



Signals

NEWSLETTER

NORTH 
SERVICE, STRENGTH, QUALITY

Welcome...

to the New Year and the January edition of *Signals*. The newsletter provides information relating to loss prevention and other topical issues and examines the implications and consequences for ship operators and seafarers.



IN THIS ISSUE

This edition of *Signals* addresses a variety of issues including crew, safe navigation, the environment and bills of lading.

The health and welfare of seafarers is a high priority for ship operators and this is reinforced by the Maritime Labour Convention which comes into force in August 2013. North has published a new loss prevention briefing about the convention, and an article in this issue highlights the importance of ensuring crew contracts incorporate the requirements of the convention. A related article stresses the importance of carrying out enhanced pre-employment medicals to safeguard seafarers' health.

Issues of safe navigation are addressed using a case study on avoiding collisions, which accompanies the publication of North's new loss prevention guide on the subject.

Issue 90: January 2013

LOSS PREVENTION NEWSLETTER
FOR NORTH'S MEMBERS

Safe navigation can also be improved by making use of data from voyage data recorders (VDR) for analysis and training purposes, as well as using it for evidence in the event of an incident. This can be enhanced by fitting VDR equipment with extended memory to save data much longer than the mandatory 12 hour period.

Environmental topics discussed in this edition include disposing of cargo residues from hold cleaning, particularly in the light of the latest amendments to Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL) relating to disposal of garbage. Also discussed is the approaching introduction of new regulations for discharges in the USA under the vessel general permit programme.

Two bill of lading issues are examined; the first is about the factors to consider when Members are asked to agree to carry cargo under an *ad valorem* bill of lading. The second provides an overview of the legal status of electronic bills of lading and the P&I clubs' position with regard to cover. We hope you find these topics and the others covered in this edition of *Signals* interesting and useful.

NEW GUIDE TO AVOIDING COLLISIONS

Collisions between ships keep occurring despite the ever-increasing sophistication of navigation and collision avoidance systems available to watchkeepers. To address this issue, North has published a new guide entitled *Collisions: How to avoid them*. The guide focuses on the 12 rules in the International Regulations for Preventing Collisions at Sea (COLREGs) that North believes are the key to collision avoidance and which it frequently sees misinterpreted and misapplied when collisions occur.

A copy of the new guide is enclosed with this issue of Signals (for appropriate entered vessels). An electronic version of the guide can be viewed on the Club's website:

www.nepia.com/loss-prevention/publications-and-guides/guides

PAGES 2-4:
SHIPS

PAGE 5:
PEOPLE

PAGES 6-7:
ENVIRONMENT

PAGE 8:
CARGO

PAGES 8-9:
LEGAL

PAGE 10:
REGULATION

PAGES 10-11:
LOSS
PREVENTION

PAGE 12:
DISCLAIMER

MAKING BETTER USE OF VOYAGE DATA RECORDERS



There have been many reported incidents of lost, corrupted or unintelligible data from voyage data recorders (VDR), which in turn make it difficult for ship operators to defend themselves following an incident or alleged incident at sea.

This article reviews how common VDR problems can be readily overcome – and it also suggests how VDR data can be used more proactively to provide significant training and operational benefits.

Avoiding Data Being Overwritten

One common problem is that if no-one remembers to save VDR data until more than 12 hours after an incident, or an allegation that an incident has occurred, the data will normally have been overwritten.

Most VDR equipment can be fitted with extended memory at very reasonable cost. External memory devices – such as voyage data capture systems (VDCS) or portable back-up boxes (PBB) can extend the memory capacity from the mandatory 12 hours to 90 days or even one year's worth of data. A 12 month portable back-up box that would fit many VDRs is available for less than US\$3,000.

Once it becomes known that ships can recover data from up to 12 months ago, it might be that speculative claims for alleged collisions or damage to property notified after the well known 12 hour limit of standard equipment become less common or defensible.

Furthermore, some voyage data capture systems can be configured so that data can be remotely downloaded in the event of an incident. This means that investigations can start while the ship is still at sea, saving the delay and costs of requiring an engineer to download the data at the next port of call. Equipment can also be set up to transmit the data for recording ashore.

Ensuring Data is Not Corrupted

If VDR data is only ever recovered after an incident, it will be too late to find out that the data feeds were not connected properly, or that the data appears to record but is actually corrupted on playback, or that the data is saved but then lost on transfer.

There are companies offering automated routine analysis of VDR data to ensure that the system is operational. This can be done remotely as described above or manually, but the key factor here is not to develop a reactive approach to VDR data.

Making Proactive Use of Data

It apparently took the aviation industry 20-30 years fully to appreciate the benefits of having flight data recorder data routinely analysed. The marine industry can benefit from this experience by appreciating early on that, in addition to safety related benefits, using VDR data proactively can provide significant training and operational benefits.

For example, use of data to replay port entry on a shipboard computer can be used in training and passage planning. Engine movements and wheel-over positions can be noted and transferred to a chart, and the bridge team can run personal computer based 'fly through' exercises so that they can visualise arrivals and departures.

Some companies have already identified major differences in berthing and un-berthing techniques. For example, the use of many 'small' engine and rudder commands may put a load on the systems and in fact be too short to have any effect. Re-training can be used to improve ship-handling technique and reduce wear and tear.

Improving Voice and Data Input

Providing additional feeds and inputs to VDR can further improve the evidence, training and analysis nature of the data. Modifications over and above the statutory requirements include additional bridge wing microphones and repositioning of microphones to avoid interference or improve reception.

Providing more than one radar input to the VDR can ensure data will be available following an incident even if the primary data input radar had been switched off.

Recommendations

A proactive approach should be adopted to the use of VDR, the data it records and associated procedures including:

- Extending the recording of data beyond the mandatory 12 hours.
- Implementing regular checks to ensure the validity of the data.
- Remote access and/or transmission of the data for analysis and recording.
- Regular assessment and analysis of the data for operational and training use.

The Oil Companies International Marine Forum (OCIMF) has published a paper entitled Recommendations on the Proactive Use of Voyage Data Recorder Information, which is available from its website: www.ocimf.com/Library/Information-Papers

NEW TANK COATING STANDARDS



There have been significant changes in the application of ballast tank coatings in the last few years following adoption of the International Maritime Organization's (IMO) Resolution MSC.215(82) 'Performance standard for protective coatings for dedicated seawater ballast tanks in all types of ships and double-side skin spaces of bulk carriers' in 2006.

