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"UNITED MARINER" SPEAKS FOR ANGRY EAST COAST MARINERS

In the past, "United Mariner" was most prominent in its attempt to improve conditions at the Coast Guard's Regional Exam Center in New York. Countless mariners faced delays caused by incredible bureaucratic incompetence that delayed their opportunities for advancement. In a number of cases, these delays, lost paperwork, and lack of accountability cost lower-level mariners jobs and pay when the Coast Guard did not process their credentials in a timely manner.

Reflecting the opinions of mariners on the East Coast, Captain Joe Dady joined Gulf Coast Mariners Association's Board of Directors last summer. Joe followed the progress of the TSAC Towing Vessel Licensing working group's progress over the past few months, contributed to the preparation of the "123 suggestions" to TSAC contained in GCMA Report #R-419.

Captain Dady prepared the following comments for delivery at the next Towing Safety Advisory Committee in Washington, DC on October 11-12, 2005. Joe plans to share these comments with a number of members of Congress as well.

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October 4, 2005

Dear Congressman:

As the Towing Safety Advisory Committee (TSAC) prepares to submit its recommendations on section 415 of the Coast Guard and Maritime Transportation Act of 2004 regarding the "Inspection of Towing Vessels" to the United States Coast Guard, the members of our organization want to clarify our continuing objections about the operation of this federal advisory committee.

To ensure an unbiased committee, Congress directed the Secretary in 1980 to select a diverse membership. We believe that the spirit of that directive was not followed because the Secretary allowed the committee to be loaded with representatives of member companies of the Coast Guard's partner, the American Waterways Operators (AWO), an industry-lobbying group located within the "beltway." AWO claims to represent a vast majority of the tug and barge industry and is funded by towing vessel and barge owners. AWO's dominant position on the TSAC committee paints a rosy picture of the industry's safety record while actual Coast Guard data documents a record that is nothing less than deplorable. We will provide a report showing just how deplorable the safety record of one towing company really is.

We see a crass pro-industry bias within this advisory committee. TSAC is manipulated by the AWO and clearly, predictably, and consistently discriminates against the interests of all working mariners. We do not believe that an advisory committee that does not include a well-rounded group from all parties

and ramrods its recommendations to federal regulators reflects the intent of Congress. While the Coast Guard can accept or reject advisory committee recommendations, the existence of a signed and formal "partnership" between the Coast Guard and AWO skews the balance. This works against "Labor" (and its approximately 30,000 mariners) that plays an important role in the industry. The workers aboard the nation's 5,200 towing vessels are on the first line of defense in protecting the environment, public health, and public safety – yet they have been systematically are effectively denied a voice.

The Coast Guard's refusal to provide travel and per-diem to support TSAC over the years also discouraged licensed mariners within the industry who could not afford the cost of participation from attending and actively engaging the advisory process. Our organization has, at its own expense, attempted to work with the committee in a positive manner with our concerns on towing vessel safety, manning, and work hours. As working mariners, we are not funded by our employers in the towing industry. Our overall experience leaves a bad taste in our mouth about the true workings of the system.

Although the committee acknowledges reports by working mariners and logs their attendance at the meetings, the Committee has a well documented history of destroying, delaying, or dismantling any and all proposals made by working mariners. Mariner concerns that could cost money, or that do not serve the towing industry as determined by the AWO received no consideration. This is true even when there are obvious contradictions and the committee's working group recommendations and basic International Maritime Organization requirements for ten hours rest each 24 hours, six of which must be uninterrupted sleep. A footnote to the TSAC report states: "The working group considered but did not adopt, a recommendation that all crewmembers receive a minimum of six hours of uninterrupted rest in every 24-hour period." The AWO advocates a 15-hour workday for unlicensed mariners. We put our foot down on such abuse and urgently ask for help from Congress to address this matter.

Our mariners, working with the Gulf Coast Mariners Association (GCMA), documented our objections to the Committee on their recommendation to the Coast Guard that virtually substitutes a "Safety Management System" for a thorough physical inspection of towing vessels envisioned by Congress in §415 last year. Earlier this year the Coast Guard docket posted a clear and informative letter from Congressman James Oberstar explaining Congress' intent to require a physical inspection of towing vessels. Although §415 authorizes the Secretary to implement a safety management system (SMS), the TSAC licensing working group continues to ramrod a Safety Management System that AWO can control and manipulate and downplays Coast Guard physical inspection of **their** vessels as "old ideas" about the nature and scope of Coast Guard inspection. These so-called "**old ideas**" were successful for the last 50 years and are constantly updated.

Although the Responsible Carrier Program (RCP) already implemented by AWO can promote and improve safety aboard a towing vessel if it is followed, <u>it lacks the teeth that only an inspection program enforced by the Coast Guard can offer</u>. Based on reports from mariner's presently involved in the RCP, the system fails whenever time factors and pressure from the company front office get in the way of making money. Not only our mariners, but also the general public, need protection that can only come from adequate enforcement. Based on those reports, our mariners request in the strongest terms that Congress require physical inspection of every towing vessel by Coast Guard personnel backed by civil penalties that are stiff enough to force compliance – not so small that they can be shrugged off "as business as usual." This suggestion clearly would serve safety but does not serve the AWO's agenda.

Years of service by lower-level mariner's are documented with death, injury, and hardship. We witness these incidents first hand while TSAC and AWO read about them on white sheets of paper. The law requiring the inspection of towing vessels (§415) is our mariners' last hope to gain a safe working environment. Many additional mariners will leave the industry if AWO and its member companies sabotage the inspection process. We believe that if USCG structures the new towing vessel inspection regulations based on recommendation of the current TSAC working group report the results will be devastating to our mariners.

We are particularly concerned that TSAC's recommendations, if implemented by the Coast Guard, will burden working mariners with an extensive safety management system that is an even greater burden than the Responsible Carrier Program. Mariners will not be able to comply with it because their watchstanding mariners are already overworked and their boats lack sufficient manning to perform all these tasks of an administrative nature.

We believe that the towing industry's deplorable safety record stems from a lack of qualified and trained mariners who are overworked as they serve on undermanned and often sub-standard equipment. We feel the self-serving TSAC report sidesteps the obvious and proven solution of Coast Guard inspection in favor of creating a more easily managed and profitable environment for the large corporate boat owners. Their report will burden up to one thousand unrepresented small owner-operators with regulations they do not understand and cannot afford to comply with. These small owner-operators are not AWO members, do not participate in TSAC, and may be forced out of business with complex paper programs they may not understand.

We suggest a real solution to these problems would be to license each company to do business the same way the Coast Guard licenses its towing officers. "Civil penalties" have become just another "cost of doing business." They are no longer effective in promoting safety and deterring accidents. It is clear from the

attached report that covers only one towing company's misdeeds that safety management systems like the existing Responsible Carrier Program and civil penalties simply do not work. The ineffectiveness of this process has made the Coast Guard more of a partner then an enforcer.

Bouchard Transportation Company (henceforth: Bouchard) demonstrates an abject failure of the AWO's Responsible Carrier Program. The attached report provided by the Coast Guard under the Freedom of Information Act demonstrates the ineffectiveness of the existing safety management system known as the Responsible Carrier Program as well as the Coast Guard's Civil Penalty process. But first, some background from a mariner's perspective.

In 1988, Bouchard's response to a union strike was a lockout of its employees. In May 1988, a federal court injunction ordered the company to take its striking workers back. For a short time, the collisions and oil spills ended as qualified union workers returned to their vessels. However, Bouchard rushed to an impasse and then removed union workers from their vessels several weeks later replacing them with unqualified and unskilled labor. Many of these licensed replacements did not have any recent service in the waters they were expected to navigate and oil spills and collisions returned. This blatant disregard by Bouchard for Federal law, public safety, and the environment took place under the nose of the Coast Guard who stood by and did nothing. With no enforcement of federal regulations by the Coast Guard, Bouchard continued to employ and over-burden its unqualified work force while forcing them to work fatiguing schedules. The same hiring practices continue today.

Although we were unable to obtain the records of Bouchard dating back to 1988, under a Freedom of Information Act request, at least we obtained the company's incident and activity records from the Coast Guard starting in 1991. During this period, Bouchard joined the American Waterways Operators and implemented its Responsible Carrier Program. It is clear by examining the **392 separate line entries of tug and barge accident data** that the Responsible Carrier Program had no positive impact.[1] Bouchard's problem was and continues to be manning its vessels with qualified personnel. The problem is evident in the article that recently appeared in the Boston Globe.

Some interesting points that jump out of the activity report is that AWO membership, Coast Guard civil penalties, and even criminal fines had no impact on the number of oil spills, collisions, allisions, or injuries and deaths that occurred at Bouchard from 1991 onward. When we first read the report it seemed that the Coast Guard was more of partner in pollution by depositing fines and penalties in the federal treasury. Since they are the collector and custodian of these facts, it is amazing that the Coast Guard did not pinpoint this company's record for greatly enhanced enforcement. Aside from spills, such benign neglect casts a blind eye to the injury and death of our mariners rather then a protector of their workplace.

It is for all the foregoing reasons that we object to the TSAC towing vessel inspection report as much as we question the very validity of the Committee. We urge you to impress on your colleagues in Congress to consider our objections, investigate our claims, draw fair conclusions, and take appropriate action.

It is clear from the Coast Guard activity report that since the explosion of the Bouchard tank barge 125 in Staten Island, where two lower-level mariners were blown to oblivion, and Bouchard's Buzzards Bay Oil Spill that this rogue company continues to spill oil and burn mariners in fires. It also appears from the conditions that our mariners describe to us that Bouchard's nearly ten million dollar fine for the Buzzards Bay oil spill will have no lasting impact.

The court sentenced the mariner involved in the Buzzards Bay oil spill to five months in jail. Bouchard officials, who knowingly shipped an unqualified officer against the advice of their own employees, received no jail time for his crime. Bouchard continues to operate their vessels with unqualified workers on the oily waters of our harbors, bays, and rivers. Our mariners report to us that during recent USCG vessel examinations, the Coast Guard boarding parties never checked upon pilotage recency requirements or other evidence of proper manning.

In closing, and in a broader perspective, we also want to encourage you and your colleagues in Congress to ask the question as to why towing industry barges were left in critical areas in hurricanes Katrina and Rita that allowed the hurricane to blow their barges over or through levee systems flooding entire communities and drowning citizens. Even the existing safety management system (RCP) should include a hurricane response plan based on geographical areas, time, distance, intensity, and probability of strike. Safe and prudent companies would direct their dispatchers to move the equipment up river. In addition, why were over 20,000 innocent victims of hurricane Katrina left to swelter for days at the New Orleans Convention Center three blocks from the ferry landing? Why was all the towing industry's equipment not made available to move these people to a place of safety as happened in New York on September 11, 2001? This is a good question to ask the American Waterways Operators!

Very truly yours,
s/Captain Joseph Dady
United Mariner

(1) A copy of the activity report compiled by the Coast Guard mentioned in this letter can be found at: the
www.unitedmariner@yahoo.com
www.geocities.com/unitedmariner

TUGBOAT MATE GOES TO PRISON FOR 2003 BUZZARDS BAY OIL SPILL

***Source**: The Boston Globe, Sept. 21, 2005*

A tugboat operator was sentenced yesterday to five months in prison for causing a massive oil spill in Buzzards Bay two years ago that killed hundreds of migratory birds, closed shellfish beds, and contaminated 90 miles of shoreline.

"This was extremely serious negligent conduct, rising to the level of recklessness," said U.S. Magistrate Judge Robert B. Collings, adding that he had to send Franklin Robert Hill to prison to send a message to others who navigate oil barges.

Hill, 54, of Jacksonville, Fla., had pleaded guilty to violating the Clean Water Act and the Migratory Bird Act. He admitted that while serving as first mate aboard the EVENING TIDE on April 27, 2003, he left the helm unattended for 15 minutes to secure a towline connected to a barge carrying 4.1 million gallons of fuel oil.

An alert from a nearby tugboat, warning that the barge had strayed outside the channel and was headed for rocks, went unheeded because Hill left behind his hand-held radio, according to federal prosecutors.

Bouchard Transportation Co., which owned the barge, pleaded guilty last year to violating environmental laws, paid a $9 million fine, and agreed to pay cleanup costs, which have already exceeded $38 million, according to federal prosecutors.

During his sentencing hearing yesterday, Hill declined an offer from the magistrate to speak, but in a letter to the court he apologized for his actions and asked to be allowed to continue working.

"I was remiss in my duties as Officer of the Watch in not insuring that the barge was in safe water," Hill wrote, adding, "I will be forever sorry and ashamed for this negligence."

But Assistant U.S. Attorney Jonathan Mitchell, who had recommended five months in prison and five months of home confinement for Hill, argued that the first mate had been involved in several mishaps in the weeks before the oil spill and was "an accident waiting to happen."

According to Mitchell, Hill slammed another Bouchard tugboat into a Philadelphia dock the month before the oil spill; nearly steered the EVENING TIDE into rocks near Hell's Gate in New York two days before the spill; and caused $15,000 in damage to part of the EVENING TIDE's towing system the night before the spill.

Bouchard was "on notice that Mr. Hill was a problem," said Mitchell, telling the court that at least three captains had reported to the corporation that they believed Hill needed more training.

Hill's lawyer, Peter Ball, argued that Hill had an exemplary career as a seaman, was never involved in any major accident, and wasn't completely responsible for the oil spill.

"Although the government questions his competence because Mr. Hill bumped into a dock and had a tow wire foul on his watch, these are fairly routine incidents in the rough-and-tumble world of tugboating, which is a contact sport," Ball wrote in a sentencing memorandum to the court.

Ball urged the magistrate to sentence Hill to probation, noting that Hill had been fired from his job and forced to declare bankruptcy, and will undoubtedly lose his seaman's license.

The captain of the EVENING TIDE was on board but off duty at the time of the spill. Hill says the captain plotted an errant course, which had the tugboat approach the channel in Buzzards Bay from the wrong angle, according to Ball's sentencing memorandum.

[GCMA Comment: We requested a complete Coast Guard accident report on this accident over 2 ½ years ago and are still awaiting its release. We present this newspaper account and withhold further comment.]

GCMA ASKS ABOUT BARGE THAT MAY HAVE DESTROYED RESIDENTIAL AREA

*[**Source: GCMA File #M-601.** GCMA FOIA request to G-CIM of Sept. 28, 2005. GCMA frequently submits FOIA requests to the Coast Guard for accident reports.]*

Freedom Of Information Act Request

Dear Sir or Madam,

On Monday, August 29, 2005, barge #ING ■■■■ apparently passed through or over the levee of the Industrial Canal in New Orleans, LA, as shown in the attached picture from the September 12, 2005 issue of U.S. News and World Report. As the picture shows, the barge currently rests in a residential area of New Orleans' Ninth Ward.

The breaching of the levee by this barge may or may not have been the proximate cause of the loss of hundreds of lives and millions of dollars worth of property. We expect that a formal investigation will undertake to determine the cause of this accident.

Unfortunately, this picture and viewing numerous brief glimpses of television footage did not allow us to obtain the number of the errant barge. However, the "ING" prefix is used by Ingram Barge Company, Box 23049, Nashville, TN, 37202 and indicates their ownership of the barge. *[A photograph of the barge later appeared on the cover of WorkBoat magazine's October 2005 edition and appears to be "ING 4127".]*

We would expect the final report to contain:

- A completed copy of the Coast Guard Accident Report form CG-2692.
- Notations as to whether the barge was loaded or empty at the time of the allision.
- A report by investigators from U.S. Coast Guard Sector New Orleans including a detailing of how the barge was secured (e.g., by wire or soft line and the condition of those lines and wires).
- A report of the barge's fleeting activity showing which towing vessel last moved it and whose custody it was under at the time of the accident. This should clarify whether the barge was moored inside the confines of the Industrial Canal at the time of the accident.
- A salvage report for the removal or scrapping of the barge.
- A report from the U.S. Army Corps of Engineers relative to the barge's role in the destruction of the levee.
- Report of any administrative, civil, or criminal action taken by the Coast Guard as a result of the accident.

We respectfully request a copy of the report when the Coast Guard releases it to the public. Please notify us if

the cost of this report will exceed $50.00.

Letters to Congress

[GCMA asked local U.S. Representatives and Senators to inform themselves on this matter.]

Mariners in our Association have asked us to ascertain whether the 195 ft by 35 ft uninspected dry cargo barge that currently rests below the broken Industrial Canal levee was the proximate cause of the loss of life and property in that area of New Orleans.

[GCMA Comment: If this is the case, it unquestionably would be the most catastrophic loss of life and property associated with the nation's tug and barge industry. It might convince Congress to reconsider the limitation of liability that protects the marine industry and leaves the taxpayer to pick up the tab.]

To do this, we filed a routine FOIA request with Coast Guard Headquarters (attached) in hopes that they will investigate the accident. If not, we believe the National Transportation Safety Board should investigate this as a "transportation accident" in light of the magnitude of the calamity. We believe that you may want to follow this matter because of the impact of this catastrophe on the entire New Orleans metropolitan area. It seems as if the American taxpayer must continually pay to remediate accidents associated with the towing industry – Webbers Falls, Bayou Canot, Queen Isabella Causeway Buzzards Bay and now this!

Although Congress passed the §415 of the Coast Guard and Maritime Transportation Act of 2004 that will bring towing vessels under inspection in the next few years, the towing industry utilizes thousands of uninspected barges like the one in the picture that the Coast Guard never inspects since they fall under the purview of OSHA. Although OSHA regulations are supposed to govern "workplace safety" on these barges, we find their oversight lax and ineffective since this agency has no way even to visit these barges unless they are tied to the dock. We believe these dry cargo barges must be brought under the Coast Guard's regulatory umbrella.

GCMA Member Comes Forward With New Information of Barge Breakaway

On October 4, 2005 a member of our Association (■■) came to the GCMA office and presented us with these facts. We, in turn, passed them along to Coast Guard investigators.

■■ was working in an area to the east of the Industrial Locks when his boat was released from the job it was on and headed toward the Industrial Locks with the intent of passing through them. However, upon arriving at the locks in mid-morning on Sunday before the storm, ■■ found that the locks had been closed to marine traffic several hours earlier at 0700 Sunday. Left with few options, he sought shelter in the area between the Industrial Locks and the Florida Avenue Bridge at an inoperative dry-bulk facility. The location they chose was diagonally opposite the breach that would occur in the levee protecting the Lower Ninth Ward of the City of New Orleans.

His boat was tied off at the facility along with five other towing vessels, to wit:

- M/V Miss Erin (Central Boat Rentals.)
- M/V Crosby Spirit (Crosby Tugs)
- M/V Lugger Tug (Collins Marine)
- M/V Mr. Wayne (Central Boat Rentals.)
- M/V Miss Enola (Jefferson Marine)
- M/V Aaron Joseph (Crosby Tugs)

These boats awaited the arrival of the storm's fury for the better part of twenty-hours.

At that time (at least) two barges were also tied off at this closed dry bulk facility including the barge ING 4127. In the opinion of our informant, the barge was empty and was not in the process of loading or unloading as the dry bulk facility was closed and apparently abandoned. As he entered the slip, he noted that the barge was pulled alongside another covered dry cargo barge and tied with two "soft" lines, presumably polypropylene.

[GCMA Comment: The lines left on barges often are of questionable quality and are sometimes called "Mardi Gras" lines to indicate that they were of "throw-away" quality.]

He observed no spring lines on the barge, nor were the lines doubled up in preparation for the storm. The two barges were not hard-wired together. Our informant chose not to tie alongside the barge because he did not feel it safe to do so.

The first strong blasts of wind reportedly struck at 0500 the next day (Monday). By that time, the boats and barges were confined to a canal segment between the west end of the Industrial Locks and the new Florida Avenue Bridge that was also closed to marine traffic. One of the other towboats was equipped with an anemometer that stopped functioning when the wind reached 120 mph.

Our informant indicates that he saw barge ING 4127 almost immediately part its two lines and race diagonally across the canal toward the levee on the far side of the canal. By that time, he estimated that swells within the Industrial Canal reached 8 to 9 feet in height. It was far too dangerous and there was no time to attempt to corral the barge that he last sighted on the other side of the levee in the residential neighborhood. It is clear in the mind of our informant that this barge either went through or over the levee.

Our informant rode out the storm safely at the abandoned dry bulk facility though not unscathed by the storm. He stated that the tidal surge arrived swiftly. He also stated that he measured the tidal surge as being 12 feet high at that location.

MR GO, Go(es) to Hell

The Industrial Canal is the site of a very expensive and controversial engineering project to expand the size of the Industrial Locks and deepen that section of the waterway so large ships can reach the industrial area behind New Orleans. That would provide a deep-draft connection between the Mississippi River-Gulf Outlet channel and the Mississippi River. Although construction has started, the nagging question remained as to whether this connection really was necessary. Hurricane Katrina and the devastation that it brought should put reconsideration at the top of the list.

Several years ago, a delegation from St. Bernard Parish appeared at a Corps of Engineers public meeting held aboard the M/V Mississippi in New Orleans that GCMA attended. These civic leaders pleaded with the Corps of Engineers to put an end to dredging the Mississippi River Gulf Outlet channel

because it was a 32-foot deep dagger pointed at the heart of St. Bernard Parish. "MR GO" connects directly with the Industrial Canal. It seems that the waters from "MR GO" did exactly what these civic leaders said it would do – it destroyed St. Bernard Parish so that almost the entire Parish is "unrecoverable."

