



NMA REPORT #R-417-B

DATE: June 16, 2011

Edited By Richard A. Block

124 North Van Avenue  
Houma, LA 70363-5895  
Phone: (985) 851-2134  
Fax: (985) 879-3911  
[www.nationalmariners.org](http://www.nationalmariners.org)  
[info@nationalmariners.org](mailto:info@nationalmariners.org)

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

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

**NMA COMMENTS TO THE TOWING SAFETY ADVISORY COMMITTEE MEETING (TSAC)  
June 16, 2011 – Docket #USCG-2011-0144.**

**REASON FOR THIS REPORT**

The National Mariners Association was founded in April 1999 to serve as the voice for an estimated 126,000 credentialed limited tonnage merchant mariners on safety, health, and welfare issues. We are a membership organization supported by dues and donations. Of the 126,000 mariners, an estimated 32,000<sup>(1)</sup> serve in the towing industry aboard an estimated 6,000 towing vessels on rivers, öwestern rivers, inland waters, the Great Lakes, near coastal, and ocean routes. [<sup>(1)</sup>NMA file #A-193]

Directors from our Association have attended all TSAC meetings and participated in working groups since we were founded because limited tonnage mariners exclusively provide the workforce for the towing industry. In the towing industry, most credentialed mariners are öhawsepipersö rather than graduates of state or federal maritime academies.

Our Association has become increasingly concerned about the quality leadership provided by the Coast Guard as industry regulators and how it affects our working mariners. We are also concerned about industry trends in cutting vessel manning to the bone and the absence of a daily work-hour limit for unlicensed crewmembers as well as violations of the statutory 12-hour rules for licensed officers ignored by Coast Guard officials.<sup>(1)</sup> We intend to make our positions clear on a number of matters that have come or may come before this Federal advisory committee. [<sup>(1)</sup>Refer to 13 NMA Reports in the R-370 series.]

The Towing Safety Advisory Committee has a new charter. Our Association has chosen this report to inform committee members about serious problems in the towing industry that your workforce believes needs your consideration. All referenced reports are available on our Association's website under öResearch Reports.ö

**NOTICE OF MEETING IN FEDERAL REGISTER**

Our Association always encouraged our mariners to fully participate in Federal Advisory Committee meetings and to make their voices heard.<sup>(1)</sup> In the past, and most recently in the case of the last TSAC meeting held in

Pittsburgh, the **Federal Register** stated that the TSAC meetings were held on two days with öworking groupsö meeting on the first day. [<sup>(1)</sup>NMA Report #R-384, Rev.1 (2003).]

In contrast, however, the May 18, 2011 **Federal Register** notice<sup>(1)</sup> signed by the Acting Director of Commercial Regulations and Standards, showed the Memphis TSAC meeting as a one-day meeting on June 16, 2011. After notifying our entire membership of a one-day meeting and after making travel and hotel reservations, we discovered the working groups were meeting on June 15, 2011. [<sup>(1)</sup>76 FR 28798-99.]

Our Association points to numerous contributions of time and effort during the informal öworking groupö meetings on the öfirst dayö that preceded the formal TSAC meeting held on the second day. In fact, in the winter of 2000-2001 our Association spent over \$6,000 to attend öworking groupö meetings in Washington that hammered out the new towing officer licensing regulations and its companion NVIC-04-01. We also traveled to Houston, St. Louis, and other destinations to participate in öworking groupsö to work on other areas assigned to TSAC.

Members of our Association attended almost every working group meeting that has worked on updating, correcting, and revising NVIC 04-01 that is Agenda item 4.b. at today's Memphis meeting. We were never alone, but were joined by countless other members of the public who added their expertise and made valuable contributions.

We express our concern that this change in issuing the formal TSAC meeting notice may represent a new and unannounced Coast Guard policy to close TSAC deliberations to members of the public who traditionally contributed their time and expertise to serve on "working groups."ö

If we learn this is the case, we will lodge a formal protest with the Commandant and with Congress to question such a policy. We note that Section 621 of the Coast Guard Authorization Act of 2010 expanded representation of mariners on TSAC. In contrast, this notice appears to be contrary to this statement. We believe that öopen meetingsö rather than closed executive sessions best serve our mariners.

Our Association requested an allotted 5 minutes at the end of the June 16<sup>th</sup>. TSAC meeting to present items we

believed to be of interest to the TSAC committee. However, the time will be too short to cover the topics so, for the most part, this report will summarize our remarks to TSAC. An electronic copy will be provided to Docket #USCG-2011-0144.

## MONIES NOT WELL SPENT

June 9, 2011

Representative Jeffrey M. Landry  
Vice Chairman, Coast Guard and Maritime Transportation  
Subcommittee  
Room 206, Cannon House Office Building  
Washington, D.C. 20515

Via Fax to: (202)-226-3944

Subject: The Coast Guard's National Maritime Center: 6  
Monies NOT Well Spent

Dear Representative Landry,

Our Association, founded and headquartered in Houma, LA, acts on behalf of approximately 126,000 limited tonnage merchant mariners who hold various Coast Guard credentials. Our mariners, both officers and ratings, serve primarily in the offshore oil, towing, and small passenger vessel sectors of the marine industry.

The present budget crisis finally focused attention on wasteful programs such as those revealed by Chairman John Mica of the House Transportation and Infrastructure Committee in an article about TWIC we re-printed in our Newsletter #77. [Enclosure #1]

The TSA Transportation Worker Identification Credential originally was thought to improve security for both shoreside maritime workers and seagoing Coast Guard-licensed and documented personnel as well. It has proven very costly to maritime facilities and mariners alike. Our Association seriously questions whether these efforts significantly improve security of our vessels and ports. It is clearly very costly and generally believed to not effectively improve our nation's security. This seems more appropriately to be *monies not well spent*.

### Training & Credentialing

Until 1995, the Coast Guard played only a very limited role in training merchant mariners by examining them before issuing their credentials. Since the Coast Guard burst into the training picture in 1995, the cost of obtaining a typical limited tonnage license has risen from about \$1,000 to as much as \$78,100 to cite a quotation from Proceedings magazine:<sup>(1)</sup> "One company I found that in addition to sea time requirements, it had also had to send company deckhands through seven weeks of training classes. The cost to advance one deckhand to mate through the apprentice-mate system was costing ... about \$78,100." [<sup>(1)</sup> *Proceedings*, Fall 2008, p.43.]

These costs do not include the personal costs to individual mariners, lost income, and a great deal of personal frustration with highly complex and substantially unresponsive system. The Coast Guard has, from time to

time, increased resources in their licensing facilities in the hopes that this would eliminate delays but has often only increased delays. The problem relates to the Coast Guard methodology. They see themselves as gate keepers insuring that every mariner complies with the exact requirements of the STCW convention. In fact it is often said that the Coast Guard knows more about the STCW convention that they do about any form of commercial maritime transportation. While the Coast Guard should be charged to assist mariners to comply with convention requirements and establish equivalent mechanisms to achieve the desired results, such outcomes never seem to happen. The more resources the Coast Guard assigns, the more technical methods of denying an application they have the time to come up with. They clearly have too many resources now and have no apparent duty to facilitate anyone's problems with complex and sometimes ridiculous requirements. This seems to be *monies not well spent*.

