



# NEWSLETTER

124 North Van Avenue  
 Houma, LA 70363-5895  
[www.nationalmariners.us](http://www.nationalmariners.us)

PHONE: (985) 851-2134  
 FAX: (985) 879-3911  
[info@nationalmariners.us](mailto:info@nationalmariners.us)

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## PLANNED AUDIT OF USCG MARINE CASUALTY REPORTING MOVES AHEAD

The Department of Homeland Security Office of **Inspector General** Fiscal Year 2012 Annual **Performance Plan** under the Government Performance and Results Act of 1993, Public Law 103-62, requires agencies to submit to the Office of Management and Budget an annual performance plan covering each program activity in the agency's budget. The annual performance plan provides a direct link between the strategic goals outlined in the agencies strategic plan and what managers and employees do from day-to-day. The plan contains the annual performance goals that the agency will use to gauge its progress toward accomplishing its strategic goals and identify the performance measures the agency will use to assess its progress.

In Newsletter #83, we mentioned that a DHS OIG Inspector General audit team visited our office to discuss the possibility of an audit of Marine Accident Reporting. On April 30, 2012 the audit was approved and is described as follows in the Performance Plan.

### Marine Accident Reporting to the USCG

"To aid in identifying, preventing, and minimizing marine accidents and casualties, the USCG requires the reporting of marine accidents, injury, or death. According to 46 CFR §4.05-1, a report submission is required for several specific mishaps, including those involving vessels, mobile offshore drilling units, Outer Continental Shelf facilities, and diving. Though the filing of the CG-2692 form is required for these specific categories, it is unclear how the USCG enforces this requirement.<sup>(1)</sup> [<sup>(1)</sup>*It is not unclear to our Association that failing to properly enforce the reporting requirement on personal injuries has abused our mariners over the years. This is why we sent every NMA member the "short version" of NMA Report #R-360-Y several weeks ago. The "long version" is a 274 page document we shared with Congressional leaders.*]

"If the feedback loop in this report filing process is not adequately enforced, the Coast Guard's ability to identify hazardous conditions or conduct statistical analysis is hindered and skewed by a lack of information. Therefore, any new or revised safety initiatives could potentially lag serious hazardous conditions, be unnecessary, or not be implemented due to the lack of information or erroneous information. **If underreporting of crew personal injury accidents occurs, the USCG would have a false overall picture of safety levels in the underreported maritime industry sector.** This may lead to insufficient inspection, regulatory, and prevention efforts and response planning on the part of the USCG for the underreported sector.

**"Objective:** Determine whether the USCG has adequate policies, procedures, and internal controls to monitor, track, and enforce the filing of Marine Accident Reports as required by the Marine Casualty and Investigations section of 46 CFR §4.05-1. *Office of Audits.*



Charles K. Edwards  
 Acting Inspector General  
 Department of Homeland Security



**RIVERBOAT BARGE CAPTAIN AWARDED \$250,000  
FOR WRONGFUL TERMINATION**

[Source: Associated Press.]

NEW ORLEANS – The U.S. Department of Labor announced it has entered into a settlement agreement with St. James Stevedoring Partners LLC New Orleans to resolve findings by the Occupational Safety and Health Administration that the company illegally terminated an employee for safety complaints, in violation of the Seaman's Protection Act.

An OSHA whistleblower investigator found, according to a press release, that St. James Stevedoring terminated the employment of a riverboat barge captain after he complained to the U.S. Coast Guard about an inoperable starboard vessel engine. (Note: The U.S. Department of Labor does not release names of employees involved in whistleblower complaints.)

In accordance with applicable regulations,<sup>(1)</sup> riverboat captains are required to report lost engines to the Coast Guard, and failure to do so can jeopardize a pilot's license.

Following the incident, the company suspended the captain and stated that he was not permitted to report anomalies to the Coast Guard without the company's permission. The employee was put on probation pending a decision regarding termination. When the employee encountered an identical second incident, he again advised the company and contacted the Coast Guard. The company then terminated the employee, alleging poor performance.

OSHA found that the company's actions constituted a violation of the Seaman's Protection Act,<sup>(2)</sup> which protects a seaman who makes complaints to the Coast Guard.

The parties resolved their difference through a settlement agreement under which St. James Stevedoring Partners will pay a total of \$245,000, including \$23,451 in back pay, \$70,352 in front pay, \$133,106 in compensatory damages and \$18,091 in attorney's fees, representing the most significant financial settlement under the Seaman's Protection Act since OSHA assumed jurisdiction of the whistleblower provisions of that law in October 2010. Additionally, the company will purge any personnel records related to its alleged justifications for the captain's termination and provide a neutral job reference to any prospective employers.<sup>(3)</sup> The company also agreed to post a notice informing all employees of their right not to be retaliated against for raising maritime safety concerns.

"Employees must feel free to exercise their rights under the law without fear of termination or retaliation by their employers," said John M. Hermanson, OSHA's regional administrator in Dallas. "The Labor Department is committed to vigorously protecting the rights of all workers."

