



BIMCO

BULLETIN

VOLUME 109
FEBRUARY 2014

1

A large yellow gantry crane dominates the center of the image, stretching across the frame. It has multiple levels and complex structural beams. Below the crane, several shipping containers are stacked on the left, and a white truck is partially visible on the right. The crane has 'ZPMC' and 'DP WORLD' logos on its side. The background shows a clear blue sky and more industrial structures.

**BIMCO events in Dubai –
programme announced**

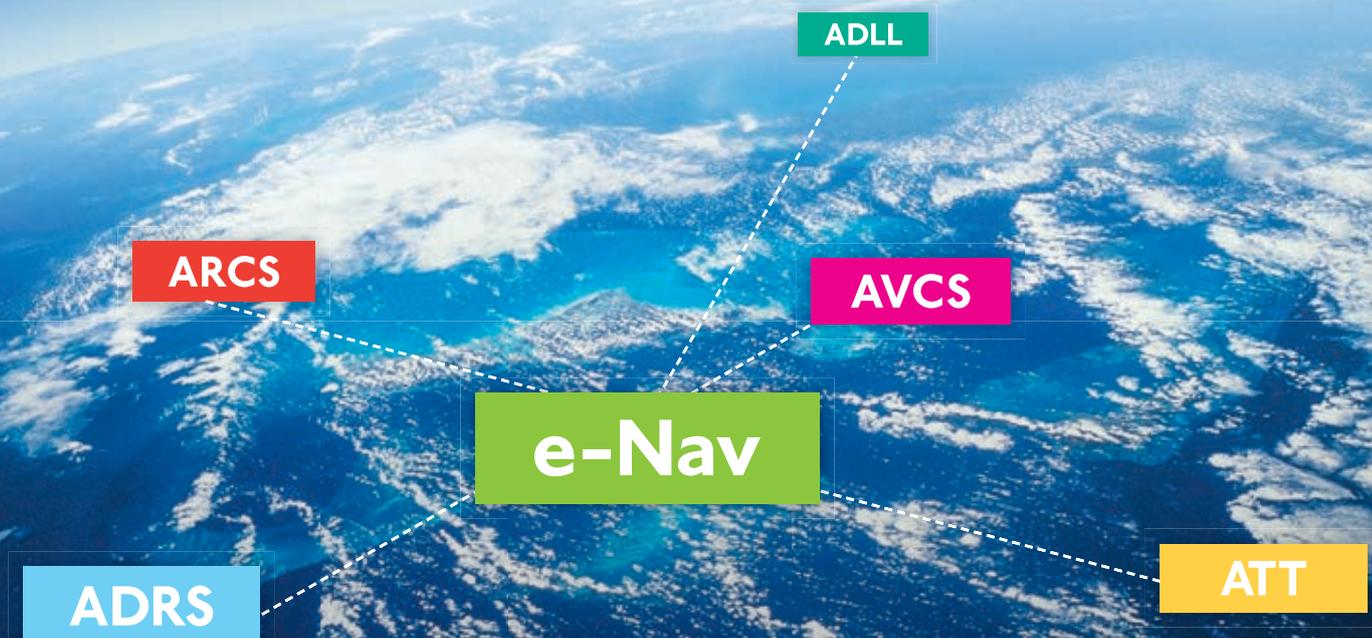
**Time to revisit
the definition
of a “safe port”?**

**Chemical tanker
market outlook –
a market at
a crossroads**

**POOLCON B adopted by
Documentary Committee**

Get more

Efficient voyage planning and chart management
in a single service



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Connect your ADMIRALTY world digitally

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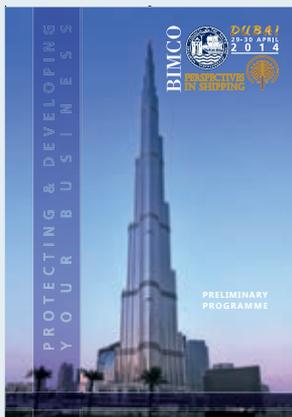
United Kingdom
Hydrographic Office



To find out more about e-Nav, visit www.admiralty.co.uk, or contact your ADMIRALTY Chart Agent.

CONTENTS

BIMCO Awards Gala Dinner and programme for Dubai Perspectives in Shipping *pp.2, 4-11*



Chemical tanker market outlook – a market at a crossroads *p.54*



POOLCON B adopted by Documentary Committee *p.68*



BIMCO

- 2 The BIMCO Awards Gala Dinner
- 3 Welcome to BIMCO
- 4 Perspectives in Shipping 2014
- 5 Dubai Perspectives in Shipping preliminary programme
- 12 NYPE update heads 2014 documentary work progress
- 14 BIMCO Education round-up
- 16 Watchkeeper

General

- 18 Time to revisit the definition of a "safe port"?
- 20 Enhanced safety through the use of real-time dynamic chart overlays
- 24 Plotting a course to better profits: how e-navigation can reduce operating costs
- 28 Live testing of new AVANTI port information software
- 30 No all ballast water treatment system type approvals are equal
- 32 High quality flag with focus on user-friendliness
- 34 Protecting marine environments: the MARPOL V Regulation
- 38 Malaysia's Trans-Peninsular Pipeline Project: will it take off?
- 40 Light upon the waters
- 44 New books

Shipping Market Overview & Outlook

- 46 Macro economics
- 48 Dry bulk shipping
- 50 Tanker shipping
- 52 Container shipping
- 54 Chemical tanker market outlook – a market at a crossroads
- 56 The devil in the detail of time charter damages calculation
- 58 Moore Stephens says 2015 should see return of healthy shipping industry

Round-ups

- 60 Ongoing Chinese shipping issues
- 62 No lack of challenges in Asia at the start of 2014
- 64 Ongoing EU shipping issues
- 66 Ongoing US shipping issues

Shipping Law

- 68 POOLCON B adopted by Documentary Committee
- 74 Anniversaries galore!
- 76 Judgment – *The Ladytramp*
- 78 London Arbitration – Incompetent versus negligent stevedoring
- 82 New York Arbitration – Shelltime (1984) – ST additional clause 48 – Major's approvals – Impossible condition – Charterer's wrongful cancellation – Owner's damages



BIMCO

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BIMCO Awards Gala Dinner

You are invited to join us on 29 April 2014 for the BIMCO Awards Gala Dinner at the Jumeirah Beach Hotel in Dubai. It promises to be a night of great networking and celebration.

The new BIMCO Awards have been created to celebrate and draw attention to shipping companies and individuals who have excelled in areas reflecting BIMCO's global activities.

The nominations will come from BIMCO members, but the winners can be any company or individual that has excelled within the category.

Award categories

The 5 BIMCO Award categories are:

- The BIMCO President's Award
- The BIMCO Regional Shipping Personality of the Year
- The BIMCO Shipping Company of the Year
- The BIMCO Education & Training Award
- The BIMCO Cairns-Hansen Award

Named after two of BIMCO's founding fathers, whose vision was to create standard forms of charter party, the basic principle that underpins BIMCO's documentary activities today.

How to nominate candidates

BIMCO members can nominate candidates for the last 4 awards categories, starting today, and the closing date for entry of nominations from BIMCO members is Friday 7 March 2014. Simply go to the nomination forms on this site: <http://dubai.bimco.org>

A distinguished judging panel has been established headed by BIMCO's President **John Denholm**. He will be joined by **Jamal Majid Bin Thaniah** (TBC), Vice Chairman of DP World and **Captain Jitendra Misra**, Managing Director of Emarat Maritime and Director of BIMCO, **Philippe Louis-Dreyfus**, President of Louis Dreyfus Armateurs and President Designate of BIMCO (TBC) and **Angus Frew**, Secretary General & CEO of BIMCO.

We need your nominations! So please go ahead and nominate your favourites within each category, and then come and join us at the BIMCO Awards Gala Dinner in Dubai on 29 April 2014 for a night of celebration.

Perspectives in Shipping 2014

Make a whole day of it and join us at BIMCO's Annual Conference. The theme of this year's conference is **Perspectives in Shipping 2014 – Protecting and Developing Your Business**.

The Conference starts at 9:30 and runs through to 16:00 on 29 April at the Jumeirah Beach Hotel.

Further information

More information, including buying seats/tables for the Gala Dinner, nomination forms for the BIMCO Awards, and sponsorship opportunities, is available on the dedicated website at <http://dubai.bimco.org>



Welcome to BIMCO!

BIMCO would like to extend a warm welcome to the following new members, admitted during the period from 1 December 2013 to 31 January 2014.

Owner Members

Qingdao, Shandong Province, China
Dragør, Denmark
Lagos, Nigeria
Doha, Qatar
Abu Dhabi, United Arab Emirates
Dubai, United Arab Emirates

Seacon Ships Management Co. Ltd.
Licvem Shipping & Trading Aps
West African Ventures Ltd.
Trelco Marine Services Co. W.L.L
Sea Horse Middle East Marine Services LLC
IPC Marine Services L.L.C.

Broker Members

Icici, Croatia
Weding/Handewitt, Germany
Thessaloniki, Greece
St. Petersburg, Russia
Dubai, United Arab Emirates

R & B Globalni Projekti d.o.o.
BOW Shipping GmbH
Seawind Shipping Services
Arvensa Transport Ltd.
GSS Marine Shipping Services LLC

Agency Members

Luanda, Angola
Montreal, Canada
Tehran, Iran

Offshores Marine Service Lda.
Robert Reford Agency
Blue Gulf Shipping Services Co. Ltd.

Associate Members

Shanghai, China
Shanghai, China
Sandefjord, Norway
Rotterdam, The Netherlands
New Orleans, LA, United States

Industrial and Commercial Bank of China Ltd.
Wärtsilä Management (Shanghai) Co. Ltd.
Jotun A/S
Port of Rotterdam
Galloway Johnson Tomkins Burr & Smith

Perspectives in Shipping 2014

BIMCO announces the programme for its annual conference *Perspectives in Shipping 2014 – Protecting and Developing Your Business* at the Jumeirah Beach Hotel, Dubai on 29 April 2014.

You are invited to join us on 29 April 2014, where the full-day conference *Perspectives in Shipping 2014* will focus on issues impacting all ship owners and help you to protect and develop your business.

His Excellency Sultan Ahmed Bin Sulayem, the Chairman of DP World (TBC), will open the conference. He will be followed by Captain Jitendra Misra, Managing Director of Emarat Maritime. The scene will be set by Peter Sand, BIMCO's Chief Shipping Analyst, who will present a Shipping Market Overview & Outlook.

The conference will then split into two exciting parallel tracks for you to choose from.

Track one

Track 1: A role playing exercise on resolving a maritime casualty – the mess, the media and the mediators

Through the muddle and confusion that immediately follows a maritime casualty – a grounding, a collision or even a total loss – the ship owner must think clearly and tread carefully, looking after the welfare of his crew and minimising damage to the environment.

What are the “do’s” and “don’ts” for the prudent ship owner? Who should he confide in, and to whom should his lips be sealed? Co-operation is the key to successful crisis management, but of equal importance is managing the media. And then there will be claims to be dealt with. Many claims. Arbitrators will be appointed, each side will gather a small army of lawyers and experts, and battle lines will be drawn.

This track will include a vibrant and interactive casualty simulation against this complex backdrop of events. The role playing exercise will be directed by **Lindsay East**, Consultant, Reed Smith, London, and will further include experts well-versed in maritime casualty work: **Chirag Karia** Q.C.,

London, **Nevil Phillips**, Barrister, London, **Han van Blanken**, Ship owner, Rotterdam, **John Tsatsas**, LMAA Arbitrator and Mediator, Chartered Shipbroker, Chartered Arbitrator, London. The media role will be played by **Julian Bray**, the Editor-in-Chief of TradeWinds.

The mock arbitration will have a unique twist – it will involve high-profile maritime arbitrators from the world’s three main arbitration venues as listed in BIMCO’s Dispute Resolution Clause, represented by **Jude Benny**, Lawyer and Maritime Arbitrator from Singapore, **Bruce Harris**, Maritime and Commercial Arbitrator from London, and **David Martowski**, Arbitrator/Mediator from New York – each with possible different approaches to resolving the dispute.

Most importantly, this exercise will involve the audience at each stage as the story unfolds. Armed with an interactive voting meter, each member of the audience will be asked what they would do next and help determine the outcome of the affair. We can’t stop your phone ringing in the middle of the night – but this event might just help you be better prepared when that phone rings.

Track two

Track 2: Upcoming regulatory requirements may erode your ticket to trade

Never have regulatory changes been more challenging for ship owners than those coming into force in the next decade.

A Ballast Water Treatment System will be one of the most expensive pieces of equipment on board your ship, but will it work? The marketing material says their system works in all conditions, and is suitable for any vessel. Will it really work reliably in all water conditions? Will all port states be happy with the results? Acquiring the wrong system will be an expensive mistake. What are the pitfalls? What are the ques-

tions you should be asking? The key issues will be presented by high-powered professionals from **Wärtsilä**, **Alfa Laval**, and **ClassNK**.

Emission control regulations are fast approaching and high oil prices are set to stay. Everyone is worrying about the availability and price of low sulphur diesel, but what are your options? Will scrubber technology really work? Is there a business case for continuing to use heavy fuel? Is LNG really a possibility, and what other fuels may be available? In the past, everyone burnt heavy fuel oil; the future may not be so simple! This may be the biggest game-changer for the industry since the end of the sailing era over 100 years ago.

This session will elaborate on the concepts of multi-fuelled ships, the availability and effectiveness of scrubber technologies and the practicalities of using LNG. To make this come alive, a group of high-powered representatives from **DNV-GL**, **Rolls Royce**, **MAN Diesel & Turbo**, **Wärtsilä**, and **Clean Marine Energy** will present the issues at stake in this context.

To wrap up Track 2, a panel of ship owners will debate the outcome and provide some key take-aways for the audience on how best to navigate the regulatory minefields ahead of us.

BIMCO Awards Gala Dinner

Make a whole day of it and join us at the BIMCO Awards Gala Dinner. The Gala dinner starts at 19:30 on 29 April at the Jumeirah Beach Hotel.

Further information

More information – including the programme, registration, fees, information on the Gala dinner, and sponsorship opportunities – is available on the dedicated BIMCO event website <http://dubai.bimco.org> ■

PROTECTING & DEVELOPING
YOUR BUSINESS

BIMCO



DUBAI
29-30 APRIL
2014

PERSPECTIVES
IN SHIPPING



PRELIMINARY
PROGRAMME



WELCOME TO PERSPECTIVES IN SHIPPING AND THE BIMCO AWARDS GALA DINNER IN DUBAI

You are invited to join us on **29 April 2014** for the **BIMCO Annual Conference** followed by the **BIMCO Awards Gala Dinner** at the spectacular **Jumeirah Beach Hotel in Dubai**. It promises to be a day to remember and a night of great networking and celebration.

Conference - Perspectives in Shipping

His Excellency Sultan Ahmed Bin Sulayem, the Chairman of DP World (TBC) will open the conference. He will be followed by *Captain Jitendra Misra*, Managing Director of Emarat Maritime. The scene will then be set by *Peter Sand*, BIMCO's Chief Shipping Analyst. The conference will then split into two exciting parallel tracks for you to choose from:

Track 1: A role playing exercise on resolving a maritime casualty – the mess, the media and the mediators

Track 2: Upcoming regulatory requirements may erode your ticket to trade

Participation in the conference is free to all BIMCO members.

BIMCO Awards Gala Dinner

You are invited to join us at the BIMCO Awards Gala Dinner in the evening of **29 April 2014**. The highlight of the Gala Dinner will be the presentation of the prestigious BIMCO Awards to shipping companies and individuals who have excelled in areas reflecting BIMCO's global activities.

The nominations for the awards will come from the BIMCO members, but the winners can be any company or individual.

Make a whole day of it and join both the BIMCO Annual Conference and the BIMCO Awards Gala Dinner. In addition to these exciting events, the full programme includes a number of BIMCO Committee and Board meetings that will also draw in top shipping professionals from around the world, providing participants with a unique opportunity to refresh old business contacts and make new ones.

See you in Dubai!

PROTECTING & DEVELOPING YOUR BUSINESS PROGRAMME



TUESDAY, 29 APRIL 2014

- 09:30-10:15 Opening Session**
Venue: Safinah Ballroom 3 + 4 - Jumeirah Beach Hotel
- 09:30-09:35 Opening Speech by BIMCO's President Mr. John Denholm**
- 09:35-09:45 Official Opening by His Excellency Sultan Ahmed Bin Sulayem The Chairman of DP World (TBC)**
- 09:45-09:50 Official Speaker Representing the Shipowning Community: Managing Director, Captain Misra of Emarat Shipping**
- 09:50-10:15 Market Overview & Outlook by BIMCO Chief Economist Peter Sand**
- 10:15-10:30 Coffee Break**
Venue: Lobby area of Jumeirah Beach Hotel

10:30-16:00 Track 1: A Role Playing Exercise on Resolving a Maritime Casualty – The Mess, the Media and the Mediators
Venue: Meyana Auditorium - Jumeirah Beach Hotel

(programme continued on the next page)

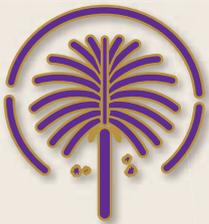
Track 1:

A Role Playing Exercise on Resolving a Maritime Casualty – The Mess, the Media and the Mediators

Through the muddle and confusion that immediately follows a maritime casualty – a grounding, a collision or even a total loss – the shipowner must think clearly and tread carefully.

This track will include a vibrant and interactive casualty simulation. The role playing exercise will be directed by *Lindsay East*, Consultant, Reed Smith, London, and will further include experts well-versed in maritime casualty work: *Chirag Karia* Q.C., London, *Nevil Phillips*, Barrister, London, *Han van Blanken*, Ship Owner, Rotterdam, *John Tsatsas*, LMAA Arbitrator and Mediator, Chartered Shipbroker, Chartered Arbitrator, London. The media role will be carried out by the Editor-in-Chief *Julian Bray* from TradeWinds. The mock arbitration will have a unique twist – it will involve high-profile maritime arbitrators from the world's three main arbitration venues as listed in BIMCO's Dispute Resolution Clause represented by: *Jude Benny*, Lawyer and Maritime Arbitrator from Singapore, *Bruce Harris*, Maritime and Commercial Arbitrator from London, and *David Martowski*, Arbitrator/Mediator from New York – each with possible different approaches to resolving the dispute.

The audience will be armed with an interactive voting meter, and will be asked what they would do next and help determine the outcome of the affair.



PROTECTING & DEVELOPING YOUR BUSINESS PROGRAMME

TUESDAY, 29 APRIL 2014 (cont.)

10:30-16:00 Track 2: Upcoming Regulatory Requirements May Erode Your Ticket to Trade
Venue: Safinah Ballroom 3 + 4 - Jumeirah Beach Hotel

Track 2: Upcoming Regulatory Requirements May Erode Your Ticket to Trade

10:30-11:30 Session 1: Ballast Water Treatment
A Ballast Water Treatment System will be one of the most expensive pieces of equipment on board your ship, but will it work? The marketing material says their system works in all conditions, and is suitable for any vessel. Will it really work reliably in all water conditions? Will all port states be happy with the results? Acquiring the wrong system will be an expensive mistake. Is this possible, what are the pitfalls? What are the questions you should be asking?

10:30-10:50 Wärtsilä Corporation, Mr. Leonardo Sonzio Director, Environmental Solutions
Technology options for compliance with the IMO Ballast Water Convention. Prospects of US type-approval to provide audience with an expected timeline for initiating installations on ships calling the US.

10:50-11:10 Alfa Laval (TBC)
Scaling systems to suit large capacity ships. How should a ballast tank transfer system ideally be designed when ballast water must be treated in the future?

11:10-11:30 ClassNK (TBC)
A Classification Society view on compliance. How will Class engage with Authorities from Flag and Port State when compliance with the Convention is scrutinised by PSC?

11:30-11:50 Short Break

11:50-12:30 Session 2: Future Fuels
Emission control regulations are fast approaching and high oil prices are set to stay. Everyone is worrying about the availability and price of low sulphur diesel, but what are your options? Will scrubber technology really work? Is there a business case for continuing to use heavy fuel? Is LNG really a possibility, and what other fuels may be available? In the past everyone burnt heavy fuel oil. The future may not be so simple! This may be the biggest game-changer for the industry since the end of the sailing era over 100 years ago. The session will elaborate on the concepts of multi-fuelled ships, availability and effectiveness of scrubber technologies and practicalities of using LNG.

11:50-12:10 DNV-GL (TBC)
Scenarios for fuel use in the shipping industry beyond 2020. Setting the scene for the session by delivering some insights to the future product mix.

12:10-12:30 Rolls Royce
Natural gas as fuel for ships. Which technologies are suitable and which sectors of the industry are likely to go for LNG?

TUESDAY, 29 APRIL 2014 (cont.)

12:30-13:30 Lunch
Venue: Lobby - Jumeirah Beach Hotel

14:45-15:00 Coffee Break
Venue: Lobby - Jumeirah Beach Hotel

19:30-23:00 BIMCO Awards Gala Dinner
Venue: Safinah Ballroom 1 + 2 - Jumeirah Beach Hotel

The new BIMCO Awards have been created to celebrate and bring attention to shipping companies and individuals who have excelled in areas reflecting BIMCO's global activities. The nominations will come from the BIMCO members but the winners can be any company or individual that has excelled within the category. The 5 BIMCO Award categories are: The BIMCO President's Award, The BIMCO Regional Shipping Personality of the Year, The BIMCO Shipping Company of the Year, The BIMCO Education & Training Award, and The BIMCO Cairns-Hansen Award. BIMCO members can nominate candidates for the last 4 awards categories and the closing date for entry of nominations from BIMCO members is on Friday, 7 March 2014. It is not possible to nominate for The BIMCO President's Award. More details at <http://dubai.bimco.org>. Dress code: Formal business attire / national dress

12:30-13:30 Lunch

13:30-14:50 Session 2 (cont.)

13:30-13:50 MAN Diesel & Turbo
Multi fuel options for large 2-stroke engines. Solutions for Oil, LNG and Methanol.

13:50-14:10 Alfa-Laval (TBC)
Abatement of SOx from the exhaust gas. What is possible? Are solutions for very large engines realistic?

14:10-14:30 Wärtsilä Corporation, Mr. Tomas Aminoff, Director, Technology Strategy, Ship Power
Advice from a supplier that delivers solutions for all compliance methods: Scrubbers, LNG, Methanol?

14:30-14:50 Alisdair Pettigrew, BLUE Com., Senior advisor to Clean Marine Energy
Novel finance means to facilitate retrofitting of expensive compliance methods. Could 3rd party financing be a solution for some owners?

14:50-15:00 Short Break

15:00-16:00 Panel Discussion
To wrap up the day, a panel of shipowners will debate the outcomes of the two sessions and provide some key take-aways for the audience on how to navigate the regulatory minefields ahead of us.

PROTECTING & DEVELOPING YOUR BUSINESS

PROGRAMME



REGISTRATION

WEDNESDAY, 30 APRIL 2014

- 08:00-12:00 **BIMCO Documentary Committee Meeting**
For members of the Documentary Committee
2013-2015 only
Venue: Safinah Ballroom 1 + 3 - Jumeirah
Beach Hotel
- 12:00-13:00 **Lunch**
For members of the Documentary Committee
& Board of Directors only
Venue: Lobby - Jumeirah Beach Hotel
- 13:00-17:00 **Board of Directors Meeting**
For members of the Board of Directors 2013-
2015 only
Venue: Safinah Ballroom 4 - Jumeirah Beach
Hotel
- 17:15-18:00 **BIMCO Annual General Meeting**
For BIMCO members only
Venue: Safinah Ballroom 2 - Jumeirah Beach
Hotel
- 18:15-21:00 **Farewell Reception**
Venue: Jumeirah Beach Hotel (TBA)

REGISTRATION

Please fill in and submit the Registration Form by Tuesday, 1 April 2014. By meeting this deadline, you will ensure that your company is shown in the Final Programme and Attendance list.

BIMCO will continue to accept registrations after this date. Delegate details will be included in a Supplement to the Attendance List.

Your registration will be handled on a first-come, first-served basis. Each delegate must use a separate form. Photocopies of the Registration Form are acceptable.

REGISTER ONLINE:

<http://dubai.bimco.org>

All registrations, cancellations and alterations must be IN WRITING to:

BIMCO
161 Bagsvaerdvej
2880 Bagsvaerd
Denmark

Email: membership@bimco.org
Telephone: +45 4436 6800
Fax: +45 4436 6868



REGISTRATION & HOTEL

REGISTRATION FEES

BIMCO Members:

BIMCO Conference, 29 April.....Free of charge
 BIMCO Awards Gala Dinner, per seat USD 140
 BIMCO Awards Gala Dinner, per table (10 seats)... USD 1200

Non-members:

BIMCO Conference, 29 April..... USD 250
 BIMCO Awards Gala Dinner, per seat USD 175
 Conference + Dinner..... USD 340
 BIMCO Awards Gala Dinner per table (10 seats).... USD 1500

PAYMENT

All payments for the BIMCO Awards Gala Dinner & Conference on 29 April will be handled by BIMCO.

BIMCO only accepts the following credit cards:
 MasterCard, Visa, Eurocard and JCB.

CONFIRMATION

Please note that we prefer to receive your Registration Form electronically. Upon completion, please press "Submit Form". You may also scan the Registration Form and e-mail it to us or forward the form via fax with your name marked clearly.

Once your Registration Form has been received, an e-mail will be sent to you confirming your official registration and your attendance at specific events.

Please check the e-mail confirmation carefully to ensure that all items requested have been correctly registered.



HOTEL RESERVATION

Accommodation is available at a special rate at the Jumeirah Beach Hotel.

Settlement of hotel bills must be made individually upon departure. All major credit cards are accepted.

Please make your reservation not later than **Friday, 28 March 2014**, as the hotel will not be able to guarantee rooms or the special rate after this date.

The Jumeirah Beach Hotel

P.O. Box 11416
 Dubai, UAE

Telephone: +971 4 348 0000

Website: www.jumeirah.com

Reservations: Please refer to link on the dedicated BIMCO event website <http://dubai.bimco.org>

Double Room (2 pax) AED 1700

Double Room (1 pax) AED 1700

The above rate is per room per night and are subject to 10% municipality fee and 10% service charges. Any further change in taxes imposed by the government will be reflected in the final invoice.

Buffet Breakfast is available from AED 180 per person inclusive of 10% municipality fee and 10% service charges.

CHECK IN / CHECK OUT

Hotel check in time is 15:00.

Room assignments prior to this time is subject to availability.

Hotel check out prior to 12:00.

After this time, a supplementary charge may be charged in respect of a late check out subject to availability.

No change may be made to these arrangements unless agreed by the Hotel in writing.

100% of the booked period will be charged should a guest depart ahead of the booked date of departure. In case of advanced payment, the amount will be non-refundable.



CANCELLATION

All cancellations must be received in writing by BIMCO. Please refer to your Event Registration Number on all correspondence. A 50% refund will be obtained if cancellations are received prior to 1 April 2014. Thereafter, no refunds will be made.

Please note that refunds will only be handled after the events have taken place.

Hotel cancellations must be made directly with the hotel.

REGISTRATION IN DUBAI

All delegates are kindly asked to register at the BIMCO Registration Desk – see below. Delegates will receive the Final Programme and Attendance List and name tags plus any additional material.

BIMCO REGISTRATION DESK

Opening hours:

Monday, 28 April
Lobby area of Conference Centre
14:00-18:00

Tuesday, 29 April
Lobby area of Conference Centre
08:00-18:00

Wednesday, 30 April
Lobby area of Conference Centre
07:30-16:00

VISA

All participants are advised to check their nearest UAE Embassy/Consulate for up-to-date visa requirements.

AIRPORT SERVICE

Jumeirah Beach Hotel is in Dubai's Jumeirah Beach area, 15 kilometres from the city centre and 25 kilometres from Dubai International Airport.

If you'd like to book a car to take you straight from the airport to the hotel, we can arrange a wide range of vehicles – from limousines to luggage vans. Whatever you choose, you'll find our rates very competitive.

Transport to and from Dubai International Airport is complimentary for guests staying in Club Executive, Premium Leisure, Suites, Villas and to Sirius Gold card holders.

Transport to and from Abu Dhabi International Airport and Al Maktoum Airport in Jebel Ali is also available for all guests at an additional charge.

FOR MORE INFORMATION, PLEASE CONTACT US:

Telephone: +971 4 348 0000

E-mail: JBHconciierge@jumeirah.com

Destination	BMW-7	Lincoln Navigator 7 seater	Coaster Bus 26 seater (semi luxury)	Luggage van (Hiace)
	One way	One way	One way	One way
Dubai Airport	AED 375	AED 375	AED 600	AED 250
Sharjah Airport	AED 450	AED 450	AED 750	AED 300
Abu Dhabi Apt	AED 575	AED 575	AED 900	AED 400
Abu Dhabi City	AED 675	AED 675	AED 1,000	AED 450
Bab Al Shams	AED 375	AED 375	AED 600	AED 250
Hourly rental	AED 375	AED 375	AED 600	AED 250

NYPE update heads 2014 documentary work programme

This year, we will see the wraps come off a newly revised NYPE 93 charter party.

For over a year now, BIMCO, working together with ASBA in New York and the SMF in Singapore, has pored over the numerous provisions of the 20 years old NYPE form and reviewed the many amendments and additional clauses that are commonly added when fixing on this charter party.

A real pattern of common amendments and riders has emerged indicating that the NYPE in its current form falls some way short of reflecting current time chartering commercial practice. The new version will certainly be longer but it will require far less additional clauses than present.

With a more comprehensive and up to date edition of the widely used charter available, users will no longer have to spend negotiating, and sometimes even drafting, numerous additional clauses. It is not a complete re-write – the drafting team has preserved wherever possible the overall structure of NYPE. Many of the clauses remain unchanged where it was felt unnecessary to revise perfectly workable and tried and tested wordings. To help maintain familiarity, many of the unchanged clauses have exactly the same clause numbers as found in the '93 edition.

An essential part of the final stages of the revision process will be an all-important consultation with the industry – the end users of NYPE. Copies of the draft revised NYPE charter party will be posted on the BIMCO website for all to review during the first quarter of 2014. During this period a series of “road shows” to explain the changes to NYPE will be conducted in Europe, the US and Asia. This will give the industry an opportunity to provide feedback on the changes and see for themselves what's coming. The target publication date for the revised NYPE is December 2014.

Bunker contract revision

Bunkers also feature highly on BIMCO's documentary agenda this year. A revision of the Standard Bunker Contract is underway, this time with the benefit of a much heavier duty marketing campaign among suppliers and purchasers to raise awareness of the contract and the benefits that harmonisation of bunker terms and conditions can bring.

In addition, we are also looking at a new Bunker Non-lien Clause for time charter parties as a possible means of combatting the double-whammy that some unfortunate ship owners occasionally face when a time charter goes bankrupt leaving hire unpaid and then, a few months later, the owners' ship is arrested for non-payment of bunkers by the bankrupt charterers. The clause under development places an obligation on the charterers to obtain a waiver from bunker suppliers of their right to place a lien over the vessel for unpaid bunkers, even though the bunkers have been purchased not by the owners but by the charterers.

Electronic bills of lading

Electronic bills of lading have been a subject much discussed by the industry for many years but with little evidence of solid implementation into mainstream business. However, in the last year a number of major charterers have started to initiate large scale projects on some trades to introduce electronic bills of lading. In terms of using electronic bills of lading from an owners' perspective, the landscape has changed considerably in the past few years. P&I cover has up until recently been an issue, but now owners enjoy the same degree of liability cover when using e-Bills as they do with their paper counterpart.

Only two companies to date have been approved by the International Group of P&I

Clubs – Electronic Shipping Solutions (ESS) and Bolero – neither of whom charge owners for issuing e-Bills on their systems. What is important now is that with the increasing use of e-Bills there needs to be proper provision made for their use under charter parties. Work will begin shortly on such a clause using the expertise of the two e-Bill solution providers as well as valuable input from owners, charterers and P&I Clubs.

Anti-bribery solutions

Measures to counter bribery and corruption continue to be a hot topic in the industry with an ever increasing number of industry players working together to find solutions and meet compliance requirements.

Part of this process is taking into consideration what provision should be made in charter parties to address compliance issues and to ensure that innocent parties are not persecuted or prosecuted for refusing to make “facilitation” payments to port officials. A charter party clause should, of course, be very protective of the owners' position as it is their vessel and their crew that will be exposed to the pressure of making such payments in order to avoid unwarranted delays to the vessel. Preliminary work to investigate the feasibility of developing a sufficiently robust anti-bribery clause will begin during the first quarter of 2014.

Other work

Other new or revised BIMCO Clauses that will appear this year include an Asian Gypsy Moth Clause, a Ship to Ship Transfer Clause for Voyage Charter Parties (formerly Double Banking Clause) and a revised North American Cargo Declaration Clause reflecting changes in cargo notification and bonding requirements in Canada. (GH) ■■



BIMCO Intervention works!

In late June, at the request of one of our owner members, we approached an agent who had not returned unused funds in the amount of USD 4,900 and urged him to arrange for remittance. As we did not receive any reply, we warned him in early September that this default would be reported in a forthcoming BIMCO Notice to Members. This prompted the agent to respond and from the reply it transpired that he had confused the identity of his principals in respect of several vessel calls. Clarifications were provided and finally our member confirmed receipt of the said amount on 4 November 2013.

At the end of September 2013, acting on behalf of one of our agency members, we approached an owner who had failed to pay a balance on disbursements and enquired as to the reasons for the delay. The owners attempted to avoid liability alleging that they were acting on behalf of a third party. Our attempts to clarify the owners' obligations did not have the desired effect and we finally had to caution them that a BIMCO Notice to Members would be issued, should they refuse to fulfil their obligations. A few days later our member informed us that the parties had reached an agreement and that the case could now be closed.

In early October, at the request of one of our owner members, we approached an agent who had not returned unused funds in the amount of USD 12,200 and suggested that remittance of that amount be arranged. The agent reacted promptly, confirming that this would be done, and our member confirmed receipt of the said amount a few weeks later.

On 4 October 2013, acting on behalf of one of our owner members, we approached an agent who had withheld unused funds in the amount of USD 5,000 for nearly a year and urged him to arrange remittance of that sum. No reply was received and on 1 November, we cautioned the agent that his default would be reported in a forthcoming BIMCO Notice to Members. Later the same day our owner member confirmed receipt of the amount due.

On 10 October 2013, acting on behalf of one of our owner members, we approached a charterer who had left the amount of USD 164,000 in respect of freight and demurrage outstanding, and urged him to arrange for remittance of same. Two weeks later, our owner member confirmed receipt of the said amount.

On 31 October 2013, we approached a charterer who owed balance hire in the amount of USD 24,000 to an owner member of BIMCO and suggested that arrangements should be made for the remittance of that amount. The charterer responded immediately and our member confirmed receipt of funds on 7 November.

On 5 November 2013, acting on behalf of one of our owner members, we approached a charterer who had not paid incurred demurrage in the amount of EUR 2,700 and enquired as to the reasons for the lack of payment. The charterer responded promptly and ten days later, our member could confirm receipt of the said amount.

Over the last five years, BIMCO has assisted members in collecting an average of USD 5.9 million p.a.

Further information

Read more about this service here:

https://www.bimco.org/en/About/Company_information/Intervention.aspx

BIMCO Education round-up

Dubai Masterclass on Voyage Chartering: *“Premium hospitality, perfect organisation, and a good dose of knowledge made this masterclass a unique opportunity and an eye opener for future dealings”.*

The BIMCO Masterclass on Voyage Chartering in Dubai from 10-12 December was a truly international event and attracted 35 participants from countries as diverse as Angola, Belgium, Egypt, Ghana, Greece, India, Italy, Jordan, Malta, The Netherlands, Norway, Singapore, Thailand, Turkey, Ukraine, United Arab Emirates and the United Kingdom.

BIMCO has developed the Voyage Chartering Masterclass with Haris Zografakis and Andrew Rigden-Green from Stephenson Harwood with a view to covering a broad range of issues, both for the dry and tanker side of the industry.

