



NMA REPORT #R-370, Revision 3
[Renumbered from #R-258]

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

WATCHSTANDING AND HOURS OF SERVICE LIMITS USING THE TWO-WATCH SYSTEM

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PREAMBLE

Congress requires the Coast Guard to establish safe manning standards for both inspected and uninspected vessels. This requirement appears in the U.S. Code (USC) and reflects treaties and other agreements reached with other nations and international organizations such as the International Maritime Organization and the International Labor Organization. The Coast Guard further refines and explains these requirements in regulations presented in the Code of Federal Regulations (CFR). The Coast Guard also interprets the statutes and regulations in Policy Letters such as Policy Letter G-MOC #04-00, Rev. 1 which was prepared by the Chief, Marine Safety, Security, and Environmental Protection at Coast Guard Headquarters.

On Sept. 11, 2000, after months of work, the Chief of Marine Safety issued a policy letter to clarify work-hour and related issue for the benefit of our licensed ðlimited tonnageö mariners. On April 26, 2001, they issued Revision #1 to that policy that we reprint below. Our Association, with the assistance of four national maritime unions, had brought the abusive work-hour situation our mariners faced to the attention of Congress and the Coast Guard in our Association's Report #R-201, Mariners Speak Out on Violation of the 12-Hour Work Day. The work-hour situation remains among the most important single issues tackled by our Association since its founding in April 1999.

While the new policy letter was not 100% of what we asked for, our Association found that it provided a good start in clarifying existing laws and regulations. It tells our mariners, their employers, as well as Coast Guard enforcement personnel exactly how the Coast Guard interprets the existing statutes and regulations concerning the 12-hour workday and outlines the protections mariners have in reporting violations of laws and regulations.

Over the course of our campaign to highlight the widespread practice where companies work their mariners beyond the legally-allowed time limits both offshore and on the inland waterways, we contacted many elected lawmakers and regulators

Our efforts paid off when the Coast Guard introduced policy letter G-MOC #04-00 at a Towing Safety Advisory Committee (TSAC) meeting in Memphis in September 2001. We achieved an important but tentative step when we learned how the Coast Guard Marine Safety staff interpreted the laws and regulations we thought they now intended to enforce to protect our mariners. However, we became disillusioned with the lack of enforcement of this policy as well as with some of the cockeyed interpretations that local Coast Guard units and some employers attached to this policy document. Nevertheless, we believe that every credentialed mariner that reads this policy letter will have an important tool in determining whether he or she is being asked to work beyond the legally prescribed time limits. .

U.S. COAST GUARD POLICY LETTER G-MOC 4-00, REV-1

Subject: Watchkeeping and Work-Hour Limitations on Towing Vessels, Offshore Supply Vessels (OSV) and Crewboats Utilizing a Two Watch System

References:

- (a) Title 46 United States Code (46 USC) Part F - Manning of Vessels
- (b) Title 46 Code of Federal Regulations (46 CFR) Part 15 - Manning Requirements
- (c) USCG Marine Safety Manual, Volume III, Chapters 20 through 26 - Marine Industry Personnel
- (d) Title 46 United States Code (46 USC) §2114 - Protection of Seamen Against Discrimination
- (e) Title 46 United States Code (46 USC) §3315 - Disclosure of Defect & Protection of Informants

1. Purpose

1. The purpose of this policy letter is to, in one document, summarize and clarify references (a) - (e) as they pertain to work-hour limitations and watchkeeping for licensed operators and other mariners on towing vessels, offshore supply vessels and crew boats utilizing a two watch system. Related to this subject is the concern that exceeding work-hour limitations leads to the diminution of crew alertness that could contribute to human factors type accidents. The problems associated with diminution of crew alertness are of particular concern even when operating within the constraints of the law. The Coast Guard is currently conducting research on improving crew alertness by identifying the extent to which various aspects of shipboard life/operations may be contributing to the diminution of crew alertness and subsequent unsafe conditions. This policy will further clarify the responsibilities of mariners, vessel owners, operators, masters and the Coast Guard concerning crew alertness and actions necessary to prevent casualties as a result of fatigue. Finally, this policy summarizes the protections afforded to individuals who report to the Coast Guard on violations of the applicable statutes.

2. Definitions [*Emphasis is ours*]

The following definitions are consistent with previous Coast Guard policies or Coast Guard regulations.

- a. **Emergency** is an unforeseen development that imposes an immediate hazard to the safety of the vessel, the passengers, the crew, the cargo, property, or the marine environment, requiring urgent action to remove or mitigate the hazard.
- b. **Overriding operational conditions** are circumstances in which essential vessel work cannot be delayed for safety or environmental reasons, or could not reasonably have been anticipated at the commencement of the voyage.
- c. **Rest** means a period of time during which the person concerned is off duty, is not performing work, including administrative tasks such as chart corrections or preparation of port entry documents, and is allowed to sleep without being interrupted.

- d. **Travel time** to a vessel is considered to be neutral time as it is normally not considered to be "rest" or "off-duty" or "work" time, but all relevant circumstances should be considered in evaluating whether a mariner complies with the applicable "rest" required by STCW or "off-duty" requirements specified in 46 U.S.C. §8104(a).
- e. **Watch** is activity related to the direct performance of vessel operations, whether deck or engine, where such operations would routinely be controlled and performed in a scheduled and fixed rotation. The performance of maintenance or work necessary to the vessel's safe operation on a daily basis does not in itself constitute the establishment of a watch. However, the latter **does count towards the hours of work that can be required by an employer.**
- f. **Work is any activity that is performed on behalf of a vessel, its crew, its cargo, or the vessel's owner or operator.** This includes standing watches, performing maintenance on the vessel or its appliances, unloading cargo, or performing administrative tasks, whether underway or at the dock.

The definitions above for "overriding operational conditions" and "rest" are used in situations where the International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers (STCW), 1978, as amended in 1995, applies.

