

# Signals

NEWSLETTER

**NORTH**   
SERVICE, STRENGTH, QUALITY

## Welcome...

to the April 2014 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 the hazards posed by fish farms in China, migrants, incompetent stevedores, liquid cargo sampling, bagged rice cargo and the importance of preserving electronic documents.

The large number of fish farms off the coast of China, whose positions are not always promptly or accurately reported, has led to an increase in claims through contact damage. This short article seeks to raise awareness of this issue with Masters and watchkeeping officers.

Migrants, both refugees and asylum seekers are on the rise and can pose problems for vessels. The latest migration patterns, the Master's responsibilities in respect of persons in distress and P&I cover when dealing with persons in distress are discussed.

Disputes often arise where cargo has been damaged due to alleged stowage problems. The current legal position in respect of alleged stevedore incompetence is explained.

Liquid cargo sampling is an important tool for spotting off-specification cargo being loaded and is key in defending claims when they arise. A recent incident where simple checks could have prevented a costly delay is explained.

Trading bagged rice cargo into West Africa is a persistent problem. Members engaged in this trade should take steps to ensure that claims at the discharge port are minimised. Simple steps to protect an owner's position are discussed in this article.

A new ruling in the US has brought into focus the importance of preserving all electronic evidence that may be relevant to a dispute. Failure to do so may severely prejudice your position. The consequences of failing to preserve electronic evidence relating to US cases are examined.

## SOFT SKILLS – TALK THE TALK

Included with this issue of *Signals* is the second poster in North's *Soft Skills* series. Entitled *Talk the Talk* the poster focuses on the importance of communication on board. In particular *Talk the Talk* encourages communication using the ships working language in all professional situations on board. This should develop the skills of ships' staff in the working language and assist smooth communication in high stress or emergency situations.



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FOR NORTH'S MEMBERS

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# DANGERS OF MODIFYING A VESSEL

Modifying a vessel often results in significant benefits for the owner because the vessel will run more efficiently. In the vast majority of circumstances these modifications, whether temporary or permanent, result in achieving such benefits without any significant increase in risk to the vessel or crew. However, sometimes things can go wrong if the potential risks of a modification are not properly assessed. This article discusses the steps that may need to be considered when modifying a vessel.

## Positives and Negatives

When planning a modification to an existing system or piece of equipment, consideration must be given to the potential impact, both positive and negative, that could be introduced by this work. Although well-intentioned, some modifications may inadvertently present serious risks to safety and lead to injuries or even death.

## Check with Class

Before embarking on a modification, consider consulting the equipment manufacturer and seek guidance from your classification society and Flag State as appropriate. Remember that modifications to existing equipment and systems may require a change in documentation, such as certification or operating and maintenance procedures.

Regardless of whether or not the proposed modification requires the involvement of a classification society, there is an obligation on the ship's crew and shore management to make sure no new potential risks arise. It is quite easy to fall into the trap of focusing on the benefits of what appears to be an improvement to a system, which can aid the ship's crew in their day to day duties, rather than the potential downsides or safety implications it can bring about.

## Manage the Change

In order to aid the process of making modifications on board, a system for managing change can be implemented. Such a system should encompass the full process from suggestion to analysis through to implementation/execution and finally close out.

The analysis should include a risk assessment to identify all of the potential undesirable impacts. This requires identifying hazards and the subsequent assessment of the estimated likelihood and the potential severity. The risks can then be determined, and therefore the change or modification can be properly managed.

The obvious impact to consider is how any change might adversely affect the safety of the ship and its crew, but other factors to consider are the potential impacts on other equipment, shipboard operations and the environment.

## Shipyard Modifications

These risks are not just limited to the actions initiated and carried out by the ship's crew or technical managers. Similar risks may arise from systems designed and installed by a shipyard, either at time of delivery of a new build or during a dry-docking. If a system or a piece of equipment does not look right, then it should be assessed.

## Further Information

For more information on carrying out risk assessments, please refer to North's Loss Prevention Briefing Principles of Risk Assessment and Risk Management which can be viewed on North's website: [www.nepia.com/lp-briefings](http://www.nepia.com/lp-briefings)

# IS YOUR PILOT LADDER SAFE AND SECURE?

Concern still exists as to the number of pilots that are injured or killed as a result of accidents while boarding or disembarking vessels using pilot ladders which have been rigged incorrectly.

The United Kingdom Maritime Pilots Association (UKMPA) has recently issued a bulletin highlighting the bad practice of securing pilot ladders by means of devices such as deck tongues or hooks. This bulletin advises that such arrangements are non-compliant with SOLAS Chapter V Regulation 23 and suggests pilots should report these arrangements to the UK Maritime and Coastguard Agency via the appropriate channel.

Members should be aware that vessels which have been reported by a pilot or port authority can expect to be targeted for Port State Control inspection.

## Further Information

Further advice on the safe rigging of pilot boarding arrangements may be found in North's Hot-Spots – Pilot Ladder, the above referenced UKMPA bulletin and the Shipping Industry Guidance on Pilot Transfer Arrangements published by the International Maritime Pilots Association in collaboration with the International Chamber of Shipping.

[www.nepia.com/hot-spots](http://www.nepia.com/hot-spots)  
[www.ukmpa.org/downloads/xcH\\_jksi\\_Cfsg\\_s23/flyer\\_2014.pdf](http://www.ukmpa.org/downloads/xcH_jksi_Cfsg_s23/flyer_2014.pdf)  
[www.impahq.org/downloads.php](http://www.impahq.org/downloads.php)

# CHINESE FISH FARMS

The Club has seen a number of high value claims as a result of alleged damage to fish farms around the Chinese coast.

Fish farms are frequently positioned close to the boundaries of port navigation channels and in some cases have been found to be inside the channel itself. Whilst not restricted to this area, the problems appear to be particularly prevalent around the ports of Lanshan and Lianyungang.

Whilst the size and position of fish farms are subject to prior approval and appropriate licensing, it has been reported that a number of farms have apparently been extended, or new farms put in place without licenses being granted.

Further problems may be caused if a dispute arises over port limit boundaries between local authorities, and one authority grants permission for a fish farm in a contested area. This results in the other

port authority, and therefore the VTS for that port, being unaware of the exact area covered by fish farms, therefore preventing accurate routing assistance for transiting vessels.

