

University-National Oceanographic Laboratory System

Research Vessel Operators Committee

Volume 18, Number 1

RVOC NEWSLETTER

May 1, 1992

My thanks to all of you who have sent me articles. I have reduced the copy size of many of these articles in an attempt to minimize the overall size of the newsletter. As this is my first newsletter please pass along any recommendations you might have.

I believe, like our annual meeting, the newsletter offers an opportunity for all of us to share our unique experiences (equipment, personnel, operational, etc.). These experiences do not have to wait until the annual meeting to be passed along. If you have something you feel will be of interest, send it to me and I will include it.

Best Regards, Paul

Update from the Chairman, RVOC

During the first three months of this year I have attended one UNOLS Council meeting and a workshop on the future of Coastal Marine Science. The UNOLS Council meeting focused quite a bit of attention on the size of the UNOLS fleet and the amount of funding available to support it. The Council was concerned that continued funding cuts, such as were required in 1993, could lead to potential safety and maintenance problems. The end result of that discussion was for the Council to recommend to the funding agencies that they form a "Blue Ribbon Panel" to address the issues of fleet size, fleet distribution, and future funding levels. The tasking to this panel could include:

- a. Making projections for science programs for the next 5-10 years.
- b. What ship mix can best support these programs, considering economics and scientific capabilities?
- c. What can be done to insure that ship funds are commensurate with projected scientific needs?
- d. Can short term lay ups continue to be used to correct budget deficiencies? Are there more effective ways to approach the problem?
- e. Does the current and projected "fleet problem" warrant the long term down sizing of the fleet? What criteria and procedure should be used?
- f. Is the current geographical distribution of ships appropriate?

The panel would be made up of knowledgeable individuals that do not have any personal or institutional stake in the outcome, if their recommendations are followed. As you can see, if the funding agencies form this panel and follow their recommendations the results could have a significant impact on some or all operators.

At the UNOLS Council meeting I presented the RVOC letter on Federal funding of ship operations and the draft guidelines for inspection of chartered vessels. No action was taken on either item. There was some discussion of the charter inspection checklist with a strong bias towards keeping it structured as "guidelines" to be used as a tool by the person inspecting a chartered vessel rather than a stringent checklist. I will keep you posted on any further action taken with regards to either item.

Flowing from this subject was some discussion about the responsibilities and liabilities of a Chief Scientist. The Council decided to form a panel to review this subject and make recommendations. Joe Coburn will represent RVOC on this panel. Joe will also serve as the RVOC liaison to the Fleet Improvement Committee with Ron Hutchinson as the alternate.

The Fleet Improvement Committee sponsored a workshop on the Future of Coastal Marine Science to which I was invited, as a representative of RVOC. The only other marine superintendent attending was Steve Rabalais. The meeting was oriented around researchers in the Coastal Marine Sciences who were charged with identifying the scientific needs for this region over the next decade and then identifying the resources needed to meet those needs. The first day started with various keynote speakers, followed by work sessions with the conference divided into four work groups. The four assigned areas were; Time Series, Synoptic Studies, Multi-Disciplinary Studies, and Data Management/Communications. I did not fit into any of these categories so I ended up in the last one. The second day started with a summary report from each group followed by breaking into four new groups to look at resources needed. Those groupings were; large ships, non-ship facilities, small ships, and instrumentation. I was in the small ship group. The third day was limited to summary reports from the second work groups. This workshop was very ambitious in the amount of territory that they were trying to cover during the time. A thorough report of the workshop will be generated over the next few months and will be available later this year.

There were some highlights of this workshop that I can pass on prior to seeing the report. One is that within this community there are a lot of potential new ship users that have been accustomed to using small boats and chartered vessels. If they receive adequate funding many would like to use more capable vessels. There was a certain amount of discussion about designing and building new vessels that would meet some of their "unique" requirements. One of the parameters that seemed to be important was the ability to work in very shallow water and still be a stable and sea kindly platform in rough weather. Defining these parameters will obviously determine the type of platform and platforms that work best. In addition, daily cost is an important factor for many of the people in this community because they are used to working with small and less expensive vessels and they usually get their funding from sources that cause them to pay shiptime directly from their own budget. In the small ship workshop, Woods Hole presented preliminary plans for a SWATH vessel under 100 feet that would be capable of year round work in the New England area. The University of Miami presented plans for a catamaran, also around 100 feet, that would work in shallow reef areas and have enough speed and stability to transit the Gulf stream quickly. Both institutions also have as part of their planning goals a daily operating cost around \$3,000. It was also clear that many of the existing vessels are capable of meeting the needs of Coastal Marine Science as they are or with some modification in equipment. It will be interesting to see how clearly the future needs of this community can be presented in the final report and even more interesting to see to what extent funding agencies will be willing and able to support their desires.

