# UNINSPECTED TOWING VESSELS

## An Analysis of the Historical and Contemporary Issue of Their Regulation

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# PREFACE

The issue of uninspected towing vessels has been in the forefront of the domestic marine industry for over a half-century. It is an issue which has soured the normally cooperative relationship between labor and management, and because it has never been resolved, continues to present a potential source of emnity between the two even today.

This report seeks to examine the historical background of the issue, the particulars that are involved, and the real import of the question in the current operational and legislative environments. It will, at best, provide the reader with a comprehensive appreciation of the historical and contemporary questions with respect to the inspection of towing vessels. It cannot, nor is it intended to, make an impregnable case for any particular position. However, its analysis, free of the rhetoric that has often clouded this issue, will hopefully provide a basis on which the various sectors of the domestic marine industry can evaluate the significance of the question today.

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# CHAPTER 1

## AN INTRODUCTION TO THE ISSUE

The issue of the uninspected status of Diesel-engine-propelled towing vessels is one that has been before the inland waters industry for over sixty years. For virtually every one of those sixty years, it has been steeped in controversy. Although great strides have been made in the area of management/labor cooperation in the past half century, this is an issue on which the two have never been able to agree. Moreover, it has become that type of issue which provokes not only substantive argument, but heated, and often bitter debate as well. Indeed, it is not unfair to say that there are few issues in the inland marine industry which have evoked the bitter emnity between management and labor that has been seen over the question of uninspected towing vessels.

Inspection of towing vessels has been an issue in the forefront of the inland industry for so many years primarily because maritime labor has kept it there. As will be discussed in Chapter 2, each time the issue has received renewed legislative consideration, the impetus for such consideration has been provided by American maritime labor. This persistence stems from a deep-seated belief within the maritime unions that the continued non-inspection of domestic towing vessels threatens the safety of their memberships. An important corollary to the uninspected status of towing vessels is their exemption from Coast Guard requirements for minimum manning levels. Maritime labor has long maintained that this dual exemption

from operating and manning standards heightens the dangers of marine navigation, especially on the relatively congested inland system.

The U.S. documented towing fleet operating today in the domestic trades comprises over 6000 vessels. Ninety-nine percent of this fleet is not subject to Coast Guard inspection. It would almost seem, given the preponderance of uninspected vessels in the tug and towboat fleet, that the inspection statutes were written to deliberately exclude this segment of the industry. However, this exclusion was not deliberate, nor was it legislatively enacted; and to a large degree, maritime labor finds the exclusion so distasteful particularly because of the way it evolved.

The issue of uninspected towing vessels hinges directly on Title 46, Section 405 of the United States Code. 46 U.S.C. 405 states flatly that "The hull and boiler of every tugboat, towing boat, and ferry boat shall be inspected...".[1] The question therefore logically arises as to how virtually the entire U.S. documented towing fleet can go uninspected, and remain in compliance with the law. The answer is that virtually the entire U.S. documented towing fleet is Diesel-engine-propelled, and 46 U.S.C. 405 was written at a time when all towing vessels were propelled by steam engines. Very succinctly, this issue, which has consumed the attention of the industry for over sixty years, exists simply because of the technological evolution from steam to Diesel propulsion. (Chapter 2 will discuss the evolution of U.S. inspection statutes in greater detail.)

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1/ United States Code Annotated, Title 46, Shipping, §§ 251 to 681, Cumulative Annual Pocket Part, (St. Paul: West Publishing Company, 1979), p. 33. The full text of the statute is reproduced in Appendix 1.

Undoubtedly, when enacted, 46 U.S.C. 405 was intended to apply inspection requirements to steam powered vessels only because that was the sole means of propulsion at the time. However, the language of this statute is broad enough to include Diesel propelled vessels as well. Indeed, one of the first attempts to bring non-steam propelled vessels under the aegis of 46 U.S.C. 405 was based on the argument that the statute was comprehensive enough to apply to those vessels. In this instance, the question was brought before the Massachusetts Supreme Court for resolution. The court's 1913 decision in *Commonwealth v. Breakwater Company* said in part:

> It has been argued that no. 43[2/] is a "freight boat" within U.S. Rev. Stats. §4427... But the terms of this section, its general purpose and context, and other section of its title (52)... indicates that it applies only to vessels propelled in whole or in part by steam,... and has no relation to a craft like this.[3/]

The decision of the Massachusetts Supreme Court in *Commonwealth v. Breakwater* was monumental in terms of its effect on the inland industry. Although the craft in question was a non-self-propelled barge and not a Diesel-propelled towboat, the Court's decision was governing for both — 46 U.S.C. 405 could be applied only to vessels propelled in whole or in part by steam. Succinctly, all other vessels, whether non-self-propelled, or propelled by some other means, were not subject to its statutory requirements.

The import of *Commonwealth v. Breakwater* would soon become evident. By the end of World War I, Diesel-propelled towing vessels began to make their appearance in the inland and coastal trades.

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2/ No. 43 was a non-self-propelled stone-carrying barge that was 115 feet in length, and 330 net tons in weight. She could progress only by being towed. She had a deck house and sleeping quarters for the crew which operated her loading and unloading machinery.

3/ Northeastern Reporter, p. 1037.

Indeed, some argue that it was the Court's decision specifically that prompted the use of Diesel vessels as a means to avoid inspection and regulation. In any case, *Commonwealth v. Breakwater* effectively closed the door on the judicial route toward inspection of the Diesel-propelled fleet. Indeed, it preempted any judicial means to resolve the issue in 1913, several years before the Diesel vessel would become anything more than a novelty in the domestic trades. In effect, the Court's decision insured that the issue could only be addressed legislatively.

The decision of *Commonwealth v. Breakwater* sets the stage for our examination of the arduous legislative battle that ensued. However, before proceeding onto that examination in Chapter 2, it is worthwhile to first define exactly what the uninspected nature of the towing vessel is. Examination of the historical record reveals that this issue is one that has often been blurred by a good deal of rhetoric from both the proponents and opponents of change. Labor unions have characterized the towing fleet as a motley assortment of rusty, unseaworthy vessels that were on the verge of sinking. Conversely, the industry describes its fleet as one of only the newest, most technologically advanced vessels that money can buy, equipped with all the comforts of home. Obviously, there are examples of each to be found in today's fleet, and the proportion of rust buckets to floating palaces is somewhere between the claims of each.

Similar rhetoric blurs the issue of just how much governmental regulation the uninspected vessel is subject to. Undoubtedly, the exemption from annual Coast Guard inspection and its attendant manning standards relieves the uninspected vessel of the major onus

of government regulation. However, uninspected does not necessarily translate into unregulated. For example, the Coast Guard publishes a 19 page volume[4/] containing nothing but those rules and regulations which do apply to uninspected vessels, dealing primarily with such things as navigation lights, foghorns, firefighting equipment, and life preservers. While these rules do not represent a great deal of governmental regulation over the major safety considerations of vessel operation, they do evidence the fact that uninspected vessels are not completely free of Coast Guard oversight.[5/]

Thus, when one speaks of an uninspected towing vessel, and the need for its regulation, there are two primary factors involved. Firstly, an uninspected towing vessel need not have a valid certificate of inspection in order to operate. In practical terms, this means that the vessel is not subject to a periodic Coast Guard inspection to determine its seaworthiness, and the appropriate maintenance of its hull, machinery, and other major component parts (as are, for example, deep-sea ships.) The operating condition of a Diesel-propelled towing vessel is therefore usually only

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4/ U.S. Coast Guard, Rules and Regulations for Uninspected Vessels. (Washington: U.S. Government Printing Office), 1978.

5/ However, the concerns of maritime labor that the uninspected status of towing vessels does indeed translate into virtually non-regulated operation is shared by a former Coast Guard official who states that the unwritten law of the operator on the Western Rivers is "If you can catch me, you can screw me."

as good as is the diligence of its owner to accomplish the appropriate maintenance and repairs.

The second major consideration of this issue is that of manning. In the course of its periodic inspections, the Coast Guard will determine, on a vessel-by-vessel basis, the minimum manning level that a particular ship should have. In order to operate under his validated certificate, the vessel owner must comply with the prescribed Coast Guard manning requirement for his vessel. Obviously, since the inspection process does not apply to the Diesel-propelled towing vessel, the attendant manning requirements are also absent. For the domestic towing fleet, this exemption means that the operator is free to set his own manning levels, whether or not they are consistent with either safety or the vessel's particular operating requirements. The only constraint which exists in this respect is that of the union-contracted company which must establish its manning levels within the context of a collective-bargaining agreement.

A final facet of the issue, which is clearly part and parcel of the manning question, is that the Coast Guard, in prescribing its minimum manning level for an inspected vessel, will also specify the education/experience requirements for each member of the crew. However, on an uninspected vessel, only the pilot must be licensed, and even this requirement is of recent vintage. For all other members of the crew, there are no minimum criteria in order to work aboard a towing vessel. Engineers, when employed, are usually unlicensed; deck hands need not know the basics of seamanship or lifesaving; and cooks need not be trained in the

fundamentals of food preparation or sanitary control. Again in this respect, the levels of experience and competence of the crew are established only by the owner, and his degree of commitment to the professional operation of the vessel.

# CHAPTER 2

## A HISTORY OF THE LEGISLATIVE ATTEMPTS TO INSPECT AND REGULATE DIESEL-POWERED TOWING VESSELS

As was discussed in Chapter 1, the process by which the inland towing vessel came to be uninspected was an evolutionary one. It did not occur because of laws enacted, but rather can be attributed to legislative inaction over a fifty year period. Throughout this past half century, the inspection laws have failed to keep pace with the technologies that have been adopted by the industry. While the inland towing industry has replaced its fleet of steam-powered towboats with the more modern Diesel-powered vessel, U.S. statutes continue to apply to only the now nearly non-existent steam-powered boats of days past.

### DEVELOPMENT OF THE "STATUTORY ANACHRONISM"

The statutory dichotomy between steam and Diesel-powered vessels has its roots in laws over a century old. In 1838, the Congress, in response to several marine disasters, passed a law to protect the lives of passengers aboard steam-propelled vessels. It required the periodic inspection of both hulls and boilers, and the installation of lifesaving and firefighting equipment. It also required the employment of experienced engineers. However, the law failed to establish either specific standards for equipment, or sufficient inspectors to insure compliance; it also

neglected to provide for officer licensing on the basis of competence.

Disasters, and the loss of life, continued; in the first eight months of 1852 alone, seven disasters took nearly 700 lives. It had become evident that the 1838 law was not strict enough to insure the safety of either passengers or vessels. This continuing casualty record prompted the Congress to pass comprehensive legislation which signaled major changes in the regulation of passenger-carrying vessels. Entitled "An Act to provide for the better Security of the lives of Passengers on board of vessels propelled in whole or in part by Steam," this legislation established specific standards for the use of pumps, life boats, and life preservers, and imposed restrictions on the carriage of dangerous articles. More importantly, it required the annual inspection of hulls, boilers, and engines, and established the bureaucracy necessary to insure compliance. The Steamboat Inspection Service, the forerunner of our present-day merchant marine inspection program, was charged with the responsibility of insuring the safety of both passengers and vessels, and was given the authority and manpower necessary to make it effective. In addition, to its inspection functions, the Steamboat Inspection Service was authorized to license and classify all pilots and engineers of steamers carrying passengers, and to halt the operation of any such vessel not in compliance with either the inspection or licensing provisions of the 1852 Act.

Although the 1852 Steamboat Act represented a significant move toward the safer operation of vessels, its provisions were only

applicable to passenger-carrying steamers. It was not until 1864 that the provisions of the 1852 law were made applicable to steam-propelled tugs, towboats, ferry-boats, and canal-boats, at which time these vessels also became subject to inspection and licensing regulation. The rationale for their inclusion surfaced during the Civil War when fears ran high that these unregulated vessels would collide with the recently regulated passenger vessels, thereby nullifying the passenger safety which was sought through enactment of the 1852 bill.

The dichotomy present today in the law which requires the inspection of steam-powered tugs and towboats but does not address Diesel-powered vessels stems directly from this June 8, 1864 Act. The language of the 1864 Act applies the regulations of the 1852 Steamboat Act specifically to "every vessel propelled in whole or in part by steam, and engaged as a ferry-boat, tug or towing boat, or canal-boat." The lack of any reference to Diesel-powered vessels in the 1864 Act is merely reflective of the fact that this law predates the development and use of Diesel engines.

Consequently, the law which governs the inspection and regulation of today's U.S. tug and tow-fleet was written in 1864, and represents a classic example of a "statutory anachronism." However, this is not to say that there have been no attempts to modernize the law. Legislation seeking to bring the Diesel-powered towing fleet under inspection and regulation has been introduced many times since the Diesel vessel appeared on the scene just after World War I.

