

# COMMERCIAL AND PASSENGER VESSEL SAFETY: CHALLENGES AND OPPORTUNITIES

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BEFORE THE  
SUBCOMMITTEE ON  
COAST GUARD AND MARITIME TRANSPORTATION  
OF THE  
COMMITTEE ON  
TRANSPORTATION AND  
INFRASTRUCTURE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTEENTH CONGRESS  
FIRST SESSION

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Committee on Transportation and Infrastructure  
U.S. House of Representatives  
Washington, DC 20515

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NOVEMBER 8, 2019

**SUMMARY OF SUBJECT MATTER**

TO: Members, Subcommittee on Coast Guard and Maritime Transportation  
FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation  
RE: Subcommittee Hearing on “Commercial and Passenger Vessel Safety: Challenges and Opportunities”

**PURPOSE**

The Subcommittee on Coast Guard and Maritime Transportation will meet on Thursday, November 14, 2019, at 2:00 p.m. in 2167 Rayburn House Office Building to explore maritime vessel safety amid recent maritime casualties and to examine the effectiveness and implementation of safety legislation such as the Cruise Vessel Security and Safety Act as well as the Hamm Alert Maritime Safety Act. The Subcommittee will hear from the United States Coast Guard, Maritime Administration, National Transportation Safety Board, Cruise Lines International Association, American Bureau of Shipping, Offshore Marine Services Association, Passenger Vessel Association, and the Louisiana Association for Justice.

**BACKGROUND**

The International Maritime Organization (IMO) is a global standard-setting authority for the safety, security, and environmental performance of international shipping<sup>1</sup> housed under the United Nations. IMO's role is to develop and maintain a comprehensive regulatory framework for worldwide shipping. Flag countries can subsequently set more stringent safety requirements for their flag vessels that operate in the domestic and/or international trade. Oversight of these vessels in the United States typically fall under the responsibility of the United States Coast Guard with the assistance of other U.S. agencies.<sup>2</sup>

The International Convention for Safety of Life at Sea (SOLAS) sets international standards for vessel safety that are agreed upon by nations that are parties to the convention. The United States is a party to this convention. The main objective of SOLAS is to specify minimum standards for the safe construction, equipping, and operation of ships, compatible with their safety. IMO updates SOLAS standards periodically. SOLAS applies to vessels operating internationally and establishes requirements for vessel construction and stability, firefighting systems, safety equipment, radio communications, safe navigation procedures, vessel management, and carriage of cargo. SOLAS is regarded generally as the most important of all international maritime treaties concerning the safety of merchant ships. Chapter V of the SOLAS Convention deals with safety of navigation, identifies certain navigation safety services, and sets forth operational provisions generally applicable to all vessels at sea. First adopted in 1914 in response to the TITANIC disaster, the current version of the treaty was adopted in 1974 and went into force in 1980.<sup>3</sup> SOLAS has been updated subsequently on several occasions through amendments which are adopted by its signatory nations after lengthy review and debate.

Marine safety management systems (SMSs) are programs designed to identify hazards and reduce risk in order to ensure safety at sea, prevent injury or loss of life, and avoid damage to the environment and vessels. An SMS provides procedures

<sup>1</sup> International Maritime Organization. Introduction to IMO.

<sup>2</sup> Depending upon the vessel and requirement, this can include the Environmental Protection Agency, and Customs and Border Protection.

<sup>3</sup> International Maritime Organization (IMO), International Convention for the Safety of Life at Sea (SOLAS), 1974.

used aboard a vessel during normal operations or emergencies. Processes for conducting regular maintenance on the vessel and its equipment also are included. An SMS also includes an audit process to identify when the SMS is not followed and a system of corrective actions to address deficiencies.

For vessels sailing under the regulations of SOLAS, SMS requirements are delineated in the International Safety Management (ISM) Code.<sup>4</sup> Per the ISM Code, a flag state issues a *Document of Compliance* to a company that complies with the requirements of the code and issues a *Safety Management Certificate* to each vessel after verifying that the company and its shipboard management operate in accordance with an approved SMS. The U.S. Coast Guard affirms compliance with all SOLAS requirements during port state control inspections that occur when vessels arrive at a U.S. port, and flag state inspections for U.S. flag vessels.

#### PASSENGER VESSELS

Passenger vessels include ferries, dive boats, tour boats, overnight boats, dinner boats, among others, that operate on U.S. domestic voyages and are typically classified by weight and number of passengers carried. These factors also determine what Coast Guard regulations the vessel is subject to. Vessels classified under 100 gross tons that carry 150 or fewer passengers or that have overnight accommodations for 49 or fewer passengers fall under subchapter T of Title 46 Code of Federal Regulations (CFR) for safety regulations.<sup>5</sup> Subchapter T vessels are considered small passenger vessels, are required by law to be inspected once they carry more than six passengers and must include at least one passenger for hire.<sup>6</sup> Passenger vessels that do not require inspection, otherwise known as “uninspected passenger vessels” (UPVs) carry up to 6 passengers for hire, not including the Master and paid crew. These are also referred to as “six-packs.” These vessels include chartered, rented or leased vessels with crew provided by the owner that carry 6 passengers or less.

The Coast Guard also oversees the use of chartered vessels and considers them passenger vessels. Bareboat chartered vessels are passenger vessels that are chartered or rented from an owner but does not have as many requirements hence the “bareboat” name. Regarding bareboat charters, the owner generally does not provide the crew (i.e. licensed Master of appropriate route and tonnage) but must be inspected by the Coast Guard if carrying more than 12 passengers.<sup>7</sup> Chartered vessels are required to be inspected when the owner provides crew for the vessel to the customer and when they carry more than 6 passengers.<sup>8</sup> Since bareboat charters allow more passengers before being required to undergo inspection, they tend to have more requirements than the average chartered vessel. These stipulations that apply to bareboat charters include: the owner not stipulating or providing a master or crew; food, fuel and stores must be provided by the charterer; port changes and pilot fees paid by the charterer; and, charterer has complete command, control, and possession of the vessel.<sup>9</sup>

#### ILLEGAL CHARTERS

Illegal charters are when one of the above stipulations for bareboat charters are not followed or the charter does not undergo an inspection as required. They are a growing small passenger vessel enforcement issue for the Coast Guard. Charter violations are increasingly common in areas such as Miami, Florida, due to its large maritime tourism industry and pose increasing safety risks to passengers and operators alike.<sup>10</sup>

Exemptions or “grandfathering” of certain passenger vessels from subchapter T requirements under title 46 CFR has occurred generally to allow older vessels to operate while gradually applying new regulations prospectively to newly built vessels. Passenger vessels with a keel laid date before March 10, 1996, are inspected under the “old T” requirements, not the “new T” requirements published after 1994. Allowing older passenger vessels to continue to operate can have serious consequences. For example, early in the morning on September 2, 2019, an overnight dive boat, the M/V CONCEPTION, caught fire off the coast of Santa Cruz, California, and sank resulting in the deaths of 33 passengers and one crew member and is the

<sup>4</sup> Ibid.

<sup>5</sup> 46 CFR Subchapter T.

<sup>6</sup> Coast Guard. COMDTPUB P16700.4 NIVC 7-94. Navigation and Vessel Inspection Circular No. 7-94: Guidance on the Passenger Vessel Safety Act of 1993. September 30, 1994.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

worst maritime disaster in 70 years.<sup>11</sup> The CONCEPTION was a 75-foot “grandfathered” passenger boat that fell under “old T” regulations.

Larger passenger vessels tend to fall under either subchapters K or H. Passenger vessels classified under 100 gross ton with more than 150 passengers and/or more than 49 overnight passengers fall under subchapter K regulations.<sup>12</sup> Passenger vessels over 100 gross tons fall under subchapter H regulations.<sup>13</sup> These regulations do not apply to foreign flagged vessels whose country is a party to SOLAS. The Coast Guard sets these regulations and enforces them through regular inspections.

#### *CRUISE SHIPS*

Worldwide, the cruise line industry carried over 28.5 million passengers in 2018 alone.<sup>14</sup> In 2010, the North American Cruise line industry contributed an estimated \$37.8 billion to the U.S. economy.<sup>15</sup> The U.S. Coast Guard regulates all commercial vessels, including cruise vessels, calling on U.S. ports, regardless of the vessel’s flag state. The Coast Guard inspects each foreign-flagged cruise vessel calling on a U.S. port at least twice a year to ensure compliance with SOLAS and U.S. regulations governing safety, security, and environmental protections. The Cruise Vessel Security and Safety Act (CVSSA) of 2010 (P.L. 111-207) was enacted on July 27, 2010, and later amended by Congress in 2013. It requires the following of all cruise vessels calling on U.S. ports:

- Safety railings must be at least 42 inches above the deck.
- Cabin doors must have peepholes, latches, and time sensitive key cards.
- Vessels must maintain video surveillance and provide access for law enforcement agencies investigating an incident.
- Vessels must integrate technology that can capture images of passengers or detect passengers that fall overboard to the extent the technology is available.
- Passengers must have access to a safety guide informing them of security and medical personnel aboard, as well as variances in laws that will occur as the ship enters different jurisdictions.
- Victims of sexual assault must have access to trained medical personnel and rape kits, and national response hotlines.
- Vessels must record all complaints and claims in an official logbook.
- Vessel owners must report all crimes to the Federal Bureau of Investigation (FBI). Crimes must then be reported on the Department of Transportation’s (DOT) website.
- DOT must maintain a website containing a compilation of statistics on crimes occurring on cruise vessels.

In 2013 the Government Accountability Office (GAO) conducted a study on the implementation of the CVSSA. Their study found that, at the time, most of the security and safety measures required under CVSSA had been implemented on cruise ships but auditors were concerned with the underreporting of crimes that occur in U.S. territorial seas, involve a U.S. national or take place on cruise vessels that visit a U.S. port.<sup>16</sup> In the report, GAO highlights the limited usefulness and transparency of existing publicly reported data. For example, allegations for which investigations are not opened, are never published, and the data is not timely reported—due to the length of time of the investigations—which are published months or years later.

#### *COMMERCIAL VESSELS*

On October 1, 2015, the SS El Faro, a 790-foot U.S.-flagged cargo ship owned by TOTE Service’s Inc., sank in the Atlantic Ocean during Hurricane Joaquin. The result was a loss of life of all 33 crew members aboard.<sup>17</sup> Both the Coast Guard and the National Transportation Safety Board (NTSB) found that the sinking was a preventable accident. There were multiple contributing factors to the sinking of SS EL FARO including: the master’s insufficient action to avoid Hurricane Joaquin and use the most current weather information, the late decision to muster the crew, as well as ineffective bridge resource management, inadequacy of owner in voyage oversight, flooding in the cargo hold from an undetected open watertight scuttle, loss

<sup>11</sup> Gregory Wallace, Rene Marsh. CNN. NTSB preliminary report says Conception dive boat did not have crewmember on roving overnight watch as required. September 12, 2019.

<sup>12</sup> 46 CFR Subchapter K

<sup>13</sup> 46 CFR Subchapter H

<sup>14</sup> Cruise Lines International Association, Inc. 2019 Cruise Trends and Industry Outlook.

<sup>15</sup> Bureau of Transportation Statistics. U.S. Department of Transportation. Maritime Trade and Transportation by the Numbers.

<sup>16</sup> Government Accountability Office. Cruise Vessels: Most Required Security and Safety Measures Have Been Implemented, but Concerns Remain about Crime Reporting. December 2013.

<sup>17</sup> Susan Miller. USA Today. Captain’s mistakes led to El Faro sinking, Coast Guard report says. October 1, 2017.

of propulsion due to low oil pressure from a sustained list, lack of an approved damage control plan, and lack of appropriate survival craft.<sup>18</sup> The Coast Guard Marine Board of Investigation made 31 safety and four administrative recommendations to address the causes of the SS EL FARO sinking.<sup>19</sup> In December 2017, the Commandant of the Coast Guard issued a Final Action Memorandum on the Marine Board's recommendation and concurred with 29 of the 31 safety recommendations and three of the four administrative recommendations.<sup>20</sup> The NTSB issued 29 recommendations for the Coast Guard, two recommendations for the Federal Communications Commission, one recommendation for the National Oceanic and Atmospheric Administration, nine recommendations for the International Association of Classification Societies, one recommendation for the American Bureau of Shipping, one recommendation for Furuno Electric Company, and 10 recommendations for TOTE Services Inc.<sup>21</sup>

On October 11, 2018, the Save our Seas Act of 2018 (P.L. 115-265) was enacted that included the Hamm Alert Maritime Safety Act of 2018 in response to the sinking of the SS EL FARO in 2015. This Act used many of the final action memo actions and includes requirements such as:

- A website documenting domestic vessel compliance with subtitle II of Title 46 that includes flag state detention rates and identifying organizations that failed to recognize a major non-conformity.
- GAO audit of the Coast Guard's oversight and enforcement of safety management plans.
- Outfitting of ships with distress signaling and location technology.
- Maintaining records regarding vessel weight changes by the owners of the vessel.
- The Commandant of the Coast Guard will enter into agreements with IMO on free-floating standards for voyage data recorders on vessels.
- Equipment that can attach a radio or Automated Identification System strobe or beacon to an object not immediately available to retrieve.
- Increase in personnel training regarding marine inspections.
- Flag-state guidance for all freight vessels to include comprehensive damage control information in safety management plans.
- Enhanced Coast Guard oversight of recognized organizations that conduct 3rd party inspections on behalf of the Coast Guard.
- Improvement of quality and timeliness of weather forecasts available to masters and mariners.
- Establishment of an anonymous safety alert pilot program.

Following this casualty and subsequent enactment of the Hamm Alert Maritime Safety Act, there has been increased focus on the use of "recognized organizations" conducting inspections on behalf of the Coast Guard and their oversight of these organizations. Flag states may delegate the issuance of Documents of Compliance and Safety Management Certificates to "recognized organizations," which are generally classification societies. The American Bureau of Shipping (ABS) is a recognized organization authorized by the Coast Guard. As such, ABS issued ISM certificates and was required to inform the Coast Guard when either a Document of Compliance or a Safety Management Certificate was rescinded. The Coast Guard's use of 3rd party inspectors raises conflict of interest concerns in light of the fact that these inspectors are being paid by the owners of the vessel that they are inspecting which could in turn result in a substandard inspection and unsafe vessel. Section 215 of the Hamm Alert Maritime Safety Act requires the Coast Guard to establish an office that conducts oversight of all recognized organizations not later than two years after the date of enactment.

While there are concerns regarding oversight of recognized organizations, there is also concern with the increasing strain placed on limited Coast Guard resources for prevention and inspection activities. In 2018, the Coast Guard began implementation of newly updated 46 CFR Subchapter M requirements for towing vessels. These

<sup>18</sup>National Transportation Safety Board. NTSB/MAR-17/01 PB2018-100342. Sinking of US Cargo Vessel El Faro Atlantic Ocean, Northeast of Acklins and Crooked Island, Bahamas, October 1, 2015. December 12, 2017.

<sup>19</sup>Coast Guard Marine Board of Investigation. Steam Ship El Faro (O.N. 561732) Sinking and Loss of the Vessel with 33 Persons Missing and Presumed Deceased Northeast of Acklins and Crooked Island, Bahamas on October 1, 2015 Marine Board's Report. September 24, 2017.

<sup>20</sup>U.S. Coast Guard. Steam Ship EL FARO (O.N. 561732) Sinking and Loss of the Vessel with 33 Persons Missing and Presumed Deceased Northeast of Acklins and Crooked Island, Bahamas on October 1, 2015 December 19, 2017.

<sup>21</sup>National Transportation Safety Board. NTSB/MAR-17/01 PB2018-100342. Sinking of US Cargo Vessel El Faro Atlantic Ocean, Northeast of Acklins and Crooked Island, Bahamas, October 1, 2015. December 12, 2017.



regulations established an inspection requirement for towing vessels.<sup>22</sup> These new regulations allow for the use of 3rd party inspectors. The success of the new subchapter M requirements rests on the Coast Guard's ability to create and oversee important regulations that determine 3rd party inspectors. In addition, the Coast Guard and Maritime Transportation Act of 2010 (Public Law 111-282) required the Coast Guard to initiate a new examination program for all commercial fishing vessels. The Coast Guard has yet to fully implement this requirement, a failure attributed by the Service to lack of resources.

#### WITNESS LIST

##### *PANEL I*

- Rear Admiral Richard V. Timme, Assistant Commandant for Prevention Policy, United States Coast Guard
- The Honorable Richard Balzano, Deputy Administrator, United States Maritime Administration
- Mr. Brian Curtis, Director, Office of Marine Safety, National Transportation Safety Board

##### *PANEL II*

- Vice Admiral Brian Salerno, USCG, Ret., Senior Vice President, Maritime Policy, Cruise Lines International Association
- Mr. Adam W. Moilanen, Vice President of Health, Safety, Quality & Environment, American Bureau of Shipping
- Mr. Aaron Smith, President and Chief Executive Officer, Offshore Marine Service Association
- Ms. Colleen Stephens, Vice President, Passenger Vessel Association
- Mr. Paul Sterbcow, President, Louisiana Association for Justice

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<sup>22</sup>U.S. Coast Guard 9/5/2019: Updated Subchapter M FAQs Now Available. September 5, 2018.



## COMMERCIAL AND PASSENGER VESSEL SAFETY: CHALLENGES AND OPPORTUNITIES

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THURSDAY, NOVEMBER 14, 2019

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COAST GUARD AND MARITIME  
TRANSPORTATION,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
Washington, DC.

The subcommittee met, pursuant to call, at 2:11 p.m., in room 2167, Rayburn House Office Building, Hon. Sean Patrick Maloney (Chairman of the subcommittee) presiding.

Mr. LARSEN [presiding]. The subcommittee will come to order.

I ask unanimous consent that the chair be authorized to declare recesses during today's hearing.

Without objection, so ordered.

I ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

I am sitting in for Chair Maloney today, who is otherwise detained, and I want to say good afternoon and welcome to this afternoon's hearing on commercial and passenger vessel safety.

As we approach the anniversaries of important maritime safety legislation, we need to know that Coast Guard-inspected vessels will be reliably safe, sound, and operable, especially in light of recent maritime casualties.

Over the past 19 years, we have seen a string of maritime casualties here in the United States, from the catastrophic *Conception* dive boat fire that cost the lives of 33 passengers and 1 crew member, the capsizing of the *Golden Ray* in Georgia, and countless other vessels, the past years have provided a continuous list of maritime casualties that is too long and tragic.

I want to share my deepest condolences to the families of victims of these maritime tragedies.

It is our responsibility as Congress to prioritize the lives and safety of crew and passengers over profits. This hearing is needed to evaluate the oversight of commercial and passenger vehicles and identify what is working and what needs improvement.

The U.S. has a history of taking a reactionary approach to safety, creating maritime safety laws that follow tragedy, rather than preemptively strengthening safety requirements for a more robust fleet, one that is effectively regulated and inspected.

Just last week, the L.A. Times described a contentious relationship between the Coast Guard and the National Transportation

Safety Board, or NTSB. The Coast Guard's repeated failure to embrace and act on the NTSB's recommendations on passenger vessels has emerged as a persistent thread in recent maritime casualties. Recommendations from prior casualties continue to resurface in later accidents, and yet, the Coast Guard refuses to act. And I share the NTSB's concerns.

Recent accidents on small passenger vessels demonstrate that poor preventive maintenance, lax fire prevention, and inadequate crew training, all continue as contributing factors leading to calamity. The Coast Guard is making a critical mistake by not acting more assertively on these recommendations.

Moreover, the grandfathering of passenger vessels under the old T regulations emphasize these concerns. Revisions to subchapter T regulations for passenger vessels in 1994 were intended to create safer vessels, yet by grandfathering in older vessels, passenger vessel safety has been compromised by keeping older, less safe vessels in service far longer than desired. All of this could lead to additional and more deadly accidents in the future.

Last year, Congress passed the Hamm Alert Maritime Safety Act of 2018 in wake of the sinking of the cargo vessel *El Faro*. This legislation focused on the Coast Guard's inspection program and oversight of recognized organizations. It also highlights the importance of safety management systems, or SMSs, on all vessels to prepare them for emergency scenarios.

One year later, I expect to hear from the Coast Guard and the American Bureau of Shipping on a concrete action step they have taken to implement the act.

Cruise vessels as well pose unique risks and vulnerabilities for passengers as safety on the high seas not only applies to the physical maintenance of the vessel, but to help passengers taken care of while at sea.

When massive cruise ships embark, they are essentially floating cities. They have their own security and oversee thousands of individuals with high exposure to risk.

In 2010, nearly a decade ago, Congress passed the Cruise Vessel Security and Safety Act to provide U.S. citizens more protections while vacationing on cruise ships. It was last amended in 2012, and has not been revisited since.

In this environment, the chances of crime, especially sexual assault, are high, and the resources available to victims, scant. I look forward to hearing from Admiral Salerno on what the industry has done to implement the act.

From cruise ships to cargo ships, from large ferries to small passenger vessels, one constant remains true: Oversight of safety measures is vital to protecting lives and property. It is the Government's and industry's responsibility to provide a safe and reliable maritime industry, and it is the work of this committee to do its oversight to make that happen so everyone who steps on a vessel safely reaches the end of their voyage.

[Mr. Maloney's prepared statement follows:]



**Prepared Statement of Hon. Sean Patrick Maloney, a Representative in Congress from the State of New York, and Chairman, Subcommittee on Coast Guard and Maritime Transportation**

Good afternoon, and welcome to this afternoon's important hearing on commercial and passenger vessel safety.

As we approach the anniversaries of important maritime safety legislation, we need to know that Coast Guard inspected vessels will be reliably safe, sound, and operable—especially in light of recent maritime casualties.

Over the past 19 years we have seen a string of maritime casualties here in the United States. From the catastrophic CONCEPTION dive boat fire that cost the lives of 33 passengers and 1 crew member, to the capsizing of the GOLDEN RAY in Georgia, and countless other vessels, the past years have provided a continuous list of maritime casualties that is too long and tragic. I share my deepest condolences to the families of victims of these maritime tragedies.

It is our responsibility as Congress to prioritize the lives and safety of crew and passengers over profits. This hearing is needed to evaluate the oversight of commercial and passenger vessels, and identify what is working, and what needs improvement.

The United States has a history of taking a reactionary approach to safety; creating maritime safety laws that follow tragedy rather than preemptively strengthening safety requirements for a more robust fleet, one that is effectively regulated and inspected.

Just this week the Los Angeles Times described a contentious relationship between the Coast Guard and the National Transportation Safety Board (NTSB). The Coast Guard's repeated failure to embrace and act on the NTSB's recommendations on passenger vessels has emerged as a persistent thread in recent maritime casualties.

Recommendations from prior casualties continue to resurface in later accidents, and yet the Coast Guard refuses to act.

I share the NTSB's concerns: recent accidents on small passenger vessels demonstrate that poor preventative maintenance, lax fire prevention and inadequate crew training all continue as contributing factors leading to calamity. The Coast Guard is making a critical mistake by not acting more assertively on these recommendations.

Moreover, the grandfathering of passenger vessels under the "old T" regulations emphasize these concerns. Revisions to subchapter T regulations for passenger vessels in 1994 were intended to create safer vessels, yet by grandfathering in older vessels, passenger vessel safety has been compromised by keeping older, less safe vessels in service far longer than desired. All of this could lead to additional and more deadly accidents in the future.

Last year Congress passed the Hamm Alert Maritime Safety Act of 2018 in the wake of the sinking of the cargo vessel EL FARO. This legislation focused on the Coast Guard's inspection program and oversight of recognized organizations. It also highlights the importance of Safety Management Systems (SMSs) on all vessels to prepare them for emergency scenarios.

One year later, I expect to hear from the Coast Guard and American Bureau of Shipping on the concrete action steps they have taken to implement this Act.

Cruise vessels pose unique risks and vulnerabilities for passengers, as safety on the high seas not only applies to the physical maintenance of the vessel, but to how passengers are taken care of while at-sea. When massive cruise ships embark, they are essentially floating cities: they have their own security and oversee thousands of individuals with high exposure to risk.

In 2010, nearly a decade ago, Congress passed the Cruise Vessel Security and Safety Act to provide U.S. citizens more protections while vacationing on cruise ships. It was last amended in 2012 and not been revisited since. In this environment the chances of crime, especially sexual assault, are high and the resources available to victims scant. I look forward to hearing from Admiral Salerno on what the industry has done to implement the Act.

From cruise ships to cargo ships, from large ferries to small passenger vessels, one constant remains true: oversight of safety measures is vital to protecting lives and property. It is the government's and industry's responsibility to provide a safe and reliable maritime industry, and it is the work of this committee to do its oversight to make that happen so everyone who steps on a vessel safely reaches the end of their voyage.

Mr. LARSEN. Before continuing, I ask unanimous consent to insert statements from Congresswoman Matsui, the International

Cruise Victims Association, and a paper from the International Organization of Masters, Mates and Pilots into the hearing record.

Without objection, so ordered.

[The information is on pages 71–85.]

Mr. LARSEN. And now I would call on the ranking member of the subcommittee, Mr. Gibbs, for an opening statement.

Mr. GIBBS. Thank you, Chairman.

Last Sunday marked the 44th anniversary of the sinking of the *Edmund Fitzgerald* on Lake Superior, made famous in the modern-day folk song, “The Wreck of the *Edmund Fitzgerald*.” The entire crew of 29 was lost, so it is appropriate that we hold this hearing on maritime safety this week.

Sadly, we have had three significant marine casualties in a U.S.-flagged vessel in the last 4 years in which nearly 90 lives were lost: The *El Faro*, the Missouri duck boat, and most recently, the *Conception*.

In response to the Commandant of the Coast Guard’s *El Faro* accident Final Action Memo, Congress adopted the Hamm Alert Maritime Safety Act to ensure the recommendations in that memo were implemented.

The subcommittee looks forward to receiving the Final Action Memo on the *Conception* tragedy when it is complete.

Today’s witnesses will discuss changes made in the year since Congress passed the Hamm Alert Maritime Safety Act and in the near decade since Congress passed the Cruise Vessel Security and Safety Act of 2010.

We will also examine the dramatically expanded Coast Guard maritime safety workload and how the Service is coping with that increased workload.

In 2004, Congress brought ferries under Coast Guard inspection. In 2006, Congress brought towing vessels under an inspection regime, though that regime is only now being implemented. Finally, in 2010, Congress established a new examination and classification requirements for fishing vessels.

Having brought nearly 75,000 vessels under additional security, the Coast Guard has received virtually no additional resources to carry out its marine safety work. This has led to increased use of third-party inspections. I look forward to hearing today what actions have been taken to ensure that the Coast Guard has sufficient authority to oversee this increased use of our third-party inspectors, and to maintain its own in-house expertise.

Mr. Chairman, thank you for holding this hearing today. I look forward to the witnesses’ testimony, and I yield back.

[Mr. Gibbs’ prepared statement follows:]

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**Prepared Statement of Hon. Bob Gibbs, a Representative in Congress from the State of Ohio, and Ranking Member, Subcommittee on Coast Guard and Maritime Transportation**

Last Sunday marked the 44th anniversary of the sinking of the *Edmund Fitzgerald* on Lake Superior, made famous in the modern-day folk song, “The Wreck of the *Edmund Fitzgerald*.” The entire crew of 29 was lost, so it is appropriate that we hold this hearing on maritime safety this week.

Sadly, we have had three significant marine casualties on U.S.-flag vessel in the last four years on which nearly 90 lives were lost—the *El Faro*, the Missouri duck

boat, and most recently the *Conception*. In response to the Commandant of the Coast Guard's *El Faro* accident Final Action Memo, Congress adopted the HAMM Alert Maritime Safety Act to assure the recommendations in that memo were implemented. The Subcommittee looks forward to receiving the Final Action Memo on the *Conception* tragedy when it is complete.

Today's witnesses will discuss changes made in the year since Congress passed the HAMM Maritime Alert Act, and in the near-decade since Congress passed the Cruise Vessel Safety and Security Act of 2010.

We will also examine the dramatically expanded Coast Guard maritime safety workload and how the Service is coping with that increased workload. In 2004, Congress brought ferries under Coast Guard inspection. In 2006, Congress brought towing vessels under an inspection regime, though that regime is only now being implemented. Finally, in 2010, Congress established new examination and classification requirements for fishing vessels.

Having brought nearly 75,000 vessels under additional scrutiny, the Coast Guard has received virtually no additional resources to carry out its marine safety work. This has led to increased use of third-party inspections. I look forward to hearing today what actions are being taken to ensure the Coast Guard has sufficient authority to oversee this increased use of third-party inspectors, and to maintain its own in-house expertise.

Mr. Chairman, thank you for holding this hearing.

Mr. MALONEY [presiding]. Well, I thank the gentleman. And I apologize to the panel for arriving late. We are dealing with some extraordinary circumstances that probably need no explanation.

But you probably also realize that between Chairman DeFazio and Chairman Larsen, you have two gentlemen who have forgotten more about these issues than I am likely to ever learn. So you are in very capable hands.

And with that, I would be happy to recognize the chairman for any remarks he might wish to make.

Mr. DEFAZIO. Thanks, Mr. Chairman.

The most important function of this committee is to ensure that all of the modes which are under our jurisdiction are as safe as is humanly possible.

And as people know, we have been pretty much submerged—I guess wrong metaphor—but anyway, we have been working a lot on aviation with the MAX fatalities. But that doesn't mean that we aren't concerned about other modes in surface. We have fatalities increasing, pedestrian and cycling and et cetera. But here we are today to talk about maritime issues.

In my vice chair's district, Salud Carbajal, the *Conception* disaster happened. And for the life of me—I live on a boat, and this is the third boat I have lived on, and there is always another exit. And I guess in this case both exits were blocked. I don't know how that happened. We don't have everything definitive from NTSB.

We have the fishing boat burning and sinking off Barbers Point, Hawaii, and then the capsized and unsalvageable RoRo off of St. Simons Island, Georgia. So I think it is very appropriate that we are here today to revisit some of these issues.

Some might remember the hearing we held on *El Faro* a few years ago. Thirty-three people died in that disaster. We held followup and oversight hearings, and we felt that we had to legislate, because the Coast Guard had allowed its marine safety branch to essentially atrophy, and we were depending upon classification societies and others.

And I have always had concerns about the classification societies, because: "Hey, come inspect my ship. Oh, wait a minute, you found

all of those problems. I am going to hire someone next time to inspect the ship who might overlook those problems.” I think there is an inherent conflict of interest there. I am not 100 percent certain how we can solve that, except from this committee’s perspective: much more expertise and oversight by the Coast Guard of those classification societies, and check up actual inspections to see that they were conducted properly is really very critical.

So we are going to talk today about the Hamm Alert Maritime Safety Act reforms that we adopted, and we want a status update from the admiral on that.

I also want to learn if the cruise industry has fully complied with the requirements adopted in 2010 with the passenger Cruise Vessel Security and Safety Act. It is a very lucrative industry, and they can well afford to implement all of the provisions of that law.

There is an old saying, all Coast Guard safety regulations are written in blood, as each new regulation reflects lessons learned from the latest marine disaster. What we want to do is get ahead of these issues as much as we humanly can. The sea is a difficult place. Accidents are still going to happen, but we want to avoid any that are preventable.

[Mr. DeFazio’s prepared statement follows:]

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**Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chairman, Committee on Transportation and Infrastructure**

Chairman Maloney, thank you for scheduling this important maritime safety oversight hearing.

One of the most important functions of the Transportation and Infrastructure Committee is our solemn responsibility to ensure that all the various modes of transportation under our jurisdiction are reliable, and most of all, safe to use by millions of people daily.

As I am sure most people are aware, the Committee has been consumed of late with aviation safety, especially concerning the circumstances and issues surrounding two fatal air crashes involving the 737 MAX aircraft. Let me assure you that I am committed to using all the tools at my disposal as Chair to get answers that we need regarding problems related to the design, development, and certification of the 737 MAX, and moving forward with reforms to address whatever deficiencies we uncover.

This afternoon we turn to maritime safety. Judging from the recent spate of high-profile marine casualties—a dive boat fire off the Channel Islands in California; a fishing boat burning and sinking off Barbers Point in Hawaii; and a capsized and unsalvageable RO-RO vessel off St. Simon’s, Georgia—this hearing could not come at a better time.

If anything, these maritime disasters remind us that when it comes to maritime safety, the sea remains a relentless threat; one that can strike without warning, without mercy, and at any time.

Such was the case in 2015 with the loss of the cargo ship EL FARO, when a series of events left the vessel powerless and floundering in a sea whipped wild by Hurricane Joaquin resulting in the loss of the vessel along with her entire crew of 33 shipmates.

This fatal marine accident, along with the investigations and reports filed by the Coast Guard and National Transportation Safety Board, prompted this Committee to enact a substantial package of marine safety reforms contained in the Hamm Alert Maritime Safety Act of 2018.

Among these reforms, most prominent were new requirements for the Coast Guard to rebuild its internal marine inspection competency and proficiency. The Coast Guard had allowed this vital capability to atrophy over the past ten to twelve years as the agency annually “stole from Peter to pay Paul” to plug funding shortfalls and maintain front line operations. This must stop, and the Coast Guard must rebuild competency in this area.



Related, the Hamm Alert reforms also targeted the poor performance, or lack thereof, of the recognized organization—mostly Classification Societies—that conduct 3rd party vessel inspections on behalf of the Coast Guard.

The use of 3rd party inspectors—itself a strategy adopted by the Coast Guard to meet the increased demand for vessel inspections while having fewer resources and people available—has always struck me as being compromised by an inherent conflict of interest whereby the person conducting the inspection is being paid by the vessel owner.

The Hamm Alert reforms now require the Coast Guard to adopt transparency and accountability measures to ensure that all 3rd party inspectors remain clear of any conflict of interest, and most important, that they remain committed to conducting their important work with safety as the paramount interest, and nothing less.

These are just a couple issues about which I will be interested to hear from our witnesses this afternoon. I also want to learn if the cruise industry has fully complied with the requirements adopted by Congress in 2010 with the passage of the Cruise Vessel Security and Safety Act.

Considering the industry's rather substantial annual profits, especially from its North American and Caribbean markets, the cruise industry certainly has had more than enough money to comply with all the Act's requirements.

In closing, there is an old saying that all Coast Guard safety regulations are written in blood as each new regulation reflects the lessons learned from the latest marine disaster.

The reality is that we will never be able to eliminate the risks of going to sea. What we can do, however, is remain steadfast in our commitment to ensure that for those who go to sea, they do so on vessels that are built, maintained and operated as safely as possible. We should all honor that pledge. Thank you.

Mr. DEFAZIO. With that, I yield back the balance of my time.

Thank you, Mr. Chairman.

Mr. MALONEY. Well, I thank the gentleman. And I thank him for his leadership on issues of safety in this context and so many others, his career dedicated to safety, first and foremost.

And I am pleased to welcome our witnesses today. I do want to express my thanks for your appearance. I am glad you got to hear my opening remarks, and I want to thank Mr. Larsen for doing that. I don't want my absence to be interpreted as a lack of concern for these issues. I think the work that you do in this space and the attention we are paying to it is critically important. So, again, thank you for being here.

Happy to introduce our panel. We are blessed to be joined by Rear Admiral Richard Timme, Assistant Commandant for Prevention Policy for the United States Coast Guard; the Honorable Richard Balzano, Deputy Administrator for the United States Maritime Administration; and Mr. Brian Curtis of the Office of Marine Safety for the National Transportation Safety Board. Thank you again for your appearances.

Without objection, our witnesses' full statements will be included in the record. Since your written testimony is in the record, we would request that you limit your oral testimony to 5 minutes so we may proceed with Members' questions.

And with that, I am pleased to recognize Admiral Timme.

You may proceed, sir.

**TESTIMONY OF REAR ADMIRAL RICHARD V. TIMME, ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD; HON. RICHARD A. BALZANO, DEPUTY ADMINISTRATOR, MARITIME ADMINISTRATION; AND BRIAN CURTIS, DIRECTOR, OFFICE OF MARINE SAFETY, NATIONAL TRANSPORTATION SAFETY BOARD**

Admiral TIMME. Good afternoon, Chairman DeFazio, Chairman Maloney, Ranking Member Gibbs, and distinguished members of the subcommittee.

Thank you for the opportunity to discuss the U.S. passenger vessel fleet and the Coast Guard's role in advancing a safe, secure, and environmentally responsible U.S. maritime industry.

I ask that my written testimony be entered into the record.

Mr. MALONEY. Without objection.

Admiral TIMME. First, let me express our sincere condolences on the passing of Congressman Elijah Cummings, former chairman of this subcommittee, and staunch supporter of the Coast Guard. Without question, his conviction and passion to public service made us a better Coast Guard.

The U.S. maritime transportation system supports \$5.4 trillion in economic activity, and more than 30 million jobs. As the Assistant Commandant for Prevention Policy, I set standards for safety, security, environmental stewardship, commercial vessels, facilities, mariners, and ensure the compliance with those standards and conduct investigations into violations and accidents across the system.

On behalf of the Coast Guard, I would, once again, express our deepest sympathies to the families and loved ones of those who have perished in recent marine casualties. These tragedies are at the forefront of our minds as we strive to enhance the marine safety program.

As I begin my role in this job, my priorities include reviewing the marine safety, regulatory, and policy framework; modernizing our marine safety workforce; and leveraging and assuring an effective oversight of third parties.

We are working closely with the National Transportation Safety Board to determine the cause of recent casualties, and identify improvements to strengthen the framework and ultimately prevent future incidents. However, we are not waiting for final investigations to implement urgent and necessary safety action.

The vessel compliance program is the systemic safety net designed to prevent accidents from occurring. All elements of that framework are interdependent and must function well for the system to work.

The Coast Guard provides a critical mandated level of oversight, and is responsible for verifying U.S.-flagged vessels comply with applicable laws and regulations, and for foreign vessels, the Coast Guard conducts examinations to ensure each vessel is in substantial compliance with international convention.

Equally important, a vessel's master and crew play essential roles and should be the first to recognize problems and take early corrective action. The vessel owner is obligated to support the master and crew's ability to maintain the vessel and operate it safely, and additionally, classification societies, recognized organizations, or third parties, should provide an expertise to ensure vessel sys-

tems are operating properly, and that the company and crew are fulfilling their roles in the safety net. All elements of this framework must be functioning well in the system.

This is a challenge, given the current U.S.-inspected passenger fleet is technologically and operationally diverse. There are over 6,300 U.S.-inspected passenger vessels, including large inland river cruise ships, high-speed catamarans, large amphibious vessels, long-distance sport fishers, to name a few. Vessels in this fleet operate in diverse environments from the Bering Sea to the Great Lakes, from the Pacific to the Atlantic to the gulf coast. They may carry as few as 7 passengers, or as many as 1,000, and operate in a journey of a few minutes or many days.

The U.S. fleet carries more than 200 million passengers annually. The cruise ship industry, comprised mostly of foreign vessels, adds to the fleet, and these vessels carry more than 14 million passengers annually, making almost 10,500 arrivals at U.S. ports each year.

The Coast Guard must have an adaptive and proficient marine safety workforce capable of operating in this complex environment, and we must continue to work effectively to implement marine inspector learning systems, and put oversight regimes in place that enable industry to safely embrace technology and advances in vessel design and operations as well as emerging passenger and crew demands.

To this end, the Coast Guard will strive to continuously improve. We will get better. We will closely examine findings of all marine casualty investigations to improve that framework. We will wholly fulfill our regulatory oversight role to keep the maritime public safe. We take our responsibility to protect and safeguard those traveling aboard foreign and domestic passenger vessels seriously. It is my priority, and I will keep you informed as we move forward.

Again, thank you for your enduring support of the Coast Guard, and I look forward to your questions.

[Admiral Timme's prepared statement follows:]

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**Prepared Statement of Rear Admiral Richard V. Timme, Assistant  
Commandant for Prevention Policy, U.S. Coast Guard**

INTRODUCTION

Good afternoon Chairman Maloney, Ranking Member Gibbs, and distinguished members of the Subcommittee. Thank you for the opportunity to be here today to discuss the state of passenger vessel safety and the Coast Guard's role in advancing a safe, secure, and environmentally responsible U.S. maritime industry.

I would like to begin my testimony by expressing the Service's sincere condolences on the passing of Congressman Elijah Cummings, a former Chairman of this Subcommittee. Chairman Cummings was a tremendous and tireless supporter of the Coast Guard, as well as a caring legislator who challenged the Service to continue to improve. We are indeed a better Coast Guard because of his conviction, passion, and public service. The Coast Guard's marine inspection program recently celebrated the anniversary of its creation on October 1, 2019, as we marked the 181st year since the Congressional Act that served as the foundation of the Steamboat Inspection Service was passed. The first marine inspector, Captain Edward Tripp, was initially appointed steamboat inspector in the Port of Baltimore; coincidentally in Maryland's 7th District, Chairman Cummings' hometown.

The Coast Guard has a long and proud tradition of serving the American boating public and marine industry through a robust and very professional Marine Safety program. Modern day Coast Guard personnel working in our compliance and stand-

ards programs likewise serve as the safety bedrock for the various passenger vessel fleets across America and its territories.

Over a year ago, the Commandant released the Coast Guard Maritime Commerce Strategic Outlook to communicate the Service's vision for facilitating and enabling safe maritime commerce throughout the U.S. Marine Transportation System (MTS). From its origin, with the establishment of the Revenue Cutter Service, the Coast Guard has facilitated maritime safety and security to promote and safeguard American commerce for more than 229 years.

Today, the transportation of cargo on water by the global maritime industry is the most economical, and efficient mode of transport. An estimated 90 percent of U.S. imports and exports move by ship through 361 commercial ports, along 95,000 miles of shoreline and 25,000 miles of navigable river and coastal waterways. The MTS supports \$5.4 trillion in economic activity and more than 30.8 million jobs. Passenger vessels are a key component of the MTS, serving not only as recreational and leisure activities, but also as ferries and water taxis, as well as providing employment to owners, operators, shipbuilders, insurers and many others.

