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# Sidelights

February 2011 Vol. 41, No 1

Written by Masters & Pilots, for Masters & Pilots

[www.mastermariner.org](http://www.mastermariner.org)



**Regulations and the Shipmaster  
Liabilities and Pollution  
Maritime Security Information Sharing  
Who is in Charge of Armed Guards?**

*Published by the Council of American Master Mariners, Inc.*

*The Council of American Master Mariners is dedicated to supporting and strengthening the United States Merchant Marine and the position of the Master by fostering the exchange of maritime information and sharing our experience. We are committed to the promotion of nautical education, the improvement of training standards, and the support of the publication of professional literature. The Council monitors, comments, and takes positions on local, state, federal and international legislation and regulation that affect the Master.*

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# In This Issue



## ON THE COVER

Built in 2007, the *OVERSEAS HOUSTON* was the first ship of the class built at Akers Philadelphia Shipyard.

Photo: Capt. Terry Jednaszewski

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We welcome your articles, comments, illustrations and photographs. Please email or send your submissions to *Sidelights* Chair Capt. Tom Bradley at the above address. All submissions will be reviewed, but are not guaranteed to be published.

## PUBLICATION DEADLINES

Issue	Submission	Release
February	Jan. 5	Feb. 1
April	March 1	April 1
June	May 1	June 1
October	Sept. 1	Oct. 1
December	Nov. 1	Dec. 1

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President Captain Cal Hunziker comments on the continued rise of piracy attacks off the Somali coast and around the world, along with the alarming number of seafarers and vessels still being held hostage months later.



## In the Council

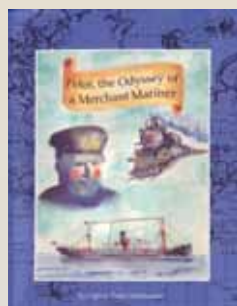
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**Chapter Inactive**

Anyone interesting in restarting this chapter,  
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### **NEW ORLEANS**

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captgoff@mastermariner.org

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ies, so please call or check website for current  
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**Mailing Address:** 1106 S.W. 12<sup>th</sup> Road

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Meetings at 1130 on the 2<sup>nd</sup> Tuesday of each  
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captfaulkner@mastermariner.org

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captboatner@mastermariner.org

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captniem@mastermariner.org

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Napa, CA 94558-2562



Captain Cal  
Hunziker  
CAMM National  
President

## IT'S HIGH TIME TO STOP PIRACY

We are on a never ending cycle! While rereading the February issue of *Sidelights* magazine, I saw that one of the subjects discussed was the increase in acts of piracy in 2009. In reviewing the International Maritime Bureau (IMB) Live Piracy website (see important links on the CAMM website) for the 2010 report, knowing that the EU force naval detachment has been operating in the area off the Somali coast, I would have expected the incidences of piracy to be reduced. Unfortunately, that is not the case.

As reported in *WAVES*, a maritime newsletter for seafarers (<http://wavesnewsletter.com>), the incidences of pirate attacks has increased yet again. Worldwide the total attacks for 2010 were 440 and the total successful hijackings were 51, an 8.4% increase over 2009, and a 50.2% increase over 2008. Even with the EU force naval attachment in operation there were 218 incidences off the Somali coast, an increase of one over the reported incidences in 2009, and more than double incidences in 2008. The total number of successful hijackings off the Somali coast remained steady at 47. The total hostages being held captive by the pirates increased to 1001.

It is high time that the maritime nations of the world demanded an end to these attacks and started efforts to release the

vessels and crews being held captive. As you can see from the statistics, the attacks and successful hijackings off the Somali coast remained steady even with the EU force in place, but increased in other parts of the world. It appears pirates in other parts of the world have seen how successful the Somali pirates have been and are now ramping up their efforts to secure similar profits.

The highest concentration of attacks in the South China Sea seems to be between Bunguran Barat and Siantan Island northeast of Singapore. Of course the old pirate stomping grounds of the Malacca Straits and Singapore Straits were also active. There were other scattered reports from Southeast Asia but no large concentrations other than those mentioned earlier. There were also reports on the West Coast of Africa and on the northern coasts of South America; these though seem to be widely scattered and isolated incidences.

In some recent reports the use of a strong room or citadel, where the crew can hide and still control vessel, protected from the pirates, seems to be very effective. It still doesn't prevent the pirates from stealing personal effects and ships stores, but, it has allowed the vessel's crew to maintain control of the vessel until help could arrive. Of course this still doesn't rid the seas of the pirates, it just forces them to find other ships that are not as well prepared.

It remains CAMM's position that until the world governments step in and rid

the seas of piracy and change the laws on piracy to include armed attack on merchant ships, the best action is a well-trained and well-armed crew as well as the secure rooms.

I want to thank those of you who step forward to volunteer as watchkeepers. As you can well imagine, it is nearly impossible for one person to continually monitor all of the agencies and government entities that want to make changes to the maritime industry and to our jobs and positions. I am presently talking with Lyn McClellan, our positions chair, to formalize this new program. There will be a report in each issue of *Sidelights* detailing our watchkeepers' findings.

Dues invoices for 2011 will be in the mail shortly along with your raffle tickets. Please remember to mail back your dues along with a check for the raffle and raffle stubs for the drawing at the April AGM. I know that the AGM in Baltimore titled *The Master and the Burden of Regulations* will be an interesting one. Capt. Hartnett has arranged for Congressman Elijah Cummings to be our main speaker on Friday evening. IFSMA and The Nautical Institute will be holding a Command Series Seminar on Wednesday, April 27 and all CAMM members are invited to attend and participate. I will be looking forward to seeing many of you there.

  
Captain Calvin C. Hunziker



The Council of American Master Mariners, Inc.

# Annual General Meeting

## Professional Development Conference

April 27-29, 2011

*"The Master and the Burden of Regulations"*

*Hosted by the Baltimore / Washington, D.C. CAMM Chapter  
Celebrating 20 years in December 2011*



**Keynote Speaker**  
**Congressman**  
**Elijah E. Cummings**  
(D-MD) Member of the  
Subcommittee on Coast  
Guard and Maritime  
Transportation

**Speakers** from the industry and governmental agencies.

**Panel Discussion** The Master and the Burden of  
Regulations.

**Business Meeting** Vote on CAMM Positions and proposals  
moving CAMM forward. CAMM positions are used as our  
voice in Congressional matters and International Conventions  
through IFSMA and the IMO.

**Gala Dinner** Formal evening with Keynote Speaker  
Congressman Elijah E. Cummings, the Lalonde Spirit of the Seas  
Award Presentation, and recognitions.

### PDC Speakers\*

**Captain Mark P. O'Malley**  
Commander, USCG Sector Baltimore

**Captain Rodger MacDonald**  
Secretary-General, IFSMA

**Captain George Quick**  
Vice-President,  
MM&P Pilot Membership Group

**Father Sinclair Oubre**  
Apostleship of the Seas  
CAMM Chaplain

**Representatives from**  
MARAD  
NTSB  
Baltimore Maritime Exchange

**Also Speaking:**  
Active Ship Master  
Maritime Attorney

\*Subject to change

### Venue:



692 Maritime Boulevard  
Linthicum Heights, MD 21090-1952  
www.ccmi.org 1-866-656-5568

**Event Chairperson:**  
Capt. Joe Hartnett  
caphartnett@mastermariner.org  
Sponsorship Opportunities Available

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*"There are those who look at things the  
way they are and ask why... I dream of  
things that never were, and ask why not?"*  
— Robert Kennedy





# Conference Agenda

## Registration

Registration forms are now available in a tear-out near the back cover and on the CAMM website. Follow the links to 2011 PDC & AGM. Please be sure to register early; registrations are due **no later than March 25, 2011**.

## Accommodations

Book your room at CCMIT **no later than March 25, 2011**. **Be sure to mention Council of American Master Mariners as your group**. CAMM has secured room rates at \$105 + tax per night. Breakfast tickets are available for \$11 per person, per day. CCMIT offers free airport and train station shuttle service.

## Activities / Day Trips

For early arrivals, bring your clubs and join us for a round of golf, Captain's Choice, on Tuesday.

Spouses and guests are invited to join us for lunch, shopping and more in Annapolis on Thursday. Transportation will be provided.

A tour of the MITAGS ship simulator will be available Thursday afternoon for anyone interested.

## Sponsorship Opportunities

Corporate and organization sponsorships are available at different levels. Please contact event chairman Capt. Joe Hartnett for a sponsorship packet.

*Print and return the registration form today!*

**[www.mastermariner.org](http://www.mastermariner.org)**

*Registration and room bookings due no later than March 25, 2011*

## Wednesday April 27

**Command Series Seminar #1  
Maritime Resource Management**  
Sponsored by The Nautical Institute  
and IFSMA

**CAMM Welcome Reception**  
Memorabilia Room 1900-2100  
Dessert selections and cash bar.

## Thursday April 28

**Professional Development  
Conference**  
\$60 per person, lunch included  
Guest Speakers  
Panel Discussion  
Bridge Simulator Tour

**Dinner & Evening Social**  
\$60 per person, includes transportation  
*The Rusty Scupper*  
Third Floor, Harbor Side  
Baltimore

## Friday April 29

**Annual General Meeting**  
\$60 per person, lunch included  
Officer Reports  
Council Business  
Views & Positions Discussion

**Gala Dinner**  
\$65 per person  
Keynote Speaker Congressman  
Elijah E. Cummings  
*Lalonde Spirit of the Seas Award*  
Presentation  
Recognitions

## Dinner Menus:

**Thursday Dinner & Social**  
*Thursday Evening, \$60 per person*  
*The Rusty Scupper*  
Buffet featuring Beef Tenderloin Tips,  
Lemon Garlic Roasted Chicken, Grilled  
Mahi-Mahi, soup, salad, and desserts  
Cash Bar

**Gala Dinner**  
*Friday evening, \$65 per person*  
CCMIT  
Mixed Grille featuring Petite Filet,  
Crab Cake and Half Chicken Breast,  
starches, vegetable and dessert  
Cash Bar





# Council Reports

## Secretary's Report

*Submitted by Captain Don Moore, Jr.*

The new year is just beginning and I am looking forward to a very productive and successful 2011.

The first order of business is to submit the final financial reports of 2010 and to present a proposed budget for 2011. These documents have been presented to the National President and to the CAMM Financial Committee for acceptance.

Next on the list is to prepare 2011 dues invoices and personal data sheets. Data sheets are in the process of being distributed to all members. I am including in this mailing additional notices to those members who are in arrears paying dues. In this way, I hope to find many of our "Lost Captains".

I must stress the importance of the data sheets that are sent out each year. The information received from these sheets is used to update the Member Administration (MAS) database. Please don't be frustrated if it looks like I am asking the same questions each year. Remember, there may be others who have moved or whose situation has changed. I am also looking for biographical data. Our archives, as you know, were destroyed in the 9/11 tragedy and we are re-building our history. The more accurate the data in MAS, the more able I am to communicate with our membership.

Our annual new member drive is also in full swing and we have had some success. As part of this project I am sending out applications to over 160 current and retired Panama Canal Pilots. Wish me luck in this endeavor.

Remember we are offering premiums to those who sponsor new members. Please be as active as you can in this recruitment. See particulars of these

premiums elsewhere in this edition of *Sidelights*.

The National Board of Governors is working on the CAMM Strategic Plan to have a draft ready for the Baltimore AGM in April. The Seattle Chapter has created an electronic survey device that they hope will generate some good ideas. National officers are working with Seattle to implement this survey to the national membership. I encourage all members and all chapters to work on this plan so that we can improve our organization.

The drive to explore changing our IRS status is temporarily on hold as we try to determine if a change in status will actually enhance our revenue situation without endangering our mission statement. Results of the research to follow.

Publication procedures for *Sidelights* Magazine have been amended by Captain Tom Bradley and ad solicitations have vastly improved. A new publisher has been hired and we expect the magazine to flourish in 2011.

Captain Hunziker and I are finishing our terms of office. We will turn over the reins in April of 2012. It is not too soon to begin the search for our successors.

## AGM /PDC Committee

*Submitted by Capt. Joe Hartnett, Chair*

Plans continue to come to fruition as we put together our event agenda. Members of our chapter voted unanimously that *The Master and the Burden of Regulations* should be the theme of this year's PDC. You will read more on this subject in this and in upcoming *Sidelights*.

Please be sure to book your room early at CCMIT and return your registration forms **no later than March 25th**. This date is extremely important to us in order to revise existing contractual obligations.

IFMSA and the Nautical Institute are sponsoring a Command Seminar on Wed., April 27, in conjunction with our PDC/AGM. The morning session will center on piracy and criminalization and the afternoon session on maritime resource management. The meetings will include lunch at no charge to attendees. Arrive early to attend this free seminar. Following the Command Seminar, head to the Memorabilia Room for a CAMM welcome reception which will feature dessert selections and a cash bar.

Our PDC on Thursday will feature speakers from the maritime industry, government and the membership. On Thursday evening we will venture to the Inner Harbor waterfront for a buffet dinner. You will have the option to return to the hotel on the bus or spend the rest of your evening in the Inner Harbor and provide your own transportation back to the hotel. Water taxis run from the restaurant to various destinations in the Inner Harbor.

On Friday we will hold our Annual General meeting which will be followed by our Gala Dinner. We are very fortunate to have as our Keynote Speaker Congressman Elijah E. Cummings (D-MD), who is the Chair for the House Subcommittee for the US Coast Guard and Maritime Transportation.

I strongly encourage all CAMM members to attend. The members of the Baltimore/Washington Chapter have worked hard to re-activate the chapter. We have renewed contacts within the Government and the maritime industry and we would like to show them that our local efforts are supported Nationally.

Corporate and organization sponsorship opportunities are available starting at \$250 and go up to \$1000. Please contact me for more information: [caphartnett@mastermairner.org](mailto:caphartnett@mastermairner.org).



## Positions Committee

*Submitted by Ms. Lyn McClelland, Chair*

Thank you to those who responded to our *Watchkeepers Wanted* article last issue. We have filled two of the positions, and still have many more to fill!

Please remember to go to our website and forums to review current positions and views. Some positions may now be moot or need to be reworded based on recent changes in regulations. Please use the forums ([www.forums.mastermariner.org](http://www.forums.mastermariner.org)) to support, oppose or suggest changes.

To date, we have one new view and we have two pending from last year. The new view is to oppose the employment of any and all holders of foreign licenses, certificates, and/or documents on any American flagged vessel, developed in response to a USCG proposed rule. The two pending views from last year are in regards to Physical Guidelines for Merchant Mariners and US Coast Guard ownership of Merchant Mariner Credential (MMC) / License.

Like last year, we will not be editing positions on the floor, so it is imperative that submissions are made prior to April 1 so the committee has time to further research and carefully word statements.

## Sidelights Committee

*Submitted by Capt. Tom Bradley, Chair*

*Sidelights* is ever-evolving as a first-class publication among seafarers; both in our membership and in building relationships with Masters' associations internationally. *Sidelights* and the website are the Council's means to carry out our Mission Statement priority of "fostering the exchange of maritime information and sharing our experience."

To continue with our request for industry and government watchkeepers, we'd like to start a recurring column featuring their reports. This is an important piece to developing CAMM positions statements and for our Board of Governors to act accordingly in a timely manner. In order for this to work, we still need to fill some watchkeeper positions. Please see the December 2010 issue for details.

