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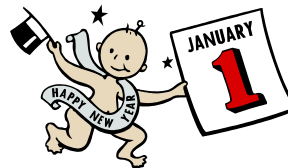
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By CWO Franz Karnuth

Marine Safety Office-St. Louis

[Source: The Waterways Journal, Oct. 3, 2005]

[Note: Underlining for emphasis is ours.]

Four hours into the morning watch, the sky is overcast, and the outside air temperature is roughly 40 degrees. You're manning the sticks of a small towboat on the cold winter waters of the Mississippi River. The boat's two-man relief crew is resting in their bunks. You've picked up one loaded rock barge, topped around, and are backing in to place the barge's port side against a mooring barge. Your sole deckhand rounds the stern port side of your loaded barge, goes behind some cargo covers to secure a line to the mooring barge and begins to put a couple of figure eights on the barge's port stern quarter keel.

Suddenly, out of the corner of your eye you catch something happening with your deckhand a hand, a spray of water. You're not sure so you move to the port side of the wheelhouse to get a better look. Over the radio you hear a call for help. At that instant you know-your deckhand has fallen in the river between the barges.

Immediately, you begin every maneuver possible to keep the loaded barge from landing on the mooring barge. The line to secure the loaded barge is now the noose which you are trying to keep from closing in on your man. The two barges come within just 24 inches.

Finally, you are able to loosen the partially secured line and open the gap between the barges. You see your deckhand struggling to stay afloat and moving downriver past the two barges.

You begin pursuit, thinking, "If I don't rescue him then no one will." You position your loaded barge just downriver so the current pushes the deckhand toward the barge's port side. All the while the deckhand continues struggling to keep his head above the water. You then make the decision to leave the wheelhouse unattended. On your way down to the barge you grab a life ring. You throw the life ring to your man, but he's hurt and can't hold on. Finally, you are able to put a line around the deckhand, but you are unable to pull him back on board the barge. So you tie him off to a keel near the bow of the barge. Reassessing the situation, you now realize that your tow is drifting sideways downriver with an upbound tow of empty barges just a mile or two away.

Racing back to the wheelhouse, you stop to wake the relief crew who quickly report to the deck of the barge. In the wheelhouse, though out of breath, you radio the upbound tow advising them of your situation. This is the first radio call you've made since the deckhand fell into the river. Then, you turn your tow upstream out of harm's way and your crew is finally able to retrieve the deckhand from the river, bruised and confused, but alive.

This is a factual account of an event which occurred in 2005. As you read the account you may have asked yourself what about ...?

...The General Alarm?

When the master realized his deckhand was in danger of being crushed, he could not leave the sticks to press the general alarm button, which was located in the corner of the wheelhouse, on the opposite side of a radar stand.

...The master's decision to leave the wheelhouse?

Once the deckhand was out from between the barges, the captain felt that an attempt to use the general alarm would only produce a mediocre response from the relief crew, because the routine drills had instilled complacency toward the alarm. He felt he had to rescue his deckhand.

...The distress radio call?

At no time did the master make a distress call on the radio.

...The reason the deckhand went overboard?

The deckhand reported that he had swept the barge's starboard side prior to departing the loading area. However, he followed company policy, which prevented transiting outboard sides of barges, and did not sweep the port side. Unfortunately, when the barge was topped around, the deckhand was forced to transit this side of the barge. The deckhand lost his footing due to product on the deck (of the) barge.

...The four man crew?

This company routinely uses a four-man crew, even though the master of the vessel had repeatedly requested an additional deckhand for day work while working on fast moving rivers.

...The deckhand's safety equipment?

The deckhand is healthy, 220 pounds, 5'7", and a nonsmoker. Prior to the incident he was well-rested. The master of the vessel always looked out for his well being ensuring breaks and rest periods were routinely taken. Prior to falling overboard he sustained head and shoulder injuries, however he maintained consciousness. He was dressed with foul-weather clothing and steeled toed boots. The deckhand felt that, had he not been able to use his good arm and kick, the personal flotation device (PFD) would not have kept him afloat. He could not hold on to the life ring when thrown him after being in the water between 10 and 15 minutes. When the other two crewmen were able to retrieve him from the river, the master reported that he was unable to help himself, a sign of hypothermia.

...The upbound tow?

At first the master of the upbound tow thought the distressed tow was just topping around and expected the tow to straighten out. At first word of a man overboard, this

master backed down and offered assistance. At no time did he feel his tow at danger of collision; even if the distressed tow did not straighten out the felt he could have maneuvered his tow around it.

What Ifs

What if... The master fell in the river due to the product on the barge? Who would have kept the tow out of harm's way as it drifted downstream, onto upbound traffic? What dangers would have the sleeping crewmen encounter? A similar casualty occurred in September 1997 when a master attempted to help the towboat's small boat come along side (the tow was pushed in along the bank of the Missouri River) and the small boat's outboard stalled. The master fell overboard after slipping on grain left on the barge's deck and everyone ended up in the river. The master was not wearing a PFD and he lost his life, but the small boat crew survived even after going under two barges.

What if... The deckhand did not sustain any injuries beyond first aid? This would not have been a reportable marine casualty and the Coast Guard would not have been notified. Correctable conditions may not have come to light and valuable preventive information could have been lost.

What if... The incident occurred anywhere else where river obstacles or tow traffic may have been more of a concern?

What if... You could have changed anything leading up to the deckhand falling overboard? What would you have wanted to do, or have done, differently?

- Change the location of the man overboard/general alarm to a place that can be accessible from the master's normal operating station.
- Ensure zero complacency existed during the emergency drills and that there was a way to notify the crew when there was an actual emergency versus a drill.
- Require work PFDs to have sufficient buoyancy to keep a person afloat.

- Do anything/everything possible to keep barge decks free from debris and product.
- Have no less than three deckhands on certain rivers.
- Other ideas?

The facts seem to indicate that people are going to continue to fall overboard. Rarely are masters able to perform as admirably as the one in this incident. Shouldn't crews, equipment and procedures be ready to respond in order to reduce the number of fatalities resulting from falling overboard? And, shouldn't the USCG include man overboard incidents on the Western Rivers as reportable marine casualties? According to the joint American Waterways Operators/Coast Guard program "Safe Decks," three out of every four deaths in the inland towing industry are deckhands, and one of every two deckhand deaths are from falls overboard.

You may have some additional suggestions and thoughts. Feel free to share them by writing CWO Franz Karnuth at Marine Safety Office St. Louis 1222 Spruce Street, Suite 8.104E, St. Louis, Mo. 63103.

(Editors note: We would also welcome your response in our letters column.)

GCMA RESPONSE BY CAPTAIN LARRY GWIN

November 13, 2005

Mr. John Shoulberg, Editor

The Waterways Journal

19 North Fourth Street, Suite 650

St. Louis, MO 63102

Dear Mr. Shoulberg,

This letter responds to the October 3, 2005 article by CWO Franz Karnuth titled Close Call on the Mississippi River – What Would You Do? The article focused our attention on an actual case of saving the life of a deckhand who fell overboard into cold, swift-flowing river water while attempting to tie off a loaded rock barge to a mooring barge.

Without changing the scenario presented in the article, the deckhand should not have been alone on the tow at any time. This reflects an ongoing manning problem that will continue until the Coast Guard finally insists upon adequate manning regulations they are willing and able to enforce. The article stated that the “Master of the vessel has repeatedly requested an additional deckhand for day work while working on fast-moving rivers.” I believe the company should have complied with this reasonable request.

The Master’s first move was to maneuver the boat to prevent crushing the deckhand. I believe he did an excellent job here. When his back was against the wall and another man’s life hung in the balance, the Master did what he had to do to preserve life. I consider this as the overriding issue in the article.

As soon as possible, the Master should have activated the General Alarm to awaken his relief crew. However, it is understandable that the Master delayed because he “could not leave the sticks to press the General Alarm button, which was located in the corner of the wheelhouse, on the opposite side of the radar stand.”

It is worth noting that, “the Captain felt that an attempt to use the General Alarm would only produce a mediocre response from the relief crew because the routine drills had instilled complacency toward the alarm.” It is the duty of the Master of the vessel to train his crew to respond instantly to the General Alarm. I would fault him for this. However, I would also fault the Coast Guard for never requiring realistic man-overboard drills in existing towing vessel regulations. After all, they know that falls overboard are the leading cause of death in the inland towing industry. Nothing is new about this!

The Gulf Coast Mariners Association pointed out this significant shortcoming⁽¹⁾ based on a well-publicized USCG-AWO Quality Action Team Report on Towing Vessel Crew Fatalities dated Dec. 30, 1996. “While the report exhaustively studied the fatality records to determine the cause for these accidents, it is remarkable that it never resulted in action to develop regulations to conduct realistic drills and provide suitable equipment to recover the mariners that fell overboard. It is clear that fatalities from falls overboard have not been satisfactorily addressed by corporate management, the Responsible Carrier Program, or the Coast Guard to the clear detriment of our lower-level mariners – primarily deckhands.” [⁽¹⁾ [GCMA Report #R-276, Rev. 9, Item 12, p. 20 available on the GCMA website.](#)]

If the vessel had sufficient crew available, proper training would require the Master to sound the General Alarm, broadcast the man overboard over the VHF radio, and remain in charge of the vessel from the pilothouse. When he left the wheelhouse unattended, he left the door open for further problems. By doing so, he failed to maintain a proper lookout and put his sleeping relief crew in harms way. I also question why he did not throw a life ring from the wheelhouse to the deckhand in the water. Yet, these are secondary issues.

We can ask “What if...” all day long, but facts presented in this article tell us that manning was a problem. The Master requested additional crew without results. This, in my opinion, shows that when the “bottom line” comes into play, safety drops to a lower priority. This is why the towing industry needs a solid set of inspection and manning regulations. GCMA has done its best to point out a number of shortcomings and provided suggestions on how to remedy them. [⁽¹⁾[GCMA Reports #R-276 & R-419.](#)]

Three out of four deaths in the inland towing industry are deckhands. This is no surprise as our deckhands, many of them with only limited experience and training, are on the “front lines” out on barges and on deck where the action is.

There are a number of additional points I need to make and will do so corresponding with CWO Karnuth in St. Louis and through the Towing Safety Advisory Committee. I encourage the Waterways Journal to print other articles of this type.

Very truly yours,

s/Captain Larry P. Gwin

Member, GCMA Board of Directors

ADDITIONAL POINTS

In a separate letter to CWO Karnuth, GCMA pointed out other initiatives it has taken in the past taken from our files and correspondence. There is nothing new here that has not been covered before – However, it is appropriate to mention them again.

1. **Cold water.** The first paragraph of CWO Karnuth’s article mentions the air temperature. This brings to mind the water temperature that is not as easy or convenient to measure. In fact, most Coast Guard accident reports fail to mention it in spite of its importance.
2. An AWO/ USCG Quality Action Team report in 1996 showed that falls overboard from barges and towboats are the greatest single cause of death to our mariners working on the rivers. In the winter, the cold river water is a real but often unrecognized danger to our mariners because of the effects of hypothermia. About five years ago, our Association formally requested the Coast Guard through TSAC to require anti-exposure suits for towboat deckhands serving on the rivers. Unfortunately, TSAC took no action on our

request – a situation we find WHOLLY UNACCEPTABLE. Our views are explained in [GCMA Report #R-276, Revision 9, Item #51](#) quoted as follows:

■ 51. Cold Weather and Cold Water Protection for Deck Crews

[Applicable Statute: 46 U.S. Code §3306(a)(2)]

[Comparable regulation: 46 CFR §25-25-5(e); 46 CFR §28.110; 46 CFR 199.273.]

GCMA asked the Coast Guard through the Towing Safety Advisory Committee to consider a requirement that would provide flotation and cold weather protection for towing vessel deckhands when operating in cold water and/or cold air conditions. The article cited below describes our request.⁽¹⁾ [⁽¹⁾Source: *Coast Guard/Industry Gets Chance to Rectify Oversight*, *Waterways Journal*, Aug. 30, 1999, p. 4 (editorial).

“Problem solvers are sometimes asked to find solutions when they do not have all of the necessary data they need. That apparently was the contributing factor when the Coast Guard attempted to clarify cold-water areas for which current or proposed regulations requiring lifesaving equipment for cold waters on commercial vessels would be based. The focus is Navigation and Vessel Inspection Circular [\(NVIC\) 7-91](#)^{pdf}

“A letter to Vice Adm. James Card, Vice Commandant, said “Unfortunately, these guidelines [the NVIC] did not take into account water temperatures that are found in various rivers – only those found along the coasts.” The writer, Richard A. Block, editor of the National Association of Maritime Educators (NAME) newsletter, said the omission is a “significant shortcoming.”

“Block cites a 1996 Quality Action Team report. It says, “Nearly 71 percent of all inland sector towing vessel fatalities resulted from falls overboard; that these falls occurred from both barges and towing vessels in roughly equal numbers; and that significantly higher fatality rates were found in the younger, less experienced population of workers.”