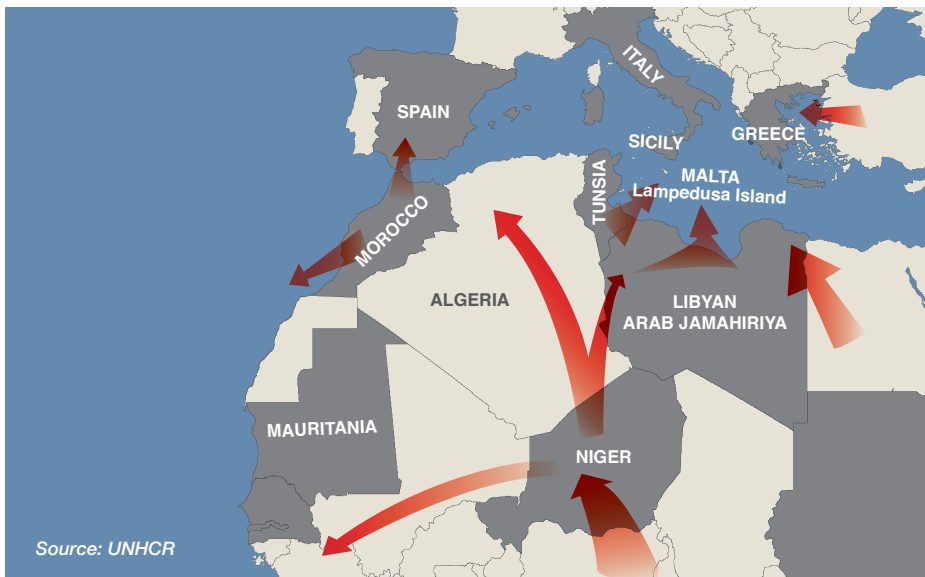
Given the potential problems faced by local authorities in determining fish farm positions, it is uncertain whether or not chart corrections or navigational warnings will accurately reflect the current situation.

Unfortunately the Chinese MSA cannot conduct frequent on-site inspections to confirm the positioning of fisheries due to the considerable manpower and resources required, and it is unlikely that the situation will improve in the foreseeable future.

When navigating in or near port approach channels, vessels should proceed with caution, keep a close lookout for uncharted fish farms and follow any routing guidance provided by the VTS centre.



# MIGRANTS PICKED UP AT SEA ON INCREASE



Source: UNHCR

The number of migrants picked up at sea is on the increase, as more people are classed as refugees or internally displaced at the present time than any time since 1994. The crisis in Syria has had a major impact, particularly in the Eastern Mediterranean. According to the United Nations High Commissioner for Refugees (UNHCR) the total number of refugees worldwide is currently around 10 million people.

## A Maritime Problem

### The Mediterranean

With such a large number of people seeking refuge, it is inevitable that many will seek to move to countries seen as safe havens and this often involves requiring transportation by sea. Recent high profile incidents off islands such as Sicily and Malta have included small boats carrying migrants and asylum seekers which have foundered at sea. In one incident off Lampedusa, 311 bodies were recovered from the sea, with only 156 survivors. Vessels operating in areas with high numbers of migrants and refugees will therefore get involved in search and rescue operations.

The map at the top of the article shows the areas of mixed migration into Europe.

### East Indian Ocean

Between 2010 and 2013, over 40,000 asylum seekers attempted to reach Australia by boat and this posed a challenge to the commercial shipping industry operating vessels in the eastern Indian Ocean. This prompted the Australian government to take action.

New government rulings following the election in September 2013 have resulted in no asylum seekers successfully arriving in Australia by boat between 1 January 2014 and 17 February 2014. However, this does not mean that the problem has entirely disappeared.

### Myanmar

Internal conflict in Myanmar has led to a spike in the number of Myanmarese asylum seekers and refugees. As reported in September 2013, there were over 240,000 asylum seekers and refugees registered by UNHCR in the Asia Pacific region, approximately 29,000 of which are from Myanmar. When attempting to flee the country, their main choice of passage is by boat when the seas begin to calm in November.



Boats Carrying Migrants

## The Master's Responsibility

The Master has an obligation under both the United Nations Convention on the Law of the Sea (UNCLOS) and the International Convention for the Safety of Life at Sea (SOLAS) to render assistance to those in distress at sea without regard to their nationality, status or the circumstances in which they are found. This is a longstanding maritime tradition as well as an obligation enshrined in international law. Compliance with this obligation is essential to preserve the integrity of maritime search and rescue services ([www.imo.org](http://www.imo.org) – Rescue at Sea).

## P&I Club Cover

The Master of the vessel is under a duty to proceed to the assistance of persons in distress and must take all steps to save life and deliver them safely to port. This of course cannot be done without expense to the shipowner.

Club Rules cover, on a discretionary basis, the net costs of proceeding to the assistance of persons in distress and where appropriate, searching for them, along with the expenses of taking reasonable steps to look after them and land them.

On arrival in port, the shipowner may face immigration issues and this will require assistance from the Club. Although it is likely that most migrants would claim asylum from the first port in which they arrive, the local immigration authorities may seek to impose fines or penalties on the vessel for bringing migrants to their jurisdiction. Alternatively, as the migrants are unlikely to carry adequate documentation, fines may be imposed for this. In addition, some Port State authorities require suitable health documentation to be provided by all persons arriving in their ports and obviously, it is quite likely that migrants would not possess such documentation. In such a situation, any fines or penalties arising from breach of immigration or health regulations may be reimbursed by the Club on a discretionary basis.

It is also equally possible that the migrants may be suffering from or carrying infectious diseases and this may result in the quarantining of the vessel. In that situation, the expenses arising from that would be covered as detailed in the Club Rules.

## Further Information

*Should Members require advice or are in any doubt as to what expenses may or may not be covered under the vessel's terms of entry in any given situation, they should contact the Club for guidance.*



# DENTAL HYGIENE AMONG SEAFARERS

## Good Dental Hygiene is Essential for Your Overall Health

Dental problems may interfere with job performance on board, lead to costly dental treatment abroad and at worst, repatriation, if complications arise or if treatment cannot be done in the workplace.

### Common Problems

**Dental caries**, the technical term for tooth decay and cavities, are caused by the development of cavities in the teeth, constant presence of germs in the mouth, protracted contact of food remnants with teeth and inherent susceptibility to decay.