This particular Masterclass Workshop also includes a Mock Mediation and Arbitration, designed to help understand the mechanisms involved when dealing with disputes on voyage charters. The Voyage Chartering Masterclass goes well hand

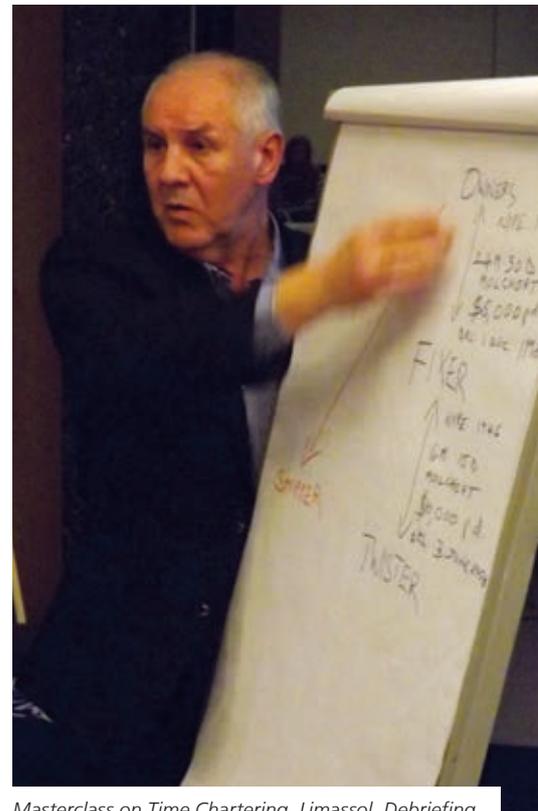


Masterclass on Voyage Chartering, Dubai. Opening remarks by Capt. Jitendra Misra, member of the BIMCO Board of Directors and Documentary Committee, representing the United Arab Emirates.

in hand with the more detailed Masterclasses on Bills of Lading and Laytime & Demurrage. The next Masterclass on Voyage Chartering will take place in Geneva from 1-3 October 2014.



Masterclass on Voyage Chartering, Dubai. Haris Zografakis of Stephenson Harwood addresses the participants.



Masterclass on Time Chartering, Limassol. Debriefing for Case Study 1 from Richard Williams.



Masterclass on Time Chartering Limassol, Richard Willams speaking.

SHIPMAN Seminar in Limassol

On 4 February, BIMCO conducted a full day seminar on the SHIPMAN, jointly organised with the Cyprus Shipping Chamber.

The BIMCO Documentary Committee formally approved the revised SHIPMAN and CREWMAN documents in November 2009. Given the importance that the shipmanagement sector places in SHIPMAN, the revision process was undertaken with great care so as not to upset the basic principles enshrined in the agreement and which, in many respects, have come to be regarded as the “law” of shipmanagement.

Today, SHIPMAN 2009 is one of BIMCO’s best-selling standard forms and enjoys almost universal usage in the ship management sector.

For the more than 40 representatives from primarily the large shipmanagement community in Cyprus and Greece, it was an excellent opportunity to provide the two speakers Grant Hunter, BIMCO’s Chief Documentary Affairs Officer, and Stephen Mackin, Partner in Eversheds shipping group, Newcastle, with input on the use of the contract.



Case Studies are comprehensive and require great attention to detail.

Masterclass on Time Charter in Limassol

Immediately following the SHIPMAN Seminar, BIMCO conducted a Masterclass on Time Chartering in Limassol, also jointly organised with the Cyprus Shipping Chamber. As many as 36 participants from Belgium, Cyprus, Denmark, France, Germany, Netherlands, Norway, Sweden, Switzerland and the United Kingdom attended the three-day course.

The next Masterclass on Time Chartering will take place in Hong Kong from 29-31 October 2014. ■■



Masterclass on Time Chartering, Limassol. Case Study Group 1 at work.

Designing for human performance

What has become known as “ergonomics” has come late to the shipping industry. This might be considered a pity, as much of shore side industry, where it has been well established fully, recognises the connection between productivity and the best possible design of the manufacturing process.

In the automobile manufacturing sector, notably led by the Japanese giants such as Toyota and Nissan, enormous efforts have been made to perfect what might be described as the “man-machine interface”. The end result, according to the combination of engineers and industrial psychologists who constantly try to further “tune” the processes, is more motivated workers, fewer errors and accidents and better products.

Now at first sight, there may be limited correlation between the design of a car production line and that of a ship, but a moment’s thought can discern how issues like functionality and habitability can influence ship operation. And while seafarers might have something of a reputation for complaining, one does not have to be long in the company of marine professionals to hear complaints about badly designed ships which, as operators, they are forced to work around, when they can see how much better it might have been.

Design detail left to shipyards

Much of this is because so much of the design detail has been left to the shipyard, with the eventual owner and those who will actually operate the new vessel left out of the design loop. Thus, areas like the detailed design of a mooring layout on bow or stern, the position of auxiliary equipment in the machinery space, the design of working spaces like bridge or galley will be undertaken by the shipyard’s design team to afford the greatest convenience to those assembling and building the ship.

How often will it be found, once the ship is in operation, that there is a poor lead for a

mooring rope, or the maintenance or even the operation of a pump or valve is inefficient or cumbersome because of its location? If it had been possible to have brought the ship’s operating staff into the design process, it would have been an easy matter to have found the optimum situation. But by the time the owner’s operating staff is able to see their new ship, changes will be judged too expensive to make and the new crew will be the first of many which will complain about the inadequate design, which makes their lives harder.

Early attempts at consensus

As far back as the 1960s, an interesting collaboration between UK ship owners and shipbuilders resulted in a useful design exercise that was to improve the detailed operational design of ships. Improved designs of navigation bridges, mooring layouts, machinery spaces and even galleys resulted from the advice of practising mariners, engineers and cooks, who were consulted as to the optimum design of these spaces from the operator’s point of view.

And while it might be easy to dismiss such an exercise by suggesting that consensus is almost impossible to reach when opinions are sought from a variety of people, the very opposite was found, and the shipbuilders and owners whose staff participated found it immensely worthwhile. The participants often found that detailed design by the shipyards was almost an iterative process; the phrase “we’ve always designed it that way!” becoming, in time, a sort of defence mechanism against change, or anything better. Sadly the project was overtaken by the virtual collapse of the UK shipbuilding industry, and with this was lost much constructive progress.

Optimised for efficiency

Ergonomics and the importance of a well-designed working environment aboard ship are increasingly being considered in terms of contemporary design. It is very reasonably argued that with the smaller crews operating today’s ships, it is important that the equipment being used is suitably optimised for efficiency.

An interesting debate was held in London recently by the Nautical Institute in which the problems caused by a lack of bridge and equipment standardisation were identified as the cause of preventable accidents. Captain Tim Crowch, president of Advanced System Safety Management (his book *Navigating the Human Element* was reviewed in Bulletin No. 4/2013) contrasted the somewhat anarchic approach to the design of controls in the maritime world to that of his own industry of aviation. He makes the very salient point that because nearly every vessel is effectively a “prototype”, every bridge will tend to be different.

Updated to reflect latest practice

It is notable that a rare exception to this practice is the design process with the passenger ships of Royal Caribbean Cruise Lines, where all the ships in the fleet have standardised bridges, with older ships updated to reflect the latest practice, along with a formal process of continuous evaluation of the vessels and their performance, with the emphasis on continuous improvement. Speaking at the International Maritime Organization’s seminar on regulation last year, RCCL’s Harry Kulovaara acknowledged the company’s in-house design debt to the aviation and automobile manufacturing industry.

Habitability, with its obvious effects upon

productivity, performance and morale, is an integral part of the new ILO Maritime Labour Convention, specifying criteria for accommodation areas, vibration, noise, the “indoor” climate and lighting. The connection of these elements with ergonomics and the seafarer’s ability to work effectively is obvious, as is their connection to health and safety.

Bad vibrations

How often is it found that with a ship in operation, there are parts of that vessel which become known for excessive or unpleasant vibration with the ship at full sea speed, or at a certain draught? If it is the

accommodation which is affected, occupants will almost certainly be adversely affected. Writing in a recent issue of the human element bulletin *Alert!*, Dr. Kevin McSweeney of ABS Corporate Technology points out that “whole body vibration” needs to be actively controlled if it is not to alter worker perception (reading text and instruments, depth perception) and influence control movements such as tactile sense, head/hand movements, manual tracking etc.

It is also pointed out that there is no great mystery about how improvements can be made, preferably at the design stage. In the

same issue of *Alert!* an example is given of a ship in which excellent habitability was an important feature of the design. Built for stand-by duties in Arctic waters for its Danish owner, the designers of the *Esvagt Aurora* have homed in on the need to minimise noise and vibration.

The solution, which has been found highly effective in operation, has included extra special insulation, shock absorbers under the main and auxiliary machinery, noise absorbent flooring material and special attention in the accommodation. The crew has been highly positive about their ship, which is a good result all round. ■

More than a lick of paint

In a cruise ship fleet, where one multi-decked white-painted giant looks very much like another and owners are clearly searching for a means of making their brand “distinctive”, it is notable that ship’s hulls are increasingly being used to provide that all important brand difference.

Amazing brightly coloured designs are now being featured on the huge white sides of ships, which probably have the effect of encouraging a degree of customer differentiation, as they peruse their cruise brochures. It could also ensure that returning passengers manage to get aboard the right ship, when there is more than one in port.

A boatswain responsible for ensuring that huge areas of shell plate remain in a pristine condition on a cruise ship might be appalled at the notion that his team will have to produce every colour in the rainbow from the paint stores to keep these extraordinary designs fresh.

Happily, the use of plastic “decals” of the sort used ashore will mostly be used to provide the designs. These have astonishing

powers of adhesion and resistance to heavy weather, although cruise lines generally avoid anything too uncomfortable.

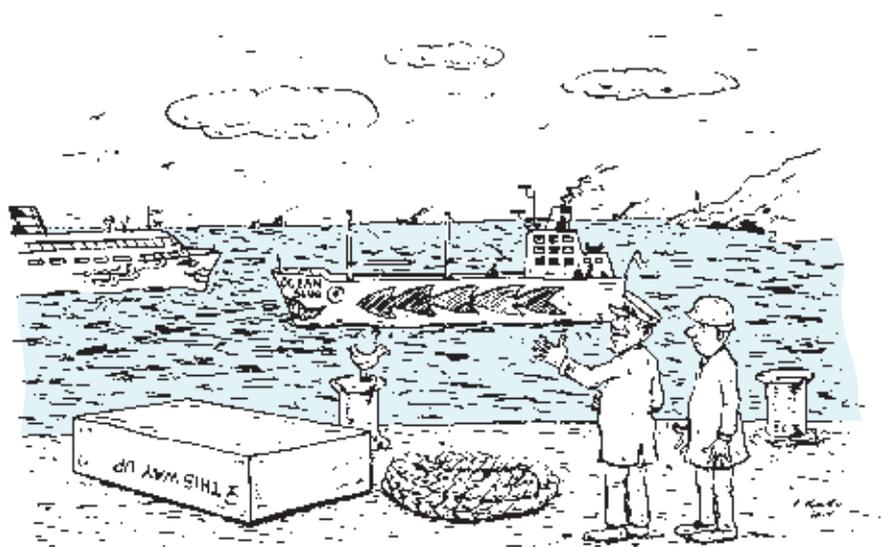
External personality

The trend seemed to begin with Aida Cruises, the German branch of Carnival, with an attempt to give their ships an external personality, with a pair of huge red lips around the stem and an enormous piercing eye on each bow, with vivid colours trailing away towards the stern.

Successive Aida newbuildings have been even more spectacular and others are now

stamping their own brand personality on their ship’s sides with ever more adventurous designs.

Curiously, ferry operators, apart from Moby in the Mediterranean, whose ships can sometimes be mistaken by enormous whales, have eschewed this form of decoration, preferring to merely advertise their brand, or perhaps even their website address, as they evidently believe that this is more useful and productive information. But to the observer, it all makes shipping more interesting and much less homogeneous. ■



“It doesn’t make us go any faster, but it’s cheaper than a more powerful engine!”

Time to revisit the definition of a “safe port”?

Almost as far back as there have been ports themselves, the concept of a “safe” port has been one of consuming interest to marine professionals. Sailing directions or charts have often noted that a harbour or anchorage would be “exposed to a south westerly wind or swell”, providing a caution to mariners that its safety was conditional upon the prevailing weather.

Charterers have warranted to owners that they will direct their ships to those ports or berths which can be considered “safe”. Implicit in this definition of safety has been the assumption that the port facilities will be adequate, that the ship can lie alongside or at anchor without undue danger and that in accessing and leaving the port, the vessel will not be exposed to unreasonable risk.

But can a safe port become one that is unsafe? Very easily, it seems, if the weather conditions deteriorate to such an extent that it is hazardous for a ship to attempt to enter or to leave the port. A port that is perfectly safe for small or modest sizes of ship can become risky or marginal for a large vessel. It might be that extreme weather conditions makes it necessary for a vessel to seek safety at sea, and the difficulties of negotiating a channel in order for a vessel to make her escape may place that vessel, which appeared to be lying alongside in safety, at great peril, before she reaches the safety of the open sea.

Considerable scope for disputes

Such issues have provided considerable scope for dispute, and indeed litigation, over the years. Charterers sometimes become enraged by the decisions of Harbour Masters and port authorities to deny ships access to a port because of weather conditions which they consider to make their port temporarily unsafe.

There have sometimes been costly accidents arising from the hazards involved in entering or leaving a port in marginal conditions and some notable legal cases emerging from them. Often, the crucial element

in these will be “judgement calls”, in which the local knowledge of professionals in directing a ship to leave or weigh anchor, or shift ship, will be critical, although these may be subject to professional or legal challenge, particularly in the event of an accident occurring.

A recent case well worth exploring is that of the *Ocean Victory*, in which a charterer was found to be liable to the tune of USD 138 million for a breach of the “safe port” warranty, following the loss of a part-laden Capesize trying to leave a Japanese port in extreme weather. After this particular case, judged to be of great importance, the UK P&I Club published an insightful review by the Holman Fenwick & Willan LLP partner Alistair Feeney, of just how far charterers’ warranties of port safety extend.

Both charterers and marine professionals perhaps ought to study this 2013 judgement from the Commercial Court (EWHC 2199), as it offers important lessons for both. In practical terms, the situation in which the Master of the part discharged Capesize found himself was an unenviable one, with the berth becoming untenable in the increasingly fierce weather, the anxiety of all for the vessel to proceed to sea and the complications of another vessel being was lost in a similar situation, although this did not play any part in the particular judgement.

Not an isolated case

But the *Ocean Victory*, while by no means an isolated case, is a stark reminder of the crucial decision-making that has to be taken by marine professionals in their “normal” process of ship operation. It is also a reminder of the intrinsically risk-laden business of

ship operation, and the near impossibility of ever eliminating such perils as are multiplied by extreme weather, despite the development of brilliant communications, accurate weather forecasting and sophisticated 21st century ships.

It might be that such cases, in which the strict definition of the safe port wording saw these massive liabilities left on the charterer’s doorstep, might encourage a more precautionary principle among those hiring ships, in looking more closely at the potential for harm in ports to which they might send ships. Is this naive?

Just as shipmasters (usually through their professional associations) comment on the commercial pressures they increasingly find themselves to take risks they would rather minimise or avoid, so Harbour Masters complain that they too are under heavy pressure to ensure that their ports stay open when they might prefer to see them closed. Threats that the contract to use the port will be terminated, or to use competitor ports, are not infrequently used to put pressure on responsible people.

A port safety code

Some suggest that a port safety code should specify the operating criteria for a port in the same way that an airport is limited by strict operating conditions. Harbour Masters, however, make the reasonable point that except for specialist terminals, ports will generally have to cope with a wide variety of ship types and while it might be hazardous to admit one type or size of vessel, other craft may offer a far more acceptable risk in bad weather. They are, nevertheless, resentful at people who do not have their

responsibilities attempting to second-guess or influence their decisions.

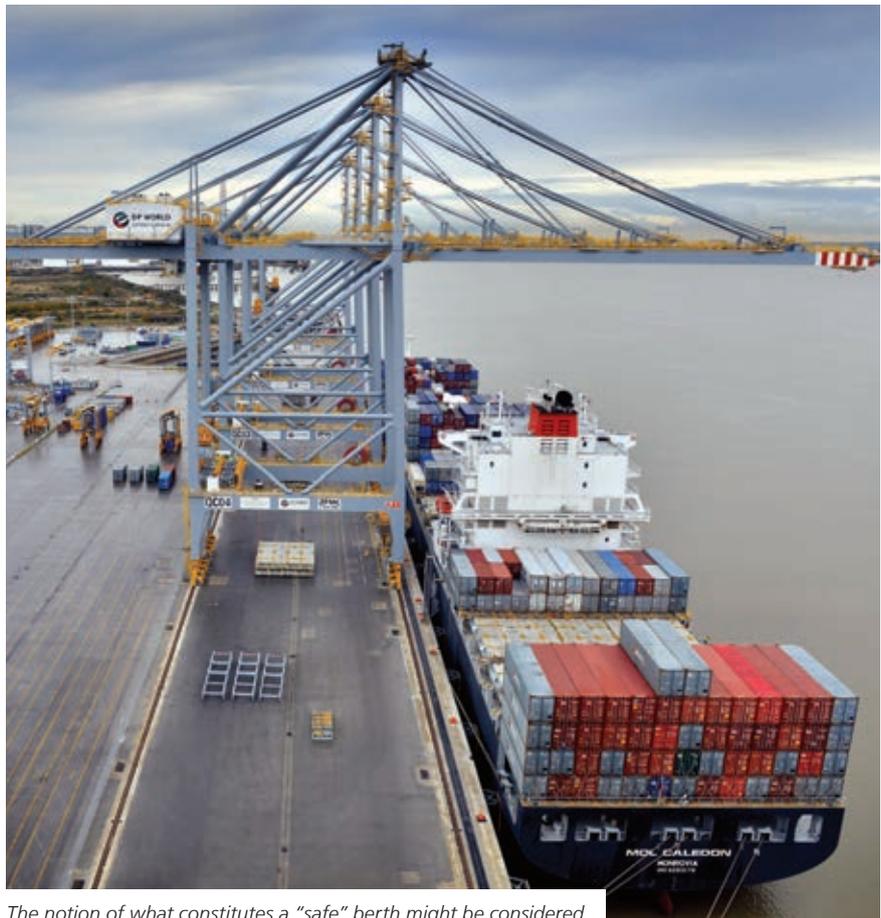
In our consideration of the “safe” port, it is a fact that we are living at a time of considerable change, not least with the huge increase in individual ship sizes. Pilots frequently find that they are handling ships that are at the very limits of their “envelopes” in term of draught or width or length, in channels and berth approaches which had always been regarded as perfectly adequate for the tonnage normally expected. Does this not alter the appreciation of “safety” in port waters?

Port operators often comment on the assumption that is always made that ports must just adapt to the changing ship dimensions by undertaking the necessary dredging, channel widening, and that terminals need to equip themselves to handle the scaling up of their customers’ ships. Ports which develop new facilities will invariably undertake extensive engineering and hydraulic research to ensure the practical feasibility of the development. But if the size or type of vessel rapidly changes over just a few years, it may be that the berth is far less optimal for the present purposes and the latest ships presenting themselves.

Not safe enough?

In a recent incident, a large container ship was damaged as it tried to swing off the berth, where the port had simply failed to provide a swinging basin that would take the size of ship the port was attracting. It probably had seemed safe enough to the commercial management for shiphandling (although pilots had warned otherwise), but experience subsequently illustrated that this was not the case.

In other instances ships offering a huge windage have been blown off their berths in extreme weather that would almost certainly have left the smaller ships of the past lying safely alongside. Bollards, which were perfectly adequate in the past, have been torn out of their concrete foundations and ships, cast adrift in the harbour, have caused mayhem among other craft,



The notion of what constitutes a “safe” berth might be considered something that is developing with the prevailing technology.

before they could be brought under control. The notion of what constitutes a “safe” berth might be considered something that is developing with the prevailing technology, as bigger ships, new mooring systems, thrusters and tugs all have to be brought into the equation, along with berths arguably more exposed to the elements as ports extend out into the open sea.

Although it might be stretching the point, it is worth also considering whether a port or terminal where ships are quite routinely exposed to unacceptable levels of stevedoring damage can be described as perfectly “safe”? There are, for instance, bulk export ports and terminals where ships are required to deballast to what their Masters might consider an unwise extent before they are expected to steam down a narrow channel where they can be exposed to difficult cross-winds, often without the tugs being fast. There are terminals which require ships to make their approach at speeds which are thought to be thoroughly hazardous, ships which cannot steer properly at their lowest engine speed in an approach channel? Is all this quite safe?

Then there are terminals which will load at speeds which are considered excessive

for the structural integrity of the vessel, or those where the unloaders are completely careless about the damage done by enormous grabs, or bulldozers or other machinery put into the holds by the stevedores. Is a port or terminal, which has an inexact appreciation of the weight (or content of containers to be considered “safe”? Is a berth where there is no security, or where the risk of armed robbery from criminals ashore or ranging around the port is very great offering adequate safety?

We may have come a long way from the simplicity of the “always afloat” clause in the charter party, or what those considering charter parties meant by warranties covering port safety. But the shipping world is changing, and with it our concept of acceptable and manageable risks. Is this something we should be thinking about rather more? ■■

Editor’s Note: Michael Grey is BIMCO’s Correspondent in London. He is a former Editor of Lloyd’s List and a regular contributor to many maritime publications.

Enhanced safety through the use of real-time dynamic chart overlays

In today's economic climate, ports need to maximise their efficiency while ensuring safety of passage. As vessels increase in size, the dilemma facing many ports is that their existing static underkeel clearance (UKC) rules are inflexible, thus deeper vessels cannot transit without compromising safety.

The problem is that static rules do not change with the environmental conditions, so the actual clearance, and the potential for vessel groundings, varies on any given day. For this reason, static rules need to be conservative.

The majority of authorities in the world use static rules to determine the underkeel clearance and they normally use the vessel's draught as the baseline. However, it is contended that this method can be erroneous, as it is based on the assumption that this clearance is sufficient, regardless of the prevailing environmental conditions.

So in practice, the actual safety clearance is determined by the conditions on the day,

and under static rules, the clearance for a vessel varies for every transit. Most of the time the static rules will be conservative, but evidence shows that up to 5% of transits are marginal, even unsafe.

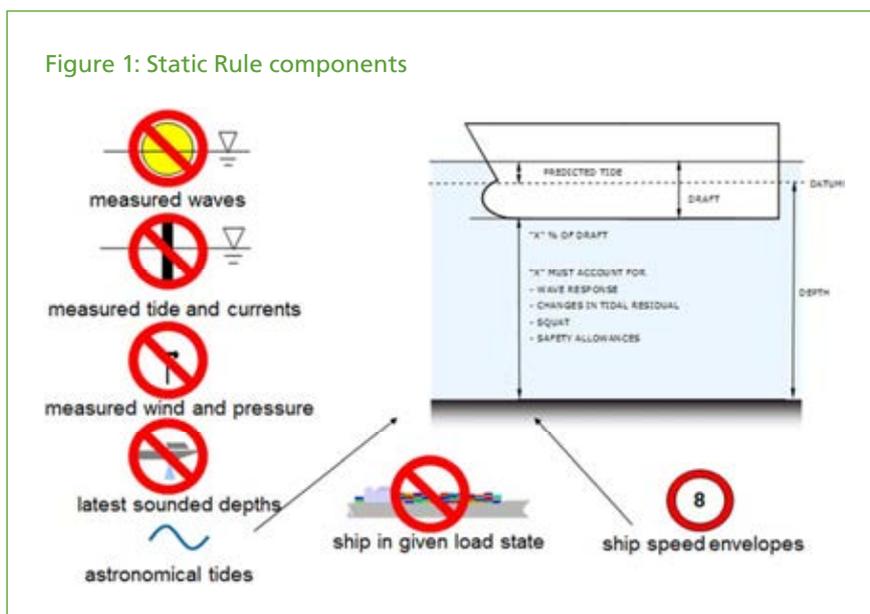
In contrast, dynamic UKC systems calculate the required UKC depending on the prevailing environmental and vessel conditions; this ensures every transit satisfies appropriate risk standards. With safety assured, economic and efficiency benefits are realised when conditions allow deeper draughts and/or extended tidal windows.

Dynamic under keel clearance systems (DUKC[®]) calculate real time under-keel clearances to maximise channel safety and

consider all factors that affect the UKC to determine the minimum safe UKC requirements. Instead of using the vessels draught as the baseline, it implements a pre-determined safety limit which must not be breached. Tidal and channel variances, vessel dynamic movements, which are modelled using real-time (and predicted) environmental conditions, are added to this limit and this results in a minimum transit water level that is required to ensure safety at all times.

Users gain an advantage from DUKC[®] systems because enormous economic benefits can be gained when environmental conditions allow. This is achieved by reducing the inefficiencies (conservatism) inherent in the static rules and allows safe transits outside the restrictive static rules. This increases productivity of the port with deeper draughts and larger tidal windows; ship operators (owners/charterers) indirectly benefit because cargo is maximised for the vessel, but still with ensured safety.

The methodology behind dynamic under-keel clearance has been internationally recognised. The improved certainty and information that dynamic systems can deliver has seen regulatory bodies regard such systems as an essential Aid to Navigation (AtoN) and consider DUKC[®] as an effective risk mitigation tool. For this reason AMSA has installed a DUKC[®] under-keel clearance management system in the Torres Strait to manage transiting vessels and is now mandatory for all deep draft vessels. This is the first coastal waterway in the world to have a mandatory UKC risk



system, and other regulators are looking to implement similar risk management systems for their waterways. It should be noted that the ship does not need any additional equipment, as the system is installed ashore and can be remotely accessed through existing communication equipment.

Static rules

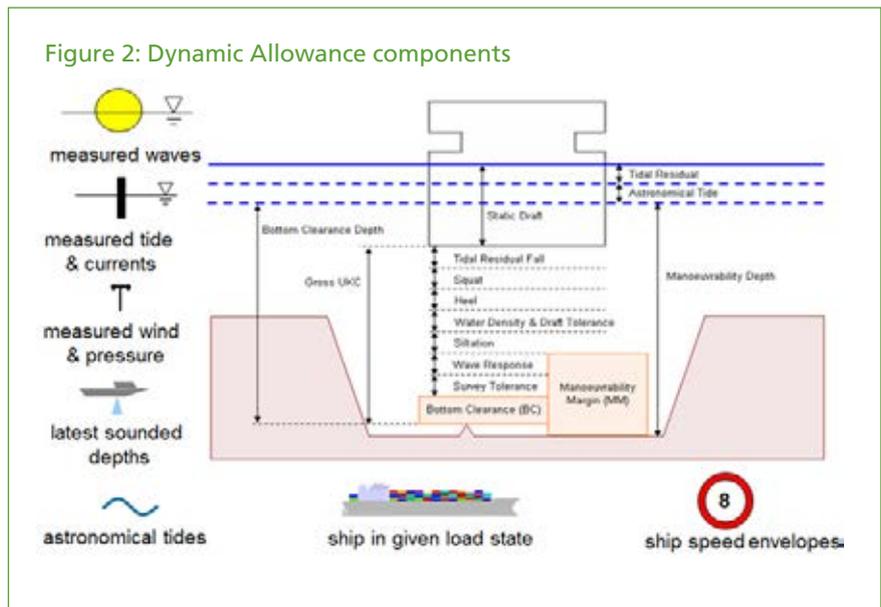
Traditionally, authorities have utilised static rules to govern the minimum UKC to ensure the safe transit of a vessel. These static rules were devised when vessels were smaller, their speeds lower, ship/shore communications poor and technology generally unavailable to determine ship motions accurately. There needed to be a simple method of calculating a safe underkeel clearance and the accepted practice was/is to calculate the underkeel clearance as a proportion of the vessels draught. The most common clearance ratio is “10% of draught”, but this is unfortunate as the PIANC guidelines state that this is a minimum suggested safety clearance, and is for calm waters only, which may be unsafe in many ports today.

The static rule tries to capture all anticipated factors in a single allowance. Essentially, the only controllable factors are the tide height (transit time) and speed (which determines the amount of squat). Therefore, where depths are critical and conditions variable, there may be times when the allowance is marginal.

It could be suggested that the “static rule” approach is a “top-down” approach, where the gross clearance is determined from the draught, but the actual net underkeel clearance is unknown.

Some ports try to assess some of the factors, and whilst some of these factors can be pre-calculated, predicted wave response (in real time) is impossible to calculate without significant processing power and access to environmental data; so in practical terms wave motions are undeterminable once a transit commences. (see Figure 1)

Speed is an absolutely critical element in maintaining safe UKC. Evidence has shown that vessels do not always maintain the planned, or proceed at an appropriate, speed for the transit. If the transit is too fast, the ship will squat in excess of the predicted amounts which is approximately proportional to the square of the speed; and if the vessel transits slower than planned, it will not reach way points at required times so may have less water than predicted and the



transit may now be unsafe. Once underway, changes to UKC can be difficult to assess and are often overlooked.

Another problem is that many authorities use a generic squat formula, but there are many formulae in existence and the most appropriate formula depends on the bathymetry, channel design and the type of vessel. Squat is often calculated for a single critical point, but in practise a vessels’ squat is continually changing throughout the entire length of the transit.

The biggest drawback with static rules is that they have to cater for the “worst case” scenario; they cannot be too optimistic as safety could be jeopardised, but cannot be too conservative as they become uneconomic; so they are blunt compromises. The actual net clearance is wholly reliant on the environmental and transit conditions and static rules are unresponsive to change. This means an authority cannot maximise efficiency when conditions allow, but more worryingly, an authority will be unaware when conditions are actually unsafe because, when static rules are used, the level of risk is variable and the net underkeel clearance on any particular transit is unknown.

Dynamic allowance

By contrast, dynamic underkeel clearances are determined in real time and are based on the actual vessel and its stability parameters, the prevailing met-ocean conditions (wave height, period and direction, water levels, currents, tidal plane, wind), vessel transit speed and waterway configuration, including detailed bathymetry, for the time of transit.

Dynamic systems can be considered as a “bottom up” approach and the system has, at its core, minimum limits that must not be breached. Every factor is computed and then added until the minimum tide height is found that ensures a safe transit. Thus, when conditions are favourable, vessels may have greater tidal windows and/or can sail with a deeper draught; but when conditions are not then tidal windows are reduced and may even be closed, or a vessel may be able to proceed but with a reduced draught. (see Figure 2)

Environmental conditions, ship speed and water depths vary continually along the transit; therefore net clearances need to be continually computed and updated to determine the UKC factors. The system is predictive, so if a navigator wishes to adapt his transit plan or if there is an unforeseen event (e.g. an engine issue or berth congestion) or there is a change in the environmental conditions, the system will automatically update the calculations. Integration of the sophisticated numerical calculations with real time environmental data ensures integrity and quality that cannot be matched by a static system; clearances are calculated individually for every ship.

The channel characteristics for the whole transit are combined in validated numerical models to ensure accurate vertical displacements for the vessel type, size and stability condition. This integrates an appropriate squat formula for the vessel and channel and includes the effect of temporal and spatial variations of tidal currents during the transit.

Therefore, every installation has to be fully customised because each port, its environ-

mental conditions, and its trade, is unique. This includes high resolution multi-beam survey data that is in greater detail than is typically available from a standard ENC or navigational chart. The DUKC® is always operating on the latest available hydrographic depths and includes a daily accumulative allowance for siltation when available. For this reason, a dynamic system satisfies, and often exceeds, the internationally-accepted levels of risk for safely managing the UKC of vessel transits.

Dynamic Underkeel Clearance Systems (DUKC®)

DUKC® is a proven safety and risk management technology and is a recognised core e-Navigation concept. The first DUKC® system was created for Hay Point coal terminal in 1993 and the technology has now been installed in over 21 ports.

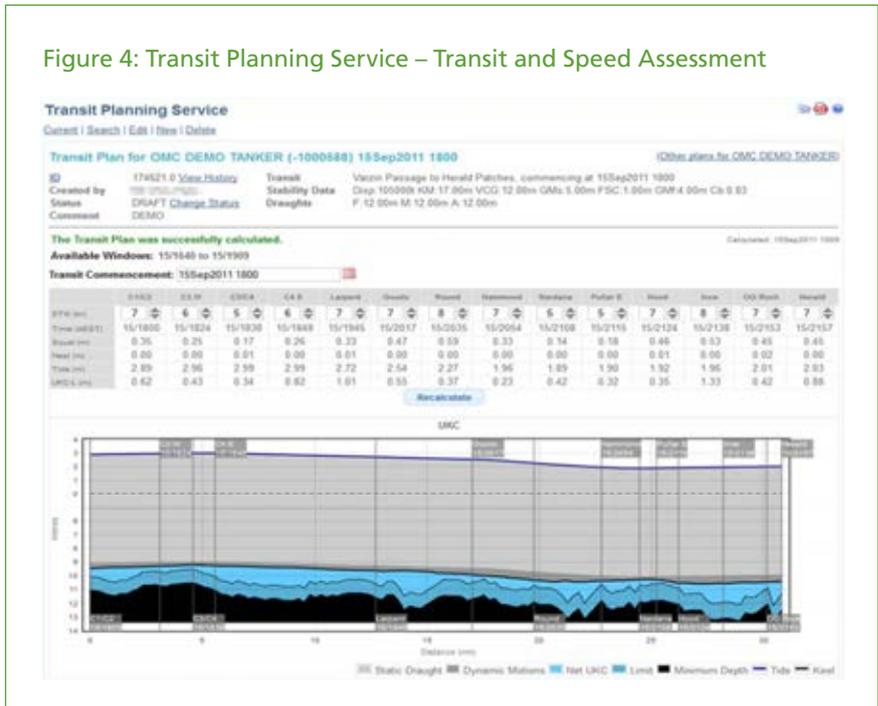
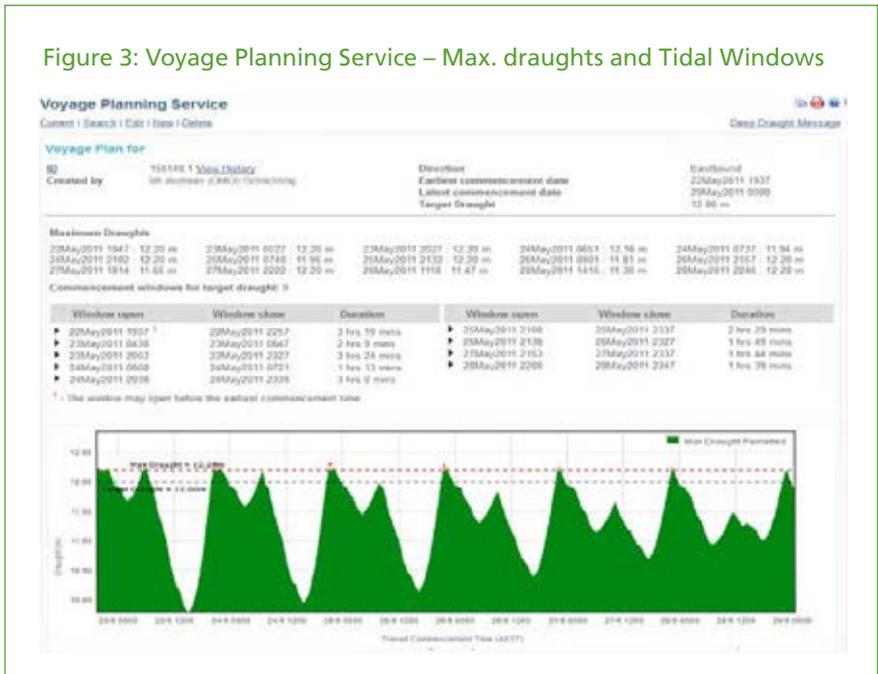
The system is customised for every port or waterway and implements the “dynamic allowances” mentioned above. The core functions of DUKC® systems have always been to provide ports and users with dynamic passage planning advice on:

- Maximum draft for tides
- Earliest and latest sailing times (tidal windows)
- UKC for specific transits.

The system provides comprehensive reports for ports and pilots, which improves the decision making process and enhances the master pilot information exchange. It also serves as a historical database for auditing and risk analysis purposes.

Examples of the information from the voyage planning service, which provides advice and maximum draughts and tidal windows, can be seen in Figure 3, and the transit planning service which allows for speed (squat) adjustment and information on calculated keel elevations in Figure 4. Figure 5 gives an overview of the transit information report.

