

GCMA NEWS

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PILOT TELLS HARROWING TALE OF GOING DOWN WITH VESSEL

By Bill Evans, *The Waterways Journal*,
Jan. 26, 2004

A towboat sinking on the Lower Mississippi River near Convent, La., left the vessel's captain swimming for his life last week.

Capt. Hugh Carl "One Ton" Lenard Jr., 35, of Walker, La., was at the controls of the M/V Ed when the 55' by 22' foot, 1,000 hp. towboat took on water and rapidly sank in 65 feet of water at Mile 158 Lower Mississippi River about 9:30 a.m., January 19.

"When I realized I couldn't stop it from sinking, it was too late for me to get out of the boat, the only thing I could do was hold on and go down with it," said Lenard. "When it went down and I was under the water, I really don't exactly know what was going on because I think I blacked out. I felt my life jacket pull me and I just started kicking and I came on up."

Lenard and the M/V Ed were helping the M/V Kyle T, shift an "eight pack" of loaded barges upriver in Elmwood Convent Fleet when the accident occurred, said Capt. David Whitehurst of Pierre Part, La., who was at the helm of the Kyle T.

"We worked around each other all morning, from about 6 a.m. on," said Whitehurst. "About 8:15 or so we departed the lower end of Convent Fleet with eight loads, four wide and two long. I made up the Kyle T with face wires on the inside port string. The Ed was on the inside starboard string pushing. He wasn't faced up, he wasn't wired into it, he was just helping push."

Whitehurst said around 9:20 to 9:25 a.m., Matthew Troulliet, a Kyle T deckhand, "brought me some tacos," then returned to the galley of the Ed where Troulliet and Edward Vinet, the Kyle T's other deckhand, were visiting with deckhands

Jerry Berry and Josh Reagan of the Ed as the vessels moved upriver.

"I took a bite out of one of the tacos and looked at the Ed and it seemed to be listing to starboard," said Whitehurst. "I walked to the starboard window and the starboard stern quarter of the Ed was underwater.

"I reached for the (VHF) mike to tell him (Lenard) and at the same time, he came on the radio and said, 'I'm sinking.'"

About the same time, the deckhands from both vessels noticed the list, scrambled onto the barges and started waving to get Lenard's attention. The boat began sinking by its starboard aft quarter, said Chief Warrant Officer Chris Donovan, an investigator with the Coast Guard's Marine Safety Office New Orleans. "It sank very quickly, in two minutes or less," said Donovan, an observation agreed with by Whitehurst.

"When it started to roll, it was just a continuous downward motion, there was no hesitation," said Whitehurst. "It was like somebody knocked the bottom out from under it. It's truly amazing how fast this thing went down. I hope I never see it again. They could have lost a whole crew, there could have been people sleeping on this vessel."

Whitehurst said after radioing a "Mayday" distress call, he grabbed his camera and turned to the sinking towboat. "I carry my camera everywhere I go," he said.

In The Pilothouse. On the Ed, furniture slid about the pilothouse as the vessel listed first to starboard, then stood on end as it slid beneath the surface of the river. "The file cabinet hit me, but after the water came in I didn't know exactly what went on because water was overtaking me," said Lenard. "When I went to get out of the boat, I grabbed (a life jacket) with my right hand. I didn't have time to put it on but I had it in my fist.

.... Continued on page 2

continued from page 1....

"Once I felt my arm go up I started kicking and I was hitting all kind of stuff." Whitehurst said as the Ed settled in the water he saw the boat's forward pilohouse window blow out. Lenard said he could not tell how he got out of the boat. "The boat stopped moving, so I think I did hit the bottom," he said. "I don't know what side or what window or anything I came out of, I could not see anything. It was just when the boat stopped moving there was stuff floating around and I was hitting stuff coming out, but I wasn't stopping because my life vest was going and I wanted to go with it. It just felt like somebody was pulling my arm with my life vest and I was going with it."

Lenard popped to the surface about 500 feet behind the Kyle T, said Whitehurst.

The crew of a Weber Marine Inc. launch saw the Ed sinking, picked up two of the Kyle T and Ed deckhands and reached Lenard, pulling him to safety shortly after he surfaced, Whitehurst said.

The M/V Ed, owned by Elmwood Fleet Inc., Harvey, La., was being operated under bare-boat charter by McKinney Industries Inc., Baton Rouge, said Donovan. The vessel is resting outside the channel on the east side of the river, said Steve McKinney, president of the McKinney firms, which include McKinney Salvage & Heavy Lift. Salvage efforts were suspended due to swift river currents. "It (the current) is flowing too hard, we're going to let the river go down before we try to get it," said McKinney. "It's supposed to crest Saturday (January 24) and from indications, we're going to have a pretty good drop."

Salvage operations will likely resume in early February, he said. The cause of the sinking has not been determined. The Coast Guard is investigating.



YOUR GCMA BOARD OF DIRECTORS ASKS YOU....

If your tug or towboat sinks, will you survive? For over 30 years towing vessels remained "UNINSPECTED." This means that towing vessels never received the effective Coast Guard oversight that protects American merchant mariners on almost every other commercial vessel. **GCMA Report #R-276** gives every crewmember over 70 specific points to consider the moment you set your seabag on a tug or towboat. Hundreds of towing vessels like the M/V Ed in Captain Whitehurst's pictures have sunk in the 30+ years of inaction by our government. While some towing vessels are state-of-the-art models of comfort, cleanliness, mechanical innovation and perfection in naval architectural design, others are neglected, floating pippens that are potential mechanical disasters just waiting for an accident to happen. If GCMA Report #R-276 makes you hesitant to risk your life on such a boat, then tell us your story and send us your pictures to share with Congress. It's time to stop being treated as "second-class mariners."

**GCMA ISSUE: DEFINING “ON-DUTY” TIME
TO BE DISCUSSED AT NEXT TSAC MEETING**

46 USC §8104(a). “An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off-duty for at least 6 hours within the 12 hours immediately before the time of leaving.”

The Towing Safety Advisory Committee will meet in Washington on March 16th and 17th to discuss and possibly clarify the meaning of “on-duty” time.

The Coast Guard has known of this problem for many years. Going on duty without adequate rest was one of the factors present in the Webbers Falls I-40 bridge allision in May 2002 that killed 13 persons. The master in that case drove for over 1,000 miles before taking charge of his towboat.

On August 8, 2002, two months after the Webbers Falls accident, one of our licensed towboat masters called from Minnesota and asked us to act on his behalf alleging that his employer’s scheduling and the requirements of his job allowed him only 6 hours of sleep in a 50-hour period. In this particular case, the mariner traveled from Louisiana to Iowa and then on to Minnesota to reach his assigned boat and was expected to go on duty as soon as he arrived.

On the surface, this appeared to be an open and shut case of outright mariner abuse. Yet, profiting from a paper written by Memphis attorney Jeff Bloomfield representing the American Inland Mariners Association in 1994, we were able to recognize that this situation was a potential minefield that could recoil and put our mariner’s license and career in jeopardy.

Consequently, GCMA immediately transcribed and faxed our mariner’s well-documented report to the nearest Marine Safety Detachment in St. Paul, MN, as well as to the Eighth District Commander. When our mariner returned home, he provided a full written and oral statement to local Coast Guard investigators about the matter.

In response, GCMA received a letter from Captain D.F. Ryan, Chief, Marine Safety Division, Eighth Coast Guard District five months later⁽¹⁾ that issued the Coast Guard District’s position on the matter as follows. (emphasis is ours). This letter is important because it summarizes a number of issues and outlines the Coast Guard’s position on these issues applying to the Eighth District: *[⁽¹⁾ On January 15, 2003]*

Eighth District’s Letter. “We have had an informational copy of your 8 August 2002 letter to MSD St. Paul for some time, and I apologize for the delay in responding.

“Your letter relayed the real-world experience of an inland towing vessel Master who, after a continuous period of travel totaling more than 20 hours, reported aboard a towing vessel and immediately stood watch for the following 5½ hours. Such a combination of travel time and work is clearly unreasonable and unsafe. Given the specifics in your letter, both the company operating the towing vessel and the Master tacitly agreed to this arrangement and consequently, both are at fault.

[GCMA Comment: The Coast Guard is well aware that a

mariner without a union contract is an “employee at will” and can be fired if he does not comply with his employer’s instructions.]

[GCMA Comment: This problem not only occurs on rivers and inland waters but is also prevalent among mariners serving in the offshore oil industry.]

[GCMA Comment: It is an often stated Coast Guard policy to remain neutral and refuse to become involved in anything the agency interprets as an “employment issue.”]

