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**ISSUE 125:
SPRING 2022**

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Signals

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North P&I and Standard Club propose merger to create new global marine insurance force



The P&I sector, along with the wider maritime industry, is wrestling with a range of issues driving the need for change. This has been emphasised by the recent challenges arising from operating in a world gripped by COVID-19 to the record levels of International Group pool claim costs which have driven significant increases in premium over the last couple of years.

Factor in the emerging long-term challenges of regulation, pressure for greater financial resilience, digitalisation, globalisation, sustainability, and you have a compelling argument for fundamental change in the P&I sector.

North and the Standard Club are now exploring the potential benefits and opportunities that a merger between the two clubs would bring. Such a merger would open the door to new thinking, technologies, and ways to solve old problems.

With complementary products and services, global office network, an unwavering commitment to mutuality and unrivalled P&I heritage, this merger can be truly ground-breaking and create the diversified P&I provider of the future.

The ambition behind the merger is to deliver tangible benefits to shipowners. Combining will provide greater financial resilience, efficiency and an even deeper pool of talent to maintain and strengthen the focus on service excellence and close member relationships for which both clubs are renowned. The enhanced financial

position will stimulate even greater competition across the P&I sector. The proposed merger remains subject to the approval of the full mutual membership of both clubs and all the appropriate regulatory authorities. Member voting procedures are anticipated to conclude by the end of May. If approved by the membership, the formal merger of both clubs is expected to complete by 20 February 2023.



Paul Jennings, CEO of North P&I, commented, "since the proposed merger was first announced, I've met with a large selection of North's Members to discuss the merger, and the feedback I have received has been overwhelmingly positive. Members have reacted favourably to the promise of greater financial and operational resilience, offering greater premium stability and predictability. Potential savings in de-duplication and reinsurance costs could quickly deliver a 3 to 4% improvement in the combined ratio of the merged Club. The prospect of new and enhanced services and innovation, linked to a broader global reach, with easy access to proven outstanding claims expertise, tried and tested on some of the largest and most complex claims the International Group has experienced, has been welcomed. Many Members commented that the new club will create increased competition across the P&I spectrum, prioritising the needs of members in these turbulent times."

North

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'Signals' is published by The North of England P&I Association Limited

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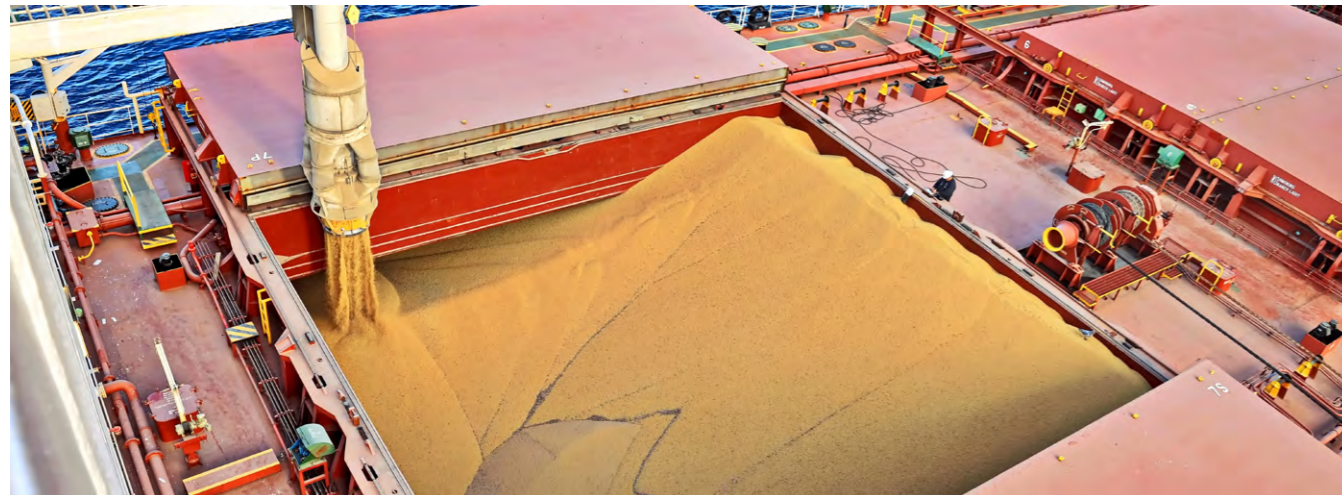
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London Arbitration looks at ICA issues



A recent London arbitration award deals with important issues arising under the Inter-Club Agreement.



The award published in the Lloyd's Maritime Law Newsletter as *London Arbitration 10/22* deals with important issues arising under the Inter-Club Agreement (ICA), the latest version of which is the ICA 2011.

Facts

The arbitration concerned two cargoes of soya beans loaded at Uruguay and Argentina, destined for discharge at China. It appears the Argentinian cargo showed physical damage at the time of discharge whereas the Uruguayan cargo deteriorated whilst in warehouses ashore.

The Chinese receivers' insurers claimed RMB 10m and, although Owners tried to defend the claims before the Chinese courts and made offers to settle, Owners were found liable for almost 100% of the claim plus interest at first instance.

The parties settled ahead of an appeal for a relatively small discount. Owners sought to recover 100% of their exposure from charterers under the ICA.

Issues under the ICA for determination

The arbitration tribunal dealt with questions about which version of the ICA applied under the charter; whether the claim advanced by cargo receivers was a "Cargo Claim" within the meaning of the ICA; what the ICA means by the requirement that underlying claims must be "properly settled or compromised"; how ICA Clause 8(b) works; and, responsibility for damage by inherent vice.

Issue 1: Which version of the ICA applied?

There have been a number of different versions of the ICA since it was first devised in 1970. The first issue for the tribunal was which version of the ICA applied given the charterparty incorporated the ICA "1984 and any amendments thereto".

Charterers argued the 1996 version (and therefore by extension the 2011 version) was not an amendment to the 1984 version but was instead a reprint, replacement or other species of revision or reincarnation.

The tribunal preferred not to take a technical approach to the language used and held the 1996 version of the ICA was an amendment to the 1984 version for the purposes of the charter incorporation clause.

Issue 2: Was the underlying claim within the scope of the ICA?

Charterers argued that the claim did not fall within the scope of the ICA because the Uruguayan cargo did not arrive damaged. Owners pointed out that the damage was allegedly caused during the voyage.

The tribunal decided that, since cargo interests had alleged in the Chinese proceedings that the Uruguayan cargo had been damaged on the voyage, the claim fell within the scope of the ICA.

Issue 3: The meaning of "properly settled or compromised"

Charterers argued the underlying cargo claim had not been properly settled or

compromised as required by ICA Clause 4(c) because Owners had failed to challenge the cargo receivers' argument that the Uruguayan cargo was damaged at the time of discharge and so Owners had in effect conceded responsibility for the alleged damage.

This argument was rejected by the tribunal on the basis that the requirement to properly settle or compromise claims did not involve the sort of delicate, nuanced or detailed assessment required to satisfy the test of reasonableness for general indemnity claims, nor did it require re-litigation of the underlying cargo claim or second guessing how the cargo claim had been defended.

The Chinese cargo claim had been settled in good faith and for reasons founded upon a genuine perception of the merits of the claim, therefore it had been properly settled and compromised for the purpose of the ICA.

Issue 4: Application of ICA Clause 8(b)

Clause 8(b) of the ICA makes the charterer responsible for cargo damage resulting from cargo damage. Owners argued this provision applied even though the damage resulted from inherent vice.