Whilst these functionalities remain at the core of the DUKC system, there is a growing requirement to deliver dynamic information in a format that is readily understandable. Through consultation with the maritime community, chart overlays have been developed as they can be readily incorporated into the pilots’ portable pilotage unit (PPU) and potentially on an ECDIS. Chart overlays present a simple visual indication on which areas meet UKC limits, and are safe for tra-



versing, and which areas do not meet UKC limits, and should be avoided.

The information is displayed geospatially through a Marine Information Overlay (MIO) on a compatible Electronic Charting System (ECS) and, in parallel; the overlays are available on the web within the DUKC portal, allowing a shore station to view the same dynamic overlay that the ship handler is viewing.

An example of the chart overlay is displayed in Figure 6. The simple presentation of predicted Go/No Go areas for the time of the vessel arrival in those areas allows the pilot

to anticipate required deviations from the transit plan. This anticipation allows time for various options to be considered and enables proactive rather than reactive navigations.

Future developments

Chart overlays will be an important component of any eNavigation system. The type of data that could be communicated is diverse and it is probable that it will revolutionise today’s navigational practices.

Dynamic chart overlays are already well established and whilst they are presently being delivered by geotifs via 3G, any recognised overlay format and communication

channel could be implemented. Implementation of the S100 standard is very likely to benefit the delivery of this information to a ship's ECDIS, or other navigational systems, rather than just the pilot's PPU, and the proposed VHF Data Exchange System (VDES) will also be an important/necessary development as data requirements increase.

Conclusion

The use of static rules at many ports needs serious consideration about whether they are suitable, and if all factors are understood. The paradox of the static rules is that without an incident, a port's static rules may appear validated and considered safe. In reality, where underkeel limits are critical and conditions variable, there may be times when the clearance is marginal and the port has experienced an unknown "near miss".

Dynamic underkeel clearance systems ensure safety through accurate planning and continual monitoring of the UKC of large vessels during transit along shallow waterways. These decision support tools and the integration into navigation systems, also allow the effect of alternative speed/sailing options on UKC to be quickly investigated by pilots and masters in situation where the passage does not proceed as planned. It does not need additional ship equipment as existing infrastructure can be used to access the information, however the level of information that can be delivered will benefit from newer technologies such as S100 charts.

Dynamic UKC chart overlays are an evolutionary step in delivering UKC information to the navigator in a visually understandable format. It is an operational and proven eNavigation solution that can only increase the safety of vessels. ||

Figure 5: Overview of Transit Information Report

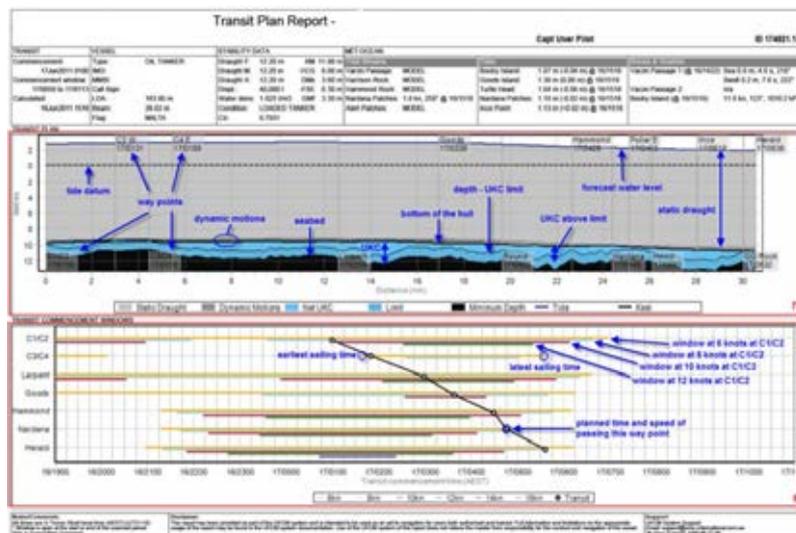
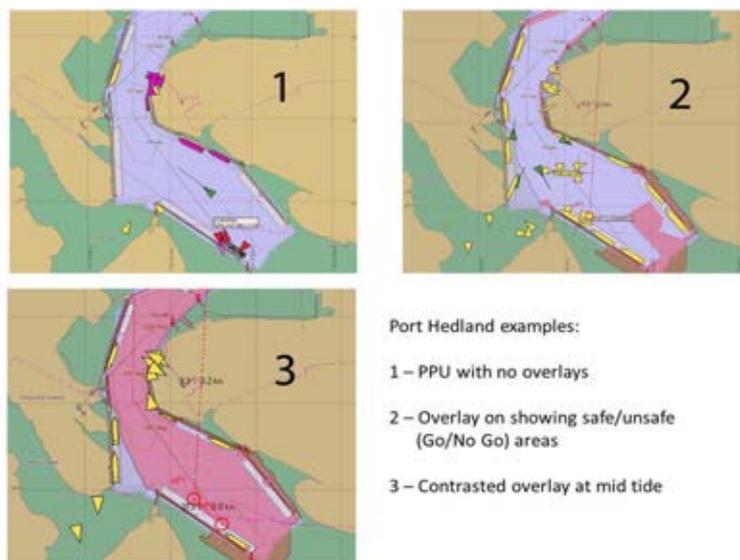


Figure 6: Actual PPU displays with overlays on/off and differing tidal conditions



- Port Hedland examples:
- 1 – PPU with no overlays
 - 2 – Overlay on showing safe/unsafe (Go/No Go) areas
 - 3 – Contrast overlay at mid tide



Captain Jonathon Pearce

Editor's Note: Jonathon Pearce joined BP as a cadet in 1979 and qualified as a Master Mariner in 1990. He has served as Master on high speed ferries before returning back deep sea as Chief Officer. In 1994 he came ashore as pilot in Port Taranaki, New Zealand.

In 2006 he returned to the UK as a risk assessor and undertook numerous formal safety audits of UK ports, and risk assessments on LNG projects. In 2008 he joined OMC International as their Business Development Manager and Senior Pilotage Advisor due to his extensive knowledge of their DUKC systems as a user.

He is a recognised expert in underkeel clearance issues and ship squat and presents nationally, and internationally, at maritime conferences.

Plotting a course to better profits: how e-navigation can reduce operating costs

Increased regulations are rarely a cause for celebration amongst the ship owning fraternity. Compliance inevitably incurs costs, time, training, and hard work, while delivering few direct benefits to a ship owner's day-to-day operations.

On the face of it, the IMO's Electronic Chart Display & Information System (ECDIS) Carriage Requirement, requiring vessels to install at least one ECDIS on the bridge, was probably met with similar, limited enthusiasm.

Hardly a reason to put the champagne on ice in anticipation of all mandated vessels switching to ECDIS and ENC's by July 2018... or so you'd think.

Safety, security, the environment and profit

To date, discussions relating to the ECDIS Mandate have focussed on the important safety and security enhancements associated with moving to ECDIS as the industry's primary navigational tool. This will, it is believed, help counter the ever increasing number of groundings and collisions, which, according to the International Union of Marine Insurance, can be attributed to human error in 60% of all recorded cases.

However, this focus has made the industry lose sight of other compelling benefits of adopting the latest, state-of-the-art e-navigation solutions, particularly with regards to ship management.

What if I told you that exploiting such technology could save ship owners between 5 and 10% of their annual fuel costs? That it could lead to more efficient man and time management on board and on shore? That it could help protect cargo? Give a better over-

view of fleet performance and status, and therefore provide superior decision making tools? Would that be reason to chill something celebratory?

In the ultra-competitive world of international shipping, still blighted by over-supply, low rates and often non-existent profit margins, I think so...

Fuel efficiency

Fuel is usually the number one concern for ship owners. Fuel costs have climbed by an average of 16% year-on-year since 2005 (*Wall Street Journal*), with escalating maritime demand (an increase of 2.2% to 3.37 million barrels a day was forecast for 2013: *JBC Energy GmbH*) unlikely to lead to a long-term reversal of this trend, despite current price fluctuations.

In general, fuel accounts for between 50 and 80% of total vessel operational costs – dependent on size, performance etc. – for the nearly 100,000 strong global SOLAS fleet. This means that any efficiencies have the power to instantly impact on a ship owners'/operators' bottom line. As a result, huge investments are made in adding more fuel-efficient ships to an already oversupplied industry, impacting negatively on rates. Isn't it equally, if not more, important to switch the emphasis to more effective route planning and voyage monitoring?

Think of aviation, where there are obvious differences, in terms of voyage dura-

tion for example, but also clear parallels. Airlines plan their departures and arrivals with precision, knowing exactly what time slot they've been allocated and how much fuel they expect to burn en-route. Contrast that with a large container vessel, where fuel accounts for the lion's share of operational costs. Typical container ships might increase their speed by three to four knots as they approach port only to find that they then have to anchor for a day awaiting their turn. All that extra fuel has been burnt for nothing.

However, investing in a state-of-the-art route planning service on the ECDIS will facilitate enhanced ship-shore interaction, providing in-depth information on voyage progress, changing weather patterns and arrival schedules. This is a key benefit, and the driving force behind, the roll-out of e-navigation technology, making vessel traffic movements reliable and easier to manage and track.

My company, NAVTOR, believes this has the ability to revolutionise the industry and, as such, has joined the SESAME project (Secure, Efficient and Safe Maritime Traffic Management) in the Straits of Malacca and Singapore, which aims to develop and implement innovative new traffic management strategies for congested waterways worldwide.

When the competition is so fierce and margins are so low, this new level of efficiency



NAVTOR systems have been fitted to Hurtigruten's cruise vessel MS Fram.

can transform business models (while also impacting positively on emission levels and vessel carbon footprints, a key focus for the IMO and associated regulatory bodies).

The human factor

And it's not only fuel that can be used more efficiently with e-navigation technology. Alongside the reduction in human navigational error achieved by switching to ECDIS (which in turn reduces costs and risks through accident avoidance) there are also benefits in terms of utilising human resources.

Here at NAVTOR we have devised a way of seamlessly distributing and updating ENC's that dramatically cuts down on an otherwise laborious administrative workload. Our ENC service, launched in 2011 and compatible with all makes of ECDIS, is distributed on the pre-loaded USB-based NavStick, allowing navigators to instantly access global charts and licences on their ECDIS consoles.

Once installed, the service can be updated on a regular basis, as per the SOLAS chart carriage requirement, using the same USB stick

and our NavSync online synchronisation feature. This ensures that all charts, updates and licences are the most recent versions.

This high-tech approach negates the need to apply for individual charts and licences prior to voyages, download a series of CDs to the ECDIS, and manually check for updates. Everything is available at the click of a few buttons, delivered instantaneously and with no charge for any charts used for planning purposes but not utilised for voyages.

This user-friendly nature and lack of administration allows navigators and the rest of the bridge team to use their valuable time to greater effect, saving precious man-hours and reducing fatigue.

On track for success

Communication is at the heart of successful e-navigation. The IMO is keen to develop the concept globally to harmonise the exchange of electronic information between vessels and land-based operations. This will lead to added safety and enhanced services for mariners, but also to a better understanding of detailed fleet movements globally.

We have therefore developed a free fleet management "App" called the NavTracker, which is included in our ENC subscription service. The tool, designed for use on internet-enabled computers and on iPhones, iPads and iPod Touch products, as well as Android operating systems, allows onshore teams to track vessels, giving them a full overview of ship location, chart usage and management. This includes a detailed insight into which charts have been updated and when.

Such technology gives management a window into navigational operations on individual vessels that, up until now, has never been possible. This kind of overview empowers better fleet decision making, allowing onshore teams to make on-board calls that maximise profitable operations.

We have also included a free three-day weather prediction service related to fleet operational positions with NavTracker. Such services are another boon for e-navigators, allowing teams to plan routes that, where possible, bypass challenging weather conditions.

This increases personnel safety, optimises

fuel efficiency and reduces possible damage to cargo caused by rough seas.

This kind of seamless connectivity between fleet assets, onshore management teams, ports and other relevant stakeholders is a game-changer for at-sea operations.

It's so much more than just the use of digital charts. Rather, it's an opportunity to use the ECDIS requirement as a platform to help enable a new age of efficiency, whereby user-friendly add-on services and solutions can be adopted to deliver powerful, tangible benefits.

Flexible solutions

The leap from paper to pixels has made it easier to create bespoke navigation solutions for individual vessels. Whereas navigators were once forced to apply for paper charts and licences prior to voyages, necessitating detailed and time consuming planning, services such as ours enable them to pick and choose what charts they need when they need them – instantly accessing them online.

In addition, we offer clients the ability to subscribe to the ENC service for a fixed area for certain periods of time, dependant on their individual needs, or simply “pay as you sail”. In the latter case, vessels are only charged after using charts on their routes.

Alternatively, the two models can be combined – as we did for Norwegian cruise

operator Hurtigruten last year – allowing ships that sail set routes the ability to deviate from those routes whenever necessary, for example, to collect special cargos or undertake repairs. In Hurtigruten's case, this flexibility allows certain vessels to undertake new cruise routes, such as the *MS Fram*, which takes passengers on far-flung voyages in the waters of Greenland and the Antarctic.

This “at sea” ease of access to charts, where everything is readily available on board – and the detailed onshore overview of exactly what charts are used and when, enabling effective cost management – is impossible without today's advanced e-navigation technology.

The path to profitability

When faced with regulations such as the ECDIS Mandate it's understandable that shipping companies and owners focus on the price of compliance. However, there needs to be a greater appreciation of the potential of this technology – not just in terms of safe operations but in the cost efficiencies, the more intelligent use of manpower and the enhanced decision making tools it can deliver.

Many ship owners already appreciate this, even if they're not being “forced to” by regulations. Norwegian offshore support vessel owners provide an interesting case in point. NAVTOR now supplies its ENC service to ship owners controlling more than



Willy Zeiler

70% of the national offshore fleet, even though the vessels do not fall under the ECDIS mandate. The owners have simply opted for cutting-edge e-navigation services because they are focused on safe, efficient and predictable operations in a notoriously demanding and competitive sector.

For the mandated SOLAS vessels that do have to invest in navigational equipment, it's clearly worth closer investigation into how it can be brandished, and what services can be added on to the standard functionality, to deliver day-to-day benefits to fleet management practices. We believe this is one IMO regulation that everyone can profit from. ■■

Editor's Note: Willy Zeiler, born 1950 in Egersund, Norway, was educated as a graphic designer and has a diploma in communication as well as marketing economy. His professional occupations span from deckhand at sea to managing advertising agencies servicing major clients in the maritime business.

His latest occupation is within electronic charting and the e-navigation sector, where he has worked for Primar, UKHO, C-MAP and now NAVTOR.

Born on the rugged South West Coast of Norway, Willy is a sailor himself, passionate about the maritime industry and the ability of technology to facilitate safe, reliable and efficient passage over the oceans.

The NavStick





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Live testing of new AVANTI port information software

Live testing of Avanti, a new on-line web-based application that provides validated nautical information for port users, is due to commence at a number of European ports. Following successful prototype testing at the Port of Rotterdam, the ports of Gøthenburg, Marseille and Luella will commence live testing in Spring 2014.

Avanti has been developed by the United Kingdom Hydrographic Office (UKHO) in collaboration with the International Harbour Masters' Association (IHMA) and promises to make a major contribution to the rapidly expanding field of e-Navigation.

The need for easily accessible and reliable nautical port information has never been more important as all players in the industry aim to increase efficiency, reduce costs and achieve environmental benefits.

By securely accessing their port's information on the Avanti website, Harbour Masters can speedily update port information making it instantly accessible to the marine industry and port community through a website that has been developed by an internationally respected organization.

A professional interface

UKHO's Publications Senior Product Manager, Christine Trickett, said "Avanti is an important research and development project for the UKHO and we are pleased to have reached the stage where we can fully test the concept with industry players".

IHMA's President, Captain Eric Atkinson, said "Avanti provides a professional interface for communicating information to port users and will help Ship Masters comply with IMO requirements for berth to berth passage planning in the interests of improved safety as well as well as increased efficiency".

A need for consistency

Although there has been a proliferation of port websites providing information, no two port websites present their entry infor-



mation in the same way. This lack of consistent presentation makes finding port information a time consuming and expensive activity for port users and has reinforced the need for a standardized format that is now available through Avanti.

Why is nautical port information so difficult to obtain?

Why should a port's most important customers, the cargo or ship owners, collect nautical port information themselves? Why doesn't the port make this information easily available to customers?

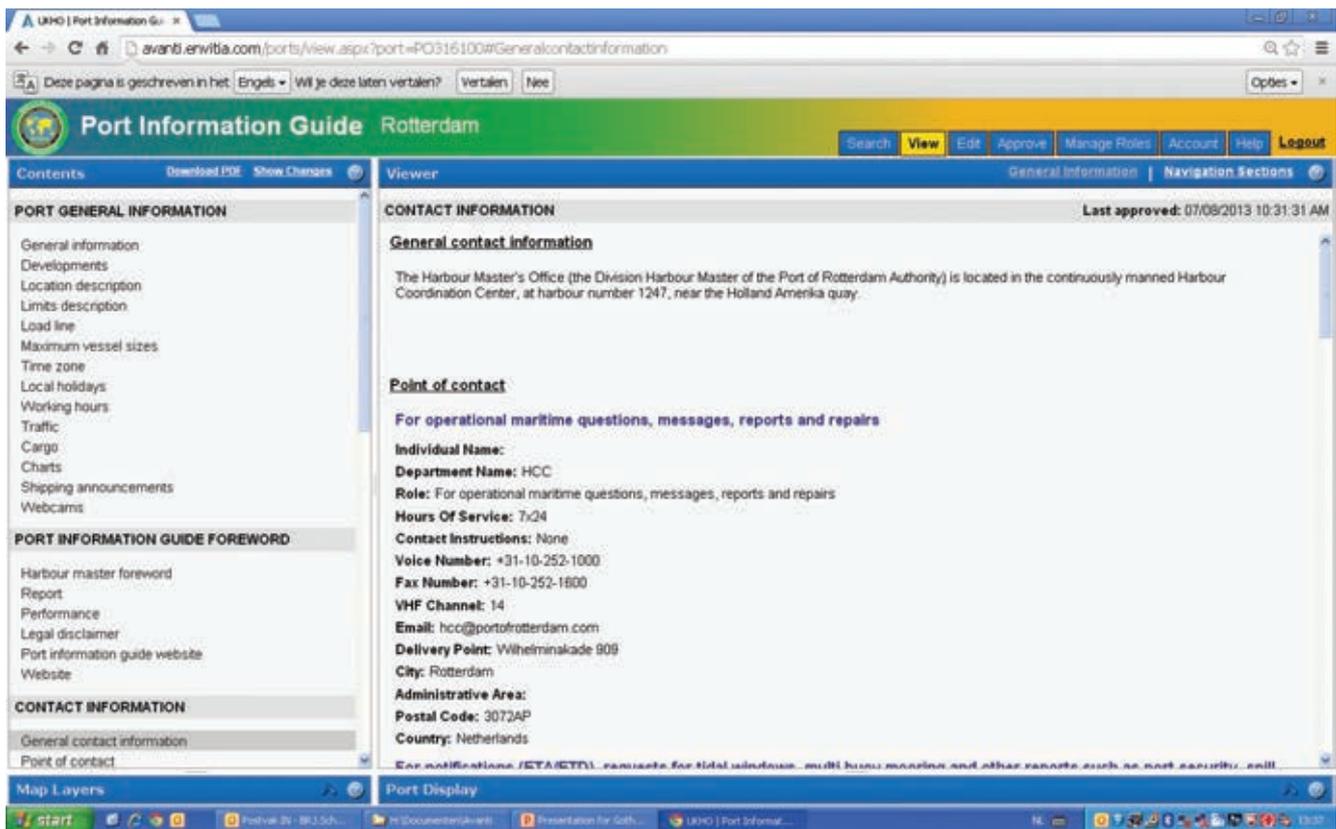
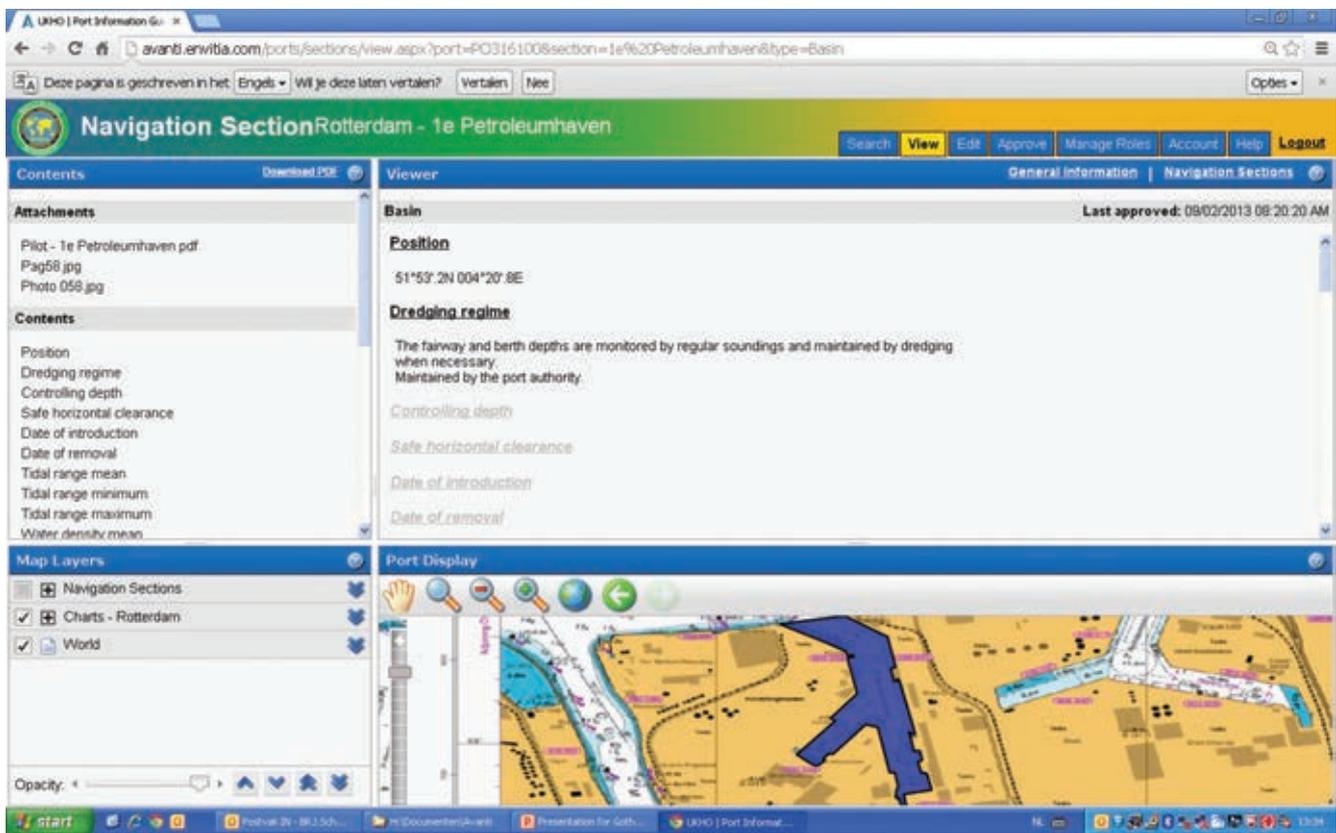
This question was raised by the vice president of a major container line during the 2006 Congress of the International Harbour Masters' Association (IHMA).

A port's most economically important cus-

tomers, cargo or ship owners, have traditionally collected nautical port information themselves. This is a labour-intensive activity often requiring representatives from the marine industry and hydrographic offices to visit ports and terminals, or obtain information from captains' reports after a port call. Despite these efforts, information can go out of date very quickly.

Conflicting information

At the same time, Harbour Masters must respond to requests for nautical port information, often about areas of frequent change, and can find it difficult to update port information quickly and consistently. As a result, the various parties dealing with a single vessel may be using different information for loading, discharging, sailing and assistance with the potential to affect efficiency and safety.



Eight years on and for the first time in maritime history, the development of Avanti helps solve the nautical port information deficit by making updates to port information easy for Harbour Masters and accessible for port users. ■■

Editor's Note: The above article was based on a joint press release issued by UKHO and IHMA. For further information contact: <http://Avanti.envitia.com>. Contact details for information and support: UKHO: Christine.Trickett@UKHO.gov.uk IHMA: Ben van Scherpenzeel, Scherpenzeel.ehmc@harbourmaster.org

Not all ballast water treatment system type approvals are equal

Robust testing, in accordance with Environmental Technology Verification (ETV) Ballast Water Protocol, can help system manufacturers expedite United States Coast Guard (USCG) Type Approval. More importantly, it gives vessel owners the information, data and reassurance they need.

As readers will know, the International Maritime Organization (IMO) launched the Ballast Water Management (BWM) Convention in 2004. It will enter into force 12 months after 30 States representing 35% of the world's merchant shipping tonnage have ratified.

To date, it appears that nearly 40 ballast water treatment (BWT) system manufacturers have obtained IMO type approval. However, it remains to be seen just how many of them will have to undergo extensive retesting in an effort to be granted USCG type approval, and there's no telling how long this retesting will take to complete.

Vessel owners deserve more than just beta technology

Vessels sailing in US waters will be required to adhere with USCG ballast water dis-

charge standards and the United States Environmental Protection Agency (USEPA) Vessel General Permit (VGP), in addition to State ballast water regulations.

As a temporary measure, the USCG may accept a system that has been type approved by another flag state and according to IMO BWM Convention criteria. They call this an Alternate Management System (AMS). However, vessel owners need to understand that AMS is merely an interim solution and that – if they're bound for ports in the United States – their vessels will ultimately have to be equipped with a USCG type approved system.

Furthermore, the USCG has been forthright in stating that the receipt of an AMS designation does not provide the manufacturer or the vessel owner any guarantee that the system will eventually qualify for type approval. The specific risk to a vessel owner relying merely on an AMS system is that the system may be drastically undersized and that substantial capital improvements and engineering will be required to rectify the situation.

Be sure to ask the tough questions

Vessel owners should be asking BWT manufacturers tough questions. Here are seven of them:

- During your IMO type approval testing, did you test in accordance USEPA ETV Ballast Water Protocol?
- How do you plan on obtaining USCG type approval, and how long will it take?
- Will you have to completely retest your system with an independent laboratory (IL)?
- Did you test your system in all salinities (i.e., fresh, brackish and marine water)?
- Can you prove (with quantitative data) that your BWT system will have little impact on my cargo operations?

- Can you prove that your scaled-up, larger flow systems will perform in a similar manner as the smaller ones you tested during your IMO Type Approval process?
- How is your system impacted by salinity, temperature, pH and organic loading?

Too much time in Port State Control is a waste of time and money

Getting in and out of ports, without delays, is an absolute necessity. And being able to prove that your BWT system is Type Approved to the highest of standards will definitely help your cause.

That's why, rather than focusing on being the first to get IMO Type Approval and testing to minimum standards, Trojan Marinex decided to focus on refining the entire testing process, turning it into one of the most modern and robust in the industry.

The path to USCG type approval

The Trojan Marinex BWT system received IMO Type Approval from Det Norske Veritas (DNV) on behalf of the Norwegian Maritime Directorate. DNV has been at the forefront of ballast water type approval and has set forth extremely strict requirements. Here are five interesting (and differentiating) facts about the Trojan Marinex type approval process:

1. Testing was conducted in accordance with USEPA ETV Ballast Water Protocol. In order to receive USCG type approval, systems must be tested to this more prescriptive protocol.
2. Land-based testing was completed at the DHI Maritime Technology Evaluation Facility in Hundested, Denmark. The DHI facility, together with DNV, achieved independent laboratory sta-



Vessel owners should be asking BWT manufacturers tough questions.

tus in June 2013. This means that they are authorized by the USCG to evaluate and test technologies, and offer class, IMO and USCG Type Approval to manufacturers.

3. Testing and reporting requirements have evolved since many of the early IMO type approvals. Many certificates awarded in the past contain little information articulating the limiting conditions of the BWT system. However, the Trojan Marinex IMO Type Approval satisfies the requirements of IMO Circular BWM.2/Circ.43c, and contains more detailed water quality information, such as the UV transmittance under which the system was tested.
4. Testing was conducted at significantly higher flow rates (i.e., 1,250 m³/h) to verify the efficacy of the system at higher flow rates than typically tested (i.e., 250 m³/h). This work was done to verify scale-up Computational Fluids Dynamics (CFD) modelling, and to satisfy the requirements of IMO circular BWM.2/Circ.33 (Guidance on the scaling of ballast water management systems).
5. Even though the USCG has been very clear in articulating that a BWT system operating in US waters must be tested in the condition in which it will operate, IMO guidelines state that testing only needs to occur in two of the three salinities. The Trojan Marinex BWT system was tested and approved in all three – brackish, fresh and marine.

The journey started long ago

For us, the search for a ballast water treatment solution dates back to 2006 – that’s around the time when the start of a research programme examining customer needs and basic scientific principles related to ballast water began. This research extended to an examination of the various types of ships and their widely varying ballast water pumping requirements. Through this research it was identified that footprint and power requirements must heavily influence any ballast water treatment system design, and that the system must have minimal impacts on a vessel’s overall operations.

Furthermore, although the international community had already acted with the creation of agreements and conventions to regulate the quality of ballast water discharge, the state of knowledge of the science around ballast water quality was still in its



Trojan Marinex shipboard testing on board the training ship Golden Bear.

infancy at the time, and the scientific and engineering implications of the impending regulations and compliance assessment criteria were not yet thoroughly understood or developed. For example, while it was agreed in principle that the elimination of potential invasive species from ships’ ballast water was beneficial, it was not known what the actual aquatic species in various waters were.

There were gaps in knowledge both in terms of identifying and quantifying the species, and in determining the extent of their viability post-treatment. That’s why scientists and engineers at Trojan Marinex (trojanmarinex.com) and Trojan Technologies (trojantechnologies.com) engaged with the international community of experts – including scientists at universities in Canada and abroad – to better understand the nature of the water and the organisms being effectively removed from it.

Contribution was not just in the development of clean technology that would eliminate invasive species in ballast water discharge without the addition of any chemicals, but also included fundamental contributions to the understanding of the nature of the species present in ballast water, their susceptibility to treatment, the mechanisms of action against their viability, and the laboratory

methodology by which efficacy and compliance can be determined. This collective knowledge is reflected in a custom-designed Trojan Marinex BWT system, and where and when appropriate, has been shared with the international community through peer-reviewed publications, regulatory submissions, presentations and partnerships. ■

Editor’s note: Jim Cosman has nearly 15 years’ experience in the water industry, with in-depth involvement in technologies used in several treatment applications, including municipal drinking water and ballast water treatment. He has been with Trojan Technologies since 1998. Prior roles included Regulatory Affairs Manager, Business Development Manager and Municipal Drinking Water Market Manager.

Jim is currently Market Manager for Trojan Marinex (a Trojan Technologies business) and leads various global market strategies. Jim is a regular participant in key IMO meetings related to ballast water as a member of the Canadian delegation to IMO.

High quality flag with focus on user-friendliness

Is it possible for a traditional government authority to be user-friendly? In the Norwegian Maritime Authority (NMA) we strongly believe so.

For several years this has been a main priority for the authority. Providing accessible services for our clients is a vital part in our efforts to ensure that the Norwegian Flag remains of high quality.

User-friendliness ties into several of the NMA's responsibilities and strategic goals. The NMA is an administrative and authoritative body for issues related to safety on board Norwegian registered ships and foreign ships arriving in Norwegian ports. Our clients represent a large part of the maritime industry.

The vision

The NMA's vision "Together for Safety at Sea in a Clean Environment" challenges our

clients to participate and also commits the NMA to initiate mutual collaboration.

New on-line services

Newbuilding activity has been at an all-time-high the past few years, with innovative new ship designs and breakthroughs in the offshore industry leading to an increasingly faster pace in the Maritime Norway. At the same time, the NMA has been working to streamline the authorisation processes for newbuildings by investing heavily in electronic services. In 2012 we could finally switch to on-line submission and processing of ship drawings.

Another example of progress is the reimbursement scheme for seafarers which made the move on-line in early 2013. As a

result, the majority of companies with NIS-registered ships now only need to utilise one single on-line application form. This guarantees an efficient reimbursement of taxes according to the rules of the NOK 1.6 billion total reimbursement scheme for NIS-registered ships.

Seafarers dependent on personal certificates issued by the NMA are responsible for manning all ships under the Norwegian flag. Until recently, the application process required submission of numerous documents by traditional mail. Considerable internal resources were required for handling, approving and issuing the certificates.

We are, therefore, proud to present our latest contribution to user-friendliness: from August 2013 it has been possible for Norwegian seafarers to apply for personal certificates on-line.

The issuer submits required documentation of qualifications (medical, educational and service records) to our database and the information is automatically paired with the seafarer's own applications. Simplification and improvement of the application process will, without doubt, benefit our clients.

International ship register

Since its establishment in 1987, the Norwegian International Ship Register (NIS) has provided the industry with a high quality option for registration. Ships registered in the NIS fly the Norwegian flag and are subject to Norwegian jurisdiction.

This implies that the ordinary shipping legislation applies to ships registered in the NIS with some exemptions and special rules. Norway's comprehensive code of maritime law assures creditors that it represents a secure and professional alternative. The



The 2008 Korean-built, Norwegian-flagged, autoliner Höegh London. (Photo: Höegh Autoliners)



The Norwegian-registered Susana S berthed in Malaysia, one of the Tokyo MoU countries. (Photo: Knut Revne)

Maritime law in Norway is known for its sophistication and predictability. As a general rule, self-propelled passenger and cargo ships, hovercrafts, drilling platforms and other mobile installations may be entered into the Norwegian International Ship Register, provided that they are not entered in the registry of another country.

According to the NIS Act, foreign shipping companies may register their vessels in the NIS. However, ships owned by foreign shipping companies must be operated by a Norwegian shipping company with its head office in Norway.

Operation is understood to mean either technical management (manning, outfitting, maintenance, etc.) or commercial operation (chartering, marketing, etc.). The vessel can also be operated wholly or partly from management offices abroad which are owned by a Norwegian shipping company with its head office in Norway.

Certain restrictions are imposed by the NIS Act on the areas where vessels in the register can trade. NIS vessels may not carry cargo or passengers between Norwegian ports or engage in regular passenger service between Norwegian and foreign ports.

Highly accepted standards

Great emphasis has been placed on maintaining a quality register which ensures that vessels operating under the NIS regulations meet high safety and working standards. To ensure this, the rules are based on the obligations accepted by Norway, particularly with regard to IMO (the International Maritime Organization) and ILO (International Labour Organization) conventions.

The Norwegian International Ship Register is a high quality register, serving fast moving international customers and providing full service around the clock. Registrations may take place between 7 am and midnight all days except Sundays and international holidays. The service is available by appointment and, if needed, on short notice. NIS is renowned for being user friendly. Both the NIS-fees as well as Norwegian shipping taxation are regarded as highly competitive.

Quality flag with top rankings

On 1 July 2014, Norway ranked as number seven on the Paris MoU's White list, confirming that the efforts put into force for improvement have been successful.

One of the objectives in the NMA's strategic plan for the period 2012 to 2015 is keeping the position among the top ten on the Paris MoU White list by the end of the period.

We are very pleased with our current ranking, but that does not mean that we are in a position to relax. Ship owners, recognised organisations, and the NMA will continue to work closely together to ensure that we continue to move in the same, positive direction.

It is not, however, only in Europe that Norwegian registered ships are recognised as being of high quality. Norway has also climbed to sixth place on Paris MoU's equivalent in the Asia Pacific Region, the Tokyo MoU White List. This is yet another encouraging development for our administration as there are a total of 31 flags on the Tokyo MoU White list.

Last, but not least, Norway is also qualified by the United States Coast Guard (USCG)



Olav Akselsen

for their list of quality ships, Qualship 21. Accordingly, we can proudly state that the Norwegian flag is a high quality flag within all the main Port State control rankings. ■■

Editor's Note: Olav Akselsen is Director General of Shipping and Navigation at the Norwegian Maritime Authority. He is also a Labour MP in the Norwegian Parliament. He was Minister of Petroleum and Energy in 1997 and has served on various committees on business and foreign affairs. In 2012 he headed up the committee which produced "The Energy Commission report – value added, reliability of supply and environment".

Protecting marine environments: the MARPOL V Regulation

Oceans, estuaries, lagoons, mangroves and other marine ecosystems are sensitive to any environmental changes. These ecosystems cover two-thirds of our planet's surface so it is no surprise that any imbalance, natural or otherwise, jeopardises not just the continuity of marine life, but has the potential to affect the planet as a whole.

