

The Maritime Law Association of Australia and New Zealand

**Protecting the Environment and Promoting Safe Navigation:
Australia's System of Pilotage in the Torres Strait**

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Introduction

Today I wish to discuss Australia's system of pilotage in the Torres Strait – the national significance of the Torres Strait; the International Maritime Organization resolution authorising the pilotage system; how it is being implemented domestically and the practical effect of the system.

The uptake of pilots on vessels transiting Torres Strait fell substantially from 1993 to 2006 raising concerns for marine safety, the environment and safe navigation in the strait. Some States have questioned the consistency of the system with international law. However, the system of pilotage is proportionate to the need to provide protection to the maritime environment, ensuring maritime safety and is consistent with international law. Protecting the environment and promoting safe navigation can go hand in hand.

Before discussing the situation prior to the implementation of Australia's system of pilotage in the Torres Strait, it will be important to put the Torres Strait in context and discuss its significance.

Geographic scope

The Torres Strait lies to the north and north east of Cape York and separates Australia and Papua New Guinea. It is about 90 nautical miles wide and 150 miles long, although useable routes for larger commercial vessels are limited to the Prince of Wales Channel and the Great North East Channel.

The area of pilotage lies almost exclusively within the territorial sea and internal waters of Australia.

Parts of the Torres Strait are isolated, remote and very demanding on the navigator. Passage through these channels also involves navigation within confined waters for long periods, with limited depths of water being a constant threat. The average depth of the Torres Strait is 30-50 metres in the east and 10-15 metres in the west. Tidal streams can be strong and variable, due to the meeting of the Pacific and Indian Oceans. Most of the region has a monsoon climate and visibility is frequently adversely affected by seasonal rain squalls. The area as a whole is subject to seasonal tropical storms and cyclones.

National interest issues

The tidal influences of two ocean systems result in frequent anomalous tidal regimes and have a great effect on the area's biodiversity. The massive freshwater and sediment input from nearby coastal rivers further influence this unique marine ecosystem. Benthic communities, fish assemblages, seagrass coverage and coral communities have all been well documented. The Strait provides critical habitat for many vulnerable or endangered

species, including dugongs and turtles. A recent UNEP report recognises the Torres Strait as ‘the most important dugong habitat in the world.’

The Torres Strait also supports commercial fisheries for prawns, mackerel, and tropical rock lobster to name but a few. The estimated value of production for the Northern Prawn Fishery, which includes the Torres Strait, in 2003-04 was AUD\$74 million. The Torres Strait Tropical Rock Lobster Fishery is the second most valuable commercial fishery in Torres Strait and very important to many Torres Strait Islanders. Both fisheries contribute significantly to the regional and national economy.

Several thousand people live in small coastal communities on Cape York, on the islands off the southern coast of Papua New Guinea and on the larger islands of the Torres Strait itself. They are ethnically, culturally and linguistically unique – the Torres Strait Islander community. Indigenous people of the Torres Strait traditionally hunt dugong and turtle and a variety of fish for food.

The Torres Strait is used primarily by large vessels trading between ports in southern Asia, Australia and New Zealand, South America, Papua New Guinea and Pacific Island Countries. The majority of tanker traffic bound for the Australian east coast refineries also use it to link with the outer route of the Great Barrier Reef. Approximately 3000 vessels transit the Torres Strait each year.

Because of the limited water exchange in and out of the Torres Strait, there are concerns that if the Torres Strait water became polluted it would probably remain in the Strait for some time. This may pose a risk of adverse and prolonged impacts on ecological communities, indigenous and commercial fisheries and the life style of the Torres Strait Islander people. Groundings or collisions could also limit traffic in the Strait.

What has been done in the past?

Following approval by the IMO, Australia implemented a recommended (ie voluntary) system of pilotage in the Torres Strait in 1991. However, the proportion of uptake of pilots onto vessels transiting the Torres Strait fell over time. In 1995, 70% of vessels carried pilots. Just six years later, in 2001, this had fallen to 55% of vessels. By 2003, 35% of vessels transiting the Torres Strait carried a pilot. It was obvious that the voluntary system would not protect the environment of the Torres Strait, ensure safe navigation and keep the Strait open to shipping traffic.

Australia had also implemented improved navigation aids and systems, including a ship reporting system, radar, electronic tidal gauges and an automatic identification system, but these alone were not sufficient to guarantee safe navigation and protection of the environment in the Torres Strait.

