



NMA REPORT #R-436, Revision 3

DATE: March 5, 2009

Compiled & Edited by Capt. Richard A. Block

[Formerly Gulf Coast Mariners Association, Founded in 1999.]

124 NORTH VAN AVENUE

Houma, LA 70363-5895

Phone: (985) 851-2134

Fax: (985) 879-3911

www.nationalmariners.org

[Publication History: Original report, Nov. 8, 2006; Rev. 1 6 July 3, 2007; Revision 2 6 January 11, 2009]

THE COAST GUARD APPEALS PROCESS

WHICH "APPEAL" REGULATIONS SHOULD OUR MARINERS BE AWARE OF?

What Is An Appeal?

The appeal process is a standardized process used to protest ANY decision made by the Coast Guard that you do not agree with. It is a written process that requires you to submit a letter at each step. These letters must be submitted within strict time deadlines. For example, one mariner we know failed to submit a timely appeal of a decision. He was two weeks late for reasons that were as easy to explain, as they were to understand. The appeal was denied for the sole reason that it was not timely, and it cost him approximately \$10,000.

Mariners are expected to know or at least be aware of this process even though it never has been the subject of any questions we know of on any lower-level license exam.

Each mariner should understand that Title 46, Code of Federal Regulations, provides a process to appeal any Coast Guard decision you are not satisfied with. Unfortunately, the process calls for everything to be done in writing 6 which causes many of our lower-level mariners considerable discomfort.

[NMA Comment: If you are not familiar with Coast Guard regulations, refer to our Report #R-223., Revision 3. Understanding and Using Federal Regulations – The Federal Register/CFR System. 10p.]

Since your appeal must be in writing, the decision you are appealing also should be available in writing. If it is not, ask the Coast Guard employee, whether in uniform or a civilian, who makes a decision you disagree with, to render his/her decision in writing. If that person refuses, you should get his/her name or at least be able to identify the person by time, place, circumstance, description of his/her physical features and what exactly he or she told you. Each Coast Guard employee, including contract employees, should have a nametag and should display it openly. If the decision is rendered over the phone, you MUST recall the name of the person you spoke with. Decisions may be big or small, but they must be important enough to you to go through the effort of appealing.

To Understand the Appeal Process, Start By Reading these Regulations

46 CFR, Part 1, Subpart 1.03 – Rights of Appeal

§1.03-10 Definition of terms used in this subpart.

§1.03-15 General.

§1.03-20 Appeals from decisions or actions of an OCMI.

§1.03-25 Appeals from decisions or actions of a District Commander.

§1.03-30 Appeals from decisions or actions of the Marine Safety Center.

§1.03-35 Appeals from decisions or actions of a recognized classification society acting on behalf of the Coast Guard.

§1.03-45 Appeals from decisions or actions of the National Maritime Center.

§1.03-50 Appeals from decisions or actions of the Director, Great Lakes Pilotage.

Subpart 1.03 – Rights of Appeal

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Public Law 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 1070; §1.01–35 also issued under the authority of 44 U.S.C. 3507.

§1.03-10...Definition of terms used in this subpart.

- (a) The term *recognized classification society* means the American Bureau of Shipping or other classification society recognized by the Commandant.
- (b) The term *new vessel* means:
 - (1) For vessels which require a Certificate of Inspection, a new vessel is a vessel which has not received an initial Certificate of Inspection.
 - (2) For vessels which do not require a Certificate of Inspection, a new vessel is a vessel which has not received a Load Line assignment.
- (c) The term *existing vessel* means a vessel which is not a new vessel.

§1.03-15 General.