They also mentioned at the time that very few deep-draft ships used the channel and that those ships were bound for only one or two sites. One estimate was that the cost of dredging cost over $10,000 per ship visit. But, this was the tip of the iceberg! Closing "MR GO" has been discussed dozen of other times in other places. The citizens' pleading fell on deaf ears. After all, the Corps of Engineers does what it is told to do.

After Hurricane Katrina, the controlling depth of "MR GO" was broadcast as being only 9 feet. Perhaps the hurricane obviates the need for maintaining a ship channel behind New Orleans. The question of whether we need locks that are over 30 feet deep would be moot since barge traffic calls for much less. Perhaps closing "MR GO," erecting a floodgate closing off the Industrial Canal near the Florida Avenue Bridge, and raising the twice-breached levee would protect this area from the tidal surge and the 8 to 9-foot swells experienced by our mariners during Katrina. But, this will be up to engineers, hydrologists, and the taxpayers to decide.

"THE COAST GUARD'S RESPONSE IS ALL WE HOPED FOR"

*[**Source:** Editorial from the Hampton Roads Daily Press, Wednesday, September 14, 2005 regarding the Coast Guard's response to Hurricane Katrina.]*

Well done. The Coast Guard's response is all we hoped for. Amid all the finger-pointing in Hurricane Katrina's wake, one group must be singled out for a hearty thumbs up: the Coast Guard.

Amid the disorganization and despair, the Coast Guard's discipline and devotion stood out. The men and women of the service's search and rescue teams were on duty almost from the beginning, it seems.

These are the images that stand out: Coast Guard helicopters hovering over buildings surrounded by floodwaters, Coast Guard rescue swimmers rappelling down on cables or hauling in baskets, plucking men, women and children – and sometimes pets – from rooftops, balconies and other precarious perches.

Some had to chop their way through roofs and rafters to find survivors. Some searched in boats. They delivered their human cargo to safety and went back for more, mission after mission, day after day, saving thousands of lives.

The Coast Guard's swing into action was swift, certain and skilled. It was everything citizens hope for in their government's response to a disaster, but saw too little of after Katrina struck.

It was the approach that led, undoubtedly, to the decision to put a Coast Guard veteran – Vice Adm. Thad W. Allen – in charge of FEMA's Gulf Coast recovery operations when it became clear that embattled FEMA Director Michael Brown had to be replaced with an effective leader.

This kind of response is what the nation expects from the Coast Guard: It also moved quickly after the Sept. 11, 2001, attacks, taking on critical jobs with trademark competence. Nowhere is this more reassuring than in Hampton Roads, for this region depends on the Coast Guard not in rare emergencies but on a day-to-day basis.

The Coast Guard has primary responsibility for the security of the deepwater harbor that is, between the international port and the navy installations, both the region's economic engine and the reason it must constantly be alert to the threat of terrorism. The Coast Guard is vigilant, patrolling, monitoring traffic – of vessels, cargo and people – boarding and inspecting incoming ships and taking the lead in planning for the region's maritime security.

These days, homeland security dominates the Coast Guard's mission, along with search and rescue, huge responsibilities that must be shouldered with resources stretched thin. Without, of course, relinquishing its traditional jobs, involving boating safety, drug interdiction, pollution, fisheries, navigation and illegal immigration.

The Coast Guard has been busy not only in New Orleans but along the battered Gulf Coast. A cutter is providing a command, control and communications center off the Mississippi coast.

Personnel are assessing environmental damage, transporting hospital patients, evacuating survivors and delivering supplies.

They have not been alone, of course: Countless individuals have served valiantly at their posts or volunteered to aid neighbors and strangers.

But the images have been inescapable. The Coast Guard showed, in Katrina's wake, that it can get the job done, quickly and effectively. It has been a bright spot in a sometimes all-too-grim picture.

ELK RIVER COLLISION DROWNS FOUR MARINERS

The Chesapeake and Delaware Canal is a sea-level waterway that extends from the Delaware River at Reedy Point, DE, to Back Creek at Chesapeake City, MD, thence down Back Creek to Elk River and the northern end of Chesapeake Bay. The canal provides a protected inland route between Delaware Bay on the North to the Virginia Capes several hundred miles to the south. The canal is maintained by the U.S. Army Corps of Engineers with a project depth of 35 feet. Elk River is located at the southern entrance to the C&D Canal. *[**Source:** NOS Coast Pilot #3.]*

On February 25, 2002, at approximately 0644 local time, the 520-foot long bulk carrier M/V A.V. KASTNER, collided with a multiple vessel flotilla of dredging equipment being pulled by the uninspected towing vessel BUCHANAN 14 and pushed by the M/V SWIFT. The collision occurred in the vicinity of buoys G15 and R16 on the Elk River off Town Point, MD, near the southern entrance of the C&D Canal. Following the collision, the tug SWIFT capsized resulting in the death of four of the eight crewmen on board at the time.

The estimated property damage was $500,000 and the C&D Canal was closed for one week pending the salvage of the tug and barges. *[**Source:** USCG Report, Misle Activity #1493713; Misle Case #84843; GCMA File #M-269]*

Statement of the Chief Mate, M/V A.V. KASTNER

I am Chief Mate of M/V "A.V. KASTNER." I hold a Canadian Home Trade Master, First Mate Foreign Going - no limitation Certificate of Competency issued on 07th October 1996. I had previously held a Chief Mate certificate of Competency issued by the Government of the Soviet Union in 1987. I have sailed as a Chief mate since 1987, and I have sailed as a Chief Mate on this vessel since April 2001. This vessel trades between Canada and either Baltimore or Jacksonville, with voyages approximately equally divided between the two ports. On voyages to Baltimore the vessel transits the Chesapeake and Delaware Canal.

On 24 February 2002, we embarked a pilot in Delaware Bay at 23:34 hours. I took over the watch at 0400 hours on 25 February 2002 as the vessel approached the entrance to the Canal. The voyage through the Canal was uneventful, winds were light and variable with good visibility. At 0545 hours we changed Pilots off Chesapeake City where the Delaware Pilot disembarked.

On the bridge, I was I charge of the watch, together with a seaman at the wheel and another seamen on lookout duty. The lookout was inside the wheelhouse. The bosun was on standby forward to let go the anchor if required. The Pilot and the Master were on the bridge.

During the voyage through the Canal the Pilot handled all communications with the Canal Control on the ship's VHF radio. As far as I can recall, the Pilot did communicate with the Canal Control but he did not make me aware of the subject of the communication.

At 0611 hours the vessel passed between 31/32 buoys, 0625 hours buoys 23/24, and at 0634 Old Town Point Wharf was abeam to port. As the vessel approached Old Town Point Wharf steaming fog was observed just above the surface of the water, maximum height about 2 meters; it was not up to deck level. In accordance with our established procedure, I dismissed the bosun from standby forward at Old Town Point Wharf.

Referring back to the time at which the vessel left the Canal proper, I overheard a conversation between the pilot and an approaching tug and tow. The Pilot asked the tug for his position and after a minute delay the tug replied that he was at Turkey Point. The Pilot replied that there was plenty time for us to clear the Canal and a PORT TO PORT passing was agreed; also the Pilot made a comment on the tugboat's captain delay to reply regarding his position that looks like he doesn't know where he is. Soon after this conversation, the Master said he was going below to the toilet and he departed.

Soon after the bosun was dismissed from the focsle, we encountered dense fog. It was just before sunrise. It was difficult to determine the exact visibility, but I could see the focsle at all times. I switched on the automatic fog signal. I tried to contact the Bosun to get him to return to the focsle. There was no answer, possibly because he had switched off his radio. I sent the lookout to tell the Bosun to resume watch on the focsle.

Referring back to the time the vessel was between Oldfield Point and Old Town Point Wharf I switched the radar from 0.75 N. Miles range to the 3.0 N. Miles range. I observed a large target at a range of 2.8 N. Miles. I acquired the target on the ARPA. I took this to be the tug and tow to which the Pilot had communicated. The Pilot came over to observe the target on the starboard side radar which I was monitoring. I switched back and forth between the 0.75 and 1.5 N. Mile ranges.

At 0634 hours we altered course to 226° true and gyro around Old Town Point Wharf. The Pilot contacted the tow requesting the tug Master to keep closer to the red side of the channel as it appeared to the pilot that the tug and tow were almost in the center of the channel. The tug Master responded that he would comply.

When we had settled on the new course the radar was on the 1.5 N. Mile range. The target was on our port bow and appeared to be moving parallel to our heading line. I monitored the approach of the target until it was between 2.0/3.0 cables distant, still on the port side moving parallel to the heading line. At this point I moved to the control stand at the center of the wheelhouse. I expected to see the tug and tow visually at any moment.

At this point I heard a transmission on the VHF radio "I fucked up all, do something."[1] Almost immediately the Pilot and I observed the lights of the approaching tow. I saw white superstructure of a tug with its deck lights and mast light on approximately 7 degrees on our **starboard** bow. I also saw large object on our **port** bow which appeared to be unlit. *[[1]This comment succinctly and unequivocally summarizes the responsibility for the accident.]*

My impression was that the tug and the tow were angled approximately 60 degrees across our bow. The Pilot ordered **FULL ASTERN** immediately and I put the engine control handle to the **FULL ASTERN** position. The tug boat passed down our starboard side but I did not see the large object which I had observed on the port side. I felt the vessel shake and almost immediately heard "Mayday, Mayday" on VHF Channel 13, probably from the tug.

The pilot ordered **FULL ASTERN, LET GO STARBOARD ANCHOR**. I repeated the order to let go the anchor on the hand held VHF radio. This was acknowledged by bosun; and then I heard the anchor chain running out. The lookout returned to the bridge as did the Master. The Master inquired what had happened, and I told him we had collided with tow. I sent the lookout forward to assist the bosun and the general alarm

was sounded.

The Master instructed me to lower the rescue boat and it was in the water at 0715 hours, and we began to search for survivors. The fog was still dense but the Master gave me a course to steer to reach the closest target. There was some debris in the water which I checked but found no one. The first target was a barge with pontoons on deck. It was listing and trimmed heavily. Some of the pontoons had broken loose and were floating nearby. There was no one on the barge and I requested direction to second object from the Master.

As I proceeded to the second target there were small pieces of debris in the water. The second target was a dredge unit which appeared to have a crane on deck. I saw one person on board and then observed the tug with white superstructure secured alongside the dredge on the side opposite to our rescue boat. The dredge was upright and appeared not to have suffered damage. I went around the dredge and came alongside to the tugboat to enquire if they required assistance. There was a number of persons on the tug and they advised that two persons on board were injured. They also told me there were four persons in the water, and I reported this information to the Master. I observed one person standing on deck holding his neck, and another person who came to the accommodation was shaking severely. They told me a Coast Guard helicopter was on its way to them. I advised them to put the person who was shaking in a stretcher and cover him up to keep him warm. His clothing did not appear to be wet. The Master instructed me to continue the search. I searched in a circular pattern and encountered some debris but no survivors. The visibility began to improve, and I observed a few Coast Guard and fire department boats on the scene. I took the rescue boat alongside one of the fireboats and enquired of the Coast Guard officer on board whether they required us to continue searching. He replied that we were relieved of our obligations and that we could return to the ship. I advised the master accordingly, and he instructed me to investigate the damage to our ship.

I observed one circular opening on the port side of the stem and a lengthwise opening slightly further aft on the port bow. In addition there were several indents and a long scratch on the starboard bow running aft for about 20 meters. I reported to the Master and then returned back to recovery davits where boat was recovered. *[Affidavit: Senior Nautical Surveyor Registry of Shipping Bermuda: I give this solemn statement consisting of 3 pages, believing it to be true and I have read it over. s/Chief Mate A.V. Kastner.]*

Statement of Master of Tug BUCHANAN 14

At watch change, (my) mate told me of the outbound ship coming down from C&D Canal. Understood port-to-port passage. I talked to ship KASTNER, confirmed port-to-port passage. My vessel was towing deck barge 811 and Dredge Jekyll Island on short wire inbound at buoy "14." Talked to ship between "14" and "16." He told me he was as far over to the green side as he could get. I responded we were over on the red side almost to buoy "16" and was close, just trying to get past buoy "16" (in) zero visibility. My mate and engineer were in the wheelhouse with me keeping watch. ██████ said "I see it" thinking buoy "16" had broken out of the fog and I said, "The buoy?" He responded, "Oh, God, it's the ship."

At that time, the ship was just off center of my starboard bow and closing fast. My instant reaction was to turn hard to port to clear the KASTNER because if I had gone to starboard we would have been hit broadside on our port side.

At that moment we slid down the starboard side of the KASTNER and once he cleared my stern, the tow wire started paying off the winch. After that, which was only a split second, the KASTNER hit the deck barge I was towing and then the tug SWIFT.

Statement of the Mate of the Tug SWIFT

On February 25, as the flotilla was proceeding up the Elk River, MD, under tow of the tug BUCHANAN 14, I (was) acting as mate of the Tug SWIFT. The flotilla (was) made up as follows: Tug BUCHANAN, pipe barge 811, Dredge Jekyll Island, Tug SWIFT, Derrick Barge and dredge pipeline. Each vessel was tied to the vessel in front of it.

I was on the midnight to 0600 watch at the time I was relieved at about 0545. The visibility was good. The tug SWIFT was locked in by a double soft line to the ladder of the dredge Jekyll Island. The rudder was midship, and because the tug BUCHANAN 14 was navigating the flotilla, I did not make any steering adjustments. The flotilla was underway to Delaware City, DE, to do a dredging job.

A crashing sound awoke me as I was thrown out of my bunk at about 0645. I kicked the door open and got out of the stateroom. The boat was laying on its side and sinking.

I grabbed a lifering and handed it to the Master and Justin Bryant and told them, "Don't panic, hold onto this and keep your head above the water. We're going in!."

The tug SWIFT rolled bottom-up. I swam to a location so that I could get up on the bottom of the tug and help the other men. Before I got to the bottom of the tug, I lost sight of them. Pusher-10 came and picked me up and took me to BUCHANAN 14. I was shaking violently, so I went to the shower and got warm water running on me to stop the hypothermia. Someone gave me clothes, then I insisted the other men do the same.

Conclusions of the Coast Guard Investigation Of the Elk River Collision

*[**Source:** USCG accident report. Black marks indicate USCG redactions from the text of the report furnished to us. Underlining for emphasis is ours. **GCMA Comment**: This provides an excellent post-accident view of the application of various "Rules of the Road."]*

1. The proximate cause of this casualty was the apparent loss of situational awareness on the part of Captain ██████, Master of the BUCHANAN-14, while operating in restricted visibility following an unexpected encounter with heavy fog and his failure to adequately assess the risk of collision under the prevailing circumstances. Evidence suggests Captain ██████ failed to adequately monitor the A.V. KASTNER's movement as well as his own vessel's movement and position relative to oncoming traffic which resulted in his vessel and associated tow being placed in the path of, and colliding with the M/V A.V. KASTNER.

Evidence suggests that the crew of the BUCHANAN-14 was unaware of their vessels exact position within the Elk River leading up to and at the time of collision. Both Captain ██████ and Mate ██████ assert that the collision occurred in a position just southwest of buoys G15 and R16, on the "red" side of the channel. ██████ indicated in a

statement that the BUCHANAN- 14 was "below a quarter of a mile from buoy 16 and were trying to get make a visual on buoy 16 when KASTNER appeared 50 to 100 ft off our starboard quarter." Based on the physical evidence recovered on scene, their assertion is deemed not believable. A thirty foot long by twenty-four inch diameter spud constructed of one inch steel that was ejected from the deck of the RC-811 upon impact, and located during a post-casualty survey conducted by ACOE (U.S. Army Corps of Engineers) supports the conclusion that the proximate location of the collision between the A.V. KASTNER and the RC-811 occurred approximately 400 feet northeast of buoys Gl5 and R16 and 75 feet north of the centerline of the channel on the green side. Based on this evidence it is highly unlikely that the A.V. KASTNER was transiting on the wrong side of the channel as ██████ and ██████ asserted. In all likelihood, the actual point of impact probably occurred at a point further north and east of the location of the recovered spud as the barge was driven backwards as a result of the impact.

2. Evidence suggests that Captain ██████ violated Rule 7 (Risk of Collision), of the Inland Regulations for Prevention of Collisions at Sea 1972 (COLREGS), which contributed to this casualty. Rule 7 states:

(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
(b) Proper use shall be made of radar equipment if fitted and operational, including long-rang scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
(c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
(d) in determining if risk of collision exists the following considerations shall be among those taken into account:
  (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change; and
  (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

Evidence suggests Captain ██████ navigated by, and relied upon scanty radar information only during the final moments leading up to the collision. ██████ indicated he had his radar set on the one-eighth mile scale, "heads-up" display with his own vessel off-set to the bottom of the scope. In this configuration, he could only view out to a quarter of a mile directly in front of his vessel and to his beam on either side. At this range he could not see any land masses or other reference points such as nearby ranges (only buoys), that may have aided in determining his vessel's position within the channel and relative bearing with the oncoming A.V. KASTNER. Once the BUCHANAN-14 encountered fog, Captain ██████ indicated that he operated solely by his radar-heading flasher and was not aware of his compass heading. ██████ indicated that he was concerned about avoiding buoy "R16" and therefore set his heading flasher to the left of the target which he assumed was R16. However, in one-eighth mile radar setting, Captain ██████ would not have sighted the A.V. KASTNER on radar until he was abeam of buoys G15 and R16. With his radar heading flasher set to the left of the target displayed in front of him and his determination to keep his vessel to the left of the target, it is highly likely that from that point forward, Captain ██████, unknowingly steered his vessel and tow directly toward, and into the path of the A.V. KASTNER.

There is no evidence that Captain ██████ or the crew of the BUCHANAN-14 employed any long-range scanning to obtain early warning of risk of collision, or any systematic observation of detected objects. Such observation may have enabled an appropriate and timely determination as to the risk of collision and allowed time for necessary actions to avoid collision altogether.

3. Evidence suggests Captain ██████ violated Rule 8 *(Action to Avoid Collision),* of the Inland Regulations for Prevention of Collisions at Sea 1972 (COLREGS), which contributed to this casualty. Rule 8 states in part:

(a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship and
(e) if necessary to avoid collision or to allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

There is no evidence that Captain ██████ took any action in ample time to avoid collision or to allow more time to assess his situation. Captain ██████ indicated during an interview that he did not adjust the power settings of the BUCHANAN-l4 in any way until after the collision and after the A.V. KASTNER had passed his position. Captain ██████ indicated that when he first saw the A.V. KASTNER, he immediately went hard to port with the rudders but did not push the throttles up as they were already at "full ahead". Given that the engine settings were at full ahead from the time Captain ██████ encountered restricted visibility to the time of collision, it is apparent that no effort was made to slacken or take way off to avoid collision or allow more time to assess the situation as required by Rule 8:

4. Evidence suggests Captain ██████ violated Rule 19 *(Conduct of Vessels' in Restricted Visibility'),* of the Inland Regulations for Prevention of Collisions at Sea 1972 COLREGS. Rule 19 states in part:

(d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:
  (i) an alteration of course to port for a vessel forward of' the beam other than for a vessel being overtaken
  (ii) An alteration of course toward a vessel abeam or abaft the beam.
(e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close quarters situation with another vessel forward of her beam, shall reduce her speed to the minimum at which she can he kept on course. She shall if necessary take all her way off and, in any event, navigate with extreme caution until the danger of collision is over.

From the time Captain ██████

encountered restricted visibility due to fog, up to the point of collision, there is no evidence to suggest that any effort was made on his part to determine his relative position within the channel and assess the risk of collision with the ship. He was navigating using radar heading flasher only and was unaware of' his compass heading. Moments leading up to this incident a risk of collision did exist between the BUCHANAN-14 and the A.V. KASTNER and Captain admittedly was having difficulty finding, and was more concerned about the potential of alliding with buoy R16. However. Captain never slackened his speed, initiated any course changes, or exercised additional caution or measures to further assess the risk of collision. He only altered course once he found himself in extremis.

It is apparent that the crew of the BUCHANAN-14 exercised poor judgment in deciding to continue its approach toward the A.V. KASTNER given the existing conditions. Based on the maximum draft of eight feet, and the charted depth of water immediately surrounding the Elk River Channel, the BUCHANAN-14 and the remainder of the flotilla could feasibly have exited the channel without running aground prior to meeting the A.V. KASTNER and waited for the ship to safely pass.

Had Captain made a full appraisal of the situation based on the existing conditions and taken all appropriate and prudent actions necessary and in ample time to avoid collision with the A.V. KASTNER on the morning of 25 February 2002, this unfortunate situation which resulted in the tragic loss of four lives, would likely have been avoided altogether.

5. The crew of the BUCHANAN-14 failed to have on board an up to date navigational chart for the area being transited. Although the outdated chart was not a likely contributing factor to the collision, the lack of an updated navigational chart is a violation of Title 33. Code of Federal Regulations, Part 164.72(b) which states in part: "Each towing vessel must carry onboard and maintain the following:

(1) Charts or Maps. Marine charts or maps of the areas to be transited. published by the National Ocean Service (NOS, the ACOE, or a river authority that satisfy the following requirements:

(ii) The charts or maps must be either

(A) Current editions or currently corrected editions, if the vessel engages in towing exclusively on the navigable waters of the U.S., including Western Rivers".

