



NMA REPORT #R-276-H

DATE: August 20, 2011

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

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

## TOWING VESSEL INSPECTION NPRM – NMA LETTER TO THE DOCKET

August 20, 2011

Docket Management Facility (M-30)  
U.S. Department of Transportation  
West Building, Ground Floor, Room W-12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

**Docket #-USCG-2006-24412 [Submitted by mail]**

**Subject: Additional Data Specifically Related to Hours of Service and Performance of Work on Towing Vessels**

**Reference: 76 FR 49991-49992, Aug.11, 2011**

**Our File #: GCM-308. (Snma0820.1A)**

Dear Sir or Madam,

Our Association presents these comments and enclosures on behalf of an estimated 32,000 mariners serving on towing vessels directly affected by this Notice of Proposed Rulemaking (NPRM).

Our Association, its officers and members, have dealt with work-hour, fatigue and performance issues long before our Association was founded in 1999 following the "Pilots Agree" strike in 1998 revealed many flaws in the towing industry. Unfortunately, because of the military nature of the Coast Guard and the frequent rotations and reassignments of personnel, our Association's agenda in support of working mariners made little progress with Coast Guard officials because we must continuously deal with different officials. Whether active duty Coast Guard officers or military "retreads," we detected an overwhelming "anti-mariner" bias throughout the past decade. Consequently, we determined that the only way to obtain a fair deal for our mariners was to appeal directly to Congress on many issues.

Our Association's concern is for safety and the health, and welfare of our working mariners. Unfortunately, we do not have adequate funds to represent an estimated 126,000 "limited-tonnage" mariners on the ground in the nation's capital. We believe that turning Marine Safety over to a truly civilian agency divorced from the Coast Guard would help resolve this perpetual problem.

In this NPRM, while "hours of service" and "vessel manning" are discussed, the Coast Guard continues to follow the path of denial and procrastination on important issues as it has since 2000 to avoid making substantial and long **overdue vessel manning changes**. This emphasizes the ascendancy of economic greed over important safety issues.

In this NPRM, the Coast Guard **does recognize** a basic problem in that current watchstanding schedules provide insufficient time off duty to allow for **at least 7 hours of uninterrupted sleep**.<sup>(1)</sup> [<sup>(1)</sup>Refer to p. 49996, col. 2.]

However, as if the Coast Guard already had not assembled sufficient data, they now seek additional 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.<sup>(1)</sup> This report will supply such data not only to the Coast Guard but also to Congressional oversight committees. [<sup>(1)</sup>Refer to NPRM pgs. 49991, 49992]

### **The Two-Watch System**

Since the Coast Guard appears unwilling to make a decision after years of advocating the CEMS program, *we respectfully suggest that the controversial two-watch system be scrapped* for vessels in 24-hour service *and be replaced by the three watch system* that does provide a full 8 consecutive hours off duty twice a day as used in the deep-sea, blue-water merchant marine and on voyages of over 600 miles on offshore supply vessels.<sup>(1)</sup> In addition, the laws and regulations limiting the workday to 12 hours for towing vessel officers should be expanded to include all unlicensed personnel. *If a vessel is contracted to operate over 12 hours in any 24-hour period, it should be provided with two full crews.* [<sup>(1)</sup>Refer to 46 CFR §15.705.]

We assert that the Coast Guard should have decided this issue ever since our Association first presented it in May 2000 in NMA Report #R-201 titled Mariners Speak Out on Violation of the 12-Hour Work Day. [Enclosure #]. Instead Admiral Paul Pluta, as Chief of Marine Safety, killed the issue referring it to the NOSAC advisory committee. NOSAC assigned a “working group” Chairman from an oilfield drilling company that was openly hostile to our mariners and finally admitted that NOSAC lacked the resources and authority to investigate our petition. This stalled our petition for 1½ years so that NOSAC’s Designated Federal Officer, a Coast Guard Captain, determined that our petition and its 57 letters were too old to investigate.

### **Congressional Intent**

During the last seven years we understood that the House Subcommittee on Coast Guard and Maritime Transportation *expected* that manning and hours of service issues would be resolved as part of this rulemaking project.<sup>(1)</sup> [Enclosure #2] [<sup>(1)</sup>Docket #2004-19997-129, Letter from Rep. James Oberstar to ADM Thomas H. Collins, pgs. 4, 5.]

In addition, our Association made an appeal to Congressional Oversight Committees in both the House and Senate in early 2006 in our Report #R-413, Rev. 1 titled A Direct Appeal to Congress to Reform the Two-Watch System [Enclosure #3] to focus legislative attention on *work-hour abuses on a variety of inspected vessels* including tugs and towboats as well as offshore supply vessels and ferries.