Pollution, in its various guises, is one of the negative impacts of human interaction with nature. And while the world's oceans have long been viewed as impervious to anything dumped into their depths, waste disposal into our seas is no longer viable.

Marine pollution does not just refer to rubbish or oil spills, although these are both areas of huge concern, it refers to anything damaging that ends up in our oceans, for instance the residues from shipped solid bulk material cargoes. Knowing whether a chemical compound has the potential to damage marine ecosystems is the first step in determining how it needs to be treated, according to the latest revision of the International Maritime Organization's (IMO) MARPOL Regulation, Annex V.

The MARPOL Regulation – Annex V

MARPOL, the IMO convention that prevents pollution of the marine environment by ships from operational or accidental causes, is broken down into six technical Annexes, each covering a different aspect of pollution. Annex V deals with different types of garbage, one of which is residues from solid bulk cargoes. Originally introduced on 31 December 1988, the most recent revision, made in July 2011, came into force on 1 January 2013.

As of this date, shippers of solid bulk materials were required to hold, and to provide to ship owners, documentation for all cargoes

being transported. This documentation has to provide detailed chemical analyses of the transported materials, and most importantly, specify whether they have the potential to damage the marine environment. Any residue that is considered dangerous to marine ecosystems (i.e. it has the potential to kill living marine organisms) is now categorised as "Harmful to the Marine Environment" (HME) by the IMO.

Providing evidence in the form of documented analyses as to whether a chemical compound is HME is a critical factor in the latest revision of the Annex V regulation. It is already a legal requirement to carry the documentation related to Annex V, and as of 1 January 2015 for any ship not in possession of this paperwork – whether the cargo is HME or not – there is the potential of legal action against the cargo shipper and the ship owner.

Specific to the compound

The chemical compound of a solid bulk material goes right back to the mine it is extracted from and is often the result of many different geological and geographical factors. It cannot therefore be said that any solid bulk material with the same generic name is precisely the same chemical compound. Minerals from each mine have to be individually analysed and very specific ecotoxicology analyses are required to understand the impact they would have on marine ecosystems if they were to be released directly into open waters.

By assessing and proving the ecological risk of each solid bulk cargo that is transported, shippers can provide ship owners with the information they need to determine the correct process for wash water disposal. Ship owners are responsible for appropriately disposing of any wash water that is harmful to the marine environment due to the chemical compound of the washed out solid bulk material. This more stringent version of the regulation is designed to prevent the complete disregard for the oceans that was so commonplace previously. There are accepted practices and requirements for the disposal of the different categories of HME substances.

What is considered HME?

Cargo residues are considered HME, and subject to regulations 4.1.3 and 6.1.2.1 of the revised Annex V, if they meet one or more of the seven criteria of the Global Harmonised System (GHS) revision 4, which states:

1. Acute Aquatic Toxicity (Category 1)
2. Chronic Aquatic Toxicity (Category 1 or 2)
3. Carcinogenicity* (Category 1A or 1B)**
4. Mutagenicity* (Category 1A or 1B)**
5. Reproductive Toxicity* (Category 1A or 1B)**
6. Specific Target Organ Toxicity Repeated Exposure* (Category 1)**
7. Solid bulk cargoes containing or consisting of synthetic polymers, rubber, plastics, or plastic feedstock pellets (this includes materials that are shred-

Overview of MARPOL Annex V discharge restrictions

TYPE OF SOLID BULK MATERIAL	SHIPS OUTSIDE SPECIAL AREAS	SHIPS WITHIN SPECIAL AREAS	OFFSHORE PLATFORMS AND ALL SHIPS WITHIN 500 M OF SUCH PLATFORMS
Cargo residues ¹ not contained in wash water	Discharge permitted, subject to two additional conditions ² while en route and \geq 12nm from the nearest land	Discharge prohibited	Discharge prohibited
Cargo residues ¹ contained in wash water		Discharge only permitted, subject to two additional conditions ² while en route and \geq 12nm from the nearest land	Discharge prohibited
Cleaning agents and additives ¹ contained in cargo hold wash water	Discharge permitted	Discharge only permitted, subject to two additional conditions ² while en route and \geq 12nm from the nearest land	Discharge prohibited
Cleaning agents and additives ¹ in deck and external surfaces wash water		Discharge permitted	Discharge prohibited

¹ These substances must not be harmful to the marine environment.

² According to MARPOL Annex V Regulation 6.1.2 discharge is permitted where conditions (a) and (b) are both present: (a) both the port of departure and the next port of destination are within the special area and the ship will not transit outside the special area between these ports; and (b) if no adequate reception facilities are available at these ports.

ded, milled, chopped or macerated or similar materials).

* Products that are classified for carcinogenicity, mutagenicity, reproductive toxicity or specific target organ toxicity repeated exposure for oral and dermal hazards or without specification of the exposure route in the hazard statement.

** Combined with not being rapidly degradable and having high bioaccumulation.

The GHS revision 4 covers all potentially hazardous materials that could detrimentally affect health or the environment. It is based on the intrinsic properties and composition of compounds and classifications against the seven criteria in this list provide a basis for hazard communications and further analyses.

Shippers versus ship owners

With a variety of stakeholders being in possession of the cargo at different times of the journey to market, who is ultimately responsible for HME classification and documentation?

The Marine Environment Protection Committee's implementation of the revised Annex V, along with other revisions made to the International Maritime Solid Bulk Cargoes code, means that the shipper – the party that owns the material and is asking for it to be transported – is now responsible for stopping HME solid bulk materials from being discharged into the sea.

But, while it is the responsibility of the shipper to hold and to provide the documentation on the classification of the cargo, any ship owner transporting the cargo, with a vessel of 400 gross tonnages or above, needs this paperwork before loading the solid bulk material in question. If a shipper is unable to provide this documentation, the ship owner should refuse to transport it on their behalf, until such time as the documents have been provided.

Any shipper that has not already made provisions to chemically test their cargo needs to action the process before the cargo is loaded on to a vessel. If the material is found to be HME, the paperwork needs to

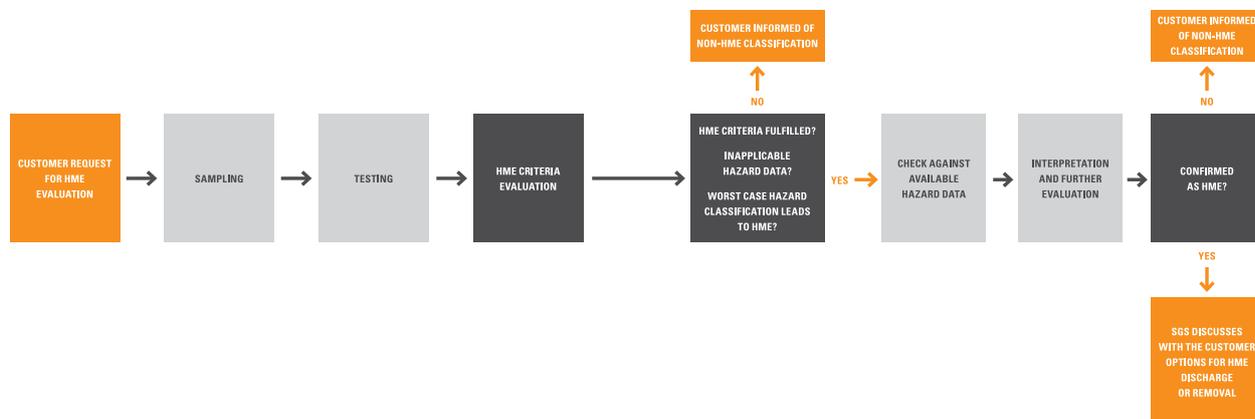
include further details that expand on the precise properties of the material, enabling the waste to be disposed of properly into a designated reception facility at the end of the voyage.

Shippers should currently be taking all reasonable measures to provisionally classify cargoes as HME or not and have been given between 1 January 2013 to December 2014 to put these processes in place. From 1 January 2015, shippers are required to provide a complete classification for their cargo, and declaration at both the loading and unloading port, as to whether the material transported is HME or not.

SGS toxicologists provide the steps to compliance

To comply with Annex V regulations, shippers need to have a clear ecotoxicology analysis process in place to first assess whether a solid bulk material compound meets one or more of the seven criteria of GHS revision 4 previously listed; and then secondly, to provide the detailed chemical compound documentation when needed.

MARPOL Annex V HME Classification from SGS



SGS has been providing analyses in this field for many years, and now, to meet the need of shippers and the marine industry, has developed a sampling, testing, interpretation, and documentation method to provide shippers with a straightforward and globally available process through which to meet their document provision obligations.

Using specialised equipment, and according to the ISO and ASTM standards, SGS takes samples from the solid bulk cargo to be analysed. This is an in-depth procedure which collects a number of samples from the same cargo to ensure that the results of subsequent analyses are reflective of the entire product. The elemental, chemical and mineralogical composition of the relevant components are analysed, and a clear interpretation of the results is provided to the shipper.

SGS classifies HME against criteria as specified in GHS revision 4. Several other national and international codes for classifying dangerous goods, such as the International Maritime Dangerous Goods (IMDG) Codes, are aligned with the GHS. Our Laboratory experts follow internal procedures that consistently evolve to stay up-to-date with the most recent revisions to testing guidelines, as issued by the Organisation for Economic Co-operation and Development (OECD), and the United Nations and Economic Commission for Europe (UNECE).

Our classification of sparingly soluble inorganic substances that could be considered HME (i.e. IMDG Class 9, UN 3077) is made according to the Transformation/Dissolution Protocol.

This method, developed by OECD and accepted through the GHS by international authorities such as the European Chemicals Agency and the United Nations, provides a bioavailability test, checking the capacity of ions to be released from the compound into water.

If ions are released, there is the potential that these are ecotoxic and further assessment is required. Bioaccumulation and biodegradation testing also form part of the comprehensive sampling, analysis and testing that SGS provides for meeting Annex V requirements.

Ultimately, SGS services for shippers and ship owners give piece of mind by allowing all the necessary documentation needed for port state authorities to be in place and in accordance with the strict requirements of the latest revision of Annex V.

Why SGS?

SGS is the world's leading inspection, verification, testing and certification company. It is recognised as the global benchmark for quality and integrity. With more than 75,000 employees, SGS operates a network of over 1,500 offices and laboratories around the world. ■■



Gerd Schneider

Editor's Note: Gerd Schneider has been working for the SGS group for 10 years. He started as Marketing Sales Manager and for the last three years has been working in the Business Development Department of Environmental Services as Global Project Manager Shipping.

For further information about HME testing and classification, contact Gerd Schneider, SGS Global Project Manager Shipping at gerd.schneider@sgs.com or visit www.sgs.com/env

On the Horizon...



DATE	VENUE	EVENT	CONTACT
10-13 Mar. 2014	Shanghai	Breakbulk Event China	Wayne Zhuang: zw@bimco.org
10-14 Mar. 2014	London	Sub-Committee on Ship Systems and Equipment (SSE)	Aron Sørensen: afs@bimco.org
11 Mar. 2014	London	BIMCO Maritime Security Committee Meeting	Giles Noakes: gno@bimco.org
12-14 Mar. 2014	Rotterdam	BIMCO Seminar: Cargo Claims	Peter Grube: pg@bimco.org
17 Mar. 2014	London	IACS Quality Advisory Committee (AVC)	Aron Sørensen: afs@bimco.org
17-19 Mar. 2014	Stamford	BIMCO participating in CMA	Michael Lund: mlu@bimco.org
19 Mar. 2014	Bangkok	BIMCO Heavy Lift Contracts Workshop	Thomas Timlen: tt@bimco.org
19-21 Mar. 2014	Singapore	Asia Pacific Maritime	Thomas Timlen: tt@bimco.org
19 Mar.-4 Jun. 2014	eLearning	Time Charter Parties	Mette Juul Madsen: mem@bimco.org
25 Mar. 2014	Copenhagen	BIMCO Marine Committee Meeting	Aron Sørensen: afs@bimco.org
31 Mar-4 Apr. 2014	London	Marine Environment Protection Committee	Aron Sørensen: afs@bimco.org
1 Apr. 2014	Shanghai	BIMCO Seminar: Using SALEFORM 2012	Wayne Zhuang: zw@bimco.org
2 Apr.-26 Jun. 2014	eLearning	Introduction to Shipping	Mette Juul Madsen: mem@bimco.org
3 Apr. 2014	Hong Kong	BIMCO Seminar: Using SALEFORM 2012	Wayne Zhuang: zw@bimco.org
6-11 Apr. 2014	Singapore	Singapore Maritime Week	Thomas Timlen: tt@bimco.org
9-11 Apr. 2014	Montreal	BIMCO Masterclass Workshop - Bills of Lading	Peter Grube: pg@bimco.org
14 Apr. 2014	London	Seatrade Awards	Karin Petersen: kp@bimco.org
22-24 Apr. 2014	Odessa	International Forum on Seafarers Education, Training and Crewing 2014	Aron Sørensen: afs@bimco.org
23-25 Apr. 2014	Singapore	Agency	Peter Grube: pg@bimco.org
28 Apr.-2 May 2014	London	IMO Legal Committee	Christian Hoppe: cho@bimco.org
28 Apr.-2 May 2014	London	IMO Editorial and Technical Group (IMSBC Code)	Ai-Cheng Foo-Nielsen: acfn@bimco.org
28 Apr. 2014	Dubai	Executive Committee Meeting	Karin Petersen: kp@bimco.org
29 Apr. 2014	Dubai	BIMCO Conference	Karin Petersen: kp@bimco.org
30 Apr. 2014	Dubai	BIMCO Documentary Committee Meeting	Søren Larsen: sl@bimco.org
30 Apr. 2014	Dubai	BIMCO Board of Directors Meeting and Annual General Meeting	Karin Petersen: kp@bimco.org
13 May-23 May 2014	London	Maritime Safety Committee	Aron Sørensen: afs@bimco.org Giles Noakes: gno@bimco.org
14-15 May 2014	New York	Contact Group on Piracy off the Coast of Somalia	Giles Noakes: gno@bimco.org
14 May-17 Sep. 2014	eLearning	Dry Cargo Laytime and Demurrage	Mette Juul Madsen: mem@bimco.org
19-21 May 2014	Otsu	Asian Shipowners Forum AGM	Thomas Timlen: tt@bimco.org
19-21 May 2014	Copenhagen	IMSF Annual Meeting	Peter Sand: ps@bimco.org
21-22 May 2014	Hamburg	Motorship Propulsion Conference	Lars Robert Pedersen: lrp@bimco.org
22-23 May 2014	Hamburg	Using SUPPLYTIME	Peter Grube: pg@bimco.org
27 May 2014	Bruges	9th International Harbour Masters Conference	Anna Wollin Ellevsen: awe@bimco.org
28-29 May 2014	Singapore	Sea Asia, Offshore Marine Forum 2014	Thomas Timlen: tt@bimco.org
2-6 Jun. 2014	Athens	Posidonia BIMCO stand	Graeme Brown: gb@bimco.org
2-6 Jun. 2014	Shanghai	BIMCO Asia Shipping School	Peter Grube: pg@bimco.org
4-6 Jun. 2014	Shanghai	Offshore Wind China	Wayne Zhuang: zw@bimco.org
4 Jun.-8 Oct. 2014	eLearning	Tanker Chartering, Laytime and Demurrage	Mette Juul Madsen: mem@bimco.org
30 Jun.-4 Jul. 2014	Copenhagen	BIMCO Summer Shipping School	Peter Grube: pg@bimco.org
30 Jun.-4 Jul. 2014	London	Sub-Committee on Navigation, Communications and Search and Rescue	Aron Sørensen: afs@bimco.org
14-18 Jul. 2014	London	Sub-Committee on Implementation of IMO Instruments	Aron Sørensen: afs@bimco.org
20 Aug.-5 Nov. 2014	eLearning	Time Charter Parties	Mette Juul Madsen: mem@bimco.org
8-9 Sep. 2014	Bahrain	SHADE (Shared Awareness and Deconfliction)	Giles Noakes: gno@bimco.org
8-12 Sep. 2014	London	Sub-Committee on Carriage of Cargoes and Containers	Ai-Cheng Foo-Nielsen: acfn@bimco.org
9-12 Sep. 2014	Hamburg	Gmec/SMM BIMCO stand	Graeme Brown: gb@bimco.org
15-19 Sep. 2014	London	IMO Editorial and Technical Group (IMSBC Code)	Ai-Cheng Foo-Nielsen: acfn@bimco.org
21-23 Sep. 2014	Amsterdam	Dry Bulk Europe	Peter Sand: ps@bimco.org
22-26 Sep. 2014	London	Facilitation Committee (FAL 39)	Giles Noakes: gno@bimco.org
24 Sep.-10 Dec. 2014	eLearning	Bills of Lading	Mette Juul Madsen: mem@bimco.org
6-11 Oct. 2014	Gothenburg	FONASBA	Søren Larsen: sl@bimco.org

Malaysia's Trans-Peninsular Pipeline Project: will it take off?

While Thailand's Isthmus of Kra canal project has been in the planning stages for a long time but not taking off, Malaysia has been quietly thinking of its own trans-peninsular pipeline that will cut across Kedah and Kelantan. Will this project succeed or face the same fate as the Kra Canal?

Malaysia's Trans-Peninsular Pipeline Project (TPP) between Kedah on the West Coast and Kelantan on the East Coast seems to have been revived. First proposed in 1994, the project initially experienced some difficulties and came to a halt in 2010. If realised, the 310 km pipeline will move oil from the coastal city of Yan in Kedah to Bachok in Kelantan and out to the South China Sea.

The *New Straits Times* reported that during the Fifth World Chinese Economic Forum held in Kuala Lumpur in October 2013, China had shown an interest in reviving the privately-funded TPP, estimated to cost more than USD 7 billion. Chinese President Xi Jinping has yet to confirm how this is to be carried out.

How the pipeline will work

To revive the TPP, the Kedah State Government planned to restart the Sungai Limau Hydrocarbon Hub Project in Yan that was suspended in 2010. Estimated to cost USD 15.6 billion, this project is still at the planning stage. Will this new interest from China succeed in turning the pipeline into reality?

The main driving force of this project is the rapid growth in demand for crude oil in East Asia, which is expected to double from its current level by the year 2020. The Malaysian Federal Government has planned to tap into this growing demand by building pipelines across the peninsula, cutting through the Titiwangsa Range.

Vessels from the Middle East will be able to unload their oil cargoes at Yan, where they will be refined and subsequently trans-

ported through the Malaysian hinterland to the other side of the peninsular. At the Bachok station in Kelantan, the refined oil will be loaded onto another vessel waiting for shipment to buyers in East Asia.

This pipeline would eventually ease the congestion in the Straits of Malacca and Singapore and the burden of accommodating increasing shipping traffic. Annually, oil tankers and very large crude carriers (VLCC) comprise 26% of the total shipping transits in the Straits of Malacca and Singapore.

Commodities such as crude oil that could pose a threat to the sensitive marine environment of the waterways will also no longer be ferried in a large amount via the Straits. Furthermore, shipments via the TPP will reduce the time to transport oil compared to the normal voyage of a vessel through the Strait of Malacca.

Once fully operational, this project is expected to save up to three days of transit time and is anticipated to reduce the cost of shipments of crude oil by USD 1.50 per barrel. Ships may also be less exposed to the risk of piracy in the waterway, while shipping traffic in the Straits of Malacca and Singapore will be reduced by 25%.

Transportation of oil via pipelines is not unusual in the petroleum industry. The concept of the TPP is similar to the SUMED Pipeline in Egypt that transports oil from the Gulf of Suez to the Mediterranean Sea. The SUMED pipeline allows shipping companies to save time and costs. To reduce dependence on the Hormuz Strait, oil pipelines have also been built to transport oil in the Persian Gulf.

Challenges facing TPP

Although the TPP is generally viewed as a viable option, analysts point out that coastal waters are generally shallow near the Malaysian Peninsular, making it difficult for large tankers to dock. Even worse, monsoon rains affect the sea conditions along the Kelantan coast where Bachok is located.

Secondly, unlike the terrain in the Middle East which mostly consists of desert lowlands, the northern parts of Peninsular Malaysia where the pipelines would cross are covered with thick jungles in the midst of highlands. Therefore, the construction of the pipeline would be more complicated. Oil would have to be pumped up the 2,000 metre high Titiwangsa Mountains, using a part of the transported oil to supply the necessary power for pumping.

Thirdly, the TPP project could result in adverse environmental impacts should there be a leakage of oil in any part of the pipeline. This would then affect Malaysian ground-water and worse still, a fire could occur along the length of the pipe should such leakages occur. Fourthly, the TPP could also directly and indirectly pose a threat to the security of the country should there be sabotage or terrorist attacks on any part of the pipeline.

The TPP project may face a number of challenges. With the ongoing fluctuations in global oil prices, it would possibly be difficult to attract investors, namely promoters of the project, shippers and oil companies, to commit to the project.

While the TPP could reduce the volume of shipping traffic in the Straits of Malacca



If built, the pipeline would eventually ease shipping congestion in the Straits of Malacca and Singapore.

and Singapore, there are still a number of reasons which point to the fact that there is actually no need to bypass the Straits. Firstly, in the event of a blockade of the Straits of Malacca and Singapore due to accidents involving tankers or any other reasons, the Sunda and Lombok-Makassar Straits routes would be available as alternative, albeit more expensive, routes.

Secondly, although traffic congestion in the Straits of Malacca and Singapore is building up, the existence of state-of-the-art navigational safety facilities along the Straits would ensure the safe passage of vessels plying the waterways. Thirdly, recent records have shown that piracy activities have dropped significantly in the Straits of Malacca and Singapore. Therefore, there is no need to transport oil via the pipeline to avoid pirate attacks in the first place.

Pros and cons must be weighed up

It is not entirely clear whether or not oil shipment using the TPP would be cheaper than going through the Straits of Malacca and Singapore. Some commentators argue that voyage time and shipping costs could be shaved if oil companies opt to use the TPP once it is ready. Nevertheless, it should be borne in mind that plying through the Straits of Malacca and Singapore would not incur any transit fee for mariners, while

shipment fees will be imposed should they choose to use the TPP.

Until the cost-benefit of using the TPP is thoroughly evaluated, the economic justification of bypassing the Straits of Malacca and Singapore to ship oil via the TPP would always be in question. The TPP project has experienced many challenges and difficulties owing to the recent global economic downturn and the instability of global oil price.

Although China has recently shown an interest in investing in such a project, this huge undertaking has pros and cons that should be considered carefully by the Malaysian Government and the shipping industry. ■



Mohd Hazmi Mohd Rusli

Editor's Note: Mohd Hazmi Mohd Rusli is a Senior Lecturer at Universiti Sains Islam Malaysia and an Associate Fellow at the Institute of Oceanography and Environment, University Malaysia Terengganu. Rahmat Mohamad is a Professor of international law at the Faculty of Law, Universiti Teknologi Mara and Secretary-General of the New Delhi-based Asian African Legal Consultative Organization.

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Light upon the waters

What man-made object has there been down the centuries which provides incontrovertible benevolence toward mankind, without any qualifications whatever? If one had any knowledge of the sea and was asked to respond to such a question, the odds-on answer would surely be “the lighthouse”. Signposts of the sea, these aids to navigation have been around since Roman times at least, and are still useful today, even in our electronics empowered world.

This year sees the 500th anniversary of the Corporation of Trinity House, an astonishing longevity when it is considered that even the most colossal organisations tend to rise and fall within a small fraction of this time, victims of ineptitude, the great glitches of history or their technical redundancy.

Trinity House, responsible for the aids to navigation around the English and Welsh coasts has lived on, through peace and wars, revolution and amazing maritime change, adapting and adjusting its mission, but always retaining its prime focus upon maritime safety.

It began its long life in 1514, with the granting of a charter by Henry VIII, although 300 years earlier, an Archbishop of Canterbury, concerned at the depredations of wreckers setting false lights to lead ships to their doom, had established a guild of “God-fear-

ing men” to suppress these criminals and build and light beacons to guide mariners. Throughout medieval times in England, there were local associations of mariners and sea people who were concerned with ship safety and pilotage along with the charitable provision of alms houses for those who had retired from seafaring and had fallen on hard times. Trinity House might be thought to have developed from such an association of mariners in Deptford, on the River Thames.

Petitioning the King

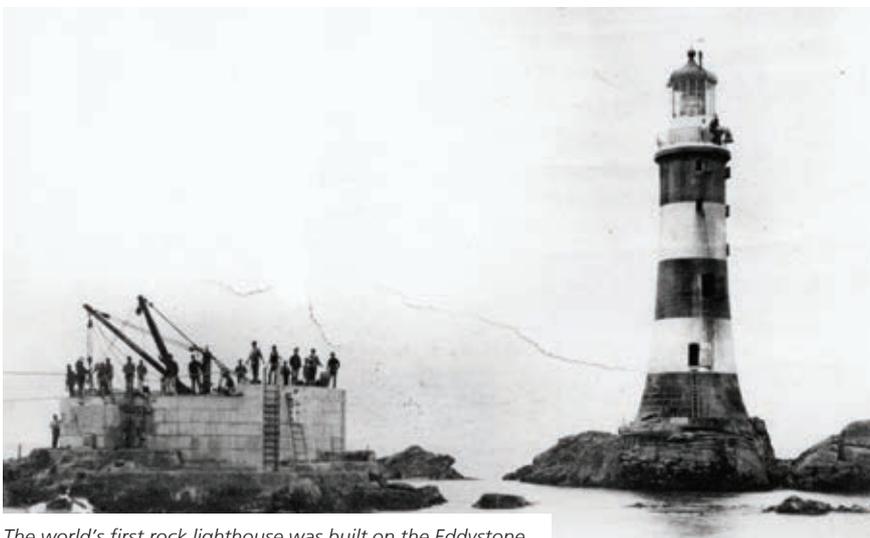
By the 16th century, and early in the reign of King Henry VIII, when there was a growing interest in maritime commerce and sea power, there was increasing concern at the shortage of competent English mariners to serve both commerce and the King’s ships. So when the “Masters, Rulers and Mariners of your Navy within your River of Thames and other places” laid their petition before

the King, soliciting his support to establish the proposed company of mariners and the development of sea skills to compete with those exhibited abroad, the sovereign’s assent was forthcoming. The Corporation was charged with pilotage, safe navigation, and also a charitable function for the relief of the poor. It is fascinating to see that these three functions are still carried out by the successors of these marine professionals, 500 years on.

Initially, the Corporation was charged with the maintenance of safe navigation in the London River and its treacherous estuary with its shifting sands, which required the positioning of buoys and beacons. However, the responsibility for these and who was to pay for them was sometimes a matter of dispute and controversy, with private individuals and landowners often seeking to make money from the provision of these aids.

Over the years and notably from the 17th century onwards, lighthouses were established, both by Trinity House and private individuals. It was to be the 19th century before the Corporation was able to take over almost all responsibility for the provision and maintenance of lighthouses throughout England and Wales. It is perhaps worth noting that during this time the Hanseatic League of Baltic ports also undertook the provision of aids to navigation – mainly buoyage of port approaches within its areas of responsibility.

The provision of such seamarks is a story of its own, with astonishing heroics involved by those engineers who built the first of the offshore rock lighthouses and beacons on hazardous shoals. Employing coal fires to mark their presence after dark and before



The world’s first rock lighthouse was built on the Eddystone.



Modern-day buoyage.

the emergence of effective lenses, oil or candlepower, the development of effective lights was not surprisingly slow. And before the arrival of mechanical power, it is worth considering the level of seamanship and navigation that was required to accurately place offshore buoys from the pitching decks of a sailing cutter or Trinity House “yacht”, as they became known.

Trinity House gradually assumed responsibility over the licensing of pilots in the 18th century and by the middle of the 19th century, it had become the largest single pilotage authority in the United Kingdom. It was to retain this responsibility until the 1987 Pilotage Act, which transferred this responsibility to Competent Harbour Authorities, leaving the Corporation with the licensing of only deep sea pilots, which it carries out to this day.

Paying for lights

The arguments over who should have the responsibilities for paying for the provision of seamarks is as old – and probably predates – Trinity House itself. What we have come to refer to as “light dues” are invariably resented by those called upon to pay them, with commerce and government demanding that the other party takes the responsibility for financing aids to navigation.

Merchants would traditionally object to any calls upon them for this purpose, although paradoxically they were the beneficiaries of anything that led to safer navigation. At the end of the 16th century, an ingenious plan

to provide Trinity House with a disbursement from the port levy system of “lastage” normally added to the sum owners had to pay for their ballast would provide funds from which aids to navigation could be maintained by the Corporation.

Throughout the existence of the Corporation the obligation to provide charity to the elderly and those sick and maimed at sea has remained an important mission. The Corporation has provided alms houses and other forms of welfare, something that is an important part of its work even today. It was also by no means unusual for Elder Brethren themselves, who might have become wealthy through trade and commerce or success in the Navy, to endow their own charitable organisations, such as schools and hospitals.

Along with their sister organisations in Scotland and the Republic of Ireland (the three forming the General Lighthouse Authority), the Corporation has been at the forefront of navigational developments for much of its long life. The world’s first rock lighthouse, built on the Eddystone and first lit in 1698, was one of its more spectacular initiatives, although its life was short, being swept away with its builder Henry Winstanley and its crew in a great storm in 1703.

It would be replaced by more substantial structures and around the coast, the Corporation encouraged lighthouse engineering, the design of buoys and beacons and through its Elder Brethren, was con-

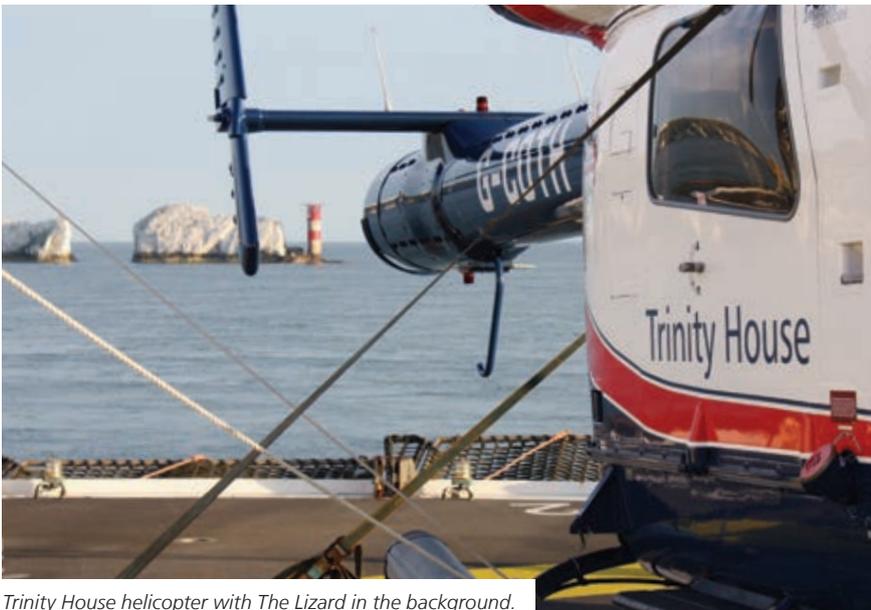
sistently available as a repository of maritime expertise for the state and commerce to draw upon.

In modern times

From the middle of the last century, the Corporation, like the shipping industry itself, has been consistently “challenged by



A Trinity House pilot.



Trinity House helicopter with *The Lizard* in the background.



Michael Grey

change”. What might be considered rudimentary “automation”, applicable to buoys and beacons had been made possible by reliable acetylene fuelled lighting machinery, requiring refuelling at regular intervals, and the Corporation, with its considerable fleet of tenders, would be at the forefront of technical developments that offered substantial economies of both cost and effort.

The facility of helicopters was taken aboard, with landing platforms built on many of the remote rock lighthouses, thus making their relief and maintenance more predictable. Gradually the lighthouses themselves were automated, as remote monitoring equipment became available, the final lighthouse keepers of the North Foreland light leaving their station in 1988.

Throughout the 1990s, with the commercial fleet of shipping largely employing satellite navigation systems, there was increasing pressure from owners over the cost of light dues, although the lighthouse authorities were to note that there were certain vulnerabilities to GPS and indeed all systems that could be interrupted or “jammed”.

The Corporation, however, embarked on a number of efficiency reviews, looking closely at the need for its aids to navigation, developing techniques and technologies that would reduce the amount of maintenance required by navigational buoys and thus the demands upon the light tenders. Preparing for the unexpected, such as the sinking of a ship in a traffic lane, was an important role for the tenders and a new Rapid Intervention Vessel, able to get to the site of a wreck at high speed and lay warning

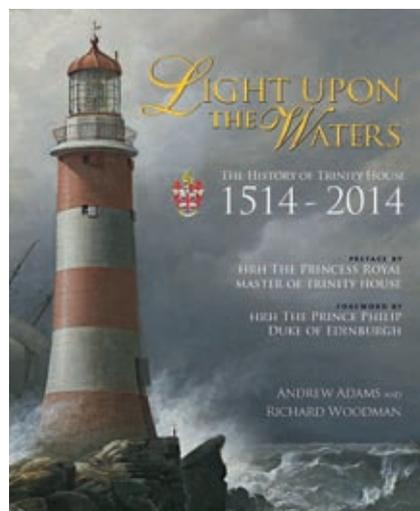
buoys, has been a recent development, as has been the commissioning of a new state of the art tender *THV Galatea*, in 2007. There have been major efficiency improvements in the depots ashore, with the commissioning of a new depot and buoy-handling facility at Harwich, from where the state of all the aids to navigation throughout the system is monitored through the most up to date telemetry.

There is important research being undertaken, into more efficient systems for powering both buoys and lighthouses, through solar and wind, with the employment of LEDs rather than the huge optics of the past, lightweight, low-maintenance buoys and navigational systems such as sequential and synchronised buoys that produce clearer channel marking.

The use of the Automated Identification

System afloat has also enabled Trinity House to be in a stronger position to provide guidance on the actual need for aids to navigation and such matters as the position of offshore windfarms and their possible effect on other sea users. The developments surrounding electronic navigation – e-Navigation – also see the Corporation closely engaged, as a highly active member of the International Association of Lighthouse Authorities.

Five centuries after it was founded, Trinity House is celebrating this notable anniversary in a modest fashion. A comprehensive history of the Corporation has been published*, while a number of events, involving the Master, HRH The Princess Royal, are planned. The extraordinary longevity of this organisation, joining the 16th with the 21st century may also perhaps emphasise the continuing importance of the maritime sector it serves. ■



Note

* *Light upon the Waters* by Andrew Adams and Richard Woodman, ISBN 978-0-9575991-0-9 is published by The Corporation of Trinity House, Price GBP 29.99. Details from www.trinityhouse.co.uk/th500/books

Editor's Note: Michael Grey is BIMCO's Correspondent in London. He is a former Editor of Lloyd's List and a regular contributor to many maritime publications.

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New books

Understanding international shipping

An essential source book for anyone trying to understand the structure and nuances of the worldwide shipping industry, *Farthing on International Shipping* has been greatly expanded and updated in its new fourth edition.

Initially the work of the late Bruce Farthing, one time deputy director general of the UK Chamber of Shipping (among a long list of maritime posts), this World Maritime University/Springer publication is the work of the WMU's P.K. Mukherjee and Mark Brownrigg, just retired as director general of the UK Chamber.

Material has also been contributed by a distinguished group of experts, so this edition might be thought of as a more collegiate effort than its earlier editions, the last of which was published some 17 years ago.

During this interval, the maritime world has changed considerably, something that is well reflected in the chapters on regulation, competition, shipping nationalism and government involvement. Nevertheless, the book conveys much of what is immutable about shipping from one age to the next: its importance to world trade, its foundations of certain important freedoms and the web of national and international structures in which it carries out its everyday tasks.

Best possible introduction to shipping

The first three chapters, which introduce the reader to the concept of freedom in international shipping, its contribution to world trade and its separate sectors, can be read for pure enjoyment and contain the very best possible introduction to this often misunderstood but vital industry. Alone, it could be the ideal basic data for distributing to school sixth formers, perhaps sowing the seeds of interest that could attract more bright young people into this fascinating industry.

