



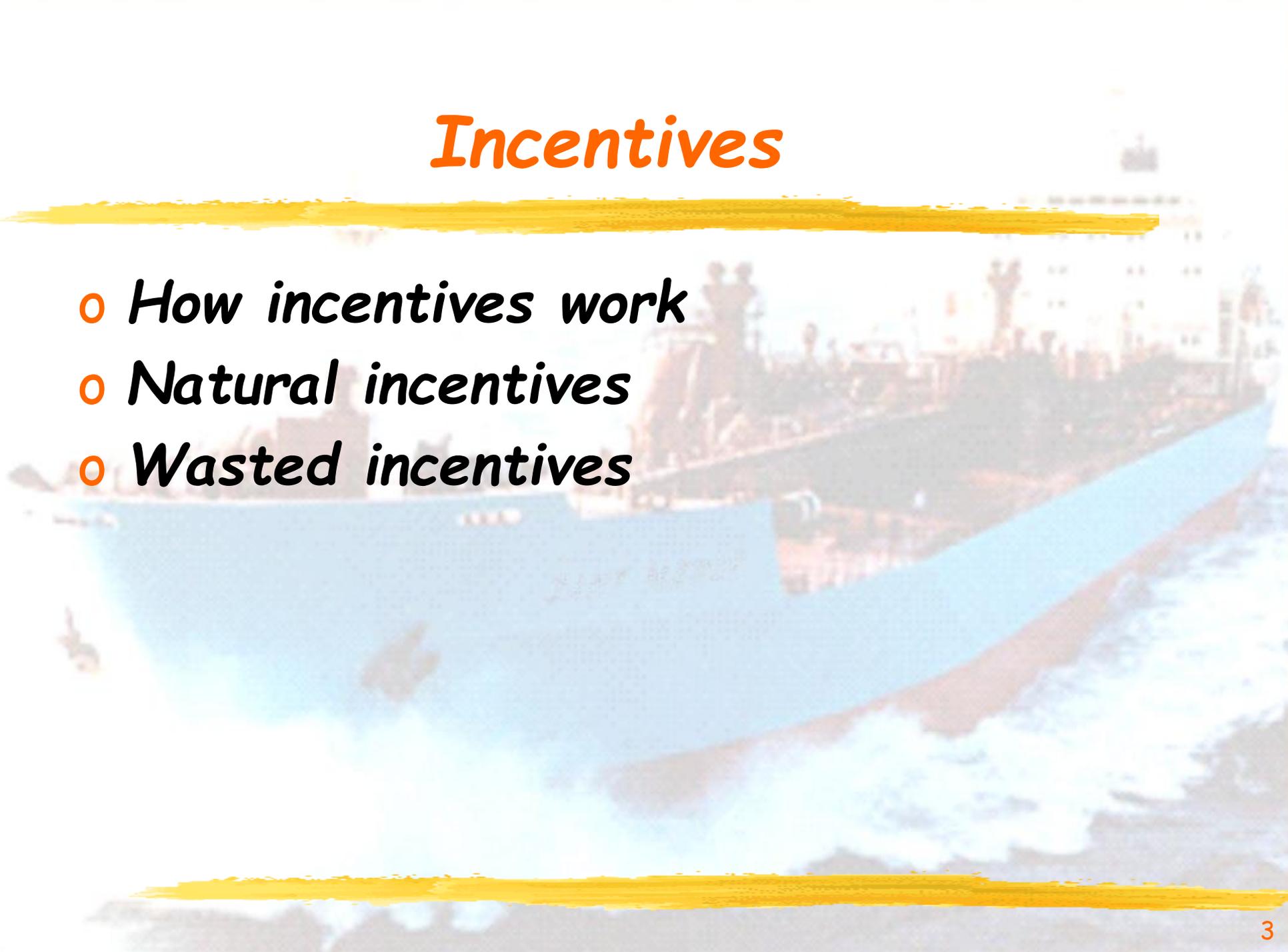
# *IMO and EU Measures to Reduce GHG Emissions from Shipping — Who Pays in the End?*

