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REPORT TO CONGRESS FIFTH ANNIVERSARY OF THE WEBBERS FALLS I-40 FATAL BRIDGE ACCIDENT UNRESOLVED ISSUES REVISITED

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EXECUTIVE SUMMARY

As we approach the fifth anniversary of this tragic accident that claimed fourteen lives and knocked out a key interstate highway bridge, we watch helplessly as the Coast Guard and National Transportation Safety Board continue to abdicate their responsibility to protecting the American public and our lower-level merchant mariners.

We urge Congress to take a new look into the true state of the towing industry and the abusive work-hours Congress and the Coast Guard expect our mariners to endure. These abuses, we have widely reported for the past decade, sap the strength and vitality of the nation's maritime workforce. Eighty-four

(84) hour work weeks are now the rule for licensed towing vessel Masters, Mates, and Pilots. Over the past half-century, Congress has never set any work hour limit for the unlicensed tankermen, engineers, or deckhands on towing vessels. The American Waterways Operators and their Responsible Carrier Program lauded by the Coast Guard sees nothing wrong with allowing their unlicensed mariners to perform 15-hour workdays.

The towboat M/V ROBERT Y. LOVE was pushing two empty tank barges when it took out the Webbers Falls I-40 bridge was operated by a 60-year old Captain who was pushed to the limit and reached that limit at the moment of the allision that plunged the span into the Arkansas River.

However, as Richard M. Plant reminded industry leaders several years earlier in a public forum, the towing industry's licensed officer corps has aged and is close to the age of retirement. It is folly for any industry or company within the industry to expect 84-hour workweeks from an aging workforce on a two-watch system that provides inadequate opportunity for recuperative sleep week after week considering the stressful nature of operating a rowing vessel.

Today, the entire industry is experiencing growing crew shortages. Many of the nation's liquid cargo tows (e.g., petroleum and chemicals) set sail with only one licensed officer on board the towing vessel. **Although most officers know the 12-Hour Statute prohibits sailing additional hours, the Coast Guard has provided no effective enforcement of that statute unless it follows a reportable accident.**

The Coast Guard has no regulations that require most lower-level licensed officers to **maintain a meaningful and effective logbook that could be used to track violations.** Consequently, many accident investigations are meaningless exercises in picking up the pieces. Our Association has urged both the Coast Guard and Congress to attend to this issue. The history of our petitions to the Coast Guard on logbooks appears on the internet at <http://www.dms.dot.gov> in Docket # USCG-2002-12581.

There are relatively few areas where a tow pushing hazardous cargo can tie-off and shut-down for 12 hours. Officers are offered inducements and emoluments, either written or implied, to keep these tows moving at all costs. Companies require it and the very nature of our economy seems to demand it. When accidents occur, the Coast Guard goes after the mariner's license because he is an easy target. Corporate offenders are a tougher nut to crack because they can afford to hire attorneys who face Hearing Officers anxious to avoid litigation.

Our Association is concerned about the toll that it is taking on the health, welfare, and careers of our lower-level licensed and unlicensed mariners. Most of our mariners are employees at will and are NOT represented by a labor union that can stand up for their rights and demand fair treatment and safe and healthful working conditions. Instead, our mariners must depend upon the United States Coast Guard. Unfortunately, the Coast Guard and the Administrative Law System have betrayed our mariners and the American public. The details follow.

BACKGROUND AND AFTERMATH OF THE BRIDGE ALLISION

The tragic bridge allision accident at Webbers Falls, Oklahoma, on May 26, 2002 generated national headlines and a complete investigation by the National Transportation Safety Board. It was the second major fatal bridge within a year, the other taking place at South Padre Island, on September 15, 2001. The Coast Guard also conducted a parallel investigation of its own that was limited in its scope to determining whether the accident involved significant statutory violations.

The NTSB investigation concluded on August 31, 2004 when the Board adopted its report NTSB/HAR-04/05. However, controversy of over this accident among mariners who work on towing vessels continues to this date as new information continues to filter in.

Although most of this new information did not generate the same national media headlines as the accident itself, mariners believe it is important for Congress to understand that violation of an important work-hour statute did occur. Unfortunately, the Coast Guard at the highest levels was willing to appease towing industry management and accept these violations as commonplace in the years leading up to the accident and persists in ignoring them today. The Coast Guard clearly failed to vigorously enforce this statute⁽¹⁾ for at least a decade although warned about it by the President of a leading mariner association as early as 1996. Violation of work-hour statutes in various forms played an important role in this and other maritime accidents as reports in this series point out. [⁽¹⁾46 U.S. Code §8104(a) & (h)]

GCMA does **NOT** assert that this violation was the direct cause of the \$30,000,000 accident that claimed 14 lives. However, GCMA asserts that the Coast Guard and the NTSB were less than vigilant in their efforts to prevent those abuses by effectively enforcing the law. We believe these actions deserve further Congressional scrutiny.

THE COMPANY AND THE VESSEL'S MASTER VIOLATED THE LAW

Title 46 U.S. Code §8104(a) states: An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving. [*Emphasis by underlining is ours.*]

Although the Coast Guard belatedly took action against both the operating company and the Master of the vessel for violating this statute four years after the accident, we petitioned the Coast Guard years ago for a regulation that directly explains and enforces that statute. We now ask Congress to ensure that the Coast Guard takes much more vigorous and effective action in the future to protect both licensed and unlicensed lower-level mariners from work-hour abuses.

THE NTSB ACCIDENT REPORT

NTSB Accident Report's Executive Summary

About 0745, on May 26, 2002, the towboat ROBERT Y LOVE, pushing two empty asphalt tank barges, was traveling northbound on the McClellan-Kerr Arkansas River Navigation System, near Webbers Falls, Oklahoma. As the tow approached the Interstate 40 highway bridge at mile 360.3, it veered off course and rammed a pier 201 feet west of (and outside) the navigation channel

The impact collapsed a 503-foot section of the bridge, which fell into the river and onto the barges below. According to witnesses, highway traffic continued to drive into the void in the bridge created by the collapsed spans. When traffic stopped, eight passenger vehicles and three truck tractor-semi-trailer combinations had fallen into the river or onto the collapsed portions of the bridge.

The accident resulted in 14 fatalities and 5 injuries and caused an estimated \$30.1 million in damage to the bridge, including the operation of detours, and \$276,000 in damage to the barges.

The National Transportation Safety Board determines that the probable cause of the ROBERT Y LOVE's allision with the Interstate 40 highway bridge and its subsequent collapse was the captain's loss of consciousness, possibly as the result of an unforeseeable, abnormal heart rhythms. Contributing to the loss of life was the inability of motorists to detect the collapsed bridge in time to stop their vehicles.

Major safety issues identified in this accident include:

- The captain's incapacitation and countermeasures for such an event;
- Bridge protection, including risk assessment; and
- Mitigation of loss of life, including motorist warning systems.

As a result of this accident, the National Transportation Safety Board makes recommendations to the U.S. Coast Guard, the Federal Highway Administration, and the American Association of State Highway and Transportation Officials.

GCMA FAULTS SAFETY BOARD ON WORK-HOUR ABUSES

[Background: Our letter of January 1, 2005 to Mrs. Ellen Engleman Connors, Chairman, National Transportation Safety Board (below) expresses our disappointment with one aspect of the NTSB report.]

