



The Draft Guidelines for the Establishment of a Regional Maritime Casualty Investigation Board

Marine Emergency Mutual Aid Centre (MEMAC)



The Draft Guidelines for the Establishment of a Regional Maritime Casualty Investigation Board

1. INTRODUCTION

The Marine Investigation Specialty, which includes the Marine Casualty Investigator competency, is considered an advanced level specialty of the Marine Safety program. Active duty members assigned to Investigation billets are required to be familiar with marine safety laws and regulations.

The aim of the Regional Accident Investigation Board is to determine the circumstances and causes of accidents and incidents with a view to avoiding similar occurrences in the future. The Regional Maritime Casualty Investigation Board (RMCIB) is a body corporate established and supervised by MEMAC. It consists of not more than 16, and not less than 8, members appointed by the RSA Member States on the recommendation of concerned authorities and should be approved by the ROPME Council. Members hold office for a term of not exceeding 5 years, and they may be reappointed. It should be noted that MEMAC is authorized to seek assistance from outside the RSA Region, taking into account the extent and circumstances of incidents/ accidents. The Board meets once a year or as it deems appropriate.

2. PURPOSE

The purpose of these guidelines is to incorporate and build on the best practice in conducting Marine Casualty and Marine Incident Investigation and also to form a Regional Maritime Casualty Investigation Board in RSA. These Guidelines are developed in accordance with the IMO conventions and the Code of the International Standards and recommended practice for a Safety investigation into a Marine Casualty or marine incident, which recognize that

each flag State shall have a duty to conduct an investigation into any casualty occurring to any of its ships when it judges that such an investigation may assist in determining what changes in the present regulations may be desirable or if such a casualty has produced a major deleterious effect upon the environment. The Code also takes into account that under the provisions of UNCLOS article 94, a flag State shall cause an inquiry to be held, by or before a suitably qualified person or persons into certain casualties or incidents of navigation on the high seas. However, the Code also recognizes that where a casualty occurs within the territorial sea or internal waters of a State, that State has the right, under UNCLOS article 2, to investigate the cause of any such casualty which might pose a risk to life or to the environment, involve the coastal State's search and rescue authorities, or otherwise affect the RSA coastal States.

3. AIM

The aim of these Guidelines is to promote a common approach to the regional safety investigation of marine casualties and incidents in RSA, and also to promote co-operation among the Member States in identifying the contributing factors leading to marine casualties. The result of this common approach and co-operation will be to aid remedial action and to enhance the safety of seafarers and passengers and the protection of the marine environment of the RSA. In achieving these aims, these Guideline recognize the need for mutual respect for national rules and practices and puts particular emphasis upon co-operation at the Regional level.

By introducing a common approach to marine casualty investigations and reporting on such casualties, the National and Regional maritime communities may be better informed about the factors which lead to and cause, or contribute to, marine casualties. This may be facilitated by:

3.1 Clearly defining the purpose of Regional marine casualty investigation and the guiding principles for its conduct.

3.2 Defining a framework for consultation and co-operation among substantially interested States.

3.3 Recognizing that the free flow of information will be promoted if individuals, who attempt to assist the investigation, may be offered a degree of immunity, both from self-incrimination and from any ensuing risk to their livelihood.

3.4 Establishing a common format for reports to facilitate publication and sharing of the lessons to be learned for all regional Stakeholders.

It is not the purpose of these Guidelines to preclude any other form of investigation, whether for civil, criminal, administrative or any other form of action, but to create a regional marine casualty investigation process, the aim of which is to establish circumstances relevant to the casualty, to establish the causal factors, to publicize the causes of the casualty and to make appropriate safety recommendations. Ideally, the Regional Marine Casualty Investigation Board should be separate from, and independent of, any other form of investigation.

4. Objective

The objective of any marine casualty investigation is to prevent similar casualties in the future. Investigations identify the circumstances of the casualty under investigation and establish the causes and contributing factors, by gathering and analyzing information and drawing conclusions. Ideally, it is not the purpose of such investigations to determine liability, or apportion blame. However, the investigating authority should not refrain

from fully reporting the root causes because fault or liability may be inferred from the findings.

