



NEWSLETTER

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BP: THE QUIET RAGE THAT MAY BECOME THE PERFECT STORM



[Source: By David Gewirtz, AC 360° Contributor. **Editor's note:** David Gewirtz is Director of the U.S. Strategic Perspective Institute and Editor-in-Chief of the ZATZ magazines. He is one of America's foremost cybersecurity experts and a top expert on saving and creating jobs. He is a member of FBI InfraGard, the Cyberterrorism

Advisor for the International Association for Counterterrorism & Security Professionals, a columnist for *The Journal of Counterterrorism and Homeland Security*, and has been a guest commentator for the *Nieman Watchdog* of the Nieman Foundation for Journalism at Harvard University. He is a faculty member at the University of California, Berkeley extension, a recipient of the Sigma Xi Research Award in Engineering and was a candidate for the 2008 Pulitzer Prize in Letters. **Emphasis is ours.**]

Three months ago on April 20, 2010, the Deepwater Horizon drilling rig exploded, killing 11 workers and sinking into the sea. In its place is what is rapidly becoming the worst man-made natural disaster in American history.

In towns all around the initial spill zone ó which are also the same towns that suffered under Katrina's wrath ó there is fear, sadness, and growing anger. Those who live there and those who are covering the ongoing story have reported just how disturbing the situation has become ó and it still has no end in sight.

Outside the Gulf region, the situation is different. Virtually every American is aware of the disaster, but most don't feel it personally. They just sense, deep in the core of their being, that something is very, very wrong.

There Is Rage Here.

We Americans have been abused again and again by those we trusted. First it was the banks. Now it's the oil companies. It's not that we had some wide-eyed innocence about how moral and ethical they were ó this is business after all.

But we expected them to have a clue how to do their jobs. We expected the banks to be smart enough to know not to put the entire world's financial system at risk just for a few extra winnings at the gambling table. **We expected the oil companies, who were engaging in acts of simply astounding engineering prowess, to have worked out contingency plans to mitigate the obvious risks of drilling holes in the ocean floor 5,000 feet down.**

[NMA Comment: And we expected the Coast Guard to have planned for a REAL “worst case” scenario. What have we paid them to do for the last 21 years!!!]

It's not even that mistakes were made or things went wrong. What's enraging Americans is the **completely cavalier attitude these ultra-rich executives have shown in**



the face of their utter stupidity. Watching these executives give testimony, it feels like we're watching teenagers claim "I dunno" after they wrecked the family car in a joyride. Except these people aren't teenagers and they're putting all of us in danger.

What's also enraging Americans are our politicians. Yes, of course, we all know that it costs a mint to run for office. We all know that politicians must kowtow to their "investors" in order to raise money for each run.

It's not that our politicians are politicians. It's that, once in a while, our politicians are expected to rise above their lowly occupation and be real leaders, real representatives. Once in a while, when the oil hits the fan, we expect our politicians to actually do their jobs as well.

That's why, when a Congressman like Joe Barton apologized to BP, it gets under our skin.

Disturbing New Parallels to the Great Depression

The damage from this oil spill is epic and Americans know this. Americans have a disquieting sense that the situation is worse than they're being told, that it's worse than even BP and the politicians know. Most Americans don't know why they have a *baaaad* feeling about it, but they do.

[NMA Comment: We have watched the Coast Guard "Marine Safety" people walk all over our mariners for years. Things will not improve until Congress recognizes failed Coast Guard leadership in "Marine Safety" (i.e., "Prevention") as part of the problem not as part of the solution!]

I know why.

There are deeply disturbing parallels between our time and the Great Depression. Sure, economists are reporting a rebound in the economy, but so did economists in the 1930s. In fact, what Congress is doing today and what American politicians did in the Great Depression are eerily similar.

As it turns out, the Great Depression wasn't one long slump. It was a series of deep recessions. Most economists agree that one of the main factors that pushed the deep recessions into a deep depression was that once the decline seemed to be improving (like it is today), Congress enacted a series of cost-cutting and deficit contracting policies that made it harder for Americans to get by.

At the time, these cost cuts seemed appropriate to keep expenses in check, but the lack of support pushed more Americans over the edge, and they took the economy with them.

COAST GUARD LEADERSHIP REVEALS ITS IGNORANCE OF HISTORY

In regard to the catastrophic BP oil well blowout in the Gulf of Mexico, it is time to quote the time-worn saying that "Those who fail to learn the lessons of History are destined to repeat them." Consequently, we dedicate this article to the senior Coast Guard "leadership" one of whose eleven missions along with their badly bungled Marine Safety mission is Marine Environmental Protection.

According to the Department of Homeland Security, "environmental protection" soaked up an estimated \$359 million of the Coast Guard's 2009 budget.⁽¹⁾ As we watch

Today, our Congress is behaving the same way, threatening to withhold extended unemployment benefits from millions of Americans in need.

A Man-made Natural Disaster of Biblical Proportions

But it wasn't just two recessions back-to-back that caused the Great Depression. There was another factor, a man-made natural disaster of biblical proportions. Sound familiar?

Back in the 1930s, Midwestern farmers didn't know how important it was to rotate their crops, so they farmed and farmed and farmed. One year, when the rains didn't come, all their top-soil simply blew away, taking the hopes and dreams of millions of Americans with it.

The Dust-Bowl lasted six years (for some areas, as long as ten), and caused enormous disruption in the lives of Americans, their ability to make a living, and their health and well-being.

Are you seeing this? A deep recession followed by a slight upswing, followed by oppressive economic policies, punctuated by a man-made disaster that destroyed a major region of the country and the income-producing ability of those who live there.

We Are Living This Now

On some level, in some portion of our core awareness, Americans are starting to realize how much trouble we're really in.

The difference now, of course, is that we have mass media. We also have two-way media and Americans today are far more comfortable making themselves heard than Americans were back in the 1930s.

Make no mistake about it. There is rage in the hearts of Americans. It is burning hot and is seeking an outlet. Today's Americans will not go quietly into the night.

All in Washington, all on Wall Street, and all in corporate boardrooms throughout the country would do well to keep that in mind.

We Americans are not telling you to give up your cushy gigs. We're not telling you to give up your mansions or your limousines or your million-dollar bonuses.

We're just telling you to do your effin' jobs.

[NMA Comment: The Coast Guard needs to enforce the laws and regulations that already are on the books.]

If you don't, that burning rage will surely bust out and the perfect storm will be upon us all.

Admiral Thad Allen struggle to manage the oil spill catastrophe, we are reminded that this is just another example of where the Coast Guard has been "reactive" rather than "proactive." ^[⁽¹⁾DHS OIG Report #09-1, p.7]

The "History" we refer to is not ancient History. This is quite modern History having taken place in the lifetime of most of those current and past Coast Guard leaders who should have understood its implications and have been better prepared. This particular item of History was recited by Larry Kiern in the May/June 2010 issue of Maritime Executive magazine quoted below:

Not the First Offshore Well Blowout

"The Deepwater Horizon blowout was not the first to cause

a major oil spill. In 1969 the Santa Barbara oil spill caused by a **blowout** on a Union Oil rig dumped 80,000 to 100,000 barrels of oil into the surrounding waters and polluted the beaches along Santa Barbara County, California. The infamous **Ixtoc I blowout in 1979 off the coast of Mexico** was the second largest oil spill in history and further illustrated the risks presented by offshore drilling. Like the *Deepwater Horizon*, the disaster began with a massive explosion and fire that caused the rig to sink. The discharge was estimated at approximately 10,000 to 30,000 barrels a day. Ultimately, it took ten months to cap the *Ixtoc I* well, which discharged approximately 140 million gallons or more than three million barrels of oil into the Gulf of Mexico. Although 600 miles south of the U.S., oil discharged from the well washed ashore along approximately 160 miles of U.S. coastline. The investigation revealed that the explosion, fire and resulting oil spill occurred because of failures associated with the drilling operation **and the inability of the blowout preventer to seal the wellhead.**

Just **last year** the world witnessed another major oil spill from a production platform operating about 160 miles off the northern coast of Australia in the Timor Sea. The spill lasted from August to November (2009) until another rig could be brought in to drill a relief well to stop it. Authorities estimated the blown-out well discharged 2,000 barrels of oil a day, resulting in a spill that covered 2,300 square miles of ocean surface. Greater environmental damage was averted and less publicity generated in the U.S. because of the well's distance from both the U.S. and the shoreline. Press reports indicated that the Australian investigation into the causes of the explosion, fire and spill revealed that the rig operator failed to install a pressure containment corrosion cap on the wellhead and violated regulations in other key respects as well.

Yet despite these serious accidents, modern offshore drilling has enjoyed an overwhelmingly safe and uneventful record, including a remarkable lack of major spills from the tens of thousands of offshore rigs in the Gulf of Mexico even in the wake of extraordinary storms like Hurricane Katrina. In large measure that is because those performing the work have learned important lessons from past accidents and improved their operations.

Spectacular Failure

To quote Capt. Joel Milton in the July 2010 issue of *WorkBoat* "What is clear is that at every level in both industry and government, we failed spectacularly. No one in a position to do something to prevent this disaster seems to have been able to **envision and accept the inevitability** of a deepwater drilling disaster of this type occurring. And **none of them had a realistic plan in place to provide an effective response to it.**"

Pathetic Oil Spill Response Plans

Congressional hearings clearly established that the response plans filed in advance of approval to drill all the deepwater wells were a sad excuse readily accepted by the very same Executive Branch agencies (including the Coast Guard) that were entrusted to protect the environment. In fact, the Coast Guard regularly conducts drills exercising response plans. If they had a clue as to the plans' inadequacy, it apparently never set off alarm bells.

Our Association cautioned Congress about the Coast Guard's inattention to **marine safety issues** for many years. Marine Safety, Security and Environmental Protection were grouped

under one "Assistant Commandant." We cataloged our complaints in our Report #R-350, Rev. 5. Each of our mariners has a copy of this report as do members of the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee. Although we should be on the same page, our Association lacks sufficient funding to do a great deal more than prepare position papers.

In our last Newsletter, we included a copy of a letter to President Obama citing the **Coast Guard's failure for the past ten years to move forward on proposed regulations in 33 CFR Subchapter N that would have made many beneficial improvements to safety, health regulations on the Outer Continental Shelf not only for our mariners but also for oilfield workers.** It is clear that the Coast Guard places mariner safety and health very low on their priority scale – so low in fact that Congress needs to terminate the Coast Guard's continued supervision over the U.S. Merchant Marine.

It appears that the proposed regulation was sentenced to **death by study** because the oil industry would rather fight its employees as individuals in court over personal injuries and death rather than "OSHA-type" regulations enforced on them.

The Department of Homeland Security's Inspector General found that the performance target for the Coast Guard's Marine Environmental Protection mission "has been met since 2001. The Coast Guard attributes the **continued success of this mission** in 2007 to **effective industry partnerships**, joint federal agency exercises, and working to update a joint contingency plan between the United States and Mexico."

Well, this catastrophe certainly ended the "continued success" of the Coast Guard's Marine Environmental Protection mission. Therefore, it is entirely fitting that former Commandant Thad Allen should take charge of cleaning up the mess caused by his agency's failure to learn the lessons of History. It is ironic that his role of National Incident Commander should follow him into civilian life. During his tenure as Commandant, Admiral Allen received the report from retired Admiral Card on the Coast Guard's spectacular failure in the field of Marine Inspection. Let us also remember Admiral Allen's apparently successful cover-up of the Chief Administrative Law Judge and the following Administrative Law debacle that reached Congress on July 31, 2007 and **continues unresolved today.**

During the past 10-year period, the same oil industry clearly showed its hatred of labor unions. Health, workplace safety, and labor unions are simply too restrictive to the swashbuckling oilfield capitalists who have now created a catastrophe of the same order and magnitude as the Teapot Dome scandal of 1923, the savings and loan crisis of the early 1990s, and the housing bubble and financial collapse of 2008.

The Teapot Dome Scandal was one of those occurrences that gets pushed back more and more, until it is remembered in a solitary paragraph here or there in random history books. The scandal itself had a huge impact at the time and forever tainted the Warren G. Harding administration with the stench of corruption. The large amount of media attention that it generated "made it the first true symbol of government corruption in America." There is a stench of corruption in Washington today from politicians soiled with "oil" money!

Our mariners – the "little people" – deserve much better oversight and supervision from our **elected representatives** and than we have received from the sorry procession of **civil servants** and Coast Guard officers than we have received. It's

time to purge the ranks and let some of them enjoy the unemployment lines.

Who Can We Trust?

Over the past decade, we pointed out the imperfections in Coast Guard investigations in our entire #R-429 report series (18 reports at last count, with 5 of them specifically addressed to Congress). Of these, a number of the reports were reprints of long ignored government reports that warned of these problems that remained uncorrected for up to 16 years.

Each day, we have access to a plethora of reports from the Incident Command Center crammed with factual information. Unfortunately, there is another side of this story that counters much of the spin in the reports issued by the Incident Command Center to journalists and the public that is being suppressed by BP and ignored by much of the national media.

The national reporting that appears daily on **CNN Anderson Cooper 360°** (<http://www.ac360.com/>) clearly

portrays the incredible ineptness of the national response effort and the frustration of the local leaders from the entire Gulf region. As the crisis drags on from weeks into months, BP was invited to appear on the show to present its rebuttal on multiple occasions but refused to do so. When all is said and done, Anderson Cooper has compiled a damning TV record that can be accessed long after the current crisis passes.

While the Coast Guard is doing its best to clean up the mess, their leadership deserves to share much of the blame for their failure to recognize that the worst case scenario was not a tank ship with a finite quantity of oil aboard but a blowout with the potential for pouring unlimited quantities of oil from the ocean floor.

One of the Coast Guard's eleven missions is Environmental Protection which involves a great deal more than cleaning up the mess after the incident. It involves planning just another thing the Coast Guard lays more empty claims to excel at.

STATISTICS OF THE GULF OIL BLOWOUT TO JULY 18, 2010 – AND MORE

[Source: National Incident Command Statistics]

By the Numbers to Date:

- The administration has authorized the deployment of 17,500 National Guard troops from Gulf Coast states to respond to this crisis; currently, 1,619 are active.
- Approximately 42,000 personnel are currently responding to protect the shoreline and wildlife and cleanup vital coastlines.
- More than 6,490 vessels are currently responding on site, including skimmers, tugs, barges, and recovery vessels to assist in containment and cleanup efforts in addition to dozens of aircraft, remotely operated vehicles, and multiple mobile offshore drilling units.
- More than 3.4 million feet of containment boom and 7.2 million feet of sorbent boom have been deployed to contain the spill and approximately 852,000 feet of containment boom and 3 million feet of sorbent boom are available.
- More than 34.2 million gallons of an oil-water mix have been recovered.

[NMA Comment: The Coast Guard and the press are strangely silent on what is happening to the millions of gallons of “glop” that was recovered but not burned at sea. One Mississippi County is up in arms that it is being dumped in a local Waste Management dumpsite.]

- Approximately 1.84 million gallons of total dispersant have been applied: 1.07 million on the surface and 771,000 sub-sea. Approximately 574,000 gallons are available.

[NMA Comment: On the EPA approved list of dispersants, the one predominantly used by BP was the most toxic.]

- 409 controlled burns have been conducted, efficiently removing a total of more than 11 million gallons of oil from the open water in an effort to protect shoreline and wildlife. Because calculations on the volume of oil burned can take more than 48 hours, the reported total volume

may not reflect the most recent controlled burns.

