



Regs4ships

Port Marine Safety Code

River Hamble Harbour Authority audit report: April 2013

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1 Executive Summary

Recent experience of mine has highlighted the importance of the Safety Management System withstanding scrutiny by the authorities and lawyers after an accident. For this audit we examined the SMS from the perspective of a lawyer or enforcement officer after an accident. This is the type of work that I am often involved in, mostly as an expert witness.

In such post-accident circumstances the SMS will be examined from top to bottom. Those putting the SMS under scrutiny will be looking for faults, especially if the risk assessments have not dealt with the accident that occurred; faults in the SMS indicate liability. They will be looking for a coherent SMS that clearly demonstrates that those accountable and those responsible (not necessarily the same people) have met the requirements of the Port Marine Safety Code and discharged their duties. Such scrutiny will include examination of:-

- The policies which support the SMS
- Procedures to implement the stated policies
- Risk assessments that inform the procedures
- Records that the systems has been kept up to date and audited.
- Evidence of practice drills.

The object of this exercise was not to examine the possibility of such accidents occurring but to examine the robustness of the SMS if they did.

Two scenarios resulting in fatal accidents were selected.

- 1 A collision between a passenger vessel (like the ones that do sightseeing trips in the River) and a dredger. The passenger vessel capsizes and there are multiple fatalities.
- 2 A fisherman falls whilst boarding his fishing vessel at night which is moored at the fishermen's jetty. He hits his head and ends up dead in the water. This type of accident is, unfortunately, not uncommon.

The analysis of the SMS after both scenarios indicates it is robust although more thought will have to be given to the use of the fishermen's jetty, especially as it is recognised that the risks associated with its use are not presently As Low As Reasonably Practicable. A major emergency drill would be good.

2 Background

The Port Marine Safety Code requires that the Designated Person audits the Harbour Authority's compliance with the Code and provides independent assurance to the duty holder. The main responsibility of the DP is to determine, through assessment and audit, the effectiveness of the marine SMS in ensuring compliance with the Code.

We report accordingly and ask that this report be presented to the Board at the next Board meeting.

We enclose a Certificate of Compliance confirming compliance with the Code subject to the contents of this report. This should be filed in the appropriate section of the SMS.

3 Close out of observations from previous audit

All observations made in previous audits have been closed out.

4 Non- conformities

4.1 Fishermen's jetty 1/13

In the light of the recent risk assessment that found that the access to the jetty needed improvement and that the risks associated with its use was not ALARP and coupled with the observations made in this report, the use and access to of the Fishermen's Jetty needs review. Close out required within 6 months.

5 Examination of the Safety Management System after a fictitious accident.

5.1 A collision between a passenger vessel and a dredger. The passenger vessel capsizes and there are multiple fatalities and pollution.

5.1.1 Policies

River Hamble Harbour Authority Strategic Vision.
River Hamble Harbour Authority Strategic Plan.
Port Marine Safety Code Statement of Compliance to the MCA dated November 2011.
Safety Policy for Marine Operations (signed by the Chairman 17/07/09).
Safety Plan for Marine Operations.
Responsibilities of the Chairman of the River Hamble Harbour Board.
Responsibilities of the Duty Holder (signed by each member).
Job descriptions for all harbour staff.

5.1.2 Standard Operating Procedures

Emergencies.

- Emergency folders.
- Emergency Logging Form.
- POLREP CG77 + continuation sheets.
- Incident report forms.

Pollution.

- Oil Spill Response Plan - relates to Hampshire County Council Coastal Oil Spill Response Plan.

Joint Emergency Plan

- SOLFIRE – contingency plan for all marine emergencies

External Emergency Plans

Hampshire County Council Emergency Officers Plans
HCC Major Incident Plan
HCC Community Recovery Plan

5.1.3 Risk Assessments

Trip Boats (Commercial) dated 06/09/10 (reviewed annually in accordance with SOP).
Also letter to operators from HM outlining required procedures (dated 08/06).
Permission required before entry from HA by VHF 68.
Byelaw 10 – competent person to navigate.
COLREGS (HM GD No2).
Byelaw 5 Safe Navigation of Vessels.
Trip boats surveyed and certificated by MCA and operated in accordance with a SMS.