**Gingivitis** is the swelling of the gums with redness and bleeding. It is caused by poor dental hygiene, crooked or misplaced teeth which make oral hygiene difficult, accumulation of tartar/nicotine on the teeth surfaces, accumulation of food residue, poorly fitting dental restoration (dentures) and vitamin C deficiency.

**Periodontitis** (pyorrhoea) is related to gingivitis. It is caused by inflammation of the tissues that support and stabilise the roots of the tooth in addition to tenderness, redness and bleeding of the gums. In an advanced state, teeth become loose.

**Abscesses** may develop if dental decay is not treated and may progress until the pulp cavity of the tooth is infected which may spread into the tissues surrounding the end of the root of the tooth, hence germs find their way between the gums of the tooth.

### Keep Your Mouth Clean

Most of these conditions can be controlled by good dental hygiene including:

- Regular, proper brushing of teeth three times a day using a soft bristle toothbrush and appropriate toothpaste or mouthwash. Change your toothbrush every three months. Rinse mouth when taking food in between meals.
- Flossing eliminates plaque and food remnants to avert tooth decay and liberate foul breath.
- Gum massage can thwart gum related disorders such as bleeding and pus formation.
- Tongue care to avoid foul breath. Brush your tongue using a back to front sweeping technique to take out food particles.



- Include more natural food to your diet such as fruits, vegetables, nuts and grains.
- Avoid too much sugar, sweets, sugar coated foods such as pastries, cakes, chocolates and drinks that cause tooth decay.
- Avoid smoking.
- Regular visits to your personal dentist for oral prophylaxis or treatment if necessary.

Where infection does develop, antibiotics can help control the infection temporarily, but proper care calls for the management and treatment of a dentist. It is in your interest to avoid the pain and trauma related to dental treatment. Maintaining good dental health helps prevent foul breath, leads to healthy and whiter teeth and avoids those painful trips to the dentist.

*With thanks to SM Lazo Medical Clinic for this article.*



# INCOMPETENT STEVEDORES

## “Master, the stevedores are damaging the cargo!”

What should a Master do when he is advised of this? It is possible that neither the Master nor the owner had any control over which stevedores were appointed, so how does the Master protect the owner?

The Master should gather as much evidence as possible – photos, reports, statements by the crew and officers and contact the local P&I correspondent to appoint a surveyor. The Master should also issue notes of protest to the stevedores, the agent, the charterer, the receiver, the owner and interested parties at that port.

Will this action stop the damage? Possibly not – it may not even protect the ship or owner against claims or arrest for cargo damage and therefore the owner may have to deal with and settle such claims in the first instance. However, taking such action may help in the longer term.

The problem is that, generally, the terms of the bill of lading provide that the carrier (often the owner) “shall properly and carefully load, handle, stow... and discharge the goods carried” (Art III Rule 2 of the Hague

and Hague-Visby Rules) and as such the carrier may be held liable for damage caused by the stevedores.

Under the charterparty, the general position is that, it is the responsibility of the charterer to arrange the cargo handling, which includes appointing the stevedores (e.g. Clause 8 of the NYPE and Clause 5 of Gencon 1994). In this case, the owner has to settle the cargo claims and then try to recover from the charterers. However, charterers often seek to avoid this by amending the charterparty along the lines that, though appointed by the charterer, the stevedores are to be regarded as the owner’s servant or under the Master’s responsibility.

The courts have long held that, where such clauses are inserted in the charterparty, the charterer’s responsibility is limited to appointing reasonably competent stevedores. There have been disputes over what constitutes the behaviour that is needed to demonstrate that a stevedore was not competent.

In a recent arbitration award, all the various arguments were reviewed:

- The charterers stated that the stevedores were appointed by the receiver under the terms of a sub-charterparty, therefore the charterer had not breached the charterparty. This was rejected; the charterers could not pass off their obligations in this way.

- Neither the charterer nor receiver could ‘select’ a stevedore, they had to use the ones employed by the Port Authority. This too was rejected; the charterer had assumed the risk of appointing local stevedores.
- The stevedores were not incompetent, in that they did not consistently fail to carry out their duties properly, but only negligent in that they occasionally failed to carry out their duties properly. This was rejected also. Even though only 1% of the cargo in question was damaged, an objective view of all reports indicated that the discharge was carried out in an unsatisfactory way, which raised a presumption of incompetence. It was up to the charterer then to rebut that presumption which, in this case, he was unable to do.
- The charterers had not been informed of the problems with the stevedores and therefore had no opportunity to correct matters. This was also rejected as the Master had sent no less than 20 letters of protest to the receivers, the stevedores, the agents and his P&I Club.

Charterers were found liable in full to the owner who was able to recover both the amount of the cargo claim and all his costs and expenses. Therefore, if stevedores are damaging the cargo, Masters are reminded to issue notes of protest, gather evidence and contact the local P&I correspondent.

# LIQUID CARGO CONTAMINATION PROBLEMS

Liquid cargo contamination claims have cost Members over US\$33 million over the past five years. These claims can be very complex and require in-depth chemical analysis by expert scientists. However, this analysis can only be carried out where owners have taken care to ensure a comprehensive sampling regime is in place. Sometimes even the most basic of sampling practices can save time and money.

## Sampling

Sampling is vitally important in monitoring the quality of liquid products during transfer and transportation. The acquisition and subsequent care and retention of representative samples are crucial in protecting the vessel from unfounded contamination claims and in defending those claims where they might arise. Unfortunately, experience has shown that on board sampling regimes may not always reflect best practice.

## First Flush Failure

In a recent incident, a manifold sample was taken at the start of loading (commonly known as a first flush sample) and this sample was then put to one side and not examined by the deck team. This is a waste of time and effort and can potentially be a costly error.

The vessel continued to load until first foot level and when sampling took place once again, the examination of the first foot samples from the cargo tank revealed suspended particles. The presence of these particles resulted in the cargo being declared off-specification.

As a result of this suspected contamination the vessel had to transfer the part-loaded cargo to the slop tank and conduct further cleaning. It was then discovered that similar particles were present in the original first flush sample.

A great deal of time and ultimately money may have been saved if a careful visual check had been made on the quality of the cargo as it came on board, the contamination noted and loading suspended pending further investigation.

## Visual Inspection

A key factor in any sampling regime is recognising contamination via close visual inspection. Only the most obvious problems will be apparent by visual inspection, e.g. change of colour or the presence of water or foreign particles. However, this does not mean the checks should be ignored.

