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**OUTRAGED MARINERS REBUKE COAST GUARD**

*[The following article appeared in the May 2004 edition of [Workboat](#) magazine. We received a number of telephone calls from mariners who read the article and responded to the Coast Guard.]*

**THE ARTICLE**

**Proposal would subject towing vessels to inspection**

By Ken Hocke

The U.S. Coast Guard has proposed legislation that would subject towing vessels to inspection. The move

to change the uninspected vessel designation is supported by the tug, towboat, and barge industry. The proposal was included in a package of recommended legislative changes for fiscal year 2005 sent to the House and Senate by Secretary of Homeland Security Tom Ridge, according to the American Waterways Operators. AWO worked closely with the Coast Guard on the recommendation. Members of the Arlington, VA-based trade association own and operate over 60 percent of the nation's tugs and towboats.

"The industry's safety record is not bad," said Capt. Joseph Brusseau, director of field activities for the USCG Marine Safety, Security and Environmental Protection Directorate, Washington, D.C., "but if you look back a couple of years, there have been some casualties."

Two highly publicized bridge allisions alone over the past three years resulted in the deaths of 22 people.

**[GCMA Comment: Recall also that the AMTRAK accident at Bayou Canot took 47 lives.]**

"There's more visibility when these things occur," said Brusseau. "The time was now to take the next step."

About a year ago, the Coast Guard and AWO sat down to discuss the uninspected vessel designation. After a number of meetings and hours of discussion, the decision was made. "We have a partnership with AWO through its RCP (Responsible Carrier Program)," Brusseau said. "Without them, we would have had to go it alone, and we probably wouldn't have done that."

**[GCMA Comment: When our Association asked the Coast Guard to act, all we ever received was the runaround.]**

"We have to look at it as an evolution," said Jennifer Carpenter, AWO's senior vice-president, government affairs and policy analysis. "The uninspected label is not helpful to our industry."

If the proposed legislation becomes law, the Coast Guard would require all towing vessels to implement a safety management system that specifies which regulations companies would have to satisfy in order to receive a COI (Certificate of Inspection).

In 2000, the National Transportation Safety Board issued a report on the 1998 accident involving a tow pushed by the towboat *Anne Holly* that collided with the Eads Bridge over the Mississippi River in St. Louis that caused \$11 million in damages. In the report, the NTSB recommended that all towing vessels implement a safety management system.

"This proposal is an idea whose time has come," Craig Philip, AWO's chairman of the board and CEO of Ingram Barge Co., said in a prepared statement. "It would extend safety, security and environmental protection benefits to the entire towing system, while drawing on private sector and corporate resources for implementing and auditing system."

Because Coast Guard personnel will have additional responsibilities once the Maritime Transportation Security Act (MTSA) takes effect in July, a third party auditor will likely handle the new inspections, which would probably be carried out every three years. "Third party auditing would be the way to go," said Brusseau.

But that doesn't mean the Coast Guard won't have a presence. The MTSA makes it mandatory for Coast Guard personnel to board each inland towboat annually to make sure that the vessel's maritime security plans being followed. While there, Coast Guard personnel can report any violations of the safety management plan. "We wouldn't do a full audit," said Brusseau, "but we might say 'Can we see the minutes of your last safety meeting?'"

Brusseau expects that it will take one to two years to develop and put the inspection program into place.

"We've continued to raise the bar," said Carpenter, "and the reaction we've gotten so far has been very positive."

## **THE GCMA REBUKE**

*[On June 18, 2004, GCMA addressed the following letter to Captain Joseph Brusseau (G-MO) at United States Coast Guard Headquarters in Washington.]*

Subject: Towing Vessel Inspection

Dear Captain Brusseau,

I recently read the attached article in the May Issue of WorkBoat magazine [**Enclosure #1**] that attributes a

number of remarks to you. On behalf of our Association, I take sharp exception to several of the remarks attributed to you in the article.

First of all, you say that "The industry's safety record is not bad." In fact, the towing industry's safety record is not only bad, it is atrocious! I believe you have been seriously misinformed and that your statements in WorkBoat would have seriously misinformed the public if they had appeared outside a trade publication whose readers know they are patently ridiculous. I have been inundated with calls from mariners over the past month! Therefore, I direct your attention to:

- GCMA Report #R-340, [**Enclosure #2**] pages 5 & 6 under the subtitles "Inland Maritime Must Prove Risk Management"; "A Year Later." and "District Commander Gives Industry Questions to Consider." These are three published articles from the Waterways Journal citing business and Coast Guard leaders that do not speak well of the towing industry's overall safety record.
- GCMA Report #R-351 [**Enclosure #3**] that is a copy of an internal government report from 1994 provided to the Towing Safety Advisory Committee.
- The USCG/AWO Quality Action Team report of May 2003 on Bridge Allisions that reported 2,692 bridge allisions between 1992-2001. In that report, the sheer number of accidents is startling. GCMA also published a bridge allision report (GCMA Report #R-293) [**Enclosure #4**] shortly after the Webbers Falls accident that reports a number of accidents in depth and was widely circulated in Headquarters and throughout the Eighth District and industry.
- GCMA recently requested a full report on all towing vessel sinkings from 1992 to present – a subject that the Coast Guard has not examined in depth in the past decade to the best of our knowledge.

Second, you state that: "About a year ago, the Coast Guard and AWO sat down to discuss the uninspected vessel designation. I am sure you had a very pleasant bilateral conversation. However, the article does not mention that you ever invited representatives of any working mariners – the helpless victims of the Coast Guard's inept superintendence of the towing industry since 1972.

Frankly, you made a incredible error in your failure to consider the issues of importance to working mariners as this the tripartite representation of business, labor and government is the cornerstone of maritime regulation throughout the world. Even if GCMA is in faraway Louisiana, you will find a number of maritime labor unions in the nearby Washington area that are concerned about these issues. Since you did not invite them into your discussions, may I suggest you contact:

- The International Organization of Masters, Mates and Pilots. (Baltimore)
- Marine Engineers Beneficial Association (Washington)
- Inlandboatmens Union, ILWU (Washington)
- American Maritime Officers (Washington)
- Local 333, ILA (New York)
- Local 25, Operating Engineers (NY-NJ)

The Gulf Coast Mariners Association working through the Towing Safety Advisory Committee formally requested that the Coast Guard inspect towing vessels in 2000. Our Association discussed the matter in a number of TSAC meetings, presented GCMA Report #R-276 [**Enclosure #5**] in 2000 and revised and updated the report 7 times since then. In fact, it was GCMA that first requested the Coast Guard initiate a Legislative Change Proposal on behalf of the working mariners you superintend. Captain Brown (G-MSO) informed us that the Coast Guard did not have the authority to inspect towing vessels. He was skeptical that a LCP would be practical and suggested that we could approach Congress directly. We followed this advice immediately and made a direct appeal to Congress. Although the impetus came from us, in the article, you appear to be uninformed about our work on this project. This letter will fill in these gaps.

The steps that the Coast Guard was unwilling to consider taking on behalf of 30,000 working mariners on 5,200 uninspected towing vessels, they appear to be more than willing to take for a group of vessel owners (AWO). We believe the problem at Coast Guard Headquarters goes much deeper than the Coast Guard's right hand's ignorance of what its left hand is doing. The way the Coast Guard has dealt with our "lower-level" working mariners is nothing short of reprehensible.

Third, your statement that, "Third party auditing would be the way to go" may well satisfy the American Waterways Operators, but their Association represents less than 200 of the 1,100 to 1,300 companies that own uninspected towing vessels. In vigorous defense of AWO, their members may well represent the "safer" companies that our mariners work for because of their dedication to the Responsible Carrier Program. The RCP itself is no small achievement in today's unregulated towing industry. It is this abysmal lack of regulation that the Coast Guard and especially former Commandant Robert Kramek aided and abetted in his report of August 8, 1994 titled Towing Vessel Studies submitted to the Secretary of Transportation that discouraged towing vessel inspection. As you can see, we have now come full circle!

GCMA has also shown in books provided to each TSAC member in San Francisco on March 13-14, 2002 and in Headquarters' TSAC files that the RCP is in no way equivalent in scope or depth to regulations in 46 CFR Subchapters T, K or L that govern vessels of comparable size and horsepower. It is our mariners that suffer from this failure to provide adequate and timely safety regulations.

Our Association recommends 1) direct Coast Guard inspection, or 2) a program equivalent to the Streamlined Inspection Program, or 3) an alternative inspection program by classification societies approved by the Commandant under 46 CFR Part 8. While the "third party auditing" is part of the AWO's Responsible Carrier Program, it is not currently accepted as a legal substitute for inspection. If the law is ever changed to permit it, we probably would not oppose such a program as long as there were suitable safeguards provided by statute and regulation.

I have attended a number of TSAC meetings in the past decade. To the best of my knowledge and belief, I have never met you or even seen you attend one of these Federal advisory committee meetings. With your apparent ignorance of the issues as displayed in the WorkBoat article cited above, I wonder why it has fallen upon you to become arbiter of the issue of towboat inspection that is so critical to the lives of almost 30,000 mariners. This really scares me!

This also leads me to question why the Coast Guard has not provided a role for TSAC in this matter. I brought up the matter of towing vessel inspection at the March 2004 TSAC meeting only after learning about it only a few days earlier. After the magazine article indicates that your office and the AWO crafted the proposed legislation submitted by Secretary Ridge to the House and Senate, I question whether the Coast Guard considers the Congressionally-authorized TSAC committee as only a debating club since projects of this kind are much more easily concocted in bilateral meetings in Washington-based industry trade associations where the inconvenience of mariner opinions is easily bypassed.

**Freedom of Information Act Request: GCMA requests:**

- 1. A copy of the proposed legislation submitted by Secretary Tom Ridge to Congress.**
- 2. A copy of all correspondence on this subject submitted by the Coast Guard to Secretary Ridge.**
- 3. A copy of the minutes or tape recordings of any/all meetings between you, your staff and the American Waterways Operators on this subject and any working documents used in these meetings.**

While I am sure that you, Sir, have an impressive Coast Guard record, probably with several college degrees; what I have no knowledge of is whether you have ever worked a day or even spent a day on a commercial towing vessel. I would like to determine what your position in the Coast Guard organization is so that your name became central in the WorkBoat magazine article. A copy of your curriculum vitae might allay our fears that you are not particularly knowledgeable of towing vessel issues.