As we expand, so do our needs to support and maintain *Sidelights* standards. We still need a few more advertisers for the year to offset publishing costs (if you or someone you know is interested, please contact myself or see our media kit on the website). We need more help with copy editing and fact-checking, and photographers and artists. If you have any suggestions for articles or improve-

ments to *Sidelights*, please send them to the committee at [sidelights@mastermariner.org](mailto:sidelights@mastermariner.org).

In respect to both *Sidelights* and the website, we are getting interest from Australia, India, UK, Ireland and more in terms of articles, subscriptions, and building relationships with common goals.

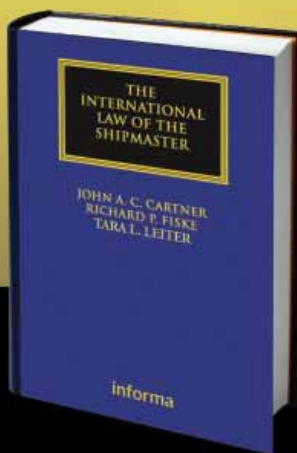
*Continued on next page >>>*

# The International Law of the Shipmaster

Part of the *Essential Maritime and Transport Library*

### Authors:

Dr. John A. C. Cartner  
Richard P. Fiske  
Tara L. Leiter



ISBN: 978 184311 807 7

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[www.mastermariner.org](http://www.mastermariner.org)



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Website:  
[www.shipmasterlaw.com](http://www.shipmasterlaw.com)

## Council >>>Continued from page 9

The CAMM website is also an excellent starting point for items of interest to mariners. You'll find links to the ICC Live Piracy Map, AIS Marine Traffic, our international colleagues and maritime governing bodies.

We believe the website is still underutilized, especially in the forums. Even though there are a few new posts from this fall, we know you have more opinions to voice! It's an excellent tool to communicate your thoughts with our membership on topics which affect us all.

### Seattle / PNW

*excerpted from SeaPacNeWletter*

A total of 18 attended the December luncheon. Although there was no guest speaker for this meeting, the agenda included a discussion on CAMM Strategic Planning with National President Captain Cal Hunziker.

Chapter President Captain Richard Klein read a letter of appreciation from YMTA regarding our Golf Tournament scholarship money.

Captain Hunziker then described the three major legs to CAMM as an organization: 1) Social atmosphere, 2) Public Awareness and 3) Political influence. He said that CAMM's mix of working and retired members allows for experience-sharing and networking. The Seattle Chapter's charity fund raising via the golf

tournament has been a good example for raising public awareness. Another venue, as described by Pat Hartle, could be the annual Maritime Career Day, which has been held at Seattle's Pier 66. Some of the booth sponsors include YMTA, Cal Maritime and Kings Point. Captain Klein suggested that CAMM could attend with information about how to prepare for a career at sea with perhaps a brochure that describes what is needed to become a merchant marine officer.

Captain Hunziker concluded with some thoughts on the political aspect of CAMM's mission. He said that what is needed now are people ("watchstanders") to monitor the information websites that might be displaying information on potential legislation that could affect a ship's Master's duties.

A discussion was held about proposal to use surveys to acquire membership input on a National level about CAMM's strategic plan.

### Columbia River

*submitted by Captain Tom Bradley*

The Columbia River Chapter continues to meet regularly and welcomed new member, retired APL CE Paul Siracusa. We've moved our meeting location across the Columbia River from the Red Lion at the Quay to the Red Lion on the River.

At our January meeting, we discussed extensively some AGM items and shared sea stories.

sible means to create a legal pirate; the recent proposal from the USCG to recognize STCW certificates of foreign seamen; and the Galileo Satellite Program, which will provide precise navigation worldwide.

The San Francisco Chapter of CAMM joined The Ancient Mariners and the San Mateo Navy League at the Oyster Point Yacht Club for their Christmas festivities. Capt. Kerry O'Brien gave a wonderful presentation about the American Flag and for which it stands and all the trials and tribulation the Flag went through. Captain Chick Gedney was recognized and honored for his contribution and as a veteran of WWII.

At the annual Christmas party aboard the *JEREMIAH O'BRIEN*, Capt. Pat Moloney was honored with a certificate and a carved plaque for the Master who served for the longest, 14 years, on the *JEREMIAH O'BRIEN*.

The Chapter plans to continue attending high school and college job fairs, encouraging high school students to participate in *JEREMIAH O'BRIEN'S* Shipboard Adventure Program with overnight stays. The Chapter is also working with Capt. Bolton at CMA to start a cadet chapter.

### Los Angeles / Long Beach

No report submitted.

### Houston

No report submitted.

### Mobile Bay

No report submitted.

### San Francisco Bay Area

*submitted by Captain Klaus Niem*

The SFBA chapter continues to meet monthly at Sinbad's Pier 2 with in-depth and lively discussions. We've talked about piracy, including issuing Letters of Marque as a pos-

### Tampa Bay

*excerpted from Tampa's CAMMLetter*

The CAMM Tampa Bay Chapter ended 2010 with our annual Christmas luncheon, where wives and significant others are invited as guests of the chapter. There were twelve members and nine guests present. As has been the custom, all ladies were presented with a small gift, a small box of chocolates, by chapter president, Captain Dave Williams.

To start off the New Year right, fifteen members were in attendance at our January luncheon. Ports Chairman, Capt. Terry Jednaszewski, reported that

## New Members

Congratulations! You now have all the benefits of CAMM membership!

3293-S Captain **Tuuli Besser-Bookman** of Benicia, CA  
*Ship's Officer and Professor, California Maritime Academy*  
Sponsored by Captain Sam Pecota, #3204-R

### Triple our Membership Drive

*Sponsor 3 approved new members and be eligible to earn a free year's membership dues!* Ask your Chapter President for more details. Membership applications are available online at [www.mastermariner.org](http://www.mastermariner.org) or request one from Capt. Liz Clark.



the main tanker terminal will be undergoing upgrades. A new cruise ship, NCL's *NORWEGIAN DAWN* will start offering cruises from Tampa later this year.

The chapter will be holding its annual brunch at Mimi's Café on Saturday February 19th at 10:30AM. Ladies will once again be invited as guests of the chapter.

We are sad to report that a Charter Member of the chapter, Capt. Glen Banks 2253-R, passed away in December.

IFSMA will hold their EXCO meeting in Tampa on Wednesday April 20th. We have changed the date of our April meeting to Thursday April 21st and invited the IFSMA members attending the EXCO meeting to join us.

### Port Everglades / Miami

No report submitted.

### Baltimore / Washington DC

*Submitted by Capt. Joe Hartnett*

Our chapter is pleased to announce we have elected a Sea-Going Vice President, Capt. Joseph Byrne, Master of the APL *JAPAN*.

Several members met at the December meeting in Baltimore to continue preparations for the PDC & AGM and discuss the theme. After discussing regulations with chapter member Capt. Byrne, we decided that "Regulations" should be the focus of our PDC. Capt. Byrne explained how his role as Master has changed given the new and changing regulations.

For the January meeting we will be attending the Joint Maritime Academy luncheon at the Army/Naval Country Club in Washington, D.C. The guest speaker will be Mr. John Porcari, The United States Deputy Secretary Of Transportation.

### New York / New Jersey

No report submitted.



### TAMUG Cadets

*submitted by Tamara Talley,  
Camm Club President*

The CAMM TAMUG cadet chapter  
*Continued on next page >>>*



## H.R.23 Belated Thank You to the Merchant Mariners of World War II Act of 2011

Belated Thank You to the Merchant Mariners of World War II Act of 2011 - Establishes in the Treasury the Merchant Mariner Equity Compensation Fund for payments by the Secretary of Veterans Affairs (VA) of a monthly benefit of \$1,000 to each individual who, between December 7, 1941, and December 31, 1946, was a documented member of the U.S. merchant marine (including the Army Transport Service and the Naval Transport Service) serving as a crewmember of a vessel that was operated in U.S. waters by the War Shipping Administration or the Office of Defense Transportation and under contract to, or the property of, the

United States. Requires such individuals to: (1) apply for such benefit within one year after the enactment of this Act; and (2) not have received benefits under the Servicemen's Readjustment Act of 1944.

Requires the Secretary to include, in annual budget documents submitted to Congress, detailed information on the Fund's operation. ☆

*H.R. 23 is sponsored by Representative Bob Filner (D-CA-51). On January 5, 2011, the bill was introduced and referred to the House Committee on Veterans' Affairs.*

## Women on the Water Conference

*submitted by Tamara Talley,  
TAMUG CAMM Club President*

The Women on the Water (WOW) Conference spotlighted the maritime issues specifically faced by women in the maritime industry. During the conference panelists shared their personal stories to the cadets, the professionals, and other attendees. The panelists for the 2010 WOW Conference included women from different areas in the maritime industry. We had professional women from the engineering side and deck professionals from NOAA, Military Sealift Command (MSC), Houston Pilots, Coast Guard Personnel, tug boat operators, and officers from ships such as tankers and containers. Each woman discussed a different issue, explained their entry into the industry, and how she achieved her position she holds today.

The topics explained at the conference included life on the water, gos-

sip throughout ships, professional life versus personal life onboard a vessel, types of vessels to operate, different jobs available upon graduation, and the overall experience of life at sea.

On the second day of the conference there was a section set aside for networking skills. Since the Council of America's Master Mariners is a type of networking and forum for communicating opinions through the maritime industry, the Vice President of CAMM Club, Shannon Peters and myself, the President of CAMM Club, made an announcement to the attendees of the conference. Our announcement described the objectives of CAMM Club as a cadet chapter and of the National Chapter. We encourage schools without a cadet chapter to create one, and the professionals in the maritime industry to join the Council of America's Master Mariners. ☆





## CROSS'D THE FINAL BAR

### CAPTAIN GLEN BANKS #2253-R



Capt. Glen P. Banks, who served in leadership positions at the Masters, Mates & Pilots for 14 years, died Dec. 15 at his home in Westminster, Maryland. He was 63 years old.

Glen started life in Brooklyn and attended New York City public schools before beginning to work his way up the hawsepipe to become a professional mariner, an accomplishment of which he was extremely proud. He served in the Navy and on merchant ships during the Vietnam conflict and the First Gulf War. During his career as a professional mariner, he worked as an officer on tankers before joining Puerto Rico Marine Management in 1986 as a permanent employee. He sailed for the company for many years as second mate, chief mate and master.

Glen joined MM&P in 1978. He began his career as a union official in 1997, winning election as Gulf Ports Vice President. Later, he was elected to three terms as the union's International Secretary-Treasurer.

A steadfast political progressive and a staunch union man, he had an incredibly quick wit and a biting sense of humor, two facets of a complex and engaging

character that co-existed with a generous nature and a heart of gold.

Devoted to his family, he strove to maximize opportunities to spend time with them. He loved to motorcycle with his wife, Betsy, and to go on camping trips with his son, Glen. One of his proudest moments was when Glen became an Eagle Scout.

He leaves his wife Elizabeth Banks, his sons Thomas Banks and Glen Banks, and Thomas' wife, Vonda.

"MM&P members, staff and officials have lost a true friend and brother," said MM&P International President Tim Brown. "He was a great friend and colleague, as well as an accomplished and forward-thinking Secretary-Treasurer. He will be sorely missed by all who knew and loved him."

A warrior with the heart of a poet, Glen found special meaning in these verses from the Carl Sandburg poem, *Finish*:

*"Ring one bell for me once, let it go at that.*

*Or ring no bell at all, better yet."*

If you wish to make a charitable contribution in Glen's name, Glen asked that donations be made to the Life Raft Group: [www.liferaftgroup.org](http://www.liferaftgroup.org).

*Courtesy of MM&P. Capt. Banks was also a founding member of the CAMM Tampa Chapter.*

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*"Ring one bell for me  
once, let it go at that.*

*Or ring no bell at all,  
better yet."*

*- Carl Sandburg  
Finsih*

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**Council >>>Continued from page 11**  
meets once a week to discuss the hot topics in the maritime industry. Our objective in the cadet chapter is to make more students aware of the current issues in the maritime industry and encourage their involvement in the maritime community. CAMM Club offers a chance for cadets to become active members while they are in school and encourages the cadets to join once they become licensed officers.

CAMM Club informs the students on discussions of maritime topics. The National Houston Chapter meets the first Friday of the month at Texas A&M Galveston in the Blue Room. We open the conference to any student who wishes to participate. The Houston Chapter is headed by our instructor, Captain Jack Lane, who believes the support of the National Council of America's Master Mariners is very important to the cadet chapter. ☆

Please have a "Moment of Silence" for the following departed brothers. The news of their passing was received via information submitted on the Dues Invoice Data Sheets, by written letter, or by email received since the last issue of *Sidelights*

- Captain **Eugene Sullivan** #136-L of Matthews, NC, passed in late 2010
- Captain **Trygve E. Haagensen** #346-L of Ipswich, ME, passed on 09/18/2010
- Captain **Hermann A. Allen** #1666-R of Shrewsbury, NJ, passed on 10/11/2010
- Captain **Andrew Skucy** #1690-R of Everett, WA, passed in Spring 2010
- Captain **Lindley Lentz** #1880-R of Columbia, MD, passed on 10/15/2010

# Dear Sidelights

News flash!! Just heard that another pilot has had his federal license pulled because of sleep apnea. He had reported each year that he was using a C-PAP machine and was having no issues. As pilots are required to submit a physical annually to the USCG and the pilot in question had been using the C-PAP for more than 10 years, this was nothing new. What was new, was that this time the USCG wrote back requesting the pilot to submit the results of a "sleep" test, and although his physician stated he had passed the test, the USCG disagreed and suspended his license. This is the second case that has been reported to me and I'm beginning to wonder how many more are out there? How about it folks, are there more cases like this one out there? If these are not isolated cases, then maybe we need to get the USCG to review their procedures when their findings go against those of a qualified physician.

Captain Cal Hunziker  
President, CAMM

I am a Warden of the Honourable Company of Master Mariners in London. I also chair the Technical Committee of the Company.

We noted with interest the section on your web site dealing with the CAMM position on various aspects of maritime legislation.

This is something which we recognise as being valuable to the maritime community on an international basis.

At a recent meeting of our Technical Committee it was suggested that we adopt the same sort of approach, thus providing our membership with a competent and considered view of legislation that has a bearing on the maritime business both nationally, regionally (we have the EU to contend with) and internationally.

My purpose in writing is to introduce myself and to let you know that we are also taking this approach which will strengthen our international links and be of great value to the professional seafarers.

With kind regards,  
Captain John Hughes, Master Mariner

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# Regulations and the Ship Master

## *a Preview for the 2011 AGM*

by Captain  
Joseph Byrne, Jr.  
#3112-R

The main topic for discussion at the April 2011 AGM will be regulations and their impact on the Ship Master's job. This is a timely and relevant subject that is sure to generate lively discussion and debate, as the Ship Master's daily responsibilities are increasingly dominated by compliance with an increasing number of regulations. The Ship Master can no longer primarily measure each of the many decisions and judgments to be made against the time-honored standard of prudent seamanship, but must also ask whether there is an applicable regulation that must be considered. Thus, at a minimum, the Ship Master must have a general sense of when a regulation may apply and have access to those regulations on board for reference. The Ship Master must then have assistance from the operating company in interpreting and complying with those regulations in daily operations. The purpose of this article is not to argue for or against the current regulatory scheme – that will be left for the 2011 AGM – but is simply to give a broad overview of the myriad of regulations now applicable to vessel operations.