- a) Any person directly affected by a decision or action taken under this chapter or under chapter III of this title, by or on behalf of the Coast Guard, except for matters covered by subpart J of part 5 of this chapter dealing with suspension-and-revocation hearings, shall follow the procedures contained in this section when requesting that the decision or action be reviewed, set aside, or revised.
- (b) When requesting that a decision or action be reconsidered or reviewed, as may be required by this subpart, ***such request must be made within 30 days*** after the decision is rendered or the action is taken.
- (c) When making a formal appeal of a decision or action, as permitted by this subpart, such appeal must be submitted in writing and received by the authority to whom the appeal is required to be made within 30 days after the decision or action being appealed, or within 30 days after the last administrative action required by this subpart. Upon written request and for good cause, the 30 day time limit may be extended by the authority to whom the appeal is required to be made.
- (d) A formal appeal must contain a description of the decision or action being appealed and the appellant's reason(s) why the decision or action should be set aside or revised.
- (e) When considering an appeal, the Commandant or a District Commander may ***stay*** the effect of a decision or action being appealed pending determination of the appeal.
- (f) While a request for reconsideration or review or a formal appeal is pending, ***the original decision or action remains in effect, unless otherwise stayed*** under paragraph (e) of this section.
- (g) The Commandant may delegate authority to act on administrative appeals under this subpart to the Assistant Commandant for Marine Safety and Environmental Protection, and appropriate office chiefs within Marine Safety and Environmental Protection.
- (h) Formal appeals made to the Commandant shall be ***addressed*** to:
 - (1) Commandant (CG-543) for appeals involving vessel inspection issues, load line issues, and vessel manning issues;
 - (2) Commandant (CG-52) for appeals involving vessel plan review or tonnage measurement issues;
 - (3) Commandant (CG654) for all appeals involving suspension or withdrawal of course approvals, all marine personnel issues ***appealed from the National Maritime Center*** or from an OCMI through a District Commander, and all appeals regarding the documentation of a vessel under part 67 or part 68 of this title. All appeals regarding the documentation of a vessel under part 67 or part 68 of this title must be addressed to Commandant (CG654d), Coast Guard Headquarters, 2100 Second St., SW, Washington, DC 20593, and a copy of each such appeal must be sent to the National Vessel Documentation Center, 792 T J Jackson Drive; Falling Waters, WV 25419;
 - (4) Commandant (CG6521), for appeals involving the recognition of a classification society; or
 - (5) Commandant (CG-5) for appeals involving decisions or actions of the Director, Great Lakes Pilotage.
- (i) Failure to submit a formal appeal in accordance with the procedures and time limits contained in this subpart results in the decision or action becoming final agency action.
- (j) Any decision made by the Commandant, or by the Assistant Commandant for Marine Safety and Environmental Protection, or by an office chief pursuant to authority delegated by the Commandant is final agency action on the appeal. [CGD 88-033, 54 FR 50376, Dec. 6, 1989, as amended by CGD

§1.03-20 Appeals from decisions or actions of an OCMI.

Any person directly affected by a decision or action of an OCMI may, after requesting reconsideration of the decision or action by the cognizant OCMI, make a formal appeal of that decision or action, via the office of the cognizant OCMI, to the District Commander of the district in which the office of the cognizant OCMI is located, or in the case of the Officer in Charge, Activities Europe, to the Atlantic Area Commander, in accordance with the procedures contained in §1.03615 of this subpart.
[USCG-2006-24520, 71 FR 35818, June 22, 2006]

[NMA Comment: Most appeals from a decision by the OCMI deal with questions involving vessel inspections

or personnel investigations.]

§1.03-25 Appeals from decisions or actions of a District Commander.

Any person directly affected by a decision or action of a District Commander made pursuant to §1.03620 of this subpart, may make a formal appeal of that decision or action, via the office of the cognizant District Commander, to the Commandant, in accordance with the procedures contained in §1.03615 of this subpart.

§1.03-30...Appeals from decisions or actions of the Marine Safety Center.

(a) Any person directly affected by a decision or action of the Marine Safety Center involving tonnage measurement or which otherwise affects a new vessel or plans for a vessel to be built may, after requesting reconsideration of the decision or action by the Commanding Officer, Marine Safety Center, make a formal appeal, of that decision or action, via the Commanding Officer, Marine Safety Center, to the Commandant, in accordance with the procedures contained in §1.03615 of this subpart.

(b) Any person directly affected by a decision or action of the Marine Safety Center not involving tonnage measurement but which otherwise affects an existing vessel, prior to initiating a formal appeal, must request review of that decision or action by the cognizant OCMI. Following review by the cognizant OCMI, the decision or action under review may be appealed to the District Commander, in accordance with the procedures contained in §1.03620 of this subpart.

[CGD 97-057, 62 FR 51040, Sept. 30, 1997, as amended by USCG-1998-4442, 63 FR 52188, Sept. 30, 1998]

§1.03-35 Appeals from decisions or actions of a recognized classification society acting on behalf of the Coast Guard.

(a) Any person directly affected by a decision or action of a recognized classification society performing plan review, tonnage measurement, or load line assignment on behalf of the Coast Guard may, after requesting reconsideration of the decision or action by the classification society, make a formal appeal, via the classification society headquarters, to the Commandant, in accordance with the procedures contained in §1.03615 of this subpart.

(b) Any person directly affected by a decision or action of a recognized classification society acting as a marine inspector, as defined in §30.10643 of this chapter, on behalf of the Coast Guard, prior to initiating a formal appeal, must request review of that decision or action by the cognizant OCMI. Following review by the cognizant OCMI, the decision or action under review may be appealed to the District Commander, in accordance with the procedures contained in §1.03620 of this subpart.

[CGD 88-033, 54 FR 50376, Dec. 6, 1989, as amended by CGD 97-057, 62 FR 51041, Sept. 30, 1997]

§1.03-40 Appeals from decisions or actions of the National Maritime Center.

