



NMA REPORT #R-276-C, Rev. 2

DATE: Jan. 26, 2011

By Capt. Richard A. Block

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

Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

[Publication History: Originally issued as Report #R-282 on June 10, 2000. Revision 1 was issued on Sept 19, 2009. Re-numbered as NMA Report #R-276-C, Rev. 2 on Jan. 26, 2011.]

"EXAMINATION" OF TOWING VESSELS IS NOT "INSPECTION" – THE BACKGROUND OF THE TOWING VESSEL "BRIDGING" PROGRAM

The Coast Guard's "Marine Safety" Program Lost its Focus

Once upon a time, in the days before Congress directed the Coast Guard to inspect towing vessels⁽¹⁾ these vessels already were required to comply with a significant number of generic regulations. However, the Coast Guard devoted very little effort to enforce those regulations and reserved most of efforts for inspected vessels. Coast Guard inspectors treated inspected vessels as if they had a stake in them. ⁽¹⁾*Sept. 9, 2004.*

Until Admiral James Card left the office of Marine Safety, Security, and Environmental Protection retired, the inspection program was a credible and meaningful undertaking. However, "Marine Safety" lost its focus after Admiral Card's departure and following 9/11 as detailed in his excellent report submitted to former Commandant Thad Allen and released to the public in February 2008. ⁽¹⁾ ⁽¹⁾*Reprinted in NMA Report #R-401-D.*

Boarding vs. Inspection

The Coast Guard assigned the enforcement of the few existing towing regulations to boarding parties rather than to inspectors who spent most of their time regulating inspected vessels such as deep-sea merchant ships, small passenger vessels and, more recently, offshore supply vessels. "Boardings" of recreational vessels, uninspected fishing vessels, and towing vessels are unannounced random law enforcement activities conducted by armed boarding parties and are quite different from inspections that are pre-planned annual visits that allow sufficient time for a vessel owner to bring his vessel into full compliance with all applicable regulations.

Examination vs. Inspection

Starting in 1990, the Coast Guard began to "examine" uninspected fishing vessels under the Commercial Fishing Vessel Safety Act signed by President Reagan on Sept. 9, 1989. This law was long overdue, as eight hundred forty-three (843) commercial fishermen had died since President Reagan took office in 1981. The Washington Post editorialized that the Act was "a good law bought at an awful price."⁽¹⁾ These "examinations" usually were voluntary dockside visits where vessel owners and crews invited the Coast Guard on board to advise them about any shortcomings found on their vessels urge them to fix the problems to prevent accidents and save lives. "Examinations" are considerably less invasive than a full-blown inspection and allowed the industry to make great strides toward the goal of accident prevention. In addition, the voluntary examinations are a serious attempt at public relations on the part of the Coast Guard. However, recent legislation in the Coast Guard Authorization Act of 2010 clearly reveals that much more must be done to make practices and equipment safer on both fishing vessels and towing vessels. ⁽¹⁾*Dillon, Patrick. Lost at Sea – An American Tragedy. p. 237*

The Bayou Canot Accident and CVTEP

In the year following the Sept. 23, 1993 Bayou Canot/Sunset Limited accident, the National Transportation Safety Board correctly pointed its finger at the Coast Guard for its lax regulatory supervision of the towing industry as well as its uncooperative attitude in failing to implement an entire series of NTSB recommendations.⁽¹⁾ Clearly, the Coast Guard as well as the towing industry needed to "shape up." One answer to the industry's shortcomings obvious to all except then Commandant Kramek would have been to bring towing vessels under inspection as soon as possible after the Bayou Canot catastrophe claimed 45 lives. His report on "Towing Vessel Studies" delivered to

the Secretary of Transportation⁽²⁾ was singularly unconvincing. [⁽¹⁾Refer to NTSB Report MAR-95/03, (M/V Argo Commodore) pgs. 59-63. PB 95-916403. NMA file #M-076. ⁽²⁾Aug. 8, 1994, NMA file #A-193-3.]