OSHA enforces the whistleblower provisions of the Seaman's Protection Act and 20 other statutes protecting employees who report violations of various airline, commercial motor carrier, consumer product, environmental, financial reform, food safety, health care reform, nuclear, pipeline, public transportation agency, railroad, maritime and securities laws. Under the various whistleblower provisions enacted by Congress, employers are prohibited from retaliating against employees who raise various protected concerns or provide protected information to the employer or the government.

Any employee who believes that he or she has been retaliated against for engaging in protected conduct may file a complaint with the secretary of labor for an investigation by OSHA's Whistleblower Protection Program. Detailed information on employer whistleblower rights, including fact sheets, is available online at <http://www.whistleblowers.gov>. ■

**NMA Footnotes**

<sup>(1)</sup> 46 CFR §4.05-1(a) requires the owner, agent, master, operator, or person-in-charge to immediately (after addressing resultant safety concerns) notify the Coast Guard Sector, Marine Inspection, or Group office whenever a vessel is involved in a maritime casualty. The regulation goes on to recite 8 examples.

NMA can cite one example where 1½ hours after such an event was not considered "immediate" and resulted in formal letter of warning entered into a Master's permanent record.

46 CFR §4.05-10 requires a formal written report to be submitted on CG Form 2692 filed within 5 days. Our Association reported to the DHS Inspector General that such written reports are often delayed, incomplete, or simply never filed especially in cases of "...a personal injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties..."

This is the basis of the recent NMA Report #R-350-Y titled Report to Congress: Mariner Indictment of Careless Personal Injury Reporting Practices that supports our request to the Inspector General to investigate this practice.

<sup>(2)</sup> The Seaman's Protection Act is 46 U.S. Code §2114. This was one of the landmark pieces of legislation passed in the 111<sup>th</sup>. Congress as reported in Newsletter #73. It is extremely complicated, so much so that we asked a maritime attorney to help us prepare NMA Report #R-210, Rev. 2, to explain its workings. Although the report doesn't say so in so many words, the Coast Guard has been absolutely useless in resolving "labor disputes" such as those that result in illegal terminations and black-listing. On the other hand, OSHA has considerable experience in such matters and, as this particular case indicates, may be helpful in resolving such "labor disputes."

Before believing that similar problems can be resolved the same way and that OSHA is the mariner's friend, our Association had another case involving similar issues that occurred after the law changed in late 2010 but received entirely different treatment by OSHA and its parent the U.S. Department of Labor. We intend to present that matter when it is finally resolved.

<sup>(3)</sup> The Coast Guard denied to us that Blacklisting (aka blackballing) even existed although it existed right under their noses for years. Refer to NMA Report #R-350, Rev. 6, Issue "P." In the past, our efforts were directed at amending the Fair Credit Reporting Act. A final resolution to this problem may be the remedy applied in this latest case by reporting suspected blacklisting to OSHA. After all, it is a "labor problem" that destroys careers of a labor force already under considerable stress through "third world" working conditions and the abuse of mariners under the two-watch system as revealed in NMA Report #R-370, Rev.4 recently submitted to Congress.

## Commentary

Blacklisting has been prominent in labor history and has been used by employers to keep their employees in line not only in the United States but also in many other countries. Although OSHA regulated “uninspected towing vessels” since they signed a Memorandum of Understanding with the Coast Guard in 1983, it is extremely rare to see this agency take a decisive stand on behalf of our mariners.

### STUDY FINDS “SIX-ON/SIX-OFF” WATCH ENTAILS HIGHEST RISK OF FATIGUE

[Source: MM&P, Apr. 24, 2012]

Almost 45 percent of watchkeepers fell asleep on duty at least once during a European Union (EU) study on the effects of the “six-on/six-off” watchkeeping regime that is widely employed in some sectors of the maritime industry. The findings were reported in an article published in a recent issue of “Nautilus International Telegraph,” the magazine of the British and Dutch officers’ union.

In the course of the study, which was conducted in engine room and cargo simulators at maritime colleges in the United Kingdom and Sweden, the fatigue levels and performance of 90 experienced deck and engineering officers were measured during simulated week-long “voyages.” The study focused on two common watchkeeping patterns: six-on/six-off and four-on/eight-off. Some participants were also exposed to a “disturbed” off-watch period, intended to reflect additional workloads and sleep disturbances associated with bad weather, port calls and emergencies.

### MARITIME UNIONS TESTIFY ON FATIGUE & MANNING LEVELS

Statement of the International Organization of Masters, Mates & Pilots and Marine Engineers Beneficial Association and American Maritime Officers before the Subcommittee on Coast Guard and Maritime Transportation of the House of Representatives Committee on Transportation and Infrastructure m Regulation of the Maritime Industry April 26, 2012. ***Emphasis is ours!!!***

Chairman LoBiondo & Ranking Member Larsen,

We welcome this opportunity to comment on the regulation of the maritime industry. The organizations I am speaking for today, the Masters, Mates & Pilots (MM&P), the American Maritime Officers (AMO), and the Marine Engineers Beneficial Association (MEBA) represent substantially all the navigating and engineering officers on American ships in international trade. We have a vital interest in the safety and security regulations that protect shipping, the public and the marine environment from the consequences of maritime accidents or terrorist acts as we are the first to bear the consequences or the blame when things go wrong. We fully support efficient and effective regulation and appreciate the role of the USCG and EPA in safety and environmental regulation.