Any person directly affected by a decision or action of an officer or employee of the National Maritime Center (NMC) involving any of the marine safety functions listed in §1.01615(c) of this subpart may, after requesting reconsideration of the decision or action by the NMC, make a formal appeal of that decision or action, via the NMC, to the Director of Prevention Policy, Commandant (CG654), in accordance with the procedures contained in §1.03615 of this subpart. The decision of the Director of Prevention Policy, Commandant (CG654), on such an appeal will constitute final agency action.

[USCG-2006-25535, 71 FR 48482, Aug. 21, 2006. Re-designated by USCG-2006-25535, 72 FR 7930, Feb. 22, 2007; USCG-2008-0906, 73 FR 56507, Sept. 29, 2008]

[NMA Comment: Most appeals from a decision by the National Maritime Center (NMC) involve merchant mariner credentials. All such appeals must follow the path outlined in this regulation. The appeal goes from the NMC to a “headquarters” office (CG-5434) that controls the “policy” of the mariner credentialing program. They try to straighten up NMC screw-ups that reach the “appeal” stage. Their role is described in Proceedings of the Marine Safety Council, Fall 2008, pgs 102-103 – www.uscg.mil/proceedings.]

§1.03-45 Appeals from decisions or actions involving documentation of vessels.

Any person directly affected by a decision or action of an officer or employee of the Coast Guard acting on or in regard to the documentation of a vessel under part 67 or part 68 of this title, may make a formal appeal of that decision or action to the Director of Prevention Policy, Commandant (CG654), in accordance with the procedures contained in §1.03615 of this subpart. The decision of the Director of Prevention Policy, Commandant (CG654), on such an appeal will constitute final agency action.

[USCG-2006-25535, 72 FR 7930, Feb. 22, 2007, as amended by USCG-2008-0906, 73 FR 56507, Sept. 29, 2008]

§1.03-50 Appeals from decisions or actions of the Director, Great Lakes Pilotage.

Any person directly affected by a decision or action of the Director, Great Lakes Pilotage, may make a formal appeal of that decision or action to Commandant (CG-5), in accordance with the procedures contained in §1.03615 of this subpart.

[USCG 2003–15137, 68 FR 37093, June 23, 2003, as amended by USCG–2008–0906, 73 FR 56507, Sept. 29, 2008]

APPEALS FROM THE NATIONAL MARITIME CENTER

Mariner credentials (i.e., licenses and merchant mariner documents, commonly called Z-cards) are handled by the National Maritime Center (NMC) in Martinsburg, West Virginia. Mariners must apply for these credentials at one of 17 Regional Exam Centers (REC), fill them out completely, and have them checked over by the REC that will forward them to the NMC.

Not all mariners agree with decisions made by either the REC or the NMC. However, you may ask the REC or the NMC to *reconsider* their ruling. You can do this over the phone or in writing. We suggest that you do it in writing, thereby *creating a paper trail* that can be followed if need be. Unfortunately, many of these transactions are extremely complex and have not always been handled well in the past.⁽¹⁾ Be sure to save copies of all correspondence and be sure to take down the name, day, and time of any government employee you may speak with. [⁽¹⁾ Refer to our Report #R-428-D, *Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services.*]

On some issues, you may find that even the NMC is unable to issue a final ruling and that may only be done higher up the chain of command. These questions usually involve policy issues or issues that may not only affect you but other mariners as well. The following article, *edited* from the Fall 2008 issue of *Proceedings Magazine* describes this appeal process.

CG-5434 – The Mariner Credentialing Program Policy Division.

By Lt. Thomas Pequinot, U.S. Coast Guard Mariner Credentialing Program Policy Division

Months after the National Maritime Center (NMC) closed its doors in Arlington, Va., [and moved to Martinsburg, West Virginia, CDR Scott Budka gets off the Metro at L'Enfant Plaza and takes the daily 10-minute shuttle ride to the Transpoint building in Washington, D.C., home of Coast Guard headquarters. CDR Budka just recently transferred to the mariner credentialing program policy division from his previous job at the office of investigations and analysis, where he was the suspension and revocation and administrative clemency program manager.

After scanning his ID badge through the usual headquarters security corral and navigating through the maze of elevators and corridors, he finds his temporary office space in the back of a cubicle farm of new and overflow HQ staff. Looking at the faded blue carpet and the reused cubicle furniture, one could think, *“What happened to the plush office with a view above the Ballston Mall?”*

CAPT David Kranking, the former division chief explains, “Separating program policy from NMC’s process of evaluating mariner applications is just the right thing to do. NMC’s challenge is to complete the realignment of the 17 Regional Examination Centers (RECs) under its control, and establish efficiencies and consistency in the processes of providing credentialing services to merchant mariners. The program policy division will support this objective by providing the regulatory and policy/guidance tools. This separation will help ensure industry’s needs are met.”

