



NMA REPORT #R-417, Rev. 2

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

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

**REPORT TO THE 112th CONGRESS:
REQUEST FOR CONTINUED CONGRESSIONAL OVERSIGHT ON THE
TOWING SAFETY ADVISORY COMMITTEE (TSAC)**

[**Publication History:** Originally issued as R-417 on Aug. 1, 2005 and sent to Congress. Revision #1 was dated Feb. 25, 2007. Revision 2 is updated and revised to Oct. 10, 2011. Our Association directed this report to Members of Congress as well as to Docket #USCG-2005-24412 on Towing Vessel Inspection.]

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WHAT IS THE NATIONAL MARINERS ASSOCIATION (NMA)?

The National Mariners Association (NMA) is a an independent association composed of "limited tonnage" licensed and un-licensed mariners who work on vessels of less than 1,600 gross register tons – primarily tugboats, towboats, offshore supply vessels, small passenger vessels, and uninspected passenger vessels. Our "limited tonnage" mariners are a numerical majority of all American merchant mariners.⁽¹⁾ We are a membership association and not a labor union. [⁽¹⁾Refer to our Report #R-353. Our Research Reports are available to the public on our internet website shown in the letterhead.]

Our Association was formed in April 1999 as the Gulf Coast Mariners Association (GCMA) with the assistance of four maritime labor unions that encouraged us to take an active role in contributing to improving the health, welfare, and safety of our mariners by participating in the workings of various federal advisory committees sponsored by the U.S. Coast Guard. After July 2003, we became independent and our financial support came exclusively from our members and donations from the public to support our work. On Jan. 1, 2008 our Board of Directors changed our name to the National Mariners Association (NMA) to recognize ion the increased scope of our activities and base of support.

We actively participated in attending numerous advisory committee and other public meetings since 1999 as reflected in our Newsletters and in various Research Reports archived on our website.

WE FIRST EXPRESSED CONCERNS ABOUT TSAC & AWO TO COAST GUARD OFFICIALS

In our Association's original report, we expressed longstanding concerns to the Towing Safety Advisory Committee's Executive Secretary, Coast Guard Capt. David Scott, in a letter dated Mar. 27, 2005.⁽¹⁾ [⁽¹⁾Our full letter ts in our Report #R-417, Rev. 1 on our website.]

Among our comments at the time (2005) was our concern about the number of AWO member companies represented on TSAC that weighed so heavily against our mariners. This remains a concern today. We received a reply to several questions five months later as follows:

Our Question #3: Membership (restated) – On the "seven members from the barge and towing industry, reflecting a regional geographic balance" I am concerned that there do not appear to be any representatives who are NOT

members of the American Waterways Operators (AWO).

AWO is a large and powerful Washington lobby. While **AWO claims to represent 80% of the tug and barge industry**, past Coast Guard rulemakings and current Corps of Engineers statistics indicate that there are between **900 and 1,300 business entities that operate towing vessels**. AWO membership currently includes slightly more than 200 companies. Many smaller towing vessel operators and their employees are not represented by the AWO and deserve to have their views considered.

In light of the Coast Guard's 10-year "partnership" with AWO, there appears to have developed a distinct bias in favor of the AWO on the TSAC committee since **non-AWO-member** towing companies do not even have a seat on the Committee. [Until 2009] Chairmanship of TSAC appeared to pass from AWO member to AWO member without question in light of their grip on the committee. Subject to correction, do you see any non-AWO-member companies represented in this group of seven? I am unable to pull the latest TSAC membership list from the website.

Since the Coast Guard superintends the merchant marine and should have accurate knowledge of its composition at USCG Headquarters level, we ask you verify whether the 80% figure cited above represents verifiable information or is simply self-serving hype or wishful-thinking.

We also ask for a definitive answer as to whether the 900 – 1,300 vessel population figures cited above (far exceeding AWO membership data) indicates the presence of a large, unrepresented sector of the towing industry whose views need to be actively solicited either by the Coast Guard or by TSAC in the rulemaking process.

We seek this information because we detect a possibility that a favored, well-organized, and well-funded cabal of powerful companies will throttle numerous legitimate towing vessel owners (e.g., independent smaller operators). We see the possibility that these companies may seek to obtain some tangible **business advantage** by mandating the institution of a complex, expensive safety management system that could put smaller towing companies out of business.

Coast Guard Response to our Question #3: To my knowledge, any particular relationship to the American Waterways Operators (AWO) is not a factor in the Secretary's decision⁽¹⁾ to appoint one candidate over another in the seven-person barge and towing industry membership category. The application for TSAC membership does not ask if the applicant is affiliated with AWO, so the Secretary would not normally be aware of AWO affiliation unless the applicant volunteered such information. The potential "bias" you perceive may simply be a result of significantly more persons applying to TSAC who work for AWO-affiliated companies and fall into this membership category. [⁽¹⁾The DHS Secretary decides on a list of recommendations from the Coast Guard.]