During the 41 years I have been involved in mariner education and training, I compiled and edited a number of textbooks and logbooks to assist mariners in complying with laws and regulations. As an educator, I have seen many good changes take place since 1995. However, the Coast Guard is all about enforcing compliance rather than facilitating compliance for our mariners who make an honest attempt to advance in the industry. The entire military approach to regulating our civilian transportation workers simply does not work. One way to obtain the desired responsiveness from the maritime credentialing system is to reduce their resources and order the Coast Guard to facilitate mariners' problems. We encourage Congress to turn most of the Coast Guard's "Marine Safety" mission over to a civilian agency before it further alienates the industry's workforce by its incompetence. There are many mechanisms to repair the system, but virtually none that we are aware of include the Coast Guard's current management style and is an example of *monies not well spent*.

### Medical Overkill

Over the past several years, the Coast Guard misled its own advisory committees and imposed excessive medical oversight upon our working mariners. They created their standards out of whole cloth with no Congressional mandate, although they claim they have such through the STCW Convention. While Coast Guard officers can retire with a pension after 20 years of service, mariners who thought they had a career in the marine industry expect to work until retirement age when Social Security kicks in or until they can no longer physically answer the call. Our mariners were helpless as overzealous Coast Guard officials teamed with hired occupational health specialists to tighten medical standards far beyond reason. This caused hardships and needless medical expenses for older mariners while depriving employers of the talent and skills many employees developed over a lifetime of service in the industry. The medical barriers the Coast Guard erected coupled with its heavy-handed bureaucracy drove many mariners from the industry and discouraged others from pursuing a maritime career. Medical overkill is clearly *monies not well spent* and continuing the program will

further alienate and tend to diminish the workforce. We are losing many professional mariners because of these problems and replacing them with inexperienced hands if and when they are available.

### **The Coast Guard Marine Safety Mission**

Starting in Louisiana in 1970, I have seen the Coast Guard mismanage many aspects of its "Marine Safety mission." These shortcomings were accurately described by retired Vice Admiral James Card several years ago.<sup>(1)</sup> "Credentialing" mariners, as part of the "marine safety" mission has been a sore point from the outset, and, as a witness to this, I have held a limited-tonnage license since 1955. [<sup>(1)</sup>Refer to NMA Report #R-401-E.]

Our Association reported on these shortcomings to members of the 110<sup>th</sup> and 111<sup>th</sup> Congress.<sup>(1)</sup> and participated in several hearings before the Coast Guard and Maritime Transportation sub-committee. [<sup>(1)</sup>Refer to NMA Reports #R-428-D & #R-428-D, Rev. 1.]

In the past, the entire Coast Guard credentialing program was staffed by about 155 government employees. When the National Maritime Center moved from Arlington to Martinsburg, WV, the number of civilian and military employees **doubled** as they aggressively expanded upon new programs. Sweeping regulatory changes **disoriented and distressed many of our mariners** and destroyed any sense of continuity they may have had in the system. This is clearly **monies not well spent**.

### **What the Solution is NOT**

The Coast Guard seems unable and unwilling to spend American taxpayer dollars to rationally and reasonably regulate the maritime industry. They have acquired serious National Security and other military duties to perform. They have repeatedly demonstrated by their actions that a military organization should **not** regulate civilian commerce. Other regulatory options should be explored. Continued maritime industry regulation by the Coast Guard represents **monies not well spent**.

In closing, our Association points out that our mariners are civilian transport workers and are increasingly uncomfortable with the current management of most aspects of the Coast Guard's "Marine Safety" program. At present, for reasons we stated above and expanded upon in a more detailed report,<sup>(1)</sup> our Association can no longer advise candidates to seek a career in the towing sector of the marine industry. Not only do we no longer recommend careers in the maritime industry, the current regulation of the maritime by the Coast Guard represents taxpayer **monies not well spent**. Furthermore, the Coast Guard's continued marginalization of the views of our working mariners is poor public policy. [<sup>(1)</sup>Refer to NMA Report #R-276-D.]

Very truly yours,  
s/Richard A. Block, B.A., M.S. (Ed)  
Master #1186377, Issue #9  
Secretary, National Mariners Association

**COAST GUARD AUTHORIZATION ACT OF 2010**

**The Law's Importance to our Mariners**

Over the past twelve years the National Mariners Association initiated and submitted several dozen reports to Congress to keep oversight committees informed of problems that our limited-tonnage mariners face on a daily basis. Our mariners, who hold credentials and endorsements as both "officers" and "ratings" comprise more than one-half (about 126,000 of the approximately 210,000 merchant mariners) of all of this nation's merchant mariners and that does not count deckhands, cooks, and others that may not be required to hold Coast Guard and/or TSA credentials.

By "limited-tonnage" we generally speak of vessels of less than 1,600 gross register tons including **every** river towboats, **all** other towing vessels, **all** small passenger vessels, **most** workboats and charter boats, and **most** of the traditional offshore supply vessels. We speak to those issues our mariners appear to be most concerned with. These **issues** and **viewpoints** appeared in NMA **Report #R-350, Rev. 6** which we updated to reflect changes for the 112<sup>th</sup> Congress.

"Upper-level" mariners and seamen serve on "deep sea" merchant vessels and are effectively represented by four national labor unions that deal with issues that are **separate and distinct** from those of our "lower-level" (i.e., limited tonnage) mariners. Although we are an independent Association, we work closely with other mariner organizations like the Master of Towing Vessels Association (MTVA) and with those unions that represent other **limited tonnage** mariners to be sure that our interests are the congruent.

The Coast Guard Authorization Act of 2010 contained a number of changes that will affect our mariners. Here is our take on a number of the issues. We posted the entire 325 pages of the Act on our website.<sup>(1)</sup> In this article, we picked out the most significant points for our mariners' attention. [<sup>(1)</sup>Refer to NMA Report #-203-E, Rev. 1.]

### **Section 621 – Renewal of Advisory Committees. Changes to TSAC**

Our Association monitors, participates in, and encourages our mariners to attend and participate in these three Federal advisory committees:

The Towing Safety Advisory Committee (TSAC).

The Merchant Marine Personnel Advisory Committee (MERPAC), and

The National Offshore Safety Advisory Committee (NOSAC).<sup>(1)</sup>

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

It is hard for our mariners to justify the cost of attending meetings in Washington or other distant cities when mariner issues are shunted aside and seldom resolved in these Federal advisory committees. Limited tonnage mariners are a **majority** of all U.S. merchant mariners, and assert that without the benefit of their labor, there would be very little waterborne commerce. We often find Coast Guard officials at all levels **unresponsive** to important mariner issues involving our mariners.

International agreements clearly recognize maritime labor as an equal participant with management and government. This is hard to ascertain on several of the advisory committees, which appear to be little more than management forums. MERPAC has become a voice for upper-level and international interests involving STCW and largely ignores our mariners. However, our complaints about the Towing Safety Advisory Committee reached the point where we petitioned Congress for changes.<sup>(1)</sup> [<sup>(1)</sup>NMA Report #R-417, Rev. 1, and NMA Report #R-350, Rev. 5, Issue V.]