With NMC divesting itself of the policy responsibilities and moving them to the mariner credentialing program policy division, headquarters personnel can focus anew on these important policies.

Policy Functions

While the decision to establish the policy division at Headquarters came later in the Restructuring and Centralization project planning (approved in April 2007), it seemed like a natural evolution.

In fact, this is not the first time the policy function has called Coast Guard Headquarters “home.” Approximately a year after being created as a separate command in Arlington, the NMC inherited the policy responsibilities from HQ in 1996. This was an effort to consolidate policy and program management all under one house. However, the fact that issuing policy remained a Headquarters function contributed to inconsistencies within the program and difficulties in publishing needed guidance. It was decided a decade later that the mariner licensing and documentation (MLD) program would benefit if the policy function did not follow the NMC as it continued to move westward to West Virginia.

In addition, having the policy division at Headquarters helps maintain the integrity of the appeal process. The former appeals system had local officer in charge, marine inspections decisions reviewed by the district commander, and then by NMC, which took final agency action. With NMC focused on the process, and under centralized operations making decisions on mariner applications, it had to have its **final agency action authority**⁽¹⁾ removed. That authority now resides with the director of prevention policy, for whom the mariner credentialing program policy division works. [⁽¹⁾ **Definition: Final Agency Action** = *The Coast Guard's final decision. If you don't like it, hire a lawyer and sue them in court.*]

Under the Director of Prevention Policy (CG-54)⁽¹⁾ are several offices, including the office of vessel activities (CG-543). The mariner credentialing program policy division (CG-5434) is one of four divisions within the office; the others manage vessel inspections and fishing vessel safety. CG-5434 develops program policy and overall management for the MLD program. [⁽¹⁾ *The Coast Guard constantly reorganizes itself. They now number various offices within their organization. This does avoid the necessity of memorizing long and confusing office and job descriptions. It also means you need a master phone list that connects the number with the job title and the building and room where the office is located. This is typical of the Federal bureaucracy.*]

This overarching mission incorporates several functions, such as:

- Reviewing NMC's performance in the areas of customer satisfaction, process cycle time, security, efficiency, and consistency.
- Playing an active role in the review committee that oversees STCW compliance at the maritime academies through quality standards system audits.
- Making revisions to the major rewrite of the Marine Safety Manual, Volume III (Marine Industry Personnel).
- Serving as one of the key Coast Guard representatives for maritime training institutions, maritime unions, and other organizations.

For more information [about a decision that has moved beyond the "reconsideration" level at the National Maritime Center to the formal "Appeal" level at Coast Guard Headquarters, contact: the] **Mariner Credentialing Program, Policy Division, USCG Headquarters, 2100 2nd Street SW, Room 5213, Washington, DC 20593-0001. Telephone (202) 372-1207.**

- Commenting on a variety of issues associated with mariner security, including the transportation worker identification credential (TWIC).

Upcoming Initiatives

Moving forward in its inaugural year at HQ, the mariner credentialing program policy division will be taking on several high-profile issues, including managing regulatory updates and establishing the merchant mariner medical advisory committee (MMMAC). The most noteworthy of the regulatory initiatives is ensuring U.S. licensing compliance with STCW and implementation of the combined merchant mariner credential (MMC). The combined MMC will benefit the mariner by reducing the number of credentials mandated by U.S. regulation, merging them into a single identification and qualifications credential.

The mariner credentialing program policy division will also be facilitating TWIC implementation and the integration of the application and data exchange processes between the Coast Guard and the Transportation Security Administration. This will allow mariners to conduct MMC transactions through the mail.

IS THE APPEALS PROCESS SATISFACTORY?

The answer to this question is a matter of opinion. Here is ours:

Our Association prepared dozens of appeals on numerous situations for our mariners – including appeals on mariner credentials. Frankly, we are very upset that our "success rate" has been quite poor in spite of many excellent arguments our mariners have put forth over the years. Nevertheless, this has not and will not keep us from putting forth the effort, maintaining a record of our appeals, and working to eventually free the merchant marine from the heavy-handed, insensitive control of a military organization and return it to civilian control of experienced merchant marine officers. Until that time arrives, we urge our mariners to continue to appeal unworkable decisions. **However, do not waste your time, our time, or the Coast Guard's time in frivolous arguments.** Do not allow spelling, grammar, the form of the address deter you from expressing your thoughts in the body of a letter. Do not let the unfamiliarity of the process daunt you, either. If you are **NMA mariner** and need help in picking your way through this opaque BS, give us a call.