The Secretary recently made new appointments to TSAC on Aug. 3, 2005. Analyzing the current TSAC membership, there are now eight AWO-affiliated members and eight non-AWO-affiliated members on TSAC (total of 16 members). Six of the eight AWO-affiliated members fall within the "barge and towing industry" category.

You also assert that AWO claims to represent 80% of the "tug and barge industry," and you ask us to verify this claim. The Coast Guard is under no obligation to verify the claims of AWO, and we neither collect nor maintain the data necessary to fulfill your request in this regard. Nonetheless, Mr. Miente spoke with AWO about the 80% figure. AWO advised us of the following:

1.) Using Army Corps of Engineers' data, AWO estimates that there are approximately 1,287 towing vessel companies, including those that engage both in towing and in other endeavors (but excluding government agencies, oil field production, shipyard and other "tug assist" work),

[NMA Comment: The 2011 NPRM on p. 49997 indicates that there are 1,059 companies left. With AWO membership of slightly more than 200 towing vessel-operating companies, that leaves a very large number (e.g., over 800 of unaffiliated companies.)]

2.) AWO claims to represent about 200 of these companies (plus approximately 200 "affiliates" who not directly own/operate towing vessels, e.g. insurance companies and shipyards),

3.) AWO estimates that these 1,287 towing vessel companies own/operate approximately 3,932 towing vessels regularly engaged in the business of commercial towing,

[NMA Comment: If 3,292 out of 5,208 towing vessels reported in the NPRM, it would appear that 75.4% of all towing vessels are NOT operated by AWO companies.]

[NMA Comment: The 2011 NPRM states there are 5,208 towing vessels. Public meetings we attended place the count of towing vessels at above 6,100, exposing a possible miscalculation in the NPRM of about 16%. Reviewers at the Marine Safety Directorate or at DHS should have caught this discrepancy.]

4.) AWO estimates that these 1,287 towing vessel companies also own/operate approximately 27,568 barges, for a total of approximately 31,500 towing vessels and barges combined.

[NMA Comment: Of this figure, over 17,000 are unmanned and uninspected dry cargo barges. Although half of the fatalities from falls overboard occur on barges, the NPRM avoids dealing with the safety hazards

our mariners encounter on these barges. Over the years, OSHA has done virtually nothing to address these issues either. We brought this to the attention of Congress in NMA Report #R-276, Rev. 10 in Issue #6-1]

5.) AWO members own/operate approximately 25,200 of these 31,500 towing vessels *and barges*, which is 80%.

The Coast Guard has not verified any of the data that AWO provided, and we cannot attest to the accuracy of any of these statistics.

Our Question #5: Travel and Per Diem. [repeated] In the September TSAC meeting, Captain William Beacom rose from the audience to state that most mariners would find it impossible to serve on TSAC if selected because travel and per diem were not covered. I share his concern. Speaking for myself, a trip to Washington from Louisiana costs about \$1,000. Running back and forth to attend working group meetings (such as the four working group meetings scheduled to meet to consider the towing vessel inspection safety management system task statement) is prohibitively expensive. However, I note that the statute indicates that travel and per diem can be paid. Yet, the Committee Charter says that neither travel nor per diem is available. This statement in the charter would discourage many otherwise qualified applicants from applying for membership to TSAC.

It appears that Members of Congress understand that private citizens need compensation for this type of expense although the Coast Guard just does not seem to get the message with TSAC. The same comments are true of NOSAC. I can only speculate that the Coast Guard believes that it doesn't need to import expertise on the towing industry from other parts of the country (including our "limited tonnage" mariners) when the AWO has a ready supply of rich talent at their beck and call in nearby Arlington, VA.

Coast Guard Response to Question #5: "...The TSAC enabling statute provides that the Secretary *may, but is not required to*, pay travel expenses (including per diem) for TSAC members. Currently, TSAC members are not paid travel expenses. Recognizing that this may pose a disproportionate burden on small businesses and individual mariners who might otherwise apply for TSAC membership, we are currently exploring the possibility of obtaining additional funding to cover these expenses; however, we do not currently know if/when we will obtain these funds.

[NMA Comment: The Coast Guard appears to have solved this problem.]

Our Comment #6: Working Mariner Perspective. We will recommend that the following mariners be included as members of TSAC in the future:

- An inland towboat pilot with broad experience on Western Rivers and Gulf Intracoastal Waterway.
- An offshore tug captain,
- A ship docking or harbor tugboat master,
- An unlicensed towboat engineer.

Coast Guard Response to Comment #6: The Coast Guard respects your right and applauds your interest in petitioning Congress to add to TSAC's membership categories as you see necessary. We also encourage you to widely publicize all TSAC membership opportunities amongst your members so that we can increase the number of "working mariner" applicants for TSAC.

CONGRESS TOOK ACTION TO BALANCE TSAC REPRESENTATION FOR MARINERS

Section 621 – Coast Guard Authorization Act of 2010 – Renewal of Advisory Committees.

