



NMA REPORT #R-276, Revision 10

DATE: October 5, 2011

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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:
PROPOSED TOWING VESSEL INSPECTION REGULATIONS MISSED THE MARK**

Comments on the Notice of Proposed Rulemaking
Docket #USCG-2006-24412 – Our File #GCM-308

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PART 1 – THE MARINE SAFETY DIRECTORATE’S INATTENTION TO OUR MARINERS

Our Association’s Background

Our Association was formed in April 1999 as the Gulf Coast Mariners Association (GCMA) that expanded in 2008 to become the National Mariners Association. We listen carefully to our mariners so we can speak with clarity on national issues on behalf of approximately 126,000 limited-tonnage mariners who serve on tugs, towboats, offshore supply vessels, small passenger vessels, charter boats and other workboats on national issues. We were founded with the help of the AFL-CIO and four national maritime labor unions, as an independent, non-partisan, issue oriented, and is not now and never was organized as a labor union.

In the following pages we cite a number of “reports” that our Association continuously posted on the internet and revised or updated as necessary on our internet website under “Research Reports.” Our concern for the safety, health, and welfare of our mariners on towing vessels predates the towing vessel inspections mandated by Congress in 2004.

Background – The Pilothouse Licensing Act of 1972

Confess became aware of an increased number of casualties involving towing vessels in the mid-1960s and reacted to it by passing the Pilothouse Licensing Act of 1972.⁽¹⁾ Although the matter of vessel inspection was prominent, it was politically expedient to focus on licensing pilothouse personnel⁽²⁾ in preventing casualties than to inspect towing vessels. Even more remote, yet discussed at the time, was the requirement to license towing vessel engineers. The story is best told by Thomas Alegretti in 1980 report titled Uninspected Towing Vessels; An Analysis of the Historical and Contemporary Issue of Their Regulation.⁽²⁾ Mr. Alegretti is now the President of the American Waterways Operators, Inc. [⁽¹⁾ P.L. 92-339 (H.R. 4479) July 7, 1972. ⁽²⁾ Reprinted as our Report #R-409-A.]

More Than Licensing was Needed

The towing industry attracted the attention of the nation in 1993 with the Amtrak-Sunset Limited disaster at Bayou Canot, AL, which took the lives of 45 persons and injured over 100 more. Although the Coast Guard had a well established vessel inspection program, Commandant Robert Kramek rejected the idea of inspecting towing vessels as being too expensive.⁽¹⁾ In 1995, the American Waterways Operators (AWO), an industry trade group representing the tug and barge industry, proposed its Responsible Carrier Program (RCP) as an alternative to inspection.

Unfortunately, the RCP did not prove to be the “silver bullet” as the number of high profile towing accidents continued:

- Jan. 7, 1994 – The tug Emily S. grounded its tow, the tank barge Morris J. Berman and spilling its cargo on the beach north of San Juan, Puerto Rico at the height of the tourist season.
- Jan. 19, 1996 – The tug Scandia catches fire and its tow, the tank barge North Cape runs aground near Point Judith, RI spilling its cargo of home heating oil damaging the fisheries and polluting Block Island Sound.
- Sept. 15, 2001 – The towboat Brownwater V knocks down the Queen Isabella Causeway Bridge to South Padre Island, TX, with 8 fatalities.
- May 25, 2002 – The towboat Robert Y. Love demolishes the Interstate 40 Bridge near Webbers Falls, OK, with 14 fatalities and 5 injuries at a cost of \$60 million.
- Apr. 27, 2003 – Oil spill involving the tug Evening Tide and its tow tank barge Bouchard 120 in Buzzards Bay, MA, pollutes Buzzards Bay with 98,000 gallons of oil.
- July 23, 2008 – Collision between the towboat Mel Oliver and tankship Tintomara near New Orleans spills 283,000 gallon spill of #6 crude oil, closes the Mississippi River for 5 days at an estimated cost of \$270 million.

While these front-page casualties attracted the attention of Congress, they also serve to highlight numerous issues within the towing industry that neither the Coast Guard nor AWO had a handle on. In the meantime, our Association continued to report on some alarming conditions within the industry based upon discussions with our mariners throughout the country as well as a number of accident reports our mariners called our attention to. In the meantime, we attended every meeting of the Towing Safety Advisory Committee (TSAC) and our Directors brought many of our reports to their attention.

On Sept. 9, 2004, President Bush signed the Coast Guard and Maritime Transportation Act of 2004 into law. Section 415 of the Act added “Towing Vessels” to a list of 14 other classes of vessels the Coast Guard must inspect.

Although the 2004 statute required towing vessel inspections, the Coast Guard first must promulgate a Final Rule that specifies how, when, and by whom the initial and subsequent inspections will take place. The Notice of Proposed Rulemaking (NPRM) is only one step in the rulemaking process. The first step, following requirements of

33 CFR §1.05-15, was to “**encourage the public to participate in its rulemaking process.**”

Our Association responded by submitting **our Report #R-276, Rev. 8** dated Feb. 8, 2005 to the Docket for Coast Guard consideration. Report #R-276, Revision 8, contained a list of 76 concrete recommendations. There were few, unrealistic “big ticket” items in our recommendations except where industry and/or the Coast Guard had cut corners on safety and health issues in the past. After waiting seven years, the long-awaited NPRM largely missed the mark because **the NPRM failed to give adequate consideration or weight to the comments collected from the mariners who serve on the nation’s towing vessels.**

There is no question⁽¹⁾ that the Coast Guard received and placed our report in the docket. However, **our Association asserts that the Coast Guard failed to give our recommendations adequate consideration and that this NPRM seriously discriminates against and betrays the interests of the 32,000+ mariners who serve aboard the nation’s 6,200⁽²⁾ towing vessels.** [⁽¹⁾NPRM, p. 49986. ⁽²⁾This vessel count reflects a recent Coast Guard estimate attributed to the “Bridging” program and is not reflected in the count that appears in Table 1 on p. 49997 of the NPRM. After months of delay, we ask, “Who checked the figures and why the discrepancy.”]]

Publication History

Our Board of Directors presented our original Report #R-276 at the Towing Safety Advisory Committee (TSAC) meeting on Mar. 15, **2001** and collected and refined data ever since. The report you are reading is its 10th reincarnation. It always has been a plan to bring all towing vessels under inspection.

Although TSAC is a Federal advisory committee authorized by Congress to advise the Coast Guard on all facets of the towing industry, we discovered that bringing towing vessels under inspection is the prerogative of Congress not the Coast Guard or its advisory committee. Nevertheless, our Association continued to explore the issue with TSAC and the Coast Guard until we determined that the Coast Guard was unwilling to sponsor a Legislative Change Proposal (LCP) to Congress.

Faced with this impediment, we **immediately** redirected our reports to the attention of the House Subcommittee on Coast Guard and Maritime Transportation and the Senate Commerce, Science, and Transportation Committee and asked Congress to authorize the Coast Guard to inspect towing vessels – which they did on Sept. 9, 2004

Our Association, acting on behalf of approximately 32,000 limited-tonnage mariners manning all U.S.-flag towing vessels, **initiated** the movement to inspect towing vessels with **the goal of protecting the safety, health, and welfare of every crewmember and to provide them with the safe workplace promised by the Occupational Safety and Health Act of 1970.** We submitted concrete proposals to TSAC, to the Coast Guard Docket, and to Congress to do so as follows:

- Original Report #R-276, Mar. 15, 2001 presented to TSAC
- #R-276, Revision #1, Sept. 7, 2001 (for TSAC)
- #R-276, Revision #2, Supplement. Mar. 8, 2002 (for TSAC).
- #R-276, Revision #3, Sept. 13, 2002 (for TSAC).
- #R-276, Revision #4 Supplement, Feb. 14, 2003 (for TSAC). The “Supplement” is 204-page book based on “**traditional**” Coast Guard vessel inspection programs presented at the TSAC meeting in San Francisco, CA.
- #R-276, Revision #5, Aug. 11, 2003.
- #R-276, Revision #6, Dec. 15, 2003.
- #R-276, Revision #7, Mar. 1, 2004 (An appeal to Congress).
- #R-276, Revision #8. Feb. 1, 2005 (Submitted to Docket #USCG-2004-19977 and to Congress).
- #R-276, Revision #9 June 1, 2005 (Submitted to Congress and posted on our website.)
- #R-276, Revision #10 revised to the date shown above and submitted to Docket #USCG-2006-24412.

Our recommendations in all our reports were based on a “**traditional**” off-the-shelf vessel inspection program that is practiced in the Coast Guards own “Bridging” program. In turn, the “Bridging” program adapted the previous Commercial Towing Vessel Examination Program (CTVEP) from the mid-1990s that fell into disuse when Headquarters failed to fund it adequately. Our Association asserts that if CTVEP had been adequately funded, we would be 15 years ahead of where we are at this moment with all vessel operators and mariners familiar with existing regulations and ready to move forward into the final “inspection” phase.

Instead, the marine industry experienced consistently vacillating and changing leadership and turnover of personnel in its Marine Safety Directorate. Fortunately, the results are well documented in a report by former Vice Commandant James Card.⁽¹⁾ Congress took note of this report in its changes to the Marine Safety Directorate in the Coast Guard Authorization Act of 2010.⁽²⁾ Consequently, our Association has been left to comment upon a very unsatisfactory NPRM that largely ignores the interests of our mariners as stated in our original submission to the

docket in 2005. [⁽¹⁾Reprinted as NMA Report #R-401-E. ⁽²⁾Title V]

Our Association's latest "update" to our Report #R-276 presents very little that is new. Rather, **this report shows how much of the input from our mariners was ignored, postponed or sidetracked in this NPRM. We only ask that it be re-evaluated and re-considered.**

While the Coast Guard's current "Bridging" program shows impressive signs of success with its long overdue effort to finally **enforce existing regulations** and carry out **traditional vessel inspection policies**, this NPRM injects Towing Safety Management Systems (TSMS) and "functional" regulations and frequently ignores "traditional" inspection efforts. While this NPRM tries to adopt an approach that pleases both "safety management system" advocates and "traditional" inspection programs, it leaves our mariners without an adequate base of enforceable regulations and an excess of vague intentions whose enforcement is left to the benevolence of employers.

46 CFR §1.05-15 states in part: "The Coast Guard will consider the comments received and, in subsequent rulemaking documents will incorporate a concise general statement of the comments received and identify changes from a proposed rule based on the comments." **Our Association submitted 75 specific comments to the docket** in our Report #R-276, Rev. 8 alone in addition to other comments submitted after the comment period closed.⁽¹⁾ Unlike previous rulemaking projects, after carefully reading the NPRM, we found it difficult to identify where most of the items we submitted for consideration were even addressed. [⁽¹⁾Namely NMA Reports #R-276-A and #R-276-B.]

★NMA Recommendation: That this NPRM is unacceptable and requires substantial revision before consideration as a Final Rule.. We ask the Marine Safety Directorate to withdraw this NPRM and fully evaluate each of "**Disappointments**" that previously were submitted in our Report #R-276, Rev. 8 in Docket #USCG-2004-19977.

<p style="text-align: center;">DISAPPOINTMENT #1 – FAILURE TO ADDRESS TOWING VESSEL UNDERMANNING, FATIGUE & HOURS-OF-SERVICE ISSUES</p>
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[**Previous NMA References, Reports, and Comments:** Our Report #R-201 (excerpt); Our Report #R-276, Rev. 9, Item 57; Our Report #R-349; Our Report #R-350, Rev. 6, Issues "H", "K" & "I"; ; Our Report #R-370, Rev. 3; ; Our Report #R-370=A, Rev. 3; Our Report #R-370-B, Rev. 4; Our Report #R-370-C; Our Report #R-370-D; Our Report #R-370-F; Our Report #R-370-J; Our Report #R-370-K; Our Report #R-370-I; Our Report #R-412; Our **Report #R-412-A**; Our Report #R-413, Rev.1; Letter from Congressman Oberstar to Admiral Collins. [*Note: All the foregoing references are included in NMA Report #R-276-H that appears in the Docket.*]

[**Statutes, regulations, and guidelines:** 46 U.S. Code §§8101, 8104, 8301, and 8904. 46 CFR Part 15; USCG Policy Letter #G-MOC 04-00, Change 1.]

Discussion

From the outset, "human factors" such as undermanning towing vessels, fatigue, and hours-of-service abuses **always** have been our Association's primary concerns. Not only do many towing vessels serve as our mariners' workplace but also, for up to one-half or two-thirds of the year, as their home away from home. We made this clear in our request to the 112th Congress in March 2011:⁽¹⁾ [⁽¹⁾NMA Report #R-350, Rev. 6, issues H & K.]

Although we informed the Coast Guard of our Association's opposition of their weak manning and enforcement policies, our efforts apparently had little impact on this NPRM. Consequently, the Marine Safety Directorate **postponed** revising their failed hours-of-service policies in 46 CFR Part 15 until some undetermined future date.⁽¹⁾ [⁽¹⁾NPRM, p. 49991, col. 2 "*The Coast Guard would later request public comment on specific hours of service or crew endurance management if it seeks to implement such requirements,*]

Clearly, the Coast Guard, as a branch of the military, is ill equipped to regulate our civilian merchant mariners. Either by ignorance or incompetence, it seeks to **avoid most human factors issues** that are a major concern to our working mariners such as the **unregulated hours of service** our unlicensed personnel face.

★NNA Observation: The vast majority of limited-tonnage mariners do not belong to a labor union with the authority to negotiate on behalf of its members. The towing industry has a long history of exploiting its mariners with unconscionable hours of service and inadequately manning its vessels. We do not trust the Marine Safety Directorate to effectively bring this exploitation or our mariners' viewpoint to the attention of Congress.

Our Association points out the Coast Guard's paucity of expertise in dealing with our mariners and their attraction to dealing almost exclusively with "Management" that pervades this NPRM. The Coast Guard has little experience with "labor issues" and has been allowed to wash its hands of these issues without making an honest effort to resolve them. This NPRM illustrates how the Coast Guard has worked almost exclusively with "Management" and will deprive our mariners of significant regulatory protection to fall back on.

One of the key components of issuing a Certificate of Inspection (COI) is determining the size and composition of each vessel's crew before entering it on the COI. This clearly makes the adequate regulation of the crew's hours of service an important part of the Towing Vessel Inspection NPRM. **Furthermore, it was our understanding that the Coast Guard assured Congress that it would deal with this contentious issue**, but it apparently does not intend to do so. [Refer to NPRM, p. 49979, col. 1, ¶1]

The NPRM Mentioned – Then Ignored – Hours-of-Service Issues.

The Coast Guard recognized the work-hours problem in that current watchstanding schedules provide **insufficient time off to allow for at least 7 hours of uninterrupted sleep**,⁽¹⁾ To quote from the NPRM preamble:⁽²⁾

- "While the need for sleep varies considerably between individuals, studies show that for adults an average length of sleep between **7 and 8½ hours per night** provides physiological and cognitive resources to support normal health and performance."
- "Additionally, significant disruptions of the timing of daily sleep onset, or restriction of the duration of sleep below 7 uninterrupted hours per day result in significant impacts on human physiology, health, and performance."
- "People who experience daily sleep loss usually suffer a decline in cognitive performance and changes in mood."
- "A substantial body of research demonstrates that **loss of sleep significantly degrades the cognitive skills... necessary to establish and maintain situational awareness**." [⁽¹⁾Refer to NPRM p. 49996, col. 2. ⁽²⁾NPRM pgs. 49992-49993.]

However, as if the Coast Guard suffered from a shortage of data, they now seek even more data, information, and public comment on potential requirements to **increase uninterrupted sleep duration to a threshold of 7 consecutive hours** in one of the two available off periods in the two-watch system. Specifically, the NPRM asks for information based on 18 specific questions.⁽¹⁾ Such questions would be unnecessary at this late date had the project officers done their job thoroughly over the past six years. [⁽¹⁾NPRM, pg 49991-49992.]

The Marine Safety Directorate appears incapable of making a decision with the clear evidence it has including its evaluation of the Crew Endurance Management System (CEMS) as a potential solution.

★NMA Recommendation to Congress: Amend 46 U.S. Code §8104(h) to read: "On a towing vessel, no individual may work for more than 12 hours in a 24-hour period except in an emergency."

★NMA Recommendation to Congress: That an "emergency" be defined in 46 CFR §136.110 of this rulemaking.

★NMA Recommendation to Congress: That the "two-watch" system be replaced with a "three-watch" system for all towing vessels in 24-hour operation on any voyage that extends beyond 24 hours that uses the same crew throughout the voyage.

★NMA Recommendation to Congress: That each watchstanding position be fully manned in each shift.

The "three-watch system as used in the deep-sea, blue-water merchant marine, provides an honest 8 consecutive hours off duty twice a day. It provides an additional officer to stand watch and provide for other supervisory, support, and administrative duties. The Coast Guard had abundant opportunity to decide this issue in the last seven years! It is clear that they are conflicted and do not intend to do so.

Our Association Responds

The Coast Guard's current excuse for inaction on manning and hours of service issues is that they needed additional information. On Aug. 20, 2011 our Association responded to the Docket with a letter and 19 enclosures⁽¹⁾ consisting of 219 pages. Of the 19 enclosures, 16 are previous NMA Reports that were available to the Coast Guard and the public on our website – some for many years. To express our keen disappointment that the Marine Safety Directorate neglected or procrastinated on these issues, **our Association also submitted printed copies of this**

★NMA Recommendation: That this NPRM be withdrawn until the Marine Safety Directorate resolves the key issues of manning, hours-of-service, and fatigue. Only then should the NPRM be resubmitted to the public for additional comments.

DISAPPOINTMENT #2
IGNORING OUR ASSOCIATION'S INPUT ON OTHER PERSONNEL MATTERS

The Coast Guard⁽¹⁾ is responsible for maintaining the industry's casualty statistics including vessel casualties and personal injuries. These statistics, including those cited in this report, indicate that the majority of all casualties are caused by "human factors." If this is so – and figures range between 54% in this report⁽²⁾ to more than 90% in the Coast Guard-AWO Bridge Allision report – then it is only reasonable to consider our mariners' viewpoint since they are the only "humans" on board towing vessels when these casualties occurred. Our Association speaks on behalf of these limited-tonnage mariners in this report. Our mariners and their comments about shipboard conditions could have improved this NPRM if the Marine Safety Directorate had not discounted and sidetracked our views as presented to the docket in 2005. [⁽¹⁾Specifically CG-545. ⁽²⁾NPRM, p.49982, col. 3.]

Since 2001, our Association collected and pointed to a number of changes to improve the towing industry. Our mariners work on these towing vessels every day and continually make suggestions to us that we continuously documented and evaluated in previous editions of this report.

The Coast Guard "Bridging" program has done a commendable job of pointing out "existing regulations" the agency is expected to enforce. In fact, they the Coast Guard should have enforced all of these regulations years ago but often failed to do so. By the time this Final Rule goes into effect, the towing industry should be ready to move ahead and enforce any new rules this NPRM introduces. However, this NPRM appears to overlook many of the important areas above and beyond undermanning, fatigue, and abusive hours of service we previously reported. We decline to speculate as to why the Project Officers did this. However, we reiterate that this NPRM will be unacceptable unless these shortcomings are remedied.

2-1. Provide mariners with a hearing protection program comparable to OSHA for shoreside workers.

[Previous NMA References, Reports, and Comments: Our Report #R-349; Our Report #R-276, Rev. 9, Item 57; Our Report #R-350, Rev. 6, Issue "Q".]

[Statutes, regulations, and guidelines:

- 46 U.S. Code §2103.
- 29 U.S. Code §651–678. Either the Coast Guard or OSHA should have enforced applicable provisions of the Occupational Safety and Health Act of 1970 on behalf of our mariners serving on towing vessels.
- 29 CFR 1910.95, Hearing Protection. Since towing vessels are "uninspected" vessels until the new rules are promulgated, OSHA should have taken the lead in enforcing their regulations on towing vessels. We discovered that they will do so only upon written complaint and if they are able to access the vessel at the dock.
- U.S. Coast Guard NVIC 12-82. Unfortunately for mariners, a NVIC – even if well intentioned – is not enforceable!

Discussion

Towing vessel operators seldom provide their mariners with an adequate hearing protection program like the program required by OSHA regulations. Our Association followed this issue for many years and submitted our Report #R-349 to the Coast Guard.

At our request, the Coast Guard opened **Docket #USCG-2003-15771** on July 28, 2003. On Sept. 24, 2004 we received a letter from Coast Guard Captain Raymond J. Petow (G-MSE-1) that stated in part: "...the Coast Guard does NOT plan to initiate an isolated rulemaking on protecting mariner hearing...A more effective way to deal with this issue is a comprehensive rulemaking that considers the entire vessel as a system. In the case of towing vessels, recent legislation has created just such an opportunity." The Coast Guard project officers missed this opportunity!

Noise exposure and hearing loss issues are serious problems that plague our mariners and call for regulatory attention since the early 1970s.

Our limited tonnage mariners never received the same protections Congress provided other American workers

under the Occupational Safety and Health Act of 1970 including enforceable OSHA Regulations for occupational noise exposure.

Although the Coast Guard was fully cognizant of IMO Resolution A.468 (XII), Code of Noise Levels Aboard Ship, and even issued their own extensive “guidelines” in NVIC 12-82 based on that resolution, they failed to introduce comprehensive and enforceable regulations to protect our mariners’ hearing or even “incorporate by reference” significant OSHA regulations.

In over three decades, the Coast Guard has done absolutely nothing to protect the hearing of our mariners on the nation’s towing vessels. Yet the National Maritime Center has the temerity to punish our mariners for hearing when they attempt to renew their licenses. In the meantime, mariners report conditions on some vessels are so noisy that they must wear earplugs even when they sleep!

Action requested: When we submitted a previous edition of this report to the Towing Vessel Inspection Docket in 2005, we asked the Coast Guard to include this item in the current towing vessel inspection rulemaking agenda. Our request appears to have been ignored. We insist that this issue be addressed and corrected for the health and welfare of our mariners. Even if the Coast Guard takes this first step for towing vessels, similar steps also must be taken for other classes of vessels under 1,600 gross tons such as small passenger vessels and offshore supply vessels.

Instead of protecting our mariners, the Coast Guard’s National Maritime Center is cracking down on mariners that have experienced hearing loss. We serve notice to both the Coast Guard and vessel operators that the day of expendable mariners has passed. Hearing protection is an expensive issue. Hearing aids cost between \$1,000 and \$10,000 and are a poor substitute for a hearing protection program.

2-2. Non-Reporting of Accidents and Injuries

[**Applicable Statutes:** 46 U.S. Code §§2103; 6101; 6301; 6305; 10603.]

[**Existing Regulations:** 46 CFR §4.05-1(a)(6). Our experience shows this regulation is inadequate and that the Coast Guard poorly enforces it to the serious detriment of our mariners.]

[**Previous NMA References, Reports, and Comments:** Our Report #R-276, Rev. 9, item 56; NMA Report #R-350, Rev. 6, Issue “Y”.]

Discussion

In August **1994**, the Coast Guard Research and Development Center issued an interim report titled: U.S. Coast Guard Marine Casualty Investigation and Reporting: Analysis and Recommendations for Improvement.⁽¹⁾
[⁽¹⁾Reprinted as NMA Report #R-429-A, Rev. 1]

The data analysis in this government report revealed a number of problems with the collection and entry of marine casualty data in general, and human factors data in particular. The problems were discussed in terms of the requirements for an accurate and reliable database, and suggestions were made for addressing these problems. These problems persist 17 years after this government report was published.

Personal injuries. Our Association demonstrated to the Coast Guard that countless personal injuries were never reported to the Coast Guard as required by existing regulations.⁽¹⁾ We also noted that the existing regulations on reporting personal injuries are far less comprehensive than regulations enforced by OSHA in most shoreside industries. [⁽¹⁾Refer to 46 CFR §4.05-1 and §4.05-10.]

Our attorneys presented evidence to a Federal District Court in Lafayette, LA, to the Department of Transportation Inspector General, and to Coast Guard Headquarters where a major marine employer failed to report 44 serious mariner injuries in an eight-year period to Coast Guard officials. The injuries in question were serious enough for mariners to file suit in various courts – where our attorney uncovered the records. The Department of Homeland Security also probed our report and interviewed our attorney.

The local Coast Guard Marine Safety Office failed to punish the offending company for failing to report these personal injuries. From data subsequently furnished by the Coast Guard, we estimated that this omission skewed the Coast Guard’s personal injury statistics submitted by the industry during an eight-year period by approximately 25%. Nevertheless, the Coast Guard expressed no interest in this revelation and took no meaningful action. This leads us to the conclusion that, when injured on the job, our mariners cannot even count on the first step of fair treatment from cognizant Marine Safety officials.

Our Association found that a number of other maritime employers are lax in their personal injury reporting practices and that this inevitably works to the detriment of our mariners.⁽¹⁾ The Coast Guard’s dismissal of our allegations clearly shows that they are neither willing nor able to enforce existing accident reporting regulations.
[⁽¹⁾Refer to NMA Report #R-202, Rev. 4.]

We are also aware of a number of instances where vessel Masters filed personal injury reports with their employers but these reports were not forwarded to the Coast Guard within the five-day period as required by existing regulations.⁽¹⁾ Sometimes, reports were never filed with the Coast Guard. [⁽¹⁾46 CFR §4.05-10.]

We have seen additional cases where boat owners and their attorneys fabricated accident reports months after the accident and then filed them with Coast Guard officials who accepted them. Our mariners invariably suffer when company attorneys prepare accident reports months after an injury occurs and when Coast Guard officials accept such reports without question. This is nothing less than dereliction of duty on their part.

Our Association petitioned the Coast Guard to allow any injured party to submit his own report to the Coast Guard if he believes the “owner, agent, master, operator, or person in charge” (i.e., those persons currently authorized to submit such a report) did not do so. The Coast Guard established **Docket #USCG 2002-12580** in response that is available at www.regulations.gov. On July 16, 2004 the Coast Guard (G-MOA) informed us that: “The current regulation, specifically 46 CFR §4.05-1, does not set limitations as to who may submit a report of marine casualty. An injured party is not prohibited from making a report to the Coast Guard...I have determined that the appropriate action in this instance is to release a Policy Letter to ensure that proper emphasis is given to any casualty report submitted to the Coast Guard regardless of the source.” To the best of our knowledge, the Coast Guard did not prepare any such Policy Letter. We respectfully disagreed. We notified the Coast Guard that we are not satisfied with this solution because a mariner and his lawyer have much more convenient primary access to a Federal regulation rather than an obscure Coast Guard staff document such as a “policy letter.” [⁽¹⁾NMA file #GCM-56]

In addition to our original petition filed on Sept. 7, 2001⁽¹⁾ we filed an additional petition on Aug. 8, 2002 with the U.S. Department of Labor seeking “Improved Record Keeping and Accident Reporting for our mariners.”

★NMA Recommendation: That the OSHA personal injury reporting system replace CG-form 2632 for reporting all personal injuries.

