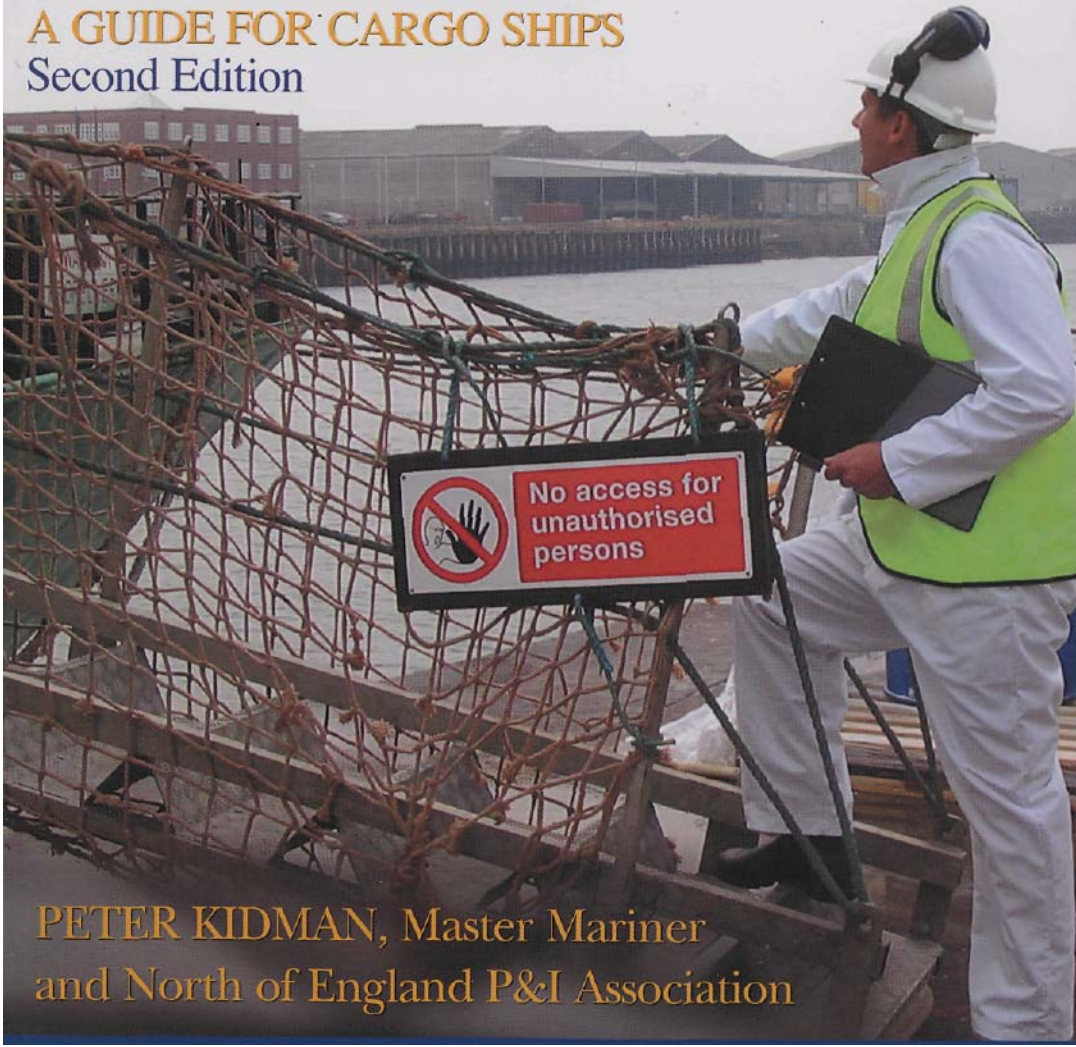
LOSS PREVENTION GUIDES

PORT STATE CONTROL

A GUIDE FOR CARGO SHIPS

Second Edition



PETER KIDMAN, Master Mariner
and North of England P&I Association

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CONTENTS

FOREWORD

For many years, port States have had the right to check that visiting ships meet the required international safety and pollution prevention standards. Over the last twenty years or so, rather than approaching the task individually, port States have developed regional agreements and now much of the world is covered. Port State control (PSC) practice does, however, continue to vary from region-to-region and, in some areas, from port-to-port.

Since 2001, when the first edition of this guide was first produced by INTERCARGO, two major events have occurred that can be expected to have a marked impact on port State control practice in the future. They are the adoption by the European Union (EU) of new regulations to step up the control of foreign ships in EU ports; and the adoption by the International Maritime Organization (IMO) of new international maritime security regulations.

The 'Erika I package', named after the tanker that sank off France in December 1999 and the first of two sets of 'post-Erika' EU maritime safety rules, have now been incorporated in the Paris Memorandum of Understanding (MOU) on Port State Control. Aimed at targeting high-risk ships, the new rules entered into force in Europe on 22 July 2003. Similar control measures can, in time, be expected to filter down to other port State control regions.

The new SOLAS regulations on maritime security and the International Ship and Port Facility Security (ISPS) Code enter into force on 1 July 2004, and will extend the port State regime from ports to port approaches. Because the new rules come within the SOLAS convention they should, in principle, be subject to the same convention control provisions that are currently applied to SOLAS safety regulations. However, some States might see security as an issue of particular national sensitivity and, as a result, monitor maritime security compliance outside of any routine port State control activity.

Yet to enter into force but recently adopted by the IMO is MARPOL Annex VI, which deals with air pollution, and a new convention to control the use of anti-fouling systems on ships. A new convention on the control and management of ships' ballast water and sediments is also likely to be adopted by the IMO in 2004. All will require ships to be certificated and all will no doubt provide port States with new inspection opportunities which could, for example, involve port States taking paint or water samples to verify compliance.

This guide, supported by diagrams, checklists and other aide-memoire, focuses on describing routine port State control practice, and gives advice on how to manage inspections and what to do when things go wrong. It also includes a comprehensive section dealing with some of the commercial implications of port State control.

Peter Kidman
August 2003

Chapter 1

BACKGROUND

- Regulatory controls on shipping
- Development of port State control
- The size of the port State control 'net'

REGULATORY CONTROLS ON SHIPPING

The international framework

The United Nations Convention on the Law of the Sea, 1982 (UNCLOS) establishes the general rights and obligations of the flag State. Within the United Nations, two specialised agencies deal with maritime affairs, the International Maritime Organization (IMO) (www.imo.org) and the International Labour Organization (ILO) (www.ilo.org). They have a responsibility for devising and developing conventions and guidelines under which ships can be regulated. Tn general, matters concerning safety at sea, maritime security, pollution prevention and the training of seafarers are dealt with by IMO, whereas the ILO deals with matters concerning working and living conditions at sea.

The role of the flag State

The international conventions developed by IMO form the main framework of regulation, with SOLAS, MARPOL, STCWi Tonnage Measurement and Load Line being the key conventions. These are supported by classification rules that largely focus on the structure of the ship, including the materials used in its construction, the size of scantlings and essential engineering systems like the main engine. Classification and convention requirements can be inter-related. The issuing of Load Line and Cargo Ship Safety Construction certificates would require, for example, the ship to be built and maintained to class rules.

Any State that signs or ratifies a convention should apply it to and enforce it on all the ships that fly its flag. Evidence that convention standards and classification rules have been met is generally provided by the presence on board of valid certificates. To ensure that a ship meets and then subsequently maintains convention standards, a flag State needs to have in place arrangements for ensuring that its ships are periodically surveyed and re-certified. This responsibility applies regardless of whether a flag State carries out its own surveys using its own surveyors or authorises a Recognised Organisation (RO) to conduct surveys and issue certificates on its behalf.

The member societies of the International Association of Classification Societies (IACS) (www.iacs.org.uk) meet the minimum standards required of an RO. In many cases therefore, it would be an IAGS class surveyor who undertakes the certification work on board ship.

The rights of a port State

In practice, many ships do not regularly call ar flag State ports and this can restrict the ability of a flag State to effectively police and enforce convention standards on its ships. This encourages some ships to sail in a substandard condition, endangering other ships, the lives of seafarers as well as the environment.

Port and coastal States, particularly now with the introduction of new SOLAS regulations on maritime security, have certain rights to exercise authority over ships in their waters. In addition, port States have the authority to check that foreign ships visiting their ports meet all the appropriate convention standards. Indeed, the origins of port State control can be traced back to the 1929 SOLAS Convention. Convention control provisions can now also be found in MARPOL, the Load Line Convention, STCW and ILO Convention No. 147.

A port State should, however, only apply those conventions which have entered into force, and which it has impiemented for its own ships. Ships that fly the flag of a State that has not ratified a convention, or are below convention size would not, however, be exempt from inspection. By applying the principle of'no more favourable treatment', a port State could decide to inspect a non-convention ship to check that equivalent standards indeed existed on that ship.

A State may also enact its own domestic laws and impose additional national rules and regulations on foreign ships entering its waters. In 1990, the United States, for example, enacted the Oil Pollution Act (OPA90).

The existence of convention control provisions and national laws, coupled with the general desire of port States to ensure that visiting ships are safe and unlikely to pollute their waters, forms the background to port State control.

DEVELOPMENT OF PORT STATE CONTROL

The development of regional port State control agreements

In Europe the increased interest in the growing number of foreign flag ships calling at its ports led to eight North Sea States agreeing to exchange information on foreign ships in 1978. This was superseded in January 1982 when fourteen European States agreed to establish a harmonised system of control resulting in the signing of the Paris Memorandum of Understanding (MOU) on Port State Control, now often and simply referred to as the 'Paris MOU[1].

Since that date, the number of States in the Paris MOU has grown. This has mainly been due to the increase in the number of member States of the European Union (EU), and that EU Directive 95/21/EC now places a legal requirement on all EU member States to carry out port State control inspections. This Directive has recently been amended to include the new control measures from the 'Erika I package'. Canada to the west and the Russian Federation to the east also participate as members of the Paris MOU.

In the Far East, another large regional grouping of port States exists. This region is known as the Asia-Pacific or 'Tokyo MOU' and while it also includes the participation of Canada and the Russian Federation, it largely involves western Asia-Pacific rim States and stretches from China in the north to Australia and New Zealand in the south.

The Tokyo MOLJ came into being in the early 1990's some ten years after the Paris MOU was formed. About the same time, a number of States in South America, together with Mexico and Cuba, formed the Vina del Mar or 'Latin American' Agreement.

Fig. 1. *Geographical* overview of *the* port State control regions

United States Port State Control Program

USA

Paris MOU

Belgium
Canada
Croatia
Denmark
Finland
France
Germany
Greece
Iceland
Ireland
Italy
Netherlands
Norway
Poland
Portugal
Russian Federation
Slovenia
Spain
Sweden
UK

Mediterranean MOU

Algeria
Cyprus
Egypt
Israel
Jordan
Lebanon
Malta
Morocco
Tunisia
Turkey

Asia-Pacific (Tokyo) MOU

Australia
Canada
Chile
China
Fiji
Hong Kong
Indonesia
Japan
Rep. of Korea
Malaysia
New Zealand
Papua New Guinea
Philippines
Russian Federation
Singapore
Thailand
Vanuatu
Vietnam

Caribbean MOU

Antigua and Barbuda
Aruba
Bahamas
Barbados
Cayman Islands
Cuba
Grenada
Guyana
Jamaica
Netherlands Antilles
Trinidad & Tobago

Vina Del Mar (Latin American) Agreement

Argentina
Bolivia
Brazil
Chile
Columbia
Cuba
Ecuador
Honduras
Mexico
Panama
Peru
Uruguay

Indian Ocean MOU

Australia
Eritrea
India
Iran
Kenya
Maldives
Mauritius
South Africa
Sri Lanka
Sudan
Tanzania

By the end of the 1990's, regional MOUs in the Caribbean, the Mediterranean and Indian Ocean had also been established. More recently, the West and Central African (Abuja) MOD has been formed with a Secretariat based in Lagos, Nigeria, as has the Black Sea MOU. Its Secretariat is based in Istanbul, Turkey.

The United States has, however, chosen to remain outside of any regional MOU grouping. Under the US Port State Control Program, it undertakes control measures on a unilateral basis. In Z001, the US Coast Guard (USCG) implemented an initiative called 'Qualship 21' to provide incentives to high quality ships in the form of fewer inspections. The Paris MOU is considering the implementation of a similar reward scheme.

Fig. 1 provides a geographical overview of the port State control regions with established Secretariats. It lists the member States chat are currently signatories and can therefore be considered port State control active.

The contact details of those Secretariats are provided in Appendix B. Their web sites are an important source of information and, as well as providing useful information in the form of Annual Reports and statistics, many also provide monthly ship detention records and other listings that arc used for targeting ships for inspection. In recent years, Kquasis (www.equasis.org), which is internet-based and open for all to use at no cost, has become a very useful source of ship information. Entry is by ship name or IMO number, and all the port State control records for ships that have been inspected in the Paris MOU, Tokyo MOU or the United States over the previous 3 years are listed. Public access to detailed information on the performance of individual ships has never been easier.

The rules that govern port State control activities

In November 1995, IMO adopted resolution A.787(19) - Procedures for port State control. The resolution was last amended in 1999 by resolution A.882(21). The Procedures were intended to provide basic guidance on how port State control inspections should be conducted and how to identify' deficiencies in a ship, its equipment, or its crew, with the purpose of ensuring that convention control provisions arc consistently applied across the world from port-to-port.