“Enclosed with the April 29 letter to Adm. Card was a document titled River Temperatures Along the Mississippi River and Tributaries. Included in the document are recorded engine cooling-water intake temperatures on selected dates and locations aboard a working riverboat and systematically recorded. “The Coast Guard has gone on record that temperatures falling below 59°F are significant for regulatory purposes in NVIC 7-91.” Block wrote. His association believes the thinking behind the NVIC should apply upon rivers just as it does in coastal areas. After all, cold water is cold water wherever found. In rivers, it may be swiftly flowing cold water and, therefore, even more dangerous.

“Block said the association is not aware that the temperature document was ever available to, or used by, the Quality Action Team, so it was offered for Coast Guard consideration. A page of the document provided for The Waterways Journal listed Lower Mississippi River temperatures recorded in 1998 and 1999. They were recorded on the first and 15th of each month. The list for 1998 shows the following water temperatures: January 1, 48 degrees, New Orleans; January 15, 50 degrees, St.

Francisville; February 1, 45 degrees, New Orleans; February 15, 46 degrees, Baton Rouge; March 1, 46 degrees, New Orleans; March 15, 46 degrees, Natchez; April 1, 52 degrees, Memphis. In mid-April temperatures rose above the 59-degree level and remained there until mid-October when they reached 56 degrees at Dubuque. November readings at St. Francisville remained above the mark, but on December 1 dropped to 56 degrees. The reading was the same at New Orleans on December 15. Readings taken in 1999, January through March 15, were all in the 40s at Natchez, New Orleans, and Baton Rouge.

“It was pointed out that in south Louisiana during the winter, the Coast Guard outfits its small-boat crews with effective cold weather insulated flotation gear similar to Coast Guard-approved anti-exposure coveralls.⁽¹⁾ [⁽¹⁾*Now required by §410 of the Maritime Transportation Security Act of 2002.*]

“Adm. Card's July 14 response said Block made a good point about the weather-resistant working suit and that “The use of these suits would be a prudent safety measure during cold weather and one that the Coast Guard would encourage. He said he was forwarding a copy of his letter to the American Waterways Operators for discussion by their membership. “I will also see that it is discussed at the next Towing Safety Advisory Committee meeting and the next AWO/USCG Partnership meeting,” he wrote.”

Comment: GCMA is distressed that neither TSAC nor AWO ever acted on this recommendation.

Falling off a tug, towboat, or its tow is dangerous any time of year at any location. Sometimes victims are crushed between barges, between barges and lock walls, or are sucked under a vessel underway. If a victim manages to reach the surface unscathed, it would be prudent to outfit him so he would not succumb to the cold.

Action: Require by regulation adequate cold-weather gear with USCG-approved flotation on towing vessels where water temperatures drop below 59°F as NVIC 7-91 recommends.

46 CFR §25-25-5(e) (no longer applicable to towing vessels) states: “Each vessel not carrying passengers for hire may substitute an immersion suit for a life preserver, buoyant vest or marine buoyant device required under paragraphs(b) or (c) of this section. Each immersion suit carried in accordance with this paragraph must be of a type approved under subpart 160.171 of this chapter.”

Since immersion suits are cumbersome to work in, we suggest that a USCG approved type V anti-exposure work suit (the type currently furnished to Coast Guard small boat personnel) be required on towing vessels when water temperatures are 59 degrees F or below as cited in NVIC 7-91.

Our mariners **expect** that the Coast Guard to consider this as part of the new towing vessel inspection regulations AND update NVIC 7-91 to include cold water data from major navigable rivers and lakes. If the Coast Guard continues to provide “guidelines” in its Navigation and Vessel Inspection Circulars, that advice needs to be correct, up to date, and relevant to all mariners it affects.

We believe the Coast Guard must take positive action on this issue when it prepares the new towing vessel inspection regulations and urge them to do so. We enclose a letter from Captain John Sutton, one of our Association’s most experienced riverboat Masters, about a man-overboard situation. Please give it your consideration **[Enclosure #1]**.

Since the Eighth District extends to and along the Gulf Coast, we also suggest you consider the enclosed article by Mr. Jim Morris that relates to an actual Coast Guard search and rescue exercise in New Orleans as additional supporting documentation showing that our mariners working on the rivers need cold-water protection. **[Enclosure #2]**.

Our mariners make a point to attend Towing Safety Advisory Committees in Washington whenever they can afford to do so. We think about important issues like lifesaving all the time. We study USCG accident reports and include them in our Newsletters to inform our mariners. Although it is dated, we enclose a copy of our “Lifesaving Issues” briefing notes for a 2000 TSAC meeting **[Enclosure #3]**. These briefing notes express our views and serve to keep our mariners well informed so that they can speak intelligently on these issues.

2. **Be alert to changes.** In the second and third paragraphs of your letter, you state in part: “Suddenly, out of the corner of your eye, you catch something happening with your deckhand – a hand, a spray of water...” “Immediately, you begin every maneuver possible to keep the loaded barge from landing on the mooring barge...which you are trying to keep from closing on your man.”

We examined a similar accident earlier this year where the Captain was not as alert or perceptive and the results were fatal for a young deckhand whose parents are valued members of our Association. The parents, Mr. and Mrs. William Hulen, attended the public meeting on towing vessel inspection in St. Louis last winter with Captain Larry Gwin. We enclose a copy of the article (on Joseph Hulen’s death) that appeared in our Newsletter #33 earlier this year and also appears on our internet website. **[Enclosure #4]**.

3. **Search and Rescue.** It is hard to believe that the Coast Guard, with its renowned national role in search and rescue, has shown such slight interest in resolving a manning problem that relegates the problem of pulling a crewmember out of the water to chance.

Hundreds of towing vessels only carry two-man crews. The case you cited is a perfect example where the deckhand weighed 220 lbs. and wore winter clothing and heavy boots. Although the details are not mentioned in this report, how is one man expected to raise the weight of an inert crewmember out of the water and over the bulwarks? There are answers like “Jason’s Cradle” and “Life Sling”, but they need to be made part of the towing vessel equipment regulatory requirements because the companies never took any initiative on this matter – and we are tired of watching our mariners perish in falls overboard.

4. **General Alarm.** 46 CFR §27.201(a) is a new (2004) regulation that requires a “contact maker” (not a button) at the operating station. In this case, its location apparently was not convenient to the operator although we concede it was installed in the “operating station.” The contact maker should be placed where it is convenient to the person at the controls of the vessel. In addition, if the vessel has an upper wheelhouse, a separate contact maker should be specified for that location as well. The typical “contact maker” (a Pauluhn cast-bronze electrical fitting) allows the alarm to remain on and does not require a person to hold down a button for continuous sounding. This also should be specified in the new towing vessel inspection regulations since this case shows these details were important. Since towing vessels are not yet inspected, many may not have any General Alarms installed yet.

5. **Man overboard drills.** Coast Guard regulations at 46 CFR §27.209 that cover drills only apply to fire drills. Whereas other vessels such as small passenger vessels call for Abandon Ship and Man Overboard drills (at 46 CFR §185.520) this is not true for towing vessels. In light of the fact that almost 1300 towing vessels sank, capsized, or flooded in a 12-year period, this is a very serious regulatory shortcoming that needs to be addressed. If done so in a realistic manner, enough people will note the difficulty (or suffer hernias from) in pulling a soaked 220-lb mariner out of the river so that this will merit regulatory attention.

6. **Reportable marine casualties.** In 2001 GCMA filed suit when our attorney (Mark Ross, Esq.) consolidated this proof that one marine employer had failed to report 44 personal injuries that were serious enough to be taken to court. None had been reported to the Coast Guard. All took place in the Eighth District where nobody in the Coast Guard was willing to raise a finger against the employer to protect the affected maritime employees. We petitioned Headquarters (G-MOA) to change the regulations at 46 CFR §4.05-10(a) to permit any injured party to file his own accident report, but were told that this was explicit in the rule. We disagreed, and G-MOA said they would prepare a policy letter – something they never did! Consequently, we approached Congress and asked them to require a different type of personal injury reporting procedure similar to the procedure used by OSHA (Form 300 et al) to report personal injuries. You can read the background material in [GCMA Report #R-292 \[Enclosure #5\]](#) and a recent update published in [GCMA Newsletter #32 \[Enclosure #6\]](#).

7. “What if...” the Master fell in the river after rushing down to the main deck without sounding the General Alarm. Your article answers the question by using the September 1997 example of

the Master who slipped on grain and fell into the Missouri River. He drowned – end of story!

8. **More effective lifesaving gear.** “He could not hold on to the life ring when thrown to him after being in the water between 10 and 15 minutes.” This is understandable in cold water.

In September 2004, Captain Larry Brudnicki, USCG (Retired), former Commanding Officer of the Coast Guard Cutter TAMAROA and well known for his role in the Perfect Storm, addressed the TSAC meeting in Washington on the subject of safety gear. This former Coast Guard officer described an invention called the “Personal Retriever” that is a sure-fire replacement for the ring life buoy.

It was invented by Paul Driscoll, a retired Coast Guard Master Chief, who spent his career at sea on search and rescue duties. [**Enclosure #7**]. Paul is an Honorary Member of our Association! The story of the “Personal Retriever” appeared in GCMA Newsletter #27. It is really a Coast Guard success story that got lost in the USCG bureaucratic tangle – but that’s another story!

Our Association tries to be “The Voice for Mariners.” We believe it is important to work with the Coast Guard in improving the health, welfare, and safety of our lower-level mariners. We want to encourage you to visit our internet website maintained by our Captain David Miller at www.gulfcoastmariners.org

GCMA DIRECTORS ATTEND TOWING

SAFETY ADVISORY COMMITTEE MEETING AT COAST GUARD HEADQUARTERS

GCMA Directors Captain Joseph Dady, Richard A. Block, and Gwen M. Block represented the Gulf Coast Mariners Association at the semi-annual TSAC meeting in Washington, D.C. When the meeting adjourned, they made a number of stops on Capitol Hill to present “lower-level” mariner views contained in a variety of our GCMA research reports with Congressional staffers who specialize in maritime transportation issues. The index of these reports appears on the GCMA website.

The TSAC meeting covered a number of important issues. We discuss those matters that should be of concern to our mariners below:

Towing Vessel Inspection

The American Waterways Operators (AWO) made a special point to dominate every single working group meeting that dealt with towing vessel inspection. Dozens of AWO member companies presented their views at the four public meetings last winter in Washington, New Orleans, Oakland, and St. Louis as well as at the 12-days of “working group” meetings held in the Washington area since the last TSAC meeting. Their comments, which consistently echoed the “party line” presented their ideas on how they should be allowed to inspect their own vessels with a “Safety Management System” patterned on their existing “Responsible Carrier Program.” GCMA, on the other hand, since 2000 consistently pushed for a real inspection of every towing vessel by properly trained Coast Guard inspectors rather than by “auditors” paid by the individual companies.

Our Association simply did not have the funds to attend all the meetings the AWO-dominated TSAC working group held over the past six months in the Washington area and other distant cities. Although we can understand the anxiety of the tug and barge owners who, with their considerable political acumen, managed to dodge a real inspection program for the past 35 years, our mariners have their own views about safety in a very unsafe work environment. Our views are now in print, deserve equal consideration, and will not be easily dismissed.

Noticeably absent from the entire process are the views of the independent companies that are not members of the AWO. Nobody heard from any of these folks who represent at least 20% of the towing industry if not more. Our Association does not represent their views and the Coast Guard apparently is unwilling to contact them individually. We were told in a meeting last summer that the Coast Guard is “not funded” to do that. So, if you work for a non-AWO company, please alert them to what is happening to them behind their backs!

Last winter, AWO member companies stuffed the public meeting docket⁽¹⁾ with their statements. Their view of vessel inspection is far different than ours! Although GCMA was unable to attend any inspection “working group” meeting in person, we took great pains to participate in a timely manner and in detail to points recorded in the working group minutes in **GCMA Report #R-419**. We submitted our report to the co-chair of the working group, for inclusion in her final report submitted to TSAC. However, our report was not even mentioned in the TSAC working group’s final report although it is 15-pages long and contains 123 concrete “suggestions.” ⁽¹⁾ Refer to [Docket #USCG-2004-19977](http://dms.dot.gov) on the internet at <http://dms.dot.gov>

As expected, the full TSAC committee accepted the working group report in spite of opposition from two quarters, GCMA and the Offshore Marine Service Association (OMSA). OMSA, representing the owners of 250 offshore towing vessels operating in the offshore oil industry, angrily insisted that its name be removed from the list of working group participants. This demonstrated a wide rift between OMSA and AWO-dominated TSAC. Both OMSA and GCMA complained that the working group report accepted by TSAC did not represent our views. In fact, OMSA submitted a formal letter of complaint to Captain Lorne Thomas,

TSAC's Executive Director. The good news is that the Coast Guard accepted GCMA Report #R-419 as well as the TSAC report. A great deal of work from almost a dozen of our licensed masters with years of experience went into our report

The Myth of Substantial Consensus

In their report to TSAC, the working group asserted that it had operated under the “principle” of Substantial Consensus – most likely invented for the occasion. Whatever that highfalutin principle is, it successfully excluded the views of both GCMA and OMSA. Since we were absent from the meetings (since we couldn't afford to attend) or were in a minority (like OMSA) our views were overwhelmed, ignored, or forgotten by the vast majority of working group members who represented AWO member-companies. To try to camouflage this embarrassing fact, the final report submitted to TSAC stated in part:

“More than 120 individual's with a diverse and highly relevant mix of expertise and experience have contributed to the working group's efforts. Working group members include representatives from all segments of the tugboat, towboat, and barge industry, large and small companies, inland, coastal, and harbor operations; dry and liquid cargo carriers; fleeters; and shipdocking companies; and working mariners. Also included are maritime labor unions; representatives from other affected industries, including offshore supply, dredging, passenger transportation, and assistance towing; and knowledgeable third-parties including auditors, surveyors, naval architects and consultants...”