Our Association believes the OSHA accident and injury recording, reporting system is far superior to the Coast Guard’s system and that its industry-wide implementation would dramatically improve personal injury record keeping in the marine industry to the great benefit of our working mariners.

Our Association continues in our efforts to change 46 CFR §4.05-1(a)(6) to allow or to require any injured mariner to submit a report directly to the Coast Guard. However, for a permanent solution and a safeguard to both employers and employees, we note that 46 U.S. Code §10603 requires notifying: “...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.” There is also a statutory requirement to post a placard informing crewmembers of this duty. Unfortunately, this statute only applies to fishing industry vessels!

We note that over the years general lack of concern over reporting personal injuries on towing vessels was not conducive to generating meaningful statistics for this sector of the maritime industry. In short, personal injury statistics generated by the Coast Guard are unreliable.

2-3. Address the Health Issues of Industry’s Failure to Adopt Uniform “No Smoking” Policies.

[Applicable Statute: 46 U.S. Code §2103, Marine Safety and Seaman’s Welfare.]

[Previous NMA References, Reports, and Comments: NMA Report #R-350, Rev. 6, Item “S”; Our Report #R-276, Rev. 9, item #68; Our Report #R-341, Rev. 4; Our Report #R-341.]

Discussion

The applicable statute states: “...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 provisions of this subtitle.”

A significant part of our disappointment with this NPRM is the Marine Safety Directorate’s complete failure to consider seamen’s health and welfare issues that impact the 32,000+ mariners who man all of the nation’s 6,200 towing vessels. While this remains a divisive issue, it not only adversely impacts the retention of mariners in the towing industry but demonstrably impacts their health with “second-hand smoke.” It has been easier for the Coast Guard to ignore this and other human factors issues – a fact that is painfully evident throughout this entire NPRM.

Many mariners serving on small commercial vessels including towing vessels report that they are deeply concerned about their health because they are surrounded by an atmosphere of second-hand tobacco smoke 24-hours

per day, sometimes for weeks on end.

Although most mariners on larger vessels have their own staterooms, central air conditioning systems often recirculate the air throughout the boat. Consequently, second-hand tobacco smoke from the pilothouse, lounge and galley pervades the entire boat.

The Coast Guard officials informed us that they enforce the following policy ***in regulating their own personnel*** as follows: “Smoking in any Coast Guard floating unit, aircraft, or vehicle is prohibited except on weather decks of Coast Guard vessels (small boats and cutters).”

In response to our inquiry they also stated that: “The Coast Guard does not currently regulate health-related smoking in the commercial industry ***and there are no plans to do so.*** The Coast Guard regulations regarding smoking on commercial vessels are generally for fire prevention purposes...”

At the same time, Coast Guard officials at the National Maritime Center’s (NMC) Medical Evaluation Branch think nothing of terminating a mariner’s career for smoking related illnesses that the absence of regulations in this area has encouraged for years. Since the towing industry has not acted on what has become a national health problem, the time has come for the Marine Safety Directorate to exert leadership and take pro-active steps to protect our mariners’ health and welfare from the universally recognized dangers of second-hand smoke. ***Our Association asserts that this NPRM is the perfect place to start and that it is timely to do so..***

Many of our mariners must live and work in confined and enclosed spaces 24-hours per day. Re-circulated and unfiltered air has the potential to create an unhealthy environment in a workplace as well as an accommodation space.

Our mariners are well informed about the dangers of second-hand smoke and the Surgeon General’s reports on smoking.⁽¹⁾ [⁽¹⁾Refer to NMA Report #R-341-A. *The Health Consequences of Involuntary Exposure to Tobacco Smoke. Executive Summary of 2006 Surgeon General’s Report. (Reprint). 28p.*]

★NMA Recommendation to Congress: Direct the Coast Guard and industry to institute the same “No Smoking” policy for mariners that the Coast Guard enforces on its own vessels to improve the health and welfare of our mariners. This reasonable policy accommodates both smokers and non-smokers.

Although we recently reiterated our petition to Congress,⁽¹⁾ our Association believes the Coast Guard already has the authority to include the regulations we seek in this NPRM. [⁽¹⁾NMA Report #R-341, Rev. 4.]

Some employers have smoking policies that parallel the Coast Guard’s policy although mariners report that ***company enforcement is unpredictable and spotty at best*** with no opportunity provided for appeal. While this is an area where employers should take the lead., it might have been helpful if the American Waterways Operators adopted a similar policy in the personnel section of its Responsible Carrier Program.

Since relatively few “limited tonnage” mariners belong to a labor union and often are unable to bring about change within the company they work for, ***smoking has become a workplace safety and health issue*** and is a regulatory issue of national significance. As such, it should be incumbent upon the Coast Guard regulators to establish appropriate regulations to protect our mariners’ health. Even though they have not assisted in resolving this issue. Local ordinances offer no protection for our mariners nor do many employers.

Action: Our Association will redouble its efforts in presenting the significance of this issue to our mariners in this rulemaking package and continue to ask the 112th Congress for statutory relief.

2-4. Sanitary Food Service Training.

[**Applicable Statutes:** 46 U.S. Code §8904(b) – as part of the CEMS “Demonstration Project” cited in §409 of the Coast Guard and Maritime Transportation Act of 2004.]]

[**Previous NMA References, Reports, and Comments::** Our Report #R-205; Report #R-276, Rev. 9, items 9, 42 & 52; Report #R-395-A, Rev. 1.]

Discussion

Since the Coast Guard ignored this matter important to our mariners in this NPRM, we update and reiterate our previous comments as follows.

Cooks. Although not usually listed separately on a vessel’s Certificate of Inspection (COI), our mariners understand the need for ***trained, healthy cooks***, to provide balanced, nutritious meals, and sanitary food service wherever food is handled, stored, and cooked on board a towing vessel. This applies to every towing vessel other than “lunch bucket” boats.

On many smaller towing vessels (e.g., with fewer than 6 crewmembers), some crewmember (e.g., officer,

deckhand, engineer, or tankermen) is designated to prepare the meals. These mariners seldom have any food-handler training or often lack sufficient time to prepare a nutritious meal under sanitary conditions.

Reports from our mariners tell of crewmembers who “work sick” and others unable to work as a result of food-borne illnesses. A sandwich made with bad meat or food that is not stored, cooked, or refrigerated properly causes many problems. These problems not only cause illness but also require other overworked crewmembers to “carry the load” for the sick mariner.

Many ***older mariners*** are on a diet prescribed by a doctor for various health issues. In most cases, these are officers that must renew their credentials every five years and whose health maintenance should be of greater concern to their employers. There is no way they can stay on their prescribed diet on many towing vessels without the ability to order the proper groceries or prepare the meals their diets call for.

A ***trained cook*** can help these crewmembers maintain their diet. A cook can also save the towing company money when ordering groceries by maintaining an inventory and ordering only the food the crew needs.

Adequate food. The statute covering provisions, 46 U.S. Code §10303(a), states: “A seaman shall be served at least 3 meals a day that total at least 3,100 calories, including adequate water and adequate protein, vitamins and minerals in accordance with the United States Recommended Daily Allowances.” Unfortunately, this statute only applies to seamen who “sign articles” – possibly a statutory oversight.

However, the problem our “limited-tonnage” mariners face is not usually the quantity or quality of the food provided as much as it is with ***poor food handling, basic sanitation, and lack of hygiene***. This is coupled with a lack of positive knowledge that every food handler is free from communicable diseases.

The crux of the problem is that a person who carries out any duty as a “food handler” must be ***trained to handle food in a safe and sanitary manner*** when cooking or serving food for others. Dietary training and training in food preparation is necessary as part of Crew Endurance Management training since a knowledge of food and food intake is an important factor in CEMS.

Unfortunately, the Coast Guard traditionally avoided the issue of enforcing basic sanitation and hygiene issues on towing vessel where the situation on some vessels often becomes out of control. Some Coast Guard boarding teams make comments like “How can you guys live this way” without any regulation that authorizes them to enforce the same basic sanitation requirements(1) they take for granted as government employees. [⁽¹⁾COMDTINST M6240.4A]

Our Association asked the Coast Guard to establish a ***“food handling”*** curriculum to address the problems cited above and to ***require*** (i.e., ***draft regulations*** as part of the towing vessel inspection regulatory package) every mariner serving on a towing vessel to obtain this training. There is no sign that this was even considered.

46 CFR §12-25-20 covers the merchant marine entry rating called “Food Handler.” This rating does not currently apply on inland waters or on vessels under 100 GRT. If it did, it only requires certification that a ***food handler*** (FH) is free from communicable diseases. Many employers simply ignore this issue.

Proposed 46 CFR §140.610 is a “functional” regulation that identifies 13 “health and safety hazards.” Item #13 is “(13) Sanitation and safe food handling.” The only guidance is: “The owner or managing operator must implement procedures to identify and mitigate health and safety hazards including but not limited to the following: “(13) Sanitation and safe food handling.”

What are needed are “prescriptive” food sanitation regulations citing recognized standards that can be enforced and not “functional” regulations that may or may not be reviewed once a year. The Coast Guard has such regulations that govern food preparation for its seagoing personnel. ***Our Association demands equal protection for our mariners.***

2-5. Adopt Requirements for a Sanitary Inspection Including Food Service.

[Previous NMA References, Reports, and Comments: Our Report #R-205; Report #R-276, Rev. 9, item 9.& 52.]

Discussion

Our Association expresses our concern for the ***health and safety*** of limited-tonnage mariners who live and work on ***all*** vessels of less than 1,600 Gross Register Tons including towing vessels.

While industry trade publications typically show gleaming crew accommodations on new vessels, some towing vessels’ crew accommodations were allowed by their owners, operators, and even crewmembers to deteriorate into unhealthy, and unsanitary conditions. Many of our mariners, especially on older and smaller towing vessels, often are forced to live in filth and squalor. In addition, health, sanitation, and personal hygiene never were treated as a significant part of most Coast Guard credentialing exams that require study and preparation and, most likely are given short shift in license preparation courses.

Mariners forced to live in substandard conditions have never had an effective voice in improving these conditions.

Consequently, we renew our determination that this NPRM address the issue.

In addition to an inspection before receiving its initial Certificate of Inspection, 46 U.S. Code §3308 requires the inspection of "...crewmember accommodations on each vessel subject to inspection at least once a month or when the vessel enters United States ports to ensure that the accommodations are:

- (A) of the size required by law and regulation,
- (B) properly ventilated and in a clean and sanitary condition; and
- (C) equipped with proper plumbing and mechanical appliances required by law and regulations, and the appliances are in good working condition."

The intent of Congress to provide decent, healthy living conditions for our mariners is clear. However, our experience and reports from working mariners indicate that the Coast Guard often interpreted this statute and 46 U.S. Code §3307 strictly but never before applied them to "uninspected" towing vessels even during random boardings. We received reports of Coast Guard boarding parties who boarded towing vessels and asked crewmembers how they could endure living in such filthy conditions – but without the authority (or concern) to make them improve the observed unsanitary and/or unsafe conditions. We find the wording of the **Canada Shipping Act**, Towboat Crew Accommodation Regulations [**Enclosure "E"**] instructive and consider its wording worthy of application to our American-flag towing vessels:

★NMA Recommendation. That the Coast Guard include suitable prescriptive regulatory wording comparable in scope to the excerpt from the Canada Shipping Act [Enclosure "F"] as a part of the NPRM.

★NMA Recommendation: That the Coast Guard apply consistent sanitary regulations to all classes of inspected vessels including towing vessels.

We show inconsistencies in the following regulations applicable to vessels that may be similar in size or horsepower to towing vessels:

Comparable Sanitation Inspection Regulations

Cargo & Miscellaneous Vessels

§91.35-1. When made.

(a) An inspection of quarters, toilet and washing spaces, serving pantries, galleys, etc., shall be made at least once in every month. If the route of the vessel is such that it is away from a United States port for more than one month, an inspection shall be conducted at least once every trip.

Offshore Supply Vessels

§131.515. Periodic sanitary inspections.

(a) The master shall make periodic inspections of the quarters, toilet and washing spaces, serving pantries, galleys, and the like, to ensure that those spaces are maintained in a sanitary condition.

(b) The master shall enter in the vessel's logbook the results of these inspections.

Small Passenger Vessels

§176.818. Sanitary inspection.

At each inspection for certification and at every other vessel inspection, quarters, toilet and washing spaces, galleys, serving pantries, lockers, and similar spaces may be examined to determine that they are serviceable and in a sanitary condition.

We note an "annual" not a "monthly" sanitary inspection for small passenger vessels. We see no definition of "sanitary" or details of what a "sanitary inspection" entails in any of these rules. 46 U.S. Code §3308(2) calls for a monthly sanitation exam. We find monthly sanitation examinations are reasonable. We expected to see nothing less in this NPRM.

Our mariners expect the Coast Guard to remedy these shortcomings by requiring substandard towing vessels to upgrade vessel sanitation and to assure that the upgraded standards are maintained.

The NPRM mentions the word "sanitary" in only two places:

- NPRM p. 50014, Col. 3. **Proposed 46 CFR §137.220** (Scope) states that: "The owner or managing operator of a towing vessel must examine or have examined the following systems...(k) Sanitary examination. Examine quarters, toilet and washing spaces, galleys, serving pantries, lockers, and similar spaces to ensure that they are clean and decently habitable.
- NPRM p. 50024, Col. 2 **Proposed 46 CFR §140.510(e)**. (General health and safety requirements). "(a) The owner

or managing operator of a towing vessel must implement procedures for reporting unsafe conditions and must have records of the activities conducted under this section....”(e) The vessel including crew’s quarters and galley must be kept in a sanitary condition.”

We assert that such broad directives are totally inadequate. Foreign cruise ships operating from U.S. ports face significant public health inspections. Other classes of inspected vessels are required to pass an initial public health service inspection. Public vessels like Coast Guard cutters and navy ships have well developed sanitary inspection procedures. We believe the Project Officers for this NPRM should have located or developed a suitable generic sanitary inspection checklist and incorporated it by reference. In addition, we believe that the health and welfare of a towing vessel’s crewmembers demand that meaningful sanitary inspections must be conducted at regular intervals.

The Coast Guard enforces basic sanitation policies on their own cutters. We ask: ***Why are there two standards – one for our government employees supported by our taxpayers and another, inferior system, for our mariners who are taxpayers?***

★NMA Recommendation: That the Marine Safety Directorate identify or develop and then incorporate a comprehensive generic sanitary inspection checklist in the Final Rule.

★NMA Recommendation: That a licensed officer conduct a full sanitary inspection of his vessel at monthly intervals recorded on a suitable checklist to be retained on board for one year, and entered in the vessel’s Official Logbook.

2-6. Habitable Accommodation Spaces

[Applicable Statutes: 46 U.S. Code §2103, 3306; 11101.]

[Comparable Regulations: 46 CFR §177.700; 46 CFR §177.710; 177.710; 177.800; 177.810.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, items 8, 21, 34. Our Report #R-386.]

Discussion

The NPRM satisfactorily defines accommodation spaces. (***OK***– proposed 46 CFR §136.110)

Considering the sorry state of many existing towing vessels, especially older vessels, and the fact that towing vessels never were subject to inspection, our Association finds the proposed “functional” type regulations are simply inadequate. Consequently, we call upon the Project Officer to provide additional “prescriptive” regulations or, at least incorporate by reference standards prescribed for other classes of inspected vessels that a vessel inspector or the OCMI can use to restrict to a substandard towing vessel whose quarters are not “habitable” to 12-hour service in any 24-hour period.⁽¹⁾ [⁽¹⁾46 CFR §177.710, a regulation for small passenger vessels, states: “Overnight accommodations must be provided for all crewmembers if the vessel is operated more than 12 hours in a 24-hour period, unless the crew is put ashore and the vessel .is provided with a new crew. We assert that towing vessel crewmembers deserve nothing less!]

Prescriptive regulations such as those at 46 CFR Part 177 Subparts G & H are reasonable standards that apply to other limited-tonnage mariners and should be available on inspected towing vessels. There are also comparable Canadian standards⁽¹⁾ mentioned above to consider for inclusion in new towing vessel inspection regulations. [⁽¹⁾Refer to our Report #R-386.]

Towing vessels have no regulations governing the size and specifications of the accommodation spaces for the crew. We assert that any new towing vessel regulations must address these specific issues among others. The Marine Safety Directorate must apply comparable accommodation standards to existing towing vessels with substandard crew accommodation spaces including ***quarters; toilet spaces; shower room; galley; and berthing spaces.***

- Two means of escape from ***each*** accommodation space. (i.e., ***no exceptions as allowed in proposed 46 CFR §144.330(d)***)
- In ***proposed 46 CFR §144.330(e)*** crewmembers should not be called upon to risk their lives if “existing arrangements” cannot provide for two means of escape.
- Ergonomics, including clear headroom and adequate floor area in sleeping spaces excluding floor areas too narrow or confined for a person to stand in.
- Furnishings including lockers with hasps for padlocks to safeguard a mariner’s personal possessions.
- Accommodation spaces may not be used for storage other than personal gear of its seamen.
- Safety includes adequate fire protection. [***Example, on one towing vessel, combustible paints and thinners were***

stored in a wooden closet in a narrow corridor adjacent to the master's and the pilot's stateroom. A fire in that closet would block egress from those rooms with no outer route to exit to safety available]

- Smoke alarms to protect all accommodation spaces. (OK – proposed 46 CFR §142.335)..
- Heat or flame detector in galley with range hood extinguishing system. (OK – proposed 46 CFR §142.340).
- Fire resistant, asbestos-free deck, paneling, and overhead coverings.
- Heating, Ventilation, and Air Conditioning (HVAC) whose minimal operating conditions are specified.
- Means to control of excessive external noise in accommodations to improve sleep quality and ensure that it is uninterrupted.
- Sanitary, vermin-proof, and rustproof construction throughout.
- Minimum illumination of living spaces with control of light for off duty sleeping and reading.
- Sanitary construction of toilet spaces that is capable of containing liquid overflows and dispersing odors.
- Gastight bulkheads to protect accommodation spaces from engineroom fumes.
- Insulation adequate to protect mariners from condensation on bulkheads, hull plating, and from external heat and cold.
- Specify minimum size of bunks, limit stacking of bunks to two bunks, provide ladders, steps, and handholds to upper bunks, and require lee rails for vessels used on waters other than rivers.
- Specify adequate seating for crewmembers in sleeping room.
- Sleeping curtains fitted to each bunk where more than one person occupies a room.
- Crew rooms limited to 4 persons.
- Weather-tight construction of living spaces.
- Sanitary inspections for vermin and hygiene must be formally addressed in federal regulations as they have been for other commercial vessels.

2-7. Require the Removal of All Asbestos and Asbestos Products.

[**Applicable statutes and regulations:** 46 U.S. Code §2103; 29 U.S. Code §651–678. (the OSH Act of 1970 as amended; 29 CFR §1915.1001; 29 CFR §1926.58.)

[**Previous NMA References, Reports, and Comments:** NMA Report #R-276, Rev. 9, item #55. NMA Report #R-445; NMA File #GCM-102.]

Discussion

For over 40 years, neither Coast Guard nor OSHA officials effectively enforced regulations promised by the Occupational Safety and Health Act of 1970 on behalf of the 32,000+ mariners serving on towing vessels.

Older towing vessels continue to have asbestos, which was outlawed, in most other workplaces throughout the country. This NPRM provided the perfect opportunity to inspect, condemn, and remediate asbestos from towing vessels. Our Association followed this issue and previously submitted our comments to the Docket. We also submitted our Report #R-445 that outlined this problem to Congressional oversight committees in 2007.

Since many 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 safely.

Comments on regulations and guidelines. While OSHA has extensive regulations governing this issue⁽¹⁾ the Coast Guard only provides unenforceable “voluntary guidelines” to protect our mariners against these hazards. The Coast Guard guidelines appear in NVIC 6-87 and include excerpts from OSHA regulations.⁽²⁾ While the Coast Guard never issued its own set of regulations, it refuses to enforce regulations from other agencies,⁽³⁾ and depends on unenforceable guidelines like NVIC 6-87. Their lack of attention to this serious health issue does not fool our Association. [⁽¹⁾29 CFR §1915.1001. ⁽²⁾29 CFR §1926.58. ⁽³⁾CG-521 Letter, Feb. 28, 2010, Acting Chief, Office of Design and Engineering Standards.]

Under Memoranda of Understanding with OSHA signed on Mar. 3, 1983 and again on Nov. 8, 1996,⁽¹⁾ the Coast Guard became the lead agency for controlling asbestos on inspected vessels. Since towing vessels will become “inspected” vessels upon the promulgation of the Final Rule, the responsibility for asbestos abatement for the nation’s 6,200 towing vessels now falls upon the Coast Guard. This rulemaking project presented the perfect opportunity for the Coast Guard to step up to the plate – and they blew it! [⁽¹⁾Refer to NMA Report #R-202-B, Rev. 2.]

Our mariners expect the Coast Guard to either adapt OSHA asbestos control regulations through **Incorporation by Reference** procedures in the new towing vessel inspection regulations or draft their own regulations and then enforce them as towing vessels are brought under inspection. This is long overdue and this rulemaking still provides

an excellent opportunity to address this issue.

The Coast Guard appears to show more concern for its own personnel in the area of asbestos protection than it does for protecting our merchant mariners – a consistent theme throughout this report – and a constant reminder that Congress charged the Coast guard with superintending the U.S. Merchant Marine under 46 U.S. Code §2103.

A Coast Guard internal publication, COMDTNOTE 6260 published in 1996, is a detailed manual that introduces and defines the asbestos problem, outlines an asbestos management plan, identifies where asbestos may be found, and describes approved repair, removal and disposal procedures in terms understandable to Coast Guard personnel.

We do not intend to see our 32,000+ mariners who work on towing vessels left holding the bag after this towing vessel inspection rulemaking becomes History. Our Association received distressing word that employers exposed our mariners to large quantities of asbestos dust **on inspected vessels**. However, when our Association notified the cognizant the Coast Guard Marine Safety Office, we received no satisfaction and not even a follow-up.

Action: Our Association insists upon adequate Coast Guard rulemaking on this issue as it affects the health of our mariners working on older towing vessels. We assert that willful or accidental violation of asbestos regulations should obligate an employer to provide affected employees with appropriate medical health monitoring and treatment after exposure.

DISAPPOINTMENT #3 – TOWING SAFETY MANAGEMENT SYSTEMS (TSMS) ARE NOT ENFORCEABLE

3-1. TSMS is Unenforceable. An explanation of the TSMS and how it will operate fills 46 CFR Part 139 of the NPRM. A likely **example** of a TSMS – although not stated as such – is the American Waterways Operators’ (AWO) Responsible Carrier Program (RCP).⁽¹⁾

The problem with such a system, as experienced by our mariners on many occasions, is that its provisions – although they may have the best intentions – have proven to be **unenforceable**. Mariners who rely on their employers to enforce these provisions are often left holding the bag because **only the Coast Guard has enforcement powers**.

Our mariners working on vessels under a TSMS will need to understand that, while the Coast Guard has complete Suspension and Revocation (S&R) control over their credentials, there is little chance that Coast Guard investigators will delve deeply into any mariner’s direct complaint about “non-conformities” on a towing vessel that falls under the TSMS system.

In occurrence short of a reportable casualty, a Coast Guard investigator has enough latitude to treat any such complaints of non-conformities as a “labor issue” between a disgruntled mariner and his employer and leave the issue up to the employer discretion to resolve. If this makes our mariners uneasy, we suggest seeking a new job with a more conscientious employer.

The Department of Homeland Security’s 2008 investigation of the Coast Guard’s management of the Marine Casualty Investigations Program⁽¹⁾ revealed that “...To reduce the backlog (of investigations), the Coast Guard resorted to a **mass closure of investigations** without proper Headquarters review. Specifically, on Sept. 26, 2006, Coast Guard **Headquarters closed 3,848 investigations that it deemed “low risk”** Included in (this) closure project were 194 informal and 1 formal investigation. Although the Coast Guard deemed them low risk, some investigations merited reviews because **they involved serious incidents requiring causal analysis**. Enforcement actions also may have resulted from these investigations.” [⁽¹⁾Reprinted in NMA Report #R-429-M.]

3-2. NPRM Attaches Few Penalties to TSMS Safety Violations. Our Association found no evidence in the NPRM that Congress has considered placing adequate civil or criminal penalties in place to punish companies who violate terms of the TSMS. The only item that resembles a penalty is that a **vessel** (i.e., **not** a person or a corporate entity) that fails to live up to its TSMS agreement would be forced to undergo annual Coast Guard vessel inspections. This can hardly be considered a **penalty** since this NPRM already offers a “traditional inspection as an optional method of compliance.”⁽¹⁾ [⁽¹⁾Refer to NPRM p. 49998]

Our Association recalls attending the Congressional hearing following the Mel Oliver oil spill. The only satisfaction Congress received as a result of the \$275 million oil spill in that hearing was an apology from AWO that the culprit, DRD Towing, was no longer a member in good standing with AWO.

In this NPRM, the towing industry feathered its own nest with the full cooperation of the Marine Safety Directorate.

3-3. The Coast Guard Must Re-learn Lessons From the Streamlined Inspection Program (SIP).

[Applicable Statutes: 46 U.S. Code §3103; 3306; 3316; 3703.]

[Comparable regulations: 46 CFR Part 8, Subpart E. NVIC 2-99 provides additional information on the Streamlined Inspection Program. OMB Control #1625-0085.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item #19.]

Discussion

In 1998, the Coast Guard working with the offshore oil industry and its trade association (OMSA) established a voluntary and optional program to provide owners and operators of U.S.-flag vessels an alternative method to comply with vessel inspection regulations. Both the Coast Guard and participating boat companies developed this program after committing to hundreds of hours of staff work and training within a regulatory framework.⁽¹⁾ Our Association is became familiar with these prolonged growing pains because they took place “locally” in the Eighth Coast Guard District. [⁽¹⁾46 CFR Part 8, Subpart E.]

The perceived benefits of the Coast Guard's "Streamlined Inspection Program" (SIP), namely the increased familiarity of vessel officers and crewmembers with Coast Guard safety regulations, never applied to towing vessels since they remained uninspected vessel.

The Streamlined Inspection Program (SIP) only can exist when meaningful and comprehensive inspection regulations are in place and are enforced. Then, as now, our Association expects the regulatory process to provide sufficient prescriptive regulations that our mariners can understand.

A SIP can function only if vessel owners are willing to work with the Coast Guard and train their employees to the level required by this program. Although there were significant paperwork burdens, many mariners found the SIP rewarding because it mandates full compliance with existing regulations at all times.

The Coast Guard could expel companies that cheated from the SIP program – with the only penalties being a lack of trust and reverting to traditional vessel inspection. We see this as one major shortcoming of the proposed Safety Management System.

Expenses accrue to participants in any inspection and auditing program such as the SIP or any Safety Management System. Many towing companies that do not participate in the AWO's Responsible Carrier Program avoided making this expensive financial commitment while other companies, like DRD Towing, cut corners with their commitments and were exposed as a result of the M/V Mel Oliver-Tintomara oil spill in New Orleans and the Queen Isabella Causeway disaster in Texas.