The first attempts to amend the law came in the 1920's. Two of the several bills introduced in that decade did indeed make it as far as the floor of the House of Representatives, where they were both ultimately defeated. In December of 1931, Fiorello La Guardia, then a Congressman from New York City, introduced H.R. 337, which proposed to amend Section 4426 of the Revised Statutes to read:

> Sec. 4426. That from and after three months after the date of approval of this Act, all vessels of above fifteen gross tons propelled by machinery, the propulsion power of which is other than steam, shall be subject to all the provisions of the laws governing the Steamboat Inspection Service or relating to steam vessels, insofar as they may be applicable thereto.[1]

Needless to say, H.R. 337 was not entacted into law. (Convinced by this defeat that he was not an effective politician, La Guardia left the Congress soon thereafter.)

Undoubtedly, many of the bills introduced in the past half century have lain dormant, never reaching the stage of serious Congressional consideration. However, on three occasions, in 1936, 1951, and 1965 respectively, such legislation has been the subject of significant efforts to secure enactment. In each case, although the attempt to require vessel inspection was unsuccessful, the Congress held extensive hearings. The content of those deliberations is integral to an understanding of why the law has never been modernized, and provides important lessons for any future effort to secure enactment of similar legislation.

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1/ U.S. Congress, House, Committee on Merchant Marine and Fisheries, Extension of Steamboat Inspection Laws, (Washington: U.S. Government Printing Office, 1936), p. 320.

## THE 1936 EFFORT

On January 21, 22, and 23, 1936, the House Committee on Merchant Marine and Fisheries held hearings on H.R. 6203. This bill, introduced by Congressman Martin L. Sweeney of Ohio, was simple in its purpose, and straightforward in its language. It read as follows:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that existing laws covering the inspections of steam vessels be, and are hereby, made applicable to vessels of fifteen gross tons and over propelled in whole or in part by internal-combustion engines to such extent and upon such conditions as may be required by the regulations of the Board of Supervising Inspectors of Steam Vessels, with the approval of the Secretary of Commerce.[2]

This bill was an early recognition of what we now know to be true—that the advent of the Diesel-powered engine signaled the eventual demise of the steam-powered towing fleet. Indeed, industry surveys conducted in 1933 indicated that nearly 50 percent of the U.S. towing fleet was propelled by some means other than steam. In certain locales, the ratio had already shifted from steam to Diesel. For instance, by 1936 there were more Diesel-powered vessels in the port of Boston than there were steam-powered ones. Consequently, it had become apparent that the statutes were becoming increasingly inconsistent with the development of the industry. Specifically, Congressman Sweeney pointed out that although the hulls of steam-powered vessels were inspected, internal combustion propulsive units had no boilers, and therefore avoided direct, ongoing inspection. His

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2/ Ibid., p. 2.

intent was to extend complete inspection to all classes of vessels, particularly small cargo-carrying harbor craft and fishing vessels. As we shall see momentarily, the inclusion of fishing vessels in the legislation may have been the fatal mistake that insured its defeat.

*Legislative Proponents*

The hearing record implies that H.R. 6203 was both written and initiated by the Marine Engineers Beneficial Association. In fact, several of the MEBA representatives who testified in support of the legislation were indiscreet enough to refer to it as "our bill."[3] Essentially, MEBA argued that given the increasing usage of Diesel and internal-combustion engines as a means of waterborne propulsion, it made good sense to extend the inspection laws in that direction. They held that operation of these vessels without governmental inspection and regulation constituted "a menace to navigation which should not be allowed."[4] Indeed, the thrust of the MEBA testimony was directed at the goal of increasing the safety of vessel and crew alike.

MEBA argued that vessels not governed by the laws of the Steamboat Inspection Service were frequently manned by incompetent operators thereby creating a hazard to the other vessels operating in the same vicinity. It charged that life-saving equipment aboard uninspected vessels was often faulty, obsolete, or in some cases, nonexistent, and that the hulls and machinery were improperly

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3/ Ibid., p. 17.

4/ Ibid., p. 22.

maintained and unsafe. MEBA argued that there was as much danger to life and property in the operation of an internal-combustion engine as there is in the operation of a steam engine. Taking that point a step further, they argued that the lack of an annual inspection and its attendant regulation made these vessels perhaps an even greater danger than the regulated steam-powered fleet.

Representatives from MEBA also argued for enactment of H.R. 6203 from the perspective of competitive equity. They stated that the unregulated operation of Diesel-powered vessels created unfair competition for the steam-powered fleet which was required to undergo an annual inspection, and to carry licensed engineers and deck officers. MEBA testified that uninspected vessels operated with one-third the crew required on inspected vessels, and were fast driving the operators of steam-powered vessels out of business through their ability to underbid on towing rates. The 20-20 hindsight we enjoy in 1980 substantiates this 1936 argument, as much of the conversion from steam to Diesel was ultimately prompted by the operators' desire to avoid inspection and regulation.

Obviously, the impact that H.R. 6203 would have on the entire manning situation was never far from the thoughts of either the bill's framers or opponents. MEBA addressed the issue by stating that due to the lack of federal regulation, operators of Diesel-powered vessels employed the minimum number of men possible. As a result, long hours and tired crews were the rule rather than the exception, with 15 to 18 hour workdays being quite common. MEBA argued that this created hazards both to the other vessels plying

the same waters, and to the crew itself since there were not enough men to adequately handle emergencies.

In addition to the question of regulating tugs and towboats, MEBA voiced its support for inspection of fishing vessels as well. Indeed, MEBA charged that there was no more neglected class of vessels plying the seas. They described the accidents aboard these vessels as "numerous," citing fires, explosions, and ship wrecks as common occurances. MEBA opined that the poor casualty record of these vessels was due in large part to incompetent engineers and navigators, and the lack of inspection of the vessel and its equipment.

The industries which voiced support for the legislation did not represent a particularly broad range. Of course, the Marine Engineers Beneficial Association was in the forefront of soliciting support for enactment. Several other labor unions, i.e. the International Union of Operating Engineers, the National Organization of Masters, Mates, and Pilots, the United Licensed Officers, and the Licensed Tugmens Protective Association, also testified in favor of the bill. The Bureau of Navigation and Steamboat Inspection (created in 1932 through a merger of the Steamboat Inspection Service and the Bureau of Marine Inspection and Navigation) also voiced its support for extending the inspection laws to internal combustion engine-propelled vessels, as did several carrier organizations whose member operators were presumably still predominantly steam-propelled. Additionally, the Propeller Club of the United States sent a telegram to the Committee Chairman expressing its support for passage.

*Legislative Opponents*

However, while the legislation's proponents constituted a fairly narrow range of industry representation, the bill's opponents did not. Strong protests against the legislation were forthcoming from both directly affected and peripheral industries. Both individually and through industry associations, general contractors, dredging companies, towboat operators, ferry and car floats owners, fishermen, fish and seafood processors, river and harbor interests, yacht clubs, and chambers of commerce (from cities whose economies were tied to the fishing industry) voiced bitter opposition.

Each group opposed the legislation for its own reasons. Contractors whose work on the inland waterways often required the use of vessels to float or transport cranes and pile drivers opposed the inevitable requirement for licensed engineers and deck officers. Similar concerns were expressed by dredging companies, and yacht and pleasure boat owners. However, it was the well-orchestrated and vehement opposition of two groups, tug and towboat owners and the fishing industry, which proved to be the most telling blow in the eventual demise of H.R. 6203.

As was mentioned above, the attempt to bring the U.S. fishing industry under inspection and regulation was probably the most significant factor in the legislation's defeat. To an even greater extent than the towboat operators, its opposition was total and uncompromising.

The opposition of U.S. fisherman to H.R. 6203 was based primarily on the manning changes that would result from inspection of

their vessels. They argued that there was no need for licensed personnel on these boats, and that the increased expense for the additional personnel would put many operators out of business. Moreover, beyond the arguments made against the bill by the fishing industry, there was one significant point that lent exceptional credence to their testimony - the industry did not oppose inspection, only its attendant manning requirements. A consistent theme throughout the industry's testimony was that their vessels were both safe and well-maintained, and that they did not fear or avoid any inspection that would insure seaworthiness. They directed their attack at the corrollary manning scale, and by doing so convinced several of the attending Committee members that from the perspective of safety, there was little need to inspect the fishing fleet.

However, it was not only the content of their arguments that made the opposition of the fisherman significant. It must also be recognized that the fishing industry exercised considerable political clout with the Committee, and called upon several of its Representatives from fishing oriented districts to voice their respective oppcsition to enactment of H.R. 6203. Further evidence of the influence of the industry in the 74th Congress was amply demonstrated by their ability to block further action on a similar inspection bill which had not only been favorably reported out of the House Committee on Merchant Marine and Fisheries (H.R. 6037), but had also been passed by the full Senate (S. 2001).

Of course, significant opposition also emanated from the Diesel-propelled tug and towboat industry, if for no other reason

than its desire to preserve the competitive edge it enjoyed over the steam-propelled fleet. The arguments were predicatable - the legislation was unnecessary because the safety record of the industry was good without inspection and regulation, and because the dangers inherent in the operation of steam engines are virtually nonexistent with the conversion to internal combustion engines.

One example of the lucidity and credibility that the industry conveyed in arguing its case before the Congress is available in the verbal and written testimony of Henry Foss of Foss Launch & Tug Company, who, at the time, was also a State Senator of Tacoma, Washington. Foss, like his colleagues who preceded him, argued that the legislation was absolutely unnecessary and uncalled for. He substantiated that argument by describing an industry in the Northwest which had pioneered the development of the Diesel tug, and its corrollary efficiencies. He described crews of long experience and high competence. He charged that the only sin that the Diesel tug had committed was one of modernization; and that to saddle the more efficient and modern engine design with unnecessary regulation to maintain a competitive balance for an obsolete steamer fleet was misguided.

The arguments of Foss, the towboat and fishing industries, and the other opponents of H.R. 6203 were sufficient to convince the Committee that the application of steamboat inspection and regulation statutes to the newly-emerging Diesel-propelled fleet were neither necessary nor desireable. Furthermore, the arguments were vigorous enough to make it clear to the Committee that industry opposition was genuine and uncompromising - that support of the

measure meant taking a stand which would be remembered, and from which the legislator could not easily retreat. The high price that might be paid for supporting a bill which did not demonstrate a particularly broad range of support, and which did not have compelling evidence behind it, insured the decision of the Committee to pursue the matter no further.

## THE 1951 EFFORT

The success that the opponents of inspection and regulation enjoyed in halting the progress of modernizing legislation in the 74th Congress was significant not only because of its immediate impact, but also because it stymied similar efforts for years to come. Indeed, it was over 15 years before this legislation would again receive sericus Congressional consideration. Although several inspection related bills had been introduced into the 75th, 76th, 80th, and 81st Congresses, none were ever reported out of committee, and it was not until the 82nd Congress that the second major effort to enact modernizing legislation was undertaken.

The 1951 effort primarily involved four bills: H.R. 2316, H.R. 2317, H.R. 3646, and H.R. 3657. The four were considered jointly in nine days of hearings in June of that year before the Subcommittee on Maritime Affairs of the Committee on Merchant Marine and Fisheries. Respectively, the bills sought to enact the following:

- H.R. 2316 - The Coast Guard shall fix the minimum number of licensed deck officers required for the safe navigation of every U.S. vessel in excess of 100 gross tons propelled by machinery, whether or not such vessel is subject to the inspection laws of the United States. In fixing this minimum number, the Coast Guard shall be guided by the standards established for steam vessel of like tonnage and service. Yachts, pleasure craft, and most fishing vessels are exempted.

- H.R. 2317 - All vessels of above fifteen gross tons propelled by machinery are subject to the laws of Steamboat vessels. Pleasure craft and fishing vessels are exempted.

- H.R. 3646 - All vessels of above fifteen gross tons carrying freight or passengers for hire, excluding fishing vessels, and all vessels of 400 or more horsepower engaged in commercial towing operations, propelled by gas, fluid, naptha, or electric motors, shall be subject to the provisions of R.S. 4426 regarding the inspection of hulls and boilers and requiring engineers and pilots.

- H.R. 3657 - All vessels of above 15 gross tons, excluding pleasure craft and fishing vessels, propelled by any form of mechanical or electrical power other than steam, are subject to all the laws and regulations relating to the inspection, safety, and navigation of steam vessels.

By 1951, the move to internal combustion engines as the means of waterborne propulsion, a move which had begun after World War I and was plainly evident by the time of the 1936 hearings, had made the steam-powered towboat an anachronism. Estimates varied, but several of those who testified before the Committee stated that over 80 percent of the vessels operating on the inland river system were Diesel-powered. Furthermore, this trend toward Diesel engine vessels was unabated, and had, indeed, increased in intensity following World War II. New vessel construction was almost exclusively Diesel, and many existing steam-propelled vessels were being reengined with Diesel units. The conversion on the Mississippi River is particularly illustrative; in just 4 years, from 1945 to 1948, the ratio of Diesel-powered to steam-powered vessels increased from an equal 50-50 division to a 70-30 predominance for the Diesel propelled units. At that quickening pace of transition, many predicted that the steamer would be entirely extinct as soon as the remaining vessels were either reengined or retired.

