



# THE PILOT

The official organ of the United Kingdom Maritime Pilots' Association



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Editor: John Clandillon-Baker FNI (JCB)

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# NEW MAGAZINE FORMAT

Fourteen years ago when John Godden had retired and was looking for a new volunteer editor to take over the editor's pencil for the magazine, I offered to keep it going for a few issues until a suitably qualified replacement came forward. I suppose that I was not really that surprised when this mythical enthusiast failed to materialise and so those few issues have now become 56!

For the last couple of years, realising that producing and distributing the magazine is one of the biggest outgoings for the Association, I have been looking at ways to cut costs and so have been seeking quotes from print companies. At the same time I have also been aware that the traditional black and white format of 16 pages is somewhat outdated and therefore I have also been seeking quotes for printing the magazine in full colour. Obviously full colour represents a considerable cost increase over black & white but having received a competitive quote, Section Committee have discussed the issues and the decision has been made to trial a twenty page full colour magazine to be published three times per year. Whilst some savings will arise from the reduction in distribution costs by switching from four to three issues and additional advertising, I rashly decided to have a go producing the copy myself. The old saying that "*it seemed like a good idea at the time*" was never more apt as I found myself adrift in a whole new world of print terminology, picture protocols and formatting required to prepare a magazine for printing. In some ways learning the art of desktop publishing (yes it's definitely an art!) has confronted me with many of the problems and issues associated with the introduction of ECDIS highlighted in this quarter's feature. Being in possession of the 800 page user manual for Adobe InDesign, I have managed to produce a very basic layout and place a few pictures into the text. My experience of ECDIS is that this is similar to many officers being just able to understand the basic ECDIS functions. I am probably only using about 5% of the desktop publishing programme's potential, but whereas this means that initially you will receive a magazine with a lot of formatting errors, a failure to fully comprehend the functions of ECDIS could result in a grounding, pollution and the loss of a ship! So much for technology!!

JCB



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## REMEMBER

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## EDITORIAL

As I am compiling this issue, the Deepwater Horizon oil rig disaster is still in the news and although the flow of oil from the well has been stopped by a temporary cap, they are still drilling the relief well in order to hopefully provide a permanent end to the leak and we all hope that this will be a successful operation. However successful the relief well might be, eleven workers have lost their lives and several millions tonnes of oil have gushed out unchecked from the well causing death to marine and bird life and untold damage to the environment, yet nobody has been arrested or charged with any criminal offence. One can only imagine the force of law that would be applied to the Captains and officers had several VLCC's collided and leaked all their cargoes into the Gulf of Mexico! As detailed in the conference report, John Cota, the pilot of the *Cosco Busan*, received a ten month jail sentence for killing an endangered species!

In the conference report you will note that there was a resolution to delete the clause which requires members to participate in the insurance policy. Although this resolution was overwhelmingly defeated, the fact that it was tabled indicates an alarming ignorance as to how vulnerable we are when we have the conduct of a vessel during what is recognised to be the highest risk part of a vessel's voyage. Maritime incidents around the world, especially any involving pollution, are seemingly no longer classed as accidents but as criminal acts and recent EU legislation has granted commissioners powers to impose criminal sanctions over environmental damage. So for pilots the question is no longer do I actually need insurance but do I have enough cover? If current cases involving pilots are anything to go by the answer is probably no!

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As mentioned opposite, this issue is the first new enlarged colour magazine. The inclusion of the conference report and the important ruling of the PNPF court case has meant that the content is all rather serious. I normally try to ensure a balance between the serious articles and the more general interest ones and will endeavour to return to that balance with the next issue which I hope to have out around Christmas time. As always, if you have a story to tell or an amusing anecdote, please send it to me.

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# ECDIS

## PART 3: PROBLEMS!



*For sale. One careful owner!*

*Photo: JCB*

*In part 2 I mentioned that one of the key problems of ECDIS was the lack of training, especially type specific training. I have now piloted around 20 vessels which are navigating solely on ECDIS with no paper charts and only on four of these have I found all officers fully conversant with the functions and confident that they could safely navigate their vessel without the familiar paper chart as a back up. Somewhat unsurprisingly these four vessels were Scandinavian tankers from the top companies and all the officers had attended type specific courses for their particular ECDIS in addition to the generic ECDIS course offered by the training colleges. However, in contrast to these examples of "best practice", on five of these vessels there was only one officer who understood the ECDIS and its functions and on all of these this was the second officer and he alone seemed to be totally responsible for planning the voyage and plotting the route on the ECDIS. So far as I could ascertain, none of the officers, including the 2nd Officer, on these ships had received any type specific training but had been expected to glean the full operating functions of their particular ECDIS from the manufacturer's manual. The manuals from all the manufacturers seem to run to 500 pages or more so it's hardly surprising that responsibility for wading through it and getting to grips with the functions is delegated to the 2nd Mate who is officer traditionally responsible for chartwork and navigation. Of the remainder of the vessels Admittedly 20 ships is a very small sample and my data collection methodology probably wouldn't stand up to scrutiny but as a very rough indicator it would suggest that 20% of vessels have good understanding and good procedures in place, 60% have a reasonable working knowledge but worryingly around 20% are at high risk of being involved in a navigational incident either as a result of ignorance of the ECDIS features of display modes or as a result of single person error by the navigating officer in planning the passage. This may seem an alarming statement but the dangers are real.*

### When is a chart not a chart?

Navigation by use of ECDIS requires a totally new thought process which expects navigators to forget the traditional paper chart and chartwork practice. This revolutionary change to the way ships are navigated has been neatly summarised by Christian Hempstead, Associate Professor at U.S. Merchant Marine Academy, who states that “ECDIS-based navigation requires the mental integration of all the displayed digital and graphical information with the visual scene and with the projected motion of the vessel and with the surrounding situation as it unfolds”.



The vector chart is a highly complex three dimensional interactive chart which requires not only detailed knowledge of the vector chart concept but also detailed knowledge of how to access essential functions, many of which may be hidden away in menus and sub menus. This menu based system for hiding information is just one of the many operational minefields associated with ECDIS because, as with radar, the information displayed has not been “user led” but decided by the whims of the multifarious manufacturers! This manufacturer led development of ECDIS has in effect created one of the most serious problems with ECDIS because of the conflict it causes with the chart familiarity contained within the STCW95 requirements. There have been concerns in some quarters that whilst the carriage of ECDIS is due to become mandatory between 2012 and 2018 there is currently no requirement for officers to be trained since the IMO model course has yet to be incorporated into the STCW requirements. However STCW 95 is quite specific in that it states that a navigating officer must possess “a thorough knowledge of and ability to use navigational charts and publications...” He must show “....evidence

of skills and ability to prepare for and conduct a passage, including interpretation and applying information from charts”. Therefore If ECDIS is used in place of a paper chart, the navigator must demonstrate the same degree of knowledge and competency concerning the use of ECDIS as with a conventional chart. I have recently piloted a Finish Ro-Ro vessel fitted with ECDIS and all the officers had been on a 4 day course for the model fitted to their company’s fleet of vessels. This course was in addition to the 5 day generic ECDIS course that they had already attended but would not be valid if they transferred to a vessel fitted with a different system. Whatever happens, all this reveals a fundamental weakness in the ECDIS concept whereby although the official Electronic Navigation Chart (ENC) displayed by the ECDIS can only be produced and updated by authorised hydrographic offices to very strict performance standards, the way in which this official chart data is accessed for use has been left to the manufacturers! As to how officers would be trained to use the system wasn’t given much consideration thus leaving the hapless mariner to muddle along the best he can!



*Different ECDIS: Different displays & menus!*

With so many different manufacturers and so many different operating systems how is the shipping industry going to cope? Just getting officers through the generic course is going to be a serious challenge within the time frame but getting the type specific training as well is a potential quagmire! In order to clarify the training requirements for ECDIS a revision to the STCW 95 was adopted by the IMO at the Manila conference in June this year which will come into force on 1st January 2012.

So, are we going to see ships delayed because no officer has had the appropriate type training? I very much doubt it because, the way I interpret the amendment, the IMO requirements stop short of actually making the ship owner responsible for ensuring that their watchkeepers are fully

type specific trained! Indeed the wording contained within the Manila amendment seems to pass the ultimate responsibility to the seafarer!

The responsibilities of companies is contained in section B-1/14

1. *Companies should provide ship-specific introductory programmes aimed at assisting newly employed seafarers to familiarize themselves with all procedures and equipment relating to their areas of responsibility*

It seems that its the interpretation of “introductory programmes” that’s important here! This could be merely to ensure that training manuals are put on board since the same B-1/14 also states under “crew members” that:

4. *Immediately upon arriving on board for the first time, each seafarer has the responsibility to become acquainted with the ship’s working environment, particularly with respect to new or unfamiliar equipment, procedures or arrangements.*

5 *Seafarers who do not promptly attain the level of familiarity required for performing their duties have the obligation to bring this fact to the attention of their supervisor .... and to identify any equipment, procedure or arrangement which remains unfamiliar”.*

Note that for companies the requirement is that they “should provide” but the seafarer “has responsibility”. Could this mean that if a company ensures that appropriate instruction manuals are placed on board but the new crew member fails to read / understand them and then fails to notify anyone that he hasn’t then he is at fault rather than the company? Perhaps I’m just getting cynical in my old age!

### ***MV “CFL Performer”***

So, is all this ECDIS training necessary or are the concerns just alarmist exaggerations? The answer is provided by the MAIB who have already investigated several ECDIS related groundings of which the most revealing is the grounding of the *CFL Performer*.

This vessel is a general cargo ship built in 2007 fitted with an approved ECDIS and therefore doesn’t carry any paper charts. In April 2008 the ship was carrying 6020 tonnes of Bauxite from Paramaribo to the Humber and because the Master was concerned about arriving in time for the tide the route was amended on the ECDIS to take a short cut through the Haisborough Sands to the pilot boarding ground. However, an error was made whereby the course was set to pass over a sand bank rather than in the adjacent channel and the vessel duly went aground. It was daylight at the time with good weather. Fortunately, the Master



CFL Performer

Photo: MAIB Report

was able to refloat the vessel using the engines and there was minimal damage and no pollution.

The subsequent investigation by the MAIB highlighted several failings, all directly attributable to unfamiliarity with the ECDIS on board.

Firstly, it is almost certain that had the passage been amended by re-drawing the courses on a paper chart, the course across the shoal would have been immediately evident but this initial error was compounded by the 2nd Mate who was on watch at the time. Quoting from the report, shortly before the grounding, *“the master, who was in his cabin, felt a change in the vessel’s vibrations. He called the second officer and instructed him to check the depth of water. The second officer looked at the ECDIS display and reported to the master that there was no cause for concern. The depth sounder was not switched on”*

Since he didn’t put the echo sounder on it seems that the 2nd Mate glanced at the ECDIS and seeing that the vessel was on track was satisfied that no danger existed!

