



National Mariners Association

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Asserting our right "...to petition the Government for redress of grievances."
Amendment 1, U.S. Constitution, Dec. 15, 1791

June 13, 2018

Admiral Karl L. Shultz
Commandant
U. S. Coast Guard Headquarters
2703 Martin Luther King, Jr. Ave. SE
Washington, DC 20593-7000

Subject: Manning, Fatigue and Official Logbook Issues Are Not Adequately Addressed

Dear Admiral Shultz,

I am Captain Joseph Dady, a United States Merchant Mariner, licensed by your agency, with forty-two years of experience serving on uninspected towing vessels.

As President of the National Mariners Association, I served on the Coast Guard's Towing Safety Advisory Committee (TSAC) for eight years. I have been a staunch advocate for *safety* in the towing industry throughout my career. With the support of the National Mariners Association and several labor unions, I actively engaged Congress and the USCG to solve problems within the USCG's Regional Exam Centers that were failing to adequately process Merchant Mariners' credentials. Those activities lead to the formation of the National Maritime Center and the modernization of the licensing process. My endeavors eventually lead me to a chair on the TSAC where I attended meetings and did my utmost to represent the interests of over 30,000 limited-tonnage merchant mariners serving on towing vessels. During my tenure I worked with others to try and include manning and fatigue in the new Subchapter M regulations. Unfortunately, our efforts ultimately did not prevail.

I wish to cite the NTSB investigation report describing the fatal Tug "**Specialist**" accident (NTSB/MAB-17/14) that occurred on March 16, 2016 and was released in March 2018 and listed as major probable causes both **inadequate manning and fatigue**.⁽¹⁾

This report should bring attention to *shortcomings* in the new 46 CFR Subchapter M regulations promulgated in 2011 and how these regulations, either by omission or oversight, failed to protect the crew of the "**Specialist**" as it predictably will continue to fail other towing vessel crew members in the future. If we in the towing industry are expected to be true to a continually-improving Safety Management System (SMS), then, in the interest of safety, it is high time to address all of the contributing factors as well as regulatory shortcomings that contributed to this accident.

We must go back over more than a decade during the development of Subchapter M to identify regulatory shortcomings and understand how they came about.

Major accidents and/or loss of life within the towing industry prior to 2004 led the 108th Congress to mandate the physical inspection of towing vessels of over 26 ft. in length in section 415 of the Coast Guard and Maritime Transportation Act of 2004.⁽²⁾ However many of Subchapter M's shortcomings are rooted in the wording of the statute where the word "MAY" was used instead of the word "SHALL."⁽³⁾

The U.S. Coast Guard and its towing industry partner, the American Waterways Operators (AWO),⁽⁴⁾ used this wording to replace the need for meaningful manning regulations with a voluntary Crew Endurance Management System (CEMS), which was both *temporary* and *experimental* in nature. The CEMS developed by the

Coast Guard and conducted by participants in the towing industry was intended to demonstrate its benefits to Congress before any widespread use to extend these controversial manning practices and work hours on towing vessels. CEMS was *never* intended to be used as an *alternative* to proper rest hours but, rather, as a tool toward safe manning regulation and to assist the Coast Guard's civilian Towing Safety Advisory Committee (TSAC) to determine ways the industry could address its outstanding and widespread fatigue problem. CEMS was a concept proposed for use *in addition to* safe manning and in conjunction with healthy rest-period regulations that still must be developed.

The mandate for towing vessel inspection was simple: Section 3301 of Title 46 was amended by adding at the end "TOWING VESSELS" to a long list of all other classes of vessels the Coast Guard was required by law to inspect. In addition, Congress determined that the Secretary of Homeland Security "MAY" also establish a requirement to establish a Safety Management System (SMS).

By the wording it is clear that the SMS was never intended to replace physical inspection of over 5,200 of these towing vessels but to enhance their safety, just as *CEMS was never intended to replace proper rest periods* whose need is supported by many longstanding scientific studies.

There is no question that many SMS (but not all) that towing vessel mariners operate under today as a result of the new Subchapter M have positively impacted safety on *many* towing vessels. At the same time, as a result of Subchapter M's shortcomings, the SMS worsened the fatigue problem by requiring more time-consuming paperwork, that along with meetings and drills, diminished crew rest periods. The Coast Guard and its industry partners skillfully avoided performing time-impact studies as well as ignored labor's request for a system that did not add to the fatigue problem aboard already-*undermanned* towing vessels. As a result, the new regulations provided no support for the overworked and stressed crew members serving on many towing vessels.

