



GULF COAST MARINERS ASSOCIATION

P. O. Box 3589 • Houma, Louisiana 70361-3589

Phone: (985) 851-2134 • Fax: (985) 879-3911

E-mail: info@gulfcoastmariners.org Website: www.gulfcoastmariners.org

STATEMENT OF RICHARD A. BLOCK

Submitted to the Subcommittee on Coast Guard and Maritime Transportation

Thursday, August 2, 2007

Mr. Chairman and distinguished members of the Subcommittee on Coast Guard and Maritime Transportation, it is my honor to be invited to appear before you today to testify on the Challenges Facing the Coast Guard Marine Safety Program.

My name is Richard A. Block, and I am the Secretary of the Gulf Coast Mariners Association. As a word regarding my background, I am a secondary school teacher by profession with a dozen years of classroom experience in academic and vocational settings in New York, Louisiana, and Alaska. For 17 years, I was editor of the National Association of Maritime Educators' newsletter. I have held a Coast Guard license for 52 years as a "lower-level" Master – with emphasis on "lower-level" defined as applying to vessels of less than 1,600 tons. I served on small vessels including launches, passenger and car ferries, freight boats, tugboats, and offshore supply vessels on the east coast, Gulf of Mexico and overseas. During these years, I either owned or managed three small boat companies. I edit and publish a series of textbooks for "lower-level" mariners including masters, mates, operators, able seamen, tankermen, and workboat engineers and have done so continuously since 1970.

The Gulf Coast Mariners Association (GCMA) is a voluntary membership association of licensed and unlicensed mariners who serve on commercial vessels like tugs, towboats, oilfield vessels, and small passenger vessels of up to 1,600 gross register tons. We were founded in 1999 with the help of four major maritime unions as an independent mariner Association. The unions taught us to stand on our own two feet. However, we are not now and never have been a labor union. We are independent and have no financial ties to any union although we are grateful for their past help and guidance.

We are an independent source of information that reports on conditions that exist in the field and affect our "lower-level" mariners. We built upon the work done by predecessor organizations and currently post about 140 GCMA research reports on our Internet website. Three of our Directors, Captain Roland Rodney, Captain Joseph Dady, and Chief Engineer Glenn Pigott received appointments by the Secretary of Homeland Security to memberships on various Coast Guard advisory committees.

In our attempts to improve safety and working conditions for our mariners, we always presented our problems to the Coast Guard first, often bringing them up in correspondence or at advisory committee meetings. However, whenever the Coast Guard proved to be either unable or unwilling to move on a number of issues, we reached an impasse. This happened a number of times in the past eight years. When it was clear to us that a law had to be changed, then and only then, did we address a report summarizing that issue to members of this Subcommittee.

Our mariners face a number of challenges from the Coast Guard's marine safety program. In the broadest sense, this program involves vessels and people. Our "lower-level" merchant mariners represent a clear majority of all merchant mariners, at least 126,000 of slightly over 200,000 that the Coast Guard issues credentials to. This does not include thousands who work on inland waters and on vessels up to 100 tons offshore that the Coast Guard has no record of.

One of the greatest challenges we face is that a branch of the military superintends our civilian mariners, who are employed by companies that are in the business of making a profit. Men and women who join the Coast Guard have chosen to live a military lifestyle. As a former Army officer, I understand and respect that lifestyle. However, it has many shortcomings when it is left to control civilian enterprises and our civilian mariners who did not choose and are not familiar with that lifestyle. The Coast Guard gained control over the merchant marine during World War II at a time of national emergency as a temporary expedient. However, after the end of the war, a postwar reorganization act did not return it to civilian control. We believe the time has come to consider controlling a

number of merchant marine functions to merchant marine officers. After all, one federal and six state maritime academies continue to turn out hundreds of new merchant marine officers each year. These officers all have college degrees. In the company of other experienced "hawsepipers" who have come up through the ranks, these mariners are able to guide, direct, and nurture the U.S. Merchant marine.

Specific Challenges

On July 5, 2007 GCMA mailed each Subcommittee member a letter and a copy of GCMA Report #R-429-J dealing with the Coast Guard Abuses of the Administrative Law System. This report summarized for the Subcommittee a matter already discussed in a hearing set for July 31st.

I want to concentrate and reiterate these points made at that time in my cover letter:

- The Coast Guard marginalized "lower-level" mariners over the years by exclusively relying on the advice of "management" without adequate consideration of working mariners.
- Although represented on "Advisory Committees" mariners were effectively shut out for a number of reasons.
- The Coast Guard created an atmosphere of intimidation and an impenetrable bureaucratic regulatory maze that discourages our mariners from seeking employment on inland, river, and coastwise vessels of less than 1,600 tons. The most obvious result is the current "personnel shortage" that grips the industry. Their personnel practices artificially-created a set of "jobs Americans will no longer perform." We believe that Americans will gladly perform these jobs if they are offered adequate pay, job security, medical care, a safe working environment and freedom of association in the work place!
- The Coast Guard is a military organization with little or no practical experience in civilian merchant marine affairs. Consequently, we will show beyond a doubt that most of the legitimate issues our "lower-level" mariners present to the Coast Guard are sidetracked and never resolved.

The record we offer below will show that GCMA did its utmost to keep Members of Congress informed about the problems and conditions our mariners face in the maritime industry. Consequently, we encourage the introduction of legislation that specifies the transfer of the following "marine safety duties" to civilian control including:

- Merchant marine personnel management including credentialing and training.
- Investigations of accidents and especially personal injuries, including hearings before Administrative Law Judges.
- Vessel inspection.

We covered these three areas that directly affect our mariners in a number of reports that we distributed to Members of the House and Senate oversight committees. Unfortunately, our limited funds never enabled us to effectively lobby for these changes. We also published each of the following reports (and many others) and posted them on our Internet website in the public domain for the past four years. They speak for themselves.

Accompanying this statement is GCMA Report #R-350. This is the third revision first issued in 2003 titled Mariners Seek Help From Congress on Safety-Related Problems. Our mariners must approach Congress after Coast Guard officials are unable or unwilling to resolve individual issues. This report summarizes many issues that indicate that a transfer of merchant marine functions to a more attentive civilian agency would directly benefit the mariners we speak for. Part 1 contains a number of issues where we ask for help from this Subcommittee while Part 2 presents our views on some other issues that may explain a little more about our mariners.

We list below other reports previously mailed to members of this Subcommittee. Each report is currently available on our website shown in our letterhead.

- GCMA Report #R-428-D. Feb. 13, 2007. Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services. [*Comment: This report tells the subcommittee exactly how the Coast Guard deals with our merchant mariners. We pulled no punches but never heard a peep from the Coast Guard about it. We believe it is credible.*]
- GCMA Report #R-354, Rev.1. Nov. 19, 2006. A Direct Appeal to Congress on Lifesaving Issues Affecting Lower-Level Mariners. [*Comment: In 1986, the NTSB asked the Coast Guard to eliminate survival craft that were not designed to keep survivors from entering the water. We ask that Congress not postpone this requirement to 2013 to mollify manufacturers because these basic lifesaving issues need immediate Congressional oversight to overcome years of Coast Guard's procrastination.*]
- GCMA Report #R-429, Aug. 29, 2006. GCMA Report to Congress: How Coast Guard Investigations Adversely Affect Lower Level Mariners. [*Comment: The Department of Homeland Security Inspector General's office is*

scheduled to provide a comprehensive and authoritative report to Congress later this year. This is a view of the Coast Guard's performance of investigations from our mariners' perspective.]

- GCMA Report #R-429-G, Rev. 2, Feb. 24, 2007. (Series). Report to Congress: Sharpening Accident Investigation Tools by Establishing Logbook Standards for Lower-Level Mariners. [*Comment: We thank Congress for including this in the recent Authorization Bill. However, we ask whether you can count on the Coast Guard to enforce it if it becomes law? The Coast Guard has been unable to successfully distribute the official logbooks and oil record books that Congress already provides.*]
- GCMA Report #R-395, Rev.2, Nov. 22, 2006. Safe Potable Water and Food Service for Commercial Vessels of Less than 1600 Gross Register Tons: An Appeal To Congress. [*Comment: Our mariners appreciate the Congressional action taken in 2004, but ask the Coast Guard why they have done nothing tangible with this issue in the last 3 years.*]
- GCMA Report #R-370-A (Series), Rev. 2, May 19, 2007. Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited. [*Comment: The Coast Guard and NTSB together sidetracked and skillfully avoided "fatigue" and "hours-of-work" issues in this towboat accident with multiple fatalities. It's a big problem — please don't duck it!*]
- GCMA Report #R-279, Rev 6, Sept. 14, 2006. Report to Congress on the Need to Review and Set Safe Manning Standards for Offshore Supply and Towing Vessels. [*Comment: Undermanning has been a problem our mariners must endure but are never invited to discuss! The Coast Guard officers who make critical decisions about manning seldom "ride the boats" to assess the conditions they establish!*]
- GCMA Report #R-401, Rev. 1, Mar. 8, 2005. Crew Endurance and the Towing Vessel Engineer – A Direct Appeal to Congress. [*Comment: The Coast Guard's record on training our lower-level engineers has been absolutely deplorable. We think they have their head in the sand or worse!*]
- GCMA Report #R-428, Rev.1, Oct. 23, 2006. Report to Congress: The Forgotten Mariners. Maritime Education and Training for Entry-Level Deck & Engine Personnel. [*Comment: Entry-level refers to new people entering the system. There are few "regulations" and only limited guidance available to new entrants; and the Coast Guard completely overlooked training of engineers for the past 30 years. It is especially important for reasons of safety to train entry level personnel.*]
- GCMA Report #R-341, Rev. 3, Jun. 30, 2006. Smoking and Merchant Mariner Health & Welfare Issues: A Petition to Congress. [*Comment: Most mariners seek a healthy place to work. Why did the Coast Guard control "smoking" on their cutters and shore stations yet ignore the health of our mariners?]*
- GCMA Report #R-413, Rev. 1, Feb. 11, 2006. A Direct Appeal to Congress to Reform the Two-Watch System. [*Comment: This was the main thrust of our Legislative Agenda in GCMA Report #R-332, Rev. 3 but appears to have been overlooked in the draft Authorization Bill.*]
- GCMA Report #R-411, Rev. 4, May 30, 2006. Congressional Oversight is Necessary to Prevent Continuing Overhead Clearance Accidents. [*Comment: The Coast Guard has been as ineffective as the Keystone Cops in "connecting the dots" and initiating rulemaking on these preventable accidents.*]
- GCMA Report #R-417, Rev. 1, Feb. 25, 2007. Report to the 110th Congress: Request for Congressional Oversight on the Towing Safety Advisory Committee. (TSAC). [*Comment: At present, the towing industry's trade association – under the guise of a TSAC working group – is writing its own towing vessel inspection regulations using a Coast Guard draft document without presenting that document as a Notice of Proposed Rulemaking in the Federal Register. Three years have passed and there still is no Notice of Proposed Rulemaking.*]

For additional information, please review the GCMA Report #R-350, Rev. 3, July 21, 2007. Mariners Seek Congressional Help on Maritime Safety, Health, and Work-Related Problems *attached* as part of this testimony.



Gulf Coast Mariners Association

GCMA REPORT #R-350, Revision 3
Compiled & Edited by Richard A. Block
DATE: July 21, 2007

P. O. Box 3589
Houma, LA 70361-3589
Phone: (985) 851-2134
Fax: (985) 879-3911
www.gulfcoastmariners.org

MARINERS SEEK CONGRESSIONAL HELP ON MARITIME SAFETY, HEALTH AND WORK-RELATED PROBLEMS

[Publication History: This report revises and updates two earlier editions published in Feb. 2003. Editorial Notes: All GCMA reports mentioned here are available on our website. You can review every "docket #" mentioned here at: <http://www.dms.dot.gov>]

EXECUTIVE SUMMARY: WHY OUR MARINERS REPORT TO CONGRESS

The Gulf Coast Mariners Association (GCMA) is a voluntary membership association of "lower-level" mariners founded in April 1999. From the beginning, our Association's primary goal was to bring our mariners' safety-related problems to the attention of the appropriate Coast Guard officials for resolution. Unfortunately, we discovered they were not up to the task of resolving them!

After reviewing earlier editions of this report, we realized that most of the problems our mariners currently experience had their roots long before the terrorist acts of Sept. 11, 2001. We believe Coast Guard officials could and should have addressed these issues when first brought to their attention. Instead, they procrastinated, attempted to smother us with their bureaucracy, and avoided remedial action while our problems grew in size and complexity. Having reached this point, we seriously doubt whether the Coast Guard either intends to or is even capable of resolving our issues.

Only because these problems were ignored and grew so sizeable do we ask the 110th. Congress to favorably consider our Requests for Congressional Action presented in Part 1 of this report (i.e., Issues 1 through 22). On the other hand, Part 2 of this report expresses the views of lower-level mariners on a number of issues for information purposes.

For the past eight years GCMA attempted to work through the Coast Guard since the Secretary of Homeland Security "...has general superintendence over the merchant marine of the United States and of merchant marine personnel..."⁽¹⁾. This report highlights the fact that we did bring our mariners' problems before U.S. Coast Guard officials at local, district, and national levels. We often found these officials were unwilling or unable to resolve them for a variety of reasons. Periodically, for the past six years, as we reached a dead end on a particular problem, we submitted individual reports to members of the Congressional oversight committees as Coast Guard officials proved to be unresponsive to our Association. ^[⁽¹⁾46 U.S. Code §§2103 and 2104.]

Several years ago, the National Maritime Center's "Proceedings" magazine provided us with an authoritative census figure of approximately 204,835 merchant mariners.⁽¹⁾ Of this number, we identified 126,362 credentials that belong to "lower-level" mariners who, by definition, work on vessels of less than 1,600 gross register tons (GRT). ^{[⁽¹⁾Refer to GCMA Report #R-353, Rev.2, Lower-level Mariners are a Majority of All U.S. Merchant Mariners].}

The 126,362 figure does not include unlicensed and undocumented mariners who serve offshore on commercial vessels of less than 100 GRT or on inland waters on all vessels up to 1,600 GRT as deckhands, unlicensed engineers, "deckineers," cooks etc. Until after 9/11, the Coast Guard largely ignored this additional population of full time, part-time, and seasonal employees.

We limited the scope of this report to problems facing licensed and unlicensed lower-level mariners who work on "boats" up to 1,600 GRT. This report (and our Association) do not purport to speak for mariners working on larger "ships" as these mariners are well represented by maritime labor unions. We defined and delineated the problems as well as the views of our lower-level mariners to our elected representatives on the legislative committees that deal with maritime transportation issues.

From 1999 to 2007, the Coast Guard's failure to address legitimate mariner complaints hurt the towing and offshore oil sectors of the marine industry as witnessed by steadily declining mariner retention rates and crew shortages as reported at several high-level national conferences. We document the reasons for our mariners' frustration in this report and in the other in-depth GCMA reports we reference here.

This report explains why our mariners find it necessary to look beyond the Coast Guard to Congress for redress of grievances and relief for a growing number of unresolved problems. These problems, although they may appear to be minor in the context of national priorities, threaten to undermine important sectors of the maritime industry if not addressed in a timely manner. This report signifies that we no longer have the confidence that the Coast Guard is up to this task!

[Request for Congressional Action. Consider transferring Coast Guard authority over all merchant marine personnel to a suitable civilian agency within the government.]

TABLE OF CONTENTS

Executive Summary: Why Our Mariners Report to Congress.....	1
Part 1 – MARINER ISSUES	
Issue #1 – Substandard Merchant Marine Personnel Services.....	3
Issue #2 – Coast Guard Investigations.....	3
Issue #3 – Formal Safety Training for Entry-Level and Engineerroom Personnel.....	4
Issue #4 – Regulating Towing Vessels.....	4
Issue #5 – Widespread Hours-of-Service Abuses.....	6
Issue #6 – Unsatisfactory Coast Guard Response to Petitions for Rule Changes.....	7
Issue #7 – Work-Hour Limits for Unlicensed Crewmembers [<i>Docket #USCG-2002-12579</i>].....	8
Issue #8 – GCMA Requests Uniform Logbook Entry Procedures [<i>Docket #USCG-2002-12581</i>].....	9
Issue #9 – Enforce Regulations for Filing Personal Injury Reports [<i>Docket #USCG-2002-12580</i>].....	11
Issue #10 – Clarify the Definition of “On Duty” Time [<i>Docket #USCG-2002-13594</i>].....	12
Issue #11 – Ensure Safe and Adequate Potable Water for Mariners [<i>Docket #USCG-2003-14325</i>].....	13
Issue #12 – Give Mariners a Voice in Setting and Reviewing Safe Vessel Manning Standards.....	15
Issue #13 – Protecting Our Mariners’ Health – Hearing Conservation.....	15
Issue #14 – Protecting Mariners’ Health from Second-Hand Smoke.....	19
Issue #15 – Protecting Our Mariners’ Health from Asbestos.....	20
Issue #16 – Reporting Drug Program Violations.....	20
Issue #17 – Whistleblower Protection for Mariners.....	21
Issue #18 – A Resolution to Protect Our Mariners from Obsolete Lifesaving Equipment.....	21
Issue #19 – Hypothermia Protection for Inland Deck Crews.....	23
Issue #20 – Homeland Security.....	25
Issue #21 – Appealing Coast Guard Decisions.....	26
Issue #22 – Blacklisting.....	27
Issue #23 – End Objectionable Employment Practices Targeting Mariners.....	28
Part 2 – MARINER VIEWPOINTS	
Issue #24 – The Medical NVIC – A Threat to Mariners’ Careers.....	28
Issue #25 – Mariners’ Problems with the Administrative Law System.....	30
Issue #26 – The Coast Guard Does Not Understand the Workboat Industry.....	31
Issue #27 – Mariners’ Limited Respect for the Coast Guard.....	31
Issue #28 – Limited Coast Guard Resources.....	31
Issue #29 – Coast Guard Partnership With Industry.....	32
Issue #30 – The Revolving Door of Government Service.....	32
Issue #31 – When Employers Speak for Mariners.....	32
Issue #32 – Coast Guard Statistics and Security Gaps.....	32
Issue #33 – Voluntary Guidelines are Monumental Wastes of Time and Effort.....	33
Issue #34 – Sporadic Reliance on NTSB Recommendations.....	32
Issue #35 – Mariner Participation on Federal Advisory Committees.....	34
Issue #36 – Missed Opportunities to Ensure Labor Peace.....	35
Issue #37 – Hard Work, Long Hours, Little Appreciation, and No Respect.....	36
Issue #38 – The Coast Guard Still Overlooks the Newman Report.....	36
Issue #39 – Industry’s Tardy Investment in Training Its Mariners.....	36

ISSUE #1 – SUBSTANDARD MERCHANT MARINE PERSONNEL SERVICES

[Request for Congressional Action: We request that Congress end the Coast Guard's mismanagement of lower-level merchant marine personnel by assigning credentialing, training, and vocational certification to an appropriate civilian agency within the government.]