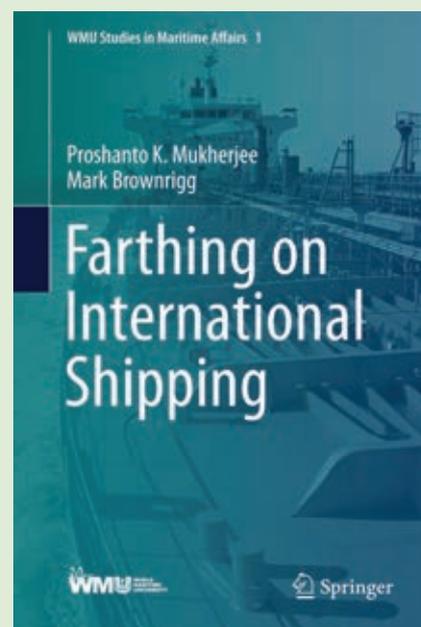
The authors then go on to explain something of the "alphabet soup" of shipping

organisations, something that tends to bewilder outsiders, before explaining the important interfaces of shipping, and many of these private bodies, with national and international governments. It might be deplored by BIMCO members, but there remains a certain amount of nationalism and government involvement and an important chapter considers the various constraints on freedom of access and other restrictions to foreign involvement which still exist throughout the world.

Similarly, there is an up to date assessment of protectionism and its various forms, which needs to be set against the rise of liberalisation which slowly is opening up access and reducing trade barriers. For those whose particular interest revolve around the liner trades, there are two comprehensive chapters covering co-operation in liner shipping through conferences, pools and consortia and the development of competition policy which, notably in Europe, has upset the 150 year old appellation of liner conference anti-trust immunities. This too is recounted in a chronological fashion, showing how these policies have been developed, the sentiments behind them and their effects.

The regulation of shipping

It is important to understand how shipping is regulated and the roles of national administration and the inter-governmental agencies are well described, with a clear explanation of the responsibilities of flag states, coastal states and port states and how they all fit together around the internationally trading ship. The reader is also introduced to what the authors describe as the "soft dimension" of human factors and the vital contribution of well-trained seafarers. There is a clear explanation of the nationality and registration of ships, objective



remarks for and against the open registers and the role of the flag state in maintaining standards and regulatory control.

Marine safety standards and the effectiveness of compliance and controls are detailed in a large section which explains liabilities, navigational safety and the role of government and the International Maritime Organization. One of the more attractive features of this book, packed with facts as it is, must be its ability to divert the reader into "debates" where the authors almost invite arguments over their interpretations of maritime issues. This in a section headed "Maritime safety in the current milieu", the book sets out what might be regarded as a "private sector perspective" on the need to keep regulation reasonable, the evils of age-discrimination, the justification for an international, rather than a national or regional regulatory approach and crew quality matters.

There are up to date chapters on maritime security, the protection of the marine environment, the way in which the maritime world has responded to marine pollution and the justification for limited liabilities.

Contentious matters

The book's concluding chapter sweeps up many of these more contentious matters and

encapsulates what might be suggested are the things that give ship operators sleepless nights in 2014, such as over-regulation, over-capacity, profitability, ethical standards.

But this book is about freedom, and its authors conclude that the wider embrace of free-market principles "is a trend which gives hope for the future". This is a *tour de*

force around the shipping industry which deserves to be widely read.

Farthing on International Shipping by Proshanto K. Mukherjee and Mark Brownrigg is a World Maritime University Study in Maritime Affairs and is published by the WMU and Springer ISBN 978-3-642-34597-5 (www.springer.com) ■■

Teaching the teacher to teach

All of us will hopefully remember the experience of learning from good, even inspirational, lecturers and instructors. Unfortunately, many of us will also recall the converse, remembering the struggle to stay awake and engaged as the lecturer droned on.

While it used to be suggested that good teachers "were born and not made", the error of such a statement might appear obvious. *Practical teaching skills for maritime instructors* by Darrell Fisher and Peter Muirhead is, as inferred by its title, a highly practical guidebook designed to make maritime instructors better lecturers.

A World Maritime University publication, its third edition coinciding with the institution's 30th birthday, the book is a necessary update encapsulating the 2010 Manila Amendments to the STCW Convention. While it is primarily a handbook designed for instructors in maritime training institutions in developing countries in particular, there is a great deal of sensible advice that any lecturer in pretty well any subject can take on board.

Fundamental skills

The book focuses upon fundamental teaching and instructor skills and guidance in meeting STCW requirements, but is also a basic manual to assist instructors and lecturers in their daily teaching roles. It covers course design, delivery methods, preparation and the use of instructional media, the evaluation of students and courses. It also has some very valuable advice on the new technologies of distance and eLearning and how these might be usefully developed to a maritime industry in which potential clients might be spread all over the world.

Written with considerable clarity, the book considers maritime education and training in the context of STCW, the assessment of competency and the various tools that are available for transmitting knowledge and assessing competence. The use of simulation, the course evaluation and the qualifications of instructors and assessors are thoroughly covered.

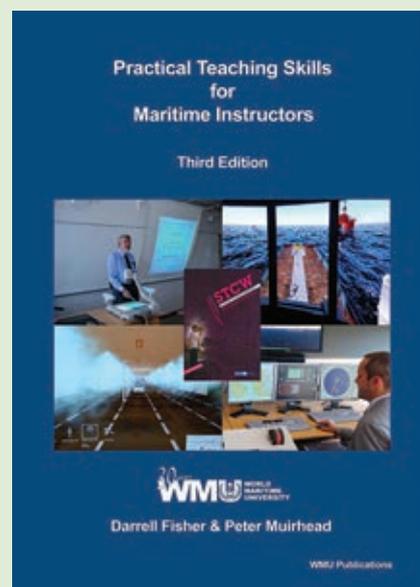
Chapters on course design and the selection of appropriate learning activities offer highly practical advice showing how the lecture can best be delivered once the material has been selected. There is similar practical advice on the various delivery systems that are now available, from whiteboards to powerpoint, and methods of getting the best out of these.

Use of simulators

There is an important chapter on the use of simulators, now being used more widely, in which the role of the instructor is reviewed. The ways in which the effectiveness of the training can be gauged are explored, while the development of Competency Based Training and its assessment are fully covered. The increasing importance of quality standards and their evaluation and assurance represent an important STCW-related section.

Distance learning

Of increasing relevance today is the development of distance learning or eLearning in which educational methodologies meet new



technology head on. The book offers sound advice on how this can be delivered to a seafaring customer base and its management.

The book concludes with some thought-provoking observations on the way in which changing technologies might impact upon MET institutions, in a fast-changing world. A range of appendices provide matrices for lectures, course design examples and a list of IMO model courses.

Practical Teaching Skills for Maritime Instructors, (third edition) by Professors Darrell Fisher and Peter Muirhead ISBN 978-91-977-254-7-7 is a WMU Publication (www.wmu.se) ■■

Macro Economics

Fundamental changes ongoing, and a positive outlook materialising around the world

Global economy

2014 is off to a good start, as global economic growth is already stronger than anticipated three months ago. At the end of January, the IMF upwardly adjusted its estimates for global economic development in 2013-2015. Amongst the countries receiving noticeable positive adjustments were the US, Japan, Spain, UK, China and India. At the negative end of the scale, Russia, Italy, ASEAN-5 and Brazil are expected to perform less strongly than previously anticipated.

In 2000, 80% of global economic activity took place in the “Advanced Economies” (US, Euro Area, Japan, UK, Canada, others), in 2008 the share was down to 70% and today “only” 60% of global GDP is generated there, with 40% generated in the “Emerging market and developing economies”.

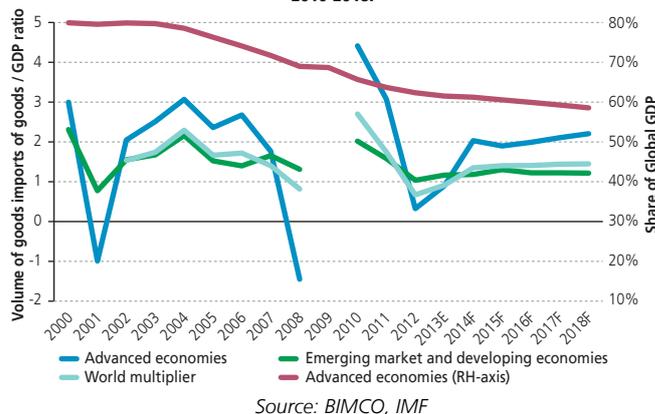
Growth in the “Advanced economies” generates higher volumes of imported goods per unit of GDP – and thus more trade – than growth in the “Emerging market and developing economies”. This is an explanatory factor behind the “new normal”, where the trade/GDP multiplier is lower (for more on this see SMO&O 2013-6). This dampening of the impact from economic growth on demand for transport is negative. However, the fact remains that fundamental global economic growth is positive, and is generating a larger demand for shipping every day, but at a slower pace than before.

In December 2013, the World Trade Organization (WTO) succeeded in closing a truly global trade deal involving 159 countries. The agreement is estimated to inject USD 960 billion into the global economy and create 21 million jobs, 18 million of them in developing nations (Peterson Institute of International Economics). The deal slashes red tape at customs around the world and gives improved terms of trade to the poorest countries.

US

On 18 December 2013, the US Central Bank (FED) announced the anticipated beginning of reducing the rate of its asset purchases. From USD 85 billion to USD 75 billion per month. This is a positive development, as it comes on the back of an improved economic situation in the US. However, it comes with a warning attached from the FED: “that it [the economy] also has much further to travel before [economic] conditions can be judged normal”. Amongst the

Trade Multipliers and the Economic Growth Generation
2010-2018F



Note: the years 2008-2010 were extraordinary in the sense of percentage growth on trade. This gives an incoherent image of the trend. This is why 2009 data is omitted from the trade multiplier graphs.

key conditions to follow are interest rates, unemployment rates and inflation rates. On 29 January 2014 the FED announced round two of the tapering measures, trimming its monthly bond purchases by another USD 10 billion to USD 65 billion. Round two was decided on the back of strong private consumption and reports of the US economy growing by 3.2% in Q4.

Further tapering is likely to follow if economic health continues to improve; steps that will be backtracked if the economy disappoints.

The budget agreement was reached in due time to sideline the risk of another government shut-down – at least in the short run. That immediately affected US consumer confidence positively. The index stood at 80.7 at the end of January, just on top of pre-government shutdown level (80.2 in Sept.). As compared to a year ago (index at 58.4), consumers are now in better spirits, and looking more optimistically on the job market. This is why domestic private demand is one of the key drivers behind increased economic activity in the coming years.



Source: Wulfmorgenthaler



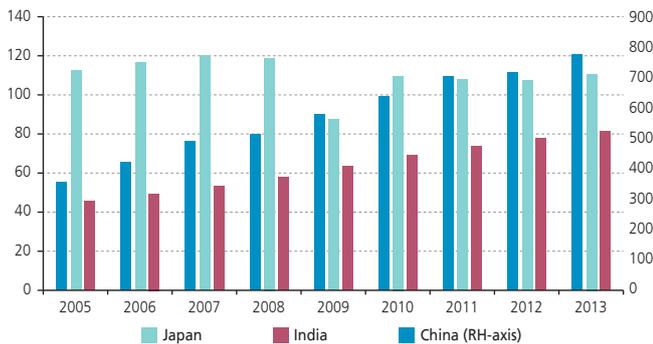
DID YOU KNOW THAT...

The full report is presented and discussed at a Members' Only WebDialog right after publication on the BIMCO website?



PETER SAND
BIMCO Chief Shipping Analyst

Crude Steel Production (Mt) 2005-2013



Source: BIMCO, World Steel Assoc.

Asia

World crude steel production increased 3.5% in 2013, driven forward by Asian production, where China more or less singlehandedly occupies the limelight due to its sheer size. Japanese growth of 3.1% and Indian growth of 5.1% is dwarfed by China, which brings its total production within striking distance of half the world's production. No wonder the increasing dependency on imported ore influenced the dry bulk market in H2-2013.

As Japan seems to continue growing at 1.7% in 2014, the obstacles to "Abenomics" have also become clearer, as a full-blown miracle turn-around might not happen just yet. Several factors come into play in Japan in 2014, all of which hold the potential to affect the recovery: a consumption tax hike, the energy situation post-Fukushima that has given Japan a massive trade deficit, new reforms to change the labour market, stability in politics, as well as the Bank of Japan's monetary policy.

China continues to manage its soft landing on a background of high growth. GDP growth still slides from a high base, while the Manufacturing PMI from HSBC/Markit has slid back into sub-50 level for the first time in half a year.

India is set to build on the recent momentum in export growth and the development of more structural policies to support investments. This will bring around GDP growth at 5.4% in 2014 and 6.4% in 2015 if the IMF scenario plays out.

EU

The 2008 crisis ignited a double-dip recession in Europe longer than that of the 1930s. As we embark on 2014, Europe starts to claw back some of the lost territory. It does so under the shadow of high public and private debt that limits

consumption, while exports are the mainstay of economic growth.

Growing exports out of the EU and trade between the European nations came back as a significant growth driver in 2012, but more negatives, primarily private consumption, trumped it. Exports remains the primary contributor to the European road back to recovery.

Moreover, private consumption ceased to be a drag on growth in 2013-Q2 following five quarters of negative contribution. In 2013-Q3 the impact was neutral.

In Spain, which is one of the European nations most hurt by the financial crisis, the 2014 rebound is set to be a strong one. Italy is also returning from the abyss. The IMF expects both nations to grow by 0.6%.

Outlook

Indicators point towards strong US growth in 2014, paced forward by a rise in US house prices. The recovery in house prices, illustrated by an increase in the S&P/Case-Shiller index of property prices of 13.7% from November 2012 to November 2013 (the highest level in nearly 8 years), has been instrumental behind the performance in 2013 that ended the year with the FED starting to unwind its considerable monetary expansionary support. The IMF expects US GDP growth of 2.8% in 2014 and 3.0% in 2015 [2013: 1.9%].

The other side of the coin to higher growth is that interest rates may be pushed up and politicians' appetite for reforms pushed down.

Higher property prices normally have quite a strong "wealth effect" on consumption growth, even though findings suggest it has slowed in the wake of the financial crisis. If forecasts of higher house prices in 2014 come true, this will strengthen GDP growth in the US and shipping demand in general.

In the Eurozone the economic recovery is strengthening too. Germany delivering the strongest output since June 2011, with employment rising during the past three month. This is supported by an optimistic first non-contraction level indication from the "Rest of the Eurozone" (excl. France and Germany). On the more negative side, France struggles to take off, as output has fallen three month in a row now.

"The upturn in the PMI puts the region [EU] on course for a 0.4-0.5% expansion of GDP in the first quarter, as a 0.6-0.7% expansion in Germany helps offset a flat-looking picture in France", Markit concludes. ■■

Global seaborne trade is dependent on global growth, thus it is vital if general shipping demand is to go forward that a smooth transition from a sustained recovery to normalized demand become successful. The article was finalised on 7 February 2014. Read about the impact on shipping on the following pages...

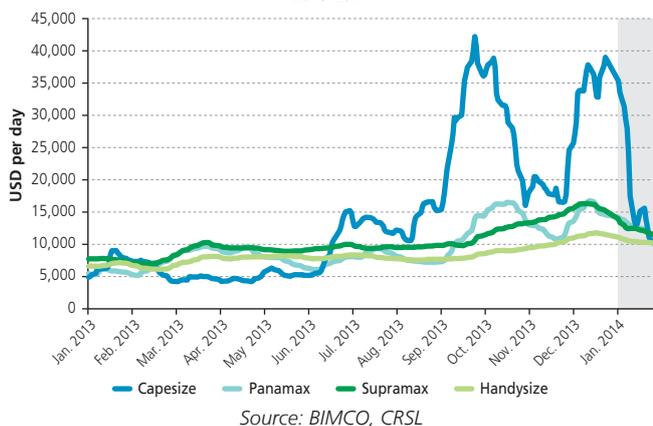
Dry Bulk Shipping

Reality bites as 2014 dawns, but the demand base is stronger than ever

Demand

The arrival of January also meant that Capesize freight rates once again touched the ground following three extraordinary months of flying high. Q4-2013 represents the strongest quarter in demand ever, and the seasonal weakness of Q1 simply had to affect the level of freight rates negatively.

Average Time Charter Rates
2013-2014



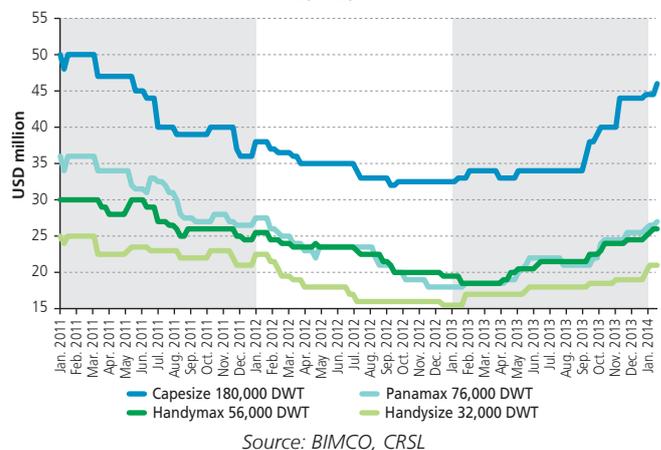
China has the biggest mouth in the dry bulk market and the Lunar New Year during the first half of February is likely to have a softening effect on rates in a continuation of the recent trend. Adding to additional pressure in the Handymax market is the Indonesian ban on exports of selected unprocessed mineral ores. In a move to secure more value from local mineral sources, Indonesia is now targeting processed nickel ore and bauxite. Indonesia is the world's largest exporter of nickel ore and plays a significant part in global bauxite exports too.

The only alternative for China, which takes the lion's share of Indonesian exports, is the typhoon-stricken Philippines, which is currently deemed unable to meet demand. However, the lower-grade ore may also prove to be unwanted by importers, who stocked up extensively prior to the Indonesian ban.

In 2013, demand for second-hand tonnage was at the highest level numbers-wise since the 2008-crisis. According to VesselsValue.com, 578 sales were concluded for a combined sales price of USD 7,386 million. This was 144 (33%) more than in 2012. Handysize tonnage was very popular, with 192 sales (2012: 121) with Supramax tonnage taking second place with 47% more deals sealed. The general trend was contrasted by the Capesize segment, which saw 13% fewer deals done in 2013. In the January market, buyers have focused their interest on Panamax tonnage – a development that has lifted the year-on-year price tag by 50%, from USD 18 million to USD 27 million in today's market. An astonishing comeback for the oversupplied Panamax segment.

This is good news for a lot of owners, where their balance sheets now appear in much better shape.

5 Year Old Secondhand Tonnage Price
2011-2014



Supply

The demolition side of shipping will be amongst the "ones to watch" in 2014. As the order book keeps building up and eventually brings around more new-build tonnage to cater for demand, owners might consider taking advantage of the strong demolition prices currently available to let go of less efficient ships.

In 2013, 22.2 million DWT was demolished, mostly in the smaller segments. This was 50% below the level of 2012 but considered a strong number, one that is unlikely to be repeated this year. The average age of a scrapped Capesize was 24, whereas the average demolished Handysize vessel was 30 years of age.

Going forward, try to consider this as a potential scenario: the current stock of dry bulk shipping capacity equals 728 million DWT. All ships built in 1993 or earlier comprise just 68 million DWT, which is less than 10%. In comparison, taking out all ships beyond the average scrapping age in recent years (29 years), comprises just 20 million DWT. History tells us that is unlikely to happen, especially in a rising market. Thus, BIMCO forecasts 14 million DWT (or 1.9% of the current fleet) will be demolished in 2014.

The fleet grew by 40 million DWT net in 2013, equal to 5.9%. BIMCO forecasts that 2014 holds 47 million DWT of newbuild capacity in store, which will be offset by 14 million DWT, leaving the fleet to bring supply growth of 4.5% around. Such a growth rate denotes an 11-year low. 2015 is already set for higher growth rates, so 2014 represents a short temporary dampening of the high growth of the fleet.



QUICK FACTS

7 February

Total fleet size (change since 1 January)

DWT million: 727.798 (+0.9%)

Rate indices (change since 3 December)

BDI: 1091 (-42%)

BCI: 1588 (-50%) • BPI: 1304 (-23%)

BSI: 929 (-38%) • BHSI: 674 (-13%)

Latest update on Baltic Indices available at www.bimco.org

As regards the orderbook, the number of new Panamax orders has been extremely slim, in 2013 accounting for just 16% of the capacity ordered. This is a clear counterbalancing statement by the industry in response to the high fleet growth seen in that segment in the previous 15 months. Despite new orders for 197 Capesizes and 80 million DWT in total, the size of the dry bulk fleet today means that the orderbook-to-fleet ratio in the Capesize segment and total dry bulk fleet lands at just 20.5% and 20.7% respectively.

Dry Bulk Supply Growth



Source: BIMCO, CRSL

A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2014-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 30% of the remaining vessels on order are delayed/postponed.

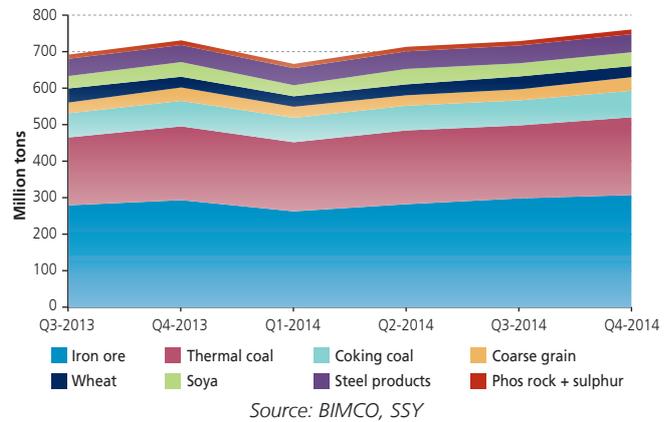
Outlook

As Q4-2013 was a massively strong quarter, the seasonal slowdown in Q1-2014 is likely to weigh a bit heavier than normally on freight rates. A drop of 8.8% in selected commodity volumes represent a clear seasonal direction in Q1, but if we look a bit further into the remaining three quarters, they all provide a solid rebound in demand.

Chinese iron ore imports especially, but also the dry bulk market in general, is trailing off around the Chinese New Year season. Demand will be lower than in undisrupted months and thermal coal demand begins to ease as the Winter season in the northern hemisphere loses its grip. General shipping of nickel ore and bauxite will be far below normal levels because of the Indonesian ban- this in itself represents a change in demand beyond seasonality. Similar to the trend forecast in BIMCO Reflections 2014, demand will be centred on the major commodities. That trend has already affected Capesize rates in the most brutal way, as earnings have now entered into the sub-USD 10,000 per day zone; a decline of some 75% since early December.

Demand Forecast for Selected Commodities

2013-2014



Source: BIMCO, SSY

In all the other segments volatility is more subdued, and over- and under-shooting (up or down) seen to a lesser extent. At the end of January, Handysize tonnage is still earning in excess of USD 10,000 per day on a T/C average. This is a three-year high.

Q1 holds little room for upside, with most focus being on weather related disruptions in e.g. Australia to intrude on normal trading as well as regulatory issues affecting not just Indonesian exports but Colombian coal exports and Indian exports/imports in general, e.g. via export duties.

As demand in volumes grew by 5.4% in 2013, the fundamental market balance only improved if slow steaming was applied more extensively. BIMCO believes that was the case, but only marginally. For 2014, an improvement in the market balance is clearly achievable. For it to materialise, owners and operators need to apply slow steaming to at least the same extent as last year. Only by managing the supply side carefully will higher earnings follow in the wake.

To sum up, our forecast for February/March: BIMCO believes that the level of Capesize TC average rates will remain and stay around USD 4,500-10,000 per day. Panamax TC average rates will stay in the region of USD 5,000-11,000 per day. For the Supramax segment, BIMCO forecasts freight rates in the USD 7,000-11,000 per day interval, whereas Handysize rates are expected to stay strong in the region of USD 7,000-9,500 per day. ■■

More shipping market analysis on www.bimco.org

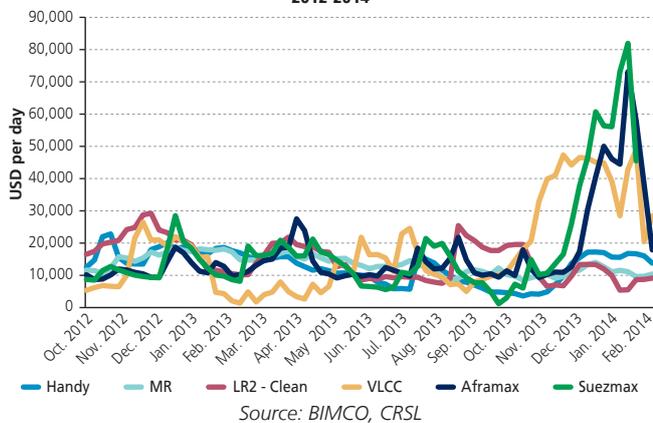
Tanker Shipping

A cocktail of slow steaming, low fleet growth, long hauls and demand shocks is creating a positive situation for many owners

Demand

A Winter season that turned the market upside down is soon coming to an end. All eyes were on product tankers, thinking “would this be the beginning of something beautiful in terms of higher earnings?” No one really paid much attention to what was already in the making in the crude oil tanker sector before the fire that started amongst the VLCCs spread like a wildfire to Suezmaxes and finally included Aframaxes too, with earnings achieving USD 70,000-80,000 per day. Whilst the VLCC market was mostly driven forward by increased Asian/Chinese demand, the strength in the Suezmax and Aframax sector originated from North Sea/Mediterranean/Black Sea. Asian demand for West African oil helped buoy the market too, as it more than offset the lack of US imports from the same region.

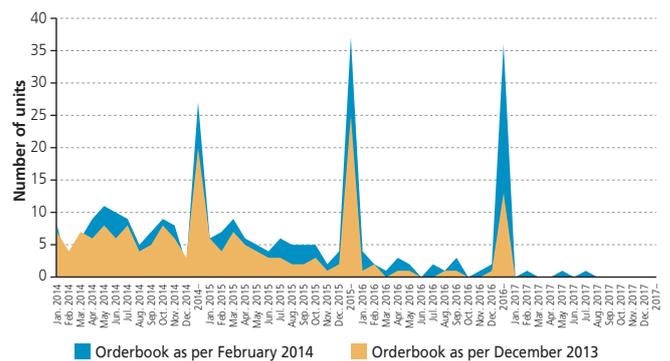
Earnings in the Tanker Segments 2012-2014



The best of it all is that the party is still ongoing, with no sign of hangovers yet at the end of January. Certainly some Q4 action is guaranteed in the crude tanker sector, but Q4-2013 made us smile more than usual. Overcapacity is severe, if you look at how poorly the fleet is utilised, but as we have seen in dry bulk, windows of opportunity may occur even in those markets if and when the pace of new ship deliveries slows down. In Q4-2012 the VLCC and Suezmax fleets were both growing at 6%, whereas in Q4-2013, the VLCC fleet grew only by 2% and Suezmaxes by little more than 4%. Aframax crude oil tankers, which have been out of fashion for so long now, experienced negative fleet growth for the last 10 months of 2013. The combination of slow steaming, low fleet growth, long hauls and demand shocks have tightened the markets, giving all the aces to owners and operators, with charterers for once left with few options to secure their cargo programme requirements.

In the product tanker market the December upswing was less impressive than the crude oil tanker market, with freight rates in the USD 12,000-18,000 per day region. The demand for heating oil in the north-eastern part of the US – where stocks were low – supported the markets in January too, as the temperatures dropped sharply. According to EIA, heating oil is to some extent being substituted by natural gas, taking out some of the positive knock-on effect to shipping from increased heating demand.

From 194 to 273 MRs on Order in Two Months



Supply

Several months ago, many owners expressed the view that an orderbook of around 200 MR units was still manageable for the market to absorb while remaining in the chase for higher earnings. At the end of January, the MR order book stood at 273 units, as more than 80 new orders have emerged in the market since the last BIMCO SMOO from early December 2013.

BIMCO has previously stated that a massive new inflow of new orders may jeopardise the product tanker market on its course towards an improved fundamental balance, as fleet growth has come down significantly during 2010-2013.

With the fleet once again growing more quickly, it needs a very strong demand side to provide the needed employment, with supply management in a very important supporting role.

Finally, we can detect a note of optimism in the crude tanker segment, which has been all too rare over the past couple of years. In addition to a strong freight market, the demolition market has contributed to the

QUICK FACTS

7 February

Fleet sizes (change since 1 January)

Crude (DWT million): 374.14 (+0.2%)

Product (DWT million): 128.83 (+0.4%)

Rate indices (change since 3 December)

BDTI: 853 (+25%) • BCTI: 606 (+3%)

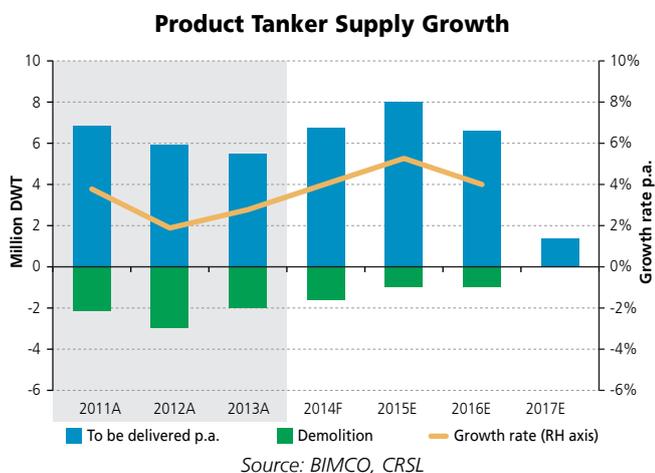
Latest update on Baltic Indices available at www.bimco.org

Note: CRSL has revised the structure of the tanker fleets to accommodate the changed trends in supply and demand that the market has undergone over the last decade. This has caused a data break in August 2013. Therefore the future data cannot be directly compared to those of the past.

success story too. As demolition picked up in the second half of 2013, year-on-year fleet growth arrived at just 1.9% at the end of 2013 for the total VLCC fleet. In H2-2013, 14 VLCCs were sold for demolition, while just nine units were delivered.

Building on the positive trend, the pace of newbuild deliveries has been slow in January. Total oil tanker fleet growth has been limited to just 0.2%.

Looking a bit further, fleet growth is now picking up in both the crude oil and oil product tanker segments as compared to 2013. Both segments are deemed to face a lower level of demolitions, while the product tanker segment is also going to see an increased amount of tonnage being delivered throughout the year.



A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2014-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 25% of the remaining vessels on order are delayed/postponed.

Note: CRSL has revised the structure of the tanker fleets to accommodate the changed trends in supply and demand that the market has undergone over the last decade. This has caused a data break in August 2013. Therefore the future data cannot be directly compared to those of the past.

Outlook

The structural changes in the product tanker market still paint a pretty picture, with refinery expansions going on in the Middle East and Far East.

Who will come out on top? Will MR or LR be the winner? Maybe both, maybe neither... The jury is still out on this one, with sound arguments which could take it either way.

Going forward, we expect the focus to be on charterers' preference for modern tonnage, with the unwritten bar set at 15 years as maximum age. However, this is not likely to result in strong demolition activity amongst elderly tonnage. There are still charterers who hire equally qualified but older tonnage, so you could say it is more of a two-tier market rather than an elimination race.

In terms of capacity, ships above the age of 15 years amount to 11.9% and 12.6% of the overall crude oil and product tanker fleet respectively. Moreover, the idea of bringing the market back to balance in a fast-forward mode by removing these ships seems unlikely. If we focus on the VLCC fleet only, an age limit of 15 years would single out 60 units as "over-aged" (9%). This would bring the fleet size back to the level at Summer 2011. For MR product tankers, there are 124 out of 1,064 above the age of 15 (11%).

The multi-million dollar question is then – how can we bring back consistently healthy rates in the freight market? By increasing demolition activity? Maybe, but slow steaming holds the key. If the VLCC fleet would continue to run at an average speed of 13 knots instead of 16 knots, increased demolition activity would most certainly make a difference, because the speed effect is actually having a bigger impact on the supply side than demolition. The trouble is that speed reduction is not permanent – demolition is.

For February/March, BIMCO expects earnings for the VLCC segment to settle in the region of USD 10,000-25,000 per day. Suezmax crude oil carriers are also seen down from the recent peak to reach USD 12,000-22,500 per day, with the Aframax crude segment to follow suit at USD 10,000-20,000 per day.

In the product tanker segment, BIMCO expects earnings on benchmark routes for LR1s and LR2s from AG to Japan to stabilise at USD 5,000-10,000 per day. The Winter season is soon over, affecting Handysize rates towards a level of USD 10,000-15,000 per day and MR average rates at USD 8,000-13,000 per day. ■■

More shipping market analysis on www.bimco.org

Container Shipping

The increased demand from “Advanced economies” should increase the utilisation of containerships

Demand

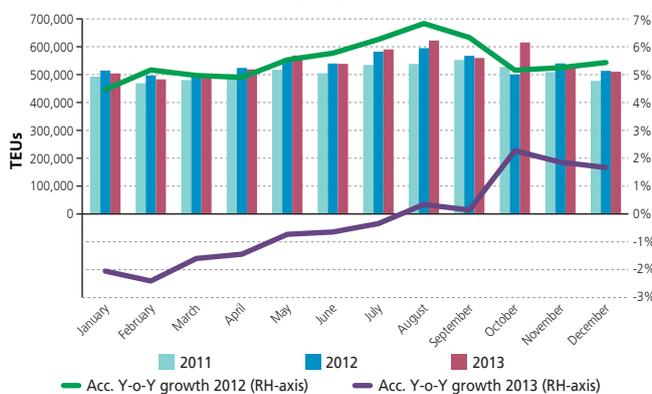
On a global scale, containerised export data from CTS, shows that activity improved in May following a weak start to 2013. Since then, the pace has picked up, and November and December saw 5-7% growth rates from same months of last year. As total imports into Europe have been growing even more strongly, it does explain why traceable freight rates from Shanghai to Europe went up sharply in October and December. In the meantime, freight rates on US bound boxes have been very steady, with only slight volatility until the recent upswing in January.

As in the past years, demand has grown quickest on the intra-Asia trades. This trend continues, despite the lowering of the IMF’s GDP-growth expectations for Emerging and developing economies. January has been slow in terms of cargo and chartering activity, but set to return by mid-February.

The US economy is the key driver for global growth in container shipping. In the Macro Economic section, it was mentioned that the US economy was going through a positive development. To look at bit deeper into that, traffic development in US ports is very interesting. The inbound loaded traffic on the US Atlantic coast remained almost unchanged this December compared to last year. Unfortunately, ports in the US Gulf were not so lucky. Compared to December last year, the US Gulf Coast ports saw a drop in inbound loaded traffic of more than 5%.

Overall, 2013 turned out to be a good year for the eastern ports of America. The increase in traffic to the Atlantic Coast ended a bit higher than 1% up on 2012, whereas the traffic to the Gulf Coast grew by almost 6%, an overall increase of 1.7% for eastern ports.

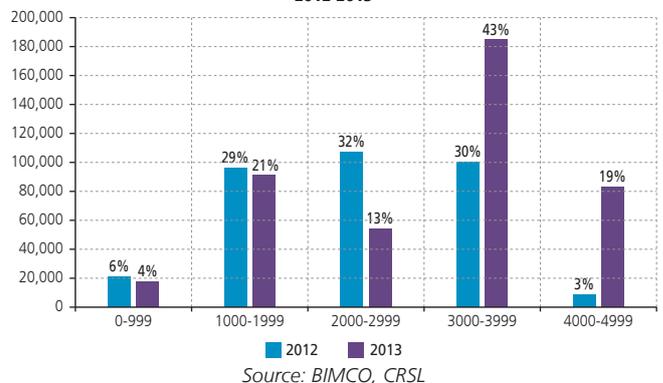
US East Coast, Inbound Loaded Containers
2011-2013



In spite of US exports being a significant contributor to US GDP growth in the 4th quarter of 2013, loaded container traffic out of the US East Coast ports did not fare well in 2013. The year ended more than 3% lower than last year. Looking forward, higher economic growth in the US in 2014 should lead to more cargo going through the Atlantic and Gulf Coast container terminals, building further on the rising trend seen throughout 2013. To benefit from this, most terminals have invested quite strongly in the future by scaling up container handling activities to meet the requirements of larger ships calling.

Whereas European imports fell in December 2013 as compared to 2012, imports of loaded containers on the US West Coast were on a par. For the year as a whole, the USWC saw growth of 2%, beating annual growth in 2012 by 0.1% points.