- *Professor Erik Røsæg*
- *University of Oslo*
- *erik@rosaeg.no*
- *rosaeg.no*

# *International law*

- o UN Sustainable Development Goal #13: Climate Action*
- o Paris Agreement, UNFCCC 2015*
- o ITLOS Advisory Opinion 2024 (Case No. 31)*
  
- o US demarche and opposition in IMO*
- o State responsibility*

# Incentives



- *How incentives work*
- *Natural incentives*
- *Wasted incentives*

# Some major systems

	EU	IMO
		MEPC/ES.2/2 draft of MARPOL Annex VI
Technical and operational		<ul style="list-style-type: none"> <li>• Required Energy Efficiency Design Index (EEDI), Reg 24</li> <li>• Required Energy Efficiency Existing Ship Index (EEXI), Reg 25</li> <li>• Ship Energy Efficiency Management Plan (SEEMP), Reg 26</li> <li>• Required Annual Operational Carbon Intensity Indicator (CII), Reg 28</li> </ul>
Consumption	<ul style="list-style-type: none"> <li>• Fuel EU Maritime, Reg 2023/1805</li> </ul>	<ul style="list-style-type: none"> <li>• IMO Net Zero Framework, Ch. 6</li> </ul>
Emissions	<ul style="list-style-type: none"> <li>• EU Emission Trading System (ETS), Dir 2003/87</li> </ul>	

*The more, the better?*

# Targets - legislators' considerations in general

- **Enforcement**
- **Decision maker**
- **Risk taker, profit maker**

# *IMO' s targets*

- o No defined target*
- o Flag state enforcement*
- o Port state enforcement*
- o => Those most interested in the operation*

# EU's targets

## Primary duties

- **Company**  
FuelEU: Art 3(13)  
ETS: Art 1(w)
- **ISM manager**  
FuelEU: Art 3(13); preambular para 20  
ETS: Art 1(w); reg 2023/2599
- **Pooling**  
FuelEU: Art 21
- **Banking and borrowing**  
FuelEU: Art 20

## Sanctions

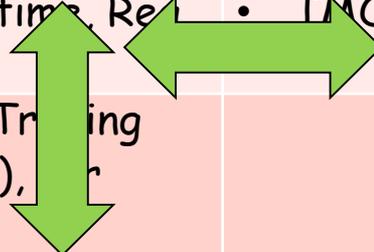
- **Penalties**  
FuelEU: Art 23  
ETS: Art 16(3a)
- **Detention and expulsion**  
FuelEU: Art 25  
ETA: Art 16(11a)