[Request for Congressional Action: Consider funding a student loan or grant program to finance required mariner education and training.]

Additional documents available on the GCMA website:

- GCMA Report #R-428-D, Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services. (55 pages).
- GCMA Report #R-415, Rev. 2. Coast Guard Mis-management of Lower Level Merchant Marine Personnel: Training and Licensing Problems for Towing Vessel Officers

Discussion: In a 2007 special edition of Maritime Executive magazine, the former chief of the Boston Regional Examination Center (REC) pointed out that two previous attempts to overhaul the credentialing process for mariners were, "poorly planned and designed (and that) Coast Guard senior leadership declined to fund them." Nevertheless, our mariners had to live through these and countless other inept blunders since the establishment of the National Maritime Center (NMC) in 1995 in Arlington, VA.

In spite of the fact that the NMC controls the credentials of over 200,000 merchant mariners, its functions were of such low priority that the Coast Guard did not even place it under the control of a flag officer. The credentialing program was perpetually understaffed, fails to meet mariners' needs for prompt service, and now depends upon contract workers to perform many functions. After twelve years, the NMC still does not even exercise full control of its seventeen Regional Examination Centers (REC).

The entire credentialing process is considered a promotion backwater within the Coast Guard and rarely attracts any real talent. Few if any "lower-level" mariners have ever participated in management positions within the system.

ISSUE #2 – COAST GUARD INVESTIGATIONS

[Request for Congressional Action: We encourage Members of Congress to carefully examine Coast Guard's investigative activities in line with the forthcoming Department of Homeland Security's Inspector General (DHS OIG) assessment.]

Discussion: GCMA was pleased to be invited to contribute to the forthcoming DHS OIG assessment.

We observed on many occasions that Coast Guard officials are reluctant to investigate problems reported by our mariners. Furthermore, after reviewing several landmark reports,⁽¹⁾ we believe the quality of Coast Guard investigations has deteriorated markedly.

We believe the relatively new requirements in §442 of the Maritime Transportation Security Act of 2002 requiring the Coast Guard to electronically publish all major marine casualty reports is a step forward as long as it is accomplished thoroughly and properly. Another step forward is the new two-year limit on preparing accident reports. Although this law should have provided the public with meaningful accident reports from which we can draw important lessons in a timely manner, there are even more problems that must be uncovered. We outlined a number of these problems in GCMA Report #R-429⁽²⁾ and are pleased that Congressional oversight committees have asked the DHS OIG to examine this matter in greater depth.

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report #R-429-A, Rev 1. (Series), U.S. Coast Guard Marine Casualty Investigations and Reporting: Analysis and Recommendations for Improvement By James G. Byers, Susan G. Hill, & Anita Rothblum. Interim Report, August 1994. and GCMA Report #R-429-B, Rev. 1. (Series) Report of the USCG Quality Action Team on Marine Safety Investigations (July 26, 1996).
- ⁽²⁾Refer to GCMA Report #R-429, How Coast Guard Investigations Adversely Affect Lower Level Mariners.]

ISSUE #3 – FORMAL SAFETY TRAINING FOR ENTRY-LEVEL & ENGINEERING PERSONNEL

[Request for Congressional Action: Acknowledge the critical role of trained engineers in maintaining machinery on vessels of less than 1600 GRT and the fact that these engineers require formal safety training before being allowed to work in machinery spaces. Provide for vocational training to improve their skills.]

Discussion: Although the Coast Guard was not granted the authority to license engineers on most small vessels, it conveniently forgot that most commercial vessels that do not require a licensed engineer⁽¹⁾ use an unlicensed engineer, “deckineer”, or deckhand to monitor the engineroom, perform maintenance, and pump the bilges because, even on small boats, the master of the vessel cannot be in two places at the same time. [⁽¹⁾Licensed engineers are only required on inspected vessels greater than 200/300 GRT in coastwise or ocean service.]

Since the Coast Guard superintends the merchant marine and is responsible for occupational safety and health afloat, they should be made to explain why they allow untrained mariners without any formal safety training to serve as “unlicensed engineers” or “deckineers” aboard vessels where they may be called upon to work with rotating machinery, electrical, pneumatic, and hydraulic equipment without suitable indoctrination.

In a 12-year period, raw data provided by the Coast Guard showed that 2,611 towing vessels lost electrical power, sank flooded, capsized, burned, exploded, were abandoned or suffered stability problems. This does not include events like groundings, allisions or collisions which might be considered navigational errors and blamed on deck officers. These figures reflect poorly upon the training and performance of individuals assigned to watch or maintain the engineroom and other machinery on towing vessels. Since towing vessels were not classed as “inspected” vessels, apparently the Coast Guard never bothered to analyze the details of this raw data in greater detail.

Additional documents available on the GCMA website:

- GCMA Report #R-428, Rev. 1, Report to Congress: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel. (30 pages).
- GCMA Report #R-401-A., Uninspected Towing Vessels; An Analysis of the Historical and Contemporary Issue of Their Regulation. July 1980
- GCMA Report #R-412, Towboat Engineer’s Death Points to Need for Changes in the Law.

ISSUE #4: REGULATING TOWING VESSELS

[Request for Congressional Action: Promulgating new towing vessel inspection regulations should be finalized as a much higher priority item. Request that significant written suggestions by our mariners be incorporated in the new regulations.⁽¹⁾

[Request for Congressional Action: Since the Coast Guard claims to be short of inspectors, take the first step in removing merchant vessel inspection from Coast Guard control by authorizing and training suitable civilian inspectors with strong maritime backgrounds to inspect the nation’s towing vessels.]

Discussion: Since 2000, our Association actively worked for Coast Guard inspection of uninspected towing vessels to protect the health, safety, and welfare the mariners who serve on these vessels. To start, we petitioned the Coast Guard who assigned our request to the Towing Safety Advisory Committee (TSAC) but found that TSAC preferred to kill the idea.

After learning that a change in the law would be required to inspect towing vessels, we requested⁽¹⁾ the Coast Guard to submit a Legislative Change Proposal to do so. We were told “...you may also seek legislative action on this issue on your own.”⁽²⁾ – which we did. [⁽¹⁾Letter to Admiral Thomas Collins, Oct. 28, 2002. ⁽²⁾Reply by VADM T.J. Barrett, Nov. 13, 2002]

GCMA requested a straightforward statutory change to amend existing 46 U.S. Code §3301 to add “towing vessels” to the existing list of vessels that require Coast Guard inspection to adequately protect our mariners as well as the general public from substandard vessel operating companies. Congress provided that change in September 2004.

Starting in 2000, our Association carefully examined existing regulations and over the years developed GCMA Report #R-276, Towing Vessels Must Be Regulated Like Every Other Inspected Vessel. This report went through nine (9) revisions.

Our report emphasized that mariners working on uninspected towing vessels never received the same basic consideration and regulatory protection from the Coast Guard as mariners working on inspected vessels of comparable size such as small passenger vessels or offshore supply vessels. The report is comprehensive and covers approximately many specific areas by comparing the lack of regulations on towing vessels to existing Small Passenger Vessel and Offshore Supply Vessel regulations.

The workforce. As determined from data published by the Coast Guard on May 12, 1994 following the Bayou Canot accident, approximately 32,000 lower-level mariners, both licensed and unlicensed, are engaged in commercial towing enterprises.

A majority of lower-level tug and towboat personnel serve as “employees at will” for an estimated 1,100 towing companies. The majority of these workers are not unionized and their continued employment is not protected by negotiated labor contracts and may be terminated “...for good cause, for no cause, or even for cause morally wrong...” to quote from a judicial opinion. Consequently, without union representation, the lower-level mariners serving on uninspected towing vessels for the last 35 years lacked sufficient leverage to press for legislative

changes to provide them with the same protections that are routinely available to mariners serving on inspected vessels of comparable size and horsepower. For example, in many cases, our mariners clearly lack protections available to workers in general industry under the Occupational Safety and Health Act of 1970 as pointed out in the Chao v. Mallard Bay Drilling, Inc. case.

Thirty-five years ago, Congress had the opportunity to 1) license towing vessel operators and/or 2) to inspect towing vessels. The legislative history of this period is related in detail in a report prepared by the Transportation Institute.⁽²⁾ We found this report a definitive contemporary study of the issues through its publication date of 1980. At that time, the Coast Guard supported both the licensing and vessel inspection proposals. Unfortunately for our mariners, Congress acted on the towing-vessel operator-licensing proposal alone but left towing vessels as uninspected vessels and did not require trained or licensed engineers on towboats at that time.

In the past, many mariner complaints fell on deaf ears because the Coast Guard lacked specific statutory authority to regulate the towing industry and curb admittedly unsafe conditions. Yet the Coast Guard failed to seek such authority.

In TSAC subcommittee discussions, GCMA expressed a general approval of the American Waterways Operators (AWO) Responsible Carrier Program (RCP) and its flexibility in dealing with changing situations. However, we pointed out that the RCP only paralleled the present level of Coast Guard regulation of uninspected towing vessels and argued that much more comprehensive regulatory coverage was necessary to protect our mariners. GCMA Report #R-276 pointed out these specific RCP shortcomings that only a comprehensive regulatory package could overcome:

- The RCP only applies to AWO members. Hundreds of smaller towing companies employing thousands of mariners choose not to belong to AWO.
- AWO is a trade association and has no enforcement powers.
- The RCP does not have any provision for appeal.
- Both AWO and GCMA expressed similar complaints in TSAC meetings about substandard vessel operators and Coast Guard's failure to enforce existing laws.
- Current standards for uninspected towing vessels already are contained in the Coast Guard's voluntary Cooperative Towing Vessel Examination Program (CTVEP).
- CTVEP, presented with considerable fanfare in the wake of the Bayou Cane accident, never received adequate funding to become an effective national program and was not enforced over wide geographic areas. This is especially true in the Gulf Coast area.⁽³⁾
- The current Responsible Carrier Program standards only mirror existing Coast Guard standards. In March 2002, GCMA completed a study (book) comparing Coast Guard regulations and RCP coverage on pages 11-26. Unfortunately, many areas of workplace safety fell outside these coverage areas.

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report #R-276, Rev. 9, Towing Vessels Must Be Regulated Like Every Other Inspected Vessel.
- ⁽¹⁾GCMA Report #R-276-A., Towing Vessel Inspection. Mariner Suggestions & Initiatives Submitted to the TSAC Towing Vessel Inspection & Licensing Work Groups.
- ⁽¹⁾GCMA Report #R-276-B, Availability of the Draft Towing Vessel Inspection Regulations.
- ⁽²⁾GCMA Report #R-401-A, Uninspected Towing Vessels; An Analysis of the Historical and Contemporary Issue of Their Regulation. July 1980.
- ⁽³⁾GCMA Report #R-282, Survey of USCG Boardings of Uninspected Towing Vessel, 2000.

[GCMA Comment: We support the Coast Guard's towing vessel inspection rulemaking project only to the extent that they use the same inspection standards as other vessels and do not cut "special deals" with industry that would create less thorough inspection standards.]

ISSUE #5 – WIDESPREAD HOURS OF SERVICE ABUSES

[Request for Congressional Action: We ask Congress to investigate why Coast Guard officials at all levels were unwilling to enforce existing work-hour statutes to the great detriment of our mariners.]

Discussion: In May 2000, in response to complaints from many lower-level mariners, GCMA collected documentary evidence of numerous violations by marine employers of the existing work-hour statutes that are supposed to protect mariners. These were violations of 46 U.S. Code §8104 and regulations based on those statutes the Coast Guard is empowered to enforce. Remarkably, there are gaps in existing laws and regulations that allow employers to exploit unlicensed crewmembers without regard to the number of hours they work each day. For example, the American Waterways Operators (AWO), an industry trade association suggests in its Responsible Carrier Program (RCP) that 15 hours is a reasonable work day. We respectfully disagree.

In June 2000, GCMA prepared a book containing 57 letters from our mariners citing actual 12-hour rule violations to illustrate rampant work-hour abuse. We sent the book to Eighth District Commander Rear Admiral

Paul Pluta. We redacted the names of each mariner because we had no way to protect our mariners from being fired by their employers or to prevent these employers from "blacklisting" them and destroying their careers. Unfortunately, Admiral Pluta showed absolutely no concern with our allegations and took no effective action whatsoever while serving as district commander or later as assistant commandant in Washington.

Later that year, GCMA distributed copies of our book to every member of three Coast Guard Advisory Committees, namely MERPAC, TSAC, and NOSAC. Even though our mariner complaints deal with the exploitation of the largest sector of active personnel in the U.S. Merchant Marine working both in inland and offshore waters, the Coast Guard assigned the "task" of evaluating our work-hour complaints to the National Offshore Safety Advisory Committee (NOSAC) instead of handling the issue directly.

NOSAC eventually concluded that they lacked the authority to resolve the matter or the means to properly investigate our complaints after they fumbled awkwardly with the problem for a year and a half. The problem did not vanish nor could the Coast Guard cover it up. This did not stop them from trying, however.

During this time, the Coast Guard furnished NOSAC members with a number of "studies" that eventually focused on "crew endurance." However, the subcommittee refused to grasp that industry's exploitation of work-hours could not be covered up by Coast Guard's Crew Endurance Management project.

At the April 2002 meeting at Coast Guard Headquarters in Washington, the NOSAC Subcommittee Chairman attempted to "wash out" our mariners' complaints. The meeting turned out to be an ugly confrontation between GCMA and the members of the subcommittee at Coast Guard Headquarters. The final subcommittee meeting led to a revised final report, resignation of its chairman, and a face-to-face public confrontation with RADM Pluta who GCMA accused of "dereliction of duty" for failing to investigate and resolve the 57 mariner complaints presented to him two years earlier.

As a result of the confrontation, RADM Pluta did agree to look into the matter – a temporary but meaningless concession. In a letter dated Dec. 4, 2002, Captain M. W. Brown of RADM Pluta's staff brushed us off by stating in part: "As promised by RADM Pluta, members of my staff examined methods of investigating reported violations in the Gulf Coast Mariners Association's "Yellow Book." Due to the age of the reports and lack of attribution, we were unable to resolve any of the allegations. The Coast Guard is interested in pursuing violations; however, we need timely, complete, and credible information to do so. We have developed this guide to assist mariners in future instances where work-hour violations are suspected. A copy of the guide is enclosed. "This guide is intended to help mariners understand work-hour and watchstanding limitations on vessels that utilize a two-watch system. A check list is also included that should help mariners record information that is essential to the Coast Guard and assist in violation case processing"

Our book was circulated with over 300 copies distributed to Members of Congress, the Department of Transportation, Department of Labor, Coast Guard, all maritime unions, the International Maritime Organization, and the International Transport Workers Federation and finally posted it on the internet.⁽¹⁾

Status: In March 2007, GCMA asked Congress⁽²⁾ to Amend 46 U.S. Code §8104 to limit the hours of work for all licensed and unlicensed mariners serving on any U.S.-flag commercial vessel to 12 hours in any 24-hour period and to address other specific problems with this statute that primarily affect lower-level merchant mariners.

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report #R-201, Mariners Speak Out on Violation of the 12-Hour Work Day.
- ⁽²⁾Refer to GCMA Report #R-332, Rev. 3, GCMA Legislative and Regulatory Agenda – 2007.

ISSUE #6 – UNSATISFACTORY COAST GUARD RESPONSE TO OUR PETITIONS FOR RULE CHANGES

[Request for Congressional Action: We ask Congress to direct the Coast Guard or successor agency to provide as fair and equal consideration to the views of working mariners (i.e., "maritime labor") as they give to the views of management.]