In the years following the Bayou Canot incident, the American Waterways Operators (AWO), a towing industry trade association, proposed their Responsible Carrier Program (RCP) while the Coast Guard put forth the Commercial Towing Vessel Examination Program (CTVEP) program as an alternative to inspection. The CTVEP program originated in the Fifth Coast Guard District and by early 1997 spread into other districts as well.

The CTVEP program for towing vessels was, in many ways, similar to the Coast Guard Auxiliary's Safe Boating Program for recreational vessels and the new dockside exam for uninspected fishing vessels. CTVEP awarded decals to towing vessels that passed their examination with flying colors. CTVEP eventually made its way throughout the Coast Guard **but only into those Marine Safety Offices that decided to go along with the program.** These offices awarded decals to towing vessels that met the program requirements. A decal on a pilothouse window meant that the Coast Guard generally would not board those vessels **except** after a particularly serious accident or when laws obviously were broken. That was reasonable enough.

The Coast Guard **planned** the CTVEP as if it was serious about enforcing the **existing laws** that already were on the books. However, the problem with the program was that the Coast Guard Headquarters did not back all of their planning **(which clearly absorbed a great deal of time, money, and effort funded by taxpayer dollars)** with sufficient money and resources to carry it out. Many Marine Safety Offices simply did not participate in CTVEP while other offices chose to participate fully in the program and the mixed results. It was a false start and a lost opportunity.

What happened to CTVEP?

In May 2000, the National Association of Maritime Educators (NAME) sent questionnaires to each of more than 40 Coast Guard Marine Safety Offices to try to ascertain the success of the CTVEP program after it appeared that this worthwhile program had started to fall apart. Our Association compiled the results of those questionnaires that the Coast Guard chose to answer and distributed the results in our original report in June 2000.

We learned that a number of Coast Guard Marine Safety Offices did not actively participate in the Commercial Towing Vessel Examination Program (CTVEP) because they were given no funding or resources to do so. While this program as a public relations exercise "looked good on paper," unless it was available and used in all parts of the country to **improve (or remove) substandard vessels and to protect working mariners** it could hardly be credited as a valid and meaningful nationwide program. In some areas, CTVEP was taken seriously. However, in other ports, it became another toothless paper tiger and exercise in public relations. NAME polled every single Marine Safety Office with the following letter and received the following results. Many Marine Safety Offices simply never bothered to respond to our request for information ó as shown by the abbreviation "N/R" in the following table. Such lapses in answering correspondence should have reflected unfavorably on their MSO Commanding Officers' next fitness report ó but we doubt whether it made any difference!

SUBJECT: Cooperative Towing Vessel Examination Program (CTVEP)

Dear Sir or Madam,

Although almost 5,500 towing vessels in the United States operate for the most part as uninspected towing vessels, the Coast Guard began to encourage development of a voluntary Cooperative Towing Vessel Examination Program (CTVEP) in 1996 and 1997 in lieu of recommending a formal "inspection" program to Congress in 1994.

As we understand, subject to your correction, the CTVEP is developed by each Coast Guard District. Individual marine safety offices award decals to vessels that meet the program requirements. Coast Guard units generally do not board vessels displaying the decal except after accidents or when laws obviously are being broken. Our information is based upon a bound, well-developed program for the Eighth District from our files (#A-589).

We also understand that certain Marine Safety Offices do not participate in such a program because of lack of resources. We are preparing an article on the effectiveness of CTVEP and respectfully request your participation by answering a few questions and Faxing back a reply on or before our editorial deadline of June 10, 2000. Our FAX number is (on our letterhead).. Specifically:

1. Does your Marine Safety Office participate in an active CTVEP? Yes: _____ No: _____ (please check)
2. If your MSO participates in the program, how many uninspected towing vessels has it examined in the past year? _____ This is a monthly average of _____ vessels.
3. Please explain how this program is funded in your unit? _____
4. What is your MSO FAX #? _____
5. Contact person for CTVEP information at your MSO: _____

We welcome any additional information and thank you for your participation.