Once you accurately state your arguments in writing, they can be distributed to interested parties outside the Coast Guard's chain-of-command including other mariners, editors of trade publications, newspapers, and your Congressional Representative or Senators. You will find the latest revision of our Report # R-422 on How to Contact Congressmen on Maritime Issues a useful resource when taking this final step.

Dealing With the Coast Guard

The U.S. Coast Guard tries to be an efficient, well-run organization patterned after the U.S. Navy. They have evolved a personnel management system that maximizes the career development of individuals within their organization. Military systems require rank and file loyalty both up and down the chain of command. How this all works out in an organization that is charged with regulating civilian endeavors seems to be less than desirable at least from the prospective of being among the “regulated public.” Regulated public applies to both individuals and corporate entities.

One example might be the operation of the appeal process. This is a legal system within law and regulation that allows an individual or organization that believes that the Coast Guard has wrongfully interpreted the law or regulation to seek reversal or modification of some requirement from an individual superior to the aggrieving party and in the direct chain of command. The idea is that the offended individual appeal to the superior officer who in theory takes a completely impartial position and researches afresh all issues before him/her and rules with no bias, prejudice, or prejudgment.

Where the System Fails

This process no longer works in maritime matters that are before the U.S. Coast Guard.

The Coast Guard has allowed the appeal process to become a shadow of what it once was. This is the result of a number of factors, not least of which is the Coast Guard military rank and file system wherein everyone within the chain of command supports both those above and those below. It often takes something very unusual or untoward to get a superior to overturn a ruling of a subordinate. This is, of course, despite the ideal that any appeal should be treated fairly and judged only on its own merit.

In today's Coast Guard; promotion as well as system and personal loyalty mean everything. Officer OERs (i.e., “fitness reports”) are generally submitted semi-annually. Within the system, each individual is counseled by his or her superior. This is done with the core belief that an average performer can be turned into an outstanding performer if he or she is simply advised how to do so by his or her superior. To not support one's subordinates would be a breach of faith. It could also reflect back on the superior officer as a failure of the superior to effectively lead or motivate the subordinate.

In general terms, the Coast Guard is very unlikely to ever acknowledge that one of their own erred because that would be potentially career ending and would have to be reflected somehow in his/her fitness report. Certainly it would at minimum be a black mark. The Coast Guard did not invent this system; it is used by military organizations around the world and clearly leads to a more cohesive and focused military force.

The problem with this is that it does not work well within the civilian regulatory environment. While this is true of many things military, in this case we are only addressing the appeal process.

Since the Coast Guard views itself as charged to protect U.S. waters and citizens from vessels and maritime operators, it is quite easy for them to rationalize that they are simply doing their job and protecting their constituency (the general public and not the maritime or regulated public) anytime they deny an appeal. Unfortunately, the Coast Guard does not seem to acknowledge they have any duty to the maritime public that they regulate.

In today's environment many within the business community strongly recommend against appealing any Coast Guard decision. Business executives from trade associations, to corporate presidents can revisit the issue by schmoozing with superior officers or politic up and down the line, but formal appeals simply do not work and affirmations of appeals are statistically inconsequential.

Of course, individual mariners and most mom-and-pop boat owners simply do not have these opportunities to influence Coast Guard policy. Senior Coast Guard officers have become so self-important that they shunt all the “small fry” to their subordinates. For example, how many individual mariners have been able to appeal the manning on a Certificate of Inspection on a vessel by whose crew is worked beyond the limit of endurance by appealing directly to the local Officer-in-Charge Marine Inspection?

It would seem that anytime a strong well organized military organization regulates civilians, the most likely outcome is some form of tyranny. Is that what we have today? Certainly, as regards our mariners, we say, "yes, it is!"

IS THE USCG APPEAL PROCESS FOR MARINERS A SHAM AND A FRAUD

By Capt. Richard A. Block

Introduction to the Appeal Process

This part of the report is based on my personal experiences over a number of years as well as the experience of a number of mariners I have worked with. The opinions expressed here are my own.

On the surface, the appeal process seems simple enough, and is one that every mariner needs to become familiar with. "Appeal" covers any decision regarding any Coast Guard action you disagree with for any reason and follows a specific "chain of command" until it reaches the level of "final agency action." If you disagree with the "final agency action," then and only then you can pursue redress by taking the matter to court if you have the money, patience, and enough money to pay a good lawyer to bring your case into Federal court. It is distressing that a number of our mariners found themselves "trapped" within the Coast Guard's Administrative Law system and cannot break free of it. The Coast Guard changes the appeal process from time to time. We recently experienced a number of changes as shown in the italicized dates in the regulations cited above.

