

# Signals

NEWSLETTER

**NORTH**   
SERVICE, STRENGTH, QUALITY

## Welcome...

to the October 2013 edition of *Signals*, which provides information relating to loss prevention and other topics of interest to ship operators and seafarers and examines their implications and consequences.

## IN THIS ISSUE

This edition of *Signals* addresses a wide variety of topics including lifeboat safety, oily water separator systems, malaria, the bagged rice trade, deviation and new BIMCO clauses.

New requirements for lifeboat release and retrieval systems were introduced in January 2013 under the International Convention for the Safety of Life at Sea (SOLAS) and the International Life-Saving Appliance (LSA) Code. The intention of these is to prevent accidents during lifeboat drills and emergencies caused by lifeboat hooks that open when they fail. Until ship operators have made the necessary changes to their lifeboats to be compliant with the new regulations, fall prevention devices should be used to minimise the risk of accidents.

## Issue 93: October 2013

LOSS PREVENTION NEWSLETTER  
FOR NORTH'S MEMBERS

Prosecutions for bypassing oily water separator systems continue. The best way of preventing such illegal discharges is to remove any need or temptation to do so. An article in this issue considers some of the steps ship operators can take relating to equipment, procedures and training to ensure best practice and reduce the risk of oily water separator violations.

The malaria parasite is becoming resistant to drugs in some parts of south east Asia, with potentially deadly consequences. This highlights the importance of taking a range of protective measures to reduce the risk of infection when calling at ports in these regions. This issue looks at malaria risks and some of the protective measures that can be taken.

North's First Call service ensures that crew members who fall ill or are injured in the USA receive proper medical treatment and that medical costs are controlled. The scheme has been in operation for a year and savings of over 30% are being regularly reported. An article in this issue provides a reminder of the service.

The bagged rice trade to West Africa is one where cargo shortage and condition problems are regularly experienced. These problems are highlighted in this issue together with some possible solutions. In another cargo related article, the topic of departing from the contractual voyage for operational or other reasons is examined.

BIMCO publishes a wide range of standard charter party clauses that are intended to set out owner's and charterer's responsibilities and obligations in a balanced way for a wide range of matters. New versions of the widely used piracy clauses have been published, together

with amendments to the hold cleaning clause for time charter parties. Of particular interest is a new hull fouling clause, which sets out hull cleaning obligations when a vessel experiences hull fouling that may affect its performance.

## NEW POSTER SERIES

North is introducing a new poster series that looks at communication as an essential aspect of shipboard operation. Entitled *Soft Skills*, the series will highlight skills that are important for effective communication and interaction with other crew members on board ships. The first poster in the series highlights the importance of good interpersonal skills and creating an atmosphere in which people are both comfortable to speak out and are prepared to listen.



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# LIFEBOAT RELEASE AND RETRIEVAL SYSTEMS: AN UPDATE

North has been concerned with lifeboat safety for many years and in particular the precautions that should be taken when using lifeboat on-load release and retrieval systems (RRS).

In 2011 the International Maritime Organization's (IMO) Maritime Safety Committee adopted amendments to the International Convention for the Safety of Life at Sea (SOLAS) and the International Life-Saving Appliance (LSA) Code, as well as the related Guidelines for the Evaluation of Existing On-load Release and Retrieval Systems. This was in response to accidents resulting from on-load lifeboat hooks which had failed or opened prematurely during drills and maintenance.

## New Regulations in Force

The new RRS requirements under SOLAS Chapter III, Regulation 1.5.1, entered into force on 1 January 2013 and applies to all ships. They require that at the first scheduled dry dock after 1 July 2014, and not later than 1 July 2019, RRS must comply with the LSA Code or be replaced with equipment that does comply.

The new RRS requirements under the Chapter IV of the LSA Code also entered into force on 1 January 2013. The amendments to the LSA Code are found in paragraphs 4.4.7.6.4 to 4.4.7.6.6, which show the criteria for new requirements for hook stability, locking devices and hydrostatic interlock.

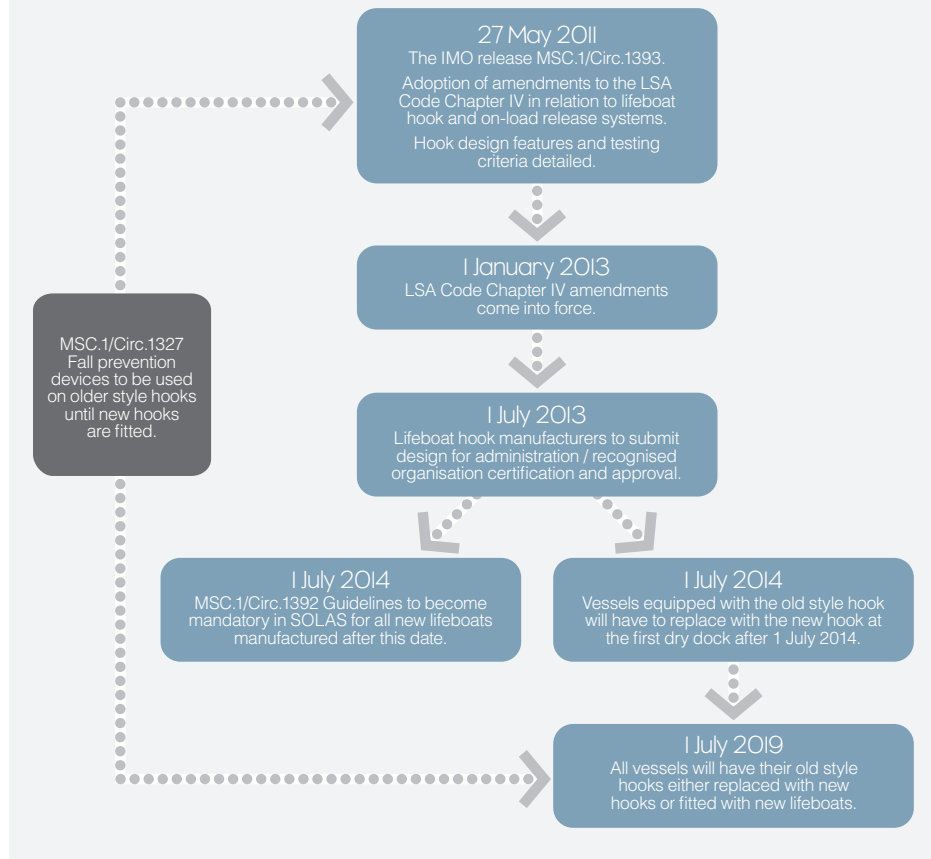
The main purpose of the revisions is to prevent unexpected accidents during lifeboat drills and inspections. RRS must comply with the new design criteria, which is intended to ensure that if a lifeboat hook 'fails' it will remain in the closed position, unlike many hooks currently in use which open when they fail.