Marine	Towing	Towing	How
--------	--------	--------	-----

Safety Office	Vessels Examined in Past Year	Vessels Examined per Month	Funded (See footnotes)
Alameda, CA	0	0	(21)
Anchorage, AK	N/R	N/R	
Baltimore, MD	N/R	N/R	
Boston, MA	N/R	N/R	
Buffalo, NY	2		
Burr Ridge, IL	avg. 33	ukn.	(1)(2)
Charleston, SC	9	<1	(3)
Cleveland, OH	N/R	N/R	
Corpus Christi, TX	18	1.5	(4)
Detroit, MI	12	1	(5)
Duluth, MN	N/R	N/R	
East Providence, RI	N/R	N/R	
Guam	N/R	N/R	
Galena Park, TX	N/R	N/R	
Honolulu, HI	N/R	N/R	
Huntington, WV	30	0	(6)
Jacksonville, FL	45	3	(7)
Juneau, AK	0	0	(21)
Long Beach, CA	0	0	(21)
Louisville, KY	52	4.3	(8)
Memphis, TN	43	<4	(9)
Miami, FL	N/R	N/R	
Milwaukee, WI	2	0	(22)
Mobile, AL	52	4	(10)
Morgan City, LA	0	0	(21)
New Orleans, LA	N/R	N/R	
New York, NY	40	3	(11)
Norfolk, VA	N/R	N/R	
Old San Juan, PR	N/R	N/R	
Paducah, KY	108	9	(12)
Philadelphia, PA	N/R	N/R	
Pittsburgh, PA	52	4.3	(13)
Port Arthur, TX	54	4.5	(14)
Portland, ME	N/R	N/R	
Portland, OR	N/R	N/R	
San Diego, CA	N/R	N/R	
St. Louis, MO	63	7	(15)
Sault Ste. Marie, MI	4	0	(16)
Savannah, GA	9	<1	(17)
Seattle, WA	0	0	(21)
Sturgeon Bay, WI	N/R	N/R	
Tampa, FL	29	0	(18)
Toledo, OH	0	0	(19)(21)
Valdez, AK	N/R	N/R	
Wilmington, NC	0	0	(20)(21)
Total towing vessels accounted for in USA: 657 (Out of 5,216 towing vessels reported.)			

Footnotes

[Explains how program is funded— and other comments submitted by MSO.]

- (1) Too many to determine, since we also board vessels from other Districts.
- (2) Funding through our District or Headquarters
- (3) No special funding. Exams conducted by reserve office during regular active duty days.
- (4) We have to basically call up the companies to see if they have vessels available. We don't get any money (i.e., funding). We are short on personnel, and we ask them to participate. However, once we do an examination, they feel us out and understand we aren't out to be a "water stickler," then they are more receptive.
- (5) No additional funding was provided for this program.
- (6) Phase 1 - 19 vessels enrolled; 19 examined. Phase 2 - 60 vessels enrolled; 11 examined by CG personnel.
- (7) MSO Inspection Dept. Funds, D7 decals and forms.
- (8) Program receives no funding, time and resources for this program come from other OCMI program areas.
- (9) This program receives no funding. Time and resources to administer this program come from other OCMI program areas.
- (10) It is not funded.
- (11) Funded by port safety resources.
- (12) Unit is provided annual funding, general unit operation from D8.
- (13) This program receives no funding.

- (14) The CTVEP receives no funding. Must draw funds from various sources when available.
- (15) There is no funding.
- (16) Out of dept funding.
- (17) No funding is provided. We have a very small fleet of towing vessels in our area of operation on a regular basis, of those that are most participate in the program.
- (18) Exams conducted on an as requested basis. No funding is provided.
- (19) We do not currently have an active CTVEP as we have no commercial towing companies home ported here, other than a few harbor-assist tugs.
- (20) MSO Wilmington used to have active CTVEP several years ago inspecting up to 20 tugs/year. Other demands/priorities within marine safety have reduced our ability to maintain active program.
- (21) this MSO does not participate in the Commercial Towing Vessel Examination Program.
- (22) Funded through unit funds.