While the statement was truthful, it contained several “conspicuous omissions” as pointed out by Captain Joe Dady. There was not a single non-AWO boat-operating member included in the list of 120 working group members. While maritime labor unions were represented, the vast majority of the industry's workforce remains non-union. Consequently, GCMA and United Mariner were the only group speaking on behalf of lower-level mariners at TSAC

Captain Dady's Remarks

In his prepared remarks, Captain Joseph Dady made these points on behalf of United Mariners and GCMA:

- Recent high severity incidents along with NTSB studies prove the need for a second person in the pilothouse at all times. He faulted the TSAC report for making absolutely no mention of this. (A “conspicuous omission”)
- The minimum manning recommendation must include a properly trained and qualified engineer. He faulted the TSAC report for making no mention of this, either. (Another conspicuous omission.”)

- The TSAC report makes no mention of the fatigue issue. (Another “conspicuous omission”) The following footnote that appeared in the working group’s final report that was accepted by TSAC shows the working group’s true orientation.

GCMA believes it is important that our mariners never forget this:

*“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 supported including such a recommendation in the working report to TSAC.”*

We refer our mariners to two GCMA reports that speak of work-hour abuse against towing vessel crewmembers:

- [GCMA Report #R-375, Crew Endurance: The Call Watch Cover-up](#). We need to push for meaningful legislation to limit the number of work hours that crewmembers can work. This is a safety and health issue.
- [GCMA Report #R-370, 12 Hour Rule Violation: The Verret Case](#). Employers often place their deck officers in situations where they must violate work hour statutes. This is an important safety and health issue that can destroy our mariners as the report clearly shows.
- [GCMA Report #R-412. Towboat Engineer’s Death Points to Need for Changes in the Law](#). The time has come for this industry to stop ignoring and overworking its engineers.



It is Time to Clamp Down on Rogue Towing Companies.

Captain Joe Dady pointed out that fines and civil penalties alone have not proven to be a satisfactory deterrent for the hard-core towing companies who hide under the umbrella of AWO’s Responsible Carrier Program (that serves as an existing example

of a Safety Management System). These companies apparently do not intend to comply with safety requirements until the Coast Guard promulgates enforceable safety regulations. Captain Dady mentioned an example of one east coast tug and barge company with a disgraceful civil penalty record of this company alone consists of 392 line items. We later discovered that this company is no longer a member of the American Waterways Operators although they were members for a number of years. Apparently, the Responsible Carrier Program did little to curb this company's operations that included at least one spectacular barge explosion in New York harbor and numerous oil spills including the infamous Buzzards Bay oil spill mentioned recently in [GCMA Newsletter 34](#) (p.4).

Captain Dady brought a video-clip showing the petroleum barge explosion at Staten Island. Unfortunately, the Coast Guard would not allow him to show an incredible three-minute excerpt to the TSAC gathering. We point out that this is the second occasion at TSAC where our mariners were not allowed to present a video to illustrate important safety issues.

Closing the "Long Loophole"

GCMA, with the assistance of the American Admiralty Bureau "led the charge" to remove 46 USC 8905(b) from the United States Code. To these ends, we also worked in concert with the Coast Guard at the local level to ensure that only Coast Guard-licensed officers are allowed to operate towing vessels in the offshore oil industry.

The Coast Guard plans to approach Congress next year with a Legislative Change Proposal (LCP) to remove this section from the United States Code. Only Congress has the power to change the law.

After LCDR D'Orazio and GCMA presented informative background information, TSAC voted to back the intent of the Coast Guard's Legislative Change Proposal to ask Congress to remove 46 USC 8905(b) from the U.S. Code. The present leadership of OMSA fully supported this move after previously polling its membership.

This change, if enacted, would require all towing vessel officers in the offshore oil industry to hold the required towing licenses. MERPAC previously supported this proposal at their last meeting in Dania, FL, attended by GCMA Director and Chief Engineer Glenn Pigott. We urge Congress to favorably consider this change in FY 2007.

TSAC Did Discuss Previous GCMA Initiatives

GCMA previously presented issues for consideration to the Coast Guard. These issues never would have been addressed if GCMA had not formally requested the Coast Guard to look into them! The Coast Guard considered these issues, prepared

“Task Statements”, and passed those task statements on to TSAC. TSAC can accept, reject, or modify these Task Statements. If they accept the tasks, TSAC then appoints a “working group” to follow through. The Coast Guard can accept, reject, or simply ignore the TSAC recommendation. We must follow this ponderous, bureaucratic procedure to bring mariner issues to the forefront.

- **Towing Vessel Visibility from the Bridge** (pilothouse). The Coast Guard finally prepared a Task Statement (Task #05-03) for the committee to discuss this GCMA initiative and assigned it to a “working group” headed by Mrs. Cathy Hammond of Inland Marine Service. GCMA will participate and furnish information including [GCMA Report #R-275](#) and other information to this working group. The key individual in preparing and following up on GCMA Report #R-275 was GCMA Director Captain David C. Whitehurst.
- **Towing vessel horsepower.** After several years, the Coast Guard prepared a Task Statement (Task #05-02) for a Standardized Method of Reporting Horsepower on Certificates of Inspection. They also prepared memorandum dated February 9, 2005 on this subject. Richard Block gave TSAC a sense of what this very modest proposal covers. It is limited in scope and asks only that the Coast Guard to set guidelines as to how they will require “horsepower” to be correctly stated on every towing vessel’s new Certificate of Inspection. Since this does not involve the important “horsepower-to-barge” issue, it should be non-controversial, straightforward, yet technical in nature. It should reduce the wildly inflated claims made by some towing companies as to the installed horsepower on their vessels. This issue turned deadly serious in the Queen Isabella Causeway bridge allision accident on September 15, 2001 that claimed 8 lives and seriously injured three other unsuspecting motorists.

GCMA Comments as Members of the Public

As members of the public, GCMA representatives have an opportunity to speak briefly for a few minutes at the conclusion of the formal meeting day. The Coast Guard usually summarizes our comments in the meeting’s minutes. Points made (in addition to the points raised by our Captain Joe Dady, previously reported) included:

- **New Licensing Program:** The Coast Guard must solve as a high-priority item the long-standing problems it faces in dealing with merchant mariners at the Regional Examination Centers especially after the flooding of the New Orleans REC that handled 20% of the national workload. Coast Guard bureaucracy at the RECs (and its treatment of our mariners) is a very important factor in explaining why the industry continues to lose its workforce. After a long series of failing policies over the past 35 years, we believe the proposals set forth in the Summer 2005 edition of Proceedings need to be implemented and fully funded by Congress. We have more confidence in Captain Fink as the Commanding Officer of the National Maritime Center than in any of his predecessors.

- The Coast Guard will need to train a sufficient number of **towing vessel inspectors** to inspect all towing vessels. As long as the inspection process follows traditional USCG inspection guidelines (i.e., unencumbered with AWO's benign interference), the Coast Guard can implement inspector training gradually. However, if it follows a new and untested track, training will have to await completion of a final rule that could take many years to complete. GCMA believes the towing industry can utilize its trained third-party auditors to best advantage to help prepare its vessels for a complete and traditional USCG inspection. These auditors can promote the companies' proposed Safety Management System as they presently monitor the Responsible Carrier Program.
- GCMA asked the Coast Guard, the NTSB, and Corps of Engineers to look into the accident where barge ING 4727 breached the Corps of Engineers levee at the New Orleans Industrial Canal that subsequently inundated the Lower Ninth Ward. We noted that many deaths and vast property damage resulted. Although GCMA included "barge inspection" as part of our agenda in [GCMA Report #R-276](#), we see this as an important issue for the future. As of the date of this newsletter, there are reported to be as many as 170 grounded barges following Hurricane Katrina. This speaks volumes about the responsibility for securing these unmanned vessels properly during future storm and high-water events
- GCMA objected to shortening the training period for new towing vessel apprentice mates or steersmen from 12 months as accepted by TSAC. The Coast Guard accepts sea service submitted as a deckhand at face value (even though much of that time may be fraudulent) but can only verify the 12-months of sea service after a person has already submitted a formal application and received his "learner's permit" as Apprentice Mate/ Steersman from the Coast Guard. It is unfortunate that the regulations establishing the apprentice mate program did not specify that the training an apprentice mate receives be as an "extra man" assigned to the wheelhouse to learn his trade. Instead, many trainees must continue to serve as deckhands and "deckineers" during this one-year period thereby defeating the goal to train them as future vessel officers. The Coast Guard needs to address this serious shortcoming and the fact that many companies are using apprentice mates/steersmen to operate towing vessels even though they are not properly licensed to do so.

Crew Endurance Management (CEMS)

TSAC received a briefing from the Coast Guard on the status of this experiment that is still in progress. The Coast Guard and AWO worked hand-in-hand on the Coast Guard's Crew Endurance Management initiative for three or four years. While GCMA sees significant value in CEMS training, we also believe the towing industry is grasping for every single straw it can find to avoid the cost of manning their tugs and towboats with an adequate number of crewmembers.

Many of our mariners are openly skeptical of CEMS yet are unwilling to risk their jobs and “rock the boat” over this issue.

Up until attending this meeting, we believed that the Offshore Marine Service Association (OMSA) was planning to follow AWO member-companies in adopting CEMS on a wholesale basis. However, we were surprised to find that OMSA expressed its doubt as to the viability of the program in their segment of the industry by considering its adoption as “premature.” In a previous meeting we learned that at least one major offshore towing company had undisclosed problems in implementing the program on its large fleet of offshore tugs. We also noted, based upon the presentation, that not every Coast Guard unit found the CEMS approach is suitable for their own use.

Since §409(b) of the Coast Guard and Maritime Transportation Act of 2004 mentions CEMS as a “Demonstration Project”, we believe that there is a fair chance that the final report that the Coast Guard presents to Congress will be a balanced one. We can only hope it will show CEMS strengths as well as its shortcomings – minus some of the “hype” and wishful thinking that clouded the issue in the past.

Other Items

The Coast Guard is preparing its “Work Plan” for the towing vessel inspection rulemaking project. This work plan awaits approval by “Headquarters” although the regulatory team will not venture a guess as to when this will occur. However, when it does, the Coast Guard will get down to the nitty-gritty work of crafting the new regulations. There is a good chance that the rulemaking project will be presented as a Notice of Proposed Rulemaking (NPRM). It is at this point where our mariners need to be prepared to carefully study about 30 or 40 pages of “fine print” and to ask important questions at a few “public meetings” held around the country. Since the NPRM can change based on your comments, we will do our best to keep you posted and pass on your comments if you are not able to attend a public meeting. This will not happen overnight, yet it will demand your careful attention to details!

One speaker made a clear point that we believe is very significant. Congress required towing vessels to be inspected (mandatory) but allowed the Secretary of Homeland Security to accept an appropriate Safety Management System (SMS) (discretionary).

GCMA has no quarrel with a safety management system that is used as a business plan to help implement regulations. However, the new regulations must come first. Nevertheless, it is clear that TSAC’s six-month long working-group exercise put the cart before the horse by tying everything to a Safety Management System and expecting that system to emerge in similar form to AWO’s existing Responsible Carrier Program. They would have the Safety Management System pre-empt and overwhelm the inspection issue. Adequate vessel inspection has been non-existent for towing vessels

for the past 35 years. Full and meaningful inspection of towing vessels is vitally important to improving the health, safety, and welfare of our working mariners.

CAPTAIN JOE DADY'S CLOSING REMARKS TO TSAC

[Captain Joe Dady is the founder of the east coast organization of towing vessel personnel known as United Mariner and is a member of the GCMA Board of Directors.]

I would like to make a brief statement for the record.

United Mariner objects to the omission of any recommendation regarding minimum work hours. We urge TSAC to include a recommendation in line with the International Maritime Organization's study on fatigue and safe work hours. The (TSAC) report as it stands right now does not address the "neutral-time" and fatigue issues.

We believe that the minimum manning recommendation must include a properly trained and qualified engineer.