IMO circular MSC.1/Circ.1392 provides guidelines for evaluation and replacement of RSS.

## Check Existing Systems

Under the LSA Code requirements, RRS manufacturers were required to submit their equipment designs to administrations for assessment before 1 July 2013. RRS not complying with the LSA Code requirements will have to be replaced according to the requirements of SOLAS. A number of lifeboat equipment manufacturers have made modifications and type approval submissions to administrations in preparation for the new amendments coming into force.

## Timeline for Implementation



Ship operators should contact their lifeboat equipment supplier to ensure that their lifeboat RRS comply with the new regulations and, if not, take steps to modify or replace the systems fitted to their vessels within the specified time frame.

## Use Fall Prevention Devices

Until such time as ship operators have made the necessary changes to their lifeboats to be compliant with the new regulations, the use of type approved fall prevention devices should be employed under the guidance of IMO circular MSC.1/Circ.1327.

## Further Information

North has published a comprehensive Loss Prevention Briefing entitled Lifeboat Safety which can be viewed or downloaded from the Club's website: [www.nepia.com/lp-briefings](http://www.nepia.com/lp-briefings)



Fall prevention device



# OILY WATER SEPARATORS: THE IMPORTANCE OF BEING ABOVE SUSPICION



Fines under the International Convention for the Prevention of Pollution from Ships (MARPOL) for bypassing oily water separator systems continue to increase. This is particularly so in the USA, where the Act to Prevent Pollution from Ships (APPS) applies in parallel with the Clean Water Act.

A ship operator was recently sentenced to pay a criminal penalty of over US\$10 million for violations of APPS and obstruction of justice. Another ship operator and two engineers have recently been convicted for conspiracy, failure to maintain an Oil Record Book in violation of APPS, and falsification of records. Sentencing is scheduled for November 2013.

Underlying these headline figures are the considerable consequential losses suffered by shipowners and crews who are falsely accused of illegal discharges. These include mental trauma for senior crew members (usually the chief engineer and master), damage to the ship operator's reputation, off-hire claims and crew costs during long detentions, and legal costs – which are irrecoverable in the USA whether or not the case succeeds.

It is thus vital that Members and seafarers take steps to ensure they do not get caught up in such situations in the first place. The accumulation of bilge water in machinery spaces and generation of bunker sludge is inevitable, so the best preventative step is to reduce this accumulation whenever possible. Bilge and sludge tank capacity on board should be sufficient for the vessel's trading pattern. Whenever possible, the availability of shore facilities should be established so that sludge can be pumped ashore and suitable documentation provided for its discharge.

The importance of such pollution prevention policies and procedures was highlighted recently when a US district court acquitted a ship operator of sixteen felony charges alleging that they and their employees had engaged in illegal discharge of bilge water in violation of APPS and then attempted to hide the illegal discharges from the US Coast Guard.

## Equipment

Members should ensure their oily water separator and related equipment is user-friendly, reliable and properly maintained, which in turn removes the inclination of some crew members to bypass it.

Temporary or permanent modifications to the equipment should be avoided. If modifications are necessary they should be approved by the vessel's classification society. Either way, the visual condition of the oily water separator and related equipment should be satisfactory, ensuring that any modifications are Class approved.

Consideration should also be given to making the equipment tamper proof, such as using a tamper proof sampling and monitoring unit, sometimes referred to as a 'white box'. This involves all sampling valves and equipment being locked within a cage, with a capability to record times of overboard discharge. The white box can work in conjunction with a position recording device and may be a secondary monitoring unit retrofitted to existing systems. A flow meter can also be integrated to calculate and record discharges.

## Procedures

The oily water separator and related equipment must be designated as 'critical equipment' within the ship operator's safety management systems, such that any failures receive heightened attention. All operational and management procedures associated with the equipment should be reviewed and updated to ensure that they comply with relevant legislation and with any refurbished equipment placed on board the vessel.

All operational and management procedures should be available in the language of the crew and suitable for training purposes. The vessel's planned maintenance systems should include the oily water separator and related equipment so that maintenance is not only carried out as planned, but also properly documented for retrieval of historical data as necessary. A seal log system can be used to monitor and record any flanges that are opened.

It is equally important to ensure that procedures are robustly implemented by conducting regular internal and external audits. Any deficiencies identified must be recorded along with the corrective action taken. Any non-compliance with set procedures should be reported directly by crew members to a senior member of the shore management. Members should also ensure that any operating budgets for waste removal and oily water separator spare parts are adequate and regularly reviewed.

The easiest way to help prevent illegal discharges is to simply take away the need to do so.

## Oil Record Book

The ship's Oil Record Book is an important document and poor record keeping can prove damaging in the event of any alleged illegal discharge. A properly maintained Oil Record Book will greatly assist in dealing with allegations of MARPOL violations.

The International Maritime Organization (IMO) published circular MEPC.1/Circ.736/Rev.2 in 2011, which gives guidance on how the Oil Record Book should be completed.

This along with any Flag State requirements should be strictly adhered to.

Entries in the Oil Record Book must be checked and signed by the chief engineer and countersigned by the master. The master should be made aware of the consequences of failing to verify the truthfulness of the Oil Record Book entries before countersigning. If deemed necessary, masters should be provided with suitable training to ensure they are able to carry out these checks effectively.

Members should also put procedures in place which frequently verify the accuracy of the Oil Record Book and other shipboard logs to ensure compliance with relevant regulations. There should be an irreducible minimum of residue or sludge on ships which Members should expect to see accounted for.

## People

Once the equipment and procedures are in place, the crew members should be trained in their use. Members should make it very clear that any attempt to circumvent MARPOL requirements is absolutely unacceptable. A culture must be created where complacency is not acceptable.

Training should also be provided on how to manage Port State inspections. The crew should be able to identify when an inspection moves from being routine to 'expanded', thereby increasing the potential for problems. The crew must be instructed to give honest answers when speaking with Port State inspectors.

In the USA, it is very important that crew members do not invoke their right to silence during routine inspections as this could be interpreted as them having something to hide. However, as soon as it is clear that a criminal investigation is underway, they should seek legal advice.



# MEASURING PERFORMANCE IN THE SHIPPING INDUSTRY

**InterManager – the international trade association for the ship management industry – has proposed a global shipping industry standard for defining, measuring and reporting information on operational performance. This standard, developed in collaboration with more than 20 organisations, uses a tool comprising performance indexes and indicators designed to measure and improve performance of ship operators and demonstrate good performance to external stakeholders.**

**In this article, Captain Kuba Szymanski, Secretary General of InterManager, provides an overview of the project and sets out its benefits.**

## Magic KPI – MBA speak or a valid tool for me?

Right from the beginning of our lives we are being measured, compared and judged. Is it fair? I honestly do not know, I am just stating the obvious!

