



NMA REPORT #R-276-I

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Asserting our right "...to petition the Government for redress of grievances."
Amendment 1, U.S. Constitution, Dec. 15, 1791

COMMENTS SUBMITTED TO DOCKET #USCG-2006-24412
Inspection of Towing Vessels
In the public meeting held on Oct. 26, 2011 in Kenner, Louisiana.

My name is Richard Block. I am and have been Secretary of the National Mariners Association (NMA) since it was formed in 1999.

We are a membership Association supported by dues and donations. We are **not and never have been a labor union** although we speak primarily on safety, health, and welfare issues on behalf of 126,000 limited tonnage-working mariners including 32,000 who work on towing vessels.

By **limited-tonnage**, I refer to commercial vessels, including towing vessels of less than 1,600 tons. All towing vessels, even the largest line-haul towboats, are less than 1,600 tons.

We keep in touch with our mariners through a Newsletter as well as more than 220 numbered "Reports" on topics useful to our mariners. Each of these endeavors is available to the public on our website www.nationalmariners.org.

I have been a "limited tonnage" licensed mariner since 1955 (9th issue) and worked on tugs, towboats, offshore supply vessels, small passenger vessels including ferries, and launches. I either owned or managed three boat businesses.

As a schoolteacher, I taught grades 7-12 for 10 years. I also taught Coast Guard Auxiliary and state safe boating courses in New York, and license prep courses in state vocational schools in Louisiana and Alaska. I have written a number of "license study" textbooks for the last 41 years, and am a former History major and keep current with graduate lecture courses. I mention this because I often use those skills to document the Coast Guard's institutional History and its interaction with our mariners in the area of Marine Safety. In an active retirement, I also keep posted on regulatory matters, maritime trade journals, and union publications on topics of concern to limited tonnage mariners.

Comments to the Docket

Our Association previously offered written comments to the Docket in Feb. 2005 in our Report #R-276,

Rev. 8 as mentioned on NPRM page 49986. That report advocated 76 specific safety issues. We were extremely **disappointed** to find that most issues were not considered or responded to in this NPRM as they should have been. Nor was our Association or its officers or directors consulted during the period from 2005 to 2012 as were others as reported by the ABS Consulting Group under Coast Guard contract. Based on the extent of our previous work on towing vessel inspection, we assert this as a **formal complaint** in today's public meeting and as the source of **disappointment** in this proposed rulemaking. We assert that the needs of 32,000 mariners deserve equal consideration with corporate business interests.

I offer these oral comments to the Coast Guard in addition to several lengthy written comments to the docket in the hope that they will finally merit attention.

Our **first written comment** was a 4-page letter to this Docket supported by 19 enclosures (totaling 215 pages) dealing with fatigue, hours-of-service, and vessel manning. This appears in the record as Docket #USCG-2006-24412-0023.

Our **second written comment** was a two-page letter questioning the **proposed definition** of Western Rivers as including “**waters specified by the Secretary in 33 CFR §80.25.**” After Congress turned back control of the Inland Navigation Rules to the Coast Guard several years ago, we found that slipping in a few new words to an existing regulation with inadequate explanation would impact many licensed mariners in the southeastern United States without adequate explanation.

In our **third written comment**, I submitted Revision 10 of the same Report #R-276 that traced and comprehensively updated many of the same issues previously brought to the Coast Guard's attention in 2005. Using this report, I brought an updated and comprehensive version of the same issues from our 2005 report to the Docket as well as to the attention of two Congressional Oversight Committees with the hope that they will be attended to in the Final Rule.

Our Background on Marine Safety Issues

In our Association's earliest meetings in 1999 and 2000 we decided that the safety, health, and welfare of our mariners in a very dangerous towing industry depended upon a **safe workplace and safe working conditions**. In the early years, we determined to work through the Towing Safety Advisory Committee (TSAC) to bring about towing vessel inspection.

We found absolutely no support for towing vessel inspection in TSAC that was dominated by the American Waterways Operators (AWO). AWO had, and still has, its own agenda. There are many small towing businesses that do not share its agenda although we do not directly represent those entities.

