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CREW ENDURANCE: WORK-HOUR LAWS AND REGULATIONS NEED REVIEW

PROBLEMS WITH EXISTING LAWS AND REGULATIONS

Title 46, U.S. Code §8104 is the law that applies to the establishment of watches aboard certain American-flag vessels. The establishment of adequate watches is the responsibility of the vessel's master.

The regulations in Title 46, Code of Federal Regulations, Part 15, "Manning Requirements" interpret the law in the U.S. Code and put it in terms that are easier for a mariner to understand.

Nevertheless, understanding the regulations in 46 CFR Part 15 can be tricky. The regulations treat "inspected" vessels like offshore supply vessels (OSVs) and small passenger vessels (SPV) differently from uninspected towing vessels (UTV).

To make things even more interesting, on September 9, 2005 the President signed the Coast Guard and Maritime Transportation Act of 2004 that ordered the inspection of previously "uninspected" towing vessels.

It will take several years to write new regulations to inspect towing vessels. The process has already started. It will then take time to re-write the "Manning Requirements" in 46 CFR Part 15 to reflect the changes and capture the "intent" of Congress.

What, exactly, does Congress intend as far as manning is concerned? Congressional intent will depend upon what Congress discovers and believes must be changed. Here are several thoughts:

- Congress in 46 USC §8104(h) limited the hours of service for a licensed officer on a towing vessel to 12 hours in any consecutive 24-hour period. This is a "two-watch" system. When companies crew their vessels in continuous service for weeks at a time, the result is an 84-hour workweek for the two licensed officers standing

navigation watches. Keep in mind that licensed officers perform a host of other duties besides standing a navigation watch steering the vessel from the pilothouse. Although we may be accused of comparing apples with oranges, these work-hours certainly do not compare favorably with the 40-hour week common in land-based jobs. These hours also exceed the hours the Coast Guard expects its own boat crews to stand. Where, the two-watch system really loses its credibility is that lack of basic enforcement of even this minimal standard by the Coast Guard leads directly to all sorts of abuses GCMA documented five years ago starting with testimony of 57 mariners in May 2000 in the book Mariners Speak Out on Violation of the 12-Hour Work Day. Several Coast Guard federal advisory committees (specifically NOSAC and TSAC) were "stacked" with management personnel and turned a blind eye to this evidence.

- The Coast Guard interprets 46 USC §8104(h) to "...permit licensed masters or mates (pilots) serving as operators of towing vessels that are not subject to the Officers Competency Certificates Convention, 1936, to be divided into two watches regardless of the length of the voyage."

While offshore supply vessels also operate on a two watch system on voyages of less than 600 miles, the law (46 USC §8104(d) requires three watches on voyages greater than 600 miles. This provision clearly discriminates against the Master of an uninspected towing vessel on a voyage greater than 600 miles in length. Now that towing vessels have become "inspected" vessels, we can only hope that this discrimination will come to an end. Yet, this provision has been a part law and regulation for at least the past 35 years. This provision clearly favored the offshore oil industry's trade association in the Gulf of Mexico where voyages to offshore oil facilities seldom exceeded 600 miles. Yet, this provision worked against mariners who often must work unconscionable hours in making frequent short runs back and forth to port, followed by frequent in-port moves with the entire crew on deck handling lines, cargo hoses etc., and standing by offshore in all sorts of weather without adequate rest.

- 46 USC §8104(a) "...permit(s) 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." GCMA pointed to documentation of the **frequent abuse** of this law before the Webbers Falls accident knocked down the Interstate 40 Bridge and killed 14 motorists. The Coast Guard investigators determined that the master of the vessel violated this law when he took charge of the vessel the day preceding the accident after driving for over 1,000 miles and not being "off-duty" for the required 6 hours. Nevertheless both TSAC and the NTSB marginalize this event and attribute the accident to other causes. He was "on duty" because he was paid while he was on the road. We have asked the Coast Guard to change their Policy Letter G-MOC 04-00 in light of this accident but have yet to hear from them. The Coast Guard has **never** diligently enforced this law. We urge Congress to place a

high statutory penalty on violations of this nature in light of the loss of life and the cost to taxpayers of \$30,000,000 to replace the bridge.

