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Asserting our right "…to petition the Government for redress of grievances."
Amendment 1, U.S. Constitution, Dec. 15, 1791

REPORT TO CONGRESS:
OUTSTANDING FAILURES TO PROTECT THE SAFETY, HEALTH & WELFARE OF 126,000 LIMITED TONNAGE MERCHANT MARINERS.

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[Publication History of Background Reports: This report (#R-205) consolidates and updates but does not replace a number of reports that furnish additional background information to document and support each issue. When the word ñ**Congress**ò (or ★) appears in the title of any report it indicates that the report previously was submitted to Members of Congress or committee staff members on the date indicated. On Jan. 1, 2008, the Gulf Coast Mariners Association (GCMA) became the National Mariners Association (NMA). An electronic copy of any report mentioned herein is available upon request.**]**

EXECUTIVE SUMMARY

To gain a better perspective of our ñlimited-tonnageò merchant mariners, consider that the U.S. Merchant Marine is separated into two major segments according to the tonnage of the vessels they serve aboard. ñLimited-tonnageò merchant mariners[(1)] are credentialed to serve on vessels of up to 1,600 gross tons while ñupper levelò merchant mariners serve on larger vessels. This report will focus upon ñlimited-tonnageò merchant mariners although portions also may apply to ñupper-levelò mariners. We assert that labor unions effectively represent the interests of ñupper-levelò mariners. *[(1) Previously referred to as "lower-level" mariners.]*

There are approximately 210,000 credentialed officers and ratings in the U.S. merchant marine of which approximately 126,000 are ñlimited tonnageò mariners. An undetermined additional number of mariners are not required to hold Coast Guard credentials. Of these 126,000 ñlimited-tonnageò mariners, the vast majority are ñhawsepipersò whose ñexperienceò was gained ñon the jobò and was not preceded by attendance at a state of federal maritime academy.

The U.S. Merchant Marine is under the superintendence of the Secretary of Homeland Security (DHS) and id

directly controlled by the U.S. Coast Guard, a branch of the nationôs military, which also has been granted police powers by Congress. Our Association expresses serious concerns in this report with failures in the administration of the Coast Guardôs Marine Safety Mission ï one of eleven missions assigned to it by Congress.

We assert that the Coast Guard failed to properly perform parts of its assigned Marine Safety mission. In 2007-8 our Association presented volumes of evidence to the DHS Inspector General as part of a nationwide investigation of longstanding shortcomings in the Coast Guardôs ñ**investigations**ò program that were reported in DHS Report #OIG-08-51[(1)] and in a Congressional Hearing in April 2008. Shortcomings in ñmarine inspectionò were reported by retired Vice-Admiral James Card in February 2008.[(2)] Gross irregularities in the Coast Guardôs Administrative Law system were exposed in a Congressional Hearing in July 2007. Each of these subheadings falls under the Coast Guardôs Marine Safety Mission. *[(1)Reprinted in our Report #R-429-M. (2)Reprinted in our Report #R-401-E.]*

This report points to additional shortcomings over a period of many years that allowed employers to largely ignore safety regulations promulgated by other Federal agencies. These regulatory ñgapsò adversely affected the safety, health, and welfare of the 126,000 ñlimited-tonnageò mariners that our Association speaks for. These are basic failures to provide for legitimate safety, health, and welfare concerns of our mariners in their workplaces as expressed by Congress in two basic statutes cited below.

We respectfully request that members of Congress continue to conduct the necessary oversight starting with the significant changes proposed for the Coast Guardôs Marine Safety Mission n H.R-3619 (111th Congress). We endorse Congressman Elijah E. Cummings statement of Oct. 28, 2009: ñThis authorization will hopefully allow the Coast Guard to shed their tradition of doing more with less. The Coast Guard deserves recognition as a critical piece of our homeland security strategy; one we hold responsible for the safety of both professional and recreational mariners. We must provide the funding needed to continue to improve on their outstanding history of service.ò

CONGRESSIONAL INTENT EXPRESSED IN THE U.S. CODE
[Emphasis is ours]

46 U.S. Code §2103. Superintendence of the merchant marine

The ***Secretary has general superintendence over the merchant marine of the United States*** and of merchant marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. ***In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle and shall carry out correctly and uniformly administer this subtitle***. The Secretary may prescribe regulations to carry out the provisions of this subtitle.

29 U.S. Code §651. Congressional statement of findings and declaration of purpose and policy

(a) The Congress finds that personal ***injuries and illnesses arising out of work situations*** impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, ***to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources***ð

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

(2) by providing that ***employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions***;

[NMA Comment: Our Association speaks on behalf of our mariners "responsibilities and rights" with respect to achieving safe and healthful working conditions. Our perspective is not always the same as either "employers" or "government regulators."]

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under this chapter;

(4) by building upon advances already made through employer and employee initiative for ***providing safe and healthful working conditions;***

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;
(8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health;
(9) by providing for the development and promulgation of occupational safety and health standards;
(10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;
(11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this chapter, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;
(12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this chapter and accurately describe the nature of the occupational safety and health problem;
(13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

EVIDENCE OF COAST GUARD MARINE SAFETY MISSION SHORTCOMINGS

Congress assigned eleven (11) missions to the Coast Guard within the Department of Homeland Security.[1] Five of these missions are ñhomeland securityò related and six are traditional or ñlegacyò missions inherited from earlier days. These missions are divided as follows:

- **Homeland Security Missions** include: 1) Ports, waterways, and coastal security, 2) Drug interdiction, 3) Migrant interdiction, 4) Defense readiness, and 5) Other law enforcement
- **Non-Homeland Security Missions** include 6) Search and rescue, 7) Aids-to-navigation, 8) ***Marine safety***, 9) Living marine resources, 10) Marine environmental protection, and 11) Ice operations. *[(1)DHS Report #OIG-09-13.]*

Most of our marinersô dealings with the Coast Guard lie within their **Marine Safety** mission. By DHS definition, Marine Safety ensures the safe operation and navigation of U.S. and foreign flagged vessels. The mission is responsible for providing safe, efficient, and environmentally sound waterways for the myriad of commercial and recreational users. Domestic vessel inspections and port state control (foreign vessel) examinations are conducted in order to safeguard maritime commerce and international trade.

The Coast Guardôs treatment of its Marine Safety Mission puts it nowhere near the top the Agencyôs allocation of resources and personnel. Our Association does not seek to influence the missionôs ranking. However, we ask Congress to direct that the Marine Safety mission be performed more effectively and efficiently to facilitate commerce and, at the same time, adequately protect our mariners who support themselves and their families in the maritime industry.

Aside from the U.S. Merchant Marine, 90% of American cargoes are carried on foreign-flag vessels[1] which must pass through the gauntlet of Coast Guard inspections. In addition, millions of recreational boaters[1] also fall under the Coast Guardôs marine safety mission as does the commercial fishing industry.[1] *[(1)Our Association does not represent these interests.]*

While Coast Guard budget projections in dollars and personnel from Fiscal Year 2007 to 2009 illustrate decreases for the ***non-***homeland security missions and increases for homeland security missions, even more troubling for our ñlimited-tonnageò mariners is the report by retired Vice Admiral James Card, former Chief of Marine Safety, as to the overall deterioration of the marine safety program.[1] Our Association commends Admiral Card for his report and for his many years of public service in the marine safety field. *[(1)Refer to our Report #R-401-E.]*

Our Association supports proposed legislation introduced in the 111th Congress in H.R. 3619. These proposals will make a number of critical improvements in the structure of the marine safety mission. However, this report will ***reiterate additional reforms*** that will be necessary to improve the health, safety, and welfare of our ñlimited-tonnageò mariners.

ISSUE #1 – Safe and Adequate Potable Water

[NMA Background Reports: We published the initial edition of our Report #R-395(★) on May 19, 2004. Rev. 1 recorded the statutory changes of Sept. 9, 2004 and requested regulatory follow-up. Rev. 2, Nov. 22, 2006, further updated the issue to include one successful mariner lawsuit to recover damages. Rev. 2 also introduced our efforts to improve shipboard food service sanitation. Our request for Congressional support was reiterated in our Report #R-350, Rev. 5 (★) on Aug. 24, 2009 as ñIssue R.ò Evidence of our efforts to work with the Coast Guard appear in Docket #USCG-2003-14325 that can be viewed on http://www.regulations.gov/ Additional information is contained in our file #GCM-44.**]**

Our Association was encouraged that Congress amend 46 U.S. Code §3305 in 2004 to require the Secretary to determine that vessels have an adequate supply of potable water for drinking, washing, and bathing while also considering:1) the size and type of vessel; 2) the number of passengers or crew on board; 3) the duration and routing of voyages; and 4) guidelines for potable water recommended by the Centers for Disease Control and prevention and the Public Health Service. ***Unfortunately, five years later***, the Coast Guard has made no visible progress in crafting appropriate new regulations to carry out this Congressional mandate to protect the health of our mariners. We attribute this lack of progress to deficiencies in Coast Guard leadership in carrying out its marine safety mission.

Prior correspondence with Congressional staff urged the changes that resulted in this 2004 amendments that assigns the promulgation of potable water regulations for inspected vessels to the Coast Guard and removes them from the purview of other Federal agencies that are less well equipped or motivated to enforce them. We recognize that the Coast Guard has a grasp of this problem as demonstrated by a manual that serves as a basis for protecting their own vessels and personnel both ashore and afloat.

[NMA Comment: We urge members of Congress to direct the Coast Guard to adequately enforce their previous mandate.]

[NMA Recommendation: That the Coast Guard "keep things simple" by adapting its own existing manual COMDTINST M6240.5, Water Supply and Wastewater Disposal Manual as an immediate starting point.]

ISSUE #2 – Food Service and Food Service Sanitation Aboard Vessels Served by Limited-Tonnage Mariners.

[NMA Background Reports: The background of this issue presented in NMA Report #R-395, Rev. 2 (★) published on Nov. 22, 2006. Supporting documentation is available in our Report #R-395-A, Rev. 1, a reprint of the Coast Guardôs own Food Service Sanitation Manual.**]**

Problems related to food handling and food service sanitation aboard vessels served by our limited-tonnage mariners are often overlooked or concealed from Coast Guard inspectors because during the annual inspection process vessels are usually ñcleaned upò to pass inspection. Approximately 5,200 towing vessels soon will enter the formal inspection process although the ***proposed*** rules governing their inspection have not yet been released to the public.

[NMA Comment: The Coast Guard must adequately train its newly hired inspectors to conduct food sanitation as well as ship sanitary inspections.]

Our Association views the failures to require vessel owners and operating companies to provide periodic sanitary food service inspections on many vessels manned by our mariners as a failure of Coast Guard leadership in its Marine Safety mission.

Years ago, the Coast Guard developed the ***Food Service Safety Manual*** (COMDTINST M6240.4A) that provides the guidance and standards necessary to provide clean, healthful food for Coast Guard personnel including civilians dining in Coast Guard facilities. As a former Army officer with food service responsibilities, I find this manual delivers the guidance necessary to run any shipboard food service where ñpotentially hazardous foodò is received, stored, prepared, cooked, served and later retained or discarded.

[NMA Recommendation: That Congress require a copy of COMDTINST M6240.4A or an approved equivalent aboard every inspected vessel with food preparation or storage facilities and as a reference at every company that operates such a vessel.]

[NMA Recommendation: That Congress direct the Coast Guard that "Food Handler" no longer be an "entry-level position" without a requirement for minimal formal training in food service or sanitation based on COMDTINST M6240.4A or equivalent.]

[NMA Recommendation: That Congress require each Coast Guard inspector be trained and become proficient in performing the inspections outlined in COMDTINST M6240.4A and adopt comparable guidelines and forms to perform annual vessel food service inspections.]

Our Association plans to carefully examine towing vessel inspection regulations, when published, in light of COMDTINST M6240.4A to determine whether these proposed regulations are sufficient to adequately protect our marinersô health. We note that the Coast Guard never required vessel owners or operating company officials to conduct food service inspections or sanitary inspections on the vessels of less than 1,600 GT served.

[NMA Recommendation: That Congress direct the Coast Guard to require a designated company official(s) to perform monthly food sanitation *and* general sanitary inspections of each inspected vessel outfitted with food service facilities or overnight accommodations for crew and passengers.]

[NMA Recommendation: That Congress direct the Coast Guard to require the Master of each inspected vessel to log every food service and general sanitary inspection by the designated company official(s) and that the operating company office maintains a file of these inspections for at least two years.]

