

GCMA NEWS

The Voice for Mariners



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OVERSIZE TOW SLAMS INTERSTATE I-55 BRIDGE AT CARUTHERSVILLE, MO.

By Katie Antalick, *Waterways Journal*
May 17, 2004.

Recovery efforts to pull three sunken barges and one partially submerged barge from the Mississippi River in Caruthersville, Mo. are set to begin today (May 17).

Ensign Anthony Carbajal of the Coast Guard's Marine Safety Office-Memphis, said the sunken barges are a result of an accident on May 9 when the M/V CRIMSON DUKE, owned by American River Transportation Company, Decatur, Ill., and piloted by William J. Cancienne, Jr., hit the I-155 bridge spanning the river at Mile 838.9 shortly after 2 p.m., causing 36 barges of the 42 total to break away. The barges had originated in Cairo, Ill., and were destined for New Orleans. One barge drifted downriver as far as Mile 820 before being recovered.

All but one of the sunken barges are on the right descending bank with one barge on the left descending bank, said Carbajal, so they are not in the channel.

The cause of the accident is still under investigation. Most likely, it will be several months before the actual cause is identified. Carbajal said he was not aware of any unusual river conditions or higher or lower river stages in the area.

Carbajal said local authorities and the M/V LOU DRAPER, M/V AMY ROSS and M/V ELMER STONE were able to assist in rounding up the loose barges. There were **six tank barges** with the remaining barges carrying general cargo. The remaining barges are tied to shore or on ground.

One tank barge was damaged, but since it was double-skinned, Carbajal said only the outer skin was fractured.

The river was closed to all traffic within 34 minutes of the accident. It wasn't until May 10 after 5 p.m. that the river was reopened to downbound traffic as workers from Budwine and Associates, Destrehan, La., continued salvage operations on two grounded barges. Once the downbound traffic had cleared, the river was opened to all traffic.

"I would estimate that there were about 30 tows waiting to go through at that time," he said. "I don't know the exact time that the river was really cleared but the southbound traffic was going through then and the northbound traffic over night, so it was back to normal in the morning."

Although the river was reopened for traffic, Carbajal said towboats in the area had to proceed with caution.

"We put out a broadcast to let everyone know that there are crews out there doing salvage operations and to be cautious," he said. "Otherwise, everything is okay."

Carbajal said the Coast Guard doesn't currently believe that the river will need to be closed in order to complete the salvage efforts of the sunken barges. That process could take two to three weeks.

With the help of American River Transportation Company, Carbajal said everything has run smoothly. He said the company has taken responsibility and has had a very active role with getting the river cleared up.

GCMA COMMENTS ON THE ACCIDENT

GCMA's mariners keep us posted on a variety of accidents. Our information is often quite comprehensive as to the background of an accident and as to the persons involved. Among our mariners are some who have experience working on salvage rigs. Occasionally our files include photographs and reports from the scene by e-mail, phone and fax.

Distribution of this newsletter was made possible by a generous donation of Capt. James Chatlosh.

When we are notified of an accident, we ask for a copy of the Coast Guard's investigation of the accident. Sometimes this information does not arrive for months or even years after we submit our request. Usually, information like the name of the mariners involved, witnesses to an accident, names of junior Coast Guard officers, drug test results etc. is redacted (i.e., blacked out) from these reports. We then compare our information with Coast Guard information.

At the last Towing Safety Advisory Committee meeting in Washington, Captain Larry Gwin made a report to the committee on the subject of Over-sized and Overloaded Tows. In giving this report he predicted that additional accidents would occur when companies insisted on pushing tows of this size.

Captain Gwin's "predictions" were based on factual information provided by many mariners who gave detailed information to GCMA. In many cases, GCMA knows that accidents occur even when the Coast Guard doesn't seem to have the faintest clue. Of course, what the Coast Guard doesn't know, they cannot act upon. Although GCMA has made an effort to inform the Coast Guard about accidents that are not reported, the Coast Guard has not shown a great deal of interest in learning about these events. What they don't know about saves them the time and trouble of acting upon it!

Of special interest to mariners several years ago was the fact that **ONE COMPANY**, this time in the offshore oil industry, failed to report 44 injuries to mariners that were serious enough for mariners' attorneys to bring to court. Nevertheless, the Coast Guard gave the offending company a meaningless slap on the wrist – no fine, no penalty! Since that time, that company has sold its boats.

Here is the recent accident record of just **ONE COMPANY** that was reported by our mariners. This company is a member of the American Waterways Operators and follows their Responsible Carrier Program. In theory, they should be doing everything the right way in light of their organization's "partnership" with the Coast Guard:

Bridge Allisions:

- M/V JOHN H. MACMILLAN,

10,500 hp., Oct. 28, 2002, Baton Rouge U.S. Route 190 Bridge, **42 barges**, \$940,000 damage, as described in GCMA Report #R-340, pages 10-12 inc. MISLE Activity #1697682, G-CIM FOIA 03-0317. [GCMA File M-299]

- M/V ANDREW CARGILL MACMILLAN, 10,500 hp., Memphis, TN, while pushing **46 barges**, tow struck the Harahan Railway Bridge, damaging 4 barges and causing \$150,000 damage, as described in GCMA Report #R-340, page 14. MISLE Activity #1716174; FOIA #03-429. [GCMA File M-402]

- M/V GINNY STONE, 9,000 (questionable) hp., Greenville, MS, pushing **42 barges**, struck Highway 82 Bridge, Nov. 22, 2003, 1 barge sunk while passing through a regulated navigation area and others reportedly damaged. Still awaiting accident report requested under FOIA #03-0491. Activity #1954954. File incomplete, "Still under investigation," Dec. 10, 2003. [GCMA File M-437]

- M/V CRIMSON DUKE, 9,000 (questionable) hp., May 9, 2004, with **42 barges** (6-long) struck Interstate Highway I-155 Bridge near Caruthersville, MO., 1400 hours. Delayed estimated 30 tows for up to 27 hours. GCMA FOIA REQUEST, File #M-467.

Other Accidents:

- M/V SALLY ARCHER, 9,000 (questionable) hp., July 28, 2003, at Victoria Bend, Rosedale, MS, while pushing **42 barges** struck the bank and broke up tow leaving 12 barges adrift. FOIA #03-1955 & 04-0029. File incomplete, G-CIM says the case is still under investigation. [GCMA File #M-428]

- M/V SALLY ARCHER, 9,000 (questionable) hp., Baton Rouge area, July 12/13, 2003. Allision with dock, damaged facility. FOIA #03-1955, USCG Activity #1856725 (New Orleans). Sent request to LT Parker, MSU Baton Rouge on July 15th. No response. G-CIM could not find elec-

tronic files on this case on Oct. 17, 2003. Looking for CG-2692. File incomplete; case reported to be "still under investigation" on Jan. 4, 2004. [GCMA File #M-428]

- M/V VIKING QUEEN, 10,500 hp., on one southbound low water trip on August 15, 2003, at Mile 164, UMR, while pushing **36 barges**, struck tow of M/V ROBERT GREEN, FOIA #04-0017 and reportedly sideswiped Meramec Power Plant, then grounded at Cape Girardeau, MO, and later knocked a fleet loose at Cairo, IL, on the same trip – but these later mishaps were apparently not reported. File incomplete; requested further information from MSO Paducah and MSO St. Louis with no reply from either office. [GCMA File #M-430]

- M/V INEZ ANDREAS, 9,000 (questionable) hp., March 1, 2004, while pushing **42 loaded barges**, collided with stranded barge from M/V KEITH DARLING in Victoria Bend, LMR 595, as it was being unloaded by a crane barge being serviced by M/V CLINT DAVIS in spite of repeated warnings on broadcast notice to mariners. Scared all involved but fortunately little damage. Case #165298, Investigation Management Activities #2016017 & 2016004. [GCMA File #M-460]

- M/V AMERICAN PILLAR, 10,500 hp, March 14, 2003, where the head of the tow proceeding in fog reportedly hit and seriously damaged a shoreside structure known to pilots as the "Cajun Condo" at or near LMR Mile 266 near St. Francisville, LA. File incomplete; reported by G-CIM to still be "under investigation." Activity #1765805, FOIA #04-0758. [GCMA File #M-450]

- M/V COOPERATIVE SPIRIT, 10,500 hp, April 25, 2003, with **37 barges** (5-long x 8 wide) was struck by T/S BOW LION in an overtaking situation near LMR mile 139 resulting in a 125 metric ton spill of xylene in the river. Accident blamed on ship pilot but report indicates tow pilot may possibly have altered course forcing ship into LDB bank suction. MISLE Activity #1782585. FOIA #04-0401. [GCMA File M-416]

THE VOICE OF REASON

This "Chat Board" posted by Captain Bill Beacom was brought to our attention by several mariners and makes a great deal of sense:

"Is there such a thing as an overloaded boat? The rules say that when planning a voyage the Master is to consider the size of the tow the boat can safely handle. The boat must be capable of stopping and maneuvering under any circumstance that can reasonably be expected to exist on the trip planned. I have never handled a 42 or 48 barge tow southbound, but I have seen 42 and 48 barges on boats in river conditions where I am certain the Master could not meet the above criteria.

"Let us use (the) same logic and apply it to over-the-road trucking. If a trucker could drive at any speed, and the company said we have to have this load delivered 800 miles in 10 hours or you lose your job, the truck driver would be faced with the same dilemma as a towboat Captain. You would have some drivers claiming it was safe, and there would be others saying it wasn't.

"Do you think just because a driver hasn't ever averaged 80 mph for 800 miles he is not qualified to say whether it is safe or not?"

"The Government sets the limits for a reason. That reason is Capitalist Greed or rationalization can always influence subjective decisions that involve safety. The towing industry employees need the U.S. Coast Guard to set limits just like the Department of Transportation (DOT), Federal Aviation Administration (FAA) and the Federal Railroad Administration.

"It is way past time for the U.S. Coast Guard to remove the burden of Capitalist Greed from the decision-making process. It is mathematically possible to determine safe tow size. Any good Naval Architect can do it. I believe every boat should be measured for Bolland Pull both backing and pushing, and a maximum tow size assigned, not to be exceeded under threat of license revocation."

As Captain Beacom points out, the regulation of tow size is clearly an issue that the Coast Guard should have addressed many years ago.

Most maritime nations regulate the loading of cargo ships and barges on ocean and coastwise voyages by regulations conforming to the International Load Line Convention.⁽¹⁾ [⁽¹⁾46 USC 5101-5116; 46 CFR Parts 41-47]

SAMUEL PLIMSOLL AND LOAD LINES

The "Plimsoll Mark," the original load line mark, was named for Samuel Plimsoll (1824-1898), a British reformer called "the sailor's friend," who conducted a strong campaign for fixing load lines on British vessels. This campaign saved the lives of many mariners who faced what Captain Beacom calls "capitalist greed."

Samuel Plimsoll believed that the many shipping disasters that occurred for most of the 19th century were due chiefly to overloading and contended that Parliament should establish a load line for every vessel. The British Parliament passed the Merchant Shipping Act of 1876, which provided that a circular disc with a horizontal line through its center must be painted on each side amidships on many British merchant vessels. The Plimsoll Line plainly indicated the greatest depth to which vessels should be safely and legally loaded, and its exact position is now determined on a thoroughly scientific basis.

The International Load Line Convention of 1930 was ratified by the U.S. Senate and went into effect on January 1, 1933. The Commandant approved the American Bureau of Shipping, an American Corporation founded in New York in 1856, as a load line assigning authority. However, the load line regulations do not apply to most towboats and barges in river service.

The lack of regulation by the Coast Guard in this area may have led to the introduction of river barges that are a standard 195 feet in length by 35 feet in width but can be loaded at least two-feet deeper than conventional barges. The difference in depth allows these barges to carry half again as much tonnage as a conventional barge – 2,250 tons compared to about 1,500 tons. However, the towing dynamics of these oversized barges are much different – and so is the risk that mariners face in moving them. There is a greater risk to the infrastructure along the river and the bed of the channel itself during low water periods when their movement is not effectively regulated. Uncle Sam (aka the American taxpayer) pays to dredge the river to keep traffic moving.

However, the issue of the relationship of horsepower to tonnage or horsepower to the number of barges is one that some companies do not want the Coast Guard to ever address because it puts a crimp in their operations and allows them to take shortcuts that are risky yet profitable if successful.

THE GOOD NEWS

The Interstate Highway I-155 at Caruthersville still stands! This allusion wasn't the "big one" – a sequel to Bayou Canot, Webbers Falls, or Port Isabel. It has not yet convinced ARTCO not to use their towboats to push overloaded tows in excess of 40 barges composed of a mixture of standard and deep-draft barges!

Yet, it appears that there may be fewer and fewer towboat Pilots that are willing to accept the risk and loss of income of license suspension and revocation in return for the extra money to move extra barges. Until the Coast Guard acts, more heavy tow pilots can only wonder what may happen to them if an oversize or overloaded tow gets away from them.

The jury is still out. In reviewing the list of accidents cited above, the Coast Guard accident reports we were furnished provided scant evidence that the Coast Guard applied administrative or civil penalties to either the mariners or the company in any of these accidents. In fact, there is such a noticeable lack of activity that one might even suggest (correctly or incorrectly) that the company in question received exceptionally favorable treatment from Coast Guard officials or the Coast Guard did not monitor the situation carefully. We will have to wait and see!

In the \$940,000 allision of the M/V JOHN H. MACMILLAN cited in detail in GCMA Report #R-340 that severely damaged docks and barges below the U.S. 190 bridge at Baton Rouge, we noted that the Coast Guard accident investigator made no recommendations for preventing accidents of this type in the future. The Coast Guard appears to have accepted this event as an "inevitable accident" even though it occurred at low water stages. In this report GCMA openly questioned the experience of the unnamed Coast Guard's accident investigator.

Although the same company appears willing to risk the losses while accepting responsibility, salvaging its barges and continuing to push oversized and overloaded tows, what does the Coast Guard plan to do to protect the interest of the public that uses the bridges or other tows that are delayed.

The M/V CRIMSON DUKE's tow dispatched from Cairo, IL, on May 9, 2004 with 42 barges including 6 tank barges reportedly arrived at Kenner Bend on March 17th with 33 barges. Our mariners who saw the tow at the "end of the line" reported to us that many of the barges appeared to be "badly battered."

GCMA ALLIES WITH USCG SAR PROFESSIONALS ON MARINER LIFESAVING ISSUES

By Richard A. Block

The Coast Guard's good reputation was established many years ago in large measure by the Coast Guard men and women who selflessly dedicated their lives to saving lives at sea.

The late LCDR Walt Martin, USCG, Ret., memorialized many of the positive contributions of the Coast Guard to our nation in an editorial for the National Association of Maritime Educators published in 1988 as follows:

- The nation's oldest seagoing service that was authorized by Congress on August 4, 1790, to guard the nation's coast against smuggling from the sea and to enforce customs laws.
- The act of 1915 that provided..."the Coast Guard shall be a military service and a branch of the armed forces of the United States at all times."
- The agency that maintains over 40,000 aids to navigation for the benefit of us mariners and then stands ready to rescue us if we don't utilize them intelligently.
- The Semper Paratus ("Always Ready") organization that claims the unofficial motto, "You have to go out, but you don't have to come back."
- The revenue cutter HARRIET LANE that fired the first shot of the Civil War in the bombardment of Fort Sumter.
- The 15 cutters and over 5,000 Coast Guardsmen that served during World War I.
- The 111 Coast Guardsmen that were lost when the cutter TAMPA was torpedoed on the night of September 26, 1918.
- The service, that in proportion to its strength, suffered the highest losses of any armed service during World War I.
- The Coast Guard that operated over 1,400 vessels during World War II and was credited with sinking 12 enemy submarines.
- The small armed service that lost 572 men during World War II.
- The outfit that rescued more than 4,000 survivors of enemy action during World War II.
- The Coast Guardsmen that manned the assault craft in landings in North Africa, Europe, the Pacific, or the old 183-footers that rescued 1,500 men from sunken landing barges on D-Day at Normandy.
- The men that manned the lonely, isolated Loran stations, or the "double-Victor" ocean-station patrols around the world.
- Those aviators who landed their old PBYS and PBMs on rough seas to effect a rescue...or more recently, when all others were grounded, put a chopper in the air to salvage a human life from a stranded vessel or an offshore oil rig.
- The men who organized the joint-service rescue of 1,600 survivors of the ANDREA DORIA collision.
- Joshua James who saved lives along the Massachusetts coast for 60 years before collapsing on the beach and being buried in a surfboat for a coffin; Katy Walker who saved more than 20 lives while keeper of Robin's Reef Lighthouse; Signalman Douglas Munroe who won the Medal of Honor for bravery at Guadalcanal; Captain Mike Healy

who brought law to frontier Alaska; Commander Frank Erickson who was the first to land a helicopter on the deck of a vessel; all of those today who are risking their own lives so that others may live productive and drug-free lives...

...and the list goes on, and on, and on...

Mariner lifesaving issues. GCMA identified a number of important issues involving lifesaving equipment, gear and policies that directly affect lower-level mariners serving on tugs, towboats, offshore supply vessels and small passenger vessels. This equipment has the potential for putting the lives of our mariners and others on board at risk. We published GCMA Report #R-354 on February 7, 2003 and were greeted with a big yawn from the "experts" at Coast Guard Headquarters.

At least we assumed that the experts were at Coast Guard Headquarters.

The "Personal Retriever". Late last year GCMA received a telephone call from Paul Driscoll, USCG, Ret., President of Life Safer, Inc. of San Diego, CA. Paul enlisted in the Coast Guard in 1965, spent his entire career in the Coast Guard branch that specializes in Search and Rescue (SAR) and retired as a Master Chief. In many hours of conversation, he introduced his invention, the "Personal Retriever" that solves several of the key problems involved in retrieving a man overboard.