Size Distribution of Demolished Tonnage
2012-2013



Supply

Panamax vessels are particularly feeling the heat in the demolition market, as they are commercially seen as special purpose ships – maybe without a special purpose once the Panama Canal expansion opens up and the beam limit in the Panama Canal extends from 32 to 49 metres in 2015. The fact remains that all “Panamax” container ships have an uncertain future. However, as long as the old locks and the new locks are working in parallel and the future pricing of transits, as decided by the Panama Canal Authority (ACP), is still unknown, there may be more room for “Panamax” business in future than meets the eye today.

Average demolition age for 3,000-5,000 TEU was 21 years in 2013, meaning that the blowtorch was kissing steel one year earlier than in 2012. For the smaller sizes, the average scrapping age was 24.



QUICK FACTS

7 February

Total fleet size (change since 1 January)

TEU million: 17,222.59 (+0.5%)

Rate Index (change since 29 November)

CCFI: 1164.88 (+9%) • SCFI: 1164.70 (+17%)

This race for the bigger ship sizes is also apparent in secondhand values, where the prices for tonnage seems to deviate with size. Larger tonnage appears to be holding up or even increasing in value, whereas the smaller ships are experiencing sliding prices as reality bites.

By mid-January, the idle fleet stood at 693,000 TEU according to Alphaliner, up 9% from mid-November (635,000 TEU). This is below the average from recent years and will probably stay below par throughout the Chinese New Year in the first two weeks of February. Operators appear to have the upper hand in the markets right now, judging by recent success in achieving higher freight rates through negotiation.

BIMCO expects 2014 to be a year of similar fleet growth to last year (around 6%), which is also expected for 2015. The industry's ability to land the supply growth at a "new normal" level – one that matches demand growth better – seems strong. 1.6 million TEU is scheduled for delivery, but BIMCO estimate the cancellations, delays, postponements etc. still affect the "planned" arrival for the new ships. 2014 is setting out to be a year where the pace of ULCS deliveries picks up.

Fleet growth in December was negative, as tonnage may have been delayed a bit back in December, pushing delivery and thus also the year of building into 2014. December saw only four ships delivered, whereas a "flood" of 16 ships of an average capacity of 7,771 TEU has entered the active fleet in the first three weeks of January.

Despite a year that saw new contracts for more the 1.8 million TEU, the order-book for containerhips looks to be amongst the healthiest in the industry. Two full years are in place, but 2016 and 2017 look very slim and ready to absorb any renewed ordering spree.

Outlook

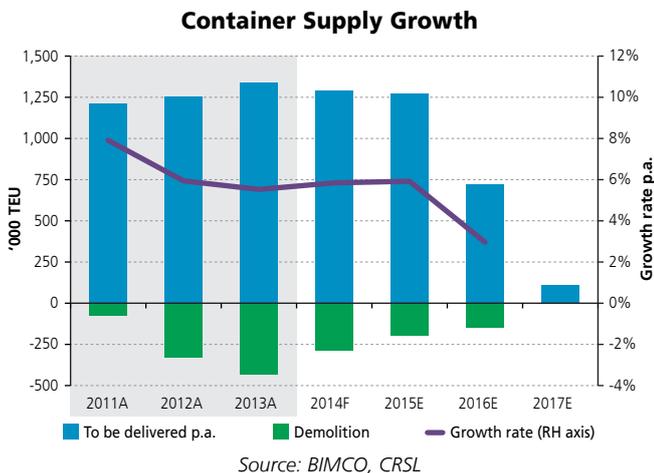
In order to assess the overall health of the container shipping industry, it is vital to keep one's eyes open towards developments in the bunker fuel market. As we have seen in the past many times, striking e.g. a contract of affreightment with a firm revenue stream without making sure you have hedged/fixed your bunker fuel costs at the same time can be extremely costly as well as an unnecessary risk to expose yourself to.

Bunker prices have been down on annual average 7% from 2012 to 2013. This is something that has surely benefitted profit/loss statements across the industry. On the other hand, the CCFI Composite (that includes not only spot freight rates but also long-term contractual rates) out of China dropped by 7% overall. Specifically to Europe, the composite index dropped by -11% and on the US West Coast, a marginal improvement was recorded.

Going forward, the demand side is set for growth, with improving macroeconomics in primarily the US but also in Europe. That, in combination with ongoing management of the supply side, should bring about improved freight rates on a global scale. A lot of cascading is expected too, as the "overhaul" continues on the main trading lanes, which will be supplemented by a similar trend on the secondary trades.

Once the Chinese New Year celebrations are over in mid-February, a steadier period is foreseen in terms of activity. Reactivations will then start again, as demand picks up.

On asset prices we continue to see a downward pressure on smaller units, whereas the run towards improved economies of scale can result in higher values for larger units. ■■



A is actual. F is forecast. E is estimate which will change if new orders are placed. The supply growth for 2014-2017 contains existing orders only and is estimated under the assumptions that the scheduled deliveries fall short by 10% due to various reasons and 10% of the remaining vessels on order are delayed/postponed.

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Chemical tanker market outlook – a market at a crossroads

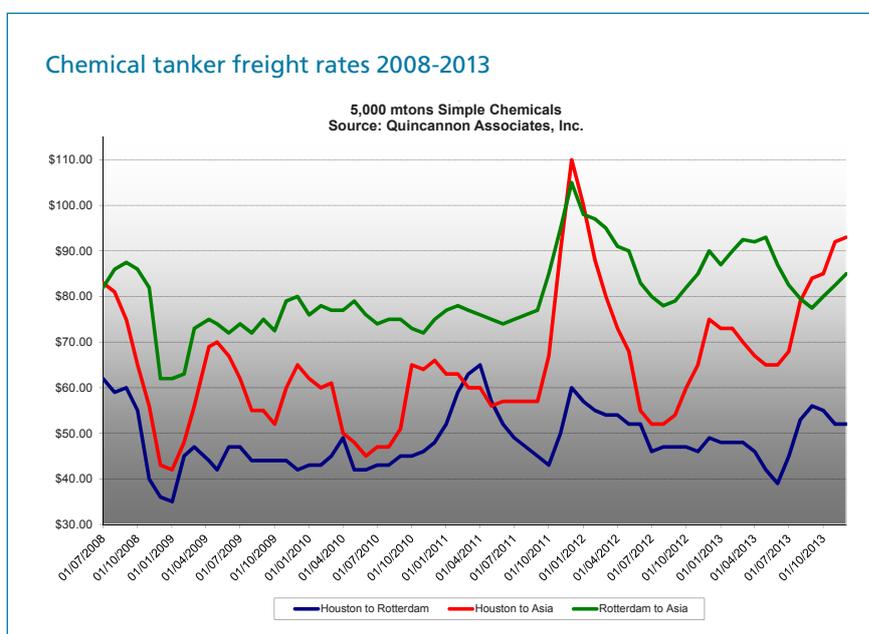
Persistently higher market conditions again eluded ship owners in 2013. Although the demand for chemical tankers did increase, it was far from enough to create the boom times that owners had hoped for.

However, it was enough to move the two largest chemical tanker operators, Stolt-Nielsen and Odfjell, into black figures as they showed a modest profit in the third quarter of 2013 for the first time in more than four years.

The supply of chemical tankers has levelled off for now, as relatively few new vessels were delivered from shipyards in 2013. Under such circumstances, even a modest amount of additional cargo volume could have altered the supply/demand curve in owner's favour, but that did not happen in 2013.

During the last couple of years, cargo volumes and freight rates have picked up in the second half of the year, particularly on the Pacific trade routes, but in each case, the ground gained by ship owners was lost during the first half of the following year. The market has behaved somewhat similarly in 2013, although things levelled off in December. At this point in time, indications are that history will repeat itself and the market will decline again in the first half of 2014.

At the end of 2013, average spot market freight rates were some 12% higher than a year earlier. In some areas such as the Pacific, the increase was as much as 24% and these rates are now higher than was the case prior to the 2008 crash. However, owners' operating expenses, including bunkers, have also been subject to strong increases. Some 80% of the world's seaborne chemicals are carried under long term contracts of affreightment. When those were renegotiated for 2014, the trend was mixed with results from modest discounts to up to dou-



ble digit increases. In general, the contracts covering sophisticated chemicals and small parcel sizes obtained the largest increases, which is a result of the composition of the chemical tanker fleet as discussed below.

Interest from the financial sector

What is unique from a historical perspective is the interest from equity funds and other financial institutions in investing in chemical tankers, both newbuildings and existing vessels. Historically, ship owners tend to be able to raise capital and contract ships only when the market is high. This has often resulted in an oversupply of vessels delivered after the market again declined; not a particularly successful model. But this is the first time investment interest is pre-

ceding a high and profitable freight market. However, the end result could very well be the same. If too many ships are contracted too soon, it may either prolong the still relatively low and unprofitable market or re-create an overtonnage situation too quickly.

The availability of so much speculative capital so soon after financial institutions, mostly banks, have lost large amounts of money on chemical tankers, is surprising. However, the feeling is that ship building prices will never be lower than they are today and once cargo volumes increase in step with the general world economy, such vessels will present a strong opportunity for capital gains. Risk-willing capital has been present in other parts of the ship-

ping industry for some time. However, the chemical tanker market has, until recently, been below the radar for such investors. The fact that they are now turning their interest this way could demonstrate a lack of knowledge of the complexities of trading chemical tankers compared to other ships.

A niche market

An alternative to trading such vessels in the market would be to charter them to owners already in the business. The chemical tanker trade is a niche market, with a relatively small number of owners, and those owners are unlikely to behave like owners in other shipping trades. In a larger market, where vessels represent easily tradable assets such as the bulk carrier or product tanker sectors, owners charter ships from each other without strategic considerations. That may not be the case in the chemical tanker trade. Quick capital gains through asset plays during the building period are also less likely in such a small and specialised market.

The chemical tanker market is generally in balance and sudden increases in cargo volume have resulted in short periods of strong rate increases. A closer look at the trade will reveal that the market is divided into three segments: sophisticated vessels with stainless steel tanks, medium size coated vessels and large simple coated vessels, mostly of 45,000/50,000 DWT. The sophisticated stainless steel vessels are presently in short supply, the medium size coated vessels are in balance and the large simple vessels are long in supply. In addition, there is a huge tonnage reserve of MR product tankers with chemical class. These vessels are presently trading in the clean petroleum product market, but could, with some modifications, enter the chemical trade.

Two things needed

Lifting the chemical tanker market up to a sustained level of profitability for owners will require two things to happen; first, chemical cargo volumes have to increase and second, the CPP market has to increase. The latter will remove incentives for MRs to venture into chemicals, thereby adding additional tonnage supply.

There is no question that the abundance of US shale gas and oil will make chemi-



The tanker Stolt Invention.

cal feed stocks and downstream products from the US very competitive on a worldwide basis and will increase chemical cargo volumes. Huge chemical plant expansions are under way in the US to take advantage of this development. This production will compete with the Middle East's production and have an impact on the ton/mile fleet utilisation concept, as the voyage from the US to the main market, China, is twice as long as the voyage from the Arabian Gulf to China.

When demand for chemicals increases as a result of improved worldwide economic conditions and the voyages are longer, there will be a real foundation for a high chemical tanker market. Such a situation could possibly occur in 2015 or 2016.

Regarding the second point, the CPP market, the situation is far from clear. There are far too many product carriers on order. In 2013 alone, new orders were placed for almost 400 vessels. It is therefore unlikely that the CPP market will increase in the next couple of years.

Small changes have major consequences

The existing fleet of chemical tankers between 19,000 DWT and 50,000 DWT consists of about 1,320 vessels. Those are the vessels relevant for the deep sea chemical tanker trade. About 96 of these are more than 20 years old. On the other hand, there are about 150 vessels on order with the yards. Many of these orders are options, which may or may not be declared.

If an additional wave of speculative orders is placed with the yards, those vessels are likely to be delivered in 2015/16. At best, they would offset any increase in demand



Søren Wolmar

and prolong a relatively low market. At worst, if the increase in demand does not happen or the CPP market continues to be low during this time frame, those vessels would send chemical freight rates down to the loss producing levels of 2009 through 2011.

Timing has always been everything in the shipping business. In a small niche market such as the chemical tanker trade, even the smallest changes to the supply and demand equation can have huge consequences. ■

Editor's Note: Søren Wolmar is a ship broker and partner with Quincannon Associates, Inc. a New York ship broker firm specializing in the chartering of Chemical, Gas and Product Tankers.

The devil in the detail of time charter damages calculation

This commentary on current shipping matters is supplied by Moore Stephens, the leading accountant and shipping industry adviser. Moore Stephens LLP is a member firm of Moore Stephens International Limited, with 634 offices of independent member firms in over 100 countries.

The legal basis for calculating damages for the early termination of a time charter is to multiply the “loss” or difference between the charter rate and the available market rate for the remainder of the charter at the date of breach, by the number of days remaining on the charter.

A variant to this approach arises when there is no available market, when the actual (and forecast) trading results of the vessel are instead taken into account.

Calculating the loss

When it comes to calculating damages, however, the devil is in the detail. The heart of the damages claim is to calculate the “loss” or net hire shortfall, which is the difference between the charter hire and the available market hire. But before that can be done, both these hire figures have to be adjusted for off-hire and then for brokerage.

Off-hire needs to be taken into account for the periods when a vessel is unable to trade and when hire is not payable. This is usually for both planned and unplanned maintenance. Either may arise at specific points in time, but predicting when may be difficult for the former and impossible for the latter. The usual practice in damages calculations is to make the commercially absurd assumption that off-hire will arise evenly, on a daily basis, over the period of the charter - for example, seven days off-hire per annum, which represents a daily deduction of 1.92% (7/365). This *pro rata* approach is fair to both parties.

In contrast, determining the actual amount

of off-hire to be deducted is frequently the subject of dispute. The assessment of off-hire flows from a number of technical issues such as whether the next survey would arise during the term of the charter, the age and type of the vessel and where it was built. These issues are usually resolved either by reference to the vessel’s operating history or to expert evidence from a shipbroker.

Because the off-hire deduction relates to the ship itself, the same deduction percentage is applied to both the charter rate and the available market rate.

Brokerage needs to be deducted from both the charter hire and the available market hire to reflect the post-brokerage amounts receivable by the owner. The brokerage/commission percentages are set out in the charter parties. Usually, although not always, the brokerage is the same for both the repudiated charter and the available market charter. The appropriate brokerage percentages are then deducted from their respective post off-hire charter rates.

A logical sequence

The calculation of net hire or loss follows a logical sequence which is best illustrated in a hypothetical example. The early terminated charter for *MV Capesize* was for a daily rate of USD 60,000, which also stipulated brokerage commissions of 5%.

The available market rate was USD 25,000 per day and expert broker evidence put the brokerage commission at the more usual 3.75%. Off-hire was eventually agreed between the parties at the rate of seven days per annum. The calculation of net hire lost per day would therefore be:

Charter hire per day	60,000.00
Less: Off-hire at 7 days pa (7/365=1.92%)	<u>(1,150.68)</u>
	58,849.32
Less: Brokerage at 5%	<u>(2,942.47)</u>
	55,906.85

Available market hire per day	25,000.00
Less: Off-hire at 7 days pa (7/365=1.92%)	<u>(479.45)</u>
	24,520.55
Less: brokerage at 3.75%	<u>(919.52)</u>
	<u>23,601.03</u> (23,601.03)

Net hire or loss per day	<u>USD 32,305.82</u>
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Before it was recognised that interest and the “time value of money” had to be taken into account, the total damages would have been calculated by taking the daily net hire of USD 32,305.82 and multiplying it by the number of days from the date of the breach to the earliest termination date of the charter. Determining these start and finish dates can involve complex issues requiring careful legal interpretation of the facts. But, if the relevant number of days was in fact 1,000 then, historically, the total damages would be USD 32,305.82 multiplied by 1,000 days, making total damages of USD 32,305,820. This simplistic approach is no longer acceptable.

If the damages claim proceeds to arbitration, the hearing may be held a long time after the date of breach, during which time the owner’s losses remain unpaid. Tribunals recognise that interest should be paid

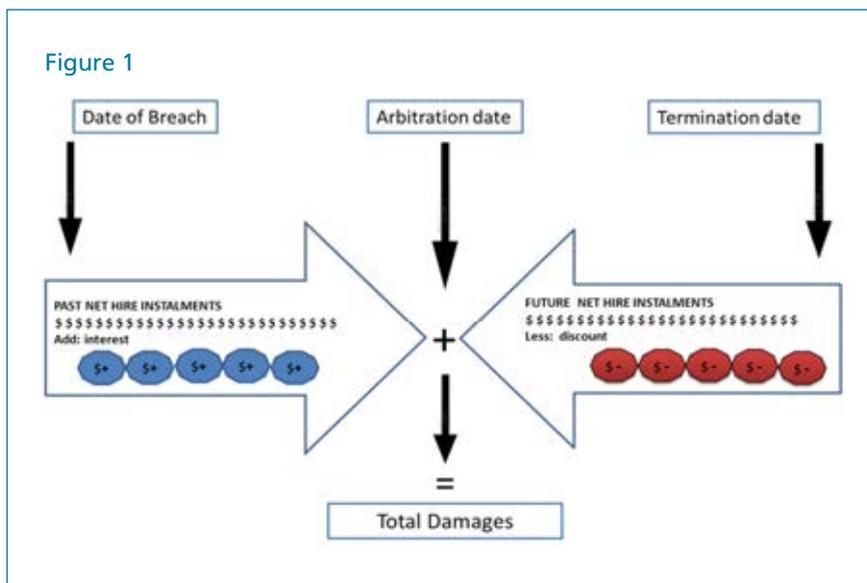
on these overdue amounts up to the date of the hearing or the making of the award.

More recently, attention has turned to how to deal with future net hire payable arising after arbitration up to the earliest termination date of the charter. It is recognised that awarding damages for these future instalments in a lump sum “today” requires credit to be given to the charterer for the accelerated receipt of this income. In the *Kildare* case (*Zodiac Maritime Agencies Limited and Fortescue Metals Group Limited, Neutral Citation Number 2010 EWHC 903, Comm.*) the judge arrived at an overall discount for accelerated receipt of income of 3%. This rate comprised 1.5% for a three-year yield in US Treasury Bonds and a further 1.5%, with the judge noting, “A further discount must be made to reflect what I have earlier categorised as more catastrophic contingencies such as total loss, bankruptcy and so on.” It should be emphasised that the *Kildare* discount rate of 3% was applicable to the particular circumstances concerned. The appropriate discount rate in other circumstances has been the subject of much debate and will not necessarily be the same.

The practical consequence of giving interest on past unpaid instalments and giving credit for the accelerated receipt of hire instalments which are not yet due has been dealt with in recent arbitrations by calculating two separate amounts either side of the arbitration, as illustrated in Figure 1.

Past net hire instalments are rolled up with interest (positive interest “blue+” cash flows) into a capital sum to the date of the hearing. Similarly, future net hire instalments are “discounted” (negative interest “cash-“ flows) to remove the inherent interest in receiving future net hire instalments early. The totals arrived at by respectively adding and removing interest either side of the arbitration are added together to calculate the total damages.

The first step is to calculate the cash flows on which the interest or discount will operate. For example, the standard NYPE charter party provides for hire to be paid in advance every 15 days. Accordingly, in the *MV Capesize* example, the individual cash flows will be USD 32,305.82 per day x 15 days = USD 484,587.30 for each cash flow. Other than by co-incidence, the damages period will not be exactly divisible by 15 days. Accordingly, the final instalment,



immediately prior to the earliest termination date, will be for an ‘odd period’ of less than 15 days.

In order to calculate interest on past net hire instalments accurately, a simple “bank account” model can be prepared on a spreadsheet which shows each 15-day net hire instalment, on each of the dates when the instalment was due, and calculating interest on each instalment to the next quarterly compounding period. The final balance on this notional bank account model represents all the past instalments plus the compound interest thereon. The interest rate itself is given by the tribunal in each case but has been of the order of 5% compounded quarterly or US LIBOR plus a margin of 2.5%.

Discounting future net hire instalments is achieved by applying Discounted Cash Flow techniques to remove the inherent interest in future cash flows. The principle underlying these techniques is that one dollar today is worth more than a dollar in a year’s time because of the interest which could be earned during the year. For example if one could earn 10% in a bank deposit account, then USD 100 in one year’s time is worth USD 90.91 today.

It should be noted that, with time charter damages, because the instalments under the charter party are payable in advance, the first instalment is not discounted because it is receivable ‘now’ and not in fifteen days’ time.

Giving credit for accelerated receipt of income is achieved by calculating the after-discount present value of the future net hire instalments. This is achieved by

the use of discount factors employing the following formula:

$$DF = 1/(1+i)^n$$

DF = Discount Factor, *i* = Interest Rate (expressed as a decimal) and *n* = Number of periods to be discounted (the first 15-day instalment would mean that *n* would be 15/365).

The above formula is recommended because the standard discounted cash flow formulas in Excel and financial calculators cannot usually cope with compounding periods other than in whole numbers of years. A 15-day instalment period means 24.333 instalments in each year. Each future net hire instalment is multiplied by its corresponding discount factor. These “discounted” amounts are then totalled to arrive at the present value of all future net hire instalments at the chosen discount rate. This figure when added to the total of the compounded past instalments equals the total damages.

Inevitably, the complex process of finalising a time charter damages claim means that the model will need to be amended for changes in assumptions. It will save considerable time if all the key assumptions, such as off-hire, interest and discount rates are set out in a separate “assumptions grid” with all calculation formulae linked to the relevant cells in the grid. It is also quite likely that the tribunal will make its award specific to a date which is not the same as that which has been assumed in the original claim. The use of a spreadsheet to handle each aspect of the damages calculation and to afford the flexibility to swiftly incorporate subsequent changes is therefore essential. ■■

Moore Stephens says 2015 should see return of healthy shipping industry

International accountant and shipping adviser Moore Stephens believes that the shipping industry's fortunes should be noticeably improved by 2015 if it maintains the recovery which got under way last year. But it warns that the prospects for recovery may still be fragile if the industry fails to meet a number of challenges, including tighter regulation and increased operating costs.

Moore Stephens shipping partner Richard Greiner says "New Year resolutions are invariably a case of in one year and out the other. Generally speaking, it is wise not to make resolutions which are too ambitious; American troubadour Woody Guthrie had the right idea when he settled for, 'Wash teeth, if any'. But the shipping industry can afford to be a little more bullish than previously in its aspirations for 2014."

"Shipping is in a different space to that which it occupied a year ago. Confidence rose to a three-year high over the course of 2013. Good things are predicted for freight rates in 2014, more companies are starting to consider new investment, and economic and political issues with the potential to hurt shipping are deemed less severe than twelve months previously."

More shipping money

"Over the next twelve months, we can expect to see more shipping money raised in the public and private equity markets. We may see more non-shipping money

invested in shipping than for some time, although not necessarily by dentists. Supply and demand levels should come closer into alignment. Consequently, freight rates are likely to rise and, with them, vessel values. Increased levels of demolition will be required to offset new tonnage.

China is already offering subsidies to shipping companies to scrap vessels before their operational expiry date and to replace them with new ships which are eco-friendly and which fly the Chinese flag. So everybody is happy – owners, shipyards, environmentalists (except those worried about the perceived evils of irresponsible recycling) and politicians alike."

Indicators somewhat fragile

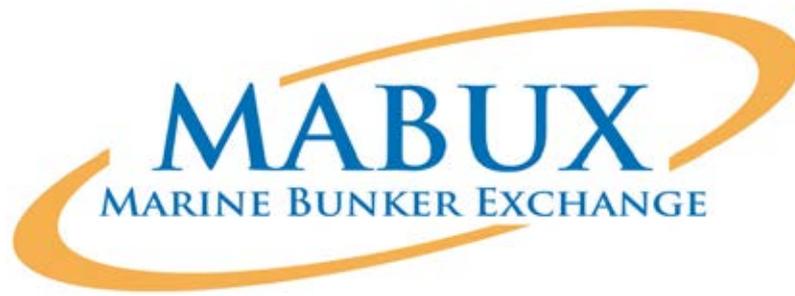
Greiner warns, however, that all the positive indicators remain somewhat fragile. Furthermore, he says, "Operating costs are expected to go up in 2014. Shipping cannot operate without fuel and skilled manpower.

Meanwhile, increased regulation of crew welfare, fuel quality and ballast water management are big-ticket items. Environmen-

tal regulation is self-perpetuating, witness the news that IMO is to debate plans for ship owners to compile fuel-consumption data to support steps to create carbon dioxide reduction regulations."

"It is to be hoped, however, that the industry can sustain the upturn which began in 2013. If it can, we may see a return to rude health by 2015 although, as John Maynard Keynes warned, 'The market can stay irrational for longer than you can stay solvent.'" ■■

Editor's Note: Moore Stephens LLP is noted for a number of industry specialisations and is widely acknowledged as a leading shipping and insurance adviser. The company is a member firm of Moore Stephens International Limited, one of the world's leading accounting and consulting associations, with 634 offices of independent member firms in over 100 countries.



Oil-Future-Based Prices

Showing 38 major ports/hubs connected to Oil Futures which give an updated price every 30 seconds

Oil-Future-Based Prices Connected to ICE and Market Indications

Compare	Ports	380 cSt	180 cSt	MDO:DMB (d)	MGO:DMA	Date
<input type="checkbox"/>	Genoa (IT) Market Indications LSFO < 1,0 % / MDO:DMB (c+b)	628	657	-	991	02 Nov
		658	s/e			
Updated every 30 sec.	Genoa (IT) Oil-Future-Based Prices LSFO < 1,0 %	628.25	-		964.75	Nov 02
<input type="checkbox"/> Connected Price - Alert		658.25	-			

Comparison Chart for Genoa between Market Indications and Oil-Future-Based Prices for Fuel Oil 380cSt HSFO

380cSt HSFO
6 months



380cSt HSFO
1 year



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Ongoing Chinese shipping issues

BIMCO welcomes China's clarification of new VAT policy

By the end of December 2013, the Chinese regulatory authorities had issued a new circular (Caishui 2013 No. 106) exempting international shipping from their recently implemented VAT law, which of course was very much welcomed by the international shipping community.

As per the circular, the “net basis method” is restored, whilst international shipping companies are eligible for zero rate VAT. All foreign shipping companies are allowed to collect their ocean freight either through their wholly-owned subsidiaries or via third party agents. In addition, the deduction of international freight is also permitted from their taxable income. Most importantly, Circular 106 has a retroactive effect back to 1 August 2013 (when the VAT law came into force) and this timely adjustment will ensure foreign shipping companies and their Chinese peers a level-playing field.

The debate began on 1 August 2013, when the Chinese “new” tax policy came into force throughout the nation in accordance with Tax Circular Caishui No.37, which triggered a wide range of reaction from the international shipping sector. The new tax system updated much of the old Business Tax (BT) and replaced it with a Value Added Tax (VAT) on goods and services, including transportation and logistics services whereby VAT of 6% is applicable to customers for all charges related to domestic shipping, logistics and freight forwarding and related services in China. In other words, a 6% VAT plus a 0.8% VAT surcharge will be charged on ocean freight collected from customers in China by the agencies of foreign shipping companies.

As the new policy created economic ripples internationally, BIMCO intervened by sending an official letter to the Chinese regulatory authorities on behalf of the international shipping industry. Thanks to other major contributors such as FMC from the US and ESCA, the Chinese ultimately agreed to make the positive changes which are now in effect.

Long-awaited China ship recycling subsidy in place

Last December, the Chinese government issued a long-expected ship recycling subsidy plan which granted 1,500 Yuan (ca. USD 247) per gross ton to Chinese shipping companies to replace obsolete ships. This subsidy policy is widely understood as a compromise between the Chinese shipping industry and the Chinese shipbuilding industry, which the state needs to look after. This subsidy plan applies to all single-hulled tankers or scrap-worthy ships from 2013 to 2015 in China with the following conditions:

- All ship ownership certificates, registry certificates as well as the survey certificate must be obtained and remain valid prior to 31 December 2012;
- Valid license must be obtained for domestic coastal transportation or international shipping;
- Single-hulled tanker no less than 600 DWT, and other type ships no less than 1,000 DWT;
- All ships to be scrapped 1-10 years ahead of their compulsory demolition deadline and also in accordance with domestic shipping regulation;
- All ships must be scrapped at Chinese scrapyards approved by the ministry of transportation.

This subsidy has two phases. The first part of the subsidy will be given after scrapping

and the second will be released when the newbuilding is completed. In other words, a premium of RMB 750 per GRT (ca. USD 124 per GRT) will be provided to Chinese ship owners who send their Chinese flagged vessel(s) to be recycled locally, and the rest of 750 RMB per GRT will be released when their newbuilding(s) (Chinese flagged) is/are carried out in China. This part is only applicable if the ship owner has scrapped a similar or bigger sized vessel over the same time period at a domestic recycling yard.

The immediate beneficiary of the above subsidies will be the leading state-owned shipping conglomerates. According to some sources, there are roughly 3,600 ships flagged with five star flags (both domestic and international) which represents 6% of the overall Chinese-controlled tonnage. In addition, about 500 elderly ships in the Chinese market are eligible for this subsidy. Lastly, COSCO and China Shipping Group are said to be the biggest winners from this subsidy policy. COSCO is likely to get RMB 700 million whilst China Shipping is to get RMB 500 million.

Ripple effect on P3 Alliance in China
Highly volatile freight rates have been a significantly driver for liners to adapt, including methods to share existing resources and how best to restructure. The P3 Alliance (Maersk Line, Mediterranean Shipping Co. and CMA CGM) is one of the recent outcomes.

At first, the China Shipowners' Association (CSOA) voiced their “expressed worries” about the P3 Alliance by suggesting that its massive scale could create unfair competition in the container shipping market. However, shortly after an in-house meeting with



China, the EU and US regulators in Washington, CSOA changed their tune slightly. Recently, CSOA indicated that they would support the Alliance provided it complied with market rules. In other words, if P3 is merely trying to reduce operational costs without interfering with competition in the marketplace, CSOA will not oppose it.

However, the China Shippers' Association (CSA) still holds a negative attitude. CSA has raised its concerns with the State Development and Reform Commission, the Ministry of Transportation and the Ministry of Commerce and requested them to block the Alliance in accordance to China's anti-trust law. CSA insists that its sheer size would give the P3 Alliance the capability of dictating the direction of the freight market, and therefore they have urged the regulators to think long and hard before giving their approval.

Chinese shipbuilding overcapacity

A recent report issued by DVB Bank warned that 25% of China's nominal shipbuilding capacity was expected to disappear over the next 24 months. Small privately-owned yards are expected to bear the brunt, with almost 75% of capacity to disappear.

The report expects to see a further 10% of capacity facing tremendous pressure, with survival dependent on market conditions and government policies. Traditionally, small Chinese shipyards count more on bulk carriers, which are at risk. The small private yards are trying to move into niche markets for gas carriers and offshore supply vessels. By 2018, 30 state-owned yards will have increased their share of total capacity to 52% from 39%, according to figures from DVB Shipping Research and Clarksons. The number of small privately owned

yards will, meanwhile, decrease dramatically from 150 today to just 19 in 2018.

According to the China Association of the National Shipbuilding Industry (CANSI), the surplus shipbuilding capacity in China will take at least five years to be digested, pointing to a gloomy outlook in 2014. And the irrational expansion of shipbuilding capacity and production lines has severely hurt profitability in the sector.

China currently has in excess of 1,600 shipbuilding enterprises, which boast an annual industrial output of some RMB 800 billion (USD 130.6 billion) and a workforce of around 1.5 million people, according to the National Development and Reform Commission (NDRC). Some experts point out that even though China gained more orders than Japan and South Korea in 2013, new ship prices kept touching new lows during the past two years, and there were no signs of recovery whatsoever.

Third Chinese shipbreaker aligned with Hong Kong Convention

Class NK issued a Statement of Compliance to Jiangsu Changrong Steel, who became the fourth ship recycling facility in the world certified in accordance with the Hong Kong Convention. This new facility is located at Yangtze River of Jiangsu Province. Class NK auditors concluded that Changrong was compliant with safe and environmentally sound facility requirements as well as the Ship Recycling Facility Plan (SRFP) set by the Hong Kong Convention. The other four certified shipbreakers are China's Jiangmen Zhongxin Shipbreaking & Steel, Dalian Shipbuilding Industry Marine Service and Japan's Miyaji Salvage.

Shanghai wins laurels for container throughput in 2013

Shanghai has retained its title as the world's busiest container port in 2013, with a total throughput of 33.6 million TEU, up 3.4% from 32.5 million TEU in 2012. The port city has been the world's largest container port since 2010, when volumes surpassed those of Singapore, its closest rival. Last October, Shanghai opened a two-way traffic lane in the main channel of Yangshan Deepwater Port. Shanghai is also accelerating the implementation of shipping-related policies under the new pilot free trade zone and contemplating the launch of the trading of freight index derivatives.

Baltic Exchange takes China factor into account

The Baltic Exchange has launched three new Capesize routes focused on the Chinese market, which are designed to catch up with the changing dry bulk market reality, in particular, China's demand for iron ore and coal. The C14 route is a round voyage from Qinqdao via Brazil, with redelivery in China-Japan. The C15 route is 150,000 tonnes of coal shipped from Richard's Bay to Quanzhou. The C16 route has delivery North China-South Japan range, for a trip via Australia or Indonesia or US West Coast or South Africa or Brazil, redelivery UK-Continent-Mediterranean within the Skaw-Passero range. ■ (ZW)

Editor's Note: This report has been produced in co-operation with Seatrade Asia.



BIMCO

No lack of challenges in Asia at the start of 2014

Daunting challenges abound but they cannot smother a sense of guarded optimism in Asia as the New Year began. The issues being addressed range from market conditions to safety of navigation and in between, taxes, tolls, pipelines and fuel are all on the radar.

A bump in the night

On the operational side, concerns raised by Indonesia, Malaysia and Singapore regarding the consequences that can result from a lack of adherence to COLREGS amongst vessels transiting the Straits of Malacca and Singapore became apparent in the darkness at 20:24 hrs. on 28 December 2013 when a 205,000 cbm LNG tanker collided with a 10,114 TEU container ship in the Singapore Straits. Fortunately there were no injuries or environmental damage. While we await the findings of the investigation, it is safe to say that adherence to COLREGS could have helped to prevent the incident.

On the bright side, the three Littoral States have agreed to publish a "Safe Passage" pamphlet for ships transiting the Straits. The pamphlet will be a timely reminder of the need to adhere to COLREGS and in addition, it covers various unique navigational characteristics of navigation in this area. The official launch of the pamphlet, which is the outcome of work conducted by a correspondence group headed by Singapore and BIMCO in the Co-operative Mechanism process, is scheduled for May 2014.

A new pipeline?

Another development that could influence traffic in the Straits is discussion of a pipeline across Malaysia known as the TRANS Peninsular Pipeline Project. Should this plan reach fruition, some reduction in the Strait's traffic would result. A related article appearing in this Bulletin describes the project in more detail.

Market forces

Turning to the market, in Bangkok, the Asian Shipowners' Forum (ASF)'s Shipping Economics Review Committee (SERC) reviewed the prospects near year-end.

As the discussion turned to the world economy, the committee members noted that the US economy is on a steady track to recovery due to the continuation of quantitative easing and the so-called shale gas revolution. However, there is the delicate issue of what will happen after tapering. In addition to having a direct impact on the US economy, tapering would trigger a withdrawal of money from emerging countries and a subsequent slowdown in their economies, which will affect the US economy negatively.

The SERC, turning its attention to Asia, noted that the economies in the Asian countries have remained stable compared to the US and Europe. Although China is no longer achieving the double-digit growth it enjoyed previously, it continues to maintain a high level of growth in the range of 7-8%. India and the ASEAN countries are also performing at 5-6%. The SERC concluded that while the global economy still faces uncertain factors, there is a steady trend toward recovery. The situation can be described as a continuing process of trial and error in pursuit of stable growth.

Turning to intra-Asia trade, the SERC noted that the market continued to grow steadily due to the continuous development of major

economies in Asia. However, overall freight rates in the market continue to suffer from the pressure of cascading larger capacity and employment of previously idle capacity from third party owners. Under these circumstances, the SERC discussed the importance of the players in the market independently studying possible measures for surviving the situation, such as some possible cost-cutting measures adopted in deep-sea trades including, where legally permissible, the sharing of vessel space and assets, and slow steaming.

