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

LIMITED TONNAGE MARINERS SEEK CONGRESSIONAL ASSISTANCE ON MARINE SAFETY, HEALTH, AND WORK-RELATED ISSUES

*[**Publication History:** This complete revision of NMA Report #R-350 summarizes, updates and supersedes the previous editions including: Rev. 6 (Mar. 14, 2011); Rev. 5 (Aug. 29, 2009); Rev. #4 (Jan. 1, 2009.); Rev. #3 submitted as part of our written testimony to the House Coast Guard and Maritime Transportation Subcommittee on Aug. 2, 2007. On Jan. 1, 2008, the Gulf Coast Mariners Association changed its name to the National Mariners Association. Most Association numbered reports mentioned herein are available from us via e-mail on request. **Index R** contains the date and full title of each report and appears on our website.]*

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EXECUTIVE SUMMARY: WHY OUR MARINERS SEEK LEGISLATIVE ASSISTANCE

An introduction to the National Mariners Association

The National Mariners Association (NMA) is a non-profit, voluntary-membership association of "limited tonnage" merchant mariners founded in April 1999 as the Gulf Coast Mariners Association. We are ***not*** a labor union and do not engage in collective bargaining with maritime employers.

The terms "***lower-level***" and "***limited-tonnage***" apply to ***most*** of the mariners we represent. These terms refer to credentialed "officers" and "ratings" who serve on merchant vessels of less than 1,600 GRT (gross register tons) or 6,000 gross tons (ITC) as measured under the International Tonnage Convention. This terminology also describes the Coast Guard credentials held by approximately 126,000 out of the nation's 214,000 credentialed merchant mariners. **Our Association has stepped up since 1999 to represent limited-tonnage mariners on the health, safety and well-being issues outlined in this report.**

In contrast, most "upper-level" mariners who serve on larger ships are members of maritime labor unions. These unions maintain a permanent presence in the Washington, DC area to represent the interests of their membership to Congress and federal executive branch agencies. Our Association does not maintain an office in Washington.

From its inception, our Association's goal was to bring our mariners' ***safety, health and well-being issues*** to the attention of appropriate Coast Guard officials for resolution through the federal advisory committee process. Unfortunately, as this and other reports will show, Coast Guard officers in their Marine Safety Directorate repeatedly ignored our issues, dismissed our "petitions for rulemaking,"[(1)] as well as our requests for "Legislative Change Proposals." Coast Guard officials proved unwilling to use their "Legislative Change Proposal (LCP)" mechanism to present our issues to Congress and suggested that we submit our issues directly to Congress. Consequently, we followed their suggestions and submit this report to Members of the 113th. Congress. *[(1)As per 33 CFR §1.05-20.]*

This report also serves as a ***status report*** on these issues as of the date of this report. Additional in-depth coverage of individual issues is available in supplemental reports cited herein and available on our website or by request.

Our Mariners' Issues

Over the past decade, our Association studied and refined the issues facing our mariners who work primarily on towing vessels, offshore supply vessels (OSV), small passenger vessels and uninspected passenger vessels. We grouped our mariners' issues in four general categories as shown above in the Table of Contents as Parts 1 through 5. Although the Coast Guard is well aware of our issues, their failure to deal with them left us with no alternative but to seek assistance from the Congressional committees that oversee the U.S. Merchant Marine. ***These issues are important to our mariners and often unique to the maritime industry.***

Our Association understands and fully supports the ***national issues*** the U.S. Merchant Marine faces such as the Maritime Security Program, protecting the Jones Act, and promoting anti-piracy legislation. However, ***our emphasis in this report continues to be on those particular issues that most directly affect our "limited-tonnage" mariners***. Unless we bring these specific issues to the attention of both the Coast Guard and Congress, they will continue to be ignored and forgotten because, unlike labor unions and trade associations, our Association rarely appears on Capitol Hill where decisions on these issues will be made.

Although our list of longstanding issues remains essentially ***unchanged*** from those presented from the 110th to the 112th Congress, considerable progress has occurred and is updated in this report. The Coast Guard Authorization Acts of 2004 and 2010 brought a number of sweeping changes that recognized and addressed many of our issues. This report reflects those changes that directly affected many of our 126,000 credentialed mariners. We respectfully submit that limited-tonnage mariners represent a majority of all American merchant mariners that hold Coast Guard credentials.

[NMA Expression of Appreciation: Our Association applauds the spirit of bipartisanship in Congressional oversight committees in the 111th. Congress that culminated in many of the improvements cited in this report.]

Limited Cooperation by the Coast Guard

For years, Coast Guard officials thwarted our attempts to solve many issues described in this report. We provide in the backgrounds of several of these issues examples to illustrate unresponsiveness by those in the ***Marine Safety Directorate*** to our mariners' needs. Other officials neglected their duties and abused a number of our mariners

within the administrative law system – a fact that Congress responded to immediately and forcefully.[1] *[[1]Refer to NMA Reports #R-204, Rev. 4 & #R-429-K.]*

While the Coast Guard is assigned eleven major "missions," our concerns cluster almost exclusively around their ***Marine Safety*** mission**.** Most of the problems our mariners currently experience took root long before the terrorist acts of Sept. 11, 2001. A prime example is contained in our initial report titled Mariners Speak Out on Violation of the 12-Hour Work Day dated May 2000.[1] We circulated the report widely throughout the Eighth Coast Guard District as well as at Coast Guard Headquarters. Nevertheless, for years, Coast Guard officials stubbornly refused to address these issues reported in writing by over 50 mariners. These officials procrastinated, entangled our Association in their bureaucratic processes, and diverted us to advisory committees that admitted they had neither the authority nor resources to act upon our complaints. This caused us to waste precious time, money, and effort. Senior Coast Guard Marine Safety officials avoided taking remedial action as the number of problems we brought to their attention grew both in size and complexity. *[[1]Refer to NMA Report #R-201.]*

We were gratified that the 111th. Congress took an important step by requiring meaningful work-hour entries by redefining an Official Logbook that our Association requested.[1] If enforced by reasonable logbook inspections – as yet not in evidence – this action has the potential to correct the most blatant work-hour abuses cited in many of our reports and to improve the Coast Guard's spotty record in "investigations."[2] Unfortunately, past flawed Coast Guard leadership in the Marine Safety Directorate[3] still requires firm Congressional follow-up on the logbook changes made by the 111th Congress since no regulation or guidance has yet appeared on this issue. *[[1]46 U.S. Code §11304. [2]Refer to NMA Report #R-370, Rev. 4. [3]As reported by Admiral Card in 2007 and detailed in NMA Report #R-401-E.]*

Since many of our important issues remain unresolved and were overlooked by the 112th. Congress, we direct your attention to various requests for Congressional action and consideration in this report. *[**Editorial Note:** To better understand the viewpoints of our limited tonnage mariners, we recommend NMA report #R-350-**B** that we removed from the main body of this report in 2011.]*

For the past ten years our Association attempted to work through the Coast Guard since the Secretary of Homeland Security "…has general superintendence over the merchant marine of the United States and of merchant marine personnel…"[1] This report highlights that our policy is to first bring mariner issues before Coast Guard officials at local, district, and national levels. As we reach a dead end on a particular issue, we often submit individual reports to leaders and/or members of the Congressional oversight committees. Consequently, if any of our reports contains the word "**Congress**" in its title, it means that we formally submitted that report for Congressional consideration – as we have done on several dozen occasions. *[[1]46 U. S. Code §§2103 and 2104.]*

On occasion, we bring mariner complaints to the attention of the DHS Secretary. At present, her Inspector General's office is in the process of completing an audit at our request dealing with careless ***personal injury reporting practices***, an extremely important issue for many of our mariners.[1] On Feb. 21, 2013, we petitioned the Secretary to task her Inspector General to audit the exam preparation section of the National Maritime Center in light of their removal of exam questions, answers, and illustrations from public access on the internet in direct violation of the Freedom of Information Act.[2] *[[1]As reported in NMA Report #R-350-Y, **Issue "Y."** [2]As explained in NMA Report #R-428-K, Rev. 6].*

Unfortunately, the 126,000 population of our limited tonnage mariners does ***not*** include an undetermined number of mariners who currently do not need Coast Guard credentials to serve on certain commercial vessels as deckhands, unlicensed engineers, "deckineers," cooks etc. Although the Coast Guard largely ignores this population of full time, part-time, or seasonal mariners, we take up their issues whenever necessary.

However, we limit the scope of this report to issues facing credentialed "***limited tonnage***" merchant mariners. We do ***not*** purport to speak for mariners working on large "ships" as these officers and ratings are well represented by maritime labor unions or those mariners working on fishing industry vessels where we do not claim expertise.

The Coast Guard's failure to address legitimate mariner complaints hurts the towing, offshore oil, and small passenger vessel sectors of the marine industry as witnessed by low mariner retention rates and crew shortages. In this and other reports, we document many reasons for our mariners' continuing frustration. These issues, although they may appear to be minor in the context of other Coast Guard's national priorities, threaten to undermine important sectors of the industry if not addressed in a timely manner.

By submitting this report directly to Members of the 113th Congress, we wish to reiterate that many of our mariners generally lack confidence that the Coast Guard adequately or effectively superintends or understands them or the work they perform.

[Request for Congressional Consideration. The Coast Guard is a branch of the military whereas our merchant mariners are all civilians. We ask Congress to consider returning the Marine Safety Mission to civilian control of experienced merchant mariners based on shortcomings presented in this report and those still unresolved issues reported in 2007 by Admiral James Card.]

Bibliography: These supporting documents are available from us upon request: NMA Report #R-201; #R-204, Rev. 4; #R-350-B; #R-350-Y; #R-401-E.

PART 1 – MARINER ISSUES WITH THE COAST GUARD'S MARINE SAFETY PROGRAM, ITS ADMINISTRATION AND PROCEDURES

Background: Since "9/11," annual reports from the DHS Inspector General's office showed that the Coast Guard focused on its military missions while short-changing their civilian Marine Safety functions.

We ask that Members of the 113th Congress also consider maximizing ***civilian maritime expertise*** in regulating all levels of the marine industry. In seeking increased civilian control, we do not consider those recently retired Coast Guard officers ***who do not have significant commercial experience or background in the industry*** as the type of "civilians" to regulate the merchant marine. Consider introducing the U.S. Army Corps of Engineers model for a civilian regulatory agency operating under the umbrella of a military organizational structure.

Since taxpayer funds train graduates of the U.S. Merchant Marine Academy and state maritime academies for service in the U.S. Merchant Marine, those mariners with credible service on commercial vessels deserve greater consideration for employment in the Marine Safety Directorate than Coast Guard officers without similar training and service.

Issue "A" – Allow Mariners a Voice in Setting and Reviewing Safe Vessel Manning Standards

Request for Congressional Consideration: Amend existing vessel manning laws in light of outstanding mariner safety, health, and work-hour issues presented here and detailed in NMA Report #R-370, Rev. 4.]

Request for Congressional Action:
1. Limit hours of work to 12 hours in any 24-hour period for <u>every officer and rating</u> serving on any inspected vessel including towing vessels.

2. Require the Coast Guard to document input from Federal advisory committees (MERPAC, TSAC, NOSAC) <u>and working mariners</u> before establishing minimum safe manning levels for any class of inspected vessel including towing vessels.

Background: Existing manning requirements for inspected vessels are contained and explained in 46 CFR Part 15 and in Coast Guard <u>policy</u> established in the <u>Marine Safety Manual</u>, Vol. 3.

46 CFR Part 15, Subpart E outlines in a confusing manner the manning requirements for uninspected towing vessels. Since "<u>uninspected</u>" towing vessels were reclassified in 2004 as "<u>inspected vessels</u>," significant differences between the "inspected" and "uninspected" vessel manning regulations in 46 CFR Part 15 now must be resolved for towing vessels. The perfect vehicle for making these changes ***should have been*** in the new Towing Vessel Inspection rulemaking project the Coast Guard has worked on since 2004. Yet, in the Notice of Proposed Rulemaking[(1)] the Coast Guard officials failed to address, examine, or resolve most of the outstanding ***manning issues*** that plague our limited-tonnage mariners. *[(1)76 FR 50004, Aug. 11, 2011.]*

It **<u>was our understanding</u>** that Congress intended that ***vessel manning*** was to be included in the towing vessel inspection rulemaking. After all, every vessel ever issued a Coast Guard Certificate of Inspection (COI) has manning levels included on the face of its COI. In addition, even though towing vessels are not yet inspected, those that set out on international voyages are issued Safe Manning Documents with manning requirements that often far exceeds domestic manning standards.

It appears that the Coast Guard has not even started to address towing vessel manning regulations. We believe that this will slow or stall progress on the entire towing vessel inspection rulemaking package.

Providing adequate vessel manning is one of our mariners' most important issues. We assert that undermanning is a serious and longstanding problem on many towing and other vessels served by our limited-tonnage mariners. We recommend your attention to two reports, NMA Report #R-412, Rev. 1 (taking place on inland waters) and NMA Report #R-412-A (taking place on near coastal waters) to document and support our position.

In NMA Report #R-412, Rev. 1 (pgs. 4, 5) we put forth some suggestions for your consideration. However, we believe that this issue is ripe for **prompt consideration by the Federal advisory committees** to provide fully balanced input from all sectors of the marine industry.

Since most Coast Guard officers have little first-hand experience serving aboard commercial vessels, they must depend on others to provide them with information to make judgments about crew size. ***Invariably such manning information comes from vessel management and industry trade associations who strive to minimize crew costs rather than emphasize safe or even adequate manning for their vessels.***

Regrettably, our mariners are ***never*** consulted about safe manning levels eventually adopted as Coast Guard policy in their Marine Safety Manual on the commercial vessels they serve on. For ***example***, a 185-foot offshore supply vessel in 24-hour service in the Gulf of Mexico that previously was assigned a six-man crew is now able to sail with only a four-man crew and without a licensed engineer by manipulating the vessel's tonnage.