While the IMO Procedures are not mandatory, port State regions are nevertheless encouraged to base their MOU rules on them. This has largely happened. Paris MOU practice is, nevertheless, often used as a blueprint by other regional port State control regimes and, as a result, any new rules or practices it adopts are always likely to find their way into other regions. With the EU now taking an increasingly active and direct rule-making role in the Paris MOU, any mirroring of Paris MOU practice might mean that actual port State practice gradually shifts away from that currently outlined in the Procedures.

THE SIZE OF THE PORT STATE CONTROL 'NET'

Looking at the statistics that are published annually by the main port State regions, it would seem unlikely that a lawfully trading ship would be able to avoid regular port State control inspection.

During 2002 in the Paris MOU region, almost 20,000 inspections were undertaken out of an estimated 70,000 port calls involving around 12,000 different foreign-flagged ships. Some 70,000 deficiencies were found, or on average, 3'A deficiencies per inspection. Nearly 1,600 detention orders were also raised, of which 70% or so related to ships that flew

blacklisted flags demonstrating, arguably, the effectiveness of the targeting procedures used in that region.

In the Tokyo MOU region for the same year, a similar number of inspections were carried out. While the number of deficiencies found was slightly higher at just over 75,000, recorded detentions were lower at just over 1,300.

The statistics for the United States show a different pattern. While around 10,500 inspections were conducted at US ports during 2002 involving some 7,000 different ships making almost 54,000 port calls, at 179, the number of ship detentions was proportionately much lower than for the other two regions.

Two other regions publish Annual Reports containing statistics. The 2002 figures, again rounded for ease of comparison, are as follows.

- In the Latin American region, 4,500 inspections were carried out, 9,000 deficiencies were recorded and 150 ships were detained.
- In the Indian Ocean MOU, 5,500 inspections were undertaken, 12,500 deficiencies were found .and 300 ship detention orders were raised.

Chapter 2

THE SELECTION OF SHIPS FOR INSPECTION

- Inspection rates
- Targeting
- Expanded inspections
- Concentrated inspection campaigns
- Overriding factors

A port State control authority undertakes inspections to satisfy itself that the foreign ships visiting its ports meet the required international standards laid down in conventions, and to check on the actual condition of specific ships whose ability to meet those standards is believed to be in doubt.

Port States however recognise that inspecting all foreign ships would be both impractical due to the resources it would take, and unnecessary since not all ships are substandard. The typical approach taken by port State regions is to set an overall percentage inspection rate to ensure that a minimum number of ships are routinely inspected each year, and to use targeting factors to focus inspection effort on those ships most likely to be substandard. In addition, specific ships will be selected for expanded inspections or because overriding factors exist, and concentrated inspection campaigns are used to check on areas of special concern.

To help port States identify suitable ships for inspection, port arrival listings, shipping schedules and ship position reports will often be monitored. Port State regions also maintain central databases, such as SIReNaC in the Paris MOU and APCIS in the Tokyo MOU, where the records of previous ship inspections conducted in the region can be viewed.

Under the new SOLAS regulations on maritime security, ships are likely to be required to provide port States with certain information before they are permitted to enter port, '['his might include details on the nature and/or status of the cargo and personnel on board, as well as a list of the ports previously visited by the ship. Ports can be expected to use this information to determine the security risk posed by a visiting ship. A ship, for example, that had recently visited a port without an approved Port Facility Security Plan or has just conducted a ship-to-ship transfer with a ship without an approved Ship Security Plan, would likely be considered high risk and might, at the very least, be targeted for inspection. Further, any shortfall in the responsiveness of a ship to requests for pre-arrival information might itself raise concerns with a port State and prompt an inspection.

Fig. 2 illustrates the selection process.

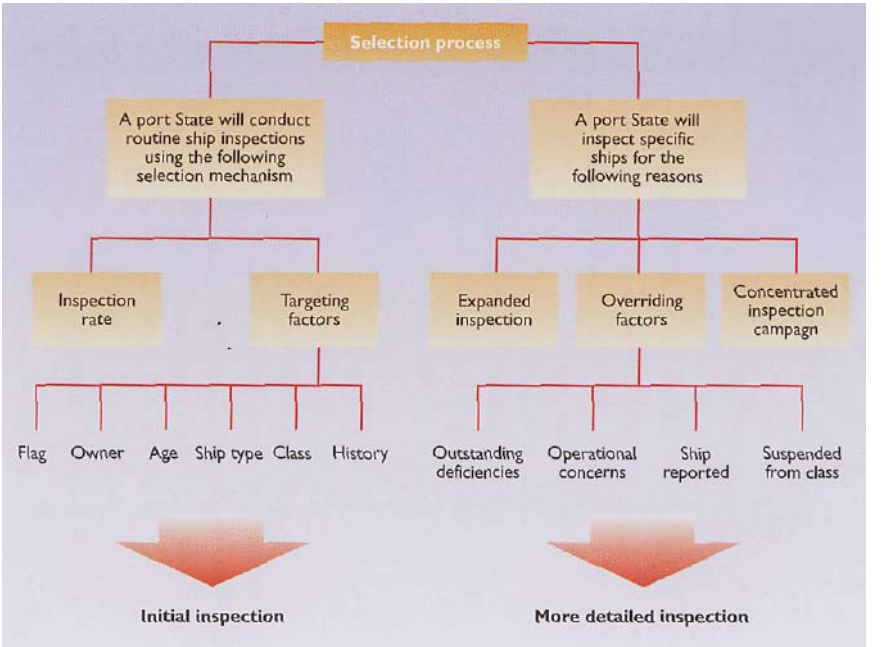

Fig. 2. The selection process

INSPECTION RATES

These are decided regionally and are designed to ensure chat a minimum number of foreign ships are inspected each year. Each region will typically agree and set an annual inspection rate for its member States. In the Paris MOU, for example, it is currently 25% (see Fig. 3), so member States would, on average, be required to inspect at least 1 in 4 foreign ships that enter its ports. Because some States have more *Port* State Control Officers (PSCOs) than others, the inspection rate might, however, vary between ports. Indeed, it might well be the policy of a State ro focus its inspection effort at certain ports.

A pure number-based selection policy cannot, of course, differentiate between good and substandard ships. Port States are now starting to consider weighting ship inspection rates according to the target factor assigned to the ships they inspect. Ships with a high target factor would count as more than one inspection (say 1.2 inspections) whereas a ship with a lower factor would count as less than one (say 0.8 inspections). By focusing on the selection of ships with high target factors, the agreed inspection rate for the region can be achieved by visiting less ships, and result in the resources of the port State being focused more efficiently, to the benefit of well-run ships.

TARGETING

Certain selection criteria such as the ship's flag, age and type, are believed to directly influence how well a ship is likely to be operated and in what condition a ship is likely to

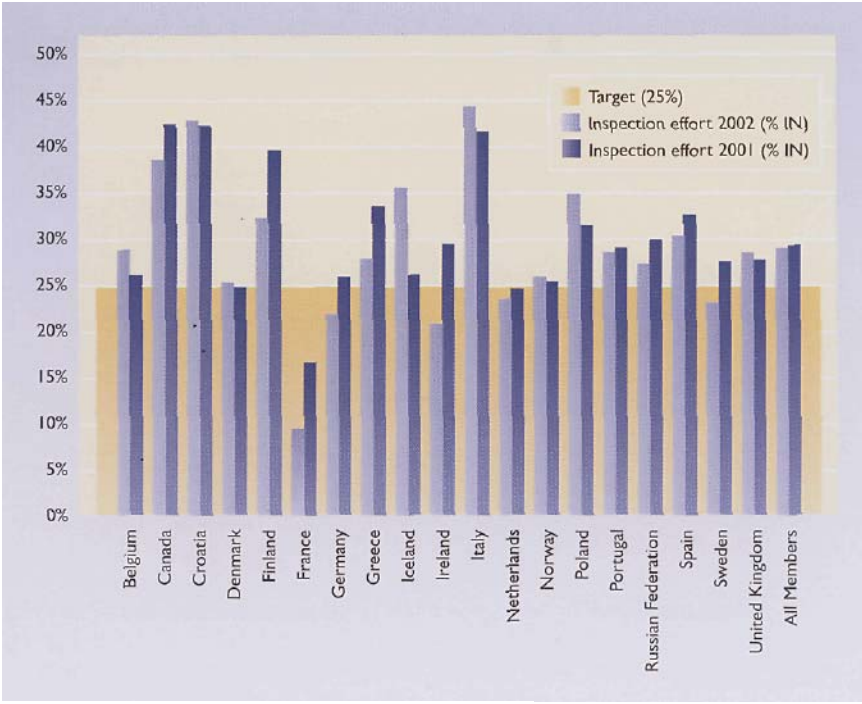

Fig. 3. Inspection effort *of member States compared to the target set*

(Source: 2002 Annual Report *of the Paris MOU)*

be found. By allocating points to each criterion, a scoring system can be employed and a ship can be assigned a targeting factor. The higher the score, the higher would be the chance of an inspection.

Up-to-date information on targeting factors can be found on the web sites of some port State regions. Paris MOU, for example, has included a target factor calculator on its web site to simplify the task of calculating a ship's overall target factor. From July 2003, ships that have a factor greater than 50 and stay in Paris MOU waters can expect to be re-inspected at monthly intervals. The US Coast Guard (USCG) has developed a tabular Boarding Priority Matrix for calculating target points. Refer to Table 1 for a copy of the Matrix published in its 2002 Annual Report. As mentioned in Chapter 1, ships that are 'Qualship 21'certified by the USCG have been effectively prc-assessed as low risk and are, therefore, a low priority for inspection. A number of factors are considered before a ship is certified, including the performance record of the ship's flag and classification society, the ship's port State control history and whether or not an IMO self assessment form has been submitted by the flag State to the USCG.

Table I. US Coast Guard Boarding Priority Matrix

Owner	Flag	Class	History	Ship type
5 Points Listed owner or operator 2%	7 Points Listed flag Stare	Priority 1 A detention ratio equal to or greater than	5 Points Detention within the previous 12 months	1 Point Oil or chemical tanker
		5 Points A detention ratio equal to 1% *or* less tJian 2%	1 Point Each Other operational control within the previous 12 months	1 Point Gas carrier
		3 Points A detention ratio equal to 0,5% or less than /%	1 Point Each Casualty within the previous 12 months	2 Points Bulk freighter over 1 0 /ears old
		0 Points A detention ratio less than 0.5%	f Point Each Violation within the previous 12 months	1 Point Passenger ship
			1 Point Each Not boarded within the previous 6 months	2 Points Carrying low value commodities in bulk

Priority	Matrix points	Restrictions / risk
I	17 or more	Port entry may be restricted until ship is inspected
II	7 to 16	Cargo operations may be restricted until ship is inspected
III	4 to 6	No operational restrictions imposed, ship will most likely be examined at the berth
IV	3 or fewer	Ship is a low risk, and will probably not be boarded

fSourcerTTie *USCG 2002* Port Stole Control Report)

The factors that are often used for targeting ships include the following.

Owner I operator. The USCG, for example, target owner / operators of ships with a bad detention record and publish 'Listed Owners[1] on its web site.

Charterer. While charterers are yet to be actually used as a factor for targeting ships, the names of charterers linked to detained ships are starting to be published. The USCG. for example, publish 'Listed Charterers', and the Paris MOU have just started recording the charterers of detained bulk carriers and tankers.

Once the new SOLAS maritime security provisions have entered into force, ships will be required to hold information on the people who are responsible for deciding their employment. If a ship is being operated under a chartcrparty arrangement, the ship would specifically need to know who the charterer is, and the names of all the parties to that charterparty. With this information becoming available on board, it will become readily available to the PSCO to record on port State inspection reports. This might well provide the impetus for making the charterer a regular factor that is used for targeting ships for inspection.

Flag. The main port State regions publish annual flag State performance tables or lists, based upon rolling data collated and averaged over the previous 3 years. The performance table (list) that is relevant at any point in time is generally considered to be that which is published in a region's latest Annual Report.

The USCG calculates flag detention ratios and issues a list of those flag States that have detention ratios higher than the overall average and have been associated with more than one detention. It will be ships of these flag States that will be primarily targeted (sec Table 2).

Both the Paris and Tokyo **MOUs** take a different approach. They calculate excess factors and group flag States into black, grey and white lists. Here it will be the blaek listed flag States that are targeted because ships from these flags are considered to have a risk category of Very high[1], 'high' or 'medium'. In the Paris MOU from July 2003, certain ship types that fly blaek listed flags and have a history of detentions, might be banned from re-entering Paris **MOU** ports.