That novel argument was rejected, and the tribunal held that, for Clause 8(b) to apply, the damage had to be attributable to more than the mere act of loading the cargo. There had to be a cargo handling aspect to the damage to the cargo which was improperly performed.

Owners had not alleged any aspect of cargo handling had caused the damage to the cargo and so therefore ICA Clause 8(b) was not engaged.

Issue 5: Were Charterers 100% responsible on the grounds of inherent vice?

In a number of previous cases, Charterers have been held 100% responsible for cargo damage arising from the pre-shipment condition of the cargo under ICA Clause 8(d).

In this arbitration, even though the tribunal decided the inherent characteristics of the soya beans were such that they were bound to spoil over time and though they concluded there was no evidence that pointed to a cause other than inherent vice, they nevertheless said they were "not persuaded that inherent vice was sufficient to make a 100 per cent apportionment under clause 8(d) absent some contributory act or neglect of one or other party which compounded the situation".

The default 50/50 apportionment applied.

Comments

The decisions of this tribunal on the first three issues are welcome since they disposed of a number of technical defences to the claim under the ICA which were not in keeping with the spirit of the ICA. It is encouraging that the tribunal found that the parties, by agreeing to incorporate the latest amendments to the ICA into their charterparty, had thereby contracted to follow the ICA 2011.

Equally it is sensible to focus on how the underlying cargo claim is presented to determine if it falls within the ambit of the ICA, rather than debate points of fine distinction.

Finally, the decision is the last in a line of awards which avoid putting undue weight on the requirement to properly settle the underlying claims and is a timely reminder that one refrain from just second guessing the original claims handlers.

At present, the risk for a charterer who causes shipment of cargo suffering from inherent vice in the future is at least 50% of any eventual cargo claim and up to 100% depending on the tribunal and the evidence.

The decision also sets out useful guidance on when ICA Clause 8(b) is engaged by focusing the mind on whether cargo handling was in fact performed properly or not.

The decision on the impact of cargo damage resulting from the pre-shipment condition of the cargo may be more controversial. The tribunal heard arguments about the meaning of the requirement for "clear and irrefutable evidence" before the default 50/50 apportionment under ICA Clauses 8(c) and (d) will be disturbed, but we do not know how the tribunal approached the meaning of those words in light of the parties' arguments.

Although the tribunal decided it was not satisfied the evidential threshold had been crossed, it seems they decided to apply the 50/50 apportionment as a matter of principle – and not as a matter of evidence – given the decision that "some contributory act or neglect of one of other party which compounded the situation" beyond the state of the cargo is required to place 100% responsibility on either the owner or charterer.

The tribunal said that it could distinguish the case before them from the facts of the Yangtze Xing Hua and it may be that this was a reference to the orders by the charterer in that other case to drift off the discharge port for a prolonged period. Whether the tribunal was correct to draw that principled distinction is questionable.

At present, the risk for a charterer who causes shipment of cargo suffering from inherent vice in the future is at least 50% of any eventual cargo claim and up to 100% depending on the tribunal and the evidence.

Cargo care

Grain cargoes in general – and soya beans in particular – have a risk of going mouldy on board the ship during the voyage. Most cargoes are loaded in apparent good order and condition but there is an inherent vice; the soya beans have a tendency to deteriorate unless cargo loading temperatures are low and average moisture content is low. There are known limits for temperature and moisture content. Cargoes above these limits are unstable, therefore at risk of damage from self-heating.

By David Richards
Director (Claims)

FIND OUT MORE

North Members can find out more about the carriage of soya bean cargoes in our loss prevention briefing [Click here](#)

In-transit cargo loss clause caution



Charterers making claims or applying deductions, such as deductions from freight, based on 'in-transit loss' clauses can be common in the crude oil trade.

These clauses often define an in-transit loss as the difference between the vessel's gross observed volume (GOV) on completion of loading and before unloading at the discharge port. While this may seem like a simple comparison, in reality, it is a fundamentally flawed approach. The result is a paper shortage rather than any physical loss.

One of the main problems with such clauses is that Owners may not have the usual defences that would otherwise be available for an alleged shortage if the claim had been, for instance, assessed with reference to the Hague/Hague-Visby Rules. Not only does this put Owners in a difficult position when trying to defend claims made by Charterers referencing these clauses, but it may also adversely impact upon the scope of club cover available in respect of the claim.

Paper shortages

During measurement, the gross observed volume is established by subtracting any free water and sediment from the total volume of fluids in the tank. This provides the quantity of oil at the given temperature upon loading.

On the voyage to the discharge port, two factors can result in changes to the gross observed volume:

(i) Cargo temperature

During the voyage, the temperature of the cargo is likely to cool. When the cargo cools, its density will increase, so the volume will reduce despite the mass of the cargo remaining the same. Even when cargo heating is employed, it is unlikely that the cargo tank temperatures at discharge port will be identical to the same

temperatures as they were at the load port during the tank survey. When the two gross volumes are compared - as required by in-transit loss clauses - this reduction in cargo volume will indicate a paper shortage.

(ii) Increase of free water

The production process consists of separating fluids from an oil well into crude oil, gas and water/sediment. While this can be a very efficient process, crude oil cargoes usually contain a small amount of water and some solids. This is known as the cargo's 'base sediment and water content' or BS&W.

To put this in context, if a vessel loads one million barrels of crude oil with a BS&W of 0.3%, 997,000 barrels of the cargo will be crude oil and 3,000 barrels will be made up of water and some sediment. Free water is the term used to describe any water that has separated out of the crude oil at the bottom of the cargo tank.

This can result in a difference in the reported amount of free water detected on completion of loading and at arrival at the discharge port. Typically, the tank survey at the load port will commence as soon as is practicable after completion of loading. Therefore, there is minimal time for any water in the cargo to separate out and the survey may detect only trace amounts of free water. Consequently, the gross observed volume will be calculated as the entire volume of the cargo tank contents, despite it likely containing an amount of water and sediment.

During the passage, water and sediment contained in the cargo will have the opportunity to separate out. When the tank is then sampled during discharge survey, free water can be detected more

readily. This is done by establishing the interface between the water and oil. While the amount of sediment will not be accounted for directly, it will be included in the free water figure as the sediment will settle below the water.

When the gross observed volume is re-calculated, free water and sediment will be subtracted from the total contents of the tank. When the gross observed volumes are compared, the difference between the volume of free water and sediment detected at the load and discharge port will indicate a paper shortage.

Performing correct calculations

To account for variations in cargo temperature between the load and discharge ports, the cargo needs to be compared at a standard temperature. This is achieved by applying a volume correction factor to calculate the quantity of cargo at standard temperature of 15°C or 60°F depending on the unit of measurement. The term gross standard volume (GSV) is used when the gross observed volume has been calculated at a standard temperature.

To ensure that any free water and sediment is accurately accounted for during the tank surveys, the total calculated volume (TCV) of the cargo should be established. This is achieved by adding any free water and sediment to the gross standard volume.

Checking cargo documents

The cargo documentation should provide details of the total volume of water and sediment for the cargo. This can be established by subtracting the gross and net quantities listed on the bill of lading or by the BS&W as stated on the Certificate of Quality.

Loss prevention

From an Owners' perspective, it is better to try and avoid any 'in-transit loss' clauses which may override clauses that incorporate the Hague/Hague Visby Rules such as the Clause Paramount.