Regards to all, Mike

Annual Meeting

The annual meeting is now slated for 26, 27, 28 October and will be hosted by Dean Letzring and Texas A & M University in Galveston, Texas. Dean will have packages mailed out in August. In the meantime, we have begun to put together an agenda.

Suggested Agenda Items:

At the end of last year's meeting the following items were suggested:

Bottom Paints
FCC or industry representative on communications equipment
ECDIS
Science program coordination (workshop)
Crew training(workshop)

Since that time the following Discussions, Reports, Workshops, or Speakers have been suggested:

ADCP's
Americans with Disabilities Act(ADA)
Automation/Alarm Systems(Presentations or Reports)
Crew Compensation(Charge from Don Heinrichs, workshop)
Crew Training and Pooling(Workshop or Discussion)
Winches and/or Cranes(panel of speakers from manufacturer's)
FCC Speaker, GMDSS Kathryn Hosford(Speaker)
Future R/V Needs(Workshop)
GMDSS Equipment and Standards(Presentation or Report)
GPS p-codes(Discussion)
Hazardous materials Update(Report)
Inspection of chartered vessels(Discussion or workshop)
Liability and Responsibility of the Chief Scientist
Master of a SWATH Vessel(Speaker)
Medical Advisory System and the competition(Report or discussion)
Modern Paint Coating Systems(Potential Speaker)
New navigation systems(ECDIS) and equipment
OPA 90(Report/ Discussion)
Sea Water Piping, Gallionella, the bug that eats steel(Robert Hinton)
Ship Operations Funding for ONR
Precision Depth Recorders

Please review the agenda items and send an E-Mail to RVOC.OPERATORS before May 30, or sooner if you can, that lists your top six items in order of priority. If you want to suggest additional items to be considered by everyone else, please put out an E-Mail message to RVOC.OPERATORS right away describing your suggestion. As always, any comments on how to improve our meetings are welcome. If you are suggesting speakers please be as thorough as possible in identifying the person and how to get in touch with them.

Safety Training Tapes

In the clippings is an article from the March-April 1993 issue of the Proceedings of the Marine Safety Council on video tapes available for safety related training. These tapes are

available from GMG International (703-620-6000) at a cost of \$10.00 each. While portions of these tapes are geared to the Military Sealift Command safety program the instructional portion on safety related practices is pretty well presented. The longest tape is 20 minutes although most of them are under 15 minutes.

RVOC Directory

Appended is an RVOC Directory. Please take the time to review it. If any of the information needs to be updated please pass the updated information along to me, Paul Ljunggren.

GMDSS and The Radio Officer Act of 1993

There are two bills circulating in Congress relating to GMDSS and the requirement for Radio Officers sponsored by Senator Inouye. One recognizes that there is no longer a requirement for a radiotelegraph and therefore the radio officer. The other bill recognizes GMDSS, but seeks to require the onboard capability of someone to maintain the equipment. I have enclosed copies of the bills in the clippings section.

RVOC Directory
May 1, 1993

Name	Institution	Tel. No.	Fax No.	Telemail
Tom Althouse	SIO, UCSD	619-1643	619-534-1635	SCRPPS.MARFAC
Tim Askew	Harbor Branch	407-465-2400	407-465-2446	HBOI.SHIPS
Harry Barnes	Bermuda,BBS	809-297-1880	809-297-8143	BDA.BIOSTATION
Joe Coburn	WHOI	508-548-1400	508-540-8675	WHOI.SHIPS
Bruce Cornwall	U of Maryland	410-326-4284	410-326-6342	CHEASAPEAKE.BAY
Bill Coste	U of Hawaii	808-848-2661	808-848-5451	UH.SNUG.HARBOR
Don Gibson	U of Texas	512-749-6735	512-749-6777	T.WHITLEDGE
Linda Goad	U of Michigan	313-763-5393	313-747-2748	T.MOORE
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Robert Hinton	U of Washington	206-543-5062	206-543-6073	R.HINTON
Ron Hutchinson	U of Miami	305-361-4880	305-361-0546	R.HUTCHINSON
Lee Knight	Skidaway	912-598-2486	912-598-2751	D.MENZEL
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Quentin Lewis	Duke	919-728-2111	919-728-2158	DUKE.UNC
Paul Ljunggren	LDEO	914-365-8845	914-359-6817	LAMONT
Don Newman	USC	310-830-4570	310-830-4570	R.PIPER
Waddy Owens	U of Delaware	302-645-4320	310-645-4006	W.OWEN
Ken Palfrey	OSU	503-867-0224	503-867-0294	OSU.SHIPS
Mike Prince	Moss Landing	408-633-3534	408-633-4580	MLML.SHIPS
Steve Rabalais	LUMCON	504-851-2800	504-851-2874	LUMCON
Tom Smith	U of Alaska	907-224-5261	907-224-3392	T.SMITH
Entire RVOC				RVOC.OPERATORS

