**NMA REPORT #R-206**

**DATE: February 22, 2010**

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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"!!!

## 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 "hawsepipe" mariners, those who worked their way up through the ranks over the years.

This "proposed rule" 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 – after 17 years – 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 industry's 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 haven't 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 nation's 126,000 "lower-level" 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 – 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 – 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 "limited tonnage" 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 Guard's 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 "government is broken." 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 "Transportation" 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 mariners**' right foot. It didn't fit, but that did not keep the Coast Guard from constantly tinkering and creating a "one size fits all" shoe. There were plenty of clues that the result would not be a comfortable fit, but they never got the message.

While America's "upper-level" 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 "Medical NVIC" introduced in 2008.
- The new "credentialing" regulations introduced in April 2009.
- Tougher educational requirements and expensive "approved courses."

But, you haven't seen anything yet until you view the proposed STCW rulemaking.

## INLAND MARINERS PAY ATTENTION, TOO!

A very important clue to the Coast Guard's master plan of "one size fits all" 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.

"The 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 "the scope of the STCW Convention is limited to seagoing ships" and because the Coast Guard's "entire 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."

"Although the NPRM states that the Coast Guard's 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 STCW's 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."

Although she didn't 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 "…the verbiage and provisions within the NPRM…appear to close the hawsepiper career path for our merchant mariners."

## MAJOR IMPACT ON LICENSING AND CERTIFICATION

***[Source:*** *Maritime Professional Training, Fort Lauderdale, FL. Contact the Student Services Department. Laura Sutherland, Guidance Counselor (*954)-525-1014 *or write to info@mptusa.com.]]*

The United States Coast Guard is requesting comments on the proposed final implementation of STCW for U.S. mariners. The goal is to have the final implementation in place by July 2010 thus ending the Interim Regulations.

The proposed implementation includes changes in required sea time to achieve various licenses, clarification of definitions that have been ill-defined or gray for many years, and also specifies training requirements that are expensive, and in some cases irrelevant, to our industry.

**Notable Points from the USCG Proposal:**

- 200GRT NC Mate (suitable for international voyages) will require three years of sea time (1080 days) for an original issue. This is three times longer than the current requirement. (As this relates to STCW, it is unlikely that we can have any effect on it, but it will make finding NC mates in the 200 ton category very difficult for international voyages or voyages which enter foreign waters.)
- Rating Forming Part of a Navigation Watch (RFPNW) still requires service on vessels over 200GRT. (Time that is extremely difficult to obtain in many parts of the industry.)

- The lowest level Master/Mate licenses for Oceans, foreign going routes, will now be 1,600 tons. No new Ocean 500, 200, 100 ton licenses of any kind will be issued. Existing licenses of this tonnage will be renewed. Primary qualifying time for 1,600/3,000 will be 75GRT.
- There will be a route to upgrade from a current 500GRT license to the new 1,600 ton license. It is crucial that anyone who qualifies for a 500GRT license now gets it now, before these changes become final. Otherwise you will be stuck getting a mate's license and serving for several more years before qualifying for your master's license.
- Flashing light will be required for all licenses (not ratings) subject to STCW code (all over 200GRT, all Oceans, all NC int'l.) and for upgrades if not previously completed.
- To obtain 1,600 GRT Mate or Master, applicant must qualify for AB and RFPNW (the requirement is a hurdle for all new applicants for ANY Ocean or NC Int'l Mate or Master license.)
- All licensing pathways above 200GRT operating in waters subject to STCW Code will require sequential advancement from Mate to Master. (This differs from the current scheme.)
- OUPV for near coastal waters will be limited to sailing on domestic voyages out to 100nm.
- Mariners holding a valid STCW endorsement on or before the effective date of the final rule will NOT need to take additional training to retain the STCW endorsement. (USCG is aiming for July 2010) Any future upgrades will only need to meet the requirements for the new credential being sought.
- Mariners currently in the application process should move forward as rapidly as possible to avoid new requirements.
- To clarify the impact of adoption of rules, any new mariner wishing to progress to mate or master of any vessel that transits foreign waters or into Ocean waters (>200nm from shore) will now be required to obtain a 1,600GRT/3,000GT license, **regardless of the tonnage of the vessel**.
- Engineers holding DDE or limited tonnage licenses will be restricted to domestic voyages. The STCW licensing route for engineers will now require lengthy training programs.