“The company operating the towing vessel was at fault because it appears that they were aware of the Master’s travel arrangements, and should have been aware that his resulting travel-work schedule violated the minimum off-duty time required by 46 United States Code §8104(a). **G-MOC Policy Letter 4-00 (paragraph 2.d)** defines travel time as:

“Travel time to a vessel is considered to be neutral time as it is normally not considered to be ‘rest,’ ‘off-duty’ or ‘work’ time, but all relevant circumstances should be considered in evaluating whether a mariner complies with the applicable ‘rest’ required by STCW or ‘off duty’ requirements specified in 46 USC §8104(a).

[GCMA Position: We disagree with the Coast Guard’s reference to “travel time” as “neutral time” because of their failure to adequately define “neutral time” compromises successful enforcement of 46 CFR §8104(a) in doubt.]

“Therefore, based on the relevant circumstances in your letter, travel time may not be used to satisfy the minimum off-duty time required by 46 United States Code §8104(a). Traveling en route to a vessel, with the company’s knowledge, does not constitute providing an opportunity for off-duty time. A company may avoid running afoul of §8104(a) by actively managing a Master’s travel arrangements or providing a hotel room so as to meet off-duty requirements.

“The Master mentioned in your letter was at fault for having taken the watch without having had the minimum off-duty time required by 46 United States Code §8104(a). The Master should have instead refused to participate in such a travel-work schedule and should have reported the company to the Coast Guard if pressed by the company to assume the watch. If such reports are made, the Eighth Coast Guard District will act on them. However, when a company does provide an opportunity for a Master to meet the minimum off-duty time required by 46 United States Code §8104(a), it then falls to the Master to use that opportunity so as to report for watch properly rested.

“Lastly, we understand from conversations with you that there is a tradition of Back Watch (0000-0600, 1200-1800) to Front Watch (0600-1200, 1800-2400) rotation for Masters on inland towing vessels, and the possibility of it leading to a violation of the 12-hour work limitation found in 46 USC §8104(h). If, as you suggest, it could transpire that a relief Master joins the vessel as the Back Watch closes, and the Master just having completed the Back Watch chooses to rotate to the Front Watch, then a chain of events could be set in motion leading to violation of the 12-hour work limitation.

That is, a violation would occur if the Master that had just completed the Back Watch wound up standing three, six-hour watches in a 24-hour period (e.g., stands the 0000-0600 Back Watch, then rotates onto the Front Watch and stands the 0600-1200 and 1800-0000 watch). Again, who is "at fault" (company or Master) would depend on the facts and relevant circumstances of the situation...."

[GCMA Comment: Our files show the American Inland Mariners Association described this situation in writing to Vice Commandant James Card on October 23, 1996.]

GCMA's Petition. GCMA filed a "Petition for Rulemaking" months before this situation⁽¹⁾ and over a month before the Webber's Falls disaster, to request that time spent in **deadhead transportation** by an employee going to his duty station (i.e., travel to the vessel) be counted as "on-duty" time. Our petition has nothing whatsoever to do with any issues of travel pay that may possibly exist – it is strictly a safety issue! Following this report, GCMA pushed our Petition for Rulemaking that was finally accepted into the Coast Guard Docket⁽²⁾ where our readers can view it on the internet.⁽³⁾ Our Petition for Rulemaking was given Docket #USCG-2002-13594 (that you can find on the internet⁽³⁾). [⁽¹⁾On Apr. 18, 2002. ⁽²⁾On Oct. 21, 2002. ⁽³⁾At <http://dms.dot.gov>]

The Coast Guard assigned our "Petition For Rulemaking" to the Towing Safety Advisory Committee as "Task Statement #03-01" that will be discussed at the next TSAC meeting. The petition asks the Coast Guard to adopt into its regulations language similar to that of the Federal Railroad Administration's regulation at 49 CFR 228.7(a)(4) that considers "on-duty" time to include "time spent in deadhead transportation en route to a duty assignment. The task statement continues:

"The petitioner (GCMA) believes the above mentioned G-MOC policy letter deals, in part, with this matter and is concerned with the definition of "travel" time as it appears in paragraph 2.d of that letter. (GCMA) is further concerned that the phrase "neutral time" as it is used in that paragraph, is not defined in the letter, and believes that could lead a mariner and an employer to a possible misunderstanding (i.e., making an evaluation whether the mariner is expected to go on watch immediately upon arriving at the vessel, or to wait until he/she has received the required rest. This situation could result in a fatigue-related accident if a mariner was required to work without an adequate period of rest."

[GCMA Position: Mariners need the protection of a Federal Regulation that can be enforced (rather than an ambiguous "policy letter") to further define and enforce provisions of 46 USC §8104(a).]

The Towing Safety Advisory Committee will submit a report to the Coast Guard outlining its findings and recommendations. We will keep our readers posted.



SIMMESPORT RAILROAD BRIDGE SNARES UNWARY MARINERS

An accident waiting to happen. Following the Amtrak disaster at Bayou Canot, AL, on September 23, 1993 the Commandant ordered a bridge survey be undertaken of bridges thought to be vulnerable to strikes by commercial tows. The National Bridge Survey Completion Report was submitted by the Commandant to the Secretary of Transportation on October 30, 1996.⁽¹⁾ [⁽¹⁾GCMA File A-164-B]

As part of this national survey, Coast Guard officers from the Eighth District accompanied by a towing company and a railroad representative undertook such a survey of the Kansas City Southern (KCS) railroad bridge at Simmesport on March 30, 1994 with these findings:

Problems identified by the towing industry: No fenderworks. Span support piers are unprotected. They are located in a bend that creates crosscurrents in the span (as recited by the Captains involved in both accidents.)

Solutions offered by the towing industry: Short term – Construct pier protection in main navigation span. Long term – Rebuild bridge with wider span.

Action summary: 1) Post warning signs 2 miles upstream to warn unfamiliar downbound mariners of the bridge hazard. 2) Recommend bridge owner improve lighting on bridge in such a way that it will improve mariners ability to judge their motion relative to the bridge (i.e., superstructure lighting or low power flood light)?

Additional Study: Recommended for the following issues:

1) Study further to determine if the bridge supports can be expected to withstand a "worst case" allision. If not, determine and recommend appropriate collision protection system.

2) Determine if a Regulated Navigation Area (RNA) mandating maneuvering performance and/or experience standards are appropriate on this very demanding river.

[GCMA Comment: The Coast Guard placed horsepower and tow size restrictions on the Lower Atchafalaya River in Berwick Bay following two bridge allisions that caused millions of dollars worth of damage and delays by knocking spans from the Southern Pacific Railroad Bridge at Morgan City in the 1970s.]

3) Determine if current mitigation techniques are plausible.

4) Determine if a remotely monitored river stage gauge at the lowest bridge could be employed to keep mariners informed of real-time air draft information.

5) Determine if the bridge qualifies for Truman-Hobbs action.

Bridge Description: Manned (upon request) railroad swing bridge. No fenders. Lighted as per regulations. No clearance gauges. River stage gauge information (is) passed by the bridge tender when the bridge is manned. (The bridge was permitted in 1925 and completed in 1928. The 132.5 foot navigable span is left of center when descending the river. Available water and vertical clearance (6' to 56') varies with river stage. Bridge is hit frequently. The bridge piers appear

to be formidable, but it is unknown if they could withstand a worst-case allision.

Waterway description:

- Bridge crosses the Atchafalaya River approximately 5 miles below the Old River Locks, which connect the waterway to the Mississippi River.
- The Congressionally-authorized 12' deep by 125' wide channel was completed in 1956 as an alternate route between Morgan City and the Mississippi. It saves about 172 miles and helps reduce congestion on the Mississippi River below Baton Rouge.
- The river is narrow (approximately 800 yards wide or less) and meandering. A tremendous amount of water, approximately one-third of the Mississippi River flow, drains through this waterway.
- The bridge is in the midst of the second bend in just over a mile.
- Water level and current fluctuate greatly.
- Occasional fog is present. Haze is common in summer months. Weather varies. River current is by far the dominant force affecting vessels.
- Bridge is obscured by trees and terrain until within approximately one-half mile when downbound.
- Minimal background lighting.
- Barges are sometimes tripped through by experienced operators if their tow size or power is in question.
- Radar is useless in approaching the bridge. There is nothing to assist in low visibility transit other than the lights on the bridge. Heavy fog stops traffic using the river.

Aids to Navigation: None that mark the bridge, other than the required bridge lights. The river above and below (the bridge) is marked with dayboards following the Western Rivers marking system. Buoys are used to mark shoal areas during low water periods, but none are in the vicinity of the bridge.

Waterway Traffic: Tug/barge, various other watercraft in transit to and from the Mississippi and Red Rivers (e.g., gambling vessel that damaged the Krotz Springs bridge), and some recreational vessels. Tugs usually push 3 or 4 barges during high water periods. Several tows transit each day during lower water. Traffic is severely limited during high water due to this bridge and those in Krotz Springs (i.e., Interstate 10) and Melville. Approximately 6.2 million tons of cargo are carried annually including substantial amounts of petroleum and chemical products.