Dramatic videos drive safety home

By LCDR Paul Comolli

Scene 1: Merchant seaman Half-Bit whistles happily as he paints a 40-foot tall ship stack. When he reaches over for some fresh paint - horror of horrors - he is not wearing a safety harness!

Scene 2: Poor Half-Bit drops to the deck - a terrible accident which need not have happened.

Scene 3: A video camera is dropped 40 feet, simulating how one would feel once it's too late.

These are scenes from one of 15 Military Sealift Command's safety training video tapes for civilian crews on USNS ships.

Why video?

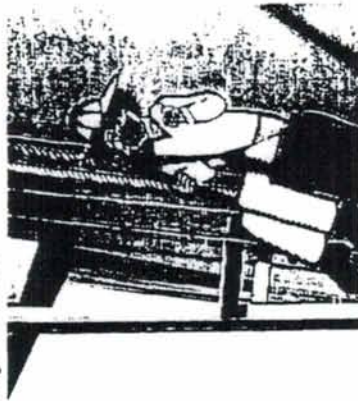
"A picture is worth a thousand words" is the old adage the Military Sealift Command interpreted as, "a thousand pictures is worth a million words," as the most effective method of impressing crew members with the importance of safety measures and how to carry them out.

To put across their training mission of "Readiness through Safety," the Command relied on the medium of audio-visual communication, producing dramatic, realistic videos to provide required on-board safety training.

A safety team based their efforts on a 1986 pilot program funded by the Military Sealift Command and carried out by the Naval Sea Systems Command, that resulted in a library of training videos for various systems on T-AO 187 class fleet oil tankers. These videos insured that the operation, maintenance and repair information provided to the first crew of each new ship would no longer be transmitted by simple word-of-mouth to subsequent crews, but be stored on tape for the life of the ship. Moreover, computer graphics and animation were able to demonstrate complex processes in easy-to-understand lessons.

Safety training tapes

The first two Military Sealift Command safety videos were produced in 1987. They described the Naval Occupational Safety and Health (NAVOSH) Program to crew members on one tape and to supervisors on the other. The



Start of scene 1

Half-Bit goes up the ship stack without a safety harness.

crew version opens with a simulation of a swinging chain-fall about to strike a crew member, realistically portraying what it feels like to know you are about to be hit.

Subsequent videos on occupational safety and health include, "Back injury prevention," which demonstrates proper lifting techniques, "Slips, trips, falls and working aloft," which deals with the causes of many shipboard accidents, and "Military Sealift Command electrical safety." The last tape highlights the dangers of electricity.

Recent videos feature a cartoon character called, "Half Bit," who demonstrates improper safety practices which result in injury. The character portrays dangerous stunt-accidents that would be prohibitive for a live actor, such as in the scenes depicting what happened to the stack painter without a safety harness. During Operation Desert Storm in 1990, the Military Sealift Command produced an 18-minute video on the proper donning of chemical, biological and radiological defense protective suits, and procedures for administering antidotes for chemical or biological weapons.

The latest occupational safety and health series consists of tapes on, "Personal protective equipment," "Heat stress," "Respiratory protection," "Sight and hearing," and "Shipboard



Start of scene 2

Half-Bit drops off his perch.