A visual check of cargo samples should always be carried out by an experienced officer.

## Other Simple Checks

Depending on the toxicity of the cargo, the density and smell of a sample may also be tested on board as another simple way of identifying obvious problems with the cargo. Extreme care should be exercised before smelling any cargo.

## If In Doubt, Stop!

It is important that, at any stage of the loading or discharge of cargo, if doubt exists as to the quality of the product being received, the responsible officer should stop the operation and seek further guidance.

## Further Information

To aid Members and crew, North has recently published a Loss Prevention Briefing on Liquid Cargo Sampling which highlights good practice and offers advice to ships' crew on when and where to take samples. This briefing, when read in conjunction with North's Loss Prevention Guide on Shipboard Petroleum Surveys and the Club's Hot-Spot information sheet on Liquid Cargo Sampling, can provide valuable assistance to Members in formulating rigorous sampling procedures. The publications can be viewed on the Club's website:

[www.nepia.com/lp-guides](http://www.nepia.com/lp-guides)  
[www.nepia.com/Hot-Spots](http://www.nepia.com/Hot-Spots)  
[www.nepia.com/lp-briefings](http://www.nepia.com/lp-briefings)

# DIRECT REDUCED IRON (DRI) DUST = RUST

The main problems associated with the carriage of Direct Reduced Iron (DRI) products – the evolution of hydrogen gas and potential for self heating – are well known. A lesser known problem is the dust that can be produced during the loading, discharging and production of DRI products.

DRI dust is a by-product of production and loading of DRI and is comprised of small, high-iron content particles. The dust is initially grey or black and tends to oxidise (rust) rapidly.

North is aware of several cases where a DRI product has been loaded on a vessel and the dust has caused problems, including the initiation of corrosion, damage to moving parts in radar scanners and damage to coatings. In moist conditions, DRI dust can adhere to paintwork, resist normal washing, and form hard deposits which bond to metal surfaces.

In addition to the dust issues for vessels loading DRI, correspondents in Trinidad and Tobago have alerted North to potential problems for vessels loading downwind of the DRI facility at Point Lisas, Trinidad and Tobago. The correspondents report that:

“At times dust clouds can be seen billowing from loading vessels, and over the years there have been reports of vessels departing Point Lisas after an apparently clear stay, and of white paintwork gradually turning brown during the ensuing voyage.”

“Dust reduction measures have been implemented periodically at the plant. In 2008, the plant announced a multi-million dollar dust reduction action plan. Certain measures were put in place, including the introduction of a cascading loading chute to reduce dust emissions during vessel loading. While dust emissions were reduced as a result, complaints continue to arise periodically.”

“Whatever their trade, officers serving on vessels calling at Point Lisas should be on the lookout for DRI dust, and seek advice and assistance as appropriate.”

Whether loading a DRI product, or loading downwind of a DRI plant or vessel producing dust, ship's officers should take care to ensure that accumulations of DRI dust are avoided where possible, and that cleaning is carried out to the fullest extent possible in order to avoid costly problems associated with rust and coatings.

*Many thanks to Rupert Steer of correspondents Cariconsult Trinidad Limited for his assistance in preparing this article.*





# PROHIBITION OF THE BLENDING OF BULK LIQUID CARGOES AND PRODUCTION PROCESSES DURING SEA VOYAGES

Following the incorporation of Resolution MSC.325(90) into SOLAS on 1 January 2014, the physical blending of bulk liquid cargoes during a sea voyage is now prohibited.

Physical blending refers to the process whereby the ship's cargo pumps and pipelines are used to internally circulate two or more different cargoes with the intent to achieve a cargo with a new product designation. This prohibition does not preclude the Master from making cargo transfers for the safety of the ship or protection of the marine environment. Blending may still take place at anchor or alongside berths within port limits subject to the local port regulations.

Any production process on board a ship during a voyage is now also prohibited. A production process is any deliberate operation whereby a chemical reaction between a ship's cargo and any other substance or cargo takes place.

The prohibitions set out above do not apply to the blending of products or to the production processes of cargoes for use in the search for and exploitation of sea-bed mineral resources on board ships used to facilitate such operations.

## Insurance and Contractual Issues

A charterer cannot require a vessel to blend cargo without express agreement by the owner. If charterers seek owner's agreement to blending or seek to include a charterparty term to allow them to give instructions to blend cargoes, then owners should ensure that they agree only to perform blending in accordance with the provisions of the Resolution. Charterers should also be required to give blending instructions in writing, and if the instructions received by owners are not clear, they should seek clarification/confirmation of what is to be done.



North further recommends that a letter of indemnity is taken from the charterer (or other party making the request for blending), and where owners are agreeing a charterparty clause allowing charterers to give blending orders, owners entitlement to a letter of indemnity should be specifically set out there. The usual warnings about letters of indemnity apply, not least being sure that the party giving the indemnity has the financial substance to honour any claims (which could be very substantial if a full cargo has been blended).

Subject to the particular facts in each case, issues in respect of P&I club cover may also arise where oil cargoes are blended. This is because blending is an activity which effectively amounts to the creation of a new product on board the vessel. In addition, complications can also arise in respect of the bills of lading to be issued for a blended cargo. The starting point is that bills of lading have to accurately describe the cargo, where and when it was loaded, etc. Not only is an instruction from a charterer to put something on a bill of lading which does not tell the truth an unlawful instruction (and one that an owner is usually entitled to refuse), a deliberate failure to issue bills of lading which do not describe what has happened to the cargo on board

the vessel (such as the fact that blending has taken place) will be likely to prejudice P&I cover.

Members should seek guidance from the Club if they are in doubt at all regarding particular clauses and requests from charterers, and Members should look out for situations such as the following.

Where separate parcels of cargo are loaded and bills of lading will only be issued for the combined cargo after blending has taken place on board, in addition to identifying the total quantity of cargo loaded, the bills of lading should identify each parcel loaded and state where each parcel was loaded and on what date. If separate parcels have been loaded and bills of lading have been issued for them before the blending operation, the first sets of bills of lading must be surrendered and cancelled before new bills of lading are issued. The new bills of lading must accurately reflect what has happened to the cargo after it was received on board the vessel. It should state, for example, that two or more different parcels of cargo were involved, the load ports and loading dates of those parcels and the date of blending.