All the numbers in italics in the regulations (above) show how often the appeal process has changed since 1989 and when and where each change appeared in the Federal Register. Until it went on line in the mid-1990s, most working mariners had no access to the Federal Register except at a number of federal depository libraries.

How Should I Appeal a Decision?

If you are an individual mariner or a small boat owner, you really do not have much choice. You should always appeal any Coast Guard decision that you simply cannot live with. To do so, you must collect your thoughts, your evidence including pictures if available, and put your arguments in writing.

Each Coast Guard office tries to be scrupulously correct in telling the mariner who to send his/her appeal to in each case, or in other words, who that office is "passing the buck" to in their chain of command.

However, as a mariner, you will be stuck with the original decision until it is overturned by higher authority. You may be "stuck" with the decision for many months until the review process runs its course and must adjust your life or your operations accordingly no matter how painful or costly that may be.

The regulations at 46 CFR §1.03-15 state that formal appeals made to the Commandant shall be addressed to the Commandant followed by letters such as (CG-543), (CG-52), (CG-54), (CG-521) and (CG-5). These are routing symbols that will direct your appeal to the correct office at Coast Guard Headquarters. These symbols change whenever the Coast Guard "re-organizes" their offices at Headquarters. Use the right symbol from the latest version of the regulations to keep your appeal from getting lost in the shuffle. The time and aggravation that you save will be your own because nobody will act upon your appeal if it shows up in the wrong office.

Why is the Appeal Process a "Sham"?

A "sham" (def.) is something that is not what it purports to be. It is a cover-up or the like for giving a thing a different outward appearance. It is a false show of something.

For our lower-level mariners, an appeal may be a false outward show of fairness that gives the appearance that a complaint, whatever it is will be treated fairly. A great many lower-level mariners are concerned that submitting an appeal will go into their record and cause the Coast Guard or their employers to blacklist them. Most mariners have no access to these mysterious personnel records that often produce unexpected surprises at renewal time.

There are probably hundreds of appeals made each year. So why is the process a "sham" as it affects our lower-level mariners?

First, the appeal process is a written process. As Secretary of the National Mariners Association, I know first-hand how difficult it is to have our mariners write anything. The vast majority of our lower-level/limited tonnage mariners, our "appellants," are practical seamen and are not college graduates. Most write very few business letters, compositions, or narratives of any sort in their world of work or in their personal lives. For many, it is an extremely difficult task to organize their thoughts into a logical sequence, use the correct grammar and punctuation, to select the correct words and phrases that must undergo the scrutiny of a gauntlet of Coast Guard officers or civilian employees who are college graduate and schooled in political correctness. Most mariners, who believe they have a good argument, after trying the telephone to no avail, will simply "back off" and accept the inevitable. The Coast Guard willingly accepts your surrender. It reinforces their position that they are right!

Many lower-level mariners are incapable of preparing any written response including accurately addressing the letter and are left out of the appeal process entirely unless someone helps them compose and submit their letter. This is one reason that the Coast Guard needs to institute an **Ombudsman** process at each and every Regional Exam Center that would be available to every mariner who has trouble working his way through the "certification"

process and the appeal process. These mariners often have no place to turn when the Coast Guard's increasingly cavalier and insensitive merchant marine personnel system discards them with the attitude or spoken words to the effect: "if you don't like it, then appeal it!" This is why the system is a sham.

The Coast Guard's own (and largely forgotten) Newman Report that closely examined lower-level mariners in the Gulf Coast area in 1972 clearly documents the low educational attainment level of the mariners in this area. Low educational attainment explains why many mariners fail to successfully grapple with a 40-page application book that contains all the forms necessary to complete just about any personnel action the Coast Guard can contemplate. The size and complexity of the paperwork blizzard overwhelms many mariners and, according to an article in the Waterways Journal, leads to a majority of applications being rejected for one reason or another. The initial rejection is often accompanied by an extended turn-around time of up to sixteen weeks that is totally unacceptable.

The 1973 Newman Report, although a truthful and forthright report by a senior active-duty Coast Guard Captain, could not be located by personnel at Coast Guard Headquarters within a decade after it was written. Fortunately, I preserved my copy of the report published it on our website as NMA Report # R-428-A, Maritime Education and Training for Lower-Level Mariners: The Newman Report. The Coast Guard largely ignored the report since the early 1980s when the Eighth District Commander declared that the region's educational attainment problems were in the past. That ridiculous comment reminds me of the story of when Governor Spottswood, one of Virginia's colonial Lieutenant Governors, reportedly climbed the Blue Ridge Mountains, looked out toward the west, and saw the Pacific Ocean. Much of what the Coast Guard sees and then translates in mismanaging merchant marine personnel has been about as well informed as the observations of Governor Spottswood.