The SERC then focused on anti-trust immunity, and recent developments in a number of jurisdictions were reported. The meeting reconfirmed the ASF's long-standing policy that the anti-trust immunity system for all types of cooperative liner shipping agreements was absolutely indispensable for the shipping industry and the whole trading industry.

Tolls and taxes

Two remaining issues of significance were also addressed by the SERC. Regarding increases in the Panama Canal tolls, the committee agreed that the ASF, in collaboration with international shipping organisations and respective ASF member associations, through their own governments, would urge the Panama Canal Authority to listen sincerely to users' voices and establish a new user-friendly toll structure and rates. Turning to the Philippines Common Carrier Tax (CCT), it was noted that some shipping bodies have made



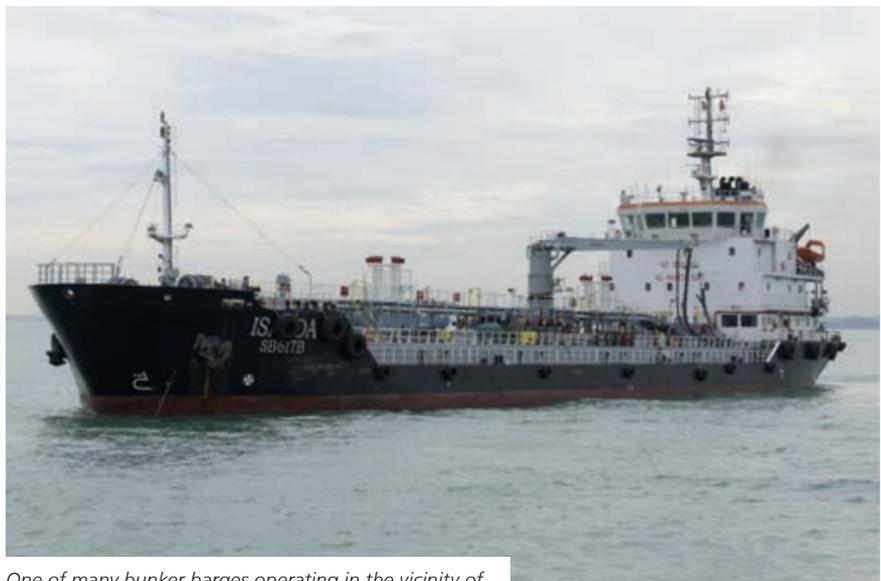
efforts seeking the abolishment of the CCT, which imposes a 3% tax (CCT) on only foreign carriers' freight revenue generated from outbound services from The Philippines. It was agreed that SERC members should request respective ship owners' associations to urge their own governments to lobby The Philippine Government towards the abolishment of the CCT.

The view from Singapore

The SERC's guarded optimism was echoed in a speech made by Singapore's Minister for Transport, Mr. Lui Tuck Yew, at a Singapore Maritime Foundation gathering in January.

Recalling that 2013 was another challenging year for the industry, Lui noted that the global economy is slowly showing signs of recovery, largely driven by growth in Asia and other emerging markets, which has led many in the shipping world to adopt a cautious outlook for 2014. He also acknowledged that shipping companies will still need to continue repositioning themselves to stay competitive, and closely manage costs, excess tonnage, manpower constraints and higher environmental standards.

Despite the challenges, however, the Minister reported that Singapore has remained resilient and registered good growth. Estimates show that Singapore's container throughput for 2013 grew by 2.9% to reach another record high of 32.6 million TEUs. Singapore maintained its position as one of the world's busiest port by vessel arrival tonnage with 2.33 billion gross tons (GT),



One of many bunker barges operating in the vicinity of the Singapore Straits. (Photo: Thomas Timlen)

an increase of 3.2% from 2012. Singapore also remained the world's top bunkering port with more than 42 million tonnes in total bunker sales in 2013.

Bunker quality regulation enforcement

Regarding bunker sales, Singapore again took decisive steps to ensure compliance with operating requirements. The Maritime and Port Authority of Singapore (MPA) cancelled the bunker supplier licences of Excel Petroleum Enterprise Pte. Ltd. and Lian Hoe Leong & Brothers Pte. Ltd. with effect from 15 January 2014 for contravening the terms and conditions of the bunkering licences.

Both companies were found to have breached Clause 3 of the terms and conditions of the Bunkering Licence (Bunker Supplier) by allowing other companies to use their Bunker Delivery Notes to supply bunkers. With the cancellation of their bunker supplier licences, Excel Petroleum

Enterprise Pte. Ltd. and Lian Hoe Leong & Brothers Pte. Ltd. will no longer be allowed to operate as bunker suppliers in the Port of Singapore.

Investigations against the companies that used the Bunker Delivery Notes of the two companies are ongoing to determine whether they have also flouted the Maritime and Port Authority of Singapore (Port) Regulations for operating as bunker suppliers without any bunkering licences issued by the MPA.

All bunker suppliers operating in the Port of Singapore are required to be licensed by MPA. The MPA has taken steps to assist bunker buyers in making informed decisions as they select licensed bunker suppliers for bunkering. Bunker buyers are strongly encouraged to ensure that the physical bunker supplier is listed on the list of accredited bunker suppliers. These lists are available to BIMCO members via the BIMCO Website. (TT) ■■

Ongoing EU shipping issues

EU MRV legislation proposal – latest developments

The Commission's proposal for a Regulation on the monitoring, reporting and verification (MRV) of carbon dioxide emissions from maritime transport has been the subject of fierce debate in the European Parliament (EP) over the last few months.

The members of the EP generally supported the concept of the Commission's proposal, but were divided on widening the scope to cover NO_x emissions and to lower the threshold from 5,000 GT to 400 GT. Other topics of debate included the key issue of the monitoring of transport data and the emissions monitoring method. BIMCO has been very much against collecting this operational data, as such data is only related to past commercial utilisation of ships and thus serves no purpose for assessing ship's future performance capacity and may, in addition, be commercially sensitive.

On 30 January the Parliament's Environment Committee (ENVI) which is leading on this issue, finalised its position. The majority of the Committee voted in favour of inclusion of NO_x and extending the scope to 400 GT. On the positive side, MEPs voted in favour of a reduction of transport monitoring data in order to avoid that shipping companies having to publish business-sensitive cargo data. The rapporteur, Mr. Skylakakis (Greek, Liberal Party), was mandated to enter into negotiations with the Council. The vote in the EP plenary meeting is provisionally scheduled for 14 April.

The legislative process is under considerable time pressure because of the Parliaments elections in May 2014. If no agreement in first reading is reached between the EP and the Council (member states) before May 2014, work may have to begin again from scratch under the next legislature. It

is understood that the Greek Presidency is in no hurry to close the issue during their Presidency in the first half of 2014.

Reportedly, the majority of member states in Council are against the inclusion of NO_x and against lowering the threshold to 400 GT. The Commission is of the same view. Member states are also keeping a close eye on the ongoing discussions in the International Maritime Organization (IMO) on possible international rules for a CO₂ MRV scheme. Compatibility of the EU MRV and the IMO scheme is generally considered highly desirable, if not essential.

STCW recognition

Following the meeting of 22 November 2013 of the Committee on Safe Seas and the prevention of pollution (COSS) the Commission concluded, following inspections carried out by EMSA, that maritime training facilities in Cuba continue to meet the requirements set out in the STCW convention and therefore its seafarers continue to meet the standards required to work on board ships flagged in EU member states. Hence, recognition was extended.

The case of The Philippines is still pending. Member states are scheduled to discuss the subject at the next COSS meeting in February. It is understood that the last inspections carried out by EMSA have not produced sufficient proof of progress to recommend renewal of recognition of The Philippines' system due to huge differences pertaining in standards among schools. Reportedly, no decision has been tabled for adoption as yet.

Sanctions on Iran partially suspended

On 21 January 2014, EU member states decided to suspend for at least six months a number of EU sanctions applicable to Iran, following an international agreement with Tehran on its nuclear programme, reached

on 10 January. More precisely, the EU will not pursue new nuclear-related sanctions and suspend the following sanctions:

- The prohibition on the import, purchase or transport of Iranian petrochemical products. The suspension will also cover the provision of all related services such as financing, financial assistance, insurance and reinsurance, including for third states.
- The prohibition on trade in gold and precious metals with the government of Iran, its public bodies and the Central Bank of Iran, or persons and entities acting on their behalf. The suspension will also cover related services such as transportation.
- The prohibition on the provision of insurance and transport in relation to Iranian crude oil. This suspension will allow the provision of transportation and insurance services to third states importing Iranian oil.

Furthermore, the EU will facilitate financial transfers for non-sanctioned trade, including for humanitarian purposes, such as food and medicines, by increasing ten-fold all the EU authorisation thresholds.

The new provisions are directly applicable in all EU member states and can be accessed via the following link: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:015:0018:0021:EN:PDF>

EU clean air package proposal

On 18 December 2013, the European Commission adopted a clean air package, aiming at ensuring full compliance with existing air quality legislation by 2020 and making further significant reductions by 2030.

Although not specific to shipping, the Clean Air package contains elements that might impact on the maritime transport indus-



try. Through the revision of the National Emission Ceilings Directive (NECD), the Commission is attempting to incentivize reduction of NO_x and SO_x emissions, as well as the emission of particulate matters from shipping. The Directive had hitherto established a national ceiling for emissions at national level.

Under the revised Directive, member states will be allowed to use reductions of shipping emissions that occur in the member states' territorial seas, exclusive economic zones or in pollution control zones to offset emissions of emissions from land-based sources. Under the conditions defined in Article 5 of the proposed legislative text, this may take place where the emissions for 2025 cannot be limited in accordance with the national emission reduction commitments applicable from 2030.

With the accompanying Communication, the Commission refers to the fact that, considering the international character of shipping and Europe's dependence on it, preference must always be given to policy development at the international level (IMO), such as the designation of NO_x Emission Control Areas (NECAs) and SO_x Emission Control Areas (SECAs) already agreed by the IMO. With Article 12 of the proposed legislative text, the Commission stresses the need for co-ordination with international organisation (such as IMO) including through the exchange of technical and scientific information for improving emission reductions.

EU developments on invasive alien species

On 13 December 2013, the Council had an orientation debate on the Commission proposal for a Regulation on the prevention and management of invasive alien species. This horizontal proposal seeks to set up a

The exhaust plume of a cargo ship sailing on the sea

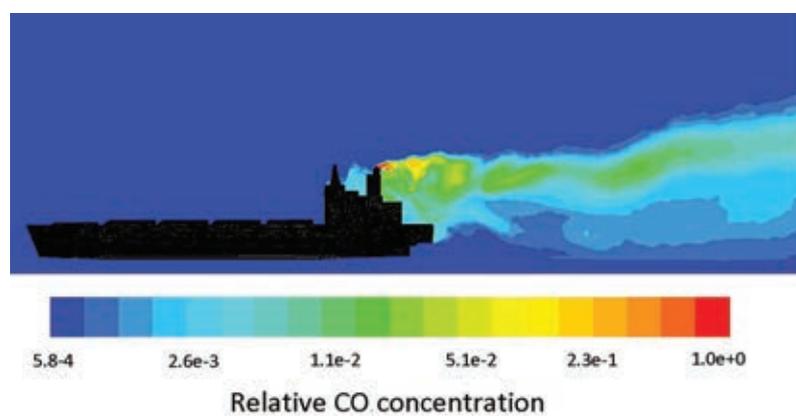


Diagram: Cornell University College of Engineering

regional co-operation framework for the identification, monitoring and combat of such species. Ballast water is identified as an important pathway, which may require priority action. However, the Commission proposal explicitly refers to the IMO Ballast Water Convention and does not propose – at this moment in time – any action that would go over and beyond the provisions of the BWC. Member states would have to report periodically on progress made with the implementation of the Convention. The position of the EP is not defined as yet.

EU ports policy – latest developments

On 21 January the European port user community (ship owners, freight forwarders, brokers, cargo owners) issued a joint open letter asking members of the EP not to vote for amendments that would weaken any further the Commission proposal to liberalise market access to port services and to increase financial transparency of ports. The port users argued that ports are not

working optimally everywhere in the EU and that the Commission's proposal provides the correct legal basis to address some of the problems.

This remarkable step on the part of port users should be seen against the background of earlier failed attempts to liberalise port services, including cargo handling, when port workers marched on Brussels in protest. Port users had already been disappointed by the fact that the new Commission proposal did not include cargo handling. A further weakening of the proposal would allegedly reduce it to an empty shell. (MLU) ■

Editor's Note: This report has been produced in co-operation with the European Community Shipowners' Associations (ECSA).



Ongoing US shipping issues

BIMCO President visits Washington DC

Even though a snow storm hampered progress during BIMCO President John Denholm's visit to Washington DC 21-22 January 2014, a string of fruitful meetings still took place. BIMCO was well received and met with the US Coast Guard (USCG), The Cotton Club (Group of diplomats covering shipping policy), Department of Justice and staff in Congress.

A number of issues were touched upon, such as piracy, the availability of low sulphur fuels in 2020, future NO_x rules and many more. But the hot issues right now in the US impacting shipping are greenhouse gas (GHG) monitoring/reporting and especially ballast water regulation. This report will therefore focus on these key issues.

USCG extensions on ballast water implementation

Over 200 applications for extension of the ballast water implementation schedule have been received by the USCG. It is anticipated that most of these applications have been submitted by ships which have ballast water treatment system implementation dates in 2014. The USCG has advised that these applications are being reviewed and decisions will be issued "shortly". We understand that a few extensions have already been granted; most of them extending the ship's implementation date to 1 January 2016. The extensions are, perhaps, not as promising a tool to handle the US situation as had been thought.

Note that USCG can give extensions to the BWT implementation date where a good faith effort has been made to acquire a US type approved system suitable for use on

that particular vessel. However, the US Environmental Protection Agency (EPA) has stated that while it will take a USCG extension into account, it will "not be legally bound" by it. This results in a situation where a ship is compliant with the provisions of the USCG regulations but would not be compliant with the EPA Vessel General Permit (VGP).

On 27 December 2013, the EPA Assistant Administrator for Enforcement and Compliance Assurance issued an enforcement policy letter addressing the conundrum summarized above. The memorandum indicates that EPA will "consider" a USCG granted extension when (1) a vessel has applied for and received an extension from the USCG (2) the vessel is not in compliance with its ballast water discharge limits per the 2013 VGP, and (3) the vessel is otherwise in compliance with all other provisions of the 2013 VGP.

The memorandum further enumerates considerations that EPA enforcement personnel should take into account (conducts complete BWE 200 nm from any shore). Otherwise, the vessel must meet USCG regulations including BWM plan, recordkeeping and reporting provisions, and comply with all other ballast water management requirements under relevant USCG and EPA regulations. The EPA will then "consider" these violations of the EPA VGP a "low enforcement priority". However, this policy will not apply to "grossly excessive ballast water discharges" (whatever that term means) or discharges which present an "imminent and substantial endangerment" (whatever that means) or other violations of the Clean Water Act. EPA also reserves the right to change this policy at any time.

This is a highly unsatisfactory situation for ship owners and it creates a number of concerns:

- Ship owners may be subject to citizen suits.
- EPA can change this policy at any time presumably without prior notice or providing the ability of the regulated community to comment or otherwise impact EPA's decision to modify or cancel this policy.
- At least two terms (noted above) negate application of this policy to certain situations. At the very least, EPA needs to define what is meant by these terms e.g. "grossly excessive ballast water discharges" and "those that present an imminent and substantial endangerment".
- This policy does not become effective until after such time that a ship is non-compliant with the EPA VGP Ballast water discharge requirements (2nd bullet in policy letter) and thus a ship is at the mercy of EPA as to whether they will adjudge the specific case to be one of low enforcement priority.
- This policy is not effective if the ship is non-compliant with any other provisions of the 2013 VGP whether related to ballast water discharges or not. Arguably, even a failure to "dot an i" or "cross a t" in any of the required recordkeeping or reports would negate application of this policy, even though they were unrelated to ballast water discharges.
- In spite of this policy letter, a ship with a perfectly good USCG extension is technically non-compliant with the provisions of the VGP (the policy letter simply suggests that EPA would consider it a low enforcement priority).
- Many, if not all, P&I Club policies may



not cover instances where a ship has knowingly violated laws/regulations (as would be the case here) thus insurance cover may be in jeopardy for any fines/penalties assessed for non-compliance of the EPA VGP as well as legal fees to defend any action against the vessel.

- Significant negative commercial implications may result from this non-compliance situation where charterer vetting inspections and cargo owners/shippers incorporate non-compliance events into vessel evaluations.
- Assuming the maritime industry deems this EPA “solution” relating to enforcement policy inadequate to provide the necessary certainty and protection from legal liability, a number of options (all with inherent risks) are available as noted below.

The industry coalition is examining possible alternatives to determine if agreement can be reached on industry actions noted in the list of options below:

- The ship may apply for an individual permit;
- The ship may enter into a consent decree with EPA;
- Industry may petition EPA to reopen the EPA VGP to properly address this issue;
- Industry may seek legislative solution to resolve the conflict;
- Industry may solicit assistance from Congress and/or the White House Council on Environmental Quality to urge more appropriate solution.

During the recent US visit, the BIMCO President highlighted the concerns that BIMCO has regarding the above. We understand that a dialogue is ongoing at

high level among key agencies to solve this issue. We also learned during the Presidential visit that many members of the House of Representatives would like to solve this issue more fundamentally but the Senate, and especially members from California, is currently blocking that opportunity, but work is ongoing at the Hill to find a real long term solution also workable for the shipping industry.

The BIMCO Secretariat will continue the dialogue with key agencies to support them in finding a workable solution for shipping.

US rules and the new IMO Resolution US ballast water rules and the new International Maritime Organization (IMO) Resolution on implementation of the Ballast Water Convention

The IMO Assembly finalised a Resolution which essentially reschedules the implementation schedule of the Ballast Water Management Convention. It has been questioned whether this Resolution would impact the implementation schedule in the United States.

The USCG and EPA have informed us that the resolution will not change the implementation dates and definitions of “existing” and “new” vessel under both the USCG regulations and the EPA’s vessel general permit (VGP). It is important to recall that the US definitions and implementation schedules are based on the first dry-docking (not necessarily the first renewal survey) after 1 January 2014 (for mid-range ballast water capacities) and 1 January 2016 (for the low and high ballast water capacities), while the definition of “new” vessel under both sets of requirements is defined as a vessel constructed on or after 1 December 2013.

US monitoring and reporting of GHG emissions

Deliberations on a global system to monitor and collect GHG and ship efficiency data from ships have been ongoing at IMO MEPC for some time. A proposal from the US to establish a three phase approach is especially at the centre of the debate, which entails a first stage of collecting data to calculate individual ship’s operational efficiency.

Most industry organisations are rejecting this idea, as regulatory application of operational efficiency grossly conflicts with the ability to make commercial decision in the future. Actually this data relates to past commercial utilisation of ships and thus serves no useful purpose for assessing ship’s future performance capacity and may, in addition, be commercially sensitive.

A submission to MEPC 66 (April 2014) from the US and a few other countries maintains that the operational efficiency of individual ships is a suitable and appropriate measure that can be used for mandatory application.

It is the view of the BIMCO Secretariat that this is highly inappropriate, and a submission commenting on this fact and suggesting a workable way forward is under consideration with industry partners. (MLU) ■■

Editor’s Note: This report has been produced in co-operation with the Chamber of Shipping of America (CSA).

POOLCON B adopted by Documentary Committee

Agency-based standard pooling agreement for dry and liquid bulk cargoes carried on a tramp basis

Pooling agreements, as a means of achieving efficiencies for ship owners with the benefits being passed on to their customers, are a feature of tramp markets.

In October 2012, BIMCO published POOLCON (now renamed POOLCON A) as the first of two specialist documents setting out the basis for contractual arrangements between owners participating in a pool and the pool managers. Under POOLCON A, the pool is constituted as a self-standing entity where owners time charter their vessel(s) to the pool and the pool contracts in its own name with third parties.

However, this is not the only model. Owners' commercial needs, together with administrative and practical considerations, have resulted in the widespread use of agency-based arrangements where pool managers act on behalf of participants with participants as principal in any contract for the use of a vessel or carriage of goods.

In response to this need, work was put in hand to develop a second document to address the special requirements of agency-based arrangements. The outcome, POOLCON B, was adopted at the Documentary Committee's meeting in Copenhagen in November 2013. BIMCO is grateful to the following members for their work in the development process:

- Mr. Francis Sarre (Chairman)
CMB (Owner)
- Mr. Stathes Kulukundis R&K (Owner)
- Mr. Georg Scheel Nordisk
(Club Member)
- and special adviser
- Ms. Marjorie Holmes (Reed Smith)
(Lawyer).

Competition law is often modelled on the European regime. As with POOLCON A,

the importance of avoiding creating restrictions on trade has been at the forefront of the Working Group's consideration of the issues. Full account has therefore been taken of EC Guidelines on horizontal cooperation agreements (2011/C11/01), together with similar regulatory implications in jurisdictions around the world. However, the issues are often complex and users are urged to make appropriate inquiries to ensure that their contractual arrangements are consistent with local competition legislation.

Explanatory Notes

The following notes are intended to provide guidance on the provisions set out in POOLCON B. Defined terms are identified in the contract by use of capital letters and, in order to assist readers, the same approach is taken in this summary.

Key Features

POOLCON B is designed for use by tramp pools operating tonnage in dry and liquid bulk trades under contracts of affreightment, spot and time charters with third parties. It governs the relationship between owners (Participants) entering a Vessel (or vessels) into the pool and the Pool Managers and regulates administrative and procedural matters covering pool operations together with the allocation of respective party liabilities and obligations.

The regime for operating pool vessels is set out in an annexed "Reference Charter" which is not a charter party but an underlying document covering the technical and commercial relationship between Participants and Pool Managers for trading the Vessel(s). As an agency agreement, there is no time charter relationship between Participants and Pool Managers. Nevertheless, in order to calculate Participants' entitlement to any share of pool profits, the Reference Charter must set out the basis for determining when the vessel is deemed to

be on hire and periods such as breakdown, maintenance or repairs when no notional hire accrues.

Pool Managers undertake marketing and fixing arrangements but all contracts (including individual charters pursuant to a contract of affreightment) for employment are concluded by Pool Managers "on behalf of and acting as agents for" Participants. However, Additional Tonnage chartered in or chartered out to meet or supplement pool commitments, is fixed in the Pool Managers' own name.

As agents, Pool Managers should not be exposed to charterers' claims. However, to guard against the possible risk of a "misdirected arrow", Participants are required to name Pool Managers as co-assured on their insurance policies, if possible without liability for calls in the event of owners' failure to make payments due.

Introduction

POOLCON B follows BIMCO's traditional style. Part I contains a box layout for variable information to be inserted by the parties; Part II sets out terms and conditions; four supporting annexes are for Pool specific arrangements; and a fifth annex, an Accession Agreement, is designed to facilitate procedures for bringing New Participants into the Pool.

Part I

Particular attention is drawn to Box 5 Reference Charter which should be attached to Annex B. As noted elsewhere, this is not a time charter but an underlying document setting out and apportioning operational and technical responsibility between Participant and Pool Managers for trading the Vessel. The Reference Charter is likely to be based on a standard document such as BALTIME, GENTIME, NYPE 46, NYPE 96 or SHELLTIME 4 amended to reflect POOL-



The CMB Juliette. (Photo: CMB)

CON B provisions for payment of Pool profits, delivery and redelivery of the vessel for Pool services and other general or trade specific provisions as appropriate.

Inside Cover Note

Attention is drawn to the complexity of competition law and variations between jurisdictions. Whether a pool is consistent with local legislation will depend on a range of factors including market share, market concentration, market structure and turnover together with other regulatory provisions in the country of destination and, possibly, origin.

The Working Group is of the opinion that POOLCON B, as a generic agreement, will not restrict competition on price and market share and is therefore unlikely to expose users to the risk of action for anti-competitive behaviour. Nevertheless, use of POOLCON B does not in itself confer compliance and users are urged to take appropriate advice to ensure that a planned venture is consistent with relevant competition laws.

Part II

Clause 1 (Definitions)

Terms used throughout the Pool Agreement are set out. Words and phrases are defined for ease of reference for the purposes of the contract but are not legal definitions.

The term “Participants” means Owners entering vessels into the Pool. Attention is drawn to the distinction between a “Reference Charter” which, as explained, forms the basis of the trading arrangements between a Participant and Pool Managers as operators; and a “Transportation Contract” which is any contract for the use of a Ves-

sel or for carriage of goods and will include a contract of affreightment, spot charter or time charter.

Clause 2 (Pool Agreement)

The Pool Agreement is made between each Participant and between the Participants and the Pool Managers. Vessels are under the commercial management of, and are traded by, Pool Managers in accordance with the Reference Charter (annex B). All third party Transportation Contracts are entered into by the Pool Managers “on behalf of and acting as agents” for individual Participants who are, therefore, principals in the transaction with counterparty charterers. In the event of, for example, differences between periods of deemed off-hire under the Reference Charter and off-hire or time lost for voyage delays under a Transportation Contract, the terms of the Reference Charter prevail for calculating a Participant’s entitlement to Pool earnings.

Clause 3 (No Partnership)

Construction of the Pool Agreement as a partnership between Participants and the Pool Managers or any of them, is expressly excluded. Participants’ obligations are owed only to the Pool Managers save in relation to the specific provisions set out in clause 4 (Indemnity, Liability and Security), clause 25 (Confidentiality) and clause 28 (Dispute Resolution).

Clause 4 (Indemnity, Liability and Security)

Each Participant is liable only for its own performance; there is no joint and several liability with any other Participant. This provision therefore protects a Participant from action by a third party to secure

a claim against another Participant or the Pool Managers. In the event of such action, the Participant whose dispute affects another pool member (or the Pool Managers), must indemnify the innocent party for all costs and losses and provide security to lift or discharge any arrest of property.

Clause 5 (Objective of the Pool Agreement)

This is a mission statement explaining the commercial efficiencies to be gained from using the Pool Agreement and the ultimate benefits to consumers. It reflects European Commission Guidelines on the application of competition legislation.

Clause 6 (Contracting on behalf of the Pool)

This clause, which should be read together with clause 9, Pool Managers’ Authority, sets out Pool Managers’ mandate to enter Transportation Contracts on behalf of Participants. Pool Managers may also enter Contracts of Affreightment in their own name but as agents for performance by individual Participants who will be named principals in Transportation Contracts issued pursuant to the Contract of Affreightment. Pool Managers may, in their own name, charter in and charter out Additional Tonnage (vessels owned and operated by owners outside the pooling arrangements).

Clause 7 (Pool Vessels)

Sub-clause (a) states that technical management of a vessel, including insurance and manning, is the sole responsibility of the Participant in accordance with the Reference Charter.

Sub-clause (b) provides that, where neces-

sary, Pool Managers may charter-in vessels (Additional Tonnage) to supplement resources to fulfil commitments or for improved efficiency.

Clause 8 (Pool Management)

A comprehensive list of duties to be undertaken by Pool Managers is set out. It includes vessel operating, administering contracts, accounting, maintaining financial records, marketing and all other functions in support of the Pool's commercial activities. It is expressly provided that the Pool Manager shall not discriminate between Participants.

The Pool Manager can sue and be sued in relation to any dispute under the Pool Agreement. Nevertheless, liability to Participants for loss or damage is expressly excluded unless (as with ship managers' liability under SHIPMAN) shown to have resulted from Pool Managers' negligence, gross negligence or wilful default.

Clause 9 (Pool Managers' Authority)

The maximum period for which Pool Managers are authorised to enter into Transportation Contracts is limited by agreement between the parties. Under sub-clause (a), in default of a stated time, the maximum is six (6) months or (for example under a Contract of Affreightment) by reference to the equivalent number of voyages provided such voyages are scheduled to be performed within a stated time or, in the absence of agreement, twelve (12) months. In accordance with sub-clause (b), Pool Managers' authority to charter-in Additional Tonnage can also be limited by agreement or, in the absence of a stated period, to a maximum of six (6) months.

Under sub-clause (c), Pool Managers are authorised to sign Accession Agreements (Annex E) to bring new Participants into the Pool following approval at a Participants' meeting (see clause 12(f)(iii)).

Clause 10 (Pool Committee)

The Pool Committee supervises and monitors the Pool Managers. Membership is drawn from among the Participants. Decisions are made by ordinary majority of those present at a meeting. A Member may be represented by a proxy with full voting rights.

Clause 11 (Pool Committee Authority)

This sets out the scope of the Pool Committee's authority. It includes making arrangements for Participants' Meetings (see clause 12), approving new and Substitute Vessels from Participants, approving Transportation Contracts for periods in excess of the Pool Managers' authority, agreeing to Pool Managers' use of currency and hedging instruments for periods of not more than twelve (12) months and such other functions as may be delegated by the Participants' Meeting.

Clause 12 (Participants' Meeting)

An ordinary meeting, with not less than 21 days' notice, must be held at least once a year. An extraordinary meeting may be called by an agreed proportion of Participants giving 14 days' notice. A meeting will be required in the event of the Pool Managers giving notice of termination (see clause 20). A Participant may be represented by a proxy with full voting rights.

The Participants' Meeting is the Pool's ultimate decision-making forum. Voting requirements ensure that decisions balance individual interests and cannot be unduly influenced or blocked by a larger or smaller Participant able to exercise a veto over a particular course of action.

Under sub-clause (d), accounting and budgets, together with other matters not subject to an enhanced majority, are to be resolved by ordinary majority. This is determined by reference to the number of Pool Vessels owned or controlled by a Participant, with each vessel giving one vote.

A two thirds majority, again on the basis of numbers of vessels, is required under sub-clause (e) for matters relating to Pool Points, Transportation Contracts in excess of the Pool Committee's authority and other listed activities in support of, or ancillary to, the Pool's objectives. In order to reduce the likelihood of stalemate, or decisions being held up by a minority, a proposal to wind-up the Pool or appoint new Pool Managers is also subject to a two thirds majority.

A unanimous decision of those present or represented at a Participants' Meeting is required under sub-clause (f) to approve certain joint venture agreements, admission of new Participants and expulsion of a

Participant (although the Participant under consideration for expulsion cannot vote on the issue).

Under sub-clause (g), proposed changes to the Pool Agreement require Participant unanimity and the Pool Managers' consent. The need for agreement by each and every Participant will protect the interests of those unable to attend, or be represented at, a meeting to determine a proposal.

Clause 13 (Calculation of Pool Gross Revenue, Pool Net Revenue and Pool Expenses)

This clause gives further meaning to the definitions in clause 1 to address the calculation of income receivable while the determination of Pool Points is set out at clause 16 and in annex D. The two concepts have been dealt with separately to avoid a single, but complex, provision.

Sub-clause (a) identifies elements comprising Pool Gross Revenue. This includes each Vessel's monthly actual and estimated voyage income and charter hire from Transportation Contracts, income from Additional Tonnage, receipts from ancillary activities and insurance money together with any indemnities or damages received arising from the Pool's operations.

Sub-clause (b) deals with Pool Expenses covering all aspects of voyage and related costs, liabilities and expenses under the Reference Charter which are for the account of the Pool and not the Participant, costs of chartering-in Additional Tonnage, outgoings connected with Pool operations, Pool Managers' remuneration and Pool Managers' insurance premia (see clause 19(b) and (c)). Liabilities or damages payable are Pool Expenses unless (as in SHIPMAN) arising solely from the negligence, gross negligence or wilful misconduct of the Pool Managers who, in such event, will themselves be liable.

If expenses exceed income, Participants will be required to cover the shortfall in accordance with sub-clause (d) of clause 15 (Distributions).

Clause 14 (Pool Managers' Accounts)

Pool Managers are required to keep true and correct accounts by reference to the International Financial Reporting Standards (IFRS) or other agreed arrangements,



Mineral Hope at Pointe Noire. (Photo: CMB)

exercise budget monitoring and controls and meet audit standards. The provision also outlines procedures for reimbursing Participants' recoverable Pool Expenses.

Clause 15 (Distributions)

The system for paying profits to Participants is central to the objectives of a pooling arrangement. Under an agency agreement where vessels are not on time charter to the pool, Participants' remuneration cannot properly be described as "hire". Payments due have, therefore, been termed "Distributions". Distributions are determined on a monthly basis (in accordance with the revenue and expenditure calculations in clause 13) based on each vessel's allocated Pool Points and deemed periods on hire under the principles in the Reference Charter. The formula for calculating payments due is set out in sub-clause (a).

Provisions for the distribution of payments, limiting or holding back payments in the event of insufficient funds and Participants' obligations to make a contribution if a calculation results in a negative sum, are set out at sub-clause (b). Sub-clause (d) covers Participants' obligations to contribute to Working Capital and operational losses.

Clause 16 (Pool Points)

Every pool will have its own individual characteristics according to trading activities and/or the type and mix of tonnage. In order to avoid the inclusion of a potentially complex formula within the text, a flexible approach has been followed. A cross reference to annex D (Pool Points Formula) suggests factors likely to be taken into con-

sideration when assessing points for a vessel joining the Pool. Under sub-clause (b), the Participants' Meeting will confirm the number of points, taking account of any recommendations made by the Pool Managers.

Sub-clause (c) requires Pool Managers to review voyage results and vessel performances on 1st January and 1st July to ensure that allocated points continue to fairly reflect each vessel's relative earning capacity. Illustrative factors likely to affect the position, and which should be kept under review, are set out and include a change of trading pattern, changes in bunker costs, introduction of new regulations and vessel modifications. Pool Managers' recommendations for amending individual Pool Points or the Pool Points Formula are referred to the next Participants' Meeting. If necessary, and in accordance with sub-clause (d), revisions can be conducted at shorter intervals.

Clause 17 (Withdrawal)

This clause seeks to balance owners' needs to be able to move in and out of trades and activities with Pool Managers' needs for certainty of supply to fulfil their commitments under Transportation Contracts. It distinguishes between withdrawal of a Vessel and withdrawal of a Participant.

Under sub-clause (a), a Pool Vessel may be withdrawn if sold or committed to a time or demise charter for longer than a pre-agreed period. Notice of withdrawal is required but, in defined circumstances, provision of a Substitute Vessel will fulfil a Participant's outstanding obligations.

Sub-clause (b) sets out the notice requirements for a withdrawing Participant and arrangements for individual vessels to be taken out of the Pool. If the value of outstanding Transportation Contracts is below the market rate, the withdrawing Participant will be required to make a financial contribution pro rata to the number of vessels being withdrawn. No compensation is payable to the withdrawing Participant where the value of outstanding Transportation contracts exceeds the market rate. Disputed valuations are to be determined by reference to chartering brokers.

Nevertheless, if one or more vessels due to be withdrawn is or are determined by Pool Managers to be essential to the performance of existing contractual obligations, sub-clause (c) provides that the Participant must supply a Substitute Vessel or pay compensation to cover the cost of chartering-in suitable tonnage.

Special provisions apply in the event of a constructive or total loss (sub-clause (f)).

The clause also sets out procedures for redelivery of vessels and repayment of Working Capital.

Clause 18 (Non-compete)

This clause might be viewed as imposing a restriction on owners' freedom to trade. However, without it, a Participant would be free to compete against the Pool, possibly with the benefit of price or other sensitive information. This would be inconsistent with restrictions on exchanges of information between competitors.

The clause has therefore been inserted to address this conflict. However, in order to clarify the intended scope, the statement “not entitled to operate in the same trades” should be interpreted in line with the industry’s understanding that this means the same geographic trades, commodities and type(s) of vessel.

Clause 19 (Insurance Policies)

Sub-clause (a), based on the insurance provisions in SHIPMAN 2009, sets out Participants’ responsibility for hull and machinery cover, protection and indemnity risks and war risks. Optional insurances may also be agreed and, although not specifically identified in the text, depending on trading requirements parties might decide to agree to add maritime kidnap and ransom (K&R) cover.

Transportation Contracts are arranged by Pool Managers as agents for Participants who are, therefore, principals in the transaction. Nevertheless, in order to protect Pool Managers against a third party claimant’s “misdirected arrow”, sub-clause (b) requires Participants to name Pool Managers as joint assureds with full cover. However, the benefit of joint assured status in many cases imposes liability on the joint assured for a defaulting Participant’s premium payments or calls. Participants are therefore required, if obtainable at no extra cost, to procure cover without such obligation and for Pool Managers to be released from all liabilities on the Participant’s withdrawal from, or on the winding up of, the Pool.