5. Application

This Code applies, as far as international, regional and national laws allow, to the investigation of marine casualties or incidents where either one or more interested States have a substantial interest in a marine casualty involving a ship under their jurisdiction. However, taking into account the size and the extent of incident/ accident, the regional Board is authorized by the instruction of MEMAC to conduct an independent investigation, if such investigation is resulted to the improvement of maritime safety and marine environment protection in RSA

6. Definitions

For the purpose of these Guidelines:

6.1 Marine casualty means an event that has resulted in any of the following:

6.1.1 the death of, or serious injury to, a person that is caused by, or in connection with, the operations of a ship; or

6.1.2 the loss of a person from a ship that is caused by, or in connection with, the operations of a ship; or

6.1.3 the loss, presumed loss or abandonment of a ship; or

6.1.4 material damage to a ship, offshore facilities and underwater pipelines; or

6.1.5 the stranding or disabling of a ship, or the involvement of a ship in a collision; or

6.1.6 material damage being caused by, or in connection with, the operations of a ship; or

6.1.7 Damage to the environment brought about by the damage of a ship or ships being caused by, or in connection with, the operations of a ship or ships.

6.2 **Very serious casualty** means a casualty to a ship which involves the total loss of the ship, loss of life or severe pollution.

6.3 **Serious casualty** means a casualty which is not defined as a very serious casualty and which involves:

6.3.1 a fire, explosion, grounding, contact, heavy weather damage, ice damage, hull cracking or suspected hull defect, etc., or

6.3.2 structural damage rendering the ship unseaworthy, such as penetration of the hull underwater, immobilization of main engines, extensive accommodation damage etc.; or

6.3.3 pollution (regardless of quantity); and/or

6.3.4 a breakdown necessitating towage or shore assistance.

6.4 **Marine incident** means an occurrence or event being caused by, or in connection with, the operations of a ship, by which the ship or any person is imperiled, or as a result of which serious damage to the ship or structure or the environment might be caused.

6.5 **Causes** mean actions, omissions, events, existing or pre-existing conditions or a combination thereof, which lead to the casualty or incident.

6.6 **Marine casualty** or **incident safety investigation** means a process held either in public or in camera conducted for the purpose of casualty prevention which includes gathering and analysis of

information, drawing of conclusions, including identification of circumstances and determination of causes and contributing factors and, when appropriate, making of safety recommendations.

6.7 Marine casualty investigator means a person or persons qualified and appointed to investigate a casualty or incident, under procedures laid down in national legislation for the furtherance of marine safety and protection of the marine environment.

6.8 Serious injury means an injury which is sustained by a person in a casualty resulting in incapacitation for more than 72 hours, commencing within seven days from the date of injury.

6.9 Ship means any kind of vessel which is used in navigation by water. The definition of ship in accordance with the MARPOL 73/78 is also applicable.

6.10 Lead investigating State means the State that takes responsibility for the conduct of the investigation as mutually agreed among the substantially interested States.

6.11 Substantially interested State means a State:

6.11.1 which is the flag State of a ship that is the subject of an investigation; or

6.11.2 in whose internal waters or territorial sea a marine casualty has occurred; or

6.11.3 where a marine casualty caused, or threatened, serious harm to the environment of that State, or within those areas over which

the State is entitled to exercise jurisdiction as recognized under international law; or

- 6.11.4** where the consequences of a marine casualty caused, or threatened, serious harm to that State or to artificial islands, installations, or structures over which it is entitled to exercise jurisdiction; or
- 6.11.5** where, as a result of a casualty, citizens of that State lost their lives or received serious injuries; or
- 6.11.6** that has at its disposal important information that may be of use to the investigation; or
- 6.11.7** that for some other reasons establishes an interest that is considered significant by the lead investigating State.

7. Members of the Board

There are 16 members, who carry out the following:

- Proper conduct of the responsibilities assigned to this Board which requires vigorous investigation of accidents involving Maritime transportation modes regulated by other agencies of governments and the ROPME/MEMAC;
- Demand continual review, appraisal, and calls for the making of conclusions and recommendations that may be critical of or adverse to any such agency or its officials.

