



[Formerly Gulf Coast Mariners Association]

NEWSLETTER

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Twenty-five (25) of 42 grain barges in a southbound tow of the M/V AMERICAN HERITAGE broke loose on Oct. 3, 2007 following a grounding. The accident scattered barges north and south of the Interstate 20 and U.S. 80 bridges at Vicksburg, MS. At least four of the barges hit Pier 4 of the U.S. 80 span. Several of our mariners reported a chemical tow *carrying liquid ammonia* (pictured here as the tow farthest down river) had to maneuver to dodge the breakaway barges. River and vehicular traffic was halted by authorities for hours while the barges were rounded up and the bridges inspected. This oversize tow of 42 barges was dispatched by the American River Transportation Co. (ARTCO), a brown-listed towing company of Decatur, IL. NMA reports on two other significant ARTCO oversize tow accidents in this issue and others in NMA Report #340, Rev. 8, **Oversize and Overloaded Tows Cause Safety Problems.** [Photo courtesy of Joshua Corban of the Vicksburg Post.]

LICENSING SERVICES CONTINUE TO DETERIORATE DESPITE LOFTY PROMISES

On February 13, 2007 our Association mailed each member of the House Transportation and Infrastructure Committee, the Senate Science, Commerce and Transportation Committee, and many cognizant Coast Guard officials a copy of our Report to the 110th Congress on Substandard Coast Guard Merchant Mariner Personnel Services that detailed the quality of personnel services rendered to our "lower-level" mariners. [¹NMA Report #R-428-D]

If the Coast Guard "got the message" delivered in this report, they certainly kept it a secret. During the intervening months we witnessed a number of changes at the National Maritime Center and an overwhelming volume of "promises" for the future but little if any real improvement in service rendered to our mariners.



Ever since the "Change in Command" took place last summer there has been a constant outpouring of glowing statements and statistics from the National Maritime Center (NMC) documenting fantastic improvements and dazzling successes. The Coast Guard's tactic seems to be to broadcast their own perceived successes while continuing to simply ignore the complaints of individual mariners who cannot get a fair shake under the existing system. Where our Association used to receive answers from the National Maritime Center in response to our written complaints lodged on behalf of desperate mariners who experienced problems with the system, we now receive no consideration, follow through, or even replies to our correspondence.

The Coast Guard appears to believe that everything it does must be communicated to the public and hailed as a "success." They admit few failures unless they occurred on someone else's watch and only in cases where that shortcoming has become plainly visible for all to see. In their arrogance, there apparently is no point of view other than the Coast Guard's and, if an individual or an Association disagrees with them they are either dead wrong or simply ignored. Consequently, our mariners continue to encounter most of the same problems outlined in our previous report and some new ones as well.

Locking the files

The story of Captain Bill West is well known to members of our Association and is related on pages 40 and 41 of our Report #R-428-D as "Mariner #27." Bill grew up on the water in Tidewater Virginia. He has years of experience on the water and earned a 500-ton inland license. However, REC Boston denied him a towing endorsement that he could use on towing vessels greater than 100 tons. Consequently, for the past year he has been running small towing vessels under the 100-ton limit. He even considered moving from Virginia where he has his roots to the Gulf Coast where he could find a Designated Examiner willing and able to complete a Towing Officers Assessment Record (TOAR) so he could advance in grade.

Bill discovered that the National Maritime Center (NMC) closed his path to advancement by "locking his file" electronically at the National Maritime Center. Although he made a number of phone inquiries at the NMC, he never could obtain a definitive answer about who locked his file, how long it was locked for, or obtain any satisfaction whatsoever. Although the NMC recently relocated to West Virginia, the new leadership is much less responsive than the previous administration to individual mariner complaints. In the past, they at least had the courtesy to answer our letters.

Finally, on Dec. 4, 2007 our Association wrote Captain David Stalfort, the NMC's Commanding Officer as follows on behalf of Captain West: "I contacted Mr. Kerlin (NMC Deputy Director) last on Sept. 25, 2007 in the attached letter about Bill's misplaced files after he informed me that his computer files were locked. Captain West reported his file was "locked" which, in effect prevents him from advancing in the industry. This adversely affects his earnings. After almost three months, we hereby request a formal reply to our letter of Sept. 25th. If his file is misplaced, we want to know what your office and/or REC Boston has done to locate it. If his file is

"locked" we want to know the name of the person responsible for locking it and under whose authority that was done.

"Locking the files" is an interesting tactic, but it is not mentioned in any regulation that we are aware of."

[NMA Comment: Our Association insists that the person or persons who conspired to "lock" Captain West's file be identified and effectively disciplined if still employed by the Coast Guard.]

The Coast Guard Effectively Closes the Door to Mariner Complaints Addressed members of Congress

Although nothing can stop a mariner from complaining directly to his Congressman, all Congressional complaints are funneled through one office. That office is skilled in presenting the Coast Guard's "line" in such reasonable and bureaucratic terms that it effectively defeats almost all congressional complaints filed on behalf of individual mariners. While mariner licensing complaints absorb tremendous amounts of time and energy of Congressional staffers, maritime educators, consultants, and occasionally lawyers, they are almost always doomed to failure. In addition, the "appeal" process has been short-circuited⁽¹⁾ to become nothing more than a compilation of "me-too" denials rather than a healthy de novo consideration and attempted resolution of the problem.

[⁽¹⁾NMA Comment: Please refer to our Report # R-436, Rev.1, The Coast Guard Appeals Process that describes this problem in detail.]

Captain Bill West (and our Association on behalf of Captain Bill West) filed detailed, formal complaints with Senator John Warner's (R. Va.) office but to no avail. On Jan. 16, 2008 Bill faxed our Association as follows: "As per our conversation the other day, I am currently drawing unemployment with no good prospects in sight. This is a direct result of the USCG's monkeying around with my license and upgrade. In other words, the USCG's action and lack thereof cost me not only my job but future prospects for employment. This is the USCG's retaliation for us⁽¹⁾ proving them wrong so many times and pointing out the illegitimacy of their actions...."

[⁽¹⁾ NMA Comment: "Us" refers not only to Bill West but to our Association that has tried to assist him for almost two years!]

Problem Applications

One of the primary duties of the National Maritime Center is to process mariner credentials. However, it appears that the NMC fails to focus on assisting mariners with "problem" applications. Individuals with problems are ignored in the rush to process more and more applications to improve statistics and reduce backlogs. Inconvenient and time consuming problems are swept under the rug. Consequently, many mariners who reach the end of their rope turn to maritime schools, consultants and to our association for help. However, we cannot help if the NMC will not answer our correspondence and take the time to work with individual mariners in a constructive and helpful manner. Every day an original or renewal application gathers

dust in an REC or NMC “in-basket” or at the bottom of a pile of papers on someone’s desk, this neglect has the potential to deprive a mariner of earning a living, depleting his savings, and supporting his/her family.

Mariners That Don’t Fit the Coast Guard’s Profiling Checklist

Our mariners are individuals with varying backgrounds, education, and training. We believe that everybody that is reasonably qualified should have a shot at obtaining a merchant mariner’s credential. Unfortunately and inconveniently for Coast Guard administrators, not all of our mariners fit the same mold to perfection.

The Coast Guard’s own 1973 Newman Report⁽¹⁾ conveniently “lost” in 1980 shows that many “lower-level” mariners have problems reading, and expressing themselves in writing. The Coast Guard only deludes itself by acting as if these problems no longer exist in their dealings with our “lower-level” mariners. More modern manifestations involve problems where some older mariners lack the ability to deal with a computerized government bureaucracy that assumes that everybody has a computer and can successfully access the Coast Guard’s “Homeport” website. Even the computerized telephone systems installed at the NMC and Regional Exam Centers can be daunting and unresponsive. [⁽¹⁾Reprinted as our Report #R-428-A. Most REC and NMC employees have never seen this report that the Coast Guard itself compiled in response to a Congressional mandate!]

Many of our mariners require individual attention to their problems or they will “fall through the cracks.” Individual attention often means that some rule, regulation, or policy must be stretched or bent in order to utilize a mariner’s experience, background, and skills to their fullest effect. However, Coast Guard personnel, whether civilian, contractor, or military, lack suitable flexibility to make reasonable, common sense adjustments to resolve problems at any level of command. While the hefty “user fees” that mariners pay should cover meaningful assistance with their credentials, it instead pays for Coast Guard officials to hide behind the myth that one size must fit every mariner. Each mariner is unique as is his or her background and experience and deserve consideration.

Unfortunately, mariners that “fall through the cracks” often take with them years of irreplaceable experience in the marine industry. With the present personnel shortages, industry will ultimately suffer from the loss of individual mariners who are carelessly ignored and shunted to the side. It is no skin off the Coast Guard’s back, and credentialing officials are not being held sufficiently accountable for the quality of service they render to the public.

Capt Paul McElroy Visits NMC in West Virginia.

In early October 2007, Capt. Paul McElroy notified us that he would travel to the NMC’s temporary home in Kearneysville, WV and meet with Captain Stalfort, the new NMC Commanding Officer. Paul has dealt with “lower-level” licensed mariners and the Coast Guard since 1981, primarily charter boat and small passenger vessel Captains. He was formerly a corporate Vice-President of Sprint and is well aware of modern corporate business practices. Paul now serves as a maritime license consultant in southern Florida.

The goal and the purpose of his trip was to share his expertise gained over years in the business world and in

dealing with mariners, with a number of different RECs and the NMC, and to obtain the answer to many of the 72 specific questions regarding current and future Coast Guard policies from a list that he shared with our Association before he left on his trip. He also faxed ahead a number of problems brought to him by individual mariners that REC Miami apparently was incapable of solving. Paul is a stickler for details – the type of details that frequently derail many mariner applications. In his dealings with the Coast Guard over the years, Paul has seen just about everything.

Certainly, one of the major problems the Coast Guard faces is “stalled” applications. In a NMC release dated Nov. 17, 2007 a quality assurance analysis showed 11,619 applications were over 60 days old. 45% of those applications were “sitting on shelves waiting for mariners to send missing information” while 28% were undergoing security, medical, and professional qualification evaluation. Only 16% were awaiting a license exam at a REC.

A trip from south Florida to the boondocks in West Virginia is a major undertaking for a small businessman. We spoke with him frequently before, during, and after his trip. Captain David Stalfort received Paul courteously and gave him the “grand tour” of the temporary facilities in Kearneysville and introduced him to various staff members. He was given the opportunity to present his views of offering positive input from his years of experience and presented specific information to try to resolve longstanding problems for a few of his clients. He left West Virginia and returned home on a very upbeat note. Paul described Captain Stalfort and several of his assistants as “real dynamos” and very accommodating. This impression faded as he experienced little or no “follow-up” to his visit.

Captain Joseph Keefe Also Got the “Grand Tour”

Captain Joseph Keefe holds an unlimited Master’s license and is the editor of The Maritime Executive a prestigious maritime trade publication directed primarily at corporate executives

Captain Keefe visited Kearneysville at approximately the same time as Paul McElroy. In reading the article he wrote in the December issue of his magazine, Captain Keefe also came away with an upbeat opinion in his article titled “Earning Back the Trust: One Mariner at a Time.”

Also notable, and mentioned in his article, was the fact that a number of executives from Ingram Barge Line were also being given the “grand tour.” His upbeat view was emphasized by a banner in his article that stated: “...the Coast Guard may finally be on its way to reversing a trend of deteriorating service to mariners by personnel who had either lost, or perhaps never had, the necessary skill sets.”

Captain Stalfort also provided upbeat messages to members of the Coast Guard advisory committees MERPAC and TSAC. Unfortunately, things look quite different from our mariners’ point of view. The “grand tour” looks to us at this point just like another Coast Guard “snow job.”

Long on Promises

Although some members of Congress and others may be favorably impressed by all of the rhetoric and wing-flapping, our mariners were victimized by the Coast Guard’s empty promises in licensing for well over thirty years. In fact, in 1973 Senator Russell Long of Louisiana called the Coast Guard on the carpet for the way it treated mariners in the mineral and oil

industry. Following a year of on-site study by senior Coast Guard Captain C.T. Newman, the Coast Guard changed its ways and listened to industry. Coast Guard officials listened at least through several evolutions of musical chairs until “new faces” decided to reinvent the wheel. Coast Guard officers have been reinventing the wheel with our mariners ever since. The re-invented wheel looks quite different when it rolls over our mariners!

Although the Coast Guard cites “change” as progress, it looks more like instability when the picture changes every time a mariner seeks to renew a license or apply for a raise of grade.

Perhaps, as a result of this embarrassment which could have shut down the offshore industry in 1973 if it had not been resolved, the Coast Guard prefers to compartmentalize merchant mariner credentialing services and move them away from Coast Guard Headquarters. This way, senior Coast Guard officials are insulated and isolated from dealing with angry merchant mariners on their doorstep. Whether it is Oklahoma City as in the 1970s and 1980s, or across the Potomac River in Arlington, or placed out in the boondocks of West Virginia, the “success-oriented” Coast Guard prefers to rather hide its most abysmal failures in satisfactorily regulating merchant marine personnel as far from Headquarters as possible. Although out of desperation and embarrassment, the Coast Guard is throwing money at the credentialing problem in hopes that it will go away, the chances of that happening grow more remote with each passing day.

There are some common problems that all mariners face. These problems are best handled by the major maritime labor unions with the resources and capable, knowledgeable people “on the scene” in Washington who can address them. At NMA, we know them and we trust them to do the best they can for our mariners.

The first of these major problems is the new medical NVIC that the Coast Guard is attempting to cram down everybody’s throat by using the advisory committees like TSAC and MERPAC as their tools. While these Federal advisory committees bring important perspectives to the table, they have not prevailed upon the Coast Guard to back off on this project that offends so many mariners to the core. If the Coast Guard succeeds in carrying out this objectives, the maritime industry will no longer be an industry mariners can plan to serve in until they retire.

The first to make that discovery will be older mariners with years of experience – a loss that industry can ill afford and will be hard pressed to replace any time in the near future. The second major problem will be the Transportation Workers Security Credential or TWIC that contains the same kind of “background checks” and disqualifications the Regional Exam Centers hopelessly screwed up so badly several years ago.

The Coast Guard must believe it can replace experienced employees by simply hiring new ones or contracting out the service. They tried to do this several times before when they yanked the National Maritime Center and its predecessors from Washington, moved them to Oklahoma City and then back to Arlington only to ship them off to West Virginia. It didn’t work then, and it doesn’t work now! Insanity has been described as repeatedly doing the same thing and expecting different results. The same describes stupidity...and all of this is at taxpayer expense.

Suggested Changes and Gradual Disillusionment.

Capt. Paul McElroy provided the Coast Guard’s website information to about twenty of his clients with pending applications to check the status of their applications via the “Homeport” site and on the NMC’s new “Help Line”. He received an almost 100% response that his clients could not access the web page and were switched to the “Timed Out” page as was Paul after attempting to follow instructions many times. Paul subsequently provided constructive input to make the NMC staff making them aware that certain publicized computer features simply did not work for our mariners. Paul then spent an hour on the phone with the NMC computer people who changed something in the link and “fixed” the problem.

Paul reviewed dozens of his clients’ files in preparation for his trip and found that the date an REC shows as “application received” at REC Miami is not the actual date it is received in their mailbox. Miami lags by as much as two weeks or more before the information appears on the Homeport application status page. He noted to Captain Stalfort that, “this lag time makes the REC look better in the application processing statistics because it cuts 2 to 3 weeks off the time frame.” In an e-mail to REC Miami, one of Paul’s clients hand-delivered an application to the REC in person but, over a month later, the application still had not been entered into the database. Paul submitted a common-sense recommendation to Captain Stalfort that each RECs be required show the actual date the application was received in the mail.

In the same letter, Paul mentioned that there was a virtual black hole of non-information available to his mariners. He produced a spread sheet covering 18 of his clients in advance of his visit to Captain Stalfort and commented that, “some mariners...literally waited months and heard nothing about their application nor is there any usable data on the Home Port page. Mariners are frustrated and trying to reach anyone in the REC in a series of time-wasting trials and tribulations.” He suggested creating a monthly aging report on all applications and developing an action plan for those over 120 days in processing and do something to correct whatever problem may exist with the application including notifying the applicant.

While Paul was favorably impressed with his “grand tour,” he was much less impressed with the way that the NMC handled the details he submitted to assist several of his applicants. While the Coast Guard is working with several advisory committees on its new “Medical NVIC,” the NVIC currently referenced is the older NVIC 2-98.

The Coast Guard tried to “enforce” provisions of the “proposed” medical NVIC on one of Paul’s clients. His application, submitted in March 2007 is still held up in mid-January 2008 because of this glitch even after Paul believed the matter was resolved during his October visit to the NMC.

Coast Guard Abuses of Mariners

The Coast Guard is slow to acknowledge that its credentialing procedures abuse many of our mariners and is even slower to fix the problems that have been ongoing for the decade that the National Maritime Center has been in existence. Credentialing merchant mariners (and merchant mariners in general – especially “lower-level” or “limited license” mariners – never has had a very high priority in the Coast Guard scheme of things. Over the years, the Coast Guard attempted to overhaul the licensing system but “two previous attempts

were...poorly planned and designed (and) Coast Guard senior leadership declined to fund them” – according to an article in The Maritime Executive.

Congress, in the draft of its Coast Guard Authorization Bill of 2007, focuses attention on reducing the huge backlog of applications and managing them in a timely and businesslike fashion. It is clear that the NMC received that message. However, our mariners whose credentials are most affected by all of this, believe that the Coast Guard also needs to refocus on mariners who are trampled on by the system. In mid-November 2007, our Association submitted Report #R-448, “Assessment Periods” Harm the Retention of Trained and Experienced Mariners to over 100 members of Congress. Aside from this report, there is a serious problem that credential applications are allowed to languish because they are missing documentation. While moving these applications off top dead center often can be done with little more than a telephone call from a Coast Guard official, mariners often need additional help. For example, while the Coast Guard has a system where a mariner is issued a discharge when he finishes a “hitch” at sea, most “lower-level” mariners never see this system. It is almost impossible to obtain blank discharge books from local Marine Safety Units that find it inconvenient to stock them. Consequently, most employers issue “sea service” letters. However, there is no enforceable requirement that they provide a sea service letter to a mariner in a timely manner. Often, these are the “missing” documents that must support a mariner’s application. A call or letter from a Coast Guard official could solve such a problem very quickly. So could either a statute that leads to an enforceable regulation requiring the issuance of such a letter in place of a Certificate of Discharge.

