



International trends regarding the placement and management of port risk

18 September 2015

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The Problem



Accidents are not always decreasing as our ports grow busier, despite...

- A growing international fear of legal action
- A greater understanding of health & safety
- More legislation, policies and procedures than ever before

The Problem



Accidents are extremely expensive

- On workers
- On reputation
- On the bottom line

Statistics (Harbour Master survey)



We surveyed 34 Harbour Masters globally:

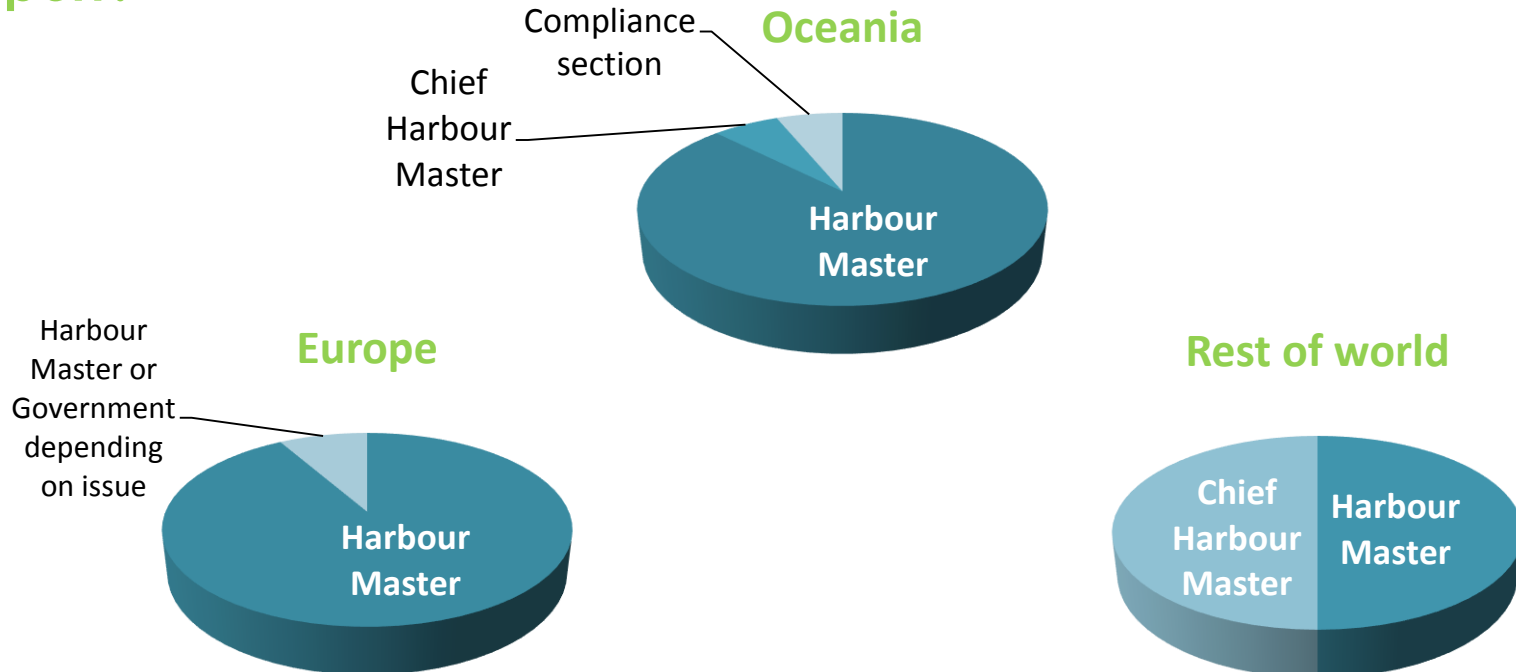
- Europe (Ireland to Finland) - 14 responses
- Oceania (Aust, NZ, PNG) - 16 responses
- Rest of world (Sth Africa, Canada, UAE) – 4 responses

Port types:

- Government
- Commercial
- Trust

Statistics (Harbour Master survey)

Who has operational responsibility for marine safety in your port?