We applaud the actions of the 111<sup>th</sup> Congress in amending 46 U.S. Code §2114 as they did in October 2010. Hopefully, this will finally emerge as the right formula to settle these nagging problems our Association outlined to Congress for many years. In retrospect, the 111<sup>th</sup> Congress (2009-2010) did a great deal of really outstanding work on behalf of our mariners as recited in Newsletter #73. Take a few minutes to review the article on pages 2 thru 10 in the newsletter posted on our website <http://www.nationalmariners.us/>.

As the week progressed, the researchers noted “a decline in the quality of information being given by participants.” The six-on/six-off rotation was found to be the most tiring, with almost 45 percent of participants falling asleep at least once, in particular during night and early morning watches. Almost 40 percent of officers working the four-on/eight-off schedule fell asleep at least once. Participants working the six-on/six-off schedule were found to get markedly less sleep overall than those working the four-on/eight-off regime.

“Reaction time tests, carried out at the start and end of each watch, showed clear evidence of performance deterioration,” the researchers said. “The slowest reaction times were found at the end of night watches and among those on the six-on/six-off patterns.” The project included 11 partner organizations across the shipping industry including Nautilus and sleep scientists from the Stress Research Institute at Stockholm University.

**[NMA Comment: We made this point in our submissions to the towing vessel inspection docket last year. We reiterated this point in NMA Report #R-370, Rev. 4, Report to Congress: Abuse of Mariners Under the Two-Watch System.]**

We wish to bring to your attention today **our concern with fatigue and manning levels in the maritime industry** and the regulations that seek to address these issues which are the root cause of many accidents. Governments and industry, both nationally and internationally, acknowledge that fatigue is a widespread problem and the NTSB has placed regulations that address the causes of fatigue on its Most Wanted List and has labeled the USCG response to the fatigue problem as unacceptable. In its defense, the USCG has cited the complexities of the marine transportation system as an impediment to effective regulation.

In order to understand the complexities of the problem there is a need to recognize the international nature of the maritime transportation system. It is the first industry to become globalized and permit competition in an unregulated and tax free environment through the **Flag of Convenience (FOC) system where no genuine link exists between the nationality of the ship owner, the ship manager, the crewing agency, the officers and crew, and the country whose flag the ship flies that is responsible for its regulation.** The FOC system allows ship owners to place their ships under the flags of FOC countries that permit the operation of ship registration services as a commercial venture for profit and use lack of regulation, taxation and labor laws as inducements to gain competitive advantage. It is fully recognized within the industry that this has resulted in driving standards downward and reducing shipboard manning levels below that needed to safely operate ships.

The dominance of the FOC system with its lack of effective national regulation has led to an ever-increasing shift to international regulation of shipping through the international Maritime Organization (IMO), a United Nations organization based in London. *The IMO is now the de facto regulator of international shipping with national regulation, such as the USCG requirements, conforming to the IMO provisions.* Even U.S. domestic regulation of shipping is now shaped or influenced to a large extent by the IMO international standards.

*While the IMO plays an important role as a forum for discussion of safety and security issues and for reaching compromises, it unfortunately has a weakness as an effective regulatory body.* As a governmental organization under the United Nations *its membership includes the many FOC countries that play a major role in decision making as surrogates for the FOC ship owners to escape effective regulation.* In addition, the European Union (EU) enforces block voting of its 27 members and that voting block is heavily influenced by the FOC ship owners in the major European ship owning countries. *There are EU member states that support more effective regulation of shipping, but are barred by EU rules from speaking in support as individual countries.* The result is that many regulations are the result of compromises to gain acceptance at very low minimum standards that jeopardize safety, or if reasonably high standards are accepted they are often stripped of any effective implementation or enforcement measures.

The lack of effective international regulation impacts U.S. interests in two ways. The vast majority of large ocean going ships in international trade in U.S. ports and waterways are FOC flagged operating under competition driven manning levels set by FOC administrations with minimum rest requirements under IMO provisions. And, *the international IMO minimum rest hour provisions also become the de facto U.S. standards under USCG regulations.*

There is widespread recognition within the international maritime community that fatigue and *manning levels have been set below that needed to safely handle the workload of usual shipboard operations.* This has led to a work program at IMO to review mandatory rest hour regulations and manning levels. The regulation of rest hours and regulation of manning levels are dual approaches to deal with fatigue and the related safety issues. *Rest hour regulation is a bottom up approach and manning level regulation is a top down approach.* They are complementary to each other and regulatory authorities should effectively address both.

The IMO, in addition to the rest hour regulations, also reviewed guidelines on the Principles of Minimum Safe Manning in an attempt to achieve a two-pronged holistic solution to the fatigue problem.