The International Convention for the Safety of Life at Sea (SOLAS) has been amended to include the standard's requirements and the standard is now mandatory for all applicable vessels delivered on or after 1 July 2012.

A similar standard for coating crude oil tanker cargo tanks was adopted by IMO Resolution MSC.288(87) 'Performance standard for protective coatings for cargo oil tanks of crude oil tankers' in 2010. The first step of implementation began on 1 January this year, with SOLAS amended to include a new regulation in Chapter II-1, Regulation 3 (see IMO Resolution MSC.291(87)).

Similar Requirements

The standards for ballast and crude oil cargo tanks are very similar, really only differing in test criteria. They both aim to ensure that applied coatings remain in a good condition for a minimum of 15 years. The definition of 'good' is detailed in IMO Resolution A.744(18) and is further described as 'only minor spot rusting' in International Association of Classification Societies guidelines.

To ensure a 15-year lifespan, the standards detail requirements for the following principal processes in the application and maintenance of the coating:

- **Surface preparation** – steel to be blasted to Swedish Standard SA 2.5, kept clean and edges ground.
- **Coating application** – epoxy-based coatings to be used, with a light coloured top-coat to facilitate future inspections. Normally coating to be applied by airless spray gun but can be brush-applied by 'stripe coats' at changes of section, welds and hard to access areas.



Alvin Forster
Risk Management Executive

- **Coating quality** – coating system and materials must be type approved and a suitably qualified coating inspector must be on site to monitor the process and carry out tests accordingly, such as dry film thickness and adhesion.
- **Documentation** – a coating technical file must be maintained and remain with the vessel throughout its life. As well as documenting the application, the file should contain details of any re-coatings and repairs.

Cargo Tank Standard

The catalyst for the cargo tank coating standard was as a result of investigations into pitting corrosion found on a significant number of double-hulled crude oil tankers. Accelerated corrosion was noted at cargo tank bottom-plates and at the underside of the deck plating in the upper tank area, and the cause was attributed to aggressive conditions due to the thermal barrier created by the double-hull structure.

As a result, the new standard only requires coating at the top and bottom of crude oil cargo tanks, with a small depth down the sides, and the remainder of the tank is allowed to remain as bare steel. This differs to the coating requirements for ballast tanks, where the entire internal surface must be coated. However, if the cargo tank is manufactured from corrosion resistant materials, this is recognised as an alternative to a coating system.

The cargo tank standard will be applicable to newly constructed crude oil tankers greater than 5,000 DWT where the building contract is placed on or after 1 January 2013 or, in the absence of a building contract, the keels are laid (or are at a similar stage of construction) on or after 1 July 2013 or delivery is on or after 1 January 2016.



Eamon Moloney
Senior Executive (Claims)

NEW GUIDE ON AVOIDING COLLISIONS

Admiralty claims – collisions, groundings and property damage – are the most expensive of marine accidents insured by North and the costs of these claims is rising steeply.

Human error is a factor in such incidents despite the ever-increasing sophistication of navigation and collision avoidance systems available to watchkeepers. The Club has thus published a new loss prevention guide for seafarers entitled *Collisions: How to avoid them*.

Focus for Discussion

It should be noted that the new guide is not a text book on the International Regulations for Preventing Collisions at Sea (COLREGs).

It is intended to provide a focus for discussion on the 12 rules that North believes are the key to collision avoidance and which it sees misinterpreted and misapplied time and time again when collisions occur. In particular the guide emphasises the key concept of the *risk of collision*, which underlies all of the COLREGs.

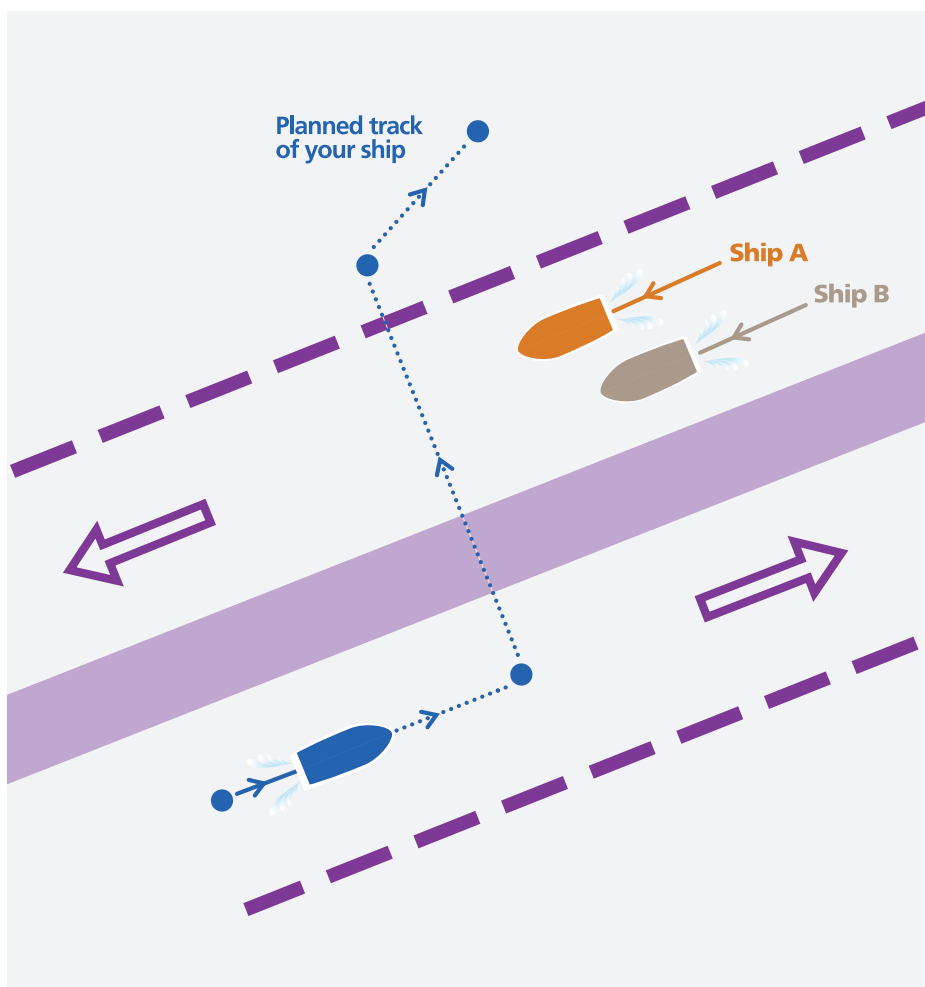
Sharing Experience

Seafarers learn best from their own experience and from the experience of those around them. North believes there is no better way of understanding the COLREGs than by sharing experiences; whether in bridge team meetings, at on board training sessions or in the mess room.