Discussion: Most conscientious mariners, especially those with a limited educational background who try to "play by the rules" discover that the maritime industry has a tapestry of laws and regulations that are difficult to understand. Mariners come to our Association when they face existing rules and policies that are flawed and need to be revised or updated or in cases where no rules apply to a particular situation.

We do not believe that all changes must originate in Washington since our nation's capitol is distant in both miles and outlook from most of the functions our mariners perform. We believe the knowledge, insight, and opinions of working mariners who make up the "grass roots" of a very large segment of our nation's maritime industry should count for something because of their unique practical knowledge of the industry. Although GCMA did its best to participate in the deliberations of the three federal advisory committees, we were not able to do so effectively.

As members of the public, an organization like GCMA is supposed to be able to participate in the rulemaking process by directly petitioning the Coast Guard to make regulatory changes. We also believe it is a legitimate function of our Association to ask the Coast Guard to submit reasonable legislative change proposals to Congress

on behalf of the mariners it superintends. We asked them to do so but sadly find that they have their own agenda that can find little room for our concerns.

In spite of our efforts, we believe the Coast Guard allowed both processes to break down so they no longer serve lower-level mariners, as they should. If the Coast Guard agenda before Sept. 11, 2001 appeared to display little interest in protecting the safety, health, and welfare of our mariners, their current agenda completely marginalizes the concerns of our mariners. This reinforces our determination to see merchant marine functions transferred to another agency that has the time and knowledge necessary to provide a workable administration.

The process of making regulatory changes is clearly outlined in the Code of Federal Regulations (CFR) at 33 CFR §1.05-20. Unfortunately, it took our Association more than a year of waiting for the Coast Guard to respond to a simple FOIA request to learn more about the procedure for making statutory changes by means of a Legislative Change Proposal (LCP). Finally, we were told, in effect to "ask Congress" directly.

Using the Petition Procedure and Legislative Change Proposals

Minor functionaries at the Coast Guard's Marine Safety Council turned the "petition" procedure a wild goose chase for our Association. We attempted to use this process on five (5) separate occasions starting in April 2000. For all practical purposes the process worked very poorly until we finally reached the point of frustration and filed a formal complaint with Admiral Thomas H. Collins, on June 7, 2002. At that point, that part of the game ended and the process moved off top dead center when we were allowed to introduce a number of new "docket" items. However, the Coast Guard again marginalizes us by dumping and then ignoring most items we introduced into a docket that never was acted upon.

A "Docket" is a collection of papers, opinions, or reports on a single subject and is the "public file open for inspection" mentioned in the regulations. Unfortunately, most of our mariners are not familiar with the term or even how to access the USCG docket on the internet at <http://dms.gov/search>.

The games continued when the Marine Safety Council, composed of some of the highest ranking flag-officers in the Coast Guard, apparently did not give the docket management facility most of the supporting material we furnished them on each docket item. We corrected that problem by providing a fresh copy directly to the docket management facility and visiting the docket office in person where we found the DOT employees very helpful in posting the supporting material required by 33 CFR §1.05-20(a). The material that follows summarizes each docket and records the responses the Coast Guard made on each docket to the date of this report.

After mastering the basic procedure, we faced the most daunting challenge of all – and one we suspected would be there all along, namely the negative response given to almost every request we made. This "NO" clearly conveyed the message to us that the Coast Guard intended to do **NOTHING** to resolve any of the problems we reported to them. In several responses, we were told that we could approach Congress directly – and we did.

We also asked the Coast Guard to make several Legislative Change Proposals on behalf of our mariners. This procedure was even less rewarding and convinces us that the Coast Guard will not allow our government to work on behalf of our mariners.

Issues #7 through 11 (below) all represent docketed items.

ISSUE #7 – WORK-HOUR LIMITS FOR UNLICENSED CREWMEMBERS [DOCKET #USCG-2002-12579]

[Request for Congressional Action: Since the Coast Guard lacks the authority to establish reasonable work-hour limits for unlicensed mariners, we ask Congress to investigate the matter.]

[Request for Congressional Action: We ask Congress to consider applying similar wage and overtime laws that apply to shoreside workers to our lower-level mariners who work on domestic waters.]

Discussion: In reviewing existing regulations, GCMA learned that the Coast Guard does not prescribe any work-hour limits for unlicensed individuals such as deckhands, tankermen, and unlicensed engineers on inland towing vessels.⁽¹⁾ We also determined that the Department of Labor had no work-hour limitation regulations that governed unlicensed personnel on uninspected towing vessels. The same situation also exists on other commercial vessels manned by lower-level unlicensed or undocumented mariners. Consequently, we petitioned the Coast Guard to protect our mariners by prescribing reasonable work-hours and cited a number of pressing reasons in our petition (in the docket) to do so.

Coast Guard Response: We received a letter from CAPT J.D. Sarubbi, Chief, Office of Compliance dated October 18, 2001 that stated in part:

"As you note in your letter, the Coast Guard does not prescribe regulations governing work hour limitations for unlicensed crewmembers aboard an uninspected towing vessel operating on inland waters and western rivers. While the Coast Guard frequently promulgates policies to interpret existing regulations, to establish new policy in the absence of a law would be prohibited by the Administrative Procedures Act. Where pertinent regulations are not in place, we rely on numerous non-regulatory solutions such as the recent fatigue alertness campaign we have embarked on with the American Waterway Operators, and the AWO Responsible Carrier Program..."

On Dec. 2, 2002, Captain M.W. Brown, on Admiral Pluta's staff, stated in part: "Research conducted by Coast Guard Headquarters legal staff revealed that the Coast Guard lacks the requisite statutory authority to generate regulations addressing work-hours for unlicensed mariners working aboard uninspected towing vessels. Based on this, the Coast Guard cannot initiate a rulemaking project."

[GCMA Comment: After more than 61 years superintending merchant mariners, it is pathetic to find that the Coast Guard NOW admits that it lacks statutory authority to regulate mariners' work-hours. Did they ever seek such authority? The Coast Guard is "asleep at the switch." Although they know about the exploitation of our unlicensed crewmembers, they never raised a finger to stop it! Congress also discovered Coast Guard officers have unrealistic expectations of their own enlisted personnel in search and rescue units and allowed them to work excessive hours and, in violation of agency policy, adversely affected the retention rate of their own enlisted personnel.⁽²⁾]

Coast Guard response (continued): "Understanding that the Coast Guard lacks specific authority to carry out this rulemaking petition, you have requested that we seek a Legislative Change Proposal (LCP) to provide for work-hour restrictions for unlicensed crewmembers serving aboard uninspected towing vessels. During the course of our normal LCP evaluation cycle, we will consider whether or not to include your particular request. However, it must be mentioned that we need to be extremely selective in choosing LCPs (to) go forward. We must consider the resource implications as well as other stakeholders and agencies and, frankly, the likelihood that our request will succeed. Please keep in mind that you may pursue such requests on your own also."

[GCMA Comment: The Coast Guard knows that unlicensed vessel crewmembers work virtually unlimited hours without offering any concrete support or encouragement to overcome this injustice. "Other stakeholders" includes employers who, in other industries, normally pay "overtime" wages for work beyond eight (8) hours but are exempt from doing so in the maritime industry.]

GCMA considers unacceptable the AWO recommendation as part of its Responsible Carrier Program (RCP) to limit unlicensed crew members to 15 hours of work per day in reality a 105-hour workweek and has repeatedly called them to task. Although RCP has much to recommend it, it does not have the force of law and its recommendations only apply to AWO members. An AWO membership count of about 220 companies fails to consider Coast Guard figures showing more than 1,100 towing companies operate in the United States. It does not take a rocket scientist to understand why there is now and will continue to be a shortage of deckhands, unlicensed engineers, cooks, etc. willing to work on towing vessels and endure such work hours.

These additional documents are available on the GCMA website:

- ⁽¹⁾GCMA Report #R-370-G (Series), Crew Endurance: The Call Watch Cover-up
- ⁽²⁾GCMA Report #R-304, Rev.1, Small Boat Station Search and Rescue Program. [A DOT Audit.]
- GCMA Report #R-305. Rev.1. Betrayed – A Call for Increased Congressional Oversight of the United States Coast Guard.

<p style="text-align: center;">ISSUE #8 – GCMA REQUESTS UNIFORM LOGBOOK ENTRY PROCEDURES <i>[DOCKET #USCG-2002-12581]</i></p>
--

[Request for Congressional Action: Since the Coast Guard does not have the authority to require small commercial vessels on domestic voyages to maintain uniform and meaningful logbooks, we ask that Congress require logbooks on all commercial vessels and require that mariners record specific and meaningful information useful for accident investigations, enforcement of work-hour regulations, and other lawful purposes in those logbooks; also, grant the Coast Guard or successor agency the authority to subpoena logbooks when investigating marine violation cases.]

[Comment on Congressional Proposal: Section 312 of the proposed Coast Guard Authorization Act of 2007 effectively captures our request. We urge Congress to adopt these proposed changes.]

[Request for Congressional Action: We also can attest to the Coast Guard's inadequate distribution practices for Official Logbooks, Oil Record Books, and Certificate of Discharge for Merchant Seamen (CG-718A) that are supposed to be provided at government expense. We ask that the burden of printing and distributing Official Logbooks and Oil Record Books be transferred to the private sector at no further expense to the government.]

Discussion: In April 2000, GCMA petitioned the Coast Guard to require logbook entries on uninspected towing vessels that reflect the true hours that all crewmembers were on duty or on watch. We later amended our formal

written request to include all vessels crewed by lower-level mariners including all inspected offshore supply vessels and small passenger vessels. Our request parallels the logbook information requirements of the AWO Responsible Carrier Program. Apparently the Marine Safety Council misplaced our entire file for more than a year.

Coast Guard response: In a letter dated Dec. 2, 2002, the Coast Guard responded in part: "Specifically, your petition asked that 'Masters, mates, pilots, operators, and lower-level mariners serving on any vessel accurately and fully log the working hours of all crewmembers at the end of a watch in a suitable vessel logbook containing consecutively numbered pages and that such accumulated logbooks be kept on board at all times to fully disclose compliance with all applicable work-hour and manning regulations for the past 90 days.'"

"Research conducted by Coast Guard legal staff indicated that the Coast Guard lacks the requisite statutory authority to generate regulations requiring log books on vessels not already required to have logbooks by 46 U.S. Code §11301(a). For vessels required to have logbooks, the additional entry requirements requested by the GCMA's petition are outside the scope of 46 U.S. Code §11301(b). Based on this and the general lack of statutory authority, the Coast Guard will not initiate a rulemaking project.

Requiring accurate logbook entries would provide both the Coast Guard and NTSB with a necessary investigative tool that could help them determine the root cause of many maritime accidents. A number of Coast Guard investigators applauded this proposal. We cannot understand why the Coast Guard did not request this authority from Congress years ago. Sadly, the quality of Coast Guard investigations deteriorated in recent years according to a report prepared by outside contractors for the Coast Guard in 1994.⁽¹⁾

We assert that violation of work-hour regulations should have been considered as a significant factor in the I-40 bridge disaster at Webber Falls, OK, on May 28, 2002 that took 14 lives.⁽²⁾ However, we were informed by an experienced Coast Guard Investigating Officer and attorney that the Coast Guard does not have the statutory authority to subpoena existing logbooks in "marine violation" cases that involve violations of the 12-hour statute. Violating this statute clearly leads to fatigue and accidents. We assert that the Coast Guard trashes many legitimate complaints of violations of existing work-hour statutes because they cannot properly investigate them without full access to these records.

These additional documents are available on the GCMA website:

- ⁽¹⁾GCMA Report # R-429-A, Rev 1 (Series), U.S. Coast Guard Marine Casualty Investigations and Reporting: Analysis and Recommendations for Improvement By James G. Byers, Susan G. Hill, & Anita Rothblum. Interim Report, August 1994.
- ⁽²⁾GCMA Report # R-370-A (Series), Rev. 2, Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited.
- GCMA Report # R-429-G, Rev. 2, Feb. 24, 2007. (Series). Report To Congress: Sharpening Accident Investigation Tools By Establishing Logbook Standards for Lower-Level Mariners.
- GCMA Report #R-332, Rev.3, GCMA Regulatory and Legislative Agenda – 2007, Item #2.

ISSUE #9 – ENFORCE REGULATIONS FOR FILING PERSONAL INJURY REPORTS
[DOCKET #USCG-2002-12580]

[Request for Congressional Action: We ask Congress to require the Coast Guard or successor agency to adequately protect mariners and offshore workers by enforcing the Congressional intent of the Occupational Safety and Health Act of 1970. Remove the data collection responsibility for health and safety issues from the Coast Guard and place it with the Department of Labor (e.g., replace forms CG-2692 with OSHA 300 series). Impose steep civil penalties for failing to report and track every "accident, injury, illness, and death" to a seaman, passenger, or other person on a vessel. Permanently separate personal injury and illness reporting from vessel and equipment casualty reporting.]

Discussion: GCMA attorney Mark Ross, Esq. presented evidence to the Federal District Court in Lafayette, LA, to the Department of Transportation Inspector General, and to Coast Guard Headquarters describing how one major maritime employer failed to report 44 serious mariner injuries as required by 46 CFR §4.05-1(a)(6) to the Coast Guard in writing within five days as required by 46 CFR §4.05-10(a). He obtained this evidence by searching local court records where injured marine workers subsequently sued this employer. In addition to this case, GCMA determined that there were many other instances where employers failed to notify the Coast Guard in a timely manner of reportable personal injuries suffered by mariners.

In one example, ENSCO, a major offshore drilling company that operated many offshore supply vessels, failed to report more than 44 such injuries in an eight-year period. The Coast Guard never punished them for failing to do so. Other companies are equally lax in their reporting practices to the detriment of our mariners.

Using Coast Guard accident statistics supplied during the course of an advisory committee meeting, the omission of these accident reports by this single large employer skewed the Coast Guard personal injury statistics submitted by the entire offshore boat industry during an eight-year period by approximately 25%. Nevertheless, the local Coast Guard Marine Safety Office expressed complete indifference about enforcing requirements to report personal injuries.

Many mariners learn the hard way that after they are injured and are unable to work, they are quickly fired or forgotten and often left without health or disability insurance coverage.⁽¹⁾⁽²⁾ This practice plays a large role in dissuading people from seeking employment as a mariner.

There are many instances where vessel Masters filed personal injury reports with their employers but these reports were never forwarded to the Coast Guard within the five-day period as required by existing regulations. There are additional cases where accident reports were fabricated months after the accident occurred and then filed with and accepted without question by the Coast Guard. We believe our mariners inevitably suffer when an accident report involving their injury is thrown together months later and is accepted without question.

Consequently, GCMA petitioned the Coast Guard to allow an injured party to submit his own report to the Coast Guard if he/she believes the "owner, agent, master, operator, or person in charge" (i.e., those persons currently authorized to submit such a report) either have not made or submitted the required personal injury report on form CG-2692 within the required five working days. In addition to our original petition filed on Sept. 7, 2001, we filed an additional petition on Aug. 8, 2002 with the U.S. Department of Labor seeking "Improved Record Keeping and Accident Reporting for Lower-Level Mariners." We assert that the OSHA personal injury recording and reporting system is far superior to the Coast Guard's system and has clear benefits for our mariners.

Coast Guard Response: In a letter dated June 30, 2005, W.D. Rabe, Chief of the Coast Guard's Investigation Division, stated in part: "We have opted to add a section to (the Marine Safety Manual), rather than draft a new policy letter, to ensure investigating officers understand the policy that all incidents reported to the Coast Guard are investigated."

We deem this response unsatisfactory. Hiding comments in relatively inaccessible internal agency documents like policy letters or even the Marine Safety Manual does not provide the unambiguous regulatory protection our mariners need. Consequently, it is of little value in protecting our mariners and requiring employers to properly document their employees' on-the-job injuries.

Additional documents available on the GCMA website:

- GCMA Report R-429-I, Investigations: Enforcement of Existing Personal Injury Reporting Requirements.
- ⁽¹⁾GCMA Report #R-333, Rev .3, Don't Count On Corporate Compassion or Coast Guard Concern – True Stories of Our Lost, Injured, and Cheated Mariners
- ⁽²⁾GCMA Report #. R-370, (Series). 12 Hour Rule Violation: The Verret Case.

STATUS: GCMA raised this matter with the Department of Homeland Security Inspector General's Office looks forward to coverage in their report on "Investigations" due out later this year.

ISSUE #10 – CLARIFY THE DEFINITION OF "ON DUTY" TIME
[DOCKET #USCG-2002-13594]

[Request for Congressional Action: After 5 years, the Coast Guard has not yet determined whether there was a violation of work-hour statutes (specifically 46 U.S. Code § 8104(a)) on the part of Magnolia Marine and the Master of the M/V Robert Y. Love in the hours before the Webbers Falls, OK, Interstate 40 bridge allision that caused 14 fatalities and at least \$30,000,000 damage on May 28, 2002.⁽¹⁾ This issue covers up serious flaws in an existing Coast Guard policy document (G-MOC #4-00) brought to the Coast Guard's attention a decade ago. It also highlights a failure within the government to require science-based hours of service in various transportation modal administrations. While this connection was clear when the Coast Guard was part of the Department of Transportation, it remains clouded as the merchant marine remains under Department of Homeland Security control.]