[**Background:** On Feb. 25, 2007, our Association submitted the previous edition of this Report #R-417, Rev. 1, titled Report to the 110th Congress: Our petition to Congress was as follows:

"The Gulf Coast Mariner's Association respectfully requests that the 110th Congress revise 33 CFR §1231a, Towing Safety Advisory Committee to expand or adjust membership on the Towing Safety Advisory Committee to include:

- One active licensed inland towboat Master or Pilot with broad experience on the Western Rivers and Gulf Intracoastal Waterway.
- One active licensed offshore tugboat Master,
- One active licensed ship docking or harbor tugboat master,
- One experienced licensed or unlicensed tugboat or towboat engineer with significant formal training and experience.⁽¹⁾ [⁽¹⁾Refer to our Report #R-401, Rev. 1, Crew Endurance and the Towing Vessel Engineer: A Direct Appeal to Congress and our Report #R-428, Rev. 1.]

We further request that each of these individuals selected by the Coast Guard to serve on this Federal advisory committee

be allowed to have his/her position represented by an experienced alternate of his/her choice with comparable experience in case he/she is unable to attend a committee meeting.

We respectfully request that the Coast Guard be directed to fund these positions for travel and per diem when attending announced TSAC meetings”

Our Association was gratified that Congress favorably considered these as follows:

- (e) Towing Safety Advisory Committee – The Act entitled “An Act to Establish a Towing Safety Advisory Committee in the Department of Transportation”, approved Oct. 6, 1980, (33 U.S.C. 1231a) is amended –
 - (1) by striking subsection (a) and inserting the following:
 - (a) There is established a Towing Safety Advisory Committee (hereinafter referred to as the ‘Committee’). The Committee shall consist of eighteen members with particular expertise, knowledge, and experience regarding shallow-draft inland and coastal waterway navigation and towing safety as follows:
 - (1) Seven members representing the barge and towing industry, reflecting a regional geographic balance.
 - (2) One member representing the offshore mineral and oil supply vessel industry.
 - (3) One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.
 - (4) One member representing the holders of active licensed Masters of towing vessels in offshore service.
 - (5) One member representing Masters who are active ship-docking or harbor towing vessel.
 - (6) One member representing licensed or unlicensed towing vessel engineers with formal training and experience.
 - (7) Two members representing each of the following groups:
 - (A) Port districts, authorities, or terminal operators.
 - (B) Shippers (of whom at least one shall be engaged in the shipment of oil or hazardous materials by barge).
 - (8) Two members representing the general public; and
 - (2) in subsection (e), by striking “Sept. 30, 2010.” and inserting “Sept. 30, 2020.”.

Welcome to the Real World

Although Congress acted positively to secure equal representation on TSAC for our mariners, the reality of the situation turned out quite differently. Membership in TSAC of the two “union” mariners representing the Seafarers International Union and Local 333 in New York under the old charter was terminated but the four mariners to replace them still have not been installed. Almost a year after Congress acted, the Secretary of Homeland Security had not yet acted to appoint the new slate of four mariners called for in the legislation. Inaction left only one working mariner on the committee to represent the interests and concerns of the 32,000 mariners who crew every towing vessel in the country.

Unfortunately, there is more to TSAC than its “voting” membership. AWO has re-emerged in its absolute domination of the un-appointed Working Group that debates the issues in the Towing Vessel Inspection NPRM under the supervision of the two TSAC Members. Money, more than anything else, makes it possible to travel to distant cities to be heard – with postage stamps as mariners’ only alternative.

Consequently, our Association presents our written disagreement with significant aspects of TSAC’s Working Group deliberations on towing vessel inspections to the docket as mentioned below.

THE AWO DOMINATES TSAC TO INFLUENCE TOWING VESSEL INSPECTION RULEMAKING

We do not contend that trying to influence an agency’s rulemaking is either unusual or illegal as long as the advice a government Agency receives is good advice that truly serves the public interest rather than the special interests of a select group with its own agenda – in this case, AWO.

Section 415(a) of the Coast Guard Authorization Act of 2004 amended 46 U.S. Code §3301 to inspect previously uninspected towing vessels.

Our Association wholeheartedly supported this legislation. In fact, in an attempt to work within existing channels, we formally proposed towing vessel inspection in a TSAC meeting on Mar. 15, 2001. We did much work on this project in our Report #R-276 and just published a critical tenth revision. The Coast Guard’s “Bridging” program inaugurated in 2009 has followed a “traditional” pre-inspection program that mariners who serve on towing vessels have become familiar with.

Unfortunately, during this period, the TSAC committee was dominated by AWO members and was led by AWO Chairmen who did their best to sidetrack our Association’s inspection proposals.⁽¹⁾ Nevertheless, we continued to perfect and refine our submittal to the rulemaking docket because our Association speaks on behalf of the safety, health, and welfare concerns of the industry’s entire 32,000 mariner workforce. However, our interests and the interests of labor were largely ignored within TSAC. [⁽¹⁾We describe the unfortunate results in NMA Report #R-276, Rev. 10.]