Dear Mrs. Connors,

The Gulf Coast Mariners Association is voluntary membership organization deeply involved in and concerned with the interests of thousands of lower-level mariners who crew vessels under 1,600 gross register tons on rivers, inland waters, coastwise and in the offshore oil industry. Our concern includes the safety, health, and welfare of over 30,000 mariners employed in the towing industry.

Our representatives met on several occasions with your Marine Department at your offices in Washington, and we conveyed our concerns to them.

While your M/V ROBERT Y. LOVE report goes into considerable detail on the history of bridge allisions involving ships and barges, forgive us if we focus on the interaction between the towboats, where our mariners live and work, and the bridges they occasionally strike. Since

the American Waterways Operators (AWO) conveniently blames "human factors" for most of these accidents, this is our focus in this letter. We are particularly upset with the following excerpt from your accident report:

[Page 37, "Factual Information," **Licensed Operators' Hours of Service**

"The hours of service or hours "on watch" per day for the licensed towboat wheelhouse watch personnel (the captain and the pilot) are specified at 46 U.S. Code §8104(h), which states that "an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency." A licensed operator on a towing vessel can work any combination of hours, as long as that person is not on watch for more than 12 hours in any 24-hour period.

"Not included in the 12-hour work period is standby time, for example, when the vessel is underway, but not moving or waiting to move through a lock or waiting for a tow to be formed. Also not included in the 12-hour work period is the operator's commuting time to a vessel. No regulation or requirement specifies the hours of rest a licensed, uninspected towing vessel operator must have before reporting on board to assume or relieve a watch.

"According to MMT,⁽¹⁾ the company complies with the hours-of-service law limiting licensed wheelhouse personnel (captain and pilot) to 12 hours of work in a consecutive 24-hour period. The company does not limit a captain's or pilot's pre-voyage commuting distance or time. Inland towing companies normally provide the crew with vehicles to use for their commute, but they do not provide drivers." [Vocabulary: MMT = Magnolia Marine Transportation, owners of the M/V Robert Y. Love.]

We believe you are mistaken in your belief that: "No regulation or requirement specifies the hours of rest a licensed, uninspected towing vessel operator must have before reporting on board to assume or relieve a watch." 46 U.S. Code §8104(a) clearly states: "An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of a deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving." We are concerned that the Coast Guard fails to effectively enforce this statute.

Here is some "institutional history": In 2000, GCMA petitioned the Coast Guard to clarify the work-hour conflicts based on 57 letters from our mariners that we reported in our book titled Mariners Speak Out on Violations of the 12-Hour Work Day. The Coast Guard published G-MOC Policy Letter #04-00 on September 11, 2000 [Enclosure #1 – GCMA Report #R-258] and discussed it in detail at the Towing Safety Advisory Committee meeting in Memphis, TN, several days later.

The Coast Guard accident investigation of the M/V ROBERT Y. LOVE accident correctly cites a work-hour violation by both the Company and the Master of that vessel based upon G-MOC Policy Letter #04-00. The Coast Guard

currently is addressing the company's violation in civil penalty proceedings. GCMA went out of its way to keep your Marine Department fully informed on this important subject. We are distressed that your report fails to reflect this information.

Crew change on the M/V ROBERT Y. LOVE took place at Lock 13 near Van Buren, AR, at 1840 hours, and the Captain took over the watch shortly thereafter at 1910. (p.14). He had just completed driving a 368-mile leg of a trip that exceeded one thousand miles for the purpose of making crew change. Did he undertake this odyssey on his own volition or was he paid to do this?⁽¹⁾ While en route, the Master may not have been "on watch" but he was clearly performing "work" on behalf of the company. The Coast Guard defines "work" in paragraph 2.f of Coast Guard Policy Letter G-MOC #04-00 that your report failed to consider. He assumed the watch at Van Buren, AR, without the required rest. While this may be a common practice, law forbids it. [⁽¹⁾In a deposition subsequently furnished to the Coast Guard's Investigations and Analysis Branch at Coast Guard Headquarters, the Captain confirmed he was paid to drive to work.]

The NTSB "Also (has) not included in the 12-hour work period is the operator's commuting time to a vessel." (p.36) We believe that you are in error on this important point as well. Your opinion certainly does not square with the Coast Guard accident report excerpt that we furnish as [Enclosure #2]. The general public should expect that two Executive Branch agencies, the NTSB and the USCG, to show more coordination in investigating the same accident. Since the "scope" of the Coast Guard's activity in this investigation was to "determine whether there was any violation of law or regulation associated with this casualty and prosecute enforcement activities accordingly," they are in a better position to state whether the Master or Magnolia Marine violated statute, regulation, or agency policy. However, when two Executive Branch agencies cannot agree on something as basic as "work-hours," then Congress needs to address the issue. We believe we are justified in asking them to do so since interpreting the statute may be in question!

In regard to "commuting time" (your term) to the boat, our Association formally petitioned the Coast Guard on this issue on April 18, 2002 even before the date of this accident. Our petition was assigned Docket #USCG-2002-13694 on October 11, 2002 and was farmed out to the Towing Safety Advisory Committee (TSAC) as Task Statement #03-01 the following spring. [Enclosure #2A]. This "task statement" reflects our mariners' great concern with the ambiguous term "neutral time" used in Policy Letter G-MOC-#04-00 and the confusion it causes as regards the issue of "commuting time." Since TSAC made little progress on this issue over the past 20 months other than to simply question towing companies on their internal policies, we requested, based on Coast Guard findings in the M/V ROBERT Y. LOVE accident, that the Coast Guard revise policy letter G-MOC #04-00⁽¹⁾ to specifically clarify that travel time is "on-duty" time. This information is contained in [Enclosure #3] to which we have not yet received a reply.

Our mariners are concerned, in spite of the Safety Board's previous "Hours of Service" recommendations to every DOT modal administration extending back to 1989, that your M/V ROBERT Y. LOVE accident report ignores

the well-documented problem of **work-hour abuse** that leads to crew fatigue. We note that “Reducing Human Fatigue in Transportation Operations” was high on the NTSB’s list of “Most Wanted” transportation safety improvements until July 30, 2003 after you became Chairman of the agency. We note that the Court of Appeals has acted on truck-driver hours of service that have implications for our mariners as well. **[Enclosure #4]**. According to a press release on that date, this topic (fatigue) is no longer on the Safety Board’s “Most Wanted” list.

We express our concern about the **constant abuse** of the statute that limits licensed towing vessel officers to 12-hours work per day. We ask why the Safety Board gave Magnolia Marine’s self-serving statement in the excerpt above the aura of your approval in your report: “According to Magnolia Marine, the company complies with the hours-of-service law limiting licensed wheelhouse personnel (captain and pilot) to 12 hours of work in a consecutive 24-hour period.” **Why did you not cite the Coast Guard’s findings?**

The Coast Guard, in its own accident report, clearly does not agree with them and currently seeks an “Administrative Civil Penalty” for this violation. No matter the amount of the civil penalty a Coast Guard hearing officer assigns them, this action hardly rises to address the magnitude of the problem of work-hour abuse that the Coast Guard ineffectively monitors in the towing industry.

Up to July 2003 it appeared that the Safety Board took the “hours of service” issue very seriously. Our Association followed the History of work-hour abuse carefully over the years and shared our information with your Marine Department. We also shared the same information with Congress and published it on the internet!