Current safety training tapes by Military Sealift Command

NAVOSH and the crew
Slips, trips, falls and working aloft
Back injury prevention
Electrical safety (Version 2)
Hazardous material - Hazardous waste
Tag out - lock out (Version 2)
NAVOSH 1990 safety update
Gas-free engineering
NAVOSH inspections
Personal protective equipment
Shipboard asbestos
Sight and hearing
Shipboard heat stress
Respiratory protection
Military Sealift Command safety aloft

asbestos safety." These and all Military Sealift safety training videos are accompanied by lesson plans to augment shipboard instruction.

Videos on underway replenishment, safety training and the handling of hazardous materials have been requested by ships' crews and are under consideration, along with safety updates on regulation changes.

Copies of safety training video tapes may be obtained by contacting the Military Sealift Command.



End of scene 2

Half-Bit lands on the deck.

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Newsletter

VOLUME 12, NUMBER 1

JANUARY 1993

DOD AND DOT SIGN MEMORANDUM OF AGREEMENT FOR CIVIL USE OF THE GLOBAL POSITIONING SYSTEM (GPS)

The U.S. Departments of Defense (DOD) and Transportation (DOT) have signed a Memorandum of Agreement which establishes policies and procedures to ensure an effective working relationship between the Department of Defense and the Department of Transportation regarding the civil use of the Navstar Global Positioning System (GPS).

As described in the background section of the Agreement, national policy prescribes that the standard positioning service (SPS) of the GPS shall be available worldwide for international civil use for the foreseeable future. U.S. policy also provides for access to and use of the GPS Precise Positioning Service (PPS) by the U.S. DOD and authorized foreign military users and for selective access to PPS by elements of the U.S. and foreign civil (government and private) sectors.

Among responsibilities assigned to DOD is that of providing DOT a GPS SPS Signal Specification for civil distribution and apprising DOT when the GPS has achieved initial operational capability (as defined in the 1992 FRP) and operation in accordance with the signal specification.

The DOT has agreed to serve as the primary interface within the U.S. Government for all civil GPS matters and to disseminate some GPS status information to military users. Within DOT, the focal point for intermodal issues is the Research and Special Programs Administration (RSPA/DRT-20); the DOT focal point for aviation issues is the Federal Aviation Administration (FAA/ASSD-1) while GPS is in and R&D status (and FAA/AVR-1 after DOD declares GPS operational); the DOT focal point for civil GPS interface is the U.S. Coast Guard (USCG/G-NRN).

Among responsibilities assigned to DOT is that of maintaining a civil information center to make GPS operational status information provided by DOD available to the U.S. and foreign civil user community and to respond to requests for information and concerns submitted by the U.S. and foreign civil user community. The U.S. Coast Guard Civil GPS Information Center has been established as the U.S. government's civil GPS information center.

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**UNITED STATES COAST GUARD PLANS TO DISCONTINUE
500 KHZ DISTRESS WATCHKEEPING AND ALL MORSE CODE SERVICES
IN THE MEDIUM FREQUENCY RADIOTELEGRAPHY BAND**

By Notice of Intent published in the Federal Register, and issuance of a Notice to Mariners the United States Coast Guard has the intent to discontinue effective August 1, 1993 watchkeeping on the distress frequency 500 kHz by all U.S. Coast Guard communication stations and cutters as well as all morse code services in the medium frequency radiotelegraphy band.

In its notice the Coast Guard cites the ongoing worldwide implementation of the Global Maritime Distress and Safety System (GMDSS) and the options within that system for handling distress alerts and maritime safety information.

Questions or comments should be directed to Lieutenant Commander Frank Irr, Telecommunications Operations Division (G-TTO), Office of Command, Control and Communications, U.S. Coast Guard, 2100 Second Street, S.W., Washington, D.C. 20593-0001, telephone 202-267-1348, telefax 202-267-4106 or telex 892427 (COASTGUARD WASH).

**FCC APPROVES HIGHER POWER FOR 121.5 MHZ
HOMING BEACONS INTEGRAL TO 406 MHZ SATELLITE EPIRB'S**

By Order, and in response to a request by the United States Coast Guard to assist aircraft homing, the U.S. Federal Communications Commission (FCC) has issued a waiver to Part 80 of its Rules to permit 406 MHz satellite EPIRB's to transmit a homing signal on 121.5 MHz of not less than 25 mw ERP, without a maximum power limit.