CTVEP Failed for Lack of Coast Guard Leadership

CTVEP was **well planned** but eventually failed because of lack of leadership. Our mariners related cases where Coast Guard examination decals were passed out to company port captains and slapped on to vessels without any meaningful examination. Some mariners obtained examination decals and slapped them on their personal vehicles.

Many mariners took the program seriously. Captain John R. Sutton, past-President of the American Inland Mariners Association (AIM), Raymond G. Robbins, a towing vessel owner from the Norfolk area, actively contributed to preparing a detailed Towing Vessel Regulation Logbook based upon CTVEP and the regulations the program was intended to enforce only to discover that the Coast Guard had dropped the ball on most of its enforcement efforts.⁽¹⁾ However, we updated the status of this book to reflect the requirements of §607 of the Coast Guard Authorization Act of 2010 that now requires an "official" logbook.. [⁽¹⁾Refer to NMA Report #R-234, Rev. 2.]

Even after Congress changed the law in 2004 to require the inspection of towing vessels, there was little change in the enforcement effort of existing laws and regulations. However, after the disastrous collision between the towing vessel MEL OLIVER and the tankship TINTOMARA that caused an oil spill that closed the Lower Mississippi River at New Orleans for five days in July 2008, the Coast Guard finally trained its boarding parties in the basics of towing vessel licensing and conducted "Operation Big Tow" in an attempt to convince itself as well as to reassure the general public that all towing vessels were properly manned and safely operated throughout the country. In our dealings with the Coast Guard, we recognized this as a knee-jerk public-relations exercise.

The Bridging Program

The Coast Guard informed the Towing Safety Advisory Committee in May 2009 that they were planning a "bridging" program to bridge the gap between the laws and regulations for towing vessels that already exist and have existed for many years and the "new" towing vessel inspection regulations that are still being developed. **Essentially, the bridging program is a revival of the old discarded CTVEP program.** The Coast Guard decided it had to make an effort to enforce the old laws before it could have any credibility in enforcing the new inspection regulations that were already far behind schedule.

There is nothing in the existing regulations that is new or unusual except that the Coast Guard finally made an effort to enforce the existing regulations and cranked up their best public relations charm offensive. They printed an excellent book titled United States Coast Guard Requirements for Uninspected Towing Vessels (Change 1, March 2009). However, we can only speculate that there will be a great deal that will be new for towing vessel officers in the upcoming inspection regulations if and when they are finally issued.

Is the Coast Guard Credible?

In a hearing before the House Coast Guard and Maritime Transportation Subcommittee, RADM James Watson told Congress that the proposed rules were currently undergoing final review "after Chairman Cummings reminded him that the Coast Guard had already missed one deadline. After a very brief tenure in "Marine Safety," Admiral Watson was reassigned and his promise to the subcommittee to publish towing vessel inspection regulations by the end of 2009 was conveniently forgotten. The Coast Guard missed many other regulatory deadlines and refuses to even discuss the regulatory project as they promote their "bridging" project behind a huge public relations smokescreen.

Eventually, Congress⁽¹⁾ enacted the Coast Guard Authorization Act of 2010 on Oct. 15, 2010 and ordered the Department of Homeland Security, parent agency of the Coast Guard, to finish its work and release the Notice of Proposed Rulemaking for the inspection of towing vessels within 90 days⁽²⁾ and complete its final rulemaking within one year⁽³⁾ of the date of enactment. [⁽¹⁾Section 701(c) of Public Law 111-281 ⁽²⁾Jan. 15, 2011. ⁽³⁾Oct 15, 2011.]

"Bridging Program" Update

On Dec. 10, 2010 the Coast Guard Marine Safety Unit, Houma, presented a day-long progress report that focused on the "Bridging" program to bring uninspected towing vessels up to an "inspected" status. The attendance of approximately 250 persons indicated that local companies are starting to pay serious attention to having their vessels "examined" under existing regulations "Phase 1" of a 3-phase program. At that time they noted that implementing Phase 2 of the program had been pushed back for an unknown period and refused to discuss the progress of the new towing vessel inspection regulations.