- Congress placed no limits on the work-hours of unlicensed personnel on inland towing vessels. The American Waterways Operators, the towing industry trade association, sees nothing wrong with allowing its member companies to work unlicensed deckhands, tankermen, engineers etc. on towing vessels to work 15-hour days. This expands into as much as a 105-hour workweek.
- It gets worse! The “call watch” system employed on many vessels under 1,600 gross register tons is even more abusive. We describe this system in detail in GCMA Report #R-375, Crew Endurance: The Call-Watch Cover-up. We furnished copies of this report to members of Congress in March 2005.
- It is clear that some work-hour regulations are clearly out of date. For example, 46 USC 8104(d) speaks of “...coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least three watches...” Although this statute recognized the arduous work of the “black gang” in the engineroom of steam vessels, there are few steam tugs today except in museums. There are no coal passers, firemen or water tenders either. However, this law by its mere presence focuses attention to successor mariners whose work-hours and duties did not receive any attention from Congress in the last 50 years.
- There have been a great many instances where mariners serve on vessels and vessel owners later refuse to furnish them with letters documenting their “sea service” for licensing purposes. Such mariners who are not covered by the existing applicability of 46 CFR Part 14, by virtue of 46 USC 10301 and 10501 route or tonnage limitations (e.g., a great many of our lower-level mariners) cannot turn to the law for help when this happens. This problem has persisted for the last 35 years.

Collectively, the two statutes cited above require shipping articles and certificates of discharge for all mariners sailing on foreign and intercoastal (i.e., from Atlantic to Pacific, or vice versa) voyages of at least 75 gross tons, and on coastwise voyages between a port in one state and a port in a non-adjointing state on vessels of at least 50 gross tons. This leaves out a great many mariners on inland voyages and coastal voyages on smaller vessels and other routes and discourages them from advancing within the marine industry when they cannot document their sea time for licenses and upgrades.

The law should be changed to require that all commercial vessels maintain accurate records of sea service, and to require that all commercial vessels make these sea service records available to the mariner and the Coast Guard upon request.

- For years, trade Associations like the American Waterways Operators and the Offshore Marine Service Association have had their way with the Coast Guard. Both the Coast Guard and industry management ignored the problems that “lower-level” mariners presented to

them because the mariners lacked organization and a voice at the table.

- While the Coast Guard was aware of these festering problems, they took no steps to resolve them over the years. Consequently, the Coast Guard and the industry are equally responsible for the sorry state of affairs that exist today – even to the point of denying that there is a problem. It is becoming evident that the “lower-level” mariner workforce (i.e., mariners working on vessels of less than 1,600 gross register tons) who are willing and able to put up with these primitive working conditions in twenty-first century America is vanishing. They haven’t gone on strike, they have just gone “elsewhere.”

SUGGESTIONS FOR CHANGES

- A “workday” should be 8-hours long for licensed and unlicensed personnel with “overtime” pay for no more than 4 extra hours per day.
- Any voyage or work schedule of 24 hours or greater requires a three watch system.
- Any voyage or work schedule of 12 to 24 hours requires at least two complete crews.
- The Certificate of Inspection must list the vessels complement. The vessel must not “sail short” without notifying and receiving permission from the Coast Guard. Such permission should be rarely granted and only for good cause. Furnishing qualified crewmembers must be the responsibility of the vessel owner or operating company.
- Any vessel with more than four crewmembers on a 24-hour or greater schedule requires a trained food-handler that passes an appropriate physical exam.
- Any person with duties in the engineroom must undergo a basic engineroom safety training program. *[For further information refer to GCMA Report #R-401, Crew Endurance and the Towing Vessel Engineer – A Direct Appeal to Congress.]*

WHAT IS WRONG WITH THE COAST GUARD

- It is time that the Coast Guard who regulate vessels under 1,600 gross register tons actually get out on the boats and talk with the mariners who run them so they can have a basis understanding of the problems our mariners face on a daily basis. By doing this, they might understand why many Coast Guard policies simply miss the mark.

Coast Guard inspectors only see one side of the story when they visit a vessel on drydock or when it is in top shape undergoing its annual equipment inspection. The time is ripe for Coast Guard officers to ride commercial vessels before trying to regulate them. There are two sides to every story, and the officers who make critical industry decisions need to understand the industry they are regulating.

Coast Guard Boarding Parties board vessels for law enforcement purposes. These boardings are often under

stressful conditions that may be adversarial in nature. These boardings do not always allow mariners to show their boats in the best light as opposed to a vessel inspection. Many mariners do not know how to differentiate between a boarding and an inspection.

