



NMA REPORT #R-203-F

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Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

Coast Guard Authorization Act of 2010 Important Sections for Our Limited Tonnage Mariners

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[Introduction: Our Association presented its views on each of the items listed below to members of Congressional Oversight Committees of the House Subcommittee on Coast Guard and Maritime Transportation and the Senate Committee on Commerce, Science, and Transportation for the past four years. This Act is the result of four years of work by Congress by the 110th and 111th Congress.].

The Law's Importance to our Mariners

Over the past eleven years the National Mariners Association submitted several dozen reports to Congress to keep them informed of problems that our limited-tonnage mariners face on a daily basis. Our mariners, who hold credentials and endorsements as both officers and ratings comprise more than one-half (about 126,000 of the approximately 210,000 merchant mariners) of all of this nation's merchant mariners and that does not count deckhands, cooks, and others that may not be required to hold Coast Guard credentials.

By limited-tonnage we generally speak of vessels of less than 1,600 gross register tons including the largest river towboats, all other towing vessels, all small passenger vessels, most workboats, and most of the traditional offshore supply vessels. We speak to those issues our mariners appear to be most concerned with. These *issues* and *viewpoints* appear in NMA Report #R-350, Rev. 5 which we reorganized after conducting a poll and updating about a year ago.

Upper-level mariners and seamen on deep sea merchant vessels are well represented by labor unions that deal with issues that are separate and distinct from those of our lower-level (i.e., limited tonnage) mariners. We work closely with other mariner associations like MTA and several unions that represent limited tonnage mariners to be sure that our interests are the same.

The Coast Guard Authorization Act of 2010 contained a number of changes that will affect our mariners. Here is our take on a number of the issues. We posted the entire 325 pages of the Act on our website as NMA Report #-203-E, Rev. 1. In this article, we will pick out the most significant points for our mariners.

Section 607 – Logbooks

The Act made important changes in maintaining a logbook on all inspected vessels including towing vessels. Section 607 of the Act added the following new requirement at 46 U.S. Code §11304:

46 U.S. Code §11304. Additional Logbook and Entry Requirements

- (a) A vessel of the United States that is subject to inspection under section 3301 of this title, except a vessel on a voyage from a port in the United States to a port in Canada, shall have an official logbook, which shall be kept available for review by the Secretary on request.
- (b) The logbook required by subsection (a) shall include the following entries:
 - (1) The time when each seaman and each officer assumed or relieved the watch.

[NMA Comment: Sign in when you go on watch and sign off at watch change. Most officers are limited to 12 hours on watch.]

- (2) The number of hours in service to the vessels of each seaman and each officer.
- (3) An account of each accident, illness, and injury that occurs during each watch.

[NMA Comment: Widespread failures to report personal injuries are a serious shortcoming NMA pointed out to Congress. Refer to 46 CFR §4.05-6.]

[NMA Comment: These new requirements apply to every inspected vessel – including towing vessels – to each officer, and each crewmember. The number of hours “on watch” and the “number of hours in service to the vessel” are not necessarily the same. The latter term corresponds to the Coast Guard’s definition of “work” in the policy letter prepared at our insistence in Sept. 2000. Refer to NMA Report #R-370, Rev. 3.]

Section 611 – Protection Against Discrimination (i.e., Whistleblower Protection for Mariners)

In the past, if a mariner believed he was discriminated against (e.g., was fired, demoted or lost his job) for making a safety report to the Coast Guard or NTSB, it was pretty much his tough luck.

If, as a mariner, you believed that you had a duty to report an unsafe or illegal condition, you often not only risked your job but also put your entire career in the marine industry at risk. Not only did your employer not want to hear about it, in many cases neither did the Coast Guard. We related the full story in NMA Report #R-370-D, Rev. 6 and cited three legal precedents that ensured that complaints would be quashed.

Attorney Jeff Bloomfield, on behalf of the American Inland Mariners Association (AIM), brought the hopeless situation mariners faced in reporting unsafe or illegal conditions to the attention of the former House Merchant Marine and Fisheries Committee on Mar. 16, 1994.