In the past, Coast Guard officials exercised extremely limited supervision of food service sanitation and general shipboard sanitation on vessels where our mariners are employed. At present, there are ***no effective controls on the purity of potable water*** used in cooking, washing, or bathing. Some Coast Guard inspectors appear unaware of potentially unsanitary conditions at the vesselôs initial inspection for certification or during subsequent annual sanitary inspections. Over 5,200 towing vessels (and thousands of fishing vessels) effectively remain ñuninspected.ò Without applicable sanitary regulations, their accommodations and food service areas remain virtually off limits or ignored by Coast Guard inspectors as well as by boarding party personnel. Promulgation of specific sanitary food service and general sanitary regulations would provide a basic framework for protecting our marinersô health.

The Coast Guard manages food service on its own vessels with considerably more care and concern than they have ever exercised on many merchant vessels of comparable tonnage vessels they superintend. Vessels our mariners serve on frequently go for a year between Coast Guard inspections with little or no concern for their food service or general sanitary condition.

We note further that existing Coast Guard examinations contain relatively few if any questions on food service sanitation or vessel sanitary practices although they are listed in 46 CFR §11.910 as examination topics for deck officer endorsements.

[NMA Recommendation: That the Coast Guard review and update its examination data bank questions under the subtopic "ship sanitation" and include questions based upon COMDTINST M6240.4A and COMDTINST M6240.5 as cited above.]

Our Mariner Food Service Complaints

One of the frequent and consistent complaints our mariners voice is when their employer decides to remove the cook (i.e., ñstewardò) from their boat in an effort to cut expenses. We summarize the results of removing the cook from a vessel operating in 24-hour service as follows:

- Shipôs officers often must take up the slack and cook the meals or assign this duty to crewmembers in addition to their other duty assignments.
- Snacks and snacking often replaces regular meals prepared at set hours. This disrupts the routines established by officers on a well ordered vessel and often replaces ñsit-downò hot meals where the crew can get together, discuss important work issues, and socialize.
- Everyone has his/her hands in the refrigerator, freezer, and dry stores area. This is in contrast to the food and condiments inventory controls set in place when a cook is in charge of ordering groceries and preparing meals.
- Ships officers must prepare grocery orders on top of their other work. The selection of groceries often concentrates on snacks and prepared foods that take the place of well-balanced hot meals.
- Without one person in charge of sanitation in the galley, cleanliness often becomes a secondary consideration.
- Management seldom shows concern for training deckhands, ñdeckineersò and unlicensed engineers in sanitary food preparation since these are often short-term employees. Often a cook/deckhand replaces the cook.
- Morale on the vessel plummets.

While this may be true, there is no law or regulation that requires a cook be assigned to any vessel. For example, on Coast Guard-inspected vessels, examine the vesselôs Certificate of Inspection and you will see no mention of a cook. Towing vessels are years away from even having a Certificate of Inspection to examine!

Well-run companies understand that a good cook can go a long way to keeping the crew contented and working together under very difficult conditions. A **trained** cook can provide meal planning services, order and check the quality of the groceries, and can lay out snacks for the crew on duty during the long night watches and periods of rigorous physical activity. When any given company realizes that a good cook improves the retention rate of its employees, and when this becomes more important to them than the cost of ñan extra personò then cooks will return to the larger towing vessels, OSVs, and other workboats.

For mariners who belong to a strong, well-established union, placing cooks back on workboats will become an important negotiating issue. Unfortunately, management has vigorously campaigned against allowing our limited-tonnage mariners to seek meaningful union representation in both the towing industry and the offshore oil industry.

The Coast Guardôs ñCrew Endurance Management Systemò (CEMS) program, first used on Coast Guard cutters has a very large component that depends on maintaining an adequate diet. Having one person on board that can follow through on this program should be of increasing importance if the marine industry intends to take advantage of any benefits of this program may offer.

Food Sanitation Considerations

*[**Source: "**Tummy Trouble" by Capt. Kelly Sweeney, Pacific Maritime Magazine, March 2004, p.4.].*

Four years ago I took a Chief Mateôs job on an oceanographic ship here on the West Coast. One day, after a chicken lunch, I became sick, and it was apparent to me that the food had something to do with it. After a night of extreme discomfort, I was talking with one of the able-seamen. He told me, ñI donôt know what was wrong with the food yesterday, but I got really sick last night.ò Later, another AB told me the same thing. The three of us each spent a couple of days running to the head every half hour or so, and I had to postpone some planned maintenance as a result. Ultimately, six crewmembers and scientists were ill after that lunch meal.

The Captain and I decided to confront the Steward. He laughed and said, ñWhatôs the problem? Maybe itôs good for you, itôll clean your pipes out!ò I was incredulous that he responded that way. Afterward, because I was the Medical Officer onboard, I decided to check things in the galley more closely. What I found was that the Steward kept leftovers in the refrigerator for up to two weeks, served canned juice that was expired, and put out potato chips that were long past their freshness date and had gone rancid. As the work tour continued, I noticed fewer and fewer people eating meals. Some of the scientists seemed to exist on fruit and instant cups of noodles. The dry stores were kept in a room near the shipôs laundry, which was normally unlocked. Interestingly, canned goods began disappearing off the shelves ï until the day when the Steward announced that he would be keeping the door locked. The morale on the ship seemed to be declining daily, and the Steward acted like he really couldnôt care less whether tasty, healthy food was served. A lot of us were wishing we could just go out to a decent restaurant ashore!

Last summer I decided to take a short relief job on that same ship ï after I first verified a different Steward would be making the trip! As the Chief Mate I was again the Medical Person in Charge, and one day while looking through the Medical Log I was amazed to find that a few months earlier yet another bout of food poisoning had hit the ship. A number of people onboard including engineers, mates, and sailors were all logged as having been afflicted. The First Engineer, a friend of mine, was one of them and I asked him about it. He told me, ñFor two days I was so sick that I really felt I wouldnôt make it to my next watch.ò

The Steward on that ship was responsible for feeding nearly sixty people three times a day ï an operation similar to a restaurant ashore. The big difference between a shipôs steward and ***a cook ashore is a cook ashore actually has to receive training in food safety and what causes food-borne illness***. In fact, public health authorities require that a food handlerôs card, involving classroom work and testing, be obtained before someone can even wash dishes in a restaurant ï much less cook the food. Unbelievably, a person with no specialized training in galley sanitation or proper food-handling can be Coast Guard certified to work on a ship as a dishwasher, cook, or steward. The only specific requirement to be a Coast Guard certified food-handler is a physical attesting that the person is free of communicable diseases. (46 CFR §12.25-20)

[NMA Comment: The Coast Guard's Marine Safety mission has ignored the need for food sanitation training and food service training and has, thereby, failed to adequately protect our mariners.]

There are, however, cooks and stewards at sea who have training far beyond the basic requirements. For example, the **Seafarers International Union** (SIU) requires that a ***20-hour shipboard sanitation class*** and a ***20-***

hour galley familiarization class be completed before a man or woman can even apprentice in the galley on a SIU-contracted ship. To actually become a Chief Steward, 33 weeks of classes and more than two years working in the galley are required. Over the years I have sailed on 11 ships whose stewardôs department was manned by the SIU, and have been impressed with the cleanliness and attention to proper food handling. Iôve personally never seen nor heard of a case of food poisoning on those vessels.

There are also quality companies that take their responsibility to serve clean, healthful food seriously. After my bad experience on the oceanographic ship four years ago, I was skeptical about accepting a relief Chief Mateôs job with an East coast based outfit that operates oceanographic ships. Nevertheless, I took the job, and was pleasantly surprised that the galley crew was one of the best Iôve ever sailed with. I had to go on a diet after that work tour! Later, I found out why the galley operation ran so well. The company sought out applicants who had a degree from an accredited culinary school, and at least three years of experience as a steward or cook on other vessels. Considering the specialized training regulations to which many in the industry must now adhere in the era of STCW, ***I think that the requirement to become a Coast Guard certified food handler should be re-examined and updated***. Itôs time to mandate that all those working in the galley demonstrate competence in the safe handling of food. I .believe that, as a minimum, in addition to the current physical requirement, ***a course similar to a food handler's certification ashore should be mandatory to obtain a food handler's endorsement on a merchant mariner's document.***

46 U.S. Code §10902 states that if the food onboard is determined to be ñunfit for use,ò then the ship can be declared unseaworthy. For years that law has focused on the quality of the food itself. If the improper handling and preparation of the food causes people onboard to become sick, shouldnôt it be considered ñunfit for use? *[Capt. Kelly Sweeney now writes for Professional Mariner magazine.]*

[NMA Comment: Our Association endorses the views of Captain Kelly Sweeney expressed above. Any vessel in 24-hour service should carry a trained cook with formal training in shipboard sanitation and food-borne illnesses.]

[NMA Comment: COMDTINST M6240.4A refers to the National Restaurant Association commercial food service training courses and certification. For further information, contact them at 175 West Jackson Blvd., Chicago, IL 60604-2702. ☎800-765-2122.]

On Dec. 19, 2009 our Association wrote a detailed letter to RADM Brian M. Salerno, Chief of Marine Safety (etc.) relative to the existing ñentry-levelò Food Handler (F.H.) endorsement and made the following recommendations:

[NMA Recommendation #1: That all Food Handler endorsements be granted following completion of a basic Coast Guard approved food service sanitation course.]

[NMA Recommendation #2: That all inspected vessels with "limited-tonnage" crews or that offer food service to members of the public have a designated Food Handler who has completed an approved food handler course as well as a food preparation course and that this endorsement be incorporated in the vessel's Certificate of inspection.]

[NMA Recommendation #3: That the Coast Guard require on a one-time basis that each officer that renews or upgrades his endorsement be given an *open-book test* on COMDTINST M6240.4A chapters as regards at minimum 1) Food Care, 2) Food Service Personnel, 3) Equipment and Utensils, 4) Cleaning, Sanitizing and Storage of Equipment, Utensils and Cleaning Gear, 5) Sanitary Facilities and Controls, 6) Miscellaneous, 7) Inspection Compliance, and 8) Food-Borne Illnesses.

ISSUE #3 – Hearing Conservation – Protecting Mariner Hearing

[**NMA Background Reports:** The background for this issue appeared as our Report #R-349. Protecting Mariner Hearing, on Jan. 20, 2003 and was reiterated in NMA Report #R-350, Rev. 5 (★) on Aug. 29, 2009 as ñIssue Q.ò Additional supporting documentation appears in our Report #R-349-A. Evidence of our efforts to work with the Coast Guard on this issue appear in Coast Guard Docket #USCG-2003-15771 and our file #GCM-55.]

The Nature of Our Complaint

In 46 U.S. Code §2103 Congress entrusted the Coast Guard with general superintendence over the vessels and personnel of the U.S. merchant marine.

On June 2, 1982 the Coast Guard published Navigation and Vessel Inspection Circular (NVIC) 12-82 titled Recommendations on Control of Excessive Noise. The ***guidelines*** in this NVIC were based in large measure on the International Maritime Organizationôs Resolution A.468 (XII) Code on Noise Levels on Board Ships. The ***recommendations*** in NVIC 12-82 applied to ñall commercial vessels inspected by the Coast Guard except Mobile Offshore Drilling Units.ò In addition, ñThe Coast Guard considers them to be appropriate guidelines should any owner of uninspected vessels also choose to follow them.ò This statement exposes the ***voluntary*** nature and a ***fatal flaw*** of these guidelines ï the same flaw we report on on several occasions in other issues in this report.

A NVIC is NOT an enforceable regulation ï a fact that pleased many vessel owners, operating companies, and several trade associations alarmed at the potential cost of retrofitting existing vessels to meet these guidelines. The substitution of guidelines for an enforceable regulation also made a critical difference for an entire generation of mariners whose hearing on board many inspected and uninspected vessels still lacks suitable protection. Make no mistake about it; NVIC 12-82 contained very impressive but unenforceable guidelines.

Employment

A mariner has little to offer an employer if he does not have his health. One major aspect of a marinerôs health, his quality of life, and his ability to perform his job depends on his ability to hear. A mariner whose hearing is impaired as a result of ambient noise in the workplace will ***experience a generally reduced quality of life and significant medical expenses in the future to adjust to the problem***.[(1)] He also may face rejection for further service in the merchant marine if ***he cannot pass the hearing portion of an entry or renewal physical exam***. In addition, as a mariner ages, he may require hearing aids whose costs, often significant, are not covered by Medicare. *[(1) The author of this report is hearing impaired.]*

The Nature of Hearing Impairment

Deafness is defined as an inability to hear. This simple definition gives no real impression of how deafness affects function in society for a hearing impaired person. An estimated 20,000,000 Americans have impaired hearing to some degree. This condition affects all age groups with consequences ranging from minor to severe; with approximately 2,000,000 considered profoundly deaf. This group has such a severe hearing loss that they cannot benefit from mechanical amplification by devices called hearing aids. However, many ñhard-of-hearingò persons often can benefit in varying degrees from hearing aids ranging in cost from about $300 to $10,000.