- 17 staging areas are in place to protect sensitive shorelines.
- Approximately 615 miles of Gulf Coast shoreline is currently oiled: approximately 352 miles in Louisiana, 112 miles in Mississippi, 69 miles in Alabama, and 82 miles in Florida. These numbers reflect a daily snapshot of shoreline currently experiencing impacts from oil so that planning and field operations can more quickly respond to new impacts; they do not include cumulative impacts to date, or shoreline that has already been cleared.
- Approximately 83,927 square miles of Gulf of Mexico federal waters remain closed to fishing in order to balance economic and public health concerns. More than 65 percent remains open. Details can be found at <http://sero.nmfs.noaa.gov/>.
- To date, the administration has leveraged assets and skills from numerous foreign countries and international organizations as part of this historic, all-hands-on-deck response, including Argentina, Belgium, Canada, China, Estonia, France, Germany, Greece, Ireland, Iceland, Japan, Kenya, Mexico, Netherlands, Norway, Qatar, Russia, Spain, Sweden, Taiwan, Tunisia, United Arab Emirates, United Kingdom, the United Nations International Maritime Organization, the European Union's Monitoring and Information Centre, and the European Maritime Safety Agency.

Government “Spins” New Website

The public can view details about current operations, resources in specific states and localities, mapping and data resources, and ongoing investigations as well as oil spill data collected throughout the federal government.

In addition, users can find information about ways to get involved including volunteer opportunities, how to submit a suggestion and how to report concerns about oiled shoreline or wildlife and a comprehensive list of all hotline numbers related to the oil spill.

Content for www.RestoreTheGulf.gov will be gathered from a wide variety of sources, including the Unified Area Command's Joint Information Center in New Orleans, all federal agencies involved in the spill response and recovery efforts, and independent scientists and members of academia who are contributing their expertise. While certain

information will remain available on various agency websites and the White House blog, the new portal will link all resources together.

The following information is for individuals, businesses, or communities who have been impacted by the Gulf Oil Spill, and need assistance. For information and data on the oil spill, visit the website listed above.

BP is accountable for processing and paying all removal costs and applicable damages incurred by individuals, businesses and communities as a result of the BP oil spill. If you think you might be eligible to file a claim with BP, go to BP's website (<http://www.BP.com/>) and file an online claim, or call 1-800-440-0858 to file a claim with BP by phone.

You may be eligible for claims from BP if you have:

- **Property damaged by the oil spill or the clean up efforts** (example: damage to a boat)
- **Loss of income/earning capacity** (example: Lost your job or had your hours cut because of the spill --fishermen, workers in seafood industry, workers in hotels or restaurants)
- **Net loss of profits or earnings from a business you own** (example: boat owners, hotel owners, restaurant owners)
- **Subsistence loss** (example: can no longer catch fish to feed your family)
- **Removal and Clean up costs for your own property** (example: costs related to cleaning oil from a dock you own)
- **Bodily injury** (BP will evaluate all claims for injury or illness on an individual basis)

If you aren't sure if you are eligible, you should call the BP hotline (1-800-440-0858) or file a claim online.. A claims representative will contact you to discuss your case, get more information, and explain the eligibility rules.

Irregularities Haunt Gulf Oil Blowout

No Mention of "Hurricane" In BP Response Plan

[Source: Rep. Edward J. Markey, (D-MA) June 30, 2010]

As hurricane Alex moved through the Gulf of Mexico disrupting spill response operations, Rep. Markey revealed that BP made no mentions of the word "hurricane" or "tropical storm" in its response plan to a Gulf oil spill. Following this latest revelation highlighting BP's unpreparedness for disasters, Rep. Markey again asked BP to explain their storm contingency plans in full.

"The BP plan had walrus in the Gulf but no hurricanes," said Rep. Markey who chairs the House Energy and Environment Subcommittee. "Walrus haven't been in the Gulf in a few million years, while a hurricane is just a few hundred miles away from the spill site right now. This is just another example of BP serial complacency."

At a subcommittee hearing on June 15th, Chairman Markey and others revealed that the major oil companies had response plans that were 90% identical and also included emergency contact information for long-deceased experts. The CEOs of the major oil companies that testified at the hearing admitted their response plans contained significant flaws and were an "embarrassment."

EPA, not Jones Act, Blocking Use of Foreign Skimmers

EPA rules, rather than the Jones Act, appear to be a major reason why more foreign skimming vessels are not at work in response to the Gulf oil spill.

Anti Jones Act activists, including Senator John McCain, pointed to skimmers being offered for the clean-up effort by the Netherlands and rejected "because of the Jones Act."

That is not, in fact, the case, according to a report in Canada's **Financial Post**:

"Three days after the BP oil spill in the Gulf of Mexico began on April 20, the Netherlands offered the U.S. government ships equipped to handle a major spill, one much larger than the BP spill that then appeared to be underway. 'Our system can handle 400 cubic metres per hour,' Weird Kooops, the chairman of Spill Response Group Holland, told Radio Netherlands Worldwide, giving each Dutch ship more cleanup capacity than all the ships that the U.S. was then employing in the Gulf to combat the spill."

"The U.S. government responded with 'Thanks but no thanks,' remarked Visser, despite BP's desire to bring in the Dutch equipment and despite the no-lose nature of the Dutch offer --the Dutch government offered the use of its equipment at no charge. Even after the U.S. refused, the Dutch kept their vessels on standby, hoping the Americans would come round. By May 5, the U.S. had not come round. To the contrary, the U.S. had also turned down offers of help from 12 other governments, most of them with superior expertise and equipment -- unlike the U.S., Europe has robust fleets of Oil Spill Response Vessels that sail circles around their make-shift U.S. counterparts."

"Ironically, the superior European technology runs afoul of U.S. environmental rules. The voracious Dutch vessels, for example, continuously suck up vast quantities of oily water, extract most of the oil and then spit overboard vast quantities of nearly oil-free water. Nearly oil-free isn't good enough for the U.S. regulators, who have a standard of 15 parts per million -- if water isn't at least 99.9985% pure, it may not be returned to the Gulf of Mexico."

Now the same sort of hurdle seems to be facing Taiwan's Nobu Su of TMT Group. TMT has brought in a 319,869 dwt ore/ oil carrier, the A Whale, which has been converted into a gigantic skimmer. According to the **Virginia Daily Press**:

"The A Whale ... is designed to work 20 to 50 miles offshore where smaller skimmers have trouble navigating. The ship would take in oily water and transfer it into specialized storage tanks on the flanks of the vessel. From there, the oil-fouled seawater would be pumped into internal tanks where the oil would separate naturally from the water.

"After the separation process, the oil would be transferred to other tankers or shore-based facilities while the remaining water would be pumped back into the gulf. "Because the process wouldn't remove all traces of oil from the seawater, TMT will likely have to gain a special permit from the EPA, said Scott H. Segal of the Washington lobbying firm, Bracewell & Giuliani, which TMT has retained to help negotiate with federal regulators."

Inspector General Faults MMS Investigation of Oil Spill

[Source: Wall St. Journal, Fri., June 18, 2010]

According to a report from The Wall Street Journal, the U.S. agency in charge of regulating offshore oil drilling is carrying out its investigation of the Gulf of Mexico oil spill in a "completely backwards" manner, and lacks sufficient guidelines and inspectors to police the industry's operations in the Gulf, the acting inspector general of the U.S. Interior

Department is expected to tell a congressional panel Thursday, June 17. *U.S. officials should also consider setting new ethics rules aimed at limiting the influence of oil and gas industry representatives over regulators,* according to remarks prepared for delivery by Mary L. Kendall, the acting inspector general of Interior.

What Planet is BP On?

Is there no end to BP's hypocrisies and ludicrous actions? Evidently not. Here's the latest, in a long line of curious blunders and aggravating insensitivities: after being publicly chastised time and again for denying access to journalists, BP has evidently loosed its own "journalists" on the scene to really get to the meat of the story . . .

The *Wall Street Journal* got access to *Planet BP*, the company's in-house magazine, and discovered that it had evidently sent out a PR agent thinly disguised as a "BP journalist" to cover the spill and its consequences in Louisiana.

But in *Planet BP* — a BP online, in-house magazine — a "BP reporter" dispatched to Louisiana managed to paint an even rosier picture of the disaster. "There is no reason to hate BP," one local seafood entrepreneur is quoted as saying, as the region relies on the oil industry for work.

Indeed, the April 20 spill on the Deepwater Horizon is being reinvented in *Planet BP* as a strike of luck.

"Much of the region's [non-fishing boat] businesses — particularly the hotels — have been prospering because so many people have come here from BP and other oil emergency response teams," another report says. Indeed, one tourist official in a local town makes it clear that "BP has always been a very great partner of ours here! We have always valued the business that BP sent us."

Fortunately the articles — on which BP declined to comment — don't go as far as praising that new treat: seasonal shrimps in (crude) oil.

It ain't all whistling-along on *Planet BP*, though. The reports mention consumers being "afraid all seafood might be contaminated" and the uncertainty over the region's economic future.

Don't Forget — Uncle Sam Collects Taxes

Last week, the *Internal Revenue Service* (IRS) announced the opening of a dedicated phone line for victims of the Gulf oil spill — (866) 562-5227 — open weekdays from 10 a.m.-7 p.m., and on July 17 from 9 a.m.-2 p.m. Central Time.

RIGHTS OF SEAMEN AND THEIR FAMILIES

We accepted an on line invitation to "Send a Letter to Congress Regarding the Rights of Seamen and Their Families" sponsored by the Houston law firm of **Gordon, Elias & Seely L.L.P.** — who are members of the National Mariners Association. We appreciate their leadership and direction on this issue that is important to our mariners.

Landmark legislation is currently working its way through the U.S. House and Senate on inter alia, allowing a spouse, child and/or parent to potentially recover "non-pecuniary" damages in maritime death cases. Currently, the law only permits pecuniary damages and pre-death pain and suffering, if any, as legal elements of recovery. *This change is monumental and necessary to bring these types of claims in*

Claims

The administration will continue to hold the responsible parties accountable for repairing the damage, and repaying Americans who've suffered a financial loss as a result of the BP oil spill. To date, 110,256 claims have been opened, from which more than \$183 million have been disbursed. No claims have been denied to date. There are 1,046 claims adjusters on the ground. To file a claim, visit www.bp.com/claims or call BP's helpline at 1-800-440-0858. Those who have already pursued the BP claims process and are not satisfied with BP's resolution can call the Coast Guard at (800) 280-7118. Additional information about the BP claims process and all available avenues of assistance can be found at www.disasterassistance.gov.

Poison Control Centers

During the initial reaction to the spill, the U.S. Coast Guard tweeted a message urging those with health-care concerns about the Gulf Oil Spill to call their local poison center at **1 (800) 222-1222**. Since then, both state and agencies have similarly prodded the public to call their poison center with health questions about the spill.

Poison centers offer free, confidential services 24 hours a day, seven days a week and are staffed by medically trained professionals.

Poison centers are sharing oil spill-related data with federal agencies including the U.S. Centers for Disease Control and Prevention, the Environmental Protection Agency and the National Institutes of Health.

The Louisiana Poison Center has worked with tribes in the state of Louisiana to publicize the availability of their services and to offer outreach to tribal members who are affected by or responding to the spill.

Poison center professionals are receiving frequent updates tracking the spill as it moves through the Gulf.

The Louisiana Poison Center is working with the state's Center for Epidemiology and Environmental Toxicology to track the number of poison exposures related to the spill.

So far, inhalation appears to be the most common means of exposure to oil spill-related toxins.

Poison centers are preparing for a variety of exposures — the Louisiana Poison Center, for example, surveyed hospitals in Louisiana to ensure adequate antivenin supplies in case of increased snakebites to relief workers in the marsh areas of the state.

line with modern day recognition of injuries associated with the loss of a family member. Additionally, there are many other issues affecting the rights of seamen being considered by Congress.

The legal firm of Gordon, Elias & Seely L.L.P. has established an online method to easily send a form letter to your representative and senators seeking their support of the non-pecuniary damages aspect and other matters as well by using a weblink they set up for that purpose (below).

The link made it possible to send a letter to Congress requesting their support for legislation that affects the rights of seamen and their families and allowed us to change the wording of the selected letter prior to sending — which we did.

**Background of Legislation Now Pending Before
The United States Senate**

Due to the completely avoidable deaths of the "Deepwater" been given to this tragic event, Congress' attention has been properly directed to the obvious inequities that exist in damages available to the DWH families and families of seaman that will lose loved ones in the future.

It is currently considering retroactively amending the Death on the High Seas Act [DOHSA] and the Jones Act to bring judicial fairness in allowing a court to consider non-pecuniary damages when a father, spouse or child is killed at sea. Currently, the law is grossly unfair and is an anomaly in only allowing pecuniary [economic] damages and the seaman's conscious pain and suffering prior to death *if not killed instantly*. For example, it currently would not allow a child or spouse to make a claim for their obvious emotional injury due to the loss of the love, care, guidance, etc. of their father, mother, husband or wife. This is clearly out of line with all states' wrongful death laws as well as even DOHSA as it applies to air crash victims. Seamen play a vital and long standing role in commerce; are considered wards of the court; and are even given special treatment in the U. S. Constitution in the Savings to Suitors Clause. It is time to bring DOHSA and the Jones Act in line with modern day recognition of damages.

Congress is also considering legislation repealing the Exoneration and Limitation of Liability Act from 1851. This arcane law is completely outdated with modern day communication; deprives seaman a choice of their forum which has always been judicially protected; allows a vessel owner to limit its liability to the dead and injured to the value of a vessel's hull and cargo as it sits on the seabed floor without even including available liability insurance which has been bought and paid for; allows a vessel owner, like Transocean, to receive a hull insurance payment for its hull of \$401MIL+ [current value of the Deepwater Horizon] and try to limit its liability to \$26.7MIL which is grossly unfair; and should be immediately, and retroactively, repealed, OR, at bare minimums, it should be amended to require the vessel owner to always include all available insurance in the "limitation fund" amount available to the injured and killed seamen.

Congress should also use this time to pass all laws which support the protection of seaman (1) ever being included in multidistrict litigation, e.g., not lumping injury/death Jones Act claims with environmental claims, loss of tourism claims, ecological injuries, etc., which drag out for years and years; and (2) in enforcing the cabotage aspects of the Jones Act,

Horizon 11" and the national attention that has appropriately e.g., foreign flagged vessels operating in our waters have skirted USCG manning far too long and not only does this pose safety risks but it also does not support American shipbuilders and American workers' jobs.

Our Letter to Congress

On June 26, 2010, the House Judiciary Committee voted out **H.R. 5503** entitled "Securing Protections for the Injured from Limitations on Liability Act" or the SPILL Act.

On behalf of the National Mariners Association, please vote in favor of the Spill Act as it will finally bring justice to the families of killed seamen and to injured seamen starting with those involved in the BP Gulf oil spill by (1) allowing modern day recognition of non-pecuniary injuries and damages resulting from the loss of a loved one and (2) not letting an antiquated law from 1851 serve as a protection for companies that place profits over the safety of their employees as well as others they injure.

Congress should also use this time to pass all laws which support the protection of seaman in enforcing the cabotage aspects of the Jones Act, e.g., foreign flagged vessels operating in our waters have skirted USCG manning far too long and not only does this pose safety risks but it also does not support American shipbuilders and American workers' jobs.

We also urge you to immediately strengthen the U.S. Coast Guard's injury reporting requirements and give our mariners the same accident reporting and follow-up protections as are found in shoreside employment.

Follow Through by Gordon, Elias & Seely L.L.P.

Dear (NMA),

Thanks to your support, H.R. 5503 has just passed the U.S. House of Representatives. We thank you for your support and we wish to extend our congratulations to you for your efforts and participation. This is a great victory! Please look for future announcements that are about to arrive very shortly. You will be receiving additional Action Alerts to support the Senate version of the bill as it works its way through the Senate. We must bring this issue to bear upon the Senate and continue to make our Senators aware of this vital issue until the final bill is passed and it becomes law. Sincerely, Gordon, Elias & Seely, L.L.P.