We also pointed out that some mariner representatives appointed to Federal advisory committees cannot attend every meeting because they serve aboard ship, are out of the country, or are unable to make arrangements for a timely relief and could not represent their constituencies. We suggest that the Coast Guard consider making special arrangements for working mariner members of an advisory committee to allow and encourage alternate delegates to represent them at all advisory committee meetings and to contribute to the work of those committees but not necessarily in a voting capacity.

We further noted that travel and per diem considerations were not uniform among Coast Guard advisory committees with some advisory committees having no arrangements for member travel and per diem. This is true in NOSAC and TSAC where the absence of travel and per diem funding in the past discriminated against mariner representation especially when meetings were held in distant cities.

Section 621 of the Coast Guard Authorization Act of 2010 changed (and increased) the representation of working mariners on this advisory committee as follows:

- One member representing holders of active licensed Masters or Pilots of towing vessels with experience on the Western Rivers and the Gulf Intracoastal Waterway.
- One member representing the holders of active licensed Masters of towing vessels in offshore service.
- One member representing Masters who are active ship-docking or harbor towing vessel.
- One member representing licensed or unlicensed towing vessel engineers with formal training and experience.

The foregoing changes are in line with our request to Congress made in our Association's reports.

**[NMA Comment: We note that the Coast Guard has ignored the training of engineers on towing vessels since 1972. We suggest that this needs to change.]**

#### Section 607 – Logbooks

The Act made important changes in maintaining a logbook on all inspected vessels including towing vessels. Section 607 of the Act added the following new requirement at 46 U.S. Code §11304:

#### 46 U.S. Code §11304. Additional Logbook and Entry Requirements

- (a) A vessel of the United States that is subject to inspection under section 3301 of this title, except a vessel on a voyage from a port in the United States to a port in Canada, shall have an official logbook, which

shall be kept available for review by the Secretary on request.

- (b) The logbook required by subsection (a) shall include the following entries:
- (1) The time when each seaman and each officer assumed or relieved the watch.

**[NMA Comment: Sign in when you go on watch and sign off at watch change. Towing officers are limited to 12 hours of work in any 24-hour period.]**

- (2) The number of hours in service to the vessels of each seaman and each officer.
- (3) An account of each accident, illness, and injury that occurs during each watch.

**[NMA Comment: Widespread failures to report personal injuries is a serious shortcoming NMA pointed out to Congress. Refer to 46 CFR §4.05-6.]**

**[NMA Comment: These new requirements apply to every inspected vessel – including towing vessels – to each officer, and each crewmember. The number of hours “on watch” and the “number of hours in service to the vessel” are not necessarily the same. The latter term corresponds to the Coast Guard’s definition of “work” in the policy letter prepared at our insistence in Sept. 2000. Refer to NMA Report #R-370, Rev. 3.]**

#### Section 611 – Protection Against Discrimination (i.e., Whistleblower Protection for Mariners)

In the past, if a mariner believed he was discriminated against (e.g., was fired, demoted or lost his job) for making a safety report to the Coast Guard or NTSB, it was pretty much his tough luck.

If, as a mariner, you believed that you had a duty to report an unsafe or illegal condition, you often not only risked your job but also put your entire career in the marine industry at risk. Not only did your employer not want to hear about it, in many cases neither did the Coast Guard. We related the full story in NMA Report #R-370-D, Rev. 6 and cited three legal precedents that ensured that complaints would be quashed.

Attorney Jeff Bloomfield, on behalf of the American Inland Mariners Association (AIM), brought the hopeless situation mariners faced in reporting unsafe or illegal conditions to the attention of the former House Merchant Marine and Fisheries Committee on Mar. 16, 1994.

One of the most important steps our new Association took in May 2000 was to speak on behalf of our mariners by submitting our Report #R-201, Mariners Speak Out on Violation of the 12-Hour Work Day to Admiral Paul Pluta, then Eighth District Commander and soon-to-be Assistant Commandant for Marine Safety (etc.). Although over 300 copies of this report were delivered to key Coast Guard personnel, the Coast Guard went out of its way to stonewall our report. To do so, they even assigned it to the National Offshore Safety Advisory Committee that attempted to kill our report. In the end, the Chairman of the NOSAC sub-committee resigned.

Admiral Pluta's complete lack of respect for our mariners was one of the most important factors that set the

stage for the decline of the entire Marine Safety Directorate for the next decade and ultimately led to the corrective actions and reorganization called for in the Coast Guard Authorization Act of 2010.

After dealing with RADM Pluta, we approached Congress with our problem. Unfortunately, an earlier, well-intentioned change to the existing law (i.e., 46 U.S. Code §2114) in 2004 did not obtain meaningful results for our mariners.

However, the Coast Guard Authorization Act of 2010 provides important changes that mean if a mariner does become a whistleblower for a valid reason, he/she will be accorded the same administrative treatment as all other workers in the transportation industry. Our Association never sought special treatment for our mariners; we only sought fair and equitable treatment that we believe we have within our grasp because future whistleblower disputes will be settled by the U.S. Department of Labor and not the Coast Guard.

Unfortunately, the wording the new statute follows is complicated – but start by reading it:

- (a) In General ó Section 2114 of title 46, United States Code, is amended ó
- (1) in subsection (a)(1)(A), by striking ; after the semicolon;
- (2) in subsection (a)(1)(B), by striking the period at the end and inserting a semicolon;
- (3) by adding at the end of subsection (a)(1) the following new subparagraphs:
- (C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;
- (D) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;

[NMA Comment: Note the requirement for a mariner to first notify or attempt to notify his/her employer.]

- (E) the seaman cooperated with a safety investigation by the Secretary or the National Transportation Safety Board;
- (F) the seaman furnished information to the Secretary, the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or
- (G) the seaman accurately reported hours of duty under this part, and

[NMA Comment: Connect this with the “logbook” requirement to accurately report your hours of duty.]

- (4) by amending subsection (b) to read as follows:
- (b) A seaman alleging discharge or discrimination in violation of subsection (a) of this section, or another person at the seaman’s request, may file a complaint with respect to such allegation in the same manner as a complaint may be filed under subsection (b) of section 31105 of title 49. Such complaint shall be subject to the procedures, requirements, and rights described in that

section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section.

[NMA Comment: We did our best to help our mariners understand these requirements by preparing NMA Report #-350. Rev. 5, “Issue L” (update) titled Improve Whistleblower Protection for Merchant Mariners. We currently have an important “test case” working its way through the U.S. Department of Labor.]

Although the report cited above still may be tough to follow, one of our mariners had recent experiences where the Department of Labor looked into his claims and obtained a settlement for lost wages after reporting serious health issues on a river towboat that the Coast Guard was just not interested in.

Over the past decade, our Association witnessed the frustration of mariners in reporting unsafe and possibly illegal activities to the Coast Guard. Consequently, our Association stepped forward and documented a number of cases and reported the results back to the Department of Homeland Security Inspector General’s Office where it attracted attention in their report on investigations in May 2008.<sup>(1)</sup> [<sup>(1)</sup> Refer to NMA Report #R-429-M].