Table 2. List of targeted flag States

Flag State	Detention ratio (%)	Flag State	Detention ratio (%)	Flag State	Detention ratio (%)
Algeria	21.74	Cayman Is.	3.95	Mexico	13.79
Antigua & Barbuda	2.81	Croatia	5.26	Netherlands Ant.	3.27
Belize	16.67	Cyprus	2.97	Panama	3.30
Bolivia	37.50	Honduras	10.39	Republic of Korea	2.99
Brazil	16.22	India	5.56	Saint Vincent	8.38
Bulgaria	7.41	Lithuania	8.82	Turkey	7.20
Cambodia	46.15	Malta	3.85	Venezuela	12.90

Note. The USCG has identified fhese *fog* Stares as having a detention ratio higher than the overall overage and were associated with more *than* one detention, in the previous *3* year period (2000, 200 / and *2002). The 3-yeai* overall arerage *figure* calculated *for use in 2003 is 2.41%.* (Sourc&The USCG 2002 Port State Contra/ Report)

Classification society. Class-related detention figures for each classification society are also compared against an average figure. Ships classed with a society that has a poor detention ratio would be most affected, as would ships classed by a society that was not a member society of **IACS.** The USCG publishes an Annual Glass List' for use with its Boarding Matrix. In the Paris **MOU,** non-EU recognised societies are assigned a targeting factor.

History. This factor considers both the performance of a ship over the last 12 months in terms of its deficiency and detention record, and the length of time since it was last inspected in that region. Ships visiting a region for the first time or after an absence of at least 6 months can expect particular attention, as would ships with outstanding deficiencies or a record of detentions.

Ship type and age. These factors are generally used to decide whether a ship is of a type or age to justify it undergoing an expanded inspection. Tankers (oil, gas and chemical), bulk carriers and passenger ships are likely to be the types of ship that are most targeted (see Fig. 4).

Age typically starts to become an issue once a ship reaches 10 years.

EXPANDED INSPECTIONS

Gas and chemical tankers of over 10 years of age, oil tankers of over 3,000 gt and 15 years of age, passenger ships of over **15** years of age and bulk carriers of over 12 years, have long been seen as ships that should be subject to regular and more rigorous inspections.

Such inspections are typically referred to as 'expanded inspections'. The Paris MOD has now decided to make annual expanded inspections mandatory from July 2003.

If the condition of the hold and hull structure during the expanded inspection give rise to concern, the PSCO is expected to consult with the ship's flag State and/or classification society with a view to deciding whether or not a more detailed survey should be undertaken.

CONCENTRATED INSPECTION CAMPAIGNS

Concentrated inspection campaigns have become a common port State control feature in many regions in recent years. They tend to be enforced for periods of about 3 months and focus either on specific areas where high levels of deficiencies have been encountered, or where new convention requirements have recently entered into force. Campaigns are generally announced well in advance, both in the press and on web sites.

Campaigns on living and working conditions and GMDSS have recently been announced by the Paris MOU, as has one on bulk carrier safety by the Tokyo MOIL Some individual States, and these include Australia, Brazil and Canada, also have a history of conducting campaigns. Campaigns on maritime security can be expected to quickly follow the entry into force in July 2004 of the new SOLAS maritime security regulations.

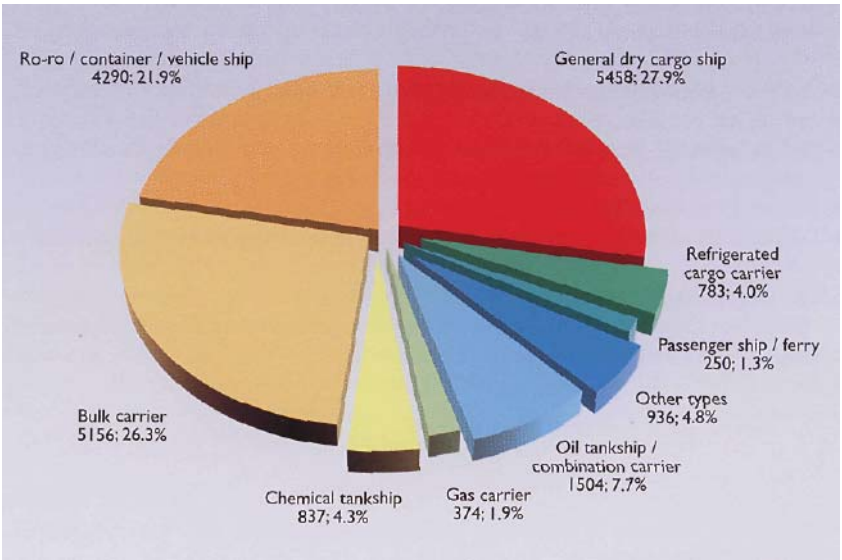

Fig. 4. Type *of ship inspected*

(Source: 2002 Annual Report on Port Stole Control *in trie Tokyo MOU)*

OVERRIDING FACTORS

Irrespective of targeting factors, campaigns and the like, there are a number of circumstances that would take a ship to the top of the inspection list and result in the PSCO proceeding directly to a 'more derailed inspection' of the ship. These are referred to as 'overriding factors' and include the following.

Ships that have been reported

Ships that have been reported by a pilot, port Authority or another State can expect to be directly targeted, as can ships against which a complaint has been lodged. While a complaint could originate from the ship itself, or another person or organisation with a legitimate but external interest in the ship, the PSCO is not required to reveal his source having no legal obligation to do so.

Ships reported as having outstanding deficiencies

Where a PSCO has allowed a ship to sail with deficiencies on condition that they are rectified after sailing, either at a specified port or within a specified period, this will be recorded in the central database of the regional port State as an outstanding deficiency. It would clearly be in the interest of a ship to clear all outstanding deficiencies as soon as possible so that the record can be deleted. Outstanding deficiencies are best cleared while the ship remains within the port State region, to increase the chance of their deletion from the database happening promptly.

Where operational concerns about a ship exist

Operational incidents include

- collision, grounding or stranding on the way to the port
- an alleged pollution violation
- erratic or unsafe manoeuvring, particularly around routeing measures or where safe navigation practices and procedures have not been followed
- failure to comply with reporting procedures
- the emission of a false alert that was not followed by proper cancellation procedures.

Skips suspended from class

Ships that have been suspended or withdrawn from their class for safety reasons in the previous 6 months eould expect to be targeted.

Chapter 3 THE INSPECTION PROCESS

- Preparing for an inspection
- Port State Control & Security Control Officers
- Initial inspection
- Clear grounds
- More detailed inspections
- Suspension of an inspection
- Reporting inspection results

All routine Port Stare Control visits to a ship should start with the Port State Control Officer (PSCO) conducting an 'initial inspection, unless a ship has been specifically targeted because, say, overriding factors exist. If during that initial inspection the PSCO finds evidence of a major problem with the ship, its crew or its operation, the PSCO would then have 'clear grounds' for proceeding to a 'more detailed inspection[1] to establish the real condition of the ship. The existence of a concentrated inspection campaign or an expanded inspection programme would also effectively result in the PSCO undertaking a level of inspection, over and above that required of an initial inspection. Deficiencies, or non-compliant security items, may be identified at any stage of the inspection process, and this could lead to a ship being detained.

Under the new SOLAS regulations on maritime security, the control provisions granted to port States now extend from the port to the waters of the port approaches. In essence, and by virtue of the fact that ships intending to enter a foreign port might be required to submit certain advance security-related information to the Authorities ashore, the inspection process starts before the ship comes alongside. Indeed, refusal to provide the information requested might lead to a ship being denied entry into port.

Whereas traditionally port State control inspections have focused on matters of management, safety and pollution prevention, the main purpose of security control inspections will be to detect and deter security threats or incidents that could affect ships and port facilities.

Fig. 5 illustrates the inspection process.

Inspection interval

Unless there are 'clear grounds' for inspection or overriding factors exist, one inspection every 6 months in a port State region is broadly what a ship should expect. If a ship, however, re-enters a region for the first time after several months it might attract sufficient targeting points to trigger an immediate inspection, even though it might have just completed an inspection in another region.

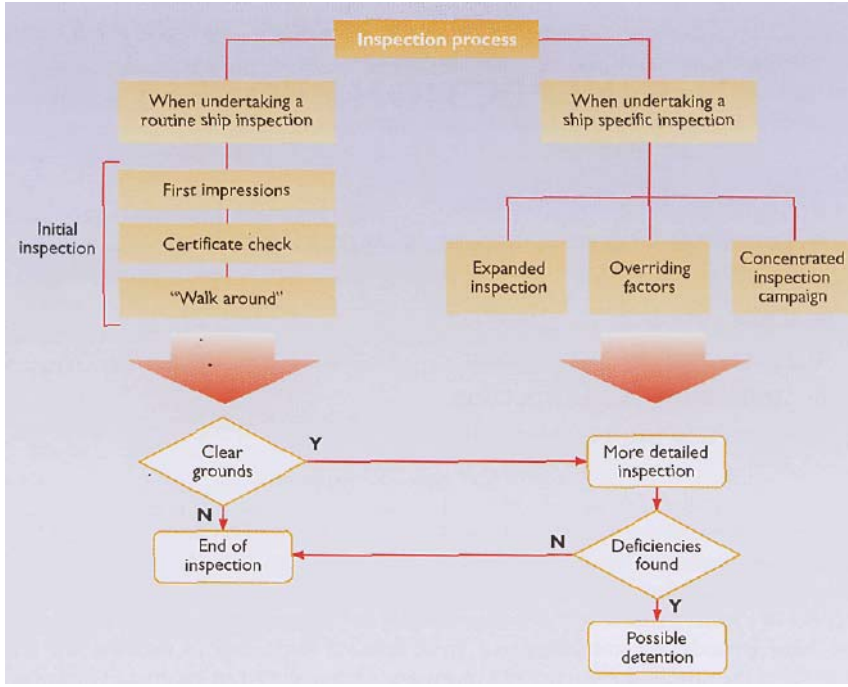

Fig.5.The inspection process

Accidental damage prior to port entry

If a ship suffers accidental damage prior to port entry, the mascer should, at the earliest opportunity, notify his flag State and/or the classification society responsible for issuing the ships' certificates, as well as the port State Authority of the destination port. The report should state the circumstances that led to the accident and the nature of the damage that the ship is believed to have suffered. Plans for remedial action should also be put into place, and the port State notified once the remedial action has been completed. The same procedure should also be followed if a ship is accidentally damaged while in port from, say, cargo operations. Failure to do so might lead to the ship being detained.

Charging for inspections

A Port State should not charge a ship for any routine inspection. Inspection charges can however be expected if a ship invites a port State to undertake an inspection, or if a .ship is found with deficiencies that warrant a detention. In the latter case all costs, and not just those related to the re-inspection, might be charged. To avoid unnecessary charges, the ship should ensure that all deficiencies are properly rectified before requesting a re-inspection.

Contacting the flag State and/or classification society

A ship might wish to contact its flag State and/or classification society for support during an inspection, particularly if the ship is detained or an inspection is suspended by

the PSCO. In order to prepare for such an event, it might he prudent for Companies to give their masters clear instructions, detailing the exact circumstances a flag State or classification surveyor should be called in for assistance. In this context, it might be advisable for ships to maintain on board a list of up-to-date contact addresses.

PREPARING FOR AN INSPECTION

Because inspections are unannounced, it is difficult for a ship to make any special preparations for an inspection, except in cases where one could *be* anticipated. A ship should therefore be ready to face an inspection at any port, at any time.

PORT STATE CONTROL & SECURITY CONTROL OFFICERS

The PSGO should be qualified as a flag State surveyor and should carry a copy of the General Procedural Guidelines for PSGOs from IMO resolution A.78709) for ready reference when carrying out inspections. These guidelines are reproduced in Appendix C.

When the new SOLAS regulations on maritime security come into force in July 2004, port State Authorities are likely to want to start conducting security-related inspections. Some States might see security as an issue of particular national sensitivity and, as a result, might want to carry out inspections using control officers trained in security matters, or Port State Security Control Officers (PSSCO). In some ports the PSSCO and the PSCO might, in practice, be the same person.

All control officers should be experienced persons and able to communicate with the master and key crcwmcmbers in English. They need not, however, have sailed as master or chief engineer or even have had any seagoing experience. Nor should they have any commercial interest in the port, the ship or be employed by or on behalf of a classification society. They should, however, be issued with an identity card as evidence of their authority to carry out inspections, and could be supported by an assistant should special expertise be needed.

Dealing with the PSCO

It is probably best assumed that the PSCO is fully qualified, well trained and familiar with ships although this might nor, necessarily, always be the case. The master should select a room for the opening meeting that is quiet and comfortable, and have all the certificates and documentation ready for checking. The reports of previous port State inspections should also be at hand. All questions asked by the PSCO should be responded to in an honest and straightforward manner.

When the PSCO is ready to inspect the ship, a senior officer should be assigned to accompany him. That person should be familiar with the ship and have the necessary keys with him to ensure that all spaces can be readily accessed. If a spare crewmember or a cadet is available, his attendance would also be recommended. If anything needs immediate attention or if assistance needs to be called, that person could attend to such matters without the flow of the inspection being disrupted.

The officer should be vigilant and not afraid to point out and immediately rectify discrepancies that appear during the inspection, rather than risk the PSCO identifying the discrepancies himself. Being able to fix things on the spot is an indication of being well organised. Even if something does not work or needs adjusting but cannot be fixed immediately, move on and let the PSCO return later. This could save a second visit to the ship.

Finally, it must be remembered that the master always has the right to query the direction that an inspection is taking should he believe that the inspection is interfering with the safety of the crew or indeed cause crew fatigue. Unreasonable requests for drills while the ship is cargo handling or bunkering should always be questioned.