The Coast Guard used TSAC to develop these new Subchapter M regulations over a period of twelve years at an estimated cost to the industry of thirty-three million dollars.⁽⁵⁾ However, in the early stages of deliberation the towing industry took over control of this federal advisory committee primarily by relying upon the trade-industry group known as the American Waterways Operators Association (AWO).

If you look at the history of this partnership and what led up to the 2016 "Specialist" accident, it is clear to see what happens when a government regulator like the Coast Guard partners with the industry it is supposed to regulate and allows the industry to write most of its own regulations.

It is now evident by the NTSB report on the "Specialist" accident that this so-called "partnership" between government regulators and the towing industry it regulates completely failed to address fatigue and manning issues as well as other key issues like bollard-pull, tow-size regulation, and enforcing requirements for Official Logbooks in the new Subchapter M. In addition, had the Coast Guard at both the national and District level, *enforced existing requirements* for recency of pilotage on the Hudson River, it is unlikely that the "Specialist" accident would have happened.⁽⁵⁾

To fully understand why the Coast Guard failed to address the unsafe manning practices aboard towing vessels in the new regulation would call for an investigation into the making of Subchapter M and the partnership itself. It is easy to see that the TSAC committee protected the towing industry's bottom line by keeping labor organization and mariner association involvement in the process to an absolute minimum. This was a strategy and main objective of the partnership.

Why did the Coast Guard omit manning requirements and fatigue issues from the inspection of towing vessels? First, they allowed the creation of a Safety Management System (SMS) to delay physical inspection of 5,500 towing vessels. Physical inspection and introduction of Official Logbook requirements using existing regulations could easily have addressed maximum work hours and minimum crew requirements for both licensed and unlicensed mariners. Physical vessel inspection always was the true intent of the Act of Congress but it provided sufficient time and freedom for the Coast Guard and employers to address the under-manning and fatigue issue by allowing a SMS to be part of the new regulations.

Safe manning regulations and addressing the primary cause of towing accidents "FATIGUE" always was a strong topic of conversation during the drafting of the Subchapter M regulations and providing input by the public at TSAC meetings. While studies supported the need for such regulation and mariners fought for it, the Coast Guard and its partner, the AWO, ignored labor's plea. When the need arose, AWO fought against adequate vessel manning by using outside studies bought and paid for by the towing industry. At every turn the AWO and the Coast Guard ignored, actively fought against, and overwhelmed labor's pleas to provide safe manning regulations.

While the mandate from Congress was to provide a program for the physical inspection of uninspected

towing vessels, the Coast Guard allowed a powerful consortium of towing companies to delay inspection with a Safety Management System (SMS) that *studiously avoided addressing both the issues of safe manning and fatigue*.

AWO manipulated the Coast Guard so as *to avoid costly new manning regulations* and opened the door to write its own regulatory ticket. However, *fatigue* became such a proven causal factor in towing vessel accidents that neither party could ignore it. So, like the SMS that served as industry's alternative to physical inspection of towing vessels by Coast Guard inspectors, they used CEMS as a different alternative to substitute for providing their employees with effective rest periods.

The partnership spent considerable time and money on CEMS. For the relatively few participating companies, CEMS only lasted a few months before it became just another manual collecting dust on the shelf. While the partnership celebrated CEMS as a success, in reality the program became a sad joke among working mariners. When crewmen complained about fatigue they would be told by others to "stare into the light." The use of interior red lighting at night was part of the CEMS program to trick the human body into staying awake. However, if you ask most new crew members what CEMS stands for today, you would most likely receive a blank stare.

When the final draft of Subchapter M appeared in the Federal Register in 2011, the only mention of developing regulations or even guidelines or policies for *safe manning and regulating maximum work hours* was that the Coast Guard did not address it as part of Subchapter M and left the responsibility for safe crewing as well as for "recency" requirements in pilotage waters with the local Captain of the Port. (COTP)

We see that the local COTP was responsible to see to it that the uninspected tugboat "Specialist" was safely manned for the service it was engaged in and that its licensed officers could prove sufficient underway experience navigating on the pilotage waters of the Hudson River - which we refer to as "Recency" of service.⁽⁵⁾

Clearly the blame for the fatal "Specialist" incident reaches beyond the crew, and the company and demonstrates the limits to and failures of the SMS.

The NTSB determined that local Coast Guard officials boarded the "Specialist" several years before the accident, found a. In addition, there has been little if any enforcement of "recency" requirements in pilotage waters by the Coast Guard anywhere in this area. Entire fleets of towing vessels were put into service upon waterways where the licensed operators of those towing vessels had no "recency" of service on those waters placing other waterways users, both commercial and recreational, at risk. Considering those high-traffic areas where the Coast Guard maintains Vessel Traffic Systems (VTS), it would be hard to argue that an *attentive* local COTP did not know of the violations of basic "recency" requirements that exist within the scope of his authority.