<http://capwiz.com/jonesactquestions/lmx/u/?jobid=152347627&queueid=5460837281>.

UNION VOICE CAN HELP PREVENT FUTURE GULF OIL DISASTERS

[Source: By Mike Hall, *Houston Chronicle*, June 15, 2010]

Dean Corgey has spent nearly 40 years in the maritime industry, from 1973 when he shipped out of Houston after graduating from the Seafarers (SIU) training program, until today, when he serves as SIU vice president for the Gulf Coast region. He has gained a deep and intimate knowledge of the Gulf Coast maritime industry, especially the offshore oil industry. In a recent column in the *Houston Chronicle*, Corgey looked at the BP/Deepwater Horizon disaster that killed 11 workers and two months later continues to spew oil, poison wildlife and wetlands, ruin beaches and wreak economic havoc all along the Gulf Coast.

He says if the offshore oil industry ó a major economic force in the Gulf and energy asset for the nation ó is to thrive, it's time to change how business is conducted in the Gulf to ensure that this tragedy is never repeated. This raises the question: What's wrong in the Gulf of Mexico?

Deepwater oil and gas drilling is a marvel of modern technology and a testament to American engineering and innovation that we should all be proud of. The Gulf of Mexico contains large reserves and is the country's ace in the hole for economic security and national defense. In my view, this is no time to abandon one of our greatest energy assets. Instead, we should look for ways to change how business is conducted in the Gulf to ensure that this tragedy is never repeated. This raises the question: What's wrong in the Gulf of Mexico?

We think the answer is simple. The offshore exploration, production and service industry in the Gulf of Mexico, to the

best of our knowledge, is 100 percent non-union and increasingly foreign. Past attempts to organize these workers have been met with bitter opposition – not from employees but from employers. These largely anti-union employers struggle in a volatile, hyper-competitive environment that has resulted in unsafe working conditions and unstable employment. Lack of union representation has denied oil-field workers a voice in the workplace, which in turn has created an out-of-control industry with little oversight or accountability.

It is painful to see oil-soaked birds receive more media attention than injured, deceased or displaced workers. It is also painful to see the lack of an organized workers' voice in the legislative and regulatory processes contribute to 11 deaths and the worst spill in U.S. history. This clearly did not have to happen.

[NMA Comment: Our Association experienced unrelenting employer opposition to organizing mariners in the period from 1999 to 2003. We continue to report unsafe working whenever they occur but find the Coast Guard largely non-responsive. Refer to our Report #R-350, Rev. 5.]

In my experience, the most effective health, safety and environmental programs are a three-legged stool consisting of a committed employer, effective government regulation and meaningful safety provisions contained in a binding union contract subject to a grievance and arbitration procedure with teeth. We practice this model in the deep-sea, U.S.-flag fleet with measurable success. I served on the Towing Safety Advisory Committee of the United States Coast Guard in the early 1990s following the Exxon Valdez disaster and participated in advising the Coast Guard on writing the regulations for the Oil Pollution Act of 1990. I also served on the Area Maritime Security Committee of the Department of Homeland Security for the Port of Houston following the Sept. 11, 2001, terrorist attack and participated in writing the

original Port Security Plan, which became the model for security plans nationwide. After Exxon Valdez and the 2001 terror attacks, government, industry and labor worked together to accomplish something positive for the nation. This model must be replicated to save our domestic offshore industry.

The obvious question now is, how do we fix the Gulf of Mexico? Some ideas to be considered from a labor perspective include:

- Re-establish Jones Act provisions on the outer continental shelf to require American companies to operate American vessels, built in America, employing American workers subject to U.S. government oversight and labor laws.

[NMA Comment: Our Association pointed out the Coast Guard's failure to pass OCS safety regulations for over a decade in our letter of May 17, 2010 to President Obama. Refer to Newsletter #70.]

- Swift passage of the Employee Free Choice Act to allow offshore workers to freely organize unions without the threat of reprisal or retaliation, thus forming a unified voice to promote the interests of their brothers, sisters and industry.
- Explore ways in which government, labor and the offshore industry can work together to improve safety, health and environmental conditions, save jobs and regain a positive public image for the industry.

The American political system is based on checks and balances. This evidently does not currently exist in the Gulf as can be evidenced by representatives for deceased Deepwater Horizon workers being either aggrieved family members or personal injury trial lawyers. These workers would clearly be better served by the unified voice of effective trade unions to help protect the environment, proactively work to prevent the need for personal injury representation and ensure that all workers safely return home to their families. That's the union way and that's the American way.

NTSB UPDATE ON FATAL DUKW TOUR BOAT COLLISION IN PHILADELPHIA

[Source: NTSB]



In its continuing investigation of a collision involving a barge and an amphibious passenger vessel, the National

Transportation Safety Board developed the following factual information:

On Wednesday July 7, 2010, about 2:36 pm, the 250-foot long empty sludge barge THE RESOURCE, which was being towed alongside by the 75.5 foot-long towing vessel M/V CARIBBEAN SEA, collided with the anchored amphibious small passenger vessel the DUKW 34 in the Delaware River, near Philadelphia, PA. On board the DUKW 34 were 35 passengers and two crewmembers, and on board the Caribbean Sea were five crewmembers.

About 5 to 10 minutes before the accident, the DUKW 34 was northbound in the river and experienced a mechanical problem that led the master to anchor his vessel. At that time, the DUKW 34 was on its normal route about 150 feet from shore and within the Delaware River Channel (navigation channel). The CARIBBEAN SEA was also northbound in the Delaware River Channel traveling about 5 knots. The bow of the barge, THE RESOURCE, struck the stern of the DUKW 34, which resulted in the DUKW 34 sinking in about 55 feet of water. As a result of the accident, two passengers on the DUKW 34 were fatally injured and 10 passengers suffered minor injuries.

The crew of the DUKW 34, a master and a deckhand, were interviewed on July 9th. They told investigators that their

radio calls to the CARIBBEAN SEA received no response. The NTSB has also interviewed the operators of several vessels in the area at the time of the accident, and they stated that they recalled hearing the DUKW 34's radio calls on channel 13. Although not all radio channels are recorded, the NTSB is attempting to verify this information.

The crew of the CARIBBEAN SEA consisted of a master, a mate, an engineer, and two deckhands. Except for the mate and a deckhand who was asleep at the time of the accident, the NTSB interviewed the crew of the CARIBBEAN SEA on July 10th. **However, when the NTSB sought to interview the mate, he exercised his Fifth Amendment right and refused to meet with investigators.**

Investigators are continuing to examine and document the structural damage of both vessels and will attempt to determine the nature of the mechanical problem that affected the DUKW 34 before the accident. Investigators have collected photographs and video that may provide further information regarding the accident sequence and will be working to develop a chronology of events leading up to the accident. The CARIBBEAN SEA'S GPS and electronic chart navigation devices were removed from the vessel and taken to NTSB Headquarters for analysis.

The NTSB is coordinating and working closely with the Coast Guard during this investigation. The NTSB also acknowledges the continued support and cooperation of the other parties involved, including Ride the Ducks of Philadelphia and K-Sea Transportation.

The NTSB's investigation continues.

Previous "DUCK" Accidents

[Source: Philadelphia Inquirer]

A 1999 accident killed 13 people when a **World War II-era duck** (DUKW) vehicle sank on Lake Hamilton near Hot Springs, Arkansas. As a result, the NTSB suggested a variety of modifications to the 1940s amphibious vehicles. **NTSB's Robert Sumwalt said he did not know whether the newer ducks in Philadelphia met those NTSB safety recommendations.** "That's something we're going to be looking at," he said. **In general, he said, duck companies have not been responsive to the safety upgrades suggested by the NTSB in that report.** **"Any time our recommendations are not acted upon, we have concerns about that,"** he said.

The NTSB will have to determine if proper radio warnings were broadcast by Duck 34, and whether the crew aboard the tug CARIBBEAN SEA was monitoring marine radio and keeping a lookout as it steamed upriver, and pushing it a city-owned, 250-foot barge

[NMA Comment: One obvious problem involves maintaining a proper lookout – Inland Rule 5. Visiting our website will clear up any uncertainty about posting lookouts. Go to our "Research Reports" and look for these reports: #R-207, Rev. 1, #R-207-A; #R-207-B. A very recent report (#R-207-B) deals with a case tried before Coast Guard Administrative Law Judge Bruce T. Smith and is very specific about the requirements to post a lookout. We suggest that our mariners immediately read this report.]

[NMA Comment: One TV station quoted one passenger as saying, "I came to find out that nobody was on the deck of the barge" – a significant fact in the case reported in our Report #R-207-B.]

A Duck 34 passenger, Alysia Petchulat, 31, said the Duck 34's captain, Gary Fox, initially had used a radio to call the Ride the Ducks office to arrange for a tow.

Fox tried to call three or four times when he spotted the barge and realized it was bearing down on his immobile vessel, Petchulat said.

Marine radio broadcasts can be heard by anyone with a radio tuned to an identical channel. If Fox followed Coast Guard rules, he would have used Channel 13, which the tug was required to monitor.

As Petchulat recalled the scene, Fox said, "Stop! We are anchored down, and we cannot move! We are right here! Please see us." "They never responded," Petchulat said of the tug.

Recalling the "Miss Majestic" Accident

[Source: NMA File #M-166.]

On May 1, 1999, the amphibious passenger vehicle *Miss Majestic*, with an operator and 20 passengers on board, entered Lake Hamilton near Hot Springs, Arkansas, on a regular excursion tour. About 7 minutes after entering the water, the vehicle listed to port and rapidly sank by the stern in 60 feet of water. One passenger escaped before the vehicle submerged but the remaining passengers and the operator were **trapped by the vehicle's canopy**⁽¹⁾ roof and drawn under water. During the vehicle's descent to the bottom of the lake, 6 passengers and the operator were able to escape and, upon their reaching the water's surface, were rescued by pleasure boaters in the area. **The remaining 13 passengers, including 3 children, lost their lives.** The vehicle damage was estimated at \$100,000. ⁽¹⁾ Pictures of the Duck 34 accident show that it, too, had a canopy.]

The Safety Board's investigation of this accident identified the following **major safety issues**:

- **Vehicle maintenance,**
- **Coast Guard inspections** of the *Miss Majestic*,
- **Coast Guard inspection guidance,**
- **Reserve buoyancy, and**
- **Survivability.**

The National Transportation Safety Board determined that the probable cause of the uncontrolled flooding and sinking of the MISS MAJESTIC was the **failure of its owner to adequately repair and maintain the DUKW.**

Contributing to the sinking was a **flaw in the design of DUKWs** as converted for passenger service, that is, the **lack of adequate reserve buoyancy** that would have allowed the vehicle to remain afloat in a flooded condition. Contributing to the unsafe condition of the MISS MAJESTIC was the **lack of adequate oversight by the Coast Guard.**⁽¹⁾

Contributing to the high loss of life was a continuous canopy roof that entrapped passengers within the sinking vehicle. ⁽¹⁾ *The Coast Guard lack of guidelines for and inspection of this "small passenger vessel" as well as its subsequent investigation of this incident were very questionable and should have attracted Congressional attention.*]

Lady Duck Accident in Canada

At about 1610 on 23 June 2002, the amphibious vehicle LADY DUCK took on water on the Ottawa River during a combined land and water-borne sightseeing tour of the National Capital region. The vehicle sank rapidly by the bow in 8 metres of water when near the Hull (Ont.) marina. Of the 12 people on board, 6 passengers, the driver, and the tour guide escaped from the vehicle and were recovered by private

craft on scene at the time of the sinking. **Four passengers trapped within the sinking vehicle drowned.** [Refer to Transportation Safety Board of Canada Report #M02C0030, NMA file #M-332.]

[NMA Comment: Pictures of the Lady Duck show a modern, streamlined three-axle motor vehicle unlike the World War II "DUKWs." However, the TSB reported the new vessel had several very serious design flaws.]

Other Issues

While, on the surface, it appears the DUKW 34 in Philadelphia was properly manned., questions still to be answered are what experience operating that particular towing vessel in those waters did its mate have and how did he deploy his available crewmembers as lookouts. News reports show they were pushing this large barge with no cargo on the hip. How did the mate and his lookout observe vessels in their blind spot as they were moving the barge?

We wonder how much we will hear about this accident since the President of the company that owns the tug CARIBBEAN SEA also happens to be the elected President of the American Waterways Operators (AWO), the tug-and-barge industry's trade association.

Followed by Another "Duck" Accident

[Source: Associated press, July 16, 2010]

BOSTON - An amphibious duck boat crashed into seven cars on a Boston highway Friday, and five people were treated for minor injuries, state police said.

It was the second time in a week that a duck boat was involved in an accident, though the driver of another vehicle

was cited in the first crash.

Trooper Thomas Murphy said the accident Friday happened at about 12:15 p.m. on a ramp connecting to Storow Drive.

Cindy Brown, general manager of **Boston Duck Tours**, said the driver couldn't stop after a computer box on board came loose and jammed behind the duck boat's brake pedal.

"Once the driver saw it down there and was able to kick it away, he was able to brake on his own," she said.

Brown said none of the 32 people on board was hurt, and they continued on the tour in a different duck boat. Brown said it's not known why the box came loose, though every duck boat will be inspected to make sure the problem doesn't happen again, she said.

The company uses a fleet of 28 World War II-era duck boats for land and water tours.

A duck boat was involved in another accident in Boston on Tuesday, when a car with carrying three people -- including one in a wedding gown -- tried to pass and became wedged between a duck boat and delivery truck. A female passenger rushed from the car after the accident "due to their wedding ceremony," according to a police report. The car's driver was cited for an unsafe lane change.

"We were in the wrong place at the wrong time in that one," Brown said Friday.

[NMA Comment: The Passenger Vessel Association and the Coast Guard should re-consider the safety of passengers who are allowed to ride on small passenger vessels with unique hull styles like DUKW boats and pontoon vessels like the LADY D that sank in Baltimore Harbor on Mar. 6, 2004 killing 5 passengers.]

NEW & REVISED NMA REPORTS

NMA Report #R-202-C, Rev. 2. July 7, 2010. OSHA Still Regulates Uninspected Dry Cargo and Work Barge Safety. Replaces Report #R-449, Rev. 1. that is hereby cancelled. The report was expanded to include OSHA article titled American Businesses Kill 14 Workers Every Day and Towboatman Reports Carbon Monoxide Poisoning found in this newsletter and the letter to President Obama (safety on the OCS) from Newsletter #70.

NMA Report #R-204-B. Coast Guard Prevention Programs: A Sad Tale of Moronic Mismanagement

For years, the National Mariners Association called upon Congress to remove the military control over civilian merchant mariners - a holdover from World War II. A recent report by the Department of Homeland Security only provides further ammunition. After the way our mariners were treated in recent years by overbearing Coast Guard officers, we believe this change needs to be accomplished quickly.

Over the past decade, our Association submitted a number of reports to members of Congress that told of serious shortcomings our mariners - as civilians - encountered in dealing with the Coast Guard as a military organization. However, if our reports did not attract sufficient attention from lawmakers, there should be no reason why Members of Congress have not already acted decisively on reports prepared by Executive Branch Agencies that they oversee.



When the U.S. Senate failed to act on all the hard work done by the 70+ member House Transportation and Infrastructure Committee in the 110th Congress before the 2008 election, it wasted two precious years that could have solved many problems for our mariners.

Speaking on behalf of our mariners, who not only are taxpayers but also voting members of the public, we do read a number of "government" reports and we make a number of these reports available on our website. In the future, we will add the word "Government Report" to identify these reports in our list of Research Reports on our website.