3. Watchkeeping, Work-hour Limitations, and Manning Requirements <i>[Emphasis is ours]</i>

- a. Watchkeeping requirements, work-hour limitations and manning requirements for mariners on towing vessels, offshore supply vessels and crewboats, as applicable, are comprehensively addressed in references (a) & (c). As a ready reference, enclosure (1) summarizes these requirements.
- b. In establishing the safe manning level for an inspected vessel, the Coast Guard Officer in Charge, Marine Inspection (OCMI) must consider many factors in addition to the statutory and regulatory requirements, including reasonable work-hour limits. **Owners and operators who establish manning levels on uninspected vessels must consider such limits as well.** These factors are specifically outlined in reference (c). In addition, OCMI's may increase the manning of a particular vessel if, through the course of a casualty or other type of investigation, an increase is deemed necessary for the safe operation of the vessel.
- c. The law that addresses watchkeeping and working hours on the subject vessels is found in reference (a), specifically 46 U.S.C. §8104. **This section of the law includes requirements for officers to have an off-duty period before taking charge of the deck watch prior to departing port, watch rotations on vessels, and specific work-hour provisions for various types of vessels.**
- d. 46 U.S.C. §8104(d) requires merchant vessels of 100 gross tons and above, when at sea, to be manned for a three-watch system, and mariners shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. This section of the law also states that a mariner cannot be required to work for more than 8 hours in one day. There are certain exceptions to the work-hour limitations relevant to the docking/undocking, conducting emergency drills, actual emergency situations or overriding operational conditions that compromise the safety of the vessel and its passengers and crew (See 46 U.S.C. §8104(f) in which a mariner can be required to work more than 8 hours in a day. Mariners subject to 46 U.S.C. §8104(d) can consent to work in excess of 8 hours in a day.
- e. 46 U.S.C. §8104(g) permits licensed individuals and crewmembers of towing vessels, offshore supply vessels, and barges, when engaged on voyages of less than 600 nautical miles, when at sea, to be divided into at least 2 watches. The Coast Guard interprets this section of the law to mean that a mariner can be scheduled to work 12 hours in any consecutive 24-hour period, provided the mariner consents to work more than 8 hours in a day.
- f. 46 U.S.C. §8104(h) establishes that licensed operators of towing vessels subject to 46 U.S.C. §8904 may not work in excess of 12 hours in any consecutive 24-hour period, except in an emergency.

4. STCW

In addition to the work-hour limitation requirements outlined above, STCW adds specific rest requirements for vessels operating outside the boundary line (12 miles in the Gulf of Mexico). As a general matter, U.S. regulations impose the STCW requirements on all commercial seagoing vessels (as defined in 46 CFR 15.1101(a)(3)) in international service and to all commercial seagoing vessels of 200 gross register tons and above on domestic and international voyages. The STCW addresses both short-term and long-term rest requirements for watchkeeping personnel.

- a. Persons assigned to navigational or engineering watches shall receive a minimum of 10 hours rest in any 24-hour period.
- b. The hours of rest may be divided into no more than two periods, of which one must be at least 6 hours in length.
- c. Rest periods may be interrupted in case of emergency, drill, or other overriding operational conditions.
- d. The minimum 10-hour rest period may be reduced to not less than 6 consecutive hours as long as no reduction extends beyond 2 days and not less than 70 hours of rest are provided in each 7-day period.
- e. The minimum period of rest required may not be devoted to watchkeeping or other duties.
- f. Watchkeeping personnel remain subject to the work-hour limits and exceptions found in reference (a).

5. Responsibilities

Mariners, owners/operators, and the Coast Guard have separate responsibilities for compliance with, and enforcement of, the work-hour limitation laws. The subparagraphs below provide general guidance regarding the responsibility of each party.

- a. **Mariners** have an individual responsibility to obey the law and are also responsible for reporting suspected watchkeeping and work-hour violations to the Coast Guard. The master of a vessel is ultimately responsible for the safety of the vessel, passengers and crew, cargo, and the environment. To carry out this responsibility the master must ensure that he/she and the crew are properly rested and complying with the law. The master must communicate with the owner/operator to ensure realistic goals are set. If management exerts pressure to exceed the law, the mariner is encouraged to report this situation to the local Coast Guard OCMI. Paragraph 6 of this policy letter describes protections afforded to mariners when reporting violations to the OCMI. While the definition of work includes activities, which are required for the vessel to be operated safely, a minimal amount of de minimis activities would generally not be considered a violation of this rule. Examples of such de minimis activities include: those which are necessary to ensure continued safe operation of the vessel (i.e. information exchange at watch change); safety meetings; and drills and training which can only be conducted underway.
- b. **Owners/operators**, like mariners, are responsible for obeying the law. Companies should ensure employees are informed of the law and educated regarding safety concerns of not getting adequate rest. They should be aware of operational demands and work hours required to complete expected tasks on board their vessels. 46 U.S.C. §8104(i) states that "the owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e) or (h) of this section occurs is liable to the government for a civil penalty..." thus pointing out their responsibility to ensure compliance. They should provide unambiguous guidelines to the master regarding expectations to comply with safety requirements and the law when these are in conflict with operational demands.
- c. Finally, the **Coast Guard** is charged with enforcement of the law. The Coast Guard can initiate an investigation based on confidential information provided by mariners during the vessel inspection process, anonymous tips called into a Coast Guard Marine Safety Office, or through the findings of a Coast Guard marine casualty investigation. The latter may also bring consequences for the mariners involved or the vessel's owner/operators. When the Coast Guard determines that a casualty occurred because of a violation of law, an appropriate action, a suspension and revocation proceeding, and/or a civil penalty may be recommended. However, as described below, protections exist for the mariner reporting deficiencies or illegal operations. OCMI's should ensure that all responsible parties within their area of responsibility are aware of the requirements of the law and particularly the importance that rest plays in ensuring safe operations.

It should be noted that the Coast Guard, by 46 CFR §5.71, is prohibited from exercising its authority for the purposes of favoring any party to a maritime labor controversy. However, if a situation is encountered that affects the safety of a vessel or persons on board, the Coast Guard will initiate an investigation and pursue appropriate action when a violation of statute or regulation is discovered. A particular situation that has generated confusion and concern involves the requirement found in 46 U.S.C. §8104(a), which states that an officer taking charge of the deck watch on a vessel leaving port must have at least 6 hours of off-duty time in the 12 hours immediately before leaving port. While an owner/operator cannot be held accountable for the time a mariner has off, they are responsible for the time that an individual is on the dock or on the vessel while in port, and can be expected to verify that the individual has had an opportunity for rest regardless of where he/she has been prior to performing the assigned duties. The owner/operator cannot expect a mariner to participate in extensive preparations for getting underway and also be rested enough to take the navigation watch without providing an opportunity for the minimum off-duty time required by 46 U.S.C. §8104(a). Similarly, the mariner is responsible for arriving at the vessel properly rested.