In my 42 years of experience upon towing vessels and as a member of TSAC for eight years, I know that any boat owner who would operate his vessel undermanned, push fatigue to the human limits of his crew members, and then leave the country and renounce his citizenship (as in the "Specialist" case) to avoid the consequences of his actions simply is *not* the norm. Most owners I have worked for and worked with and particularly those I have worked with while on TSAC hold a genuine concern and interest in making the towing industry safer. That includes Coast Guard officers, enlisted and civilian personnel. They believed in the work they were doing to develop the Subchapter M and their SMS. As noted, the SMS has had a positive impact on overall safety. Companies that operate with a real commitment to the SMS and adhere to its protocols do have the best interests of their crew members and vessels in mind.

But the question remains: What created the shortcomings that contributed to the loss of life in the "Specialist" accident? In my opinion two major things come to light:

the "*bottom line*" and the towing industry's political push to avoid being over-regulated led to *under-regulating* key areas, and

the failure of the Coast Guard from the outset to address the fatigue issue was rooted in their desire to play partner with the industry and concede to *industry's desire to keep the cost of providing safe vessel manning levels and setting work-hour maximums out of the new regulation*.

The 12-hour work day leaves us with an 84-hour work-week as an easily-abused low standard that has no place in 21st. century America. Our Association has shown on numerous occasions that the lack of enforcing "Official Logbook" standards leads to the abuse. The "Specialist" accident illustrates that these regulatory deficiencies deserve immediate correction *and is the purpose of this letter*.

The SMS was designed as a program of continual improvement to develop the best practices in the

industry. The full system makes use of Near-Miss Reporting, Non-Conformity Reporting, Captains' Reviews and regular crew evaluation along with drills, meaningful safety meetings, voyage planning, etc.

If the partnership has the strength of its convictions and believes that the system works, then they must now address safe manning, work-hours, and fatigue upon towing vessels by amending Subchapter M to include these issues.

Although most companies operate in good faith with their SMS in place and even exceed its standards, there will always be those companies, like the operators of the Specialist that chose to treat their SMS as nothing more than a paper-shuffle along the path to Subchapter M compliance. The Coast Guard now can deal directly with those boat owners that operate without a certified SMS and should be alert to work-hour infractions and fatigue issues.

Without regulation and enforcement there will always be those who operate in bad faith outside the system's true intent. The existing system failed the crew of the Specialist because manning and fatigue prevention were not regulated. Instead, the Coast Guard left these issues up to the discretion of the licensed officer, who faces pressure from the owner and the bottom line, and the COTP who doesn't want to make waves to upset the partnership and put his job at risk.

Mariners should become familiar with and the Coast Guard should require that the protections provided to mariners by the Coast Guard Authorization Act of 2010 be posted in plain view on every towing vessel and manned barge in the United States.⁽⁶⁾

Licensed and unlicensed limited-tonnage merchant mariners, I respectfully request a reply that outlines your Agency's plans to address the fatigue, manning, and competency issues that were so prominent in the Specialist accident as well as the 2010 Congressional requirements to introduce and enforce Official Logbooks on towing vessels.

Very truly yours,



Captain Joseph Dady
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National Mariners Association

Cc: House Coast Guard and Maritime Transportation Subcommittee
Senate Commerce, Science and Transportation Committee

References:

⁽¹⁾ NTSB Tug Specialist Report, NTSB/MAB-17/14, DCA16FM033

⁽²⁾ The USCG Maritime Act of 2004

⁽³⁾ In 118 STAT. 1045. **The secretary MAY prescribe by regulation requirements for maximum work hours. Prior to prescribing regulation under this section the secretary SHALL conduct and report to the Congress on results of a demonstration project involving the implementation of a Crew Endurance Management System on towing vessels.**

⁽⁴⁾ AWO is a national trade association funded by the towing industry to promote domestic waterway transportation and has existed for over sixty years. The United States Coast Guard refers to the AWO as its partner in the towing industry in the development of regulations and promotion of safety upon towing vessels.

⁽⁵⁾ The Federal Advisory Act of 1972 provides for the federal government to seek advice of citizens on issues affecting regulation and policy. The USCG uses advisory committees to aid them in their different tasks. USCG used such a committee, the Towing Safety Advisory Committee (TSAC), to develop the new subchapter M regulation at a cost of three million dollars a year.

⁽⁶⁾ 46 CFR 15.812. Provide evidence of completing a minimum of 12 round trips over the route to be traversed, as an observer or under instruction in the wheelhouse. At least three of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

⁽⁷⁾ Coast Guard Authorization act of 2010