Ironically however, it was not the quickened pace of conversion that prompted the Congress to reexamine the question of inspection of the unregulated Diesel fleet. The impetus to this second Congressional hearing was the same as that which had prompted action in the 19th Century - a marine disaster. In this case, it was the explosion and sinking of the tugboat SACHEM, a vessel of 85 gross tons in weight and over 76 feet in length, in Lake Erie in December of 1950. The SACHEM, originally a steam-powered vessel maintained in accordance with U.S. inspection laws, had been reengined with Diesel units. She had, therefore, not been inspected between the time of her conversion and her sinking. Moreover, the consensus of opinion was that the SACHEM exploded because of defects which would have been discovered and corrected had she been inspected.

It was this disaster which motivated the Licensed Tugmen's Protective Association of Toledo, Ohio to petition their representative, Congressman Frazier Reams, to introduce H.R. 3657, and to insure that it received due consideration. The Licensed Tugmen's Protective Association did not want to see this bill lay dormant as had similar proposals in previous Congresses. Representative Reams effectively sponsored the bill to the extent that he secured Committee hearings, and to the extent that although there were three other bills under consideration, H.R. 3657 received the preponderant attention.

Reams was the first witness at the opening Committee session, speaking eloquently to the need for a modernization of the nation's marine inspection statutes. He argued for enactment of H.R. 3657 on the basis of five fundamental points:

1. Personnel aboard Diesel-propelled vessels deserve the same degree of safety enjoyed by their collegues aboard inspected steam-powered boats.

2. The safety of other vessels, especially in congested harbors, will be enhanced through inspection of the unregulated fleet.

3. The competency of operating personnel will be increased by requiring that they pass Commerce Department examinations.

4. The Steamboat Inspection Service will be authorized to punish those Diesel-powered vessel operators who violate the law, just as steam-powered vessel operators are now liable to punishment.

5. The unfair competitive tactics of Diesel vessel owners and manufacturers against the steam-powered fleet, such as the use of one's uninspected status as a selling point, will be rightfully obviated.

In expanding on these points, Reams argued that vessels propelled by machinery other than steam pose an equal or greater hazard to navigation than do steam vessels. He stated that the same danger to life and property exists except that the hazards of the boiler have become those of the internal combustion engine. However, he added that with boilers subject to the stringent inspection of the Bureau of Marine Inspection and Navigation, it had been many years since life or property had been destroyed due to a boiler accident. Given the fact that the hazards of the internal combustion engine are not similarly regulated, the danger they pose is undoubtedly greater.

Reams also spoke to the danger of permitting motor vessels to be operated by anyone that the owner saw fit to employ. He argued against not only the competitive disadvantage which the operator of a steam vessel faced through compliance with the respective laws, but also against the excessive workdays that resulted on the uninspected vessel. He also pointed out to the Committee that the

inspection statutes were established as much for the protection of the American public as for the protection of the vessels and crews, and that to allow these statutes to disappear along with the inevitable demise of the steamer fleet would be a disservice to their constituents.

Testimony in favor of or in opposition to the legislation essentially divided along management vs. labor lines, with the Federal Government projecting a split position depending upon the agency testifying. In verbal testimony before the Committee, the Coast Guard expressed support for the bill, and opined that the annual inspection of towboats and the licensing of their personnel could only serve to enhance safety and decrease marine casualties. However, the Department of Commerce, while generally sympathetic to legislation designed to promote safety in water transportation, stated that the extension of regulatory authority for crews of Diesel vessels "would greatly increase the administrative problems of regulation and might not result in any appreciable improvement with respect to the safety of operations."[5] Additionally, although the Commerce Department acknowledged that the bill's provisions regarding the inspection of vessels would promote safer operations, it stated that the added regulatory burden would saddle the Coast Guard with a workload that it was not then ready to handle. Succinctly, the Department predicted that if the law were amended to require the inspection of thousands of Diesel-powered vessels, it would be impossible to administer effectively. The Department of Commerce offered its support for enactment only if the

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[5] U.S. Congress, House, Committee on Merchant Marine and Fisheries, Providing Certain Requirements for Diesel and Other Nonsteam Vessels, (Washington: U.S. Government Printing Office, 1951), p. 3.

proposal was diluted to extend the inspection laws to machinery-propelled vessels under 15 gross tons, and carrying 12 or more passengers for hire. The Department of the Treasury echoed the position of the Commerce Department.

*Legislative Proponents*

The testimony of organized labor represented the staunchest and most pronounced support of the proposals presented to the Subcommittee. As had been the case during the 1936 hearings, the Marine Engineers' Beneficial Association was in the forefront of the labor initiative, with corraborative support provided by the National Organization of Masters, Mates, and Pilots and the International Longshoreman's Association.

MEBA argued that the principle of inspecting Diesel-propelled towing vessels was sound and long overdue. Of the legislation before the Subcommittee, MEBA supported all the proposals but expressed its preference for H.R. 3646, as introduced by Congressman Shelley. MEBA argued that the substitution of Diesel engines for steam engines in commercial towing vessels was having the effect of exempting an entire marine sector from compliance with longstanding safety statutes. It urged that the Congress modernize the statutes consistent with the trend of the industry just as it had done in 1905 when it subjected the then newly emergent fleet of gas, naptha, fluid, or electrically-propelled vessels carrying passengers or freight for hire to hull and boiler inspection, and to the requirement for employing licensed engineers and pilots. MEBA argued that the time had come for the anachronism to be remedied.

MEBA maintained that the anachronism of the inspection statutes had created a most illogical situation on the inland waters of the

United States. Namely, that as steam vessels were being converted into Diesel vessels, they were simultaniously passing from a state of being subject to inspection to one of exemption from inspection. MEBA maintained that if there was wisdom in inspecting the hull equipment, firefighting apparatus, and life-saving facilities aboard the vessel when it is powered by steam, the logic of such inspection did not cease with a conversion to a different mode of propulsion. MEBA offered several examples of vessels which sank after their conversion from steam to Diesel, and the concurrent lack of inspection, as substantiation that continued inspection was necessary to insure proper vessel maintenance.

MEBA also spoke to the law which requires the inspection of any vessel carrying inflammable or combustiable liquids. As such, inland oil barges are subject to inspection while the Diesel-powered towboats which move them are not. MEBA pointed to the absurdity of a law which requires that a cargo carrying barge meet the standards of the Bureau of Vessel Inspection while the propellant unit which carries the crew requires no certificate of any kind.

Although MEBA spoke to the Subcommittee before any significant opponents of the legislation testified, the union anticipated the cries of unionization that were sure to be raised, and addressed them squarely. MEBA rejected the argument that they viewed this legislation as a means by which they could gain control over the large group of licensed deck officers not then eligible for membership in the union. To the contrary, they stated that they did not believe the mere requirement for licensed officers aboard these commercial towing vessels (as proposed by H.R. 2316) was the

solution. MEBA stated that H.R. 2316 addressed only one phase of the need, and would not solve the problem of a large portion of the towing fleet being exempt from established standards of safety. In fact, MEBA argued, placing licensed men aboard uninspected towing vessels would place them in the position of being subject to penalties for accidents resulting from factors over which they had little control. MEBA argued that in order to modernize the statutes consistent with established standards of safety, a twofold change, addressing both licensing and inspection, was necessary. The union's interest in, and support of, this legislation was safety-oriented, and they maintained that any suggestion to the contrary could only serve to cloud the issue in an attempt to paint the bill as a parochial, self-serving piece of maritime labor legislation.

*Legislative Opponents*

It was inevitable that the charges of unionization and featherbedding would be leveled. However, the surprising fact was that they emanated now only from those operators who appeared in opposition to the legislation, but came even more viciously from a Subcommittee member. Congressman Alvin Weichel (R-OH), senior minority member of the Subcommittee, served as a vociferous opponent of the legislation, representing his operator constituency on the Great Lakes. He made no attempt to disguise his distaste for the legislation, and badgered each and every witness who appeared before the Subcommittee in support of these bills. He was especially rude to the Coast Guard spokesman who was foolish enough to suggest that there was a need to inspect Diesel-powered

towing vessels, and questioned labor spokesmen at length regarding the real rationale behind their support of the proposals. For instance, after questioning a MEBA witness regarding the respective manning levels aboard steam and Diesel-propelled vessels, and learning that crews aboard Diesel towboats were only half as large as those employed on steam-powered towboats, he concluded that these bills sought to double the size of the crew aboard Diesel vessels so that several boatmen could "stand by and do nothing."[6] Not surprisingly, Weichel did not draw the conclusion that Diesel-powered vessels operating with 50% less crew than their steam competitors was evidence of any need that perhaps some type of governmental oversight was warranted to insure adequate manning levels.

Substantial opposition to these bills was also presented by a plethoria of inland operators, including some future TI members such as Crowley Launch & Tugboat Company. The opposition almost literally "came out of the woodwork", with no operator voicing even the smallest degree of support for the legislation. The arguments made in opposition to these bills were essentially the same for all the operators who testified, the major differences among them simply in emphasis on a given point. The testimony of the American Waterway Operators was, however, the most convincing, and presents an accurate reflection of the industry position.

The thrust of the AWO presentation was that, as had been argued in 1936, there was no demonstrated need for legislation which would extend the inspection statutes of the United States to Diesel-powered

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6/ Ibid., p. 119.

towing vessels. AWO argued that the inspection of steam-powered vessels had been instituted due to a problem inherent in their operation, i.e., the danger of boiler explosion. The loss of life and property that had resulted in steamer operations was clear and compelling evidence for the establishment of inspection provisions. However, since the Diesel-propelled towing vessel does not have a boiler, that element of danger to life and property had been eliminated, and obviated the corrollary need for inspection.

AWO spoke to the exceptional safety record of the Diesel towboat fleet, and argued that not a single accident in which a towboat was involved could have been avoided through a periodic Coast Guard inspection. AWO argued to the Subcommittee that it was necessary to recognize that those who operated inland towing vessels were, first and foremost, businessmen. The towboat represented their sole means of livelihood, and it was foolish to presume that they would operate this equipment in either a cavalier or unseaworthy manner. From the simple economic perspective of good business sense, it was a given that operators would both properly maintain their vessels and employ the most competent men they could find. No businessman would risk the sinking of a $500,000 investment (in 1951 dollars) for the sake of avoiding maintenance costs, nor would he risk that same vessel by entrusting it to an inexperienced or incompetent pilot.

AWO argued that the "dieselization" of the barge and towing industry represented an advancement of which the industry was proud. The attempts to impose unnecessary inspection and regulation on the industry could only serve to retard that advancement and

punish those operators who had been innovative and progressive. AWO also maintained that the imposition of these proposals would not only unduly hamstring the industry but would harm the consumer through the higher prices that would result from the operator passing on his increased operating expenses. AWO concluded that given the substantially increased expenses that would result to both the operator and the government (for more inspection personnel) from enactment of this legislation, when weighed against the nonexistent contribution that would be made toward greater safety, it made impeccable sense for the Subcommittee to deny these bills.

The Chairman of the Subcommittee, and at that time of the full Committee as well, Edward J. Hart (D-NJ), pointed to the oft-repeated argument of the legislation's opponents that the principle of ownership would adequately insure well-maintained and properly operated equipment as no justification for not extending longstanding safety statutes to the Diesel towing fleet. Hart argued that, although the principle of ownership had some validity, it was nevertheless a principle which had application to all industries, especially transportation enterprises. He maintained that in and of itself, it did not obviate the need for governmental regulation.

While the testimony of AWO was generally representative of the opposition arguments, it was, to be sure, more tempered in its content and tone than many others. Many of the opponents who appeared before the Subcommittee adopted the rancorous approach of Congressman Weichel. They viewed the question as a clear management vs. labor struggle, and addressed it as such. Several witnesses related to the Subcommittee that they suspected the motives of the labor organizations

supporting these bills. The stated concern for safety, they opined, was in reality a distant second to other less honorable goals. Specifically, the charge was made several times that under the guise of promoting maritime safety, the unions were attempting to create more jobs for their members. These bills, they felt, were an attempt to set up a system of extra men; a system whereby a pilot has to be licensed for a particular stretch of river, necessitating the use of a new "trip pilot" every 100-200 miles. Furthermore, they argued that once the licensed pilot requirement is established, then the hiring hall becomes almost inevitable because all licensed men will by that time have been "forced into the unions." The operator will be forced to employ the hiring hall each time he needs a new man, and forced to take the first one on the union's list whether or not the company is satisfied with his qualifications. Lastly, they charged that once the Coast Guard had established minimum manning scales on these towing vessels, union pressure on that agency would be constant to increase the number of boatmen required.

The efforts to extend the inspection statutes for steam vessels to the Diesel fleet in 1936 and 1951 shared several common characteristics. First, both were unsuccessful. Secondly, in the final analysis, both ultimately broke down into a classic labor vs. management struggle with neither labor nor management witnesses yielding any validity to the arguments of the other. Lastly, the arguments themselves remained essentially the same on both sides of the issue, although the rancor of both camps had intensified in the fifteen years between the two efforts. The increased vigor with which both management and labor argued their respective cases is probably due

to the fact that between 1936 and 1951 the Diesel fleet had moved from a fledgling state to one of clear predominance on the inland waters, and the stakes for loss or victory had become much higher for both sides.