**The deadline for comments (was) Feb. 16,, 2010.** The procedure for submitting your comments is outlined in the Federal Register.

**Now is the time** to get your license or upgrade your qualifications. MPT is here to help you every step of the way. Call today to set up a **complimentary career counseling session**. We know that in a difficult economy it is hard to spend time and money on training, however this may be the best way to get the advantage in the job market, not to mention meeting the licensing requirements currently in effect rather than adding the burden of all of these new requirements into the schedule.

A limited number of **Founders Grants for training will be available** to candidates and can be applied for during the career counseling session. USCG Application Paperwork and Sea Service Evaluation can also be made at this time. If you have started your paperwork, bring it with you along with any sea time letters or discharges you may have received up to date.

## MARINERS ON TOWING VESSELS EXPRESS THEIR CONCERNS ABOUT STCW

**Captain Bill West**

***[Source**: e-Mail question and reply to Captain Bill West, NMA Board of Directors to Ms. Amy Beavers, Academic Principal, Maritime Professional Training, Fort Lauderdale, FL.]*

I sat beside you guys at the last TASC and MERPAC meetings. I am on the Board of Directors for the National Mariners Association. As you know, my organization and yours share concern for our industry. I am also concerned about the proposed rule making. I would like you to contact me about this. I will use myself as a "case study". Currently I qualify for a "Mate 500 Ocean" but, of course, don't have the "OICNW", Celestial, BRM and a few other things. I am currently 5th Issue

- Master, 500 tons, Inland,
- Master of Towing vessels, inland,
- Master 100tons, Near Coastal, and
- Mate towing vessels, Near Coastal with Able Seaman, ARPA, STCW Basic.

As such, what would it take in time and money to obtain a "Mate 500 Oceans" license. I will try to call as well.

Dear Bill,

I hope all is well. Good to hear from you.

Most of the people that are applying for a Mate 500 oceans do not yet have ARPA, etc so I will tell you how long and how much it will take to go from AB to Mate 500 ton oceans and then you can take out the individual costs for the courses that you already have. That way the case study is accurate for most candidates.

The OICNW 500 ton Mate program is 26 weeks in length and is $18,995 in course fees, not to mention housing, transportation and meals. This includes:

1) Radar
2) ARPA
3) Advanced Fire
4) GMDSS
5) Terrestrial and Coastal Navigation
6) Medical First Aid Care Provider
7) BRM
8) Celestial Navigation
9) Watch keeping Course
10) Basic Meteorology
11) Emergency Procedures
12) Search and Rescue
13) Basic Ship Construction and Stability
14) Cargo Handling & Stowage
15) Magnetic and Gyro Compass
16) Electronic Navigation
17) Basic Ship Handling and Steering
18) Visual Signaling
19) Watch keeping and BRM Assessments

This would cover all of the requirements provided a mariner already holds a valid AB with PSC Lifeboatman and STCW BST.

Please let me know if we can help you with this or any other information.

Thank you and have a great day!

**s/Amy Beavers**

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**Capt. Joe Dady,**
**President, National Mariners Association**

Mariners on the East Coast report that the Coast Guard only counts the actual hours on waters ***outside the Boundary Lines*** as time creditable towards the 360 days required for mariners to renew their STCW credentials. Without 360 days of service mariners are faced with having to duplicate extensive and expensive STCW training. While this may be a tremendous cash windfall for approved training schools, it is a ***heavy expense*** and ***unnecessary training*** for mariners who can show they have been employed on the water for 360 days every 5 years.

***There are few if any approved shorter and less expensive STCW "refresher" courses***. We believe that this issue must be addressed in light of the fact that most voyages start and terminate in inland waters. We assert that time served on large bodies of water such as Long Island Sound, Puget Sound, Chesapeake Bay, and the Inside Passage should be counted toward the required 360 days without the need to repeat STCW training. Companies should be saved the additional burden of splitting voyages into inland and offshore components with its attendant accounting and sea service letter-preparation time involved.