Finally, in 2003, we were told that the Coast Guard was unwilling to support us in a **Legislative Change Proposal** to bring about inspection and that we would have to ask Congress directly if we wanted to have

the Coast Guard inspect towing vessels. With this send off, we acted promptly and provided a number of reports to Congress supporting our position.

Our plan was based on a “**traditional**” Coast Guard inspection like those I had undergone on vessels I owned, worked on, or managed since 1958, the year the first “T” boats came under inspection. All that was needed was a workable set of regulations. Our Association previously furnished a detailed 204-page study of our proposal to **uninterested** TSAC attendees for their consideration at a TSAC Meeting in San Francisco on Mar. 13-14, 2002. TSAC simply ignored this report. We furnished the same report to Congress.

The towing industry lost the support of many of its licensed officers in mid-America as demonstrated by the Pilots Agree Strike of 1998 and earlier on the East Coast in a strike in 1988. Since 1999, our Association took great care to document working conditions including a wholesale **lack of enforcement of existing regulations** especially regarding **work-hour abuses, undermanning, and fatigue**. That is why we keep our records available to the public on the Internet.

While **any** government **inspection** program can be a real pain in the neck, based on my past experience, I had a great deal of confidence in the ability of the Coast Guard to initiate and carry out a meaningful inspection program for vessels of less than 1,600 tons citing the 1996 revised small passenger vessel regulations and the new 1997 OSV regulations. Basically, towing vessels are not that different from these classes of inspected vessels, and these differences could be accommodated – as the new OSV regulations had done. I witnessed the Coast Guard bringing OSVs including liftboats under inspection in the 1980s and early 1990s and saw that reasonable decisions prevailed.

Under the Occupational Safety and Health Act of 1970 and in subsequent memoranda between the Coast Guard and OSHA in 1983 and 1996, uninspected towing vessels were **supposed to** fall under OSHA with the Coast Guard taking care of inspected vessels. Administratively, the Coast Guard and OSHA divided the territory between them. **Thereafter, both agencies did virtually nothing to protect our 32,000 towing vessel mariners from workplace hazards.** Both agencies were to blame but neither agency alerted Congress to a widening regulatory void. If an injured mariner had the resources, he was left to “lawyer up” and take his chances **without firm regulatory support**. The latest revision of NMA Report #R-202 will recount a number of these cases.

The Mallard Bay Drilling Case decided by the Supreme Court in January 2002, exposed the regulatory void between the Coast Guard and OSHA. The Coast Guard knew very well that this void existed not only in regard to Uninspected Towing Vessels but also for Outer Continental Shelf Activities. In fact, in 1998 the Coast Guard already was working on a project titled Outer Continental Shelf Activities (Docket #USCG-1998-3868) whose NPRM issued on Dec. 7, 1999 would update 33 CFR Subchapter N titled Outer

Continental Shelf Activities. A proposed new Part 142 dealt with **Workplace Safety and Health** and Part 146 dealt with vessels. The Coast Guard Project Officer worked closely with OSHA to prepare a **proposed** set of regulations for use on inspected vessels. We asked him over a period of 10 years whether these proposed regulations would apply to towing vessels – but never received an answer!

This Coast Guard Civilian Project Officer, Mr. Jim Magill, with a lifetime of experience working with ships and with the oil industry, spent many years – at least fourteen – working on this project at Coast Guard Headquarters that never came to fruition. He retired last year. The Marine Safety Directorate’s failure to bring his proposals to fruition was a tremendous waste of taxpayer money and Coast Guard expertise but was just one of many regulatory projects bogged down as the Coast Guard’s attention drifted away from Marine Safety and toward Homeland Security. Nevertheless, Jim did leave behind an entire “Part 142” comprised of OSHA-type workplace regulations carefully worked out with his OSHA liaison. Our Association followed the progress of this regulatory package in NOSAC meetings from the time the project was introduced. We assert that these proposed regulations should have been considered in this rulemaking. Our Report #R-276, Revision 8 listed our mariners’ concerns in these specific items....