### **Crew Endurance Management**

In §409 of the Coast Guard Authorization Act of 2004, Congress ordered the Coast Guard to prepare a report on the Crew Endurance Management System (CEMS). That report was delivered on March 29, 2006 – over 5 years ago. This report spoke directly to the issue, but the Coast Guard procrastinated again in taking a stand in this NPRM.

While we commend the “science” revealed in the CEMS report and find it informative and the knowledge it provides is helpful, it is also clear that this program alone cannot possibly account for the fatigue caused by the 84-hour work-week required by the existing “two-watch” system on vessels in 24-hour service. While our mariners are open minded and willing to apply much of the information gained through CEMS especially in an emergency, an overwhelming number of our mariners appear unwilling to adjust their lives to fulfill the requirements of the system. Employers who force the program upon their mariners will encounter resentment and inherit retention problems.

We are encouraged to see that: “the Coast Guard is considering requirements that would permit crewmembers on towing vessels (a) sufficient time off to obtain at least 8 uninterrupted hours of sleep or at least 7 hours of uninterrupted sleep and an additional sleep period in every 24 hour period; and, (b) the means to prevent the disruption of circadian rhythms...” for the reasons stated on p. 49992 column 3 of this NPRM.

However, for those companies that opt to burden their *watchstanding officers* with the paperwork involved in maintaining any Safety Management System, we can see no workable alternative to providing the number of officers necessary to man a full *three-watch system*.

We submit our Report #R-370-F titled Crew Endurance Management Systems (CEMS) [Enclosure #4] for your consideration in this rulemaking project.

### **Our Experience With Managing the Paperwork Burden of a Safety Management System Refer to [Enclosure #5]**

### **Work Hours for Ratings**

In March 2011, our Association addressed individual copies of NMA Report #R-350, Rev. 6 titled Limited Tonnage Mariners ask for Assistance from Congress on Mariner Safety, Health, and Work-Related Issues to individual members of the Senate Commerce, Science, and Transportation Committee and the House Coast Guard and Maritime Transportation Subcommittee.

In light of Coast Guard intransigence on many important mariner issues, we found it necessary to approach

Congress on “hours of service” issues directly and on several occasions. Consequently, we enclose an excerpt from this report that deals with work hours for unlicensed mariners who work on towing vessels as [Enclosure #6]

We also enclose our Report #R-370-G titled Crew Endurance and the “Call Watch” Cover-up [Enclosure #7] to illustrate how mariners on line-haul towboats on the Western Rivers system often are abused under existing conditions and the expectations of their employers relative to the 15-hour workday that is accepted as part of the American Waterways Operators (AWO) Responsible Carrier Program (RCP). We note that the RCP is likely to be accepted by the Coast Guard as an approved Safety Management System (SMS) under this NPRM. Although we do not oppose the RCP, we are more than uncomfortable with its acceptance of the 15-hour workday. Restated: Our Association unalterably opposes any work day schedule that routinely exceeds 12 hours.

### **General Work Hour Considerations**

Directors of our Association have followed work-hour and related abuses for the past 40 years. We developed related information in NMA Report #R-370-D, Rev. 6 titled Whistleblower Protection, Work-Hour Abuse, and “Deadhead” Transportation and submit it as [Enclosure #8] for consideration in relation to this NPRM.

We also introduce NMA Report #R-370, Rev. 3 [Enclosure #9] containing Coast Guard definitions and interpretations contained in Policy Letter G-MOC #04-00 that was created at the specific request of our Association and presented at the September 2000 meeting of the Towing Safety Advisory Committee (TSAC) in Memphis, TN.

Further, we introduce NMA Report #R-370-J [Enclosure #10.] for your consideration. This report was recommended by Capt. John R. Sutton, former President of the American Inland Mariners Association, a predecessor mariner organization composed of western rivers towboat pilots. This report was prepared by LCDR Tom Beistle, USCG.

### **Harbor Tugs and the “One Watch” System**

We enclose our Report #R-370-H titled 12-Hour Rule Violations: Harbor Tugs and the One-Watch System. This report deals with unique problems encountered by Harbor-Assist tugs as mentioned in this NPRM. [Enclosure #11]

### **Safe Management of Crew Travel Time**

We enclose NMA Report #R-370-I, Rev. 1 titled: Safe Management of Crew Travel Time. [Enclosure #11.] This topic was discussed by TSAC on several occasions.

### **In Depth Reports of 12-Hour Rule Violations**

We enclose the following reports of individual cases our Association reported to our members where serious 12-hour rule violations occurred involving licensed deck officers.