There are four types of hearing loss as follows:

1) **Conductive hearing loss** is caused by diseases or obstructions in the outer or middle ear and usually is not severe in that such a person generally can use a hearing aid to advantage or may be helped with medical or surgical treatment.
2) **Sensorneural hearing loss** results from damage to the sensory hair cells or nerves of the inner ear and can range in severity from mild to profound deafness. This type of deafness occurs in certain sound frequencies more than in others resulting in distorted perception of sounds even when the sound ñvolumeò is turned up. A hearing aid may help a person with sensorneural hearing loss.
3) **Mixed hearing loss** results from problems in the outer and the inner ear.
4) **Central hearing loss** is the result of damage to or impairment of nerves or nuclei of the central nervous system.

Deafness can be caused by injury or accident or may be inherited. Continuous or frequent exposure to noise levels above 85 decibels (dB) can cause a progressive and eventually severe sensorneural hearing lossï a fact that the Coast Guard is well aware of.

Did OSHA Come to the Rescue?

The Occupational Safety and Health Act effectively protects the safety and health of workers in other occupations and has done so since 1970. Unfortunately, the task of developing and enforcing comparable regulations to protect our mariners was left to the Coast Guard and was one of many tasks they fumbled in that they did an unacceptably poor job of protecting our mariners. The more we speak with OSHA[(1)] representatives at various levels of government, the more this reinforces our view. *[(1)OSHA is an agency of the U.S. Department of Labor while the Coast Guard is an agency of the Department of Homeland Security.]*

Many years ago, OSHA developed Occupational Noise Exposure regulations at 29 CFR §1910.95. Unlike the

regulations the Coast Guard proposed for the Outer Continental Shelf (OCS) in 1998 but never implemented, OSHA regulations call for more than ñadministrative controlsò of posting signs in high noise areas. These OSHA regulations include a continuing and effective ***hearing conservation program*** to conserve the hearing of covered employees. Unfortunately, these regulations do not cover our mariners. The OSHA regulations include monitoring, employee hazard notification, observation of monitoring by worker representatives, an audiometric testing program, training, record-keeping, and provision for record transfers to follow employees from job to job. The Coast Guard requires none of this for our merchant mariners.

The maritime industry reports a high turnover rate of ñlimited-tonnageò mariners. Many operating companies treat their employees as expendable ï a policy our Association disagrees with.

The start-up date for OSHA hearing protection regulations was March 1, **1984** ï the same time frame as the introduction of NVIC 12-82, more than twenty-five (25) years ago!

While workers in most noisy workplaces ashore have been protected by OSHA regulations for the past 25 years, ***the Coast Guard Marine Safety Directorate has taken few if any steps to protect the hearing of our limited-tonnage mariners***. Whatôs more, the limited measures they ***proposed*** for the OCS in Docket #USCG 1998-3868 would apply only to workers on the outer continental shelf (OCS).

A History of Neglect, Inaction and Passing the Buck

Our Associationôs complaint extends to all limited-tonnage mariners under Coast Guard superintendence. The Coast Guard completely and utterly failed to provide an effective degree of ***enforceable*** hearing protection regulations for our mariners. Furthermore, they hid their neglectful conduct behind an impressive but unenforceable NVIC.

With publication of NVIC 12-82, Recommendations on Control of Excessive Noise on June 2, 1982, the Coast Guard showed that it was fully aware of the noise problem and of existing scientific literature, testing standards, and of the international significance of hearing protection and conservation. Further, the Coast Guard participated in drafting and endorsing the recommendations of the International Maritime Organizationôs (IMO) Resolution A.468 (XII) titled Code on Noise Levels On Board Ships. They even cite portions of that document in NVIC 12-82.

Whereas, the IMO resolution applied only to ships greater than 1,600 gross tons, our concern is for mariners on vessels of less than 1,600 gross tons regardless of the type of vessel they serve on or the waters where the vessel operates. While they exhibited an excellent grasp of the technical problems involved, ***the Coast Guard utterly failed to grasp that this was clearly a human problem and not simply an "engineering" problem***. They failed to address this problem effectively then and still avoid it today!

The NVIC[(1)] states: ñThe Coast Guard realizes that reducing noise levels generally becomes increasingly more difficult on smaller vesselsé On many existing vessels of less than 500 gross tons,[(2)] the incorporation of effective structural and engineering alterations to attenuate structure-borne noise may be economically prohibitive. However, through the use of hearing protective devices, administrative controls and selective engineering changes, the recommended 24-hour exposure limité should still be attainable.ò That passage was written twenty-seven years ago, a period of time that represents the effective lifetime of many steel vessels! Had the Coast Guard addressed the problem then, there might be no reason to address it today. *[(1) NVIC 12-82, paragraph 4.b.5. (2) At the time the NVIC was written, all offshore supply vessels were less than 500 gross tons and most offshore towing vessels were less than 200 gross tons.* ***All*** *inland towboats are less than 1,600 GT and* ***every*** *small passenger vessel is under 100 GT. "Limited-tonnage" mariners crew all these vessels.]*

NVIC 12-82[(1)] stated that: ñThe Coast Guard believes therefore, that the recommendations in this circular are a satisfactory implementation of the IMO Code.ò Our Association pointedly disagrees with this statement. ***We assert that what was called for at the time was nothing short of a federal rulemaking project and a regulatory product similar to the rulemaking adopted by the Occupational Safety and Health Administration that now appear in updated form as 29 CFR §1910.95***.

We assert that the Coast Guard's failure to write or adopt comparable regulations adversely affected the hearing of more than an entire generation of limited-tonnage mariners during the period 1982-2009.

[NMA Recommendation: That Congress direct the Coast Guard to adopt, adapt, or "incorporate by reference" existing OSHA hearing regulations at 29 CFR 1910.95, and train their vessel inspectors and require them to enforce the resulting comprehensive hearing conservation regulations.]

[NMA Recommendation: That Congress direct the Coast Guard to include hearing conservation regulations

included in every set of vessel inspection regulations covering vessels served by our mariners – including over 5,200 towing vessels soon to be regulated.]

While our Association has evidence that vessel operating companies, their trade associations, and the Coast Guard all contributed to this industryôs high turnover rate by failing to adequately protect marinersô health and safety in the workplace, we suggest that drafting appropriate regulations or ñincorporation by referenceò of existing OSHA regulations at 29 CFR §1910.95 is long overdue.

Example: Stalled Outer Continental Shelf (OCS) Rulemaking

In Coast Guard Docket #1998-3868, a long overdue major revision of Outer Continental Shelf (OCS) safety regulations, the Coast Guard ***proposed*** at 33 CFR §§142.235 and 142.240 that a ñnoise surveyò in accordance with ANSI Standard S1.13-1995 and S1.36-1990 or with IMO Resolution A.468(XII) be performed and also proposed to require posting signs warning of noise hazards ñon vessels.ò

For ten years, our Association attempted to obtain a statement from Coast Guard officials as to whether the proposed list of vessels in §§33 CFR 140.5 and 33 CFR 146.1 included approximately 250 uninspected offshore towing vessels. Finally, after never receiving a reply, we now believe the statute that brought towing vessels under inspection in 2004 answered that question in the affirmative. However, the entire OCS regulatory package has remained stalled 10 years after its introduction.

The Marine Safety Manual (MSM) Explains Coast Guard Programs and Policies

The Marine Safety Manual is an internal Coast Guard document that describes in great detail to Coast Guard personnel the purpose of various Agency programs and how they should be conducted. This is a ñliving documentò in that it is one that is constantly undergoing change. When we first explored the problem of ***hearing protection*** for mariners in 2001 we cited a number of passages in Marine Safety Manual (MSM), Volume 2, Materiel Inspection, as follows:

MSM, Vol. 2, paragraph 9.p.9.a. states: ñThe problem of excessive noise on commercial vessels and offshore drilling and production units has been the focus of an ongoing Coast Guard-sponsored study.ò Under the Freedom of Information Act (FOIA), our Association requested a copy of that study as well as a statement of when that study was initiated, the contributors to the study, and its current status.[1] *[(1)Our Association was "stonewalled" as reported in detail our Report #R-349.]*

MSM Volume 2, paragraph (¶) 9.p.9.b. states: ñPreviously,[1] the Coast Guard dealt with maritime noise problems through existing regulations, in a general way or on a case-by-case basis. For example, 46 CFR 72.20-5 and 92.20-5 require accommodations aboard vessels to be insulated from undue noise. Similarly, 46 CFR 32.40-15 requires tank ships and manned tank barges to have crewôs quarters suitable for the accommodation and protection of the crewé ò ***We further note that there are currently no regulations listed under "noise" or "hearing protection" in any of the regulations that protect our "limited-tonnage" mariners***. This includes offshore supply vessels, small passenger vessels, or uninspected towing vessels.[2] *[(1)We requested and received copies of the outdated regulations (2)As of the date of this report!]*

MSM, Vol. 2, ¶9.p.9.c. states: ñIts (i.e., NVIC #12-82) two major recommendations are a 24-hour noise exposure limit of 82 dB(A)[1] for all personnel, and a periodic audiometric examination of all personnel exposed to noise levels above a certain low exposure level of 77 dB(A)é ò

We asked the Coast Guard for a cogent explanation of why an audiometric examination is contained in current OSHA rules but it is not contained in the proposed rules for the Outer Continental Shelf, specifically in proposed 33 CFR §§142.235 and 142.240. If failing to include these provisions in the proposed regulation was an oversight, we asked the Coast Guard Project Officer to add it to the rulemaking package OR undertake a new rulemaking project to protect our marinersô hearing in line with the current OSHA rules. To the best of our knowledge and belief, no such actions were ever taken and even the proposed OCS rulemaking has been bogged down for the past 10 years. *[(1)**Vocabulary: dB** or **db** = Decibel is a unit that describes the intensity of a sound wave.]*

MSM, Vol. 2, ¶9.p.9.d. states: ñThe policy in NVIC 12-82 is based on the ***expectation that the maritime industry will voluntarily implement and maintain an effective noise control program***, without direct Coast Guard involvement. The policy was developed with the assistance of industry and the Commandant anticipates its wide implementation.ò As a result of this statement we asked for a copy of all documents from June 2, 1982 (the date of publication of NVIC #12-82) to 2003 that revealed the history of this ñvoluntary implementationò by industry and any conclusions concerning its success or failure. We received none of the requested information that might show

any evidence of continuing oversight by the Coast Guard.

MSM, Vol. 2, ¶9.p.9.f calls for a ñProgram Reviewò containing feedback from field units relating noteworthy experiences and observations of noise conditions and actions. Such reports and questions concerning NVIC 12-82 should be directed to Commandant (G-MVI-2).ò Consequently, our Association requested copies of all such feedback under FOIA and received nothing. Stonewalled again!

MSM, Vol. 2, ¶9.p.9.d. stated in a footnote that: ñComplaints alleging that crewmembers have suffered hearing loss from long-term exposure to excessive noise shall ***not*** be considered as reportable marine casualties involving personal injury.ò We believe that this comment (with its emphasis on the word ñ**not**ò) is not only unnecessary but ***serves to diminish the importance of hearing loss in the eyes of Coast Guard inspectors and industry management*** ï the two groups most likely to have access to the Marine Safety Manual. The following paragraph only exacerbates the matter.

MSM, Vol. 2, ¶9.p.9.e. ñHandling Complaintsò states that: ñIf a crewmember files a ***written complaint*** to eliminate a specific noise hazard, the situation should be evaluated and all discrepancies corrected. However, these measures should be ***taken only by the vessel owner, upon request by the OCMI.*** Only when the OCMI has reason to question the ownerôs evaluations should inspection personnel become involved in noise measurement.ò

In the real world our limited tonnage mariners work in, if a crewmember has the temerity to file a ñwritten complaintò with the Coast Guard he would probably be fired. This is because most limited-tonnage mariners are ñ***employees-at-will***ò and can be terminated by their employers for any reason whatsoever. This policy effectively removes Coast Guard inspectors, those individuals who actually meet our mariners serving on inspected vessels and are, therefore, most likely to hear a verbal complaint, from investigating any ñnoiseò problems on any inspected vessel. Even then, Coast Guard inspectors only visit vessels briefly and seldom while the vessels are underway with their engines ñhooked up.ò

Coast Guard Inspectors do not have to live with excessive noise and vibration on a 24-hour a day basis as do the mariners who work on these vessels.