Nevertheless, we are indeed measured, compared and judged. When a child is born the nurse announces: "it's a healthy girl," and immediately the baby is put on the scales to be weighed and then has its length recorded. "Ooooh 3.55 kg and 48 cm – that's a good size," the nurse may say.

Then we go to kindergarten and all our playtime has an element of comparison. For example: "I have three dolls/cars and you have two. I can count to seven and you only get to three".

School is the same. The number of A+ grades we get compared to the C grades will quantify our skill level and our ability to progress through the schooling system.

Then we reach adult life and our value may be determined in terms of business profit. Even at a personal level we are motivated by numbers – the quantity of dollars we earn per month affects us enormously and either frustrates or motivates us.

So, it looks like we are all very familiar with performance indicators. Why then, in shipping, have we not been using them until now (with the exception of some very simple ones like fuel consumption or days on board)?

Again, I do not know the answer. Maybe it is because we are one of the oldest industries in the world? Maybe it is because we are an extremely efficient industry (one of *the* most efficient)? Or maybe it is because we are just so conservative and "won't fix something unless it is broken"?

InterManager gathered together like-minded people who, in 2004, decided that we "need to know what we are talking about" and stop misleading each other. We need to develop accepted definitions for common maritime issues, such as what an accident is, what a fire is, and what are retention rates.

At this stage it became apparent that people were using the same words for very, very different things. Let us take the example of the word "vessel". Ask yourself – do you know what a vessel is? Is it a glass full of water? Surely in a maritime context it has to be a ship. Okay, what type of ship – passenger, container or maybe tanker? Is it one which is involved in international trade or maybe only in cabotage? Is it one which is 500 GT and more or is it anything that floats?

So the first task the Shipping Key Performance Indicators Project (SKPI) faced was to agree upon acceptable definitions. Once that basis had been established it was important to establish the agreed criteria for what makes a Key Performance Indicator (KPI).

The project determined that all KPIs have to comply with six requirements:

- **Observable and quantifiable** – a KPI is a mathematical formula on the basis of unambiguous, observable performance measurements.
- **A valid indicator of performance** – a KPI expresses performance within an area which the ship manager needs to perform well. Also the ship manager needs to have complete control of the factors affecting the performance measured.
- **Robust against manipulation** – a KPI must relate, to a large extent, to unambiguous descriptions of the needed measurements and not leave room for 'favourable interpretations'.
- **Sensitive to change** – a KPI will reflect actual changes in the ship manager's performance over time.
- **Transparent and easy to understand** – a KPI should be interpreted by all users in the same manner.
- **Compatible** – a KPI is harmonised with the rest of the performance hierarchy. The KPI must be compatible with other KPIs to prevent the decision-makers receiving contradictory control signals.

This sounds simple – but it was not! A lot of "good KPIs" did not meet the above criteria and therefore are not included in the Shipping KPI System.

It took seven years to agree on 64 Performance Indicators – things we can simply measure and express in a figure – such as the number of officers on board, number of cadets per vessel, number of lost time injuries and number of oil spills.

Then it was agreed to create 34 Key Performance Indicators – these are a result of the mathematical computation of the

Performance Indicators to provide just seven Shipping Performance Indices:

- Environmental Performance
- Health and Safety Performance
- HR Management Performance
- Navigational Safety Performance
- Operational Performance
- Security Performance
- Technical Performance

A vigilant reader will immediately stop and ask: "Hold on, where is the financial performance here?" Well it was a conscious decision of InterManager and its industry partners not to include financial performance. Far too often companies mask their real performance with either very good or very poor financial performance. We at InterManager wanted to see what makes a good ship manager – what are the elements which make someone "safe, robust, transparent". For this, financial performance was not needed.

Now comes the question: why should the chief officer, second engineer, master, chief engineer, purchaser, technical or marine superintendent bother with KPIs?

Well – first of all you do not have to. It is not compulsory. It was invented by chief officers, second engineers, masters, chief engineers, technical and marine superintendents for themselves in order to see "how am I doing? Am I moving in the right direction?" or "Am I spending too much time and money (and HR resources) on something I shouldn't?"

Also the Shipping KPI System allows you to see how you are doing in comparison to the whole industry. The system is designed to show internal but also external trends. We can now see this system being used by 168 companies worldwide (September 2013) with 2,077 ships already in the database.

Usage of the KPI system can be very versatile. It can benefit many different aspects of your work, from discussions with owners when arguing over budgets to winning new business by being able to demonstrate robust management performance. Maybe more importantly, it can be used for internal improvements and monitoring of your own performance over time and when benchmarking within your own departments.

Finally, since the introduction of KPIs in June 2011, we have received many, many comments. Here is one of the nicest ones which I personally like the most:

"We started talking to each other, it improved internal communication in our company".

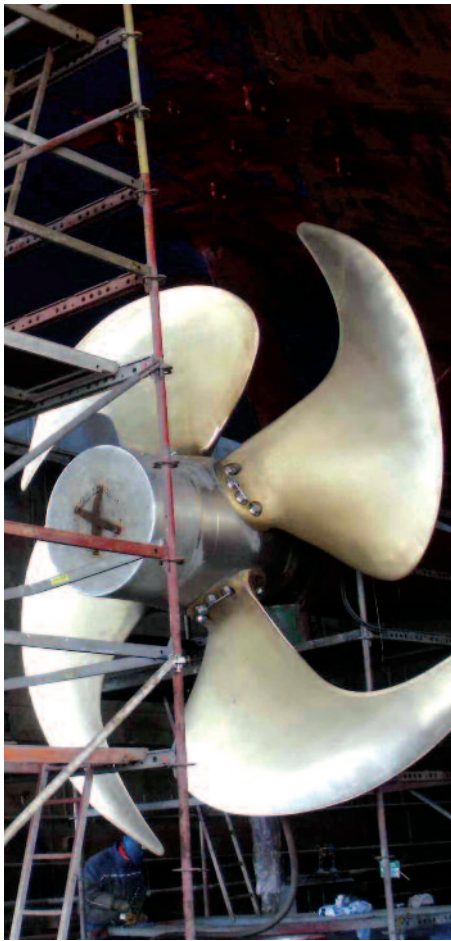
That on its own is a great achievement.

## Further Information

*For further information members should contact InterManager.*

*Website: [www.intermanager.org](http://www.intermanager.org)  
Email: [kuba.szymanski@intermanager.org](mailto:kuba.szymanski@intermanager.org)*

# CONTROLLABLE-PITCH PROPELLER FAILURES



There have been many incidents in recent years involving failure of Controllable-Pitch Propeller (CPP) systems. One problem is loss of control during manoeuvring, resulting in contact damage to the vessel, other vessels and port installations.