Our Association submitted our rulemaking proposals⁽¹⁾ to the Coast Guard as part of the current towing-vessel inspection rulemaking project. We thought that the Coast Guard would fully consider and comment upon our proposals during the rulemaking process although we were not encouraged that the Marine Safety Directorate's hierarchy would give our mariners the same degree of consideration they extend to the industry trade association they have been linked to in a formal "partnership" since 1996. [⁽¹⁾*Our Report #R-276, Rev. 8 was submitted in Feb. 2005.*]

What is obvious to even a casual observer, however, is that the AWO holds complete control of TSAC in the palm of their hand. At present, as in the past, AWO-member companies completely dominate TSAC's working group meetings and use their position to pursue and promote their members' corporate interests at the expense of their workforce and as many as one-thousand other non-member companies.

The AWO also dominated the four public meetings that were held in Washington, New Orleans, Oakland, and St. Louis during the Winter and Spring of 2005 as the transcripts in the rulemaking docket #USCG-2004-19977 clearly show. Nevertheless, working mariners from our Association and several labor unions raised a few voices to counter an endless parade of speakers zealously supporting AWO interests. Equally noticeable to any observer with a list of AWO member companies was the fact that **few of more than 800 non-AWO member companies spoke at any of these public meetings.**

RECENT COAST GUARD EFFORTS IMPROVED OUTREACH TO SMALL TOWING COMPANIES

Before 2004, it was clear to us that the Coast Guard's Marine Safety Directorate made little effort to reach out to our mariners or to independent boat owners who were **not** members of the American Waterways Operators. In fact, Marine Safety, as one of the Coast Guard's eleven missions, declined and was overshadowed by its "national security" missions. The extent of the decline of the Marine Safety mission was a shock even to us as we digested Admiral James Card's report⁽¹⁾ in 2008. [⁽¹⁾*Retired VADM Card's report is posted on our website as NMA Report #R-401-E.*]

Faced with a decline that could no longer be hidden from Congress or from the public, the Coast Guard inaugurated its "**Bridging**" program to address the issue of inspecting the large number of towing vessels that, after 40 years of neglect, they knew very little about. The first problem was to introduce not only their new inspectors but also our mariners to a bevy of "**existing regulations**" that applied to **uninspected** towing vessels. The next issue would be to familiarize its own new inspectors with the type of **traditional** inspection system they use.

Our Association saw from the outset that the largely unregulated towing industry would fight against regulation in any form. Following the Supreme Court's 2002 Mallard Bay Drilling decision,⁽¹⁾ the industry faced the stark reality of whether it would be regulated by OSHA that already had jurisdiction over **uninspected** vessels,⁽²⁾ or by the Coast Guard with its jurisdiction over **inspected** vessels. When Congress ordered the Coast Guard to inspect towing vessels in 2004, the die was cast. AWO supported the friends it previously cultivated in the Coast Guard and unexpectedly sponsored "towing vessel inspection" – but on their own terms! [⁽¹⁾*Refer to NMA Report #R-202-B containing OSHA Directive CPL 2-1.20 delineating OSHA/USCG Authority over vessels.* ⁽²⁾*Refer to our Report #R-300.*]

Although OSHA in Washington assumed control over occupational safety and health on uninspected towing vessels in actuality they made little impact on these vessels in over 40 years. OSHA's "Memoranda of Understanding" with the Coast Guard in 1983 and 1996 did little more than carve up a paper empire.

In 1998, a conscientious Coast Guard Project Officer tried to work to introduce OSHA-type regulations to the offshore oil industry many years after Outer Continental Shelf Lands Act amendments⁽¹⁾ and the OSH Act required the Coast Guard to do so. For all his efforts, he saw 12 years of hard work sidetracked by the offshore oil industry – another industry that would do anything possible to delay and sidetrack OSHA-type workplace regulations. By allowing this to happen, the Marine Safety Directorate demonstrated it had the regulatory backbone of a banana. [⁽¹⁾*Docket #USCG-1998-3868, Outer Continental Shelf Activities. Refer to our Report #R-276, Rev. 10, pgs. 33-39.*]

While our Association recognizes that AWO can and does make significant contributions to the industry and has the potential to make the Coast Guard's regulatory job easier, we neither seek to denigrate their positive efforts nor discourage positive aspects of their work. However, **if** the Marine Safety Directorate plans to regulate the towing industry in a fair and equitable manner, they also must **reach out to our limited-tonnage mariners as well as to smaller towing companies that are not affiliated with AWO.** The vessel inspection NPRM does not do this nor do the TSAC Working Group activities cited below.

At this point, we want to reiterate that we are **not** a labor union and that the vast majority of our mariners we speak on behalf of are **not** represented by labor unions although many are. Our Association speaks to safety, health, welfare and related workplace issues and not to wages or salary. We do not engage in collective bargaining.