The Coast Guard policy of not confronting excessive noise issues for the past 25 years clearly reflects their acquiescence to managementôs laissez-faire treatment of mariner health issues without giving fair and equal consideration to the mariners who are most impacted by noise pollution.

Were the views of our mariners ever solicited or even considered when the Coast Guard buried this issue in the mid-1980s with our marinersô hearing and quality of life at stake? Most ñlimited-tonnageò mariners are not represented by a labor union who could have challenged these issues at the time.

We also requested information on noise attenuation requirements on Coast Guard vessels of between 100 feet and 200 feet in length that are presently under construction and copies of any ñhearing conservation programsò currently in effect for enlisted mariners serving on these new vessels. We received a copy of **COMDTINST M5100.47** Chapter 4 containing a well-developed hearing conservation program that the **Coast Guard developed for its own personnel.** Our mariners should have received protection comparable to the OSHA hearing protection regulations adopted in 1985 and or the Coast Guard program.

Why do our mariners NOT have comparable protection? Judging by the an editorial comment in the March 31, 1982 copy of the Offshore Marine Service Association (OMSA) Newsletter, ***it may have been because of industry opposition to the costs involved and their ability to influence the Coast Guard without anyone there to present the mariners' point of view***: ñDonôt let the word ñRecommendationò or the fact that these recommended standards are not published as regulations fool you. The Association believes that these so-called guidelines may have the most serious impact on this industry than any other recent event.ò Industry worked to blunt the impact of these guidelines.

ISSUE #4 – Coast Guard Failure to Protect Our Mariners From Asbestos

[NMA Background Reports: Our Report #R-445, .Report to **Congress**: Coast Guard Failed to Protect Mariners from Asbestos (★), was published on Sept. 14, 2007. We reiterated this issue in our Report #R-395, Rev. 5 (★) on Aug. 29, 2009 as ñIssue U.ò Additional information documenting our efforts to work with the Coast Guard on this issue appear in file #GCM-102 and in the file for ñMariner #70ò**]**

Asbestos – A Health Threat to Our Mariners

Corporate America has long recognized that inhalation of asbestos fibers can cause serious illnesses, including Mesothelioma. Television ads announce this fact on a daily basis. Our background Report #R-445 notes that health-related problems involving asbestos were recognized by a major life insurance company as early as 1918 but the asbestos industry covered up the health connection well into the 1950s. While asbestos was one of the most

common industrial materials put to use in the twentieth century, it has also proven to be one of the most lethal, as inhaling asbestos fibers can lead to a wide range of pulmonary problems such as asthma and asbestosis ï and can also be the direct cause of Mesothelioma.

Mesothelioma is a lethal cancer that attacks the membranes around the lungs, the heart and the abdominal cavity. Mesothelioma cancer of the lungs is by far the most common form whose most unusual characteristic is that its diagnosis usually occurs decades after the initial exposure to asbestos.

It takes years for the asbestos fibers to work their way into those membranes; after an extended presence they begin to cause fluid accumulation and tumor development. The first symptoms are a persistent cough, chest pain or shortness of breath. These symptoms are often mistaken for evidence of more common lung problems, which delays adequate diagnosis even further. As a result, many Mesothelioma patients face a poor prognosis and limited treatment options . Asbestos exposure also has been linked to a number of life-threatening diseases

Health hazards from asbestos fibers are especially well recognized in workers exposed in a number of industries including the ***shipbuilding***, and in construction, insulation, automotive and a variety of other trades. Without adequate and often costly protective practices, demolition workers, drywall removers, and asbestos removal workers are at particular risk.

Corporate Responsibility

Lawsuits have brought about a massive upheaval in the corporate liability area. Mesothelioma lawsuits have been filed on behalf of tens of thousands of people suffering from the results of asbestos exposure. Hundreds of millions in claims have been paid out. A multi-billion dollar trust fund was established to provide compensation for Mesothelioma victims and mesothelioma attorneys have become specialists in the field. However, as a direct result of ***government regulations*** and improved work practices, todayôs workers without previous exposure are likely to face smaller risks than did those exposed in the past.

The Coast Guard Fails to Protect Our Mariners

Coast Guard actions closely parallel those recited in Issue #3 (above). While OSHA provided enforceable workplace regulations in 29 CFR §1910.1001, the Coast Guard borrowed upon the ***early*** OSHA regulations in producing NVIC 6-87 in 1987. Further, the Coast Guard has a well developed Asbestos Exposure Control Manual (COMDTINST M6260.16A) that effectively covers its own vessels and shoreside facilities but ***makes no provision for vessels of comparable size and tonnage crewed by our mariners***.

Aside from the fact that a NVIC is not enforceable as a regulation, this NVIC ï unlike OSHA regulations protecting shoreside workers ï never was updated. The record of OSHA updates to their regulations since 1986 appears below. ***The Coast Guard has no comparable regulations***..

[51 FR 22733, June 20, 1986, as amended at 51 FR 37004, Oct. 17, 1986; 52 FR 17754, 17755, May 12, 1987; 53 FR 35625, September 14, 1988; 54 FR 24334, June 7, 1989; 54 FR 29546, July 13, 1989; 54 FR 52027, Dec. 20, 1989, 55 FR 3731, Feb. 5, 1990; 55 FR 34710, Aug. 24, 1990; 57 FR 24330, June 8, 1992; 59 FR 41057, Aug. 10, 1994; 60 FR 9625, Feb. 21, 1995; 60 FR 33344, June 28, 1995; 60 FR 33984ï 33987, June 29, 1995; 61 FR 5508, Feb. 13, 1996; 61 FR 43457, Aug. 23, 1996; 63 FR 1285, Jan. 8, 1998; 70 FR 1141, Jan. 5, 2005; 71 FR 16672, 16673, Apr. 3, 2006; 71 FR 50188, Aug. 24, 2006; 73 FR 75584, Dec. 12, 2008]

[NMA Recommendation: That Congress direct the Coast Guard to adopt, adapt, or "incorporate by reference" existing OSHA asbestos regulations at 29 CFR 1910.1001, and train their vessel inspectors and require them to enforce the resulting regulations.]

[NMA Recommendation: That Congress direct the Coast Guard to include asbestos regulations included in every set of vessel inspection regulations covering vessels served by our mariners – including over 5,200 towing vessels soon to be regulated.]

ISSUE #4A – Protection of Seamen Against Discrimination – "Whistleblower" Protection

[Background Reports: Our Report #R-445. Sept. 14, 200, Report to **Congress (★)**: Coast Guard Failed to Protect Mariners from Asbestos. Our Report #R-347, Rev. 1. Nov. 19, 2009, Proposed Rulemaking on Maritime Workplace Safety and Health Issues, contains OSHA Directive CPL 2-1.20, that delineates OSHA/USCG Authority Over Vessels. Our file #GCM-102.**]**

[NMA Editorial Note: The asbestos problem will serve as an *EXAMPLE* of a much larger problem that our mariners have faced in dealing with the Coast Guard's Marine Safety Directorate in the decade following

Admiral Card's retirement.]

Poor Coordination Between Two Executive Branch Agencies

On Sept. 8, 2004 our Association endorsed and submitted a handwritten complaint by one of our mariners (■) directed jointly to the Chief, Inspection Department, of the Coast Guard Marine Safety Office in Morgan City, LA. and to the Regional Director of the Occupational Safety and Health Administration in Dallas, TX with this introduction:

ñThe writer, ■, is a member of our Association and, at the time, was an employee of Global Industries Offshore (ñGlobalò). He worked on Globalôs fleet of offshore supply boats, a self-elevating ñliftboatò as an able seaman. His letter cites conditions on several of Globalôs ñlift boatsò that are ***regularly are inspected by the Coast Guard***.

■ cited asbestos contamination on certain Global vessels resulting principally from work conducted on these vessels both by its ***crewmembers (i.e., seamen) as well as by shipyard workers*** in a vessel renovation project conducted at the Marine Industrial Fabricators shipyard in New Iberia, LA under the active supervision of company management personnel. The asbestos containing material was being removed so that the vessels could be made acceptable for sale to another company.

We notified the Coast Guard and OSHA that: ñThe letter seeks an emergency investigation of this issue by either the Coast Guard or OSHA (or both) depending upon which agency has jurisdiction over the vessel and/or the shipyard. It further requests testing of all present and former boat personnel for possible asbestos contamination.

ñPlease advise us in writing as to your jurisdiction and actions that you plan to take on this matter. ■ can provide you with further information. He can be contacted até ò

Failure to Inspect = Failure to Enforce

The Coast Guard failed to conduct a meaningful inspection and investigation of the incident and, thus, were derelict in their duty to protect the health and welfare of Mr. ■, numerous shipmates, and shipyard workers working on the ***inspected vessel*** at the fabrication facility in New Iberia within their inspection zone. The Coast Guard provided a written response a month after our letter that did not directly respond to the detailed written report provided by ■ but did provide a copy of NVIC 6-87 mentioned below.

Our Association was keenly disappointed by the Coast Guardôs reluctance to promptly investigate ■ôs asbestos report. The need was immediate. ***Mariners were living and working in substandard conditions, grinding asbestos floor tiles, removing lagging containing asbestos from piping in the engineroom and creating dust without being furnished respiratory protection, air breathing equipment, protective clothing or other equipment normally required by OSHA regulations (et al.) during asbestos removal. This was a supervisory responsibility of management that should have been governed by explicit regulations requiring personal protective equipment, engineering controls, and professionally trained removal personnel and was all being ignored – as if asbestos remediation protection was not prominent in every land-based construction activity.***

The OSHA response was equally disappointing. They replied that, in light of an OSHA/USCG Memorandum of Understanding dated Nov. 11, 1996[(1)] ***it could not enforce the OSH Act with respect to "seamen" on inspected vessels***. However, they did express limited interest in shipyard employees who might have been exposed to asbestos fibers. *[(1)Reprinted as our Report #R-347, Rev. 1]*

Our Association examined and compared existing regulations and guidelines on asbestos in these areas:

- The Occupational Safety and Health Act of 1970.
- OSHA Regulations governing asbestos mitigation and control.
- Coast Guard ñPolicyò concerning Asbestos removal activities on Coast Guard vessels and other assets.
- Coast Guard ñguidelinesò on Asbestos mitigation on merchant marine vessels.
- Our Associationô Asbestos removal policy submitted to TSAC and the Coast Guard.

Conclusions: ***OSHA asbestos regulations are comprehensive and would be effective if enforced on all vessels***. However, they are only enforceable on ñuninspectedò vessels and then only if OSHA receives a written complaint, request for inspection, and if the vessel is actually available at the dock and can be boarded. Most of our mariners are unfamiliar with these requirements and seldom put their names on documents that could threaten their employment status. However, our Association was prepared to do this on behalf of our mariners; and this report is a result of these actions.

Existing Coast Guard ñpoliciesò in COMDTINST M6260.16A are detailed and are enforceable in the military service for which they were written. They should adequately protect Coast Guard personnel at Coast Guard facilities ashore and at sea, ***but do not protect our merchant mariners***.

Coast Guard ñguidelinesò in the form of Navigation and Vessel Inspection Circular No. 6-87 (NVIC 6-87) are only ñrecommended practices for control of asbestos and other respiratory hazardsò and are not enforceable as they are not in the form of federal regulations and ***do not effectively protect our mariners from asbestos*** on inspected vessels.

[NMA Comment: Similar to the way that the Coast Guard decided to "protect" our mariners' hearing by preparing an informed NVIC that relies on voluntary compliance, they used the same method to "protect" our mariners from the dangers of asbestos.

[NMA Recommendation: Citing 29 U.S. Code §651 (above), we recommend that Congress direct the Coast Guard to adopt, adapt, or "incorporate by reference" existing OSHA asbestos regulations at 29 CFR 1910.1001 or COMDTNOTICE 6260.16A and then train their vessel inspectors and require them to enforce the resulting regulations.]

OSHA-USCG Memoranda of Understanding

Our Association recognizes that it is essential for Federal agencies to coordinate and eliminate duplication in carrying out overlapping responsibilities and do so using a ñMemorandum of Understandingò (MOU) as a tool to do so.

In 1973, the Coast Guard and OSHA signed a MOU dividing their responsibilities in the marine field so as not to duplicate each otherôs efforts. A second Memorandum signed in 1996[(1)] further clarified this division. ***However, these memoranda failed to make it a primary responsibility of either agency to effectively protect the safety and health of all merchant mariners***. Although the MOU may have perfected the relationships between the two agencies, it did ***not*** ensure our mariners of safe and healthful working conditions on either inspected or uninspected vessels.