Over the years, we watched the Coast Guard continually re-organize and re-invent itself every time one of its mission changes until there is precious little left in the way of continuity and even less in the way of institutional History. For example, we watched and documented over 40 years of "institutional History" trashed by the National Maritime Center in its crusade against our older and most experienced mariners in the last three years.

Somewhere in the recent past the word "Prevention" crept into the Coast Guard lexicon. Webster's Dictionary (on line) gives the following as one of the most plausible definitions of "Prevention": The act of preventing or hindering; obstruction of action, access, or approach; thwarting.

Suddenly, a few years ago, Coast Guard "Prevention" offices began to spring up in brand new "Sector" offices throughout the country. These "Sector" offices began to replace the old "Marine Safety" offices that the entire marine industry had dealt with for

years. If there was some advantage to this reorganization it flew over the heads of most of our mariners.

Outstanding, however, was the Coast Guard's absolute failure in the areas of Marine Inspection and Investigations. In addition, the entire rulemaking process ground to a halt as we pointed out in our May 17, 2010 letter to President Obama on the Gulf of Mexico Oil Spill and Stalled Safety Initiatives on the Outer Continental Shelf that appeared in our Newsletter #70.

The Department of Homeland Security, the cabinet-level Department that oversees Coast Guard activities, commissioned its own report on Prevention that was published over a year ago. The report is titled Independent Evaluation of the U.S. Coast Guard Prevention Program –

Marine Safety and Environmental Protection

Neither the Department of Homeland Security nor the Homeland Security Institute that conducted the study ever bothered to contact our Association. In fact, we would not even have known that such a study existed unless we were alerted to it by our own Mariner #94. However, if our readers succeed in wading through neck-deep academic BS that paralyzes many government reports, you will find this material documents many of our previous complaints.

NMA Report #R-344-A, Rev. 1. Mariner Rights – Maintenance and Cure. The revision expanded to include the Atlantic Soundings v. Townsend Decision.

ETHICS OR JUST MORE PROPAGANDA?

By Paul Driscoll, BMCM, USCG (Ret)
Member, NMA Board of Directors

The US Coast Guard has written at length about Honor, Respect and Devotion to Duty. In an ethics statement published by the Coast Guard, anyone can read the following principles:

1. Public service involves uncompromising trust, requiring each of us to place our loyalty to the Constitution, laws and ethical principles above private gain.
2. Further stating, We shall act impartially and not give preferential treatment to any private organization or individual.
3. It went on to say that We shall endeavor to avoid any actions creating the appearance that we are violating the law or the ethical standards set forth herein.
4. Then added We will bring problems forward as soon as they are identified, and not attempt to misrepresent our errors or evade their consequences. We must always own our mistakes, and demonstrate good faith in our efforts to learn from them.
5. It concluded by saying that Essentially, the principles outlined here amount to strengthening our commitment to live by the highest principles of the Coast Guard's core values - honor, respect, devotion to duty.

As a proud former member of the U.S. Coast Guard, a career mariner and rescuer, I cannot say that these values have been in evidence, at least not during my personal efforts to resolve regulatory issues within the current process. I saw back then as I do now, a direct link between poorly performing rescue and survival gear and the high loss of life we were seeing. And while I feel, as do a growing number of my former shipmates, who all served with distinction, a problem exists within this program. And just like a number of outspoken civilian mariners I see in the news, or the recent studies I've reviewed, a growing number of people are coming to the conclusion that something is terribly wrong with the internal workings of current process.

I, personally, had tried for years, both during and since serving on active duty, to reconcile life-threatening problems I'd encountered and continued hoping to resolve them after retirement. Most problems, which I later came to discover, had their roots within the regulatory compliance program. My past efforts to do so in a discreet back-channel manner had all failed. Sadly, I now feel it's time to take these problems public; far too much time has been wasted in bureaucratic stonewalling, while lives that could have been preserved by improved rescue gear will in most cases, continue to be lost.

So, while much (Acts, Laws, directives and internal instructions and even political speeches) has been said or written over the years, on how to resolve the issues involved, little has been done by officials to achieve their stated goals, leaving many to suspect unstated motives are at the root if this decades old intransigence, making this above all else a case of failed ethics. So to those who may say otherwise, let me just quote what the famed Russian novelist Alexander Solzhenitsyn once said, Even the most rational approach to ethics is defenseless if there isn't the will to do what is right (Emphasis mine)

Let me be as frank as I possibly can. From my own personal experiences and that of a number of innovators I've encountered over the years, I can say with a certainty born of personal experience, that the **Office of Marine Safety** has by its very actions, exhibited an agenda and set of priorities clearly not in line with their primary and publicly advertised objective of protecting and saving lives. At least not when it comes to cultivating innovational rescue and survival gear that happens to originate outside of their select group of **Industry Partners.** Behavior by this organization exhibits the symptoms of an organization in the state of Regulatory Capture.

Further, it is the Public Interests that has long suffered, while certain special interests continue to benefit unfairly, and will as long as this condition is allowed to remain unchecked by external safeguards.

I am now in the final stages of a 6-month long research report for the National Mariners Association, one that we intend to put before Congress. I have abandoned all hope of seeing the Coast Guard act on any of the above listed ethical principles, especially principle #4.

I have distributed an article the Association published on the dichotomy of use policy with ring buoys, one that's also troubled a number of my former shipmates and as well as myself. While what they did in this instance, over thirty years ago, remains to this day without any reasonable explanation, perhaps with some real legal stretching, someone involved might ultimately be able to define it in away as to be seen as falling within legal bounds in the strictest of terms; at least by today's loose standards.

As it currently stands, what has occurred over the past three decades, while lives were being lost, can by no means be termed as ethical in nature. If enough families of these victims, those lost in many of these past failed rescue attempts, knew the back-story on this and other arcane rescue tools, (See **NMA Report #R-354-C of March 5, 2010 on the National Mariners Website**). I suspect a class action might one day emerge. I just regret having to say, at this point, it may be the only hope of seeing any remedy imposed.

THREE MARINERS REPORT CARBON MONOXIDE POISONING

We want to bring this Marine Inspection issue to the attention of Coast Guard.

The first report came to us several years ago from a mariner working aboard a workboat on a construction job laying either a cable or pipeline across Long Island Sound. The vessel had loaded a self-contained building aboard the after deck of an OSV-type vessel to accommodate extra construction crew members on the vessel. These accommodation spaces were served by a window-type air conditioner unit. A crewmember called to tell us that the air conditioners sucked in exhaust fumes from the vessel's main engines and generators while he slept and that he nearly died from carbon monoxide poisoning as a result. We would have moved forward on the case at that time except that the mariner was unwilling to press the issue against his former employer.

More recently, we learned of a crewmember of a towing vessel, reported that he was sickened by fumes and immediately reported the incident to his employer. He was immediately fired by his employer but immediately sought medical treatment. He was examined, tested, and told he suffered a heart attack as a result of carbon monoxide poisoning.

Realizing that the Coast Guard could not care less about the fact that he had been fired for reporting unsafe conditions aboard the towing vessel he served on, the mariner reported the incident to a representative of the Occupational Safety and Health Administration (OSHA).

Report Safety Violations to OSHA If You work on an Uninspected Towing Vessel

According to a Memorandum of Understanding between the Coast Guard and OSHA, OSHA will investigate workplace accidents aboard uninspected vessels. Since there are no "inspection" regulations currently in place for towing vessels, OSHA stepped in to this case to obtain a settlement for the mariner.

The mariner asserted to us that, "there is carbon monoxide getting into the living quarters. There is also black smutty, dusty stuff coming out of the A/C ductwork if it has not been cleaned yet! I have a small dirt-devil vacuum cleaner that I was using to keep my room (as) dust free as I could. The filter has some of this black stuff in it. I tried to have it tested (at the university) but no one at the school can tell me who or where I need to bring it to. My bunkroom is where the Air Conditioner intake is located for the second deck. The intake would pull air through the louvered door into my bunkroom! I have more faith in OSHA than the coasties..." In addition, the towing vessel is equipped with a window-type air conditioner that sucks up fumes from the vessel's exhaust stacks and feeds it into the pilothouse. This poisonous air also can circulate below into the crew's quarters.

[NMA Comment: We urge our mariners who work on towing vessels to report unsafe workplace conditions on

their vessels to OSHA since the Coast Guard has fallen so far behind issuing new towing vessel inspection regulations. At this point, we even have doubt in their will to move forward on this rulemaking. Before reporting to OSHA, be sure to review our Reports #R-202-B and #R-202-C, Rev. 2 posted on our website.]

While OSHA did step in, the apparent thrust of their investigation was to mediate between the employer and employee for lost wages after his report of an unsafe workplace condition. The result, if accepted by both parties, would pay the mariner's back wages. A written agreement would also bar him from further discussing the incident.

Our Association urged the mariner to "take the money and run" because there is nothing a non-union mariner can do about unfair termination. Consequently, we will not reveal the mariner's name or the name of the offending company under the OSHA-sponsored agreement. We will mention, however, that the company is a member of the American Waterways Operators, the tug and barge industry's trade association and sponsor of the Responsible Carrier Program. This is a problem the AWO needs to be alerted to and not simply swept under the rug. However, we will bring the importance of guarding against Carbon Monoxide poisoning to the attention of both Congress and the Coast Guard.

Our Association is on record in pointing out the Coast Guard's lack of interest in workplace protection in our letter to President Obama published in Newsletter #70. We also caution our mariners who are not members of a union and do not work under a contract with their employers, are treated as "employees-at-will" and can be terminated for any reason whatsoever. We explain the background thoroughly in NMA Report #R-370-D titled Whistleblower Protection, Work Hour Abuse and "Deadhead" Transportation.

Third Report of Carbon Monoxide Poisoning

In a recent interview with one of our members, we were told of three additional cases of carbon monoxide poisoning aboard a towing vessel working for a scumbag towing company. Not only were crew accommodation spaces polluted by stack gases, but there were also major exhaust leaks in the engine room that were sufficient to completely blacken the bulkheads with soot. The employer did not act in a responsible manner.

Whatever the proposed new towing vessel regulations may possibly contain, we will immediately suggest in strongest terms to the Towing Center of Expertise that all existing towing vessels immediately be "examined" for the presence of carbon monoxide and that suitable alarms be installed on vessels where the air conditioning and exhaust systems are in questionable condition and suggest that all crewmembers be interviewed for symptoms of carbon monoxide poisoning.

Carbon Monoxide Poisoning Symptoms

Because carbon monoxide is odorless and colorless it is not always evident when it has become a problem. Often people who have a mild to moderate problem will find they



feel sick while they spend time indoors. They might feel a little better outside in the fresh air but will have re-occurring symptoms shortly after returning inside. If other members of the crew have re-occurring bouts with flu-like symptoms while engines or any fuel-burning appliances in use it may be time to have the vessel checked by a professional.

Low levels of carbon monoxide poisoning can be confused with flu symptoms, food poisoning or other illnesses and can have a long-term health risk if left unattended. Some of the symptoms are as follows:

- Shortness of breath
- Mild nausea
- Mild headaches

Moderate levels of CO exposure can cause death if the following symptoms persist for a long time.

- Headaches
- Dizziness
- Nausea
- Light-headedness

High levels of Carbon Monoxide can be fatal causing death within minutes.

On workboats like tugs, towboats and offshore supply boats carbon monoxide may be recognized only as an annoyance. Many of these vessels may have been altered so that exhaust stacks are directed outboard rather than in the more traditional "straight up" smoke stack configuration. However, we have heard of company officials in major towing companies who refuse to do this because they believe it gives their vessels an odd appearance. Modern OSVs have gradually evolved with tall "North Sea" stacks which are much more effective in removing carbon monoxide and other pollutants from gassing their deck crews. However, carbon monoxide poisoning is much more than the annoyance of the stench of diesel exhaust. It can be fatal. Our mariner had been in "good health" until he was diagnosed with an apparent mild heart attack as reported above.

We believe it is incumbent upon the Coast Guard and OSHA as regulatory agencies to properly inspect the location of air intakes for all enclosed areas on the vessel and to see that proper carbon monoxide warning signs and detectors are installed and maintained.

Treatment Options

There are immediate measures you can take to help those suffering from carbon monoxide poisoning.

- Get the victim into fresh air ***immediately***.
- If you can not get the people out of doors, then open all windows, doors, and hatches. Turn off any appliances, such as heaters, that have an open flame.
- Take those who were subjected to carbon monoxide to a hospital emergency room as quickly as possible. A simple blood test will be able to determine if carbon monoxide poisoning has occurred.

NMA Request to Coast Guard

July 15, 2010

Rear Admiral Kevin Cook (CG-54)
Chief, Prevention Policy
U.S. Coast Guard Headquarters

2100 Second Street, SW
Washington, DC 20593-0001

Via Fax to: 202-372-1931

Subject: Carbon Monoxide Poisoning

Dear Admiral Cook,

We have had a number of recent reports of Carbon Monoxide poisoning aboard towing vessels. Two mariners, as reported in the attached Newsletter article, advised me that their doctors advised them that they had suffered ***heart attacks*** as a result of this poisoning. I can provide further information in both cases involving towing vessels.

We are not certain that the current "examination" of towing vessels has included any mention of this subject. However, we believe it is a matter of immediate concern and ask you to check with both the drafters of the towing vessel inspection NPRM and the towing vessel center of expertise to alert them to our Association's concerns.

A recent safety information posting by Investigations and Analysis warned mariners of using internal combustion engines like portable generators in enclosed spaces. However, "exhaust leaks" of propulsion engines and other installed engines in the engine room or machinery spaces and drawing exhaust fumes from outside the vessel into the vessel through heating, ventilation or air conditioning (HVAC) systems are rarely mentioned.

Please advise us of any actions you take on this matter.

Very truly yours, s/Richard A. Block
Secretary, National Mariners Association

OSHA Fines Shipyard \$1.3 Million In Fatal Tugboat Explosion

[*Source: Shipbuilding News, June 2010. By Larry Pearson*]

[NMA Comment: Until the Coast Guard provides adequate protection for mariners serving on "uninspected" towing vessels, we suggest that our mariners report unsafe conditions to OSHA.]

Following an investigation, the U.S. Dept. of Labor has fined VT Halter Marine, of Pascagoula, Miss., \$1.3 million in a tugboat explosion at one of the company's three shipyards. Labor Secretary Hilda Solis described the explosion as "a horrific and preventable situation."

Two Halter subcontractors were killed and two were injured as a crew was cleaning and prepping a tank for painting in Nov. 2009.

"The employer was aware of the hazards and knowingly and willfully sent workers into a confined space with an explosive and toxic atmosphere," Solis added.

"The safety of our employees is our first priority and we deeply regret this tragic accident," said Halter President Bill Skinner. "Up until now, we've never had a fatal accident, and even this one is too much for us."

The company was cited for 17 willful, 11 serious and eight "other-than-serious" violations. Halter has 15 business days from the issuance of the fine to either comply, request an informal conference with OSHA's area director or contest the findings before OSHA's review commission.

**LACK OF PROGRESS ON FATIGUE
AND HOURS OF REST ISSUES**

STCW Amendments on Hours of Rest

[Source: IMO Press Release, June 30, 2010]

The recently concluded Diplomatic Conference held in Manila to adopt amendments to the STCW Convention, agreed, by consensus, a series of new provisions on the issue of "fitness for duty - hours of rest."

Under the Manila Amendments to the STCW Convention, all persons who are assigned duty as *officer in charge of a watch or as a rating forming part of a watch and those whose duties involve designated safety, prevention of pollution and security duties* shall be provided with a rest period of not less than:

- a minimum of 10 hours of rest in any 24-hour period; and
- 77 hours of rest in any 7-day period.