One mariner recently turned in his application for a lost document to REC Mandeville, LA, where it was supposedly checked for completeness and forwarded to the National Maritime Center. However, the application lacked a passport photograph. In a call from the NMC, the caller told the mariner that she needed a passport photograph (no problem) and that it must be mounted on a printed sheet available over the internet and then signed by the applicant. Several days later, the mariner and a friend – both mature adults – showed up at our Association’s office completely baffled with what he was supposed to pull from the internet. The caller from the NMC breezily “assumed” that the mariner could access the internet. She did not even ask if the mariner could access a computer! So much for the NMC’s new policy that each REC carefully check all applications before it forwards them to the NMC, or the care with which they are handled en route. Incidentally, our Association never did receive a reply to our FOIA request inquiring about a misplaced package containing about 50 mariner applications the Coast Guard reported as lost en route to the NMC several months ago.

What Needs to be Done

Like it or not, our mariners are what they are. Our mariners are a human resource that is in increasingly short supply. Our mariners are in short supply in part because they have been abused by their employers over the years and ignored and trivialized by Coast Guard officials. Our Association’s first major report in May 2000, Report #R-201, Mariners Speak Out on the Violation of the 12-Hour

Work Day outlined the issues eight years ago. Not a great deal has changed since then simply because the Coast Guard at both District and Headquarters level went out of its way to ignore this report from Day 1.

Not only mariner “bodies” are important in manning vessels, but also the experience they accrue within in the marine industry. Older mariners usually have more experience than green deckhands, steersmen, or first-issue license holders. While formal training is important, one of the oldest truisms from ancient Rome is the phrase “Experientia Docet” – experience is the best teacher. This has become the motto of our Association!

Employers are paying cash for their mistakes – probably the highest wages they have ever paid simply to retain the people they already have. Employers also are starting to realize that they must provide formal training to their deck officers simply to keep up with new requirements. However, they still do not understand that the mariners who must operate the fancy new machinery and electronics aboard vessels also require formal training or the equipment will simply disintegrate from misuse or lack of maintenance.

The Coast Guard has not yet had to pay for their mistakes simply because they very seldom admit to having made any. The scandal over the new national security cutters and the failed modification project to enlarge and update eight of their own 110-foot patrol boats to 123-foot has aroused Congress to action as has the entire merchant mariner credentialing boondoggle. The Coast Guard hopes and prays that throwing money at the merchant marine personnel problem will make it magically disappear. However, we do not see that this problem will go away until they stop purging existing credentialed mariners from the system through their pathetic ignorance of our mariners and of the sectors of the industry they work in.

Perpetuating Poor Service

Just last week, a local mariner [Mariner #74] who recently obtained a Steersman’s “learner’s permit” and works for a small towing company reportedly called the Regional Exam Center asking for a copy of the blank Towing Officer’s Assessment Record (TOAR) form. The person who answered the phone at the REC clearly was annoyed, “blew off” his request, and told him to ask his company or their Designated Examiner who “knew all about it.” Apparently, the REC employee didn’t have a clue and didn’t bother to find out the answer for the mariner!

Unfortunately, this is just one example of incompetent agency personnel who are supposed to assist our mariners yet know very few details about the programs they are expected to administer and are unwilling to take the time to even find out the answer by asking around the office. The requested form is available over the internet but only if you know where to look for it. Fortunately, we were able to help when nobody else was able to.

Enough is Enough

Our mariners have had enough! The Coast Guard is a military service. Our mariners are civilians and have come to deeply resent the arbitrary and capricious treatment they received at the hands of the Coast Guard credentialing officials for many years. The answer lies in getting the Coast Guard out of mismanaging the U.S. Merchant Marine at all levels – and doing it just as soon as possible.

Only Congress can order these changes, and we will not presume to tell them how or to do their job.

RULEMAKING PROPOSAL SEEKS TO CHANGE TOWING TRAINING & SERVICE REQUIREMENTS

On Sept. 17, 2007 the Coast Guard issued a Notice of Proposed Rulemaking (NPRM)⁽¹⁾ to change certain training and service requirements in Docket #USCG-2006-26202. The comment period closed on Dec. 17, 2007. [⁽¹⁾ Refer to our report #R-223 for a discussion of a NPRM]

The Coast Guard proposes to make administrative changes to the requirements for merchant mariner training and service that primarily affects service on towing vessels. The proposed regulation would:

- (1) remove the expiration date of the radar-observer endorsement from your license,
- (2) allow an apprentice mate/steersman of towing vessels to reduce his/her sea-service time to advance to mate/pilot of towing vessels by completing additional approved training, and
- (3) provide an alternate path to mate/pilot of towing vessels for master of steam or motor vessels of not more than 200 gross register tons.

These changes are intended to eliminate confusion and clarify training and service requirements. If you have questions on this proposed rule, call Mr. Luke Harden, CG-3PSO, Coast Guard, telephone 202-372-1408.

[NMA Comment: As a Lieutenant Commander, Mr. Harden was the third and final "Project Officer" who worked on the towing officer licensing rulemaking project.]

(1) Radar-Observer Endorsement

A petition for rulemaking was submitted to the Coast Guard on Mar. 10, 2005 by an industry working group called the Mid-America Regional Examination Center Workgroup.⁽¹⁾ That petition identified problems associated with placing the expiration date for the radar observer endorsement on the deck licenses for mariners operating vessels equipped with radar. The petition, authored by a retired Coast Guard officer, was deservedly blunt in revealing the stupidity of the existing regulation. The expiration date for the radar-observer endorsement may be different from the expiration date of the license itself, thereby causing confusion as to the validity of the license. [⁽¹⁾ *An voluntary industry group formed outside the Federal Advisory Committee Act. Refer to file #GCM-208*]

A license is valid for a five-year period from the date it is issued by the Coast Guard. A radar-observer endorsement is also valid for five years, but that period begins after the month of issuance of the certificate of training from an approved course. For original licenses, unless the radar training certificate was issued the month before the license is issued, the expiration date of the radar endorsement will be different than the expiration date of the license. For license renewals, existing 46 CFR 10.480(k) provided a one time opportunity for a mariner to synchronize the expiration date of the radar endorsement with that of the license. However, for various reasons, many mariners did not understand or take advantage of this opportunity. Even if they did, 46 CFR 10.480(k) does not account for subsequent renewals which might also bring the dates out of alignment again. The end result is that many licenses have conflicting radar endorsement dates printed on them.

[NMA Comment: Several of our mariners were seriously

inconvenienced by the existing rule. Even the RECs were confused. NMA supports this change.]

When conflicting dates appear on the license, confusion results. Moreover, licenses may need to be prematurely renewed or reissued with the new radar observer endorsement date when the mariner obtains a new radar training certificate. This problem can be avoided if the radar observer endorsement date is not printed on the license.

Changing the requirement would simplify the process of issuing the license and ease the burden on the Coast Guard, industry, and schools providing the training. However, mariners would still be required to keep their radar-observer training current, but an endorsement evidencing that training would not be printed on their licenses. While they would still be required to hold current radar training certificates to man vessels equipped with radar, as specified in 46 CFR 15.815, mariners would have up to 48 hours to produce a copy of their certificate upon request of the Coast Guard or other appropriate federal agency.

Removing the requirement in for the month and year of the expiration of the radar-observer endorsement to appear on the license, the change will eliminate the apparent early expiration of licenses when the radar-observer endorsement expires. The proposed regulatory change would not affect the actual expiration date of either the license or the endorsement, and would not affect the requirement that the mariner maintain a current radar training certificate. This change would only eliminate the requirement that the Coast Guard actually print the expiration date of the endorsement on the license.

This change would allow mariners greater flexibility in managing their training schedules, and cut out some useless and meaningless work at the hopelessly backlogged Coast Guard RECs. Mariners would be able to submit their licenses for renewal closer to the actual five-year expiration of the license, rather than the shorter period that resulted from the need to renew when the radar-observer endorsement expired. A longer effective renewal requirement is expected to reduce paperwork for both mariners and the Coast Guard. Congress is also expected to step in on this issue as well.

The Coast Guard also proposes to require "readily available evidence" that each person holds a valid radar-observer certificate. Inspection teams, boarding parties, incident investigators, employers, and any appropriate Federal agency representative must still be able to see proof that a mariner is currently qualified as a radar-observer. This change would facilitate enforcement of qualification requirements while providing mariners flexibility in the way they maintain evidence of training.

(2) Training programs

A petition⁽¹⁾ submitted by Kirby Inland Marine, Inc. dated Jan. 4, 2006, and a Report of the Licensing Implementation Working Group of the Towing Safety Advisory Committee (TSAC) dated Oct. 3, 2005, identified difficulties with the service requirements for certification as a mate/pilot of towing vessels. [⁽¹⁾ *These documents are part of the docket and may be viewed in Docket #USCG-2006-26202 at www.regulations.gov*]

According to Kirby and TSAC, the requirements for an apprentice mate to become a mate/pilot of towing vessels unnecessarily restrict and dampen the use of comprehensive long-term training programs. The proposed change would provide mariners and their employers the flexibility to use training programs, which the Coast Guard could accept as meeting a

portion of the service requirements for mate/pilot of towing vessels.

[NMA Comment: Coast Guard-approved courses and long-term training programs have been a part of the new regulations since 2001. Kirby was the first to prepare an acceptable “approved” towing officer training course. Years later the rest of the industry worked through TSAC in public meetings to put together a “model course” that would be available to schools and other companies.]

[NMA Comment: To understand details of any course approval, go to the National Maritime Center website and search for the organization that offers the approved course in question.]

[NMA Comment: NMA would be more inclined to accept the validity of an “approved course” if we knew that the people at the National Maritime Center had practical experience in the subject area they were approving and, at the REC level, if Coast Guard personnel conducting site visits had teaching credentials as well as practical experience in the subject areas they evaluate.]

The service requirements in 46 CFR table 10.465–1 would be revised to permit mariners to count time successfully spent in Coast Guard-approved training programs toward the service requirements for mate (pilot) of towing vessels.

[NMA Comment: We ask, how much credit? We would not argue with one day’s credit for each 8-hour school day rather than 2:1, 3:1 or even 6:1 credit.]

The proposed rule would allow applicants for a license as a mate (pilot) of towing vessels to apply time spent in Coast Guard-approved training courses or programs toward the minimum length of service requirement. The Coast Guard’s current regulations do not count time spent in a rigorous Coast Guard-approved towing training course toward the minimum service time requirements. Prospective pilots that elect to take such a course forego a chance to qualify for their licenses more quickly. The proposed changes would encourage more prospective towing vessel pilots to enroll in a course and more towing companies and training institutions to establish them.

The Coast Guard believes that increasing the number of approved towing course graduates among towing vessel officers could increase overall towing safety.

Recent experience indicates that a substantial number of prospective towing pilots could take advantage of the increased flexibility. Currently the Kirby towing course is the only one approved by the Coast Guard. This course graduates about 10 to 20 students annually, compared to an annual average of 68 original towing licenses as mates (pilot) of towing vessels issued by the Coast Guard during 2003–05.

[NMA Comment: Our Report #R-428-D submitted to Congress last February, highlights the point that the Coast Guard drives off far more experienced mariners in one year than the Kirby program can graduate – and Kirby is the largest towing company in the inland towing industry.]

Based upon discussions at the Towing Safety Advisory Committee, the Coast Guard believes that several towing

companies would consider setting up towing courses if completion of the course could substitute for required service time toward a towing license. The Coast Guard already allows applicants for certain engineering and deck licenses to substitute time spent in a Coast Guard-approved training course toward service time requirements.

(3) Alternate Progression

A petition for rulemaking dated Feb. 11, 2005 was submitted by Delta Towing Co. seeking an alternate path to obtain a license as mate/pilot of towing vessels. The petition recommended a path that could relieve a shortage of qualified towing vessel personnel, as well as provide alternatives to companies that operate diverse fleets of vessels (e.g., offshore supply vessels (OSVs) and towing vessels). The proposed regulatory change would provide a path for a master of steam or motor vessels of not more than 200 GRT to qualify as a mate (pilot) of towing vessels while still demonstrating the experience and training that the regulations require. The alternate path would be available for any holder of a master of steam or motor vessels license, of any route and of any tonnage less than 200 GRT, except for the limited masters’ licenses specified in §§10.429 and 10.456 of this part (e.g., yacht club, camp, and marina launch operators, etc.).

[NMA Comment: Captain Joel Milton discusses this in detail in his letter (below).]

This proposed rule would allow a master of steam or motor vessels to count time successfully spent in Coast Guard-approved training programs toward the service requirements for mate/pilot of towing vessels. The master of steam or motor vessels of not more than 200 GRT would need :

- ? three years of service as master⁽¹⁾ of steam or motor vessels less than 200 GRT, [⁽¹⁾The American Waterways Operators recommended including licensed mates as well as masters.]
- ? completion of a Towing Officer Assessment Record,
- ? completion of the towing vessel license (apprentice mate) exam, and
- ? 30 days of training and observation on a towing vessel on the route being sought.

The existing regulations describe only two paths to obtain a license as mate (pilot) of towing vessels. The first proposed path requires an applicant for a license as mate/pilot of towing vessels to complete at least 30 months of service, a Towing Officer Assessment Record (TOAR) or an approved course, and a 90-day period of training and observation on a towing vessel on the route for which the mariner seeks approval.

The second proposed path allows individuals licensed as a mate or first-class pilot of inspected, self-propelled vessels greater than 200 GRT to obtain a license as a mate/pilot of towing vessels on a particular route after completing a TOAR and a 30-day period of training and observation on a towing vessel on that route.

The third proposed path would allow individuals licensed for three years or longer as a master of steam or motor vessels not more than 200 GRT, including individuals licensed as a master of steam or motor vessels of any route and of any tonnage less than 200 GRT (except for the limited masters’ licenses – e.g., yacht club launch operator types), to obtain a license as a mate (pilot) of towing vessels on a particular route after completing :

- ? a TOAR,
- ? the appropriate apprentice mate exam, and

? a 30-day period of training and observation on a towing vessel on that route.

**Capt. Joel Milton Responds
On Behalf of Working Mariners**

[Editorial Note: Joel Milton is known nationally throughout the marine industry for his column "On the Water" that appears monthly in WorkBoat Magazine. This letter demonstrates his skill in analyzing the problems facing mariners and responding to the Coast Guard Docket on this important Notice of Proposed Rulemaking. This timely contribution to the Coast Guard Docket is very likely to receive favorable consideration during the rulemaking procedure. The Coast Guard Project Officer will respond to "comments" in the Preamble to the Final Rule when it is published in the Federal Register. Joel can be reached at joelmilton@yahoo.com. Emphasis by underlining is ours.]

December 17, 2007

U.S. Coast Guard Docket Number USCG-2006-26202 Training and Service Requirements for Merchant Marine Officers

To whom it may concern,

I have several concerns regarding the reduction of the standards for deck officers serving aboard towing vessels that are contained in this proposed rule. I am referring specifically to the proposal that would allow a Master of Steam or Motor Vessels of not more than 200 G.R.T. to serve as a mate of towing vessels after a mere thirty days of service aboard towing vessels. If this proposal is enacted into the existing regulations it will eventually result in a net decrease of the quality of officers serving aboard towing vessels by lowering the minimum experience requirements. This will almost certainly result in a concurrent decrease in marine safety.

In the *Benefits* paragraph of the Alternate Progression proposal it states that "Candidates eligible for a license as mate (pilot) of towing vessels under this proposed rule change would, in fact, have the same level of knowledge as those seeking a license as master of towing vessels because they would be required to pass the same apprentice mate exam. In addition, such a candidate would have already served approximately five years (sixty months) as a licensed officer before receiving the endorsement. This period is twice as long as the Coast Guard currently requires for candidates seeking a license as a mate (pilot) of towing vessels under the first progression. The second progression already allows mariners holding a license as a mate or first-class pilot of inspected, self-propelled vessels greater than 200 GRT to operate towing vessels on a route if they complete a TOAR as well as 30 days of training and observation on towing vessels on the desired route. The alternate progression element of the proposed rule would extend similar flexibility to a sufficiently experienced master of steam or motor vessels not more than 200 GRT"

To start with, the statement that the candidate would have approximately five years of experience as a licensed officer is factually incorrect. In 46 CFR 10.426 the sea time requirement for Master <200 GRT N/C is 720 total days (360 as master or mate while holding a license), and in 46 CFR 10.428 the sea time requirement for Master <100 GRT N/C is 720 total days (0 as master/mate). In the Discussion of Proposed Rule, Section (3) Alternate Progression, it states that "the master of steam or motor vessels not more than 200 GRT would need three years as service as master of steam or motor vessels not more than 200 GRT" So by adding this proposed requirement of three years of service to

the already required one year as master for the Master <200 GRT license-holder a final total of as little as 4 years experience on the license is what I come up with. In the case of the Master <100 GRT license-holders they could have as little as 3 years of total experience on their license. This amounts to a potential reduction in the actual sea time of these candidates for the Mate of Towing Vessels endorsement of as much as 20% and 40%, respectively, from the 5-year total cited in the proposed rule. This is significant. It is also highly probable that the vast majority of the candidates will come from the ranks of <100 GRT masters, so the lower of the two experience levels would likely be dominant. Furthermore, and most important of all, only 30 days of this total would have to have been served aboard towing vessels.

Thirty days of training and observation is, by any fair and honest measure, insufficient as a minimum requirement of experience, and I would also argue that it is insufficient regardless of whether the candidate is the holder of a six-pack license or a Master - Unlimited upon Oceans. The exception that was made for the holders of <500 GRT-and-up licenses back when the towing vessel officer requirements were written should not have been. From a practical standpoint, anyone who presents a completed TOAR with only 30 days of experience is making, at best, a highly questionable claim and it should immediately arouse the suspicion of a competent license evaluator. At a bare minimum, not less than 6 months would be a good place to consider setting the minimum experience requirement

My own experiences have taught me that, on average, about six to nine months would probably work reasonably well for *most* candidates who had at least two or three years of previous experience *operating* commercial work boats of one variety or another. There are surely a very exceptional few that could probably do it quicker and with no reduction in safety. But they are just that, few in number. While it's true that someone going through the apprentice mate route of advancement could potentially have a total of only 2½ years of sea time when they became eligible to advance to mate, in most cases all of that time will have been gained on towing vessels. In addition, 1 year *must* have been spent as an apprentice mate.