## OTHER MARINERS EXPRESS THEIR CONCERNS ABOUT STCW

**Captain Michael Kiernan**
captmike@longreachcruises.com

February 17, 2010

Senator Olympia Snow
154 Russell Senate Office Building
Washington, DC 20510

RE: NPRM: *Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978*

Dear Senator Snowe:

The USCG is considering sweeping changes concerning the licensing of merchant mariners. These changes are far-reaching and will impact the ability of many mariners including myself to earn a living as Officers, Engineers and Merchant Seaman on U. S. Flagged vessels.

The rationale of the USCG for these sweeping changes is for the United States to comply with the requirements of the above referenced international agreement of which the United States is a signatory. ***I do not believe that the Congress was fully informed of the consequences to our merchant mariners of ratifying this agreement***.

**[NMA Comment: Members of the NMA Board of Directors agree that Captain Kiernan is "on target" with his comments regarding the role of the U.S. Senate. We believe the House of Representatives Transportation and Infrastructure Committee has when they were given incomplete information by the Coast Guard before ratifying the 1995 STCW Amendments. See comments by V.J. Gianelloni III (below)]**

The U.S. maritime fleet is comprised of many vessels performing diverse functions in conditions and under work rules that are unlike what is done in other countries. As a result, the international regulations being imposed upon us will result in the inability of many mariners to progress in their careers through hard work, study and merit.

I respectfully request your assistance in causing the USCG to "re-think" their approach to these mariner license changes and to modify their proposed regulations in a manner that will more closely reflect the needs and career paths of our country's Merchant Officers, Engineers and Seamen.

I would personally be willing to serve on any "study group," testify to congress or work with the USCG to improve the outcome of their proposed regulations.

Sincerely,
s/**Michael E. Kiernan**

(Edited) Comments by Capt. Kiernan correspond to the Federal Register Pages in the Tues. Nov. 17, 2009 edition as "Proposed Rules."

The USCG is creating an unreasonable and unworkable system in this rulemaking that will cause great hardship to the men and women who make their living as licensed mariners in the United States. If adopted, the net effect of this rulemaking will be to virtually eliminate the possibility of working mariners to progress to vessel master in a reasonable time while maintaining full time work schedules necessary to support their families.

Page 59354:

***The Comment Period was too short*** to allow the working mariner community to become fully informed about these extensive changes that will directly affect their continued ability to maintain their livelihoods and progress within their chosen profession. Some mariners may actually be employed "at sea" for the entire duration of this comment period and therefore will not be in a position to have been able to study the impact on their jobs and careers. Those mariners will therefore not be able to comment on this proposal before the input period closes thereby denying these citizens the right to protect their jobs.

Page 59354:

It is not clear from the Summary or Table of Contents what the proposed date of adoption and implementation of this rule would be.

Given the impact on the careers of working mariners some of whom may be incurring great personal expense and sacrifice in attending training programs and are working to ***upgrade*** their existing mariner licenses according to the rules now in effect, any such adoption/implementation should be delayed until the working mariner labor pool can complete their present educational, training and testing plans. ***A period of AT LEAST 36 months is reasonable for this purpose.***

To elaborate on the point above; A working mariner may be employed for 8 months ON and 4 months OFF each year (my present schedule). During the 4 months ashore in addition to fulfilling family and household responsibilities such as filing tax returns, taking care of medical/dental appointments etc… A mariner must devote time and great expense to attending training schools to meet the ***existing*** requirements for license advancement. The requirements proposed in this rule are ***more extensive and expensive.***

(In my case) meeting the current requirement(s) to progress from 150 ton Master to 500 ton Master has involved:

- Over 115 days of dedicated classroom or simulator training.
- Over 30 days of dedicated travel to attend training at approved schools throughout the United States.
- Fitting such training into the short available time ashore causes ***great hardship*** and sacrifice to families of mariners. Obviously, it takes ***several years*** for a working mariner to fit these training programs into his or her time ashore.
- To date I have expended over $36,000 in personal funds (un-reimbursed by my employers) for this required training to receive an approval to test for a 500 ton master license. Once this approval to test is granted, I will incur another $5,000 in tuition and travel costs to prepare for the test. For a total cost to my family of ***over $40,000 for license upgrade to 500 ton*** under the existing rules.
- ***Lost income*** costs if I were to have taken the above training during otherwise scheduled duty time would have cost an ***additional $65,000.***

It would be impossible to compete all of this required training within one year while holding a licensed officer position on a U.S.-flagged vessel based on common manning schedules. Therefore, the 36 month ***minimum*** transition period to new rules is both sensible and required.

