

Alistair Johnston – CJC London
Paul Martin – CJC Singapore

Campbell Johnston Clark

www.cjclaw.com

LOSS OF SHIPS' RECORDS



Introduction

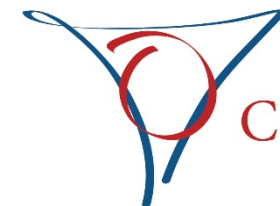
- Types of Ships' Records
- Legal Obligations – disclosure
- Identifying What happened & Cause
- Claims under the Policy
- Recourse & Defence
- Evidence of compliance with regulations

Types of Records

- 1) Operational
- 2) Mandatory
- 3) Supplementary / Contemporaneous

1) Operational Records

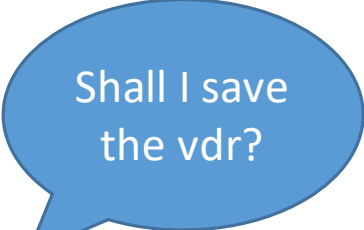
- Maintenance, requisitions, training (Electronic if allowed by flag state)
- Log books – official, deck, engine room, GMDSS, bell books
(GREAT WEIGHT ATTACHED TO THESE CONTEMPERANEOUS RECORDS)
- Automatically recorded – “OLD FASHIONED”
- Automatically recorded – ECDIS & VDR



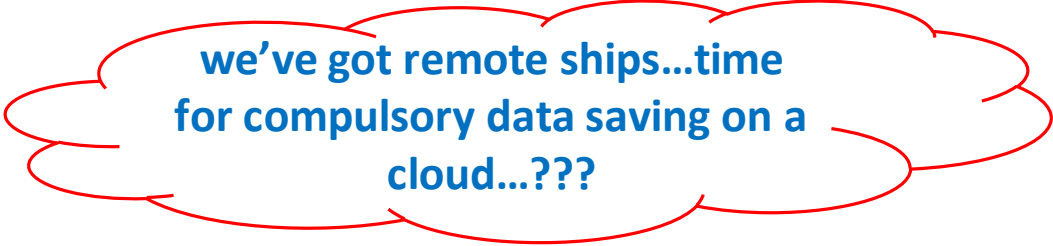
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Computerised Shipboard Records

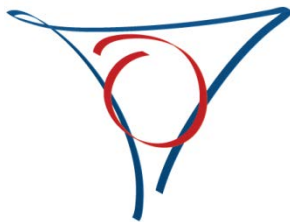
- Vulnerable to data loss, viruses and cyber crime
- Sometimes require active intervention...



Shall I save
the vdr?

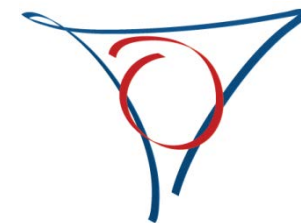


we've got remote ships...time
for compulsory data saving on a
cloud...???



“Old Fashioned’ Automatic Logging

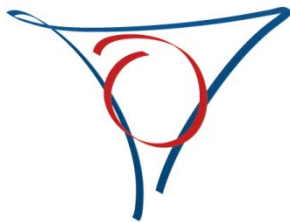
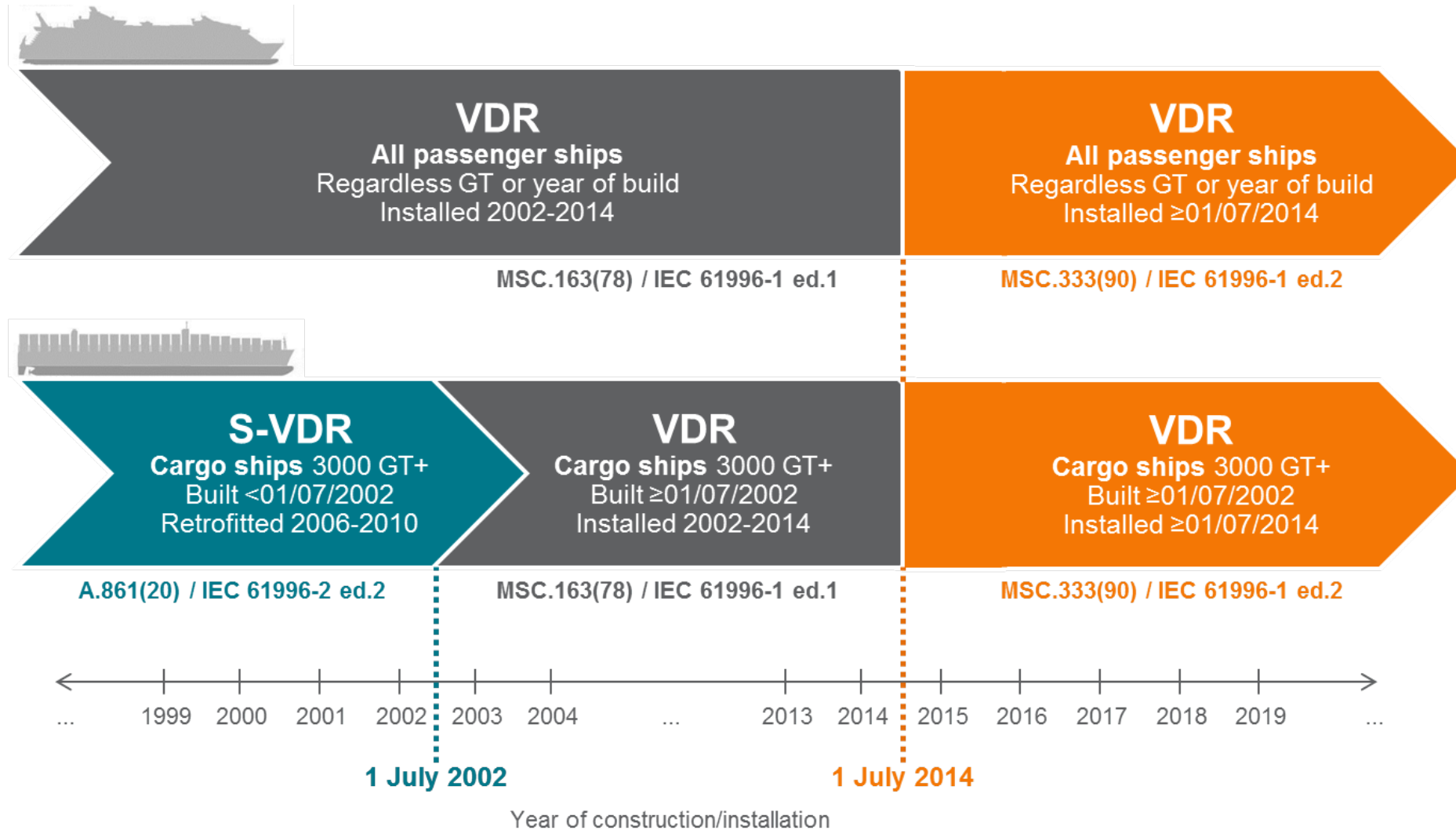