Recent high severity incidents along with NTSB studies have proven the need for a second person in the wheelhouse. However, the TSAC report makes no mention of this and falls short in that regard.

The (AWO's) Responsible Carrier Program has proven to provide a great improvement in safety when it is complied with. However, it lacks teeth and is not a cure for all the towing industry's ills.

Fines alone are not a deterrent for the hard-core companies who will not comply unless the safety management system is enforced. This is why United Mariner favors a corporate licensing system over civil penalties.

Regarding hull and machinery issues, we ask TSAC to follow the suggestion made yesterday by Ms. Sporen and add an exclusion of critical systems to the failure of redundant auxiliary systems.

We realize the hard work and hours sacrificed by each committee member to finalize this (inspection) report. It would not serve the interests of safety to delay acceptance of TSAC's report. It would be unrealistic to expect TSAC to go back to the drawing board. So, instead, we will ask TSAC to include our concerns in future tasks concerning towing vessel inspection and safety management system updates.

We end on this point. Statistics may show only 5% of towing incidents are of the “high severity” type. This video clip⁽¹⁾ illustrates why 5% is too high a number. [⁽¹⁾ *The video clip shows the explosion of tank barge “Bouchard 125” at Staten Island, N.Y. that killed several mariners. The Coast Guard would not allow Captain Dady to show a three-minute segment from the video.*]

With the foregoing concerns noted for the record, United Mariner supports the TSAC report.

BREAKAWAY BARGE FOLLOW-UP

In [GCMA Newsletter #34](#) we asked the Coast Guard to look into the barge breakaway that left a barge stranded on the wrong side of the levee in a residential area of New Orleans’ Lower Ninth Ward – an area that, as a consequence of the broken levee, flooded a second time and remains uninhabitable. We still have questions and no answers. In fact, we have more questions than ever.

The October 2005 issue of WorkBoat Magazine features a front-cover picture of barge ING-4727 (it looks like ING-4127) lying amidst a debris field of crumpled residences and battered cars in the flooded-out neighborhood. About this particular barge, WorkBoat reports: “About 10% of Ingram Barge Co.’s 4,000 barge fleet was affected including one of its barges that was sucked through the Industrial Canal levee just east of New Orleans coming to rest in a neighborhood.”

GCMA Updates Barge Report to Coast Guard

On October 24, 2005 we met again with the mariner who provided us with his experiences in the Intracoastal Waterway on the day of Hurricane Katrina to discuss the matter. This time we used a copy of NOS Chart #11367 of the area. We added a large arrow to point to the location of the abandoned bulk plant where our informant’s towboat was tied during the storm. The same arrow also points in the initial direction from which the hurricane force winds were blowing on the morning of Hurricane Katrina question. Our mariner indicated that these winds later backed from this direction. Our informant’s description of events did not change. However, the conversation led us to make five important revisions that may be helpful in conducting an appropriate investigation of this incident. We believe such an investigation must take place and filed a FOIA request on September 28, 2005.⁽¹⁾ [⁽¹⁾ *GCMA file #M-601*]

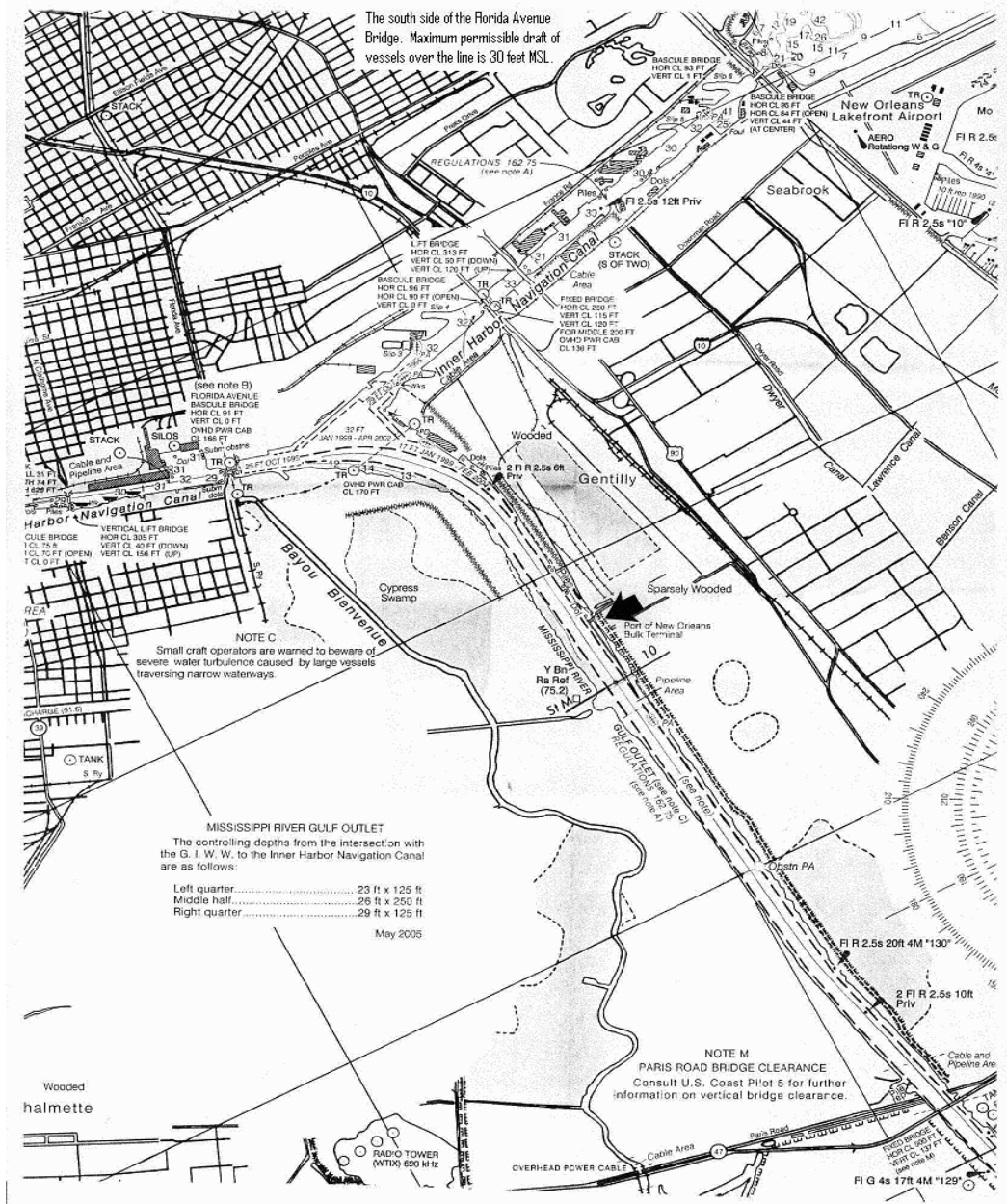
Three Changes

(1) The location of the report moves to the less confined waterway segment outside the new Florida Avenue Bridge. While this is a significant change, it does not reflect a change in our mariner's story of the incident but, rather, results from studying chart #11367 of the area during the discussion rather than working from memory.

(2) The levee breach, if caused by this breakaway barge would have been to the east of the new Florida Avenue Bridge.

(3) At no point did our mariner record the number of the breakaway barge. This number came from post-accident photos. However, the informant noted that the breakaway barge he saw was a dry-cargo barge with its covers intact just as the barge in the photograph on the cover of WorkBoat Magazine. He saw the dry cargo barge break loose from the bulk plant and watched it as the hurricane-force winds propelled it across the canal. After striking the levee across from the bulk plant, he watched it moving in a general westerly direction towards the intersection of MR-GO and the Inner Harbor Navigation Canal, propelled by wind and swells until he lost sight of it in the heavy rain. He did not see the barge again.

- The breakaway barge was tied on the outside of other barges. The other barges were tied more securely and were still there after the storm passed although receding water left them partially on top of the dock. To the best of our mariner's knowledge, none of the towboats tied up with him had brought the breakaway barge to the abandoned bulk plant. He stated that he expected that someone would come and get the barge before the storm arrived. He mentioned that when the storm surge arrived, water overtopped the levees on both sides



of the canal where he tied up at the bulk plant and that the bulk plant itself partially collapsed during the storm. In fact, he was afraid that the bulk plant would fall on the towing vessels that were tied there – but, fortunately, it did not.

GCMA Contacts National Transportation Safety Board (NTSB)

And U.S. Army Corps of Engineers

On October 5, 2005 GCMA wrote to the Chairman of the National Transportation Safety Board on this issue as follows:

“One question that comes to mind is whether this (accident) should be considered an “Act of God” or a preventable transportation accident involving the tug-and-barge industry. If it is a “transportation” accident, it might be one of the largest in terms of human life and monetary loss. Another question that remains open is: Who will investigate it – the Coast Guard or your agency?”

“At present, the Coast Guard considers dry cargo barges such as this as “uninspected vessels.” As such, they receive only cursory attention from that agency. Nevertheless, dry cargo barges are supposed to be supervised by OSHA when they serve as a workplace for our mariners. We do not believe OSHA’s current practices properly protect our mariners who work on them since they have no means of even getting out to see (the barges) except when they are tied to the dock. In short, the proper supervision of over 20,000 dry cargo and other barges is left up in the air between two federal agencies. As the old saying goes, “What’s everybody’s business is nobody’s business.” Apparently it was “nobody’s business” to properly secure this barge for the hurricane. Apparently, nobody checked it! Was this negligence?”

A job not-so-well done

Far down the Mississippi River at Myrtle Grove and Davant, a number of barges were either sunk or grounded by Hurricane Katrina. An article in the September 12, 2005 issue of the Waterways Journal states in part: “Barges affected. The exact number of barges affected at Myrtle Grove–Davant has yet to be determined, but Ingram Barge Company reported it had 102 and Memco Barge Line said it had 67. Teco Barge Line is thought to have had about 60. American Commercial Barge Line and M/G Transport Services are reported to have barges there as well.”

“Amongst the barges on the bank are two towboats, the 6800 hp ANITA M and the 2000 hp ANN PETERS both owned by Teco. When the hurricane started, the crew of the ANN PETERS supposedly transferred to the ANITA M where the 19 crewmen toughed it out during the storm.” We ask: Just what were these towboat crews expected to do during the storm? They are lucky to be alive!

The excellent story, from which we took this excerpt, explained in words and color pictures the extreme conditions mariners faced when they were placed in this very exposed position during the hurricane. This exposed location was not the place where any linehaul pushboat should be allowed to remain in anticipation of a hurricane – any hurricane. In addition, it is also not a location where large numbers of barges should be left, especially by the major barge lines that have adequate horsepower to move them or enough cash to have others do it for them.

We believe the Coast Guard should look into who was responsible for these vessels being left in the location they were in protected by nothing more than the overtopped levees on both sides of the river. If new laws and regulations are required, a thousand lives and billions of dollars in losses cry out for them.

Now would be a good time for Congress to look into changing the American law of shipowners' liability to bring it into accord with international practice and modern policy concerns. The availability of insurance to cover losses in maritime casualty situations, whether of property or personal injury damages, calls new purposes into play.⁽¹⁾ [⁽¹⁾ *Schoenbaum, T.J. Admiralty and Maritime Law, 3rd ed, p.810.*]

The Coast Guard Captain of the Port first warned the marine community as Hurricane Katrina approached southeast Florida and well before it even entered the Gulf of Mexico. If the offshore oil industry can go to the great expense of evacuating its personnel well before a major storm arrives, why on earth does the Coast Guard as supervisor of the waterways allow the tug-and-barge industry to place its mariners lives at risk on vessels that have no business operating in storm conditions on exposed waters? We believe the new towing vessel inspection regulations must clarify the routes and weather conditions each "pushboat" can safely operate in as part of the inspection process in granting an initial Certificate of Inspection.

As of the time of this writing, a TV news report stated that almost 170 barges remained aground after the hurricane. This does not speak to a job well done by the tug and barge industry. Nor, does it heap praises upon the COTP and the Eighth District's efforts to adequately supervise the tug and barge industry. But we expressed our misgivings about this in a number of GCMA Reports such as [#R-340](#) and [#R-375](#).



Where the Coast Guard received high marks

[Excerpt from H.R.889]

SEC. 701. Sense Of Senate On Coast Guard Response To Hurricane Katrina.

(a) Findings- The Senate makes the following findings:

- (1) The response of the Coast Guard to Hurricane Katrina was exemplary.
- (2) The Coast Guard strategically positioned its aircraft, vessels, and personnel the day before Hurricane Katrina made landfall and launched search and rescue teams within hours after Hurricane Katrina struck.
- (3) The impacts of Hurricane Katrina were unprecedented, and the Coast Guard rose to meet the challenges presented by such impacts.
- (4) The Coast Guard moved its operations in areas threatened by Hurricane Katrina to

higher ground and mobilized cutters, small boats, and aircraft from all around the United States to help in the response to Hurricane Katrina.