INITIAL INSPECTION

First impressions

Before boarding the PSCO is likely to walk along the quay and look at the general condition of the ship, the state of the mooring lines and whether or not the draught and load line marks are present and readable. The condition of the paintwork, signs of corrosion, tank leakage or un-rcpakcd damage would give the PSCO an immediate impression of the standard of care and maintenance on board.

Walking on board, the PSCO can check the condition of the gangway and see how well it is rigged and secured. Being able to walk on board and wander around freely and uncontested, apart from indicating lax deck operations would also give the PSCO the opportunity to take a good and unsupervised look around the ship. If cargo operations were underway, for example, he might then have an opportunity to judge the managerial competence of those running the ship, by observing how well the deck was organised. On the way to the master's office, he might also have opportunity to look at the onboard mooring arrangements and areas of the accommodation space.

Once, of course, the new SOLAS maritime security provisions have entered into force, it should not be possible for any person to board a ship from ashore or from a boat, unchecked and unnoticed.

Certificate check

Subject to favourable first impressions, the initial inspection should largely be limited to checking the ship's certificates and manning arrangements. A more detailed inspection would require 'clear grounds' to be present. It is however becoming common practice for the PSCO to also want to 'walk around' the ship to check its overall condition and to see that the ship is actually in the condition that the certificates suggest it should be. Deficiencies related to overdue statutory surveys are common. Certificates issued by non-recognised organisations might also attract particular attention.

The principle of no more favourable treatment referred to in Chapter 1, might be applied to ships that fly the flag of States that have not ratified particular conventions, or are below convention size. In such cases, a ship might not be carrying all the certificates expected of it by the PSCO. Absence of certificates should not therefore, in itself, always constitute a reason for detaining a ship. A ship would, however, need to demonstrate that it was substantially in compliance with the provisions of the relevant conventions.

A close examination of the Oil and Garbage Record Books and the ship's ISM and maritime security certificates can be expected at this stage. The PSCO can also be expected to look specifically at the manning arrangements on board. The numbers and composition of the crew would need to conform to the Safe Manning Certificate carried. The master should be aware that the port State has the right to query the manning arrangements of any ship with the flag State, and ask for confirmation that the ship can sail as currently manned. Failure of the flag State to respond could result in the ship being detained. The PSCO should accept the flag State's manning level unless it is clearly unsafe or docs not meet STCW requirements.

Regarding the crew and their certificates, the STCW Code requires that the original copies of certificates and endorsements be carried on board at all times. Photocopies would not be acceptable. The PSCO might wish to check that individual crewmembers actually have their certificates with them. Medical certificates may also be chocked at this time.

Appendix A contains details of the certificates and documents that ships generally need to carry.

'Walk around' to check on the overall condition of the ship

If, during the 'walk around[1], the PSCO finds little wrong, the inspection is likely to be concluded rapidly. A check on the internal structure of the ship would not normally be undertaken at this stage. Further, the PSCO would be likely to rely on visual signs to see if equipment is being regularly used and tested. Paint in the davits or rusted harbour pins could, for example, indicate that the lifeboat had not been recently lowered and this might conflict with statements in logbooks concerning the carrying out of boat drills.

Discrepancies of this nature could encourage the PSCO to believe that sufficient 'clear grounds' existed to justify moving onto a more detailed inspection. A request for a drill to be conducted might be one approach that the PSCO takes, and it would provide him with an opportunity to communicate with crewmembers and to see how well the crewmembers communicate together.

The PSCO would also be likely to want to check on the living and working conditions on board with a view to verifying that the ship conformed to the standards laid down in the ILO Convention No.147. A visit to the engine room and a tour of the accommodation and galley should therefore be expected, with the PSCO paying particular attention to hygiene and safe practices.

Table 3 contains a brief aide-memoire that lists those areas that a PSCO can be expected to look at during an initial inspection.

Table 3.The initialinspection

First impressions (on boarding)	External condition of the ● hull ● freeboard marks ● accommodation ladder ● mooring arrangements.	☐
Certificate check (in the master's cabin)	General status of certificates / documentation – verify ● missing or expired ● not translated or posted up, as required ● discrepancies ● outdated or unsigned endorsements ● uncertified copies of original certificates ● inconsistencies or omissions in record books ● certificates issued by non-recognised organisations.	☐
	Safe manning – verify ● compliant manning levels ● minimum rest periods applied.	☐
	Crew certification – verify ● presence of original and valid certificates ● English translation ● medical certificates ● minimum age compliance.	☐
	The ISM code – verify ● crewmembers are familiar with the Company 'safety and environmental protection policy' ● the 'Safety Management System' documentation is readily available ● status of interim certificates, if any ● the ship type is covered in the DOC.	☐

	Ship security - verify ● presence of original and valid certificates ● correct procedures have been followed according to the ISPS Code, part A, reg. 19.4 if ship has an Interim ISSC ● master and/or crew are basically familiar with the essential shipboard security procedures.	☐
'Walk around' (to check on the overall condition of the ship)	PSCO would be likely to verify the general condition of exposed decks ● deck plating ● bulwark and stays ● guard rail ● hatch coamings and covers ● piping and vents ● presence of improper temporary repairs ● presence of recent welding / hot work ● presence of liquid seepages	☐
	cargo handling gear ● cargo gear and additional equipment ● cargo securing devices	☐
	navigation and radio communication equipment ● navigational equipment ● management of voyage charts / publications ● hand-over procedures for watch and control of ship ● bridge visibility ● record of steering gear tests / drills ● radio installation and equipment ● reserve radio batteries ● record of operation and maintenance ● fire detection and alarm systems	☐
	lifesaving appliances (LSA) ● lifeboats, rescue boats and life rafts ● launching arrangements ● personal lifesaving appliances ● record of periodic inspections and testing / drills ● management of emergency plans and instructions	☐
	fire fighting arrangements (FFA) ● fire doors ● means of escape ● fire pumps ● fire main, hydrants and hoses ● fire extinguishers ● record of periodic inspections and testing / drills ● management of fire control plan and instructions	☐
	machinery spaces ● main and auxiliary engines ● piping, pumps and valves ● electrical generators ● cables, terminations and joint arrangements ● lighting ● cleanliness of spaces ● emergency escape routes	☐
	pollution prevention ● oily-water separator and associated equipment ● Shipboard Oil Pollution Emergency Plan (SOPEP) or Shipboard Marine Pollution Emergency Plan (SMPEP) arrangements ● garbage arrangements	☐
	living and working conditions ● condition and sufficiency of food and potable water supply ● arrangements and cleanliness of food stores, galley, pantries, refrigerated chambers and mess rooms ● sanitary arrangements, including condition of doors, flooring and drainage ● operation and maintenance of ventilation, lighting, heating and water supply ● medical facilities, including medicines and equipment ● record of accommodation inspections ● availability of personal protective equipment.	☐

CLEAR GROUNDS

'Clear grounds' for proceeding to a more detailed inspection will exist if, in the profession judgement of the PSCO, evidence is found during the initial inspection that

- the ship, its equipment, or its crew did not appear to correspond substantially with the requirements of the relevant conventions, or
- the master or crewmembers were not familiar with the essential shipboard operational procedures that related to the safety or security of the ship and pollution prevention.

Once the PSCO believes that a more detailed inspection is justified he is required to inform the master, givjng reasons for his decision, lable 4 lists examples of what might constitute 'clear grounds[1].

Table 4. Examples of clear grounds

Evidence of inaccuracies in the certificates, log books and manuals during their examination, including evidence that the Oil Record Book has not been properly kept and absent or inaccurate ISM Code or ISPS Code certification, where appropriate.
Indications that crewmembers are not able to communicate adequately with each other.
Evidence of shipboard operations, such as cargo work, are not being conducted safely and in accordance with IMO guidelines.
Absence of an up-to-date muster fist, fire control plan and a damage control plan, and evidence that crewmembers are not aware of their fire fighting, abandon ship or security duties.
The absence of, or serious deficiencies in, the principal safety, pollution prevention or security equipment or arrangements required by conventions.
• Excessively unsanitary conditions on board the ship,
• Evidence that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weather-tight integrity of the ship. The absence on board of the Survey Report File, where appropriate, or the failure to keep the file up to date may also constitute clear grounds.
• Evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of the ship, prevention of pollution or maritime security, or that such operations have not been carried ouL
• Evidence that the ship has embarked persons, or loaded stores or cargo at a port facility or from another ship or by helicopter transfer where that third party is either not in compliance with SOLAS XI-2 or part A of the ISPS Code or does not have to be in compliance AND the ship has either not completed a Declaration of Security or not taken appropriate measures.

The checklists contained in Appendix D focus specifically on essential shipboard operations, areas that could well come under the scrutiny of a PSCO during a more detailed inspection.

In the case of the new SOLAS regulations on maritime security, a port State might attempt to judge the existence of 'clear grounds' solely on the strength of the information a ship provides, prior to port entry. Should 'clear grounds' be judged to exist at that point, a ship might be required to proceed first to anchor for a pre-arrival inspection, before being allowed to berth. A port might even deny a ship entry into porr.

MORE DETAILED INSPECTIONS

A more detailed inspection is an in-depth inspection, and could potentially cover all aspects of the ship including the ship's construction, equipment, manning, living and

working conditions, as well as checking compliance of ship operational procedures. The purpose of a more detailed inspection is to establish a ship's real condition, where doubts exist. It may be prompted by overriding factors or because 'clear grounds' were identified during an initial or expanded inspection of a ship.

Where security-related doubts exist, the PSSCO might request to see the Ship Security Plan (SSP). This can only happen with the permission of either the master or the flag State, and even then, only limited access should be allowed because the SSP is confidential.

Any inspection of a more detailed nature should initially focus on the specific areas that were of original concern to the PSCO. It might, however, be extended into new areas should fresh concerns arise during the inspection. As has been previously mentioned, one direction that a PSCO might take at this stage would be to request a drill. This would allow him to readily assess how well crcwmcmbcrs were trained, aware of their duties, and able to effectively communicate among themselves.

Any inspection should not, unnecessarily, delay or impose undue physical demands on a ship, or jeopardise its safety or the safety of its crcwmembers. While the master would be entitled to query excessive inspection demands, particularly those that eould interfere with the running of his ship, it is recommended that the master always remains positive and cooperative in his dealings with the PSCO.

SUSPENSION OF AN INSPECTION

In exceptional circumstances, where the overall condition of a ship, its equipment or the working or living conditions of the crew were found to be obviously substandard, the PSCO might suspend an inspection. In such cases, the port State should notify the flag State, without delay The suspension is likely to be enforced until all the deficiencies identified by the PSCO, have been rectified as instructed.

REPORTING INSPECTION RESULTS

Following a port State control inspection, the PSCO should provide the master with a teport giving the results of the inspection and detailing any actions to be taken.

If no deficiencies have been found, 'Report Form A' should be used. Where deficiencies exist, these should be recorded on 'Report Form B' and both forms issued to the ship.

When a ship is detained, this fact should be noted on both forms. The reporting of maritime security-related inspections is likely to follow a similar pattern, albeit forms of a slightly different format might be used.

All reports should be retained on board for at least two years so that they can be examined at subsequent inspections. The results of inspections will be entered in the central database of the port State region and, as mentioned in Chapter 1, sonic regions submit details of recorded deficiencies and detentions to Equasis. Ship detentions are also often reported in the shipping press.

Chapter 4

DEFICIENCIES ANDTHE DETENTION OF SHIPS

- Deficiencies
- Detention orders
- Banning orders

DEFICIENCIES

A deficiency exists when a condition is found on a ship that does not comply with the requirements of a convention. While the term 'non-compliant security item' might also be used to describe deficiencies of a maritime security nature, the term deficiency will be used in this Guide for reasons of simplicity.

In the context of the new SOLAS regulations on maritime security, it should be noted that compliance might not only be based on the ship itself. A ship, for example, that has intetacted with a port facility or another ship chat does not have an approved security plan might, by that action, be pre-judged non-compliant before any port State inspection actually takes place.

When deficiencies are found, this fact is noted on 'Report Form A' and the nature of the deficiency and the corresponding action to be taken by the ship is recorded on the 'Report Form B'. To assist the function of reporting and analysing deficiencies, port State regions typically use codes to group together deficiencies of a common type. The number and nature of the deficiencies found by the PSCO would determine the corrective action that the ship would need to take, and whether or not the ship was to be detained.

It is important that the master fully understands both what the deficiencies are, and what corrective actions are required of the ship. Any misunderstanding could unnecessarily delay the ship in port. The master must, therefore, check that the deficiency details entered on 'Report Form B[1] are correct and seek clarification from the PSCO, when necessary.

Where the deficiencies relate to a statutory survey item, the master is advised to call in the classification surveyor because the classification society will typically be authorised to deal with such items on behalf of the flag State.

If deficiencies are found, there are three basic types of corrective actions that can be taken by the PSCO

- require the rectification of the deficiencies before the ship sails
- permit the ship to sail on condition that the deficiencies are rectified at a named 'repair[1] port
- require the deficiencies to be rectified within a specified period, say, 14 days.