- The Coast Guard only hears from office personnel at most conferences and advisory committee meetings. Mariners do not feel they are welcome and most fear being “blacklisted” (aka “blackballed”) within the industry if they speak up and tell the truth. This condition will remain as long as mariners are “employees at will.” Unions were driven from the river and only exist precariously in other areas. Consequently, “lower-level” mariners feel they have no voice.
- The towing industry’s trade association and its member companies capture the Coast Guard’s attention and divert it to serve their own goals. In doing so, it is evident to mariners that the Coast Guard officers are NOT duped. Rather, former Coast Guard personnel approach industry (or vice-versa) to take post-retirement jobs where their expertise and contacts made during years of service at taxpayer expense are utilized to advance a corporate agenda.
- It ain’t college! Most Coast Guard commissioned officers do not connect well with working mariners. Mariners for the most part have less formal education and often have who often have more experience on the waters than the officers who regulate them. Further, the Coast Guard is a military organization while the merchant marine is not.
- Both management and the Coast Guard assign 80% of the blame for maritime accidents to “human factors.” Human factors is a synonym for the vessel master or pilot on watch or, when convenient, for both. This is a constant “slap in the face” for any conscientious mariner. Over the years this sort of abuse became a constant irritant.

More than just an irritant, the Coast Guard’s ponderous bureaucracy cranks out “remedial” penalties for mariners with great ease. When a mariner is summoned to appear before an administrative law judge (ALJ), he must furnish his own lawyer to deal with well-oiled administrative machinery. The expense can be staggering.

On the other hand, the Coast Guard appears to be much more lenient with boat companies that break the law. Citing a company for violating a regulation and assigning a civil penalty turns out to be a major obstacle for the Coast Guard. Instead of fighting a defenseless mariner, the Coast Guard must face well-paid attorneys. A much easier course of action is to suspend or revoke a mariner’s license or let him sweat the effects of a Letter

of Warning or lesser degrees of administrative nastiness. Viewing the list of civil penalties on the internet, it seems that the costs of running the hearing office and processing the cases far exceed the amount of penalties collected. While this is just an independent observation, it is an area that needs some attention.

- The Coast Guard Regional Exam Centers that administer the Coast Guard’s licensing and merchant mariner documents are forbidding entanglements of bureaucracy that are both expensive and frustrating to deal with. The RECs operate in a world of its own.

**A LITANY OF LAISSEZ-FAIRE POLICIES AND
BLUNDERS HIGHLIGHTED COAST GUARD
ACTIVITIES IN THE MID-1990s**

The Coast Guard tries to be all things for all people. It is there when Congress needs it to perform all sorts of important jobs – some unique and some traditional.

Since the time of the Second World War, supervising the merchant marine has been one of the Coast Guard’s “traditional” tasks. From the perspective of our lower-level mariners, the results are not very impressive.

The Bayou Canot accident in September 1993 showed the Coast Guard at its nadir. As the background of the accident unfolded, the National Transportation Safety Board and the public had a field day with the Coast Guard’s ineffective supervision of the towing industry following that accident. This was the perfect moment to bring towing vessels under inspection. The word “inspection” means “under control” – and the industry was careening out of control.

Nevertheless, the Commandant’s 1994 Towing Vessel Inspection Study stated in part: “An analysis of **casualty data** does not justify a “traditional” Coast Guard material inspection program for uninspected towing vessels.”

There was a good explanation for that although nobody ever volunteered to “connect the dots.” About this time, a Coast Guard research and development report titled U.S. Coast Guard Marine Casualty Investigation and Reporting: Analysis and Recommendations for Improvement⁽¹⁾ tore apart the Coast Guard’s accident investigation process and the collection of **casualty data** in no uncertain terms. [⁽¹⁾ *Report #CG-D-13-95, GCMA File #A-634A*].