I also believe that relatively few people are actually ready to take and pass the apprentice mate written exam after only 1 ½ years on the job, so it is likely that most who go this route will have even more experience than the minimum. It is a mistake to minimize the importance and necessity of the good, sound education that can only be gained from working on the deck of a tug or towboat. In general, poor or inexperienced deck hands make for poor mates or pilots and, eventually, captains. Those who've never decked at all are highly unlikely to ever amount to much in the wheelhouse of a tug. They are a danger to both their crew, other vessels and the general public.

In addition, because there is no minimum standard for what **type** of experience would be accepted, candidates who earned their licenses with sea time gained on charter fishing vessels, party boats, dinner yachts, tour boats, private yachts and other types of small passenger vessels would qualify for the towing endorsement under this proposed rule. This kind of experience generally bears little relevance to what we do, nor does it necessarily transfer over readily to the dangerous and rather specialized world of the tug and barge industry, particularly on the still-dominant conventional wire boats. And there are also a few hawser boats still in operation, which require even greater skill yet to operate safely. It depends on the quality, not just the quantity, of the experience that the individual trainee brings to the table and that is something best judged by the person conducting

the actual training and evaluation on board the towing vessel. It also takes time. I would agree with the argument that, if there exists a group of experienced captains that have the potential to be able to lateral over into the towing industry with relatively minimal adjustment needed, the source would be the crewboat and offshore supply vessel fleets from the oil fields. Sea time gained in this environment should definitely be given far more weight than that of any of the other categories. Nevertheless, except in the most exceptional of cases, 30 days is still far too little time. Perhaps 90-120 days would be a suitable minimum training and evaluation period for this category of candidates.

The vast majority of wheelhouse personnel on towing vessels in 24-hour service stand a two-watch system. This, by its very nature, demands that both the mate / pilot and master be able to hold down their own watches without each others assistance, except in the event of an emergency, or else they will be operating in violation of the maximum work hour rules and will become dangerously fatigued quite rapidly. Rounding up on a barge to pick it up alongside is not an emergency, it's a routine maneuver. So is making and breaking tow. As are entering port, landing a barge at a terminal, and navigating in reduced visibility or in congested waterways. They happen all the time. These are not things that a mate should normally ever have to interrupt a captain's legally mandated rest periods (which are themselves inadequate already) to accomplish safely. In fact, the manning regulations at 46 CFR 15.705 expressly prohibit it. To put it simply, for this system to work safely the mates must themselves possess minimum captain-level abilities to avoid unduly burdening the captains.

However, if these newly endorsed towing vessel mates were put into a two-watch system (splitting the regular watches between a fully-qualified and experienced Chief Mate & a trainee 2nd Mate) where the captain didn't stand a normal watch and could adjust his schedule as needed to observe and train the 2nd Mates, it would be a different matter altogether. Under such a watch system adequate safety would be maintained while the new mate learned on the job and got a suitable amount of real-world experience. It would also take the pressure off the *Designated Examiner-certified* captains to sign off the TOARs as quickly as possible, which will otherwise undoubtedly become an additional problem.

I do agree that those who choose to attend an approved course for apprentice mate should be given credit towards the minimum sea service requirement just as those working towards other licenses are. But anything more than day-for-day credit would be overly generous and not in the best interests of

safety. Many courses generally amount to little more than license exam preparation and are geared primarily towards rote memorization so that individuals may correctly answer the multiple-choice questions. This is hardly a viable substitute for real boots-on-the-deck experience and on-the-job training from veteran mariners. Unless the Coast Guard intends to truly strengthen the academic standards of such courses (and require high-quality, realistic practical exercises to go along with it) then it would be unwise to substitute class time for sea time at anything more than a 1:1 ratio. It would also be unfair to all self-studying hawespipers, who possess at least the same minimum level of book knowledge after passing their Coast Guard-administered exam as those who attend a course instead, but must still meet the full minimum service requirement.

Sincerely,

Capt. Joel Milton

Master of Towing Vessels

Master of Steam & Motor Vessels <1,600 G.R.T.

Able Seaman - Unlimited

License #1143797 - Issue #5

Captain Jordan May

Master of Towing Vessel Association Responds

"It is not realistic that a senior tugboat Captain, towing 40,000 barrels of oil would leave the wheelhouse for 12 hours and let a mate with 30 days on a tug take charge; however, it would be well within the proposed regulations, if they are implemented, and it would undoubtedly happen.

"We also have some concern that should an accident occur involving spilled oil or loss of life, there could be a severe public backlash if it were discovered that the Coast Guard recently lowered the bar for training requirements, and the mate at fault had about 30 days on a tugboat under his belt. This could easily cause the pendulum to swing in the extreme opposite direction, and we could end up with training requirements and regulations stiffer than what we have today.

"These Coast Guard regulations were not written just to be changed when the industry is short (of) a few people and ready to lobby. There are between 10,000 and 12,000 towing endorsements currently in the U.S., only a small percentage of which are being utilized."

Sincerely,

Captain Jordan May

Master of Towing Vessels Association

www.mtvassociation.com

(P.O. Box 261, South Beach, OR 9736)

BROWN-LISTED TOWING COMPANY MUST PAY FOR ENDANGERING ITS MARINERS' HEALTH

[Editorial note: NMA followed this remarkable case from the outset through the court's rendering the summary judgment requested by Plaintiff Herman Newton. This article is an edited version of the motion for summary judgment, Civil Action #36199, filed in Division A of the 18th. Judicial District of Louisiana subsequently granted on "maintenance and cure" and "unseaworthiness" issues. The motion was filed by NMA Attorney Mark L. Ross, Esq. NMA edited out (for readability) cites of case law and use of depositions obtained in this case. For further information, contact Attorney Mark L. Ross, 600 Jefferson St., Suite 501, Lafayette, La. 70501. Tel.(337) 266-2345; Fax (337) 266-2346.]

Herman Newton vs. Versatility Marine, LLC

The plaintiff, Herman Newton, brought the Motion for Summary Judgment under La C.C.P, 966, the Jones Act, 46 U.S.C. 688, et seq. and the general maritime law.

The Plaintiff moves the Court to find as an uncontested matter of fact or law that the defendant, Versatility Marine, LLC, owes the plaintiff, a former member of defendant's crew aboard defendant's towboat EAST WIND, maintenance and cure following his development of an MRSA staph infection on or about Mar. 2, 2007.

The evidence shows that plaintiff became ill while in the service of his vessel. The evidence also shows that despite actual, repeated notice of plaintiff's staph infection and eleven day hospitalization, Versatility Marine, LLC arbitrarily and capriciously denied plaintiff maintenance and cure.

The Plaintiff further moves the Court to find as an

uncontested matter of fact and law that defendant, Versatility Marine, LLC, is liable to plaintiff since plaintiff's staph infection resulted from the unseaworthiness of the M/V EAST WIND.

Towboat EAST WIND Judged to be "Unseaworthy"

The M/V EAST WIND's crew was rendered unseaworthy in that a fellow deckhand, Adam Hanshew, carried the MRSA staph and infected the plaintiff, Herman Newton. The vessel was further rendered unseaworthy by Versatility's failure to properly decontaminate the vessel after notification of the staph contagion, as well as provide plaintiff with medical care under Versatility's maintenance and cure obligations.

Herman Newton is a former crewmember of the M/V EAST WIND, a vessel chartered and/or operated by defendant, Versatility Marine, a towboat company doing business within the State of Louisiana from its office in Port Allen, Louisiana.

Another Crewmember Infected Herman Newton

In mid-February 2007, Herman Newton, was a crewmember of the M/V EAST WIND and working out of Galveston, Texas. On or about Feb. 11, 2007, Versatility brought aboard a new deckhand, Adam Hanshew. Unbeknownst to Newton, Adam Hanshew previously contracted and continued to suffer from a staph infection known as Methicillin-Resistant Staphylococcus Aureus (hereinafter "MRSA"). MRSA is infectious, resistant to antibiotics and can lead to toxic shock syndrome, pneumonia, blood poisoning, organ failure, the loss of limbs and death. Once contracted, MRSA remains in the victim's blood system for life and can manifest again at any time.

One eyewitness to the events at issue was former Versatility captain Gary Hensley, a towboat pilot with 20 years experience who began working with Versatility on Sept. 7, 2006 and who provided a deposition in this case.

Versatility appointed Captain Hensley to pilot their towboat M/V EAST WIND and gave him the option to chose his own crew. Captain Hensley chose as deckhand plaintiff Herman Newton with whom he had worked previously and considered an "outstanding deckhand".

Captain Hensley recalled that the carrier of the staph infection, Adam Hanshew, came aboard the M/V EAST WIND as a new deckhand in early Feb. 2007. After a day or day and a half, Captain Hensley noticed that Hanshew's nose was swollen and was "real red". Hanshew's nose continued to get "really big and really sore and it started draining". At that point, Hanshew told Captain Hensley and Herman Newton that the swelling stemmed from a staph infection from which he had suffered three previous outbreaks and showed them surgical scars to his stomach, chest and arm required to cut out the infected tissue. As deckhand Hanshew's infection continued to worsen it began to drain a "pusy mucus type drain."

Captain Hensley arranged for Hanshew to receive medical treatment in Port Arthur, Texas, because Hanshew told him he could not sleep due to the "pusy mucus type" draining. Furthermore, Captain Hensley and his crew feared being infected since Hanshew cooked the crew's meals.

Captain Hensley felt compelled to get Hanshew medical attention less than a week after Hanshew came on board the M/V EAST WIND. The examining physician found that Hanshew suffered from a staph infection and refused to release him to return to work and further directed that Hanshew receive immediate medical attention at his home in Mississippi.

From the time Adam Hanshew came on board the M/V EAST WIND until he had to leave due to his staph infection,

he bunked with the plaintiff, fellow deckhand Herman Newton, in a 8' by 10' bunkroom. Hanshew and Newton used the same shower and toilet. Captain Hensley recalled that Hanshew was "draining" and bunking with Herman Newton for three or four days.

Versatility Marine's management recognized the highly contagious nature of Hanshew's staph infection from the outset. When Versatility refused to provide transportation for Adam Hanshew to return home to Mississippi from Port Arthur, Texas, Versatility Marine general manager Rhonda Watson and port captain Doug Faust told Captain Hensley they were concerned about the contagious nature of Hanshew's staph infection and Versatility's potential liability if some else became infected.

Captain Hensley and his relief pilot, Captain David Whitehurst, concerned about their own exposure to Hanshew's staph infection, went on the internet to learn about staph infections, "and the more we read, the more scared we got about it..."

Captains Hensley and Whitehurst thereupon contacted the Center for Disease Control (CDC) in Atlanta, Georgia, among other agencies, and were advised to have a professional cleaning crew fumigate and clean the boat. The CDC also advised Captain Hensley to throw away the mattresses on which Adam Hanshaw and his roommate, Herman Newton, had slept. Captain Hensley told Versatility's port captain, Doug Faust, its general manager, Rhonda Watson and the company's owner, Bud Watson, about the CDC's recommendations that Versatility shut down the M/V EAST WIND so a professional service could fumigate the vessel and that Hanshew's and Newton's mattresses be thrown away, "... to kill whatever viruses may be on that boat to protect us."

Versatility Refused to Take CDC Recommended Steps to Remove Staph Infection From Their Towboat

Doug Faust was the marine superintendent for Versatility and was in charge of regulatory compliance and safety for Versatility's vessels. Faust admitted he learned of staph infections aboard the M/V EAST WIND when the vessel's captain, Gary Hensley, called and told him of deckhand Hanshew's infection. When the subject of maintenance and cure for deckhand Hanshew was discussed, however, Versatility refused to provide Hanshew medical treatment on the pretext that Hanshew's affliction was a so-called "pre-existing condition."

Incredibly, about two months after ejecting Hanshew from the M/V EAST WIND in Port Arthur, Texas and refusing to provide him medical treatment, Versatility rehired Adam Hanshew. Versatility rehired Hanshew despite its knowledge that he could expose yet other Versatility employees to the highly infectious and dangerous MRSA staph. Hanshew did not finish his 28 day hitch after Versatility hired him a second time since Hanshew had yet another outbreak and had to leave the vessel again.

Captain Hensley subsequently discovered in speaking with the captain of Hanshew's second Versatility boat that Hanshew came down with an outbreak of "something" and that Versatility never advised that vessel's crew that Hanshew had recently suffered an MRSA staph outbreak.

After deckhand Hanshew left the M/V EAST WIND to obtain medical treatment on his own, Versatility refused to hire a professional decontamination service to clean the M/V EAST WIND. Versatility told Captain Hensley, "they could not afford to shut the boat down for a professional cleaning crew..."

Instead, Versatility's port captain Faust told Captain Hensley to have the crew clean the boat with Lysol and bleach.

Versatility also refused to throw away the mattresses on which Hanshew and Newton slept despite the CDC's strong recommendation that the mattresses be discarded since once the staph, "gets into the mattress, there is no killing that virus in the mattress." Versatility's Doug Faust responded that Versatility would not discard the mattresses as they were supposedly brand new and Versatility did not want to buy new ones.

Herman Newton Contracts MRSA Staph Infection

Captain Hensley recalled that Newton came to him a few days after Hanshew left the boat complaining of painful red spot on his right leg above his knee with a black spot in the middle. Captain Hensley told Doug Faust, Versatility's port captain, about Newton's staph infection, which was the second infection aboard his vessel in the space of a week.

Herman Newton went to San Jacinto Methodist Hospital in Baytown, Texas where he had his right leg aspirated, was prescribed antibiotics, given a "do not return for work" slip and directed to seek medical attention.

Captain Gary Hensley e-mailed both Versatility port captain Doug Faust and general manager Rhonda Watson a "First Report of Injury or Illness" dated Mar. 2, 2007, which reported that Newton suffered, "Possible spider bite or outbreak of Staph infection." Captain Hensley recalled that Versatility's port captain Doug Faust, general manager Rhonda Watson and owner Bud Watson seemed "very nonchalant" about a second case of staph infection aboard the M/V EAST WIND. Doug Faust and Versatility refused even after a second staph infection within a week to retain a professional cleaning crew to fumigate and decontaminate the vessel.

Captain Hensley recalled that Versatility would not arrange transportation for Herman Newton to return home to Florida because Versatility was concerned, "about the contagious level of it" and, "that they could be held liable and responsible for Mr. Joe Blow or Mr. Julio Inglesias coming down with this stuff..." Plaintiff Herman Newton, like Hanshew, therefore had to find his own way home.

[NMA Comment: We asked our Eighth District Liaison Officer, Commander Jim Stewart, to check with District Legal and advise us in writing of any position the Coast Guard would take to assist seamen with grievances involving abandonment without travel funds such as in the case cited above. We stated that most of our mariners are not members of a labor union with grievance procedures established under a collective bargaining agreement.]

Versatility's Doug Faust spoke to plaintiff Herman Newton after Newton left the M/V EAST WIND in Texas and returned home to Crestview, Florida to seek medical care. Newton informed Faust that a Florida doctor sent him straight to a hospital emergency room, "Because he was in urgent need", due to the infection in his right leg. Newton informed Faust in a series of telephone calls that he had been placed in isolation, diagnosed with a staph infection and repeated asked if Versatility would cover plaintiff's medical expenses. Faust filed an "Incident Investigation Report" dated Mar. 12, 2007 with Versatility, reporting that Herman Newton had suffered an, "Infection of right leg", and that, "At his home in Florida he was diagnosed with CAMRSA." In short, Versatility received a constant stream of information concerning the source of

Newton's infection, its diagnosis and pleas from Newton for maintenance and cure, all of which Versatility ignored.

Herman Newton entered North Okaloosa Medical Center on March 6 and was discharged from hospital on March 16, 2007. A treating physician diagnosed that Newton suffered from MRSA staph infection. Newton's physician stated that : "(he was)...a previously healthy 28-year-old gentlemen whom I have seen in the postoperative period after he had had an incision and drainage of his right knee. I agree with Dr. Herf's antibiotic choices in the form of Vancomycin and Zosyn, as the patient is a perfect setup for community acquired methicillin-resistant staphylococcus aureus. I question whether or not he ever actually had a spider bite. He denies any trauma to the right knee. He states that it popped up spontaneously, but given the history that there are other folks on the boat that he was working on in close quarters with this infection, I feel that this may be methicillin-resistant staphylococcus aureus..."

Newton presented a full set of the voluminous North Okaloosa Medical Center records for to Versatility Marine, LLC, but received no response to his request for payment of maintenance and cure.

Versatility's port captain, Doug Faust, "felt quite sure" that Versatility would cover plaintiff's maintenance and cure expenses "because of the situation at hand. He was aboard our vessel, had an infection, and sought medical treatment, and I felt it was our responsibility." Faust could not think of any reason why Herman Newton should not receive maintenance and cure. Captain Hensley agreed that he could not think of any reason why Newton should not receive maintenance and cure. Captain Hensley concurs that by all rights, "he should have been paid maintenance and cure and transportation home by the law."

Versatility "Stiffs" its Mariners

Versatility has neither paid, offered to pay nor been willing to discuss whether it will pay Herman Newton maintenance and cure despite repeated requests from Newton and his attorney.

The amount of maintenance and cure owed by Versatility to Herman Newton is considerable. Herman Newton is indebted to the North Okaloosa Medical Center for his eleven day stay in isolation and surgery in the amount of \$42,739.75. Mr. Newton is also indebted to a treating physician for post-discharge outpatient care, Dr. David Herf, in the amount of \$630.00.

Herman Newton was out of work due to his staph infection from Mar. 2, 2007 until May 2007. Versatility's former port captain, Doug Faust, testified that Versatility's general manager, Rhonda Watson, had agreed to pay Newton maintenance of \$15.00 per day, although no payment has ever actually been made.