#### Section 605 – Mariner Records

##### *(Your Employer Owes You a Sea Service Letter)*

The Coast Guard Authorization Act of 2010 should make it easier for a mariner to obtain his/her sea-service letter from an employer or former employer. Over the years, we wrote letters to a number of employers on behalf of our mariners asking for them to produce sea service letters that are essential for a mariner to advance in the maritime industry. Unfortunately, the existing law had a serious loophole that hurt some of our requests. We explained the problem and are pleased that this change responds to our requests.

The amendment states:

- Section 7502 of title 46, United States Code, is amended ó
- (1) by inserting :(a) before The;
- (2) by striking :computerized records and inserting :records, including electronic records,; and
- (3) by adding at the end the following:
- (b) The Secretary may prescribe regulations requiring a vessel owner or managing operator of a commercial vessel, or the employer of a seaman on that vessel, to maintain records of each individual engaged on the vessel subject to inspection under chapter 33 on matters of engagement, discharge, and service for not less than 5 years after the date of the completion of the service of that individual on the vessel. The regulations may require that a vessel owner, managing operator, or employer shall make these records available to the individual and the Coast Guard on request.
- (c) A person violating this section, or a regulation prescribed under this section, is liable to the United States Government for a civil penalty of not more than \$5,000.

The amendment has teeth. However, companies go out of business, people die, and stuff happens over time. The best course of action for all concerned is for each mariner to ask for his/her sea service letter as soon as you leave the employ of a company or individual. Don't let it drag out over weeks or even a month. Also, keep track of your own sea service in writing, and make all demands for your sea service letter in writing if you do not receive your sea service letter with your final paycheck from any employer!

#### **Section 606 – The “Long Loophole” Closes**

46 U.S. Code §8905(b) allowed a towing vessel operator to operate without a license if the vessel he was operating has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure. Senator Russell Long engineered this concession at the urging of the offshore oil industry in 1973. Although it was seldom used, its abuses became well known. The Coast Guard with the support of NOSAC, TSAC, and MERPAC (and NMA) petitioned Congress to remove this provision. Our Association supported the Coast Guard in this move following a serious accident by an unlicensed watchstander in the Gulf of Mexico.

#### **Section 811 – Seamen’s Shoreside Access**

Ever since 9/11 many mariners have faced problems getting to and from their assigned vessels. There were a number of horror stories for both American and foreign seamen. Father Sinclair Oubre and the Apostleship of the Sea in concert with major maritime labor unions urged the Coast Guard for years to remedy this situation. We are glad to see that Congress stepped in to forcefully prod the Coast Guard to act on behalf of merchant mariners.

Each facility security plan approved under section 70103(c) of title 46, United States Code, shall provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual

#### **Section 701 – Rulemakings**

##### **(Overdue Coast Guard Rulemaking Projects)**

While the Coast Guard concentrated on or was distracted by other things, their ability to successfully complete existing rulemaking projects has diminished. One of the best examples we know of is their fiasco in revising offshore oil regulation of 33 CFR Subchapter N that we discussed in our Letter to the President published in Newsletter #70, pgs. 3-7. But, that was not the only rulemaking that was lost in the Coast Guard's bureaucracy. There are close to 100 of them. It was reasonable for Congress to ask for a full status report.

Since the comment period ended several years ago, the Coast Guard maintained that it could not discuss the towing vessel inspection regulations Congress called for on Sept. 9, 2004. Rear Admiral Watson “promised” at a Congressional hearing that the proposed rules would be on the street over a year ago. In light of all the procrastination and behind-closed-doors maneuvering within the Coast Guard, Congress finally set its own

deadline as follows:

(c) Towing Vessels. No later than 90 days after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking regarding inspection requirements for towing vessels required under section 3306(j) of title 46, United States Code. The Secretary shall issue a final rule pursuant to that rulemaking no later than one year after the date of enactment of this Act.

We note that the Department of Homeland Security missed this deadline!

#### **Section 609 – Approval of Survival Craft (Keep Mariners and Passengers out of the Water)**

In NMA Report #R-354, Rev.4 we appealed to the 111<sup>th</sup>. Congress to require that future survival craft maintain survivors out of the water. This would eliminate life floats that expect survivors to hold onto a grab-line while their bodies are immersed in the water. Hypothermia reportedly occurs 25 times faster in water than in air of the same temperature.

The NTSB first recommended this change in 1985 following the PILGRIM BELLE accident but the Coast Guard ignored the recommendation. Our Association brought up the matter with RADM Robert North who, as Chief of Marine Safety (etc.), appeared more concerned about the expense to the boat owners than to the human beings who risked hypothermia and drowning while awaiting rescue holding on to a life float's grab-line in the water. We consider Admiral North's decision as one of the most ill-advised Marine Safety decisions of the past decade.

Here is the wording of the new law and is a victory not only for our mariners but also for passengers on smaller vessels that still are equipped with life-floats.

(a) In General. Chapter 31 of title 46, United States Code, is amended by adding at the end the following new section:

##### **§ 3104. Survival craft**

(a) Except as provided in subsection (b), the Secretary may not approve a survival craft as a safety device for purposes of this part, unless the craft ensures that no part of an individual is immersed in water.

(b) The Secretary may authorize a survival craft that does not provide protection described in subsection (a) to remain in service until not later than Jan. 1, 2015, if

- (1) it was approved by the Secretary before Jan. 1, 2010; and
- (2) it is in serviceable condition.

#### **Section 302 – Maritime Drug Law Enforcement Act Amendment-Simple Possession**

Not every person on a commercial vessel has a Coast Guard credential or is subject to Suspension and Revocation proceedings. This amendment considers those individuals who are found in a drug-free workplace.

Section 70506 of title 46, United States Code, is amended by adding at the end the following:

(c) Simple Possession.

(1) In General Any individual on a vessel subject to the

jurisdiction of the United States who is found by the Secretary, after notice and an opportunity for a hearing, to have knowingly or intentionally possessed a controlled substance within the meaning of the Controlled Substances Act (21 U.S.C. 812) shall be liable to the United States for a civil penalty of not to exceed \$5,000 for each violation. The Secretary shall notify the individual in writing of the amount of the civil penalty.

- (2) Determination of Amount ó In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.
- (3) Treatment of Civil Penalty Assessment. ó Assessment of a civil penalty under this subsection shall not be considered a conviction for purposes of State or Federal law but may be considered proof of possession if such a determination is relevant.

#### **Straightening out the Credentialing Mess**

The House Coast Guard and Maritime Transportation Committee held several hearings that dealt with the National Maritime Center (NMC) blunders in administering the ðcredentialingö program. The Coast Guard officials in charge of the program were held directly accountable by Congress for their mistakes. We were at the hearing in Washington. We saw it happen.

**[NMA Comment: Nothing in our memory has so completely alienated our mariners from the Coast Guard as the events that occurred at the National Maritime Center during and after its move to Martinsburg, WV. We especially cite the zealous enforcement of medical oversight by the medical staff at the NMC.]**

Our Association submitted two reports to Congressional oversight committees, #R-429-D to the 110<sup>th</sup> Congress and #R-429-D, Rev. 1 to the 111<sup>th</sup> Congress that described their intolerable treatment of our mariners. These reports were submitted to Congress as our Association's prepared testimony on July 9, 2009. Nor were individual mariners at all reticent in speaking with countless Senators and Representatives during this period.