**FEDERAL COMMUNICATION COMMISSION EXTENDS COMMENT
PERIOD FOR MAJOR INQUIRY INTO U.S. RULES
CONCERNING MARITIME TELECOMMUNICATIONS**

By Order, and in response to petitions filed by the U.S. Coast Guard and RTCM, the U.S. Federal Communications Commission (FCC) has extended the comment period to June 1, 1993 and reply comment period to July 15, 1993 for its major NPRM/NOI inquiry reported in the November 1992 issue of the RTCM Newsletter.

RTCM will develop views on the issues through an AdHoc Committee working primarily by correspondence. Work will begin shortly on an initial draft document which will be mailed to AdHoc members, refined through their inputs, and further discussed at the 1993 Annual Assembly Meeting in San Diego. RTCM members are encouraged to participate in the AdHoc Committee by submitting their views in writing to the Future Non-Compulsory Rules Ad Hoc Committee. Those submitting comments will be placed on the mailing list for copies of draft documents as they are developed. Comments may be transmitted by fax to 202-347-8540 or by mail to RTCM, 655 Fifteenth Street, NW, Washington, D.C. 20005.

Nautical charts change to metric

One of the best-kept secrets in the nation's capital is a program that is underway to change all nautical charts from English to metric measurements. While the changeover won't be complete for a decade or more, nearly 30 metric charts have already been produced.

The program would still be a secret, at least to me, if I hadn't been asked for comment on the switch by a reporter from a Midwestern newspaper. After pleading ignorance, I made a call to the National Oceanic and Atmospheric Administration (NOAA) charting office, which confirmed that the rumor was true.

My second call went to a key staff member of the House subcommittee on Coast Guard and navigation. I asked for a comment about the implications of the metric conversion program. Long silence. Apparently, no one at the NOAA charting office notified the subcommittee a change was in the works.

When told of the changeover, the aide immediately expressed concern for those coastal mariners, especially fishermen, who are accustomed to reading depths in fathoms. The new readings will be in meters (39.37"), roughly half that of a fathom.

The next call went to the Committee on Nautical Charts and Information, which is part of the National Research Council. The chairman wasn't available, but a staffer reported that although there had been talk about future metrication, he wasn't aware a decision had been made to do it.

"We've been working on it since about 1990 and even earlier," says Dennis Carroll of NOAA's charting division. Most of the early work, he says, dealt with charts of areas near the Canadian border.

The plan is to replace measurements in feet and fathoms with those in meters, decimeters, kilometers and so on as nautical charts are routinely revised and updated. Carroll says there's no master timetable for converting regions by specific dates. However, the charting office promises to try to "convert charts in logical groupings so that mariners' transits will require minimal shifting between the two measurement systems."

Carroll says the marching orders for the change came first from two pieces of federal legislation, the Metric Conversion Act of 1975, and the Omnibus Trade and Competitiveness Act of 1988. Both laws cite metric weights and measurements as the preferred system and require federal agencies to convert their activities as soon as practical.

More recently, though, he points to Executive Order 12770. Issued in mid-1991, the administration action directs executive departments and agencies to use the metric system in procurements, grants and "all use of measurement units in agency programs and functions related to trade, industry and commerce."

The metric version of the charts still relies on nautical miles. But all other designations, from depths and depth curves to bridge clearances and tidal information are in metric units.

Regarding implications for commercial fishing and other marine operations, Carroll says he is not aware of any assessment that was made regarding potential impacts on safety.

He feels the change shouldn't present much of a problem to commercial fishermen because, he says, they tend to rely more on their lorans than charts. Apparently the Coast Guard navigation office agrees. According to information specialist Frank Parker, the Coast Guard, in reviewing implications of the change, expressed concern only that efforts be made to educate the public.

Furuno technical consultant Jasper Sipes says the changeover presents no problems for the company's depth-sounders because, like virtually all electronics sold into the international market, the gear offers readings in meters as well as feet and fathoms. He adds that modifications may have to be made on some electronics that are sold into the U.S. market exclusively.

National Fisherman
Apr 93

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Underwriting Merit

Tim M. Foran, Jr.
Texaco Marine Services Inc.

Part 1. Part 2 in next issue.

The author is Superintendent of Insurance & Claims with Texaco Marine Services Inc. in Port Arthur, Texas. He is also a member of the Marine Index Bureau Advisory Board.

Recent developments appear to have rendered traditional methods of analytic marine underwriting obsolete. Similar to solving simultaneous equations in algebra, renovations to risk assessment must be accompanied by an effective program of rating premiums according to merit.