The leading maintenance and cure case of *Hall v. Noble Drilling*, 242 F.3d 582, 591-2 (5th Cir. 2001), contains an excellent discussion how the marine industry's selection of \$15.00 a day maintenance in the 1970's now translates into \$38.35 per day in current dollars. Plaintiff notes that even \$38.35 per day is a small fraction of the two-thirds payment of worker's compensation assured injured land based workers. Mr. Newton is entitled to unpaid maintenance in the amount of \$1,342.25, representing the period between Mar. 2, 2007 and his release from this particular bout of MRSA staph infection on Apr.16, 2007 at a rate of \$38.35 a day. Newton also is entitled to an award of attorney's fees incurred in the prosecution of plaintiff's maintenance and cure claim.

Maintenance and Cure

The law required Versatility, as Herman Newton's Jones Act employer, to provide Newton medical care for any injury or illness incurred in the service of his vessel. Jones Act employers specifically owe maintenance and cure to seaman who suffer illnesses while in the service of their vessels. The Plaintiff need not show his illness is job-related. Similarly, a "seaman's entitlement to maintenance and cure is entirely unrelated to any fault or negligence on the part of the shipowner." A seaman need not "absolutely" prove his entitlement to maintenance and cure: "Any doubts or ambiguities in the application of the law of maintenance and cure are resolved in favor of the seaman." The employer's duty to pay maintenance and cure "is of ancient vintage...". [Editorial note: Attorney Mark Ross fully documents each of these statements in case law in his motion.]

Doug Faust, Versatility's *former* port captain and Captain Gary Hensley, *former* captain of the M/V EAST WIND, have both testified no issue existed in their minds that Versatility owed Herman Newton maintenance and cure. Given Versatility's denial of maintenance and cure to Herman Newton constitutes by any measure the "egregious fault," the plaintiff is also entitled to an award of attorney's fees. Therefore, Attorney Mark L. Ross moved the Court to award attorney's fees on a contingency fee basis based on the amount the Court may chose to award in maintenance and cure citing a Supreme Court case that observed that a lower court had assessed attorney's fees at 50% of the maintenance and cure award.

The Vessel Was Unseaworthy As a Matter of Law – A Substantial Cause of Newton's Infection.

"The case law holds that an owner is responsible to the captain or any seaman thereof for injuries received because of the unseaworthiness of the vessel." A vessel is unseaworthy when its crew is inadequate or incompetent. The duty of a vessel owner to provide a seaworthy vessel, including a competent crew, is absolute and non-delegable. Liability is imposed for unseaworthiness regardless of the vessel owner's negligence or failure to exercise reasonable care.

Versatility was obligated under its duty to provide plaintiff with a seaworthy vessel and an adequate crew. It is an uncontested matter of fact and law that burdening the M/V EAST WIND with an MRSA staph infected crewman such as Adam Hanshew rendered the vessel unseaworthy. Newton, in order to prevail on its unseaworthiness claim against Versatility, need not show that Versatility knew or should have known of Adam Hanshew's MRSA staph infection when it hired him since, "Liability is imposed for unseaworthiness regardless of fault, negligence or the failure to exercise reasonable care on the part of the vessel owner." However, given that Versatility rehired Hanshew after the outbreak of his Feb. 2007 staph infection and despite the infection of fellow crewman Herman Newton, the Court concluded that Versatility was indifferent to the health risks that an MRSA staph carrier presented to its employees.

Refusal to Professionally Decontaminate the Vessel Also Rendered M/V EAST WIND Unseaworthy.

Versatility's refusal to have a professional cleaning service decontaminate the M/V EAST WIND and at a bare minimum dispose of the mattress on which Adam Hanshew had been draining a "pussey mucus type drain" rendered the vessel

unseaworthy and led to plaintiff's MRSA staph infection. Professional cleaning services with special expertise in addressing MRSA staph infections exist and are readily available. Attorney Mark Ross attached a brochure of one such service with special expertise in addressing MRSA staph infections.

Versatility's refusal to dispose of Hanshew's obviously staph infected mattress, which may still be in use to this day, likewise renders the vessel unseaworthy.

Versatility's Failure to Provide Medical Care Rendered the Vessel Unseaworthy

Versatility's uncontradicted refusal to provide Herman Newton with medical care rendered the M/V EASTWIND unseaworthy. Failure to evaluate and provide proper medical care rendered vessel unseaworthy. The vessel was "rendered unseaworthy by the failure of the ship owner to render prompt and adequate medical treatment."

Unseaworthiness was the Proximate Cause Of Newton's MRSA Staph Infection

For Herman Newton to prevail on a claim of unseaworthiness, he had to show that the unseaworthy condition, the presence of MRSA staph infected Adam Hanshew and Versatility's refusal to provide him with prompt medical care, was a proximate cause of his staph infection, i.e. that Newton's staph infection was, "a reasonably probable consequence of the unseaworthy condition. The evidence on causation exceed that of being "reasonably probable" and was more in the realm of beyond a reasonable doubt.

Conclusion

On Nov. 26, 2007 Judge James Best, Division A, 18th Judicial District, New Roads, Louisiana granted Herman Newton's motion for summary judgment for the reasons stated in the plaintiff's motion (above) that were adopted by the court as its own.

The Plaintiff, Herman Newton, moved the Court to find as an uncontested matter of fact or law that the defendant, Versatility Marine, LLC, owes plaintiff maintenance and cure following his development of an MRSA staph infection while working in the course and scope of his employment as deckhand aboard defendant's towboat, the M/V EAST WIND. Newton showed that despite Versatility Marine having actual and repeated notice of plaintiff's staph infection, they arbitrarily and capriciously refused to pay plaintiff maintenance and cure.

Plaintiff further moved the Court to find as an uncontested matter of fact and law that Versatility Marine was liable to the plaintiff since the plaintiff's MRSA staph infection resulted from the unseaworthiness of the towboat M/V EAST WIND. The crew was rendered unseaworthy in that a fellow deckhand, Adam Hanshew, carried the MRSA staph and infected Herman Newton. The vessel was further rendered unseaworthy by Versatility's failure to properly decontaminate the vessel after discovery of the staph contagion, as well as Versatility's refusal to provide plaintiff with medical care under Versatility's maintenance and cure obligations.

[NMA Comment: We were informed by a reliable source that Versatility Marine is no longer in business. Nevertheless, they will remain on our brown-list until Herman Newton is paid in full.]

TOWBOAT RAMS WALL AT SMITHLAND L&D SINKING TWO BARGES

[Source: FOIA #05-1398; NMA File #M-562; USCG Mistle Activity #2338052; Mistle Case #227316, MSO Paducah; Release dates May 2, 2006 (partial) and Jan. 5, 2008 on Enforcement Activity #2344197.]

On April 5, 2005 at approximately 04:30, the M/V CAPTAIN BILL, a 131-foot, 2160 horsepower towboat pushing 15 loaded rock barges down river, experienced a loss of propulsion when the starboard engine went down due to possible drift accumulation. The vessel was operated by the Western Rivers Management Company of Ash Flat, AR. Loss of the starboard engine reportedly contributed to the pilot's inability to maneuver, causing the vessel's tow to smash into the long wall at Smithland Lock and Dam and ram a tow emerging from the lock.

The allision at the first coupling of the tow broke the couplings and allowed the first 12 barges to continue on into the lock chamber where they collided with and damaged the tow of the 5,600 horsepower M/V F.M. Baker.

The M/V CAPTAIN BILL attempted to maneuver the remaining three barges. However, the two outside barges on the port and starboard side parted their wires causing the barges CM-101 and ML-609 to drift down on the dam and eventually sink.

Although this was a "Serious Marine Incident" the Coast Guard's investigation was carried out at the "Data Collection" level – the lowest of three investigation levels as explained in our Report #R-429-C, Coast Guard Marine Casualty Investigations. Damage estimates totaled \$168,000 including \$18,000 damage to the facility.

Drug and alcohol testing took place approximately 8½ hours after the accident and focused upon the "watch captain" of the M/V CAPTAIN BILL.

As is often the case, immediately after the accident, we received a number of calls providing information as to the possible causes of the accident. One mariner said that he heard that the engine(s) of the M/V CAPTAIN BILL died as the vessel was approaching the long wall on the upstream side of the dam and that was the immediate cause of the accident. Another reported that it was "well known up and down the river" that the vessel was experiencing engine problems and possibly steering problems before the accident. However, "well-known" may or may not have included giving formal notification to the Coast Guard as required by 46 CFR 4.05-1(a)(3) that requires immediate notification of "a loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel."

Another mariner searched his daily logbook records and recalled witnessing a near collision between the tows of the M/V CAPTAIN BILL and the M/V BRONSON INGRAM on Feb. 27, 2005 near 81-Mile Point in the New Orleans area where the vessel reportedly lost engine power on both engines. At that time, the Captain reportedly said he had "clutch tire" problems although the eyewitness believes he lost power on both engines. The following day, he heard another radio conversation (but did not witness) that the vessel lost power again in the New Orleans area.

Although these incidents reportedly took place almost 800 miles apart, we thought they should lead a competent investigator to look into a possible history of:

? lack of proper maintenance, or a credible preventive maintenance system.

? running with an inexperienced or untrained engineer,

"deckineers" whose service is split between deck and engine duties, or perhaps sailing without any designated engineer as has been common in the industry since around 1970,⁽¹⁾ [⁽¹⁾Refer to Report # R-401, Rev. 1, Crew Endurance and the Towing Vessel Engineer – A Direct Appeal to Congress.]

? unwillingness to call upon shoreside mechanics to make engine repairs in a timely manner.

? sailing without a designated engineer,

? lack of tools or replacement parts to perform simple underway repairs if possible,

? whether the operating company has a credible safety management system.

We shared our thoughts with our Eighth District Liaison Officer at the time.

If these engine problems did occur, did the master or pilot of the vessel ever notify the Coast Guard of these problems in the New Orleans area or, subsequently, on the Ohio River above Smithland Lock & Dam as required by 46 CFR §4.05-1(a)(3)? After all, the Coast Guard is perfectly justified in requiring this information be furnished since it is tasked by Congress to perform its regulatory duties.

Three years later...

In early January 2008, as part of our initial FOIA request, we received a notice of "Enforcement Activity #2344187" that indicated that a mariner tested positive for drug use and surrendered his license in a settlement agreement shortly after the accident.

While drug use certainly is significant, it is not the only or necessarily the overriding cause of accidents. Our Association is concerned that the Coast Guard pays insufficient attention to the role of engineroom personnel on towing vessels. One stalled engine at the wrong time at one of the locks, for example, could close a large part of the Ohio River for a long period of time and cause serious damage to our economy. Another accident last year at a lock on the Tennessee River involving a Maryland Marine towboat severely impaired traffic on the upper reaches of that waterway in the Chattanooga area before the lock was restored to service. We also remind our mariners that a towboat rammed the gates of the Harvey Locks in the early 1970s and flooded Harvey, LA. The "driftwood" answer given "off the cuff" is usually enough to stall any investigation, especially a cursory investigation conducted at only the "data collection" level.

Towboats should have engineroom personnel available to immediately re-start engines that shut down while maneuvering around locks and other important river infrastructure such as bridges, docks, and water intakes.

Engineroom personnel working on coastal tugs are supposed to work a three-watch system as per 46 USC 8104(g) and 46 CFR §15.705(c). However, the Coast Guard rarely enforces this regulation. Remarkably, virtually no manning regulations apply to towboat engineroom personnel on inland waters. Incredibly, the Coast Guard ruled out tackling "manning issues" in the new towing vessel inspection regulations currently being prepared at Headquarters. In fact, there may not even be an engineroom "watch" at all on many towing vessels. All this negligence and inattention on the part of the Coast Guard for years just begs for a easily preventable but catastrophic accident to occur. Would crashing through the lock gates at Smithland L&D be sufficiently catastrophic to commerce on the lower Ohio River?

Perhaps after the recent beating the Coast Guard's reputation took following the COSCO BUSAN bridge allision and oil spill in San Francisco Bay on Nov. 7, 2007, Congress will re-evaluate the job the Coast Guard is doing supervising the towing industry. In

addition, the NTSB is looking very carefully at things like “preventive maintenance” that the Coast Guard brass at Headquarters is trying to talk its way around and make go away.

It is a tall order to expect a “deckineer” 600 feet away and standing out on the head of a tow to sprint across five loaded rock barges to re-start an engine that shuts down. Our Association has serious concerns about inadequate manning, lack of formal training in engine rooms of towing vessels not only on the inland rivers but offshore as well. Inexperience may help explain some of the 1,300+ towing vessel “floodings, sinkings, and capsizings” reported over a 12 year period and subsequently questioned by Congress. Our Association expressed our complaints in the following reports available on our internet website:

? Report #R-412, Towboat Engineer’s Death Points to Need for Changes in the Law.

? Report #R-428, Rev.1. Report to Congress: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel.

? Report #R-428-H. Maritime Education & Training: Lower-Level Engineering Programs.

Although the accident report does not mention the name of the drug abuser, this does not concern us in light of privacy considerations. However, the report also does not make it absolutely clear as to the position the drug abuser held on the

vessel – which we believe is much more serious. Was he the Master of the vessel, the pilot on duty, or somebody else. This type of information will become increasingly important as more Apprentice Mates/ Steersmen and newly-trained Mates are given an opportunity to practice tow handling.

In reviewing a number of these accident reports (e.g., well in excess of 700) we believe that every accident report should make it crystal clear as to exactly what position a mariner held during any accident. In addition, we note that the accident report on form CG-2692 time-stamped on April 11, 2005 is not complete in that it left out significant information concerning the person’s time in the industry, time with the company, time in that position, etc. The incomplete form apparently was accepted by the Coast Guard – something that is also quite common from our experience. In fact, many accidents that involve personal injuries are not reported to the Coast Guard until months after the occurrence. This is always to the very great detriment to our mariners who are often stiffed by their employers for maintenance and cure and even for hospital bills as is related in our Report # R-440, Employers Abuse Mariners On Health & Medical Issues by Mark L. Ross, Esq. and Report #R-333, Rev. 3, Don’t Count On Corporate Compassion or Coast Guard Concern – True Stories of Our Lost, Injured, and Cheated Mariners.

TWO MORE OVERSIZE ARTCO TOWS SNARL RIVER TRAFFIC

[Source: Mistle Activity #22506587; Mistle Case #211703; FOIA #05-0263 & 08-0364; GCMA File M-502. Release Date May 30, 2006]

M/V Dan MacMillan Accident

ARTCO’s towboat M/V DAN MACMILLAN has been the subject of a number of Coast Guard accident reports in our files. The story seems to repeat itself highlighting the fact that ARTCO’s “six-long” downbound tows repeatedly find themselves in trouble. We also note that the Coast Guard avoids “connecting the dots” about the frequency and severity of these accidents and how difficult these oversize tows make it for other mariners using the river.

This accident reportedly delayed between 6 and 10 other vessels for more than 18 hours while other boats recovered the damaged and grounded barges and the boat crew went through the job of replacing the damaged rigging and rebuilding the tow. In this accident, 11 barges were damaged while 29 were undamaged. The estimated cost of the property damage was in excess of \$142,000.

As Quoted from the Coast Guard Accident Report

[Editorial Note: Edited for grammar. Emphasis is ours.]

(The) operator was flanking around Grays Point southbound at MM 46 UMR when he misjudged the edge of the channel and went deep, causing the port stern of his vessel Dan Macmillan to strike bottom. The grounding caused the head of his 36 barge tow to top around and the starboard head barge to ground.

Buoys located at MM 46 were determined to be missing and are a contributing factor in the casualty. Buoys marking the edge of the sandbars and dikes are especially important in assisting the towing vessels maneuvering around Grays Point to visually determine their position, speed, and distance relative to the

estimated position of the hazard, allowing them to adjust their flank according.

The overall length and width of the tow is 1380’ x 210’, and is considered a contributing factor in the casualty. The overall width of the river at Gray’s Point is approx 1800 ft. The width of the navigation channel is estimated at approximately one-third of the width of the river (approximately 600 feet) due to location of dikes, sandbars, and buoys. While the channel width provides sufficient maneuvering room when a vessel is on a straight course, the addition of a bend of approx 100 degrees at Gray’s Point makes it difficult to maneuver a downbound vessel of nearly 1400’ through this area even under ideal conditions. The additional factor of missing buoys at this location for reference decreases the ability of the operator to safely transit this portion of the river.

(The) Master of the M/V DAN MACMILLAN at the time of the casualty, misjudged his position while conducting a flanking maneuver around Gray’s Point bend at MM 46, upper Mississippi river. Captain XXX was unable to properly judge his position due to missing buoys marking the sandbars located in the bend. On scene investigators confirmed buoys were missing and notified aids to navigation. The Coast Guard report noted:

1. The M/V DAN MACMILLAN, owned by American River Transportation Co (ARTCO) was pushing 36 loaded barges southbound on upper Mississippi river when starboard head barge ATT-335 struck bottom while attempting to flank around Grays Point (MM 46) causing barge facing wires to break and the vessel to top around.
2. Three barges ran aground immediately and 33 were set adrift. Of the 33 barges adrift 26 quickly grounded while the remaining six barges remained adrift and passed under the Thebes railroad bridge before grounding along the river bank outside of the channel.
3. It was initially reported that Thebes railroad bridge was struck by an adrift barge. On scene investigation and a phone call to

Alexandria County sheriff did not reveal any evidence to support a bridge allision. However, the railroad bridge was closed and inspected before being reopened to rail traffic.

4. Barge XL-315 is taking on water and sitting on the bottom, outside of the navigation channel barge was loaded with soy meal and is in no danger of being completely submerged due to location and water depth. Three loaded red flag barges were involved in the incident but were not impacted. Red flag cargo consists of denatured alcohol.
5. Vessel and tow maneuvering through area observed that buoys marking channel north of Grays Point were missing. (However), the tow went deep in the bend and starboard corner of starboard head barge struck bottom.
6. M/V GINNY STONE and M/V CURTIS MOORE were on scene to assist with the grounded barges. M/V MARY EVELYN was enroute to assist. A marine surveyor was on scene and evaluating grounded barges for damage. The river was closed until grounded barges were removed.

[NMA Comment: Although investigators gave the extreme length of the tow as one of the contributing factors to the casualty, they failed to recommend that the company shorten their tows.]

[NMA Comment: We are indebted to an Association member who provided us with shoreside coverage of this accident.]

M/V American Pillar Accident

[Source: FOIA 07-122; Mistle Activity #2800827; Mistle Case #319856; Our File #M-657.]

“Shortly after midnight on Oct. 6, 2006 while underway southbound at mile 531 on the Lower Mississippi River, the Pilot of a 42-barge (“six-long”) tow attempted to navigate through the Greenville Bridge.