The UK Marine Accident Investigation Branch recently reported on an incident where a general cargo vessel equipped with CPP hit a lock gate and tug. A zero-pitch command was given but the actual pitch remained stuck at 40% ahead and a CPP failure alarm activated. However, upon investigation the fault could not be replicated.

Another recent example involved a vessel hitting a jetty after a CPP system failure. The master altered the pitch from 20% astern to 20% ahead but the pitch actually changed to 80% astern. In this case the fault was diagnosed to be a failure of the control software, but in a number of other cases the fault appears to be intermittent and cannot be traced.

## Maintenance and Testing

There are generally three elements to a CPP system – electronic, hydraulic and mechanical – and all are susceptible to failure. Certainly good maintenance and regular testing and inspections will help to prevent failures of the hydraulic and mechanical systems.

This could include regular testing and replacement of the hydraulic oil, cleaning filters, greasing linkages and periodic overhauling of control valves as per the manufacturer's schedule.

Preventative maintenance of the electronics and programmable controllers is more difficult though. These components can be complex and adjustments made by persons who are not suitably trained can cause considerable problems. Comprehensive pre-departure checks should thus be carried out on the CCP system, as part of the ship's on board safety management system. These should include a full function and movement test observed locally by an engineer.

## Training for Emergencies

The time between a CCP failure and a collision or grounding can be very short. Masters and crews on CCP equipped vessels must therefore be well drilled in how to react quickly in the event of a system failure. Such scenarios should be incorporated in the ship's emergency drill matrix, so that all personnel on board know their duty and the procedures to follow if a failure occurs. The crew's familiarity with the CCP system and its emergency control is of particular importance.

# MARITIME LABOUR CONVENTION NOW IN FORCE

The International Labour Organization (ILO) Maritime Labour Convention 2006 (MLC) – the internationally agreed set of minimum standards for the welfare of seafarers – came into force on 20 August 2013. At the time of writing, the convention had been ratified by 46 ILO member states.

All Members that have not already done so should review the terms of their current crew contracts to ensure they are compatible with the entitlements detailed in the new Convention.

For example, MLC requires certain information to be included in the crew contract, including the seafarer's full name, their date of birth or age, the capacity in which they are employed along with wage and annual leave information.

In addition, the convention details requirements of the seafarers' entitlement in respect of wages, hours of work, medical care, accommodation and repatriation.

However, Members may not be liable, for example, for injuries sustained by crew members when they are not in service on the ship, for injuries or illnesses caused by wilful misconduct of crew members, or for illnesses intentionally concealed at the time the contract of employment was entered into.

## Level Playing Field

MLC is a welcome and wide-ranging 'bill of rights' for seafarers, helping to ensure a level playing field across the shipping industry without unduly increasing the liabilities of quality shipowners.

Flag States should be able to provide guidance regarding any queries Members have in respect of their crew contracts and compliance with the Convention. In addition, North requests that any new or revised crew contract terms are submitted to the Club for advice and approval under P&I Rule 19(1)(f).

Members should note that several vessels have been reported to be detained by Port State control for issues relating to crew contracts.



# INCREASED MALARIA RISK IN SOUTH EAST ASIA



The World Health Organization is increasingly concerned by evidence in south east Asia that the mosquito borne malaria parasite is becoming resistant to anti-malarial drugs.

Resistance to artemisinin based combination therapies (ACTs) has now been identified in Cambodia, Myanmar, Thailand and Vietnam. While urgent action is being taken to eliminate resistant strains of the parasite to ensure ACTs remain effective – and new anti-malarial drugs are under development – seafarers visiting south east Asian ports need to be extra vigilant.

Without effective treatment, malaria can kill very quickly. Prevention, recognising its symptoms and acting accordingly is therefore essential knowledge for every seafarer.

## A Maritime Problem

Malaria is a maritime problem for the following reasons:

- Unawareness by seafarers of the fact that malaria is a serious and potentially fatal disease.
- Insufficient information given to seafarers regarding the clinical features of malaria.
- No or insufficient use of anti-mosquito measures and pro-active medication.
- Fluctuating frequency of malaria occurrence in most dangerous areas, which leads to miscalculation of the real risk.

It is the responsibility of all seafarers to prevent and recognise malaria on ships, both for themselves and for their fellow crew members.

## Protection and Prevention

The best way to prevent malaria infection is to take measures to avoid being bitten by infected mosquitoes. The advent of air conditioned ships has helped but, when within two miles of a malaria shore, it is important to undertake the following:

- After dusk keep all doors closed; windows should only be left open when mosquito netting is in place.
- Any mosquitoes which enter compartments should be killed; just because mosquitoes cannot be heard does not mean they are not there.
- Use an insecticide spray – spray in particular under tables, chairs and in dark corners.
- Persons going on deck or ashore after dusk should wear long-sleeved shirts and trousers to avoid exposing their arms and legs.
- No pools of stagnant water should be allowed to develop in receptacles, on deck or in lifeboats as these are places where mosquitoes might lay their eggs.
- Refuse bags or drums should be sealed properly; when this is done mosquito numbers often drop spectacularly, especially on ships lying close to shore.

## Signs and Symptoms

It is also important to recognise the signs and symptoms of malaria. The symptoms of the most life threatening type of malaria are usually experienced between one week and two months after infection. There are other less severe types of malaria, which can cause symptoms more than a year later.

Even in its uncomplicated form, malaria is debilitating. It clinically presents a variety of non-specific, flu-like symptoms including:

- Fever (often exceeding 40°C)
- Chills
- Malaise
- Nausea and vomiting
- Fatigue
- Myalgia (muscle pain)
- Headaches
- Sweating.

A typical attack lasts 8 to 12 hours. It is necessary to take the body temperature every 3 to 4 hours in order to discover a typical pattern in a patient with possible malaria. The classic malaria attack is characterised by a sudden fever which lasts several hours. Three successive and clearly distinctive stages may be observed:

- **Cold stage** – rising fever; the patient often feels cold and is ashen colour, the temperature increases rapidly and the patient seeks more covering with blankets in bed.
- **Hot stage** – the patient throws off all blankets, looks red and congestive, feels very warm, suffers a high temperature, splitting headaches and severe neck pains.
- **Sweat stage** – the patient suddenly breaks out in perspiration, the clothes and bedding are wet with sweat, temperature falls quickly, the patient feels better and often regains appetite and then falls asleep.

It is important to note that the above stages may not be observed in the case of plasmodium falciparum malaria, which is one of four distinct species of the malaria parasite that affect humans.

## Conclusion

There is no method available to prevent malaria completely. All measures are aimed at reducing the risk of a malaria attack to a minimum, hence all measures have to be combined, giving almost 100% risk elimination for severe malaria and malaria death.