In our review of several Paperwork Reduction Act submissions, the number of participants in the SIP dropped precipitously over the years. We believe this was a result of the heavy training and paperwork burdens associated with the SIP as well as the constant turnover of mariners trained to perform inspections and deal with the paperwork. Many companies simply decided that it was cheaper and easier to hire knowledgeable “third parties” to bring their vessels through traditional Coast Guard inspections.

In this NPRM, we see the Coast Guard working with another industry trade association (i.e., AWO) to develop a Safety Management System roughly comparable to the SIP that involves a significant paperwork burden. The effects of this paperwork burden on our mariners are described in [Enclosure “A”] to this report.

While we do not have a crystal ball to predict its outcome, we see the similarities between mariners previously involved with the SIP and officers trying to work under paperwork burdens created by the proposed Towing Safety Management System (TSMS) in companies that fail to provide the necessary administrative resources and overload vessel personnel.

DISAPPOINTMENT #4 – IGNORING ENGINEER ROOM TRAINING

[Applicable statutes: 46 U.S. Code §8104(e)(1)(A).]

[Previous NMA References, Reports, Guidelines and Comments: Our Report #R-276, Rev. 9, item #53. Our Reports #R-401, Rev. 1; #R-412; #R-412-A; #R-428, Rev. 1; #R-428-H. NVIC 1-78.]

Discussion

Need for Safety and/or Vocational Training for Engineer Room Duties.

Any debate as to whether engineers on towing vessels should be “licensed” or not only obscures a very important training issue but it often is ignored by the towing industry.

★NMA Recommendation: That an employer tasking any mariner with duties in the confines of a towing vessel's engine room or machinery space provide that person with initial formal safety training and permanently record all such training before the mariner undertakes any duties in these spaces.

★NMA Recommendation: That the employer provide any person tasked as a "deckineer" or "engineer" in charge of machinery operation during any watch with additional vocational training on the operation and maintenance of all installed machinery including propulsion engines, generators, pumps, compressors, hydraulic systems and piping and wiring systems applicable to the vessel. Record all such training before the mariner undertakes these duties as a watchstander.

★NMA Recommendation: That this NPRM be rewritten to include regulations that prohibit using "deckineer" (i.e., a person working both on deck and in the engine room in violation of 46 U.S. Code §8104(e) on a towing vessel that exceeds 100 GRT.

★NMA Recommendation to Congress: Consider establishing a true career path for limited-tonnage engineers on inspected towing vessels exceeding 100 GRT.

Industry Wants to Eliminate Engineers on Most Towing Vessels

Although in this NPRM the Coast Guard deftly avoids every possibly contentious personnel issue, we believe engineer training must be addressed in any Final Rule for safety reasons.

The term "engineer" only appears once in proposed 46 CFR §140.400(c) in this context and states: "If an engineering watch is maintained, comparable records documenting the engineering watch are required." However, the NPRM does not provide any guidance as to when such an engineering watch must be maintained – and this is a key question the Final Rule must answer. It is a question TSAC never addressed. It appears that Management and the Coast Guard have conspired to reduce Engineers on most towing vessels to the status of deckhands or multi-tasked "deckineers" without any viable career path in engineering. Our Association opposes this trend. [Refer to NPRM p. 50023.]

Many towing vessels operate with small crews. Masters and Mate/Pilots cannot safely⁽¹⁾ leave their post in the pilothouse and make or supervise engine repairs or adjustments while underway. Nor should deck watch officers be expected or allowed to work in the engine room beyond the end of their watch in violation of 46 USC §8104(h) – the 12-hour rule. [⁽¹⁾Refer to NTSB/HAR-94/03, U.S. Towboat CHRIS, Collision with the Judge William Seeber Bridge, New Orleans, LA May 28, 1993. In this accident, the Captain went to the engine room to supervise a new deckhand changing a fuel filter while leaving the engine in gear pushing the bank. His barge came loose and struck a bridge bent collapsing the span and killing one person and injuring several others.]

An employer should be required to train at least one unlicensed crewmember to perform every type of required engine room task on each watch. If this is not done, we maintain that the vessel is not seaworthy. These individuals become the vessel's de facto engineers.

Although the Officers Competency Act of 1938 enacted provisions of the Officers Competency Convention of 1936 requiring licensed engineering officers on vessels in excess of 200 GRT, this statute only applies to vessels on oceans and coastwise routes. The vast majority of existing towing vessels in such service were purpose-built to remain below the 200 GRT threshold.

Safety regulations should require at least minimal formal training for any person servicing as a de facto towing vessel engineer so that he/she can maintain, adjust or simply monitor the main engine(s), bilge pumps, hydraulic and pneumatic systems, sewage and potable water systems, and electric generating equipment. That person should be well versed in electrical safety, proper use of all hand and power tools available, and knowledgeable through training in pollution prevention while taking on bunkers.

Engineers are also responsible for maintaining and operating machinery in the engine room as well as deck machinery. This machinery includes bilge pumps, fire pumps, stuffing box packing on propeller shafts, deck winches, capstans, towing machines, portable fire pumps, rescue boat launching equipment, etc.

When untrained deckhands ("deckineers") must perform these duties on a part-time basis, duties such as handling lines, making or breaking tow, or cooking for the crew often crowd out engineering responsibilities. The engine room is a hot, dirty, and noisy place and – lacking proper supervision – is often neglected. A review of accidents in our files show that unexpected sinking and capsizing are often traced to flooding that went unnoticed while the engine room was unmanned and the deck crew was otherwise occupied.

Action: Formal safety and vocational training for limited-tonnage tug and towboat engineers must be supported by statute and regulation and include the areas listed below to provide for the safety of our mariners. This is why we previously approached Congress on this issue.⁽¹⁾ [⁽¹⁾Refer to Our Report #R-401, Rev. 1.]

The subjects listed are generally those subjects required at the “oiler” level on many inspected vessels. Proof of satisfactorily completing this training must be required before any mariner is permitted to perform any function in an unmanned engine room on a towing vessel. “Licensing,” if appropriate should be discussed only after sufficient personnel receive adequate engine room “safety” training:

- First Aid and CPR
- Respiratory Protection
- Tank Safety and Testing
- Confined Space Entry.
- Lifesaving equipment training.
- Firefighting School.
- Liquid Cargo Training.
- Pollution Prevention and Control.
- Damage Control.
- Vessel Construction.
- Tools and instruments.
- Piping Systems and Components.
- Lubrication including Filters and Strainers.
- Diesel engines.
- Basic Electricity.
- Pneumatics including Air Compressors and Air Systems.
- Hydraulics.
- Steering Gear.
- Deck Machinery – Winches, Capstans and Cranes.

★NMA Recommendation: That formal safety training is necessary in the following areas since neither OSHA nor the Marine Safety Directorate ever enforced occupational safety and health standards on towing vessels. Apply the following OSHA cites to inspected towing vessels by “Incorporation by Reference” and train Coast Guard Inspectors to enforce them.]

- 29 CFR §1910.147 – The Control of Hazardous Energy (Lockout-Tagout).
- 29 CFR §1910.169 - Air receivers.
- 29 CFR §1910.212 - General requirements for all machines.
- 29 CFR §1910.243 - Guarding of Portable Power Tools.
- 29 CFR §1910.244 - Other Portable Tools and Equipment.
- 29 CFR §1910.253 - Oxygen-Fuel Gas Welding and Cutting.
- 29 CFR §1910.254 - Arc Welding and Cutting.
- 29 CFR §1910.332 - Training (electrical shock)
- 29 CFR §1910.334 - Use of Electrical) Equipment.
- 29 CFR §1910.335 - Safeguards for Personnel Protection.

DISAPPOINTMENT #5 – OTHER PROBLEM AREAS NOT ADDRESSED
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5-1. Our Association Created a 2003 “Supplement” to Guide the Traditional Coast Guard Inspection Regime.

[Previous NMA References, Reports, Guidelines and Comments: Our Report #R-276, Rev. 4 Supplement, Feb. 14, 2003 (prepared for TSAC). The “Supplement” is 204-page book based on “traditional” Coast Guard vessel inspection programs presented at the TSAC meeting in San Francisco, CA.]

[Applicable Regulations: 46 CFR Subchapters K & T (small passenger vessels) and 46 CFR Subchapter L (offshore supply vessels. Also, based on the Commercial Towing Vessel Examination Program.)

Discussion

NMA Directors attended the TSAC meeting in San Francisco, CA, on Mar. 13-14, 2002 and presented a 204-page “strawman” describing how a traditional towing vessel inspection regime could be assembled for the most part utilizing existing Coast Guard regulations and policies. After all, the Coast Guard had been inspecting small passenger vessels since 1958 and recently revised, updated, and expanded those regulations in 1996. The Coast Guard finalized regulating offshore supply vessels in 1997. These classes of vessels are roughly comparable in size and horsepower to towing vessels although certainly not identical. In addition, Coast Guard Headquarters also had recently created the Commercial Towing Vessel Examination Program (CTVEP) in the Fifth District where it had spread to other Coast Guard Districts. Our Association was familiar with all these precedents.

At that time, TSAC was chaired and dominated by AWO members who showed absolutely no interest in having towing vessels brought under inspection. Nor did the Coast Guard show any interest. Our Association, keenly aware of the lengthening chain of catastrophic towing actions continued to update our “supplement” for the next year and brought it to the attention of the House Coast Guard and Maritime Subcommittee staff.

After Congress enacted towing vessel inspection in 2004, the Marine Safety Directorate claimed it had no background in the towing industry and set aside 5 months for “familiarization.” Our Association was never contacted then or at any other time to provide any mariner input.

In this NPRM, “The Coast Guard proposes an inspection “option” that utilizes a TSMS but also provides for a traditional annual inspection regime.”⁽¹⁾ Our Association asserts that the Marine Safety Directorate placed its priorities backward in drafting this NPRM to favor an unproven TSMS “option” over a “traditional” vessel inspection program. [⁽¹⁾Refer to NPRM p.49989, col. 2]

The first clue comes when the NPRM considered the “traditional” annual inspection regime only as an “alternative” to the TSMS regime. However, the Coast Guard does admit that its traditional inspection program may be less intrusive and more cost effective and may appeal especially to smaller towing vessel operators. We believe this observation is correct. Nevertheless, in the NPRM, the Coast Guard short-changes its “traditional” inspection program already underway in the “Bridging” program by providing a paucity of new and enforceable regulations that are crowded out by “functional” regulations. “Functional requirements indicate what the section is trying to achieve in the most non-prescriptive manner possible.”⁽¹⁾ [⁽¹⁾NPRM p. 49984, col. 1.]

Our Association always addressed the traditional inspection program as the better, most direct regulatory approach to solve our mariners’ most pressing issues. Our experience illustrates the Coast Guard “Bridging” program can progress into a realistic and effective example of the traditional type of vessel inspection program used on other inspected vessels of comparable size and horsepower. Other programs like the Streamlined Inspection Program (SIP) fell into disuse because of its complexity and the constant struggle to train a work force that is highly mobile, under appreciated and has a relatively low employee retention rate.

Our Association does not oppose a Towing Safety Management System (TSMS) for those employers willing to devote sufficient resources and personnel to maintain it. However, we cite two serious casualties⁽¹⁾ caused by companies who claimed to follow a SMS but, in fact, did not do so. [⁽¹⁾ *The 2008 M/V Mel Oliver-Tintomara collision (\$275,000,000) and the 2001 M/V Brownwater V destruction of the Queen Isabella Causeway bridge with 8 fatalities.*]

Coast Guard inspectors traditionally do not care who prepares a vessel for inspection – whether the regular crew, a shipyard, a “third party” or other outside hired help – as long as the vessel satisfies the regulatory requirements. However, the Final Rule must establish adequate and sufficiently detailed regulatory requirements as found in regulations for comparable vessels.

The new “Bridging” program “examines” (i.e., does not “inspect”) towing vessels for compliance with existing laws and regulations with a “goal” of awarding a “safety decal” that is meaningful to the towing vessel’s future operation. Most existing regulations are detailed and objective enough to use for inspection purposes. The Coast Guard is still occupied with “Phase 1” of this program having examined only about one-half of the nation’s 6,200 towing vessels. Examiners still “ask” boat owners to comply with existing regulations rather than “enforce” them! The examiners are the “good guys” in a successful outreach program that already has improved towing vessel safety. When “Phase 2” begins, the examiners may have to “summon” the remaining towing vessels and their “good guy” image may fade. At the end of Phase 2, the Coast Guard anticipates that all towing vessels will comply with existing regulations.

To placate the towing industry, the Coast Guard largely overlooks the fact that all towing vessels should have complied with existing laws and regulations years ago. This complements another fact that the Coast Guard only sporadically and often ineffectively enforced the existing regulations primarily using random boardings and usually without trained “inspectors.” “Phase 3” of the “Bridging” program will occur after the proposed regulations become final rules and “examiners” will be replaced by trained “inspectors” who will issue Certificates of Inspection (COI)

and enforce both the new and existing rules.

★NMA Recommendation: Unless many of the changes reiterated in this report are considered, the proposed “inspection” by itself will not materially improve the safety of towing vessels.

5-2. Ban the Use of Doubler Plating in all Hull Repairs.

[Applicable Guidelines: NVIC 11-68.]

Discussion

“A welded doubler plate is not, in general, considered as a permanent repair measure for the main hull girder. Its use does not insure continuity of strength, which is achieved by the installation of an insert plate in the same location. Also, when a doubler is attached to deficient plating, its very presence creates a discontinuity, which may induce rather than prevent a structural failure. Additionally, where doublers have been used, they tend to proliferate as randomly-placed patches which often serve only to cover up the deficiencies which would otherwise indicate the true condition of the hull.” [Source: USCG NVIC 7-68, Notes on Inspection and Repair of Steel Hulls, p. 22.]

In 2005, Rep. James Oberstar in a letter⁽¹⁾ to Commandant Thomas Collins in pointed out the risks of working on towing vessels in that: “Since 1992, towing vessels have been involved in 601 sinkings, 593 floodings, 494 fires, 115 capsizings, 41 explosions and 103 abandonments.” Since towing vessels were uninspected, the Coast Guard did not always thoroughly investigate many of the highlighted casualties – much less than would have been the case with inspected vessels. If towing vessels had been inspected, the Coast Guard would have discouraged doubler plates in permanent repair work just as they are not permitted on other inspected vessels. [⁽¹⁾Refer to Docket #USCG-2004-19977-129.]

Since the “Bridging” program has not yet viewed the hulls of a majority of towing vessels in drydock, the NPRM would have been the appropriate place to introduce the longstanding Coast Guard policy of rejecting the use of doubler plates as an unacceptable repair policy.. Since the Coast Guard vigorously enforced this ban on doubler plating on the hull on other classes of inspected vessels for over 40 years, our Association asserts that rejection of doubler plates must become a part of the Final Rule as a standard for all towing vessels. Our concern lies with the safety of our mariners working aboard substandard vessels on all waters.

Our Association brought up this issue at several TSAC meetings. In fact, it was one of the Project Officers that pointed us to the 1968 NVIC that is still considered current.

★NMA Recommendation: That the use of doubler plating be prohibited by regulation on any inspected vessel without specific approval by the Commandant.

★NMA Recommendation: That boat owners be given a choice at the time of initial inspection for certification to undertake proper hull repairs or retire substandard vessels from service if it is not economically feasible to repair them.

5-3. Install carbon monoxide alarms to protect the crew against carbon monoxide poisoning.

[Previous NMA References, Reports, and Comments: NMA Report #R-276, Rev. 9, item #81.]

Discussion

On many occasions, towing vessels must standby with their engines running and with the wind blowing exhaust smoke into the pilothouse and/or room-type air conditioners and HVAC air-handling units. This presents an unhealthy and potentially lethal situation. Officers should be alert to this danger and have ready access to operable meters that warn of the threat of carbon monoxide poisoning.

In addition, many towing vessels for a variety of reasons do not conduct their engine exhaust high enough above the deck to protect mariners working on deck including aft steering stations. This condition must be subject to inspection and problems resolved before the vessel is put in service as an inspected vessel.

Our Association hereby requests that this matter be addressed in the Final Rule.

5-4. Provide Safe Potable Water to all Towing Vessels.

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, items #9, 42, 52. and our Report #R-395, rev. 3; Report #R-395-A & Report #R-395-B.]

Discussion

The health problem: Tugs and towboats take on water from a number of different sources. These not only include “approved” primary public water sources but also include secondary sources including contaminated hoses on docks, water barges, and from storage tanks on offshore supply vessels, or other vessels.

Many tanks used to store potable water are steel tanks with or without appropriate coatings that are of undetermined age and may be in poor condition. Rust is often a serious and visible problem – visible in drinking water glasses, commodes, washbasins, plumbing, and stains that affect clothes washed in washing machines.

Many tanks have deteriorating coatings and many systems do not even provide for the basic filtration of solids. Rust also causes the tops and sides of potable water tanks to deteriorate and allow contaminants to enter the damaged tanks from decks, bilges, and even invasive muddy river water or salt water through cracks, pin holes, and otherwise deteriorated plating.

Water treatment on many vessels consists almost exclusively of pouring undetermined and unregulated quantities of bleach into the storage tanks at undetermined periods – a questionable practice at best.

Example: Our Association cites a recent case where a shipyard painted the potable water tank of a refurbished towing vessel with a two-part epoxy solution but forgot to add the hardener. Consequently, the tank coating never cured or dried leaving the drinking, cooking, and bathing water on the vessel contaminated with a chemical substance that smelled like acetone. The manager who worked for this large national towing company never bothered to have the sample his mariners provided tested by an approved laboratory in spite of the perceived health considerations involved.

★NMA Recommendation: That the shipboard potable water supply for our mariners be at least as well protected as water provided to Coast Guard’s military and civilian employees. This calls for an immediate response with a reasonable, workable solution in plain English regulations our mariners and vessel owners can comprehend.

Our mariners have reached the threshold of towing vessel inspection without a clear cut set of potable water inspection regulations even after the Coast Guard and Maritime Transportation Act of 2004 mandated action on this issue.

Almost all of the 6,200 towing vessels are “uninspected” vessels and as such were not subject to even the most rudimentary Coast Guard sanitary inspection either at the time of construction or on any regular basis thereafter. Builders constructed many existing potable water tanks on a bulkhead common with fuel or ballast tanks or with an adjacent polluted bilge. Few hose spigots are even equipped with inexpensive vacuum breakers that could prevent contaminated water from flowing back to potable water tanks. Some vessels do not have a dedicated water hoses that is used for no other purpose than to fill drinking water tanks. Tanks and associated plumbing often leak while homemade repairs may compromise the integrity of the system. The Marine Safety Directorate has known of these health and sanitation issues for years yet continues to ignore them.

In October 1999, the Commandant promulgated the latest version of COMDTINST M6240.5 titled “Water Supply and Wastewater Disposal Manual” to “provide standards and public health information for Coast Guard personnel responsible for producing, storing, monitoring, and using potable water and wastewater systems at afloat and ashore units.” This Manual “applies to all active and reserve, afloat and ashore commands.” The document’s Table of Contents clearly shows the broad extent of the agency’s knowledge. This book also provides clear evidence that the Coast Guard has an active concern for its own regular and reserve personnel *without one iota of concern to the limited-tonnage merchant mariners who serve on towing vessels.*

The Marine Safety Directorate maneuvered our Association’s “good faith” request for rulemaking into the ditch. Our Association now asks them to provide an adequate remedy as shown our recommendation. (below)

Although the Coast Guard maintains a detailed potable water policy for all Coast Guard cutters and shore units, our Association had to prove to the satisfaction of Congress in 2004 that the Coast Guard never regulated potable water used by the merchant mariners their Agency superintends.

If water is not of satisfactory quality and purity for drinking and cooking purposes, vessel owners must supply bottled water and adequate wash water for use by the crew, and industrial workers using the vessel. Unfortunately, many companies have not been responsive to mariner needs.

On Dec. 27, 2002, our Association petitioned the Coast Guard for rulemaking to ensure that safe potable water is a requirement on vessels of less than 1,600 gross register tons⁽¹⁾ – including all towing vessels. We presented details of the potable water issue in **Docket #USCG-2005-20052** at www.regulations.gov. After the Coast Guard

tried unsuccessfully to pass the buck to the Department of Health and Human Services, and when they failed to take any initiative, our Association appealed directly to Congress for relief. [⁽¹⁾Our Association represents “limited-tonnage” mariners.]

Status: In Section 416 of the Coast Guard and Maritime Transportation Act of 2004, Congress amended 46 U.S. Code §3305 by “ensuring a vessel subject to inspection” (that will now include towing vessels) “has an adequate supply of potable water for drinking and washing by passengers and crew.” “In determining the adequacy of the supply of potable water... the Secretary shall consider...the size and type of vessel...the number of passengers and crew on board...the duration and routing of voyages; and...guidelines for potable water recommended by the Centers for Disease Control and Prevention and the Public Health Service.”

The Coast Guard put this rulemaking in a separate docket and **NOT** in the Rowing Vessel Inspection Docket. Although a large number of our complaints come from older, poorly maintained towing vessels and are largely a storage tank and pipe maintenance and sanitation issue, the problem is also prevalent on older offshore supply vessels.

Letters in the separate potable water rulemaking docket (i.e., #USCG-2005-20052) indicate that “top of the line” companies have no problem with the quality of their drinking water. We don’t question their efforts and their letters to the docket. However, these letters – although well intentioned – **allowed the Coast Guard to do nothing** assuming the problem either was solved or would go away. On the contrary, this is a very important issue on many towing vessels and will not go away. **This problem deserves attention in this NPRM because it should be a towing vessel inspection item!** Since the Coast Guard failed to take corrective action for other vessels, we do not intend this issue to remain forgotten in this rulemaking package.

On May 27, 2005 our Association formally requested that the Coast Guard synchronize these two projects to ensure that potable water systems on towing vessels are inspected and water quality tested when issuing the vessels’ initial Certificate of Inspection. We see no signs in this NPRM that this has been done.

★NMA Recommendation to Congress: Our Association reiterates our previous request to provide “Potable Water” to towing vessels that meets existing Coast Guard standards applicable to their own vessels. This standard is reasonable, attainable, and is contained in an existing Coast Guard publication.

5-5. Towing Vessel Stability, Tests and Operational Restrictions.

[Applicable Statutes: 46 U.S. Code §2103, 3306, 3703.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item 4. NMA Report #R-451.]

[Comparable regulations: 46 CFR §131.930 for OSVs; 46 CFR Part 179, Subdivision Damage Stability, and Watertight Integrity, and 46 CFR §174.140.]

Discussion

Stability regulations already exist, but these regulations should be considered in light of the “plain wording” that appears in 46 CFR Part 28, Subpart E for uninspected **fishing vessels**. The applicability of 46 CFR Part 174, Subpart E, **Special Rules Pertaining to Tugboats and Towboats**, should be expanded to apply to **all** towing vessels, not just those few large towing vessels inspected under Subchapter I. Regulations must be crafted to specifically to apply to towing vessels.

Re-statement of the issue. **Proposed 46 CFR §144.315** (stability) applies only to an existing towing vessel with a previously issued stability document. **Proposed 46 CFR §144.415** (stability) **applies only to new towing vessels**. We do not question these two proposed regulations for the vessels they apply to.

However, **the number of existing vessels the two cited regulations apply to is far from all existing towing vessels**. Our Association is dissatisfied with “grandfathering” large numbers of possibly unstable towing vessels as they may include many vessels referenced in the discussion that follows. A number of these vessels may be unsafe, unstable, and/or unseaworthy.

Unlike inspected vessels, many existing **uninspected towing vessels**, like many uninspected fishing vessels, were not built to conform to any regulations that required stability testing and may not meet the rigorous stability requirements of other inspected vessels.

Towing vessel owners added **raised pilothouses**, **heavy deck machinery**, and made other **major structural conversions** to existing vessels at will. There were no requirements to have a naval architect perform a basic stability review.

Consequently, our Association asserts that the Coast Guard or an approved third party must conduct or oversee formal stability testing on many towing vessels before issuing them an initial Certificate of Inspection (COI) to

determine their stability and possibly limit their service to “protected waters” or limited geographic area upon any major route (e.g., inland waters, western rivers, rivers, or Great Lakes). We assert that the Coast Guard must take these steps to protect the safety of the crew before allowing these vessels to traverse routes where these vessels are not fully capable of operating safely. Such restrictions also might impose a limitation on the size of a vessel’s tow as some smaller towing vessels are too light to capably handle the tows assigned to them.

Unlike other vessel problems, stability problems are invisible to the mariner – especially to those untrained in stability issues. The Coast Guard encountered this problem in dealing with the uninspected fishing industry vessels in the 1980s and 1990s. However, there is no evidence in this NPRM that the Coast Guard ever sought to apply the knowledge of stability gained from fishing vessels and their crews to uninspected towing vessels.

Judging by the shocking accident statistics on capsizing, sinking, and flooding⁽¹⁾ the Marine Safety Directorate must pay very close attention to towing vessel stability at the time of their initial inspection for a Certificate of Inspection. [⁽¹⁾Refer to Rep. Oberstar’s letter to ADM Collins in Docket #USCG-2004-19977-129.]

Stability letters and stability books. Unlike inspected vessels, the Coast Guard was not required to and did not issue a **stability letter**, stability booklet or other stability advice to guide most towing vessel officers. However, our mariners’ safety requires that formal stability instructions be included in any new set of regulations and that employers specifically provide towing vessel officers with formal instruction in reading and applying the terms of each vessel’s stability document.

Past Casualties. In light of the numerous incidents of towing vessels flooding, capsizing, and sinking reported by Congressman Oberstar to the Commandant in 2005, our Association requested the Coast Guard to evaluate the raw data they provided on sinking, flooding, and capsizing and make it available to the public for full consideration in the towing vessel-inspection rulemaking docket. Unfortunately, we did not find evidence of any such undertaking in the Preamble of this NPRM.

On an uninspected towing vessel, a crane, a rescue boat davit, an elevated pilothouse, or a heavy towing winch may be installed and other significant structural changes may be initiated and heavy machinery placed in operation without calculating (or even understanding) the effects on undamaged vessel stability to say nothing of vessel stability in a damaged condition. There is no assurance that a person suitably trained in vessel stability will operate this equipment because “Damage Trim and Stability” and “Damage Control” are not even tested on steersman examinations.⁽¹⁾. This leads to situations where licensed officers may not recognize and evaluate stability issues on the towing vessel and, thereby place their crew and vessel at risk. [⁽¹⁾46 CFR Table 11.910-2.]

We are aware of a several accidents where the tugboat’s Master did not recognize or question the stability of the tows he was required to move. In both cases, the unstable tow overturned and in one of the cases with fatalities.

5-6 Provide for Professional Plans and Coast Guard Plan Review and Approval for Towing Vessels

[Applicable Statutes: 46 U.S. Code §2103, 3201, 3205, 3306, 3307, 3703.]

