NMA REPORT #R-206-A

DATE: February 22, 2010

124 North Van Avenue
Houma, LA 70363-5895
Phone: (985) 851-2134
Fax: (985) 879-3911
www.nationalmariners.org
info@nationalmariners.org

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

IF THE *QUESTION* CONCERNS STCW — OUR *ANSWER* REMAINS "NO"!!!

[**Publication History**: This is an abbreviated version of our Report #R-206, NMA Newsletter #68.7P]

Introduction

Closing day for comments to Docket #USCG-2004-17914, Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers !1978) was Feb. 16, 2010.

This rulemaking could seal the fate and end the careers of many of our õhawsepipeö mariners, those who worked their way up through the ranks over the years.

This õproposed ruleö garnered quite a bit of attention, at last count 222 entries in the Docket. We urge our mariners to view these entries at **www.regulations.gov**. Enter the docket number (above) after you enter the website.

After spending considerable time wading through these entries, it is clear that ó after 17 years ó the Coast Guard completely missed the boat. They not only missed the boat as far as our mariners are concerned, they missed it from the entire industryøs standpoint.

The Coast Guard Marine Safety Directorate has ignored working mariners as well as complaints from the maritime industry for so long that the time is here to rein them in or clean them out once and for all. Why havenøt these people been able to get the picture?

BACKGROUND: ARE 1995 STCW AMENDMENTS LEGALLY BINDING ON THE UNITED STATES?
By V.J. Gianelloni, III

***[Source:** National Association of Maritime Educators, News-letter #69, January 1998]*

[After V.J. Gianelloni became more fully aware of the effects of the STCW regulations on vessels between 200 and 1,600 gross tons, he decided to investigate the ratification of STCW by the U.S. Senate. He obtained a copy of Senate Executive Report 102-4. He then decided to verify that the Senate had, in fact, ratified STCW '78. Congressman Tauzin's office and the Coast Guard Congressional Liaison Office were unable to provide documentation that ratification had taken place. Consequently, he contacted the State Department and eventually received word that the Senate had ratified STCW in 1991 although he never received the written documentation he asked for.

According to Senate Executive Report 102-4, certain assurances were given to the Senate Foreign Relations Committee before ratification and were never complied with. Two letters from USCG Commander Boyle verified these assurances were not complied with.

*V.J. Gianelloni sent the following letter to Senator Jesse Helms seeking hearings on the 1995 amendments to STCW. He believed these amendments may not be binding upon the United States **since the U.S. Senate was totally left "out of the loop" in violation of the assurances given by the Executive Department**. Additional letters to Senator Helms and your U.S. Senators and Representatives did not succeed in having the **Senate Foreign Relations Committee** look into the legality of applying the 1995 STCW amendments to U.S.-flag vessels.]*

October 14, 1997

Senator Jesse Helms
Chairman, U.S. Senate Foreign Relations Committee
Washington DC 20210

RE: Request for Hearings on the need for Senate ratification of the 1995 Amendments to the 1978 STCW Convention

Dear Senator Helms,

As a graduate of the U.S. Merchant Marine Academy, also holding a Law Degree and working as a shipboard engineer, my most extensive background and knowledge is in the marine industry.

Over the last twenty years there has been a tremendous increase in the degree to which we have been surrendering our national sovereignty to international bodies, particularly in the area of economic affairs. This is particularly true in the area of Shipping. The STCW Convention is a most egregious case in point. The extensive 1995 amendments to the 1978 STCW have resulted in very significant and costly changes in U.S. Coast Guard Regulations covering the licensing of U.S. Merchant Mariners, that appeared in the *Federal Register* on June 26, 1997 at page 34506 et seq. I believe these major changes to our domestic laws, rules, and regulations have taken place without any notice and action by your committee or action by either house of Congress whatsoever.

Something needs to change or we will wake up one day and find that our economy is totally controlled by bodies over which we have relatively little control or influence, having only one vote among hundreds of other countries in the International arena.

I believe this represents a subversion of our law-making due process at best, and a prostitution of our Constitution at worst. I refer to the way that treaties are being used to *by-pass and avoid*, particularity in the economic and commercial arena, the open and, often healthy but contentious process that we normally use to pass laws and develop regulations.