Later, the lack of clarity between these two agencies bubbled to the surface in the Mallard Bay Drilling Case that had to be decided by the U.S. Supreme Court in 2000 and, in effect, left the matter up to Congress.[(1)] *[[(1)]Our Report #R-300, Chao, Secretary of Labor vs. Mallard Bay Drilling, Inc.]*

[NMA Comment: Dividing responsibilities between Executive Branch agencies often is confusing, counterproductive, and fails to protect the safety, health, and welfare of our mariners.]

Enforcement of OSHA Regulations

The OSHA regulations that cover Asbestos fall under Shipyard Employment Regulations at 29 CFR §1915.1001 and cover almost 80 pages. Although OSHA asbestos regulations existed in the 1980s, the present regulations date from Aug. 10, 1994 and were last updated in 2008. These regulations are very thorough and complete.

Although the liftboats in question were being renovated and prepared for sale in a shipyard, and although shipyard workers and other contract labor reportedly were also involved in working on the contaminated vessels, one independent contractor specifically did not want his name mentioned for fear of retribution and loss of future work. Consequently, we were unable to furnish the name of the contractor to OSHA when they replied to our letter several weeks later.

OSHA clearly was not interested in protecting the health and safety of our mariners because they lay outside their agency-imposed jurisdictional realm limited to ñshipyard workers.ò Apparently, the idea of working with the Coast Guard and shutting down an unsafe operation apparently never occurred to them.

[NMA Recommendation: **That the existing Memoranda of Understanding be redesigned to require OSHA and the Coast Guard to work in concert to protect working mariners on both inspected and uninspected vessels.]**

Our Association reiterates that it experienced the same ñ***bureaucratic inertia***ò between the Coast Guard and the Department of Health and Human Services over the matter of potable water in Issue #1 (above). We were favorably impressed that Congress understood the problem and acted swiftly to clarify overlapping responsibilities in order to try to protect our mariners.

Coast Guard "Policy" on Asbestos Removal Activities on Coast Guard Assets

The Coast Guard takes care of its own! They have a manual, **COMDTINST M6260.16A,** prepared by their Chief, Office of Health and Safety, whose intended users are every Coast Guard unit that has asbestos containing materials within its facility and has ***trained asbestos abatement personnel***. While ñé area and district

commanders, maintenance and logistics commands, commanding officers of headquarters units, and chief of staff offices and special staff divisions at Headquarters shall assure compliance with the provisions of this noticeò ***there is no mention of Coast Guard Marine Safety inspectors protecting our mariners***.

While this notice only applies to Coast Guard personnel, ***it calls for trained asbestos abatement personnel to do asbestos removal work as do OSHA regulations.*** We ask:

- Why are employers allowed to assign our mariners to grind, disassemble and remove asbestos-containing materials?
- Why are mariners serving on inspected and uninspected vessels treated differently in federal regulations?
- Why didnôt the Coast Guard and OSHA coordinate and act immediately on our fax request at the local level?

[NMA Comment: Lax protection of our mariners' health and safety must be recognized as a shortcoming of both the inspection and investigation functions of the Coast Guard's Marine Safety program.]

NMA Submitted "Asbestos Removal" to TSAC and Towing Vessel Inspection Docket

Our Association submitted Report #R-276, Rev. 9, Item #55, Asbestos Removal to the Towing Vessel Inspection Docket with this explanation: Although the Notice of Proposed Rulemaking has not been released to the public, our Association intends to follow up Item #55 in this rulemaking project.

Our Association affirms that: ñMany mariners work on older vessels that still contain asbestos. Any work involving asbestos dust contamination or asbestos removal should be shipyard work done without the assistance of mariners because our mariners do not receive the training or equipment OSHA requires to perform tasks of this nature safelyé ò

■'s Report Submitted to the Coast Guard and OSHA Aug. 23, 2004

It is inconceivable that a major employers in the marine industry did not ñget the messageò about asbestos. It is much easier to believe that this was a ***willful violation*** that should have been prosecuted if adequate enforcement regulations had been in place and if government officials had done their job. Here is one marinerôs account of what occurred under the noses of two agencies:

Re: Asbestos contamination of Employees with Global Industries Offshore

I have been employed with Global Industries Offshore since June 2001. Since being with this company, I heard numerous employees speak about vessels containing asbestos, but not having knowledge of what damage asbestos can cause the human body until I was sent to school and obtained a notebook from a school named ñStarsò located in Maurice, Louisiana. After attending the ñStarsò school and becoming aware of some regulations, I asked my supervisors é about the vessels possibly containing asbestos. ***They both said that no vessel owned by Global contains any asbestos***.

I, and other employees with this company, as well as former employees have been exposed to asbestos on numerous occasions. Our employer had us replacing padding (i.e., lagging) around pipes aboard the vessels in the enginerooms of the vessels, (and) rip up the floor tiles of the vessel.

On or about May 27, 2004, the liftboat POMPANO arrived at Marine Industrial Fabricators Shipyard in New Iberia, Louisiana, and the main job was for the crew (names redacted) to start ripping out the (asbestos tile) floor in the galley of the Liftboat POMPANO.

The General Manager (name redacted) and the Port Engineer (name redacted) knew of the asbestos contaminants but still scheduled Coast Guard Inspection for Aug. 1, 2004. The vessel failed the inspection. On Aug. 20, 2004, they ordered the crew to move off the Liftboat POMPANO onto the Liftboat SWORDFISH due to asbestos contamination which they were well aware of before the Coast Guard inspection, but they never attempted to move the boat crew until after the Coast Guard inspection on August 19, 2004.

[NMA Comment: During this period, the crew was forced to live and work on the liftboat in the midst of the dust, dirt, and contaminant asbestos fibers and were not housed in a motel overnight.]

On Aug. 20, 2004, I was informed by (name of seaman redacted) that the crew was ordered to move off the POMPANO onto the SWORDFISH and that over the weekend a ñspecial crewò was being brought in to remove the asbestos material from the vessel. On Aug. 23, 2004, I spoke with the (same seaman) again and he informed me that on the previous day that the crew was allowed to move back on board the vessel. During the removal of the asbestos tile flooring, there were welders working inside the vessel, cutting aluminum from the cabin, cutting the

flooring, and we wiped the dust from the cabinets and the ceilings. I will provide photographs if necessary of the galley. There was dust in the air conditioner vents, beds, and clothing as wellé .

Global Industries Offshore had a total of twenty-two (22) liftboats. The two newest ones were the KINGFISH and the SWORDFISH. ***The other twenty (20) boats were built in the 1970s and 1980s***. The company is well aware of the asbestos contamination aboard these (older) vessels, but they feel that the almighty dollar is more important than the health and safety of their employees. I recently received word that the General Manager said that the company is not required to test their employees as long as the contaminants are removed from the vessel. I was also told that once the M/V POMPANO is sandblasted and painted this week, it will set sail for offshore after it passes its Coast Guard Inspection on Aug. 23, 2004.

Please consider this letter a request for an emergency investigation!

Further information revealed that Global Industries Offshore only removed the asbestos contaminants in order to sell the vessels, but I am told that so far only twelve (12) liftboats were sold and that the buyer became aware of the contaminants and requested that they be removed before finalizing the sale. This information may not be exact.

Testing (for asbestos contamination) is needed on all present employees as well as all former boat personnel with Global Industries Offshore. Signed ■

[NMA Comment: ■ furnished a list of company contact numbers including office phones, home phones and boat phones that our Association provided to both OSHA and the Coast Guard.]

[NMA Comment: Hercules Offshore announced on Oct. 4, 2004 their purchase of the Global liftboat fleet for $53,000,000. The former Global manager was employed as President of Hercules Offshore.]

Dereliction of Duty by the Coast Guard Marine Safety Directorate

[Background Report: Our Report #R-201, May 2000. Mariners Speak Out on Violation of the 12-Hour Work Day. 200p.**]**

During the past decade, our Association informed the Coast Guardôs Marine Safety Directorate at Headquarters of a number of ongoing problems dealing with mariner health, safety, and welfare programs. Over 300 copies of our Report #R-201 were provided to labor leaders, senior Coast Guard officials, and U.S. Senators and Representatives since it was prepared in 2000.

[NMA Recommendation: That Congress recognize the Coast Guard Marine Safety Directorate's longstanding unwillingness to suitably respond to our mariners' safety, health and welfare issues for the past decade as dereliction of duty at the highest level. We ask that Congress take action against those civilian or military employees who persist in this conduct in the future.]

"Whistleblower" Reforms Proposed by Congress

[Background Reports: Refer to Our Report #R-350, Rev. 5, Aug. 24, 2009. Limited Tonnage Mariners Seek Help From Congress on Marine Safety, Health, and Work-Related Issues and turn to ñIssue Lò. Also refer to ñIssue Lò (update) of Nov. 12, 2009 Improve Whistleblower Protection for Merchant Mariners.**]**

46 U.S. Code §2114 contains whistleblower protections that would be expanded in proposed legislation.

[NMA Comment: Our Association agrees that mariners should enjoy the same right as other transport workers in resolving grievances as proposed in H.R. 3619, SEC. 811 that incorporates the "employee protections" in 49 U.S. Code §31105.]

ISSUE #5 – Hydrogen Sulfide – A Danger to Mariners

[NMA Background Reports: Our Report #R-378. Hydrogen Sulfide ï A Danger to Mariners was published on Sep. 22, 2003 and was brought to the attention of the National Offshore Safety Advisory Committee and addressed by the Department of Interior, Minerals Management Service. Also see files GCM-13-I and GCM-75.]

Hydrogen Sulfide (H_2S) is a highly toxic and corrosive gas. It occurs naturally in many geologic formations. It is formed by decomposition of animal and vegetable matter by bacteria. This decomposition can be recent as in rotting fish remnants in a fishing vesselôs hold or muck in the bilge or may have occurred millions of years ago in a

geologic formation that now contains petroleum. ***When inhaled in high concentrations, H_2S can cause almost immediate death***.

This issue is significant in the petroleum, fishing, and tank barge industry. The Department of the Interiorôs Minerals Management Service has effective regulations at 30 CFR §250.499.

[NMA Recommendations: That Congress require that employers provide H_2S adequate training for any employee involved with the production and transportation of petroleum products and on commercial fishing vessels and direct the Coast Guard to develop, adapt, adopt or "incorporate by reference" adequate regulations for affected classes of vessels.]

ISSUE #6 – Smoking and Merchant Mariner Health and Welfare

[NMA Background Reports: Our Report #R-341, Rev.3, Smoking and Merchant Mariner Health & Welfare Issues: A Petition to **Congress,**(★).and our Report #R-341-A, a reprint of The Health Consequences of Involuntary Exposure to Tobacco Smoke. Executive Summary of 2006 Surgeon Generalôs Report were published on Jun. 29, 2006. We reiterated our position in our Report #R-350, Rev. 5 (★) on Aug. 29, 2009 as ñIssue S.ò**]**

Our Petition to Congress

The National Mariners Association, on behalf of our ñlimited-tonnageò mariners whose health, welfare, and quality of life is placed at risk from the actions of ñactive smokersò that produce toxic second-hand tobacco smoke as documented by the U.S. Surgeon Generalôs Report cited above hereby petitions the 111th Congress as follows:

[NMA Recommendation: That Congress direct the Coast Guard to initiate rulemaking to protect "limited-tonnage" merchant mariners under their superintendence from the actions of active smokers and the health consequences of second-hand smoke on commercial vessels to the same degree and extent that the Coast Guard protects their own personnel from those same dangers on their floating units, vehicles, and shoreside facilities.]

The Basis of Our Petition

Title 46 U.S. Code §2103 places the Superintendence of the merchant marine in the hands of the Secretary of Homeland Security. In 2001, our Association formally addressed the health issues of smoking with the Coast Guard and asked about its smoking policy. The Chief, Coast Guard Operating Standards Division answered our letter as follows:

ñOn behalf of Admiral Loy, I am responding to your letter of June 4, 2001, requesting information on the Coast Guardôs smoking policy onboard our vessels and whether any Coast Guard initiatives were planned addressing health-related concerns of mariners faced with exposure to second-hand smoke on commercial vessels.

ñ***Smoking in any Coast Guard floating unit, aircraft or vehicle is prohibited except on weather decks of Coast Guard vessels (small boats and cutters)***. The policy appears similar to the Amtrak policy you enclosed with your letter in that it is based on an employerôs decision as opposed to a legal mandate.

ñThe Coast Guard does not currently regulate health-related smoking in the commercial industry and there are no plans to do so at this time. The Coast Guard regulations regarding smoking on commercial vessels are generally for fire prevention purposes...ò

Since our inquiry, the Coast Guard has been aware of our concerns but has not initiated any changes.

