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By Richard A. Block, Secretary, GCMA

WHY OUR MARINERS DON'T GET THE MESSAGE

BACKGROUND

Mariners can have a voice in regulatory affairs when they interact with established Federal advisory committees.

The Chief of the Maritime Personnel Qualifications Division, G-MSO, is the Staff Officer at Coast Guard Headquarters who serves as the Executive Director of the Merchant Marine Personnel Advisory Committee (MERPAC). I wrote to that officer on Dec. 15, 1997 on the matter of providing adequate notification to mariners in the offshore oil industry concerning the 1995 Amendments to STCW.⁽¹⁾ [⁽¹⁾CGD 95-062.]

The text of that letter follows ó suitably updated to reflect changes that have occurred in the past 6 years.

Dear Captain

Relative to our previous exchange of correspondence, in this letter I will address suggestions on how the Coast Guard might better inform "the public."

You stated that: "We share your concern on the importance of public notification on rules affecting merchant mariners." I will limit this discussion of "the public" to lower-level licensed mariners and the documented mariners who serve with them so as to deal with areas I am directly and actively concerned with. I contend that this segment of the public, as holders of Coast Guard licenses and MMDs makes an important contribution to the maritime industry and is far too important for the Coast Guard to continue to overlook. Our figures show that lower-level licensed mariners holding deck licenses comprise almost 69% of all licensed deck officers and operators.

It is clear from both your letter and from reading many notices in the Federal Register that the Coast Guard regularly takes many steps to inform the public. What I will address in this letter is **why these efforts consistently fail to reach the working mariners?**

THE FEDERAL REGISTER

I do not question the fact that publishing rulemaking projects in the Federal Register meets the legal requirements

for public notification. This is why the Federal Register and Code of Federal Regulations system was established in 1935. I have subscribed to this publication for the past 20 years at a cost that is now \$697 per year. If you think about it, I am sure you will agree that probably less than 1% of the working mariners in this country part with this kind of cold cash simply to pick their way through more than 60,000 pages per year to keep abreast of the regulatory changes that affect them personally. Consequently, with the Federal Register, you do not enjoy a direct and immediate contact with most working mariners. [*Note: Placing the FR on the internet has improved its accessibility by the General public.*]

In our experience, relatively few "boat companies" that employ lower-level licensed mariners receive the Federal Register. However, most boat companies (hereinafter "employers") are members of the Offshore Marine Services Association (OMSA), the American Waterways Operators (AWO), and the Passenger Vessel Association (PVA) (hereinafter "Associations") that do keep their corporate members well informed with a timely synopsis and analysis of pertinent Federal Register articles and their expected impact on the industry. Consequently, the leaders of the industry can interact with the Coast Guard directly or through their Associations to input their views regarding any rulemaking proposal every step of the way. Industry views, as presented by Associations or individual business leaders provide feedback in the form the Coast Guard is prepared to use. Consequently, the Coast Guard may have reason to believe it is thoroughly informed.

UNION AND NON-UNION

Lower-level working mariners are either "union" or "non-union." The entire mineral and oil industry is non-union; most towing vessel operators and small passenger vessel operators and virtually all uninspected passenger vessel operators are non-union as well. The small number of licensed engineers on oilfield vessels are non-union as well. These are all lower-level licensed and documented mariners. The point is that the relatively few lower-level licensed mariners that are represented by the major maritime unions receive union publications that do discuss major rulemaking proposals in a timely manner while those without union representation do not receive such notification! Therefore, most lower-level mariners do not receive the benefit of pertinent and useful information from this source although they may opt to do so in the future.

For the most part, maritime labor unions represent upper-level license holders and blue-water documented mariners. These interests are the ones that most union representatives tend to be closest to, identify with, and whose interests they represent. Union representatives also provide feedback in the form the Coast Guard is prepared to deal with, namely, with their presence at public meetings, participation in many federal advisory committees, preparation of written responses to Federal Register rulemaking notices, and so forth. Yet, the views of non-union working mariners are seldom expressed in written comments, heard at public meetings, or effectively represented at federal advisory committee meetings. They are lost in the shuffle.

Unfortunately, the views, opinions, and practical expertise of these mariners that represent up to 69% of the

licensed deck officers are allowed to slip through the cracks because they are never informed of proposed changes and their comments are not solicited. Yet, these are important people who can make or break a regulation. They need to be brought into the regulatory loop.