6. Protections *[Emphasis is ours]*

The Coast Guard has historically depended on individuals involved with the maritime industry to report violations or unsafe vessel conditions when they occur. In the absence of mariner reporting, the Coast Guard is limited to discovering these types of violations through casualty investigations, or by chance during a scheduled inspection. To prevent retaliation for reporting violations to the Coast Guard, Congress enacted specific protections for mariners that make reports of violations to the Coast Guard. The following cites represent the obligation and protections afforded to mariners for reporting violations of the law or regulations to the Coast Guard.

- a. 46 U.S.C. §2114 provides protection to seamen against any form of discrimination, including discharge, for reporting a violation of any law or regulation issued under the authority of Title 46.
- b. 46 U.S.C. §3315(a) requires licensed officers serving on inspected vessels to assist the Coast Guard in the inspection of their vessels as well as point out defects and imperfections known to them. ***This includes any violations of work or watch standing limitations.***
- c. 46 U.S.C. §3315(b) prohibits any official of the Coast Guard from disclosing the identity of any individual that provides information on vessel defects, imperfections, and overall safety of an inspected vessel on which he or she is serving. This includes information on watchkeeping and work hours.
- d. The identity of any mariner who reports an unsafe condition on any vessel, inspected or uninspected, is also protected in accordance with the Freedom of Information Act (FOIA) exemptions and Department of Transportation (DOT) regulations (49 CFR 7).

[(Signed by CAPT J. D. Sarubbi. Distributed to all District (m) offices; all MSOs/MSDs/Activities; all Regional Examination Centers; and the National Maritime Center NMC(4c).]

OPEN QUESTIONS THAT CRY FOR ANSWERS

1. Why do existing regulations provide two mates on inspected offshore supply vessels on voyages over 600 miles in length but only one mate for a line-haul towing vessel of comparable size or horsepower or on an oceangoing tug for voyages much longer than 600 miles?
2. Why do existing Coast Guard deck officer endorsement examinations contain only two (2) multiple choice questions out of over 12,000 questions on the 12-hour rule?
3. How can a company man a vessel to comply with the 12-Hour Rule with only two officers and still require both the Master and his Mate/Pilot to be on watch together for certain bridges, bends, or portions of the route at the same time.
4. Why, on some Offshore Supply Vessels, is the Master working in the pilothouse while his only Mate is working on deck at the same time and the vessel is operating under a two-watch system?
5. How can a Master on a towing vessel be expected to train his Mate/ pilot to handle anchors when they are the only

two officers on board a two-watch vessel? [Refer to our Report #R-370]

6. If a Master is supposed to have managerial duties on a vessel and is responsible for managing his crew's time, why isn't he provided with a tool like a time clock to keep track of time and/or assigned enough people to do the job properly? [46 CFR §15.710 "It is the responsibility of the Master or Person in Charge to ensure that these limitations are met."]
7. Since, following the request of Congress in 2004, the Coast Guard published its "Demonstration Project" on Crew Endurance Management Systems (CEMS) in April 2006, in what concrete and meaningful ways will this document affect our mariners?

COAST GUARD ABANDONED OUR MARINERS BETWEEN A ROCK AND A HARD PLACE

Although it is clear that they studied the 12-hour rule issues, the sad part of the story is that the Coast Guard never showed as much commitment to enforcing statutory work hour limits as RADM Robert North's staff showed in drafting policy letter G-MOC #-4-00. Presenting the policy letter at the Towing Safety Advisory Committee meeting in Memphis in September 2001 turned out to be little more than a public relations gesture.

Unfortunately, working beyond the statutory work hour limits places a working mariner, whose status in most states is that of an "employee at will," between a rock and a hard place — specifically between the Coast Guard and his employer. The Coast Guard makes ***threats of real enforcement*** to mariners who violate the law and has the tools at hand to make the threats meaningful. A mariner's credential and livelihood are on the line if he breaks the law. On the other hand, an employer has the power to terminate a mariner's employment for any reason (or no reason at all) if he refuses to "cooperate" and work beyond the statutory 12-hour limit his assignment may require.

In some areas, local Coast Guard units interpret the 12-hour rule as if it referred in some manner to the vessel's "underway" time. ***We are unable to find any such interpretation in policy letter G-MOC #04-00, Rev. 1 or any law or regulation cited in the references.***

We continue to ask our credentialed mariners to document any instances where you were forced to work beyond the legal 12 hour limit as well as to leave a record of that in your vessel's rough logbook. We will respect your confidentiality as we respected the confidentiality of the 58 mariners who contributed to the "Yellow Book."

AN EXAMPLE OF A 12-HOUR RULE VIOLATION

On Apr. 19, 2006, our Association received a call from a mariner working on a 55-foot lugger-type towing vessel who works in southeast Louisiana. His vessel was contracted to work on an inland location for a small "oil company" that took over an oil field originally worked by one of the major oil companies.

Although the "oil company" contracted this boat as a "12-hour boat," they frequently required the boat crew to operate beyond the contracted 12 hours per day in violation of the 12-hour rules.

The local Coast Guard boarded the boat to check on "homeland security" issues. During the "boarding" the boarding officer asked the Captain questions about how he observed the 12-hour rule. The Captain reportedly told him "I don't want to tell you a lie" and left the matter at that, without discussing the subject any further. At the time, the company safety man was standing within earshot of the entire conversation.

The Coast Guard boarding officer did **NOT** ask to look at the vessel logs, but did go to the trouble of explaining what the twelve-hour rule meant as far as hours of service were concerned. Consequently, the boat company, the charterer, and the Captain should know what will be expected of them in the future.

The boat was shut down for several equipment violations, one of which reportedly involving the need to install a dedicated fire pump to comply with regulations at 46 CFR §27.303 that had gone into effect a year earlier.