Although the 1951 effort was ultimately unsuccessful, the labor proponents had learned from the 1936 defeat. Most notably, the 1951 legislation did not attempt to include either fishing craft or pleasure boats as had H.R. 6203 in 1936. By narrowing the 1951 effort to the Diesel towing fleet only, the vociferous opposition of fishing and yachting interests was eliminated. Undoubtedly, this not only increased the chances of enactment, but also clarified the issue by eliminating arguments and statistics which were largely peripheral. However, there was a price to be paid for not proposing the inclusion of fishing vessels and pleasure boats. Towing interests opposing the legislation charged that if increased safety was indeed the paramount labor concern, then certainly they would have included in their proposals those segments of the marine industry with the poorest casualty records. Although the extent to which these charges hurt the legislation is unknown, there is little doubt that they had the effect of making the unions' motives suspect, at least in the minds of some legislators.

## THE 1965 EFFORT

In large part, the title of this subsection is a misnomer for "The 1965 Effort" was in fact a legislative attempt that spanned five Congresses and ten years. However, the extensive hearings held in the House Committee on Merchant Marine and Fisheries during 1965 provided the major impetus in this legislative initiative, and for that reason, deserve at least some degree of recognition.

In each of the efforts previously examined in this chapter, the legislative question before the Congress was twofold. In the first instance, the Congress was asked to judge the merits of extending U.S. inspection statutes to include Diesel-powered towing vessels. However, in both 1936 and 1951, it had also been asked to concurrently consider the need for licensed personnel aboard those vessels irrespective of the question of inspection. This was the case again in 1965; and it is specifically in this instance that the significance of the twofold effort becomes apparent for the ultimate result of this decade-long debate was to enact certain licensing requirements for Diesel-propelled towing vessels while leaving them uninspected.

The 1965 effort differs from the 1936 and 1951 initiatives in several respects. Firstly, unlike the earlier considerations, the industry which was now the subject of examination had evolved into an almost exclusively Diesel-powered one; nearly all reports agreed that the U.S. documented towing fleet was over 98 percent non-steam-propelled. Thus, the 1936 and 1951 prophesies that the competitive edge of noninspection would allow Diesel-powered towboats and tugs to supplant the steam-propelled fleet had been fulfilled. However, this also meant that the argument of competitive equity was no longer valid or important; the evolution of the towing fleet had effectively nullified it.

Secondly, there were differences from the political perspective. The fact that the towing fleet was almost exclusively Diesel meant that its opposition front was now solidly united. The Diesel vs. steam split of 1936 and 1951 was no longer a factor. From the standpoint of those supporting the legislation, the commitment of

important Committee members to finally enact modernizing legislation was integral to sustaining the effort for a decade. Labor proponents had lacked solid and committed support from influential legislators in both previous attempts. Undoubtedly, the limited degree of success that distinquished the 1965 effort from 1936 and 1951 was largely due to the political influence of sympathetic representatives. Additionally, the Coast Guard provided clear support for the legislation in 1965, in both its need from the perspective of safety and in terms of that agency's capability to accomplish the necessary administrative tasks. This was in stark contrast to its lukewarm endorsements of the legislation considered in 1936 and 1951, which were always coupled with pronounced self-doubts as to the agency's ability to handle the added administrative burden.

Another significant difference between this and previous attemps to enact inspection legislation was that, in this case, the proponents sought to argue their case on the basis of comprehensive fact. The 1936 and 1951 arguments of the legislation's supporters were largely rhetorical. To be sure, specific examples of accidents and loss of life were pointed to, but in neither attempt was a comprehensive and cogent case made which refuted the claims of uninspected vessel operators that they operated as safely as did the steam-powered competition. The proponents of vessel inspection in the 1965 initiative understood that the lack of a clear casualty indictment for the Diesel fleet in 1936 and 1951 was a significant factor in the ultimate failure of those respective efforts. They sought to insure that this would not again be the case.

Lastly, there is a difference between the 1965 effort and its predessors in that this most recent attempt was debated in a modern technological and political climate that is closely akin to the current environment in which another attempt would be considered. Specifically, the 1965 effort took place in a technological context that remains the same today, i.e. a towing fleet that is almost wholly Diesel-propelled. Politically, the cast of characters in 1965 was much the same as it would be at present, with trade associations and labor unions taking the lead role in the debate. The 1936 and 1951 efforts transpired when the technology of the industry was much different than it is now, and especially from the perspective of the opposition camp, saw much less reliance on the trade association as a means of representation before the Congress. The significance of this difference between the 1965 and 1936-1951 efforts is that, given the resemblence between the technological and political climates of 1965 and today, the lessons that can be learned from this most recent effort are much more educational than those offered by the earlier attempts. In many respects, the 1965 effort can be used as an accurate indicator of what could be expected in any serious attempt to legislatively reexamine the issue today.

The third effort to enact legislation which would make the Diesel-powered towing fleet subject to the inspection laws of the United States began with the introduction of H.R. 9700 to the 87th Congress on January 16, 1962. The bill's sponser, Mrs. Leonor K. Sullivan (D-MO), introduced the legislation following several meetings with the legislative committee of Local 28 (St. Louis) of the International Organization of Masters, Mates, and Pilots.

By her own admission, Mrs. Sullivan was not at that time a proponent of the bill, but introduced it as a vehicle to prompt hearings through which the MM & P could argue its case. However, no hearings were held on the bill in the 87th Congress.

The same bill was introduced into the 88th Congress as H.R. 942. However, the Coast Guard asked that the Congress not schedule any hearings on this bill until they had the opportunity to conduct a comprehensive in-house analysis of the casualty data on uninspected towing vessels to determine the need for this legislation. This postponement was agreed to by the parties involved.

During 1962, the Coast Guard conducted this comprehensive study of towing vessel operations, and it was on the basis of their findings that the decade-long effort was to be propelled. Briefly, the study showed that of the 5,100 vessels then documented for towing service, only 103 were inspected and certified by the Coast Guard. The alarming corrollary to this statistic was that although the number of towing vessels had increased by only 20 percent in the previous 10 years, the number of casualties had increased by 120 percent. The average for the period from 1960 through 1962 had reached 559 casualties per year; and the Coast Guard found that during 1962, one out of ten towing vessels was involved in an accident serious enough to be reported. The casualty figures for 1962 also showed that of the 15 lives lost on towing vessels, all involved the uninspected fleet. The figures further revealed that less than 3 percent of the inspected vessels were involved in reportable casualties compared to over 10 percent of the uninspected boats.

The study concluded that on the basis of these casualty figures it was evident that the operation of Diesel-powered towing vessels involved as great a hazard as operation of those propelled by steam, and that this hazard could be reduced by requiring compliance with Coast Guard safety standards. Succinctly, the study recommended that motor-propelled towing vessels be brought under the inspection statutes of the United States.

An additional finding of the Coast Guard study, and one which by significant in the eventual result of this effort, was that a large percentage of the casualties which had occurred on uninspected towing vessels were of a type which could have been avoided or minimized if competent personnel were aboard. For example, during 1962, almost 60 percent of the reported casualties involved collisions, and nearly 12 percent involved groundings of the tug or tow. The Coast Guard pointed to these figures as substantiation that it was necessary to provide the agency with the authority to prescribe manning regulations, and to govern the licensing and certification of personnel. Although the Coast Guard's recommendation in this respect was part and parcel of the inspection program, the statistics would serve to separate the issues into two distinct considerations several years down the road.

The Coast Guard submitted its analysis to the Congress on November 14, 1963, along with proposed legislation for the inspection of towing vessels which was even broader in scope than that introduced by Congresswoman Sullivan. It was introduced that same day by Mrs. Sullivan as H.R. 9130, and hearings on the bill were scheduled for August of 1964, at which time over 80 witnesses were

to testify. However, due to the crush of the legislative calendar, these hearings were postponed, and no action was taken prior to the adjornment of the 88th Congress.

It was during the 89th Congress that the issue was to receive its most thorough examination. The vehicles for the 10 days of hearings in July and August of 1965 were three bills, two of which proposed the inspection of Diesel-powered towing vessels, and one which sought to establish the Coast Guard's authority to to license and certificate the masters and pilots of these vessels.

H.R. 156, introduced by Mrs. Sullivan, and H.R. 723, introduced by full Committee Chairman Herbert C. Bonner (D-NC), were identical to each other as well as to the Coast Guard legislation (H.R. 9130) of the 88th Congress (see Appendix II for bill text). These bills represented the most comprehensive legislation yet proposed to regulate the inland towing industry. They proposed that all towing vessels which were above fifteen gross tons or over 26 feet in length, regardless of their manner of propulsion, must be inspected at least once every two years. This inspection was to include, in addition to a determination of seaworthiness, such factors as suitable crew accomodations and proper lifesaving and fire-fighting equipment. The Coast Guard was also provided with the authority to prescribe regulations with respect to:

- vessel design, construction, and repair;
- vessel operation, including the waters in which a towboat or tug could navigate;
- vessel manning, including the duties of both licensed officers and crewmembers; and
- crew licensing and certification.

*Legislative Proponents*

By the time that the first day of hearings began on July 20, 1965, Congresswoman Sullivan had become a firm believer in the need for the inspection and regulation of towing vessels. Her initial skepticism in introducing the first bill in 1962 had been erased by the results of the Coast Guard study. She recognized the controversial nature of this legislation but argued that the consistent instigation of these proposals by labor organizations did not indicate that it was a special-interest bill. Indeed, Sullivan stated that labor unions, anxious to protect their members, had a legitimate interest in safety legislation of this sort. She argued to her colleagues that while labor and management viewed the need for this proposal differently, the Coast Guard had only one interest to serve - the public interest - and that their testimony should therefore be given considerable weight.

As previously discussed in the beginning of this subsection, the Coast Guard, unlike previous testimonies on this issue, did not simply pay it the obligatory lip service in 1965. The Coast Guard testimony was a cogent presentation on the need for his legislation in order to increase safety and reduce casualties. The Coast Guard argued that to reject these proposals would leave the anamoly of the law intact, at the cost of lives and vessels. The Coast Guard pointed to the Motorboat Act of 1940, which required the inspection of motor-propelled vessels that carry cargo for hire, and the laws requiring the inspection of barges carrying inflam-

mable or combustible liquid cargoes as evidence of the need for change. They argued that it was both inconsistent and absurd to inspect a cargo carrying barge while allowing the motor-propelled vessel pushing it to go uninspected. They concluded that, given the known casualty record, not to establish inspection provisions would be tantamount to courting a major maritime disaster on the inland waters.

A significant point in the Coast Guard's testimony was their assertion that they had the administrative desire and capability to bring the Diesel-powered towing fleet under inspection. In the previous efforts in 1936 and 1951, to some degree the inspection initiative was preempted by the testimony of the existing regulatory agency that they either lacked the manpower or the resources to establish a viable inspection program. In some respects, this testimony would make all subsequent arguments merely theoretical because it had already been established that the existing regulatory structure was not prepared to accept the added administrative burden. However, in 1965, subsequent testimonies would have to be addressed on a practical level because the Coast Guard expressed the capability and desire to inspect. In fact, they pointed to the Small Vessel Passenger Act as a recent example of the agency's capability to bring an entire industry segment under inspection all at one time. The 4,000 vessels covered by that Act demonstrated that such a change could be practically accomplished without major disruption.

Lastly, the Coast Guard came armed with facts and figures regarding what the agency needed to bring an estimated 4,300 towing

vessels under inspection - 55 officers and 20 civilians for an additional cost of approximately $700,000 per year. This data effectively preempted any dire warnings from the legislation's opponents that excessive administrative costs would result if the proposal was enacted.

The lines in support of, and in opposition to, this legislation were drawn much as they had been in both 1936 and 1951. The primary breakdown was labor vs. management, although in this instance it appears as if the government was also clearly sympathetic to the labor position. Labor support for the bill was forthcoming from virtually all affected unions; indeed, the International Organization of Master, Mates, and Pilots, the Marine Officers Association of the International Brotherhood of Teamsters, Local 333 of the United Marine Division, the Marine Engineers Beneficial Association (District No. 1), the National Maritime Union, and the AFL-CIO Maritime Committee all testified in favor of the proposal.

Substantively, the arguments of labor in favor of enactment were much the same as they had been in the past. The testimony of labor representatives characterized these bills as amendments which were long overdue, and analagous to existing motor vehicle regulations which required drivers to be licensed, and automobiles to be periodically inspected. They argued that it was incredible to realize that 5,000 horsepower towboats were allowed to operate on the nation's rivers totally uninspected and with a man at the wheel who very well may be wholly unqualified and untrained. The unions pointed to the conscientious operators who, although not required by law, only employ licensed men to navigate their vessels

as evidence of the need to close the gap in the statutes. Labor argued that it was these conscientious companies who suffered by competition with "gypsy" operators who did not use licensed crewmen, who cut corners on safety and lifesaving equipment, and who operate their vessels in unsafe states of disrepair in order to avoid maintenance costs.