There are significant differences in crewing practices for inspected vessels and for uninspected towing vessels. We noted significant problems in manning vessels less than 1,600 gross tons that we discuss in detail in NMA Report #R-279, Rev. 8.

It is manifestly unfair that ***the process used to determine vessel manning virtually excludes any input from the mariners who work on these vessels***. The undermanning that results leads to work-hour abuse since Congress has not limited the number of hours unlicensed mariners may be called upon to work in any 24-hour period. Since unions do not represent most of our limited tonnage mariners, our mariners cannot engage in collective bargaining with their employers to obtain additional crewmembers to share the workload. ***There is no meaningful and effective appeal route a mariner can follow to have the Coast Guard increase the crew size on his vessel***. In addition, even attempting to appeal would probably result in the mariner losing his or her job and even subsequent blacklisting in the industry.

Since our limited-tonnage mariners are a majority of all merchant mariners and provide 100% of the work force on vessels less than 1,600 gross tons in the towing, small passenger vessel, and offshore oil sectors of the maritime industry, we respectfully submit our requests to Members of Congress.

Bibliography: These supporting documents are available from us upon request: NMA Report #R-279, Rev. 8; #R-370, Rev. 4.

Issue "B" – Improve the Merchant Mariner Credentialing Program

Request for Congressional Consideration: Reconsider funding a student loan program similar to HR-2651 introduced by Congressman Cummings in the 111th. Congress to assist many of our mariners cope with the high cost of training mandated by international conventions, statutes, regulations, and Coast Guard policies.[1] *[(1)Refer to NMA Report #R-203-A.]*

Request for Congressional Action:

1. **Ensure that merchant mariner credentialing services reside in the hands of qualified civilians with a verified employment background in the Merchant Marine Service rather than with contract personnel with no such service.**

2. **Require the Coast Guard Congressional Liaison Office to inform the staff of the House and Senate oversight committees of all credentialing issues reported by merchant mariners to their Congressmen.**

Background: In a 2007 special edition of Maritime Executive magazine, the former chief of the Boston Regional Examination Center (REC) pointed out that two previous attempts to overhaul the credentialing process for mariners were, "poorly planned and designed (and that) Coast Guard senior leadership declined to fund them."

Our mariners were forced to live through a series of inept blunders[1] before and during the establishment of the National Maritime Center (NMC) in 1995 in Arlington, VA, and again during its removal to Martinsburg, WV, in 2008. These blunders continue in 2013. *[(1)NMA Report #R-401-B. (2)NMA Report #R-427-K, Rev. 4.]*

Credentialing merchant mariners is considered a promotion backwater within the Coast Guard and seldom attracted real talent or commitment from senior Coast Guard officials. The credentialing program was perpetually understaffed, failed to reflect our mariners' needs, and still depends upon contract workers without a maritime background to perform many functions.

On July 9, 2009 the House Coast Guard and Maritime Transportation Subcommittee heard testimony from two trade associations (OMSA & PVA), three labor unions, and our Association that outlined the shortcomings of the National Maritime Center. While immediate problems revealed in our Reports to the 110th and 111th Congress[(1)] were significantly reduced in the aftermath of this hearing, we encountered significant problems when the Commanding Officer of the National Maritime Center withdrew and withheld 25,000 exam questions, answers, and illustrations from the public and disregarded the Freedom of Information Act for over two years in spite of an appeal that was perfected and granted by the Coast Guard Chief of Staff in 1988.[(2)] We urge the 113th. Congress to look into this problem that makes it extremely difficult and discourages merchant mariners preparing for advancement by passing required credentialing exams. *[(1)NMA Reports #R-428-D & #R-428-D, Rev. 1. (2)NMA Report #R-428-K, Rev. 6.]*

One licensed Master quoted in an industry trade publication[(1)] reflected experiences reported by our mariners: "I have been told that almost all of the civilian employees at the NMC are simply ***clerical workers*** who read from forms, go down checklists, and generally have ***no real personal knowledge of the marine industry or the mariners who they are supposed to serve***. For these employees, it is just basic administrative work, and they could just as easily be `administrating' the issuance of business licenses, parking or fishing permits. As a result, often they are unable to answer questions, and access to those who can answer them is still spotty. The second concern is the location of the NMC in Martinsburg, WV. Its remote location makes any face-to-face meeting with the people who make the critical decisions (including medical decisions) not even remotely possible for the vast majority of mariners. Therefore, the licensing process is cold, impersonal and faceless. This is not good. Face-to-face meetings help people work through problems in ways that can't be solved over the phone or via e-mail." *[(1)Capt. Joel Milton, WorkBoat, Feb. 2011, p. 10]*

Bibliography: These supporting documents are available from us upon request: NMA Report #R-203-A; #R-401-B; #R-428-D & #R-428-D, Rev. 1; #R-428-I; #R-415, Rev. 2; #R-428-K, Rev. 6; .#R-448, Rev. 1.

Issue "C" – Marine Casualty Investigations and Abuse of the Coast Guard's Administrative Law System

Requests for Congressional Consideration:

1. **Reconsider civilianizing maritime casualty investigations, and moving <u>*all*</u> maritime casualty safety assets and investigations to the National Transportation Safety Board.**

2. **Transfer the reporting and follow-up of all maritime <u>personal injuries</u> to OSHA and increase civil penalties for not reporting these injuries in a timely manner as prescribed by existing regulations at 46 CFR §4.05-10(a). We expect a DHS Inspector General audit we requested later in 2013.**

3. **Determine whether the current electronic reporting of casualties satisfactorily meets the intent of 46 U.S. Code §6101(i). Our experience indicates it does not do so.**

4. **Consider improving the appeal process for a credential revoked under 46 U.S. Code §7703 by making a Commandant Decision on Appeal (CDOA) the "final agency action" and allowing a mariner who reaches this stage to appeal directly to a Federal District Court. The existing process[(1)] requires a further appeal to the NTSB which is unnecessarily burdensome, time consuming, and expensive for the aggrieved mariner. Our experience is that a mariner, once caught up in the Administrative Law system can be held there for years until he or she is financially ruined.[(2)]** *[(1)46 CFR §§5.713 & 5.715. (2)NMA Report #R-429-O.]*

5. **Consider allowing an Administrative Law Judge[(1)] to arrange for adequate representation by a defense counsel for a mariner when the Coast Guard seeks to <u>*revoke*</u> that person's credential under 46 U.S. Code §7703 for Misconduct, Negligence, Incompetence, or Violation of Law or Regulation.[(2)] "Defense Counsel" could include a pro-bono lawyer or law students supervised by a faculty member and approved**

by an ALJ.] *[(1)We encourage the initiatives taken by ALJ Bruce T. Smith in New Orleans to enhance the existing ALJ system. (2)NMA Report #R-204, Rev. 4.]*

Investigations and Casualty Analysis

Background: We commend the joint letter by the Chairmen and Ranking Members of the Senate Commerce, Science and Transportation Committee and the House Transportation and Infrastructure Committee for their letter of Dec. 15, 2005 that initiated the Department of Homeland Security's (DHS) Inspector General's (OIG) inquiry into the Coast Guard's conduct of marine casualty investigations. The resulting DHS Report #OIG-08-51[(1)] summarized serious long-term failures within the Coast Guard's Investigations and Analysis Branch and in the quality of casualty investigations conducted throughout the Coast Guard. We urge the 113th Congress to carefully re-examine the OIG report as well as our related report[(2)] that covers the last 17 years of Coast Guard casualty investigations. *[(1)Reprinted as NMA Report #R-429-M. (2)NMA Report #R-429, Rev. 1.]*

We were pleased to be invited by the DHS Inspector General's office to contribute to their report on casualty investigations since, on many occasions, Coast Guard officials were reluctant to thoroughly investigate safety violations reported by our mariners. After reviewing several landmark government reports from the 1990s as well as the Inspector General's Report, it became clear that the quality of Coast Guard investigations were woefully deficient in many respects for many years. The Inspector General's Report pointed out that ***thousands of Coast Guard investigations were simply "dumped" without ever being properly investigated***. It is reasonable to conclude that ***the Coast Guard was not capable of administering an important part of its marine safety mission involving casualty investigations and lacked the resources to do so.*** In any event, we believe this office deserves continued scrutiny by the Inspector General and continued Congressional oversight.

Electronic Publication of Major Casualty reports

While requirements in 46 U.S. Code §6101(i) require the Coast Guard to electronically publish all major marine casualty reports is a step in the right direction, we found newly imposed administrative procedures in the FOIA office blocked our access to several hundred accidents reported by our mariners. The quality of casualty report ***summaries*** provided on the Coast Guard's "Homeport" internet connection were far inferior to those previously provided by routine FOIA requests made directly to Headquarters. We continue to question the Coast Guard's allocation of resources to casualty investigations ***especially those involving personal injuries to mariners***.

Consequently, in April 2012, we requested the DHS Inspector General audit the Coast Guard's handling of reports of mariner personal injuries and provided abundant reasons for our request.[(1)] We were told that this audit is on track and will be completed in Spring 2013. *[(1)Refer to NMA Report #R-350-Y.]*

Abuse of the Administrative Law System

The Coast Guard's misuse of the Administrative Law system in many of its suspension and revocation (S&R) proceedings was aired in a hearing before the House Coast Guard and Maritime Transportation Subcommittee on July 31, 2007 and has continued since that date. We commend the House Transportation and Infrastructure Committee for promptly conducting hearings on the ALJ scandal that triggered an audit by the Inspector General and resulted in a number of important remedial changes.

Bibliography: These supporting documents are available from us upon request: NMA Report #R-204., Rev. 4; #R-350-Y; #R-429, Rev. 1; #R-429-A, Rev 1; #R-429-G, Rev. 2; #R-429-M; #R-429-O. Also refer to Docket #USCG-2002-12578 at www.regulations.gov.

Issue "D" – Civilianize Control Over Merchant Mariners and Their Appeal Process

Request for Congressional Consideration: Remove civilian merchant mariners from under Coast Guard military control and institute a simplified appeal process.

Background: The Coast Guard's "marine safety" mission lost the respect of many civilian mariners that are part of the regulated public as a result of the poor performance of the Marine Safety Directorate during the past decade as explained in retired Admiral James Card's report[(1)] to former Commandant Thad Allen. We continue to hear most about the treatment mariners endured for years with the inept handling of credentialing by the National Maritime Center

detailed in two reports our Association made to Congress.[2] *[[1]Refer to NMA Report #R-401-E. [2]NMA Reports #R-428-D & #R-428-D, Rev. 1.]*

The appeal process is a system within law and regulation that allows an individual or organization that believes that the Coast Guard may have wrongfully interpreted a law, regulation, or policy to seek reversal or modification of some requirement from an individual superior to the aggrieving party and in the direct chain of command.

We are disappointed in the formal appeals process as shown by the Coast Guard's failure to honor an appeal previously granted (in 1988) or for Headquarters to respond to our appeal that affected many of our mariners for over two years as detailed in NMA Report #R-428-K, Rev. 6. Many other appeals have had to wait as long as seven (7) years for resolution.

Senior Coast Guard officers have become so self-important that they shunt all the "small fry" to their subordinates. For example, no individual mariner we know of ever successfully appealed the manning on a vessel's Certificate of Inspection. Often, a small crew is forced to work beyond the limit of endurance. However, few Officers-in-Charge Marine Inspection have the practical experience to go beyond the manning standards set out in the Marine Safety Manual? It seems that any time a strong well organized military organization regulates civilians, the most likely outcome is some form of tyranny and reflects what our mariners believe today.

Bibliography: These supporting documents are available upon request**:** NMA Report #401-E; #R-428-D; #R-428-D, Rev. 1; #R-428-K, Rev. 6.; #R-436, Rev.3.

Issue "E" – Require Credentials for all Merchant Mariners

Request for Congressional Consideration: We ask Congress to consider requiring ALL merchant mariners serving on commercial vessels regardless of tonnage carry an identity document after undergoing a suitable and relevant background clearance check.

Background

Security Considerations. Existing Coast Guard regulations do not require merchant mariner credentials for ratings (i.e., crewmembers below the rank of an officer) on vessels of less than 100 gross tons working offshore or on many vessels working on inland waters in the heartland of America. Consequently, thousands of mariners including deckhands, unlicensed engineers, "deckineers," cooks, etc. not only do not require formal maritime training or qualifications but also do not require any form of security identification. We suggest that this loophole be closed.

The "***100-ton***" figure may have been a convenient benchmark in the past for regulatory purposes, but its lower limit excludes uncounted thousands of our limited-tonnage merchant mariners who work on thousands of smaller commercial vessels. Furthermore, many un-credentialed and entry-level individuals are temporary, part-time, or seasonal employees and others are casual laborers. Although many of these employees have an alarmingly high turnover rate in the industry, our Association speaks on behalf of all limited tonnage mariners.

Unless the Department of Homeland Security (i.e., USCG or TSA) has a meaningful credential to withhold or take away from a mariner, the federal government has no leverage to control drug use, criminal behavior, or security threats or even to locate the mariner. Consequently, we assert that the interests of national security would be well served by requiring ***all*** merchant mariners to carry a federal identity credential that requires an appropriate background check to reduce the possibility of a transportation security incident.

Issue "F" – Unsatisfactory Coast Guard Response to Making Regulatory Changes

Background

The Coast Guard appears paralyzed in its ability to carry out its important rulemaking functions. Two examples that affected our mariners were:

- Failure to satisfactorily update safety regulations on the Outer Continental Shelf ***including workplace protections*** for more than 14 years from the start of their last attempt to do so.[1]
- Failure to include in the Proposed Rulemaking for Towing Vessel Inspections any mention of vessel manning issues in spite of repeated requests to do so.[2] Both of these failures appear to have been a result of actions by

industry that clearly were not in the best interests of our mariners. *[(1)Refer to Docket #USCG-1999-3868 that has been under consideration for 15 years. (2)Refer to Docket #USCG-2004-19977 and to Issue A (above)]*

Other failures: As members of the public, an organization like ours should be able to participate in the rulemaking process by directly ***petitioning*** the Coast Guard to make regulatory changes. However, minor functionaries at what is now the Coast Guard's Marine Safety and Security Council turned our use of the "petition" procedure into a wild goose chase. We attempted to use this process on five (5) separate occasions starting in April 2000.