6. Evidence suggests Chief Officer of the A.V. KASTNER violated Rule 5 *(Lookout).* of the Inland Regulations for Prevention of Collisions at Sea 1972 (COLREGS). Rule 5 states;

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and the risk of collision.

Upon exiting the C&D Canal, Chief Officer released the Bosun from his duties on the forecastle. At the time the Bosun was released, the A.V. KASTNER was approaching Old Town Point Wharf, and the Chief Officer reported observing "steaming fog just above the surface of the water, maximum height about 2 meters." Shortly afterwards, the Chief Officer noticed a thick fog developing, and he attempted to contact the Bosun by radio to have him return to his position on the forecastle with negative results. The Chief Officer then instructed the bridge lookout to physically find the Bosun and direct him to resume his watch on the forecastle while the vessel transited through the heavy fog. The collision took place between the time the AB contacted the Bosun and before both individuals resumed their respective look-out positions.

At the time of the collision, there was no lookout posted on the bridge or forecastle of the A.V. KASTNER. Although visibility was significantly reduced due to the fog conditions, witnesses stated the A.V. KASTNER's forecastle remained visible at all times during the voyage. It is reasonable to conclude that had a proper lookout, as required by Rule 5 of the COLREGS and the Beltship' Management Limited's Technical Operations Manual, been posted on A.V. KASTNER's forecastle, the BUCHANAN-14 may have been spotted earlier, and potentially within adequate time to take sufficient action to avoid collision.

7. Evidence suggests Chief Officer violated Rule 7 (Risk of Collision), of the Inland Regulations for Prevention of Collisions at Sea 1972 (COLREGS) which contributed to the collision. appears to have relied on scanty radar information and failed to adequately assess, and or recognize the risk of collision with the BUCHANAN-14 and its tow. The last radio transmission between the A.V. KASTNER and the BUCHANAN-14 occurred approximately 3.5 minutes prior to the collision when the vessel were 1,500 yards from one another. At that time, KASTNER's pilot indicated that he was as far to the right as he could possibly get and that the BUCIIANAN - 14 was close to the green side of the channel ("fairly close to my side"). However, there is no evidence of additional radar plotting, follow-up radio transmissions, or any actions taken on the part of the A.V. KASTNER's crew to adequately ascertain the BUCHANAN-14's actual position, heading, and relative bearing to assess the risk of collision. This resulted in the bridge team of A.V. KASTNER failing to recognize the BUCHANAN-14 had crossed into its path until both vessels were in extremis.

8. Evidence suggests Chief Officer violated Rule 8 *(Action to Avoid Collision),* of the Inland Regulations for Prevention of Collisions at Sea, 1972 (COLREGS), which contributed to this casualty. Rule 8 states in part:

(a) Any action taken to avoid collision shall, if the circumstances of the case admit, he positive, made in ample time and with due regard to the observance of good seamanship and

(e) If necessary to avoid collision or to allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

9. Evidence suggests Chief Officer violated Rule 19 (Conduct of Vessels in Restricted Visibility)*,* of the Inland Regulations for Prevention of Collisions at Sea l972 COLREGS. Rule 19(d)(e)…(are cited above).

Chief Officer indicated that at approximately 0634 "the visibility suddenly and drastically deteriorated." The elapsed time from when the A.V. KASTNER first encountered restricted visibility to the point of collision was approximately ten minutes. During this same period of time, the Chief Officer indicated there was some concern on his part with regard to the position of the BUCHANAN-14 and its tow. In the Chief Officer's statement he indicated: "It appeared on radar that the tug had moved into the middle of the channel.

Pilot [redacted] called and asked the tug to keep as far to their side as possible." Also during this time, there was no assigned look-out posted on the bridge, and there was no assigned look-out posted on the forecastle of the A.V. KASTNER. Despite the restricted visibility conditions, the fact that no look-outs were posted and he expressed concerns regarding the movement of known oncoming traffic, the Chief Officer initiated no additional actions to avoid collision or to allow more time to assess the situation. At no time during this ten minute period was the power setting for the A.V. KASTNER's main propulsion reduced in attempt to slacken the vessel's speed or all way taken off by stopping or reversing. Only after the BUCHANAN-14 passed beneath the ships bow were any actions initiated to alter the ships speed.

10. Prior to the collision, the BUCHANAN-14 with tow and the A.V. KASTNER were on nearly reciprocal course – "Head-on" as defined by Rule 14 of the Inland Navigation Rules. Rule 14 states:

(a) When two power-driven vessels are meeting on a reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each will pass on the port side of the other.
(b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line and/or both sidelights and by day she observes the corresponding aspect of the other vessel.
(c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does and act accordingly.

The vessels were in apparent extremis at the point when both vessels sighted one another visually. Based the A.V. KASTNER's maneuvering characteristics data and the point at which the crew made visual contact with the BUCHANAN-14, it appears that there was insufficient time to initiate an alteration of course or "crash stop" procedures to avoid the collision. Further, based on its relative heading at the time of extremis and its limited maneuverability due to the size and configuration of the tow, the BUCHANAN-14 was not able to maneuver its tow in time to avoid collision with the A.V. KASTNER.

11. Crew fatigue was not an apparent contributing factor to this incident. All surviving crewmen interviewed that were directly involved with this incident indicated receiving sufficient rest during the preceding 72 hours and all reported that they felt well rested at the time of the collision.

12. Drugs and, or alcohol were not a contributing cause to this incident. Although test results indicated [redacted] by one individual, he was not involved with duties directly affecting the navigation of a any vessel.

13. Evidence suggests that watertight integrity on the SWIFT was less than adequate and not properly maintained while underway. This condition likely contributed to rapid down-flooding and the subsequent sinking of the vessel. At the time the Swift was raised, two of the three starboard side watertight doors were discovered open. Additionally, two wall-mounted air conditioning units were installed through the watertight bulkhead on the main deck (one mounted on the forward, starboard side bulkhead leading into the main deck berthing area, and the other was mounted on the aft bulkhead on time port side leading to the galley). Both air conditioning units measured approximately 18 inches by 24 inches. The air conditioning units became dislodged during this casualty and likely contributed to the additional ingress of water and subsequent down flooding.

[GCMA Comment: We believe our efforts to promote the effective inspection of towing vessels by USCG inspectors will increase attention to improved watertight integrity issues on commercial towing vessels.]

OILFIELD LIFTBOAT CUTS GAS PIPELINE IN $4,600,000 ACCIDENT

*[**Source:** MSO Mobile, Misle Activity #1984377, Misle Case #160245. GCMA file #M-452.]*

Liftboat Safety

Liftboats are unique pieces of equipment designed to perform specialized maintenance tasks in the oilfield. They had such a poor safety record that they were eventually brought under Coast Guard inspection in 1989-1990. Inspection gradually brought law and order into the wild waters of the Gulf of Mexico. Safety standards and reasonable limits were imposed on existing vessels before they were "grandfathered" into an "inspected" status.

GCMA observers participated in liftboat safety sub-committee meetings conducted by the National Offshore Safety Advisory Committee. NOSAC always has been managed in a professional manner by Mr. Jim Magill, its Assistant Executive Director, who accumulated a lifetime of maritime and oilfield experience in the United States and abroad. Jim always cooperated fully with GCMA and has been willing to share his knowledge and expertise with us on many occasions.

The NOSAC liftboat sub-committee forthrightly addressed the industry's safety problems several years ago and, with the Offshore Marine Service Association, is developing an improved training program for liftboat captains. This will be a difficult undertaking because professional engineers must be brought "down-to-earth" to translate their technical expertise into language that can be easily understood by lower-level licensed mariners with 100, 200 and sometimes 500-1,600 ton near coastal licenses. We look forward to watching this program develop and, hopefully, make liftboats a safer work platform for our mariners.

Unfortunately, accidents still happen especially where mariners (and/or their employers) cut corners.

The L/B Paul Danos

January 8, 2004: The liftboat PAUL DANOS was enroute from Pascagoula, MS to Chandeleur Block 40 in the Gulf of Mexico. At approximately 1600 hours the vessel started to experience adverse weather conditions beyond its normal limitations, as cited in the Danos & Curole standard operating procedures manual. The Master phoned Danos & Curole[1] to notify them of the weather conditions. *[[1] The vessel owners.]*

The Master instructed the office that they were proceeding to Chandeleur Block 20 to jack-up and get above the sea conditions which is an important advantage of a liftboat. At approximately 1800 hrs the vessel arrived in Chandeleur Block 20 and proceeded to lower its 3 legs. The legs pierced the bottom surface at approximate position N 29.57.815° - W 088.43.284° at approximately 1830 hours. The Master jacked up to approximately 4 feet above the water.

Between the hours of 2300 and 2330 the tilt alarm sounded and the Master and Mate ■■ proceeded to the bridge and jacked the rig up another 4 feet to level the lift boat. The Chief Engineer was lying in his bunk and felt heavy vibrations coming from the vessel. He proceeded to the bridge and was instructed by the Master to go to the engine room and turn on the Z-Drives. The Able Seaman and the Ordinary Seaman were also in their bunks at the time of the incident between 2300-2330 hrs. They both were awakened from their bunks and proceeded to the bridge area. All personnel onboard acknowledged that they smelled a strong odor of gas, as well as seeing a plume of water and mud approximately 30+ feet high on the starboard side of the liftboat.

The PAUL DANOS had jacked up on a natural gas pipeline approximately 9 to 12 feet below the sea floor. The pipeline had approximately 900 PSI of pressure, and once the leg broke through the pipeline, the natural gas was released. The high pressure eventually washed out around the legs of the rig and caused the liftboat to lose stability and heel over.

[GCMA Comment: We are reminded of the OSV ANGELA BRILEY[1] that exploded after colorless and odorless natural gas accidentally entered the engineroom. The supply boat exploded as the Master and Chief Engineer tried to restart a generator. Both men died and an able seaman was seriously injured.] *[[1]NTSB/MAR-85/02/SUM; GCMA File M-015C]*

The Master instructed all personnel to prepare to abandon ship, while he maintained a level bubble on the rig. The Coast Guard was notified via VHF-FM channel 16 by the Ordinary Seaman. The M/V Christine McCall, was diverted to retrieve all crewman from the liftboat. All personnel were evacuated to the M/V Christine McCall and transported to Chevron facility in Pascagoula, MS.

February 20, 2004. The Coast Guard interviewed Captain ■ and Mr. (Redacted) at MSO Mobile. Captain ■ and (redacted) admitted fault and gave no reason as to why there were not the appropriate charts for the area onboard the vessel at the time of the incident. Captain ■ advised that the charts that were onboard had never been corrected. Both advised they were using a laptop computer purchased by the company.

Amputation by Cutting Torch Leaves L/B Paul Danos Legless for Second Time

March 18, 2004: The liftboat legs were eventually cut from the vessel and the vessel removed without structural damage (excluding the legs). The vessel proceeded to Pascagoula, MS to await repair proposals and future actions. The vessel eventually proceeded to drydock in Louisiana. According to reports by company officials and the crew, the vessel was broken into while in the Port of Pascagoula, after (being salvaged following) the pipeline incident. The pipeline was repaired and is fully functional.

This was not the first time the M/V PAUL DANOS was rendered legless.[1] On August 17, 1999 working in waters 15 miles northeast of Aransas Pass, Tx, this vessel suffered an apparent "punch-through" of the substrate under its port forward leg in pre-loading operations utilizing 600,000 pounds of ballast with an air gap of 5 feet during wreck removal operations involving another liftboat. When the port forward leg penetrated the substrate, it caused the vessel to rapidly drop to port where it settled to a 24° angle benging all three legs. The leg wells were damaged and the legs later had to be removed. *[[1]Case #MC99010506, GCMA File #A-197.]*

Conclusions

The vessel was operating in the Gulf of Mexico and making port calls in Pascagoula, MS. There were no corrected navigational charts onboard the vessel for the area that she was operating in. There were several charts onboard for other areas. However these charts had not been corrected from the Notice of Mariners. According to the crew, there was a laptop computer with navigational software that was used to navigate the vessel.

The company confirmed that they had purchased a laptop computer for use on the bridge, but not for navigational purposes. The software being used to navigate the vessel was not approved by the company. In fact, USCG regulations require the vessel to have updated and corrected navigational charts onboard.

At the time of the incident, the vessel was using a block chart to navigate the area. The block chart being used was cut in half and had no corrections from the notice of mariners made to it. The block. chart indicated that chart #11363 should be used when navigating in the area where the accident occurred. However, chart #11363 was not onboard the vessel. In addition, chart #11363 clearly shows the pipelines that the PAUL DANOS jacked up on and ruptured.

[GCMA Comment: Block Chart #1115A has a scale of 1:456,394 covering a three-state coastal area and contains an overprint of oilfield block numbers whereas chart #11363 has a larger scale of 1:80,000.]

[GCMA Comment: Mariners should note the Coast Guard's emphasize using the largest scale chart available (#11363) and up-to-date chart corrections. As this case illustrates, companies do not always provide their mariners with the latest charts or provide copies of the latest Local Notice to Mariners. Many mariners were never taught how to correct charts properly – a time-consuming process if done thoroughly. The Master in this case reportedly had 40 years of experience in the offshore oil industry.]

The weather at the time of the incident was seas from 4 to 6 feet and winds at 20 knots. The weather forecast was reviewed from the national weather service for the day of the incident and two days prior to the incident. The forecast clearly showed forecasted seas to be 5 feet and winds at 20 knots. The limiting envelope in accordance with the PAUL DANOS Operations manual is 4-foot seas. The Operations Manual also provides for the Master to check the weather prior to getting underway to ensure proper operation of the vessel. The Master did not properly review the weather and

did not discuss the vessels options for transiting to the work location in the Gulf of Mexico with the company representative.

Several events occurred prior to the vessel departing, that if done properly and in accordance with rules and regulations, would have prevented this accident. The vessel should have had the appropriate charts onboard to transit in the areas of operation. If the vessel had Chart #11363 onboard and was using the chart, the master would have known the location of the pipeline (which was clearly indicated on the chart). If the Master had checked the appropriate weather forecast, he could have communicated that the vessel should have stayed in port until the seas were below the limiting envelope to ensure a safe transit. The end result of these actions caused several million dollars in damage, the loss of 42 million cubic feet of natural gas, shut-in of a major pipeline for several weeks, and risked the lives of 5 crewmembers onboard the vessel. //s//LT ■■■, Investigator

Pollution Investigation

The PAUL DANOS had approximately 7,000 gallons of diesel fuel and 158 gallons of motor oil on board. No product was discharged into the Gulf of Mexico. Approximately 42 million cubic feet of natural gas was released from the pipeline. However, natural gas (methane mix) does not have an reportable quantity associated with it. Marine Environmental Response Branch took no further action with the incident. //S// Pollution Investigator.

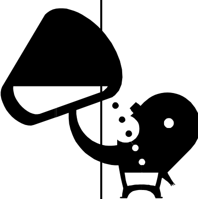
Settlement Agreement

"In light of the respondent's cooperative attitude, good faith efforts to reach compliance and completion of a Bridge Management Course, a mitigated penalty of 36 months suspension (12 months outright suspension with 24 months stayed on 24 months probation will be assessed."

POTABLE WATER

*[**Source:** File #GCM-44. GCMA initiated action several years ago to improve the quality of the water carried aboard the vessels our mariners serve aboard. This water is used for drinking, bathing and cooking. The following article by Dennis L. Bryant appeared in the August 2005 issue of Maritime Reporter and Engineering News and adds an important and useful insight on this matter. Underlining for emphasis is ours.]*

In this age when it seems like everything related to ships has been regulated to an extreme, it comes as a surprise to learn that there are no general regulations relating to potable water on U.S. vessels. That is about to end, as the Coast Guard initiates a rulemaking project to establish such standards.



Rulemaking Project

The project seems to have begun with a 2002 letter from the Gulf Coast Mariners Association petitioning the Coast Guard for a rulemaking. The letter complained of the poor quality of drinking water on some of the vessels manned by members of the Association. It pointed out that the Coast Guard has general superintendence over the merchant marine and one of the agency's missions is to look after seamen's welfare.

In 2004, Congress amended the vessel inspection law to provide that, for U.S. vessels subject to inspection, the inspection process shall ensure (an) adequate drinking supply of potable water for drinking and washing by passengers and crews. In determining the adequacy of the supply of potable water for drinking and washing by passengers and crew, the Coast Guard is to consider:
(1) the size and type of vessel;
(2) the number of passengers and crew on board;
(3) the duration and routing of voyages; and
(4) guidelines recommended by other federal agencies.

On July 11, 2005, the Coast Guard issued a notice soliciting public input. Comments should be submitted by September 9. In addition to the statutory requirements, the agency would like comments on: (a) other factors that should be considered in determining the amount of potable water that should be available on a vessel; (b) design practices and policies used for testing; and (c) industry standards that could be applied to the design and testing of potable water systems on vessels.

Vague Definition

The word "potable" is defined as "fit to drink" and is as accurate as it is concise. The word is derived from the Latin word "potare," meaning "to drink." Thus, potable water is water that is fit to drink. The problem is that, like pornography, you may know it when you drink it, but it is difficult to write a regulation setting enforceable standards regarding potability.

Standards and Guidelines

While there currently are no general U.S. regulations regarding potable water on U.S. vessels, that does not mean there is no available guidance. There is actually a wide variety of guidance documents available for adaptation into appropriate regulatory format.

The U.S. Centers for Disease Control and Prevention (CDC) issues guidelines on sanitary issues related to construction and operation of large passenger ships. These guidelines are applicable to the cruise ships (mostly foreign flag) that embark passengers at U.S. ports and may have limited applicability to non-passenger ships. The Food and Drug Administration (FDA) has promulgated regulations regarding the source and use of potable water on conveyances engaged in interstate traffic. Portions of those regulations apply to vessels, but they provide few specifics. Under the Safe Drinking Water Act, the Environmental Protection Agency (EPA) has issued regulations and guidance regarding standards for safe drinking water and maximum contaminant levels for drinking water. The EPA standards are focused on municipal water sources and similar land-based water systems.

The U.S. Coast Guard has standards applicable to potable water and waste water systems at its units afloat and ashore, but has not utilized them outside the agency. The USCG Marine Safety Center has developed rudimentary guidelines for review of potable water systems when those systems included in ship construction plans submitted for agency review. Unfortunately, there is no

requirement that a potable water system be included in the construction plans submitted to the Coast Guard and not all ship construction plans are submitted to the Coast Guard for review.

distribution, and disinfections, among other things. One section is devoted to potable water on smaller vessels (yard craft, in Navy parlance) that lack their own water production capability. The manual also addresses recommended amounts of potable water for various uses on a per person per day basis: drinking (0.5 to 1 gallon); galley and scullery (1.5 to 4 gallons); personal hygiene (5 to 20 gallons); and laundry (5 to 10 gallons).

Norway promulgated guidelines and regulations for potable water systems and potable water supply on offshore units, such as platforms and drills ships, operating under Norwegian jurisdiction. The Norwegian Institute for Public Health issued a lengthy checklist for design of potable water systems on offshore units. For vessels and offshore units with water production systems, it recommends that there be at least two production units, each capable of producing at least 100% of the water needed, or three production units, each capable of producing at least 50% of the water needed. The number and size of potable water tanks is to be based on the vessel's potable water production capability and size of the crew. The agency provides minimum standards for the vessel's potable water manual. Finally, it includes a handy listing for a potable water quality criteria and recommended analysis program. This program addresses subjective factors such as smell, taste, and appearance along with objective factors such as pH value, conductivity, free chlorine, color, e-coli count, copper, ammonia, benzene, lead etc. The International Organization for Standardization (ISO), located in Geneva, Switzerland, has

The U.S. Navy, Bureau of Medicine and Surgery, has a Manual of Naval Preventive Medicine. One chapter of this manual is devoted to water supply afloat. It addresses such issues as receipt and transfer of potable water, storage and developed standards for potable water supply on ships and marine structures. These standards come in two parts: ((1) planning and design; and (2) method of calculation. Classification societies include potable water systems in their rules and regulations for building and classing ships. The American Bureau of Shipping (ABS) has also published a guide for crew habitability that addresses potable water systems and related issues.

Summary

Potable water is a basic human necessity – more important than food. Crewmembers on ships have as much need for, and right to potable water as persons ashore. It is assumed[(1)] that the number of U.S. ships with inadequate potable water systems is very low, but the number should be zero. *[[(1)]GCMA Comment: Whoever "assumed" this must have had limited experience working on towing vessels and OSVs.]*

Guidance and basic regulations should resolve any problems. If nothing else, this rulemaking project can serve to focus the attention of the industry on this important issue and lead ship owners and operators to double-check the potable water systems on their vessels. This is a very low cost effort that will pay important dividends – and one that everyone can fully support.

Comments on the rulemaking project appear at: www.dms.dot.gov on the internet in Docket #USCG 2005-20052.

GCMA – THE VOICE FOR MARINERS
(An Editorial)

The Gulf Coast Mariners Association serves as the voice for "lower-level" mariners or, if you prefer a less demeaning term "limited" mariners who serve on thousands of tugs, towboats, offshore supply vessels, small passenger vessels, and other commercial craft of less than 1,600 gross register tons. Whether "limited" or "lower-level" we are the forgotten mariners although we always have been in the clear majority of all the nation's merchant mariners. Nevertheless, some in management seem to forget that nothing moves in this industry unless our mariners move it!