Whilst alongside at Grimsby the vessel was detained due to deficiencies by Port State control and one of the deficiencies was that the ship’s officers weren’t trained in the use of ECDIS and one of the non conformities found during an ISM audit of the vessel by Lloyd’s was the navigating officers’ lack of familiarity with, and incorrect use of, the ECDIS system on board.

When the vessel had been commissioned, the owners had ensured that the Captain and 1st Mate received type specific training but this wasn’t provided for officers who subsequently joined the ship and the MAIB found the following:

*Of the officers on board at the time of the grounding, neither the chief officer nor the second officer was trained in the operation of ECDIS, but both had used such equipment on previous ships. The master had no previous experience or training on ECDIS or any other form of electronic navigation system. None of the officers were aware of the significance of the safety contour, the safety depth, and the shallow and deep contours, and did not know how to establish a watch vector ahead of the vessel, or its significance. They also did not*

*know how to use the ‘check page’ to ensure that all course lines and associated channel limits were clear of navigational dangers.*

With reference to type specific training, the report makes the following observation:

*The chief and second officers on board CFL Performer had used an ECDIS on previous ships. However, the factors listed in Paragraph 2.2 indicate that neither had an acceptable working knowledge of the operation of the Furuno FEA-2107. Although ECDIS’ must meet the specific performance standards set by the IMO, manufacturers inevitably vary aspects of equipment operation in order to remain commercially competitive. This has led to differences between systems in terms of menus, terminology and equipment interface. Such differences can be marked and, although operations manuals are provided, these are not always easily understood. A mariner’s proficiency in the use of a particular system is therefore undoubtedly best served by the provision of equipment-specific training, regardless of any previous training and experience.*

To me that statement seems to confirm that the commercial interests of the manufacturers rather than the needs of the mariner have been allowed to dictate ECDIS development!

The other aspect of ECDIS use highlighted in this report is the change in mental attitude of a watchkeeper using ECDIS and the report makes the following observation with respect to this:

*“...the OOW relied on ECDIS alarms to warn when the vessel was approaching an alteration of course or was more than 185m off the intended track. In effect, the monitoring of the vessel’s progress was undertaken by the ECDIS, while the OOW spent much of his watch preparing for forthcoming audits and passage planning.*

*The second officer presumed that the vessel would be safe providing she remained within the channel. Consequently, he paid little attention to where the vessel was heading, and did not:*

*-Investigate the significance of the South Haisbro’ cardinal mark and the Mid Haisbro’ starboard conical buoy, which the vessel passed at a distance of about 1 mile;*

*-Check the new course before altering*

*-See the eddies or disturbed water...*

*-Ensure that the echo sounder was switched on, particularly when the master raised concern regarding the depth of water.*

*Such actions are fundamental to the duties of an OOW, and would have undoubtedly helped to identify the shallows ahead of the vessel in sufficient time for successful avoiding action to be taken.*

*ECDIS provides a potentially invaluable asset to passage planning. However, there is a danger that many bridge watchkeepers will increasingly trust what is displayed without question. As this case demonstrates, such trust can be misplaced. The need for bridge watchkeepers to remain vigilant and continuously monitor a vessel’s position in relation to navigational hazards remains valid, regardless of the electronic aids available.*

Feedback from deep sea pilots and concerned masters suggests that such practices are alarmingly commonplace amongst the younger officers!

### Other Problems

Even if the watchkeepers have been fully trained to use their particular ECDIS, there are an increasing number of operational problems being uncovered during usage, including some potentially serious problems with the actual official ENC data that underpins it.

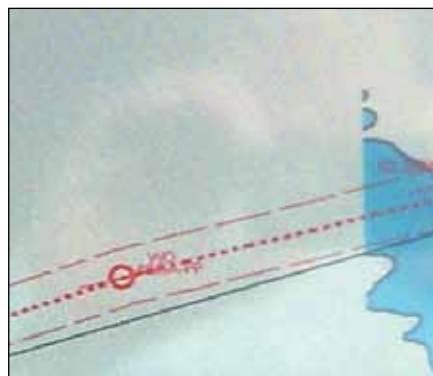
### Screen size

One universal complaint that I have encountered is the small screen area actually available on the ECDIS screen for the chart display. The specification is for a minimum screen size of 27cm x 27cm which, compared to a paper chart, is minuscule but the vast majority of ECDIS displays that I have seen have been that size or only slightly larger. Obviously the size dates from the inception of ECDIS over a decade ago when LCD screen monitors were still in development and even the flat screen cathode ray tube TV was a novel and expensive innovation, but with a good quality 23 inch (59cm) monitor now costing less than £200 and even a 42 inch (107cm) public display monitor costing less than £1000 it does beg the question as to why the ECDIS manufacturers / suppliers aren’t offering larger displays. I realise that the ECDIS requires rigid screen specifications but that’s what the developers should be working on especially since a 42inch display would fit very neatly into the redundant chart table!! The problem of screen size is confirmed by the following complaint posted on the Nautical Institute’s ECDIS forum ([www.nautinst.org/ECDIS/index.htm](http://www.nautinst.org/ECDIS/index.htm))

*Due to the size of the screen, an over view of the*

whole passage is very hard to see and this causes problems when checking passages, explaining to navigators where I want to go etc, if the range is increased on the ECDIS it is very hard to see small items of information, particularly soundings near to the course line. This has led to what could be called near misses in the passage planning stage. The only way to check the passage plan effectively is to decrease the range to say 6 miles and then keep moving the screen along over the course. Time spent in this when on a relatively short passage of say 400 miles is rather time consuming and not a very effective use of time. Also with short turnarounds in port it can at times be an issue.

Other problems that I have been made aware of are too numerous to list here but an example of confusing anomalies is the following screen shots taken by a deep sea pilot where changing ranges caused part of a charted bank to totally disappear! Most ECDIS seem to run on standard computers under the Microsoft Windows operating system and most ECDIS only vessels that I have piloted have experienced the hard drive failures, crashes, screen freezing and slow running common to all comput-



ers. Fortunately, the back up unit has enabled the navigation of the vessel to continue safely but I have received one report of a black out where the emergency generator failed to start so both ECDIS units failed. Although power was restored fairly rapidly it apparently took a considerable time to reboot the ECDIS. Fortunately, this occurred well out to sea but the consequences of such a failure in confined waters are worrying. The good news is that I haven't yet heard

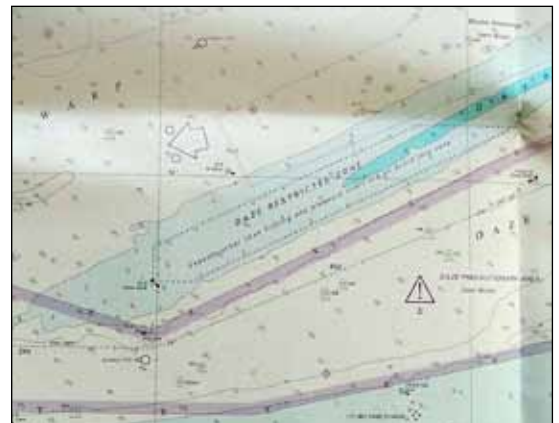
of any ECDIS being infected by a virus or trojan but some observers believe that such an attack is inevitable!

**The Electronic Navigation Chart (ENC)**

As detailed in parts 1 & 2 the heart of an approved ECDIS is the ENC which is produced by registered hydrographic offices to very exacting data standards known as S-57. However, the ENC is highly complex and although the data is exactly the same as for a paper chart, in order to prevent overloading the navigator ( that small screen again) much of the data present on a paper chart is stored away on different layers or is accessed by clicking on charted "objects" to obtain detailed information via what is termed a "pick report"

The adjacent photos show a paper chart and the equivalent ECDIS standard display of the same area.

This is an interesting area because it contains many features which, in my opinion, reveal some serious anomalies in the ENC data formatting. As can be seen all of the written information is missing from the ECDIS display and whilst some detail will appear when the range is changed, other information can only be obtained via a pick report. This particular area of the Thames Estuary isn't a compulsory pilotage district for certain classes of vessel up to 90m in length so this lack of chart information can cause major problems for even the best run vessels and the VTS. For passage planning purposes, a navigator setting a course



through the Precautionary Area on a paper chart will immediately notice the fact that this is an area where anchoring is prohibited and can check the printed notes on the chart. During the transit, the watchkeeper will be familiar with the symbology and read the notes and exercise the required caution whilst transiting. In contrast, on the ECDIS, the missing text, combined with the lack of shading delineating the Ooze Precautionary area is very confusing with the two caution areas being so close. The only way that a navigator will discover the legend "vessels other than fishing and pleasure craft are to avoid this zone" is by wading through the pages of data that are presented when a pick report for the area is requested. As to how many navigators will have either the time or inclination to undertake the laborious process of getting pick reports for areas along their proposed route is another question that needs to be addressed! It also explains the reason why all watchkeepers who I have encountered prefer

the raster electronic chart to the official vector ECDIS.

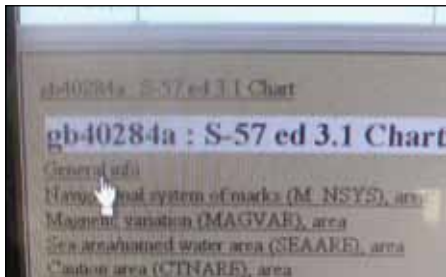
Is this text information actually important in 2010? Well yes, because if VTS broadcasts information relevant to a precautionary area, a navigator unfamiliar with the district will have no way of knowing if the information is relevant to his vessel unless this information has been accessed and noted as part of the passage planning process. It is also no use for just the navigator preparing the passage to be aware of this information because whoever

is on watch at the relevant time also needs to be aware. Quite how this can be achieved is problematic but best practice would suggest written notes, either on screen or hard copy, to accompany the passage should be produced but again this would be a very laborious and time consuming process which would seem to defeat the object of electronic charting. In my opinion, practical usage aspects such as this represent a fundamental failure of the developers of ECDIS to comprehend how competent navigators actually use a paper chart! This isn't an exaggeration because in this particular area the place where this missing text causes the most problems in practice is the Mouse Anchorage. This anchorage is used by the small vessels prior to entering their compulsory pilotage districts for London or the Medway so they are frequently requested to anchor there by VTS, but how is a navigator expected to know where it is on an ECDIS if he's never visited the port before? The answer to that question

was part of the reason for my writing this part 3 ECDIS feature. Having heard several small vessels report in to VTS with their details and, upon being instructed to anchor in the Mouse anchorage to await their pilot, requesting the Latitude and Longitude of the anchorage, my (and other pilots) thoughts were naturally that *"if he doesn't know where the mouse anchorage was he should take a pilot"*! It was only whilst piloting an ECDIS only vessel that I noticed the absence of the name on the anchorage and discovered that even by changing ranges the name didn't appear. Checking the other named anchorages revealed the same problem. Interestingly the numbered and lettered individual anchorages off Southend and Shoebury do appear when the display is zoomed in (Z12 & W1 in the top left of the ECDIS picture). So how does a navigator find the names of the general anchorage areas? Well, if he doesn't know where the anchorage is then the answer is that it's almost impossible especially on the ECDIS display opposite!