We Urge Our Mariners to be Alert to Existing Requirements

The purpose of Phase 1 (which is as far as the program has progressed to date) is to alert companies and their mariners to the existing regulations "something our Association asserts they have done neither consistently nor well in the past.

The Coast Guard has been active in "examining" towing vessels for the past 18 months and encouraged boat owners to call and make an appointment for an "examination" whose success is displayed by a decal "just like the old CTVEP program. The book and checklist they use is titled United States Coast Guard Requirements for Uninspected Towing Vessels, Change 1, March 2009. The book is available free-of-charge from the Coast Guard⁽¹⁾ or from our Association. We suggest that every credentialed towing vessel officer and every Apprentice Mate/Steersman obtain a personal copy. [⁽¹⁾Call Mike White at the Eighth District Prevention Department at (504) 671- 2105.]

The process of "examining" all towing vessels is well underway. During Phase 1, this "examination" will be at the convenience of the boat owner "the old public relations ploy. In Phase 1 the examiners will work with the boat owners and suggest any repairs that need to be made in order to meet existing requirements to obtain a safety decal. The examination is by invitation.

Phase 2 originally scheduled for January 1, 2011 was pushed back to an unknown date "with no reason given. Phase 2 will ensure that all towing vessels are "examined" "clearly something that should have been done 15 years ago and could be dragged out for many months.. Unlike Phase 1, Phase 2 will be done at the convenience of the Coast Guard. In Phase 2, the Coast Guard will be under pressure to complete all their examinations to ensure that all 6,000 of the nation's towing vessels are up to snuff. There will be a deadline to complete this work and ensure that all towing vessels earn a safety decal.

Phase 3 will reflect the inspection regulations that have not even reached the Notice of Proposed Rulemaking (NPRM) stage in spite of the deadline that clearly reflected the will of Congress.

Smart Steps for Towing Vessel Officers

Preparing your vessel for a Coast Guard examination is an excellent opportunity to get in on the ground floor and learn the existing regulations if you haven't already done so. Do not pass up the opportunity to study the book the Coast Guard offers and learn the regulations because this is just the start of something that will become much more complicated in the future. **If you plan to remain in the towing industry, be prepared to pay a lot closer attention to the regulations that govern the industry than you have done in the past.**

Starting in early 2011, the Coast Guard was supposed to publish a Notice of Proposed Rulemaking (NPRM). This notice will propose additional regulations to bring your vessel up to "inspected" status. This, too, has been postponed. Don't let the word "proposed" fool you. The Coast Guard has a very good idea right now of what they intend to do, but all parties will have a chance to submit their written comments on the "proposal." As a mariner, the NPRM stage will be your only chance to make your opinion known. We understand that the NPRM will be open for comment for a period that will be announced. After the close of comments, there will be a delay while the comments are reviewed, a few necessary changes are made, and a "Final Rule" or "Interim Final Rule" is issued. An earlier rulemaking on towing vessel licensing elicited over 700 comments that the Coast Guard had to respond to. This will probably contain even more comments.

All of the "good practices" the Coast Guard has suggested during their vessel "examinations" probably will be required by the new regulations. The period after the NPRM is issued will present an opportunity to make plans to step up to the new regulations. Many boat owners will have to face the economic reality of either repairing or replacing their equipment.

As a former boat owner who lived through every phase of Subchapter T regulations for small passenger vessels from their introduction in 1958, I want to make it clear that a licensed officer who does not know and understand the existing regulations as well as any new inspection regulations governing the class of vessel he/she works on is a liability to the vessel's owner. While you might be tolerated for a while, the boat owner will have less and less use for you if you cannot be trusted to maintain your vessel to inspection standards and then work with your Port Captain or Port Engineer to bring your vessel through a Coast Guard inspection with flying colors. **You need to know the existing regulations now and the new regulations when they are issued.** This is your best opportunity to prepare.