In GCMA, our mariners have an outlet to express their needs, concerns, and interests in an arena monopolized by large corporate egos and governed by the Coast Guard. Boat owners, represented by increasingly larger and larger corporations have taken our mariners for granted and mercilessly exploited them. The Coast Guard often serves as little more than a corporate handmaiden.

Until recently, there was no shortage of mariners to work on commercial vessels. Small commercial vessels were an area that offered individuals a unique opportunity for advancement without a hassle if they were mechanically inclined, loved the water, and found heavy-equipment operation appealing. Others found an occupation that was inviting, attractive, or lucrative where they could learn a trade while making their way upward through the "hawsepipe" from deckhand to Captain – all within the limits of their formal education.

The marine industry used to be an area where there was minimal government interference and the rules allowed a great deal of personal freedom. Working on the water rarely involved tasks that did not involve plenty of hard work, but there were rewards of personal satisfaction of a job completed or a job well done. In viewing the offshore oilfields along the Louisiana coast, it is clear they were not developed by idiots or without lots of toil and sweat. In the past, a mariner could count on their being enough other mariners working alongside him to share the burden.

In recent years all of these factors started to change. "Cost cutting" by corporate "bean-counters" reduced the number of licensed and unlicensed mariners on each boat. The cooks on tugs, towboats, and OSVs were eliminated and mariners were left to raid the icebox and survive on microwave snack foods. Additional duties dumped on mariners by the government, large and small corporations, safety management systems, and "homeland security" concerns extended the workweek for licensed officers beyond the "legal" but grinding 84 hours. A perfect example lies in the existing "Safety Management System" called the Responsible Carrier Program that finds absolutely nothing wrong with 15-hour workdays.

The Coast Guard bends over backwards in praising the Responsible Carrier Program though saying nothing about its failures. Although we brought the 15-hour workday to the attention of the Towing Safety Advisory Committee at its last two meetings, both AWO and the Coast Guard are too dense to see that building an industry around policies like this are strangling the goose that lays their golden egg. Can you believe that the following statement was added as a footnote to a TSAC Working Group document dated September 21, 2005: "The Working Group considered, but did not adopt, a recommendation that all crewmembers receive a minimum of six hours of uninterrupted rest in every 24-hour period. Ten working group members opposed not including such a recommendation in the working group report to TSAC." More

about these "working groups" appears in this newsletter.

Our mariners need to understand that this "Working Group" was staffed almost exclusively by corporate members of the American Waterways Operators (AWO), an industry trade association representing the interests of about 200 of the most influential towing companies. The meeting that generated this document was held in the Washington area in September 2005. GCMA did not have the funds available to attend this meeting although we have plenty to say about its outcome. Consequently, the interests of lower-level mariners were not represented even though we submitted a timely list of "123 Suggestions" to TSAC. The corporate wimps will only back off when a dozen or so well-informed mariners show up at these meetings and challenge some of the points offered by chair-bound corporate executives without any real work-experience on the boats they manage.

Since April 1999, GCMA has been the only real "voice" for the nation's lower-level mariners. We follow every major issue, attend numerous meetings, prepare research reports. Under the dedicated supervision and hard work of Captain David Miller, we make our work available to the public on the internet. But GCMA is a "voice" shouting in the wilderness.

Over the years, our "lower-level" mariners documented their open intimidation by corporate management. There are clear signs, however, that some mariners have "had enough." A group of experienced river pilots known as the "ARTCO Six" banded together to expose the tactics used by a subsidiary of one of the nation's largest corporations – Archer Daniels Midland. The egregious behavior of other industry giants like American Commercial Barge Line (ACBL) toward our mariners and their families have been exposed in the courtroom and reported in the GCMA newsletter.

In the past, grass roots organizations like **American Inland Mariners** (AIM), **Pilots Agree**, and **Offshore Mariners United** (OMU) that dared to express the true concerns of their mariners were silenced, crushed, and their leaders driven from the industry for daring to stand up and assert "rights" for mariners. Both industry and the Coast Guard chose to ignore grass-roots mariner organizations like AIM with a strong leadership structure and an expressed willingness to work with them. The marine industry's past is littered with oversize egos, missed opportunities, and incredibly poor and unresponsive management.

Large corporations do not want to hear any "back-talk" from their employees. Unfortunately, this back-talk could teach many important safety lessons that must be learned the hard way at the expense of the public, insurance carriers, and eventually by our mariners.

Mariner Rights

At this point, it might be pertinent to ask: "What rights do I have as a mariner?" It is difficult to give a definitive answer. However, the question encouraged us to publish Revision 1 to **GCMA Report #R-344** entitled Mariner Rights in early September. If nothing else, this report will give our mariners a chance to look at the situation they face today in dealing with Corporate America from the unenviable position of an "Employee-at-Will." Nevertheless, this report is really a work-in-progress and subject to change based upon what GCMA supporters tell us.

It is painfully clear that our "lower-level" mariners have few rights. Our mariners are nothing more than "at will" employees who can be fired at will for almost any reason. They missed the opportunity to join labor unions that are virtually non-existent in our segment of the U.S. Merchant Marine.

GCMA could only watch as union busters financed by wealthy corporations and trade associations lied about our Association, sabotaged our training program, and then set out to cripple Offshore Mariners United (OMU), a fledgling union, as it tried its best to improve the lot of mariners in the offshore oil industry from 2000 to 2003. It is factually correct to say that the "lockdown" of offshore mariners and restriction of their free speech and freedom of association along the Louisiana and Texas coasts occurred long before the terrorist attacks of 9/11 and long before "homeland security" ever became a consideration.

Under this type of pressure, no individual dares to risk his job and his career by speaking up to oppose management or Coast Guard positions no matter how ignorant or uninformed these positions may be. GCMA does not ask our supporters to "stick their necks out" because we see that they have little protection from the nation's labor laws.

We are at a point where too few individuals are interested in accepting a job in an overbearing industry where they work hard, gain invaluable experience but still be treated like ignorant peons. Mariners who work in towing and in offshore oil understand why these sectors of the marine industry have earned such a bad reputation. Both the Coast Guard and its "partners" in industry have done their best to domineer and silence "lower-level" mariners and, for the most part, succeeded.

Yet, we point out that our mariners clearly make up the majority of all mariners in the U.S. Merchant Marine who lack any sort of meaningful representation. While both sectors of the industry try to woo new "Academy" graduates who have the book learning, the college diploma, and a license, they find that many of these graduates lack the experience to handle our boats or the inclination to accept the abuse they can see all around them.

The latest travesty to mariners seeking to rise through the hawsepipe is boosting the requirements for the 1,600-ton license – traditionally a "lower-level" license to that of a third-mate license. Our lower-level mariners' attain a 1,600-ton license with a lifetime of hard-won experience. Now, they find that they must attain the same level of "book knowledge" as a graduate of a four-year maritime academy. Among other things, there is a considerable price for such an education both in dollars and in time. The fact that the 500 and 1,600-ton licenses are inextricably tied together doesn't help things for our "hawsepiper" who never saw the inside of a college lecture hall, or for that matter, may not have a high school or a G.E.D. diploma.

It seems unlikely that most academy graduates will be willing to work in jobs where they can survey the situation and see that the mariners around them are treated like dirt. Most of them did not struggle through four years of college to attain that kind of privilege. Many young graduates are uncomfortable and stand out like sore thumbs if an employer offers them special treatment over hawsepipers who fought to come up through the ranks. Many measure their success by moving into management rather than staying on the boats. Although many Academy graduates will survive these conditions, will it be enough to ensure the glowing forecasts for future expansion of trade and industry in the next quarter century?

In our six years of existence, GCMA has been able to make very limited headway against "stacked" advisory committees who pay little attention to problems of "lower-level" mariners. For several years, our representative on MERPAC patiently waited for that advisory committee to deal with any meaningful "lower-level" issues. The Coast Guard puts off answering our wide-ranging inquiries even though we must address dozens of problems that our mariners report to us. Our mariners report to us and we report the truth and publish our findings.

Both corporate management and the Coast Guard that control our industry made serious mistakes that hurt our mariners. Not listening to the mariners who face each and every problem we report on is the biggest mistake they ever

made and is about to turn around and bite them with a vengeance. The fare that the Coast Guard and industry offer has very little appeal to "lower-level" mariners that remain and little to attract new personnel.

COAST GUARD RESPONDS TO OUR QUESTIONS ON TOWING SAFETY ADVISORY COMMITTEE

On March 27, 2005, GCMA wrote to Captain David Scott (G-MSO), Executive Director, Towing Safety Advisory Committee at U.S. Coast Guard Headquarters asking 10 questions about TSAC. We will combine the two letters:

On August 25, 2005 we received the following response from USCG Captain L.W. Thomas with the following explanation for the delay:

"This is in response to your June 1, 2005 letter to the Commandant and your March 27, 2005 letter to Captain David L. Scott, former Chief, Office of Operational and Environmental Standards (G-MSO) and former Executive Director of the Towing Safety Advisory Committee (TSAC). I relieved Captain Scott in July of this year. I apologize for the time it has taken to provide you with a formal reply. Mr. Gerald Miante, the Assistant Executive Director of TSAC, informs me that he has been in telephone contact with you on several occasions regarding your letters. I trust that Mr. Miante has already answered the most pressing of your concerns. I will address each point of your letter to Captain Scott in the same paragraph number below.

[Introduction & GCMA ¶1: Since the September TSAC meeting, I have become increasingly concerned about the direction the Towing Safety Advisory Committee has taken and the very limited role that working mariners and small towing vessel operators (i.e., businesses) have in the operation of this federal advisory committee.

As its Executive Director, I would appreciate it if you would clarify, correct, or comment on any of the following points regarding TSAC so that I may bring these matters to the attention of Congress. I will number these points for brevity and ease of response.

TSAC was established by Congress in 1980 in 33 U.S.C. 1231a **[Enclosure #1].** Are you aware of any subsequent amendments to the law that do not appear in **[Enclosure #1]**?

[USCG Reply to ¶1]: A review of the legislative history of 33 U.S.C. §1231 a indicates that there have been eight amendments since Congress enacted Public Law 96-380 (94 Stat. 1521) on October 6, 1980 to establish TSAC. Five of these amendments periodically extended the existence of the committee (in 1984, 1989, 1996, 2002 & 2004). Currently, TSAC is authorized to operate until 2010 (Section 418 of the Coast Guard and Maritime Transportation Act, Public Law 108-293, August 9, 2004).

The three other amendments, which all occurred in 1982 (Public Law 97-322), added the notice to publish notice in the Federal Register for solicitation of members, authorized TSAC to make information available to Congress, and inserted provisions respecting compensation and travel expenses. Regarding travel expenses, the law states that the Secretary **may** – but is not required to – pay travel expenses (including per diem) for TSAC members.

[GCMA ¶2: Membership.] Since the composition of the 16-member Committee was established by Congress in October 1980, is it correct to say that any additions or changes affecting its composition can only be changed by Congress. Can the Coast Guard make changes when it renews the committee charter – and to what extent?

[USCG Response to ¶2] 33 U.S.C. 1231(a) requires the Secretary to appoint 16 total TSAC members in a specified ratio among six listed categories: seven members from the barge & towing industry, one member from the offshore mineral & oil supply vessel industry, two members from port districts, authorities or terminal operators, two members from maritime labor, two shippers and two members of the general public. While the Secretary appoints the individual members who fill the positions required by the statute, you are correct that only Congress can change the positions required by the statute. The TSAC charter, which the Secretary renews every two years, cannot conflict with the statute. Therefore, we cannot make changes to the positions when we renew the charter.

[GCMA ¶3. Membership]. On the "seven members from the barge and towing industry, reflecting a regional geographic balance" I am concerned that there do not appear to be any representatives who are NOT members of the American Waterways Operators. AWO is a large and powerful Washington lobby. While **AWO claims to represent 80% of the tug and barge industry**, past Coast Guard rulemakings and current Corps of Engineers statistics indicate that there are between **900 and 1,300 business entities that operate towing vessels.** AWO membership currently includes slightly less than 200 companies.

In light of the Coast Guard's 10-year "partnership" with AWO, there appears to have developed a distinct bias in favor of the AWO on the TSAC committee since non-AWO-member towing companies do not even have a seat on the Committee. Chairmanship of TSAC appears to pass from AWO member to AWO member without question in light of their grip on the committee. Subject to correction, do you see any non-AWO-member companies represented in this group of seven? I am unable to pull the latest TSAC membership list from the website.

Since the Coast Guard superintends the merchant marine and should have accurate knowledge of its composition at USCG Headquarters level, we ask you verify whether the 80% figure cited above represents verifiable information or is simply self-serving hype or wishful thinking.

We also ask for a definitive answer as to whether the 900-1,300 vessel population figures cited above (far in exceeding AWO membership data) indicates the presence of a large, unrepresented sector of the towing industry whose views need to be actively solicited either by the Coast Guard or by TSAC in the rulemaking process.

We seek this information because we detect a possibility that a favored, well-organized, and well-funded cabal of powerful companies will throttle numerous legitimate towing vessel owners (e.g., independent smaller operators). We see the possibility that these companies may seek to obtain some tangible business advantage by mandating the institution of a complex, expensive safety management system that could put smaller towing companies out of business.

[USCG Reply to ¶3.] To my knowledge,

any particular relationship to the American Waterways Operators (AWO) is not a factor in the Secretary's decision to appoint one candidate over another in the seven-person barge and towing industry membership category. The application for TSAC membership does not ask if the applicant is affiliated with AWO, so the Secretary would not normally be aware of AWO affiliation unless the applicant volunteered such information. The potential "bias" you perceive may simply be a result of significantly more persons applying to TSAC who work for AWO-affiliated companies and fall into this membership category.

The Secretary recently made new appointments to TSAC on August 3, 2005. Analyzing the current TSAC membership, there are now eight AWO-affiliated members and eight non-AWO-affiliated members on TSAC (total of 16 members). Six of the eight AWO-affiliated members fall within the "barge and towing industry" category.

You also assert that AWO claims to represent 80% of the "tug and barge industry," and you ask us to verify this claim. The Coast Guard is under no obligation to verify the claims of AWO, and we neither collect nor maintain the data necessary to fulfill your request in this regard. Nonetheless, Mr. Miante spoke with AWO about the 80% figure.

AWO advised us of the following:

- Using Army Corps of Engineers' data, AWO estimates that there are approximately 1,287 towing vessel companies, including those that engage both in towing and in other endeavors (but excluding government agencies, oil field production, shipyard and other "tug assist" work).
- AWO claims to represent about 200 of these companies (plus approximately 200 "affiliates" who not directly own/operate towing vessels, e.g. insurance companies and shipyards).
- AWO estimates that these 1,287 towing vessel companies own/operate approximately 3,932 towing vessels regularly engaged in the business of commercial towing.
- AWO estimates that these 1,287 towing vessel companies also own/operate approximately 27,568 barges, for a total of approximately 31,500 towing vessels and barges combined; and,
- AWO members own/operate approximately 25,200 of these 31,500 towing vessels and barges, which is 80%. The Coast Guard has not verified any of the data that AWO provided, and we cannot attest to the accuracy of any of these figures.

[GCMA Comment: Since the Coast Guard controls vessel documentation, they should know how many towing vessels there are in the industry. USCG figures appearing in several rulemaking dockets list 5,200 towing vessels. We can only hope that the Coast Guard will have a clearer idea of the number of towing vessels after each towing vessel must earn a USCG Certificate of Inspection.]

[GCMA ¶4. Membership. One member is selected from the offshore mineral and oil supply vessel industry. We have no complaint about the selection, but would respectfully suggest that Congress consider updating the wording of the statute to "the towing sector of the offshore mineral and oil industry" to represent the 200+ towing vessels rather than offshore supply vessels (OSV). OSVs are well represented by the National Offshore Safety Advisory Committee (NOSAC) that was formed years after the formation of TSAC. There is a significant difference between OSVs and tugs.

[USCG Reply to ¶4.] The Coast Guard agrees with your statement in item #4 that the offshore category should be filled from the *"towing sector* of the offshore mineral and oil industry." Indeed, the offshore supply vessel (OSV) contingent is well represented at the National Offshore Safety Advisory Committee (NOSAC). Perhaps you might include these views when you petition Congress for the addition of other membership categories (see paragraph #6).

[GCMA Comment: We did this in our petition to Congress transmitted in GCMA Report #R-417.]

[GCMA ¶5. Travel and Per Diem.] In the September (2004) TSAC meeting, Captain William Beacom rose from the audience to state that most mariners would find it impossible to serve on TSAC if selected because travel and per diem were not covered. I share his concern. Speaking for myself, a trip to Washington from Louisiana costs about $1,000. Running back and forth to attend working group meetings (such as the four working group meetings scheduled to meet to consider the towing vessel inspection safety management system task statement) is prohibitively expensive. However, I note that the statute **[Enclosure #1, item 5]** indicates that travel and per diem can be paid. Yet, the Committee Charter **[Enclosure #2, item #1]** says that neither travel nor per diem is available. This statement in the charter would discourage many otherwise qualified applicants from applying for membership to TSAC. It appears that Members of Congress understand that private citizens need compensation for this type of expense although the Coast Guard just does not seem to get the message with TSAC. The same comments are true of NOSAC. I can only speculate that the Coast Guard believes that it doesn't need to import expertise on the towing industry from other parts of the country (including our "lower-level" mariners) when AWO has a ready supply of talent at their beck and call in nearby Arlington, VA.

[USCG Reply to ¶5.] As discussed in paragraph #1 above, the TSAC enabling statute provides that the Secretary **may,** but is not required to, pay travel expenses (including per diem) for TSAC members. Currently, TSAC members are not paid travel expenses. Recognizing that this may pose a disproportionate burden on small businesses and individual mariners who might otherwise apply for TSAC membership, we are currently exploring the possibility of obtaining additional funding to cover these expenses; however, we do not currently know if/when we will obtain these funds.

[GCMA Comment: The Coast Guard does pay travel and per diem for the Merchant Marine Personnel Advisory Committee (MERPAC). They recently held a meeting in Hawaii! Aloha.]

[GCMA ¶6. Working Mariner Perspective.] Although the TSAC committee advises on "matters related to shallow-draft inland and coastal waterway navigation and towing safety," in the September (2004) TSAC meeting we noted that only two committee members present actually had experience operating towing vessels. A third

member with such experience was not in attendance. Of these three members, all are currently in "chair-bound" management positions.

[Enclosure #3] shows that from the Coast Guard's first selection of members that participants from industry were overwhelmingly selected from the ranks of corporate executives – a trend that continues today. We find it shocking that no working mariners are represented on this federal advisory committee. Consequently, GCMA will suggest that Congress review TSAC membership criteria. We are preparing to ask that Congress change the membership groups represented on the committee to represent our 32,000 "lower-level" mariners. Our mariners, who actually work on towing vessels on a day-to-day basis, must be accorded some opportunity to stand up and discuss mariner problems. We will recommend that the following mariners be included as members of TSAC in the future:

1) An inland towboat pilot with broad experience on Western Rivers and Gulf Intracoastal Waterway.
2) An offshore tug captain,
3) A ship docking or harbor tugboat master,
4) An unlicensed towboat engineer.

[USCG Reply to ¶6.] The Coast Guard respects your right and applauds your interest in petitioning Congress to add to TSAC's membership categories as you see necessary. We also encourage you to widely publicize all TSAC membership opportunities amongst your members so that we can increase the number of "working mariner" applicants for TSAC.

[GCMA ¶7.] This remark is not intended to be personal. In the immediate future, it would be helpful if the Coast Guard appointed an Executive Director of TSAC who had recent experience in the towing industry. This is especially important in light of the coming inspection of towing vessels. Since the Coast Guard may not be able to find the person in their ranks with this background, in lieu of that, we suggest that your successor spend at least one month gaining on-the-water experience in riding towing vessels and making necessary industry visits throughout the country before signing aboard.

[USCG Reply to ¶7.] While the work of any federal advisory committee should be understood by the Coast Guard officials designated to facilitate the operation of the committee, the resultant recommendations should be those of the expert members. The missions of the Coast Guard are diverse, and our military members generally change duty stations every two to four years. The remaining civilian employees, although possessing varying expertise in the general maritime field, may not be career towboat personnel. We will consider your suggestion to afford Coast Guard personnel with TSAC responsibilities the opportunity for appropriate towing-specific training and/or experience; however, we cannot commit to any additional training or qualification requirements for Coast Guard personnel at this time.

[GCMA ¶8.] Since the sixteen members of TSAC as well as members of the public travel from all parts of the country to attend a TSAC meeting, this and involves considerable expense it is is not a social gathering. Since these meetings often are announced 6 months in advance, it is only reasonable to ask that the Committee Sponsor attend the meeting in its entirety. As formal presentations by members of the public are relegated to the last 30 minutes of the main meeting, it would be rewarding to have an officer of flag rank in attendance. One of our members suggested that starting the meeting with the Pledge of Allegiance also would be dignified and appropriate and its absence in past meetings was noted.

[USCG Reply to ¶8.] Your suggestion for the Pledge of Allegiance is noted. As to the attendance of TSAC's sponsor, Rear Admiral Gilmour's scheduling requirements are subject to change even within several days or hours of our meetings. He remains committed, however, to attend as many meetings of the eight federal advisory committees he sponsors for as long a time as he is permitted by his other marine safety and security duties.

[GCMA ¶9.] We note that **[Enclosure #2]** taken from the Committee website shows the current committee Charter expires on July 1, 2003. Surely, the committee has not passed out of existence, has it?