- #57-Hearing Protection
- #42-Safe Potable Water
- #55-Asbestos Renewal
- #54-Lockout/Tagout
- #9 & #52-Sanitary Inspection and Sanitary Food Service
- #72-Inspect Dry Cargo Barges for Workplace Safety

The present NPRM gives our mariners little comfort because these items and many others that are important to mariners were never considered. Yet, in areas like hearing protection, safe potable water, and asbestos removal, the Coast Guard has “**feathered its own nest**” for its own personnel with suitable Commandant Instructions and written policies without ever considering the 210,000 credentialed mariners that Congress gave them to superintend. Our Association covered this conflict in many reports that Coast Guard officials continue to ignore.

Traditional Vessel Inspection Versus a Safety Management System

Our Association, in a good faith effort, encouraged the Coast Guard to bring a “**traditional**” inspection program to the towing industry to protect our mariners’ safety, health, and welfare. Meanwhile, the AWO sought to replace traditional inspection with a Safety Management System.

In 2005, Congressman James Oberstar, then Ranking Member and later Chairman of the large House Transportation and Infrastructure Committee, was the only Member of Congress to submit a letter to the

Docket. In this letter dated March 23, 2005 he clearly stated the difference between a Safety Management System and inspection. **I quote from pages 1 &2 of his letter. [Emphasis is ours!]**

The Federal Government has been inspecting vessels for over 150 years. Nothing in the Coast Guard and Maritime Transportation Act of 2004 (P.L. 108-293) changed those items that are subject to inspection by the Coast Guard. It simply added “towing vessels” as a new class of vessels that are required to be inspected. Congress **supplemented** the traditional inspection system by **allowing** the Coast Guard to develop a “safety management system” for towing vessels. As the **Conference Report** on this law stated:

“Safety management systems allow the Coast Guard to oversee the **maintenance and repair of vessel equipment and ship systems subject to inspection** through an approved safety management plan that includes maintenance schedules and system tests. The Coast Guard may enforce the plan through audits of the vessel’s logs and vessel operator’s records **rather than directly oversee the repair or maintenance work** conducted on a particular piece of equipment or ship system.

“I understand that in public meetings some individuals have indicated that safety management could be used to fulfill the requirements for inspection of vessels by Coast Guard personnel. However, Chapter 33 of Title 46 United States Code and historical precedent regarding the implementation of the vessel inspection laws for all other types of vessels require vessels to be **physically inspected by Coast Guard personnel**. Safety management will supplement the inspection of towing vessels by the Coast Guard personnel to help ensure that the vessel is maintained in compliance with the inspection requirements in between Coast Guard inspections. **Congress did not intend for safety management to be the basis for an inspection mechanism for towing vessels.**”

In 2007 our Association requested Congressional Oversight on the Towing Safety Advisory Committee (TSAC) citing numerous reasons and making several recommendations. In Section 621 of the Coast Guard Authorization Act of 2010, Congress increased mariner representation on TSAC – an action that we recommended. However, on October 10, 2011 our Association submitted **our fourth letter to this Docket and to Congress** as NMA Report #R-417, Revision 2 asking for continued Congressional oversight for TSAC for cause as USCG-2006-24412-0038.

In our fourth submission to the docket, we pointed out what we believe is bad advice offered by TSAC to the Coast Guard that, if followed, would negatively impact mariners who serve on towing vessels.

In February 2008, as long-term advocates for “**traditional**” Coast Guard inspection of towing vessels, we were shocked to read the report by former Vice Commandant James Card about the shortcomings in the Coast Guard’s Marine Safety Directorate. However, Congress immediately took steps to reinvigorate and restore the inspection program even before turning their goals into legislation in the Coast Guard Authorization Act of 2010. The current “**Bridging**” program and the establishment of a National Towing Center of Expertise are excellent examples of what the Coast Guard can do with a **traditional** inspection program when it sets its mind to doing so. If a Towing Safety Management System (TSMS) can assist in preparing towing vessels to meet regulatory requirements and vessel inspection standards, we encourage it to do so. However, our Association does not intend to sit idly by and watch special interests carve up this program or subvert Coast Guard inspectors and investigators for their special interests

To reiterate the words of Congressman Oberstar: “**Congress did not intend for safety management to be the basis for an inspection mechanism for towing vessels.**”