#### **Section 613 – Oaths**

Previously, a mariner had to take an oath ðbefore a designated official.ö Traveling long distances to appear before the ðdesignated officialö proved to be a problem with the new business practices adopted in credentialing mariners. Your signature on your application reflects a more modern approach as does a substantial penalty for making a false statement to a federal agent.

#### **Section 614 – Duration of Credentials**

A ðcredentialö (formerly known as license, MMD, z-card, or certificate of registry) is supposed to be valid for 5 full years. Although it may be issued up to 8 months in advance of expiration, it will not be effective until the existing credential expires.

The new law still uses the older terminology. Nevertheless, the Coast Guard ðgot the messageö and began to apply this change during the past year or so ó but you had to ask them to do so specifically and well in advance of issuance.

#### **Section 615 – Extending the Duration of Credentials**

Although the Coast Guard's credentialing problems were evident well before the arrival of Hurricane Katrina on Aug. 29, 2005, the loss of REC New Orleans with its records and work in progress brought about a backlog of work that took years to clear. Section 614 will allow the (DHS) Secretary to extend for not more than one year an expiring credential to eliminate a backlog in processing such as occurred in 2008-09 or in response to a national emergency or natural disaster. Such an extension may be granted to individual seamen or to a specifically identified group of seamen.

#### **Section 616 – Merchant Mariner Assistance Report**

Here is the wording of the section: .

ðNot later than 180 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report regarding the feasibility of ó

- (1) expanding the streamlined evaluation process program that was affiliated with the Houston Regional Examination Center of the Coast Guard to all processing centers of the Coast Guard nationwide;

**[NMA Comment: Congress believed that REC Houston had done an exemplary job. Unfortunately, the Coast Guard failed to move those responsible to posts at the National Maritime Center in Martinsburg, WV.]**

- (2) including proposals to simplify the application process for a license as an officer, staff officer, or operator and for a merchant mariner's document to help eliminate errors by merchant mariners when completing the application form (CG6719B), including instructions attached to the application form and a modified application form for renewals with questions pertaining only to the period of time since the previous application;

**[NMA Comment: The Coast Guard dragged our mariners through the coals in the name of "security" since 9/11. Since the application process has become even more convoluted, there is still much work left to accomplish.]**

- (3) providing notice to an applicant of the status of the pending application, including a process to allow the applicant to check on the status of the application by electronic means; and

**[NMA Comment: Considerable progress was made to assist applicants "on-line."]**

- (4) ensuring that all information collected with respect to

applications for new or renewed licenses, merchant mariner documents, and certificates of registry is retained in a secure electronic format.

**[NMA Comment: NMA Report #R-401-B describes how Coast Guard dunces screwed up the NMC computer system in the 1990s. After Katrina, the NMC relied very heavily on their computers but also appears to have become more competent. However, the Coast Guard often dumps its burden to our mariners,. Remember to keep back-up copies paperwork that deals with your credentials.]**

### Section 617 – Offshore Supply Vessels

The tonnage limits on Offshore Supply Vessels (OSV) were removed. The limit previously was 500 Gross Tons. Over the years, OSVs have grown in size to the point where first 3,000 Tons (ITC) and later 6,000 Tons (ITC) were no longer sufficient to cover many specialized vessels that now must be used to perform oilfield related tasks in deepwater in the Gulf of Mexico or around the world.

Company officials from Edison Chouest Offshore made a very strong case for raising or removing the tonnage limit several years ago at a NOSAC meeting in Galveston in an argument that we supported. At that time, they were building an offshore supply vessel that would exceed 6,000 tons (ITC) ó then the upper limit. Now that limit has been removed.

We refer mariners who serve or plan to serve on large OSVs in excess of 3,000 gross tons (ITC) to a number of licensing and manning issues for these vessels that are contained on pages 173 ó 180 of the legislation.<sup>(1)</sup> Please bring any problems you may have with existing, interim, or final Coast Guard regulations (when issued) to our attention. [<sup>(1)</sup>Refer to NMA Report #R-203-E, Rev. 1.]

### Section 608 – Termination of Unsafe Operation

An individual authorized to enforce Title 46 U.S. Code may remove a vessel's Certificate of Inspection (COI) from a vessel that does not comply with provisions of the certificate and order the vessel back to its moorings. He may order the person in charge to take reasonable steps necessary for the safety of individuals on board if a hazardous condition exists.

## SUSPENSION AND REVOCATION OF MERCHANT MARINER CREDENTIALS

The Coast Guard has two separate and distinct systems in enforcing laws and regulations on individual mariners and upon corporate offenders.

Since our Association was founded, a number of our mariners were subjected to Suspension and Revocation (S&R) proceedings brought by Coast Guard Investigating Officers and using Coast Guard Administrative Law Judges (ALJ). The intent of S&R proceedings is supposed to be remedial rather than punitive in nature. The violations do not result in ócivil penaltiesö that call for monetary fines, nor are they criminal in nature.

A large proportion of Administrative Law cases

involve violation of drug and alcohol regulations. While our Association supports all DOT and Coast Guard drug and alcohol regulations, we have serious concerns that the rights of a number of our mariners were violated by excesses within the current S&R program.

The matter was brought to the attention of Congress in the summer of 2007 by front-page articles in the Baltimore Sun and cases in which mariners sued the Commandant, Chief Administrative Law Judge and others in Federal District Court in New Orleans.

Directors of our Association attended many hearings before ALJs in the past dozen years. We brought many of the shortcomings of the system to the attention of Members of Congress, the Department of Homeland Security's Inspector General, and the Coast Guard Judge Advocate General and suggested solutions in NMA Report #R-204 ó The Coast Guard óInjusticeö Manual.

In 22 chapters, we revealed many of the problems that our mariners have encountered within the ALJ system.

In a number of cases, Coast Guard prosecutors have ruined the careers of our mariners and forced them to also lose their homes and possessions. There is nothing óremedialö about this type of activity and little consideration for the cost to individual mariners or even the cost to taxpayers. Our Association's report stands as a stark warning to every working mariner that the slightest misstep by any mariner may be punished ruthlessly. Another lesson is that once caught up in the ALJ system, you may never be able to get your life back on track ó and we have the cases to prove it.

While a number of important changes have been made, we believe there is much work that remains to be done before mariners can have any assurance that their case will be handled fairly by Coast Guard Investigating Officers. Coast Guard óInvestigationsö ó part of the Marine Safety Directorate ó has experienced serious problems as reported by the Inspector General.<sup>(1)</sup> These problems are longstanding problems as shown in two government reports<sup>(2)</sup> dating back about fifteen years. [<sup>(1)</sup>NMA Report #R-429-. <sup>(2)</sup>NMA Reports #R-429-A & #R-429-B.]