Understandably, labor also argued for enactment of these bills on the basis of crew safety. They stated that the thousands of men who worked aboard tugs and towboats deserved at least the protection that this legislation would provide. Labor argued that the fact that 99 percent of inland towing vessels were uninspected and 50 percent of the crew were unlicensed was a direct causal factor in the increasing casualty figures within the industry. It pointed to this lack of regulation as actual encouragement for operating in an unsafe manner in order to maximize profits and remain competitive.

However, labor testimony in the 1965 hearings differed from that presented in 1936 and 1951 in one important respect. There seems to be a recognition in the 1965 testimony that arguing its case on the board, theoretical tenets of safety and common sense would not, in and of itself, be adequate to convince the Congress of the needed change. The 1965 testimony shows a willingness to get to the bottom line - to address the issue in practical terms, and translate these proposals into their real impact on the industry, and on management/labor relations. Additionally, having been through a similar effort twice before, labor could anticipate the arguments of its opponents, and was ready to refute them in blunt terms.

The inland towing industry was, and is predominantly unorganized, and its workforce largely non-union. This fact had raised the suspicions of legislators and operators alike that the safety of the workforce was not the real concern of labor (if only because most of the workforce was non-union). They suspected instead that the unions saw these bills as a means to facilitate the organization of the industry. In the 1965 hearings, management opponents of the legislation did not have to raise the issue before the Subcommittee because the labor unions beat them to the punch.

Firstly, labor addressed the question of how many more members would be added to their ranks if the bills were enacted into law. In their assessment, no tangible gains would be realized in this respect because the companies which operated under union contract were already abiding by the safety provisions and were, for the most part, adequately manned. Furthermore, labor pointed out that the Coast Guard manning levels which would be established under the inspection statutes were to be <u>minimum</u> manning levels, and would probably be less than those levels already established through collective bargaining agreements. Therefore, labor argued that those union-contracted operators who testified regarding their fear of featherbedding and excessive regulation were largely crying wolf because their manning levels and safety practices were already greater than what the Coast Guard would require. The labor proponents pointed out that the advantage of this legislation is that it would only affect those operators who did indeed operate unsafely or with inadequate crews.

Secondly, labor argued that the companies who opposed this legislation discredited themselves. Arguments that this legislation would destroy the viability of the industry were wholly unfounded. If the operators' claims that they operated safely were true, then the added cost of compliance would be low or nonexistent. Opposition arguments that the industry was capable of policy itself were no more than wishful thinking given the fact that 90 percent of the companies are one boat concerns. The unions opined that a more farsighted position of the major operators who had appeared to testify would be to join labor in attempting to bring many of the gypsy operators into compliance with recognized standards of safety, if not for the safety of their crews, then at least for the competitive threat they presented.

Lastly, labor argued that they had a legitimate interest in seeking protection for the lives of nonunion boatmen aboard substandard vessels because of the ultimate effect that their operations had on union members. That was the rationale for labor's initiation of this measure, and any effort to prescribe other ulterior motives were not consistent with the facts. Additionally, the unions argued that it made no sense for labor to wish to jeopardize the continued existence of water transportation through legislation which was truly debilitating. Indeed, labor recognized that their future was inextricably tied to the industry's well-being, and that it was suicide to advocate the destruction of the industry on which its members relied for their livelihood. Undoubtedly, labor had often stood by the side of its operators in their struggles with the railroads and the Interstate Commerce Commission, and promised

to continue to do so.

Labor proponents argued that this legislation was a "broad public proposition" which involved "a question of public policy affecting all aspects of the industry and the public." Indeed, on one level it was that, but it was also a rather parochial issue which caused emnity between the opposing forces. In these hearings, labor evidently tried to broaden its base of support by soliciting testimony before the Subcommittee from other parties. The testimony of a licensed towboat captain, who related the hazards of navigating in the same waters with untrained pilots, a deckhand who had served aboard a substandard uninspected tug, and the American Trial Lawyers Association, which argued that the best way to rehabilitate a victim of a maritime casualty was to prevent him from becoming one, undoubtedly broadened that base to some degree. However, the effectiveness of their testimony, in a political sense, was questionable.

*Legislative Opponents*

Just as labor's position was solidly in favor of enactment of these proposals, the companies were unalterably opposed. And it should be noted here that like the previous hearings in 1936 and 1951, the 1965 effort consisted of a seemingly endless procession of operator opponents who came before the Subcommittee to express their displeasure with the proposed amendments. Indeed, it is clear in all three efforts that the companies held the edge to the extent that by virtue of their number alone, they were able to consume the lion's share of the allotted hearing schedule. Even in the case of the 1965 hearings, where more labor unions appeared than in either of the previous efforts, in both time before the

Subcommittee and volume of testimony, labor placed a distant second to the operators. If only because of the respective nature of the organizations supporting and opposing the legislation, the best ratio that labor proponents could muster would be a half-dozen advocates vs. scores of opponents. Undoubtedly, the sheer volume of the opposition would play some role in the minds of the legislators.

As had been the case with the labor testimony in 1965, opponents of the bills argued many of the same points that they had in 1936 and 1951. Despite the preponderance of evidence to the contrary, the operators maintained again in 1965 that the industry had an exemplary safety record, and that the legislation was unnecessary. Arguments that the industry had done a capable job of policy itself were forwarded as justification for there being no need to require Coast Guard inspection. In fact, the industry argued that it was inherently self-regulating not only because they were genuinely concerned about the safety of theirs crews but also from "the cold, hardheaded approach of business economics." Specifically, they argued that it was in the operator's economic self-interest to operate as safely as possible because no one wanted to risk the substantial investment they had in their tugs and towboats. Additionally, the argument was made that the high cost of marine insurance to operators with poor casualty records necessitated prudence in the operation of one's vessel. The liability an operator faced for negligence was substantial, both in civil and criminal suits, and served as an effective deterrent to substandard and unsafe equipment and operations. Lastly, the operators pointed to the prescense of unions as adequate insurance that vessels on the inland waters and in the harbors

would be safely, if not excessively, manned, and that their equipment and structure would be properly maintained. Succinctly, they argued that given the nongovernmental regulatory bounds already in place, enactment of this legislation would be unconscionably duplicative, without providing any significant enhancement in safety.

To be sure, the testimony in opposition to this legislation was not homogeneous; different presentations adopted different emphasis and tactics, from the subdued to the shrill. The American Waterway Operators attacked the credibility of the Coast Guard's study, maintaining that it did not accurately reflect the safety situation on the nation's waterways. In that same vein, they argued, as did many others, that the Coast Guard did not possess the necessary operational expertise to set manning levels on tugs and towboats. The industry maintained that the company itself was better able to judge the number of men necessary to safely crew their vessels. Many made this same point on a philosophical basis, arguing that these bills sought to preempt long-standing management prerogatives, and would effectively transfer the management of the towing industry into the hands of the Federal Government.

Some approached the issue from the perspective of the delicate competitive balance between barge transportation and the other modes. They stressed to the legislators that the inland industry was highly reliant on its low rates as the means of attracting shippers, and that the additional maintenance and crewing costs which would result from these bills could price them out of the marketplace vis-a-vis

their intermodal competitors. At the very least, they stated, it would be the consumer who would ultimately suffer as water compelled rail rates were raised to keep pace with increasing barge rates.

There were, of course, also the prophets of doom who foresaw only the ultimate and total destruction of the water carrier industry should this legislation be enacted. Dire predictions that the licensing requirements would throw thousands of experienced and competent boatmen onto the welfare rolls were advanced. The imposition of these "artificial criteria" on the industry were to inevitably lead to the demise of profitable operations until it would be necessary to provide Federal subsidies to inland carriers to sustain their activity.

And there were also those who approached the issue as if it were a holy war with infidels who were conspiring to destroy the industry once and for all, or as one operator described it - "a sinister effort to bankrupt and ruin a thriving segment of our transportation industry."[7] Indeed, charges that this was a blatant attempt by organized labor to featherbed the industry were the mildest statements some would make. Others would indict the Coast Guard and organized labor of conspiring together, for their own respective selfish reasons and ulterior motives, to make the water carrier industry impotent and uncompetitve. Labor leaders were accused of promoting this legislation so that they could increase their membership, which would in turn increase the dues received, which would then allow them "to fill their coffers and build political slush funds to defeat honest politicians."[8] This kind

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7/ U.S. Congress, House, Committee on Merchant Marine and Fisheries, Towboat Regulations, (Washington: U.S. Government Printing Office, 1965), p. 370.

8/ Ibid., p. 364.

of paranoia even found its way into the trade publications. An editorial entered into the hearing record which appeared in the MARITIME REPORTER & ENGINEER NEWS on August 15, 1965, accused the Coast Guard of having "formed an unholy alliance with maritime labor unions in its efforts to ram through Congress..." the bills in question. That publication described the Coast Guard's efforts as "the lust for power."9/

Despite the fact that the arguments of the legislation's opponents closely paralleled those made in the two previous efforts, the 1965 testimony was significant because it presented the first small crack in what had heretofore been virtually monolithic opposition to any change in the industry's status vis-a-vis government regulations. Specifically, two of the more influential members of the opposition camp admitted, albeit reluctantly, that there might be a need for licensed wheelhouse personnel. The American Waterways Operators and Jesse E. Brent of Brent Towing Company both stated to the Subcommittee that they believed that licensed navigators were something that the industry could live with, and that, indeed, many operators already had internal policies which required Coast Guard licenses for their wheelhouse personnel. Subsequent questioning of these and other witnesses revealed that the majority of larger operators encouraged, if not actually required, Coast Guard licensing of their pilots and navigators. The significance of these revelations was to make it very difficult for the operators to argue, with any substantial credibility, that

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9/ Ibid., p. 472.

there was no need for any increased government regulation. In effect, their actions (in encouraging their wheelhouse employees to become licensed) spoke louder than their testimony in opposition to any such Coast Guard requirement. Moreover, with the clear 20/20 hindsight we enjoy in 1980, these 1965 hearings, although unsuccessful in the immediate sense, paved the way for the licensing requirement that would be ultimately enacted, and provided the fuel for a sustained effort over the next several years. Although the bills in question were not reported out of Committee, the 1965 hearings were undoubtedly different from either the 1936 or 1951 efforts to the extent that they made a case sufficient to keep the momentum alive beyond the confines of the 89th Congress. This was in marked contrast to the speed with which the issue was dropped in the 74th and 82nd Congresses once the hearings were concluded.

Lastly, before we leave our consideration of the 1965 hearings, there is one other historical lesson to be learned, and this of particular importance to the Transportation Institute. Within the procession of companies who appeared before the Subcommittee on Coast Guard and Navigation to voice their opposition to the legislation, no less than nine are now members of the Institute, with SIU crews on their tugs and towboats. Their arguments were consistent with those of the industry in general, and no less vociferous. And consistent with the composition of the opposition coalition as a whole, these TI member companies represent the leadership of the industry, and are among the largest, most progressive, and most politically astute companies within our membership. Harbor Towing Company (Baltimore), American Commercial Barge Lines (Jeffersonville,

Indiana), Dunbar & Sullivan Dredging Company (Dearborn), Crowley Launch and Tug (San Francisco), Sabine Towing and Transportation Company (Groves, Texas), the Higman Towing Division of Slade, Inc. (Orange, Texas), Foss Launch and Tug (Seattle), McAllister Brothers, Inc. (Philadelphia), and Interstate Oil Transport (Philadelphia) all felt strongly enough about this issue to personally appear before the Subcommittee in opposition to enactment instead of leaving that task to their trade association representatives. Undoubtedly, their position is reflective of the Institute's membership as a whole, and portends an extremely difficult role for the Institute should this subject become legislatively active once again. Indeed, the position of the Transportation Institute in any future effort to secure inspection of towing vessels would be, at the very least, most precarious.

## THE ISSUE OF LICENSED PERSONNEL

As has been noted above, the 1965 effort was in reality a series of legislative activities that spanned a decade. However, it is clear that following the 1965 hearings themselves, the focus of labor, the industry, and the Congress narrowed, placing primary emphasis on the question of the licensing of towboat personnel. The question of the inspection of towing vessels would increasingly diminish in importance throughout the remainder of this effort, until it ultimately faded entirely.

### *90TH Congress*

In the 90th Congress, two bills were introduced relative to the issue. H.R. 156 introduced by Congresswoman Sullivan (and coincidentally assigned the same number as in the 89th Congress),

proposed the inspection of towing vessels regardless of their means of propulsion; H.R. 11216, introduced by Congressman Garmatz (D-MD), proposed the licensing of personnel. On June 17 and 18 of 1968, the full Committee on Merchant Marine and Fisheries met in executive session on these bills. Since the transcript of those hearings was not printed, the content of the discussion is unknown. In any event, the bills were not acted on, and no substantive progress was made.

