PAC Paper No. 4/2010

PILOTAGE ADVISORY COMMITTEE

Berthing Guidelines Amendment Procedures & Suspension of Ma Wan Night Transit for Bulkers and Tankers

Purpose

The purpose of this paper is to seek members' advice on the established procedures for amending/updating the Berthing Guidelines and the recent suspension by the Hong Kong Pilot Association Limited on Ma Wan night transit for bulkers and tankers with length overall (LOA) over 198m to 230m.

Background

2. The Berthing Guidelines (BGL) is a document prepared by the Hong Kong Pilots Association Limited (HKPAL). It lists all the operational conditions related to the pilotage service. Paragraph 8 of Chapter 2 "General Remarks" also states that "All entries in these Guidelines are subject to change without notice."

3. On 5 September 2003, PAC endorsed the amendment to the BGL to allow bulkers and tankers with LOA over 198m to 230m with draft less than 12.5m to transit Ma Wan at night. On 15 January 2010, HKPAL informed the Marine Department (MD) that with immediate effect, night transit at Ma Wan for such vessels would be temporary suspended until further notice.

Berthing Guidelines Amendment Procedures

4. Under the current practice which has been adopted for many years, any change to the existing berthing guidelines would be discussed at the PAC Working Group (PACWG) and submitted to PAC for endorsement. The new guidelines will then be made known to the shipping industry by updating the BGL file carried in the MD web site.

5. As mentioned above, the BGL states all the operational conditions related to the pilotage services. For example, it contains the requirements about number of pilots and tugs to be employed on different types/sizes of ships for different pilotage/berthing/unberthing operations. It also provides the time and tidal windows for berthing and unberthing of vessels as well as for transiting Ma Wan Channel. In fact, the amendments to the BGL are not solely proposed by HKPAL. For example, when new port facilities, higher-powered tugs, an additional class of vessel or new traffic control measures are introduced, the stakeholders such as terminal operators, tug operators and MD may initiate amendments to the BGL.

6. The purpose of the BGL is not only for guiding the pilots but also for the reference of the shipping industry when engaging the pilotage service and making port call arrangements. The BGL therefore plays an important role to ensure a clear and transparent pilotage service. Although the PAC may call a meeting in short notice to handle urgent request to change the guidelines, for example, the establishment of new procedures for large cruise ships transiting Harbour (PAC Paper No.3/2009) was discussed in a special meeting in April 2009, the established amendment procedures may take some time to effect a change to the guidelines. Hence, paragraph 8 of Chapter 2 is inserted to allow for immediate response to any emergency situations occur in the port. However, it seems that the current situation may not justify to invoke the emergency measure under this paragraph.

7. Though the BGL is not a statutory provision under the Pilotage Ordinance (Cap 84), the entire guidelines and its amendments are endorsed by the PAC and serves as codes-book for stakeholders. In order to maintain a stable pilotage service, members are requested to reaffirm the established procedures for amending the BGL.

Suspension of Ma Wan Night Transit for Bulkers and Tankers

8. As mentioned in paragraph 3 above, HKPAL suspended the night transit at Ma Wan on 15 January with immediate effect without going through the amendment process. Notwithstanding HKPAL was advised to follow the BGL amendment procedure, HKPAL insisted the suspension forthwith.

9. In the PACWG meeting held on 20 January 2010, HKPAL provided their reasons for the immediate suspension of night transit for bulkers and tankers with LOA over 198m to 230m. Firstly, the tidal window for Ma Wan transit had not been strictly observed. Furthermore, there were issues brought out from the trial of the 'Neftegz 67' and 'Yao Hai' collision case. The background lights from the buildings ashore had affected the detection of the navigation lights of westbound vessels by vessels moving in the opposite direction. The other issue was that the court viewed the buoyed channel as a narrow channel to which Rule 9 of the International Regulations for Preventing Collisions at Sea 1972 (COLREGS) applied as opposed to MD's citing that the buoyed channel as a deepwater passage.

10. On the first point, HKPAL on some occasions would pilot a late arrival vessel, which has nearly missed the Ma Wan transit schedule, to transit Ma Wan. To avoid posting potential hazards to the vessel and the port, the tidal window for Ma Wan transit should be strictly followed. However, some members in the PAC WG meeting expressed that suspension of pilotage service for night transit would also affect those ships which followed the tidal windows. In order to ensure the safety of Ma Wan transit, on the advice of the HKPAL, MD could assign the vessel which has missed the tidal window to anchor at an anchorage to wait for the next tidal window. This point had been conveyed at the last PACWG meeting.

11. Regarding background lights from buildings ashore that make it difficult for an eastbound vessel to identify the navigation lights of a westbound bulker or tanker, it was noted that the Master of 'Neftegaz-67', while being examined at the trial hearing on 15 June 2009 expressed that the condition of the shore light did not give any impact on the watchkeeper and stressed that he did not mix up the 'Yao Hai' and the 'CMA CGM Berlioz'—the container proceeding the same way as and behind 'Yao Hai'. Besides, he could also made good use of Automatic Radar Plotting Aids (APRA) and Automatic Identification System (AIS) to identify the two vessels. Furthermore, an expert witness, while being cross-examined on 26 June 2009 stated that the outline shape of a ship could be identified with the presence of background light and a watchkeeper could be able to tell whether a ship was in ballast or in laden condition. Another expert witness, also stated in court on 16 July 2009 that with the assistance of radar which gives bearing of target, a mariner could identify target even with the presence of

background light. Though it might be difficult for a mariner to identify the navigation lights against the background, but pilots were familiar with the background light and it tended to be a "fairly quick operation" for a pilot to detect moving navigational lights against the background. The above testimony suggested that the background lights in Ma Wan did not pose difficulty in the detection of navigational lights of westbound vessels. In fact, the court had established that both vessels were in sight of each other at 2.5 nautical miles apart. Background light was not mentioned in the verdict and the court did not consider it as a contributory factor to the collision of 'Neftegaz 67' and 'Yao Hai'.

12 In respect of the buoyed channel, MD officers had so cited at the trial hearing based on facts and the vessel traffic regulation practice. The buoyed channel marked the deepwater route leading to China Light & Power Station in Tap Shek Kok and vessels navigated in the north Lantau waters according to their passage plans and drafts. MD would not dispute the court's decision that the buoyed channel was a narrow channel and Rule 9 of COLREGS applied. However, this decision is subject to the outcome of the appeal. Nevertheless, MD would regulate the traffic within the buoyed channel to keep to the starboard side as far as practicable based on the practice of good seamanship. When the legal proceedings associated with this collision is finally concluded, MD will study the final decisions of the courts and act accordingly.

Advice Sought

13. According to the transcript of the verdict, the court concluded that the cause of the collision was the late action taken by both the 'Yao Hai' and 'Neftegz 67' which had also wrongly turned to port at the last moment. As the night transit has been in operation without problem for 7 years, and the accident was caused mainly by human error, members are requested to evaluate and advice on the appropriateness of the suspension.

Marine Department
January 2010