Also, at about the same time (i.e., 1994-95) the Bureau of Labor statistics showed that the number of workers in the towing industry was NOT in the vicinity of 100,000 mariners but more like 32,000.⁽¹⁾ The Coast Guard relied on the towing industry’s trade association figure of 100,000 since they had no more idea than the man in the moon as to how many mariners were in the towing industry or, for that matter, how many licenses and merchant mariner documents there were. The trade association hastened to commission a study that arrived at the 32,000 figure. The Coast Guard employee making the discovery stated in part, “It was recommended due to the political ‘bomb shell’ nature of these figures that these estimates be kept internal to the office until they could be better validated.”⁽¹⁾ [⁽¹⁾ *Towing Vessel Personnel Exposure Data, May 12, 1994, G-MVI as reprinted in GCMA Report #R-351*]

Apparently the Coast Guard thought the industry trade

association would have a more accurate feel for the size of their industry. The 100,000 figure, however, reflected a favorable fatality rate that the industry never stops bragging about even today. Nevertheless, with the new 32,000 figure, the fatality rate more than tripled overnight. The fatality rate is how one segment of America's workforce is compared with another segment. Instead of a "safe" industry, the towing industry was shown in its true light as being one of the most dangerous places to work in the country. This is both evident and terrifying to any mariner when he sees the industry lose 10 mariners in a three-month period as it did in the winter of 2004-05.

Remarkably, after making all of these blunders, the Commandant decided to "partner" with the industry and literally abdicate control of over 5,200 towing vessels and all the mariners who serve on them to an industry virtually without regulations to provide for the health, welfare and safety of its mariners. The Coast Guard opened the henhouse and invited the fox in for a dinner of roasted mariners.

As an afterthought, the Coast Guard developed the Commercial Towing Vessel Safety Examination Program but never provided the program with funding to make it a meaningful program.

While all of this was occurring, the Coast Guard suddenly announced in July 1995 that commercial mariners working offshore would have to cope with the Standards of Training, Certification, and Watchkeeping (STCW) convention that bombed the industry and its mariners without warning. This capped several frantic years of failed Coast Guard leadership, burgeoning bureaucracy, and catastrophic blunders that the industry's lower-level mariners may never recover from.

A DECADE OF DOMESTIC DISASTERS

Tom Price writes for The Dispatcher, a monthly newspaper prepared for the members of the International Longshore and Warehouse Union in San Francisco, CA. GCMA delegates to the Towing Safety Advisory Committee (TSAC) meeting in San Francisco on March 13 & 14, 2002 met with Tom and union officials during the meeting. Two of Tom's articles did a good job of summarizing the disasters that befell the towing industry and provide a background for understanding why Congress stepped in to bring the towing industry under control.

USCG CLOSES EYES TO REAL FIX FOR FATIGUE

[Source: By Tom Price. The Dispatcher, March 2002.]

The tug was pushing a barge down Lake Washington on a clear summer's night two years ago when the captain, alone in the wheelhouse, fell asleep at the helm. It may have been only a few moments, but when he came to, he realized he was heading straight for the Evergreen Point bridge. Steering hard to port and advancing the starboard engine, the captain's skillful maneuver saved most of the bridge as the tow missed five pilings, but it hit the sixth.

[GCMA Comment: This accident is described in detail in GCMA Report #R-308, Rev. 3, Violation of the 12-Hour Rules: The Lake Washington Bridge Allision.]

The Coast Guard's reflexes were almost as swift – blame the captain. He'd had rest before his watch, but had worked 30 of the previous 51 hours before the collision. Ship's duties interrupted his rest period three times. A Coast Guard investigation determined fatigue was a factor in the accident.

Still, the Coast Guard suspended the captain's license. But it let the company, Seacoast Towing, off the hook for the \$11,000 fine imposed for violating the federal law limiting mariners' work to 12 hours in every 24 hours.

[GCMA 2005 Update: After a review of the M/V Chinook's logbooks, the Coast Guard found that nine violations of the 12-hour rule occurred in the three weeks preceding the accident. The Coast Guard assessed Sea Coast Towing a civil penalty of \$7,500 as reported in GCMA Report #R-406.]

Even though the Coast Guard's own accident report concluded that given the CHINOOK's "operational schedule, operating area, and manning, it is difficult if not impossible to comply with the requirements" of the 12-hour rule. Seacoast is a non-union double-breasting operation of Foss Maritime, a union company under contract with the ILWU's marine division, the Inlandboatmen's Union. The CHINOOK carried a crew of three, where the same boat operated by Foss under an IBU agreement would have had five.

Crew fatigue has contributed to a growing number of maritime disasters, killing sailors and civilians alike, and endangering the lives of everyone along the shore. A 1996 Coast Guard study of 279 accidents showed fatigue contributed to 16 percent of the accidents and was a factor in 33 percent.