PAST OUTREACH POORLY INFORMED OUR MARINERS OF MAJOR LICENSING CHANGES

The Marine Safety Directorate previously **failed** at the Headquarters level to transmit to their Regional Exam Centers in an **effective and timely manner** the importance of the new 2001 **licensing** program for towing vessel officers, and in fact, stumbled and fumbled for years. Our Association expressed our mariners' frustration with the National Maritime Center (NMC) in two reports presented at a 2009 Congressional hearing.⁽¹⁾ The failed to

effectively reach out to **every company** in the towing industry to tell them about the new licensing program in a period extending over five years. Some of the “better positioned” towing companies received the message, but many simply ignored it.⁽²⁾ [⁽¹⁾*Our Reports #R-428-D and #R-428-D, Rev. 1.* ⁽²⁾*Report #R-382.*]

Although the new program of training Apprentice Mates/Steersmen was well developed, the Marine Safety Directorate never made it crystal-clear to the towing industry that companies must train their new pilots in the pilothouse over a one-year period using the services of specially qualified Designated Examiners. Companies rushed as many new trainees through the old licensing program as possible because it was faster and cheaper. Few companies committed the money necessary to train Mates/Pilots under the new system – because this training required paying an “extra man” in the pilothouse. Many potential candidates still find it hard to find a career path in the towing industry through a confusing maze of regulations. Before the 2008 economic downturn, the towing industry experienced a severe shortage of licensed towing officers.

Fewer candidates are interested in working on towing vessels as long as the AWO’s Responsible Carrier Program 15-hour workdays discourages unlicensed personnel. Furthermore, our Association no longer encourages them to do so.⁽¹⁾ Increased bureaucracy and regulatory rigidity at the National Maritime Center turned promising careers in the towing industry into an unmitigated disaster for many “hawsepipers” who lack the formal education or as much as \$78,100⁽²⁾ to move up from “deckhand” to Mate or Pilot. Employers often abuse eighty-four hour workweeks for licensed officers by adding extra after-hours duties and command responsibilities. The Webbers Falls bridge disaster gave the public an inside view of work-hour abuse that even fervent denials and appeals will not soften. [⁽¹⁾*Refer to NMA Report #R-276-D, Rev. 5.* ⁽²⁾*Proceedings of the Marine Safety Council, Fall 2008, p.43.*]

AWO & TSAC MOVE TO FORCE SAFETY MANAGEMENT SYSTEMS ON ALL TOWING VESSELS

Section 415(b) of the Coast Guard Authorization Act of 2004 amended 46 U.S. Code §3306 to allow the Secretary to “...establish by regulation a Safety Management System appropriate for the characteristics, methods of operation, and nature of service of towing vessels.” While our Association supports the intent of this provision, we assert that inaugurating a Safety Management System is a “***business decision***” that must be made by individual companies. It should ***not be a substitute for vessel inspection*** that must remain a regulatory decision.

Since 1996, the AWO perfected their Responsible Carrier Program (RCP) that serves as an ***example*** of a type of Safety Management System. Our Association does not find fault with most of the RCP. However, we ***strongly disagree*** with one of its longstanding provisions that approves ***15-hour workdays for unlicensed personnel***. We still ask Congress to limit service by all mariners to a 12-hour day.⁽¹⁾

The Coast Guard should have objected to this provision years ago but failed to do so before joining in a “partnership” with AWO and endorsing their RCP. By accepting the 15-hour provision as a part of RCP, it appears to our mariners that the Coast Guard acted in concert with AWO in endorsing harsh working conditions. At the same time, the Coast Guard accepted self-regulation by the towing industry and put forth some very weak reasons why they did not ask Congress to impose a vessel inspection regime upon the towing industry following the AMTRAK-Bayou Canot accident at the time the AWO initiated its Responsible Carrier Program.⁽¹⁾ A few years later in 2004, Congress found it necessary to overrule this decision. [⁽¹⁾*NMA Report #R-350, Rev. 6, issues “H” & “K.”* ⁽²⁾*Towing Vessel Inspection Study, Letter from Commandant Kramek to Secretary, Department of Transportation, Aug. 8, 1994, NMA File A193-3.*]

The AWO, as an association, cannot compel its member companies to comply with their Responsible Carrier Program. On at least two occasions⁽¹⁾ rogue AWO-member companies were caught operating outside the RCP following serious and expensive marine casualties. Although AWO offered Congress sincere and heartfelt public apologies the actions of two small companies undermined AWO’s many years of hard work and accomplishments. In discussions at TSAC meetings, AWO representatives admitted that only the Coast Guard has true enforcement powers. [⁽¹⁾*M/V Mel Oliver- T/S Tintomara \$275M oil spill (2008) and the (2001) Queen Isabella Causeway disaster with 8 fatalities.*]

Over the years, adherence to the Responsible Carrier Program became a ***requirement*** for membership in AWO and thus separated AWO from non-AWO companies. Experience tells us that hundreds of smaller towing companies, some with a very minimal office staff, have no idea whatsoever of the complexity of a Safety Management System nor a desire to become members of AWO and be required to implement their own version of the Responsible Carrier Program. We say this because our mariners work for both AWO and non-AWO companies.

The Coast Guard chose a middle course and non-controversial course and decided to please both sides allowing both a Towing Safety Management System as well as a traditional inspection system. The Coast Guard explained this in the NPRM at 76 FT 49979-49980. We cite several key statements from those pages – ***[Emphasis is ours!]***

Key Coast Guard Statements in the NPRM

- The Coast Guard proposes to require towing vessels subject to this rulemaking to be part of a safety management system ***or be subject to an alternative, annual Coast Guard inspection regime.***

- The **objectives** of a TSMS are to ensure the safety of the vessel and crew, prevent human injury or loss of life, avoid environmental and property damage, and ensure continuous compliance with applicable regulations.