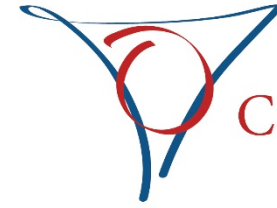
Voyage Data Recorder

VDR	S-VDR
• Date and Time (GPS) • Ship's Position (GPS) • Speed (Speed Log) • Heading (Gyro Compass) • Bridge Audio & VHF Communications	• Date and Time (GPS) • Ship's Position (GPS) • Speed (Speed Log or GPS) • Heading (Gyro Compass) • Bridge Audio & VHF Communications
• Radar Display Image	• Radar Display Image and/or AIS (can substitute AIS for Radar Display with class waiver)
• Water Depth (Echosounder) • Wind Speed and Wind Direction • Main alarms (as required by class) -Steering Alarms -Engine Alarms -Fire Detection Alarms • Rudder Order and Response • Heading Keeping Information • Engine Order and Response • Ship Control and Indication Statuses • Hull Openings, Watertight and Fire Door Status (if fitted) • Accelerations and Hull Stresses (if fitted)	• Any other Serial (NMEA) format per IEC 61162

Voyage Data Recorder



Voyage Data Recorder

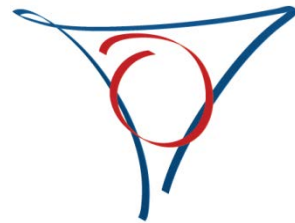


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What period of time is “saved” on the fixed capsule when a vdr button is pressed:

- **6 hrs**
- **12 hrs**
- **24 hrs**
- **48 hrs**





NW-6860-1000
Fixed Capsule



NW-6880
Float Free
Capsule



NW-6000
Core Module

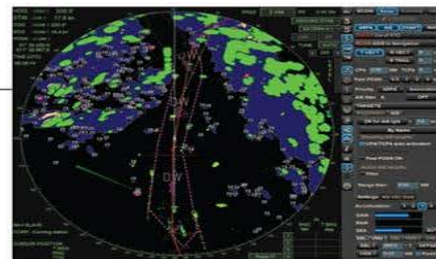


NW-6010
Bridge Control Unit
(BCU)



NW-64xx
Data Acquisition Unit (DAQ)

NW-6060
VHF interface



Radar 2x



ECDIS 2x



NW-6020
PoE indoor
Microphones

NW-6021
PoE outdoor
Microphones

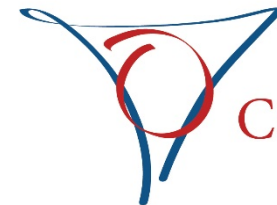
No VDR - impact



In any case, failure to save the VDR can give rise to a suspicion of guilt.

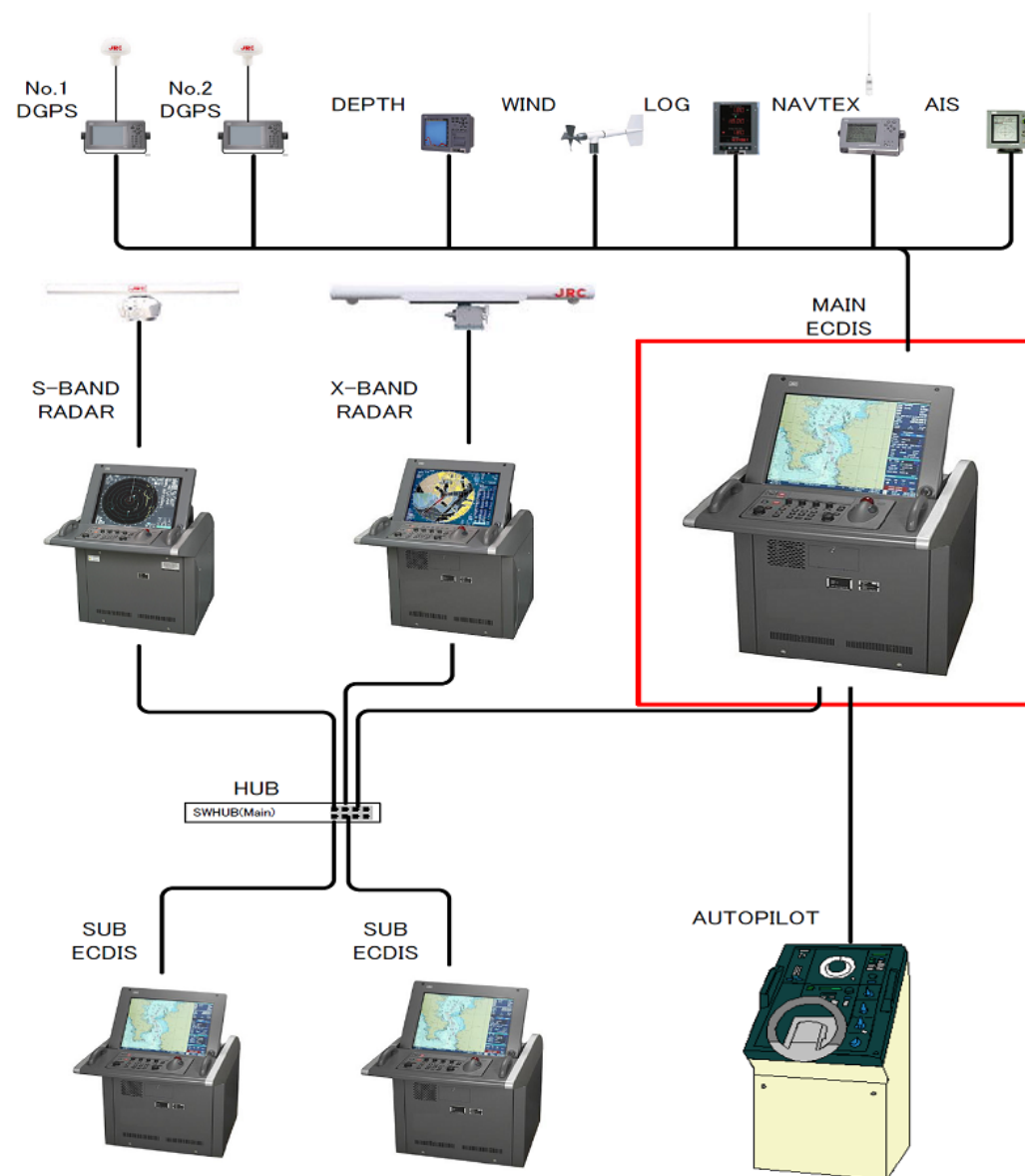
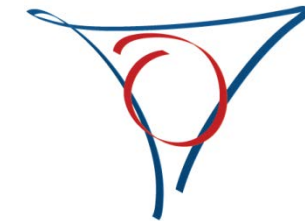
Costs will be increased due to the need to collect detailed statements and other evidence to establish course etc.

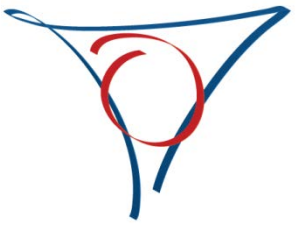
Settlement becomes more difficult/expensive if the VDR data has been lost.