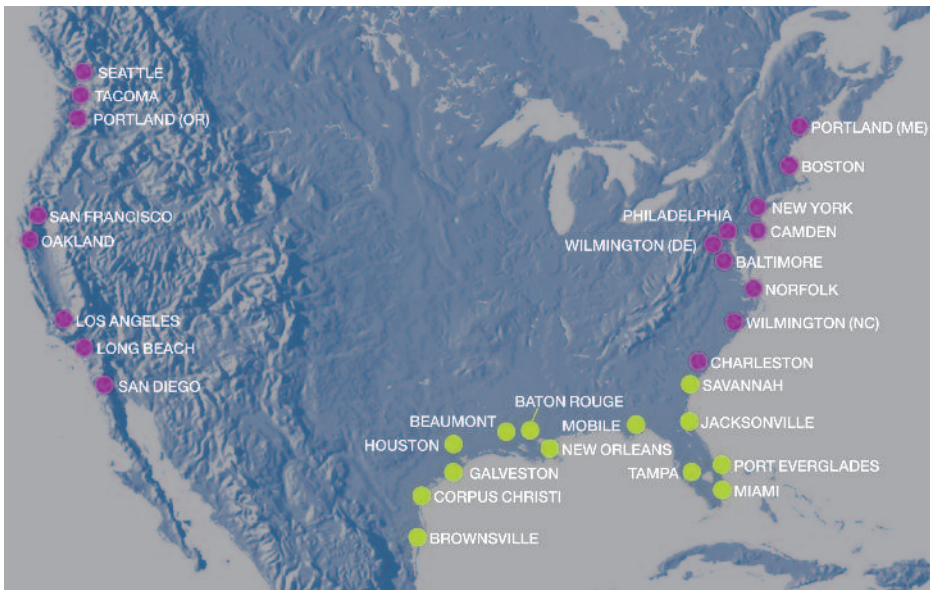
*Source: World Health Organization*

*For more information, please visit:*

***[www.who.int/topics/malaria/en](http://www.who.int/topics/malaria/en)***



# FIRST CALL – FIRST ANNIVERSARY



## Significant Savings

The scheme is entirely optional but Members that use this service should make significant savings on medical costs. In some instances discounts of over 80% have already been negotiated on medical invoices, with negotiated discounts regularly falling within the 30 to 40% range.

Members whose vessels trade to the USA are encouraged to use the First Call dedicated telephone numbers when a crew member needs medical treatment in the USA rather than relying on their port agent.

## Contact

### East and West Coast Ports

If you are disembarking crew for medical treatment at an East or West Coast Port, please contact First Call – Hudson Tactix on +1 856 342 7500 or email: [firstcall@hudsontactix.com](mailto:firstcall@hudsontactix.com)

### South Coast Ports

If you are disembarking crew for medical treatment at a South Coast Port, please contact First Call – Shuman Consulting Services on +1 281 486 5511 or email: [firstcall@scslp.com](mailto:firstcall@scslp.com)

## Further Information

Details of the First Call scheme can be found on North's website: [www.nepia.com/firstcall](http://www.nepia.com/firstcall)

Members requiring more information should contact the Club: [FirstCall@nepia.com](mailto:FirstCall@nepia.com)

First Call is a service supported by North in collaboration with two correspondents in the US, Hudson Tactix and Shuman Consulting Services, to help Members reduce the risk of incurring excessive medical bills in the USA.

The First Call service covers principal ports in and around the US west, east and south coasts.

## Excellent Medical Attention

Under the scheme, initial notification from a vessel with an ill or injured crew member on board at a US port is made to Hudson Tactix

or Shuman Consulting Services. Local staff from these correspondents then ensure that the crew member is taken directly from the ship to a reputable treatment facility, ensuring they receive excellent medical attention as quickly and as cost effectively as possible.

The First Call team continue to monitor the crew member's progress throughout their stay in the USA and, where necessary, assist with repatriation. Medical services provided by the hospital and the associated costs are monitored closely, as is the welfare of the crew member in the event of a prolonged hospital stay.



# CONTAINERS: GETTING THE RIGHT WEIGHT AT THE RIGHT HEIGHT

North has previously advised of the need for masters and cargo officers to ensure that container stowage is conducted in accordance with the requirements of the ship's approved Cargo Securing Manual, typically using an approved software programme in conjunction with the manual.

However, the Club continues to see claims arising from collapses of stows caused by containers greater than the prescribed weight at a particular tier being placed in container stacks.

On occasion, the excess weight is significant; instances have been recorded of heavy containers placed at positions on the top tier of deck stows, where only empty containers should be stowed.

Examples have also been noted of ships' officers specifically ordering correctly stowed containers to be moved to other positions for stability and trim purposes, without even considering the suitability of the container weight at the new position.

The Cargo Securing Manual will include specifications as to what weight of container can be stowed at each tier and these specifications should be followed closely. The cost to a ship operator of failing to follow tier weight specifications can be substantial, both in terms of cargo claims and delay to the vessel.





# BEWARE WEST AFRICAN RICE TRADE



West African nations import more than five million tonnes of rice annually. While this and other West African trades may look attractive in the current market, shipowners are often unprepared for the challenges that trading to the region can present.

## Cargo Shortage Claims

Shortage claims are particularly prevalent, primarily due to extensive pilferage by stevedores and mis-tallying as a result of inefficient discharge practices. Pilferage in many West African ports extends beyond the petty thefts by stevedores and can be widespread, involving organised theft and influence over local officials and agents.

As such it is rare for a ship trading in several West African ports to do so without a shortage allegation being raised, even before discharge is completed.

## Security Demands

Owners also often encounter security demands in anticipation of shortage claims. Though P&I club letters of undertaking are usually accepted, delays may range from days to several months where agreement cannot be reached on points such as quantum or jurisdiction.

Further demands are common for security in respect to fines imposed by local customs authorities, which are payable on short or over-landed cargo as determined by stevedore's outturn reports. These are rarely produced on time, so cargoes may be exposed to further theft or damage long after delivery under the bill of lading.

Customs fines may be subject to negotiation, although it is rare to avoid them altogether despite the defences available to the carrier.

## Cargo Condition Claims

Claims in respect to cargo condition are also common. These can be caused by issues prior to loading and are often heavily exaggerated. In addition, climatic changes en route can lead to bagged rice cargoes being affected by condensation during carriage.

Jurisdictional issues should also be considered carefully as they can place liability for cargo with owners long after discharge has been completed and while the cargo is at the mercy of port practices. The time bar for claims may also be significantly longer than the twelve months provided for by the Hague-Visby Rules.

## Conclusions

Should Members be considering carrying rice to West Africa, they should gain a clear picture of the charterer with which they are seeking to fix. Bills of lading signed by masters will generally place owners in line for claims in the first instance. Once discharge is complete, owners will then have to rely on the terms of the charter party to seek recovery.