The standard pre-printed charterparty clauses are preferable from an Owner's perspective. For example, Asbatankvoy has a Clause Paramount (clause 20(b)(i)) which incorporates the Hague Rules. There is also the BIMCO Clause Paramount, which incorporates the Hague/Hague Visby Rules.

By Dave Patterson

Loss Prevention Executive

Simon Clarke

Senior Executive (Claims)

FIND OUT MORE

Click here for North's Recommended clauses (2021-2022)

North Members get free access to our loss prevention guide **Shipboard Petroleum Surveys: A Guide to Good Practice**.

Helping Members beat bad bunkers with technology

North has collaborated with fuel testing experts VPS to provide our Members with global bunker data on **MyGlobeView**.

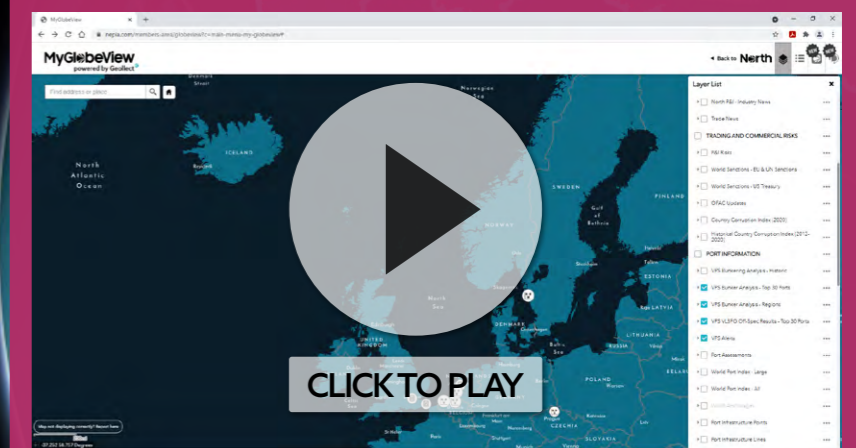
The VPS fuel quality layer on our Members-only maritime intelligence platform **MyGlobeView**, helps our Members make more informed decisions on their fuel purchasing arrangements. It also allows the onboard engineers burning the fuel to have a better idea of what they might expect.

Leveraging the wealth of data collected by VPS based on thousands of bunker samples, the layer provides information on bunker quality from around the world.

Features exclusive to North Members include:

- ✓ Top 30 ports for cases of 'off-spec' bunkers in last two months
- ✓ Top 10 'off-spec' parameters for each of the 'Top 30' ports
- ✓ Regional and historic overview and included data for ports or regions with no off-spec parameters
- ✓ VPS bunker alerts for the past 12 months

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Learn more about the VPS layer on MyGlobeView in our video by clicking on the thumbnail above

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The new normal or a bad idea? Beware requests for unconventional carriage

With container freight rates rocketing and containership capacity squeezed, more bulk carrier operators are considering carrying cargoes that are usually containerised.

Carriers are exploring the possibilities of carrying break-bulk cargoes that traditionally would have been shipped in a container, in the cargo holds of bulk carriers; typically, in bags, FIBCs (Flexible Intermediate Bulk Containers – also known as jumbo bags) or IBCs (Intermediate Bulk Containers).

Shifting trades

Bulk operators presented with the opportunity to carry cargoes in break-bulk that would usually be containerised should be aware of the risks associated with the proposed cargo. Not all containerised cargoes are suited to this method of shipment.

Some of the cargoes considered for break-bulk:

Bagged Coffee

Coffee is a high-value commodity, with current prices at around US\$6 per kilo for Arabica beans and around half that for Robusta. The carriage of coffee beans using any recognised method presents the carrier with challenges. The beans are hygroscopic and will contain a significant amount of moisture. This makes them vulnerable to condensation which then wets the bags. The chances of condensation taking place are increased by the transport of the coffee beans from the warm moist growing regions to cooler climates, which is typical of the trading routes.

The primary source of wetting is the formation of condensation on steel structures ("Ship's sweat"). This then comes into contact with the bags. When carrying bagged coffee using the current industry practice of dry standard containers, the same risk is present. There is very limited ventilation, so moist air is not effectively expelled. Therefore, cardboard or Kraft paper lining is applied to protect the cargo. The effectiveness of this method is disputed, however.

Cargo experts BMT advise against carrying bagged coffee in cargo holds because of this high risk of wetting damage, which leads to fungal growth. It is very challenging to ensure sufficient dunnaging is applied to prevent cargo-to-steel contact and hold ventilation may be limited in its effectiveness. As we reported [here](#), the effectiveness of building ventilation channels into the stow is unproven.

A further risk in carrying bagged coffee in break-bulk is crushing damage, caused by the weight of the cargo loaded above.

Chemicals

Some chemicals have traditionally been carried in containers, such as sodium metabisulphite, are now being carried in jumbo bags as break-bulk cargo.

If overloaded or poorly stowed, jumbo bags can split, and their contents can leak into the hold.

Not only does this present a health hazard to those working in the hold, but the spill can also cause damage to adjacent cargo and the steel structure of the cargo hold.

Car parts

Parts used in the manufacture of vehicles are increasingly finding their way on board bulk carriers as break-bulk cargo; usually packed within crates and/or palletised. The shippers must ensure the protection afforded by the crate or packaging is suitable, but it is also important that these are properly stowed and secured in the hold.

Seek advice

Whilst the shipping industry is used to adapting to new requirements from its customers and to solving capacity issues to keep trade flowing, requests to carry cargoes in an unconventional manner need to be carefully scrutinised, particularly when dealing with dangerous or high value cargoes.

There are particular concerns given reported shortages in reefer capacity in relation to high value cargoes requiring temperature control, such as some pharmaceuticals.

Carriage of cargoes in IBC tanks laid across the top of a bulk stow of grain, for example, may prevent effective fumigation, ventilation and may lead to contamination issues.

Cover may be prejudiced where unconventional cargo arrangements mean a cargo is incapable of being carried in accordance with a safe and proper system, or if the carriage is imprudent for some other reason. The carriage of rare and valuable cargo may require approval in advance from the managers of the means used for the carriage of the cargo. Further, any change or alternation in the risk due to the carriage of an unconventional cargo requires prompt disclosure to the Club to ensure that cover remains in place.

Legal advice should be sought when a carrier is requested by a charterer to carry cargo in an unconventional manner. Depending on the terms of the charterparty, such an order may be illegitimate, particularly if compliance would be impossible or unsafe. Owners may wish to explore taking a Letter of Indemnity from a charterer who requests unconventional carriage arrangements.

By David Richards
Director (Claims)

John Southam
Loss Prevention Executive



FIND OUT MORE

Read our Loss Prevention briefings;

- o Carriage of Break-Bulk Cargoes
- o Carrying coffee beans in containers

For more information, reach out to your usual contact at North

The time zone trap



A failure to strictly comply with claims notification and presentation time bars can prove very costly, as shown in a recent case where the difference in time zones led to a notice of a claim being out of time.



In *Euronav N.V. v Repsol Trading S.A. (The "Maria")* [2021] EWHC 2565 (Comm), the nine-hour time difference between where the parties were based and where the vessel discharged, led to a loss of almost US\$ 500,000 demurrage.

Facts of the case

Owners voyage chartered "Maria" to Charterers on a Shellvoy 6 form, for the carriage of a cargo of crude oil from Brazil to the US West Coast, by which clause 15(3) provided that:

"Owners shall notify Charterers within 30 days after completion of discharge if demurrage has been incurred ... If Owners fail to give notice ... Charterers' liability for ... demurrage shall be extinguished."