On the screen shot the vessel Fast Sam is at anchor in the Mouse anchorage whose boundary is very faintly marked by a pecked magenta line. To find the name of this anchorage the navigator first has to find it and then click within it which provides a bewildering index of information about the anchorage, but not the name!

I consider myself to be a relatively normal human being so I assumed that it would be contained in the "General Information"



page. Wrong! This page actually contains data about the ENC rather than the area that was clicked on. To get the name of the anchorage it is necessary to click on the 11th index item "anchorage Area" and this finally brings up the name!



So what this actually reveals is that our hapless Captain is actually taking the only practical course of action open to him by asking the VTS for the Latitude & Longitude of the anchorage but such a request could potentially cause the vessel to be classed as "non compliant" for port entry with all the associated implications for the vessel and owners.

### Strange symbology!

The problems don't just end with this missing text data because I have also discovered that the actual delineation of areas is seemingly not only different to the established symbology of the paper chart but is again left up to the manufacturers. I have already noted that the lack of boundary shading on the Precautionary Area limits make it difficult for the navigator to readily differentiate between the Precautionary Area and Restricted zone but there are also anomalies with respect to the magenta boundary markings. On the paper chart there are crossed anchors at regular intervals along the boundary so it's immediately obvious to any navigator that anchoring is prohibited within this area but on the ECDIS no such crossed anchor symbols exist. Instead they have been replaced by a single (again very faint) crossed anchor adjacent to the exclamation mark. On other ECDIS they have replaced the shading with inward facing pointers and have placed light magenta hatching across the area to help the navigator but again the crossed anchors are missing from the boundary having again been replaced by an insignificant single crossed anchor symbol hidden within the area!

The inclusion of crossed anchors on a boundary obviously isn't a problem for manufacturers because the same ECDIS had crossed anchors bordering the Yantlet dredged channel although it's interesting to note that on the paper chart there are no crossed anchors on that Channel boundary but rather crossed anchor symbols at regular intervals within the channel. In view of the potential dangers of navigators misinterpreting chart information it is difficult to comprehend why the display specifications for ECDIS doesn't require the retention of established chart protocols.

### Satellite Failure

ECDIS is a satellite only position fixing system so currently relies totally on the GPS signal being received. A total or partial loss of GPS signal will result in an ECDIS becoming inaccurate and therefore a navigator must know how to plot visual bearings or radar range and bearing information onto the ECDIS to obtain a position. Again, this vital function has been left to the manufacturers to incorporate and on many ECDIS the process is so complicated as to be not fit for purpose, despite the requirement for such a feature to be integrated. I have noted that the vast majority of watchkeepers not only haven't a clue as to how to undertake such manual plotting but many were totally unaware that such plotting was actually possible. That training issue again! However, on

ECDIS only tankers I have been informed that many vetting inspectors now include manual plotting on ECDIS as part of their checks and consequently I understand that the latest generation of ECDIS are now required to have a simple plotting facility instantly available from the main menu display. Just don't ask about celestial navigation plotting on an ECDIS!

The biggest problem with GPS position errors however is not the manual plotting but the psychological aspect of a navigator seeing the ship on the chart and not believing that it is possible that the displayed position could be in error. In the same way that SATNAV causes lorry drivers to drive into farms or into rivers, there have been many cases of navigators refusing to accept that the GPS could be in error despite visual and radar references indicating that something is incorrect and simulator trials have confirmed that this is a serious problem.

With the GLONASS satellite system being upgraded and the EU's Galileo system due to come on stream in a few years, there are already multi system satellite receivers being produced which will take positions from a greater number of satellites and thus effectively eliminate such position errors and with most ships now having at least two satellite receivers, aerial problems, such as caused the grounding of the cruise ship Royal Majesty in 1995, should no longer be an issue. Despite this potential to eliminate satellite positioning errors, a growing area of concern is jamming of satellite signals. Although I'm unaware of any serious deliberate jamming attacks on GPS, there have been several reported cases of inadvertent disruptions from a variety of sources that have caused havoc to on-board systems, usually in congested port areas. However, with GPS jammers readily available on line from as little as £25 deliberate jamming is potentially a serious threat especially if road usage tax policies become a reality. In order to assess the impact of jamming on commercial shipping, Trinity House have undertaken GPS jamming trials and I will include a report on these in the next issue?

One solution to prevent outages caused by jamming could have been e-Loran which Trinity House have been developing with the General Lighthouse Authorities (GLA's) with considerable success but last year the USA announced the dismantling of the Loran Stations in the US so the future of this project is currently in doubt.

Another possible solution came to me whilst piloting a ship with an electronic chart overlay on the radar. with common photo applications now capable of face and feature recognition it occurred to me that it should be

fairly straightforward for and “intelligent” ECDIS to examine a radar image of the land and, if there was any discrepancy with the satellite positioning to align itself with the radar coastline. I have made a few enquiries regarding this concept and I understand that some companies are working on this so remember, you read it here first!

**Conclusion**

As an overall concept, ECDIS has the potential to enhance navigational safety by incorporating charting into the integrated bridge console displaying information specifically tailored to that particular vessel's safety parameters and it was this safety potential that persuaded IMO to introduce the compulsory carriage timetable.

For the ship owners the advantage is that it removes the need to place vast folios of charts on board a ship which all require to be kept corrected but a fair percentage of which might never be used. Licences can just be purchased for charts relevant to a particular passage and if the trading area changes then it's a simple matter to purchase the licences to access the charts for the new trade. For the ship, the tedious process of checking / updating folios and chart correcting is removed.

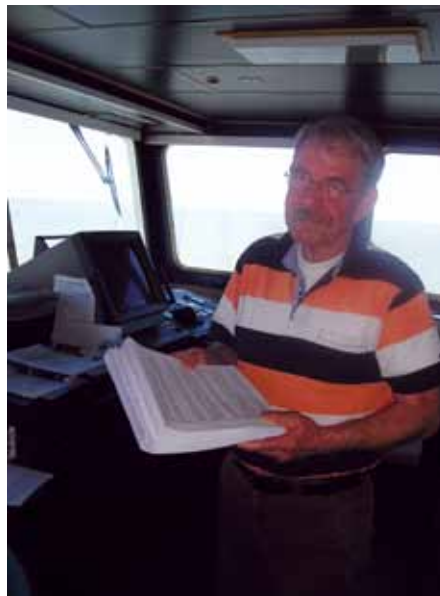
The problem is that, in order to please the manufacturers and to encourage them to develop the systems, the needs of the end user have been sidelined and consequently there are a bewildering number of different ECDIS with a myriad of different operating systems incorporating incompatible menu systems. The situation was bad enough with radar but chartwork is so fundamental to the safety of a vessel that a comprehensive knowledge of not just the concept of the vector chart that underpins ECDIS but also the type specific functionality is essential. This need is only now being addressed seriously, but with so many different systems and so many navigators to be trained it is almost inevitable that there will be more groundings such as that of the *CFL Performer!*

In my mini survey I have discovered that all navigators prefer the paper chart to ECDIS and given the choice would prefer the raster chart with its familiar display to the vector chart. Even on the best run vessels with highly trained officers I have yet to find any officer who is enthusiastic about ECDIS or who believes that the ECDIS is the ultimate solution to navigation practice. In contrast the momentum has been driven by those ashore who are convinced that ECDIS is the ultimate solution to navigation safety. Such a chasm between the proponents and end user is regrettably a hallmark of the commercial maritime world.

JCB

# THE ISM CODE

## A picture speaks a thousand words!



I recently piloted a small coastal tanker and noticed that the printer in the improvised office section (now an essential element of a short sea trader's bridge!) of the wheelhouse was clunking away merrily, churning out page after page of documents.

After a while, noting that this energetic little machine was showing no sign of giving up, I asked the Captain what he was printing out and he explained that his company had recently been taken over and the since the change he had been bombarded with emails and instructions and procedures and policies and everything else that a large modern company seems to have to produce to be able to function. That morning, he had received an email advising that the new safety management system document was attached and that he was to print it out and

email confirmation of receipt and also to confirm that he had read and understood its content. Being busy with navigation and ensuring that he complied with the 12 page port arrival procedures he had hit the “print” key so that he could read the attachment later.

Much later as it turned out! It was nearly an hour and a couple of paper and ink cartridge changes (this was a cheap domestic printer) before we both heaved a sigh of relief as the printer finally fell silent and relative peace was restored to the wheelhouse! It turned out that the attachment was the company's full safety management system document, totalling 402 pages!

Being a Dutch ship, with the office still in Holland, I was surprised to note that this massive wodge of paper was all in English and although the Captain spoke English perfectly I questioned him why such a seemingly essential document was not printed in Dutch. With another resigned sigh, he explained that the new company's policy was that all communications now had to be undertaken in English and he had already been told off because he always spoke Dutch when he phoned the office! As he explained, when trying to explain a technical issue it was always easier and safer to do it in one's own language.

What I love about the Dutch is their great sense of humour and later on, whilst he was sorting through the pile of papers I asked him if he had located any important procedures. *“Oh no Mr Pilot, I know that just by being a tanker underway we probably breach them all but I am just checking to make sure that I order the correct grade and colour of toilet paper”*. It's no wonder that so few officers now aspire to rise to command!

JCB



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**122<sup>nd</sup> ANNUAL CONFERENCE****VENUE: SWANSEA****13<sup>th</sup> - 14<sup>th</sup> May 2010**

*The 2010 conference was organised by S E Wales pilot, Gordon Harries and Milford Haven pilot John Pearn at the Village Hotel, Swansea which was attended by 44 delegates representing 22 districts. As usual with the two day conferences, the conference sessions were enlightened by an evening dinner / dance where a raffle was held in support of the Marine Society & Sea Cadets which raised £650*

The conference session was formally opened by UKMPA President, Lord Tony Berkeley.

**Chairman's Report: Joe Wilson (Tees)**

Joe explained how frustrating and non productive the last year had been as a result of all the key personnel within the DfT, MCA and Port Skills & Safety having left. Progress on National Occupational Standards (NOS) and pilot qualifications had remained stalled but the UKMPA continued working on this issue

**PNPF:** Joe explained the history of the PNPF to which every UK pilot had originally been a member and in 1972 there had been 1318 active members with 715 pensioners but the 1987 Pilotage Act had resulted in new pilots tending to join their port's scheme and consequently the current membership stood at 181 actives with 1340 pensioners. Despite the low numbers, PNPF pilot trustees were still elected by the UKMPA and the UKMPA also dealt with general pension enquiries from non PNPF members and for this reason Joe felt that it was important that Pensions remained as part of the conference proceedings. (See page 17)

**Membership:** The current membership is 459. Joe estimated that there were probably around 200 pilots working in the UK who weren't members and this was an area that the UKMPA was currently addressing.

**UNITE,** continued to offer an excellent service and the Regional Officer (RO) should be the first point of contact for employment issues. Joe advised that all members should establish contact with their RO.