One of the most important steps our new Association took in May 2000 was to speak on behalf of our mariners by submitting our Report #R-201, Mariners Speak Out on Violation of the 12-Hour Work Day to Admiral Paul Pluta, then Eighth District Commander and soon-to-be Assistant Commandant for Marine Safety (etc.). Although over 300 copies of this report were delivered to key Coast Guard personnel, the Coast Guard went out of its way to stonewall the report. To do so, they even assigned it to the National Offshore Safety Advisory Committee that attempted to kill our report. In the end, the Chairman of the NOSAC sub-committee resigned.

Admiral Pluta’s complete lack of respect for our mariners was one of the most important factors that set the stage for the decline of the entire Marine Safety Directorate for the next decade and ultimately led to the corrective action and reorganization called for in the Coast Guard Authorization Act of 2010.

After dealing with RADM Pluta, we approached Congress with our problem. Unfortunately, an earlier, well-intentioned change to the existing law (i.e., 46 U.S Code §2114) in 2004 did not obtain meaningful results for our mariners.

However, the Coast Guard Authorization Act of 2010 provides important changes that mean if a mariner does become a whistleblowers for a valid reason, he/she will be accorded the same administrative treatment as all other workers in the transportation industry. Our Association never sought “special” treatment for our mariners; we only sought fair and equitable treatment that we believe we have within our grasp because future whistleblower disputes will be settled by the U.S. Department of Labor and not the Coast Guard.

Unfortunately, the wording the new statute follows is complicated – but start by reading it:

- (a) In General Section 2114 of title 46, United States Code, is amended
 - (1) in subsection (a)(1)(A), by striking “or” after the semicolon;
 - (2) in subsection (a)(1)(B), by striking the period at the end and inserting a semicolon;
 - (3) by adding at the end of subsection (a)(1) the following new subparagraphs:
 - (C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;
 - (D) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;

[NMA Comment: Note the requirement to first notify or attempt to notify your employer.]

- (E) the seaman cooperated with a safety investigation by the Secretary or the National Transportation Safety Board;
- (F) the seaman furnished information to the Secretary, the National Transportation Safety Board, or any other

public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or
(G) the seaman accurately reported hours of duty under this part, and

[NMA Comment: Connect this with the “logbook” requirement to accurately report your hours of duty.]

(4) by amending subsection (b) to read as follows:

(b) A seaman alleging discharge or discrimination in violation of subsection (a) of this section, or another person at the seaman’s request, may file a complaint with respect to such allegation in the same manner as a complaint may be filed under subsection (b) of section 31105 of title 49. Such complaint shall be subject to the procedures, requirements, and rights described in that section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section.

[NMA Comment: We did our best to help you understand these requirements by preparing NMA Report #-350. Rev. 5, “Issue L” (update) titled Improve Whistleblower Protection for Merchant Mariners.]

Although the report cited above still may be tough to follow, one of our mariners had recent experiences where the Department of Labor looked into his claims and obtained a settlement for lost wages after reporting serious health issues on a river towboat that the Coast Guard was just not interested in.

Over the past decade, our Association witnessed the frustration of mariners in reporting unsafe and possibly illegal activities to the Coast Guard. Consequently, our Association stepped forward and documented a number of cases and reported the results back to the Department of Homeland Security Inspector General’s Office where it attracted attention in their report on “Investigations” in May 2008.⁽¹⁾ [⁽¹⁾ Refer to NMA Report #R-429-M].

Section 605 – Mariner Records (Your Employer Owes You a Sea Service Letter)

The Coast Guard Authorization Act of 2010 should make it easier for a mariner to obtain his/her sea-service letter from an employer or former employer. Over the years, we wrote letters to a number of employers on behalf of our mariners asking for them to produce sea service letters that are essential for a mariner to advance in the maritime industry. Unfortunately, the existing law had a serious loophole that hurt some of our requests. We explained the problem and are pleased that this change responds to our requests.

The amendment states:

Section 7502 of title 46, United States Code, is amended so

(1) by inserting “(a)” before “The”;

(2) by striking “computerized records” and inserting “records, including electronic records,” and

(3) by adding at the end the following:

(b) The Secretary may prescribe regulations requiring a vessel owner or managing operator of a commercial vessel, or the employer of a seaman on that vessel, to maintain records of each individual engaged on the vessel subject to inspection under chapter 33 on matters of engagement, discharge, and service for not less than 5 years after the date of the completion of the service of that individual on the vessel. The regulations may require that a vessel owner, managing operator, or employer shall make these records available to the individual and the Coast Guard on request.