[Comparable regulations: 46 CFR §176.402 for small passenger vessels; 46 CFR §126.230 for offshore supply vessels.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, Item #3.]

Discussion

Our Association believes that proposed 46 CFR §136.210(b)(3)(i) in accepting an existing towing vessel into “inspected-vessel” status on the basis of an unspecified and possibly unqualified person’s interpretation of “objective evidence” as defined in proposed §136.110 is ripe with opportunity for abuse and would allow unsafe, substandard towing vessels to operate at the peril of mariners who serve on that vessel. Specifically, we contrast this requirement with existing requirements for comparable small passenger vessels cited above.

Unlike inspected vessels, many existing towing vessels often were constructed without the professional knowledge and guidance of a naval architect and, in many cases, even without plans. This is in contrast to inspected vessels that must be constructed from plans that undergo “plan review” at the Coast Guard Marine Safety Center.

Many towing vessels were constructed without watertight bulkheads as reflected by a number of recent accident reports of towing vessels sinking in a matter of seconds, often with fatalities.

Routine, hurried, or poorly supervised repairs often breach existing watertight bulkheads and impair the vessel’s watertight integrity. These conditions exist because the vessels were never required to undergo annual Coast Guard inspections. Any third party certifying a towing vessel’s structure should be an established, qualified surveyor with suitable credentials before his/her report is accepted. One of the most important aspects of an impartial survey is that

it safeguard the lives of the crewmembers working on these vessels.

To help ensure the safety and health of our mariners, we assert that every **new** towing vessel undergo inspection by the Coast Guard during construction – comparable to the requirements for other inspected vessels (e.g., small passenger vessels). The owner and/or the naval architect must ensure additional quality control beyond the basic inspection requirements.

Serious defects may appear at any time in **existing** towing vessels that never underwent the complete inspected vessel certification process. In addition, the high number of towing vessels sinking (607), capsizing (115) and flooding (593) from 1992 through 2004⁽¹⁾ clearly called for the Coast Guard to pay much closer attention to stability, seaworthiness, and operational considerations of existing vessels that should have taken place years ago. [⁽¹⁾Refer to *Rep. Oberstar's letter to ADM Collins in Docket #USCG-2004-19977-129.*]

Now that these vessels are coming under inspection, the Coast Guard must attest to every aspect of their stability and seaworthiness to protect the mariners who sail on them. Defects, shoddy construction, and shortcuts in vessel construction and repair (including installed doubler plates) exist because vessel owners were never required to meet rigorous maintenance and inspection standards.

Our mariners do not have adequate representation vis-à-vis their employers and substandard treatment of our injured and disabled mariners has become a national scandal. The idea of building a towing vessel in a back yard without plans, dumping it in the water, and putting it to work must give way to professional standards. The Coast Guard has an obligation to protect the safety of our mariners and not to cover up past shortcomings of vessel owners or other unnamed parties.

We have no complaint with the remainder of the proposed regulation at 46 CFR §136.210.

5-7. The Coast Guard Must Address Route and Seaworthiness Concerns on Towing Vessels.

[Applicable Statutes: 46 U.S. Code §2103, 3205, 3306, 3307.]

[Comparable Regulations: 46 CFR §176.110; 46 CFR §126.220.]

[Previous NMA References, Reports, and Comments:: Our Report #R-276, Rev. 9, Item #5.]

Discussion

Every Certificate of Inspection (COI) for an inspected vessel lists the routes that she may operate on as well as **any other operating restrictions**.

While they remained as “uninspected” vessels, towing vessels seldom faced any **operational restrictions** by limiting the routes where they could operate safely or the size of the tows they could handle. For example, our Association had a number of complaints of “pushboats” operating in open and exposed waters. An operating company’s greed and/or willingness to risk their vessel (though often well insured) frequently placed the crews of these vessels in harm’s way.

Our Association does not believe that the health and wellbeing of mariners serving on towing vessels should be subjected to dangers that can be avoided or that any crewmember is in any way expendable.

Towing companies frequently dispatch their vessels on assignments that clearly exceed their capabilities. One outstanding **example** was the dispatch⁽¹⁾ and subsequent allision of an underpowered towing vessel M/V Brownwater V that was unable to control its tow and demolished the Queen Isabella Causeway Bridge to South Padre Island, Texas in 2001 with 8 fatalities. Such conduct permitted by vessel operators (in dispatching under-powered tows) as well as by some mariners (in accepting such assignments) places both our mariners and members of the public at risk. Our mariners expected this NPRM to address these issues but are disappointed. .Another **example** was the sinking of the tug Mathilde on May 7, 2003 in the Gulf of Mexico while carrying an illegal 4,000 lbs. of deck cargo that shifted in a seaway. Although the Mathilde was not a “lugger tug,” our Association still awaits a reply correspondence regarding the manner by which the Coast Guard plans to treat this unique type of towing vessel common on the Gulf Coast⁽²⁾. We believe this should be covered by this rulemaking. [⁽¹⁾NMA file M-421, Newsletter #18, p. 9. ⁽²⁾NMA correspondence. #smna0615.1Q.]]

Until the **adequate and enforceable inspection regulations** are in place, many marginally seaworthy vessels can continue to operate on any route their owners choose without adequate **professional consideration** of the vessel’s capability or seaworthiness for that route.

In the towing industry, business decisions rather than sufficient concern for crew safety, often dictate vessel assignments. Blaming the vessel’s Master or other licensed officer for a casualty often unfairly targets the officer who is obliged to carry out his employer’s instructions in the capacity of an “at will” employee. The fact that a licensed

officer can lose his job if he does not do as his employer orders, often becomes a mariner's overriding consideration because of the leverage of his paycheck has upon him and his family.

The Coast Guard's existing administrative law system often fails to balance the employer's and the mariner's responsibilities to follow the law. It is much easier, much less time consuming, and involves less legal talent to punish a mariner in an administrative hearing than to attempt to punish the employer with a civil penalty. [Refer to NMA Report #R-204, Rev. 3.]

★NMA Recommendation: That the Marine Safety Directorate respond to reports by experienced professional mariners, naval architects, surveyors, and classification societies and assign appropriate vessel route restrictions to a Certificate of Inspection on a vessel-by-vessel basis based upon reasonable safety considerations.

5-8. Furnish Towing Vessels With Adequate Anchors and Ground Tackle

[Applicable Statute: 46 U.S. Code §3306.]

[Comparable regulations: 46 CFR §130.240 although this requirement should not be limited to vessels greater than 100 gross tons.]

[Previous NMA References, Reports, and Comments:: Our Report #R-276, Rev. 9, item #29.]

Discussion

Our Association asserts that providing proper ground tackle and machinery to handle it is an important *crew protection*⁽¹⁾ measure. [⁽¹⁾Crew protection on towing vessels need **not** consider anchoring unmanned barges or other vessels in tow.]

Each towing vessel must have an adequate anchor and ground tackle that its crew can handle safely with the available equipment. This ground tackle must be able to hold the towing vessel on the routes and in the waters it operates in under all foreseeable circumstances.

For the purpose of crew protection, an effective sea anchor or suitable equivalent should be provided for towing vessels on ocean and coastwise routes.

5-9. Line Throwing Apparatus.

[Applicable Statutes: 46 U.S. Code §3305; 3306; 3307.]

[Comparable regulation: 46 CFR §133.170; 46 CFR §160.031 and §161.040.]

[Previous NMA References, Reports, and Comments:: Our Report #R-276, Rev. 9, item 41.]

Discussion

Our Association previously requested that "All towing vessels in offshore service, not just those over 150 gross tons, should carry suitable line-throwing equipment."

Proposed 46 CFR §141.385 removed the 150-ton requirement but specified the requirement for vessels in "Ocean Service" omitting Near Coastal routes.

★NMA Recommendation: Broaden the line throwing apparatus requirement to include those towing vessels in coastwise service operating beyond the boundary line.

5-10. Tow Release Mechanisms

[Applicable Statutes: 46 U.S. Code §2103; 3306; 3307.]

[Comparable regulations: 46 CFR §132.360; 46 CFR §181.600.]

[Previous NMA References, Reports, and Comments: Our report #R-276, Rev. 9, item #40.; Our Report #R-390.]

Discussion

For the safety of its crewmembers, tugs and towboats need a fast and effective way to release towing hawsers, face wires and other lines and wires under strain when an emergency arises.

Examples:

- Sinking of the tug Thomas Hebert⁽¹⁾ that was tripped by its coal barge carrying 8,500 tons of coal when the steering jammed as the vessel proceeded on autopilot on Mar. 7, 1993 off the New Jersey coast with the loss of 5 lives.

[⁽¹⁾Refer to our Report #R-390.]

- The towboat TANA LYNN pushing a loaded deck barge struck the Simmesport, LA, railroad Bridge on the Atchafalaya River on Mar. 8, 2003 and turned over when it could not free its face wires in a timely manner.

We are pleased to see that the NPRM⁽¹⁾ will require that towing vessels be equipped with at least one fire ax mounted on an exterior part of the vessel. While this is primarily a firefighting tool, it also is useful in severing fiber towing hawsers if necessary. However, chain and wire rope present tougher problems that require special tools (e.g., cutting torches; chop saws, etc.), machinery release mechanisms or quick release towing hooks to provide necessary crew safety in emergencies. Quick release towing hooks offer safe release functions under full load operations. Hydraulic or pneumatic remote control from the operating station is available and desirable.

★NMA Recommendation: That an effective means of quickly severing or releasing the towing connection is necessary to protect our mariners. The type of emergency release gear depends upon the towing operation.

5-11. Bilge Pumping and Piping Systems

[Applicable Statutes: 46 U.S. Code §3306; 3703.]

[Comparable regulations: 46 CFR §56.50-50 for OSVs. 46 CFR §182.500; 46 CFR §182.510; 46 CFR §182.520.]

[Previous NMA References, Reports, and Comments:: Our report #R-276, Rev. 9, issue #33.]

Discussion

Like other classes of inspected vessels, our mariners **expected** this NPRM to require a towing vessels' bilge pumping system to be piped to every compartment with each bilge strainer in each compartment easily accessible for cleaning. Our mariners also **expected** to see a requirement for installation of at least one dedicated, power-operated bilge pump with sufficient capacity to handle predictable thru-hull piping and stuffing box failures. Bilge pumping and emergency dewatering should be approached as two different evolutions.

Our concern over the large number of sinking and flooding towing vessels dictates that improved bilge pumping and piping systems must become an important regulatory consideration, perhaps more so on towing vessels than on other commercial vessels of comparable size.

Coast Guard raw accident statistics indicate that 607 sinking, 593 flooding, and 115 capsizing cases occurred between 1992 and 2004. Our Association requested (in Docket #USCG-2004-19977) that these 1315 “occurrences” be the subject of a Coast Guard inquiry for use in this towing vessel inspection rulemaking project. As members of the public, all our Association can do is ask! **However, we saw no evidence in the preamble of this rulemaking to lead us to believe the Marine Safety Directorate undertook any such study.**

While an existing regulation at 46 CFR §27.301 requires a fixed or portable fire pump but it did not address bilge-pumping systems.

Proposed 46 CFR §143.295 (Bilge pumps or other dewatering capability) is both vague and dangerous. This was designed as a “functional” regulation where a prescriptive regulation containing at least elements of existing 46 CFR §50.50-50 would provide a more suitable basis of regulation.

The proposed regulation allows a “portable” bilge pump or “another method for emergency dewatering.” (e.g., a bucket) to substitute for a permanently mounted and piped bilge drainage system. The emphasis here is **emergency**. Pumping the bilge in both new and existing vessels should be viewed as planning for predictable thru-hull pipe and stuffing box failures rather than an emergency evolution.

The most important below-decks areas on a towing vessel are its engine room and other machinery spaces that must be **protected** from flooding. A permanently installed and piped bilge pump with a high level water alarm provide this protection available with a flip of the switch or movement of a lever – provided the bilges are maintained clean and free of debris. The bilge pump, at a minimum, should free vessel crewmembers to repair pipe and stuffing box failures while keeping the influx of water through the failed fittings to a reasonable level below the deck plates. “Good housekeeping” practices to assure strainers are not clogged should be verified by regular inspection and noted in the Official Logbook.

A permanently installed, power-operated bilge pump is not the equivalent of a portable pump that must be moved into place and whose hoses must be connected and led to the bilge and overboard. Buckets, while useful in emergencies, must be carried up and out on deck and then dumped overboard. Doing so may result in slips, trips and falls. Portable pumps, buckets etc. should be recognized as being suitable for emergency use only.

★NMA Recommendation: Reconstruct proposed 46 CFR §143.295 to provide for a workable permanently installed bilge piping system using the regulations in 46 CFR §56-50 as a model.

5-12. Checking Steering System Operation.

[Applicable Statutes: 46 U.S. Code §2103; 3205; 3306; 3307.; 6101.]

[Comparable regulations: 46 CFR §58.25; 46 CFR § 130.130; 46 CFR §130.140; 46 CFR §176.814; 46 CFR §182.610; 46 CFR §182.620. 46 CFR §185.320.]

[Previous NMA References, Reports, and Comments:: Our Report #R-276, Rev. 9, item 47.]

Discussion

Well functioning steering systems are vitally important to every towing vessel. The flanking rudder systems (and other types of steering systems) installed on many towing vessels may be of greater complexity than steering systems of other comparably sized vessels.

33 CFR §164.80(a)(1) – that applies to “each towing vessel of less than 1,600 GT – now requires that steering systems be checked before any voyage of more than 24 hours or when each new Master or operator assumes command. This existing regulation falsely assumes that no steering accidents will take place on a voyage of less than 24 hours duration.

Proposed 46 CFR §140.615 refers to each towing vessel not subject to 33 CFR §164.80(a)(1). Apparently, some towing vessels exempted by 33 CFR §164.01(b) such as those between 26 and 39.4 feet in length and used in a limited geographic area such as fleet boats assembling and disassembling a tow. Our Association asserts that the steering system on all towing vessels including those exempted be checked before each voyage including at least once in every 24 hour period and recorded and signed for in the Official Logbook.

★NMA Recommendation: That proposed 46 CFR §140.615(a) apply to ALL towing vessels and that existing 33 CFR §164.01(b) be altered to conform to the proposed rule.

5-13. Securing Guards and Railings and Preventing Unsafe Boarding Practices

[Applicable Statutes: 46 U.S. Code §2103; 3306.]

[Comparable regulations: 46 CFR §127.310; 46 CFR 127.320; 46 CFR §127.330; 46 CFR §177.900; 177.920; 177.960; 177.970.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item 23.]

Discussion

As long as towing vessels remained “uninspected,” there was no assurance that owners would install or maintain protective guards in dangerous places, especially around rotating machinery. Recently, conditions improved with Coast Guard examinations as part of the “Bridging” program.

Without inspections, there will be no assurance that handrails or storm rails placed in and on deckhouses will remain properly welded, maintained or otherwise secured in place. On a number of towing vessel, our mariners reported serious discontinuities of guardrails whose welds completely rusted away. One of our Association’s Directors displayed photographs of these dangerous conditions to a TSAC committee meeting at Coast Guard Headquarters yet attracted little attention or comment.

On some towing vessels, unsafe methods of boarding barges and other towed vessels and offshore platforms are common. These problems also need attention. Crewmembers often are pressured to use unsafe boarding and line handling procedures under marginal sea, and weather conditions. This, added to poor footing on towing vessels and uninspected barges leaves mariners at risk of debilitating back injuries, strained muscles, and hernias.

On inland tows, making high/low couplings resulting from the difference in height between towboats and empty and loaded barges often is left to a single deckhand working alone. He must climb and move heavy rigging back and forth from one level to another. This results in a number of back injuries.

Until the passage of §415 of the Coast Guard and Maritime Transportation Act of 2004, matters concerning occupational safety and health on uninspected towing vessels fell under the purview of the U.S. Department of Labor rather than the Coast Guard. Department of Labor Directive 2-1.20 became the governing document. However, the control exercised by the Department of Labor over towing vessels on OSH issues was both minimal and ineffective

in protecting our mariners who rarely called upon the agency since they saw no signs of their interest in or presence on towing vessels.

The Coast Guard seldom extended itself to enforce OSH standards on uninspected towing vessels – which is contrary to the stated Congressional purpose of the OSH Act and to the lasting detriment of our merchant mariners.

Proposed 46 CFR §137.220 requires the owner or managing operator to examine or have examined certain structural members – but this is only for vessels using the TSMS option.

Much more general is coverage under *proposed 46 CFR §140.510* (Identification and mitigation of health and safety hazards) where (2) Slips, trips, and falls, (9) Falls overboard, and (10) Vessel embarkation and disembarkation (including pilot transfers) are left to the province of “...the owner or managing operator to identify and mitigate...safety hazards.”

Our Association continues to be concerned that such “*functional*” regulations do little to explain and counter the specific hazards we cite above. Since many of these concerns arise away from the dock or drydock where the vessel inspection takes place, these items may be overlooked unless supported by prescriptive regulations that our mariners have access to. Where, in the past, many such items might be covered by a NVIC, we are concerned that NVICs, if used, are not enforceable. This leaves an accident ready to happen and our mariners without protection other than to hire an attorney and seek compensation for his injuries. NMA Report #R-202, Rev. 4 shows a number of examples where this approach has been very unrewarding to injured mariners.

5-14. Control of Hot Work on Towing Vessels.

[Applicable Statutes: 46 U.S. Code §2103, 3205, 3306, 3307.]

[Comparable Regulations: 46 CFR §176.710, Inspection and Testing Prior to Hot Work; 46 CFR §126.160, Tests and Inspections During Repairs or Alterations During Riveting, Welding, Burning, or Other Hot Work.]

[Industry Standards: NFPA 306.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item 17.]

Discussion

Tests and inspections under provisions of NFPA 306 during repairs including welding, burning, or other hot work were easy to avoid on towing vessels because these vessels were not subject to Coast Guard inspection. Dangers from fire and explosion exist when making repairs under unsafe conditions and without adequate and qualified supervision. The fact that a vessel was “uninspected” meant that unsafe repairs often were undertaken and resulting accident statistics seldom reported to the Coast Guard. The absence of prescriptive regulations restricts legitimate Coast Guard safety investigations to uncover the cause of accidents.

A word search of the NPRM shows no mention or “incorporation by reference” of NFPA 306.

★NMA Recommendation: That NFPA 306, Control of Gas Hazards on Vessels, latest edition, be incorporated by reference in this rulemaking.

5-15. Require Safe Electrical Installations Including Emergency and Portable Lighting.

[Applicable Statutes: 46 U.S. Code §3306; 3307, 3703.]

[Comparable regulations: 46 CFR Parts 129 & 183.]

[Previous NMA Recommendation: Our Report #r-276, Rev. 9, item 27]

Discussion

When dealing with electrical energy, it is better to be safe a hundred times than to die once.

The concerns our Association previously expressed to the towing vessel inspection docket in 2005 were based on reports we received of unsafe conditions of the electrical systems on existing towing vessels. This occurred after years of neglect and that many vessels never were subject to comprehensive electrical regulations. This NPRM recognizes the pervasiveness of these shortcomings⁽¹⁾ [⁽¹⁾NPRM, p. 49983, col. 1 “2. Electrical Installations.”]

Although, according to the NPRM, the final issuance of a towing vessel’s initial Certificate of Inspection is still years in the future, proposed 46 CFR 142 Subpart C would postpone or defer compliance with meaningful electrical regulations for an additional 5 years. Also, proposed 46 CFR §143.340(a)(3) provides a loophole for “excepted towing vessels” that follow a Towing Safety Management System. By definition, this could include fleet boats and harbor assist vessels that, without doubt, need an adequate “means to power essential alarms, lighting, radios,

navigation equipment and other essential system(s)...” Leaving these vessels without electrical back-up is a serious mistake.

The “Bridging” program’s instruction book on page 54 refers to the Coast Guard’s ability to take action by using a Captain of the Port’s authority⁽¹⁾ to remedy “hazardous conditions” and provides examples including “improper material condition – bare, jury-rigged or dead-end electrical wires, open switch or breaker box covers” and “not reporting failures or malfunctions of ...radar, gyrocompass, echo depth sounding device... automatic identification system or navigation lights.” Limiting Coast Guard response to these “hazardous conditions” clearly does not adequately protect many of our mariners. Furthermore, this limited list of examples is far from being all-inclusive and the enforcement authority cited is tenuous at best⁽¹⁾. [⁽¹⁾Refer to 33 CFR §160.113.]

★NMA Recommendation: While, the interim “Bridging” program may discover and correct many egregious electrical hazards on towing vessels, correcting all electrical discrepancies must be accomplished before a Certificate of Inspection is issued.

Meaningful electrical inspections by knowledgeable and experienced inspectors will provide an improved level of safety for all crewmembers. However, since none of this was provided by regulation for towing vessels when they were classed as uninspected vessels, electrical standards must be brought up to the same standards as other commercial vessels as the first priority of vessel inspection.

5-16. Correctly Using an Auto Pilot

[Applicable Statutes: 46 U.S. Code §2103; 3306; 6101; 10104]

[Comparable regulations: 46 CFR §131.960; 46 CFR §185.360.]

[Previous NMA Recommendation: Our Report #R-276, Rev. 9, item 39; NMA Reports #R-390 and Report #R-326, Rev. 1]

Discussion

Our Association reiterates its previous comments to the docket asking the Marine Safety Directorate to draft regulations for this rulemaking project that govern the proper use of any autopilot installed on a towing vessel similar to those that apply to other classes of inspected vessels.

Ineffective use of a vessel’s autopilot contributed to the grounding of the **Exxon Valdez** that led to a major oil spill. In fact, a review of the NTSB report on this disaster has many applications to the operation of towing vessels that this NPRM could have profited from. That similar issues also can afflict towing vessels is illustrated in the case of the sinking of the M/V Thomas Hebert with loss of life.⁽²⁾ [⁽¹⁾Grounding of the U.S. Tankship **Exxon Valdez** On Bligh Reef, Prince William Sound, Near Valdez, AK. NTSB-MAR-90-04, pgs. 9-11, 52-54, and 118-121. ⁽²⁾Our Report #R-390.]

★NMA Recommendation: Include in this rulemaking an autopilot regulation comparable to 46 CFR §185.360.

5-17. Ensure Adequate Pilothouse Visibility Standards.

[Applicable Statute: 46 U.S. Code §3306.]

[Comparable regulations: The Coast Guard already promulgates pilothouse visibility regulations that pertain to each of these specific classes of vessels.

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item 70. Our Report #R-275, Rev.3.]

Discussion

Glazing. We note that regulations at 46 CFR §32.16-1(c) and 46 CFR §72.04-1(c) state that “polarized or tinted windows must not be fitted. On OSVs and small passenger vessels, 46 CFR §127.410(b) and 46 CFR §116.1030 and 46 CFR §177.1030 allow glazing material with a light transmission of 70%.

Previously, our Association asserted that standards for new and replacement windows should require untinted glass that does not distort the color of navigation lights on other vessels and aids to navigation. We note that the NPRM does not discuss the “transmissivity of light” through the glazing material on towing vessels in any terms.

★NMA Recommendation: That the Marine Safety Directorate review and consolidate its position on the

“transmissivity of light” through glazing materials and apply its decision to towing vessels in proposed 46 CFR §144.325 and/or §144.425.

Height of Eye. The NPRM fails to address the serious problem of providing adequate “height of eye” for towing vessels pushing ahead or alongside. It is clear that the industry recognized the problem after our Association brought it to their attention at a TSAC meeting in 2004 in our Report #R-275, Rev. 3. In addition, adequate visibility and height of eye were brought to the public’s attention in the July 7, 2010 collision between the tug Caribbean Sea and a “Duck” tour boat in Philadelphia with 2 fatalities and dozens of passengers thrown into the water. Yet, this NPRM overlooked this accident as well as the fact that vessel owners have raised the height of many pilothouses and added hundreds of “upper” pilothouses during the past decade.

This NPRM leaves the industry with no enforceable height of eye regulations or enforceable lookout posting regulations for towing vessels although there have been a number of fatalities where tows have run over recreational boats and other vessels and fixed objects.

★NMA Recommendation: That the Coast Guard establish “height of eye” guidelines for towing vessels and require continuous posting of trained and rested lookouts and logging of any vessel assignments in cases where these guidelines cannot be achieved.

5-18. Ensure that Towing Vessel Owners Adopt Suitable Preventive Maintenance Programs.

[Applicable Statutes: 46 U.S. Code §2103; 3306; 3307; 3308. §415 of the Coast Guard and Maritime Transportation Act of 2004 that amends by addition a new 46 U.S. Code §3306(j)]

[Comparable Regulations: 46 CFR Part 8 (Safety Management Systems.)]

[Previous NMA Recommendations: Our Report #R-276, Rev. 9, item #75.]

Discussion

The Coast Guard, as do other branches of the military, places great emphasis on preventive maintenance of their equipment. However, the Marine Safety Directorate in this NPRM never drafted specific requirements that would require a preventive maintenance program for inspected towing vessels.

The National Transportation Safety Board (NTSB) pointed out in two accident reports our Association brought to the Marine Safety Directorate’s attention that a preventive maintenance program belongs as part of a Safety Management System **on inspected vessels**, such as towing vessels, subject to Coast Guard oversight.

On both reports on inspected small passenger vessel,⁽¹⁾ the (NTSB) pointed out: “Because no authority other than the Coast Guard exercises oversight over (inspected vessels)...the Coast Guard should require that companies operating (inspected vessels) develop and implement a preventive maintenance program for all systems affecting the safe operation of their vessels, including the hull and the mechanical and electrical systems.” [⁽¹⁾NTSB/MAR-04/01, pgs. 36, 37. Recommendation #M-02-5, NMA File #M-519 and NTSM/MAR 02/02, NMA File #M-278.]

“A requirement to develop and implement such (a) program should not be burdensome to vessel operators who already have them in place. **Only substandard operators would not have such programs in place. Without an ongoing preventive maintenance program, substandard operators can continue to operate substandard vessels and in so doing, place the public at risk.**”

The federal regulators of other transportation modes recognize the importance of preventive maintenance to the safety of their operations and require that operators have a systematic program for performing inspections and maintenance as follows:

- The Federal Aviation Administration promulgated comprehensive maintenance requirements, which include provisions for inspections, repairs, and preventive maintenance for all airplane operators.
- The federal Motor Carrier Safety Administration requires that every motor carrier systematically inspect, repair, and maintain...all motor vehicles subject to its control.
- The Federal Railroad Administration has extensive inspection and maintenance requirements for locomotives, train cars, crossing signals, and tracks.

If this NPRM is a “forward looking” document, it should have included a preventive maintenance proposal.

15-19. Recognize that Hazardous Evolutions Require Task Briefings.⁽¹⁾

[Applicable Statute: 46 U.S. Code §2103; 3306; 6101.]

[Comparable Regulations: 33 CFR Parts 131 & 185.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item 80.]