The new guide is designed to encourage discussion between all watch keepers, from cadets to masters and inspecting officers. It asks questions on the rules but, importantly, it does not give answers – those are for watchkeepers to discuss, identify and learn from.

A copy of North's new guide *Collisions: How to avoid them* is enclosed with this issue of *Signals* for all entered ships, and an electronic version of the guide can be viewed on the Club's website: www.nepia.com/loss-prevention/publications-and-guides/guides

COLLISION CASE STUDY



There is a series of Collision Case Studies and plotting sheets included in North's new loss prevention guide which are intended to promote wide ranging discussions on all aspects of collision avoidance.

Each case study is set out as simply as possible, with the minimum information necessary to describe a developing situation. It also asks a number of questions, but the answers are not provided. The intention is for the questions to be discussed among members of the bridge team so they can agree on their response.

As well as the six case studies in the guide, additional case studies will be published in *Signals* from time to time and the first of these is provided here.

Scenario

You are the watchkeeper on a ship following the north-east lane of a traffic separation scheme. You need to cross the south-west lane and your passage plan is marked on the chart (see above). Your speed is 15 knots.

As you approach your alteration of course, you identify two targets of interest following the south-west lane. Target A's speed is 18 knots and target B's speed is 16 knots.

Questions

1. Is anything wrong with your ship's planned track? You can use the plotting sheets at the end of the *Collisions: How to avoid them* guide to sketch your plan to cross the traffic separation scheme safely.
2. Identify, in the correct order, the steps you must take to execute the manoeuvre safely.
3. Would your answers be any different if it was night time?

MARITIME LABOUR CONVENTION: ARE YOU READY?



Maria Laffey
Senior Executive (Claims)

As previously reported in *Signals*, the Maritime Labour Convention (MLC) 2006 will come into force on 20 August 2013 as the requirements for ratification have now been met. It will apply to all commercial vessels which fly the flag of a signatory State or which enter a signatory State port from the day the convention enters into force.

Whereas MLC 2006 lays down minimum standards which should be easily met by most of North's Members, it also contains new certification, inspection and record keeping requirements.

Members are therefore advised to ensure that they have carefully reviewed the Convention and have plans in place to ensure compliance. They should also contact their Flag States and classification societies for guidance.

Certificates and Declarations

Vessels of 500 GT or more, trading internationally and from a signatory State flag will need a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance

on board. Signatory Flag States will inspect their registered ships to establish and certify compliance, and will ensure ship owners have plans for ongoing compliance.

In addition, all vessels irrespective of flag may be subject to detailed inspections by authorised inspectors in the ports of a signatory State.

The Convention will therefore have a global impact and its Port State control enforcement mechanism will mean there is no advantage being registered in a non-ratifying State. On the contrary, ships flying non-signatory flags may find they are subject to greater vigilance and more thorough inspection as they will not have the requisite documentation on board.

Crew Contracts

One of many matters Members need to address is crew contracts of employment.

The Convention lays down specific minimum requirements which must be incorporated into crew contracts from August 2013. This includes requirements relating to medical treatment costs, sickness wages, repatriation, burial costs and compensation following disability or death of a seafarer.

Notice periods, wages, hours of work or rest and annual leave are also subject to specific requirements.

The Club has produced a Loss Prevention Briefing that provides guidance to Members, which can be accessed on the Club's website: www.nepia.com/loss-prevention/publications-and-guides/loss-prevention-briefings

CHECK YOUR CREW CONTRACTS

It is vital that Members understand and trust their crew contracts to ensure they are not exposed to any unnecessary or excessive liabilities. Crew employment arrangements can be highly complex, often involving manning agents, crew managers and other entities.

North regularly helps Members protect their position when arranging and drafting new crew contracts and collective bargaining agreements. The Club can also help Members to identify any problems with contracts that have already been negotiated and signed.

North's P&I cover for Members includes protection against liabilities arising from

seafarers' terms of employment, which should be approved by the Club. Members are thus reminded to submit their crew contracts to the Club for review if they have not already done so.

Members who require further information or wish to submit their crew contracts of employment for review should contact Maria Laffey at the Club. Email: maria.laffey@nepia.com



ENHANCED MEDICALS BENEFIT EVERYONE

Members are reminded that North's enhanced pre-employment medical schemes, such as those it operates in the Philippines and Ukraine, benefit crew members as well as ship operators.

For example, a 45 year old master who had a standard pre-employment medical in February 2010 sadly died on board ship in February 2011 from advanced left coronary arterial disease. The disease would not have developed to that extent in 12 months so it would almost certainly have been evident during the medical.

It is very likely that if the master had been examined to North's enhanced pre-employment medical standards he would still be alive today, and the ship operator would not have been faced with a very large claim.

Proven Statistics

Indeed, many of the most expensive crew illness claims handled by the Club would almost certainly not have happened – and the crew members and their families not have suffered as much – if the crew members involved had undertaken enhanced medicals before going to sea.

Answering two simple questions is usually sufficient to demonstrate whether a crew illness case could have been prevented or mitigated by an enhanced pre-employment medical:

- Did the illness result from a pre-existing condition?
- Was only a standard pre-employment medical carried out?

If the answer to both questions is yes, it is very probable that an enhanced pre-employment medical would have helped. However, this is only likely to be the case if the enhanced medical met the standards laid down in North's guidelines and was carried out by a reliable clinic.