[GCMA Comment: Travel time en route to a vessel should be considered "on duty" time. Furthermore, the law (46 U.S. Code §8104(a)) should be expanded to apply to all mariners who occupy "safety-sensitive" shipboard positions.]

Discussion: On Apr. 18, 2002 we petitioned the Coast Guard (below).

"The lower-level" mariners we represent are distressed with the definition of "travel time" that appears in paragraph 2.d of Coast Guard Policy letter (G-MOC #4-00) as follows:

"Travel time to a vessel is considered to be neutral time as it is normally not considered to be rest, off duty, or work time, but all relevant circumstances should be considered in evaluating whether a mariner complies with the applicable rest required by STCW or off-duty requirements specified in 46 U.S.C. 8104(a)."

We note that neutral time is not defined anywhere in this Coast Guard policy letter. This leaves a mariner and his employer with the possibility of a misunderstanding as to evaluating whether a mariner is expected to go on watch immediately upon arriving at the vessel or to wait until he has received the required rest. Lacking a clear Coast Guard policy statement, the mariner may feel justified in delaying departure until he is rested and, as a result, be fired or forced by threat of being fired into committing an unsafe act. This in turn could lead to a fatigue-related

accident, suspension or revocation of the mariner's license, and/or lawsuits and liability depending upon the nature and extent of the damage resulting from fatigued operation.

Our licensed mariners reported being forced to drive (or being driven) for hours and then having to take over a watch immediately upon arrival at the vessel. We reported these matters to both the Coast Guard and the National Transportation Safety Board on a number of occasions in writing.

After a third follow-up to our original letter, we received a reply dated Oct. 11, 2002 that the Coast Guard had finally established a docket to file our petition in – as opposed to acting upon it.

Proposed solution: "On page 40 (Table 1-1) of (an) NTSB study⁽¹⁾...the Federal Railroad Administration (FRA) regulations at 49 CFR 228.7(a)(4) consider "on-duty" time to include "Time spent in deadhead transportation en route to a duty assignment. It is followed by this statement: "Time spent in deadhead transportation by an employee returning from duty to his point of final release may not be counted in computing time off duty or time on duty." We note that this deadhead transportation takes place mostly on land both for railway employees and for their mariner counterparts. [⁽¹⁾*Evaluation of U.S. Department of Transportation Efforts in the 1990s to Address Operator Fatigue, NTSB/SR-99/01*]

"We note that this FRA passage cites a Federal Regulation while G-MOC #4-00 is a lesser internal "policy letter" that never passed through administrative rulemaking procedures. Consequently, under provisions of 33 CFR §1.05-20, we formally filed a Petition for Rulemaking and requested that the wording in the FRA regulation at 49 CFR 228.7(a)(4) be adopted by the Coast Guard for the protection and welfare of our mariners. A copy of our request was sent to the Chairman of the National Transportation Safety Board."

Status: The Coast Guard assigned our Petition for Rulemaking to the Towing Safety Advisory Committee. TSAC allowed the issue to languish for four years without making a decision. Finally, after a number of follow-up letters, the TSAC meeting in April 2007 decided that in the future individual companies should include statements describing crew-change arrangements in their "Safety Management System" that would address this issue. Of course, this assumes that Congress will require that every towing company to operate under a safety management system. At present, only the American Waterways Operators has its "Responsible Carrier Program" which may be upgraded to an acceptable Safety Management System in the future.

By assigning the matter to TSAC rather than making a firm command decision, the Coast Guard failed to address the same crew change issue prevalent on offshore supply vessels and other vessels under 1,600 GRT.

Additional documents available on the GCMA website:

- GCMA Report #R-370-D.,(Series) Work-Hour Abuse, Whistleblower Protection and "Deadhead Transportation."
- ⁽¹⁾GCMA Report #R-370-A (Series), Rev. 2, Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited.
- GCMA Report # R-258, Rev.2, Watchkeeping and Work-Hour Limitations on Towing Vessels, Offshore Supply Vessels (OSV) and Crewboats Utilizing a Two Watch System

ISSUE #11 – ENSURE SAFE AND ADEQUATE POTABLE WATER FOR MARINERS [DOCKET #USCG-2003-14325]

[Request for Congressional Action: Three years after passing §416 of the Coast Guard and Maritime Transportation Act of 2004, we ask Congress to assign the Coast Guard or successor agency a deadline to promulgate effective potable water regulations to ensure that potable water systems on ALL vessels of less than 1,600 gross are properly constructed and regularly tested to ensure clean and sanitary fresh water for drinking, cooking and bathing purposes.]

Discussion: On Dec. 27, 2002, GCMA petitioned the Coast Guard for rulemaking to ensure that boat operating companies provide safe and sanitary potable water to inspected and uninspected vessels of less than 1,600 gross register tons.

Our petition pointed out that we speak on behalf of thousands of mariners that serve on these vessels in the Gulf of Mexico, on western rivers, and inland waters. Many of our mariners regularly express concern about the poor quality of the drinking water found aboard the vessels they work on. While some employers provide bottled water for drinking purposes, others do not because of the additional cost.

Especially noteworthy are complaints from mariners serving on uninspected towing vessels. Few if any employers regularly test the potable water in the tanks on their vessels for waterborne diseases to certify it is safe for human consumption, nor do existing regulations require them to do so. Since most of our mariners do not belong to a union and cannot engage in collective bargaining, they have no protection other than that gained through appropriate regulations and regulatory enforcement.

In reviewing Coast Guard regulations governing all classes of vessels that our mariners serve on, there appear to be no regulations that govern the materials of construction, installation, filtration, or maintenance of a vessel's potable water system. Nor are there any Coast Guard regulations that require periodic testing of vessels' potable

water systems for waterborne contamination and diseases. A review of Coast Guard Navigation and Vessel Inspection Circulars shows there is no active guidance published on this matter whatsoever. Nor is there any mention of potable water systems in Marine Safety Manual Volume II Materiel Inspection. Nor is there any mention in any Coast Guard vessel inspection regulations (including regulations governing uninspected towing vessels) that would even direct readers to regulations enforced by any other government agency – such as DHHS. There are, however, a total of only three (3) deck license exam questions out of approximately 12,000 in the USCG deck exam database dealing with this subject. Aside from that, this topic draws a complete blank.

Our Association is actively concerned with the matter of seamen's welfare. Since humans cannot live without water, we expect our potable water to be clean, pure, and free of disease causing organisms and dangerous impurities.

The health problem: Workboats such as tugs, towboats, ferries, and offshore supply vessels take on water from a number of different sources including hoses on docks, water barges, and from other vessels, etc. Many of the tanks used to store potable water are steel tanks with or without appropriate coatings that are of undetermined age and may be in poor condition. Rust is often a serious and visible problem as are deteriorating coatings and the lack of basic filtration of solids. Rust also causes the tops and sides of potable water tanks to deteriorate and allow contaminants to enter the damaged tanks. Water treatment consists almost exclusively of pouring undetermined and unregulated quantities of Clorox bleach into the storage tanks at unspecified periods.

Almost all of the nation's 5,200 towing vessels currently are "uninspected" vessels and are not subject to even the most rudimentary Coast Guard examination either at the time of their construction or on any regular basis thereafter. Some potable water tanks may be constructed on a common bulkhead with fuel or ballast tanks or with polluted bilge water. Few hose spigots are equipped with vacuum breakers that could prevent contaminated water from flowing back to potable water tanks. Some vessels do not have dedicated water hoses that are used for no other purpose than to transfer drinking water. Tanks and associated plumbing often leak while homemade repairs may compromise the integrity of the system.

The Coast Guard knows of this health problem. In October 1999, the Commandant promulgated COMDTINST M6240.5 titled "Water Supply and Wastewater Disposal Manual" to "provide standards and public health information for Coast Guard personnel responsible for producing, storing, monitoring, and using potable water and wastewater systems at afloat and ashore units."...This Manual applies to all active and reserve units afloat and ashore commands." The document's Table of Contents clearly shows the broad extent of the agency's knowledge. This book also provides clear evidence that the Coast Guard has an active concern for its own regular and reserve personnel without one iota of concern to lower-level merchant mariners it superintends.

[GCMA Comment: As mariners, we cannot understand why cognizant Coast Guard officials do not show as much concern for providing pure water for drinking and bathing for the merchant mariners it superintends as for their own military and civilian personnel.]

We note recent declarations in an NTSB accident report that ferries carry more than 20,000,000 passengers each year. Many of these ferries are small passenger vessels crewed by lower-level mariners. Both passengers and crewmembers may drink water from the vessel tanks. The same is true about oilfield workers transported by boat to inland and offshore oil rigs and platforms.

Additional documents available on the GCMA website:

- GCMA Report #R-395, Rev.2., Safe Potable Water and Food Service for Commercial Vessels of Less than 1600 Gross Register Tons: An Appeal To Congress

These publications should be available from the Library of Congress:

International Organization on Standardization (ISO) publications pertinent to providing safe potable water.

- ISO 14726-2:2002 Ships and Marine Technology- Potable Water Supply on Ships and Marine Structures; Part 1- Planning and Design.
- ISO 15748-2:2002 Ships and Marine Technology- Potable Water Supply on Ships and Marine Structures; Part 2- Method of Calculation.

Status: In Section 416 of the Coast Guard and Maritime Transportation Act of 2004, Congress assigned the task of determining the adequacy of the supply of potable water on all vessels to the Coast Guard. Adequacy is to be determined by considering the size and type of the vessel, the number of passengers or crew on board, the duration and routing of the voyage, and guidelines for potable water recommended by the Centers for disease control and Prevention and the Public Health Service. Three years after the Act was passed and signed by the President, we can see no evidence of meaningful action that the Coast Guard has taken to date.

**ISSUE #12 – GIVE MARINERS A VOICE IN SETTING AND REVIEWING
SAFE VESSEL MANNING STANDARDS**

[Request for Congressional Action: Lower-level mariners provide 100% of the workforce on vessels less than 1,600 gross tons in the towing, small passenger vessel, and offshore oil sectors of the maritime industry. We ask Congress to require the Coast Guard or successor agency to establish regulations that effectively and adequately consider mariners concerns in setting and reviewing realistic safe manning levels on ALL inspected and uninspected commercial vessels less than 1,600 gross tons.]

Discussion: Existing manning requirements for inspected vessels are contained and explained in 46 CFR Part 15 and in Coast Guard policy established in the Marine Safety Manual, Vol. 3. 46 CFR Part 15 outlines in a very confusing manner the manning requirements for uninspected towing vessels. Since "uninspected" towing vessels were reclassified as "inspected vessels," significant differences between the two sets of existing rules must be resolved for vessels of comparable size and horsepower. However, after three years, the Coast Guard has taken no concrete steps to resolve these differences.

Unfortunately, the Coast Guard has very little first-hand information about manning certain types of commercial vessels and must depend on others to provide them with information to make judgments about crew size. The Coast Guard neither rides on nor works these commercial vessels. Invariably outside manning information comes from vessel management and vessel trade associations whose concern center around reducing crew costs. Regrettably, mariners are never consulted about manning levels on the vessels they serve on. For example, a 185-foot offshore supply vessel in 24-hour service in the Gulf of Mexico can get underway with a four-man crew.

There are significant differences in crewing practices for inspected vessels and for uninspected towing vessels. We noted significant problems in manning vessels less than 1,600 gross tons that we discuss in detail in GCMA Report #R-279.⁽¹⁾

Unfortunately, the process the Coast Guard traditionally uses to determine vessel manning virtually excludes any input from the mariners who work on these vessels. The undermanning that results leads to work-hour abuse since many of the unlicensed crew members are not limited in the number of hours they may be called upon to work. Since a great majority of our mariners are not represented by a union, they cannot engage in collective bargaining with their employers to obtain additional crewmembers to share the workload. There is no meaningful and effective appeal route a mariner can follow to have the Coast Guard increase the crew size on his vessel. In addition, even attempting to appeal would probably result in the mariner losing his or her job.

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report #R-279, Rev. 6, Review and Set Safe Manning Standards for Offshore Supply Vessels and Uninspected Towing Vessels.

ISSUE #13 – PROTECTING OUR MARINERS' HEALTH– HEARING CONSERVATION

[Request for Congressional Action: We ask that Congress' provide lower-level mariners with the same hearing protection afforded American industrial workers under the OSHA Regulations at 29 CFR 1910.95.]

Discussion: A mariner has little to offer an employer if he does not have his health. One major aspect of a mariner's health and his quality of life depends on his ability to hear. A mariner whose hearing is impaired by workplace conditions will experience a significantly reduced quality of life and considerable future medical expenses to remediate the condition including hearing aids whose cost is not covered by Medicare. A mariner may even face rejection for further service in the merchant marine if he/she cannot pass the hearing portion of a required physical exam.

The Occupational Safety and Health Act effectively protects the safety and health of workers in other occupations and has done so since 1970. Unfortunately, the task of developing comparable regulations for mariners and enforcing them was left to the Coast Guard. They failed to protect our mariners and, in doing so, probably were applauded by employers who were spared considerable compliance expenses. As early as 1974, OSHA developed Occupational Noise Exposure regulations at 29 CFR §1910.95. Unlike the regulations the Coast Guard now proposes for the Outer Continental Shelf, these regulations call for more than simply an "administrative control" of posting signs in high noise areas. They also include a continuing and effective hearing conservation program for the benefit of employees under 29 CFR §1910.95(c). This program includes monitoring, employee hazard notification, and observation of monitoring by worker representatives, an audiometric testing program, training, record keeping, and provision for record transfers to follow employees from job to job. Such coverage is particularly important in an industry with a high turnover rate that treats many of its employees as expendable – a position we disagree with

While workers in workplaces ashore were protected by OSHA regulations for all these years, the Coast Guard did little to protect the hearing of our lower-level mariners. What's more, the limited measures they propose in Docket #USCG 1998-3868 apply only to workers on the outer continental shelf. Even these proposed regulations only apply to an ill-defined segment of mariners whose employers cry about the expense with nary a thought for the mariners they deafen and otherwise injure in other unreported ways.

Our complaint extends far beyond the mariners who work on the Outer Continental Shelf to all lower-level

mariners under Coast Guard regulatory supervision. We believe that the Coast Guard completely and utterly failed to provide any effective hearing protection for an estimated 200,000 lower-level mariners. This provides another reason why Coast Guard officers should no longer superintend the merchant marine.

History. On June 2, 1982 the Coast Guard published Navigation and Vessel Inspection Circular #12-82 titled Recommendations on Control of Excessive Noise. This circular contained the Coast Guard's recommended "guidelines" to the American maritime industry for addressing conditions of high noise. This document shows that the Coast Guard was fully aware of the noise problem, all the scientific literature, testing standards, and international significance of this matter twenty-five years ago. During the same time period, the International Maritime Organization published IMO Resolution A.468(XII) titled Code on Noise Levels On Board Ships. The Coast Guard not only participated in the development of this code but also endorsed its recommendations. Portions of that document currently are cited in NVIC 12-82 that is still an active NVIC.

Unfortunately, the IMO resolution applied only to ships of more than 1,600 gross tons whereas our concern is for mariners on vessels of less than 1,600 gross tons regardless of the type of vessel they serve on or the waters where the vessel operates. This is clearly a human problem the Coast Guard failed to address with enforceable regulations. In stark contrast, OSHA addressed the same subject for shoreside industrial occupations with enforceable regulations as early as 1974.

The NVIC⁽¹⁾ states in pertinent part: "The Coast Guard realizes that reducing noise levels generally becomes increasingly more difficult on smaller vessels...On many existing vessels of less than 500 gross tons,⁽²⁾ the incorporation of effective structural and engineering alterations to attenuate structure-borne noise may be economically prohibitive. However, through the use of hearing protective devices, administrative controls and selective engineering changes, the recommended 24-hour exposure limit...should still be attainable." That passage was written twenty-five years ago! [⁽¹⁾NVIC 12-82, paragraph 4.b.5. ⁽²⁾At the time the NVIC was written, all offshore supply vessels were less than 500 gross tons as are most towing vessels and small passenger vessels crewed by our "lower-level" mariners today.]

NVIC 12-82 further stated that: "The Coast Guard believes therefore, that the recommendations in this circular are a satisfactory implementation of the IMO Code." We pointedly disagree with this statement. We believe that what was called for at the time was nothing short of a federal rulemaking project – a regulatory product similar to the one adopted by the Occupational Safety and Health Administration in 1974 that appears in updated form as 29 CFR §1910.95.

The Coast Guard's failure to write or adopt comparable regulations adversely affected the hearing of an entire generation of lower-level mariners during the period 1982-2007 and continues to affect them. The number includes those who are considered permanent employees as well as countless other part-time workers and casual laborers who contribute to the industry's high turnover rate. Fundamental changes are long overdue.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.a. states: "The problem of excessive noise on commercial vessels and offshore drilling and production units has been the focus of an ongoing Coast Guard-sponsored study." Under the Freedom of Information Act (FOIA), GCMA requested a copy of that study as well as a statement of when that study was initiated, the contributors to the study, and its current status. We never received the requested material.