We assert that it is a legitimate function of our Association to ask the Coast Guard to inform Congressional oversight committees of issues like many of those contained in this report that face our mariners. We do not find it unreasonable to ask the Coast Guard to submit reasonable ***Legislative Change Proposals*** (LCP) to Congress on our behalf. Although procedures exist in 33 CFR §1.05-20 to petition the Coast Guard for rulemaking, we experienced problems in even having the Coast Guard open a docket. Once we succeeded in having the Coast Guard open a docket, we then found that the Coast Guard used 33 CFR §1.05-20(b) and summarily vetoed all action in that docket to initiate a rulemaking.

Over the years, the Coast Guard allowed the "Petitions" and the "Legislative Change Proposal" processes to break down so they no longer serve the needs of our mariners. This reluctance and bad faith only reinforced our determination to ask Congress to transfer marine safety functions from military to civilian employees that we would expect to have the necessary background of working in the maritime industry. These individuals should be able to recognize the issues we bring to their attention and provide the time, knowledge, and commitment necessary to provide a workable administration within an Executive Branch agency.

Issues **F, I, K, W, and Y** in this report all represent items we placed on Coast Guard dockets.

Status: To avoid these administrative problems, we opted to submit certain reports directly to Members of Congress.

Issue "G" – Promulgate Timely Towing Vessel Inspection Regulations

Our Association fully participated in this rulemaking process and supports the Coast Guard's "Bridging" program and the establishment of the Towing Vessel Center of Expertise in Paducah, KY. However, we still await the outcome of the Coast Guard's work on their ongoing work on the rulemaking package. Nevertheless, we believe that a serious problem exists as a result of their ***failure to address towing vessel manning standards*** as mentioned in Issue A (above).

Bibliography: These supporting documents are available from us upon request: NMA Report #R-276, Rev. 10; #R-401-E; #R-426, Rev. 1.

PART 2 – MARINER ISSUES WITH VESSEL WORKPLACE CONDITIONS AND SAFETY

Part 2 of this report and its supporting documents bring to light some of the ***third-world working conditions*** found on many vessels manned by our limited-tonnage mariners. For example, existing statutes inadequately define the length of the work day and off-duty rest periods for our seamen (i.e., "***ratings***"). Work days can exceed 12-, 15-, 18-hours or more without clearly defined rest and off-duty periods except for vessels on international voyages where 10-hours of rest are mandated and now must be documented. While there are defined work hours for most ***officers***, they are seldom logged or verified and enforced by the Coast Guard inspectors or investigators unless an accident draws attention to them. An increasing number of mariners are required to work both on deck and in the engineroom (e.g., as "deckineers") on vessels of less than 100 gross tons and on vessels of more than 100 GT in direct violation of 46 U.S. Code §8104(e)(1)(A)(B).

The Coast Guard totally ignored the need for engineroom safety and vocational training on small merchant vessels for over 40 years. There is no guarantee of or requirement for ***safety training*** required for entry level personnel or ***vocational training*** for unlicensed engineroom personnel (i.e., "deckineers" and unlicensed engineers). This masks serious recruiting and retention problems to say nothing of ***unreported injuries*** that led to a DHS audit in 2012-13 whose results are expected later this year.

Issues "H"& "K" – Vessel Manning Issues and Enforceable Work-Hour Limits.

Request for Congressional Action: We ask Congress to limit the service of every mariner on every inspected U.S. flag vessel to no more than 12-hours of work in any consecutive 24-hour period.

Background: Our Association explored this issue in depth ever since our founding in 1999 and our officers have spoken on this subject at many public meetings. We respectfully direct your attention to NMA Report #R-370, Rev. 4 that contains the most pertinent material on this subject that continues to be our most important legislative request for Congressional action.

Bibliography: Additional supporting documents are available from us upon request including NMA Reports #R-201; #R-202, Rev. 5; #R-205, Rev. 1; #R-213; #R-370-A, Rev. 2; #R-370-B, Rev.4; #R-370-D, Rev. 6; #R-370-G; #R-370-H; #R-370-I; and, for engineers> NMA Report #R-401, Rev. 1; #R-408-A; #R-412; #R-412-A, Rev. 1. Also review Docket #USCG-2002-12579 at www.regulations.gov.

Issue "I" – Establish and Enforce a Clear Definition of "On-Duty Time" for All Our Mariners

Request for Congressional Action: We ask that <u>travel time en route to a vessel assignment</u> be considered "on duty" time by amending the first sentence of 46 U.S. Code §8104(a) to read: "…may permit an officer to take charge of the deck *or engine* watch…." This change would mirror transportation crew change practices on railroads and <u>also</u> recognizes dangers faced by fatigued engineering personnel.

Background

After 11½ years, the Coast Guard still has not resolved an appeal by Magnolia Marine to vacate a civil penalty for ***violating work-hour statute*** 46 U.S. Code §8104(h) by the company and the Master of its M/V Robert Y. Love that led up to the Interstate 40 bridge allision on May 28, 2002 – highlighting another failure of the Coast Guard's appeal process to resolve issues in a timely manner.[(1)] The bridge allision knocked out a major interstate highway bridge, caused 14 fatalities and 5 injuries, disrupted highway traffic for several months, and left more than $30,000,000 in damage.[(2)] *[(1)Example in reference to Issue "D" (above). (2)Refer to NMA Report #R-370-A, Rev. 2.]*

This issue obscures several flaws in existing 46 U.S. Code §8104(a) and in the Coast Guard policy document that interprets this statute.[(1)] We further note that the Coast Guard has not yet introduced the science-based hours-of-service regulations first urged by the NTSB in 1989 and reiterated many times thereafter. *[(1)Policy letter G-MOC #4-00, Change 1.]*

On Apr. 18, 2002, several weeks ***<u>before</u>*** the Interstate 40 bridge allision, our Association petitioned the Coast Guard as follows:

"The…mariners we represent are distressed with the definition of "travel time" that appears in paragraph 2.d of Coast Guard Policy letter G-MOC #4-00 as follows:

"Travel time to a vessel is considered to be ***<u>neutral time</u>*** as it is normally not considered to be rest, off duty, or work time, but all relevant circumstances should be considered in <u>evaluating</u> whether a mariner complies with the applicable rest required by STCW or off-duty requirements specified in 46 U.S. Code §8104(a)."

We note that ***<u>neutral time</u>*** is not defined anywhere in this Coast Guard policy letter. Consequently, a mariner and his employer may disagree as to whether a deck officer must ***get underway*** (or take charge of a watch) immediately upon arriving at the vessel or to wait until he or she has received the rest required by 46 U.S. Code §8104(a). Lacking a clear Coast Guard policy statement, the deck officer may feel justified in delaying departure until he or she is rested and, as a result, be fired or coerced into committing an unsafe act by fatigue. This act could lead to a reportable fatigue-related accident, suspension or revocation of the mariner's credential, and/or lawsuits and liability depending upon the nature and extent of the damage resulting from fatigued operation.

Our deck officers reported being forced to drive (or being driven) for hours and then having to take over a watch and get underway immediately upon arrival at the vessel. We reported these problems to both the Coast Guard and the National Transportation Safety Board on a number of occasions in writing.

After a third follow-up to our original letter, we received a reply dated Oct. 11, 2002 that the Coast Guard had finally ***<u>established a docket to file our petition in – as opposed to acting upon it</u>***. A recent re-examination of this

docket shows that no action other than collecting an additional report by our Association.[1] In other words, our petition for rulemaking, following the procedure outlined in 33 CFR §1.05-20 was buried in a Coast Guard file with no regulatory initiative taken on it in an eleven-year period. *[[1]Refer to NMA Report #R-370-D, Rev. 6.]*

Proposed solution: "On page 40 (Table 1-1) of (an) NTSB study[1]…the **Federal Railroad Administratio**n (FRA) regulations at 49 CFR §228.7(a)(4) consider "***on-duty" time*** to include "Time spent in deadhead transportation en route to a duty assignment. It is followed by this statement: "Time spent in deadhead transportation by an employee returning from duty to his point of final release may not be counted in computing time off duty or time on duty." We note that this deadhead transportation takes place mostly on land both for railway employees as well as for our mariner counterparts. *[[1]Evaluation of U.S. Department of Transportation Efforts in the 1990s to Address Operator Fatigue, NTSB/SR-99/01]*

We note that this FRA passage cites a Federal Regulation while G-MOC #4-00 is a lesser internal policy letter that never passed through administrative rulemaking procedures. Consequently, under provisions of 33 CFR §1.05-20, we formally filed a Petition for Rulemaking and requested that the wording in the FRA regulation at 49 CFR §228.7(a)(4) be adopted by the Coast Guard for the protection and welfare of our mariners. A copy of our request was sent to the Chairman of the National Transportation Safety Board.

Status

The Coast Guard assigned our Petition for Rulemaking to the Towing Safety Advisory Committee. ***TSAC allowed the issue to languish for four years without making a decision***. Finally, after a number of follow-up letters, a TSAC meeting in April 2007 decided that ***in the future individual companies*** should include statements describing crew-change arrangements in their "Safety Management System" that would address this issue. This ***assumes*** that the proposed towing vessel inspection regulations will require every towing company to operate under a safety management system. By assigning the matter to TSAC rather than making a firm command decision, the Coast Guard also failed to address the same crew change issues prevalent on towing vessels, offshore supply vessels, and other vessels under 1,600 gross register tons.

Bibliography: Additional supporting documents available upon request: NMA Report #R-370, Rev. 4; #R-370-A, Rev. 2; #R-370-D, Rev. 6. Also review Docket #USCG-2002-13594 at www.regulations.gov.

Issue "J" – Seaman's Shoreside Access

NMA Expression of Appreciation: The 111th Congress enacted Sec. 811 of the Coast Guard Authorization Act of 2010 to require that each facility security plan approved under 46 U.S. Code §70103(c) provides a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual. Some outstanding enforcement issues may still need to be resolved.

Issue "L" – Improve "Whistleblower Protection" for Merchant Mariners

NMA Expresses our appreciation that the 111th Congress clarified 46 U.S. Code §2114 (The Seaman's Protection Act) to provide the same degree of whistleblower protection for our mariners as protects other transport workers. OSHA is actively enforcing applicable DOT regulations and offers necessary administrative protections previously ignored by the Coast Guard. We will continue to monitor the effectiveness of this new legislation.

Our Association submitted its first case to the U.S. Department of Labor for settlement.

Bibliography: Additional supporting documents available upon request: NMA Report R-210. Rev. 2; #R-370-D, Rev. 6; #R-429-L, Rev. 2.

Issue "M" – Untrained Entry Level Deck and Engineroom Personnel

Request for Congressional Action:

1. **Require by statute that each mariner assigned duties in an engineroom or machinery space on an inspected vessel undergo and document formal safety training. The purpose of this training is to protect the mariner against known safety hazards within those spaces before performing any assignment in those spaces.**

2. **Require by statute proof of suitable vocational training commensurate with the operation, maintenance, and repair duties for a mariner regularly assigned to perform such duties for all machinery and onboard systems on each inspected vessel on any navigable waters.**

Background

Although Congress did not give the Coast Guard authority to license engineers[1] on inspected small passenger vessels,[2] or offshore supply vessels of less than 200 GRT,[3] or most towing vessels,[4] we find that unlicensed engineers, and often new deckhands, or "deckineers" are tasked with entering and or monitoring the engineroom and other machinery spaces, and with operating or performing maintenance on increasingly complex hydraulic-, pneumatic-, electrical-, and electronic- systems. These mariners are often made responsible for pumping bilges, ballast water, and cargo as well as taking on fuel and maintaining different types of marine sanitation devices.

Even on small vessels of less than 100 GRT it is uncontested that ***the Master of the vessel never can be in two places at the same time*** – at his station in the pilothouse and (at the same time) below decks in the engineroom. *[(1)Statutes require licensed engineers only on inspected vessels greater than 200 GRT in coastwise or ocean service. (2)Approximately 5,600 small passenger vessels are inspected under 46 CFR Subchapters K & T according to Proceedings, Jan.-Mar. 2003. None require engineers. (3)Some OSVs are as long as 185 feet, with as many as five engines, carry dozens of persons in addition to the crew, maneuver with highly sophisticated dynamic positioning systems – but have no dedicated "engineer." (4)6,100 towing vessels will come under inspection in the next few years. Many tow dangerous cargoes through locks, under bridges, and through densely populated areas.]*

Congress assigned the Coast Guard to superintend the merchant marine that included taking responsibility for the occupational safety and health of our mariners afloat.

We urge Congressional oversight committees to determine if the Coast Guard is adequately protecting the safety and health of entry-level mariners without first requiring evidence of structured ***safety training*** for mariners to serve as "unlicensed engineers" or "deckineers" aboard vessels where they may be called upon to operate, maintain, or repair potentially dangerous equipment and/or handle toxic substances without providing suitably documented indoctrination and training.

Raw data provided by the Coast Guard showed in a 12-year period, that ***2,611 towing vessels***[1] lost electrical power, sank, flooded, capsized, burned, exploded, suffered stability problems, or were abandoned. This does not include events like groundings, allisions or collisions which might be considered navigational errors where deck officers are primarily responsible. These figures reflect poorly upon the training and performance of individuals assigned to watch, operate, maintain, or repair the engineroom and other machinery on towing vessels. Since towing vessels were not classed as "inspected" vessels until 2004, the Coast Guard never analyzed the details of this raw data in greater detail. *[(1)USCG-2004-19977-129 Letter by Rep. James Oberstar dated Mar. 23, 2005.]*

In investigating three separate small passenger vessel accidents,[1] ***the NTSB faulted the Coast Guard for not prescribing "preventive maintenance" in their existing regulations***. They still have not done so. *[(1)NTSB Recommendation #M-02-05, Fire on Board the Small Passenger Vessel Port Imperial Manhattan, NTSB/MAR-02/02. This recommendation was reiterated in two additional accidents; Fire on Board the Small Passenger Vessel Sea Streak New York, Sept. 28, 2001, NTSB/MAR-02/04 and Fire on Board Small Passenger Vessel Express Shuttle II, Pithlachascotee River near Port Richey, FL Oct. 17, 2004, NTSB/MAR-06/02.]*

Bibliography: These additional supporting documents are available upon request: NMA Report #R-279, Rev 8; #R-428-H; #R-428, Rev. 1; #R-401-A; #R-412, Rev. 1; #412-A, Rev. 1.