Dredgers

Works consents requires a RA + method statement to be submitted to HM.
Byelaw 10 – competent person to navigate.
COLREGS (HM GD No2).
Byelaw 5 Safe Navigation of Vessels.
Dredgers surveyed and certificated by MCA.

5.1.4 Audits

External audits of SMS by independent Designated Person every 6 months.

5.1.5 Drills

There has not been a drill or table top exercise for an accident of this magnitude. On 13/05/11 there was a practical drill for a localised accident. Oil Spill drills accord with the statutory requirements.

5.1.6 Observation 1/13

Whilst multi agency drills for major accidents drills are extremely difficult to organise we urge that consideration be given to exercise a major accident such as this, even if it is an internal desk top drill involving all of the Harbour Staff.

5.2 Fishing Vessel Boarding Fatality at Fishermen's jetty.

5.2.1 Policies

River Hamble Harbour Authority Strategic Vision.
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Job descriptions for all harbour staff.

5.2.2 Risk Assessment

Landing of commercial fishing catch.

Note: A Bridge Link is planned to be located between the fishermen's jetty and the boardwalk. The HA have applied for pre-application advice from the LPA and may need permission from the MMO. Until this bridge is in place the RA is not ALARP. There is no lighting or power on the jetty and no handrails. The vessels that use the jetty include visiting vessels and are less than 12metres LOA. The agreement with the fishermen is that the jetty should only be used for unloading their catch and taking on gear. However, local fishing vessels lay over alongside and fishing gear is stowed on the end of the pontoon. At low water the public have access to the jetty as access is provided around the locked gate by walking down the foreshore slipway.

The Harbour Authority owns the jetty and maintains it although it was partially funded by grants from fishing industry related bodies.

5.2.3 Docks Regulations and other legislation.

Given what is said above the question to answer is:

"As the Harbour Authority has provided the fishermen's jetty (albeit jointly funded) and owns and maintains the jetty (such costs invoiced to the fishermen) would it be potentially liable both under criminal and civil law if a fisherman was to fall from it?"

The law in this area is complicated and vague. Use of the jetty when a catch is not being landed is covered by the Docks Regulations 1988. These regulations were made under the Health and Safety at Work Act 1974 and deal with port operations. In accordance with section 16 of the 1974 Act an approved code of practice (ACOP) was published by the HSE to accompany the regulations to make intentions clear and to detail how the regulatory requirements can be applied. It was first published in 1988 and whilst there have been some changes in the law since that time the Code of Practice has not been amended. It was last reprinted in 2012.

The ACOP provides the text of the regulations, guidance on the regulations and the provisions of the ACOP.

The Docks Regulations 1988 impose duties on a range of organisations that have responsibilities over docks and dock operations. Dock operations includes the fuelling and provisioning of a ship,¹ mooring of a ship,² and the embarking or disembarking on or from a ship of its crew at dock premises.³

Those duties are imposed on every employer, self-employed person and other person on whom a duty is imposed by section 4 of the HSW Act 1974⁴. This section imposes duties on persons controlling dock premises in relations to others who are not their employees but who use those premises as a place of work. The ACOP provides guidance thus (bold used for emphasis):

*"In the dock context this would therefore mean that duties are placed on **owners or controllers of dock premises** (even if they employ no one) in relation to any person whether employed or not who uses their premises. **Duties also fall on persons who rent premises.** The*

¹ Docks Regulations 1988 2(1)(c) (i)

² Docks Regulations 1988 2(1)(c) (ii)

³ Docks Regulations 1988 2(1)(d)

⁴ Docks Regulations 1988 4(1)

*precise distribution of duties in a particular case will depend on the control actually exercised. **The terms of any contract may therefore be relevant in determining the degree of control that exists.** This will be in addition to duties imposed on employers and the self-employed.”*

Dock premises are defined as;

*‘dock premises’ means any dock, wharf, quay, **jetty** or other place at which ships load or unload goods or embark or disembark passengers, together with neighbouring land or water which is used or occupied, or intended to be used or occupied, for those or incidental activities, and any part of a ship when used for those or incidental activities;⁵*

It follows that the River Hamble Harbour Authority has a duty under the Docks Regulations 1988 for the fishermen’s jetty. The nature of these duties depends on the contractual relationship between the Harbour Authority and the fishermen and the degree of control retained by the Harbour Authority.