Information about North's pre-employment medical standards, selection of clinics, and audited schemes in the Philippines and Ukraine is available from the Club's website: www.nepia.com/loss-prevention/publications-and-guides/Pre-Employment-Medicals.php

NEW GARBAGE DISPOSAL RULES

New garbage disposal rules came into force in July 2012, which greatly limit the dumping of garbage at sea. With a few very specific exceptions, they reverse the historical presumption that most garbage can be discharged at a suitable distance offshore.

MARPOL Annex V

Under Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL), garbage includes all kinds of food, domestic and operational waste generated during the normal operation of a vessel and liable to be disposed of continuously or periodically. Annex V prohibits the disposal of plastics anywhere into the sea, and severely restricts discharge of other garbage from ships into coastal waters and defined 'special areas'.

The special areas established under Annex V are the:

- Mediterranean Sea
- Baltic Sea area
- Black Sea area
- Red Sea area
- Gulfs area
- North Sea
- wider Caribbean region
- Antarctic area.

On 1 July 2012 the International Maritime Organization (IMO) accepted amendments to MARPOL Annex V, and issued guidelines to their implementation under resolutions MEPC.201(62) and MEPC.219(63). Under the revised Annex V, discharge of all garbage is now prohibited, except as specifically permitted in Regulations 3, 4, 5 and 6 of the Annex (see table on page 7). This reverses the historical presumption that garbage may be discharged into the sea based on the nature of the garbage and defined distances from shore. Regulation 7 of the Annex allows a limited number of exceptions in emergency and non-routine situations.

Generally, discharge is restricted to food wastes, identified cargo residues, animal carcasses and identified cleaning agents, additives and cargo residues entrained in hold wash water that are not harmful to the marine environment. It is recommended that ships use port reception facilities as the primary means of discharge for all garbage.

Cargo Residues from Solid Bulk Cargoes

Cargo residues are included in the definition of garbage under Annex V, Regulation 1.9, and may be discharged in accordance with Regulations 4 and 6 as long as they are not considered harmful to the marine environment.

Cargo residues are considered harmful to the marine environment if they are residues of solid bulk substances which are classified according to the criteria of the United Nations Globally Harmonized System for Classification and Labelling of Chemicals.

Solid bulk cargoes should be classified and declared by the shipper as to whether or not they are harmful to the marine environment. Such declaration should be included in the information required in section 4.2 of the International Maritime Solid Bulk Cargoes (IMSBC) Code.

Prior to loading, Members are advised to liaise with shippers and ports of discharge to determine whether the cargoes they are carrying have been classified as harmful to the marine environment under MARPOL Annex V and if so, that suitable reception facilities are available.

Cargo residues that are harmful to the marine environment may require special handling not normally provided by reception facilities. Ports and terminals receiving such cargoes should have adequate reception facilities for all relevant residues, including when contained in wash water.

Reception Facilities

Under Regulation 8 of Annex V, governments must ensure that adequate port reception facilities for garbage from ships are provided and should facilitate and promote their use.

To ensure timely transfer of large quantities of ship generated garbage to port reception facilities, it is essential for ship operators or their agents to make arrangements for garbage reception well in advance. At the same time, discharge needs should be identified in order to make arrangements for garbage requiring special handling or other necessary arrangements.

Advice should be provided to the port of the type of garbage to be discharged and whether it is separated and the estimated amounts.



Andrew Glen
Manager

The port may have special discharge requirements for garbage such as food waste and garbage that may carry certain disease or pest organisms, dunnage, batteries, medicines, outdated pyrotechnics or unusually large or heavy items.

Intercargo, BIMCO and the International Chamber of Shipping submitted a paper to the IMO in July 2012 expressing concern at survey findings that suggested ports and terminals receiving cargoes declared as harmful to the marine environment under MARPOL Annex V did not have adequate port reception facilities for cargoes residues, including cargo hold washing water containing the remnants of any dry cargo material.

Ship operators should inform their Flag State of ports in countries party to Annex V which do not have adequate port reception facilities for garbage. This can provide a basis for advising responsible governments of possible problems and calling the IMO's attention to possible issues of compliance. A suitable reporting format is reproduced in IMO circular MEPC.1/Circ.671, along with the procedure for submitting and handling such reports.

Regulation 6.1.2 of the Annex makes allowance for discharge of cargo residues in a special area under strict conditions if there are no adequate reception facilities at either the port of departure or port of destination and both ports are in the same special area. However, the residues must not contain substances considered harmful to the marine environment.



Summary of the Restrictions to the Discharge of Garbage into the Sea

Garbage type ¹	All ships except platforms ⁴		Offshore platforms located more than 12 nm from nearest land and ships when alongside or within 500 m of such platforms ⁴
	Outside special areas	Within special areas	
	Regulation 4 (distances are from the nearest land)	Regulation 6 (distances are from nearest land or nearest ice-shelf)	
Food waste comminuted or ground ²	≥3 nm, en route and as far as practicable	≥12 nm, en route and as far as practicable ³	Discharge permitted
Food waste not comminuted or ground	≥12 nm, en route and as far as practicable	Discharge prohibited	Discharge prohibited
Cargo residues ^{5,6} not contained in wash water	≥12 nm, en route and as far as practicable	Discharge prohibited	
Cargo residues ^{5,6} contained in wash water		≥12 nm, en route and as far as practicable (subject to conditions in regulation 6.1.2)	Discharge prohibited
Cleaning agents and additives ⁶ contained in cargo hold wash water	Discharge permitted	≥12 nm, en route and as far as practicable (subject to conditions in regulation 6.1.2)	Discharge prohibited
Cleaning agents and additives ⁶ in deck and external surfaces wash water		Discharge permitted	
Animal carcasses (should be split or otherwise treated to ensure the carcasses will sink immediately)	Must be en route and as far from the nearest land as possible. Should be >100 nm and maximum water depth	Discharge prohibited	Discharge prohibited
All other garbage including plastics, synthetic ropes, fishing gear, plastic garbage bags, incinerator ashes, clinkers, cooking oil, floating dunnage, lining and packing materials, paper, rags, glass, metal, bottles, crockery and similar refuse	Discharge prohibited	Discharge prohibited	Discharge prohibited

Notes

- When garbage is mixed with or contaminated by other harmful substances prohibited from discharge or having different discharge requirements, the more stringent requirements shall apply.
- Comminuted or ground food wastes must be able to pass through a screen with mesh no larger than 25 mm.
- The discharge of introduced avian products in the Antarctic area is not permitted unless incinerated, autoclaved or otherwise treated to be made sterile.
- Offshore platforms located 12 nm from nearest land and associated ships include all fixed or floating platforms engaged in exploration or exploitation or associated processing of seabed mineral resources, and all ships alongside or within 500 m of such platforms.
- Cargo residues means only those cargo residues that cannot be recovered using commonly available methods for unloading.
- These substances must not be harmful to the marine environment.