“While steering towards the bridge, the pilot believed that he was steering toward the pillar located near the left descending bank. However, he was actually steering towards the pillar located near the right descending bank. “Once he discovered his error, he attempted to correct course but could not do so in time and was forced to pass between the pillar nearest the right descending bank and the bank itself.”

He did not do this successfully.

“While attempting to do this, the freight barge PVBL-94 allided with the pillar causing all of the vessel’s face wires to break and resulting in a 42-barge breakaway. Sixteen barges were intentionally grounded approximately five miles down river on the right descending bank to prevent them from sinking.”

This was a “Serious Marine Incident” that damaged 21 barges causing \$500,000 in damage to the barges and \$1,000,000 damage to the cargo they were carrying. An “informal” investigation was conducted which produced little more than the foregoing account and a list that identified the damaged barges.

Following the accident, the Pilot stated in pertinent part: “Upon my approach to the upper Greenville Bridge, the lower bridge lights obscured the navigation lights and bridge on the upper bridge. The only navigation lights that were visible were the navigation steering lights on the Ar(kansas) span, the span that is now closed. As I approached...the upper bridge and took a new bearing and realized I was heading on the wrong bridge span, I went into emergency maneuvering to try to slow down to the slowest possible speed before an allision with the bridge.”

With 10,500 horsepower, the AMERICAN PILLAR is one of the most powerful towboats on the western rivers. It has all the latest navigational equipment. All that horsepower is of little value if you do not know where you are or how to use the navigation equipment you are provided with. The Pilot “...was confused by the lights of the new bridge under construction and lined up on the wrong span of (the) bridge. (The) tow then allided with (the) bridge.”

[NMA Comment: A 1385-foot by 245-foot tow is a large chunk of floating real estate to turn loose on the river entrusted to a person that either loses situational awareness or just doesn’t know where he is going.]

The Coast Guard investigator made no recommendations on how to avoid future accidents (he probably didn’t have a clue!) and, as is customary with ARTCO accidents in particular, made no referrals for enforcement action.

[NMA Comment: For the past five years, the Coast Guard at the Eighth District level was derelict in its duty to regulate oversize and overloaded tows on the Lower Mississippi River. Refer to our Report #R-340, Rev. 8, Oversize and Overloaded Tows Cause Safety Problems.]

DOES THE COAST GUARD IGNORE BASIC SURVIVAL LESSONS FROM THE TITANIC?

[Source: *Passengers Outnumber Lifeboats and Rafts*, by Gary Stoller., USA Today. Jan 11, 1999. *Emphasis is ours.*]

Out-of-Water Survival Equipment On Some Passenger Vessels Where Passengers Outnumber Lifeboats and Life Rafts

NMA Introduction: In 1986, following the grounding of the PILGRIM BELLE, the National Transportation Safety Board urged the Coast Guard to provide “out-of water” lifesaving equipment for passengers and crewmembers of commercial vessels. Our Association has consistently supported the NTSB recommendations for “out-of-water”

survival craft – although to no avail. However, we believe that Congress intends to address this issue in the next Coast Guard Authorization Bill.

In response to our letter of Oct. 8, 2007, Chairman Rosenker of the NTSB furnished our Association with a History of their recommendations and the problems they have had in dealing with the Coast Guard on this issue.

NMA recently posted Report #R-354-A, Basic Survival: The Regulatory Struggle for “Out-of-Water” Lifesaving Equipment on our website. This report reproduces the exchange of correspondence between the two agencies on this issue.

The 1999 article by Gary Stoller that follows shows the extent of the shortfall of “out-of-water survival equipment on selected passenger vessels. Hopefully, inspection deficiencies mentioned in the article have been corrected in the eight years since the story broke. However, lifesaving equipment regulations we consider deficient remain the same. Therein lies the problem.

Special Report: Passenger Boat Safety

USA TODAY investigative travel editor Gary Stoller rode 10 boats on both sides of the USA to learn about their out-of-the-water lifesaving equipment. Most carry far more passengers than their lifeboats and rafts can handle. However, all met Coast Guard regulations for lifeboats and rafts. Coast Guard officials say passenger boats should publicly post inspection certificates that disclose the number and capacity of lifeboats and rafts aboard.

Anacortes, Wash., to Orcas Island, Wash. Aboard the HYAK: The lifeboats and rafts could not be seen from the public areas on the ship, but ferry officials say there are enough to accommodate 195 of the 2,500 passengers permitted on board.

Stan Stumbo, a naval architect for the ferry system, says: "We wouldn't want to add any more survival craft" because all state ferries operate two miles or less from land and 15 minutes or less from a ferry slip. Stumbo says other options can be used in an emergency, including intentionally grounding the ferry or evacuating passengers onto nearby ships.

[NMA Comment: He fails to mention the range of water temperatures in Puget Sound – an important issue.]

The boat's inspection certificate was inside a frame. Only its first page could be read, and it did not include any information about out-of-the-water lifesaving equipment.

Clinton, Wash., to Mukilteo, Wash. Aboard the CATHLAMET: Ferry officials say the ship, which shuttles commuters north of Seattle, carries out-of-the-water equipment for only 195 of the 1,200 passengers permitted. The equipment and inspection certificate was out of public view.

[NMA Comment: Since the article was written, terrorism has become a serious new consideration including several threats targeting the state ferry system. Recently, several ferries with deficient hull plating were pulled from service.]

Hyannis, Mass. to Nantucket, Mass. Aboard the EAGLE: On a 135-minute trip to Nantucket in early December, the EAGLE is carrying out-of-the-water equipment for 945 passengers. The boat carries a maximum of 945 passengers in the winter and 1,494 in the summer, says Jim Swindler, director of maintenance for the Woods Hole, Martha's Vineyard & Nantucket Steamship Authority.

On the mezzanine deck, a safety placard that once said "Keep off stairways when vessel is docking" is broken and unreadable.

"That's a safety item that should be taken care of in 24 hours," Swindler says.

The ship's inspection certificate is not posted in public. A crew member says it's in the captain's office. Swindler says it should be posted publicly.

Nantucket, Mass. to Hyannis, Mass. Aboard the GREY LADY II: Out-of-the-water safety equipment is available for 75 people – enough for everyone on board. Though the catamaran can accommodate 150 people, the GREY LADY II is limited to 70 passengers.

Murray Scudder, vice president of operations for Hy-Line

Cruises, says Hy-Line's traditional ferryboats, which carry 450 to 800 passengers from Cape Cod to Nantucket and Martha's Vineyard during the summer, carry no out-of-the-water equipment.

He says the inspection certificate is kept in the pilothouse and, contrary to what Coast Guard officials say, doesn't have to be publicly posted. "We'd let in anyone wishing to see it," he says

Woods Hole, Mass. To Martha's Vineyard. Aboard the ISLANDER: This 192-foot ferry, which makes a 45-minute run between Cape Cod and Martha's Vineyard, carries out-of-the-water equipment for a total of 620 people.

In the cold-water winter months, the number of passengers is limited to 620, ensuring 100% out-of-the-water protection, Swindler says. In summer, the same amount of out-of-the-water devices are carried, although the boat can carry up to 796 people. The boat does have an inspection certificate publicly posted that lists out-of-the-water equipment, but the information is difficult to understand.

Hingham, Mass. to Boston. Aboard the NORA VITTORIA: The out-of-the-water equipment on the high-speed catamaran accommodates 250 people – 105 less than the boat's maximum occupancy. Rick Nolan, managing partner of Boston Harbor Cruises, says no out-of-the-water equipment is needed on the route, but it's carried because the NORA VITTORIA sometimes goes on winter whale-watching excursions.

The NORA VITTORIA has a crystal-clear sound system. A detailed safety announcement points out where the "life rafts" (actually inflatable buoyant apparatus) and life jackets are. The boat's inspection certificate hangs in the boat pilothouse, a restricted area. Coast Guard officials at the agency's headquarters in Washington say the certificate should be posted in an area where it is "likely" to be seen.

Boston to Hingham, Mass. Aboard the LAURA: Although it travels the same route as its sister ship, the NORA VITTORIA, the 101-foot LAURA carries no out-of-the-water safety equipment. The boat seats a maximum of 350 passengers. A diagram posted on a wall points out the locations of life floats (which don't keep passengers out of the water) and fire extinguishers. The boat did not have life floats, however, and fire extinguishers were not in their designated positions.

Nolan says the life floats are not required on the Laura's current route and were removed several months ago. The discrepancies will be caught in an upcoming internal safety audit and corrected, he says. On the same route last December, a fire broke out in the engine room of another of Nolan's commuter boats, the JAMES DOUGHERTY, which was carrying no out-of-the-water equipment. All 39 passengers had to don life jackets and evacuate onto another vessel. Nolan says the inspection certificate is posted in the pilothouse.

Boston Harbor. Aboard the FOSTER: This 38-foot boat, which shuttles passengers from downtown Boston to Logan airport, carries a maximum of 28 passengers and has no out-of-the-water lifesaving equipment. There is a life float for 15 people to hang onto in the water. No out-of-the-water equipment is needed, the captain says, because the boat operates within a mile of shore.

Instructions are posted on a wall in the indoor seating area if someone goes overboard: "Throw a ring buoy overboard as

close to the person as possible." There are instructions for life jackets made by a manufacturer named APCO. A company named Stearns made the jackets aboard the ship. "With those directions, passengers could still figure out how to don the life jackets, but the Stearns directions should be posted," says Richard Hiscock, a marine safety consultant.

Its certificate is not publicly posted. Boston Harbor Commuter Service, which operates the FOSTER, did not return calls for comment.

Bridgeport, Conn., to Port Jefferson, N.Y., on Long Island. Aboard the PARK CITY: The 288-foot ferry has out-of-the-water equipment for 500 people – two lifeboats that can each carry 25 people and 18 life rafts that can each hold 25 passengers. The capacity of the equipment is half the maximum amount of passengers allowed on board from May 15 through Oct. 14. The boat would be required to carry more out-of-the-water equipment during the rest of the year, but its operators instead choose to restrict the number of passengers to 500 in the cold-weather months, says Fred Hall, vice president of Bridgeport & Port Jefferson Steamboat.

There are no signs saying where the life rafts are located. "I have no idea why there are no signs," Hall says.

"I've seen some life rafts on a lower deck, but the public generally knows that life rafts and equipment are usually on the top deck."

The certificate of inspection is not posted in a public area.

Port Jefferson on Long Island to Bridgeport, Conn.

Aboard the GRAND REPUBLIC: Like its sister ship, the PARK CITY, the GRAND REPUBLIC has out-of-the-water equipment for 500 of the maximum 1,000 passengers allowed on trips from May 15 through Oct. 14. During the rest of the year, Hall says, the maximum is 500. He says that since he joined Bridgeport & Port Jefferson Steamboat in 1976, no emergencies have required the out-of-the water equipment.

The GRAND REPUBLIC pulls out of the Port Jefferson harbor with only one of two engines operating. No signs inform passengers that they are traveling on a boat with only one engine working. "Maybe we could have communicated that better," Hall says. A certificate of inspection is not visible in a public area on this 261-foot ferry.

BARGE HITS RAILWAY BRIDGE AS TUG MANEUVERS TO AVOID SAILBOAT

[Source: By David Taylor, *Professional Mariner Magazine*. Emphasis is ours.]

A barge struck a railroad bridge in Connecticut on Sept. 9 (2006) as the tug accompanying the barge took emergency measures to avoid hitting a sailboat passing under the raised drawbridge.

The accident occurred at about 1330 as the 1,950-hp Moran tug TURECAMO GIRLS was heading south towing the empty 310-foot barge CONNECTICUT. The barge hit the bridge after the tugboat captain released it from its towline in an attempt to avoid hitting a northbound sailboat under power that was transiting the Old Lyme drawbridge. After the barge was released by the tug, it dropped an anchor but still struck wooden fenders protecting the bridge, which connects Old Lyme and Old Saybrook.

The bridge's northeast fender system was destroyed, but there were no injuries, according to Karina Romero, a spokeswoman for Amtrak. The bridge had to be inspected and rail traffic was suspended for about two hours. The river was closed to traffic until that evening so divers could clear the channels.

The drawbridge is lowered and raised by an operator who communicates with vessel crews via VHF channel 13. From mid-May to mid-October, the bridge is generally in the open position, unless an Amtrak train is approaching, according to Scott F. Masse, president of Oak Leaf Marina of Old Saybrook, located one-quarter mile upriver from the drawbridge. Masse drove the Old Saybrook police boat to the scene of the collision.

Masse heard radio calls from TURECAMO GIRLS pleading with the sailboat to get out of its way as it approached the bridge. "You could hear him saying, 'You guys get out my way,'" Masse said. The tug asked the boat by name to move. In addition, the tug gave five blasts on its horn, Masse said.

Masse said visibility was unlimited that day and that sight lines were good. At the time, the tide was ebbing, Masse said, creating a very strong downriver current under the bridge. The drawbridge opening is about 100 feet wide.

"It was very much like a car trying to beat a red light; they (the sailboat) decided they were going to go through the draw. These guys just didn't yield to him," Masse said. By that point, the tug was committed. "His choice was to run them over and kill them or try to turn the tug around. They made the valiant effort to give themselves up."

The barge was being towed quite close to the tug. To avoid striking the sailboat, the tug released the tow, the barge dropped an anchor off the bow, and the tug went to the rear of the barge. "What they did, in my opinion, saved lives," said Masse.

The Connecticut River has a tremendous amount of recreational traffic and not much commercial traffic, Masse said. Common sense would dictate that the sailboat yield to the tugboat and tow, he said. "If you're staring down a tug and a barge, the smart guy is going to say, 'I'm going to wait. until it goes through; I'm not going to play chicken with a tug.'"

Rule 9 of the COLREGS governing narrow channels would apply in this situation, according to Capt. Ralph Pundt chair of the Marine Transportation Department at Maine Maritime Academy. While under power, a sailboat considered a power vessel. He said the rule that applies is 9d: "A vessel shall not cross a narrow passage or a fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway." In addition, Rule 9b also states that a vessel less than 20 meters long or a sailing vessel, shall not impede the passage of a vessel, which can only navigate in that channel. "If he is less than 20 meters, he doesn't, have the right of way," Pundt said.

The barge was extricated from the fenders by the tug and the bridge was determined to be safe by 20:10, according to Romero. All of Amtrak's moveable bridges between Boston and Washington, D.C., have fender systems to protect them, she said. In early October, workers were still replacing the fender system. The double-hulled oil barge was not damaged, according to Ted Tregurtha, president of Moran Towing Corp.

He praised the five crew and river pilot on the tugboat and the two crew on the barge for their response. "They took all the appropriate action to a recreational boater who was not in right place in the right time," Tregurtha, said. "It's unfortunate that the bridge was struck, but more importantly, the recreational boaters were not injured. They probably will never know how lucky they were."

The problem is not a new one he said. "Everyone in the industry has issues with recreational boaters all the time." said Tregurtha. "Many of them; understand the rules of the road.

[NMA Comment: A recent study of towboatmen on the Gulf Coast and western rivers show revealed that recreational boaters are their biggest operational headache.]

[NMA Comment: We urge states to require boating safety courses like those offered by the Coast Guard Auxiliary for all recreational boaters.]

Additional Information from the Coast Guard Accident Report

[Source: Mistle Activity #2775504; Mistle Case #314475; GCMA File #M-662; Release date: Nov. 15, 2007.]

The tank Barge CONNECTICUT allided with the AMTRAK railroad bridge over the Connecticut River between Old Saybrook and Old Lyme, CT, destroying the northeast fendering system for the railroad bridge. No injuries and no oil was spilled as a result of the accident. The damage to the bridge fender system was estimated at \$750,000.

The Pilot's Statement

The barge was under tow on a short hawser downbound on the Connecticut River. The barge was empty after discharging at the Middletown Powerhouse north of the Essex, CT, anchorage.

I contacted the Old Lyme drawbridge at approximately 14:40. The bridge tender and I came to an agreement that the draw would close briefly to allow a westbound train to cross the bridge at 15:10. The bridge would go up immediately following the train passage. This all went as planned. At approximately 14:50, we were approaching the north end of Calves Island Beacon #R "20". I made a Security call on Channel 13 regarding my intentions. (Vessels in the) vicinity could plan accordingly.

While approaching the Baldwin Bridge for Interstate 95 I

slowed the vessel to reduce wake in between the bridges for the marinas and made a second security call on channel 13.

Due to the shape of the barge and decreasing maneuverability, I started to increase power. I sounded the danger signal on the tug's horn warning the vessels in the draw. I started to increase power to straighten the barge and increase my maneuverability. At this time, approximately 15:13, there were between 3 and 5 pleasure craft in the draw and more approaching from the south with the apparent intent of outrunning the tug through the draw.

As I came up (increased power) on the throttles, the hawser parted. Our position at this time was in between the Old Lyme Dock Co. and the D.E.P. Dock directly abeam to port.

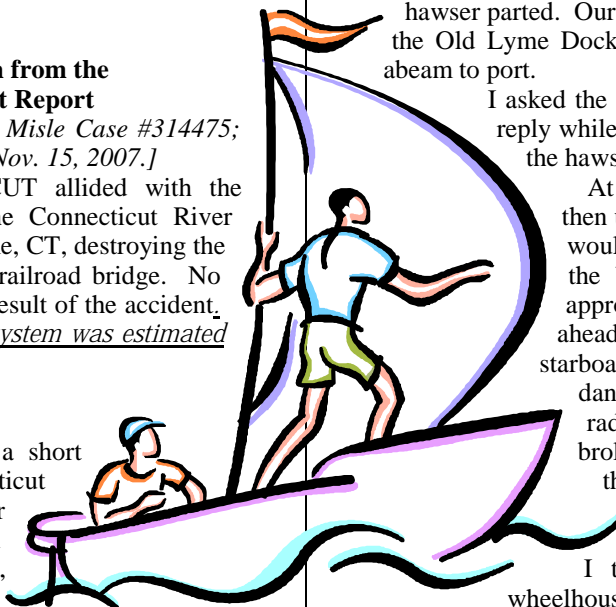
I asked the mate, "Did the hawser break." No reply while he looked back. Again I said, "Did the hawser break?" "Yes" replied the mate.