8. Qualification of the members of the Board

The members of the board shall have the minimum knowledge but not limited to the following:

- They shall have at least five years of experience working in Maritime casualty Investigation Office.
- They shall have the background as Master mariners, Marine Engineers and naval Architects and Marine Legal Experts.
- They shall speak, read and write fluently in English language.
- They shall pass a special training course in regard to Maritime Casualty Investigation and be certified for this purpose.
- They shall have thorough Knowledge of all IMO related Conventions, protocols and Codes and UNCLOS.
- They shall have thorough knowledge of general investigative techniques, statutory and legal issues.

9. The principle functions of the Board shall be:

- Investigation of accidents and incidents.
- Without limiting the principle functions under sections and subsection, the Board shall also have the following functions:
- To make such inquiries as it considers appropriate in order to ascertain the cause or causes of accidents and incidents.

- To co-ordinate and direct all such investigations and to determine which other parties (if any) should be involved in such investigations.
- To prepare and publish findings and recommendations (if any) in respect of any such investigations.
- If requested by the ROPME Council, to deliver a written report on each investigation to the Ministers, including any recommendations for changes and improvements that it considers to ensure the avoidance of accidents and incidents in the future.
- To co-operate and co-ordinate with other accident investigation organizations overseas, including taking evidence on their behalf.
- To perform any other function or duty in relation with Maritime casualty Investigation.

10. Accidents and Incidents to be investigated

The Board is required to investigate an accident or incident in the following circumstances:

- a) The circumstances of the accident or incident have, or are likely to have, significant implications for transport safety, or may allow the Board to establish findings or make recommendations which may increase Maritime safety and marine environment protection in RSA;

b) In the case of an accident or incident that the Board has decided not to investigate, ROPME/MEMAC or the State concerned directs the Board to undertake an investigation in respect of that accident or incident.

C) The Board is not required to investigate marine accidents or incidents relating to maintenance while a vessel is not at sea, loading or unloading, unless directed to by ROPME/MEMAC or the concerned State.

D) The Board may investigate accidents in neighbouring states which do not have adequate accident investigation capabilities, when requested to do so by the State concerned.

11. Conduct of marine casualty investigations

11.1 Where an investigation is to be conducted, the following points should be taken into consideration:

11.1.1 Thorough and unbiased marine casualty investigations are the most effective way of establishing the circumstances and causes of a casualty.

11.1.2 Only through co-operation among the States with a substantial interest, a full analysis can be made of a marine casualty.

11.1.3 Marine casualty investigations should be given the same priority as criminal or other investigations held to determine responsibility or blame.

11.1.4 Regional Marine casualty investigators should have ready access to relevant safety information, including survey records held by the flag State, the owners, and classification societies. Access to

information should not be barred by reason of competing investigations.

- 11.1.5** Effective use should be made of all recorded data, including voyage data recorders (VDR), if fitted, in the investigation of marine casualties or marine incidents wherever they occurred. The State conducting the investigation should arrange for the read-out of the VDR.
- 11.1.6** Regional Marine casualty investigators should allow access to Government surveyors, coastguard officers, vessel traffic service operators, pilots or other marine personnel of the respective States.
- 11.1.7** The investigation should take into account any recommendations or instruments published by IMO or ILO, in particular those related to the human factor, and any other recommendations or instruments adopted by other relevant international organizations.
- 11.1.8** Reports of investigations are most effective when released to the shipping industry and public through MEMAC.
- 11.2** Other substantially interested States should be invited to be represented during any such investigations and should be admitted as parties in the proceedings and have equal standing, rights and access to evidence as the State conducting the investigation.
- 11.3** Recognizing that any vessel involved in a casualty may continue in service and that a ship should not be delayed more than it is absolutely necessary, the Regional Investigation Board conducting the investigation should start the investigation as

soon as practicable with the coordination of concerned State(s), without delaying the ship unreasonably.

12. Responsibility for investigation of casualties and incidents

- 12.1** Flag States are encouraged to ensure that investigations are carried out into all casualties occurring to their ships. All cases of serious and very serious casualties should be investigated. However, if the consequences of such incidents/accidents might affect the other States or there is good evidence to believe that the investigation requires additional resources from the Region, the Regional Maritime Casualty Investigation Board shall be invited to conduct the Investigation whether parallel or with the cooperation with the concerned State.
- 12.2** Where a marine casualty or incident occurs within the territorial sea of a State, the flag and coastal States recognizing the obligations of that State to its citizens and the legal status of the territorial sea under the provisions of UNCLOS, and also recognizing the duties placed on a flag State, the flag and coastal States and the Regional Maritime Casualty Investigation Board should co-operate to the maximum extent possible, and mutually agree that the Regional Maritime Casualty Investigation Board should take the role of lead investigaton.
- 12.3** An investigation should be started as soon as practicable after the casualty occurs. Substantially interested States and Regional

Maritime Casualty Investigation Board should, by mutual agreement, be allowed to join an investigation conducted by another substantially interested State at any stage of the investigation.