#### THE PREVENTION PROGRAM

The Coast Guard's Assistant Commandant for Prevention Policy is responsible for setting the standards for safety, security, and environmental stewardship for commercial vessels, facilities, and mariners; ensuring compliance with those standards; and conducting investigations of violations and accidents. The Coast Guard's role in regulating passenger vessels and the challenges the vessel compliance program faces as the Service exercises its authorities to protect these commercial passengers touches on all of these responsibilities.

Commercial passenger vessels are an essential part of the MTS and the American way of life, and provide consumers the opportunity to fully experience and enjoy the marine environment in ways that cannot be accomplished ashore. Paying passengers come from every area of the country and around the world, and bring the full range of experience, from maritime first timers, to seasoned mariners. Aboard passenger-carrying boats and ships, these passengers then become concentrated in a single location on the water, in groups ranging from less than six, to upwards of almost 9,000 combined passengers and crew aboard today's largest and most modern cruise ships. Given the potential associated risks, protecting passengers aboard these vessels is one of the Service's most vital missions as these vessels are carrying what we consider the "world's most precious cargo."

#### PASSENGER VESSEL SAFETY COMPLIANCE

The passenger vessel compliance program may be viewed as a systemic safety net that works to prevent accidents from occurring. The Coast Guard provides a critical level of mandated oversight. For U.S. flagged vessels, the Coast Guard is responsible for verifying that these vessels comply with laws and regulations and for ensuring the overall safety net is functioning as designed. For foreign vessels, the Coast Guard exercises Port State Control authorities and conducts examinations on foreign vessels to ensure each vessel is in substantial compliance with international conventions.

Just as importantly, a vessel's master and crew are the front line of the program as they are often the first to recognize a problem and take early corrective action. The vessel owner has an obligation to support the master and crew's ability to maintain the vessel and operate it safely. Additionally, and where applicable, Classification Society, Recognized Organization, or Third-Party inspectors should provide effective technical expertise to ensure vessel systems are operating properly and the company and crew are fulfilling their roles in the safety net.

The Coast Guard works closely with the Service's various Congressional oversight bodies, sister agencies, and industry stakeholders to assist in passenger vessel safety. Bodies such as this Subcommittee, as well as partners here today, including the National Transportation Safety Board (NTSB) and the Maritime Administration (MARAD), combine efforts and authorities to help build the passenger vessel safety framework. Additionally, numerous other maritime stakeholders are key contributors in implementing the marine safety regime and ultimately ensuring the safe transport of all passengers aboard vessels.

#### COMPLEXITY OF THE PASSENGER VESSEL FLEET

The passenger vessel fleet is materially complex, as well as technologically and operationally diverse. For example, in San Diego, a vintage boiler vessel built in 1898 met the requisite requirements to hold a Coast Guard Certificate of Inspection. Meanwhile, under construction in San Francisco, the Coast Guard is working with

the maritime industry to design, build, and safely operate the first hydrogen fuel cell ferry. There will also soon be LNG-fueled cruise ships departing U.S. ports carrying thousands of passengers equipped with state of the art engineering automation and environmental control systems.

Passenger vessels may be in the form of a sail boat, charter fishing boat, water taxi, dinner cruise ship, ferry, or amphibious vehicle and be constructed of steel, aluminum, wood, or fiberglass. Operationally, these vessels may carry passengers overnight or underwater, maneuver at high speed as “thrill” rides, or have passengers dive below, tow behind or float via parasail beyond the confines of the vessel. The diversity of vessels and operations create a challenge for the industry and the Coast Guard alike. To safely operate, Coast Guard Marine Inspectors and vessel owners and operators must all understand the limitations, required maintenance, and potential risks for each vessel while ensuring the vessel meets a complex regulatory framework that is often based upon when the vessel was built.

Unlike many other regulators, the Coast Guard manages almost all aspects of vessel safety under its regulatory authority. The Coast Guard publishes regulations and participates in the international bodies which outline the requirements for passenger vessels on international voyages. The Coast Guard reviews plans for vessels being built and supervises the construction to ensure they meet applicable standards. Once the vessel meets required regulations, a Coast Guard Certificate of Inspection or Certificate of Compliance is issued as proof of compliance, and Coast Guard Marine Inspectors conduct annual, semi-annual, or quarterly inspections as applicable. Likewise, the Coast Guard issues Merchant Mariner Credentials to the crew, which signify that the crew meets safety and competency standards assessed by the Coast Guard. The Coast Guard also investigates marine casualties and mariner misconduct and makes recommendations to improve safety or to remove a mariner’s credential, if warranted.

Our passenger vessel compliance model relies upon verification of the vessel’s material condition and a sampling of exercises to assess the crew’s performance. It is difficult for the regulatory regime to keep with the pace of change of technology. Vessels built 50 years ago, while in satisfactory condition and deemed safe to operate, may not meet the design expectations of modern passengers.

Additionally, recent casualties have demonstrated that material condition is just one aspect in the overall safety of the vessel. The human factor—the master and crew—serves a vital role in the early detection and avoidance of potential hazards that may have severe consequences to life and property on these complex vessels.

Finally, there are increasing cyber-related risks facing the MTS, and the Coast Guard is actively working to address these emerging risks. Related to the shipboard environment, the Coast Guard is working to address cyber vulnerabilities through the development of a cyber risk management regime incorporated within the existing conventions of the International Maritime Organization. The Coast Guard is also sponsoring the development of an industry specific cybersecurity framework profile for Passenger Vessel Operations with the National Institute of Standards and Technology.

The Coast Guard will continue to modernize the Service’s vessel compliance model to incorporate risk based inspection criteria, third party oversight, cybersecurity, and increased focus on mariner and human factor performance. The Coast Guard will also continue to improve the Marine Inspector Training Program, and will remain focused on successfully fulfilling our role in the safety net to advance a safe, secure, and environmentally responsible U.S. maritime industry.

#### CONCLUSION

I appreciate the opportunity to testify before you today regarding passenger vessel safety. This topic has the Coast Guard’s utmost attention, and we will continue to evolve the Coast Guard’s Marine Safety mission to keep pace with industry and consumer change, as we strive to ensure the continued safety, security and environmental compliance of this key component of the MTS.

Thank you for all that you do for the men and women of the United States Coast Guard. I look forward to your questions.

Mr. MALONEY. I thank the gentleman.

Mr. Balzano.

Mr. BALZANO. Good afternoon, Chairman DeFazio, Chairman Maloney, Ranking Member Gibbs, and members of the subcommittee.

Thank you for the opportunity to testify today on the Maritime Administration, MARAD's, role in promoting the safety and security of the U.S.-flagged commercial fleet.

I request that my full written testimony be submitted in the record.

Mr. MALONEY. Without objection.

Mr. BALZANO. Secretary Chao's number one priority is safety, and that focus extends to MARAD's programs. The maritime environment is remote, dangerous, and repetitive, which can increase the risk of accidents. MARAD plays an important role in educating and training U.S. mariners to face the challenges and hazards of living and working at sea.

At MARAD, we believe a well-trained mariner is a safer mariner. MARAD educates and trains U.S. merchant mariners at the U.S. Merchant Marine Academy and supports the six State Maritime Academies and the Seafarers International Union, all of which adhere to the U.S. Coast Guard and international training requirements.

At the academies, deck and engineering cadets must complete training and assessments required to obtain a U.S. Coast Guard Unlimited License as a 3rd Mate or 3rd Assistant Engineer. These training courses and assessment take place during the academies' 4-year curricula, which include classroom and hands-on shipboard training.

U.S. Merchant Marine Academy cadets spend 1 year working and learning at sea on commercial U.S.-flagged vessels. Building on knowledge from the classroom, this hands-on experience solidifies the best working and safest practices on board commercial vessels.

Cadets at the State Maritime Academies receive most of their at-sea training aboard MARAD-provided training vessels. I would like to thank the Congress for funding two new modern training ships. The national security multimission vessel, which is currently in procurement, will greatly enhance our training capability.

Additionally, MARAD supports the Department of Defense's strategic sealift requirements through our Government-owned Ready Reserve Force Fleet, and assured access to commercial vessels in the Maritime Security Program.

As a fleet owner and operator, MARAD is committed to staying abreast of maritime industry safety and security trends, incorporating lessons learned from the real-world incidents.

Security is another major concern for MARAD and the maritime industry. MARAD provides U.S.-flagged vessels with timely information on security threats through interagency coordinated maritime alerts and advisories.

Moreover, DOT ensures proper and accurate reporting of incidents occurring on cruise vessels by collecting the data directly from the FBI and publishing it on our Department website.

Safety and security regulations do not always keep pace with technology and practices. As a result, national and international industry standards often fill the gap. MARAD collaborates with the U.S. Coast Guard, the maritime industry, and technology developers, to develop industry standards that guide equipment requirements and usage.

MARAD is currently working with the U.S. Army Corps of Engineers and the National Oceanic and Atmospheric Administration on a project to install automated weather stations on U.S.-flagged ships to improve weather forecasting and warning and provide for greater vessel-operational safety. Pairing this system with other onboard global positioning systems, GPS, may also assist in detecting GPS interference, which is a growing cybersecurity threat.

The U.S. maritime workforce is a critical component of our Nation's economic and national security. Recognizing this, MARAD is looking at advances in remote operations to help to reduce the risk to mariners.

MARAD recently partnered with industry to demonstrate remote operations of a spill response vessel that can help minimize mariner exposure to toxic and explosive environments responding to a hazardous spill.

MARAD is exploring additional applications of data-driven systems, particularly in enhancing shipboard and port operations optimization.

MARAD looks forward to continuing collaboration with our Federal partners in the maritime industry to improve vessel safety and security.

I appreciate this subcommittee's interest and support of the U.S. merchant marine, and I am happy to answer any questions you may have.

[Mr. Balzano's prepared statement follows:]

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**Prepared Statement of Hon. Richard A. Balzano, Deputy Administrator,  
Maritime Administration**

Good afternoon, Chairman Maloney, Ranking Member Gibbs, and members of the Subcommittee. Thank you for the opportunity to testify today on the Maritime Administration's (MARAD) role in promoting the safety and security of U.S.-flag commercial vessels. Secretary Chao's number one priority is safety, and that focus extends to MARAD's programs. Safe operation of MARAD's National Defense Reserve Fleet (NDRF) and Ready Reserve Force (RRF), the privately-owned commercial Maritime Security Program (MSP) and Voluntary Intermodal Sealift Agreement (VISA) fleets, and all other U.S.-flag vessels is critically important to our maritime industry. MARAD is actively engaged with U.S.-flag commercial vessel operators to alert them to security threats and collaborate with them on emerging technologies and best practices to improve safety at sea. MARAD also plays an important role in educating and training U.S. mariners to ensure they are ready to face the challenges of living and working at sea, which includes encountering sometimes hazardous environments.

**MARINER TRAINING**

The marine environment can be dangerous by its very nature, so a well-trained workforce is critical to safe vessel operations. MARAD educates and trains U.S. merchant mariners at the U.S. Merchant Marine Academy (USMMA) and facilitates mariner education through the support we provide to the State Maritime Academies (SMAs). The U.S. Coast Guard (USCG) establishes training requirements that maritime academies must meet, and the USMMA and the SMAs modify their curricula accordingly. In addition, MARAD encourages the academies to incorporate lessons learned from real world incidents.

At the academies, deck and engineering cadets must complete training and assessments required to obtain USCG Unlimited Licenses as 3rd Mate and 3rd Assistant Engineer and the corresponding international Standards of Training, Certification and Watchkeeping endorsements as well. These training courses and assessments take place during the academies' four-year curricula. In addition to classroom and practical training ashore, cadets and midshipmen receive hands-on shipboard

training on commercial vessels, the academies' training vessels, or a combination of both.

For example, cadets at the USMMA receive formalized safety training throughout the curriculum. They learn everything from first aid and the proper use of personal safety equipment to aquatic survival and firefighting. As part of their education and training, USMMA cadets spend one year working and learning at sea on commercial U.S.-flag vessels, most of which are either MSP vessels or ships operated by the Military Sealift Command and crewed by civilian mariners. The cadets are integrated into the crews aboard these ships, which are actively engaged in commerce around the globe. Building on knowledge from the classroom, this first-hand experience solidifies the best working practices onboard the vessels, including safe vessel operations.

Cadets at the SMAs receive most of their at-sea training aboard vessels MARAD provides. One of the ways MARAD supports quality training for these cadets is providing them with safe and modern training vessels. Congress has appropriated funds the past two years to replace the oldest vessels in the aging training vessel fleet. The new training ships will provide state-of-the-art platforms to allow for future mariners to keep up with the ever-evolving global maritime industry. The new vessels have been designed specifically to provide a robust training environment including a second bridge, multiple simulators, and laboratories and classrooms designed to provide focus on specific curricula. While these vessels will primarily be used by SMA cadets, we anticipate that USMMA cadets will also gain required sea time aboard them.

#### MARITIME SECURITY

In addition to supporting U.S. mariner training, MARAD supports DOD strategic sealift requirements through our Government-owned vessels in the NDRF and RRF, as well as through assured access to commercial vessels in the MSP and VISA program. Security is a major concern for mariners who operate our ships and those who operate the broader commercial fleet. While we stay abreast of maritime security threats to our own assets, which include piracy, terrorism, criminal activity, or cyber-attack, MARAD also provides U.S.-flag vessels with timely information on those threats through interagency coordinated Maritime Alerts and Advisories. MARAD cooperates with the Departments of State, Defense, Justice, and Homeland Security, as well as the Intelligence Community, in providing those advisories. MARAD is also DOT's principal coordinator for maritime domain awareness functions and serves as a key facilitator between maritime industry and government agencies providing expert maritime security advice and assistance on issues involving the global maritime transportation system.

Moreover, the Cruise Vessel Security and Safety Act of 2010 (CVSSA) directed DOT to ensure proper and accurate reporting of incidents occurring on cruise vessels. This information is collected from the FBI and made publicly available on the Department's website on a quarterly basis. The CVSSA also permitted MARAD to create a Training Provider Certification Program to help certify companies that provide commercial CVSSA training to cruise vessel members. Since its creation in 2015, this voluntary program has certified that training provided by these companies adheres to the training standards and curricula jointly developed by the U.S. Coast Guard, the Federal Bureau of Investigation, and MARAD. These training standards are enforced by the Coast Guard and include ensuring proper maintenance of video surveillance systems, displaying U.S. Embassy and Consulate information, and adhering to fire safety and emergency requirements for passengers.

#### TECHNOLOGY AND INNOVATION TO IMPROVE MARITIME SAFETY

Safety regulations do not always keep pace with new technologies and practices. As a result, national and international industry-developed consensus standards often fill the gap. MARAD collaborates with the USCG, maritime industry, and scientific and technological innovators to develop voluntary consensus standards that guide equipment requirements and usage. For example, in response to the surge in interest to use liquefied natural gas (LNG) as a marine fuel, MARAD led the development of standards for LNG transfer hoses and associated equipment. MARAD also uses its RRF and training vessels as platforms to demonstrate innovations in safety technology, including anti-snapback mooring lines and marine evacuation systems, where existing equipment poses risks to mariner safety.

MARAD is currently working with the U.S. Army Corps of Engineers and the National Oceanic and Atmospheric Administration (NOAA) on a project to automate weather reporting from vessels. After prototype testing on MARAD vessels, automated weather stations are being installed on U.S.-flag ships for further demonstra-



tion and validation. These systems report weather data at three minute intervals through the ship's automated identification system (AIS). Additional weather data obtained from ships much more frequently should improve weather forecasting and warnings, and hence improve vessel operational safety. Pairing this system with other on-board Global Positioning Systems (GPS) applications may also assist in detecting GPS spoofing (e.g., altering vessel location information), which is a growing cyber security threat.

The U.S. maritime workforce is a critical component to our Nation's economic and national security. Recognizing this, MARAD is looking at advances in remote operations that help to reduce hazards to mariners. MARAD recently partnered with industry to demonstrate remote operation of a spill response vessel that can help minimize mariner exposure to toxic chemicals. Similar remote technologies could be used in other areas where mariner risks are high, such as emergency response or vessel inspections. Remote systems also have a role to play in preventing intrusion and monitoring risks during maritime operations. MARAD is exploring additional applications of data driven systems particularly in enhancing engineering and navigation systems.

#### CONCLUSION

MARAD looks forward to continued collaboration with our Federal partners and the maritime industry to improve vessel safety and security. I appreciate this subcommittee's interest and support for the U.S. merchant marine and am happy to answer any questions you may have.

Mr. MALONEY. I thank the gentleman.

Mr. Curtis.

Mr. CURTIS. Good afternoon, Chairman DeFazio, Chairman Maloney, Ranking Member Gibbs, and subcommittee members. Thank you for inviting the National Transportation Safety Board, NTSB, to discuss marine safety today.

I request my written testimony be admitted into the record.

The NTSB investigates accidents in all modes of transportation, determines the probable cause, and issues safety recommendations to prevent future accidents.

Today, we will focus on two topics: small passenger vessel safety, and the importance of safety management systems, or SMS, on passenger vessels.

On July 19th, 2018, the World War II-era amphibious passenger vessel, *Stretch Duck 7*, sank during a storm near Branson, Missouri, resulting in 17 fatalities. We continue to investigate this accident in parallel, but separate from the U.S. Attorney's criminal investigation. We have identified two safety issues we have seen before: insufficient reserve buoyancy, leaving these vessels vulnerable to rapid flooding and sinking, and impediments to passenger vessel emergency ingress/egress.

We saw these same two issues 20 years ago in the 1999 sinking of the *Miss Majestic*, another amphibious passenger vessel, that claimed 13 lives. Survivors from that accident confirmed that the vessel sank less than a minute after the deck edge submerged, leaving little opportunity for passengers to escape. Further, the vessel's canopy impeded their ability to safety egress from the vessel.

We recommended at the time that the Coast Guard require greater stability and reserve buoyancy in amphibious passenger vessels. Until that was done, we urged the Coast Guard to require canopies be removed during waterborne operations, or that such vessels install a Coast Guard-approved canopy that does not restrict passenger escape. After the Coast Guard did not require our

recommended improvements, we classified those recommendations as closed, unacceptable action.

Now, we know that insufficient reserve buoyancy and a canopy that impeded the passengers' ability to escape served to worsen the tragic death toll when the *Stretch Duck 7* sank last year.

Accordingly, yesterday, the Board issued two new safety recommendations. We, again, call on the Coast Guard to require sufficient reserve buoyancy and the removal of canopies from those amphibious vessels that do not have sufficient reserve buoyancy. These known safety issues should no longer go unaddressed, or be left to voluntary compliance.

On another front, late last year, we completed our investigation of the fire aboard the small passenger vessel *Island Lady* near Port Richey, Florida. One passenger died, and 14 others were hospitalized. During the voyage, the captain encountered an engine alarm. Rather than shut the engine down, he left it idling, allowing it to continue to generate heat, which, in turn, ignited the exhaust system and surrounding structures, eventually consuming the vessel.

Although Federal regulations require small passenger vessels to have fire detection and suppression systems in the engine rooms, the regulations do not require such systems in unoccupied spaces outside the engine room, which is where we determined the fire started. A recommendation to the Coast Guard has been issued related to this very matter.

The NTSB has long advocated to the Coast Guard that all passenger vessels should implement a safety management system, a comprehensive, documented system, ensuring oversight of all vessel and shoreside operational safety aspects. An SMS is essential for enhancing safety on board passenger vessels, and the NTSB feels the Coast Guard should ensure such systems are required.

In the case I just described, an SMS would likely have ensured greater adherence to completing crew training drills, ensuring appropriate responses to emergencies, and improved recordkeeping of training and maintenance, which is required of oceangoing vessels in international service.

Finally, on September 2 of this year, the dive boat *Conception* caught fire and sank near Santa Cruz Island, California, with the loss of 33 passengers and 1 crewmember. Our investigators continue to gather information and review current regulations for vessels of this age, type, and operation, specifically regarding fire detection and alarm systems, evacuation routes, and crew training.

The deadly loss of the *Conception*, just feet from shore, should remind the small passenger vessel industry that the potential for catastrophe is always present.

The loss of the *Island Lady* reminds us that an SMS and robust preventive maintenance systems are necessary to improve the safety of any marine enterprise.

Our investigation findings and recommendations represent lessons learned at the highest price. Action on NTSB recommendations provides a return in lives saved, injuries prevented, and property loss and environmental damage avoided.

Thank you for your time today. I would be pleased to take any questions you might have.

[Mr. Curtis' prepared statement follows:]

**Prepared Statement of Brian Curtis, Director, Office of Marine Safety,  
National Transportation Safety Board**

Good afternoon Chairman Maloney, Ranking Member Gibbs, and subcommittee members. Thank you for inviting me to testify on behalf of the National Transportation Safety Board (NTSB) to discuss our marine accident investigations and the safety lessons that we have learned from them.

The NTSB is an independent federal agency charged by Congress with investigating every civil aviation accident in the United States and significant accidents in other modes of transportation—highway, rail, marine, and pipeline. We determine the probable cause of the accidents we investigate, and we issue safety recommendations aimed at preventing future accidents. In addition, we conduct special transportation studies and coordinate the resources of the federal government and other organizations to assist victims and their family members who have been impacted by major transportation disasters. Recommendation recipients can include any entity that can improve safety, including the United States Coast Guard (USCG).

The NTSB is not a regulatory agency; we do not promulgate operating standards, nor do we certificate organizations and individuals. Instead, we advance safety through our most important product: safety recommendations. The goal of our work is to foster safety improvements for the traveling public. Although action might take years, recommendation recipients eventually act favorably on four out of five NTSB recommendations.

Today, I would like to share some of the lessons we have learned from the roughly 50 marine accidents that we typically investigate each year. In particular, I will focus on safety issues related to small passenger vessel operations, the importance of safety management systems (SMSs) in marine operations, and some of the vital lessons learned from our investigation of the October 1, 2015, sinking of the cargo ship *El Faro*.

We work closely with the USCG to investigate marine accidents, and my sincerest thanks go out to the USCG for its outstanding assistance in our investigative efforts. Our marine investigations are carried out contemporaneously with the USCG's; sometimes we reach the same conclusions, sometimes not. We greatly appreciate that the USCG sees our work as adding value, even if that means we must be at times critical of the organization's regulations and processes. Our relationship with the USCG is a collaboration focused on improving marine safety.

SMALL PASSENGER VESSEL SAFETY

Over a 4-year period in the mid-1990s, we included "Small Passenger Vessel Safety" on our Most Wanted List of transportation safety improvements (MWL).<sup>1</sup> Although not all safety recommendations we have made regarding small passenger vessels have been addressed, small passenger vessel safety continues to improve by the implementation of the safety recommendations already issued. In addition, the Passenger Vessel Association developed crew emergency procedures and standards, including preincident planning for a variety of shipboard emergencies, which it distributed to its members. The association also agreed that its members would routinely provide predeparture emergency safety orientations.

However, we have investigated at least three significant accidents involving small passenger vessels in recent years, which indicates that there still are significant safety gaps to be addressed.

*Branson, Missouri: Stretch Duck 7*

On July 19, 2018, the 33-foot-long, modified World War II-era DUKW<sup>2</sup> amphibious passenger vessel, *Stretch Duck 7*, sank during a storm that developed rapidly on Table Rock Lake near Branson, Missouri. We continue to investigate this accident in parallel with the US Attorney's criminal investigation, which has delayed our access to information vital to determining the probable cause of this accident. However, the information we have so far has helped us identify two safety issues for these types of amphibious passenger vessels: insufficient reserve buoyancy (leav-

<sup>1</sup>See the We Are Safer page [<https://www.nts.gov/safety/mwl/Pages/was6.aspx>] regarding small vessel passenger safety on the Most Wanted List section of our website.

<sup>2</sup>DUKW (pronounced "duck") is an acronym that signifies the characteristics of the WWII amphibious vessel: D = 1942 (the year of design); U = utility; K = front-wheel drive; and W = two rear-driving axles.

ing vessels vulnerable to flooding and sinking) and impediments to passenger emergency egress.

It is worth noting that these safety issues are not new. In fact, they were identified almost 20 years prior to the *Stretch Duck 7*'s sinking, after the 1999 sinking of the *Miss Majestic*, another DUKW amphibious passenger vessel, on Lake Hamilton, near Hot Springs, Arkansas. As a result of that sinking, 13 passengers died. Survivors of the *Miss Majestic* accident confirmed that the vehicle sank less than a minute after the deck edge at the stern was submerged, leaving insufficient opportunity for passengers to escape. Vessel maintenance, reserve buoyancy, and survivability—specifically, impediments to passenger egress caused by the vessel's canopy—were among the major safety issues identified by our investigation of the *Miss Majestic* accident.

As a result of the *Miss Majestic* sinking, we recommended that the USCG require greater stability and reserve buoyancy in amphibious passenger vessels.<sup>3</sup> Further, until the goals of that recommendation were achieved, we urged the USCG to require—among other measures—that canopies be removed from waterborne vessels, or that such vessels have installed a USCG-approved canopy that does not restrict horizontal or vertical escape by passengers in the event of sinking.<sup>4</sup>

The Coast Guard agreed with the intent of our recommendations but sought to address them through Navigation and Vessel Inspection Circular (NVIC) 1-01, a guidance document that relies on voluntary compliance. After the USCG refused to require the recommended improvements, we classified Safety Recommendations M-02-1 and M-02-2 “Closed—Unacceptable Action.”

We believe that some of the fatalities that occurred when the *Stretch Duck 7* sank likely resulted from the canopy and its framing preventing emergency egress. Our position on canopies on DUKW vessels has not changed since the *Miss Majestic* sinking, and the number of fatalities resulting from the *Stretch Duck 7* sinking shows that canopies currently installed on modified DUKW vessels continue to pose an unacceptable risk.

Accordingly, on November 6, 2019, we issued two safety recommendations to the USCG.

[M-19-016]

Require DUKW amphibious passenger vessels (commonly referred to as original ducks and/or stretch ducks) to have sufficient reserve buoyancy through passive means so that they remain upright and afloat with a full complement of passengers and crewmembers in the event of damage or flooding.

[M-19-017]

For DUKW amphibious passenger vessels without sufficient reserve buoyancy (commonly referred to as original ducks and/or stretch ducks) require the removal of canopies, side curtains, and their associated framing during waterborne operations to improve emergency egress in the event of sinking.

#### *Port Richey, Florida: Island Lady*

Late last year, we completed our investigation into the fire aboard the small passenger vessel *Island Lady* near Port Richey, Florida, on January 14, 2018. The vessel, operated by Tropical Breeze Casino Cruz, shuttled passengers to and from an offshore casino vessel. As a result of the accident, one passenger died and 14 others on board were hospitalized.

During the voyage, the captain received a high-temperature alarm for the port engine's jacket-water system. Rather than shut the engine down, he left it idling, allowing it to continue to generate excessive heat, which in turn affected the exhaust tubing and ignited its surrounding structure.

The vessel owner had not given its vessel captains specific guidance about how to respond to high-temperature alarms. Although federal regulations require small passenger vessels to have fire detection and suppression systems in spaces containing propulsion machinery (such as engine rooms), the regulations do not require such systems in unoccupied spaces with engine exhaust tubing, which is where we suspect the fire on board the *Island Lady* started (in the lazarette). Further, the *Island Lady*'s crewmembers lacked sufficient understanding of firefighting principles, and their training drills were infrequent or incomplete.

This accident was particularly notable because of its commonalities with the 2004 fire aboard the small passenger vessel *Express II*, operated by the same company,

<sup>3</sup> Safety Recommendation M-02-1. [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts.gov/recsearch/Recommendation.aspx?Rec=M-02-001](https://www.nts.gov/safety/safety-recs/_layouts/nts.gov/recsearch/Recommendation.aspx?Rec=M-02-001)]

<sup>4</sup> Safety Recommendation M-02-2. [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts.gov/recsearch/Recommendation.aspx?Rec=M-02-002](https://www.nts.gov/safety/safety-recs/_layouts/nts.gov/recsearch/Recommendation.aspx?Rec=M-02-002)]

in the same geographic location.<sup>5</sup> Despite preventive maintenance and firefighting programs put in place in response to recommendations from the *Express II* investigation, crewmembers aboard the *Island Lady* were not sufficiently trained, and the maintenance program did not prevent noncompliant plastic tubing from being used where heat-resistant material was required.

In response to this accident, we issued new recommendations to Tropical Breeze Casino Cruz to develop and apply an oversight system to its maintenance program, and to revise its training programs.<sup>6</sup> Although we request responses to recommendation letters within 90 days of their issuance, we have not received any reply from Tropical Breeze Casino Cruze to either of these December 2018 recommendations which are currently classified “Open—Await Response.”

We also issued two recommendations to the USCG to require fire-detection systems in unoccupied spaces with machinery or other potential heat sources on board small passenger vessels, and to issue a Marine Safety Information Bulletin regarding the need to use only approved material and components in fuel tank level-indicator systems.<sup>7</sup> The USCG has not replied to either of these recommendations which are also currently classified “Open—Await Response.”

#### *Santa Cruz Island, California: Conception*

Shortly after 3:00 a.m. on Monday, September 2, 2019, the 75-foot commercial diving vessel *Conception*, with 39 persons on board, caught fire while anchored in Platts Harbor, off Santa Cruz Island in California. The *Conception* was on the last night of a 3-day diving trip. Thirty-three passengers and one crewmember died, making this the largest loss of life in a US marine casualty in decades.

Initial interviews of three crewmembers revealed that no mechanical or electrical anomalies were reported. A crewmember sleeping in the wheelhouse berths was awakened by a noise and got up to investigate. He saw a fire at the aft end of the sun deck, rising up from the salon compartment below. The crew attempted to access the salon and passengers below that deck, but were unable to do so. The vessel burned to the waterline by morning and subsequently sank in about 60 feet of water.

The NTSB is the lead federal agency for this investigation. Investigators are scrutinizing the wreckage, as well as reviewing current regulations regarding vessels of this type, year of build, and operation; early warning and fire detection alarm systems; evacuation routes; training; and current company policies and procedures. We will keep the subcommittee informed of developments in this investigation as they occur.

#### SAFETY MANAGEMENT SYSTEMS (SMS)

The NTSB has long advocated for all passenger vessel operators to implement an SMS: a comprehensive, documented system to enhance safety. Regardless of a company's size, an SMS ensures that each crewmember is given standard and clear procedures for routine and emergency operations. An SMS specifies crewmember duties and responsibilities, as well as delineates supervisory and subordinate chains of command, so that each crewmember understands what to do during critical vessel operations and emergency scenarios. Developing an SMS includes creating plans for crewmember responses to a range of possible emergency situations. SMSs also include procedures for performing and tracking preventive maintenance, as well as, procedures for crew training, emergency preparedness, documentation and oversight, and other actions that make safe operations a priority.

The International Maritime Organization (IMO) requires that US vessels engaged in oceangoing international service operate under an SMS, but such a requirement is not in place for the domestic passenger vessel fleet. Following the 2010 allision of passenger ferry *Andrew J. Barberi* with a terminal at Staten Island, New York, in which 50 people were injured, we again recommended that the USCG require all operators of US-flagged passenger vessels to implement an SMS.<sup>8</sup> After the Coast

<sup>5</sup>These were not the only issues we found as a result of this accident investigation. For more information, see the full report, *Fire On Board US Small Passenger Vessel Island Lady, Pithlachascotee River Near Port Richey, Florida, January 14, 2018*. [<https://www.nts.gov/investigations/AccidentReports/Reports/MAR1802.pdf>]

<sup>6</sup>Safety Recommendations M-18-11 [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts.recsearch/Recommendation.aspx?Rec=M-18-011](https://www.nts.gov/safety/safety-recs/_layouts/nts.recsearch/Recommendation.aspx?Rec=M-18-011)] and -12. [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts.recsearch/Recommendation.aspx?Rec=M-18-012](https://www.nts.gov/safety/safety-recs/_layouts/nts.recsearch/Recommendation.aspx?Rec=M-18-012)]

<sup>7</sup>Safety Recommendations M-18-13 and -14.

<sup>8</sup>Safety Recommendation M-12-3 [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts.recsearch/Recommendation.aspx?Rec=M-12-003](https://www.nts.gov/safety/safety-recs/_layouts/nts.recsearch/Recommendation.aspx?Rec=M-12-003)]. See also Safety Recommendations M-05-6

Guard initially responded that it was developing appropriate regulations for all US-flagged passenger vessels (part of Public Law 111-281), we classified Safety Recommendation M-12-3 “Open—Acceptable Response.” However, in April 2014, after more than 3 years since Congress authorized the Coast Guard to mandate SMS, and nearly 1 year since the Coast Guard (in its response to Recommendation M-12-3) expressed its intent to initiate rulemaking, we classified the recommendation “Open—Unacceptable Response.”

We continue to believe that an SMS is an essential tool for enhancing safety on board all US passenger vessels, and that the USCG is the appropriate authority to ensure such systems are implemented and enforced. In the case of the *Island Lady* and *Tropical Breeze Casino Cruz*, a Coast Guard requirement for an SMS would likely have ensured greater adherence to completing crew training drills, appropriate responses to emergencies such as alarms and fires, and improved record-keeping of training and maintenance-related documents. Implementing an SMS on all domestic passenger vessels would further enhance operators’ ability to achieve the higher standards of safety that the Coast Guard requires of US oceangoing vessels in international service. Currently, numerous operators of domestic small passenger vessels have voluntarily implemented SMSs that include integral preventive maintenance programs.

In the *Island Lady* investigation, we reiterated recommendations that the USCG require preventative maintenance programs for companies operating domestic passenger vessels (M-02-5) and that it require that vessel operators implement an SMS (M-12-3).<sup>9</sup>

We continue to support a federal requirement for small passenger vessel operators to implement an SMS.

#### *Atlantic Ocean, Northeast of Acklins and Crooked Island, Bahamas: El Faro*

On October 1, 2015, the US-flagged cargo ship *El Faro* sank in the Atlantic Ocean about 40 nautical miles northeast of Acklins and Crooked Island, Bahamas, during Hurricane Joaquin, claiming the lives of all 33 crew members. Our investigation identified several major safety issues, including the captain’s actions, currency of weather information, bridge resource management, company oversight, damage control plans, and survival craft suitability.

On September 29, 2015, the *El Faro* departed its homeport in Jacksonville, Florida, on a 1,100-nautical-mile (nm) planned voyage to San Juan, Puerto Rico, slated to arrive in the early morning hours of October 2. However, the ship sailed directly into the path of Hurricane Joaquin, a Category 3 storm that reached Category 4 strength shortly after the *El Faro* sank, at approximately 8:00 a.m. on October 1.

The captain’s insufficient action to avoid Hurricane Joaquin due to his failure to use the most current weather information and the lack of appropriate survival craft for the conditions were critical factors in the probable cause of *El Faro*’s sinking and the loss of 33 lives. Although the ship and its crew should never have found themselves sailing into the storm, many other factors, including ineffective bridge resource management, inadequate company oversight and safety management, flooding, propulsion loss, and the lack of an approved damage control plan also contributed to the sinking.

On December 12, 2017, following a 26-month investigation, we determined the probable cause of the sinking and made 53 safety recommendations (we issued 10 urgent recommendations prior to the Board meeting). This was the most resource-intensive marine investigation in the NTSB’s history. The resulting 63 safety recommendations, if acted upon, will yield a generational advance in marine safety.

The USCG has been responsive to the recommendations we made as a result of the *El Faro* investigation; however, changing the Coast Guard’s regulations alone would have little impact in the international realm because, in international waters, International Maritime Organization (IMO) regulations hold sway. Even in US

[[https://www.nts.gov/safety/safety-recs/\\_layouts/nts-recsearch/Recommendation.aspx?Rec=M-05-006](https://www.nts.gov/safety/safety-recs/_layouts/nts-recsearch/Recommendation.aspx?Rec=M-05-006)] to the Coast Guard, and M-05-2 [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts-recsearch/Recommendation.aspx?Rec=M-05-002](https://www.nts.gov/safety/safety-recs/_layouts/nts-recsearch/Recommendation.aspx?Rec=M-05-002)] to the New York City Department of Transportation resulting from the 2003 *Andrew J. Barberi* allision with a pier at Staten Island, New York; M-10-7 [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts-recsearch/Recommendation.aspx?Rec=M-10-007](https://www.nts.gov/safety/safety-recs/_layouts/nts-recsearch/Recommendation.aspx?Rec=M-10-007)] to ferry operator Interstate Navigation Co. resulting from the 2008 collision between its vessel *Block Island* and Coast Guard cutter *Morro Bay* on Block Island Sound, Rhode Island; and M-14-7 [[https://www.nts.gov/safety/safety-recs/\\_layouts/nts-recsearch/Recommendation.aspx?Rec=M-14-007](https://www.nts.gov/safety/safety-recs/_layouts/nts-recsearch/Recommendation.aspx?Rec=M-14-007)] to ferry operator Seastreak, LLC resulting from the 2013 allision of its vessel *Seastreak Wall Street* with a pier at Manhattan, New York.

<sup>9</sup>For more information, see page 46 of the full report, *Fire On Board US Small Passenger Vessel Island Lady, Pithlachascotee River Near Port Richey, Florida, January 14, 2018* [<https://www.nts.gov/investigations/AccidentReports/Reports/MAR1802.pdf>]

waters, it is not always the case that the United States is the “flag state”, since there are many foreign-flagged vessels plying our waters. In the case of *El Faro*, the United States was the flag state; however, since the accident lessons are applicable to other oceangoing vessels, we recommended that the Coast Guard propose changes to the IMO on behalf of the United States. We believe these changes would save lives in waters around the world.

We also issued recommendations to the American Bureau of Shipping—the US classification society—and to the International Association of Classification Societies. Classification societies establish and maintain standards for the construction and operation of ships.

Our recommendations also recognized a systemic problem with lifesaving equipment. The *El Faro* was outfitted with open lifeboats, which, for about 30 years before the sinking, would not have been legal on an otherwise equivalent new vessel. *El Faro* was “grandfathered out” of this requirement. We recommended that the Coast Guard, at regular intervals not to exceed 20 years, review all lifesaving appliances on such vessels.

#### CONCLUSION

The loss of *El Faro* shook the marine shipping world, and *Conception*’s loss, just feet from shore, reminded the small passenger vessel world that the potential for catastrophe is always present. SMSs and required preventive maintenance are necessary to improve the safety of any marine enterprise, including that of small passenger vessels.

Our accident findings and recommendations represent lessons learned at the highest price. To put safety recommendations into action provides a return on investment in lives saved, injuries prevented, and property loss and environmental damage avoided.

Thank you for your consideration of these important marine safety matters. I would be pleased to take any questions you might have.

Mr. MALONEY. I thank the gentlemen for their statements.

We will now proceed to Members’ questions, observing the 5-minute rule.

I recognize myself for 5 minutes.

Admiral Timme, you heard in my opening statement some of the concerns raised by the Los Angeles Times recently. I wanted to give you an opportunity to correct anything you think I said through my colleague, Mr. Larsen, that might have been unfair or incorrect. And I would love to get the thoughts of the NTSB. I think you understand the issue. You understand the issue is whether we are sufficiently implementing recommendations of the NTSB, and if not, why not? I want to give you an opportunity to respond.

Admiral TIMME. Thank you, Mr. Chair.

The *Conception* fire is a tragedy. And upon learning of it, we dispatched our lead marine investigator, the head of our investigation shop, to go out there. And he was there the next day, along with NTSB, to begin looking at the circumstances. And as alluded to, that investigation continues.

One of the things that we also did was to charter a small passenger vessel task force internally, as well as direct a concentrated inspection campaign on all vessels of that type carrying overnight passengers across the country. That happened immediately after.

I have asked my team to take the results of that, when they are complete, as well as the NTSB recommendations, and we need to look at that framework now and reevaluate post—what we learned from this short-term walk as well as the long-term Marine Board investigation, but relook at, including NTSB’s recommendations, what to do with our small passenger framework.

Mr. MALONEY. Mr. Curtis, do you have anything to add to that?

It is not required, but it is—I want to give you an opportunity to comment.

Mr. CURTIS. I would say we look forward to the implementation of our recommendations. Some of these have been outstanding for an extended period of time, and those more recent ones, we feel are critical to the safety of passenger vessels. So we look forward to working with the Coast Guard on these recommendations to get these implemented.

Mr. MALONEY. Admiral, can you give us an update on the Coast Guard's assistance in developing MOB standards with the IMO?

Admiral TIMME. Thank you, Mr. Chair. The MOB standards, for man overboard standards, as part of the Cruise Vessel Security and Safety Act. We are working with IMO and the International Standards Organization, and together have created a standard, a draft standard, for the MOB.

We worked through that international process to come to an official standard that we hope to adopt into the rulemaking, adopt and make the standard. So we are looking forward to that within the next year to be able to then promulgate the rule.

Mr. MALONEY. And so what is your timeframe for promulgating a rule?

Admiral TIMME. I would say we are looking at the next 12 months as we work with the International Standards Organization, and that body to approve it and then incorporate it.

Mr. MALONEY. And how long have we been working on the rule?

Admiral TIMME. Sir, we have been working on it since its passage in 2010 and 2012, and then immediately put into action 11 of the 15, self-executing, and have been working with industry and cruise ships to make sure that was in place, but this is an outstanding piece that we need to continue to work.

Mr. MALONEY. We look forward to that being completed, sir.

I yield the balance of my time.

Mr. Gibbs.

Mr. GIBBS. Thank you, Chairman.

Admiral, since 2004, the Congress enacted legislation to bring ferries and towing vessels under inspection, require examination and classification for fishing vessels and increase the safety requirements on, as you know, cruise vessels.