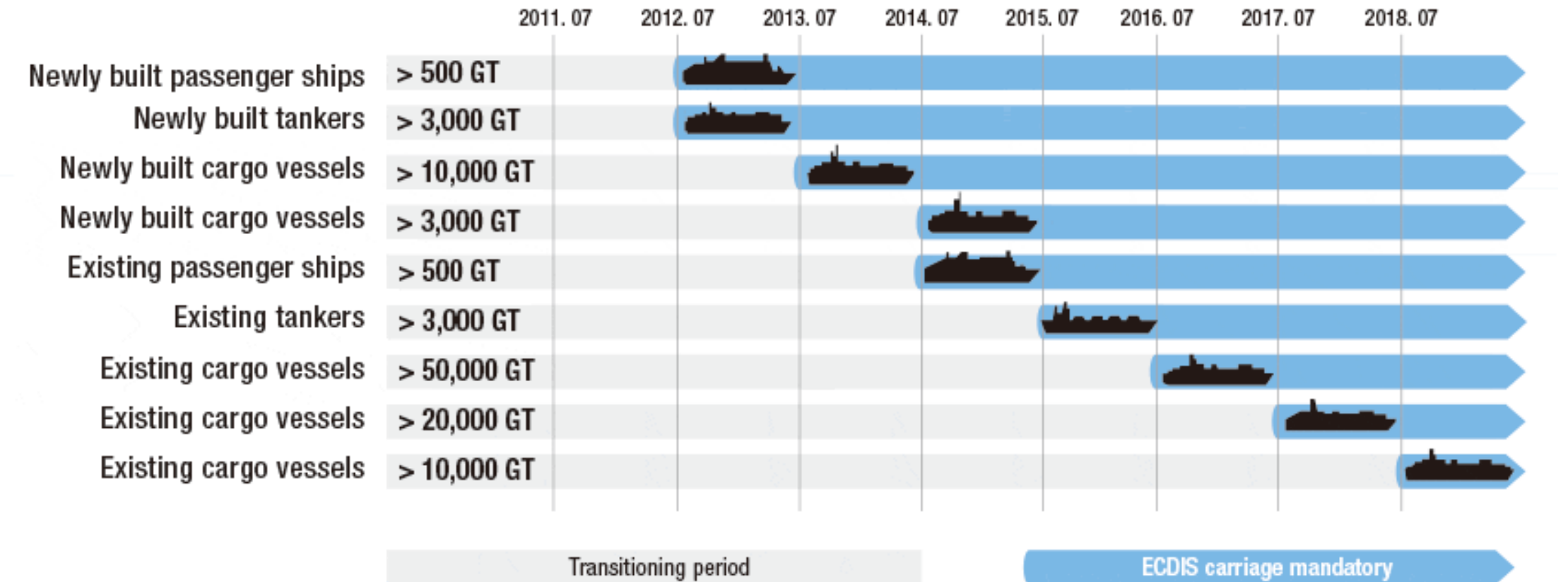
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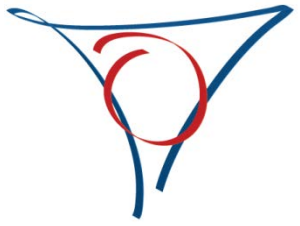
ECDIS





ECDIS





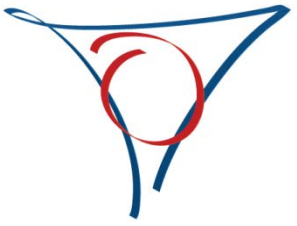
ECDIS

For 12 HOURS at 1 MINUTE INTERVALS -

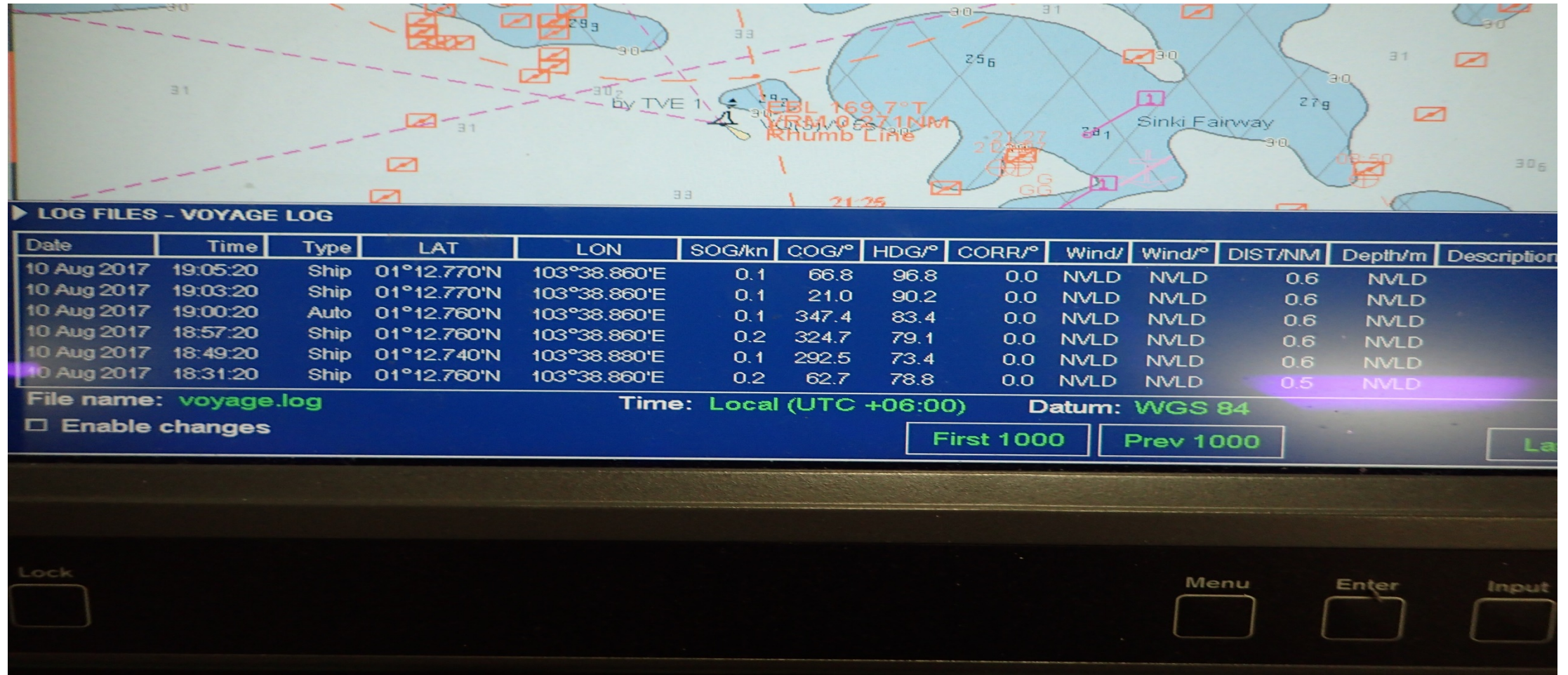
- Required to record own ship's past track - time, position, heading and speed and
- Required to record official data used – ENC source, edition, date, cell, update history