Smoking Policies in Confined Spaces

Prior to addressing the smoking issue with Coast Guard officials, our Association asked the National Railroad Passenger Corporation what public and corporate policies were in effect for AMTRAK passenger trains. We received this answer from R. Clifford Black, IV, Director of Special Projects as follows:

ñThank you for your letter of March 28, **2001**, in which you inquire about smoking regulations on board Amtrak intercity trains.

ñNo statute prohibits smoking on Amtrak trains. However, as a matter of operational policy, Amtrak prohibits smoking on board virtually all its trains, with the exception of most long-distance (overnight) trains, where provision is made for smoking in designated areas.[(1)] The designated area usually consists of a specially ventilated smoking room either in a coach (bi-level Superliners) or in the lounge car (single-level trains). Smoking elsewhere by passengers is prohibited. *[(1)Since revoked.]*

Effective ñno smokingò regulations require at least an effective federal regulation that mandates employer and employee compliance. However, we assert that such a regulation should be no more burdensome than the current policies in use aboard Coast Guard vessels of comparable size.

[NMA Recommendation: That Congress authorize the Coast Guard to require by regulation that employers allow smoking only on the weather decks of vessels. This would provide the same amount of protection against the effects of second-hand smoke that the Coast Guard requires of its civilian, officer, and enlisted personnel and reinforces the public policy and leadership of the U.S. Surgeon General.]

[NMA Recommendation: That enforcement of "no smoking" regulations should be left to employers. An aggrieved mariner unable to resolve smoking violations with his employer should file a written report with the Coast Guard and expect e meaningful response.]

[NMA Comment: AMTRAK, a corporation subsidized with public funds by Congress, now provides its crewmembers and the public with effective protection against second-hand smoke.

[NMA Comment: Permitting smoking is contrary to the goals of the Coast Guard's recent "Medical NVIC" (NVIC 04-08) to improve mariner health. Acting to eliminate second-hand smoke also supports the positive goal of improving mariner health.]

"Active" Smokers and Secondhand Smoke on Small Commercial Vessels

Smoking is a personal habit that is increasingly under attack not only because it has proven to be unhealthy but also because of the effects of ñsecond hand smoke.ò The effects of second hand smoke are especially pervasive on all small commercial vessels. ***Second-hand smoke is re-circulated through a vessel's central heating and cooling system or simply remains in galleys, lounges and public accommodation areas.***

The Role of the Master

The master of a commercial vessel is responsible taking care of his crew ï including caring for their health and welfare. This includes affording his crew reasonable protection from the dangers of second hand smoke cited in the Surgeon Generalôs report. In fact, the Master is the crewôs most important line of defense. If the employer has included a smoking policy in his company operations manual, then it is incumbent upon the Master to enforce that policy regardless of his personal preferences.

While many employers do not establish or enforce ñno smokingò policies because they may be unpopular, the absence of a ñno smokingò policy creates an ***unhealthy working environment*** for vessels crewed by live-aboard personnel. It also creates an ***unhealthy living environment*** because of the continual circulation of trapped tobacco smoke by the heating and ventilation system. While our Association understands the unpopularity of ñno smokingò rules with many mariners, our role is to be an advocate for mariner health, safety, and welfare issues and not to win a popularity contest.

ISSUE #7 – IMPROVE PERSONAL INJURY REPORTING REQUIREMENTS

[NMA Background Reports: This report originally issued on Sept. 7, 2001 as our Report #R-292. It was revised on July 16, 2006 and renumbered as #R-429-I. Rev. 2 of this report was issued on Mar. 24, 2007. Our Report # R-351, Rev.1, How Safe Is The Towing Industry? was issued on Oct. 24, 2006. Evidence of our Associationôs efforts to work with the Coast Guard on this issue appear in Docket #USCG-2002-12580. We reiterated our request for Congressional assistance in our Report #R-350, Rev. 5 on Aug. 24, 2009 as ñIssue Y.ò For additional information refer to our canceled Report #R-277. Also refer to our files #GCM-64 and GCM-149.**]**

Introduction

Our Association assigns this issue very high priority to our efforts to improve existing accident reporting requirements to more accurately report and properly record the personal injuries that happen to our ñlimited-tonnageò mariners on the job.

[NMA Recommendation: That Congress to direct the Coast Guard to more adequately protect our mariners by removing personal injury data collection responsibility from the Coast Guard and place it with the U.S. Department of Labor.]

[NMA Recommendation: That Congress permanently separate personal injury and illness reporting from vessel and equipment casualty reporting. Supplement forms CG-2692 for reporting personal injuries and illness with OSHA 300 series forms.]

[NMA Recommendation: That Congress *expand* the application of 46 U.S. Code §10603 to include every inspected and uninspected commercial vessel.]

> **46 U.S. Code §10603. Seaman's duty to notify employer regarding illness, disability, and injury**
> **(a)** A seaman on a ***fishing vessel, fish processing vessel, or fish tender vessel*** shall notify the master or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose.
> **(b)** The Secretary shall prescribe regulations requiring that each ***fishing vessel, fish processing vessel, and fish tender vessel*** shall have on board a placard displayed in a prominent location accessible to the crew describing the seamanôs duty under subsection (a) of this section.

[NMA Recommendation: Impose strict civil penalties for employers who fail to report and track every "accident, injury, illness, and death" to a seaman, passenger, or other person on a vessel.]

Shortcomings of Existing Coast Guard Casualty Regulations

Coast Guard regulations at 46 CFR 4.05-10(a) state in part that ñThe owner, agent, master, operator, or person in charge shall, within five days, file a written report of any marine casualty required to be reported under §4.05-1. Such casualties include: 1) Loss of life, 2) Any injury that requires professional medical treatment (i.e., treatment beyond first aid), and 3) Any injury that leaves a person unfit to perform his or her duties.

NMA attorney Mark Ross, Esq., investigated courthouse records in south Louisiana and Texas, checked his findings with local Coast Guard marine safety offices, and determined that one major offshore company failed to file forty-four (44) written reports of personal injury in violation of Coast Guard regulations between 1992 and 1999. Subsequent discussions with DHS auditors in 2007-8 indicated the problem was much more widespread.

Other evidence gathered from a number of our members looking into other personal injuries indicated that these violations were not restricted to a single errant employer and that other marine employers may failed to file reports of accidents and injuries. Our repeated attempts to probe this matter were obstructed by Coast Guard officials and violations of the reporting regulation punishable by a civil penalty appear to be rarely enforced.

Our Association was appalled to discover that all attempts to encourage cognizant Coast Guard officers to take meaningful action on our findings, such as imposing civil penalties on the employers, brought about no results. Consequently, NMA attorney Mark Ross followed a different path and filed suit in Federal District Court under the False Claims Act. Unfortunately, the U.S. Attorney subsequently dismissed this suit on a technicality. However, Mr. Ross made his information available to DHS Inspector General auditors in 2007 and 2008.

Failure to report instances of serious personal injury and disability under the existing regulations seriously distort Coast Guard statistics maintained by the Coast Guard Office of Investigations and Analysis to the point that they cannot not accurately convey the dangers that our ñlimited-tonnageò mariners face on the job.

[NMA Recommendation: That Congress request that DHS Inspector General assign experienced maritime auditors to continue to thoroughly audit USCG merchant mariner personal injury reporting procedures.]

Personal Injury Reporting in the Offshore Oil Industry

On April 25, 2001, the Coast Guard supplied statistics to the National Offshore Safety Advisory Committee (NOSAC) purportedly covering 400 accidents involving offshore support vessels that took place between 1992 and 2000. These statistics record 37 deaths and 144 injuries. While ñdeathsò are harder to cover up, the 144 reported injuries did not reflect the 44 injuries that NMA Attorney Mark Ross uncovered reflecting those injuries reported by a single offshore employer. Each of these cases was serious enough for the injured party to seek an attorney and bring the case to court! Had these cases been included in published Coast Guard statistics, they would have reflected a significant percentage of the total reported offshore injuries.

Personal Injury Reporting in the Towing Industry

A Coast Guard internal report of towing vessel industry personnel clearly showed that the Coast Guard did not have a grasp on this important sector of the maritime industry and its ñlimited-tonnageò mariners. Nevertheless,

Coast Guard exposure data clearly shows that the towing industry is a very dangerous place to work.

In a memorandum dated May 12, 1994,[(1)] a program analyst in the Coast Guardôs Inspection and Documentation Division reported that the death rate (i.e., the number of deaths per 100,000 workers per year) in the towing industry was far higher than had been previously reported because the number of workers in the industry was grossly exaggerated. Instead of using the American Waterways Operators (AWO) estimate of 130,000 to 140,000, the Bureau of Labor Statistics estimated the work force in the towing sector as being closer to ***only 37,300***. ***This indicated a much more serious fatality rate for the towing industry than previously acknowledged.*** In this fiasco, it appeared that the Coast Guard depended upon an industry trade group for the statistics it blindly accepted and that they had no valid figure that listed either the exact number of persons or towing vessels in the industry. *[(1)NMA Report #R-351, Rev.1.]*

By pointing out these dangers to our ñlimited-tonnageò mariners who work on towing vessels and offshore support vessels, we encourage Congress to strengthen regulations covering personal injury reporting and improve safety in the industry.

[NMA Recommendation: That Congress, in recognition of the towing industry's high fatality rate, require employers to provide basic life and disability insurance coverage for each employee.]

In contrast to the lack of attention employers give this issue, many union contracts provide such coverage. While vessel owners and operating companies avoid the expense of insuring their employees, they appear willing to turn to their corporate lawyers to contest many reasonable claims our mariners make for service-related injuries.

Our Association determined that one of the major problems with accident reporting lies within the internal structure of a number of companies. While masters and persons in charge often report accidents through company channels, and even filling out the required form CG-2692, some companies fail to follow through and forward these reports to the Coast Guard as they are supposed to. Other companies supply ñlook-alikeò accident report forms on their vessels and edit them in company offices to protect their own interests. While fatalities and serious accidents are usually reported, often the Coast Guard is never informed of other less significant accidents and personal injuries that also are required to be reported. Consequently, the data the Coast Guard uses fails to present an accurate picture of how dangerous working offshore or in the towing industry really is. Consequently, our Association requested that the Coast Guard modify their accident reporting procedures in this petition dated Sept. 7, 2001. Since we have seen no action on this matter, we respectfully request that Congress step in on behalf of our mariners.

[NMA Comment: 46 CFR §4.05-1 as worded does not encourage any mariner who is *NOT* an owner, agent, master, or person-in-charge to file his/her own accident or personal injury report with the Coast Guard for consideration.]

Our Association notes that industry trade associations take advantage of skewed accident statistics to the detriment of our mariners. The American Waterways Operatorsô (AWO) was the source of distorted work force estimate mentioned in our Report #R-351, Rev. 1 (above) that skewed the estimate of the number of deaths per 100,000 persons so that the towing industry appeared to be three to eight-times safer to work in than it really was in comparison to other U.S. industries.

In another example, the former President of the Offshore Marine Service Association (OMSA) fed this statement[(1)] to the public record:

- ñOnly five injuries are identified in a seven-year period that might have been prevented or diminished in severity by proposed workplace safety and health requirements.ò OR
- ñ...that OMSA operators had far fewer lost time injuries than any other sector of the U.S. marine transportation industry.ò OR
- ñOMSA vessel operators have an exemplary injury safety record that has been improving for the past seven years.ò *[(1)**Source**: OMSA Letter dated 2/26/00 submitted to USCG Docket #1998-3868 as item #38. This letter spearheaded industry opposition to proposed new workplace safety standards on OSVs for outer continental shelf activities.]*

[NMA Comment: COMDTINST 16200.3A, Table 5-A gives the Civil Penalty ranges for "failure of a marine employer to report a marine casualty in writing to the OCMI as required by 46 CFR §4.05-10(a) as between $500 and $1,000. In light of our experience, we question why this penalty is seldom imposed.]

[NMA Recommendation: That Congress raise the penalty for failing to report an accident or personal injury to better protect our mariners.]

[NMA Recommendation: That Congress direct Coast Guard officials to be accountable for following up every reported and investigate unreported accidents involving commercial vessels. DHS Inspector General Report #OIG-08-51 (our Report #R-429-M) on page 16 stated: "…on September 29, 2006 Coast Guard Headquarters closed 3,848 investigations it deemed "low risk"… The report also indicates that the Coast Guard did not assign enough employees to handle their case load.]

Conclusion

Our Association recommends to every mariner that (to paraphrase the regulation) if you are injured or become seriously ill on the job that you immediately notify the Master of any injury that requires professional medical treatment (treatment beyond first aid) and that renders you unfit to perform your routine duties.