Before the Captain was scheduled to return to work, he called his office. On his previous "hitch" he worked with one deckhand. He asked whether (as a result of the recent boarding) a "third man" (i.e., a second licensed towing officer) had been assigned to the boat. The answer he received was that **IF** the company decided to assign a second licensed officer to the boat they "would let him know."

The Coast Guard boarding officer clearly threatened the Captain if he was caught running the boat short-handed again. Nevertheless, the oil company that hired the boat expected it to operate with its two man crew to fit its 24-hour schedule.

The problem is that the contract calls for the boat company to supply a two-man crew but did not specify that the

crews' hours of operation are limited to 12 hours in a 24-hour period in order to comply with the law. The boat owner was willing to put his crew at risk to save the job if something that happens quite often.

The Coast Guard inspector told the Captain quite plainly that the next time he visited the boat he would check the vessel logs. This put the Captain in a bind. If he complained about being overworked by the charterer, he stood to lose his job since he did not believe his employer would back him. It would cost the charterer several hundred dollars more per day to hire a second licensed officer for the boat. It is the sort of thing that drives a wedge between a mariner and his employer. It leaves a mariner in the middle, trying their best to obey the law and still serve his employer. This is an example of the sort of thing that has gone on for years. The Coast Guard has gone out of its way to overlook it. This is a rather unimpressive example that appears to have a simple solution.

The solution. Most inspected small passenger vessels have Certificates of Inspection (COI) that list the numbers of crewmembers required for both 12- and 24-hour operation. If a boat like this is chartered for 12 hour operation it should have at least one licensed Master and one deckhand. If chartered for 24-hour operation, it should have at least one Master, one Mate, and two deckhands because unlicensed deckhands get tired, too! Our Association expects to see two full crews to serve a vessel for two twelve-hour shifts at a minimum.

Add to this proposed solution that larger vessels need dedicated engine room personnel to service and maintain the engines and all associated engine room equipment including generators, compressors, pumps, steering gear, etc. on towing vessels⁽¹⁾ when these vessels finally come under inspection as ordered by Congress in 2004. [⁽¹⁾Refer to our Report #R-276, Rev. 9, Towing Vessels Must Be Regulated Like Every Other Inspected Vessels.]

Our Association outlined the safety and vocational training requirements⁽¹⁾ for anyone expected to perform duties or stand watch in the engine room in light of the more than 1,300 documented floodings, sinkings, and capsizings, 41 explosions, and 103 abandonments of towing vessels alone in the 12 years between 1992 and 2004. [Refer to our Report #R-428, Rev.1. Report to Congress: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel.]

Add to the foregoing garden variety of problems the fact that fatigue causes accidents and can be prevented. The National Transportation Safety Board called for the introduction of scientifically-based work hour regulations in all modes of transport over a decade ago.⁽¹⁾ [⁽¹⁾ Refer to our Report #R-200, Operator Fatigue and Hours of Service. [NTSB Safety Recommendations I-99-1, to Department of Transportation] 13p

OUR ASSOCIATION PREPARED ADDITIONAL REPORTS ON WORK-HOUR ABUSE

[NMA Comment: This is an annotated list of the reports our Association has compiled on this issue. NMA members are entitled to electronic copies of these reports from our Association. Printed copies are priced below.]

- R-200. June 1, 1999. Operator Fatigue and Hours of Service. [NTSB Safety Recommendations I-99-1, to Department of Transportation] 13p. \$3.60.
- R-200-A. Rev. 2, Nov. 10, 2009. Towing Vessel Hours of Service Issues. 10p, \$3.00
- R-279, Rev 8, Apr. 19, 2008. Request to Congress: To Review and Set Safe Manning Standards for Mariners Serving on Towing and Offshore Supply Vessels. [By Glenn L. Pigott, Capt. Roland Rodney, Richard A. Block] 18p. \$4.60.
- R-302. Guide for Investigating for Fatigue. [Reprint of Transportation Safety Board of Canada report]. 26p. \$6.20.
- R-322. Jun. 30, 2002. Mariner Fatigue is an Accident Waiting to Happen. [Reprint of Article from Houma Courier by Richard Block. 2p. \$1.40.
- R-366. May 1, 2003. The Plight of Towing Vessel Personnel. 5p. \$2.00.
- R-370, Rev. 3. (Series) Nov. 10, 2009. Watchstanding and Hours of Service Limits Using the Two-Watch System.
- R-370-A, Rev. 2. (Series). May 19, 2007.. Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited. 12p. \$3.40.
- R-370-B, Rev.4. (Series). June 1, 2006. Violation of the 12-Hour Rules: The Tug Chinook Strikes & Damages The Lake Washington Bridge. 14p. \$3.80.
- R-370-C Rev. 2. [Withdrawn 6/09; Content merged with #R-370-D, Rev.6]
- R-370-D. Rev. 6. June 18, 2009. Whistleblower Protection, Work-Hour Abuse, and Deadhead Transportation. 16p. \$4.20.
- R-370-E. (Series) July 6, 2006. Crew Endurance: Work-Hour Laws and Regulations Need Review. 8p. \$2.60.

- R-370-F (Series) July 6, 2006. Crew Endurance Management Systems. [Renumbered –formerly #R-362] 9p. \$1.80.
- R-370-G. (Series) Nov. 21, 2006. Crew Endurance: The Call Watch Cover-up. [Renumbered from #R-375.] 10p. \$3.00.
- R-370-H. (Series) Mar. 14, 2006. 12-Hour Rule Violations: Harbor Tugs and The One-Watch System. 4p. \$1.80.
- R-370-I. (Series) Apr. 19, 2008. Safe Management of Crew Travel Time.
- R-370-J. (Series) Aug. 27, 2009. The 12/24 Hour Rule by LCDR Tom Beistle. 18p. \$4.60.
- R-370-K. (Series) Jun 16, 2003. 12 Hour Rule Violation: The Verret Case. 12p. \$3.40.
- R-372. Rev.1. Questions About Towing Vessel Officer Licensing and Manning. 16p. \$4.20.
- R-401, Rev. 1.,. Mar. 8, 2005. Crew Endurance and the Towing Vessel Engineer ó A Direct Appeal to Congress. 30p. \$7.00.
- R-403. Sept. 19, 2004. Stress and the Licensed Mariner. 20p. \$5.00
- R-412 April 25, 2005. Towboat Engineerø Death Points to Need for Changes in the Law. 20p. \$5.00.
- R-413. Rev. 1, Feb. 11, 2006. A Direct Appeal to Congress to Reform the Two-Watch System. 21p. \$5.20.
- R-429-G. Rev. 2. (Series) Feb. 24, 2007.. Report to Congress: Sharpening Accident Investigation Tools By Establishing Logbook Standards for Lower-Level Mariners. 11[p. \$3.20