The vessel loaded at Santos, Brazil and discharged at Long Beach, California with Owners claiming US\$ 487,183.12 of demurrage.

The vessel disconnected cargo hoses at 21:54 Pacific Standard Time (PST) on 24 December 2019. This corresponded with 06:54 Central European Time (CET) on 25 December 2019, where both parties were based - a nine hours' time difference.

On 24 January 2020, Owners sent Charterers an email timed at 12:42 CET, stating that demurrage had been incurred

on the voyage and that the email was notice of demurrage. A dispute arose about whether that notice had been sent in time.

Judgment

As the charter was silent on the issue, the judge concluded that the date of final discharge of the cargo should be determined using local time at the place the cargo was discharged. That meant Owners had until midnight PST on 23 January 2020 to give notification within the 30 days allowed, with the result that the notice sent to Charterers the following day was out of time.

That conclusion followed a thorough legal analysis on how days and time are treated. Days are ordinarily treated as calendar days counted from the day after the relevant event, and time is essentially a local concept. As such, the claim notification time bar was most closely connected with the place at which discharge was completed, as recorded in the statement of facts.

Furthermore, the paramount desirability of certainty as a guiding principle for commercial parties necessarily meant that adopting a far more complicated approach, such as by factoring in where the parties

are based (which, unlike in this case, are often in different countries where different time zones apply), would undermine shipowners knowing what is required of them.

Conclusion

The stark result of this case underlines the importance of carefully checking charter terms, diarising deadlines and, above all, not leaving steps required to avoid time bars expiring until the last minute.

At North, we have experience of disputes where the lack of express terms on how days and time apply for the giving of notices and the taking of other time-sensitive steps, has caused ambiguity.

As such, where there are time-sensitive provisions in charters, it is far better to state expressly how days and time are to be treated to clarify how to protect and exercise rights in time.

By Jim Leighton
Consultant (FD&D)

FIND OUT MORE

[Click here](#) to read the judgment.

Short contractual time limits loom large



The trend for shortening contractual time limits to notify claims in charterparties and other contracts is making compliance increasingly difficult.

There is nothing new in specifying within a commercial agreement that all claims must be notified to the other party, or proceedings begun, within a set period of time. The current trend is, however, for parties to agree very short time limits. These are often only a few days, which are in practice impossible to comply with.

Judges and arbitrators typically uphold clearly worded time bar clauses, even if they are very onerous, upon the justification of a commercial need to settle claims quickly. There may, however, be arguments available to challenge short time limits.

In this article, we look at the situations where time bars will be enforced and the potential arguments to escape their consequences. The best advice though is to only agree to workable time limits which are fair to both parties.

Bunker quality clauses

Those trying to resist time bar clauses where there is a bunker quality dispute, frequently try to argue the clause has a narrow scope. For example, if the clause only mentions claims relating to the “quality” of fuel, it might be argued that does not apply to claims for failure to comply with contractual description or specification requirements, or of the implied obligation to provide fuel that is fit for use in the ship’s engines.

This argument finds support from decisions such as *Board of Trade v. Steel Brothers & Co* (1952), where claims for “inferior quality” had to be brought by the buyer within 60 days of the date of the discharge of the goods into a recognised warehouse. The Court of Appeal held that the words “inferior quality” referred only to the quality of the goods as shipped and did

not extend to claims for deterioration of the goods in the course of a voyage arising from defective packing. The buyer could, therefore, bring an action for the latter outside the 60-day period but within the statutory limitation period.

In *Cauwenberghe v. Tropical Product Sales* (1986) the High Court upheld a decision of a Federation of Oils, Seeds and Fats Associations Ltd (FOSFA) arbitration tribunal that a claim was not one for inferior quality for the purpose of FOSFA time limits, but one relating to description (for which a longer time limit applied), even though the cargo contained a different product and was contaminated with some form of solid black substance/liquid materials.

Impossibility

It is often argued that a short time bar cannot apply when the claim only materialises after the time limit has passed. For example, when bunkers are consumed and cause engine damage only after the time bar has expired. The claimant may then argue that they can rely on the presumption of interpretation that a contract does not require performance of the impossible.

Such an argument would be supported by observations made in *Pinnock Bros v Lewis & Peat Ltd* (1923) and in *Hardwick Game Farm v Suffolk Agricultural & Poultry Producers Association Ltd* (1964) to the effect that a time bar in an arbitration agreement might be limited to disputes capable of arising, and of being brought forward, within the stipulated period.

However, in the context of the Centrocon arbitration clause, which requires the presentation of the claim and the commencement of proceedings within a certain period, it has been held that the clause applies regardless of whether the claim had “come to light” within the relevant period (for example, see *The Evje* (1975), *The Stephanos* (1989) and *P v. Q* (2018)).

Specifying the consequences of non-compliance

What happens if the time bar clause does not spell out the consequences of failing to notify or submit a claim in time? For example, if there is no wording to the effect that, unless the claim is lodged in time it will be “absolutely waived and time-barred”?

The time bar cases usually cited in this area – *The Oltenia* (1982), *The Obo Venture* (1999), *The Yellow Star* (2000), *The Sabrewing* (2008), *The Eagle Valencia* (2010), *The Abqaiq* (2012), *The Adventure* (2015), *The Ocean Neptune* (2018), *The Tiger Shanghai* (2020), *The Amalie Essberger* (2020) and *The MTM Hong Kong* (2020) – all dealt with express wording to the effect that the charterer will be discharged from liability unless (for example) the claim is notified with all supporting documents within ‘X’ amount of days.

By contrast, in *The Pera* (1985) the charterparty provided that “Demurrage, if any, shall be payable by Charterers against owners invoice supported by notices and statements of fact(s) from loading and discharging port(s) duly signed by shippers. Any claim for demurrage to be accordingly presented within 12 months from completion of final discharge.” There was no explicit reference to a claim being waived if it was not presented within those 12 months. The High Court and the Court of Appeal thought the phrasing was ambiguous and ought to be construed contra proferentum; the clause was not sufficiently clear in its terms to require the documents to be presented within 12 months in order to prevent the claim becoming time barred.

On the other hand, in *The Nedon* (1962) the charterparty said that “Any Claim arising under this Charter Party has to be made in writing within 6 months after final discharge”. The provision did not expressly mention that a failure to make a claim within six months of final discharge would have any particular consequences, but the Judge nonetheless thought that the provision took effect as a time bar. The Judge said he was reinforced in that conclusion by the consideration that if the

clause does not operate as a time bar then it is deprived of all effect. In *Metalimex Foreign Trade Corporation v. Eugenie Maritime Company Ltd*, a charterparty said that “any claim arising under this Charter Party has to be made in writing within 6 months after final discharge.” No consequences were spelled out if this did not happen. The Judge concluded that unless a claim was presented within the time allowed then it was barred and not admissible.

In *Metalfer v. Pan Ocean* (1998), a charterparty clause provided that any dispute had to be referred to arbitration within 30 days of the completion of the voyage but did not specify what happened if the dispute was not referred to arbitration within that time limit. The Judge decided that the clause did nevertheless bar claims that were not commenced in time, because that was most likely to have been what was intended, given that the clause served no real purpose unless it worked in this way.