This advice is general in nature and each matter should of course be reviewed on its facts.



## INDONESIAN MINERAL ORE EXPORT BAN – UPDATE

The latest news from Indonesia indicates that the mineral ore export ban has been relaxed for a number of cargoes but remains in place for nickel ore and bauxite.

For up to date information please visit the Club's website: [www.nepia.com/publications/industrynews/listing](http://www.nepia.com/publications/industrynews/listing)

# BAGGED RICE TO WEST AFRICA



Bagged rice claims in West Africa and the pitfalls surrounding this trade are nothing new. In this article we look again at the problems that may be encountered in this trade, and steps that may be taken by Members to mitigate the almost inevitable claims that accompany the trade.

## Trading Pattern

Rice is typically shipped from South East Asia to the Middle East and sub-Saharan Africa. The total amount of rice traded globally each year is close to 30 million tonnes. The two biggest producers are China and India, followed by Thailand, Vietnam, Indonesia, Pakistan and Myanmar. The amount of rice exported to Africa accounts for 30% of the world's rice exports, the majority of which is in the form of 20-50kg bags.

## Charter Party Considerations

Before fixing a cargo of bagged rice, it is important to specify that stevedores are employed at the risk and expense of the shippers, charterer and/or receivers. Members should also give careful consideration to the allocation of risk under the relevant charterparty, the applicable law and jurisdiction that may apply to claims under the bills of lading.

## Potential Problems with Bagged Rice

The main problems that may be encountered with the carriage of bagged rice cargoes are:

- Temperature at the load port and climatic sea conditions throughout the voyage.
- Humidity/moisture content at the load port.
- Ventilation throughout the voyage/damage caused by sweat.
- Self heating/spontaneous combustion due to high moisture content over 15% (0.5% – 1.0% oil content).
- Odour caused by wet damaged rice penetrating the unaffected stow.
- Contamination by dust, dirt, oils, fats and other contaminants.
- Mechanical influences such as damage to bags caused by the use of hooks or overloaded cargo slings.

- Gases caused by bio activity and natural metabolic processes.
- Toxicity/hazards to health caused by the evolution of CO<sub>2</sub> within the cargo hold.
- Shrinkage/shortage primarily caused by pilferage or damaged bags.
- Insect infestation/disease.

If any of these problems arise during the voyage, even if very minor in nature, it may cause a big problem at a West African discharge port.

Members should notify the Club if they have any concerns when fixing a vessel to load a cargo of bagged rice or if they encounter any potential problems.

Early notification of potential problems will ensure that all appropriate steps can be taken to help the Club protect Member's interests.

Members should also consider appointing an independent surveyor prior to a vessel's arrival in port to oversee the loading/discharge operation and a firm of tally clerks engaged to make a tally of the cargo. The Club can assist with this if required.

## Ventilation

Condensation during the voyage to West Africa will often occur as the ambient air and sea water temperatures reduce. However, this can be reduced by adequate ventilation. In order to maintain the moisture content of the cargo to within acceptable levels, the air exchange rate should be between 15 to 25 changes per hour where appropriate. The cargo should be protected from the ships side and ventilation channels created throughout the stow.

*Please refer to North's Loss Prevention Guide on Ventilation for more in depth information.*

[www.northpublications.com/lpguides](http://www.northpublications.com/lpguides)

## Claims Mitigation

In order to prevent or mitigate the effect of claims of this nature we would recommend:

- Hatch covers, vents and other cargo hold openings to be properly maintained and made fully weathertight prior to arrival in port. Residues of previous cargoes to be removed and cargo holds swept, washed and cleaned ready for loading. Ensure hatch coaming drain channels and drains are unblocked and drain valves working correctly.
- Correct sized, clean dunnage and Kraft paper to be used in lining all tank tops and bulkheads ensuring adequate ventilation channels throughout. Bamboo poles and matting should be avoided if at all possible.

- Draft surveys carried out by an independent surveyor, prior to the commencement of and again at the end of cargo operations at both load and discharge ports.
- Tally clerks appointed to tally the cargo both at load and discharge ports and any discrepancies immediately reported to the local correspondent.
- Stowage of cargo providing adequate ventilation channels within the stow, allowing effective ventilation throughout the voyage. Be prepared to issue letters of protest in the shortest possible time scale, if necessary on a daily basis and ensure that the protest is issued to not only the stevedores, but also the receivers and charterers.
- Prevent stevedores from using hooks or overloading cargo slings and immediately report any rough handling to the local correspondent and North.
- Employ appropriate weather services and the officer on watch to monitor weather via the ship's radar. If there are any signs of rain, there must be sufficient crew to be readily available to close all open hatch covers promptly.
- Prior to sailing, the hatch covers and access hatches should be appropriately fitted with numbered security seals, witnessed and recorded by all appropriate parties. Unsealing at the discharge port should also be similarly witnessed and recorded.
- Incorporate the Inter-Club Agreement (ICA) clause into the charterparty.
- Ensure that the charterer is financially secure and entered with an IG club before fixing your vessel.
- In an effort to avoid pilferage both on board and on the quay, responsible crew members should be deputized to monitor the operation. Effective gangway security should be maintained throughout.

There are no guarantees that by following these measures that claims will not occur, indeed claims are always likely in this trade, but they will assist in reducing the size of claims and in the defence of claims.

## Further Information

*North's Loss Prevention Briefing on Bagged Rice Cargoes is available to read or download from our website: [www.nepia.com/lp-briefings](http://www.nepia.com/lp-briefings)*



# ARE YOUR CHARTERERS WHO THEY SEEM TO BE?

Readers will be familiar with the problem of fake or counterfeit goods: the watch that looks like an expensive Swiss watch, but is not.

Recently North has seen instances of Members fixing with a charterer having a name very similar to that of a well known Chinese state enterprise actively involved in the import of commodities. This suggests that the intended charterer is a subsidiary of the Chinese state enterprise, only later learning that the charterer and the Chinese state enterprise in question have no corporate link.

## The Deception is Not Sophisticated

Those behind the deception have in both instances legally incorporated a company with a similar name to a well-known Chinese state enterprise (the name is in fact identical, but with the name of a Chinese city or province in front of it).

On the face of the Fixture Note they have put the web address of the Chinese state enterprise, and via brokers they have provided a list of fixtures concluded by the Chinese state enterprise.