Black's Law Dictionary (Sixth Edition) defines a regulation as a "... rule or order having force of law ... issued by various governmental departments to carry out the intent of the law ...". Thus, regarding the US Merchant Marine, Congress passes an applicable law and delegates its specific application and enforcement to the Department of Homeland Security/US Coast Guard (DHS/USCG). The USCG accomplishes its regulatory mandate through the promulgation of enforcing regulations. In addition to empowering

laws passed in the normal legislative process, many of the laws from which we get our maritime regulations come from Convention Codes to which the US is signatory through membership in multi-national organizations such as the International Maritime Organization (IMO). These International Convention Codes become US law once passed by Congress. These include, but are not limited to: International Convention for Safety of Life at Sea 1974 (SOLAS); Convention on the International Regulations for Preventing Collisions at Sea 1972 (COLREGS); International Safety Management Code 2002 (ISM Code); International Convention for the Prevention of Pollution from Ships 1973/1978 (MARPOL); International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1995 (STCW); and, International Ship and Port Facility Security Code 2002 (ISPS) (in US incorporated into Maritime Transportation Security Act of 2002 - MTSA). Additionally, other US federal and state authorities claim regulatory oversight of merchant shipping.

As Master of a US Flag containership on a liner service, regulatory compliance is a major aspect of my daily responsibilities. For the sake of simplicity and brevity I've listed the most frequently applicable regulations that I encounter. Please note that this list is not exhaustive and is not presented in any order of importance. These numerous regulations are enforced by the USCG and other US federal, state and foreign authorities through scheduled and unscheduled audits and inspections. The Ship Master generally proves regulatory compliance by showing the requisite logbooks, log entries and manuals to regulators, and by conducting drills for regulators.

There is much to discuss and debate on this subject at the 2011 AGM. However, what seems beyond debate at this point

is that maritime regulation is a growth industry for the foreseeable future. ☆

### Frequently Encountered Regulations

#### **Pollution / Environmental**

- MARPOL Annex I (oil pollution)
- MARPOL Annex III (pollution from harmful substances carried in packages)
- MARPOL Annex IV (sewage pollution)
- MARPOL Annex V (garbage pollution)
- MARPOL Annex VI (air pollution)
- Vessel General Permit (VGP – shipboard pollution from all sources within US waters)
- Ballast Water Management (prevention of invasive species introduction into US waters)
- Right Whale (speed reduction and sighting reporting requirements during calving and mating seasons in certain US waters)
- California and New York stack emissions (low sulfur fuel requirements)

#### **Safety / Operations Crewing**

- ISM Code (safety and quality management systems)
- STCW Code (licensing, certification and watchkeeping standards, including work/rest rules)
- SOLAS (safety requirements, including lifesaving and firefighting)
- IMDG Code (International Maritime Dangerous Goods Code – safe HAZMAT stowage requirements)
- COLREGS (Rules of the Road)

#### **Security**

- ISPS Code/MTSA
  - Vessel and port facility security and access
  - Vessel Security Plans
  - Anti-Piracy measures



# We Need Good Regulations, Not Less Regulation



by Father  
Sinclair Oubre  
CAMM Chaplain  
#3220-A

*This past October, family members gathered at the Mobile, Alabama Seafarers Union Hall to remember the crewmembers who disappeared in 1980 when the SS POET disappeared with all hands.*

The 522-foot *POET* disappeared in the Atlantic Ocean. Not a trace of the 11,241-ton ship ever was found. The 36-year-old bulk carrier, operated by Hawaiian Eugenia Corp., departed Philadelphia bound for Port Said, Egypt, with a cargo of corn. Six hours later, one of the deck officers called his wife through the marine operator. That was the last time the ship was heard from.

According to reports from that era, the ship was due to pass Gibraltar on Nov. 4 and was scheduled to arrive in Port Said Nov. 9. It missed its 48-hour check-in on Oct. 26 but was not reported missing by the company until Nov. 3. After the company did finally report the *POET* missing, the Coast Guard delayed another five days before beginning their investigation, which included an exhaustive air search from high altitude for the missing ship more than a 100,000 square-mile area ranging from the U.S. Outer Continental Shelf to 1,000 miles out to sea. The agency then searched the same area from a much lower altitude.

Another Coast Guard plane out of the Azores tracked the scheduled course of the *POET* all the way to Gibraltar. On Nov. 17, the Coast Guard "regretfully" ended the futile search.

March 27, 2011, will be the fortieth anniversary of the breaking up and sinking of the *T/S TEXACO OKLAHOMA*. With

most of her crew from Southeast Texas, and sailing from Texaco Island in Port Arthur, Texas, she broke in two off Cape Hatteras, North Carolina on the morning of March 27, 1971. Of the forty-four crewmembers, only thirteen survived.

The *TEXACO OKLAHOMA* was built in 1958. She was of classic tanker design with a midship house that contained the bridge and the deck officer quarters. In the aftermath of the tragedy, then Congressman Jack Brooks called upon the Coast Guard to "... make an immediate inspection of the 16 other ships in the *TEXACO OKLAHOMA* class as soon as they reached port, and discharged cargo for any evidence of hull failure."

In Robert Frump's book in the *S/S MARINE ELECTRIC*, *Until the Sea Shall Free Them*, he outlines a maritime industry that ignored or circumvented regulations and safe practices in the name of efficient operations or a "... do what needs to be done" culture. A cavalier culture permeated the companies, the classification society and the Coast Guard. This operational style came to a tragic end with the capsizing and sinking of the *MARINE ELECTRIC* on February 12, 1983.

In the investigations that followed these and many other maritime tragedies, the investigators have never concluded that there were too many regulations, and that these regulations were the cause of the particular incident. Rather, they either list the regulations that were ignored, or point to proposed recommendations that had been raised in past, but never implemented.

In our present political environment, it is popular to say that what we need is to reduce government regulations so that business and our nation can prosper. However, when we study our maritime history, it is the lack of proper regulations and their enforcement that has claimed so many lives. I am very certain that when the final chapter is written on the *MODU DEEPWATER HORIZON*, it will conclude that if the existing regulations had been followed, and the best practices have been employed, eleven lives would not have been lost, and the worst environmental disaster in the history of the United States would not have occurred. ☆

Reason to Attend #12  
Father Oubre's Invocation



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## Limitation of Liability Act

### *Jones Act, DOHSA, and the DEEPWATER HORIZON*



by Steve Gordon

In 1851, the United States Congress enacted the Limitation of Liability Act. The purpose of the act was to promote and encourage the growth of American shipping and the American merchant fleet. Under the terms of the Act, if certain factual prerequisites are met, a shipowner, i.e., Transocean and Triton Asset Leasing GmbH [a Swiss entity] and others in this matter, can limit their liability for a casualty to the value of the vessel and the freight then pending, if any. Specifically, vessel owners and/or operators are entitled to limit their liability if the negligence or unseaworthy condition which caused the loss occurred without the “*privity and knowledge of the owner or master.*”

The DEEPWATER HORIZON is a “vessel.” I realize people commonly refer to it as a “rig” but, in fact, it is actually a semi-submersible vessel. I will not, in this statement, get into what has, and what has not, judicially been held to be a “vessel” but, suffice it to say that the profits to be made by oil/gas exploration, development and production have accelerated technological development to construct very odd looking structures which has, in turn, “*pushed the traditional legal definitions*” of what is deemed a “vessel.” The structures that we now see being

utilized to extract hydrocarbons from the seabed floors, at incredible depths, do not look anything like a cargo tanker, or other traditional ship historically utilized in commerce and trade. The point is that, because the DEEPWATER HORIZON is a “vessel” the: (1) Jones Act and DOHSA applies to injured/killed “seaman”, (2) DOHSA applies to killed “non-seaman” and (3) the DEEPWATER HORIZON owners/operators can avail themselves, i.e., like they have in this matter, of the Exoneration and Limitation of Liability action set out in Title 46 Subtitle III. Ch 305 Section 30501, et seq. [hereinafter called the “Limitations Action”]

#### **Why should the Limitations Action be available in today’s world?**

It should not. With insurance and indemnity coverage offered by the Lloyd’s of London and other international insurance markets insuring vessels to extraordinary amounts, the Limitation Action is antiquated and functionally not necessary.

Additionally, with the ability of U.S. companies hiring U.S. workers but legally shifting the ownership of the vessel, such as the DEEPWATER HORIZON, into a company out of Switzerland, what is Congress’ impetus to provide protection to the Swiss based Triton Asset Leasing GmbH under the Limitation Action? There is none and it should be abolished.

There are no Congressional requirements that the vessels extracting our natural resources be U.S. made, U.S. flagged, U.S. owned or, for that matter, U.S. crewed/manned. What interest does Congress have in protecting a Marshall Islands flagged vessel owner under the Limitations Action? They have none.

If Congress does not abolish the Limitations Action, it should, at bare minimum, amend it to require that any and all insurance covering the vessel and its owners be made a part of the “Limitation Fund” available for the claimants. As the Limitation Action sits right now, the movant is only required to post a surety for the amount of the appraised value. In the Transocean instance, that is \$26MIL and change.

A question has been raised that “*wouldn’t this “Insurance Inclusion” amendment cause intentional underinsurance by the vessel owner and/or operator?*”

The companies that operate and own these vessels have no interest whatsoever in subjecting themselves to a situation where they file a Limitation Action and, at the end, do not get a limitation granted. If this occurred, it would subject their corporate assets to seizure due to a verdict that would exceed the low insurance limits that some people think would happen;

Furthermore, the vessel owners are usually obligated to obtain and maintain insurance that is sufficient to cover the lease holder [BP] as an additional insured as a prerequisite to getting the job of drilling the well and you can rest assured that, for example in this case, BP would never allow them to underinsure.

There is a practical application issue with an “Insurance Inclusion” amendment. Very infrequently, the vessel owner/operator will actually file for bankruptcy. When this happens, the bankruptcy filing places an automatic “stay” in any litigation that is ongoing against the debtor. Since the debtor has been sued as a defendant, this requires the plaintiff to file, in the bankruptcy court, a “Motion to Lift the Bankruptcy



Reason to Attend #12  
**Discuss Fair Treatment  
of Seafarers**



Stay” and when this is done, the motion would state that the plaintiff will agree to only recover from the available insurance proceeds in the underlying litigation. The bankruptcy court will routinely grant these requests to lift the stay because it does not disturb, nor touch, the actual assets of the debtor. The problem in the maritime context is that the policies are not true insurance policies but are, instead, indemnity policies. An indemnity policy will never pay claims until the insured has paid out of pocket to some third party. Thus, if the debtor [vessel owner] will never pay because they are in bankruptcy the contractual requirements to indemnify the debtor/vessel owner will never come to fruition. This could be legislatively addressed in the Insurance Inclusion amendment by expressly providing that any bankruptcy, reorganization, etc., filing on the part of one or more of the “Parties in Limitation” would not, in any way, affect the requirement to tender the insurance as part of the Limitation Fund.

In addition to including the insurance aspects above, the Limitation Action should be excluded from use by vessels engaged in the exploration, development and production of hydrocarbons. The reason is simple: When Congress thought about protecting vessel owners it had no idea that someday there would be a vessel that could, in one event, destroy the entire ecosystem of a body of water as large as the Gulf of Mexico. If offshore drilling is here to stay, then the companies that choose to engage in this risky endeavor for incredible economic gain should not be afforded protections when they can kill people, hurt people and destroy four states’ coastlines.

### Death on the High Seas Act (DOHSA)

Under the current state of maritime law, seaman who are killed as a result of the negligence of their employer, a third party, or as a result of the unseaworthiness of the vessel upon which they work, are not afforded the same remedies as people who are killed as a result of negligence on land.

Congress previously amended the Death on the High Seas Act, which governs aviation and maritime death accidents, to afford aviation accident victims the same remedies as those accidents that occur over land. Prior to that amendment, following the tragic airline crashes involving TWA Flight 800, Swissair Flight 111, and EgyptAir 990, Senator McCain explained that: “[t]he families of aviation accident victims over international waters have waited far too long for Congress to make sure that their losses are accorded the same respect as those associated with accidents over land. Family members should know that their children have value in the eyes of the law. The recent aviation tragedies only highlight the need for prompt action.” The DOHSA amendment afforded aviation accident victims non-pecuniary damages—e.g., damages for the loss of love and affection—a remedy previously unavailable under the law.

Congress, unfortunately, did not amend DOHSA to allow families of maritime workers to recover for the lost love and affection of their father, husband, brother, sister, son, or daughter. As a result, maritime families are currently not accorded the same respect as those associated with accidents over land, whose families are afforded the opportunity to recover non-pecuniary damages. Congress should change the law and allow families in maritime death cases to recover non-pecuniary damages, including loss of love and affection and pre-death pain and suffering. As of now, if a non-seaman burned to death over the course of five minutes, in ago-

nizing pain, the current law does not afford his survivors a remedy for those damages.

The Jones Act, likewise, does not allow families to recover non-pecuniary damages. That means that under both the Jones Act and DOHSA, if a seaman is not married and has no children, his parents do not have a remedy at law. Children that the seamen do not financially support also have no legal remedy.

A brief summary of the differences between damages available for those who die on land vs. those who die at sea are shown in the table below.

The DEEPWATER HORIZON maritime disaster calls out to Congress to promptly amend the above maritime statutes to afford these workers and their families the same remedies as those involved in accidents occurring on land. If Congress moves swiftly in adopting the above recommendations, it is this author’s opinion that it would be applicable to these DEEPWATER HORIZON victims both on the Limitations Action and on DOHSA.

We truly hope that families who lost their sons, husbands and fathers that horrific night will never again be faced with the cold realities of the law as it exists today.

I realize that making laws can be very complex and that the interest of all must be taken into consideration but for far too many years the interests of the hard working men and women in the maritime industry who lay their lives on the line everyday have been silenced. The time has come for Congress to recognize this gross inequity in our judicial system and to act now. ☆

	State Wrongful Death Damages	DOHSA/Jones Act Death Damages
Financial Contributions to Family	Yes	YES but for children, only until they reach majority
Loss of care guidance and support	Yes	YES but only until children reach majority
Loss of companionship and society	Yes	No
Mental Anguish	Yes	No
Loss of inheritance	Yes	No
Punitive Damages	Yes in some states	No



## Information sharing is critical to maritime security



by Will Watson  
#3256-A

time security. As threats to the maritime environment - ships, crews, cargoes, terminals and ports, dockworkers and others - continues to grow, it is information that can help make everyone safer. Knowledge about threats in waters being transited or at terminals being called on can help captains and crews safeguard their ships and themselves.

Various sources of information, both open and secure, exist to aid mariners in planning their voyages. But much more could be done and it's up to the industry to help itself in this regard. One such improvement would be the establishment of a Maritime Information Sharing & Analysis Center (Maritime-ISAC) that would allow maritime companies and interests to share information and to promote information exchanges between governments and the industry.

In the US, ISACs already exist for many critical industries. Information Technology, Surface Transportation, Public Transportation, and First Responders have ISACs as do the Nuclear, Electricity, Communications

and Financial Services industries and others. All are members of the National Council of ISACs. Missing from the list is the maritime industry.

For years, one organization - the Maritime Security Council - has served as a de facto Maritime ISAC in that it gathers maritime security related information and distributes it to members. That's a good start but much more needs to be done and it's time for masters and mariners to support formation of a formal maritime ISAC.

Some in the industry have resisted the formation of an ISAC because they either see it as another layer of bureaucracy or because their companies or organizations would rather not share with competitors or non-constituents. But as crime, piracy, terrorism, stowaways, smugglers and other threats continue to flourish, the time is ripe for all in the maritime industry to understand that "we're all in this together." Just as no mariner would ever fail to come to the aid of a fellow seafarer distressed at sea, now is the time for all to pitch in to help safeguard the maritime domain.