REFERENCES

[NMA Comment: The Coast Guard cited five (5) references in preparing their Policy Letter G-MOC #04-00. Of these references, laws (statutes) passed by Act of Congress (øReferences øÄ, øDö, and øEö) deserve your primary attention. Regulations that have the force of law (øReference Bø) deserve comparable attention. øReference Cö, excerpts from the Marine Safety Manual (MSM), is outdated and does not accurately reflect the current status of towing vessels. The problem that arises if you ignore the MSM is that the Coast Guardø new öinspection regulationsö will determine the future manning of all towing vessels. The only opportunity to affect those decisions is before the final regulations are promulgated.]

■REFERENCE A – 46 U.S. Code Part F

[NMA Comment: 46 U.S. Code Part F, Manning of Vessels, contains sections (§) 8101 through 9307. We included only §8104 and §8904 since these were the only two sections in Part F mentioned in the text above. Updated to Sept. 22, 2009]

46 U.S. Code §8104. Watches

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a fishing, fish processing, or fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

© On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsection (d) of this section-

(1) a seaman may not be-

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for-

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g) On a towing vessel, an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of \$10,000.

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of \$10,000. The seaman is entitled to discharge from the vessel and receipt of wages earned.

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 watches.

(l) Except as provided in subsection (k) of this section, on a fish processing vessel, the licensed individuals and deck crew shall be divided, when at sea, into at least 2 watches if the vessel-

(1) entered into service before January 1, 1988, and is more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and has more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(m) This section does not apply to a fish processing vessel-

(1) entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(2) entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, "work" includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

(o)

(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

(2) On a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel-

(A) before September 8, 1990, operated in that trade; or

(B)

(i) before September 8, 1990, was purchased to be used in that trade; and

(ii) before June 1, 1992, entered into service in that trade.

(p) The Secretary may prescribe the watchstanding and work hours requirements for an oil spill response vessel.

46 U.S. Code §8904. Towing vessels

(a) A towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer), shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

(b) A vessel that tows a disabled vessel for consideration shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.

(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).

■REFERENCE B – 46 CFR Part 15, Manning Requirements

46 CFR §15.710 Working hours.

In addition to prescribing watch requirements, 46 U.S.C. 8104 sets limitations on the working hours of credentialed officers and crew members, prescribes certain rest periods, and prohibits unnecessary work on Sundays and certain holidays when the vessel is in a safe harbor. It is the responsibility of the master or person in charge to ensure that these limitations are met. However, under 46 U.S.C. 8104(f), the master or other credentialed officer can require any part of the crew to work when, in his or her judgment, they are needed for:

- (a) Maneuvering, shifting berth, mooring, unmooring;
- (b) Performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;
- (c) Saving of life on board another vessel in jeopardy; or,
- (d) Performing fire, lifeboat, or other drills in port or at sea.

[CGD 81-059, 52 FR 38652, Oct. 16, 1987, as amended by USCG-2004-18884, 69 FR 58343, Sept. 30, 2004; USCG-2006-24371, 74 FR 11261, Mar. 16, 2009]

46 CFR §15.1101 General.

(a) *Definitions.* For purposes of this subpart, the term-

(1) *STCW* means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995;

(2) *STCW Code* means the Seafarer's Training, Certification and Watchkeeping Code;

(3) *Seagoing vessel* means a self-propelled vessel in commercial service that operates beyond the Boundary Line established by 46 CFR part 7. It does not include a vessel that navigates exclusively on inland waters;

(4) *Rest* means a period of time during which the person concerned is off duty, is not performing work (which includes administrative tasks such as chart corrections or preparation of port-entry documents), and is allowed to sleep without being interrupted; and

(5) *Overriding operational conditions* means circumstances in which essential shipboard work cannot be delayed for safety or environmental reasons, or could not reasonably have been anticipated at the commencement of the voyage.

(6) *Vessel Security Officer (VSO)* means a person onboard the vessel accountable to the Master, designated by the Company as responsible for security of the vessel, including implementation and maintenance of the Vessel Security Plan, and for liaison with the Facility Security Officer and vessel's Company Security Officer.

(b) Except as otherwise provided in §15.1103(d), the regulations in this subpart apply to seagoing vessels subject to STCW.

(c) A vessel that has on board a valid Safety Management Certificate and a copy of a Document of Compliance issued for that vessel in accordance with 46 U.S.C. 3205 is presumed in compliance with the regulations in this subpart.

[CGD 95-062, 62 FR 34539, June 26, 1997, as amended by USCG-2008-0028, 73 FR 29071, May 20, 2008]

■REFERENCE C – Marine Safety Manual, COMDTINST M16000.8B, Volume III, Chapters 20 thru 26

[**NMA Comment:** Volume 3 of the Marine Safety Manual (MSM), available on the internet, contains written policies that govern Marine Industry Personnel of our merchant mariners. This 342-page volume currently needs updating since the current version is dated May 27, 1999. This pre-dates current towing vessel credentialing regulations. This excerpt from the Table of Contents will help you to find pertinent sections.]

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Selections from MSM Chapter 20: General Provisions for Vessel Manning

A. Introduction. This chapter contains guidance for correct, uniform application of the statutes and regulations that relate to the ***manning of inspected and uninspected vessels***. This material is used by Coast Guard marine safety personnel to determine vessel manning scales, in conjunction with the applicable manning laws and regulations and official directives.