Recent months had seen changes within the

**UKMPA Section Committee (SC)** who continue to undertake an enormous workload on behalf of members. SC are all volunteers and much of the work isn't evident to the majority of members but the work is vital to protect every pilot's interests.

**Insurances: Rob Watt (Forth)**

With Simon Campbell having been unable to attend conference, Rob, who has taken over as Treasurer from John Pretswell, gave the insurance presentation. Rob detailed the various policies and their benefit to members. In particular Rob explained that the compulsory **Royal & Sun Alliance (RSA)** legal protection policy for members was a unique policy tailor-made for pilots which offered unparalleled protection for UK pilots. Having detailed the aspects of the cover, Rob warned delegates that as a result of some cases currently being processed, the current highest cover of £1m may need to be revised upwards.

With respect to the **DAS** policy, Rob explained that this didn't just cover pilots when piloting but also other members of their family and provided examples of this. At less than £15 per annum this policy is extremely good value.

Rob also detailed the benefits of the optional **accident insurance** policy available. This wasn't restricted to accidents whilst piloting and members could opt in or out at any time. Several pilots had benefitted from this policy

Rob concluded by explaining that this presentation had been given to the EMPA conference and had resulted in many requests for further details since it represented a level of cover and protection which was considered to be "Gold Plated" by European standards.

**Q&A**

This topic generated considerable debate regarding the policies and cover provided. A question was raised regarding what might happen if the legal defence costs exceeded a member's level of cover. This was uncertain but historically, in serious cases, UNITE had agreed to underwrite the continuation of the case.

With respect to the legal protection of a pilot by a CHA which some pilots considered provided sufficient cover, a legal opinion had been provided to London that the *Cavendish* case had effectively removed any legal protection that a CHA might provide whilst a pilot was on board piloting because he was legally no longer employed by the CHA and therefore even if a CHA wished to represent a pilot they were legally unable to do so. Therefore any pilot who didn't have personal insurance was potentially dangerously exposed to possible personal ruin.

The *Cavendish* ruling has never been challenged and it was pointed out that in the case of the *Sea Empress*, it was the CHA themselves that took legal action against the pilot.

There were currently three major cases being handled by the RSA insurance, one of which

looked as if it would exceed the £1m cover. Another case which had been successful involved a pilot who had had his authorisation downgraded by his CHA. The policy had paid the difference to restore his salary.

A **resolution** from Harwich proposed that insurance cover should not be a compulsory requirement for UKMPA membership and that clause 4(d) should be deleted.

In the subsequent debate, no delegates spoke in support of the resolution. The reason for the insurance cover being compulsory is in order to be able to obtain group cover at a reasonable rate for members. Alistair Gibson (Forth) explained that whilst he could understand the reasoning behind the resolution, historically, the group insurance policy had been introduced as a result of members having incidents and then turning to the UKMPA / T&G for legal assistance which had been a drain on the Association's finances. A formal ballot was held over the resolution which resulted in

**3 votes in favour**, and **44 Against**. The resolution was therefore defeated

**MCA & DfT Peter Wylie (Tees)**

The MCA Brief includes: the Port Marine Safety Code Steering Group (PMSCSG), the UK Safety of Navigation (UKSON) meetings, The VTS steering group, and work towards a pilots Certificate of Competence with Port Skills and Safety (PSS).

Unfortunately the key persons with whom the UKMPA had been dealing in these groups have moved on or been replaced, so much of the hard work put in over the years is having to be redone.

**UKSON:** This meeting was attended with a deep sea pilot as traffic schemes and coastal problems were on the agenda. Recent work had included updating IMO resolution A486 on the use of qualified North Sea Pilots and getting a dedicated anchorage for Aberdeen approved.

**ECDIS:** mandatory carriage of ECDIS starts in 2012 and the MCA are getting increasingly concerned regarding the safety implications of poor training.

**VTS:** The MCA have expressed concern over the closing down of the Severn Estuary Coastal VTS by ABP but are powerless to insist on continuation.

**IALA:** Guidelines on the provision of Navigational Assistance by VTS have been published and provide a well written set of advice. (Electronic copies are available from Peter on request).

**PSS:** The latest news is that recruitment is underway and that work towards pilotage Certificates of Competency is still high on the agenda. They are aware that our Technical and Training committee have all necessary documentation ready.

**PMSC:** A refreshed code was launched this year.

It is more compact and user friendly than the original and is available on the DfT Website.

**MAIB:** The report on the Vallermosa has caused much debate. In particular the following paragraph caused concern that the MAIB considered pilots to be a “weak link” in the safety chain:

*“Evidence from this, and previous accidents, demonstrates the potential for Serious accidents to occur once pilots become the weak link in the safety Chain.” [2.6.1]*

Peter raised this at the last PMSCSG meeting and the “weak link” interpretation was completely refuted by all members and Peter provided the following extract from the minutes which clarify the MAIB statement:

- *It was felt that manning levels were not a significant cause of this incident; rather, it was the crew's lack of attention and willingness to transfer vessel safety to the pilot.*

- *With pilots being a single point of expertise, a breakdown could allow them to become a weak link in the safety chain.*

- *It was not easy for a pilot to decide if the crew are sufficiently engaged or not.*

Peter considered this to be a positive and reassuring clarification. The other outcome of this incident is that as a result of the recommendations within the MAIB report, the MCA are discussing safe manning with the MAIB and the UKMPA are currently working with the UK Major Ports Group and the British Ports Association on the pilot / bridge team issues.

Q&A

A question was asked regarding **pilotage qualifications** and Peter explained PSS had confirmed that a pilotage qualification was still on the agenda and that they were pleased that the UKMPA were prepared to input. PSS had also now accepted that a “Foundation Degree” was insufficient as a pilotage qualification.

**Passage planning** was also raised and in the subsequent discussion it was revealed that different ports had vastly differing interpretation of the requirements for both ship and pilot plans. Concerns were raised that the failure of the MCA to have a coherent inspection and regulatory system in place, coupled with the requirement for pilots to report any defects, resulted in the onus being placed on pilots to police ship board navigational safety practices.

#### **EMPA: Peter Wylie (Tees)**

**Romania:** Here competition is the norm and at the EMPA conference the Romanian representative had explained how, despite being government funded, pilotage was controlled by several different companies supplying pilots of varying qualifications and competence who were authorised for all ports. The major shipping companies controlled the contracts and attempts to form a united group had resulted in the suspension of pilots.

**Holland:** Peter was pleased to report that plans

to introduce competition had been abandoned.

#### **CHIRP Don Cockrill (London)**

Don is the UKMPA representative and attends the quarterly meetings of this Government sponsored investigation body. Although most of CHIRP's investigations involve the leisure sector, it plays a very important role in navigation safety. Unfortunately, the budget is under threat Don referred delegates to his written report which detailed this funding crisis.

#### **IMPA: Don Cockrill (London)**

Currently IMPA had concerns regarding IALA who had been issuing documentation and stating policies outside the established IMO forum. In particular IMPA were closely monitoring the e-navigation agenda and would be producing a common “position” statement on e-navigation for all pilots to refer to if asked what pilots' opinions were. IMPA were also working with EMPA on the Romanian situation.

#### **Nick Cutmore (IMPA General Secretary)**

Nick detailed the new **pilot ladder proposals** that were being debated by the IMO Maritime Safety Committee. These proposals, largely drafted by IMPA were complete and ready for inclusion in SOLAS regulations. IMPA has built a good working relationship with Intertanko who were supportive of the IMPA proposals and had appreciated IMPA's input into securing accommodation ladders by means other than welded points.

**e-Navigation,** The agenda has departed from the original ship / shore concept and was rapidly expanding to include freight logistics and port infrastructure projects. Such expansion of the agenda indicated that this would be a very long term project!

With respect to the concerns with IALA, this stemmed from IALA establishing a “Pilotage Advisory Forum” (PAF). IMPA had attended the early meetings but had been dismayed by the ignorance of the members regarding pilotage issues and had therefore withdrawn from the Forum. Recently the IALA PAF had produced a paper for presentation to IMO which contained many elements not endorsed by IMPA. Consequently IMPA had attended the IALA conference in Cape Town and following raising their concerns at a private meeting, IMPA had reinforced their “position” that IALA had no authority to be drafting papers on pilotage issues by issuing a formal letter to IALA. This issue was on-going but Nick hoped to be able to release details to members in the near future.

#### **LEGAL: Paul Kirchner,**

#### **Executive Director & General Counsel, American Pilots' Association (APA).**

The UKMPA had been very fortunate in that Paul had agreed to address the conference. Having been intimately involved in the *Cosco Busan* case he was in a unique position to detail the

pilotage aspects of the case. Paul opened



Paul Kirchner

by stating that whilst this case had encompassed every aspect of pilotage, he didn't believe that it had fundamentally changed US pilotage law which is different to that in the UK. What had changed was that this had been the first case involving a criminal prosecution of a pilot for “unintentional conduct”.

This wasn't for drugs or alcohol or a deliberate act but for negligence and strict liability (liability without fault). The prosecution had been brought under the Migratory Birds Act which dated from 1912 and made it a criminal offence to kill certain listed birds. Much of this case had been a result of its location in a very environmentally aware area and much time had been spent dealing with local and national politicians. Fortunately, the APA had been able to quash the draconian proposals that had originally been tabled and only minor legislative changes had actually occurred as a result of this incident. These had been supported by APA as positive and the main changes had been as a result of “lessons learned” from the incident.

Paul explained the unique American system of State & Federal pilot licences and also addressed the issue of a pilot as an “advisor”. APA agreed that the term failed to correctly identify the role of a pilot.

The issue of **Portable Pilotage Units (PPU)** had been examined and San Francisco was one of a minority ports where their local Association didn't have a carriage policy on this and at that time only around 40% of pilots used them. John Cota was one who didn't. The US Coast Guard considered that non carriage of a PPU by John Cota might be considered negligent and, in contrast to previous liability concerns, all Bay pilots now carry PPU's.

Although APA support PPU's they are against establishing a national policy and left it up to the individual ports & pilots to decide their PPU type and carriage policy.

The pilots' **use of the ships' navigational equipment** had also been examined by the court and it had been unfortunate that it had been reported that pilots needn't know how to use on board navigational equipment because

that was the watchkeeper's role. US pilots has for many years been arguing the contrary. Other areas examined included fog procedures, the pilot's medical history and drug and alcohol policies.

The National Transport Safety Bureau's (NTSB) investigation into the case concluded that the cause was a loss of situational awareness coupled with BRM failure from the bridge team and the recommendations made regarding the APA had all been complied with and the main one of these was ensuring a comprehensive Pilot / Master exchange.

It is standard practice for APA to be involved in any investigation involving pilots but their role is as an expert witness rather than as defence council and so this is usually undertaken by a recently retired pilot. The pilot representative is not allowed to be an attorney and proceedings are strictly confidential until the NTSB release their report. Due to a general lack of experience and knowledge of pilotage issues, such participation was always beneficial to pilotage in general and the *Cosco* investigation findings would have been totally inaccurate had pilots not been involved. The case was now used as a training example on MRM courses with the emphasis on presenting the facts as a discussion topic without the conclusions and recommendations.