[USCG Reply to ¶9.] The charter date to which you refer is the date of enactment of the previous charter. It expired two years from July 1, 2003 (i.e., it expired on July 1, 2005). As of the date of this letter, TSAC's charter has been renewed until August 1, 2007. The current charter is available on Coast Guard Homeport: http://homeport.uscg.mil/mycg/portal/ep/home.do (select "Ports & Waterways" in left column of opening page, then click "Safety Advisory Committees" in lower middle of next screen, then select "TSAC").

[GCMA ¶10.] We request a copy of the Department of Homeland Security Directive that speaks to the operation of the department's federal advisory committees. Please advise whether a separate FOIA request is necessary.

[USCG Reply to ¶10.] You may contact the Department of Homeland Security for the federal advisory committee directive that you seek. You should direct your request to Ms. Georgia Abraham: gabraham@dhs.gov. Ms. Abraham's phone number is 202-282-9150.

Thank you for your continued interest and participation in TSAC. If you require additional information, please contact Mr. Miante at 202-267-0221, fax: 202-267-4570, or via e-mail at: gmiante@comdt.uscg.mil. Sincerely, L. W. Thomas, Captain, U.S. Coast Guard Chief, Office of Operating and Environmental Standards.
Copy: G-CCS; G-CQM; G-M; G-M-1.

BLOOMFIELD & KATZ
THE RIVER LAWYERS

L. Jeff Bloomfield **Telephone: (901) 528-1702**
50. N. Front Street, Ste. 800 **1-888-31-RIVER**

M/V LAUREN: LIFTBOAT SINKS IN THE GULF OF MEXICO

[Source: USCG MISLE Case #222740, GCMA file #M-565.]

On or about 1140 on March 13, 2005 the Liftboat Lauren, owned and operated by Melancon Marine of Cut Off, LA, sank after the port leg jacking tower failed while the vessel was in South Timbalier Block 21, Well #111 in the Gulf of Mexico just south of the Louisiana coastline.

The 99 gross register ton liftboat was 62 feet long with a beam of 46 feet and was built in 1973. It had three 90-foot legs with two cranes and berths for 16 people including a crew of four. It was operating in approximately 30 feet of water at the time of the accident.

The liftboat capsized on its side and pictures revealed it was totally submerged. It was declared a total constructive loss with a reported value of $1,150,000. There were no injuries, minimal pollution. Fortunately, there was no damage to the well the liftboat was servicing..

The Coast Guard Investigation

On or about 1300 on March 12, 2005, the L/B LAUREN was jacked up at position 29°01'N, 090° 16'W with approximately 30 feet of air gap between the keel and the water's surface. The Master, Capt. ■■■■ made preparations to lower the liftboat. When Capt. ■■■■ began the jackdown procedures, he and the crew of ten personnel onboard heard a noise that was determined to have originated from the Port Leg Jacking Tower. Jacking operations were secured, and the crew inspected the leg tower and discovered cracks in the structure.

Capt. ■■■■ contacted the owner of the L/B LAUREN, Mr. ■■■■ of Melancon Marine, LLC. Mr. ■■■■ contacted Marine Industrial Fabricators (MIF) to have a welder report to the L/B LAUREN to make repairs to the subject vessel on site in the Gulf of Mexico.

At approximately 0730 on March 13, 2005, Mr. ■■■■ from MIF arrived on board the L/B LAUREN to make repairs. Mr. ■■■■ welded two patches over the visible cracks on the Port Leg Tower and declared it fixed.

At approximately 1140 on March 13, 2005, the leg was tested and it failed. The vessel listed to port, fell 15 feet. The crew abandoned ship by jumping overboard, and the L/B LAUREN sank in 30 feet of water.

Captain ■■■■, Mr. ■■■■, nor any other representatives of Melancon Marine LLC or MIF notified any U.S. Coast Guard personnel regarding the major malfunction of the Port Leg Jacking Tower on board the L/B LAUREN or received permission to conduct repairs to the leg.

The evidence indicates that the Port Leg Jacking Tower suffered a structural failure of its housing. The situation was stabilized enough to bring in a repair company the next day but there was no engineering review of the Port Leg Jacking Tower malfunction or the welding repair plan.

After the accident, Mr. ■■■■, the welder, claimed that he had no training other than basic welding skills. No other ship building engineers or liftboat specialists came aboard to inspect the damage prior to the subject vessel's sinking.

Apparent Cause

- The evidence indicates that the Port Leg Jacking Tower housing suffered a major structural failure.
- The evidence indicates the loss of the L/B LAUREN was due to the failure of the Master and the Owners of the vessel to properly inform the USCG or have the malfunction and repairs inspected by shipbuilding engineers.
- Fatigue was not a factor in this casualty.
- Weather was not a factor in this casualty.

Remedial Action

Suspension and revocation proceedings are being taken against Captain ■■■■. Civil Penalty actions are being taken against Melancon Marine, LLC.

The Captain's Statement to USCG

[The Captain's typed statement was submitted through his attorney and was not edited.]

On 3/11/05, I was Captain aboard the M/V LAUREN, a liftboat. The deckhand on board was ■■■■. At approximately 1300 hours, we were going to move at the instruction of our customer back to ST 21 #111. I had 10 people onboard vessel, including a customer representative, and contractors. Secured vessel and started jack down about 15-20 ft. when the port leg had a problem. I stopped jacking and went and inspected the port leg. I saw a crack near the top of the tower. I spoke with , the customer's representative, and told him that's it, we have to get all contractors off the boat. We called the C/B MAGGIE to come offload all contractors onto the MISS LEAH. While waiting to offload contractors, I required everyone to stay off the front deck and to stay on wheelhouse level on starboard side until everyone could be evacuated. We had three life rings and lifeboat on deck (wheelhouse) starboard side.

For the rest of the night, the boat crew was on board only, and the M/V INTERNATIONAL LEADER was at ST21 D&H on standby in case of emergency to assist us. We kept watch and stayed in constant contact with that boat. Life rings were still on wheelhouse deck in case of emergency. At around 0730, we offloaded one repairman from Marine Industrial Fabricators to make repairs to the port leg tower.

Adjustments were made toward lining-up the rack of the port leg with the pinions. ■■■■ (welded) two plates to the top of the leg tower and the pinion box. Installed the hoses on the motors for the pinions. All brake lines were attached to each brake. Capped off the hose for the no. 2 motor and looped the hose for the no. 1 motor. After ■■■■ finished his repairs, he said to give it a shot to jack-down.

I got everyone up on the starboard side with lifejackets on and called the M/V INTERNATIONAL LEADER to come standby and be ready in case of emergency. When I tried to go up on the port leg to start the process for jacking down, it never moved up. It just went down on its own. I tried to come down on the starboard and stern legs to catch up with the port, but there was no catching up.

I instructed everyone to abandon ship. The M/V INTERNATIONAL LEADER was right there to rescue us. No one was injured. We all were hauled in on M/V INTERNATIONAL LEADER.

Action Against the Captain

Subject: Warning in lieu of suspension and revocation proceedings
Dear Mr. ■■■■,

An investigation has revealed the following conduct on your part while serving aboard the L/B LAUREN O/N548383 under the authority of (your) license
Complaint: 46 CFR 5.29 (Negligence).
To wit: On or about 1140 on March 13, 2005, while you were piloting the L/B LAUREN, you failed to safely operate the vessel and thereby contributed to the sinking of subject vessel.

It was determined that justice will be best served by a issuing a warning rather than conducting a formal proceeding for your conduct as set forth above. You are advised that this warning will become a part of your merchant mariner's record and will be considered during any future enforcement actions involving you. If you feel this warning is not warranted, you may decline it by signing and dating the under the statement below and returning this letter to the address above within 30 days of the date of the letter. However, your refusal will result in suspension and revocation proceedings being initiated against your Merchant Mariner's Credential in accordance with Title 46 USC Chapter 77. You may contact me at the number above with questions. Sincerely, LCDR R. D. Patrick, Investigating Officer.

Lessons for our Mariners

In light of their poor safety record, the Coast Guard brought every liftboat in the offshore oil industry under inspection 1n 1989-1990.

It is apparent, both from the Captain's handwritten statement as well as his typed statement, he did almost everything that was reasonably possible under the circumstances. However, his company put his license in jeopardy by failing to notify the Coast Guard that they proposed to repair the vessel on site in violation of 46 CFR §176.700.

If you operate an inspected vessel, that will include towing vessels as soon as the regulations are in place, you must have the Coast Guard's permission before making repairs on an inspected vessels. This will be a whole new ballgame for towing vessels when they finally come under inspection. We believe the towing industry will fight to preserve their ability to "save a buck" by performing all sorts of unsafe and unsupervised repairs as they always have done. As a licensed officer, you must be sure the Coast Guard has an opportunity to supervise all repairs on your vessel. These rules were promulgated for your safety and the safety of your crew. Your crew is your responsibility. Don't let them down or sell them out!

The Regulations

46 CFR §176.700. Permission for repairs and alterations.

(a) Repairs or alterations to the hull, machinery, or equipment that affect the safety of the vessel must not be made without the approval of the cognizant OCMI, except during an emergency. When repairs are made during an emergency, the owner, managing operator, or master shall notify the OCMI as soon as practicable after such repairs or alternations are made. Repairs or alterations that affect the safety of the vessel include, but are not limited to: replacement, repair, or refastening of deck or hull planking, plating, and structural members; repair of plate or frame cracks; damage repair or replacement, other than replacement in kind, of electrical wiring, fuel lines, tanks, boilers and other pressure vessels, and steering, propulsion and power supply systems; alterations affecting stability; and repair or alteration of lifesaving, fire detecting, or fire extinguishing equipment.

(b) The owner or managing operator shall submit drawings, sketches, or written specifications describing the details of any proposed alterations to the cognizant OCMI. Proposed alterations must be approved by the OCMI before work is started.

(c) Drawings are not required to be submitted for repairs or replacements in kind.

(d) The OCMI may require an inspection and testing whenever a repair or alteration is undertaken.

USCG SEEKS CHANGE IN FEDERAL LICENSING STANDARDS

By Richard A. Block

[Docket #USCG 2005-21187; GCMA File GCM-128]

Introduction

It is important for our "lower-level" mariners to present our views at the national level. While it may be important, it can also be extremely tedious and to wade through what could well be legislative and regulatory minefields. After doing so, it is an immense sigh of relief just to put your thoughts on paper and move on.

The problem with "moving on" for "lower-level" mariners is that while we may go "on record" for one position or another, we have no staff resident in Washington to present our views to Congress or even to properly inform the Coast Guard. For years, trade Associations like AWO and OMSA have totally ignored the views of their mariners and pushed forward with their own greedy and selfish corporate agendas.

In late May 2005, GCMA received a call from a Mr. Dan Fitzgerald at the Coast Guard's Office of Compliance (G-MOC) asking for our comments on a Coast Guard Legislative Change Proposal (LCP). This is the **first time** I can remember that the Coast Guard asked our Association to comment on a LCP.

This Legislative Change Proposal is an initiative by Coast Guard Headquarters staff (especially lawyers) to ask Congress to change existing laws. To summarize this proposal, "The Coast Guard believes that identity verification is a critical element of port security, recognizing that we must know and trust those who are provided unescorted access to our port facilities and vessels (as part of) the President's proposal to implement the recommendations of the (9/11 Commission Report in the area of Merchant Mariner Credentials and to modernize these statutes."

The draft proposal, if adopted by Congress, would create two new Chapters in Title 46 of the United States Code, Chapters 72 and 74. These two Chapters would contain these new Sections (§) that deal with subjects that are of concern to our mariners:

New Chapter 72

§7201 General

§7202 Issuance of Merchant Mariner Credentials.
§7203 Oath
§7204 Citizenship
§7205 Duration.
§7206 Background Checks.
§7207 Drug and Alcohol Testing.
§7208 Fees.
§7209 Substitution for Service
§7210 Exemption From Draft
§7211 Records.

New Chapter 74

§7401 General.
§7402 Administrative Procedures for Suspension & Revocation Hearings.
§7403 Subpoenas and Oaths.
§7404 Grounds for Suspension or Revocation of a Merchant Mariner Credential.
§7405 Grounds for Temporary Suspension.
§7406 Penalties

Changing the statutes would mean that soon thereafter the Coast Guard would have to issue new regulations so they could enforce the new statutes. This ponderous procedure is so dull that most mariners will give it one great big yawn. However, this yawn dismisses a number of things that could be of great concern to our mariners in the years to come.

GCMA Reviewed the Proposed Changes

Mariners can access the entire Legislative Change Proposal on the internet at http://dms.dot.gov. In fact, our letter (below) is of only limited interest unless you read it along with the Coast Guard's Legislative Change Proposal.

The LCP, along with all the responses from members of the public, appears on the Department of Transportation's Docket Management System website. When you reach the site, you can access this particular docket by typing the numbers 21187. There you will find our letter (below) surrounded by several dozen letters from other groups – each with its own point of view. Our viewpoint is unique in that it concentrates on problems that our mariners face on a daily basis. Many of the items we cite were ignored by the Coast Guard for years. Every day we watch the Coast Guard gravitating toward the centers of political and business power (i.e., kissing up to trade associations like AWO and OMSA). Because they consider our mariners insignificant in comparison to boat owners, trade associations, labor unions etc., these groups receive most of their attention. All of these groups exercise much greater "power" than our mariners.

The voice of our "lower-level" mariners is ineffective because boat companies make it virtually impossible for mariners to join unions. Unions can hire the staff necessary to follow important mariner issues in Washington as well as locally and speak up whenever necessary. Our Association, on the other hand, does not garner sufficient support to attract enough interest, commitment, and funding to send our representatives to important meetings in Washington such as the one on June 17, 2005 where important matters were discussed and decisions made that will affect us for years to come.

GCMA Letter Submitted to the Docket

June 2, 2005

Mr. Dan Fitzgerald
Office of Compliance (G-MOC)
U.S. Coast Guard Headquarters
2100 Second Street, SW
Washington, DC 20593-0001

References:

- Docket #USCG-2005-21187; §208 (proposed) Coast Guard Authorization Act of 2005.
- Your call of Monday May 23, 2005.

Dear Mr. Fitzgerald,

Thank you for extending us an invitation to comment on §208 of this Legislative Change Proposal. I want to preface my remarks by saying that I am not a lawyer. My background on this LCP is limited to "plain reading" the material from the internet on this date.

The Gulf Coast Mariners Association represents "lower-level" licensed and unlicensed mariners who serve on vessels of less than 1,600 gross register tons – primarily tugs, towboats, offshore supply vessels and small passenger vessels. My comments reflect these limits. I will be unable to attend the public meeting in Washington and request that you enter these comments in the docket. These comments refer to the following proposed LCP sections and subsections.

§7201(b)(3) Definition of "mariner." It would be useful if you defined a "**merchant mariner**." We consider this term to refer to any licensed, unlicensed, or certificated person who works on a commercial vessel.

In 46 U.S.C §2103, "The Secretary has general superintendence over the merchant marine of the United States and of merchant marine personnel…" The statute should define exactly who the Secretary superintends!

§7202(c)(3). "Qualified professionally as demonstrated by **education**, examination, training, and experience." A significant number of well-qualified lower-level mariners and hawsepipers would leave the industry if they had to possess a high school or college diploma as a condition of entry or advancement in the merchant marine. I see no problem with the other words, specifically "examination, training, and experience."

I can recall a meeting a number of years ago, well attended by local commercial boat owners, where a Coast Guard Captain from G-MVP suggested that it might not be possible to obtain a license in the future without at least a 10th grade education. That comment stirred angry controversy. Formal education is a sensitive issue with many lower-level mariners who are practical people and must make do in life with whatever education they have obtained.

§7202(e). "…seaman working in the deck department or engine department or any other capacity deemed appropriate." What happened to the Steward's Department? Did the "Steward's Department" vanish as a "cost cutting" measure? If so, this certainly cannot benefit mariners.

The Coast Guard is supposed to regulate the marine industry. "…Any other capacity deemed appropriate" allows

employers to decide what is appropriate and what is not appropriate. Our mariners report significant problems with deckhands, engineers, and tankermen without even basic sanitation training cooking meals for the vessel's crew. **[Enclosure #1]** explains some of the practical problems our mariners face when they are not sufficiently regulated**.** We have reported major problems with "green" deckhands being "**deemed appropriate**" by their employers and then assigned to engineroom duties without any training. **[Enclosure #2]** lays out the whole sorry problem with engineers in this industry. As you can see, we shared this report with Congress several months ago.

§7202(h) & §7404(a)(7). "The Secretary may deny issuance of a merchant mariner credential to an applicant…who will adversely impact good discipline at sea."

Which Coast Guard official is the custodian of the crystal ball that predicts future acts? There have to be adequate appeal procedures for unjustified actions taken against a mariner who may be denied the opportunity to work and support himself and his family.

§7202(k). "The Secretary may refuse to consider an incomplete merchant mariner credential application."

This problem reflects one of the greatest abuses of the existing Regional Exam Centers. A mariner pays quite a bit of your money for a government service. License and MMD "evaluation" has become a very specialized part of an extremely complicated application process. One of the better-organized RECs had an application "package" in excess of 30 pages.

Many applicants, especially our lower-level mariners need help in completing their applications. They often leave spaces blank because they don't know how to fill them in. Reaching many RECs by phone has been especially challenging. Consequently, many individuals who are uncomfortable with the bureaucracy are discouraged from applying for licenses and MMDs. Others turn away because they cannot get timely help from existing RECs. One alternative is to spend more money to get a "application preparer" to do the job for them – often a tall order for a person who may be out of work. Paperwork gridlock is one of the major causes of the current personnel shortage.

This provision will be of little help to our mariners because it will guarantee that the RECs will never take the time to improve their service to mariners. It is easier to drive them away than put up with the hassle of helping mariners with their paperwork. It is easier to "highlight" blanks on the application, throw it back in the mail, and get rid of it for another few weeks. That is exactly what this proposal does.

§7206(a) & (c). "The Secretary **may** conduct background checks on applicants for merchant marine credentials." The word "may" should be changed to "**must**."

I believe that you may have overlooked the very important fact that most mariners who work on commercial vessels on inland waters (i.e., where all the ports we must protect are located) were never issued Merchant Mariner Documents and, consequently, all fly below the Coast Guard's radar. In addition, even when working offshore on vessels under 100 GRT (e.g., where many important and vulnerable installations are located, especially in the Gulf of Mexico) mariners do not have MMDs either. Over the years, the size of vessels under the 100 GRT thresholds has grown so that it includes some vessels over 200 feet in length. All of these vessels could pose a threat if they were in the wrong hands.

One problem has always been the high turnover of deckhands. Our mariners **expect** the new towing vessel inspection regulations (Docket #USCG-2004-19977) to end the work-hour abuse of our mariners on these vessels. Improving working conditions may improve the turnover situation.

Our mariners working on inland towing vessels where "deckhands" do not require any USCG credentials report employers hire criminals and drug abusers to work on these vessels. During the mid-1990s, the Coast Guard would not pay the small fee to obtain routine FBI checks for all mariners applying for credentials. That invited the type of problems we must deal with today. Has the Coast Guard learned from that experience?

It seems that this Legislative Change Proposal misses the mark if it skirts this issue and fails to require identity credentials and background checks for all merchant mariners – inshore and offshore, on all commercial vessels.

Employers abused their mariners by overworking their licensed and unlicensed personnel – and the Coast Guard did nothing about it for years. A significant source of this abuse is the AWO's Responsible Carrier Program that still tells its member companies that a 15-hour workday is acceptable. **[Enclosure #5]** Even that policy is abused in the "Call watch" system as mentioned in **[Enclosure #3]** for Engineers and in **[Enclosure #4]** for deckhands**.** This contributes to the turnover problem.

§7207(b) and §7404(a)(6). I believe this provision has been on the books for a long time. It does not seem to have any meaning in the context of the drug laws enforced by the Coast Guard. Its meaning and usefulness remains a mystery.

§7210. "If killed or wounded when performing these duties…" Excellent change – only 60 years late!
I am sure Congressman Filner, who stood up for World War II merchant mariners, will appreciate it, too.

§7211(b) & (c). Thank you for including GCMA's requested change in the Legislative Change Proposal.

§7401(a). The "purpose" of Suspension and Revocation should include the words "**remedial in nature**." That is still true, isn't it?

§7404(a)(4). The word "**may**" that governs this subsection is like a Sword of Damocles suspended over a mariner's head for up to 5 years. This leaves uncertainty when a mariner goes to renew his license or MMD. We have had cases like this and they are very stressful, especially when they completed punishment or cure and are not recidivists. This will be an administrative wasteland lorded over by petty bureaucrats acting as God. We can do better than this!

§7405(a). "A **merchant mariner** credential may be temporarily suspended for not more than 45 days…" Does a mariner have a claim to his 45-days lost pay and attorney fees under the Equal Access to Justice Act if the government cannot prove its case? If so, include that information in the proposed statute. Again, note the term "merchant mariner" should be defined.

§7405(b). "…shall be provided with…." Suggest: "**may request**" an expedited hearing.

§7406(a)(1). Unfortunately, you cannot legislate honesty.

