

## **Prevention of Future Deaths Report – Response by the Maritime and Coastguard Agency**

This response is provided to David Lewis, Assistant Coroner for North Wales (East and Central) on behalf of the Maritime and Coastguard Agency, following the inquests into the deaths of Ross Stephen Ballantine, Carl Stephen McGrath and Alan Wallace Minard, each of whom died from immersion/drowning after the fishing vessel on which they were working (Nicola Faith) capsized off the coast of North Wales on 27 January 2021.

### **Coroner's concerns**

The Coroner's concerns dated 17 July 2023 were as follows:

*Although I was somewhat reassured to learn that the relevant Regulations have been revised and strengthened since these events, I am concerned that in this case (and, therefore, possibly in other cases) the Agency did not establish or apply a clear threshold in determining the need for a full stability assessment to be performed following significant modifications to the vessel. Too much reliance was placed on (1) reassurances offered by the skipper of the vessel in relation to his appreciation of risk and/or his operational intentions (notably about the size and distribution of the load) and (2) informal visual assessments of the impact of the modifications which were undertaken whilst the vessel was in dock and was not under loaded conditions.*

*In addition, insufficient concern arose from the issues identified on the two occasions when Holyhead Coastguard advised the agency of the need to rescue the vessel following breakdowns at sea.*

*I am concerned that other vessels (whether of a similar size or otherwise) may be operating, which have been modified since the issue of the original safety certificate and which require a full stability assessment before their operational safety can be properly evaluated.*

### **Action taken**

As stated above, the Coroner is already aware from the evidence provided by the Maritime and Coastguard Agency (MCA) during the inquests that the relevant guidance has been amended and strengthened since these events. By way of background, and to further assist the Coroner, set out below is a summary of the changes that have been implemented.

At the time of the Nicola Faith capsized, stability requirements had existed for new vessels built after 23 October 2017 of 12 metres registered length and over. (The Nicola Faith had a registered length of 9.81 metres).

The Code of Practice for the Safety of Small Fishing Vessels of less than 15 metres length overall [MSN1871 Amendment 2](#) came into force on 6 September 2021.

This Code introduced (at Chapter 3) new stability requirements for fishing vessels of less than 15 metres overall (i.e. it reduced the length of the vessel to which the stability requirements apply). In accordance with the Code, vessels must satisfy the required stability criteria when intact in the conditions of service for which they are intended. All vessels are required to maintain a record of stability tests which must be readily available for viewing at inspections. Stability information shall be checked and the continuing validity confirmed when renewing the Small Fishing Vessel Certificate (every 5 years).

The Code also retained, at Chapter 1, the requirement from MSN 1871 (published in October 2017) that owners must notify the MCA of modifications to vessels and that these must be approved by the MCA.

The Code states at paragraph 1.9 that the owner of a fishing vessel must notify MCA at the earliest opportunity of the details of any proposal to alter or modify the structure of that vessel, remove, replace or reposition engines or machinery or to change to a new method of fishing and/or gear. MCA will consider whether it should investigate these proposed modifications and alterations or changes, *prior* to them being made, to ensure that the vessel will continue to comply with the stability criteria as required by Chapter 3 of the Code.

In addition, modifications, alterations or changes to any vessel shall meet the requirements of MGN 628 (which sets out the minimum construction and outfit standards that fishing vessels must comply with when being constructed, repaired, modified or altered) and only be carried out *after* consultations with, and approval from, MCA.

In response to the Coroner's comment regarding insufficient concern having been given following the two breakdowns of the Nicola Faith at sea, the MCA had published [MSIS27 Annex 23](#) in April 2020.

As the Coroner will be aware from the evidence given during the inquests, this requires that vessels reporting an incident where there is a fatality, serious injury, serious damage or major mechanical breakdown, are subject to follow up action. This includes a requirement on the MCA Surveyor to consider previous inspections and compliance with current Codes of Practice.

This means that vessels inspected as part of the follow up procedure post 6 September 2021 (when MSN 1871 Amendment 2 came into force) will now have to demonstrate compliance with stability requirements as part of that procedure.

Further, in September 2021, the MCA has updated its guidance to Surveyors in investigation of modifications [MSIS27 Chapter 1](#) which includes an assessment of the impact on stability.

Finally, in order to address the Coroner's concerns that there may be vessels operating which have been modified since the issue of the original safety certificate and which require a full stability assessment before their operational safety can be properly evaluated, the following action has been taken by the MCA.

The MCA has analysed records and identified that there are currently 4,480 registered vessels of less than 15 metres length overall. As the Coroner is aware, MSN1871 Amendment 2 requires that vessels are inspected once every 5 years from the issue date of the original safety certificate.

2,734 vessels currently remain to be inspected against this Code as part of the 5 yearly inspection regime by 5 September 2026.

To identify vessels that may have informed MCA prior to 6 September 2021 of modifications they intend to carry out (which may or may not have been completed) would require an extensive review of all files relating to these 2,734 vessels. This process would also not identify any vessels which may have carried out modifications without notifying MCA.

The Coroner is aware the MCA conducts ad hoc inspections. These commenced in 2021 as concentrated inspection campaigns and now form part of MCA's usual Surveying business. A minimum of 250 vessels are inspected on an ad hoc basis per year and the inspections consider vessel modifications and stability.

However, in order to go beyond the ad hoc inspections and seek to capture any vessels of less than 15 meters length overall within the 2,734 which potentially may not be due an inspection until September 2026, but may have made modifications which have not been notified to the MCA, the MCA published an Urgent Safety Bulletin on 4 September 2023 [Safety bulletin 32 - Vessel modifications increasing risk](#)

[of capsizes - GOV.UK \(www.gov.uk\)](#) which has been provided to the fishing industry with an associated press release [Safety bulletin reminds fishers to report changes they make to their vessels - GOV.UK \(www.gov.uk\)](#). The MCA has asked Federations, Trade Press, Harbour Masters, Fisheries Administrations and Inshore Fisheries Conservation Authorities to circulate the bulletin. MCA is also looking at identifying those vessels yet to be inspected with the intention of contacting them directly to inform them of the bulletin.

The Bulletin informs owners of the requirements in the Code and the importance of assessing the impact on stability of any modifications which may not have been notified to the MCA. Further, it provides guidance on how to conduct these assessments and what to do if the vessel does not meet the minimum test criteria.

We trust that the above action taken by MCA has satisfied the Coroner's concerns but should the Coroner have any further queries, please do not hesitate to contact us.