Metalimex and *The Nedon* were recently applied in *The Atlantic Tonjer* (2019), which concerned the provision in the SUPPLYTIME form saying that an invoice cannot be disputed unless challenged within an agreed number of days of receipt

of the invoice. The Judge in *The Atlantic Tonjer* concluded the charterer is precluded from disputing the payment of any invoice unless done within the 21 days referred to in the contract.

One cannot easily reconcile the result in *The Pera* with the result in *Metalimex*, *The Nedon* or *The Atlantic Tonjer*. The Judge in *The Atlantic Tonjer* cited the decision in *The Pera* but did not explain why he did not reach a similar result.

It may be that the impossibility argument mentioned earlier is more likely to succeed where a time bar clause does not specify the consequences of failing to submit claims in time.

By David Richards
Director (Claims)

FIND OUT MORE

[Click here](#) to read the full version of this article, where we also look at:

- The notion of “strict compliance”
- What “all supporting documents” means
- Multiple claims
- Conflicting provisions

“The best advice is to only agree to workable time limits which are fair to both parties”

Shipping to go nuclear on climate change

As the maritime industry begins navigating its way to decarbonisation, shipowners face challenges in finding the ideal zero-carbon fuel for their purposes. However with a lack of bunkering infrastructure creating a major hurdle for many of these alternative fuel options, interest in nuclear power generation is on the increase.

Shipowners are facing difficult choices when deciding on their future newbuild strategy.

Committing to a zero-carbon fuel today comes with the very real risk that the future bunkering infrastructure might not be properly developed where the vessel will trade. But what if you could build a vessel that doesn't need to refuel for 25 years and could still sail at a higher service speed than normal despite more stringent emission requirements?

This could become a reality - a new type of nuclear-powered vessel is on the horizon, using the Molten Salt Reactor (MSR).

Experts on the nuclear option: Q&A

For generations, nuclear power has produced reliable electric power around the world but has also attracted bad press regarding concerns on safety and nuclear waste handling. To find out more about the safety and sustainability of MSR technology, we spoke to Mikal Bøe (M), CEO of Core Power UK Ltd and Edmund Hughes PhD (E) of Green Marine Associates, previously a member of the IMO Secretariat before setting up an independent consultancy that focuses on the decarbonisation of shipping.

Q Describe to us the nuclear-powered vessel of the future

M: It's very important to recognise that the choice of advanced nuclear technology for sustainable shipping must meet key suitability criteria specific to our industry:

- a fuel-for-life reactor system, locks the fuel in the reactor, avoids refuelling and hence handling spent fuels in ports.
- a reactor system that remains safe in the event of an accident at sea; essentially a system we can rely on to passively shut down in the event of a collision, grounding, explosion or even a sinking without polluting the environment.
- a system that is simple and small enough to mass manufacture so that we can get the highest quality assurance in construction and the fastest incremental innovation cycle at the lowest cost.

MSR technology meets these criteria and allows for a new way to harness nuclear power. It's the most efficient and compact advanced reactor system conceived. It consumes less than a gram of fuel to produce 24 Megawatt-hours (MWh) of 100% clean energy. This means a Capesize bulk carrier would use less than 200 kg of fuel in 25 years, with zero emissions and making little waste.

Q What risks have been identified and how can they be addressed?

M: Most of the disadvantages associated with nuclear propulsion using conventional PWR systems are removed with a marine MSR. There is no need for high pressure design specification which is much cheaper; no refuelling which reduces the risk, and of course, miniscule waste means a sustainable solution.

As such, in future the risks could be:

- Economic risk (capital cost) if shipping experiences a downturn and struggles to pay for new ships. This can be addressed through applying different cost models including leasing from reactor owner/payment for units of energy provided by reactor.
- Political risk in countries where the fear of old-nuclear still prevails. This can be addressed through international dialogue highlighting the advantages of deploying advanced nuclear technologies, as opposed to conventional nuclear especially in the context of the climate emergency.

By Mark Smith
Loss Prevention Executive

[Click here](#) to read the full Q&A with Mikal Bøe (M), CEO of Core Power UK Ltd and Edmund Hughes PhD (E) of Green Marine Associates

FIND OUT MORE

[Click here](#) to view North's Navigating Decarbonisation website.

- [Core Power](#)
- [Green Marine](#)

25 YEARS WITHOUT BUNKERING



Higher service speed



Lower fuel costs



200kg spent fuel in 25 years



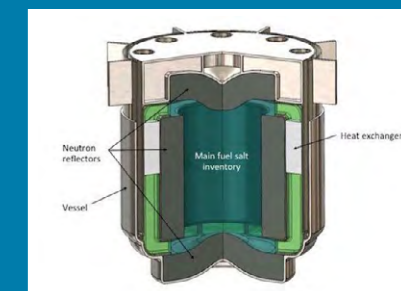
Explainer: The Molten Salt Reactor



Nuclear science is of course a very specialised subject. But in simple terms, MSRs operate on the same principle as a current nuclear power reactor, using controlled fission (the splitting of a large atom into smaller atoms to release energy). The heat generated by fission produces steam which drives electricity-generating turbines.

But there is a key difference with the MSR: molten salt is used in the reactor core, which acts as both a fuel and a coolant. This is in contrast with current operating reactors which use solid fuel rods and require a highly pressurised water coolant system.

This means the MSR generates less waste, can operate at higher temperatures, which leads to increased efficiencies, and at low operating pressures, which can reduce the risk of coolant loss. Therefore, the MSR is considered safer than current reactor technology and more suited to a maritime application.



Voluntary carbon markets

The European Union is set to include shipping in its mandatory carbon trading system in 2023. With this covering only a minor proportion of the world's fleet and the absence of an international scheme or global fuel levy, is there a place for a voluntary carbon market for shipping?



As we discussed here, the EU's Emissions Trading Scheme (EU-ETS) works on the 'cap and trade' principle. A cap is set on the total amount of greenhouse gases allowed to be emitted, which is reduced over time so that total emissions fall. Carbon credits, called 'EU Allowances' (EUA), are purchased and every year, each emitter will surrender the required number of EUA to cover its emissions.

Voluntary offsetting

Voluntary carbon markets work on a similar principle but there is no regulatory cap. Instead of purchasing credits from a regulatory body, such as the EU, emitters can either buy carbon credits from projects that remove or reduce greenhouse gases from the atmosphere, or, from other emitters who have been able to reduce their emissions to a level below their set targets.

When the credit is used to offset carbon emissions, it is placed in a 'retirement' register and cannot be traded again.

A further key difference is that while the current compliance carbon markets (or those in the pipeline) are specific to a region, voluntary markets are not constrained by such boundaries and have the potential to be much more flexible and adaptable.

Identifying a need for a voluntary market

Companies across all industries are under pressure to reduce carbon emissions and

many are committing to net-zero, initiated by commercial demands or a company pledge. However, if significant financial investment in technology is required to achieve the required reductions, those costs may be prohibitive. Voluntary off-setting provides an alternative means that allows companies to declare the achievement of their carbon-reduction targets (such as net-zero), whilst continuing to burn fossil fuels.

Those considering going down the voluntary route should be aware of the risks. According to management consultancy McKinsey, there is a need for a voluntary carbon market that is large, transparent, verifiable, and environmentally robust. Currently, the voluntary carbon market remains fragmented and complex, where some credits have turned out to represent emissions reductions that were questionable. They also raise concerns on the limited pricing data that is available, making it difficult for buyers to know whether they are paying a fair price.

Voluntary offsetting in the shipping industry

Mandatory carbon reduction schemes in shipping are likely to be dictated by international legislation from the IMO or regional/national regulations such as the EU-ETS.