With respect to liability, such obsolescence has been attributed to: excessive jury awards; environmental legislation; and the increasing volume of frivolous claims. Antagonized that their environment and personal well being appear viewed as less valuable, other nations will soon amplify this condition by following suit.

Regarding Hull and Machinery, reasons have been sighted as being anything from classification societies' relaxation in duty of care (attributed to several of its own reasons, including competition), to falling freight rates and their resulting budget cuts affecting training, crew rotation; manning levels, language barriers, and overall operating standards.

The underwriters' assessment must now focus on how efficiently his customer (the shipowner) manages and operates both shoreside and shipboard, in order to compensate for this erosion of traditional methods. This requires an intimate familiarity that would appear unattainable as underwriters have been observed to have limited expertise in shipping technicalities, concentrating more on the ratio of claims. Assessment will be reliant on someone within the customer's organization. The customer's Insurance and Claims manager must be familiar with the function and knowledge of each shipowning department, as well as with the underwriter's language and concerns. Loss prevention is best served by coordination between Fleet Management, Risk Management, and Underwriters; not unlike the growing concept of "Unified Command" in emergency response plans.

The Insurance and Claims manager is the key link in this reciprocating process, serving as both catalyst and interpreter. Utilizing the Insurance and Claims manager, the underwriter can identify the superior, as opposed to inferior, management. Exemplary performance and management can not only be awarded relative to vessel premiums, but enhanced by way of premiums charged to the cargo owner. (MIB)

OPA: Train-wrecks and designated jailees

CONGRESSIONAL staffers who remember the last go round don't relish the possibility, but it looks very much as though Congress will have to reopen OPA, the Oil Pollution Act of 1990. The only question is whether some needed changes can be slipped rapidly through the Congressional process as "technical corrections," or whether a whole slew of new, "environmentally-correct" congress persons will want to reopen the whole can of worms. If they do, there's no telling what might happen. Oil companies, in particular, are fearful that the result could be liability for cargo owners as well as ship operators in the event of a pollution incident.

The big unresolved issue is, of course, Certificates of Financial Responsibility (COFRs), but the requirements for Vessel Response Plans also seem to contain a provision that has the potential for being plainly unworkable.

At press time the Coast Guard had still to publish its final rule on COFRs. But the signs were that, when published, it would look much like the proposed rule. If so, the result could well be the so-called "train-wreck" scenario: A self-imposed

tanker embargo of the U.S. because tanker owners would not be allowed into U.S. waters without a piece of paper that nobody, repeat nobody, could give them. Realistically, the only source to whom tanker owners can turn for COFRs are those P&I clubs who are members of the International Group. The clubs have made it very clear that they either can't or won't issue COFRs meeting the proposed rules. To make the sorts of changes that the clubs would like, would require a change in the law.

The Norwegian and Greek shipowners' associations have both put forward substantive proposals for ending the impasse, but these too, would require technical changes to OPA.

While the Coast Guard has not issued a final rule on COFRs it has issued Navigation and Vessel Inspection Circular No. 8-92. This sets forth interim guidelines for the development and review of the Vessel Response Plans that shipowners must file by February 18, next year.

Owners may well find that they have great difficulty in getting anyone in their right mind to agree to designation as the "Qualified Individual" (QI) that must be named in the VRP. That's because

the QI position is already being referred to in some admiralty law circles as the "designated jailee".

The QI must be "an English-speaking, shore-based representative of a vessel owner or operator, located in the United States, available on a 24 hour basis, familiar with implementation of the vessel response plan and trained in his or her responsibilities under the plan. ... This person must have full written authority to implement the VRP including obligating, either directly or through prearranged contracts, funds necessary to carry out all required or directed oil response activities."

Many admiralty law sources feel that, should a clean-up operation go wrong, the QI could well be the target of not only civil liability suits but possible criminal prosecution. To make matters worse, some P&I sources have signaled that they will not necessarily automatically back the QI's judgment with up front funds.

Another controversial OPA issue still to be resolved is whether the Coast Guard will recommend that the Secretary of Transportation ask Congress to approve the mid-deck tanker as equivalent to the double hull tanker.

OSHA defines its jurisdictional boundaries within a state to include its territorial waters which extend three nautical miles from the coastline, except in the Gulf of Alaska where the territorial waters extend three marine leagues or approximately nine miles (Seattle Regional Instruction CPL 2.6A dated August 12, 1992).