THE MARINE SAFETY NEWSLETTER

Since early 1992, the Oil Pollution Act Update that later became the Marine Safety Newsletter began informing its readers of regulations in the regulatory pipeline. Those who knew this publication even existed received timely announcements and contact names and numbers for regulatory projects. However, I was told that only about 6,000⁽¹⁾ names were on the mailing list. This does not come close to the population of approximately 160,000 merchant mariners, which is as close to an "official" count of the number of existing merchant mariners that appears to exist. Although the publication was informative, useful, and cut through much of the red tape involved in using the Federal Register, this publication had very little in it to attract the interest of most lower-level working mariners. [⁽¹⁾*An attempt to obtain a more accurate count was stonewalled by Admiral Loy while he was Commandant.*]

The Marine Safety Newsletter is no longer published. Local Marine Safety Offices occasionally issue bulletins to their local mailing list, but these tend to be sporadic.

LOCAL NOTICES TO MARINERS (LNM) AND BROADCAST NOTICES TO MARINERS (BNM)

The LNM publication is limited in scope to matters concerning aids to navigation and closely related matters. For the most part, it duplicates information in the broadcast notices to mariners (BNM). Information passed through the LNM and BNM should reach working mariners. Yet information on most Coast Guard regulatory initiatives never passes through this pipeline and, consequently, never seems to reach the eyes or ears of lower-level mariners. Specifically, announcements of ANPRM, NPRM, SNPRM, Interim Rules, and Final Rules are rarely if ever mentioned in broadcasts or in the published copies of the LNM. It is as if two branches of the Coast Guard never communicate with each other. This is a direct notification opportunity that the Coast Guard has missed. It could become an important means of reaching working mariners if the Coast Guard would expand the content of the standard marine information broadcast.

PROCEEDINGS

Proceedings of the Marine Safety Council, the Coast Guard's glossy, tabletop showpiece magazine is produced at considerable public expense. However, for all the effort that goes into this publication, its purpose appears to be aimed at public relations rather than to provide information of immediate importance or value to lower-level mariners.

THE BOAT COMPANY AND ITS MARINERS

While it does not go out of its way to restrict the flow of information to mariners, the Coast Guard appears to act as if it assumes that each employer will automatically transmit the information it receives about rulemaking matters from its "Association" contacts or from any meetings it attends to its licensed and documented mariners. It would make sense to do so, but it simply does not happen. The Coast Guard should acknowledge this. Possible reasons include:

- É The raw information provided by the Coast Guard may be too lengthy, too complex, or too hard to understand. Preparing a synopsis for company employees may be too time-consuming or burdensome. The STCW rulemaking is an excellent example of a rulemaking initiative that never really reached down to the employee level five years later.
- É The wrong person in "management" may receive the information, may not understand it, and may feel under no pressing obligation to pass it on.
- É Only large boat companies have one or more persons detailed on a regular basis to handle regulatory affairs.
- É The synopsis provided by an Association may be considered as privileged information, available to management or restricted to its dues-paying members, but must be simplified or edited before presentation to mariners. In any event, it is written at a level that "management" would be expected to understand. The "management" level is assumed to be at the same level of educational attainment as the Coast Guard ó at the college level. At this level, the Coast Guard assumes its written word can be understood and acted upon ó although some recent NVICs and NMC Policy Letters are virtually unintelligible with a Master's degree!
- É The written word at the "management" level must be translated into meaningful guidance and directives directed at the level of the working mariner. This can be a time-consuming process, and it is at this point where the flow of information usually stops.
- É As regards new licensing regulations, to this date "management" largely has left the matter of licensing up to its employees. A license is a prerequisite for holding a job. However, the more complex and burdensome the process became in recent years, the more "management" was sucked into providing more than service letters and character references. Schooling, training, record-keeping, etc., are now becoming part of a burden management is expected to pick up ó often without being specifically told to do so.

Most employers assume that their interests and those of their employees are the same. It makes for a good working relationship. In a great many cases they are. However, consider this statement: "This proposed rule would place its primary economic burden on the mariners, not on their employers ó who may, though they need not assume responsibility for this burden."⁽²⁾ This statement is factually correct. However, it emphasizes a key difference that, in the rumor mill, could easily separate a "good" employer who picks up the full training tab including travel, lodging, and

tuition from a "bad" employer who does not show such concern for his employees. Mariners have changed jobs for less! With training costs mounting as a result of new regulations, the party who picks up this new bill can be very significant. [⁽²⁾Refer to 62 FR 55554, Oct. 27, 1997 and 59 FR 53757, Oct. 26, 1994.]