For all intents and purposes therefore, it looks like the charterer is a subsidiary company of the Chinese state enterprise, with a history of successfully performed fixtures.

The fact that a charterer might be a subsidiary company of a well-known Chinese state enterprise is not a guarantee of performance, but it gives some comfort in this difficult market and North can fully understand Members fixing with this comfort.

How can this fraud be avoided? The below is not an exhaustive list, but making the suggested enquiries should establish whether the intended charterer is in fact who they claim to be:

- As a first step Members should always try and obtain a Certificate of Incorporation of their intended charterer, thereby confirming the correct style and place of incorporation of the charterer.
- With this information, does the web page Members have been given refer to a subsidiary company with the same name as the intended charterer?
- Members should contact owners identified on the provided list of fixtures and ask if they have contracted with charterers of this exact name.
- And not least Members should ask the intended charterer to confirm who their P&I and damage to hull cover is placed with and ask North to cross-check.

Members are also referred to North's 'Check Before Fixing' Circular dated 9 January 2014.

# ATHENS CONVENTION 2002 PROTOCOL – COMING INTO FORCE

The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea 1974 ("the Convention"), which came into force on 28 April 1987, was designed to establish a regime of liability for damage suffered by passengers carried on a seagoing ship. However, due to a growing dissatisfaction with the Convention's low limits of liability, a Protocol was adopted in 2002 which will result in significant changes to the current regime. This Protocol will come into force on 23 April 2014.

Within Europe, the EU Passenger Liability Regulation ("PLR"), incorporates the liability, insurance and certification Articles of the 2002 Protocol and came into force on 31 December 2012.

The changes brought about by the 2002 Protocol include:

- The introduction of compulsory insurance to cover passengers on ships.
- A raise in the limits of liability.
- The use of other mechanisms to assist passengers in obtaining compensation.

These mechanisms will be based on principles already applied in existing liability and compensation regimes which deal with environmental pollution. These include replacing the fault-based liability system with a strict liability system for shipping related incidents.

The Convention also has a new Article which requires carriers to maintain insurance or some other financial security to cover the limits for strict liability under the Convention, in respect to the death of, and injury to, passengers. The amount of the insurance must not be less than SDR 250,000 per passenger on each distinct occasion.

Where the compulsory insurance requirements apply, a vessel will require a certificate of insurance from a state party to the Convention. In order to obtain a state certificate, Members will need to obtain evidence from their insurers to present to the state party. This will usually take the form of a Blue Card issued by the Club for non-war risk liabilities and a separate Blue Card from an insurer or guarantor in respect of war risk liabilities.

The Athens Convention does not apply to domestic voyages although it may be applied in certain EU states under the PLR. Members are referred to Circular 2012/039 in relation to the application of the PLR to domestic voyages.





# PARTY IS SANCTIONED FOR DESTRUCTION OF ELECTRONIC DOCUMENTS AFTER RECEIVING A CLAIM

US Law presumes prejudice even if data is protected by law of a party's country.

Destroying electronic records relevant to a pending claim or lawsuit is never a good idea, even when emails are destroyed or deleted without malevolent intentions. A federal court in New York has ruled that, "When evidence is destroyed willfully or through any gross negligence, prejudice to the innocent party may be presumed," as a matter of law.

The reason, according to the court, is that when electronic documents requested for production cannot be produced because the evidence was deleted or destroyed intentionally, the judge can reasonably assume the deleted evidence would have been helpful to the other side. Moreover, the court may impose sanctions for failure to produce the destroyed evidence. The complaining party does not have to show malevolence. It is enough to prove that a hold was not placed on the file until long after the claim was filed and that the emails or other relevant data were intentionally deleted. *Sekisui Medical America v. Hart* (S.D.N.Y., August 15, 2013).

After a claim is filed, no documents in the relevant file should be destroyed. Since 2006, US federal law has been modified to require that a party issue internal instruction to key employees informing them that litigation has ensued and that they are not to destroy or alter any paper or electronic documents, including emails and spreadsheets, etc. A party may not even destroy duplicate documents, as explaining that the destroyed emails or data were duplications only raises an issue of credibility which will be overcome by the presumption. When a claim is received, the hold should be placed promptly on relevant files of any department or of any outside investigators.



Image courtesy of Alexei Kuznetsov  
<http://www.flickr.com/photos/eofstr/>



For plaintiffs, the duty to institute a "litigation hold" arises when the attorney-client relationship arises. For the defendant, the same duty arises when the employees of a particular corporation know that there "may be" a lawsuit, for instance, when a notice or claim has been received.

In another case involving a Brazilian plaintiff, an apology and cultural explanation for failure to produce requested documents to the same federal court in the US got nowhere when months went by and the plaintiff failed to produce documents that were requested by a defendant.

The Brazilian plaintiff claimed he did not understand English. His lawyers went to Brazil to discuss discovery requirements with him, but only after a seven-month delay. They found plaintiffs had not produced several documents because they were considered private and protected from revelation under Brazilian law, which provide that "the secrecy of correspondence and of telegraphic data and telephone communications is unviable".

But the US federal judge found the plaintiff "had a culpable state of mind as they and their counsel were at least negligent" in failing to comply with US court rules for months. The judge added that having availed themselves of a US court system, plaintiffs "have no credible excuse for their blatant disregard of the discovery process". The judge imposed sanctions on the plaintiff and his trust. *Valentini v. Citigroup* (11 Civ. 1355, S.D.N.Y., August 21, 2013).

In summary, litigation in US federal courts imposes obligations on both domestic and foreign parties a duty to:

1. Preserve and maintain electronic evidence;
2. Adopt and enforce appropriate document preservation policies;
3. Issue a litigation "hold" as soon as litigation can reasonably be anticipated;
4. Counsel to advise and supervise preservation, searches and the production of electronic evidence.

The party responding to discovery has the burden to prove that the electronic information is not reasonably accessible due to burden or cost. A party can also assert a privilege as to electronic information that has been produced in discovery. The information can be provided to the court under seal until the issue of privilege is resolved. Lastly, a party may avoid sanctions if it can show that the electronic information was lost as a result of a routine good-faith operation of an electronic information system.

*With thanks to Vincent M. DeOrchis of Montgomery McCracken for this article.*

# OPA 90 – ALASKA MARITIME RESPONSE

Members will be well aware of the requirements under the United States Oil Pollution Act 1990 (OPA 90) for non-tank vessels to comply with the regulations for oil pollution response planning by 31 January 2014.