[NMA Comment: It is nice to think that IMO recognizes "fatigue" as a problem. However, 77 "Hours of Rest" will leave a 91-hour workweek. Who are they kidding?]

The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours.

To ensure a continued safe operation of ships in exceptional conditions, the Conference unanimously agreed to allow certain exceptions from the above requirements for the rest periods.

Under the exception clause, parties to allow exceptions from the required hours of rest provided that the rest period is not less than 70 hours in any 7 day period and on certain conditions, namely:

- such exceptional arrangements shall not be extended for more than two consecutive weeks;

[NMA Comment: So a 98-hour week is OK as long as it does not extend for more than two weeks! Just dandy!]

- the intervals between two periods of exceptions shall not be less than twice the duration of the exception;
- the hours of rest may be divided into no more than three periods, one of at least 6 hours and none of the other two periods less than one hour in length;
- the intervals between consecutive periods of rest shall not exceed 14 hours; and
- exceptions shall not extend beyond two 24-hour periods in any 7-day period.

[NMA Comment: You need to be a lawyer to understand this!]

Exceptions shall, as far as possible, take into account the guidance regarding prevention of fatigue in section B-VIII/1.

[NMA Comment: These guidelines in Section B-VIII/1 and are not mandatory.]

IMO says these provisions were the result of intensive negotiations between regulators and the shipping industry and represent a well-balanced solution of the issue in the well-

known IMO spirit of compromise.

In a statement, Secretary-General Mitropoulos said: "I am very pleased that the Conference agreed, by consensus, an important new text on fitness for duty, which will create better conditions for seafarers to be adequately rested before they undertake their onboard duties. Fatigue has been found to be a contributory factor to accidents at sea and to ensure seafarers' rest will play an important role in preventing casualties. I am particularly pleased that the new STCW requirements on this delicate issue are consistent with the corresponding provisions of ILO's Maritime Labor Convention, 2006, which I hope will come into force soon."

We understand that ship owners' organizations persuaded delegates to allow exceptions on a daily and weekly basis to meet "short-term operational requirements."

"We are and will continue to be against flexibilities in hours of rest above those agreed," said International Transport Workers Federation (ITF) Seafarers' Section Assistant Secretary John Bainbridge stated: "any agreement for seafarers to work 98 hours per week in the Year of the Seafarer is not sending a message seafarers will be comforted by."

The amendments, to be known as "The Manila amendments to the STCW Convention and Code," are set to enter into force on Jan. 1, 2012

**The NTSB's Most Wanted Transportation Safety
Improvements is to Reduce Accidents and Incidents
Caused by Human Fatigue in the Marine Industry**

[Source: National Transportation Safety Board Website]

Objective: Set working hour limits for mariners based on fatigue research, circadian rhythms, and sleep and rest requirements.

Importance: The NTSB has long been concerned about the issue of operator fatigue in transportation and has stressed its concerns in investigation reports issued throughout the 1970s and 1980s. In 1989, the NTSB issued three recommendations to the Secretary of Transportation calling for research, education, and revisions to existing regulations. These recommendations were added to the NTSB's Most Wanted List in 1990, and the issue of fatigue has remained on the Most Wanted List since then. The NTSB's 1999 safety study of U.S. Department of Transportation efforts to address operator fatigue continued to show that this problem was widespread. Operating a vehicle without the operator's having adequate rest, in any mode of transportation, presents an unnecessary risk to the traveling public.

NTSB recommendations on the issue of human fatigue and hours-of-service (HOS) policies have had a substantial effect on encouraging the modal agencies to conduct research and take actions towards understanding the complex problem of operator fatigue in transportation and how it can affect operator performance.

Summary of Action: International. The Coast Guard played a major role in addressing fatigue at the International Maritime Organization (IMO) Convention, especially in the 1995 amendments to the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), and in an IMO resolution calling attention to the variety of factors that contribute to fatigue. The new rules became mandatory for all mariners operating internationally in 2002.

[NMA Comment: It doesn't look as if the Coast Guard distinguished itself at the STCW conference in Manila. The "work hours" agreements are not even a consolation prize.]

Domestic. In the Coast Guard and Maritime Transportation Act of 2004,⁽¹⁾ Congress authorized the Secretary of the Department of Homeland Security to set maximum HOS for towing vessel operators based on the results of the demonstration project that implemented Crew Endurance Management System (CEMS)⁽²⁾ on towing vessels. The demonstration project was completed in 2005, and a report of the results was submitted to Congress on March 29, 2006. According to the report, the demonstration project was designed to evaluate the feasibility, effectiveness, and sustainability of CEMS in the towing industry. Although the report cautioned that the sample size of vessels that participated in the project was relatively small, and therefore might not generalize to a wider population, it asserted that, "when properly practiced, CEMS is effective in reducing fatigue-related risks." Coast Guard staff indicated at a July 19, 2007, briefing that an increasing number of crews from vessels in the towing industry have received training on CEMS and that the Coast Guard is commencing efforts to promote CEMS in other industry segments. They also indicated that, although the Coast Guard would likely consider regulatory changes to HOS in the future, it had established no specific timeline for doing so.

Although the Coast Guard has made extensive efforts in developing and providing guidance in CEMS and in working with the towing industry, CEMS is a voluntary program, and all aspects of the program may not be implemented or properly implemented. For example, approximately half of

the vessels involved in the demonstration project did not change their existing "6-on, 6-off" watch schedule. With such a schedule, it would not be possible for crews to obtain enough uninterrupted sleep to maintain alertness levels during working periods.

The Coast Guard played a role in the IMO's 1995 amendments to the STCW and has taken action to address fatigue-related risk through its CEMS program; however, more than 10 years after the recommendation was issued—and 20 years after the NTSB asked the Department of Transportation to review and update HOS regulations for all modes of transportation (I-89-3)—the Coast Guard has not initiated any rulemaking governing domestic operations.

Action Remaining: Issue HOS regulations for all domestic operators, such as those referenced for towing vessel operators in the Coast Guard and Maritime Transportation Act of 2004.

Safety Recommendation: M-99-1 (USCG)
Issued June 1, 1999 Added to the Most Wanted List: 1999.
Status: Open – UNACCEPTABLE RESPONSE.

Establish within 2 years scientifically based hours-of-service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements.

Footnotes:

⁽¹⁾United States Department of Homeland Security, United States Coast Guard. (December 2005). *Report on Demonstration Project: Implementing the Crew Endurance Management System (CEMS) on Towing Vessels.*

⁽²⁾CEMS is defined as "a system for managing the risk factors that can lead to human error and performance degradation in maritime environments." Fatigue management is one of several factors that CEMS considers.

DRD TOWING COMPANY & OWNER CHARGED WITH OBSTRUCTING JUSTICE IN 2007 MISSISSIPPI RIVER OIL SPILL

[NMA Comment: After several years and even after a Congressional hearing, there is still no Accident Report from Coast Guard Headquarters.]

[Source: News Release, July 2, 2010, U.S. Attorney, Eastern District of LA. Emphasis is ours.]

DRD Towing Company, LLC., a marine company located in Harvey, Louisiana, was charged today in a two-count Bill of Information for violating the Ports and Waterways Safety Act and the Clean Water Act, announced U. S. Attorney Jim Letten. In addition, Randall Dantin, age 46, a resident of Marrero, Louisiana and co-owner of **DRD Towing** was also charged today in a separate one-count Bill of Information with obstruction of justice.

Count 1 charges **DRD Towing** with creating hazardous conditions in violation of the Ports and Waterways Safety Act (PWSA), by (1) assigning employees without proper Coast Guard licenses to operate certain vessels thereby causing these vessels to operate in the navigable waters of the United States with manning levels below those determined by the Coast Guard to be necessary for safe navigation, and (2) paying licensed captains to operate a vessel for 24 hour a day without a relief captain, knowing that the Coast Guard

viewed the use of over-fatigued mariners operating tugboats and barges to be a hazardous condition that would not allow for safe operation of the vessel. The statutory standard related to fatigue was that operators were prohibited from working for more than 12 hours in a 24 hour period.

[NMA Comment: It's really remarkable after pointing out a decade of 12-hour rule violations to both the Coast Guard and Congress that it took a catastrophe of this magnitude within the city limits of New Orleans to finally arouse a U.S. Attorney to finally take notice of what our association has reported for years in NMA Reports #R-201 and our entire R-370 series of reports.]

In count 2, **DRD Towing** is charged with the illegal negligent discharge of oil on July 23, 2008. At approximately 1:30 A.M. on July 23, 2008, the M/V Mel Oliver, owned by **DRD**, was pushing a tank barge full of fuel oil when it crossed in the path of the M/T Tintomara, a 600-foot Liberian-flagged tanker ship and caused a collision which resulted in the negligent discharge of approximately 282,686 gallons of fuel oil from the barge into the Mississippi River.

The maximum penalty **DRD Towing** faces as to count one is a maximum fine of the greater of \$500,000 or twice the gain or loss resulting from the criminal offense, and as to count two, a fine of up to \$200,000 or twice the gain or loss resulting from the criminal offense.

[NMA Comments: These fines are insignificant in relation to the damages that resulted from the accident. Operation Big Tow was a "reaction" to a state of affairs in the towing industry that the Coast Guard should have acted upon years ago. They were too busy "partnering" with an industry they should have been regulating.]

In the second case, it is alleged that **Dantin** was charged in a separate Bill of Information with obstruction of justice for causing the deletion of "electronic payroll sheets," from a DRD Towing laptop computer which were material to the Coast Guard Hearing convened to investigate the collision on July 23, 2008 between a the M/V Mel Oliver and M/T Tintomara.

If convicted, **Dantin** faces a maximum penalty of five (5) years imprisonment and a fine of \$250,000.

U. S. Attorney Letten reiterated that bills of information are merely a charge and that the guilty of the defendants must be proven beyond a reasonable doubt.

This case was investigated by the United States Environmental Protection Agency, Criminal Investigation and the United States Coast Guard Criminal Investigative Service and was prosecuted by Assistant United States Attorney Dorothy Manning Taylor.

Inspector Testifies About Violations by DRD Towing

[Source: By Jen DeGregorio, *New Orleans Times Picayune*, Oct. 20, 2008]

A third straight week of Coast Guard hearings probing a July oil spill opened Monday with more scrutiny of the Harvey towing company involved in the accident as well as the private trade group that oversees the barge industry.

Marine surveyor James Hawkins recalled inspections he performed earlier this year that found dozens of serious violations by DRD Towing, the firm that was operating the Mel Oliver towboat that pushed a barge into the path of the oncoming ship Tintomara. The July 23 collision unleashed **280,000 gallons of No. 6 fuel oil** from the barge into the Mississippi River in New Orleans.

Hawkins audited DRD Towing earlier this year on behalf of **American Waterways Operators**, a trade group that requires members to pass periodic safety evaluations. Hawkins recorded more than 50 infractions by the company, which he described as a significant sum compared with the number of offenses he typically finds while auditing companies for AWO.

"Fifty-two items; that's a lot," said Hawkins, who works as a subcontractor for Budwine & Associates, the Destrehan firm DRD Towing hired to perform the audit.

Among the more serious offenses, Hawkins described a lack of documentation that mariners employed by DRD Towing had completed any required training programs during the previous three years.

During walk-on checks of five vessels owned by DRD Towing, Hawkins found problems with smoke detectors, expired fire extinguishers, dirty oil filters and evidence of pollution leaking overboard. Hawkins also said he believed that mariners had been "smoking in bed" on at least one vessel, where he found an ashtray and ashes in the "linen." The Mel Oliver, which is owned by the Indiana company American Commercial Lines, was not part of the AWO exam.

Hawkins was so disturbed by his discoveries that he

wrote an e-mail urging Budwine & Associates to probe additional vessels owned by DRD Towing. The company subsequently pulled Hawkins from the audit and continued without him. During testimony last week, Budwine & Associates principal Fred Budwine said he removed Hawkins due to tension between him and DRD Towing. Budwine said he has worked with DRD Towing for years and considered its executives to be his "friends."

Even with Hawkins off the case, DRD Towing flunked the audit and had to request probationary status with AWO. The group expelled the company in August, although an AWO executive testified two weeks ago that the group did so only after DRD Towing failed to write a letter agreeing to tighter safety standards for probationary members.

Hawkins' testimony Monday inside the Hale Boggs Federal Building, where the Coast Guard hearings have proceeded, did little to help the case of DRD Towing. The company has taken much of the heat for the oil spill after the Coast Guard revealed that an improperly licensed pilot was at the helm of the Mel Oliver during the collision. Apprentice mate John Bavaret is scheduled to testify this morning.

LCDR Melissa Harper, the Coast Guard's investigating officer, also made a pointed remark about the role of the AWO in regulating the barge industry. After questioning Budwine, who returned to the witness stand Monday, she called the AWO audits a "useless task" because the group does not inform the Coast Guard or the maritime industry about companies that fail inspections.

Both Budwine and Hawkins said they were barred from discussing the audits with anyone except executives of DRD Towing. Although AWO requires safety audits, the group does not collect paperwork documenting the checks. Instead, AWO receives a letter saying whether a member passed or should be put on probation, which requires annual safety inspections instead of the usual triennial checks.

Towboats such as the Mel Oliver are considered uninspected towing vessels, or UTVs, which are not subject to regular Coast Guard inspections. AWO has stepped in to fill the lack of government oversight, although the group's only real power is over membership. Congress ordered the Coast Guard four years ago to create a program for inspecting UTVs, although the rules have not yet been implemented.

Randy Waits, an attorney for DRD Towing, said his company moved quickly to fix the violations Hawkins recorded aboard the company's vessels .

[NMA Comment: We commend Ms. Jen DeGregorio for her extensive and intuitive reporting on this case.]



HAWSEPIPERS: WHY THEY'RE NEEDED NOW MORE THAN EVER

[Excerpts from *Master of Towing Vessels Association, Towmasters*, June 9, 2010. **Emphasis is ours**]

There is a powerful belief these days that you absolutely must have an advanced higher (formal) education to be of any real value in the workplace, unless you are functionally serving only as a draft animal doing the ðunskilledö grunt work that no one else wants to do. The justification for this is usually made along the lines of ðtodayö complex work environment demands more technical training and skills, blah, blah, blah.ö To be sure, virtually all of our systems appear to be caught up in the death-grip of ever-increasing complexity that just keeps feeding off itself: we struggle to solve problems caused by todayö over-complexity by, you guessed it, adding even more of it tomorrow, *ad infinitum*. Even worse, the pace of this continual transformation steadily increases as well and we're expected to regularly ðupgradeö our knowledge and skills in a vain attempt to keep up. We're perpetually behind that curve, always outrun by the increasing rate of change, and there are human limits to our ability to keep up that aren't being acknowledged, let alone allowed for.

In the U.S. Merchant Marine, and elsewhere, this has had serious ramifications. The powers-that-be at the International Maritime Organization (IMO) have continuously ramped up the training and education requirements for virtually all licenses to impractical levels, apparently without much if any regard for the practical, economic and social impacts that come with it. Manning standards, in contrast, remain flat or are reduced to make the bean counters happy. **This has made the traditional hawsepiper an endangered species on a long skid towards extinction.** It has become extremely difficult, if not impossible, to pursue a career as an officer by your own efforts and resources alone. This, along with a long-standing disregard for the quality of life of working mariners, has caused serious shortages of younger seafarers. While there have been some uneven improvements in living and working conditions in recent years it still has not checked the decline. **Inertia** can be very tough to overcomeí ..