The need for a PSCO to return to a ship indicates the seriousness of the deficiencies found. Deficiencies that have been rectified but not checked and cleared by the PSCO are

likely to be recorded in the central database of a port State region as 'outstanding'. As mentioned in Chapter 2, the presence of outstanding deficiencies would constitute an overriding factor and ensure that the ship is targeted for repeat inspections. It would therefore be in the interests of the ship to get deficiencies rectified and cleared by the regional port State Authority, as soon as possible.

Recorded deficiencies might also be used as a factor for targeting ships for inspection. The Paris MOLI, for example, assigns targeting points based upon the total number of deficiencies that a ship accumulates during inspections in its region over a 12-month period.

Fig. 6 illustrates what happens if deficiencies are found.

Permit to sail

When a deficiency needs to be rectified but where proper repair facilities or docks are not available at the port of inspection, the ship may be allowed to sail to the nearest appropriate repair port, even if the deficiencies are of a detainable nature. In assessing whether or not a ship is safe to proceed to sea and onto a repair port, the PSCO should consider

- the length and nature of the intended voyage
- the size and type of ship
- the nature of the cargo being carried
- whether or not the crew is sufficiently rested.

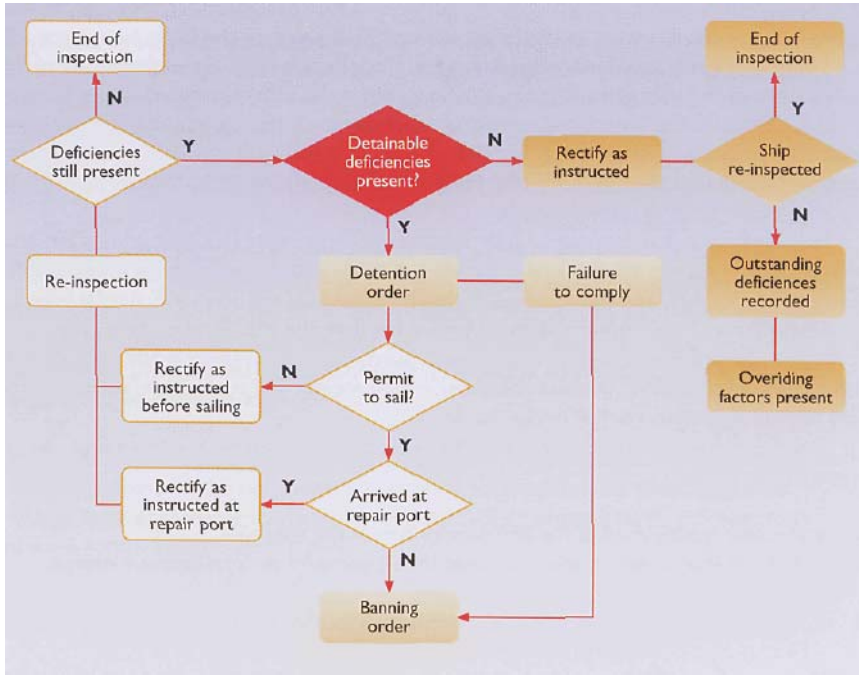

Fig. 6. Procedure *if deficiencies are found*

In some cases, the granting of a permit to sail might be conditional upon, say, cargo being discharged or temporary repairs being undertaken before the ship leaves the inspection port.

It is essential that the ship reaches the repair port, as instructed. As well as the ship's flag State being notified, the port State Authority at the repair port will also be told of the decision. Any failure to arrive at the repair port might result in a banning order being placed on the ship.

Suspension or prohibition of ship operations

If the deficiencies found made ship operations unsafe, threatened the marine environment or caused security concerns, the PSCO might formally suspend or prohibit a ship operation such as cargo work or bunkering. The following deficiencies are examples of those that might lead to a suspension

incomplete oil transfer procedures when bunkering
incomplete Shipboard Oil Pollution Emergency Plan (SOPEP) arrangements
serious security hazard
incomplete information on the cargo
a non-compliant cargo loading plan.

DETENTION ORDERS

A ship can expect to be detained when, in the professional judgement of a PSOO, i: is considered unsafe to allow a ship to proceed to sea before ihe deficiencies identified have been rectified. Further, the ship should expect the PSCO to return to check that the deficiencies have been properly rectified, before clearance to sail is granted. Deficiencies that pose no reasonable threat to the environment and do not seriously affect the safety or security of the ship or its crew should not give cause to a ship being detained. Refer to Table 5 for examples of detainable deficiencies.

Table 5. Examples of detainable deficiencies

Under SOLAS	● failure of the main propulsion, electrical, pumping and steering systems ● poor cleanliness of engine room, excessive amounts of oily-water in the bilges, pipework insulation contaminated by oil ● absence, insufficient capacity or poor condition of LSA equipment ● absence, non-compliance or poor condition of FFA equipment, ventilation valves, fire dampers and quick closing devices ● absence, non-compliance or poor condition of navigation lights, shapes and sound signals ● absence or failure of mandatory navigation systems and equipment ● absence of corrected nautical charts and publications ● absence or failure of radio communication systems ● number, composition or certification of crew not corresponding to safe manning certificate ● serious deficiency of crew's operational competence
Under LOAD LINES	● significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull effecting seaworthiness, unless proper temporary repairs for a voyage to a port for permanent repairs have been carried out ● insufficient stability or ability to calculate stability conditions ● absence or poor condition of hull closing devices such as hatch covers and watertight doors ● overloading ● absence or inability to read the draught marks

Under MARPOL (Annex I)	● absence, poor condition or failure of oily-water filtering equipment, oil discharge monitoring and control systems and alarms ● remaining capacity of slop and/or sludge tank insufficient for intended voyage ● no Oil Record Book
Under STCW	● lack of or insufficient crewmember certificates / endorsements ● inadequate navigational or engineering watch arrangements / personnel ● crewmember competency not adequate for the duties assigned for the safety and security of the ship and the prevention of pollution ● insufficient rested crewmembers for first watch and relieving watch duties at the commencement of the voyage
Under ILO *Conventions*	● insufficient food or potable water for next voyage ● *excessively unsanitary conditions on board* ● no heating in accommodation if ship operating in low temperature areas ● excessive garbage, blocked passageways

Once a detention order has been placed on a ship, it is likely to remain part of the historical port State records for that ship and be displayed on the Equasis web site for at least 3 years. The fact that the deficiencies that led to the detention were easily and promptly rectified, say, before the ship was scheduled to sail would not remove the detention from the ship's port State record. A detention order might include an instruction that the ship had to remain in a particular place, or move to an anchorage or another berth. The order should specify the circumstances that would allow the detention to be released. The fact that a ship had been detained should be clearly stated on 'Report Form A'.

In coming to a decision on detention, particularly when it relates to structural rather than operational deficiencies, the PSCO should consider the seaworthiness of the ship and not just its age, and make due allowance for fair wear and tear. If there were questions about diminution rates of the main structural members, for example, the PSCO would be expected to contact the flag State and/or classification society. Damage temporarily but effectively repaired for a voyage to a port for permanent repairs should not constitute grounds for detention. Problems with the crew's accommodation and living conditions, however, might be treated more seriously.

The port State is obliged to notify a flag State of any detention. The flag State, or a classification society acting on its behalf, may attend the ship to help resolve the problem. In this case, the PSCO might agree to the remedial action proposed by the surveyor, and allow him to oversee the repairs. Whatever the arrangement, the master and/or the shipowner would need to authorise the repair work because there will be associated costs to cover. Port State inspection costs will, of course, also be charged to the ship, and detention orders are not normally lifted until payment has been received in full.

As with recorded deficiencies, the detention history of a ship might be used for targeting. The Paris MOU, for example, assigns 15 points for each detention incurred by a ship in the last 12 months. The USCG, under its Boarding Matrix, assigns 5 points.

A poor detention record might also result in a ship being banned from re-entering ports within the port State region. Under the Paris MOU rule changes of July 2003, such a regime will be applied to certain ship types, namely tankers (chemical, gas and oil), bulk carriers and passenger ships. Such ships will be refused access to Paris MOU ports after

- a third detention in 2 years, if the flag flown is from either the 'medium to high' or 'medium[1] category in the published black list, or
- a second detention in 3 years, if the flag flown is from cither the Very high' or 'high[1] risk category.

The right of appeal against a detention order or any undue delays

Should the master feel that the detention order was unfair, he is advised to start by directly querying the detention order with the PSCO before he leaves the ship. Should that fail, the master is then recommended to attempt to make an informal appeal to senior officials from within the port State Administration. If that fails or is not possible, the only recourse that can be taken would be to submit a formal appeal. At the time the detention order is raised, the PSCO should inform the master of his right of appeal and the procedure that would need to be followed.

Before the PSGO leaves the ship, the master is advised to ensure that he fully understands the appeals procedure. For ships detained in the Paris MOU, this would be less important, because full information for each member State is given on its web site. The master should also ensure that the ship's flag State is promptly informed about the detention, as well as told of any concerns that might exist about the detention decision and the details of any corrective action being taken by rhe ship.

The appeals procedure would normally require the ship to serve notice to appeal within a specified period.'This could be as little as 21 days. That notice to appeal would need to be served on the port State Authority where the detention took place. The appeals process is likely to involve arbitration proceedings and these would be conducted under the national law of the port State. An appeal would not, however, usually trigger the automatic lifting of a detention order.

The Paris MOU has instigated a review procedure that is open to flag States to use if there is any disagreement with the outcome of any investigation stemming from a formal appeal. A request for review should be sent to the Paris MOU Secretariat, who will set up a Review Panel to consider the information presented by both the flag and port States concerned. The findings of the Panel are not binding, and the port State concerned will still have the final say on whether or not its detention decision will stand. Full details of this review process are published on the web site of the Paris MOU.

BANNING ORDERS

Banning orders are generally imposed when ships fail to comply with any condition that is attached to a detention order. The failure of a ship to proceed directly to a nominated repair port, would be an example of an incident that might trigger a banning order. As outlined above, a poor detention record might also trigger a ban for ships of a certain type and flag.

In general, when a banning order is placed on a ship by a regional port State Authority, that ship will be refused further access to all ports in that region. To lift a ban a ship will typically need its flag State to certify- that it was now fully compliant, and it might have to undergo a special port State inspection. A ship, for example, banned under the new Paris MOU rule changes will have to complete an expanded inspection at its own expense.

Where, in the exercise of port State control, a foreign ship is denied port entry, the master and the flag State should be provided with reasons for the denial of entry. Force majeure or other overriding safety considerations might however necessitate a port State granting special permission for a banned ship to enter a specific port.

Lists of banned ships appear on the web sites of many of the regional port States.

Chapter 5

COMMERCIAL IMPLICATIONS

- Financial implications
- Time charterparties
- Voyage charterparties
- Breach of contract
- Effect on further employment
- Effect on ship sale and purchase
- Frustration and exception clauses
- Responsibility of charterers
- Effect on insurances
- Effect on mortgages

Port State control will inevitably have commercial implications, particularly if a ship is subject to detention or a banning order, and there are likely to be financial implications for a shipowner. The performance of contracts, such as charterparties, contracts for the carriage of goods, sale and purchase agreements, and others will be affected. Performance may be delayed or even prevented altogether. The result is that an owner is likely to suffer financial losses of his own and may also face claims from contractual partners. The freedom to contract in the future may be compromised and the ability to trade the ship in the future may be limited or restricted. There could also be implications for the ship's insurances and even the basis upon which it is financed.

It is not possible to explore the commercial, and in particular the legal, implications of port State control in any detail in this Guide. It is also not possible to give firm advice or indications of exactly what the effects may be as this will depend on the particular circumstances of each individual case. It will only be possible to identify exactly what the implications maybe in a particular ease by obtaining independent legal advice. However, it is important to remember that there arc likely to be commercial implications because of the intervention of Port State Control Officers. This chapter is therefore intended to serve as a reminder and to help focus attention on the importance of managing the port State control process successfully.

FINANCIAL IMPLICATIONS

The bottom line is that the principal impact of a ship being delayed by port State control, being detained or made subject to a banning order, is going to be financial. Costs and expenses are likely to be incurred in dealing with and rectifying any deficiencies identified by a Port State Control Officer. Financial losses are also likely to be incurred

simply as a result of any delay to the ship or, in the longer term, any restriction or limitation of the abiliry to trade the ship in a particular way.

TIME CHARTERPARTIES

If the ship is employed on a time charter, the owner's immediate financial loss is likely to be that the ship may be placed off-hire. It is likely that where a ship is delayed because of physical defects and in particular, if it is subject to a detention order, the ship will be off-hire and charterers will be excused their obligation to pay hire. This will be of course depend on the precise wording of the off-hire provisions in the charterparty.

It is less clear that a ship will be off-hire if the delay or detention relates to other defects that are not of a physical nature, relating to the ship's documents for example, but there is nevertheless the risk that the ship may still be off-hire.

It should also be borne in mind that, depending upon the wording of the relevant off-hire clauses, the ship could be off-hire not only for any time that is actually lost but also for the whole of the period that the ship is subject to the detention order. The ship could therefore still be off-hire while detained even though it is otherwise able to provide a service to the time charterers, for example by continuing to work cargo.

VOYAGE CHARTERPARTIES

In the case of the ship employed on a voyage charter the running of laytime or demurrage could be affected. If a Port State Control Officer finds deficiencies, it is possible that any Notice of Readiness will be invalid. At the very least, commencement of laytime is likely to delayed. Otherwise, delays caused by any deficiencies or any detention could interrupt or stop the running of laytime or demurrage.