Regulation 5(1) of the Docks Regulations 1988 prescribes that

Dock operations shall be planned and executed in such a manner as to ensure so far as is reasonably practicable that no person will be exposed to danger.

“As far as reasonable practicable” is explained in the guidance in the ACOP thus:

The term ‘reasonably practicable’ is not defined but appears in certain Regulations. It has however been interpreted (Edwards v National Coal Board (1949)) as a narrower term than ‘physically possible’ and requires that the quantum of risk involved should be weighed against the remedial measures required, whether in terms of money, time or trouble. Correspondingly, where rectification requires or costs little in comparison with the risk involved, then action will need to be taken. For situations intermediate between these two extremes, the degree of action necessary to discharge the legal duty will need to be considered in each case. The term ‘practicable’ imposes a stricter standard and is generally taken to refer to measures which are possible in the light of current knowledge and invention (Adsett v K and L Steelfounders and Engineers Ltd (1953) and other High Court decisions).

The guidance relating to Regulation 5(1) in the ACOP says:

*The general duty required under Regulation 5(1) is for dock operations to be planned and executed so as to **ensure ‘so far as is reasonably practicable that no person will be exposed to danger’.** This means that those having control and therefore duties under Regulation 4(1) have to take account of persons acting in a reasonably foreseeable way in circumstances that may reasonably be expected to occur, so far as is reasonably practicable. **This will include amongst other things taking account of foreseeable vagaries in human behaviour, for example carelessness, which could result in a person exposing himself or others to danger.** It does not include unforeseeably perverse behaviour. It should also be remembered that*

⁵ Docks regulations 1988 2(1)

Regulation 4(2) of the Docks Regulations imposes certain duties on employees, as do sections 7 and 8 of the HSW Act.

It should be noted that the Dock Regulations 1988 do not apply to "dock operations" involving the loading and unloading of wet fish. Wet fish include shellfish and cuttlefish which are the principle catch of the fishing vessels using the jetty. When a "fish loading process" is being carried out the Loading and Unloading of Fishing Vessels Regulations 1988 apply. A fish loading process:-

means the loading, unloading, moving or handling of wet fish on, at, or nearby any quay or on any fishing vessel when moored at the quay, or any activity incidental to those activities including the mooring, fuelling and provisioning of the fishing vessel at the quay or the transfer of wet fish from one fishing vessel to another when at least one of the fishing vessels is moored at the quay;

'quay' includes any wharf, jetty or dock.

Most, if not all, of the activities undertaken at the fishermen's jetty would be included in this definition. These regulations broadly reflect the Docks Regulations yet the HSE provide the following guidance on their application with respect to safe access:

General

1 Safe access should be provided to and from any place of work on shore or the vessel which any person has to visit for or incidental to the purpose of fish handling.

2 Where there are dangerous parts at the edge of a quay, such as a break, where a person is more than ordinarily liable to fall into the water, or at the open sides of gangways, bridges, footways, caissons or lock gates where a person is liable to fall into the water, or any other place where a person is liable to fall more than 2 metres, adequate fencing should be provided and maintained in a proper condition.

3 Fencing is not required [] at straight and level quaysides, nor at edges which by virtue of the nature of the work in progress must remain unfenced during that work.

Shore to ship

*9 Safe means of access should be provided and maintained from shore to ship. **Skippers, shoreside employers, owners, self-employed persons, employees and others have responsibilities in this regard, but extending only to matters within their control. In general, it is for the skipper to check that safe access is available for use by his crew and others involved in loading and unloading operations.** To achieve this, he will often need to make suitable arrangements with the port operator or owner regarding the use of, for example, quayside ladders. The port operator or owner will have the primary responsibility for the maintenance of such ladders. Persons may step ashore if the vessel is level with, moored at and adjacent to the quayside but they should not be required to jump ashore or on board. Factors to be taken into consideration in assessing whether suitable means of access has been provided include the state of the sea and tidal variations, which may be*

considerable, and the fact that access is likely to be required at night as well as during the daytime.

The MCA published guidance in MGN 337 "Provision of Safe Means of Access to Fishing and Other Small Vessels". This includes the following extract.