Members should also consider appointing local surveyors and tally clerks, which North can help to arrange. However, even the best representation may provide only limited protection from shortage and condition claims.

# HOT DRUGS RISK

Members should be aware that significant claims can arise from incorrect carriage of pharmaceutical products in containers, particularly if they are allowed to get warm. Pharmaceuticals can be high value cargoes; North is aware of one container load being valued at US\$38 million.

Pharmaceuticals are often carried in insulated, temperature controlled containers. While the temperatures are not low, it is often a strict requirement of the destination country's health authorities that this temperature is maintained throughout the voyage. In the absence of evidence this was done, the cargo may be rejected regardless of whether it has been affected by warmer conditions.

Though a carrier should be able to limit its liability to the package limitation under the applicable liability regime, this could still be a very high level of liability. Members are thus urged to consider the nature and value of cargoes they are asked to carry in temperature controlled conditions and to take appropriate precautions.







# DEVIATION

Most contracts of carriage, charter parties as well as bills of lading, contain implied or explicit provisions that voyages will be carried out with 'utmost despatch' (or similar wording) and by the shortest geographical or customary route. Any failure to do so could be regarded as an unjustifiable departure from the voyage agreed in the contract, generally referred to as a 'deviation'.

The effect of a deviation on a shipowner's liabilities and P&I cover can be substantial. The law as it stands indicates that the carrier under a bill of lading could lose most of its defences and exceptions from liability. P&I cover is based on the insured retaining all its defences and exceptions, so an owner or operator may not be able to recover from its P&I club any liabilities and costs that cannot be defended as a result of a deviation (see for example North P&I Rule 19(17)(B)).

## Justified Departure

A departure from the contractual voyage ('a diversion') can, however, be justifiable if it is involuntary; if it is permitted in law; if it is permitted in the relevant contract; or if it can otherwise be regarded as 'reasonable'. For example, a ship taken by pirates will inevitably depart from the direct route and there could be significant delay. As this would not be voluntary, it will not be regarded as a deviation. Similarly, if the ship is forced from its intended route by heavy weather, this may not be voluntary and may also not be a deviation.

The usual example of a permissible 'diversion' is the master's right and duty to divert to save life at sea. Provided life is at stake, a reasonable diversion from the voyage will always be permitted.

## Liberty Clauses

Sometimes diversions are permitted under the relevant contract. For instance, the

Hague and Hague-Visby Rules, which are generally incorporated into bills of lading, permit deviation to save property at sea. Bills of lading and charter parties can include a liberty clause permitting the ship to, for instance, call at any port or ports in any order for any purpose. A 'bunker deviation' clause is sometimes included in charter parties to permit a ship to deviate from the usual or direct route in order to take on fuel.

Courts have, however, stated that wide-ranging liberty clauses cannot be used to undermine the commercial purpose of the contract, which is to take cargo from the load to the discharge ports without unreasonable delay. Liberty clauses are likely to be narrowly interpreted by the courts.

## Reasonableness

Any other diversion from, or delay to, the contractual voyage may also be justifiable if it was, in all the circumstances, reasonable for the ship to do so.

There is much case law on the matter but one way to judge reasonableness is whether the need to divert was preventable (for instance, if the diversion is to take on bunkers or stores which could have been taken before loading) and whether it was for the benefit of all parties to the voyage, including charterers, cargo interests and owners. If the diversion was not preventable and was for everyone's benefit, it is more likely to be regarded as reasonable.

Even if the cause of the diversion is reasonable, its extent also has to be reasonable. For instance, if the ship cannot avoid bunkering during a long voyage, it would be expected that she would go to a usual bunkering port that is close as possible to the direct or usual route and by a route that does not expose the ship to significantly increased navigational risks and to do otherwise would not be reasonable.

## Maintaining Cover

Where Members intend to depart from the usual or direct route or to delay during the voyage, or as soon as possible after they have learnt of what might be considered a deviation from the contractual voyage, they should seek advice from North on whether the departure or delay is likely to be covered under their P&I policy. The Club will need to have as much information as possible about the reason and extent of the diversion to make its decision, including details of all the relevant contracts relating to the voyage and details of the cargo.

The managers of the Club will always endeavour to accommodate the Member if, on a practical and common sense basis, the proposed diversion is being taken for the common benefit of all parties. However, the law on deviation remains very strict and the managers may have to take the view that the constraints of the law outweigh what may seem to an owner or operator to be more compelling commercial practicalities.

If North takes the view that the diversion is unlikely to be justifiable and therefore not protected by P&I cover, the Member should consider taking out ship owner's liability (SOL) cover, which the Club can assist to arrange. SOL cover extends to the additional liabilities that the Member has assumed by deviating. SOL does not, however, cover the effect of delay on the condition of the cargo; for instance, if it is a perishable cargo, SOL will not cover any additional loss from the cargo perishing. SOL premiums are usually calculated as a percentage of the value of the cargo.

## Conclusion

North advises Members to inform the Club immediately when they become aware that a ship has or will depart from the usual or direct route or has or will be delayed in its voyage.

# IMO UPDATE

## Emergency Procedures

In May last year the International Maritime Organization's (IMO) Maritime Safety Committee approved amendments to the International Maritime Dangerous Goods (IMDG) Code Emergency Response Procedures for Ships Carrying Dangerous Goods (the 'EmS Guide'). The amendments, which are covered in MSC.1/Circ.1438 and have been voluntarily applied from the beginning of this year, will become mandatory on 1 January 2014.

## Caribbean Emissions

The IMO Marine Environment Protection Committee decided in July 2011 to adopt, by Resolution MEPC.202(62), amendments to Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) to designate the US Caribbean Sea emission control area (ECA) for NO<sub>x</sub>, SO<sub>x</sub> and particulate matter.

The emission requirements for SO<sub>x</sub> and particulate matter become effective in the ECA on 1 January 2014, from which date the sulphur content of fuel oil used on ships operating in the area should not exceed 1.00% m/m. The amendments are covered in MEPC.1/Circ.755.

## Packaged Goods Rules

In 2010 the IMO Marine Environment Protection Committee adopted amendments to the MARPOL Annex III Regulations for the Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form. The amendments covered in MEPC.193(61), enter into force on 1 January 2014.



## UPDATED AND NEW BIMCO CLAUSES

BIMCO continues to update its standard clauses and add to its library of industry clauses, most recently publishing a new Hull Fouling Clause.

### Standard Clause Updates

BIMCO has published 2013 editions of CONWARTIME and VOYWAR. Members using charter parties containing the 1993 or 2004 editions of these clauses should update them. The latest versions have been developed in response to views recently expressed by the courts (notably the case of the Triton Lark [2012]) as well as changes in specialist cover provided by insurers. BIMCO will incorporate the 2013 editions in all new and revised standard contracts.