Paul stresses that his invention was made by a mariner who had the opportunity to rescue many people from the water and knows all of the problems involved first hand from hands-on experience. He is a SAR professional with friends and acquaintances in that part of the Coast Guard that every mariner deeply respects. Paul demonstrated his "Personal Retriever" to the crews on Coast Guard cutters and proved to their satisfaction that the device was far superior to the ring life buoys and heaving lines in current use. Many cutters and patrol boats purchased his device from unit funds.

While convincing the crews on Coast Guard cutters and patrol boats was a "slam-dunk", convincing the Coast Guard bureaucracy in Washington of its value was an entirely different story. Paul received the same "big yawn" treatment that GCMA constantly receives when we broach issues of concern to our mariners. We exchanged experiences.

Paul posed a simple question: "Why hasn't the Coast Guard relied upon the same ring life buoys on its own cutters and patrol boats for the past 20 years that it requires to be carried on all commercial vessels and many recreational vessels?" A picture is worth a thousand words, and Paul produced a convincing videotape of a rescue from a frozen river in Massachusetts and a comparison of the "Personal Retriever" and ring life buoys and heaving lines from the deck of a Coast Guard cutter.

When Paul offered to give his invention to the Coast Guard he received the same "big yawn" as we did when we questioned the "experts." Consequently, he determined to go in business so he could market his device to professional mariners as well as search and rescue outfits such as police and fire departments and to the Coast Guard.

Although I asked Paul for a sample, the only way he would release one was by sending it with Frank Hawthorne, a former Coast Guard Officer, who personally instructed me in how to use it properly. We each drove about 150 miles on a Saturday

morning and met near Lake Charles, LA, where I received instruction in how to use the device.

The "Personal Retriever" does more than take the place of a ring life buoy and has a "reach" of up to 100-feet. Compare apples to apples; see how far you can throw a ring life buoy in comparison to the "Personal Retriever." Try both on the lawn or in the water. Even more important, compare the accuracy with which you can reach a target (say, a person in the water) 25, 50 or 75 feet away. Like anything, practice makes perfect. Remember that there may be a drowning person on the other end of the line and time is of the essence.

Talking with Paul and using the "Personal Retriever" following the instructions of Frank Hawthorne made me a "believer."

GCMA is taking the unusual step of recommending this lifesaving device to our members. Personal instruction (about

15 minutes) is included with instruction by videotape as an alternative. Since GCMA does not have a resale license and is "non-profit," sales will be handled by Marine Education Textbooks, 124 North Van Avenue, Houma, LA 70363 at \$65.00 each. Profits from all sales through MET will go to support the Gulf Coast Mariners Association.

Paul Driscoll is an Honorary Member of GCMA and has agreed to consult with us on his product and to recommend other products he may determine to be of real value to our working mariners. He will be our SAR "resource person." We will furnish all comments from our members directly to Paul, and he will contribute articles to the GCMA News from time to time and keep us in the loop with his friends and professional associates. We see this relationship as a "win-win" situation for all our mariners.

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- Stows anywhere

See back for additional specs and information.

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Technical Data	Reach: 100 feet	Rope: 650 pound test buoyant 3/16 inch polypropylene base
	Buoyancy: 12 pounds*	Wind Penetration: Full extension into 15 knot winds
	Deployment: 10 seconds or less	Coating: Petroleum and UV resistant plasti-coat
	Redeployment: 45 seconds or less	Design: Aero and Hydro-dynamic rotating wing
	Diameter: 17 inches	Training Time: One hour or less
	Thickness: 3 inches	Storage: Protective nylon pouch
	Weight: 1.5 lbs.	
	Material: Soft expanded polyethylene foam top with a propylene base	

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**BUZZARDS BAY OIL SPILL
 BLACKENS
 NATION'S TOWING INDUSTRY**
[GCMA File #M-417]

An article in the June/July 2004 issue of Professional Mariner (PM) blows the lid off an oil-spill that occurred on April 27, 2003 off the Massachusetts coast involving the uninspected tug EVENING TIDE and the inspected tank barge BOUCHARD 120.

While reports in other trade journals briefly mention that the U.S. Attorney

for the District of Massachusetts that Bouchard Transportation Co. agreed to plead guilty to violation of federal law and pay a criminal fine of \$10 million, PM mentions some of the details of the case that we had not seen in print elsewhere. We look forward to receiving the Coast Guard's investigation report that we requested under FOIA to look more closely into this case.

The size of the fine, \$10 million for a 55,000-gallon oil spill, eclipses the \$7+ million previously paid for the 1996 SCANDIA-NORTH CAPE oil spill in

neighboring Rhode Island of over 828,000 gallons. Points revealed in the PM article of particular concern to our mariners include:

- "The EVENING TIDE's mate allowed the boat to drift off course and toward the rocks when he left the pilothouse for an extended period to work at the stern of the towboat." (We have concerns related to the two-watch system and lookout issues among others.)
- The mate failed to monitor the radio and thereby missed a warning call sent by a nearby vessel.

• Other employees previously questioned the company about the mate's competency.

The Boston Globe reported in June 2003 that the cost for cleaning up the spill had already passed the \$34-million figure – an amount reported by both the Coast Guard and the responsible party. They also reported that the crew was not tested for alcohol use until at least 18 hours after the barge hit an underwater obstacle. Nevertheless, on May 2 (2003) the Coast Guard announced the crewmembers had passed the test.

Hopefully, the investigation report will clarify this issue.

The Coast Guard, published a Notice of Proposed Rulemaking following the SCANDIA-NORTH CAPE accident (Docket #USCG-2001-8773) that plans to revise the requirements for chemical testing following serious marine incidents by ensuring that alcohol testing is conducted within two hours of a serious marine incident. Comments on this NPRM have already closed.

• The Boston Globe reported in June 2003 that "...critics in New England and

elsewhere are worried over the prevalence of retired Coast Guard employees that go on to work for the marine industry they regulated. Bouchard has hired as a consultant (a retired Coast Guard Assistant Commandant for Marine Safety and Environmental Protection." It is about time that Congress reconsidered the ethics of the "revolving door" policy – but it isn't about to happen soon because the practice permeates many other federal agencies!

SAFE DRINKING WATER ISSUE

The issue of providing safe drinking water on tugs, towboats, offshore supply boats and other small commercial vessels certainly is not a new one. GCMA has worked on it on behalf of our mariners for the past several years and has received a royal "run-around" by several Federal agencies in Washington.

Most vessels take on supplies of potable water from public water sources in the United States. However, when the water enters your vessel's storage tank it enters a "private" system. The "state" public health authorities, although they understand the problem, effectively wash their hands of the issue. Essentially, this becomes a problem between you and your employer.

If your vessel has a "problem" with its water supply, you should bring that problem to the attention of your employer immediately. If that route leads nowhere, consider this – If you were a member of a labor union, resolving this problem could be done through the collective bargaining process. For example, the following clause appears in the contract signed between the International Union of Operating Engineers, AFL-CIO, Local 25, Marine Division and the companies that employ its workers including Masters, Mates, AB Deckhands, Oilers, Tankermen etc. in dredging operations on the east coast – and was brought to our attention by GCMA member Captain Pat Kiffe who is represented by that union:

"The COMPANY shall provide clean potable water which shall be tested by an independent laboratory twice a year."

Water testing is one solution. Union contracts also cover issues such as training, job security, holidays, transportation to the job site, manning, watches, call-out pay, hazardous duty pay, personal protective gear, loss of personal effects, promotions, vacations, medical care, death in the family, jury duty, maintenance and cure payments, etc. that represent the achievements of the labor unions in the past century.

Understand that GCMA has reviewed this problem. The result of this review supplemented by several "Horror Stories" from our mariners appears in GCMA Report #R-395 that appears on our website. (If you have an additional "horror story" to add to this report, be sure to send it to us!)

On May 19, 2004 we sent the following letter along with a copy of GCMA Report #R-395 to several dozen select Congressmen:

"I am writing to you ... on behalf of our mariners who work on uninspected towing vessels as well as on every type of commercial vessel from ferries to offshore supply vessels of

less than 1,600 gross register tons. For the most part, our mariners are not represented by a labor union and, therefore, never had an opportunity to bring up or negotiate this issue with their employers. We view this as an unaddressed public health issue.

"Ever since we brought this problem to your attention over a year ago,⁽¹⁾ we have tried to find a solution to the problem of providing safe drinking water on small commercial vessels. As our attached position paper explains, the Coast Guard passed the buck to the Department of Health and Human Services. To the best of our knowledge, there are no laws and consequently no regulations that effectively require vessel owners or operating companies to provide safe, clean water for drinking and bathing purposes to vessels our mariners serve on. [⁽¹⁾GCMA Report #R-350, issue #8, Feb. 14, 2003]



"We believe that the problem can be solved by requiring commercial boat owners to install suitable water making or water purification equipment on each vessel and/or at least require regular water testing to accompany Coast Guard inspections (on "inspected" vessels) or boardings or in response to specific water quality complaints by mariners. Granting the Coast Guard the authority to check and sample the same water from each shipboard water storage system that our merchant mariners must drink would probably put a bright spotlight on this issue and lead to its correction.

"We also ask that you give the Coast Guard the authority to improve the sanitation requirements for seamen providing food service to our mariners in the course of their service aboard these small commercial vessels in light of the problems cited in the attached report. At present, the Coast Guard has the authority to certificate "food handlers" in 46 CFR Part 12 although we believe these regulations are wide of the mark and seldom applied to vessels under 1,600 gross register tons.

"On behalf of our mariners, we thank you for taking the time to look into this issue."

GCMA PETITIONS USCG FOR "HONEST HORSEPOWER"

On May 28, 2004, GCMA formally petitioned the Coast Guard as follows: "Under provisions of 33 CFR 1.05-20 the Gulf Coast Mariners Association (GCMA) as concerned members of the public in the interest of public safety and to safeguard the health, safety and welfare of our mariners, respectfully requests the Coast Guard to initiate rulemaking to require the owner of every commercial towing vessel to accurately and uniformly record, report and update information on their vessel's horsepower when filing any official papers with the Coast Guard or with any business correspondence or publication that the public relies upon to provide truthful information concerning the towing industry."

In its request for rulemaking, GCMA cited the remarks of Captain Larry P. Gwin before the Towing Safety Advisory Committee on March 17, 2004 (GCMA Reports #R-391 and R-340) in reference to "paper" horsepower that "...is of absolutely no value to a pilot whatsoever and simply attracts larger and deeper loading. It is a deceptive



practice that can defeat "voluntary" measures taken by joint Coast Guard and river industry committees under high-water emergency conditions."

GCMA also cited "...a complete and informative response from Captain J. A. Servidio, Chief, Office of Compliance" on horsepower measurement in response to a GCMA FOIA request. GCMA also furnished technical information on horsepower measurement provided by Binfield Engineering, Inc.

GCMA noted that the Towing Safety Advisory Committee previously studied the issue of tow size and horsepower in 1994 and 1995 and offered comments on this previous study asking why the Coast Guard had not taken action on several previous recommendations.

GCMA also submitted to the Marine Safety Council for their consideration two monographs previously submitted to the Eighth District Commander, namely a Preview of a Tow Configuration and Power Guide and Interim Recommendations for Tow Powering and Configuration for Western Rivers Push Tows by CDR John Deck, III, USCG, Retired, of the American Admiralty Bureau that deal with the relationship between horsepower and tow size.

MOTORCYCLE CLUB FOR MARINERS

F.R.A.M. – A motorcycle club for mariners. GCMA received a newsletter from Captain Michael Allen, aka "Montana" announcing the formation of a motorcycle club for mariners known as **Free-Riding American Mariners**.

In his newsletter he states: "My purpose in trying to do this is simple. Many of us know others that have been killed out there on the water with only the outfits we work for to compensate the families left behind. Why couldn't we get together and have charity rides and give our donations raised from poker runs and sorts to those families. Basically, I would like to see us form one huge family that takes care of their own... We are just a bunch of guys and gals that want to ride and have someone to ride with and every now and then attend something fun together..."

For further information call "Montana" at 772-708-4355 or Capt. Ralph Treadway, aka "Big T" at 337-249-7940 (cell #).

TO MY GREEN DECKHANDS....

By Captain David Whitehurst

Here is what I, as an inland towboat Pilot, expect from my deckhands:

VHF Communications Between the Lead Deckhand on the Head-of-tow and the Pilot:

When entering a lock, there are no standard verbal messages that the lead deckhand on the head of a tow can pass the important distances a pilot needs to know! Some deckhands call out odd-ball numbers and information that is more distracting than useful. As the Pilot of an inland towboat, here is the information I need my lead deckhand to convey to me:

When you are northbound, headed up-river or headed into the current you are "below" the lock.

When you are southbound, headed down river or running with the current, you are "above" the lock." Keep your

VHF radio message as short as possible, but also be as informative as possible.

Before you enter the lock, you should both know the size of the lock the boat is entering.

- As you approach the lock, from 1,000 feet down to 100 feet, "Call Out" each 100-foot interval.
- From 100 feet down to 25 feet, call out at 25-foot intervals.
- From 25 feet down to 5 feet, call out at 5-foot intervals.
- From 5 feet down to 1 foot, call out at 1-foot intervals.
- Refer to speeds as a "fast walk", "medium walk" or "slow walk."

Examples of "Call Outs" to pilots on the Western Rivers:

- (Northbound): "You are 50 feet below the long wall, 20 feet wide, pointed at the third light pole up the wall moving at a fast walk."
- "You are on the flat of the long wall, 15 ft. wide on the head, 20 feet at the stern at a medium walk."

- (Southbound) "You are 100 feet above the long wall, fifty feet wide and falling over to the wall; speed is a slow walk."
- "You are on the flat of the long wall, 15 ft. wide. We are getting a line to the lock man; speed is a slow walk. We now have a line on the wall."
- "You are 100 ft. above the short bull nose; we are catching a line you can work into."
- "You are 50 ft. above the short bull nose, 5 ft. wide and closing; the tow is coming in flat to the wall; we are turning the line loose and walking it up the wall."
- "The head is inside the short wall, 20 ft. to the gates, speed is a slow walk."
- "You have 50 ft. to the tie off bitt and 75 ft. to the lower gates."

Examples of "Call Outs" to pilots on the Canal (i.e., Gulf Intracoastal Waterway in Louisiana or Texas): [*"Eastbound" generally means you are headed toward New Orleans;*

“westbound” means you are headed toward Houston; “northbound” means you are headed toward Baton Rouge.]

- “You are 100 ft. to the long wall; looks to be 5 ft. to the good; speed is a fast walk.”
- “You are coming abreast of the long wall, one foot wide on the head; tow looks to be flat with the wall; speed slowed to a medium walk.”
- “You are 20 ft. from the short wall; running 1 ft. wide; speed is a slow walk.”
- “The head is inside the short wall, 20 ft. to the gates; still 1 ft. wide; looking good; speed is a slow walk.”
- “You are 20 ft. to the tie off place; 50 ft. to the gates; still a slow walk.”

Always let the Pilot know...

- When the tow is “tied off.”
- Towing or backing lead.
- Tight line on the head.
- When the lock man blows the horn, do not turn any lines loose before asking the Pilot if he is ready to go.
- When you untie the stern, say “All gone on the stern”. Then the man on the head unties the head and calls out, “All gone on the head.”

Most Common Locking Procedures:

- A Single Locking occurs when the towboat and its tow are all locked through at one time.
- A Set-Over Single Locking occurs when the tow is tied off in the lock; then the towboat is broken out and shifted to one side of the tow and tied off. If only the towboat shifts position, this can be done “on-the-fly” by moving the tow partially out of the lock chamber and, when there is sufficient room behind the tow for the towboat, it then shifts back to the stern of the tow. While doing this, be very careful when placing the face wires on the barge’s deck fittings because you can lose your fingers if they are pinched between the face wires and the fittings.
- A Double Locking occurs when the Pilot brings the entire tow into the lock chamber. Half the tow is tied off in the lock chamber while the other half of the tow is broken off and backed out just far enough to clear the lock gates and is then tied off. With an upbound tow, the first half of the tow will be pulled out by a small trolley that runs on a rail track that is on the lock wall. This trolley has a cavel on it and is pulled by a

cable that runs to a winch on the wall called a mule. On a downbound tow, the first half of the tow is pushed out when the lock man opens a valve and the water flushes the tow out of the chamber. The deck crew must be careful doing this because if they cannot stop the barges with the deck lines, they will end up floating free down the river.

Equipment used on the River:

- (Northbound). On the head of the tow, place one 3-inch lock line at least 100 ft. long with eyes spliced at both ends. Also have 2 hand-held bumpers. If you are double locking, have a lock line and bumper at the break-coupling as well. Place a lock line and a bumper at the stern of the tow.
- (Southbound). The lock line should be 300 ft. long. If there is no assist boat at the lock to help the tow on the wall, this line is used to move the tow to the long wall.
- (Winter). The lock lines and the bumpers need to be wrapped in tarpaulins to keep them from freezing. When a line gets wet, it will freeze and be of no use to you. Bring a wet line to dry in the towboat’s engine room or deck locker if the locker is heated.
- Always stow lock lines, other lines and bumpers where they cannot wash over the side and tangle in the propellers.

Equipment used on the Canal:

- There should be one 50-ft., 3 inch lock line with an eye in both ends and a bumper on both the head and stern of the tow.

Always Expect the Unexpected:

Always stay on guard for the unexpected. Be prepared to stop the tow with the lock lines. A main engine may fail or a log may jam the propeller(s) and/or rudders. At some locks, there is a surge of water. For example, at Lock 2 on the Arkansas River, the water released from the lock chamber will travel down river, reach Lock 1, then surge back up river to Lock 2. If the tow starts out of the lock chamber, it will reach the lower gates when the surge hits it and pushes it back into the lock chamber. If the pilot tries to push the tow, this will cause even more water to be pulled back into the lock chamber and

pull the tow even faster back into the lock chamber!