Closer investigations also reveal a broader threat to the industry sub-standard boats that are neither inspected nor regulated. With predominately non-union crews, and "at will" employment, the mariners have little power to oppose unsafe conditions. Enforcement of health and safety standards for tugs falls into the cracks between the Coast Guard and Occupational Safety and Health Administration (OSHA). And in a highly competitive business these maritime sweatshops act as a downward pressure on wages and working conditions at the union companies that have better standards. In order to find solutions to the accident problem, Congress authorized a Towing Safety Advisory Committee, chartered 20 years ago. TSAC's 16-member group advises the Secretary of Transportation through' the U.S. Coast Guard on ways to improve safety in the industry.

[GCMA 2005 Update: The Coast Guard is now under the Department of Homeland Security whose Secretary appoints TSAC members.]

The transportation secretary appointed seven members from the barge and towing industry to the committee, one from the offshore oil supply vessel owners, two from the port districts, two shippers' representatives, two public members, and two from labor. IBU's San Francisco Regional Director, Marina Secchitano, is one of the labor

representatives to TSAC. Coast Guard officers also sit in. The composition of the committee clearly favors employers.

[GCMA Comment: In the September 2004 TSAC meeting, in response to a question from the audience, only three (3) TSAC members actually had any working experience on towing vessels and all three currently held corporate management positions. Of those members active in the towing industry, all were members of the American Waterways Operators. Small independent towing vessel operators and working mariners are not represented on TSAC.]

"Since the employers are resistant to any kind of regulatory solutions, a lot of what's done in our committee is to form a consensus with industry," Secchitano said.

The documents TSAC produces usually become an advisory attachment to the Coast Guard's Navigation and Vessel Inspection Circulars, (NVIC), a non-binding recommendation, though some recommendations make it into Coast Guard regulations. Recent reports on fire safety and barge inspections came out of that consensus. But when it comes to issues of crew safety, TSAC avoids the obvious answer to fatigue-increased manning. That would affect the companies' profits, so industry-run TSAC is looking at every other new-fangled solution imaginable instead.

[GCMA Comment: The Coast Guard and Industry continue to push the "Crew Endurance Management System" (CEMS). Although the scientific evidence supporting CEMS is impressive, CEMS is not able to provide the 7 to 8 hours of uninterrupted sleep necessary for mariner health and safety.]

"The Coast Guard and industry want to look for alternatives to additional manning," Secchitano said. "That's what they're talking about. Instead of putting somebody additional on, let's try to change the lights on the tug so the melatonin (a sleep-inducing hormone) doesn't kick in when the night watch is on duty. Various studies by medical professionals say that green lights on the evening watch will stop your body from making melatonin."

Other TSAC studies recommended changes in crews' quarters to protect off-watch mariners from noise, and porthole covers to shield sleeping crew members from light. Altering diet and mealtimes, the study said, would encourage sleep at the appropriate time.

These changes ignore the mariners' main complaint—the two-watch system. Under that regime, a ship's day divides into four alternating, six-hour watches. The most continuous sleep anyone can get under ideal conditions is six hours, and conditions are far from ideal. It also translates into a staggering 84-hour workweek, often for weeks on end. That's 24 hours more than truckers' 60-hour legal workweek and 12 hours more than the standards of the U.N.'s International Labor Organization. Unless they have a union contract, mariners on these ships don't get overtime pay. The obvious solution is three, eight-hour watches, but that means larger crews and higher labor costs.

TSAC's most recent meeting was held in San Francisco March 13-14, 2002. At that meeting Captain Richard Block of the Gulf Coast Mariners Assn. (GCMA), an organization of

workers from the decks, engine rooms and wheelhouses of the nation's uninspected towing vessels, presented evidence of the effects of chronic understaffing and of crews overworked without rest.

"Coast Guard Admiral North said human factors cause 80 percent of maritime accidents," Block told the committee. "We are the human factor." Block told the mariners' side of the story with hundreds of pages of documents detailing accidents caused by understaffing and overwork on un-inspected boats.

In incidents like the CHINOOK's, the company faces a small fine of around \$10,000 for 12-hour rule violations. This slap on the wrist is more than made up for in lower wage costs from the two-watch system, giving employers an economic incentive to violate the rule. And since the Coast Guard does not license corporate officers, it can't take their jobs away, but it can and will beach mariners.

