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[Formerly Gulf Coast Mariners Association, Founded in 1999.]

ACCIDENT INVESTIGATIONS

[**Publication History:** This report is based on a Waterways Journal editorial by Jack Simpson that appeared in the Nov. 8, 1999 issue of that publication. Our comments to that editorial, now ten years old, are revised on July 4, 2009 to reflect changes that have taken place.]

Who Has the Best Approach To Public Safety?

(The Waterways Journal ó November 8, 1999)

There is a rumor⁽¹⁾ circulating that the National Transportation Safety Board is seeking to expand its authority to investigate all marine accidents. The idea, we hear, is to take investigations out of the hands of the Coast Guard.

While we have not been able to find anything in writing to substantiate the rumor, there are enough reliable, knowledgeable people who have heard of it to justify considering the hypothetical. After all, while tracking down past rumors, we heard enough false denials to convince us that this is worth discussion. There were denials when rumors circulated that the epitaph was being written for the Second Coast Guard District. Today the district no longer exists, and the Eighth Coast Guard District in New Orleans is in control. Besides, safety is a major issueó one used to justify the imposition of new rules and regulations on the marine industry.

The rationale behind the expansion of investigative authority, rumor has it, is that only the NTSB can be objective because the Coast Guard has grown too close to the industry it both serves and regulates.⁽²⁾ It is not just rumor, however, that both the maritime and aviation transportation industries have experienced watershed events in recent years. The Exxon Valdez spill, the Sunset Limited accident, and the Valujet Flight 592 crash brought unfavorable attention and changes in the relationships between regulatory agencies and their constituents.

After the Valujet accident the FAA was roundly criticized for having been too helpful in promoting a startup airline and negligent in its regulatory responsibilities. During the investigation it was found that FAA field inspectors had recommended that Valujet be recertified several months before the accident. Instead of grounding the airline, FAA headquarters began a "special emphasis" inspection, which was ongoing at the time of the crash. Immediately following the accident, an exhaustive 30-day review was launched óthe equivalent of four years of normal work. The airline complained, with some justification, of a witch-hunt. Five weeks: after the crash, Valujet was shut down. Heads rolled at the FAA. The agency's chief regulator was the first to lose his job, followed not long after by the administrator. The NTSB had run a tight, professional investigation and had managed the press well, in stark contrast with the FAA's handling of the situation. In the ensuing shake-up the FAA was forced to re-emphasize its inspection and regulatory responsibilities, putting the industry at arm's length.

The NTSB's investigation of the Sunset Limited accident laid the blame on the Mauvilla's pilot for incompetence, on the company for allowing a person of questionable competence to operate the vessel, and on the Coast Guard for failing to establish higher standards in licensing inland mariners. In contrast with FAA/Valujet, this accident drew the inland maritime industry and the Coast Guard closer together⁽³⁾ No heads rolled at Coast Guard headquarters. The industry, through The American Waterways Operators, launched the Responsible Carrier Program to improve its practices. Partnerships between the Coast Guard and the industry were formed to deal with issues of common concern and implement new regulations.

Which approach best serves the needs of public safety? We can see pros and cons to each of the three: arm's length, partnerships, or third party. We can't help but note the role politics plays in such matters.

Do we ask too much of the people in our regulatory agencies when we expect them to promote, serve, investigate, and punish the industries they oversee? The NTSB thinks so and appears to have staked out the moral high ground in the current discussion. . Yet we note that NTSB makes recommendations with no concern for practicality or cost of implementation. Regulatory agencies must at least conduct a cost-benefit analysis. Perhaps investigations are better done by a third-party agency.

No one can argue against having objective information. The question is whether expanding NTSB would be the best course.

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We added these notes to the editorial:

(1) The matter surfaced in a 2008 hearing before the House Coast Guard and Maritime Transportation Subcommittee in which Coast Guard investigative practices were criticized following two Department of Homeland Security Inspector General's Office reports. The turf war between the Coast Guard and the NTSB spilled out into debate. While the debate was instructive to members of Congress, the failure of Coast Guard investigators in the field is well documented in two reports issued to the public, one in 1994 and 1996.

Of the three reports, the most significant of these reports is reprinted in our Report #R-429-M. May 9, 2008. United States Coast Guard's Management of the Marine Casualty Investigations Program. [Reprint of *Department of Homeland Security Report #OIG-08-51*] 48p. Our concern is that it appears that the Coast Guard was so incensed by this report that they were able to have the participants reassigned to duties that would no longer impact the Coast Guard. The Coast Guard has the power to silence its critics and is willing to use that power to protect their own turf.

The two earlier reports, allowed to gather dust on the shelf, but published by our association are:

- Report #R-429-A, Rev 1. Mar. 20, 2007. U.S. Coast Guard Marine Casualty Investigations and Reporting: Analysis and Recommendations for Improvement By James G. Byers, Susan G. Hill, & Anita Rothblum. Interim Report, August 1994. [Reprint of the 1994 Coast Guard R&D Report.] 66p. \$14.20.
- Report #R-429-B, Rev. 1. Report of the USCG Quality Action Team on Marine Safety Investigations (July 26, 1996). 78p. \$16.60.