A detention order in particular could have the effect of making the voyage overall take longer than anticipated when the charterparty was originally agreed. Owners' calculations of the freight and demurrage rates required may be of no value. Profit margins may be reduced or even turned into a loss.

BREACH OF CONTRACT

Any delays at the hands of port Srate control may also amount to a breach of contract. The presence of any deficiencies identified by port State control are likely to indicate that there has been a breach of contract. Physical defects may indicate a breach of obligations relating to the seaworthiness of the ship or to maintenance. Other deficiencies may point to other breaches. For example, it is not uncommon to see clauses requiring the maintenance of a valid **ISM** system. The existence of any defects, physical or otherwise, may indicate a breach of such an obligation.

The implication of such a breach is that a charterer or other contractual partner may have a claim against the owner for financial losses that they suffer as a result of that breach. Depending on the circumstances those damages could be substantial.

Possibly even more significant than delay or detention orders may be the consequences of a banning order. Any order that prevents the ship from calling at certain ports may make it impossible for the contract to be performed. Any inability to perform may amount to a repudiation of the contract that would enable the charterer, or other party, to end the contract and make a claim for damages.

The problem may be particularly acute if a banning order is imposed part way through a voyage, for example ac an intermediate port. If cargo is already on board from an earlier port it may not be possible to continue the voyage to the contractual discharge port and alternative arrangements will have to be made for delivery of the cargo. For example, it may be necessary to arrange discharge at an alternative port and arrangement transhipment and carriage to the contractual destination. The cost of all of these could be for the owners' account.

The consequences of a banning order being imposed on a ship that is employed on a long rerm time charter could be particularly significant if the effect is to restrict the range of ports or areas to which charterers can employ the ship. This is likely to result in charterers suffering losses, which they may be able to claim from the owner. Charterers may also be able to end the charterparty. At the very least they may be in a position to bring sufficient commercial pressure to bear on the owner to agree that the charterparty should be brought to an end or the rate of hire payable be reduced. In any event, the owner faces potentially serious financial consequences.

EFFECT ON FURTHER EMPLOYMENT

Any delay to the ship could have the effect that its delivery into its next employment is delayed. The time when the owner will start earning under that employment will therefore be delayed. Delays could lead to the ship missing her cancelling date under the contract so that the employment is lost altogether. Further time, and money, may then be lost while looking for alternative employment. If the markets are falling at the time, owners face the prospect of suffering further losses when they do find new employment.

In the case of a banning order, the owner's ability to refix a ship on charter may be severely restricted. The ship may no longer be able to trade to large parts of the world. Obviously, a ship subject to such restrictions is unlikely to be attractive to many charterers. It may therefore only be possible to trade the ship within limited geographical areas. In the worst cases, it may simply not be possible to trade the ship at all!

EFFECT ON SHIP SALE AND PURCHASE

It is not only charterparties and other contracts of carriage that may be affected. Another type of contract that may be seriously adversely affected by any problems with port State control is a contract for the sale of the ship. If the contract has a right of cancellation in it, the buyer may have the right to cancel the contract if delays caused by port State control mean that the ship is not ready for delivery under the Memorandum of Agreement, the contract for sale of the ship. As with any right of cancellation, it will not matter whether the delay or detention involve any fault on the owners' part. In addition, if any of the deficiencies identified by the Port State Control Officer relate to the condition of the ship, the buyer may be entitled to refuse to accept delivery of the ship. To complete the sale, the owner will have to incur expense to remedy the defects or may have to agree to a reduced price before the buyer will take delivery.

FRUSTRATION AND EXCEPTION CLAUSES

In English law there is a concept of frustration of contract. If circumstances beyond the control of the parties, and which were beyond their reasonable contempiation at the time the contract was agreed, prevent performance of the contract, the contract ends without any

liability on either part}'. A contract may also be frustrated if the circumstances arc such that performance of the contract would become fundamentally different from what the parties intended. For example, an excessive delay may have the effect of frustrating a contract.

It is also very common for contracts to contain exception clauses, excusing the parties from further performance or from the consequences of certain events. These clauses will commonly deal with performance being affected by, for example, 'acts of God' or 'perils of the sea'. Another common phrase is 'restraint of princes, rulers and people'. Sometimes there is simply a reference to 'force majeure' events. It may be thought if a ship is delayed or detained by port State control or if a banning order is imposed it might be possible to rely on a 'restraint of princes[1] exception or to treat the intervention of port State control as 'force majeure'. In most cases however this will not be possible and it would be unwise to rely on such exception clauses. Nor is it likely to be possible to rely on the intervention of port State control as a frustrating event.

The problem that an owner will face is that the delay, detention or banning order will be the result of some deficiency that is owners' responsibility. The circumstances leading to the intervention will therefore not be something that is beyond the owners[1] control. To be able to rely upon frustration or an exception clause the events in question must be beyond their control. On the contrary, as has already been explained, the circumstances leading to detention or ban may themselves amount to, or indicate, a breach of contract.

RESPONSIBILITY OF CHARTERERS

The discussion in this chapter so far assumes that it will be the owner who is responsible for the consequences of any port State control intervention. This is for the reason that the issues regulated by port State control are exclusively the responsibility of the owner. It is not therefore generally likely that any responsibility will fall on charterers. However, there may be circumstances where this is the case. For example, a ship may be damaged by stevedores. Charterers may be responsible for the stevedores and therefore liable for the damage caused. If the presence of damage causes the ship to be detained charterers may be liable for the consequences of that delay. The ship may not go off-hire, if employed on a time charter basis, or at least owners may still have a claim for hire if the ship is off-hire. The running of laytime or demurrage may not be interrupted, if on voyage charter. The owner may have a claim against charterers not only for the damage itself but also for the consequences of the delay, and a right of indemnity against the charterer for any other consequences.

What is not so clear is whether in such circumstances charterers could also be liable for the consequences of any banning order that might be imposed by this particular port State control intervention. The difficulty is that the ship may only be subject to a banning order if there have been previous occasions when the ship has been subject to detentions by port State control. Unless those earlier interventions were also caused by something for which the present charterers are responsible, those earlier incidents arc likely to be the owners' responsibility. It is doubtful whether a charterer would be responsible for the consequences of a banning order if the earlier detentions were not its responsibility.

EFFECT ON INSURANCES

As mentioned above it is not only commercial contracts, such as charterparties, that may be affected by actions taken by port State control. The nature of any defects that

result in a ship being detained may involve the ship being unseaworthy at some point. Certain insurances, in particular huli and machinery insurance, may contain an express warranty that the ship shall be seaworthy. One effect of a detention could therefore be that certain of the owners' insurances could be prejudiced, and owners may find themselves uninsured.

EFFECT ON MORTGAGES

Another potential problem area for an owner may be the finance arrangements for the ship. It is common in the contracts for the financing of a ship, such as a mortgage, for certain events to amount to a 'default' of that contract. Commonly the result of such a default is that the lender has the right to foreclose and require repayment of the loan. That may also carry with it the right actually to sell the ship. Depending on the actual wording of the contract or mortgage and the circumstances any detention or banning orders that might: be imposed by port State control could amount to a 'default'.

CONCLUSION

The clear message that needs to be borne in mind is that problems arising from a port State control inspection and intervention may not simply be a Temporary inconvenience or minor irritation. If a ship is delayed or detained, and particularly if a banning order is imposed, there can be very serious and far reaching commercial and practical consequences, particularly adverse financial consequences, for an owner.

APPENDIX A

DETAILS OF CONVENTION CERTIFICATES AND DOCUMENTS TO BE CARRIED

Applicable generally to all ships

Certificate of Registry
As issued by the flag State. ☐

Tonnage Certificate
Issued to every ship above 24 metres in length (mL) and 150 gross tonnes (gt). The gt and net tonnage (nt) would, in most cases, be determined in accordance with the convention. The gt of a ship may, however, for certain ships be determined in accordance with national rules. A statement to that effect should be included on the certificate, and as a footnote in the relevant SOLAS, STCW and MARPOL certificates held by the ship [Tonnage Measurement Convention 1969, art. 7]. ☐

International Load Line Certificate
Issued to every ship above 24 mL and/or 150 gt. which has been surveyed and marked in accordance with the convention. The certificate is valid for five years. A booklet **Particulars of Conditions of Assignment** is issued with the certificate, detailing the conditions under which the freeboard is assigned. It forms an integral part of the certificate. There is also an **International Load Line Exemption Certificate** that is issued to a ship granted an exemption under the Load Line Convention provisions [International Load Line Convention (ILLC) 1966, art. 16 / Load Line Protocol 1988, art. 18]. ☐

Stability Booklet
Issued to all cargo ships above 24 mL. Contains information as is necessary to enable the master, by rapid and simple processes, to obtain accurate guidance as to the stability of the ship under varying conditions of service [SOLAS 1974, reg. II-1/22 & II-1/25-8 / LL Protocol 1988, reg. 10]. ☐

Cargo Securing Manual
All cargoes (other than solid and liquid bulk cargoes) should be loaded, stowed and secured in accordance with the Manual [SOLAS 1974, reg. VI/5, VII/6 & MSC/Circ.745]. ☐

International Oil Pollution Prevention Certificate (IOPP)
Issued to oil tankers over 150 gt and other cargo ships over 400 gt that are engaged on voyages to ports under the jurisdiction of other Parties to MARPOL 73/78. The IOPP certificate is valid for five years. The certificate is supplemented by a **Record of Construction and Equipment for Ships other than Oil Tankers (Form A)** [MARPOL 73/78, Annex I, reg. 5]. ☐

Oil Record Book
Oil tankers over 150 gt and other ships over 400 gt to be issued with an **Oil Record Book, Part I (Machinery space operations)** [MARPOL 73/78, Annex I, reg. 20]. ☐

Shipboard Oil Pollution Emergency Plan (SOPEP)
Required to be carried on every cargo ship over 400 gt and be approved by the flag State [MARPOL 73/78, Annex I, reg. 26]. Ships carrying noxious liquid substances in bulk should combine SOPEP with a **Shipboard Marine Pollution Emergency Plan (SMPEP)** [MARPOL 73/78, Annex II, reg. 16]. ☐

Garbage Management Plan
Annex V deals with regulations for the prevention of pollution by garbage from ships. Issued to all ships above 400 gt. The Plan must be in accordance with the IMO Guidelines and written in the working language of the crew. Each ship with a Plan must also keep a **Garbage Record Book**. Placards notifying the crew of disposal requirements, need to be displayed [MARPOL 73/78, Annex V, reg. 9]. ☐

International Sewage Pollution Prevention Certificate
MARPOL Annex IV dealing with sewage pollution prevention entered force on 27 September 2003. The certificate is required by all new MARPOL ships over 400 gt. Existing ships over 400 gt will have five years to comply. [MARPOL 73/78, Annex 4, reg. 4]. ☐

International Air Pollution Prevention (IAPP) Certificate ☐
MARPOL Annex VI dealing with air pollution prevention is yet to enter into force. It will be issued after survey to all ships over 400 gt and will be supplemented by a ***Record of Construction & Equipment****. It will have a validity of 5 years. [MARPOL 73/78, Annex VI, reg. 6].*

International Anti-Fouling Systems (AFS) Certificate ☐
This certificate, supplemented by a ***Record of Anti-Fouling Systems****, will be required to be issued to all ships over 400 gt once the International Convention on the Control of Harmful Anti-Fouling Systems for Ships, 2001 (AFS Convention) enters into force. [AFS Convention, 2001, Annex 4, reg.2].*

Minimum Safe Manning Certificate ☐
Issued to all ships. Valid until amended. [SOLAS 1974 (1989 amendments), reg. V/13b].

Certificates for masters, officers or ratings ☐
Certificates of Competency - Seafarers must carry appropriate original national certificates of competence endorsed by the State that issued the certificate attesting that it meets international STCW standards. **Flag State Recognition Endorsements.**- for those seafarers serving on ships of a flag that is different to that of the State that issued the certificate of competency, the seafarer should carry a flag State recognition endorsement. The recognition endorsement must be obtained within 3 months of a seafarer joining a ship. Documentary evidence that the recognition endorsement has been applied for by the seafarer should be carried. **Ship Type Endorsements** - Certificates must be fully endorsed for service on particular types of ships, in particular passenger ships and tankers. [STCW 1995, art. VI, reg. I/2 / STCW Code, section A-I/2].

Certificates of medical fitness ☐
A medical fitness certificate to be issued at least once every 2 years, although equivalent arrangements may apply in some States. Medical information and records of vaccination and revaccination should be carried [ILO Convention No. 73].

Table of shipboard working arrangements ☐
To be posted on all ships in an easily accessible place [ILO Convention No. 180].

Records of hours of work or rest of seafarers ☐
To be maintained on all ships, with a copy endorsed both by the master and the seafarer, to be held by the seafarer [ILO Convention No. 180].

ISM Document of Compliance (DOC) & Safety Management Certificate (SMC) ☐
Required under the ISM Code for all ships above 500 gt. Both certificates are valid for five years and are subject to intermediate verification audits [SOLAS 1974, reg. IX/4].