*91st Congress*

It was within the 91st Congress that the groundwork was laid for enactment of legislation to require licensed towboat and tug operators on uninspected vessels. By this time, the emphasis on licensing requirements had overshadowed the issue of inspection to the point where inspection legislation was not even included on the hearing schedule. Indeed, the hearings held by the Subcommittee on Coast Guard, Coast and Geodetic Survey, and Navigation on October 8, 9, 13 and 14, and November 12 and 13 of 1969 considered two bills, both of which dealt exclusively with licensing requirements. The two bills, H.R. 13987, introduced by Chairman Edward A. Garmatz on September 24, 1969, and H.R. 14186, introduced by Hastings Keith (R-MA), were exactly alike in all respects except one. Both provided that all towing vessels of above fifteen gross tons or exceeding twenty-six feet in length must, while underway, be under the actual direction and control of a person licensed by the Coast Guard. Except in the case of an emergency, this operator must not work in excess of twelve hours in any consecutive twenty-four hour period. Both bills additionally proposed that the Secretary of Transportation would conduct a study regarding the need for inspection of towing vessels, and submit its legislative recommendations on the basis of those

findings to the Congress within two years. The single difference between the two bills was a provision in H.R. 13987 which required all uninspected towing vessels in excess of 750 horsepower to have on board a Coast Guard licensed engineer while underway; H.R. 14186 made no mention of licensed engineers.

The hearings in 1969 differed from those that preceded it in both substance and tone. The substantive difference stemmed from the fact that the focus on the issue had shifted from the emphasis on inspection to an emphasis on the licensing of personnel. However, even more dramatic was the notable difference in the tone of the hearings. Gone were the strident cries of the opposition camp that this legislation would regulate the industry into extinction. Also gone were the impassioned pleas of maritime labor that the welfare of American boatmen mandated the enactment of these proposals without delay.

The reason for the difference in the substantive composition of the hearings is evident. However, the history of the struggle between labor and management on this issue, as heated and bitter as it often was, does not lead to the expectation that these hearings would be any different than their predecessors. Yet, they were different, to a significant degree.

The close analysis of the hearing record indicates that this tonal difference emanates directly from the compromises which had been struck prior to the opening session of the Subcommittee. Neither the Subcommittee, labor, management, nor the Coast Guard had been idle in the 4 year hiatus between the 1965 and 1969 hearings. There was evidently a good deal of discussion between and among the participants regarding what could be agreed to. These attempts apparently involved the development of a legislative vehicle which would address the safety concerns of labor and the Coast Guard without prompting another all-out industry onslaught

to kill the bill. The tenuous consensus that evolved centered on the licensing of tug and towboat operators.

Succinctly, the consensus was that the industry would support the requirement for Coast Guard licensed operators aboard its vessels. The industry principals in previous opposition endeavors now appeared before the Subcommittee to speak of the need for licensed towboat operators, from the perspective of safety no less. Indeed, as solid as was the industry's opposition to inspection legislation in 1936, 1951, and 1965 was its support for the licensing proposal in 1969. Trade associations such as The American Waterway Operators, the New York Towboat Exchange, the Mississippi Valley Association, the Associated General Contractors, and the Columbia River Towboat Association, as well as respected operators like Foss Launch and Tug, Harbor Tug and Barge, Brent Towing, National Marine Service, A.L. Mechling Barge Lines, and McAllister Brothers all lent their support to enactment of an operator licensing bill.

Of course, the labor unions which testified before the Subcommittee were strongly supportive of the legislation. However, the role of labor in these hearings was more limited, at least in terms of testimony volume, than had been the case in the previous hearings. Only the International Organization of Masters, Mates, and Pilots, and both Districts 1 and 2 of the Marine Engineers Beneficial Association, actually appeared before the Subcommittee to testify. But more important than the limited nature of labor's role in these hearings was its fragmented position. Undoubtedly, labor was united in its support of the licensed operator requirement. However, their unanimity ended there. The Marine Engineers Beneficial Association threw its support to H.R. 13987, the bill which required licensed engineers on vessels of more than 750 horsepower, while agreeing not to pursue the inspection provisions

of the earlier bills. The International Organization of Masters, Mates, and Pilots, although it too did not insist on the politically difficult inspection provisions, went a step further in the direction of compromise, stating that it did not believe that licensed engineers were vital to the ultimate safety of a Diesel-powered vessel. Essentially, the MM&P told the Subcommittee that it would agree to ignore the inspection and engineer questions in order to secure enactment of the requirement for licensed operators.

Notwithstanding these various degrees of compromise verbally presented to the Subcommittee, one sector of labor called its brethren to task for striking political compromises on a question of safety. The AFL-CIO Maritime Committee, under the direction of Hoyt S. Haddock, submitted a written statement which argued that this compromise, although politically expedient, did not serve to address the real question of making the uninspected towing fleet inherently safer. The Committee argued that the effect of this political compromise was a compromise of safety, as they phrased it - "...a far cry from what is needed."[10] And although their sentiments were echoed by Congresswoman Sullivan, the hearing record gives the reader the clear impression that their voices were cries in the wilderness, unable to halt the momentum of a compromise on a troubling, recurring issue. Indeed, if the agreement of labor and management were not enough to void the arguments of the stalwarts, the endorsements of the Coast Guard and the National Transportation Safety Board surely were.

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10/ U.S. Congress, House, Committee on Merchant Marine and Fisheries, Towboat Crew Licensing, (Washington: U.S. Government Printing Office, 1970), p. 239.

Therefore, it would be inaccurate to characterize the 1969 hearings as sessions of complete unanimity. Although industry, labor and government agreed on the need to license towboat operators, there was a significant divergence of opinion regarding the need for licensed engineers. As discussed above, the position of labor differed within its own ranks. However, the industry opinion in this regard was not split; it very much resembled the single-mindedness of purpose that was demonstrated in the opposition efforts of 1936, 1951, and 1965. The industry position was simply that the development of automated enginerooms and remote control monitoring equipment in the wheelhouse had made the engineer an anachronism on a Diesel-propelled vessel; it argued that to require the Diesel fleet to hire an engineer for each of its vessels would constitute the most blatant example of featherbedding.

The Coast Guard was also opposed to a statutory requirement for licensed engineers on all towing vessels without regard for the particulars of the vessel and its operations. They argued that since most towing vessel casualties were caused by collisions or groundings, the presence of an engineer would not significantly contribute to greater safety on the rivers and in the bays. They made the suggestion that the need for engineers be examined in conjunction with the proposed 2 year study on the need for vessel inspection. Additionally, the National Transportation Safety Board, on the basis of its 1969 study of the towing industry, concurred with the Coast Guard's testimony in this respect.

Although no bill was enacted in the 91st Congress as a result of these hearings, they were significant to the extent that

they laid the foundation for passage in the 92nd. The willingness of the industry to accept the requirement for licensed operators was not a substantial compromise inasmuch as most of the large companies already employed only licensed wheelhouse personnel. However, that willingness did provide a theretofore nonexistant area of common agreement among management, labor, and government, and as such, presented a politically attractive means by which the Congress could rid itself of a troublesome issue. The attractiveness of that route is clearly evidenced by the speed with which the bill was enacted in the 92nd Congress.

*92nd Congress*

The legislative vehicle which would eventually evolve into law was introduced as H.R. 6479 on March 22, 1971 by Edward A. Garmatz, Chairman of the full Committee on Merchant Marine and Fisheries. As if the sponsorship of the Chairman was not enough to indicate the political strength of this bill, the list of cosponsors left no doubt: the two senior majority members of the full Committee, Leonor K. Sullivan (D-MO) and Frank M. Clark (D-PA), and the two senior minority members, Thomas M. Pelly (R-WA) and William S. Mailliard (R-CA). H.R. 6479 resembled its predecessors in some respects, but differed in others, primarily those which required compromise with the industry. Specifically, like the bills considered in the 91st Congress, H.R. 6479 required that all towing vessels of 26 feet or more in length must, while underway, be under the actual direction and control of a Coast Guard licensed operator. This operator was prohibited from working a vessel for more than twelve hours in any consecutive twenty-four hour period.

H.R. 6479 differed from the predecessor bills in two primary respects. Firstly, consistent with the previously-noted trend away from consideration of the inspection issue, this bill deleted the provision for a two-year study to examine the need for inspection of Diesel-propelled vessels. Secondly, as a direct result of the industry's unwillingness to accept a requirement for licensed engineers, that provision was also omited. In its place was substituted a provision which authorized the Coast Guard to conduct a ten-month study concerning the need for engineers on uninspected towing vessels, and charging them with the responsibility to make the legislative recommendations found appropriate. H.R. 6479 indicates the degree to which the inspection issue had been replaced by the more politicially feasible question of operator licensing. Indeed, although H.R. 4177, a bill to require towing vessel inspection, was introduced into the 92nd Congress, its progress was minimal given the compromises which had been forged in the previous six years. Likewise, two other bills, H.R. 293 and H.R. 4178, which proposed the requirement for both licensed operators and engineers, were stalled by the understandings which had developed.

On April 15, 1971, less than one month after formal introduction, the full Committee on Merchant Marine and Fisheries meet in executive session, and favorably reported H.R. 6479 to the House of Representatives. The House responded in kind and with equal speed, passing the bill on April 29, 1971, and sending it on to the Senate.

The bill languished before the Merchant Marine Subcommittee of Senate Committe on Commerce for a full year, and it was beginning

to seem to the House proponents as if they had come this far only to be denied again as in so many previous attempts. However, almost a year to the day after H.R. 6479 had secured the ratification of the House, the Merchant Marine Subcommittee held a two-hour hearing on the bill. Senator Russell Long (D-LA) chaired the April 27, 1972 session, which included the testimonies of several of the long-time principals in this controversy. For the most part, their positions were virtually identical to those expressed to the House Subcommittee in 1969. The AWO, the MM&P, and the Coast Guard remained supportive of the licensing requirement for towboat operators; MEBA opposed the bill because it failed to include that provision which required licensed engineers aboard towing vessels exceeding 750 horsepower. Indeed, the Senate hearing differed from the House proceedings in only one significant respect, i.e. the argument of the offshore mineral and oil industry that this bill would impose a serious hardship on its operations.

Robert Alario, Vice President of the Offshore Marine Service Association, took an interesting tact in opposing the legislation before the Subcommittee; interesting because he opposed the bill by first expressing unqualified support for the principle of licensed operators in all inland and coastal operations, including the M&O industry. Succinctly, Alario argued to the Chairman that the distinctly different operational nature of the 600 M&O towing vessels warranted separate consideration with regard to the issuance of Coast Guard regulations. To his mind, this was a problem which must be addressed prior to the enactment of enabling legislation to insure that the offshore industry would not be lumped into the

regulations governing the inland waters. Alario was apologetic for introducing this new wrinkle into the issue at this point, and expressed his hope that it would not serve to impede the decade-long attempt to license inland towboat operators. The Chairman was clearly sympathetic to Alario's "problem," and suggested that perhaps some means could be found to "separate out the type situation involving the barges operating up and down the river from the operation that you have on offshore."(sic)

The resourceful Chairman did indeed find a means to resolve the "problem" of the offshore M&O industry, and thereby move the bill further down the road toward enactment. The means devised by Senator Long took the form of an amendment which exempted the offshore mineral and oil industry from the provisions of the bill. The Committee report states that this amendment was incorporated into the legislation in recognition that:

> These vessels differ substantially in their operations from the inland water towboats at which the bill is primarily directed. They operate in waters having relatively little vessel congestion and under special procedures which would make the requirement of the legislation unduly burdensome. Frequently, these vessels operate in foreign waters servicing the growing offshore oil exploitation industries of other nations and the requirements of the legislation might tend to disadvantage them competitively vis-a-vis foreign operators not subject to the requirement. Finally, it was noted that the Coast Guard is conducting a special study of these offshore operations and that, therefore, legislation at this time would be inappropriate.[11]

The full Committee on Commerce unanimously ordered the amended bill to be favorably reported to the Senate on June 27, 1972. The

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11/ U.S. Congress, United Stated Code Congressional and Administrative News, (St. Paul: West Publishing Company, 1972), p. 2762.

Senate voted passage on June 29, 1972, and on that same day, the House voted favorably to adopt the bill as amended. It was signed into law (P.L. 92-339) on June 7 of that year by the President (See Appendix III for the text of the law). The Coast Guard, pursuant to its responsibility to implement the law, issued regulations on February 26, 1973. These regulations became effective on September 1 of that year.

For all intents and purposes, the enactment of H.R. 6479 brought the controversy to a close. To be sure, the question of Diesel-propelled towing vessel inspection remained. Nevertheless, it had been relegated to a position of secondary importance in the effort to secure enactment of a compromise proposal that was palatable to the principals involved. In effect, the licensing requirements of H.R. 6479 represented the lowest common denominator - a denominator in which there was no room for manditory vessel inspection. Yet, although the decision to ignore the question of inspection was primarily a political one, or perhaps because it was, the hearing records of the late 60's and early 70's give a clear indication that many believed enactment of the operator licensing requirement also meant the final resolution of the inspection issue.