(5) The Coast Guard rescued more than 33,000 people affected by Hurricane Katrina through the air and by water, including evacuations of hospitals, and has been at the center of efforts to restore commerce to areas affected by Hurricane Katrina by clearing shipping channels, replacing aids to navigation, and securing uprooted oil rigs.

(6) The Coast Guard has been at the forefront of the Federal response to the numerous oil and chemical spills in the area affected by Hurricane Katrina.

(7) As an indication of the effectiveness of the Coast Guard in a time of emergency, the Chief of Staff of the Coast Guard was placed in charge of coordinating all response operations relating to Hurricane Katrina.

(b) Sense of Senate- It is the sense of the Senate that the Coast Guard should play a major role in the event of any future national emergency or disaster caused by a natural event in the United States in a coastal or offshore area. *[End Excerpt]*

But...

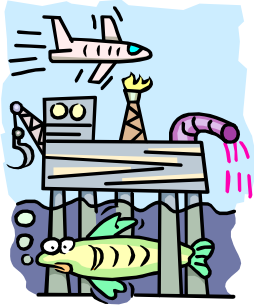
In the words of a September 2004 Marine Safety Bulletin: “Barge fleet, vessel, and facility operators are encouraged to ensure the integrity of barge and vessel moorings within fleeting and waterfront facilities.” Apparently, “encouragement” is not enough to curb an industry that is more concerned about making profits than it is about protecting the public infrastructure its profits depend on. We already know about how well they protect the safety of its mariners. Tying barges off with cheap polypro “Mardi Gras Lines” in an impending storm makes no sense – but it may not be against the law. Leaving barge-line executives and dispatchers free to make the kind of decisions that allow barges to remain in exposed positions makes no sense, either. But they can hop in their SUVs and take off for high ground. When the barges break loose, they pound against, ground on, or break through levees that taxpayer dollars built to protect the lives of thousands of innocent people. Curbing this stupidity will take a much firmer hand than Coast Guard officials have used in the past.

Several of our mariners were shocked at how much damage barge removal activities appear to do to the levees after the storm. Their reports prompted us to make additional comments to the U.S. Army Corps of Engineers since they are tasked with restoring the levees.

HURRICANES DESTROY 109 OIL PLATFORMS

[Source: IOMM&P Wheelhouse Weekly, Oct. 13, 2005]

Hurricane Rita did the most damage in the Gulf of Mexico, which produces nearly one-third of U.S. crude oil imports, Interior Secretary Gale Norton said. Rita destroyed 63 platforms and one drilling rig on Sept. 24, she said.



In August, Hurricane Katrina destroyed 46 platforms and four drilling rigs when it hit the Gulf. Katrina also caused extensive damage to another 20 platforms and nine drilling rigs. Rita seriously damaged 30 platforms and 10 drilling rigs.

“We had altogether, with both of the hurricanes, about 2,900 platforms that were in the path of the hurricanes,” she said. “We have no official estimate of the dollar value of the damage and the amount that it will cost to repair those facilities, but it will clearly be in the billions of dollars.”

A total of 342 platforms remain evacuated, roughly 40 per cent of the manned sites in the Gulf, Ms. Norton said. As a result, 90 per cent of crude production and 72 per cent of natural gas output is paralyzed, she said. But Ms. Norton also stressed that only one of the damaged platforms was built after federal construction standards were tightened in 1988. The ones that were destroyed were nearing the end of their lives. “As a result, only a very small percentage of production is expected to be permanently lost,” she added.

GIVING AWAY AMERICAN MARINER JOBS:

GCMA OPPOSES FOREIGN “RIDING” CREWS

[Background: In our last newsletter (pgs. 28-30) we stated our deep concern about outsourcing American mariners' jobs as reported in Attorney Ralph Mellusi's article.]

Masters, Mates and Pilots Protest

[Mr. Mellusi was joined in his protest by the International Organization of Masters, Mates, and Pilots in their weekly newsletter of October 6, 2005 as quoted below.]

In a position paper prepared for members of Congress that oversee maritime issues, MM&P has expressed strong concerns regarding section 425 of HR 889 as passed by the House of Representatives. This section, entitled “Citizenship and Naval Reserve Requirements” will allow foreign workers to be employed aboard U.S.-flag commercial vessels.

MM&P strongly objects to allowing foreign riding crews to work on board U.S.-flag vessels in the post 9/11 world. The position paper states that, “the legislation does not require that foreign riding crews be subject to the same background checks as are applicable to the vessel’s U.S.-citizen crew. Requiring that these foreign workers obtain a Transportation Workers Identification Card in the future does nothing to ensure that foreign citizens working aboard U.S.-flag vessels are not part of a terrorist organization seeking the opportunity and means to harm the vessel, its cargo and the American crew, or in some other way dedicated to the destruction of the U.S. and our way of life.”

In the paper MM&P also noted that the legislative provision does not limit the nature and scope of the work foreign citizen riding crews would be allowed to perform aboard U.S.-flag ships. MM&P also stated that by failing to limit the number of foreign workers who can be employed aboard a U.S.-flag vessel, and by failing to more specifically define the nature and scope of the work these workers can perform, the legislation raises the distinct possibility that the number of American citizen personnel employed aboard the ship and who will be available whenever and wherever needed by the Department of Defense, will be reduced.

Katie Haven, MERPAC Member, Protests

[This letter was passed to GCMA by Chief Engineer Glenn Pigott, a member of the Merchant Marine Personnel Advisory Committee and member of the GCMA Board of Directors.]

Dear Friends,

I’m sending this along to everyone who I know who is involved in the Maritime industry in some way. The attachment to this e-mail⁽¹⁾ describes legislation that I am opposed to, and I think that many of you will be disturbed by it as well. While most of us know that the practice of hiring “riding crews” to perform work typically done by the ship’s crew is already happening, if this legislation is passed it will open the door for a dramatic transformation of the U.S. Merchant Marine. [⁽¹⁾ i.e., Mr. Mellusi’s letter reprinted in the [Sept./Oct GCMA newsletter](#).]

The amendment mentions that these workers will be required to carry a Transportation Worker ID card, which is a document that doesn’t even exist yet. The questionable status of this document was a big reason that MERPAC rejected proposed changes to the U.S. Code at their last meeting. I see this amendment as a sneak attack on U.S. merchant mariners, and an attempt by the companies to get away with hiring crews that will work for low wages and not have to have any training whatsoever. If they can do this, why bother with STCW at all?

If you read the attachment, you will see that the bill passed the U.S. House unanimously. I believe that was because the amendment was added at the last minute to an otherwise popular bill. Fortunately, we still have time to act, as it now

goes to the Senate committees for discussion. I know that at least one letter has been written to the appropriate subcommittees, and I can only hope that if the committee members start receiving correspondence asking them to remove this amendment from the bill, that at least one or two of them will start asking questions about it.

The first step is to let them know that there is a constituency out here that feels strongly on this issue. I am sending letters to each Senator on the Commerce, Science, and Transportation Committee and urge you to do the same. The website for the (law firm) that generated the letter in this attachment has more information: www.sealawyers.com.

Also, it is appropriate to pass this along to anyone you know who would be interested. Best regards, Katie Haven

GCMA's Protest

[On October 20, 2005 GCMA addressed the following letter to each member of the Senate Commerce, Science, and Transportation Committee. On November 10, 2005 we addressed a similar letter to the House conferees who must settle the differences between H.R. 889 and the Senate bill that contains no mention of Section 425. The letter was sent by fax and its receipt acknowledged in each instance.]

Dear Senator (or Representative) xxxx,

Our Association communicates our strong opposition to **Section 425** of **H.R. 889**, An Act to Authorize Appropriations for Coast Guard Fiscal Year 2006.

Our Association speaks on behalf of approximately 45,000 "lower-level" licensed and unlicensed mariners who serve on the nation's tugs, towboats, offshore oil industry vessels, and small passenger vessels.

Our objection to **Section 425** is that it would authorize the maritime industry to give away jobs that must be reserved for American citizens in order to maintain the strength and viability of the U.S. Merchant Marine. Although its immediate application is to the deep-sea merchant marine, we see this as a precursor of things to come for our mariners who serve on vessels of less than 1,600 gross register tons.

At present, there is a growing shortage of "lower-level" mariners. There are many reasons for this shortage that we cover in detail in a number of research reports that appear on our website listed above. One of these reports, [GCMA Report #R-401](#), mailed to your office earlier this year, explains how employers have avoided making the investment of properly training the "lower-level" mariners who care for the machinery on their vessels.

The maritime industry mistakenly believes it can continue to survive by using cheap, untrained labor. However, the supply of American labor willing to work 84+ hour workweeks under the unsafe and the increasingly intolerable conditions we document in many of our research reports⁽¹⁾ is becoming scarce. Mariner “rights” are virtually non-existent!⁽²⁾ We suggest that Congress needs to address the problems of properly training and supporting American merchant mariners before giving their jobs away to foreigners.

Taking a convenient path of using foreign “riding crews” to do the work of American mariners will give a clear sign to our remaining mariners that they can expect to compete with hordes of undocumented foreigners at lower wages. [⁽¹⁾For example GCMA Research Reports [#R-258](#), [#R-370](#), [#R-375](#), [#R-412](#) available on our website. ⁽²⁾ Refer to [GCMA Report #R-344](#).]

The implications of using undocumented riding crews, or for that matter any undocumented alien at any level on U.S.-flag vessels, clearly undercuts the national effort to improve maritime security since the terrorist attacks of September 11, 2001.

For these reasons, we urge you to remove **Section 425** from H.R. 889. s/Richard A. Block, Sec’y., GCMA



LICENSING

[Source: This “Letter to the Editor” appeared in the September 26, 2005 issue of The Waterways Journal. The letter was written by Captain Ernest Fink, Commanding Officer, National Maritime Center, Arlington, VA. Comments and emphasis by underlining are ours.]

I am writing to respond to the article on towing vessel licensing that appeared in your July 4, 2005 edition. I also enclose a press release providing some information on licensing.

A key element of the new licensing scheme for towing vessels is that candidates are now required to demonstrate their ability to safely operate a towing vessel. The assessment is done before a Designated Examiner, typically a working towboat captain. It is not the Coast Guard’s intent to require training programs to obtain a towing vessel license, and completion of a formal training program is not required for a towing vessel license.

The article alleges an effort by the Coast Guard to “impose” blue-water terminology on the inland towing industry. In order to respect and preserve the different terminology used in different areas, several of the new licenses have dual names: the Steersman license is also known as Apprentice Mate and the license of Pilot is also

Mate of Towing Vessels. The choice of what terminology will be used is left to the individual mariner.

[GCMA Comment: We believe the Coast Guard “bent over backwards” to adopt Western Rivers terminology. It is time to move on to more important issues!]

Similarly, the Western Rivers authority of a towing vessel license was recognized as separate and distinct from other routes and requiring of different skills. This is a significant departure from the past when the authority to operate on the Western Rivers was considered to be lesser and included in an inland, near coastal or oceans license. The new licensing scheme recognizes the terminology and unique operations of the rivers and inland industries.

[GCMA Comment: We emphasize this significant outcome of the public hearings held in the late 1990s where the Coast Guard listened carefully to licensed Western Rivers mariners.]

The article also raises concerns over the background checks to be performed on licensed mariners. I must first note that this is not a new requirement. The regulations concerning criminal history and disqualifying offenses have existed for many years. The current process is the result of the heightened awareness and concern over security issues since September 11, 2001. An analysis of mariners holding a Merchant Mariner's Document (MMD) or "z-card" who were screened since February 3, 2003, reveals that fewer than 2 percent of MMD holders required further evaluation resulting in their applications being denied.

[GCMA Comments: One of the most important changes since 9/11 is that lying to Federal officials including the Coast Guard is no longer tolerated. This extends from falsifying sea-service time to lying to Federal investigators and extends all the way to the White House.]

Concerns such as those raised in the article should be channeled through the advisory committee process or by initiating a request for regulatory change. The Towing Safety Advisory Committee (TSAC) is comprised of towing industry stakeholders who advise the Coast Guard on issues affecting the towing industry. TSAC meetings and working groups are open to all members of the industry and to the general public. TSAC has had a very active role in the development of the current towing vessel licensing regulations.

Capt. Ernest Fink

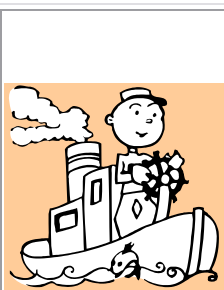
U.S. Coast Guard.

National Maritime Center

**COAST GUARD PRESS RELEASE ON
LICENSING REQUIREMENTS FOR TOWING VESSELS**

[Editor's note: Enclosed with Captain Fink's letter was the following press release. Emphasis and comments are ours.]