USA TIGHTENS DISCHARGE RULES

The US Environmental Protection Agency's (EPA) existing programme of Vessel General Permits for discharges incidental to normal operations will be replaced by a more rigorous regime on 19 December 2013.

The new programme will apply to all vessels of 300 GT or above within three nautical miles of the US coastline. There is a separate scheme for commercial vessels below 300 GT.

Key clarification and amendments to earlier drafts of the permit include:

- Ship operators are required to submit an annual report for each vessel by 28 February 2014.
- All reporting must be done electronically.
- For cargoes or materials which might wash overboard or dissolve as a result of contact with rain or spray, or which may be blown overboard, owners must minimise the amount of time these items are exposed to such conditions.
- General training is required for those who actively take part in the management of incidental discharges.
- Vessel operators must minimise deck washing while in port. Before deck washing, crew must sweep clean and remove all existing debris.
- Vessels using water from a public water supply as ballast must maintain a record of which public water supply they received and a receipt, invoice, or other documentation from the public water supply indicating that water came from that system.

The EPA also advises that in order to minimise production of "grey water", crew members should restrict the length of showers while in port.

Members are advised to monitor the EPA website carefully and to prepare now for implementation in December 2013.

A draft of the new permit and further details about requirements for implementation can be viewed at the EPA's website: <http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm>



UNDERSTANDING IMDG CODE REVISIONS

The International Maritime Dangerous Goods (IMDG) Code applies to all transport modes worldwide and is frequently amended to take account of ever changing national and industry needs. It is thus vital that ship owners understand and keep abreast of these revisions – not least to maintain their P&I cover.

Fifty Years of Development

Development of the IMDG Code dates back to the 1960 Safety of Life at Sea Conference. This recommended that governments should adopt a uniform international code for the transport of dangerous goods by sea to supplement regulations in the International Convention for the Safety of Life at Sea (SOLAS).

A working group of the International Maritime Organization's (IMO) Maritime Safety Committee (MSC) began preparing the code in 1961, in close co operation with the United Nations' (UN) Committee of Experts on the Transport of Dangerous Goods. It covered matters such as packing, container traffic and stowage – with particular reference to the segregation of incompatible substances.

Since adoption in 1965, the IMDG Code has undergone many changes – both in appearance

and content – to keep pace with the ever changing needs of industry.

Amendments to the Code

Amendments which do not affect the principles upon which the Code is based may be adopted by MSC, allowing IMO to respond to transport developments in reasonable time. Amendments to the IMDG Code originate from two sources: proposals submitted directly to IMO by member States, and amendments required to take account of changes to the UN Recommendations on the Transport of Dangerous Goods, which sets the basic requirements for all transport modes.

Amendments to the UN recommendations are made on a two-yearly cycle. Approximately two years after their adoption they are adopted by the authorities responsible for regulating the various transport modes. In that way a basic set of requirements applicable to all modes of transport is established and implemented, thus ensuring that difficulties are not encountered at inter modal interfaces.

The IMDG Code 2010 edition, incorporating amendment 35-10, has been in force since 1 January 2012. However, from 1 January 2013 amendment 36-12 can also be used

on a voluntary basis before becoming mandatory on 1 January 2014.

Carriage of Dangerous Goods

The IMDG Code lays down basic principles, detailed recommendations for individual substances, materials and articles, and a number of recommendations for good operational practice. These include advice on terminology, packing, labelling, stowage, segregation and handling, and emergency response action.

In general, P&I cover requires that dangerous goods are carried strictly in accordance with all statutory requirements, including the IMDG Code, and only if permitted by the vessel's Document of Compliance as required by SOLAS, Chapter II-2, Regulation 19.

The IMDG Code is available in hard copy, a fully searchable database on CD or as a download. Intranet and internet versions are also available. IMO provides information about how to obtain the IMDG Code and other IMO publications on its website: www.imo.org/Publications/Pages/Home.aspx



ELECTRONIC BILLS OF LADING

In the last few months North has received many enquiries, particularly from tanker operators, about electronic bills of lading. This article provides a brief overview of the legal status of electronic bills of lading, the currently available systems and P&I clubs' position with regard to cover.

Many people consider that paper bills of lading are not fulfilling one of the purposes of their existence. As a document of title, one of the primary functions of a bill of lading is to enable the rightful holder to demand and take delivery of the cargo.

The extensive use of letters of indemnity for delivery of cargo without production of an original bill of lading is evidence that paper bills of lading are not keeping up with the movement of cargo. As a result, instantly transmitted electronic bills of lading have started to be used as an alternative to the physical paper versions.

Electronic Trading Systems

However, there is no generally accepted trade definition of an 'electronic bill of lading'. Even the terminology used is not universally

accepted, with terms such as 'ebills' and 'electronic transport records' also being used. Though not accurate from a legal or technical point of view, the terms tend to be used interchangeably.

Until February 2010, the rules of all member clubs in the International Group of P&I Clubs specifically excluded all liabilities for cargo carried under electronic trading systems if the liabilities would not have arisen under a 'normal' paper system.

However, after having reviewed a number of electronic trading systems, the International Group agreed from 20 February 2010 to include cover for liabilities for cargo carried under electronic bills using either Electronic Shipping Solutions (ESS) or Bolero International Ltd trading platforms in accordance with Club rules. The review process is ongoing and more systems have been put forward for the International Group's consideration.

Closed Groups in Each System

Because there is no international convention for the use of electronic bills of lading, ESS and Bolero have each formed and manage a private closed group of participants who wish to trade on paperless terms. Participants of each system can be owners, charterers, banks, shippers, receivers, commodity traders, insurance companies, vessel agents and import/export authorities.