At this time, I looked back at the barge then up at my speed and concluded that it would not be at all possible to back into the bow of the barge to stop it. At approximately the same time, I came full ahead on the port engine and hard to starboard to get the tug and crew out of danger, called the bridge tender on the radio to let him know the barge had broken free and was going to contact the bridge and to get off the bridge.

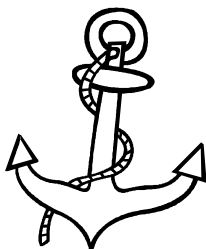
As I completed the turn to starboard and was facing upriver, I turned to look out the starboard wheelhouse window and saw the barge make contact with the fendering system of the bridge. The barge tankerman had dropped the anchor by this time.

We came alongside the barge to hold it in place and contacted the tankermen to make sure they were OK (and) that there were no other vessels involved.

No one was hurt. The barge men went down into the void spaces directly involved to make sure the barge was not taking on water, etc. At the time I turned away from the barge, the mate promptly went below to wake the Captain and start to evaluate the situation.



ANCHORS FOR TUGBOATS?



We asked Headquarters (CG-5222) this question in December: "Although the only regulations that pertain to anchors appear in 46 CFR 96.07, I do not recall whether the matter of carrying anchors has come up at any of the TSAC meetings. What are your intentions in regard to requiring one or more anchors to be carried on inspected towing vessels? It seems to me that good seamanship as well as environmental protection require that this subject be addressed.

We received this Answer from Headquarters in January:

"As you are aware, the Coast Guard is currently drafting regulations for Coast Guard inspection of towing vessels. It is unclear whether anchors will be specifically required. I encourage you to follow this important rulemaking closely and provide input to the docket once it has been opened for public comment.

We cite, as just one example, the fire and grounding of the tugboat SCANDIA and the grounding of the tank barge NORTH CAPE, off Point Judith, Rhode Island on January 19, 1996, with major pollution and ecological damage. The SCANDIA had no anchor. The tank barge had an anchor, but its windlass had been removed for repair. In spite of heroic efforts by one crewmember and Coast Guard personnel in gale-force winds at the scene of the accident, the tank barge's anchor could not be released.

POSSIBLE CONGRESSIONAL FIX FOR ALJ SYSTEM

[Source: *Waterways Journal* editorial by Jack Simpson, Dec. 17, 2007. Emphasis is ours.]

While the system of administrative law judges to administer justice in the United States seems on the whole to be working well, it still stinks within the Coast Guard.

Rep. Elijah E. Cummings, a Baltimore Democrat and chairman of the House subcommittee responsible for oversight of the Coast Guard, told the *Baltimore Sun* that he is finalizing legislation to dismantle the Coast Guard's administrative law system. Instead, marine cases would go to the National Transportation Safety Board (NTSB), which handles similar cases regarding aircraft pilots. The *Sun* reported on November 10 that Cummings "plans to introduce the measure as part of the annual Coast Guard reauthorization bill, which the House of Representatives could pass by the end of the year."

This "smelly" issue – smelly actually being a word used by U.S. District Judge Helen G. Berrigan to describe it – has as its foundation evidence presented previously to show that Coast Guard Chief Judge Joseph N. Ingolia was purported to tell other judges how to rule. (See *WJ* Editorial Sept. 17). During the presentation of that evidence, Judge Berrigan said it "raised a big pile of smelly stuff that doesn't, you know, it doesn't pass the smell test."

Despite having said that, Judge Berrigan, on November 8, dismissed the cases of three mariners who had challenged the system and had sued the Coast Guard. "The mariners must exhaust their appeals within the Coast Guard system before suing in federal court over allegations that they were treated unfairly," she said.

In response to the ruling, the Gulf Coast Mariners Association commented in *GCMA News*, "Unless appealed, this unfortunate ruling traps mariners within the existing Coast Guard Administrative Law System that unfairly deprived a number of mariners of their licenses for years on end."



[NMA Comment: The dismissal was appealed to the U.S. Fifth Circuit Court of Appeals in New Orleans.]

Surprisingly – perhaps not so surprisingly, considering how the Coast Guard operates – the *Sun* obtained a memorandum in the Coast Guard's ALJ office that said that "during an October 24 conference call with agency judges...Adm. Thad Allen, the commandant, has assured them that their office will not be dismantled, despite the efforts of Congress." The Coast Guard refused comment to the *Sun*.

Evidently informed of the Admiral's comments, Cummings told the *Sun*, "I'm more adamant about this now than ever, and I would hope the Coast Guard would work with us to make it happen."

One has to wonder where the Coast Guard Commandant comes off expressing defiance of potential congressional action. Or is he just sure of himself that nothing will come of this multitude of complaints that continue to plague the courts? Some mariners have been fighting their cases for more than a decade.

One wonders at what point does the ego of the Coast Guard hierarchy give way to duty to country. The agency has performed admirably in many instances, but when it comes to dealing with the brown-water industry, the Coast Guard has frequently stymied operations, making survival in a high-cost, competitive industry more difficult. Trained professionals have lost their livelihoods, while the industry depending upon them has been deprived of their service.

We have to applaud the *Baltimore Sun* for sticking to its guns on this story and making clear its position that the ALJ system within the Coast Guard is eroded. More to the point, the *Sun* reports that the Government Accountability Office (GAO) has confirmed that it is looking into the matter. It was also confirmed to the *Sun* by two sources that investigators from the Department of Homeland Security's Office of Inspector General have requested a host of Coast Guard records as part of a wide-ranging review of how the agency investigates and prosecutes cases.

Amen to that!

XYLENE TOW DISABLES MITER GATE AT LOCK ON TENNESSEE RIVER

[Source: *Misle* activity #2734739; *Misle Case* #305457, FOIA #06-2001 & 07-0698. Release date Jan. 9, 2008; NMA file #M-659.]

At morning watch change on August 30, 2006 the M/V POTOMAC pushing two loaded xylene barges bound from Houston, TX to Decatur, AL, entered the Wilson Lock at Tennessee River Mile 259.4 in what should have been a routine 30-foot lockage up to the Wilson Pool.

During the lockage and after the tow was secured in the lock, the lead tank barge HTCO 3016 managed to allide with the miter sill as the vessels surged inside the lock as the lock chamber flooded.

The port bow of the barge became fouled beneath the upper lock gate as the lock chamber continued to flood and the towboat and its tow ascended to the upper pool. As the vessels ascended, so did the upper gate causing the gate to lift out of its track and out of its seat.

The tank barge, a new piece of equipment, suffered substantial damage to its bow rake void space as it carried the weight of the lock gate during the incident.

The tank barge remained pinned and fouled beneath the gate for about three days at which time temporary shoring was used and allowed the lock chamber's water level to lower and release the trapped barge.

For approximately four months, the Corps of Engineers used a temporary caisson to conduct intermittent locking at the main chamber to manage barge queues. The auxiliary chamber at Wilson L&D was also used to conduct single barge lockages.

The barge suffered \$100,000 in damage while the lock suffered \$850,000 in damage. These figures do not reflect the losses and inconvenience to the waterway users.

Here's What Happened

The report and exhibits comprise 112 pages. The most revealing statement, however, came from the lock operator on duty, a man with over 24 years of service, quoted as follows.:

"The tow of the M/V POTOMAC drifted up under the upper gate causing the gate to become dislodged from its resting place.

"The river side of the upper gate is raised up out of the water with the bottom of the gate being even with the lock wall; the land wall side of the gate is about level with the top of the superstructure of the gate.

"I (name redacted) was raising the tow up with two chemical barges loaded with Xylene. After closing the lower gate, I began filling the chamber and started to the upper end to finish locking the boat. I remembered I had equipment in the back of the scooter that belonged down in the shop. Instead of going to the upper end like I should have, I took a detour to the shop to dump off the welding leads and grinder that was in the back of the scooter. While I was in the shop, I heard the deckhands on the barge yelling. I also heard the machinery coming out of the water. By the time I got there, it was too late to do anything about it. After the fact, I called Mr. C and Mr. C C to report the accident. I understand the Captain on the boat reported the incident to the Coast Guard. We are now in the process of calling people to get started on the repairs."

Meanwhile, on the tow...

The deckhand on the lead barge lined up the barge as best he could with a yellow-painted safety marking that was high on the lock wall. There was very little extra room in the lock,

to handle two 297.5 foot barges, but the tow was secured and the towboat moved aside the aft barge for the lockage..

As the water level started to rise, the deckhand became "uncomfortable" with the tow's placement relative to the lock gate and called the Pilot to request that the lockage be stopped – as he should have done.

From that point on, first the Pilot and then the Master tried to contact the lock operator by VHF radio on three channels but without result. The lock operator did not have his VHF radio with him as he diverted to the shop in his scooter. A nearby towboat verified repeated calls and no reply. The Master finally used the public address system to try to attract attention. Apparently, the only thing he did not do was sound the danger signal on the whistle.

Broke Every Rule in the Book

In reviewing Corps of Engineers instructions, it appears that the lock operator, who had many years of service, failed to follow clear written procedures by not watching every step of the ongoing locking evolution. His enemy appeared to be complacency after years of doing the same thing over and over again.

Xylene is a nasty chemical and its vapors are harmful to humans if released into the atmosphere. It is a moderate fire hazard but may explode if ignited in an enclosed area (like a lock chamber). Fortunately, the cargo compartments of the barge (built in 1999) were not breached and there was no pollution.

The deckhands and the officers on the M/V POTOMAC did everything the way they should have done and did it in a timely manner. If there was any "slack" in the lines, it was measured in inches and not feet, and the master backed down as far as he could to try to keep from being trapped.

The accident report revealed two similar accidents had occurred at the same lock in 1981 and in 2000 when a barge was trapped, rolled over, and sank inside the lock.

JUDGE MASSEY DESCRIBES WHAT MARINERS CAN EXPECT IN COURT

[Background: Departing from her prepared written testimony available on-line in our Report #R-429-K on pages 19 through 25, former Administrative Law Judge Jeffie J. Massey placed herself in the shoes of an average mariner who is summoned to appear before an ALJ.

As a mariner who attended many administrative hearings and spoke at length with mariners and attorneys involved in these "remedial" proceedings, I believe Ms. Massey paints a fairly accurate picture.

This oral testimony was given before the House Coast Guard and Maritime Transportation Subcommittee chaired by Rep. Elijah Cummings on July 31, 2007. I was there! s/Richard A. Block, Secretary, National Mariners Association. Emphasis is ours!]

Mr. Chairman, Mr. LaTourette and members of the



committee, thank you for the opportunity to contribute information to your investigation.

For a moment, let me ask you to imagine that you are a mariner living in southern Mississippi. You are a high school graduate and you have worked as a crewman on a vessel that takes supplies to oil rigs in the Gulf of Mexico. You have been employed by various companies in the last 10 years, but you have never done any other type of work and you have no training to do any other type of work.

It is 1 p.m. in the afternoon and you are sitting in the upstairs hall of a regional Coast Guard facility, the same facility where the investigating officer you met with six months ago has his office. It was then that he served you with a copy of a complaint that alleged you had been intoxicated on board the vessel you last worked on, and while intoxicated you assaulted another crew member. When your vessel docked after this incident, you were informed by the company's regional employee relations specialist that you were being fired because of the allegations, and they had to

report the alleged incident to the U.S. Coast Guard.

When you met with the investigating officer (I.O), he took your mariner's credentials from you. You have been out of work for six months. **Although the investigating officer explained to you that you had the right to an attorney to represent you at a hearing, you can't afford an attorney.**

You feel if you just tell your side of the story, any reasonable person will know that the charges are not true. You believe that the Coast Guard will have several crewmembers present to testify because you know the Coast Guard took statements from them. They all know what really happened.

When you received a witness list from the Coast Guard just two weeks before your hearing, you see that the names of all the crewmembers they interviewed are not on there. You don't understand that this means that the Coast Guard does not intend to call these men as witnesses.

There are all sorts of uniformed Coast Guard employees milling about. After about 15 minutes, a man comes up the stairs, accompanied by the I.O. you met with and two other uniformed U.S. Coast Guard employees. They are laughing and talking and pay no attention to you. They all go into a room down the hall, a room you are summoned into in a few minutes. To your surprise, sitting on the bench is the man who was just laughing and talking with the Coast Guard employees. None of the crewmembers that you know witnessed the incident are present. The only people there are your former employer's regional employee specialist and the crewmember you had the fight with.

The hearing is over in less than 30 minutes. The crewmember that you had the fight with testifies that you were intoxicated and that you attacked him for no reason. The employee specialist testifies that he received a report of the incident, took you off the boat because that was company policy and informed you that you were fired.

You testify that you were not intoxicated, that the other

crewmember had been drinking and he attacked you. You were only defending yourself. You also testify that this crewmember had it in for you because a former girlfriend of his had started dating you.

You know but do not say that this guy is also a cousin of someone who is an executive in the company you worked for. You don't mention this because you don't know it is important and no one asks you. You tell the judge that there were other witnesses to the incident, but he tells you that if you didn't get them to the hearing, then he wasn't going to hear their testimony today because today was your hearing date and your only chance to present your evidence. Before you really understand what is happening to you, the judge says your license is suspended for six months.

I hope that this scenario does not sound incredible or unlikely to the committee members because, based on my experience at the Coast Guard, this scenario is representative of past hearings, the type of hearings that have gone on for years at the Coast Guard.

I also hope that the committee members understand that I am here today only because I believe the suspension and revocation hearing process at the Coast Guard is in violation of its own regulations and of all the basic tenets of due process. Despite the personal attacks and disrespectful environment I was subjected to while at the Coast Guard, my appearance here today has nothing to do with me personally. What has been happening to the mariners who have been forced to face Suspension and Revocation proceedings without the protections guaranteed by law is the only thing that matters. I welcome the questions of the committee members.

[NMA Comment: Aside from purchasing license insurance, NMA plans to examine whether there are any viable options open to mariners when they cannot afford the cost of obtaining legal assistance to appear before an ALJ.]

MEMBER WRITES HIS CONGRESSMAN ABOUT INVESTIGATING & PROSECUTING MARINERS

November 1, 2007

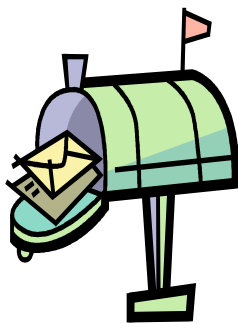
Office of U.S. Representative Tom Allen
Attention Jim Pineau
57 Exchange Street, Suite 302
Portland, ME 04101

Re: Investigating and prosecuting merchant mariners must be removed from the hands of the Coast Guard and given to another governmental entity.

Jim,

I have been a Coast Guard licensed captain since 1998. For the past two years I have worked in the U.S. merchant Marine on tug boats. My work experiences have convinced me that the Coast Guard has significant problems which require the attention of members of Congress.

Please find enclosed Newsletter #51 from the Gulf Coast Mariners Association of which I am a proud member. I am forwarding this to you because I am sure that Tom Allen will



welcome the opportunity to once again assist working Americans. By the way, as the Legislative Officer for the Maine Professional Driver's Association, I am personally grateful for Tom's efforts to prevent the Bush administration from allowing unsafe Mexican trucks onto U.S. roads.

PLEASE see the highlighted sections on pages 3, 5, 12, & 19. From these sections it will be painfully obvious that unnecessary difficulties with the Coast Guard are complicating, and in some cases terminating, otherwise successful careers of law abiding American workers. Please note that Congressman Elijah Cummings has taken an interest in finding a solution to these problems.

I will be calling you in the coming weeks and I would appreciate any suggestions that you may have for American mariners interested in finding relief from biased and inefficient government.

Sincerely,
Dan Schweitzer

[NMA Comment: We encourage every mariner to express your views to members of Congress. Please see our Report #R-422, Rev. 1, How to Contact Congressmen on Maritime Issues 110th Congress. (Mailing List) Feel free to cite our Newsletters and Reports. Call NMA if you need a copy to accompany your letter.]

**CERTIFICATES OF SAFE MANNING
FOR TUGS ON DOMESTIC & FOREIGN VOYAGES**

In August we learned of a puzzling manning problem encountered by one of our Directors who is a tugboat Captain for a major towing company. His question led us to ask Coast Guard Marine Safety Unit Seattle to seek a definitive answer from Coast Guard Headquarters.

The towing vessel in question was on a run in international waters between Jacksonville, FL and San Juan, PR – a voyage of approximately 39 hours duration through the Old Bahamas Channel and paralleling the coast of Cuba for almost its entire length. An accident resulting from fatigue or the unavailability of adequate or competent relief in these waters is a risk that could have international repercussions.

The Master reported that his vessel had on board a Coast Guard Certificate of Safe Manning issued by Marine Safety Unit in Seattle that required two licensed officers on a domestic or international voyage of less than 600 miles. However, on a domestic or international voyage greater than 600 miles the certificate requires three licensed officers.

Safe Manning Certificates perform the same function as a Certificate of Inspection as far as requiring a vessel to be properly manned on an international voyage. Of course, towing vessels will not be issued Certificates of Inspection until such time as the new towing vessel inspection regulations are put in place. But this vessel had a valid Safe Manning Document calling for three licensed officers while only two were physically present on board the tugboat.

A Conflict Existed

GCMA determined that there was a conflict between the Certificate of Safe Manning that requires three (3) licensed officers and the existing regulation at 46 CFR §15.705(d) cited below that only required two (2) licensed officers:

46 CFR §15.705(d) – Subject to exceptions, 46 U.S.C. 8104(h) permits a licensed master or mate (pilot) operating a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer) to work not more than 12 hours in a consecutive 24 hour period except in an emergency. The Coast Guard interprets this, in conjunction with other provisions of the law, to permit licensed masters or mates (pilots) serving as operators of towing vessels that are not subject to the provisions of the Officers' Competency Certificates Convention, 1936, to be divided into two watches regardless of the length of the voyage.

We asked the Marine Safety Unit in Seattle to determine if there was a conflict and to resolve it if there was. We promptly received a letter dated August 29, 2007 from LCDR T.M. Howard that acknowledged that a conflict did exist but stated that the vessel was only required to have one licensed Master and one licensed Mate regardless of the length of the voyage and that the Safe Manning Certificate would be changed to reflect that fact.

Our Association has never been satisfied with the manning regulation that requires tugboat officers to work a “two watch” system on voyages of more than 600 miles in contrast to

offshore supply vessel (OSV) officers who work a three-watch system on voyages exceeding 600 miles. Consequently, we appealed the decision.