Unfortunately, in order to gain acceptance by the FOC interests at IMO, *the international mandatory rest hour provisions adopted<sup>(1)</sup> still permit a 91 hour work week as a normal standard.* It is anticipated that this will be implemented by the USCG as the regulatory standard for U.S. ships in both international and domestic services. *The rest hour provisions clearly do not adequately address the shipboard fatigue problem and should not be accepted as a goal or target under normal conditions.* It should be borne in mind that typical shipboard assignments are for three or four months of continuous duty with minimum sleep under

regulations that require only a minimum six hour rest period and four hour rest period of time free from work per day, and even this requirement can be waived for up to two weeks. *The regulations are the result of compromises needed to gain acceptance by FOC interests rather than an analysis by human factors professionals on the effects of work/rest periods on cognitive ability and safety.* It is anticipated that, following past practice, the USCG will adopt the compromised minimum international standards as our national standards although there is no reason not to adopt higher U.S. standards other than rule making convenience.

Fortunately, the IMO's top down approach to define a methodology for determining safe manning levels may prove more hopeful. Guidelines on the Principles of Minimum Safe Manning<sup>(2)</sup> were recently adopted by the IMO in November of 2011 and they contain comprehensive guidance that should be used in determining safe manning levels that take into account many of the operational requirements that affect shipboard workload. The guidelines contain a framework for assessment of workload and available crew complement to meet that workload. *A recently approved amendment to the SOLAS Convention<sup>(3)</sup> requires national administrations (USCG) to take the Principles of Minimum Safe Manning into account in a transparent procedure when establishing manning levels.* Present U.S. manning levels have *not* been set using the new IMO guidelines and there is a need to begin a review and assessment of current manning levels.

The new requirement that manning levels be established following a transparent procedure should be interpreted as requiring all ships, U.S. and foreign, in international trade calling at U.S. ports to carry onboard a copy of the methodology used and steps taken under the framework for determining manning levels in Annex 5 of the Principles of Minimum Safe Manning. This should include factors considered and determinations made on operational functions, operational factors, task capability, and workload assessments that form the basis for an administration's evaluation and issuance of a minimum safe manning document. Transparency is essential if the crew and Port State Control (PSC) are to assure the ship is actually being operated under conditions that formed the basis of their administrations evaluation. Transparency is also essential if U.S. and foreign ships in U.S. ports are regulated on a level playing field with equal compliance with regulations that protect U.S. environmental interests.

While it is recognized that fatigue mitigation is an issue across the entire ship's complement, it is of greater concern when fatigue impairs the ability of the senior officers responsible for critical decision-making affecting safety. International and national regulation of work/rest periods have set the same standards across the entire ship's complement from the lowest rating to the master without regard to the criticality of the position held. Although all members of the crew complement serve important safety functions in times of emergency, there is a vast difference in the potential consequences of fatigue induced cognitive impairment between that of a support level crew member and a master's impaired decision making that may produce an *Exxon Valdez*. Today's container ships and tankers are some of the largest most complex ships in the world exceeding in length and tonnage our largest aircraft carriers. Their size alone represents a significant threat to the environment in the event

of an accident. A risk based assessment of potential consequences based on ship size and type, and the critical role of particular crew members in decision making affecting safety, should be a factor in setting the composition of the manning levels as well as work/rest periods.

**It is generally recognized within the maritime community that past reductions in manning have shifted an excessive workload on to the master.** The elimination of the staff officers, the radio operator and purser, as well as the elimination of the non-watch standing chief mate has resulted in their administrative duties being shifted to the master. The elimination of the junior third watch standing mate has removed the chief mate from a non-watch standing full time administrative and operational role to standing a navigational watch eight hours a day in addition to his many other duties. **Compounding the problem, the ever increasing tasks required for remaining in regulatory compliance and its documentation falls principally on the master.** It may seem counter intuitive, but the burden of ensuring and documenting regulatory compliance has become a safety issue in that it diverts substantial amounts of time away from the traditional shipboard tasks that are the basis of good seamanship and ship safety. While the burden of meeting the regulatory tasks continues to increase, so does the potential for civil and criminal liability. Ship's masters and other ships officers often face prison terms and are, in fact, imprisoned around the world for regulatory non-compliance and industrial accidents. **The criminalization of simple professional errors, often the result of fatigue or excessive workload, is without justification when there is no oversight regarding the sufficiency of the personnel available to carry out shipboard responsibilities.**

The obvious solution is the return of the chief mate to a non-watch standing position so time would be available to divide the necessary administrative, operational and regulatory compliance tasks between the master and chief mate. It could be argued that this is a manning issue that might be resolved through the collective bargaining process. **But, in today's competitive environment within the shipping industry, management and labor that agreed to an increase in manning that was not followed by their competitors would be at an economic disadvantage.** Reduced manning levels have been equated by some in the industry with efficiency and profitability. However, **when the drive for efficiency and economic advantage jeopardize safety there is a need for regulatory intervention.**

We are requesting that consideration be given by Congress

to mandating a study to review the specific issue of manning levels and their relationship to workload, fatigue and safety on management level officers and watch standing officers on U.S. flag ships. To assure objectivity we suggest that the study be conducted by independent human factors professionals experienced in workplace fatigue and take into account the guidelines and the framework for assessment and evaluation of workload in the IMO "Principles of Minimum Safe Manning" and the results of the extensive scientific studies available on the effects of fatigue on performance. **The goal should not be meeting the minimum rest hours in a 91 hour work week, but scientifically based recommendations to the USCG on how to evaluate appropriate manning levels to avoid excessive fatigue effecting performance and safety.**

In the past the USCG has side stepped the manning level issue and sought to address shipboard fatigue with guidance on **Crew Endurance Management (CEM) that has been largely unsuccessful on merchant ships as the problem is not one of time management, but one of a lack of human resources.** The CEM approach simply shifts the blame for unavoidable fatigue created accidents on to the management level officers rather than recognizing inadequate manning as the cause.