But this isn't really about fairness and equal opportunity,

COAST GUARD RESTRICTS ACCESS TO MARINER EXAM Q&A DATABASE

[**Source:** National Maritime Center internet announcement June 6, 2010]

The United States Coast Guard National Maritime Center (NMC) recently found a ðnon-conformityö during a routine internal audit of one of its core programs. In order to maximize marine transportation safety and ensure conformity with the Merchant Mariner Credentialing Programö Mission Management System, the Coast Guard will no longer post actual mariner examination questions on the NMC website. **Effective July 12, 2010**, the full set of deck and engineering questions and answers will be removed from the NMC Website. They will be replaced with sample deck and engineering questions and answers for review by mariners.

[NMA Comment: This summer it's not the heat but the

because it's clear that no one cares much about that. It's about the cold, hard fact that **the Merchant Marine is greatly diminished without a large percentage of hawsepipers in the ranks to ensure that the educated technicians from the academies, who possess little practical experience upon graduation, are not left to their own devices and wind up having to learn everything the hard way.** **Translation: increased damage, injury and accident rates.** In support of my argument I offer the wise words of none other than an academy-graduate deck officer (read: non-hawsepiper) who actually sails for a living and has avoided **drinking the Kool-Aid**. He clearly sees the value in having hawsepipers around in more than token numbers.

I am continually impressed by the younger mates I have worked with that began sailing as apprentice seaman and took the initiative to study and test for a third mate's license. Their education at sea brings a set of skills unattainable at maritime academies into the workplace. Any lacking knowledge in the theory of nautical sciences is amply made up for by a zeal to learn that theory while being able to run circles around academy grads on deck.

I couldn't agree more, and I would also say that this applies doubly so when it comes to towing vessels. The paragraph above was excerpted from the post **Human Resources** on the **Deep Water Writing** blog. Clear vision like this is uncommon amongst academy graduates and I hope that it spreads and sinks in.

Can you hear this, IMO? Are you paying attention, U.S. Coast Guard? Are you capable of understanding the great damage you're doing while continuing on the current course? It's long past the time to alter that course substantially to avoid a collision with reality. **The 2010 STCW International Diplomatic Conference** is being held this month in Manila, and they'll be deciding where we go from here. While the U.S. Coast Guard has temporarily backed off from implementing the latest round of changes to fully implement STCW 05, largely due to industry and possibly even marinerö objections, it is unknown if they truly get it yet and are willing and able to advise Congress that maybe this international treaty we signed wasn't such a great idea after all. So we're still very concerned about what may come out of STCW 10. Stay tunedí ..

Coast Guard's intense stupidity that is really remarkable. How much more of this can our mariners continue to accept? Maritime educators fought these problems 25 years ago by filing a FOIA appeal that secured the release of these questions to the public.]

The Coast Guard is removing the deck and engine exam questions from the website of the National Maritime Center (**supposedly**) to protect the integrity of the exam and the Coast Guard's regulation of licensed mariners. The Coast Guard sets standards to ensure that credentialed mariners are adequately skilled and knowledgeable to protect the public. The examination of mariners is an integral part of the evaluation process in determining whether a prospective mariner should receive a credential.

[NMA Comment: The existing license exam descriptions **by subject** found in 46 CFR Table 11.910-2 (deck) and 11.950 (engine) and ratings (46 CFR §12.05-9 (deck) and 46 CFR

§12-15-9 (engine) and the explanations (by module) in the Deck and Engine Guides provide insufficient information for a mariner to prepare for a Coast Guard exam.]

Removing the deck and engine exam questions will facilitate an examination of prospective mariners' seamanship and maritime knowledge rather than their knowledge of the questions and answers posted on the website. Recognizing that many customers use the examination questions to prepare for required mariner examinations, the NMC will post similar sample questions that are published in Coast Guard publications and periodicals. Sample deck and engine exam questions can be found on NMC's web site at http://uscg.mil/nmc/training/2010q3_sample_deck_questions.pdf (deck) and (engine) at http://www.uscg.mil/nmc/training/2010q3_sample_engineering_questions.pdf

Modifications to the Mariner Examination Deck and Engine Guide will also be forthcoming to reflect these important changes.
Sincerely, D. C. STALFORT, Captain, U.S. Coast Guard.

Masters, Mates & Pilots Protest

MM&P has protested the Coast Guard's action and is now in the process of assessing what it may mean for mariners taking the exam. "NMC made this decision on a unilateral basis, without soliciting comment from the affected mariner community." said MM&P Special Projects Director Richard Plant. The union is preparing a report that details the implications of the Coast Guard's move.

National Mariners Association Response

July 8, 2010

Dear Captain Stalfort,

On July 18, 1988 as a result of a Freedom of Information Act Request and formal Appeal⁽¹⁾ to a decision by the Office of Marine Safety, Security, and Environmental Protection, the Coast Guard Chief of Staff released all questions and answers from the question bank for all merchant marine deck and engine licensing exams. [⁽¹⁾FOIA Appeal #88-10.]



I started the FOIA process in letters to the Secretary of Transportation in 1983. The process dragged on until 1988.

Although done under my corporate letterhead, a number of maritime educators subsequently formed the non-profit **National Association of Maritime Educators** (NAME) that, inter alia, arranged for the distribution of the released questions to all concerned.⁽¹⁾ This predated the publication of the Coast Guard's Yellow Books and the questions later posted on the internet. [⁽¹⁾NAME Newsletter #3 & 5]

During this same time period (1983-1999), NAME pointed out approximately 1,500 questions that contained various errors. However, we were not alone in assisting the Coast Guard to improve its Q&A data bank. In fact, the existing data bank benefited from significant public input over the years. In fact, we believe this question bank truly has become public property and, as such, is far superior to the questions that preceded it and that were kept shrouded in secrecy. Consequently, we want continued access to the question and answer database for all mariners.

Speaking for myself as well as on behalf of all merchant mariners who take Coast Guard examinations, instructors that prepare them, and the general public, I believe that at the very least we deserve the transparency of a much more complete and detailed description of the recently found non-conformity during a routine internal audit of one of its core programs which is the only explanation your announcement provided.

I believe that my original FOIA request and its subsequent appeal fully complied with the provisions of FOIA and the appeal process and the results clearly established the position of mariners as well as the Coast Guard on this issue.

Although I await the requested written explanation, I am prepared to carry this issue out one I have dealt with for the past 40 years, or through or beyond your chain of command as may be necessary.

Very truly yours, s/Richard A. Block, Secretary NMA

[NMA Comment: Captain Stalfort will be relieved on July 23rd in a Change of Command Ceremony. Consequently, it will be up to his successor to deal with this issue.]

**Book Review
"RIVERS OF LIFE – AND DEATH"
By William T. Harper**

Anyone who has ever put a nautical mile under the keel of a commercial boat will want to read award-winning author-historian William T. Harper's gripping stories of triumph and tragedy on *The Rivers of Life – and Death*.

In his book, the author is a former newspaper reporter who has thoroughly researched nine major towboat incidents on the Inland Waterways. They range from the horrendous crash of the *Sunset Limited* railroad train involving the towboat *Mauvilla* near Mobile, Alabama in 1993, to the collapse of the Interstate Highway 40 Bridge in Oklahoma brought on by the *Robert Y. Love* in 2002. The catastrophes covered took the lives of 114 unsuspecting motor vehicle occupants, railroad train passengers and crew, fishermen, and mariners (including four aboard the towboat *Elizabeth M.* in the icy waters of the Ohio River in 2005).

In this must-read for any mariner, employer of mariners,

and those in agencies that regulate the mariners and the waterways, the thoughtful and extremely well-documented coverage of these isolated events really brings their significance to life, according to the Secretary of the National Mariners Association (NMA), Captain Richard Block. Not only does this book belong in every seaman's duffle bag, all of them should buy at least two copies – one to share with their family, and the other to send to their Congressional representatives.

The NMA is pleased to endorse *The Rivers of Life – and Death* and make an electronic version of the book available to all its members at a deeply discounted pre-publication price of \$9.95 (plus tax and postage), with the author donating \$1.00 of the proceeds from each book sold to mariners who read the NMA Newsletter to help support the organization's goals as expressed on their website.

To order *The Rivers of Life – and Death* contact the author, William T. Harper, at his e-mail address (harpersferry_2000@yahoo.com) or at 4752 Tiffany Park Circle, Bryan, TX 77802 or via FAX (979) 776-9347.

**NMA QUESTIONS PRISON WORK/RELEASE
PROGRAMS AND TWIC REQUIREMENTS**

[Our letter of April 12, 2010 was addressed to RADM Mary Landry, Commander, Eighth Coast Guard District and was answered on June 8, 2010 by CAPT J.S. Paradis, Eighth District Chief of Prevention, and received by mail on July 7, 2010.]

Dear Admiral Landry,

A reliable source recently reported to me that a number of mariners who were preparing for various officer and ratings endorsements questioned the legality of a growing number of marine employers who purposely replaced their credentialed merchant mariners with deckhands from various correctional work-release programs who either did not have a Coast Guard credential, a TWIC card, or both. The reported purpose and advantage of this program was an economic one so that the work-release personnel only had to be paid minimum wage which often was only half as much as they normally paid regular deckhands.

If there is any question of legality involved and there may be other aspects to some of these cases we would like to know the person on your District staff would be the person designated to handle such allegations if they are brought by mariners or others in respect to maintaining confidentiality under 46 U.S. Code §2114.

Our Association expresses concern that this work-release policy may be shortsighted in several respects:

- **Overall security issues.** One concern is that credentialed mariners working on most commercial vessels must pass through the TWIC process while these un-credentialed deckhands may not be required to do so. Since most mariners as well as port workers, truck drivers, service technicians, and just about everybody else needs a TWIC to work in the maritime industry, why is this not a requirement for all commercial mariners? There do not appear to be such requirements for many commercial vessels under 100 GRT or for vessels that operate solely on inland waters. Specifically, can you spell out where in the commercial maritime industry can work-release individuals without TWIC cards legally work?

The government offers a tax-incentive program to employers who hire ex-offenders. While this is understandable, many of the individuals who seek jobs as mariners serve with the same companies that operate in the Gulf of Mexico as well as on the western rivers and the chemical corridor south of Baton Rouge where security clearly is a priority.

The Louisiana Department of Labor often refers candidates to offshore and inland boat companies for employment. We understand that some of these companies hire ex-offenders. A number of companies pay for ex-offenders to complete applications for credentialing required by the Coast Guard. Our Association has been called upon to draft appeals on behalf of mariners who subsequently encountered roadblocks⁽¹⁾ to career advancement they never realized existed. We believe this is a glaring gap that the current regulations did not fully explore. ^[⁽¹⁾Refer to our Report #R-448, Enclosure #1.]

- **Career Advancement.** Assuming that the new deckhands from work release programs are encouraged to advance in their careers, and eventually plan to earn a credential to improve their economic status, their applications eventually must undergo separate TSA and Coast Guard criminal records check. While taking advantage of existing gaps in the system may not present a barrier to short-term employment, it does not boost the industry's employee retention rate or fill the shortage of dedicated and responsible mariners. An individual's past criminal record may short circuit a career already encouraged and assisted by public funds in the work-release program and result in recidivism. What has been the Eighth District's involvement, if any, in advising or encouraging various prisoner work-release programs?

- **Encourages Lengthy Appeals.** At some point, a previously incarcerated mariner must face the application process including security assessment periods, and character of life issues. Mariners who are encouraged to enter work-release programs that allow them to enter the maritime industry need to be fully informed of the potential roadblocks to their career progress before being turned loose in the system and well before being crushed and rejected by the system.

Our Association worked on far too many appeals generated on behalf of mariners with such issues that were never fully and warned of these roadblocks. Over the years, appeals were handled in a wide variety of ways and whose bureaucracy offered little leeway to our mariners. We took our complaints to the national level with little satisfaction.⁽¹⁾

While we only file an appeal if we believe the case has merit, our Association witnessed too much needless discouragement to believe that the Coast Guard satisfactorily managed our limited-tonnage personnel issues for the past decade. We have seen enough to believe that some career path other than the maritime industry may offer far fewer complications. ^[⁽¹⁾Refer to our Reports #R-428-D & #R-428-D, Rev. 1, Enclosures #2 & #3.]

- **Discourages Mariners Already in the System:** Many employers in the marine industry encourage responsible law-abiding individuals to apply for maritime jobs. These employers and responsible, law abiding mariners resent having this industry used as a dumping ground by other employers who undermine these efforts by manning their vessels with individuals that have proven to be less than responsible or trustworthy. The M/V Mel Oliver oil spill is a perfect example. Many of our mariners have invested thousands of dollars in education and training to become the professionals that the industry says it wants. Yet, we are never sure where the Coast Guard stands on these issues. We seek clarification on this issue.

Very truly yours,
s/Richard A. Block, Secretary, NMA

Coast Guard Response
June 8, 2010

Dear Mr. Block:

I am in receipt of your letter, dated April 12, 2010, regarding prisoner work-release programs and the legality of

individuals in such programs being employed in the maritime industry. Your letter requests to know where employees without a Transportation Worker Identification Credential (TWIC) may work in the maritime industry. The Coast Guard's responsibility, per the SAFE Port Act of 2006, is to ensure that all individuals working in secure areas onboard commercial vessels and at waterfront facilities are in possession of a TWIC. Therefore, I would like to take this opportunity to outline which individuals employed in the maritime industry are required to maintain a TWIC and detail the provisions of the TWIC waiver process.

The Coast Guard employs risk management methodology to identify which areas at waterfront facilities and onboard commercial vessels must be designated as secure areas. As stated in Title 33 Code of Federal Regulations part 101.514, all persons requiring unescorted access to secure areas of vessels, facilities and OCS facilities regulated by parts 104, 105, or 106 of this subchapter must possess a TWIC before such access is granted. Also, 46 U.S.C. 70105 (b)(2)(B) requires all Coast Guard **credentialed mariners** to maintain a TWIC.

While these populations represent a significant portion of maritime employees, they certainly do not represent the entirety of maritime industry employees. Many waterfront facilities and commercial vessels do not have designated secure areas and are not required to maintain a security plan due to the low risk nature of their day to day operations. In cases such as these, possession of a TWIC would not be required for access to these waterfront facilities and commercial vessels.

In the case of individuals with a criminal record, the Transportation Security Administration (TSA) created a very straightforward waiver and appeals process to afford applicants who no longer present a threat to the maritime industry, as identified in the rule, the ability to qualify for and receive a TWIC. This process was designed to ensure that individuals who have satisfied the legal system are not denied gainful employment in the maritime industry.

Your letter also requested to know of any Eighth District involvement in advising or encouraging prisoner work-release programs. To date, the Eighth District has not provided any direction or advisement to the maritime industry regarding the inclusion of prisoner work-release programs in their employment decision processes. However, the Coast Guard will continue to ensure, through the mariner credentialing program and TWIC program, that well-trained and qualified workers populate the maritime industry in those instances where unescorted access to secure areas at waterfront facilities and onboard commercial vessels is required.

One example of our commitment is the Eighth District's quick and decisive response to the DM932 oil spill through Operation Big Tow. This operation, which reached over 90% of mariners and 78% of vessels, revealed that over 99% of employed mariners who require a Coast Guard issued credential as a condition of employment were indeed properly licensed.

Should you have further questions regarding the legality of persons working in the maritime industry or require further explanation of current Coast Guard port security regulations and policy, please contact Mr. James Nolan at 504-671-2164.

Sincerely,
J. S. Paradis

AMERICAN BUSINESSES KILL 14 WORKERS EVERY DAY

[Source: By Tom O'Connor, Executive Director of the National Council for Occupational Safety and Health, the umbrella organization of 20 state and local COSH groups. Article forwarded to us by Capt. J. David Miller]

Now ó in the wake of a slew of highly publicized and preventable disasters ó is the time to demand action, before more workers die.