With respect to the criminal charges there were two charges of "unintentional conduct". One was breaching the US Clean Waters Act resulting from negligently discharging a pollutant into the waterway and the other was the aforementioned Migratory Birds Act. The prosecutors were aware that they were setting a precedent by criminalising the civil law case of "unintentional conduct" so two further charges relating to making false statements on his health form were introduced to justify the criminal charge. A plea bargain resulting from pleading guilty to the Clean Water and Birds Acts resulted in a recommendation of 2 – 10 months imprisonment. Although the judge gave the maximum jail sentence, in recognition of the civil unintentional aspects, she removed the fine and reduced the community service recommendations. In setting the maximum sentence she indicated that Congress had determined that the criminal charges and jail term were necessary as a "deterrent" but Paul had no records of Congress ever formally stating this! So why the criminalisation in this case?

It would appear that John Cota was unlucky in that this spill happened in a very environmentally aware area with a very active and aggressive media which provided the prosecutors with an incentive to set a legal precedent and find an individual criminally liable for pollution. However, since the 1990's legislation had existed in the US for such incidents to be criminalised but although the *Cosco Busan* incident did meet the criteria for a criminal prosecution to

be brought, subsequent legal opinion was that prosecutors were generally unlikely to bring criminal charges against pilots for unintentional conduct

Regarding general issues of concern to pilots, Paul offered advice that legally, the most important part was the Master/pilot exchange and that pilots should conclude every exchange by asking the Master if he had any questions and supplementing this by reminding him to ask if he had any questions during the passage.

With respect to proceeding in fog, pilots should err on the side of caution and the decision should be jointly made with the Master and if either was uncertain then the ship shouldn't move.

**Voyage Data Recorders (VDR):** are increasingly being installed on vessels and in the USA the NTSB take the position that if a conversation isn't on the VDR then it never took place!

**AIS** is another technology that prosecutors believe provides precise information. APA had advised both the USCG and the NTSB that AIS information was too unreliable to be used as admissible evidence in any investigation. Despite this there were an increasing number of private companies providing AIS information to attorneys but there were also companies providing expert witnesses to refute AIS evidence.

With respect to action to be taken by a pilot after an accident the advice is get a lawyer! In the US a pilot has the right to have an attorney and the attorney must establish whether a criminal prosecution may result. This is probable in cases of pollution or where there has been loss of life.

**Insurance:** US pilots don't generally need liability insurance but have insurance to cover defence to protect their licence and some districts self insure by holding a fund to cover this. However US pilots are looking at taking out cover for legal defence costs and fines resulting from a pollution incident. Another important part of any response in the US is to hire a PR firm. A good PR company can ask appropriate questions to divert the press and also handle the press with respect to providing statements and organising interviews etc. Most pilot groups also have one or more pilots specially trained to draft statements and give interviews.



Francois Laffoucriere

**CRIMINALISATION**

**Francois Laffoucriere (Le Havre)**

In addition to Paul Kirchner the UKMPA were also fortunate that Le Havre pilot and lawyer Francois Laffoucriere had agreed to address the conference on criminalisation of seafarers in general and pilots in particular.

Francois stated that the criminalisation of seafarers was causing great concern in legal centres as well as the IMO and he believed that the trend would stifle seafaring as a career and do nothing to enhance maritime safety.

Why was this happening? It was basically the interpretation of "negligence" and increasingly around the world, even in accidents resulting from "force majeure", prosecutors were pressing for criminal charges to be brought. Francois quoted the case of the *Pacific Adventure* which had been caught in a typhoon off the Australian

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coast which had resulted in 31 containers being lost overboard where they struck the hull and punctured the fuel oil tanks causing pollution. The Captain had been arrested and charged with causing pollution and was facing a fine of \$350,000 if found guilty. It was considered likely that this charge would be successful.

The difference between civil liability and criminal liability was that civil was to repair damage and criminal was to punish and deter.

**Criminal liability:** There are two elements required to prove criminal liability: A breach of the law (*actus Rea*) and the will to break the law (*mens rea*). *Mens rea* exists if there is Intent, negligence or recklessness. Recklessness exists if foresight of the consequence is evident but with negligence there cannot be foresight so prosecuting won't act as a deterrent. Pollution is a breach of the law under MARPOL but only two criteria for *mens rea* are stated: Intent & recklessness. Intent is straightforward since a deliberate act of pollution is a criminal offence but recklessness is difficult to prove so prosecutors were using negligence to prove recklessness. Despite this legal necessity of proof of criminality, Francois gave examples where Masters & pilots had been found guilty even though such proof had been absent. Popular & media pressure, resulting from intolerance of pollution, has led to a blame culture which requires a scapegoat in the hope that it would act as a deterrent and eliminate rogue operators! However in no cases of pollution involving seafarers had there ever been any "intent" so such prosecutions were meaningless.

The IMO & International Labour Organisation had introduced resolutions on the fair treatment of seafarers and other legislation covered human rights and fair trials but in many cases these were being overturned by prosecutors.

In Europe the situation was even more serious in that an EU Directive, which was ratified in 2009, overturns MARPOL legislation and gives the EU Commissioners powers to overrule States for any breaches of environmental law and impose criminal sanctions. Such criminalisation will never be a deterrent for accidental pollution and the maritime industry is concerned that this legislation will be a serious deterrent to anyone taking up a seagoing career. However insurance can be obtained for legal defence and this is now especially essential for all pilots. With respect to action to be taken by pilots following any incident, the officers' union Nautilus had produced guidelines for officers and these were also useful for pilots: The most important of these is that you have the right to remain silent and should do so until legal representation is present.

In conclusion Francois believed that no pilot could afford to be without legal defence insurance. Stating that "YOUR LEGAL DEFENCE INSURANCE IS YOUR LIFEBOAT!"

In the subsequent discussions the concepts of "negligence" and "recklessness" were explored which confirmed that prosecutors were analysing these words to justify criminal charges. All present fully agreed that no pilot could afford to be without personal legal cover regardless of employment status.

### Technical & Training Committee (T&TC)

#### Brian Wilson (Belfast)

**Personnel changes:** Roger Francis has retired and has been replaced by Kevin Vallance as Deep Sea representative.

Jonathan Mills has replaced Paul Wibberley as Deputy Chairman.

Brian thanked both Roger and Paul for their dedication to the committee.

During the last year the T&TC had met once with the second meeting being set to coincide with the 2010 SeaWorks Exhibition. Brian had attended the **IMO Nav 55** as part of the UK government team to oversee the UK's interests in **pilot transfer arrangements** and the overhauling of SOLAS V/23 with the drafting of a new resolution to replace A889. The steering group comprised of 22 countries and within that and coordinated by IMPA, were some 12 pilots. Brian paid credit to Nick Cutmore and Mike Watson whose expertise had ensured the successful adoption of the proposed pilot ladder regulations. Pilots should report any substandard ladders and refuse to board if in any doubt and if possible take photos and forward them to Brian (*contact detail page 9*). The success of the pilot ladder proposals had confirmed the value of UK pilots being part of IMPA and working together as an international body.

**Foundation degrees:** Hopefully this proposal had died a death but the T&TC, will continue to strive to ensure that any pilotage qualification will reflect the value of our work.

The **pilot boat survey** update had been completed by Dave Roberts and given to EMPA for their data base.

Kevin Vallance has worked extremely hard during his first year within the committees of the UKSON, Dover Straights Working Group, Sunk / Bristol Channel Working Group. In addition, Kevin had taken on the E-navigation brief and is working with EMPA to support an IMPA paper on E-Nav at IMO Nav 56 this summer.

**Revalidation of Masters and other STCW qualifications:** After 2012, pilots will have to have attended a generic ECDIS course and the committee are working on resolving the type specific requirement issue for pilots.

**Azipilot** – Gareth Rees and Nigel Allen have been busy all year on the project (see page 16)

**Personal Locator beacons (PLB's):** Prices of these are now under £250 and having undertaken a detailed survey, Brian personally approved the Sea Marshall 121.5 MHz devices which are salt water activated, intrinsically safe, have a

homing range of about 30 miles and all aircraft and rescue organizations can receive the signals. Despite the apparent lack of progress on some issues, behind the scenes the T&TC was proving effective and IMPA General Secretary Nick Cutmore confirmed that the UKMPA T&TC had gained recognition throughout the pilotage world as a highly professional and respected body.

### The Pilot Qualification!

Brian expressed his frustration at the fact that despite over 10 years of hard work, pilots still had no qualification because a pilot's authorisation is not a qualification but something totally in the control of a CHA which can be removed at any time by them as had happened on the Humber and the Clyde.

Generally, the IMO required pilots to have a qualification and it was in the whole Industry's interests to have well qualified pilots. Despite this, the UK ports had stalled any attempts to implement a qualification, the DfT and MCA seemed powerless and so the status quo was unlikely to change.

The solution? Brian proposed that Continual Professional Development (CPD) could provide pilots with valuable protection by setting standards for re-validation and the same criteria could also be used for PEC holders. CPD was a recognised concept and the elements for pilots were already in place and widely used throughout the world. Brian then detailed how the UKMPA could establish a grading criteria endorsed by the Nautical Institute and / or the nautical colleges whereby such a system could be incorporated into the dormant National Occupational Standards (NOS) thus making it easy for the procedures to be adopted by the MCA / DfT. Since such procedures were fully recognised as a requirement it would be difficult for the ports' lobbyists to resist them! Having created the framework to introduce such a system, Brian concluded by explaining to the delegates that it was now up to the membership as to how this proposal was progressed.

During the subsequent discussion it was questioned as to how CPD could provide the protection stated? It was explained that the major objection of the ports over the years had been the costs of a formal pilot qualification but CPD built on a candidate's existing STCW qualification rather than requiring a new qualification so would be at no cost to the port. What CPD would achieve was that at the end of a pilot's training period he would be examined / authorised as per the NOS criteria for his particular port and thus be issued with a formal qualification as a pilot. On-going training to progress through the grades would add endorsements to the original qualification as per the proposed CPD procedures tailored to individual ports. A pilot's qualification is an IMO requirement un-

der A960 and also a requirement of the PMSC so the UK had to adopt it and once implemented it could provide the security for pilots currently missing under the 1987 Pilotage Act.

In reply to the question as to how this could be progressed, Brian explained that the Nautical Institute were establishing a formal CPD programme and that the UKMPA T&T Committee had been in contact with the NI and they were happy for the UKMPA to participate in the programme. The T&TC would have to manage the pilotage aspect but in return would have the benefit of endorsement from a respected independent professional organisation.

What happens next? Under the remit from the 2009 conference the Section Committee would progress this matter.

In conclusion Brian thanked Liverpool pilots Jonathan Mills and Dave Roberts who had done most of the work on this project.