The question is, has the Coast Guard been able to keep up with these increased statutory requirements in terms of—I got three points here. The first point would be services budget and the number of personnel needed. I will just go through it. Expertise, able to cope to the breadth of the U.S.-flag fleet from our old steamships, which we rely on to meet our military sealift needs, and the new state-of-the-art vessels just coming into service; and the third would be the Service's ability to effectively oversee the third-party inspectors now doing much of the day-to-day inspection work. So those three points. What is the status?

Admiral TIMME. Thank you, Congressman.

So to your point about the ability of resources and expertise to take on the challenges that you have outlined, it is, in fact, a challenge for us, and we have to divide among our lines of effort the ability to address each of those problems or each of those challenges.



For instance, the expertise issue, steam, we have created a new steam course, in working with our partners, and that was part of, I believe, the Hamm Alert Maritime Safety Act as well.

We also have gone into the modernization of our marine inspections workforce with a program that will baseline how we train this workforce. The expertise in that workforce is critical to being able to handle the capacity of demand that you have mentioned. So we have put resources into that this year, in a 2-year program that will conclude next year with new training, new delivery methods, blended training, both online and in person, that is more in keeping with modern education for our workforce.

We have to look at risk-basing our framework. We will have to prioritize our limited finite resources to the highest risk. We continue to do that in all our fleets, and we need to develop that in the small passenger vessel fleet as well.

And third parties is the other portion you mentioned. We have continued to develop that for—subchapter M, the towing vessel fleet, is a crucial piece to handle the nearly 6,000 vessels that are added through that. But, really, to revamp it post-*El Faro* and Hamm Alert Maritime Safety Act, revamp our relationship with recognized organizations who act on our behalf, and inject the discipline into that so that they, when acting on our behalf, are carrying out our desires with regards to the framework.

And so we have worked hard with our partners to, one, publish a framework on our interpretation of the International Safety Management Code, to set a baseline for the third parties to look at, and then to make a more robust relationship from the port level, where our inspectors work with the surveyors of DNV and ABS and the rest, up to leadership level.

Mr. GIBBS. Thank you. I want to get to the next question. I am running out of time.

But on September 12th, the Coast Guard's Great Lakes Pilotage Advisory Committee unanimously agreed to recommend that in April of each year, they meet with the Coast Guard and stakeholders to facilitate what the rates will be for the pilots. The Coast Guard, do you intend to work with this committee, unanimously made this recommendation, to work together to figure out what the rates should be for the fees?

Admiral TIMME. Congressman, the Federal advisory committee for the Great Lakes is absolutely one of the valuable advisory committees that we take in order to perform our job across all of the missions.

We have had a great 3 years working with GLAC-PAC, or the Great Lakes Advisory Committee, on rate setting. There are challenges to that, and we make sure that we are transparent and sit down with that committee. And we are happy to continue to sit with them as we go through that framework to set the rates.

Mr. GIBBS. I would think it should be an open process and work together to facilitate that.

During the inspection requirements, Admiral, subchapter T vessels, subject to the post-1996 regulations and those grandfathered small passenger vessels subject to pre-1996 regulations, will the Coast Guard casualty investigation look at whether this application

of post-1996 regulations might have changed the outcome of the passengers aboard the *Conception* accident?

Admiral TIMME. Congressman, that is exactly what this Marine Board of Investigation is tasked at looking at. All of the pieces of the framework that are involved, from the construction standard you mentioned to the operation of the crew and the owner, to the maintenance post-certification of a Coast Guard inspection.

If the investigation comes back and points to the pre-1996 standard as a causal factor, we will react to that with policy and/or rule.

Mr. GIBBS. Thank you.

Amount of time yield back.

Mr. MALONEY. I thank the gentleman.

Also in my absence, I know we expressed our condolences and concerns for the victims of the *Conception* tragedy. I know we are also pleased to be joined by Representative Salud Carbajal, who represents the district in which that tragedy occurred. We thank the gentleman for his appearance today. I know he has been in the forefront of efforts to respond to that appropriately. And we look forward to his questioning on today's panel. At this time, I would like to recognize Mr. Lowenthal.

Mr. LOWENTHAL. Thank you, Chairman Maloney.

Admiral Timme, in the recent past, we know the Coast Guard has placed an increased emphasis on combating illegal charters in light of multiple fatalities and other significant safety concerns from commercial passenger vessels.

For example, one tragic casualty occurred near St. Petersburg, Florida, from the vessel, *Jaguar*, in 2017 where a crewmember unsuccessfully attempted to rescue a fatigued passenger in the water during rough weather, which resulted in both men losing their lives. And we understand that there is an active criminal investigation going on at this time. But can you describe the importance of crew training and man overboard drills?

Admiral TIMME. Thank you, Congressman. Absolutely. You point to critical factors in this framework for passenger vessel safety.

Not only the certification of the construction of the vessel that carries passengers, but the training of the captain and crew who are responsible for their safety. That would require for any passenger, any paying passenger, six-pack and above—excuse me, seven and above, that is a Coast Guard license of a certain level, and at six-pack and below, that is also another license, that is ensured first aid training, basic seamanship, things designed to keep the person in charge from making decisions that put their passengers at risk, like going into an area and making a swim call in conditions that were not warranted.

We have worked hard with outreach and education across the country, particularly in the pockets where illegal charters are more common, to make sure that this is addressed, and work with the U.S. Attorney's to prosecute in those areas.

This last weekend in Fort Myers, a public outreach campaign of a Coast Guard station with local television crew was out doing the outreach and actually did termination of an illegal charter. So those are the steps we are out there doing to address that.

Mr. LOWENTHAL. I have a question also to follow up, and maybe you have answered it. But just to be clear, is crew training re-

quired on uninspected—not inspected—but uninspected passenger vessels?

Admiral TIMME. Congressman, on an uninspected passenger vessel, the only crew that would be required would be the captain.

Mr. LOWENTHAL. That is the only training?

Admiral TIMME. And the captain would receive the basic training that went with that uninspected passenger vessel license, basic seamanship, first aid.

Mr. LOWENTHAL. So you are saying that commercial passenger vessel, besides the captain, has no requirement to have crew training in emergency situations?

Admiral TIMME. Congressman, to your question—and happy to take specifics on this. But when we talk about six-pack and below—six passengers and below—that is the way I took your question. If I took that wrong, I will correct that.

Mr. LOWENTHAL. OK.

Admiral TIMME. But for six and below, it is just the captain.

To a regular T boat, what we call the small passenger vessel fleet, there is, indeed, training for the captain, but the crew may or may not—a deckhand may or may not be trained and licensed.

Mr. LOWENTHAL. So there is no requirement?

Admiral TIMME. Correct.

Mr. LOWENTHAL. So could the Coast Guard provide us with investigation statistics regarding crew training on uninspected and inspected passenger vessels?

Admiral TIMME. Congressman, I will take that for the record. Absolutely.

Mr. LOWENTHAL. Thank you. I appreciate that.

I appreciate your testimony highlighting the increasing cybersecurity risk to our maritime transportation system and the Coast Guard's efforts to establish cybersecurity standards for passenger vessels operating operations with NIST.

Can you give us an update on these efforts, when can we expect the framework or the standards to be completed?

Admiral TIMME. Congressman, we addressed cyber across many parts of the new transportation system. We have worked with IMO since 2016 to create an international standard for assessment of risks; and then 1 year later, we led the effort at IMO, internationally, to require cyber be addressed in safety management systems for ships.

Here, we work at this area level, or the port level, to ensure every port will do an assessment of cyber risks in the port. Below the port level, we get to the facilities. The facilities themselves will be required—not required, but advised, through policy, to work off of a National Institute of Standards and Technology framework. At least that is what a draft of our current guidance showed.

We will then bring that down to the vessel level as well, where we recommend that industry begin to lead themselves to compliance with cyber standards of hygiene and assessment. This is where the risk lies for them.

Mr. LOWENTHAL. I thank you, Admiral.

And I yield back.

Mr. MALONEY. I thank the gentleman.

Mr. Mast.

Mr. MAST. Thank you, Chairman.

And, thank you, Admiral, Mr. Balzano, Mr. Curtis, for sharing the information that you have with each of us.

I want to talk about safety, but from a little bit different perspective. And I believe this question will be directed towards Mr. Curtis—I think you are the most suited to answer this, but I open this up to any of you that feel you can answer this.

I want to talk about markers, aids to navigation, specifically, that we put out there to hopefully allow for mariners to navigate safely, and navigate in times of reduced visibility.

Now, I was prompted to ask this question because my community was recently rocked when a mother and a 1-year-old child were on a vessel that struck a navigational beacon in a time of reduced visibility, and they were killed. And so that prompts this line of questioning.

I am trying to understand, what is the rationale that exists for why there may be a day beacon used, or a light used or if a can or a nun has a light on it, or whether bridge markers or pilings, other aids to navigation, you know, whether they are marked in a lit fashion or not? And specifically looking at Florida where this occurred, inland waterways and intercoastal waterways, maybe to be more specific.

Mr. CURTIS. Thank you for the question, sir. I am not familiar with that accident. We have done some accidents involving aids to navigation, very few, not recently. I don't want to throw it over, but maybe the admiral may be better suited to answer your question, sir.

Admiral TIMME. Congressman, thank you for the question.

So there are a couple of different ways when you look at a port area that we will seek to establish what aids to navigation are appropriate for that.

We will do either a waterway assessment, which is typically from our navigation office here at headquarters, working with local stakeholders, and that is done on a rotating basis in the port areas, to look at what new needs might be arising from the waterway for its navigation.

The other one is a port and waterway safety assessment, again, done locally by the captain of the port or the OCMI, that office there, working with stakeholders like pilots, Harbor Safety Committees, industry, recreational groups, to look at traffic and what type of aids to navigation would be appropriate there to change that. There is a process to change it, if they need to be updated.

Mr. MAST. Can you discuss a little bit further, in the time remaining, the process to upgrade and change?

Admiral TIMME. I am sorry, sir. I missed the first part.

Mr. MAST. Could you discuss, in the time remaining, the process of go out there and upgrade and change some of these aids to navigation, to make them be in a lit fashion?

Admiral TIMME. So the overall process—and I was able to do one of these in Tampa Bay around 2002. It is a multiday workshop process that would start with invitations to the stakeholders. And again, this is the big process. An individual who wanted to petition for a change could come directly to Coast Guard headquarters or the local county port. But the larger process is a transparent one,

where we bring in particularly the Pilots Association, the Harbor Safety Committee, local industry, recreational boaters is typically important, port authorities that deal with what vessels are coming in, and so—because that is important to the characteristics of turning basins and other aids to navigation.

So over a 2- to 3-day workshop, they will do a risk assessment, they will score it, they will rank it, and they will make a recommendation at the end in a report that will go to Coast Guard headquarters. And then, my office of navigation will look at that and update typically in the next aids to navigation cycle what would go there.

Floating aids are much easier than fixed aids. Fixed aids are a little more resource-intensive. And particularly larger aids, like ranges, range lights, would be particularly challenging to do in a quick budget cycle.

Mr. MAST. Thank you. I appreciate it.

And, Chairman, I yield back.

Mr. MALONEY. I thank the gentleman.

Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman.

And, gentlemen, thank you for your presence here today and your commitment to improving our waterway safety.

I wanted to ask you, Admiral, a question or two about the Towing Safety Advisory Committee. And as you know, that is the Federal advisory committee for towing and industry safety. And, apparently, brought to my attention by some of my constituents who have been actively involved or engaged with the work of the committee, that the Coast Guard was unable to secure the Department of Homeland Security's reapproval of the committee's charter prior to its expiration in early July.

The Coast Guard Authorization Act of 2018 reauthorized the Towing and Safety Advisory Committee under a new name, the National Towing Safety Advisory Committee.

So my question is, essentially, what is the status of reconstituting, or establishing, this newer iteration of the Towing Safety Advisory Committee? Do you anticipate that members that were currently serving on that committee are being considered and perhaps may serve on this newly constituted committee?

Admiral TIMME. Congressman, we have clarified with congressional staff, the committee staff, our take on that direction from the Authorization Act, and we intend to keep the committees in place, as-is, through their intended expiration at the end of 2020.

So we will reconstitute as-is the current membership, the current charter, as we work on renewing all of the Federal advisory committees in accordance with congressional intent, so that they are redone under the new names, new charters at the end of next year. That is when membership may change, if we resolicit for membership, but I am happy to follow up on any membership issues with you.

Mr. BROWN. And then just to clarify as a followup. So during the period that we are in right now, are you continuing to formally solicit input from the existing members of the Towing Safety Advisory Committee?

Admiral TIMME. That is my intent, to use the existing committee members as the advisory to the framework. But again, there are often many opportunities for different stakeholders that would be on that committee to bring input to the Coast Guard. But as constituted, we will take that membership advice.

Mr. BROWN. All right. And again, all of this is just clarification. I know that the Towing Safety Advisory Committee works on several tasks. And so this task work, does that continue today?

Admiral TIMME. That is correct, Congressman, it should be.

Mr. BROWN. OK. Great. Thank you.

I yield back, Mr. Chairman.

Mr. MALONEY. I thank the gentleman.

I would now like to recognize Mr. Gallagher for 5 minutes of questioning or shaving, whichever he prefers.

Mr. GALLAGHER. Wow. That was a low blow, Mr. Chairman. I am not sure of all the products available in Wisconsin, so I just want to give the gentleman every opportunity.

It is called a hunting beard.

So to follow up on the questioning about the Towing Safety Advisory Committee, which provided recommendations to the Coast Guard in 2015 on the improvement of marine casualty reporting, the 2016 Coast Guard Reauthorization Act required the Coast Guard to provide a report to Congress on the actions the agency would take to implement its recommendations.

A lot of my constituents believe that the report shows that the Coast Guard has not gone far enough in implementation. They believe that the Coast Guard's vast amount of marine casualty data should be systematized so that the maritime community can better use it to improve commercial and passenger vessel safety.

So I guess the question I would have, Admiral, is how is the Coast Guard addressing the challenge of making marine casualty reporting data more valuable and more available to the maritime community in order to improve maritime safety?

Admiral TIMME. Thank you, Congressman.

I concur. We need to make the data we have more valuable, not just to the maritime community, but to the Coast Guard itself, as we seek to modernize our IT systems and our data systems. And that is one of the priorities the Commandant has, to make sure that we have a 21st-century information technology backbone.

In 2015, when that guidance went out with regards to marine casualties, we saw a significant drop in the casualty reporting the next year. I point that out, because it did, in fact, clarify for those stakeholders you are talking about, where and when they had to report, much to their satisfaction is what—that is what had been advised. So we saw a real change in the reporting. The challenge now becomes, as you point out, modernizing that data for use, both internally and externally.

We do keep the data that we do have available on the Port State Information Exchange on casualties and investigations for the public. And we, unfortunately, would be at a FOIA request for other data at this point.

Mr. GALLAGHER. OK. And then you have a great team in my district of coastguardsmen who do outreach to the community. But there is some concern I hear about sort of big Coast Guard or Coast

Guard staff in DC who have an intersection with a lot of the regulatory aspects.

Is there a way to sort of plug them in to the Great Lakes region and have more feedback and interaction? I guess less of a question, but more of whether you would be amenable to a followup conversation with me and my staff on how we can improve that communication and find a way to sort of satisfy some of the concerns that my constituents have.

Admiral TIMME. Congressman, I look forward to that conversation.

Mr. GALLAGHER. Fantastic.

Mr. Chairman, I just would say, you know, on behalf of people with beards everywhere—I will not be silent.

Mr. MALONEY. Does the gentleman yield? I am going to recommend he just let it go.

As someone who has got hair challenges, I should probably not be speaking. Appreciate the gentleman's indulgence.

With that, I am going to recommend Ms. Plaskett.

Ms. PLASKETT. Thank you. And I have a petition started for Mr. Gallagher called "Keep the Beard," so long as we get to go hunting with you.

Mr. MALONEY. Who said bipartisanship was dead?

The gentlelady may proceed.

Ms. PLASKETT. Admiral, I wanted to ask you about passenger vessels. In the Virgin Islands, passenger vessels play a really important role in the part of our local economy, and safety is a very important issue.

I have heard concern from constituents about the issue of illegal vessels, illegal charters specifically. Companies come down without a business license and don't have the right certification. Licensed charters are in competition with these vessels, which may have safety gear issues—they may have the safety gear, but not certification to be operating with dozens of passengers.

I realize this is a problem nationally, in light of multiple fatalities and other safety concerns from commercial passenger vessels.

Can you provide us with an update on the Coast Guard's efforts and strategy to combat these illegal charters?

Admiral TIMME. Congresswoman, the Virgin Islands is one of those places, as an island, it is absolutely dependent on that waterway.

I ran the Coast Guard detachment in St. Croix from 1997 to 1999, and am very familiar with the unique aspects of the passenger vessel there.

We are looking at outreach, education, partnership, and enforcement as the approach to illegal charters around the country. We have sought to educate the public with regards to what they should look for when renting a vessel, including a licensed captain and a certificated vessel, if it is above six people.

We have done outreach at the port level by walking the docks, posting signs. We have worked with local news crews to highlight the problem. And then lastly, we have partnered—not partnered, but gone to the U.S. Attorney, where appropriate, for egregious violations of the laws with regards to charters and passenger vessels.

It disadvantages those you just pointed out, those who legitimately take the time to certificate their vessels, to do the training that is expected, to carry passenger vessels in this country, and it is a disadvantage for them. So we continue to attack it.

Ms. PLASKETT. Are there additional resources, or do you feel that you have sufficient manpower and resources on the ground to get that done?

Admiral TIMME. Like all of our mission sets, we prioritize for mission accomplishment with the finite resources we do have. We meet mission with those resources. But additional resources always go to more optimal solution sets.

Ms. PLASKETT. Great. One of the other things I wanted to talk with you about in terms of this travel and survival craft regulations, when vessels sailing internationally are generally required to carry out-of-water survival craft. This is intended for vessels like cruise ships, large deep draft vessels, oil rigs, et cetera.

I know that in the past, there has been an exemption to subchapter 11 where the conditions of the voyage would render specific requirements unreasonable and unnecessary. You know, in the U.S. Virgin Islands, there is a lot of international voyage to the British Virgin Islands, and in some places, that is a span of less than 5 miles. We do understand that it is pretty treacherous water in between there.

Numerous operators in the district have requested subchapter W exemptions due to the unreasonable cost for such voyage in warm weather.

What is the Coast Guard's commitment to operating this in a very fair risk-base, and at the same time, keeping safety in mind?

Admiral TIMME. Thank you, Congresswoman.

From your question, you can see that the intricacies that go into the different variables for making a decision with regards to life-saving on certain vessels: route, amounts of passengers, the conditions.

And so, the best tool we have is local knowledge. It is the local officer in charge of marine inspection. In this case, out of San Juan, Puerto Rico, or the detachments in St. Croix and in St. Thomas, that would be most familiar with the routes, most familiar with the vessels, and most familiar with what would be appropriate.

I am happy to get back to you on the record or follow up with you on any particular vessel.

Ms. PLASKETT. Great. I appreciate that.

And Deputy Administrator Balzano, before my time runs out, under the Cruise Vessel Security and Safety Act of 2010, information on who to contact in the event of a crime is required to be posted by a cruise vessel and easily accessible to victims when the FBI is doing investigations.

How do victims receive this information? Where is it posted? And what has MARAD done to help standardize training of crews on evidence and crime scene preservation?

Mr. BALZANO. Well, ma'am, that is a good question, but a lot of that falls into the Coast Guard's area of responsibility. MARAD's responsibility is to collect the data of FBI incidents and report that on the Department's website.



Additionally, the other role that we have with that act is that we provide voluntary certification of companies who do training to cruise vessel security programs. And that is the only two roles we have, ma'am.

Ms. PLASKETT. OK. Thank you.

Mr. MALONEY. Thank the gentlelady.

It is my understanding that Mr. Young would like to yield his time to Mr. Gibbs.

The gentleman is recognized.

Mr. GIBBS. Admiral, the answer you gave regarding the safety advisory committee is actually contrary to the answers that the Coast Guard has provided the subcommittee previously. And regarding the advisory committees, whose members have been told the committees are in abeyance, I just have a request that the Coast Guard provide to the subcommittee a briefing on this issue as soon as possible.

Admiral TIMME. Congressman, we will follow up with you at your convenience.

Mr. GIBBS. Thank you.

Mr. MALONEY. The gentleman yields back.

Mr. Carbajal is recognized.

Mr. CARBAJAL. Thank you, Mr. Chair.

On September 2nd, we tragically lost 34 lives when the *Conception* dive boat caught on fire at 3:14 a.m. Off the coast of my district in California. This was the worst maritime disaster in 70 years. My condolences go out to the families of those victims.

Let me say that I am very grateful to the Coast Guard for their help in the search and rescue operations, and to the NTSB for their continued investigation into what went wrong.

And while I want to recognize the Coast Guard men and women for just doing an heroic job day in and day out on their mission—and I have a number of Coast Guard service officers in my district that do an outstanding job—I must say that when you look at the track record of implementing the NTSB's recommendations, it is not a good track record. And since, over the years, we have seen tragedy after tragedy after tragedy happen, and the Coast Guard has a track record of inaction.

While it is my understanding the NTSB is still conducting their investigation, I am disturbed by some of the reporting following this tragedy.

Admiral Timme, I am particularly concerned by the fact that the NTSB has continuously, for many years, advocated for the Coast Guard to implement procedures, to conducting regular inspections, reporting maintenance needs for all of the boats' systems and crew training, yet the Coast Guard has ignored many of these recommendations.

What action has the Coast Guard taken to make sure those recommendations are implemented, and why have they not been implemented to date?

Admiral TIMME. Congressman, the *Conception* fire is an absolute tragedy, and our hearts go out to the families of the victims. And we look forward to a full and complete investigation with the Marine Board of Investigation.

To your question with regards to the NTSB's recommendations, we work with them side by side on the investigations we do. And when we come to a recommendation, the NTSB makes a recommendation in the framework of a protocol to make a safety recommendation. We would have to take that recommendation into a different framework, into the framework of not just the recommendation itself, but the rulemaking, the guidance, the workforce, and the ecosystem it would go into.

In this particular case, after the *Conception*, I chartered a team to look at—immediately, without waiting for the Marine Board of Investigation, but immediately, to look at that class of vessel, after a 30-day inspection campaign on that type of vessel, come back, look at what we found, without waiting for the full MBI, and make recommendations to me regarding their findings and what needs to change in the safety framework, including rules and policy around these passenger vessels, and that includes relooking at the National Transportation Safety Board's recommendations with regard to that. And I look forward to doing that.

Mr. CARBAJAL. Thank you.

It has been brought to my attention that the *Conception* was working under “old T”—quote, unquote, “old T” safety requirements, meaning they were not following the most up-to-date safety rules.

What are some of the safety implications to continue to operate under this framework? And why do we need to wait until another tragedy to change our current safety rules?

Admiral TIMME. Congressman, the old subchapter T and new subchapter T both have many vessels in the fleet that operate under those construction standards. They are valid construction standards today, as long as the vessels continue to be maintained in accordance with, as constructed under that regime.

We—to your question, we do not have to wait moving forward to look at what needs to change in that subchapter. In fact, that team I reference will look at that, including if the Marine Board of Investigation finds that there was a point that had to do with the old construction standard, we will absolutely look at that.

Mr. CARBAJAL. Thank you.

Mr. Curtis, do you care to add to that?

Mr. CURTIS. Yes, sir. Thank you for the question.

Certainly we have issued recommendations in the past in these areas. Particular to the *Conception*, we are going to take a close look in this investigation at subchapter T as the admiral alluded to, not just for the existing and the old T, new T, but whether even the new T is adequate as it addresses means of escape, crew responsibilities, and the likes of that.

So certainly this is a tragedy, and we are taking a close look at all of these regulations, a fresh look at old subchapter T, new subchapter T, just for the validity on that very subchapter, to make sure that this doesn't happen again.

Mr. CARBAJAL. Thank you very much to both of you.

Mr. Chair, I yield back.

Mr. MALONEY. I thank the gentleman. We will now proceed to the second panel. Thank you all.

Oh. Pardon me. Forgive me. We have one more Member who has not had an opportunity to question. Forgive me.

Mrs. Miller is recognized, and at that time, we will proceed to the second panel. Thank you.

And we have been joined by Mr. Carson. Forgive me. We will have two more Members of Congress do their questioning, and we will proceed to the second panel. Forgive me.

The gentlewoman is recognized.

Mrs. MILLER. Thank you, Mr. Chairman. Although my district in southern West Virginia may be far from the coast, maritime transportation is essential for my district that exports the natural resources and manufactured products that power this country and the world. It is so important that we protect the mariners that go out on our rivers, lakes, and seas while making sure that our industry can remain competitive in international commerce and trade.

Rear Admiral Timme, how has the domestic commercial shipping industry taken on the responsibility to ensure that their vessels are safe for their mariners and communities?

Admiral TIMME. Congresswoman, I see the evidence of the attention of the fleet to the safety and security of their cargoes, passengers, and the environment through many stakeholder frameworks that we have, not just the fact that they comply with the regulations that we put on them. They come to the advisory committees that we have referenced here today.

The Federal advisory committees are full of the marine professionals you talk about who are there to advise the Coast Guard and other regulating bodies about how to do the job better. They participate at the local level with the Harbor Safety Committees in each port on the rivers.

Huntington, West Virginia, I think is the nearest Harbor Safety Committee you are going to have there. With that local industry, particularly, the chemical and oil industry, given the refining capability there works closely with the Coast Guard to ensure that that communication to achieve a joint goal of a safe and secure maritime system is achieved.

Mrs. MILLER. What are the biggest challenges that the Coast Guard faces when it comes to ensuring that vessels are in compliance with the Federal regulations and international standards?

Admiral TIMME. Looking ahead, we see emerging technologies that will challenge the inspection regime and the inspection workforce. We are looking at new means of propulsion with liquified natural gas as a fuel. We are looking at dynamically positioning ships in the offshore. We are looking at the incorporation of technology into bridges of ships that we hadn't seen or envisioned 30 years ago. This challenges both the industry and the Coast Guard to keep pace.

Mrs. MILLER. Thank you.

Admiral Balzano, what steps have the Maritime Administration taken to work with industry stakeholders to improve safety in passenger and commercial safety?

Admiral BALZANO. Well, ma'am, as the admiral mentioned, we host many different industry days. We cooperate and coordinate with the Coast Guard, the maritime industry, and our Federal

partners as well. We don't have any enforcement or regulatory responsibility for safety, so we try to take all the lessons learned so we can apply those to our own fleets that we operate, and that is the extent of our responsibility.

Mrs. MILLER. Thank you. I yield back my time.

Mr. CARBAJAL [presiding]. Thank you. Now I would like to recognize Representative Carson.

Mr. CARSON. Thank you, Chairman, and Ranking Member Gibbs for holding this very important hearing and for allowing me to join the subcommittee today. Although I am not assigned to this subcommittee, maritime safety is very important to my constituents, especially the Coleman family members who survived the duck boat tragedy in Branson, Missouri, last year.

Director Curtis, I was very pleased to see in your testimony, sir, recommendations for duck boats to have sufficient buoyancy so that they remain upright and afloat with passengers in the event of damage or flooding. NTSB also recommended the removal of canopies for vessels without sufficient buoyancy.

I have introduced legislation H.R. 2799 which would require implementation of these recommendations and a number of other recommendations made previously after other duck boat fatalities. Sir, do you believe the changes you have recommended can prevent future fatalities like the tragedy in Branson?

Mr. CURTIS. Thank you for your question, sir.

Well, certainly those two recommendations that we spoke about that were new recommendations yesterday, the intent there is when these duck boats—historically when they go down, once they submerge, they sink very quickly. The intent of the recommendation, A, is to have reserve buoyancy so when they do get to the water level with the passengers on board, they will remain at the water level to enhance the ability of the passengers to egress.

And additionally, if they do not have the reserved buoyancy, we would like to see the canopies removed and the hardware over them. So the challenge has been when these vessels sink that the passengers become entrapped. They sink quickly, and they are trapped inside, so that is the intent of those two recommendations. If they ever do encounter problems and take on water, they will stay at least at the water line to allow responders to help as well as keep the vessel on the surface.

Mr. CARSON. Is there more action that the committee should consider, including maybe enforcement of existing requirements?

Mr. CURTIS. Well, certainly we appreciate the endorsement of the safety recommendations and get them implemented. These were made originally very close to the same language 20 years ago. I think they are critical to the survivability. Vessels can always take on water, but it is really about survivability, keeping them on the surface and not being encumbered by the canopies.

So certainly we feel these two recommendations are critical, and we really urge the implementation of these by the Coast Guard.

Mr. CARSON. Thank you all.

Thank you, Chairman. I yield back.

Mr. CARBAJAL. Are there any other questions?

Having none, I want to thank the witnesses for their testimony and for answering questions today. It has been very insightful and

helpful. Thank you so much. We will now move on to the second panel.

Good afternoon. I would like now to welcome our next panel of witnesses. We have a number of individuals.

First, we have Vice Admiral Brian Salerno, senior vice president of global maritime policy for the Cruise Lines International Association.

We also have Mr. Adam W. Moilanen, vice president of health, safety, quality, and environment for the American Bureau of Shipping.

We have Mr. Aaron Smith, president and CEO for the Offshore Marine Service Association.

We have Ms. Colleen Stephens, vice president of the Passenger Vessel Association.

And Mr. Paul Sterbcow. Did I get that right?

Mr. STERBCOW. Close enough.

Mr. CARBAJAL. President of the Louisiana Association for Justice. I have a hard name to pronounce too, so I sympathize.

Thank you to all of you for being here. I look forward to your testimony and attendance. I want to recognize Representative Young who wants to make an introduction of one of his constituents who happens to be here on the panel today.

Mr. YOUNG. Thank you, Mr. Chairman, and I would just make one comment ahead of time. I have been involved with the Coast Guard now for 60 years. And if we want to solve some of the problems of the Coast Guard, we have to start funding them better than we have been doing in the past. That is one of our biggest challenges. We give them responsibilities, and yet we don't give them the money to do the job.

But my pleasure now, Mr. Chairman, is to welcome my fellow Alaskan, Colleen Stephens, to the Transportation and Infrastructure Committee. Colleen Stephens is the president of her family's business, Stan Stephens Glacier & Wildlife Cruises and the national vice president of the Passenger Vessel Association.

Stan Stephens Cruises has been in operation for 48 years, the same length I have been in Congress, and operates two 149-passenger sightseeing vessels in Prince William Sound, carrying 18,000 persons per year. Her company embodies a great maritime tradition we have in Alaska. I understand Colleen joined the family business at a very early age and worked her way up through all aspects of the company to her present role.

I am proud to know that an Alaskan is here to serve as the voice of the U.S.-flagged passenger vessel industry which is very important to the State of Alaska. We in Alaska know how vital this industry is to the State and to the future in Alaska and nationally is predicted and continues to improve in their safety.

I appreciate all the work that you and your colleagues have done in the Coast Guard and Maritime Transportation Subcommittee to ensure the safety of your passengers, and I look forward to the testimony that we can do better. Thank you for being here.

Mr. CARBAJAL. Thank you, Representative Young.

Again, thank you for being here today. I look forward to your testimony.

Without objection, our witnesses' full statements will be included in the record. As with the previous panel, since your written testimony has been made a part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes each.

With that, we will start with Admiral Salerno. You may proceed.

**TESTIMONY OF VICE ADMIRAL BRIAN M. SALERNO, U.S. COAST GUARD (RET.), SENIOR VICE PRESIDENT OF GLOBAL MARITIME POLICY, CRUISE LINES INTERNATIONAL ASSOCIATION; ADAM W. MOILANEN, VICE PRESIDENT OF HEALTH, SAFETY, QUALITY, AND ENVIRONMENT, AMERICAN BUREAU OF SHIPPING; AARON C. SMITH, PRESIDENT AND CHIEF EXECUTIVE OFFICER, OFFSHORE MARINE SERVICE ASSOCIATION; COLLEEN STEPHENS, VICE PRESIDENT, PASSENGER VESSEL ASSOCIATION; AND PAUL M. STERBCOW, PRESIDENT, LOUISIANA ASSOCIATION FOR JUSTICE**

Admiral SALERNO. Thank you, Mr. Chairman, Ranking Member Gibbs, and distinguished members of the subcommittee. It is an honor to appear before you as a representative of the Cruise Lines International Association, or CLIA, to discuss passenger vessel safety.

CLIA is the world's largest cruise industry trade association. It includes among its membership approximately 95 percent of the global cruise capacity. This year, our members anticipate carrying 30 million passengers on their 272 ships. Half of all passengers will sail from ports in the United States which remains the largest cruise market globally.

The number of passengers carried has grown by approximately 1 million per year over the last decade as ships have likewise grown in complexity and capability.

The safety and security of our passengers is of paramount importance. These are the fundamentals without which our industry could not succeed. It is what our guests and our crewmembers rightly expect. And thanks to sustained efforts by our members, objective data shows that cruising is, indeed, among the safest vacation experiences available anywhere.

According to renowned maritime industry analyst and researcher G.P. Wild, the cruise industry has expanded its capacity by 55 percent over a 10-year period from 2009 to 2018. Meanwhile, the rate of operational incidents has declined by 35 percent. The kinds of incidents analyzed includes fires, groundings, collisions, loss of propulsion, and persons going overboard.

These positive trends did not occur by chance. They result from an industry making a concerted effort to operate safely and with due regard for the safety and comfort of its guests.

Nine years ago Congress passed the Cruise Vessel Security and Safety Act which raised the bar on passenger safety and security. CLIA supported that legislation. At that time, the subcommittee was under the leadership of Chairman Elijah Cummings who, as you all know, was a passionate advocate for maritime safety and for seafarers.

We note with sadness his recent passing. His legacy endures, however, and we are pleased to report that the industry has embraced the requirements contained in the CVSSA and has made

them part of standard operating procedures. Railing heights and stateroom security measures are built into our member ships.

Medical facilities and trained providers are available in the event of a medical emergency. And although crimes remain rare events, when they do occur, trained security personnel preserve evidence and coordinate with shoreside law enforcement. Crimes involving U.S. passengers are reported to the FBI and the Coast Guard, and quarterly crime statistics are published online by the Department of Transportation.

As for the rate of crime, noted criminologist Dr. James Fox of Northeastern University has compared reported incidents on cruise ships to the national FBI crime statistics, the uniform crime reporting program, and concluded that major crimes on cruise ships occur at significantly lower rates as compared to those occurring on land.

Safety is essential to the operation of our cruise ships. However, our commitment to maritime safety is not limited to our own ships. Most of our members are active participants in AMVER, the Automated Mutual-Assistance Vessel Rescue system. Through the AMVER system, our members make their vessels available to rescue coordination centers around the world to respond when needed to aid mariners in distress. Although this means itinerary disruptions and delays, cruise ships typically respond without hesitation when called upon, often placing their own crewmembers at risk to save others.

Each year cruise ships are recognized for their lifesaving efforts by the AMVER program and here in the Capital by the Association for Rescue at Sea.

Equally important to our industry is environmental stewardship. Just as safety and security is a prerequisite for our guests' willingness to book a cruise, they also expect that their vacation is not going to despoil the very places they want to visit and enjoy.

It is in our long-term interests as an industry to protect the seas and the destinations we visit. That fact has provided the impetus behind the more than \$22 billion invested so far across the industry in new technologies to protect the seas from overboard discharges and the air from stack emissions. In fact, the cruise industry has been a leader in the development and adoption of new ship-board environmental technologies.

In conclusion, it is a well worn cliché to say that safety is a journey, not a destination. Nevertheless, that is how we in CLIA view it. It is how our members view it. Safety, security, and environmental stewardship have our ongoing focused attention.

Thank you, and I look forward to your questions.

[Admiral Salerno's prepared statement follows:]

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**Prepared Statement of Vice Admiral Brian M. Salerno, U.S. Coast Guard (Ret.), Senior Vice President of Global Maritime Policy, Cruise Lines International Association**

Thank you, Chairman Maloney, Ranking Member Gibbs, and distinguished members of the Coast Guard and Maritime Transportation Subcommittee. It is an honor to appear before you to discuss "Commercial and Passenger Vessel Safety: Challenges and Opportunities."

Having served 36 years in the U.S. Coast Guard, retiring in 2012 at the rank of Vice Admiral and Deputy Commandant for Operations and having worked on a

broad range of Coast Guard operational missions with a particular focus on maritime safety, my entire professional life's work has been devoted to marine safety.

I am currently the Senior Vice President for Global Maritime Policy for the Cruise Lines International Association (CLIA), which is the world's largest cruise industry trade association representing more than 95 percent of the global cruise capacity. CLIA represents 36 oceangoing cruise lines as well as 15,000 travel agencies, including the largest agency hosts, franchises and consortia, 30,000 travel agents, and 300 industry partners who provide products and services to the cruise industry.

Thirty million passengers are expected to cruise in 2019 globally, and nearly half of those passengers are sourced or cruise from the U.S. The number of people enjoying cruise vacations has increased, on average, by more than one million new cruisers every year over the last decade. It is safe to say that cruising is one of the most popular vacation experiences. The industry enjoys a high customer satisfaction rate with nearly 90 percent of cruisers saying they will cruise again. Fifty-two percent of vacationers who have never cruised say they are open to a cruise holiday. Families and other groups often cruise on an annual basis, booking the next trip during their cruise or immediately upon returning to port. These individuals appreciate the convenience of cruising and feel safe while doing so.

CLIA promotes the policies and practices that foster a safe, secure, healthy and sustainable cruise ship environment for our guests and crewmembers. Our Cruise Line Members participate in ongoing, specialized committees, working groups, task forces and other forums to develop and promote industry-wide policies. CLIA and its members routinely meet with regulators and enforcement officials to promote efficiency and best practices throughout the world. Through these varied groups, and aided by a professional technical staff, consultants, and maritime authorities, our members share information, review and assist in developing applicable national and international legal requirements, and identify best industry practices for all to adopt.

#### CRUISE LINE SAFETY

Safety of passengers and crew is the cruise industry's number one priority! Providing a safe, secure, healthy and sustainable cruise ship environment is fundamental to the success of the cruise industry.

Cruise ships are among the most scrutinized vessels at sea. Using comprehensive design, construction and operating standards developed at the International Maritime Organization (IMO), flag and port State authorities, and vessel classification societies provide strict safety oversight throughout a ship's operational life. IMO member States (nations) have implemented the International Convention for the Safety of Life at Sea (SOLAS), which is designed to help ensure maritime security and safety worldwide. Among other criteria, SOLAS also provides that companies and vessels should comply with the requirements of the International Safety Management Code (ISM Code), which was first adopted by IMO in 1993.

In addition to safety standards, the cruise industry follows comprehensive security protocols, both prior to departure and at sea. Passengers, crew, and baggage must pass through rigorous security checkpoints before boarding. In addition to video surveillance and around-the-clock onboard emergency contacts, cruise ships keep an official manifest that lists everyone onboard. Proof of identity is required to access a cruise ship, and only crew, ticketed passengers and those on a pre-approved list may enter.

Every cruise ship must be equipped with enough survival craft, including lifeboats and liferafts, to accommodate at least 125 percent of the number of persons on board. In addition, all survival craft must meet rigorous mandatory international standards in design, construction, maintenance and operations.

Crewmembers receive robust training in safety, security and first aid to prevent and respond to potential emergency situations. Ship security personnel are on call 24/7. Major cruise lines have sophisticated security departments which in many cases are run by former federal, state and military law enforcement officials. Every ship sailing to or from the U.S. must have at least one crewmember onboard specifically trained in crime prevention, detection, and reporting.

As evidenced in a study titled *Report on Operational Incidents 2009 to 2018*, G.P. Wild (International) Limited concluded that significant operational incidents have been reduced by 33 percent over the last ten years. (Operational incidents include such events as: fire, engine failure, collisions, groundings.) Other key findings include:

- "From 2009 to 2018, significant operational incidents have been on a downward trend with an average of 18.2 incidents a year ...



- “An average of 20 minor operational incidents are reported from 2009 to 2018, a figure which is also declining. It is noteworthy that the figure of 15 incidents in 2018 and 16 in 2017 were the lowest recorded in the ten years covered by this report.

Onboard staff must be trained in first aid and public health practices, as well as in emergency procedures, signals and alarms; evacuation procedures; and fire prevention and fire safety.

CLIA and its Cruise Line Members constantly work to improve safety by reviewing operational procedures to enhance both processes and technology. With new policies implemented and ongoing work with an Independent Panel of Experts comprised of top maritime and transportation professionals to provide advice on measures to enhance safety, the cruise industry is always looking to improve and is doing so.

#### CVSSA IMPLEMENTATION

In 2010, Congress passed the Cruise Vessel Security and Safety Act (CVSSA) with the support of the cruise industry. With a record 30 million passengers now cruising, the industry goes to great lengths to maintain the safety and security of passengers and crew. As a result, cruising is safer than ever.

A recent study of crime data covering a three-year period by renowned criminologist Dr. James Alan Fox shows that there are 25 times fewer allegations of major crime (homicide, sexual assault and assault) on cruise ships than are seen with comparable data on land-based crime allegations that are tracked by the FBI. Furthermore, Dr. Fox says in his report that “cruise lines do an exceptional job of securing and providing surveillance in addition to screening their populations and generally providing a high level of security aboard ships.”

The CVSSA, along with existing laws and regulations, provides broad and stringent safety and security oversight of the cruise industry. The CVSSA was amended in 2014 to further expand public reporting of alleged incidents, which is a requirement that does not currently exist in any other travel sector. The cruise industry has embraced the requirements of the CVSSA and believes that the outcomes have benefited cruise passengers and the industry itself.

#### *Reporting of Crimes and Missing Persons*

Unlike any comparable industry ashore, cruise lines are subject to strict legal requirements for the reporting of crimes on board cruise ships. Incidents are to be reported orally, as soon as possible, to the Federal Bureau of Investigation (FBI) and a written report of an incident is to be completed as soon as possible and directed to the FBI and U.S. Coast Guard (USCG). These are tracked on an internet website maintained by the Department of Transportation.