Discussion

Our Association's previous submission to the docket pointed out that towing is a unique and dangerous occupation as confirmed in a Coast Guard (G-MVI) report titled Towing Vessel Industry Personnel Exposure Data dated May 12, 1994.⁽²⁾ [⁽¹⁾Refer to MISLE Activity #1699939, MSO Louisville. ⁽²⁾Available as our Report #R-35, Rev. 1.]

Definitions in **proposed 46 CFR §136.110** includes **Recognized Hazardous Conditions** defined as conditions that are (1) generally known among persons in the towing industry as causing, or likely to cause, death or serious personal harm to persons exposed to those conditions, and (2) routinely controlled in the towing industry.

We reiterate that this definition applies to the following issues. **While our Association propose a solution, the NPRM simply provides a general definition and goes no further.**

★NMA Recommendation: That the Marine Safety Directorate re-consider the workplace safety proposals including but not limited to those listed in [Enclosure "B"] before engaging in any towing evolution including normal fleet work. A briefing must take place between the officer-in-charge of the watch and participating crewmember(s) to discuss in detail the proposed towing evolution and any alternatives that may be required.

5-20. Better Utilize the Local Notice to Mariners (LNM) and Broadcast Notice to Mariners BNM

[Applicable Statutes: 33 U.S. Code §1222(5); 1223, 1231; 46 U.S. Code §2103; 3703.]

[Comparable regulations: 46 CFR §185.320; 46 CFR §131.620. 46 CFR §131.910.]

[Previous NMA References, Reports, and Comments: Our report #R-276, Rev. 9, Item 38.]

Discussion

Our Association previously asked the Coast Guard to visit this issue in the towing vessel inspection rulemaking. We sought a **regulatory requirement** for the officer on watch to listen to Coast Guard Broadcast Notices to Mariners (BNM) on a regular basis to avoid the hazards reported by these broadcasts. The same is true of weather reports issued by the National Weather Service.⁽¹⁾

The Broadcast Notice to Mariners (BNM) periodically broadcasts **important time-sensitive information** collected for weekly distribution in the Local Notice to Mariners (LNM). The BNM contains **extremely important, timely, and authoritative safety information**. **It is a waste of public funds, federal resources, and is a disservice to the taxpayers providing these important services and yet not require their use by watch officers utilizing our public waterways.**

The NPRM on towing vessel inspections in **proposed 46 CFR §140.705** fails to even mention either BNM or LNM and leaves it up to mariners to consult 33 CFR §164.72⁽¹⁾ and then determine the applicability of these services provided by the Coast Guard. This failure is a sad commentary on the Marine Safety Directorate. [⁽¹⁾Copies of these regulations in 33 CFR rarely are carried on towing vessels. Carrying outdated LNM printed copies ignores modern communications technology.]

Additional information on this topic appears in our Report #R-311 describing a sinking where a licensed officer's failure to heed NWS and Coast Guard broadcast weather warnings (BNM) led directly to the loss of his vessel and two crewmembers' lives. Our Association was directly involved with the loss of one of the seamen and brought the matter to the attention of NOSAC and RADM Pluta in a meeting at Coast Guard Headquarters. Stupidity like this are is paid in the blood of our mariners and the tears of their loved ones!

Regulations⁽¹⁾ require the use of the Local Notice to Mariners (LNM) in voyage planning – **but only for voyages seaward of the baseline of the territorial sea**. Unfortunately, the towing industry defeated application of these voyage-planning requirements to the Western Rivers and most inland waters only to have these shortcomings exposed in the Coast Guard accident report on the 2001 M/V Brownwater V allision with the Queen Isabella Causeway Bridge with 8 fatalities.⁽²⁾ [⁽¹⁾33 CFR §164.80(c)(3)(i). ⁽²⁾NMA File #M-239.]

5-21. Public Address and Internal Communications System

[Applicable Statute: 46 U.S. Code §3306.]

[Comparable regulations: 46 CFR §184.610 – although this regulation does not speak to the need to address crewmembers on a tow.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev.9, item 31.]

Discussion

Proposed 46 CFR §143.250, like the existing regulation⁽¹⁾ recognizes that a public address system can replace a General Alarm under certain circumstances as long as the phrase “in any workspace” is broadly interpreted to include workspaces on nearby barges in tow and that the system is effective in doing so. Unfortunately, we assert that the proposed regulation does not go far enough. [⁽¹⁾Existing 46 CFR §27.201(b)(1-4)]

★NMA Recommendation: That public address systems be fitted with “talk-back” capabilities to contact crewmembers working out of sight of the watch officer at active steering station. In lieu of such a system, that each crewmember be provided with a working hand-held radio that can be keyed automatically if both hands are in use, for example, when handling lines.

5-22. Alarms and the Proposed Pilothouse Alerter System.

[Applicable Statute: 46 U.S. Code §3306.]

[Comparable regulation: 46 CFR §130.450. Requirement for engine room fire detection alarms was added to the regulations at 46 CFR §27.203. 46 CFR §130.460(a)(4); 46 CFR §182.530. 46 CFR §28.250.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev.9, item 32.]

Discussion

Alarm requirements, including proposed 46 CFR §143.245 for high bilge level alarms appear to be adequate. However, the new requirement for a Pilothouse Alerter System required in proposed 46 CFR 143325 is controversial.

Proposed 46 CFR 143.325(a)(2) is controversial in that a towing vessel can travel a significant distance with a 10 minute delay in acknowledgement.

Proposed 46 CFR 143.325(b) is controversial because our Association asserts that it is absolutely necessary to have a second person, well-rested and alert, standing by in the pilothouse serving as lookout or acting under the close supervision and immediately attendant to orders from the watch officer whenever a tow is underway.

★NMA Position: Please refer to Enclosure “C” (below) titled “Should Motion Sensors Replace Lookouts in the Pilothouse?”]

5-23. Markings.

[Applicable Statutes: 46 U.S. Code §2103; 3306; 6101.]

[Comparable regulations: 46 CFR Part 131, Subparts B & H. 46 CFR §185.602; §185.604; §185.606; §185.608; §185.610; §185.612; §185.614.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev.9, item 49.]

Discussion

Unlike inspected vessels, towing vessels were not required to uniformly mark or stencil escape hatches, emergency exits, fuel shutoff stations, watertight doors, and emergency lighting (if installed) when they were classed as uninspected vessels. Many towing vessels were not required to display draft markings.

Markings are important to crewmembers newly assigned to the vessel and to first responders. In addition, the name of the vessel must be marked on each of the vessel's life jackets, ring life buoys, and survival craft to assist in Coast Guard search, rescue, and recovery operations. Markings also are required by vessel security regulations.

Since many employers do not provide formal training to many “deckineers” it assigns to perform duties in the engine room duties on a part-time basis, we assert that regulations should require every important valve, panel board, electrical apparatus, control, meter, gauge, fill, pipe, and vent (etc.) be adequately marked and/or labeled so that a mariner can follow instructions to perform important engine room functions without forcing the watch officer to leave his primary duty station in the pilothouse unattended to supervise him in the engine room.

Proposed 46 CFR §144.240 requires considerably less in the way of markings on towing vessels than it does for OSVs and small passenger vessels of comparable size and horsepower. Other than draft and deck line markings in proposed 46 CFR §144.240(c)(d) that are standard on all vessels, little more is required than to mark watertight hatches and emergency exits.

Proposed 46 CFR §143.270(c) refers to color coding “piping for flammable liquid, seawater cooling, or firefighting systems...(to be) clearly marked by labeling or color coding that enables the crew to identify its function...”. However, proposed 46 CFR §143.270(e) allows the use of either ISO Standard 14276 (cost about \$90.00) or marking “in accordance with the Towing Management System applicable to the vessel.” This “choice” would lead to a lack of uniformity between towing vessels and is counterproductive.

★**NMA Recommendation:** That the Marine Safety Directorate simply identify the basic colors used to mark piping for the “flammable liquid, seawater cooling, or firefighting systems” as cited in proposed 46 CFR §143.270(c).

<p style="text-align: center;">DISAPPOINTMENT #6 – USCG MARINE SAFETY DIRECTORATE INTERACTS POORLY WITH OTHER FEDERAL AGENCIES</p>

Discussion

Over the years, the Marine Safety Directorate has not interacted well with the programs of at least three other government agencies to improve the safety of our mariners serving on uninspected towing vessels.

A. National Transportation Safety Board (NTSB)

A dysfunctional relationship between the Coast Guard and the NTSB became evident in the Marine Safety Directorate’s failure to close dozens of “open” NTSB safety recommendations throughout the 1990s.⁽¹⁾ For example, the Marine Safety Directorate refused to act on NTSB recommendations for “out-of-water” survival craft for over 23 years.⁽²⁾ Finally, the 111th Congress placed the safety and wellbeing of crew and passengers above the Coast Guard’s focus on replacement costs for boat owners by requiring them to replace unsuitable survival craft that required survivors to await rescue in the water.⁽³⁾ Congress recognized that “life floats” are much better suited for recreational use by swimmers in lakes or other bodies of water than they are as survival craft!.

Our Association witnessed perpetual procrastination on science-based hours of service regulations⁽⁴⁾ that this NPRM would perpetuate as an insult not only to our mariners but to Congress as well.

A turf war between the Coast Guard and the NTSB over accident investigations erupted at a May 2008 Congressional hearing on the **Cosco Busan** oil spill in San Francisco Bay that was settled by a Memorandum Of Understanding (MOU) in December 2008. Unbelievably, the MOU relinquished the NTSB’s leadership in accident investigations of “significant marine casualties” involving less than 12 fatalities or serious injuries on any commercial vessel. This happened in spite of the Coast Guard’s deplorable accident investigations record.⁽⁶⁾ Considering the poor quality of Coast Guard investigations – including the relegation of over 3,648 “low risk” investigations to the trash can – the MOU disadvantages crewmembers on almost all towing vessels with fewer than 12 crewmembers by its definition of a “significant marine casualty.” [⁽¹⁾NTSB/MAR-95/03, Appendix F. ⁽²⁾NTSB/MAR-86/08. NMA Report #R-354, Rev. 4, p. 28. Letter from RADM Robert North dated Feb. 16, 2000. ⁽³⁾Congress amended 46 U.S. Code §3104(a). ⁽⁴⁾Recommendation on fatigue hazards #M-99-1, June 1, 1999. ⁽⁵⁾Memorandum of Understanding, USCG-NTSB, Dec. 19, 2008. ⁽⁶⁾NMA Report #R-429-M. Contains reprint of Department of Homeland Security Report #OIG-08-5 on Coast Guard investigations]

B. Department of Health & Human Services

In our Association’s request to provide safe potable water⁽¹⁾ for those vessels crewed by our mariners, the Marine Safety Directorate misled our Association by informing us that Public Health Service regulations governed this area. Subsequently, our Association explained to Congress how our inquiries had been mishandled by both agencies. Congress acted in 2004 to correct this oversight and assigned supervision of providing clean potable water to the Coast Guard. Since then, the Marine Safety Directorate failed to take the action addressed by Congress⁽²⁾ After reviewing the responses to that Docket, our Association points out that the problem still exists on many towing and other vessels even if it has been remedied by some of the respondents representing major companies who have taken action.. [⁽¹⁾Refer to §5-4 above. ⁽²⁾Refer to our Report #R-395, Rev. 3.]

C. U.S. Department of Labor – OSHA

The Occupational Safety and Health Administration was (and is) supposed to regulate uninspected towing vessels. While the Coast Guard and OSHA staked out their own regulatory territories in several Memoranda of

Understandings in 1983 and 1996 on “uninspected vessels” it is instructive that “...the Coast Guard’s inspector training program is designed to train inspectors to assess compliance with regulations contained in Titles 33 and 46 of the CFR. As part of that training, Coast Guard inspectors are familiarized with the Navigation and Vessel Inspection Circulars (NVIC). **However, we do not prepare our instructors to enforce OSHA regulations, or any other agency’s regulations on uninspected vessels.**”⁽¹⁾ This is a profound and troubling revelation.

Unfortunately for our mariners – and lucky for boat owners – **OSHA does not have ready access to towing vessels or barges unless they are at a dock.** In addition, OSHA requires submission of a written complaint – and most of our mariners are hesitant to follow that route.⁽²⁾ [⁽¹⁾*CG-521 Letter, Feb. 28, 2010, Acting Chief, Office of Design and Engineering Standards* ⁽²⁾*Refer to NMA Report #R-202-B.*]

OSHA was, and still is, in charge of regulating towing vessels as long as they remain “uninspected.” However, we have seen four areas where our mariners’ safety, health, and welfare issues remain largely unprotected because of the Coast Guard’s parochial attitudes. These areas are:

- Workplace safety on uninspected dry cargo barges.⁽¹⁾ [⁽¹⁾*OSHA is supposed to regulate these barges. Refer to NMA Report #R-202-C, Rev. 2.*]
- Hearing protection and noise prevention. Our mariners must settle for an unenforceable Coast Guard NVIC in place of an active, enforceable OSHA hearing protection program as discussed in §2-1 (above). **Our Association insists on comparable protection from the Coast Guard in this rulemaking project.**
- Asbestos. Again, an unenforceable Coast Guard NVIC exists in place of a dynamic, enforceable OSHA asbestos remediation program that protects workers as discussed in §2-7 (above). **Our Association expects accountability.**
- Personal protective equipment and other neglected safety areas discussed in §6-4 (below)

6-1. Require the Coast Guard to Inspect Dry Cargo and Manned Barges for Workplace Safety.

[**Applicable Statutes:** 46 U.S. Code §2103. 12102; 12103; 12301.]

[**Comparable Regulations:** 33 CFR §207.180; 46 CFR Parts 67 & 69.].

[**Previous NMA References, Reports, and Comments:** NMA Report #R-276, Rev. 9, Item 72; NMA Report #R-202-B; NMA Report #R-202-C, Rev. 2.]

Discussion

Each year a number of mariners fall overboard, die or injure themselves while working on dry cargo and other barges that are not subject to Coast Guard inspection. In 1996, an AWO/USCG Towing Vessel Crew Safety Quality Action Team Study⁽¹⁾ “...revealed that **falls overboard resulting in fatalities occur in roughly equal numbers from barges and towing vessels**; generally during clear weather; at any time, day or night; while the vessel is underway; and during performance of routine tasks such as line handling, deck maintenance, or moving about on the vessel. [⁽¹⁾*Refer to our reprint as Report #R-428-B.*]

Since a significant number of falls overboard occur from uninspected “freight barges”⁽¹⁾ with a lesser amount from inspected tank barges⁽²⁾ and that these falls continue to take place in spite of industry’s best efforts. It is reasonable to include consideration of **uninspected** freight barges along with **uninspected** towing vessels in this NPRM since many companies who own towing vessels also own barges and are represented by the same industry trade association. [*Refer to NMA Report #R-428-B, Rev. 1.* ⁽¹⁾*Estimated at 35%.* ⁽²⁾*Estimated at 6%.*]

Most uninspected barges remain subject to OSHA regulations.⁽¹⁾ [⁽¹⁾*Refer to NMA Report #R-300.*]

Our mariners report to us that the barge owners maintain **some** of these barges in deplorable condition. Many barges do not have – **and are not even required to have by regulation** – basic lifesaving equipment such as ring life buoys, retrieval lines, and water lights available to rescue a person who accidentally falls overboard.

Our mariners must work on these barges even if these workplaces are in an unsafe condition and in need of repairs. Many of these barges pass unchallenged through U.S. Army Corps of Engineers’ locks and other facilities in an unsafe condition. When the barges leak, our mariners often are required to enter rusted tanks, possibly deficient in oxygen, and perform emergency pumping and repairs (i.e., shingling) in dark, damp, malodorous environments to keep the barge afloat and without the benefit of basic personal protective and safety gear..

Our Association also is concerned that these dilapidated barges threaten the waterway infrastructure when they break away from docks and fleeting facilities. Decrepit and unseaworthy barges often are pushed on the bank and abandoned by their owners and left to be salvaged at taxpayer expense. While the Coast Guard has found that their remaining watertight spaces often are used to dump trash, used oil and toxic chemicals.

This issue is one that OSHA largely ignored and avoided because it was ill-equipped to handle it for the same reason the Coast Guard finds itself better equipped to respond to barge-related problems. It is a problem best handled

by barge owners working under a Safety Management System focused on existing OSHA-type workplace safety regulations as well as EPA environmental regulations.

Congress took the first step in 1992 by enacting the Abandoned Barge Act and subsequently assigned the task of **numbering undocumented barges** over 100 gross tons to the Coast Guard. Unfortunately, Coast Guard regulators did even complete the preliminary NPRM⁽¹⁾ step of **numbering barges** even though most barge owners prominently number their barges for identification purposes. [⁽¹⁾Refer to Docket #USCG-1998-3798.]

The Coast Guard has access to the nation's waterways. It is noteworthy that the Coast Guard – ***and not OSHA*** – surveyed the nation's waterways in 1997 and discovered 1,010 abandoned barges. The Coast Guard was assigned the task of designing a numbering system for undocumented barges but has not done so.

★NMA Recommendation to Congress: That the Coast Guard complete its barge numbering project, establish a complete database of barge owners and operators, and take preliminary steps to accept a role in enforcing workplace safety regulations on uninspected barges.

Our Association is concerned about uninspected barges as being unregulated and unsafe workplaces for our mariners. Access to barges is the reason why our Association recommended in 2005 that the Coast Guard assume responsibility for uninspected barges. With its large number of rapid response patrol boats, dangerous conditions on barges can be reported, inspected, and corrected immediately before our mariners are hurt.

Unsafe barges threaten the flow of commerce when they sink and block the waterway or are used as repositories for hazardous wastes. Congress recognized that removing remains of discarded and sunken barges as a significant national problem.⁽¹⁾ [⁽¹⁾Refer to the Abandoned Barge Act of 1992, 46 U.S. Code §12301 and Docket #USCG-1998-3798.]

While Coast Guard inspectors regularly inspect tank barges, their regulatory inertia speaks volumes about their lack of concern about “uninspected” barges and adversely affects our mariners.

For ***example***, some barges used to haul pulpwood, wood chips, and rocks are in especially deplorable physical condition. Many of these barges previously were retired from the grain, coal or other dry-product trades. Many of these barges leak and, in some cases the cargo box is the only part of the barge that keeps these battered barges afloat. When the wing tanks, bow and stern voids fill with river and/or rainwater, the barge lists to one side or the bow or stern rides low in the water.

On many barges, the hatch covers or manholes are left open, are entirely missing, or are in poor repair. Many manhole covers accessing wing tanks and void areas remain unsecured and give way when stepped on. Some hatch or manhole covers remain open and in plain view of lockmasters and Coast Guard patrol boats who are under no orders to act on these deficiencies. Mariners often enter these tanks and make temporary repairs at risk to their health just to keep the barges afloat. They often work with primitive tools, inadequate lighting, and without reference to OSHA confined space entry procedures or other common workplace safety procedures.

The lockmasters and other Corps of Engineers personnel often do not emerge from their control houses to view the tows that transit their locks. However, their regulations at 33 CFR 207.180 reinforce our contention that vessels in a sinking condition shall not be permitted to enter locks and approach channels and that lockmasters have sufficient authority to monitor the situation and prevent this from happening – if encouraged by their government supervisors to do so!

There is a litany of unresolved and ineffectively regulated problems including:

- Lack of maintenance;
- Open or unsecured hatches;
- Cargo spilled on deck creates dangerous footing;
- Absence of anti-skid deck coatings to provide secure footing; ice and snow on deck in the winter months; and
- The absence of design or construction standards to improve or eliminate narrow walkways with tripping hazards that make it extremely dangerous for anyone walking along the sides of these barges.
- Injuries and death from falls overboard impact our mariners and others while moving pumps, hoses, towing rigging, lights, depth sounders, etc. under these dangerous conditions.
- The joint Coast Guard/AWO Quality Action Team report in 1996 (cited above) shows that falls overboard from barges are common. However, the “best practice” of painting deck surfaces with non-skid paint remains unfulfilled as long as the barges remain “uninspected.”⁽¹⁾ [⁽¹⁾One of the toothless recommendations of the 1996 USCG/AWO Quality Action Team Report.

Slips and falls on barges cause death and gruesome crushing injuries that the victims' families must deal with when the towing companies and barge owners are allowed to turn a deaf ear to these safety issues. Barge owners who

seek any possible way to avoid regulatory red tape and civil penalties rarely call in OSHA.

Dry cargo barges, and even some manned barges, still remain as uninspected vessels. Although workplace safety on these uninspected vessels falls to the OSHA under DOL Directive CPL2-1.20, the Coast Guard rather than OSHA has the waterborne transportation (e.g., patrol boats) and presence on the waterway necessary to board these vessels and check for workplace safety issues before our mariners are injured and killed. We ask the Coast Guard to sponsor a Legislative Change Proposal seeking authority to inspect and regulate all barges that remain uninspected to protect the health and welfare of our mariners. .

In the meantime (as an interim measure), Title 33, U. S. Code §3315 requires a licensed officer to “point out defects and imperfections known to the individual in matters subject to regulation and inspection.” It also protects the mariner’s name from disclosure.

★NMA Recommendation to Congress: That Congress reassign workplace inspection, drafting safety regulations, and requiring proper maintenance of all barges from OSHA to the Coast Guard,

★NMA Recommendation: That licensed officers report dangerous workplace conditions on uninspected barges to their employers. If no action is taken, call the nearest Coast Guard investigator to contact OSHA while protecting the reporter’s identity under 46 U.S. Code §3315.

While OSHA’s regulatory compliance procedures can be applied to uninspected barges, the barges must be tracked and located before the first remedial steps can be taken. OSHA inspectors do not have boats to access these barges. **Our experience shows that this process (as described below) cannot effectively protect our mariners.**

Current OSHA Requirements

“OSHA's complaint process allows for anonymous and formal notices of hazards. OSHA evaluates each complaint to determine how it can be handled best – 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:

- 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;
- An allegation that physical harm has occurred as a result of the hazard and that it still exists;
- A report of an imminent danger;
- A complaint about a company in an industry covered by one of OSHA's local or national emphasis programs or a hazard targeted by one of these programs;
- Inadequate response from an employer who has received information on the hazard through a phone/fax investigation;
- A complaint against an employer with a past history of egregious, willful or failure-to-abate OSHA citations within the past three years;
- Referral from a whistle blower investigator; or
- Complaint at a facility scheduled for or already undergoing an OSHA inspection.

6-2. Consistently Enforce Existing Regulations.

[Applicable Statutes: 46 U.S. Code §2103. OSH Act of 1970.]

[Comparable Regulations: 46 CFR Subchapters K, L & T; 29 CFR Part 1915.]

[Previous NMA Recommendations: Our Report #R-276, Rev. 9, item #58.]

Discussion

Years of failure to enforce *existing regulations* encouraged owners and operators of substandard towing vessels to continue to profit from violating existing safety regulations and take shortcuts in repair or maintenance of these vessels. This conduct seriously undercut ethical carriers who complied with existing laws, regulations, and industry safety-management systems such as the Responsible Carrier Program (RCP).

Our Association recognizes that substandard towing vessel operators continue to endanger our mariners’ safety, health, and welfare by providing unsafe and unhealthy workplaces and conditions of employment that abuse our mariners.

Coast Guard Regulatory Enforcement Must Replace OSHA Non-enforcement.

Enforcement of laws and regulations for towing vessels will come under full control of the Marine Safety Directorate with the implementation of the Final Rule resulting from this NPRM. They had plenty of advance warning a result of the enactment of the Coast Guard and Maritime Transportation Act of 2004.

★NMA Recommendation to Congress: That inspecting towing vessels effectively places responsibility to enforce OSH regulations in the hands of the Marine Safety Directorate although they omit any mention of this in the NPRM.

The purpose of the Occupational Safety and Health Act of 1970 as stated by Congress was “...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....”⁽¹⁾ Our mariners, who work on all the nation’s towing vessels, waited in vain for years for the Coast Guard to honor this longstanding Congressional declaration of purpose and policy. [⁽¹⁾29 U.S. Code §651]

Our mariners watched the Coast Guard request the necessary “marine inspector” billets from Congress in a timely manner and then work to train vessel inspectors necessary in the existing “Bridging” program. We also expected them to train these inspectors to follow long-ignored OSHA standards – something that they apparently refuse to do.⁽¹⁾ [⁽¹⁾CG-521 Letter, Feb. 28, 2010, Acting Chief, Office of Design and Engineering Standards ⁽²⁾Refer to NMA Report #R-202-B.]

★NMA Recommendation to Congress: That Coast Guard inspectors be trained to apply OSHA workplace safety regulations to towing vessels.

6-3. The Coast Guard’s Aversion to Workplace Safety Regulations

[Applicable statutes: 29 U.S. Code §651-678. Occupational Safety and Health Act of 1970.]

[Previous NMA Recommendations: NMA Report #R-350, Rev. 6, issues “N” (hearing); “R” (Potable Water); “S” (second-hand Smoke); and “U” (Asbestos). This report was sent to Congress in March 2011.]

Discussion: Protection of Mariners in the Workplace

It never ceases to amaze our Association how much time, effort, and resources the Marine Safety Directorate has committed to projects it never follows through to conclusion. One such project was the proposed rule on Outer Continental Shelf (OCS) Activities that is pertinent to the NPRM on towing vessel inspection.⁽¹⁾ [⁽¹⁾ Docket #USCG-1998-3868, 64 FR 68416-68505, Dec. 7, 1999.].

Over forty years ago, Congress declared the purpose of the Occupational Safety and Health Act of 1970 “...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.”⁽¹⁾

While the OSH Act placed most of the burden on the Secretary of Labor, the Coast Guard “limited its turf” to inspected vessels in several Memoranda of Understanding with OSHA and accepted the burden of looking after the health, safety, and welfare of merchant mariners. While accepting this responsibility, the Marine Safety Directorate did very little and seldom applies the lessons OSHA learned over the last 40 years. This was brought home by the statement that the Coast Guard does not even train its inspectors on the regulations of other agencies.⁽²⁾ How much more arrogant or dysfunctional can Congress allow government agencies to become! [⁽¹⁾29 U.S. Code 651. ⁽²⁾CG-521 Letter, Feb. 28, 2010, Acting Chief, Office of Design and Engineering Standards.]

Limited tonnage mariners supply the vast majority of the workforce on inspected offshore supply vessels (OSV) regulated by the Coast Guard. They supply the entire workforce on approximately 250 towing vessels engaged in OCS activities. Since the proposed OCS rulemaking applied to inspected OSVs, it drew the attention of our Association from the moment it was introduced as a NPRM until it faded away as another unfinished project a dozen years later. We followed the proposed rule’s progress and questioned the rule’s Project Officer repeatedly on its lack of progress his project made at Coast Guard Headquarters at every NOSAC advisory committee meeting our Association attended.