Also – complete track for the entire voyage with time marks not exceeding 4 hour intervals

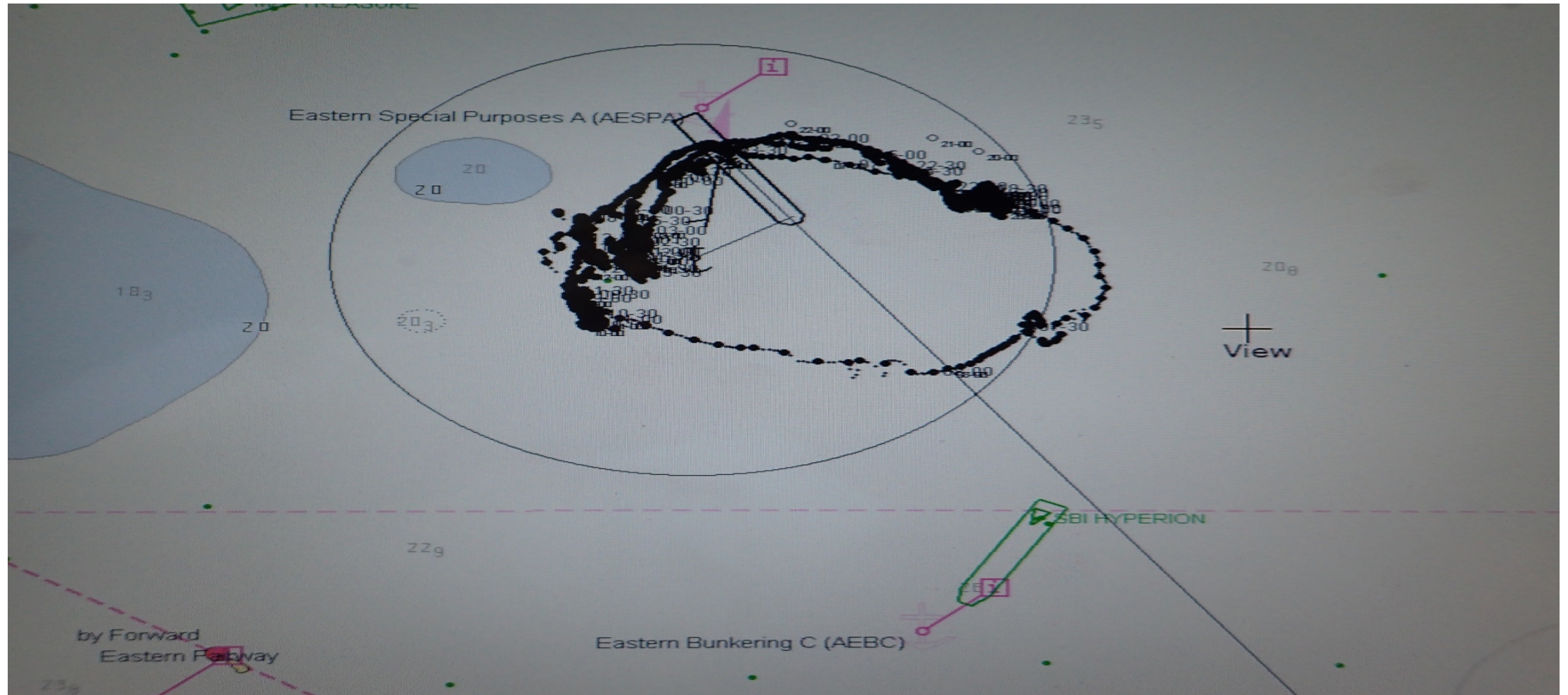
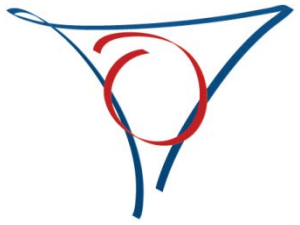
Should not be possible to manipulate or change the recorded information.



ECDIS VOYAGE LOG



ECDIS REPLAY

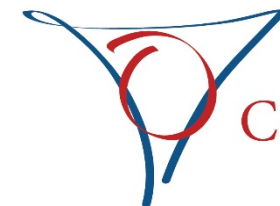


Other sources of electronic records

- GPS
- Echo Sounder
- NAVTEX
- 3rd Party Providers (e.g. AIS and VHF records)

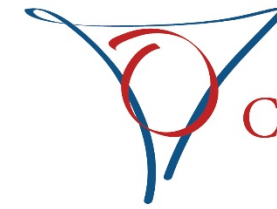
2) Mandatory Records

- International Tonnage Certificate
- International Load Line Certificate
- Intact stability booklet; damage control booklets
- Minimum safe manning document
- Certificates for masters, officers or ratings
- International Oil Pollution Prevention Certificate; Oil Record Book;
- Shipboard Oil Pollution Emergency Plan
- Garbage Management Plan
- Garbage Record Book
- Cargo Securing Manual
- Document of Compliance
- Safety Management Certificate (ISM Code)