[NMA Comment: A TSMS shares the same objectives as a traditional Coast Guard vessel inspection program.]

- To accomplish these objectives, a TSMS would **require** management, in this case an owner or managing operator of a towing vessel, to implement safety management practices for both their shoreside management and vessel operations.

[NMA Comment: ***If imposed, this would be a very expensive and time-consuming mandate for a small business.***]

- The ABSG report...recommended alternative inspection approaches for some companies stating, in part, that ...”**a safety management system may not [be] a very cost-effective way to achieve safer operation.**” ... and suggested a more traditional inspected vessel option be considered.
- The ABSG report stated: “...the industry personnel were clear that **effective implementation of a safety management system was a very difficult task for a company that had not previously been highly structured** and had not formally documented its policies and procedures.
- The TSAC Economic Working Group report stated: **“[A TSMS] will likely have a larger and more devastating impact on smaller companies who do not have the economic means, manpower, or even time to implement a system.”**
- Considering the strong recommendations of both the NTSB and TSAC, and considering that towing vessels operate within the same areas as other vessels, many of which also use a safety management system, sharing busy waterways and overworked infrastructure, interacting within the supply chain and marine transportation system, and at times, sharing crewmembers, **it is appropriate to propose that all towing vessels subject to this rulemaking have the option** of operating within a company-implemented TSMS.
- The Coast Guard understands that full compliance with **an elaborate TSMS designed for large operations may be impractical for owners or managing operators with small operations.**

Since there is considerable “paperwork” in any Safety Management System, many smaller companies avoid it as a needless expense and deterrent to continuing their “business as usual.” It is expensive to join AWO and may be more expensive yet to hire consultants to prepare comparable safety management system “paperwork” that, when completed, may be relegated to the filing cabinet. We are not certain that many companies will “get the message” of a complex Safety Management System although the “Bridging” program has helped them to understand **existing regulations** and is a good platform on which to introduce the final towing vessel inspection rule when it is introduced. In either case, fair advance warning needs to reach each entity that operates a commercial towing vessel.

Our Association Represents Working Mariners – Not Boat Owners

It does not appear that the Marine Safety Directorate considers all towing vessel owners when it speaks almost exclusively to AWO-member companies. While AWO member companies, large and small, already absorbed the cost of membership and compliance with their internal Safety Management System, every participant that receives a Certificate of Inspection will have to absorb the cost of Coast Guard inspection services as “user fees.” The NPRM did not announce the amount of these fees although user fees for inspected vessels of comparable horsepower **may** provide useful guidelines.

While our Association supports the concept of a Safety Management System, **we are aware of very few examples where the Coast Guard actively enforces compliance with provisions of the Responsible Carrier Program.** Consequently, when disasters occur, the Coast Guard makes noise, flaps its wings, and takes the course of least resistance and often “pins the tail on the mariner.” We look forward to the time when the Coast Guard completes its work on enforceable towing vessel inspection regulations to provide our mariners with the **same level of protection** as other mariners who serve on inspected vessels.

OUR ASSOCIATION OBJECTS TO A NEW TSAC WORKING GROUP REPORT

The Towing Safety Advisory Committee (TSAC) as a creation of Congress, has much closer access to the Coast Guard than does an Association such as AWO or NMA. As such, TSAC reports to the Commandant and its suggestions received very great weight and consideration in this rulemaking whereas our efforts, as described in NMA Report #R-276, Rev. 10, did not. However, in order to function, TSAC requires the services of volunteer “Working

Group” members who work under the supervision of one or more TSAC members appointed by the Secretary of the Department of Homeland Security.

Such a “Working Group” met at Coast Guard Headquarters on Sept. 20-21, 2011. In reviewing the roster, we found that a great majority were representatives of AWO member companies. While their final report still must be approved by the full TSAC membership in October (with few working mariners” represented) and then accepted or rejected by the Coast Guard in preparing a final rule, we are far from satisfied with the following quotations edited from the Working Group’s preliminary report. Since time is short before the Docket closes on Dec. 9, 2011, our Association will make these comments to the Docket. We comment on each selected quotation marked [Q].

- [Q].“Recommendations made by the working group represent the consensus of an overwhelming majority of working group members, with many recommendations enjoying unanimous support. Members who disagree with any the working group’s specific recommendations remain free to submit comments to the docket to that effect.”

[NMA Comment: Although we could not attend the Working Group meeting at Coast Guard Headquarters, we will submit our comments to Docket #USCG-2006-24412.]

- [Q].“The working group very much appreciates the Coast Guard’s consistent efforts to consult with TSAC throughout the development of the NPRM and the agency’s commitment to continuing this consultation now that the NPRM has been published.”

[NMA Comment: Our Association notes that our access to the Coast Guard through TSAC on behalf of mariners for the past 7 years has been extremely limited. Even the public comment period has been limited to 5 minutes per speaker.]