This proposed rule on Outer Continental Shelf Activities⁽¹⁾ was unique in that the Project Officer worked closely with representatives of OSHA to prepare proposed Part 142 titled Outer Continental Shelf Activities: Workplace Safety and Health. This NPRM provided an honest and informed attempt to upgrade workplace conditions based on previous work done by OSHA from its establishment in 1970. The Project Officer assigned to draft the NPRM was a well qualified veteran of oilfield and shipyard workplaces and experienced in Federal rulemaking activities. Although

he spent a dozen years shepherding this OCS NPRM project, all of this expertise spent drafting a NPRM that filled 89 Federal Register pages was lost when he retired from the Coast Guard in 2010. [⁽¹⁾*OCS Activities, Docket #USCG-1998-3868, 64 FR 68416-68505, Dec. 7, 1999.*]

If this rulemaking had received the consideration it deserved, the OSHA-based requirements of **proposed 33 CFR Part 142**⁽¹⁾ would apply to inspected towing vessels operating on the outer continental shelf and would serve as a basis for towing vessels operating on other routes as well. However, the Towing Vessel Inspection NPRM shows no signs that any of the work on proposed 33 CFR Part 142 found its way into the Towing Vessel Inspection NPRM although the Project Officers for both projects worked in the same office at Coast Guard Headquarters for years. [⁽¹⁾*Refer to 64 FR 68457-68467.*]

★NMA Recommendation: That the current NPRM be withdrawn and rewritten to fully consider and evaluate the regulations proposed for workplace safety and health regulations in 33 CFR Part 142 in Docket #USCG-1998-3868.

6-4. Personal Protective Equipment (PPE) and Other Neglected Areas of Occupational Safety and Health [Previous NMA Recommendations: Our Report #R-276, Rev. 9, item 58.]

Discussion

This is an *example* of one area regulated by OSHA and provides a reason why a number of OSHA regulations should be “Incorporated by Reference” into the new towing vessel inspection regulations.

The Coast Guard conducted an investigation⁽¹⁾ into a 2003 casualty on a towing vessel where a mariner was repairing a navigation light on a mast. The mariner climbed the mast, fastened the lanyard around the mast, leaned back supported by the safety belt and began working. For personal fall protection, the mariner used a body belt and a positioning lanyard taken from a storage location on the towing vessel. Just minutes into the repair the lanyard parted. The mariner fell to the deck approximately 40 feet below and sustained a broken leg, arm, ribs and contusions to his head and back. [⁽¹⁾*Source: USCG Safety Alert, Nov. 5, 2003,]*

Important regulatory issues regarding the use, training, and storage of Personal Protective Equipment (PPE) were discovered. Specifically:

- Effective Jan. 1, 1998, **OSHA deemed body belts unacceptable** for use as part of a personal fall arrest system.
- The manufacturer's instructions for the proper use, care and inspection schedule for the body belt and positioning lanyard were not followed.
- The marine employer did not adhere to the OSHA requirements of 29 CFR §1915.159 for personal fall arrest systems.
- The marine employer did not adhere to the requirements of 29 CFR §1915.160 for positioning device systems.
- The marine employer did not adhere to the requirements of 29 CFR §1915.152, general requirements for training and documentation.

Investigators determined that the positioning lanyard was manufactured in Nov. 1993. The manufacturer's instructions called for semi-annual inspection and removal from service no later than Nov. 1998.

Further investigation revealed that **company policy prohibited the use of a body belt for personal fall protection and required the use of a full body harness; however, the vessel never was provided with a body harness and instead retained two body belts and lanyards.** The Coast Guard could not establish that the involved individuals had been trained on their use, storage, and limitations.

The Coast Guard stated that persons owning and operating towing vessels are required to comply with OSHA regulations concerning personal protective equipment (PPE) and are subject to fines for non-compliance. Owners/operators were strongly encouraged to:

- Visit the U.S. Department of Labor website to view Directive CPL 2-1.20 - OSHA / U.S. Coast Guard Authority Over Vessels at: <http://www.osha.gov>.
- Develop, document and provide specialized crew training which includes demonstrations to ensure familiarity with use, storage, and limitations of Personal Protective Equipment.

★NMA Recommendation to Congress: That the Marine Safety Directorate be required to thoroughly evaluate its new role in promoting occupational safety and health regulations and assume a “pro-active” approach to protecting all mariners it superintends. Our mariners should no longer have to suffer accidental injury or

death because of inter-agency fumbling.

★NMA Recommendation: Use proposed 33 CFR §142.155 thru §142.150⁽¹⁾ from Docket #USCG-1998-3868 (cited above) as a starting point to provide for the broad coverage for necessary regulatory OSH protection for our mariners in the towing vessel inspection NPRM. [⁽¹⁾Refer to 64 FR 68460, Dec. 7, 1999, in Docket #USCG-1998-3868.]

Other Neglected Regulatory Areas

Docket #USCG-1998-3868 represented untold hours of effort expended by Coast Guard professionals over a decade ago to fulfill the Coast Guard's obligations under the OSH Act to protect individuals it superintends. This effort and all the time and taxpayer dollars it represented must not be allowed to go to waste because of ineffective leadership for more than a decade by the Marine Safety Directorate. There are dozens of proposed OSH-type regulations evaluated in the Federal Register pages cited above that were have been neglected and overlooked and should have been re-considered before issuing this Towing Vessel Inspection NPRM. Topics include (but are not limited to) personal protective equipment, fall arrest, work vests, radiation, infectious material, workplace conditions, exposure to airborne substances, noise control, machinery guards, lockout-tagout, personnel transfer nets, confined space entry regulations, atmospheric testing equipment and testing, restrictions on equipment and work, personnel training, rescue teams, competent persons, and hazardous materials. Although the original docket was prepared for offshore energy operations, much of it is applicable directly to towing vessels.

Our Association asserts that mariners on towing vessels deserve the same protections as accorded to landside workers facing similar working conditions.

DISAPPOINTMENT #7 – PROVIDE SUFFICIENT REGULATORY TRAINING

7-1. Learning About Towing Vessel Inspection Regulations.

[Applicable Statutes: 46 U.S. Code §2103; 3305; 3306; 3307, and §3301 as amended.]

[For additional information in this area refer to our Report #R-382, Why Our Mariners Don't Get the Message.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, Item #1. NMA Report #R-428-K]

Discussion

Mariners who work on towing vessels have a right to a safe workplace. Glaring differences exist between workplace safety on inspected vessels like small passenger vessels or offshore supply vessels and on many uninspected towing vessels. These differences result from 40 years of neglect and divided responsibility for regulating more than 6,200 towing vessels for the last 40 years.

This huge "regulatory gap" described above left a legacy of inadequate occupational safety and health (OSH) regulations and ineffective enforcement by several government agencies. This was abetted by the towing industry's desire to avoid OSH regulations and the Coast Guard's ability to keep Congress satisfied but often in the dark.

The gap widened by a failure in leadership by Commandant Robert Kramek in 1994 to push for towing vessel inspection following the AMTRAK disaster at Bayou Canot⁽¹⁾ and, after 2000, by failed leadership of the Marine Safety Directorate.⁽²⁾ Congress finally stepped in and successfully addressed many of these issues from 2004 through 2010, especially after reviewing a report by retired Vice Commandant Card on marine safety issues.⁽²⁾ [⁽¹⁾NMA File #A-193-3. ⁽²⁾Refer to NMA Report #R-401-E.]

Mariners serving on 6,200 "uninspected" towing vessels are disappointed that the towing vessel NPRM was been delayed so long, and when released, offered so few solutions to common problems they encounter every day. .It is encouraging that the American Waterways Operators (AWO) finally recognizes the word "uninspected" is synonymous with "unsafe." Unfortunately, they are unwilling to embrace a 12-hour limit to the work day of unlicensed crewmembers. Our Association believes that AWO's approval of a 15-hour workday is an affront to our Association and all working mariners..

Training – License Courses and Exams.

The Coast Guard provides only one opportunity to test the "professional knowledge" of candidates for Apprentice Mate/Steersman, Mate/Pilot, and Master of Towing Vessels. This written exam takes place before allowing n Apprentice Mate/Steersman candidate to train in the pilothouse.

The National Maritime Center (NMC) approves license preparation courses for Apprentice Mates/Steersmen and authorizes written exam questions and answers to administer exams at both Regional Exam Centers and in “Approved Courses” offered by private training providers. For years, Coast Guard tolerated insufficient knowledge of existing regulations throughout the towing industry by licensed officers, by management, and even by Coastguardsmen assigned to boarding parties. **The “Bridging” program already spent over two years trying to reverse this trend and has done a commendable job of doing so.**

★NMA Recommendation: That the Marine Safety Directorate comprehensively test all towing vessel officers and officer candidates on new towing vessel inspections in the Final Rule.

The Coast Guard’s “**Bridging**” program published and distributed its book titled USCG Requirements for Uninspected Towing Vessels, Change 1, March 2009. This was a significant step in identifying **existing regulations** and was long overdue. This effort must continue, and exams and courses must reflect both **existing regulations** as well as any **new** regulations that will result from this rulemaking. NMC exam questions often suffer from limited first-hand knowledge of the towing industry and often lag regulations and published policies by years. Even with its huge expansion in the past few years, our Association asserts that the Marine Safety Directorate including the NMC still does not have its act together regarding our mariners in the towing industry.⁽¹⁾ [⁽¹⁾Refer to NMA Report #R-428-K.]

Training – Improving the Exam Q&A Database

The NMC must prepare comprehensive questions and answers on the content of both existing and the new towing regulations and include them in all **new towing endorsement exams** immediately after the regulation’s effective date.

Regardless of the inspection “option” chosen, regulations are the law of the land. When the Final Rule goes into effect, we assert that **each officer seeking or holding a “towing endorsement” must be instructed in their content or this rulemaking loses its value.** This task can be undertaken by employers or by approved third parties to ensure that everybody is on “the same page.” However, the Coast Guard must make provisions for this training.

Consider the precedent used for another initial rulemaking effort: When the Coast Guard promulgated **new oil pollution regulations in 1973**, they provided an explanatory pamphlet and a required completion of an “open-book” test on the new regulations.

★NMA Recommendation: That the Coast Guard supplement and update the “Bridging” program’s book (cited above) in electronic format with new regulations from this rulemaking and other related regulations to provide a clear regulatory and policy statement to the towing industry and thereafter require the book or an updated electronic copy be carried aboard each towing vessel.

Employers should be encouraged to provide mariners with copies of company policies not in conflict with these regulations.

DISAPPOINTMENT #8 – PROPOSED LIFESAVING REGULATIONS

8-1. Correct Shortcomings in Survival Craft Requirements

[Applicable Statutes: 46 U.S. Code §2104, 3306.]

[Comparable regulations: 46 CFR §133.105 thru §133.75; 46 CFR §160.151-35 thru §160.151-57; 46 CFR §175.400; 46 CFR Part180, Subpart E.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item #10. Our Report #R-390.]

Discussion

Unlike inspected vessels, most “uninspected” towing vessels are **not required** to carry **any** survival craft, only life jackets and ring life buoys.

In the past, providing and maintaining survival craft on a towing vessel was on a voluntary basis. Many towing companies still provide no survival craft on their vessels. To cite only one **example**, in the 1993 sinking of the tug Thomas Hebert 35-miles off the New Jersey Coast, it was only the **availability** of a voluntarily installed inflatable life raft that saved the life of the master and the mate in 40°F water in late winter. It is also **fortunate** that the inflatable liferaft was in serviceable condition because no regulation required, and still does not require, voluntarily installed

inflatable life rafts to be serviced annually.

Our mariners **expected** the new towing vessel regulations to require each inflatable life raft and inflatable buoyant apparatus to be unpacked and professionally checked by an approved service facility once a year to prove that it is in good working order.

★NMA Recommendation: While proposed 46 CFR §141.235 provides for the examination, testing, and maintenance of lifesaving equipment, it references 46 CFR §199.190, a very complex regulation in Subchapter W. Since a towing vessel's survival craft was not previously subject to inspection before, 46 CFR §199.190 should be placed in the NPRM as a stand-alone regulation and modified where necessary to apply specifically to lifesaving equipment used on towing vessels. It should clearly specify whenever any required factory maintenance is required.

On the coastwise tug M/V Thomas Hebert⁽¹⁾, neither the officers nor the crew were trained to use the inflatable life raft. They made some errors that could have been life-threatening, but they survived only because of a timely rescue.

Although lifesaving drills still are not required by existing regulations, the NPRM⁽¹⁾ will require emergency drills and training including "abandoning the vessel and recovering persons from the water." [⁽¹⁾NMA Report #R-390. ⁽²⁾Refer to NPRM, p.50023, proposed 46 CFR §140.420.]

★NMA Recommendation: In Proposed 46 CFR §140.420. Subsection (d)(5) – we assert that training should include not only launching but also training in the effective utilization of inflatable life rafts and any other type of approved survival craft.

The Coast Guard previously claimed to "lack the authority" to require survival craft to be carried on uninspected towing vessels, or to require adequate inspection and maintenance of voluntarily provided survival craft, or to require training in their use and deployment. This travesty against our mariners was symbolic of over 40 years of regulatory neglect. Our Association expressed its unequivocal disgust with senior Marine Safety Directorate officials who supervised TSAC as well as with TSAC itself for never bringing important lifesaving issues to the attention of Congress.

Our Association **expected** that the NPRM would require each towing vessel, regardless of route, to have at least one Coast Guard-approved survival craft capable of holding every crewmember on the vessel. **We are disappointed.**

★NMA Recommendation: Proposed Table 141.305⁽¹⁾ allows an OCMI to permit a towing vessel to operate in a "Limited Geographic Areas" without a survival craft. Our mariners operate towing vessels at all times of day and night in all seasons, weather and climatic conditions. Since inflatable buoyant apparatus (IBA) take up so little space when packed, our Association wants all towing vessels equipped with out-of-water survival craft protection as required by Congress starting in 2015. [⁽¹⁾NPRM, p. 50030. Refer to Column 1 and footnote #1 that our Association finds unacceptable.]

Our Association also is concerned about the **capacity of survival craft on each towing vessel**. We note in regulations for Offshore Supply Vessels⁽¹⁾ that their survival craft capacity will accommodate the "total number of persons on board." While we can **expect** a Certificate of Inspection to list all required crewmembers, we assert that other "persons in addition to the crew" may be carried at times. This could include Apprentice Mate/Steersmen or others in training on the vessel and/or supervisory personnel or perhaps an "industrial person." The COI must list the total number of persons allowed and call for a sufficient number of life jackets, as well as space in a survival craft.

★NMA Recommendation: That a suitable subsection be added to reflect that lifejackets and space aboard approved survival craft be added to proposed 46 CFR Part 141.

8-2. Safety Training Using Skiffs and Rescue Boats.

[Applicable Statutes: 46 U.S. Code §2103; 2104; 3306; 3307; 3703.]

[Comparable regulations: 46 CFR §125.160; 46 CFR §133.135; 46 CFR §133.140; 46 CFR §133.160; 46 CFR §180.210. 46 CFR §160.056.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item #77.]

Discussion

Most inland and river towing vessels already carry a small boat used for general purposes that range from painting to carrying lines ashore, to making crew changes.

Our mariners understand that a small boat, called a *skiff* in the NPRM, is a useful piece of equipment that *can be used for many purposes* including lifesaving. Our mariners asked the Coast Guard to draft suitable regulations or at least develop guidelines for this often-abused craft to suitably protect our mariners when using a skiff and were *disappointed that our previous recommendations were ignored*. When traveling in a skiff, our mariners must be aware of existing requirements for recreational boaters using similar craft but, as commercial mariners, are expected to show a greater degree of competence and professionalism. We reiterate these recommendations as [Enclosure “D”] to this report.

Proposed 46 CFR §141.330⁽¹⁾ with references to Table 141.305⁽²⁾ appears in the NPRM and addresses many issues – but far from satisfactorily. [⁽¹⁾NPRM, p. 50031. ⁽²⁾NPRM p. 50030.]

Purpose: One purpose of a skiff is to respond to falls overboard and thereby prevent the loss of life. However, common usage demands that a skiff, unlike other survival equipment, be adaptable to many different conditions, situations, and usage depending upon her towing vessel’s **route**. Since the NPRM allows substituting a “skiff” for all or part of the approved survival craft, we expect it to be listed along with its approved passenger capacity as part of the vessel’s lifesaving equipment on the towing vessel’s initial Certificate of Inspection (COI).

If counted as a survival craft, a skiff must be maintained and properly equipped at all times and ready for rapid launching – often by one person considering the small number of many towing vessel’s crew. However the phrase “launched within five minutes” (in footnote 2) is overly long and would not discourage its use as a catch-all collection basket for gear not easily stowed elsewhere – as often is common practice.

Our Association strongly disagrees with the idea that “A skiff may be substituted for all or part of the approved survival craft as permitted *by footnote 2 in proposed Table 141.305* because a skiff is taken for granted by both employers and mariners as a utility boat. As such, it may be used for tasks like painting and hull maintenance that may rapidly downgrade its condition for use in an emergency as a “rescue boat” (e.g., a true survival craft). The two terms should not be used synonymously.

In addition, a skiff may be dispatched on lengthy errands including crew changes and grocery runs leaving other crewmembers remaining on the towing vessel without a survival craft if the skiff is the only survival craft. Since acceptable inflatable survival craft such as inflatable buoyant apparatus are available in small packages, one of these of suitable size for all persons on board should be provided.

★NMA Recommendation: That the Marine Safety Directorate require a suitable IBA or true survival craft on every towing vessel regardless of any “skiff” carried.

Our Association strongly disagrees with *proposed Table 141.305, footnote #5*, where a towing vessel designed for pushing ahead when operating on rivers and canals need not carry survival craft. The great diversity of emergency situations including those not contemplated by the best planning may include one where the only safe evacuation route would be by means of a survival craft. The *possible* availability of a barge(s) in tow as an “evacuation site” for mariners fleeing a burning or sinking towboat should not be a factor when outfitting a towing vessel. The OCMI, who must approve such an exemption, is not always well attuned to the needs of working mariners, although generally compliant with the wishes of employers.

Our Association strongly disagrees with the exemption in *proposed Table 141.305, footnote #6*. One mile is a long distance to swim ashore, and if doing so, the location ashore may in itself pose more dangers than would floating in an approved survival craft. The casualty records include many “fleet boats” and other towing vessels sinking close to shore, often in swiftly flowing rivers in all seasons of the year. The OCMI, who must approve such an exemption, is not always well attuned to the needs of our mariners, although generally compliant with the wishes of employers

Our Association strongly disagrees with *proposed 46 CFR §141.305(c)(2)* because any survival craft after Jan. 1, 2015 must comply with §141.305(c)(6) that no longer allows a survival craft such as a life float or most types of buoyant apparatus (except *inflatable* buoyant apparatus) that allows a survivor to be immersed in water.

Our Association strongly disagrees with *proposed 46 CFR §141.305(c)(5)* to exempt any towing vessel operating within a limited geographic area from carrying a survival craft. Our Association asserts that every mariner serving on a towing vessel needs the protection of an approved survival craft. The OCMI, who must approve such an exemption, is not always well attuned to the needs of our mariners although generally compliant with the wishes of employers.

★NMA Recommendation: That reference to “Life Floats” be removed from the NPRM since Congress ordered them removed from service on or before Jan. 1, 2015. We further recommend that the “Bridging” program notify all towing vessel owners of this “sunset” provision.

★NMA Recommendation: Replace the term “Buoyant Apparatus” in proposed Table 141.305 with “Approved Buoyant Apparatus.” Any “Approved Buoyant Apparatus” (inflatable or not) that complies with §141.305(c)(6) must keep a person from being immersed in water.

8-3. Cold Weather and Cold Water Protection for Deck Crews

[Applicable Statute: 46 U.S. Code §3306(a)(2)]

[Comparable regulation: 46 CFR §25-25-5(e); 46 CFR §28.110; 46 CFR 199.273.]

[Previous NMA References, Reports, and Comments: Our Report #R-276, Rev. 9, item 51. NMA Report #R-354, Rev. 4.]

Discussion

Our Association asked the Coast Guard through TSAC to consider a requirement that would provide flotation and cold weather protection for towing vessel crewmembers when operating in cold-water areas and/or cold air conditions. The article cited in [Enclosure “E”] (below) describes our request.⁽¹⁾

Falling off a tug, towboat, or its tow is dangerous any time of year at any location. Sometimes victims are crushed between barges, fall between barges and lock walls, or are sucked under the vessel underway. If a victim manages to reach the surface unscathed, it will prove to be prudent to outfit him so he will not succumb to the cold. Our Association is disappointed that neither the Coast Guard, nor TSAC, nor the AWO ever acted upon this matter although discussed at TSAC meetings. We are disappointed that no mention of it even appeared in this NPRM.

★NMA Recommendation: That adequate cold-weather apparel with Coast Guard approved flotation be provided for crews on towing vessels where water temperatures drop below 59°F as NVIC 7-91 recommends.

★NMA Recommendation: That employers be required to furnish flotation and cold weather protection for towing vessel crewmembers comparable to that provided on Coast Guard vessels when they operate in “cold water” conditions on all waters.⁽¹⁾ [⁽¹⁾As outlined in NVIC 7-91

★NMA Recommendation: That, to better protect towing vessel crewmembers from hypothermia, the Marine Safety Directorate further research and rewrite NVIC 7-91 to include “cold water” areas found on navigable rivers in addition to its present coastwise coverage.

Since immersion suits are cumbersome to work in, we suggest that a Coast Guard approved Type V anti-exposure work suit (the type currently furnished to Coast Guard small boat personnel) be required on towing vessels when water temperatures are 59 degrees F or below as cited in NVIC 7-91. Again, our Association notes that the Coast Guard knows how to protect its own personnel so they can function effectively. However, the Marine Safety Directorate (after VADM Card retired) remained clueless and unconcerned for the past 10 years about protecting the safety, health, and welfare of our mariners. Clearly, there needs to be a change in attitude in dealing with working mariners in the Marine Safety Directorate.

Our mariners expected that the Coast Guard to consider this as part of the new towing vessel inspection regulations AND also update NVIC 7-91 to include cold water data from major navigable rivers and lakes. If the Coast Guard continues to provide “guidelines” in its Navigation and Vessel Inspection Circulars, we insist that such advice be correct, up to date, and relevant to all mariners it affects.

8-4. Man Overboard & Abandon Ship Drills and Retrieving a Man Overboard.

[Applicable Statutes: 46 U.S. Code §2104; 3306; 3307.]

[Comparable regulations: 46 CFR Part 131, Subpart E; 46 CFR §133.140; 46 CFR §180.210; §185.520; §185.524; 46 CFR Table 199.10(a).]

[Previous NMA References, Reports, and Comments: Our Report #T-276, Rev. 9, item #12 & 62. NMA Report #R-354, Rev. 4.]

Discussion

Our Association previously brought this subject to the attention of TSAC, the Coast Guard, and Congress.

We are ***disappointed*** to find that the NPRM Lifesaving proposals in 46 CFR Part 141 had so little to offer mariners serving on towing vessels. Since our previous recommendations submitted to the docket in 2005 and to Congress as late as 2009 were not responded to in the NPRM Preamble, ***we update and offer our previous recommendations for reconsideration in the Final Rule.***

Falls Overboard

The most common type of fatality in the towing industry is a fall overboard from either a barge or a towboat.

The AWO/USCG Quality Action Team (QAT) Report on Deck Crew Safety in the Inland Towing Industry⁽¹⁾ dated Dec. 30, 1996 states in part: “The study found that during the ten-year period, 1985-1994, the inland towing industry experienced an average annualized fatality rate of 68 deaths per 100,000 employees, with vessel employees classified as deck crew incurring the highest fatality rate. The study further found that ***nearly 71% of all inland sector fatalities resulted from falls overboard***; that ***these falls occurred from both barges and towing vessels in roughly equal numbers***; and that significantly higher fatality rates were found in the younger, less experienced population of workers.” [⁽¹⁾Reprinted as our Report #R-428-B.]

Falls from towing vessels. Many towing vessels present difficult physical obstacles to retrieving a person overboard from the water. Time is of the essence especially when cold water is involved. Physical obstacles include but are not limited to:

- high bulwarks and fenders hanging on the side of the towing vessel.
- no requirement for a suitable boarding ladder or “rescue platform“ comparable to those used on offshore supply vessels.
- no requirements for a suitable skiff, rescue boat, or survival craft until a Final Rule is adopted.. Even then, a five-minute launching window for a skiff is unreasonably protracted.
- a very limited number of crewmembers available or physically capable of hauling a person back over the gunwale. This is especially true on smaller two-man boats where special consideration, planning and equipment should be but is not recognized in the NPRM..
- the weight of the person who fell overboard, especially if the person is heavy or obese.
- the inability to easily maneuver the towing vessel especially when restricted by its tow..
- ring life buoys can only be thrown a relatively short distance. This antiquated equipment should be replaced by handier retrieval devices like the “***personal retriever***”⁽¹⁾ invented by retired Coast Guard BMCM Paul Driscoll. Captain Larry Brudnicki (USCG, Retired) brought this device to the attention of the Coast Guard Marine Safety Directorate, TSAC, AWO, as well as Members of Congress. [⁽¹⁾ Refer to NMA Report #R-354, Rev. 4, pgs 21-22, 35, 37 as reported to Congress in March 2009.]

To overcome many of these obstacles, a suitable ***mechanical means of recovery*** may need to be installed on certain towing vessels to assist with retrieval of a man overboard.. “Jacob’s Cradle” and “Life Sling” are two such devices assisted by block and tackle that are available commercially. This is an area where the Coast Guard’s Life Saving and Fire Safety Standards Division (CG-5214) should have made a meaningful contribution to this NPRM but, for some reason, clearly did not do so.

★NMA Recommendation to Congress: To enhance the safety of crews and passengers and using the example of the “Personal Retriever” (cited above) convene a public hearing to examine the lifesaving equipment approval process within the Marine Safety Directorate to determine which changes are necessary to encourage introduction of new and innovative lifesaving devices suitable for use on commercial vessels.

Falls From Uninspected Barges (Also see §6-1 (above))

Unmanned cargo barges come in various sizes. However, the Marine Safety Directorate blissfully ignored these barges since, like uninspected towing vessels, they were not required to inspect or examine an estimated 17,000+ dry cargo and deck barges. Complaints from our lawyers representing drowned mariners often find that they must work in a regulatory noman’s land of disinterested bureaucrats. This situation calls for a meaningful remedy.

As uninspected vessels, these barges are supposed to be “regulated” by OSHA⁽¹⁾ but are seldom examined. OSHA’s existing regulations do not result in any meaningful oversight that protects our mariners against workplace hazards on these barges. [⁽¹⁾Refer to NMA Report #R-202-C, Rev. 2 and NMA Report R-426, Rev. 2.]

If an accident occurs, it may be reportable to OSHA. However, even a civil penalty for workplace hazards brings little comfort to a mariner or his loved ones after a serious injury or a fatal accident occurs. Our Association has seen that the tug and barge industry's treatment of its injured mariners often is deplorable.⁽¹⁾ [⁽¹⁾Refer to NMA Report #R-202, Rev. 4.]