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Port State Control



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Deficiencies Top 20

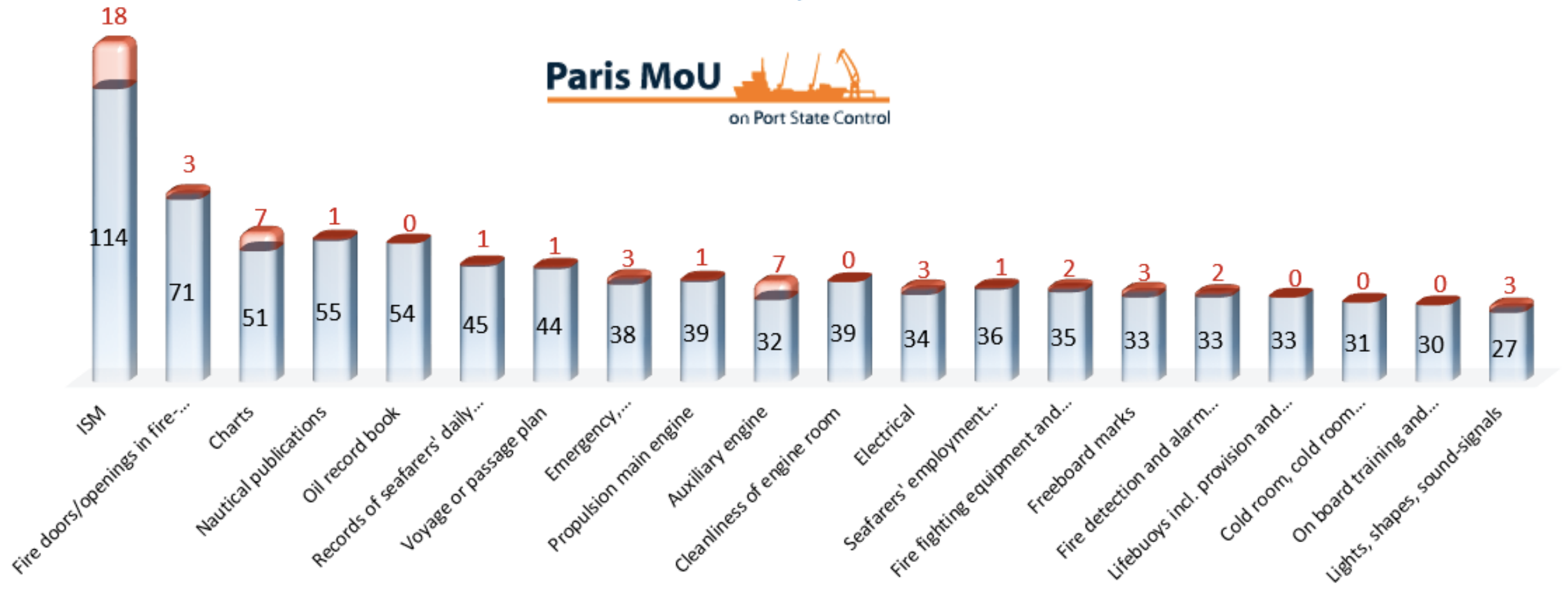
Paris MoU



on Port State Control

■ Nr of Deficiencies

■ Nr of Detainable deficiencies



Port State Control & STCW

- 1) Examine all certification (as well as equipment)
- 2) Verify crew in accordance with safe manning certificate
- 3) Checking Watch keeping procedures including rest periods are being observed

STCW



REPUBLIC OF THE PHILIPPINES

CERTIFICATE ISSUED UNDER THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED

The Government of the Republic of the Philippines certifies that

has been found duly qualified in accordance with the provisions of

REGULATION II/2, IV/2

of the above Convention, as amended, and has been found competent to perform the following functions, at the level specified, subject to any limitation/s indicated until the date of expiry of this Certificate. The lawful holder of this Certificate may serve in a capacity or capacities specified in the applicable safe manning requirements of the Administration. The original of this Certificate must be kept available in accordance with Regulation I/2, paragraph 11 of the Convention while serving on a ship.

FUNCTION	LEVEL	LIMITATION/S APPLYING (IF ANY)
Navigation	MANAGEMENT	N/A
Cargo handling and stowage		
Controlling the operation of the ship and care for persons on board		
Radiocommunications	CAPACITY	N/A
MASTER MARINER		

Date of Issue: January 24, 2017
Date of Revalidation: January 24, 2022
Date of Expiry: January 24, 2022
Certificate Number: 34-20070

MARINA

MARITAL QUIRINO C. AMARO W. PhD.
Administrator
MARITIME INDUSTRY AUTHORITY

Date of birth of certificate holder
Signature of the holder of the Certificate

SN 3627782

THE REPUBLIC OF LIBERIA

LIBERIA MARITIME AUTHORITY

ENDORSEMENT NUMBER: 1062955

LICENSE OF COMPETENCE TO MERCHANT MARINE OFFICER

ENDORSEMENT ATTESTING THE RECOGNITION OF A CERTIFICATE UNDER THE PROVISIONS OF THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978, AS AMENDED

The Government of the Republic of Liberia certifies that Certificate No. 34-20070 issued to [REDACTED] by or on behalf of the Government of PHILIPPINES, is duly recognized in accordance with the provisions of Regulation I/10 of the above Convention, as amended. The lawful holder of this Endorsement may serve in the capacity of MASTER, REGULATION II/2, specified in the applicable safe manning requirements of the Administration, at the following functions with the levels specified, subject to any limitations indicated until 24 JANUARY 2022.

FUNCTION & LEVEL	QUALIFICATIONS & LIMITATIONS APPLYING (IF ANY)
NAVIGATION	MANAGEMENT REGULATION II/2 VALID ON SHIPS OF 500 GROSS TONNAGE OR MORE AS PER SECTION A-II/2, PARA. 1 - 7. VALID ON SHIPS FITTED WITH AUTOMATIC RADAR PLOTTING AIDS (ARPA), INCLUDES RADAR OBSERVER. PER SECTION A-II/2, PARA. 1 - 7. VALID ON SHIPS FITTED WITH ELECTRONIC CHART DISPLAY & INFORMATION SYSTEMS (ECDIS) AS PER SECTION A-II/2, PARA. 1-7. INCLUDES BRIDGE RESOURCE MANAGEMENT AS PER STCW REGULATION II/2
CARGO HANDLING & STOWAGE	MANAGEMENT REGULATION VI/1 NOT VALID FOR SERVICE ABOARD CHEMICAL, LIQUEFIED GAS, & OIL CARGO TANKERS UNLESS SUCH ENDORSEMENTS ARE ISSUED IN LIBERIAN SIRB.
CONTROLLING THE OPERATION OF THE SHIP & CARE FOR PERSONS ON BOARD	MANAGEMENT REGULATION VI BASIC TRAINING, SECTION A-VI/1-2 VALID AS ADVANCED FIREFIGHTER, SECTION A-VI/3. VALID AS MEDICAL CARE PERSON, SECTION A-VI/4, PARA. 4- 6. VALID AS FIRST AID PROVIDER, SECTION A-VI/4, PARA. 1- 3. VALID AS PROFICIENT IN SURVIVAL CRAFT, SECTION A-VI/2, PARA. 1- 4.
RADIOCOMMUNICATIONS	MANAGEMENT REGULATION IV VALID AS GENERAL OPERATOR- GMDSS, SECTION A-IV/2; SECTION B-IV/2; PARA. 29- 36.

This Endorsement is issued by authority of the Commissioner of Maritime Affairs.

Endorsement No. 1062955 issued on 11 APRIL 2017 FIN: [REDACTED]

Chief, Seafarer's Certification & Documentation

Margaret Ansumana
Deputy Commissioner of Maritime Affairs, R.L.

REPUBLIC OF LIBERIA

Signature of the holder of this Endorsement

Date of Birth of the holder of this Endorsement

NOTE: The original of this Endorsement must be kept available in accordance with Regulation I/2, paragraph 11 of the Convention while serving on a ship. This Endorsement and all Qualifications are only valid so long as the National Certificate and any training certificates, on which they are based, are current and valid.