In addition to various operational and structural requirements to enhance shipboard security and safety, the CVSSA codified the industry’s 2007 agreement for reporting of serious incidents on cruises to or from the United States, and dramatically increased penalties for non-reporting as compared to those under the preceding regime implemented under the Ports and Waterways Safety Act. The CVSSA also requires that passengers shall have available contact information for the appropriate law enforcement authorities. All passengers and crew must have access to information regarding the locations of the U.S. embassy and consulate in each country the vessel will visit during the voyage. In addition to the CVSSA requirements, CLIA Cruise Line Members have adopted a policy that all passengers and crew are to be provided the means and assistance to contact law enforcement authorities. In addition, cruise ships sailing to or from the U.S. are required by the CVSSA to record all complaints of crimes and thefts over \$10,000 in a log that is subject to inspection by law enforcement officials.

Beyond these U.S. legal requirements, other flag or port States have enacted additional requirements or established protocols concerning the reporting of alleged criminal activity. Also, CLIA Cruise Line Members have adopted a policy that serious incidents as defined in the 2007 agreement with the FBI and USCG, and codified by the CVSSA, are to be reported to the ship’s flag State. Under this policy these serious incidents are also to be reported to local law enforcement when appropriate, depending on the specific circumstances including the location of the ship when the incident occurred.

#### *Security Measures*

Cruise lines make every effort to deter criminal activity on board their ships while also ensuring that ship security staff are prepared to effectively respond to an alleged incident. One source typically utilized to train shipboard staff is the model training standards covering crime prevention, detection, evidence preservation, and

reporting of criminal activities in the international maritime environment cooperatively established by the FBI, USCG and the Maritime Administration (MARAD).

Cruise line incident response procedures are based on national (flag State) and international rules and regulations, as well as other applicable laws and/or legal directives. Cruise line procedures emphasize the responsibility of ship Security Officers to exercise best efforts to provide for the safety and welfare of passengers, crewmembers, and ships. The procedures also include requirements for ship Security Officers to effectively preserve incident evidence for investigation by the appropriate law enforcement authorities.

#### *Medical Facilities*

CLIA and its Cruise Line Members have taken a proactive role in addressing the quality of shipboard medical care. Many cruise ship physicians are members of the American College of Emergency Physicians (ACEP) and serve on that organization's Cruise Ship and Maritime Medicine Section.

As a result of cooperative efforts between experienced cruise ship physicians and ACEP, CLIA's Cruise Line Members traveling regularly on itineraries beyond the territorial waters of the coastal State, have agreed on a mandatory basis to meet or exceed the requirements of the ACEP Health Care Guidelines for Cruise Ship Medical Facilities. ACEP's guidelines address facilities, staffing, equipment and procedures. Patients requiring more comprehensive facilities or treatment are typically referred to a shoreside medical facility.

The guidelines are generally intended to foster the goals of providing reasonable emergency medical care for passengers and crew aboard cruise vessels, stabilizing patients and/or initiating reasonable diagnostic and therapeutic intervention, and facilitating the evacuation of seriously ill or injured patients when deemed necessary by a shipboard physician.

#### *Man Overboard (MOB) Incidents*

Man overboard (MOB) incidents on cruise ships are rare and unfortunate events. A recent study conducted by GP Wild analyzed man overboard (MOB) incidents involving both passengers and crew between 2009 and 2018, identifying on average 18.7 incidents per year with some fluctuations from year to year. When compared with the growth in capacity in the industry over the years analyzed, man overboard incidents were on a downward trend between 2009 and 2018:

- While number of man overboard incidents have fluctuated over this ten-year period, the number of incidents in 2018 was 23, unchanged from 2009.
- Incidence rate decreased<sup>1</sup> due to a 54.4% increase in active lower berths (synonymous with a cabin's bed) during that same ten-year period.
- Passenger fatalities from man overboard incidents also decreased from 15 in 2009 to 13 in 2018.
- Crew fatalities remain around the period average of five per year, around one in every 50,000 crew serving in the fleet at any one time in 2018.
- Persons rescued remains around 25% of fatalities; one in four is rescued.

As noted in the GP Wild study, in every case where the cause of the MOB was established following a careful investigation it was found to be the result of an intentional or reckless act. MOB incidents are primarily linked to human behavior (suicide, recklessness, etc.) rather than existing ship safety features, including the minimum 42" high railings mandated by the 2010 Cruise Vessel Security and Safety Act (CVSSA).

In 2018, with 28.5 million cruise passengers globally, MOB incidents on cruise ships resulted in about one passenger fatality per 2.19 million cruise passengers annually—or 0.0456 fatalities per 100,000 cruise passengers annually. By way of comparison, recent data from the United States Centers for Disease Control and Prevention (CDC) reports<sup>2</sup> the U.S. suicide rate to be 14 events per 100,000 people annually. Given the average length of a cruise is about a week, this would equate to about 0.27 suicide events per 100,000 people per week.

Cruise ships today are the safest that ever sailed due to the enhanced rules, regulations and technological innovations that govern their design and operation. Safety regulations such as minimum railing and balcony heights, structural barriers and other requirements prevent passengers who are acting responsibly from simply falling off a cruise ship.

<sup>1</sup> There were 0.0000425 ( $4.25 \cdot 10^{-5}$ ) overboard reports per active lower berth in 2018, compared to 0.0000657 ( $6.57 \cdot 10^{-5}$ ) in 2009.

<sup>2</sup> Suicide Mortality by State, National Center for Health Statistics, U.S. Centers for Disease Control and Prevention <https://www.cdc.gov/nchs/pressroom/sosmap/suicide-mortality/suicide.htm>, last accessed August 23, 2019.

The 2010 CVSSA specifically requires cruise ships that embark or disembark passengers in the United States to use technology to capture images of passengers or detect passengers who have fallen overboard, to the extent that such technology is available. To comply with this requirement, cruise lines have invested in video surveillance systems. Several cruise lines have also installed MOB detection systems on a developmental basis in order to evaluate their effectiveness and accuracy. A principle concern in the evaluation of these systems is high false-positive rates, which can ultimately cause damage to a ship's safety culture and be counter-productive to effectively detecting instances of MOB.

The International Organization for Standardization (ISO) is working to complete a standard for MOB detection technologies, which will allow operators and other stakeholders to evaluate new and existing systems against an established set of technical criteria, to ensure that installed systems function to a high degree of accuracy and reliability. As the Coast Guard stated in their 2017 MOB report, "Once an international standard is developed with the input of all involved stakeholders, it will be easier to determine the feasibility of overboard detection technologies." CLIA fully welcomes the finalization of this ISO standard.

#### ENVIRONMENTAL STEWARDSHIP

The health of the cruise industry is inextricably linked to a clean and healthy marine environment. Our guests expect to sail on clean oceans and visit scenic pollution free destinations. More importantly, preserving and protecting the environment is simply the right thing to do. That is why environmental sustainability has therefore become a dominant theme in cruise line management.

Each cruise ship receives dozens of inspections each year from the ports they visit, countries where they are registered and other independent agencies, including checks of equipment and practices for waste management, emission reduction and wastewater treatment. In U.S. waters, the Environmental Protection Agency (EPA) and the U.S. Coast Guard enforce rigorous requirements on air, water, power, and waste, including provisions of the Clean Water Act. The cruise industry also participates in International Maritime Organization (IMO) working groups and committees to develop ever more stringent global regulations to protect the environment.

As previously mentioned, over 30 million passengers are expected to cruise this year. While cruise ships comprise far less than 1 percent of the global number of internationally trading ships, the cruise industry is at the forefront of developing sustainable environmental practices and innovative technologies, and has invested over \$22 billion in new energy efficient ships, technologies and cleaner fuels. Onboard, the cruise lines encourage environmental awareness by educating crew and guests regarding cruise ship environmental programs. Cruise line crewmembers take part in comprehensive training programs, and many ships employ a dedicated environmental officer who oversees the environmental program and ensures strict compliance.

With 272 oceangoing cruise ships in operation, CLIA Cruise Line Members continue to transform the modern fleet to protect the oceans, air and destinations enjoyed by millions of passengers each year by following established industry practices including operation of advanced wastewater treatment systems, innovative exhaust gas cleaning systems, energy efficiency management programs, and shoreside electricity technologies.

#### *Emission Reductions*

Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) specifically addresses air pollution prevention requirements. Specific pollutants targeted by Annex VI include: Sulfur Oxides, Nitrogen Oxides, Greenhouse Gases and Particulate Matter. The requirements of Annex VI are implemented through US Legislation (Act to Prevent Pollution from Ships—APPS) and the related US Coast Guard and EPA regulations.

To meet these requirements, the industry has pursued sustainable environmental innovations, new technologies and alternative fuels. Among these advancements adopted by the industry has been exhaust gas cleaning systems (EGCS), which reduce sulfur oxide emissions in a ship's exhaust by as much as 98 percent, and particulate matter by well over 50 percent, including elemental and organic carbon and black carbon. Catalytic filters and other systems further reduce particulate matter by over 30% and nitrogen oxides by up to 12%. Over 68 percent of the industry's current fleet capacity utilizes EGCS to meet or exceed air emissions requirements.

The international maritime industry has also begun exploring the potential for cleaner fuels for future new builds or retrofit projects.

A cleaner fuel already being adopted by several cruise lines is liquefied natural gas (LNG). The industry has invested over \$8 billion in LNG propulsion technology

due to its clean emissions profile. LNG releases virtually no Sulfur Oxides or particulates and 85 percent less Nitrogen Oxides. It also reduces CO<sub>2</sub> emissions by approximately 20%. Currently, 26 LNG-powered ships are on order or under construction. 75 percent of new ships not relying on LNG will have EGCS installed. In addition to design measures, cruise lines have also implemented Ship Energy Efficiency Management Plans to reduce fuel consumption and thereby limit carbon emissions.

In 2018, the IMO adopted the Initial IMO Strategy on Reduction of GHG Emissions from Ships, which established definitive levels of ambition and put the maritime industry on the pathway to reducing annual GHG emissions by at least 50 percent by 2050 as compared to 2008, while pursuing efforts towards phasing them out entirely this century. CLIA and its cruise line members have specifically committed to a first major step in support of the IMO Strategy by agreeing to reduce the carbon intensity, or rate of CO<sub>2</sub> emissions, by at least 40 percent by 2030, as compared to 2008. Cruise lines are actively making their fleets more energy efficient through operational practices, retrofits of equipment on existing ships, and installation of energy efficient technologies and practices on new build vessels. Development of zero-carbon fuels and propulsion technologies for transoceanic shipping remains imperative in order to meet longer term IMO goals to decarbonize the maritime sector as soon as possible this century.

#### *Waste Management*

CLIA and its cruise line members recognize that proper waste management is fundamental to the protection of the environment. The cruise industry demonstrates its commitment to protecting the environment using a broad spectrum of waste management technologies and procedures employed on its vessels. Through the International Maritime Organization (IMO) and flag and port States, cruise lines are subject to comprehensive, consistent and uniform international standards under Annex V of MARPOL, as well as the national, state and/or local regulations that apply to all vessels. For example, the IMO Action Plan to Address Marine Plastic Litter from Ships was adopted in 2018 to formalize efforts to reduce the production of marine plastic litter by the maritime industry. Cruise lines are already taking steps to reduce the amount of plastic litter onboard with efforts such as reducing single-use plastics, banning plastic straws, and optimizing recycling methods.

To improve environmental performance, many cruise lines have installed advanced wastewater treatment systems (AWTS) that utilize tertiary-level treatment to generate effluent discharges often equivalent to the best shoreside treatment plants. CLIA members cooperate fully with national and local requirements in planning wastewater discharges where permitted and encourage the provision of adequate shoreside reception facilities for wastewater where discharge is a concern. All the industry's new ships on order are specified to have these systems, which, consistent with CLIA policy, are well beyond international requirements. Due to the efforts of highly trained waste management professionals onboard, some cruise ships repurpose 100 percent of the waste generated—by reducing, reusing, donating, recycling and converting waste into energy. Cruise lines recycle 80,000 tons of paper, plastic, aluminum and glass each year.

#### *Energy Efficiency*

CLIA and its cruise line members place a high priority on energy efficiency as part of their environmental protection programs. Innovative investments include energy-efficient engines and hull coatings that reduce friction and fuel consumption, as well as energy-saving LED lights and higher efficiency appliances. By switching to low-energy LED lights, newer cruise ships can improve lighting energy efficiency by nearly 80 percent.

To further reduce emissions, 88 percent of our industry's new ships will be fitted with shore-side electricity systems or configured to add shore-side power in the future. Currently, cruise ships may operate on shoreside electricity at 16 ports worldwide where the shoreside infrastructure supports the technology.

#### *Social Responsibility*

The industry has proactively engaged with partners who provide efficient and sustainable strategies for waste and recyclables landed ashore. Cruise industry representatives also participate in regional ocean planning efforts with maritime stakeholders and provide direct input and feedback to address ocean management challenges and the sustainable use of oceans.

The cruise industry remains committed to wildlife and nature conservation. Cruise lines actively train their employees and educate travelers through ads and printed materials, and champion creative campaigns, to raise awareness of the crucial role consumers play in ending illegal wildlife trade. CLIA has joined these efforts by partnering with the U.S. National Park Service to develop a pilot whale

mapping program in Alaska's Glacier Bay; United for Wildlife to combat illegal wildlife traffickers, and The U.S. Wildlife Trafficking Alliance to reduce the purchase and sale of illegal wildlife products.

#### CONTRIBUTION OF THE CRUISE INDUSTRY TO THE U.S. ECONOMY

According to the Business Research and Economic Advisors study on *The Contribution of the International Cruise Industry to the U.S. Economy in 2018*:

- An estimated 13.09 million cruise passengers were sourced from the U.S.
- A total of 12.68 million cruise passengers embarked on their cruises from U.S. ports during 2018. Florida, whose ports handled 7.5 million embarkations, accounted for more than 59 percent of all U.S. cruise embarkations.
- The cruise lines and their passengers and crew directly spent \$23.96 billion on goods and services in the U.S., a 10.5 percent increase from 2016 and a 33 percent increase from 2010. The cruise lines spent \$19.28 billion while passengers and crew spent \$4.67 billion.
- Within the U.S., spending by the cruise lines with their direct suppliers was up from \$11.17 million in 2016 to \$11.74 in 2018.
- The cruise industry generated the direct employment of an estimated 172,326 workers with U.S. businesses, who, in return, received \$8.32 billion in wages and salaries during 2018.
- Including the indirect economic impacts, the spending of the cruise lines and their crew and passengers was responsible for the generation of \$52.67 billion in gross output in the U.S., a 10.3 percent increase from 2016.
- Including the indirect economic impacts, the spending of the cruise lines and their crew and passengers in 2018 was responsible for the generation of 421,711 jobs throughout the country.
- Total wages and salaries paid to these workers was \$23.15 billion

The economic benefits of the cruise industry positively impact every state. This involves travel agency and travel agent sale of cruise bookings, and the procurement of products and services from numerous industry sectors.

#### *Serving the Wider Maritime Industry and Communities*

CLIA members strive to do their part to be positive contributors within the wider maritime community. In particular, our Member Line cruise ships routinely cooperate with Rescue Coordination Centers and serve as search and rescue resources to aid mariners in distress at sea. CLIA members actively participate in the Automated Mutual Assistance Vessel Rescue System—or AMVER—which is a worldwide voluntary reporting system sponsored by the U.S. Coast Guard. It is a computer-based global ship-reporting system used worldwide by search and rescue authorities to arrange for assistance to persons in distress at sea. With AMVER, rescue coordinators can identify participating ships in the area of distress and divert the best-suited ship or ships to respond. CLIA members voluntarily give their time and resources to assisting those in need on the high seas, and they are often recognized for the lives they have saved at AMVER events around the world and annually by the Association for Rescue at Sea (AFRAS) held here on Capitol Hill.

CLIA members are also actively engaged in providing relief and assistance leading up to and following hurricanes and tropical storms. Following the devastation from Hurricane Maria in 2017 and Hurricane Dorian in 2019, CLIA members assisted with evacuations, temporary housing, multiple tons of pallets with food, water, medical supplies, and many other provisions, as well as millions of dollars in donations to support the efforts of non-profit international relief organizations.

Thank you again for the opportunity to provide this testimony to the Committee. I hope the information is helpful in addressing the substantial oversight and accountability of cruise lines, both in the U.S. and internationally. We remain fully and deeply committed to continuous enhancement of the safety of our guests and crewmembers, as it is without question our top priority. In addition, we will continue to be a leader in environmental stewardship in the maritime community. I look forward to answering your questions. Thank you.

Mr. CARBAJAL. Thank you, Admiral Salerno.

Next, Mr. Moilanen, you may proceed.

Mr. MOILANEN. Good afternoon, Mr. Chairman, Mr. Ranking Member, and members of the committee.

First of all, I want to thank the committee for giving the American Bureau of Shipping or ABS the opportunity to attend this hearing today. My name is Adam Moilanen. I am vice president of

the American Bureau of Shipping, and I cover the health, safety, quality, and environmental management system. I would like to provide the committee an overview of ABS and who we are and what we do.

ABS is a mission-focused, not-for-profit organization dedicated to the promotion of safety for the marine and offshore industries. ABS was founded in 1862. And we are the sole American classification society. We are an organization of about 2,800 people made up of naval architects, marine engineers, and other highly technical and experienced professionals with alumni from each State Maritime Academy, including the U.S. Coast Guard Academy and U.S. Merchant Marine Academy and with a number of employees who are active reservists and retired from the U.S. armed services.

With safety as our core value, ABS has now achieved over 3 years of zero lost time work-related injuries for our workforce. ABS has implemented an ongoing safety excellence program as well as life safety rules which includes a stop work obligation, authorizing all employees to intervene if safety is in question in any aspect of their work.

The actual day-to-day work of ABS includes research and rule development, design review, survey during new construction of vessels and units including the associated material and equipment, surveys during operational life of those vessels and units, and performing safety audits of companies in their vessels and units. Note that our rules are a mechanism by which we publish technical safety standards for the industry.

We also publish the ABS Record which provides an up-to-date status of all vessels and offshore units that are classed with ABS. Training of our qualified workforce is supported by a centralized learning organization and ABS Academy.

ABS has also delegated statutory work on behalf of 110 national flag states or countries where vessels and marine-related facilities are registered. In this capacity, ABS and other class societies are referred to as recognized organizations or ROs.

For nearly 100 years, ABS has been the official class society of the United States under the Merchant Marine Act of 1920. ABS has maintained a long and valued relationship with the U.S. Coast Guard, and along with other class societies, performs delegated inspections on behalf of the U.S. Coast Guard which includes the alternate compliance program or ACP.

As stated, ABS plays an important role in marine and offshore safety, but ABS is only one component of the overall safety chain. Shipowners, crews, shipyards, equipment and material manufacturers, port states, flag states, charters, and underwriters all have vital roles as well to support the safety of the vessel, the crew, and the environment.

The control environment for ABS is robust and transparent and includes an extensive internal quality management system. Over 4,000 documented policies, procedures, and work instructions guide our employees in their day-to-day work.

Secondly, we conduct more than 100 internal audits ourselves to assess the quality of our work, and there are more than 50 external audits of ABS every year. External audits are conducted by flag

states, including the U.S. Coast Guard and International Association of Class Societies or IACS, among others.

Continuous improvement is an important element of our quality system with input for change from employees, from clients, from audits, and lessons learned. Port state control, where vessels are boarded when entering port, is an external indicator of the quality of ABS service delivery. In fact, last year ABS maintained its leading position in overall port state control performance, being one of the top performing ROs in all three of the most active regions in the world for the last 3-year period from 2016 to 2018.

For ABS, our objective remains the same as ever, to set standards for safety and excellence in marine and offshore design, construction, and operation and to verify adherence to those standards.

Again, I would like to thank the committee for its time and look forward to answering your questions.

[Mr. Moilanen's prepared statement follows:]

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**Prepared Statement of Adam W. Moilanen, Vice President of Health, Safety, Quality, and Environment, American Bureau of Shipping**

Good afternoon Mr. Chairman, Mr. Ranking Member, Members of the Committee. First of all, I want to thank the Committee for giving the American Bureau of Shipping, or ABS, the opportunity to participate in this hearing today. My name is Adam Moilanen and I am Vice President of ABS overseeing our Health, Safety, Quality and Environmental Management System.

I'd like to provide the Committee an overview of ABS, of who we are and what we do. ABS is a mission-focused not-for-profit organization dedicated to the promotion of safety in the marine and offshore industries.

ABS was founded in 1862 and we are the sole American classification society. We are an organization of about 2,800 people, made up of naval architects, marine engineers, and other highly technical and experienced professionals, with alumni from each State Maritime Academy in the USA, as well as the U.S. Merchant Marine Academy and U.S. Coast Guard Academy, and with a number of employees who are active reservists or retired from our U.S. armed services.

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As stated, ABS plays an important role in marine and offshore safety, but ABS is only one component of the overall safety chain. Shipowners, crews, shipyards, equipment and material manufacturers, port states, flag states, charterers and underwriters all have vital roles as well to support the safety of the vessel, the crew and the environment.

The control environment at ABS is robust and transparent and includes an extensive internal quality management system. Over 4,000 documented policies, procedures and work instructions guide our employees in their day-to-day work. Secondly, we conduct more than 100 internal audits ourselves to assess the quality of our work, and there are more than 50 external audits of ABS every year. External audits are conducted by flag states, including the U.S. Coast Guard and the International Association of Classification Societies (IACS), among others.

Continuous improvement is an important element of our quality system with input for change from employees, clients, audits and lessons learned.

Port State Control, where vessels are boarded when entering port, is an external indicator of the overall quality of ABS service delivery. In fact, last year, ABS maintained its leading position in overall Port State Control performance, being one of the top performing ROs in all three of the most active regions of the world for the three-year period of 2016 to 2018.

For ABS, our objective remains the same as ever: to set standards for safety and excellence in marine and offshore design, construction and operation and to verify adherence to those standards.

Again, I would like to thank the Committee for its time today, and I look forward to answering your questions.

Mr. CARBAJAL. Thank you, Mr. Moilanen.

Next, Mr. Smith, you may proceed.

Mr. SMITH. Thank you, Mr. Chairman, Ranking Member Gibbs, and distinguished members of this subcommittee.

My name is Aaron Smith, and I have the pleasure of serving as president and CEO of the Offshore Marine Service Association or OMSA. I want to thank you for allowing me to speak here.

Safety is a culture in our industry, and I am honored to be here to share with you how the domestic maritime industry not only strives to ensure that everyone goes home at the end of their hitch but also explain how this committee can help enforce current laws that safeguard American lives, American jobs, and our national security.

Mr. Chairman, my organization represents the U.S.-flagged vessels and associated supply chain engaged in constructing, maintaining, and servicing offshore energy infrastructure, including the oil and gas fields of the Gulf of Mexico, and increasingly, the offshore wind fields of the east coast. We represent in total 170 member companies across the United States, and we are proud to report that our collective TRIR incident rate is more than two times better than the general oil and gas production industry.

OMSA has two complementary purposes, to increase industry safety and to ensure proper enforcement of the Jones Act which, as this committee knows, is vital to our national homeland and economic security. And while the offshore energy industry continues to strive for zero incidents, our achievements could not happen without the United States Coast Guard. They serve as our regulator, but they also serve as our first responders.

And we think what this committee has done to advance legislation to ensure that our 42,000 Coast Guard men and women who protect our Nation and protect our industry will never again miss a paycheck because of politics.

While safety is intrinsic to our industry, the flag state laws governing United States vessels are some of the more stringent in the world. However, many of these laws are not applied to the foreign vessels operating here. The net result is the U.S. has created an unlevel playing field that favors foreign vessels and mariners doing business in our Nation's own waters.



As a few examples, when here, foreign vessels are not required to report the same level of incident data that we have to report to the United States Coast Guard. Additionally, foreign vessels can and do employ foreign nationals who may not follow the same safety standards as U.S. mariners and are paid a fraction of what OMSA members pay their U.S. mariners, creating a lucrative cost advantage for these vessels.

Use of these mariners also causes security problems as many come from non-aligned nations such as Russia and China and are issued 5-year visas with little oversight. Moreover, U.S. law requires all persons on board a U.S.-flagged vessel to have a merchant mariner credential.

Conversely, almost every foreign nation allows only the marine crew to have such a license. The cost differential caused by this requirement can stretch to \$1,000 per person.

Outside of mariners, our industry utilizes modules to customize every vessel for each operation or contract. Regardless of complexity or risk, the Coast Guard requires the U.S.-flagged vessels to be subjected to lengthy plan approval and physical inspections. The cost and delays associated with this requirement which are not enforced on foreign vessels have directly cost OMSA members jobs and work.

Considering the higher safety standard carried by U.S.-flagged vessels, one of the best ways to protect mariner safety is to fully enforce the Jones Act. Unfortunately, between 1976 and 2009, Customs and Border Protection created numerous loopholes to the Jones Act which have allowed foreign-flagged vessels to transport energy equipment between U.S. points in contravention to the law and in detriment to U.S. mariners.

Since 2009, CBP has openly acknowledged three times that they wrongly exceeded their authority. The first two times, CBP failed to follow through with their promised remedy. The third time came last month.

In this instance, CBP also sought to revoke the so-called Koff or heavy lift rulings where they had correctly enforced the law and prevented foreign-flagged vessels from moving heavy lifts between two U.S. points. In place of the Koff ruling, CBP has proposed legally dubious definitions which not only help foreign vessels to conduct all lifts in contravention to the law but create new loopholes in the Jones Act. These definitions are outside the law and are unnecessary.

This committee in its wisdom and in its constitutional authority has already created and passed through the House a legal, transparent, and safe ways for these heavy lifts to be conducted.

The U.S. offshore industry has now been waiting for 10 years and 1 month to see the Jones Act properly enforced and put our American mariners back to work. Without proper enforcement of the Jones Act, we instead cede this work to foreign vessels which do not comply to the same safety standard as U.S. vessels. They also do not comply to the same standards we have for environmental safety or security laws.

For these reasons, we hope the committee will join us in working towards correct enforcement of the Jones Act, and I look forward to your questions.

Thank you.  
[Mr. Smith's prepared statement follows:]

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**Prepared Statement of Aaron C. Smith, President and Chief Executive  
Officer, Offshore Marine Service Association**

Chairman Maloney, Ranking Member Gibbs, and Members of the Subcommittee, thank you for allowing me to speak at this important hearing. My name is Aaron Smith, and I have the pleasure of serving as the President and CEO of the Offshore Marine Service Association (OMSA).

WHO WE ARE

OMSA is the association for the domestic offshore marine transportation industry. Traditionally, many of our members own and operate the U.S.-flagged vessels engaged in constructing, maintaining, and servicing oil and gas infrastructure on the Outer Continental Shelf (OCS). More recently and in increasing numbers, OMSA members are engaged in constructing and servicing the offshore wind market along the East Coast.

OMSA's members also include many shipyards that construct, maintain, repair, and modernize both privately and government-owned U.S. fleets. In addition, we represent associated suppliers and allied companies that provide supplies, services, and training to these vessel operators and shipyards.

In total, OMSA represents approximately 170 companies and their approximately 12,000 employees. While these companies and employees are primarily based in the Gulf Coast, OMSA has an increasing presence on the East and West Coasts. In addition to geographic disparity, we also represent business of varying size, from large publicly traded companies to small family-owned businesses. Some of our members have hundreds of vessels while others operate only one or two.

IMPORTANCE OF SAFETY TO OUR ORGANIZATION AND MEMBERSHIP

OMSA has two stated and complementary purposes. Our organization exists to promote the highest standards of safety. Specifically, we work to constantly improve the training of mariners and offshore workers and ensure international and domestic laws and regulations are written and implemented in a way that benefits mariners, contractors, workers, vessel operators, the general public, and the environment.

Toward this end, OMSA is one of three accreditation bodies to conduct SafeGulf training. SafeGulf is a standardized safety orientation program that ensures everyone who works in the energy industry—onshore or offshore—receives the same comprehensive, independently audited safety training. Additionally, as a member of the SafeGulf Advisory Group, OMSA helps set the standards for this program, working to ensure that as the offshore energy industry changes, the SafeGulf orientation changes with it.

Additionally, OMSA created their own system dynamic positioning operator (DPO) training and certification scheme, one which exceeded the existing industry standards.

Dynamic positioning (DP) is used to hold vessels in position in situations where mooring or anchoring cannot be utilized; usually, this means when two vessels or a vessel and an installation are close to each other. As such, DP operations are, by their very nature, safety critical activities. The existing training system did not adequately account for this criticality. Thus, OMSA created its own program, called the Offshore Service Vessel Dynamic Positioning Authority (OSVDPA). This DPO certification program is an improvement upon the existing industry standard, including increased assessments, increased experience verification systems, and true-to-life simulations.

I am proud to also run the OSVDPA and via my work with the OSVDPA, I also sit on the Marine Technology Society DP Committee's Guidance and Standards Subcommittee. This committee sets design, operational, and competency standards intended to improve the safety of the DP industry. Also, I am currently part of an Oil Company International Marine Forum (OCIMF) ad hoc working group to re-write the OCIMF DP risk assurance guidelines.

The importance of safety and the constant drive toward zero incidents is operationalized by OMSA members. You see it in the safety management systems of OMSA members. These systems include the policies and procedures which are

utilized to prevent, respond to, and correct incidents. The specificity of these systems is truly impressive.

They include not only training requirements, procedures for big operations, requirements for job safety analyses (or JSAs), and stop work authority. They include seemingly minor components like how workers should park their cars and admonishments about using cell phones while driving to and from work.

The result of these systems is quantifiable. Every year OMSA collects Total Recordable Incident Rate (TRIR) data from its member companies. Last year, the collective OMSA TRIR was 0.29. For comparison, the Bureau of Safety and Environmental Enforcement (BSEE) reported that the TRIR for the oil and gas production sector was 0.8, drilling and well operations was 0.6, and construction and decommissioning was 0.7. In short, the OMSA Member TRIR is significantly lower than any peer group.

#### IMPORTANCE OF INDUSTRY PARTNERSHIP WITH THE U.S. COAST GUARD

While OMSA, OMSA Members, and the offshore energy industry have taken immense measures to improve the safety of our industry, there is another party that must be recognized as one of the primary factors for the safety of our industry. Specifically, the safety advancements achieved by our industry could not have happened without the U.S. Coast Guard. The Coast Guard is not only our industry's regulator, they are also who the offshore industry calls when everything has gone wrong. They are our first, and often only responders.

The roles of regulator and rescuer are in addition to the roles our Coast Guardsmen and women play as part of our national and homeland security apparatus, protecting our borders—both land and sea borders—and conducting drug interdictions on our Outer Continental Shelf (OCS) and on the high seas beyond.

For all of these reasons, it is unconscionable that 2018 started with a 35-day period where our 42,000 Coast Guardsmen protected our industry and our nation were not receiving a paycheck for doing so. In my mind, the single most important thing this Subcommittee, Committee, and Congress can do to provide for the safety of our industry is to ensure that disagreements in Washington never cause those protecting or rescuing us from being paid for doing so.

#### SAFETY OF THE U.S.-FLAGGED FLEET

When these two parties, the U.S. offshore marine industry, and the U.S. Coast Guard work together the result is the impressive safety record indicated by the TRIR stats previously cited.

Beyond the safety culture of OMSA members and the professionalism of the U.S. Coast Guard, this record is also in many cases a result of U.S. Coast Guard regulations covering the U.S.-flagged fleet which are more stringent than those governing foreign-flagged vessels that operate in U.S. waters. The net result is that the U.S. has created an uneven playing field that favors foreign vessels and mariners in our own waters.

While most nations meet the standards set by the International Maritime Organization (IMO) conventions, such as the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), International Convention for the Safety of Life at Sea (SOLAS), and the International Convention for the Prevention of Pollution from Ships (MARPOL), these are only minimum standards. Above those conventions each flag state has more extensive regulations for the ships in their registry.

The U.S. Coast Guard's regulations and policies are some of the more stringent within IMO White List nations. However, many of these regulations are only applicable or are only applied to U.S.-flagged vessels. OMSA has compiled a list of some of the more ready examples.

#### *Incident Reporting*

At 46 C.F.R. § 4 is the requirement for U.S.-flagged vessels reporting marine casualties to the U.S. Coast Guard. This regulation is more stringent than those same requirements for foreign flagged vessels operating in U.S. waters. Specifically, when a vessel is operating beyond the boundary line (12 nautical miles from shore) U.S.-flagged vessels must report incidents resulting in injuries to less than five people; groundings; allisions; loss of propulsion steering, or other impairment of the vessel its components and cargo; adverse impact to the vessel's seaworthiness; and significant harm to the environment must be reported.

Obviously, that is all information that is good for a safety regulator to have. It is especially problematic to think that the foreign-flagged vessels operating in U.S. waters are not reporting this information when such vessels are often in U.S. waters

for days, week, months, and even years without coming into port. As such, unless the vessel operator or the charterer proactively reports an incident to the Coast Guard, the Coast Guard may never know about—as purely hypothetical examples—a foreign-flagged accommodation vessel losing power and floating through a crowded field, or a foreign-flagged tug hitting an installation.

#### *Foreign Manning*

The differences in U.S.-flagged vessel regulations and foreign-flagged vessel regulations are not constrained to the vessel itself. 33 C.F.R. § 141.5 allows vessels with an ownership structure that is more than 50 percent foreign to employ foreign nationals in U.S. waters. Specifically, these foreign mariners are provided a five-year visa to come and work as a mariner in the U.S. Moreover, the employer of such a mariner does need to prove that there is a lack of U.S. mariners before the visa is issued. In fact, the vessel operator does not need to even regularly prove the vessel is more than 50 percent foreign owned; once this determination is made one time, it is good for the life of the vessel. Finally, when foreign mariners work in U.S. waters, there is not a requirement that they are paid U.S. wages. As such, many of these mariners will be paid a fraction of what a U.S. mariner would be paid, thereby creating a lucrative cost advantage for the foreign vessel operators.

The problems with how these regulations are implemented extend beyond the economic disadvantages to U.S. vessel operators. The implementation of these regulations also causes situational awareness and security problems for the U.S. Coast Guard on our OCS. These foreign mariners are issued visas with little oversight. Which is a problem when you consider the critical nature of the work that is done on the OCS and the catastrophic results that can occur when things go wrong. The problem is further exacerbated when one considers that many of these mariners come from nations that cannot be considered allies. Specifically, one of the largest pools of mariners for the offshore energy industry are Russian nationals.

#### *Mariner Versus Industrial Worker*

On the topic of mariners is a provision in the U.S. Code which disadvantages U.S. vessel operators. 46 U.S.C. § 8701 requires all persons aboard a U.S.-flagged vessel to have a merchant mariner credential, essentially a Coast Guard license. Conversely, almost every foreign-flagged vessel only requires the marine crew to have such a license. This law has only recently been enforced by the U.S. Coast Guard; however, it is very costly for U.S. vessel operators. The amount of training and other requirements which are part of a U.S. Coast Guard license is at least \$7,000, plus the time it takes to secure such a license.

This is especially problematic because as offshore energy operations have gotten more complex, and the safety culture of vessel operators, charterers, and third parties has improved, more and more personnel have been added to the lists of people on board a vessel. These additional personnel are remote operated vehicle (ROV) pilots, crane operators, acoustic data experts, representatives of the charterers and vendors, and other professionals. They are not engaged in the operation of the vessel nor are they ever unescorted in critical areas. For this reason, in almost every country in the world, they are not required to be a licensed mariner. However, they are in the U.S. system. This is another U.S. regulation that makes a U.S. flagged vessel more expensive than a similarly equipped foreign-flagged vessel.

#### *Portable Accommodation Modules (PAMs)*

Offshore energy vessels are designed to be versatile so that they can perform a variety of missions. To customize these vessels, owners, charterers, or third-party vendors and contractors will install modules on a vessel. These modules can be as simple as a completely freestanding shipping container with a light and a workbench inside or as complex as living quarters completely integrated into a vessel's power, water, and HVAC systems.

As the risk level varies greatly between the above examples, international industry standards have differing inspection requirements. The American Bureau of Shipping (ABS) has internationally accepted guidelines which distinguish between Portable Accommodation Modules (PAMs), which must be inspected, and industrial modules which do not “so long as the modules are unmanned during heavy weather and sufficient space for the entire complement of personnel assigned to work in the unit(s) is provided in a deckhouse, superstructure, or module complying fully with applicable structural requirements.”

In contrast to the existing industry standards, in 2016, the USCG released the CG-ENG Policy Letter 01-16, Portable Accommodation Module (PAM) Guidance, (PAM Policy Letter), which applies to “any non-integral enclosed space that is installed on a host vessel or facility, and occupied by personnel for berthing, rec-

reational, service, or industrial purposes”—essentially any module placed on a vessel.

Not only does the PAM Policy Letter apply a single standard to modules with varying risk profiles, its requirements are onerous. The Policy Letter requires all plans, arrangements, and specifications for the module itself, where it will be placed on the vessel, and how it will be attached to the vessel and/or connected to any vessel system to be submitted to the relevant Coast Guard inspector, the Authorized Classification Society (ACS), and/or the Marine Safety Center (MSC).

In addition to plan approval, a physical inspection is required by the USCG. This requirement is difficult to comply with, as scheduling these inspections requires a minimum of two weeks. With the “just-in-time” nature of the offshore energy industry these timelines can simply not be adhered to.

That fact would not be as problematic if every vessel operating on the U.S. OCS had to comply with the PAM Policy Letter. However, that is not true. The PAM Policy letter *again* applies only to U.S.-flagged vessels. Foreign-flagged vessels have been able to take advantage of this requirement, taking jobs from U.S. vessels based upon the fact they could get the work done sooner because they did not have to wait for Coast Guard inspections.

#### *Inspection Forms*

Additionally, in the last year our industry has noticed a new enforcement regime on U.S.-flagged vessels. For example, the U.S. Coast Guard has long used CG-835V “Vessel Inspection Requirements” to document deficiencies found on U.S.-flagged vessels. In the past, minor, immediately corrected items found during an inspection were not recorded on an 835 but were, instead, addressed on the spot, or documented on a “work list” and addressed immediately after the inspection. This system reflected the lower risk profile carried with addressing these items.

However, OMSA members no longer find these accommodations to be provided. Instead, every single deficiency is now documented by USCG personnel on an 835. While that might not sound like much of a burden, the problem is all deficiencies documented on an 835 need to be corrected and then the correction needs to be inspected in a follow up by a Coast Guard or other third-party inspector. Which means the vessel operator either has to wait for a Coast Guard inspector to become available or pay a third party to have the repair inspected. This change in strategy means that it might cost a vessel operator thousands of dollars and a day at the dock to have the changing of a light bulb inspected.

Once again, the 835-inspection system is only for U.S.-flagged vessels, thereby creating a cost and time-based competitive disadvantage for U.S.-flagged vessels when compared to their foreign-flagged competitors.

#### LACK OF JONES ACT ENFORCEMENT

The above are just a few examples of how U.S.-flagged vessels carry a higher standard of safety and security when compared to foreign-flag vessels operating in the same space and providing the same services. Thus, one of the best ways the safety of the maritime industry can be increased is to fully enforce the Jones Act. Enforcement of this statute is OMSA’s second primary mission, one complementary of our mission to increase the safety of our industry.

Unfortunately, the Jones Act is not currently fully enforced as it relates to the offshore energy industry. Specifically, for the last three decades, the Federal Government has allowed foreign vessels to do work the Jones Act reserves for U.S.-flagged vessels. In addition to benefiting foreign companies, foreign ships, and foreign mariners to the detriment of U.S. mariners, shipyard works and U.S. taxpayers it also increases the number of vessels on our OCS that comply with a lower safety standard.

Unfortunately, CBP has allowed this to happen by confusing and degrading the clear standard proffered by the Jones Act by issuing interpretations of the statute that are directly contrary to the Jones Act’s text, structure, and purpose.

Specifically, between 1976 and 2009, CBP issued several letter rulings which allowed foreign flag vessels to transport offshore energy cargos (called “merchandise” under the Jones Act) from U.S. ports to locations on the U.S. OCS. These letter rulings are CBP’s responses to private correspondence. They were issued without any notice or comment before their publication.

Without any basis in law, CBP’s letter rulings have green lit proposals by foreign vessel operators to transport merchandise to and from U.S. points on the OCS, using vessels that do not comply with the standards that U.S.-flagged vessels have to meet.

The problem started in Letter Ruling HQ 101925 (also known as T.D. 78-387 Oct. 7, 1976). In this letter, CBP permitted the foreign-built vessel to transport pipeline

connectors, pipe and repair materials, wellhead equipment, and other materials from the U.S. mainland to a point on the OCS. CBP has applied—and extended—the flawed reasoning of that letter ruling dozens of times.

Furthermore, CBP has issued letter rulings that improperly narrow the definition of “merchandise” that must be transported by Jones Act qualified vessels. By its plain language, the Jones Act applies to the all transportation of “merchandise,” and defines that term with broad, sweeping language by specifically including even “valueless material” in 46 U.S.C. § 55102(b), and prescribing only limited, explicit exceptions for narrow categories of merchandise, such as empty cargo containers—and only then when a foreign government extends reciprocal privileges to such items. Despite this binding law by Congress, CBP has mis-interpreted “merchandise” in an unlawfully narrow fashion, labeling as “vessel equipment” exempt from the Jones Act large categories of articles, such as oilfield equipment, that are transported by a vessel from a port and installed on the OCS by vessels that comply with a lower safety standard enforced by the U.S. Coast Guard.