The scope of the Act, however, was limited by Section 4(b)(1), (29 USC 653(b)(1)), which states:

Nothing in this chapter shall apply to working conditions of employees with respect to which other Federal Agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Thus in the case of vessels, OSHA would have jurisdiction if there is one employee, the vessel was within the geographic area of jurisdiction, and no other federal agency had preempted them under the 4(b)(1) section.

The Coast Guard is another federal agency which may exercise occupational safety and health jurisdiction and thereby preempted OSHA on vessels. Note that before preemption occurs, another agency not only needs to have jurisdiction, but must exercise that jurisdiction.

At this point, several definitions must be understood. An "inspected vessel" means one that the Coast Guard has inspected and has issued a current Certificate of Inspection. The routine boarding of a vessel by the Coast Guard to assure compliance with certain laws does not make the vessel an "inspected vessel". Common classes of vessel normally "inspected" are passenger vessels carrying more than six passengers, tankers, and cargo vessels.

"Uninspected vessels" are defined in 46 USCA 2101(43) as those vessels not subject to inspection and not issued a Certificate of Inspection by the Coast Guard and which are not recreational vessels. Common classes of vessels which are "uninspected" are tugs under 300 GT, inland dredges, inland barges, fishing vessels, fish tenders under 500 GT, and fish processors under 5000 GT.

A table setting forth the requirements for inspection is found at the beginning of many of the Subchapters of 46 CFR. One such table is 46 CFR Table 24.05-1(a) found in Subchapter C, Uninspected Vessels.

In order to clarify the regulatory status of some vessels, OSHA and the Coast Guard entered into a Memorandum of Understanding (MOU) published in the Federal Register, Vol 48, No. 54, March 18, 1983. This MOU acknowledged that the Coast Guard had preempted OSHA with respect to "inspected" vessels. It did not address "uninspected" vessels although by their omission, it can be read that this class of vessels remains under OSHA jurisdiction.

An interesting aside to the issue of who has jurisdiction is the ongoing attempt by the Washington state Department of Labor and Industries (WISHA) to regulate the Washington "inspected" ferries operated by the Washington Department of Transportation. By memorandum to Jim Arvan, WISHA Chief Compliance Officer from Thornton Wilson, Assistant Attorney General, dated April 1, 1980, it was opined that since the Coast Guard regulations did not relate directly to employee safety, the Coast Guard rules did not limit the department's authority under WISHA. A similar opinion was issued in a memorandum to Dale Check, Director Division of Labor Standards and Safety, State of Alaska from Wilson L. Condon, Attorney General, State of Alaska, dated February 16, 1982 with regard to that state's owned and operated vessels. However, those opinions were overtaken by the OSHA-Coast MOU in 1983.

Subsequently, in the State of Washington, the Department of Labor and Industries issued seven violations against the Department of Transportation for failure to comply with WISHA standards relating to asbestos and noise aboard their ferries. An appeal was filed before the Board of Industrial Insurance Appeals on the basis of lack of jurisdiction by WISHA. By order dated August 1, 1986, the Board ruled that WISHA had been preempted by the United States Coast Guard and lacked jurisdiction.

That matter has not yet ended since WISHA is seeking jurisdiction as an employer through the state legislature.

With respect to "uninspected" vessels which agency has occupational and health jurisdiction has not always been clear. Early court decisions favored Coast Guard preemption of OSHA even on "uninspected" vessels because the Coast Guard clearly regulated even "uninspect

Continued on next page

OSHA UPDATE

When a person is injured aboard a vessel, one of the critical issues to resolve is, "were any laws or regulations violated?" There are basically two federal agencies which may have jurisdiction and two areas of regulations which may apply. Coast Guard regulations may be found in 33 CFR, and 46 CFR. OSHA regulations are found in 29 CFR.

The Occupational Safety and Health Administration (OSHA) was created by the Occupational Safety and Health Act of 1970. The Act applied to all employment, even if there was only a single employee, performed in a work place in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the outer shelf lands, and some other areas.

vessels. However, the regulation of inspected vessels did not relate to occupational safety and health and, in my opinion, these decisions were clearly incorrect.