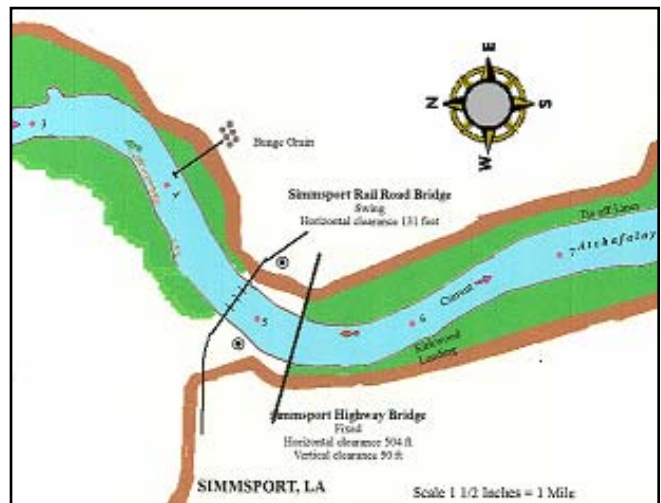
Allision Potential: This bridge sits in a bend, the current flows through it at an angle, and it isn't visible until within a short distance up river. These features combined with powerful currents at high water require downbound tows to begin setting up for passage through the navigation span before it is even in sight. If they are unaware of the bridge and round the bend with a tow, they may not have time to recover or stop in time. However, vessels frequently run other spans. The other spans are considerably wider but are still a challenge to negotiate. When vessels are using other spans, the primary concern is vertical clearance and, in the event that unprotected piers are hit, can they safely withstand the impact. Vertical clearance varies constantly. Vessels must know well in advance what minimum clearance they can expect.

[GCMA Comment: U.S. Coast Pilot 5 (p.562) doesn't give the slightest hint of problems that lie in wait for mariners

at this bridge. However, the Barway Pilots Guide by Capt. Jimmy W. Leggett shows pictures of the area.] Taken from the Atchafalaya River Chartbook. M.E.T. Stock #0745-1



North bound view from the highway bridge



The M/V TANA LYNN accident.⁽¹⁾ On March 8, 2003, the Coast Guard Marine Safety Unit at Baton Rouge, LA received a report that the M/V TANA LYNN hit the Kansas City Southern Railroad Bridge at Mile 5 of the Atchafalaya River near Simmesport, LA, at approximately 0715 local time and sank several minutes later between the railroad bridge and the State Highway 75 bridge downstream. Fortunately, the towboat's crew of three was rescued [⁽¹⁾Based upon USCG Activity #1755672 obtained under FOIA, GCMA File #M-458.]

The vessel, owned by Jefferson Marine Towing, had on board approximately 3,500 gallons of diesel, 1 barrel of lube oil, and 30 gallons of hydraulic fluid. Small pockets of sheen were seen on the water's surface from where the vessel sank.

The Pilot's written statement says, in part: "...at about 0700 AM the M/V Tana Lynn was lined up for the Simmesport Bridge southbound with a 200 foot x 50 foot barge and a **partly blind tow.**"⁽¹⁾ I noticed that the bridge is set at an angle in the river so when the bridge was open you had to let the tow drop some to clear the swing span." The 200-foot deck barge was carrying a large processing tank as cargo. The tank allided with the swing span of the bridge as the barge carrying it passed under the bridge. Following the

allision of the barge with the bridge, the towboat struck the western pier of the swing span and landed up against it broadside on the starboard side.

[⁽¹⁾GCMA Position: GCMA Report #R-275, Navigation Bridge Visibility, discusses problem involved in pushing tows their pilot's have trouble seeing around. GCMA Report #R-276 (item #70) calls upon the Coast Guard to set standards for pilothouse visibility, height of eye and forward visibility for uninspected towing vessels as they have for inspected vessels.]

The report continues: "Once you get close to the bridge after the set (of the current), you are too far over. So...that's what took place. The barge, U2050, hit the bridge on the starboard side of the barge's bow with the rest of the barge and the boat on the stern. The strong river (current) had something to grab and push sideways in the river against the side of the bridge that didn't open and force the boat under (water)."

After landing up against the west pier of the bridge the towboat started to progressively fill with water as the current pushed water over the port side of the boat. As a result of the allision, the face wires holding the barge to the towboat snapped allowing the barge to come free of the tug.

The Pilot relates: "When the boat was going down, I stayed by the Captain on the starboard side of the wheelhouse. By the time, the deckhand had grabbed his life jacket the whole boat was going under (the) Simmesport Bridge and was on its side.

"I held on to the boat for as long as I could. Then, when I was in the water, I couldn't see my...Captain. I could hear him but I couldn't see him.

"My deckhand was headed for shore when I noticed the...Captain was holding on to the front of the boat as it was still going under. He didn't have a life jacket on. I swam one to him. At that time, a flat boat was on its way to us from shore. The flat boat picked up the deckhand first, then me; and we couldn't get the Captain in the boat, so we pulled him as I held on to him."

An eyewitness nearby on the bank stated in part: "...I was standing on the boat ramp on the Atchafalaya River in Simmesport. I saw a towboat pushing a barge (moving) south in the river. When the barge approached the pier under the railroad bridge, I noticed the barge hit one of the piers and the cables to the barge broke loose and the towboat hit the pier. The towboat then swung against the pier and began to roll over. I then heard some man yelling for help. ■■■ (a fisherman) got in his boat and went (to) help the men in the water. I saw ■■■ rescue two men out (of) the water. One man hung on the side of the boat until he was pulled to the bank."

After breaking away from the towboat, barge U2050 continued south in the current and slammed into the nearby State Highway Bridge. The highway bridge suffered no damage and the barge suffered only minor damage as a result of the incident. According to the report, the vessel was valued at \$500,000, was declared a constructive total loss and was not salvaged from the river.

The Coast Guard investigators listed the following as causes of the accident: Execution errors; attention failures and mistiming errors. The river current was swift and it was the operator's first time transiting the Atchafalaya River.

The M/V MELINDA BRENT accident.⁽¹⁾ On February 25, 2000 the twin screw, 85x27-foot, 92 GRT, 1800 hp towboat MELINDA BRENT pushing 4 tank barges loaded with gasoline traveling southbound at Atchafalaya River mile 5 allided with the west support of the right descending bridge span of the KCS Railroad bridge. [⁽¹⁾GCMA file #M198, USCG Case #MC00002402.]

The pilot of the towboat had been on watch for 1.5 hours at the time of the accident. He had been an operator of uninspected towing vessels for two years but had been in the industry for 20 years.

According to the pilot: "While coming down on the Simmsport RR bridge, setting up for the bridge running about half throttle making about 6 mph – tow shaping up good for the bridge and lining up about right. When about 600 feet from the bridge, head began falling out of shape. Boat was sliding due to current. Came full ahead and put straight rudder to flatten out and break slide, lead barge on starboard side hit bridge pier on starboard side causing sparks."

Barge #OMR 2577 struck the bridge pier with the starboard side of the barge. The impact caused hull damage to the single skin barge loaded with gasoline. Cargo leaked and was immediately ignited by sparks from the allision. The pilot turned control of the vessel over to the Captain and went to assist the crew in disconnecting the tow from the towboat. The Captain reported the incident to the Coast Guard. The M/V MELINDA BRENT then followed the burning tow at a safe distance as the current pushed it down river.

The M/V VICKI, using empty hopper barges as a spacer, pushed the burning tow against the bank ten miles downstream at mile 15.3. Two of the four barges burned until specialized firefighting equipment arrived on scene. A specialized fire control contractor put out the fire a day and a half later.

The navigation span of the KCS bridge is 132 feet wide while the width of the tow was 105 feet. That only left 27 feet to accommodate any variation in alignment while transiting the bridge. To make alignment even more difficult are eddies created by the river passing through the bridge spans. Operators familiar with this area must take this into account when making this bridge.

The accident occurred at night with clear visibility. The Captain and pilot both reported the steering and propulsion systems were operating normally as supported by a safety examination conducted by a USCG Boarding Team officer after the event. The M/V MELINDA BRENT has 1800 horsepower that is equivalent to 450 horsepower per barge. The Coast Guard report states that "The normal working standard for the inland rivers is 200 to 350 horsepower per barge"⁽¹⁾ and that the towboat was well above that minimum. [⁽¹⁾There is little in the unpublished "industry standard" that "guarantees" a company will follow the standard. Furthermore, many vessel owners lie about the true horsepower of their vessels to enhance the sales potential and to skirt high-water restrictions that may be put in place.]