## RAISING THE BAR ON LICENSE EXAMS

The Coast Guard, ignoring the reality that limited tonnage mariners are a majority of all credentialed mariners and that most of them are óhawsepipersö ó many with limited formal education ó attempts to re-make the industry by simply raising the bar without consideration of the resources available to our mariners. While some employers step up to the plate and train their own employees sufficiently to serve their corporate interests, others are unwilling to invest in their personnel since they remain as only óemployees at willö and are free to seek employment elsewhere at any time and for any reason.

Instead of facilitating the path to bring mariners into the industry, the Coast Guard simply demand compliance and rigid adherence to new regulations enforced by individuals without any experience serving in the industry. For example, on July 6, 2010, the NMC removed the entire examination Q&A database of 25,000 questions from the internet without any stated reason for doing so.



Although our Association immediately wrote a letter<sup>(1)</sup> protesting Captain Stalfort's decision as Commanding Officer of the National Maritime Center, we **never received a response** from him or his successor, Captain Lloyd. Consequently, we filed a formal appeal the Director of Prevention Policy<sup>(2)</sup> on Nov. 23, 2010 including a copy of a letter signed by RADM A. Bruce Beran, former Coast Guard Chief of Staff,<sup>(3)</sup> granting FOIA Appeal 85-10 and making all exam questions available to me and shortly thereafter to the public. After waiting a suitable time, we wrote a letter to Commandant Papp<sup>(4)</sup> soliciting his assistance. The fact that **none** of the foregoing correspondence ever was answered reinforces our belief previously expressed to Congress that the Coast Guard is **unresponsive** to the merchant mariners it superintends and **cannot be trusted to honor written decisions on appeal.** [<sup>(1)</sup>July 8, 2010. <sup>(2)</sup>Nov. 23, 2010. <sup>(3)</sup>July 18, 1988, letter #5720.7/FOIA Appeal 85-10. <sup>(4)</sup>Feb. 22, 2011.]

Our Association informed our mariners of the Coast Guard's actions in NMA Report #R-428-J, titled **Lack of Transparency: Closing the Coast Guard Exam Question Database to the Public** and was assured by CDR Patrick W. Clark (CG-5222) that "...I have directed my staff to post your Association's Report #R-428-J to the TSAC and NOSAC online databases, thereby assuring the report's availability to the public." [<sup>(1)</sup>Aug 25, 2010.]

Our original FOIA requests dating back to 1983 pointed out that the Federal Aviation Administration (FAA) which, like the Coast Guard at the time, was part of the U.S. Department of Transportation, published all its exam questions and answers. It took us five years to get a straight answer, but we were satisfied when the Coast Guard's Chief of Staff notified us that the questions were released to the public in 1988.

Shortly thereafter, the Coast Guard put the questions and answers into print in the "Yellow Books" that were sold through the U.S. Government Printing Office. Finally the Coast Guard mastered its own computer system and put the questions and answers on the internet - all of which was unilaterally cancelled last July.

Unfortunately, the Coast Guard's National Maritime Center failed to learn the lessons of History learned by their predecessors, namely:

- Answer letters from the public. That is just as true of all Coast Guard officers as it is for any government employee. There are others above you in your chain of command and still more in Congress.
- The Appeals process, although reconstructed many times and quite recently, is broken. Our Association has the interests of 126,000 "limited tonnage" mariners at heart - every one of them a taxpaying American citizen. All we asked for was a straight and timely answer. Since it has not been forthcoming, we will move ahead.
- It's time to trim the Coast Guard's bloated and unresponsive bureaucracy.

**Bureaucracy Wrecked the Coast Guard Merchant Marine Licensing and Documentation Computer System.**

The NMC may have moved into the computer age, but they and the entire "Marine Safety" directorate need to learn these lessons of History, namely:

- Answer letters from the public. If you don't, remember

that there are others above you in your chain of command and still more in Congress.

- The Appeals process, although reconstructed many times and quite recently, is broken.<sup>(1)</sup> Our Association has the interests of 126,000 "limited tonnage" mariners at heart - every one of them a taxpaying American citizen. All we asked for was a straight answer. [<sup>(1)</sup>Refer to NMA Report #R-436, Rev. 3.]
- It is time to trim a bloated and unresponsive bureaucracy. Denying mariners access to the Coast Guard's Exam Q&A database set back mariners who prepare to take credentialing exams back over 20 years. Here is what our mariners can look forward to:
  - No help from all members of the public to detect incorrect answers including inaccurate solutions to problems before you encounter the question on an examination - and possibly failing the exam. By commenting on or reporting these errors, members of the public have full access to available reference materials. In contrast, mariners who encounter a bad question on an exam have no "references" available to make their case and only a "Protest" form to hurriedly try to make your case before you leave the exam room.
  - Exam **re-takes** are expensive and time consuming for mariners - and the burden in time, expense, and frustration falls completely on the mariner.
  - Although the NMC has increased the size of its database, they still have bad questions, incorrect answers, ambiguous question stems and incorrect solutions.
  - Members of the public have serviced the database since 1988. The National Association of Maritime Educators (NAME) alone reported 1,500 deficient questions between 1988 and 1999 of which approximately 750 had to be revised or withdrawn. Others educators also provided exemplary services in correcting and updating the database at no cost to the government - and apparently with no appreciation for their contributions.
  - Members of the public help to bring new questions to the database.
  - It costs money to develop and maintain the database. For example, it cost the Coast Guard \$141,000 under contract to develop questions used to qualify officers on drilling rigs. Yet, the Coast Guard requires schools to develop questions to examine its candidates with and can adopt these questions for their own use without going to the trouble and expense of **researching and developing** these questions. The fact that many schools may use "genuine" Coast Guard database questions only point out the fact that the existing Coast Guard database is used as a "standard."
  - The "topics" on Coast Guard exams come from a list of topics in 46 CFR §11.910-2 (deck) and §11.950 (engine). Each topic is expressed in only a few words with no further descriptive material. However, examinations are given by "module" combining an unknown grouping of topics. The only "explanation" for this is contained in the "Deck Guide" or "Engine Guide" that lists a module number and the total number of questions in each module. Wading through this material alone on the internet is incomprehensible and largely useless to mariners doing "home study" without the questions that they actually will be tested on.

- In the past, we found that the Coast Guard spent little effort updating the database for changes in regulations.

## END REGULATION BY UNENFORCEABLE NVICS

The Coast Guard has a well-established rulemaking procedure described in 33 CFR Subpart 1.05 (Rulemaking) in which it encourages the public to participate in the process. The rulemaking process as outlined is straightforward but has become overly involved and technical. It involves establishing a rulemaking docket, often an Advance Notice of Proposed Rulemaking, always a Notice of Proposed Rulemaking (NPRM), Interim Rules, and Final Rules.

Outside of established rulemaking process lies a separate process utilizing Navigation and Vessel Inspection Circulars (NVIC). NVICs provide detailed guidance about the enforcement or compliance with a certain Federal Marine Safety Regulations and Coast Guard Marine Safety programs. NVIC's are used internally by the Coast Guard to ensure that inspections and other regulatory actions conducted by their field personnel are adequate, complete and consistent. Likewise, Mariners, the marine industry and the general public use NVIC's as means of determining how the Coast Guard will enforce certain regulations or conducting various marine safety programs.