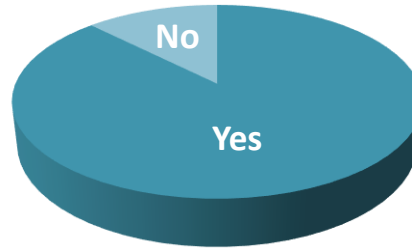


Statistics (Harbour Master survey)



Is the risk currently with the person best placed to manage it?

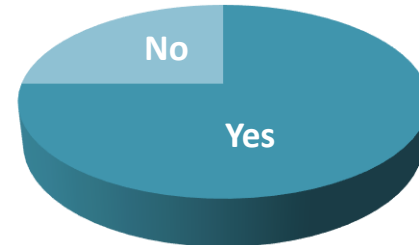
Oceania



Europe



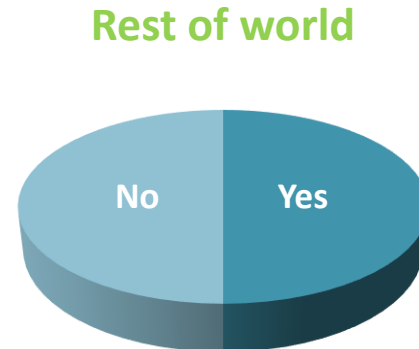
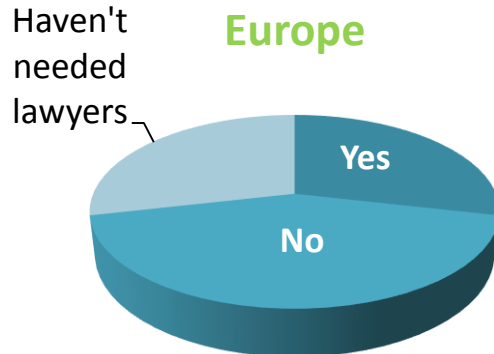
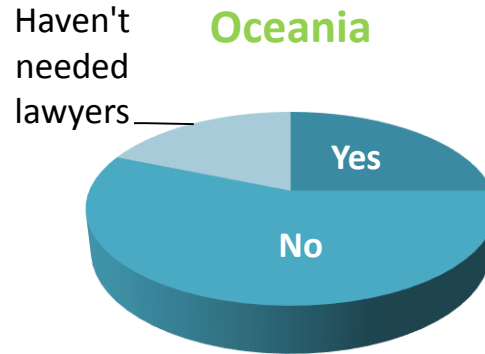
Rest of world



Statistics (Harbour Master survey)



Do lawyers interpret marine law as mariners were trained to interpret it?



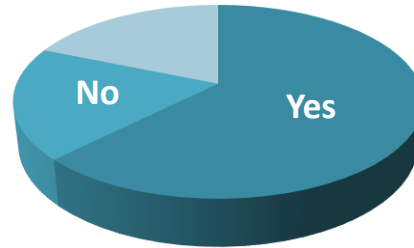
Statistics (Harbour Master survey)



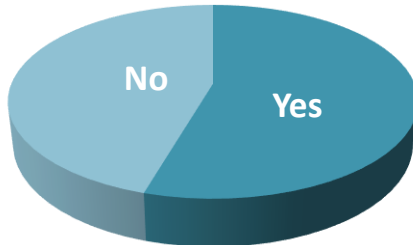
Is litigation an increasing trend in your region?

Oceania

Don't know

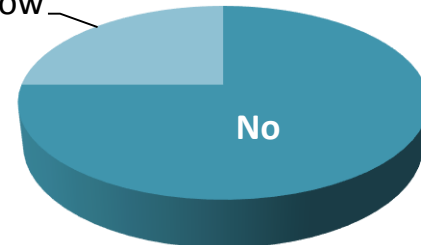


Europe



Rest of world

Don't know



Statistics (Harbour Master survey)



How has your port's attitude to risk changed?