In accordance with 46 CFR §15.610 and 46 CFR §15.910, on and after May 21, 2006, all towing vessels at least 8 meters (26 feet) in length must be under the direction and control of a person: 1) licensed as master or mate (pilot) of towing vessels, or 2) licensed as master or mate of vessels greater than 200 gross register tons holding either an endorsement on his/her license for towing vessels or a completed Towing Officer's Assessment Record signed by an approved Designated Examiner and documentation of at least 30 days under observation and training aboard a towing vessel on the applicable route. No other individuals will be permitted to operate these vessels after May 21, 2006.



These vessels must carry a designated Master and, if the vessel is operating more than 12 hours in any 24-hour period, a mate (pilot). An apprentice mate/steersman has no authority to operate these vessels unless he/she is under the direct supervision of a properly-licensed master and/or mate (pilot).

[GCMA Comment: Do not be misled. A mariner with an Apprentice Mate/Steersman “learners permit” is NEVER ALLOWED to stand watch except under direct supervision by a properly licensed Master or Mate (Pilot). “Direct supervision” by a licensed officer does NOT include supervision from the galley, stateroom, or head or other remote location.]

In accordance with 46 U.S. Code §8906 and 33 CFR §27.3, owners, charterers, managing operators, agents, masters or individuals in charge of towing vessels operated in violation of these requirements are subject to a maximum civil penalty of \$27,500. None of this applies to vessels engaged in assistance towing (defined as towing a disabled vessel for consideration).

The requirements to obtain towing officers' licenses are contained in 46 CFR §10.463 – 10.466. They are further discussed in Navigation and Vessel Inspection Circular [\(NVIC\) 4-01](#),

Licensing and Manning for Officers of Towing Vessels:

(www.uscg.mil/hq/g-m/nvic/index00.htm)

For more information, contact the nearest Coast Guard Regional Examination Center.

A listing of all Coast Guard units is available on the internet at: www.uscg.mil/units.html



IMPORTANT CHANGES LIE AHEAD

IN THE FUTURE OF THE NATIONAL MARITIME CENTER

When the Coast Guard Regional Exam Center in New Orleans East sunk beneath the waves of Hurricane Katrina it cut off access by approximately 20% of the nation's merchant mariners to their files as well as license and merchant mariner document transactions.

Following Katrina, the Coast Guard was faced with taking a band-aid approach to patching their failed system or moving forward with a series of modern improvements.

Fortunately, the Coast Guard's plan to transform its licensing and documentation program took shape well before the hurricane. On May 13, 2005, the National Maritime Center (NMC) was tasked with implementing the plan. The Summer 2005 edition of Proceedings of the Marine Safety and Security Council ("Proceedings" for short) published a series of articles outlining tentative plans for the future of the Coast Guard's Mariner Licensing and Documentation (MLD) Program. These plans were "tentative" in that they required funding from Congress. Hurricane Katrina demonstrated the importance of moving ahead with the new program. We now

understand that the program will be funded in Fiscal Year 2006 (i.e., now!)

The remainder of this article is based on excerpts from Proceedings. It will give our mariners a glimpse of the direction that the National Maritime Center plans to take us. [*Emphasis by underlining is ours!*]

The Future of the National Maritime Center Restructuring and Centralization of the Marine Licensing and Documentation Program.

[By CDR David W. Kranking]

The Coast Guard's Mariner Licensing and Documentation (MLD) Program has reached a state in which there is little disagreement that changes are necessary. Fortunately, the National Maritime Center, (NMC) has designed a plan to address these necessary changes. NMC plans to restructure the way the MLD Program is organized and centralize its operations.

The Commandant has approved the plan to implement a comprehensive restructuring of the program by which merchant mariners obtain their credentials. The plan was developed by the National Maritime Center with the input of many stakeholders, those in industry as well as internal to the Coast Guard. The Commandant included this initiative on the short list, of his unfunded priorities that was submitted to Congress in February 2005. Despite the "unfunded" status that qualified the restructuring for consideration on the Commandant's list, the Coast Guard is committed to finding a way to effect the necessary improvements to the MLD Program sooner than the normal budgeting process may allow. Ideally, NMC would begin the multi-year implementation of the plan in 2006, if possible.

Current Situation

In general, mariners consider the service provided by the MLD Program to be slow, inconsistent, and unresponsive. While not intended to minimize this public opinion, which is justified, the situation is that the staffs at the 17 Regional Examination Centers (RECs), despite doing commendable work under the circumstances, have been overcome by increases in their responsibilities.

The volume of applications of mariner credentials has resulted in delays in the processing of those applications. Mariners have become rather astute at comparing the backlogs at various RECs, choosing to submit their applications to the REC where they hope to receive faster service. Although this may satisfy their immediate need, it can make it difficult for any given REC to manage its expected workload. In addition, it can compound the fact that mariner records are not consolidated-the National Maritime Center is the custodian of the records of the issuances of Merchant Mariner Documents (MMDs), while the RECs maintain the records for licenses. (Many mariners hold both a license and an MMD.) "REC shopping," while permissible, may necessitate the shipment of records between RECs, adding to the processing time, or result in the further splitting of a mariner's official record.

Although the National Maritime Center is the MLD Program Manager, disseminating policy and issuing guidance to the Regional Examination Centers with whom the mariner customers interface, NMC is not in the chain of command of the RECs. Rather, each REC works for its respective Officer in Charge, Marine Inspection (OCMI). With 17 RECs interpreting and enforcing national policy, influenced by the discretion extended to 17 OCMI's, inconsistency is admittedly a possibility. Mariner groups have cited examples whereby applications containing identical documentation for two mariners seeking the same credentials have been processed with different outcomes by different RECs-or even by different Coast Guard evaluators within the same REC.

As far as complaints regarding the program's unresponsiveness, mariners cite an inability to contact the RECs by phone when seeking general program information or an update on the status of their applications. The processing delays, actual or perceived, naturally increase the volume of calls, which in turn takes away from the time spent evaluating the application packages.

To help reverse the trend in the growing number of applications in the processing queue and, consequently, the amount of time to process an application, the National Maritime Center has placed contracted support personnel at 16 of the RECs to augment the Coast Guard staffs. This support has been invaluable; however, it has been expensive and is not expected on its own to improve the situation to the point of satisfying customer expectations. Also, the support has not enabled the permanent REC staffs to devote the necessary time to other program requirements such as the oversight of the steadily increasing mariner training course industry.

How We Arrived Here

Since 1990, the MLD Program has experienced a significant increase in both the scope and complexity of its responsibilities. However, with the exception of the temporary contractor support added at the Regional Examination Centers over the past three years, staffing levels have changed little since the regionalization of the program in 1982.

The Oil Pollution Act of 1990 (OPA 90) had a significant impact on the licensing and documentation of mariners. Drug testing of applicants was introduced, as was the requirement for applicants to submit to a check of the National Driver Register. However, the greatest effect of OPA 90 on the RECs' workload was the change that made Merchant Mariner Documents renewable credentials, where previously they did not expire.

The 2002 implementation of the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW) 1978, as amended, added significant complexity to the evaluation of many mariner applications. The increased training and assessment requirements for mariners created a market for training courses to fulfill those requirements, courses that the Coast Guard must

approve and oversee. An entirely new credential, the STCW certificate, also became the responsibility for the MLD Program to issue.

The imposition of user fees for application evaluation, credential issuance, and exam administration further added to the workload of the Regional Exam Centers, as they are required to collect and account for these funds. Changes to the regulations governing the licensing of mariners in certain segments of the maritime industry increased the types of credential endorsements that may be issued, each with its own specialized requirements.

Finally, as a result of the events of September 11, 2001, enhanced safety and security screening procedures were put into place. Compliance with regulatory requirements for verifying the identity and nationality of applicants and the administration of the specified oath by mariners is strictly enforced. The MMD was replaced with a new card incorporating tamper resistant and anti-counterfeiting features. New procedures, including the NMC-centralized screening and evaluation of applicants' criminal backgrounds, were implemented to enhance safety and security of the nation and the marine transportation system.

From this description, one can see that the evaluation process for mariner credential applications has become significantly more intricate. There are approximately 210,000 active merchant mariners. The MLD Program has experienced a 25 percent increase over the past 10 years in the number of applications received annually. More than 84,000 credential transactions were processed in Fiscal Year 2004 by the RECs, which also collected and accounted for over \$7 million in user fees. The number of Coast Guard-approved mariner training courses now exceeds 1,800. Again, the MLD Program's personnel resources have not increased commensurate with the workload.

MLD Program Vision: Security, Efficiency, Consistency

The challenge facing the Coast Guard is far from trivial. To meet its current and future mission demands, the MLD Program has subjected itself to a critical review and developed a comprehensive plan to improve its service. Security is one guiding principle. The program must ensure that the credentialing of merchant mariners does not represent a gap in the security of the nation and the maritime industry; it must also ensure that credentials are only issued to those who are qualified and have demonstrated the necessary character.

To ensure that mariner customer service expectations are met, the MLD Program must also be designed to provide efficiency and consistency. These primary objectives will be fulfilled through the organizational restructuring of the National Maritime Center and the Regional Exam Centers, including their relationship to each other, the centralization of many of the functions historically performed by the RECs, and the implementation of several technological enhancements that are envisioned to improve the process for mariners and the Coast Guard alike. The restructuring and centralization

will capitalize on production-line efficiencies, while leveraging field resources for face-to-face interaction with mariners

Restructuring and Centralization

There are four main components to the MLD Program restructuring and centralization plan. First, the organizational alignment of the RECs will be changed so that they operate directly under the auspices of the National Maritime Center rather than under the individual Officers in Charge, Marine Inspection. The Commanding Officer of the NMC will be designated as an OCMI and will become the decision-maker with respect to the issuance and denial of mariner credentials. While some interaction between NMC and the local OCMI's will still be required for area-specific license and pilotage issues, the MLD Program OCMI authorities and duties will be reassigned to NMC. A corresponding change to the appeal chain for credentialing decisions will be instituted. Aligning the RECs under the National Maritime Center also removes the burden of this complex administrative function from the responsibilities of the commanders of the Coast Guard's new Sector commands, which are being formed to create unity of command over Coast Guard operations.

The second component of the plan is to divest the National Maritime Center of its three subunits National Vessel Documentation Center, Marine Safety Center, and Marine Safety Laboratory. NMC will then be restructured to integrate its existing responsibilities with the centralized evaluation of applications, processing of associated user fees, production and issuance of mariner credentials, and consolidated management of mariner records. The three NMC subunits' missions are unrelated to the licensing and documentation of merchant mariners, so divestiture will have no adverse impact on the program. Instead, divestiture will better enable NMC to provide the necessary administrative and operational management to, appropriately, the RECs.

With the transfer of the functions mentioned above from the RECs to the central facility at the National Maritime Center, the third element of the restructuring and centralization plan is to focus the Regional Exam Centers on their remaining functions. The RECs will perform the important customer service tasks that require face-to-face contact with mariners and the training industry. These responsibilities will include answering basic questions concerning credential requirements and the application process; verifying applicant identity and nationality; fingerprinting applicants; reviewing applications for completeness and forwarding them to NMC, at least until such time as applications may be submitted directly to NMC; administering examinations; assisting the NMC and local Officers in Charge, Marine Inspection, with pilotage and local licensing issues; and performing oversight of Coast Guard-approved training courses.

Fourth, staffing at the Regional Examination Centers and the National Maritime Center will be adjusted to reflect the changes in assigned work. None of the RECs

will close. However, all but the smallest offices will have their staff size reduced; the small RECs will actually have personnel added to be able to operate more effectively. The NMC will grow from its current complement of 95 government and contractor employees to 253 total personnel, absorbing all of the positions displaced from the RECs, while also adding an additional 40 contractors....

The majority of the Mariner Services Division represents functions that will transfer to the National Maritime Center from the RECs. Of note, the Mariner Information Team will be a dedicated staff, separate from those evaluating applications, whose purpose will be to answer phone inquiries from program customers. This 800-call-center-team will be trained to answer questions regarding how to apply for various credentials, what the basic requirements entail, and where in the application process a mariner's package may be.

New Technology

An integral part of the restructuring and centralization initiative is to leverage technology to achieve greater efficiencies in the mariner credentialing process. One enhancement, which was fully deployed at all of the RECs by the end of 2004, is the electronic capturing and submission of applicant fingerprints. The hardware used with this system assesses the quality of the fingerprints prior to transmission, effectively eliminating the possibility of , rejection due to smudges or other faults. Results of the Federal Bureau of Investigation (FBI) checks submitted with this equipment are available to the MLD Program within 48 hours, rather than the four- to six-week lag time of the past, thereby reducing the time required to process an application.

After consolidation at the National Maritime Center, mariner records will be imaged and made available electronically to the NMC staff of evaluators and supervisors, the RECs, Coast Guard investigators, and others as necessary, eliminating the need, time delay, and vulnerability of shipping records between sites. Mariners will be able to pay their user fees and check the status of their applications online. Examinations will be administered and graded at the RECs electronically. The 800-call-center will be able to exchange information with mariners through a variety of automated or electronic means.