Don’t Wait! Practice throwing lines. Don’t wait until it’s too late. While you are making a lock is not the time to practice. This is the test of whether you are a valuable crewmember. Throwing a line is an art, and the more you do it the better you will become. The better you become, the easier your job will be and the easier you will make your Pilot’s job. It’s all about teamwork. Decking is very hard work! There is the easy way, and there is the hard way. The better you carry out your duties, the faster you become and the easier the duties become.

When doing “Call Outs,” stand 10 to 15 ft. back from the corner of the barge and use the side of the barge as a straight edge to line up with the lock wall.

You are the Pilot’s eyes when you are on the head of the tow. This is where you will first start to learn how to run a towboat! Don’t wait until the last moment to tell the Pilot if something doesn’t look good! Remember, there are time delays for the marine gears to shift from ahead to astern.

These are only guidelines to help you become familiar with some of the terminology used on inland towboats. Feel free to ask meaningful questions. I hope you find these guidelines helpful. Always be careful; take your time and speed will come naturally. Remember, Safety First.



**MARINER ORGANIZATIONS
WORK TOGETHER**

[Editorial Note: A recent article in WorkBoat magazine attracted our attention and we went to the "United Mariner" website and corresponded with Captain Joseph Dady. Captain Dady later spoke at length with GCMA member Captain Larry P. Gwin. We received this correspondence from Captain Dady.]

**UNITED MARINER
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Phone: 727-534-4081**

Dear Richard:

I read your "An affront to lower level mariners" It went through my crew, one man to the other. Every man aboard has had problems with USCG. They all commented that your views are right on the money.

Many personal experiences and observations allow me to say that the USCG is a biased agency that does not serve the mariners' and owners' interest

equally. Our effort so far has been a fact-finding mission to see how far-reaching the failures at the RECs are. Coming up to speed as to the legal question, for us, will take some time. Responses have been slow. Getting the mariner to share REC torts is another matter.

Your article indicates your efforts have been focused on the USCG itself, although I am sure, you have pursued other avenues. My experience with the USCG has been (that) they are selective as to what laws and regulations they will enforce and what actions they will take. It seems largely depending upon who is seeking help. I have been run around in a circle in regards to enforcement of the twelve-hour work rule, manning issues, lookouts, etc. My view is (that) a mariner is forced into a service which taxes him while it denies him the laws and regulations design to protect him. This Federal agency denies him his freedom from their deliberate misuse of the law. It denies him equal protection of the law. The Coast Guard instills in us that we are Merchant Mariners and have no rights. They do this under the cloth of sovereign immunity, the...Privacy Act and others. Although sovereign immunity is a defense from

liability it is not a right to be free of trial for wrongs. They are not completely fire proof as some recent court cases have proven.

As you can see I am not a fan of the higher ups. I hold the highest respect for the servicemen in the field however. I do not believe we can expect to make any ground toward improvements directly through the USCG. As I said above I have been around the circle jerk and do not wish to take that ride again. Any assistance or guidance you could provide in petitioning Congress would be greatly appreciated.

When all else fails and your rights have been denied you, the Bill of Rights gives you the power to right those wrongs. I feel the USCG believes we, the lower level mariners, are infirm and lack the will to unite and take a workplace action. I think they are wrong.

I thought I would write you and share our views while giving you the opportunity to understand our idealism. Thank you again for your e-mail. It was very helpful.

Respectfully,
Captain Joseph Dady

BRING YOUR OWN LIFE VEST

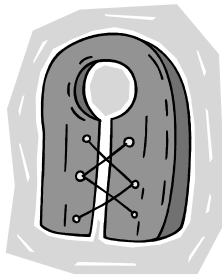
We received an e-mail after the sinking of the offshore supply vessel M/V LEE III in Southwest Pass of the Mississippi River (GCMA News, April 2004, pgs. 1, 5) with the loss of its entire crew that purports to cite a company policy some might consider remarkable:

Effective Immediately

Ocean Runner, Inc. will no longer continue to purchase the equipment listed below because the equipment we are purchasing continues to "disappear". All employees will be required to provide their own equipment at their own cost. If you have any questions regarding this new policy, please feel free to ask. If you do not have this equipment, Ocean Runner, Inc. will purchase it for you and the price of the equipment will be deducted from your payroll check. Thank You. Ocean Runner, Inc.

Required Equipment
To Be Provided By Employee

- Hard Hat
- Steel Toe Shoes or Boots
- Work Vest**
- Safety Glasses
- Needle Gun**
- 4" Angle Grinder**
- Tools, Torch,**
- Gauges, etc.**
- (Engineer)
- Navigational Tools (Captain/Mates)
- Binoculars (Captains/Mates)



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Attorney-at-Law

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GCMA REVISITS 12-HOUR RULE VIOLATION ON SEATTLE BRIDGE ALLISION

[GCMA Report #R-308, Revision 3]

Establishing watches is always the job of the vessel's master. On a vessel with two licensed officers, federal statutes limit both the designated master and the mate/pilot to a 12-hour workday. Consequently, the master will establish a 6-hour on-duty and 6-hour off-duty watch schedule (6 and 6) although equivalents such as 12-and-12 or other time-balanced schedules are possible.

The abuse comes when a licensed officer is expected to perform additional or specified duties beyond and outside of standing his watch. The abuse can be subtle or it can be blatant. In the case covered by GCMA Report #R-308 (recently revisited and revised) company policies were pinpointed as the culprit.

The company in this case was a member of the American Waterways Operators (AWO) following the Responsible Carrier Program. AWO is an industry trade association with very close connections, in fact a "partnership", with the Coast Guard.

The Captain violated the 12-hour rules because he followed published "company policy." This fact did not protect him or his license. The result of violating the "12-hour rules" and ramming a bridge or other fixed object is predictable: The master admitted his guilt and reached a "settlement agreement" with the Coast Guard. The Coast Guard imposed an administrative penalty on the master and suspended his license!

All this brought pressure to bear on the USCG/AWO "partnership." Responding to this pressure, the "partners" assembled a "Quality Action Team" to look into the situation.

Strangely, in the Quality Action Team's "Executive Summary" there was no mention of one of its recommendations as shown on pages 35, 36 and 37 that calls for adding a second mate to the crew of many towing vessels. Since many people who read this report will never read beyond the "Executive Summary" in the front of the report, they will miss the portions of the report where there is an almost universal complaint about "6&6" watches (i.e., the 84-hour workweek) and will overlook recom-

mendations for manning changes that suggest the solution in many cases is to add another person to the understaffed boat crew. Consequently, the AWO and the Coast Guard masterfully covered up some major misunderstandings by simply not drawing reader's attention to them.

The USCG/AWO Quality Action Team did recommend developing a Crew Endurance Management System (CEMS) based upon a current Coast Guard research project. In one way, this is a positive development. However, the fact that the USCG/AWO QAT would cover up one recommendation (i.e., adding an extra mate) and then push "crew endurance" (one of the Coast Guard's pet projects) in its place has very clear implications for many mariners. It also leads us to believe that the true motivation behind management's approach to "crew endurance management" is to exploit it as simply another tool to use with the help of the Coast Guard to squeeze more work out of mariners into sharp relief.

As revealed in subsequent draft legislation, the industry also would like to see the Federal government pick up many of the training expenses for implementing the Crew Endurance Management System. Fortunately, Congress is asking about just how much this will cost the taxpayers. The wording the QAT places in bold-face type in its report on page 32 lends credence to this suspicion. It says:

"Create a level of crew alertness that consistently enables towing vessel operators to discharge their assigned duties safely and efficiently, thereby minimizing the risk to vessel personnel, the public and the environment."

Read GCMA Report #R-308, Revision 3 in its entirety on our internet website or request a copy.

GCMA BRINGS OUR REPORT ON OVERSIZE AND OVERLOADED TOWS TO MISSISSIPPI RIVER COMMISSION HEARING

Created by Act of Congress on June 8, 1879, the Mississippi River Commission:

- recommends policy and work programs,
- studies and reports upon the necessity for modifications or additions to the flood control and navigation projects,

- recommends upon any matters authorized by law,
- conducts inspection trips,
- and holds public hearings where it reviews and discusses its programs.

The work of the Mississippi River Commission is directed by its President, Brigadier General Don T. Riley and carried out by the six Army Engineer Districts at St. Paul, Rock Island, St. Louis, Memphis, Vicksburg and New Orleans.

GCMA members have participated in a number of the commission's public meetings to discuss topics ranging from the visibility from the pilothouses of towing vessels to measuring bridge overhead clearances for cranes and other tall loads that pass under bridges over navigable waters.

Included in the Commission's responsibilities are the main stem of the Mississippi River from Cairo, IL to the Head of Passes, the basins of the St. Francis, Tensas, Yazoo, Atchafalaya, Lower Red, Lower Arkansas, Lower White, and west Tennessee Rivers.

The Commission tours the Mississippi Valley twice a year at high water and low water on the M/V MISSISSIPPI, a working Corps of Engineers towboat usually assigned to the Corps bank mat-laying and other activities but equipped with a full meeting room to conduct public meetings scheduled at various landings. This Spring's meetings were held at Caruthersville, MO, Helena, AR, Natchez, MS, and New Orleans, LA.

GCMA's concern at the latest meeting reflected the same concerns expressed in the Towing Safety Advisory Committee meeting in Washington in March, namely the continued unsafe operation of oversize and overloaded tows on a number of waterways. The information pertinent to this subject is contained in GCMA Report #R-340, whose eighth revision was reinforced by the addition of the remarks of Captain Larry P. Gwin that were presented at TSAC and in the last GCMA Newsletter.

GCMA Report #R-340, originally presented to RADM Casto, former Eighth District Commander, in December 2002, was described briefly by a GCMA representative speaking before the Commission. While most of the material in the report is of direct concern to the Coast Guard, the operation of oversized tows, especially at high and low river stages, has a direct

impact on channel maintenance.

The Corps of Engineers guarantees the depth and width of the channel between New Orleans and Cairo at 12x300 ft on the Lower Mississippi (LMR) and 9x300 ft from Cairo to mile 191 on the Upper Mississippi River (UMR) at St. Louis.

Dredging, revetting and mat laying work that improves the navigability of the river in places is often necessary. The U.S. Army Corps of Engineers must contract the dredges and other construction equipment it does not own at taxpayer expense. This can be a very challenging activity when tows are 7 or 8 barges wide (i.e., 245 to 280 feet) trying to navigate in a 300-foot wide channel.

Even more challenging is the fact that, to the best of our knowledge, only one company continues to insist on pushing barges in strings that are 6-barges long (i.e., "6-long") containing over 40 barges. While it is physically possible to do this successfully, there have been a number of accidents including four recent bridge allisions on the main stem of the Mississippi River alone.

The most recent accident occurred when the towboat CRIMSON DUKE pushing 42 barges slammed into the In-

terstate 155 Bridge below Caruthersville, MO, reportedly sinking 4 barges and stranding 4 more on downstream dikes and a falling river on May 10, 2004.

Many companies in the industry deem this a risky practice but have remained silent. Senior GCMA River Pilots are united in their belief that this practice places our mariners at risk, causes extensive delays because of the cumbersome nature of the oversize tows, and causes serious damage to the infrastructure along the river. Many of our mariners report that operating tows of this size is very stressful and is detrimental to their health. These are some of the key points that we make in GCMA Report #R-340.

Mr. Sam E. Angel, a member of the Mississippi River Commission, asked if GCMA had brought these matters to the attention of the Coast Guard and if so, with what results. Our reply was that the Coast Guard replies we received generally were not encouraging although there were some bright spots. Our written reply to Mr. Angel following the meeting made these points:

- The Coast Guard is aware of the oversize and overloaded tow problem. The size of these tows affects

channel maintenance and dredging activities throughout the valley as well as related safety concerns. Corps personnel in Washington who attended the Towing Safety Advisory Committee meeting in Washington last month appear to understand the problem. Captain Larry Gwin, whose statement to TSAC appears in GCMA Report #R-340, appeared before the TSAC committee a month earlier. It is his statement that we wanted to be certain that all members of the Mississippi River Commission had in their hands to study.

- Mariners who work on the Western Rivers also have a number of other problems that we brought to the attention of Congress only after the Coast Guard either could not or would not act upon them. This was the basis of our comment that we were not satisfied with the way the Coast Guard handled our issues...(we are) enclosing GCMA Report #R-350 that supports this answer – although many if not most of the 16 issues it contains (may) not directly impact the Corps of Engineers or the Mississippi River Commission.

UNIONS VOICE STRONG OBJECTIONS TO MMD PROVISIONS

[Source: Seafarers Log, May 2004, p.5

The SIU and seven other maritime unions, along with the Maritime Trades Department, AFL-CIO, early last month submitted comments objecting to numerous provisions in a U.S. Coast Guard interim rule (46 CFR Part 12, USCG-2003-14500) covering forms and procedures for the issuance and renewal of merchant mariners' documents (MMDs).

The joint statement came from the SIU; MTD; American Maritime Officers; Inland Boatmen's Union of the Pacific; International Longshore and Warehouse Union; International Organization of Masters, Mates & Pilots; Marine Engineers' Beneficial Association; Marine Firemen's Union; and the Sailors' Union of the Pacific.

The unions called for a public hearing "in order to develop a complete and

accurate record regarding the provisions and consequences of the Interim Rule."

"At the outset, we believe it is extremely important to emphasize that the procedures and requirements governing the issuance and renewal of MMDs determine whether a trained and qualified individual will or will not in fact be able to pursue his or her chosen profession," the unions wrote. "It is absolutely essential that such procedures and requirements be reasonable, realistic, clear and fair, and that they do not serve to arbitrarily deny qualified persons with the opportunity to work aboard U.S.-flag commercial vessels.

"It is also important to emphasize that to the extent American citizens are denied the chance to pursue a career in the United States merchant marine for reasons that have very little if anything to do with their current qualifications and on-the-job performance, our country will lose a valuable, irreplaceable component of its militarily-useful commercial sealift."

The unions argued that the interim rule "is directed at mariners least in need of additional regulation and is thus an unnecessary means to improve security." They also pointed to runaway flags (also known as flags of convenience) as "the real threat to the security of the United States," from a maritime perspective. "While we commend the United States Coast Guard for the steps it has taken in recent years to regulate foreign-flag vessels, far more regulation is needed in this area rather than against United States flag ships."

Further, they noted that the interim rule "simply further regulates the group of people in the maritime industry who are already the most regulated. Adding to the complexity of merchant mariner documentation does not itself enhance the security interests of the United States. Our country needs more, not less, U.S.-flag ships and more, not fewer, U.S. citizen crews if the United States wants to seriously address the threats to our ports, our economy and to our citi-

zens posed by flag-of-convenience vessels and their foreign citizen crews."

"The Interim Rule provides that the 'character and habits of life' of the applicant, and whether the applicant is determined to be a 'safe and suitable person', shall be considered by the Coast Guard when deciding whether or not to issue or renew a merchant mariners' document," the unions wrote. "These terms are not defined, but rather will, according to the Interim Rule, be left to the 'appropriate Coast Guard official' to decide.

"We understand that prior to the promulgation of this Interim Rule, 33 CFR section 6.10-1 permitted the Coast Guard to grant MMDs only if 'the Commandant is satisfied that the character and habits of life of such person are such as to authorize the belief that the presence of the individual on board would not be inimical to the security of the United States.' However, we know of no instance in the last twenty years when this rule was used to deny the issuance of an MMD. In fact, this rule has all but been struck down by the United States Supreme Court, and the Coast Guard's attempt to resurrect it and to make it part of the regular MMD application process cannot succeed...."

They also pointed out, "We understand that the intent of this standard is to thwart terrorism and terrorist activities. However, we are greatly concerned that as written, the undefined 'character and habits of life' criteria could be used as a catch-all excuse to deny individuals an opportunity to work aboard U.S.-flag vessels based not on their qualifications or on-the-job performance, but rather on their unpopular but legitimate and legal politics; personal habits and lifestyle; or other equally irrelevant, non-terrorist related matters. Without clear definition and specific criteria, United States citizens are in the position where they may lose their right to work in the profession of their choice based on purely subjective determinations by an agency of the United States government."

Lastly, the unions asserted that the appeals process for mariners whose applications are denied "is unclear and insufficient," while the cost of the interim rule to mariners "is vastly under-rated."

[GCMA Comment: *We commend the unions for their stand. GCMA also submitted comments to the docket from the viewpoint of our lower-level mariners. The Coast Guard plans to offer a similar rule to apply to licensed personnel at a future date. Read our comments posted*

Among other objections, the unions particularly took issue with the "character and habits of life" standard included in the interim rule. "Business" has persuaded "Government" in many states to let them treat you as an "employee-at-will" by convincing them that this choice only adds to your freedom. However, as an employee-at-will you can be fired for any reason whatsoever and at any time – in some cases, even after over 20 or more years of loyal service.

DISCRIMINATING AGAINST OUR MARINERS *(An Editorial)*

We lower-level mariners need to place the blame squarely on ourselves for allowing the discrimination against us to continue unchecked in this great country and in this day and age.

As a group, we need to identify and recognize the tools that both companies and the government agencies that regulate the maritime industry use to control us year after year and take steps to counteract them.

As you know, our "world of work" has three major players, namely:

- **Business** (i.e., your employer);
- **Government** (e.g., primarily, for us, the USCG); and
- **Labor** (i.e., yourself as an individual)

The first big mistake is that many mariners, acting as individuals, choose to stand alone as their own representative of "Labor." By doing this you think that you are exercising your freedom and independence in decision-making...and so you are! But there are other important considerations you overlook.