- Risk assessment is highly placed on the port's agenda
- We carry out best practice for a port of our size
- More risks to be covered by insurances
- Reviewed and changed our pilotage directions and introduced new navigational advice
- Port insurers are more involved with risk assessments
- The term risk can now be used as a convenient tool to avoid certain proposals

Statistics (Harbour Master survey)

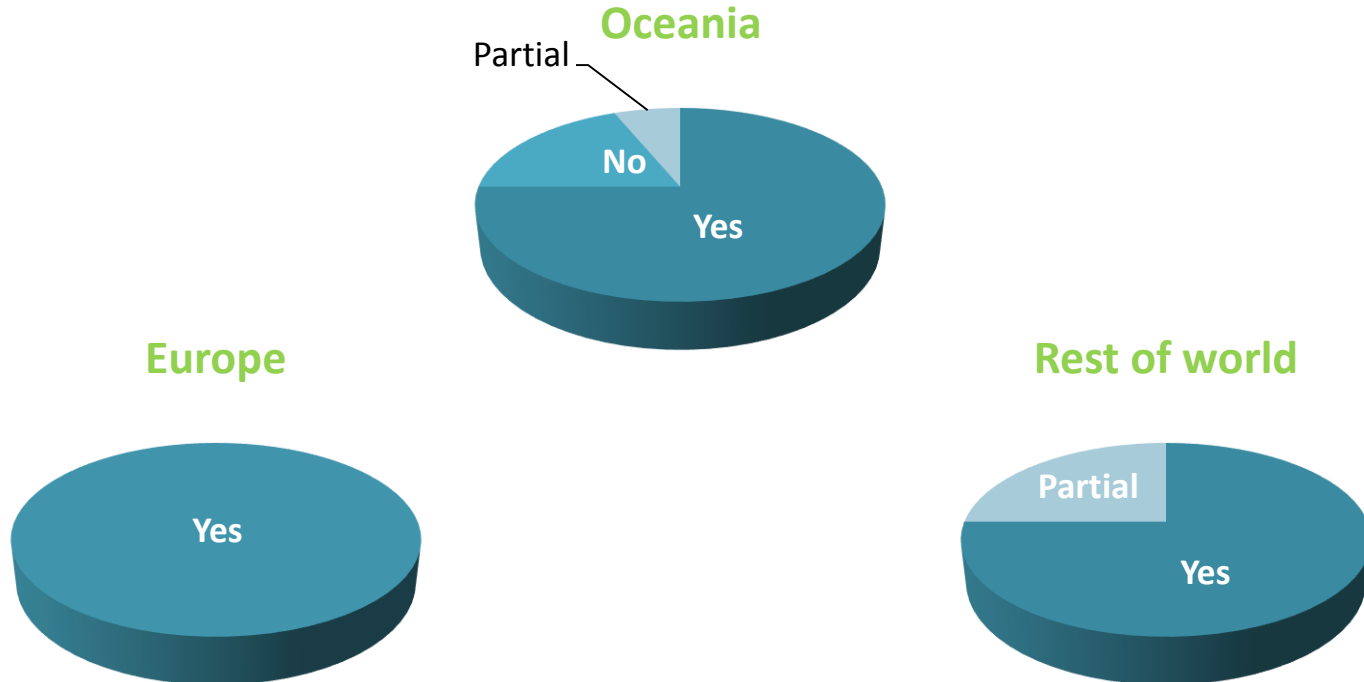


How has your port's attitude to risk changed?

“One of my biggest issues currently is trying to get a practical risk appetite and tolerance statement out of my board, which is proving very difficult. I think they are inherently nervous of being too clear and they seem to think the ambiguity is useful. I don't. In my view it's a bloody curse.”