#### 2009 REVOCATION EFFORT

CBP realized its errors and in 2009 issued a notice that it intended to revoke many of these flawed letter rulings. That notice was very candid when it admitted that the agency had not been following the law:

CBP recognizes that allowing a foreign-flagged vessel to transport articles that are not needed to navigate, operate, or maintain that vessel or for the safety and comfort of the persons on board that vessel, but rather to accomplish a[n] activity for which that vessel would be engaged, would be contrary to the legislative intent of [the Jones Act] (Proposed Modification and Revocation of Ruling Letters Relating to the Customs Position on the Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points, 43 Cust. B. & Dec. No. 28, at 61 (July 17, 2009)) (2009 Notice).

The Notice also stated:

CBP recognizes that allowing foreign-flagged vessels to transport merchandise from one U.S. point and install that merchandise at another point on the OCS on the condition that it merely be accomplished ‘on or from that vessel’ would be contrary to the legislative intent of [the Jones Act] (2009 Notice).

CBP failed, however, to revoke the unlawful letter rulings. On September 15, 2009, at the urging of foreign vessel owners and charterers of vessels who were benefiting from CBP’s unlawful opinions, CBP made a final decision to withdraw its proposed action and announced that a “new notice . . . will be published in the *Customs Bulletin* in the near future.” While the suspension of the 2009 Notice of Revocation was disappointing, CBP did not reverse its determination that its letter rulings were inconsistent with the Jones Act.

#### AFTER THE 2009 NOTICE OF REVOCATION

Three things happened after CBP suspended their 2009 Notice of Revocation. First, relying on CBP’s promise to act “in the near future,” OMSA members invested \$2 billion in U.S. shipyards to construct dozens of the state-of-the-art vessels required to do the work covered by the Revocation notice. Not only were these vessels built with the latest technology, they also were, obviously, U.S.-flagged, and therefore subject to increased safety standards when operating in U.S. waters, when compared to foreign-flagged vessels as evidenced by the above examples.

Second, OMSA spent countless hours meeting with CBP and documenting violations of the Jones Act that exist under the faulty letter rulings.

Finally, CBP issued letter rulings which accurately upheld the law. Specifically, it issued three rulings referred to as the “Koff” rulings (HQ H 225102) (September 24, 2012); (HQ H235242) (November 15, 2012); and (HQ H242466) (July 3, 2013). In these rulings, CBP correctly enforced the Jones Act, stating that a foreign-flag heavy lift vessel could not move merchandise between two points on the U.S. OCS, even though the moves made by this vessel were relatively short in distance. These rulings were viewed as problematic within the offshore energy community for two reasons. First there were not U.S. vessels to conduct the operations at issue in the letter rulings. The vessels necessary are large, highly specified vessels that conduct very rare but very important projects. These projects are so rare that the small fleet of vessels that perform these operations need a worldwide steam of projects—and heavily government subsidized shipyards—to be profitable.

While the Jones Act community was pleased that these letters represented CBP adhering to the statute, those who sought to utilize these vessels were not pleased, not only because of the specific operations in question—which again happen only rarely—but also because the denial of these letter ruling requests represented the apparent change in enforcement posture evident in the Koff rulings could spill into the countless other areas of projects that happen on a daily basis in which CBP had been allowing foreign vessels to engage.

#### 2017 NOTICE OF REVOCATION

The “near future” promised by the suspension of the 2009 revocation effort appeared to come on January 18, 2017 with CBP issuing another notice of revocation. The 2017 Notice proposed the revocation or modification of 25 letter rulings which allow foreign-flagged vessels to move energy related merchandise from U.S. ports to locations on the U.S. OCS.

Like the 2009 notice, the 2017 Notice demonstrated remarkable and laudable honesty, stating that it had created wholesale exceptions to the Jones Act that were not found in the statute. It also stated that the CBP-created loopholes were not found in statute and should be withdrawn. (See “Proposed Modification and Revocation of Ruling Letters Relating to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points,” 51 Cust. B. & Dec. No. 3, at 4 (Jan. 18, 2017)) (2017 Notice).

OMSA and numerous OMSA members submitted comments in support of the 2017 Notice. In addition to these comments, 34 U.S. Representatives—including half of the members of this Subcommittee—and 10 U.S. Senators sent letters in support of CBP’s 2017 Notice.

Despite this second acknowledgement that they were not enforcing the laws that Congress had passed and the widespread support this Notice received, on May 10, CBP once again made a final decision to withdraw their revocation notice stating, “[b]ased on the many substantive comments [it] received,” it needed “further research on the issue” and was therefore “reconsider[ing]” whether to withdraw and/or revoke the letter rulings identified in the 2017 Notice (Withdrawal of Proposed Modification and Revocation of Ruling Letters Relating to Customs Application of the Jones Act to the Transportation of Certain Merchandise and Equipment between Coastwise Points, 51 Cust. B. & Dec. No. 19, at 11 (May 10, 2017)).

This notice and comments from CBP personnel to congressional staff are unfortunate because they seem to indicate that CBP’s sustained acknowledgment that its letter rulings flouting the Jones Act do not matter. Further, the comments by CBP imply that the Administration is allowed to discuss and study if it wants to comply with the laws passed by Congress.

#### AFTER WITHDRAWAL OF THE 2017 NOTICE

It is clear who benefited from the withdrawal of the 2017 Notice. Foreign vessel owners and their trade associations claimed victory. One email I received from a London-based trade association for the international competitors of OMSA members called it a “fantastic result” and that everyone should “celebrate a positive result.”

OMSA members were not in a celebratory mood. In fact, 12 days after CBP withdrew the 2017 Notice, one OMSA member lost a lucrative job to a foreign flag vessel. The job in question was work that was covered by the revocation notice. The foreign vessel that took this contract was able to do so by not complying with the above-described U.S. regulations and was able to underbid the OMSA member by 25 percent.

Again, OMSA attempted to work with CBP and the Administration to help them find a way to follow the law. As part of these discussions, it became apparent that CBP would not be able to move our issue forward until it was able to find a solution to the “heavy lift” problem.

This “problem” is the plain reading of the Jones Act and its prohibition on foreign-flagged vessels engaging in “any part” of the transportation of merchandise. Understanding that the U.S. market did not have any of these heavy lift vessels because of the factors listed above, OMSA worked with members of this committee and Congressional leaders, including Chairman DeFazio, Congressman Graves of Louisiana, Congressman Garamendi, Congressman Scalise, and Congressman Lowenthal to develop a legislative solution.

We worked with this Committee and these members because OMSA understood that if changes to the Jones Act are necessary, Congress should enact them. Our solution was based on an existing legislative solution that provides market transparency and the ability to utilize foreign-flagged heavy lift vessels when there is not a suitable U.S. vessel available.

## 2019 REVOCATION EFFORT

Last month, CBP again issued a revocation notice. (See *Customs Bulletin* (Vol. 53, No. 38, October 23, 2019) “Proposed modification and revocation of ruling letters relating to CBP’s application of the Jones Act to the transportation of certain merchandise and equipment between coastwise points”) (2019 Notice).

Just as the 2009 and 2017 Notices had before, the 2019 notice again confirmed that a number of previously issued letter rulings are not consistent with the Jones Act and must be revoked or modified.

Unfortunately, CBP did not follow the heavy lift solution proposed by this Committee and adopted by the U.S. House of Representatives. Instead, the 2019 notice revokes the previously mentioned Koff Rulings and replaces them with interpretive guidance which will allow for foreign-flagged vessels to transport merchandise when engaged in lifting operations. This definition does not only cover those very specialized and rare operations I mentioned before. Instead, the loophole offered by CBP applies to the lifting of any offshore subsea merchandise. These are operations that the dozens of U.S. vessels that have been built since the 2009 notice conduct on a daily basis—at least, those that haven’t been idled.

This definition is also very problematic because it proposes to create loopholes in the Jones Act which would allow for foreign-flagged vessels to move merchandise on the OCS, provided the foreign-flagged vessels claim such movements are necessary for safety or practical purposes.

As previously stated, OMSA and OMSA members view safety as vitally important and we stand behind the safety of the U.S.-flagged maritime industry. We have doubts that the reasoning CBP adopts will actually increase safety; that is, the CBP proposal effectively encourages additional lifts of merchandise by multiple vessels, instead of using U.S. vessels that can transport from shore and have cranes to lift. Moreover, in the statute there is not a safety exemption to the Jones Act, and we worry about operators using this flawed reasoning by CBP as a pretext to violate the law and use cheap foreign vessels. In addition, we agree that heavy lift operations need to happen; for that reason we worked with this committee to provide for a legally viable way for these operations to happen in a safe and transparent manner. And again, the CBP’s new loophole covers the work that can and is conducted by U.S.-flagged vessels, vessels that when operated in U.S. waters adhere to a higher safety standard than their foreign-flagged counterparts. If safety is the goal, these U.S.-flagged vessels should be utilized.

For all of the reasons stated above, OMSA will continue to strive for increases in safety in our industry and increased Jones Act enforcement. We believe these goals will complement each other. We are grateful for the support for this mission provided by this Committee and we look forward to continuing to work with you on these important missions.

Thank you for the opportunity to testify before the committee on such an important matter. I look forward to your questions.

Mr. CARBAJAL. Thank you, Mr. Smith.

Ms. STEPHENS, you may proceed.

Ms. STEPHENS. Thank you, and thank you, Congressman Young, for the kind introduction. It is nice to hear from a fellow Alaskan.

I am here today on behalf of the Passenger Vessel Association. It is a trade association representing the owners and operators of U.S. Coast Guard inspected vessels. Our membership has approximately 1,500 vessels, 600 business owners and businesses represented.

PVA and the industry that we represent has a responsibility to be vigilant in addressing safety concerns. An essential reason for PVA’s existence is to promote safety among its members and, indeed, among the operators of passenger vessels.

To meet this responsibility, PVA develops and offers effective training programs and tools that vessel operators can easily implement. Some of these tools include preventive maintenance and guidance and documents, deckhand training manuals, and video training tools on firefighting, lifesaving, and other systems.



PVA has its own safety management system for domestic passenger vessels. We call this Flagship. In June of 2017, the Coast Guard Director of Inspections and Compliance characterized Flagship as a remarkable achievement that meets the objectives and functional requirements for an SMS and a voluntary program that can be accepted by the Coast Guard. All of PVA's safety products can use and benefit smaller businesses like me or larger businesses with multiple vessels in their fleet.

PVA interacts with the Coast Guard in a formal body known as the Coast Guard PVA Quality Partnership or QP. In our most recent QP meeting at Coast Guard headquarters last week, we discussed, among other things, what PVA has done to communicate safety information to members following the fire on the California dive boat, the *Conception*, who was not a PVA member. Over the years, the National Transportation Safety Board has made several recommendations to PVA, and we have responded to each of those appropriately.

PVA's efforts to promote safety on passenger vessels depend on an engaged, well-trained, and adequately funded Coast Guard marine safety workforce. Coast Guard inspectors visit and rigorously examine domestic passenger vessels at least once a year. Having this direct Coast Guard presence on passenger vessels is essential and has successfully promoted safety.

In the early 2000s as the Coast Guard made security a priority, the agency allowed the marine safety function to deteriorate. This situation became alarming enough that in 2007, this committee under the leadership of Chairmen Oberstar and Cummings, pressed the Coast Guard to reinvigorate its marine safety mission. The result was the Coast Guard's action plan entitled "Enhancing the Coast Guard's Marine Safety Program."

Are the action plan's objectives being met? Are the goals for the number and competence of the marine inspectors being satisfied? Some have suggested that the Coast Guard should delegate inspection functions of domestic passenger vessels to a third-party organization as has been done for towing vessels and certain deep draught vessels. PVA adamantly believes that this would be a mistake in policy. It would deprive the Coast Guard marine safety personnel of the intimate knowledge of the domestic passenger fleet.

Furthermore, third-party organizations do not have the expertise regarding domestic passenger vessels. Direct Coast Guard inspection of domestic passenger vessels is the best way to promote safety.

In the Passenger Vessel Safety Act of 1993, Congress determined that a vessel carrying more than six passengers for hire must meet rigorous safety standards and be inspected by the Coast Guard at least annually. These requirements exist primarily for safety of the paying passengers. They ensure that the vessel is constructed properly, that its master and crew have the proper documents and training, and that it has the appropriate fire protection, communications, and lifesaving equipment.

Far too frequently, persons with full knowledge of Coast Guard requirements try to take illegal regulatory shortcuts and make a quick buck by using an uninspected vessel to carry more than six

passengers for hire. This is unlawful and jeopardizes the passenger safety.

In my written statement, you will find details about two recent incidences in Florida in which passengers on illegal charters died as a result of improper training and inactions by the boat crew. The problem of illegal charters has always existed, but it seems to have become much worse. It is simple to market an illegal charter to any audience on boat-sharing websites. This happens all over the country. The Coast Guard has recognized the problem and has begun to crack down. PVA applauds the Coast Guard, but unfortunately, the temptation for people to engage in illegal charters is so compelling that the enforcement seems to be a constant game of whack-a-mole for them to keep up with.

Thank you very much for this opportunity to participate in the hearing. PVA encourages the subcommittee to stand by the statutory and regulatory requirements for safety on vessels that carry passengers for hire. Congress can best ensure safety on domestic vessels by strongly supporting and adequately funding the Coast Guard and marine safety mission. Thank you.

[Ms. Stephens' prepared statement follows:]

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#### **Prepared Statement of Colleen Stephens, Vice President, Passenger Vessel Association**

##### INTRODUCTION

Good afternoon. I am Colleen Stephens of Valdez, Alaska. My company, Stan Stephens Glacier & Wildlife Cruises, operates two 149-passenger Coast Guard-inspected sightseeing vessels. We offer multi-hour cruises to view glaciers and wildlife in Prince William Sound. We have been in business 48 years and carry roughly 18,000 persons each year from May to September.

I testify in my capacity as Vice President of the Passenger Vessel Association (PVA). PVA is the national trade association representing owners and operators of U.S.-flagged, Coast Guard-inspected passenger-carrying vessels of all types, including sightseeing and excursion vessels, vehicle-carrying and passenger-only ferries, dinner cruise boats, whalewatching vessels, gaming vessels, "small-ship" overnight cruise vessels, and windjammers. Our members operate approximately 1,500 vessels. Our total membership is about 600 companies, including associate members who are shipyards, engine manufacturers, naval architects, marine equipment suppliers, and insurance companies.

##### PVA'S ROOTS IN SAFETY

PVA and the industry that we represent have a responsibility to be ever-vigilant in addressing safety concerns. An essential reason for PVA's existence is to promote safety among its members and indeed among all operators of domestic passenger vessels. We believe strongly that this is a primary mission of our association. To meet this responsibility, PVA develops and offers effective training programs and tools that vessel operators can easily implement.

PVA has deep roots in safety. In fact, the association was formed nearly 50 years ago around a need to identify reliable sources of marine insurance and to work with the Coast Guard on regulatory matters and vessel inspection issues.

In those early days, PVA (then the National Association of Passenger Vessel Owners) was made up of a relatively small group of individuals who operated primarily on the U.S. Inland River System. These operators were industry pioneers, who in many cases fashioned their businesses to reflect the romance associated with our country's rich riverboat history. While they built their businesses, they also recognized the need to expand training to protect passengers and crew. As the association grew, its members became more diverse, and PVA started attracting other types of vessel operators as members. A prime attraction for these new members was their desire access safety training tools produced by PVA.

An essential component of PVA is its Safety, Security and Risk Management Committee. The committee's volunteer members have produced and released an array of new training tools, manuals and guidelines for PVA members to use in company training programs. These include:

- Preventative Maintenance checklists and guidance documents;
- Deckhand and Senior Deckhand training manuals;
- PVA/Coast Guard Risk Guide;
- Rail Jumper Guidance;
- Crew Drug Testing tools;
- Video training tools on firefighting, line handling, lifesaving equipment, personal safety for crew members, and preventing slips, trips, and falls; and
- A white paper focusing on combatting "slips, trips and falls" aboard passenger vessels.

More recently, PVA launched an online crew training program to help PVA members make their safety and risk management programs and training even easier, effective, and more sophisticated.

Following enactment of the Coast Guard and Maritime Transportation Act of 2010, PVA developed its own Safety Management System (SMS) expressly for domestic passenger-carrying vessels. We call it "Flagship." In June 2017, the Coast Guard's Director of Inspections and Compliance characterized the Flagship SMS as a "remarkable achievement" and advised PVA that "Flagship SMS meets the objectives and functional requirements for a SMS as per 33 Code of Federal Regulation (CFR) Part 96, and this voluntary program can be accepted by the Coast Guard as it endeavors to enhance regulatory compliance and safety on domestic passenger vessels."

All PVA safety products are such that they can be used by and benefit smaller vessel operators, such as myself, as well as larger organizations with fleets of 20 or more vessels.

PVA works closely with the U.S. Coast Guard and the National Transportation Safety Board (NTSB). Its relationships with both government entities helps to continuously raise the bar on safety. We interact with the Coast Guard in many venues, but especially in a formal body known as the Coast Guard-PVA Quality Partnership (QP) in which leaders of both organizations meet at least twice a year to examine pressing issues. At our most recent QP meeting at Coast Guard Headquarters last week on November 7, we discussed what PVA has done to communicate safety information to members following the fire on the California dive boat *Conception* (not a PVA member). Over the years, the NTSB has made several recommendations to PVA, and we have responded appropriately to them. For example, PVA has convened two "summits" of amphibious vehicle operators to discuss best safety practices in this segment of the industry.

#### IMPORTANCE OF COAST GUARD'S SAFETY MISSION

PVA's efforts to promote safety by passenger-carrying vessel operators depend heavily on an engaged, well-trained, and adequately-funded Coast Guard Marine Safety Mission. Coast Guard inspectors visit and rigorously examine domestic passenger vessels at least once a year. Any detected deficiencies must be corrected. Having this direct Coast Guard presence on passenger vessels is essential and has successfully promoted safety.

It is imperative that the Coast Guard safety function be preserved. In the early 2000s, as the Coast Guard made security a priority after enactment of the Maritime Transportation Security Act of 2002, the agency allowed its Marine Safety function to deteriorate. The situation became alarming enough that in 2007 this committee, under the leadership of Chairmen Oberstar and Cummings, convened a hearing to press the Coast Guard to reinvigorate its marine safety mission. Then-Commandant Thad Allen promised corrective action, and the result was the action plan entitled *Enhancing the Coast Guard's Marine Safety Program*. After its issuance, things improved. However, PVA encourages this Subcommittee to review the objectives of *Enhancing the Coast Guard's Marine Safety Program*. Are they still being met? Specifically, are the goals for number of marine inspector billets being filled?

Occasionally, some have suggested that a response to Coast Guard budgetary constraints would be to delegate inspection functions of domestic passenger vessels to a third-party organization, as has been done for towing vessels and certain deep-sea vessels. PVA adamantly believes that this would be a mistaken policy. It would deprive Coast Guard marine safety personnel of intimate knowledge of the domestic passenger fleet and would "drive a wedge" into the current good relationship between passenger vessel operators and Coast Guard personnel. Furthermore, third-party organizations such as classification societies do not have expertise regarding

smaller passenger vessels that operate on domestic routes. The current commitment to direct Coast Guard inspection of domestic passenger vessels is the preferable policy and is the best way to promote safety.

#### ILLEGAL CHARTERS

Many years ago, Congress determined that a vessel that carries six or more passengers "for hire" must satisfy numerous and rigorous safety standards and that it must be inspected by the Coast Guard at least once annually to ensure compliance. The key statute is the Passenger Vessel Safety Act of 1993.

These requirements exist primarily for the safety of paying passengers. A person who purchases a ticket to ride on a compliant commercial vessel should be confident that the vessel is constructed properly, that its master and crew are properly certified and trained, and that it has appropriate fire protection, communications, and lifesaving equipment. The annual Coast Guard inspection ensures that the vessel meets these requirements.

Far too frequently, a person with full knowledge of the Coast Guard requirement tries to take a regulatory "short cut" and make a buck by using an uninspected vessel to carry passengers for hire. This is illegal and jeopardizes the safety of passengers.

Last year in Miami, the unlicensed captain of an illegal charter vessel killed a paying passenger by losing track of the number of swimmers in the water and running the boat over an unaccounted-for customer. The Coast Guard had previously issued an order telling the vessel owner to cease offering illegal charters. The captain pleaded guilty to violating the Seaman's Manslaughter Act and has received a prison term.

In March 2017 off the coast of St. Petersburg, Florida, a swimming passenger from an illegally-operated charter vessel carrying 15 passengers was swept away from the boat. Violating well-understood safety rules, an untrained deckhand dived into the sea attempting to save the passenger. Both the passenger and the deckhand drowned.

The problem of illegal charters has always existed, but it seems to have become much worse with the proliferation of boat-sharing web sites. In the past, the illegal operator had to "advertise" locally by word of mouth. Now it is simple to market an illegal charter to a nationwide audience with a listing on a boat-sharing web site. There are many such web sites. The sponsor of the web site doesn't know or care whether the vessel is operating legally, and it's virtually impossible for the potential customer to tell.

The Passenger Vessel Association has been "sounding the alarm" about the prevalence of illegal charters to the Coast Guard for several years. We are gratified that the Coast Guard, especially in certain geographic areas, recognizes the problem and has cracked down. Coast Guard units in Chicago, Miami, and elsewhere have undertaken extensive education and enforcement actions. Individual illegal charter voyages have been halted, owners and captains have been assessed civil fines, Captain of the Port orders to cease operations have been issued, and now we are beginning to see criminal penalties imposed on repeat offenders. PVA applauds the Coast Guard for these actions, but the temptation for people to engage in illegal charters is so compelling that enforcement often seems to be a game of "whack-a-mole."

PVA encourages this Subcommittee to stand by the statutory and regulatory requirements for safety on vessels that carry passenger "for hire" and to signal to the Coast Guard that enforcement actions against operators of vessels that carry passengers illegally should remain a high safety priority.

#### CONCLUSION

Thank you for this opportunity to participate in this hearing. An essential reason for PVA's existence is to promote safety among its members and indeed among all operators of domestic passenger vessels. Congress can best support safety on domestic passenger vessels by strongly supporting and adequately funding and staffing the existing Coast Guard Marine Safety Mission with direct inspection of passenger vessels. Combatting the proliferation of illegal passenger vessel charters is an important component of that safety mission.

Mr. CARBAJAL. Thank you, Ms. Stephens.

Mr. Sterbcow, you may proceed.

Mr. STERBCOW. Thank you, Mr. Chairman, Ranking Member Gibbs, and members of the committee. I thank you for the opportunity to speak to you from the perspective of an attorney who has

represented those injured in marine disasters and the survivors of those who have been killed in marine disasters for 32 years.

My experience and our experience dictates that safety in the marine environment is a product of accountability, pure and simple. Whether we are talking about a \$100 million drill ship that sinks in the Gulf of Mexico or a jet ski that is rented at the beach, the goal must be to protect people, and that goal is only reached by holding those responsible accountable.

Some examples of the law that applies to these cases that is severely lacking, in our opinion, is number one, the Death on the High Seas Act. It was passed in 1920. The Death on the High Seas Act applies to marine deaths occurring more than 3 nautical miles from the coast of the United States or any Territory. The act limits recovery of damages to economic losses and funeral and burial expenses.

Therefore, in cases where the victim is a child, a retiree, or a stay-at-home parent, those survivors who seek redress for the death of the decedent are limited to funeral and burial expense recovery. There is no accountability. That is not protecting people.

Second, and an example—actually, a recent example of this that I would like to point out to you is in August of 2017, you may recall that the USS *John S. McCain* was rammed in the Singapore Strait by a freighter. Ten sailors were killed. The sailors hailed from New York, New Jersey, Connecticut, Illinois, Ohio, Maryland, Missouri, and Texas. Unless any of these sailors were supporting others economically or had economic dependents, their survivors are limited in damage recovery to their funeral and burial expenses. There is no accountability. There is no protecting people. And in this example, we are not protecting our servicepeople.

A second example of inadequate legislation is what is known as the Limitation of Liability Act. Passed first in 1851, the act allows a vessel owner to limit its liability in cases of personal injury and death to the value of the vessel after the catastrophe. The vessel owner actually is the plaintiff in this case. The vessel owner files suit and alleges in Federal court his or her ability to limit liability growing out of a marine disaster to the value of the boat following the casualty.

One need only look at the *Conception* to see the inequity, the gross inequity of the statute. Thirty-four people burned alive in a boat. Within 72 hours and before the Coast Guard had completed its investigation, the owner of the *Conception* filed suit in Federal court in California alleging an ability to limit its liability to the families of these 34 people to zero dollars, the value of the vessel as she sat burned at the bottom of the Pacific Ocean. It's unconscionable, there is no accountability, and it should change.

A third example of inadequacy, not so much in maritime law but in the maritime setting in terms of protecting people is forced arbitration. Forced arbitration in maritime employment agreements and in passenger vessel boarding agreements are grossly unfair.

A passenger vessel boarding agreement example that I am currently familiar with is a family from Ohio who drives down to the Alabama gulf coast for a weeklong beach vacation. They decided to take a parasail trip. In order to board the parasail vessel, they are required to sign a boarding agreement which requires either a com-

plete waiver of liability for any and all problems, or alternatively, forced arbitration.

They go parasailing. The father, the breadwinner of the family, suffers a severe injury that has disabled him and prevented him from going back to work. So this family is now faced with the prospect of either facing a complete waiver of liability, or in the alternative, being forced to go to a secret arbitration proceeding where there is no accountability, and most importantly, their right to seek redress in the State or Federal court system and their Seventh Amendment right to a jury trial is denied them. No accountability, no protecting people, and encourages, frankly, ongoing unsafe practice.

In conclusion, the Death on the High Seas Act and the Limitation of Liability Act are antiquated. Forced arbitration in this maritime setting is grossly unfair. The common thread among all three is that they all protect the wrongdoer. None of them protect the people who are being injured or the survivors of those who are killed.

I stand ready to address any questions and make any recommendations on these laws or other areas of the maritime legal regime, and I appreciate the opportunity to speak to you today.

[Mr. Sterbcow's prepared statement follows:]

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**Prepared Statement of Paul M. Sterbcow, President, Louisiana Association for Justice**

Chairman DeFazio and members of the subcommittee:

I am honored to testify today. Thank you for inviting me.<sup>1</sup>

I am Paul M. Sterbcow. I live in New Orleans, Louisiana with my wife, Laurie, and youngest child. I am the Managing Partner of the law firm of Lewis, Kullman, Sterbcow & Abramson, LLC in New Orleans. I received my Bachelor of Science in Political Science from Tulane University, and my law degree from Tulane Law School. I have represented injured individuals and the families of persons killed in maritime catastrophes for over thirty-two years. I practice primarily in federal court in New Orleans and other Gulf Coast cities. I have authored over forty-five continuing legal education papers and have been published in the *Journal of Maritime Law and Commerce* and the *Loyola University New Orleans Maritime Law Journal*. I was a member of the Plaintiffs Steering Committee and co-lead trial attorney in the liability trial arising out of the Deepwater Horizon explosion and subsequent largest oil spill in the history of the United States. The incident led to the largest civil litigation in United States History.

I have been asked to comment on three discreet areas: (1) the Death on the High Seas Act, 46 U.S.C. § 30301, *et seq.* (DOHSA); (2) the Limitation of Liability Act, 46 U.S.C. § 30501, *et seq.* (LOLA); and (3) Forced Arbitration in cases falling within the Maritime Jurisdiction of the United States.

OVERVIEW

The founding fathers knew that the United States needed a uniform, distinct and strong body of national maritime law if the young democracy was to compete and prosper in maritime commerce. As a result, Article III of the U.S. Constitution extended the judicial power of the United States to "all cases of admiralty and maritime jurisdiction" in order to ensure that maritime law remained federal and consistent among the states.<sup>2</sup> In addition to federal statutes enacted by Congress as part of its legislative function, the federal courts have exercised this unique constitutional authority to create a body of common law applicable to cases within admiralty jurisdiction, generally referred to as the "general maritime law." Therefore,

<sup>1</sup> Curriculum Vitae.

<sup>2</sup> U.S. Const. art. III, § 2, cl.1.

admiralty law, including maritime personal injury and death, is federal law over which Congress can and should exercise its legislative authority.<sup>3</sup>

Against this background, DOHSA, LOLA and Forced Arbitration have a common thread—they arbitrarily, unfairly and without cause deprive maritime personal injury and death victims of rights and remedies afforded other classes of tort victims. The inequity is compounded by the fact that by their very nature, maritime torts, which frequently involve unforgiving perils of the sea, typically have severe and long-lasting consequences for the victims. Given the significant advancements in marine safety systems, procedures and technology, combined with the steady and precipitous decline in U.S. commercial shipbuilding,<sup>4</sup> the damage limitations of DOHSA, LOLA and forced arbitration are not justifiable. Indeed, DOHSA and LOLA stem from antiquated notions of having to protect otherwise “innocent” vessel owners from calamities at sea occurring out of their control and incentivizing shipbuilding. This rationale is demonstrably invalid today. Respectfully, these antiquated laws need to be updated to reflect the changes and progress in technology and society in our constitutional democracy.

#### THE DEATH ON THE HIGH SEAS ACT (DOHSA)

Congress passed DOHSA on March 30, 1920. DOHSA created a right to sue in court for the death of a spouse, parent, child or dependent relative.<sup>5</sup> The Act applies to a tort occurring on the high seas beyond a marine league (three nautical miles) from the shore of any state, or the District of Columbia, or the territories or dependencies of the United States.<sup>6</sup> The Federal Courts have defined “High Seas” as including territorial waters of another country as long as the disaster site is more than one marine league from United States waters.<sup>7</sup>

DOHSA specifies the remedies available to the survivor Plaintiffs. Recovery is limited to “... the pecuniary loss sustained by the individuals for whose benefit the action is brought ...”<sup>8</sup> “Pecuniary loss” includes loss of economic support from the decedent and funeral and burial expenses.<sup>9</sup> The statute contemplates only the death of the family breadwinner. The statute as written does not provide compensation for the emotional loss of survivors with the one limited exception described below. When the decedent is a person not in the workforce, such as a retiree, a child or a stay-at-home parent, the statute’s combination of only providing compensation for loss of economic support and not recognizing emotional loss is inadequate and unfair. Further, the statute does not provide for pre-death pain and suffering of the decedent, another unjustifiable inequity.

Congress has amended DOHSA only once since 1920. Following the crash of TWA Flight 800 in international waters off the New York coast on July 17, 1996, the victims of which included a number of high school students from Pennsylvania, the statute’s unreasonable recovery limits understandably became a significant political issue. The families of those children correctly persuaded lawmakers that their losses should be accorded the same respect as those associated with accidents over land. As a result, Congress amended former Sections 761 and 762 of DOHSA to limit DOHSA coverage in commercial aviation disasters beyond twelve nautical miles from the shore and to add “... compensation for non-pecuniary damages for wrongful death of a decedent ... for death resulting “from a commercial aviation accident ...” “Non-pecuniary damages” is statutorily defined as “damages for loss of care, comfort and companionship.”<sup>10</sup> Therefore, the lone DOHSA amendment in the eighty-nine years of the statute’s existence extends the jurisdictional line from three out to twelve nautical miles from shore and affords the survivors of commercial aviation accident victims damages for the wrongful death of their loved one, a remedy previously unavailable. However, damages for the pre-death pain and suffering of the deceased victim remain prohibited.<sup>11</sup>

Unfortunately, this limited exception does nothing to address the clear inequity caused by DOHSA’s recovery limitations in the vast majority of deaths covered by DOHSA, those being non-commercial aviation accidents occurring on the high seas.

<sup>3</sup> U.S. Const. art. I, § 8, cl.18.

<sup>4</sup> In the 1950’s, U.S. shipyards built most of the world’s fleets. Today, America ranks nineteenth in the world in commercial shipbuilding, accounting for less than 1% of new construction. See: Klein, Aaron, Decline in U.S. Shipbuilding Industry: A Cautionary Tale of Foreign Subsidies Destroying U.S. Jobs, *Eno Transportation Weekly*, September 1, 2015.

<sup>5</sup> 46 U.S.C. § 30302 (formerly 46 U.S.C. § 761).

<sup>6</sup> *Id.*

<sup>7</sup> *Motts v. M/V Green Wave*, 210 F. 3d 565 (5th Cir. 2000).

<sup>8</sup> 46 U.S.C. § 330303 (formerly 46 U.S.C. § 762(a))

<sup>9</sup> *Lasky v. Royal Caribbean Cruises, Ltd.*, 850 F. Supp. 2d 1309 (S.D. Fla. 2012).

<sup>10</sup> 46 U.S.C. § 30307.

<sup>11</sup> *Id.*

I personally know of numerous examples of the injustice caused by DOHSA over the years. The following are some examples:

*Example #1:*

A current example is a July 4, 2019 helicopter crash in the Bahamas that took the life of a prominent West Virginia coal producer and six others, including his 25-year-old daughter and three of her 25-year-old friends. My firm is privileged to represent the families of two of the girls killed when the helicopter transporting them from the Bahamas to Florida crashed shortly after takeoff in the Atlantic Ocean. The families of these beautiful young ladies, one of whom had just earned her registered nurse license and the other had scored highly on her first MCAT medical school entrance examination, may be limited to recovering insured funeral and burial expenses if DOHSA's statutory limit on damages is held to control their claims. If so, the claims are worthless. If the same helicopter accident occurred on land, the families would be entitled to damages for the pre-death pain and suffering of their daughters, and loss of care, comfort and companionship for their daughters' wrongful deaths. The fortuity of the incident's location should not control the measure of damages and certainly should not cheapen the lives of these girls. DOHSA as presently written does just that.

*Example #2:*

Another example is the tragic August 21, 2017 collision between the ALNIC MC Liberian-flagged tanker and the U.S.S. John S. McCain in the Singapore Straits. The tanker negligently rammed into the destroyer and killed ten Navy sailors. While there is clear liability on ALNIC's part, DOHSA limits recovery to nothing more than funeral and burial expenses for the families of any unmarried sailors who were not supporting anyone financially. This is a travesty and horribly disrespectful to the sailors who gave their lives for their country.

Unfortunately, there are also numerous instances of otherwise meritorious cases that maritime attorneys refuse to accept due to DOHSA's injustice. Two examples are:

*Example #1:*

A 61-year-old cruise ship passenger became ill at sea. The medical center diagnosed stomach flu. Six days later, while still on the cruise, the passenger died of acute pyelonephritis<sup>12</sup> and urinary tract infection. The ship's physician missed the obvious diagnosis, and the lack of treatment allowed the infection to convert to sepsis. Timely treatment would have resulted in a complete recovery. The passenger left behind a son with whom she had a very close and loving relationship, but who was not dependent on her financially. The case was not pursued because DOHSA limited the son's recovery to funeral and burial expenses for which his mother had a pre-paid plan.

*Example #2:*

A 70-year-old physically fit male cruise ship passenger went to the ship's doctor complaining of acute left shoulder pain. His blood pressure was extremely high. The passenger sat unattended in the ship's infirmary for approximately three hours before cardiac evaluation and appropriate care was instituted. Approximately one hour later, the passenger went into cardiac arrest and died on the vessel. Again, the case was rejected by the evaluating attorney because DOHSA limited the recovery of the decedent's spouse and daughter to funeral and burial expenses.

In summary, if the decedent is unmarried, a minor, a stay-at-home parent or a retired parent/grandparent or person who does not support others financially, then those left behind are constrained to sue for funeral and burial expenses, which in many cases are either pre-paid or insured. It is time for DOHSA to fully compensate the survivors for the pre-death pain and suffering of their lost loved ones, all economic losses resulting from the death, and their own lost care, comfort and companionship. Anything less is unjust.

*Recommendation:* Amend the Death on the High Seas Act so that all decedents have the same remedies, and personal injury and death victims on the high seas

<sup>12</sup>Pyelonephritis is an infection that generally begins in the urethra or bladder and spreads to one or both kidneys.



are treated the same as those on land. Such an amendment will necessarily include recovery for economic loss, loss of care, comfort and companionship of the survivors, and pre-death pain and suffering of the decedent.

#### THE LIMITATION OF LIABILITY ACT (LOLA)

In 1851, Congress enacted a law exonerating an owner of any vessel from liability to any person or any loss or damage caused by fire on board the vessel unless the fire was caused by the design or neglect of the vessel owner.<sup>13</sup>

In 1871, this vessel owner liability limitation was extended to owners and masters of vessels carrying valuable commodities such as precious metals, precious stones, jewelry, china, furs, etc. unless the cargo owner provided the master or vessel owner written notice of the "true character and value thereof" and entered the same information on the bill of lading.<sup>14</sup>

The purpose of these laws, which the courts held had to be liberally construed in the ship owner's favor, was to encourage ship building and protect an otherwise innocent ship owner from catastrophes at sea over which the ship owner had no control or ability to prevent. America was emerging as a leader in maritime commerce, the exclusive method for transporting goods to Europe, Africa, Asia and the Pacific. Although the use of iron instead of wood as the primary material of ships' hulls began in the 1830's, this advance was limited primarily to war ships. Commercial vessels remained wooden and were therefore more vulnerable to fire, weather and cargo damage. Modern vessel design, safety and navigational systems, and storm warning systems were not imaginable. Congress decided that ship owners needed liability protection to ensure their profitability and encourage investment in maritime commerce.

In 1935, Congress expanded these liability limitations. The new law limited vessel owner liability in the case of "... any loss, damage, or injury by collision, or for any act, manner, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity of knowledge" of the vessel owner.<sup>15</sup> In such cases, vessel owner liability shall not exceed "the amount or value of the interest of such owner in such vessel, and her freight then pending."<sup>16</sup>

The Article III (federal) courts developed a procedure somewhat unique to maritime law to handle LOLA proceedings. The vessel owner files a lawsuit as the plaintiff alleging entitlement to exoneration or, alternatively, limitation of liability per LOLA. Any personal injury or death claims arising out of the catastrophe forming the basis of the LOLA proceeding must then be filed into the pending LOLA lawsuit, which actions are immediately stayed. This becomes a *concursum*<sup>17</sup> proceeding, whereby the federal judge having exclusive jurisdiction decides whether the vessel owner is exonerated (i.e., did not cause injury or death). If the court finds fault (i.e., denies exoneration), then the judge decides whether the owner can limit its liability to the value of the vessel and pending freight based on the privity or knowledge statutory test. If the incident occurred without the owner's privity or knowledge, then the owner's damages exposure is limited to the vessel's post-accident value, regardless of the severity of the catastrophe or the number of injuries or deaths involved. Like its predecessor limitation statutes, section 30505 was intended to encourage ship building and induce capital investment in the marine industry. As one court stated, the section, providing for limited liability of vessel owners, was designed to induce the heavy financial commitments the shipping industry requires by mitigating threat of a multitude of suits and hazards of vast unlimited liability as the result of maritime disaster.<sup>18</sup>

While requiring multiple claimants to file claims against a vessel owner for a marine disaster in one proceeding is laudable, the limitation of the vessel owner's liability to the value of the vessel and freight pending can no longer be justified. Encouragement of investment in ship building should no longer be accomplished on the backs of victims of maritime torts. In the age of international corporate vessel ownership, marine insurance, contractual claim limitation, and technology that provides ship owners the ability to retain complete operational control over vessels at sea, it is patently unfair to penalize those injured and the families of those killed in

<sup>13</sup> Formerly 46 U.S.C. § 182 (1851).

<sup>14</sup> Formerly 46 U.S.C. § 181 (1871).

<sup>15</sup> 46 U.S.C. § 30505 (formerly 46 U.S.C. § 183(a) (1935)).

<sup>16</sup> *Id.*

<sup>17</sup> *Concursum* is a procedural method staying legal proceedings in a LOLA action after the ship owner's limitation fund has been created. The primary purpose of the *concursum* is to avoid a multiplicity of suits and actions. It contemplates a proceeding leading to a single judgment that resolves all issues between all parties.

<sup>18</sup> *Petition of Wood*, 124 F. Supp. 540 (D.C.N.Y. 1954).

shipboard catastrophes. Every blue water commercial vessel operating in international waters can be tracked in real time.<sup>19</sup> Direct shore to ship communication is easy and occurs in real time. Navigational technology allows ship operation in virtually any environmental condition without the risk of encountering an unknown hazard or situation out of the vessel owner's control. There is no reason to allow the owner to limit its liability.

This is particularly true with respect to coastal trade and hydrocarbon exploration and production in the Gulf of Mexico. In Louisiana, the center of the offshore exploration and production industry, limitation of liability is regularly sought by owners of inland tugs, river push boats and oilfield supply boats that neither venture into open water nor travel more than 100 miles from the coast. It is even more ludicrous that the owners of pleasure boats and jet skis, both deemed vessels for purposes of LOLA, can attempt to limit their liability to the value of the boat or jet ski and force the victim to participate in the concursus proceeding with the potential of no recovery. The proceeding prevents the marine personal injury or death victim from pursuing a lawsuit in a court of competent jurisdiction until such time that the concursus is completed and the judge lifts the standard limitation stay order.<sup>20</sup> The delay is often lengthy and is unnecessary.

Moreover, because of draconian limitation periods built into the law, ship owners attempt to misuse the statute to deprive victims of remedies by defaulting them, without appropriate due process. If victims do not file claims within a short time period (ranging from 60 to 120 days), they could forever be barred from seeking any compensation—even if the LOLA action is frivolous and the owners have no factual basis to achieve limitation or exoneration. Often federal courts allow notice to victims, which is intended to inform victims of their rights and requirements to file a claim, to be posted in classified sections of obscure local newspapers. In instances of tragedies where families have lost loved ones to a maritime disaster (examples below), families often are in a state of shock and just beginning the mourning process in these early days. Yet, under the current law, they may lose all their rights and remedies if they do not take the necessary legal steps within a short period of time.