The sole epilogue to Public Law 92-339, which had come to be known as the Pilothouse Licensing Act, was the study conducted by Coast Guard regarding the need for engineers on uninspected towing vessels. Given the fact that the Coast Guard began the study with the disposition that engineers were not important to the ultimate safety of the vessel, the outcome of their study was never a

serious question. Nevertheless, both management and labor submitted extensive correspondence and documentation in support of their respective positions. One such submission was that prepared by the Transportation Institute for the Marine Engineers Beneficial Association, in which the need for engineers was argued from a number of perspectives. Another was a petition from the SIU affiliated Inland Boatmen's Union in which 120 boatmen protested the study itself, arguing that the need for experienced and competent engineers was undeniable. However, these efforts, as well as the other coordinated initiatives of maritime labor, proved fruitless. The recommendations and conclusions contained in the Coast Guard's report to Congress were clear and unequivocal — there was no need to enact legislation which would require engineers on uninspected towing vessels. That two-volume report said in part:

> A review of the findings and conclusions in this study seems to indicate that the addition of designated engineers aboard uninspected towing vessels will not reduce the casualty/disarrangement rates currently experienced and therefore will not improve the safety record of these vessels. Therefore, it is recommended that at this time the Coast Guard not make any legislative recommendations which would require engineers on uninspected towing vessels.[12]

As the Pilothouse Licensing Act had effectively sealed the question of inspection in the minds of many, the results of the Coast Guard's study laid to rest the effort to require engineers on inland towing vessels. However, although it is academic at this point, at least one Coast Guard official who worked on the

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12/ U.S. Coast Guard, A Report to Congress Concerning the Need For Engineers on Uninspected Towing Vessels, (May, 1973), p. 36.

study at a staff level is willing to now state (off the record) that it "was very poorly done." Indeed, he opined that the method by which the data was gathered insured that the study results would substantiate the superfluousness of the engineer from a safety perspective. He characterized the questions asked of interviewees as "obscene."

*95th and 96th Congresses*

To be sure, although the issue of inspection of Diesel-propelled towing vessels no longer commands the attention it received before the passage of the Pilothouse Licensing Act, it remains on the minds of maritime labor, and at least one congressional Representative. Congressman Hamilton Fish (R-NY) has introduced bills to require the inspection of towing vessels in both the 95th (H.R. 4021) and 96th (H.R. 327) Congresses. H.R. 327, the text of which is reproduced in Appendix IV, proposes that all towing vessels above fifteen gross tons or 26 feet or over in length shall be inspected, regardless of their manner of propulsion. The bill provides that these inspections would be accomplished before the vessel is put into service, and at two year intervals thereafter. Additionally, it empowers the Coast Guard to issue regulations with respect to the manning of towing vessels, including the duties of the licensed officers and crew members. Although the bill has received only limited attention, and has made no substantive progress, it at least serves to keep the issue legislatively alive. Its importance within the current and future Congressional environment will be discussed in greater detail in Chapter 3.

# CHAPTER 3

## THE ISSUE IN THE CONTEMPORARY ENVIRONMENT

As noted in Chapter 2, the question of the inspection of towing vessels has not enjoyed a great deal of attention since the Pilothouse Licensing Act became law in 1972. It is clear that there is one school of thought that believes that enactment of the operator licensing requirement for uninspected towing vessels concurrently laid to rest the inspection issue as well. Indeed, there is some basis for that belief as evidenced by the reluctance of the Congress to again address the issue. However, there also remains today small pockets of support for vessel inspection requirements in both the legislative and regulatory bodies of government. Additionally, there is little doubt that maritime labor retains a strong philosophical commitment to the regulation of domestic towing vessels. It is these remaining pockets of support that serve to keep the issue alive, and if not in the forefront, then at least in the back of the industry's collective mind.

### CURRENT LEGISLATIVE AND REGULATORY PROPONENTS

The sole legislative proponent of towing vessel inspection in the 96th Congress is Representative Hamilton Fish. His bill, H.R. 327, proposes to accomplish exactly what maritime labor has sought for the past half-century. Ironically, however, his support of towing vessel inspection stems from reasons very different from those which

have motivated the labor proponents of change. Specifically, Congressman Fish's concerns with uninspected towing vessels are wholly environmental. He does not share the concerns that have prompted labor's involvement in the issue; indeed, it would be fair to say that he is probably unaware that labor concerns exist, or that the issue has been so extensively debated in past Congresses.

Congressman Fish's interest in the issue stems directly from an incident which occurred in his district two years ago; namely, a tug hauling a tow of tank barges laden with oil ran aground in the icy waters of the Hudson River just north of Peeksville, New York. An oil spill resulted from a ruptured barge, washing up on the city's beaches. The local populace was understandably angry, and according to the Congressman's staff aide, there was some press sensationalism regarding the environmental damage which had been done. Newspaper pictures of oil covered ducks prompted the constituency to request Fish's assistance in regulating the river commerce through his district. Although the grounding occurred as a result of a navigational error, the vessel was uninspected, and H.R. 4021 was introduced into the 95th Congress.

Congressman Fish probably does not represent that kind of spokesman who would be willing to lead any future effort to seriously reopen the issue. Frankly, his introduction of H.R. 4021 was an immediate response to the concerns of his constituents following an unfortunate incident, and does not represent any deep-seated commitment on his part to the inspection of towing vessels based on the historical record. Indeed, his staff is candid enough to admit that they have not heard him mention the bill since its

initial introduction. The reintroduction of the legislation into the 96th Congress was evidently only a pro forma exercise.

On the regulatory front, there are indications that the Coast Guard remains supportive of the concept of Diesel-propelled towing vessel inspection. The most recent example of the Coast Guard's position in this respect came in response to the recommendations of the General Accounting Office in its study of the agency's effectiveness in its Commercial Vessel Safety Program.[1/] In that study, the GAO noted the low priority which the Coast Guard has given to the boarding of uninspected vessels for periodic safety examinations (primarily involving firefighting and lifesaving equipment). The official Coast Guard posture has been to conduct these boardings for safety and pollution prevention examinations once every three years, to the extent that resources allow. Given the agency's limited resources, the reality has been that very few of these boardings have been accomplished. However, it was the finding of the GAO that uninspected vessels (including fishing vessels) had a significantly poorer safety record than did inspected vessels, and on that basis it recommended that the Coast Guard place a renewed emphasis on the boarding and examination of uninspected U.S. commercial vessels.

The Coast Guard agrees with the GAO assessment that it has traditionally given a low priority to the boarding of uninspected commercial vessels. However, the agency states that it is now developing a triennial dockside safety boarding program which will

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1/ U.S. General Accounting Office, How Effective is the Coast Guard in Carrying Out Its Commercial Vessel Safety Responsibilities?, (Washington: U.S. Government Printing Office, 1979)

conduct vessel examinations at the mutual convenience of the owners and the Coast Guard. Approximately 30 additional billets within the Commercial Vessel Safety Program have already been approved to implement the plan.

While this renewed emphasis by the Coast Guard to exercise its regulatory authority over uninspected vessels may be an encouraging sign to maritime labor, it must be recognized that the program is really no more than the fulfillment of the agency's existing statutory responsibility. It should also be kept in mind that these inspections are voluntary on the owner's part, and will only include those minimal safety and pollution prevention requirements now in place. The program will in no way alter the status of the two central considerations in the issue, e.g., hull and machinery inspection, or minimum manning requirements. Indeed, while the program may be viewed as a step in the right direction, it is at this juncture largely peripheral to the historical question.

Nevertheless, the program at least indicates that the Coast Guard's attitude is supportive of vessel inspection. Moreover, as part of its response to the GAO study, the agency also voiced support for H.R. 327, revealing its continued belief that amendment of the laws was necessary to bring the domestic towing fleet under meaningful government regulation.

## THE FUTURE POSTURE OF MARITIME LABOR

For six decades, the maritime unions have called for the increased regulation of the Diesel-powered domestic towing fleet. Those unions have argued that the safety and well-being of their memberships were threatened daily because the law had failed to

keep pace with the technological development of the industry. Undoubtedly, their arguments have credence. Study after study concludes that the casualty rate aboard uninspected vessels is significantly higher than that aboard inspected vessels. However, as we have seen, maritime labor has expended its considerable energies on at least three different occasions to secure amendment of the law, and in each case, the effort was unsuccessful.

The question arises then — What did they do wrong? In 1936, the fatal mistake was probably fighting with forces that need not have been fought. The clout of the fishing industry was the telling blow in that instance. In 1951, labor proponents attempted to argue their case largely on the basis of rhetoric. Occasional references to specific examples of marine disasters were not sufficient to convince the Congress of the need for change. However, in 1965, the unions were well-prepared for the debate. They had secured the support of the Coast Guard on the basis of that agency's own data analysis. Moreover, they secured the support of several influential members of the Merchant Marine and Fisheries Committee. Indeed, in many respects, that effort was a textbook example of how one should go about laying the foundation for enactment of a statutory amendment. Nevertheless, the central objective of that effort was also not achieved.

In each case, despite the ancillary considerations that may have existed, the legislation's fate hinged on one primary factor — the political clout of the opposition. In each case, it is clear that maritime labor was simply outgunned by the considerable pressures brought to bear on the Congress by the industry. As has been

noted, the issue of uninspected towing vessels is one that prompts the most vociferous and strident opposition the industry can muster. It is one of those issues that serves to unify a highly competitive industry into a single cohesive force. Clearly, it is one of those issues on which the industry will not compromise.

The dilemma for maritime labor is that in an era of relative management/labor calm, this is an issue which remains on the legislative agenda, and a goal which is wholly consistent with the philosophical tenets of trade unionism. It is an issue which is in one respect difficult to ignore, but at the same time, costly to pursue. Without question, a concerted labor effort to legislatively pursue the issue would exact a high price, the first expense being the loss of any existing labor/management cooperation and trust.

Needless to say, there are other costs that will be associated with a renewed effort in this regard. The historical record provides at least two lessons which cannot be ignored. The first is that the only means by which maritime labor can ever secure the enactment of a vessel inspection statute will be through an exhaustive and unrelenting campaign of all its energies. The sole method to overcome the considerable political influence of the domestic towing industry is to spend twice the time and effort in lobbying the question before the Congress. To insure the effort that is necessary, every maritime union would have to commit its resources in this direction, with a common understanding among all that this issue took precedence over any others. Any effort less intense would only result in a repeat performance of past defeats.

The second lesson that the historical record provides is that the foundation to this lobbying effort must be an impregnable case for towing vessel inspection on the basis of safety. In each previous effort, labor's motives have been suspect. Even in 1965, when the Coast Guard lent its support to the legislation, opponents of the bill pointed accusing fingers at labor for attempting to create an environment on the Western Rivers which would facilitate its organizing efforts. These charges are sure to be leveled again in any future initiative, and the only meaningful argument against them is a clear and compelling case for amendment of the laws based on safety. To borrow the phrase of a witness at the 1951 hearings, labor's case must vividly show the "demonstrated need" for change. Indeed, the safety argument must be such that it obviates the accusations of suspect labor motives before they are even voiced.

Succinctly, any future effort to secure enactment of vessel inspection legislation would have to be conducted on both the political and statistical fronts. It would require an unqualified commitment of labor's time and resources, and would probably exact a high price with respect to its relationship with the industry as well. The difficult policy question which therefore faces maritime labor is whether the price to be paid is justified by the gains to be realized.

Consequently, central to the resolution of the policy question regarding labor's future pursuit of vessel inspection legislation is a blunt analysis of exactly what the real gains would be if a statutory amendment was secured. Certainly, the substandard operating

conditions which do exist aboard uninspected towing vessels would be corrected providing a concomitant improvement in the boatman's workplace thereby enhancing his safety. However, the historical record indicates that the immediate import of this gain to organized labor is questionable. Specifically, most of the vessels crewed by unions probably already comply with the manning and equipment regulations that would be issued by virtue of the collective bargaining agreements under which they operate. Labor witnesses have argued at length in the past efforts that very little, if any, improvement expense would result to organized operators if inspection legislation were to be enacted. The same argument has been made with respect to the crew costs of organized vessels. Therefore, the primary thrust of the improvements that would result in operating conditions and safe manning levels would be aboard those vessels which are non-union, and now free of the constraints of a collective bargaining agreement. It is these small one and two boat companies which have traditionally been the least diligent with respect to proper maintenance and safe manning, and who would bear the lion's share of the added expense of the mandated improvements.

To be sure, there are gains associated with the regulation of the unorganized towing fleet. Firstly, the safety of the waterways as a whole will be enhanced through the use of trained crews and properly maintained equipment, thereby improving the navigational environment of organized boatmen. Secondly, the regulation of the unorganized fleet will increase its operating expenses consistent with that of the organized fleet thus making the two more competitively equal. Succinctly, it would eliminate to some degree the

competitive edge the unorganized operator enjoys because of lesser capital costs and crew expenses, possibly resulting in a more favorable environment for organized companies in the competition for freight.