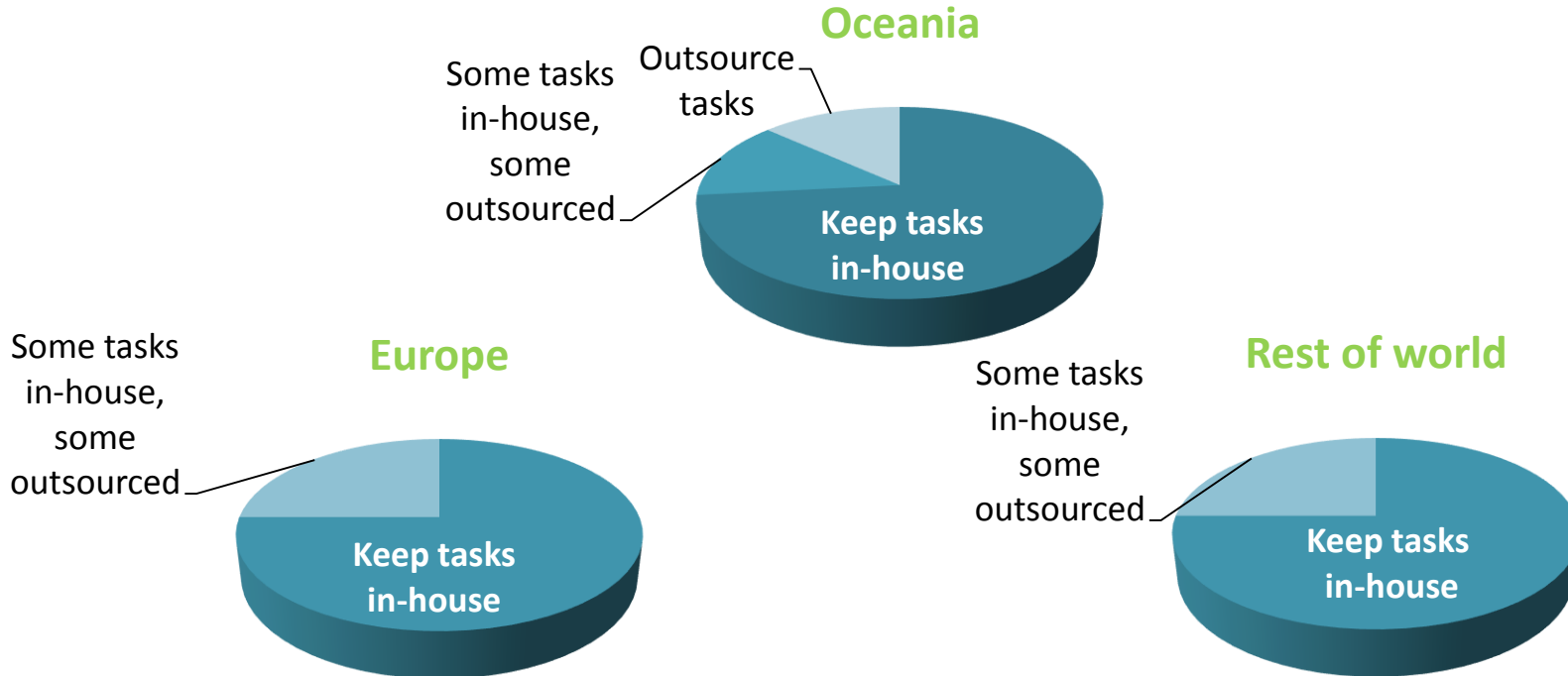
Statistics (Harbour Master survey)

Has your port carried out a formal marine risk assessment?



Statistics (Harbour Master survey)

What risk minimisation strategies do your organisation favour?



The reality



Ports are being prosecuted around the world for safety breaches...

Milford Haven, Wales, 1996. Sea Empress grounds. Port-managed pilot and port systems found at fault. Port fined £1.4m.