These information technology solutions will mark a significant change in the way current work processes are conducted. Some of these enhancements may not necessarily be implemented concurrently with the centralization. However, they are included in the envisioned end-state of the restructuring and centralization of the MLD Program. If some complicating factors can be resolved, the MLD Program would eventually hope that mariners could even submit their applications online to the National Maritime Center.

Conclusion

In response to dramatic workload increases over the past decade and the demands emanating from its customer base, the Mariner Licensing and Documentation Program is poised to implement a comprehensive change intended to appropriately resource the program and improve the services provided. This change will positively affect our Coast Guard personnel, as well as the mariners and U.S. public they serve. The challenge is to establish a modern Mariner Licensing and Documentation Program that enhances homeland security and in the process maintains the face-to-face contact favored by our customers and that is essential for related security functions. The evolved program should also maximize efficiency through the incorporation of technology and centralization of processes; it should achieve the desired consistency by centralizing the program elements requiring the interpretation of regulations and policies under a single Officer in Charge, Marine Inspection. The Coast Guard is confident that the MLD Program restructuring and centralization plan meets these challenges and will provide for the secure, efficient, and consistent credentialing of merchant mariners.



MOVING FROM “OPERATOR” TO MASTER AND LEARNING FROM HISTORY

On May 21, 2006 the license for “Operator of Uninspected Towing Vessels” (OUTV) will pass into History and will be replaced by the licenses for Master of Towing Vessels and Mate (Pilot) of Towing Vessels. This concludes a regulatory process that extended over ten years.

We are indebted to Captain James A. Wilson (USCG, Retired and Director of Program Development for the American Admiralty Bureau) for his historical insight on this matter as presented an article published in the Waterways Journal of March 13, **1995**. We include excerpts from his article and add our own emphasis by underlining.

Tow boaters Kept on a Short Leash

“The Towing Vessel Operator Licensing Act...(July 1972) ... established that U.S.

uninspected towboats would be under command and control of persons licensed by the U.S. Coast Guard. While the law allowed the employment of traditionally licensed masters and pilots, it also created a new class of licensee, the towboat “operator.”

“Holders of licenses as “operator” now (1995) are predominant in the uninspected towboat pilothouse. The industry refers to these “operators” by job titles of “master” and “pilot.” However, as a matter of law, these “operators” are not “masters” and “pilots.” Indeed there is a qualitative difference in their legal authority and responsibility. That qualitative difference is reflected in the legislative history of the Towing Vessel Operator Licensing Act and its implementing regulations. The difference can be costly to owners, especially when seeking the shelter of a limitation of liability proceeding.⁽¹⁾ [⁽¹⁾ *The **Limitation of Shipowners’ Liability Act of 1851** is a law that limits recovery from a maritime accident to the value of the vessel(s) involved in the accident. When written, it was considered unfair to impose liability on a ship owner for circumstances beyond his control, such as acts of its agents and servants, not to mention the perils of the seas. Today, after accidents like the bridge allisions at Bayou Canot, Webbers Falls, and the Queen Isabella Causeway, many question the continued usefulness and vitality of a system that limits the liability of a narrow class of persons – and their abuse of the system.*]

Limited Skill Envisioned

“The (Operator) license was originally envisioned as a very limited skill and competency certification. This is clear in the legislative history. However, a series of infamous accidents over the years has contributed to an upward thrust in the examination and training requirements. The Amtrak disaster (Bayou Canot, Alabama, 1993) with its attendant new radar requirements, now largely closes the gap in training and testing requirements between the OUTV license and the legally superior “Master...license. OUTV licenses are denied the legal benefits of a license titled “Master” but the training and examination factors for the two licenses have narrowed to a point where there is little, if any, benefit to a separate OUTV license...

“There are two major legal drawbacks to the OUTV license as compared to the Master...license. First, the “operator” license is not considered in and of itself a license as a “U.S. Merchant Marine Officer.” ...Operators are licensed but are not considered “officers” within the meaning of the law.

“Secondly, the legislative history of the Towing Vessel Operator Licensing (Act) reflects a number of “short leash” arguments offered by the industry during the lobbying effort for the act. “Short leash” arguments refer to statements indicating that the then-proposed “operators” would be subject to close supervision and support by shoreside management. This “short leash” was part of the argument for not extending the pre-existing “master,” “mate” or “pilot” system to uninspected towing vessels. “Short leash” arguments were made to encourage the establishment of a

license structure for uninspected towing vessels with lesser experience, training, and examination requirements than existing for traditional masters, mates, and pilots. Recent cases involving bridge allisions – cases participated in by the American Admiralty Bureau – indicate that the “short-leash” arguments in the legislative history of the act become troublesome when owners attempt to limit liability in the wake of a marine accident.

Proceedings Dropped

“The American Admiralty Bureau has participated in a number of cases where the owners of uninspected towing vessels have dropped limitation proceedings and settled with claimants when presented with the legislative history of the OUTV Act. These owners had argued for limitation of liability, claiming that they had hired “licensed competent officers” and consequently they could rely on them for professional services – pilot error not being within the privity and knowledge of management. The legislative history of the OUTV Act and related regulations reveal that, legally, the holder of an OUTV license is not in fact a “master” or “pilot” in a professional legal sense. Moreover, management claimed authority and responsibility for training beyond certain minimums when lobbying for the OUTV Act. The argument that prevailed in the cases observed was in this order:

“An operator is to an officer or master or pilot as a paralegal is to a lawyer. While the paralegal and attorneys have many skills in common, there is a qualitative difference in their training and legal status. The professional attorney must assume final responsibility for the paralegal’s work. In the legislative history of the OUTV Act, towboat management assumed authority and responsibility for the “operator’s” work product. In fact, industry practice confirms this when companies confer the titles of “master” and “pilot” upon individuals licensed as “operators.” These are titles ripe with legal meaning. Only when conferred by the Coast Guard can owners claim reliance on independent “professionals.” When conferred by industry upon lesser licenses, the party conferring the title assumes the responsibility for assurance of competency. This was apparently established and agreed to in the legislative history of the OUTV Act and related regulations.

“In evaluating this sample legal argument, consider the Coast Guard’s original views as presented in the Federal Register of March 2, 1973, as the final implementing regulations for the OUTV Act were published:

Coast Guard’s Original Views

[As cited from the Federal Register]

“The designations of the operator and second-class operator were favored by a large percentage of affected individuals, and are included in the language of the congressional committee reports. However, views were submitted that these terms reflected a break in custom and that towboat skippers would be demeaned thereby. Also, the introduction of such terms would complicate existing and future collective

bargaining arrangements.

“It is the Coast Guard’s view that the term “operator” admirably suits the circumstances and serves additionally to protect the status and prestige of the traditional master. Subpart 10.16 places appropriate and reasonable requirements upon the uninitiated and allows their entry into the regulated arena with minimal qualifications for a special license. Considered as a preliminary or intermediate approach, it is a particularly suitable approach for those individuals who will be eligible for a license under the “grandfather” clause 10.16.71.

“Furthermore, the path is open for the newly licensed “operator” to accept the challenge of the higher grade and after a given time make application for and sit for the superior licenses, if he so desires.

“Apart from any of the foregoing, if the master/pilot concept was adopted as requested by some commentators, it would automatically invoke more severe qualifying standards and criteria to the detriment of the entire program. Nevertheless, there is nothing to prevent the more experienced or qualified candidate from sitting immediately for any of the existing master, mate or pilot licenses, bypassing the operator step altogether.

“Thus, the Coast Guard summarized its understanding of the “operator’s” license as something less than an officer’s license. All existing master, mate, and pilot licenses are on forms that state, “License to U.S. Merchant Marine Officer,” while each “operator’s” license is on its own separate operator form indirectly referencing unspecified parts of the legislative history of the OUTV Act and pre-regulatory public comments....” *.[End excerpt.]*

Events from 1975 to 1996

In the years following the passage of the OUTV Act, a number of mariners did accept the challenge of a higher-grade license. The available “superior” licenses at the time were the Master, Freight & Towing license that subsequently became the “Master (500/1600 ton)” license in 1989 and the “Pilot” endorsement that was added to an OUTV license.

On the western rivers, obtaining a Pilot endorsement became a goal for many “operators” who considered themselves as professional river pilots and who sought to advance within the industry and attain the best jobs by going to a great deal trouble to prove their knowledge of the river was equivalent to that of a First Class Pilot. At their own expense, hundreds of towing vessel “operators” sought pilotage endorsements for various river segments they regularly traversed. Each endorsement required submitting a formal application and taking an examination at a Coast Guard office and paying a “user’s fee” for the endorsement.

Coast Guard Ignorance and Stupidity (1996)

In 1996, Admiral Robert North, then Commander of the Eighth Coast Guard District discontinued the pilotage endorsement for waters above Lower Mississippi River mile 235 at Baton Rouge, LA. This left hundreds of mariners who demonstrated their leadership, professionalism, and desire to advance within the towing industry with no choice but to revert to the unadorned and unprofessional “operator” status of rank and file members of the workforce. The American Inland Mariners Association (AIM), the National Association of Maritime Educators (NAME), and later GCMA brought this travesty to the attention of Vice Commandant Card, Admiral North, and Admiral Pluta over a 5-year period but gained absolutely no satisfaction for mariners who had attained pilotage endorsements for hundreds of river miles above Baton Rouge.

Assuming a Leadership Role

By tradition, a merchant marine officer is trained as a leader who will take charge of his crew and accomplish whatever task is set out for his vessel to accomplish. The history of the U.S. Merchant Marine has a tradition of leadership and sacrifice as witnessed by their role in World War II to the present conflict in Iraq. Unfortunately, for lower-level merchant mariners, the quality of the training is often influenced by its cost and availability. However, by its action in 1996 the Coast Guard removed the important “pilotage” incentive for building leadership within the industry. If the Coast Guard ever performed a similar act of stupidity upon its own officers, it would be the equivalent of reducing every Coast Guard officer to the rank of an Ensign.

We have no evidence that towing industry management played a part in this act of stupidity other than sitting back and watching their most knowledgeable mariners as the Coast Guard “leveled” their achievements.

During the mid-1990s as this situation was developing, a number of towboatmen on the western rivers came together as the American Inland Mariners (AIM). They organized their association, elected officers, began to attend public meetings including Towing Safety Advisory Committee meetings in Washington and other cities. They even arranged several meetings open to the public to discuss proposed licensing rules in the Memphis and New Orleans areas. At one time their association had more than 300 members and collected dues of \$120 per year to support its activities. It was an association of experienced pilots that developed a responsible agenda – and industry did its best to ignore its leadership role!

In 1998 a new organization, Pilots Agree, formed and actively sought a leadership role in representing towboat pilots on the western rivers and on the Gulf Intracoastal Waterway. However, when they tried to negotiate with employers for improved wages and working conditions, almost one-hundred towing companies simply ignored them as well. The companies clearly wanted to hold their mariners on a

short leash and discourage mariners from taking a leadership role – especially one with union connotations

Pointedly ignoring a call to negotiate with a large segment of its licensed “operators” quickly led to a strike that threatened to shut down river traffic. The strike failed and was followed by widespread employer retaliation against striking employees and rampant blacklisting by company officials. These actions effectively destroyed the leadership of the movement.

At the time, there were enough licensed “operators” in reserve to step up and fill vacant slots – often with significantly less-experienced personnel. At the same time, industry retaliation drove many experienced mariners off the river and soured many others who remained.

In the end, the strike upset much but accomplished little. Yet the industry was foolish enough to celebrate a “victory” over its disgruntled employees and continued to ignore the serious internal problems that both AIM and Pilots Agree exposed. Many of the remaining “operators” who stayed on the job or returned to work were not happy campers. However, the strike taught them the “power of the paycheck” and their true status as “employees at will” who, since they have no enforceable contract, can be terminated at any time for any reason.

It’s Not About Money

“Money” was the most significant and appealing rallying point for mariners during the Pilots Agree strike. While increasing a mariner’s paycheck undoubtedly could solve all sorts of problems at a personal level, it would not have attacked the root of many of the problems that trouble this industry. It is not that Pilots Agree did not recognize the nature of these problems. They certainly did and made it possible for GCMA to document them so we can address them. However, in the rush of activity in the Spring of 1998, Pilots Agree may have been forced to overlook the real problems in return for the goal of a higher paycheck.

Since it was founded in 1999, Gulf Coast Mariners Association studied the same problems in the towing industry that both AIM and Pilots Agree unearthed. We believe that the towing industry now has an obligation to solve these problems for these basic reasons:

- To retain its existing workforce that is leaving in droves. (In the old “plantation system” there are the masters and the slaves. The slaves must toil from sunrise to sunset and beyond – as do many of our mariners on a “two-watch” system.)
- To protect the waterways infrastructure and assure the safety and welfare of the public. (Knocking down bridges, polluting the environment, and mishandling dangerous cargoes already exceed Congress’ patience. 170 grounded barges following Hurricane Katrina attest to the towing industry’s poor preparations.)