The issue of fatigue and degradation of performance leading to accidents should be treated with a similar approach and gravitas as those pertaining to oil pollution as in many cases fatigue is the root cause. Our organizations and its members extend our full cooperation and support in carrying out any study as responsible partners in furthering maritime safety.

Timothy A. Brown, President MM&P

Thomas J. Bethel, President AMO

Michael Jewell, President MEBA

- (1) *Manila Amendments to STCW Code, Section A- VIII/1, Fitness for duty*
- (2) *IMO Assembly resolution, A 27/Res. 1047, adopted on 30 November, 2011*
- (3) *Amendment to SOLAS Convention, CHAPTER V/Regulation 14 – Ships' manning*  
"2 For every ship to which chapter I applies, the Administration shall:  
.1 establish appropriate minimum safe manning following a transparent procedure, taking into account the relevant guidance adopted by the Organization\*....  
\* Refer to the Principles of minimum safe manning, adopted by the Organization by resolution [A 27/Res. 1047].

## NEW AND REVISED NMA REPORTS

**NMA Report #R-213. Blood on Brown Water.** 74p. In the past, NMA addressed the Coast Guard on a number of matters that are unique and important to our "limited tonnage" mariners with few meaningful results. We learned the hard way that the center of "power" in those industry sectors that employ our mariners lies with employers. Since so many of our mariners are "at will" employees, the Coast Guard acts as if the vessel owners and their operating companies "own" us.

Since these corporations and/or wealthy boat owners speak on behalf of our mariners, the Coast Guard must believe that it is a waste of time to listen to working mariners or pay

attention to anything that we write? They try to humor us at public meetings or at advisory committee meetings and then do as they please.

Our Association soon tired of this attitude and began to appeal directly to Congress. When all is said and done, all we have to work with is the truth.

Although this book will be hand-delivered to members of Congressional oversight committees, it was prepared for much wider distribution to the public as will be announced in more detail to our members by e-mail and snail mail for those not yet wired to the internet. Like all NMA Reports, it will be listed on our website as NMA Report #R-213.

**NMA Report #R-276-L, Safe Manning for Uninspected**

**Towing Vessels Engaged on International Voyages.** 95 p.

Our Association received word during the last Towing Safety Advisory Committee meeting in Houston that the Coast Guard had circulated a “DRAFT” policy letter titled Safe Manning for Uninspected Towing Vessels Engaged on International Voyages. Our Association did not receive a copy and none were available at the last TSAC meeting.

Safe manning is one of our Association’s most important issues in dealing with both the Coast Guard and with Congress.<sup>(1)</sup> We became upset when our Association learned that the Coast Guard is actively working on a towing vessel manning project with management but failed to inform our Association on behalf of the working mariners that actually man those towing vessels. We filed a Freedom of Information Act request to obtain equal access to this information. [<sup>(1)</sup>Refer to NMA Report #R-350, Rev. 6, Items H, K & I.]

Our FOIA request was processed quickly and we received a follow-up phone call to discuss the DRAFT policy.

This “Draft” represented nothing more than a first attempt to put together a meaningful policy. In order to understand this letter, a mariner should first collect and study the 10 “references” listed in a) thru j) on the draft policy letter. Collecting these references and studying them took a number of hours. However, without doing so, the draft policy letter is very difficult to understand. We shared the Draft Policy Letter with a number of our mariners but received no response. Consequently, in **NMA Report #R-276-L**, we printed out all the references. This will give our towing vessel officers, who use their licenses on international voyages, a better idea of the Coast Guard’s thinking on adequately manning towing vessels on those voyages. Keep in mind that these (still uninspected) towing vessels will have to undergo

Port State Control inspections at their destinations in foreign countries.

The rest of the world frowns on the two-watch systems and on deckhands that do the work of trained engineers as has become commonplace in our domestic waters. This is clearly expressed in IMO Resolution A.1047(27) which we printed out as “Reference C” in our report. While this document makes inspiring reading, sadly, it does not apply to domestic voyages. The three-watch system for both the deck and engine departments and a second man in the pilothouse standing lookout are features of the “Principles of Safe Manning” covered in this resolution.

Along these same lines, concern with fatigue and manning levels was expressed in testimony before the House Coast Guard and Maritime Transportation Subcommittee on April 26, 2012 in testimony carefully prepared by Don Marcus, Secretary-Treasurer of the International Association of Masters, Mates and Pilots speaking for his union as well as for the Marine Engineers Beneficial Association and the American Maritime Officers. We added a copy as [Enclosure #1] to this report because it provides a greater depth to understanding related manning problems on larger vessels. We also added our direct response to the Coast Guard FOIA document as [Enclosure #2] in this report.