The report indicated that the pilot was on watch for 1.5 hours and had 16 years experience "operating vessels" although his license was only two-years old. Nevertheless, this was his first trip on the M/V MELINDA BRENT and his first trip on the Atchafalaya River in 10 years.

The Coast Guard stated that the apparent cause of this KCS bridge allision was pilot error. The pilot was setting his

tow to pass under the starboard side (of the bridge) where there is less clearance and less room for error. However, the primary contributing factor was the currents in the area. A secondary contributing factor was the pilot's lack of experience traveling the route. A third contributing factor is the small width of the navigation span of the bridge.

The pilot was charged with negligence and the specification read: "Failed to maintain adequate control over his vessel, the M/V MELINDA BRENT which subsequently led to an allision with the Kansas City Southern Simmesport, Louisiana, railroad bridge." The report shows that a motion for a settlement agreement was filed and approved by an Administrative Law Judge where the charge was found "proved" and the Pilot was "required to draft a (written) report on the Atchafalaya River."

The investigation of the accident consumed approximately 200 hours of Coast Guard time and resources. The two severely damaged barges were inspected tank vessels. Barge OMR 2578 decks were buckled, hatch fittings were melted, cargo controls were rendered inoperable. Approximately 20 feet of the starboard deck knuckle were pushed in 3 to 5 feet and 15 feet of the bilge knuckle were torn away opening #2 & #3 tanks to the sea.

SEA SERVICE LETTERS

By Richard A. Block

Early last August I wrote the letter that follows to the Deputy Director of the Coast Guard's National Maritime Center in Arlington, VA on the matter of obtaining sea service letters for our mariners. The NMC is the Coast Guard office that establishes licensing policies for merchant mariners.

"I have been associated with lower-level merchant mariner licensing since 1970. During that period, I have witnessed a great many instances where a mariner served at sea or in inland waters for a vessel owner who later refused to furnish him with a letter of sea service. Such refusal may retaliate for some action or event or, more likely, result from sloppy record keeping, laziness, or inaction after repeated requests. In any event, by denying each legitimate request, a working mariner is cheated of the "sea service" he earned and needs for documentary proof to a Coast Guard license examiner to qualify for renewal or raise of grade. This is discouraging and often marks the end of a career. In light of the shortage of trained and qualified mariners, this practice can no longer be tolerated.

"Over the years, I have also seen the Coast Guard take a "hands-off" attitude placing the full burden of proof upon the mariner to provide his own "Sea Service" letter. Although the Coast Guard prints Certificates of Discharge (CG Form 718-A) and maintains records of these certificates if and when they are returned to Headquarters, these blank certificates are not readily available from many Marine Safety Offices and are not widely used by companies that hire lower-level mariners. Instead, the Coast Guard allows and places most of its emphasis on company-issued "Sea Service" letters to record a mariner's time served. This "hands-off" solution, rather than maintaining neutrality, favors the employer over the employee by denying the employee the legitimate fruits of his service.

"Title 46, U.S. Code, §10320, Records of Seamen, states: "The Secretary shall⁽¹⁾ **prescribe regulations** requiring vessel

owners to maintain records of seamen on matters of engagement, discharge, and service. A vessel owner shall⁽¹⁾ **make these records available to the seaman and the Coast Guard on request.**" [⁽¹⁾ The word "shall" replaced "may" in a 1993 amendment. Refer to Pub. L 103-206 §411]

"The end result, whether accomplished by the mariner or the Coast Guard, is to place the "sea service" record in the hands of a Coast Guard license examiner. We believe that the law says this.

"The law says that the "Secretary **shall** prescribe regulations..."

"We respectfully request to know which specific regulations the Coast Guard has prescribed to **require** "A vessel owner (to) make these records available to the seaman and the Coast Guard on request." A "regulation" reflects the purpose of the law, generally has a penalty for non-compliance, and is enforceable. If there are no such regulations, what steps will the Coast Guard take to promulgate regulations to enforce this statute?

"Separately, we would also like to ascertain whether there are any current guidance or policy letters that direct Coast Guard officials to obtain "sea service" records from recalcitrant companies to fulfill legitimate licensing or certification objectives sought by individual mariners that you can cite as being "helpful" to our mariners for such purposes?

"We respectfully request a written response that we can pass on to our mariners."

The Coast Guard Ignores Our Letter. The National Maritime Center establishes Coast Guard licensing policy and should be capable of answering this letter in a timely manner. We followed up the letter on October 23, 2003 and January 5, 2004 with no results. Consequently, on January 22nd GCMA submitted a Request for Rulemaking to the USCG **Marine Safety Council** as follows:

"As permitted by 33 CFR §1.03-20(a), the Gulf Coast Mariners Association hereby respectfully petitions the Coast Guard to carry out the intent of Congress as clearly stated in 46 U.S.C. §10320 and promulgate necessary regulations that guarantee the entitlement of a mariner to full and accurate accounting of his sea service as required by law. Copies of these employment and sea service records should be made available to both the seaman and Coast Guard upon the request of either the seaman or the Coast Guard."

What is the Marine Safety Council?⁽¹⁾ The Marine Safety Council is the Commandant's advisory council for Coast Guard regulatory issues. The Council advises the Commandant (Admiral Thomas Collins) on regulatory issues and periodically reports to the Commandant the status of Headquarters regulatory projects. It approves or recommends Commandant approval of new projects, changes to active projects, and suspension or termination of inactive projects. The Council provides policy and procedural guidance to program managers and regulatory development teams for the development of Headquarters rulemaking projects. [⁽¹⁾Source: *HQINST 16703.2*]

How the Marine Safety Council treated previous GCMA petitions. GCMA previously filed these petitions for rulemaking with the Marine Safety Council:

- 1. Work-hour limitation for all unlicensed crewmembers on uninspected towing vessels. [*Docket #USCG-2002-12579*].
- 2. To require logbook entries of time served.

- 3. Allow an injured party to file his/her own accident report. [Docket #USCG-2002-12580]
- 4. Prevent the Coast Guard from appealing an adverse opinion by an Administrative Law Judge. [Docket #USCG-2002-12578]
- 5. Travel time going to a vessel should be considered “on duty” time. [Docket #USCG-2002-13584]
- 6. To ensure safe drinking water on inspected and uninspected vessels of less than 1,600 gross register tons. [Docket #USCG-2003-14325].

Just getting the Coast Guard to assign our requests a “docket number” turned out to be a major bureaucratic stumbling block. In fact, the Coast Guard ignored our petitions for over a year until we lodged a formal complaint with former-Commandant Admiral James Loy. We received a reply from Vice Admiral T.J. Barrett on September 3, 2002 stating in part: “The Coast Guard considers your concerns seriously and I deeply regret that we were unable to place your petitions for rulemaking into the public docket in a timely manner.” However, once our petitions were assigned a docket number and placed into the docket (at <http://dms.dot.gov>), the next step was for the Coast Guard to tell us why they could not consider rulemaking for most of the things we asked them to do.

In many cases, the Coast Guard told us that Congress had not given them specific authority to regulate a particular item or, in the case of safe drinking water, simply passed us off to another agency. At that point (February 2003), we appealed directly to Congress for these items as well as several very important matters like our requests to 1) regulate all uninspected towing vessels and 2) to end work-hour abuses as related in the GCMA “yellow Book.” Our full report to Congress was sent to every member of the House Infrastructure Committee (including the Coast Guard and Maritime Transportation Subcommittee) and the Senate Committee on Commerce, Science and Transportation.

TERRORIST WATCH LIST

Source: IOMM&P *Wheelhouse Weekly*, Jan. 29, 2004

The FBI says 11 U.S. seafarers “having a nexus to terrorism matters” have been placed on the “No Fly” and “Watchlist” maintained by the terrorist screening center (TSC). A further 700 have been found to “have issues related to law enforcement and maritime concerns.” FBI counter-terrorism division head Gary Bald revealed the information on Jan. 27 in testimony before the Senate Judiciary Subcommittee on Terrorism, Technology and Homeland Security.

In his testimony, Bald said that checks of USCG-issued merchant marine licenses began in January 2003 under “Operation Drydock,” a national joint terrorism task force investigation with the FBI and USCG. Out of 200,000 U.S. Seafarers, only 15,000 records remain to be checked. The MM&P is keeping a watchful eye on this process to assure that seafarers’ privacy rights are being respected...”

DOING A SLOW BURN

Go in a bedroom when you smoke to protect your kids? Shut all the windows and doors? Good Luck. A new study says that cigarette smoke, in all its poisonous glory, lingers for two to four hours in a sealed room; smoke the average 20 a day and concentrations of toxic substances could easily exceed federal limits for outdoor particulate pollution.

“A lot of people think that if they blow smoke in the opposite direction, it’s enough to protect kids,” says Judith Watt of SmokeFree London. “Clearly, this shows it is not.”