### How ISACs work

The various ISACs already in existence are industry based but work with government partner agencies. Often established with governmental grants or federal funding, the ISACs eventually rely on participating members to fund ongoing activities. Such would be the case with the Maritime ISAC. The Maritime Security Council stands ready to secure funds to establish the facility and over a period of several years will



rely on those benefiting from the added security information to fund the operation.

Some suggest that existing government agencies - like the Coast Guard, the Maritime Administration and the Office of Naval Intelligence(ONI) - already provide sufficient security information. But, in fact, much of the information needed by the industry cannot be shared because it's classified or because laws, regulations or international agreements preclude such sharing.

Analysts at the Maritime ISAC would be granted security clearances and would then be able to use secure telecommunications devices to talk to the USCG, MarAd, ONI, the National Maritime Intelligence Center and other domestic and foreign military and intelligence entities to exchange information

One body of information that is critical to mariners is threat information on ports and terminals on their projected voyages. Knowing whether to visit a port or not and whether to do so under Maritime Security (MarSec) levels 1, 2 or 3 can make a world of difference. The US Coast Guard gathers a great deal of information on foreign ports through its International Port Security Program (IPSP) but unfortunately it is precluded from sharing potential threat information with ships - even US flagged vessels - that plan calls at ports or terminals known to have marginal security. Of course, the most egregious of these ports are Black Listed and those are made public but borderline facilities continue to plague masters who may well be subject

*Continued on page 20 >>>*



Reason to Attend #26:  
Discuss the finer points  
of implementing ISACs

## Who Is in Charge of Armed Guards?



by Captain  
Dr. John A. C. Cartner  
#2475-R

The question arises among those ignorant in our ways: “Who controls armed guards aboard?” The culture of the contracted security business requires ‘taking control’ of matters as the team leader sees it. This may be by brandishing guns, making loud noises and dancing silly choreographies replete with shouting and sing-song jargon if he wishes. That business often conflates internal discipline of their own kind with control by lawful authority. Masters and armed guards are creatures of law. A vessel is an extra-territorial chattel of the flag state and by law it is controlled and administered by the master. Only he or she has the warrant of the flag state to do so. This warrant is a sovereign matter of delegation of authority and responsibility to the Master by the state. Armed guards are neither warranted nor delegated by a sovereign.

The status of armed guards may be of three kinds. They may be put aboard (1) as seafarers on the crew list; (2) as riding crew; or (3) as the expression of the powers of a sovereign boarding military or civil persons. The first two are regulated in law similarly. The third is governed otherwise. I will discuss the first two.

The master in law may hire whom-ever he wants to prosecute the voyage, subject to the rules of the flag state and his contract with the company. In law there is no difference between a person having some imputed facility with fir-

ing guns and an able seaman or a boatswain with seamanship skills. Neither has any special privilege. Each has skills the master deems necessary to assist him in performing his duty to prosecute the voyage safely while taking care of his other duties. Each is aboard to assist the master as the master sees fit. The master may delegate some of his authority to those competent in law to accept the delegation. However, he may only delegate to certificated officers because only certificated officers are competent to take the delegation. Therefore in flag state law, the chief engineer, for example, is certificated as being legally competent to accept the delegation to manage all other engineers aboard for the master. The holding of a certificate or license of the flag state is prima fascia evidence of the competence to accept the master’s delegation within the certificate’s or license’s constraints of the flag state. Holding a contract with a company as a mercenary sailor is not such evidence.

Thus, the master commands by law. Officers and ratings assist the master and his delegated officers. What does this make an armed guard? The short but accurate answer in the law of command is “not very much.” The guard has no certificate. Therefore he is incompetent in law to accept any delegation of the master’s duties or authorities. He may be directed in lawful orders coming from the master or his delegated officers. That delegate may be the greenest of third mates. He, however, is competent to order armed guards as a delegate of the master if so ordered by the master. An armed guard cannot be the delegate of the master. An armed guard is as any other uncertificated person aboard.

He is always, without exception, under the dominion, control, authority and responsibility of the master at all times and in all places afloat or ashore as long as he is in the master’s employ.

The company may hire riding crew for technical work. Riding crew are not paying passengers but contracted workers. The riding crew as situated as are passengers and under the command, dominion and control of the master by law. They differ from no other person aboard who is incompetent to accept delegated authority. Even if one or all of the riding crew is certificated, he or she is not of the officers of the vessel and remains incompetent for delegation. This is also the case of any rating or an armed guard who has a certificate. The certificate is exercisable if the person is hired by the master to exercise it. Otherwise it means nothing aboard. Thus, in the case of an armed guard with a certificate, he is as riding crew and under the dominion, control and command of the master as any other incompetent uncertificated person.

In day to day piracy how does this work? For example, who gives the order to fire and to cease fire? The master is responsible for the acts of his officers and crew unless an officer or crew commits an illegal act against his order or commits an illegal act without his knowledge. The master may not delegate authority to an uncertificated armed guard. Hence, the master has the responsibility of firing and must give the order

*Continued on page 20 >>>*

Reason to Attend #6  
Debate the caveats of armed  
guards aboard your vessel.



*Armed >>>Cont'd from page 19*

himself or through a lawful delegate. The order may be in the future or contingent such as and order book which says "When you [armed guard] see a person in a funny pirate suit who fires his gun at us from a small craft you may fire at him at will." Hence, the local 'rules of engagement' are the master's to provide or to approve or disapprove or modify if given by his company – but not the armed guard's company. The master is not an agent of the guard company but is the commander of the armed guards aboard. He may violate his company's contract with the armed mercenaries if he wishes if his duties call for it and he may do so with impunity in that case. His duties supersede contracts with hired guns executed by the owner.

Does the riding crew leader or rating in charge of the armed guards have any authority aboard? The short but accurate answer is "No." He remains under the dominion, control and command of the master from the time he boards until he leaves as do his assistants. Thus, the company may give lawful orders to the master about armed guards. The master may agree if these orders do not violate his five principal duties. The master is under a duty at law to exercise his professional judgment. To the extent there is a conflict, his on-the-scene professional expertise is the deciding factor.

What happens if armed guards disobey and detour and frolic? They are on

their own. The master may arrest them or suppress them for mutiny if warranted and that suppression, if reasonable, may employ deadly force. He may punish them within reason or restrain them. The armed guards may be liable civilly or criminally for their acts if they step outside the dominion, control and authority of the master. Armed guards get no special treatment aboard or in law.

Bottom line, armed guards have no authority aboard. They are as incompetent in law to accept the master's delegation as an ordinary seaman. The master is in full dominion, authority and control of armed guards at all times as he has of any other person aboard.

Mercenaries of any stripe aboard need to be very clear in this understanding. ☆

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*ISACs>>>Continued from page 18*

to greater Port State Control inspections when returning to US ports even though they had no idea they had called on a foreign port with substandard security. The Maritime ISAC could collect security data from masters who call on these troublesome terminals and that information could then be shared with other potential visitors who could adjust their routes or security levels appropriately.

This is only one of a number of kinds of information that could and should be shared. And sharing wouldn't stop with the industry. The ISAC could provide a vehicle for masters to share information with the Coast Guard and other agencies without fear of reprisal. One example that rushes to mind is the bulker that lies at anchor at Rio Haina when a would-be stowaway climbs the anchor chain. The crew spots the intruder coming aboard, rushes forward and the interloper dives overboard and swims ashore. This "incident" should be reported to the Coast Guard if a US port is to be a future call, but many masters won't report the "no harm, no foul" event as it would almost certainly subject the ship to a Port State Control inspection on its next US port call. The ISAC could sanitize the vessel's name and let the Coast Guard know of the ongoing threat. This is information the USCG isn't presently getting. ☆

*Will Watson is a member of the Council of American Master Mariners and is Vice President – Government Affairs and serves on the Board of Governors of the Maritime Security Council. www.maritimesecurity.org*

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## Are You Prepared For A Disability ?



by Ralph J. Mellusi  
#2690-A

The legal definition of “Perils of the Sea” is a fortuitous accident or casualty, peculiar to transportation on a navigable water,

such as stranding, sinking, collision of the vessel, striking a submerged object, or encountering heavy weather or other unusual forces of nature.

Speaking as a maritime attorney who has spent his entire legal career representing mariners and their estates in personal injury and wrongful death claims, I would recommend the definition be expanded to include Disabilities from Occupational Injuries at Sea. Over the past 35 years, I have represented seafarers injured in every conceivable type of accident imaginable arising from slippery decks, trips over raised surfaces, falls through exposed openings, failures of fittings, hand tools, power tools, unguarded rotating machinery, electrocutions, parting mooring lines, asphyxiations, excessive lifting, fires, explosions, etc. Prior to becoming a maritime attorney I sailed as an assistant engineer, mostly shuttling between Saigon and Okinawa during the Vietnam War. When I look back on that experience, I am amazed how my attitude about ship board safety has changed. Gone are the days when I would fly down ladder handrails with the balls of my feet, skimming over the stair tread nosings to answer engine room alarms. Gone too are the days of climbing verti-

cal rung ladders without the slightest concern that any rung would fail under my weight. Fast forward to the present, I now find myself apprehensive whenever I do a ship inspection. Each fitting, item of equipment, machinery, means of access I see, serves only to remind me of past clients injured by these instrumentalities.

### **What happens when a Mariner sustains a serious injury? What are the Options?**

Maritime Law provides unique rights and remedies under the Jones Act and General Maritime Law to compensate injured mariners. The first is based on a federal statute which gives the mariner the right to sue for an injury caused by the negligence of the employer, its agents, servants and employees. The second is non-statutory, meaning that it is based on maritime common law. It gives the mariner the right to sue the employer and the vessel for an injury caused by an “unseaworthy” condition.

There are also rights and remedies when death occurs which are also based on statute and the maritime common law. However, and since the focus of this article is to address the problem of surviving mariners who are faced with the problem of coping with career ending injuries, I will not discuss wrongful death issues. Moreover, when death occurs, the surviving family is usually protected because the mariner had enough sense to buy insurance. The purchase of whole life or term insurance is a no-brainer. Most mariners have enough common sense to purchase insurance for

that eventuality. But for reasons which do not make sense, the vast majority of the working population, and especially mariners, do not have insurance – i.e. disability insurance – to cover the situation of a career ending injury or illness. Everyone accepts the possibility of an untimely death but few accept the reality that a career ending injury or illness is more likely to happen. More to be said about this later. For the moment, let's continue with the discussion of the Jones Act and Unseaworthiness claims.

### **Jones Act and Unseaworthiness Claims**

If I had to sum up the rights and remedies available to compensate injured mariners under the Jones Act and General Maritime Law, I would say that there is good news and bad news. The good news is that these are powerful remedies which allow for recovery of full tort damages to render the mariner whole. In other words, such claims are intended to compensate for all losses due to an occupational injury including loss of past and future wages, diminution of earning capacity, past and future pain and suffering, and loss of quality of life. Unlike workers' compensation, there is no statutory or fixed dollar limit to the amount of the recovery that a judge or jury may award as long as it is reasonable and not grossly excessive. Anyone who reads the newspapers is aware that multi-million dollar verdicts are no longer rarities.

The bad news is that it often takes several years to reach a verdict, more so if the case is appealed. This raises

*Continued on page 22 >>>*

*Disabilities>>>Cont'd from page 21*

the problem of financial survival while the case is pending. The next piece of bad news is that the Jones Act negligence claim and the General Maritime Law Unseaworthiness claim do not provide for an automatic recovery as in the case of state workers compensation. Negligence requires proof to persuade a jury or a judge that someone was in fact negligent and that this caused injury. Unseaworthiness requires proof that the item of ships gear, equipment, fittings which caused the injury was not reasonable suitable for its intended purpose and this resulted in injury.

The next piece of bad news that the employer had certain defenses which it can assert to reduce the amount of compensable damages. The primary defense is "contributory negligence". Under this defense, the jury is entitled to reduce the amount of the award by the same percentage it determines the seafarer's own negligence contributed to the happening of the accident.

The end result of a trial is not unlike placing a bet in a casino. There are times when mariners walk out of court with multi-million dollar verdicts, but there are also times when the end result is zero, or an award is reduced 50% or higher due to contributory negligence. While all this is unfolding, sometimes at a snail's pace, finances run out, mortgages go into default and marital life disintegrates.

There is one other benefit which the General Maritime Law also provides which - in the very distant past - was intended to provide a daily living allowance for room, board and lodging while the mariner was recovering under medical treatment. It is called "maintenance and cure." It has a colorful history associated with pirates, but unfortunately, it typically provides no more than about \$15.00 per day, hardly enough for a single meal and to add insult to injury, that amount is paid only while the seafarer is receiving non-palliative medical treatment. Once maximum medical cure is reached, the employer's obligation ends.

That comprises a brief sketch of the mariner's personal injury remedies. Notice that the Workers Compensation does not enter into the picture. Every shore side occupation (except railroad workers in interstate commerce) is covered by a state workers compensation statute and for those who make their living along the water's edge, and on adjacent piers, docks, and loading areas, there is federal compensation under the Longshore and Harbor Workers Compensation Act.

Workers compensation statutes typically provide income benefits approximating 2/3 of base salary (with a cap) soon after a claim is filed, and at the point of maximum medical cure, either a final lump sum award is made based on the degree of impairment or weekly payments may continued for life.

Unlike the mariners' remedies, workers' compensation statutes are "no-fault" statutes which means that benefits are paid regardless of the negligence or fault of the employer or co-worker. The trigger for entitlement is nothing more than proving that an injury or illness occurred during the normal course of employment and was not self inflicted or due to willful or intentional misconduct.

Mariners and railroad workers "Casey Jones and Davey Jones" do not have workers' compensation. In the case of mariners, the sole remedies require a civil court suit for negligence, unseaworthiness and maintenance and cure as

described above. In the case of railroad workers, a civil court suit for negligence is filed under a statute known as "FELA" Federal Employers Liability Act.

**Disabilities are not limited to Occupational Injuries but more likely will arise from an illness**

To this point we have been discussing disabilities caused by an occupational ship board injury. Despite the common misperception that accidents account for most disabilities, data from the National Institute on Disability and Rehabilitation Research (1992) show that only 13% of disabilities are due to injury. In fact, disability due to illness is far more common and illness does not discriminate. In the case of an illness, the mariner's remedies under the Jones Act and General Maritime Law, are not applicable.

**Probability of a Disability**

The odds of a person having at least one long term disability that lasts three months or longer before that person reaches age 65 are shown below.

And according to the 1985 Society of Actuaries, the chart below shows how many people have recovered, died or remained disabled for five years after a disabilities onset.

The risk of disability is substantially greater than the risk of death:

- Age 30, long-term disability is 3.5 times more likely than death.

Disabilities Statistics					
The odds of a long term disability that lasts three months or longer before that person reaches age 65:		Percentages of people have recovered, died or remained disabled for five years after a disabilities onset			
Age	Probability	Age at Onset	Recovered	Died	Still Disabled
25	44%	24	44.1%	9.7%	46.2%
30	42%	35	34.0%	12.3%	53.7%
35	41%	45	21.5%	19.9%	58.6%
40	39%	55	11.8%	28.5%	59.7%
45	36%				
50	33%				
55	27%				



- Age 40, long-term disability is 3.2 times more likely than death.
- Age 50, long-term disability is 2.4 times more likely than death.