# Targets - legislators' considerations in general

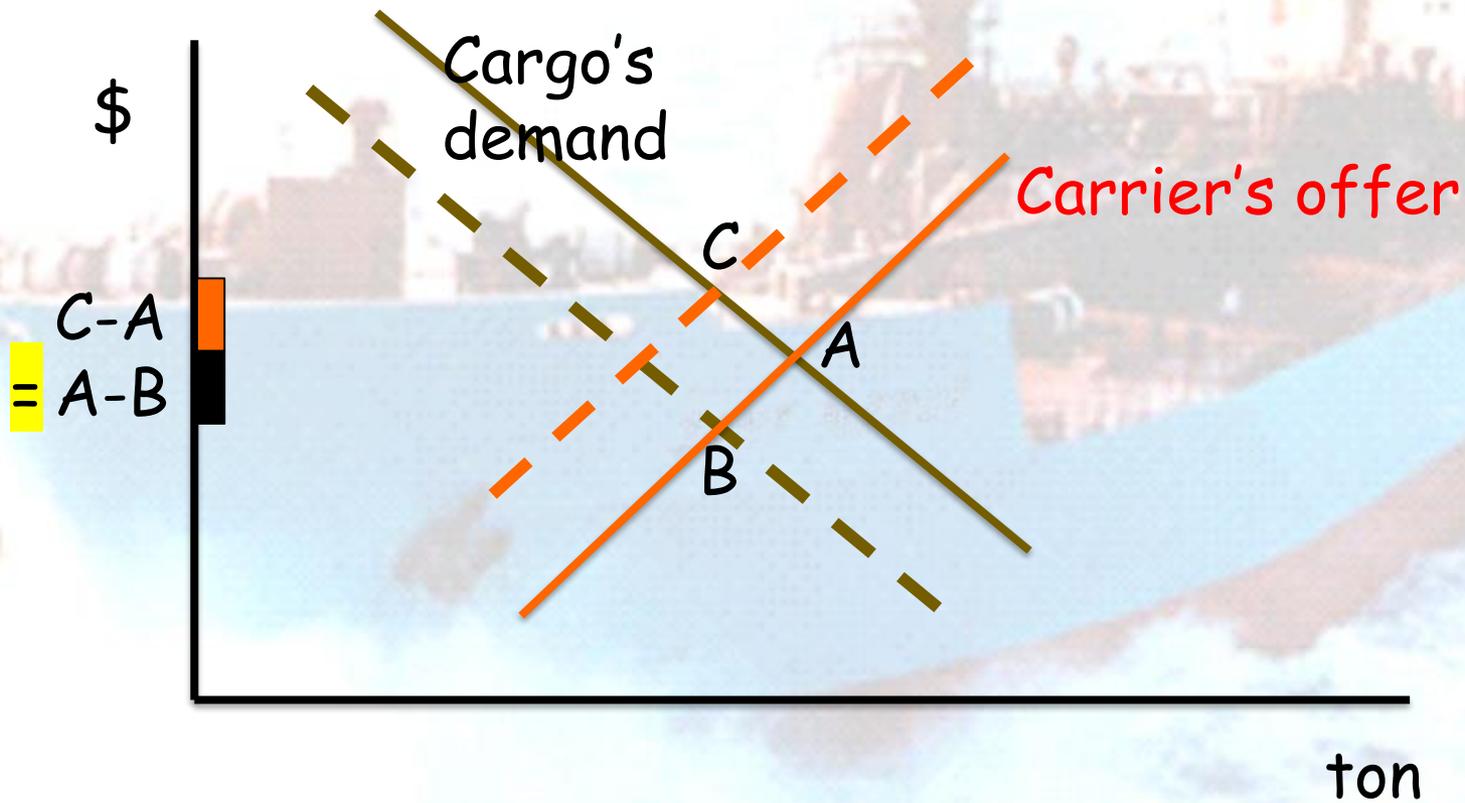
- **Enforcement**
- **Decision maker**
- **Risk taker, profit maker**

# Interaction between systems

	EU	IMO
		MEPC/ES.2/2 draft of MARPOL Annex VI
Technical and operational		<ul style="list-style-type: none"> <li>• Required Energy Efficiency Design Index (EEDI), Reg 24</li> <li>• Required Energy Efficiency Existing Ship Index (EEXI), Reg 25</li> <li>• Ship Energy Efficiency Management Plan (SEEMP), Reg 26</li> <li>• Required Annual Operational Carbon Intensity Indicator (CII), Reg 28</li> </ul>
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Emissions	<ul style="list-style-type: none"> <li>• EU Emission Trading System (ETS), 2003/87</li> </ul>	



# Market redistribution of costs



# Recourse clause in ETS Dir Art. 3gc

*Member States shall take the necessary measures to ensure that when the ultimate responsibility for the purchase of the fuel, or the operation of the ship, or both, is assumed by an entity other than the shipping company pursuant to a contractual arrangement, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances.*