The Marine Safety Manual, Vol. 2, paragraphs 9.p.9.b. states: "Previously, the Coast Guard dealt with maritime noise problems through existing regulations in a general way or on a case-by-case basis. For example, 46 CFR §72.20-5 for passenger ships and §92.20-5 for cargo ships required accommodations aboard vessels to be insulated from undue noise. Similarly, 46 CFR §32.40-15 requires tank ships and manned tank barges to have crew's quarters suitable for the accommodation and protection of the crew..." However, none of these regulations currently survive in the Code of Federal Regulations.

We further note that there are currently no regulations listed under "noise" or "hearing protection" in any of the regulations that protect our "lower-level" mariners. This includes offshore supply vessels, small passenger vessels, or uninspected towing vessels.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.c. states: "Its two major recommendations are a 24-hour noise exposure limit of 82 dB(A) for all personnel, and a periodic audiometric examination of all personnel exposed to noise levels above a certain low exposure level of 77 dB(A)..." We asked the Coast Guard for a cogent explanation of why an audiometric examination is contained in current OSHA rules while it is not contained in the proposed rules for the Outer Continental Shelf, specifically in proposed 33 CFR §142.235 and §142.240. If failing to include these provisions in the proposed regulation for vessels working on the Outer Continental Shelf was an oversight, we asked the Coast Guard Project Officer to add it to the rulemaking package OR undertake a new rulemaking project to protect our mariners' hearing in line with the current OSHA rules. Eight years after the project started – and over 20 years late – revisions to 33 CFR Subchapter N remain mired in red tape and have not been published.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.d. states: "The policy in NVIC 12-82 is based on the expectation that the maritime industry will voluntarily implement and maintain an effective noise control program, without direct Coast Guard involvement. The policy was developed with the assistance of industry and the Commandant anticipates its wide implementation." As a result of this statement we asked for a copy of all documents from June 2, 1982 (the date of publication of NVIC #12-82) to the present date that show the history of this "voluntary implementation" by industry and oversight by the Coast Guard and any conclusions concerning its

success or failure. We received none of the requested documents.

We note that Marine Safety Manual, Vol. 2, paragraph 9.p.9.f calls for a "Program Review" containing feedback from field units relating noteworthy experiences and observations of noise conditions and actions. Such reports and questions concerning NVIC 12-82 should be directed to Commandant (G-MVI-2)." GCMA requested copies of all such feedback under FOIA and received nothing.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.d. stated in a note that: "Complaints alleging that crewmembers have suffered hearing loss from long-term exposure to excessive noise shall not be considered as reportable marine casualties involving personal injury." We believe that this comment (with its emphasis on the word "not") is not only unnecessary but serves to diminish the importance of hearing loss in the eyes of Coast Guard inspectors and management – the two groups most likely to have access to the Marine Safety Manual. The following paragraph only exacerbates the matter.

The Marine Safety Manual, Vol. 2, paragraph 9.p.9.e. "Handling Complaints" states that: "If a crew member files a written complaint to eliminate a specific noise hazard, the situation should be evaluated and all discrepancies corrected. However, these measures should be taken only by the vessel owner, upon request by the OCMI. Only when the OCMI has reason to question the owner's evaluations should inspection personnel become involved in noise measurement".

In the real world inhabited by our "lower-level" mariners if a crewmember has the temerity to file a "written complaint" with the Coast Guard he would probably be fired. After all, most of our mariners are "at will" employees and can be terminated at any time for any reason. This policy effectively removes Coast Guard inspectors, those in closest contact to mariners on visits to inspected vessels and those most likely to hear a verbal complaint from further investigating problems of excessive noise on any inspected vessel. However, even a Coast Guard inspector only visits a vessel briefly and does not have to live with excessive noise on a 24-hour a day basis. If he did, most deckhouses and crew accommodations on towboats would probably have to be mounted on springs to attenuate the vibrations and engine noise.

The foregoing is very poor policy on the part of the Coast Guard, and one that clearly reflects only the wishes of management to reduce costs without considering the health of mariners who work on the vessel and are those most impacted by noise pollution.

This explains why GCMA sought to ascertain who, if anyone, stood up and represented the position on lower-level mariners on this issue since it was our mariners' hearing and quality of life that were at stake. We assumed that any such representation took place at a Federal advisory committee meeting and asked for copies of minutes taken from pertinent meetings and comments of those directly representing the interests of lower-level mariners at these meetings. We received none of the requested documentation.

We also asked for information on noise attenuation requirements on Coast Guard vessels of between 100 feet and 200 feet in length that are presently under construction and copies of any "hearing conservation programs" currently in effect for enlisted mariners serving on these new vessels. We received a copy of COMDTINST M5100.47 containing a well-developed hearing conservation program that the Coast Guard developed for its own personnel. This program is comparable to the OSHA hearing protection regulations adopted in 1985.

Why don't our mariners have comparable protection? Judging by the following editorial comment in the Mar. 31, 1982 copy of the Offshore Marine Service Association's Newsletter, it may have been because of industry opposition to the costs involved and their ability to influence the Coast Guard without anyone standing up to present the mariners' point of view: "Don't let the word "Recommendation" or the fact that these recommended standards are not published as regulations fool you. The Association (OMSA) believes that these so-called guidelines may have the most serious impact on this industry than any other recent event."

Outer Continental Shelf Proposed Regulations (33 CFR Subchapter N): In Coast Guard Docket #1998-3868, the Coast Guard included in a proposed regulation governing activities on the Outer Continental Shelf at 33 CFR §142.235 and §142.240 a "noise survey" in accordance with ANSI Standard S1.13-1995 and S1.36-1990 or with IMO Resolution A.468(XII) and also proposed to require posting signs warning of noise hazards.

Proposed 33 CFR §142.200 indicates that sections 142.234 and 142.240 relate to the general working conditions on "OCS units" that include "vessels." However, the proposed list of vessels (in §§33 CFR 140.5 and 33 CFR §146.1) omits the uninspected towing vessels working on the outer continental shelf. GCMA asked the Commandant (G-MSO-2) to clarify this matter in writing in 2000 yet this has not been done to date.

We believe these points are significant:

- The Coast Guard is supposed to be the lead Federal agency for workplace safety and health on facilities and vessels engaged in exploration for, or development or production of mineral resources on the OCS.
- This regulation was proposed in 1999 and has generated 115 comments and is the first major revision of OCS regulations in 20 years – and became stalled in the Coast Guard's rulemaking process.
- The proposed regulation affects only vessels working on the Outer Continental Shelf (OCS) and nowhere else. The problem is much broader and covers all vessels of less than 1,600 GRT.
- Significant hearing standards were proposed by IMO over 20 years ago. An entire generation of mariners has not been afforded hearing protection by Coast Guard regulations during this period.
- The Coast Guard never clarified whether any of its health and safety improvements in the proposed regulations will apply to mariners working on uninspected towing vessels on the OCS. This is an emerging example where

mariners working on towing vessels suffer from ongoing regulatory discrimination.

- If the proposed rule does apply to both inspected AND uninspected vessels on the OCS, and if it is properly enforced, the Coast Guard still has not proposed any hearing protection regulations to protect our mariners serving on other waters.
- Even the proposed regulations provide far less workplace protections for our mariners than in workplaces ashore that are protected by OSHA regulations

Additional documents available on the GCMA website:

- GCMA Report #R-349 – Protecting Mariners Hearing.

Status: GCMA submitted our petition to the Coast Guard Docket on Feb. 1, 2003. On Sept. 27, 2004, 1½ years later, we received a letter from the Chief, Office of Design and Engineering Standards (G-MSE-1) that stated in part: “At this time, the Coast Guard does not plan to initiate an isolated rulemaking on Protecting Mariner Hearing. Hearing conservation and noise abatement methods are closely tied to other aspects of a vessel’s design, construction and operation. A more effective way to deal with this issue is a comprehensive rulemaking that considers the entire vessel as a system. In the case of towing vessels, recent legislation has created just such an opportunity.”

The “recent legislation” refers to §415 of the Coast Guard and Maritime Transportation Act of 2004 that provides for the inspection of towing vessels. After three years, the only sign of “noise abatement” appears in proposed 46 CFR §145.260, Crew Spaces, that states: “Condition of the crew accommodations should consider the importance of crew rest. Factors to consider include: vibrations, ambient light, noise levels, and general comfort. Every effort should be made to ensure that quarters help provide a suitable environment for off-duty rest.” This is a sad excuse for an enforceable regulation that the Coast Guard could cite to protect mariner hearing on a towing vessel both on and off duty.

ISSUE #14 – PROTECTING OUR MARINERS’ HEALTH – SECOND-HAND SMOKE

[Request for Congressional Action: We ask Congress to protect our mariners from the harmful effects of second-hand smoke in their workplace that also serves as their living, eating, and recreational space aboard ship.]

Discussion: Many mariners serving on small commercial vessels report deep concerns about their health because they are surrounded by an atmosphere of second-hand cigarette smoke 24-hours per day, lasting sometimes for weeks on end. Although most mariners on larger vessels may have their own staterooms, central air conditioning systems re-circulate the smoke-laden air throughout the boat. Consequently, second-hand tobacco smoke from the pilothouse and galley pervades the entire boat.

The Coast Guard, in regulating their own personnel, enforce this policy: “Smoking in any Coast Guard floating unit, aircraft, or vehicle is prohibited except on weather decks of Coast Guard vessels (small boats and cutters).” In response to our inquiry they also stated that: “The Coast Guard does not currently regulate health-related smoking in the commercial industry and there are no plans to do so. The Coast Guard regulations regarding smoking on commercial vessels are generally for fire prevention purposes...”

Our mariners live and work in confined and enclosed spaces 24-hours per day. They are well-informed about the dangers of second-hand smoke and the Surgeon General’s reports on smoking.⁽¹⁾ The policy the Coast Guard enforces on its own vessels contributes to the health and safety of their crewmembers and is a reasonable policy that accommodates both smokers and non-smokers.

Some employers have smoking policies that parallel the Coast Guard’s policy although our mariners report that enforcement is spotty. Since most of our mariners do not belong to a union, they have little power to effect change within the company they work for. Since the Coast Guard recognizes both the health and safety issues of smoking and since local anti-smoking ordinances offer no protection to our mariners on navigable waters, we urge Congress to require employers to protect the health of their workers in the maritime workplace that also serves as their living quarters by using the Coast Guard’s own policy as an example.

Additional documents available on the GCMA website:

- GCMA Report #R-341, Rev. 3. Smoking and Merchant Mariner Health & Welfare Issues: A Petition to Congress.
- GCMA Report #R-341-A. The Health Consequences of Involuntary Exposure to Tobacco Smoke. Executive Summary of 2006 Surgeon General’s Report.

ISSUE #15 – PROTECTING OUR MARINERS’ HEALTH FROM ASBESTOS

[Request for Congressional Action: Require the Coast Guard or successor agency to prepare asbestos protection regulations or “incorporate by reference” in the Code of Federal Regulations those regulations created by OSHA.]

Discussion: While OSHA prepared extensive asbestos regulations in the early 1980s, the Coast Guard only prepared a "guidance" document (i.e. NVIC 6-87) for merchant vessels. Nevertheless, the Coast Guard prepared an exhaustive Asbestos Control Manual (COMDTINST M6260.16A) to protect crewmembers on their own vessels and shore stations and updated it several times.

In 1983, the Coast Guard signed a Memorandum of Understanding with the U.S. Department of Labor delineating the authority of each agency to enforce Occupational Safety and Health Standards. Our experience shows lax enforcement of OSH standards on inspected vessels by the Coast Guard. Nor are we aware of any reported activity by OSHA in dealing with asbestos hazards on uninspected towing vessels.

Regulations can be enforced but "guidance" document like NVICs, no matter how well meaning and informative they may be, cannot be enforced without promulgating enforceable regulations. Our mariners on inspected vessels never were afforded protection by Coast Guard regulations and were left at risk for the past 25 years. In fact, one of our GCMA Directors was forced to bring suit against his employer in Federal District Court after a local Coast Guard unit failed to follow up his report of egregious health asbestos safety violations. [File #GCM-102]

ISSUE #16 – REPORTING DRUG PROGRAM VIOLATIONS

[Congressional Action Request: Stiffen penalties for employers who violate drug and alcohol testing requirements.]

Drug Program – Cooperation with authorities. The drug abuse regulations (46 CFR Part 16 & 49 CFR Part 40) represent a partnership between the Federal government and employers to stamp out drug abuse in the transportation industry. GCMA supports the intent of these regulations to stamp out illegal drug use in the workplace.

On Jan. 30, 2002 we provided convincing evidence that certain employers who pay collectors to perform random drug tests are able to receive "pre-screening" reports on whether any of their employees test "positive" for drugs.

As a result of their business relationship with local specimen collectors, some employers have an unintended opportunity to direct some urine specimens to an approved SAMSHA drug lab while withholding results from other specimens. Since a SAMSHA-listed lab would report any "positive" drug tests directly to the Coast Guard, the employer would lose control of any employees who test "positive" for drug use. In most cases, a positive test leads to suspension and revocation proceedings or an administrative settlement agreement that must be approved by an Administrative Law Judge. This can keep a licensed mariner off the water for a period of no less than 14 to 18 months and in some cases as long as six years. Not reporting some test results diverts control of the drug problem from the authorities to the individual employer who can continue to use a known drug abuser in his business. In days of chronic crew shortages, this is a risk some employers are more than willing to take.

Local "pre-screening" is illegal. Bending the law gives an unethical employer the opportunity to hide a "positive" drug or alcohol test by simply quashing the screening report and not notifying the Coast Guard. The employer can then hold a "pre-screened" drug abuser hostage to his job, take advantage of him, and place all sorts of loyalty or employment demands upon him. In addition, employers can and do warn some specific vessels in advance that their crews will be subjected to "random" drug tests. By doing so, employers can circumvent a growing shortage of available personnel to man their vessels. They can keep their vessels manned and continue to conduct business as usual.

GCMA provided the Coast Guard detailed testimony on how this is done not only on the Gulf Coast but also on the western rivers system. We reported our findings to the Federal official in charge of the SAMSHA laboratory program who immediately put us in touch with the Coast Guard's "Drug Czar" at Coast Guard Headquarters. We also contacted several Members of Congress and at least two Marine Safety Offices. Receipt of one of our letters was acknowledged by a copy of a memo from that office forwarding our correspondence and stating in part: "This letter is being forwarded to you because of the national impact of the issues in question".

Our mariners report drug abuse all around them and protest that they often must risk their licenses and their jobs in an environment of drugs and corruption. Although the Coast Guard may handle hundreds of drug cases administratively each year, the problem persists. In May 2007, serious problems involving a number of local employers came to light in the New Orleans area. The matter is currently "under investigation" – which, in the past, meant we never learned its outcome.

Additional documents available on the GCMA website:

- GCMA Report #R-315, Rev. 1, Drug Testing: Urine Specimen Collection.
- GCMA Report #R-315-A, Drug Testing Regulations: The Role of the Medical Review Officer (MRO)
- GCMA Report #R-315-B, Drug Testing: Refusal to Test.
- GCMA Report #R-315-C, Mariner Drug Cases.
- GCMA Report #R-315-D, Changes in Alcohol and Drug Testing Effective June 20, 2006.
- GCMA Report #R-315-E, Drug, Alcohol & Other Convictions and How They Affect Your License and MMD.

ISSUE #17 – "WHISTLEBLOWER PROTECTION" FOR MARINERS

[Request for Congressional Action. GCMA appreciates the work of the 107th Congress in addressing whistleblower protection. However, the \$1,000 limit provided in the existing statute is not sufficient ensure a working mariner will have adequate legal representation by an attorney experienced in administrative and/or maritime law.

[Comment on Congressional Action: GCMA supports §316 "Protection Against Discrimination" that appears in the draft Coast Guard Authorization Act of 2007 as an extremely important provision that will protect our mariners.]

Additional documents available on the GCMA website:

- GCMA Report #R-370-D (Series), Work-Hour Abuse, Whistleblower Protection and "Deadhead Transportation.

ISSUE #18 – A RESOLUTION TO PROTECT OUR MARINERS FROM OBSOLETE LIFESAVING EQUIPMENT

[Request for Congressional Action: We ask Congress to direct the Coast Guard or successor agency to respect the National Transportation Safety Board recommendations from the 1985 PILGRIM BELLE accident and mandate out-of-water survival craft on all small passenger vessels, offshore supply vessels, and towing vessels to protect the lives of the crew and other persons on these vessels.]

[Comment on Congressional Intent: GCMA supports §314 of the proposed Coast Guard Authorization Act of 2007 but respectfully request a shortened deadline.]

Discussion: The appeal that life floats and buoyant apparatus hold for many commercial boat owners is that they are simple to use, simple to maintain, and, above all they are relatively cheap.