We would like to point out that the issue of inspecting towing vessels goes far deeper than Ms. Jennifer Carpenter's statement that, "The uninspected label is not helpful to our industry." While I agree with her statement completely and have enjoyed the opportunity of working with her on several occasions, OUR ASSOCIATION is struggling for equal treatment of our mariners under the law. We seek nothing more than the same treatment that other "lower-level" mariners who work on inspected vessels like small passenger vessels and offshore supply vessels of comparable size and horsepower currently receive under the law and regulations. Our position on these issues is spelled out unequivocally in GCMA Report #R-276. Our cause is bigger than any one person and will not be sidetracked by partisan issues.

May I suggest, Sir, that unless you and others working on the towing vessel inspection project share these core beliefs – as supported by almost 50 years of Coast Guard success in inspecting "T-boats" – that you

will do a great disservice to the mariners who work on these vessels by listening to only one side of this issue.

Please inform Admiral Collins and Admiral Gilmour of our views on this matter.

Very truly yours,

Richard A. Block,

Master #1014425, Issue #8,

Secretary, GCMA.

### VERIFYING VESSEL SECURITY PLANS: WHAT YOU NEED TO KNOW

*[Source: Edited from an article in the July 6, 2004 issue of the [Waterways Journal](#) by Commander Suzanne Englebert, USCG. CDR Englebert is presently the Commanding Officer of the St. Louis Marine Safety Office and served on the Headquarters staff that prepared the new "security" regulations. [GCMA added emphasis by underlining.](#)]*

As July approaches, the Coast Guard has begun a "full court press" to verify security plans on our U.S. fleet.

The security requirements, put in place through the Maritime Transportation Security Act (MTSA), must be implemented by July 1. The requirements, found in 33 Code of Federal Regulations parts 101 through 106, have been discussed and incorporated into many organizations within the past year. Alternative Security Programs (ASPs) have been put into place to meet the requirements for those companies that chose to use them.

**[GCMA Comment: The American Waterways Operators created an Alternative Security Program that was adopted by many towing companies.]**

So now, with the deadline looming, the question seems to be: "What will the Coast Guard look for after July 1?" The short answer: we will look for full compliance with the requirements. The longer answer: our boarding officers and commercial vessel inspectors will ask key questions and oversee on-the-spot drills as needed to verify that your Vessel Security Plan (VSP) works. The nuts and bolts look something like this:

#### Who will the Coast Guard be conducting verifications on?

- Vessels whose plans have been approved by Marine Safety Center.
- Vessels operating under Alternative Security Programs.
- We will also be double-checking information on:
  - Public Access Facilities designated in the Area Maritime Security Plan(s);
  - Facilities regulated under 33 CFR parts 105 or 106;
  - Remote or isolated facilities to verify that they meet 33 CFR 105.105(c)(5);
  - General shipyard facilities; and
  - Facilities that receive only vessels to be laid-up, dismantled, or otherwise placed out of commission.

#### How will these verifications be conducted?

We will focus on maximizing our coordination with the Company Security Officers (CSO) to: facilitate the inspections, expedite inspections of vessel fleets, and identify any fleet-wide issues.

Prior to July 1, we will conduct a review of your security provisions with any other applicable safety inspection (Certificate of Inspection [COI] or annual facility exam), to align the inspections as much as practicable. If a vessel does not have the plan implemented at the re-inspection or COI, we will still issue a COI. If a vessel does have the Vessel Security Plan (VSP) implemented, even if the plan has not yet been approved, we will conduct a verification exam to assess the VSP's implementation. In most cases, you can anticipate that the verifications will be done by a team of personnel qualified for the type of inspection being conducted rather than a lone inspector. This is being done to expedite the inspections, maximize the number of Coast Guard personnel familiar with the facility/vessel, and assist in future Maritime Security

(MARSEC) verification operations.

### **What will these verifications include?**

We will start with a review of the appropriate documentation; make sure you have copies of your Vessel Security Plan (VSP) or Alternate Security Program (ASP), your approval letter, and your vessel-specific assessment report. We will also check for designations of Vessel Security Officer (VSO) and Company Security Officer (CSO): Who are they? Do you have appropriate contact information for them?

Then we will check your communications and ask your Vessel Security Officer (VSO) to explain how you will contact outside agencies (external), the vessel crew (internal), and if any special protocols are used, (e.g. code words, specific channels, phone numbers, unique areas of operation where alternate communications must be used due to poor radio or cell phone coverage.) We will also check to make sure any other crewmembers with security duties know your communication protocols.

Next we will query personnel on their knowledge and duties related to the safety and security of the vessel, including their actions at the higher MARSEC levels, how they would handle a security incident, and what security measures they have in place for access control, cargo handling, and reporting. We will look for records that show training or drills that have been done.

You can expect the teams to initiate a security drill or, at the very least, ask the Vessel Security Officer (VSO) and crew to explain how the crew/personnel should react to a given scenario based on their plan.

We will also ask the Vessel Security Officer (VSO) to explain how they balance their security duties with any other duties they have and how they share duties with the Company Security Officers (CSO).

Now we will look at your vessel operations – asking the Vessel Security Officer (VSO) and crew information on where you tie up, fleet, or typically operate. If you use public-access facilities, we will check to ensure they are approved. If not, you will not be allowed to use them. If you tie up at facilities, we will ask you if you have any special operational arrangements with the facility. If you have non-operational periods, we will discuss vessel security arrangements for these periods.

Finally, we will conduct a examination of the vessel, looking at both safety and security items. We will be comparing what is in the Alternate Security Program (ASP) or approved Vessel Security Plan (VSP) with what is actually in place on vessel. We will pay particular attention to those critical processes identified in the Vessel Security Plan (VSP) as well as the vessel-specific assessment reports. If security equipment is installed, we will ask to see your maintenance and testing records and may ask for a demonstration of the equipment by the crewmembers that are designated to use it. As appropriate, the teams will also conduct safety inspections.

### **What happens once these verifications are done?**

We will discuss the verification results with the Vessel Security Officer (VSO) and the Company Security Officer (if the CSO is present) and leave a copy of the inspection report form with the Vessel Security Officer (VSO).

If your implementation of the Vessel Security Plan (VSP) does not address the security requirements, a Captain of the Port (COTP) Order may be issued restricting your vessel operation until you can correct the deficiencies.

To ensure other Captains of the Port (COTP) are aware of the verification and its results, we will enter a report into the Coast Guard database. If necessary, a follow-up visit will be scheduled to clear any outstanding issues.

### **When can we anticipate these verifications?**

Currently we are reviewing these requirements with vessel operators as we conduct routine safety inspections or boardings. After July 1, we will focus on full compliance with approved Vessel Security Plans (VSP). You can expect checks to be done during routine boardings, during safety inspections, during random compliance checks, in conjunction with Company Security Officer (CSO) or company inspections, when MARSEC levels change, or whenever the Coast Guard comes aboard your vessel.

Verifying that your vessel security plan meets the security requirements and continues to be effective under your watchful eye as a maritime professional is extremely important to the protection of our nation's maritime transportation system. The Coast Guard is committed to assisting you to meet these requirements

by July 1. If you need further guidance or assistance, please log onto [www.uscg.mil/hg/g-m/mp/mtsa.shtml](http://www.uscg.mil/hg/g-m/mp/mtsa.shtml) or contact our MTSA help desk at 877- 687-2243.



## CONGRESS RESPONDS TO MARINER APPEALS

"Vox clamantis in deserto"...is a Latin phrase that, freely translated, means "a voice crying in the wilderness." Needless to say, and mariners need to be reminded that a voice that cries out in the wilderness is seldom heard.

In 1999, this was the situation that most "lower-level" mariners found themselves in, a situation in which they did not have an effective voice to tell their side of the story.

In April 1999, our mariners were given an important gift, the gift of "opportunity." Four major maritime unions joined together under the banner of the AFL-CIO to form the Gulf Coast Mariners Association that declared itself to be, "The Voice for Mariners."

However, GCMA was not destined to become a "vox clamantis in deserto." With the help and mentoring of the staff we formed our Association (not a union), drew up our by-laws, elected a Board of Directors and learned the basics of how to speak for and effectively represent our mariners.

Since the maritime industry is controlled by laws and regulations drafted in Washington, it was only natural that much of our attention should focus on the nation's capital. The maritime unions supported many of our GCMA members while they attended meetings of the three Federal advisory committees that directly affect our mariners, namely TSAC, MERPAC and NOSAC. It is through these committees that the Coast Guard, the Executive Branch agency that is the principal regulator of the maritime industry, is supposed to hear our voice.

It was clear that these committees had other agendas and that we were "the new kids on the block." For any voice to be effective it must have something meaningful to say. The most practical advice our Directors received came from former Louisiana State Senator Dr. Mike Robichaux was to "leave a paper trail." Whatever you have to say, put it in writing.

Our first basic document was a document containing 58 "mariner letters", many of them handwritten, describing the life of mariners in the towing and offshore oil sectors of the marine industry. The most powerful points about the contents of this book was that they were true – no matter how much the industry wanted to deny them.

The History of GCMA to this point has been to outline the problems that face "lower-level" mariners and to seek solutions to these problems. In doing this, we have worked with the Coast Guard wherever possible, and when they have been less than helpful, we approached Congress directly. GCMA Report #R-350 represented our first formal appeal to Congress on a number of our most pressing problems. GCMA Report #R-395 was our most recent direct appeal to establish adequate drinking water standards on vessels crewed by our mariners.

The Coast Guard is an Executive Branch agency. Congress exercises oversight authority over the Coast Guard and the nation's marine industry. The Coast Guard's authority comes from Congress.

Congress is composed of the U.S. House of Representatives and the U.S. Senate. Both legislative bodies must agree on any piece of legislation before it is presented to the President to be signed into law. To reach an agreement the House and Senate hold a conference. On July 20, 2004 Conference Report #108-617 was printed as the Coast Guard and Maritime Transportation Act of 2004. By a vote of 425 to 1, the House overwhelmingly adopted MTSA-2004; although it is unclear when the Senate will vote on the bill (H.R. 2443) a prominent law firm reports that eventual passage is highly probable. The Conference Report covers

99 pages and hundreds of items. "Plain reading" of parts of the Conference Report clearly shows that Congress heard our mariners' voice and balanced what they have heard against all of their other priorities in the national interest. Here is some of the wording taken from the conference report.

#### **SEC. 415. Inspection Of Towing Vessels.**

(a) VESSELS SUBJECT TO INSPECTION.— Section 3301 of title 46, United States Code, is amended by adding at the end the following:

“(15) towing vessels.”

[GCMA Comment: This means all towing vessels will be subject to USCG inspection standards after inspection regulations are drafted and pass through the rulemaking process. This won't happen tomorrow, but it will happen.]