However, in viewing NVIC 04-08 known as the "Medical NVIC," the Coast Guard carefully avoided the formal rulemaking process to slip in a detailed list of 202 possibly disqualifying medical conditions and mercilessly enforced them upon our mariners attempting to renew their credentials causing great expense, hardship and disruption both for mariners and employers.

All of this leads to a conclusion that the Marine Safety Directorate no longer appears to be the master of its own rulemaking process. It covers up its failure in achieving consensus in promulgating regulations in a number of areas by simply issuing a NVIC to take the place of regulations.

In a recent TSAC meeting, we were told that there were changes afoot with NVICs by Ms. Medina but were never provided with amplifying information. We believe that we are entitled to learn in which direction the Coast Guard is moving with NVICs!

As regards meaningful safety and health regulations, sometimes the Coast Guard avoided regulating a major segment of the offshore industry by bottling up a Notice of Proposed Rulemaking "in house" for twelve years.

A good example of this is Docket #USCG-1998-2868, Outer Continental Shelf (OCS) Activities. This docket was of concern to our Association because at least 250 towing vessels and over 1,000 offshore supply vessels work on the OCS. In particular, 33 CFR Part 142 proposed workplace safety and health measures and Part 146 explained its application to "vessels."

This rulemaking project was on the NOSAC agenda for 10 years. The Coast Guard Project Officer had vast experience in the offshore mineral and oil industry and he consulted with other government agencies including OSHA in producing the NPRM published in the Federal

Register of Dec. 7, 1999. Apparently the drilling industry did not like the rulemaking and manipulated Coast Guard officials into doing virtually nothing to move this matter toward its final rule stage in spite of tremendous expense in terms of time and talent. At each NOSAC meeting for ten years, participants were told of the lack of progress of this rulemaking project. Finally, the experienced Project Manager retired from the Coast Guard with no action being taken on his project that filled 89 pages of the Federal Register. How does the Coast Guard account for this massive waste of time and talent? This represents monies not well spent. We believe that Congress must hold Coast Guard officials accountable.

There appears to be a close parallel between the Coast Guard's "inaction" and the failures recently exposed in the former Mineral Management Service. Unfortunately, nobody ever mentioned this parallel as an example of regulatory avoidance both by the industry and the Coast Guard. However, the Coast Guard has failed in many ways to effectively regulate the marine industry and this failure falls at the feet of the Coast Guard Marine Safety Directorate (CG-5).

Our Association mentions OSHA because the Occupational Safety and Health Act of 1970 (OSH Act) ensures safe and healthful working condition for workers in all industries. The Coast Guard Marine Safety Directorate had control over making this safe and healthful working environment occur in the marine industry. While OSHA promulgated all sorts of federal regulations to bring regulate landside industry, the Coast Guard generated NVICs, which cannot be enforced, in place of regulations that are enforceable. Consequently, the maritime industry was spared the expense and inconvenience of complying with meaningful safety and health regulations since 1970 because the Coast Guard promulgated no OSHA-like regulations. The absence of enforceable health and safety regulations in Docket #USCG-1998-2868 directly impacts our mariners who work offshore.

In addition, the Coast Guard uses an unenforceable NVIC supposedly to protect our mariners' hearing. In fact it provides no protection whatsoever as described in detail in NMA Report #R-349. Our mariners are justifiably angry and upset - especially those mariners whose hearing is impaired and must purchase hearing aids to renew their credentials.

In addition, the Coast Guard uses an unenforceable NVIC supposedly to protect our mariners from asbestos. It, too, provides no real protection as described in NMA Report #R-445. Coast Guard inspectors would not even investigate a formal complaint one of our Directors reported on an inspected vessel.

In the towing industry, many of the approximately 17,000 dry cargo barges worked by our mariners are never inspected by OSHA until after an injury or death occurs. This is discussed in detail in NMA Report #R-426, Rev. 1, titled, Report to Congress: Challenges Facing the Coast Guard's Marine Safety Program - Effectively Regulating the Towing Industry. OSHA remains responsible for "uninspected" vessels like these barges but will not act unless it is notified of these injuries and is provided landside access to the barges. The Coast Guard's method

of reporting personal injuries (on barges and elsewhere) is not effectively enforced and injured mariners are thrown to the wolves as often as not.<sup>(1)</sup> [1]Refer to NMA Reports #R-429-I, and #R-202, Rev. 4.]

At this TSAC meeting, it is timely to mention NVIC 04-01 that "supplemented" the Licensing rulemaking effective May 21, 2002. Although long hours spent by "working groups" and TSAC committee members did much of the work on the original document, Coast Guard input after the working group finished made a number of changes.

From the outset, it was clear that several features of NVIC 04-01 did not work as intended. Changes became necessary and the working groups were called in. Important changes were discussed at great length over an extended period of 4 or 5 years and in many meetings. At this meeting, the final changes should be complete. ***However, some of these changes should have been made years ago – but were not done.*** Now the committee's work product "which are only "recommendations" " will be turned over to ***someone*** in the Coast Guard for consideration. Who in the constantly changing bureaucracy will review and accept or reject the changes? Who in the Coast Guard is even qualified to do so through a background in the towing industry or, after attending ***all*** the working group meetings, is even qualified to do so? How will the changes be implemented and who will be responsible for seeing they are put into force? In the end, it is all only a NVIC and is "not enforceable" although it is quite clear that terms of the original document still affect our mariners as if they were part and parcel of the original regulations.

#### TELLING IT LIKE IT IS DURING HIGH WATER ON THE WESTERN RIVERS

***[Source: By Captain John R. Sutton, in a Letter to the Editor of The Waterways Journal. Captain Sutton is the past President of the American Inland Mariners Association (AIM) that represented well over 300 inland and western river towing vessel pilots during the mid- to late-1990s. Please send your comments directly to Captain John R Sutton, [captainjrs@hotmail.com](mailto:captainjrs@hotmail.com)]***

June 5, 2011

**RE: May 23, 2011 Waterways Journal Issue  
"Licensing Regime: Ten Years Later"**

Dear Mr. Shoulberg,,

I write to you in response to two statements of the American Waterways Operators (AWO), Senior Vice President -Government Affairs, Mrs. Jennifer Carpenter.

I would like to foremost state clearly that I have no axe to grind with Mrs. Carpenter. I just simply have a different perspective on what I believe is the true state of the inland towing industry.

I first met Jennifer in 1994 when I was asked by Rep. Billy Tauzin (LA) to testify before a Congressional Subcommittee on Towing Vessel Safety in the wake of the Sunset Limited train accident in Bayou Canot, near Mobile, AL. I acknowledge Jennifer has been front and center on the Master Towing Vessel licensing changes

from day one as one of the AWO's point persons.

First, in the (May 23) WWJ issue Mrs. Carpenter is quoted as stating, ***"...On the other hand, during the recent unprecedented flooding, there have been relatively few reports of accidents, loose barges and bridge allisions..."***

I respectfully disagree with Mrs. Carpenter's assessment of the industry's safety record. The towing industry has had plenty of reportable marine incidents to go around during this epic historic flood event. The inland towing industry has experienced significant bridge allisions with contact to bridges at Thebes, IL, Memphis, TN, Vicksburg, MS, Natchez, MS and just recently two back-to-back events at Baton Rouge, LA on two extremely large horsepower vessels. This is just a short list of the major events on the waterways I was working on during the past 60 days.