13. Responsibilities of the Regional Maritime Casualty Investigation Board

The Regional Maritime Casualty Investigation Board should be responsible for:

- 13.1** developing a common strategy for investigating casualties in liaison with substantially interested States;
- 13.2** providing investigators in charge and coordinating the investigation;
- 13.3** establishing the investigation parameters based on the laws of the investigating State and ensuring that the investigation respects these laws;
- 13.4** being the custodian of records of interviews and other evidence gathered by the investigation;
- 13.5** preparing the report of the investigation, and obtaining and reflecting the views of the substantially interested States;
- 13.6** coordinating, when applicable, with other agencies conducting other investigations;
- 13.7** liaising with agencies, organizations and individuals not part of the investigating team.

14. Consultation

14.1 Notwithstanding the obligations placed on the master or owners of a ship to inform its flag State authority of any casualty occurring to the ship, where a casualty or incident occurs in the internal waters or territorial sea of another State, the coastal State should notify, with minimum of delay, the flag State or States and Regional Maritime Casualty Investigation Board through MEMAC of the circumstances and what, if any, action is proposed by the coastal State.

14.2 Following a casualty, the investigating State should inform the other substantially interested States and Regional Maritime Casualty Investigation Board through MEMAC, either through the Consular Office in that State or by contacting the relevant authorities. That State and the other substantially interested States, Regional Maritime Casualty Investigation Board through MEMAC, should consult, at the earliest opportunity, on the conduct of the investigation and to determine details of co-operation.

15. Co-operation

15.1 Where two or more States have agreed to inform and co-operate with the Regional Maritime Casualty Investigation Board through MEMAC and have agreed to the procedures for a marine casualty investigation, the Regional Maritime Casualty Investigation Board should invite the representatives of other substantially interested

States to take part in the investigation and, consistent with the IMO Code, allow such representatives to:

- 15.1.1** question witnesses;
- 15.1.2** view and examine evidence and take copies of documentation;
- 15.1.3** produce witnesses or other evidence;
- 15.1.4** make submissions in respect of the evidence, comment on and have their views properly reflected in the final report; and
- 15.1.5** be provided with transcripts, statements and the final report related to the investigation.

15.2 States are encouraged to provide for maximum participation in the investigation by all States with a substantial interest in the marine casualty.

15.3 The flag State of a ship involved in a marine casualty should help to facilitate the availability of a crew to the investigation and encourage the crew to co-operate with the State and the regional Board conducting the investigation.

16. Disclosure of records

16.1 The Regional Maritime Casualty Investigation Board conducting the investigation of a casualty or incident, wherever it has occurred, should not make the following records, obtained during the conduct of the investigation, available for purposes other than casualty investigation, unless the appropriate authority for the administration of justice in that State determines that their disclosure outweighs any possible adverse domestic and

international impact on that or any future investigation, and the State providing the information authorizes its release:

- 16.1.1** all statements taken from persons by the investigating authorities in the course of the investigation;
 - 16.1.2** all communications between persons having been involved in the operation of the ship;
 - 16.1.3** medical or private information regarding persons involved in the casualty or incident;
 - 16.1.4** opinions expressed during the conduct of the investigation.
- 16.2** These records should be included in the final report, or its appendices, only when pertinent to the analysis of the casualty or incident. Parts of the record not pertinent, and not included in the final report, should not be disclosed.

17. Personnel and material resources

MEMAC and the Regional Maritime Casualty Investigation Board, in the cooperation with the Member States, should take all necessary steps to ensure that they have available sufficient means and suitably qualified personnel and material resources to enable them to undertake casualty investigations.



References:

- IMO Code for international Standard and Recommendation practices for a safety Investigation into a Marine casualty or marine Incident- Res. A 884(21)
- Unites States of America Transport Accident Investigation Commission- Annual report