The Coast Guard ignored the report just like they continue to ignore the problems brought forward by lower-level mariners in the principal federal advisory committees set up to deal with them as well as throughout the Coast Guard. The Coast Guard has its head firmly planted in the sand as regards lower-level mariners, but its butt sticks so far in the air that it invites a good, swift kick into reality.

Thirty (30) days is a long period for any of our mariners to put his life on hold, especially if the decision he awaits also affects a job opening, a pay raise, or the future of his paycheck itself. However, the same 30 days is nothing in the life of a government office worker (military or civilian) and often seems as an unreasonably short response time for that drone to turn around a written response to some unknown mariner, have the response approved by a superior, and put into the mail – although e-mail can speed up the process to some extent.

There is no guarantee that any of the pundits at any level of the Coast Guard chain of command has any experience comparable to the appellant. Few on active duty in the Coast Guard have ever worked on small commercial vessels like tugs, towboats, OSVs, small passenger vessels etc. While many are academy graduates, their experience in the Coast Guard may not really be comparable to commercial experience. Few administrative job openings in the government, especially at the national level, could be filled by most lower-level mariners judging by the way that job openings are announced to the public.

I Will Contact My Congressman!

Many mariners, overwhelmed by a succession of rejections from the Coast Guard after they traveling up the chain of command, seek assistance from their elected officials. Unfortunately, they face tough going on Capitol Hill because the Coast Guard appeals process is ruthlessly efficient in quashing attempts to obtain a fresh review of a problem. The Coast Guard coordinates its appeal system so completely by funneling all Congressional inquiries through a Coast Guard liaison officer. This officer summarizes all of the steps the appeal has passed through, regurgitates the high points of the intermediate steps, and words the agency's final reply in such a manner as to kill the inquiry. There is no fresh review.

We watched this happen on a number of occasions, the latest being from an appeal to a U.S. Senator. We accompanied the mariner throughout the review process visiting the Coast Guard office at District Level as well as going to the office of the mariner's Senator. The Senator's office forwarded the appeal to Washington only to receive this reply:

Dear xxx

I am enclosing a copy of a letter, which I have received from the U.S. Department of Homeland Security. I believe you will find it to be self-explanatory.

It was a pleasure for me to try to be helpful to you in this matter, and if I can be of assistance in any other appropriate way, please let me know. Sincerely,

xxxx, United States Senator.

The letter was "self-explanatory." It reiterated the denial of the mariner's appeal of outrageous conduct from the

Regional Examination Center through all levels of command. The Coast Guard's letter added nothing new. **However, it succeeded in severing the link between the mariner and his elected official.** It was obvious that the Coast Guard was determined to prevail and that the Senator found it easier to "crank out the paperwork" than to seriously confront the underlying issues.

Of the entire roster of Members of Congress, we understand that only one Member holds a lower-level mariner's license and that Member appears to have forsaken the interests and concerns of his fellow mariners during his years in Congress.

At the Towing Safety Advisory Committee meeting in St. Louis in October 2006, in response to a probing question by Captain Bill Beacom, not a single Coast Guard appointee to the TSAC committee present at the meeting admitted to being a "working mariner" and have proven to be unwilling to pay attention to issues brought forward by lower-level mariners.

Why I Believe the Appeal Process a "Fraud"

On a personal level, I have had occasion to make a number of appeals to the Coast Guard. I will mention only two of them that affected a number of lower-level mariners. I have filed more recent appeals for individual mariners that I addressed in our Report #R-428-D, Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services

Appeal on License Exam Questions

On July 18, **1988**, I received a letter answering an appeal to a decision to withhold the questions and answers from the Coast Guard's exam question databank for merchant marine licensing examinations from RADM A. Bruce Buran, Coast Guard Chief of Staff.

In granting my appeal, his letter begins, "This is a response to your letter of April 19, 1988" — precisely three months earlier. I don't quibble with three months. However, my April letter was only the last of many appeal letters stretching back seven years on this issue.

At the time of the appeal, this was a "hot" issue with hundreds of mariners who had been screwed by faulty questions or answers on various licensing examinations. Mariners had no access to the Coast Guard's bank of questions and answers that went into making up their license or MMD exam. At the same time, the Federal Aviation Administration, an agency of the U.S. Department of Transportation (just like the Coast Guard at the time) published the exam questions and answers for commercial airplane pilots. Why was the policy different for agencies within the same government department? Why were our mariners singled out for unfair treatment? We asked and fully expected a prompt answer — and waited, and waited.

Were the Coast Guard questions on examinations given to members of the public correct and were they appropriate for the exam they were selected to become a part of? If you were a mariner, you never knew until you went to the exam room, took the exam, failed it, and then went through a final administrative hurdle of submitting a written protest that was only valid if submitted before you walked out of the exam room.