- Our Report #R-370-K, titled: 12 Hour Rule Violation: The Verret Case. 12p [Enclosure #12.]
- Our Report #R-370-B, Rev.4, titled: Violation of the 12-Hour Rules: The Tug Chinook Strikes & Damages the Lake Washington Bridge. 14p. as [Enclosure #13.]
- Our Report #R-370-C, Rev. 2 titled 12-Hour Rule Violations titled: The Winkler Case. 5p. [Enclosure #14.] is typical of many towing vessel violations in south Louisiana where owners accept a 24-hour contract and man the vessel with a single crew limited to 12 hours service and pocket the savings. This applies to both towing vessels and inspected small passenger vessels. The Coast Guard seldom shows much initiative in investigating these cases to the severe detriment of our mariners.
- Our Report #R-370-A, Rev. 2, titled Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited. 12p. [Enclosure #15.] Copies of this report were sent to Members of Congress. We also enclose NMA Report #R-370-I titled Safe Management of Crew Travel Time. 1p. [Enclosure #16.] that is closely associated with the Webbers Falls accident where the Captain traveled 1000 miles between jobs on two of his company’s towing vessels and took control of a towing vessel immediately upon arrival, a few hours later, his tow knocked down the I-40 bridge at Webbers Falls, OK.

We also enclose the following reports of individual cases our Association reported to our members where serious 12-hour rule violations occurred involving licensed engineer officers

- Our Report #R-412 titled Towboat Engineer’s Death Points to Need for Changes in the Law, p.20. [Enclosure #17.] A gross violation of safety standards and work hours lead to the death of Chief Engineer Gary Duncan. Gary’s wife Mary attended the public meeting in St. Louis, MO referenced in this docket<sup>(1)</sup>. She spoke at that meeting and her remarks were a matter of public record. [<sup>(1)</sup>NPRM, p.49978, col. 1 (top). Also see Docket #USCG-2004-19977.]
- NMA Report #R-412-A titled In Search of Justice for Chief Engineer Leon Manderson. 20p. [Enclosure #18.]

Although Chief Manderson served on an *inspected OSV*, conditions he experienced in the engine room on that 30-year-old vessel are comparable to those found on many older towing vessels. Although the vessel was fully inspected and complied with regulations, the conditions our Association reported on this vessel further deteriorated and the vessel subsequently exploded and sank in the Gulf of Mexico killing three men. The Manderson case is undergoing appeal in the Fifth Circuit.

#### **Additional Available Information**

Our Association has addressed these problems continuously. The Coast Guard acted through NOSAC and was clearly leading our Association around by the nose with no intention of solving hours of service, manning, and fatigue problems. Nevertheless, we received outstanding cooperation from Mr. Jim Magill, a senior Coast Guard civilian employee (now retired), in supplying literature on the topic. This material was made available as committee handouts. We collected, read, and marked up this material in our Accession Files #A772 and A924.. **[Enclosure #19.]** We can only assume that the Project Officers for this Docket considered all of this material before postponing consideration of these issues in the NPRM and also possibly not taking action on these issues in the future<sup>(1)</sup> We can furnish paper copies of these “marked-up” documents in support of this Docket..

Very truly yours,

Richard A. Block, B.A., M.S. (Ed.)  
Master #1186377, Issue 9  
Secretary, National Mariners Association

#### **Enclosures:**

*[Note: NMA & GCMA reports are available in PDF Files on our website [www.nationalmariners.org](http://www.nationalmariners.org).]*

- #1 - Report #R-201 Excerpt
- #2 - Letter from Congressman Oberstar to Admiral Collins
- #3 - Report #R-413, Revision 1
- #4 - Report #R-370-F
- #5 - Excerpt – Paperwork Overload RCP
- #6 - Excerpt from Report #R-350, Revision 6, Items H&K
- #7 - Report R-370-G
- #8 - Report #R-370-D
- #9 - Report #R-370, Revision 3
- #10 - Report #R-370-J
- #11 - Report #R-370-I
- #12 - Report #R-370-K
- #13 - Report #R-370-B, Revision 4
- #14 - Report #R-370-C
- #15 - Report #R-370-A, Revision 2
- #16 - Report #R-370-I
- #17 - Report #R-412
- #18 - Report #R-412-A
- #19 - Contents of NMA Files A-772 & A-924

**[Note:** NMA Reports are available on our website under “Research Reports.” Access the Coast Guard Docket at [www.regulations.gov](http://www.regulations.gov) and search for Docket #USCG-2006-24412.]