Some examples of maritime disasters that prompted ship owners to hastily seek protection under LOLA are:

*Example #1:*

A current and compelling example of the extreme injustice of LOLA is the disaster involving the 75-foot commercial diving vessel *Conception*. On September 2, 2019, at 3:14 a.m., the U.S. Coast Guard received a distress call from the vessel, anchored 215 nautical miles south-southwest of Santa Barbara, California. Thirty-nine people were on board for a three-day diving trip. A crew member awoke to a fire aboard the vessel. Although the crew saved themselves, thirty-three passengers burned to death because they were unable to escape. The vessel burned to the waterline and sank in sixty feet of water.

Three days later, while bodies were still being recovered by the Coast Guard, the owners of the *Conception* filed a Petition for Exoneration and/or Limitation under LOLA in federal court in the Central District of California.<sup>21</sup> The owner specifically pled the right to be exonerated from all liability or, if they are found to be negligent, to limit their exposure to the value of the vessel after the casualty, which is \$0.00. Now the families of the thirty-three victims must act hastily in order to deal with the limitation concursus and the owner's quest to limit its liability to nothing.

*Example #2:*

A second prominent example of LOLA's unfairness is the Missouri duck boat catastrophe. In July 2018, seventeen people were killed, including nine members of the same family, when a duck boat sank in bad weather on a lake near Branson, Missouri. The voyage should never have occurred, as the duck boat owner had ample warnings of approaching severe weather.

<sup>19</sup> GPS tracking systems allow vessel owners to track and control any vessel, regardless of size or geographical scope of navigation.

<sup>20</sup> In a single claimant limitation proceeding (i.e., when only one person is hurt or killed), the claimant is more apt to obtain a lift of the stay order early in the proceeding. However, if there are more than one claimant (including property damage and insurance indemnity claimants) then all must agree on a stipulation as a prerequisite to lift the stay order. This occurs very rarely.

<sup>21</sup> *In the Matter of the Complaint of Truth Aquatics, Inc.*, 2:19-cv-07693-PA-MRW (C.D. Ca. Sept. 5, 2019).

Duck boats are not the safest means of maritime transport under the best of conditions. Here, the vessel was unable to handle the seas and quickly sank. Passengers might have survived, but they became entrapped in the duck boat's canopy, which the vessel owner had not removed in direct violation of an NTSB recommendation.

The duck boat owner's use of LOLA is a ridiculous contortion of the law that should not be allowed as a means to escape legal responsibility. This duck boat owner was in direct and constant communication with the crew operating this vessel. Anyone with an operating marine radio, television or even a cell phone could have obtained real time weather and lake conditions. The fact is this disaster was easily foreseeable and readily preventable. Yet, the vessel owner has used LOLA to try to limit its liability to the families of seventeen drowned passengers to \$0.00.

*Example #3:*

The most notorious example of the inequity created by LOLA is the Deepwater Horizon disaster. On April 20, 2010, the Deepwater Horizon drilling vessel exploded in the Gulf of Mexico approximately fifty miles south of the mouth of the Mississippi River after the crew lost control of the well. The steady flow of hydrocarbons feeding the fire prevented it from being extinguished. This resulted in the vessel sinking 5,000 feet to the Gulf of Mexico floor two days after the explosion.<sup>22</sup> This catastrophe caused eleven deaths, numerous severe injuries to the rest of the 126 people aboard the vessel, and billions of dollars in environmental damage. Yet, Transocean, the owner of the drilling vessel, sought protection under LOLA by filing a complaint for exoneration for limitation in federal court in Houston, Texas. Transocean claimed that the catastrophe occurred without the privity or knowledge of Transocean management. As a result, it claimed entitlement to limit its liability for all legal claims arising out of the explosion, vessel sinking and subsequent massive oil spill to approximately \$27 million, the calculated salvage value of the Deepwater Horizon and her pending freight as she sat at the bottom of the Gulf of Mexico.

The fact that the owners of the Conception, the duck boat, and Transocean as owner of the Deepwater Horizon were legally able to take this step is unconscionable. The limitation funds could not adequately compensate the families of the people killed (recall two of the three are \$0.00), much less the hundreds of thousands of other claims for damages in the Deepwater Horizon disaster.

Ship owners will undoubtedly argue that elimination of their ability to pursue liability limitation will somehow put them out of business. There is no data or credible study to support this argument. Additionally, marine insurance is readily available. Indeed, LOLA is now being used to protect the marine insurance industry, not the ship owner, by allowing insurance companies to avoid their contractual responsibilities and risk. The truth is that a pre-Civil War law, designed to encourage shipbuilding in the United States, has turned into a tool to safeguard the bottom line of insurance companies at the expense of marine personal injury and death victims. This was never intended by Congress, nor should it be.

The concerns of the marine industry regarding multiple suits in multiple jurisdictions arising out of a marine accident are valid. LOLA can still be used as a jurisdictional vehicle to consolidate all potential claims in one place to allow the ship owner to fully assess the severity of the disaster and potential financial exposure. However, there is no longer any social or economic justification to limit a ship owner's liability. Ship owners have extensive means to monitor and control the condition of the vessel at the outset of the voyage as well as her movements and crew conduct throughout the voyage. The extent of recovery for injury and death in these situations should not be dependent on an owner's privity or knowledge and should not be more restrictive than recovery afforded for land-based personal injury and death. Persons injured or killed in a boat accident should not have a more limited recovery than persons injured or killed in a train or commercial trucking accident. There is no principled reason to treat marine personal injury and death victims differently, particularly when Congress' motive for enacting the laws in the 1800's and 1935 no longer exist.

<sup>22</sup>This incident resulted in the largest pollution event in the history of the United States. The owner of the well, BP, was found grossly negligent by the federal judge handling the multidistrict litigation and has paid over \$60 billion in damages.

*Recommendation:* Amend the Limitation of Liability Act to remove the vessel owner's ability to limit its liability to the vessel's value in cases of personal injury or death to passengers and crew.

#### FORCED ARBITRATION

The gross inequities of forced arbitration are well documented and publicized. Indeed, they were subject to much discussion and debate in the U.S. House of Representatives, which discussion resulted in passage of the Forced Arbitration Injustice Repeal Act ("FAIR Act"). Although passage of the FAIR Act by the House addresses arbitration clauses in employment agreements, until the bill is passed by the U.S. Senate, maritime employees and others continue to be subject to forced arbitration. Some recent examples of forced arbitration in the maritime context are:

*Example #1:*

An American crewmember was working aboard a foreign-flagged cruise ship. During a voyage, the crewmember fell down a flight of steps injuring her shoulders, neck and back. Despite having a broken shoulder as well as other serious injuries, she was kept on the ship working for twenty-three days. After initially approving payment for her medical expenses, the cruise line mismanaged her benefits, which resulted in lengthy delays in her care and recommended surgeries. The delays resulted in her developing psychological issues, including documented anxiety and depression, due to the stress caused by her medical and financial issues. Her medical condition has continued to deteriorate, and she still has outstanding medical needs that require attention.

Her employment agreement with the cruise line incorporates a Collective Bargaining Agreement ("CBA") with the Norwegian Seaman's Union. She is not a member of this Union and has no voting or other rights provided to Union members. The CBA mandates binding arbitration in accordance with the laws of the Bahamas, "notwithstanding any statutory claims for negligence, unseaworthiness, maintenance, cure, failure to provide prompt proper or adequate medical care, personal injury, or property damages which might be available under the laws of any jurisdiction." Bahamian law does not provide the equivalent or anything close to the legal rights she would have under U.S. law. Expert testimony from Bahamian lawyers supports this conclusion. Moreover, the arbitration may take place overseas depending on whether the parties can agree on a location. As such, the U.S. crewmember is left at home to suffer while she undergoes a forced arbitration process, potentially on foreign soil, applying foreign law that deprives her of rights and remedies afforded a U.S. citizen. No U.S. citizen should be forced to suffer this type of mistreatment and humiliation without the protection of U.S. law, regardless of the circumstances of their employment.

*Example #2:*

A family traveled to the Gulf Coast for a beach vacation. They decided to go parasailing. The vessel owner required all parasailers to sign a "Release of Liability, Assumption of Risk, Waiver of Claims, Indemnification and Binding Arbitration Agreement" as a condition of boarding the vessel.

According to the Complaint filed on the family's behalf, at the end of the ride, the father, who is the family breadwinner, was pulled into a winch positioned on the vessel stern that is used to play out and reel in the parasail. He suffered a severe pelvic fracture that required hip replacement surgery. He has remained out of work since the incident and may be physically foreclosed from returning to his job with a local gas company.

If the binding arbitration language in the Release of Liability form is enforced, this family has no right to file a lawsuit against the vessel owner or obtain a trial by jury as is guaranteed by the 7th Amendment of the U.S. Constitution. As if this was not bad enough, the vessel owner in this case has also filed a Petition for Exoneration from or limitation of liability, claiming that its liability to this family should be limited to \$86,000.<sup>23</sup>

Therefore, a person alleging severe injury through no fault of his own while on vacation at the beach is now subject to (1) forced secretive arbitration that deprives him of his right to seek redress in court; and (2) a LOLA concursus proceeding de-

<sup>23</sup> *In the matter of Fruisher, LLC, et. al.*, 1:19-cv-00618 (S.D. Ala. Sept. 6, 2019).

scribed herein and a potential recovery limit of \$86,000 in a case that may reasonably be worth a far greater amount if justice is to be achieved.

*Recommendation:* Adopt a clear and concise statute ending forced arbitration for all maritime employees and vessel passengers who are U.S. citizens.

#### CONCLUSION

As has been shown, there has been no meaningful attempt to update federal statutory maritime law to ensure justice for passengers and crew members injured and killed on the high seas in a century. The last meaningful change to limitation of liability occurred in 1935, and it came to the detriment of those injured and killed in maritime catastrophes. The laws are antiquated. They do not promote accountability, which we know encourages safety and reduces injury and death. Further, commercial and recreational vessel owners now have insurance to adequately cover their risk, much of which further accountability will reduce or eliminate. Respectfully, Congress should act now to modernize DOHSA and LOLA and end the use of forced arbitration clauses in maritime recreational agreements and employment contracts. These steps will improve the current system, which arbitrarily, unfairly and without cause deprives maritime personal injury and death victims of rights and remedies afforded to other classes of tort victims.

Mr. CARBAJAL. Thank you, Mr. Sterbcow.

We will now move on to Member questions. Each Member will be recognized for 5 minutes, and I will start by recognizing myself.

Mr. Sterbcow, in relation to the *Conception* tragedy off the coast of my district, how does accountability improve overall maritime safety?

Mr. STERBCOW. Well, it just—really, it extends beyond the maritime setting. It is particularly important in the maritime setting because there is no incentive on the part of vessel owners and operators to ensure that their vessels are safe, they are staunch, they are seaworthy unless there are consequences in the event that they set sail, and there are not.

Accountability breeds attention to detail. Accountability breeds compliance with rules and regulations. We have heard a lot today from the Coast Guard, from the NTSB, from these various organizations who all do good work and have done good work for a long time.

The problem is that despite this good work, we repeatedly see one maritime disaster after another, and the problem is that at the end of the day, if the vessel owner knows, regardless of the severity of the catastrophe, it could either limit its liability or walk away with no liability, then there is really no incentive at the end of the day to ensure that these vessels are fit for their intended purpose.

Mr. CARBAJAL. It seems to me that the Limitation of Liability Act is no longer relevant to today's maritime industry given the advances in technology and changes in the ability of insurance and the corporate structure. It has outlived its purpose. Would you agree?

Mr. STERBCOW. I totally agree. It was originally enacted in 1851 when we were a fledgling country trying to compete in maritime exercises with European powers, at a time when boats were wooden, cargo was routinely ruined, and boats caught fire and sank in a matter of minutes. There was no modern communication. There was no ability of a vessel owner to control his ship once it left port.

All of those considerations are now gone. Vessel owners can call ships regardless of their location in the world by cell phone just as you and I would talk by cell phone in Washington, DC. We track ships in real-time. We know exactly where they are. We know ex-

actly where they are going. Crews are much better trained. They have safety management systems.

The notion that there is an innocent vessel owner who needs to be protected from perils out of his control has long since passed, and all the Limitation of Liability Act does now in addition to eliminating accountability is it limits the liability of the marine insurer because none of these boats leave port without insurance. So what you are really doing is protecting the insurance industry and not the people riding the vessels.

Mr. CARBAJAL. Thank you. How do you propose we fix the law?

Mr. STERBCOW. Limitation of liability is simple. It can be amended to eliminate the ability to limit liability in cases of injury or death. Very simple fix. You remove the problem, you increase the accountability.

In terms of the Death on the High Seas Act, my recommendation would be to extend damages to include the preterminal pain and suffering of the person who unfortunately is the victim of a marine disaster and extend to the survivors the right to sue for what we typically call wrongful death damages.

Those are damages for—say, if a child is killed, the parents of that child cannot sue at this point for their losses, for their emotional distress, loss of care, comfort, and companionship. Those, the parents, and the survivors of decedents in this situation should be permitted to recover those damages.

And, by the way, there is precedent for this. In 1996, Congress carved out what is called the commercial aviation exception to the Death on the High Seas Act following the TWA 800 disaster. If you remember, it went into the Atlantic Ocean off the coast of Long Island, and a group of students from Pennsylvania were killed.

And when their parents learned that their recovery in that case was limited to funeral and burial expenses, it created a situation that ultimately made its way to Congress which ultimately led to what is called the commercial aviation exception which allows parents to recover their damages for the loss of a child in the limited case of a commercial aviation disaster more than 12 miles off the coast.

My fix is very simple. Extend that to all disasters falling under DOHSA. There is no reason to treat a plane disaster different than a boat disaster, and after all, the vast majority of these cases involve vessels and not airplanes.

Mr. CARBAJAL. Thank you very much for that thorough answer. Now I would like to recognize Ranking Member Gibbs.

Mr. GIBBS. Thank you.

Mr. Smith, in your written testimony, you talk about the safety of U.S.-flagged vessels carrying a higher standard of safety and security than foreign-flagged vessels, and you go on to say that if we fully enforce the Jones Act, that would enhance that but as it relates to we are not enforcing offshore energy, offshore energy. Can you expound on that and explain what is really going on so I can understand that better?

Mr. SMITH. Yes, sir. Starting in 1976, Customs and Border Protection started issuing kind of private correspondence to charters. They would request a determination if a certain activity violated the Jones Act or not. CBP would respond with a letter saying yes,

it did, yes, it did not. In approximately 160 of these letter rulings of customs provided basically loopholes to the Jones Act that are not found in the statute.

These were concepts based on well, the vessel was only moving a small amount of cargo, or it was only moving cargo a small distance. Therefore, we should—or they were doing something legal, so they should also be able to do something illegal simultaneously.

None of that—as I said, none of these exceptions are found in law. That is something that, as I said in my testimony, CBP has recognized three times now and has tried to revoke those letter rulings, has tried to close those loopholes two times. After announcing their intention to do so, they have backtracked and said no, we are not going to do that at this time.

In fact, in 2009, when they retracted that, they said we will get back to this in the near future. In 2017, they said we received a lot of emails, so we need to study this. I didn't know you could not enforce a law because you got a lot of emails. I am sure that would change how your office operates, sir. So they have now again said we want to correctly enforce the law.

Unfortunately, in doing so, they have also issued some new definitions which we believe create new loopholes to replace the old loopholes they are trying to close. That is probably not the best of situations.

Mr. GIBBS. I would also, I guess, like to kind of follow up with the idea. I know LNG was exporting LNG, now largest producer in the world of natural gas and oil, and my understanding is because we pick up LNG shipments in the gulf area, and then they export to other countries, but to get LNG in needed areas of the country like our New England area, for example, they had to get it from foreign.

What can we do to adjust or fix it? How do we handle that so Americans can burn LNG natural gas, the domestically produced LNG natural gas?

Mr. SMITH. Sure. Thank you for the question, Ranking Member Gibbs. The American maritime industry is willing to meet any challenge, and in fact, what we are best at is overbuilding a market.

If you give us the signals that a market will be protected, we are probably going to build too many ships for it. And with the signals now that LNG is going to be protected by this administration, what we are seeing is even the European trade magazines are already saying that there is going to be U.S. LNG capacity.

One of my members just launched an ATB, an articulated tug and barge, to transport LNG, and I know that they can take that design and are taking that design to produce more of those so we can have that.

It is my understanding—although this isn't necessarily exactly what we do on a day-to-day basis, but it is my understanding that we are right now basically at the export of—there is no extra capacity in the export terminals. Once there is, we will have the vessels capable to carry that.

Mr. GIBBS. That is good to know, because it just makes so much sense to do that, plus our U.S.-flagged vessels would be safer, prob-

ably, theoretically, anyway, than other ones especially carrying LNG.

So glad to hear that because I think that makes a lot of sense, and we need to do that and open up the market because we need to move as much as we can out of the Permian Basin in Texas and of course the Dakotas and also produce a lot of natural gas in Ohio and Pennsylvania. So it would be great to be able to export as much as we can on American vessels. I am glad to hear that.

Mr. SMITH. Completely agree, Ranking Member Gibbs.

Mr. GIBBS. Thank you, and I yield back.

Mr. CARBAJAL. Thank you, Representative Gibbs.

I think that pretty much concludes our hearing.

Are there any further questions from members of the subcommittee?

Seeing none, I would like to thank each of the witnesses for your testimony today. Your contributions to today's discussion have been informative and helpful.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing and unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing. Without objection, so ordered.

If no other Member has anything to add, the subcommittee stands adjourned.

[Whereupon, at 4:02 p.m., the subcommittee was adjourned.]



## SUBMISSIONS FOR THE RECORD

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**Letter of November 14, 2019, from Hon. Doris O. Matsui, a Representative in Congress from the State of California, Submitted for the Record by Hon. Larsen**

NOVEMBER 14, 2019.

Hon. PETER DEFAZIO

*Chairman*

*House Committee on Transportation and Infrastructure. U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMAN DEFAZIO:

I would like to request that the testimony submitted by the International Cruise Victims Association (ICV) on November 13th, 2019 be included as part of the official record for the Transportation and Infrastructure's November 14th hearing entitled "Commercial and Passenger Vessel Safety: Challenges and Opportunities."

As the original sponsor of the Cruise Vessel Security and Safety Act (CVSSA) (P.L. 111-207), which was signed into law in 2010, I have a particular interest in these issues and am committed to continue the work of protecting passengers and victims of crime on cruise ships.

Despite this success 10 years ago, it is clear that additional work is needed to implement safeguards that protect families and provide information to consumers in an open, accessible, and transparent manner before they ever board a cruise ship. Last Congress, I introduced follow-up legislation, the Cruise Passenger Protection Act (CPPA) to address shortcomings in reporting requirements, medical standards, and legal protections for victims. It is time for Congress to act to see that the law is implemented and carried out as we originally intended and that additional protections are secured to provide for the security and well-being of all cruise passengers.

Today I have introduced an updated version of the Cruise Passenger Protection Act for the 116th Congress to bring attention to this issue just ahead of the 10th anniversary of House passage of the CVSSA. I look forward to working with ICV and this Committee to advance our bill and ensure these vital consumer protections become law.

Sincerely,

DORIS O. MATSUI  
*Member of Congress*

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### **Statement on behalf of the International Cruise Victims Association, Submitted for the Record by Hon. Larsen**

Thank you Chairman Maloney and Chairman DeFazio, and thank you Ranking Members Bob Gibbs and Sam Graves. Thank you also to all distinguished members of this committee for allowing us to submit this statement.

As long-time volunteer members of the victims advocacy organization known around the world as the International Cruise Victims Association (ICV), we are grateful for the opportunity to submit this statement on behalf of all those who have experienced trauma, tragedy or victimization while onboard a cruise ship. And we especially submit this in the memory of all those whom we have loved and lost while on what they hoped and dreamed would be their vacation of a lifetime.

In 2006 four families, each having lost loved ones while on cruise vacations, banded together. With a common and dedicated goal to improve safety and increase the rights of cruise ship passengers the International Cruise Victims Association (ICV) was formed. Today, that grass-roots organization with its modest beginning has become the major voice for victims of crime at sea around the world. With an all-volunteer, unpaid staff and a history of highlighting the need for legislative action, in-

creased passenger protection, and public awareness, ICV's membership has grown to include several hundred members in over 25 countries around the world.

In 2010, ICV's efforts were rewarded when Congress passed the historic Cruise Vessel Security and Safety Act (CVSSA), which was first introduced in the House by Representatives Doris Matsui and Judge Ted Poe. Such bi-partisan support was subsequently echoed in the Senate when Senator John Kerry introduced the companion bill which passed unanimously. With the passing of that bill, our nation saw for the first time, a dedication and commitment to the safety and security of millions of vulnerable cruise ship passengers. However, despite this carefully crafted bill, safety and health incidents continue to happen on cruise ships. An appalling percentage of crimes are going unreported, and cruise ship compliance is uncertain. These concerns, together with tremendous advances in technology (marine and otherwise), stand to open the door for the strengthening, improving, and updating of the measures previously signed into law almost ten years ago.

As cruise ships increase in size, so does the cruise ship industry's stream of revenue creating an environment where industry profit and its marketing emphasis on fun might be on the upswing but concern over people and safety has a lot of catching up to do. Circumstances and incidents, some of which we will highlight here in this statement, have exposed the fact that even with the CVSSA in place, cruise passengers remain vulnerable. In truth, the calculated disregard for passenger safety makes a mockery of the cruise lines' all-too-frequent public declaration that "passenger safety is our number one priority." The inherent dangers that still exist for Americans who are considering a cruise vacation compel us to press forward with renewed commitment to stronger language that not only reinforces the CVSSA but adds additional protections as well.

As a victims' advocacy organization, we hear tragic, heartbreaking stories nearly every week. What makes this unique is the fact that the stories aren't coming from police logs, or the newspaper headlines. Instead, they are coming from people who were taking the vacation of a life time until quite suddenly, when they least expected it, something went terribly wrong.

We are always touched and amazed by the members of ICV who have been courageous and determined enough to share their stories, even the families of minors who have been affected, so that the real truth behind the cruise industry's glamorous ads and the constant claims that safety is their number one concern might be uncovered. Again and again, since 2006, we have gathered all the courage anyone could muster to walk the halls of Congress equipped only with our tragic stories in an effort to gain support for legislation. Many times we have been uplifted by members and their staff who, though shocked and saddened, have encouraged us by telling us to go back and tell our grassroots organization that we are doing the right thing by coming to Washington—that in America, this is how things get done.

Still, as we have traveled and lectured around the world, we find that one of the most commonly asked questions we receive is, "What could possibly go wrong on a cruise?" So, today we submit to you a few abbreviated stories from some of our victims, each representing a different scenario of what could and does go wrong in hopes that it presents a clearer picture of how powerful they are to hear, yet difficult to tell and relive over and over again.

In 2004, a 43 year old divorced mother of one, and daughter of Ken, one of the original four ICV founders, decides to take a cruise vacation to Alaska while her teen-aged daughter is visiting her father in England. After two days onboard, her cabin steward notices that her room has not been disturbed or slept in and reports his concern to his staff supervisor who downplays the situation as a possible ship-board romance. When her room remains the same for several more days, the steward again goes to his supervisor to report her as missing. The supervisor tells him to "forget it." But when there was no sign of the woman by the time the voyage was to end, the steward asked his boss what he should do with her personal items. He was told to put them in a bag and lock them in a storage closet. He did what he was told to do, put the unclaimed items in a closet where they remained until the cruise line later discarded them. No one ... no law enforcement, no family was notified that she was missing, no search was conducted, no announcement was made, no attention was paid. The woman and her baggage simply disappeared.

Meanwhile, her daughter back in England, having no idea her mother had taken a cruise, kept trying to reach her at home but couldn't get an answer. With growing concern she called her maternal grandfather Ken, in Arizona, to see if he knew where she was. He did not. But he did contact the authorities in his daughter's hometown of Boston who entered her apartment and searched her belongings, eventually discovering a cruise ticket purchase for a voyage during the dates the woman went missing. The cruise line was contacted and their records revealed that she had gotten on the cruise ship but had never gotten off. The authorities in Boston ordered

the ship to notify the authorities in Vancouver where the cruise ended so that they could investigate this as a missing person report. They did not. Instead, a week later the cruise lines notified the FBI, who by this time refused to open a case claiming they did not have jurisdictional authority to do so. This left the woman's family with no choice but to hire an attorney who then hired a private investigator who finally found the only person who ever saw the woman on the cruise, her cabin steward who kindly offered everything he knew which is all included in the statements above. The family asked for surveillance video but they were told they were too late, there was none by that point, and that if there had been they would not be able to share it with them for security reasons. Months later, as their personal costs, frustration and tears were mounting by the day, during a deposition, the family discovered the beginning of many lies and cover ups. There had been video when they requested it but it had not been shared with them and three months later it was destroyed by the cruise line. Now they were lost, there was no evidence, no case and no authority to care what happens to this family or their loved one Merrian. No one who knew the process or was willing to tackle this extreme consolidation of wealth and power with its nearly total freedom from a strong governmental hand—the cruise industry. Thus began ICV.

The second tragic story involves Georgia, who is also one of the senior vice presidents of ICV. Georgia and her family became victims of one of the worst cruise ship disasters of recent history. On January 13, 2012, the Costa Concordia Cruise ship crashed and nearly sunk in Italy. 32 people paid the ultimate price of losing their lives, and thousands of other passengers suffered with pain, fear, and emotional as well as physical traumas. The Costa Concordia disaster was especially difficult for her family, as they had been long time cruisers, and were devastated by the way they were treated by the cruise lines.

"It has been almost 8 years and we still have not been adequately compensated for the damages we suffered," Georgia explains, but "more important than compensation for us though, is the need for the cruise line to take responsibility for their actions, to be transparent, and willing to put safety for their passengers at the forefront which they have refused to do."

Few tragedies in life are more devastating than the loss of a child. For many of us, it is difficult to imagine anything worse. But the unimaginable becomes the harshest reality for those whose children are lost due to the negligence of a "trusted" corporation; specifically a global one touting a business model that "supports policies and practices that foster a safe, secure, healthy and sustainable environment." This is the story of Ashley. Her mother Jamie has served as president of ICV since 2007. She is also an ordained transitional Deacon in the Episcopal Church and will be ordained to the priesthood in January of 2020. But what precipitated her calling to the priesthood was the tragic loss of her only daughter Ashley Barnett on October 15, 2005. Ashley took a 3-day cruise from Long Beach, California down to Ensenada, Mexico with her boyfriend and several of his friends, six days before her 25th birthday. Less than 24-hours later, she was dead. Her boyfriend, who was a recovering drug addict somehow managed to smuggle illegally obtained liquid methadone onto the ship in an emptied out bottle of Dayquil. And somehow, that methadone made its way into a non-drug using, adamantly and profoundly opposed to drugs of any kind, young lady's system. Having both anecdotal and scientific proof that she was not a drug user, the question of how this got into her system is of extreme interest and importance.

Ashley and her boyfriend had an argument the first night of the cruise. He left her in their cabin and when he returned, she was asleep. He got into bed beside her. The next morning he got up and she was still sleeping according to his report. He left the cabin to meet up with his friends and plan the day, again according to his story. When he returned he found he couldn't wake her up and began to scream out into the hallway for help. A volunteer fireman rushed in and began CPR on Ashley. It is important to note that the fireman's story, quite different from that of the cruise lines, says that Ashley was viable, warm and with a slight, faint pulse at the time a nurse finally arrived, empty-handed from her office one flight directly below their cabin. She took over the resuscitation efforts and called for the doctor to come. When he got there they began to perform a few albeit unsuccessful life saving measures but none of the ones you would expect in a land based hospital, especially when the patient is suspected of having ingested methadone which her boyfriend finally admits is missing. No Narcan is administered, no line is put in, and over 20 minutes go by before a defibrillator arrives. By this time, it is too late. She is pronounced dead.

"Once I was notified, an experience I will never recover from," says Jamie, she was told the FBI and Mexico were investigating but the ship was requesting that her body be allowed to remain onboard in their small morgue and return along with

everyone else to Los Angeles 36 hours later. It would be months before she learned that in actuality her body had already been removed and left alone in a morgue in Mexico. No one stayed with her. The ship sailed on.

Five days later, Jamie was able to get Ashley's autopsied, embalmed body back to Los Angeles where she was told she would have to hire a private forensic pathologist if she was ever to know what killed Ashley (other than the cruise line's medical negligence). And it had to be good one, because he or she would have precious little to work with when they received her.

Meanwhile the FBI maintained that they could not discuss anything with Jamie. And the cruise line offered nothing in the way of information or help and the boyfriend, who was never charged with anything ... not even illegal possession of drugs, or manslaughter, or reckless homicide, remained free. These were only some of the legal hurdles, the jurisdictional murkiness, the lack of laws and rights that victims of crime at sea or their survivors have, the pain, the sense of powerlessness and secondary victimization Jamie was beginning to become painfully familiar with.

Our final story comes from Laurie, another senior vice president of ICV, who while on a Royal Caribbean cruise vacation with her best friend Michelle was brutally raped by a crew member who was employed as a janitor but who was at the time filling in as a security guard. The crew member followed Laurie to her cabin, forced his way in and sexually assaulted her. She was left unconscious and when she woke up she discovered that her pants had been removed and that she not only had an impacted tampon she also had had ligature marks on her neck from what she could suddenly recall must have been caused by the perpetrator holding her down while she was trying to kick and push him off of her.

After Laurie reported the rape, two supervisors, the purser and the head of security, came to her cabin and sat on the bed where the rape occurred to interview her. When Laurie was interviewed by the men one of the questions they asked her was how much she had had to drink that evening, and Laurie's answer was that over the course of the afternoon and night, she probably had a total of four alcoholic beverages.

The purser then rose, clasped his hands behind his back and turned to face Laurie, who thought he was now going to say that medical help was on the way. Instead what she heard was this, "Ms. Dishman, it sounds to me like you need to control your drinking."

Several hours later, she was taken to the infirmary. There she and her friend Michelle were handed two trash bags and told to go back to their cabin and collect her own evidence. "Everything with my case was horribly mishandled by the cruise line, and I was provided with no course of action," Laurie says. Eventually after finding an attorney to help her she says, "I had a eight hour deposition where the cruise line attorneys questioned me the entire time about my character because they knew what had happened with the janitorial employee they put in a security guard uniform was going to be big trouble. He had already been in trouble for falsifying records, insubordination and harassing two women six weeks before he raped me."

Laurie later wrote to her Congresswoman, Doris Matsui, when it became clear that neither the FBI nor the DOJ could help her. Afterwards she made over 30 trips to Washington for hearings and to gain support for legislation which the Congresswoman introduced as the Cruise Vessel Safety and Security Act. The bill was passed and signed into law July 27, 2010.

The details involved in each of these cases and so many others points loudly to the fact that the cruise industry has, to an astonishing extent, functioned as a privatized society, ruled almost solely by their own corporate policies. This is an industry that has cleverly crafted a business model that allows them to "enjoy virtually every benefit and protection of operating as an American company—indeed icons of Americana—without being required to shoulder any of the responsibilities commonly understood to accompany the privilege. For all intents and purposes, they pay no federal taxes, and contend with no labor restrictions. Modern ships have expanded to size to a small city—they can carry approximately 9000 passengers and crew. While most cruise customers are from the U.S., their workers come from impoverished nations like Indonesia, Honduras or the Philippines. Their corporate headquarters are often found in Miami yet instead of paying taxes and registering their ships here in the U.S. they pay nominal fees to countries like Liberia, Panama, or the Bahamas, which affords them the right to fly their ships under what is known as "flags of convenience." Tragically, this means that the ships are now registered in countries which are essentially legal and regulatory vacuums, unable and largely unwilling to exercise oversight and control. Doing this allows them to not only avoid U.S. laws and standards such as OSHA, and other regulatory controls, but labor laws, hiring practices and conditions, and a host of other requirements that would significantly cut into their profit margins.

Critics rightfully claim that the cruise industry is effectively being subsidized by the U.S. government. These claims are based on the fact that the cruise industry actually represents a significant government expense. First of all, its ships are highly attractive targets for terrorists with unparalleled potential for mass casualty given their powerful symbolism of American consumer culture. With that in mind, the U.S. has spent millions of taxpayer dollars to fund port security to safeguard these cruise ships. These funds include but are in no way limited to the U. S. Coast Guard's patrol of the ships coming into and going out of our ports, shoreside security, the FBI which has jurisdiction over crimes involving U.S. citizens, and customs agents. Even more egregious is the treatment of passengers who become victims of crime or other tragic acts of negligence on these ships while at sea. Typically, the passenger is an American, having bought their cruise ticket in America and boarded the ship in an American port. Naturally, if they even think of it at all, they assume that the rights, laws and protections they have as an American go with them as they step onto the ship. What they don't know is that as soon as their ship sails away, so does all of that. Not until something goes wrong do these unsuspecting passengers realize that they are instead trapped on a tiny piece of Liberia or Panama ...

Here we are today, in 2019 and the 25,000,000 passengers projected to take a cruise this year are still in jeopardy and in need of protection and awareness. Many could unknowingly fall victim to the number one crime occurring on cruise ships; sexual assault. And yet the cruise lines continue to shield the truth of how many of these crimes are actually occurring and how *many of them involve minors*. Thanks to Senate testimony, we do know and we feel that the public needs to know. On average, an appalling total of 33% of all sexual assaults on cruise ships are committed against minors.

Without the efforts of ICV and the congressional action taken over the past nine years, no legislation would have been passed to improve the safety of passengers. While our voice will not be heard at the current public hearing, we appreciate the opportunity to submit this statement of need for continued oversight and additional legislation. Beginning with the fact that reportable crime categories should be expanded to include all crimes, not only the ones included under the CVSSA but all, so that they too may be included in the crime statistics. As it appears now, the cruise lines themselves are able to decide and label any offense or crime, with the possibility of downgrading the seriousness of such crimes (i.e. instead of categorizing an incident as a sexual assault which is a reportable offense, the cruise line has the option of categorizing it as "inappropriate touch" which is not currently a reportable offense). Such limited and unchecked reporting serves to protect the cruise line rather than the passenger. This calls for your attention.

Another issue of deep concern is the fact that cruise lines resist legislation claiming that they are already highly regulated. However, these claims are unsubstantiated and can be easily refuted. One need only refer to a statement submitted on a slide included in a power point presentation given by the International Maritime Organization (IMO) itself stating the following:

"Roles and Functions ...

IMO is *not*:

- A policeman

IMO does not:

- Implement anything
- Develop standards for strength or determine design requirements
- Approve equipment and systems
- Have (m)any sanctions"

Additionally one can only look with suspicion upon the Cruise Lines International Association (CLIA) self-adopted and promoted Passenger Bill of Rights—an obvious public relations initiative. Sadly, an evaluation of that claim reveals that while many of the promises included there seem reassuring to cruise passengers, a deeper dive into them indicates it is filled with empty promises and lacks any legal substance or guarantee for passenger recourse when seeking fair compensation.

Finally, unlike companies on land, cruise lines face virtually no financial exposure when their passengers die or disappear. Even if the cruise line is clearly negligent or acts maliciously. This is because of a nearly one hundred year old law known as the Death on the High Seas Act (DOHSA), which was originally passed to provide for a widow's ability to obtain limited recovery when her seaman husband died at sea. This same law is still being used—now as a shield by the cruise industry to avoid financial accountability for the wrongful deaths of passengers. Applied to the cruise lines, DOHSA today provides no recovery when the victim is a retiree or a child. This passenger demographic accounts for a significant portion of the 25 mil-

lion passengers who cruise each year. Cruise lines and their insurance companies have profited enormously due to this ancient law. Understandably, many grieving passengers are not only floored when they learn of this, they are also made to feel victimized once again when told their loved one's life was worthless under current maritime law.

ICV implores Congress to not only continue but to in fact strengthen its resolve to warn and protect the public from danger when they are the most vulnerable and the least aware: on a cruise ship. Our hope and our mission is to change the fact that even as we seek to increase safety, create awareness, and open up opportunities for the public to hear and know the details of tragic stories such as the victim members stories presented here, the cruise are engaged in efforts to shield and protect themselves while they shame and overwhelm the victims in many cases such as in the sexual assault of Laurie, or the costly PTSD Georgia, Dean, Valerie, and Cindy are still living with as a result of their harrowing evacuation of a sinking cruise ship off the coast of Italy. Not to mention the heartache and scapegoating tactics used after the fiery deaths of Richard, or Larry and Christy. Several ICV members can certainly speak to the medical negligence on the supposedly fun ships that led to the deaths of Ashley, Matthew, and Christina; or the truth behind the disappearance of Merrian, or Rebecca, or Blake, or Amy, or Daniel. And all of us could tell you the truth of what could have been done to prevent these tragedies.

The congressional champions we have had along the way have made all the difference in our fight for answers and justice. There is an old African proverb that says, "Until the lion tells the story, the hunter will always be the hero." While stories are most often told by the hunter—the customary hero—there is always another story. One that struggles to be told. In this case, the story struggling to be told is that of victims of crime on cruise ships. We are that lion—we have a story too. The world is counting on you to listen to that story.

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**Educational paper, "Spotlight On Safety: Why Accidents Are Often Not Accidental" by International Organization of Masters, Mates & Pilots and Dalhousie University, Department of Industrial Engineering, July 2019, Submitted for the Record by Hon. Larsen**

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[This educational paper is retained in committee files and appears in abridged form below. It is available in its entirety online at <https://bridgedeck.org/actionnetwork/Spotlight-MMP-WMRC-Final071619.pdf>.]

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This Paper is background information to the Poster Presentation at the World Maritime Rescue Congress, Vancouver, British Columbia, Canada, June 2019.

#### ABSTRACT

The best search and rescue (SAR) response is the one that does not have to take place. The International Maritime Organization (IMO) and the International Maritime Rescue Federation (IMRF) recognize that *prevention* is a key function of rescue organizations. If the number of maritime casualties is reduced, lives are saved, pollution averted and there are fewer risks to SAR personnel and lower costs for SAR organizations.

The IMO, the International Labour Organization (ILO) and national and private regulatory bodies provide a regulatory regime which, if followed, substantially reduces the risk and severity of maritime casualties. In the shipping economy, however, commercial pressures may lead to conflicts with the regulatory regime. It is therefore no surprise that failure to comply with the regulatory regime is a factor in many maritime casualties.

The General Maritime Law that governs international shipping has effectively insulated upper level managers from the consequences of regulatory noncompliance, provided that they can deny knowledge of it. The International Safety Management (ISM) Code, with its provision requiring that deficiencies be reported to a Designated Person Ashore, is designed to inform managers and bring them into the circle of responsibility. Although technology provides ship operators with the ability to have immediate knowledge of conditions aboard ship, including the degree of compliance with regulatory standards, there is a tendency to discourage reporting so as to maintain management's immunity from personal liability. It is difficult to estab-

lish a shared safety culture between the ship and management when the future of the master and crew may depend on not sharing safety information with management.

This problem may be exacerbated by “regulatory capture,” which can happen when marine inspectors are pressured by their superiors to “look the other way.”

With modern technology, the burden of responsibility can, and must, extend to ship operators, ship owners, classification societies and flag states.

In this paper, the International Organization of Masters, Mates & Pilots (MM&P), in conjunction with Dalhousie University, explores this complex problem, along with possible solutions. The authors also present their personal experiences in attempting to maintain safety standards.

#### GLOSSARY

**ABS**—The American Bureau of Shipping, a classification society, IACS member and Recognized Organization.

**ACP**—The U.S. Alternate Compliance Program is a voluntary alternate inspection process for U.S.-flagged vessels in which an approved Classification Society (Recognized Organization) may issue certificates of inspection on behalf of the U.S. Coast Guard.

**CAR**—Corrective Action Report. Under the International Safety Management Code (ISM), ship operators are required to maintain Safety Management Systems (SMS). In the context of these systems, Corrective Action Reports are used to report safety deficiencies to management.

**Classification Societies**—Classification societies are non-governmental organizations that establish and maintain technical standards for ship construction and operation. They confirm that ship designs and their underlying calculations meet published standards. They also carry out periodic surveys to ensure that ships continue to meet standards. Flag states may authorize classification societies to carry out surveys on their behalf.

**DPA**—Designated Person Ashore. Under the ISM Code, DPAs serve as a link between shipboard personnel and top management ashore.

**Flag State**—The nation in which a commercial ship is registered. Flag states have the legal authority and responsibility to enforce regulations (on inspection, certification, safety and pollution) on vessels registered under their flag.

**IACS**—The International Association of Classification Societies. The IACS is a not-for-profit membership organisation of classification societies that establishes minimum technical maritime safety and environmental standards and requirements and ensures their consistent application. The IACS is recognized as the IMO’s principal technical advisor.

**IMO**—The International Maritime Organization. The United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. Its primary mission is to create a fair and effective regulatory framework that is universally adopted and universally implemented. It works to create a level playing field, one in which ship operators cannot address financial challenges by compromising on safety, security and environmental performance.

**ISM Code**—The International Safety Management Code. It is intended to provide an international standard for the safe management and operation of ships and for pollution prevention.

**NGO**—Non-Governmental Organization.

**Port State Control (PSC)**—The inspection of foreign ships in national ports to verify that the condition of the ship and its equipment complies with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.

**Recognized Organization (RO)**—An organization (principally a classification society) authorized to carry out survey and certification functions.

**SMS**—Safety Management System. Under the International Safety Management Code (ISM), operators are required to maintain a Safety Management System (SMS). The SMS details: how a ship is to be operated on a day-to-day basis; emergency procedures; measures to be taken for safe operation; and requirements for reporting to the DPA ashore.

**SOLAS**—The Safety of Life at Sea Convention, widely considered the most important international treaty on the safe operation of merchant ships.

1) THE MARITIME SAFETY REGULATORY REGIME AND COMMERCIAL PRESSURES VS.  
REGULATORY COMPLIANCE AND SAFETY

The international maritime shipping sector, which carries 95 percent of international trade and makes globalization possible, is dominated by the “flag-of-convenience” (FOC) system. This system allows a ship owner to register a ship under the flag of one of more than 30 foreign countries, usually small island nations that operate open registries.