In some US states (notably Alaska, California and Washington) the federal requirements of OPA 90 are augmented by local regulations to address specific issues.

The Western Alaska Alternative Planning Criteria (WA-APC-T) are particularly significant because they attempt to address that region's vast geographic area, isolated coastline, sensitive ecology, transport and communication difficulties.

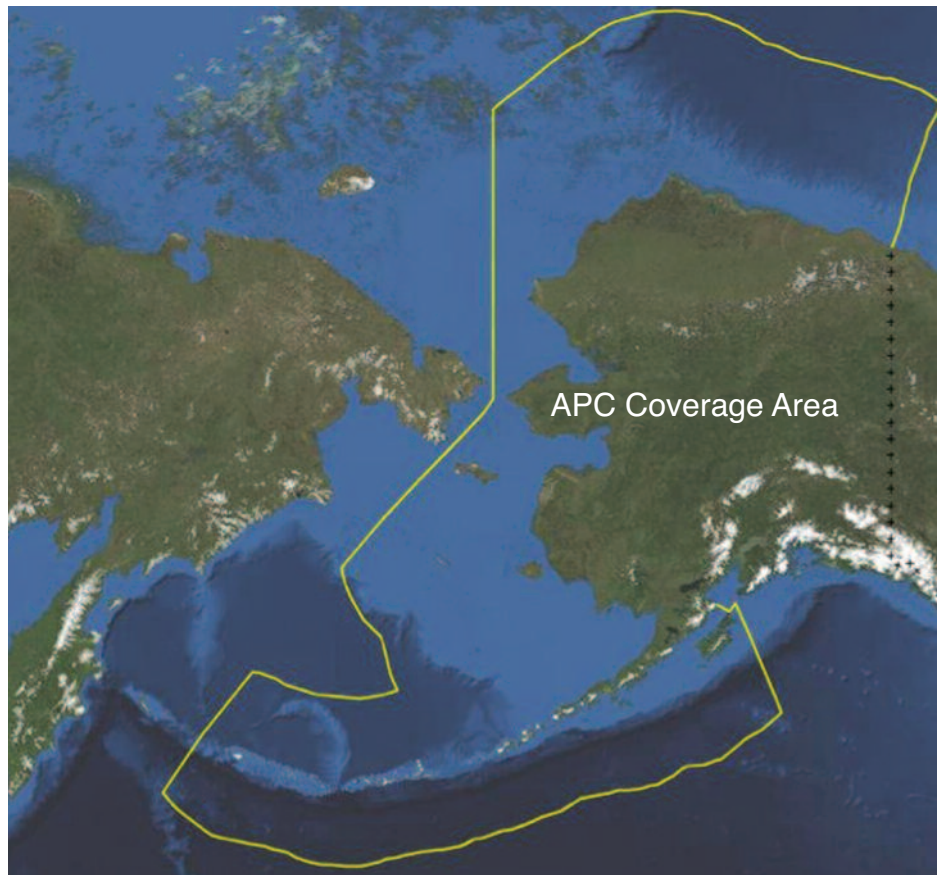
The Western Alaska region includes the Aleutian Islands, which straddle the North Pacific great circle route and mark the dividing line between the Pacific Ocean and the Bering Sea. The great circle route carries significant international traffic.

For further information please visit [www.ak-mprn.org/pdfs/WA-APC-T\\_2013.pdf](http://www.ak-mprn.org/pdfs/WA-APC-T_2013.pdf)

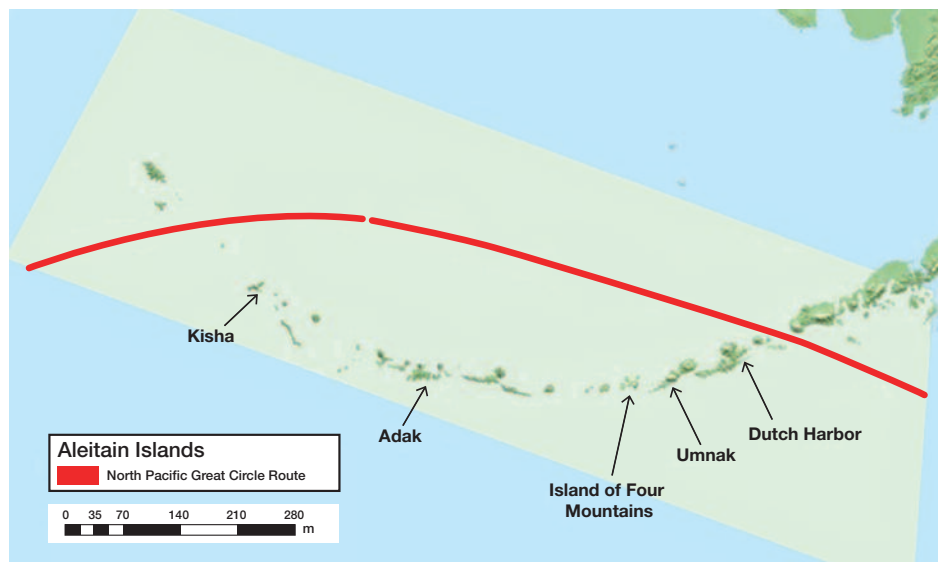
This is important because the WA-APC-T apply to the whole of the Exclusive Economic Zone (up to 200nm from land). The APC apply to vessels 'operating' within the Exclusive Economic Zone and to vessels whose last or next port of call is within the United States not just to vessels calling at ports in Western Alaska.

So, all vessels over 300 tonnes going to or from a US port must comply with WA-APC-T (which includes requirements for advance notification of transit) if they are using the North Pacific Great Circle Route and likely to pass within 200nm of the Aleutian Islands. Vessels which are not going to or from US ports may exercise the right of 'innocent passage' without complying with AW-APT-T but they must maintain continuous passage and not do anything inconsistent with it.

*If Members are in any doubt about application of these federal regulations, they should not hesitate to contact North's Pollution Enquiry Group at [pollutionenquirygroup@nepia.com](mailto:pollutionenquirygroup@nepia.com)*



APC Coverage Area



North Pacific Great Circle Route

## Adoption of Amendments to the FSS Code

The IMO Maritime Safety Committee (MSC), during its 91st session, approved amendments to the International Code for Fire Safety Systems (FSS Code). MSC.339(91) outlines the amendments to the Code, these include changes to the requirements for breathing apparatus. This must now be a self contained compressed air breathing apparatus with a minimum volume of air in the cylinder of 1,200 litres or which is capable of functioning for at least 30 minutes and must be fitted with an audible low air volume alarm.