What causes this breakdown in communications? While some lower-level licensed and documented mariners have attended college, experience leads me to believe that most have a high school level education or less; many have considerably less. Since I have been writing marine textbooks for the past 33 years for this audience, I am quite familiar with this problem. Unfortunately, many of these mariners are simply not able to accurately read and digest the regulatory messages presented in the Federal Register ⁽¹⁾ ó even if with better access to that material. I believe that the "plain language" requirements for writing regulations can help to improve the readability of federal regulations in general. Whenever I apply standard readability tests to Federal Register and CFR material, the grade level inevitably shoots above the 12th grade level.

Reading and general educational attainment problems were well documented by Capt C. T. Newman's year-long study and his landmark report for the Coast Guard published in 1973.⁽³⁾ Consequently, somebody must help many mariners wade through this material. Who is this "somebody?" The Employer? The Coast Guard? [⁽³⁾Available from Marine Education Textbooks as MET Stock #BK-515]

THE EMPLOYER

There can be considerable expenses involved in informing mariners of new regulations. It is easy to understand why an employer only feels an obligation to spend the time and money to call a meeting, pay to bring half his employees from its boats to a central location, and discuss a new regulation after the regulation becomes a "Final Rule" and only if it is proven to have a direct impact on some aspect of company operations. Understandably and predictably, some companies opt for a cheaper way out by preparing a company memo that describes only those aspects of a new rule that directly impact their employees. Again, however, the problem of reading and understanding the written word arises. Since most lower-level mariners have no knowledge of this "new" rule, they can only react to it after the fact. All of this leads to the spread of rumors and misinformation from mariners in one company to mariners in another. It is not simply the differences in educational attainment and reading abilities, but also the fact that the correct information in the Federal Register has passed through too many hands on its way to the mariners it directly affects. The new towing vessel licensing regulations creating new Apprentice Mate and Steersman positions as well as the STCW rulemaking are good examples.

THE COAST GUARD

If a mariner has a problem with a license or a MMD the Coast Guard directs him to the Regional Exam Center. Yet, with its workload, the typical REC neither has the time nor sufficient trained personnel to discuss new regulations in detail with every mariner. It is a physical impossibility to do

so. Yet, the RECs are expected to translate the STCW regulations, the Tankerman regulations, Radar Observer regulations, and Towing Regulations to an audience that has a varying background ranging from ill-informed to misinformed. In many cases, the REC personnel must work in a confrontational atmosphere with a mariner who has been thwarted in his attempt to renew a license or MMD or raise its grade or scope because of a new regulation or requirement he may know little or nothing about. The REC "experience" can be a great source of frustration to a working mariner. The REC is the wrong place to discover a new regulation or new license requirement. Dumping all personnel problems involved with enforcing a new regulation on the REC is simply the wrong approach to disseminating regulatory changes to the merchant mariners. It is easy to explain why the RECs are a barely controlled bedlam.

In order to keep their heads above water, the REC personnel often develop written handouts. Unfortunately, like all written directives, the Coast Guard assumes that working mariners can read and understand the written word. This is not always true as Mr. Paul McElroy pointed out to the Quality Action Team assembled in 1997 to work on Coast Guard licensing practices. The "quality" of paperwork improved considerably with his input.

FEDERAL ADVISORY COMMITTEES

Mariners do care about their jobs and the issues that affect them. This is why almost 800 letters were submitted on the towing vessel licensing NPRM in the summer of 1996. The National Association of Maritime Educators (NAME) and the American Inland Mariners Association (AIM) spent considerable time and effort in informing working mariners and small businesses directly impacted by the proposed regulations. This is a job of informing the public that the Coast Guard is paid to do!

It is significant that this particular NPRM was prepared with the help of two federal advisory committees and the input from two highly respected "Associations" whose comments you provided us. However, nobody in the entire process considered incorporating opinions offered by working mariners although the rulemaking affected them most directly. This was particularly true of MERPAC who, although they solicited opinions from working mariners, would not allow the mariners who contributed to their report to present their input to the full committee. Instead, MERPAC required that the report be read by a deep-sea engineer who was an appointed member of MERPAC and who botched the report's delivery and focus. This certainly does not encourage participation in the process.