Issue "N" – Resolve Remaining Lifesaving Equipment Approval Issues

NMA Expression of Appreciation: Our Association applauds the 111th Congress for amending 46 U.S. Code §3104(a) that ends further approval of survival craft such as "life floats" that leave their occupants in the water awaiting rescue. This action reflects NTSB recommendations following the 1985 M/V Pilgrim Belle accident and aligns with our Association's petition to Congress. Further changes authorized by the 112th Congress are directed at accommodating industry compliance issues.

Background

The Coast Guard's Search and Rescue mission is described by the DHS Inspector General as: "Minimizing the loss of life, personal injury, and property damage or loss by rendering aid to persons in distress and property in the maritime environment." Saving lives at sea always has been a Coast Guard priority. It is a mission they have accomplished with great credit to the service and a public service our mariners respect.

Our mariners are truly grateful for training and the effort that the Coast Guard expends to carry out this mission that protects them. We note that this mission is managed separately from the Marine Safety mission – ***with the notable exception of the lifesaving equipment approval process***.

The Coast Guard Marine Safety directorate remains as the approval authority for lifesaving equipment. We believe that serious problems exist in the approval process for innovative lifesaving equipment. Among those problems are in equipment to "**retrieve**"[(1)] persons who fall overboard and "**recover**"[(2)] these individuals from the water. *[(1)**Vocabulary: Retrieve** = bring back. (2)**Recover** = Lift out of the water to safety.].*

This is an important issue for our Association because most of our limited-tonnage mariners work on small commercial vessels where falls overboard are quite common. This includes falls from thousands of barges whose work spaces are not adequately inspected either by the Coast Guard or OSHA and that rarely sail with any lifesaving gear on board. Our Association brought this information to the attention of Congress in NMA Report #R-354, Rev. 4 and in the additional supporting documents listed below.

Bibliography: These additional supporting documents are available upon request: NMA Report #R-202-B; #R-202-C, Rev. 2; #R-202-D; #R-354, Rev. 4; #R-354-A. Also refer to Docket USCG-2011-0925.

Issue "O" – Fund Study and Improve Mariner Hypothermia Protection

Request for Congressional Action:

1. **Authorize and fund the Coast Guard to extend their previous studies[(1)] and guidance to identify places and dates on navigable inland waterways where ambient water temperatures fall below the 59°F "cold water" benchmark during any month of the year.** *[(1)These studies led to the publication of NVIC 7-91 on May 20, 1991 and the inclusion of "immersion suits" in Coast Guard regulations.]*

2. **Authorize and fund the Coast Guard to update both regulations and guidance (e.g., NVIC 7-91) so as to require effective hypothermia protective survival gear against falls overboard in identified "cold water" areas for mariners who work on inland and river towing vessels, barges, and small passenger vessels.**

3. **Require employers to provide adequate safety equipment including hypothermia protective clothing[(1)] comparable to that furnished by the Coast Guard for its personnel on search and rescue missions.** *[(1)An immersion suit approved under 46 CFR §160.171 or an exposure suit as required for commercial fishing vessels in 46 CFR Table 28.110.]*

Background

A 1996 joint Coast Guard/Industry Quality Action Team report stated in part: "…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."

The Coast Guard is well aware of the hypothermia problem that exists in cold water areas as shown in their

Navigation and Vessel Inspection Circular NVIC 7-91. Unfortunately, the guidelines in this NVIC do not take into account cold water temperatures that are found in various rivers and inland waters – only those found along the coasts. ***A letter to Admiral James Card and a formal request to the Towing Safety Advisory Committee at a meeting in Washington identified this significant shortcoming a decade ago.*** However, the Coast Guard subsequently ***ignored*** this request made at the advisory committee level.

The Coast Guard went on record in NVIC 7-91 that temperatures falling below 59°F are significant for regulatory purposes. However, the same thinking behind the guidance in NVIC 7-91 also should apply upon rivers and other inland waters just as it does in coastal areas. After all, cold water affects the human body regardless of geography. In rivers, it may be swiftly flowing cold water and, therefore, even more dangerous.

Our Association provided 1998 river water temperatures for Coast Guard consideration. These temperatures were recorded on the first and 15th of each month. The list included these river Mississippi River water temperatures: January 1, 48°F at New Orleans; January 15, 50°F at St. Francisville, LA; February 1, 45°F at New Orleans; February 15, 46°F at Baton Rouge, LA; March 1, 46°F at New Orleans; March 15, 46°F at Natchez, MS; April 1, 52°F at Memphis, TN. Only in mid-April did water temperatures rise above the 59°F level and remained there until mid-October when they fell to 56°F at Dubuque, IA. November readings at St. Francisville, LA, remained above the 59°F mark, but on December 1 dropped to 56°F. 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. Although this information was well publicized in trade journals, the Coast Guard ***ignored*** it. Consequently, a significant proportion of our limited tonnage mariners were left unprotected.

Our Association pointed out that even 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. This requirement was codified in §410 of the Maritime Transportation Security Act of 2002 for Coast Guard personnel. We asked the Coast Guard and the Towing Safety Advisory Committee to consider our mariners' needs but our request was repeatedly ***ignored.*** We now reiterate the same request to Congress.

Our Association is concerned that Coast Guard inspection officials routinely waiver cold-water lifesaving equipment carriage regulations for some large passenger carrying vessels. One example cited to us involves the car ferries that cross the mouth of the Delaware River between Cape May, NJ and Cape Henlopen, DE.

The onset of hypothermia clearly does not depend upon the size of the vessel that you are riding on as seen in the 1994 M/S ESTONIA disaster in the Baltic Sea with a loss of 852 lives.

A Personal Letter

[This is a reprint of a personal letter from Captain John R. Sutton to the Editor of this report dated Jan. 8, 1997, written at work on the Illinois River at 2100 hours.]

Dear Richard,

I nearly lost a man today. My Mate fell in the river at Hennepin, Illinois at Illinois River Mile 207. It was 0700. There was a heavy frost on the barges from a heavy fog last night. He was in the water approximately 10 minutes. It was 10°F this morning and the water had to be at least 34°F.

My Mate was walking down the side of the tow in the process of turning the tow loose from the fleet. He slipped and fell between the barges. I was preparing the daily log and catching up my personal log at this time. There were several boats working in the harbor this morning. At approximately the same time both the fleet boat and I heard a microphone key up with garbled sounds – but nothing understandable. I believe this was my Mate's radio shorting out when he fell in the water.

A few minutes later my deckhand came running down the barges waving his arms signaling me by waving his own life jacket. He yelled that he heard the Mate screaming for help but could not find him.

I immediately called the tug to assist. I then called my watch to go to the tow and assist. By this time my deckhand had found the Mate located between the tow and fleet of barges. He was approximately 300 feet ahead of the boat. I shifted my engines in a full throttle twin screw to open up the space between the tow and the fleet. I did not know whether the man had been crushed between the barges.

The deckhand on watch that came to his rescue was the Mate's brother-in-law. The deckhand later told me, that the Mate pleaded with him not to let him go and that he had been under once and was scared. The Mate had managed to wedge himself between the barges by placing his hands on one barge and his back to the other and pushing out. The Mate's hands immediately froze to the steel on the barge in the 10°F cold. The deckhand pried his hands loose, along with a couple layers of skin, and pulled him up to where he was able to put his forearms up on deck of the barge. His forearms froze to the deck.

By this time several more minutes had passed. The tugs arrived just as the barges were starting to close up again. The Chief Engineer arrived at almost the same time, realized the barges were closing, and made the decision to try and retrieve the Mate without the help of others.

The Mate is approximately six feet tall and weighs 265 pounds. With his winter garb and radio this man was easily over 300 pounds soaking wet and, by this time, was in no shape to help himself. Somehow by God's helping hand, they managed to pull the Mate to the gunwale of the barge.

Somehow, while standing witness to this happening before me, I had the forethought to call the fleet dispatcher for Emergency Medical Technicians. This was in between pleading for the tugs to hurry to my deckhand's assistance.

My Mate walked to the boat on his own power, while I sent the tug to retrieve the waiting EMTs that were only three blocks away from the fleet's office.

I met the Mate at his room and helped him strip out of his icy clothes. While I was pulling his coverall arms down and unlacing his boots, he was apologizing for getting the radio wet. As soon as he stripped, I put him in a warm shower. Approximately five minutes later the EMTs arrived to check him out.

When the Mate dried off, he was red as a beet from the cold and still shivering to the bone. He dressed in sweat pants and shirt. The EMTs covered him with four blankets and applied chemical warm packs under his arms. After a brief observation, they opted to take him to the hospital.

When I woke up early this afternoon, I had a bad dream. It was about an outcome that was not as bright as this event had been. He is shaken up and wants to go home for a few days. His wife is 8½ months pregnant and understandably concerned.

She has called six times today. He is going home tomorrow; but for the mean time I'm not letting him do anything but sleep.

This event has hit home for me. I've seen other people in the water during warmer weather; but I nearly lost this man today. Somehow, I am going to bring this to the attention of Admiral Card, the Towing Safety Advisory Committee, and industry. The error chain in this event had too many links. The major ones were:

- Lack of communications because each man on a tow should carry a watertight radio.
- Lack of manpower because I only had two men on tow, and
- Lack of proper gear (i.e., a float coat or float coveralls). He was not capable of flotation dressed as he was.

This is a dangerous industry. Some of us tend to forget it when we are isolated three decks above the real action. There has already been one man lost on this river this winter at Beardston, Illinois, after falling off a tug.

Be careful my friend, and please exercise caution around the water this winter.

Best wishes, your friend, John.

Issues "P" & "X" – Review Employment Statutes: "Black Listing" and "Headhunting"

Request for Congressional Action: In fairness to our mariners, we ask Congress to review the Fair Credit Reporting Act's "reasonable procedures" clause. Consider excluding any "not eligible for rehire" type entry from appearing on any work report of a seaman furnished by any Credit Reporting Agency unless the agency first notifies the mariner of this ineligibility determination with the name of the employer and the person who submitted the entry along with and instructions on how to contest the entry.

Background on Reducing "Blacklisting"

15 U.S. Code §1681(a)(4) states that: "There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy."

The term "**consumer reporting agency**" refers to any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

Consumer reporting agencies are expected to adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in

accordance with the requirements of this subchapter.

The problem – "other information": Our Association witnessed abuse of the "proper utilization" provision that adversely affects our limited tonnage mariners in seeking new employment in the maritime industry. When abuse by a vindictive employer occurs, it can deprive the industry of a trained and experienced mariner and "blacklist" his/her career.

Good employees try to maintain a good work record. The fact that such a work record really exists and may follow a mariner in the workplace provides a positive and sobering influence upon a mariner's conduct and stability. Nevertheless, one feature stands out and detracts from the value of this type of "consumer report." That point deals with the answer to the question, "Would you rehire this employee?" or, restated, "Is this former employee eligible for rehire by your company?"

We received reports from our mariners that this single point often is used to evaluate and subsequently "***blacklist***" merchant mariners. This question can become a "***quick and dirty***" test of suitability for employment.

The "would not rehire" determination is not based upon any uniform set of employment guidelines. It is a subjective opinion of some person working for a former employer who is under no obligation to reveal his/her identity or even his or her position within the company. It could represent the opinion of a President, a Human Resources Director, or even a receptionist with access to the company's computer. In many cases, employees are not even given a "pink slip" stating the reason for their termination from employment.

A mariner does not know which person "blacklisted" him/her or when it was done. However, "would not rehire" now can appear on a computer screen at a job seeker's next job interview. Or, it may appear as part of the "reinvestigation" the present law allows. **Example:** In one case that we followed, the job applicant only found out about his "would not rehire" entry three years later – much of that time spent unemployed but constantly seeking work. Although our mariner made written inquiry to both his former employer and to the Credit Reporting Agency, he never was told why his former employer would not rehire him. The information the mariner chose to add to his consumer report to counteract the "blacklisting" could be nothing more than a shot in the dark since he had no access to solid facts he could refute. Even worse, his statement stood out like a sore thumb on future reports provided to potential employers.

Related problem: Most job applications require job seekers to list their previous employers. In the transportation industry, 49 CFR §40.25 even requires prospective employers to verify a job seeker's drug records for the past two years. Whenever a prospective employer makes such a call he has a greater opportunity to speak with a responsible person in authority and ask legally permissible questions about the job seeker. Unfortunately, ***a "would not rehire" computer entry can short circuit the entire process*** and becomes manifestly unfair to a job seeker.

Accepting "would not rehire" notations without identifying them by name coupled with the limitation of liability in 15 U.S. Code §1681h make it extremely difficult for an injured employee to prove in court that he was disqualified from employment by "...false information furnished with malice or willful intent to injure such (a) consumer" if this is the case. Our experience shows that most mariners, especially those who are unemployed, do not have the means, the ability, and the knowledge to deal with the administrative procedures of a Credit Reporting Agency – even when the agency scrupulously follows the law ***or even to identify, locate, or contact an appropriate Credit Reporting Agency***.

Background on "Headhunting" or Recruiting for Profit

Request for Congressional Action: We ask Congress to review and provide for adequate enforcement of existing maritime employment statutes to protect our mariners serving on all inspected vessels wherever they operate – including inland waters, rivers, and the Great Lakes.