Open a window? It helps, says the study. Ditto a door (although that spreads the smoke). But the bottom line: “The concentration of particulate pollution (fine particles emitted by burning objects that go deep into the lungs where they’re trapped) is incredibly higher than what we would expect to find outside on the very worst day in the most polluted U.S. city,” says Stanford University researcher Wayne Ott, lead author of the study to be published in the Journal of the Air and Waste Management Association. The major reasons? The average home is relatively small (read: Most of us don’t live in warehouse-size mansions). Plus, the so-called air-change rates of most homes are low. Translation: Fresh air replaces the stale stuff very slowly.

“As we have sought to conserve energy in our heating and air conditioning systems, air-change rates have dropped and indoor air pollution, not just from cigarettes but also from other indoor sources, has become a bigger problem,” says Ott. “However, if there’s a smoker in a home, the cigarette still is the largest single source of indoor air pollution for fine particles and many other toxic pollutants. The exposure to toxic pollutants that a non-smoker living with a smoker receives in their home greatly exceeds the exposure they receive from any other location, indoors or outdoors, no matter where they live.”

Not enough to make you quit? Then open a door – and step outside to smoke. Preferably without any kids nearby. But beware: A Stanford research team has applied for a grant to study the effect of secondhand smoke outside.

[GCMA Comment: The Coast Guard protects its own personnel from second-hand smoke by restricting smoking to the weather deck. They do not show the same concern for merchant mariners.]



A less acceptable alternative.

FEDERAL ADVISORY COMMITTEES

MARCH 17 TSAC MEETING TO DISCUSS REGULATING TOWING VESSELS

We are approaching the third anniversary of GCMA's proposal to the Towing Safety Advisory Committee to properly regulate uninspected towing vessels. TSAC is the Federal Advisory Committee that advises the Coast Guard on issues involving the towing industry. On March 15, 2001 GCMA pointed out more than 70 different areas where mariners who work on uninspected towing vessels receive substantially less protection under existing laws and regulations than do mariners who work aboard vessels of comparable size and horsepower that are inspected by the Coast Guard.

GCMA originally asked that TSAC be given the "task" of looking into this matter. Early on, the Coast Guard representatives told us that its position was that Congress never gave them the authority to "inspect" uninspected vessels. Nevertheless, TSAC agreed to look into the matter and formed a Subcommittee headed by Mr. Mario Munoz of American Commercial Barge Lines.

The goal of the TSAC Subcommittee was to determine how many of the more than 70 items they could address by using "non-regulatory" solutions. The Subcommittee worked diligently toward this end and was scheduled to deliver its report in September 2003. However, because Mr. Munoz was absent from the meeting, the report was delayed until the next meeting on March 17, 2004 in Washington.

Frustrated with the lack of progress and understanding the vast differences that fall upon our mariners by adopting a "non-regulatory" approach that cannot be enforced and the desirability of formal Coast Guard regulations with the force of law behind them, we brought the matter to the attention of Congress as "Issue #1" and sought relief.⁽¹⁾ [⁽¹⁾GCMA Report #R-350.]

In a letter to the Commandant dated September 30, 2003 GCMA stated: "We turned to Congress only after carefully reviewing the RCP (i.e., the American Waterways Operators Responsible Carrier Program) and participating in the TSAC working group.

"The RCP falls short in the safety it provides to our mariners. We made a line-by-line comparison of the RCP and existing USCG regulations...at the suggestion of the "public" member of TSAC. If you review these pages you will be able to identify the shortcomings. In addition, AWO represents only about 175 towing companies, far short of the 1,100 to 1,300 towing companies cited in several USCG rulemaking projects. A great many of our mariners work for companies the AWO does not represent.

"On August 8, 1994 (former) Commandant Kramek sent a report titled Towing Vessel Studies to the Secretary of Transportation. Recommendation (a) in the Executive Summary (was that)... "The Secretary advise the Congress

that Coast Guard inspection of towing vessels would not be the best use of resources in preventing marine casualties involving towing vessels."

[GCMA Position: The Coast Guard needs to show greater concern for the safety of our mariners and seek any necessary "resources" to do so from Congress.]

"GCMA agrees in part. We believe that the auditing process the AWO established for their own members could be satisfactory **if adequate regulations provided the background for the audit.** Unfortunately, **existing regulations are not comprehensive** in comparison to those of Subchapters T and L.⁽¹⁾ Further, there are classification societies that could survey towing vessels to comply with strengthened regulations; and the Coast Guard could use the same streamlined inspection program (SIP) it uses for T-Boats and OSVs. This has always been part of our suggestion. [⁽¹⁾46 CFR Subchapter T regulates Small Passenger Vessels of less than 100 gross tons; 46 CFR Subchapter L regulates Offshore Supply Vessels.]

"Until something is done to properly regulate uninspected towing vessels, the Coast Guard will bear the brunt of the criticism as it did following the Bayou Canot accident. To date, the Coast Guard has been unresponsive to the needs of our mariners as GCMA Report #R-350 discusses. (We) discussed the matter with Commander ■■■ (G-MSO) when he called us several weeks ago in response to the copy of (GCMA Report #) R-350 we sent to the Assistant Secretary of the Department of Homeland Security.

"The Gulf Coast Mariners Association seeks a commitment from you as Commandant of the Coast Guard to properly regulate uninspected towing vessels. By "properly regulate" we refer to closing the "gaps" in existing regulations between inspected vessels and uninspected towing vessels of comparable size and horsepower. We believe that government, management and labor need to work together domestically in the same tripartite spirit as in the IMO and ILO. To this point, we note that we are seldom asked to participate. The agreements reached by the "partnership" between the Coast Guard and management appear to us as hollow and self-serving."

In his response, the Commandant looked forward to receiving the final TSAC report that should be presented at the Towing Safety Advisory Committee meeting in Washington on March 17th. Nevertheless, GCMA sees the "gap" between voluntary industry standards that are not fully participated in by all towing companies in the industry and meaningful safety regulations necessary to protect our mariners as widening rather than closing as GCMA members continue to report unsafe industry practices. We will work more closely with the Coast Guard on this issue when they demonstrate a greater concern for our mariners working on towing vessels.

NAHEOLA BRIDGE STATUS

In response to a request from several of our mariners, we sought this information from the Eighth Coast Guard District's Bridge Administration Branch: (Emphasis by underlining is ours).

"...(R)egarding the SR 114 bridge crossing the Tombigbee River mile 128.5 (BWT mile 173.5) at Naheola, Alabama. The Bigbee & Meridian Railroad, LLC, owns the existing railroad bridge that formerly provided one lane usage to vehicular traffic on that structure. A new bridge has been constructed approximately 50 feet downstream of the existing railroad bridge to carry SR (State Route) 114. As advertised in the Public Notice of September 27, 2000 the existing railroad bridge will remain.

"A request was made to add the subject railroad bridge to the U. S. Coast Guard list for evaluation under the Truman-Hobbs Act. A review of the records shows that this bridge has been submitted for consideration in the past. It is important to note that public involvement is key for the study to move forward from the Preliminary Review phase under the Truman-Hobbs Act. You are encouraged to enlist the support of the maritime industry as well as the local interest to participate in the process when notice for comments is received. The study of a bridge under the Truman-Hobbs process does not guarantee that the bridge will be found obstructive or receive funds under the Act if ordered altered."

[GCMA Position: We ask our mariners who experience problems navigating under this bridge on the Tenn-Tom waterway to write us and explain the nature of their problems so that GCMA can effectively represent your concerns regarding the possible removal and replacement of the bridge under the Truman-Hobbs Act of 1940.]

DEADLINE APPROACHES FOR MASTER OF TOWING VESSELS LICENSE

Source: IOMM&P Wheelhouse Weekly, Jan. 29, 2004

The Coast Guard advises that if you began your service or training in the towing industry before May 21, 2001, you may receive a license for Master of Towing Vessels, **if, before May 21, 2004**, you complete the exam required by 46 CFR 10.903(a)(18)(i) and meet either of the following two requirements:

- (1) Three years of service, including:
 - Two years on deck aboard a vessel 26-feet or more in length;
 - One year on deck aboard a towing vessel, with at least six months of training or duty in the wheelhouse of the towing vessel; and
 - Three months in each particular geographic area for which you are seeking authority, **or**
- (2) Three years of service aboard towing vessels including:
 - One year on deck, with at least six months of training or duty in the wheelhouse of the towing vessel; and
 - Three months in each particular geographic area for which you are seeking authority.

The deadline to complete testing and service is May 21, 2004. If you miss this deadline, then the requirement to work up through Apprentice Mate, Mate and then Master will apply.

Although the deadline is this May, applications submitted after January may not allow sufficient time for evaluation and testing.

For additional information contact Mr. Richard Wells at REC New Orleans at (504) 240-7300.