Sub-clause (c) requires Pool Managers to take out professional liability insurance, charterers’ liability insurance for Additional Tonnage and FD&D cover.

Clause 20 (Termination by the Pool Managers)

Pool Managers may give six (6) months’ notice to terminate their role. A Participants’ Meeting, convened in accordance with clause 12, must decide whether to appoint replacement managers. In the absence of a two thirds majority in support of a proposal, it will be necessary to proceed to the winding-up arrangements in clause 21.

Clause 21 (Winding up of Pool)

Sub-clause (a) provides a mechanism for

winding-up the Pool by a two thirds majority vote at a Participants’ Meeting or where, following Pool Managers’ resignation (clause 20), there is no agreement to make a new appointment.

Sub-clause (b) details arrangements for withdrawing vessels from the Pool and releasing Participants from their contractual obligations during the winding-up period.

Clause 22 (Default)

This sets out the events and circumstances which may result in a Participant’s expulsion if so resolved at a Participant’s Meeting. Nevertheless, expulsion is without prejudice to the Pool Managers’ right to claim damages in accordance with clause 23.

Clause 23 (Rights on Termination and Withdrawal)

It is expressly provided that a Participant’s withdrawal whether voluntarily, by expulsion or in the event of total loss, does not affect any rights or obligations incurred up to the effective date of withdrawal or beyond in the case of rights and obligations that survive termination of the Agreement.

Clause 24 (Hardship and Force Majeure)

Parties are encouraged, under sub-clause (a), to try to reach an amicable solution if the Agreement does not work as intended or expected.

Sub-clause (b), sets out mutual exclusions from liability as between Participants and Pool Managers under the Pool Agreement. Exclusions from liability between Participants and third parties will be determined in accordance with the relevant Transportation Contract.

Clause 25 (Confidentiality)

Competition legislation restricts the exchange of market or price sensitive information between competitors. It is, therefore, important that Participants observe and comply with this clause and its prohibition on disclosure, other than in accordance with legal process, or outside exploitation of information gained within the Pool or use in other trades of information gained within the Pool.

Clause 26 (Assignment)

This requires all Participants to agree before

a member may assign or transfer rights under the Pool Agreement, other than assignment to an affiliate or financiers.

Clause 27 (Notices)

This is the standard BIMCO provision.

Clause 28 (Dispute Resolution Clause)

The provision incorporates the Singapore forum together with other amendments made to the London and New York options, introduced in the updated 2013 version of the BIMCO Standard Clause. However, as disputes under pooling agreements might involve multiple parties, additional wording in each named forum provides a mechanism for appointing arbitrators in circumstances where there are more than two parties in the dispute. The modifications mean that the clause is no longer the standard version and “BIMCO” has therefore been removed from the heading.

Clause 29 (Severability)

This is a standard clause. It seeks to avoid a situation where the entire agreement is held to be invalid because a particular provision is deemed by an arbitrator or other competent authority to be illegal, invalid or unenforceable.

Annexes

Annexes A to D should be completed with details of all Pool Participants, the underlying Reference Charter, Pool Vessels and their Allocated Pool Points and the Pool Points Formula. The Accession Agreement in Annex E sets out wording to facilitate the administrative mechanism for bringing a New Participant into the Pool.

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Anniversaries galore!

In 2013, we celebrated many anniversaries; anniversaries of great developments in New York's history and culture, anniversaries of important maritime organization and anniversaries of Charter Parties on which we still trade ships and cargoes.

One hundred years ago, in 1913, Grand Central Terminal was inaugurated. In addition, New Yorkers were first introduced to modern art at a seminal art show at the Armory.

Aside from ASBA, which is celebrating its 80th anniversary, and the Society of Maritime Arbitrators which is celebrating its 50th, several Charter Parties are also celebrating important anniversaries this year.

On 7 January 1914, the first steamship passed through the Panama Canal. In anticipation of its imminent opening, shipping organizations were hard at work issuing various new forms of Charter Parties.

Several centenaries

We celebrate this year the 100th anniversary of several familiar Charter Parties. The New York Produce Exchange, issued a "Government Form time charter party" in 1913. This Time Charter Party is the progenitor of the familiar NYPE Time Charter Party which is now utilized as an ASBA Charter Party.

The New York Produce Exchange, founded in 1867, was located at 2 Broadway on Bowling Green in lower Manhattan. It was a long-standing exchange for trade in various commodities, ranging from grain, coal, lumber, flour, butter, hogs to vegetable oil, crude oil, naphtha and refined petro-

leum products. As such, it issued numerous forms of contracts including Bills of Lading and Charter Parties. For the grain trade, the New York Produce Exchange issued a Grain Charter Party in 1897.

Other Charter Parties, such as the Baltimore Form C Berth Terms Charter Party, the progenitor of the NORGRAIN, was also adopted in 1913. The Welsh Coal Charter Party, the progenitor of the Amwelsh Coal Charter Party, was issued in 1914 and adapted to American use in January 1953 as the Americanized Welsh Coal Charter (Amwelsh). It became an approved ASBA form in 1979.

Some half-centuries

This year also marks the 50th anniversary of several other Charter Parties as well: the NIPPONVOY, published by the Japan Shipping Exchange, was issued in May of 1963 and the SHELLTIME 3 Charter Party in June of 1963. The ESSOVOY 63 was developed for chartering of vessels for full cargoes of oil and petroleum products and was eventually revised into the EXXONVOY 69. The latter became the progenitor of the ASBATANKVOY which was issued by ASBA in 1977. Over the years, the ASBATANKVOY became very popular and was widely used in the chemical, vegoil and parcel tanker trade.

Five years ago, in 2008, the ASBACHEMVOY, which is very similar to the ASBATANKVOY, was developed by ASBA, specifically for the chemical and parcel tanker trades.

Other anniversaries

We also celebrate the 40th anniversary of some other forms of Charter Parties such as the Bulk Sugar Charter – U.S.A. which was

2014 update for NYPE Time Charter

ASBA, working together with BIMCO and the Singapore Maritime Foundation (SMF), is in the process of preparing a significant update to the widely used NYPE Time Charter.

The NYPE form was last updated in 1993 and lacks many of the clauses that commonly form part of modern time charter parties – often being added as riders.

To make sure this important standard form remains relevant and up to date, the joint ASBA/BIMCO/SMF Sub-Committee has been working hard over the past 18 months to review the existing wording and add commonly used additional provisions. The sub-committee is taking care to maintain the overall look and feel of the NYPE by locking into place the many clauses that remain unchanged. Issues that were not even contemplated back in 1993, such as ISPS, pollution, hull fouling and sanctions, will now form an integral part of the agreement.

During 2014 the sub-committee will release a provisional draft of the new NYPE as part of a wide consultation with the industry. The sub-committee will stage a number of "roadshows" in the US, Europe and Asia to explain the background and thinking behind the revision. NYPE "2014" is due for completion and publication in November 2014. ■■

issued in April 1962 and revised in 1973. Finally, the North American Grain Charterparty (NORGRAIN) was first introduced on 3 December 1973. Its creation was the result of negotiations between NAEGA (the North American Export Grain Association), BIMCO (The Baltic and International Maritime Conference), the Chamber of Shipping of the U.K., FONASBA (The Federation of National Associations of Shipbrokers and Agents) and ASBA.

NORGRAIN, which was first introduced on 3 December 1973, was designed to replace the outdated Baltimore Berth Grain Charter Party Steamer Form “C”, which had been adopted in 1913. It was also designed to supplant the many private forms which had been created by individual grain houses and represented a more suitable “modernized” contract for use by the trade. ■■

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Mrs. Bulow worked for over thirty-five years for two major International Commodity Trading companies, Bunge Corporation and Continental Grain Company in various positions. She was in charge of maritime and commercial claims and arbitrations. She previously worked for a ship brokerage and agency firm.

She has been a member of the Society of Maritime Arbitrators, Inc. (SMA) since 1980 and was its President from 1997 to 2001. She currently serves on its Board of Governors.

Although primarily a maritime arbitrator, Mrs. Bulow is also a member of the Neutrals Panel of the International Centre for Dispute Resolution of the American Arbitration Association and of the ICC Arbitration Panel. She holds a Ph.D. from Yale University.



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The *Ladytramp*

Demurrage – Delay – Loading of cargo delayed following fire destroying conveyor belt system at loading terminal – Whether delay caused by “mechanical breakdown” – Whether charterers entitled to rely on force majeure clause. *ED&F Man Sugar Ltd. v Unicargo Transportgesellschaft mbH (The “Ladytramp”)* – Court of Appeal (Patten, Tomlinson and Christopher Clarke LJJ) [2013] EWCA Civ 1449 – 19 November 2013

Readers may recall the summary of the High Court decision which appeared in BIMCO Bulletin No. 1/2013. Although the initial appeal by the charterers against the arbitration was dismissed by the High Court, an appeal by the charterers was nevertheless considered by the Court of Appeal as summarized below.

On 9 June 2010 the vessel *Ladytramp* was chartered on the Sugar Charter Party 1999 form for the carriage of bulk sugar from “1-2 safe berth(s), 1 safe port (intention Santos) but not south of Paranagua to the Black Sea (intention Odessa)”. On the date of the fixture the charterers declared Paranagua as the loading port.

On 14 June 2010 the parties became aware that a fire had occurred at the terminal where the vessel was scheduled to load the cargo. The fire had destroyed the conveyor belt system linking the terminal to the warehouse.

The vessel arrived at Paranagua on 20 June 2010 and tendered notice of readiness. In the absence of an available berth the vessel remained off the port until 14 July 2010 when she weighed anchor and entered the

inner roads of the port awaiting berthing instructions. Loading commenced on 18 July 2010 and was completed at 13.00 on 20 July 2010 at which time the vessel sailed for the discharging port in the Black Sea.

The owners contended that time began to count at 14.00 on 21 June 2010 and that, allowing for rain periods and permissible laytime, laytime expired at 23.53 on 25 June 2010, and that thereafter the vessel was on demurrage continuously up to 13.00 on 20 July 2010.

The charterers disputed the claim, relying on clause 28 of the charter party, which provided:

“In the event that whilst at or off the loading place ... the loading...of the vessel is prevented or delayed by ... mechanical breakdowns at mechanical loading plants, government interferences ... time so lost shall not count as laytime.”

The charterers said that they were entitled to rely on clause 28 because the loading of the vessel was prevented or delayed by “mechanical breakdown”, and also by “government interferences” in the sense that decisions by the port authority to re-sched-

ule the loading or discharging of vessels in the light of the fire amounted to “government interference”.

The arbitrators rejected the charterers’ submissions and awarded the owners demurrage in the sum of USD 397,912.77 plus interest and costs. They held, first, that since the charterers were entitled to nominate any safe berth in the port of Paranagua, in order for them to rely upon clause 28 to exclude from laytime the time lost as a result of their inability to use the relevant terminal, that terminal would have had to have been named in clause 4 of the charter party so that the charterers were unable (from a legal standpoint) to nominate an alternative berth. The fact that the relevant terminal and berth was unusable throughout the relevant period did not mean that the charterers were unable to perform their obligation to nominate any “safe berth” at the port for the loading of the contractual cargo. The charterers could have discharged their obligation to nominate a safe berth by nominating an alternative berth.

The arbitrators held, secondly, that the inoperability of the conveyor belt was the result of physical damage due to the fire rather than “mechanical breakdown”

within clause 28. Thirdly, the arbitrators held that any refusal by the port authority of Paranagua to permit vessels to load at the terminal was not “government interference” within the meaning of clause 28.

The charterers appealed to the High Court, submitting that the tribunal erred in relation to all three reasons.

The judge held that the arbitrators’ first reason for concluding that the charterers were unable to rely upon clause 28 was flawed. Even if the charterers were under an obligation to nominate an alternative berth (which in fact they were not: see the Vancouver Strikes Case, *Reardon Smith Line Ltd. v Ministry of Agriculture, Fisheries and Food* [1963] 1 Lloyd’s Rep. 12; [1963] AC 691) it would not follow that there could be no prevention of or delay in loading while that was being done or that charterers were necessarily precluded from reliance upon clause 28. However, the judge upheld the arbitrators’ second and third reasons and accordingly dismissed the appeal: see (2012) 859 LMLN 1.

The charterers appealed to the Court of Appeal solely on the “mechanical breakdown” point. They submitted that *The Afra-*

pearl [2004] 2 Lloyd’s Rep. 305 compelled the conclusion that there was a “mechanical breakdown” of the conveyor belt system, simply on the footing that as a result of the fire the machinery no longer functioned as a conveyor belt system.

Held, that the charterers’ submission would be rejected. It overlooked that the clause under consideration in *The Afrapearl* (and in the earlier decision of Robert Goff J in *Olben SA v Psara Maritime Inc. (The Thanassis A)* 22 March 1982, unreported), was concerned simply with “breakdown of machinery or equipment in or about the plant of the charterer, supplier, shipper or consignee of the cargo”. The clause under consideration in the present case was concerned with “mechanical breakdown at mechanical loading plants”. Unlike *The Afrapearl* and *The Thanassis A*, it was not enough that the mechanical loading plant simply no longer functioned, or malfunctioned (irrespective of the cause of the malfunction). The nature of the malfunction had to be mechanical in the sense that it was the mechanism of the mechanical loading plant which ceased to function, or malfunctioned, and caused the prevention of or delay to loading and the consequent loss of time. That connoted an inherent mechan-

ical problem, as distinct from a wider or external cause. Destruction of machinery by fire did not, without more, amount to a mechanical breakdown for the purpose of clause 28. The arbitrators had found that there was complete destruction of the conveyor belt system. By no stretch of the imagination could the arbitrators’ finding be regarded as one of mechanical breakdown.

The appeal would be dismissed. ■■

Editor’s Note: The above is a summary of a London judgment which appeared in Lloyd’s Maritime Law Newsletter No. 888 of 13 December 2013, and which is reproduced by kind permission of the publishers, Informa Law.

Incompetent versus negligent stevedoring

Charter party – Cargo damaged during discharge – Whether implied term that stevedores appointed by charterers would be competent – Whether stevedores incompetent – Whether charterers responsible for any such incompetence – Sugar Charter Party 1999

The vessel was chartered on an amended Sugar Charter Party 1999 form, clause 14 of which provided:

“Stevedores FIOST Stevedores for loading, stowing, trimming and discharging to be employed by Charterers or Shippers or Receivers at their expense and under Master’s control. Stevedores shall be considered as Owners servants, and the Charterers/Shippers/Receivers are not to be responsible for any negligence of whatsoever nature, default or error in judgement of the stevedores employed. Master to notify Charterers if Stevedores do not adhere to his instructions and Charterers to use their best efforts to rectify the situation.” [The words in regular type were added to the printed form.]

The vessel loaded a cargo of approximately 14,000 mt of bagged white sugar in Brazil. At the discharge port, discharging was carried out by gangs of stevedores employed by the port authority. They used the ship’s cranes to discharge the bags of sugar directly on to the receivers’ trucks on the quay alongside the ship. Out of 280,000 bags shipped, 274,687 were discharged in sound condition. 226 were said to have fallen into the sea and 2,583 had suffered damage as a result of tearing. The result was that there was a shortage of 1,553 bags.

The cargo receivers brought a claim against the vessel in the sum of USD 105,861.71. The owners subsequently settled the claim for USD 84,689.50.

The owners brought arbitration proceedings against the charterers claiming damages in respect of the USD 84,689.50 paid to the cargo receivers, together with surveyors’ and correspondents’ fees. The owners’ case was that the damage which led to the claim by cargo interests was attributable entirely to the incompetence of the stevedores. The owners said that the charterers were in breach of a well-established implied obligation to appoint stevedores who were competent.

The charterers denied that they were under any implied obligation to appoint competent stevedores but even if they were the damage caused to the cargo was attributable not to incompetence but to negligence – for which the owners were responsible under the terms of the charter party. Moreover, even if any term was to be implied as to the competence of the stevedores it was inapplicable in the circumstances existing at the discharge port because it was the receivers who had engaged the stevedores.

Since the port authority had a monopoly over stevedoring operations, neither they (the charterers) nor the receivers were in

a position to “select” stevedores – and so could not be held responsible for the selection of stevedores whose activities turned out to be unsatisfactory. Even if the charter party did contain an implied term requiring the charterers to ensure that stevedores appointed were competent, the charterers could not be held responsible for the consequences of any incompetence since they had not been informed of the unsatisfactory nature of the stevedoring operation; nor had they been informed of the claim and consulted with regard to how it should be dealt with.

Held, that during the discharging process the Master had sent no less than 20 letters of protest to the receivers, the stevedoring company, the local agents and the owners’ P&I Club. The earlier letters had referred to the fact that some of the stevedores were intentionally damaging bags on the trucks into which the bags were discharged, and to cargo falling overboard as a result of “bad handling”.

One letter referred to the fact that the second officer had tried to stop a stevedore who had removed bags from a truck and put them into his car. Subsequent letters complained of “torn, damaged sugar bags and spillage inside the holds, deck and shore cause of forcedly pulling out by the stevedores and discharged directly to the truck

and inside the truck also the stevedores made damage to the bags”.

There were references to “lot of sugar bags dropped from slings to the sea”. The letters repeatedly used phrases such as “inefficient discharging”, “negligent and careless handling”, “inefficient and incompetent discharge”, and on more than one occasion the Master observed that “contrary to the correct practice of discharging the cargo from corner of the holds bags have been stowed on slings in corners and then dragged along the deck all the way through until lifted”.

Surveyors instructed on behalf of the receivers’ insurers reported that the damage suffered was due to a number of factors, including the poor quality of the slings, which led to bags falling into the sea and onto the quay; the pressure of sling ropes which effectively “strangled” bags leading to leakage from the stitching; bags getting caught on obstructions or being dragged in slings across the holds, and lack of nets between the ship and quayside.

On any view, the contemporaneous evidence painted a picture of a highly unsatisfactory stevedoring operation.

In the tribunal’s view a term had to be implied into clause 14 of the charter party requiring the charterers to appoint only stevedores who were competent. The reasoning which justified the implication of such a term in the equivalent provision in *The Sinoe* [1972] 1 Lloyd’s Rep. 201 was equally valid in the present case.

Furthermore, the words “of whatsoever nature” in clause 14 clearly applied only to the preceding word “negligence”, so that the intention of the parties had to be taken to be that if the facts of the particular case led to the conclusion that the stevedores were

incompetent as opposed to merely negligent, then the implied term would be available to the owners to excuse them for the liability which they would otherwise have faced under clause 14.

Since it was open to the parties to make whatever provision they saw fit to deal with liabilities resulting from the discharge of cargo, the parties could have made it clear that the owners were assuming responsibility for all claims for loss of or damage to cargo arising out of the loading or discharging of the cargo. However, they did not do so, preferring instead to deal with such matters simply by reference to clause 14 of the Sugar Charter Party printed form – with the amendment regarding notice. In so doing, the charterers had to be taken to have understood what was a well-established principle that a term was to be implied requiring any stevedores appointed to be competent.

It might well be correct, as the charterers had suggested, that the owners must have been aware of the fact that state-owned port authorities had a monopoly on stevedoring activities at their ports, so that “selection” of competent stevedores was impossible in the circumstances of the present case. However, no evidence had been put forward on the basis of which any finding to that effect could have been made.

But even if the owners were aware that it would have been impossible for the charterers to have ensured that only competent stevedores were engaged at the discharge port, the tribunal would still have been obliged to conclude that on a true construction of the charter party it was the charterers and not the owners who had assumed the risk that it might be impossible to ensure that only stevedores who were competent were engaged to carry out the discharge.

The next question was whether the evidence supported a finding that the stevedores were incompetent or merely negligent. In the tribunal’s experience, it was rare to find a Master issuing one protest after another during the course of a discharge. The message of the letters of protest was very clear and the evidence which they provided remained uncontroverted, whether by the receivers, the agents, or the stevedores themselves.

It was not uncommon for the recipients of such letters to endorse them with remarks denying the allegations put forward but there was no such denial in the present case. There was not even any reservation of rights or remarks such as “For receipt only”, such as was often seen in similar circumstances. There was a note of genuine conviction about the letters of protest, and therefore they carried considerable weight.

Furthermore, the matters of which the Master complained were not occasional issues that arose in the ordinary course of a competently-handled discharging operation. Normally, competent stevedores did not use slings that cut into bags. They did not drag bags around within the holds with the inevitable consequence that they suffered damage.

Whilst an occasional bag might fall into the sea or onto the quayside however competently a discharging operation was carried out, the frequency with which those incidents appeared to have happened in the present case could not be regarded as consistent with competent stevedoring activities. Similarly, intentional damage to cargo (and, even more so, theft of cargo) was completely incompatible with competent stevedoring operations.

Nor was the Master alone in his criticisms of the stevedores. Whilst the charterers had

criticised the comments made by the surveyors instructed on behalf of the owners as being obviously self-serving, the same could not be said of the surveyors instructed on behalf of the receivers' insurers. Their comments were essentially consistent with those of the owners' surveyors.

"Incompetence" involved a conclusion that there was a consistent course of conduct falling below what would be regarded as satisfactory in all the circumstances (*The Clipper Sao Luis* [2000] 1 Lloyd's Rep. 645 considered). Ultimately, the distinction between negligence and incompetence had to be as much a matter of impression on the evidence of the particular case as a matter of logical principle. It involved taking account of all relevant circumstances. Thus, an overall loss of less than 1% of a particularly sensitive cargo such as bagged white sugar would not in itself be regarded as evidence of incompetence.

However, the converse was not true and that the mere fact that no more than 1% of a cargo was damaged was not to be regarded as an indication that the stevedores handling it were not incompetent. Incompetence of stevedores might result in an overall degree of loss of less than 1%. It might equally well lead to a far greater percentage of loss. The degree of loss or damage to a particular cargo told one very little about the competence or incompetence of the stevedores responsible for its discharge.

If there was a distinction in principle to be drawn between negligence and incompetence it could only be on the basis that "negligence" was a term associated with a failure from time to time to carry out a particular task to the standard which was objectively to be expected. "Incompetence", on the other hand, was a term which would be appropriate only to a course of conduct which revealed a continuing failure to live up to the expected standard.

A distinction between the two clearly had to be drawn in the context of a clause such as clause 14 in the present case since if the two were to be equated, charterers under the Sugar Charter Party 1999 printed form could simply avoid any liability for

losses arising from the fact that they had appointed incompetent stevedores by saying that they were negligent.

Thus, even competent stevedores might be guilty of negligence from time to time. If they were, a charterer under the Sugar Charter Party 1999 would be protected by clause 14. The same might be true of incompetent stevedores, if their negligence was not to be regarded as part of their incompetence. But if it could be shown that the stevedores were incompetent and that it was such incompetence that caused damage, a claim might lie.

In the present case it was more than likely that even if the stevedores were in fact competent, there would have been a degree of "inevitable" loss or damage. If that was correct, then such a degree of loss or damage would have had to have been treated as the consequence of negligence rather than any incompetence. That would have meant that an apportionment had to be made between the degree of loss which had to be attributed to incompetence and the degree of loss which was attributable simply to negligence.

However, in the present case there was no evidence of the degree of loss that might be expected as an unavoidable consequence of the discharge of such a sensitive cargo at such a port at the relevant time. That being so, it was clearly inappropriate to attempt any apportionment on a broad brush basis by reference to the tribunal's own experience to reflect the fact that even if the stevedores were indeed competent, there would still have been a degree of loss.

Viewed objectively, the evidence suggested that all concerned regarded the discharge in the present case as thoroughly unsatisfactory throughout. That raised a presumption of incompetence and the charterers had adduced no evidence to rebut that presumption. Applying an objective test there was little doubt that the stevedores were incompetent.

Even if the charterers were unaware at the time (i.e. during the course of the discharge) of the letters of protest, that could not pro-

vide them with a defence to the claim for breach of the obligation to appoint competent stevedores. The requirement of notification contained in the additional sentence to clause 14 could not be regarded as a condition precedent to any liability that the charterers might face for breach of the implied term. But even if there was a breach of that requirement (because the Master had failed to ensure that the charterers were aware of the fact that the stevedores were not following his instructions), there were no legal consequences of that breach. If the receivers – who were responsible for the appointment (if not the selection) of the stevedores and who were certainly aware of their unsatisfactory performance – were unable to take steps to improve their performance in order to protect their own cargo, then the only assumption that could be made was that the charterers would have not been able to do any more. They could only have complained to the receivers – and if the receivers were unable or unwilling on their own initiative to do anything to improve the performance of the stevedores, then it hardly seemed likely that they could or would have done so just because the charterers had protested to them.

Accordingly, the charterers had failed to make good their case that if the stevedores were incompetent (and there was therefore a breach of the implied term) they could nevertheless not be held responsible for any such incompetence given the particular situation at the discharge port at the time.

The tribunal was satisfied that the owners had acted reasonably in concluding the settlement with the cargo receivers, and accordingly the owners were entitled to the damages claimed. ■■

Editor's Note: The above is a summary of a London Arbitration Award (No. 18/013) which appeared in Lloyd's Maritime Law Newsletter No. 889 of 31 December 2013 and which is reproduced by the kind permission of the publishers, Informa Law.



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Shelltime (1984) – ST additional clause 48 – Majors’ approvals – Impossible condition – Charterer’s wrongful cancellation – Owner’s damages

An interesting issue arose in a recent arbitration award. In a typical tanker time charter there is a clause dealing with majors’ approval of the performing vessel. The arbitrators were called upon to decide the meaning and scope of the word “approval”. What does an owner have to do to secure an approval from a major to comply with the charter party clause?

While this obviously will depend on the specific wording in the charter, oftentimes the clause will have wording similar to that set forth below which was contained in a charter between Falcon Carrier, as owner of the *Falcon Carrier* and ST Shipping and Transport dated 15 May 2008.

The charter was comprised of the 1984 Shelltime 4 form and more than 100 additional rider clauses. The additional rider clause most relevant to the principal issue in the arbitration was Clause 48, entitled “Approvals.” The clause provides as follows:

“The vessel shall hold at least 3 (three) out of the following oil majors: Conoco/Chevtex/Exxonmobil/BPAmoco/Shell/Statoil.

Owners further warrant that they will exercise due diligence to maintain vessel approved

by the oil company listed above. However, Charterers also recognize that oil company approvals are subject to the vessel’s trading pattern, Charterers early notification of discharge ports and oil company vetting inspectors availability. If during the Charter any of the approvals will be withdrawn or expired, Owners shall take necessary steps to rectify the faults and/or maintain acceptance.

Should Owners fail to maintain at least 3 (three) approvals out of Conoco/Chevtex/Exxonmobil/BPAmoco/Shell/Statoil, Charterers to notify Owners and Owners to have 45 (forty five) days after notification or 3 (three) discharge ports, whichever occurs later, to rectify same. If after such time vessel still fails to maintain at least 3 (three) oil companies approvals and that Charterers have made sufficiently early notifications of discharge ports and that oil company vetting inspectors have been available and that

inspections have actually taken place, only then Charterers have the option to cancel the Charter Party by giving redelivery notice latest by 1700 hours London the first day after expiry of 45 (forty five) days or negative results of inspection at the third discharge port has arrived whichever later.”

The clause does not specify what an “approval” is, and what steps an owner has to take to obtain an approval.

Background

By way of background, the development of approval clauses in charters began after the *Exxon Valdez* casualty in the late 1990s.

As a result of the *Exxon Valdez* pollution incident, the oil majors formed the Oil Company International Marine Forum (OCIMF) and charged it with the responsibility of generating a vessel computer data-

base for the pre-screening of tank vessels prior to their employment by member companies for loading and discharge operations at their terminals. OCIMF is an association of oil companies having an interest in the marine transportation and terminalling of petroleum products and is especially concerned with the prevention of pollution and the safe conduct of these operations.

Shortly thereafter, the OCIMF standardised the vessel inspection programme, creating Ship Inspection Reports (SIRE), which included a standard Vessel Inspection Questionnaire (VIQ). OCIMF trains and certifies SIRE inspectors who carry out vessel inspections, make findings and electronically post their findings. Subsequently, vessel owners/operators have 14 days to submit their comments to each and every negative finding. The report and its comments then become available to members of OCIMF on its website.

Prior to the pollution incidents involving the vessels *Erica* (sank off the coast of France in 1999) and *Prestige* (sank off the coast of Spain in 2002), the oil majors inspected tankers and recorded the results on the OCIMF SIRE database and also issued pre-fixtured blanket approval letters generally effective for six to twelve months. However, post-*Erica* and *Prestige*, the oil majors have refused to grant pre-fixtured blanket approvals and now merely acknowledge on the SIRE database that the vessel had been inspected.

The parties acknowledged that the post-SIRE inspection vetting review by the oil majors is very subjective and varies greatly from one oil major to another as well as within the same company. The vetting risk assessment of oil majors is based on a number of factors that vary from company to company. The generally applicable vetting standards take into consideration a number of factors that are not within the vessel owner's control or OCIMF's standards, such as geographic scope, vessel's age, specific cargo to be lifted, etc.

Owner arranged four SIRE inspections of the vessel in the interval between the lifting of subjects on 15 May 2008, at the inception

of the charter party, and re-delivery of the vessel on 3 March 2009 at Pennsauken on 3 March 2009. They were:

- BP at Sines, Portugal dated 25 May 2008
- Chevron at NYC dated 20 June 2008
- Shell at Quintero Chile, dated 5 September 2008
- BP at San Vicente, Chile dated 5 December 2008

Charterer considered these inspection reports to be insufficient to satisfy owner's obligations under Clause 48. On 7 February 2009, charterer issued its second notice of cancellation (an earlier one had been withdrawn) and the vessel was prematurely redelivered at Pennsauken on 3 March 2009. Due to market conditions, owner's efforts to mitigate damages, while reasonable, were not sufficient to cover the difference between the charter rate and the then market rate. Therefore the owner claimed the lost hire less the mitigation earnings. Charterer denied any liability asserting that the vessel did not have the required approvals (There were other minor disputes not related to the Clause 48 issues.)

Both sides agreed that the oil majors no longer issue approvals but differed strongly as to how Clause 48 should be read.

The arbitrators stated that there were two ways to look at the clause.

"Given the fact that Clause 48, which was ST Shipping's form, created a condition that was impossible to meet, a strong argument could be made that the clause should be considered null and void. However, since a vessel's ability to be accepted to carry the cargo contemplated by the charterer is of great importance to the charterer, an effort should be made to find some reasonable meaning to the Oil Major approval requirement of Clause 48."

Owner argued that a vessel should be deemed to meet the Clause 48 requirements of a specific major approval when it has passed the SIRE inspection and there are no open comments and the major has no further questions. Owner asserted that it had the necessary three approvals required by the charter.

Charterer contended that the proper way to read Clause 48 is that the owner must show that the vessel was actually approved by a major for specific voyage(s). The arbitrators rejected this argument:

Clause 48 provides owner with the time and opportunity to have additional SIRE inspections performed before the vessel can be redelivered [by charterer for breach by owner] It does not mention an actual acceptance of the vessel for a voyage by an oil major. Since it is ST Shipping that controls the vessel's employment and the actual tendering of the vessel to a particular oil major, ST Shipping's construction of Clause 48's provision of time for additional SIRE inspections provides no protection for owner, since owner would have no way to compel ST Shipping to offer the vessel to any oil major for a voyage and no way of knowing that the vessel had been rejected by an oil major that had previously approved it.

With this standard in mind, we turn to the questions whether the *Falcon Carrier* had the three oil major approvals in February 2009 when ST Shipping gave notice of cancellation and early re-delivery.

The vessel did have approvals from BP and Shell in February 2009. The SIRE inspections had been successful and each of the companies indicated that additional inspection would not be needed until a future time. At that point, owner had done all in its power to obtain the approval, and it was likely that the vessel would be accepted at least for some voyages by those companies.

The fact that BP was awaiting a CAP Report or a TSMA from the owner did not mean that the vessel was not generally approved, as is evident from the fact that BP subsequently employed the vessel. Similarly, the fact that Shell wanted to arrange an inspection of owner's office before approving the vessel for an environmentally sensitive voyage did not negate its general approval of the vessel.

While there is no record of any other current SIRE inspection that would indicate approval of the vessel by a third oil major in February 2009, the record indicates

that some oil majors may employ the vessel based on recent SIRE reports that are posted on the OCIMF website. In connection with a ST Shipping sub-charter party dated 23 January 2009, ST Shipping stated that the vessel was not unacceptable to ExxonMobil/Shell/BP/StatoilHydro.

While ST Shipping attempts to denigrate the significance of this admission by again arguing that it could only rely on information provided by owner, the owner had not made any representation with respect to ExxonMobil or Statoil at that time. Since ST Shipping was marketing the vessel, it was in the best position to know which oil majors would find the vessel acceptable. Having represented to one of its customers that the vessel was acceptable to ExxonMobil and Statoil in January and February 2009, ST Shipping cannot be heard to assert in this proceeding that the vessel was not acceptable to those oil majors.

Thus, the Panel finds that in February 2009, the vessel had the requisite Clause 48 approvals.

Conclusion on liability

As the discussion above indicates, the Panel finds that ST Shipping breached the charter by its cancellation and early re-delivery of the vessel at a time when the vessel possessed the necessary three oil major approvals and was in full compliance with Clause 48.

Damages

The owner based its claim on the difference in what the vessel would have earned from 9 March 2009, to 26 April 2010, under the Charter and what it did, in fact, earn under the mitigation voyages. At the time the tanker market was very volatile, depressed market. The charter hire was USD 21,500 per day for 418 days totalling USD 8,874,662, from which it deducted the actual net earnings of USD 2,579,981 for a loss of USD 5,760,405.

Charterer challenged this figure asserting that the owner's mitigation efforts were inadequate and ineffective. Its expert witness entered into evidence a theoretical triangulation matrix which owner should have followed. Also, the ability to trade the

vessel at better rates was hampered by its failure to have major's approvals.

The Panel rejected these arguments.

It has been stated that mitigation efforts should not be viewed with the benefit of hindsight and, likewise, there is a multitude of court and arbitration decisions holding that damages need not be proven with precision, but that a reasonable approximation is sufficient (*The Pergamos*, SMA 3578 [1999]).

In the *Tbilisi* arbitration (SMA 3935 [2006]), the panel decided that while the claimant has the burden of proving it exercised reasonable efforts to mitigate its damages, it need not prove its mitigation was the best and most effect, only that it was reasonable. Thereafter, it is the defendant's burden to show that the mitigation efforts were palpably unreasonable. The *Tbilisi* panel went on to state that it was unable to conclude that the mitigation was so unreasonable as to warrant a reduction of the claim.

ST Shipping's expert provided a recommended trading pattern which the *Falcon Carrier* should have followed to achieve maximum results in her mitigation efforts. The triangulation matrix suggested (Exhibit 24 to his report) is nothing new; this concept gave rise to the development of OBOs (ore-bulk-oil carriers), which, by their different cargo-carrying capabilities, would be able to minimize non-revenue-producing ballast legs and maximize the laden voyages to produce optimum revenues. However, under the prevailing poor market conditions combined with a surplus of newer and available competing vessels (compared with the 1992-built single-purpose *Falcon Carrier*) made the triangulation concept a theoretical exercise but not a realistic business model to be applied in the poor market which followed the cancellation.

The Panel accepted owner's calculations and awarded damages, including an allowance for legal fees, as discussed above. ■

Parties

Falcon Carrier Shipping, Ltd., as owner of the M/V *Falcon Carrier*, claimant, and ST



Patrick V. Martin

Shipping and Transport, Pte. Ltd., time charterer, and Glencore, Ltd., as guarantor, respondents, under a time charter party, dated 15 May 2008, on the Shelltime 4 1984 Form, as amended.

Before

Manfred W. Arnold, Jack Berg and the Hon. John S. Martin, Chairman.

Appearances

Falcon Carrier Shipping, Ltd.
Cichanowicz, Callan, Keane,
Vengrow & Textor LLP
James M. Textor, Esq.

ST Shipping and Transport, Pte. Ltd.
Glencore, Ltd., as Guarantor
Clyde & Co. US LLP
John M. Woods, Esq.
William M. Cooney, Esq.

(Society of Maritime Arbitrators (SMA)
Award No. 4217, dated 20 September 2013)

Editor's Note: Readers are referred to summary of the Rowan Court of Appeal judgment, which appeared in BIMCO Bulletin 3/2012 and which also considered the concept of "approval of majors".

This summary has been prepared by Patrick V. Martin, Esq., counsel to the Society of Maritime Arbitrators of New York (SMA).



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