Of the three major "players" you as an individual are the smallest, the weakest, and the most vulnerable. The sad thing is that many of our mariners chose to stand alone rather than to accept the hand offered by the nation's maritime unions.

As an individual, you may believe you defend your position from a position of strength but, in reality you speak from a position of weakness. Even in cases when you happen to be "right," you can be easily overruled and overwhelmed by Business and Government agendas because you simply do not have the time or take the time to follow and participate in following many different issues. You must pull your own chair up to the table or you will only see and smell the food but will never eat!

Your freedom and independence are used against you. You certainly are free to go out and select a job of your own choosing. This is very important in a democracy. Many people in this world can only dream of such freedom. But

ter and habits of life" standard included in the interim rule.

"Business" has persuaded "Government" in many states to let them treat you as an "employee-at-will" by convincing them that this choice only adds to your freedom. However, as an employee-at-will you can be fired for any reason whatsoever and at any time – in some cases, even after over 20 or more years of loyal service.

Since you act alone as a free agent, few others are willing to take a risk and stand by you if you are fired unfairly. More likely, you can expect that other individuals will line up to take your job. Survival of the fittest or most adaptable is "nature's law."

SAFETY IS GCMA ISSUE

Unfortunately, the marine industry has so many fly-by-night companies that are allowed to operate often in violation of laws and regulations that their cut-throat competition leaves little leeway for safety-minded companies who want to "do the right thing" for their employees. Boat companies form, merge and go out of business so often that there is little they can provide in the way of true "job security." This doesn't mean they can't and don't make promises, but, as Lenin observed, "Promises are piecrusts made to be broken."

There is precious little to guarantee a mariner any reward for years of loyalty to a company in the way of "seniority" rights. In the name of "equal treatment", when you approach old age you are often treated the same as younger workers. If you can't keep up the pace or your health fails to meet Coast Guard or company insurance standards you will fall by the wayside until "Social Security" and medicare can pick you up at age 65. If you work hard and can't make 65, you have a problem – and it will be your problem to cope with! That's one of the rewards for insisting on standing alone and being a free agent!

There is a solution to this problem, but it requires a personal commitment from you. As an employee-at-will you are like a grain of sand. In most fields of employment, employees prefer to bond to an organization that is large and has more resources than they do to help weather the storms of life. Many employees turn to their employers and depend on their "benefit programs" that extend beyond their paycheck and usu-

ally include training, insurance, savings, and medical care. On the other hand, for example, some "trip pilots" choose to be "independent," opt for temporary employment at higher day rates, and protect their interests as they deem necessary.

Labor unions should be attractive in industries like the marine industry where business owners often do not treat their employees fairly. At GCMA we hear a number of "horror stories" every month. Since mariners have long suffered from discrimination in many areas, they have a long history of being strong union supporters that can be traced back to the 1860s and 1870s. MEBA, IOMM&P and SUP have a history that extends back well over 100 years. Established unions generally offer their members excellent benefit programs that have been won by collective bargaining over the negotiating table and where mariners have a voice in their coverage.

Most upper-level mariners who work on large vessels (over 1,600 GRT) are members of recognized labor unions. These unions elect their own officers and participate in collective bargaining with their employers to negotiate the work issues that they believe are important into their "contracts" with their employers.

In contrast, lower-level mariners are "free" to drift from company to company and pick up the highest paying jobs currently available in the job market. As such, they do not work under terms of a written contract. "Negotiation" for most lower-level mariners amounts to nothing more than accepting or rejecting whatever terms you are offered by an employer.

Over the years, labor unions have won a great deal for their members because their members "stick together" and become a force that business and government must reckon with. In contrast, as an individual you have very limited "clout" to negotiate better pay or better benefits from your employer and even less clout in dealing with "Government." Both areas are equally important!

Consider, for example, the lack of respect many mariners face in their dealings with the Regional Exam Center – and remember that the "service" these government employees provide is one that you must pay for dearly! Your application for an upgrade or a renewal sits in a pile that may be several feet high and may remain unopened or unattended for months on end. For example, at the Coast Guard's New Orleans Re-

gional Exam Center on May 5, 2004 the stack of mail from the general public was reported to be 11-feet high and delayed for 9 weeks; school files were 1 foot high with estimated delays of 3 weeks; renewal applications were stacked 14 feet high with delays estimated at 5 weeks.

THE GOVERNMENT

Most lower-level mariners do not understand that many maritime accidents result in public pressure applied to lawmakers in Washington that will directly affect their lives and livelihood. However, many of companies, especially those who belong to trade associations like the American Waterways Operators (AWO), the Offshore Marine Service Association (OMSA), and the Passenger Vessel Association (PVA) are acutely aware of this relationship.

AWO and PVA have their headquarters convenient to government offices in the Washington, DC area and are constantly lobbying their programs and defending their turf. The major labor unions, including all the maritime unions also have offices in Washington to project the views of their members to legislators and government employees.

Unfortunately, for lower-level mariners who are not members of a union, there is nobody stationed in Washington to project their needs to the Coast Guard or to Congress. While GCMA tried to work with the Coast Guard in many areas, we found that we must have legislation to correct a number of problems that affect us – and only Congress can help us.⁽¹⁾ GCMA identified most of our mariners' problems and has suggested solutions. However, we must often fight the business associations who have their own agendas to project and the pocket books of their members to protect. [⁽¹⁾Refer to GCMA Report #R-350.]

There are many aspects of the jobs our mariners perform on tugs, towboats and offshore supply vessels that government agencies like the Coast Guard simply do not understand. Consequently, we must be able to present our point of view to the Coast Guard both at the local and the national level. At the national level, our mariners must be well represented on at least three Federal Advisory Committees such as:

- TSAC (Towing Safety Advisory Committee)
- NOSAC (national Offshore Safety

Advisory Committee)

- MERPAC (Merchant Marine Personnel Advisory Committee).

Unfortunately, GCMA's present dues structure does not allow us to send delegates to these Federal advisory committee meetings to present our points of view. Partly as a result of a lack of funds, we were unable to ask mariners to travel to attend a NOSAC meeting in Washington in April. Fortunately, Captain Larry Gwin, a working towboat Master, paid his own expenses and those of his wife Brenda to fly to and spend three days in Washington to represent mariners on the problems of Oversize and Overloaded Tows to the members of the Towing Safety Advisory Committee.⁽¹⁾ [⁽¹⁾GCMA added Captain Gwin's remarks to GCMA Report #R-340 to expand upon the information available to the Coast Guard, the public and the media on this issue.]

RECOGNIZE ORGANIZED LABOR AS A FRIEND OF MARINERS

While lower-level mariners in a number of towing companies are union members there are few if any that come from the offshore oil industry. An attempt by four major maritime unions to organize mariners on offshore supply vessels and tugs from April 2000 through June 2003 into an independent union called Offshore Mariners United was beaten back by the Offshore Marine Service Association (OMSA) and large companies who spent millions of dollars to remain union-free. While doing so these companies imposed heavy "security" burdens on their working mariners (long before the attacks of 9/11) as a "union busting" tactic. This action clearly deprived most mariners on offshore supply vessels and the many tugboats in the offshore oil industry of many of the rights guaranteed by the Constitution such as the rights of free speech and free assembly as well as other protections guaranteed by labor laws in effect ever since the Great Depression of the 1930s.

While many of these actions were clearly illegal, many mariners sat back and did nothing about it.

Unions exist to serve their members and are supported by their membership. Their power is derived from the support of their members. They must take care of the needs of their members first and foremost. They represent their members

at the bargaining table with management as well as in the halls of Congress and before various government agencies. They are not organized as charitable organizations.

GCMA was established and still exists as a free and independent Association of mariners. We were not then and are not now a labor union. However, not being a labor union does not mean that we are "anti-labor." Four of the nation's most important maritime unions extended the hand of friendship to our lower-level mariners in April 1999 by helping us to establish this independent association. We willingly accepted their help and, through our association with them, recognized the strength and the respected leadership they offer in the nation's capital and in formulating national maritime policy.

However, we cannot ask these unions and their thousands of members to do for us what we are not willing to do for ourselves. If our mariners want to be represented in Washington, they must first learn the background issues that are discussed at important meetings, volunteer to travel to attend these meetings wherever they may be held and pay the expenses to travel there out of their own pockets – or pay dues for someone to do it for them. Part of the obligation of representing others extends to carrying the message, the "good news" or "bad news" back from these meetings and sharing it with other mariners. This is a "long-term" proposition.

As mariners, each of us must be willing to broaden our views beyond our immediate concerns and take the time and effort to support national and international positions of major labor organizations in return for their valuable and continuing support for those programs that are near-and-dear to us that can wither on the vine if not properly tended to in Washington. GCMA would never have made the progress it has made without the support of the AFL-CIO, the four major maritime unions and the International Transport Workers Federation (ITF). We do not have a permanent presence in Washington nor the funds to commute back and forth. Working with organized labor is to the advantage of all lower-level mariners.

Be part of the solution not part of the problem. Spread the word to other mariners that we need their support. Don't ask what we can do for you. Stop and ask what you are willing to do for yourself.

**LOSS OF
F/V ARCTIC ROSE WITH ITS
CREW OF 15**

[GCMA File #M-464, obtained under FOIA]

The incident: On March 26 2001, the 93-foot fishing vessel ARCTIC ROSE departed Dutch Harbor, AK, for the Bering Sea fishing grounds near Zemchug Canyon. The vessel made several uneventful tows on the Slime Banks and proceeded to St. Paul, AK, to take on fuel and top off the potable water tanks.

On March 30, 2001 the vessel departed St. Paul for Zemchug Canyon to fish the April 1st flathead sole opening. They made several tows, securing fishing operations during the evening.

The ARCTIC ROSE sank between 2200 April 1st and 0335 April 2nd. The Coast Guard's 17th District Communications Center received a 406MHz EPIRB alert at 0335, issued an Urgent Marine Information Broadcast (UMIB) and sent an INMARSAT C message to all stations to alert other vessels. A Search and Rescue case was initiated and a USCG aircraft was sent to the EPIRB location and arrived at 0840. They spotted a large debris field and oil sheen in the area.

A nearby fishing vessel eventually responded to the UMIB and joined the search and rescue efforts. Shortly after arriving on scene, the F/V ALASKAN ROSE recovered the body of the Captain from the water. A subsequent search by Coast Guard aircraft, two cutters and two other fishing vessels failed to recover additional bodies. Fourteen persons are missing at sea and presumed dead.

Significance to all "lower-level" mariners. The report furnished under our FOIA request is likely to have a significant effect on the commercial fishing industry in the years to come. However, some lessons may also have direct or indirect application to our offshore mariners working on uninspected towing vessels and offshore supply vessels. The report is several hundred pages long so the following remarks only tell a part of the story.

- Because of the heavy loss of life, the Coast Guard hired the necessary resources to find the wreck to determine the cause of the accident. The wreck was located 200 miles northwest of St. Paul Island in 428 feet of water and was photographed by a remote operated vehicle (ROV).

- The vessel sank as a result of stability problems. Cement and steel weight and new freezer equipment was added to the vessel after the vessel's stability test but no new stability calculations were made.
- The stability letter required all weathertight and watertight doors to remain closed at all times except when in actual use. One watertight door, one interior door and one overboard processing chute were found open by the ROV.
- There is no standard formatting of stability information and many mariners have never been instructed in how to use the information they are provided with.

[GCMA Comment: Our Mariners should be concerned that there is even less attention to and oversight of stability issues on uninspected towing vessels accompanied by an excessive number of sinkings that rarely attract Coast Guard attention except when loss of life is a direct result.]

- The stability operating guidelines furnished to the master required the fish processing space to remain water-free at all times. Persons serving on the vessel before the accident said this was not always the case.
- The vessel was engaged in fish processing as defined by 46 CFR §28.50 and was subject to additional stability criterion including requirements to be assigned a load line and classification by a recognized classification society that it did not meet.
- Ten of the 15 crewmembers had worked on the boat less than 4 months; most of the crew were inexperienced. Three were illegal aliens.
- Significant weather events including seas to 24 feet and sustained winds of 45 knots struck the area at the time of the disaster, but no storm damage or hull damage was noted by the ROV.
- The vessel was not fishing at the time of the sinking and was not overloaded.
- Seven immersion suits were pulled out of their bags for use; the Captain was in his suit, but it was full of water.
- Sinking was sudden; there was no distress call; the EPIRB functioned properly and was recovered.
- The Coast Guard had inspected the

vessel 18 months earlier and boarded the vessel only a few days before the accident and found no safety violations.

- The company had a drug testing policy but did not follow it. The Captain's body was recovered and showed no signs of drug use. No other bodies were recovered and tested.

"The loss of the ARCTIC ROSE was most likely caused by progressive flooding from the after deck into the processing space through the door in the aft bulkhead of the processing space. The vessel then flooded, rather rapidly, forward through the open door in the forward bulkhead of the processing space. The water then flooded into the galley and engine room through non-watertight doors... The vessel would likely lose all positive stability between 1 minute 40 seconds and two minutes 40 seconds, and sink in as little as 4 minutes and 6 seconds after progressive flooding started."

"The arrangement of the ARCTIC ROSE increased the likelihood of pro-

gressive flooding from the processing space. The door from the processing space to the aft deck was far outboard on the starboard side, reducing the heel angle at which water could enter the processing space. Additionally, the doors leading forward into the galley and also into the engine room were also on the starboard side of the vessel. A lolling angle to starboard caused by the inflow of water through the aft door and the free surface effect inside the processing space would cause water to easily spill forward into the galley and down into the engine room and eventually into the fish hold..."

The analysis established the three most likely causes of progressive flooding into the processing space. The processing space could have flooded internally, from a wash-up hose left on (as testimony showed occurred in the past) or from the water supply to the plate freezers. The processing space could be flooded from the aft deck through the open aft door by boarding seas. Lastly, the space could have flooded through the open aft door if the vessel took a roll to ductive problems.

About 440,000 Americans die of smoking-related diseases each year. The report said more than 12 million people have died from smoking-related diseases in the 40 years since the first surgeon general's report on smoking and health was released in 1964.

That report linked smoking to lung and larynx cancer and chronic bronchitis. Subsequent reports, such as the one released on May 27th expanded the list of diseases linked to smoking.

Carmona's report said treating smoking-related diseases costs the nation \$75 billion annually. The loss of productivity from smoking is estimated to be \$82 billion annually.

On average, the surgeon general said, smokers die 13 years to 14 years before nonsmokers. And if that fact doesn't get the point across to you that smoking and/or breathing someone else's second-hand smoke will do you in, nothing will.

At least some people are concerned enough about their health to pay attention. The number of adults who smoke has dropped from about 42 percent in 1965 to about 22 percent in 2002, the last year for which such data is available, according to the surgeon general.

The government has set a goal of 12 percent by 2010, but is having trouble getting the rate to come down as quickly

starboard of only 23°. Regardless of how the water entered the processing space, the subsequent stability would most likely be very reduced, and progressive flooding would continue until the vessel sank. Had the processing space been maintained as watertight as per the (vessel's) stability book, the ARCTIC ROSE would not have sunk."

If you have another theory, the accident report will probably accommodate you because it continues to discuss 18 additional, but less likely, sinking scenarios. The report is exceptional in its scope and will most likely become a valuable resource in the study of vessel stability.

The Coast Guard and Captain Ron Morris, Chairman of the Marine Board of Investigation from the Eighth Coast Guard District Headquarters in New Orleans clearly performed a valuable service in preparing this accident report because it is exceptionally readable and largely non-technical. However, you must read it to fully appreciate its value.

SMOKING SHORTENS YOUR LIFE SPAN

Newspaper articles appearing nationwide on May 27, 2004 linked more diseases to smoking. Added to the list are acute myeloid leukemia, cancers of the cervix, kidney, pancreas and stomach, abdominal aortic aneurysms, cataracts, periodontitis and pneumonia.

"We've known for decades that smoking is bad for your health, but this report shows that it's even worse," said Surgeon General Richard Carmona, announcing his first official assessment of the effects of tobacco.

The report said current evidence is not conclusive enough to say smoking causes colorectal cancer, liver cancer, prostate cancer or erectile dysfunction. Some research has associated those diseases with smoking, but Carmona said more proof is needed.

The evidence suggests smoking may not cause breast cancer in women but that some women, depending on genetics, may increase their risk of getting it by smoking, the report said.

Diseases previously linked to smoking include cancer of the bladder, esophagus, larynx, lung and mouth. Also tied to smoking are chronic lung disease, chronic heart and cardiovascular disease, osteoporosis, peptic ulcers and repro-

as sought as the smoking rate is declining by less than one-half of a percentage point annually.

Cheryl Heaton, president of the anti-smoking American Legacy Foundation, said officials failed to act on recommendations made by a government-appointed scientific panel last year. Among its proposals was raising the federal tax on cigarettes from 39 cents per pack to \$2.39.

Nevertheless, the Bush administration did agree with the proposal to establish a national hot line to counsel smokers that should be set up next year.

Matthew Myers, president of the Campaign for Tobacco-free Kids, said the surgeon general's report demonstrates the need for the Food and Drug Administration to regulate cigarettes. That has been proposed in Congress.

Carmona said he was briefed on the legislation, which would set strict rules for marketing and manufacturing cigarettes. While he stopped short of endorsing the bill, he said it was "wonderful" that lawmakers were considering it.

Health and Human Services Secretary Tommy Thompson has said he thinks tobacco ought to be regulated.

[GCMA Comment: GCMA's position on smoking in the workplace closely follows the policies the Coast Guard enforces on their cutters, patrol boats and shore stations and is outlined in GCMA Report #R-341.]