[GCMA Comment: In light of the horrendous accidents fatigue can cause, increasing the civil penalty to \$100,000, instituting license revocation for willful violation, and actively enforcing "hours-of-service" statutes would stop this problem.]

Most tugs are less than 150 feet long and [admeasure at] less than 200 [gross register] tons. To the Coast Guard, ships that small fall into the "un-inspected" category, and there are 5,200 such vessels with 12,000 licensed and 18,000 other mariners aboard them. The Coast Guard calls their tickets "lower-level licenses," a term mariners find demeaning. Any license to work on ships under 1,600 tons is "lower-level." Many small cargo ships service ports and oil rigs. One of these, the SEABULK GEORGIA, met with disaster off the Gulf Coast in August 2000.

The SEABULK GEORGIA, a 180-foot offshore supply vessel, was on a journey to re-supply an oilrig at sea when it rammed a drilling platform. The mate was in the wheelhouse, at the end of a six-hour watch with six hours sleep before that. All he remembered was checking the weather report and then the collision. He had either blacked out before, or suffered amnesia after the accident. The boat went under the platform, destroying the wheelhouse and amputating the mate's legs.

[GCMA Comment: GCMA Report #R-299 recounts the story of the M/V Seabulk Georgia accident in detail.]

An oiler served as lookout, but he had gone below to inspect the engines and grab some food. He had worked more than 17 hours in the 24 hours before the accident. The captain was not on watch at the time, but he admitted he frequently put in 20-hour days.

The Coast Guard declared the mate to be at fault and graciously allowed him to surrender his license. As is the case with most mariners, he had no union and no workers' compensation. The mate was left with minimum medical care and no job, and his only recourse was to sue. His attorneys' investigation turned up some disturbing facts. Since the cooks had been removed from the boats in a cost-cutting move, crewmembers had to go to the galley and prepare their own food. This requires the lookout to take the wheel, a violation. Both the lookout and mate relieved each other to eat, leaving only one person watching under the night skies, another

violation. Even though the SEABULK GEORGIA was an inspected vessel, the investigation turned up several serious defects. The gyrocompass had failed, and the autopilot used the magnetic compass for reference. Magnetic compasses don't usually point true north, and in this case the magnetic compass was not reliable. Due to an electrical failure the rudder had a tendency to go "hard over" on its own, a defect that had not been properly corrected. Any of these conditions could have caused the accident, especially when combined with fatigue. The company settled Dec. 17, 2001, for an undisclosed but apparently satisfactory sum.

[GCMA Comment: No amount of money was a "satisfactory" substitute for the amputation of both of the mate's legs and his pain, suffering and disability.]

Another example Block presented to TSAC went all the way to the U.S. Supreme Court. In this case an oil-drilling rig working inland waters in Louisiana suffered an explosion in July 1997, killing four and injuring two others.

The Coast Guard investigated, but sent the labor safety issue to OSHA as part of the agreement between the two agencies. Since the Coast Guard doesn't regulate labor standards on un-inspected vessels, OSHA fined the owner, Mallard Bay Drilling. Mallard appealed the ruling to the U.S. Fifth Court of Appeals, which overturned the OSHA ruling and said the Coast Guard had jurisdiction. Alexis Herman, then Secretary of Labor, appealed to the Supreme Court. The current Secretary, Elaine Chao, continued the case and the court decided in her favor Jan. 9, 2002. Consequently, uninspected vessels, including many towing vessels, may come under OSHA's purview.

[GCMA Comment: The regulatory noman's land that existed for thirty years ended with the Supreme Court's decision on Chao (Secretary of Labor) vs Mallard Bay Drilling Company –reprinted in GCMA Report #R-300. Faced with the possibility of coming under OSHA regulations, the towing industry tried to make a "deal" with the Coast Guard. As a result, Congress passed new legislation in 2004 ordering the Coast Guard to prepare to inspect all towing vessels.]

"Meanwhile GCMA is asking the Coast Guard to fill in the gaps, but it might take between 10 and 12 years for this to happen," Block said. "Industry would love to drag it on. They would like to regulate themselves. But when they don't follow their own rules, who do you complain to? There's no one."