Currently, the IMO has adopted new rules on the Carbon Intensity Indicator (CII) and Efficiency Existing Ship Index (EEXI) to

ensure shipping meets the target of reducing total greenhouse gas emissions by 50% by 2050. It should be stressed that engaging in any voluntary offsetting program will not help shipowners meet their obligations under the CII or EEXI.

Looking ahead, it is not unreasonable to expect that the IMO will consider introducing some sort of market-based measure (MBM) supported by the IMO Data Collection System (IMO-DCS) at some point in the future, which may take the form of a compliance carbon trading scheme.

But what about shipping companies who have set net-zero targets, going above and beyond the current IMO ambitions? What mechanism can they use to help them achieve their pledge?

As things stand, there are very few options for stakeholders in the shipping industry to engage in voluntary carbon offsetting. The maritime market has not reached the same levels of maturity to that of other industries.

One early example of voluntary carbon trading in our sector was the issuance of carbon credits by the Gold Standard Foundation to those shipowners using AkzoNobel's Intersleek hull coating, which is claimed to have been proven to reduce fuel consumption and, as a result, CO₂ emissions.

In the United States, the maritime investment, chartering and financing consultancy Marsoft has launched their

GreenScreen™ program, which enables shipowners to earn carbon credits through retrofitting their vessels. Similar to the AkzoNobel program, this has been recognised by the global carbon registry Gold Standard.

By Alvin Forster
Loss Prevention Executive

Charterparty comment

We have started seeing clauses introduced into charterparties to capture emissions data and share such data between the parties, which is considered essential to gain understanding of the emission impact

of their chartering activities and to enable efficiencies to be made. However, we are yet to see much in the way of agreements or clauses in charterparties between shipowners and charters whereby a voyage is to be carbon neutral.

This may be because individual companies deal with such carbon off-setting at company level, depending on their company's net-zero goal and strategy.

As the pressure to achieve net-zero as soon as possible continues to increase, we may start seeing agreements between owners and charterers which aim to achieve a carbon neutral voyage. An

example being the purchase of certain carbon credits, although how this would interplay with freight and hire rates would remain to be seen.

By Helen Barden
Senior Solicitor (FD&D)

FIND OUT MORE

Visit our Navigating Decarbonisation expertise area

New Layers Added Ukraine/Russia Conflict

Our **GlobeView** and **MyGlobeView** platforms have been updated with specific Ukraine/Russia Conflict layers.

The specific layers include:

- ✓ Ukraine Conflict – Industry News, Trade News and OFAC Updates
- ✓ Situation Reports
- ✓ Navigational Warnings
- ✓ Russian Occupied Ukrainian Territory
- ✓ Port Restrictions on Russian Connected Vessels
- ✓ Sanctions Information – North P&I and UK Government

FIND OUT MORE
Maritime Intelligence Platforms

Available on
GlobeView and **MyGlobeView**

Zoom to

Port restrictions on Russian connected vessels

Country: Egypt

Informing Party: Kalimbassieris Maritime Egypt (LLC)

Date: 14 March 2022

Description of Restrictions: No restrictions currently enforced in Egypt on Russian connected vessels.

Capturing carbon on board

As shipowners and operators look to decarbonise their fleets, they are faced with numerous options on alternative energy sources and other CO₂ reduction methods. One of the less-publicised options is carbon capture, but is it a viable solution for ships?



Carbon capture and storage (CCS) technology has been used in shore installations for decades and is now being explored as a possible solution for the decarbonisation of shipping.

How carbon capture works

In very simple terms, a post-combustion carbon capture system will block CO₂ from reaching the atmosphere. The system traps CO₂ at the emission source and transfers it to an isolated storage location.

For a system fitted on board a vessel, the CO₂ is extracted from the exhaust gases either through scrubbing or by bubbling the gas through an absorber column packed with liquid solvents. Once the CO₂ has been captured, it is compressed into liquid state. The liquid will then be stored on board in cryogenic storage tanks until the vessel reaches a port connected to a suitable transfer and storage infrastructure.

From there, underground geological formations may be used for storage and isolation from the atmosphere.

The CO₂ captured by the system could be re-used for other purposes, such as in 'enhanced oil recovery', where it is injected into oil and gas reservoirs to increase extraction. This is known as carbon capture and utilisation (CCU).

Other than the risk of leakage during storage, one of the main reported drawbacks with current CCS technologies in general, is that they are energy intensive. A vessel with a carbon capture system will require adequate power capacity, which may mean increased fuel consumption.

Global and regional policies

Under the European Union's carbon trading scheme, ships fitted with carbon capture systems could benefit from reduced costs. The EU's emissions trading system (EU-ETS), expected to include shipping from 2023, currently proposes that installations are not required to surrender carbon credits (known as EU Allowances) when CO₂ is captured for subsequent transportation by pipelines and geological storage.

However, current IMO regulations do not recognise CCS as a means of improving the carbon intensity (CI) rating.

Charterparty considerations

In the future, there may well be scenarios where a vessel fitted with a CCS system would be attractive to charterers, such as low fossil-fuel prices or if the cost of carbon credits increases significantly.

However, owners should check that the installation of a system reduces the cargo-carrying capacity of the vessel, which may depend on the size and location of the liquid CO₂ storage tanks.

Based on current knowledge, certain charterparty clauses will require consideration and, potentially, amendment. For example, the provision to address the time and cost of installing the CCS system, as well as the right for owners to deviate to dry dock or repair berth to do so should that be necessary. Description clauses and performance warranties may need to be revisited if the CCS system increases fuel consumption or requires a greater power generation capacity.

As the CCS system will form part of the vessel's machinery and equipment, in the event of any breakdown it is likely that the time lost and/or delays arising because of

such a breakdown would be covered by the off-hire provision in a time charterparty.

Parties should investigate whether the liquid CO₂ storage tanks are capable of being discharged at the same time as cargo operations, so to ensure there are no delays caused to the vessel from that perspective.

Furthermore, consideration of the trading pattern of the ship will be important because infrastructure to transport the captured CO₂ may not be available in every port.

The CC-Ocean Project

Mitsubishi Shipbuilding, part of Mitsubishi Heavy Industries (MHI) Group, are leading the world's first marine based test of CO₂ capture system in their "Carbon Capture on the Ocean" (CC-Ocean) project.

The project is taking place on CORONA UTILITY, a coal carrier for Tohoku Electric Power Co., operated by "K" Line, in conjunction with classification society ClassNK.

We spoke to Maetoko Takeshi (senior deputy manager) of Mitsubishi Heavy Industries to find out more about the CC-Ocean project.

Q How do you expect CCS systems will be used on the different ship types in the future?

A When the infrastructure to manage the captured CO₂ is more advanced, we see carbon capture systems being widely used regardless of the type of ship.

For example, carbon capture may lend itself well to crude oil tankers because crude oil ports are generally close to the oil field where captured CO₂ is used for enhanced oil recovery (EOR). CO₂ EOR is gaining popularity globally and it assists with major increases in oil well production.

Q How will you marinize the technology of the CCS systems used ashore?

A The technology is well established ashore. It's now just a case of downsizing it for the marine market and preventing damage from the conditions experienced on board a ship, such as vibration and corrosion.



Q What are the space requirements for the storage of carbon capture?

A The amount of captured CO₂ varies depending on capture rate and type of fuel. Capacity is further determined by the ship's trading pattern and the frequency of discharging captured CO₂.

Q How is the transportation of carbon capture going to be handled?