It's hard to imagine becoming disabled. But accidents and illnesses can happen to anyone-at any time; and for those who go to sea, the risks are magnified. Disability is more common than you think. Studies Show:

- Three in 10 workers entering the work force today will become disabled before retiring.
- One in 7 workers can expect to be disabled for five years or more before retirement.
- In 2005, 2.4 million people filed disability claims with Social Security.
- The latest U.S. Census estimated that there are over 30 million disabled Americans between ages 21 and 64.
- Over 51 million Americans are classified as disabled, representing 18 percent of the population.
- In the U.S., a disabling injury occurs every 1 second, a fatal injury occurs every 4 minutes.
- Over 6.8 million workers are receiving Social Security Disability benefits, almost half are under age 50.
- In the time it took to read this article, 498 Americans became disabled.

### Other Safety Nets

Social Security Disability (SSD) is certainly an option. It is available to all workers including mariners, however that benefit is not easily obtainable. For one thing, entitlement requires proof that the disability significantly limits one's ability to do basic work activities—such as walking, sitting and remembering—for at least one year. Secondly even if you prove you are unable to return to your normal seafaring occupation, SSD benefits will likely be denied if it is shown that by reason of your education, past work experience and skills are transferable to a shore side job. Moreover, according to 2008 SSA Fact Sheet the average monthly Social Security Disability Insurance

(SSDI) benefit is only \$1,004.

So with this background, I now come back to the point of this article, Are you prepared for a serious or significant injury or illness that cuts short your seagoing career? Do you have sufficient savings or other resources, to get you through the time it takes to resolve a court case. Do you have sufficient resources if you have to find alternative shore side employment suitable to your disabled condition?

### What is Disability Insurance?

Disability insurance helps replace a major portion of your income when you are sick or injured and unable to work. Some people think of it as paycheck protection. Others view it as a way to protect their home since a mortgage payment is often a family's most significant monthly expense. Having disability insurance can provide a sense of security, knowing that if the unexpected should happen, you'll still receive a monthly income.

If you think about it, everything you have today - your home, car, groceries, savings - basically your lifestyle, depends on your ability to earn an income. Most people are quick to insure their possessions, such as their home and car. And

they generally have life insurance that would provide for their family. But the one thing that makes all this possible is - your income. It's your most important asset. So, protecting it with disability insurance isn't just a good decision - it's essential.

Many of CAMM members recognize my company, R.J. Mellusi & Co. as an agent of the MOPS License Insurance product. For many years I have sought to find an insurer willing to underwrite Disability Insurance for Seafarers. I am now proud to announce that I have located an excellent policy which is underwritten by Lloyds of London and marketed throughout the USA by their US correspondent, Petersen International Underwriters.

All interested mariners who may wish to obtain this policy can take the first step by completing a simple proposal request which is available for download on my web site, [www.marinelicenseinsurance.com](http://www.marinelicenseinsurance.com) or by contacting me by telephone at 212-962-1590. ☆

Reason to Attend #6  
Do I really need a reason?



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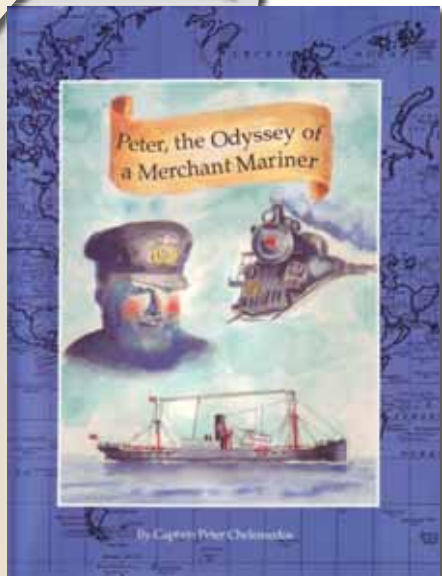
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by Captain  
Peter Chelemedos  
#1671-R

## Peter, the Odyssey of a Merchant Mariner

### Chapter 4: Southern Lady May - August 1938

ler like the heartbeat of the ship beneath me, I thought I felt a release from the chains that had bound me to the shore. Ahead were days of learning a new life. The feel of rough manila lines in my hands, blisters from hours of monotonous chipping of paint, of painting and repainting the steel bulkheads, bulwarks and other strangely named items around me. The exhilaration of standing high up on a mast looking over the blue expanse of the sea. Learning the names of the stars, and learning the mathematics connected with finding my way across the ancient deeps of the world. And the fresh salt air - I could almost feel it cleansing the coal smoke and dust of the road from my lungs. I was at sea....

Time went by, and the sores on my legs healed with the soap and water treatment and the regular diet. The trip to Tuxpan, Mexico, for a cargo of bananas to bring back to Mobile added bananas and canned cream to my diet - at least until I got sort of green at the thought of more bananas. On our return to Mobile, I was offered the job of officers' messman at the rate of twenty-five dollars per month. I accepted readily.

The succession of incidents that followed, I think, often managed to make the steward regret the offer. He told me at breakfast one Sunday morning that the day would be a "field day." Since I hadn't heard the expression before, I inferred that it was some sort of holiday. So after the breakfast dishes were done, I went down to my cabin below the old passenger quarters and started reading a magazine. He came down roaring, and pointed out that when he said 'field day' he meant I was supposed to work all day. I apologized, of course, and asked him what he wanted me to do.

"Soogie the passageway by the engineer's quarters," he said.

"Soogie? What's that?" I asked.

"Don't you know what 'soogie' is?" he asked.

"It's a new expression for me," I answered.

"Please tell me what you want done and I'll be happy to do it."

"Get a bucket of fresh water and put it under the steam line and get it boiling hot. Add some lye and some soap powder and mix it good, then take a brush and brush it over the painted bulkheads. Then take a bucket of fresh water and rinse it off."

I got the bucket of water under the steam line and, when it was boiling hot, I poured in about half a can of lye and about half a pound of Gold-Dust, a strong soap powder, and stirred it up well (I wouldn't put my hand in it for anything as it was scalding hot). I brushed it down the bulkheads (walls) with a long-handled brush, then got the fresh water and rinsed the paint down to bare red-lead.

There was a carpet on the deck, and a couple of days later the steward vacuumed the passageway, slurping up pieces of the carpet where some of my concoction had spilled. He was not happy.

When we were coming in to Tampico, Mexico, one morning, they told me, "There will a party of shore officials aboard for lunch, so be sure that everything in the place is spick and span."

After the breakfast dishes were done, since I didn't want to leave coal soot tracks on the white tile deck, I set up the tables for lunch before I mopped the deck. While I was in getting the rinse water to rinse the soap off the deck, the second mate came in for an early lunch,

When the crew of the *Southern Lady* invited me to come in out of the rain, it was an answer to many unspoken prayers of the past few months. I was to clean up the crew's mess, fetch the meals from the galley, and generally make their lives a bit easier.

They seemed satisfied with my work and asked the captain if he would sign me on as workaway for the trip at least to give me a chance to get rested up and fed for a bit.

Besides the twenty-five cents a month I was signed on the articles for, each man would give me twenty-five cents apiece at the end of the week if they thought I had earned it. One of the men gave me a clean pair of dungarees and a shirt, since the clothes I had left home in were showing many signs of wear besides the accumulated grime of the road.

That week I was on top of the world - three meals a day and a coil of hawser to sleep on. I worked hard to wash the plates as fast as one man finished so the next man could get his meal, since there were only five plates for the fifteen men and a small assortment of silverware and cups to go with them.

As I watched the turmoil of the water streaming aft under the stem of the ship and listened to the thump of the propeller



so he could relieve the chief mate in time for the party. I tried to hurry him out so I could finish mopping, but he was a slow, methodical eater. Before he finished, the members of the shore party came in and were seated at the long table I had set up for them. The captain, in his white uniform, sat at the head of the table.

The steward came down in a spanking clean uniform to officially serve them himself. He strutted into the saloon, carrying a tureen on a platter balanced on one hand, and skidded on the soapy deck. The tureen of soup sailed up the table, taking all the condiment bottles with it and dumping the lot in the captain's lap.

I went up and hid under a lifeboat.

An hour or so later, a hand reached over and dragged me up by the scruff of the neck. "What are you doing here?" were the gruff words I heard.

"Where would you be about now?" I asked.

The steward thought a moment and let me go. "Give me a half hour more to cool off," he said. "Then come down to my cabin and I'll pour you a drink."

As the ship was approaching Mobile, I got the makings for the dinner salad from the ship's walk-in icebox. I also picked up a couple of oranges on the way out. I dropped the key into the pocket of my shirt, shut the door with my elbow and, with arms loaded down with lettuce, tomatoes, oranges, etc., used the inside route through the engineroom rather than going out on the rainswept decks. When I reached down to pass the oranges to the oiler on watch who was standing on the grating below, the key fell out of my shirt pocket and dropped into the crank pit of the main engine.

I couldn't imagine calling the bridge to have them stop the ship so I could retrieve the key. I didn't mention it to the steward, but after dinner, I went down to the engine room. The first engineer fashioned a long brass rod into a hook and, timing his movements to the revolutions

of the engine, managed to snag the key and retrieve it.

On our return to Mobile, while I was carrying stores aboard, I brought a box of light bulbs up the gangway. The box, though not heavy, was rather large. The steward added a box of glassware to the top of my load, making it difficult to see in addition to being top heavy. On reaching the deck, I asked him where I should put them down.

He answered "Anywhere!" then seemed rather perturbed when I set them down on the hatch which, for the first time in a long time, was open.

The next few minutes found me thirty



feet below sweeping up broken glass.

When I got my first payoff, of course, I went into Jake Kamil's waterfront emporium and bought some new work clothes and shoes. I had a few dollars left over. The first time the clothes got wet, they shrank and the colors left their marks on me. The shoes disintegrated, so I was back to my old worn pair for the rest of the next trip.

I took a trip off and paid a week's room rent at the Commercial Hotel in Mobile. When the girl brought up my change, I realized what "commercial" transactions the place was named for. But, since I had paid the week's rent and couldn't get a refund, I stayed to do battle with the bedbugs until the week was up.

On the Fourth of July, I rode to the end of a streetcar line and bought a small watermelon and a loaf of bread and walked off into the country down by Mobile Bay to find a quiet spot to have a picnic by myself. Some other people had the same idea and joined me. Afterwards, I walked over to their place on Orange Street, and later went to a "church meetin' place" with them. That was my first experience with "Holy Rollers."

One evening there, after listening to the various people go up front to tell about their past sins and how they had been saved, one of my ex-shipmates, who was in the congregation after a few hours in a bar somewhere, got up and proclaimed in a loud voice, "I can sum it all up in just a few words. 'A woman's ass and a whiskey glass made a horse's ass out of me.'" There ensued a bit more commotion than I had seen in a church meeting anywhere.

When the week's rent was up, I had no more money to pay the next week's, so I left my suitcase with Jake Kamil and spent my nights out in the freight yards again, swimming off the docks in the daytime.

When the *SOUTHERN LADY* returned, I was re-hired as deck boy. The steward told me not to set foot in his passageways again; he would rather bring my food out to me.

And so to sea again. They gave me duties as lookout, from eight in the evening until four in the morning. The night watches on the bridge watching the stars and the quiet, black tropic sea, the faint throb of the steam engine the only sound above the hissing of the passing waves, were graven into my memory for their beauty and solitude.

The old Danish bo'sun who came aft and found me chucking chunks of rust at a passing sea gull said, 'Ach, kid, you should not do that. Is old sailor's superstition, those birds are the souls of departed sailors.'

A short time later, a large "splat" hit the rail near him. I said, "I'll bet that one

*Continued on page 26 >>>*

*Peter>>>Cont'd from page 25*  
was a bo'sun."

He walked off muttering something like "Damn smart kid."

Every Monday, Wednesday and Friday afternoon, I was to work on deck from one until three. Maybe I wasn't healthy enough for those long hours. Though I tried, I couldn't stay awake at all in the daytime long enough to eat, and one night I dozed off about 1:30 in the morning. The mate had sent me down as usual to bring up coffee and toast from the

pantry. This was okay until I brought the tray up and set it on the flag box on the starboard wing of the bridge. I remember going back to my station on the port side and pacing back and forth trying to stay awake. And then well, I heard a crash of cups and awakened to find that in my sleep I had wandered around to the starboard side again and tripped over the second mate's feet and landed in the coffee tray and splattered some all over the skipper and the mate.

When we made our next arrival, it was

at Jacksonville, Florida. I paid off there, as I wanted to get back to San Pedro to meet the *FERNBANK* when she returned from Japan. ☆

## How Stowaways became Israeli citizens

*submitted by Capt. Klaus Niem*

After the demise of United States Lines, I started to work for Farrell Lines as Chief Mate on the *EXPORT CHAMPION*, with one of the lowest paying jobs in the Union. We sailed from Abidjan, Ivory Coast, with a load of cocoa butter and cocoa beans, very early in the morning. Our minds set already on Charleston, SC.

While perusing boat notes and the stow plan, my AB on watch called me and said, "Mate, please look down in front of the house." To my chagrin I saw four native Africans, not crew members but obviously stowaways. All four of them took advantage of the fresh water bib in front of the house. I called the captain, who came onto the bridge with a big smile. "This is not a problem. Don't we have a stack of Israeli shore passes?" the Captain wanted to know. "And this is what we are going to do," he said. "We take their pictures, paste them into the shore passes, and fill in their names, DOB and place of birth."

We choose Aqabar as their place of birth, and stamped the passes with the official stamp from the Israeli Government on loan to the ship to stamp all our entry papers to shorten entry time into Haifa. Our crew brought the stowaways to the bridge and one of them spoke fairly good English. After being fed, the crew provided some clean jeans and shirts for our temporary guests. Now the four felt at ease. They all signed the shore passes with some help from us. That became their official ID and made them apparent citizens of Israel. We did this strictly to prevent them going to jail in Abidjan. ☆

## "The Stranger"

*by Peter Chelemedos -dedicated to the crew of the SOUTHERN LADY*

*We saw him on the docks one day  
With dusty face and hair like hay  
Drying 'neath the summer sun.  
Hunger showed in his pallid face,  
His walk was at a snail's pace.  
Had he forgotten how to run?*

*The clothes he wore were tattered,  
As if it really mattered.  
We could see he was no tramp.  
His face looked mighty thin.  
He had an air about him,  
He wasn't just a scamp.*

*We called to him to come aboard  
As a coffee cup we poured  
And placed a sandwich in his hand.  
'Twas as if some fairy wand  
Had touched this rusty ship of ours.  
His face so lighted up.*

*He told the tale of the open road  
From 'Frisco to Mobile,  
Of how his shoe had lost a heel.  
Along the road he'd hopped a freight,  
Of weeks since he last ate,  
Couldn't remember his last meal.*

*Our old banana boat was laying  
At the docks in old Mobile.  
The rain was pouring down,  
He was wetter than a seal.  
We asked the mate to sign him on  
As workaway at best.  
We could give him food and rest.*

*We could never guess when he said, "Yes"  
What the end result would be.  
The youngster was a natural  
To the ways of men at sea.*

*The years passed by.  
We're proud of this guy  
He learned what we could teach.  
Of ships and stars and harbor bars  
They're all within his reach.*

*The bridge of this ship we take to sea  
Has a new captain, don't you see.  
This selfsame lad we called aboard  
That day in old Mobile  
Has learned his lessons well.  
That's all of my tale  
I can tell today; we're ready to set sail.*

*So when you meet a stranger  
And lend a helping hand,  
You never know for years to come  
The end result, you see.  
You may have made a lifelong friend  
Whoever he might be.*



Reason to Attend #10:  
**Hear a new old Sea Story**

Reason to Attend #11:  
**Tell a new Sea Story**





## The Tick of the Gyro



by Captain  
John Konrad V  
#3205-S

I miss the ticks of the analog gyro repeater. Today's gyro compasses are more functional and easy to interface with modern elec-

tronic systems but they lack the tick which was so effective in letting you feel the rate of turn aboard your ship.