When it comes time to consider our mariners sailing on near coastal and inland waters, rivers and the Great Lakes we want to let the same Coast Guard officials understand that our Association intends to stand up for adequate manning levels on all these vessels. To this end, we want to report that NMA Report #R-370, Rev. 4 titled Abuse of Mariners Under the Two-Watch System is now in the hands of both the Coast Guard and Members of Congress.

**WATCH OUT FOR THAT BRIDGE!**

[Source: By Capt. Joel Milton, WorkBoat April 3, 2012. Emphasis is Ours!!!]



Dealing with unreliable or questionable air-draft figures aren’t the only thing we must deal with. Often, vessel crews will not carefully read the local notice to mariners (LNMs) that are relevant to where they operate, and where such information is always readily available. Some mariners don’t bother to read them at all.

For anyone who did decide to read the LMN for New York Harbor prior to the March 13 incident when a derrick barge under tow struck the underside of the Brooklyn Bridge at the

center span, this is what they would have found in the “Bridges” section:

NEW YORK - NEW YORK HARBOR – EAST RIVER – Bridge Painting – Painting of the Brooklyn Bridge across the East River, mile 0.8, is in progress. Installation of scaffolding will commence from the Brooklyn side of the bridge through mid-channel. Scaffolding will reduce the available vertical clearance under the bridge by approximately 6 feet. The scaffolding will be marked by three red lights one at each end of the scaffolding and one at the center. The remainder of the channel between mid-channel and the Manhattan side will provide full vertical clearance and be clear of all obstructions. This project is expected to be completed by 2014. Mariners are advised to exercise caution when transiting the area and large vessels to transit the Manhattan half of the channel.”

That seems pretty clear to me. However, we will have to wait and see if the clearance reduction was in fact “approximately 6 feet.” It could have been more, or it could have been less.

Low tide at that location was estimated at 2029 on the evening of March 13, about 30 minutes after the allision occurred. The range of tide was 3.92 feet on that high-to-low cycle. The corresponding slack water times in Hell Gate, six miles upstream of the bridge, were at 1452 (slack before ebb) and 2106 (slack before flood), making this a “fair tide (or current)” transit in the East River. It appears that the arrival at the Brooklyn Bridge was timed to coincide with the predicted low water time, but who knows? The answer to that question should also be revealed in the Coast Guard investigation.

Still, the clearance reduction was only 6 feet and, even with a low tide-passage, it still hit. **Thus, reduced clearance or not, it was definitely going to be close enough to make sure you had reliable exact numbers, not estimates or guesses.** “It’s always been okay before” just doesn’t work in these types of cases.

Maybe it was OK before, but this time it wasn’t. Unless the clearance reduction was grossly understated, this has all the signs of a voyage planning failure. **Did the captain and mate aboard that tug have good information to work with?** If no, then why not? That is where the Coast Guard needs to look for answers so we can avoid a repeat of this type of incident. ■

#### NMA Concerns

This is not the first “overhead clearance” accident our

Association examined. NMA Report #R-293-B, Rev. 6 titled **We Urge Congress to Look Into Overhead Clearance Accidents** examines 11 previous incidents. We informed Congressman Jeff Landry, Vice Chairman of the Coast Guard and Maritime Subcommittee about this incident in a letter dated March 16, 2012 stating in part: “I believe the problem of “overhead clearance accidents” when viewed in light of a “worst case” scenario at the Brooklyn Bridge may merit your Subcommittee’s attention. If this is the case, I hope the enclosed information (NMA Report #R-293-B) will be helpful.” [Also see Newsletter #82, p.9]

We have yet to receive a response, but will add this article to our report and file a FOIA request and see if the Coast Guard determines the cause of the accident at some future date.

### FAMILIES GET \$15 MILLION IN DUCK BOAT SETTLEMENT

[Source: By Dale K. DuPont, WorkBoat, May 10, 2012. **Emphasis is ours!!!**]

The families of two students killed in a tour boat accident on the Delaware River in Philadelphia will split \$15 million after a settlement was reached two days after the start of a federal court trial.

An additional \$2 million will be put into a fund for 18 survivors of the July 2010 accident that occurred when **Ride the Ducks DUKW 34** was struck by the bow of Philadelphia’s 250’ sludge barge *The Resource* being towed by the *Caribbean Sea*, a 2,400-hp tug owned by **K-Sea Transportation Partners**.

The tug didn’t answer distress calls because the mate piloting it was in the lower rather than upper wheelhouse on his cell phone and laptop dealing with a family emergency. Matthew Devlin was sentenced to a year and a day in jail after pleading guilty to involuntary manslaughter and agreeing to the permanent revocation of his Coast Guard license.

A spokesman for K-Sea, East Brunswick, N.J., said the company would not comment on the settlement. Houston-based

**Kirby Corp.** acquired K-Sea last July in a deal valued at \$600 million and changed the name to **Kirby Offshore Marine**.