- [Q].“The NPRM incorporates many of the recommendations previously made by TSAC and demonstrates the Coast Guard’s willingness to listen to and take seriously stakeholder input.”

[NMA Comment: Our Association did not find the Coast Guard willing to listen or to take our mariners’ (i.e., as “stakeholders”) seriously in this rulemaking. Specifically, refer to the many issues discussed in our Report to Congress #R-276, Rev. 10.]

- [Q].“Consistent with these principles and with the prior recommendations of TSAC, the working group urges the Coast Guard to require that all towing vessels covered by Subchapter M be operated pursuant to a Coast Guard-accepted Towing Safety Management System, or TSMS.”

[NMA Comment: Mandating a TSMS would divert attention from the Coast Guard’s task of physically inspecting towing vessels. It would divert inspectors from the vessels they were hired to inspect to sorting through reams of paper at company offices. This would be more than just a distraction and would provide opportunities for companies to subvert the inspection program.]

- [Q].“Safety management systems focus on the largest single cause of towing vessel casualties, and the National Transportation Safety Board has recommended, as one of its “Ten Most Wanted” transportation safety improvements, that safety management systems be required by regulation for all vessels. Adherence to a safety management system should be the foundation of the towing vessel inspection regime, not an option.”

[NMA Comment: While the NTSB may “recommend” anything it likes and do so with the best intentions, Congress assigned the Coast Guard the task of implementing a workable inspection program. The Coast Guard previously worked with industry on developing complex inspection programs like the Streamlined Inspection Program⁽¹⁾ only to see it fall into disuse. By returning to its “traditional” inspection program, the Coast Guard can manage with the resources it has available. Congress already provided funding for training new inspectors.] ⁽¹⁾ Refer to 46 CFR Part 8, Subpart E.]

- [Q].“We urge the Coast Guard to review the proposed parts 141, 142, 143, and 144 and eliminate requirements included primarily for the purpose of consistency with regulations for other types of inspected vessels.”

[NMA Comments: The towing industry watched the existing regulatory system develop over the past 50 years. However, corporations managed to skirt OSHA regulations governing maritime workplaces not only on tugs and towboats but also on barges. I wants to cut corners again. Enough “special treatment” is enough.]

- [Q].“The Coast Guard has already demonstrated its commendable willingness to bring fresh thinking to the

development of the inspection regulations for towing vessels, incorporating requirements – like TSMS – that are not required for other types of inspected vessels.”

[NMA Comment: Congress also demonstrated its willingness to consider a Safety Management System even though it is not required for other types of inspected vessels. Consequently AWO (by using TSAC) should back off trying to push the burden of its business decisions on small business entities that are not AWO members.]

• [Q].“The working group appreciates and supports the Coast Guard’s statement in the preamble to the NPRM that “we are not proposing to change any of the current manning levels required for towing vessels.” This is consistent with prior Coast Guard-TSAC discussions. However, in order to provide a baseline requirement for a safe watch complement and avoid confusion about the minimum manning that will be required on towing vessel Certificates of Inspection and the role of the TSMS in crewing decisions, we urge the Coast Guard to amend §15.535 to incorporate the 2006 TSAC recommendations on manning, which stated that: Each towing vessel engaged in towing operations shall have a licensed master. If operations exceed 12 hours, an additional licensed officer (master, mate, or pilot) must be added or an alternate relief crew provided. One licensed officer and one additional crewmember must be on duty at all times while the vessel is underway. These requirements shall be posted on the vessel’s Certificate of Inspection.”

[NMA Comment: Nothing less than two full crews should man any towing vessel that operates more than 12 hours in a 24-hour period.]

• [Q].“The working group recognizes the importance of preventing fatigue and promoting crew alertness in the 24/7 environment in which towing vessels operate. We are disappointed that the preamble discussion of this issue includes no mention of the TSAC recommendations on this subject and instead seeks comment on a different approach not previously discussed with TSAC.

• [Q].“It was not TSAC’s understanding that, as stated in the preamble, “The central objective of CEMS was and is to ensure that crewmembers have sufficient time off to obtain a daily minimum of 7-8 hours of uninterrupted, high quality sleep.”

[NMA Comment: CEMS is based upon scientific knowledge as reported to Congress in December 2005. However, CEMS is not a substitute for science-based hours-of-service regulations called for by the NTSB in 1989 and again in 1999 in all modes of transportation. The clock is ticking!]

• [Q].“We note, as well, that the issues raised in the preamble have implications that extend far beyond towing vessels or other vessels that employ a two-watch system. In fact, no watchstanding schedule used in the maritime industry today by vessels operating round-the-clock provides an opportunity for 7-8 hours of uninterrupted sleep. The towing vessel inspection rulemaking is not an appropriate vehicle to address issues with implications for the entire maritime industry.”

[NMA Comment: The Working Group overlooked the three-watch system in common use in the marine industry. It provides just such an opportunity for 7-8 hours of uninterrupted sleep for vessels operating round-the-clock.]