RLM-105Da M 10/12

RECORDS OF HOURS OF REST (MLC, 2006)

NAME OF SHIP: [REDACTED]

SEAFARER'S NAME, RANK: [REDACTED]

Month and Year: AUGUST 2017

IMO Number: [REDACTED]

Flag of Ship

LIBERIA

Position / Rank: SECOND MATE

Watch Keepers: YES ☒ 1 NO ☐ 1

MLC-108, Regulation 10.341 and MLC-003, 3.3 & 3.4 governing limitations on maximum working hours or minimum hours of rest period apply on this ship. The following collective agreement(s) permitting exceptions to the minimum rest periods apply on this ship:

Date	Please mark period of work or rest, as applicable, with an X																								Hours of rest, in 24-hours period	Comments	Not to be completed by the seafarer (2)				
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23			24	Hours of rest, in any 24-hours period (3)	Hours of rest, in any 7-day period (3)		
01-08-17																											0	AT ANCHOR	0	0	
02-08-17																											0	AT ANCHOR	0	0	
03-08-17																											0	AT ANCHOR	0	0	
04-08-17																											0	AT ANCHOR	0	0	
05-08-17																											0	AT ANCHOR/DUELS	0	0	
06-08-17																											0	AT ANCHOR/DUELS	0	0	
07-08-17																											0	AT ANCHOR	0	0	
08-08-17																											0	AT ANCHOR	0	0	
09-08-17						X	X	X	X	X	X						X	X	X	X	X	X	X	X	X	X	14	AT ANCHOR	14	14	
10-08-17						X	X	X	X	X	X						X	X	X	X	X	X	X	X	X	X	14	AT ANCHOR	14	28	
11-08-17						X	X	X	X	X	X	X	X														8	SHIFT TO ALPHA	8	36	
12-08-17																											0	SHIFT TO KUTUBHA	0	36	
13-08-17																											0	AT ANCHOR	0	36	
14-08-17																											0	AT ANCHOR	0	36	
15-08-17																											0	AT ANCHOR	0	36	
16-08-17																											0	AT ANCHOR	0	32	
17-08-17																											0	AT ANCHOR	0	8	
18-08-17																											0	AT ANCHOR	0	0	
19-08-17																											0	AT ANCHOR	0	0	
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27-08-17																											0	AT ANCHOR	0	0	
28-08-17																											0	AT ANCHOR	0	0	
29-08-17																											0	AT ANCHOR	0	0	
30-08-17																											0	AT ANCHOR	0	0	
31-08-17																											0	AT ANCHOR	0	0	
TOTAL																											36		TOTAL		36

I agree that this record is an accurate reflection of the hours of work or rest of the seafarer concerned.

Name / Signature of Master or Authorized Person to sign this record

Signature of Seafarer

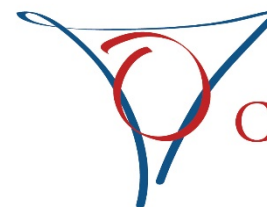
Date: 31 AUG 2017

A copy of this record is given to the seafarer. This form is subject to examination and endorsement under procedures established by the Flag State. * Please mark only hours of rest.

(1.) Check as appropriate (2.) For completion and use in accordance with the procedures established in MLC-003/3.316 (3.) Additional calculations or verifications may be necessary to ensure compliance with the requirements of the

Convention on Standards of Training, Certification and Watch-keeping, 1978 as amended

Records of hours of rest

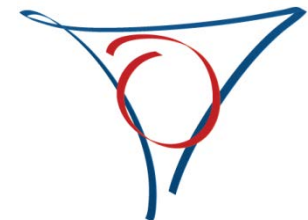


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Annex C – Summary of requirements

Note: The certificate(s) a seafarer needs to hold depends on the function(s) and level of responsibility held on board. This table is just a guide indicating what are the likely certificates required by rank according to common shipboard work practices. To find out the exact requirement that apply, readers are strongly advised to refer to section 2 in this guide, to the STCW Convention and to the maritime Administrations of both the country issuing the certificate(s) and, if different, of the flag State of the ship where the seafarer intends to work.

Category	STCW title	2010 amendments	Master	Chief officer	Officer in charge of navigation	Radio officer	Chief engineer	Second engineer	Officer in charge of maintenance	Electrical officer	Electrical rating holder	Cadets	Boat crew	Watchstander	AB or deck crew	OS/V	Deck crew	Electrical rating holder	Pump operator	Watchstander	AB or deck crew	Electrical rating holder	Engine room crew	Chief cook	Cooling	Steward	All personnel	Director of operations
Main Certificate	Certificate of competency	New certificates	◆	◆	◆	A	◆	◆	◆	◆																		◆
	Certificate of proficiency	New certificates	◆	◆	◆		◆	◆	◆	◆					◆			◆			◆							
	Endorsement	No change	◆	◆	◆		◆	◆	◆	◆								◆										
	Watch keeping certificate for ratings	No change												◆	◆			◆		◆								
	Endorsement of recognition, foreign flag	No change	◆	◆	◆		◆	◆	◆	◆								◆		◆								
	Medical fitness	Revised	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
Catering	Certificate of qualification as cook	ILO requirement																						◆				
Basic safety training evidence	Personal survival techniques	No change	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
	Fire fighting	No change	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
	Elementary first aid	No change	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
	Personal safety and social responsibility	No change	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
Familiarisation	Ship specific familiarisation	No change	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
	Security familiarisation	New requirement	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆
Personnel assigned with other safety or security functions	Proficiency in survival craft and rescue boat	Five year refresher	◆	◆	◆	D	◆	◆	◆	D			◆		◆													
	Fast rescue boat	Five year refresher	D	D	D		D	D	D				D		D													
	Advance fire fighting	Five year refresher	D	D	D		D	D	D																			
	Medical first aid	Guidance update	D	D	◆		◆	◆	◆																			
	Medical care	Guidance update	◆	◆																								
	Ship security officer	New requirement	D	D			D	D																				
	Security awareness or security training	New requirement	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D	D
ARPA, RADAR GMDSS	ARPA (if fitted)	No change	◆	◆	◆																							
	Radar	No change	◆	◆	◆																							
	GMDSS–ROC or GOC	No change	◆	◆	◆	◆																						
Personnel on tankers cargo operations	Basic training on oil and chemical tankers	New format	◆	◆	◆		◆	◆	◆	◆			◆		◆	D			◆		◆							
	Advanced training for oil tankers	New format	◆	◆	D		◆	◆	D				D						D									
	Advanced training for chemical tankers	New format	◆	◆	D		◆	◆	D				D						D									
	Basic training on oil & chemical tankers for ratings	New format	◆	◆									◆	◆	◆	◆	◆	◆	◆	◆	◆							
	Basic training for officers on liquefied gas tankers	New format	◆	◆	◆		◆	◆	◆	◆																		
	Basic training for ratings on liquefied gas tankers	New format	◆	◆	◆		◆	◆	◆	◆	◆																	
	Advanced training for liquefied gas tankers	New format	◆	◆	D		◆	◆	D	◆			D						D									
Personnel on passenger ships	Crowd management	No change	D	D	D	D	D	D	D	D	D	D	D	D	D				D	D	D			D	D	D	D	D
	Safety training	Amended																							◆		◆	◆
	Passenger safety	No change	◆	◆			◆	◆																			D	D
	Crisis management & human behaviour	No change	◆	◆			◆	◆																			D	D
Training	Training record book	No change	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆	◆

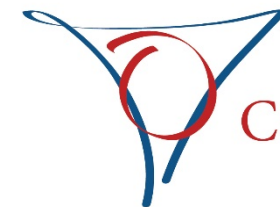


No/Incomplete mandatory records - impact

An unqualified or incompetent crew means the ship is unseaworthy.