Other amendments relate to the requirements for fixed gas, water and water mist fire-extinguishing systems, fire detection and alarm systems, emergency fire pumps and means of escape. These amendments are due to enter into force on 1 July 2014.



## Athens Convention 2002 Protocol

The Athens Convention 2002 Protocol will enter into force on 23 April 2014. Please refer to our article on page 8 for further details.

## Procedures for Recovery of Persons from the Water 1 July 2014

New requirements for the recovery of persons from the water enter into force on 1 July 2014, under SOLAS Regulation III/17-1.

The new Regulation requires all ships (other than ro-ro passenger ships\*) to have ship-specific plans and procedures for the recovery of persons from the water.

The requirements apply to new ships (cargo ships of 500 GT and above, and passenger ships regardless of size) constructed (having their keel laid) on or after 1 July 2014, and to existing ships by the first periodical or renewal safety equipment survey after 1 July 2014.

The recovery plans and procedures should facilitate the transfer of persons from the water to the ship while minimising the risk of injury from impact with ship structure, including by the recovery appliance itself, through a risk assessment taking into account the anticipated conditions and ship-specific characteristics.

The recovery plans/procedures do not necessarily need to be approved by the vessel's flag administration.

Drills should also be carried out to ensure that crew are familiar with the plans, procedures and equipment for recovery of persons from the water. These drills should be part of the routine man-overboard drills.

Further guidance for preparing the plans and procedures is provided in the following Circulars:

- MSC.1/Circ.1447 – Guidelines for the Development of Plans and Procedures for Recovery of Persons from the Water.
- MSC.1/Circ.1182 – Guide to Recovery Techniques.
- MSC.1/Circ.1185/Rev.1. – Guide for Cold Water Survival.

\*Ro-ro passenger ships are already required to carry means of recovery equipment by SOLAS Regulation III/26.4, and so are deemed to have complied with the Regulation III/17-1 requirements.

The new requirements have been introduced as part of the emergency preparedness plan required by Paragraph 8 of Part A of the International Safety Management (ISM) Code. They were adopted by IMO Resolution MSC.338 (91).

# SOFT SKILLS POSTER 2 – TALK THE TALK

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 second poster in North's latest series aims to promote awareness amongst seafarers of the importance of communicating in the ship's working language. The normal reaction when faced with a stressful situation is to revert to your first language and this can be detrimental to the safe operation of the vessel. The poster suggests some tips for encouraging the use of ship's working language on board.

## Further Information

Soft Skills – Talk the Talk can be viewed or downloaded from the Club's website: [www.nepia.com/lp-posters](http://www.nepia.com/lp-posters)

A copy of Soft Skills – Talk the Talk is also enclosed with this issue of Signals for all appropriate entered vessels.





# UK RESIDENTIAL TRAINING COURSE 2014

North's annual UK-based residential training course in P&I insurance and Loss Prevention, now in its 22nd year, is very popular and places are filling up fast with many delegates from around the world attending. The course runs from 13 – 20 June and is based at Lumley Castle and South Shields in the north east of England. There are only a few places remaining so please contact us immediately to avoid missing out.

## Further Information

If you are interested in attending this course please contact [denise.huddleston@nepia.com](mailto:denise.huddleston@nepia.com) or visit [www.nepia.com/residential-training-course](http://www.nepia.com/residential-training-course)



# COLLISION CASE STUDY

## Scenario

Two ships are full away in open waters. Visibility reduces steadily until they are both in thick fog.

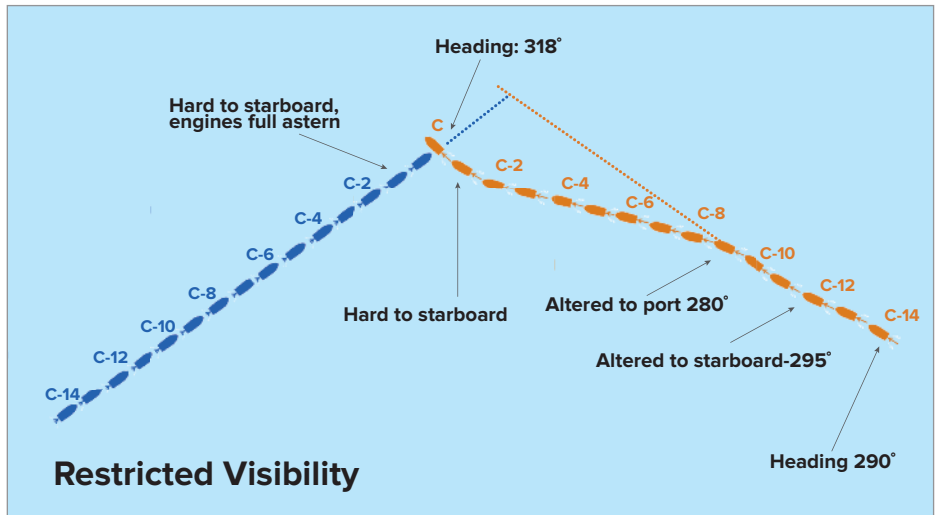
Each ship observes the other by radar alone at about six miles range.

Each ship manoeuvres as shown on the plot (to the right).

Neither ship hears a sound signal from the other. The ships do not see each other by eye until the last moments before the collision.

## Questions

1. At C-14 what options are open to the OOW on each ship?
2. At C-10 what options are open to the OOW on each ship?
3. At C-6 what options are open to the OOW on each ship?
4. Should the watch keepers have tried to make VHF contact? If 'yes' at what time?



## 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 enclosure:  
● Soft Skills – Talk the Talk.



# 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 this publication is to provide 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 the information contained herein are expected to satisfy themselves that it is relevant and suitable for the purposes to which it is applied or intended to be applied. No responsibility is accepted by North or by any person, firm, corporation or organisation who or which has been in any way concerned with the furnishing of data, the development, compilation or publication thereof, for the accuracy of any information or advice given herein or for any omission herefrom, or for any consequences whatsoever resulting directly or indirectly from, reliance upon or adoption of guidance contained herein.

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