(c) A person violating this section, or a regulation prescribed under this section, is liable to the United States Government for a civil penalty of not more than \$5,000.

The amendment has “teeth.” However, companies go out of business, people die, and stuff happens over time. The best course of action for all concerned is for each mariner to ask for his/her sea service letter as soon as you leave the employ of a company or individual. Don’t let it drag out over weeks or even a month. Also, keep track of your own sea service in writing, and make all demands for your sea service letter in writing if you do not receive your sea service letter with your final paycheck from any employer!

Section 606 – The “Long Loophole” Closes

46 U.S. Code §8905(b) allowed a towing vessel operator to operate without a license if the vessel he was operating “has offshore mineral and oil industry sites or equipment as its ultimate destination or place of

departure.ö Senator Russell Long engineered this concession at the urging of the offshore oil industry in 1973. Although it was seldom used, its abuses became well known. The Coast Guard with the support of NOSAC, TSAC, and MERPAC petitioned Congress to remove this provision. Our Association supported the Coast Guard in this move following a serious accident by an unlicensed watchstander in the Gulf of Mexico.

Section 811 – Seamen’s Shoreside Access

Ever since 9/11 many mariners have faced problems getting to and from their assigned vessels. There were a number of horror stories for both American and foreign seamen. Father Sinclair Oubre and the Apostleship of the Sea in concert with major maritime labor unions urged the Coast Guard for years to remedy this situation. We are glad to see that Congress stepped in to forcefully prod the Coast Guard to act on behalf of merchant mariners. Each facility security plan approved under section 70103(c) of title 46, United States Code, shall provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen’s welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual

Section 701 – Rulemakings (Overdue Coast Guard Rulemaking Projects)

While the Coast Guard concentrated on or was distracted by other things, their ability to successfully complete existing rulemaking projects has diminished. One of the best example we know of is their fiasco in revising offshore oil regulation of 33 CFR Subchapter N that we discussed in our “Letter to the President” published in Newsletter #70, pgs. 3-7. But, that was not the only rulemaking that was “lost” in the Coast Guard’s bureaucracy. There are close to 100 of them. It was reasonable for Congress to ask for a full “status report.”

Since the comment period ended several years ago, the Coast Guard maintained that it could not discuss the towing vessel inspection regulations Congress called for on Sept. 9, 2004. Rear Admiral Watson “promised” at a Congressional hearing that the proposed rules would be on the street over a year ago. In light of all the procrastination and behind-closed-doors maneuvering within the Coast Guard, Congress finally set its own deadline as follows:

- (c) Towing Vessels. ö No later than 90 days after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking regarding inspection requirements for towing vessels required under section 3306(j) of title 46, United States Code. The Secretary shall issue a final rule pursuant to that rulemaking no later than one year after the date of enactment of this Act.

Section 609 – Approval of Survival Craft (Keep Mariners and Passengers out of the Water)

In NMA Report #R-354, Rev.4 we appealed to the 111th. Congress to require that future “survival craft” keep survivors out of the water. This would eliminate “life floats” that expect survivors to hold onto a grab-line while their bodies are immersed in the water. Hypothermia occurs much faster in water than in air of the same temperature.

The NTSB first recommended this change in 1985 following the PILGRIM BELLE accident but the recommendation was ignored by the Coast Guard. Our Association brought up the matter with RADM Robert North who, as Chief of Marine Safety (etc.), appeared more concerned about the expense to the boat owners than to the human beings who risked hypothermia and drowning while awaiting rescue holding on to a life float’s grab-line in the water. We consider Admiral North’s decision as one of the most ill-advised “Marine Safety” decisions of the past decade.

Here is the wording of the new law ö and is a victory not only for our mariners but also for passengers on smaller vessels that still are equipped with life-floats.