I drafted the "appeal" on behalf of the National Association of Maritime Educators (NAME) informally representing many maritime training schools. After the questions were released and published, NAME alone questioned 1,500 exam questions and obtained changes and corrections to at least 750 of them. However, the process took seven years of perseverance and patience while the exam process ground on for all of our mariners without the public ever being permitted a view into the workings of the system. This is how the appeal system delays and defers judgment on important questions and runs interference for the Coast Guard. They hope we will tire of waiting and simply go away.

Appeal on Behalf of Western Rivers Pilots

I drafted another "appeal" on behalf of the American Inland Mariners Association (AIM) representing a number of western rivers mariners who questioned the 1996 Eighth Coast Guard District ruling that made every single pilot endorsement on the Mississippi River system above Baton Rouge meaningless. Hundreds of western rivers towboat pilots spent a great deal of their time, effort, and hard-earned money to sit for various time-consuming "pilotage" examinations to enhance their licenses and their employment credentials. These endorsements were used to enhance mariners' personal qualifications in a tight job market and to prove to the Coast Guard, to prospective employers, and fellow river pilots that they were more than just minimally qualified "towboat operators." It was a manifestation of their pride, their training, and their interest in their job and the continuation of a tradition over a hundred years old.

Suddenly, the Coast Guard changed the regulations. I suspected that the Regional Exam Centers simply grew weary of tying up their inexperienced staff grading license exams they really knew very little about because most of them had never worked on the river. They combed through the regulations and found where such licenses were not

“unnecessary” and simply eliminated the process. All this took was a couple of sharp Coast Guard officers, a project officer, and a District Commander who couldn’t care less and knew little about the qualifications required for a river mariner to gain proficiency in the trade. He flushed a hundred years of western rivers tradition and the hard work of hundreds of conscientious mariners down the drain. We proposed alternatives, but Admirals Pluta and North as District Commanders and then Assistant Commandants for Marine Safety, Security, and Environmental Protection did not want to consider them.

The mariners with pilotage endorsements were allowed to continue to show the pilotage on their licenses, but those endorsements no longer had any meaning. The RECs were able to better utilize their clerk-flunkies in processing an increasing backlog of other licenses, and the Coast Guard slipped out from beneath a burden that might have required that they hire qualified, experienced mariners who were familiar with the river to grade pilot exams.

Our appeal sought to determine exactly who made the unwise decision to eliminate the pilotage and on what basis they made that decision. In spring 2006 I received a call from Coast Guard Headquarters asking if I was still interested in proceeding with the appeal. Of course I was. Several months later I received three heavily redacted pages out of about the dozen I requested that successfully covered up the persons responsible for the whole decision-making process and the thought that went into that decision.

Several years earlier, despairing of the appeals process, I confronted RADM Robert North, the Eighth District Commander in 1996 and then serving as Assistant Commandant for Marine Safety, Security, and Environmental Protection in a direct question before a Towing Safety Advisory Committee meeting at Coast Guard Headquarters. In his reply, he shifted responsibility for this action (that I described as above) to his junior officers. If nothing else, the appeals process provided a cover and a seven year cushion of time and anonymity for the Coast Guard to continue with “business as usual.” Both of the junior officers in question, his former Chief of Staff and his project officer retired to cushy jobs in the marine industry.

As for the river pilots, there was no formal protest. Those who complained privately were told by other mariners as well as by company officials, “Well, see, you never needed the pilotage endorsement anyway.” Their time, effort, time spent in learning the river so well that they could “draw it from scratch” was wasted and then derided. The most experienced mariners were made to look like fools in comparison to others who only had done the minimum the Coast Guard required of them. Today, industry has pushed through a “Fast-Track” program that further reduces the time it takes for a mariner to qualify as a pilot. This further emphasizes that the Coast Guard knows very little about the rivers they are supposed to regulate, and in fact, that they have no real knowledge of how to regulate the towing industry.

The virtual “demotion” of our most experienced river pilots played an unspoken role in the Pilots Agree strike of 1998 that almost shut down the river industry. It became part of the overwhelming dissatisfaction and malaise that grips the industry today – except that it is no longer just the river industry. Very few lower-level mariners recommend work on the water to their friends or their relatives for this and many other reasons. The Coast Guard’s cavalier treatment of merchant marine personnel in their Regional Examination Centers and in handling their appeals on a number of issues plays a large role in this story.

It appears that the entire appeal system is bogged down. Years ago, I was told that the second of my appeals, the one regarding western river pilotage, was #103 on their list. If this is a correct assessment, the Coast Guard needs to ask Congress for the funds and personnel to clear the backlog – or let the world know the appeal system has become a maze with no exit point.