**P&I CLUBS & PILOTS: Andy Kirkham**  
**North of England P&I Club (North)**  
**Loss prevention Department.**

Andy provided an overview of North which covered 3800 vessels employing 100 claims handlers, all of whom were ex mariners. Like all P&I clubs North was a non profit Mutual organisation and was part of the International Group of P&I clubs (IG). Consisting of 13 P&I Clubs the IG held a central cash reserve and members contributed varying amounts dependent upon risk analysis. The structure was complex but basically each individual club covered claims up to £8M with anything over that being handled by the IG. The total maximum cover offered by the IG was £5.25 billion.

Explaining his role as a loss prevention officer, this involved working with the ship owners to reduce the possibility of a claim arising and he was pleased to announce to delegates that following last year's presentation, North had dropped the term "pilot error" from their statistics and now had pilot incident records. The object of these pilotage incident reports was to raise awareness and to encourage debate and most importantly the P&I Clubs were not there to allocate any blame.

The pilotage incident reports no longer include cases resulting from engine or systems failures or even helmsman errors and so the only cases now considered as pilotage incidents were where it was considered that an act or omission of the pilot had been a contributory factor to an incident leading to a claim.

The claims were now simplified into three groups:

- Damage to property
- Collisions
- Groundings.

The number of claims was falling but the costs of each claim were rising rapidly with the av-

erage cost of each claim now around £1.5m. Of the three groups, groundings were resulting in the highest claims and this was very much a result of the pollution element. With ten years of data now analysed, a major report had been produced which broke down the data into countries and ports. IMPA had provided much useful data on pilot numbers etc which had enhanced the accuracy of this major report. Although this report was still in draft form there was evidence that it was already being studied and its content noted by a wide variety of organisations. One outcome of the report was that as a result of the vast increase in costs of claims it was possible that the P&I Clubs might become involved in training and standards of both officers and pilots.

Andy then detailed three recent cases which highlighted how an inadequate Master / pilot exchange coupled with inadequacies of the bridge team had resulted in claims.

During the subsequent debate a question was asked regarding the case where a port was accepting larger vessels but the available tugs were of insufficient power. Could a pilot be liable for damage even if the problem had been raised with the CHA? The consensus was yes, because the pilot was effectively knowingly undertaking an unsafe act.

**MAIB Admiral Stephen Mayer**

Stephen announced that he was retiring as head of the MAIB after 8 years but planned to remain active in maritime affairs and hoped that in some way he might help to reverse the worrying trend of the criminalisation of seafarers.

Stephen then detailed the role of the MAIB and expressed his concern that there was still widespread ignorance over the status and modus operandi of the organisation.

The MAIB was not part of the MCA it wasn't interested in enforcement of legislation, never carried out prosecutions and it was fundamental to the organisation that no information obtained during investigations could be used in a court of law.

Stephen stated that he had never investigated any case involving a deliberate act. Errors were obviously made but he had never come across criminal intent behind those errors and no accident is ever the result of a single factor by a single person. Accidents always result from a combination of factors and one reason why the MAIB always tried to release their report as soon as possible following an incident was to try to avoid the finger of blame being pointed at a single individual.

Stephen stressed the importance that the MAIB attached to their investigations being totally independent and this frequently meant resisting considerable pressure from other interested parties. Confidentiality was of paramount importance and the sole purpose of the reports was

to establish:

- What happened?
- How did it happen?
- Why did it happen?
- What can be done to prevent a recurrence?

This ethos of the MAIB had slowly gained recognition and Stephen was pleased that an increasing number of countries were establishing similar investigatory bodies and in particular there was an EU Directive being introduced that would require all EU countries to have an investigatory body modelled on the MAIB's "no blame" investigation procedures.

It was essential that it was the MAIB rather than other bodies undertaking this form of investigation because the Police were solely interested in criminal investigations that would lead to prosecution and regrettably, all other bodies who may be involved in maritime investigations had a vested interest, either to exonerate themselves or their clients. The MAIB was unique in that by seeking to identify causes, their investigations looked beyond the immediate accident to on board practices and cultures that may be relevant in preventing a recurrence in the future. With respect to the major area of concern, this continued to be the fishing industry where the death rate was 200 times the average. Short sea traders also frequently operated in an unsafe manner resulting from complacency but with the added risks of fatigue.

The leisure industry resisted all attempts to introduce any formal competency which resulted in a culture where safety practices were considered a voluntary, optional extra.

To conclude his presentation Stephen referred to pilotage, which was unique in that pilots operated in areas where vessels were at their highest risk of an accident. Pilotage should therefore be considered as a high level risk mitigation service but it was essential that pilots were supported and should never work in a vacuum. Having undertaken the same passage, possibly hundreds of times it was easy for a pilot to drop his guard and traditionally, when under pilotage, the bridge team also relaxed their guard thus increasing the risk of an incident. Although everybody disliked the term, it was a fact that every single pilotage incident that the MAIB investigated had involved an element of complacency. During the subsequent discussion the following questions were raised.

*With respect to defect reporting, should UK pilots' status be amended to be a representative of the State rather than the ship owner as is the case in many countries?*

Stephen agreed that the current system contained confusing anomalies that served neither the pilot or the port.

*With respect to the legal presentations, following an incident, should a pilot have legal representation when being interviewed by the MAIB?*

No! The whole ethos of the MAIB is that any

information received during interviews is totally confidential.

*Why is it that some in-port incidents are only investigated by the port authority?*

THE MAIB receive over 1500 incident reports per year. It is only possible to fully investigate 40 – 50 of these so unless it is considered that an incident is a result of a failure by a port or that there are important aspects of wider relevance then it is necessary to leave the port to undertake its own investigation. However, although a full investigation may not be made, the MAIB may recommend that the CHA examine / address specific elements of an incident and will subsequently check that this has been done.

*Can individuals object to the content of a report prior to publication?*

Part of the process is full consultation and all parties are given the opportunity to respond prior to publication. The MAIB have to carefully analyse all the responses because again it is fundamental to the existence of the MAIB that the final report is accurate.

*Does the MAIB use outside consultants?*

Yes, but only to ensure accuracy of detail outside the sphere of expertise of the MAIB investigators. For example external experts were used regarding the behaviour of Becker rudders in the *Vallermosa* report.

At the end of the discussions, UKMPA chairman, Joe Wilson, presented Stephen with a UKMPA plaque as a gesture of thanks for the interest that he had shown in the Association and pilotage issues by his attendance at many conferences during his time as Chief Investigator. This recognition was supported by the delegates offering warm applause.

**DfT: Ian Timpson**

**Ports division – Navigation Safety**

Following an introduction by Chairman Joe Wilson, Ian detailed his role which includes responsibility for the PMSC. Explaining the history behind the Code he explained that although it was a voluntary document, it did link in with legislation and CHA's were required to comply with its provisions. Having been designed as a "living" document an updating "refresh" process had recently been undertaken in order to ensure that it reflected current best practice and correctly integrated with existing and new legislation along with MAIB recommendations. Ian detailed the various sections and indicated where and why revisions had taken place and explained the difference between the "duty holder" and "designated person". With respect to what happens next with the Code, the important issues were the monitoring of the effectiveness of the Code, the enforcement of its provisions and the relationship between what he referred to as the "wet & dry" aspects of port operations. With the PMSC covering the "wet" aspects and the H&SE dealing with the "dry" there is a debate over whether the two bodies should be merged. Ian summed up the ethos of port safety as being that everyone was responsible and the duty holder was accountable

Q&A

*What was the current position of the DfT regarding the situation on the Clyde where it was reported that there were currently no Class 1 pilots?*

There were acknowledged problems on the Clyde and the MCA had undertaken a verification visit in 2009. There had also been an incident investigation by the MAIB which had identified areas of concern. The outcome of

the visit and MAIB's report had been that there was now a "dedicated person" in place and assurance had been received that the identified areas of concern were being addressed.

*What can the DfT do if it became evident that a port was not compliant with the Code?*

This would be up to the relevant government Minister but one course of action could be making the Code mandatory but that in itself created problems in that it would set minimum standards whereas the aim of the Code was to establish best practice.

*Whilst acknowledging that the majority of ports might be doing their best to comply with the Code there was a general impression that it seemed to lack "teeth"?*

Some aspects of the Code were supported by legislation and the accountability of the duty holder should be sufficient to ensure all CHA's were compliant. Also, the fact that the code was voluntary wouldn't prevent a judge examining compliance issues should they become relevant to any court proceedings. There were also provisions for the Secretary of State to intervene in a non compliant CHA contained within the draft Marine Bill.

JCB

*The full conference minutes are available for members on request or from the UKMPA website:*

**IMPA**



**EMPA**

It is often forgotten that all UKMPA members are also members of IMPA & EMPA and, as these conference notes reveal, membership of both these associations is of great importance to all pilots. UKMPA members are welcome to attend the IMPA & EMPA conferences and this can be tied in with a holiday. The next dates and venues are:

**IMPA**

Brisbane convention Centre  
14th - 19th November 2010  
Details: [www.impahq.org](http://www.impahq.org)

**EMPA**

Amsterdam  
23rd – 27th May 2011  
Details: [www.empa-pilots.org](http://www.empa-pilots.org)

NB: The next IMPA congress will be held in London in 2012 from 24th – 28th September so please make a note of those dates in your diaries

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# PORT REVEL

## Manned Model Centre

John Pearn

I have known Arthur de Graauw, the Director of Port Revel near Grenoble in France, for a number of years, having met him at various pilotage conferences. He has kindly invited me on a number of occasions to attend a manned model course at Port Revel and this year, in May, I was finally able to go.

Port Revel was originally set up in the 1960's by Esso to train their tanker captains; in 1970 it was taken over by Sogreah. In the early days the ratio of masters to pilots attending was 9 to 1, that ratio has now reversed to 9 pilots to 1 master.



Lake Revel has a surface area of 5 ha (13 acres) and is located in woodland about one hour's drive from Lyon in the South of France.

The Instructors who are all retired pilots work on a part time basis and stay with the students at the Hostellerie de Chambaran in Viriville some 20 minutes by minibus from Port Revel. On our course were Instructors Marc Van Vliet (Amsterdam), Michel Sabatier (Sete), and Olivier Thomas (Nantes) and four pilots Rick Crowley and Rich Rauhut (Los Angeles, USA), Alper Aniker (Izmit, Turkey) and myself (Milford Haven).

The transfers and accommodation are arranged by Port Revel and are normally included in the cost of the course. Each day we would leave our hotel at about 0730 so that we were ready to start classes at 0800 prompt. The day starts with a lecture regarding the forthcoming day's exercises after which the rest of the day is spent doing exercises on the lake. The Hostellerie de Chambaran also provided the lunchtime catering at Port Revel. This includes wine, which can make for a drowsy start to the afternoon. No doubt purposely for simulating fatigue! The exercises normally continue until between 5 and 6 in the evening.