# Standard recourse clauses 1

## EU ETS SIDE AGREEMENT (hereinafter referred to as “ANNEX”) TO SHIP MANAGEMENT AGREEMENT OF FLEET

### The Parties:

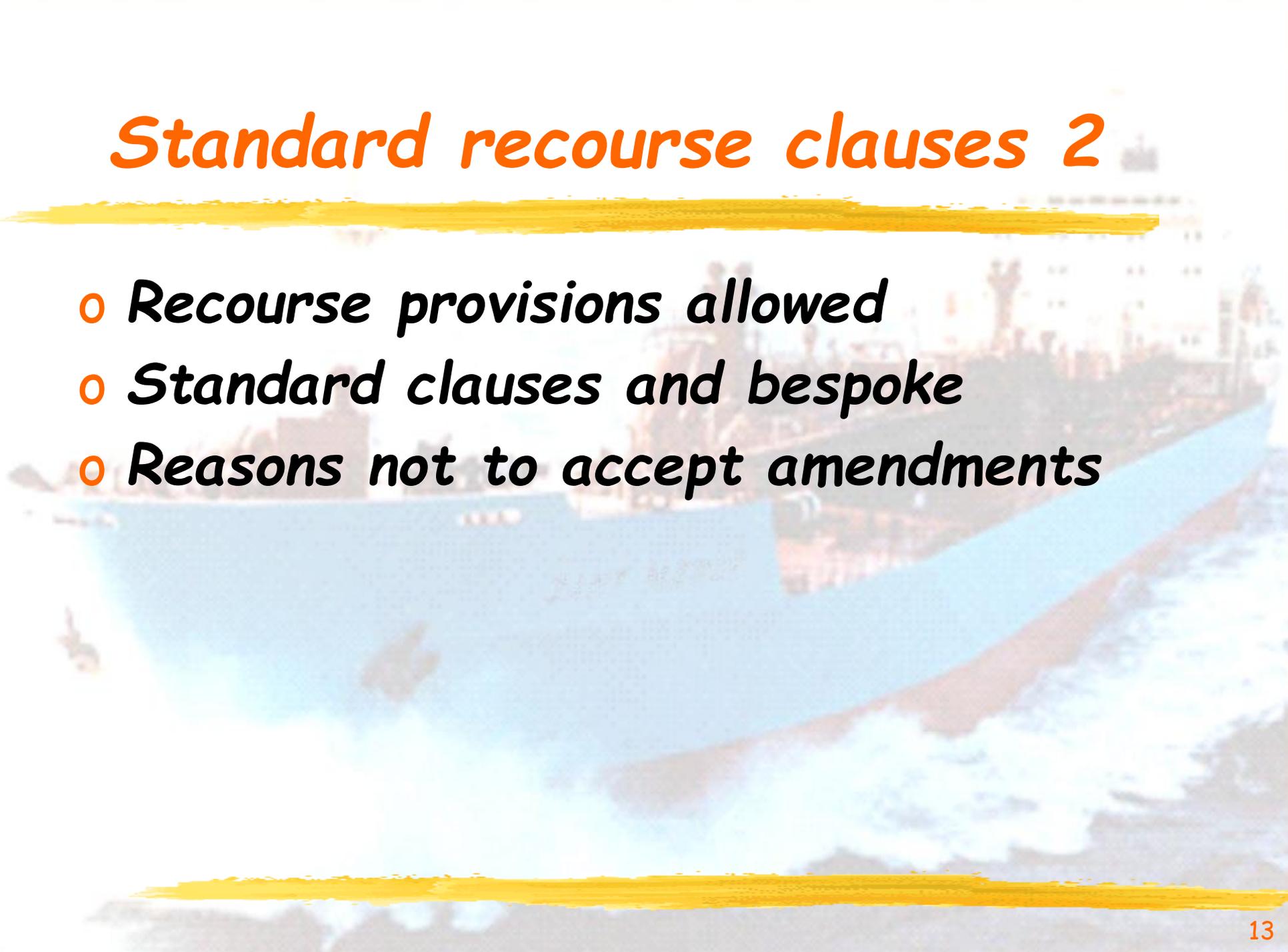
1. [REDACTED], a company organized under the laws of [REDACTED] with its registered office at [REDACTED] (as “Owners”);
2. [REDACTED], a company organized under the laws of [REDACTED] with its registered office at [REDACTED] (as “Managers”); and
3. [REDACTED], a company organized under the laws of [REDACTED] with its registered office at [REDACTED] (as “ISM Company”)

Each of whom may be referred to collectively as the “Parties” and individually, a “Party”.