**DANGER ON THE ILLINOIS
WATERWAY:
TOWBOAT PILOT LOSES
LICENSE AFTER HE ACCEPTS
HIGH-RISK ASSIGNMENT**

By Richard A. Block

Because the towing industry has been allowed to conduct its business for the past thirty years in a laissez-faire business climate with an absolute minimum of Coast Guard regulation, a “high risk” voyage by a towing vessel is often treated by many towing companies as a routine assignment. “High risk” only becomes evident when the Coast Guard must respond to and subsequently “investigate” an accident – especially when that accident affects the public and draws media attention. That is what happened in the case described in this report.

When a towboat pilot, and the term may apply to either a Master or a Pilot when he is in control of a towing vessel, accepts a “high risk” piloting assignment, he must understand that he will be held responsible for the consequences if anything goes wrong on his watch – even events clearly beyond his control. Consequently, a pilot should take all reasonable steps to protect himself in case something unforeseen happens because he will be judged by a very high standard of both knowledge and competence.

[GCMA Position: We urge our mariners to take an increasingly conservative approach to accepting a high-risk piloting assignment and carefully consider every possible consequences of your actions if something goes wrong.]

Before getting underway, a pilot should carefully evaluate whether the assignment is a “high risk” assignment. Many jobs that pilots routinely perform carry a high degree of risk whether that risk is evident or not.

The incident described in this paper was a bridge allision on the Illinois Waterway on May 2, 2003 in the heart of the City of Joliet, Illinois, a Chicago suburb with a population of 105,000.

THE ILLINOIS WATERWAY

The Illinois Waterway is a 300+ mile waterway that serves as a connecting

link between Lake Michigan and the Upper Mississippi River at Grafton, IL. It provides a shallow draft (9 ft.) all-water route between the Great Lakes and the Gulf of Mexico. As a commercial waterway, much of its structure dates back to the 1930s and, in many ways is outdated and too constricted to handle tows of up to 15 barges that often travel as far north as Lamont, IL, at mile 300 about ten miles above the Lockport Lock and Dam. In other words, the upper stretches of the waterway in Cook and Will Counties present many risks for pilots – risks that are not always plainly evident to waterway users.

The portion of the Illinois Waterway above (i.e., north) of Lockport Lock and Dam is known as the Chicago Sanitary and Ship Canal while the segment immediately below the dam that runs through Joliet Harbor is known as the Des Plaines River.

The Chicago Sanitary and Ship Canal was constructed to keep a 500+ square mile basin including the City of Chicago from flooding during rainstorms and for sanitary purposes. Construction continues on the municipal flood control system within the Chicago metropolitan area. The water collected and held in the canal is released downstream at the Lockport Dam where it plunges over 40 feet and flows southbound into the Des Plaines River. A very limited amount of fresh water is drawn from Lake Michigan and must all be accounted for.

When it rains in the Chicago metropolitan area the regulated water from its watershed is directed south through the Chicago Sanitary and Ship Canal through the Lockport Dam. Joliet, in Will County south of Chicago, lies below the Lockport Lock and Dam in a larger 1,500+ square mile watershed of the Des Plaines River basin. An unregulated portion of that water from the Des Plaines River basin also flows “downhill” into the Illinois Waterway a mile or so below the Lockport Dam. By “regulated” we mean that the gates at the Lockport Dam control the flow of water and measure that flow in cubic feet per second (CFS). Unregulated water from the Des Plaines River joins the regulated flow a mile or so below the Lockport Lock and Dam and pools behind the Brandon Road Lock and Dam downstream of Joliet. Our story takes place between these two locks.

A heavy rain in Chicago can turn the

waters of the Illinois Waterway into a raging torrent that cannot be navigated. Consequently, the safety of navigation in the Joliet area depends upon sensibly and reasonably regulating the flow of water from the Lockport Dam since the water from the Des Plaines River is neither regulated nor monitored (i.e., measured).

The Pilot who assembled his 15-barge tow on the Canal above the Lockport Locks on May 2, 2003 relied upon the Lockmaster to report the water flow over the dam before he assessed the risk of undertaking his voyage. The “typical” regulated flow from the Lockport Dam is about 1,000 CFS. The flow on the day of the accident had dropped from 20,000 CFS (where navigation is impossible and no locking takes place) to a reasonable 2,600 CFS that the Pilot and the Master of the 3,600 horsepower towboat LAURA ELIZABETH deemed through his experience in the area to be a safe flow to kick off his southbound voyage with 9 empty and 6 loaded barges.

Pilots are expected to be knowledgeable of river conditions including currents, depth of water, weather conditions based upon their past experience. At the time, in spite of previous accidents in the area, there were no special Coast Guard regulations covering the passage through Joliet Harbor.

THE ACCIDENT

The Pilot had considerable previous experience with the Illinois Waterway and with pushing 15-barge tows, the largest on the waterway. In fact, the Pilot had considerably more experience than the Master of the vessel in that particular area and in the hours awaiting the downbound lockage willingly agreed to come to the pilothouse and advise the Master on how to make the passage when the vessel moved into the locks. Consequently, he broke off his afternoon watch early and turned in for several hours of zzz-time as the LAURA ELIZABETH, owned by Southern Towing, Company, waited its turn to descend at the Lockport Lock.

The Master summoned the Pilot as the tow exited the locks and reformed at **20:15 hours**. In fact, the Pilot stepped up to the pilothouse and prepared to pour a cup of coffee and become oriented. However, instead of “advising” the

Master, the Pilot was asked to get “between the sticks” and take control of the tow...and accepted the assignment without question as the Master remained with him in the pilothouse. This simple acceptance of control of the tow would be one of the things the Pilot would soon regret. Nevertheless, it was done in the spirit of mutual cooperation that expresses one mariner’s willingness to help another and was to his credit.

As he assumed control of the tow, the Pilot asked the Master what water flow the lock reported. The Master said that the Lock had not announced any change in the water flow from the 2,600 CFS rate announced earlier in the day and, in fact as testimony later revealed, the flow remained at that rate as they departed.

The route through Joliet Harbor is characterized as being “difficult to navigate” and involves considerable risk that could arise from a number of different sources. The channel width through this urban area is limited by a number of drawbridges to 150 feet wide. In addition, the bridges are not aligned in a straight line but contain several bends that restrict the movement of a long tow and prolong its movement through the city. The total length of the tow was 1120 feet long by 105 feet wide. In fact, the tow was longer than the distance between two bridges, a fact that would play a prominent role in the events that were to follow. Specifically, the distance between the upstream Cass Street Bridge and the Jefferson Street Bridge where the allision would take place is 984 feet and is considerably less than the 1120 foot tow.

The flotilla of 15 barges moved slowly, at clutch speed, southbound from the locks through the EJ&E railroad bridge to the Ruby Street Bridge where construction equipment on the bridge had to be removed to allow both leaves of the bascule bridge to open for the large tow.

Next, the nine empty barges followed by six loaded barges were in the process of moving through the Cass Street Bridge and into a bend to starboard without a problem and maintaining a steady clearance of approximately eight (8) feet from the Cass Street fender works. Lookouts were posted on the port and starboard corners of the lead barges with VHF radios and made regular reports to the pilothouse. A third deckhand was coiling lines on deck, the Pilot was between the sticks and the

Master was watching the vessel’s progress as the flotilla proceeded slowly through the Cass Street bridge at a “slow walk.” Suddenly, and unpredictably, the after starboard corner of the last barge slid to the right and rubbed the fender works causing no damage.

The pilot immediately went from dead slow ahead to full astern on both main engines to try to stop the tow with the 3,600 horsepower at his command. Nevertheless, the tow “flattened out” and the lead barge, an empty rake barge riding high in the water swung to starboard, ramming into the unprotected draw works on the right descending leaf of the Jefferson Street Bridge.

The starboard string of barges stopped dead in the water as a result of the allision snapping all couplings and the center and port strings proceeded another 200 feet until stopped by the thrust of the towboat’s engines.

State and federal authorities were notified immediately. The Pilot then re-established his tow with soft couplings and proceeded downstream safely and without further incident to drop the damaged barge and await the Coast Guard boarding.

Although the damage did not appear serious at the time, the 74-year old Jefferson Street Bridge, one of the major crossings in downtown Joliet was sufficiently damaged so that the Illinois Department of Transportation closed it to vehicular traffic for six months as a result of the accident. The accident reportedly resulted in a repair bill of approximately \$300,000 that the towing company and its insurer will eventually be expected to pay and economic damages to the community that may never be recovered.

GCMA – MARINERS HELPING MARINERS

On July 29, 2003, several months after the allision, the Pilot of the M/V LAURA ELIZABETH contacted GCMA to seek advice about the formal “complaint” filed against his license by the Coast Guard Marine Safety Office in Chicago charging him with “negligence” and alleging that he “was negligent...by committing an act or failing to perform an act that contributed to an allision between (the tow of the M/V) LAURA ELIZABETH and (the) Jefferson Street Bridge, in that you as the Master⁽¹⁾ failed

to safely navigate your vessel and struck the Jefferson Street Bridge, a well charted and fixed object.” In that complaint, the Coast Guard proposed a settlement agreement of “3 months outright suspension, in accordance with 46 CFR Table 5.569.” [⁽¹⁾Actually while serving as pilot of the vessel and not as its Master. No complaint was filed against the Master although he was the “front watch” watchstander at the time.]

The Pilot explained his case carefully and in considerable detail stating that he did not believe that he had been negligent in any way. The story that started to emerge from the “bare bones” story detailed above turned out to be interesting, complex, and believable – and in retrospect, was entirely borne out by 587 pages of testimony in court transcripts.

Because the Pilot denied the factual allegations supporting the charge of negligence he had to select a hearing date when he would appear before an Administrative Law Judge in the future. Since he had never had a chargeable offense before, his question to our Association was basic: “What do I do?”

While the Coast Guard usually makes its “best offer” in a “settlement agreement” in an attempt to save time, effort and taxpayer expense, it’s not reasonable to willingly accept a ruling that you were “negligent” when you know that you did everything possible to avoid an accident. In this case, the Pilot, as second in command, offered to take the risk of moving the tow downstream in an area that everybody agreed was “difficult to navigate” and even altered his watch schedule to do so. He did this because he had considerably more experience in running the Des Plaines River and Joliet Harbor than did the Master of the vessel.

[GCMA Position: The towing company should have checked to determine whether the Master of the vessel was adequately posted before assigning him to work this difficult waterway.]

The first basic question we asked was whether the towing company was willing to defend the Pilot as an employee or whether he would have to hire his own lawyer? At that time the Pilot told us that the Company had said nothing about defending him and, in fact, had not called him back to work for the three months following the accident. Consequently, at the time he believed that he was “on his own”, could not afford to

hire a lawyer, and did not have "license insurance."

Since GCMA cannot provide legal services, the only help we could offer was to look into the case and help him accumulate the facts that he could use to defend himself at the hearing before the Administrative Law Judge. We proceeded to do this on a tight schedule.

GCMA contacted three Masters with extensive experience in the Joliet Harbor area of the Illinois Waterway – Captain David Whitehurst, Captain Ray Ashford and Captain Reid Stewart to provide a comprehensive picture of this complex waterway and its principal features. We also called upon the U.S. Army Corps of Engineers, Rock Island District, the Metropolitan Water Reclamation District, and the Coast Guard Marine Safety Office for information.

GCMA TAKES POSITION ON OVERSIZED TOWS

On August 25, 2003, Captain David Whitehurst, as a member of the GCMA Board of Directors, wrote the following letter on behalf of the Gulf Coast Mariners Association to Captain Raymond Seebald, USCG, Commanding Officer of MSO Chicago. Captain Seebald never responded to the letter and its contents were never added to the Ninth Coast Guard District Docket for Temporary Rulemaking as requested:

Dear Captain Seebald,

I am a member of the Board of Directors of the Gulf Coast Mariners Association that represents the interests and concerns of several hundred "lower-level" mariners working on tugs, towboats, small passenger vessels and offshore supply vessels, primarily in the Eighth Coast Guard District.

I am a heavy tow pilot and have worked on towing vessels since 1965. I received my first towing license on inland waters and western rivers in 1973 and made my first trip up the Illinois Waterway, the Des Plaines River and the Chicago Sanitary and Ship Canal to Lemont, IL, in 1975.

The first tow I piloted on this waterway was a two-barge tow (300-foot long by 54-foot wide) pushed by the 1200-horsepower M/V Luby Guidry owned by Spanier Marine in Harvey, La. I have navigated this waterway with 15-barge tows for American Commercial Barge Lines (ACBL), SCF/Brown Water Towing, Steel City Marine as well as others. Fortunately, I have never had any trouble at any of the bridges or locks

on the waterway.

In response to the attached article, in my opinion, piloting a 15-barge tow 1,000 feet long by 105 foot wide through the Joliet Bridges is asking for trouble. The towboat Pilot has only five feet of clearance in some places. Now, I ask you to think about the requirement of pushing a tow of the size of three football fields through the Joliet Bridges without touching a fender. According to 46 CFR 4.05-1(a)(1) I must report to your office "...whenever (my) vessel is involved in a marine casualty consisting in...an unintended strike of (allision with) a bridge..." Such a report could, at the very least, bring a letter of warning or an administrative suspension or revocation of my license. Piloting is my profession; it is where I make my living. I have an obligation to feed my family. I cannot do this if my license is taken away from me. However, the choice is not really mine. It belongs to my employer who issues the orders I must follow.

Trying to thread a tow 105-feet wide through a series of bridges that are not aligned in a straight line without touching a fender wall it is next to impossible. However, if the company I am working for instructs me to move a 15-barge tow to or from Lockport, I have the experience to do so without damage as long as nothing unexpected happens. Unfortunately, the "unexpected" may take many forms.

As a contract pilot, if I refuse to take the job of moving the 15-barge tow, the company will find another pilot to do so. As long as it is not illegal to move the tow, and it will physically fit in the waterway, somebody will do it. Consequently, I fully support the Coast Guard's "temporary navigation rules" as briefly mentioned in the attached article and urge that tow-size restrictions be made permanent. Since our office does not have a copy of the new rules, here is what I suggest:

- That there should be no more than a six-barge tows measuring no more than 600-feet long by 70-foot wide from the Interstate 80 bridge north. Present practice breaks 15-barge tows at mile 292 just above the Lockport lock. I really can't see why these large tows can't be broken five miles away at mile 287 to protect all the bridges in the Joliet area. I can't understand why this was not done years ago.
- That smaller tows could traverse the bridges quickly and easily with less damage to the infrastructure and re-

duce the delays for highway traffic caused by the time large tows often must spend shaping up for the bridges.

- That towboat pilots would welcome the change because it would put much less strain on us and reduce our exposure to loss of license and appearances before Administrative Law Judges. A number of years ago, Captain John Sutton as President of the American Inland Mariners Association made a survey in which the lifespan of the average towboat pilot was only 57 years. Collectively, as a group, we do not need, want, or seek the stress of piloting 15-barge tows through downtown Joliet.

In closing, as GCMA's Senior River Pilot, I would like to point out that on the Gulf Intracoastal Waterway (GIWW), a waterway comparable to the Illinois waterway in many ways, the Coast Guard requires "double-wide" (i.e., 70' wide) tows to obtain Coast Guard permits to proceed since these tows take up more than half of the 125-foot width of the waterway.

In reviewing the winners and losers resulting from pushing the canal beyond its design limits, only gain accrues to the carriers and only if the tow reaches its destination with no damage. There is no gain to the general public when road traffic is brought to gridlock. There is no gain for the Pilot involved in the accident. There is no gain for the Pilot from facing hours of stress knowing that his license and livelihood is at stake even if he rubs fenders and creates no lasting damage other than fair wear and tear to the infrastructure. The months spent repairing the damaged bridge will never pay a dime to the inconvenienced residents of Joliet and will merely restore the bridge to its condition prior to the accident.

As expressed in the newspaper article, the Joliet City Manager is right to expect a pilot to know the waterway. Proper manning is a responsibility of the towing company while licensing is a Coast Guard responsibility. However, in the accident at Jefferson Street on May 2nd, the most qualified person on the vessel with many years of pertinent experience was called out after his watch had ended to "make the bridges."

I request that this letter be added to the Docket for the "temporary" rule-making mentioned in the newspaper article. Sincerely, s/Capt. David Whitehurst, Master of Towing Vessels, 7th Issue, Member, Board of Directors, GCMA.☼

GOVERNMENT BUNGLING REVEALED

A key to understanding why the starboard corner of the aftermost barge slid into the Cass Street fender works, flattening the tow and sending the lead barge into the draw works of the Jefferson Street Bridge precipitating the accident was the fact that the Lockport Dam doubled the flow of water from 2,600 CFS to 5,200 CFS without providing any notification to the vessels in the pool below. The Pilot only learned about the increased release of water several hours after the accident. The increased flow was introduced shortly after the tow had finished locking and started to move through Joliet Harbor.

Through his past experience in the area, the Pilot knew that the Corps of Engineers Lockmaster at the Lockport Lock broadcast the changes in water flow released from the nearby Lockport Dam. Unfortunately, the Metropolitan Water Reclamation District (MWRD), a local governmental agency, actually controls the flow from the Lockport Dam while the U.S. Army Corps of Engineers, a federal agency, operates the Lockport Lock. These are two separate and distinct government agencies that have not always worked in coordination with each other according to testimony recorded at the Pilot's license hearing in December 2003.