A Pipelines, containers and road tankers will be used ashore. At sea, liquified CO₂ carriers (LCO₂), currently under development by Mitsubishi Shipbuilding, will be used.

Q What equipment needs to be installed on the vessel?

A The key components are the towers that capture the CO₂, the equipment to liquefy it and the storage tanks.

Q Is fuel pre-treatment required for CO₂ capture system?

A Fuel pre-treatment is not required.

By Mark Smith

Loss Prevention Executive

Helen Barden

Senior Solicitor (FD&D)

FIND OUT MORE

- Navigating Decarbonisation website
- Proposed amendments to draft EU-ETS directive
- Understanding the EU ETS
- [Click here](#) to read the latest press release on the CC-Ocean project from MHI

Beware bunkering at Singapore OPL

Bunkering outside Singapore port limits may seem an attractive proposition for owners and charterers alike, but it is not without its risks.

Bunkering outside port limits (OPL) was once common practice. Though it may be less prevalent in recent times, bunkering operations continue to occur in these waters, and parties considering engaging in such operations should be aware of the issues that could arise.

Bunker standards and protection

To protect all parties engaged in bunkering within its jurisdiction, the Maritime Port Authority of Singapore (MPA) enforces a set of standards for bunkering. While bunkering OPL can save time and costs, shipowners can lose the protection automatically offered by the MPA's codes. Bunker suppliers operating at OPL may not operate to the MPA's high standards or participate in the accreditation scheme.

Higher risk locations

Bunkering in open waters at OPL can expose the vessel to additional risks, typically:

- **Maritime security** – the risk of piracy and robbery remains present in the Malacca Straits and the Singapore Strait. In 2021, there were 49 reported incidents in the Singapore Strait alone.
- **Weather and sea conditions** – this can increase the risk of damage to both the receiving vessel and the bunker barge as well as threat of a bunker spill.
- **Collisions** – bunkering in busy waters introduces an increased risk of contact with another vessel.

Disputed jurisdictions

Some sea areas outside Singapore port limits are the subject of territorial disputes. In the event of an incident or casualty while bunkering at Singapore OPL, costs and responsiveness can be impacted by uncertainties and conflicts over which country has jurisdiction in the matter.

Illegal anchoring

Malaysia and Indonesia enforce restrictions on unauthorised or illegal anchoring and bunkering in the waters they claim.

Both countries have detained ships alleged to have been engaged in such activities in their waters. Shipowners have been fined or forced to pay significant amounts to obtain the release of their vessels, potentially after significant delays, and in circumstances where the legitimacy of the demand/ payment is sometimes unclear - which can create difficulties for the Club when asked to reimburse them.

Take precautions

When considering bunkering at Singapore OPL or ordered to do so by a charterer, consider the risks involved in doing so outside the scope of the MPA's codes of practice.

Where a charterer orders, or a bunker supplier proposes, bunkering at a specific position at Singapore OPL, the Owner should, provided it is able to do so under the terms of the relevant charterparty, resist doing so unless provided with proof in the form of an official circular or notice issued by the Malaysian or Indonesian maritime authorities confirming that the nominated position is in an area that is authorised for bunkering operations.

By Peter Scott
Senior Executive
(Claims)



FIND OUT MORE

North Members requiring further information should approach their usual P&I or FD&D contact.

- Singapore bunkering standards
- North news article: Indonesia – Vessel detentions
- North news article: Malaysia Targets Anchoring Vessels with 'Operation Jangkar Haram'

Biofouling: Countries getting tough on clean hull requirements



More countries are taking steps to tackle biofouling from ships, as Australia introduces new requirements in 2022.

New requirements for managing biofouling on international vessels arriving in Australia will begin on 15 June 2022. This follows the implementation of the New Zealand Craft Risk Management Standard (CRMS) in 2018.

Biofouling

The transfer of invasive aquatic species – typically microorganisms, plants, algae and animals – to new environments via ships has been identified by the International Maritime Organization (IMO) as a major threat to the world's oceans and to the conservation of biodiversity.

The main routes for these invasive species are through ballast water transfer and biofouling. Ballast water management is now subject to international legislation through the IMO Ballast Water Management Convention, which requires most vessels to treat their ballast water.

Biofouling, which is the accumulation of unwanted biological material on submerged surfaces (e.g. the ship's hull, sea chests, appendages etc.) is not currently subject to international legislation. This leads to some countries introducing their own domestic legislation to prevent this method of transfer and make 'clean hulls' a requirement for entry into their waters.

New Zealand

The Craft Risk Management Standard (CRMS) came into force on 18 May 2018. This mandatory 'clean hull' requirement applies to vessels entering NZ territorial waters and non-compliance can lead to expulsion.

Before entering NZ territorial waters, the operator must submit the following:

- Advanced Notice of Arrival.
- Biofouling and Ballast Water Declaration.
- Master's Declaration.
- Verifiable evidence that one of the three management options to meet the biofouling standard have been completed:

1. Carry out hull cleaning within 30 days of arrival.
2. Provide evidence of continual hull maintenance in accordance with best practice (e.g. antifouling certificate, biofouling management plan, biofouling record book, report from last hull cleaning).
3. Book an appointment to haul out a vessel at an approved facility with 24 hours of arrival.

- Details about the vessel's antifouling coating (AFC) such as date of last renewal, certificate of treatment and service life.
- Intended length of stay within NZT and the places the vessel intends to visit.
- Whether a Biofouling Management Plan (BFMP) and Biofouling Record Book (BFRB) (or any other forms of records) are kept.
- Whether the vessel has spent extensive time idle or extended periods mainly stationary in a single location.

This information is used by the Ministry for Primary Industries (MPI) to carry out a biofouling risk assessment, the rating of which determines the level of verification that MPI Quarantine Officers will carry out.

Australia

From 15 June 2022, vessel operators must provide information on the vessel's biofouling management prior to entering Australian territorial seas. This information will need to be reported through the **Maritime Arrivals Reporting System (MARS)**.

The information will then be used to target vessel interventions. Vessel operators will receive less intervention for biofouling if they comply with one of the following three accepted biofouling management practices:

- Implementation of an effective biofouling management plan; or
- Cleaning of all biofouling within 30 days prior to arriving in Australian territory; or

- Implementation of an alternative biofouling management method pre-approved by the Australian Government's Department of Agriculture, Water and the Environment.

A vessel operator that has not applied one of the three accepted biofouling management practices will be subject to further questions and assessment of the biosecurity risk associated with biofouling on the vessel.

The new requirements will be phased in. From 15 June 2022 to 15 December 2023 an 'education first' approach will be taken. However, powers under the Biosecurity Act 2015 will be used to manage unacceptable biosecurity risks associated with biofouling.

California

The California State Lands Commission (SLC) Marine Invasive Species Program (MISP) applies to vessels 300 GT and above and are capable of carrying ballast water.

Funded through a \$1,000 fee on qualifying vessel voyage arrivals, the biofouling regulations require:

- Developing and maintaining a Biofouling Management Plan.
- Developing and maintaining a Biofouling Record Book.
- Mandatory biofouling management of the vessel's wetted surfaces.
- Mandatory biofouling management for vessels that undergo an extended stay in the same location (45 or more days).

An Annual Vessel Reporting Form (AVRF) must be submitted once per calendar year and at least 24 hours prior to a vessel's first arrival at a California port. The AVRF must be submitted through the web-based platform www.MISP.IO.