### Whereas:

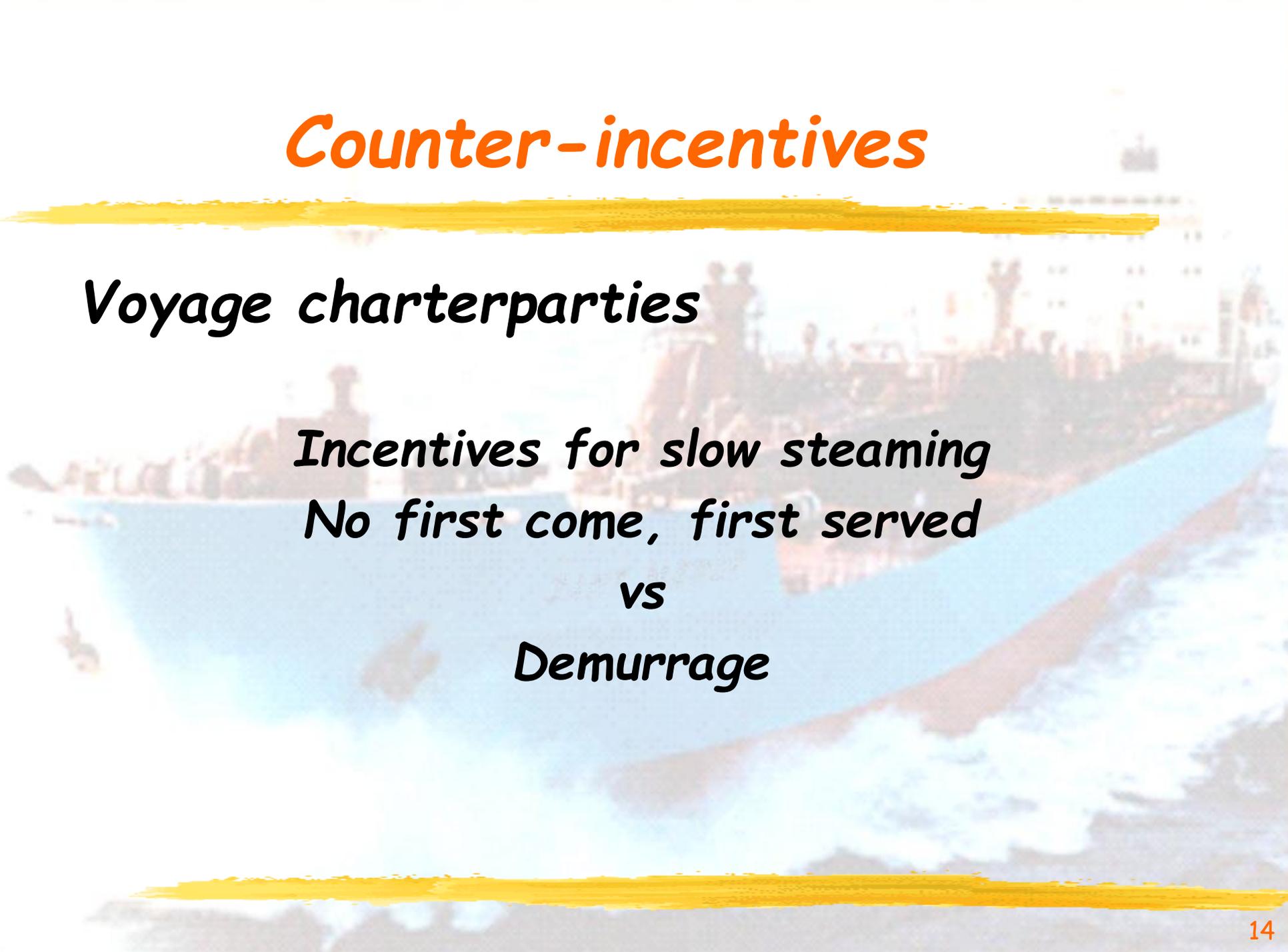
- (A) The Registered Owners as the registered owner and the Owners as the bareboat charterer/Disponent Owner entered into the bareboat charterparty in respect of the vessel listed in Exhibit A attached hereto (“Vessel”) (together with any annexes or addendum thereto, “Charterparty”);

# *Standard recourse clauses 2*



- o Recourse provisions allowed*
- o Standard clauses and bespoke*
- o Reasons not to accept amendments*