The Tulsa World⁽¹⁾ quoted Safety Board Member Deborah A.P. Hersman as saying: **“It’s almost amazing that he could function” due to his lack of sleep.** However, our mariners understand exactly what the problem is because it happens to them every day while the Coast Guard simply turns its back on the matter. We regret that your agency now appears to turn its back on the problem, too. Although the time-line showing the Master’s hours of service on p. 14 was impressive, we believe the following simple statement reported in “The Oklahoman” on May 30, 2002 sums up the problem best. “The captain who piloted the tugboat and barges that struck the Interstate 40 Bridge had slept for less than 10 hours during the 4½ hours preceding the accident, a National Transportation Safety Board investigator said Thursday.” By using any other yardstick such as 72-hours or even 24-hours, you clearly dilute the impact of this statement. ⁽¹⁾*Rod Walton, Tulsa World, Sept. 1, 2004, p. A1*

The Gulf Coast Mariners Association hereby files a formal protest on the excerpt of the report we cited above and respectfully requests that you change it in light of this letter. We regret that we find your report unbalanced and biased in that it accepts seemingly without question information provided by the American Waterways Operators, an industry trade group, without soliciting information from the mariners who have years of hands-on experience operating towing vessels.

We direct your attention to GCMA’s report on bridge allisions **[Enclosure #5 – GCMA Report #R-293]** that presents the issues from the mariners’ point of view. We note that the Safety Board appears to derive comfort in

relying only on the “corporate” view. Also, from the mariners’ point of view are three reports on one significant bridge allision that occurred in Seattle **[Enclosure #6 – GCMA Report #R-370-B] & [Enclosure #7]** that the Coast Guard investigated. That accident exposed how a company’s interpretation of the Responsible Carrier Program led directly to work-hour abuse. This, in turn, led to a AWO-USCG Quality Action Team report that had critical flaws.

We further submit for the Safety Board’s consideration **[Enclosure #8 – GCMA Report #R-370-G]** that recites the work-hour abuses attendant to the “call watch” system in use on western rivers towboats. We previously furnished this information to your Marine Department and to members of Congress as well as to the general public that accesses our website. We believe that the Safety Board under your leadership will discredit itself by continuing to ignore our mariners’ views.

Every licensed mariner must serve two masters – his employer and the Coast Guard that licenses him to use the public waterways. The American taxpayer, who paid the most of the bill for the Webbers Falls accident, deserves to read the whole story. This story is rampant with work-hour abuse that apparently Ms. Hersman was the only Safety Board member to recognize it. While we appreciate and recognize the expertise of the medical doctors and professional engineers you called upon to elucidate the details that virtually exonerated the Master of the towboat, it is incredible that your report completely missed the much larger issue of reducing human fatigue in transportation operations previously examined by the Safety Board. Your predecessor understood that a much larger issue of work-hour abuse lurked behind many problems blamed on seemingly inscrutable “human factors.”

While our Association supports Crew Endurance Management (CEMS) training, we do not believe it is a magic bullet that can or will cure “work-hour” abuse. Consider that our lower-level licensed mariners already work an 84-hour workweek. Then consider that employers abuse that 84-hour workweek. Now consider that AWO’s Responsible Carrier Program suggests that even a 105-hour workweek for unlicensed mariners is permissible. They also abuse the 105-hour figure. Our mariners are fed up and are leaving the industry in droves. The Safety Board needs to consider that mariners (and other transport workers) live in the twenty-first century and not the nineteenth century and have homes, families and loved ones.

Our Association encourages Crew Endurance Management Systems (CEMS) training. However, we understand that “work-hour abuse” is based upon “greed” – both individual and corporate. Seeking to install some mechanical device that seeks to obviate the presence of a second mariner serving in the traditional role as “lookout,” glosses over the issue of safe manning. The Coast Guard ignored this problem for years and continues to ignore it!

We offer the suggestion that the Coast Guard adopt adequate manning standards when they finally promulgate the regulations that will finally “inspect” the nation’s towing vessels and not simply play dead when industry complains about the cost.

Very truly yours,
Richard A. Block
Master #1014425, Issue #8

GCMA Exposes Additional Flaws

The NTSB's statement that, "A licensed operator on a towing vessel can work any combination of hours, as long as that person is not on watch for more than 12 hours in any 24-hour period" contains a critical flaw.

This excerpt, as accepted by NTSB, incorrectly leads the reader to believe that a licensed Master, Mate or Pilot could legally complete a 12-hour watch period and, if he held a Merchant Mariner Document (MMD or Z-card) endorsed as "tankerman" (as is common in the liquid commodities trade), legally use that document to spend his time "off watch" to supervise or actively participate in pumping the tank barges that were part of his tow.

On August 28, 2002, less than three months after the Webbers Falls accident, we addressed just such a matter in a letter answered on November 7, 2002 by U.S. Coast Guard Captain D.F. Ryan, Chief of the Eighth Coast Guard District's Marine Safety Division as follows:

"This is in response to your letter of August 28, 2002 addressed to the Commanding Officer, Marine Safety Office Houston-Galveston, requesting for clarification of the work-hour limitation outlined in Title 46 U.S.C. 8104 (h).

"The purpose of the work-hour limitation statute is to prevent fatigue related accidents and promote the safe navigation of tugboats. Section 8104(h) states "an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency."

In September 2000, Coast Guard Commandant (G-MOC-1) released policy letter #04-00, which clarified the work-hour limitations. The policy letter defined **work** as "any activity that is performed on behalf of a vessel, its crew, its cargo, or the vessel's owner or operator. This includes standing watches, performing maintenance on the vessel or its appliances, unloading cargo, or performing administrative tasks, whether underway or at the dock." It is clear from the definition that a licensed individual cannot perform miscellaneous tasks beyond their normal 12-hour helm duty, even if it is voluntary. Consequently, the scenario that you alluded to in your letter (transfer operations of petroleum cargo) would fall under the definition of work."

GCMA believes that the Safety Board and its staff should have recognized that this statement contained on page 37 of their report was in error.

The NTSB also made the following error on page 37 when they wrote: "Not included in the 12-hour work period is **standby time**, for example, when the vessel is underway but not moving or waiting to move through a lock or waiting for a tow to be formed." The Coast Guard clearly defines these under the broad definition of work in G-MOC Policy Letter #04-00 cited above. Clearly, the authors of the NTSB report lacked critical information from the Coast Guard or simply were asleep at the switch on this one!

Even worse, the NTSB erred in writing without making further comment that, "The company does not limit a Captain's or pilot's pre-voyage commuting distance or time. Inland towing companies normally provide the crew with vehicles to use for their commute, but they do not provide drivers." While this may be true, in doing so, Magnolia

Marine (as owner or managing operator) made no provision, allowance, or arrangement for their licensed Master to comply with 46 U.S. Code §8104(a) that allowed him to drive for 368 miles (after driving over 650 miles the previous day) and for sleeping only 3½ hours before assuming control of the M/V ROBERT Y. LOVE on the evening before the fatal accident.

GCMA was on record before the Webbers Falls accident for criticizing the Coast Guard for failing to promulgate a regulation that effectively explains and clarifies the provisions of this statute for the towing industry so that there will be no doubt as to ensuring that the ongoing watch officer at a crew change is adequately rested before going on watch. The history of this "record" is contained on the U.S. Department of Transportation internet website <http://www.dms.dot.gov> as docket #USCG--2002-13594.