The Port Revel fleet consists of seven tankers ranging from 17,000 dwt to 400,000 dwt, which can be operated either as diesel motor or steam turbine engines; two container ships 4,400 teu and 8,500 teu, and two Gas Tankers, a 125,000m<sup>3</sup> LNG and the latest edition to the fleet a Q-Max, 266,000m<sup>3</sup>. All the models are 1:25 scale which means that everything happens at 5 times the normal speed. Lake Revel on a 1:25 scale has a surface area that equates to 5 by 2 nautical miles. As our course was a Pod and Emergency Response Course the 4,400 teu container vessel (Normandie) was rigged with twin azipods. Interestingly the Normandie is based on a real vessel, which was subsequently renamed the MSC Napoli, which you will recall broke up on Devon's beaches in 2006, without the aid of azipods.

There are also three types of escort tug, an ASD Tractor, a Voith Schneider and a Carousel type tug. The tug operator, Michel Vallette who is a retired tug master from Marseilles, rode on the back of the models and was able to respond to the instructions given to the tug. Before each exercise he would programme the power of the tugs to an appropriate bollard pull for the exercise, typically this would be about 65 tonnes, though they could work up to the equivalent of 100 tonnes bollard pull.



Escort Towing: A 400,000dwt Tanker with a 65t ASD tug

One of the unique features of the lake at Port Revel is that they can plot the models accurately with GPS transponders and evaluate your exercises accurately during the debrief sessions. Another useful feature is that they can generate current to simulate tide and river effects. The Los Angeles pilots were able to make particular use of this facility. A simulation of their port was set up to enable them to practice some manoeuvres for a proposed new oil terminal.

The topics covered during the week included; turning and skidding, pods and pod manoeuvring, emergency stopping on pod and conventional ships, shallow water effect; including sinkage and squat, canal and bank effect, passing and overtaking in canals, and escort towage. Each boat had a crew of two, the pilot and the engineer, with each exercise being undertaken twice to allow the engineer and pilot to swap places. During the course of the week we worked with everybody, which gave us all a chance to see how pilots operate in other countries. On the last day, time was given over to allow each person to choose which vessel and exercises he wished to do. I was particularly interested in the Q-Max as we are now getting regular visits at Milford Haven. As expected the Q-Max model was very different from the oil tankers to handle. They are fitted with inward turning twin screws with independent rudders and engines. Just as in real life we were restricted to no more than slow ahead and astern when operating the engines independently. Whilst in real life the Q-Max has no thrusters, they are provided on the model to replicate tugs. Their equivalent force was 70 tonnes.

The purpose of the course is not to teach you how to be a pilot, but to enable you to develop your ship handling skills. To do this in a relaxed environment with other pilots, serving and retired, is a most enjoyable experience. I would strongly recommend a manned model course to any pilot. Now all I have to do is to plan my holidays in Los Angeles and Turkey.

John Pearn (Milford Haven)



## AZIPILOT PROJECT

GARETH REES & NIGEL ALLEN

The Azipilot Project is a three year project part funded by the EU. The Project was put together, and is being managed by Newcastle University and comprises of representatives, or Partners, from Naval Architects, Training Establishments, Simulator Manufacturers, Hydrodynamics and Pilots with the UKMPA being the representatives of the Pilotage profession. The Project has been subdivided into four Work Packages (WP) these being Hydrodynamic Modelling, Marine Simulation, Maritime Training and Operational Practice. The UKMPA are WP Leaders for Operational Practice and have been working closely with Port Revel, South Shields and representatives of ship owners. The aim of this WP is the collation, review and audit of available material that is relevant to the operation of azimuthing control devices when manoeuvring vessels in pilotage waters and to identify any shortcomings. The outcome of the review will then be used to improve current practice and training.

There are three phases to Azipilot with Phase 1 being a review of current practice and training and this has been our work for the last 18 months. Phase 2 requires to summarise and assimilate what we have discovered during Phase 1 and integrate this with the findings of the other Work Packages. This is expected to run from month 18 through to month 27. The 3rd and final Phase is to make any recommendations to improve current operational practice, regulations and criteria and is expected to run from month 27 through to month 36.

### Progress to date

The Project 'kicked off' with a meeting hosted by Newcastle University in November 2008 and since then there have been meetings every 3 months, each one being hosted by a Partner and has so far involved meetings in Copenhagen, Gdansk, Gothenborg, Rotterdam and Nice and Port Revel. There have been a lot of email exchanges between meetings and as WP Leader it falls upon us to ensure that the deadlines laid out in the Projects Description of Work are met.

The UKMPA is hosting the meeting to be held in September this year and as we have no facilities in which to hold such a meeting, we have organised this to be held onboard the *Independence of the Seas*, a large passenger vessel owned and operated by Royal Caribbean Cruise Lines with podded propulsion, during her 4 day cruise from Southampton to Cork and back.

During Phase I of the project our WP had 4 tasks to complete these included a review of existing recommendations, criteria and applications, a review of existing operational practice, a review of accident and incident reports and finally a review of bridge operational practice and the human interface.

### Review of existing recommendations, criteria and applications.

This has been led by Newcastle University and has focused on current recommendations such as those from IMO and the MCA and the requirements for trial data to be presented in the form of a manoeuvring booklet and Pilot Card. It has been quite interesting to see the wide variety of Pilot Cards ranging from the standard

IMO format to the more informative, perhaps too informative, Pilot Cards we are presented with at 3 o'clock in the morning!



**Review of existing operational practice:** This Task has been led by CONS.A.R. An Italian shipowners Research Consortium. We started by circulating a short questionnaire to all Pilot Districts using the UKMPA, EMPA and IMPA Secretariat. The aim was to establish how many Ports had podded vessels calling, what training had Pilots been given and what guidance, if any, did Pilotage/Port Authorities give. We received over 28% response which, not surprisingly, showed that whilst a large number of Ports had podded vessels calling, only a small percentage of Pilots received any form of training.

We conducted interviews onboard three large passenger vessels and other podded vessels, typically small coastal tankers. These interviews clearly indicated the need for proper structured training in the use of pods in order to use them to best advantage and reduce the risk of damage to pods and vessel through incorrect usage. It would have been beneficial if we could have had access to onboard operational manuals outlining company policy and procedure in the use of azimuthing control devices but it will come as no surprise that these have been difficult to obtain.

We were very fortunate in being able to take advantage of a late cancellation to attend a three day podded course at Port Revel. This introduced us to new terminology such as positive and negative thrust, toe in, toe out and T-boning.

**Review of accident and incident reports:** This task has been led by the UKMPA aided by STC, the Dutch based Training establishment in Rotterdam. This involved searching for reports into Marine Casualties. The reports that we found showed that there was no one major cause but the two main contributory factors were in fact failure of the control system itself or failure in onboard procedures.

### Review of bridge operational practice and the human interface

This task has also been led by CONS.A.R and has examined the bridge controls and how they have developed either by ad hoc additions or by improved design. The UKMPA have been able to help in this task by supplying photographic evidence of bridge layouts highlighting areas of poor interface between the bridge personnel and the bridge control systems.

**Reporting:** Each of the above tasks has been completed on time.

**Funding:** Funding for the project is from the EU via Newcastle University with a total budget of €1.2 million. Providing we conduct our part of the project and meet the deadlines set out the UKMPA will receive a contribution which, after deduction of expenses should provide a healthy surplus for the UKMPA, as was the case with our contribution in MarNIS.

**Gareth Rees & Nigel Allen :Southampton Pilots**

## OBITUARY

### Captain Iain MacLean 1923 - 2009

Iain MacLean died in Edinburgh last December after a long period in hospital. Born in Edinburgh and educated at George Heriot's School, where he was a "foundationer", Iain went straight from day school to sea as a cadet in 1939 and he served all his service at sea with Christian Salvesen of Leith. Serving during the whole of World War 2 he had a remarkable escape when he declined to join a ship which was subsequently torpedoed and sunk with the loss of all hands. His wartime voyages took him on Atlantic convoys and then to the Mediterranean in support of the allied landings in Italy.

After the war Iain spent five seasons with the South Georgia whaling fleet as Master of the *Southern Harvester* and *Southern Opal* following which he served as Master on the *Glitra* running between the Forth and Norway.



*SS Glitra (1952) From MN Nostalgia website courtesy A. J. Barratt*

In 1963 Iain became licensed as a Leith pilot where he served until retirement in 1988 when his 65th birthday conveniently coincided with the enactment of the 1987 Pilotage Act.

Iain suffered a double personal tragedy in 2005 when his younger son died and shortly afterwards his childhood sweetheart and wife of 60 years also passed away. He is survived by his eldest son and two grand children.

Malcolm M. Rose  
Forth pilot (retired 1993)

### Pensioners Deceased

February 2010 to April 2010

D. Garman	Southampton
S. C. Hook	Teignmouth
J. Martin	London-West
D. Moir	Milford Haven
F. R. Penrice	Manchester
R. N. Purvis	Harwich
B. Read	Humber
N. Smith	Kings Lynn
J. Walker	Medway

## PNPF COURT CASE

*As you are all aware, last year the PNPF instigated a court case in order to establish the liability of CHA's regarding the Pilots' National Pension Fund (PNPF). Following the hearing in February the judgement was made in June. The following letter was sent to all PNPF members but in view of the fact that the ruling has the potential to affect most CHA's and because information has been requested by non-PNPF members, the letter to PNPF members is reproduced below with the authorisation of Joe Wilson, Chairman: UKMPA. JCB*

\*\*\*\*\*

### The Pilots' National Pension Fund (the "Scheme") - Application to Court

Dear Member,

As you will know by now, judgment in the Trustee's application for directions was formally given by Mr Justice Warren on 28 June 2010. The judgment is unusually long and very detailed. It is available on the internet at: [www.bailii.org/ew/cases/EWHC/Ch/2010/1573.html](http://www.bailii.org/ew/cases/EWHC/Ch/2010/1573.html).

The purpose of this circular is to remind you about the nature of the proceedings and to explain as clearly and accurately, and yet as succinctly as possible, the effect of this very complex judgment. The summary has been agreed between the parties to the proceedings.

The nature of the proceedings

1. As you will recall from earlier communications, the Trustee brought these proceedings in order to establish what its powers were to recover the deficit existing in the Scheme.
2. Because the Scheme is so unusual, this was a matter of some legal doubt and the Trustee required the guidance of the Court in order to make any progress.
3. Various parties were appointed to represent all the different interests of those participating in the Scheme, both Competent Harbour Authorities ("CHAs") and Members. This type of proceeding was chosen in order that the Court's ruling could be obtained without the need for adversarial litigation, and in an efficient way. The Trustee is very grateful to all those who undertook a representative role thereby allowing the legal uncertainties facing the Scheme to be resolved in a collaborative manner.

The Trustee's legal advisors divided up the CHAs that participate in the Scheme into four categories, depending on whether they currently employ or had previously employed Pilots who were Members of the Scheme, or whether they currently authorise or had previously authorised self-employed Pilots who were Members of the Scheme.