It's been a very bad couple of months for worker safety: Seven dead in Anacortes, Washington, following the explosion of the Tesoro refinery. Six dead in Middletown, Connecticut, in the Kleen Energy power plant explosion. Twenty-nine dead in West Virginia's Upper Big Branch mine disaster. And **11 dead in the Gulf of Mexico oil rig collapse (a fact almost completely overlooked in media coverage of the spill's environmental consequences).**

But behind the headlines on the latest disaster is a far quieter but equally disturbing story of daily carnage. In the same week as the human-created disaster in the Massey mine in West Virginia, local media outlets around the country carried dozens of stories with headlines like "Man Killed in Trench Collapse" or "Fall from Roof Fatal."

The toll of these routine incidents ó 14 deaths a day from injuries alone ó is obscured because most occur one death at a time.

Month after month, year after year, workers die in trench collapses and falls from roofs. OSHA cites the employer, slaps it with a **modest fine (a median penalty of only \$3,675 per death in 2007)**, and points out that simple methods exist to prevent such tragic loss of life. Yet some employers continue to ignore the hazards and workers continue to lose their lives due to this criminal neglect.

Like the high-profile workplace disasters, the vast majority of deaths on the job are entirely preventable. The problem is not a technical one of chemical concentrations, safe machinery, and ventilation, but a political one ó simply put, **our national system for enforcing health and safety regulations in the workplace is broken.**

We know how to prevent trenches from collapsing ó by using trench boxes to shore them up. We know how to prevent falls from roofs from becoming fatal ó by properly using safety harnesses. We know how to prevent coal mine explosions by minimizing the build-up of coal dust and monitoring methane concentrations. **But employers routinely refuse to use these established precautions, and OSHA does not force them to.**

Why No Enforcement?

First, it's a problem of resources: **OSHA's budget for enforcement is pitifully inadequate, a situation that has worsened since deregulation began in the Reagan era.** In the late 1970s, OSHA had one inspector per 30,000 covered workers; today it's one per 60,000.

Second, obstacles to any new workplace safety rules, put in place by deregulation ideologues in Congress, have effectively brought the OSHA regulatory process to a complete standstill. As the Center for Progressive Reform puts it, **In the nearly 40 years since its enactment, the OSHA Act has been exposed as a virtually useless tool for**

establishing occupational health and safety standards.ö In the last 13 years, OSHA has issued exactly one new health standard establishing the maximum safe exposure to a chemical, and that under the duress of a court order.

Third, OSHA's promise that all workers have the right to speak up about unsafe or unhealthy conditions without retaliation has proven to be a cruel joke to those who have risked their jobs by calling OSHA. The agency's whistleblower protection program is so ineffective that worker advocates cannot in good conscience advise a non-union worker to file an OSHA complaint if he or she wants to keep the job.

The Massey mine explosion demonstrated clearly that the combination of de-unionization, lack of enforcement of safety regulations, minimal penalties for violations, and lack of whistleblower protections is lethal. As several current and former Massey workers noted, the mine was a time bomb waiting to explode, but in a non-union mine, it was keep your mouth shut or lose your job.

How To Fix It

The solutions to this sorry state of affairs are not complex:

- 1) Congress should amend the OSH Act and the Mine Safety and Health (MSH) Act to protect whistleblowers and to require serious monetary and criminal penalties for egregious violators whose willful neglect of safety results in workers' deaths. Under current law, even the most egregious case of employer neglect can result in no more than a misdemeanor, punishable by a maximum six months in jail. Civil penalties also lag far behind those for violations of other federal law. New OSHA chief David Michaels noted in a recent Congressional hearing that when a Delaware refinery worker was killed in a sulfuric acid explosion, OSHA assessed a fine of \$175,000, while the same incident resulted in EPA fines of \$10 million for violations of the Clean Water Act.
- 2) Congress should dramatically increase the budget for OSHA enforcement.
- 3) OSHA should fundamentally rework its system for regulating hazards. It should issue a broad "Health and

Safety Program Standard" and cite employers under the "General Duty Clause" for unsafe conditions. These measures would require employers to develop worksite-specific health and safety programs and allow OSHA to enforce the employer's duty to provide a safe workplace without having to navigate the endless bureaucratic obstacles to issuing safety or health standards on a one-by-one basis.

- 4) Congress should close the loophole in the MSH Act that allows companies like Massey to avoid paying fines by contesting most MSHA citations, effectively shutting down the penalty system. Massey contested 3,601 citations in 2009, creating a logjam that prevents MSHA from collecting on assessed penalties.
- 5) Congress should enact labor law reform so that workers who want to join a union and speak up about unsafe conditions are able to do so.

Fist-Pounding

But these changes won't come about because Congress simply decides to do so. Despite much fist-pounding by senators at recent hearings on the mine disaster, they will likely soon forget about worker safety and move on to the next crisis.

A bill introduced in 2009 would go a long way toward strengthening OSHA's ability to protect workers. The Protecting America's Workers Act would increase maximum civil and criminal penalties, expand protections for whistleblowers, and extend OSHA protections to public employees, many of whom are now excluded.

Unfortunately, a timid Democratic-controlled Senate Labor Committee appears unwilling to move the bill without Republican support. (Can someone explain to me why it's not a good idea to force Republicans to cast a vote against worker safety after the recent disasters?)

So perhaps we can expect little from Congress unless the labor movement and its allies turn up the heat on our representatives. Now in the wake of a slew of highly publicized and preventable disasters is the time to demand action, before more workers die.

KNIVES

[Source: By Capt. Joel Milton. For other interesting articles and information, visit the Master of Towing Vessels Ass'n/website at: www.mtvassociation.com/]

This is one of those "stop the madness" moments that comes along periodically, so I have to take advantage of it. Starting last fall I ran a 3-part series ([Part I](#), [Part II](#) & [Part III](#)) on the numerous types of knives that may be useful to working mariners, along with various sharpening implements to keep them sharp and functional. Knives are one of the oldest known tools invented by humans, and have been carried and used by seafarers for as long as we've been putting to sea. We need knives, and they must be kept sharp because a dull knife is ineffective at best and dangerous at worst. Everyone should know this by now! ..

During the time that I was writing those posts I found several discussion threads on the [gCaptain forums](#) about the fairly widespread company policies in the Gulf of Mexico

forbidding the possession of any edged "weapons" on board their boats and drilling rigs. I have to admit I was surprised by this, and also disgusted that the state of affairs for seamen had gotten so bad that we were now being systematically stripped of one of our most useful and traditional tools in the name of safety. "What the hell is the matter, has everyone lost their minds?"ö, I thought.

Since then there's been a horrible "accident" in the Gulf of Mexico, the Deepwater Horizon blowout and ongoing oil gusher (the term "spill" is both technically and rhetorically inaccurate) in Mississippi Canyon Block 252, roughly forty miles off the southeast Louisiana coast. In the course of following this tragedy I watched the coverage afforded it by CBS's 60 Minutes. On their website was a 2:41-long video "extra" that tells in searing detail the recollections of Mike Williams, *Deepwater Horizon's* chief electronics technician, who survived the explosion and fire, and was one of the last people to make it off the rig alive. He describes how the last life raft full of survivors almost didn't escape the burning oil slick under the doomed rig because no one had a knife to cut

the sea painter with due to Transocean's no-knife policy. WTF????!!

Here it is! ..

Yeah, I know that life rafts are supposed to be equipped with knives in their emergency equipment package. Was it missing, or there all along and they just couldn't find it quickly enough when they needed it? Did they locate it but find it to be useless? Who knows? Given the scale of the disaster I have doubts that this small aspect of it will ever be looked at as closely as it ought to be. Regardless, if most everyone was carrying a knife in their pocket or on their belt someone would surely have remembered it in time. Redundant, back-up safety systems! ..

Knives are simply tools that we need to do our jobs and, not least, to potentially save our own lives when things go badly wrong. Like all tools, they can be abused, but that is insufficient reason to do away with them. I'm well aware that

sometimes humans hurt themselves, and others, with knives. Most of the time accidentally, but some of the time intentionally. But **a no-knives policy for mariners and maritime workers is just stupidity of a higher order than we normally see.** I wish the safety manager or management executive at **Transocean** that dreamed up their policy was in the liferaft that night, experiencing firsthand what happens when you are barred from having the tools you need by people who should but apparently don't know any better, whose personal physical safety isn't directly at stake, but are still in important decision-making positions nonetheless. Working on the water is no joke! ..and at the risk of sounding extreme I would say that mariners faced with being stripped by company policy of their otherwise-lawful work knives should seriously consider wide-scale "civil" disobedience of those rules. **This shows just how far the stupidity has permeated both our society and our profession.**

WORK BEGINS ON REPLACING BURLINGTON RAILWAY BRIDGE

[Source: Trains, June 10, 2010]

BURLINGTON, Iowa - BNSF Railway will begin work this month to replace seven approach spans on its Mississippi River crossing at Burlington. The bridge carries the railroad's coal-heavy Ottumwa Subdivision, part of its Chicago-Lincoln, Neb., link and Amtrak's *California Zephyr*.

Work began last year to replace the bridge's swing span with a lift span, and it continues. Barge traffic on the Mississippi necessitates the bridge be able to clear a navigation channel. When the two projects are complete, the entire bridge will have been rebuilt to 21st century engineering standards.

The 250-foot steel replacement approach spans will employ new reinforced concrete foundations. They're scheduled to be completed by December 2011.

The new lift span, financed primarily through the American Recovery and Reinvestment Act, is to be floated into place this December. It will widen the navigation channel width from 150 feet to 307 feet 6 inches. That's key, as the bridge is among the top three U.S. bridges most frequently struck by barge tows.

[NMA Comment: In Newsletter #9, Sept/Oct 2001 our Association requested the Secretary of Transportation to issue an emergency order under the Truman-Hobbs Act to replace the Burlington Northern Railway Bridge at UMR Mile 403.1. Although the Commandant had ordered the bridge altered in 1991, Congress did not provide the necessary funds until last year.]



WATERTIGHT DOORS CLOSE THEM AND DOG THEM!

[Source: USCG Safety Alert 04-10]

Recently a push boat operating "unfaced" (no barges attached) in the Houston Ship Channel flooded and sank while in the wake of tractor tug resulting in the death of the push boat crew and the narrow escape of two others. Although the investigation is not yet complete, it appears that the following occurred: The vessel's watertight doors leading to its engine room had each been pinned open. The push boat had very little freeboard and was fully loaded with fuel and water. As it took the wake of the tractor tug, the vessel listed to one side and down flooded the engine room through a watertight door. As it rolled to the other side, it took on more water, eventually sink stern first and coming to rest on the bottom of the channel in an upright position. A person working in the engine room was trapped by the incoming water and drowned. Two others narrowly escaped death after being trapped in a berthing area for over 10 minutes, breathing only a pocket of air before taking dramatic efforts to reach the surface via a broken window.

Watertight doors have been the subject of three other safety alerts involving fishing vessels and offshore supply vessels. Despite these awareness efforts, despite certain vessels having stability requirements requiring closure of such doors well documented in stability letters, despite owners and operators knowing what constitutes "Good Marine Practice," and many other applicable regulations the Coast Guard continues to investigate casualties where the failure to keep closed or properly maintain watertight doors is determined to be a causal factor.

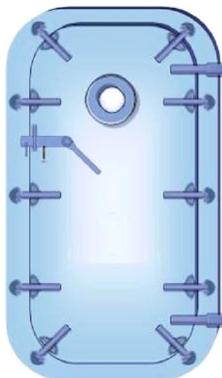
[NMA Comment: Towing vessels do not have Certificates of Inspection or Stability Letters that we hope will be required under the new inspection regulations mandated by Congress in 2004 and currently more than a year behind schedule.]

[NMA Comment: There are few if any "stability" questions on the one existing towing officer licensing exam for "Apprentice Mate/Steersman." The Coast Guard appears to expect mariners to understand subjects they were never taught - as we discovered about the lack of radar training after the Bayou Canot AMTRAK accident in 1993!]

Watertight doors function to establish the watertight integrity of the vessel and must always be treated as such. Although an open or poorly maintained door may seem like an insignificant issue, when the right causal factors align, the door can become a death trap and result in terrible circumstances to a vessel and its crew. The Coast Guard strongly recommends to all operators of any vessel, underway, having watertight doors to:

CLOSE THEM and DOG THEM!

The Coast Guard also recommends that the attached related safety alerts be reviewed for additional information. This safety alert is provided for informational purposes only and does not relieve any domestic or international safety, operational or material requirement. Developed by the Office of Investigations and Analysis, United States Coast Guard Headquarters, Washington, DC. Questions can be addressed to Mr. Ken Olsen at 202.372.1037 or via the email address below.



IDENTIFYING JONES ACT CLAIMS

By Lee J. Bloomfield, Esq.

[Source: This Article appeared in the Spring 2010 edition of the Trial Lawyer Magazine published by the Tennessee Association of Justice and is reprinted with its permission. The TAJ is Tennessee association of attorneys who represent injured persons. ðJeffð Bloomfield, a longstanding member of the National Mariners Association, wrote the article for Tennessee attorneys to explain the Jones Act. ðJeffð is a past president of the TAJ, and has written numerous articles and spoken at numerous seminars on the Jones Act and the maritime law for the TAJ. Mariners can contact Jeff at Godwin, Morris, Laurenzi, and Bloomfield, P.C., 50 N. Front Street, Suite 800, Memphis, Tennessee 38103. ☎ (901) 528-1702. Email: lbloomfield@gmlblaw.com]

[NMA Editorial Note: To save space, we printed this article in this newsletter for our mariners without its extensive end notes. We reprinted the article with all 56 endnotes as NMA Report #R-344-B. The full report appears on our website.]

Introduction

The State of Tennessee is not generally known as a state that has a large maritime law practice. However, the State not only has two major navigable waterways which run through it, the Cumberland and Tennessee Rivers, but its western border is also formed by the Mississippi River.

A large number of people who live in or near the State work on the vessels that ply these waters, and it is therefore not that uncommon for river workers to contact Tennessee plaintiffð attorneys with their maritime claims.

Maritime claims are not like typical Tennessee workersð compensation claims. They involve different practices and procedures, and the benefits to the worker are often more generous. Be advised, however, that the benefits a maritime worker receives will vary, depending on the legal category

into which the worker falls. This article is a brief primer on the rights and remedies afforded to those maritime workers who have the status of a Jones Act seaman.⁽¹⁾

A worker who has the status of ðseaman,ð or ðmember of the crew of a vessel in navigation,ð has three potential rights of action against his or her employer. These rights are: (1) if the injury was due to the employer's negligence, the worker has a claim under the Jones Act to recover tort damages for personal injury; (2) if the injury was caused by the unseaworthiness of the vessel, irrespective of negligence or fault, the worker has a claim under general maritime law for tort damages; and (3) under general maritime law, the worker has a right to recover maintenance and cure.