International Guidelines

The above domestic biofouling regulations are largely aligned with the **IMO's 2011 Guidelines for the Control and Management of Ships' Biofouling** to

Minimize the Transfer of Invasive Aquatic Species.

The guidelines provide practical guidance on measures to minimize the risk of transferring invasive aquatic species from ships' biofouling through the implementation of biofouling management practices, including the use of anti-fouling systems and other operational management practices.

Central to this, is the ship-specific Biofouling Management Plan. This includes details of the anti-fouling systems, hull

locations susceptible to biofouling, schedule of planned inspections, repairs, maintenance and renewal of anti-fouling systems, and the recommended operating conditions suitable for the chosen anti-fouling systems.

The plan should be accompanied by a Biofouling Record Book, showing details of all inspections and biofouling management measures carried out.

By Alvin Forster
Loss Prevention Executive

FIND OUT MORE

- [The IMO guidance on biofouling](#)
- [California Marine Invasive Species Program \(MISP\)](#)
- [Australian Biofouling Regulations](#)
- [New Zealand CRMS](#)
- [Template for Biofouling Management Plan from the Institute of Marine Engineering, Science and Technology \(IMarEST\)](#)

Introducing the human element into risk assessments



The way in which we carry out risk assessments is well established, but does it adequately assess the human element?

Risk assessments are a fundamental part of safety management. Despite often being seen as a hindrance to 'proper' work or being too long-winded and bureaucratic, when done properly by people who understand risk, they are an invaluable tool in safe working on board vessels.

But the process for risk assessments is often limited to considering only the physical elements of the task in hand. Should we now pay more attention to human performance and how this impacts the overarching risk?

The traditional risk assessment process

The process follows a well-trodden path. But it's useful to revisit this, as we can lose sight of what risk assessments really mean. Some risk assessment processes can become over-complicated. Also, crew may be over-reliant on generic risk assessments without appreciating they are the starting point. There is also the danger that the process becomes centralised and the crew on board become detached from the process.

Think: What is the job in hand? What can go wrong? This is the **hazard**. A hazard is something that can cause you, others, or the vessel harm

Think: What is the likelihood of it going wrong?

Think: If it does go wrong, how harmful could it be to me, others, or the vessel?

Think: What can I do about this? How can I prevent it or make it less harmful?

Think: Is it now safe to do the job? Is the risk now acceptable?

A high chance of something bad happening coupled with a high level of harm would clearly be an unacceptable risk. Something will have to be done. The steps taken to lower the risk are commonly referred to as control measures and can be used to form the basis of a work procedure or job checklist.

It's important to get these control measures right and ensure that they are reasonable and practical. The cost and manpower needed should be proportional to the benefit they bring. If they're over the top,

then crew are likely to work around them just to get the job done, potentially resulting in the job becoming more dangerous.

Bringing in the human element

Quite often, the last thing we want is for someone to introduce an additional step to a process. It screams "more work" or "more paperwork", but this is a simple question to be asked during the risk assessment process:

Think: How could my **performance or condition** increase the risk?

We already consider someone's competency when carrying out a risk assessment (i.e., whether they are trained to do the task), but this process now introduces the influence of human performance. When we consider the much-repeated claim that 'human error' is behind the vast majority of injuries and incidents (**see our previous article on why it isn't a root cause**), then why isn't this introduced at the risk assessment phase?

When things go wrong, and it is attributed (rightly or wrongly) to 'human error', it often involves a 'fault' in someone's decision making. The question must be asked: "Why did that particular decision make sense to them at that time?". A person's decision-making process is strongly influenced by many factors, some relating to their physical and mental condition at that time. If these human performance factors are considered before carrying out the task, it creates the opportunity to do something about it and reduce the risk.

Let's strip this back to basics. Everyone carries out risk assessments all the time without even knowing it. Crossing the road? You assess the risk and then you decide how, where and when it is safe to cross.

Now think about your condition or state of mind. Are you tired and sluggish? Are you in a hurry? Are you under stress and distracted?

This affects your risk assessment for crossing the road - you recognise how your state of mind or performance could impact a safe crossing and you alter your actions to suit.

Following this simple process can help anyone assess the risk when planning a task or when circumstances change in the middle of carrying out a task.

Learning from other industries

Although not directly related to task risk assessments, airline pilots use a simple system to make them think about their condition prior to flying. This helps them assess whether their performance could be affected, which in turn could impact the safe operation of the craft.

The mnemonic used is I'M SAFE:

- I** Illness (am I well?)
- M** Medication (am I taking any medication that could affect me?)
- S** Stress (am I feeling stressed or under pressure?)
- A** Alcohol (when did I last drink?)
- F** Fatigue (am I rested?)
- E** Eating (have I had the right nutrition?) or Emotion (is my head in the right place?)

Drill down into best practice

The offshore drilling industry also takes a progressive approach to work planning and risk assessments. Erik Roesen Larsen, VP and Head of HSSE at Maersk Drilling advised us that when planning a task in advance, they don't just assess the technical and operational aspects, they also consider the organisational factors, which encompasses the human factors.

Mr Larsen told us: "All too often fatigue, energy level, mental status etc., are being under evaluated - and to help us talk about that we use something called the full engagement model". This means that a person's physical, mental and emotional conditions are all considered when assessing the risks associated with carrying out a job.

By Alvin Forster

Loss Prevention Executive



Thanks to Erik Roesen Larsen, Maersk Drilling



FIND OUT MORE
United Kingdom Health & Safety Executive (HSE) - Human Factors in Risk Assessment

North in the news

Click here to read North's latest news online



Supporting Members Navigate Decarbonisation

The IMO has set targets for shipping to reduce greenhouse gases between now and 2050 in a phased approach. The 'Navigating Decarbonisation' area on our website looks at the goals in more detail and how the industry can accomplish them.

Learn more about decarbonising shipping at www.nepia.com/topics/navigating-decarbonisation

Where we tackle subjects such as:

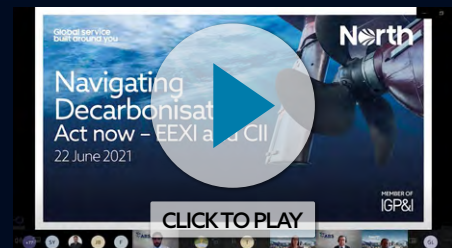
- IMO greenhouse gas emissions strategy
- Meeting the 2030 targets
- Meeting the 2050 targets
- Emerging technologies and alternative fuels
- Sea Cargo Charter and Poseidon Principles
- Details on national decarbonisation schemes
- Contractual and charterparty issues, including:
 - CO₂ reduction measures
 - CO₂ data collection clauses
 - Carbon trading

2023: Act Now for EEXI and CII

The Energy Efficiency Existing Ship Index (EEXI) and the Carbon Intensity Indicator (CII) requirements will enter into force from 2023. EEXI benchmarking of shipowner's fleets of vessels is required soon to allow technical improvements can be considered and the contractual aspects planned.

DISCUSSIONS BETWEEN CHARTERERS AND SHIPOWNERS NEED TO START NOW!

We recently combined forces with ABS to provide our Members with a webinar on the EEXI and CII. See the webinar [here](#).



WANT TO KNOW MORE?

Contact us at decarbonisation@nepia.com to see how we can support Members in making informed decisions.

Contact our Loss Prevention team on: loss.prevention@nepia.com

Current articles from *Signals* can be found online at: www.nepia.com/latest and back issues of *Signals* are available online at: www.nepia.com/latest/publications/newsletters/

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