I also miss single-function electronics. Sure I enjoy viewing AIS, radar and propulsion information on one screen but, the problem is, now all the alarms sound the same.

The modern bridge has become a visually enticing environment but it neglects the other senses. Yes, you can still feel the ship's motion but you can't smell the cargo from a modern CCR, or feel the wind from inside a climate controlled bridge wing, or hear the increasingly rapid ticks of the gyro when the helmsman gets sleepy.

Aboard a recent ship, one mate thought my ability to notice the condition of the ship without looking at the stability computer was a form of magic and another was convinced I had secret access to that computer through the network. Neither was the case. My ability to sense the ship's condition came from other senses, my senses, ones that are second nature to most CAMM members... I simply notice small changes like one door's tendency to jam when the ship sagged or the timing of the ship's roll.

I am by no means a luddite and continue to embrace advances in marine

technology, but I do believe that the effectiveness of electronics make it too easy for watchkeepers to ignore the feel of the ship.

The future of integrated bridge technology will hopefully include terms like ergonomics, tactile response and acoustic resonance. Engineering words you won't need to remember but ones that can work together with computer systems to engage the watchstander by

switching on all five of his senses.

While I don't predict a return of smell-o-vision, I do see a future in which naval architects borrow ideas from Hollywood and theme park designers to improve the situational awareness of watchstanders. Until that happens it's important not to forget our other senses. ☆

### Book Release

#### Fire on the Horizon

The Untold Story of the Gulf Oil Disaster

By John Konrad and Tom Shroder

On April 20, 2010, the half-billion-dollar floating oil rig *DEEPWATER HORIZON* became a household name when it blew up, killing 11 people, shattering a multinational company's reputation, and leaving an unprecedented swath of devastation in its wake. Told by CAMM member Captain John Konrad and award-winning Washington Post journalist Tom Shroder, *Fire on the Horizon* is the remarkable story of this tragedy—the biggest news story of 2010—a riveting chronicle of engineering hubris at odds with the mariners in charge of this impressive vessel.

An extraordinary true-life adventure tale reminiscent of *The Perfect Storm*, *Fire on the Horizon* captures life aboard the rig, vividly detailing in “real time” the events that preceded its demise. The authors identify the factors behind the accident, including the culture clashes—roughnecks, merchant mariners and corporate bureaucrats—and expose what the Coast Guard and MMS inspectors overlooked.

From the crew's first glimpse of her in a Korean shipyard, through the ill fated voyage to the Gulf of Mexico and drilling of the world's deepest well the book follows the ship's progression from birth to disaster. In parallel the authors bring us the lives of the mariners aboard including accounts of the Chief Mate's time aboard the Training Ship *EMPIRE STATE* and the Captain's promotion after a ballast incident disables the rig in 2008.

Gripping and harrowing, *Fire on the Horizon* is both a page-turning account of that day and a narrative of the lives involved before, during, and after the explosion. It is also a warts-and-all portrait of deepwater drilling replete with the swashbuckling history, astonishing technology and disturbing vulnerability of this vital but little understood corner of the maritime world. ☆





by Captain  
Rodger MacDonald  
Secretary-General  
IFSMA

## Progress on davit launched lifeboats and on-load release hooks

If you are following this saga you will be pleased to know that a little victory was obtained during the IMO's Maritime Safety Committee (MSC) meeting in December. The hurried idea of pushing through proposals that, in IFSMA's opinion, did not adequately deal with the stability of on-load release mechanisms was voted down by Administrations supporting the Industry Lifeboat Group. So the MSC has tasked its design and equipment sub-committee to thoroughly review proposed revisions before next May, when it will again debate the situation.

deployment. Nautilus has altered its previous stance of opposing the use of guards to one of not opposing armed guards if there is no other option to protect vessels. So it is not a blanket acceptance of their use, but they will not oppose the use of armed guards if it has been agreed with Nautilus on a case-by-case basis and providing the guards being used are properly trained and approved. This change is significant and reflects an emerging trend in the shipping industry, particularly as there is increasing concern over the spread of the areas where ships are subject to pirate attacks in the Indian Ocean and the limitations on the ability of naval forces to provide full protection.

## Piracy: What has the world come to?

I was staggered to read in the UK press that a Somali pirate has been ranked alongside a billionaire trade magnate and the Chinese transport minister as among the most powerful people in shipping.

The Lloyd's List ranking of the 100 top people in the global shipping business is one of the most respected sources in the industry. Although he is placed fourth, the gun-toting pirate's real name isn't even known – he uses the alias Garad Mohammed. Richard Meade of Lloyd's List said, "Mohammed's position is representative of the influence that pirates currently hold over the shipping industry."

## Piracy in the Indian Ocean has reached a critical stage

In mid-December, Reuters reported that 29 ships containing at least 363 people are still being held captive by Somali pirates after a year of piracy off the Horn of Africa. Tankers and bulk carriers were the hardest hit with only one container-ship and a multipurpose ship still in the hands of pirates. Taken, and still held, were fishing boats which despite their

diminutive size tend to have disproportionately large crews. However on Friday, 14 January at the 'Oceans Beyond Piracy' meeting in London, I learnt that the latest figures have escalated to over 600 hostages and about 60 ships. It was also reported that the pirates are becoming more violent against the hostages. This dramatic increase in the threat of piracy has led to the shipping industry looking at more decisive steps to protect our seafarers.

The steps proposed range from more radical changes in the re-routing of shipping virtually eliminating most of the Indian Ocean, to arming merchant ships and having military personnel on board. Both proposals will inevitably increase the transportation costs for all cargoes at a time when the world is trying to recover from the financial downturn of the last three years.

## Nautilus International changes strategy on Piracy

Nautilus is one of our IFSMA Associations (UK and Netherlands) and has joined CAMM in the way it feels we should deal with piracy. In a major change to its policy on the use of armed guards on board ships to protect against piracy attacks, the executive committee has dropped its opposition to their

## The 2011 Command Seminar in Baltimore

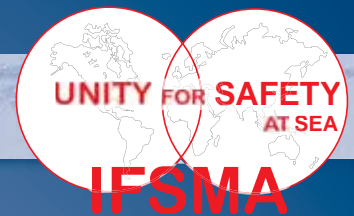
We have been working with Joe Hartnett to finalise arrangements for the Command Seminar to be held in Baltimore immediately prior to the AGM for CAMM in 2011. Just to remind you that attendance is free to all CAMM members as well as ships' officers who will benefit from the presentations and meeting shipmasters to discuss their future commands.

There will be a morning session chaired by Joe Hartnett which will focus on the issues facing today's Shipmasters. The subject will include piracy and criminalization and we intend to have a representative from the USCG. The afternoon session will focus on Maritime Resource Management. There will be ample opportunities for you to have your say. So I look forward to seeing you at this special event. 🌐



Reason to Attend #18:  
Meet Capt. MacDonald!

Working together to protect and benefit Masters Internationally



The Nautical Institute and IFSMA present

# 2011 Command Seminar Series

Seminar Series #1

## Maritime Resource Management

April 27, 2011 🌐 Baltimore, MD USA

### Morning Session: The Challenges of Command in 2011

The Pace of Modern Technology: Will E-navigation change the Master's authority?  
Criminalization: How does USCG view this and how can Masters deal with this?  
Piracy: Updates and advice from US African Command

### Afternoon Session: Maritime Resource Management

The Relationship Between the Shipmaster, Pilot and Harbor Authorities  
Is Training Right for Today's Command?  
Discussion Panel



Hosted by The Council of American Master Mariners, Inc.  
Venue: CCMIT (MITAGS), Baltimore, MD USA

[www.mastermariner.org](http://www.mastermariner.org)

Seminar Series #2

## Shipping & Environmental Issues

### What more can be done?

June 7-8, 2011 🌐 Halifax, Nova Scotia, Canada

### Papers Presented on these topics and more:

Fair Treatment of Seafarers following Pollution Incident  
*John O' Connor, Counsel to Canadian Merchant Service Guild, Ottawa*  
New Regulatory Requirements for Off-shore Oil/Gas Drilling Operations  
*Dr. Jens-Uwe Schroder World Maritime University, Malmo, Sweden*  
Hybrid Tug Design Reduces Operational Emissions  
*Paul Jamer, VP, Aspin Kemp, Halifax*



Hosted by the Company of Master Mariners of Canada  
Venue: The Westin Nova Scotian Hotel, Halifax, Canada

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## IFSMA 37th Annual General Assembly

June 9-10, 2011 🌐 Halifax, Nova Scotia

[www.ifsma.org](http://www.ifsma.org)





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by Captain  
Jim Calvesbert  
CMMC National  
Master

### *From the Master's Desk* **Seafarer Shortage**

One of the challenges for those in the operational, recruiting, and training sectors is to understand if there really is a shortage of officers and then how to address any issues resulting from that understanding. On the surface, it seems like an easy issue: count the number of ships in service, multiply by the number of officers required for each ship and then compare to the existing number of valid certificates. In fact, the recent ISF/Bimco survey suggests that the demand and supply of seafarers is in balance and that the shortage of skilled officers is easing. This is a big change from the 2005 survey which predicted a chronic labour shortage among officers. And to further confuse the issue, the same recent report concluded *"Unless measures are taken to ensure a continued rapid growth of qualified seafarer numbers, especially for officers, and/or to reduce wastage from the industry, existing shortages are likely to intensify over the next decade"*.

Many other surveys and reports present similar conflicting opinions. The current economic downturn has resulted in new-build cancellations and vessel lay-ups with a corresponding reduction in requirements for seafarers. That will change with the recovery of the world economy. It also doesn't take into consideration that older officers, both in sea and shore positions, are retiring and that more shore positions and senior shipboard positions are opening up as a result of that. A couple of years ago, the CEO of V.Ships postulated that officers were moving into posi-

tions, particularly ashore, with considerably less sea experience than in the past. If you continue with that train of thought, then perhaps officers at sea are being promoted with similar lack of longer term experience. There is now a more diverse range of types of ships than in the past and it is possible that perceived shortages are in specific areas of shipping. The issue is more complex than appears on the surface.

Canadian marine training institutes have increased their recruiting efforts with a corresponding increase in the number of students. Are these people staying with the industry, is there a reason to stay with the industry today, can governments provide more incentive for personnel to remain in sea-going professions, is the sea-going profession sufficiently rewarding to overcome the increasing liability and legal action that ship masters face today? The Newfoundland and Labrador Division of The Company has conducted four International Conferences on Maritime Human Resource Solutions and I refer you to <http://www.mastermariners.ca/newfoundland/> for more information about those discussions.

There are a number of questions arising from this situation which The Company should be addressing.

And with those thoughts, I hope that the holidays were restful, peaceful, and left you ready to tackle the challenges of 2011. 🍁



## Collision: *IRTYSHSK* & *OCEAN FAME*



by Captain  
Geoff Vale

mately 20 miles south of Amphitrite Point, Vancouver Island, B.C. Canada.

*IRTYSHSK* is a Russian flag stern trawler/fish factory vessel. At time of collision she had on board 338 tonnes of frozen fish in the two cargo holds, which have a reported capacity of 760 tonnes. The crew was Russian with a Russian-born Canadian citizen, female, on board as an interpreter.

The *OCEAN FAME* is a bulk carrier often in BC waters, to carry logs in four cargo holds and on deck. The vessel was bound for Japan with just under 20,000 tonnes of barley, of which 3514 tonnes was stowed in No.1 Hold.

I was at my workplace, Ship Safety Office, Nanaimo (DOT) when I received a telephone call at 0812 hrs. from

This collision reportedly took place at 0630 hours P.S.D.T. on August 24th 1988 in position 48°33' N and 125°32' W approxi-

Vancouver traffic services advising that the above two vessels had been in collision and there was a possibility of oil pollution.

After consultation with the Regional Office and Manager, Ship Safety, Vancouver, I was directed to attend on both vessels, investigate the collision, damages arising and oil pollution, if any.

I left Nanaimo by chartered seaplane and arrived at Bamfield (W. Coast), where, by previous arrangement I boarded the Bamfield lifeboat. We departed at 1209 bound offshore to meet the *OCEAN FAME* which was inbound for Cape Beal to pick up a Pilot. At approximately 1300 I met with *OCEAN FAME*, photographed the damages and boarded the vessel at 1315.

### **OCEAN FAME**

After viewing the damage and talking with the master it was established that the following damage had occurred:

1. Side shell, port side, in way of No.1 hold, fractured and opened up, a distance of approximately 13 metres in a fore and aft direction and to a depth of

9 metres, as reported by divers later in the day. Alongside the various hatches there were bundles of timber uprights for securing of timber deck cargoes. The bundle of timber uprights at the port side of No.1 hatch assisted, to some degree, in nullifying the ramming effect of the bow of *IRTYSHSK*. Even so the hatch coaming was fractured and buckled over a length of 12 metres.

2. The 3rd section of No.1 hatch cover was set over to starboard 2.6 metres.

3. The main deck was fractured and opened up over an area of approximately 7.3 x 2.2 metres.

4. The steel conduit carrying power cable to anchor windlass were heavily distorted. Tests made prior to anchoring ensured the windlass in working order.

5. The port side bulwark was torn adrift over a length of 15 metres (one section embedded in the bow of the Russian vessel).

6. Steel uprights in way of No.1 Masthouse, port side, were heavily distorted.

7. Damage to steel uprights at after end No.4 hatch and bulwark at port forward corner, were raised quarter deck.

8. There was slight damage to steel uprights between No's 3 and 4 hatches, port side.

9. Due to the extensive damage to the port side shell, a small proportion of the barley cargo had been washed out of the hold by the sea.

10. The divers advised that the damage in the sidshell extended down to a point just above the juncture of the bottom port side ballast tank with the shell. This sloping side tank is common with the

*Continued on page 32 >>>*

<i>IRTYSHSK</i>	
Gross Tons	4407
Length BPP	105.5 metres
Breadth	16.03 metres
Depth	6.50m metres
Owner	Dalryba- PetropalovskayaKa mchatsky, Oceanicheskogo Rybolovstra, USSR
Crew	92, Russian
Vessel built	1983
Propulsion	diesel engine driving a controllable pitch propeller.
Sea speed	11 knots

<i>OCEAN FAME</i>	
Gross Tons	14,395
Length OA	160.38 metres
Breadth	24.64 metres
Owner	Lasperias Shipping Co, Panama
Crew	19, Korean
Propulsion	diesel engine through conventional shaft and propeller, turning at 130-132 rpm.
Sea speed	13.5 knots



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### Collision>>>Cont'd from page 31

double bottom tank.

There was no leakage of oil or any other pollutant from the vessel.

I interviewed the chief officer (Korean) who had been on watch at the time of the collision. He advised he was assisted by a helmsman, who was manually steering the vessel at the time and also acting as Lookout. The Chief Officer stated that the normal sea speed for the vessel was between 130-132 RPM which gave a speed of 13.5 knots. Manoeuvring speed was 100 RPM which gave 10.3 knots.

The vessel left Vancouver at 1700 hrs. Aug. 23rd. A pilot was disembarked off Victoria at 2340 and the vessel entered Juan De Fuca Strait, westbound. From positions marked on the chart between 0130 and 0500 the average speed was 14.68 knots, given that at 0530, the ebb tide, setting 290 degrees (true) reached a maximum of 1.8 knots. It would appear that the vessel was turning revolutions for around 13 knots, which would appear to be close to the normal sea speed.