Studies

In 2004, Australia commissioned a study to analyse the level of risk to the environment and the risk of collision in the Torres Strait. The navigational risk assessment found ‘the risk to the environment in the Torres Strait...was very high. Further...the risks were not adequately balanced by the existing risk reduction measures notably the [voluntary] pilotage regime and the ship-reporting framework.’

The study also found that ‘compulsory pilotage would significantly improve navigational safety of transiting ships...reduced the risk of grounding by 45% and collisions by 57%. In...the Prince of Wales Channel, mandatory pilotage would reduce the risk of groundings by 54% and collision by 67%.’

IMO Resolution

The IMO Resolution of the Marine Environment Protection Committee (MEPC) adopted on 22 July 2005 – recommended that ‘Governments recognize the need for effective protection of the...Torres Strait region and inform ships flying their flag that they should act in accordance with Australia’s system of pilotage for merchant ships 70 metres in length and over or oil tankers, chemical tankers, and gas carriers, irrespective of size when navigating...the Torres Strait and the Great North East Channel between Booby Island and Bramble Cay.’

The Resolution extended the Particularly Sensitive Sea Area (PSSA) which covered the Great Barrier Reef to the Torres Strait.

This Resolution followed consideration of Australia’s system of pilotage in the Torres Strait in a number of IMO committees. Further, the language used in the Resolution was carefully drafted to take into account the interests of flag as well as coastal States. A balance was sought and achieved. The Resolution included the phrase “Australia’s system of pilotage”. This is a reference to the pilotage system in the Great Barrier Reef, which is a compulsory pilotage area.

***Navigation Act* – Domestic Implementation**

Following the IMO Resolution, the Australian Parliament passed amendments to the *Navigation Act 1912* making it an offence to navigate in designated pilotage areas without a licensed pilot and allowing regulations to specify areas for which pilotage is compulsory. The amendments entered into force on 6 October 2006.

The amendments to the *Navigation Act* and Marine Orders Part 54 do not in any way hinder, impede or deny the right of transit passage in the Torres Strait. Australia will not stop or board vessels transiting the Torres Strait without a pilot. Rather we will record an offence by the owner and the master and then seek to enforce the penalty should the

vessel subsequently port in Australia. These measures are consistent with international law, specifically the United Nations Convention on the Law of the Sea.

Rather than hindering, impeding or denying passage, in fact the system promotes transit passage. Should a ship run aground, not only would there be potential environmental consequences, but the narrow passage of the Torres Strait mean it could easily block other ships and thereby restrict passage, with significant impact on the economies of Australia and other States that rely on the Torres Strait for the export of resources and import of goods.

What has happened since?

Under the previous voluntary pilotage system, the uptake of pilots peaked at about 70% of vessels and fell substantially over time to approximately 35%. Following the implementation of the new system of pilotage from October 2006, there has been 100% compliance with the system.

Since Australia implemented the new pilotage system in the Torres Strait, a few States have opposed the system and questioned its legal basis.

First, arguments have been made that Australia's system of pilotage in the Torres Strait sets a precedent for other straits around the world. The Torres Strait, however, is unique. The language of the MEPC resolution, referring specifically to "Australia's system of pilotage", was carefully negotiated in good faith and by consensus so that it would not form a precedent. Since Australia was granted approval by the IMO to apply its system of pilotage to the Torres Strait, the IMO has made the criteria for declaring particularly sensitive sea areas (PSSA) stricter.

It has also been argued that the system of pilotage in the Torres Strait has the practical effect of denying, hampering or impairing the right of transit passage. This is an incorrect characterisation of the system. As discussed earlier, Australia will not stop or board vessels transiting the Torres Strait without a pilot. Should that vessel later call at port, then we would seek to enforce a penalty. This clearly does not deny, hamper or impede the right of transit passage.

Conclusion

The Torres Strait is a unique area between Australia and Papua New Guinea. It is important in terms of habitat for vulnerable and endangered species, commercial fisheries, Indigenous peoples and commercial shipping.

The Torres Strait is narrow, treacherous, subjected to cyclonic conditions and monsoonal rain squalls.

In our view, the pilotage system established by Australia is consistent with international law, adopted by IMO MEPC and implemented by Australian legislation requiring certain vessels to carry a pilot. This demonstrates that environmental protection and preservation of safety of navigation and UNCLOS rights of transit passage can be simultaneously achieved through carefully planned and implemented policy initiatives such as this.

Now I would like to show a short video which was prepared by the Australian Maritime Safety Authority for the IMO Marine Environment Protection Committee.