BIMCO's widely used Piracy Clauses for Period Time Charter Parties, Single Voyage Charter Parties and Consecutive Voyage Charter Parties and COAs, which were first issued in 2009, have also been revised. The updated versions reflect changes in trade practice and specialist insurance cover as well as other issues. They now clarify a charterer's liabilities after a vessel is released following seizure.

In addition, BIMCO's Hold Cleaning/Residue Removal Clause for Time Charter Parties has been revised in the light of amendments to Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL) that came into force on 1 January 2013. The revised 2013 clause takes into account the disposal of cleaning agents and additives used for hold cleaning which may be harmful to the marine environment. However, the provisions relating to correct disposal of cargo residues and hold washings have not been amended.

### New Hull Fouling Clause

In June 2013 BIMCO published its much anticipated Hull Fouling Clause. As Members will be aware, the consequences of hull fouling on the performance of the vessel can be significant.

At common law and under most standard forms of time charter party the owner is responsible for maintaining the vessel in a thoroughly efficient state throughout the charter period. This includes a requirement to keep the vessel's hull and other underwater parts free from fouling.

Many owners seek to reverse the position by using their own in-house clauses. BIMCO's new Hull Fouling Clause for Time Charter Parties seeks to improve on these clauses and produce a balanced clause that is readily understandable.

Key points in the new clause include the following:

- The clause reverses the common law position and transfers hull cleaning obligations to the charterer where, as a result of trading requirements and employment orders, a vessel is subject to a prolonged period of idling in port or at anchorage that results in fouling of the hull and underwater parts to an extent that may affect vessel performance.
- The clause is triggered when a number of days idling in tropical or seasonal tropical zones and in other locations has passed. The parties are encouraged to agree the number of days since the tendency to foul will vary according to the sea area and seasonal conditions. A default period of 15 days applies in the absence of agreement.
- Once the agreed number of days has elapsed, the vessel's performance warranties relating to speed and consumption are suspended until such time as the vessel's underwater parts can be inspected and, if required, cleaned.
- The inspection will be for the charterer's account.
- If the hull is fouled then it is to be cleaned by the charterer at its cost and in its time, in accordance with the paint manufacturers' recommendations and under the supervision of the master. This acknowledges that hull coatings are very expensive, easily damaged and become less effective the more often they are cleaned.
- If inspection and cleaning is not possible or permitted at the port where the fouling has occurred, or the charterer otherwise chooses to postpone cleaning, the speed and consumption warranties remain suspended until cleaning has been completed.
- The clause anticipates that cleaning will be undertaken before redelivery to the owner. However, if this cannot be done the parties should, before or at the latest on redelivery, agree a lump sum to cover the owner's costs and ancillary expenses in respect of cleaning.
- Finally, the charterer will not be responsible for hull cleaning if it can show that notwithstanding the period the vessel was idle, the vessel is performing in accordance with charter party speed and consumption warranties.

### New Bunker Non-Lien Clause

Other BIMCO projects include a new bunker non-lien clause for charter parties, which has an anticipated publication date in late 2013.

## LIABILITY FOR POOR STOWAGE DAMAGE CLARIFIED

A recent court case has clarified that a carrier may not be liable to a cargo claimant for damage caused because of poor stowage under a bill of lading contract. Such liability can be governed by the terms of a charter party incorporated into a bill of lading which governs the responsibility for stowage.

The recent decision of the UK High Court in the *MV Eems Solar (Yuzhny Zavod Metall Profil LLC v Eems Beheerder B/V. 2013)* clarifies a previously debated point as to whether an allocation of responsibility and risk to a charterer for cargo operations under a charter party incorporated into a bill of lading would operate so as to protect the carrier from a cargo claimant's claim for damage caused by such operations.

### Charterer Responsible for Loading and Stowage

In the *Eems Solar* case, a cargo of 411 coils of pre-painted steel sheets shifted, during foreseeable heavy weather, due to inadequate stowage that caused the cargo to suffer damage. Loading was carried out by the charterer's appointed stevedores. The cargo was shipped from Xingang, China, to Novorossiysk, Russia, under a CONGEN 1994 bill of lading which incorporated a GENCON 1994 charter party entered into with a third party.

Clause 5 of the charter party stated:

'The cargo shall be brought into the holds, loaded, stowed and/or trimmed, tallied, lashed and/or secured by the Charterers, free of any risk, liability and expense whatsoever to the Owners.'

When the cargo was received in a damaged condition, the receiver brought a claim against the carrier under the bill of lading contract. The court held that the sole cause of damage to the cargo was that the vessel was not properly loaded and stowed when it left the load port. The stowage was performed by the stevedores hired by the charterer or cargo owner, not the carrier.

The court considered that the following wording of the contract of carriage in the bill of lading was sufficient to incorporate all the terms of the GENCON 1994 charter party into the bill of lading contract:

'All terms and conditions, liberties and exceptions of the Charterparty... including the law and arbitration clause are herewith incorporated.'

*Continued overleaf*

## Carrier Not Responsible for Loading and Stowage

In relation to interpretation of Clause 5 of the charter party, it was held that the clause not only made it clear that the charterer was responsible for loading, stowing and securing the cargo but also that the carrier was not. There was no suggestion that the stevedores were employed by the carrier and it is understandable that the carrier should seek to avoid responsibility for cargo damage arising from poor stowage.

The judge also noted that the parties to the bill of lading must have intended the responsibility for loading, stowing and securing to have

been transferred to the shipper and cargo owner and it was a natural consequence of the agreement that the carrier would not be responsible.

Reference was made in the case to circumstances where damage arising from improper stowage renders a vessel unseaworthy. It was considered that if responsibility for stowage had been contractually passed from the carrier to the charterer (or cargo owner), the carrier would not be liable for damage arising from improper stowage even if the vessel was rendered unseaworthy. The exception would be if it was established that the bad stowage leading

to the damage arose from a significant intervention by the carrier or master. This confirmed the previously understood legal position. In this case it was decided that there was no intervention by the carrier.

## Welcome Clarification for Carriers

The decision reached in the *Eems Solar* case offers a welcome clarification for carriers. They can now be more confident in defending cargo claims when a charter party that allocates the risk of cargo responsibility to the charterer is incorporated into a bill of lading.

## NEW SOFT SKILLS POSTER SERIES

Soft skills is a term generally used in relation to a person's personality traits, communications and other skills that characterise their relationships with other people. Soft skills complement hard skills, which are the professional and occupational skills required for a job.

Soft skills are important because they affect a person's ability to communicate and interact effectively with other team members in their place of work. Such interpersonal skills and relationships are important contributing factors to an efficient, happy and above all safe vessel, particularly in key areas such as the bridge and engine room teams.