- (a) In General. ö Chapter 31 of title 46, United States Code, is amended by adding at the end the following new section:

§ 3104. Survival craft

- (a) Except as provided in subsection (b), the Secretary may not approve a survival craft as a safety device for purposes of this part, unless the craft ensures that no part of an individual is immersed in water.
(b) The Secretary may authorize a survival craft that does not provide protection described in subsection (a) to

- remain in service until not later than Jan. 1, 2015, if
- (1) it was approved by the Secretary before Jan. 1, 2010; and
 - (2) it is in serviceable condition.

**Section 621 – Renewal of Advisory Committees.
(TSAC Will Have More Mariner Members)**

On Feb. 25, 2007, our Association submitted Report #R-417, Rev. 1, titled Report to the 110th Congress: Request for Congressional Oversight on the Towing Safety Advisory Committee. (TSAC). Our petition to Congress appeared on page 6 of the report. We are gratified that Congress favorably considered four of our Association's requests we *emphasized* below.

- (e) Towing Safety Advisory Committee. The Act entitled "An Act To Establish a Towing Safety Advisory Committee in the Department of Transportation," approved Oct. 6, 1980, (33 U.S.C. 1231a) is amended
- (1) by striking subsection (a) and inserting the following:
 - (a) There is established a Towing Safety Advisory Committee (hereinafter referred to as the "Committee"). The Committee shall consist of eighteen members with particular expertise, knowledge, and experience regarding shallow-draft inland and coastal waterway navigation and towing safety as follows:
 - (1) Seven members representing the barge and towing industry, reflecting a regional geographic balance.
 - (2) One member representing the offshore mineral and oil supply vessel industry.
 - (3) One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.
 - (4) One member representing the holders of active licensed Masters of towing vessels in offshore service.
 - (5) One member representing Masters who are active ship-docking or harbor towing vessel.
 - (6) One member representing licensed or unlicensed towing vessel engineers with formal training and experience.
 - (7) Two members representing each of the following groups:
 - (A) Port districts, authorities, or terminal operators.
 - (B) Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge).
 - (8) Two members representing the general public; and
 - (2) in subsection (e), by striking "Sept. 30, 2010" and inserting "Sept. 30, 2020."

[NMA Comment: We urge qualified mariners to consider serving on TSAC. Refer to our Report #R-384.]

**Section 302 – Maritime Drug Law Enforcement Act
Amendment-Simple Possession**

Not every person on a commercial vessel has a Coast Guard credential or is subject to Suspension and Revocation proceedings. This amendment considers those individuals who are found in a drug-free workplace.

Section 70506 of title 46, United States Code, is amended by adding at the end the following:

- (c) Simple Possession.
 - (1) In General. Any individual on a vessel subject to the jurisdiction of the United States who is found by the Secretary, after notice and an opportunity for a hearing, to have knowingly or intentionally possessed a controlled substance within the meaning of the Controlled Substances Act (21 U.S.C. 812) shall be liable to the United States for a civil penalty of not to exceed \$5,000 for each violation. The Secretary shall notify the individual in writing of the amount of the civil penalty.
 - (2) Determination Of Amount. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.
 - (3) Treatment Of Civil Penalty Assessment. Assessment of a civil penalty under this subsection shall not be considered a conviction for purposes of State or Federal law but may be considered proof of possession if such a determination is relevant.

Straightening out the Credentialing Mess

The House Coast Guard and Maritime Transportation Committee held several hearings that dealt with the National Maritime Center (NMC) blunders in administering the "credentialing" program. The Coast Guard

officials in charge of the program were held directly accountable by Congress for their mistakes. *We were at the hearing in Washington. We saw it happen.*

[NMA Comment: Nothing in our memory has so completely alienated our mariners from the Coast Guard as the events that occurred at the National Maritime Center during and after its move to Martinsburg, WV.]

Our Association submitted two reports to Congressional oversight committees, #R-429-D to the 110th Congress and #R-429-D, Rev. 1 to the 111th Congress that described their intolerable treatment of our mariners. These reports were submitted to Congress as our Association's prepared testimony on July 9, 2009. Nor were individual mariners at all reticent in speaking with countless Senators and Representatives during this period.