A case in point is the major and economically-significant changes to the manner of obtaining and renewing the merchant mariner's documents, certificates, and licenses mariners require to serve on U.S.-flag seagoing vessels[1] of all sizes.

The changes I question are a result of the 1995 amendments to the *Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, 1978* (STCW), which I believe are so major in nature that they constitute a new treaty requiring Senate ratification. A little background as to how we got to this point is in order.

The United States was deeply involved in the discussions, negotiations, and other matters that led to the adoption of STCW-78 at the international level. During this same time frame, the offshore marine service segment of the marine industry was having major problems meeting the requirements of the antiquated and obsolete provisions of U.S. maritime law (i.e., Title 52 of the revised statutes et seq.) and the Coast Guard's administration of these laws. In mid-1978, the Propeller Club of Lafourche presented to Congressman David C. Treen a list of more than 30 items of suggested changes in Coast Guard Administrative Procedures, Federal Regulations, and Congressional Statutes.

Congressman Treen introduced a bill and his successor, Congressman Billy Tauzin, was successful in passing Public Law 96-378. This law corrected many of the statutory problems encountered by offshore small boat operators. A provision of this law, now found[2] at 46 U.S. Code §7101(d) provides: "…the Secretary shall establish, when possible, suitable career patterns and service and other qualifying requirements appropriate to the particular service or industry…"

President Carter signed PL 96-378 into law on October 6, 1980; and the Coast Guard began working on a rulemaking package to put its provisions into effect. Meanwhile, the offshore industry was able, with the assistance of the U.S. Senators from Louisiana and Texas, to place ratification of STCW-78 on "hold" until the regulations implementing PL 96-378 were effective and implemented. In a process that took eight years and four rulemaking packages,[3] a "final rule" was issued on January 4, 1989.

These new licensing regulations incorporated the statutory provisions of PL 96-378, the hundreds of comments made during the rulemaking process and, on the Coast Guard's own initiative, the provisions of STCW-78, which had not yet been ratified by the United States Senate.[4]

With the provisions of PL 96-378 codified as primary law in U.S. Code Title 46, Subtitle II, with acceptable regulations issued and in effect, and with many of the ambiguous provisions of STCW-78 addressed and clarified by the new U.S. maritime licensing regulations, **the offshore industry, in good faith, withdrew its opposition to STCW in 1991.**

In a letter dated January 29, 1991, the Secretary of Transportation wrote to the Chairman of the Senate Foreign Relations Committee requesting ratification with a "clarification" as stated in the sixth paragraph of his letter.[5] The U.S. Senate accordingly ratified STCW-78 in 1991. In fact *Senate Executive Report 102-4* contains at the middle of the bottom paragraph, page 2, the following language:

"Accordingly, the committee has sought and has received the assurances from the Executive Branch that

(1) the only kind of amendments that will be processed through the tacit amendment procedures will be amendments that are purely technical in nature, and

(2) the Foreign Relations Committee will be kept apprised of all contemplated amendments while they are still `pending, i.e., before they go into force, thereby enabling the committee to be sure that no amendment is being contemplated which is of such a substantive nature as would have to be submitted to the Senate for advice and consent."

However, it appears that as soon as the United States ratified STCW-78, a new movement began that resulted in extensive (i.e., 255 printed pages) amendments to the STCW-78 Annex and the replacement of the Appendices with a separate and detailed *STCW Code.* The net result is that extensive and expensive new requirements are being forced upon United States vessel operators and their shipboard employees. Neither they nor their elected governmental representatives have had any voice in these very important substantive changes. These changes entered into force under the tacit amendment process in STCW-78, Article XIII.

I, therefore, call upon you to hold hearings concerning:

(1) the apparent failure of the executive department to inform the Senate Foreign Relations Committee of the proposed changes that resulted in the 1995 STCW Amendments,

(2) the nature of the extensive revisions to the STCW requirements with the objective of determining whether these substantive changes constitute a new treaty that requires Senate ratification.