However, the "gain" which organized operators have traditionally used as the basis for their opposition to vessel inspection legislation is the creation of more union jobs. An analysis of the labor testimony which has been presented over the years indicates that this gain is largely illusory; indeed, labor witnesses have argued that enactment would not create one more union job. Assuming that the existing contracts between management and labor provide for safe levels of manning on domestic tugs and towboats, these arguments are correct. The Coast Guard, under the authority of vessel inspection legislation, would only establish minimum manning levels. Conceivably, these levels could be less than those established through collective bargaining. In any event, it appears as though the net gain in union jobs as a result of inspection regulations would not be significant.

An analysis of the relative balance between the gains and costs associated with a pursuit of the issue can only be made within a forum comprising the principals of maritime labor. However, that analysis must include a recognition of the increased difficulty of arguing the question legislatively. For as much as the issue has remained the same over the years, many of the substantive labor arguments have disappeared with the passage of time, and the concurrent demise of the steam-powered towing fleet.

Gone is any meaningful comparison between the respective

safety records of steam and Diesel-propelled towing vessels. Also gone is the argument of competitive equity between the two. The issue has now shifted from one of applying existing standards to a newly-emergant segment of the fleet to proposing a major change in the regulatory status of the industry. The case must now be made as to the necessity for such a change after 60 years of unregulated operation. No longer is it necessary for the industry to prove that the law need not be amended to reflect current technology. The passage of time has shifted the burden of proof from industry to labor; it now falls on the proponents of change.

Lastly, the recognition of the changing character of the issue must be analyzed consistent with an ancillary recognition of the changing character of the Congress. Unlike the Congresses of the past which believed that the best means to improve the safety and well-being of the citizenry was for the Federal Government to legislate and regulate, the recent Congressional mood has become one marked by a belief in substantially less governmental intervention. Especially in the transportation sector, the fervor to deregulate has spread rapidly. The result is that with respect to the issue of towing vessel inspection, labor would be arguing for increased government regulation within a forum which has adopted a pointedly deregulatory stance. If nothing else, labor's position would be philosophically inconsistent with the reigning Congressional mentality.

## EPILOGUE

On that thought, this narrative can end. The difficult policy questions, however, remain. Their resolution must be accomplished on the basis of both the historical record, and the

contemporary environment. The issue of the need for inspection of the Diesel-propelled towing fleet is one of broad import for all segments of the domestic maritime industry; the definition of its continuing significance to organized labor today should be determined without delay.

§ 405. Tugboats, freight boats, and towing vessels; licensing of personnel

(a) The hull and boiler of every tugboat, towing boat, and freight boat shall be inspected, under the provisions of title 52 of the Revised Statutes; and the Coast Guard shall see that the boilers, machinery, and appurtenances of such vessel are not dangerous in form or workmanship, and that the safety valves, gauge cocks, low-water alarm indicators, steam gauges, and fusible plugs are all attached in conformity to law; and the officers navigating such vessels shall be licensed in conformity with the provisions of sections 214, 224, 226, 228, 229, and 230 of this title and shall be subject to the same provisions of law as officers navigating passenger steamers.

(b) (1) As used in this subsection—

(A) the term "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(B) the term "towing" means pulling, pushing, or hauling alongside or any combination thereof;

(C) the term "towing vessel" means a commercial vessel engaged in or intended to engage in the service of towing which is twenty-six feet or more in length, measured from end to end over the deck, excluding sheer;

(D) the term "uninspected" means not required by law to have a valid certificate of inspection issued by the Secretary.

(2) An uninspected towing vessel in order to assure safe navigation shall, while underway, be under the actual direction and control of a person licensed by the Secretary to operate in the particular geographic area and by type of vessel under regulations prescribed by him. A person so licensed may not work a vessel while underway or perform other duties in excess of a total of twelve hours in any consecutive twenty-four-hour period except in case of emergency.

(3) Paragraph 2 of this subsection shall not apply to towing vessels of less than two hundred gross tons engaged in a service or preparing or intending to immediately engage in a service to the offshore oil and mineral exploitation industry, including construction for such industry, where the vessels involved would have as their ultimate destination or last point of departure offshore oil and mineral exploitation sites or equipment.

As amended July 7, 1972, Pub.L. 92-339, § 1, 86 Stat. 423.

**1972 Amendment.** Pub.L. 92-339 designated existing provisions as subsec. (a) and added subsec. (b).

**Effective Date of 1972 Amendment.** Section 3 of Pub.L. 92-339 provided that: "The amendments made by the first section of this Act [adding subsec. (b) to this section] shall become effective on January 1, 1972, or on the first day of the sixth month which begins after the month in which regulations are first issued under section 4427(b) (2) of the Revised Statutes (as added by the first section of this Act) [subsec. (b) of this section], whichever date is later."

**Issuance of Regulations Covering Licenses for Operation of Uninspected Towing Vessels.** Regulations covering licenses for the operation of uninspected towing vessels were issued on Feb. 20, 1973, by the Commandant of the Coast Guard. The regulations became effective on Sept. 1, 1973, to coincide with the effective date of subsec. (b) of this section which sets out the license requirement and which, under the terms of section 3 of Pub.L. 92-339 set out in the Effective Date of 1972 Amendment note above, also became effective Sept. 1, 1973. See 38 F.R. 5746.

**Report on the Need for Engineers on Uninspected Towing Vessels.** Section 2 of Pub.L. 92-339 provided that: "The Secretary of Transportation shall conduct a study concerning the need for engineers on uninspected towing vessels and shall submit to the Congress a report on this study, together with any legislative recommendations not later than ten months after the enactment of this legislation [July 7, 1972]."

**Legislative History.** For legislative history and purpose of Pub.L. 92-339, see 1972 U.S.Code Cong. and Adm.News, p. 2700.

## Supplementary Index to Notes

**Officers required to be licensed 3**

1. Vessels within section

Tug is not bailee of vessel in tow or of its cargo. Nat G. Harrison Overseas Corp. v. American Tug Titan, C.A.Fla. 1975, 516 F.2d 80, modified on other grounds 520 F.2d 1104.

3. Officers required to be licensed

Under this section, party acting as master on diesel powered merchant vessel was required to have a license. McDevitt v. Gunn, D.C.Pa.1980, 182 F.Supp. 335.

# APPENDIX II

[H.R. 156, 89th Cong., 1st sess.]

A BILL To require the inspection of certain towing vessels

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 4427 of the Revised Statutes (46 U.S.C. 405) is amended to read as follows:

"(a) When used in this section—

"(1) The term 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(2) The term 'towing' means pulling, pushing, or hauling alongside, or any combination thereof.

"(3) The term 'towing vessel' means all tugboats, towboats, towing boats, and other vessels engaged or intended to engage in the service of towing, which are above fifteen gross tons or twenty-six feet or over in length.

"(b) All towing vessels regardless of manner of propulsion, and whether documented or not, shall be inspected under the provisions of this title.

"(c) The Secretary shall, before a towing vessel is put into service, and at least once every two years thereafter, cause it to be inspected, and shall satisfy himself that it (1) is of a structure suitable for the service in which it is to be employed; (2) is equipped with the proper appliances for lifesaving and fire protection; (3) has suitable accommodations for the crew; and (4) is in a condition to warrant the belief that it may be used, operated, and navigated with safety to life and property in the proposed service.

"(d) The Secretary may, in order to secure effective provision against hazard to life and property created by vessels subject to this section, prescribe such regulations as may be necessary with respect to the following matters:

"(1) The design, construction, alteration, or repair of towing vessels.

"(2) Operation of towing vessels, including the waters in which they may be navigated.

"(3) Manning of towing vessels and the duties of the licensed officers and members of the crews of such vessels.

"(4) Licensing and certificating of crews of towing vessels.

"(e) In prescribing regulations for towing vessels the Secretary shall give consideration to the age, size, service, route, and other factors affecting the operation of the vessels. If the Secretary determines that the application to any towing vessel of the regulations prescribed for towing vessels is not necessary in the public interest, he may exempt that vessel from the application of the regulations, or any part thereof, upon such terms and conditions and for such periods as he may specify.

"(f) A certificate of inspection issued to a towing vessel may at any time be voluntarily surrendered.

"(g) The Secretary may prescribe reasonable fees or charges for (1) any inspection made and (2) any certificate, license, or permit issued under this section or the regulations prescribed hereunder."

SEC. 2. If any amendment made by this Act or the application of any amendment made by this Act to any person or circumstance is held to be invalid, the application of that amendment to other persons or circumstances or to the remainder of the amendments made by this Act shall not be affected thereby.

SEC. 3. The amendments made by this Act become effective on January 1, 1966, or on the first day of the sixth month following the promulgation of regulations under the amendments made by the first section of this Act, whichever is later.

## VESSELS—PERSONNEL—LICENSES

*For Legislative History of Act, see p. 2760*

PUBLIC LAW 92-339; 86 STAT. 423

[H. R. 6479]

An Act to provide for the licensing of personnel on certain vessels.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:*

Section 4427 of the Revised Statutes (46 U.S.C. 405)[4] is amended by inserting "(a)" immediately before the first word thereof and by adding at the end thereof the following new subsection:

"(b) (1) As used in this subsection—

"(A) the term 'Secretary' means the Secretary of the department in which the Coast Guard is operating;

"(B) the term 'towing' means pulling, pushing, or hauling alongside or any combination thereof;

"(C) the term 'towing vessel' means a commercial vessel engaged in or intended to engage in the service of towing which is twenty-six feet or more in length, measured from end to end over the deck, excluding sheer;

"(D) the term 'uninspected' means not required by law to have a valid certificate of inspection issued by the Secretary.

"(2) An uninspected towing vessel in order to assure safe navigation shall, while underway, be under the actual direction and control of a person licensed by the Secretary to operate in the particular geographic area and by type of vessel under regulations prescribed by him. A person so licensed may not work a vessel while underway or perform other duties in excess of a total of twelve hours in any consecutive twenty-four-hour period except in case of emergency.

"(3) Paragraph 2 of this subsection shall not apply to towing vessels of less than two hundred gross tons engaged in a service or preparing or intending to immediately engage in a service to the offshore oil and mineral exploitation industry, including construction for such industry, where the vessels involved would have as their ultimate destination or last point of departure offshore oil and mineral exploitation sites or equipment."

Sec. 2. The Secretary of Transportation shall conduct a study concerning the need for engineers on uninspected towing vessels and shall submit to the Congress a report on this study, together with any legislative recommendations not later than ten months after the enactment of this legislation.

Sec. 3. The amendments made by the first section of this Act shall become effective on January 1, 1972, or on the first day of the sixth month which begins after the month in which regulations are first issued under section 4427(b) (2) of the Revised Statutes (as added by the first section of this Act), whichever date is later.

Approved July 7, 1972.

4. 46 U.S.C.A. § 405.

96TH CONGRESS
1ST SESSION

# H. R. 327

To require the inspection of certain towing vessels, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. FISH introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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# A BILL

To require the inspection of certain towing vessels, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 4427 of the Revised Statutes (46 U.S.C. 405) is amended to read as follows:

"(a) When used in this section:

"(1) The term 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(2) The term 'towing' means pulling, pushing, or hauling, or any combination thereof.

"(3) The term 'towing vessel' means all tugboats, towboats, towing boats, and other vessels engaged or

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intended to engage in the service of towing, which are above fifteen gross tons or twenty-six feet or over in length.

"(b) All towing vessels regardless of manner of propulsion, and whether documented or not, shall be inspected under the provisions of this title.

"(c) The Secretary shall, before a towing vessel is put into service, and at least once every two years thereafter, cause it to be inspected, and shall satisfy himself that it (1) is of a structure suitable for the service in which it is to be employed; (2) has suitable accommodations for the crew; and (3) is in a condition to warrant the belief that it may be used, operated, and navigated with safety to life and property in the proposed service.

"(d) The Secretary may, in order to secure effective provision against hazard to life and property created by vessels subject to this section, prescribe such regulations as may be necessary with respect to the following matters:

"(1) The design, construction, alteration, or repair of towing vessels.

"(2) Operation of towing vessels, including the waters in which they may be navigated.

"(3) Manning of towing vessels and the duties of the licensed officers and members of the crews of such vessels.

"(e) In prescribing regulations for towing vessels the

Secretary shall give consideration to age, size, service, route, and other factors affecting the operation of the vessel. If the Secretary determines that the application to any towing vessel of the regulations prescribed for towing vessels is not necessary in the public interest, he may exempt the vessel from the application of the regulations, or any part thereof, upon such terms and conditions and for such periods as he may specify.

"(f) A certificate of inspection issued to a towing vessel may at any time be voluntarily surrendered.

"(g) The Secretary may prescribe reasonable fees or charges for (1) any inspection made and (2) any certificate, license, or permit issued under this section or the regulations prescribed hereunder.".

SEC. 2. If any amendment made by this Act or the application of any amendment made by this Act to any person or circumstance is held to be invalid, the application of that amendment to other persons or circumstances or to the remainder of the amendments made by this Act shall not be affected thereby.

SEC. 3. The amendments made by this Act become effective immediately upon passage, or on the first day of the sixth month following the promulgation of regulations under the amendments made by the first section of this Act, whichever is later.

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