Even if it is just a cut, scrape, slip, trip, fall, strain or other minor injury, ask the Master of the vessel to make a logbook entry. Ask the Master to also report the injury or illness to the company and then check to see that he does so. If you ***ever*** require more than first aid (i.e., a trip to the doctorôs office or a medical clinic, or hospital) ***also*** be sure that the company reports it to the Coast Guard on CG-2692.

Be alert to the fact that most employers prefer to deal with personal injuries in their own offices rather than to allow the Master to fill out a form to submit to the Coast Guard. However, if you doubt whether the Company reported your injury or illness to the Coast Guard, ask for a copy of the form they submitted to the Coast Guard. If they hesitate to give you a copy ask the Coast Guard for a blank form CG-2692 or just mail a statement of your injury and treatment directly to the nearest Coast Guard Sector office to the attention of the Prevention Department. If the injury or illness is serious, immediately contact a maritime attorney of your choice, and discuss the extent of your injuries and seek advice. Our Association has a list of attorneys on our website. We also suggest our mariners read the following NMA Reports:

- NMA Report #R-202, Rev. 4, June 5, 2008. Treatment of ñLower-Levelò Mariners. (Donôt Count On Corporate Compassion or Coast Guard Concern: True Stories of Our Lost, Injured & Cheated Mariners).
- NMA Report #R-370-K. Jun 16, 2003. 12 Hour Rule Violation: The Verret Case
- NMA Report # R-412, April 25, 2005. Towboat Engineerôs Death Points to Need for Changes in the Law.

Employers Abuse Mariners on Health and Medical Issues – Maintenance and Cure

[NMA Background Reports: Our Report # R-440, Rev. 1. Employers Abuse Mariners on Health and Medical Issues. By Mark L. Ross, Esq. was issued on Jan. 1, 2008. The author, Mark L. Ross, Esq., is a maritime attorney in private practice at 600 Jefferson Street, Suite 501, Lafayette, La. 70501. You can reach him by telephone at (337) 266-2345, by fax at (318) 266-2163, or by e-mail :mlross1@bellsouth.net]

Maintenance. As a matter of law, a seaman is entitled to maintenance and cure from his employer if he becomes injured or ill while working aboard his vessel. In some circumstances, a seaman may be entitled to maintenance and cure if hurt while working in the course of his employment even if off his vessel.

"Maintenanceò is a form of seamanôs workersô compensation. Maintenance is a daily stipend, generally in the $15 to $20 range. However, if you can show your living costs are more than $15 to $20 per day, as is usually the case, you can prove what your actual living expenses are to a court and get an award for the amount. Generally, maintenance includes expenses like room and board that you would not have to pay if you still worked aboard your vessel. Shoreside costs like clothes cleaning bills would not be included under maintenance.

A boat company must pay an ill or injured seaman maintenance from the day he became ill or injured until he recovers. Alternatively, a boat company must pay its ill or injured seaman maintenance until a doctor says the seaman has reached maximum medical cure. Maximum medical cure is the point where although a seaman may still be ill, a doctor says he cannot do anything more to improve the seamanôs condition.

If the question of whether a seaman has reached maximum medical cure is disputed by the boat company and the seaman, a court can decide the issue. Generally, a court will favor the opinion of the doctor who has actually treated the seaman, as opposed to a company ñindependent medical examinerò physician who may have only seen the seaman once or twice.

Cure. Cure is a maritime term meaning that a boat company has to pay a seamanôs medical bills arising out of the illness or injury the seaman suffered while on duty aboard his vessel. A boat company must pay 100% of the seamanôs medical bills even if the seaman has health insurance. The boat company has to pay 100% of the injured

or ill seamanôs medical bills until the seaman reaches maximum medical cure.

Defense to payment of maintenance and cure: Concealment and misconduct. A boat company can avoid paying maintenance and cure for only two reasons. First, a boat company does not have to pay maintenance and cure if they can show the seaman lied on his employment application about his health. A common example is if a seaman says he hurt his back while working. If the boat company finds that the seaman hurt his back before working for that company, but denied any prior back injury on his employment application, the boat company could refuse to pay maintenance and cure for the second back injury. The prior injury must be directly related to the injury or illness at issue, however, and the boat companyôs employment application must clearly ask the seaman about the prior illness or injury.

Second, a boat company can avoid paying maintenance and cure if a seamanôs injury or illness results from ñmisconduct.ò Most ñmisconductò cases involve someone getting sick or hurt due to misuse of drugs or alcohol. Courts have similarly ruled that a seaman cannot get maintenance and cure from illnesses caused by sexually transmitted diseases or from active AIDs since those are likewise deemed to result from ñmisconduct.ò

This is not intended to be a complete discussion of this often complicated area of seamanôs rights. The National Mariners Association wants to inform its members that these rights and remedies exist so that, if necessary, they can ask their employers or an attorney about their rights to maintenance and cure.

The full report (available on request) goes on to cite several cases that illustrate how injured mariners are exploited by their employers when they seek reimbursement for injuries received in the line of duty. A 2009 Supreme Court decision *Atlantic Sounding Co., v. Townsend* promises some relief to mariners in the form of punitive damages to some.

[NMA Comment: Following a personal injury, many of our mariners face unique challenges in dealing with their employers since they fall outside the "Workman's Compensation" system. The "examples" in our Report #R-440 provide an insight into the problem often made more difficult by failures in personal injury reporting under the existing system.]

ISSUE #8 – Thousands of Barges Are Unregulated Workplace Safety Hazards

[NMA Background Reports: Our Report #R-426, Rev. 1, Report to **Congress (★)**: Challenges Facing the Coast Guardôs Marine Safety Program ï Effectively Regulating the Towing Industry. was published on Aug. 27, 2007.]

Unsafe Working Conditions on Dry Cargo Barges

On Dec. 8, 2003, our Association filed simultaneous formal complaints with the **Coast Guard**, **OSHA**, and the **U.S. Army Corps of Engineers** about unsafe working conditions and unsatisfactory ***uninspected dry cargo barge maintenance*** on unmanned dry cargo barges carrying pulpwood cargo on the inland waters, specifically the Tennessee-Tombigbee Waterway. This followed an accident in which a deckhand fell through an open manhole cover on the deck of a barge at night and was seriously injured.

Several additional barge accidents occurred within days of each other when:

- A barge worker was crushed between barges on Dec. 6, 2003 in the Triangle Fleet, at Reserve, LA
- A tugboat crewman was crushed between a barge and the pier at Pinto Island, Mobile, AL. on Dec. 9, 2003.

Accidents of this type and other fatalities from falls overboard from uninspected barges are frequent and well documented. One of our Directors who reported these and other barge-related fatalities spurred our Association to respond vigorously.

[NMA Recommendation: That Congress review and upgrade the interface between the Coast Guard, OSHA, and the Corps of Engineers regarding workplace safety issues on uninspected barges.]

[NMA Recommendation: That Congress direct the Coast Guard to identify and monitor all uninspected barges to ensure safe workplace conditions and to ensure accurate and timely accident investigation to better protect maritime employees.]

NTSB Pinpoints Regulatory Coverage Problems on Work Barges

In a very different fatal accident on an uninspected work barge, the ATHENA 106,[(1)] the NTSB stated in their

report (pg.39) that: ñ***No regulatory agency inspects operations – general working conditions, safety gear, equipment, and operating practices – on barges that are not subject to inspection***. Coast Guard oversight is limited to examining the lifesaving and firefighting equipment on certain uninspected vessels such as MISS MEGAN (that pushed Athena 106).ò *[(1) Accident Report NTSB/MAR-07/01, our file #M-660.]*

"OSHA investigates only after an accident, in the case of an employee complaint, or as part of a ñspecial emphasisò program focusing on particular workplace safety hazardsé This accident illustrates that before an accident occurs, ***no agency currently inspects operations involving barges not subject to inspection, and that even if a material defect or unsafe work practice exists, in the absence of no complaint no preventive regulatory action will take place***.ò

In its analysis of this (p.40) the Safety Board stated: ñWhen the new regulations supporting the Coast Guard and Maritime Transportation Act of 2004 are promulgated, they ***should*** restate the Masterôs responsibility for his vessel and for the safety of the vessels in tow. The new regulations will add a layer of oversight for vessels under tow that are not subject to inspection. Although towboats will be inspected under new rules that have not yet been proposed, ***monitoring of workplace safety aboard barges such as ATHENA 106 needs to be improved.*** The memorandum of understanding that the Coast Guard and OSHA signed was ***intended*** to eliminate confusion among members of the public with regard to the relative authorities of the two agencies.

Although OSHA has exercised its jurisdiction over workplace safety on barges after accidents, ***responsibility has been divided between the two agencies***. With the advent of regulations for towing vessels, the gap will shrink between vessels subject to inspection and uninspected barges such as the ATHENA 106. ***The Safety Board concludes that workplace safety on uninspected vessels should be more closely observed before accidents occur,*** and that the agreement between the Coast Guard and OSHA should reflect the new regulatory scheme, address all specifics of workplace and navigational safety, and encourage communication between the two agencies and industry.ò

Our mariners who work on uninspected towing vessels face additional dangers when they work on uninspected barges. Our Association documented the nature of the dangers with a number of photographs in our reports of the mariner who fell through the manhole at night.

The OSHA Connection

As uninspected vessels, ***dry cargo barges*** are subject to inspection by the Occupational Safety and Health Administration (OSHA). However, the full extent of this OSHA involvement is spelled out in the 1996 OSHA Directive CPL 2-1.20.(1) *[(1) As reprinted in our Report #R-347, Rev. 1.]*.

In the case of the mariner who fell through the manhole cover, the OSHA Regional Administrator in Atlanta responded to our complaint in a letter that outlined the procedures mariners must do to report unsafe conditions on uninspected cargo barges. These procedures involve ***filing written reports of safety violations*** ï something our mariners hesitate to do. Regardless of any protection of confidentiality, reports to OSHA can easily compromise employment rights of any person who serves as ñemployees at willò throughout the tug and barge industry. Furthermore, ñpenaltiesò do not provide for medical care for any injuries that occur on these barges ï an extremely important item. In background reports,(1) our Association documented that **many employers ignore "maintenance and cure" and medical bills as a result of these accidents in order to ignore and starve out potential litigants**. Consequently, injured parties must hire attorneys to represent them and often try to recover in the absence of costly medical care. *[(1) See our Report #R-440, Rev. 1. Jan. 1, 2008. Employers Abuse Mariners on Health and Medical Issues. (By Mark L. Ross, Esq.)]*

Although towing vessels are now designated as ñinspectedò vessels, this 2004 statute does ***not*** apply to unmanned cargo barges towed by these vessels. This is in contrast to most tank barges that come under the jurisdiction of the Coast Guard, are regularly inspected, and carry Certificates of Inspection (COI).

If a barge does not have a COI, it is an ñuninspectedò vessel. The Coast Guard marine safety program carefully attends to the condition of ñinspectedò tank barges but washed its hands of concern for dry cargo barges, deck barges and others without a Certificate of Inspection.

[NMA Comment: Has either the Coast Guard or OSHA brought the absence of effective "uninspected" barge regulations to the attention of Congress?]

[NMA Recommendation: That Congress to provide for the safety of mariners and barge workers on all types of "uninspected" barges by authorizing the Coast Guard to *either "examine" or "inspect*" all barges for seaworthiness and workplace safety.]

[NMA Recommendation: That Congress direct the Coast Guard to train its inspectors to use existing OSHA workplace regulations and its own uninspected vessel regulations to *inspect* every *manned work barge* as an inspected vessel.]

[NMA Recommendation: That Congress direct the Coast Guard to require sufficient temporary manning (e.g., minimum of two men) when boarding or moving any barge.]

[NMA Recommendation: That Congress direct the Coast Guard to require a crewmember to carry and have available an approved personal retrieval device to provide immediate assistance in the recovery of a man overboard whenever working with barges.]

[NMA Recommendation: That Congress direct the Coast Guard to require towing companies to decline to tow unseaworthy barges or those with obvious workplace safety hazards except to specific repair locations and to immediately report the ownership, markings, location, and hazards discovered.]

[NMA Comment: The barge industry successfully avoided regulating most of its assets in spite of its poor safety record. The industry has not shown sufficient leadership in addressing a significant national abandoned barge problem.]

Example: How OSHA Dropped the Ball on Unsafe Dry Cargo Barges

ñThe Atlanta Regional Office for the Occupational Safety and Health Administration (OSHA) is in receipt of your correspondence dated Dec. 8, 2003, where you advised our office of hazards involving unsafe vessels, including ñuninspectedò dry cargo barges. Your allegations ***address several jurisdictional areas***, some that may involve OSHA coverage for confined space hazards and open (unattended) deck openings on the vessels where personnel may fall.