My questions concerning federal advisory committees leads me to believe that organized labor is well represented on both TSAC and MERPAC. However, organized labor does not represent the majority or even a sizeable minority of lower-level mariners. Organized labor's interests are primarily deep-sea and large-ship oriented. These interests are often served while the interests of many mariners who work in the small-vessel, brown-water segments of the industry remain unknown or are ignored.

I have found that your comments that "Even if they are not committee members, working mariners in attendance as members of the public are invited to participate..." are quite

true. Yet, few are able to participate because of travel expenses, work schedules, and lack of information about committee meetings that are announced in the Federal Register ó that they never receive. However, the Coast Guard never hesitates to proceed without effective input from these working mariners. This is as true in 2003 as it was in 1997!

COMPUTERS

The Coast Guard has taken giant steps in making information more readily available on computer. Unfortunately, you must have a computer hooked to the internet to obtain this information. You must be able to read and comprehend the same material written at the 12th grade level to use the information when you find it. This is the same basic readability problem previously discussed.

NVICs

Until the internet arrived, Navigation and Vessel Inspection Circulars (NVICs) were a subscription item. Although the Coast Guard expended great effort in compiling useful advice in many areas, most lower-level mariners had never seen or heard of a NVIC ó and still haven't!

PROPOSED SOLUTIONS

1. Every lower-level licensed mariner and holder of an MMD pays the Coast Guard a user fee for issuing his credentials. However, for the life of the license or document, the mariner receives absolutely nothing from the Coast Guard in the way of information concerning proposed or final regulations involving changes that govern that license or document. Is it too much to ask the Coast Guard to use its computers to mail such notices to mariners who have licenses or documents that are affected by proposed rulemaking? A simple announcement of proposed changes and final rules and contact numbers and addresses could be directly mailed for a small fraction of the user fees a license or MMD holder paid. In this case, the Coast Guard should keep in mind that each licensed or documented mariner is its customer.

2. When any substantial new requirements affect working mariners, the Coast Guard should include in its final rulemaking process a discussion of the final rule directed both at employers and working mariners that outlines the purpose, responsibilities, dates of compliance, and penalties imposed by the new regulation. This discussion should be in the form of a videotape of sufficient length that discusses the new regulations in terms that can be readily understood by the audience it is intended to reach ó including all affected working mariners. In some cases, this may require definition of terms, using a simple vocabulary, and illustrations showing any equipment or process described in the regulation. This discussion should be scripted by the Project Officer as part of his project and reviewed in-house before being released. If necessary, a talking face familiar with the television media could be hired to present the script

once it is approved at the Headquarters level. However, the key to this program should be its script preparation.

Copies of the video tape (or DVD) should be furnished to each Marine Safety Office and Regional Exam Center and should be available at cost to each employer, school, and even to an individual mariner. The Coast Guard offices should then notify their primary customers of its availability ó and use the tape to become informed about the project and its requirements and implications. The tapes also could be used for training REC personnel, in license renewal courses, to train individual mariners on vessels, in company offices, in the waiting rooms of RECs, at public meetings etc. This will mean that a complete and accurate message, not a partial-truth or misinformation can be presented from top to bottom so that everybody understands all of the implications of new regulations.

Most Coast Guard regulations are written for good reasons and can withstand careful scrutiny. These "reasons" are often interesting and often provide useful safety pointers and illustrations. However, the background is often omitted and the regulations are often distorted as they pass down through a chain of command that selects certain sections, fails to mention others, and can put a "spin" on still others that may never have been intended. Working mariners often need simple explanations of complex subjects presented at a time and place convenient to them. Employers often appreciate material of a regulatory nature that doesn't waste their time and that they can easily pass along to their employees in an authoritative yet simplified package that is easy to understand.

3. A project officer assigned to any project that will affect lower-level licensed or documented mariners should either have experience in the field or should acquire sufficient background before starting to generate the project. He/she should actively seek the opinions of a number of working mariners that is a truly representative sample of the population that will be affected by the rulemaking. Adequate funds and time must be set aside for obtaining this information in the field and away from Washington. This effort should be in addition to the time spent with "employers", "Associations", and federal advisory committees.

4. All REC personnel should receive comprehensive training in applying every new regulation that affects merchant mariners before the effective date of that regulation. If that cannot be accomplished, then the effective date should be delayed until it can. Wrong answers generated in the REC lead to unnecessary expense and frustration to working mariners. Mariners have good reason to tire of this runaround!

5. Expand coverage of the LNM and BNM to include a minimum of regulatory project notification even though time does not permit discussion of the details. However, the announcement should be properly scripted and its audience identified.