B. Authority.

1. Statutes And Implementing Regulations.

- a. Division of crew into watches: 46 U.S.C. 8104; 46 CFR 15.705.
- b. Work hours and rest periods: 46 U.S.C. 8104; 46 CFR 15.1111; 46 CFR 15.710.
- c. Able seamen: 46 U.S.C. 7306-7312 and 8702; 46 CFR 15.1103; 46 CFR 15.840.
- d. Lifeboatmen: 46 U.S.C. 7316 and 8101; 46 CFR 15.845 and 199.100.
- e. Mates: 46 U.S.C. 7102 and 8301; 46 CFR 15.1103; 46 CFR 15.810.
- f. Masters: 46 U.S.C. 7102 and 8301; 46 CFR 15.805.
- g. Radar observers: 46 CFR 15.815.
- h. Chief engineers: 46 U.S.C. 7102 and 8101; 46 CFR 15.820.
- i. Engineers: 46 U.S.C. 7102, 8101 and 8301; 46 CFR 15.1103; 46 CFR 15.825.
- j. Pilots: 46 U.S.C. 7101, 8101 and 8502; 46 CFR 15.812.
- k. Lookouts: 46 CFR 15.850.
- l. Fire patrolmen and cabin watchmen: 46 U.S.C. 8102; 46 CFR 15.855 and 78.30.
- m. Radio officer/radiotelegraph operator watches: 46 U.S.C. 7101-7103, 7318 and 8101; 46 CFR 15.1103; 46 CFR 15.830.

- n. GMDSS Operator(s) and GMDSS Maintenance: 47 CFR 80.1073 and 80.1074.
- o. Tankermen: 46 U.S.C. 3703, 7317, 8703, 9101 and 9102; 33 CFR 155.710; 46 CFR 31.15 and 15.860.
- p. Operators: 46 U.S.C. 8104(h), 8903 and 8904; 46 CFR 15.601, 15.605, 15.610 and 15.705.
- q. Staff officers: 46 U.S.C. 7101, 7102 and 8302; 46 CFR 15.835.
- r. Qualified members of the engineering department (QMEDs): 46 U.S.C. 7313 and 7314; 46 CFR 15.1103.
- s. Ordinary seamen: 46 U.S.C. 8702; 46 CFR 12.25-10 and 15.840.
- t. Crew citizenship: 46 U.S.C. 8103 and 12110(d); 46 CFR 15.720.

The Secretary of the Department of Transportation (SEC DOT) has authorized the Commandant to perform the functions required of the SEC DOT by these laws. This authority has been further delegated in Part 1 of Titles 33 and 46, Code of Federal Regulations (CFR), this manual, and instructions issued to marine safety personnel.

2. General Manning Authority.

The general regulations for manning of vessels are contained in 46 CFR 15 (Subchapter B, Merchant Marine Officers and Seamen). Regulations concerning certificated lifeboatmen, fire patrolmen, and other manning standards for specific classes of vessels are contained in Subchapters D (Tank Vessels), H (Passenger Vessels), I (Cargo and Miscellaneous Vessels), R (Nautical Schools), T (Small Passenger Vessels), and U (Oceanographic Research Vessels). The general manning and crewing requirements for vessels and facilities operating on the U.S. Outer Continental Shelf are contained in Part 141 of Title 33 (Subchapter N, Outer Continental Shelf Activities).

C. Responsibility Of The Officer In Charge, Marine Inspection (OCMI).

Under 33 CFR 1.01-20, the OCMI is responsible for the enforcement of vessel inspection, navigation, and seamen's laws within a specific zone. In this capacity, the OCMI is responsible for certifying the competence of merchant mariners and for establishing manning levels for various types of vessels. The Certificate of Inspection (COI), Form CG-841, states the minimum number of licensed officers and certificated crewmembers necessary for the safe operation of inspected vessels, as required by 46 U.S.C. 8101 and 46 CFR 15.501. Also, many uninspected U.S. merchant vessels are subject to the manning requirements of 46 U.S.C. 8103, 8104, 8304, 8701-8703, 8903 and 8904. The International Convention for the Safety of Life At Sea (SOLAS), Chapter V, Regulation 13(b) requires each vessel to which SOLAS Chapter I applies to be issued a "Safe Manning Document." The COI serves as the safe manning document for U.S. inspected vessels. In establishing the safe manning level for a certificated vessel, the OCMI should consider the following factors, in addition to statutory and regulatory requirements:

1. Size of the vessel;
2. Route;
3. Hull and equipment maintenance needs (protective coatings, cargo gear, equipment sophistication, etc.);
4. Type and horsepower of propulsion machinery;
5. Maintenance of machinery and equipment;
6. Degree of automation of deck and engine room equipment;
7. Type of cargo;
8. Cargo transfer system;
9. Fire protection systems (crew operational requirements);
10. General arrangement of vessel equipment as it relates to crew operational requirements;
11. Lifesaving equipment;
12. Level of qualification of each crew position to perform tasks demanded by the vessel's mission;
13. Number of passengers carried;
14. Hazards peculiar to route and service;
15. Hours of operation within a 24-hour period;
16. Successful operation of similar vessels;
17. Reasonable work hour limits;
18. The existing safety record of the vessel; and
19. International Maritime Organization guidelines (IMO Resolution A.481) and other international standards.

D. Administration of Manning Scales.

When a vessel is certificated in one zone for operation in another, the development of the vessel's manning scale should be coordinated with the OCMI for the latter zone, to avoid misunderstandings later. Manning of special or unique vessels shall be coordinated with Commandant (G-MOC). Consult volume I of this manual concerning waivers and appeals of manning requirements.

E. Citizenship Requirements For Licensed And Unlicensed Seamen On U.S. Documented Vessels And Foreign Vessels Within U.S. Jurisdiction.