Until after 9/11, the Coast Guard seldom scrutinized applications or performed perfunctory checks. In the mid-1990s, Regional Exam Centers purged license files to make space in their filing cabinets. Important personal documents such as court records of convictions were trashed in the process. The whole process was very loose. Suddenly, the Coast Guard tightened the process after 9/11 and mariners were told to find or replace irreplaceable documents the RECs trashed. This was at the root of some of the alleged failure to report convictions settled years before – and had nothing to do with honesty.

Keep in mind that the license and MMD application process became excessively complex over the years – comparable to filing an income tax. The application process and the Coast Guard mismanagement of merchant marine personnel has become the poster child for intolerably poor public service. Processing merchant marine personnel has become such a disgrace that Congress should take it away from the Coast Guard because of the way it denigrates our mariners!

There may be reasonable explanations for minor infractions that ought to be excusable under normal circumstances. However, I have seen these infractions treated as an S&R case where absolutely nothing is excusable and no excuse can deter revocation.

§7706(e). License applications always carried the 18 USC §1001 penalty. I believe the existing penalty is sufficient, even for "willful violations." Expecting to recover $10,000 per day for each day of a violation from one of our mariners is unrealistic!

I seldom see the Coast Guard take a company to court over a license or MMD violation – even when they hire unqualified mariners and work them unconscionable hours. When you show the need to impose a $10,000-a-day civil penalty on a large corporation to make it unprofitable for them to continue to break the law, like working our mariners unconscionable hours, then change the law.

§7406(a)(2) Even paid or unpaid "preparers" who try to help mariners prepare their applications can mistakes. There are so many regulations, policies, and such voluminous NMC guidance documents that it is very easy to get lost. I helped fill out applications for over 30 years. I no longer do so because I could not keep up with all the regulations – and I have a Master's degree.

I watched the Coast Guard harass and threaten an "application preparer" at a local maritime school who was accused of what would become 46 USC §7706(a)(2). I believe those charges were baseless. The harassment was uncalled for. The proposed change escalates the punishment with an overblown civil penalty.

§8101 – The core of your problem with lower-level merchant mariners does not lie in the changes you propose to make. It lies elsewhere. But, since the document mentions §8101, you will find my thoughts in the opening pages of **[Enclosure #3].**

I hope that these comments will be useful.

Very truly yours,
s/Richard A. Block
Master #1014425, Issue #8
Secretary, Gulf Coast Mariners Association

Enclosures

Enclosure #1 – Excerpt from GCMA Report #R-276, Rev. 9, #9, 42, 52.
Enclosure #2 – GCMA Report #R-401, Rev 1, Crew Endurance and the Towing Vessel Engineer
Enclosure #3 – GCMA Report #R-412. Towboat Engineer's Death Points to Need for Changes in the Law.
Enclosure #4 – GCMA Report #R-375, Crew Endurance: The Call-Watch Cover-Up.
Enclosure #5 – AWO Responsible Carrier Program, Section V – B.

THE APPRENTICE MATE/STEERSMAN SITUATION

As the Coast Guard prepared to update towing vessel licensing in the late 1990s following the Amtrak-Bayou Canot disaster, they held a number of public hearings. A major concern voiced by a number of mariners was that there were a number of pilots that could not handle their tows. The Coast Guard interpreted this as a call for more practical training – a call that eventually led to creation of the Apprentice Mate/Steersman program with its Towing Officer Assessment Record (TOAR).

The towing industry is slow to adopt changes. Although the Towing Safety Advisory Committee, that has become very closely linked to the American Waterways Operators, spearheaded many of these licensing changes, GCMA representatives participated in many of the Washington meetings where the Apprentice Mate/Steersman concept was developed and finalized before May 21, 2001.

Although the regulations have been on the books since May 21, 2001 and training of the new candidates presumably has been ongoing, these words appeared in a recent editorial in The Waterways Journal.[1] [[1]*Sept. 19, 2005, p.4]*

"…What is worrisome is that the agency published in its most recent Proceedings magazine a list of persons holding various mariner licenses. This list shows only 84 hold the new steersman license! What this means is that in the entire country, there are only 84 people training to become towboat pilots. This begs the question: How can the industry expect to replace people lost to even routine attrition during the next two years with hardly anyone in the training pipeline? Two years is the average amount of time it will take to train a steersman to become a pilot. The Coast Guard lists about 30,000 operators of uninspected towing vessels, some of whom hold more than one type of operator's license. It is clear that there will need to be a lot more than 84 steersmen out there or there will be a lot of boats tied up for lack of crew. The Proceedings list revealed a problem only exacerbated by (hurricane) Katrina."

Actually, the situation may not be as drastic as pictured. The figure of "84 steersmen" comes from a count made last December that appears in this newsletter. In addition, many candidates for pilot licenses who could provide sea service

letters showing service before May 21, 2001 were able to sit for their pilot licenses directly under the "old" licensing system. However, that window of opportunity has closed.

GCMA Letter to TSAC Licensing Working Group

*[**Background:** The Towing Safety Advisory Committee is a Federal advisory committee that advises the Coast Guard on issues involving the towing industry. Unfortunately, it often serves as a "rubber stamp" for the American Waterways Operators, an industry trade association. On July 14, 2005 Captains David C. Whitehurst and Richard A. Block attended a licensing working group meeting at the offices of Buffalo Marine in Houston, TX. Following that meeting, we submitted the following letter for the working group's consideration. Unfortunately, but predictably, these suggestions were largely ignored]*

July 25, 2004

We respectfully submit that each of the following points be considered in regard to towing vessel licensing by the Towing Safety Advisory Committee (TSAC), the Coast Guard and the towing industry in general.

For TSAC Consideration

1. GCMA suggests that TSAC reaffirm that the purpose of the original rulemaking for Apprentice Mate/Steersman was to provide for systematic training through observation and hands-on training in the pilothouse by a licensed Master or Mate Pilot. It was not designed as off-duty, or after-hours training for deckhands after completing their required 18-month service on deck.

2. GCMA suggests that TSAC reaffirm that, although not spelled out in the regulations, this pilothouse training requires carrying an "extra man" (i.e., the Apprentice Mate/Steersman) in addition to the Master or Mate/Pilot on duty for training purposes. This does involve training expense for the company.

3. GCMA suggests that TSAC reaffirm that pilothouse training is not mandatory for any towing company. However, the regulations and guidance in NVIC 4-01 expect the management of a towing company that trains one or more Apprentice Mate/Steersman to have a training program, to administer it properly, and use the services of a Designated Examiner certified by the National Maritime Center (NMC) to check out each Apprentice Mate/Steersman candidate using the appropriate TOAR.

4. GCMA suggests that TSAC reaffirm that 18 months service on deck with 12 of those months served on towing vessels (as is presently required) is the minimum acceptable service time on deck as a prerequisite to enter the Apprentice Mate/Steersman program. The only way this service time can be shortened is if a candidate attends a USCG-approved training course that trains a candidate in deck skills (counted towards the 6 months required) and/or in towing-related skills (as part of the 12-month towing vessel service requirement).

5. GCMA suggests that TSAC reaffirm that pilothouse training and observation does not include filling the slot or carrying out the duties of any (missing) deckhand, engineer, or other crewmember.

6. GCMA suggests that TSAC consider recommending that approved courses in engineroom safety and equipment

operational subjects pertinent to towing vessels be credited for a portion of the required 18-month sea service required before a person can sit for the Apprentice Mate/Steersman test.

7. GCMA suggests that TSAC consider recommending that existing Academy hands-on training programs could be re-evaluated to calculate any days of sea service that might be applicable toward 1) deck service (6 month limit) and/or 2) towing vessel service (12-month limit). Eight hours are creditable for one day of sea service or as determined by NMC policy.

8. GCMA suggests that TSAC express concern that, after 4½ years of the 5-year grace period has already passed, it appears that management of many towing companies did not fulfill their responsibilities in training Mates/Pilots using the Apprentice Mate/Steersman/Designated Examiner program.

9. GCMA suggests that TSAC consider whether an industry-wide mandatory training program based on an attainable career path to generate Mates/Pilots is a viable alternative and seek help from the U.S. Department of Labor to fund such a program. (Previously suggested at the March 2004 TSAC meeting).

10. GCMA suggests that TSAC reaffirm that one year of observation and training is a fair and reasonable period for an Apprentice Mate/Steersman to participate in pilothouse training, preparing his TOAR, and advancing to Mate/Pilot.

11. GCMA suggests that TSAC consider, the following in light of the existing two-watch system, the 12-hour rules, as well as for increasing their future knowledge. Each Apprentice Mate/Steersman should be given complete instructions by appropriate company officials that are necessary to relieve the fully licensed watchstanders of many paperwork burdens they are expected to complete after their watch ends. This would give the Master more time to rest as well as time to supervise the operation of the vessel that is entrusted to his care.

12. GCMA suggests that TSAC consider whether each Apprentice Mate/Steersman should receive formal training as a Vessel Security Officer so that he might fulfill that "collateral duty" to relieve the licensed officers.

13. GCMA suggests that TSAC consider whether each Apprentice Mate/Steersman be trained to conduct the fire and other required safety drills as well as safety meetings and eventually conduct those drills when he becomes proficient thereby relieving the Master of this collateral duty.

14. GCMA suggests that TSAC consider that, when a towing vessel is safely moored, that the Apprentice Mate/Steersman be trained (and allowed) to relieve the licensed watchstander, and maintain the radio and security watch from the pilothouse, according to company policies and the night orders left by the Master.

15. GCMA suggests that TSAC consider recommending that each Apprentice Mate/Steersmen be trained in as many different geographic areas and on as many vessels as possible to gain as broad experience as possible during his apprenticeship. *[**Note:** The Apprentice Mate/Steersman system tacitly replaced the older system where one licensed officer took an unlicensed mariner "under his wing" and trained him until he was a proficient Mate/Pilot. While the old system successfully trained many of today's pilots, the same personnel conditions that supported the older system may no longer exist in many places following the Pilots Agree strike of 1998. See #30 below.]*

For USCG Consideration

16. The Coast Guard's National Maritime Center approved hundreds of training courses that now serve as a basis for training merchant mariners. However, when the Coast Guard fails to budget the funds to monitor these training courses and, by default, trusts any for-profit system (even an "educational" system) to operate without adequate and knowledgeable supervision, the entire training system – especially a complex one – is likely to fall apart. Captain Fink (NMC) described his budget shortfall at a TSAC meeting at Headquarters a year ago.

17 The Coast Guard failed at Headquarters level to transmit in an effective and timely manner the importance of the new towing vessel licensing program the TSAC License Working Group helped to put together in 2000-2001 to their own Regional Exam Centers. Nor did the Coast Guard undertake the task of outreaching to **EVERY** company in the towing industry to tell them about the new licensing program and Apprentice Mate/ Steersman program. (GCMA is disgusted that, after all the TSAC License Working Group did that the Coast Guard failed to get the message out.)

18. In a letter to Captain R. L. Skewes (G-MSO) on December 15, 1997, we pointed out that the Coast Guard was not getting its message out to "lower-level" mariners in general and made some suggestions. These suggestions now appear in GCMA Report #R-382 available on our web site and is "nothing new."

19. It is clear that many companies may not understand the need for Designated Examiners. Some companies signed up dozens of Designated Examiners while other companies only have one or two – and the vast majority of companies have none! Yet, since 2001, the Coast Guard signed up 652 individuals and apparently never brought this discrepancy to the attention of anyone in authority – after 4½ years.

20. GCMA cannot fathom why the Coast Guard took no action to establish and contact a complete list of all the corporate players in the towing industry including the 900+ towing companies that own towing vessels but are not members of the AWO or OMSA trade associations. Although the USCG cannot force management to attend meetings, unless they contact management of these companies with a stiff, no-nonsense letter about what is coming down the pike, implementation of the new licensing and inspection regulations will be as dismal a failure as the current Apprentice Mate/ Steersman – Designated Examiner program has been in producing enough Mates/Pilots for the industry. We called for this effort at two separate TSAC meetings.

21. GCMA suggested to the USCG representative at the TSAC License Working Group meeting in Houston on July 14, 2005 that the Coast Guard notify each towing company by certified mail, return receipt about important new programs such as the licensing program (and also the inspection

program) so that these companies can be held responsible for complying with this information. The response we received was that the Coast Guard was "not funded" to do anything like that. We find this unacceptable! We question whether the Coast Guard must get permission from Congress to buy postage stamps to save a program it has already invested considerable time and money on. (GCMA alone spent over $6,000 to send representatives to attend the License Working Group meetings. This says nothing of the expense to every other Working Group member).

22. The seventeen RECs' failed to handle their licensing load in a prompt and expeditious manner for the past five years. This discouraged many mariners from pursuing a career in the towing industry. In spite of industry complaints and in spite of the fees the Coast Guard charges mariners for almost every license transaction (with the most noticeable exception of time-consuming STCW transactions), the Coast Guard failed both the towing industry and its mariners. GCMA has records of the Coast Guard's failures to manage the system going back almost 20 years.

23. **Homeland Security Issues:**

- Neither the Coast Guard nor the towing industry treat unlicensed personnel on the western rivers or those who work on towing vessels under 100 GRT offshore as bona fide "mariners." Most, with the exception of tankermen, are not required or even permitted to obtain entry-level documents (MMDs). The Coast Guard has no record of who these individuals are nor does it know their background. Consequently, the Coast Guard has virtually no authority over them. Although such practices might have been acceptable before 9/11, this needs to change.
- "Green deckhands," who may be acceptable to some employers, may no longer be suitable for the Coast Guard since they not be able to pass criminal record checks. GCMA hears reports of suspected illegal immigrants working on vessels in these categories. One of the complaints our experienced mariners often report but must to cope with on board the vessel is their deckhands' lack of training. Now they also learn that many deckhands also have drug abuse and violent criminal records.
- Since the shortage of Mates/Pilots puts pressure on companies and mariners, both groups need to understand the enhanced implications of submitting a false report, including false sea service, to the Coast Guard. This might be avoided if regulations were put in place to ensure that vessel logs are signed by the steersman and entries are verified by the vessel's Master. *[Refer to 18 USC §1001 and 46 USC 8104(c) that includes recordkeeping requirements for "hours of service." Also refer to GCMA Report #R-291, Revision 1, Establishing Logbook Standards for Lower-Level Mariners.]*

24. The Coast Guard must seek to simplify the licensing process for lower-level mariners. Without disrupting the TOARs established to assess skills, we suggest these general "book knowledge" test changes:

- **Establish one basic exam from 25 to 200 GRT.** Drawing on the similarities between the exams for Master 100-ton, Master 200-ton, and the exam for Apprentice Mate/Steersman (for any size towing vessel), these exams should be combined into a single basic exam that tests the book-knowledge of 1) Deck-General, 2) Deck-Safety, and 3) Rules of the Road questions that apply to all inspected vessels of the size range of 0 to 200 GRT. Most of this material would be generic to all commercial inspected vessels and would require the candidate to demonstrate familiarity with the CFR and other government publications as references.

- **To this basic exam add:**
  1) A separate Western Rivers Navigation module to test candidates for western rivers routes on "Navigation–General" topics.
  2) A separate "towing module" for all towing candidates. This would differentiate a towing license from a non-towing license. The towing module represents the "book knowledge" required for all towing modes. Although normally taken at the Apprentice Mate/Steersman level, it also should be available for any individual moving into the towing sector. Existing towing questions in the USCG database should be sufficient to outline the subject area with ongoing advice from TSAC. These questions should cover all types of towing without distinction.

- **Addressing specialties that cause problems:**
  1) A candidate who needs to use a Western Rivers license on the Gulf Intracoastal Waterway where there are limited expanses of "open water" could attend an approved training course in basic piloting including use of GPS to learn how to lay out a course from buoy to buoy and find his position in the limited expanses of protected open water in fog or if buoys are missing. Keep in mind that the greatest distance between buoys on the Gulf Intracoastal Waterway is no more than 5 miles. (Vessels in these waters should be equipped with GPS.) This approved training could lead to a limited endorsement for the "Gulf Intracoastal Waterway" instead of a more strenuous "inland waters" endorsement required in other parts of the country like Long Island Sound and Chesapeake Bay with broader expanses of open water.

  2) Require each candidate for an Inland Waters, near-coastal, or oceans route to take an approved piloting course to demonstrate the proficiency currently required by the 200-ton course (i.e., which does not differ greatly from the 100-ton requirement.)

- **Tonnage considerations:**
  1) The tonnage on any license up to 200 GRT issued still should depend upon the tonnage of the largest vessel served on for at least 30 days plus the usual margin that allows credit for service or observation on a larger vessel. Typical license tonnages in the past were 25, 50, 100, 150, and 200 tons.
  2) On river and inland routes, any initial tonnage above 200 tons (i.e., 500 GRT and 1,600 GRT) could be issued according to proven sea service according to vessel tonnage accompanied by 30 days observation and training in the pilothouse on larger vessels as certified to by a Designated Examiner on a TOAR as satisfactory.
  3) On near-coastal and oceans routes where most tugs previously were built less than 200 GRT, the licensing is controlled in part by STCW and the next tonnage step would continue to be 500/1,600 tons.

25. **Entry level training on towing vessels.** NVIC 1-95, based on the TSAC report of February 7, 1994, recommended Voluntary Training Standards for Entry-Level Personnel on Towing Industry Vessels.

The Coast Guard is responsible for superintending the U.S. Merchant Marine. In light of its poor workplace safety record[1] we suggest that the National Maritime Center approve formal deckhand training curricula and facilities and make attendance at such a program mandatory for all new entrants into the towing industry.

GCMA suggests the training be offered only in USCG "approved courses" for deckhand training since most mariners hired "off the street" need basic seamanship training once in their career. That one-time course should be taken before entrants are allowed to serve in the towing industry.

Although towing companies could offer these courses, the curriculum covered should be separate and distinct from any instruction in "company orientation" whose purpose is to cover company policy and employment practices.

26. Mariners should not have to pay "headhunters" exorbitant fees to obtain jobs on towing vessels in violation of 46 U.S.C §10505 or International Labor Organization Convention No. 9 (1920).

27. On a recent list furnished by the National Maritime Center under FOIA, the addresses and contact information of 57 Designated Examiners not affiliated with a towing company were redacted. The Coast Guard should consider obtaining Privacy Act releases from these individuals so that Apprentice Mates/Steersmen working for companies without any approved Designated Examiners might be better able to utilize their services. *[Refer to GCMA Report #R-383, Revision 2, Designated Examiner Qualifications.]*

28. Many mariners prefer not to "put their name on the dotted line" on any paper including a TOAR that is sent to the Coast Guard. The reasons may include:

- They have not been instructed in and may not understand complex Coast Guard methods and administrative procedures.
- They may not trust the Coast Guard to protect their interests from past experience ranging from their treatment at the REC, to vessel boardings, to their Coast Guard's perceived lack of interest in improving conditions on towing vessels.

Consequently, most towing companies and many Apprentice Mates/Steersmen will never be able to count on 100% participation in any organized pilot training program.

29. Mariners cite problems where they left one or two blank spaces on their TOAR for what they believed were valid reasons. However, they reported the REC was not interested in listening to these reasons and rejected the TOAR "incomplete" and "not acceptable." That puts any mariner seeking to upgrade to Mate/Pilot between a rock and a hard place. It also pressures a Designated Examiner to "pencil in" his initials to keep the process moving forward for his employer (who controls his paycheck). There needs to be some uniform policy to resolve this type of problem.

30. In the past, some Captains were willing to volunteer their time to train a friend, family member, or a candidate that expressed interest in learning the trade. This was done at no personal gain other than, perhaps, some degree of satisfaction that comes from successfully training another mariner. Many of these trainer/trainee connections were broken when the company overrode this voluntary effort by arbitrarily assigning the Captain and his trainee to different vessels.

For Towing Industry Consideration

31. It appears that many customers insist upon Masters and Mates holding the 500/1600-ton near-coastal and oceans licenses even though these licenses are in short supply. The 500/1600-ton near-coastal licenses are now equivalent to a third mate license in their cost (e.g., $20,000) and degree of difficulty (e.g., 4-year academy) to obtain. This means these licenses will continue to remain in short supply. An attempt to force mariners to obtain a 500/1600 ton license just to please a customer may place unacceptable pressure on some licensed mariners as well as their employers.

We suggest that these customers may need assurance that the Master of Towing Vessel license is suitable for all vessels of the appropriate tonnage and that industry policy reserves assigning license holders of 500/1600-ton licenses to larger vessels beyond the 200-ton range and vessels in international service that carry larger ITC tonnages.

32. No mariner should be allowed to work for more than 12 hours in a 24-hour period. Until Congress changes the law and provides the adequate protection to unlicensed mariners that we advocated for years, we suggest that the American Waterways Operators eliminate its approval of a 15-hour workday for unlicensed personnel that appears in the Responsible Carrier Program. *[Refer to GCMA Report # R-375, Aug 17, 2003. Crew Endurance: The Call-Watch Cover-up.]*

33. Licensed mariners serving on towing vessels need a crew that is trained adequately to support them. This means that vessel "deckineers" and/or engineers need complete and adequate safety training as well as full training in maintenance and operation of their equipment. This is an area that has been seriously neglected by both industry and the Coast Guard. *[Refer to GCMA Report # R-401, Crew Endurance and the Towing Vessel Engineer – A Direct Appeal to Congress and GCMA Report #R-412, Towboat Engineer's Death Points to Need for Changes in the Law.]*

34. We suggest that employers provide each Apprentice Mates/Steersmen with any specific training necessary to carry out the "collateral" non-navigating paperwork duties dumped on licensed officers by the companies. Some of these duties may be associated with the Responsible Carrier Program and various ISM requirements. This means "Secretarial" duties such as preparing reports, making required log entries, using the computer, conducting inventories etc. will not be required beyond the time allotted for watchstanding duties which fall within the definition of "work" in G-MOC Policy Letter #04-00, Rev. 1.