Some ports struggle to recognise their responsibilities:

Esperance, WA, 2006. Magellan lead loading operation causes mass poisoning of birds and affects the local population. Port pleads not guilty then changes plea to guilty. Fined \$525,000.

The reality



Ports are beginning to be held liable for actions of third parties, although examples are harder to find.

Clyde, Scotland, 2007. Svitzer tug Flying Phantom sinks, killing three crew. Svitzer fined £1.7m for operational shortcomings and Clydeport also indicted for safety system shortcomings. Fined £650,000.

The reality



Should we be improving how we manage risk, or divesting ourselves of it?

Chain of responsibility

The chain of responsibility is a policy concept used in Australian transport legislation to place legal obligations on parties in the transport supply chain or across transport industries generally.

In recent years, the chain of responsibility concept has been widely used as a basis for the reform of transport laws in the State of Victoria. It has been adapted for use in a number of new statutes, including the Marine Safety Act 2012.

Not the answer?



Problems in ports in New Zealand

'Port Nelson has had five accidents reported to WorkSafe. Chief executive Martin Byrne said they did not include accidents reported by contractors but that they knew what went on at the site.'

'WorkSafe New Zealand chief executive Gordon MacDonald said at least one prosecution against a port was under way, and there could be more. There was one case open against CentrePort in Wellington in connection with the death of Mark Samoa, who was hit by a forklift last year.'

'Meanwhile, a man was being hit by a container on a ship at Port of Timaru. It was not known how badly he was injured.'

Not the answer?



Port of Tauranga Corporate Services Manager Sara Lunam.

- Radio New Zealand, 30 October, 2014

Union officials and health and safety lawyer Hazel Armstrong said that, **under the Health and Safety in Employment Act, the port authority had a legal obligation** to ensure it took all practical steps **to protect all workers from the risk of harm while working at the port.**

Ms Armstrong said it was **not acceptable for the port company to merely say it was a "landlord,"** as the company was **legally responsible for hazard management** and monitoring of health and safety compliance **on the entire work site.**

NZ Herald, October 31, 2014

Not the answer?



Lyttelton Port of Christchurch – reported on stuff.co.nz, January 2015

Lyttelton Port of Christchurch chief executive Peter Davie said **the company accepted it had accountability for its contractors' health and safety.**

Kerr said he welcomed **reforms of the Health and Safety in Employment Act** to come into effect on April 1. **Under the reforms** - largely brought about after the Pike River Mine Royal Commission - the Ministry of Business, Innovation and Employment said **larger businesses could not "contract away" health and safety obligations.**

"It will make outfits like Lyttelton Port far more directly accountable for what happens," Kerr said.

"One of the things that was identified by the royal commission was **organisations that contract out work have been able to abdicate responsibility for health and safety and that's changing.**"

The mariner's solution

(based on experience)



- Place port risk with those who are best placed to manage it. That is almost always going to be the Harbour Master
- Don't be afraid to keep responsibility in house. If third parties are involved, actively manage them and ensure YOUR safety culture is adhered to as part of their contract
- Spend money on offence, not defence. Invest in risk management tools – for lawyers they prove intent, for us they simply do the job

The mariner's solution

(based on experience)



- Work with the risk managers to ensure operations staff and visiting mariners (ie captains) are well supported but not overloaded. Take a minimalist approach to paperwork requirements – stress from too much of this can cause accidents
- Encourage honesty and integrity in reporting and analysing accidents - trying to avoid liability will not result in any lessons being learned
- When things have been done right stand your ground, or that ground will erode

Conclusions



So what are the future international trends in the placement of port risk?

- Port risk is likely to remain with the port authority, whether they manage services in-house or contract to third parties
- Harbour masters do not see a major future trend towards the contracting out of port services
- Risk-based tools such as formal marine risk assessments and risk-assessed decision-making will gain growing acceptance as best practice for port risk management
- Oversight of third party contractors on port land will need to be strengthened in the future



Thank you

Questions