At 0500 dense fog was encountered, visibility 1.5 cables (900 ft.-274 metres). The fog signal was sounded and speed lowered to manoeuvring speed, 10.3 knots (= 1 mile in 5.8 minutes).

At the time of our interview with the chief officer, there were no notations in the log book since 0400 (the log book was kept in English) but the chief officer had a page of notes in Korean script. He had difficulty in telling me as to what revolutions he had reduced at this time, in fact he called the engine room and a discussion in Korean followed. He seemed less than decisive about his reduction in speed, only that he had reduced speed somewhat.

Between 0500 and 0630 (collision time) average speed was 11.9 knots, allowing for the tide it would appear that the vessel had reduced to manoeuvring

speed at 0500.

At 0520 course was adjusted to 288 degrees (all courses and bearings are in degrees true) and at 0550 to 275 degrees. At 0600 Cape Beale bore 028 degrees 15.8 miles and a vessel (probably *IRTYSHSK*) was plotted bearing 270 degrees at 9 miles. At 0615 the vessel bore 270 degrees 5.2 miles and at 0625 271 degrees at 1.5 miles. (These last two figures indicate a closing speed of 22.2 knots). At that time the chief officer altered course to starboard giving 20 degrees of helm and steadying up on a course of 320 degrees. At 0630 the collision took place.

In general conversation, the chief officer indicated that just prior to the collision he went to starboard and at the same time stopped the engine. If he did alter at 0625 because he felt collision was imminent it is strange that he would steady on 320 degrees, only 45 degrees from his original course.

Whilst the inspection of the vessel and the interviews with the master and chief officer were ongoing, the pilot had been embarked and the vessel proceeded to Sarita Bay, some 6 miles NE of Bamfield. There the vessel anchored. Divers conducted their examination and the undersigned embarked in a Zodiac and took draughts and photos of the damage. Also proceeded, carefully, with Coastguard crew, the Zodiac into the No.1 hold to inspect for any further damage.

The draughts showed 11.65 metres forward and 9.03 m aft, computed, forward draughts immersed, meaning vessel was 2.62 metres by the head (8.6 ft.).

Later in the afternoon, representatives of the Ship's agents in Vancouver and Port Alberni, Ship's P & I lawyer and the NK Surveyor, all boarded. About this time the Master of the *OCEAN FAME* suggested to me that as the damage had been assessed and his vessel had received a clean Certificate by the Port State

Control representative in Vancouver the day before. He wished to be allowed to proceed with his voyage to Japan. Apart from the huge opening in the No.1 hold and being down by the head some 8 ft., this accident occurred in Canadian waters and there was no way I, as a representative of the Canadian Government, was going to allow an unseaworthy vessel to enter on a trans-Pacific voyage. I did not say that to the master; I told him that was definitely out of the question. I think, like so many Masters in this age of ship management (although he presumably was under the owner's orders), all he wished for was a piece of official paper telling him to give up on the voyage and get his ship repaired as soon as possible.

Later it was agreed by all concerned that the vessel proceed to Esquimalt for repairs. At 1930 anchor was weighed and the vessel proceeded to Esquimalt.

After leaving the *OCEAN FAME* I returned to the lifeboat station at Bamfield, released the charter plane and set out in the Bamfield lifeboat again to meet up with the Russian vessel, which we met with about 1830 hours, circled her to take photographs and boarded.

### **IRTYSHSK**

The Canadian interpreter and I were taken forward to examine the damage, which consisted of a deep gash, just below the forecandle head, extending about 8 metres, both to port and starboard. The height of gash varied, but averaged 80 cms (31"). This was the area of the bow that met the junction of the main deck and sheerstrake plating of the *OCEAN FAME*. This gash had occurred in the stores area, the deck of which was cluttered with spare parts, broken metal shelving and many items of gear, so much that a proper examination of the deck itself, which was the deckhead of the tank underneath was not possible. This tank most usually on other ships





is the forepeak, used as ballast, but in this ship it was designated as No.1 Deep Tank and was sometimes used to hold fuel oil. The interpreter advised that the tank under my feet had been fractured; fortunately there was no fuel in it at this time.

Immediately aft of the stores area was the open manhole into the starboard chain locker, abaft that the forward collision bulkhead. Aft of that was the No. 2 deep tank (capacity 360 tonnes) which contained, at this time, 340 tonnes of medium diesel oil. I was advised that the shock of the collision had caused a welded seam on the starboard shell, in way of this tank, to open very slightly and allow a leak of some of the diesel oil. (This was the tank the interpreter was referring to.) The *IRTYSHSK* had bunkered recently but was able to transfer a small amount of the contents elsewhere on the vessel which was sufficient to stop the leak, but as a precaution, she summoned two other Russian vessels and transferred all the oil from No.2 Deep Tank to them. I was advised that due to the small seepage about 1 tonne of diesel had leaked into the sea previously. As I had met with the Russian vessel some way from the collision position, I was unable to verify or challenge this statement. However, the Canadian fisheries vessel *JAMES SINCLAIR* was on scene and will be able to comment.

About this time the pilot boarded and the *IRTYSHSK* headed for Sarita Bay passing the *OCEAN FAME* on its way to Esquimalt.

At 2000 hrs the *IRTYSHSK* anchored, shortly thereafter the undersigner together with the master and the interpreter boarded the Zodiac and circled the vessel to obtain draughts and assess the freeboard in the damaged bow area. It was noted the vessel had a port list of 29 cms, mean of the forward draughts was 4.0 metres and aft 6.88 m. Also noted was a freeboard of 4.50 metres

from the waterline to the underside of the gash.

In discussions later the master advised he had a capacity on board to carry 760 tonnes of frozen fish and now on board was 338 tonnes. He wished to be allowed to return to the fishing area off the coast in order to fill the remaining space, or until the mother ship returned from Russia. Although the additional weight would only increase the draught by 20cms, which would be lessened slightly by a burn off of fuel of 1cm. per day, I was apprehensive of the seaworthiness of the vessel in its present state. The 4.50 freeboard forward could disappear very quickly in a heavy swell and rough seas. Noting my hesitation the master offered an alternative: he would bring another factory vessel alongside and transfer all his cargo to her, then proceed to Vancouver for repairs. With this new plan, I agreed.

I met with the chief officer on watch at the time of the collision, to examine the chart. At about 0500 hrs. *IRTYSHSK* was steering 040 degrees, making 11.4 knots, visibility 5-6 miles. (I was advised that with the engine turning at 145 rpm and with the C.P. propeller set at #5.5, speed is 11 knots, in fog the setting is reduced to #5, equaling 10.8 knots.

At 0550 course was altered to 050 degrees to meet another Russian vessel. Between 0550 and 0610 the vessel, according to chart positions, steamed 4.2 miles = 12.6 knots. At 0610 course was altered to 090 degrees, between 0610 and 0620, the vessel made 2.1 miles, still 12.6 knots. At 0620 course was altered to 072 degrees to avoid two fishing vessels. At this time fog was observed, fog signals made and speed reduced to #4.5. This resulted in a speed of only 7.2 knots between 0620 and 0630 (collision time). The chief officer never saw the *OCEAN FAME* on radar, therefore he was unaware that he was the giving way vessel, being on the port side of *OCEAN FAME*.

While standing just to starboard of the helmsman he saw a shadow appear out of the fog, about 10 to 15 degrees on the starboard bow, very close. He told the helmsman to go hard a port (35 degrees) and stopped the engine, then collision.

The chief officer advised that the visibility just prior to collision was about 1 cable (600 ft-183 metres). Damage was also suffered by both vessels in their after parts, indicating that after penetration they came together.

According to the distances between the vessels in the 0615 to 0625 they were closing at 22.2 knots, if we say the visibility was 1.5 cables, that is 900 ft., the chief officer on the *OCEAN FAME* on the bridge where his radar is situated is 400 ft abaft the bow, thus he has 500 ft clearance, at 22.2 knots means 1 mile every 2.72 minutes, the other vessel appears out of the fog 500 ft. from his bow, he has 13.6 seconds to make a decision, the chief officer on the *IRTYSHSK* has a little more time as his bridge with the radar is much closer to the bow.

In any case, both vessels were steaming at an inappropriate speed, there were no proper lookouts, and the helmsmen is not a substitute for a lookout, especially in congested areas. The lookouts should be on the wings of the bridge, where each may then have heard the fog signals of the other, better still, in heavy fog on the fo'c'sle head. The rules for prevention of collisions at sea were not obeyed, neither was the ordinary practice of seamen.

Fortunately there was no loss of life, no injuries and no pollution. If there was a court case I never heard of the outcome; as far as I am concerned it should have been about 50% to each party. 🍁

Reason to Attend #24

*I'm a retired Master, ready to share my experiences, successes and failures with the next generation!*



## Environmental pollution and recent legislation



by Captain  
A.K. Bansal  
Company of Master  
Mariners of India

Volumes have been written about the penalisation of Masters, officers and crew of ships in the aftermath of oil spills at sea. The basic issues

involved in such “criminalization” are how *not* to penalise only those on site within local jurisdiction who may or may not have been responsible for such a disaster. Secondly, how to find and punish those who were not present at the scene at the time of the incident, but whose acts of omission and/or commission may have caused it. Thirdly, how to protect local ambience and our environment. This article mainly deals with these issues.

The power of the Oceans is limitless. Perils of the sea can cause disasters despite the best of efforts and preparation. If such disasters are caused solely through the forces of nature, they have to be accepted as such, in much the same way as we accept an earthquake or a tsunami. But if a disaster at sea has occurred as a consequence of even relatively trivial errors, through contributory negligence or acts of omission and/or commission of one party or another, without which it may not have happened, the resulting pollution cannot be attributed to natural causes and the perpetrators must be punished, if for no other reason than as a deterrent for the future.

When a disaster of some magnitude occurs at sea, causing pollution, two dis-

tinct kinds of damages and losses result.

A. Those which can be quantified and compensated for in monetary terms.

B. Those intangible damages to our planet, local ambience and environment, including loss of marine life, disfigurement of sea bed, its effects on local weather and climate etc.; the quantification of which is, at best, difficult and can tend to be subjective.

The international maritime community has taken many steps since 1967 to cater to quantifiable damages and losses suffered by individuals and communities. It is only the *prevention* of such disasters in the future which can curb damages to our environment, and which cannot be rectified or quantified in monetary terms. The question arises, how to minimise, if not eliminate, such irreversible and intangible damage to our environment? How to protect the ambience and environment, which is under threat due to risk of millions of gallons of oil which can leak out of the huge tankers of today, if those involved in commanding, owning, chartering, managing, manning, repairing, surveying and providing a host of other services to these ships do not take care that such a thing does not happen through their acts of omission and/or commission either knowingly or inadvertently? One way mankind has known since time immemorial is to find and punish the perpetrators as a deterrent to others.

Until recently, marine accidents mainly resulted in death, injury, and damage to the ship and what was on board. The owner recovered whatever he could from insurers and the rest attracted concern and sympathy. If there was damage to fittings, fixtures, and/or shore installa-

tions in the vicinity, third party liability for tangible damages mostly attached to the ship herself *in rem* and was therefore restricted to her own value. Even so, insurers stepped into the shoes of the ship and indemnified the claimants. Liability for any loss or damage to the environment was usually minimal and mostly “fell where it lay.”

Before 1967, the largest known oil spill anywhere in the world was that of *E.H. BLUM* in 1942. It was insignificant when compared to the over 70,000 tons of oil spilled by *TORREY CANYON* into the sea and on the beaches of Europe. Total clean up costs were in excess of US \$392 million. The ship did not even have P&I Club cover. Total liability of the owners for pollution was only US \$100 under a remote British law. The owners recovered full value from insurers and laughed all the way to their bank. The 1979 collision between two fully laden VLCCs in the West Indies caused the largest ever oil spill in the world. As was the case until then, very little thought seems to have been given to the marine life, which perished as a consequence, and to the effect it had on the ecology of the area. Thus, acts of omission and/or commission of those on the spot and behind the scene went unpunished in these disasters.

The *TORREY CANYON* disaster made it obvious to the international maritime community that placing liability only on the ship in her person for causing pollution is no more relevant, firstly because the ship may perish, and secondly, because the kind and quantum of pollution which can be caused by a tanker carrying large quantities of oil can exceed many times the value of the ship which caused it. Answers



were found in the form of CLC, Fund Convention, SCOPIC plus P&I cover for pollution liability. The shipping industry also came up with TOVALOP/CRISTAL, and now with STOPIA/TOPIA. STOPIA is a voluntary agreement in force from March 5, 2005. It only affects vessels of around 29,000 GRT or less entered in the International Group Clubs, and applies to incidents in third tier states. It effectively raises the CLC limit from SDR 4.5m to SDR 20m. TOPIA is a voluntary agreement which came into force from February 2006, under which 50% of any payments made by the Fund under the third tier is reimbursed by P&I cover.

Monetary payments to those who suffer losses and damages by pollution does not alleviate the irreversible destruction caused to the environment. Also, destroying marine life in the seas cannot be gauged in monetary terms.

Solutions lie in learning lessons to *prevent* such large scale pollutions in the future, and stipulating deterrents over and above compensation for tangible losses.

Obviously, if and when a ship causes pollution, the Master is the first person who is contacted by the Coastal State authorities. Firstly, because he is readily available within jurisdiction of the Coastal State where pollution was caused. Secondly, because he is the person on the spot with authority. Thirdly, he personifies the ship which caused the pollution. If the ship has done wrong, the Master has done wrong. While this may be most convenient, he may not have either caused the disaster by his acts and may not have been able to prevent it through all means available to him. Above all, he may have been one of the few survivors of an appalling tragedy. This was quite obvious to the world in the case of both the *ERIKA* and *PRESTIGE*, which made world headlines.

The *ERIKA* sank in the Bay of Biscay in bad weather due to cracks which developed on her deck and shipside. The first question is whether bad weather was of such a magnitude that no ship, however strong, could have withstood those forces

of nature. The entire international media called *ERIKA* an “old rust bucket”, but the ship had all required class certificates issued by her classification society confirming her seaworthiness. Obviously those paper certificates did not make the ship *seaworthy*. Therefore should it not stand to reason, that the owners, the classification society surveyor who certified her as seaworthy, and the officer from the Flag state who accepted her as such had some responsibility? The second question is, why the Master? Is it simply because he is identified in law with the ship, even though he is not a specialist, to know, proclaim and certify that the ship is seaworthy? In fact, today’s reality is that he is expected to accept the seaworthiness certificates issued by others, who are considered specialists to say so.

The *PRESTIGE* sank in bad weather because her ship side plates failed. Not only did the Master spend 85 days in jail, but he is also still being called into court even though he could not have done anything to prevent the ship side plates from falling apart. He still did every thing in his power to stop this disaster from happening. So why is it that officers of the shipyard which repaired the ship during special survey, the surveyors who supervised and certified the repairs to have been satisfactorily conducted *and* declared the ship seaworthy did not find themselves arrested along with the Master? It was reported that her previous Master was not satisfied with repairs being conducted to the ship and sent an adverse report while the ship was being repaired. Criminalizing these two Masters for resultant pollution has generated a strong reaction in the maritime world because it was neither perpetrated by them nor under their control.

In law, a ship is deemed to have a legal personality of her own to be able to conduct her business on the voyage away from owners. Because she does not have

eyes, ears or brain, the Master is deemed to be her alter ego. This was important in the old days when once away from her home port the master could not to contact the owners for instructions and assistance.