[GCMA Comment: This settles the matter brought up in the Supreme Court's Mallard Bay Drilling decision (2000) that the Coast Guard rather than OSHA will regulate towing vessels. Refer to GCMA Report #300.]

[GCMA Comment: To quote from the explanation of §415 of the Conference Report: "Section 3306 of Title 46 details the items to be regulated...to secure the safety of individuals and property on board the vessel. This includes design, construction, alteration and repair of the superstructures, hulls, fittings, equipment appliances, propulsion equipment, machinery, lifesaving equipment, firefighting equipment, and vessel stores and other supplies of a dangerous nature.]

(b) SAFETY MANAGEMENT SYSTEM.— Section 3306 of chapter 33 of title 46, United States Code, is amended by adding at the end the following:

“(j) The Secretary may establish by regulation a safety management system appropriate for the characteristics, methods of operation, and nature of service of towing vessels.”

[GCMA Comment: The objectives of a safety management system is to ensure safety at sea, prevent injury and loss of life, and avoid damage to the environment and property by addressing safety as the most important matter both ashore and afloat.]

[GCMA Comment: To quote from the explanation of §415 of the Conference Report: "The Coast Guard may enforce the plan through audits of the vessel's logs and vessel operator records..."]

#### **SEC. 409. Hours Of Service On Towing Vessels.**

(a) REGULATIONS – Section 8904 of title 46, United States Code, is amended by adding at the end of the following:

“(c) The Secretary may prescribe by regulation requirements for maximum hours of service (including recording and recordkeeping of that service) of individuals engaged on a towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding the sheer).”

[GCMA Comment: We reaffirm that our Association's first priority was to establish meaningful logbook standards ("recordkeeping") to protect our mariners in GCMA Report #R-291.]

(b) DEMONSTRATION PROJECT. – Prior to prescribing regulations under this section the Secretary shall conduct and report to the Congress on the results of a demonstration project involving the implementation of Crew Endurance Management Systems on towing vessels.

The report shall include a description of the public and private sector resources needed to enable implementation of Crew Endurance Management Systems on all United States-flag towing vessels.

[GCMA Comment: We encourage crew endurance management training but caution that this training is not a substitute for requiring adequate manning levels by regulation.]

#### **SEC. 416. Potable Water.**

(a) IN GENERAL – Section 3305(a) of title 46, United States Code, is amended—

(1) by redesignating paragraphs (4) and (5) in order as paragraphs (5) and (6); and (2) by inserting after paragraph (3) the following:

“(4) has an adequate supply of potable water for drinking and washing by passengers and crew;”.

(b) ADEQUACY DETERMINATION.— Section 3305(a) of title 46, United States Code, as amended by subsection (a), is further amended—

(1) by inserting “(1)” after “(a)”;

(2) by redesignating paragraphs (1) through (6) as subparagraphs (A) through (F), respectively; and

(3) by adding at the end the following:

“(2) In determining the adequacy of the supply of potable water under paragraph (1)(D), the Secretary shall consider—

“(A) the size and type of vessel;

“(B) the number of passengers or crew on board;

“(C) the duration and routing of voyages; and

“(D) guidelines for potable water recommended by the Centers for Disease Control and Prevention and the Public Health Service.”

**[GCMA Comment: Refer to GCMA Report #R-395 for details of the problems this change addresses.]**

### **100 YEAR ANNIVERSARY OF A HORRIFIC U.S. MARITIME DISASTER**

*[Source: IOMM&P Wheelhouse Weekly]*

While the 60th anniversary of the D-Day invasion on June 6, 1944 is now one of America's best-known maritime operations, there is another anniversary that is now being observed on June 15 that is far less known but has had a greater effect on the U.S. maritime community. It is the 100-year anniversary of one of this country's worst maritime disasters.

On June 15, 1904, shortly after getting underway on New York City's East River, the steamship GENERAL SLOCUM caught fire, burned, and eventually sank, killing 1021 people. During the accident, hoses used fight the fire burst under the pressure of the fire main because of their poor condition, and life preservers were in such bad condition that they actually contributed to the death of many who wore them.

As tragic as it was, it was not the first steam-powered vessel to burn in New York that held great implications for the maritime industry. In fact, the International Organization of Masters, Mates and Pilots (IOMM&P) traces its beginnings to another tragic turning of the steamboat in during the month of June in New York Harbor.

On June 28, 1880, the 612-ton, 230-foot side-wheeler SEAWANAKA, under the command of Capt. Charles P. Smith, suffered an explosion in the boiler room; an event not uncommon in the early days of steam-powered vessels. As flames spread rapidly through the wooden-hulled boat, Capt. Smith was faced with few options in the narrow Hell Gate channel. He stayed at the helm and was burned by the flames while taking the boat aground in shallow waters where passengers could safely escape the burning vessel.

While there were lives lost, it was only among those passengers who panicked and jumped while the ship was underway. No lives were lost among the passengers on the SEAWANHAKA after Capt. Smith had her grounded.

Ultimately, Capt. Smith was recognized for his heroism in handling of the situation, but he was first scapegoated, stated Frank Braynard, maritime historian and curator of the American Merchant Marine Museum at Kings Point, NY. "Eventually he was cleared of any wrongdoing, but his shabby treatment, especially since the evidence indicated that he had risked his life, so outraged his colleagues, other pilots and captains that they formed a committee. That committee was the genesis of the International Organization of Masters, Mates & Pilots."

These tragedies revealed the continuing need for on-going safety programs designed to protect workers in the maritime trades. The MM&P has worked to secure and protect the rights and working conditions of members and of all persons who work in the seagoing maritime industry.

The MM&P also works closely with the U.S. Coast Guard and with U.S. port commissions to establish safe vessel traffic standards to safeguard the environment, life and property. The result has been expanding maritime safety system of oversight that now ranks among the world's finest.

[GCMA Comment: GCMA file #M-462 contains a transcript of the hearing of the fire that consumed the GENERAL SLOCUM.]

[GCMA Comment: We are focusing our efforts to convince Congress to bring the nation's 5,200 uninspected towing vessels under inspection so that mariners serving on these vessels are protected by the same laws and regulations that govern other commercial vessels of comparable size and horsepower. We appreciate the support of our nation's maritime unions in this endeavor.]

## STABILITY PROBLEMS CAUSE TOWBOAT TO CAPSIZE IN BAYOU SORRELL LOCKS

[**Source:** Edited from USCG incident and investigation activity #1837105 & 1881881 as redacted. GCMA File #M-424.]

### INCIDENT BRIEF

On July 5, 2003, the 65 foot, 1,400 hp, diesel-powered uninspected towing vessel (UTV) FAITH was northbound on the Intercoastal Waterway pushing ahead four loaded open hopper barges. The operator of the UTV FAITH was Mr. ■■■. <sup>(1)</sup> [Identified as Captain Eric Bennet of New Orleans in the July 14, 2003 issue of the Waterways Journal.]

At approximately 2330, while transiting back through the Bayou Sorrell Locks light-boat, the UTV FAITH capsized and sank inside the Bayou Sorrell Locks. As a result of the incident the operator of the UTV FAITH sustained serious injuries (i.e., a crushed forearm) while abandoning ship. MSU Baton Rouge investigators were unable to determine the apparent cause of the sinking.

### FACTS

On July 5, 2003, the UTV FAITH was northbound on the Intercoastal Waterway pushing four loaded hopper barges. Before entering the Bayou Sorrell Locks, the UTV FAITH secured two of its barges to the buoys outside of the lock since the lock is only large enough to hold two barges at a time. After pushing two of its barges north through the locks, the UTV FAITH prepared to transit south through the locks, light-boat, to pick up the two remaining barges.

After the UTV FAITH separated from its tow, some of the crew and the Lockmaster noticed the boat listing slightly to its port side.

The UTV FAITH entered the Bayou Sorrell Locks behind the UTV THERESA B that was pushing two barges. The Bayou Sorrell Lock is 800 feet in length and 56 feet wide. The UTV FAITH then positioned itself off of the starboard side of the UTV THERESA B.

The Lockmaster opened the south gates of the Locks and the UTV THERESA B started to push its barges forward out of the locks. As the UTV THERESA B moved forward the UTV FAITH started to roll to port.

The master noticed the UTV FAITH listing to port and sent his deckhands to the engine room to investigate. The deckhands noticed water up to the deck plates in the port side of the engine room. One crewmember states in his witness statement that he saw bubbles coming from under the port generator. The deckhands then attempted to set up a pump for dewatering but the UTV FAITH was rolling to its port side too fast.

When the UTV FAITH was listing approximately 45 degrees to port, the master ordered the crew to abandon ship. All of the deckhands climbed onto the lock walls to safety. While abandoning ship the Master jumped onto the deck of the UTV THERESA B and fell.

The master was lying on the deck when the UTV FAITH rolled onto the UTV THERESA B crushing his left arm. The trip pilot, was inside of the UTV FAITH when it rolled and was trapped in the wheelhouse until one of the windows was blown out from the water pressure. Personnel working at the Bayou Sorrell Locks and crewmembers aboard the UTV THERESA B helped to rescue the crew of the UTV FAITH.

The UTV FAITH rolled to port and sank in the Bayou Sorrell Locks at approximately 2315. As it did so, it discharged approximately 3,000 gallons of diesel oil into the water after sinking.

Acadian Air-Med was called for the master and he was flown to the hospital and **later had his lower left arm amputated.** Due to the extent of his injuries and the pain medications he was given, drug and alcohol testing was not completed on him.

Salvage operations for the barges began on July 6, 2003 by Big River Salvage. The towboat was righted and re-floated late on July 9, 2003 and taken out of the south end of the locks and readied for its voyage to dry dock in Morgan City, Louisiana. When the vessel was righted and re-floated, pumps were on standby for immediate deployment anticipating flooding. However, the vessel did not take on any water when it was re-floated.

On July 10, 2003 two Coast Guard Inspectors boarded the UTV FAITH at the locks and checked all of the accessible voids and spaces and the position of all of the valves. Coast Guard Inspectors were not able to test the vessels engines for leaks because the engines were not operable once the boat was re-floated. Coast Guard Inspectors did not find any damage or breaches in the vessels watertight envelope.

On July 11, 2003, two Coast Guard inspectors conducted a thorough inspection of the vessel immediately after it was placed on dry-dock in Morgan City, LA. No hull damage or breeches in the watertight envelope were detected with the exception of a fracture located in the aft starboard rudder post void. A thorough examination of the hull plate under the port generator where the deckhand reported seeing bubbles did not reveal any damage or source for the reported bubbles.

Coast Guard Inspectors noticed that the scum line on the stern of the UTV FAITH indicated that the vessel had had a slight list to port for some time prior to the incident. Coast Guard investigators were unable to determine a precise cause for the vessel sinking.