These categories were given the following names:

- (a) Active ECHAs (CHAs that currently employ Members accruing benefits under the Scheme ("active Members")): represented by Milford Haven Port Authority.
- (b) Active SCHAs (CHAs that currently authorise active self-employed Members): represented by The Bristol Port Company.
- (c) Formerly Active ECHAs (CHAs that previously employed active Members): represented by Shoreham Port Authority.
- (d) Formerly Active SCHAs (CHAs that previously authorised active self-employed Members): represented by Port of Tyne Authority.

-In addition, The Port of London Authority represented a discrete group of ECHAs in respect of which there arose a question as to whether they had triggered what is called an "employer debt" to the Scheme under the relevant legislation when they ceased to employ any active Members. This group of CHAs was referred to in the proceedings as the "Cessation CHAs".

-The Members were represented by Mr Geoff Taylor (for self-employed Members) and by Mr Terry Clark (for employed Members).

-All the representative parties were independently advised. As is usual in such cases, the Trustee is bearing their legal costs on the basis that the proceedings were brought in the interests of the Scheme in order to determine what the Trustee's powers were.

-PD Teesport joined the proceedings at their own instance and in order to argue their own case. They did not appear in a representative capacity.

### The judgment

-In brief, the judgment has decided that the Trustee's power of amendment is wide enough to allow it to amend the Rules so as to impose contributions on all categories of CHA in order to recover the whole of the deficit.

-In addition to its powers under the Rules, both categories of ECHA are liable to contribute to the Scheme pursuant to the process laid down by statute (referred to as the "Scheme Specific Funding regime") while such CHAs employ either active Members or persons eligible to join the Scheme.

-The Trustee is not able to require the SCHAs to contribute as part of the statutory regime unless they start to employ active Members or persons eligible to join the Scheme, but it can levy contributions from SCHAs under the Rules if it amends the Rules to allow itself to do so.

-The Court held that the Trustee's powers under the Rules and under statute were cumulative, that is to say, they were not in any way mutually exclusive. This means that the Trustee can use a combination of the Rules (as they may be amended) and the relevant legislation to require contributions into the Scheme.

-The net effect therefore is that the Trustee has the power under the Rules and under statute to eliminate the deficit by raising contributions from all types of CHA. However, certain CHAs have specifically reserved their right to argue that there are or may be further reasons why the Trustee may not be entitled to exercise its powers. The Trustee will seek to resolve any such issues as soon as possible.

-In the attached schedule a more detailed summary of the answers given by the Court to the specific questions raised on the claim form is provided.

#### Next steps

-The judgment has resolved many of the outstanding issues affecting the Scheme and has cleared the way for a recovery plan to bring the Scheme back to funding over an appropriate timescale. As indicated above, there may still be some outstanding issues to be resolved, but the Trustee would hope now to proceed in a consensual and collaborative way with all affected parties across the industry.

-One of the outstanding issues is whether any party wishes to appeal the judgment. This is currently unclear. It is expected that the final Order (a document sealed by the Court and embodying in a formulaic way the answers to the questions asked on the claim form) will be made in July at a short hearing during the course of which any party will be able to seek the Court's permission to appeal. Any appeal that is made will (subject to any alternative deadline given by the judge) have to be lodged within three weeks of that Order being made. An appeal would be likely to be heard in about a year to eighteen months' time. The effect of any appeal on the Trustee's recovery plan will be something the Trustee will address if necessary in further communications.

Yours sincerely

Mrs Heather McGuire, Chairman of the Trustee Board

#### Summary of the judgment

##### Question 1 on the claim form

-The first question the Trustee asked the Court to decide was whether the Trustee had the power (both under the Rules of the Scheme and under a particular statutory provision (the "PNPF Order")) to seek contributions from CHAs (both ECHAs and SCHAs) so as to make up the deficit in the Scheme.

-Because of the unusual nature of the Scheme, in particular, the participation of self-employed Members, the Court was asked whether the answer to this question differed depending on the type of CHA that participates in the Scheme.

-A further question for the Court was whether the Trustee's power might be limited in respect of the relevant periods of pensionable service of the Members with any given CHA.

-The Court decided that the Trustee has the power under the Rules of the Scheme to amend the Scheme so as to impose contributions on all categories of CHA, not limited by reference to the pensionable service of such CHAs' Members.

-A question was also asked about the powers of the Trustee to amend the Rules of the Scheme under the PNPF Order, which made provision for the current-day scheme to be set up. In light of its answer on the Trustee's power under the Rules, the Court did not think it was necessary to answer this question. However, the Court did decide that, if the Trustee did have a separate power under the PNPF Order, that power had the same scope as the power under the Rules.

##### Question 2 on the claim form

-Question 2 asked the Court to determine an ambiguity about the operation of one particular Rule in the Rules, Rule 14(4) (which allows the Trustee in certain specific circumstances to seek lump sum contributions from ECHAs that cease to employ any "E Members" (as defined in the Rules) or Pilots).

-The Court held that Rule 14(4) entitles the Trustee, in certain prescribed circumstances, to demand from ECHAs a lump sum contribution calculated by reference to the total deficit under the Scheme.

##### Question 3 on the claim form

-Question 3 asked whether the introduction of Rule 14(4) into the Scheme Rules was valid. In the event, this was not disputed, and the Court accordingly gave a declaration that Rule 14(4) was validly introduced.

##### Question 3A on the claim form

-In similar vein to Question 3, Question 3A asked whether the introduction of Rule 13(4) (a Rule that allows the Trustee in certain specific circumstances

to seek lump sum contributions from SCHAs that cease to authorise any active Members of the Scheme) was valid. As with Rule 14(4), the Court gave a declaration that Rule 13(4) was validly introduced.

##### Question 4 on the claim form

-Question 4 asked about the circumstances in which (prior to 6 April 2008, when the law changed) employers who cease to participate in multi-employer pension schemes become liable for a statutory debt to the scheme. The Court gave a lengthy answer to this question, but, putting the matter very simply, it decided that an employer triggered a debt to the Scheme under section 75 of the Pensions Act 1995 if it ceased to employ anyone who was either active in, or eligible to join, the Scheme.

-The Court found that one CHA had triggered such a debt, Seaham Harbour Dock Company.

-The guidance which the Court has now given as regards this matter will help the Trustee in collecting statutory debts in the future.

##### Question 5 on the claim form

-Following on from Question 4, Question 5 asked a related question about the operation of the same statutory provisions in relation to the statutory debt. Put simply, Question 5 asked whether, when calculating a statutory debt, it should be calculated by reference to the entire deficit under the Scheme. The Court confirmed this was the case.

##### Question 6 on the claim form

-Question 6 asked whether SCHAs were "employers" for the purposes of certain statutory provisions, which would have meant they had associated funding obligations towards the Scheme. The Court decided that SCHAs were not employers for this purpose.

##### Question 7 on the claim form

-Question 7 asked whether self-employed Members were "employers" for the purposes of the same statutory provisions as in Question 6. The Court decided that self-employed Members were not employers for this purpose.

##### Question 8 on the claim form

-Question 8 referred back to questions 2 and 3 and asked whether, if Rule 14(4) was validly introduced, the Trustee was entitled to demand a contribution from any of the four Cessation CHAs (which CHAs had ceased to employ any active Members of the Scheme in recent years). The Court held that the Trustee will (subject to exercising its discretion to do so) be able to claim a debt from one of these four CHAs, Sunderland City Council.

##### Questions 9 and 10 on the claim form

-Questions 9 and 10 asked the Court to decide some extremely detailed and technical points concerning the inter-action of the statutory Scheme Specific Funding regime and the Trustee's powers under the Rules of the Scheme to demand contributions. In particular the Court was asked whether the Scheme Specific Funding provisions restricted or enlarged the Trustee's ability to demand contributions under the Rules.

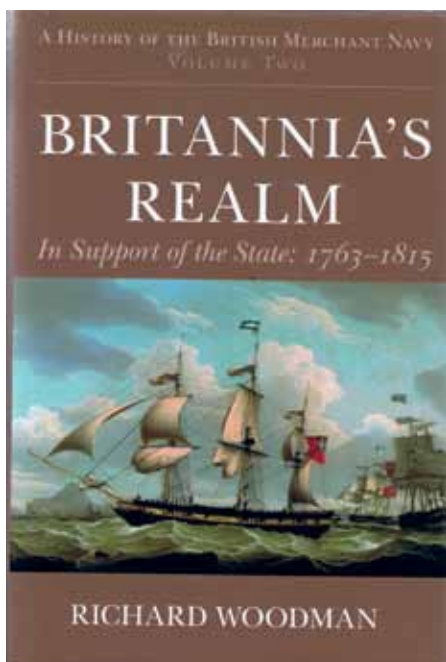
-The Court held that CHAs employing active Members or persons eligible to join the Scheme can be made liable under the Scheme Specific Funding regime to make contributions sufficient to achieve the statutory funding objective even if the Rules of the scheme are otherwise inadequate to do so.

-The Trustee is only required to obtain the consent of such CHAs to the level of contributions under the Scheme Specific Funding regime if the contributions sought exceed those that could be required under the Scheme's existing contribution Rule. It was recognised in the judgment that any recovery plan drawn up without the existing contribution Rule being amended would, in order to meet the statutory funding objective, require contributions in excess of what the current Rules oblige CHAs to pay. If the consent of the CHAs to pay such contributions was not forthcoming, the Pensions Regulator would have the power to determine the level of contributions that they should pay.

-However, if the contribution Rules are amended (in light of the answer to question 1 on the claim form) so that all CHAs can be required to contribute further sums without their agreement being necessary, the Trustee need only consult with the CHAs as to the level of Scheme Specific Funding contributions, rather than obtain their consent.

-Further, the Court held that if the Scheme Rules were amended so as to demand contributions from CHAs that do not employ active Members or persons eligible to join the Scheme then the Scheme Specific Funding regime would not prevent the Trustee demanding contributions from such CHAs, despite the fact that they are not normally regarded as employers for the purpose of the Scheme Specific Funding regime (see Question 6 above in relation to SCHAs).

## BOOK REVIEW



*Britannia's Realm* is volume two of Richard Woodman's five volume history of the British Merchant Navy and covers the period from 1763 - 1815. As with the first volume, *Neptune's Trident*, Richard Woodman's detailed analysis reveals how so much of our history is tied up with trade and the ships and men that carried it. The Treaty of Paris in 1763 saw Britain emerge from war in a strong position to compete with France and the other European nations in maritime trade but the costs of the war had to be met and the taxes imposed resulted on the loss of the American Colonies leading to the establishment of the USA in 1783.

This colonial loss had a lesser impact than feared at the time and subsequently actually provided benefits in competition through advanced ship design but peace didn't last and the Napoleonic years once again saw Britain at war. At a time when Britain was expanding trade with India and the Far East, much of the Royal Navy was tied up blockading the French ports and so this trade became vulnerable to attack from French corsairs such as Robert Surcouf. However, the Navy's appalling press gangs caused almost as much damage to the Merchant Navy as the French! It is often forgotten that the Napoleonic wars continued throughout Europe for another decade after Trafalgar and the impact of this and other events on trade are examined in fascinating detail. JCB

### ***Britannia's Realm***

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