There is currently no regulatory requirement for barge owners to provide lifesaving equipment on an unmanned barge. – even temporarily. In light of the fact that towing vessel crewmembers work on these barges, make and break tows, handle lines, pump bilges, and clear decks of debris, our Association asserts that, as a minimum, each towing vessel should be required to furnish a throwable flotation lifesaving device on the end of each barge or tow available and ready for use at all times to **rapidly retrieve** a man who falls overboard. The availability and condition of each device should be checked regularly. Without a “lifebuoy” or equivalent, if a person falls overboard from a single barge tow, the nearest throwable lifesaving device may be on the towboat itself and may be 100 to more than 1,000 feet and minutes away – day or night.

Carrying suitable approved throwable devices is required on every towing vessel. However, the NPRM does not consider stationing these devices on barges in tow and on barges while crewmembers are working on them in a fleet or alongside a dock – night. All these factors must be considered, especially in light of the number of falls overboard.

We are critical of **proposed 46 CFR §141.360** (Lifebuoys) as this proposed regulation cranks out the same old and unimaginative regulations. If applied to single or multiple barge tows, carrying a heavy ring life buoy complete with attachments as described at 46 CFR §199.70(a) would be challenging especially on a long 1,000-foot tow. Carrying a much more **compact and easily deployable “Personal Retriever”** would make much such a task much easier and mariners more likely to undertake it.

At present, **existing regulations**⁽¹⁾ dating back to June 2004, do not require towing vessels to conduct “**man overboard**” or “**abandon ship**” drills notwithstanding the many documented cases of mariners falling overboard both from towing vessels and the (mostly) uninspected barges they tow. Fortunately, **proposed 46 CFR §140.420** puts “Emergency Drills and Training” including man overboard and retrieving a person from the water “on the map” but without any details. It is the unmentioned details that concern our Association.

In the absence of a safe manning document on inspected towing vessels requiring a minimal number of crewmembers, **the proposed regulation provides no assurance that a towing vessel manned with only two crewmembers (i.e., a Master and a deckineer) is properly equipped⁽¹⁾ to retrieve the deckhand from the water if that person falls overboard.** This issue remains unaddressed and is a serious safety issue especially for fleet boats whose owners elect to operate with only a two-man crew working in swiftly flowing river waters. [⁽¹⁾46 CFR §27.209.]

While the Coast Guard/AWO report (cited above) exhaustively studied the fatality records to determine the cause of these accidents, **the report never resulted action to develop regulations to conduct realistic drills and provide suitable equipment to recover the mariners that fell overboard.** It is clear that fatalities from falls overboard has not been satisfactorily addressed by corporate management, the Responsible Carrier Program, or the Marine Safety Directorate to the clear detriment of our mariners – primarily deckhands and “deckineers”.

It is clear in this NPRM that the Marine Safety Directorate and industry management continue to overlook these regulatory shortcomings. However, our Association works to protect our mariners and is unwilling to let this issue slide without adequate rulemaking to **require effective training and development of realistic and practical man overboard drills** that provide crewmembers on every towing vessel with a greater degree of assurance of a successful recovery from a fall overboard.

It is well documented that **man overboard** causes the greatest number of fatalities in the towing industry. Yet, this NPRM does not address this issue for vessels choosing the direct inspection option. It provides no guidance to the Master as to **how many** man overboard drills must be held, or **how often**, or **how to conduct them.** Because the rule is not prescriptive, it does not provide Coast Guard inspectors with guidance as to what, if any, gear is required to be carried or installed to successfully recover a man overboard.

Regulations for other classes of inspected vessels⁽¹⁾ offer only slight insight as to what is necessary. However, the man overboard situations on towing vessels is unique because of the nature of the work on deck as well as the structure of towing vessels in general.⁽²⁾ [⁽¹⁾Example; 46 CFR §122.520(g). ⁽²⁾Few protective bulwarks; decks often awash when crews are working; limited size of the crew assigned or available to work on deck.]

It is clear that the Coast Guard Project Officer has much more work to do to turn this into a credible regulation. Whereas vessels **operating under a TSMS** are called upon for “procedures for prompt recovery of a person from the water” and “training crewmembers responsible for recovery in effectively implementing such procedures,” the burden falls on the Coast Guard inspector to ascertain that such procedures and training are implemented on the vessels they inspect. The NPRM fails to take even the first step in this direction. **We are disappointed and see this as a failure in**

leadership to deal with one of the towing industry's greatest issues.

★NMA Recommendation: That proposed wording in 46 CFR §141.360(a)(1) be removed since this rulemaking does not encompass towing vessels less than 26-feet in length.

★NMA Recommendation: Cure the shortcoming in proposed 46 CFR §141.365 (Means for recovery of persons in the water) that only speaks to towing vessels operating under a Towing Safety Management System (TSMS). It does not address vessels choosing the traditional Coast Guard vessel inspection option where falls overboard also require an adequate response.

★NMA Recommendation: That proposed 46 CFR §140.420(d) fails to specifically list a man overboard drill or obscures it in subsection (d)(2) leaving it under the general terminology of “emergency drills and training.” Clarify this and list man overboard drills in a separate category.

★NMA Recommendation: Proposed 46 CFR §140.420(c) states: “Unless otherwise stated, each crewmember must receive the training required by this section annually.” Clarify whether this means that a “Man Overboard” drill (i.e., recovering a person from the water) must be conducted only once a year or whether the annual training is separate and distinct from regular drills and, if so, who is responsible for providing the annual training.

★NMA Recommendation to Congress: Proposed 46 CFR §141.360 promotes a traditional “lifebuoy” (aka Ring Life Buoy) as a standard personnel retrieval device where this device is little more than a datum marker. Our Association points out that the “Personal Retriever” is far superior to a “lifebuoy” in its retrieval capacity and is fully prepared to demonstrate it to members of Congress. Our Association has no commercial ties with its manufacturer.

DISAPPOINTMENT #9 – SHORTCOMINGS IN PROPOSED FIREFIGHTING REGULATIONS

9-1. Portable Fire Pumps.

[Applicable Statutes: 46 U.S. Code §3306; 3307.]

[Comparable regulations: 46 CFR Parts 132 & 182.]

[Previous NMA References, Reports, and Comments:: Our report #R-276, Rev. 9, item 44.]

Discussion

In the wake of the SCANDIA-NORTH CAPE disaster a number of changes were made in fire suppression and firefighting regulations for towing vessels.

Portable fire pumps as envisioned by the regulations are not interchangeable with portable bilge pumps used to pump barges. Most portable fire pumps are not comparable to the fixed fire pump installations with fire mains, hoses and nozzles on inspected vessels because of the time it takes to break the pump and its hoses from storage, the time to start the unit. The entire process may fall apart in rough weather with the possibility of slips, trips, and falls in addition to the stress of other firefighting efforts. This may compromise the safety of our mariners by letting a small fire get out of control. We believe these shortcomings will gain the attention of vessel examiners in the “Bridging” program and inspectors at a later date when they observe fire drills in progress.

Boat owners who have gasoline and diesel bilge pumps used to pump barges will find that these pumps cannot maintain a discharge of 80 gpm at a pressure of 60 psi as required by 46 CFR §27.301(e)(1). This is already an enforceable requirement. The NPRM proposes to replace this regulation with proposed 46 CFR §142.325(e)(f).

Unless a portable fire pump is a “dedicated” fire pump, it may have iron pipe threads (IPT) that do not match the NST threads used on fire hose as discovered 30 years ago when offshore supply vessels were brought under inspection.

Unless the portable pump can bypass the water, shutting off the flow at the nozzle may damage the pump seals. Equipping a portable pump with a smoothbore nozzle will not comply with the existing or proposed regulations.

Allowing gasoline fire (or bilge) pumps on an inspected vessel means that these pumps and their gasoline storage cans must be stored safely in a paint locker or equivalent space with adequate fire protection as described in proposed

46 CFR §142.225.

There is no mention in the existing or proposed regulations of:

- A strainer that is needed on any portable pump that draws quantities of water from a large body of water.
- The non-collapsible suction hose required on a fire pump, its length, its diameter, and the difficulty of stowing this hose outside the engineroom particularly on a small towing vessel.

No minimum fire drill standards appear to have been considered or established as to the time it will take to fuel and assemble the fire pump, retrieve from storage, lay out the fire hose and nozzle, start the pump, charge the hose and place the pump into action. This time will vary according to the number of crewmembers available for the task. It would be safe to say that, in light of the small crew size on many towing vessels, that only one person may be available to perform these tasks. **Our concern is that the time it might take to assemble the equipment and move it into position to fight the fire could allow the fire to get out of control.**

Since the fuel for many engineroom fires is diesel fuel, water is of questionable value on this type of fire.

★NMA Recommendation: In light of the large number of destructive towing vessel fires, re-evaluate the existing portable fire pump regulations that do not appear to provide adequate protection for our mariners.

★NMA Recommendation: Assemble and publish updated data on towing vessel fires and make that data available in the regulatory record for this rulemaking. [⁽¹⁾Refer to Docket #USCG-2004-19977-129 that mentioned 49 towing vessel fires from 1992-2005.]

9-2. Firefighting Gear and Respiratory Protection Gear

[Applicable Statutes: 46 U.S. Code §3306; 29 U.S. Code §653; 655; 657.]

[Comparable regulations or standards: NFPA-306, Standard for the Control of Gas Hazards on Vessels. 46 CFR 96.35-10; 46 CFR Part 98, Subpart 98.25, Anhydrous Ammonia. 29 CFR §1910.134; 29 CFR §1910.146. 30 CFR §250.490.]

[Previous NMA References, Reports, and Comments:: Our Report #R-276, Rev. 9, item 45. Our Report #R-368; NMA file #M-099 – Scandia/North Cape Disaster.]

Discussion

We previously asked the Coast Guard to require by regulation self-contained breathing apparatus (SCBA) and fire suits as well as full training in how to use them on towing vessels that operate beyond the boundary line.⁽¹⁾ [*Refer to NTSB recommendation M-98-109. ⁽¹⁾NTSB recommends this for all towing vessels.*]

Proposed regulations at 46 CFR §142.245 would require the Master of each towing vessel to participate in firefighting drills and receive instruction in firefighting once a month. This includes donning a fireman's outfit and a self-contained breathing apparatus (SCBA) if the vessel is so equipped.

Proposed regulations at 46 CFR §142.345 only require towing vessels 79 feet or more in length operating on oceans and coastwise routes and that do not have a fixed fire extinguishing system to carry fireman's outfits and SCBA.

The Coast Guard ignored NTSB recommendation M-98-109 to "Require self-contained breathing apparatus and fire suits aboard all towing vessels, as well as training in their use.

The Coast Guard ignored NTSB recommendation M-98-110 to "Require approved fixed firefighting systems in the enginerooms of all existing towing vessels." This was after the industry complained about the cost of a fixed system ranging from \$25,000 for small towing vessels to \$55,000 for large towing vessels. The Marine Safety Directorate overrode the advice of its own specialists in Headquarters in doing so and provided little if any consideration was given to the safety of the crews.

Connecting Firefighting to Voyage Planning

The facts revealed in the Scandia– North Cape Accident connected two separate and distinct issues of Firefighting to Voyage Planning in one rulemaking package⁽¹⁾ that turned out very badly for all concerned.. [⁽¹⁾ Docket ##USCG-2000-6931.]

The Marine Safety Directorate, on the advice of TSAC and the towing industry, seriously gutted NTSB recommendation M-98-106 that would have required voyage planning standards for rivers and inland waters with the one exception of the general areas⁽¹⁾ where the Scandia/North Cape disaster occurred. This mistake soon became evident when an unrelated Coast Guard accident report on the M/V Brownwater V allision with the Queen Isabella

Causeway Bridge attributed one of the causes of the accident to a **lack of voyage planning**. [⁽¹⁾First Coast Guard District.]

9-3. **Training Crews in Firefighting.**

[Applicable Statutes: 46 U.S. Code §2103; 3306; 3307.]

[Comparable regulations: 46 CFR §10.205(g); 46 CFR §27.209.]

[Previous NMA Recommendations: Our Report #R-276, Rev. 9, item 78.]

Discussion

Raw data provided by the Coast Guard to Congress⁽¹⁾ shows **494 towing vessel fires** in the 13 years from 1992 through 2004 for an average of 38 events per year. [⁽¹⁾Refer to Rep. Oberstar's letter to ADM Collins in Docket #USCG-2004-19977-129.]

Current regulations⁽¹⁾ require a course completion certificate in basic and advanced firefighting for **all Engineer officer endorsements**, and all Master or Mate endorsements on vessels of **more than 200 GRT but only for Masters on vessels of 200 GRT or less on oceans routes**. [⁽¹⁾46 CFR §11.205(d)(1)(2)(3).]

We continue to point out that the regulations that require completing a fire training course do not apply to most unlicensed towing vessel engineers although the engine room and machinery spaces are the seats of most fires on towing vessels. As mentioned in "Disappointment #4" (above) the towing industry has done its best to eliminate separate and distinct engineer positions on towing vessels as cited above.

Most older towing vessels in **coastwise service** were built to admeasure less than 200 GRT leaving them without a requirement for fire school training.

In our original comments to the Docket we asked that the Coast Guard Office of Investigation and Analysis and fire safety experts review and interpret the raw data concerning the large number of towing vessel fires. We see no evidence that this was accomplished in this NPRM.

The installation of new⁽¹⁾ fire detection devices, the new requirements for fire pumps, hose lines, nozzles, semi-portable fire extinguishers and new fire suppression systems on some new vessels call for effective fire training to meet Coast Guard standards. [⁽¹⁾"New" refers to Docket #USCG-2000-6931, 69 FR 34069, June 18, 2004.]

Considering the **small crew size and undermanning** prevalent on towing vessels and that the Master must remain in command in the pilothouse to handle communications and maneuver the vessel, the Mate/Pilot and available crewmembers will have to fight the fire. An engineer trained in fire prevention and firefighting techniques must activate the vessel's fire main system including fire pump. However, as a result of industry's attempt to eliminate "engineer" officers, very few hold "engineer officer endorsements" on towing vessels. In light of the large number of towing vessel fires, both the industry and the Marine Safety Directorate missed a golden opportunity to require firefighting training for new apprentice mate/steersmen before advancing to Mate/Pilot. To enhance safety aboard all towing vessels, our Association believes all licensed towing vessel officers as well as apprentice mates and steersmen as well as persons serving, as towing vessel engineers should undergo formal fire training to Coast Guard standards.

Regulations⁽¹⁾ continue to require towing vessel officers to drill and train their own crewmembers although many of these officers are not required to receive Coast Guard-approved fire training. The **blind leading the blind is inexcusable** when adequate training facilities exist. The absence of formal training for many towing vessel officers places them and their unlicensed crewmembers at risk in a fire emergency. This gap continues to be a part of the regulation⁽²⁾ that shunts "Alternative Forms of Instruction" to "**someone**" familiar with the contingencies" – a vague and unfocused regulation. [⁽¹⁾Proposed 46 CFR §142.245 is virtually the same as existing 46 CFR §27.209. ⁽²⁾Proposed 46 CFR §142.245(b).]

Previous rulemaking revealed that many, mostly older, towing vessels were constructed in such a way that the spread of fire could not be stopped by sealing the engine room or other space where the fire is burning. This would defeat the purpose of a fixed fire suppression system. Yet, industry set aside the rulemaking that was aimed at resolving these deficiencies with fixed fire suppression systems because the new modifications would cost between \$25,000 and \$55,000 **per vessel**. This ignored the fact that the proposed cost of buying and installing this equipment was far less than the cost of preventing a catastrophic personal injury or saving a single human life. In the absence of fire suppression equipment, meaningful training is necessary to avoid the danger of being overcome by smoke or fire on ill-equipped towing vessels. Of course, insuring the towing vessel solves the problem facing management and is part of the cost of doing business.

DISAPPOINTMENT #10 – OFFICIAL LOGBOOKS

10-1. Official Logbooks

[Previous NMA References, Reports, and Comments: NMA Report #R-276, Rev. 9, item 37. NMA Report #R-234, Rev. 2]

The New Statute

Section 409 of the Coast Guard and Maritime Transportation Act of 2004 amended 46 U.S. Code §8904 by adding the following verbiage:

“(c) The Secretary may prescribe by regulation requirements for maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer).

Section 607 of the Coast Guard Authorization Act of 2010 made important changes on maintaining an official logbook on all inspected vessels including towing vessels by adding this new requirement at 46 U.S. Code §11304:

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

(a) A vessel of the United States that is subject to inspection under section 3301 of this title, except a vessel on a voyage from a port in the United States to a port in Canada, shall have an official logbook, which shall be kept available for review by the Secretary on request.

(b) The logbook required by subsection (a) shall include the following entries:

- (1) The time when each seaman and each officer assumed or relieved the watch.
- (2) The number of hours in service to the vessel of each seaman and each officer.
- (3) An account of each accident, illness, and injury that occurs during each watch.

Discussion

Background. Our Association requested a Coast Guard rulemaking initiative to improve logbooks in a formal petition to the Commandant on Mar. 28, 2000 and subsequently was entered in Coast Guard Docket #USCG-2002-12581⁽¹⁾ However, the Coast Guard told us they lacked the statutory authority to require logbooks other than for Official Logbooks used on international voyages. Consequently, we took this important request directly to Congress where our request received the attention it we believe it deserved. [⁽¹⁾Refer to this Docket at www.regulations.gov.]

Official Logbooks. These new statutory requirements put teeth in a law that already contained modest civil penalties⁽¹⁾ for making false entries and late entries as well as failure to maintain the logbook by making about a dozen other entries required by laws. [⁽¹⁾These entries appear in 46 U.S. Code §11303]

Aside from accurately listing each mariner’s hours-of-service to the vessel, the law calls for listing each accident, illness or injury, thereby addressing a major shortcoming that resulted in 1) sloppy enforcement of hours-of-service regulations, and 2) personal illness and injury reporting requirements largely ignored by the Marine Safety Directorate. The latter resulted in improbable injury statistics for the entire marine industry and created problems for attorneys representing mariners to recover losses for injuries on the job.

Government-issued Official Logbooks are required for a vessel on an international voyage. At the end of the voyage, these logbooks must be shipped to the Coast Guard for storage, safekeeping, and future reference. The existing supply of these logbooks not been updated to include new U.S. Code §11304 – but, aside from that shortcoming, they are still acceptable.

The new meaning of “Official Logbook” is not restricted to Coast Guard “freebie” logbooks. The law now requires every inspected vessel (including a towing vessel) to maintain its own “Official Logbook.” This logbook need not be the government “freebie.” The logbook remains on board or in a company office “to be available for review by the Secretary” – e.g., a Coast Guard inspector or investigator.

Officers must log all the 12 types of entries previously listed in U.S. Code §11301⁽¹⁾ in the manner listed in U.S. Code §11302⁽²⁾ as well as the new entries listed in U.S. Code §11304 (above). [⁽¹⁾These **traditional** entries are well known to blue-water, deep-sea mariners. ⁽²⁾§11302 tells our mariners how and when to make log entries. It applies these rules to all inspected vessels.]

Congress was aware that the Coast Guard was willing to overlook sloppy, inaccurate recordkeeping often encoded to be intelligible only to the Master of the vessel. These imperfect records adversely affected two very important areas, namely 1) reporting personal injuries, and 2) accurately recording hours-of-service.

The law limits towing vessel officers to serving 12 hours on duty in every 24-hour period. As a result, mariners

are expected to sign in when they go on watch and sign off at watch change – and these entries in an “official” record and are no longer casual entries that can be ignored.

Based upon the changes made by the 111th Congress, our Association **expected** that more detailed Official Logbooks will replace the diary-type logbooks available from office supply outlets because of the many different laws and regulations that must be tracked.

Our Association also **expects** Coast Guard inspectors, investigators, and “third parties” to check these Official Logbooks for accuracy and statutory compliance so this document will be available for use as evidence by investigating officers and lawyers. The logbook or true copies must be available for examination by inspectors, investigators, and boarding teams. Actual hours of service must be shown to allow officials to reach meaningful conclusions about fatigue related accidents and illegal hours of service.

★NMA Recommendation: 46 U.S. Code §11304 states that a vessel of the United States that is subject to inspection “...shall have an official logbook which shall be kept available for review by the Secretary.” Proposed regulations at 46 CFR §140.905 and §140.910 conflict with the law in that they apparently were not checked for “outdated” verbiage.

Our Association worked much too hard and for too many years to watch the clarification made by the 111th ongress go down the drain.

PART 2 – POSITIVE ASPECTS OF THE TOWING VESSEL INSPECTION NPRM

1. Congress Provided Reasonable Federal Whistleblower Protection for Mariners

[**Applicable Statutes:** 46 U.S. Code §2103; 46 U.S. Code §2114 as amended; 46 U.S. Code §3315(a)(b);33 U.S. Code §1321(b)(5) (FWPCA).

[**Comparable Regulations:** 33 CFR §160.215]

[**Previous references:** Our Report #R-276, Rev.9, item #59 provides a detailed History of this issue.];

The 111th. Congress must receive the credit for its work to improve mariners’ job protection under the law by amending 46 U.S. Code §2114 in §611 of the Coast Guard Authorization Act of 2010. The Marine Safety Directorate never raised a finger to help our mariners. The Marine Safety Directorate, with its limited interest in and understanding of our working mariners, often displays its ignorance of labor relations in general. It was only reasonable, therefore, for Congress to clip its regulatory authority in this area and supplant it by regulations enforced by the U.S. Department of Labor.

The new regulations are the same that apply to all U.S. transportation workers – with no “special treatment” carved out for mariners.

In the past, if a mariner believed he was discriminated against (e.g., was fired, demoted or lost his job) for making a safety report to the Coast Guard or NTSB, that was pretty much his tough luck. This appears to be a move in the right direction.

2. Controlling any Unsafe Movement of a Damaged Towing Vessel

[*Refer to NMA Report #R-276, Rev. 9, item #14*]

Problem we stated: New towing vessel regulations must require the same “permission to proceed” that other classes of inspected vessels must comply with.

Damaged “uninspected” towing vessel never required Coast Guard “permission to proceed to another port for repairs” (CG-948) after an accident. Unsafe movement of damaged vessel could result in sinking, damage to the environment, channel blockage, or further development of other unsafe conditions. It is only reasonable for the Coast Guard to have sufficient control of the nation’s waterways to decide on the safety of such vessel movements that could block major channels or result in pollution.

Solution: We believe the proposed regulation at 46 CFR 136.240⁽¹⁾ is satisfactory as well as a standard practice affecting other classes of inspected vessels. [⁽¹⁾*NPRM p. 50011.*]

3. Congress Eliminated the “Long Loophole”

[**Applicable Statute:** 46 U.S. Code §8905(b). Congressional action in §606 of the Coast Guard Authorization Act of

2010 was required to repeal this statute.]

[**Comparable Regulation:** 46 U.S. Code §15.610(a).]

[**Previous reference:** Our Report #R-276, Item #74 contains the History of this issue.]

For 40 years 46 U.S. Code §8904(b) existed as a special interest “loophole” that allowed the offshore mineral and oil (M&O) industry to operate inland and offshore towing vessels without licensed Masters. The Coast Guard, working with our Association, TSAC, MERPAC, and NOSAC convinced the 111th Congress to repeal this special exemption. This problem was solved outside this NPRM and was the first Legislative Change Proposal our Association has seen based (in part) upon our requests.

4. True Propulsion Horsepower Will be Listed on a Towing Vessel’s Certificate of Inspection

[**Applicable Statutes:** 46 U.S. Code §2103; 3205; 3306; 3307.]

[**Comparable Regulations:** 46 CFR Parts 126 & 176.]

[**Previous Reference:** Our Report #R-276, Rev. 9, item #73 summarizes the History of this issue Our Report #R-400, Rev.8 contains much greater detail.]

Horsepower⁽¹⁾ means the horsepower stated on a vessel’s Certificate of Inspection (COI), which is the sum of the manufacturer’s listed brake horsepower for all installed propulsion engines. Our Association is satisfied that this will eliminate bogus horsepower assertions by some vessel owners and reflects factory engine specifications based upon factual evidence. [⁽¹⁾NPRM, p. 50006, Col. 3 is part of the proposed definitions in 46 CFR §136.110.]

5. Mariner Requests for Service Letters are Protected by Law.

[**Applicable Statutes:** 46 U.S. Code §10320 & §10321; **Abuse of** 15 U.S. Code §1681b of the Fair Credit Reporting Act (FCRA).]

[**Previous Reference:** Our Report #R-276, Rev. 9, Item #69.]

Discussion – Sea Service Letters

Discrimination against mariners can take many forms: Unfairly denying a mariner a discharge certificate or sea service letter after he/she serves time served aboard a vessel became a serious problem that affected our mariners.

The Coast Guard seldom helped mariners who requested a sea service letter from an employer although the letter was a requirement for renewing a credential or for a raise of grade. This often led to frustration when it thwarted a mariner’s advancement in the industry and undermined the smooth operation of the mariner-credentialing program.

Our Association frequently took the lead in seeking sea service letters from employers. Section 605 of the Coast Guard Authorization Act of 2010 tightened the language of the statute by amending Title 46 U.S. Code §7502: The amendment has “teeth” although companies go out of business, people die, and stuff happens over time

Remaining issues: Blacklisting Mariners. Unfairly blacklisting a mariner can destroy his/her career without just cause and often without notifying him of this action in a forthright manner. This impairs a mariner’s capacity to get another job in the industry. Our Association will continue to request Congress to make modifications to a provision of the Fair Credit Reporting Act through the House Subcommittee on Commerce, Trade and Consumer Protection in the 112th. Congress. We believe that the towing industry is starting to realize that its personnel is a finite resource.

6. Satisfying the need for Visual Distress Signals.

[**Applicable Statutes:** 46 U.S. Code §2104; 3306; 3307.]

[**Comparable regulations:** 46 CFR §133.60(b); 46 CFR §160.136; 46 CFR §180.68; 46 CFR §185.614.]

[**Previous References:** Our Report #R-276, Rev. 9, item #46.]

Our mariners **expected** the new towing vessel inspection regulations to address this issue and are satisfied that proposed 46 CFR §141.375 does so satisfactorily,

7. Congress Outlawed Life Floats and Buoyant Apparatus.

[**Previous references:** Our Report #R-276, Rev. 9, item #10. NMA Report #R-354, Rev. 4.]

Discussion

Starting in 1985, the National Transportation Safety Board (NTSB) repeatedly and continuously urged the Coast Guard to require survival craft that were able to support all survivors out of the water to avoid hypothermia, shark attack, snake bite, etc. until help arrives.

Our Association pointed out that traditional life floats and buoyant apparatus are not suitable lifesaving

appliances because they require survivors to remain in the water and subject to hypothermia since no seawater temperature provides the heat equivalent to a person's body temperature of 98.6°F. Cold-water temperature reduces body heat 25 times more rapidly than air of the same temperature. Our Association petitioned TSAC and the Coast Guard directly as early as 2000 to outlaw these types of survival craft. When both the Marine Safety Directorate and TSAC were unresponsive, we sent the same petition to Congress. Our records show that we had to fight the Coast Guard every inch of the way. Finally, in 2010, Congress in §609 to the Coast Guard Authorization Act of 2010 requiring out-of-water protection for survivors in survival craft. It is clear to our Association that Congress cares more about the safety of our mariners than does the Marine Safety Directorate.