[GCMA Comment: The American Waterways Operators, the towing industry's trade association would like to see a "Safety Management System" similar to their Responsible Carrier Program take the place of Coast Guard inspection of towing vessels...just as predicted in this article. GCMA believes that the only fair and equitable approach to protect our mariners is for the Coast Guard to inspect towing vessels to the same extent as they inspect all other classes of commercial vessels.]

The court's decision makes clear there is no agency fully responsible for worker safety on un-inspected vessels, and that legislation is desperately needed. Since the Coast Guard

licenses mariners, working mariners almost universally demand the Coast Guard be charged with inspecting all commercial vessels and be responsible for enforcing crew safety.

"The majority of changes that have come in the industry have come as a result of accidents," Secchitano said.

"Our guys think that the prevention of incidents in the towing industry is through people. The lack of people adds a certain element of risk that cannot be addressed by the food you eat, or the music you listen to before you go to sleep, or the light and sounds. It's just about putting another person on the boat."

[GCMA Comment: The solution will involve scrutinizing the entire manning process on vessels under 1,600 GRT – not only on towing vessels.]

<p style="text-align: center;">FATIGUE FACTOR IGNORED AGAIN: TOWBOAT CAPTAIN BLAMED FOR MARITIME DISASTER</p>
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[Source:., By Tom Price. The Dispatcher, May 2002.]

The towboat ROBERT Y. LOVE slammed its two barges into the Interstate 40 bridge near Webbers Falls, Oklahoma.

The towboat ROBERT Y. LOVE was pushing two barges up the Arkansas River early on the morning of May 26, 2002 when suddenly, without warning, the barges veered into a bridge. Within seconds a 600-foot section of the Interstate 40 Bridge plunged into the water.

At least a dozen vehicles followed, one after another, 62 feet down as horrified fishermen scrambled to the rescue in their boats. One of them fired a flare at the bridge in warning. A trucker managed to stop with his front wheels just hanging over the precipice.

Heavy storms were threatening at 7:30 that Sunday morning. The bridge is on the state's main east-west route, 100 miles east of Oklahoma City, and traffic was light. If it hadn't been, the death toll would have been much worse. At least 14 are known dead and five injured, but more cars and bodies may be trapped beneath tons of concrete and steel. Rescue crews from Webbers Falls raced to the scene in response to 911 calls from a crewman on the towboat. Then the storm broke so violently that rescue efforts had to be called off. Five survivors were pulled out.

None of the non-union crew was injured, but the captain, Joe Dedmon, was taken to hospital. He said he last recalled seeing a marker buoy, about five minutes before the accident. He claims he had a seizure or blackout.

As the dust cleared and the waters calmed a familiar response came from the company, Magnolia Marine Transport, and federal authorities probing the accident. The company tested the captain for drugs. Investigators from the National Transportation Safety Board grilled Dedmon in his hospital bed. All signs pointed to fatigue, boat problems and short staffing. The 47-year old towboat was the old man of the river, and the two 290-foot barges had their classifications downgraded within the past year by the American Bureau of Shipping for failure to inspect in a timely way. But when the captain was found to have a heart condition, most observers thought they had their culprit.

Dedmon's life in the 72 hours prior to the accident became a matter of intense official scrutiny. If he failed to get enough rest due to company policy, or if he was pressured to run an unsafe boat, the authorities could still blame him. If company manning policies made it impossible to have a deckhand stand lookout duty during dangerous maneuvers, it could still be his fault failing assign one.

"There was apparently no lookout in the pilot house, and there is no requirement for one," said Captain Richard Block of the Gulf Coast Mariners Association., which advocates for "lower-level" mariners in the towing and offshore oil industry and has reviewed hundreds of accidents involving crew fatigue. "In just about every accident we come across, the man is in the pilothouse by himself."

The boat was on a two-watch system, six hours on, six off, guaranteeing no more than six hours sleep for anyone on board, while a Coast Guard study points out the need for seven to eight hours of uninterrupted sleep per day.

"They blame the captain, but what they don't tell you is if the captain doesn't do what he's told he won't be working there," said the Inland Boatman's Union (IBU) Regional Director of the San Francisco Region Marina V Secchitano. "The mariners say the solution is to put more people on the vessel, go back to the three watch system, that means you're on watch for four hours, off watch eight hours, on watch four hours on, off watch eight hours off, making up a 24 hour day."