(2) This accurately reflects our Association's opinion.

(3) We agree that this is what happened. However, we believe the Coast Guard should have asked Congress for permission to inspect towing vessels at that time. The Coast Guard failed to do so, and a number of serious accidents took place in the years that followed. The Coast Guard also failed to adequately fund an initiative called the **Commercial Towing Vessel Examination Program** (CTVEP) after committing a great deal of time and resources to it. Finally, in 2004 Congress mandated towing vessel inspection. To date, the Coast Guard has not yet issued the initial Notice of Proposed Rulemaking. The House Subcommittee on Coast Guard and Maritime Transportation noted its impatience with the rulemaking project in public hearings in Fall 2008 following the M/V Mel Oliver collision and Oil Spill in New Orleans. Interestingly, in the interim, the Coast Guard is trying to revive CTVEP.

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National Mariners Association Comments
By Richard A. Block, Secretary, NMA

Both the Coast Guard and the National Transportation Safety Board investigate maritime accidents. According to 49 CFR 850.10, the Coast Guard conducts the preliminary investigation of marine casualties. The Commandant determines from this preliminary investigation whether the casualty is a "major marine casualty" which involves significant safety issues relating to Coast Guard safety functions such as search and rescue, aids to navigation, vessel traffic systems, commercial vessel safety, etc. The Coast Guard must notify the NTSB of major marine casualties.

In April 1993 I requested and received a comprehensive synopsis of the NTSB investigations of marine accidents. While the NTSB has investigated many accidents, I did note some safety recommendations that had "no concern for practicality or cost of implementation..." as the editorial states. However, the vast majority presented solid and meaningful safety considerations.

As the editorial states: "cost-benefit analysis" is an important preliminary step in considering any new regulation. In that regard, mariners should note what the Coast Guard wrote in its preamble to the radar observer rulemaking: "Statistical research has shown that American society is willing to pay \$2,600,000 to save even just one life. Therefore, even if only one life is saved each year (by this rule), the benefit outweighs the expense (by about \$2,000,000 a year)."

In some cases like the Amtrak Sunset Limited accident in 1993, the Coast Guard engages in self-flagellation, grits its teeth and trumpets NTSB recommendations that reach obvious conclusions plainly visible to Congress and the general public. After that accident the NTSB openly and quite deservedly criticized the Coast Guard's failure to

establish higher standards for licensing operators of inland towing vessels. Mariners will pay dearly for this "failure" as detailed in the 2001 regulations that now govern the licensing of towing vessel officers.

The Coast Guard does not always show such respect for the Safety Board's judgment. In November 1995, while public hearings were being held on new small passenger vessel regulations, the NTSB published 55 "open" safety recommendations on passenger vessels the Coast Guard either ignored or never resolved. Under considerable pressure the Coast Guard finally reduced the number of "open" and "closed-unacceptable action" recommendations by 1997.

Our Association is concerned that one of the "open-unacceptable action" NTSB recommendations important to working mariners is being ignored. This recommendation seeks out-of-water survival craft for all vessels and has been out there since the PILGRIM BELLE accident in 1986. This was such an important recommendation that the NTSB placed it on its "most wanted list." The Coast Guard continued to ignore this NTSB recommendation to the detriment of our merchant mariners as well as passengers on small passenger vessels. Finally, Congress stepped in and proposed to remedy the situation in H.R. 2830 (110th Congress) by a vote of 395 to 7. However, the Senate never considered the Bill. In H.R. 2652 (111th Congress) this issue finally may be resolved but no thanks to the Coast Guard looking out for mariner welfare. This safety measure is especially important to mariners who work during the winter months and in cold-water areas.

One of the most egregious examples of in-the-water lifesaving appliances that the Coast Guard continues to approve in spite of this NTSB recommendation remain in common use on small passenger vessels, small tugs, towboats and offshore supply vessels is the "life float." These appliances are not designed to support a person out of water. Survivors are expected to grasp 3/8-inch polypropylene lifelines and hang on to the device in the water (sometimes for hours) until rescued. While these appliances are relatively inexpensive, their continued presence on vessels ignores the fact that a person in cold water loses body heat 25 times more rapidly than a person in an inflatable life raft or inflatable buoyant apparatus whose body is out of water. This causes a significantly earlier onset of hypothermia.

It is unfortunate that the NTSB is a "toothless tiger" with only the power to recommend since the "Coast Guard has grown too close to the industry it both serves and regulates..." as the editorial states. The partnership between industry and the Coast Guard has been so close and cozy for so long that the needs of mariners working in the industry only receive passing consideration in Washington.

Our association believes that working mariners need a strong and effective voice to stand up for their interests in such an environment. Providing adequate lifesaving equipment to save just one life valued at \$2,600,000 is one of our greatest concerns.

Following the virtual collapse of Coast Guard investigations as related by an entire series of reports, we have seen a migration of Coast Guard personnel moving into job openings at the NTSB.