1. The Jones Act

The Jones Act,⁽²⁾ in pertinent part, states: (a) Cause of action.--A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

Incorporating by reference the Federal Employees Liability Act (FELA),⁽³⁾ the Jones Act allows a seaman injured through the negligence of his or her employer to fully recover for their damages. The Jones Act thus affords a potentially greater recovery for an injured worker than that coverage provided by the Tennessee Workersð Compensation Act.⁽⁴⁾

Proof of negligence is essential to recovery under the Jones Act.⁽⁵⁾ Whether an employer is negligent is determined under an ðordinary prudenceð standard.⁽⁶⁾ Once negligence is established, however, the plaintiff need only show that the employerð negligence caused, in whole or in part, the injuries suffered.⁽⁷⁾ In other words, there is a reduced standard of causation between the employerð negligence and the employeeð injury in Jones Act litigation.⁽⁸⁾ Consequently, the employerð negligence in producing the injury, even if slight, sufficiently establishes causation.⁽⁹⁾

Still, the employer must have actual or constructive notice and the opportunity to correct any unsafe conditions before liability attaches.⁽¹⁰⁾

Under the Jones Act, a vessel owner will be deemed negligent if he or she: (1) fails to exercise reasonable care to maintain a reasonably safe place in which to work; (2) fails to provide reasonably safe conditions in which to work; or (3) fails to provide reasonably safe and adequate tools and equipment.⁽¹¹⁾ The owner also has a duty to select a competent master and crew.⁽¹²⁾ Also, a co-workerð operational negligence can support a finding of the breach of duty.⁽¹³⁾ Additionally, negligent orders given by supervisory personnel concerning how work should be performed can expose the employer to liability.⁽¹⁴⁾

Contributory negligence is not an absolute or complete defense to recovery, but is considered in the mitigation of damages.⁽¹⁵⁾ Using comparative negligence principles, any negligence on the part of the employee merely reduces recovery, unless the employeeð negligence is the sole cause of the injury.⁽¹⁶⁾ No risk that can reasonably be controlled by the employer or vessel owner is assumed by the seaman.⁽¹⁷⁾

Damages recoverable under the Jones Act and the Doctrine of Unseaworthiness, discussed in section 2, *infra*,

include loss of earnings, past and prospective, impairment of earning capacity, medical expenses incurred and to be incurred, and other economic losses sustained or likely to be sustained.⁽¹⁸⁾ Further, the injured person may recover damages for the effects of the physical injuries, including suffering, mental anguish, discomfort, and inconvenience.⁽¹⁹⁾ Also included as an element of damages is the loss of enjoyment of life.⁽²⁰⁾

Jones Act cases can be filed in federal court, either on the law side or on the admiralty side.⁽²¹⁾ If brought on the law side, the plaintiff can ask for a jury trial.⁽²²⁾ If brought on the admiralty side, there is no jury trial.⁽²³⁾ Cases are brought in admiralty by designating in the complaint that the claim is brought pursuant to Rule 9(h) of the FRCP.⁽²⁴⁾

According to the language of the Jones Act, employers can only be sued in the district of the employer's residence or the employer's principal office.⁽²⁵⁾ However, the Jones Act has frequently been held to incorporate federal venue provisions, which allow suit against a corporation in any judicial district where it is incorporated, licensed to do business, or in which it is doing business.⁽²⁶⁾ Pursuant to the Savings and Suits Clause, a Jones Act case can also be brought in state court.⁽²⁷⁾ Such state court suits may not be removed even where diversity exists.⁽²⁸⁾

As the Jones Act incorporates by reference the FELA, the three (3) year statute of limitations prescribed by that Act is also applicable to Jones Act cases.⁽²⁹⁾

2. Unseaworthiness

The Doctrine of Unseaworthiness provides that a vessel owner owes an absolute and non-delegable duty to a seaman to furnish a vessel that is reasonably safe and fit for its intended purpose.⁽³⁰⁾ Complying with industry customs and practices will not discharge this duty to provide a seaworthy vessel as the duty is both absolute and independent of the Jones Act duty to exercise reasonable care.⁽³¹⁾ Liability for unseaworthy vessels under the Doctrine of Unseaworthiness is not dependant upon a showing of negligence or fault, but rather is a form of strict liability.⁽³²⁾

There are numerous examples of what constitutes an actionable unseaworthy condition. For instance, an unsafe method of work may create an unseaworthy condition.⁽³³⁾ Unseaworthiness may also be established by crew member fatigue or illness resulting from not having an adequate crew in place.⁽³⁴⁾ Additionally, an actionable unseaworthy condition may exist if a vessel lacks a sufficient number of crew members to perform heavy lifting.⁽³⁵⁾ Unreasonably slippery decks or ladders, or obstructions left on deck may constitute an unseaworthy condition.⁽³⁶⁾ Even a temporary or unforeseeable failure of a piece of vessel equipment under proper and expected use is sufficient to establish unseaworthiness, provided that the unseaworthy condition was the proximate cause of the harm suffered by the plaintiff.⁽³⁷⁾

Since an unseaworthiness claim arises under the general maritime law, the three (3) year statute of limitations provided by the Uniform Statutes of Limitations for Maritime Torts applies.⁽³⁸⁾

3. Maintenance and Cure

Maintenance refers to a ship owner's obligation to provide a mariner with food and lodging if he or she becomes injured or falls ill while in the service of the ship.⁽³⁹⁾ In determining

the amount of maintenance required, the general rule is that a seaman is entitled to the reasonable cost of obtaining the same quality of room and board ashore that he or she received aboard the vessel.⁽⁴⁰⁾

Cure refers to the duty to provide necessary medical care and attention.⁽⁴¹⁾

Maintenance and cure is an independent claim that is not contingent upon recovery for negligence under the Jones Act, or the violation of the duty to provide a seaworthy vessel.⁽⁴²⁾ In order to recover maintenance and cure, a seaman must show that: (1) he or she was working as a seaman; (2) he or she became ill or injured while in the service of the vessel; and (3) he or she lost wages or incurred expenditures relating to treatment for the illness or injury.⁽⁴³⁾

It is well settled that regardless of whether the seaman's employment caused the injury or illness, maintenance and cure is payable.⁽⁴⁴⁾ Maintenance should be inclusive and simple, with few exceptions.⁽⁴⁵⁾ A shipowner must pay maintenance and cure for an illness which occurred, was aggravated, or manifested itself while the seaman is in the ship's service.⁽⁴⁶⁾ A seaman's burden is "feather light" and ambiguities or doubts are to be resolved in his or her favor.⁽⁴⁷⁾ There are few defenses to a claim for maintenance and cure. If, however, a seaman has willfully concealed a disabling condition at the time of hire, this may provide a defense to disabilities related to this condition.⁽⁴⁸⁾

The shipowner's obligation to pay maintenance, cure, and unearned wages stops after the seaman has reached "maximum cure."⁽⁴⁹⁾ Maximum cure is reached when a seaman's condition is of a permanent character and will not further improve with additional medical treatment.⁽⁵⁰⁾

Because maintenance and cure payments are supposed to be prompt and made without delay, expedited hearings are allowed.⁽⁵¹⁾ The three (3) year statute of limitations for maritime tort actions does not apply to claims for maintenance and cure because the action does not sound in tort.⁽⁵²⁾ Rather, the equitable defense of laches applies.⁽⁵³⁾ Laches is defined as the negligent and unintentional failure to protect one's rights.⁽⁵⁴⁾ A party asserting laches must show: (1) a lack of diligence by the party against whom the defense is asserted; and (2) prejudice to the party asserting it.⁽⁵⁵⁾ If the three (3) year statute of limitations has run, the burden shifts to the plaintiff to prove excusable delay and lack of prejudice to the defendant.⁽⁵⁶⁾

Conclusion

While some Tennessee plaintiff's attorneys will not encounter Jones Act claims in their practices, such cases often arise in this State. Often, they are mistaken for workers' compensation claims or are otherwise not handled properly, to the detriment of both the client and their attorney.

Therefore, it is important for plaintiff's attorneys to recognize Jones Act claims in order to maximize the recoveries afforded the injured maritime worker.

DON'T LEAVE PORT WITHOUT THESE TERMS IN YOUR VESSEL CHARTER



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[Source: *MarineNews*, May 2010.]

Put it in Writing.

When chartering an asset so valuable and with so many risk exposures as a vessel — whether a 15-ft RIB or a 4,000 HP tractor tug, put the agreement in writing. While I have previously written in this magazine about how maritime contracts can be enforceable under admiralty law (see “Marine Contracts: Do I Have to Put it in Writing?” *MarineNews*, June 2008), it is far preferable to put the terms in writing. Some terminology: A contract to lease a vessel is a “charter party,” or for short a “charter.” While I cannot cover all the terms a vessel charter should include, I highlight below some indispensable ones. First, though, a warning about forms.

Be Wary of Forms

While forms may be better than having no written agreement, the problem with forms is they are static. They do not change to take account of serious shortcomings which may be present in the wording of the form that, unbeknownst to you, may have caused others using the same form to have sued one another. Forms also may take into account changes in the law. Even if you have a vessel charter form, or the other side sends you theirs as a starting point, I strongly recommend you have an admiralty lawyer review the document to ensure it does not have flaws, that it takes into account developments in the law, that it is consistent with the type and service of the vessel involved, and that it accurately puts into writing the key terms of the parties’ agreement.

Vessel Description and Agreed Value

Clearly identify the vessel, typically by its U.S. Coast Guard Official Number, its Hull Number, if state-registered its state registration number, and set forth the vessel’s characteristics, such as: construction material, type of vessel, build date, dimensions, engine/power plant, horsepower, fuel and lube types and fuel efficiency. For example, if the owner warrants it is chartering out a well-maintained and fuel efficient tug, but it turns out the vessel burns oil and is highly fuel in-efficient, this paragraph can assist the charterer in later negotiating a reduction in the charter hire, or cost of chartering the vessel. Specify the gross and net tonnage. If a passenger vessel, state the manning requirements and passenger capacities as listed in the vessel’s U.S. Coast Guard Certificate of Inspection.

Type of Charter

State the nature and purpose of the charter. State whether it is a time charter, meaning a lease of the vessel for a fixed period of time, or a voyage charter, only for as long as it takes for the vessel to transit from point X to point Y. State if the owner will be responsible for crewing and operating the vessel (fully found charter), or if the charter is only of the vessel itself, shifting crewing, operating, insuring responsibilities to the charterer or lessee (bareboat charter).

Warranty of Seaworthiness

The owner should warrant the seaworthiness of the vessel, usually worded along the lines of: “Owner warrants the Vessel is tight, staunch, strong, well and sufficiently tackled and equipped, and in every respect seaworthy and in good running order, condition and repair, and in all ways permitted and constructed to [describe the intended service of the vessel: towing, carrying passengers, etc.]”

Trading Limits

Describe where, geographically and on which waterways, and when the vessel may be used (for example, can the vessel withstand ice?).

Agreed Value

Agree to this up front and specify the currency. This way, if the vessel sinks or is involved in an accident and rendered a total or constructive total loss, there will be one less thing to fight about. The insurer of the party responsible for insuring the vessel will also typically demand specification of this figure so it can determine the premium it will charge. The insurer may require a recognized marine surveyor to perform a “Condition and Valuation” survey of the vessel to assist in establishing this value.

Term of Charter

If a time charter, when does it begin and end? Can it be extended or renewed? On what conditions? For how long?

Place of Delivery and Redelivery

Specify where the party chartering-in the vessel will take possession of and assume responsibility for the vessel, and where the charterer must return the vessel to the owner.

Surveys

Provide for joint on-hire and off-hire surveys, and, ideally, specify in the charter the surveyor(s) to be used. The on-hire survey sets the baseline condition of the vessel. If the vessel has more than reasonable wear and tear at the time of the off-hire survey, the owner will be looking for the charterer to pay for the cost of refurbishing the vessel. Specify which party will pay for these surveys or, if they are to be shared, state this.

Consumables

Typically, the vessel owner and charterer agree to a joint inventory of the vessel’s consumables aboard at the time of the on-hire and off-hire surveys and a method to account for changes in quantities.

Charter Hire

“Charter hire” is the cost to charter the vessel. The charter

should also express the effect on charter hire of certain contingencies, such as breakdowns, accidents, Coast Guard or classification society surveys, drydockings.

Vessel Operations, Fuel, Lube and Other Expenses

State which party is responsible for operating, fueling, lubing, and otherwise provisioning the vessel, and paying for such.

Charterer's Signage and Other Modifications

It is common, particularly for a long term charter, to permit the charterer to paint the exterior of the vessel in its company colors, and affix or paint on its ship stack logo. Structural changes should be permitted only with the owner's advance written consent.

Insurance

This is one of the most critical terms of any vessel charter. Here, the owner specifies down to the precise policy forms and endorsements, and dollar limits of the insurance it requires. Both sides should consult their own admiralty lawyer and marine insurance broker when working out this clause, in particular.

Indemnity

An indemnity agreement within a charter, as in most other commercial agreements, is typical and prudent. This is a clause where if magic words are missing the clause may be unenforceable. Have an admiralty lawyer review this clause closely and how it interrelates with the charter's Insurance clause.

Termination of Charter

State which party or what circumstances can end the charter before its agreed term and in such event who pays for what?

Force Majeure

A force majeure clause generally states that if, because of accidents, floods, fuel shortages, embargoes, lock closures, ice, terrorist actions, or for other causes beyond the reasonable control of either party, the terms of the charter cannot be adhered to, the parties shall attempt to negotiate suitable amendments to the charter so as to continue the charter, but if no resolution is agreed upon within a certain amount of time of the force majeure event, either party may terminate the charter without further recourse.

Notice

State whom the parties nominate as the only permissible providers and recipients of notices. Specify their contact information, including name, title, mailing address, fax #, and e-mail address.

Dispute Resolution, Choice of Law and Forum

State how the parties will resolve disputes that arise under the charter. By litigation? Arbitration? Where? Under what law? Who will pay for the attorney's fees and other expenses?

Conclusion: Put it in Writing, Use a Professional

Charter parties have too many terms, with minute details and great significance, to not put the agreement in writing. The terms discussed above are just a starting point. While involving a lawyer may increase the cost of the project incrementally up front, and take more time, there are many cases for which I never would have been hired and cases which would have been resolved in short order, had the parties both put their agreement in writing and consulted an admiralty lawyer and a marine insurance broker before they signed on the dotted line.

FOREIGN VESSELS OPERATING IN U.S. EXCLUSIVE ECONOMIC ZONES

[Source: Marine Link, June 18, 2010.]

Offshore Marine Service Association (OMSA) President/CEO Ken Wells testified before the Subcommittee on Coast Guard and Maritime Transportation of the House Transportation and Infrastructure Committee on June 17, with regard to foreign vessels operating in the economic zone exclusive to American vessels. Testifying on the activities of foreign vessels that carry cargo and do construction work at offshore energy projects in the Gulf of Mexico, our government enforcement agencies lack the tools to adequately track them or even hold them to compliance, Wells said.

OMSA members operate U.S. flag vessels and have made a commitment to comply with the laws of the United States on safety, environmental protection and security, and to pay American-level wages and American taxes. Their vessels are built in American shipyards which must also comply with U.S. laws and wage scales. All of those requirements potentially place us at a disadvantage to foreign vessels which do not have to meet those requirements, Wells said.

Wells offered some facts from a recent economic study commissioned by OMSA: For every mariner who works on the water, there are roughly nine shoreside jobs that support

vessel operations. According to a study of the offshore vessel market, the American offshore industry is responsible for \$18 billion in annual economic activity in this country. OMSA members generate \$4.6b in annual wages and more than \$2b in taxes.

And in the wake of the explosion of the Deepwater Horizon, it was an American crew on an American vessel that saved the lives of 115 rig workers in the tragedy.

We have become very concerned that the Jones Act [U.S. maritime cabotage law] is being degraded and that the numbers of foreign vessels in the offshore energy sector is increasing. We find that many of these vessels are blatantly ignoring the Jones Act. Worse, we find that the agency charged with enforcing the Jones Act has failed to live up to its responsibilities to enforce the law and to interpret the law as Congress intended. Because of this, we are concerned that to a large extent, American vessels are being written out of the script for the future of our offshore energy policy, Wells stated.

In looking at many of the foreign vessels operating in the Gulf, Mr. Wells testified that there are safety concerns, Jones Act violations non-compliance of tax laws.

Wells said, OMSA's members developed the boats that work offshore and then they shared their knowledge with the world. The United States still has the largest fleet of offshore energy vessels in the world, but it's our leading role and our future is threatened