• [Q].“The 2006 TSAC recommendation concerning the Coast Guard oversight role. TSAC recommended that 100% of vessels experience at least one Coast Guard oversight visit during the five-year COI cycle and that the scope and frequency of Coast Guard oversight visits be determined using a risk matrix focusing on major deficiencies that affect the safety of personnel, vessels, and/or the environment, and/or evidence of lack of commitment from management in support of the vessel or lack of commitment from crew to implementing the safety management system. We are unsure if the Coast Guard intended the proposed §136.145 to apply only to towing vessels using the “Coast Guard option,” but note that this provision seems to contemplate a traditional Coast Guard inspection that is not consistent with the TSAC-recommended risk-based approach to targeting Coast Guard resources.”

[NMA Comment: One scheduled on-vessel visit by a trained inspector every year is part of a traditional Coast Guard vessel inspection program – one our Association recommends for the safety of our mariners.]

• [Q].“Well-qualified, well-trained third-party auditors will be essential to ensuring a smooth transition to, and the effective functioning of, the new inspection regime. In this regard, we reiterate the 2007 TSAC recommendation underscoring the importance of having a sufficiently sized pool of Coast Guard-approved third-party auditors in place before companies and vessels are required to comply with the inspection regulations.”

[NMA Comment: If this is a problem, it should be solved by companies that already use the services of these auditors in the Responsible Carrier Program.]

- [Q]. “Revise §138.505 to specify that, consistent with §138.315(c), audit reports must be made available to the Coast Guard upon request, rather than requiring that each audit report be submitted to the Coast Guard.”

[NMA Comment: Since Congress holds the Coast Guard responsible for public safety on the waterways, they should have immediate access to each audit report especially for casualty investigations. However, the Coast Guard must be allowed to maintain control over the flow of paperwork to keep from being inundated by it – a problem shared by many of our mariners.]

- [Q]. “Incorporate language in Part 138 to reflect the 2006 TSAC recommendations with respect to the process that should be followed when a non-conformity is discovered during a third-party audit. TSAC recommended that: Any non-conformities will be identified at the completion of the audit. Non-conformities affecting the safety of the crew or the vessel must be resolved promptly. The company must prepare a Corrective Action Plan to be submitted with the auditor’s report. The company must submit the Corrective Action Plan for review and acceptance to the auditor within 30 days of completion of the audit. Once the Corrective Action Plan has been accepted by the auditor, the auditor will submit the full audit report to the company and the Coast Guard. The company must notify the auditor when the process outlined in the Corrective Action Plan is complete. Auditor to notify the Coast Guard and the company immediately of a serious, unsafe situation that threatens the vessel, its personnel, or the environment.

[NMA Comment: The key is that “Non-conformities affecting the safety of the crew or the vessel must be resolved.” The rest is just fluff and paperwork.]

- [Q]. “The Coast Guard should include a definition of excursion party in the definitions section of Part 136.”

[NMA Comment: Towing vessels are work boats. They are not passenger vessels and, with the possible exception of “lugger-tugs,” are not cargo vessels. If “persons in addition to the crew” are allowed on board a towing vessel, this should be provided for on the vessel’s Certificate of Inspection. Providing for an “excursion party” requires considerable preparation by the Coast Guard and should merit a separate “user fee” based upon the amount of work involved.]

- [Q]. “The Coast Guard should modernize the requirement to post the Certificate of Inspection on board the vessel. §136.220 should be revised to allow a correct copy of the COI to be maintained in a safe location from which it is readily available to the master, crew, approved third party or Coast Guard. It is unnecessary and anachronistic to require that the original COI be displayed under glass.”

[NMA Comment: The open display of the vessel’s COI and stability letter (when issued) serve a useful purpose for boarding parties as well as providing valuable information about the vessel for its crew to report “non-conformities” that could lead to a casualty. It is not an anachronism.]

- [Q]. “The Coast Guard should eliminate all references to the still-pending potable water requirements (§143.225 reserved). When the potable requirements for inspected vessels are promulgated, the Coast Guard can amend Subchapter M (as the agency will have to do for other subchapters) to add these requirements where appropriate.”

[NMA Comment: Congress provided the Coast Guard with clear instructions in regard to furnishing potable water to vessels including towing vessels. Unfortunately, for thousands of our mariners, the Marine Safety Directorate has not yet completed the task they were assigned 7 years ago. Refer to NMA Reports #R-276, Rev. 10, Issue 5-4 and #R-395, Rev. 3]

- [Q]. “In this regard, we note that the 2006 TSAC report recommended that “Hull fractures in any plating except an oil tank may be covered with an appropriately sized doubler plate, installed using good marine practice, if the hull thickness and condition is suitable.”

[NMA Comment: Approving a substandard repair using a doubler plate goes against the Coast Guard’s well known “Steel NVIC” (NVIC 7-68) that has been applied to every other class of inspected vessel since 1968. We admonish the TSAC Working Group to provide “good” rather than “bad” advice to the Coast Guard. We are confident the Marine Safety Directorate and those in the “Bridging” program will have the good sense to reject doubler plates during the drydocking of sub-standard vessels.]