NTSB CHAIRPERSON RESPONDS TO GCMA CRITICISM

[NTSB Chairman Conners replied in a letter dated Feb. 15, 2005 and published in GCMA Newsletter #28, Feb.-Mar. 2005. *Emphasis by underlining is ours.*]

Dear Mr. Block:

Thank you for your letter dated January 1, 2005, concerning Safety Board report NTSB/HAR-04/05, Towboat ROBERT Y. LOVE Allision with Interstate 40 Highway Bridge Near Webbers Falls, Oklahoma, May 26, 2002. In your letter, you disagree with a statement made on page 36 of that report' and appear to raise two different points. Each of these points is addressed separately below.

First, you state the Board is mistaken when it makes the following statement:

"No regulation or requirement specifies the **hours of rest** a licensed, uninspected towing vessel operator must have before reporting on board to assume or relieve a watch. [*emphasis added*] To support your contention, you cite 46 United States Code §8104(a), which states:

"An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of a deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours it immediately before the time of leaving."

The Board believes the quoted statement to be factually correct. The regulation you cite specifies time off-duty, but does not specify rest. A crewmember could be engaged in any number of activities unrelated to his or her employment (therefore being "off-duty") that would not be considered "rest."

Second, you believe the Board erred by excluding the Captain's travel to the vessel ("commuting time") from his working "on-duty" time. You offer a number of documents in support of this belief, including Coast Guard Policy Letter G-MOC 04-00, Coast Guard investigation report MISLE Case 156409, and others.

You believe the Board's exclusion of this time to be at odds with the conclusions of Coast Guard investigation report MISLE Case 156409. As a party to the investigation, the Coast Guard was invited to comment on the factual information developed by the Board and agreed with this exclusion; the MISLE case to which you refer had not been

released and did not reflect the position of Coast Guard at the time NTSB report NTSB/HAR-04/05 was adopted.

In your general discussion of fatigue, you note that fatigue is no longer on the Board's "Most Wanted" list. This is incorrect; fatigue remains an item on the intermodal "Most Wanted" list, and can be found on the Internet at: http://www.nts.gov/Recs/mostwanted/intermodal_issues.htm.

The Safety Board continues to aggressively address the issue of fatigue in all modes of transportation.

Thank you for your commitment to transportation safety.
s/ Ellen Engleman Conners, Chairman

[GCMA Comment: We appreciate the NTSB's continued interest in the fatigue issue because greater attention to this subject can improve safety, health and welfare of our mariners.]

[GCMA Comment: GCMA discussed the Coast Guard's investigative findings at the September 2005 Towing Safety Advisory Committee (TSAC) meeting. Based upon those findings, we asked the Coast Guard to change its policy letter G-MOC #04-00 and its mention of "neutral time" – a term it never defined.]

[GCMA Comment: The Coast Guard placed "neutral time" or "deadhead time" on the TSAC agenda. TSAC, dominated by the American Waterways Operators, suggested that each company formulate its crew change policies as part of a future Towing Safety Management System.]

[GCMA Comment: To date, the Coast Guard has not promulgated a regulation to effectively enforce the existing statute at 46 U.S. Code §8104(a) and stated at TSAC in April 2007 that it does not intend to do so.]

THE COMPANY VIEWPOINT

[Source: Wheel Wash, Vol. 7, Issue 2, Sept. 2004. Commentary by Roger Harris, Vice President of Marine Operations, Magnolia Marine Transportation Co. The article from this company publication was furnished by a company employee Emphasis by underlining is ours!]

Closure?

On August 3rd (2004), several of us traveled to Washington, D.C, to the National Transportation Safety Board. (NTSB) hearing on the I-40 ó M/V ROBERT Y LOVE accident.

All of us have been dealing with this tragic accident for the past 2 years. It has been an emotional and physical drain on the employees of Magnolia Marine. Those few minutes that Sunday morning changed our employees, changed our company, and quite probably changed our industry.

[GCMA Comment: This accident should have changed the industry, but did not have that impact! Crew shortages result from management's continuing expectations that lower-level mariners will continue to endure excessive, stressful work hours, and chronic undermanning on towing vessels by inadequately trained

deck and engine personnel.]

Some of us were directly involved in the immediate aftermath of the accident, dealing with the many agencies working the accident or with salvage and cleanup. Many of us were dealing with it in our own way, speculating about what happened, consoling co-workers, and keeping the rumor mill from running rampant. Some of us simply prayed. We prayed for the ones that lost their life, their loved ones, and for our company. We asked over and over, how could this happen.

Finally, after 27 months, the NTSB completed its investigation, presented their findings, probable causes, and recommendations. As I anxiously sat there that morning awaiting the hearing, I wondered how they possibly conclude something besides what has been so obvious to us for the past 27 months. Numerous publications, associations,⁽¹⁾ and press articles had wrongfully branded this accident as fatigue related without having all of the facts. Knowing that the NTSB had all of the facts, I felt confident that the lead investigating entity would conclude otherwise. Then, as the NTSB staff members presented their finding to the board, my confidence was confirmed. ⁽¹⁾ *Including GCMA.]*

The NTSB concluded that the probable cause was "the captain's loss of consciousness, possibly as the result of an unforeseeable abnormal heart abnormal heart rhythmí ö Furthermore, they also concluded "the captain's incapacitation was probably not a result of his falling asleep."

Recommendations from the NTSB were:

- To the U.S. Coast Guard: Evaluate the utility and effectiveness of wheelhouse alerter systems on inland towing vessels for preventing accidents.
- To the Federal Highway Administration: 1. Revise your sufficiency rating system, which prioritizes bridges for rehabilitation and replacement, to include the probability of extreme events, such as vessel impact. 2. Develop an effective motorist warning system to stop motor vehicle traffic in the event of a partial or total bridge collapse.
- To the American Association of State Highway and Transportation Officials: Once an effective motorist warning system has been developed, provide guidance to the States on its use.

The recommendation to the U.S. Coast Guard is something that this company has already implemented.. Once the wheelhouse alerter systems became commercially available following the I-40 accident, Magnolia Marine outfitted our entire fleet with these systems. We believe these units can and will prevent accidents due to pilot incapacitation.

But can we stop there? Probably not. We must all continue to find ways to prevent accidents and protect the public from harm inflicted by our industry's operations. This is the challenge that each of us in this industry are faced with. We can not let our guard down and accept complacency. We must continually improve our operations to weed out the possibilities that still lurk hidden beneath the radar screen and prevent them from causing problems.

In conclusion, is this closure? I believe it is the end of one chapter and the beginning of another. With the inevitable and forthcoming classification of inland water towing vessels as USCG "Inspected" our industry will

continue to change in the name of safety and environmental concerns. How we deal with these changes will fill chapter after chapter of this never ending book.

[GCMA Comment: The American Waterways Operators still pushes a 15-hour workday for unlicensed deckhands, engineers, "deckineers," and tankermen.]

**COAST GUARD ALLOWS
WORK-HOUR ABUSE AT CREW CHANGES**

[GCMA Comments: Mariner groups other than GCMA made bona fide attempts to inform the Coast Guard about flaws in existing practices that force mariners to work outside the law. The American Inland Mariners Association (AIM) sent this clear explanation of the problem in a letter dated Oct. 22, 1996 to Vice Commandant James Card. The practice cited in this letter continues today and played a role in the Webber Falls I-40 bridge allision that claimed 14 lives.]