FOC registries are often managed by private corporations as for-profit enterprises that provide ships with an assumed nationality for tax and regulatory purposes. The system allows the ship owner to operate free of the taxes, regulations, labor and environmental laws of his or her home country. It also allows owners to crew their ships with seafarers from low-wage labor supply countries in the developing world.

FOC registries compete with each other to offer the least burdensome tax and regulatory environment. In effect, they create an international industry that operates in a nearly stateless environment. This leads to an uneven playing field and a race to the bottom with substandard shipping enjoying a competitive advantage.

To counter the destabilizing effect of the FOC system and bring some semblance of regulatory uniformity to international shipping, the United Nations has acted through its International Maritime Organization (IMO) to establish minimum safety, pollution and emission standards for ships in the international trade. The London-based IMO has 174 member states. There are also more than 60 non-governmental organizations (NGOs) with consultative status; they include industry trade associations, professional associations, class societies and maritime labor organizations. The IMO provides a forum for oversight and debate on amendments to more than 50 international conventions and codes covering all aspects of shipping, from design and construction to fire protection, equipment performance standards, manning, hours of work and rest, training, pollution and emissions, navigation safety, communications, search and rescue, and safety of life at sea.

The IMO recognizes the International Association of Classification Societies (IACS) as its principal technical advisor in the development of technical and safety standards. The membership of the IACS consists of twelve class societies that verify the structural strength and integrity of essential parts of the ship’s hull and its appendages, and the reliability and function of the propulsion and steering systems, power generation and other auxiliary systems. The IACS is the only NGO at the IMO that is able to develop and apply its own rules.

It should be noted that the IMO has no enforcement power. Its function is to provide a forum for member states to debate both the adoption of new conventions and codes and the need for safety-related revisions in existing conventions and codes. Member states that are signatories to a specific convention have a contractual treaty obligation to conform their national laws to its terms.

Enforcement remains at the national level, under the purview of the administration of each flag state. The majority of ships in international trade are registered in FOC flag states; as sovereign nations, they can interpret, implement and enforce their treaty obligations as best serves their national interests. FOC and traditional national flag states alike are reluctant to place their ships at a competitive disadvantage by implementing regulations that go beyond the international minimum standards as they interpret them.

IMO conventions permit flag states to delegate ship inspection and surveying to class societies that meet the requirements of the IMO Code for a Recognized Organization (RO). This is a reflection of the fact that many flag state administrations do not have the technical experience, manpower or global coverage necessary to undertake all the IMO-required inspections and surveys on their own. It is for each flag state to decide how much authority to delegate. In most cases, the RO class society is empowered by the flag state to require repairs or other corrective action and to withdraw or invalidate the relevant certificates required to operate the ship if that action is not taken. Often, the RO class society and its surveyors are the frontline actors in the enforcement of regulations that address ship design and construction, along with the maintenance required to keep ships in safe condition over the course of their life cycles.

Because the ship owner is free to choose which FOC flag state and class society to use, there is commercial pressure on flag states and class societies to satisfy their clients. This obviously puts pressure on RO class society employees, i.e., the surveyors and auditors responsible for certifying regulatory compliance and the condition of the ship. The ship owners themselves are under commercial pressure from other ship owners operating under competing FOC and RO systems of regulatory enforcement and compliance verification.



The IMO's International Safety Management (ISM) Code contains regulations that govern the safe management and operation of ships, along with pollution prevention. The ISM Code requires that companies have a Safety Management System (SMS) that sets out their safety and pollution prevention policies and complies with all mandatory international and national regulations and maritime industry standards and guidance. The SMS contains company policy on all aspects of its safety program. As with other IMO regulations, the flag state can delegate to RO class societies the enforcement, auditing and issuance of certificates of compliance. Ship owners can also delegate to the same RO class societies the preparation of the company's SMS.

One of the principal purposes of the SMS is to provide a link between onboard safety management and a designated person ashore (DPA) who has access to the highest level of management in the company. The designated person is responsible for monitoring the safety of the ship and ensuring that adequate resources and shore-based support are provided.

The system places responsibility on the master and the designated person to communicate information related to: onboard safety deficiencies and non-conformities and their possible causes; regulations pertaining to corrective actions; and record-keeping of such actions. The intent is to make shore-side management directly responsible and liable for the safe condition and operation of the ship and for documenting the actions taken in this regard. This has major implications, as it undermines the ability of the company to limit its liability based on a lack of knowledge, or privity, of the unsafe conditions. It also calls for creation of a documented record of deficiencies that could prove a case of negligence on the part of the company.

It was hoped that the ISM Code would lead companies to embrace a more positive safety culture. In a well-managed company with experienced staffers who have the authority and resources needed to take action, an SMS will contribute to the development of a positive safety culture. But not all companies are managed well or staffed with the resources necessary to support the master in maintaining a safely operated ship. In these cases, the reporting of deficiencies may be looked upon as a problem rather than as an opportunity to improve safety. In such companies, a master who brings safety management problems to the company is himself a problem and risks being replaced. This can have a chilling effect on other masters who then become reluctant to bring their own safety concerns to management.

The underlying problem with maritime safety is that the regulatory system is subject to commercial pressure from the top down.

Even at the highest level within the IMO, commercial considerations are taken into account in drafting and adopting regulations. To some extent this may be acceptable because, as is the case in any high-risk industry, there must be an appropriate balance between commercial viability and safety. The problem is that the IMO is not a regulatory body in that it does not implement or enforce the regulations in the conventions and codes that its member states adopt. It is left to member flag states to bring their national laws into compliance with the international regulations.

Flag states in the FOC system are essentially competitive flags for hire. They dominate international shipping and they delegate most of their responsibilities and authority to private RO class societies. The RO class societies are employed by companies but act on behalf of flag states in implementing and enforcing international regulations. Companies, in turn, employ RO class societies to prepare their ISM Code safety management systems and conduct audits of SMS documentation and performance. The end result is that companies are regulated by private organizations that they themselves employ and have a choice in selecting.

Despite the apparent conflict of interest, in most cases the system works well: the flag state, the RO class society, the company and shipboard personnel cooperate to achieve a quality operation. In many trades and maritime sectors, quality confers commercial benefits. But there are significant differences in the quality and integrity of FOC flag states and RO class societies, and companies take these differences into consideration when making the choice of which to select. A bad actor with a substandard ship may select a flag state and class society with a reputation for lax enforcement of standards. There may be a penalty for doing so, as it may subject the ship to more stringent Port State Control inspections because of the reputation of the flag state or class society. However, that may be a risk the owner is willing to take to gain a competitive advantage.

*Port State Control (PSC)* is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.

The inspections were originally intended to be a backup to flag state implementation, but experience has shown that they can be extremely effective—particularly in cases in which the regulatory organizations (flag state, class society) have not fully met their obligations.

PSC came about partly in response to the March 1978 grounding of the *VLCC Amoco Cadiz* off the coast of Brittany, France, which caused a 220,000-ton oil spill.

Nine regional agreements on Port State Control—Memoranda of Understanding, or MoUs—have been signed: Europe and the North Atlantic (Paris MoU); Asia and the Pacific (Tokyo MoU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MoU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MoU); the Mediterranean (Mediterranean MoU); the Indian Ocean (Indian Ocean MoU); and the Riyadh MoU. The United States Coast Guard maintains the tenth PSC regime.

Where vigorously enforced, PSC has been effective in detaining substandard ships, discouraging them from operation in regions with effective PSC, banning substandard ships, publicizing and penalizing substandard ships, their operators, their flag state and the classification society. (In contrast, ships operating in domestic waters only, and not subject to PSC, are often less safe).

## 2) MARITIME INCIDENTS—RISK TO LIFE AND THE ENVIRONMENT

The shipping industry is prone to repetitive incidents, which have often resulted in loss of life and damage to the environment. With proper oversight—by ship management, inspectors, regulatory authorities, and crew—the deficiencies, which caused these incidents, would have been corrected before disaster struck. Many of the shortcomings identified during subsequent investigations of the casualties were related to survey items: machinery, hull structure or load line issues. Some were related to the operators' safety culture. In many cases, investigators found both survey issues and a lack of safety culture.

In this section we highlight several serious incidents that resulted in loss of life. Although different on the surface and separated by time, distance and vessel type, they have at least one significant factor in common: in every case, the risks were obvious and predictable.

**Bulk Carriers:** In March 2000, the bulk carrier *Leader L* sank in the North Atlantic off the eastern coast of Canada. Eighteen crew members died. The *Leader L* was one of about 100 bulk carriers to sink in the 1990s; nearly 700 mariners were lost in bulk carrier casualties in this time period. (Associated Press, 2000). There were allegations of serious structural deficiencies in this ship.

Efforts have been made to increase the safety of bulk carriers, which have been among the vessels most vulnerable to casualty (see illustration on the following page). But the ships continue to sink. As recently as March 2017, the bulk carrier *Stellar Daisy*, the largest such vessel ever to sink, went down in the South Atlantic, taking with it 22 of 24 members of the crew.

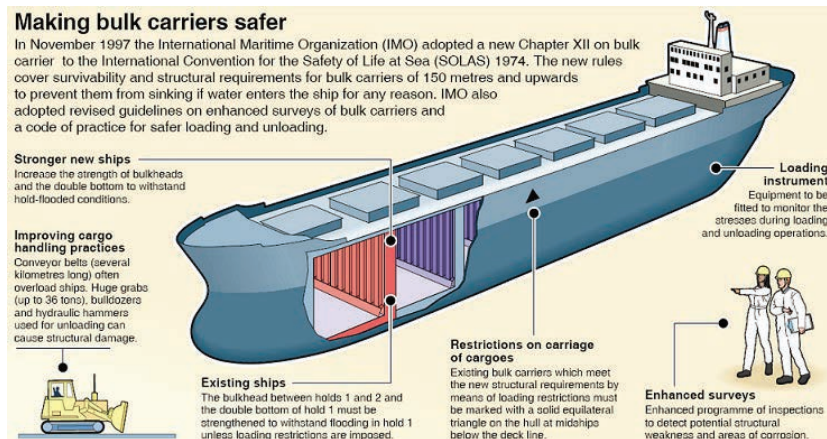


Figure 1. Making bulk carriers safer (Bulk Carrier Guide, 2010a).

*Tankers:* Although international efforts to improve the safety of tankers have met with some success, incidents still occur—often with catastrophic effects on the environment—and a flawed international regulatory system can shield those responsible.

In 2002, the structurally deficient tanker *Prestige* sank off the coast of northern Spain, spilling over 60,000 tons of heavy fuel oil. In an outrageous case of injustice, the master of the vessel, 81-year-old Captain Apostolos Mangouros, was held accountable and imprisoned, even though the Spanish government had refused his request to provide a place of refuge when the foundering vessel was in distress (Maritime Executive, 2016). The owner of the ship had knowledge of its condition and should not have permitted it to sail. It subsequently broke-up, with disastrous effects on the Spanish coast. (Maritime Knowledge, 2018).

*Ferries:* The continuing loss of ferries and tour boats around the world has led to calls for improved regulation of these vessels.

In the Philippines, the Sulpicio Lines ferry *Princess of the Stars* capsized in a typhoon in 2008, causing the death of more than 800 people. In 1987, in what is considered the deadliest peacetime disaster in maritime history, another Sulpicio Lines vessel, the *Dona Paz*, sank after a fiery collision. The ferry was seriously overcrowded: nearly 4,400 people died, many times the number that the company said it was certified to carry, and almost three times the number listed on its manifest. There were just 24 survivors.

In 2009, in the South Pacific Kingdom of Tonga, another domestic ferry, the *Princess Ashika*, sank with considerable loss of life. Investigators were told later by an officer for the Ministry of Transport that “any fool (could) tell how bad the ship was ...” (Kavaliku, 2010, p. v).

The Russian riverboat *Bulgaria* sank in 2011 on the Volga River; 122 people died, many of them school children (Appendix F).

A particularly horrifying ferry disaster occurred in 2014, when the Korean ferry *Sewol* capsized, trapping over 300 people—mostly students on a school trip—inside.

The American-flag bulk carrier *Marine Electric* sank in 1983, largely due to its deteriorated condition. There were only three survivors; the other 31 members of the crew died. The *Marine Electric* has been referred to as ‘The Wreck That Changed the Coast Guard Forever’ (Zilnicki, 2019). Yet the loss of the *El Faro* with all hands (33 souls) occurred in 2015, more than three decades after the *Marine Electric* sank.

Did the safety culture really change as a result of the *Marine Electric* disaster?

### 3) PRESSURES ON FRONT LINE PERSONNEL: SHIPS OFFICERS AND CREW

Mariners are guided through darkness, fog, and foul weather by radar and a multitude of other electronic navigational aids. The electronic era, and Satellite Telephone, has in some cases also induced micro-management from ashore; often by managers with little or no seagoing experience. While the electronic age has given us new tools to assist in progressing from one port to another, intense commercial pressures have increased for: on time arrivals, timely departures, and fuel conservation wherever possible.

The fact is, ships do not make money at the berth. So, while we have all of this electronic navigation to illuminate the way, and “help” from management ashore, what keeps the ship safe? *The best set of eyes and ears to ensure safety and regulatory compliance for any ship is its crew.* Unfortunately, the seamen are often underutilized in keeping a ship within regulatory compliance. Indeed, in some cases they are pressured to keep quiet and keep the ship moving. *Ships make money at sea!*

Under the International Safety Management Code (ISM), operators are required to maintain a Safety Management System (SMS). A requirement of an approved SMS is reporting, and documentation, of deficiencies via “Corrective Action Reports” (CAR’s). Maritime companies do not like having a documented trail of failures to comply with the ISM Code or other regulatory requirements. Multiple infractions may make them susceptible to increased scrutiny by Port State Control or other regulatory agencies. This could jeopardize schedules, increase repair costs at an inconvenient time, or leave a trail for a charge of negligence and liability in the event of an accident. Hence management can develop a negative attitude towards ship’s personnel who originate CAR’s and open up the documentation trail. Thus, officers can be reluctant to write CAR’s for fear of retaliation, which can be subtle in nature, such as lack of advancement, or more acute as job loss.

Any company intent on retaliation, no matter how subtle, will exploit an available issue to disqualify the complainant. Effectively, within the maritime industry, these companies work against the ISM Code to their own advantage, and to cover any wrongdoing at the management level. We have classification societies and Port

State Control that visit ships but do not review CAR files, nor ask officers if there are any outstanding deficiencies not included in the CAR file. Often, the presumption by agencies is that because the ship has passed annual inspections and is properly certificated there are no problems. Closer scrutiny is definitely needed. If the CAR file is historically without mention of any safety violations or non-compliance issues, this should raise a red flag for the auditor.

In addition, in the United States, we have the “Alternate Compliance Program” (ACP), under which classification societies perform marine inspection duties that were once the sphere of the U.S. Coast Guard. On the one hand, the classification society is there to inspect for noncompliance, which could possibly cause delays. On the other hand, it is being paid by the ship’s owner to authorize the various certificates needed for marine operation, so the ship can sail. This manifests as a serious conflict of interest. Classification societies are self-financing and so require revenues to continue to operate, not to lose clients that can go to an alternative society. In the United States, under the ACP, the U.S. Coast Guard is the agency that issues the Certificate of Inspection, and other certificates, based on the inspection of the classification society. It should be a double check; it is not.

One of the findings of the USCG Marine Board of Investigation into the sinking of the *SS El Faro* was the USCG’s lack of manpower for marine inspection oversight. The Coast Guard, when under ACP, is relying heavily on the classification society to perform proper inspections. In the case of the *SS El Faro*, the Board’s findings showed a distinct failure by both the ABS and the USCG.

What was the operator’s accountability in the loss of the *El Faro*? No official was held to account. Contrast this with a Russian court’s decision in 2014 regarding the 2011 sinking of the riverboat *Bulgaria*. In this case, managers and others found guilty of failure to comply with regulations were imprisoned (see Appendix F). Alternatively, in a legal case of retaliation by a major U.S. shipping company, *Captain John Loftus v. Horizon Lines*, the ship’s master was awarded over \$1.154 million dollars. The judge called the actions of management “REPREHENSIBLE.” Here, there was violation of federal law by some of the highest corporate executives in the company to cover their own mismanagement and to silence a ship’s master who was reporting major safety issues to protect his ship and crew. (See Appendix A)

The case parallels that of Jeff Hagopian, who was abruptly terminated from his job as captain of Noble Drilling’s *Noble Danny Adkins* after filing a report of safety violations.

Hagopian had been a captain with the company from 2010 to 2015. Each year, he had received highly positive, complimentary performance evaluations.

He reported two violations to Noble’s alternate designated person ashore: a false “red entry” in the logbook which claimed the crew had performed the quarterly launching and maneuvering of the lifeboats; and an attempt to mislead USCG inspectors during the vessel’s annual Certificate of Compliance Inspection about the defective condition of the gravity davit that deploys the fast rescue craft.

Eleven days after filing his report, he received a phone call from his direct supervisor and Noble’s human resources manager claiming the company had “lost confidence” in his “ability to manage the vessel.”

Unbeknownst to Hagopian was the fact that his safety report had exposed directives by management to not be forthright with the U.S. Coast Guard. And while the company constantly stressed its safety policy, it had actually just begun four years of criminal probation after pleading guilty to eight felony counts related to safety and oil pollution violations and major non-conformities with the safety management system on the *Noble Discoverer*.

Hagopian filed a lawsuit against Noble Drilling under the “Seaman’s Protection Act” in U.S. District Court for the Southern District of Texas. It was settled out of court in February 2017 (case # 3:2016-cv-00099).

As Captain Hagopian has stated, “Law enforcement, regulatory agencies and classification societies are all failing the mariner due to conflicts of interest, politics, cronyism and corporate pandering. Safety regulations should be enforced more vigorously to help support anyone who is trying to protect their crew and vessel without fear of retaliation.”

Rear Admiral Paul F. Thomas said it best in the Spring (2016) Issue of USCG Proceedings in discussing Safety Management Systems and the ISM Code: “An effective SMS must not only be very well developed in terms of process and procedures; it must also be deployed from the boardroom to the boiler room. There shouldn’t be any disconnect between the auditors and the surveyors, or between the CEO and the seaman. We all must work together to discover and eliminate such disconnects.” (Rear Admiral Thomas, 2016, p. 4)

## 4) PRESSURES ON SAFETY INSPECTORS

The safety inspection regulatory regimes, such as classification society and flag state, are the top level of the safety system. If they fail, the only safety check is an effective Port State Control regime, which does not apply in many cases.

The pressures on the safety inspection system may come at several levels: the organization level, and, often as a result, the personal level.

*a) At the organizational level ("regulatory capture")*

The Safety Inspection System is subject to conflicting pressures: on the one hand, pressure from industry seeking to reduce the regulatory burden and the "cost" of safety; on the other hand, public pressure to maintain safety. Industry pressure is generally ongoing, through public fear of job losses due to the cost of safety, and through political pressure (often as a result of lobbying and political contributions). Pressure from the public generally only comes after a major tragedy, such as the sinking of the *El Faro* or the *Marine Electric*, and usually subsides after a few years.

*b) At the level of individual safety inspectors*

Why do safety inspectors often pass over and not identify obvious deficiencies for needed repairs? In some cases, it may be a genuine oversight, or a lack of training (itself a serious issue). However, in many cases it is pressure from their managers, (themselves subject to pressure from more senior managers). There may also be pressure from colleagues to be "part of the team," to not rock the boat.

Those who endear themselves to management and get the job done on time and at less cost are likely to be rewarded with better personnel reviews as well as promotions. The desire for career advancement may interfere with taking the actions necessary to protect the safety of the public. Absent a collective response and/or legal protections, it may be difficult for individual inspectors within an organization to withstand these pressures. (See Appendix B)

## 5) PRESSURES ON MANAGEMENT

*"And in competitive markets, whatever is possible becomes necessary."  
(Shaxson, 2011, p. 130)*

Pressures on ship management include the need to compete based on price and other factors such as timely delivery of cargo. Many ships are an important link in a "just in time" supply chain aimed at maximizing efficiency, minimizing cost and improving customer satisfaction.

Delays, due perhaps to rectifying "minor" safety issues raised by ship's crew or the class society, can interrupt this supply chain, with a significant impact on the shipping firm's customers. These customers may seek another "more reliable" shipping firm, one where the crew does not cause delays by reporting defects, one where the classification society is "more reasonable." Senior management is under pressure from the stock market, from shareholders, and from the board of directors, to keep costs down, to keep ships running on time. Middle managers, in turn, come under pressure from senior management to achieve these goals.

## 6) ACCOUNTABILITY

The public has the right to expect, and must demand, that those tasked with protecting public safety be competent to perform the responsibilities they are assigned, act with integrity, and place their responsibilities to the public ahead of all other considerations.

After the *Marine Electric* sank in 1983, the owner—Marine Transport Lines—pleaded guilty to criminal negligence and was fined \$10,000. No one in senior management was convicted of a crime, or even penalized by the company. But, a few years later, the CEO and his team were removed because the cost of new (safer) ships had reduced the company's profitability.

In the case of major marine incidents, the senior managers of shipping firms are very rarely successfully prosecuted. Senior management, albeit often not making the day-to-day front-line decisions, established the safety culture of the organization. In many, if not most cases, this corporate culture discouraged reporting of regulatory violations and safety concerns up the management chain, effectively insulating management from responsibility for the firm's actions.

Earlier this year (2019), more than a decade after the Philippine ferry *Princess of the Stars* sailed into Typhoon Frank and capsized with the loss of over 800 lives, criminal charges of reckless imprudence were filed against Edgar S. Go, Sulpicio

Lines first vice president and team leader of the firm's crisis management committee. (Supreme Court of the Philippines, 2019)

The charging document alleged that "the DOJ (Department of Justice) panel found that Go was involved in making decisions on whether a vessel should be allowed to sail such that he should have cancelled or discouraged the voyage considering the severe weather (Typhoon Frank) at that time." Originally, the loss was blamed solely on the master.

In the case of the tourist boat *Bulgaria*, unlike most cases, not just operating personnel but senior company officials, regulatory officials and a senior inspector were sentenced to significant terms of imprisonment (see Appendix F).

U.S. Coast Guard Final Action Memo on the October 2015 Sinking of the *SS El Faro*:

*"This tragic story points to the need for a strong and enduring commitment at all elements of the safety framework. First and foremost, the company must commit to safety culture by embracing their responsibilities under the ISM Code. Secondly, Recognized Organizations (ROs) must fully and effectively perform their duties and responsibilities. Finally, the Coast Guard must, and will, provide the final safety net with sustainable policy, oversight, and accountability"* (Commandant Admiral Zukunft, 2017, p. 3).

#### 7) CONCLUSION: THE WAY FORWARD—EFFECTIVE REGULATORY OVERSIGHT & A REAL SAFETY CULTURE

We have shown that the regulatory framework, based on IMO standards, is generally adequate, and is capable of being periodically updated as may be required.

*In most cases it is the lack of compliance with existing standards, be they ship construction and maintenance, or safety management procedures, which is the root cause of safety incidents.*

The following proposals geared toward American regulations could be adopted worldwide:

1. Greater uniformity by flag and port states in implementation of international safety regulations, with strict enforcement by Port State Control, including the ability to look behind certificates of compliance issued by flag states or other inspection organizations.
2. The right and obligation of ship's officers to raise "Corrective Action Reports" (CAR's) and have them addressed in a timely manner.
3. Classification society inspectors, or USCG/port state control personnel, should be "required" to review the CAR file "every" time they board a vessel. There should be accountability to ensure compliance with the system as intended.
4. Consider ending, or modifying, the Alternate Compliance Program. ACP is a "pay for play" program, where there is a direct conflict of interest for the regulatory agency (such as ABS, or another classification society).
5. Protection of crew and other personnel by a legal framework, such as the American "Seaman's Protection Act" (See Appendix D), and by enforcement of the rights established under the Maritime Labour Convention of 2006.
6. Ensure the company's operational team includes management personnel with extensive seagoing experience who can review policy and be available for consultation with the ship's senior officers.
7. Legal (criminal) accountability, such as the Canadian "Westray Bill" (See Appendix E), for officers and directors of an organization as well as the organization itself, including Regulatory Organizations, where their action, or lack of action, results in injury or death.

#### 8) AUTHORS' NOTES AND ACKNOWLEDGEMENTS

This Paper is based on the authors' and contributors' professional knowledge and experiences. In particular, three of the contributors were penalized by their employers and ultimately terminated as a consequence of their attempt to comply with regulations and safety protocols.

These whistle-blowers would like to take this opportunity to thank the many colleagues, including some in senior positions, who supported them; the many others, including prominent politicians, who understood the significance of their situation; and the families who stood by them through many frustrating times. They would also like to thank their lawyers, whose sense of fairness and justice led them to carry on, at some risk to themselves, without a clear prospect of reward.

The authors also thank Jeff Hagopian, former captain at Noble Drilling, for sharing his safety experience on the *Noble Danny Adkins*.

Finally, they would like to acknowledge the efforts and enthusiasm of student co-author Tara Sherrard, for whom this project presented an opportunity to learn the

somewhat disillusioning difference between the ‘Paper’ academic world, and the ‘Real’ world experienced by many.

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[Appendixes A through F are retained in committee files and are available in the online version of the educational paper at <https://bridgedeck.org/actionnetwork/Spotlight-MMP-WMRC-Final071619.pdf>.]





## APPENDIX

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QUESTIONS FROM HON. PETER A. DEFazio FOR REAR ADMIRAL RICHARD V. TIMME,  
ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

*Question 1.* Are there any changes to vessel safety requirements or the processes used by the Coast Guard or ROs to enforce the requirements that warrant being amended to make them more efficient and/or effective?

*ANSWER.* The Coast Guard will continue to evaluate safety regulations and associated processes for their effectiveness and to determine whether they warrant adjustment. The Coast Guard will also continue to work closely with Recognized Organizations to ensure they follow a similar process for their individual rule sets and ensure any updates align with national regulations. The Service does not recommend any changes to enforcement processes at this time.

*Question 2.* How does the Coast Guard determine that U.S.-flagged commercial vessels have sufficiently addressed the new safety requirements?

*ANSWER.* The Coast Guard generally conducts annual inspections on U.S. flagged commercial vessels that are subject to inspection to verify compliance with all applicable laws, policy, and international regulations. For new safety requirements, the Service provides compliance/enforcement guidance to field units and maritime stakeholders where necessary.

If a vessel is not in compliance following the implementation date for a new safety requirement, a Coast Guard marine inspector will issue a deficiency, using Coast Guard Form 835V, where required, describing the regulation the vessel did not meet, the required actions to come into compliance, the timeline for resolution, and any operational restrictions as necessary.

*Question 2.a.* To what extent does the Coast Guard review updated Safety Management System Plans for U.S.-flagged commercial vessels to ensure those vessels are in compliance with the new safety requirements vs. rely on third-parties (Recognized Organizations-RO), such as the American Bureau of Shipping and others, to review the updated plans?

*ANSWER.* The International Safety Management (ISM) Code includes a framework to provide operators an outline of key elements required to be considered for inclusion in a Safety Management System (SMS) program. The Recognized Organizations (ROs) have the responsibility to verify compliance by auditing the vessel's program to ensure conformance with applicable statutes, laws, and conventions.

Although the Coast Guard does not directly review a vessel's SMS or approve the SMS plan, Coast Guard marine inspectors examine/test crew knowledge of the vessel, emergency actions, and the vessel's material condition and its equipment/machinery during vessel inspections. If there are serious deficiencies noted in these areas, marine inspectors will determine if these deficiencies may be linked to a Safety Management issue and may require a RO or Third Party Organization (TPO) to conduct an audit of the vessel's SMS.

Additionally, the Coast Guard established a new Flag State Control Division at Coast Guard Headquarters that is principally focused on oversight of ROs and TPOs. The Coast Guard also continues to revise and develop improved policies for third party inspections, audits, and monitoring activities for Coast Guard marine inspectors and third party surveyors. Finally, the Coast Guard is developing a robust set of performance measures and improving communications with field commands and third parties to ensure performance expectations are well known and widely understood.

*Question 2.b.* To what extent does the Coast Guard conduct inspections of U.S.-flagged commercial vessels to ensure those vessels are in compliance with the new safety requirements vs. rely on third-parties (Recognized Organizations-RO), such as the American Bureau of Shipping and others, to conduct such compliance reviews?

*ANSWER.* With the exception of towing vessels enrolled in the Towing Safety Management System (TSMS), the Coast Guard conducts annual exams on all certificated vessels even if a third party is conducting exams on behalf of the Coast Guard. These focused Coast Guard inspections encompass critical systems and new safety requirements.

*Question 3.* Safety Management Systems, which include details ranging from safely conducting day-to-day operations to procedures for emergencies, drills, and training, are required by the US Code for certain classes of vessels.

What is the current and future role and importance of Safety management System and how it relates to vessel safety?

*ANSWER.* Safety Management Systems (SMS) are a structured and documented system that enable companies and personnel involved in vessel operations or management to effectively implement safety and environmental protection requirements. SMS are intended to be continuously updated by the companies who use them, based on observed non-conformities and lessons learned as a result of reviewing incidents. SMS facilitate a culture of safety and continuous improvement from the company's leadership down to the operational vessel level.

Vessels engaged in international trade are required to establish a SMS under the International Safety Management (ISM) Code. Towing vessel owners or operators also have the option to implement these systems as an alternate compliance option under 46 CFR Subchapter M.

*Question 4.* To the extent that the Coast Guard relies on Recognized Organizations to perform SMS plan reviews and vessel safety inspections on behalf of the Coast Guard, how does the Coast Guard ensure that these SMS plan reviews and vessel compliance inspections are conducted in line with requirements?

*ANSWER.* The newly created Flag State Control Division within the Office of Commercial Vessel Compliance, established as a result of recommendations in the wake of the SS EL FARO tragedy, is responsible for monitoring Key Performance Indicators that measure Recognized Organization and Third Party Organization (TPO) performance.

This Division also performs oversight of these entities, such as conducting quality assurance and vertical contract audits of third parties, actively monitoring and tracking findings to ensure corrective actions are being executed, and observing company and vessel audits to ensure adherence to the International Safety Management (ISM) Code to name a few.

The Coast Guard has also increased outreach and coordination with these entities, including holding regular meetings and two TPO workshops within the past two years.

*Question 5.* What types of compliance activities, if any, does the Coast Guard employ to ensure that the ROs are performing their review and inspection activities in line with requirements?

*ANSWER.* The Coast Guard uses several compliance oversight activities to ensure Recognized Organizations (ROs) are performing their review and inspection services in line with requirements. Coast Guard Oversight activities of ROs include:

1. Plan Review Oversight
2. New Construction Oversight
3. Inspection Oversight
4. Additional Fleet Risk Oversight Exams
5. Safety Management Certificate (SMC) Audit Observation and Oversight
6. Document of Compliance (DOC) Audit Observation and Oversight
7. Direct observation of the RO's employees performing services
8. Observation of each authorized RO's external Quality System Audit

The first six listed activities may also result in a formal request from the Coast Guard for the RO to conduct an internal review of their quality system to ensure statutory certification and services are performed in line with requirements.

*Question 6.* What types of performance indicators, if any, does the Coast Guard employ to monitor and track the extent to which the ROs are performing their SMS plan reviews and vessel safety inspection activities in line with requirements?

*ANSWER.* The Coast Guard monitors the following Key Performance Indicators (KPIs) and may publish the results in internal or public documents, as appropriate:

- KPI #1: Number of Recognized Organization (RO) issued statutory findings divided by the number of statutory surveys conducted (e.g. 100 findings / 10 surveys = KPI of 10).
- KPI #2: Number of RO Safety Management Certificate (SMC) and related Statement of Voluntary Compliance (SOVC) audit findings (total of observations,

non-conformities, and major non-conformities) divided by the number of all types of SMC audits conducted.

- KPI #3: Number of RO Document of Compliance (DOC) and related SOVC audit findings (total of observations, non-conformities, and major non-conformities) divided by the number of all types DOC audits conducted.
- KPI #4: Number of RO associations to Port State Control Detentions under the Paris Memorandum of Understanding, Tokyo Memorandum of Understanding, and Coast Guard Port State Control programs.
- KPI #5: Number of International Association of Classification Societies Procedural Requirement 17s (IACS PR-17) issued divided by the total number of RO statutory surveys conducted.

*Question 7.* To the extent the Coast Guard monitors and reports on the results of ROs' SMS plan reviews and vessel safety inspection activities, what metrics or data has the Coast Guard gathered on the results of the ROs' activities?

*ANSWER.* Recognized Organizations (ROs) are required to notify the Coast Guard prior to conducting a management company Document of Compliance (DOC) Audit or a vessel's Safety Management Certificate (SMC) audit. The Coast Guard attends and observes certain DOC and International Safety Management (ISM) audits performed by ROs. Each audit attendance is documented in the Coast Guard Marine Information for Safety and Law Enforcement (MISLE) system under a Management System Oversight (MSO) activity. Additionally, RO's audit findings are included in the Key Performance Indicator (KPI) data submitted by each RO on a quarterly basis.

*Question 8.* How is the Cruise Ship National Center of Expertise working with MARAD and cruise lines to establish safety standards for the industry?

*ANSWER.* The U. S. Coast Guard, the Maritime Administration (MARAD), and the Federal Bureau of Investigation (FBI) jointly developed the training standard and curriculum for commercial providers of Cruise Vessel Security and Safety Act (CVSSA) training. Per Coast Guard policy, Coast Guard Foreign Passenger Vessel Examiners verify training for the prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment. Additionally, the Cruise Ship National Center of Expertise (CSNCOE) has developed a Tactics, Techniques, and Procedures manual (TTP) to verify crewmembers are in compliance with these training requirements.

*Question 9.* Under the Cruise Vessel Security and Safety Act of 2010, Vessel Owners are required to post information on how victims can report a crime and how to contact the FBI. How do victims receive this information? Where is it posted? And what has the Coast Guard done to work with the FBI on responding and investigating crimes occurring on Cruise Ships?

*ANSWER.* Cruise lines disseminate information including consulate phone numbers and addresses and local Federal Bureau of Investigation (FBI) contact information in several ways:

- Most cruise lines provide passengers contact information in the terms of agreement that are signed at the time of booking.
- Additionally, the cruise lines provide daily local information in either a book, newsletter, or on the television in each stateroom.
- Crew members with specific Cruise Vessel Security and Safety Act (CVSSA) training are also available to provide assistance in contacting law enforcement when a report of a crime is made.

On a case-by-case basis, the Coast Guard has previously assisted the FBI, the lead investigating agency, with local investigations in a support capacity.

QUESTIONS FROM HON. SEAN PATRICK MALONEY FOR REAR ADMIRAL RICHARD V. TIMME, ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

*Question 1.* During the hearing you mentioned that the Coast Guard put together a "small passenger vessel task force" in the wake of the Conception incident. Could you provide details on this taskforce and how it is working to implement improving passenger vessel safety?

*ANSWER.* On November 8, 2019, the Assistant Commandant for Prevention Policy chartered the Small Passenger Vessel (SPV) Safety Task Force. This task force is comprised of naval engineers, marine inspectors, traveling inspectors, marine investigators, and data analytics personnel. The task force will review risk-based targeting, safety management systems, the results of the concentrated overnight accommodation vessel inspection campaign, and the results of SPV marine casualty investigations.

*Question 2.* You gave an example of response the Coast Guard is providing in the wake of the Conception incident as a direct concentrated inspection campaign of all vessels carrying the type of overnight passengers that the Conception catered to. Please provide more details on this campaign and what the Coast Guard has found so far.

*ANSWER.* Shortly after the passenger vessel CONCEPTION marine casualty, the Coast Guard released a Marine Safety Information Bulletin as guidance to owners and operators of passenger vessels with overnight accommodations to review their own operations and to reinforce items of concern found during the initial stages of the investigation.

The Coast Guard also initiated a nationwide vessel inspection campaign of over 350 vessels to review overnight accommodations spaces, fire safety, and electrical installations. One purpose of the campaign was to take immediate action to ensure inspected small passenger vessels (SPVs) with overnight accommodations were complying with applicable regulations. The secondary purpose during the campaign was to educate vessel owners and operators about key safety concerns identified in the early stages of the Conception investigation, and recommend owners and operators take voluntary action to improve the safety of their vessels when warranted.

The Assistant Commandant for Prevention Policy has formed a task force to examine SPV issues. Information from the vessel inspection campaign will be shared with the SPV safety task force for consideration.

QUESTIONS FROM HON. BOB GIBBS FOR REAR ADMIRAL RICHARD V. TIMME,  
ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

*Question 1.* Recently we have heard concerns from towing vessels operators working in South Louisiana on the lack of consistency in the interpretation and implementation of new safety standards under 46 CFR Subchapter M from one Officer in Charge of Marine Inspection (OCMI) Zone to another. Within the Eighth District, operators have encountered inconsistencies in the way that OCMI's construe regulatory requirements, resolve implementation issues, and manage towing vessel certification and other processes. In a segment of the maritime industry as transient as the towing industry, where companies own and operate vessels that routinely cross OCMI boundaries and frequently change areas of operation, consistency is critical to facilitate maritime commerce and reduce compliance burdens on towing vessel operators and crewmembers. While I appreciate and support the Coast Guard's empowerment of OCMI's to act with discretion where local conditions compel a distinct approach, most OCMI Zones share similar operational environments and most towing vessels share similar operational characteristics.

Will you work with your staff as well as stakeholders in the industry to identify or develop mechanisms through which you can elevate Subchapter M implementation issues, find reasonable and effective solutions, and promote the consistent application of those solutions by inspectors in the Coast Guard? Is the Coast Guard already taking any measures to increase consistency?

*ANSWER.* Yes. Coast Guard members are engaged across Headquarters, Areas, Districts, and field units to promote consistency and facilitate timely and effective solutions. The Coast Guard continues to work with industry stakeholders to minimize inconsistencies in interpretation and enforcement of 46 CFR Subchapter M. Additionally, Pub. L. 115-282, enacted on December 4, 2018, established a formal mechanism to promote consistency in the interpretation of regulations starting at the local Officer in Charge, Marine Inspection (OCMI) level. The Coast Guard has implemented this process nationwide, and will continue to encourage field units to expedite appeals to the Headquarters level where local concurrence cannot be achieved.

The Service also holds industry outreach days and regular meetings with industry organizations such as the American Waterways Operators to address potential areas for inconsistencies in regulatory interpretation.

QUESTIONS FROM HON. ALAN S. LOWENTHAL FOR REAR ADMIRAL RICHARD V. TIMME,  
ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

*Question 1.* During the hearing, you mentioned that you would provide investigation statistics regarding crew training on uninspected and inspected passenger vessels. Please provide those statistics.

*ANSWER.* Reportable Marine Casualties (RMCs) involving U.S. flag Passenger Vessels (inspected and uninspected), 2017–2019

	<b>RMCs where Training was identified as a Causal Factor</b>		
	<b>2017</b>	<b>2018</b>	<b>2019</b>
Passenger Vessels (Inspected) .....	17	14	8
Passenger Vessels (Uninspected) .....	1	4	1

QUESTIONS FROM HON. STACEY E. PLASKETT FOR REAR ADMIRAL RICHARD V. TIMME, ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

*Question 1.* While vessels sailing internationally are generally required to carry out-of-water survival craft, the Coast Guard has previously reviewed such a requirement for certain small vessels and determined that such vessels operating in certain environments do not need to carry such craft. Coast Guard regulations, under Subchapter W, allow for exemptions in situations where the conditions of voyage would render specific requirements unreasonable or unnecessary, and in which the course of the voyage is less than 20 miles from the nearest land.

In the U.S. Virgin Islands, international voyages to the British Virgin Islands are commonly offered and, in many cases, span less than 5 miles, and are shorter than a lot of domestic voyages. Meanwhile, longer inter-island domestic voyages do not require out-of-water survival craft because regulations on these voyages only require such craft on vessels operating in cold water.

Numerous operators in my district have been granted exemption for these short international voyages in warm water, but I understand that this has only been granted through the end of this year.

Will the Coast Guard provide risk-based consideration of continued requests for status quo treatment under reasonable circumstances?

*ANSWER.* As with all exemption requests, the Coast Guard will conduct a comprehensive review of the request. The route, service, operations, and regulatory requirements will be thoroughly examined to ensure accurate risk analysis. Based on the risk appraisal, the Coast Guard will make a determination.

QUESTIONS FROM HON. SALUD O. CARBAJAL FOR REAR ADMIRAL RICHARD V. TIMME, ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

*Question 1.* What additional steps could be taken to ensure that passenger vessels are safer in light of recent incidents like the CONCEPTION and ISLAND LADY?

*ANSWER.* Shortly after the passenger vessel CONCEPTION casualty, the Coast Guard (1) released Marine Safety Information Bulletin guidance to owners and operators of passenger vessels with overnight accommodations to review their own operations and to reinforce items of concern found during the initial stages of the investigation; and (2) initiated a nationwide vessel inspection campaign (including over 350 vessels) to review overnight accommodations spaces, fire safety and electrical installations. The nationwide campaign resulted in the issuance and correction of deficiencies with a focus on operating conditions, fire safety and escape routes.

Additionally, the Assistant Commandant for Prevention Policy directed the creation of a task force to analyze the inspection data and implement enhancements to the small passenger vessel compliance program.

*Question 2.* The NTSB believes the Coast Guard could be doing more to improve safety on small passenger vessels. Do you concur with the NTSB's recommendations increase safety regulations to required enhanced fire detection, protection and suppression technologies required on Passenger Vessels and require two routes of escape from passenger accommodations?

*ANSWER.* The Coast Guard carefully considers National Transportation Safety Board (NTSB) recommendations through a deliberate process that involves multiple layers of review by subject matter experts and senior leaders responsible for implementing the potential policy and regulatory changes.