International Ship Security Certificate (ISSC) ☐
From 1 July 2004, all cargo ships over 500 gt will be required to carry either an interim certificate, valid for 6 months, or a full certificate, valid for 5 years, following an initial or renewal verification of compliance of the ISPS Code provisions [SOLAS 1974, chapter XI-2, ISPS Code, part A/19.2].

Declaration of Security (DoS) ☐
An agreement reached between the ship and port authorities about the security measures to be taken at the interface between the ship and a port facility. From 1 July 2004, the flag State should determine how long a ship should keep DoS records, although some port States might expect to see records covering a ship's last 10 ports [SOLAS 1974, chapter XI-2, ISPS Code, part A/5].

Record of ship security levels ☐
From 1 July 2004, all ships should hold records of the security level operated at its previous 10 ports of call [SOLAS 1974, reg. XI-2/9.2].

Continuous Synopsis Record ☐
An on-board record, issued by the flag State, of the ship's history and any changes for the purpose of assessing security risk. To be carried by all ships engaged on international voyages from 1 July 2004 [SOLAS 1974, reg. XI-1/5].

Radio Station Licence ☐
Issued to the shipowner and is valid for 4 years. It is the shipowner that is licensed to operate the ship's radio station [ITU Regulations].

Fire Control Plan and Muster List ☐
All ships must carry and permanently display general arrangement plans showing fire control stations, fire sections, extinguishing arrangements / appliances etc. This information may be provided in the form of a booklet, one copy to each officer. An additional set of plans should be permanently stored outside of the deckhouse for shore side fire fighting personnel. All ships must carry and display in conspicuous places throughout the ship up to date muster lists, including on the bridge, and in the engine room and crew accommodation spaces [SOLAS 1974, reg. II-2/20, III/8].

Ship's Logbook ☐
Every ship must keep records of tests and drills, and records of inspection / maintenance of lifesaving appliances and equipment, and such records are likely to be checked by the PSCO [SOLAS 1974, reg. III/19.5].

Classification Certificates (Hull and Machinery) ☐
Issued to ships by a classification society and should be carried as long as the ship remains in class.

Port State control inspection reports ☐
All ships should carry reports from at least the previous 2 years.

Cargo Ship Safety Construction Certificate * ☐
Issued after survey of a cargo ship of over 500 gt that satisfies the requirements for cargo ships, set out in SOLAS regulation I/10, and complies with the applicable requirements of chapters II-1 and II-2, other than those relating to fire extinguishing appliances and fire control plans. The certificate is issued by the flag State and is valid for five years [SOLAS 1974, reg. I/12 / SOLAS Protocol 1988, reg. I/12].

Cargo Ship Safety Equipment Certificate * ☐
Issued after survey of a cargo ship of over 500 gt that complies with the relevant requirements of chapters II-1, II-2 and III and any other relevant requirements of SOLAS. A Record of Equipment (Form E) supplements the Certificate and should be permanently attached. Issued by the flag State and is valid for two years. An **Exemption Certificate** exempting the fitting of a fixed gas fire-extinguishing system where only specific listed cargoes are carried, may be granted to general cargo ships and issued as an addition certificate under SOLAS 1974, reg. II-2/10/7.1.4 [SOLAS 1974, reg. I/12 / SOLAS Protocol 1988, reg. I/12].

Cargo Ship Safety Radio Certificate * ☐
Issued after survey of a cargo ship of over 300 gt fitted with a radio installation. Issued by an organisation approved by the flag State and valid for one year. A **Record of Equipment (Form R)** supplements the Certificate and should be permanently attached [SOLAS 1974, reg. I/12].

Document of compliance with the special requirements for ships carrying dangerous goods ☐
The document is evidence of compliance with the construction and equipment requirements of the Regulation. Issued by the flag State. The period of validity should not exceed 5 years and should not be extended beyond the expiry date of the Cargo Ship Safety Construction Certificate held on board [SOLAS 1974, reg. II-2/54.3].

Dangerous goods list or manifest or stowage plan ☐
This is a requirement for ships carrying dangerous goods. It is a special list or manifest that sets out, in accordance with the classification in SOLAS reg. VII/2, the dangerous goods on board and their location. A detailed stowage plan which identifies by class and sets out the location of all dangerous goods on board may be used in place of such special list or manifest. A copy of one of these documents shall be made available before departure to the person/organisation designated by the port State authorities [SOLAS 1974, reg. VII/5 & MARPOL 73/78, Annex III, reg. 4].

Damage control booklets / plans ☐
Cargo ships built after 1 February 1992 should permanently exhibit plans clearly showing the boundaries of the watertight compartments for each deck and hold, the openings therein with the means of closure and position of any controls thereof, and the arrangements for the correction of any list due to flooding. Booklets containing the aforementioned information shall be made available to the officers of the ship [SOLAS 1974, reg. II-1/23-1].

* A certificate called a **Cargo Ship Safety Certificate** may be issued after survey to a cargo ship which complies with the relevant requirements of chapters 11-1,11-2, III, IV &V, as an alternative to the above individual cargo ship safety certificates [SOLAS Protocol 1988, reg. 1/12]

Additional certificates that bulk carriers may be required to carry

Bulk carrier booklet
Applies to all ships carrying bulk cargoes other than grain, although for ships below 500 gt, the flag State may allow alternative measures. The booklet shall include information on stability, ballasting rates / capacities, maximum tank top loading, loading instructions etc [SOLAS 1974, reg.VI/7]. ☐

Bulk carrier loading/unloading plans
Applies to all ships carrying bulk cargoes other than grain [SOLAS 1974, reg.VI/7]. ☐

Document of authorisation for the carriage of grain
Certifies that a ship loaded with grain complies with the regulations of the International Code for the Safe Carriage of Grain in Bulk. The document shall accompany or be incorporated into the Grain Loading Manual and include information on stability information [SOLAS 1974, reg.VI/9]. ☐

Survey report file
Every bulk carrier of more than 150 metres in length must have a complete survey report file consisting of: reports of structural surveys; condition evaluation report; thickness measurements reports; and survey planning document and supporting documents: main structural plans of holds and ballast tanks; previous repair history; cargo and ballast history; and inspections by ship's personnel [SOLAS 1974 reg. XI/2]. ☐

Ship structure access manual
Bulk carriers over 20,000 gt constructed after 1 January 2005 will have to comply with means of access provisions and carry a manual [SOLAS 1974, part A-1, reg. II-1, 3-6]. ☐

Additional certificates that tankers (chemical, gas or oil) may be required to carry

Survey report file
Every crude oil tanker over 20,000 dwt and product tanker over 30,000 dwt must have a complete survey report file consisting of: reports of structural surveys; condition evaluation report; thickness measurements reports; and survey planning document and supporting documents: main structural plans of holds and ballast tanks; previous repair history; cargo and ballast history; and inspections by ship's personnel [MARPOL 73/78, Annex I, re. 13G]. ☐

Ship structure access manual
Oil tankers over 500 gt constructed after 1 January 2005 will have to comply with means of access provisions and carry a manual [SOLAS 1974, part A-1, reg. II-1, 3-6]. ☐

Certificate of insurance or other financial security in respect of civil liability for oil pollution damage
Issued to each ship carrying more than 2,000 tons of oil in bulk as cargo, attesting that insurance or other financial security is in force. Issued after determining that the requirements of article VII, paragraph 1 of the CLC Convention have been complied with. Valid for one year. [CLC 1969, art.VII]. ☐

Oil Record Book
In addition to the **Oil Record Book, Part I (Machinery space operations)**, oil tankers over 150 gt to be issued with an **Oil Record Book Part II (Cargo/ballast operations)** [MARPOL 73/78, Annex I, reg. 20]. ☐

Record of the oil discharge monitoring and control system for the last ballast voyage
Every oil tanker of 150 gt and above shall be fitted with an oil discharge monitoring and control system. Records shall be identifiable as to time and date and kept for at least 3 years. [MARPOL 73/78, Annex I, reg. 15]. ☐

Operations and Equipment Manual
To be carried by every oil tanker operating with crude oil washing systems and be approved by the flag State [MARPOL 73/78, Annex I, reg. 13B]. ☐

Statement of compliance
To be issued to oil tankers that complete the Condition Assessment Scheme (CAS) and carried as an supplement to the ship's IOPP Certificate and should be supported by a copy of the **CAS Final Report** and **Review Record** [MARPOL 73/78, Annex I, reg. 13G]. ☐

International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk (NLS Certificate) ☐
Issued after survey in accordance with the MARPOL provisions of regulation 10 to any ship carrying noxious liquid substances in bulk that is engaged in voyages to ports or terminals under the jurisdiction of other Parties to MARPOL. Chemical tankers can alternatively carry the (International) Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk, and which shall have the same force and receive the same recognition as the NLS Certificate. [MARPOL 73/78, Annex II reg. 12].

Cargo record book ☐
Every ship to which Annex II applies must be provided with a Cargo Record Book [MARPOL 73/78, Annex II, reg. 9].

Procedures and Arrangements (P&A) Manual ☐
All ships that carry noxious liquid substances in bulk must apply standards for procedures and arrangements for the control of operational discharges, as evidenced by an approved P&A Manual. [MARPOL 73/78, Annex II, reg. 5, 5A & 8].

Shipboard Marine Pollution Emergency Plan (SMPEP) ☐
To be carried by every ship of 150 gt and above certified to carry noxious liquid substances in bulk and be approved by the flag State [MARPOL 73/78, Annex II, reg. 16]. Should be combined with **Shipboard Oil Pollution Emergency Plan (SOPEP)** [MARPOL 73/78, Annex I, reg. 26].

Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk ☐
Issued after an initial or periodical survey to a chemical carrier engaged in international voyages, which complies with the relevant requirements of the Code. Valid for 5 years. Note (1): The Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (BCH Code) is mandatory under MARPOL 73/78, Annex II for chemical tankers constructed before 1st July 1986. Note (2): The International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (IBC Code) is mandatory under SOLAS 1974, chapter VII & MARPOL 73/78, Annex II for chemical tankers constructed on or after 1st July 1986. [BCH Code, section 1.6 / IBC Code, section 1.5].

Certificate of Fitness for the Carriage of Liquefied Gases in Bulk or International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk ☐
Issued after an initial or periodical survey to a gas carrier that complies with the relevant requirements of the Code. Valid for 5 years. The International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk (IGC Code) is mandatory under SOLAS 1974, chapter VII for gas carriers constructed on or after 1st July 1986. [GC Code, section 1.6 / IGC Code, section 1.5].

APPENDIX B

CONTACT DETAILS OF THE REGIONAL PORT STATE CONTROL SECRETARIATS

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Vina del Mar (Latin American) Agreement

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APPENDIX C

GENERAL PROCEDURAL GUIDELINES FOR PORT STATE CONTROL OFFICERS (PSCOS)

Extract from IMO resolution AJ87(19), as amended:

2.6.1 The PSCO should use professional judgement in carrying ouc all duties, and consider consulting others as deemed appropriate.

2.6.2 When boarding a ship, the PSCO should present to the master or to the representative of the owner, if requested to do so, the PSCO identity card.This card should be accepted as documentary evidence that the PSCO in question is duly authorised by the Administration to carry out port State control inspections.

2.6.3 If che PSCO has clear grounds for carrying out a more detailed inspection, the master should be immediately informed of these grounds and advised that, if so desired, the master may contact the Administration or, as appropriate, the recognised organisation responsible for issuing the certificate and invite their presence on board,

2.6.4 In the case that an inspection is initiated based on a report or complaint, especially if it is from a crewrnember, the source of the information should not be disclosed.

2.6.5 When exercising control, all possible efforts should be made to avoid a ship being unduly detained or delayed. It should be borne in mind that the main purpose of port State control is to prevent a ship proceeding to sea if it is unsafe or presents an unreasonable threat of harm to the marine environment.The PSCO should exercise professional judgement to determine whether to detain a ship until the deficiencies are corrected or to allow it to sail with certain deficiencies, having regard to the particular circumstance of the intended voyage.

2.6.6 It should be recognised that all equipment is subject to failure and spares or replacement parts may not be readily available. In such cases, undue delay should not be caused if, in the opinion of the PSCO, safe alternative arrangements have been made.

2.6.7 Where the grounds for detention are the result of accidental damage suffered on the ship's voyage to a port, no detention order should be issued provided that

. I due account has been given to the convention requirements regarding notification to the flag State Administration, the nominated surveyor or the recognised organisation for issuing the relevant certificate;

.2 prior to entering a port, the master or company has submitted to the port State authority details on the circumstances of the accident and the damage suffered and information about the required notification of the flag State Ad m i n istratio n;

.3 appropriate remedial action, to the satisfaction of the port State authority, is being taken by the ship; and

.4 the port State authority has ensured, having been notified of the completion of the remedial action, that deficiencies that were clearly hazardous to safety, health or environment have been rectified.

2.6.8 Since detention of a ship is a serious matter involving many issues, it may be in the best interest of the PSCO to act with other interested parties. For example, the officer may request the owner's representatives to provide proposals for correcting the situation.The PSCO may also consider co-operating with the flag State Administration's representatives or recognised organisation responsible for issuing the relevant certificates, and consulting them regarding their acceptance of the owner's proposals and their possible additional requirements. Without limiting the PSCOs discretion in any way, the involvement of other parties could result in a safer ship, avoid subsequent arguments relating to the circumstances of the detention, and prove advantageous in the case of litigation involving "undue delay'.