GCMA first confirmed the existence of a problem in our conversation with Mr. Sergio Serafino, Chief Engineer of the Metropolitan Water Reclamation District (MWRD) who told us in essence that they don't have any radios and don't talk to the boats. The Lockmaster and a number of other local parties in interest are supposed to be notified by phone by MWRD personnel whenever they change the flow of water into Joliet Harbor. When he receives this information, the Lockmaster can provide it to vessels waiting above and traveling below the locks "...as a courtesy." However, Rick Granados, the U.S. Army Corps of Engineers Operations Manager for the Illinois Waterway for the Rock Island District provided this last tidbit of information in the hearing. He stated: "My organization (USACE) is not making the gate changes (on the dam), so I am not going to be held responsible

for notification" (of the towboats).⁽¹⁾ The Pilot did not know this at the time, had no reason to question existing practices, and expected timely notification of flow changes. [⁽¹⁾ *Transcript, p.332.*]

On cross-examination by the Coast Guard Prosecutor, Mr. Granados acknowledged that the discrepancies in the communications and notification system of announcements are were known not only to MWRD, the Corps of Engineers as well as to the Illinois River Carriers Association and that the problem existed for at least a year and a half and had never been resolved.⁽¹⁾ It was not clear whether the Coast Guard had ever been brought into the discussions. What is clear is that too many cooks were left to stir the pot with no single agency left accepting responsibility for its actions and no regulations effectively governing the waterway. [⁽¹⁾ *Transcript, p.333.*]

[GCMA Position: For the safety of the citizens of Joliet and of the mariners navigating the Des Plaines River, Congress should designate one Federal agency to regulate the flow of water and adequately notify every vessel in the pool of releases of water that could pose problems for waterway users.]

Both the Pilot and our group of mariners familiar with the Illinois Waterway agree that they would never risk entering the area down river of Lockport L&D with a southbound tow with an initial flow rate of 5,200 cubic feet per second. However, when you are underway in the waterway you have no choice except to work with the hand you are dealt.

HISTORY OF RECURRING ACCIDENTS AT THE JEFFERSON ST. BRIDGE

Several years earlier on October 22, 1998 the M/V THRUSTON B. MORTON owned by American Commercial Barge Line southbound with 7 loads and 8 empty barges arranged in 3 strings of 5 barges had its starboard lead barge come in contact with the right descending pier of the Jefferson Street Bridge. The very sketchy report on form CG 2692

includes this vague statement: "Damage to the bridge should be obtained by the owners/operators." If anyone learned a lesson from this accident, it is not in the file we received from the Coast Guard under FOIA. Unfortunately, this is not unusual.

On February 22, 2001 the MSO Chicago Investigations Team responded to a bridge allision between the tow of the M/V JANE G. HUFFMAN owned by American Commercial Barge Lines and the Jefferson Street drawbridge in downtown Joliet, Illinois Waterway mile 287.9. The vessel was heading southbound with 15 barges (3 strings of 5 barges) including 5 empty red-flag barges and 10 hopper barges.

The tow struck the Jefferson Street Bridge on the northwest corner of the draw and seriously damaged the track girder rendering the bridge inoperable. The bridge remained open to marine traffic but closed to vehicular traffic. The Bridge Engineer on the scene estimated the total damage to be between \$300,000 and \$400,000 and will take between two to four months to repair. "Tow length - 1125 feet; width 105 feet; draft 9 feet. Clear visibility. No current."⁽¹⁾ [⁽¹⁾ *Source: USCG Accident Report obtained under FOIA.*]

The "factual allegations" of negligence (46 CFR 5.29) in the Coast Guard's complaint in the M/V JANE HUFFMAN accident should be of particular interest to our mariners:

- **First Specification:** In that you while operating under the authority of (your license) did on or about February 21, 2001 wrongfully strike the Jefferson Street Bridge near MM 287.9 on the Des Plaines River while operating the M/V JANE G. HUFFMAN.
- **Second Specification:** In that you while operating under the authority of (your license) did on or about February 21, 2001 **engage in an unsafe industry practice by pushing an excessive tow length in the Des Plaines River through Joliet Illinois.**

[GCMA Comment: The Coast Guard recognized that this was an "unsafe industry practice" yet took no steps to use the rulemaking process to regulate this unsafe practice. The Coast Guard clearly demonstrated lack of leadership and failed to take effective action

following this accident.]

The Coast Guard “proposed” that the Master’s license be suspended for 15 months. However, the Master of the M/V JANE G. HUFFMAN on the advice of counsel accepted a “settlement agreement” offered by the Coast Guard. The Coast Guard thereby avoided the point that is now clear to many of our mariners as well as to the citizens of Joliet that pushing an excessive number of barges is indeed “**an unsafe industry practice.**” Pushing an 1,120 by 105-foot tow through this narrow waterway is a risky business.

Instead of taking effective action to eliminate the root cause of the problem, the Coast Guard took the easy way out by blaming the Master of the vessel who was just performing the task his employer assigned to him. The mariner and his license is a much easier target than a large towing company with considerable political clout in the nation’s capitol.

The Master of the M/V JANE G. HUFFMAN accepted the Coast Guard’s settlement agreement on advice of counsel that stated in part: “In light of the Respondent’s cooperative attitude and good faith efforts to reach compliance, a mitigated penalty of 12 months suspension: 2 months outright with 10 months remitted on probation will be assessed.”

Other terms of the settlement agreement are also significant: “If the respondent fails to satisfactorily complete these conditions by committing acts resulting in additional Suspension and Revocation proceedings then the respondent’s license will be suspended for the full 12 months plus any additional assessment awarded as a result of new charges.”

MORE BUREAUCRATIC BUNGLING

Southern Towing Company provided a skilled maritime attorney to defend the Pilot of the M/V LAURA ELIZABETH.

Robert Nienhuis, Esq., carefully examined the background of previous accidents and discovered that following the HUFFMAN accident that the Illinois Department of Transportation (IDOT) working with the Illinois River Carriers Association prepared plans and drawings to build a cell to protect the vulnerable portion of the Jefferson Street bridge. Formal plans had to be submitted, reviewed by all parties including the Coast Guard Bridge Administration Branch in

St. Louis, and reworked after the proposed cell was found to unnecessarily narrow the width of the waterway. At that point the matter of funding construction of the cell had to be arranged with IDOT Headquarters in the state capitol at Springfield. Final plans then had to be submitted to and approved by the Coast Guard. However, the process became bogged down within the IDOT bureaucracy when the Coast Guard’s Bridge Administration Branch did not push the issue with any sense of urgency. Consequently, this project that was obviously necessary for the safety of the excessively large tows passing through Joliet Harbor never saw the light of day by the time of the LAURA ELIZABETH allision. However, shortly after the accident, the Coast Guard finally ordered the bridge owner (IDOT) to construct the protective cell. It was a textbook case of slamming the barn door after the cow escapes.

All the attorney’s efforts, in pointing out another governmental screw-up came to naught. The Administrative Law Judge in his Decision and Order⁽¹⁾ pointed out that “These arguments are essentially that of contributory negligence. In a Coast Guard suspension and revocation proceeding, the only issue is the negligence of the licensee charged. Contributory negligence is not a defense. *Appeal Decision 2380 (Hall)*⁽²⁾ I must, therefore, reject the contributory negligence defense of (the) respondent.” This is one of those nasty surprises that the existing Administrative Law System can deliver to a reasonable defense. [⁽¹⁾ *Decision and Order, p.10.* ⁽²⁾ *Commandant Decisions on Appeal #2380.*]

PUBLIC OUTRAGE

On May 21, 2003, several weeks after the LAURA ELIZABETH accident, the Coast Guard’s Ninth Coast Guard District announced a “Temporary Final Rule” establishing a Regulated Navigation Area on the Des Plaines River requiring all southbound tows in the vicinity of the Jefferson Street Bridge over 89 feet wide and 800 feet long to use an assist tug. Some regulation was long overdue and was another textbook example of the Coast Guard ineptly slamming the barn door after the cow ran away.

The Coast Guard also “encouraged comments” on whether a Regulated

Navigation Area (RNA) was the appropriate tool to provide for the safe navigation of tows transiting through the Jefferson Street Bridge.

Comments returned to the Coast Guard indicated that the rule was flawed because it did not indicate whether the 800 foot tow length included the length of the towboat or not – a remarkable oversight in the eyes of our mariners. The Coast Guard’s “assist tug” concept also had its own flaws.

Two classes of comments poured in to the Coast Guard – in favor of (pro) and against (con) the Coast Guard proposal for a permanent regulated navigation area. In any event, the **temporary regulation with its flaws and adjustments simply expired on March 1, 2004 and has not been renewed** according to a call placed with the MSO Operations Office on April 28, 2004.

[GCMA Position: Without a reasonable Regulated Navigation Area in effect and with no bridge protection cell in place, it does not appear that the interests of the citizens of Joliet have a single iota of protection more than they had on the day(s) of the accident.]

Pro: According to letters in the Coast Guard’s Rulemaking Docket,⁽¹⁾ the Chamber of Commerce commented in part: “The disabling of the Jefferson Street Bridge ...has resulted in a devastating negative economic impact on the Joliet business community. While businesses throughout the city suffer significantly as a result of this incident, businesses located in Joliet City Center are suffering overwhelming losses because of the chaotic traffic situation getting into and out of the City Center due to traffic reconfiguration resulting from the barge accident. Two new businesses who just opened prior to the barge damaging the bridge are facing probable failure simply because they will not be able to survive until the...reopening of the Jefferson Street Bridge...Knowing that the bridges in this section of river through Joliet have been damaged by barge traffic in three of the past five years, we strongly urge you to move these restrictions from temporary to permanent status ...” In a separate letter, IDOT concurred with making a permanently-regulated navigation area in Joliet. [⁽¹⁾ *CGD09-03-214.*]

The Joliet City Partnership, a division of the Joliet/Will County Center for Economic Development made these points among others:

- Joliet is the County Seat of Will County where thousands of county residents transact their business with government officials.
- On (June 9, 2003) at noon both the Ruby and Jefferson Street bridges were closed for repair. At the noon hour, southbound tows closed two other bridges at Cass Street and Jackson Street for one-half hour each meaning that none of the downtown bridges were available for use.
- Since the Ruby Street bridge is also vulnerable to heavy tows, the Regulated Navigation Area should be extended farther north. (Letters from the Joliet City Manager and from IDOT, the bridge owner, concurred.)
- No 3X5 barge configuration should be allowed in either direction through Joliet.
- The narrow area does not allow an assist tug to be secured on the side of the barges to direct them through the area. A letter from IDOT agreed with this point because of the limited (150-foot) opening between bridge piers. The Joliet City Manager also pointed out that: "An assist tug in such a 3X5 configuration is in and of itself creating a dangerous condition" – a thought that clearly escaped the Coast Guard rulemakers who are well paid to know about these things!
- The Illinois Department of Transportation also stated: "Even after the proposed pier cell is constructed at the northwest corner of the Jefferson Street Bridge, there will remain little maneuvering room for large tows.

The Joliet Police Chief pointed out that: "Each time a lift bridge is put out of commission, public safety is negatively affected by more difficult and restricted police response to emergencies. This negative effect is not just caused when a bridge is hit and put out of commission but it is also affected year-round when three-by-five barges move through the area. The reason for this year-round effect is the extended length of time it takes for a three-by-five barge (flotilla) to slowly attempt to navigate through the City of Joliet.

Con. A letter from the Chairman of the River Industry Executive Task Force stated: "This Regulated Navigation Area is a significant regulatory action and

does place financial pressures on the industry. It is estimated that this action will increase the tows and costs by over 20%. This is an unacceptable shift of financial burden from those who have responsibility for the bridge, IDOT, to an industry that transits congressionally authorized commercial waterways"

"RIETF and other industry groups are disappointed that MSO Chicago has neglected the government/industry partnership that industry has tried to foster and issued such a heavy-handed RNA without sufficient dialogue with all stakeholders, including the towing industry..."

[GCMA Comment: The "dialog" between the Coast Guard and the towing industry does not appear to adequately consider the views of the citizens of Joliet and Will County or those of mariners that oversized tows place at risk.]

The Illinois River Carriers Association (IRCA) stated in part: "...There have only been three (3) allisions between tows transiting the Joliet Harbor and the Jefferson Street Bridge over the past ten (10) years. While the percentage of allisions is low, the industry feels that even these could have been preventable had the IDOT been pro-active in the installation of the protective cell. With the establishment of this RNA, the towing industry is taking on all of the burden for the additional time and cost while the industry continues to wait for the IDOT to react."

The Coast Guard Prosecutors do not appear to have bought that argument because, during the Pilot's suspension and revocation hearing in December CWO Razney posed these questions to the Past President of the Illinois River Carriers Association (IRCA) who was acting as an expert witness for the pilot:

Q. The protection cell – the reason for not wanting to go with this Regulated Navigation Area is essentially that it ... cost members of your association money?

A. That is correct.

Q. ...IRCA would rather have the cost borne by the State putting in a protection cell⁽¹⁾ than there be any kind of a revenue increase cost to them?

A. That's one (aspect). The other is a safety factor. Any time you ... place a tug on the head of a tow

you are exposing the crewmembers to a (man) overboard situation and you've got a flotilla out ahead of your tow with a tug that contains crewmembers, and you have put them in harms way as far as I am concerned."⁽²⁾ [⁽¹⁾ Transcript p. 576. ⁽²⁾ Transcript p. 263]

Congressional Interest. U.S Representative Jerry Weller representing Illinois 11th. Congressional District (and the Assistant House Majority Whip), while citing points previously mentioned, added this comment to the regulatory docket that should stand out as a warning to our mariners: "I also urge you to look into the licensing of barge pilots to determine if they are (sic) appropriate. It is my understanding the pilot of the barge who hit the bridge on May 2, 2003 has been charged with negligence. One cannot help but wonder if this would happen if the license requirements were stricter and/or required additional testing or training. Many professionals are mandated to keep their skills updated with additional instruction."

[GCMA Comment: In May 2001, the Coast Guard upgraded towing vessel officer licensing regulations. The root of this problem lies beyond the mariner's control.]

[GCMA Comment: The subject of oversized and overloaded tows is covered in detail in GCMA Report #R-340 on our internet website.]

MONTHS OF STRESS, STRAIN & HARASSMENT TAKES A TOLL

Any mariner who is charged with any offense under the Coast Guard's Administrative Law system will invariably find himself under intense pressure from every quarter. This part of the report details these pressures:

As a mariner you must answer the Coast Guard's formal complaint in writing within 20 days. If you fail to provide an answer or fail to request an extension of time to reply or fail to attend any scheduled hearings, you may be found in default. This constitutes an admission of all alleged facts in the complaint and waives (i.e., gives up) your right to a hearing.

The "complaint" for this accident was directed to the Pilot at the towing company's address in the form of a registered letter that arrived several weeks

after the accident. The letter was forwarded to the Pilot at home and then to the company attorney in St. Louis.

The Coast Guard Marine Safety Office in Chicago, thirty miles from the accident, prepared the "complaint." Southern Towing Company's main office is in Memphis, TN. Goldstein and Price, the law firm that would handle the case, is located in St. Louis, MO. The Pilot lives in Alabama. The hearing was set at Joliet, IL. The Pilot had to look forward to paying significant travel and hotel expenses just to appear at the hearing.

Although the towing company and their insurance underwriters agreed that they "...should defend this administrative procedure" it took them some time to let the Pilot know that this meant they would defend him in this matter. It was while left in limbo at this point at the end of July 2003 when the Pilot contacted GCMA.

Understand that a boat company is under no obligation to defend one of its employees at a license hearing. A license is granted to a mariner and not to his employer. It is up to the license holder to protect, defend, and if necessary surrender his license before the Coast Guard.

Fortunately for the mariner in this case, the company decided it was in their interest to provide a skilled lawyer to defend the Pilot.

GCMA expressed its concern to the Pilot that his interests and the interests of the company might not be the same and that there might be some conflict of interest. However, since the Pilot stated that he could not afford to pay an attorney, our advice to him was limited to how he might best prepare himself for the hearing.

GCMA advised the Pilot that defending himself adequately against the charges is best handled by an experienced maritime attorney. Hiring a lawyer during a time without a paycheck coming in and with no license insurance to pay for the lawyer is very difficult. This is why we advise our mariners to purchase license insurance.⁽¹⁾ Unfortunately, too many mariners take their chances without it. [⁽¹⁾ Refer to GCMA Report #R-342, License Defense and Income Protection Insurance.]

Several weeks later after Southern Towing Company made Attorney Robert Nienhuis available to counsel the Pilot, GCMA called him to discuss the issue of

any possible conflict of interest and received assurances that this would not be a problem. We proceeded to share the information we gathered with "the defense."

Throughout the ordeal of the hearing, as determined by a GCMA's review of the entire 587-page transcript, attorney Robert Nienhuis did what we consider to be "the right thing" for the Pilot because it is not the company's obligation to defend a mariner's license! For this we commend both Southern Towing Company and Robert Nienhuis, Esq.

The company footed thousands of dollars in legal fees that, considering the reported financial impact upon the mariner of \$18,000 to \$20,000 made the difference between bankruptcy and keeping his head above water. As it was, the pilot had to sell his recreational vehicle, a major piece of shop equipment, take out a loan on another vehicle and still continue to support his two children – a heavy price for just "doing your job."

The Pilot passed on this advice to his fellow licensed Masters and Pilots after the trial, "If you really love this type of work, you had better stash away a full 12-months' pay for the time when – NOT IF – the Coast Guard decides to get on your case!"

The Pilot's written answer to the Coast Guard was to deny that he was guilty of "negligence" as charged because he did everything leading up to the accident "by the book" with the full knowledge and consent of the vessel's Master who was standing by him in the pilothouse at the time of the accident. He firmly believed that the accident was a result of forces that were completely beyond his control.

In the proposed settlement agreement the Coast Guard proposed three months outright suspension of the Pilot's license. That means the Pilot would be out of a job for the next 90 days the moment he signed on the dotted line – and that the suspension would go on his record that had been unblemished for over 20 years.