### CONTRIBUTING FACTORS

- Improper rounds of the engine room by the deckhands aboard the UTV FAITH. Proper rounds might have noticed water in the engine room earlier.
- The aft starboard rudder post void of the UTV FAITH was flooded due to a crack in the rudder housing and an adjoining void on the opposite side was flooded to counterbalance the flooded stern void (see illustration). There are four watertight voids under the vessel's stern aft of the engine room. These voids are very small in comparison to the size/volume of the other voids on the vessel.

### POSSIBLE CONTRIBUTING FACTORS

- Crewmembers reported a possible inoperable bilge pump and check valve on the port side. However, when the vessel was righted and re-floated the bilge pump was operable.
- Wheel wash from the UTV THERESA B against the hull of the UTV FAITH. It is possible that the wheel wash from the UTV THERESA B. was directed towards the port quarter of the UTV FAITH. The force of the wheel wash may have contributed to the vessel rolling towards its port side.
- As soon as the vessel started to roll to port all of the loose gear (including washer, dryer and refrigerator) slid to the port side changing the vessels center of gravity."
- Once the towboat was righted and re-floated Coast Guard Inspectors observed the shaft packing on the port side of the vessel leaking. The leak was approximately one-quarter inch in diameter. The shaft packing on the starboard side had a slow drip.
- The valve between the port and starboard fuel tank was in the open position. This would allow the fuel to flow freely between the tanks. Once the vessel started to list to port the fuel would flow to the port side changing the vessel's center of gravity. Coast Guard Inspectors noted that after the towboat was righted that the throttle controls were situated in a configuration that would show that the vessel was turning to starboard at the time of the incident. It is a possibility that the UTV FAITH became pinched between the UTV THERESA B. and the lock wall causing the vessel to roll to port.
- A leak in the one of the towboat's diesel engines cooling system could have caused the vessel to take on water. Unfortunately Coast Guard inspectors were not able to test the vessels engines for leaks because they were not operable once the boat was re-floated.

### CONCLUSIONS

After inspecting the towboat after it was righted and after it was placed on dry dock Coast Guard investigators were unable to determine a precise cause for the vessel sinking. Coast Guard investigators believe that a chain of events including one or more of the contributing and possible contributing factors lead to the sinking in the Bayou Sorrell Locks.

In their opinion there was probably a considerable amount of water in the vessel's bilge's before the incident. Deckhands reported seeing water in the engineroom after the boat started to list to port. Investigators were unable to locate any breeches in the watertight envelope to account for the water in the engine room (i.e. flooding).

As soon as the vessel started to roll to port all of the loose gear (including washer, dryer and refrigerator) slid to the port side changing the vessels center of gravity. This combined with the free surface effect of the water in the engineroom and the fuel in the fuel tanks aided in rolling the vessel.

The Bayou Sorrell lock was closed for approximately 4 days at an estimated cost of \$150,000 per day for marine traffic. The waiting time at the Algiers locks increased from approximately 3 to 4 hours to 18 to 20 hours as traffic was diverted from the Morgan City – Port Allen alternate waterway. The property damage estimate for the vessel was estimated at \$150,000.

### GCMA CONSIDERS POSSIBLE ROOT CAUSES OF THIS ACCIDENT

1. The Coast Guard report does not comment further on the partial amputation of the Captain's arm, his pain, suffering and disability as a result of the accident. Since mariners are not covered by Workmen's Compensation, it will be up to the towing company's or its insurer either to settle with the Captain or for the Captain to file a lawsuit and take his chances in court. Since he is not a GCMA member, we can only hope that someone is looking out for the mariner!

2. The Coast Guard has no regulations that govern the training of "engineers" on the nation's uninspected towing vessels or even requiring a "designated engineer" (i.e., someone assigned solely to take care of the engineroom) aboard a towing vessel. In fact, deckhands on many of the nation's 5,200 uninspected towing vessels are also assigned "engineer" duties with questionable if any additional training in how to take care of all of the equipment propulsion, electrical, compressed air, and hydraulic-powered equipment in the engineroom. In this accident, the timely operation of engineroom bilge pumping equipment, the decision to flood a void space to counteract the effect of a leaking rudder post instead of repairing it, the apparent installation and use of a fuel tank sluice valve were items that required the attention of a person assigned to and trained in engineroom duties.

[GCMA Action: GCMA invites our readers to participate in Project #R-401 announced in this newsletter to explore the status of engineers on towing vessels today.]

3. It is clear that this towing vessel had (and possibly still has) a significant stability problem. If it still has a problem, the mariners serving on it today may still be at risk.

**GCMA Report #R-276**, Item #4 makes several observations about stability: GCMA submitted this report to Congress for its consideration in the future inspection of towing vessels:

"Unlike inspected vessels, uninspected towing vessels have no regulations that require stability testing and do not have to meet rigorous stability requirements that other vessels do. Some towing vessel owners added raised pilothouses and made other major structural conversions without having the vessel undergo a basic stability review by a naval architect.<sup>(1)</sup> [<sup>(1)</sup>If the UTV FAITH was an inspected vessel, the Coast Guard would have to approve any major change made to the vessel and could order it to undergo a stability test.]

"Unlike inspected vessels, the Coast Guard is not required to and does not issue a stability letter, stability booklet or other stability advice to most uninspected towing vessel officers. Nor are towing vessel officers tested on basic stability issues."

**GCMA Report #R-276**, Item #15 makes these further observations about stability on towing vessels:

"On an uninspected towing vessel, a crane (or an elevated pilothouse) may be installed or operated without calculating or even understanding the effects of its use on vessel stability. There is no assurance that a suitably trained person will be used as a crane operator. Coast Guard examinations<sup>(1)</sup> do not test towing vessel officers on ship stability topics. This leads to situations where licensed officers may not recognize signs of instability on the towing vessel and, thereby place the crew at risk. In addition, they may not recognize, recognize or question the instability of a tow they are required to move."<sup>(2)</sup> [<sup>(1)</sup>Refer to 46 CFR 10.910-2, columns 10, 11, 12. <sup>(2)</sup>An example of this type of accident was the capsizing of the UTV HARBOR MASTER (below).]

We are concerned that the Coast Guard did not require the owner of the UTV FAITH to have a naval

architect perform a stability test on the vessel in the shipyard after they were unable to make a positive statement as to why the vessel sank. Of course, there are no regulations that require a towing vessel to pass a stability test – and that’s the rub. This points to another instance of where our mariners are not adequately protected by current Coast Guard regulations! That’s why GCMA has asked Congress to help.

### ANOTHER TOWING VESSEL CAPSIZES

*[Source: USCG Incident Report, MISLE Activity #75452, USCG MSO Morgan City, LA.]*

"On August 22, 2001, the M/V HARBOR MASTER was pushing two compressor barges SUARD 203 and SUARD 204. The HARBOR MASTER was transiting westbound at mile 23 on the Gulf Intracoastal Waterway (GIWW) when the (barges) began listing to port. At the time, the master of the HARBOR MASTER steered toward the south bank in an effort to intentionally ground the barges and prevent further capsizing and sinking. The master was able to ground the barges, but (both barges) capsized to port and caused the HARBOR MASTER to take on water and sink, resulting in the total loss of the (vessel). In addition, 300-400 gallons of oil were spilled. No injuries.

"The HARBOR MASTER and (barges) SUARD 203 and 204 were salvaged on September 5, 2001 – **estimated damage of \$450,000**. Drug testing was conducted, but the results were unknown.... The HARBOR MASTER was recently (renamed) the M/V TLC KNIGHT."

A suit subsequently filed in Federal District Court alleged that the capsizings "...were not caused or occasioned by any fault, neglect or lack of due diligence on the part of (the towing company) or by the unseaworthiness of the M/V HARBOR MASTER, but were in fact caused or occasioned by the unseaworthiness of the compressor barges...which lacked the requisite stability to withstand towage under normal conditions in inland waters."

**[GCMA Comment: An understanding of basic stability principles is no less important for all licensed officers on towing vessels than on other vessels so that they will be alert to the wide variety of stability-related situations they may encounter in their work.]**

### WE INVITE MARINERS TO PARTICIPATE IN GCMA PROJECT #401: TRAINED ENGINEERS FOR TUGBOATS AND TOWBOATS

1972 and 1973 were important years for the nation’s towing industry as three major initiatives were decided during these two years. These decisions remained in effect for the next three decades.

First, Congress decided to license towing vessel "operators" and passed the Pilothouse Licensing Act.

Second, Congress was also asked to bring towing vessels under inspection – which they declined to do even though the Coast Guard recommended it at the time.

Third, Public Law 92-339 passed in 1972 required the Secretary of Transportation to conduct a study concerning the need for engineers on uninspected towing vessels and make legislative recommendations to Congress that year.

In 2001, largely as a result of a number of high profile accidents, the Coast Guard scrapped the "operator" license replacing it with the Master, Mate/Pilot and Apprentice Mate/ Steersman licenses and tightened the licensing regulations in general.

Bringing uninspected towing vessels under inspection is an issue that is again before Congress this year due in some measure to GCMA’s Report #R-276 introduced to the Towing Safety Advisory Committee (TSAC) in 2000.

The third issue regarding engineers on uninspected towing vessels was "shot down" as a result of the recommendations made in a report from a study conducted under Coast Guard contract by the Educational Testing Service in 1972. Their recommendation stated: "A review of the findings and conclusions in this study seems to indicate that the addition of designated engineers aboard uninspected towing vessels will not reduce the casualty ... rates currently experienced and therefore will not improve the safety record of these vessels. Therefore, it is recommended that **at this time** the Coast Guard not make any legislative recommendations which would require engineers on uninspected towing vessels."

"**This time**" has passed. Conditions in 2004 are not the same as conditions in 1973. Consequently, GCMA is reviewing the 1973 report and a companion document submitted to the Coast Guard by the Marine Engineers’ Beneficial Association the same year. We will ask our mariners for their thoughts, ideas and

suggestions to try to reach a meaningful position that best represents the views of today's merchant mariners who work on tugs and towboats.

GCMA is "the voice for mariners." Your thoughts and opinions are vital to the success of this project and so that our mariners can speak with at places and times when that voice can be heard. Talking to the Coast Guard is often like talking to the wall – it listens politely and does nothing. We have tried that exercise before and decided to move on.

If you would like to participate in this review, we ask you to notify us at GCMA by phone, fax or e-mail. We will ask you to read the two documents mentioned above (reproduced in "Project 401" and provide your written comments on any area covered by either document where your personal experience leads you comment. We will reach a consensus and move on from that point involving each person who asks to be included. There will be "deadlines" that this project will have to meet.