Dear Admiral Card,

In a recent conversation with a colleague, we discussed certain practices in the inland towing industry that I wanted to share with you. Since I do not know the depth of your personal knowledge of industry practices, please do not be offended if you already know about this practice.

The practice I will explain deals with watchkeeping on uninspected towing vessels and how a Captain is relieved at the end of his tour of duty on a vessel. It is a widely used practice for owner/operators of towing vessels to crew their vessels on a "2 for 1" basis. This is simply a rotation such as 14 days on and 7 days off or possibly 30 days on and 15 days off.

Rotating pilothouse crews in this manner involves using only three employees dedicated to the control of the vessel, i.e., a Captain, a Relief Captain, and a Pilot. Only two are physically present on the vessel with the third on his time-off ashore. The Captain is the senior individual of the vessel and is so designated by the company. The Relief Captain performs the same duties as the Captain in his absence during time off. The Relief Captain fills the after-watch position and serves as Pilot when the Pilot is on time-off. The Pilot normally only fills the after-watch position and is usually the least experienced individual in control of the vessel.

The main problem with this widely used system is that it **clearly violates the law regulating maximum work-hour limitations for operators of uninspected towing vessels.** 46 USC 8104(h) states that an individual licensed as OUTV⁽¹⁾ may not work (even voluntarily) more than 12 hours in a consecutive 24-hour period. ⁽¹⁾OUTV = *Operator of Uninspected Towing Vessel. New terminology now refers to Masters and Mates/Pilots of Towing Vessels.*

Perhaps it is necessary to explain this system in greater depth. When the Captain and the Relief Captain are sailing on the vessel together, and the Captain gets off the vessel, the Relief Captain must change watches. This normally means that the Relief Captain must move from the after-watch to the forward-watch. Incidentally and traditionally, he moves his personal belonging to the Captain's quarters (with a bigger bed)! However, this means this individual

inevitably has to work in excess of the regulatory 12-hour limit on the day of the crew change. This may happen once every 15 days. Considering that the Pilot normally only works the ðafter-watchö and the Captain works the ðforward-watchö it is only the Relief Captain that violates the law. This clearly is an accident waiting to happen.

As an example, the Captain of a towing vessel serves thirty days onboard the vessel. He is relieved by the regular Pilot of the vessel at 0630 on a given morning. Considering the Captain only worked 30 minutes of the first watch of the day it is now necessary for the Relief Captain to change watches and assume the duties as Captain of the vessel. He will work 17½ hours in this 24-hour period: 6 hours from 0001 to 0600 as the Pilot, 5½ hours from 0630 to 1200, and an additional 6 hours from 1800 to 2400 serving as the Captain of the vessel.

I was told by a company representative that this work hour violation could be alleviated in several ways if the Captain split the additional 5½ hours by "working over" before getting off the boat since he would no longer have to stand a watch, or he could stand all of the remaining 5½ hours. One of the two licensed operators of the towing vessel still would have to violate 46 U.S. Code §8104(h) in order to complete this crew change.

Given the towing industry's deeply rooted premise that this system has always existed, why should they change their ways now? In searching for answers, we need to consider the safety aspects of operating a towing vessel for up to 18 hours a day without adequate relief and still comply with 46 U.S. Code §8104(a). I think it is also fair to assume the industry as a whole has always known this system violated the intent of the regulations governing watch keeping on uninspected towing vessels.

I suggest that the industry as a whole needs to address this obvious snubbing of U.S. Code requirements, if it truly hopes to address the root causes of human error relative to fatigue as we move into the 21st century. Perhaps this topic should be reviewed by the National Steering Committee for PTP or as an issue in the "Licensing and Manning for Officers of Towing Vessels" as it relates to adequate manning issues.

Very truly yours,

s/Capt John R. Sutton

President, American Inland Mariners Association
Memphis, TN.

**COAST GUARD AND TSAC REFUSE TO DICUUS
WORK-HOUR ABUSE ISSUES**

Coast Guard Docket #2002-13594 (available on the internet at <http://dms.dot.gov> (search for ð13594ö) shows that our Association petitioned the Coast Guard on April 18, 2002 to request that travel time on the way to a mariner's jobsite (e.g., his boat) to should count as on-duty time as it does on America's railroads (i.e., 49 CFR 228.7(a)(4) where it is called ðDeadhead Transportation.ö

The Coast Guard directed our petition to TSAC that fumbled with the issue for four years without making a decision whether to support it or not. It is clear that TSAC, long dominated by the American Waterways Operators, does not want the Coast Guard to enforce the underlying statute, 46 U. S. Code §8104(a), with a meaningful regulation that

would disrupt its existing dangerous and physically abusive practices as GCMA petitioned.

We cite the following landmarks in our efforts to convince the Coast Guard to enforce a reasonable statute although it may be unpopular with boat owners and the industry trade associations bent on continuing to exploit working mariners:

- **Oct. 22, 1996.** Captain John R. Sutton, as President of the American Inland Mariners Association (AIM), explained the complex issue of towing vessel officer crew rotation to Admiral Card in a letter. Consequently, the Coast Guard was adequately informed of the statutory violation problem at the highest levels and has done nothing in the intervening period to remedy the situation.
- **May 30, 2000.** GCMA prepared and issued our Yellow Book titled Mariners Speak Out on Violation of the 12-Hour Work Day. The book was presented to the Commander of the Eighth Coast Guard District and widely circulated within Coast Guard circles. It now appears on our internet website as GCMA Report #R-201. The Coast Guard assigned the issue to the National Offshore Safety Advisory Committee (NOSAC) which effectively killed any further Coast Guard consideration of the issue.
- **Sept. 11, 2000.** GCMA, with backing and assistance from four maritime labor unions, fought for and Coast Guard finally issued G-MOC Policy Letter #04-00 clarifying certain work-hour limitations. This was a GCMA victory and the Coast Guard announced it at the Memphis TSAC meeting the following day. The policy was subsequently revised with input from AWO (only). GCMA reprinted the current policy letter in GCMA Report #R-258, Revision 1. This document clearly states the Coast Guard's policy on work. Unfortunately, a Policy Letter is NOT a Federal Regulation and its introduction of an undefined neutral time causes a significant flaw that has yet to be remedied.
- **April 18, 2002.** GCMA expressed our distress about neutral time as covered in Policy Letter G-MOC #04-00. We asked the Coast Guard to change the policy letter and then petitioned them for rulemaking. In our letter to Docket #USCG-2002-13594 on August 29, 2004 we again asked the Coast Guard to formally address the neutral time issue.
- **July 3, 2002.** In a letter to the NTSB and the Coast Guard, GCMA invited both agencies to review the Sutton Letter of Oct. 22, 1996 (above) because of the complexity of the issue as it affects crew changes.
- **August 8, 2002.** GCMA Director David Whitehurst provided a live example of work-hour abuse with 6-hours sleep in 46 hours. This case was widely reported in GCMA Report #R-370-D and served as our GCMA's model case on work-hour abuse. We understand the company involved received a minor civil penalty but were unable to extract amplifying information even with a FOIA request. Unfortunately, such reluctance to provide information on the part of the Coast Guard is not unusual.
- **Sept. 3 & 27, 2002.** The Coast Guard Vice-

Commandant responded to and apologized for our complaint that the Marine Safety Council mishandled ALL GCMA petitions ó not just this petition but others as well.