Ride the Ducks president Chris Herschend said in a statement that the Norcross, Ga., company was “glad to bring closure to this sad chapter, most importantly for the families involved. As parents ourselves, we are sorry for what they have experienced. I personally want them to know that I’d move heaven and earth to undo what happened if I could.”

Neither side said how much they contributed to the settlement.

Both Ride the Ducks and K-Sea wanted to limit their liability under a law that keeps damages to the value of the vessel and its freight. The duck boat company claimed a cap of \$150,000 and K-Sea a cap of \$1.65 million under the 1851 Limitation of Liability Act, federal court documents show.

But Robert Mongeluzzi, of Philadelphia, a lawyer for the families, said **evidence he presented before the trial showed the accident didn’t result from “negligence that suddenly arose that day on the water.”**

**Both companies have policies against personal cell phone use. In K-Sea’s case, “Our contention was that nobody followed it,”** he said. He also cited duck boat problems ranging from a missing radiator cap to not having an anchor ball on the vessel.

### SOUNDING THE ALARM ON U.S.-FLAG COMPLIANCE

[Source: By Capt. Eric Christensen, USCG, May 17, 2012. **Emphasis is ours!!!**]



Capt. Eric Christensen is chief, Commercial Vessel Compliance at U.S. Coast Guard headquarters in Washington, D.C. He oversees vessel inspection policy development for over 12,000 U.S.-flag vessels, 8,800 foreign vessels under the Port State Control Program, uninspected vessels, and mariner credentialing policy for 200,000 U.S. merchant mariners. At Coast Guard headquarters he was previously assigned to the Office of Merchant

Vessel Inspections where he served as the project officer who developed the Final Rule for Small Passenger Vessel Inspection, ISM Code Compliance Policy for Small Passenger Vessels, and the Streamline Inspection Program.]

Alarms are designed to alert the watch that something is amiss with a particular piece of equipment or that a level is too high or too low, and it requires attention. Consider this a high-level alarm for detentions of U.S.-flag vessels.

Coast Guard analysis of recent actions taken on U.S.-flag vessels by port state control (PSC) authorities overseas indicates an alarming trend in the number of significant deficiencies noted. **These deficiencies mainly relate to improper manning, primary lifesaving equipment, engine room fire hazards, structural hull safety, and the inability to verify compliance with international conventions due to missing or non-endorsed documentation such as International Safety Management (ISM) certificates.**

This pattern is illustrative of a decline of registry performance, which has firmly landed the U.S. on the “**grey list**” in at least one of the regional PSC regimes since 2008. This status is indicative of an average performance over the preceding three years and signifies the necessity to implement immediate corrective action. **As a result of “grey list” categorization, U.S.-flagged vessels are subject to increased PSC scrutiny and examination frequency.** Compounded

with the results from Coast Guard and class oversight efforts, multiple substandard conditions have been identified and attributed to **habitual offenders** indicative of a flawed safety management culture.

The objectives of SOLAS Chapter IX and the ISM Code are to ensure safety at sea, prevent injury or loss of life, and to avoid environmental and property damage. ISM Code requirements outline processes of communication, training, and actions to continuously maintain the ship in a state of compliance with the applicable safety and environmental protection regulations. Specifically, the code seeks to develop a “safety culture” which addresses human error and human omissions.

To accomplish its objectives, the code requires owners and operators who have assumed responsibility for their respective vessels, to **implement safety management systems (SMS) for their companies and ships**. The ability to implement an effective SMS and to foster a “safety culture” throughout all levels of the organization requires a staunch commitment from the upper echelons of management, to the international standards for the safe management and operations of ships.

In an effort to address the decline in statutory and international convention compliance of the U.S. fleet, the Coast Guard has initiated a **campaign focused on holding**

**repeat offenders accountable by targeting the company SMS** for increased oversight and compliance verification at the management level.

In a recent case, objective evidence of continued non-compliance with the requirements of the ISM Code, applicable international conventions, and flag state regulations as well as a **systemic failure to adequately implement company policies** and procedures led to the first-ever revocation and cancellation of a U.S. company’s ISM Document of Compliance (DOC). A review of attendance reports, documented by various authorities including port and flag states, clearly established **a pattern of habitual disregard for rules and regulations**. There was also a repetitive inability of the company to implement effective corrective action, both indicative of an ineffective SMS.

The Coast Guard is asking U.S.-flag vessel owners and operators to take the steps necessary to mitigate the detention of vessels overseas. Verifying that vessels meet applicable requirements under SOLAS and that crews are compliant with STCW in advance of foreign voyages and port calls can go a long way toward improving our international standing.

The Coast Guard stands ready to assist vessels owners and operators in this compliance effort. Please contact your local sector, Marine Safety Unit or detachment with questions.

## COAST GUARD BUDGET PROBLEMS



**USCGC Stratton, the most expensive cutter in Coast Guard History, leaks**

*[Source: Marine Log, May 18, 2012]*

U.S. Rep. Frank LoBiondo (R-NJ) recently voiced his concern about the sustainability of the U.S. Coast Guard’s acquisition program and its ability to maintain its fleet of ships and aircraft in light of an inadequate budget.