In August 1999, GCMA pointed out significant problems with existing "approved" lifesaving appliances to high-level Coast Guard officials to no avail since existing regulations accept "life floats" and "buoyant apparatus" on many commercial vessels including small passenger vessels, offshore supply vessels, and other work boats. Nevertheless, for our mariners and passengers the real "bottom line" should be to adequately protect human life. We cite a number of clear disadvantages to allowing the continued use of life floats and buoyant apparatus:

- Life floats are designed to hang onto not to climb on or into. To use a life float, you must first enter and remain in the water. As your body is immersed in the water, body heat loss is up to 25 times as great as if you remained out of water but in air of the same temperature. Survival time is reduced correspondingly.
- Survivors are expected to hang onto $\frac{3}{4}$ " polypro "lifelines" attached to straps sewn around the body of the life float. These "lifelines" are of very small diameter and do not even have loops to hold onto. Your ability to hold onto these lifelines depends on your grip that, in turn, depends on your time in the water, the water temperature, your physical condition, and the onset of hypothermia.
- In calm weather, one or two people may possibly be able to balance themselves on top of a life float's body with their feet inside the shark net. However, the "capacity" of any approved life float ranges from 6 to 25 persons. This barely allows enough space to hang onto around the float's periphery.
- In heavy weather a solid life float that can weigh up to several hundred pounds and will batter survivors in the water making it difficult if not impossible to survive for any length of time.
- A person begins to lose body heat the moment he/she is immersed in the water. Water temperatures in the Gulf of Mexico during the coldest winter months are regularly reported as 60°F but often dip as low as 55°F. On other bodies of water the water temperatures may be considerably colder because of colder surrounding land temperatures in more northern latitudes than on the Gulf Coast.
- Although it is painted a bright international orange with retro-reflective tape on it, a "Coast Guard Approved" life float is not a state-of-the-art piece of survival equipment. While it may give a bright illusion of safety, there are other survival craft such as "inflatable life rafts" and "inflatable buoyant apparatus" (IBA) that offer any person a much greater chance of survival.
- Hypothermia has a record as a killer from the loss of the TITANIC in 1912, through two World Wars, to the PELICAN disaster in 1951 with a loss of 45 lives off Montauk Point, NY, to the present. Many people lost their lives from cold water immersion and hypothermia because they were unable to pull their bodies clear of the water.
- Life floats and buoyant apparatus are better suited for people swimming in a lake or bay in the summer months than they are for lifesaving purposes. However, do not confuse the terminology "buoyant apparatus" with "inflatable buoyant apparatus" (IBA), which does provide survivors with a reasonable chance to get out of the water.
- Regulations in the SOLAS convention do not even list life floats and buoyant apparatus as "survival craft." So, why are they still permitted in domestic Coast Guard regulations?

GCMA condemns the practice of allowing many of the vessels our mariners work on to carry lifesaving equipment that jeopardize mariners' lives and the lives of others that we are responsible for.

The Coast Guard ignored formal recommendations made by the National Transportation Safety Board in the 1985 PILGRIM BELLE accident to ban the use of life floats on commercial vessels. The problem with this type of lifesaving gear is that it requires survivors of marine casualties (including infirm and elderly people and small children) to await rescue for unknown periods of time clinging to inadequate equipment while in the water – sometimes in very cold water and for extended periods. To do so, possible survivors of all ages, injured or uninjured, are immersed in the water, threatened by hypothermia, fear, possible drowning, and various sea creatures.

It is obvious to us that the Coast Guard's principal concern in this matter is NOT with the safety of our mariners or other persons but lies with their close relationship with vessel owners, their trade associations, and lifesaving equipment manufacturers. A number of our mariners with extensive service-related lifesaving experience believe that the Coast Guard has lost its expertise in this area through lack of experience demonstrated by Headquarters personnel.

GCMA RESOLUTION TO PROTECT OUR MARINERS

WHEREAS our Association's membership is composed of licensed, documented, and undocumented mariners who work in the marine transportation sector of the offshore oil industry operating every type of offshore supply vessel and towing vessel...

WHEREAS our Association's overriding concern is for the safety and protection of all "crew members", "persons in addition to the crew", "passengers", "oilfield workers", or other individuals aboard oilfield and uninspected towing vessels...

WHEREAS these vessels operate not only in the Gulf of Mexico but also in other areas of our nation and the world, in fair weather and foul, in all seasons of the year, and under all sea and weather conditions ranging from benign to dangerous, on waters from inland to oceans, and in areas near rescue and in remote areas.

WHEREAS the National Transportation Safety Board in Safety Recommendations M-86-61 and M-94-26 recommended as early as 1986 that the U.S. Coast Guard require out-of-the-water survival craft for all passengers and crew on board small passenger vessels to prevent immersion in the water for all passengers and crew...

WHEREAS "life floats" fail to meet the National Transportation Safety Board's criteria of lifesaving equipment that prevents immersion in the water and virtually assures that survivors will be immersed in the water until the time of their rescue or death from hypothermia or other causes...

WHEREAS the Coast Guard has repeatedly failed to take action acceptable to the National Transportation Safety Board or to our Association in this regard...

WHEREAS members of our Association assert that all "crewmembers", "persons in addition to the crew", "passengers", "oilfield workers", and other individuals aboard oilfield vessels and uninspected towing vessels deserve the same degree of safety, care and consideration as crew members and paying passengers on small passenger vessels...

WHEREAS statistical research presented by the Coast Guard for regulatory purposes shows that American society is willing to pay \$2,700,000 to save even just one life...

WHEREAS 46 CFR 160.027 describes Coast Guard approved life floats for merchant vessels; 46 CFR 199.30 classifies "life floats" and "buoyant apparatus" as survival craft and continues to allow their use on certain small U.S.-flag vessels; 46 CFR 131.870 continues to allow their use on oilfield vessels; 46 CFR 117.137 and 180.137 continues to allow their use on small passenger vessels; and existing Coast Guard regulations fail to require an uninspected towing vessel to carry any lifesaving equipment capable of preventing immersion in the water...

THEREFORE BE IT RESOLVED that the Gulf Coast Mariners Association petition the United States Congress to require suitable lifesaving equipment by statute for all oilfield and uninspected towing vessels that prevents immersion in the water of all persons on board the vessel that satisfies the National Transportation Safety Board's safety recommendations.

Additional documents available on the GCMA website:

- GCMA Report #R-354, Rev. 1, A Direct Appeal to Congress on Lifesaving Issues Affecting Lower-Level Mariners.

ISSUE #19 – HYPOTHERMIA PROTECTION FOR INLAND DECK CREWS

[Request for Congressional Action: We ask Congress to direct the Coast Guard or successor agency to ensure that all maritime personnel required to work on deck in winter including those on inland waters including rivers be provided adequate safety equipment including hypothermia protective clothing comparable to that required for Coast Guard personnel on search and rescue missions.]

[Request for Congressional Action: We ask that Congress request the Coast Guard or successor agency to conduct studies to identify places and dates where ambient surface water temperatures on principal rivers and waterways fall below the 59°F benchmark during any month of the year and to update their guidance (i.e., NVIC 7-91) and regulations to include this data for inland and river routes.]

Discussion: A 1996 joint Coast Guard/Industry Quality Action Team report stated in part: "...nearly 71% of all inland sector towing vessel fatalities resulted from falls overboard; that these falls occurred from both barges and towing vessels in roughly equal numbers; and that significantly higher fatality rates were found in the younger, less experienced population of workers."

The Coast Guard is well aware of the hypothermia problem that exists in cold water areas as shown in their Navigation and Vessel Inspection Circular NVIC 7-91. Unfortunately, the guidelines in the NVIC do not take into account water temperatures that are found in various rivers and inland waters – only those found along the coasts. A letter to Admiral James Card identified this significant shortcoming a decade ago – although the Coast Guard subsequently ignored the matter.

The Coast Guard went on record in NVIC 7-91 that temperatures falling below 59°F are significant for regulatory purposes. However, the same thinking behind the guidance in NVIC 7-91 should apply upon rivers and other inland waters just as it does in coastal areas. After all, cold water is cold water regardless of geography. In rivers, it may be swiftly flowing cold water and, therefore, even more dangerous.

GCMA provided 1998 river water temperatures for Coast Guard consideration. These temperatures were recorded on the first and 15th of each month. The list included these river Mississippi River water temperatures: January 1, 48°F at New Orleans; January 15, 50°F at St. Francisville, LA; February 1, 45°F at New Orleans; February 15, 46°F at Baton Rouge, LA; March 1, 46°F at New Orleans; March 15, 46°F at Natchez, MS; April 1, 52°F at Memphis, TN. In mid-April temperatures rose above the 59°F level and remained there until mid-October when they reached 56°F at Dubuque, IA. November readings at St. Francisville, LA, remained above the 59°F mark, but on December 1 dropped to 56°F. The reading was the same at New Orleans on December 15. Readings taken in 1999, January through March 15, were all in the 40s at Natchez, New Orleans, and Baton Rouge. Although this information was well publicized in trade journals, the Coast Guard ignored it.

GCMA pointed out that even in south Louisiana during the winter, the Coast Guard outfits its small-boat crews with effective cold weather insulated flotation gear similar to Coast Guard-approved anti-exposure coveralls. This requirement was codified in §410 of the Maritime Transportation Security Act of 2002 for Coast Guard personnel. GCMA asked the Coast Guard and the TSAC advisory committee to consider our mariners' needs but our request was repeatedly ignored. We now make the same request to Congress.

GCMA is concerned that Coast Guard inspection officials routinely waiver cold-water lifesaving equipment carriage regulations for some large passenger carrying vessels. The onset of hypothermia does not depend upon the size of the vessel that you are riding on as seen in the M/S ESTONIA disaster in the Baltic Sea..

A PERSONAL LETTER

[This is a reprint of a personal letter from Captain John R. Sutton to Captain Richard A. Block dated January 8, 1997, written at work on the Illinois River at 2100 hours.]

Dear Richard,

I nearly lost a man today. My Mate fell in the river at Hennepin, Illinois at Illinois River Mile 207. It was 0700. There was a heavy frost on the barges from a heavy fog last night. He was in the water approximately 10 minutes. It was 10°F this morning and the water had to be at least 34°F.

My Mate was walking down the side of the tow in the process of turning the tow loose from the fleet. He slipped and fell between the barges. I was preparing the daily log and catching up my personal log at this time. There were several boats working in the harbor this morning. At approximately the same time both the fleet boat and I heard a microphone key up with garbled sounds. Nothing understandable. I believe this was my Mate's radio shorting out when he fell in the water.

A few minutes later my deckhand came running down the barges waving his arms signaling me by waving his own life jacket. He yelled that he heard the Mate screaming for help but could not find him.

I immediately called the tug to assist. I then called my watch to go to the tow and assist. By this time my deckhand had found the Mate located between the tow and fleet of barges. He was approximately 300 feet ahead of the boat. I shifted my engines in a full throttle twin screw to open up the space between the tow and the fleet. I did not know whether the man had been crushed between the barges.

The deckhand on watch that came to his rescue was the Mate's brother-in-law. The deckhand later told me, that the Mate pleaded with him not to let him go and that he had been under once and was scared. The Mate had managed to wedge himself between the barges by placing his hands on one barge and his back to the other and pushing out. The Mate's hands immediately froze to the steel on the barge in the 10°F cold. The deckhand pried his hands loose, along with a couple layers of skin, and pulled him up to where he was able to put his forearms up on deck of the barge. His forearms froze to the deck.

By this time several more minutes had passed. The tugs arrived just as the barges were starting to close up again. The Chief Engineer arrived at almost the same time, realized the barges were closing, and made the decision

to try and retrieve the Mate without the help of others.

The Mate is approximately six feet and weighs 265 pounds. With his winter garb and radio this man was easily over 300 pounds soaking wet and, by this time, was in no shape to help himself. Somehow by God's helping hand, they managed to pull the Mate to the gunwale of the barge.

Somehow, while standing witness to this happening before me, I had the forethought to call the fleet dispatcher for Emergency Medical Technicians. This was in between pleading for the tugs to hurry to my deckhand's assistance.

My Mate walked to the boat on his own power, while I sent the tug to retrieve the waiting EMTs that were only three blocks away from the fleet's office.

I met the Mate at his room and helped him strip out of his icy clothes. While I was pulling his coveralls arms down and unlacing his boots, he was apologizing for getting the radio wet. As soon as he stripped, I put him in a warm shower. Approximately five minutes later the EMTs arrived to check him out.

When the Mate dried off, he was red as a beet from the cold and still shivering to the bone. He dressed in sweat pants and shirt. The EMTs covered him with four blankets and applied chemical warm packs under his arms. After a brief observation, they opted to take him to the hospital.

When I woke up early this afternoon, I had a bad dream. It was about an outcome that was not as bright as this event had been. He is shaken up and wants to go home for a few days. His wife is 8½ months pregnant and understandably concerned.

She has called six times today. He is going home tomorrow; but for the mean time I'm not letting him do anything but sleep.

This event has hit home for me. I've seen other people in the water during warmer weather; but I nearly lost this man today. Somehow, I am going to bring this to the attention of Admiral Card, the Towing Safety Advisory Committee, and industry. The error chain in this event had too many links. The major ones were:

- Lack of communications because each man on a tow should carry a watertight radio.
- Lack of manpower because I only had two men on tow, and
- Lack of proper gear (i.e., a float coat or float coveralls). He was not capable of flotation dressed as he was.

This is a dangerous industry. Some of us tend to forget it when we are isolated three decks above the real action. There has already been one man lost on this river this winter at Beardston, Illinois, after falling off a tug.

Be careful my friend, and please exercise caution around the water this winter.

Best wishes, your friend, John.

ISSUE #20 – HOMELAND SECURITY

[Request for Congressional Action: We ask that Congress require ALL merchant mariners serving on commercial vessels regardless of tonnage to carry a Coast Guard identity document after undergoing a suitable and relevant background clearance check.]

Security Considerations. Existing Coast Guard regulations do not require merchant mariner documents for crewmembers on vessels of less than 100 gross tons working offshore or on vessels working on inland waters. Consequently, thousands of deckhands, unlicensed engineers, "deckineers" and cooks not only do not require training or qualifications but also do not require any form of Coast Guard identification. The "100-ton" figure may have been a convenient benchmark in the past for regulatory purposes, but its lower limit excludes thousands of merchant mariners who work on smaller commercial vessels. Furthermore, many unlicensed and "entry-level" individuals are temporary, part-time, seasonal employees and some have an alarmingly high turnover rate in the industry. However, all of these individuals are merchant mariners.

Unless the Coast Guard has a meaningful credential to take away from a mariner, they have no leverage in controlling drug use or other criminal activities. For this reason, we believe that the interest of national security would be well served by requiring all mariners to carry a federal identity credential (such as a merchant mariner document) that requires an appropriate background check. However, there needs to be a greater effort than the Coast Guard has demonstrated to avoid discouraging individuals who have been in trouble in the past and who seek this type of work in an honest effort to "turn their lives around."

ISSUE #21 – APPEALING COAST GUARD DECISIONS

[Request for Congressional Action: Remove civilian merchant marine personnel from military control and institute a simplified appeal process.]

The Coast Guard considers itself as an efficient, well-run organization patterned after the U.S. Navy. They have evolved a personnel management system that maximizes the career development of individuals within their organization.

Military systems require rank-and-file loyalty both up and down the chain of command. How this all works out in an

organization that is charged with regulating civilian endeavors seems to be less than desirable at least from the prospective of being among the "regulated public." Regulated public applies to both individuals and corporate entities.

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

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

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

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

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

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

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

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

Of course, individual mariners and most mom-and-pop boat owners simply do not have these opportunities to influence Coast Guard policy. Senior Coast Guard officers have become so self-important that they shunt all the "small fry" to their subordinates. For example, how many individual mariners ever successfully appealed the manning on a Certificate of Inspection on a vessel by whose crew is forced to work beyond the limit of endurance by appealing directly to the local Officer-in-Charge Marine Inspection? Then there are thousands of towing vessels that were never issued a Certificate of Inspection so that their manning level even could be appealed.

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

Additional documents available on the GCMA website:

- GCMA Report #R-436, Rev.1, The Coast Guard Appeals Process.

ISSUE #22 – BLACK LISTING

[Request for Congressional Action: We ask that Congress amend the Fair Credit Reporting Act to protect our mariners from vindictive employers.]

Discussion: 15 U.S. Code §1681b indicates that one of the permissible purposes of a consumer report is for "employment purposes." The Federal Trade Commission further defines these "permissible purposes" relating to employment to include reports used for evaluating a consumer "for employment, promotion, reassignment or retention as an employee." There is frequent abuse of this provision in a significant, non-unionized portion of the maritime industry for employment purposes.

Good employees try to maintain a good work record. The fact that such a record really exists and may follow him in the workplace provides a positive and sobering influence upon his or her conduct and stability. Nevertheless, there is one feature that stands out and detracts from the value of this type of "consumer report." That point deals with the answer to the question, "Would you rehire this employee?" or, restated, "Is this former employee eligible for rehire by your company?"

We receive widespread reports from our mariners that this single point is used to evaluate and subsequently to “**blacklist**” many of our mariners. It is a “quick and dirty” test of suitability for employment. Our complaint lies with the law and not with the Consumer Reporting Agency that only appears to be doing what the law and/or the Federal Trade Commission allow. We make the following arguments for change.