- **Oct. 11, 2002.** GCMA's Deadhead Transportation petition was assigned Docket Number USCG-2002-13594. Although this petition, which includes issues on the Webbers Falls accident, is now in Docket #USCG USCG-2002-13594, it is available to the public on the internet but was never actively considered by the Coast Guard. All this paper shuffling means very little for the health, welfare, and safety of our mariners unless the Coast Guard has any intention of moving forward on the issue.
- **Jan. 15, 2003.** Eighth Coast Guard District answers our letter of August 8, 2002 on the Whitehurst Case stating that both the company and our mariner are at fault.
- **Jan. 17, 2003.** Our reply to Eighth District cited another example of work-hour abuse. We placed both letters in Docket #USCG-2002-13594 on internet for the public to read.
- **Mar. 10, 2003.** The Coast Guard asked TSAC to look into GCMA's Deadhead Transportation issue and prepared a draft Task Statement for TSAC to look into.
- **Sept. 9-10, 2003** ó The Coast Guard introduced Draft Task Statement #03-01 titled Regulatory Review of Travel Time for Towing Vessel Crewmembers at TSAC.
- **Mar. 16-17, 2004.** TSAC set up a Working Group to look into issue. The working group met in April in Arlington, VA to discuss the issue. GCMA learned that AWO will poll its members to see how they would deal with the issue. AWO is an industry lobbying group.
- **Sept. 28-29, 2004.** On TSAC Agenda but no progress.
- **Mar. 15-16, 2005.** Chairman Mario Munoz announced that the working group met three times and identified several practices to reduce travel time problems as follows:
 1. A home-port concept matching crews to vessels based on geographical locations;
 2. Target geographical areas in the recruitment of crewmembers;
 3. Having hotels or laid-up vessels in these areas for crewmembers to use for rest periods;
 4. Provide air or rail transport to a vessel;
 5. Utilize a crew change window plan optimizing geographical and travel plans to effect transfer planning;
 6. Require crews to possess drivers' licenses and use carpools to reduce driving time, and using designated van drivers so that crewmembers do not have to drive at all;
 7. Offset or total crew change schedules;
 8. Put Crew Endurance Management practices into effect.Mr. Mario Munoz (now the Chairman of TSAC) submitted the following recommendation for consideration by TSAC and the Coast Guard:

óTSAC recommended that the Coast Guard and the Towing Vessel Inspection Working Group include a policy on managing crew travel time as a required element of the safety management system for towing vessels to be required under the forthcoming inspection regime.ó Mario Munoz will prepare a final report that incorporates this recommendation and closes out the task.

[GCMA Comment: In light of the Webbers Falls

disaster, towing vessel officers as well as the taxpaying public need the immediate protection of an enforceable regulation comparable to the existing Federal Railroad Administration regulation at 49 CFR §228.7(a)(4) to support the existing statute at 46 U.S. Code §8104(a) as opposed to the promise of language referencing a projected safety management system. Captain Lorne Thomas, TSAC Executive Director, spoke against such a regulation at the April 2007 TSAC meeting.]

WHAT ACTION DID THE COAST GUARD TAKE AGAINST THE TOWBOAT MASTER?

GCMA is a mariner membership association and serves to inform our mariners of important issues that affect mariner lives and licenses. Our mariners tell us that Captain ■■ was a highly respected senior Master, a family man, a good man to work with, a person who carried his share of the load and then some and an extremely conscientious individual.

Most mariners agreed that he worked for a good and reputable employer that had a good corporate reputation. In summary, over the past five years following the accident, we never heard a derogatory comment about him.

However, we must question what his employers (and other employers in this industry) are thinking by allowing a 60-year old pilot to put in the excessive hours of work and travel between assignments that he did. To say they were ignorant of these conditions while they paying him for his services is more than any of our mariners can swallow comfortably.

According to Enforcement Activity #2784236 obtained under the Freedom of Information Act, Captain ■■ voluntarily deposited his USCG License five days after the accident and signed a voluntary deposit agreement stating that as long as the agreement remained in effect the Coast Guard would not charge him with incompetence. The agreement stated:

- I, ■■, have been informed by LT (jg) XXX, a Coast Guard Investigating Officer, that, based on my actions on board the M/V ROBERT Y. LOVE. on May 26, 2002, I am presently not physically fit to serve as a crew member or pilot aboard a vessel.
- In order to avoid a charge of incompetence under the provisions of 46 U.S.C. 239, I am voluntarily depositing my License No. XXX with the Coast Guard on this date. I understand that while this agreement is in effect the Coast Guard will not charge me with incompetence.
- I understand that this voluntary deposit agreement will remain in effect until I present a report from a licensed physician which states that I am fully fit, in all respects, to perform my duties aboard ship. I agree to allow the Coast Guard to provide this physician with my medical history and information concerning my duties aboard ship. I agree to allow this physician to provide the Coast Guard with medical information concerning my ability to perform my duties aboard ship. I understand that the Coast Guard will promptly return my license to me after the physician's report unless the report is withdrawn or amended by the physician.
- I agree that during the period my license is held by the

Coast Guard, I will not accept employment on any merchant vessel of the United States. I further agree that I will not make application to the Coast Guard for the renewal, issue, or reissue of any Merchant Mariner's Document, License, or Certificate of Registry, without stating on such application that this agreement is in effect.

- I enter into this agreement freely and voluntarily and I fully understand its meaning and effect. Signed ■■

The license expired on December 23, 2002 and by allowing the one-year grace period to expire, Captain ■■ may have relinquished all rights to his license. Suspension and Revocation proceedings against his expired and invalid license would serve no practical or useful purpose.

It is clear that Captain ■■ suffered from a medical condition that manifested itself at the time and was the proximate cause of the accident. We do not question the doctor's diagnosis reported in the NTSB report. However, we believe he was the victim of harsh and unreasonable working conditions associated with the two-watch system, perpetuated not only by the towing industry but also by the offshore oil industry without regard for workplace safety in the transportation industry. GCMA reported on conditions in both industry sectors.

We applaud Congress's attention to this matter as evidenced by Section 409, Hours of Service on Towing Vessels, in the Coast Guard and Maritime Transportation Act of 2004, that calls for adequate recordkeeping of hours of service and for supporting the "Demonstration Project" for Crew Endurance Management Systems (CEMS) whose report the Coast Guard submitted to Congress in May 2006. It is now "crunch time" for meaningful and enforceable "hours of service" regulations.

THE COAST GUARD EQUIVOCATES ON WORK-HOUR ABUSE

GCMA brought to the attention of the full Towing Safety Advisory Committee (TSAC) that the Coast Guard accident report showed that the Master on the M/V ROBERT Y. LOVE violated Coast Guard work-hour regulations by failing to obtain 6 hours rest before taking command of the vessel in Arkansas after driving or being driven for over 1,000 miles in only two days with only 3.5 hours of sleep.

It was clear that the Towing Safety Advisory Committee did not like the message and even angrily suggested that GCMA disseminated false information. However, the Committee's Assistant Executive Director, brought up a copy of the Coast Guard's accident report in "Power Point" in the meeting room at Coast Guard Headquarters and later printed copies for all present to examine. That was several years ago.

The Waterways Journal reported on its website on August 28, 2006: "Coast Guard Recommends Fines in I-40 Bridge Accident." Quote: "A final Coast Guard report recommended fines against the Captain and the boat's owner for the May 2002 allision in which the towboat ROBERT Y. LOVE knocked down a 500-foot section of the I-40 Bridge at Webbers Falls in the Arkansas River, killing 14 people and injuring five.