[GCMA Comment: This is just one way that the backlog of work clogging the Regional Exam Centers as reported in our last two newsletters can take its toll on our mariners.]



I would like to join the **Gulf Coast Mariners Association**.

I understand that full voting membership costs **\$36.00** a year and that associate membership costs **\$20.00** per year. I am joining as a (full) (associate) member and enclose \$ _____ (cash) (check) (money order)

Name: _____ Date: _____

Family Members: _____

Home Address: _____

Mailing Address: _____

Telephone #: (Residence): _____ (cell phone): _____ (fax:) _____

Employer: _____

E-Mail Address: _____

Job Title: _____

USCG License and or MMD: (Title) _____

SINKING OF M/V ERIN ELIZABETH

[Source: Extracted from the USCG Accident Report]

While transiting west across Lake Pontchartrain, in the middle of the day on July 13, 2002, the operator of the 46 ft, 55 GT, twin-screw diesel tug reported that weather conditions were calm and ideal. As the vessel passed under the south draw of the Causeway Bridge, the bridge tender warned the captain about a strong storm that was rapidly approaching. The captain reported that at this time he could see the weather on the radar, and he told the bridge tender that he would be "OK to pass through the bridge." The bridge tender asked the captain to call him when he got one mile out from the bridge to let him know how bad the storm was, but unfortunately the tug didn't make it that far. The rapidly approaching severe storm struck at approximately 1455, and capsized the vessel.

[GCMA Comment: Looking through the pilothouse windows is also a useful method of detecting approaching inclement weather. This method should be well-known to a Captain who spent 35 years in this industry.]

[GCMA Comment: After the Lake Pontchartrain Causeway was rammed and knocked down on a number of occasions (see GCMA Report #R-293) all towing vessels within one mile of this 22-mile bridge must report their name, position, and destination to the Causeway Police.]

The National Weather Service (NWS) broadcast a warning at 1430 for a cluster of "strong thunderstorms over the southern half of Lake Pontchartrain", approximately 20 minutes before the casualty. Wind gusts were in excess of 34 knots, according to the warning, and boaters were advised to seek safe harbor immediately. Unfortunately, the crew aboard the tug didn't hear the NWS warning.

The Captain stated that a gust of wind began heeling the vessel, and he instructed the deckhand to close the port and starboard doors on the main deck to the engineering spaces. Because of the severe wind, the deckhand could barely open the wheelhouse door, and he only made it down one deck before water began flooding the vessel.

The Captain and the deckhand both donned lifejackets as the vessel took on water from the starboard side and sunk to the bottom of the lake, in 13 feet of water. From the time the vessel entered the storm until the time the vessel rolled over on her starboard side and started sinking was approximately 3 minutes.

A Coast Guard Search and Rescue team was dispatched to the scene, and the crewmembers were picked up with no injuries. Over a week later, one crewmember claimed to be having neck and back pain, but these claims were not substantiated.

The vessel has since been raised, and was considered a total loss by the insurance company. The owner of the vessel bought the vessel back from the insurance company and repaired it. Repair costs, including steel work, engine work, cosmetic damage, etc, were approximated at \$175,000.

(Positive) drug test results were received for the non-documented mariner. Regional Exam Center New Orleans was notified, and they created and locked a file on him.

[GCMA Position: Unlicensed mariners on inland waters as well as those serving offshore on vessels of less than 100 gross tons are not required to hold merchant mariner documents. This policy of not requiring all commercial mariners to hold a USCG credential leaves a gaping loophole in the nation's security.]

[GCMA Comment: If the Coast Guard has no credential to suspend or revoke for drug abuse, all they can do is "create" a file and "lock" it in case the individual applies for a Z-card or license in the future. This is like closing the barn door after the cow runs away.]

This incident was considered a "Significant Marine Casualty" and a "Serious Marine Incident" and was easily preventable.

SENATOR LANDRIEU PROMISES TO LOOK INTO GASSOWAY LAKE NAVIGATION CASE

Senator Mary Landrieu (D, La) replied to our letter regarding the case of Walker Land v. State of Louisiana as described in the December 6, 2003 issue of the GCMA News. In a letter dated January 13, 2004 Senator Landrieu stated: "I am certainly pleased to look into this matter for you. I have contacted the appropriate officials at the U.S. Army Corps of Engineers to request further information. I will be back in touch with you as soon as I receive a response.

GCMA is pursuing the State of Louisiana's case against Walker Land Co. as Amicus Curiae.

THE RUMOR MILL

The Rumor: Kirby Inland Marine has "some kind of special waiver" that allows their employees to sit directly for a Master of Towing Vessel license while employees of other companies have to work up through Apprentice Mate/ Steersman and Mate levels.

Fact: "Kirby Corporation has an approved training program for officers on towing vessels; however, there is no special waiver for Kirby Corporation...Satisfactory completion of the training program only substitutes for the Coast Guard's examination and the assessments." [Source: Stewart A. Walker, Chief, Licensing & Evaluation Branch, National Maritime Center.]

NEW GCMA REPORTS

GCMA Report # R-386 is titled a Comparative Report: Towboats in Canada & the United States. This Canadian document reveals some key differences between how towing vessels are regulated in Canada as compared to how they are regulated in this country. We believe that our readers who work on American towing vessels will find this brief report interesting and informative. We incorporated comments on this report in GCMA Report #R-276, Rev. 7.

GCMA Report #R-387 is titled Canada Shipping Act: Towboat Crew Accommodation Regulations and recites the regulations that govern crew accommodations on Canadian-flag vessels. For the most part, they mirror comparable regulations on U.S. flag inspected vessels. The problem is that there are virtually no comparable U.S. Coast Guard regulations that can be enforced on American uninspected towing vessels and, consequently, why some American mariners must live in floating "pig pens."

GCMA Report #R-388 is titled Merchant Mariner Document (MMD) Changes to 46 CFR Part 12. The comments that follow apply specifically to merchant mariner documents (MMD or z-cards) and do not (yet) apply directly to USCG licenses.

On February 3, **2003**, the Coast Guard temporarily suspended issuing all merchant mariner documents so they could examine and "improve" the MMD program in light of security concerns over a year after the attacks on New York and Washington of September 11, 2001. They began to reissue MMDs on February 28, 2003 using a new tamper-resistant card.

In the Federal Register of January 6, **2004**, the Coast Guard announced new policies that went into effect immediately as regards the issuance of z-cards. Many, but not all, licensed mariners must also hold a MMD in addition to their license. As a "security" measure under the Maritime Transportation Security Act (MTSA) of 1992, the USCG can now circumvent normal rulemaking procedures in the interest of national security. This is a "magic wand" for federal bureaucrats who normally move at a snail's pace. There was no "Notice of Proposed Rulemaking" issued, no mention of the action in the Semi-Annual Regulatory Agenda, no chance to present arguments in advance of the rulemaking. This is what we can expect in wartime.

Among other things, in this Interim Rule the Coast Guard:

- Broadened the definition of "conviction" as it applies to applying for a z-card. This could affect many mariners.
- Require you to submit your complete criminal record going back as long as you have had one.
- Require you to disclose any foreign and military convictions as well as domestic convictions.
- Although the REC encourages you to renew by mail so you won't disrupt or ruin their day with your presence, they require you to visit the REC (at your expense) for fingerprinting and identification for original documents and renewals.
- Describes the "character and habits of life" that they believe are adverse to the security of the U.S. and that

determine whether you are a "safe and suitable" person.

- Describe how to replace your z-card if you lose it.
- Require you to surrender your old z-card when you receive your new z-card.

The Coast Guard is accepting comments on this rulemaking until April 5, 2004. However, they do not indicate that they intend to change the rule based on the comments. Consequently, the comments that we submitted to the docket (below) are probably another exercise in futility.

GCMA Report #R-389 deals with an expansion of the Coast Guard's "Notice of Violation Program."

This is the program where, if you break the law, the Coast Guard will give you a ticket. This doesn't sound like a strange or unusual law enforcement practice, but it is a relatively new one for the Coast Guard...and it's being expanded. When you receive a ticket, expect to pay money!

As applied to small oil discharges less than 100 gallons, the Coast Guard's standard civil penalty assessment procedure proved to be slow, cumbersome, and inefficient. It was not uncommon for a responsible party (RP) to accumulate additional violations before he was told that action was in progress on an earlier violation.

In 1995 the Coast Guard introduced a process where a simple Notice of Violation (NOV) can be issued in the field to permit early resolution of apparent small oil spill and pollution prevention violations.⁽¹⁾ This process saved time, reduced the cost of unnecessary internal review, improved deterrence, and enabled earlier corrective action. The responsible party (RP) was given an option to pay a proposed penalty or to pursue his right to a full hearing. [⁽¹⁾Refer to 59 FR 16558, Apr. 7, 1994.]