### **GCMA MARINER SOUNDS ALARM ON HOMELAND SECURITY**

Although some parts of the new regulations give us heartburn, GCMA actively supports the nation's homeland security efforts. We have been very specific in asking our mariners to keep their eyes open and report suspicious operations.

One of our most experienced licensed masters did just that when he found a number of things seriously amiss on the vessel he was assigned to. The vessel was a dilapidated offshore supply vessel that had been re-flagged and was operating under a "flag of convenience" (FOC). The vessel was working for an American company with a foreign crew hired to work in the offshore mineral and oil industry off the Louisiana coast.

Among other things, in fact among a great many other things, the vessel had no sign of a security plan and regularly worked between several gulf coast oil ports.

The master reported the discrepancies he found on the vessel to one Coast Guard Marine Safety Office but never received a return call.

The master was concerned about security. He was also concerned about a number of unsafe conditions aboard the vessel. In addition, the foreign crew reported that they had signed an agreement to work 8-hour watches but were being exploited to work a typically endless oilfield day of at least 12-hours.

After hearing nothing from the Coast Guard, the master called GCMA for advice and then proceeded to fully document his story. GCMA, in turn, immediately contacted the commanding officers of two marine safety offices to conduct a thorough investigation of the master's allegations. At press time, we have no further information on the progress of this investigation.

Since the Coast Guard does not take sides in "labor disputes," GCMA also contacted the International Transport Workers Federation (ITF) inspector in New Orleans, the national ITF office in Washington and ITF headquarters in London.

The offshore oil industry poisoned its pool of licensed and documented mariners with its virulent anti-labor union activities starting in 1999. The conditions and activities reported to us in this particular case show how willing certain companies are to break not only U.S. labor laws but other laws as well to make a fast buck.

GCMA is concerned for the health, safety, and welfare of all mariners regardless of race, creed, color or national origin. We also support the Jones Act protections our mariners have come to expect.



### **ILLEGAL ALIEN CREWMEMBERS ON OFFSHORE SUPPLY VESSELS**

At GCMA we have heard stories of companies cutting corners out in the Gulf of Mexico by hiring foreign

workers to perform jobs normally done by Americans. This was the subject of GCMA Report #R-334 (Nov. 1, 2002).

The Eighth Coast Guard finally addressed the problem in Policy Letter 02-2004. We have pertinent portions below for your information and action and added emphasis by underlining and added our comments where needed.

**[GCMA Comment: We want every offshore mariner to be familiar with this policy letter. As part of homeland security awareness, if you have any definite knowledge of violations of this policy please report specific facts (e.g., names, dates, boat names and places) to GCMA for evaluation and placement with our contacts in the Coast Guard.]**

Ref (a) 46 U.S.C. 8103(b); (b) 43 U.S.C. 1356

1. PURPOSE: This letter provides Eighth Coast Guard District (D8) guidance in determining the legality of foreign crewmembers working on board offshore supply vessels (OSVs).

2. DIRECTIVES AFFECTED: none.

3. BACKGROUND:

a. There have been reports of foreign crewmembers (not permanent resident aliens) working on board U.S. flagged OSVs on the U.S. OCS.<sup>(1)</sup> They normally hold a C-1/D visa, and are neither "aliens lawfully admitted to the U.S. for permanent residence" nor aliens holding a valid waiver from G-MOC.<sup>(2)</sup> The OSV owners typically arrange for all the transportation costs for the foreigners and take care of any health issues. The owners also do not pay the foreign workers directly; they normally pay an agent who then pays the workers family. The foreigners work on board the vessel as deckhands. However, since the vessels meet the minimum manning requirements set by the COI<sup>(3)</sup> with U.S. citizens, the OSV owners view the foreigners as "extra" crewmembers. [<sup>(1)</sup>**OCS** = Outer Continental Shelf. <sup>(2)</sup>**G-MOC** = A staff department at USCG Headquarters. <sup>(3)</sup>**COI** = Certificate of Inspection.]

b. There are two statutes that govern the employment of non-U.S. citizens as unlicensed crewmembers on board U.S. flagged vessels working within the U.S. OCS. Reference (a) requires that each unlicensed seaman must be either a U.S. citizen or an "alien lawfully admitted to the [U.S.] for permanent residence." It further stipulates that no more than 25 percent of the total unlicensed seamen on board can be aliens lawfully admitted for permanent residence. Reference (b) requires that all crewmembers be either U.S. citizens or "aliens lawfully admitted to the U.S. for permanent residence." Both of these statutes contain a provision under which G-MOC may issue a waiver for the employment of other legal aliens when there are not U.S. citizens or permanent resident aliens qualified for work available. The requirements for the waiver program are contained in NVIC 7-84. (To date, G-MOC has not issued any waivers for OSVs operating in the U.S. OCS and is unlikely to do so due to the difficulty in proving that U.S. citizens are not available for employment.)<sup>(1)</sup> The effect of these statutes is that all crewmembers on an OSV operating in the OCS must be either U.S. citizens or permanent resident aliens or they must possess a valid waiver from G-MOC and be in full compliance with the conditions of the waiver. Without a waiver from G-MOC, foreign workers who are not permanent resident aliens are not permitted, and the maximum number of permanent resident aliens that may be employed is 25 percent of the total number of unlicensed seamen on board.

**[GCMA Comment: Several years ago one local employment agency attempted to obtain a waiver to bring in hundreds of foreign deckhands and engineers. The maritime unions pointed out to authorities in Washington that there were many qualified American workers available.]**

4. DISCUSSION

a. Any alien serving as a crewmember on board an OSV operating in the U.S. OCS must be able to show that they are aliens lawfully admitted for permanent residence or produce a waiver from G-MOC and demonstrate compliance with the waiver. 33 CFR 141.30 lists three methods for an alien to show that they have been lawfully admitted for permanent residence:

(1) An MMD;

(2) A 'green card'; or

(3) A declaration of intent to become a citizen issued by a U.S. naturalization court.

b. Production of a visa would not satisfy the above requirement because visas are temporary in nature.

Therefore an alien with only a visa of any sort, including a C1/D or B-1 visa, would be violation of both references (a) and (b) unless they had a waiver from G-MOC.

c. When permanent resident aliens are encountered then the number should be compared with the total number of unlicensed seaman aboard the vessel to ensure that it does not exceed 25 percent. If there were only three seamen aboard, none of them can be resident aliens, the number of resident aliens exceeded 25 percent, a violation of reference (a) exists, and the company would be subject to a \$650 fine. The minimum number of crewmembers as stated on the vessel's COI has no bearing because the law applies to the "total number of unlicensed seamen on the vessel".

d. The fact that foreigners may have been hired to fill a position on the vessel that exceeds the manning requirements of the COI is irrelevant. 46 CFR 125.160 defines "crew" as all persons carried on board the OSV to provide navigation and maintenance of the OSV, its machinery, systems, and arrangements essential for propulsion and safe navigation or to provide services for other persons on board". Therefore, if the foreigners on the OSVs are deckhands and help out with day-to-day operations, they are considered "crewmembers".

e. In addition, MSM<sup>(1)</sup> Volume III Chapter 20, Paragraph E, defines "seamen" as an "individual engaged or employed in the business of a ship or a person whose efforts contribute to accomplishing the ship's business, whether that person is involved with operations of the vessel". It also states a crewmember may be a seaman although he or she is not occupying a position required by the COI. Persons who are on board the vessel in a capacity other than as a crewmembers are considered passengers and are not subject to the citizenship requirements; except if the person is filling a position that is designated as 'person in addition to the crew". It further states, "individuals being compensated for performing their jobs while the vessel is under way are considered seamen for the purpose of applying citizenship requirements". There for if the foreigners are employed in the operations of the vessel and are being paid by the company for their work on board the vessel, they are considered "seamen". [<sup>(1)</sup>MSM = Marine Safety Manual, Volume 3 is a USCG publication that contains Coast Guard personnel policies.]

f. An "offshore worker" is defined in 46 CFR 125.160 as "an individual carried aboard an OSV and employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel; but it does not include the master on a member of the crew engaged in the business of the vessel, who has contributed no consideration for carriage aboard and is paid for services aboard". Therefore, if the foreigners are being paid by the OSV owners to work on board the vessel and do not depart the vessel once the OSV gets to an OCS facility, they are not considered to be an 'offshore worker'.

## 5. ACTION

a. There is no legal basis for the allowance of foreign workers who are not permanent resident aliens and do not have a waiver letter from G-MOC to save as crewmembers on board an OSV in the U.S. OCS. Therefore, OCMI should inform companies that this practice is not legal. Depending on the circumstances, the OCMI may deem it appropriate to allow companies time to rectify the situation. Marine inspectors are to verify the nationality of all crewmembers during future OSV inspections. If companies are still found to be in violation of 46 USC 8103 after an initial outreach period, the following actions should be taken:

(1) For the first offense:

- (i) Have the vessel's owner/operator remove the foreign crewmember from the vessel.
- (ii) Notify Customs and Border Protection (CBP) to see if they intend to take any action.
- (iii) issue a Letter of Warning (LOW) to the company.

(2) For subsequent offenses:

- (1) Have the vessel's owner/operator remove the foreign crewmember from the vessel.
- (ii) Notify Customs and Border Protection (CBP) to see if they intend to take any action.
- (iii) Conduct civil penalty action against the company.

6. FEEDBACK Questions on this policy should be referred to the Eighth Coast Guard District, D8(m), at 504-589-2455.

Distribution : All Eighth District MSOs & MSUs.

## MERCHANT MARINER SENTENCED FOR FALSE USCG APPLICATION

Joseph A. Boevink, 51; of Panama City, FL., was sentenced by United States District Judge Thomas S. Zilly in Seattle to two months in custody, followed by up to 60 days in a halfway house, and two years of supervised release, for falsely claiming that he had never been convicted of a criminal offense on an application for Merchant Mariner license submitted to the U.S. Coast Guard in Seattle in January 2001.

The U.S. Coast Guard is required under federal law to issue such licenses, called Merchant Mariner Documents, to individuals employed on merchant vessels. One of the purposes of the license is to ensure that the U.S. Coast Guard knows who has access to, and is traveling on, merchant vessels that operate within United States waters. Boevink was convicted of the offense of False Statement to a United States Agency on March 10, 2004, following a two-day trial before a federal jury in Seattle.