A fine of \$20,000 against the boat owner Magnolia Marine and \$5,000 against boat Capt. ■■ was

recommended by the Coast Guard, according to KOTV-TV in Tulsa, Oklahoma, and quoted on a Coast Guard website.

Capt. ■■ lost consciousness and the boat and its two empty barges smashed into a pier of the Webbers Falls bridge, 201 feet outside of the channel, causing eight cars and three tractor trailers to plunge into the water below.

The report said the fine was leveled against the company for allowing the captain to work for more than 12 hours in one day without adequate rest, and against the captain for working without enough rest. An estimated 20,000 vehicles a day had to be rerouted around the bridge. Construction crews reopened the bridge in record time two months later.

Apparently Magnolia Marine executives aroused their corporate indignation and decided that this ending to the story either did not fit their perceived corporate image, could embarrass them in the maritime community, or offend their corporate clients. For whatever reason, they appealed the Hearing Officer's decision that they had somehow violated the Congressionally mandated work-hour statute and Coast Guard work-hour policies.

GCMA submitted a FOIA request on February 25, 2007 to the U.S. Coast Guard Hearing Office in Arlington, VA, only to find that the case had been appealed to "CG-0941 formerly G-LMI" at the Coast Guard's Office of Maritime and International Law.

According to a recent phone call to MMT corporate attorney David Humphrey in Jackson, MS, we were told that the civil penalty against the company was reduced from \$20,000 to only \$2,000 and the civil penalty against Captain ■■ from \$5,000 to \$500 or possibly done away with completely. Apparently, the Investigating Officer backpeddled and said his report was flawed and that the 12-hour rule simply did not apply. This is what usually happens when corporate attorneys apply pressure to a very pliable Coast Guard Hearing Officer who is happy to please at any price to avoid litigation. We have asked the Coast Guard to confirm this information with a "status report" as permitted under §552 of the Administrative Procedures Act.

In any event, approaching the **fifth anniversary** of this accident, GCMA has yet to receive definitive word from the Coast Guard Commandant on his final disposition of this case.

Connecting the Dots

The boat company, Magnolia Marine, is an AWO-member company that violated the AWO's Responsible Carrier Program just as Sea Coast Marine, another AWO-member company violated the 12-hour rules when its tug CHINOOK rammed the Highway 520 bridge across Lake Washington on July 29, 2000. This case appears in **GCMA Report #370-B** available on our website.

The NTSB report chose the less controversial route of avoiding the obvious statutory and regulatory work-hour violations even though Board member Ms. Debbie Hersman and NTSB investigators pointed out this matter at the time.

If the Coast Guard finally understood that it was obliged to enforce a federal statute, namely 46 U.S. Code 8104(a) four years after the fact, who finally clued them that the rest of the world was watching? Our mariners can only hope that Congress has been able to see past the smoke and mirrors and will take concrete steps after reading this report and others in this series to end the work-hour abuse that adversely affects our

lower-level mariners. This abuse has extended for many years and actively contributes to the existing crew shortage. The partisanship exhibited by Coast Guard officers on the side of industry for "retirement" jobs, professional advancement, recognition, praise, or emoluments are seen by many of our mariners as contributing to the seriously deteriorating existing situation within the industry.

INCOMPLETE NATIONAL MEDIA COVERAGE OF THE ACCIDENT

The towing industry tends to remain in the background and out of public view where it does not attract too much attention. This tends to perpetuate the myth that their trade association has built that the industry is a safe, well-regulated industry. The media, for the most part, buys into this myth until the industry is thrust onto the national stage by some catastrophic accident that bursts the bubble.

The National Broadcasting Company (NBC) aired a documentary on the Webbers Falls accident. Mr. Richard M. Plant, Director of Special Projects of the International Organization of Masters, Mates, and Pilots, wrote the following letter to "Dateline" to set the record straight.

"Dear Dateline,

Thank you for reviewing tonight (May 14, 2003) on TV the Webbers Fall, OK bridge collision that occurred nearly 1 year ago on May 26, 2002. Please note that in the year following the incident many have missed the boat on what truly is happening on our Inland Rivers. What actions have been taken by the USCG, NTSB, OSHA, DOT, AWO, inland towing companies and others to satisfy the families of those 14 lives needlessly lost at Webbers Falls? Nothing and here is why! Don't state that the final report on the accident has not been published yet. When the report comes out will it include any of the following facts? Probably not!

The United States Coast Guard (USCG) and Inland River companies, according to law, requires inland mariners on "uninspected towing vessels" to work 12 hours per day "6 hours on and 6 hours off continuously for up to 28 days at time. Some mariners are lucky enough to work "1 for 1" (28 days on 28 days off). However, most work "2 for 1" (28 days on and only 14 days off). In many cases, Captains and Pilots "TRIP." That means, they sail with the same or another inland towing company during their time off when they are suppose to be resting. These mariners push their fatigue limit by avoiding the achievement of obtaining adequate rest. This is done to earn adequate pay in an industry that is severely underpaid.

These mariners earn \$400 per day (assumed to be average) which is \$33.33 per hour. However, consider that they work 12 hours per day 7 days per week with no overtime, no holiday pay and no vacation pay. Their actual hourly wage, when you assume that any time in excess of 8 hours per day should be overtime (1½ times base pay) including weekends and holidays, is actually closer to \$26.41 per hour over a week. Since there is no vacation pay, and assume the mariner works "2 for 1", this reduces his pay by one-third to \$17.61 per hour. Remember, these mariners are away from home and family two-thirds of the year. Yet, that is only a small part of the story. Fatigue, difficult

working conditions, safety, environment, and many other factors lead up to these accidents. Let's talk about each one of these factors.

Consider working 12 hours per day for 7 days that equals 84 hours per week. In one week where average John Q. Public works 40 hours, these mariners work a minimum of 84 hours. This is more than twice as much as John Q. Public but with no overtime, no holiday pay, no vacation pay, and poor living conditions. With 28 days on and 14 days off the typical inland river mariner works 242 days per year times 12 hours (minimum) per day, or 2904 hours per year. That equals 72 weeks of work in a 52-week year without tripping!

Unfortunately, these mariners MUST work these hours. They are "Employees at Will" and can be fired at any time for "any reason ó even no reason." Most of these mariners are NOT represented by a union and do not work under a Collective Bargaining Agreement (CBA). They must travel numerous hours to or from the job and immediately go to work without achieving adequate rest prior to standing their watch. This is something I have not seen mentioned with respect the Webbers Fall incident that, more than likely, played a part in the allision.

With a work schedule of 6 hours on and 6 hours off every 12 hours, it allows the mariner to achieve ONLY a maximum of from 5 to 5½ hours of continuous sleep. This is on a vessel that is picking up or dropping off barges, making locks, vibrating, with diesel smells, poor or inadequate drinking water, no cooks requiring mariners to prepare their own meals prior to resting, etc., etc. One would expect there would be many more accidents on our inland rivers.

All sleep study and fatigue experts state that a MINIMUM of from 7 to 8 hours of continuous uninterrupted sleep is needed every night to achieve adequate rest. How is this possible with a two-watch system (6-on, 6-off) work schedule? Also consider the fact that the U.S. Department of Transportation anticipates that the movement of cargo on our inland waterways system will double if not triple by 2020. Think about the number of towing vessels and barges that will be moving on the rivers at that time.