“The Coast Guard’s acquisition programs have suffered through some dark days,” says LoBiondo, “and this Subcommittee has been vigilant to ensure the Service has the capability, capacity, and motivation to reform its acquisition process. I applaud the improvements made by both Admiral Papp and his predecessor, Admiral Thad Allen. They both made acquisitions reform a priority and focused on the end result: building new assets in a timely and cost-effective manner.”

LoBiondo, Chairman of the House Subcommittee on Coast Guard and Maritime Transportation, made his comments in a

statement at recently held subcommittee hearing to examine the status and sustainability of the U.S. Coast Guard’s acquisition program and plans for recapitalizing its aging vessels, aircraft, and communication systems.

Continues LoBiondo, “However, I fear that for every two steps forward, we may still be taking one step back. I’m very concerned about the recent discovery that Coast Guard Cutter Stratton, the third and newest National Security Cutter, is in need of an emergency dry dock to fix leaky hull plating. I know there is an investigation into what caused this steel to fail, but it is extremely troubling to see the newest ship in the fleet, and the **most expensive cutter in Coast Guard history** needing emergency repairs.

“I am also upset to hear there is a shortage of spares for the maritime patrol aircraft. Due to poor planning and budgetary shortsightedness, the brand new fleet of MPAs will face flight hour restrictions for the foreseeable future, further exacerbating the MPA patrol hour gap.

“The failure to adequately budget for critical spares points to larger problems with the budget request and the sustainability of the Capital Improvement Plan. The Administration’s decision to cut the Service’s acquisition budget by 19% over the current year has left it scrambling to reprioritize limited funding, forcing the termination of critical acquisition programs, and the reduction in vital capabilities for certain assets. Trying to squeeze a \$2.5 billion annual need into \$1.2 billion annual program is not going to work. Tradeoffs will undermine the Service’s mission effectiveness and costs will increase in the out years.

“I also continue to be concerned with the findings by the GAO and others which question the Service’s assertions that new assets are providing increased capability. For instance, after 10 years and nearly \$4 billion appropriated by Congress, the National Security Cutter and the C4ISR program still have not met promised capability. The three National Security Cutters operating today still lack enhanced small boats, extended aerial surveillance capability, or a crewing plan to



increase patrol days. And the C4ISR program has failed to deliver a common operating picture across all assets. I look forward to hearing from the Admiral how these acquisitions are a good investment for the taxpayer, and how we are going to get the results we were promised.

“Finally, while it important to focus on how the Coast Guard intends to recapitalize its assets, we must not forget that the Service faces a half a billion dollar backlog in shore side infrastructure. The Administration’s decision to slash shore

side infrastructure funding by 86% and zero out funds to rehabilitate service member housing is extremely disappointing. We ask a lot of the men and women of the United States Coast Guard. Failing to provide them and their families with adequate housing is just unacceptable. Admiral, I hope you will be able to tell me when we can expect to receive the complete housing survey report and what the Coast Guard is doing to ensure our service members have the resources and support they need.”

**NTSB: FAULTY VALVE CRITICAL IN STATEN ISLAND FERRY ACCIDENT**



[Source: Marine Log.]

Almost two years ago, the Staten Island ferry Andrew J. Barberi lost propulsion control in one of its two cycloidal propellers because of a failed solenoid valve in a control panel, causing the vessel to strike the ferry terminal, according to the U.S. National Transportation Safety Board (NTSB).

The accident on May 8, 2010 resulted in three passengers being seriously injured and others reporting minor injuries. A total of 266 persons, including 244 passengers, were on board the vessel.

The crewmembers on board the Andrew J. Barberi were

unaware that the propeller failed to respond to their commands until seconds before the ferry struck the terminal.

The Andrew J. Barberi, which has the largest capacity of any coastal passenger vessel in the U.S. at nearly 6,000 passengers, was not equipped with or required to have an alarm to alert the pilothouse crewmembers to the loss of propulsion control. This type of alarm would have given the crew additional time to respond.

As a result, the NTSB recommends that U.S. passenger vessels with controllable pitch propulsion, including cycloidal propulsion be equipped with alarms that audibly and visually alert operators when the propeller fails to respond to commands.

The Andrew J. Barberi was also involved in an accident in 2003, in which 11 people died and 70 people were injured. Subsequent to that accident and in response to NTSB safety recommendations, New York City Department of Transportation (NYC DOT) Ferry Division implemented a safety management system (SMS) and trained its personnel in it.

A SMS in the marine industry is a structured and documented system developed to enhance safe vessel operation, ensure compliance with regulatory requirements, prevent injury or loss of life, and avoid environmental pollution.

"The bad news is that the Barberi experienced an unanticipated and unusual failure in its propulsion system," said NTSB Chairman Deborah A.P. Hersman. "The good news is that no lives were lost and our investigation showed positive safety improvements following the 2003 accident, in particular the NYC DOT Ferry Division implemented an industry-leading safety management system."

The NTSB recommends that all U.S.-flag passenger vessels implement safety management systems.



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