Of course, the boat owner must pay for necessary repairs, upgrades, parts, and labor but as a licensed officer, you must **report** those repairs that are necessary to keep the boat up to par and do it in writing in your logbook and follow it up with necessary phone calls. Keep in mind that **not logging break-downs, equipment failures, and necessary repairs demonstrates a lack of ability to manage your vessel properly.**

Remember, the boat you operate is a sizeable investment. Officers who do this job well and understand the inspection regulations are those who have a good claim to a promotion to Port Captain, Port Engineer, or Marine Superintendent. Even if you prefer a job afloat, the supervisory jobs ashore do provide a pay check for experienced mariners who, for any reason and at any time in the future, find themselves without a license.

We regret that most of our Association's attempts to obtain openings in government employment for experienced mariners with experience in the towing industry to serve as part of the Coast Guard's inspection team were unsuccessful because a vast majority of these jobs were scooped up by former Coast Guard personnel (now civilians) who had an inside track to government employment.

The Coast Guard Approach

For years, the Coast Guard has dealt almost exclusively with "management" in the towing industry. At Headquarters level this has been relatively easy because the American Waterways Operators is located within a few miles of Coast Guard Headquarters and Capitol Hill.

Until 2004, the Coast Guard did not have the authority to inspect towing vessels. As "uninspected" vessels, the Coast Guard was limited to enforcing the "existing" regulations that are far less detailed than the upcoming "Subchapter M" regulations will be. It is the difference between night and day **and you are now in the "Twilight Zone."**

In August 1994, less than a year after the AMTRAK Sunset Limited disaster, Commandant Robert Kramek convinced the Secretary of Transportation that it would be too expensive to inspect towing vessels. In our small world, this was the equivalent of Neville Chamberlain's announcement following the 1938 Munich Conference that turning control of Czechoslovakia to Hitler would bring "peace in our time."

Knowing the History of Subchapter T and the inspection of about 6,500 small passenger vessels, our Association pushed for the inspection of towing vessels as early as 2000. While the Coast Guard and their Federal Advisory Committees⁽¹⁾ played games with us for four years and wasted our time and their time trying to discourage us, we continued to push the issue of towing vessel inspection with Congress for the purpose of ensuring the safety of our mariners who often had to work on substandard vessels. Finally, AWO accepted the idea of inspection as if it always had been their idea.

However, we did make one mistake. We based our decision on the **success** of Subchapter T that underwent substantial revision and updating in the mid-1990s. Following Vice Admiral James Card's retirement from the Coast Guard, his successors allowed the inspection program to deteriorate badly during the past 10 years. While the terrorist attacks of 9/11 were a great distraction, the thing that really damaged the Coast Guard vessel inspection program was the **poor quality of Coast Guard leadership in marine inspection** during the past decade starting with Rear Admiral Pluta. Admiral Pluta demonstrated his complete lack of respect for our mariners on every possible occasion. The extent of the Coast Guard's failure to keep its eye on the ball was chronicled with great accuracy when retired Admiral Card released a report to the public in 2008 that appears in NMA Report #R-401-E.

Congress gave the Coast Guard a second chance, and it appeared that the Coast Guard finally is back on course with its "Bridging" program **until they failed to meet the Congressional deadline for publishing the Notice of Proposed Rulemaking.** A renewed interest and a somewhat aggressive leadership appears to be in place as it was in earlier programs that revived 46 CFR Subchapter T in the mid-1990s. Much of the foundation for the program was built in the late 1990s as the Commercial Towing Vessel Examination Program (CTVEP) and then was neglected with the time-worn excuse of "lack of funding."

Fortunately, the Coast Guard had the good sense to resurrect the meaningful CTVEP program. Congress made substantial changes to Marine Safety in the Coast Guard Authorization Act of 2010. However, the delay in introducing the NPRM for towing vessel inspections without any attempt at making a reasonable, public explanation is unconscionable. We do not intend to let this deadline slip by without comment to the Department of Homeland Security.

<p>§701(c) TOWING VESSELS. No later than 90 days after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking regarding inspection requirements for towing vessels required under section 3306(j) of title 46, United States Code. The Secretary <u>shall</u> issue a final rule pursuant to that rulemaking no later than one year after the date of enactment of this Act.</p>
--