Cargo claims: the carrier cannot prove due diligence

Hull insurance: lack of control over recruitment may amount to privity in the unseaworthiness of the ship?

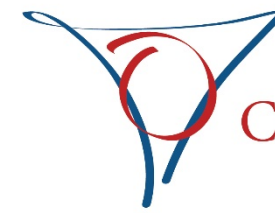


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3) Supplementary / Contemporaneous

At the time of an incident;

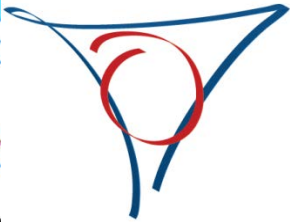
e.g. photos, videos, sound recordings of an incident



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SCENARIO





What we know...(recap)



- MV GIBNEY outbound from Southampton to Rotterdam
- Almost fully laden
- Turns to starboard at North End of Thorn Channel
- Loss of Steering Control
- MV GIBNEY grounds at 12 knots opposite the Thorn Knoll Buoy
- MV GIBNEY is hard aground and stern is encroaching channel
- Temporary movement restriction of other vessels is put in place by the Harbour Master
- Salvage assistance required
- GA declared

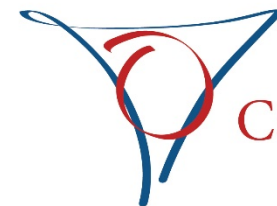
Legal Obligations...the duty of disclosure...

- Civil Procedure Rules...

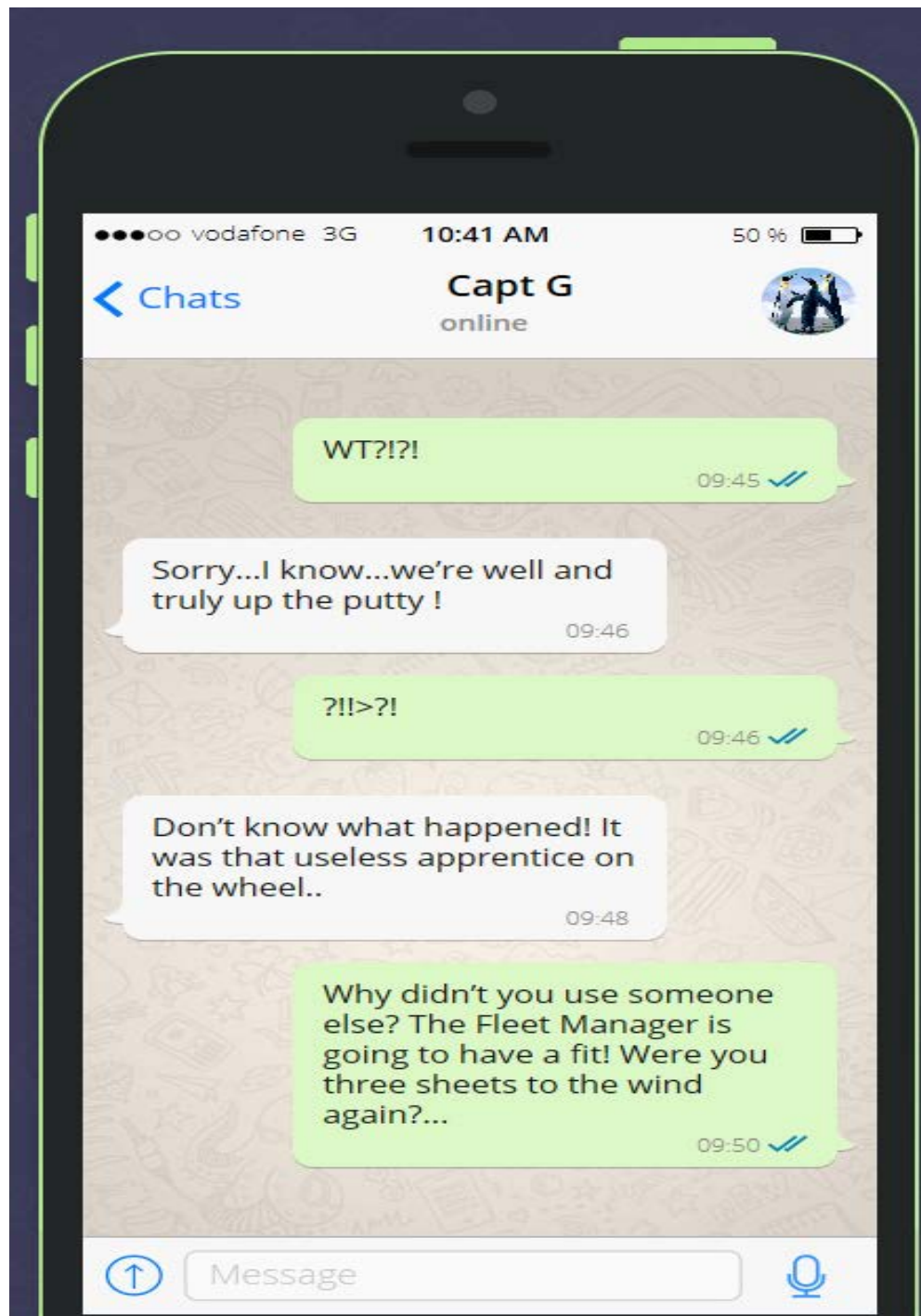
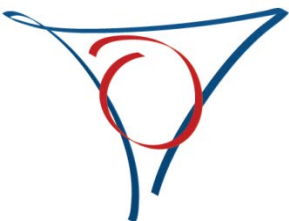
- Documents on which rely...adversely affect own case/other party's case...support other party's case...

- Physical & Electronic Disclosure

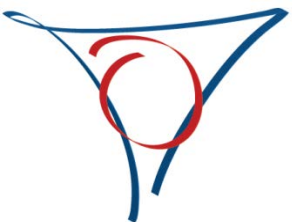
- **Electronic disclosure**, including e-mail and other electronic communications, word processed documents and databases. In addition to documents that are readily accessible from computer systems and other electronic devices and media, the definition covers those documents that are stored on servers and back-up systems and electronic documents that have been 'deleted'. It also extends to additional information stored and associated with electronic documents known as metadata. databases.



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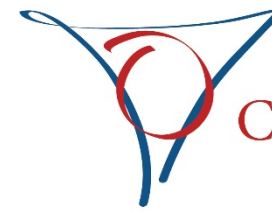
“DOCUMENTS”?



“DOCUMENTS”?



*Is a whats app chat
disclosable?*



“Documents”

- CPR:

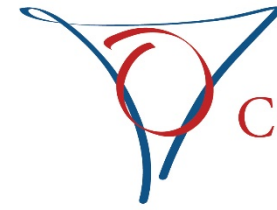
“anything in which information of any description is recorded”

- Broad definition

- Not restricted to hard copy documents or obvious electronic sources

Documents include...