Secchitano is a member of the Towing Safety Advisory Committee (TSAC), a federal advisory board charged with reviewing maritime safety issues and reporting to the Secretary of Transportation. Many tug and towboat workers represented by the ILWU's marine division, the Inland Boatmen's Union, work under the same six hours on, six hours off watch system and deal with the same issues of how fatigue causes safety problems.

The FBI, U.S. Coast Guard, NTSB, and the Army Corps of Engineers all interviewed Dedmon as he lay in a hospital bed. But had these agencies done a better job of regulating the industry, this and a long list of similar accidents could have been avoided.

The Coast Guard does not inspect most tugboats, towboats and many other vessels under 1,600 tons. The Coast Guard licenses mariners and it will pull their tickets at the least sign of impropriety and leave them on the beach. But company officials can get legal protection from their responsibilities. In early June 2002 the company filed for relief under a maritime law that limits the its liability to the value of the vessels and cargo involved. If successful, it could get off scot-free on the accidental death claims, and stick taxpayers with costs of the property damage and bridge repair.

"The towing companies will try to interpret the accident in the narrowest way possible, as if 'here's a personnel problem, there's nothing wrong with his boat, it doesn't need to be inspected, let's solve the immediate personnel problem,'" said Capt. Block.

The 61-year old Dedmon was clean and sober, but his sleep habits meant he frequently got insufficient rest. Because of the length of the Mississippi River system, mariners often travel great distances between assignments. This was true for Dedmon. NTSB investigator Ken Suydam said at a press conference May 30. Dedmon had only nine-and-a-half hours sleep in the previous 46 hours before he

went to bed at 11 p.m. Saturday. Then he had six hours rest, taking his watch at 5 a.m. Sunday, two-and-a-half hours before the accident.

In the two days prior to boarding the ROBERT Y LOVE Dedmon had driven more than 1,000 miles from one boat at Hermann, Mo. to Florence, Miss. to Fort Smith, Ark., where the ROBERT Y. LOVE was berthed.

Magnolia Marine. spokesman Greg Beuerman told the media the sleep schedule was typical for Dedmon. "We feel that he was rested enough," Beuerman said. The Coast Guard apparently concurred. Its spokeswoman, Lt. j.g. Natalie Magnino, told the press that boat captains are restricted to 12 hours work in a 24-hour period. Dedmon's schedule met that requirement. She also said the Coast Guard has no regulations on what happens before the beginning of the shift.

Capt. Block made that exact point in an April 18 letter to the Coast Guard regulations "Travel time is considered to be neutral time as it is normally not considered to be 'rest,' 'off duty,' or 'work' time."

Rail workers' travel time to the job is counted as "on duty" time. Mariners frequently go on watch after considerable travel and "may be fired or forced by the threat of being fired into committing an unsafe act" if they insist on rest, Block wrote. They have no legal protection from that. In his letter Block called for the Coast Guard to change the rules to consider travel time to the job as "on duty time." A month later 14 people are dead.

"Studies say if you aren't able to get your rest, then day after day it adds up. In a very short time it's like you're intoxicated," Secchitano said. "Mariners say if we put the right manning on, it will protect the industry, the public and the environment."

WEBBERS FALLS: TWO YEARS AND COUNTING

A report in the May 31, 2004 issue of the Daily Oklahoman filled in some of the details of the aftermath of the May 2002 bridge allision between the tow of the M/V ROBERT Y. LOVE and the Interstate 40 bridge at Webbers Falls that killed 14 unsuspecting highway travelers.

In May 2004, the State of Oklahoma settled its lawsuit out of court for \$4,500,000 of which the state may receive about \$1,500,000 after legal expenses.

"With \$28 million already promised from the federal government, the state will 'more or less' break even on the \$30 million cost of the bridge collapse" according to a spokesman for the Oklahoma Attorney General's Office"

A State Transportation Department spokeswoman agreed but said she is still disappointed tax dollars paid for most of the cost. "The fact is, the maritime laws are very antiquated and do need to be updated," she said.

Both the Oklahoma Transportation Department and the National Transportation Safety Board are expected to release reports later this summer.

[GCMA Comment: As American taxpayers, you and I paid the \$30,000,000 bill on the Webbers Falls accident. Also note that AMTRAK, a taxpayer-supported public corporation, suffered \$20,000,000 in equipment loss in the Bayou Canot accident in 1993. Our tax dollars have subsidized unsafe practices in the towing industry long enough.]