- “Would not rehire” is not based upon any uniform set of employment guidelines. It is a subjective opinion of some person working for a former employer who is under no obligation to reveal his/her identity or even position within the company. It could represent the opinion of a President, a Personnel Director, or even a clerk-typist with access to the company’s computer. In some cases, employees are not even given a “pink slip” stating the reason for their termination.
- A mariner does not know which person “blacklisted” him or when it was done. However, “would not rehire” now can appear on a computer screen at a job seeker’s next job interview. Or, it may appear as part of the “reinvestigation” the present law allows. In one case that we followed, the job applicant found out about it three years later – much of that time spent unemployed but constantly seeking work. Although he made written inquiry to both his former employer and to the Credit Reporting Agency, he was never told why his former employer would not rehire him. The information the mariner chose to add to his consumer report to counteract the “blacklisting” was nothing more than a shot in the dark since he had no access to solid facts he could refute. Even worse, his statement now stands out like a sore thumb on his work report.
- Most job applications require job seekers to list their previous employers. In the transportation industry, 49 CFR §40.25 even requires prospective employers to verify a job seeker’s drug records for the past two years. If the prospective employer made such a call he would have a greater opportunity to speak with a responsible person in authority and ask legally permissible questions about the job seeker. A “would not rehire” computer entry short circuits the entire process and is manifestly unfair to job seeker.
- Accepting “would not rehire” notations without identifying them by name coupled with the limitation of liability in 15 USC §1681h make it very extremely for an injured employee to prove in court that he was disqualified from employment by “...false information furnished with malice or willful intent to injure such (a) consumer” if this is the case. Our experience shows that most mariners, especially those who are unemployed, do not have the means, the ability, and the knowledge to deal with the administrative procedures of the Credit Reporting Agencies – even when those agencies scrupulously follow the law.

It is for these reasons and in the interest of fairness to our mariners that we seek to amend the Fair Credit Reporting Act to exclude the solicitation of the information by Credit Reporting Agencies that allows notations such as “would not rehire” or “not eligible for rehire” to appear on a work report furnished by such an agency.

ISSUE #23- END OBJECTIONABLE EMPLOYMENT PRACTICES TARGETING MARINERS

[Request for Congressional Action: We ask that Congress review the applicable statutes listed below and the ILO convention and require more adequate enforcement of the statutes.]

Discussion: We believe that all expenses incurred for recruiting and hiring individuals to serve as “lower-level” mariners (i.e., to work on vessels of less than 1,600 GRT), whether for licensed or unlicensed positions must be borne by the employer and not the mariner.

Mariners should not be required to enter into agreements where a significant portion of their pay check – as much as the first two weeks pay – must be returned to an employment agency for the “privilege” of employment. We received reports that this practice exists and are prepared to refer any cases to our attorneys. We do not offer legal advice that remains in the province of our attorneys.

The fact that most mariners may not complain about the problem to the Coast Guard does not mean that the problem does not exist. Many of them complain to us – and we listen to their complaints. Employment in the maritime industry is often little more than a dangerous adventure that often does not end well. In this day and age, and with our experience in dealing with mariner issues, employment in this industry is certainly NOT a “privilege” worth paying for.

We believe that these practices are in violation of 46 U.S. Code §10505(a)(1)(C), 46 U.S. Code §10505(a)(2), 46 U.S. Code §10314(a)(1)(C), and 46 U.S. Code §10314(a)(2) as well as Article 4(a) of the Recruitment and Placement of Seamen Convention, 1920 (ILO no. 9). In our correspondence with Coast Guard officials, they deny that such conditions exist.

Additional documents available on the GCMA website:

- GCMA Report #R-415-A, Objectionable Employment Practices: Headhunting.

LOWER-LEVEL MARINER VIEWPOINTS

Introduction. Lower-level mariners who work aboard boats in the maritime industry have their own views of

how the maritime industry operates. These views seldom find their way to the nation's capitol because so few lower-level mariners have occasion to visit Washington and seek out their elected representatives. We take the opportunity in this report to share this view with our elected representatives to provide an insight into these issues – without seeking direct Congressional intervention.

ISSUE #24- THE MEDICAL NVIC – A THREAT TO MARINERS' CAREERS

Discussion: We believe the Coast Guard went overboard in carrying out NTSB recommendations that seeks to manage all merchant mariners' health records. Since 1980, our mariners have become accustomed to dealing with their own physicians and must meet the physical standards of their employers without outside interference by the Coast Guard. The Coast Guard's record in promoting the health of our mariners is poor, and this recent intrusion is not necessary. To prevent our mariners from working when they are able to meet existing physical requirements will further aggravate the existing personnel shortage. Worse still, it will mean that many older mariners will never be able to finish their working years in the marine industry.

With this "Medical NVIC," the Coast Guard introduced a document with a "military mindset" in dealing with important health issues that have the potential to end the career of many civilian merchant mariners by age 50. This means that for many mariners there will be no viable career path in the maritime industry that would allow them to continue to work in this industry until they reach retirement age – currently age 65. This may not be evident to those just entering the industry at a relatively young age. However, it will have an immediate effect on many older trained and experienced mariners already in the marine industry. One of the most serious problems facing the boat owners who employ our lower-level mariners is the impending retirement of a large number of skilled and experienced mariners. The introduction of this NVIC and its potential for expanding the "red tape" and bureaucratic harassment already prevalent in the licensing system could not possibly have come at a worse time for our mariners and the industry as a whole.

We hate to disillusion the Coast Guard officials in Washington who are so completely out of touch with our working mariners already, but most mariners remain in the industry work well beyond age 40 to 50. While this proposal may be sound for military health administrators, it is controversial and creates far more problems than it solves for our civilian merchant mariners.

It appears that the Coast Guard has a distorted view that their duty is to protect our waters from licensed American mariners who may become more hearing impaired or unable to pass a stress test as they advance in age. Coast Guard administrators seem to recognize no duty to serve the trained and experienced mariner who is on an advanced issue of his license. It appears through this proposed NVIC that the Coast Guard wants to eliminate older personnel from the maritime work force as if they were part of a military organization with military type duties. In doing so, it appears that Coast Guard officers plan to turn the merchant marine into the only type organization they are familiar with – a military organization. In such an organization, everyone should be under 40 so they can always put out unlimited exertion for whatever purpose they are engaged. We respectfully disagree.

Most physical requirements for Coast Guard credentials have been in place for many years and most mariners understand them. However, through this arbitrary system of adding health and physical requirements whenever they feel like it in "guidance" documents like this NVIC, the Coast Guard imposes a significant change upon the maritime industry in general and significant expenses upon our mariners in particular without any form of due process or direction from the Congress. These abuses of their authority are all rationalized, and in the Coast Guard's view, perfectly legal. We respectfully disagree.

It appears that the Coast Guard is making this up as they go along. Apparently, the Coast Guard believes it can change the requirements for a license arbitrarily at any time that they so choose. According to this rationale, making the licensee sign a Conditional Medical Waiver (as happened recently to one of our mariners) means that the Coast Guard can institute Suspension and Revocation Proceedings if the mariner does not fully comply with the terms and conditions of any waiver he is granted. We object to this type of threat.

A great deal of the medical NVIC appears to be poorly concealed age discrimination although we are certain that the Coast Guard can provide persuasive rationalization indicating it is not. Many of our mariners have called our office and expressed this belief.

We profoundly regret that the Coast Guard also seems to believe that their superintendence of the Merchant Marine includes no duty to protect the health of our mariners, especially older mariners. However, our Association takes a contrary position. We hereby state that these are the duties we believe the Coast Guard has to protect the health and welfare of our lower-level mariners. The Coast Guard needs to concentrate on these preventive measures rather than arbitrarily endanger the careers of our mariners.

- A duty to ease the unreasonable work-hour burden placed on our mariners. The Coast Guard permits 15-hour workdays for unlicensed crewmembers.
- A duty to address the work-hour abuse faced by licensed officers under the existing two-watch system as well as many working on 24-hour tugboats on a "one-watch" system.
- A duty to support Public Health policy by requiring boat owners to institute no-smoking policies in public and sleeping areas of the boat to protect mariners against the hazards of second-hand smoke as discussed in the 2006

Surgeon General's report on smoking. Since the Coast Guard can do it on their own cutters and bases, they must seek comparable authority from Congress to do so on commercial vessels to protect the health of our mariners who serve on these vessels.

- **A duty** to encourage boat owners to take positive and, verifiable steps to reduce the workload on older mariners instead of trying to "run-off" older mariners.
- **A duty** to require audio surveys on all commercial vessels as a first step to protect our mariners' hearing from excessive noise.
- **A duty** to require a survey on all vessels over 25 years old to determine the presence of asbestos and determine the threat it poses to our mariners.
- **A duty** to require a standard entry-level physical exam of all mariners to determine from the outset whether they are suitable for service in the merchant marine. This should include not only those sitting for a license or a merchant mariner document (MMD) to work on a vessel of more than 100 GRT but also those who work on smaller commercial vessels. There are thousands of mariners working on vessels of less than 100 tons that the Coast Guard never even counted as merchant mariners and does not have a any information on.
- **A duty** to recognize that the towing industry and the offshore oil industry are dangerous industries for mariners. Since there is no longer medical coverage for mariners at Public Health Service facilities, the Coast Guard should require employers to provide full medical, disability, and death benefit coverage for merchant mariners that would include coverage for any and all medical tests the Coast Guard may order during their credential renewal process.
- **A duty** to recommend to Congress authorization for disability coverage (SSI) for merchant mariners who are disabled on the job or whose health problems develop after an initial physical examination does not allow them to return to a job afloat.
- **A duty** to eliminate the ineffective CG-2692 as an instrument for reporting personal injuries and to replace it with a reporting form similar to the OSHA-300 series of reports where employers must keep track of their employees' injuries.
- **A duty** to assign a higher priority to creating new regulations to provide for safe potable water to commercial vessels (as mandated by Congress in 2004) as well as providing sanitation training for all those who carry out food preparation for others on vessels in 24-hour operation to prevent the spread of food borne illnesses.
- **A duty** to recommend Crew Endurance Management (CEMS) training (only) for all mariners and disallow CEMS as a method that allows companies to under man their vessels.
- **A duty** to require training in CPR, First Aid, and stress avoidance for all mariners on every commercial vessel. CPR and First Aid training is necessary because some vessels are manned by as few as two mariners.

Additional documents available on the GCMA website:

- GCMA Report #R-415-B, Rev. 1 (Series) Medical & Physical Evaluation Guidelines for Merchant Mariner Credentials
- GCMA Report #R-403, Stress and the Licensed Mariner.
- GCMA Report #R-351, Rev. 1, How Safe Is The Towing Industry?

ISSUE #25 – MARINERS PROBLEMS WITH THE ADMINISTRATIVE LAW SYSTEM

Discussion: Mariners have no clear concept of what the Coast Guard's "Administrative Law" system is all about because little is written about it in layman's terms and no time is spent explaining it in approved courses leading to lower-level licenses.

Many mariners who face administrative proceedings incorrectly believe they are being court-martialed and will sign or do almost anything to avoid it. Mariners see the administrative law system used by some Coast Guard officers as a tool to terrorize and subjugate our mariners⁽¹⁾ while it does next to nothing to investigate, restrain, or reprimand corporate executives that may have ordered or allowed violations of statutes or regulations. It takes fewer resources to bring a mariner before an Administrative Law Judge (ALJ) than to bring a civil penalty action against a company, which makes our mariners a much easier target. Many lawyers find the system unfair and necessary to use their full courtroom skills to defend mariners before an Administrative Law Judge (ALJ).

We urge our mariners to engage effective legal counsel knowledgeable in administrative and admiralty law before they sign away any rights they may have in "settlement agreements" even though those agreements must be validated by an ALJ. We urge our licensed mariners to purchase license insurance⁽³⁾ to cope with protecting their credentials without which they cannot work. Unfortunately, only a few mariners followed our advice. Recent revelations about abuses of the ALJ system⁽²⁾ raise serious questions about the ethics of senior Coast Guard officials.

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report # R-315-C, Mariner Drug Cases
- ⁽²⁾GCMA Report #R-429-J, Investigations: Report to Congress – Coast Guard Abuses of the Administrative Law System.
- ⁽³⁾GCMA Report #R-342, Rev. 5, License Defense Insurance; Income Protection Insurance and Civil Legal Defense

ISSUE #26 – THE COAST GUARD DOES NOT UNDERSTAND THE WORKBOAT INDUSTRY

Discussion: Coast Guard officers have little first-hand knowledge of the work our mariners perform, the schedules we keep, the hardships and conflicts we face. Very few Coast Guard officers ever had first-hand experience in working on commercial vessels of less than 1,600 tons in the merchant marine service. Very few Coast Guard projects ever require Coast Guard officers to “ride our boats” for any length of time to get a first-hand sense of what our mariners do for a living. When they occasionally do ride with us, the trip has a management “spin” since it can only take place with management approval. Although the Coast Guard as an institution lacks first-hand experience with the industry, they rarely go out of their way to solicit the unique views of our mariners.

ISSUE #27 – MARINERS’ LIMITED RESPECT FOR THE COAST GUARD

Discussion: Our mariners respect and admire the Coast Guardsmen assigned to Search and Rescue missions who put their lives at risk on our behalf. We also respect those who work on Coast Guard cutters and buoy tenders that we depend on. Consequently, our mariners bond with those Coast Guardsmen when they learn that they also are overworked and overburdened with duties as Congress discovered following the MORNING DEW accident on December 29, 1997.⁽¹⁾ The officers that were responsible apparently are of the same ilk as those who ignore our lower-level mariner work-hour violations. These officers conveniently overlook the fact that there are no work-hour limits set for many lower-level mariners, including many who are not required to hold merchant mariner documents. They should have moved to correct these injustices by submitting legislative change proposals years ago

Additional documents available on the GCMA website:

- GCMA Report #R-370-G. (Series), Crew Endurance: The Call Watch Cover-up
- GCMA Report #R-279, Rev 6, Report to Congress on the Need to Review and Set Safe Manning Standards for Offshore Supply and Towing Vessels.
- ⁽¹⁾GCMA Report #R-305, Betrayed – A Call for Increased Congressional Oversight of the United States Coast Guard.
- ⁽¹⁾GCMA Report #R-304, Rev. 1, Small Boat Station Search and Rescue Program.

ISSUE #28 – LIMITED COAST GUARD RESOURCES

Discussion: Over the years it was evident that some Coast Guard resources were stretched very thin. Until recently, the Coast Guard publicly boasted of its ability to do more with less. While others may have been impressed, our mariners saw this as little more than false pride, arrogance, or a downright lie as many programs deteriorated or fell by the wayside. For example, at one time marine inspectors did not have gasoline to reach vessel inspection assignments. For over a year, the Coast Guard did not have the funds to monitor the quality of NMC “approved” training courses offered to the public.

The recent revelations of high-level Coast Guard ineptness in managing expensive programs in which they were expected to demonstrate their expertise bears out our contention. GCMA will not “go to bat” for the Coast Guard because we are not convinced that they have shown genuine interest in our mariners’ welfare.

Many mariners, especially during the 1998 Pilots Agree strike, believed the Coast Guard betrayed them by allowing the industry to operate their towboats in 24-hour service with only one licensed officer on board. This feeling persists today in the treatment our mariners receive.

ISSUE #29 – COAST GUARD PARTNERSHIP WITH INDUSTRY

Discussion: Our mariners view “partnerships” between the marine industry and the Coast Guard with suspicion because it advances the interests of both parties without considering a third and very important party – maritime labor. The partnerships are often touted in trade publications but seldom work to benefit our mariners who believe they are highly overrated. These partnerships involve large corporations and industry trade associations that often have the power to set the agendas to benefit their member companies without considering the interests of the mariners these companies employ. This is particularly worrisome where an association clearly does not represent a majority of the participants in an industry or where it provides information that may be misleading or inaccurate.⁽¹⁾

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report #R-351, How Safe Is The Towing Industry?

ISSUE #30 – THE REVOLVING DOOR OF GOVERNMENT SERVICE

Discussion: While in their closing years of Coast Guard service, many senior commissioned officers develop cozy relationships with industry management or trade associations in anticipation of landing a prestige job upon retirement. During these years, few find any need to go out of their way to stand up for our lower-level mariners. Since most Coast Guard officers are college graduates, they are more comfortable in dealing with management personnel at a comparable level and expect these managers to exercise firm control their employees – as in the military. It is this arrogance and their obvious attempts to ingratiate themselves within the industry before leaving the service that mariners most clearly resent. Management in private industry can offer very attractive and lucrative jobs to cooperative and malleable Coast Guard officers on leaving the service. Equally attractive are post-retirement jobs with the Coast Guard.

One Eighth District Commander, allowed his staff to betray many western river pilots by turning the pilotage endorsements they had worked, studied, and paid for over many years into worthless paper. This destroyed the pride of some of the most professional and experienced mariners on the river. When the Admiral retired, he appeared in London at a meeting of the International Maritime Organization as a private citizen representing a “flag-of-convenience” registry. While this may be perfectly “legal” it discredits the Coast Guard officer corps in the eyes of our mariners and should raise eyebrows in Congress.

Mariners also observe that very few Coast Guard officers show any interest in working at sea especially if they must qualify for a merchant marine officer’s license.

ISSUE #31 – WHEN EMPLOYERS SPEAK FOR MARINERS

Discussion: Employers don’t always speak on behalf of the mariners who work for them. Just because employers hire lower-level mariners to crew their boats, many believe that entitles them to speak on behalf of their workers on every matter. While there is usually no reason to challenge employers on most business issues, there are some very distinctive issues where mariners need to make their own voices heard. That is the purpose of our Association and of labor unions as well.