The definition of "negligence" is "the commission of an act which a reasonable and prudent person of the same station, under the same circumstances would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances would not fail to perform." This definition, along with the knowledge he discovered of the failure of three separate governmental agencies and a

major industry association to control and safely manage the waterway reinforced the Pilot's determination to vigorously fight the charge against him.

The Pilot, as a professional, was concerned that he would no longer have a job with a company that he thought highly of. He also was concerned about what the company thought of him. The fact is that he was not recalled to service in the six months after the accident and had to obtain another job to support his family and pay his bills.

Another point, and one not brought out at the hearing, was that the Master he worked under and who testified that he was not comfortable with or posted on that section of the Illinois Waterway reportedly spread rumors that were malicious, prejudicial to the Pilot's reputation, and were untrue. This led the Pilot to question in his own mind why he did not let the Master steer the tow through the waterway and serve as his "advisor" as he originally agreed to do. (Later, at trial, the Pilot would receive professional exoneration of sorts when an expert witness, the Past President of the Illinois River Carriers Association (IRCA) stated: "He (i.e., the Pilot) probably did one of the best things that we teach down at the Seaman's Church Institute is to give the Captain of the vessel (the freedom to) determine who has the ... more experience to go through that particular area.)"⁽¹⁾ [⁽¹⁾ Transcript, p. 553.]

As the case moved toward trial, the Coast Guard Prosecutors announced that the trial would be held at the Will County Courthouse at 14 West Jefferson Street in Joliet – several blocks away from the bridge that had been knocked out of commission. Considering the magnitude of the calamity that had befallen the downtown center of this city of 105,000, the many newspaper articles that appeared at the time of the accident, the involvement of politicians and civic leaders, all took a toll on the Pilot who was freely blamed for the disaster and every delay it had caused for the past six months. Every mariner needs to put himself in the place of this Pilot.

Add to the roiling stomach acid the perverse pleasure that many mariners get from trashing other mariners on internet "chat boards." While seeking employment between June and December 2003 the Pilot found that several employers "knew all about the accident" by reading these "chat board" accounts and had the

temerity to lecture him on why they would never hire him to work for their company.

We suggest that a far more accurate account of this accident is rendered in the pages of the hearing transcript. This is one of many reasons why GCMA does not operate – AND WILL NEVER OPERATE – an online “chat board!”

Life would be much easier for Coast Guard Prosecutors if every “respondent” would sign a “settlement agreement.” This is because it takes a great deal of work and preparation to put on a full-blown hearing before an Administrative Law Judge (ALJ). Many prosecutors are not trial lawyers and some have only the most tenuous grasp of what is expected of them. In the courtroom they no longer face the mariner they can threaten, cajole and browbeat. They can’t cut any deals and must now perform and be rated on their performance. They are facing accomplished trial lawyers on one hand and an experienced Judge on the other hand.

Other Coast Guard officers, warrant officers and ratings as well as interested members of the public may attend a hearing. The MSO Investigations Office provides interested observers for, when the Judge comes to town, this is their “big day.” This particular Judge flew in from Seattle, WA, specifically for this trial, and as the trial proceeded, it was obvious that he had little knowledge of either the local area or of the towing industry that exists in mid-America on the 6,000 mile “Western Rivers” system – a significant shortcoming.⁽¹⁾ Even the “courtroom” is not located at the Marine Safety Office and was “borrowed” from county authorities. All these things must be arranged and the Judge treated like visiting royalty. [⁽¹⁾ Refer to GCMA Historical Report #396]

When you are a mariner and see a number of blue uniforms in the room, they appear there to serve as moral support for the efforts of the prosecution. However, some will be there principally to rate the performance of the Prosecutor.

What the Pilot reported as being most disconcerting to him was when this Coast Guard “cheering section” passed notes to the Prosecutor when he appeared at a loss for words. None of this appears in the cold pages of a hearing transcript.

By the time the trial got underway, the original charge of failing to safely

navigate the vessel through the bridge and seeking 3 months license suspension was increased by two additional counts, namely:

- failing to maintain a proper lookout (seeking 3 additional months suspension), and
- failing to maintain a safe speed (seeking 3 additional months for a total of 9 months suspension).

Whatever the Coast Guard’s motivation for adding these counts, they had to be defended. This took time and effort on the part of the Pilot’s attorney. The charge of failing to maintain a proper lookout was relatively easy to dispose of by showing the Pilot, the Master, the Mate and a deckhand were all watching the progress of the tow and reporting its progress directly to the Pilot by radio at all times the tow was underway in the Des Plaines River.

The question of “safe speed” took much more soul searching since it is wrapped in so much seagoing tradition and case law. However, the testimony that both engines were operating only at “clutch speed” (i.e., idle), that this degree of propulsion was necessary, and the tow was only making the speed of a “slow walk” finally disposed of that count. However, the transcript shows it took the lawyer’s skill to successfully make these points with the Judge. A mariner alone would not have had much of a chance.

The Pilot characterized MSO Chicago’s Investigations Branch as “the equivalent of Russia’s infamous KGB.” In reviewing the transcript, much of this heartburn comes from the opening statement by the Prosecutor LTJG Michael Reed who had also boarded the vessel at the time of the accident. The Pilot was particularly incensed at his opening remarks outlining the Coast Guard’s case against him, specifically:

- Mr. ■■■ had limited experience transiting the area. (Testimony would show approximately 50 trips – how much is enough?).
- It was dark. (That happens every day).
- The Joliet section of the river is difficult to navigate (That’s what he was paid to do.)
- Mr. ■■■ elected not to take any additional precautions. He could have easily solicited an assist tug to help him maneuvering his tow. (At the river flow correctly reported to him by the Master standing at his side he

did not need assistance. An assist boat would be of limited and of questionable value and possibly a danger as supported by expert testimony.)

- He could have broken his tow in half so it was more maneuverable and made two trips. (He already made the same trip a number of times safely and successfully.)
- He could have delayed his transit until conditions were safer. (At 2,600 CFS flow, conditions were safe. However, the MWRD increased the flow without notification.)
- He should have followed the example set by the vessel’s Captain and admitted he did not have the experience to safely transit the area. (The Captain asked him to do a job he had done many times before. He had the experience and demonstrated it clearly after the accident by recovering his tow and safely transiting three additional bridges.)

THE DECISION AND SANCTIONS

The Judge’s Decision and Order was issued on March 23, 2004 almost 11 months after the accident and fills 18 pages.

Judge Edwin M. Bladen stated inter alia that “It is well settled that a rebuttable presumption of negligence arises when a moving vessel strikes a fixed object...Without adequate rebuttal, the presumption permits an Administrative Law Judge to rely upon the presumption to find negligence in a suspension and revocation proceeding.

I find the respondent has not adequately rebutted the presumption of negligence arising from the allision of the flotilla with the Jefferson Street Bridge. I must conclude the charge of negligence is proven.”

“It is ordered (that) respondent’s license is suspended for a period of four (4) months, two (2) months of which is remitted with six months of probation to follow. As conditions of probation

- (1) Respondent shall take and successfully complete a bridge resource management course approved by the Coast Guard;
- (2) Any violation of the rules, regulations or COLREGS by respondent during the probationary period shall subject respondent to an outright two

(2) month suspension besides any further sanction warranted on account of the violation established after a hearing on the matter.

GCMA VIEWS

The Coast Guard delivered the public a nice, neat package tied with a ribbon and a bow. The Pilot was found guilty of "negligence" after a show trial in downtown Joliet that the public and the media was welcome to attend if they chose to do so. The pilot was found guilty of "negligence", lost his license and was ordered as part of his punishment to go back to school and take a course in "Bridge Resource Management." If the Coast Guard believes the problem is solved, we respectfully disagree.

1. The indiscriminate release of water by the Metropolitan Water Reclamation District without providing adequate advance warning and time for navigation interests in the pool below remains an outstanding problem. The citizens of Joliet must understand that the lack of coordination between the MWRD and the Corps of Engineers is directly coupled to knocking out the Jefferson Street Bridge in this accident. This is a local problem that local interests should address.

[GCMA Position: We advise our mariners not to accept any piloting assignment in the area between the Lockport and Brandon Road Locks until such time as the indiscriminate water-release problem is resolved and the Corps of Engineers publishes suitable water-flow regulations or guidelines.]

2. Parts of this section of the waterway are over 70 years old and were not built for the size of some of the large tows that now use it. The only reason it can be utilized to move 15 barges in one tow is through the exceptional skill of the pilots that use the waterway. Once it was proven that a tow of this size could physically fit in the waterway, its use gradually became "routine" and accepted by the authorities who failed to establish reasonable governing regulations.

3. The wisdom of continuing to use the existing waterway facilities to move

oversized tows needs to be re-evaluated. Many legitimate concerns of the citizens of the local community need to be considered as well as the needs of the companies that continue to exploit the waterway.

4. By allowing the temporary regulations restricting the size of tows through the area to lapse on March 1, 2004, the Coast Guard ignored local concerns in favor of allowing unrestricted traffic to benefit a few large towing companies. Mariners understand that the towing industry exercised considerable political clout in Washington for the past 30 years to the detriment of legitimate mariner safety interests and has established a very comfortable "partnership" with the Coast Guard. [*Refer to GCMA Report #R-276, Rev. 7, Towing Vessels Need Regulations Comparable to Other Vessels; GCMA Report #R-340, Rev. 7, Oversize and Overloaded Tows Cause Safety Problems; GCMA Report #R-375, Crew Endurance: The "Call Watch" Cover-Up. These reports are on our internet website.]*

5. The Pilot on the M/V LAURA ELIZABETH at the time of the accident was a fully trained professional river pilot with many years of experience that met all Coast Guard license requirements. The company he worked for is a highly regarded employer in the industry. The equipment he worked with was top of the line equipment in good mechanical order.

[GCMA Position: The Coast Guard's Chicago Marine Safety Office erred in its failure to recognize that poor management practices evidenced by the indiscriminate water releases by the MWRD and the failure to adequately notify tows in the pool below were the cause of a legitimate "accident."]

[GCMA Position: Attempting to humiliate and denigrate experienced river pilots using prosecutors who do not have comparable credentials or knowledge and then covering the problem with a legal mantle is not conducive to solving a festering communication problem between several government agencies and waterway users.]

[GCMA Comment: If the Coast Guard, Corps of Engineers and the

MWRD cannot properly coordinate and regulate the water releases with existing marine interests today, how can they be expected to do so in the future if Congress authorizes extensive and expensive construction projects to improve the waterway?]

6. The towing company erred in not assigning a Master to the vessel that was as well "posted" on local river and operating conditions as the Pilot. Therefore, the Pilot who would have normally been "off-watch" at the time of the accident, was called upon to undertake the most "risky" portion of the southbound voyage.

7. Although he was provided with "compensatory time" off-watch, the fact that both the Pilot and the Master were together in the pilothouse at the same time for a considerable period conducting the southbound voyage through the Des Plaines River technically violated the "12-Hour Rule" established by Congress at 46 U.S. Code §8104(h). The Coast Guard has an exceptionally poor record in regard to enforcing this statute. Consequently, mariner fatigue and exhaustion has played a role in a number of bridge allisions although not in this case. [*Refer to GCMA Report #R-346, Rev. 2, Work-Hour Abuse, Whistleblower Protection, and "Deadhead" Transportation; GCMA Report #R-293, Rev. 2 Towboats and Bridges, A Dangerous Mix on our internet website.]*

FIBER OPTIC WARNING SYSTEM PLACED AT SOUTH PADRE BRIDGE

[Source: By Lynn Brezosky, Associated Press. Fort Worth Star Telegram, March 6, 2004. Submitted by Tim Raiter, one of GCMA's staunchest supporters.]

Port Isabel, TX. Officials on Friday unveiled what they say is a first-in-the-nation fiber optic warning system at the South Padre Island causeway that springs to action if anything shakes the stability of the bridge.

Barriers will go up and lights will flash to warn motorists to stop driving, Texas transportation officials said.

The system was developed after eight people died in the Sept. 15, 2001 col-

lapse of the Queen Isabella Causeway, the state's longest bridge.

A towboat pushing four barges lost control of them, causing the barges to veer in strong currents and strike a bridge support. A 240-foot midsection was knocked into the bay 80 feet below, and motorists drove blindly into the chasm.

As another safeguard, concrete slabs that are 16 feet around have been placed in front of bridge supports.

Mario Jorge, district engineer for the Texas Department of Transportation, said the agency searched the nation for an electronic warning system and couldn't find any. Several had been attempted in other states but they hadn't been able to withstand the weather.

"What we have is a unique system," Jorge said. "We hope that it's one that others will emulate."

The \$900,000 system consists of two fiber-optic cables about as thick as a fountain pen that are strung along the

bridge's north side. They are stretched in segments and are weakened in points. If a portion of the bridge breaks, one or both of the cables will break, sending signals to computers that will activate a railroad-type gate to close the bridge.

The computers are also programmed to start red lights and warning signs. Calls will automatically be placed to law-enforcement agencies and the U.S. Coast Guard.

James Mercier, an Austin-based engineer for the Transportation Department, designed the system with fellow engineer Mark Bloschok.

Mercier said that much of the technology is brand new and that federal transportation officials were eager to use the system on other bridges.

There have been several bridge collapses since the Queen Isabella tragedy, including the May 2002 collapse of the Interstate 40 Bridge in Oklahoma that killed 14.

The Texas collapse has led to a hand

ful of lawsuits against the barge company that contracted the tow. Other lawsuits blame the county for failing to maintain street lights on the bridge.

The findings from an October 2001 Coast Guard hearing on whether the channel under the bridge was mismarked or insufficiently dredged are still pending, said a Coast Guard spokeswoman in Washington, D.C.

In November, the span was renamed the Queen Isabella Memorial Causeway in honor of the accident victims.

[GCMA Comment: Several GCMA members were involved in different phases of this accident investigation. Less than two weeks after the accident other GCMA representatives visited the Washington office of Congressman Solomon P. Ortiz (D, Tx.) and discussed the accident with his staff. After almost three years, we still await the tardy Coast Guard accident report.]



PROTECTING MARINER SHORE-LEAVE RIGHTS

In the last issue of the *GCMA News* (April 2004, p. 12), we explained the important role that one of GCMA's most esteemed members, Father Sinclair Oubre, is playing in trying to lighten the heavy burden facing foreign seamen arriving on ships from overseas.

CREW LIST VISAS ELIMINATED

Effective June 16, 2004, all crewmembers seeking to enter the United States as seamen will be required to apply for an individual crew visa because the State Department is eliminating the crew list visa for enhanced security reasons.

By so doing, each crewmember entering the U.S. must complete a "non-immigrant visa" application, submit a valid passport, undergo background checks, and be personally interviewed by a consular officer. Recognizing that there may be costly delays at ports while crewmembers await the necessary processing and clearances to obtain a visa, the State Department notes that it will make every effort to ensure that applications made for crew visas will be processed speedily and that crewmembers can apply at any U.S. Embassy or Consulate that issues visas.

The State Department, in its Final

Rule, specifically rejects substituting the International Labor Organization's (ILO) Seafarers Identity Document in lieu of a valid passport and visa requirement.

MARAD SUPPORTS SEAMENS RIGHTS

Father Sinclair Oubre is the current President of the Apostleship of the Sea. His organization passed the following resolution thanking the United States Maritime Administration (MARAD) for their efforts in defending mariners' rights to shore leave:

WHEREAS, in the wake of the attacks on the United States of America on September 11, 2001, the Immigration and Naturalization Service (now U.S. Customs and Border Protection) severely restricted the access of non-U.S. seafarers to shore leave;

WHEREAS, thousands of seafarers have been denied shore leave and medical care because of these policy changes;

WHEREAS, the Apostleship of the Sea of the United States of America (AOSUSA) and other seafarer ministry organizations and seafarer welfare agencies have vociferously decried the loss of **Crew List Visas** and the loss of the authority of Custom and Border Protection officials to waive D-1 Visas for visiting mariners;

WHEREAS, the U.S. Maritime Administration has actively supported the rights of seafarers to access shore leave;

WHEREAS, the United States Department of State has refused to consider the points raised by U.S. Maritime Administration, AOSUSA, seafarer maritime ministries, maritime unions and other seafarer welfare agencies, and has issued the final rule eliminating the crew list visa and explicitly rejecting the principle of accepting the new seafarer identification document

BE IT RESOLVED THAT the Apostleship of the Sea of the United States of America meeting during its 2004 Annual Conference at the Great Lakes Maritime Academy wishes to express its most sincere thanks and appreciation to Capt. William Schubert and the dedicated men and women of the United States Maritime Administration for their efforts in overcoming the onerous policies that have prevented seafarers from access to shore leave;

BE IT FURTHER RESOLVED THAT AOSUSA looks forward to continuing the cooperative efforts with the United States Maritime Administration in assisting the more than one million foreign seafarers who visit our ports, and to eventually develop policies and procedures that will reduce the more onerous effects of the U.S. Department of State's policies.

**TRANSPORT WORKERS ASSAIL
U.S. TREATMENT OF MERCHANT
MARINERS
ON CREW LIST VISA ISSUE**

[Editorial Note: GCMA received strong and unswerving support from the International Transport Workers Federation (ITF) during our formative years. The ITF sees merchant mariners from a worldwide perspective in its fight to improve working conditions for all transport workers. They recognized the treatment many of our mariners faced in the Gulf of Mexico was as bad as found in many third-world countries...and tried to help. With membership of over 4,500,000 transport workers, the ITF is a unifying force that all mariners respect. They stood up for us in the Gulf of Mexico, held a meeting to offer us worldwide support in New Orleans and marched with us en masse to the WorkBoat Show. This is a copy of a recent ITF letter addressed to the U.S. State Department that deserves our careful attention and consideration.]