The first poster in North's latest series aims to promote awareness amongst seafarers of the importance of good interpersonal skills and highlights the importance to junior officers and other personnel of being prepared to speak out when they become aware of a hazard or something untoward occurring. Equally, the poster highlights the importance of senior officers creating an atmosphere in which junior personnel are comfortable to speak out and senior officers are prepared to listen and take notice.

### Further Information

Soft Skills – It Takes Two can be viewed or downloaded from the Club's website: [www.nepia.com/loss-prevention/publications-and-guides/posters](http://www.nepia.com/loss-prevention/publications-and-guides/posters)

A copy of Soft Skills – It Takes Two is also enclosed with this issue of Signals for all appropriate entered vessels.

## RESIDENTIAL TRAINING COURSES

North's Singapore Residential Training Course in P&I Insurance and Loss Prevention is once again fully subscribed. The course will take place from 18 to 22 November 2013 at the Shangri La's Rasa Sentosa Resort & Spa.

Delegates will benefit from seminars and workshops led by experts from the Club's Asia Pacific offices, including a simulated collision workshop. It will also provide a chance to network with marine professionals from a variety of industry sectors.

Members will soon be able to book places on the next UK course at Lumley Castle and South Shields Marine School in north east England. The 2014 course will take place from 13 to 20 June 2014 and a brochure and course details will be available in early 2014.

### Further Information

Up-to-date information about North's Residential Training Courses is provided on the Club's website: [www.nepia.com/residential-training-course](http://www.nepia.com/residential-training-course)



## TALKING ABOUT MOORING SAFETY

*Talking Points* is a North initiative to assist masters and safety officers during safety meetings. It consists of a range of topical, illustrated papers designed to raise awareness and promote discussion of common causes of accidents.

The latest *Talking Points*, entitled *Stand Safe*, is about safety during mooring operations. It focuses in particular on snap-back zones.

Serious injuries and fatalities during mooring operations occur all too regularly. If snap-back zones are properly marked, and seafarers are aware of the dangers of entering them when lines are under tension, fewer serious mooring incidents should occur when lines break.

### Further Information

An electronic version of this and other *Talking Points* is also available on the Club's website: [www.nepia.com/talking-points](http://www.nepia.com/talking-points)

A copy of *Talking Points* – Stand Safe is also enclosed with this issue of Signals for all appropriate entered vessels.





# COLLISION CASE STUDY

North's loss prevention guide entitled *Collisions: How to avoid them* includes a series of collision case studies intended to generate discussions about the International Regulations for Preventing Collisions at Sea (COLREGS). Further case studies are published in *Signals* from time to time and the next of these is provided here.

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 case studies are intended to promote wide-ranging discussions about collision avoidance.

## Scenario

Two ships are approaching each other in open water. Between them a sailing yacht is moving slowly on an easterly course.

At 1425 the blue ship starts making a series of small alterations to starboard as it does not want to pass ahead of the sailing yacht. At the same time it increases speed as required by its passage plan.

The orange ship recognises the difficulty of the blue ship's situation and increases its speed, intending to pass ahead of the blue ship.

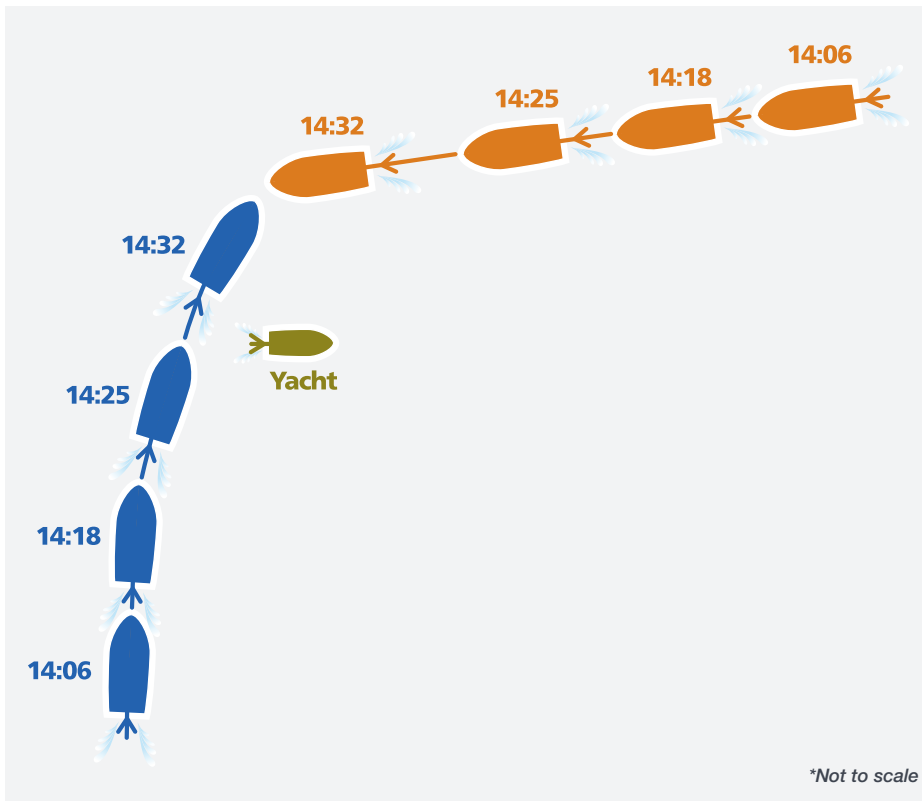
The ships collide at 1432.

## Questions

- 1 Did the blue ship do anything wrong?
- 2 Did the orange ship do anything wrong?
- 3 Did the sailing yacht do anything wrong?
- 4 What would have been the easiest way to avoid this collision?

## Further Information

North's loss prevention guide entitled *Collisions: How to avoid them* can be viewed on its website: [www.nepia.com/lpguides](http://www.nepia.com/lpguides)



## Your Copy of Signals

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

- Soft Skills poster – It Takes Two (appropriate entered ships only).
- Talking Points – Stand Safe (appropriate entered ships only).

## Answers to Signals Search 36

- |               |                |            |
|---------------|----------------|------------|
| 1 Tokyo       | 5 Cold         | 8 Germany  |
| 2 Jumbo       | 6 Obstructions | 9 NTVRP    |
| 3 Philippines | 7 Singapore    | 10 Lithium |
| 4 DMLC        |                |            |

## Signals Search 36 Winners

Winner: Marek Kotsulim, MV Vos Explorer, Vroon Offshore Services  
Runners-up: Virgilio P Ungriani, Cardiff Crewing Filipinas Inc  
Captain Debakanta Kar, MV Glyfada I, Sea Traders



# 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 whatsoever 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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