All participants enter into an agreement which regulates not only the use of the electronic bills of lading but also the participants' rights and obligations towards the rest of the group and its managers. Depending on the system used, participants may elect between English or US law and jurisdiction to resolve their differences.

To date there is no statistical evidence as to how many companies are actually using the services of the two systems.

Obstacles to Overcome

Further development of electronic bills of lading in the form of closed groups will require other obstacles to be overcome. For example, unlike their paper counterparts, which are universally accepted, electronic bills of lading cannot be considered for use in many parts of the world until suitable technology becomes available.

Also, though the proposed Rotterdam Rules anticipate the use of electronic bills of lading, they only extend to recognition and not setting out how they will actually function. Further amendment to the convention would be needed.

Further information about Electronic Shipping Solutions and Bolero International Ltd can be found from their respective websites: www.essdocs.com and www.bolero.net



BEWARE AD VALOREM BILLS OF LADING

An *ad valorem* bill of lading is one which has a value of the cargo declared on the face of it. The effect of the declaration, as provided in the Hague-Visby Rules, Article IV, Rule 5, is that the package or unit limitation stated in the rules does not apply.

As a result, if the cargo is lost or damaged, the carrier could be liable for an amount up to the declared value and potentially without insurance cover.

Legal Requirements

English and US law requires the process of forming an *ad valorem* bill of lading contract to be carried out in two stages, with the shipper stating the nature and value of the goods on the face of the bill of lading, and then the carrier agreeing to such a contract. In practice this means that the shipper has to notify its intention to the carrier before the cargo is loaded and the carrier has to agree to the shipper's request.

For there to be a valid agreement, the carrier must have been given the opportunity either to reject the cargo or to charge a higher freight rate. It is no use the shipper declaring a value on the draft bill of lading after the cargo has been loaded and the vessel has sailed, and then insisting that the master sign the bill as presented. The shipper cannot force the carrier to agree to an *ad valorem* contract at that stage and the master has the right to refuse to sign a bill with a value declared on it.

Effect on P&I Cover

The effect of *ad valorem* contracts on shipowners and operators is that, by agreeing and thereby voluntarily waiving their rights to rely on package limitation, they will prejudice their P&I cover. P&I cover extends only up to the Hague-Visby Rules package limitation figures. If a carrier agrees to an *ad valorem* contract, it should arrange separate cover for the additional risks agreed to.

The problem for ship owners and operators is that sometimes they can be held to be liable on an *ad valorem* basis when they had no intention of entering into such a contract.

Shippers' Rights

Under US law, shippers have to be given a 'fair opportunity' to declare the value of the cargo on the bill of lading. Various courts in the US have defined fair opportunity in different ways. It is generally accepted that there can be no fair opportunity without an indication from the carrier to the shipper that a choice of shipping rates exists, or that the shipper knew that a particular freight rate was tied to limited liability and that, by paying a higher freight rate, the shipper could enjoy a higher limit of liability.

If a US court finds that a shipper has not been given a fair opportunity, it is open to the shipper to argue that, had it been given the opportunity, it would have declared a higher value and paid a higher freight rate and that the ship owner, as carrier, is therefore not entitled to rely on limitation.

In other jurisdictions, a simple reference on the face of the bill of lading to a commercial invoice or letter of credit has been held to constitute a declaration of the value stated in that commercial invoice or letter of credit.

Advice for Members

If Members find themselves being held liable on an *ad valorem* basis, they may be able to try to recover from the shipper or from the charterer, depending on the terms of the charterparty. However, the ability in law to do so is not clear cut.

Members should, therefore, consider very carefully any request by a shipper to state a value or refer to a commercial document on the face of the bill of lading. If Members wish to assist a shipper by agreeing to an *ad valorem* bill of lading contract, they should immediately contact the Club which can assist in obtaining additional insurance to cover the additional risks.

Where Members do not wish to assist, they should remember that neither they or the master are under an obligation to include information about the value of the cargo or reference to other commercial documents on the bill of lading, and they are perfectly entitled to refuse to sign such a bill of lading.

If Members have any question concerning additional information being placed on the face of the bill of lading, they are encouraged to contact the Club immediately.

IRAN SANCTIONS UPDATE

On 15 October 2012 the European Union (EU) published two new measures extending the current sanctions against Iran. One is Regulation (EU) 945/2012, which extends the list of individuals and entities subject to the asset freeze under Annex IX of Regulation (EU) 267/2012. Most of the companies listed are involved in the oil and gas industries.

The other measure is Council Decision 2012/635/CFSP. The measures contained in this decision were implemented under EU Regulation 1263/2012 in December 2012. The regulations cover the following principal areas:

- Prohibition of the purchase, import or transport of natural gas from Iran.
- Prohibition of the sale, supply or transfer to Iran of graphite, and raw or semi-finished metals such as aluminium and steel, and software for integrating industrial processes, which is relevant to industries either controlled by the Iranian government or relevant to Iran's nuclear programme.

- Prohibition of the sale, supply or transfer to Iran and Iranian or Iranian-owned enterprises of key naval equipment and technology for ship building, maintenance or refit.
- Prohibition of the provision of flagging and classification services to Iranian oil tankers and cargo vessels.
- Prohibition of the supply of vessels designed for the transport or storage of oil and petrochemical products to Iranian persons, entities or bodies (or others transporting or storing Iranian oil or petrochemical products).
- Prohibition of the construction of new oil tankers for Iran or for Iranian persons or entities.
- Prohibition of transactions between EU banks and Iranian banks and financial institutions (unless authorised in advance by the relevant member State).

The International Group of P&I Clubs has produced answers to frequently asked questions that give an overview of the sanctions. These have been updated to reflect the latest developments.

Further information about Iran sanctions is provided in North's Loss Prevention Briefing which is available from the Club's website: www.nepia.com/loss-prevention/publications-and-guides/loss-prevention-briefings

Further information about the International Group of P&I Clubs, including answers to frequently asked questions about EU sanctions, is available from its website: www.igpandi.org/News+and+Information

Further information about sanctions, including a current list of all individuals and entities subject to EU sanctions, is available on the UK HM Treasury website: www.hm-treasury.gov.uk/fin_sanctions_currentindex.htm

NEW EU PASSENGER LIABILITY REGULATION



European Union (EU) Regulation (EC) No. 392/2009 on the liability of carriers of passengers by sea in the event of accidents came into force at the end of 2012.