Today with the IT revolution, the owner, manager, charterer, and anyone and everyone who is interested in the ship, are constantly in contact with the ship, giving orders and instructions as if they were present on board. Thus the master is rarely able to take independent decisions on behalf of the ship. International developments pertaining to shipping are already widening respon-

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**Perhaps time has come ... to dump the concept of legal personality of a ship ... and to treat a ship as a transporter like any other means be it a mule, bullock cart, truck, railway train or aircraft.**

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sibility of owners, charterers, managers, classification societies and all others who may have been guilty of acts of omission and/or commission behind the scenes which led to a marine accident or pollution. Perhaps time has come for the international community to dump the concept of legal personality of a ship into the dustbin of history, as it has outlived its utility, and to treat a ship as a transporter like any other means be it a mule, bullock cart, truck, railway train or aircraft.

The next question is whether those responsible for such acts, knew or were aware that such a disaster may result as a consequence. Obviously, if they committed such acts knowingly, punishments should be more than if they did so inadvertently. Criminal sanctions have always been seen by mankind not only as punishment to those who did criminal acts, but more so that others should be afraid of similar sanctions. This acts as a deterrent. *Mens rea* is a criminal law concept which requires proof of intent, recklessness, or the ‘turning of a blind

*Continued on page 36 >>>*



*Pollution*>>>Cont'd from page 35

eye', to consequences of one's actions. This is what has led to the concept of criminalization of those responsible for such disasters in their individual capacity.

In February 2004, the *Loi Perben* came into force in France. It extends the concept of individual criminal liability for causing pollution beyond the Master to owners, managers and others. Ships are being intercepted under this Act on suspicion of pollution and brought into French ports to face fines and jail sentences, even on questionable evidence.

The *ERIKA III* package and directive was adopted by EU in September 2005. It came into force as domestic laws of all EU states from April 2007. It stipulates sanctions against the ship owner, Master, cargo owner, classification society or any other person, for even unintentional ship-source pollution and makes it a criminal offence, if committed with intent, recklessly or negligently. It excludes port authorities but not salvors. Much criticism has been laid against EU for this directive. The international maritime community has no choice but to abide by it.

Hopefully, punitive measures against those who may be indirectly responsible for causing or promoting pollution may ameliorate the position of Masters of ships. But inclusion of salvors under the *ERIKA III* package may prove unfortunate, because instantly available salvage services can make a difference between

success and failure to prevent or eliminate pollution. Sometimes delay of even hours or minutes can make a difference. If salvors are exposed to possible criminal sanctions, they may be reluctant to save crucial time, without getting guarantees from the Coastal State involved, that they will not be prosecuted. In the *TASMAN SPIRIT* case in Karachi, the salvors were also detained.

In 1987, the *HERALD OF FREE ENTERPRISE* sank off a Belgian port, with huge loss of life, because her bow doors were still open after clearing the breakwater. Owners knew about this unsafe practice, but turned a Nelson's eye to it because it saved them commercial time if the bow doors were closed after the ship put to sea. Dependants of those who died filed a criminal case against the owners on the ground that they knew about this unsafe practice but actively allowed it for gain. The company could not be convicted of a crime causing death, because *mens rea* could not be proved against any individual or individuals. This resulted in a provision in the ISM code for a "Designated Person." If such an accident happened today, *mens rea* could be placed at the doorstep of this Designated Person. Furthermore, environmental pollution by ships is mostly treated today as a serious crime in which *mens rea* need not be proved.

In the *IRVING FOREST* case, the master and first officer were imprisoned following a collision with an oil rig in the North Sea, even when they did not cause

the collision through their own acts. The officer on watch was asleep because he had not slept for three days. The judge said that he would have liked the ship's managers to share the punishment.

The *ARGO MERCHANT* oil spill off Massachusetts in 1976 caused a public outcry in the USA and culminated in the passage of the Clean Water Act of 1977. The *EXXON VELDEZ* grounding on Good Friday in 1989 caused the largest, most expensive oil spill in US history resulting in prosecution of the Master and Exxon. It also resulted in OPA 1990 which stipulates extensive liabilities and penalties, not only against the Master but also against owner, operator, demise charterer and others for release of oil or other hazardous substances, plus removal costs and resultant damages to natural resources and damages to real or personal property.

Authority to recover damages to natural resources also stems from Section 311 of the Clean Water Act (CWA). Recent amendments to OPA 90 provide for punishment up to 3 years imprisonment and/or fines ranging from US \$5000 to \$50,000.

Pollution is viewed so seriously in USA today that it makes criminal investigation imminent even for an accidental spill, and certainly when intentional spill is suspected.

A bigger threat to our environment is intentional pollution from ships as against accidental pollution. MARPOL 1973/78 regulates intentional discharge of oil and oily mixture from ships. It does not deal with accidental spills unless there is deliberate or reckless misconduct by owner or master which, if proved, may establish *mens rea* in the mind of ship owner, which will break his right to limit liability under Article 4 of the Limitation of Liability for Maritime Claims 1976. It provides:

"A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result".



The *EXXON VALDEZ* remains in place in Prince Williams Sound after running aground. The *EXXON VALDEZ* ran aground on Bligh Reef in Prince William Sound, Alaska, March 23, 1989, spilling 11 million gallons of crude oil, which resulted in the largest oil spill in U.S. history.

Photo: US Coast Guard



MARPOL stipulates a limit of 15 ppm of oily water mixture that can be pumped out of ships. Oil water separators (OWS) are now fitted on ocean going ships to monitor this. It is difficult and tiresome for ship's personnel, not only to achieve 15 ppm, but also to monitor what is pumped out. So they find ways and means to bypass the equipment and pump out oily water mixtures at sea with impunity, as it is difficult to police activities of ships out in mid-oceans. Also, many techniques have been devised to circumvent MARPOL provisions by doctoring the equipment to show dirty water as if it were clean.

Violation of provisions of UNCLOS and MARPOL outside territorial waters of Coastal States can only be dealt with by the Flag State. Many countries, especially FOC States, do not take action against ships registered with them because they neither have the necessary infrastructure to detect and deal with such violations, nor do such acts affect their coasts. The US Act to Prevent Pollution from Ships (APPS), makes it a crime for any person to knowingly violate it or MARPOL, or federal regulations made under APPS, which apply to all US flag ships anywhere, and to all foreign flag ships in US waters or while in US ports. The US government has no jurisdiction over unauthorized discharges of oily mixtures by foreign-flag ships in international waters. But as can be seen from the following case, the American authorities find ways to detain crew members of ships even when they do not have evidence of violations.

Capt. Grigore Manolache, Master of *M/V IRENE E.M.*, and eight crew were detained on Dec. 5, 2005, on suspicion of dumping oil from the ship with a "magic pipe" to bypass a filtration device to dump oily sludge directly into the ocean. Dumping is a violation of international laws.

On inspection in Delaware Bay, safety violations and the piping system used to dump oil were found. Both are criminal offenses in USA. The ship was allowed to leave a few weeks later with a replace-

ment crew as part of a security agreement between the US government and ship's owners, plus a \$500,000 bond. No one was charged for conspiring to dump oil.

This practice of holding ship's crew without charge has become common in USA over the last eight years, on the plea for US authorities to have time to investigate. It is internationally controversial as it amounts to taking hostages. The company paid the captain and crew and put them up in a hotel while they waited for prosecutors to finish the investigation and file charges. After seven months, lawyers for the crew filed an emergency petition in U.S. District Court in Wilmington seeking to free the men, especially when owners refused to pay crew expenses for another month.

It was then that the Master was charged with making a false entry in his logbook about a safety drill and for violating safeguards set up after Sept. 11, 2001 against undermining the security of USA. The chief engineer was charged for having ordered crew to dump the sludge at least four times a week between October 2005 and December 2005. The chief engineer and ship's owner were charged with conspiracy, witness tampering, and false logbook entries to cover oil dumping. The Master pleaded guilty to making wrong log book entries about a safety drill (which had nothing to do with oil pollution), and was sentenced to unsupervised probation. The Master and the crew were allowed to leave the USA on July 13, after seven months.

Under Common Law, a corporation can incur vicarious criminal liability for actions of its employees acting within the scope of their employment because such an act is deemed to be the act of the corporation. But a corporation can only be fined, for which it is usually insured. If the responsible individual can be jailed, it is a much more effective deterrent.

Under the 'responsible corporate offi-

cer doctrine,' if an individual is in a position of responsibility to influence corporate policies or activities, and could have prevented or corrected the actions which constituted a violation, he may be held criminally liable under environmental statutes, provided his actions/omissions have facilitated the violation. Thus, if someone in authority, even unknowingly hires an incompetent Master or crew-member whose incompetence causes a spill, he can be held liable.

If he fails to implement systems under the ISM requirements and/or environmental regulations, or he fails to know of a defect in the ship's equipment which causes a spill, he and his company may

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### **American authorities find ways to detain crew members of ships even when they do not have evidence of violations.**

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be at risk of criminal prosecution under this doctrine.

Even when a corporation is located outside the jurisdiction of a country, a ship belonging to it can be confiscated and her crew charged and held, pending trial. Today, there are extradition treaties between countries. Therefore if a non resident or a foreigner is charged with a crime in another country, the person or persons charged can be brought within the jurisdiction to stand trial, under such treaties. This happened to owners, managers and Designated Person of the *FREJA JUTLANDIC*.

Although accidental pollution usually makes world headlines, the biggest threat to our environment remains operational pollution, which is the greatest burden on the global environment. Up to the 1950s, normal practice was simply to wash ship's tanks with water and pump oil and water into the sea. Also, during every voyage back to the loading terminal, water at the bottom of tanks was pumped overboard and more oil was loaded at the loading terminal. It was estimated that with such practices 8 to

*Continued on page 38 >>>*

*Pollution*>>>Cont'd from page 37

10 million tons of oil would have entered our oceans every year. While ships have become bigger and the volumes of oil which is carried across our oceans have increased many fold, our oceans have not become any bigger. Therefore this kind of prospect for our environment was frightening. The two most important regulations for prevention of operational pollution are MARPOL 73/78 and SOLAS 1974.

Unfortunately, owners and seafarers do not always cooperate. Most ships continue to pump out oil and oily mixtures into the oceans when they think that no one is looking. They make false entries in log books stating compliance with international rules and conventions.

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## **Unintentional and accidental pollution as a strict liability crime bears particularly heavily on seafarers.**

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It has been estimated that with provisions of Shipboard Oil Pollution Emergency Plan (SOPEP) approved and made mandatory by each Flag State and tailor made for each type, size and design of ships with guide lines developed by IMO, this kind of pollution was reduced from 8-10 million tons yearly to about 568,800 MT by 1989. But even that is not enough. Hence the need for stricter rules and laws.

In 2001, the world had 87,239 registered ships. Even if each ship threw out one litre of oil into the sea per day, we would have as much as 87,239 litres of oil per day, or 31,842,235 litres or 31,842 tons of oil indiscriminately thrown into our oceans every year. This is a frightening prospect especially since part, if not all, of this is already happening.

As a result of strict actions taken by

the US authorities under OPA 90 and APPS, the volume of oil spilled in US waters from tankers on both coasts of the USA has reduced from 70,000 barrels per year to 4,000 barrels per year. Perhaps time has come for other coastal States to pass similar laws and take similar stringent actions against polluters to save their coasts and the global ecology at large.

Since the USA has never ratified MARPOL or UNCLOS, CWA, APPS and OPA 90, they could not be criticized by the rest of the world. Critics of the *Loi Perben* and the EU Directive say that some of the provisions in these two instruments violate provisions of MARPOL and UNCLOS which have been ratified by France and most EU States. It therefore follows that the French and other EU States would have also escaped criticism if they had not ratified MARPOL and UNCLOS. Should then one consider it an incentive for Sovereign States not to ratify international conventions just in case they have to rethink and pass legislation in the future to protect their environment and interests in line with existing realities?

UNCLOS 1982 empowers coastal or port states to adopt and enforce laws and regulations against foreign ships under their jurisdiction or within their ports. In fact these powers are more specific in MARPOL 1973/78. There cannot be a violation under MARPOL unless an accidental discharge was due to wilful or reckless act of the owner or Master with intent to cause damage. The government of a country can impose stringent requirements and standards to ships flying its flag. Because ships sail in areas where their activities are not always easy to detect, seafarers usually by pass OWS equipment to discharge oily waste into the seas when they think that no one is looking. Furthermore, most violations can only be dealt with by monetary penalties without alleviating environmental

pollution.

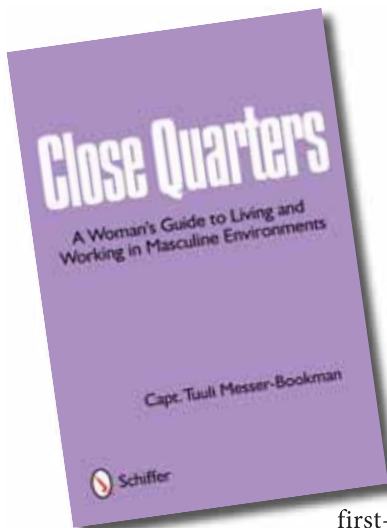
EC Directive on ship-source pollution uses the term 'serious negligence' but does not define it. EU States have ignored parts of UNCLOS and MARPOL at will even though most of them have ratified them. To that extent the EU directive contravenes International Maritime law.

The international maritime community has been active to monitor and implement procedures, practices and regulations to minimise pollution and continues to do so since the *TORREY CANYON* disaster in 1967. Unintentional and accidental pollution as a strict liability crime bears particularly heavily on seafarers. The trend to criminalise them, coupled with many other disincentives, has badly affected the morale of officers and engineers of ships who have started to prefer not to ascend to the two senior most roles on board, to avoid criminal proceedings in case of a mistake on board not necessarily by them.

Thus, balance between punitive criminalization and reasonable deterrence seems to have been overshot. Focus on casualties should be to find out what went wrong and why, to punish those responsible, and to prevent future accidents. But to seek truth against fear of punishment is not the best way to obtain honest and detailed evidence of causes of an accident and to learn lessons that may prevent the next accident.

It is not being made out in this article that every provision of CWA, APPS, OPA 90, *Loi Perben* and EU Directive is either wrong or perfect or desirable. MARPOL is now 32-37 years old and UNCLOS is 28 years old. In the fast changing and dynamic realities of today, it may be time to have another look at the provisions of these two Conventions, taking into consideration realities and exacting requirements of modern times, instead of criticizing these laws and actions being taken under them. ☆





## Close Quarters: A Woman's Guide to Living and Working in Masculine Environments

by Captain Tuuli Messer-Bookman, #3293-S

This unconventional and refreshingly candid book offers delightful and gritty advice to women working and living in masculine environments. The author's first-hand experiences can help women work more smoothly, happily, and successfully in any profession where men and women are in close quarters, such as law enforcement, firefighting, any aspect of the maritime industry, construction, forestry, and the military. Written frankly, it covers everything from avoiding embarrassing male

colleagues with one's laundry, to graciously deflecting their romantic advances. This book challenges the politically correct, hair-trigger sensitivities some women hold regarding sexual harassment and discrimination. It gives new-found respect to women who have endured sometimes brutal harassment in order to blaze trails into male-dominated professions. It applauds the merits of being a "lady," not just a woman, no matter what the setting. The book is sobering, laugh-out-loud funny, and thought-provoking. ☆

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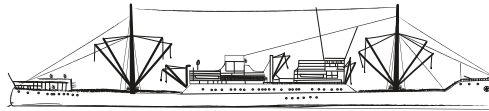
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