8. Safe Storage of Combustibles on Towing Vessels.

[Applicable Statutes: 46 U.S. Code §2103;3306; 3307.]

[Comparable regulations: 46 CFR §92.05-10. 46 CFR §177.405(d); 46 CFR §132.310. 46 CFR §118.400(a)(5)(6).]

[Previous references: Our Report #R-276, Rev. 9, item 43.]

Discussion

Inspected vessels are required to have paint lockers made of steel or other non-combustible material. These lockers are for storage of paint, grease, gasoline for outboards, and pump engines, etc. These lockers must be protected by installed fire extinguishing equipment.

Under no circumstances should combustible or flammable materials be stored in accommodation spaces as we documented to the Coast Guard.⁽¹⁾ [⁽¹⁾Refer to letter #KCMA1111.1P, Dec. 13, 2003.]

Additional information is available in a report by the NTSB on the Fire Aboard the Tug Scandia.⁽¹⁾ [⁽¹⁾NTSB/MAR-98/03, pgs.37-38) NMA file #M-099.]

NPRM proposed regulation 46 CFR §142.225 coupled with required training in proposed 46 CFR 140.515(a)(6)(d)(e)(f) appear to be sufficient for existing vessels although we would like to see separate paint lockers with installed firefighting equipment required on new towing vessels.

ENCLOSURE "A"

Paperwork Overload on Towing Vessel Masters Under the AWO Responsible Carrier Program

[NMA File #: Snma0820.3C]

Fatigue must always be an important factor when operating heavy equipment. It is not only a danger when towing oil barges, dangerous chemicals, or liquefied gases such as chlorine and ammonia but also in other transportation modes such as driving intercity buses, tractor-trailer trucks, railroad locomotives, or flying airplanes. Fatigue **grabs the headlines** when "passengers" or "innocent civilians" are involved.

[Source: Our Association received this letter from an East Coast tugboat Captain [Mariner #174] in December 2005. The letter outlines the administrative tasks he is responsible for on a 5-man boat. These tasks often force him to break the law and operate his vessel in a fatigued condition. Thankfully, this letter did not report an accident.

Reference: This excerpt appears in our Report #R-413, Rev. 1

Dear ■,

This is a list of the duties, drills, and meetings required by the Responsible Carrier Program (RCP) and by my employer as normal boat business.

We like many things about the American Waterways Operators' Responsible Carrier Program (RCP). RCP has helped promote safety. However, as you can see, this has become more a safety maintenance system than a physical inspection system in design.

"As Captain, I do not appreciate the shift of responsibility (SOR) from management to crew. I do not think RCP should be used as a substitute or a model for a physical inspection of towing vessels for the following reason. The RCP does not take into account the time needed to conduct drills, hold meetings, and do the required paper work. The crew off-watch must participate on its own time in this additional work.

"As Captain, I am now left in a position to make the RCP a priority over my boat's performance. The real world comes first! If there is not enough time in a hitch to complete the REC requirements they simply remain unfinished.

I have been pressured to complete documents with a “satisfactory” report when weather or other factors; prevented us from actually conducting drills or holding meetings. It forced me to work over the 12-hour work rule many times.

I say this in confidence. All the enclosed documents would no doubt be considered sensitive proprietary materials to AWO and others including my employer. However, I need to show them to you in hopes they help you understand the paperwork required by the RCP and will bring to light some of the hidden problems it causes for working mariners.”

Oh, yes not to mention five men, 24 hours per day, 365 day a year must operate and maintain a very active towing vessel. This includes engine and deck maintenance, shopping for food and boat supplies, carrying them back to the boat, traveling, and – of course – all the administrative work.

Thank You. [Mariner #174].

////////////////////////////////////
Enclosures:

- Document #1 - Declaration of Security.
- Document #2 - Ballast Water Reporting Form. (This is a running log and daily reporting requirement.)
- Document #3 - Voyage Plan. (Required before each sailing.)
- Document #4 - Report due before each crew change. I consider this to be a shift in responsibility. (SOR)
- Document #5 - Request for money for food rations before each crew change. (SOR)
- Document #6 - Monthly tow wire report. (SOR)
- Document #7 - Daily billing log. (Not an “RCP” item).
- Document #8 - Company accident report. (Completed as needed. Not an RCP item.)
- Document #9 - Line inventory. (Due before each crew change. Not an RCP item).
- Document #10 - Release and indemnity agreement. Completed for each visitor,
- Document #11 - Radio Log. A running log record.
- Document #12 - New crewmember orientation checklist.
- Document #13 - Post orientation performance evaluation. (This report caused many problems.)
- Document #14 - New crewmember drug and alcohol policy.
- Document #15 - Repair request report. (SOR).
- Document #16 -Towing Investigation Report. Each incident.
- Document #17 - Reporting & Chemical Testing Requirement (Procedures).
- Document #18 - Parts Requisition. Weekly.
- Document #19 - Supply List Inventory & Requisition. Monthly (SOR)
- Document #20 - Overall Checklist for an Uninspected Towing Vessel. Due at Crew change.88 items. (SOR)
- Document #21 - Ice Report (Winter season only.)
- Document #22 - Safety Meeting Report. Weekly.(SOR).
- Document #23 - Fire & Boat Drill and Safety Meeting 23. Weekly. (SOR)
- Document #24 - A running trash log record book.
- Document #25 - Local Notice to Mariners. This requires the time to down load the document. It takes additional time to correct and update the charts.
- Document #26 - U.S. Army Corps of Engineers. Vessel Operations Report is a running log and reporting requirement.

Also include time I spend for:

- Daily Navigation Equipment & Communications Check.
- Weekly test of the general alarm system.
- Time to prepare minutes for weekly safety meeting and fire drill and then execute my plans.
- Weekly abandon ship drill.
- Weekly steering failure or loss-of-power drill.
- Bi-weekly man-overboard drill.
- Weekly test of emergency lighting and power.

ENCLOSURE “B” Improving Workplace Safety on Towing Vessels

- The role of each person involved in the task.

- The lines, wires, fittings, tools, and heaving lines that will be used, their condition, suitability and availability.
- Any vessel maneuvering that is anticipated to take place.
- Any reasonable deviation from the plan that may take place if plans change after the vessel is committed to the evolution. (aka “Plan B”)
- Safety procedures and positions the seamen must take to avoid all anticipated hazards.
- Require an instantaneous means of communication between the seamen on deck and the officer at the vessel’s control station.
- When a handheld radio is used to communicate, the radio must provide for hands-free operation since both of the seaman’s hands may be engaged in line-handling.
- If a loudhailer or public address system is used for communications, it must be fitted with a talkback system usable from all deck locations on the boat normally utilized by the deck crew (e.g., cavels, capstans, towing winches).
- If hand signals are used, the exact nature and meaning of each hand signal must be specified.
- Deck and pilothouse speakers must produce clear and audible sounds and must be energized during the evolution.
- The officer in charge must understand that his first responsibility is to monitor his crewmembers whom are at risk during the entire evolution.
- If the officer is unable to manage distractions, he must call off the evolution and have his deck crew stand down until such time as the evolution can proceed safely.
- If a new (“green”) deckhand is assigned to the vessel, the officer must determine the extent of his training (if any). The officer then must take the time to assess this deckhand’s knowledge of the vessel, his aptitude for the tasks he must perform, his understanding of the dangers involved, and the individual’s capability to serve as a useful crewmember before placing him at risk.
- If an officer anticipates a problem using a “green” deckhand he should not expose him to danger without first bringing the matter to the attention of the office and logging the resolution and have his deckhand sign the entry.
- Any task that cannot be performed safely by any of the persons assigned to perform it or with the equipment available must not be attempted. In making this determination, a towing vessel officer must consider the physical condition of his crewmembers including fatigue factors.
- On inland towing vessels, officers must ensure that all safety chains are in place to guard against a man overboard situation. Safety chains are lowered only with the knowledge and consent of the officer in charge. In general, safety chains should come down only when the towing vessel is tied to its tow.
- Heavy items must not be passed from boat to boat or boat to barge unless the two vessels firmly secured to each other and there is no appreciable gap between them.
- Consideration should be given to using a ramp between the 2nd deck of a towboat (“Texas Deck”) and the deck of an empty barge firmly secured alongside to facilitate moving gear between boat and barge.
- Before undertaking any task, the officer must be certain that all participants have donned any/all personal protective gear properly and that suitable lifesaving devices and personnel are available and immediately on hand to retrieve and recover a man overboard.
- The licensed officer must have the authority to stop any towing evolution that cannot be performed safely. This “responsibility” is detailed in Rule 2 of the Navigation Rules.
- There are times such as during high water or in bad weather where circumstances do not permit an evolution to take place with safety. The officer must be able to exercise his prerogative in those cases to avoid the possibility of an accident that would put his crew at risk.

<p>ENCLOSURE “C” – Should Motion Sensors Replace Lookouts in the Pilothouse?</p>

[Source: NMA Newsletter #74, Dec. 2010 - article #Mnl74.14N.]

This is probably a dumb question because it assumes that most companies in the towing industry seriously address training lookouts or posts them in the pilothouse or anywhere else]

On May 26, 2002 the inland towboat **Robert Y Love** pushing two empty asphalt barges up the Arkansas River at mile 360.3 went out of the channel and struck the Interstate 40 highway bridge causing it to collapse. The allision resulted in 14 fatalities and 5 injuries and is described in NMA Report #R-370-A, Rev. 2. Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited. This is only one of many

other towing vessel accidents resulting in infrastructure damage, oil spills, death and injury, but it is unique in a number of ways.

The Master was on watch at the time and was alone in the pilothouse. There were serious questions as to both the Master's and the Company's abuse of existing work-hour regulations – a matter that the Coast Guard's appeals process has allowed to drag on far too long.

One controversial result of this high-profile I-40 bridge allision prompted the towing company in question followed by other towing companies in the industry to install motion sensors in the pilothouses of many towing vessels to improve crew alertness.

There are two types of sensors. One type works off of the movement of the steering levers while the other type of sensors work off of the vessel operator's body movement. Both are activated by engaging the throttles.

Generally, the first alarm sounds in the pilothouse when the operator has remained motionless for a period of time that is unacceptable according to a decision reached by company management. Then if operator waits too long to wave his arms or move in a manner to indicate activity or push a button to deactivate the alarm, a second alarm will sound throughout the vessel alerting all crew members. So much for concerns about interrupting crewmembers who deserve a restful sleep while off-watch!

One of our mariners reports that he was awakened by this alarm more than once when nothing was wrong! In one instance, the pilot on watch walked outside to observe a fuel flat land and tie off alongside!

We ask, are motion sensors *really* the answer?

Since the I-40 bridge accident triggered this “mechanical and electrical” response (i.e., sensor installation) to a personnel problem, we ask why was the Master alone in the pilothouse? If a ***trained lookout*** was with him in the pilothouse, the accident could have been avoided. This would have been the case whether the Master had fallen asleep as a result of violating his hours of service (as the Coast Guard believes) or suffered from a medical condition (as the NTSB believes). Note, we use two words here – **trained** and **lookout**. We are not describing a “green” deckhand here!

Another interesting case where a trained lookout could have prevented a disaster was the grounding of the tank barge **Morris J. Berman**⁽¹⁾ on the beach in San Juan, PR on Jan. 7, 1994 spilling 620,000 gallons of oil during the height of tourist season. The Mate on duty spent almost an hour alone sitting in the helmsman's chair without looking astern to watch his tow or to attend to any other duties as his 105-foot tug, M/V Emily S., steered itself on auto pilot. He only noticed his tow was missing when his office called him and told him his 302-foot barge with 1.5 million gallons of oil was aground on a reef on the San Juan waterfront. [⁽¹⁾ *Professional Mariner #6, Mar. 1994.*]

We also point out that the Pilot of the WGN inland towboat Mauvilla did not have a lookout on duty when his towboat knocked the Bayou Canot railroad bridge out of alignment derailing the AMTRAK Sunset Limited killing 45 persons. Aside from the heartbreak and tragedy left in the wake of this accident, was AMTRAK \$20,000,000 loss of railway equipment. One of the coaches⁽¹⁾ still awaits repairs 17 years after the accident. [⁽¹⁾ *Superliner Coach 34040, Trains, Oct. 2010, p.49. Amtrak is a public corporation supported by our tax dollars.*]

Mechanical Solutions to Personnel Problems

The Coast Guard and most of the rest of the marine industry learned over 20 years ago that most accidents are the result of human error and not mechanical failure. Coast Guard officers with an engineering background found it hard to adapt to this new concept. The towing industry's motive for trying to solve a personnel problem with an electronic or mechanical measure has a different motivation – money. Whatever the cost of the new electronic gadgetry, it is cheaper than providing a lookout to assist the Master or Pilot of the vessel. The theme for the past 40 years has been to cut personnel costs to the bare bones. Our mariners serving on 24-hour boats pay the price every day. The public also pays the price as “accidents” destroy valuable infrastructure. The cost of this accident was estimated to be between \$30,000,000 and \$60,000,000 to say nothing of the human toll.

Mariner #149 Has Some Questions

As a licensed towboat master I have a few questions to ask!

- Why do these sensors need so much movement to keep them from sounding their alarm?
- Has a survey ever been conducted to evaluate whether these sensors save lives?
- Do these sensors' loud alarms distract the vessel officers while they navigate the vessel and its tow?
- What is the added cost to the towing companies?
- Did any towing company discuss the installing of these sensors with their vessel officers?

With many years experience navigating inland rivers and canals with all types of tows, Mariner #149 states

emphatically that loud sounding alarms do distract the vessel officer. When setting up to align his tow with the bridge opening, for example, the very last thing he needs is a loud-sounding alarm going off, breaking his concentration.

Some vessel operators, who would be terminated if caught, became so annoyed that they placed light-weight aluminum foil or other type of moving objects in front of the pilothouse sensors to register “motion.” The down fall is, if the towing company office managers find out that the sensors have been rigged in this manor someone is getting terminated!

However, a well trained pilot does not move the vessel’s rudders more than necessary to steer. On the other hand, there are pilots that over-steer. Some even fan the rudders hard-over to hard-over and, by doing so burn more fuel and cost the towing company money in addition putting undue strain on the cables that hold the towing vessel and its tow together!

Mariner #149 states: “There are no government regulations requiring these devices, so why have them on board? I believe that these motion detecting devices cost the towing companies money in extra fuel burned by having to move the rudders when it is not necessary to do so and by distracting the vessel operator at the worst possible time, and by doing so, also putting added stress⁽¹⁾ on the towing vessel officer – possibly causing an accident! It also causes off-duty crewmembers to lose sleep!” [⁽¹⁾Refer to NMA Report #R-403, *Stress and the Licensed Mariner.*]

The Case for Trained Lookouts

Mariner #149 agrees that the real answer to this problem is the overwhelming absence of adequately trained lookouts. These trained personnel could include a pilot in training (i.e., an Apprentice Mate/Steersman using Coast Guard terminology) who will have the opportunity to see the right way and the wrong way to handle a tow.

Inland Rule #5 (33 CFR §83.05) states: “**Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.**”

It is clear that providing the Master and Pilot with a trained, well-rested lookout can avoid many significant and costly towing accidents. Working crewmembers “until they drop” is counterproductive. However, even experienced Masters need to understand that properly utilizing the crewmembers they do have is not always a routine exercise. Our best advice to towing vessel officers is contained in three reports in our NMA R-207 report series.

- #R-207, Rev. 1. Training and Posting Lookouts.
- #R-207-A. Lookout Training.
- #R-207-B. Rule 5 – Maintaining A Proper Lookout.
- #R-275, Rev. 3. Navigation Bridge Visibility]

The Coast Guard has an excellent opportunity to solve this problem in its new Towing Vessel Inspection regulations. Addressing personnel shortages on towing vessels is long overdue and ***should be part of the new regulations.***

One key function of the Certificate of Inspection for ***all inspected vessels*** is to list the required number of officers and ratings on an inspected vessel. Up to this point, owners of towing vessels have cut corners and have been allowed to get away with it. It is up to the vessel owner or operating company to supply the Master with a sufficient number of properly trained crewmembers. With these crewmembers, it is left to the Master to post watches and provide for posting lookouts. We suggest that the Master is often shortchanged by being provided with insufficient (or insufficiently trained) mariners to fulfill his obligations.

Congress made it clear (in 2004) that towing vessels will be inspected. The Coast Guard Authorization Act of 2010 set the deadline (in wet concrete) to announce the new towing inspection regulations. The Coast Guard has the personnel necessary to inspect towing vessels and to enforce manning requirements – ***if they choose to do so.***

ENCLOSURE “D” – NMA Recommendations for Training, Preparing, and Using a Skiff

The Coast Guard, in this NPRM, ***appears to incorrectly assume*** that every crewmember of a towing vessel is a proficient recreational boater and has ample knowledge of the safe and proper loading, maneuvering or propulsion of a skiff or rescue boat. This assumption also may be shared by many employers who assign new hires with no small-boat background to towing vessels as “green” deckhands. The ***assumption*** that drills are suitable training for such persons is often false or premature. We call upon the employer rather than the Master of the towing vessel to correct this error. Because of the small size of towing vessel crews, personnel without training in these skills may be an immediate liability rather than an asset.

In regard to proposed **46 CFR §141.330** (Other Survival Craft), we assert that the following factors must be considered when approving ***existing*** “skiffs” as well as accepting ***new*** skiffs purchased for use on any towing vessel:

In light of the dangers of drowning we are disappointed that these safety and training issues were not included in the NPRM. We ask to incorporate these recommendations in the final rule for the safety of our mariners.

- The skiff must be suitable for at least people, e.g., 2 crewmembers plus one survivor.
- The skiff must be stable enough and so arranged as to make it possible to pull a survivor aboard without capsizing the skiff.
- The skiff must be approved by the Coast Guard and have an approved nameplate. The nameplate must be readable and not painted over. Provision for testing and certifying replacement nameplates must be provided by regulation.
- New and existing recreational skiffs may be “grandfathered” for use by towing vessels on inland waters if specifically accepted by the Officer in Charge, Marine Inspection on a case by case basis.
- The skiff must not be loaded beyond the nameplate weight limit with persons, supplies, or water in the bilge.
- The skiff must not be powered beyond the horsepower limit as shown on its nameplate.
- In-place buoyancy must be tested on all skiffs at the time of initial inspection and re-checked annually at the same time as the towing vessel’s annual equipment inspection.
- Suitable oars, oarlocks, and oarlock sockets must be provided for each skiff and must be demonstrated to be both durable and functional.
- One eyebolt, ring bolt or other fitting suitable for attaching a painter must be fitted to both the bow and stern. Suitable painters, one-half inch in diameter and each at least 30 feet long (as per 46 CFR 160.056-3(b)(2)) must be attached to both the bow and stern respectively.
- Oars must be carried and marked with the towing vessel’s name.
- The skiff must be operated in full accord with the navigation rules and, when in the water, would be treated as a recreational vessel for purposes of the navigation rules. Mariners operating the skiff, including unlicensed crewmembers, must be trained in the navigation rules to the same extent as a proficient recreational boater..
- The skiff must carry appropriate lights for nighttime use (if operated between sunset and sunrise) and be equipped as a recreational vessel in all respects.
- The skiff should be equipped with a suitable outboard motor suitable for its intended service such as crew change and installed to the satisfaction of the OCMI.
- The skiff must have a launching appliance operable by one person alone and installed to the satisfaction of the OCMI except where demonstration shows this is not necessary.
- The skiff must be ready for immediate launching. A launching plan must cover all situations and detail the use of all equipment. The plan must detail necessary security measures for the skiff and its equipment.
- Fuel containers for outboard motors must be stowed safely.
- The skiff must be well maintained and fully equipped at all times the towing vessel is in service.
- When the skiff is dispatched from the towing vessel’s immediate area, it must carry a handheld radio tuned to the same channel being monitored on the towing vessel.
- Man overboard drills must be conducted on a regular basis and whenever new crewmembers are assigned to the vessel.
- Each crewmember must receive training in boating safety applicable to the operation of a recreational skiff. This training must be to the extent required by the state boating authorities if the skiff operates only in one state or to the appropriate course conducted by the U.S. Coast Guard Auxiliary if the towing vessel operates in two or more states. No untrained mariner who has not proven to be proficient in small skiff safety may be allowed to use or be transported in such a skiff.
- Every crewmember must receive specific training in the proper operation of the installed outboard motor and in the safe operation of outboard motors in general. In addition, each crewmember must be trained to both row and paddle the skiff. The company must provide this training. These mariner skills must be demonstrated and signed off in each monthly man overboard drill using the boat. The Coast Guard must observe one man overboard drill annually to the satisfaction of the cognizant marine inspector.
- The Master of the vessel must contact the OCMI at any time under provisions of 46 USC 3315 if he believes the boat provided him and approved by the OCMI is in any way unsafe, inadequate, or poorly maintained for the purpose intended.
- The boat must be provided with a suitable watertight cover and a drain plug. If an inflatable boat is authorized, the cover must protect its fabric from the deleterious rays of the sun.
- Mariners must wear at least a work vest (safety apparel) when working from the boat in the immediate vicinity of the towing vessel. If dispatched to pick up crew or supplies out of sight of the towing vessel, the mariner must wear a suitable Coast Guard-approved lifejacket.
- Pirogues and kayaks should not be accepted as approved skiffs.

ENCLOSURE “E”

Coast Guard and Industry Get Chance to Rectify Oversight
[Source: The Waterways Journal, Aug. 30, 1999, p. 4 (editorial).]

Problem solvers are sometimes asked to find solutions when they do not have all of the necessary data they need. That apparently was the contributing factor when the Coast Guard attempted to clarify cold-water areas for which current or proposed regulations requiring lifesaving equipment for cold waters on commercial vessels would be based. The focus is Navigation and Vessel Inspection Circular (NVIC 7-91).

A letter to Vice Adm. James Card, Vice Commandant, said “Unfortunately, these guidelines *[the NVIC] did not take into account water temperatures that are found in various rivers – only those found along the coasts.*” The writer, Richard A. Block, editor of the National Association of Maritime Educators (NAME) newsletter, said the omission is a “significant shortcoming.”

Block cites a 1996 Quality Action Team report. It says, “Nearly 71% of all inland sector towing vessel fatalities resulted from falls overboard; that these falls occurred from both barges and towing vessels in roughly equal numbers; and that significantly higher fatality rates were found in the younger, less experienced population of workers.”

Enclosed with the April 29 letter to Adm. Card was a document titled River Temperatures Along the Mississippi River and Tributaries. Included in the document are recorded engine cooling-water intake temperatures on selected dates and locations aboard a working riverboat and systematically recorded. “The Coast Guard has gone on record that temperatures falling below 59°F are significant for regulatory purposes in NVIC 7-91.” Block wrote. His association believes the thinking behind the NVIC should apply upon rivers just as it does in coastal areas. *After all, cold water is cold water wherever found.* In rivers, it may be swiftly flowing cold water and, therefore, even more dangerous.

Block said the association is not aware that the temperature document was ever available to, or used by, the Quality Action Team, so it was offered for Coast Guard consideration. A page of the document provided for The Waterways Journal listed Lower Mississippi River temperatures recorded in 1998 and 1999. They were recorded on the first and 15th of each month. The list for 1998 shows the following water temperatures: January 1, 48 degrees, New Orleans; January 15, 50 degrees, St. Francisville; February 1, 45 degrees, New Orleans; February 15, 46 degrees, Baton Rouge; March 1, 46 degrees, New Orleans; March 15, 46 degrees, Natchez; April 1, 52 degrees, Memphis. In mid-April temperatures rose above the 59-degree level and remained there until mid-October when they reached 56 degrees at Dubuque. November readings at St. Francisville remained above the mark, but on December 1 dropped to 56 degrees. The reading was the same at New Orleans on December 15. Readings taken in 1999, January through March 15, were all in the 40s at Natchez, New Orleans, and Baton Rouge.

It was pointed out that in south Louisiana during the winter, the Coast Guard outfits its small-boat crews with effective cold weather insulated flotation gear similar to Coast Guard-approved anti-exposure coveralls.⁽¹⁾ [⁽¹⁾Now required by §410 of the Maritime Transportation Security Act of 2002.]

Adm. Card's July 14 response said Block made a good point about the weather-resistant working suit and that “The use of these suits would be a prudent safety measure during cold weather and one that the Coast Guard would encourage. He said he was forwarding a copy of his letter to the American Waterways Operators for discussion by their membership. “I will also see that it is discussed at the next Towing Safety Advisory Committee meeting and the next AWO/USCG Partnership meeting,” he wrote.”

ENCLOSURE “F”

Canada Shipping Act, Towboat Crew Accommodation Regulations

- “46. (1) The owner of a ship shall require the master, or any officer appointed by the master for the purpose, to inspect every part of the crew accommodation at intervals not exceeding 30 days.
- (2) Subject to subsection (3), the owner of a ship shall ensure that the master causes to be entered in the ship's official logbook a record of
- (a) The time and date of every inspection made in accordance with subsection (1);
 - (b) The name of the person making the inspection; and
 - (c) Particulars of any respect in which the crew accommodation or any part thereof was found not to comply with the requirements of these regulations and the action taken to remedy such non-compliance.

- (3) In the case of a ship for which an official log is not required by the Act, the owner of the ship shall ensure that the master sign a statement each time the ship is inspected in accordance with subsection (1), to the effect that the ship has been inspected and the statement shall
- (a) Include the details required to be entered in a log book by subsection (2); and
- (b) Be retained with the ship's official papers.
- “48. The Minister of Transport may designate as an inspector any person in the Public Service of Canada who, in his opinion, is qualified to be so designated.
- “49. (1) An inspector may at any reasonable time go on board and inspect any ship where he has reason to believe that any provision of these Regulations has been contravened.
- (2) Where
- (a) A member of the crew of a ship complains to an inspector that a contravention of these Regulations has taken place on that ship, or
- (b) An officer of an organization that represents owners of or persons employed on ships complains to an inspector that a contravention of these Regulations has taken place on any ship, an inspector shall investigate the circumstances giving rise to the complaint.
- (3) Every complaint referred to in subsection (2) shall, where required by an inspector, be in writing and signed by the person making the complaint.
- (4) Where an investigation is made pursuant to this section, any person in possession of a ship's logbook shall, when requested to do so by an inspector, produce that log book, furnish a true copy of any entry therein and produce any other document in his possession relating to the ship.
- (5) No person shall obstruct or hinder an inspector in the carrying out of his duties or functions under these Regulations.
- (6) The owner of any ship boarded pursuant to subsection (1) and every person found on board the ship shall give an inspector all reasonable assistance in his power to enable the inspector to carry out his duties and functions under these Regulations and shall furnish the inspector with such information as he may reasonably require.