Generally known as the 'Passenger Liability Regulation' (PLR), it is based on the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 as amended by the 2002 Protocol, and the IMO guidelines for implementation of the Athens Convention, adopted in 2006.

While the 2002 Protocol to the Athens Convention is not yet in effect, the PLR came into force on 31 December 2012. It is intended to lay down a harmonised regime of liability and insurance for the carriage of passengers by sea.

Insurance and Certification

Ships licensed to carry more than twelve passengers and registered in an EU or European Economic Area (EEA) member State – or entering or leaving an EU or EEA port – now have to maintain insurance which meets the requirements of the PLR.

They also have to carry appropriate certification onboard at all times issued by an EU or EEA State confirming that such insurance is in force. EU member States are also free to extend the scope of the Regulation to domestic sea-going voyages.

North's Members operating ships which may be affected by the PLR are advised to check insurance and certification requirements with their Flag State and member States of the EU or EEA where they operate. Members should also consult North's Club Circulars or their usual underwriting contact for the latest Club advice.

Further information about the PLR is available from the European Union's website: http://europa.eu/legislation_summaries/transport/waterborne_transport/tr0018_en.htm

Further information for Members about PLR insurance and certification requirements is provided in North's Club Circulars 2012/032 (24 September 2012) and 2012/039 (7 December 2012) which are available from the Club's website: www.nepia.com/publications/clubcirculars/listing

IMO UPDATE

New Solid Bulk Cargo Rules

The International Maritime Organization (IMO) Maritime Safety Committee adopted amendments to the International Maritime Solid Bulk Cargoes (IMSBC) Code at its 89th session in May 2011 under Resolution MSC.318(89).

The amendments include changes to a number of existing schedules and the inclusion of new cargo schedules. These amendments to the Code became mandatory on 1 January this year.

Lifeboat Release Mechanisms

The IMO Maritime Safety Committee also adopted amendments to chapter III on life saving appliances and arrangements of the International Convention for the Safety of Life at Sea (SOLAS) at its 89th session under Resolution MSC.317(89).

The amendments entered into force on 1 January this year. They require all ships to be fitted with lifeboat on-load release mechanisms in accordance with the International Life

Saving Appliances (LSA) Code not later than the first scheduled dry-docking after 1 July 2014, but not later than 1 July 2019.

New Emission Control Areas

The IMO Marine Environment Protection Committee adopted amendments to the International Convention for the Prevention of Pollution from Ships (MARPOL), Annex VI, Regulations 13 and 14, at its 62nd session in July 2011 under Resolution MEPC.202(62).

The amendments define specific portions of the coastal waters of Puerto Rico and Virgin Islands as designated emission control areas for limiting discharges of nitrogen oxides, sulphur oxides and particulate matter. The amendments entered into force on 1 January this year.

Ship Energy Efficiency Plans

The International Association of Classification Societies, in agreement with the IMO Marine Environment Protection Committee, has developed a unified interpretation for chapter 4 of MARPOL Annex VI requiring vessels to have a Ship Energy Efficiency Management Plan (SEEMP).

The unified interpretation states that a SEEMP is not required on an existing ship until a MARPOL Annex VI verification survey is carried out. The plan shall be verified on board not later than the first intermediate or renewal MARPOL Annex VI survey, whichever is sooner, after 1 January this year.



TALKING POINTS

We continue to add to our library of *Talking Points* which are produced with the aim of assisting discussion during safety meetings. We now have three *Talking Points* available:

- Grinding Disks
- Working at Height
- Means of Access

If you have any images that you think may be appropriate or *Talking Points* we would be pleased to receive them.

Electronic copies of *Talking Points* are available from the Club's website: www.nepia.com/loss-prevention/publications-and-guides/Talking-Points.php



TRAINING FOR THE PORT OF TYNE

In October 2012 North provided in-house training for the Board of the Port of Tyne, which is based just a few miles down-river from the Club's head office in Newcastle upon Tyne.

A team from North attended the port's headquarters to deliver presentations on the scope of P&I cover, including some background on the costs of claims, and claims issues relating to stevedores, ship damage to property, pollution, fines, cargo claims and unsafe ports and berths. The legal concepts were explained with some practical examples.

World Leading Port

The Port of Tyne is a world leader in handling wood pellet cargoes and has the most advanced facilities for this in Europe. It is also ideally placed to become a centre for both manufacturing and servicing the new offshore wind farms planned for the North Sea.

The port already handles over £10 billion worth of goods a year through its car, bulk, and container terminals, and over 650,000 passengers a year use its cruise and ferry terminal.

The port's 14 board members include Chairman, Sir Les Elton and Chief Operating Officer, Andrew Moffat.

NEW GUIDANCE ON LIQUID CARGO SAMPLING

North has published a new *Hot-Spots* information sheet to help Members defend bulk liquid contamination claims with robust sample evidence.

The Club deals with many contamination claims relating to bulk liquid cargoes. These often rely on samples, taken at the load port, to provide evidence to defend a ship operator's position. Sometimes – as a result of a poor sampling procedure, poor labelling, inadequate sealing or inappropriate or dirty sampling material – the claims cannot be properly defended.

Any bulk liquid cargo requires rigorous and comprehensive control measures to identify and minimise the effects of potential cargo contamination. A robust sampling regime enables an effective means of determining when or how any contamination may have occurred.

The Club's latest sheet in its *Hot-Spots* series, entitled *Liquid Cargo Sampling*, offers practical guidance on the sampling of oil cargoes and useful guidance on

labelling and storage. *Hot-Spots* are published as loss prevention tools and aim to provide practical hints and tips to help avoid incidents and claims.

A copy of *Liquid Cargo Sampling Hot-Spots* is enclosed with this issue of *Signals* for all appropriate entered vessels. An electronic copy of this and other *Hot-Spots* is also available from the Club's website:

www.nepia.com/loss-prevention/publications-and-guides/hot-spots.php

NORTH SPONSORS MARITIME LAW SEMINAR

North recently sponsored The Nautical Institute's biennial international seminar, entitled 'The Mariner and the Maritime Law – Managing Bridge Relationships', which took place on 9–10 November in Gateshead, UK.