It shouldn't go without mentioning that the Vicksburg event turned out to be quite significant and resulted in dangerous erosion on the base of Mississippi pier of the Interstate-20 highway bridge causing the State(s) of Louisiana and Mississippi Department(s) of Transportation to undertake emergency repairs by dumping thousands of tons of rock along the base of the bridge pier to shore up and stabilize the bridge pier. As for loose barges, there have been plenty of those to go around as well. In fact, I have knowledge of several events that went unreported to the Coast Guard in the Baton Rouge " New Orleans corridor.

I believe the real reason we haven't actually seen more accidents, barge breakaways, collisions and allisions in the inland waterways is because we have witnessed the United States Coast Guard step up its Marine Safety vigilance with the implementation of its proactive Western Rivers Waterways Action Plans adopted in the wake of the extreme 1997 flood event. Action Plans that have been vetted and flushed out by the Coast Guard in conjunction with industry after each flood event since 1997.

If it were not for these "Action Plans" and the mandatory reduction of tow sizes for towing vessels thereby increasing the horsepower to barge ratio, it is my opinion the towing industry lacks the depth of experience in its licensed mariners today to have "safely" coped with a flooding event of this magnitude. It is clearly the increased horsepower to barge ratios, unprecedented in this industry, and never enforced by the Coast Guard prior to the 1997 flood event that has averted disaster in the inland towing industry.

Secondly, Mrs. Carpenter is quoted as stating, ***"...Despite the flaws and problems, we have a better-trained, more qualified work force on the rivers than we have ever had, said Carpenter..."***

Again, I have to respectfully disagree with Mrs. Carpenter. While we clearly have a more regimented Coast Guard licensing process in place in our industry as the result of their implementation of the Master of Towing Vessel license in 2001, we are no closer to improving the competence levels of new Mate/Pilot Towing Vessel officers based solely on the licensing changes and/or new training requirements implemented as a result of those licensing changes. The young "Apprentice" and Mate/Pilots merely have a new set of hoops to jump

through to attain there credentials.

While Mrs. Carpenter's statement may represent her opinion and possibly the AWO's official public position on the state of the towing industry, however, it is my opinion the young cub pilots in the inland sector of the towing industry today are just outright scary to meet. Experienced pilots like myself frequently find themselves having to navigate both vessels so to speak by giving young cub pilots explicit instructions on where to and where not to meet and at exact locations for fear of what these young pilots will do next. I don't know about my fellow towboaters, but I find it challenging enough to navigate my own vessel in these extreme water conditions without having to navigate two vessels.

If you were to wave a magic wand and turn off all the electronic charts on the towboats today (particularly those towboats of the liquid sector) there would likely be an outright epidemic of collisions and allisions in our nation's inland waterways. The young cub pilots of today rely too heavily on electronic charts for information that is all too often suspect at best and frequently just outright wrong. So much so, the young pilots have just simply failed to learn that portion of the pilot's skills that we more-seasoned individuals learned as young pilots 30-40 years ago as a matter of routine. Most young pilots today are not even focusing on learning navigation reference points and navigation lights because it is all too easy to glance at the electronic chart for this information.

Furthermore, the towing industry in general, as well as AWO member companies that call themselves "Responsible Carriers" still continue to send un-posted and inexperienced pilots to new routes without due regard for the consequences of their business decisions, in spite of the Coast Guard's repeated urging of towing companies to man their vessels with their most experienced mariners during extreme water conditions both high and low water.

Just two days ago I overheard a pilot onboard an AWO member company vessel state that he was "lost" never been through here before and shortly thereafter that same pilot asked an up-bound vessel if he would be flanking Forty-Eight Mile Point.

For those WWJ readers that don't understand the significance of this statement, flanking is a pilot maneuver performed only while down-bound. It is this type of business decision on the part of towing company owners and managers that truly jeopardizes maritime safety and challenges the rest of the towing industry's pilots to safely navigate the inland waterways.

It is just an opinion, and I fear if I continue to write this letter will turn into a "Dennis Miller"-like rant, so I will close by saying, I feel confident my fellow experienced licensed towboaters will sound off validating my perspective on this matter.

Respectfully,

s/Captain John R Sutton

USCG Licensed Master Mariner (8<sup>th</sup> Issue)

- Master Great Lakes and Inland Any Gross Tons
- Master of Towing Vessels, Great Lakes, Inland and Western Rivers
- First Class Pilot, Mississippi River
- Radar Observer (Unlimited)

**[NMA Comment: Refer to NMA Report #R-340, Rev. 9. (2008) NMA Report to Congress: Safety Problems With Oversize and Overloaded Tows.]**

E-Mail June 10, 2011:

I just witnessed a boat run over dikes above Memphis because he was following a past track on the e-chart. There was 12 feet (of water) over the dikes. I could not have been that lucky. When I pointed out what he had done the pilot stopped for the rest of the night. The combo of lost pilots and e-charts is a disaster in the making. The location was at "Randolph Bluff," the vessel was "Miss Sarah" and the time was approx. 0100.

**THE BRIDGING PROGRAM**

The "Bridging" program successfully resurrected the Commercial Towing Vessel Examination Program (CTVEP) of the 1990's - a program that Headquarters failed to adequately fund in the past. This clearly was a failure of leadership on the part of the Coast Guard.

This program represents a real attempt to enforce existing regulations on towing vessels in many areas. All of the efforts expended on the "Bridging" program are making up for lost time - years in which standard vessels continued to put their crews (and others) at risk.

Congress had reason to be upset and on Sept. 9, 2004 added towing vessels to the list of inspected vessels. Our Association fully supported this action and, in fact, had urged TSAC to support inspection in every meeting since 2001.

Clearly, Congress had had enough! On March 23, 2005, Rep. James Oberstar<sup>(1)</sup> stated in a letter to Admiral Collins that, "Since 1992, towing vessels were involved in more than 607 sinkings, 593 floodings, 494 fires, 115 capsizings, 41 explosions and 103 abandonments." [<sup>(1)</sup>Docket #USCG-2004-19977-127]

We want to point out that - with some exceptions - that sinkings, floodings, explosions, and fires generally take place "below decks" and often in the engine room or machinery spaces. The benign neglect the Coast Guard has demonstrated to training and qualifying engineers needs to be addressed in the future.

**DENUNCIATION OF STCW FOR DOMESTIC VOYAGES**

In closing, our Association points out that our mariners serving on towing vessels are civilian transport workers and are increasingly uncomfortable with the current "military" management of most aspects of the Coast Guard's "Marine Safety" program. Most towing vessel officers do not work on international voyages and resent the imposition of STCW requirements in domestic operations since they never were asked to participate in these sweeping international changes made in 1993-95. Article XV of STCW allows for Denunciation of the agreement after a 5 year period. That time has passed. As stated at a previous TSAC meeting, we believe this should be considered for all U.S. flag vessels in domestic service.