This new approach using a Notice of Violation (NOV) did not disrupt the existing civil penalty process for large pollution cases or other types of cases. In its first few months of operation, the personnel of one Coast Guard Marine Safety Office zealously handed out more than 500 of these new NOV "tickets" to offending polluters in its marine inspection zone.

Coast Guard Policy Letter G-MOA 4-03 announced the expansion of the Notice of Violation program to include oil discharge violations for spills of up to 1,000 gallons as well as for violations of designated marine safety and the new security regulations. Additionally, the maximum proposed penalty for all violations noted on the Notice of Violation "ticket" was increased to \$10,000. This policy went into effect on **January 4, 2004**.

A notice appeared in the Federal Register of June 2, 2002 where you are considered to be in default if you either decline to pay the "proposed" penalty within 45 days or simply don't pay it at all. So, Uncle Sam already has a new collection tool!

Not every marine safety and security regulation is currently eligible for issuance of the Notice of Violation. Consequently, the Coast Guard provided two enclosures listing those offenses can be covered by this simplified procedure. Don't let the word "proposed penalty" fool you! It's a proposition you can't refuse.

In general, the following offenses are covered:

- Oil Spills and Discharges.
- Failing to report a casualty listed in 46 CFR 4.05-1 immediately. Report #R-389 reminds you what this involves. **Warning!!!** This is of particular concern to any mariner who is a "**master, operator, or person in charge.**"

- Failure to report a marine casualty in writing within 5 days to the OCMI. The “boat companies” seem to be the biggest violators based upon the accident reports we requested that were never filed or filed months after the accident.
- Failure of a marine employer to complete chemical testing (e.g., drug and alcohol) for individuals directly involved in a serious marine incident. This is a hot item, too!
- Failure of a marine employer to submit required reports and chemical tests for a serious marine incident.
- Failure of a marine employer to comply with a chemical testing regulation in accordance with 46 CFR Part 16 and/or DOT regulations at 49 CFR Part 40.
- The new security planning deadlines that were not met by vessel, facility, and OSV facility owners have substantial financial penalties that can now be levied with a stroke of the pen.

[Note: Non-GCMA members may order printed copies of any GCMA Reports for \$5.00 per copy to cover expenses.]

BLACK LISTING AND THE FAIR CREDIT REPORTING ACT

[Background: On September 1, 2003 GCMA wrote the following letter to Representative Billy Tauzin, Chairman of the House Committee on Energy and Commerce as well as to each member of the Committee presenting our views on the provisions of the Fair Credit Reporting Act (FCRA) that adversely affect our mariners. We followed up our correspondence with a second letter to the Chairman on December 17th. Unfortunately, we have absolutely nothing to show for our efforts.]

“I am writing to you as a member of the House **Subcommittee on Commerce, Trade and Consumer Protection** to earnestly ask you to amend a provision in the Fair Credit Reporting Act (FCRA). I am writing on behalf of the Gulf Coast Mariners Association, an independent Association representing the interests and concerns of approximately 50,000 lower-level merchant mariners who serve on the nation’s tugs, towboats, small passenger vessels and offshore supply vessels.

“**Employment purposes.** 15 USC §1681b indicates that one of the permissible purposes of a consumer report is for “employment purposes.” The Federal Trade Commission further defines these “permissible purposes” relating to employment to include reports used for evaluating a consumer “for employment, promotion, reassignment or retention as an employee.” Our request concerns abuse of this provision in a significant, non-unionized portion of the maritime industry for employment purposes.

“We believe that a good employee will try to maintain a good work record. The fact that such a record really exists and may follow him in the workplace provides a positive and sobering influence upon his or her conduct and stability.

“Unfortunately, there is one feature that stands out and detracts from the value of this type of “consumer report.” That point deals with the answer to the question, “Would

you rehire this employee?” or, restated, “Is this former employee eligible for rehire by your company?”

“We receive widespread reports from our mariners that this single point is used to evaluate and subsequently to “**blacklist**” many of our mariners. It is a “quick and dirty” test of suitability for employment. Our complaint lies with the law and not with the Consumer Reporting Agency that only appears to be doing what the law and/or the Federal Trade Commission allow. We make the following arguments for change. **[ENCLOSURE #1]** is a Work Report with the “would rehire” blank circled. An employer may elect a “Yes”, “No” or simply to make no comment.

- “Would not rehire” is not based upon any uniform set of employment guidelines. It is a subjective opinion of some person working for a former employer who is under no obligation to reveal his/her identity or even position within the company. It could represent the opinion of a President, a Personnel Director, or even a clerk-typist with access to the company’s computer. In the case covered in **[ENCLOSURE #1]** the employee was never “fired” or even given a “pink slip.”

- “A mariner does not know which person “blacklisted” him or when it was done. However, “would not rehire” now can appear on a computer screen at a job seeker’s next job interview. Or, it may appear as part of the “reinvestigation” the present law allows. In this case, **[ENCLOSURE #1]** the job applicant found out about it three years later – much of that time spent unemployed but constantly seeking work. Although he made written inquiry to both his former employer and to the Credit Reporting Agency, he was never told why his former employer would not rehire him. The information the mariner chose to add to his consumer report to counteract the “blacklisting” was nothing more than a shot in the dark since he had no access to solid facts he could refute. Even worse, his statement now stands out like a sore thumb on his work report.

- “Most job applications require job seekers to list their previous employers. In the transportation industry, 49 CFR §40.25 even requires prospective employers to verify a job seeker’s drug records for the past two years. If the prospective employer made such a call he would have a greater opportunity to speak with a responsible person in authority and ask legally permissible questions about the job seeker. A “would not rehire” computer entry short circuits the entire process and is manifestly unfair to job seeker.

- Accepting “would not rehire” notations without identifying them by name coupled with the limitation of liability in 15 USC 1681h make it very extremely difficult for an injured employee to prove in court that he was disqualified from employment by “...false information furnished with malice or willful intent to injure such (a) consumer” if this is the case. Our experience shows that most mariners, especially those who are unemployed, do not have the means, the ability, and the knowledge to deal with the administrative procedures of the Credit Reporting Agencies – even when those agencies scrupulously follow the law.

“It is for these reasons and in the interest of fairness to our mariners that I ask you on behalf of our Association to amend the Fair Credit Reporting Act to exclude the solicitation of the information by Credit Reporting Agencies that allows notations such as “would not rehire” or “not eligible for rehire” to appear on a work report furnished by such an agency.”

**ACTION ON MARINER COMPLAINTS:
FILTHY COOK & CONTAMINATED WATER**
[Source: Edited from a mariner's letter to GCMA.]

During June 2003, I was transferred to the Lift Boat ■■■■■■ where I remain today. In January 2004, we were working a job for Apache at Eugene Island 188-P. We arrived on location on a Friday without a cook on board. The cook did not arrive until Saturday afternoon in time to prepare the 1700 meal. I knew this cook from previous jobs. I knew that several other Captains on other company boats previously ran him off for being filthy and cooking with contaminated water from the boat's potable water tanks instead of bottled water.

A few days after the cook arrived on the lift boat, one of the construction crewmembers told me he believed that the cook was using sink water from our contaminated potable water tanks to cook with. So I began to watch the cook closely and caught him cooking grits with the sink water. Members of the twelve-man construction crew and two members of the boat crew began to have serious diarrhea problems and severe stomach aches.

I went to the galley and confronted the cook about the situation and told him if he did not stop using the sink water to cook our food with that I was going to report him to OSHA. He responded by saying, "You think I'm scared..." and then laughed at me. The company man for Apache then spoke with the Captain about the situation.

The Captain told us we only had one more day on the job and that he would do the cooking the next day and stated, "You will at least have one decent meal before the job ends." This turned out to be true. However, when I asked the Captain in the presence of another crewmember if he was he going to notify the cook's office about what he did, the Captain said that he had known the cook for too long to do that to him.

GCMA Reply: Filthy Cook – The vessel you work on is 99 Gross Register Tons – and that's the rub! A cook (or other mariner) working on a vessel of less than 100 gross tons does not have to have a merchant mariner's document. If he had a Z-card, it should be endorsed as a "Food Handler" (F.H.). 46 CFR §12.25-20 states: "No applicant for a rating authorizing the handling of food will be certificated unless he produces a certificate from a medical officer of the United States Public Health Service, or other reputable physician stating that the applicant is free from communicable disease." The regulation says nothing about being trained how to handle food in a sanitary manner. That's an "employment issue" for his boss to handle.

Food-handling is an area the Coast Guard does not appear to be very concerned about. It is an "employment" issue left to the companies to handle with minimal Coast Guard oversight – even on inspected vessels. The Captain on your vessel represents the company. He has done little to assure his crew's health by allowing the cook to continue his slovenly ways. In contrast, on deep-sea U.S.-flag ships, it is a "given" that most of the cooks are well

trained in menu preparation and food sanitation by training at the Seafarers International Union cooking school.