[NMA Comment: Our Association expects two or more Federal agencies to resolve jurisdictional disputes of this nature keeping the protection of our mariners in the foreground. Our background reports (see Issues #4 & 4A above) give other examples where OSHA and the Coast Guard fumbled the and chose to ignored our mariners while failing to address the underlying issues .]

ñBecause your letter does not provide specific details as to employer identifications and when and where personnel were exposed to the hazards, we ask that .you have the trip pilot contact our office to provide needed information ï which he promptly did.

OSHA's Bureaucratic Complaint Review Process Fits Their Agency's Needs, Not Our Mariners'

ñOSHAôs complaint process allows for anonymous and formal notices of hazards. OSHA evaluates each complaint to determine how it can be handled best ï an off site investigation or an on-site inspection. Workers who would like an on-site inspection must submit a ***written request***. Workers who complain have the right to have their names withheld from their employers, and OSHA will not reveal this information. ***At least one of the following eight criteria must be met for OSHA to conduct an on-site inspection:***

1. A written, signed complaint by a current employee or employee representative with enough detail to enable OSHA to determine that a violation or danger likely exists that threatens physical harm or that an imminent danger exists;
2. An allegation that physical harm has occurred as a result of the hazard and that it still exists;
3. A report of an imminent danger;
4. A complaint about a company in an industry covered by one of OSHAôs local or national emphasis programs or a hazard targeted by one of these programs;
5. Inadequate response from an employer who has received information on the hazard through a phone/fax investigation;
6. A complaint against an employer with a past history of egregious, willful or failure-to-abate OSHA citations within the past three years;
7. Referral from a whistle blower investigator; or
8. Complaint at a facility scheduled for or already undergoing an OSHA inspection.

OSHA Finally Cited the Employer for Unsafe Conditions

In response to our formal complaint and another filed by the injured employee, ***OSHA inspected the worksite (the pulpwood barge) approximately eleven (11) months after the deckhand was seriously injured falling through an open manhole cover while attempting to pump the barge in the middle of the night***. The employer failed to provide the deckhand with prompt medical care for his injury at the time and, as a result, he was seriously disabled and lost months of work.

The ñproposed penaltyò imposed by OSHA was $1,500. The citation and notification of penalty must be posted at the work site, corrective action must be taken and verified, and payment of the penalty is due in 15 days unless contested.

It is significant to note that the injured deckhand had to hire an attorney after the accident and seek reimbursement for his medical expenses, pain and suffering. He later reported he was not satisfied with the way the attorney handled the case. He no longer works in the industry.

We have no idea if OSHA ever collected the ñreduced penalty.ò The injured mariner was just out of luck with his injuries and lost time never compensated. The entire procedure as respects protection of our mariners is entirely unsatisfactory.

[NMA Comment: An appropriate legislative remedy needs to be provided to insure that our mariners receive immediate medical treatment for injuries received on uninspected barges and receive adequate compensation for resulting time off the job. In this regard, Workman's Compensation may be better than existing remedies. Our Report #R-202, Revision 4 cites additional incidents of a similar nature.]

The Significance of the Problem

Consider this paragraph taken from page 29 of the full NTSB ñATHENA 106ò report:

ñAccording to the American Waterways Operators, the national trade association for the U.S. tugboat, towboat, and barge industry, more than 4,000 deck barges operate across the country, using different types of winches and other equipment in a variety of different operations. ***Coast Guard data show that 305 people were fatally injured*** on barge/tow combinations between 1997 and 2006, and 379 explosions or fires occurred on barges or towboats during the same period killing 14 people.ò

One common feature that most construction barges, dry cargo barges, tugboats, and towboats have in common is that they are uninspected vessels

Pertinent NTSB Recommendations

Recommendations the NTSB made as a result of the ATHENA 106 accident investigation include:

To the Occupational Safety and Health Administration:

- Review and ***update your Memorandum of Understanding with the Coast Guard to specifically address your respective oversight roles on vessels that are NOT subject to Coast Guard inspection***. (Recommendation #M-07-4)
- Direct the Maritime Advisory Committee for Occupational Safety and Health (MACOSH) to issue the following documents to the maritime industry: (1) a fact sheet regarding the accident, and (2) a guidance document regarding the need to secure the gear on barges, including spud pins, before the barges are moved, and detailing any changes to your memorandum of understanding with the Coast Guard. (Recommendation #M-07-5)

To the U. S. Coast Guard:

- Finalize and implement the new towing vessel inspection regulations and ***require the establishment of safety management systems appropriate for the characteristics, methods of operation, and nature of service of towing vessels.*** (NTSB Recommendation #M-07-6).
- Review and ***update your Memorandum of Understanding with the Occupational Safety and Health Administration*** to specifically address your respective oversight roles on vessels that are not subject to Coast Guard inspection. (NTSB Recommendation #M-07-7)

[NMA Comment: Two memoranda of understanding between OSHA and the Coast Guard failed to provide effective workplace safety and protection to mariners serving on uninspected vessels including barges. The death toll, as well as reported and unreported injuries, are unacceptable and must be addressed.]

[NMA Recommendation: That Congress ensures that Coast Guard plans to hire and train additional inspectors be expanded "examine" 17,000 currently dry cargo barges, and "inspect" 4,000 "work barges" – many manned by our "limited-tonnage" mariners as well as uncredentialed and equally unprotected maritime workers.]

[NMA Recommendation: That Congress address the longstanding gap in regulatory supervision of barges rather than allow two Executive Branch agencies, who have been overly influenced in the past by industry lobbyists, make minor and ineffective adjustments in their Memorandum of Understanding.]

ISSUE #9 – Give Mariners a Voice in Setting and Reviewing Safe Vessel Manning Standards

[NMA Background Reports: Our Report #R-350, Rev. 5, Limited Tonnage Mariners Seek Help From Congress (★) on Marine Safety, Health, and Work-Related Issues was revised and updated on Aug. 24, 2009. Turn to ñIssue Aò on pgs. 4 & 5 of that report. Also review our Report #R-279, Rev 8, Request to **Congress (★)**: To Review and Set Safe Manning Standards for Mariners Serving on Towing and Offshore Supply Vessels last revised on Apr. 19, 2008. Also review our Report #R-370-G, Crew Endurance: The Call Watch Cover-up, of March 14, 2006 and our Report #R-370-H, 12-Hour Rule Violations: Harbor Tugs and the ñOne-Watchò System. Also our Report #R-372, Rev.1, Questions About **Towing Vessel Officer Licensing** and Manning, June 25, 2002. Our files #GCM-82, CGM-199 and GCM-211**]**.

The Role of the Coast Guard

Manning levels always has been a contentious between the Coast Guard with its authority to assign a vesselôs minimum manning level and vessel operating companies using every possible step to reduce crew cost and enhance profits.

The Coast Guard issues each ***inspected vesse***l a Certificate of Inspection (COI) listing its minimum manning requirements. Uninspected vessels do not receive a COI but are manned according to regulations in 46 CFR Part 15, Subpart E , §§15,601; 15.605, 15.610 as well as §§15.701; 15.705; 15.710; 15.720; 15.730; 15.801; 15.806; 15.810; 15.820; 15.825; 15.840; 15.850; 15.855; 15.905; 15.910 and 15.915. Not only are these regulations confusing for officers on the nationôs 5,200 towing vessels that are in the drawn out process changing status from ñuninspectedò to ñinspectedò vessels, but the regulations themselves are changing. Three major rulemaking packages affecting 46 CFR Part 15 have been dumped on towing vessel officers within a single year. Not only is there confusion, but our mariners are concerned that the impact of all the changed regulations will ***perpetuate unfairness and past discrimination against towing vessel officers*** will emerge in the final manning regulations..

Unfairness and Discrimination

Existing manning requirements for all vessels are contained and explained in 46 CFR Part 15 and in Coast Guard policy established in the Marine Safety Manual, Vol. 3.

Since ñuninspectedò towing vessels are being reclassified as ñinspected vesselsò ï a process that may take as much as ***five more years*** ï significant differences between the two sets of existing rules in 46 CFR Part 15 must be resolved for vessels of comparable size and horsepower. However, after spending the period 2004 through 2009 without drafting a Notice of Proposed Rulemaking, the Coast Guard has yet to give even a hint that they intend to resolve these differences. The most acute differences are easily visible between the manning of inspected OSVs and less-than-adequate manning of uninspected towing vessels ï differences our Association has pointed out for years!

The Coast Guard's Authority is not Based on Experience

Unfortunately, Coast Guard officers have very little first-hand information about manning the commercial vessels our mariners serve aboard. Consequently, they must depend on others to provide them with information to make judgments about crew size. The Coast Guard neither rides on nor works these commercial vessels. ***Invariably outside manning information comes from vessel management and vessel trade associations whose concern center around reducing crew costs rather than upon adequately manning their vessels. Regrettably, mariners are never consulted about safe manning levels on the vessels they serve on.*** For example, a 185-foot offshore supply vessel ***in 24-hour service*** in the Gulf of Mexico that previously was assigned a six-man crew is now able to sail with only a four-man crew.

There are significant differences in crewing practices for inspected vessels and for uninspected towing vessels. We noted significant problems in manning vessels less than 1,600 gross tons that we discuss in detail in our Report #R-279, Rev. 8.[(1)]

Unfortunately, ***the process the Coast Guard traditionally uses to determine vessel manning virtually excludes***

any input from the mariners who work on these vessels. The undermanning that results leads to work-hour abuse since many of the unlicensed crewmembers are not limited in the number of hours they may be called upon to work. Since a great majority of our mariners are not represented by a union, they cannot engage in collective bargaining with their employers to obtain additional crewmembers to share the workload. ***Our background reports illustrate the lack of any meaningful and effective appeal route a mariner can follow to have the Coast Guard increase the crew size on his vessel***. In addition, even attempting to appeal likely would result in the mariner losing his or her job.

[NMA Comment: Limited-tonnage mariners provide 100% of the workforce on vessels less than 1,600 gross tons in the towing, small passenger vessel, and offshore oil sectors of the maritime industry.]

[NMA Recommendation: That Congress amend existing vessel manning laws to consider outstanding mariner safety, health, and work-hour issues as presented in our background reports.]

[NMA Recommendation: That Congress direct the Coast Guard to consider (and adequately document) input from working mariners as well as from operating companies and their trade associations before establishing minimum safe manning levels on various classes of inspected vessels less than 1,600 gross register tons.]

[NMA Recommendation: That Congress direct the Coast Guard to provide an effective and workable path for a licensed Master in command of a vessel to promptly document, appeal, and remedy any manning situation he deems dangerous to the safety, health, or welfare of his crew or passengers.]

CLOSING REMARKS

The Coast Guard Marine Safety Directorate has tried to do too much with too few resources for too many years. The results appear in the deficiencies spelled out in this report that is limited to presenting safety, health, and welfare issues. Deficiencies also appear in other areas of the Marine Safety Mission summarized by other reports.

In a number of areas like Hearing Conservation, Potable Water, Food Service Sanitation, Second-hand Smoke, and Asbestos Removal, the Coast Guard knows exactly what is required to solve these problems and has the instructional manuals to prove it. In areas where they have successfully applied their own instruction manuals, they should have provided the leadership to turn these instructions into ñ***best practices***ò for use by management in vessel operating companies and for individual boat owners to apply to their employees.

Unfortunately, in many of the areas mentioned above, our mariners are not protected by these ñ***best practices***.ò However, the Coast Guard now has the opportunity to introduce these ñ***best practices***ò into the towing industry to accompany the proposed towing vessel inspection regulations it will introduce as 46 CFR Subchapter M

If the Coast Guard is to provide the leadership that has been so lacking in its marine safety mission during the last decade, they can insist that the recognized ñ***best practices***ò appear in the industryøs ***Safety Management System***.

The alternative of mobilizing management to manage its own business enterprise, is to flood the industry with thousands of additional military personnel who would have to learn the industry from scratch before attempting to regulate it. Our mariners have witnessed enough of that kind of arrogance, bluff, and bluster to last a lifetime.

History shows, for the most part, that military control over civilians hasnøt worked well for quite some time. If management expects to draw new mariners into the maritime industry, then they must address safety, health, and welfare issues. This is a job management and not the Coast Guard is paid to doï to manage their enterprise.

Our Association seeks to identify where an adequate framework of laws and regulations still needs to be set in place. If we consider the new proposed regulation as a new concrete foundation in process of being poured, we ask Congress to consider our ***recommendations*** in this and our other reports as reinforcing bars (i.e., regulatory rebar) best introduced and standardized as the new concrete is poured.