The case marks the first time a merchant mariner, identified through the nationwide U.S. Coast Guard initiative known as "Operation Drydock," has been convicted of a criminal offense at trial. Court records show that in December 2002, the U.S. Coast Guard initiated "Operation Drydock," a comprehensive criminal and counterterrorism investigation designed to identify vulnerabilities in the merchant mariner credentialing process. The Coast Guard, working with the Federal Bureau of Investigation (FBI) National Joint Terrorism Task Force (NJTTF) and other interagency partners, compared the names of over 220,000 credentialed merchant mariners against law enforcement information to identify anomalies. Joseph A. Boevink was identified as an active mariner who had made false statements on his application for a Merchant Mariner Document concerning past criminal convictions and drug use. While there is no evidence Boevink has any association with terrorism, the U.S. Coast Guard determined that Boevink had falsely claimed that he had never been convicted of a criminal offense (other than a minor traffic offense), when in fact Boevink previously had suffered convictions for burglary and possession and use of drug paraphernalia.

This case was investigated by Special Agents with the U.S. Coast Guard Investigative Service, Northwest Region. Special Assistant United States Attorney E. Kate Patchen and Assistant United States Attorney Lawrence Lincoln prosecuted the case.



## TONTO'S HORSE

*By Richard A Block*

In the haze of approaching senility and befuddlement, probably a result of reading too many Coast Guard regulations, policy letters and related drivel, it is frustrating to be unable to recall many details from the past – details that may be either important or trivial. One that definitely fits the latter category was the name of Tonto's horse! Tonto, of course, was the Lone Ranger's faithful Indian companion. The star of the show was always the Lone Ranger and "Silver" – "...a fiery horse with the speed of light, a cloud of dust and a hearty "Hi Yo Silver." But Tonto also rode a horse, too, and always arrived in the nick of time to save the day for his "Kemo Sabe" the "daring and resourceful masked rider of the plains who led the fight for law and order in the early west." But what was Tonto's horse's name? For weeks the name caused me weeks of mental frustration.

Finally, one morning frustration overcame me and I blurted out that I could not remember the name of Tonto's horse! The comment galvanized our office crew into action. Gwen rushed to the internet while Carolyn grabbed the phone to call her older sister. Within 10 minutes I had the answer. Tonto's horse's name was "Scout" – but I received more than just the answer. I re-discovered a small piece of Americana that I want to share with you:



### **The Lone Ranger Creed**

By: Fran Striker

"I believe that to have a friend,  
a man must be one.

That all men are created equal  
and that everyone has within himself  
the power to make this a better world.

That God put the firewood there  
but that every man  
must gather and light it himself.

In being prepared  
physically, mentally, and morally  
to fight when necessary  
for that which is right.

That a man should make the most  
of what equipment he has.

That This government,  
of the people, by the people

and for the people'  
shall live always.

That men should live by  
the rule of what is best  
for the greatest number.

That sooner or later...somewhere...somehow...  
we must settle with the world  
and make payment for what we have taken.

That all things change but truth,  
and that truth alone, lives on forever  
in my Creator, my country, my fellow man."

### WEBBERS FALLS ALLISION REVISITED

A report in the May 31, 2004 issue of the Daily Oklahoman filled in some of the details of the aftermath of the May 2002 bridge allision between the tow of the M/V ROBERT Y. LOVE and the Interstate 40 bridge at Webbers Falls that killed 14 unsuspecting highway travelers.

In May 2004, the State of Oklahoma settled its lawsuit out of court for \$4,500,000 of which the state may receive about \$1,500,000 after legal expenses.

"With \$28 million already promised from the federal government, the state will 'more or less' break even on the \$30 million cost of the bridge collapse" according to a spokesman for the Oklahoma Attorney General's Office".

A State Transportation Department spokeswoman agreed but said she is still disappointed tax dollars paid for most of the cost. "The fact is, the maritime laws are very antiquated and do need to be updated," she said.

Both the Oklahoma Transportation Department and the National Transportation Safety Board are expected to release reports later this summer.

**[GCMA Comment: As American taxpayers, you and I paid the \$30,000,000 bill on the Webbers Falls accident. Also note that AMTRAK, a taxpayer-supported public corporation, suffered \$20,000,000 in equipment loss in the Bayou Canot accident in 1993. Our tax dollars have subsidized unsafe practices in the towing industry long enough.]**



## BALLAST WATER MANAGEMENT: A NEW TIME-CONSUMING CHORE FOR MANY OF OUR MARINERS

By Richard A. Block

In the late 1980s the Zebra Mussel, a pesky little aquatic creature from Eurasia, began to invade the fresh water of the Great Lakes and clogged power plant cooling pipes, ate the food normally consumed by fish and other wildlife, and fouled the shoreline. These critters traveled to the United States and Canada in the ballast water carried by cargo ships and drawn from the waters of foreign harbors and dumped in the Great Lakes and created a major problem that is about to impact our mariners.

The first regulations attacking this problem dealt specifically with the Great Lakes and appeared in the early 1990s. The problem spread to the Hudson River and New York State Barge Canal system by the mid-1990s followed by more regulations. Other aquatic nuisance species followed. The cost to the Great Lakes alone (to date) is almost **five billion dollars**. That's why it's a problem – not only a "Great Lakes" problem, but a national problem!

In the National Invasive Species Act of 1996 (NISA), Congress confirmed that the problem was more than a regional problem. The Coast Guard was given the task of collecting information about all ballast water carried in U.S. waters. They first introduced a "voluntary" reporting system (i.e., the "good guy" approach. Unfortunately, they were unable to get the information and cooperation they needed by using purely voluntary measures. We are now at the point where push has come to shove and things could become nasty.

In 2002, the Secretary of Transportation reported to Congress that the voluntary system simply was not working and that he would have to use the Congressional authority granted him to require a **mandatory ballast reporting system**. The report to Congress was thorough and expressed the DOT's frustration with the inadequate voluntary reporting system. Consequently, a Final Rule was promulgated on June 14, 2004 and becomes effective on **August 13, 2004**.

**How does this affect me?** Up until August 13, 2004 the problem affected primarily deep-sea shipping interests. But now, if you operate a towing vessel or an offshore supply vessel or any other vessel that contains ballast tanks or void spaces whether used for ballast water or not, the Coast Guard wants to know what you are carrying (or not carrying), where you picked it up, where you dumped it and lots of other pertinent information. You must now report this information **in writing on a voyage-by-voyage basis**. Just about the only time the Coast Guard will not be interested in the status of your ballast water tanks or void spaces is when you only operate exclusively within a single Captain of the Port (COTP) Zone.

This means you must know something about the boundaries of the COTP Zones you work in especially if you cross into a different COTP zone. If the vessel you operate contains ballast tanks or void spaces that could be used for ballast, you (as master) will have to make regular ballast water reports for each voyage and maintain a separate Ballast Water Record Book containing report forms that were originally designed for "big ships."

The foregoing only summarizes what is happening. We want to keep our mariners informed of the whole story – including regulations and even more because we see this as significant problem for many of our mariners. Now you may know something even your boss doesn't know, but break the news gently so he doesn't take his frustration out on the messenger!

I recently updated Marine Education Textbooks Ballast Water Record Book (MET Stock #BK-133) that I sold to "big ships" for the past 6 or 7 years. Although I copyright and sell these logbooks for a living, the "guts" of this book are available free to our mariners as GCMA Report #R-402, Rev. 1, so you can learn all about the problems. I say problems (plural) because there are two: 1) the invasive species that have screwed up the environment and 2) the paperwork or e-mail you must furnish the Coast Guard so they can control the invasive species problem.

In spite of the fact that the Coast Guard has other, more-pressing "invasive species" problems of the 9/11 variety threatening our ports, waterways and mariners, it appears they plan a vigorous enforcement program starting with your ballast tanks and ending with your ballast records.

The details of the enforcement program appear in NVIC 07-04 published on June 17<sup>th</sup>. This provides the agonizing details of how the Coast Guard can (and presumably will) scrutinize each report they receive and how they will board your vessel and/or inspect the ballast water records you keep on board. Be aware that there are penalties of up to \$27,500 per day for non-compliance with the Ballast Water Management regulations. Willful violation (and the thought may come to mind as you read the details) is even more expensive.

Representatives of the towing industry and the offshore oil industry submitted comments that the Coast Guard rejected – so most routes to avoiding this reporting task are already closed.

In following various Coast Guard initiatives in the past, I have noted a serious "disconnect" between some Headquarters initiatives and the real world our mariners live in. There are just some basic concepts the beltway bureaucrats find very hard to grasp. However, the Ballast Water Management rulemaking preamble does contain this thought: "If, after a period of time we determine that we are receiving data that does not benefit our evaluation, we will then revisit the program and adjust it accordingly." Don't hold your breath!

To avoid a possible penalty or other administrative nastiness, I suggest that you invest a few minutes of your time to read GCMA Report #R-402 (on our internet web site) to see if it affects you and use the information it contains to protect your license.

## LAWSUIT CLAIMS LOCAL COMPANY MISLED SHAREHOLDERS

**The allegations are the basis of a federal lawsuit filed against Trico Marine Services.**

By Katherine Kelly Gilbert  
The Houma Courier, Wednesday, June 16, 2004

**Houma** – Alleging fraudulent practices, a class-action lawsuit has been filed against Houma-based Trico Marine Services on behalf of company shareholders.

The suit, filed earlier this month in U.S. District Court in New Orleans, alleges that Trico President and CEO Thomas E. Fairley and Ronald O. Palmer, chief financial officer, publicly maintained optimism that company operations would improve even though it had been experiencing financial difficulties since 2002.

The oil-and-gas marine services and transportation company's officials maintained that premise to artificially inflate stock prices, the suit alleges, until sales of Fairley and Palmer's company stock were complete.

In mid-May, the company reported a net loss of \$16.5 million for the first quarter. Its stock, traded on the NASDAQ as TMAR, has closed at less than \$1 per share since late April. It closed Tuesday at 37 cents per share.

"There are a lot of local people who buy local companies," said William Federman, the Oklahoma-City based attorney who filed the lawsuit.

"They thought that Trico was a good company. The business overall has been doing well, then hearing from the company (that it) has pretty good near-and long-term future... They really are offended they got lied to," he said.

The suit alleges Fairley and Palmer "were involved in and had direct knowledge of false, misleading incomplete information conveyed in the company's public filings, press releases and other publications" that led investors to continue buying Trico stock through mid-May.

Because of the company's own admission of the seasonal nature of some of the markers, the suit alleges, Fairley and Palmer knew continued decline was expected but did not communicate that information to investors.

Federman said the number of claimants is undetermined at this time, as is the amount of damages since the court must first certify the class. But he estimated claimants trying to recover their losses could number into the thousands.

"It's a huge amount of money," he said "Damages are well in excess of \$10 million." It could be six months to a year before the lawsuit really starts progressing, Federman said.