Our Appeal of Sept. 17, 2007

Our appeal was answered by Thomas S. Kuhaneck, Office of Vessel Activities at Coast Guard Headquarters on Dec. 13, 2007 as follows:

Short answer: By law, the M/V XXX, at 197 GRT can utilize a two-watch system for domestic voyages. A voyage from the continental U.S. to Puerto Rico is considered a domestic voyage for licensing/manning purposes. Manning required for domestic voyages is different than that required for foreign voyages.

Longer answer: If M/V XXX engaged on a foreign voyage (say the continental U.S. to the Dominican Republic), they would be required to meet international requirements in terms of manning including a three-watch system for both deck and engineering personnel (unless stipulated otherwise by a Safe Manning Document).

[NMA Comment: In other words, our “two-watch” requirement in 46 CFR§15.705(d) is *substandard* and is less than comparable international safe-manning requirements.]

The requirement for a Safe Manning Document (SMD) is found in SOLAS (Chapter 5, Regulation 14) and that particular regulation has its own applicability clause. It says that a SMD is required if Chapter I applies to the vessel. M/V XXX, built in 1975, is entitled to use her pre-existing national tonnage (in this case, her domestic gross register tonnage) to determine applicability for most of SOLAS. Her 197 gross ton figure puts her below the threshold of applicability for SOLAS Chapter 1, so a SMD is not required.

However, if she wants to reduce her foreign voyage manning, particularly regarding the number of engineers on board, she must have a flag-state SMD. The size of the plant and/or automation are two things that can reduce the number of licensed engineers and QMEDs required to be onboard (see attached IMO resolution, page 7). The number of engineers is based on aggregate horsepower, not tonnage. In this case, M/V XXX is 5,000 horsepower and could be required to have as many as three (3) licensed engineers. Only an OCMI evaluation could accurately determine the number of licensed engineers and QMEDs required to safely operate this vessel.

[NMA Comment: This opens up a whole new bag of worms. The towing industry has not offered and the Coast Guard never required formal engineer training since 1972. We pointed out to Congress in our Report #R-401, Rev. 1. that this oversight was a national disgrace because it failed to adequately develop our mariners’ potential.]

The Deck Department is usually unaffected by automation so that means that a Master and two Mates are required when the vessel engages on foreign voyages. So, your SMD for this vessel should reflect a three-watch system for the deck department and it may reflect something different for the engineering department.

**AMERICAN COMMERCIAL LINES, INC.
ACCELERATED TRAINING PROGRAM**

[Source: Edited from a news release by American Commercial Lines Inc. that appeared in Forbes Magazine. Emphasis is ours.]

(Jeffersonville, IN, Dec.13, 2007.) American Commercial Lines, Inc. announced today that it has received United States Coast Guard approval of the nation's first inland river accelerated pilot license training program in partnership with Northeast Maritime Institute of Fairhaven, Massachusetts.

On Nov. 15, 2007 the United States Coast Guard approved a new Mate (Pilot) training program. This program can shorten the total time of license eligibility for Mate (the second and final stage in the licensing process of a professional mariner) by approximately 50%. The program includes classroom, simulator and sea time. The end result will be that a person who is new to the industry can achieve the rank of Full Mate in approximately 30-36 months, as opposed to the current five to six year licensing period.

**DRUNKEN CAPTAIN RAMMED BAYOU BOEUF
RAILROAD BRIDGE LAST MAY
CAUSING \$1,500,000 DAMAGE**

[Source: Misle Activity #2929696; Misle Case #349028; Release date Dec. 4, 2007; GCMA File #M-720.]

A bridge allision occurred on May 13, 2007 when an unidentified tug and "barge" struck and severely damaged the rickety and antiquated Bayou Boeuf railroad bridge at Amelia, LA.



Our Association first heard of the accident in a news report dated July 10, 2007 (almost two months after the accident) relating that the bridge had been repaired. That story was supported by a photograph in the July 16, 2007 issue of the Waterways Journal showing a derrick barge replacing the railroad bridge's draw section back in place. The "tug and barge" were still unidentified.

In Newsletter #51 we printed a letter we sent to the Waterways Journal that was published in their Sept. 3, 2007 issue that stated in part that the bridge is on the Burlington Northern's main line between New Orleans and Houston.

Michael J. Monahan, Senior Vice President, Transportation Services commented, "We are pleased that our Pre-Steersman training program was approved by the United States Coast Guard. ACL, in conjunction with Northeast Maritime Institute, has developed an innovative training program that will enable us to attract new employees and fast-track their advancement as they become future leaders on our boats. This represents the first time an inland marine transportation company has implemented an approved program for its vessel officers in conjunction with a national maritime institute. We believe this is further evidence that our safety and training programs are unmatched in the industry, and ultimately demonstrates our commitment to establishing a leadership position in the transportation industry for our employees and customers."

American Commercial Lines Inc., headquartered in Jeffersonville, Indiana, is an integrated marine transportation and service company operating in the United States Jones Act trades, with approximately \$940 million in annual revenues and approximately 2,750 employees as of December 31, 2006. For more information about American Commercial Lines Inc. generally, visit www.aclines.com....

Aside from heavy freight traffic, it carries AMTRAK's Sunset Limited passenger train between New Orleans and Los Angeles. Several years ago, another tug and barge struck the same bridge just about 10 minutes before the Sunset Limited was to cross it. This was a near miss that caused us to recall the Sunset Limited's 1993 plunge into Bayou Canot, the 45 lives lost, and its lingering effect on the towing industry.

In early December we received information from the Coast Guard in Washington that more fully described the events that took place on Bayou Boeuf.

The uninspected towing vessel VICKI LYNN owned by T.K. Towing of Morgan City, LA, was southbound on Bayou Boeuf pushing the Uninspected Towing Vessel MAMA LERE in a dead ship tow when it allided head on with the Bayou Boeuf Railroad Bridge. There was major damage to the bridge estimated to be \$1,500,000 while the 128-foot M/V MAMA LERE suffered \$5,000 damage. The 61-foot VICKI LYNN was undamaged. The bridge tender was taken to the hospital with "shortness of breath and pain in the upper torso" but apparently had not suffered a heart attack. There were no other injuries and no pollution.

It appears that the Master of the M/V VICKI LYNN, with over 35 years of service in the industry, consumed alcohol while on duty. The deckhand was at the head of the tow attempting to give directions to the Master since he was attempting to push a high tow that blocked his view. At about 15:27 hours while 600 feet north of the Bayou Boeuf Railroad Bridge, the deckhand radioed for the Master to slow down because they were not lined up with the narrow bridge opening. When the Master would not answer the radio, at about 200 feet north of the bridge, the deckhand ran back to where the pilot could see him so that he could give the pilot hand signals. The Master later acknowledged that he heard the calls over the radio and that he did not respond because he was trying to get the vessel back on what he believed to be the proper course. The tow slammed head on into the fender works driving the pilings all the way back to the bridge's pivot pier mounting. The bow of the M/V MAMA LERE that was in tow was damaged on the starboard side of the

centerline although hardly discernible from the badly-rusted plating surrounding the indent in the photo of this decrepit 54-year old vessel veteran riverboat.

Following the collision, the Master backed off the bridge, made a course alteration to proceed around the bridge and traveled to Conrad Deep Water Shipyard to leave off his tow. Thereupon, he was relieved of his duties and was taken for post accident drug and alcohol testing.

The Coast Guard found the causes of the accident were that the Master had an alcohol reading of .17 and forgot the location of the Bayou Boeuf Railroad Bridge despite passing

through the waterway hundreds of times before the incident. He was overconfident in believing that, even though he had been drinking, he could operate his vessel on a waterway he was familiar with. He was wrong!

In lieu of a hearing, the Master surrendered his license and z-card to the Coast Guard on May 16, 2007. The Coast Guard opened a criminal investigation at the local level but have yet to refer the case for criminal prosecution as the Master is alleged to have shot and killed someone in Mobile, AL. The Coast Guard will wait to see the outcome of that case before filing criminal charges.

FLAG OF CONVENIENCE SHIP REGISTRY IS A THREAT TO OUR NATIONAL SECURITY

[Source: *Business Daily Africa*. Date posted: Sep. 21, 200. AOS Oct. 9, 2007.]

On the face of it, Liberia should hardly register as a maritime force of any consequence. Although the West African nation has boasted a naval component to its military since 1848 when the Liberal British government of Lord John Russell presented the then-one-year-old republic with its first naval vessel, QUAIL, a four-gun cutter with which to patrol its coastline against slave traders. In more recent years the Liberian National Coast Guard's connections to the sea have been increasingly tenuous, to put it charitably. The six small patrol craft it once possessed have been inoperative since the early 1980s for want of spare parts. The last time the Liberian "navy" saw any action was five years ago during the second phase of the country's civil war when its commander, Roland Duo, led his "seamen" in retaking a town 60 kilometers inland on behalf of then-dictator Charles Taylor. Despite all of this, according to a 2004 report by the *International Transport Workers' Federation*, (ITF) the same Liberia that cannot float a single dugout to patrol its 579-kilometer coastline has the world's second largest merchant navy, both in terms of vessels and gross tonnage.

The updated Central Intelligence Agency World Fact Book reports that this fleet has grown by almost 10 per cent since then to include 1,687 large ships amounting to more than 96 million deadweight tons.

How did this come about? In 1948, Liberia enacted a Maritime Code which continues to generate revenues for the Liberian state through the registration of foreign-owned ships that are allowed to fly the Liberian flag and enjoy tax and other economic benefits. The consequent establishment of the "open registries" program of the fictitious "Liberian Merchant Marine" nowadays contributes the not-so-negligible sum of some \$13 million annually to the impoverished country's treasury.

In effect, Liberia rents out its national banner as a "flag of convenience" under which, in addition to escaping taxes, ship operators can find, according to the international umbrella group

for seafarers' unions, "means of avoiding labor regulation in the country of ownership," thus "paying low wages and forcing long hours of work and unsafe working conditions" on sailors.

Whatever its faults, no one accuses Liberia's democratically-elected Ellen Johnson Sirleaf of anything approaching the malfeasance of her predecessor, who is now on trial before an international court at The Hague, and the revenues from its fictitious fleet presently only accounts for one-twentieth of the government's budget. The question, rather, is the wider implications of a farce such as allowing a country like Liberia to register ships. No one pretends that a ship comes from the home port painted on its stern, or that it has ever been anywhere near. Panama is the largest maritime nation on earth, followed by bloody Liberia, which hardly exists. No coastline is required either. There also are ships that hail from La Paz, in landlocked Bolivia. There are ships that hail from the Mongolian desert.

The notion that all states are equal may make sense in an idealized world populated solely by juridical norms, but it is foolhardily naive in the real world of dangerous accidents and malicious people. Even more worrisome is the potential exploitation by terrorists of the possibilities offered by the discount ship registries of capacity-challenged countries.

Dr. Rohan Gunaratna, head of the International Centre for Political Violence and Terrorism Research at the Institute of Defence and Strategic Studies has been quoted as asserting that "many terrorist organizations have been known to use vessels registered in the 'HonPaLib' countries," referring to Honduras, Panama and Liberia. In the context of the present global war on terrorism, we can no longer afford to compromise with the fiction that all states are equal, even when their capacities to assume the responsibilities of full sovereignty are manifestly not there.

Specifically, we need to be assured that the ships sailing the world's oceans, waters kept open largely by the efforts of the U.S. Navy, are safe, high-quality vessels meeting common sense environmental safeguards and fair labor standards as well as basic security requirements. We need to know who owns the ships, who operates them, and who crews them, especially if they approach our shores or those of our allies. In short, the bargain-basement "flags of convenience" offered by Liberia and other similarly-situated countries have become quite inconvenient to our overall national security interests.

COAST GUARD ENVIRONMENTAL CRIMES DISCLOSURE POLICY By Richard A. Block

We printed a number of stories in this newsletter about licensed officers who are convicted of polluting the environment by pumping oily waste overboard or by using a "magic pipe" to

bypass an oily-water separator. The penalties for these crimes runs into the hundreds of thousands and often millions of dollars with a smattering of jail time here and there.

Fortunately, the oily-water separators (OWS), where they exist on vessels of less than 1,600 GRT manned by our mariners, are few and far between. However, they do exist and, therefore, are an issue for some of our mariners.

An unfortunate fact of life is that most OWS equipment

does not operate very well – a fact that is well known by the Coast Guard as well as the International Maritime Organization. Poor design, lack of training, or malfunctioning appears to be ignored by some law enforcement officers determined to make their case “stick” at any cost. The result is that some mariners and their companies face disaster when oil is pumped or allowed to flow overboard and/or oil record books are altered.

Last year, the Coast Guard opened a rulemaking “docket” on the subject of oily-water separators. NMA Director and Chief Engineer Glenn L. Pigott advised us on Report #R-444, Bilge Water Processing Equipment: Comments to the Docket, to the Coast Guard that we submitted on Jan. 20, 2006.

The oily-water problem is deeper than malfunctioning OWS equipment and, for lower-level mariners, may not involve oily water separating equipment at all. Consider a tug or OSV that is going up on drydock. If the bilges are laden with oil, it will have to be pumped out at the shipyard by a vacuum truck and disposed of on shore. This is an expensive process. The word goes out from the company to the vessel’s master and on to the “engineer” or “deckineer” or deckhand that the bilges must be clean and dry before the vessel reaches the shipyard. In pumping the oily bilge water contaminated with soap and degreaser, each mariner is involved in an “environmental crime.” The Coast Guard has the scientific tools from airborne radar to a forensic laboratory in Connecticut that can prove that such a crime has been committed and which vessel was responsible – if they choose to do so.

The Coast Guard wants to portray itself as an *effective* law enforcement agency in preventing “environmental crimes” such as polluting the environment. However, we learn to take much of what the Coast Guard *really* does as showmanship and adroit use of the media. Here are some well known examples we encounter that relate to their lack of effectiveness.

? Example: The Coast Guard is notoriously inept at curbing work-hour abuses because it never asked Congress for the authority to require logbooks for vessels on domestic voyages. They maintain “law and order” by making horrible examples of a few mariners, ignoring the rest, and proclaim a “job well done” at some change of command ceremony.

? Example: We have recorded the Coast Guard’s pathetic record on enforcing “work-hour” statutes and regulations. They cover up their shortcomings in enforcement with their highly touted and widely publicized Crew Endurance Management (CEMS) system.

Our Concern is for Mariners

Coast Guard Concern is for Corporate Executives

An article titled U.S. Environmental Crime Disclosure Policy, The Rest of the Story by Dennis L. Bryant, Esq. in the December 2007 issue of The Maritime Reporter attracted my attention. Bryant points out that the Coast Guard issued a new Environmental Crimes Voluntary Disclosure policy on November 14, 2007. He didn’t state exactly where that policy is found. However, it is in Appendix V to the U.S. Coast Guard Maritime Law Enforcement Manual (MLEM) – not exactly a book found on every bookshelf.

[NMA Comment: On Jan. 8, 2008 we posted NMA Report # R-444-A., Coast Guard Environmental Crime Disclosure Policy on our internet website.]

We are concerned that some of our mariners are burdened

with inoperative oily water separators (OWS) installed in their machinery spaces. However, most of this equipment is found on vessels over 400 GRT on offshore routes and international service. The equipment may be inoperable for several reasons, principal among them are “mechanical problems” that develop over time as pointed out in our Report #R-444. A second source of problems is the general lack of formal training provided to our “lower-level” engineers including training in engineroom equipment such as oily water separators.

Lack of formal engineroom training requirements for our “lower-level” mariners is the subject of Report #R-428, Report to Congress: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel that was first introduced by GCMA Director Glenn L. Pigott to MERPAC as Task Statement #55. Following delays and procrastination at MERPAC, our Association mailed the report to approximately 100 Congressmen and Senators. We further advised the Chairman of the National Transportation Safety Board about the industry’s abject failure to provide formal training for most lower-level engineroom personnel. We also drew a parallel between that issue and the Coast Guard’s resistance to requiring “preventive maintenance” of equipment in their regulations – a recent NTSB issue on small passenger vessels.

The Coast Guard’s new “Voluntary Disclosure Policy” is a legal maze cloaked (or choked) in verbiage that would provide executives of large corporations a path to avoid multi-million dollar pollution penalties. A company could set up a very elaborate “compliance management system” that would allow them to “voluntarily disclose” an “environmental crime” that they discover without being dragged into court and fined. In other words, if a company official catches one of their mariners polluting the environment or making phony entries in his oil record book to hide something, the official can turn him in and possibly avoid the penalty.

Our Association does not condone abuse of the environment, but understands that many of our mariners work for companies that fail to make timely repairs when requested. This is one reason why our Association has championed logbook issues to keep a written record of broken or inoperable equipment and good-faith requests for necessary repair work.

The Coast Guard Can Plan Better Than They Can’t Administer

Over the years, the Coast Guard demonstrated that it can “plan” anything but experiences problems administering their complex programs.

? Example: The Coast Guard “planned” a very elaborate system of “discharges” (i.e., NVIC 1-86) where mariners could receive credit at the end of a voyage for their sea service. However, the Coast Guard never mastered the simple task of distributing the “discharge” form books to the Masters of many vessels who needed to use them. Consequently, most of our lower-level mariners still have to beg their employers for a “sea service letter” – a substitute for the elaborate discharge. Yet, the Coast Guard still maintains its discharge system at considerable expense and won’t lift a finger to assist mariners to obtain their sea service letters for recalcitrant employers.

? Example: The Commercial Towing Vessel Examination Program represented a major Coast Guard administrative failure. This was a type of pre-inspection initiative that fell by the wayside because Headquarters never funded it properly.

? Example: The Coast Guard’s Streamlined Inspection

Program (SIP) was well intentioned and even became part of Coast Guard regulations in 46 CFR Part 8. This program was so complicated and time consuming to administer and it did not allow for the industry's constant turnover of personnel.

Putting together the Environmental Crimes Voluntary Disclosure Policy must have consumed considerable administrative time and effort by Coast Guard legal talent, but like so much that the Coast Guard does, it leaves out any consideration of the mariner.