ISSUE #32 – COAST GUARD STATISTICS AND SECURITY GAPS.

Discussion: We question the accuracy of many Coast Guard statistics we have seen. For example, we believe the Coast Guard personal injury statistics are a cruel farce. Also, from 1992 until 2005 the Coast Guard was unable to provide an accurate count of the total number of licensed and documented mariners and ignored repeated FOIA requests for this basic information even those that were finally directed to the Commandant’s personal attention.

At the national level, we believe the Coast Guard does not know how many merchant mariners there really are – aside from those with licenses and merchant mariner documents – who they are, where they reside or where they may be contacted. They have no records of most unlicensed and undocumented mariners who serve on inland waters⁽¹⁾ or mariners working on vessels of less than 100 gross tons working “offshore.”

The Coast Guard rarely check to see which small commercial vessels enter and leave our ports or who are the mariners that crew these vessels, and until recently, whether they are properly licensed or documented. These huge gaps have existed for years. We saw little effort expended to close these gaps after the terrorist attack of Sept. 11, 2001 although, following Hurricanes Katrina and Rita, there is an effort to consolidate and centralize some of this information at a new facility under construction in Martinsburg, WV.

ISSUE #33 – VOLUNTARY GUIDELINES ARE MONUMENTAL WASTES OF TIME AND EFFORT

Discussion: Although the Coast Guard prefers to use persuasion rather than “enforcement” powers, many of their efforts at voluntary compliance left the agency spinning its wheels or accomplished little for the time and effort expended.

Fishing vessels. Trying to improve commercial fishing vessel safety using voluntary means throughout the 1980s involved considerable wasted effort until Congress finally stepped in and demanded action by passing the 1988 Commercial Fishing Industry Vessel Safety Act.

Streamlined Inspection: The Streamlined Inspection Program⁽¹⁾ gobbled up a great deal of administrative resources but a decade later has very few takers. Today, most boat owners now opt for a straight inspection. [⁽¹⁾46 CFR Part 8, Subpart E.]

Towing Industry. The towing industry has been out of control since 1993 as demonstrated by the Bayou Canot, Webbers Falls I-40, Lake Washington, and South Padre Island bridge allision disasters⁽²⁾ that killed scores of

people and cost taxpayers millions of dollars. Spectacular tank barge groundings off Rhode Island, Puerto Rico, and Massachusetts caused regional ecological disasters. Although these and thousands of lesser accidents resulted from a plethora of causes, the simple fact remains that the towing industry still operates with such an inferior set of regulatory standards that it cried out for Congressional attention in 1994 – and a call to inspect all towing vessels.

In the following decade, the Coast Guard allowed the towing industry to regulate itself under AWO's Responsible Carrier Program. Although industry fashioned its commendable "Responsible Carrier Program," it had no enforcement "teeth" and demonstrated clearly that towing vessels needed to be brought under a formal inspection program applicable to all vessels. The Coast Guard leadership took the easy route in 1994 and 1995 and but should have recommended a formal inspection program to Congress at the time.

Commercial Towing Vessel Examination Program. This program, that obviously took a great deal of time, effort, and resources to create, might have had a lasting impact and succeeded in at least ensuring that towing vessels met the limited existing standards if the Coast Guard properly funded it as a national program. However, this was not done.⁽³⁾

Additional documents available on the GCMA website:

- ⁽²⁾GCMA Report #R-293, Towboats and Bridges. A Dangerous Mix
- GCMA Report # R-411, Rev. 4, Congressional Oversight is Necessary to Prevent Continuing Overhead Clearance Accidents.
- ⁽³⁾GCMA Report #R-282. Cooperative Towing Examination Program (CTVEP). Survey of USCG Boardings of Uninspected Towing Vessels.

ISSUE #34 – SPORADIC RELIANCE ON NTSB RECOMMENDATIONS

Discussion: While the Coast Guard apparently disagrees with many NTSB recommendations, it goes overboard on pushing many others. For example, in 1995, the NTSB listed 55 Small Passenger Vessel safety recommendations that were still "open"⁽¹⁾ and had not been resolved. [⁽¹⁾Refer to Report #NTSB/MAR-95/03, Appendix F. Some recommendations were 10 years old and some of NTSB's "Most Wanted" regulations that would protect our mariners showed no signs of Coast Guard acceptance.

Hours of Service. The NTSB called for the implementation of "science-based hours of work" regulations in all transportation modes. This recommendation has languished since 1989 and was virtually rejected by the Coast Guard Chief of Staff a decade later.

Although the Coast Guard research and development laboratory performed commendable "scientific" work on their "crew endurance management" (CEMS) project, our mariners have little confidence in the way that the towing industry in particular plans to manipulate that science to maintain an illusion of legitimacy of the existing but incompatible "two-watch" system. The Coast Guard did little to investigate and confirm the abuses of the 12-hour statutes we reported to them and never demonstrated any real interest in curbing unlimited work-hours used to exploit many unlicensed mariners.

Independence. The NTSB is supposed to be an independent agency. We are alarmed to see the migration of former Coast Guard personnel into the National Transportation Safety Board to investigate accidents involving commercial vessels. We believe the NTSB must remain an independent of the Coast Guard and its inadequate accident investigation system. We further object to the Memorandum of Understanding that restricts NTSB investigations to accidents with six or more fatalities. Many of the vessels manned by our mariners regularly operate with fewer than six crew members. We have little confidence in the quality of Coast Guard accident investigations.⁽²⁾

Preventive Maintenance. We believe the Safety Board was correct in urging the Coast Guard to reconsider requiring operators of inspected small passenger vessels to develop and implement preventive maintenance programs for safety-critical vessel systems, including the hull and the mechanical and electrical systems as stated in Safety Recommendation M-02-5. We further believe that preventive maintenance programs are necessary on all vessels manned by our mariners.⁽³⁾

Additional documents available on the GCMA website:

- ⁽²⁾GCMA Report # R-429, GCMA Report to Congress: How Coast Guard Investigations Adversely Affect Lower Level Mariners.
- ⁽³⁾GCMA Report #R-441, Coast Guard Obstructs Preventive Maintenance – NTSB.

ISSUE #35 – MARINER PARTICIPATION IN FEDERAL ADVISORY COMMITTEES

Discussion: GCMA monitors and participates in three Federal advisory committees, the Towing Safety Advisory Committee (TSAC), the Merchant Marine Personnel Advisory Committee (MERPAC) and the National Offshore Safety Advisory Committee (NOSAC). We encourage our mariners to attend and participate in these

meetings whenever possible.⁽¹⁾

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

It is hard to justify the cost of attending meetings in Washington or other distant cities when mariner issues are shunted aside and seldom resolved. Lower-level mariners are a majority of all U.S. merchant mariners, and without our labor, there would be very little waterborne commerce.

International agreements recognize maritime labor as an equal participant with management and government. This is hard to ascertain on several of the advisory committees which appear to be little more than management forums. Our complaints about the Towing Safety Advisory Committee reached the point where we petitioned Congress for changes.⁽²⁾

We should point out that some mariner representatives appointed to federal advisory committees cannot attend every meeting because they serve aboard ship, are out of the country, or are unable to make arrangements for a timely relief. We believe the Coast Guard needs to make special arrangements for working mariners to allow alternate delegates to represent them at all advisory committee meetings and to contribute to the work of those committees.

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

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report #R-384, Rev. 1, GCMA Encourages Mariners to Attend and Participate in Federal Advisory Committee Meetings.
- ⁽²⁾GCMA Report #R-417, Rev. 1, Report to the 110th Congress: Request for Congressional Oversight on the Towing Safety Advisory Committee.

ISSUE #36 – MISSED OPPORTUNITIES TO ENSURE LABOR PEACE

Discussion: There remains a ground swell of dissatisfaction among towboatmen on the western rivers and Gulf Intracoastal Waterway following the 1998 “Pilots Agree” strike. Pilots Agree was a “grass roots” organization formed by the river pilots that was sought to make specific changes in the industry. In that strike, an estimated 1,400 licensed Masters and Pilots joined the work stoppage for a number of reasons detailed below. Management of 100 affected towing companies refused to negotiate with the striking workers and used their superior financial resources and “union busting” tactics⁽¹⁾ to break the strike

Although GCMA did not exist in 1998, river and inland mariners still carry much of the resentment about how they were treated both by management and the Coast Guard at that time. We receive reports that “blackballing” dissident mariners by some major towing companies continues today.

These remain as some of the unresolved “employment” issues.” Since GCMA is not a union, we cannot bargain on behalf of our mariners – but we can identify issues.

- better pay.
- an opportunity to chose a labor union to represent mariners without employer interference.
- collective bargaining of wages.
- overtime pay for legal overtime work.
- unsafe crew cutbacks outside of federal manning regulations
- comprehensive and portable health and benefit plans for mariners and their family members.
- pension, benefits, vacation pay, sick pay, leave of absence and retirement issues.
- preserve seniority and prevent changes of benefit programs resulting from corporate mergers.
- restore the cooks replaced by microwave ovens on long haul tows.
- consider proper meal planning and the effect of proper nutrition on crew health.
- provide for reasonable grocery budgets on every vessel.
- ending the widespread practice of blackballing (i.e., blacklisting) employees throughout the industry.
- provide sufficient engineroom manning; if only one engineer is on board, he is on call 24 hours per day.
- correct sources of excessive vibration and noise that deprive crew members of their sleep.
- job protection under a contract that prevents unjust firing for refusing to perform unsafe and/or illegal operations.
- eliminate vessel undermanning and “call watches” that interrupt sleep.
- testing drinking water on a regular basis.
- truthful marketing of a vessel’s horsepower to customers will eliminate one source of underpowered tows.
- operating vessels with a safe horsepower to tow tonnage (or barge) ratio reduces stress on pilots and promotes safety.

- recognize that pilots suffer fatigue, stress, strain and a shortened lifespan estimated at only 57 years.
- door to door transportation and travel pay to and from the boat wherever it may be located.
- safe, insured transportation to and from the job site when furnished by the employer.
- tell the truth about the towing industry accident rate statistics.
- companies should fund industry training programs as new equipment and practices are introduced.
- guarantee security of seniority in promotions, lay-offs, rehiring and filling vacancies.
- fixed and written grievance and arbitration procedures.
- reasonable published work rules agreeable to both labor and management.
- stop practices identified as unfair labor practices by the NLRB
- the choice of day-for-day time off.

Following the 1998 work stoppage, management retaliated against many mariners with terminations, demotions, etc. Some of the practices resulted in unfair labor practices that were brought before the National Labor Relations Board by the International Organization of Masters, Mates and Pilots with more than \$414,000 recovered for proven violations against individual mariners.

Mariners widely criticized the Coast Guard for not strictly enforcing existing manning statutes for licensed personnel and allowing towing vessels to operate 24-hour days with only one licensed person on board.

The proposed Employee Free Choice Act, if passed, will be a big step in bringing our mariners the freedom of association in the workplace they should have.

ISSUE #37 – HARD WORK, LONG HOURS, LITTLE APPRECIATION, AND NO RESPECT

Discussion: With the exception of those lower-level mariners who work on ferries and small passenger vessels, the jobs that most lower-level mariners perform have little exposure to the general public. Mariners on the rivers usually work “on the other side” of a levee, often in urban areas. Many mariners working on OSVs work offshore from bases in isolated oil ports served by inadequate public transportation.

Few print or television journalists accurately convey to the public the importance of the work our mariners perform because they are a small and generally unseen part of society. Only a few of our mariners make the headlines and then only if they are blamed for a disaster that affects the public.

Our mariners refuse to take the blame for incidents they have no control over, especially when they are pushed beyond their endurance limits or must cope with the limitations imposed by the equipment they are operating.⁽²⁾ Statements like this one regarding bridge allisions⁽¹⁾ are particularly inflammatory: “Work group members (i.e., “management”) were therefore forced to rely on their own operational experience, judgment, and knowledge of a particular waterway in interpreting the limited information in the Coast Guard casualty reports and classifying (bridge) allisions and mishaps by type and causal factor. With this admittedly significant caveat, the group concluded that 90% of the cases were related to human performance (78% to pilot error and 12% to other operational errors.” [⁽¹⁾Report of the U.S. Coast Guard – American Waterways Operators Bridge Allision Working Group, May 21, 2003]

The Coast Guard has a formidable public information apparatus that releases news of their own exploits to the media.

Additional documents available on the GCMA website:

- GCMA Report #R-340, Rev. 8, Oversize and Overloaded Tows Cause Safety Problems

ISSUE #38 – THE COAST GUARD STILL OVERLOOKS THE “NEWMAN REPORT”⁽¹⁾

Discussion: Thirty-five years ago, the offshore oil industry experienced serious problems when the Eighth Coast Guard District attempted to license mariners working in the offshore oil industry. The Coast Guard assumed that it could administer the same license examinations it used in other parts of the country to mariners in Louisiana. Although this appeared to be reasonable, the Coast Guard’s “one-size fits all” strategy did not fit these mariners. They failed to license enough “Ocean Operators” (now known as 100-ton Masters) to run the offshore industry’s crew boats. Licensing the industry’s supply boat Captains and the numerous tug and towboat operators would prove to be another challenge.

The boat owners, facing an interruption of their operations, called upon Louisiana Senator Russell Long to assist them. As a result of political pressure, the Coast Guard dispatched one of its most senior Captains to “study” the situation and make recommendations. Captain C.T. Newman spent a year studying the industry personnel and preparing the report he delivered to the Commandant in 1973. He reported that the mariners that were preparing for the license exam were good seamen but had very little formal education. As a result, he recommended and the Coast Guard adopted special examinations for “mineral and oil” licenses.

While that “fix” settled things for a number of years, Coast Guard Headquarters conveniently “lost” the 1973 Newman Report and eventually reverted to its “one size fits all” strategy. By 1980, a new Eighth District Commander went on record stating that the educational problems Captain Newman observed were in the past and

that the Coast Guard would move forward. Although he was wrong, the Coast Guard forgot many of the lessons they learned from the Newman Report and continued to make the same mistakes over and over again.

In the 1980s, when the oil boom turned to bust, those with licenses and jobs held on to them. The educational situation remained static through the next ten years of recession but was pushed into the background.

However, then as now, very few mariners who seek lower-level licenses ever attend college. While there may be more high school graduates available today, many license applicants today enter the marine industry without graduating from high school. They come to work and earn a day's pay, and few entertain dreams of attending or graduating from college – in spite of what many educators would like to believe.

Many of our mariners have serious gaps in their formal education and have difficulty reading and comprehending technical or regulatory reading material. Reading tests show that most government regulations are written at the twelfth-grade level. While little can be done about that, it helps to explain why so much that the Coast Guard writes sails over our mariners' heads and why the Coast Guard has never been able to effectively communicate with our mariners.⁽²⁾ This partly explains why so many mariners have trouble completing documents such as a formal license application – a problem that plagued Regional Exam Centers for years. Yet, year after year, Coast Guard officials at Regional Exam Centers deal with the same people and try to extract exactly the same information that they should have computerized long ago. It is aggravating and frustrating for all concerned – and largely a waste of time and energy.

Additional documents available on the GCMA website:

- ⁽¹⁾GCMA Report #R-428-A, Maritime Education & Training for Lower-Level Mariners. The Newman Report.
- ⁽²⁾GCMA Report # R-382, Why Our Mariners Don't Get The Message, [Note: This report is based on a letter we wrote to Coast Guard Headquarters on Dec. 15, 1997.]

ISSUE #39 – INDUSTRY'S TARDY INVESTMENT IN TRAINING ITS MARINERS

Discussion: Until the mid-1990s, most companies that hired licensed or documented lower-level mariners required their mariners to pay for their own training. This was reasonable as long as the cost of training was relatively low – generally under \$1,000. Some companies loaned mariners the cost of tuition and extracted guarantees of repayment that took several forms. However, with the sudden introduction of STCW in 1995, the cost of training sky-rocketed to the point where a \$1,000 lower-level license now costs upwards of \$20,000. In addition, the complexity of license training and assessment grew exponentially and to the point where the red tape involved in obtaining a license dissuaded many applicants. Yet, the Coast Guard never raised a finger to assist our mariners while they continued to crank out endless qualifications for our mariners to meet.

While there were enough credentialed mariners in 1995, any surplus of licensed or documented personnel has vanished today. Only within the past several years have some of the larger companies invested the thousands of dollars it takes to train and license a mariner to the degree the Coast Guard now requires. While some of these "requirements" are driven by international treaty obligations the United States must meet, they also affect the domestic market for which these requirements are overkill and for which there will probably not be enough qualified candidates. Smaller companies simply cannot afford to lay out \$20,000 or more to train a mate or pilot who may or may not stay with them after gaining a license. The Coast Guard placed this burden on both the mariners and their employers without really understanding the industry in which our mariners work. It was one of their more spectacular but inexcusable blunders – and one more reason why they should lose their authority over mariner education, training, and licensing.

Additional documents available on the GCMA website:

- GCMA Report #R-415, Rev. 2, Coast Guard Mis-management of Lower Level Merchant Marine Personnel: Training and Licensing Problems for Towing Vessel Officers.