# *Counter-incentives*



## *Voyage charterparties*

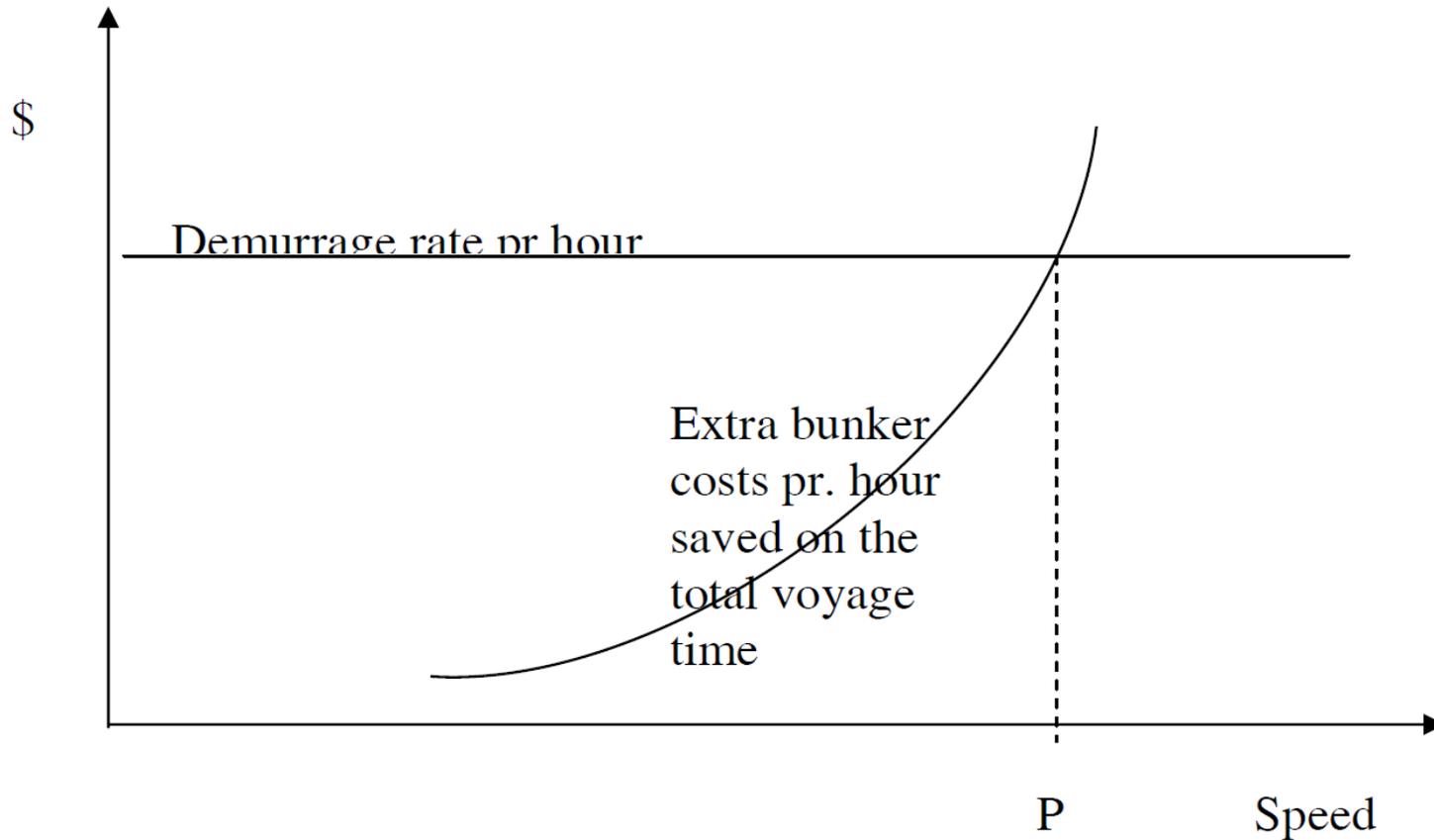
*Incentives for slow steaming*

*No first come, first served*

*vs*

*Demurrage*

# Counter-incentives illustration



# Existing contracts

## *Time charterparties*

- *Should costs have been anticipated?*
- *Implied terms*
  - *The English approach*  
Royal Greek Government v Minister of Transport (the "Illissos") (1948-49) 82 Ll L Rep 196 CA
  - *The Scandinavian approach*  
ND-1979-364 Jobst Oldendorff NV
  - *The Scandinavian approach on an annual basis*



*Take home points*