35. We suggest that each Apprentice Mate/Steersmen be trained fully in security duties so that he may fulfill the role of Vessel Security Officer. This is one of the "collateral duties" dumped on many licensed towing vessel officers by the Coast Guard and violates the 12-hour rules and the definition of "work" in G-MOC Policy Letter #04-00, Rev. 1.

36. Since there is a shortage of Mates/Pilots and Masters of Towing Vessels, we suggest the towing industry establish an industry-wide training program to train new mariners from scratch – possibly similar to the training program established by Kirby Inland Marine. Such a program should offer career training and a clear path for advancement within the industry. We suggest that few if any mariners can afford to pay for training that runs between $100 to $200 per day. Although some may be willing to do so, it is clear that there are not enough to fill in the gaps that currently exist.

37. For the past 4½ years, it appears that a vast majority of towing companies avoided training new personnel under the Apprentice Mate/Steersman program. Their clear preference was to train personnel under the old system rather than encourage use of the new system. This offered a "quick fix" rather than a long-term solution to the pilothouse personnel shortage. This procrastination explains why there is such a difficult transition from the "old" to the "new" system.

38. We suggest that towing companies recognize that "training" is a major cost of doing business on public waterways. We suggest that corporations in this industry invest in their workers not continue to abuse and mistreat them – or consider getting out of the towing business.

39. Although GCMA is not and never has been a union, we suggest to the towing industry that many of their workers want an opportunity to join a union of their choice in a smooth transition to take advantage of "free" union training facilities and other union benefits. Companies support these training facilities and have a voice in training their mariners.

40. Many mariners believe their employers do not have their best interests at heart – and often for good reason. Some companies see no need to cut any slack for an older mariner or a mariner with a history of medical problems that his doctor and the Coast Guard medical review board believes is still fit for duty. Mariners, like machinery, wear out over time. Older mariners may show this wear in the form of medical conditions that require Coast Guard waivers. Some company(1) personnel managers are careless in their exploitation of their older mariners by abusing their work hours, ignoring the severity of the working conditions, and failing to consider the effects of stress(2) on their mariners. [(1)***Example:*** *Refer to GCMA Report # R-370, Rule Violation: The Verret Case. It happens that the company in this case was* ***Delta Towing****. (2)Refer to GCMA Report # R-403, Stress and the Licensed Mariner.]*

41. Many mariners recognize that the towing industry is not a suitable job they will be able to hold until retirement age and, consequently, make other career choices. The towing industry as it now operates does not appeal to many academy graduates to make their career at sea.

42. Many mariners are not good teachers and are not interested in training others. Others, through past experiences in the industry, have no intention of training a potential Mate/Pilot to take their jobs. Some mariners see training a pilot as an additional duty, an extra assignment or a nuisance – and an unpaid assignment at that.

43. Industry management needs to relieve the pressure and stress on all licensed towing vessel officers by calling on the Coast Guard to control the operation of oversize and overloaded tows by other companies that restrict their use of the waterways, cause excessive delays, and result in preventable accidents. *[Refer to GCMA Report #R-340, Oversize and Overloaded Tows.]*

The Delta Towing Question:

44. Our mariners oppose Delta Towing's request to change existing regulations for these reasons:

- The equivalent authority for Masters/Mates of steam and motor vessels of not more than 100 GRT (with "mates" expanded to 200-tons) to serve as operators of towing vessels was dropped in the new licensing regulations for many valid reasons and was discussed thoroughly by TSAC's licensing working group before the new rules took effect.

- A recurring theme expressed by many towing vessel officers in public hearings and comment periods in the late 1990s was the inability of some licensed mates/pilots they worked with to safely handle a tow. The new licensing regulations require a candidate for Mate/Pilot license to prove to a qualified "Designated Examiner" that he actually can handle the boat and its tow. This was a provision that our experienced mariners urged the Coast Guard to put in place. There was no lingering opposition from the companies represented on the TSAC working group on the Apprentice Mate/Steersman and Designated Examiner requirements.

- We suggest that if Delta Towing wants to use these licensed crew boat masters and mates with 100/200-ton licenses, they must become fully qualified in all respects to operate towing vessels by serving a full 12 months as an Apprentice Mate/Steersman under the supervision of a fully licensed Master or Mate/Pilot of towing vessels.

- Since Delta is a large company and has many towing vessels of all sizes that work both inland and offshore, assigning their existing crew boat Captains as a "third man" in the pilothouse to learn about all aspects of towing and towing seems to be exactly what the new regulations envisioned.

- GCMA respectfully suggests that Delta Towing train their licensed crew boat Captains for a year on a variety of towing vessels to give them maximum exposure. We suggest that Delta pay them for the licenses they already hold. We do not believe Delta can expect success if you work them for half-pay or have them "learn on their time off" by expecting them to work on deck in addition to the required "observation" and hands-on training in the pilothouse as suggested in the Houston TSAC Working Group meeting .

- Delta appears to have a number of Designated Examiners that are approved to check out all their Apprentice Mate/Steersman candidates. Your connections with Edison Chouest Offshore indicate you have use of

excellent training facilities – perhaps better than most towing companies.

- The record of Delta Towing speaks for itself in regard using one of our mariners as an example. GCMA Report #R-370, 12-Hour Rule Violations: The Verret Case. The report that shows that management sent a poorly qualified (but licensed) mate-trainee as the second licensed officer on an anchor-handling tug in the Gulf of Mexico. The strain of handling the vessel for 12 hours watches **plus** the additional duty of supervising the mate's training in anchor handling during off-duty hours caused Captain Verret to suffer a paralytic stroke and to become permanently disabled. The vessel should have carried two fully competent officers and placed the mate-trainee as a "third man" in a training slot. This oversight cost Delta Towing well over one million dollars and should have taught them a valuable lesson on this subject.

- Delta and its predecessor companies contributed to the existing pilot shortage by buying out a number of smaller companies and tying up their boats and releasing a number of licensed individuals. Many experienced mariners left the industry – many as a result of this consolidation. Delta must now adjust to the resulting personnel shortage by training new personnel following the new set of rules put in place since the "consolidation" took place. Licensed mariners are no longer a "dime a dozen" and may never be again.

PROMINENT ADMIRALTY ATTORNEY WARNS GCMA OF PROVISIONS OF H.R. 889

*[**Source and Introduction:** Ralph J. Mellusi called and directed us to his posting on website www.sealawyers.com .*

At first glance, the subject matter appears to apply only to "upper-level" deep-sea mariners. However, the implications of Section (§) 425 of this bill should be very clear and equally disturbing to our lower-level mariners as well.

Because of the shortage of experienced merchant mariners at all levels (as documented in a WorkBoat magazine article in the October 2005 issue), it is disheartening to see that Congress appears to have caved in by encouraging use of foreign seamen.

This "Bill" passed the House of Representatives by a vote of 415 to 0. It now moves on to the U.S. Senate. Time is short, and if you find it as troubling as we do, pick up your phone and call your United States Senator – NOW NOT LATER!. His or her number is in the phone book under U.S. Government. Additional emphasis by underlining is ours. The law offices of Tabak, Mellusi & Shisha are located at 29 Broadway, New York, NY 10006-3267. Tel (212) 962-1590 or (800) 280-1590; FAX (212) 385-0920.]

September 26, 2005

Comments on H.R. 889
An Act To Authorize Appropriations for Coast Guard Fiscal Year 2006
(Otherwise known as an Act to Out-Source American Seafaring Jobs)

On September 15, 2005, the House of Representatives, passed H.R. 889. One of the amendments to the Bill, which was sponsored by Congressman Young from Alaska, will have a major adverse impact on U.S. maritime, seagoing labor. Oddly, this amendment sailed through the House without a single opposition, 415 to 0.

The amendment, which is found in **section 425** of the Bill, is entitled "Citizenship and Naval Reserve Requirements." A copy of the Index to the Bill, the relevant section, and Congressional Record are attached as Exhibit 1. Relevant section 425 reads as follows:

"Section 8103 (b) of Title 46, United States Code, is amended by adding the following language at the end of that subsection:

(4) Paragraph (1) of this subsection and section 8701 of this title do not apply to individuals transported on international voyages who are not part of the crew complement required under section 8101 or a member of the Stewards department, and do not perform watchstanding functions. However, such individuals must possess a transportation security card issued under section 70105 of this title, when required."

The significance of this is the following. First, what this Bill accomplishes, in simple words, is that it permits U.S. flag vessels to carry an unspecified number of foreign seamen on international voyages to perform any type of work (outside of the stewards department) excepting work considered to be a "watchstanding function". This means that all non-watch standing work, including but not limited to maintenance and repair, heretofore performed by U.S. citizen crews, can now be performed by foreign seamen.

The impact of this will greatly affect licensed personnel (engine more so than deck) and all unlicensed ratings excepting those in the stewards department.

A glimpse into some history which preceded this Bill is reflected in an exchange of correspondence between Admiral Thomas H. Collins, USCG, William G.. Schubert, Maritime Administrator, and Vice Admiral David Brewer, Department of the Navy, attached as Exhibit "2". *[Attachments are available on the website.]*

As reflected in this exchange and to their credit, the U.S. Coast Guard has stood fast, against the contrary intentions and opinions of these agencies, by properly interpreting and enforcing the U.S. citizenship and other requirements contained in the federal manning laws and regulations. However, and based on the current and growing use of foreign seaman riding crews on U.S. vessels, (more will be said later on this) it would appear that the Coast Guard's enforcement efforts have not been completely effective.

A concise summary of the relevant laws and regulations are contained in the Coast Guard Marine Safety Manual, which can be viewed on line at:

http://www.uscg.mil/hg/g-m-nmc/pubs/msm /v3/c20.htrn

In a nutshell, the current federal law and the Coast Guard's interpretation as stated in the Marine Safety Manual, is summarized as follows:

Definition of Seaman

"In general, the term "seaman" is interpreted broadly by the Coast Guard to mean any individual engaged or employed

in the business of a ship or a person whose efforts contributed to accomplishing the ship's business, whether that person is involved with the operation of the vessel."

"... A crewmember may be a seaman although he or she is not occupying a position required by the Certificate of Inspection."

"... Under normal circumstances, the Coast Guard does not consider a person who is briefly visiting the vessel in a consulting capacity (e.g., a vendor's technical representative) to be a crewmember. Similarly, the Coast Guard does not apply citizenship requirements to shoreside personnel who come on board vessels while they are not underway to load or unload cargo or to perform services such as maintenance of shipboard equipment. However, under most circumstances. individuals who are compensated for performing their jobs while the vessel is underway are considered seamen for purposes of applying citizenship requirements. Waiters, entertainers, industrial personnel, oil recovery workers, riding maintenance crews, and others employed in the business of the vessel are considered seamen." (emphasis added)

General Citizenship Requirements

46 U.S.C. 8103(a) states that only a citizen of the United States may serve as a Master, Chief Engineer, Radio Officer, or officer in charge of a deck watch or engineering watch on a vessel documented in the United States.

Section 8103(b) further states that each unlicensed seaman must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residency, and not more than 25 percent of the total number of unlicensed seaman on a vessel may be permanent resident aliens."

The above quotations are taken directly from the Coast Guard Marine Safety Manual, Vol. 3, Chapter 20.

Other pertinent provisions of the U.S Code pertaining to manning requirements are the following:

- 46 USC section 10101 defines a "seaman" in extremely broad terms (with limited exceptions), as "an individual employed in any capacity on board a vessel.
- 46 U.S.C. § 8701 prohibits employment of any individual that does not have a merchant mariners' document.
- 46 USC section 10302 requires ship owners to have written shipping articles which must be signed with all seamen employed on theft vessel.

How HR 889 Changes the Existing Law.

A new paragraph (4) is added to 46 U.S.C. 8103(b), which does two things:

- it specifically exempts citizenship requirements for persons who are not part of the licensed and unlicensed crew complement set forth in the Certificate of Inspection and who also do not perform watchstanding functions;
- it exempts the requirements to have a merchant mariner's document for this new class of worlcers.

In summary, all persons who by law have been (or should have been) considered seaman, subject to citizenship, merchant mariner document, and other regulatory requirements, which include riding maintenance crews, waiters, entertainers, industrial personnel, oil recovery workers, etc, will no longer be subject to these restrictions, – if this Bill passes in the Senate, is approved by the President and becomes law.

Of particular and crucial importance in this list are the riding crews. For those of you who are not currently familiar with industry developments, it is a fact of life that foreign seamen riding crews, none of whom have been admitted to the U.S. for permanent residency, are currently being used extensively on US flag vessels in violation of existing laws. They are paid significantly less than Federal Minimum wage, they live and work alongside US seamen, logging more sea-time than U.S. seamen, and they perform all manner of routine maintenance work traditionally done by licensed and unlicensed crews.

Maritime Administrator Schubert states in his letter that "it has been a worldwide practice for many decades to utilize foreign and industrial maintenance teams on commercial merchant vessels, both foreign and U.S. registry ships, and also on U.S. Naval Military Sealift Command Ships", and that "the teams are used to perform shipyard type repairs and vessel maintenance that are either beyond the capability of the vessel's crew or which the crew does not desire to do."

With all due respect to Administrator Schubert, what may be done on foreign flag ships should not dictate U.S- flag manning laws. Moreover, the suggestion or claim that American seafarers by design or intent seek to limit the scope of their traditional work and to outsource their jobs, is an astounding claim. Secondly, his characterization and description of the work performed by foreign riding crews on U.S. ships is completely inconsistent with documents I have obtained in litigation involving foreign seamen. Maintenance and other records I have reviewed demonstrate that foreign riding crews are doing the day to day M&R repairs typically done by the U.S. crews during the vessel's normal service. It is not shipyard work, or work which is beyond the capabilities of U.S. crews or work U.S. crews do not want to do. Attached as Exhibit "3" are summaries of four months of overtime records, for one Polish foreign seaman who homesteaded a U.S.-flag vessel during the period 1999 to 2001.

His overtime work was categorized by a maritime expert for my office into ten areas. It clearly shows the work is not only routine, but of the type typically performed by licensed engineering (boiler, main engine) and unlicensed deck and engine ratings. Moreover, whoever heard of riding crews being hired to so "sanitary work" or "taking on ships stores". Other of his overtime records are not attached, as they are repetitive of the same type work. This foreign seaman is only one of many employed on other vessels in the fleet of the same U.S. vessel operator.

The making of a generalized statements as to what foreign riding crews are doing aboard U.S.-flag vessels, is simple to make; however, reviewing the maintenance records in detail – the gold standard will show a different picture.

In the same vein, the comments of Congressman Young as reported in the Congressional Record, that "it is well established that foreign workers may work on U.S. flag vessels on international voyages to conduct various non-watchstanding functions" and that these personnel are not considered seamen" is totally wrong. As noted above, Federal law clearly identifies such personnel as "seamen" and prohibits such employment whether the work performed is watchstanding or non-watching.

How and why this practice has been permitted, and why it has grown are issues that should be studied and addressed.

More pressing at this time, however, is the present problem caused by the House passage of this Bill and the urgent need to prevent it from becoming law.

There are numerous legal authorities including U.S. Supreme Court precedent supporting the Coast Guard interpretation of seaman status. Looking ahead, on the assumption that this Bill will become law, maritime labor will likely see a further curtailment of jobs traditionally performed by U.S. citizens.

One likely scenario will be reductions in the size of the crew composition as set forth in the Certificate of Inspection (COI). Vessel owners may likely argue that such reductions are justified because all maintenance and non watchstanding functions are performed by others thereby permitting the vessel to be operated safely with a reduced COI manning level.

Thereafter, the next inroad may well be based on efforts to reduce the concept of watchstanding activities. Vessel owners may argue that traditional watchstanding really means navigational watches, not in-port watches.

Having brought this matter to the attention of all concerned, it is my hope that individually and collectively efforts will be made to spread the word and to take actions which will defeat this amendment when it is considered in the Senate.

If the merchant marine is to remain vital, dependable and available to perform its historic defense and its new security functions, it is imperative that U.S. flag vessels be manned and crewed by U.S. citizens. I urge all to contact their Senators, the Coast Guard and all groups, associations, and organizations interested in these issues to express their concerns and reasons as to why this amendment should be deleted from the Bill.

Respectfully submitted,
Tabak, Mellusi & Shisha
s/Ralph J. Mellusi
s/Jacob Shisha

GCMA ALERTS COAST GUARD AND TSAC TO AWO REGULATORY HIJACKINGS

It is unfortunate that so few working mariners, especially those working in the towing industry, have taken the time to learn about the Towing Safety Advisory Committee (TSAC) and made the effort to attend at least one TSAC meeting to discover what goes on behind the scenes in the towing industry. Of course, as they say, ignorance is bliss!

The work done by this committee can have a great impact upon the direction the towing industry will take in the future. At GCMA, we worry about the undue influence that the American Waterways Operators (AWO) continues to exert upon the Coast Guard through TSAC.

In the broadest sense, TSAC is a Coast Guard "advisory" committee – one that gives its "advice" to the Coast Guard. The committee meets twice a year, usually at Coast Guard Headquarters in Washington. The Secretary of Homeland Security appoints new members to the TSAC committee based upon recommendations by senior Coast Guard officers after publicly soliciting the public (in the Federal Register) seeking those persons interested in serving on the committee. The committee then appoints "working groups" or sub-committees that are headed by an appointed committee member. These "working groups" prepare reports that are accepted, rejected, or modified when presented to the full committee.

GCMA maintains that AWO has, for all intents and purposes, "hijacked" the important working groups so they can move the AWO agenda forward without opposition from their mariners (i.e., their 30,000 employees) or from competing independent vessel operators. GCMA represents working mariners; to date, no similar organization represents the views, interests, and concerns of independent vessel operators (i.e., small boat companies, the moms-and-pops of the towing industry.

Hijacking #1

"Working Groups" do the work of TSAC, both at the formal TSAC meetings twice a year and in between meetings. However, when the overwhelming majority of members of these working groups are corporate officials from companies that belong to the American Waterways Operators, a powerful beltway lobby in Arlington, VA, we believe this working group's work product is biased against the interest of our working mariners.

Working groups that prepare "recommendations" for the Coast Guard are open to all members of the public whether they attend TSAC meetings or not. However, the fact of the matter is that very few working mariners or independent towing vessel owners or operators attend these meetings – especially when they take place in Washington, DC. The cost of travel, lodging, and rearranging work schedules among other things keep many mariners away. Add to that, GCMA has documented instances where corporate management pressures their mariners (our mariners) to stay away from these meetings and keep their mouths shut. The towing industry has run roughshod over its employees for years!

Two of the active TSAC working groups are those on Towing Vessel Inspection and on Towing Vessel Licensing problems. We believe that both of these working groups were "hijacked" when their memberships were flooded by AWO corporate members to the virtual exclusion of working mariners and independent owners/operators of towing vessels. While inspection and licensing issues are important to management, they are also important to labor!

GCMA presented its case for inspecting towing vessels in GCMA Report #R-276 a number of years ago. TSAC assigned a working group headed by the present TSAC Chairman Mario Munoz, a minor official of the American Commercial Barge Lines, who did his absolute best to delay and derail our initiative. However, GCMA persisted and kept our report up-to-date for almost 5 years.

Although GCMA's dues structure ($36.00 per year) does not provide for travel expenses to attend meetings in distant cities, we were able to keep posted on the activities underway at the meetings in Arlington, VA on July 19 & 20, 2005. Consequently, we submitted a list of "123 suggestions" to the Chair of TSAC's Inspection towing group, Mrs. Jennifer Carpenter, who is also a Vice-President of AWO. After reviewing the final draft of the working group report, we believe that our "123 suggestions" were ignored. However, there is nothing new about this – it has gone on for years. AWO must wonder why we don't get the message.

[GCMA Comment: Our "123 suggestions" appear in GCMA Report #R-419 posted on the GCMA website.]

Hijacking #2

GCMA attended and reported on the Licensing meeting in Houston, TX, on July 14, 2005 to our Board of Directors in GCMA Report #R-416 that is posted on our website. We also submitted the body of our report to Mrs. Jennifer Carpenter, who is the co-Chair of this working group as well. The final report that the working group will submit to TSAC on October 12, 2005 largely ignores our report – again!

The key to understanding our treatment by AWO is to realize that AWO and its member companies want to ignore and marginalize their mariners completely. This tactic has not changed from the days of Pilots Agree and will never change as long as their mariners remain "employees at will." Although they may listen politely,[1] they ignore us completely. *[[1]After all, who wants unpleasantness to mar the façade of a TSAC meeting.]*

For the Houston meeting, GCMA reviewed the problems in an article titled Training and Licensing Problems for Towing Vessel Officers that appeared in our July 2005 newsletter.[1] *[[1]Reprinted as GCMA Report #R-415, Revision 1, available on our website.]*

GCMA Alerts the Full TSAC Committee

At this point, it is only fair to say that the Towing Safety Advisory Committee contains some members who are NOT members of the American Waterways Operators. While AWO members hold key positions on this federal advisory committee, they do NOT hold EVERY position on the committee.