1. Definition Of Seaman.

In general, the term "seaman" is interpreted broadly by the Coast Guard to mean any 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

operation of the vessel. This interpretation is consistent with expressions of congressional intent, and with judicial opinions regarding the use of the term "seaman" throughout Title 46 of the U.S. Code.

a. A crewmember may be a seaman although he or she is not occupying a position required by the Certificate of Inspection. However, persons who are on board the vessel in a capacity other than as crewmembers are considered passengers and are not subject to the citizenship requirements; except if the person is filling a position that is designated as a "person in addition to the crew".

b. Under normal conditions, the Coast Guard does not consider a person who is briefly visiting the vessel in a consulting capacity (e.g., a vendor's technical representative) to be a crewmember. Similarly, the Coast Guard does not apply citizenship requirements to shoreside personnel who come on board vessels while they are not underway to load or unload cargo or to perform services such as maintenance of shipboard equipment. However, under most circumstances, individuals being compensated for performing their jobs while the vessel is underway are considered seamen for the purpose of applying citizenship requirements. Waiters, entertainers, industrial personnel, oil recovery workers, riding maintenance crews, and others employed in the business of the vessel are considered seamen.

c. The actual details of a particular situation will determine whether in fact the individual in question is a seaman for the purpose of 46 U.S.C. 8103.

(3) Presidential Declaration.

The President of the United States may grant an exemption for any position aboard a vessel if he determines that employment of American citizens or resident aliens would not be consistent with the national interest. This exemption would potentially be applied to address a national emergency or circumstances involving special foreign policy implications.

6. Enforcement.

Whenever a question arises as to whether or not a particular individual is properly documented as a permanent resident alien or other alien allowed to work, the Coast Guard officer should consult with local officials of the INS. Coast Guard units that are normally involved in enforcement of laws relating to fisheries should establish contact with the local INS office to discuss how questions concerning aliens will be addressed when they arise.

F. Crew Vacancies And "Sailing Short."

1. Introduction.

46 U.S.C. 8101(e) permits a master to "sail short," e.g., without meeting the manning requirements stated on the COI, under certain unusual circumstances. At the outset of a voyage a vessel should "possess" the complement of certificated crewmembers and licensed officers stipulated on the COI. The Shipping Articles, Form CG-705A, if required, would provide acceptable evidence of this. When vacancies occur at or after the time the crew is required to be aboard as specified in the Shipping Articles, the vessel may sail short, provided the vacancy was without the consent, fault, or collusion of the master, owner, or any other person interested in the vessel, and the master has made a conscientious effort to find a qualified replacement. In addition, the master must be satisfied that the vessel is safe to make the intended voyage.

2. Restrictions.

Convenience-type discharges, vacation time granted in accordance with collective bargaining agreements, etc., are considered "consent" actions and, therefore, not appropriate reasons for sailing short. Desertion, failure to join, hospitalization, etc., are considered "no consent" cases and, may be grounds for sailing short if the master considers the remaining complement sufficient. However, at each port or place called at during the voyage (including the port of departure), the master has an obligation to obtain qualified replacements if they are available. The master need not obtain permission to sail short, but must report the situation in writing within 12 hours of arrival at the port of destination. The master's decision to sail short is subject to the OCMI's review and appropriate administrative action should be taken if warranted (see the Commandant's Decisions on Appeal, Nos. 2136 (Dillon) and 2172 (Chapman). *[NOTE: The difference between the sailing-short provision and a national defense waiver is based upon timing and purpose. The waiver is a shortage sanctioned for national defense considerations, and is obtained before the voyage. Sailing short is based solely on the master's judgment, and is the subject of an after-the-fact report, and is not based on national defense considerations.]*

3. Filling Vacancies With Foreign Crewmembers.

46 U.S.C. 8103(e) provides that if a documented vessel is "deprived for any reason of the services of an individual (except the master and the radio officer)" while on a foreign voyage, the resulting vacancy can be filled with an individual not a citizen of the United States "until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained." The non-U.S. citizen crewmember should hold an equivalent certificate of competency appropriate for the position being filled. The vessel would be expected to replace the non-U.S. citizen crewmember at any subsequent port call where a qualified U.S. citizen could be dispatched to meet the vessel.

G. Maintenance Department.

1. Background.

In recent years, labor-saving devices and operational innovations have been introduced on merchant vessels that permit adjustments in the composition of the minimum crews required by the Coast Guard. These adjustments provide the vessel's master the flexibility to use the crew more effectively while still ensuring that sufficient qualified personnel are carried for continued safe operation of a vessel. Such adjustments may include maintenance-persons within the deck and engineering departments, or through the formation of a maintenance department. Personnel so assigned would perform duties on a regular work day basis, and would not be considered members of an established watch, as defined in 46 CFR 15.705.

2. Manning Factors.

The OCMI's authority for approving requests for changes in the required crew composition is contained in 46 CFR 15.501 and 46 U.S.C. 8101. These sections state that the COI issued to an inspected vessel specifies the minimum complement of licensed individuals and crew considered necessary for the safe operation of the vessel. Among the factors to be considered by the OCMI in determining the minimum crew complement are: installed equipment, degree of automation, use of labor saving devices, work hour limits, and the organizational structure of the vessel.

3. Crossover Between Deck And Engine Departments.

A modern vessel with a traditional deck/engine department organization may typically require 6 ABs and 3 QMEDs. When permitted by the COI, some of the individuals in a vessel's required crew complement may be engaged as maintenance-persons (deck or engine). All personnel so designated will hold ratings as AB for deck maintenance-person or an appropriate rating for engine maintenance-person. Deck or engine personnel assigned to their respective departments are subject to the crossover prohibition of 46 U.S.C. 8104(e). If the vessel establishes an acceptable maintenance department, the persons assigned to the maintenance department are available as a ship's maintenance crew and are not subject to the crossover prohibition. These personnel may then be employed in a manner best satisfying the vessel's needs that is left to the discretion of the vessel master provided the master operates the vessel in accordance with the approved automation plan. Vessels reorganized with a maintenance department or maintenance-persons assigned to deck and engine departments would normally require unlicensed manning including 3 ABs in the deck department, and at least 5 maintenance-persons. (See chapter 23 of this volume for further discussion and sample manning scales for vessels which employ maintenance-persons as required crew.)