Related to the passenger vessel CONCEPTION marine casualty, the Coast Guard Marine Board of Investigation and NTSB are still conducting thorough and detailed investigations to determine the causal factors associated with this tragedy. Each agency will conduct an independent analysis of all the evidence and propose appropriate recommendations to improve passenger vessel safety.

If the vessel's construction and equipment standards, or regulatory regime, are determined to be contributing factors, the Coast Guard will consider updates at that time as appropriate.

*Question 3.* What is the current role of firefighting training on small passenger vessels and should firefighting training for all crew onboard play more of a role on small passenger vessels?

*ANSWER.* To obtain a merchant mariner credential, small passenger vessel officers are required to demonstrate knowledge of firefighting during required exams. Additionally, the officer and non-credentialed crew (if any) are required to be familiar with a vessel's characteristics before they assume duties and responsibilities on a vessel, including the proper operation of the installed firefighting equipment.

The main goal of firefighting on small passenger vessels is to ensure passengers remain safe on board or when abandoning the vessel. Establishing additional requirements for standardized hands-on firefighting training for the small passenger vessel industry would be challenging due to the varied construction and layout of vessels in this fleet.

QUESTIONS FROM HON. CHRIS PAPPAS FOR REAR ADMIRAL RICHARD V. TIMME,  
ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

*Question 1.* As you know, offshore wind energy facilities along the Atlantic Coast are developing rapidly. We anticipate that several major projects on the Atlantic Outer Continental Shelf will have steel in the water as early as next year. The Coast Guard's Office of Marine Transportation Systems has initiated a rulemaking project to establish an Atlantic Coast fairway based on recommendations within the 2017 Atlantic Coast Port Access Route Study (ACPARS), a comprehensive analysis of the navigational and maritime safety impact of offshore wind projects planned off the Atlantic Coast. I also understand that the Coast Guard is actively engaged in discussions with BOEM to ensure that the proposed fairway preserves safe navigation lanes, and the Coast Guard Authorization Act of 2018 requires the Coast Guard to report back to Congress on its progress in implementing the ACPARS recommendations. Can you provide an update on how the Coast Guard is ensuring that the Atlantic Coast fairway rulemaking is released as soon as possible?

*ANSWER.* The Advanced Notice of Proposed Rulemaking "Shipping Safety Fairways Along the Atlantic Coast," was determined to be a high priority rulemaking project in September 2018. The rulemaking project is moving forward and currently under departmental review before entering interagency review.

QUESTIONS FROM HON. PETER A. DEFazio FOR VICE ADMIRAL BRIAN M. SALERNO,  
U.S. COAST GUARD (RET.), SENIOR VICE PRESIDENT OF GLOBAL MARITIME POLICY,  
CRUISE LINES INTERNATIONAL ASSOCIATION

*Question 1.* The Cruise Vessel Security and Safety Act (CVSSA) of 2010 was intended to introduce tighter security regulations and crime reporting requirements.

While the CVSSA was a good start to tackle these issues, we continue to hear tragic stories from victims that shed light on the need for additional action. For example, while CVSSA mandated new requirements for cruise ships to report crimes to the FBI to provide for greater transparency to the public, there remain a number of issues that lead to underreporting of crimes.

How soon is the FBI notified after a crime occurs?

*ANSWER.* Allegations of serious incidents as identified in the CVSSA must be reported to the nearest FBI Field Office or Legal Attache by telephone as soon as possible. These provisions of the CVSSA were supported by the cruise industry as the law was being developed and reflect an earlier (2007) voluntary agreement between the industry and the FBI. In addition to those legal requirements, CLIA cruise lines have additionally agreed to and implemented a mandatory crime reporting policy which makes reporting allegations of serious crime to local law enforcement applicable worldwide.

*Question 2.* Who gets to determine how a crime is categorized? The victim of the crime or a cruise ship employee?

*ANSWER.* Crimes are categorized based upon how they are reported and conform to federal statutory definitions and the FBI's Uniform Crime Reporting program. All allegations are reported and thereby become subject to FBI investigations.

*Question 3.* What actions have CLIA and its members taken to ensure that accurate and timely information regarding crimes onboard cruise ships is promptly conveyed to relevant federal agencies? What additional actions can be taken to improve these efforts?

*ANSWER.* CLIA member policies underscore the need to report all allegations of serious crimes to the FBI and other law enforcement authorities, the vessel's flag state and other appropriate shoreside authorities. Implementation of CLIA Policies is a condition of membership and is certified annually by the CEO of each member cruise line. Security policy provisions are incorporated into the ship's Safety Management System (SMS) and subject to internal and third party auditing. The CVSSA imposes civil and criminal fines and penalties for non-compliance. CLIA is unaware of any prosecution of any cruise line member for violating the crime reporting requirements.

*Question 4.* What actions have CLIA and its members taken to ensure that timely, accurate and accessible information regarding crimes aboard cruise ships is provided to the general public? What more can be done to improve public information efforts?

*ANSWER.* CLIA members are required by the CVSSA, and as a condition of membership in CLIA, to report allegations of serious crimes as soon as possible. In accordance with the modifications to the CVSSA in 2014, all allegations of serious crimes are publicly reported on the Department of Transportation website; DOT publishes the crime statistics quarterly broken down by each cruise line. To further inform the interested public, CLIA provides a link on its website to a report produced by Dr James Fox of Northeastern University, which compares crime rates on cruise ships to those of comparably sized cities. Cruise ships are demonstrably safer in all categories analyzed: Homicides (119 x safer), Sexual assault (3 x safer), and Aggravated Assault (130 x safer). Cruise lines must also provide a link on their websites to the DOT reporting data.

*Question 5.* In your testimony you state that operational incidents have declined by 35% but also state that it only includes fires, groundings, collisions, loss of propulsion and persons overboard, but do not state that it includes incidents of crime such as sexual assault. Recent articles by the Washington Post and Business Insider suggest an increasing trend of incidents of sexual assaults being reported on Cruise Vessels.

How is the Cruise industry working to reduce these instances of sexual assault and protect passengers?

*ANSWER.* The cruise industry works hard to provide a secure and safe environment for all of its guests. Overall, the rate of crime on board cruise ships, including sexual assaults, aggravated assaults and homicide, is a fraction of that committed on land in comparably sized U.S. cities. Looking at sexual assaults specifically, the rate on cruise ships occurs at 19.5 per 100,000 persons, compared to 63.8 per 100,000 on land, or 1/3 the rate on land. Cruise lines security staffs work diligently to bring the shipboard rate to zero. Hiring and vetting programs reduce the likelihood of employing crewmembers who could pose a threat. CLIA also has a specific policy for vetting workers in Youth Activity Centers. On most new ships, crew entry into guest rooms for daily servicing can be electronically tracked, further reducing the likelihood of illegal contact. Company security officers and vessel security officers are trained in responding to allegations of criminal activity including preservation of evidence and coordination with law enforcement authorities. Per CLIA mandatory policy, medical teams must follow the guidelines developed by the American College of Emergency Physicians (ACEP) and care teams are available to provide emotional support to victims. Also, a number of CLIA cruise line members use the training and certification services provided by RAINN (Rape, Assault, Incest National Network), the nation's largest anti sexual violence organization.

*Question 6.* What additional crime prevention actions have CLIA and its members taken to minimize crime occurring aboard cruise ships since implementation of the CVSSA?

*ANSWER.* By policy, CLIA's members have agreed that all passengers and crew are to be provided the means and assistance to contact law enforcement authorities, even for cruises not otherwise covered by the CVSSA. CLIA's members have further agreed that these serious incidents are also to be reported to the ship's flag State. Voluntary, industry-led cooperative measures have been agreed regionally whereby cruise lines distribute security information to passengers and follow protocols and reporting practices. One prominent example is the Guidelines which have been developed between cruise operators and the Pacific Islands Chiefs of Police (PICP), to provide a high-level good practice guide for reporting and responding to allegations of crimes committed on-board cruise ships at sea in this region.

*Question 7.* What actions have CLIA and its members taken to implement crew training related to crime aboard cruise ships (including such things as preservation of a crime scene, collecting evidence and/or treatment of crime victims)? Have there

been attempts to create an industry wide standardization of crime scene preservation or evidence collection?

*ANSWER.* CLIA member lines must comply with 46 U.S.C. § 3508 for crime scene preservation training for passenger vessel crewmember and satisfy applicable MARAD certification requirements. CLIA policy further requires member lines to develop training for their crews and encourages use of incident scene management training materials prepared by the FBI. Topics covered in the FBI materials include: initial response, securing the scene, victim assistance, reporting and investigation. In 2013, the Legal Committee of the International Maritime Organization adopted a proposal which CLIA co-sponsored with IMO Member states on international standards for crime reporting, cooperation between governments, evidence preservation and pastoral and medical care for victims.

*Question 8.* What is the status of efforts to improve crew training pertaining to crime victims and crime scenes aboard cruise ships? What benefits and challenges are associated with the provision of this training? Are there industry wide efforts to standardize these trainings?

*ANSWER.* (Same as for 6 above.)

*Question 9.* What more could be done to enhance the safety and security of cruise ship passengers?

*ANSWER.* Cruise lines support an improved risk-based video surveillance approach to help ensure ship board awareness of potentially unsafe activity and providing forensic capability should an allegation of illegal activity occur. The risk-based approach would account for demographics (e.g., age), vessel configuration, and recognizes that cruises span a wide spectrum from mass appeal to niche markets.

*Question 10.* By the time the CVSSA was enacted, to its credit, the cruise industry had already taken many actions to address the CVSSA's expected requirements. However, there are still several pending requirements (e.g. related to technology and technology information storage and crew training) for which the Coast Guard issued a proposed rule in 2015.

How has the cruise industry been involved in this proposed rulemaking? To what extent, if at all, has industry already taken action to address the concerns that these proposed rules are expected to address?

*ANSWER.* The cruise industry offered comments on the proposed rulemaking to the public docket which focused on the state of existing technology, and has remained in contact with the Coast Guard regarding the progress being made toward the development of a technical standard at the International Organization for Standardization.

*Question 11.* Going further, the CVSSA calls for the installation of man overboard, or MOB, detection systems. Yet, these systems have not been fully implemented or really considered by the cruise industry often sighting the inaccuracy of the technology.

In late 2017, MSC Cruises announced its first installation of MOB technology onto one of their vessels, the MSC MERAVIGLIA, and its intention to retrofit the rest of its vessels with MOB systems.

What is the progress with this installation and is the technology working on this vessel?

*ANSWER.* Detection equipment has been fitted on several cruise ships, including by several different cruise lines, on a developmental basis. A variety of different detection systems have been evaluated, with some performing better than others. One area of concern has been the high false alarm rate with this novel technology. The companies which have deployed these systems have also been working with CLIA and the International Organization for Standardization (ISO) in the ongoing effort to develop technical standards for these systems. So far, the ISO has issued a Publicly Available Specification (PAS) to aid in the evaluation phase of standard development and is working toward publication of an ISO standard for MOB detection equipment.

*Question 12.* What are CLIA and its members current views on the use and efficacy of overboard technology, and data storage requirements for various types of video data? What are the benefits and challenges associated with having this technology in place onboard cruise ships?

*ANSWER.* One challenge has been the high false alarm rate associated with several of the available systems. As the systems are improved, correcting this fault is a major objective. Currently, CLIA member lines comply with the requirements of the CVSSA, in that the statute allows for video capture in lieu of MOB detection systems, recognizing that reliable MOB system technology had yet to be developed.



*Question 13.* In light of these developments, why haven't MOB systems been deployed more broadly within the cruise industry?

*ANSWER.* CLIA member line ships operating from the US already comply with the CVSSA. Most are using video capture technology as allowed by the statute. MOB detection technology is improving, and several lines have been sharing their practical experiences with the ISO as it continues to work towards development of a MOB technical standard.

*Question 14.* Would you object to a requirement that there be publicly available information on which ships have MOB systems in place and if so, why?

*ANSWER.* Cruise ships operating from U.S. ports already comply with the provisions of the CVSSA in that they either have MOB detection OR video capture capability, as permitted by the statute. We would anticipate the number of ships fitted with MOB detection systems will increase once the ISO standard is finalized and the market can respond with reliable equipment.

*Question 15.* Given how few cruise ships actually have MOB systems, can you describe the procedure that is followed once a person is declared missing on a ship? Is it immediately assumed they have gone overboard?

*ANSWER.* Regardless of whether a ship is fitted with an MOB detection system, when a person is observed/detected going over the side of a ship at sea, the ship's bridge team can be immediately alerted and the alarm sounded for crew to prepare the ship for recovery of the MOB from the water using well-established procedures in the ship's Safety Management System. MOB incidents on cruise ships are the unfortunate result of an intentional or reckless act. When the cause of the MOB could be established following a careful investigation, it was determined to be the unfortunate result of an intentional or reckless act.

From 2009 to 2018, although the number of man overboard incidents globally was unchanged, the incidence rate of 0.0000425 overboard reports per active lower berth (synonymous with a cabin's bed) decreased in 2018 compared to 0.0000657 in 2009 due to a 54.4% increase in active lower berths during that same period. During this same period, the number of passenger fatalities from man overboard incidents decreased from 15 to 13. Crew fatalities remain around the period average of five per year, around one in every 50,000 crew serving in the fleet at any one time in 2018.

In 2018, with 28.5 million cruise passengers globally, MOB incidents on cruise ships resulted in about one passenger fatality per 2.19 million cruise passengers annually—or 0.0456 fatalities per 100,000 cruise passengers annually. By way of comparison, recent data from the United States Centers for Disease Control and Prevention (CDC) reports the U.S. suicide rate to be 14 events per 100,000 people annually. Given the average length of a cruise is about a week, this would equate to about 0.27 suicide events per 100,000 people per week.

*Question 16.* How much time would you say elapses before such a declaration is made and what entity ultimately conducts a search for the missing person? The cruise line itself, or Coast Guard?

*ANSWER.* Absent direct observation of an MOB, once it has been determined that a person is not accounted for on the vessel, notification would be made by ship's bridge team to the responsible Rescue Coordination Center. In US waters, plus significant portions of the North Atlantic and North Pacific oceans, and the Caribbean Sea, rescue operations would be coordinated by the U.S. Coast Guard. Cruise ships would follow the directions of the RCC/Coast Guard in conducting Search and Rescue efforts.

QUESTIONS FROM HON. PETER A. DEFazio FOR ADAM W. MOILANEN, VICE PRESIDENT OF HEALTH, SAFETY, QUALITY, AND ENVIRONMENT, AMERICAN BUREAU OF SHIPPING

*Question 1.* What new safety requirements, if any, has your company required to be incorporated into U.S.-flagged commercial vessels' safety management system (SMS) since the EL FARO sinking?

*ANSWER.* First, ABS has fully complied with the recommendations of the National Transportation Safety Board (NTSB). ABS has also supported the Coast Guard in addressing and implementing the recommendations of the Coast Guard's Marine Board of Investigation and Final Action Memo. Further, we have gone above and beyond those recommendations internally to improve the safety of the vessels we class, by including new and updated training for our surveyors and further enhancing the requirements for surveying older vessels.

It is also important to note that the International Safety Management Code (ISM), which sets forth the requirements of the Safety Management System (SMS), is an International Maritime Organization (IMO) initiative and the requirements contained therein are not driven by Classification Societies or Recognized Organiza-

tions (ROs). When any ISM Code change is made, ABS incorporates that change into its work instructions and audit processes, including any specific requirement by the Coast Guard.

Following the EL FARO sinking, ABS did initiate training improvements for SMS by requiring all Surveyors and Auditors to complete a refresher training course in 2018. The training was enhanced in 2019, and all ISM Auditors were required to attend ISM refresher training in the first quarter of 2019.

ABS also piloted an ISM Refresher course for shipowners/operators in October 2019. Our Corporate Learning Organization is addressing the feedback from this “pilot” course. We are now ready for delivery to additional shipowners/operators in the first quarter of 2020.

Further, internal ABS work instructions have been updated, including additional guidance to Auditors for major nonconformities. In addition to requiring mandatory drills during full scope ISM audits, ABS has issued several new job aids which cover fire drills, lifeboat drills, enclosed space entry drills, and Guidance Notes on cybersecurity during ISM audits. ABS is currently developing an online training course to prepare ISM Auditors to verify that cybersecurity risks have been addressed in the Safety Management Systems of vessel operators for compliance with IMO Resolution MSC. 428 (98), which enters into force on January 1, 2021.

In addition, quarterly meetings are being held between the Coast Guard’s Officer-in-Charge of Marine Inspection and ABS Surveyors-in-Charge in various ports and sectors. ABS Surveyor meetings are held on a monthly basis in each port to discuss survey and audit issues.

With regards to the Alternate Compliance Program (ACP), there are quarterly meetings at the headquarters level between Coast Guard, ABS Engineering, and ABS Operations to review ACP performance, including engineering, survey/inspection and audit issues.

ABS has provided additional ACP training that addresses the latest ACP Navigation and Vessel Inspection Circular and Supplement. The Supplement captures critical standards and certain operational requirements in Coast Guard regulations that are not adequately addressed in IMO instruments or the RO’s Rules, and to provide any additional Flag Administration interpretations where necessary. To date, 382 ABS Surveyors have completed this training.

Specifically, in order to document a vessel’s condition, at each Annual Survey of a vessel 10 years of age and older, an additional ABS requirement has been implemented whereas the Surveyor is to take approximately 25 representative photos, including the following areas to support the annual survey report: Fire Dampers, Cable Penetrations, Load Line items including watertight closures, Air Pipes, Vents, Machinery space condition, Bilges, and Life Saving Appliances and Firefighting equipment.

Lastly, ABS supported the Government Accountability Office (GAO) in evaluating the implementation and effectiveness of Safety Management System (SMS) plans for U.S.-flag vessels. This review was mandated by the Hamm Alert Maritime Safety Act of 2018 (P.L. 115-265) which asked GAO to evaluate Coast Guard’s oversight of SMS plans, and review SMS plans for a range of vessel types and sizes. ABS facilitated this effort at the request of the GAO by requesting copies of the SMS manuals from selected U.S. vessel operators for onward transmittal to the GAO. ABS and the GAO then held meetings to discuss questions related to the SMS review and audit process.

*Question 2.* To what extent has your company amended its SMS plan review procedures to verify compliance with the new safety requirements since the EL FARO sinking?

*ANSWER.* See the response to No. 1 above. In addition, ABS internal work instructions for U.S.-flag ISM Code were amended in 2018 to include the Coast Guard’s interpretations of the ISM Code.

As stated earlier, there are quarterly meetings between the Coast Guard, ABS Engineering and ABS Survey Operations (including ISM auditing) to review ACP performance, including engineering, survey/inspection and audit issues. Coast Guard concerns, if any, are discussed and actions taken as appropriate. Similarly, ABS seeks clarifications on Coast Guard positions/interpretations on the ISM Code implementation (e.g. advance audit notification requirements to the Coast Guard, Coast Guard expectations on implementation of IMO Guidance documents, etc.). These clarifications are then implemented within the ABS work instructions for Surveyors, Auditors and Engineers to follow.

*Question 3.* What controls, if any, does your company have in place to ensure that reviews of SMS plans are sufficiently thorough and verify that required safety elements/issues are addressed in the SMS plans?

*ANSWER.* The main controls that ABS has put in place include the following:

- Selection of Surveyors/Auditors and Engineers is carried out per documented procedures (which includes requirements for minimum technical and industry experience).
- Classroom, web-based and on-the-job training is required for all Surveyors, Auditors and Engineers.
- 100% report review by an experienced Surveyor/Auditor, and 100% task review by an experienced Engineer, are required for all design reviews.
- Internal audits are required, that include sampling SMS work activity.
- External audits (by the Coast Guard and other external entities) are required, which include sampling SMS work activity.
- Port State Control inspectors do inspect SMS during onboard inspections.
- Activity monitoring is carried out on 100% of all Surveyors, Auditors, and Engineers.

*Question 4.* In your testimony you mentioned ABS performs internal and external audits. What additional controls, if any, does your company have in place to ensure that your company's inspections of U.S.-flagged commercial vessels are sufficiently thorough and verify that required safety elements/issues are addressed? How does your company limit the possibility of an inherent conflict of interest during inspections and ensure that a fair, unbiased inspection is completed?

*ANSWER.* In addition to those items detailed in item #1 to #3 above, the following have been put in place:

- ABS requires that all Surveyors attending repairs of main propulsion boilers must be also certified for boiler surveys effective February 1, 2018.
- As of February 1, 2018, for Special Periodical Survey No. 5 and subsequent surveys, the Principal Surveyor/Surveyor-in-Charge is to take part in the Special Survey of all self-propelled vessels, other than yachts, to confirm that the survey has been properly carried out and reported upon as required by the Rules.
- As of February 1, 2018, for U. S. Flagged vessels enrolled in ACP or Maritime Security Programs (MSP or MSP Select) that reach 10 years of age, ABS requires two qualified Surveyors to attend each subsequent annual survey and special survey.
- ABS has confirmed to the Coast Guard that ABS will have Surveyors available to attend Advanced Journeyman training at Yorktown. ABS has not been invited to attend these courses as of this date.
- ABS has sent a total of eight Surveyors to the Coast Guard's Steam Propulsion Course. An ABS Surveyor is now one of the instructors.
- ABS has been reconfirming the accuracy of the data contained in each vessel survey status and the details for the Load Line assignment (form LL-11-D).
- ABS requires all Surveyors to complete an annual web-based training course on statutory regulation and ABS Rule changes.
- Training presentations on the Coast Guard's ACP, MSP, and MSP Select are given to the ABS Special Committee and Ship Operations.
- ABS worked with IACS to require, starting at Special Survey No. 3 and subsequent Special Surveys, that structural down flooding ducts and structural ventilation ducts are to be internally examined as per the current version of IACS Unified Requirement UR Z7.
- A comprehensive review and update of the ACP Supplement and ABS check sheets has been completed.
- ABS continues to support the Coast Guard's efforts in developing a single US Supplement applicable to all ACP Vessels, including critical safety items.
- ABS has a "Targeted Ship List" (TSL) that allows ABS to identify and follow-up on vessels not considered to be satisfactorily maintained between surveys. Items that typically are identified include lack of maintenance on hull structure, main and essential auxiliary machinery, load-line items, safety equipment, oil pollution prevention equipment, etc. The objective of placing vessels on the TSL is to require the vessel's owner to maintain and improve the quality of their fleet. In 2019, ABS had 20 U.S. flagged vessels on our Targeted Ship List.
- ABS has implemented ABS Freedom, which includes improved controls within the workflow. ABS Freedom is the internal workflow application that all ABS Surveyors/Auditors use to complete and document their surveys/inspections and audits.
- The ABS Rule Change process has been enhanced to speed up the time that ABS can implement ABS Rule changes.

ABS conducted two Regional Lead Auditor meetings in 2019 to address audit activity related matters and to improve performance.

The Coast Guard is notified of all audits of U.S.-flag companies and vessels. Many of these audits are observed by the Coast Guard travelling inspectors and local Coast Guard staff.

Regarding the possibility of conflicts of interest, there are numerous controls in place to address this possibility.

First, ABS is a non-profit organization created with a Mission to protect life, property and the environment. As a non-profit, ABS does not have incentives to sacrifice quality or provide less than thorough professional and ethical services.

Second, ABS uses a system of Principal Surveyors-in-Charge and Area Managers to provide support to the Surveyors/Auditors during surveys and audits. This is in addition to survey departments in each hemisphere that can provide detailed interpretations and guidance for policies and Rules and Regulations to the Surveyor/Auditor. Certain surveys require two Surveyors, which reduces the potential for conflict of interest and provides consistent application of the Rules/Regulations.

Furthermore, the controls noted above such as internal and external audits, Flag State Inspections and Port State Control help to ensure that ABS conducts its activities in accordance with its Rules, with international standards, and with all Coast Guard guidance and requirements. The Coast Guard's oversight of ABS includes engineering design review activities, survey and audit activities, and involvement during external audits, too.

Finally, ABS also has a Code of Ethics and a robust ethics and compliance program to manage any potential conflicts. All employees are required to conduct an annual review and acknowledgement of the Conflict of Interest. Each work order assigned requires the surveyor or auditor to confirm no conflict of interest.

*Question 5.* Does your company track the results of SMS plan reviews and vessel inspections for internal control purposes and to determine the compliance rate of your clients? If so, what do those compliance data show in terms of compliance rates for (a) SMS plan reviews and (b) vessel inspections in recent years?

*ANSWER.* As noted above, ABS does carry out a 100% review of our SMS activities.

The results of SMS review and vessel inspections are recorded in the ABS reporting system to which the Coast Guard has access. Findings are recorded as "major nonconformities, nonconformities and observations". IACS procedures and Coast Guard instructions for handling these findings, including corrective action plans, are followed. No ISM certificate is issued or endorsed with an unresolved major nonconformity. The Coast Guard is notified when a major nonconformity is issued, or ABS has significant concern with the client's SMS implementation.

Actual data from January 1, 2018 through November 7, 2019 shows that:

- a) Of a total number of 329 Document of Compliance (DOC) audits (e.g. corporate audits) of U.S. flag operators' SMS, there were 188 audits with no nonconformities. Those companies with audit nonconformities were documented and tracked for corrective action(s), as appropriate.
- b) Of a total number of 1132 U.S. flag vessel SMC audits, there were 830 audits with no nonconformities. Those vessels with audit nonconformities were documented and tracked for corrective action(s), as appropriate.
- c) All major nonconformities and nonconformities are documented and tracked until each one is followed up for confirmation of being fully resolved.

*Question 6.* Are there any changes to vessel safety requirements or the processes used by the Coast Guard or ROs to enforce the requirements that warrant being amended to make them more efficient and/or effective?

*ANSWER.* ABS maintains a commitment to continual improvement and is always open to additional improvements and opportunities to enhance the overall processes and work that we carry out.

ABS is constantly updating our Rules and Guides based on feedback from the industry, ABS Technical Committees and ABS staff, as well as requirements from the Coast Guard, other Flag States and IACS. ABS also updates our internal quality system instructions to improve the guidance to Surveyors/Auditors and Engineers as result of survey and audit feedback, requirements from IMO and requests from individual flag administrations on whose behalf ABS conducts survey and audits. The purpose of these changes is to improve safety and to address the latest technology.

In addition, ABS works within IACS at all levels to provide IMO proposed amendments and improvements to international conventions.

Based upon this robust structure and improvements to date, no other changes have been identified at this time.

QUESTIONS FROM HON. SALUD O. CARBAJAL FOR COLLEEN STEPHENS, VICE  
PRESIDENT, PASSENGER VESSEL ASSOCIATION

*Question 1.* The NTSB believes the Coast Guard could be doing more to improve safety on small passenger vessels. Do you concur with the NTSB's recommendations increase safety regulations to required enhanced fire detection, protection and suppression technologies required on Passenger Vessels and require two routes of escape from passenger accommodations?

*ANSWER.* The Passenger Vessel Association works closely with the National Transportation Safety Board. The NTSB's Director of Marine Safety, at our invitation, will make a presentation at PVA's Annual Convention in Tampa this coming first week of February. In the past, when NTSB has made safety recommendations to PVA, our organization has responded appropriately, and the NTSB has classified PVA's actions as "satisfactory." In fact, in one instance, the NTSB advised PVA that "Your efforts exceed the level of implementation we expected for Safety Recommendation M-16-28, which is classified CLOSED—EXCEEDS RECOMMENDED ACTION."

PVA wishes the subcommittee to understand that while a relatively few of its members operate vessels with overnight accommodations for passengers, most of the membership does not. Of the no more than three dozen PVA vessels with overnight accommodations, nearly all have the passenger cabins above deck (not below deck, as was the case with the *Conception*, operated by a company not a member of PVA).

With respect to the issues of two routes of escape from passenger accommodations, this is already required by Coast Guard regulations. For example, section 177.500 ("Means of Escape") of title 46 *Code of Federal Regulations* reads: "(a) Except as otherwise provided in this section, each space accessible to passengers or used by the crew on a regular basis, must have at least two means of escape, one of which must not be a watertight door. (b) The two required means of escape must be widely separated and, if possible, at opposite ends or sides of the space to minimize the possibility of one incident blocking both escapes." This regulation applies to a small passenger vessel of less than 100 gross tons with a passenger capacity of no more than 150 or with overnight accommodations for no more than 49 passengers (commonly referred to as a subchapter T vessel). Section 116.500 of title 46 *Code of Federal Regulations* has a similar requirement for a small passenger vessel of less than 100 gross tons with a passenger capacity of more than 150 or with overnight accommodations for more than 49 passengers (commonly referred to as a subchapter K vessel).

PVA will gladly work with the Subcommittee and the Coast Guard for enhanced requirements regarding (1) the use of rechargeable devices on passenger-carrying vessels; (2) interconnected fire detection devices; and (3) monitoring devices for the required night watch on a vessel with overnight accommodations. In addition, PVA suggests a mandate for a monthly fire drill during the vessel's operating season. The current Coast Guard rule calls for quarterly firefighting training, as well as before a new crew member assumes his or her responsibilities. The Coast Guard would be charged to ensure that this enhanced training requirement is adhered to. The new crew member requirement should be retained as well.

To ensure safety on U.S. passenger vessels and small passenger vessels, it is absolutely essential that the Coast Guard's safety functions be preserved. PVA reminds the Subcommittee that in 2007 Chairmen Oberstar and Cummings convened a hearing to press the Coast Guard to reinvigorate its marine safety mission and resources, which had been allowed to deteriorate as the Coast Guard emphasized security after the 2001 terrorist attacks. Then-Commandant Thad Allen promised corrective action, and the result was the action plan entitled *Enhancing the Coast Guard's Marine Safety Program*. After its issuance, things improved. However, PVA encourages this Subcommittee to review the objectives of *Enhancing the Coast Guard's Marine Safety Program*. Are they still being met? Specifically, are the goals for the number of marine inspector billets being filled? With the intervening advent of the inspection program for thousands of towing vessels (subchapter M), does the number of marine inspector billets need to be increased? Has Congress appropriated enough funds to fill all required billets in the marine safety mission?

*Question 2.* What measures does PVA take to encourage members to follow and go above current safety requirements set in place by the Coast Guard?

*ANSWER.* PVA has developed and makes available to its vessel-operating members a Safety Management System (SMS) tailored to U.S.-flagged passenger vessels of all types, sizes, and routes. We call it FLAGSHIP. PVA conferred regularly with the U.S. Coast Guard as we developed FLAGSHIP, and Coast Guard officers participated in some drafting sessions that led up to production of the document. In June 2017, the Coast Guard's Director of Inspections and Compliance characterized

FLAGSHIP as a “remarkable achievement” and advised PVA that “Flagship SMS meets the objectives and functional requirements for a SMS as per 33 Code of Federal Regulations (CFR) Part 96, and this voluntary program can be accepted by the Coast Guard as it endeavors to enhance regulatory compliance and safety on domestic passenger vessels.” Please see the attached letter.

In addition, PVA has produced other safety-related materials for use by its members. These include:

1. On-line training portal on which safety and security training materials are posted;
2. Five safety training manuals with videos, addressing the topics of firefighting; lifesaving equipment; line handling; preventing slips, trips, and falls; and personal safety;
3. Preventative maintenance checklists and guidance documents;
4. A template for those members who must have a Coast Guard-approved Nontank Vessel Response Plan;
5. A Coast Guard-approved Alternate Security Plan which can be used by PVA members to satisfy their obligations under the Maritime Transportation Safety Act (MTSA);
6. Rail jumper guidance;
7. Crew drug testing tools;
8. A white paper focusing on mitigating “slips, trips, and falls” aboard passenger vessels;
9. Numerous speakers and panels on safety issues at PVA’s Annual National Convention and its five region meetings each fall. For example, at its upcoming Annual Convention in Tampa in early February, we have several presentations by senior Coast Guard officials and the head of the National Transportation Safety Board’s marine division. In addition, there will be extensive information about conducting active shooter drills; and
10. Regular articles on safety topics in PVA’s monthly magazine FOGHORN. See the attached article about the Subcommittee’s recent hearing and the statement by PVA’s witness, Colleen Stephens of Valdez, Alaska.

*Question 3.* Does PVA provide supplemental safety training to its members in addition to required training?

*ANSWER.* Please see the discussion to the question above about our extensive outreach to members on safety topics. While PVA does not conduct formal safety classes itself, our associate members have recently provided training and education on safety management systems. Additionally, last fall local Coast Guard units provided damage control training to our members at two of our region meetings.

*Question 4.* Safety Management Systems, which include details ranging from safely conducting day-to-day operations to procedures for emergencies, drills, and training, are required by the US Code for certain classes of vessels. What is the current and future role and importance of Safety Management Systems in small passenger vessels and how they could improve vessel safety?

*ANSWER.* Under current law, most U.S.-flagged vessels that operate on foreign voyages must have a Safety Management System that meets the criteria set out in section 3203(a) of title 46 *United States Code*. This requirement embraces a passenger-carrying vessel with a capacity more than 12 passengers. This statutory provision is how the U.S. implements the requirements of the International Safety Management (ISM) Code.

In addition, in section 610 of the Coast Guard Authorization Act of 2010 (Public Law 111-281 ), Congress directed the Coast Guard to implement a rule that requires an appropriate SMS for certain passenger-carrying vessels in domestic service. See Sections 3202(b) and 3203(c) of title 46 *United States Code*. The Secretary of the department in which the Coast Guard is operating is to determine which domestic passenger-carrying vessels are to be subject to the SMS mandate based on “the number of individuals on the vessel that could be killed or injured in a marine casualty.” In developing the regulation, the Secretary is to consider “(1) the characteristics, methods of operation, and nature of the service of these vessels; and (2) with respect to vessels that are ferries, the sizes of the ferry systems within which the vessels operate.”

The Coast Guard has yet to issue a rule implementing section 610 of Public Law 111-281. With the availability of the FLAGSHIP SMS (discussed above), PVA believes that it and its members are well-positioned to comply with an eventual final rule on SMS for vessels within the domestic passenger fleet.

As noted above, section 610 of Public Law 111-281 provides broad authority as to what domestic passenger vessels should be covered by the eventual SMS rule. However, PVA does not believe that it is necessary or efficient for every inspected

domestic passenger vessel to have an SMS. Keep in mind that SMS represents an effort to “go beyond” regulatory requirements for vessel safety. Many domestic vessels are authorized to carry only limited numbers of passengers (in many cases, as few as 6), and their crews may consist of only a captain (frequently) the owner and a part-time mate. For such vessels, an SMS requirement is likely to be regulatory overkill.

PVA recommends that the Subcommittee exert its efforts to seeing that the Coast Guard promptly finalizes a rule implementing section 610 of the 2010 Coast Guard Authorization Act. Perhaps the leaders of the Subcommittee could send a letter to the Coast Guard Commandant emphasizing the importance of completing this regulatory project. If the Congress were to consider a legislative response, PVA offers the following possible statutory language:

“SEC. \_\_\_\_\_. EXPEDITIOUS RULEMAKING FOR SAFETY MANAGEMENT SYSTEMS.

The Congress directs the Secretary of the Department in which the Coast Guard is operating to expeditiously finalize the required rulemaking on Safety Management System for certain passenger vessels and small passenger vessels, pursuant to section 610 of Public Law 111-281, the Coast Guard Authorization Act of 2010 (Title 46 section 3202(b) of *United States Code*).”

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ATTACHMENTS TO MS. STEPHENS RESPONSES

LETTER

JUNE 12, 2017.

Passenger Vessel Association  
Attn: Mr. John Groundwater  
103 Oronoco Street, Suite 200, Alexandria, VA 22314

Dear MR. GROUNDWATER:

This letter is a follow-up to my letter dated April 21, 2017, which was in response to your letter dated December 20, 2016, seeking review and acceptance of PVA’s “Flagship Safety Management System (SMS) for Members of the Passenger Vessel Association.” The U.S. Coast Guard completed its review and has determined that Flagship SMS meets the objectives and functional requirements for a SMS as per 33 Code of Federal Regulation (CFR) Part 96, and this voluntary program can be accepted by the Coast Guard as it endeavors to enhance regulatory compliance and safety on domestic passenger vessels.

With the recognition of Flagship by the Coast Guard, it is worth noting that external third party safety audits are not required under this program; however, if a participating company schedules an external audit, external auditing personnel shall be independent of the company being audited. Both external and internal audit results, and associated documentation, may be examined by the local Officer In Charge, Marine Inspection (OCMI) to help determine the effective implementation of Flagship.

In addition, Flagship will be recognized and considered by the local OCMI’s when carrying out the Coast Guard’s risk-based decision making (RBDM) policy letter for small passenger vessels (CVC Policy Letter 16-05 (series)); and in particular when determining the proper scope for a vessel’s annual inspection. It is important to point out that it is our intention that vessels with a history of being in substantial compliance with the regulations will be eligible for a reduced scope inspection, and a vessel’s enrollment in a CG recognized SMS, such as Flagship, should improve the OCMI’s factorization with the RBDM policy.

This represents a significant milestone and I commend you, your staff, and members of the Flagship Working Group on this remarkable accomplishment, and look forward to our continued work on the development of policies and procedures that will enhance passenger vessel safety. It is also worth acknowledging this as an important first step in instilling a culture of safety industry wide, and I greatly value PVA’s partnership and commitment to achieving this common goal.

If you have any questions concerning this matter, please feel free to contact Captain Matt Edwards, Chief of the Office of Commercial Vessel Compliance (CG-CVC).

Sincerely,

J.F. WILLIAMS  
*Captain, U.S. Coast Guard*  
*Director of Inspections and Compliance*  
*By direction*

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ARTICLE

[The article entitled "Passenger Vessel Casualties Prompt Congressional Legislation," by Ed Welch, PVA legislative director, is retained in committee files and appears below. It is also available online in the January/February 2020 issue of Foghorn Magazine on pages 42–43 at [http://foghornmagazine.com/issues/2020/0120\\_FH\\_flipbook/?page=42](http://foghornmagazine.com/issues/2020/0120_FH_flipbook/?page=42) and [http://foghornmagazine.com/issues/2020/0120\\_FH\\_flipbook/?page=43](http://foghornmagazine.com/issues/2020/0120_FH_flipbook/?page=43)]

### LEGISLATIVE REPORT



By Ed Welch,  
PVA Legislative Director

## Passenger Vessel Casualties Prompt Congressional Legislation

Highly publicized marine casualties frequently induce Congress to consider new maritime safety measures. This was true in 1990 after the *Exxon Valdez* oil spill in Alaska. The most recent example is the enactment of the Hamm Alert Maritime Safety Act of 2018 in response to the 2015 sinking of the containership *El Faro* with the loss of all 33 seafarers on board. Now, history might repeat itself following two U.S. passenger vessel casualties: the storm-caused capsizing of the *Stretch Duck 7* on Missouri's Table Rock Lake in July 2018 with 17 fatalities and the fire on the moored dive boat *Conception* in California on September 2, 2019, with 34 deaths.

Bills have been introduced in Congress in response to both tragedies. The May 2019 issue of FOGHORN contained a comprehensive explanation of S. 1031, the Duck Boat Safety Enhancement Act of 2019, introduced by Senator Josh

Hawley of Missouri. Congressman Andre Carson of Indiana has introduced a companion bill, H.R. 2799.

Let's look at the newest bills, S. 3042 and H.R. 5413. Introduced on December 12, 2019, they are entitled the "Small Passenger Vessel Safety Act of 2019."

Senator Diane Feinstein, Congressman Salud Carbajal, and Congresswoman Julia Brownley, all of California, sponsored these bills in response to the fatal fire on the dive boat *Conception*. If enacted, the bills will impose additional safety measures for certain small passenger vessels.

Certain of the legislation's provisions would apply to all small passenger vessels (that is, all Subchapter T and K vessels). These provisions include direction to the Coast Guard:

- To prescribe regulations that address the use of "rechargeable devices utilized for personal or commercial electronic



## LEGISLATIVE REPORT

equipment." There has been unconfirmed speculation that the fire on the *Conception* may have originated from the equipment used by passengers to recharge their phones and other battery-powered equipment.

- To mandate by regulation that every small passenger vessel must put in place an appropriate Safety Management System (SMS). A 2010 law (not yet implemented by rule) directs that certain small passenger vessels with a passenger capacity specified by the Coast Guard must have a SMS. PVA has developed a voluntary SMS ("FLAGSHIP") for use by its members.

In addition, the legislation calls for other safety measures to apply to a new vessel category called "covered small passenger vessel." This category includes all subchapter T vessels (*i.e.*, vessels of less than 100 gross tons with a passenger capacity of no more than 150 or with overnight accommodations for no more than 49 passengers). It also includes all overnight vessels built of wood, regardless of tonnage or passenger capacity, if they were built before March 11, 1996. However, with the exception of wooden vessels with overnight accommodations, subchapter K vessels do not fall within the bill's definition of "covered small passenger vessel."

With respect to a "covered small passenger vessel," the Coast Guard is to:

- Undertake a comprehensive review of all requirements for fire detection, protection, and suppression;
- Mandate a rule for the addition of interconnected fire detection, protection, and suppression equipment (including fire extinguishers) for all areas of the vessel to which passengers have access;
- Mandate a rule for increased fire detection, protection, and suppression equipment systems in unmanned areas with machinery or areas with other potential heat sources;
- Put in place a requirement that all general areas accessible to passengers have at least two avenues of escape; and

- Mandate a rule for marine fire-fighting training for crewmembers, with training programs reviewed and maintained by a Coast Guard-approved third-party contractor. PVA staff believes that if this provision is enacted into law, it would represent the first instance of required third party oversight of inspected small passenger vessels.

Several of these items are identical or similar to measures previous-

ly recommended by the National Transportation Safety Board (NTSB) following prior vessel casualty investigations (including the *Island Lady* casino shuttle launch fire in Florida).

The Coast Guard and the NTSB are investigating both casualties, but their final reports are not expected for at least several months. Will Congress wait for the fact-finders to make conclusions and issue recommendations before legislation is acted upon? ■