GCMA maintains that the reports that the Inspection and Licensing "Working Groups" will submit to the full TSAC committee for approval on October 12, 2005 are in reality AWO work products. We are asking the full committee to recognize this fact and pass them along to the Coast Guard as AWO and NOT TSAC recommendations. While this may be a technical point, it will show that our mariners have very serious reservations about AWO's hijacking one of the most important means our mariners can present our points of view to Coast Guard regulators. Here is what we said in a letter e-mailed to the full TSAC committee:

"GCMA remained committed to improving conditions for working mariners between TSAC meetings. In reference to the Notice of Meeting published in the Federal Register, we ask you (the Assistant Executive Director of TSAC) to distribute electronically a copy of the material in this e-mail including attachments to each member of the Towing Safety Advisory Committee for their consideration in advance of the committee meeting on October 11-12, 2005. In addition, please provide copies to TSAC's Executive Director, Captain Karr in the Office of Compliance, and Captain Fink at the National Maritime Center. We will comment on three numbered agenda items from the meeting notice and on a fourth item that we determine is essential to the continued presence and contributions of working mariners at future TSAC committee meetings:

- (4) Status Report of the Towing Vessel Inspection Working Group. (INSPECTION).
- Congressional Oversight of TSAC.
- (5) Status Report on the Licensing Implementation Working Group. (LICENSING).
- (7) Legislative Change Proposal Regarding 46 U.S. Code §8509(b)."

Inspection

The Gulf Coast Mariners Association made its position on towing vessel inspection clear at the TSAC meeting on March 15, 2001 in GCMA Report #R-276 and at subsequent meetings.

We believe that Coast Guard must inspect towing vessels in the same manner as every other inspected vessel of comparable size and horsepower. Those regulations, for the most part, appear in 46 CFR Subchapters T & L.

We believe that the formal Coast Guard inspection process is the only way our mariners serving on these vessels can receive the same degree of regulatory protection as mariners serving on inspected vessels of comparable size and horsepower – nothing more, and certainly nothing less.

Our mariners are emphatic that neither self-regulation, nor the Commercial Towing Vessel Examination Program (CTVEP), nor the existing Responsible Carrier Program offer comparable protection.

GCMA continued to work with TSAC until such time as the Coast Guard formally notified us that they required authority from Congress to inspect towing vessels. At this point, we approached Congress with a revised version of GCMA Report #R-276. We continued to review, revise, consolidate, and augment our report through Revision 9 issued on June 1, 2005. We offered this report to the Coast Guard, TSAC, and members of Congress for consideration. **[Attachment].** In addition, all GCMA research reports are available to the public on our website, www.gulfcoastmariners.org

GCMA monitored the work of the TSAC Working Group on Inspection although we were unable to travel to Arlington, VA, to attend meetings. On August 18, 2005 we submitted 123 "suggestions" as GCMA Report #R-419 **[Attachment]** to the working group based on their July 27, 2005 draft document following the Working Group meeting in Arlington on July 19-20.

We subsequently reviewed the Working Group's September 21, 2005 revised document on "Subchapter M" and concluded it contained **irreconcilable differences** between our mariners point of view and those of the consensus of working group members.

We note that the Inspection Working Group contains an overwhelming number of representatives of American Waterways Operators member companies. In fact, we do not believe any independent operators who represent non-AWO companies attended the working group meetings. Consequently, we ask that the "Subchapter M" work-product planned for submission to TSAC be identified, submitted, and forwarded to the Coast Guard without endorsement as an AWO rather than a TSAC product.

We respectfully request that the Coast Guard, out of fairness to our mariners, inspect towing vessels in the same manner as every other inspected vessel of comparable size and horsepower. This will bring uniform enforcement to

regulating vessels of less than 1,600 gross register tons and will be less confusing for Coast Guard personnel to understand and effectively enforce.

Congressional Oversight of TSAC

On August 1, 2005 GCMA submitted GCMA Report #R-417 **[Attachment]** to members of Congress requesting additional Congressional oversight for and recommending changes to the composition of the Towing Safety Advisory Committee.

Licensing

GCMA has a serious problem with one Licensing Working Group recommendation. We do **NOT** believe that the Coast Guard should amend its licensing regulations to eliminate the requirement for a mariner hold a license as Apprentice Mate or Steersman for 12 months for the reasons enumerated below:

1) The Coast Guard does not track the personal information, security background, or sea service of most unlicensed personnel on commercial inland and river towing vessels or on coastal towing vessels of less than 100 GRT by requiring merchant mariner credentials (MMDs). This represents a security gap that the Coast Guard must address in the future. Consequently, the time a person claims to spend as a deckhand (or in any other unlicensed position) is only as trustworthy as the sea service letter upon which that sea service is based.

2) The Coast Guard already accepts the 1½ years of unlicensed time at face value with little legal recourse either to serve as a supernumerary in formal training as a Pilot for 360 8-hour days and **NOT** as a deckhand who must beg for an opportunity to train on his off-duty hours. There is much more involved in being a towing vessel officer than just steering the boat.

GCMA Report #R415, Rev. 1 **[Attachment]** presents our views on a number of licensing problems.

We would like to point out two other licensing issues that may require TSAC and Coast Guard attention.

The first was an issue that the original Licensing Working Group sidestepped in 2000-2001 hoping that it would resolve itself. This issue appeared as a "Letter to the Editor" in The Waterways Journal that I cite below:

Training Pilots

*[**Source:** The Waterways Journal, Letter to the Editor, by Mark Haury. Sept. 19, 2005.]*

"One of the things I've always enjoyed in my 23+ years as a pilot is talking with friends and acquaintances up and down the river. Most of the time it's all friendly chatter but there are occasions when serious issues need to be discussed and we are entering into one of those times now.

"The law of supply and demand is starting to have a serious effect on the pilot market. It is resulting in higher wages as the number of pilots declines. This shortage of pilots will only get worse over the next few years due to deaths and retirements, but also due to the new licensing rules the mariner or to company officials who inflate this sea service to serve their own purposes. Our mariners are aware of many cases of "paper" sea service. This would not have been the case if Congress required all mariners serving on commercial vessels to hold a Merchant Mariner Credentials as was recommended in the mid-1990s or for security purposes following the 9/11 terrorist attack.

3) The weakness of the existing apprenticeship program is evident from the following words extracted from the Working Group's proposed statement: "…(I)ndustry practice regarding the training of wheelhouse personnel varies considerably. In some companies, for example, the holder of an Apprentice Mate or Steersman license (sic) occupies a supernumerary[(1)] training position on the vessel, meaning that he or she has the opportunity to spend virtually all of his or her time steering under the supervision of an experienced master, mate, or pilot….In other companies, meanwhile, the holder of an Apprentice Mate or Steersman license works essentially as a full-time deckhand, making use of opportunities to steer under supervision when circumstances allow." To this we will add that it is an increasingly common practice for Apprentice Mates and Steersmen to stand regular watches in the absence of a second properly licensed officer on towing vessels in 24-hour service. *[[(1)]**Vocabulary: Supernumerary:** Extra or additional position.]*

4) If the Coast Guard is to amend licensing regulations, we believe it should be in a direction that requires uniformity of training practices so that an Apprentice Mate or Steersman receives uniform (and comprehensive) training along with the broadest possible experience. To do this, the program must be strengthened to require Apprentice Mates and Steersmen to that state that new pilots must serve an apprenticeship for 1½ years before standing (the) back watch alone.

"Assuming that I have the numbers right, this means that for a year and a half we will be teaching these "cubs" our trade. In effect we will be doing two jobs: 1) Standing our own watch, and 2) being a teacher to a young pilot. So how much is this worth? What are the rules for accepting and instructing new pilots? I don't have any of the answers but I do have a few questions and a couple of points to make that we need to talk over with each other, pilot to pilot:
1) What should our financial compensation be for teaching?
2) Who should determine which hands are taught? Should the office be allowed to order us to teach an individual, or should we be able to teach those that we have found deserving, as has always been the case in the past?
3) How many pilots should be taught each year industry-wide?

"Each of these questions deserves to be discussed amongst ourselves. And each is vitally important not only to those of us working in the industry now, but also to the ones that will follow.

"That we deserve to be paid for extra work is pretty much a given.[(1)] But, how much? Remember that you will not only be putting in time, but you will also be giving away hard-earned knowledge, too. How do we put a price tag on that? *[[(1)]**GCMA Comment**: We have only heard of a few companies who offer extra pay as an incentive for training apprentice mates/steersmen.]*

"And most importantly, remember when the market of the early 80s when pilots truly were a "dime a dozen." If we teach too many, we only cheapen our own value, and also that of the

pilots we are teaching. I think that we need to ensure that we have enough pilots to replace those that leave the industry. And that's it! But I want to know what other pilots think also.

"So talk about these issues the next time you "switch over" to chew the fat. I'll be listening in.

The second also appears in a paragraph extracted from an Editorial in the same issue of The Waterways Journal:

"…What is worrisome is that the agency published in its most recent Proceedings magazine a list of persons holding various mariner licenses. This list shows only 84 hold the new steersman license! What this means is that in the entire country, there are only 84 people training to become towboat pilots. This begs the question: How can the industry expect to replace people lost to even routine attrition during the next two years with hardly anyone in the training pipeline? Two years is the average amount of time it will take to train a steersman to become a pilot. The Coast Guard lists about 30,000 operators of uninspected towing vessels, some of whom hold more than one type of operator's license. It is clear that there will need to be a lot more than 84 steersmen out there or there will be a lot of boats tied up for lack of crew. The Proceedings list revealed a problem only exacerbated by (hurricane) Katrina."

GCMA Report #R-383, Rev.2 **[Attachment]** discusses the Designated Examiner problem in detail.

46 U.S. CODE §8509(b).

GCMA joins with MERPAC in fully supporting the Coast Guard's Legislative Change Proposal.(1) *[(1)This long-overdue change would require officers serving on towing vessels in the offshore oil industry to hold a towing license.]*

As the World Turns

When all is said and done, no matter what TSAC recommends, no matter what AWO recommends, and no matter what GCMA recommends, the Coast Guard will make the final decision and turn it into regulations at some future date.

GCMA has submitted all of its positions to the Coast Guard for their review.

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MARINER CREDENTIALS (AS OF DEC. 31, 2004 [Source: USCG. Proceedings of the Marine Safety and Security Council, Summer 2005.]

Source: U.S. Coast Guard, Proceedings of the Marine Safety and Security Council, Summer 2005, pages 38-40.

After a 10-year hiatus, Proceedings is again publishing statistics on the make-up of the U.S. merchant marine. It is our plan to make this a regular feature of the summer issue.

Technology improvements have enabled us to improve the utility of the published statistics. Previous statistics were based on hand-compiled tallies of annual licensing transactions. While the data provided a general idea of licensing activity and program workload, the figures could not be used reliably to provide a breakdown of the U.S merchant marine population and its qualifications.

The numbers provided with this article represent mariners with the qualification indicated as of December 31, 2004. The U.S. licensing and mariner documentation program is a complex one that meets a broad spectrum of industry needs. There are literally hundreds of different permutations and combinations of licenses and ratings issued to U.S. mariners. It is not possible in the space available to list all of these alternatives. We have patterned the listed categories after previous reports, and it is our hope that these provide sufficiently informative detail. Where qualifications are in transition (for example, the transition from Operator Uninspected Towing Vessel to Master Towing) and there are mariners holding both qualifications, they have been combined.

Many mariners hold more than one qualification. The numbers presented here endeavor to capture all of those qualifications. For example, a mariner holding a license as a 1600-ton Master and an unlimited second mate would be counted in each category. Similarly, a Chief Engineer, Steam and Motor, is counted in each propulsion category.

We hope this breakdown is useful to Proceedings' readers. We welcome your suggestions for improvements.

U.S. Merchant Marine: Summary Statistics

	Total number	with STCW
Mariners with an MMD only	66,870	16,322
Mariners with a license only	95,789	4,166
Mariners with both a license and an MMD	42,176	28,674
TOTAL	204,835	49,162

U.S. Merchant Marine: MMD-holder Statistics

	Total Number
Mariners with one or more qualified Deck Dept. ratings	36,618
Mariners with one or more qualified Engine Dept. ratings	16,921
Mariners with any Tankerman rating	18,214
Mariners with only entry-level ratings	43,339
Mariners with only entry-level ratings + lifeboatman	2,598

Licensed Deck Department

Description	Number of mariners
Master Ocean, Any Gross Tons	3,411
Master Near Coastal, Any Gross Tons	93
Chief Mate Ocean Any Gross Tons	875
Chief Mate Near Coastal, Any Gross Tons	3
Second Mate Ocean, Any Gross Tons	1,417
Second Mate Near Coastal, Any Gross Tons	8
Third Mate Ocean, Any Gross Tons	3,475
Third Mate Near Coastal, Any Gross Tons	102
Master Ocean Not More Than 1,600 tons	5,089
Master Near Coastal Not More Than 1,600 tons	2,742
Mate Ocean Not More Than 1,600 tons	286
Mate Near Coastal Not More Than 1,600 tons	985
Master Ocean Not More Than 500 tons	579
Master Near Coastal Not More Than 500 tons	1,269
Mate Ocean Not More Than 500 tons	78
Mate Near Coastal Not More Than 500 tons	181
Master Ocean Not More Than 200 tons	180
Master Near Coastal Not More Than 200 tons	2,184
Mate Near Coastal Not More Than 200 tons	972
Master Near Coastal Not More Than 100 tons	2,662
Master Uninspected Fishing Industry Vessel	804
Mate Uninspected Fishing Industry Vessel 204	130
Master (OSV)	
Chief Mate (OSV) 1 Mate (OSV)	19
Master Great Lakes and In. Any	305
Mate Great Lakes and In. Any	222
Master Great Lakes and In. Not More Than 1,600 tons	155
Mate Great Lakes and Inland. Not More Than 1,600 tons	53
Master Great Lakes and Inland. Not More Than 200 tons	30
Mate Great Lakes and Inland. Not More Than 200 tons	12
Master Inland And 1,049 Mate Inland, Any Gross Tons	241
Master Inland Not More Than 200 tons	438
Mate Inland Not More Than 200 tons	353
Master Inland Not More Than 100 tons	7,451
Mate Inland Not More Than 100 tons	40
First Class Pilot	3,541
OUTV/Master Towing	13,336
2ND-Class OUTV/Mate (Pilot)	185
Apprentice Mate (Steersman)	84
Operator Uninspected Passenger Vessels	30,518
Assistance Towing Endorsement	21,332
Offshore Installation Manager (OIM)	1,784
Barge Supervisor (BS)	632
Ballast Control Operator	351

Licensed Engine Department

Description	
Chief Engineer Motor	3,175
1ST Asst. Eng. Motor	1,062
2ND Asst. Eng. Motor	1,151
3RD Asst. Eng. Motor	3,940
Chief Engineer Steam	2,204
1ST Asst. Eng. Steam	985
2ND Asst. Eng. Steam	1,108
3RD Asst. Eng. Steam	3,974
Chief Eng; Turbine	2,256
1st Asst. Eng. Turbine	876
2nd Asst. Eng. Turbine	934
3rd Asst. Eng. Turbine	2,105
Chief Engineer (Limited-Ocean)	1,466
Assistant Engineer (Limited-Ocean)	448
Chief Engineer (Limited-Near Coastal)	438
Designated Duty Eng.	2,379
Chief Eng; Uninspected Fishing. Industry Vessels.	589
Assistant Engineer Fish. Ind.	114

Chief Engineer MODU	114
Assistant Engineer MODU	0
Chief Engineer (OSV)	534
Engineer (OSV)	7

Licensed Radio Officer and Certificates of Registry	
Description	Number of Mariners
Radio Officer	335
Chief Purser	189
Purser	65
Sr. Asst. Purser	26
Jr. Asst. Purser	138
Medical Doctor	86
Professional Nurse	85
Surgeon	3

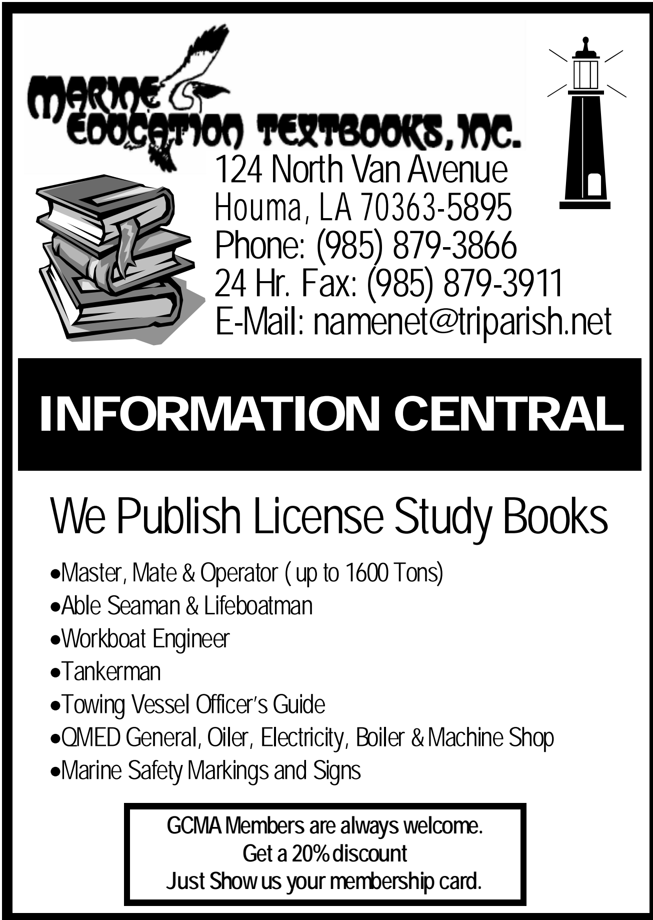
Merchant Mariner Document Ratings	
Rating	**Number of Mariners**
Able Seamen AB-Special	3,649
AB-Limited	3,491
AB-Unlimited	11,870
AB-Special(OSV)	3,241
AB-MOU	2,463
AB-Fishing	173
AB-Sail	299
Qualified Member of the Engine Department	
QMED-Deck Engine Mechanic	179
QMED-Deck Engineer	924
QMED-Electrician	1,199
QMED-Engineman	191
QMED-Junior Engineer	1,505
QMED-Machinist	755
QMED-Oiler	4,583
QMED-Pumpman	1,303
QMED-Refrigerating Engineer	859
QMED-Fireman/Watertender	2,382
QMED-Any Rating	865
Lifeboatman	
	19,810
Tankerman	
Tankerman-Person In Charge (PIC)	4,291
Tankerman-PIC (Barge)	871
Tankerman-Engineer	901
Tankerman-Assistant	4,464
Licensed Officer Ratings	
Any Unlicensed Rating in Deck Dept Except AB	995
Any Unlicensed Rating in Deck Dept Including AB	12,214
Any Unlicensed Rating in Engine Dept	11,137
Cadet/Deck or Engine	3,587
Entry Level Mariners	43,339

"V.J. GIANELLONI REJOINS GCMA BOARD OF DIRECTORS

We are pleased to announce that "V.J. Gianelloni has rejoined GCMA's Board of Directors. "V.J." was one of GCMA's founding members and previously served on the board.

"V.J." is a U.S. Merchant Marine Academy Graduate as well as a law school graduate. He recently retired from the U.S. Army Corps of Engineers where he served as Engineer aboard the dredge WHEELER. He previously served as a Legislative Assistant to former Congressman (and later Governor) David Treen and ran the Congressman's office in Houma, LA.. He also held a commission as a Commander in the U.S. Coast Guard Reserve.

"V.J." established the Louisiana Marine and Petroleum Institute in Houma, LA and served as its director for a number of years. He is active in curriculum writing and is an expert in the lower-level engineering licenses. He is a teacher, an author, and above all is a passionate and outspoken mariner rights advocate. We are proud to welcome him back on the board.



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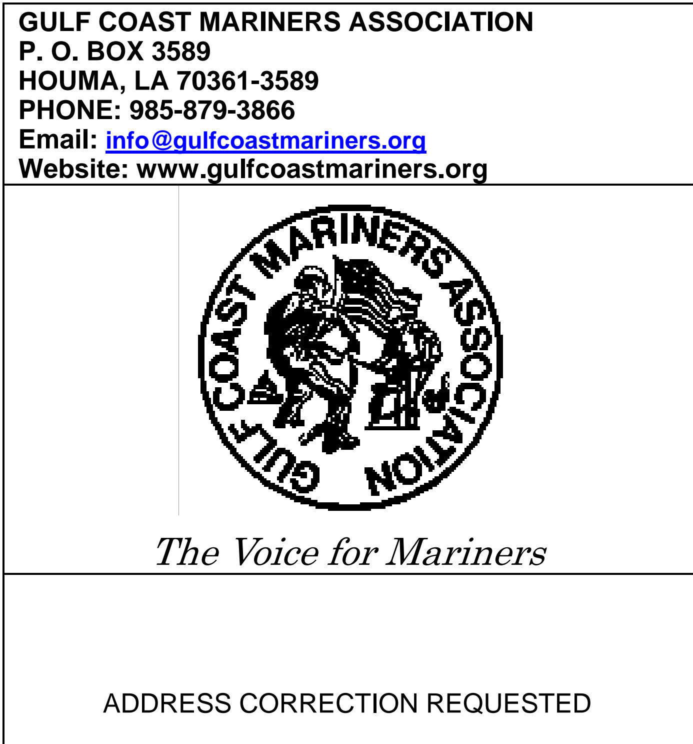

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