Background

In consideration of Article 4(a) of the Placing of Seamen Convention, 1920 (ILO No. 9) as well as Article 4 of the Recruitment and Placement of Seamen Convention, 1996 (ILO No. 179) that came into effect in 2001 (and in harmony with the Maritime Labour Convention of 2006), Congress enacted statutes that asserted that ***all expenses incurred for recruiting and hiring merchant mariners must be borne by the employer and not the mariner***. The pertinent statutes read as follows:

46 U.S. Code §10505. Advances *[Applicable to Coastwise Voyages]*

(a)

(1) *A person may* ***not*** *–*
(A) pay a seaman wages in advance of the time when the seaman has earned the wages;
(B) pay advance wages of the seaman to another person; or
(C) make to another person an order, note, or other evidence of indebtedness of the wages, or **pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage.**
(2) A person violating this subsection is liable to the United States Government for a **civil penalty of not more than $5,000**. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.
(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than $5,000.
(c) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10502 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.
(d) This section does not apply to a fishing or whaling vessel or a yacht.

46 U.S. Code §10314. Advances *[Applicable to International and Intercoastal Voyages]*
(a)
(1) A person may not –
(A) pay a seaman wages in advance of the time when the seaman has earned the wages;
(B) pay advance wages of the seaman to another person; or
(C) make to another person an order, note, or other evidence of indebtedness of the wages, **or pay another person, for the engagement of seamen when payment is deducted or to be deducted from the seaman's wage**.
(2) A person violating this subsection is liable to the United States Government for a civil penalty of not more than $500. A payment made in violation of this subsection does not relieve the vessel or the master from the duty to pay all wages after they have been earned.
(b) A person demanding or receiving from a seaman or an individual seeking employment as a seaman, remuneration for providing the seaman or individual with employment, is liable to the Government for a civil penalty of not more than $500.
(c) This section applies to a foreign vessel when in waters of the United States. An owner, charterer, managing operator, agent, or master of a foreign vessel violating this section is liable to the Government for the same penalty as an owner, charterer, managing operator, agent, or master of a vessel of the United States for the same violation.
(d) The owner, charterer, managing operator, agent, or master of a vessel seeking clearance from a port of the United States shall present the agreement required by section 10302 of this title at the office of clearance. Clearance may be granted to a vessel only if this section has been complied with.
(e) This section does not apply to a fishing or whaling vessel or a yacht.

The problem: Existing statutes, while clear and direct are not effectively enforced. We detailed this problem in NMA Report #R-211, Rev. 1. NMA attorney Dennis O'Bryan[(1)] heads our efforts on behalf of our mariners in the courtroom. *[(1)Dennis M. O'Bryan, Esq., 401 S. Old Woodward Road, Ste. 450, Birmingham, MI 48009. (1-800-OBryan.)]*

Although a number of International Labour Organization (ILO) conventions were not ratified by the U.S. Senate, they do protect seafarers from nations like the Philippines and Russia that provide an overwhelming number of the world's merchant mariners. We assert that our mariners deserve comparable protection.

Employment in the maritime industry often becomes a dangerous adventure that frequently does not end well for many of our merchant mariners. In this day and age, and with our experience in dealing with mariner issues such as the high cost of maritime training borne by mariners, employment in the maritime industry is certainly NOT a "privilege" many mariners find worth paying for.

Many of our mariners report that they are forced to enter into **employment agreements** where a significant portion of their pay check (e.g., as much as their first two weeks pay) must be returned to a private employment agency for the "privilege" of employment. For **example**, the agreement could cost a towing vessel master earning $500/day for 14 days up to $7,000 for a job that might only last a few weeks.

The fact that most mariners no longer complain about the problem to the Coast Guard does not mean that the problem does not exist because the Coast Guard simply does not entertain such complaints. The facile Coast Guard position is that they are not allowed to become party to a labor dispute between employers and employees. In addition, when we approached the Coast Guard on behalf of our mariners and cited the following statutes, we were told that the problem did not exist. We disagree.

- 46 U.S. Code §10505(a)(1)(C) and 46 U.S. Code §10505(a)(2), for coastwise voyages.

- 46 U.S. Code §10314(a)(1)(C), and 46 U.S. Code §10314(a)(2) for foreign and intercoastal voyages.

In reading these two statutes, we also noted a wide discrepancy in the Civil Penalties between the two – the difference is between $500 (i.e., five ***hundred*** dollars) and $5,000 (i.e., five ***thousand*** dollars). We believe that the larger figure, as adjusted for inflation, more adequately reflects the significance of the problem facing our mariners and would be required as a bare minimum to eradicate it.

Bibliography: These additional supporting documents available upon request**:** NMA Report #R-211, Rev. 1; #R-211-A; #R-454; #R-454-A.

PART 3 – MARINER HEALTH ISSUES

The lack of ***reasonable potable water requirements*** for limited tonnage vessel crews is in the top 10 mariner issues identified in a 2009 survey**!**

Requirements for the protection of mariners ***hearing*** was at the top among the Health issues and ranked fifth among all of the 25 issues in our survey.

Protection from ***second-hand smoke*** and ***engine exhaust gases***, ***asbestos*** and stiffer penalties for drug use, are also important health issues for mariners.

Chief Engineer V.J. Gianelloni II, a Director of our Association, active marine engineer, and retired Coast Guard Commander took a special look at the "issues" rankings of the Engine Department personnel. As expected, they ranked protection from hearing loss, engine exhaust gases, and asbestos higher than the non-engineering mariner population since they must live with these issues in their workplace on a daily basis.

Issue "Q" – Introduce Legislation to Protect our Mariners' Hearing

Request for Congressional Action: We ask Congress to introduce legislation provide mariners with the same regulatory hearing protection as industrial workers receive under OSHA Regulations at 29 CFR §1910.95.

Background

A mariner has little to offer an employer if he loses his health. One major aspect of a mariner's health and his quality of life depends on his ability to hear. A mariner whose hearing is impaired by workplace conditions will experience a significantly reduced quality of life and considerable future medical expenses to remediate the condition including hearing aids whose cost is ***not*** covered by Medicare. In addition, a mariner may face rejection for further service in the merchant marine if he/she cannot pass the hearing portion of the required physical exam.

The Occupational Safety and Health Act effectively protected the safety and health of workers in other occupations since 1970. Unfortunately, the task of developing comparable regulations for mariners and enforcing them was left to the Coast Guard and not to the U.S. Department of Labor. The Coast Guard position expressed in a 2010 letter stated: "The Coast Guard 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 Navigation and Vessel Inspection Circulars (NVIC). However, we do not train our inspectors to enforce OSHA regulations or any other agency's regulations…"

The Coast Guard failed to protect our mariners with appropriate regulations and left us only with ***unenforceable "guidelines."*** In doing so, they were encouraged by industry trade associations in the mid-1980s whose members were spared considerable costs of regulatory compliance. The Coast Guard never undertook meaningful enforcement of the "guidelines" that appear in NVIC 12-82.

As early as 1974, ***OSHA developed Occupational Noise Exposure Regulations*** at 29 CFR §1910.95. Unlike the regulations the Coast Guard ***proposed***[(1)] for the Outer Continental Shelf (that gathered dust as a failed Notice of ***Proposed*** Rulemaking since 1999) the existing OSHA regulations call for more than simply an "administrative control" of posting signs in high noise areas. They also include a continuing and effective hearing conservation program for the benefit of employees under 29 CFR §1910.95(c). The OSHA program includes monitoring, employee hazard notification, and observation of monitoring by worker representatives, an audiometric testing program, training, record keeping, and provision for record transfers to follow employees from job to job. Such coverage is particularly important in an industry with a high turnover rate that treats many of its employees as

expendable – a position we disagree with. *[(1)Docket #USCG-1999-3868, Outer Continental Shelf Activities, proposed 33 CFR §142-135. After 14 years of regulatory paralysis, even this basic proposal to require hearing protectors in noisy spaces has not become a regulatory requirement.]*

While workers in workplaces ashore were protected by OSHA regulations for all these years, ***the Coast Guard, in its Congressionally assigned task of superintending the maritime industry, did absolutely nothing to monitor and protect the hearing of our mariners***. What's more, the limited measures the Coast Guard proposed years ago in Docket #USCG 1998-3868 would apply only to workers on the outer continental shelf (OCS). Even these proposed regulations only apply to an ill-defined segment of mariners whose employers cry about the expense without considering the mariners they deafen and otherwise injure in other unreported ways. However, the Coast Guard National Maritime Center enforces a double standard when it ***refuses to renew credentials for experienced mariners whose hearing was impaired by years of working on noisy vessels***.(1) *[(1)Example: NMA Mariner #159.]*

Our complaint extends far beyond the mariners who work on the Outer Continental Shelf to ***all*** limited tonnage mariners under Coast Guard regulatory supervision. We assert that the Coast Guard completely and utterly failed to provide any effective hearing protection for our 126,000 limited tonnage mariners.

"Regulation by Expectation"

On June 2, 1982 the Coast Guard published Navigation and Vessel Inspection Circular #12-82 titled Recommendations on Control of Excessive Noise. This circular contained the Coast Guard's recommended "***guidelines***" to the American maritime industry for addressing conditions of high noise. This document shows that the Coast Guard was fully aware of the noise problem, all the scientific literature, testing standards, and international significance of this matter three decades ago.

During the same time period, the International Maritime Organization published IMO Resolution A.468(XII) titled Code on Noise Levels On Board Ships. The Coast Guard not only participated in the development of this code but also endorsed its recommendations. Portions of that document currently are cited in NVIC 12-82 that remains an active NVIC.

Unfortunately, the IMO resolution applied only to ships of more than 1,600 gross tons whereas ***our Association's concern is for mariners serving on vessels of less than 1,600 gross tons*** regardless of the type of vessel they serve on or the waters where the vessel operates. This is clearly a human problem the Coast Guard failed to address with enforceable regulations. In stark contrast, OSHA addressed the same subject for shoreside industrial occupations with ***enforceable regulations*** as early as 1974.

NVIC 12-82(1) states in pertinent part: "The Coast Guard realizes that reducing noise levels generally becomes increasingly more difficult on smaller vessels…On many existing vessels of less than 500 gross tons,(2) the incorporation of effective structural and engineering alterations to attenuate structure-borne noise may be economically prohibitive. However, through the use of hearing protective devices, administrative controls and selective engineering changes, the recommended 24-hour exposure limit…should still be attainable." That passage was written over a quarter century ago! *[(1)NVIC 12-82, paragraph 4.b.5. (2)i.e., the vessels our mariners serve on.]*

NVIC 12-82 further stated that: "The Coast Guard believes therefore, that the recommendations in this circular are a satisfactory implementation of the IMO Code." We pointedly disagree and assert that nothing short of incorporating the wording in 29 CFR §1910.95 will suffice.

The Coast Guard's failure to write or adopt comparable regulations adversely affected the hearing of more than an entire generation of limited tonnage mariners during the period 1982-2013 and continues to affect them. The number includes those who are considered permanent employees as well as countless other part-time workers and casual laborers who contribute to the industry's high turnover rate.

The Coast Guard's Marine Safety Manual, Vol. 2, paragraph 9.p.9.a. states: "The problem of excessive noise on commercial vessels and offshore drilling and production units has been the focus of an ongoing Coast Guard-sponsored study." Under the Freedom of Information Act (FOIA), our Association requested a copy of that study as well as a statement of when that study was initiated, the contributors to the study, and its current status. ***We never received the requested material*** – that indicates to us that the Coast Guard lost or misplaced this study as they misplaced other studies including the 1973 Newman Report.

The Marine Safety Manual, Vol. 2, paragraphs 9.p.9.b. states: "Previously, the Coast Guard dealt with maritime noise problems through existing regulations in a general way or on a case-by-case basis. For example, 46 CFR §72.20-5 for passenger ships and §92.20-5 for cargo ships required accommodations aboard vessels to be insulated from undue noise. Similarly, 46 CFR §32.40-15 requires tank ships and manned tank barges to have crew's quarters suitable for the accommodation and protection of the crew…" However, none of these regulations

currently survive in the Code of Federal Regulations. We question why this is so!

We further note that there are currently no regulations listed under "noise" or "hearing protection" in any of the regulations that are supposed to protect our limited tonnage mariners. This includes offshore supply vessels, small passenger vessels, and towing vessels.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.c. states: "Its two major recommendations are a 24-hour noise exposure limit of 82 dB(A) for all personnel, and a ***periodic audiometric examination of all personnel exposed to noise levels above a certain low exposure level of 77 dB(A)***…" We asked the Coast Guard for a cogent explanation of why an audiometric examination is contained in current OSHA rules while it is not contained in the proposed rules for the Outer Continental Shelf, specifically in proposed 33 CFR §142.235 and §142.240. If failing to include these provisions in the proposed regulation for vessels working on the Outer Continental Shelf was an oversight, we asked the Coast Guard Project Officer to add it to the rulemaking package or undertake a new rulemaking project to protect our mariners' hearing in line with the current OSHA rules. Fourteen years after this project started – and that, itself, is over 20 years late – revisions to 33 CFR Subchapter N[(1)] remain mired in red tape and have never been published. *[(1)Docket #USCG-1999-3868, Outer Continental Shelf Activities.]*

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.d. states: "The policy in NVIC 12-82 is based on the ***expectation that the maritime industry will voluntarily implement and maintain an effective noise control program, without direct Coast Guard involvement***. The policy was developed with the assistance of industry and the Commandant anticipates its wide implementation." As a result of this statement we asked for a copy of all documents from June 2, 1982 (the date of publication of NVIC #12-82) to the present date that show the history of this "voluntary implementation" by industry and oversight by the Coast Guard and any conclusions concerning its success or failure. ***We received none of the requested documents***. The Coast Guard "stonewalled" our request.