**Implementing the proposed new rules before I (and all other similarly situated working mariners) have a chance to complete the required training and testing would cause a great hardship to all of the families impacted by an implementation date sooner than 36 months from final rule adoption.**

Page 59356: Medical Competency – It should not be necessary for Licensed Officers to obtain the MEDICAL PERSON IN CHARGE certification level. But rather each "seagoing" vessel should have one such certified person onboard as part of the vessel manning requirements. Such person does not have to be an officer. In fact, an officer may not be able to perform this function during an emergency as his/her greater obligation is to all hands onboard while another crewmember may be more appropriately positioned to perform this important function.

Page 59356: Deck Officer Progression – Eliminating the 200 GRT/500 GT endorsement and the 500 GRT license will be a great mistake due to large active fleet of U.S.-flagged vessels within this size range that employ thousands of mariners. Requiring those mariners to go through the ***great expense and time required to obtain a much larger license than is actually needed by the fleet employing them is an unreasonable burden on mariners and the industry including small enterprises that comprise the bulk of our merchant marine activity.***

Page 59357: Officer Endorsements: If we are moving to integrate with STCW, then allowing the crediting of vessel "sea service" using ITC measurements (GT) is a good idea. However, such service should be allowed to be credited ***retroactively*** and should offer both the actual measurement for those vessels that have dual admeasurements or the table method for those vessels which are not admeasured using both domestic and ITC tonnage measurements – (***whichever is greater***).

Page 59375: .Costs of rule implementation and primary benefit: Based upon my experience and the experience of thousands of other licensed mariners the cost estimates contained in this rulemaking ***severely underestimate the actual costs*** to be incurred by mariners if this rule is adopted. Further, the analysis does not consider ***the impact of these burdensome requirements on the quality of family life*** and the resulting impact on safety and increase in stress levels on working mariners as a result of complying with these changes. Since this aspect has not been considered or evaluated, the USCG assumption that the increased requirements will result in an improvement in vessel safety is ***suspect*** and may not in fact be the result of such changes.

The USCG clearly states that they intend the costs of compliance with these new training requirements to be borne by the individual mariners and as a result state there will be minimal impact on "small entities." This may not be true since ***the additional requirements may reduce the mariner pool available and ultimately drive up the costs to "small entities"*** as they will have to pay more for a fewer number of qualified mariners.

***The most likely impact will be to drive out of the labor pool mariners who have demonstrated skills and competence through experience***. Many mariners will not be able to comply with the new regulations for economic reasons and then will be forced out of the industry due to the excessively high financial and personal costs imposed.

There is ***no mechanism provided in the rule to assist individual mariners with the costs and time required to comply with this proposed rulemaking.*** A tuition assistance/reimbursement and training time allowance should be considered to allow a transition for mariners if this rulemaking is adopted.

Page 59380: Definition of Domestic Voyage: Presently, U.S. Mariners can operate under domestic authority in the Great Lakes and the St. Lawrence Seaway and in the St Lawrence River in Canada out to the "Anticosti Line." If the proposed rule is adopted, our area of operations will be reduced.

Please ***revise*** this definition to include the above waters by allowing a special STCW endorsement to be issued for these waters for licensed mariners who need this authority to operate in Canada. At least one passenger vessel company has been operating in the above referenced waters for over 30 years successfully and these changes would put such operations in jeopardy.

Page 59380: Increase in Scope: In order to assist mariners in the transition period to STCW, the USCG should allow a "dual" system of sea time and experience requirements for a period of 3 to 5 years. During this period, a mariner who is upgrading or increasing the scope of his or her credential can apply experience and sea time requirements using either or both of the existing regulations or the new regulations (whichever is more favorable) to meet the upgrade requirements. This will allow mariners who are already in the "system" of upgrading their credentials to follow through and complete training programs they are presently in. New mariners entering the system can be required to follow the "new" rules at time of entry into the system.