2.6.9 Where deficiencies cannot be remedied at the port of inspection, the PSCO may allow the ship to proceed to another port, subject to any appropriate conditions determined. In such circumstances, the PSCO should ensure that the competent authority of the next port of call and the flag State are notified.

2.6.10 Detention reports to the flag State should be in sufficient detail for an assessment to be made of the severity of the deficiencies giving rise to the detention

2.6.11 The company or its representative has a right of appeal against a detention taken by the authority of a port State. The appeal should not cause the detention to be suspended.The PSCO should properly inform the master of the right of appeal.

2.6.12 To ensure consistent enforcement of port State control requirements, PSCOs should carry an extract of 2.6 (General Procedural Guidelines for PSCOs) for ready reference when carrying out any port State control inspections.

APPENDIX D

CHECKLISTS

Mustering

1. Are crewmembers aware of their duties indicated in the muster list and aware of the location where to perform those duties?
2. Are muster lists exhibited in conspicuous places throughout the ship, including on the bridge, in the engine room and in the crew accommodation space?
3. Does the muster list show the dudes assigned to different crewmembers?
4. Does the muster list specify which officers are assigned to ensure that ISA and FFA equipment is maintained in good condition and available for immediate use?
5. Does the muster list specif/ substitutes for key persons that might become disabled?
6. Is the format of the muster list approved?
7. Is the muster list up-to-date and in conformity with the crew list?
8. Are the duties assigned to crewmembers manning the survival craft (boats or rafts) in accordance bx SOLAS chapter III, part B?
9. Are the persons placed in charge of each survival craft and their substitutes named?
10. Are the operating instructions for the survival craft satisfactory?

Com m un ication

11. Are key persons able to communicate with each other?
12. Which languages are the working languages used onboard?
13. Are key persons able to understand each other during inspections or drills?

Abandon ship drills and LSA equipment

14. Is die correct alarm used for summoning crewmembers to the muster scation(s) and are crewmembers familiar with that alarm? [_\
15. During drills, are the survival craft correcdy manned and operated by the assigned persons?
16. Do crewmembers dress suitably for drills and know how to correctly don lifejackets?
17. Is at least one lifeboat lowered after the necessary preparations, and launched with its assigned crew into the water at least once every 3 months?
18. Can crewmembers start and operate the lifeboat engine(s) satisfactorily?
19. Can crewmembers operate the davits (cranes) used for launching liferafts acceptably?
20. Are crewmembers familiar with their assigned duties during abandon ship operations?
21. Have crewmembers in charge of survival craft complete knowledge of the operation and equipment of the craft?
22. Can two crewmembers undertake the preparations for embarking and launching survival craft in less than 5 minutes?
23. Does the performance of crewmembers on the drills suggest that the ship could be abandoned in 30 minutes?
24. Is the condition of the survival craft, their contents (food, water etc) and launching arrangements {including davits, falls, winches and brakes) satisfactory?

25.	Is the condition of the side lighting, emergency communication means, operating instructions (posters / signs) and embarkation ladder arrangements satisfactory?	☐
26.	Are the liferafts correctly serviced, stowed and connected to the ship by hydrostatic releases?	☐
27.	Is the number and stowage of lifejackets (including immersion suits and thermal protective aids, where appropriate) correct, and the number, condition and validity of life buoys, rockets, smoke signals and SARTs?	☐

Fire drills and FFA equipment

28.	Do the crewmembers know how to activate the fire alarm / general emergency alarm signal, as appropriate?	☐
29.	Do the crewmembers understand the procedure for reporting a fire, once detected, to the bridge and/or damage control centre?	☐
30.	When the alarm is sounded, do the fire fighting parties promptly muster at their stations?	☐
31.	During the course of fighting a simulated fire, do the fire fighting parties correctly bring into action, don and effectively use all the appropriate equipment?	☐
32.	Do the fire fighting team leaders give effective orders and report adequately to the bridge and/or damage control centre?	☐
33.	Do the medical teams correctly take care of injured persons and handle the stretchers in an acceptable manner through narrow passageways, doors and stairways?	☐
34.	Do the appropriate crewmembers know how to operate the emergency generator, CO_2 system, sprinkler and emergency fire pumps correctly?	☐
35.	Do the appropriate crewmembers understand the operation of manually operated fire doors, watertight doors and fire dampers?	☐
36.	Do the following function correctly ● fire doors, including their remote operation if appropriate ● fire dampers and smoke flaps ● quick-closing remotely operated valves ● emergency stops of fans and fuel oil pumps ● fire detection and fire alarm system ● fixed systems in engine room and cargo spaces (servicing dates) ● main and emergency fire pumps?	☐
37.	Do the fire fighting appliances comply with the fire control plan?	☐

Damage and fire control plans

38.	Are the damage and fire control plans (or booklets) provided?	☐
39.	Are the crewmembers familiar with their duties according to the information given on the control plans?	☐
40.	Can key persons explain the actions to be taken in various damage conditions?	☐
41.	Are key persons knowledgeable in respect of watertight bulkheads and the openings therein, the means of closing and the positions of any controls?	☐
42.	Can key persons explain arrangements for the correction of any list due to flooding?	☐
43.	Can key persons explain the effect of trim and stability in case of damage to and the consequential flooding of a compartment and the countermeasures to be taken?	☐
44.	Are the fire control plans permanently exhibited, up-to-date, and is one copy readily available in an accessible position?	☐
45.	Are key persons familiar with the principal structural members forming part of the various fire sections and the means of access to the different compartments?	☐

Manuals and instructions

46.	Do key crewmembers understand manuals, instructions etc. relevant to the safe condition and operation of the ship and its equipment?	☐
47.	Is the following information provided in a language that is understood by the crew and are the crewmembers aware of the contents and able to respond accordingly to ● instructions concerning the maintenance and operation of FFA equipment and installations ● instructions to be followed in the event of an emergency ● posters and signs illustrating the purpose of controls and the procedures for operating survival craft launching controls ● instructions for on board maintenance of LSA equipment ● training manuals containing instructions and information on the LSA equipment provided ● SOPEP or SMPEP as appropriate ● the stability booklet, associated plans and information contained therein?	☐
48.	Are key crewmembers aware of the requirements for maintenance, periodic testing, training, drills and logbook entries?	☐

ISM Code

49.	Is there a Company safety and environmental protection policy and are key personnel familiar with it?	☐
50.	Is the safety management documentation and manual readily available onboard?	☐
51.	Is the relevant documentation on the safety management system (SMS) in a working language or a language understood by crewmembers?	☐
52.	Can key personnel identify the company responsible for the operation of the ship and does this correspond with the Company named on the ISM certificates?	☐
53.	Can key personnel identify the 'designated person'?	☐
54.	Are procedures in place for establishing and maintaining contact with shore management in an emergency?	☐
55.	Are programmes available onboard for drills and exercises to prepare crewmembers for emergency actions?	☐
56.	Is documentation available to show how new crewmembers have been made familiar with their duties?	☐
57.	Can the master provide documented proof of his responsibilities and authority, and allow for, and sit comfortably with his overriding authority?	☐
58.	Have non-conformities been reported to the Company and has the Company taken corrective action?	☐
59.	Does the ship have a maintenance routine and are records available?	☐

Ship security and the ISPS Code

60.	Can the master provide documented proof of his responsibilities and authority?	☐
61.	Has the Ship Security Officer (SSO) been designated and does he understand his responsibilities?	☐
62.	Is the Ship Security Plan in the working language of the ship, as well as either English, French or Spanish?	☐
63.	Does the crew have the capabilities to monitor the ship, including cargo areas, restricted areas and areas surrounding the ship?	☐
64.	Are restricted areas of the ship secured?	☐
65.	Are crewmembers competently performing their ship security duties?	☐
66.	Are crewmembers competently controlling access to the ship, including the embarkation of persons and their effects from ashore, and checking their identities?	☐
67.	Is the handling of cargo and ship's stores being adequately supervised?	☐
68.	Can senior crewmembers identify both the SSO and Company Security Officer (CSO)?	☐
69.	Has the ship maintained records of training, drills and exercises?	☐
70.	Has the ship maintained records of security level changes?	☐

Bridge and radio operations and equipment

71. Is the OOW familiar with the bridge control and navigational equipment, changing the steering mode from automatic to manual and the ship's manoeuvring characteristics? ☐

72. Does the OOW have knowledge of the location and operation of all safety and navigational equipment, including fire detection and alarm panels? ☐

73. Is the OOW familiar with collision avoidance procedures, the COLREGS, the radar, ARPA controls and capable of obtaining an acceptable radar picture? ☐

74. Is the OOW familiar with the procedures applying to the navigation of the ship in all circumstances, including ☐
- management of nautical charts and nautical publications
- bridge procedures, instructions and manuals
- voyage planning
- periodic tests and checks of equipment
- compass error checks
- preparations for arrival and departure
- signalling
- communications
- emergencies
- logbook entries?

75. Is the GMDSS radio operator(s) able to use all components of the radio arrangement including its test functions? ☐

76. Is the GMDSS operator(s) able to explain the correct procedures for cancelling a false distress alert? ☐

77. Is the GMDSS equipment compliant for the sea areas the ship is trading and, if an Exemption Certificate is issued, does the ship comply with the special requirements imposed by the exemption? ☐

78. Does the ship receive Navtex MSI messages? ☐

79. Are the following satisfactory ☐
- EPIRB installation
- radar transponder installation
- antenna condition
- radio batteries?

Cargo operations

80. Are personnel assigned with specific duties related to the cargo and any cargo handling equipment familiar with those duties? ☐

81. Are such personnel familiar with any dangers posed by the cargo or cargo operations? ☐

82. Are the oxygen analysers and other personal protection devices used during cargo operations in good working order? ☐

83. Are ship / shore safety checklists used? ☐

84. Are bending stresses with maximum limits calculated? ☐

85. Are cargo / ballasting operations carried out in accordance with the loading / discharging plan and cargo stowage conditions being observed? ☐

86. Are the responsible crewmembers familiar with the Cargo Securing Manual and other codes of practice, where relevant? ☐

Operation of machinery

87. Are key engineering personnel familiar with their duties related to the operation of essential machinery, such as ☐
- emergency and stand-by sources of electrical power
- auxiliary steering gear
- bilge and fire pumps
- any other equipment essential in emergency situations?

88. Are such personnel familiar with ☐
- the emergency generators
- actions necessary before the main engine can be started
- different possibilities of starting the main engine in combination with the source of starting energy
- procedures when the first attempt to start the main engine fails?

89. Are such personnel familiar with
- the stand-by generator engine
- possibilities of starting the stand-by engine automatically and/or by hand
- blackout procedures
- load sharing system?

90. Are such personnel familiar with
- which type of auxiliary steering gear system applies to the ship
- how it is indicated which steering gear unit is in operation
- what action is needed to bring the auxiliary steering gear into operation?

91. Are such personnel familiar with
- bilge pumps
- number and location of bilge pumps, including emergency bilge pumps
- starting procedures for all these bilge pumps
- appropriate valves to operate
- most likely causes of failure of bilge pump operation and the possible remedies
- fire pumps
- number and location of fire pumps, including emergency fire pump
- starting procedures for all fire pumps and appropriate valves to open?

92. Are such personnel familiar with the starting and maintenance of lifeboat / rescue boat engines?

93. Are such personnel familiar with the local control procedures for those systems that are normally controlled from the bridge?

94. Are such personnel familiar with the maintenance procedure for batteries?

95. Are such personnel familiar with emergency stops, dampers, fire detection and alarm systems, the operation of watertight and fire doors?

96. Are such personnel familiar with the change of control from automatic to manual for cooling water and lube oil systems for the main and auxiliary engines?

Bunkering operations

97. Are bunkering transfer procedures posted, available and understood by all relevant personnel?

98. Are an appropriate number of personnel on duty for bunkering?

99. Are there means of communication between ship's bunkering personnel and between ship and ashore / barge?

100. Are there procedures to report and deal with oil discharges?

Control of oily mixtures from machinery spaces

101. Have all the operational requirements of MARPOL Annex I been met, taking into account
- the quantity of oil residues generated
- the capacity of sludge and bilge water holding tanks
- the capacity of the oily water separator?

102. Have all the correct entries been made in the Oil Record Book?

103. Has the correct use been made of reception facilities, and have any alleged inadequate facilities been noted and reported by the master to the flag State?

104. Are the responsible personnel familiar with the procedures for handling sludge and bilge water?

Control of garbage

105. Have all the operational requirements of MARPOL Annex V and national legislation been met?

106. Has the correct use been made of reception facilities, and have any alleged inadequate facilities been noted and reported by the master to the flag State?

107. Are all ship's personnel familiar with the principle of minimising the amount of potential garbage and the shipboard procedures for handling and storing garbage as contained in the Garbage Management Plan?

108. Are ship's personnel familiar with the disposal and discharge requirements under MARPOL Annex V inside and outside a special area?

109. Are they aware of the areas determined as special areas?

INDEX

PORT STATE CONTROL

A GUIDE FOR CARGO SHIPS

Second Edition

PETER KIDMAN,.Master Mariner
and North of England P&I Association Limited

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