We note that Marine Safety Manual, Vol. 2, paragraph 9.p.9.f calls for a "Program Review" containing feedback from field units relating noteworthy experiences and observations of noise conditions and actions. Such reports and questions concerning NVIC 12-82 should be directed to Commandant (G-MVI-2)." Our Association requested copies of all such feedback under the Freedom of Information Act of and ***received nothing***.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.d. stated in a note that: "Complaints alleging that crewmembers have suffered hearing loss from long-term exposure to excessive noise ***shall not be considered as reportable marine casualties involving personal injury.***" We believe that this comment (with its emphasis on the word "**not**") is not only unnecessary but serves to diminish the importance of hearing loss in the eyes of Coast Guard inspectors and management – the two groups most likely to have access to the Marine Safety Manual. The following paragraph only exacerbates the matter.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.e. "Handling Complaints" states that: "If a crew member files a ***written complaint*** to eliminate a specific noise hazard, the situation should be evaluated and all discrepancies corrected. However, these measures should be taken only by the vessel owner, upon request by the OCMI. Only when the OCMI has reason to question the owner's evaluations should inspection personnel become involved in noise measurement".

In the real world inhabited by our mariners, if an employee has the temerity to file a "***written complaint***" with the Coast Guard, he probably would be fired. After all, most of our mariners are "at will" employees and can be terminated at any time for any reason. This policy effectively removes Coast Guard inspectors, those in closest contact to mariners on visits to inspected vessels and those most likely to hear a verbal complaint from further investigating problems of excessive noise on any inspected vessel. However, even a Coast Guard inspector only visits a vessel briefly, usually when it is dockside or on drydock on "shore power," and does not have to contend with excessive noise and vibrations on a 24-hour a day basis. Since towing vessels remained uninspected vessels for the past 40 years, most were never routinely visited by qualified Coast Guard inspectors until recently under the "Bridging" program. If inspectors were required to ride towing vessels, many deckhouses and crew accommodations would probably have to be insulated, furnished with sound-attenuating floor coverings, and mounted on springs to attenuate the vibrations and engine noise.

The foregoing represents a fraudulent policy on the part of the Coast Guard, and one that clearly reflects only the wishes of management to reduce costs without considering the health, welfare and future of the mariners who work on the vessel and are those most impacted by excessive noise. ***We urge Congress to ask the DHS Inspector General to investigate our assertion***.

This explains why our Association sought to ascertain who, if anyone, stood up and represented the position on limited tonnage mariners on this issue since it was ***our mariners' hearing and quality of life*** that were at stake. We assumed that any such representation took place at a Federal advisory committee meeting and asked for copies

of minutes taken from pertinent meetings and comments of those directly representing the interests of our limited-tonnage mariners at these meetings. ***We received none of the requested documentation***.

Why Don't Our Mariners Have the Same Level of Protection as Coast Guard Employees?

Our Association also asked for information on noise attenuation requirements on Coast Guard vessels of between 100 feet and 200 feet in length that are presently under construction and copies of any "hearing conservation programs" currently in effect for enlisted mariners serving on these new vessels. We received a copy of COMDTINST M5100.47 containing a ***well-developed hearing conservation program that the Coast Guard developed for its own personnel.*** This program is comparable to the OSHA hearing protection regulations adopted in 1985.

Judging by the following editorial comment in the Mar. 31, 1982 copy of the Offshore Marine Service Association's Newsletter, it may have been because of ***industry opposition to the costs involved and their ability to influence the Coast Guard without having the inconvenience of hearing the mariners' point of view:*** "Don't let the word "Recommendation" or the fact that these recommended standards are not published as regulations fool you….(OMSA) believes that these so-called guidelines may have the most serious impact on this industry than any other recent event." In fact, they had virtually no impact upon the industry because they were sidetracked and ignored.

Outer Continental Shelf *Proposed* Regulations (33 CFR Subchapter N)

In Coast Guard Docket #1998-3868, the Coast Guard included in a proposed regulation governing activities on the Outer Continental Shelf at 33 CFR §142.235 and §142.240 a "noise survey" in accordance with ANSI Standard S1.13-1995 and S1.36-1990 or with IMO Resolution A.468(XII) and also proposed to require posting signs warning of noise hazards.

Proposed 33 CFR §142.200 indicates that sections 142.234 and 142.240 relate to the general working conditions on "OCS units" that include "vessels." However, the proposed list of vessels (in §§33 CFR 140.5 and 33 CFR §146.1) omits towing vessels working on the outer continental shelf. Our Association repeatedly asked the Commandant (G-MSO-2) to clarify this matter in writing as early as 2000 yet this was never done. Clearly, the concerns of our mariners on this issue have been ignored!

These points are significant

- The Coast Guard is supposed to be the lead Federal agency for workplace safety and health on facilities and vessels engaged in exploration for, or development, or production of mineral resources on the OCS.
- This regulation (33 CFR Subchapter N) was proposed in 1999 and generated 115 comments. It was the first major revision of OCS regulations in 20 years. Fourteen years later the rulemaking is still stalled in the Coast Guard's regulatory morass.
- The proposed regulations affect only those vessels working on the Outer Continental Shelf (OCS) and nowhere else. However, the issue of adequate hearing protection for our mariners is much broader than the OCS and covers all commercial vessels of less than 1,600 GRT.
- Significant hearing standards were proposed by IMO over 25 years ago. ***The Coast Guard, as the industry regulator failed to protect an entire generation of mariners from hearing loss during this entire period***.
- The Coast Guard never answered our direct question as to whether any of its health and safety improvements in the proposed regulations will apply to mariners working on towing vessels on the OCS. Will the fact that 6,100 towing vessels are now inspected vessels change this or will mariners working on towing vessels suffer from ongoing regulatory discrimination?
- The Coast Guard did not propose any hearing protection regulations to protect our mariners in the proposed towing vessel inspection regulations.
- An examination of the basic documents cited herein show that even the proposed OCS regulations provide far less workplace protections for our mariners than in workplaces ashore that are protected by OSHA regulations.

Coast Guard Denied Our Petition for Hearing Protection

Our Association petitioned the Coast Guard for rulemaking on Feb. 1, 2003. On Sept. 27, 2004, 1½ years later, we received a letter from the Chief, Office of Design and Engineering Standards (G-MSE-1) that denied our petition as follows: "***At this time, the Coast Guard does not plan to initiate an isolated rulemaking on Protecting Mariner Hearing***. Hearing conservation and noise abatement methods are closely tied to other aspects of a vessel's design, construction and operation. 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."

Unfortunately, ten years after our petition, the Towing Vessel Inspection rulemaking has not been released and we have no information that the hearing protection even was addressed.[1] *[[1]Our Report #R-276, Rev.9, item 57 on "Hearing Protection" was submitted to the rulemaking docket in a timely manner.]*

Bibliography: This supporting document is available upon request: NMA Report #R-349.

Issue "R" – Provide Safe and Adequate Potable Water for All Inspected Vessels

Request for Congressional Action:

1. **Require the Coast Guard to inspect all commercial vessels to at least comply with the same "water supply" standards required for their own vessels and facilities as cited in COMDTINST M6240.5 titled "Water Supply and Wastewater Disposal Manual.**

2. **Require rulemaking. Nine years after Congress amended 46 U.S. Code §3305(a) the situation our Association reported on in NMA Report #R-395, Rev. 4 has not improved. The rulemaking process consisted of a "notice" in the Federal Register scuttled by management of compliant companies. We have seen no evidence of any meaningful enforcement action to improve the potable water situation on many vessels where our mariners live and work. We ask Congress to move the Coast Guard to enforce this statute through inspection and regular testing inspected vessel potable water systems.**

Background

On Dec. 27, 2002, our Association petitioned the Coast Guard for rulemaking to ensure that boat operating companies provide safe and sanitary potable water to all inspected and uninspected vessels of less than 1,600 gross register tons. The Coast Guard dismissed our petition stating that it was the responsibility of another federal Agency.

Our petition pointed out that we speak on behalf of thousands of mariners that serve on these vessels primarily in inland and near coastal waters and on the western rivers. Many of our mariners regularly expressed concern about the poor quality of the potable water they ***drink, cook, and bathe*** in on the vessels they live and work on. While some employers voluntarily provide bottled water for drinking purposes, others do not because of the additional cost. The quality of the water, drawn primarily from public water systems, deteriorates or is contaminated in the "private" water supply systems that should be maintained by the vessel owners and operators. While some companies maintain their systems well and take pride in doing so, others clearly do not.

Especially noteworthy were complaints from mariners serving on the nation's 6,100 towing vessels. Few if any employers regularly test the potable water in the tanks on their vessels for waterborne diseases to certify the water is safe for human consumption, nor do existing regulations require them to do so. Since most of our mariners do not belong to a union and cannot engage in collective bargaining, they have no protection other than that provided by statutes, regulations, and adequate regulatory enforcement.

In 2004, Congress amended **46 U.S. Code §3305(a)(2)** and assigned the task of determining the adequacy of the supply of potable water on all vessels to the Coast Guard. Henceforth, the adequacy of a vessel's potable water was to be determined by considering the size and type of the vessel, the number of passengers or crew on board, the duration and routing of the voyage, and guidelines for potable water recommended by the Centers for Disease Control and Prevention and the Public Health Service.

In response to the 2004 amendment, the Coast Guard put out a notice asking for responses from the marine industry. These responses indicated that some companies do take their responsibilities to their crews, passengers, and other human beings seriously. While this was refreshing to note, there are others that did not respond and do not take their responsibilities of providing clean and sanitary potable water seriously. In our estimation, the responses accomplished little in resolving the issue.

In reviewing Coast Guard regulations governing all classes of vessels our mariners serve on, there appear to be no regulations that govern the materials of construction, installation, filtration, or maintenance of a vessel's potable water system. Nor are there any Coast Guard regulations that require periodic testing of vessels' potable water systems for waterborne contamination and diseases. A review of Coast Guard Navigation and Vessel Inspection Circulars shows there is no active guidance published on this matter whatsoever. Nor is there any mention of potable water systems in Marine Safety Manual Volume II – Materiel Inspection. Nor is there any mention in any Coast Guard vessel inspection regulations (including regulations governing uninspected towing vessels or in

proposed towing vessel inspection regulations) that would even direct readers to regulations enforced by any other government agency – such as DHHS. Nor is there any mention of potable water in the Coast Guard's new "Bridging" Program that seeks to "examine" all existing towing vessels for compliance with existing Coast Guard regulations. As for mariner training, a total of only three (3) deck license exam questions out of approximately 12,000 in the Coast Guard deck exam database even deal with this subject – not enough to ensure that every officer the Coast Guard provides with credentials has even a rudimentary knowledge of potable water safety or waterborne diseases. Aside from these few exam questions, this topic draws a complete blank.

[NMA Comment: It is clear that the Coast Guard Marine Safety Directorate has not taken meaningful steps to comply with the intent of Congress after it amended 46 U.S. Code §3305(a)(2) in 2004.]

[NMA Comment: **Our Association is actively concerned with the matter of seamen's health and welfare. Since humans cannot live without water, we expect the potable water in the storage and supply system to be clean, pure, and free of disease causing organisms, rust, dirt, and dangerous chemical impurities. We assert that these privately owned systems on all inspected vessels should be subject to regular maintenance and testing regulations and be verified by periodic Coast Guard inspection.]**

The Health Problem

Workboats such as tugs, towboats, ferries, and offshore supply vessels take on water from a number of different ***public sources*** including hoses on docks, water barges, and from other vessels, etc. These public water sources are inspected by public officials. However, when the water moves from public water systems into ***private systems*** maintained on individual vessels the water often is not under any formal inspection regime as it is provided to our mariners, passengers, and other persons in addition to the crew. Our complaint lies with the installation and maintenance of these private shipboard systems ***and the lack of continuing inspection thereof***. – especially on Coast Guard-inspected vessels.

Many of the tanks on vessels that are used to store potable water are steel tanks with or without appropriate coatings that may be poorly maintained. Rust is often a serious and visible problem as are deteriorating or incorrectly applied coatings and the lack of basic filtration of solids. Rust also causes the tops, sides, and bottoms of potable water tanks to deteriorate and allow contaminants to enter the damaged tanks from outside sources including the bilge, adjacent tanks, and even from the body of water in which the vessel is floating. Water treatment on many vessels consists almost exclusively of pouring undetermined and unregulated quantities of bleach into the storage tanks at unspecified periods.

Almost all of the nation's 6,100 towing vessels have a history as "uninspected" vessels and never were subject to even the most rudimentary Coast Guard examination either at the time of their construction or thereafter. Notably, since 2009, the Coast Guard started to "examine" towing vessels for compliance with existing regulations. However, these "examinations" do ***not*** include checks of potable water storage.[(1)] Our Association asked repeatedly that inspection of potable water systems become an ongoing part of vessel inspection and that requirements for testing the water supply be included in the regulations. We have not seen any sign of cooperation from the Coast Guard. *[(1)Refer to the Coast Guard's UTV form 001 (8-09) checklist.]*

Some potable water tanks may be constructed on a common bulkhead with fuel or ballast tanks or with polluted bilge water. Few hose spigots are equipped with vacuum breakers that could prevent contaminated water from flowing back to potable water tanks. Some vessels do not have dedicated water hoses that are used for no other purpose than to transfer drinking water. Tanks and associated plumbing often leak while homemade repairs may compromise the integrity of the system.

The Coast Guard Knows of the Health Implications

In October 1999, the Commandant promulgated 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 their installations both afloat and ashore. This Coast Guard Manual applies to all active and reserve units 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 that does not carry over to our limited tonnage merchant mariners.***

We do not see why cognizant Coast Guard Marine Safety officials do not enforce the same standards for our

mariners in regard to pure water for drinking, cooking, and bathing that they do for their own military and civilian personnel without having to be told to do so by Congress!

We note recent declarations in an NTSB accident report that ferries carry more than 20,000,000 passengers each year. Many of these ferries are small passenger vessels crewed by our mariners. Both passengers and crewmembers may drink water from the vessel tanks. The same is true about oilfield workers transported by boat to inland and offshore oil rigs and platforms as well as personnel serving aboard oil rigs and uninspected construction and pipe-laying barges. Any vessels where substandard and unhealthful conditions exist should be made to correct these conditions immediately. We assert that the Coast Guard's Marine Safety Directorate must be held responsible for doing so and not be allowed to fail our mariners.