No Incentive for Mariners

Contrary to what Coast Guard administrators may think, mariners could and should be a key to preventing environmental crimes. Most mariners do not want to be a participant in an environmental crime. Some are willing to stand up to their superiors and say "NO!" when requested to pump oily waste, dump raw sewage, or jettison trash and garbage overboard. However, the Voluntary Disclosure Policy has nothing in it for the mariner. In brief, the Coast

Guard only wants to hear about these problems from the executives of large corporations. However, the program is far too complex and convoluted for small companies or "mom and pop" operators to read or understand.

We learned years ago that local Coast Guard Investigating Officers are not interested in having our mariners report "environmental crimes" or any other crimes for that matter. Nevertheless, we placed supporting information in the public record although the results we have seen from the Coast Guard are far less than the effort expended. Furthermore, we are not convinced that most Coast Guard units could investigate their way out of a paper bag.

We believe that lower-level mariners would be receptive to receiving monetary rewards for reporting environmental crimes, other crimes, and violations of statutes and regulations because they do not want to be associated with this type of activity. However, this simple concept seems to be more than the Coast Guard is either willing or able to grasp when it can construct paper palaces at public expense.

GROSS SAFETY VIOLATIONS LED TO LOSS OF TANKSHIPS PRESTIGE & ERICA By Captain Ronald Sinn

[Editorial Note: Captain Sinn submitted the following statement to go on the record at the House Transportation and Infrastructure hearing on Aug. 2, 2007 that he attended.]

During the oversight hearings in Congress about the requirements for double hull tank vessels (Coast Guard Sub-Committee chaired by Representative Wayne T. Gilchrest on June 29, 1999 and the Senate Commerce Committee hearing about phasing out of single hull tank vessels chaired by Senator John McCain on Jan. 9, 2003), U.S. Coast Guard Admirals Paul Pluta and Robert North deceived the Representatives and Senators by covering up information that unsafe tankers with gross safety violations regularly entered U.S. ports and navigated along our coasts.

The Senators on the Senate Commerce Committee were:

John McCain., Chairman	Ted Stevens
Daniel K. Inouye	Bill Nelson
John Sununu	Ron Wyden

[Refer to transcript Hearing on the Phase-out of Single-Hull Tank Vessels dated Jan. 9, 2003. NMA file #A-1120.]

House Coast Guard Sub-Committee members were:

Wayne T. Gilchrest, Chairman	Howard Coble
Peter A. De Fazio	Brian Baird
Gene Taylor	

[Refer to transcript of oversight Hearing on the Requirement for Double Hulls under the Oil Pollution Act of 1990 dated June 29, 1999. NMA file #A-1120.]

Admirals Kremek and Card issued NVIC 2-97 directing inspectors not to do civil penalty actions against single hull tankers, which made the inspectors unable to do their jobs to protect the environment and public safety. Unsafe tankers like the PRESTIGE and ERICA operated with gross safety violations along the east coast from Maine to Texas including the ports of Baltimore, Philadelphia, and New York.

The PRESTIGE Casualty

According to the San Francisco Chronicle of Nov. 24, 2002, the PRESTIGE visited these United States ports at least 33 times from 1989 to 1999. In an 18-month period between

January 6, 1998 and June 25, 1999 Lloyds List shows the PRESTIGE visited the following ports:

- ? New York, January 6, 1998
- ? Philadelphia, PA, January 9, 1998
- ? New York, September 8, 1998
- ? New York, October 10, 1998
- ? Philadelphia, October 20, 1998
- ? Northville, NY, January 8, 1999
- ? Northville, NY, February 20, 1999
- ? New York, February 28, 1999
- ? Northville, NY April 18, 1999
- ? New York, April 20, 1999
- ? Baltimore, MD, June 25, 1999

The last inspection done by the Coast Guard was on June 25, 1999 in Baltimore, Maryland. "No detentions, no deficiencies" were found according to the Coast Guard Port State Control Inspection. The American Bureau of Shipping's (ABS) "Special Survey No. 5" on the PRESTIGE conducted in Guangzhou, China in May 2001 shows major repairs were done on transverse bulkheads and frames, repair of shell (ship's plating), and longitudinal bulkheads. The total steel replaced was estimated at 362 tons. On Nov. 20, 2002 the PRESTIGE split in two with 20 million gallons of fuel oil aboard.

The Coast Guard's Port State Control Inspections of the PRESTIGE were grossly inadequate and failed to identify major structural problems that easily could have spawned an environmental catastrophe in United States waters.

Sinking of the ERICA

The ERICA was also known as the Chinci Maru (1975), Interman Prosperity (1977), South Energy (1984), Jahre Energy (1985), Prime Nobel (1990), and Nobless (1994).

In an article from www.corrosion-doctor.org, the Coast Guard inspection of the ERICA was conducted in Portland, Maine in July 1994. According to their inspection, holes were discovered in main deck coamings. Holes were also found in both portside and starboard inert gas system risers, which could increase vulnerability to explosions. The fire fighting equipment was also in poor shape. In 1997, three years after the problem was first recognized, an inspection conducted in New Orleans, Louisiana finally addressed permanent repairs of the inert gas system. The ERICA had seven "sister ships" that were also built with 10% less scantlings (steel) in their construction. Three of these ships

had major structural hull failure problems. If the ERICA had not sunk on Dec. 12, 1999 it still could have called at U.S. ports until January 1, 2000.

The Coast Guard Admirals apparently did not want the Senators or Representatives to know that the American Bureau of Shipping (ABS) had done the inspections on the PRESTIGE and that Admiral Kremek, a former Coast Guard Commandant 1994 to 1998, was the President and Chief Operating Officer (COO) of ABS until 2006 and is now the President of the Society of Naval Architects and Marine Engineers (SNAME). Rear Admiral Card, formerly Chief of the Office on Marine Safety, Security and Environmental Protection, was Senior Vice President of Technology at the American Bureau of Shipping (ABS). Both men were being paid high salaries in their new civilian positions. Admiral Pluta never mentioned ABS in his testimony to the Committee to protect his fellow Admirals from scrutiny.

The Spanish government sued the American Bureau of Shipping for 2.3 billion dollars for liability for the cleanup due to improper inspection. It is obvious that Coast Guard Admirals don't abide by their Academy honor concept., "We revere

honor – we neither lie, cheat, steal, nor attempt to deceive."

It has been said in the past by the Marine Board of Investigation in the sinking of the S/S MARINE ELECTRIC that ABS represents the interests of the vessel owners and doesn't represent the interest and safety of the public..

The Marine Casualty Report, S/S Marine Electric dated July 25, 1984 states under "Recommendations" on page 122:

"Examinations of U.S. Merchant vessels to assure their compliance with the applicable Federal safety statutes and regulations be conducted and determined by knowledgeable members of a U.S. Government agency. The responsibilities for these functions should not be delegated or entrusted to the private sector"

The private sector in this case refers to an organization like ABS. A U.S. Government organization would be a civilian, non-military organization like the former Bureau of Marine Inspection and Navigation. This would be best served under the Department of Transportation.

FORMER DOT SECRETARY MINETA CALLS FOR NEW FEDERAL MARITIME POLICY

[Sources: MM&P Dec. 10, 2007. SUP, Dec. 21, 2007.]

A new federal agency should be created to unify the responsibilities for maritime industry promotion and oversight that are now scattered among more than a dozen federal agencies, according to Norman Mineta, former U.S. Secretary of Transportation.

In a speech to an audience of port industry executives and investors, Mineta said that bringing together responsibilities for maritime industry management, promotion and oversight would allow the government to develop a comprehensive maritime policy and more efficiently raise money for maritime from Congress. He argued that the government should transfer virtually all federal maritime programs to a new maritime authority, including the responsibilities for aids to navigation from the Coast Guard and the portion of the Army Corps of Engineers that manages domestic ports and waterways.

[NMA Comment: We recommend that Congress remove the Coast Guard from its role of superintending the U.S. Merchant Marine in its entirety.]

Mineta said the unification could embrace activities now overseen by agencies that include the National Oceanic and Atmospheric Administration, the Commerce Department and

the Federal Maritime Commission. Mineta also said the new organization should cover all maritime-related modes, such as inland rail, barge and roadways leading into and out of port facilities.

"The federal government must develop a legislative reauthorization process that puts maritime issues on the same level of importance that surface and aviation assets currently have," he said. As long as port and waterway funding is relegated to legislative channels such as the defense bill, he argued, it will remain a stepchild of the overall system. He also suggested that the Merchant Marine Academy at Kings Point be renamed the National Maritime Academy and made into a federal service institution along the lines of West Point.

[NMA Comment: The role of the U.S. Merchant Marine Academy is to train merchant marine officers. This contrasts with the Coast Guard Academy which trains officers to carry out various Coast Guard missions – only one of which is to "superintend the merchant marine." They now lack the expertise to do the job well and relegated it to a back burner.]

To help ensure that the maritime industry receives its fair share of infrastructure investments, Mineta also called on the major industry players to create a national maritime association to educate legislators and the public.

TIPS ABOUT ON-LINE TWIC PRE-ENROLLMENT

[Source: MM&P Wheelhouse Weekly Dec. 10, 2007 & Jan. 7, 2008]

The Transportation Security Administration (TSA) announced new enrollment centers for the Transportation Worker Identification Credential (TWIC) will open.

TSA has been recommending that mariners pre-enroll by logging on to www.tsa.gov. But an MM&P member contacted the union to say that the main site did not have any direct links for merchant mariners or for the TWIC card. After several searches, he found a link that takes applicants directly to the pre-enrollment site. Below, he shares a step-by-step description of the process.

1. Log on to www.tsa.gov/twic.
2. Click on "Pre-enrollment."
3. Click on "Apply for a TWIC," or "Register."
4. Fill out form with personal information.
5. Create a user ID and password. (Tip: Read the password rules and follow the instructions carefully.)
6. Complete the pre-enrollment form and print out the receipt. (Remember: Bring the receipt, which includes your name and a bar code, to the enrollment center.)
7. A welcome page with your name appears, along with instructions on how to set up an appointment.
8. Click on "Find an Enrollment Center." Fill out your address, then click "find."
9. A list of the nearest enrollment center sites will pop up,

- along with their addresses. Select a site. Click on
10. A one week-calendar will appear, with highlights indicating appointment times available between 7:30 a.m. and 5:10 p.m. Select date and time. (Appointments can only be made online or in-person. There are no phone numbers listed for any of the enrollment centers.)
 11. The next screen summarizes appointment information. Click on "Make Appointment" to confirm.
 12. The Appointment Confirmation Card pops up. Print this document and bring it to the enrollment center.
 13. For more information, click on, "What to Bring to the Enrollment Center."

When You Go To Pick-Up Your TWIC, Take A Book... Or Two

When you go to pick up your TWIC card at a local enrollment center, consider bringing along a book and a sandwich. Several (mariners contacted their union) to say that picking up their cards turned into something quite different from the five-minute stop that they had been led by TSA to expect. One (mariner) says he wished he had had a snack to nibble on while waiting in line. Here's his report:

"You are notified of your card's readiness by e-mail or a

"Address" for directions.

recorded phone message. The two people ahead of me had been duly notified, but their cards were not to be found. My card was there, and, after 15 minutes, I was told that there were several people ahead of me waiting to be 'activated,' and I should probably go get something to eat. When I asked how many were ahead, the answer was a shrug, and a finger pointed at some yellow sticky pad slips with names entered, crossed off, and who knows what. I was then told that each card takes 10 to 15 minutes... for information to be downloaded onto it (i.e., activation).

[NMA Comment: Sounds like treatment our mariners report receiving from Coast Guard RECs. Let's hope not!]

There appears to be only one person and one computer station doing that process. You do the math! They will hold your card so you can return at a later time to wait again."

[NMA Comment: As you complete the TWIC process, share your advice with other mariners who are applying for the cards.]

NMA JOINS IN CRITICIZING NEW MEDICAL NVIC

[Source: MM&P Wheelhouse Weekly Dec. 10, 2007]

On Nov. 26-27, MM&P Director of Special Projects Richard Plant and Mike Rodriguez, Executive Assistant to MM&P President Tim Brown, attended a meeting of the Merchant Marine Personnel Advisory Committee (MERPAC) medical working group. The working group is reviewing the Coast Guard's rewrite of the medical standards the agency uses to determine the physical and medical fitness of mariners.

MM&P and the other seafaring unions have been outspoken opponents of the USCG's approach. The unions say that the new medical policy is an overly aggressive response to the ANDREW J. BARBIERI allision and that there is no evidence that imposing the more stringent requirements will result in a significantly safer maritime transportation industry. They called on the Coast Guard to conduct a study of marine casualties to inform the process.

Chief among the unions' complaints are reduced discretion given to examining physicians, unnecessary medical evaluations and consultations, and increased costs to mariners and health care plans.

The Coast Guard intends to finalize, publish, and begin implementing the new medical policy following the MERPAC meeting in April. MM&P will continue to monitor developments and advocate for a sensible and effective medical policy.

New Medical Policies Hurt Our Lower-Level Mariners

Our mariners can thank all the unions for standing up to the Coast Guard on this issue. Our mariners want no part of having their medical records controlled by an incompetent bureaucracy running amuck in the foothills of eastern West Virginia.

Unlike most union mariners, most of our mariners have no "retirement" benefits to look forward to. As our mariners age, it becomes an increasing struggle to reach Social Security's

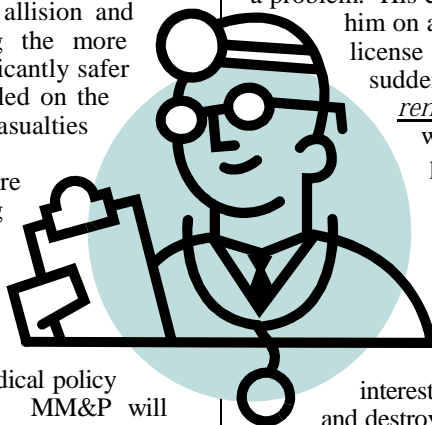
retirement age and remain in top physical condition.

The Coast Guard, as a military service, has its choice of young men entering the service. They can pick and choose among candidates. They can demand tough physical and educational standards. The story of lower-level mariners entering the maritime industry is quite different. Where companies with the most sought-after jobs can make all sorts of similar demands, other employers are lucky to find live bodies to man their vessels. Of all times, this is probably the worst possible time to harass "lower-level" mariners with these restrictive medical policies.

Example: One of our mariners, the Master of an oilfield liftboat, has been using his license for the past decade without a problem. His cardiologist and his personal physician placed him on a prescription medication for his heart. When license renewal time arrived, the mariner was suddenly told that the Coast Guard would not renew his license because of the medication he was prescribed even after his personal physician gave him an "all-clear" to continue to go to sea. The Coast Guard wanted the mariner to "see a psychiatrist" – something that he simply cannot understand.

The Coast Guard is "overplaying" its hand and, at the same time, is destroying the marine industry through its ignorance, incompetence, and arrogance. They have no interest or concern for the lives they have disrupted and destroyed by this medical stupidity. The idea that the Coast Guard's medical bureaucracy in Washington is more knowledgeable about any given mariner than his personal physician who administers his physical exam and signs his name as a medical professional "on the dotted line" should be good enough for the Coast Guard. The rest of their bureaucratic fluff needs to vanish like the winter snow on a Spring day.

[NMA Comment: We strongly advise candidates to reconsider preparing for a career in non-union sectors of the maritime industry without established retirement provisions. Train for a career in another industry until



such time as the restrictive medical requirements

NEW & REVISED NMA REPORTS

Lifesaving

NMA Report #R-354, Rev. 3. (Series). Jan. 8, 2008. A Direct Appeal to Congress on Lifesaving Issues Affecting Lower-Level Mariners. This updated 40-page report represents our Association's position on the lifesaving and survival gear that we believe the Coast Guard should have required years ago aboard vessels manned by our mariners. We recently revised the report to include the excerpt from the report by Dr. C.J. Brooks titled "Survival in Cold Water: Staying Alive" commissioned by Department of Transport, Canada, report that appeared in our Newsletter #52.

Lifesaving

NMA Report #R-354-A. (Series) Jan. 8, 2008. Basic Survival: The Regulatory Struggle for "Out-of-Water" Lifesaving Equipment. The National Transportation Safety Board (NTSB) *recommended* a number of basic changes in out-of-water survival equipment following the PILGRIM BELLE accident in 1985. The Coast Guard *ignored the NTSB recommendations* for two decades and thereby endangered the lives of our mariners as well as the general public. In a reply to our Association's formal inquiry, NTSB Chairman Mark Rosenker lays out the details of the NTSB position on this matter in official correspondence covering this period.

Mariner Health & Welfare

NMA Report #R-440. Jan. 1, 2008. Employers Abuse Mariners On Health & Medical Issues. By Mark L. Ross, Esq. Discussed in this Newsletter in the article titled Brown-listed Towing Company Must Pay For Endangering Its Mariners' Health.

Pollution

NMA Report #R-444-A. Jan. 8, 2008. Coast Guard Environmental Crime Disclosure Policy. The report is discussed in this newsletter in the article titled Coast Guard Environmental Crimes Voluntary Disclosure Policy.

currently proposed and enforced are rescinded.]

CURRENT NMA "BROWN-LIST"

This list has not changed in the past several months since Newsletter #51. Some of the industry's least desirable employers continue to receive unfavorable mention in this issue of the Newsletter in their plunge to the bottom of the tank.

Brown Listed Companies:

- ? **Abdon Callais Offshore.**
- ? **American River Transportation Co. (ARTCO)**
(Mentioned unfavorably in this Newsletter)
- ? **American Commercial Barge Lines (ACBL)**
- **BJ Services, Inc.**
- **Chet Morrison Contractors, Inc.**
- ? **Coastal Towing, LLC & TLC Marine Svc.**
- ? **Delta Towing.**
- ? **ENSCO.**
- ? **Five Bs Towing Inc.**
- ? **Frazier Towing**
- ? **Global Industries Offshore**
- ? **Gulf Pride Marine Service, Inc.**
- ? **Guidry Brothers/Harvey Gulf Marine**
- **Hornbeck Offshore Services**
- ? **L&M Botruc Rentals**
- ? **Maryland Marine**
- **Martin Gas Marine**
- ? **Stapp Towing**
- ? **Steel City Marine Transportation, Inc.**
- ? **Tidewater Marine**
- ? **Trico**
- **Versatility Marine** *(Mentioned unfavorably in this newsletter)*
- ? **Western Kentucky Navigation Company (WKN)**

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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)
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