Section 613 – Oaths

Previously, a mariner had to take an oath *“before a designated official.”* Traveling long distances to appear before the “designated official” proved to be a problem with the new business practices adopted in credentialing mariners. Your signature on your application reflects a more modern approach as does a substantial penalty for making a false statement to a federal agent.

Section 614 – Duration of Credentials

A “credential” (formerly known as license, MMD, z-card, or certificate of registry) is supposed to be valid for 5 full years. Although it may be issued up to 8 months in advance of expiration, it will not be effective until the existing credential expires.

The new law still uses the older terminology. Nevertheless, the Coast Guard “got the message” and began to apply this change during the past year or so ó *but you had to ask them to do so specifically and well in advance of issuance.*

Section 615 – Extending the Duration of Credentials

Although the Coast Guard's credentialing problems were evident well before the arrival of Hurricane Katrina on Aug. 29, 2005, the loss of REC New Orleans with its records and work in progress brought about a backlog of work that took years to clear. Section 614 will allow the (DHS) Secretary to *extend for not more than one year* an expiring credential to eliminate a backlog in processing such as occurred in 2008-09 or in response to a national emergency or natural disaster. Such an extension may be granted to individual seamen or to a specifically identified group of seamen.

Section 616 – Merchant Mariner Assistance Report

Here is the wording of the section:

“Not later than 180 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report regarding the feasibility of

(1) *expanding the streamlined evaluation process program* that was affiliated with the Houston Regional Examination Center of the Coast Guard to all processing centers of the Coast Guard nationwide;

[NMA Comment: Congress believed that REC Houston had done an exemplary job. Unfortunately, the Coast Guard failed to move those responsible to posts at the National Maritime Center in Martinsburg, WV.]

(2) including proposals *to simplify the application process for a license as an officer, staff officer, or operator and for a merchant mariner's document to help eliminate errors by merchant mariners when completing the application form* (CG6719B), including instructions attached to the application form and a modified application form for renewals *with questions pertaining only to the period of time since the previous application;*

[NMA Comment: The Coast Guard dragged our mariners through the coals in the name of “security” since 9/11. Since the application process has become even more convoluted, there is still much work left to accomplish.]

(3) providing notice to an applicant of the *status of the pending application,* including a process to allow the

applicant to check on the status of the application by electronic means; and

[NMA Comment: Considerable progress was made to assist applicants “on-line.”]

(4) ensuring that all information collected with respect to applications for new or renewed licenses, merchant mariner documents, and certificates of registry is retained in a secure electronic format.ö

[NMA Comment: NMA Report #R-401-B describes how Coast Guard dunces screwed up the NMC computer system in the 1990s. After Katrina, the NMC relied very heavily on their computers but also appears to have become more competent. However, the Coast Guard often dumps its burden to our mariners,. Remember to keep back-up copies paperwork that deals with your credentials.]

Section 617 – Offshore Supply Vessels

The tonnage limits on Offshore Supply Vessels (OSV) were removed. The limit previously was 500 Gross Tons. Over the years, OSVs have grown in size to the point where first 3,000 Tons (ITC) and later 6,000 Tons (ITC) were no longer sufficient to cover many specialized vessels that now must be used to perform oilfield related tasks in deepwater in the Gulf of Mexico or around the world.

Company officials from Edison Chouest Offshore made a very strong case for raising or removing the tonnage limit several years ago at a NOSAC meeting in Galveston in an argument that we supported. At that time, they were building an offshore supply vessel that would exceed 6,000 tons (ITC) ó then the upper limit. Now that limit has been removed.

We refer mariners who serve or plan to serve on large OSVs in excess of 3,000 gross tons (ITC) to a number of licensing and manning issues for these vessels that are contained on pages 173 ó 180 of the legislation.⁽¹⁾ Please bring any problems you may have with existing, interim, or final Coast Guard regulations (when issued) to our attention. [⁽¹⁾Refer to NMA Report #R-203-E, Rev. 1.]

Section 608 – Termination of Unsafe Operation

An individual authorized to enforce Title 46 U.S. Code may remove a vessel's Certificate of Inspection (COI) from a vessel that does not comply with provisions of the certificate and order the vessel back to its moorings. He may order the person in charge to take reasonable steps necessary for the safety of individuals on board if a hazardous condition exists.