Worldwide Attendance

Delegates from all over the world attended the event, which explored many aspects of managing a ship's bridge – from common failings through to recent developments in technology and training.

Experts from North and the shipping industry addressed topics such as bridge resource management in theory and practice, the use of electronic chart systems and the application of the International Regulations for Preventing Collisions at Sea.

There was an update too on *The Mariner's Role in Collecting Evidence Handbook*, which was jointly launched at the seminar in 2010 by The Nautical Institute and North.

New Collision Avoidance Guide Launched

North introduced a new loss prevention publication at this year's seminar entitled *Collisions: How to avoid them*. Copies are included with this edition of *Signals* for entered vessels.

The new guide highlights key collision avoidance rules and provides back-to-basics guidance for bridge watch keepers, which can then be discussed and practiced using example scenarios included in the guide.

For more information about *Collisions: How to avoid them*, please see page 4.



Andrew Kirkham
Risk Management Executive

NORTH'S SUPPORT OF MARINE EDUCATION CONTINUES

North continues to support the education of postgraduate students from the UK and around the world in marine insurance and law topics. Part of this support is provided through universities in England and Scotland.

University of Edinburgh

North has now been supporting the University of Edinburgh's school of law for several years by providing annual lectures on an introduction to ships and shipping for the honours and masters courses in international trade law. North's connection with Edinburgh comes via Dr Simone Lamont-Black, who worked for many years as lecturer in Newcastle before joining Edinburgh's law school.

Newcastle University

A total of 21 postgraduates successfully completed North's module on marine liability insurance and law at Newcastle University last year as part of their one year Master of Science degree in marine transport and management. In this, the tenth year of collaboration with the university, interest in the module has increased, with 32 students choosing the subject as an elective unit.



Ms Hsiao Mei Chiu, joint recipient of North's scholarship awarded to the most deserving student studying *Marine Transport with Management* at Newcastle University, with Simon Macleod from the loss prevention department.

2013 RESIDENTIAL TRAINING COURSES IN P&I INSURANCE

UK

North's highly successful annual residential training course in P&I insurance, based at historic Lumley Castle Hotel near the Club's head office in Newcastle upon Tyne, celebrates 21 years this summer. The event on 14-21 June will again provide delegates with a thorough grounding in the basic principles of P&I insurance. Over the years it has been constantly updated to reflect the changing shipping, claims and legal environments while remaining true to its key features of quality

teaching, delegate participation, hard work and networking.

For more information and to download the brochure, visit: www.nepia.com/loss-prevention/education-and-training/residential-training-course.php

Singapore

Members in the Asia Pacific region may recall that a very successful training course in P&I insurance was held in Singapore in 2011. The event will be repeated in October this year,

with dates to be confirmed. Members in the region may wish to attend this course as an alternative to the UK based course. Details will be published in due course.



Signals Search 34 ?

Questions

- 1 What information about the cargo is declared on an 'ad valorem' bill of lading?
- 2 What is intended to harmonise passenger liability?
- 3 What does North's latest guide help avoid?
- 4 What acronym describes standard for ballast tank coatings?
- 5 What can external VDR devices increase?
- 6 Which islands are covered by a new ECA?
- 7 Which castle hosts North's annual training course?
- 8 Which type of garbage can never be disposed of at sea?
- 9 What convention comes into force in August 2013?
- 10 What type of document is required by vessels to carry IMDG cargo?

V N L G C W C N C V K R J H
 H T G N E R T S O E O K E A
 M E M O R Y L V M C L U S P
 Y Q Y N V D Y H P I L V R P
 A S C A G E M D L V H E Y Y
 E X L O L V A D I R V T D W
 P U C M L M T O A E A A F L
 E X U I B L F F N S S N F D
 V L E S T K I T C R N A P C
 R I L V R S I S E Q W R B S
 L E R Q T O A H I T X C Z Q
 P T L G N C S L L O P L G O
 C P S P I N L C P M N S T P
 K N R Z B N O M Y J R S M U

Your Copy of Signals

Copies of this issue of *Signals* should contain the following enclosures:

- Loss prevention guide – Collisions: How to avoid them (appropriate entered ships only).
- Hot-Spots – Liquid Cargo Sampling (appropriate entered ships only).

Signals Search is open to all readers of *Signals*.

- Send a photocopy of your completed search, along with your name and, if appropriate, name of ship, position on board, company and address to Denise Huddleston at the Club. Email: denise.huddleston@nepia.com

- All correct entries received by the closing date will be entered in a prize draw.

- Closing date Friday 1 March 2013.

Prizes will be awarded to the first correct entry and two runners-up drawn.

Details of the winner and runners-up will appear in the next edition of *Signals*.

Answers to Signals Search 33

- | | | |
|----------------|-------------|---------|
| 1 Catalytic | 2 Caribbean | 3 Dog |
| 4 Value | 5 Bridge | 6 India |
| 7 Mental | 8 Sulphur | 9 First |
| 10 Repudiatory | | |

Signals Search 33 Winners

Winner: Captain Debakanta Kar, MV Samoa – Netfor Limited
Runners-up: Captain Eusebio Libron, MV Murray Express – Vroon Ship Management BV
 Captain Maung Maung Sein, MT BL Aoba – Raffles Ship Management Pte

Disclaimer

In this publication all references to the masculine gender are for convenience only and are also intended as a reference to the female gender. Unless the contrary is indicated, all articles are written with reference to English Law. However it should be noted that the content of this publication does not constitute legal advice and should not be construed as such. Members with appropriate cover should contact the North's FD&D department for legal advice on particular matters.

The purpose of the North's loss prevention facility is to provide a source of information which is additional to that available to the maritime industry from regulatory, advisory, and consultative organisations. Whilst care is taken to ensure the accuracy of any information made available (whether orally or in writing and whether in the nature of guidance, advice, or direction) no warranty of accuracy is given and users of that information are expected to satisfy themselves that the information is relevant and suitable for the purposes to which it is applied. In no circumstances whatsoever shall North of England P&I Association Limited be liable to any person whatsoever for any loss or damage whensoever or howsoever arising out of or in connection with the supply (including negligent supply) or use of information (as described above).

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