Consider the Captain who hit the bridge at Webbers Falls on May 26, 2002. He had only 9 hours of rest in the previous 48 hours as stated in the Dateline Report, as recorded by the National Transportation Safety Board and the Coast Guard. Also take into consideration that this mariner just got off another towing vessel. Consider that he then drove from that vessel to his home, was there for approximately three to four hours, and then drove to his next assigned vessel estimated at 1,000 miles between assignments. How much rest in that 24 hours between vessels did he acquire? Was he coming from his normal job to a trip or from a trip to his normal job? How long was he on the previous vessel? What amount of rest did he achieve on that previous vessel? All of this plays a part in the accident. Yet, none of this is ever explained to the public. It is no wonder he blacked out. He probably fell asleep. That is what his fellow mariners in the industry all feel happened. Will the NTSB, the Coast Guard, and the inland river towing companies hide these facts or tell the truth to the public and the families of those whose lives were lost needlessly?

Inland river mariners, by law, are not required to

maintain a logbook of hours worked. They are not required to record when they come on or go off watch, made a lock, tie up to a fleet, take on barges, let go barges, pass a specified mile, marker, or bridge, etc. Some inland towing companies maintain logbooks voluntarily. However, without logbook requirements being LAW, these logbooks can easily be modified, lost or misplaced after an accident occurs. All other modes of transportation (air, highway, and rail, as well as inspected vessels ó blue and brown water) require logbooks to be maintained and limit the hours one can work in any 24 hour period. Furthermore, it is a violation of "LAW" to make false entries to these required logbooks. Why not so on our inland rivers with "Uninspected Vessels"?

[GCMA Comment: A number of years ago, GCMA petitioned the Coast Guard to require logbooks on all commercial vessels regardless of size. Our petitions and all related correspondence appear in docket #USCG-2002-12581 on the internet at <http://www.dms.dot.gov> and search for 12581 where the Coast Guard pigeon-holed it.]

Only on Inland Rivers on "Uninspected Vessels" are towing companies allowed to get away with compliance with normal common-sense standards. Many companies operate under the "Responsible Carrier Program" created by the American Waterways Operators (AWO) and approved by the U.S. Coast Guard. In many cases, the mariners feel that this allows the company to regulate themselves. It is like having the fox guard the hen house. This will only be changed by an Act of Congress! Congress alone has the power to act and require logbooks to be "mandatory" but yet fail to do so. How many more lives must be lost or endangered before Congress orders the Coast Guard to do the proper thing. When will the Department of Homeland Security, the National Transportation Safety Board and OSHA get their act together on our inland rivers where mariners sail as if working in a third-world country?

This is the United States of America ó the greatest country in the world ó yet our inland rivers mariners must work under conditions that most of the public are totally unaware of. Webbers Falls is not the site of the first bridge allision and I can guarantee that it will not be the last. Until Congress establishes laws to protect our mariners, public lives and our environment are at risk from unsafely, and improperly operated vessels sailing on the thousands of miles of inland rivers. The public beware: Your bridge and your life could be next. Write to your Congressman and Senators and ask them to act now!

If Dateline wishes to obtain the true facts about our inland rivers give me a call or email me. I will point you in the direction of not only the American Waterways Operators (AWO), the USCG, OSHA, the NTSB, Gulf Coast Mariners Association and other organizations but to the actual mariners sailing on the rivers that will tell you how it really is. You will hear both sides of the story and you can produce a one-hour show on just the situation and environment that many American citizens work under and the situations that many of our citizens, living on or near cities along our rivers, risk every day, every hour, every minute, every second. It will be a real eye-opener for many viewers ó even for Dateline.

In the last month alone it is estimated that 18 Captains and Pilots who were not willing to move excessive numbers of barges have been fired by such companies as American River Transportation Company (ARTCO), forcing others to take on the movement of a larger number of barges. Inland river mariners are being forced to push 36 or more barges (drafts are 11 to 12 feet) with towing vessels designed to only handle 18 or 20 barges at 9 foot drafts when first built 10, 15 or even 20 years ago. All the inland river companies have done, with Coast Guard approval, is write a letter changing the horsepower of the vessel. This is wrong and it is inaccurate. As a vessel gets older it does not become more efficient.

Keep in mind that the Webbers Falls, OK bridge was knocked down by only a towing vessel pushing two empty barges moving up-river. Just imagine the damage 36 fully loaded barges can do especially when the Captain or Pilot is asleep at the sticks! Just imagine one or more of these barges containing hazardous (explosive or poisonous) materials. It is very surprising that many, many, many more accidents have not occurred on our Inland Rivers.

It is only after the loss of civilian lives that laws are changed. Why must we continue to be reactive and not proactive in the inland river industry? Why is it that our Coast Guard, the safe keeper of our waterways, has not requested Congress to establish these common sense laws? Is it possibly because the inland river companies are a potential source of employment for the Coast Guard personnel after retirement? This means that one day you regulate the industry, and the next day you work for it. Does this sound right?

Many things must be changed in our inland waterways to adequately protect our mariners and citizens. What are we waiting for?

GCMA PROPOSES SOLUTIONS TO BACKGROUND ISSUES

The Gulf Coast Mariners Association (GCMA) submitted its "Legislative and Regulatory Agenda" to Congress in GCMA Report #R-332, Rev. 3 on March 15, 2007. Included are the following items pertinent to this report:

ITEM #1. Amend 46 U.S. Code §8104 to limit the hours of work for all licensed and unlicensed mariners serving on any U.S.-flag commercial vessel to 12 hours in any 24-hour period. Address other specific problems with this statute that primarily affect lower-level merchant mariners. *[Note: The report speaks to each sub-section of the statute in detail.]*

ITEM #2. Amend 46 U.S. Code §11301(a) (requiring vessels to maintain accurate logbooks) by adding a new subsection (3) to include every inspected U.S.-flag commercial vessel not on an international voyage. *[Note: The following specific items refer to this Webbers Falls accident report.]*

Amend §11301(b) to include additional entries to apply to new subsection §11301(a)(3):

- (13)the time when each seaman and officer assumed or relieved the watch.
- (14)the number of hours in service to the vessel of

each seaman and officer.

ITEM #6: Request for Congressional Oversight of the Towing Safety Advisory Committee. *[Refer to GCMA Report #R-417.]*

RELATED GCMA REPORTS

These reports are available on our internet website.

- GCMA Report # R-201. Mariners Speak Out on Violation of the 12-Hour Work Day.
- GCMA Report #R-332, Rev. 3, GCMA Regulatory and Legislative Agenda ó 2007.
- GCMA Report #R-370, 12 Hour Rule Violation: The Verret Case.
- GCMA Report #R-370-B, Rev. 4. 2006. Violation of the 12-Hour Rules: The Tug Chinook Strikes and Damages The Lake Washington Bridge.
- GCMA Report #R-370-C, Rev. 2. 12 Hour Rule Violations: The Winkler Case.
- GCMA Report #R-370-D. Work-Hour Abuse, Whistleblower Protection and "Deadhead Transportation.
- GCMA Report #R-370-F. Crew Endurance: Work-Hour Laws and Regulations Need Review.
- GCMA Report #R-370-G. Crew Endurance: The "Call Watch" Cover-up.
- GCMA Report #R-417, Report to the 110th Congress: Request for Congressional Oversight on the Towing Safety Advisory Committee.(TSAC)