(3) as a possible alternative, I ask you to determine whether these substantive changes allow the U.S. Senate, under Article XV of the Convention, to issue a "Denunciation" of the 1995 provisions, at least as far as they affect vessels less than 1,600 Gross Tons that operate exclusively in domestic operations to and from United States ports.

Very truly yours,
s/V. J. Gianelloni III

(1997) Footnotes

[1] Coast Guard's definition of "seagoing vessel" is any self-propelled vessel in commercial service that operates beyond the boundary line established by 46 CFR Part 7. Refer to 46 CFR 15.1101 (a)(3).

[2] Title 46, U.S. Code, Subtitle II was codified as positive law in Public Law 98-89, August 26, 1983; 97 Statutes at Large 500. This act repealed the old Title 52 of the Revised Statutes and all laws amendatory thereof.

[3] Public Law 96-378 signed into law, October 6, 1980.
Advanced Notice of Proposed Rulemaking, October 1981, (46 FR 53624).
Notice of Proposed Rulemaking, August 8, 1983 (48 FR 35920).
Supplemental Notice of Proposed Rulemaking, October 24, 1985 (50 FR 43316).
Interim Final Rule, October 16, 1987 (52 FR 38614).
Final Rule, January 4, 1989 (54 FR 125).

[4] I, personally, made extensive comments on three of these rulemaking documents. I addressed more than 200 items alone, including strong objections to basing certain proposed regulatory provisions upon STCW, which had not been ratified by the U.S. Senate, and was therefore not binding upon our citizens.

[5] A copy of this letter is attached, as is a copy of Mr. Alario's letter as President of the Offshore Marine Services Association (OMSA).

Reply from Senator Jesse Helms

Committee on Foreign Relations
Washington. DC 20510-6225
February 3, 1998

Commander V.J. Gianelloni III USCGR. (ret)
Dear Commander Gianelloni:

Thank you for your letter regarding the 1995 amendments to the Convention on Standards of Training. Certification, and Watchkeeping for Seafarers, 1978 (STCW). I appreciate your efforts to bring the implications of these amendments to my attention.

The major changes caused by these amendments are precisely the concerns that I have had in the past and continue to have. Efforts by the Executive branch to circumvent the Senate's duty of advice and consent are a serious problem. I have instructed my staff to inquire into this matter of these amendments to the 1978 STCW Convention and the potential need for Senate ratification.

Rest assured that I will continue to keep a close eye on the Executive branch and their Constitutional duty to submit treaties to the Senate for advice and consent.

Thank you again for your letter.

Kindest regards.
Sincerely,
s/Jesse Helms

[NMA Position: The 1995 *Amendments* to STCW were so extensive that they constituted a *new treaty* that never received the required ratification by the U.S. Senate.]

[NMA Position: We ask the U.S. Senate to renounce that portion of the STCW convention that deals with U.S. domestic waters – not just out to the "boundary lines" but out to the 200-mile limit.]

[NMA Position: The rulemaking resulting from these Amendments will cause personnel problems for mariners and employers including hiring, training, and retaining personnel to man vessels in near coastal domestic waters.]

THE U.S SENATE NEEDS TO REVISIT THE 1995 STCW AMENDMENTS

The entire set of amendments never even considered the nationøs 126,000 õlower-levelö mariners and its effect on our mariners. For the most part, the Coast Guard officers responsible for this fiasco in the 1990s as well as today never spent a day working in the industry they regulated ó that is until many of them used their former Coast Guard jobs to obtain cushy management jobs in industry after their retirement.

Some of our hawsepipe mariners were able to jump through the hurdles and become STCW qualified. We want to be very careful and do not want to take anything away from these mariners. However, the time has come to move beyond the Coast Guard and demand that the U.S. Senate renounce that portion of the STCW convention that deals with U.S. domestic waters ó not just out to the boundary lines but out to the 200-mile limit to save the jobs of our mariners and that portion of our vital marine industry that operates within those boundaries.