Bibliography: These additional supporting documents are available from us upon request: NMA Report #R-395, Rev.4; #R-401-E; #R-441. Also see Docket #USCG-2003-14325 at www.regulations.gov.

The following publications should be available from the Library of Congress:
International Organization on Standardization (ISO) publications pertinent to providing safe potable water.

- ISO 14726-2:2002 Ships and Marine Technology- Potable Water Supply on Ships and Marine Structures; Part 1–Planning and Design.
- ISO 15748-2:2002 Ships and Marine Technology–Potable Water Supply on Ships and Marine Structures; Part 2-Method of Calculation.

Issue "S" – Introduce Legislation to Protect our Mariners' Health Against Second-Hand Smoke

Request for Congressional Action: We urge Congress to protect the health and well-being of our mariners from the harmful effects of second-hand smoke in their workplace. Specifically, request Coast Guard officials to *promote* the benefits of the same policy they enforce on their own vessels and facilities to employers of our mariners. Such a policy contributes to the health and safety of Coast Guard personnel and successfully accommodates both smokers and non-smokers. Set aside those accommodation spaces that serve as sleeping, eating, and recreational areas as non-smoking areas.

Background

Many mariners serving on small commercial vessels report deep concerns about their health because they are surrounded by an atmosphere of second-hand cigarette smoke 24-hours per day, lasting sometimes for weeks on end. Although many mariners on larger vessels may have their own staterooms, central air conditioning systems re-circulate the smoke-laden air throughout the boat. Consequently, second-hand tobacco smoke from the pilothouse and galley pervades the entire boat on a 24-hour per day basis.

The Coast Guard, in regulating their own personnel, enforces the following policy: "***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, Coast Guard Headquarters 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…"

On the other hand, the National Maritime Center rigidly enforces other medical and health requirements that affect our mariners when they initially obtain or renew their credentials. Not insisting on healthful living conditions at sea when a mariner is governed solely by federal laws and regulations appears as a non sequitur!

We further note that AMTRAK, a national quasi-governmental organization, protects both passengers and its own employees by banning smoking on ***all*** its passenger trains where its crews live and work.

Many of our mariners live and work in confined and enclosed spaces 24-hours per day. They are well-informed about the dangers of second-hand smoke and the Surgeon General's reports on smoking.[1] *[[1]Refer to our reports #R-205, Rev. 1; #R-341, Rev. 4 and #R-341-A.]*

Some employers have smoking policies that parallel the Coast Guard's policy although our mariners report that enforcement is spotty. We suggest that the Coast Guard interacting with industry trade associations could play an important role in encouraging vessel owners and operators to improve the indoor environment on their vessels. Since most of our mariners do not belong to a union, they have little power to effect change within the company they work for. It is reasonable for our Association to turn to Congress in light of the interstate nature of the water

transport industry.

Since the Coast Guard recognizes both the health and safety issues of smoking and since state laws and local anti-smoking ordinances offer no protection to our mariners on navigable waters, we urge Congress to take indirect but positive steps to protect the health of our mariners.

Bibliography: These additional supporting documents are available upon request: NMA Report *#R-205, Rev. 1;* #R-341, Rev. 4; #R-341-A.

Issue "T" – Stiffen Penalties for Drug and Alcohol Program Violations

NMA Expression of Appreciation: Our Association appreciates the efforts of the 111th Congress in enacting Section 302 of the Maritime Drug Enforcement Act that provides substantial civil penalties for simple possession on any vessel subject to the jurisdiction of the United States.

Request for Congressional Action: Stiffen penalties for employers who violate any aspect of drug and alcohol testing requirements.

Background: Drug and Alcohol Program – Cooperation with Authorities

The drug and alcohol abuse regulations in 46 CFR Part 16, 49 CFR Part 40 and 33 CFR Part 95 are nothing less than a partnership between the Federal government and employers to stamp out drug abuse in the transportation industry. Our Association supports the intent of these regulations to stamp out illegal drug and alcohol use in the maritime workplace and is pleased that these enforcement actions appear to be successful.

On Jan. 30, 2002 we provided convincing evidence to the Coast Guard that certain employers who pay qualified agents to perform random drug tests are able to receive "pre-screening" reports that inform employers whether any of their employees tested "positive" for drugs.

As a result of their ***business relationship*** with local specimen collectors, some employers have an unintended opportunity through "test-strip" sampling to direct some "positive" urine specimens to an approved SAMSHA drug lab while withholding results from other specimens from the Coast Guard. Since a SAMSHA-listed lab would report ***all*** "positive" drug tests directly to the Coast Guard, the employer would lose control of any employees who test "positive" for drug use if those tests were submitted to a SAMSHA lab. In most cases, a positive test leads to suspension and revocation proceedings or an administrative settlement agreement that must be approved by an Administrative Law Judge. This can keep a credentialed mariner off the water for a period of no less than 14 to 18 months and in some cases our Association reviewed, as long as six years.

Not reporting some test results diverts control of the drug problem from the authorities to the ***individual employer who can continue to use a known drug abuser in a safety-sensitive position in his business. In days of chronic crew shortages, this is a risk some employers are more than willing to take.***

"Pre-screening" is Illegal

Bending the law gives an unethical employer the opportunity to hide a "positive" drug or alcohol test by simply quashing the screening report and not notifying the Coast Guard. The employer can then hold a "pre-screened" drug abuser hostage to his job, take advantage of him, and place all sorts of loyalty or employment demands upon him.

In addition, employers can and do warn some specific vessels in advance that their crews will be subjected to "random" drug tests. The resulting test cannot be considered as being truly random. By doing so, employers can circumvent a shortage of available personnel to man their vessels. They can keep their vessels manned and continue to conduct business as usual with a callous disregard for marine safety.

Our Association provided the Coast Guard with detailed testimony on how this is done not only on the Gulf Coast but also on the western rivers system. We reported our findings to the Federal official in charge of the SAMSHA laboratory program who immediately put us in touch with the Coast Guard's "Drug Czar" at Coast Guard Headquarters. We also contacted several Members of Congress and at least two Marine Safety Offices. One Marine Safety Office acknowledged receipt of one of our letters with a copy of a memo from that office forwarding up the chain of command and stating in part: "This letter is being forwarded to you because of the national impact of the issues in question".

Our mariners reported drug abuse all around them and protest that they often must risk their credentials and their

jobs in an environment of drug use and corruption. Although the Coast Guard may handle hundreds of drug cases administratively each year, the problem persists. In May 2007, serious problems involving a number of local employers came to light in the New Orleans area. The matter as reported to us remained "under investigation" – which meant we were denied information concerning its outcome.

While the Coast Guard applies DOT regulations in 49 CFR Part 40 to all its drug testing, it does ***not*** use these DOT regulations[(1)] for alcohol testing. Instead, the Coast Guard uses a completely different set of regulations for alcohol testing.[(2)] We never received a reply from former Vice Commandant O'Hara[(3)] that would explain the reasons why this is done. Unfortunately, the latter regulations do not appear to provide the same protections for mariners that the detailed DOT regulations do. *[(1)Specifically 49 CFR §§40.211 thru 40.277. (2)33 CFR Part 95. (3)Letter of Mar. 10, 2011 in regard to Vice Commandant Decision on Appeal #2692.]*

Bibliography: These additional supporting documents are available upon request: NMA Report #R-204, Rev. 4; #R-315-C, Rev. 1. We prepared the following reports as guidance for our mariners: NMA Report #R-315, Rev. 2; #R-315-A; #R-315-B; #R-315-D; #R-315-E.

Issue "U" – Act to Protect Our Mariners' from Asbestos

Request for Congressional Action: We ask Congress to require the Coast Guard to incorporate asbestos protection into all their vessel inspection regulations or "incorporate by reference" existing OSHA asbestos protection regulations to aid in detection, remediation, and enforcement.

Background

While OSHA prepared extensive asbestos regulations in the early 1980s, the Coast Guard only prepared a "guidance" document (i.e., NVIC 6-87) for merchant vessels. Nevertheless, the Coast Guard prepared an exhaustive Asbestos Control Manual (COMDTINST M6260.16A) ***to protect crewmembers on their own vessels and shore stations*** and updated it several times.

In 1983, the Coast Guard signed a Memorandum of Understanding with the U.S. Department of Labor delineating the authority of each agency to enforce Occupational Safety and Health Standards. ***Unfortunately, our experience shows NO Coast Guard enforcement of OSHA standards on inspected vessels***. ***Nor are we aware of any reported activity by OSHA that attempted to deal with asbestos hazards on 6,100 towing vessels***.

Regulations can be enforced but a "guidance" document like a NVIC, no matter how well meaning and informative it may be, cannot be enforced without first promulgating enforceable regulations. ***Our mariners on inspected vessels never were afforded protection by Coast Guard regulations comparable to OSHA regulations that protect shoreside workers and were left at risk for the past 25 years***. In fact, one of our Association's Directors unsuccessfully filed suit against his employer in Federal District Court after a local Coast Guard unit failed to investigate his report of egregious health asbestos safety violations on an inspected oilfield liftboat.(1) *[(1)NMA File #GCM-102]*

Bibliography: This additional supporting document is available upon request: NMA Report #R-445.

PART 4 – MARINER LEGAL, REGULATORY AND DOCUMENTATION ISSUES

Results of Mariner Poll - Part 4. We point out that credentialed merchant mariners have a better understanding of the relationship of these issues than do mariners who do not hold a Coast Guard credential. The accurate documentation of hours of work, accidents, injuries and deaths as well as a basic understanding of the statutes and regulations governing the marine industry is extremely important in conducting smooth and seamless operations.

Obtaining more experienced limited-tonnage mariners to actively participate and attend Coast Guard Advisory Committee meetings, reporting vessel casualties and personal injuries when they occur in the format required by the Coast Guard[(1)] and actively maintaining a readable and accurate "official logbook" as is now required by law is vital. The log entry is an exception to the "hearsay rule of evidence" if a lawsuit results from the vessel's operations. Keeping the pressure on the Coast Guard to review and to update regulations, laws and treaties to a large extent depends upon maintaining the **records, reports and other documentation showing a need for such action.** *[(1)i.e., on USCG Form 2692 Report of Death, Injury or Property Damage. Our Association asserted to the*

Secretary of Homeland Security that this form and procedure do not adequately protect our injured mariners and requested her Inspector General to audit the situation. The result of the audit is expected to be released in 2013.]

Issue "V" – Mariner Participation in Federal Advisory Committees

NMA Expression of Appreciation: Our Association appreciates the 111th Congress' realignment of representation to the Towing Safety Advisory Committee (TSAC) in Section 621(e) of the Coast Guard Authorization Act of 2010. That provision granted additional representation to our mariners in the towing industry.

Background

Although under tight financial constraints, our Association monitors, participates in, and encourages our mariners to attend and participate in these three Federal advisory committees:

- The Towing Safety Advisory Committee (TSAC).
- The Merchant Marine Personnel Advisory Committee (MERPAC), and'
- The National Offshore Safety Advisory Committee (NOSAC).

Although we are impressed with the knowledge, background and diversity of the members selected for these three committees, the ***Coast Guard should devote more attention to resolving mariner issues in these committees instead of loading meeting agendas to serve their own purposes***.

It is hard to justify the cost of attending meetings in Washington or other distant cities when important mariner issues are shunted aside and remain unresolved by these Federal advisory committees. We point out that our limited tonnage mariners provide a majority of all U.S. credentialed merchant mariners, and without the benefit of their labor, there would be very little domestic waterborne commerce.

International agreements clearly ***recognize maritime labor as an equal participant with management*** and government. This outlook often has been hard to ascertain on several of the advisory committees that turned out to be little more than management and Coast Guard forums. ***Our complaints about the Towing Safety Advisory Committee reached the point where we petitioned Congress for changes***.[(1)]

Attendance at Advisory Committee Meetings

We point out to Members of Congress that some ***working mariners*** appointed to Coast Guard advisory committees are unable to attend every meeting because they also serve aboard vessels, may be on a voyage, out of the country, or may be unable to make arrangements for a timely relief to attend scheduled advisory committee meetings. We seek a suitable arrangement where an individual qualified (in the opinion of the Designated Federal Officer) ***to represent the absent mariner's constituency*** can serve as an ***alternate*** on a temporary basis in order to maintain continuity for the regularly appointed member. We have seen this done on occasion for committee members representing management.

Experience With the Merchant Marine Personnel Advisory Committee (MERPAC)

In light of our past experiences, we ask that Congress either re-organize MERPAC as they did for TSAC or close the committee. For the past 10 years, as illustrated throughout this report, MERPAC bypassed most of the personnel issues important to our ***limited-tonnage*** mariners and failed to effectively monitor and question Coast Guard policies that shortened, damaged or destroyed careers of many experienced limited tonnage mariners. ***We question MERPAC as presently constituted to accurately reflect the views of 126,000 limited-tonnage mariners.***

Travel and Per Diem for All Advisory Committee Members

We further note that travel and per diem considerations in the past were not uniform among Coast Guard advisory committees and that some advisory committees had limited if any arrangements for member travel and per diem reimbursement. This makes membership on such committees unattractive to individual mariners who would otherwise be qualified to volunteer for these positions. Most members of corporate management, unlike many of our mariners, generally are not discouraged from attending committee meetings for financial reasons.

Bibliography: This additional supporting document is available upon request: [(1)]NMA Report #R-417, Rev. 1.

Issue "W"– Oversight on Official Logbook Entries for Inspected Vessels

NMA Comment: Our Association appreciates the addition of 46 U.S. Code §11304 by the Coast Guard Authorization Act of 2010 that requires an "official logbook" be maintained on each inspected vessel. Since we have yet to see any evidence that the Coast Guard acted upon this change that we believe is significant, we present our background of this issue that may require continuing attention by Congress.