Mr. R Acker
Legislation and Regulations Division
Visa Services Division
Department of State
Washington, DC 20520-0106
United States of America

19 April 2004

Subject: Interim final rule - Documentation of Non-immigrants Under the Immigration and Nationality Act, as Amended - Elimination of Crew List Visas

Dear Sir,

Further to our previous communications during the rulemaking process, we are extremely disappointed that the United States has issued the Interim Final Rule in Public Notice 4654. We also note that the Public Notice advises that the proposed rule solicited 81 comments from seafarers' trade unions, ship owners and Governments, all of which argued against the elimination of the crew list visa. Moreover, earlier this year the Secretary-General of the International Maritime Organization and the Director-General of the International Labor Office wrote a joint letter to the Secretary of the seafarers on board who have not been subject to a consular interview currently

Department of Homeland Security requesting the United States to recognize the exceptional position of seafarers in terms of entry into foreign countries and to facilitate shore leave for seafarers.

The joint letter by the heads of two United Nations Specialized Agencies notes the way the international community has, in the wake of 11 September, put in place additional stringent and comprehensive measures to address the question of maritime security. The International Ship and Port Facility Security (ISPS) Code, adopted by the IMO, which comes into force on 1 July this year, puts seafarers at the forefront of the new maritime security regime. The IMO Diplomatic Conference that adopted amendments to the SOLAS Convention and the ISPS Code also adopted a Conference Resolution on Human Element Related Aspects and Shore Leave for Seafarers. The ILO also promptly responded to a request, which originated from the United States, to revise the Seafarers' Identity Document Convention and adopted ILO Convention No. 185 in June 2003. The ILO International Labor Conference, which adopted ILO Convention No. 185 Seafarers' Identity Documents), also adopted a Conference Resolution Concerning Decent Work for Seafarers. The fact that two United Nations Specialized Agencies adopted such Resolutions, which recognize that seafarers need special protection, shore leave and facilitation of travel to and from ships, are indicative of the importance the international community attaches to such matters.

As we have stated in our previous comments, the requirement that seafarers secure individual visas is causing great hardship. The State Department Public Notice wrongly suggests that individual visas would be cheaper as most seafarers would receive a multiple entry, long-term visa. However, it ignores the fact that the cost of a crew list visa was borne by the ship owner, while the costs associated with the issuance of an individual visa are generally met by the seafarer. As many seafarers come from developing countries and live in communities some distance from a United States Embassy or Consulate, the costs are not insubstantial. Moreover, we are advised that many seafarers encounter difficulties in securing a United States visa when visit ports in the United States, we believe acceptance of the provisions of ILO

they are not able to demonstrate that they will actually be visiting the United States. In these cases the seafarers become unemployable.

The State Department Public Notice erroneously suggests that the new seafarers' identity document, which contains biometric details, would take many years to be developed. The Convention has been adopted and the necessary technical standards to ensure global interoperability have just been agreed. Moreover, a number of countries have started to ratify the ILO Convention and some are receiving technical assistance from the United States to implement the onerous provisions associated with the issuance of seafarers' identity documents. We would have hoped that the United States would have encouraged widespread ratification of the ILO Convention, through the provision of an incentive that would have provided more favorable treatment for seafarers holding the new seafarers' identity document.

The State Department Public Notice states: *"By eliminating the crew list visa, the Department will ensure that each crewmember entering the United States will be required to complete the non-immigrant visa application forms, submit a valid passport and undergo an interview and background checks."*

It also suggests that: *"One of the principal reasons for requiring individual visas is the need, for security purposes, for a consular officer to personally interview each applicant."*

However, this ignores the modalities of the shipping industry and the fact that any ships, crewed by seafarers who do not hold a valid United States visa and who have not been subject to a consular interview, are likely to call at ports in the United States. Shipping is unique in this regard. It therefore needs and, given its importance to the global economy, deserves special treatment.

We are firmly of the view that the new seafarers' identity document, coupled with other measures, most notably the 96-hour rule that requires the details of all persons on board to be submitted to the United States Coast Guard 96-hours prior to the arrival of the vessel, provide an equivalent level of security and adequate time for background checks. Moreover, given that ships with

Convention No. 185 would significantly enhance homeland security.

Seafarers cannot understand why they are subject to such a visa regime by the United States and are, at the same time, expected to be responsible for the ship's security and for the implementation of the onerous duties imposed by the ISPS Code.

We note that the U.S. visa regime for seafarers applies to all seafarers, even those who originate from visa waiver countries. This uniquely discriminates against seafarers.

We hope this letter receives sympathetic consideration and that the United States shows some flexibility, which would involve the promotion of the new

ILO seafarers' identity document through the provision of an incentive; meet the expectations of the international community with regard to shore leave for seafarers and, at the same time, enhance the homeland security of the United States.

The International Transport Workers' Federation (ITF) is an international trade union federation of transport workers' unions. Over 550 unions representing more than 4.5 million transport workers in over 130 countries are members of the ITF. **The affiliated unions within the ITF Seafarers' Section represent over 700,000 of the estimated 1.2 million**

seafarers employed in the global shipping industry. The ITF stands ready to co-operate with the various United States agencies to put in place a regime which will improve maritime security and the homeland security of the United States, while at the same time, providing for the more equitable treatment of seafarers and recognizing their crucial role in terms of the functioning of the global economy and their pre-eminent role in enhancing maritime security.

We look forward to hearing from you.

Yours sincerely,
David Cockroft, General Secretary

BARGE LIGHTING ISSUES

Captain David Whitehurst, a member of the GCMA Board of Directors, while pushing a red-flag tow along the Intra-coastal Waterway Port Allen Route at 0345 on May 6th, came upon **an unlighted six-pack of barges** tied off south of the Verret Shipyard. The barges were in a heavily shadowed area. There was no towboat in attendance with these barges and the area is not a designated fleeting area. As he maneuvered around them, he noted that several of these barges were carrying the "SUN..." prefix.

Aside from the danger of striking the unlighted barges with a "red flag" tow, the barges were located near the Jack Miller Landing where a small boat launching ramp used by the public is located. Captain Whitehurst, as he has done on several occasions, expressed concern that a small boat leaving the ramp could easily run into unlighted barges on a dark night.

Captain Whitehurst grew up on the waters of south Louisiana and lives near the area in question. He repeatedly expressed his great concern for the safety of recreational boaters, most recently at the NAVSAC public meeting held last month in Galveston, TX. He previously discussed the matter of barge lighting before TSAC in Memphis in 2000.

Barge lighting has become a "hot topic" at recent TSAC meetings and led to the formation of a working group led by Captain Gerard Maurice of Sunset Marine, the largest minority dredging company in the country, and Mrs. Cathy

Hammond, President of Inland Marine Service.

For the past year, the TSAC working group discussed the interface of commercial vessels with recreational vessels and has worked jointly with NAVSAC on this issue. Both NAVSAC and TSAC are federal advisory committees chartered by the Coast Guard.

We, at GCMA, consider this interface an important issue and want to go on the record on this matter.

GCMA reported the "near miss" to LCDR Jim Stewart, the new Eighth District GCMA Liaison officer, who passed the information to Marine Safety Unit, Baton Rouge. LCDR P. E. Dittman, Commanding Officer of MSU Baton Rouge wrote us on May 12th as follows: "I dispatched a team from my office to investigate the barge tier on May 6, 2004; however, the tier was removed prior to their arrival on the scene. Title 33, Code of Federal Regulations, Part 88.13 prescribes regulations for lighting moored barges at night and in restricted visibility. **Failure to abide by this regulation may subject the owner or operator of the barge to civil penalties of up to \$6,500 per violation.** (emphasis ours). I have included a copy of 33 CFR 88.13 for your files." The regulation also appears in the USCG Rules of the Road book that every vessel over 26 feet in length must carry.

MSO MORGAN CITY ISSUES INFORMATION BULLETIN ON BARGE LIGHTING

On May 24th, two GCMA Directors met with the members of the Port Operations Department, Port Safety and

Security Division at MSO Morgan City to discuss the barge lighting issue and were told that the following Information Bulletin had been approved by their command and that they would be distributing it to companies in the Morgan City Captain of the Port Area. GCMA was satisfied that MSO Morgan City was "on top of" the problem and "ahead of the curve." The text of the Information Bulletin follows:

Purpose: As a result of numerous near misses, actual hits and multiple complaints, I am providing this bulletin to inform you of your responsibility as a company to light barges at night and during periods of low visibility.

References: 33 CFR 88.13

"If you are in control of barges projecting into a buoyed or restricted channel, moored so that it reduces the available navigable width of any channel to less than 80 meters, barges moored in groups more than two barges width or to a maximum width of over 25 meters, or not moored parallel to the bank or dock, at night and, if practical, during periods of restricted visibility, it is your responsibility to light these barges accordingly. All barges described in this paragraph shall carry two unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile and must meet the technical requirement found under 33 CFR §84.15. Companies found to be negligent in this manner so as to endanger the life, limb, or property of a person, may be liable to the United States Government for a civil penalty of up to **\$5,000.00.**

"Thank you in advance for your assistance in this matter. With your help, we can reduce and hopefully eliminate incidents thereby making our shared waterways a safer place. Any questions may be addressed to the MSO Morgan City Port Operations Department at (985) 380-5320, or the MSU Houma Port Operation Department at (985) 851-1692."

GCMA FOLLOWS-UP

33 CFR §88.13(b) speaks to a light that meets the technical requirements of 33 CFR §84.15. While this section deals with an impressive formula of measuring

the luminous intensity of lights, it says nothing about the quality of the light and the charge of the battery for the light itself. That's may be a problem, too – as would repeated theft of lights placed on barges etc. (It could be made a "logbook" requirement if Congress acts on that GCMA request filed 4 years ago!)

(We) believe some consideration needs to be given to the question of how long it takes to "crash stop" a tow 1180 feet long and relate that to the "minimal" cost of the light that (was) displayed (at our meeting). Perhaps Inland Annex 1 needs to be amended to require meaningful standards for these white lights and require that towing vessels carry what-

ever number of these lights that might be necessary in its service. The cost for 5,200 towing vessels to carry and use these lights could be weighed against the fire and pollution risks of not properly lighting barges as well as the threat to recreational boaters. (We) doubt that the cost of a simple lantern battery and light bulb would impress the NTSB investigating a "worst case" accident!

If this makes sense from a practical standpoint from what you observe in your AOR, we would be willing to present the idea at the next Towing Safety Advisory Committee meeting (in September). In the meantime, we will publish your information bulletin in our next newsletter.

NEW & REVISED GCMA REPORTS

[Available on our internet web site or by mail]

GCMA REPORT #R-398 CREW VAN – DEATH VAN?

Captain David Whitehurst, a GCMA Director, forwarded an attached article about 15-passenger vans from the internet stating that he had watched a Fox News program on the subject and obtained the internet article to pass along to other concerned mariners. He simply stated that, "This type of van is used by (boat) companies to transport crews." He pointed out that these vans often pull trailers loaded with cargo and boat supplies that place additional weight on the rear axle and contribute to the vehicle's instability and chances for having an accident.

As a passenger (and as a mariner), you should be concerned about the training, skill, health and amount of rest the person driving the crew van has had. Vehicle and health insurance are also legitimate concerns in light of the way some companies have been known to treat injured mariners. A 15-passenger van driver needs additional training as the report indicates. In addition, if you are a licensed officer be aware of 46 U.S.C. §8104(a) that states: An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of a 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.

GCMA REPORT #R-396 HOW WESTERN RIVERS MARINERS LOST THEIR ADMINISTRATIVE LAW JUDGE

Until 1996, Mariners working on the Western Rivers who faced administrative hearings went before an Administrative Law Judge who had experience and knowledge of the unique conditions that face mariners on America's 6,000-mile inland river system. Today, as the recent case on the Illinois River discussed in this Newsletter shows, the ALJ assigned to the case and flown in at great expense from Seattle didn't have a clue as to what the job a towboat pilot

performs and what the relationship of the pilot to the master of a towing vessel is. Make no doubt about it, the job of teaching the Coast Guard's ALJ this basic lesson fell upon the mariner's attorney.

GCMA REPORT #R-395 SAFE POTABLE WATER & FOOD SERVICE FOR COMMERCIAL VESSELS AN APPEAL TO CONGRESS

During the month of May, GCMA sent a direct appeal to over 30 members of Congress asking for their help in providing safe drinking water and sanitary food service to our mariners serving on tugs, towboats and offshore supply vessels. Citing a number of "Horrible Examples" from our mariners and the lack of concern evidenced by both the U.S. Coast Guard and the Department of Health and Human Services, we asked members of a Congressional committee to step in and clarify the roles they expected federal agencies to take to provide adequate health protection for our lower-level mariners in the workplace.

GCMA REPORT #R-394 INSPECTIONS MAY BE PART OF NEW TOWBOAT SAFETY REGIEME

A recent article in the Waterways Journal by Bill Evans and accompanied by a "Letter to the Editor" from GCMA cover recent developments on this important mariner issue.

GCMA REPORT #R-393 USCG LICENSING PROCEDURES: AN AFFRONT TO LOWER-LEVEL MARINERS

Mariners are tired of sitting back and watching their careers be trashed by inane Coast Guard policies administered by careless

bureaucrats. The license process has spiraled out of control for the past decade and is now so complex it can no longer be effectively administered.

GCMA “hand-delivered” our report to the Commanding Officer of the National Maritime Center at the last Towing Safety Advisory Committee in Washington and mailed copies to every Regional Exam Center in the United States. We believe the time has come for Congress to simplify the hopeless mess the Coast Guard created.

R-362, Revision #1, June 7, 2004

At the last Towing Safety Advisory Committee meeting in March, we learned that the several large towing companies were planning to implement Crew Endurance Management Programs (CEMS) in the next year. Congress is well informed of the work-hour abuses that have been taking place in the towing and offshore oil industry for at least the past 4 years since the publication of the GCMA “Yellow Book” in May 2000. This book was distributed to over 250 people in the Congress, the Coast Guard, and three Federal advisory committees.

The National Transportation Safety Board addressed the problem during the 1990s and “recommended” that the Coast Guard prepare “scientifically-based work hour regulations. The Coast Guard Research and Development Center in New London studied the problem on deep-sea ships, on Coast Guard vessels and shore stations, and finally upon river towboats. GCMA watched the entire process unfold from the Coast Guard “cover-up” at a series of NOSAC meetings that turned out to be a monumental embarrassment to the Coast Guard. The towing and the offshore oil sectors of the marine industry will go to almost any length possible to save the money it will cost to properly man their vessels with enough crewmembers to do their job properly. Work weeks of between 84 and 105 hours mean nothing to some of these greedy people.

The Coast Guard R&D people stand by their guns when it comes to saying that a human being needs between 7 and 8 hours of uninterrupted sleep each day. The revised version of GCMA Report #R-362 contains a reprint of The Commercial Mariner Endurance Management System published last year and finally received as a result of our Freedom of Information Act Request almost a year ago.

We want our mariners to know the whole story. To us, the Coast Guard R&D people “have played it straight” with us and have something meaningful to say. However, we have seen that other branches of the Coast Guard will go to any lengths to placate management. We have suffered at their hands and have little time and even less respect for these people.

The Coast Guard has shortchanged our mariners for years. They have also shortchanged their own personnel in the Search and Rescue arena. In case you missed it, read the story of how they overworked their own men and in the SAR field in the classic GCMA Report #R-305, Betrayed. This is a real eye - opener!

UPDATED GCMA “BROWN-LIST”

GCMA fields a significant number of complaints on employment issues from lower-level 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.” Unfortunately, this means that they do not work under 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 fired or demoted 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.

When one of our mariners is mistreated, we take the matter very seriously. As a mariners Association, we keep track of these incidents. When our mariners look for a new job, we want them to obtain jobs with employers who respect them and will treat them fairly. Companies whose names appear in our records as having mistreated one or more of our mariners are assigned to our “Brown List.”

Mariners must make their own decisions about who to work for. As a service to the dues-paying members of GCMA (only) we can inform you of some of the specific incidents that led us to “Brown List” a company on the list below. You read and then you decide whether you want to seek employment with a “Brown List” company. We reference certain specific GCMA publications may or may not appear on our internet website. [Key: N/L refers to our Newsletter; R# refers to a numbered GCMA Report; NLRB refers to the National Labor Relations Board.]

Company: GCMA Reference...

- **Abdon Callais Offshore.** N/L #222, pgs. 19-23.
- **American River Transportation Co.** (ARTCO): #R-391; R-350; IOMM&P v. ARTCO, NLRB Case #14-CA-257 (2001), GCMA File A-882; N/L #7, pages 7,8; N/L #20, pgs 1-3.
- **American Commercial Barge Lines** (ACBL): N/L#9, p.20; N/L#16, pgs. 12, 13.
- **Coastal Towing, LLC & TLC Marine Service:** #R-369.
- **Delta Towing:** #R-370; N/L#7. p.3; N/L#9, p.3.
- **ENSCO:** N/L#8, p.1.
- **Frazier Towing:** N/L#9, p.15, 19.; N/L#10, p.13.; #R-333, Rev. 1
- **Global Marine:** N/L#22, pgs. 14, 24, 26.
- **Gulf Pride Marine Service, Inc.:** #R-320, Rev.2 etc.
- **Guidry Brothers/Harvey Gulf Marine:** N/L#5, p.5; N/L #7, p.3..
- **L&M Botruc Rentals:** #R-311; N/L#19, p.1; File M-216.
- **Maryland Marine:** N/L#22, p.15.
- **Stapp Towing:** N/L#18, pgs. 1-5.
- **Tidewater Marine:** #R-333, Case #1.
- **Trico:** N/L#5, p.1; N/L#7, p.3, 8.; N/L#9, p.3.