**General/Summary Comments**:

The proposed rules would ***increase the costs and burdens*** on United States Mariners without offsetting benefits to the public.

The rulemaking as proposed, ***places the burden and costs of compliance with mariner licensing regulation changes on individual mariners***, without any offsetting changes to allow those mariners to obtain the extensive training and help fund the tremendous costs. This places the greatest burdens of those with the least ability to pay.

Page 59380: International voyage. This proposed definition would effectively preclude the use of near-coastal licenses for U.S. mariners who are employed in foreign countries. Celestial navigation is not required nor is it typically used on near-coastal voyages no matter where such voyages originate or end if the vessel(s) do not exceed a 200 mile offshore limit. Given this the requirement for such license holders to obtain this certification, which they will not use, is ***an unreasonable burden and expense with no resulting safety benefit***.

The issuance of near-coastal licenses should be continued in their present form without the requirement for those licensees to obtain an oceans' endorsement or to meet an oceans' requirement. This will allow U.S. Citizens to continue to be employed in foreign countries sailing within near-coastal limits without the resulting hardship and unemployment that would be caused by these onerous requirements.

Page 59381: Definition. Seagoing vessel.: The boundary line is not a realistic location to establish "seagoing" requirements as the boundary line is frequently crossed by vessels engaged in coastwise trade. The more appropriate demarcation point would be the 200 mile limit currently contemplated by the near-coastal license authority. Using the 200 mile limit would allow mariners to continue to use their near-coastal skills and experience without imposing unnecessary burdens and expense that would serve little public benefit.

Page 59389. Proposed 46 CFR §10.304(c). Many mariners may not obtain their seagoing experience in an organized progressive sequence such as provided by Maritime Academies. Therefore, by not allowing sea time from prior service to be credited toward upgrades or endorsements will effectively PREVENT "hawsepipe" mariners from using their considerable and valuable experience to progress in their careers.

Pages 59391 and 59392. Proposed 46 CFR §11.202 STCW Endorsements(d)(4): ADD: *St. Lawrence Seaway and the St Lawrence River to the Anticosti line in Canada* to the end of this paragraph. This will allow those mariners who currently operate small passenger vessels who navigate these waters on a regular basis to continue to do so.

Page 59391. Proposed 46 CFR §11.201: Do not eliminate the 500GRT/1600GT license category as a ***significant portion*** of the U.S. flagged fleet is within these tonnage limits. Officers operating those vessels are able to do so ***safely*** (as demonstrated by many years of safe operations) without the added burdensome requirements contemplated in this rule for operating larger vessels on longer routes.

Dropping the 500 GRT/1200 GT license is ***regulatory overkill*** on the part of the USCG without a demonstrated need for change or justification for the ***extreme cost burdens*** to be placed on mariners to comply.

Page 59393 and 59394. Proposed 46 CFR §11.401: Conflict exists between STCW convention requirements and the U.S. Flagged Fleet operations. Since a great many U.S. Mariners serve in "brown water" operations and since the U.S. manning protocol(s) often use only ***one master and one mate*** on vessels, the required "progression" in STCW of moving from 3rd Mate to 2nd Mate and then Chief Mate does not exist for most mariners in the USA. By adopting the international standard ***without recognizing the actual operations of the U.S. mariner labor pool*** the USCG is doing a ***grave injustice*** to U.S. mariners who wish to progress in their careers while continuing to work onboard U.S. Flag vessels. ***This conflict should be resolved in favor of the U.S. mariner*** by continuing to allow licensing progression compatible with our sea service experience.

***Modify*** our integration with the STCW requirements by maintaining our ability to qualify for the management level licenses as the current system allows.

Page 59394 Proposed 46 CFR §11.401(i): Flashing Light requirement – ***Delete It***. This is an archaic requirement that serves little or no purpose particularly for those engaged in near-coastal voyages. It is an ***unnecessary burden and expense for mariners who will never use that training again in their careers.***

Page 59395. Proposed 46 CFR §11.402: The TABLE in this section should be modified to allow for mariners to use the ***actual*** admeasurements tonnage of their vessels in lieu of the table for sea service credit. For Example; I serve on a U.S. Flag vessel of 98 GRT and 765 GT (ITC). I should be allowed to use the 765 GT sea service time when applying for license upgrades, rather than the **table** limit of 250 GT.