Background

In April 2000, our Association petitioned the Coast Guard to require formal logbook entries on uninspected towing vessels that reflect the true hours that all crewmembers were on duty or on watch. We later amended our formal written request to include ***all inspected vessels*** crewed by limited tonnage mariners. Apparently, the Marine Safety Council misplaced our entire file for more than a year.

In a letter dated Dec. 2, 2002, the Coast Guard responded in part: "Specifically, your petition asked that 'Masters, mates, pilots, operators, and (limited tonnage) mariners serving on any vessel accurately and fully log the working hours of all crewmembers at the end of a watch in a suitable vessel logbook containing consecutively numbered pages and that such accumulated logbooks be kept on board at all times to fully disclose compliance with all applicable work-hour and manning regulations for the past 90 days."

"Research conducted by Coast Guard legal staff indicated that ***the Coast Guard lacks the requisite statutory authority*** to generate regulations requiring logbooks on vessels not already required to have logbooks by 46 U.S. Code §11301(a). For vessels required to have logbooks, the additional entry requirements requested by petition are outside the scope of 46 U.S. Code §11301(b). Based on this and the general lack of statutory authority, ***the Coast Guard will not initiate a rulemaking project***.

We asserted that requiring accurate logbook entries would provide both the Coast Guard and NTSB with a necessary investigative tool that could help them determine the root cause of many maritime accidents. Additionally, a number of Coast Guard investigators applauded this proposal.

Our Association reviewed the April 2008 DHS Inspector General's report on ***Coast Guard investigations***[3] to which our Association contributed 15 volumes of background information. We understood and witnessed many instances of the failure of Coast Guard "investigations" program over a period of at least 15 years. We learned that the Coast Guard merely "***stores" but seldom "reviews***" the relatively small number of official logbooks turned into them each year. Thus, we can see why the Coast Guard was never interested in asking for additional logbook authority from Congress. Sadly, the poor quality of Coast Guard investigations was clearly defined in a report prepared by an outside contractor for the Coast Guard as early as 1994[1] and was allowed to further deteriorate since then.

We assert that violation of work-hour regulations should have been considered as a significant factor in the fatal I-40 bridge disaster at Webber Falls, OK, on May 28, 2002 that took 14 lives.[2] However, we were informed by an experienced Coast Guard Investigating Officer and attorney that the Coast Guard does not have the statutory authority to subpoena existing logbooks in "marine violation" cases that involve violations of the 12-hour statute. Violating this statute obviously leads to mariner fatigue and accidents. We asserted in a meeting with key Inspector General staff members that the Coast Guard trashes many legitimate complaints of violations of existing work-hour statutes because they cannot properly investigate them without full access to these records.

While the addition of §11304 is important, of even more importance is to change the Coast Guard attitude to maintaining an accurate and inclusive on-board official logbook and review that logbook as an "inspection" requirement.

Bibliography: Refer to Docket #USCG-2002-12581 at www.regulations.gov.

Issue "Y" – Legislate New Requirements for Filing Personal Injury Reports

Requests for Congressional Action:

1. **Review the Congressional intent of the Occupational Safety and Health Act of 1970 and determine why Coast Guard officials failed to effectively adopt key OSHA regulations and apply them to the marine industry.**

2. **Enact additional safeguards that require employers to report, treat, and adequately compensate all mariners and offshore workers injured on the job.**

3. **Reassign the personal injury data collection responsibility for health and safety issues from the Coast Guard to the Department of Labor.**[1]

4. **Consider imposing deterrent civil penalties on employers who fail to report and track every "accident, injury, illness, and death" to a seaman, passenger, or other person on any inspected vessel.**

5. **Consider permanently separating reports of personal injury and illness from vessel and equipment casualty reporting. For example, consider replacing forms CG-2692 for reporting personal injuries with OSHA 300 series forms.**

Background

On behalf of our Association**,** NMA attorney Mark L. Ross, Esq. presented evidence to the Federal District Court in Lafayette, LA, to the DHS Inspector General and to Coast Guard Headquarters describing how one major maritime employer failed to report 44 serious mariner injuries as required[1] to the Coast Guard in writing within five days.[2] He obtained this evidence by searching court records to determine where injured maritime workers subsequently sued this employer. In addition to this case, other attorneys determined that there were many other instances where employers failed to notify the Coast Guard of reportable personal injuries suffered by mariners in a timely manner. *[[1]Required by 46 CFR §4.05-1(a)(6). [2]As required by 46 CFR §4.05-10(a).]*

In this example, ENSCO, a major offshore drilling company that operated many offshore supply vessels, failed to report more than 44 such injuries in an eight-year period. The Coast Guard never punished them in any manner for failing to do so. Other companies were equally lax in their reporting practices to the detriment of our mariners.

Using Coast Guard accident statistics supplied during the course of an advisory committee meeting, the omission of these accident reports by this one large employer skewed the Coast Guard personal injury statistics submitted by the entire offshore boat industry during an eight-year period by approximately 25%. Nevertheless, the local Coast Guard Marine Safety Office and the Department of Justice expressed complete indifference about enforcing the regulatory requirements to report personal injuries.

Many mariners learn the hard way that after they are injured and are unable to work, they are quickly fired or forgotten and often left without health or disability insurance coverage.[1][2] This practice plays a large role in dissuading individuals from seeking employment in the marine industry.

There are many instances where vessel Masters filed personal injury reports with their employers but these reports were never forwarded to the Coast Guard within the five-day period as required by existing regulations. There are additional cases where accident reports were fabricated months after the accident occurred and then filed with and accepted without question by the Coast Guard. We believe our mariners, who are ineligible to receive "workmen's compensation" for their injuries, inevitably suffer when an accident report involving their injury is thrown together months later and is accepted without question.

Consequently, our Association petitioned the Coast Guard to allow ***an injured mariner*** to submit his own report to the Coast Guard if he/she believes the "owner, agent, master, operator, or person in charge" (i.e., those persons currently authorized to submit such a report) either have not made or submitted the required personal injury report on form CG-2692 within the required five working days. In addition to our original petition filed on Sept. 7, ***2001***, we filed an additional petition on Aug. 8, 2002 with the U.S. Department of Labor seeking "Improved Record Keeping and Accident Reporting for Lower-Level Mariners." We assert that the OSHA personal injury recording and reporting system is far superior to the Coast Guard's system and has clear benefits for our mariners.

Coast Guard Response: In a letter dated June 30, ***2005***, W.D. Rabe, Chief of the Coast Guard's Investigation Division, stated in part: "We have opted to add a section to (the Marine Safety Manual), rather than draft a new policy letter, to ensure investigating officers understand the policy that all incidents reported to the Coast Guard are investigated."

We deem this response unsatisfactory. The 2008 Inspector General's report indicated that several thousand casualties were either improperly investigated or never investigated at all![3] Hiding comments in relatively inaccessible internal agency documents like policy letters or even the Marine Safety Manual does not provide the unambiguous regulatory protection our mariners need. Consequently, it is of little value in protecting our mariners and requiring employers to properly document their employees' on-the-job injuries.

Bibliography: These additional supporting documents are available upon request: NMA Report #R-202, Rev. 4; [1]#R-333, Rev. 3, [2]#R-370, Rev. 4; #R-429-I, Rev. 2; [3]#R-429-M. Also refer to Docket #USCG-2002-12580

at www.regulations.gov.

PART 5 – MARINER EDUCATION & TRAINING

Issue Z – Important Mariner Education and Training Issues

Request for Congressional Action:

1. **To support our request for the DHS Inspector General to audit the activities of National Maritime Center's Credentialing Examination program as presented below.**

2. **To support Coast Guard efforts through the Federal Advisory Committee process with TSAC and MERPAC and in concert with the U.S. Coast Guard Auxiliary to *strengthen and coordinate state efforts* to expand and improve their recreational boating safety training and licensing programs for all recreational boaters.**

National Maritime Center Damages an Important Public Partnership With Maritime Educators

Background

This is not a "perfect world" where every Master, Mate, Pilot, or Chief Engineer is a graduate of a four-year maritime academy. Most of our limited-tonnage mariners simply do not fit this description.

The Coast Guard cannot create a "perfect world" by **suddenly** raising the bar by creating tough new examinations without providing sufficient guidance to mariners on how to pass them. The National Maritime Center has done just that by seriously damaging the partnership it developed with the public over the years between 1988 and 2010 by pulling the rug out from under many maritime educators. The changes described below were precipitate in nature and affected not only home-study candidates for credentials but every mariner, whether limited-tonnage or upper-level, that takes a Coast Guard credentialing exam or credential renewal exercise.

Comments by Capt. Richard A. Block at MERPAC Meeting, Houston, TX , Mar. 12, 2013

The Coast Guard needs to know whether the changes implemented in centralizing the Mariner Licensing and Documenting (MLD) program are producing improvements in the levels of service the agency provides to mariners. For a number of years, we asserted serious problems exist.

On July 6, 2010, the Commanding Officer of the National Maritime Center removed public access to exam **questions, answers and illustrations** (Q&A) used on all merchant mariner exams. These are public documents whose public access was granted to the public following a lengthy appeal in 1987. I am the person responsible for filing that appeal. I believe my original and subsequent appeals were supported by a recent Supreme Court decision.[1] *[[1]Milner v. Department of the Navy, NMA Report #R-428-L]*

Following the Q&A removals, I immediately protested in writing to Capt. Stalfort to return the Q&A to the internet. This was followed by additional correspondence that built over 2½ years until my second appeal was granted and the NMC was directed to "…reinstate the previous policy of publishing examination questions and answers on the NMC website."

The fact that the appeal process ***appeared*** to work – the second time in 25 years on the same issue – should not mislead anyone. It only demonstrates that the action of removing the Q&A from public access went against the Congressional intent of the Freedom of Information Act. This action distorted a longstanding and successful Coast Guard program of maintaining the Q&A database and, in doing so, trampled upon the rights of the public, injured merchant mariners aspiring to obtain or upgrade their credentials, brought additional costs and uncertainties to their employers, upset schools, academies and many individual instructors providing training for mariners, and damaged the credibility of established publishers providing a variety of examination preparation materials and who, incidentally relieved the Coast Guard of the burden of providing this material.

The Secretary of Homeland Security has been well aware of this problem since we contacted her in June 2011. I recently requested that her DHS Inspector General conduct an "audit" of the National Maritime Center's examination program and database in order to provide more efficient administration of its Agency functions and clarify the Coast Guard's responsibilities to many external stakeholders. To give her auditors something to work with, our Association furnished her with a copy of NMA Report #R-428-K, Rev. 6 containing our record of this

issue that is the latest revision of the report we e-mailed to each MERPAC member several years ago

While posting the Q&A + a few of over 500 illustrations previously displayed on the internet responds to our Appeal, ***it does not do so completely***. There are many shortcomings in the material that was restored to the public domain that leaves great gaps in its usefulness to members of the public. We assert that these gaps are fully attributable to the current managers of this program. On behalf of our mariners and members of the public, we expect to see these deficiencies resolved promptly.

Our Association recently prepared and distributed NMA Report #R-461 to our mariners. That report focuses exclusively with the existing condition of the database as it affects limited-tonnage engineer license exams. It is a temporary report that will be revised periodically.

While the Coast Guard found the funds to almost double the size of their staff devoted to Merchant Marine credentialing activities during the 2006-2010 period, our Association now has serious concerns in light of tightening budgets whether enough personnel with the requisite knowledge and talent will be available to untangle the colossal blunders of the past 2½ years discussed in these two reports and reported by others in the course of this meeting.

I respectfully request that MERPAC post a copy of NMA Reports #R-428-K and #R-461on the MERPAC website where they will be accessible to the public. ■

Bibliography: These additional supporting documents are available upon request: NMA Report #R-428-K; #R-429-L; #R-461.

Time to License Everyone?

*[**Source**: By Capt. Alan Bernstein, WorkBoat, Mar. 21, 2013. Capt. Bernstein is the owner of BB Riverboats in Cincinnati, a licensed limited tonnage Master, and a former President of the Passenger Vessel Association. **Emphasis is Ours!!**]*

I have always strongly supported the unrestricted use of our waterways for recreation. However, I now believe we should require that all users of our state and federal waterways be licensed.

I have changed my tune on this after witnessing too many close calls and preventable accidents. It is unthinkable that a person can purchase a boat for $500,000 or more and drive it away from the dock without any education or training. Can you buy a motor home and drive it off the lot without a driver's license? The answer is no. So should it be OK to allow people to operate recreational vessels on our busy waterways without some sort of ***training or license***?

In Cincinnati Harbor where my company operates, teenagers ride personal watercraft around downtown weaving in and out of barge tows, excursion boats, and whatever else is on the water. They do this without one bit of boating education – no "rules of the road" training, no safety course, and certainly no license.

Why are federal and state governments ignoring the safety of their citizens, not to mention professional mariners, by not requiring training or licensing for recreational boaters? Would anyone think that this is a good idea for drivers on U.S. highways?

Enough is enough on our waterways. At a minimum, a driver's test and license should be required to operate any motorized recreational vessel.

NMA Background and Comment

In Sept. 2007, Mariner #194, a Coast Guard officer prepared a Master's Degree thesis on "Situational Awareness in the Marine Towing Industry." In this thesis, he completed a survey of towing vessel officers on the Western Rivers. He found that "***85% of participants have frequent worries about the abilities of the operator on (a) recreational vessel to react in a predictable and responsible manner, while 15% have occasional worries about the captain on (a) recreational vessel…***"

It is our Association's position that we ask Congress to support Coast Guard efforts through the Federal Advisory Committee process with TSAC and MERPAC and in concert with the U.S. Coast Guard Auxiliary to ***strengthen and coordinate state efforts*** to expand and improve their recreational training and licensing programs for all recreational boaters. We urge all NMA members to learn about the state program in their home state and offer their expertise by joining local Coast Guard Auxiliary flotillas or assist as a volunteer in your state's boater training program.