"During the interim, all the shareholders are getting killed on the stock, he said.

Aside from compensation of shareholders, Federman said he would like to see an investigation by the U.S. Securities and Exchange Commission. Courier calls to Trico's Houma and Houston offices were not returned Tuesday.

The suit was filed on behalf of those who purchased Trico stock between May 6, 2003 and May 10, 2004. According to the suit:

- The company reported losses of \$13.5 million, \$42 million, \$35 million, and \$99.4 million between May 2003 and December 2003. Company officials continued to note improvements in troubled markets, primarily the North Sea sector but also in the Gulf of Mexico. They indicated a turnaround would come with the awarding of two long-term contracts.

- From September 2003 to October 2003, Fairley and Palmer sold 405,000 shares of stock. Fairley sold 220,000 shares for \$311,353; Palmer sold 185,000 shares for \$261,565.
- In April 2004, Trico's stock price began a rapid fall – from \$1.08 per share to 75 cents per share. The company named a non-executive chairman to address the financial challenge and disclosed retention of legal advisors for "exploring various alternatives, including selling assets, raising additional financing and restructuring the company's debt."

- Last month, Trico announced it would exercise a 30-day grace period for interest payments on senior notes and announced first-quarter losses of \$16.5 million.

At the end of May, Trico's stock closed at 28 cents per share. Its 52-week low was 17 cents per share, while its 52-week high was \$4.60 per share.

The poor performance has resulted in notification this week that the stock could be delisted from NASDAQ and moved to the small cap market if it doesn't improve said Tulane University professor Peter Ricchiuti, director of the university's Burkenroad Reports investment publication.

That would result in some investors being unable to own the stock because of their types of portfolios.

Ricchiuti said the boat business has been the weakest-performing group in the industry. Since Trico is a very leveraged company with a high amount of debt, it has performed poorly during the period the boat business has been down.

That, he said, can be attributed to Trico's fleet, which contains some showpieces but is dominated by the standard 180-foot offshore-supply vessels. While they're good boats, they're not as in demand as high-tech vessels that are more computerized, work with GPS satellite systems and go into deeper water on one trip, he said.

Federman said that if the company's fleet is older and outdated, officials should have disclosed that information.

"Their boats are the way they make money. If people aren't using their ships,.... They should announce that. That is material."

[GCMA Comment: In response to numerous allegations of unsafe working conditions and other abuses, GCMA reviewed a number of court records in the Terrebonne Parish Court House and "brownlisted" this company in an effort to protect our mariners.]

[GCMA Comment: A number of Trico's anti-labor practices were reported to the International Transport Workers Federation (ITF). Refer to Newsletter #12.]

[GCMA Comment: GCMA Report #R-328 describes the collision of Trico's M/V BASS RIVER near Port Fourchon, LA, with the loss of three crewmembers.]

#### **HAWSEPIPE DREAMS AND REALITY**

*[Editorial note: Although GCMA is not a union, we owe our existence to the leadership and support offered by the AFL-CIO and four of the nation's maritime unions. For each issue of this newsletter we review union publications for items of interest. The following "Letter to the Editor" comes from the June 2004 issue of the SIU Seafarers Log.]*

#### **Student: Top Marks to Paul Hall Center**

The following is addressed to my fellow brothers and sisters in the deck department. I recently sat for the USCG Third Mate-Oceans Exam (new testing), and am happy to report that I passed this 800-lb gorilla!

This was, without a doubt, the most difficult undertaking of my life (and I ain't no Boy Scout). After accumulating the necessary 1,080 days of sea time, driving my 2/M (second mate) and C/M (chief mate) crazy to proctor onboard assessments, and attending months and months of upgrading back at Piney Point, I had finally satisfied everything required to sit for the test. Next came two solid months of intense study, and then I was ready to go for it!

The hawsepipe can still be climbed but it takes tremendous dedication and unsinkable determination to see you through. This is a long hard fight, but as a member of the SIU,

we benefit from the free courses, lodging, and travel that others do not.

I have compared what I received from the Paul Hall Center free-of-charge to other "commercial sea schools" and have saved over \$60,000 in out-of-pocket expenditures! I owe my success and gratitude to the fine staff of the Paul Hall Center of Maritime Training and Education. Thank you! Respectfully submitted, **Michael Thomas**.

### **GCMA: Most of us are "Hawsepipers"**

Unless you attended the U.S. Merchant Marine Academy or one of the six state maritime academies you climbed "up the hawsepipe" to reach your present position in the industry through trial and error, by "on-the-job training" (OJT), attending a license or other private "cram school", by home study or by training in one of the military services. To this point, most lower-level mariners who received training from private sources had to pay for out of their own pockets or attend training on their own time. ("Your time, your dime.")

One of the benefits of membership in a maritime union is the training that union schools offer. One of the nation's leading maritime union training facilities is at the Paul Hall Center run by the Seafarers International Union at Piney Point, Maryland.

Part and parcel of GCMA's introduction to the maritime unions, a number of our mariners had the opportunity to visit the various maritime union training schools at Piney Point (SIU), the AMO Star Centers at Dania Beach, Florida, and Toledo, Ohio, the Maritime Institute of Technology and Graduate Studies (IOMM&P) at Linthicum Heights, Maryland, and the Calhoon MEBA Engineering School at Easton, Maryland.

The "free" schooling that Michael Thomas received is part of the "benefits" of belonging to a maritime union. It is "free" as far as "out-of-pocket" expenses are concerned because it is part of the contract negotiated with each company. It was earned through the sweat and toil of union workers in the past that is passed along to their members today.

If you do not belong to a union you pay your own way and you walk alone. In the Gulf of Mexico and on the rivers and canals, boat companies fought tooth and nail so they would not have to pay for your training. Many companies would rather have you, or the state, or the federal government pick up the training expenses by running cut-rate courses or obtaining government grants. This is another name for "corporate welfare." If training expense is a "company expense", most companies will try to limit it to "on-the-job" training.

Until 1995, the Coast Guard claimed that their area of responsibility only covered "testing" not "training" merchant mariners. Suddenly, when the Coast Guard dropped STCW on our unsuspecting mariners in 1995, they quickly became the "experts" in training as well as testing. The National Maritime Center operating from rented office space in Arlington, Virginia, became the agency's mouthpiece. However, their concern for maritime training never really paid a great deal of attention to the cost of that training as far as "lower-level" mariners were concerned. In addition, huge gaps currently exist in Coast Guard oversight of the training that is offered to mariners!

Let's get back to Michael Thomas who became a "Third Mate" through the hawsepipe. Although Third Mate is an upper-level license, the games that the National Maritime Center played with licensing over the years has led the qualifications of a Third Mate to come very close to the qualifications required of a 500/1600 ton Master – a limited "lower-level" license.

The problem on a nationwide basis has become the cost of training, who pays the cost, where to find assistance in meeting those costs, and how quickly and arbitrarily the Coast Guard can take away your license and livelihood.

### **Commitment**

If you want to become a union member and get the "free" training that Michael Thomas expressed his thanks for, you will find that in most cases union membership depends on working for a "union" company. If your company's employees want union representation, a majority must vote for it. You must be able to work together with others in your company. This sounds easy, but most companies go out of their way to discourage unions membership and, since you are an "at-will" employee, your employer can fire you for just about anything.

As "lower-level" mariners discovered in the Gulf of Mexico in 2000-2003 and on the rivers with "Pilots Agree" in 1999, boat companies will go to any expense to keep from having to deal with a united work force. One towing company in south Louisiana with less than 100 employees reportedly spent up to \$2,000,000 to brainwash these employees to vote against joining a union. It's hard to argue with this kind of money. That amount of money divided among that company's 100 employees would have "bought" their loyalty for cash. To avoid unions, the policy is clearly to "divide and conquer." In this regard, to obtain "free" union training, you first must be committed to working together for a common goal. You will find that the deck is stacked against you because our nation's labor laws have had their teeth pulled out one by one over the years. In an election year, you must know that you are voting for a candidate who has your interests in mind.

Remember that labor unions focus on labor issues because these issues impact their members.

#### **CURRENT GCMA "BROWN-LIST"**

##### **Company: GCMA Reference...**

- **Abdon Callais Offshore.** N/L #22, pgs. 19-23.
- **American River Transportation Co. (ARTCO):** #R-391; R-350; IOMM&P v. ARTCO, NLRB Case #14-CA-257 (2001), GCMA File A-882; N/L #7, pages 7,8; N/L #20, pgs 1-3.
- **American Commercial Barge Lines (ACBL):** N/L#9, p.20; N/L#16, pgs. 12, 13.
- **Coastal Towing, LLC & TLC Marine Service:** #R-369.
- **Delta Towing:** #R-370; N/L#7. p.3; N/L#9, p.3.
- **ENSCO:** N/L#8, p.1.
- **Frazier Towing:** N/L#9, p.15, 19.; N/L#10, p.13.; #R-333, Rev. 1
- **Global Marine:** N/L#22, pgs. 14, 24, 26.
- **Gulf Pride Marine Service, Inc.:** #R-320, Rev.2 etc.
- **Guidry Brothers/Harvey Gulf Marine:** N/L#5, p.5; N/L #7, p.3..
- **L&M Botruc Rentals:** #R-311; N/L#19, p.1; File M-216.
- **Maryland Marine:** N/L#22, p.15.
- **Stapp Towing:** N/L#18, pgs. 1-5.
- **Tidewater Marine:** #R-333, Case #1.
- **Trico:** N/L#5, p.1; N/L#7, p.3, 8.; N/L#9, p.3.

#### **THE PREDICAMENT OF LOWER-LEVEL LICENSED MARINERS**

**By Captain John R. Sutton**

*[This article appeared in the November-December 1995 issue of Proceedings of the Marine Safety Council. Captain Sutton is the former President of the American Inland Mariners Association (AIM) and holds an unlimited inland Master's license. It is remarkable how little has changed in the years since this article appeared.]*

We of the American Inland Mariners Association (AIM) are pleased to accept the Coast Guard's invitation to contribute to this issue of Proceedings as concerned mariners. While some statements may appear critical of Coast Guard policy, we believe that this article reflects the true and accurate opinions of today's active "lower-level" mariners.

The Coast Guard has established and maintained a long-standing dialogue with towing and passenger vessel owners and associations that lobby for them and represent their interests. This relationship provides the Coast Guard with only a portion of the information it needs to regulate the industry, although it does provide easy access to the industry.