Page 59397 §11.410: Mariners who have been pursuing license upgrades under the ***existing rules*** have expended money for training classes and in some instances ***many months or years of their personal shore leave t***ime to participate in training classes to upgrade their licenses. Their must be a ***transition period*** allowed in the rules for those mariners to complete their license upgrades so that they don't lose all of their time, money and effort expended to progress their careers. ***a reasonable period*** would

be 36 months from the rule adoption to complete their training and test for the license under the present rules. ***This would call for continuing the 500 GRT/1200GT license for those mariners***. ALSO, it would allow those mariners already in the "pipeline" to complete their 1600 GRT/3000 GT licenses under existing rules and sea service requirements.

## NMA LETTER TO THE STCW DOCKET

February 9, 2010
*(Corrected Version Feb. 22, 2009)*

Docket Management Facility (M-30)
U.S. Department of Transportation
1200 New Jersey Avenue, West Bldg., Room 12-140
Washington, DC 20590

Sent by Mail to **Docket #USCG-2004-17914**
Our File #GCM-273

Subject: Comments to **Docket #USCG-2004-17914**

Dear Sir or Madam,

This letter supplements an earlier letter submitted by our Association on Dec. 11, 2009. That letter was accepted into the Docket as USCG-2004-17914-0021.

**Comment #1:** ***General Comment.***

The regulatory changes that apply to vessels subject to STCW are part of sweeping changes in credentialing regulations that affect many of the estimated 5,200 towing vessels and an estimated 30,000 mariners (approximately one-seventh of ***all*** credentialed U.S. mariners) that serve on these vessels. This closely follows credentialing changes affecting these same mariners in April 2009. The proposed STCW changes in this rulemaking package come at a bad time since the proposed new towing vessel ***inspection regulations*** have not yet been published.

***We recommend that the Coast Guard delay the STCW changes until after the proposed new Towing Vessel Inspection regulations are finalized and the initial inspections of all existing towing vessels are complete.***

**Comment #2:** ***Refer to: 74 FR 59372, item #17, paragraph 2***. ***Basic Safety Training and Ship-Specific Familiarization.***

**Quote:** "…changes in interpretation of the STCW Convention by IMO and the Coast Guard allow a mariner to retain competency in Basic Safety Training through continued sea service."

The National Maritime Center's current practice of crediting only the time served outside the boundary lines of 46 CFR Part 7 for STCW endorsement renewals creates an unnecessary burden both for mariners and their employers in requesting and constructing "sea service" letters that must be presented to the National Maritime Center for renewal purposes.

Failure to provide 360 days of ***creditable service*** at renewal time means that a mariner must re-take Basic Safety Training classes to renew his credential. This is expensive, inconvenient, and time consuming. Although attending a STCW "refresher" course might be less intrusive and expensive, there are few if any of these courses available.

***We recommend that time served on major inland bodies of water should be credited towards STCW Basic Safety Training endorsement renewals.*** – The list includes the Great Lakes, Chesapeake Bay, Long Island-Sound, Block Island Sound, Buzzards Bay, Mississippi Sound, Santa Rosa Sound, Matagorda Bay, Laguna Madre, Puget Sound, San Francisco Bay, Inside Passage, – or simply include "Lakes, Bays and Sounds."

We support the comments by Captain Joseph D. Dady in his letter to the Docket.[(1)] *[[(1)]USCG-2004-17914-0008.]*

**Comment #3.** ***Formal Training for Engineers.***

We are unclear about which Engineers will require "education and training of at least 30 months" for career advancement and when, exactly, that training first will be required. Please clarify this in the preamble to the next rulemaking step after the NPRM ….

Specify:

- On vessels and of what tonnage? Under/over 200 GRT or 500 GT/1,600GT?
- On vessels of what horsepower? 1,000? 4,000? 10,000?
- On what routes? Coastwise? Oceans? Inland? Great Lakes?
- On vessels going to which foreign destinations? Canada? Mexico? Bahamas? Puerto Rico? Other foreign countries?
- Most towing vessels under 200 GRT do not require a licensed engineer. Will this change?

**Comment #4.** ***Refer To 74 FR 59366 (Request for comments)*.**