1. Introduction/ Background

1.1 Marine Accident Investigation Branch (MAIB) reports indicate that poor access, including poor lighting, are a cause every year of serious, and sometimes fatal, incidents involving crew members and other persons boarding or leaving fishing and other small vessels whether alongside a quay, jetty, afloat at a mooring; on a slipway, or in a dry-dock.

2. Responsibility

2.1 Primary responsibility for ensuring safe access to any vessel, large or small, rests with the person providing the means of access. This would be the owner and/or skipper of the vessel, when the means of access, e.g. a gangway, forms part of the vessel's equipment. For UK merchant ships, there is a specific duty on the employer to ensure safe access between the ship and the quay or pontoon, as detailed in the Merchant Shipping (Means of Access) Regulations 1988 (SI 1988/1637), as amended.

2.2 Alternatively primary responsibility could rest with the operator of a dock (including a dry-dock), jetty, harbour, pontoon or mooring when the means of access is provided by that shore facility, e.g. a gangway or ladder provided by a harbour or dock (including a dry dock) operator.

None of the above is crystal clear but the Harbour Authority, at the very least, has a share in the duty to ensure the health and safety of persons using the fishermen's jetty and that the loading and unloading of fishing vessels is, as far as it is reasonable, does not expose any person to danger. How onerous that duty is depends on the level of control the harbour authority has and what contractual arrangements exist between the Harbour Authority and the fishermen. If the risk to the health and safety of the fishermen is insignificant when compared with the measures required to rectify the problem, then compliance will not be reasonably practicable. Unfortunately, statistics indicate that accidents involving fishermen falling into the water are not rare. A research project, published in 2007 showed that the fatal accident rate for UK Fishermen for the decade 1996-2005 was 115 times higher than that of the general workforce in Great Britain and that many accidents occurred in ports and involved fishermen falling into the water.

5.2.4 Observation 2/13

The management of risk associated with the use of the fishermen's jetty provides a challenge. It is understood that at the funding stage the option for lighting, power and water was turned down by the fishermen who would have had to have contributed additional funds. This has left the jetty unlit and without guard rails (if indeed they are needed).

Lighting can be provided by the fishermen using torches. The jetty would be safer if the stowage of fishing gear was prohibited. Fishermen should be made aware of the guidance in MGN 337

“Seafarers, and others requiring access to vessels, also have their part to play in minimising the risks to themselves. This includes avoiding alcohol, taking a torch and, especially, not taking a leap in the dark.”

The Harbour Master intends to write to all the fishermen known to use the jetty raising his concerns. A meeting may be useful to determine if the fishermen have an appetite for funding lighting on the jetty and to consider the practicality and benefit of providing some guard rails.

The use of the jetty should be reflected formally in a contract, as is standard practice. This contract could be a lease at peppercorn rent and could include T&Cs which should clearly stipulate the relative duties and responsibilities of the Harbour Authority and the fishermen to ensure its use remains safe. The lease could incorporate the respective maintenance obligations of the Harbour Authority and the fishermen. If after these T&Cs are in place the Harbour Authority is still exposed to liability under the regulations then either improvements will have to be made or the risk accepted.

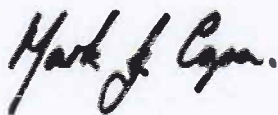
6 Talks with Harbour Staff

As part of this audit I spoke informally with all staff on duty. I reiterated the role of the DP and the importance of the Port Marine Safety Code and enquired if any of the staff had safety concerns. All the staff displayed a high level of commitment to safety and an understanding of the SMS. There appears a team spirit and all staff wish to be fully integrated into the team. It was particularly satisfying to learn of the progress and enthusiasm of the apprentice and the interest he showed in the role of the DP.

7 Conclusion

This exercise has been most useful. The examination of the SMS prompted fictitious scenarios has provided a practical analysis of the robustness of the SMS and worthwhile lessons have been learned. The fishermen’s jetty is a very worthwhile facility and has been in use for some years without major incident. My work at other harbours heightens my appreciation of what can go wrong and how liabilities can then be attached to the unwary. Forewarned is forearmed although I fully understand that pragmatic solutions sometimes do not sit comfortably with the requirements of “health and safety”.

Respectfully submitted



Mark G Capon
Designated Person under the Port Marine Safety Code
For and on behalf of Regs4ships Ltd

The following forms part of this report:

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