- Photographs, tape recordings, VDR
- Emails, instant messaging, sms, voicemail
- Deleted items
- Information on mobiles and memory sticks
- Metadata
- Meeting notes
- Etc.

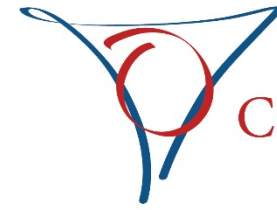


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*You send your surveyor on
board...s/he takes
photographs of the
casualty...*

***are those photographs
disclosable?***



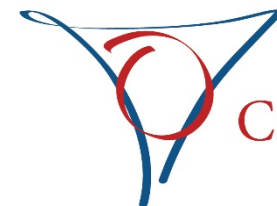
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*Your solicitors send a
solicitor-investigator
onboard – s/he takes
photographs of the
casualty –
are these disclosable?*

Failure to preserve records...

- Adverse Inferences
- Court sanctions include:
 - Costs penalties
 - Striking out points of claim or defence
 - Drawing adverse inferences as to documentary contents
- Problems establishing claim
- Problems with proving loss / defence
- Problems establishing seaworthiness...loss of defences..
- Port & Flag State problems...fines...
- Costs!!



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Non disclosure - impact

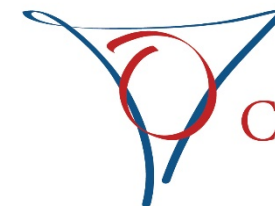
Adverse inferences may be drawn.

In plain language:

You must have destroyed the evidence because you know you're guilty!

Costs will be wasted by the other side trying to find documents that don't exist.

Even if you are in the right, you may (1) lose or (2) incur unnecessary costs to prove your case.



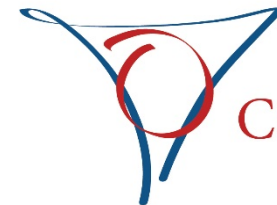
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Insured Peril?

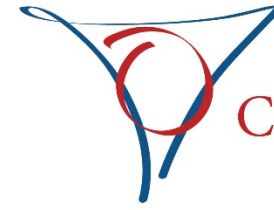
- Burden of proof on assured to demonstrate that casualty caused by insured peril

Subrogated Proceedings

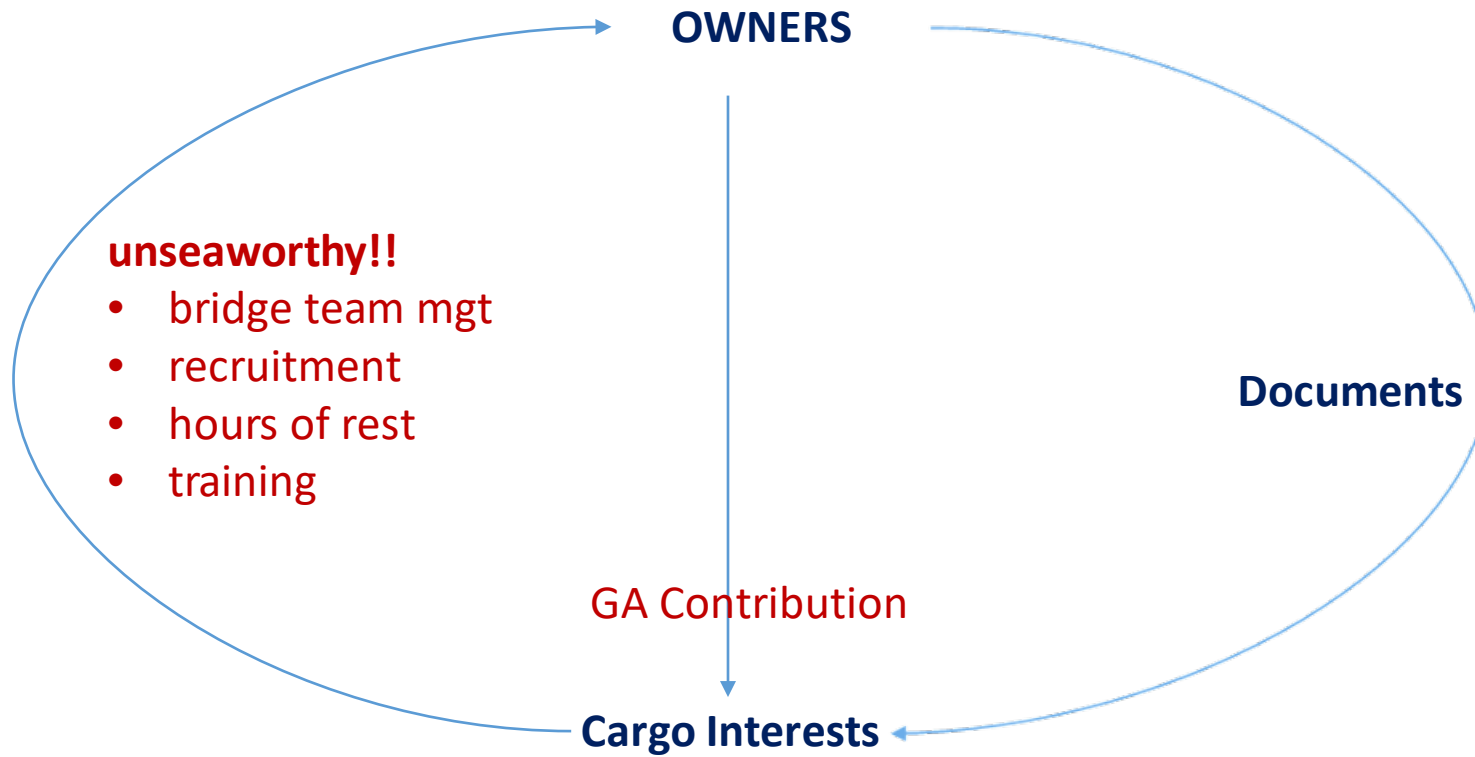
- Implied duty on assured not to prejudice insurers' subrogated rights
 - Contractual duty of cooperation?
- Scope of implied duty- at least a duty not to actively prejudice insurers' subrogated rights



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GA Contributions



What to do in the event of a grounding?

- Preserve VDR / S-VDR / ECDIS data
- Collect and retain:
 - Operational records, particularly log books
 - Mandatory records – e.g. hours of rest
 - Supplementary / Contemporaneous – e.g. photos

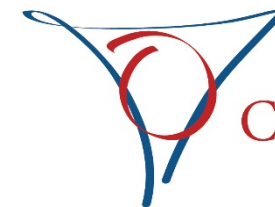


No records – the wider impact

Increases the risk of criminal sanctions and reputational damage.

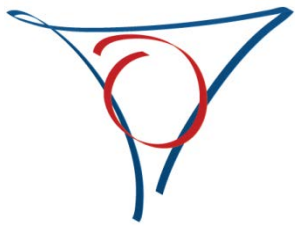
Makes loss prevention for the future more difficult – investigating the cause of accidents is as much about the future as the past.

Is relevant to underwriting assessment.



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Any Questions?



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