We understand from talking with you about your letter that the cook works for a catering company. Since the Captain did not seem concerned about the health of his crew or the construction crew, he did not report this to your boat company. Perhaps the Apache crew chief was sufficiently offended to report it to his superiors. After all, his company was paying for the cook's services. If you furnish the name and address of the catering company and of "Apache", GCMA will be pleased to send a copy of your signed letter to either or both firms along with a copy of this article.

GCMA Reply: Dirty Water – GCMA has worked on the drinking water issue for well over a year. This is an issue we take very seriously. The Coast Guard (in Docket #USCG-2003-14325 on the internet (at <http://dms.dot.gov>) rejected our petition for rulemaking and, instead, referred us on March 17, 2003 to the U.S. Department of Health and Human Services (DHHS). The contact they gave us in DHHS was unable to find any applicable regulations that govern drinking water on small commercial vessels.

Without regulations and a government agency willing to enforce them there is no protection other than what your company provides (i.e., that they obviously do not provide!). We understand, from earlier correspondence that your company skimps on providing bottled water for the boat crew and for "industrial persons" housed on your lift boat – even in the summer. We believe this is extremely short-sighted for both health and crew morale.

GCMA also contacted the Louisiana Department of Health and Hospitals. They indicated that drinking water on commercial vessels was not their problem. However, they did give us a list of approved drinking water testing laboratories. We contacted one that will work with you to test the samples that you will provide and will send us instructions on exactly how to take the samples and maintain their validity so they can supply a meaningful report on the condition of your boat's potable water system. We also sought help from Senator John Breaux's office as to the need to seek legislation. We are awaiting a reply from his office.

GCMA Reply: OSHA – This is definitely a workplace issue. However, since you work on an inspected vessel, the Coast Guard rather than OSHA is in control. There are new regulations in the works (33 CFR Subchapter N) that deal with matters on the Outer Continental Shelf. Also, refer to GCMA Report #R-347.

The Coast Guard has detailed instructions regarding the measures necessary to protect the drinking water supply on their own vessels. However, it is clear that the merchant mariners they "superintend" are expected to fend for themselves without the protection of law or regulation. In our opinion, they tried to "pass the buck" to DHHS.

[GCMA Position: The Coast Guard has mixed its priorities. If they can regulate ballast water to protect the environment, they should be able to regulate the quality of drinking water that our mariners use aboard small commercial vessels without "passing the buck" to another government agency.]

**GCMA "BROWN-LISTS"
MARYLAND MARINE**

GCMA fields a significant number of complaints on employment issues from our mariners in as fair a manner as possible. When a mariner gets a "raw deal" we do what little we can to get to the bottom of the problem. However, we are not and never have been a labor union. The vast majority of our "lower-level" mariners work as "employees at will." This means that they do not have a labor contract negotiated through collective bargaining that controls their conditions of employment and provides the machinery to resolve their grievances. Without such a contract, most of our mariners can be terminated at any time, for any reason whether fair or not. There is little recourse for most of our mariners unless such termination is clearly illegal – and only then with the help of an attorney.

In late September, one of our mariners, a certificated tankerman, approached us claiming that his employer cheated him out of \$728.00. The employer was in a different state from the state in which our mariner resided. He brought receipts and other documentation that appeared to support his story. We checked with our attorneys and learned that the sum in question was too small for them to recover. Travel expenses would eat up any possible recovery from small claims court. The only remaining course of action was to write to the company on behalf of the mariner – that we did on October 1, 2003 as follows:

Personnel Manager, Maryland Marine, Inc.
1980 Post Oak Blvd., Suite 1101, Houston, TX 77056

Dear Sir,

The Gulf Coast Mariners Association is an independent association that represents the interests of mariners serving on tugs, towboats, offshore supply vessels and small passenger vessels in the Eighth Coast Guard District.

One of our mariners, Mr. ■■■■■, a resident of ■■■■■ ■■■■■, LA, reported that he worked with Maryland Marine starting April 10, 2003. He reports that he was terminated (i.e., fired) by your company on or about August 5, 2003. His final paycheck #17989 is dated August 11, 2003 in the amount of \$165.93 covering the period of July 20th through August 4, 2003. On behalf of Mr. ■■■■■ we respectfully contest the amount of his final check for the following reasons and submit the following monetary claim on his behalf:

ITEM #1: \$300.00

Mr. ■■■■■ initialed a document [ENCLOSURE #1] that states, "Any employee who terminates his employment before six (6) months of service will have the cost of his pre-employment physicals deducted from any remaining wages. I acknowledge with my initials." Mr. ■■■■■ states unequivocally that he was fired. He did not resign. We note that this sentence differs from the wording three items below that that use the phrase: "If employment is terminated for any reason..."

Mr. ■■■■■ was charged for a drug screen/physical exam and Work-Steps, part of the physical exam, (matrix) totaling \$300.00.

ITEM #2: Travel expenses. \$428.00

Mr. ■■■■■ is a resident of Louisiana. He understood that his travel would be paid to and from the job by common carrier. He was only paid once for his travel returning from work from Houston, TX to Morgan City, LA by airplane via New Orleans. He claims the following:

- Another trip by airplane from Houston to Morgan City via New Orleans where he was not paid. (\$108.00). The \$108 includes the extra charge for baggage that included work clothes, personal protective equipment and as well as blankets and linens that he was required to supply when he worked for your company. (voucher enclosed).

- Four round trips from Morgan City to Houston or Orange, TX by bus including extra baggage. Bus fare is \$80.00 per trip. Total \$320.00. (voucher enclosed).

These figures can be verified with your personnel supervisor as to dates of travel. These dates correspond to the days he was on duty and had to travel to and from Louisiana to Texas to work on your vessels.

Mr. ■■■■■ hereby respectfully requests that you pay him a total of **\$728.00** that reflects the money deducted from his paycheck or money never paid him for his travel expenses. We request that this matter be settled between him on or before November 1, 2003. Very truly yours, Secretary, GCMA. [Mr. ■■■■■ certified by his signature that the foregoing statements were true and correct to the best of his knowledge and belief.]

The mariner reported on February 12, 2004 that he received no reply to our letter. Since GCMA believes that his claim was valid, we want to advise other mariners who may seek future employment in the towing industry of what we consider to be an unfair practice.

The towing industry faces a shortage of licensed and certificated mariners in the future for many reasons. In the past, employers "threw money at the problems" while continuing to give many of their employees "raw deals" of all sorts. We will actively advise our mariners to avoid those employers who arrogantly mistreat their employees.

NOSAC MEETING ANNOUNCEMENT

[Source: 69 FR 7245, Feb 13, 2004]

The National Offshore Safety Advisory Committee (NOSAC) will meet on Thursday April 1, 2004 from 9:00 AM to 3:00 PM in Room 2415 of Coast Guard Headquarters. The preliminary agenda for the meeting follows (and is rearranged in **GCMA's** order of importance):

1. Revision of 33 CFR Subchapter N on Outer Continental Shelf (OCS) activities. [WARNING: GCMA has gone on record in this rulemaking docket on a number of issues that concern our mariners on **workplace safety on the OCS**. We are particularly concerned that the Final Rule, when issued, may not sufficiently clarify the applicability of workplace safety requirements to **uninspected towing vessels that work on the OCS**. Inspected vessels may fare somewhat better. We warn our mariners that OSHA workplace safety regulations do not cover these mariners. You may face unacceptable personal risks where there are no laws or regulations in place that clearly protect you.]
2. Presentation by the Minerals Management Service (MMS) on protection of OCS attending vessel crews from exposure to toxic Hydrogen Sulfide gas. [Note that GCMA brought this matter to the attention of NOSAC at its last meeting in order to protect our offshore mariners and reported additional concerns involving inland mariners since the last meeting.]
3. Report from OMSA on development of operations procedure/training for liftboat operators. [GCMA actively participated in the NOSAC Liftboat Subcommittee that developed an important report available as Document #R-363.]
4. Report by the Coast Guard and the NOSAC Security Subcommittee Chairman on the implementation of maritime and offshore security rules.
5. Report on issues concerning the International Maritime Organization and the International Organization for Standardization.
6. Status report on Coast Guard/ Minerals Management Service inspection of fixed offshore facilities.
7. 33 CFR Subchapter NN deals with a temporary final rule on Deepwater Ports including proposed new deepwater ports for liquefied natural gas in the Gulf of Mexico.

Mr. Jim Magill, Assistant to the Executive Director is the NOSAC contact at (202) 267-1082. Captain Roland Rodney is the mariner representative on the NOSAC committee appointed by the Secretary of Homeland Security. GCMA members planning to attend the meeting and/or make a presentation are asked to notify us at (985) 851-2134.