A review of the comments to Docket #USCG-2004-17914 shows how big a failure the Coast Guard has been to our õlimited tonnageö mariners. That the Marine Safety Directorate could not come up with something better after 17 years of effort speaks directly to the issue. The House of Representatives in both the 110th and 111th Congress decided to make significant changes in the Coast Guardøs Marine Safety mission. Now, it is time for our mariners to come together and push to get the U.S. Senate on board and get the show on the road. A recent nationwide poll shows that 86% of the population believes the õgovernment is broken.ö Certainly, the U.S. Senate is broken, and election for one-third of its members occurs in November 2010. We are enclosing a list of Senators on the Senate Commerce, Science and **Transportation** Committee. As mariners, each of you is a õTransportationö worker. These are the people we must reach. This article spells out what we expect.

If the Shoe Doesn’t Fit, Push Harder!

Since 1995, the Coast Guard ineptly tried to cram the left shoe on our **domestic marinersø** right foot. It didnøt fit, but that did not keep the Coast Guard from constantly tinkering and creating a õone size fits allö shoe. There were plenty of clues that the result would not be a comfortable fit, but they never got the message.

While Americaøs õupper-levelö mariners joined the rest of the world of international shipping by meeting the onerous new international standards by Feb. 1, 2002, a large proportion of our domestic mariners who operate smaller vessels of less than 200 gross register tons in domestic service on rivers and other inland waters enjoyed an exemption granted by the Coast Guard. The offshore oil industry operating 1,200 vessels in both domestic and worldwide service was caught in the middle. Domestically, the industry sector opted for ***trade-restricted licenses limited to service on OSVs***.

It has taken the Coast Guard 17 years to reach the point where they are ready to cram all of STCW down the throats of our limited-tonnage mariners who serve under near coastal licenses. ***Don’t think for a minute that this move to place our entire merchant marine under STCW has changed one iota because it has not.*** We already witnessed these components driven by STCW:

- .The new õMedical NVICö introduced in 2008.
- The new õcredentialingö regulations introduced in April 2009.
- Tougher educational requirements and expensive õapproved courses.ö

But, you havenøt seen anything yet until you view the proposed STCW rulemaking.

INLAND MARINERS PAY ATTENTION, TOO!

A very important clue to the Coast Guardøs master plan of õone size fits allö outlined years ago lies in these paragraphs taken from a comment submitted by Mrs. Deborah A. P. Hersman, Chairman of the National Transportation Safety Board.

õThe proposed rule changes apply to mariners who operate beyond the boundary line, as established at 46 CFR Part 7. The NPRM states that there is no need for the Coast Guard to revise its rules pertaining to mariners on inland waters because õthe scope of the STCW Convention is limited to seagoing shipsö and because the Coast Guardøs õentire scheme of licensing, testing, inspection, and continued oversight for inland water(s) and Great Lakes provides a level of safety equivalent to the STCW Convention. If this is the case, then the NTSB believes that the domestic rules should be replaced by the provisions of the STCW Convention. Further, operations on the Great Lakes and in the Inside Passage from Seattle, Washington, area to the Vancouver, British Columbia, and southeast Alaska areas should not be exempt from STCW standards. Voyages in those areas are as ***navigationally complex and operationally challenging*** as oceangoing voyages. The government of Canada requires Canadian mariners who sail on the Great Lakes and in the Inland Passage to be STCW certified, highlighting the need to apply the highest licensing standards on those waterways.ö

õAlthough the NPRM states that the Coast Guardøs regulatory regime for mariners serving on inland waters and the Great Lakes provides a level of safety equivalent to the STCW Convention, the Coast Guard does not describe how its regulatory regime matches the STCWøs comprehensiveness, either in general or in regard to specific regulations. The NTSB believes that the provisions of the STCW Convention, with a few exceptions, exceed the level of safety provided by Coast Guard regulations for mariners working on the Great Lakes or the waters of the Inside Passage. Therefore, the NTSB believes the Coast Guard should apply the NPRM revisions to mariners serving on vessels that operate on the Great Lakes and in the Inside Passage as well as to those serving on seagoing vessels.ö

Although she didnøt say it, are not the waters of the western rivers just as ***navigationally complex and operationally challenging*** as those of the Great Lakes and Inland Passage? The Coast Guard always said that it would be too expensive to have two separate licensing systems. Their plans are obvious, and to quote one comment from the Seafarers International Union öí ***the verbiage and provisions within the NPRM…appear to close the hawsepiper career path for our merchant mariners.***ö