- To train its workforce to follow existing regulations as well as forthcoming towing vessel inspection regulations
- To train its workforce to be more proficient. (This includes engineers who have been all but forgotten and new apprentice mates/steersmen.
- To protect the health and welfare of its employees and their families. (Coast Guard statistics show that this is a very dangerous occupation. The towing industry has an abysmal record of caring for its injured employees and their families after a disabling personal injury.)

GCMA does not intend to overlook any of the problems outlined in GCMA [Report #R-276, Rev. 9](#), or the “suggestions” in GCMA [Reports #R-419](#) and [#R-421](#). We respectfully suggest that the Coast Guard’s towing vessel inspection regulatory team give these GCMA reports their closest attention.

The Leadership Vacuum

Demoting river pilots, breaking the Pilots Agree strike, and the eventual demise of that organization left a leadership vacuum among the towing vessel mariners that remains to this day. Few mariners are foolish enough to stand up and take a leadership role when they understand that their employer will fire and blacklist them throughout the industry if they attempt to fill the leadership vacuum.

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On the other hand, the Coast guard has come full circle with its towing vessel officer licensing regulations. Towing vessel Masters and Mate (Pilots) are full-fledged U.S. Merchant Marine Officers. As pointed out a decade ago by Captain James A. Wilson, the Master and Mate (Pilot) of towing vessel licenses have a meaning that the old “operator” licenses lacked. So, if you have one of these new licenses, you are considered a “professional” within the scope of your license. Being a “professional” means that you as well as your employer can be sued for any mistakes you make that cause harm⁽¹⁾ or damage. The Coast Guard expects you to act as a professional and is quite capable of punishing you through suspension and revocation proceedings (i.e., “Administrative Law”) if you turn out not to be “officer” material. [⁽¹⁾ Refer to Docket #USCG-2000-6927, a soon-to-be-released final rule adding “significant harm to the environment” as a reportable marine casualty.]

In the meantime, towing industry management is working hard to have its cake and eat it too! Considering the doctrine of limited liability, they are happy to have its officers considered as “professionals” to duck out from beneath catastrophic accident claims. Their thinking appears to be to allow Uncle Sam (aka Uncle Sap)

or any insurance company with big pockets, to continue to pay the tab for knocking down bridges, polluting the environment, and derailing passenger trains.

Industry is starting to realize that proper training is also one of the very costly ingredients in making a “professional” mariner. How many companies have stepped up to train their new apprentice mate/steersmen as an extra hand in the pilothouse? It seems as if many companies expect their apprentice mates/steersmen to pay their own way through school and, after they receive their “learners permit” then serve another year as deckhand, and then, with little or no real wheelhouse experience, slide into the next step to Mate(Pilot) that can take charge of a navigational watch.

GCMA believes that each apprentice mate/steersman deserves one full year of pilothouse training⁽¹⁾ at a rate of pay that acknowledges that he/she had to take an enhanced version of the same test that an OUTV used to take. GCMA believes the Towing Officer Assessment Record (TOAR) should be a true testament to completion of an apprentice mate/steersman’s training in the pilothouse. The Coast Guard has done its best to make this training period as much of a professional activity as possible and appears to be poised to crack down on those companies and Designated Examiners who try to turn the process into another “license mill”. [⁽¹⁾ Refer to GCMA Report #R-421.]



GCMA CRITICAL OF MERPAC PREOCCUPATION WITH UPPER LEVEL ISSUES

[Source: GCMA letter of Sept. 17, 2005 to an unnamed Coast Guard official.]

Thank you for your FAX of September 14th.

1. (Our Chief Engineer) Glenn Pigott discussed with me on several occasions the MERPAC working group looking at training for “hawsepipers” training to obtain a Third Assistant Engineers License-Officer in Charge of an Engineering Watch. While you may know of candidates interested in taking this route, we don’t know of any.

2. Our concern (at GCMA) has absolutely nothing to do with any mariner who seeks to work on any ship over 1,600 GRT. This is an “upper level” area that is and always has been within the province of the six maritime academies and the union training schools. Unfortunately, the vast majority of mariners we deal with are not union members nor are they academy graduates. We recall the 1973 Newman Report and our own work with mariners that showed the average educational attainment level was somewhere around 7th or 8th grade. As you know, there is no “steam” (engines or equipment) on the vessels our mariners work on.

3. During the period 1999-2003, the Offshore Marine Service Association (OMSA) made all sorts of “deals” and accommodations with the Coast Guard. However, in light of their uncompromising and unwarranted attacks on labor unions that have the facilities to train engineers to any level required, OMSA largely cut itself off from this source of real training. At present in the Gulf area, we are unaware of any school that has formal hands-on training (beyond on-the-job training) to prepare engineers.

4. There is a great need to train “engineers” for:

- Vessels under 100 GRT of all types including small passenger vessels and OSVs
- All sizes of towing vessels on inland, rivers, and near coastal routes (and probably on the Great Lakes)
- Tugs on international voyages whose international tonnage exceeds 200 tons
- OSVs between 100 and 200 GRT. Let OMSA worry about its own vessels greater than 200 GRT.

5. You mentioned how STCW will impact limited engineer licensing. However,

- Mariners already at work cannot take off 30 months to attend formal training. They can’t afford to do so. If they were able or were qualified to do so, they might have attended an academy. They don’t have that choice.
- The 1000/4000 hp DDE license was increasingly impractical for many mariners to obtain because most training was at license mills that simply tested and retested qualified candidates on multiple choice questions. This is not the training that they need. Cut out the 4000 hp license and you will probably shut down the offshore industry. But that is their problem and not one that GCMA is interested in any longer. Let OMSA beat their brains out on that.
- We agree that STCW should affect engineers on international voyages. We have no opposition to any training that has resulted from STCW as it is a definite “plus” for our mariners. However, STCW is doing very little for the engineers we are most concerned about in ¶4 (above). The Coast Guard failed to do anything about the

existing engineer problem. Nor has “industry” recognized the problem that is primarily one of safety. GCMA reports #R-279, R-401, and R-412 point out many of these problems. Several of these reports (already) have gone to Congress, so I can say that those who “should know” do know.

6. From the outset, we made it clear that STCW did not fit the domestic industry. However, it was not possible to make any headway against the Coast Guard or the big mouth and wheeling and dealing of Bob Alario and OMSA. At present, the only way out is through the process of “renunciation.”

Frankly, we hoped that MERPAC would be more concerned with “lower-level” problems. It seems that they focus most of their attention is focused on “upper-level” matters and STCW. After all, lower-level mariners have always been in the majority, but you wouldn’t know it by the lack of attention MERPAC has given them for many years.

NEW GCMA RESEARCH REPORTS

[GCMA Report #R-420, Rev. 1 Correcting and Maintaining Your Nautical Charts and Publications](#)

First – came the accident; then the regulation. Coast Guard regulations on the use of charts became much stricter after revelations following the 1993 Bayou Canot accident. In that accident, the pilot of a towboat owned by a major towing company became disoriented in fog, had no charts of the waters he was traversing, and did not use his radar properly. Consequently, his tow struck a railroad bridge that, in turn, dislocated the welded rail that derailed the Amtrak “Sunset Limited” passenger train traveling over 70 mph and killed 45 passengers and train crewmembers.

All commercial vessel regulations⁽¹⁾ now specify “**current editions or currently corrected editions**” of charts must be carried. For lower-level mariners, especially those working on inland waters or on coastwise routes, the question of how to “correct” your charts properly covers a great deal more than meets the eye. We hope that this report will give you a better understanding of this subject.

[GCMA Report #R-421, GCMA Suggestions for an Apprentice Mate/Steersman Model Training Course](#)

GCMA submitted this report to the Towing Safety Advisory Committee (TSAC) Licensing Working Group in advance of their meeting on December 1, 2005. In light of our lack of confidence in the TSAC process, we also submitted copies of this report directly to a number of cognizant Coast Guard officials.

We recently received a number of reports from the field that towing companies are taking advantage of new apprentice mates and steersmen by assigning them to stand unsupervised watches in the pilothouse. These are companies that attended the same meetings that we attended and “know better” than to do this. They openly violate the law by using these mariners that have only “learner’s permits” to operate the towing vessels as if they were licensed towing vessel officers. These apprentice mates and steersmen have not completed the mandatory training and are not licensed as mates or pilots. These actions compromise the entire program and bring into serious question the integrity of the towing company officials that condone it and licensed towing vessel masters that allow it to occur on their vessels.

We want to caution our licensed officers that 46 CFR §5.27 **Misconduct** (as charged in Suspension and Revocation cases) states: “Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in , among other places, statutes, regulations, the common law, the general maritime law, a ship’s regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.” The applicable regulation is the definition that appears in 46 CFR §10.103: “Apprentice mate (steersman) of towing vessels means a mariner qualified to perform watchkeeping on the bridge, aboard a towing vessel, while in training under the direct supervision of a licensed master or mate (pilot) of towing vessels.”

“Direct supervision” cannot occur if the officer is asleep in the pilothouse or in his bunk, down in the galley having a cup of coffee, using the head, etc. If the towing vessel operates over 12 hours in any consecutive 24-hour period, 46 U.S. Code §8104(h) and 46 CFR §15.705(d) work hours for each officer is limited to 12 hours. Thus, such a vessel must have two licensed officers on the vessel – and an apprentice mate/steersman paper is not a towing vessel officer’s license.

Our report indicates how we believe that a model pilothouse-training program should be structured. [*Also refer to “Licensing” in this issue.*]



ITF SURVEY SHOWS THAT THE SECURITY CODE HURTS SEAFARERS

[Source: Edited from the MM&P Wheelhouse Weekly, Nov. 23, 2005. GCMA supports the work of the International Transport Workers Federation.]

The International Ship and Port Facility Code (ISPS) is improving security at the expense of seafarers that are increasingly overworked and treated with suspicion, according to a survey by the International Transport Workers Federation (ITF).

The ISPS Code was widely seen as a successful example of “fast-tracking” legislation when it was introduced in response to the 9/11 attacks in the United States. However, the ITF survey shows that the welcome security gains are being undermined by lack of trust and support for the seafarers tasked with implementing it.

The ITF was broadly supportive of ISPS and applauded the way it was drawn up. However, there have always been concerns about a possible negative impact on seafarers. Consequently, the ITF initiated the survey that was sent to its 127 Inspectors and 230 affiliated maritime unions that represent about 700,000 seafarers for them to consult their members and report back.

You can review the results, published as the report: [Access Denied: Implementing the ISPS Code](http://www.itfglobal.org/infocentre/pubs.cfm/detail/1446) at: www.itfglobal.org/infocentre/pubs.cfm/detail/1446

The overwhelming response to the survey was that ISPS had seriously increased seafarers' workloads without any increase in staff, pay or training, and was associated with grave problems experienced with shore leave, especially in the USA.

Although the ISPS Code includes provisions to avert problems of access to ports, shore leave, and welfare facilities, it is clear from the survey that these are being neglected in the Code's implementation.

Serious areas of concern highlighted in the survey responses include:

- Increased workload and responsibility.
- No commensurate increase in pay.
- Inadequate training.
- Restrictions on shore leave.
- Problems in obtaining U.S. visas; and
- Difficulties for seafarers' welfare and trade union representatives seeking to board vessels to provide services to the crew.

Jon Whitlow, Secretary of the ITF Seafarers' Section in London, said: "All responsible parties back the aim of the ISPS code. But there is a gap between principle and practice. The measures that were supposed to protect seafarers are too often being neglected. Combine that with other excessive security measures being implemented outside the code and you have a grave and counter-productive climate of distrust and suspicion being created out there."



UPDATED GCMA "BROWN-LIST"

GCMA fields a significant number of complaints on employment issues from lower-level mariners in as fair a manner as possible. When a mariner gets a "raw deal" we do what little we can to get to the bottom of the problem. However, we are not and never have been a labor union.

The vast majority of our "lower-level" mariners work as "employees at will." Unfortunately, this means that they do not work under a labor contract negotiated through collective bargaining that controls their conditions of employment and provides the machinery to resolve their grievances. Without such a contract, most of our mariners can be fired or demoted at any time, for any reason whether fair or not. There is little recourse for most of our mariners unless such termination is clearly illegal – and only then with the help of an attorney.

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

Mariners must make their own decisions about their employers. As a service to dues-paying members of GCMA (only) we can inform you of some of the specific incidents that led us to “Brown List” a company. Then you can decide whether you want to learn the same lessons the hard way by working for a “Brown Listed” company.

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- Able Bodied Seaman/USCG-approved (testing done on site)
- Celestial Navigation 200/500/1600/STCW Gross Ton/USCG-approved (testing done on site)**
- Basic Safety Training/STCW-approved/USCG-approved (testing done on site)
- * The following modules are available: Elementary First Aid and CPR, Personnel Safety and Social Responsibility.**
- Visual Communications (Flashing Light)/ STCW-approved/USCG-approved (testing done on site)
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- Master of Towing Vessels/USCG-approved (testing done on site)**

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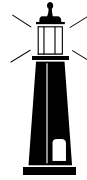




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