4. Watch Augmentation.

The required personnel in the maintenance department shall hold appropriate qualified ratings (AB, QMED, etc.) so that they may be used by the vessel's master to augment navigational or machinery space watches should the need arise. For those personnel not assigned to the maintenance department, watch assignments would be governed by departmental affiliation, except under circumstances noted in 46 U.S.C. 8104(f). For personnel assigned to the maintenance department, watch augmentation will be based on individual qualifications. For example, an individual who holds both deck and engine qualifying ratings assigned to the maintenance department may be assigned to deck or engine watches. During periods in which these maintenance-persons are used to augment navigational or machinery space watches, they become part of the watch and are subject to successive watch rotation (46 CFR 15.705). Engagement of maintenance-persons with the intention of assigning any individual alternately between deck and engineering watch sections on a routine basis would be considered a violation of 46 U.S.C. 8104(e).

5. Maintenance Department Request.

A request for implementation of a maintenance department on an inspected vessel will require complete documentation from the vessel's operator describing how such a department will function within the shipboard management arrangements. The request must be made to the OCMI who last certificated the vessel or is currently conducting an inspection for certification. The documentation must include an operating manual for the vessel that describes the structure of the maintenance department, qualifications of the maintenance-persons, the responsibilities and duties of all vessel personnel when the maintenance department concept is implemented, various operating conditions under which personnel would be rotated out of the department (e.g., watchstanding augmentation), and a planned maintenance program.

H. Work hour Limits.

2. Other Vessels.

Various sections of 46 U.S.C. 8104 limit the number of hours that licensed individuals and/or crewmembers may be required to work on certain classes of vessels. This does not preclude seamen from voluntarily working beyond those limits and possibly becoming fatigued from excessive hours of overtime. OCMI's should consider all relevant information described in 20.C in establishing required manning levels. While there may be no definitive, scientific basis for a maximum work hour limit for vessel crewmembers, **the OCMI has the discretion to impose manning levels based on a specified reasonable workhour limit taking into account fatigue and other human factors.** A twelve hour work day, applied in a manner similar to the above work hour limit for tankers, is considered a reasonable work hour limit for other classes of vessels. It is recommended that the OCMI consider this work hour limit in establishing manning levels for non-tankers, adjusting for vessel specific factors that might either alleviate or exacerbate fatigue. Likewise, the OCMI may appropriately consider working conditions and work hour limits established through a collective bargaining agreement in arriving at a final manning determination. (See chapter 24 of this volume for additional discussion regarding working conditions.)

3. Enforcement.

Coast Guard boarding officers/marine inspectors, during boarding or inspection activity on board a vessel shall:

- a. Ensure that they make general inquiries concerning the working conditions on board the vessel.
- b. Make a specific effort on tankers to ascertain whether the vessel's crew is complying with the work hour provisions of 46 U.S.C. 8104(n) and rest requirements of STCW as found in 46 CFR 10.51111. A review of vessel work logs, maintenance records, and crew interviews should be conducted at each vessel inspection and re-inspection to validate adequacy of the manning level to maintain the vessel in safe operating condition.

(1) Any indication that the owner/operator has made manning increases beyond that required by the COI to satisfy work hour limits, or that work hours have been or may be exceeded, or that required maintenance has not been performed because of inadequate manpower should be brought to the attention of the OCMI. The OCMI should review the vessel's manning complement and determine whether the required complement should be modified or increased to ensure that the vessel can be safely operated within the OPA work hour limits.

(2) All manning increases necessary to meet the statutory requirements must be reflected on the COI as the minimum required manning, regardless of whether the owner has already made such changes voluntarily. To facilitate program review of OPA 90 impacts, OCMI's shall notify Commandant (G-MOC) of any increases in manning levels imposed as a result of this work hour limit.

Selections from MSM Chapter 21: Sample Vessel Manning Scales

A. Introduction.

This chapter is intended to assist the Officer in Charge, Marine Inspection (OCMI) in the translation of the various statutes, regulations, court decisions, and practices into minimum manning requirements on a vessel's Certificate of Inspection (COI). Sample manning scales are presented below for both general and specific classes of vessels. It must be clearly understood that these scales are stated for conventional (NON-AUTOMATED) vessels, and do not invalidate the basic legal requirements outlined in chapter 20 of this volume. The OCMI is not compelled to assign manning levels according to the sample scales presented below, as they are neither mandatory, nor all inclusive. They are representative of specific classes of certificate vessels. The OCMI should consider the manning level recommended by the appropriate table as a starting point, and then determine whether fewer or more personnel are required for the safe operation of the vessel based on local circumstances and other relevant considerations which are spelled out in section 20.C. Guidance regarding the proper entry of COI manning data is provided in chapter 3 section H of the Marine Safety Manual, Volume II. Where manning reductions are requested or contemplated by virtue of vessel automation considerations, the OCMI should also follow the guidance in chapter 25 of this volume. Inquiries and correspondence concerning manning requirements should be directed to Commandant (G-MOC).

[NMA Comment: This chapter contains a number of "sample" manning tables including those for integrated tug-barges (ITB) and offshore supply vessels. Since the status of "towing vessels" currently lies somewhere in between "inspected" and "uninspected" vessels and understanding how little the Coast Guard really knows about these vessels, most of this and subsequent chapters are of little help in determining the final outcome of manning requirements.]

■ REFERENCE D – 46 U.S. Code §2114

46 U.S. Code §2114. Protection of seamen against discrimination

(a)

(1) A person may not discharge or in any manner discriminate against a seaman because-

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred; or

(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public.

(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer.

(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including-

(1) restraining violations of this section;

(2) reinstatement to the seaman's former position with back pay;

(3) an award of costs and reasonable attorney's fees to a prevailing plaintiff not exceeding \$1,000; and

(4) an award of costs and reasonable attorney's fees to a prevailing employer not exceeding \$1,000 if the court finds that a complaint filed under this section is frivolous or has been brought in bad faith.

■ REFERENCE E – 46 U.S. Code §3315

46 U.S. Code §3315. Disclosure of defects and protection of informants

(a) Each individual licensed under part E of this subtitle shall assist in the inspection or examination under this part of the vessel on which the individual is serving, and shall point out defects and imperfections known to the individual in matters subject to regulations and inspection. The individual also shall make known to officials designated to enforce this part, at the earliest opportunity, any marine casualty producing serious injury to the vessel, its equipment, or individuals on the vessel.

(b) An official may not disclose the name of an individual providing information under this section, or the source of the information, to a person except a person authorized by the Secretary. An official violating this subsection is liable to disciplinary action under applicable law.