On the other hand, the Coast Guard has never sought nor established a close working relationship with the mariners it licenses and regulates. In fact, in selecting members for important federal advisory committees like MERPAC and TSAC, the Coast Guard has repeatedly ignored applications for working "lower-level" mariners unless they held a "management" position or union affiliation. The term "lower-level," which the Coast Guard applies to licenses of under 1,600 gross tons, appears to imply that these mariners' outlook and opinions are not worthy of Coast Guard consideration. By allowing this questionable state of affairs to continue, the vessel owners and the Coast Guard have virtually silenced the voices of 70% of all licensed deck mariners. Yet, these same "lower-level" mariners move most of the nation's waterborne commerce.

Nevertheless, these "lower-level" licensed mariners have experience-based opinions on many aspects of their jobs that merit consideration by the Coast Guard and other regulatory agencies. Licensed mariners bear the responsibility for operating transportation equipment worth millions of dollars. They also must protect the public and the environment by obeying government regulations. Here are some of the issues our Association is interested in:

- The American Inland Mariners Association (AIM) supports proficiency and competency evaluation as long as active, working mariners perform it. The key is "active working mariners," as opposed to persons assigned office duty who have not sailed for years.
- AIM supports basic entry-level training for ALL boat personnel including full first aid, CPR, fire, and deck seamanship training. Staffing , towing or passenger vessels with "green hands" is unsafe and it unfairly burdens licensed personnel.
- The "uninspected" status of towing vessels lies in stark contrast to the "inspected" status of other comparable workboats. This has led to a popular misconception both by politicians and the general public that the towing industry is unregulated. Consequently, AIM took the initiative and published the Towboatman's Guide to Federal Regulations to inform its members and other concerned mariners of existing regulations.
- The Coast Guard never established or maintained a direct line of communication with the licensed personnel it regulates. It does not inform them effectively and clearly of regulatory changes in the industry. The Coast Guard does not have a mailing list of licensed and certificated personnel and does not even know how many licenses it has issued or how many are still active. A secondary purpose of publishing the Towboatman's Guide to Federal Regulations is to tell our members and other

concerned mariners how to find public information that already exists.

- AIM believes that reasonable and enforceable inspection and manning requirements for uninspected towing vessels will create a level playing field in the towing industry. Licensed mariners need protection from "substandard operators" with poorly maintained and inspected equipment, under-manned or overloaded boats, and untrained personnel. These conditions threaten all responsible mariners' licenses and livelihoods. However, we do not equate the term "substandard operator" with "small operator" and we trust that the Coast Guard will not make this error. We note that the Coast Guard is developing workable alternatives to the burdensome formal inspection process.
- AIM believes that the Coast Guard should recognize the importance of all "lower-level" licensed mariners and should actively seek their opinions on matters that are of legitimate concern to them. Included in these issues are licensing, the relationship of horsepower size, vessel manning, expanded "emergency equipment," and human factors such as the fatigue involved in an 84-hour work week. The Coast Guard must include active, working lower-level mariners on federal advisory committees. The Coast Guard must include active working mariners in all District and MSO meetings where it discusses areas of concern to working mariners.
- A towing vessel operator (i.e., "pilot") must know his vessel and the waterways it traverses. He must meet the qualifications and service criteria of his employer and the Coast Guard. This involves a long-term commitment and career choice rather than simply accepting a job opportunity. We believe that present health criteria and new proposals threaten the careers of many mariners. These criteria hinder the license renewal for reasons not directly related to job performance. The Coast Guard's 80% approval rate for requests for health related waivers proves this.
- Normal channels of appeal for health related problems lie with a person's physician and his employer. Punishment for drug and alcohol related problems are a matter for police, courts and possibly employers. We deplore any intrusive penalty beyond existing sanctions.
- While we deplore crimes like driving while intoxicated (DWI) or driving under the influence (DUI) of drugs or alcohol on the highway, we believe that current laws and regulations governing mariners are sufficient. We believe employers are now and should continue to be responsible for maintaining their vessels drug and alcohol free.
- Although it is convenient for the Coast Guard to hold meetings in Washington, it could devise no more effective way to discourage mariners from being informed and being heard. Meetings to discuss proposed regulations at the District level would be a great improvement over the existing system. It is many hundreds of miles and dollars from Washington to St. Paul, St. Louis, Houston, New Orleans, and Mobile.
- A clear and unmistakable majority of all mariners work on vessels under 1600 gross tons. Coast Guard officers serving in COTP, MSO and REC billets need extensive training in all aspects of the maritime industry dealing with "small vessels". We question the significance of the training that new Coast Guard officers receive. Upper-level, deep-sea criterion applied to this part of the industry is uninformed, counterproductive, and a waste of the taxpayers' money considering the shrinking size of the U.S. Merchant Marine deep-draft fleet.
- Licensed mariners and certificated tankermen have two masters. They have a responsibility to carry out their employer's instructions under the threat of losing their

job. They also have a responsibility to obey federal regulations or lose their license and/or MMD. This also equates to the loss of their job. AIM supports responsible legislation that would provide the mariner with protection of a method of resolving these conflicts.

- Towing vessels and all commercial vessels under 1,600 gross tons should carry one or more persons trained in and specifically assigned to engine auxiliary equipment operation maintenance.

The American Inland Mariners Association is not a labor union. Rather, it is a voluntary association of concerned professional mariners that wishes to play a meaningful and constructive role in improving the maritime industry and the safety of our nation's waterways.

### REPLIES TO GCMA REPORT ON OVERSIZE AND OVERLOADED TOWS

"Thank you for your presentation before the Mississippi River Commission during the public meeting held in New Orleans, Louisiana, on April 23, 2004. In your statement you expressed concern about the safe movement of cargo, overloaded vessels, and the regulation of marine transportation tow size on the Mississippi River. You also submitted a copy of Gulf Coast Mariners Association Report #R-340, Revision 8, dated April 22, 2004, for the record.

"The Commission concurs that safe and dependable transportation on the nation's waterways is of great importance. However, the U.S. Army Corps of Engineers does not have jurisdiction to authorize or regulate allowable tow size on waters of the United States."

**[GCMA Comment: The purpose of formally submitting GCMA Report #R-340 to the Commission was to make them aware of the existing problems and the need for Congress to adequately regulate the towing industry.]**

"The Corps continues to be aware of problems and safety issues associated with tow size on the nation's inland Waterway systems, specifically during high-river or flood-stage flows. However, any actions to regulate tow sizes remain under the authority and jurisdiction of the U.S. Coast Guard and the United States Congress."

**[GCMA Comment: Congress is also aware of this problem. As taxpayers, we are confident that the Corps of Engineers and its Mississippi River Commission will actively contribute to a solution rather than "stonewall" the problem .]**

"The Corps does have established operating procedures for safely locking vessels carrying dangerous, flammable, or hazardous cargo through Corps locks.

"The Commission appreciates receiving your comments and looks forward to hearing from you at our future public meetings." Sincerely, Robert Crear, Brigadier General, U.S. Army, President Designee, Mississippi River Commission.

### STONEWALLING THE PROBLEM

**Example:** Eighth District Letter of June 2, 2004 in response to a GCMA letter following a recent bridge allision near Caruthersville, MO.:

"We are responding to your letter of May 12, 2004, in which you voiced the concerns of

the Gulf Coast Mariners Association regarding large and/or overloaded tows and the issue of horsepower as applied to towing vessels. The issue of tonnage to horsepower ratio, or barge to horsepower ratio, is a very complex, subjective, and case particular issue for which few definitive rules or regulations have been established by the Coast Guard to date.

**[GCMA Comment: We question why there are no tow-size regulations to guide both companies and mariners on this controversial subject. GCMA is currently reviewing a 1995 TSAC report on this subject (GCMA Project #R-400) to obtain fresh feedback from our mariners.]**

"The overwhelming majority of transits on the Upper and Lower Mississippi Rivers and the Ohio River do not result in groundings or collisions. We do not agree with you that the majority of inland river casualties are caused by "underpowered" towboats or large tows.

**[GCMA Comment: We never made such an absurd statement. We pointed out to the District Commander that portions of this letter that refer to such a statement are off target!]**

For example, a joint Coast Guard-AWO work group conducted a detailed bridge allision casualty analysis in May 2003 for the years 1992-2001, and found no evidence that underpowered towboats or large tows contributed to the majority of the casualties. In fact, the work group concluded, "the human element, in particular decision making errors, is the predominant factor in bridge allisions.

**[GCMA Comment: It is popular to "blame the mariner" for every accident. A true "Safety Management System" will also examine decisions made by dispatchers, port captains and office staffs who do not have or need licenses to do their jobs.]**

"The Eighth Coast Guard District Marine Safety Division also analyzed the 1992-2001 bridge allision database used by the CG/AWO work group, but did not find underpowered towboats or large tows as major root causes. We developed and disseminated an information bulletin on our analysis results at the 2004 ACOE/CG Inland Waterways Conference, see enclosure(1). Also during the conference, a panel of Coast Guard and industry representatives conducted a discussion of bridge allisions and towboat navigation safety. The panel did not conclude that lack of horsepower or large tows played a significant part in the majority of bridge allisions. In addition, MSO Memphis released an information bulletin in June 2003 that analyzed the 4-year history of marine casualties in their zone, see enclosure (2). Their analysis did not find large tows or underpowered vessels as the root cause to the majority of casualties.

Low and high water conditions present additional risk variables for operators to consider. As you stated, the typical navigation channel width published by the Army Corps of Engineers (for the inland river region) is 300-foot. As you alluded to, risk is amplified during low-water conditions when 40+ barge tows, involving 6-barges long and 7-barges wide are competing for channel space with other vessels. High water usually presents the additional risk factor of strong currents, which becomes a critical factor for maneuverability of a towboat that is underpowered in comparison to its tow size. The Eighth Coast Guard District will not set tow size or horsepower ratio standards at this point or declare 40+ barge tows as inherently "unsafe industry practice." We will urge companies to review their safe navigating practices to include considering certain variables when pushing larger tows, such as using their bigger, more powerful towboats, and most qualified operators, in addition to reviewing river conditions, channel width and area traffic. Lastly, we will make every opportunity to discuss the issue before appropriate Coast Guard and industry forums to learn more

about industry practices, lessons learned and safety considerations. S/ D.F.Ryan, II, Captain, U.S. Coast Guard, Chief, Marine Safety, Security, and Environmental Protection Division, By direction of the Commander Eighth Coast Guard District.

[GCMA Comments: Unlike the U.S. Army Corps of Engineers, "appropriate Coast Guard and industry forums" seldom solicit the views of working mariners who are willing or financially able to take time off from work to attend and risk being fired for expressing their views in light of their "employee at will" status.]



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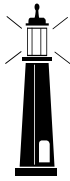
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