The one most frequently cited case in support of the inapplicability of OSHA is Kopczynski v THE JACQUELINE, 2 F.2d 555 (9th Cir 1984). In Kopczynski, a Jones Act seaman was injured as he attempted to step from the vessel to the dock. Relying on Corray v Pacific Co., 335 U.S. 520, 69 S.Ct 275 (1949), the plaintiff in Kopczynski argued that the jury's determination of his comparative fault could not be used to reduce award because his employer was in violation of various regulations. However, the plaintiff mistakenly relied upon OSHA regulations which expressly apply only to longshoring activities, not work performed by Jones Act seamen. Kopczynski, 742 F.2d at 559; 29 CFR 15.2(b) specifically exempts crew members from "employee" category. Had the plaintiff used the proper regulation, 29 CFR 1910, the result of his claim would likely have been different as indicated by subsequent cases. Thus, Kopczynski is confined to the fact that OSHA longshoring regulations do not apply to Jones Act seamen.

Several subsequent decisions have supported the view that OSHA's jurisdiction over "uninspected" vessels has not been preempted. In Donovan v Red Star Marine Service, Inc., 739 F.2d 774 (2nd Cir 1984), cert. denied, 470 U.S. 1003 [12 S.H.C. 1304] (1985), it was held that OSHA possessed statutory authority to regulate the working conditions of employees aboard uninspected vessels. The case involved noise hazards on tugs. As recently as July 13, 1992, OSHA has issued citations on tugs for noise, lack of guards, obstruction of passageways, and blocked exit doors (OSHA Bellevue, WA inspection #109421685 of Crowley Inlander class tugs).

In re inspection of Norfolk Dredging Co., 783 F.2d 1526 (11th Cir 1986), Reh' denied 790 F.2d 688, Cert denied, 109 S.Ct 271 (1987) the court said, "the issues of jurisdiction turn on difference between 'inspected' and 'uninspected' vessels. . . We conclude that the Coast Guard's regulation of safety aboard uninspected vessels is so circumscribed that it does not preempt OSHA's jurisdiction. . ."

which applies to fishing industry vessels is an unreported Alaskan case, Barbara Munden v Ultra-Alaska, Case No. 3K0-81-491 Civ., filed in the Superior Court for the State of Alaska, Third Judicial District at Kodiak. The case involved an injured party who worked on the processing line of the "uninspected" fish processing barge NEPTUNE. In a well reasoned decision dated April 11, 1985, the court therefore finds that OSHA Regulations are applicable to this matter."

With respect to fishing industry vessels, Public Law 100-24 [11 R. 1841] enacted September 9, 1988 has changed jurisdiction with respect to some of these vessels. Discussions with Coast Guard personnel who had a hand in drafting the Coast Guard regulations indicate that it was not their intent to preempt OSHA in

OSHA POSSESSES STATUTORY AUTHORITY TO REGULATE THE WORKING CONDITIONS ABOARD UNINSPECTED VESSELS

the factory areas of processing vessels. Meetings were held between OSHA and the Coast Guard to hammer out another MOU relating to preemption on fishing industry vessels. However, because of the press of other more important issues, it is not anticipated that the MOU will be forthcoming in the immediate future.

The fishing industry regulations promulgated under this Act were published in the Federal Register on August 14, 1991 as 46 CFR Part 28. This Part falls in Subchapter C, Uninspected Vessels.

It is clear that the "inspected" - "uninspected" vessel classification is no longer the dividing line between Coast Guard and OSHA authority. Although a new MOU has not been published, OSHA's Seattle Regional Administrator has published guidelines with respect to the division of jurisdiction (Seattle Regional Instruction CPL 2.6A). The division between OSHA jurisdiction and Coast

Guard jurisdiction will depend on whether the hazard or condition is regulated by the Coast Guard in 46 CFR 28. If it is, OSHA is preempted. If not, OSHA continues to assert jurisdiction. This is an unusual approach and I know of no other area in which OSHA has shared jurisdiction within the same environmental area or surroundings. See Southern Ry Co. v Occupational Saf. & H. Review Comm 539 F.2d 335 (1976) and Southern Pacific Transportation Co. v Uscry 539 F.2d 386 (1976). The applicability of OSHA authority on processing vessels may be questioned in the courts. If it is, the outcome will be reported in Maritime & Environmental Consultants newsletter, THE EXPERT. Those interested in a discussion of the preemption issue with respect to the Commercial Fishing Industry Vessel Safety Act of 1988 may wish to read Secretary of Labor v Alaska Trawl Fisheries Inc (15 OSTIC 1699) in which the Commission upheld the authority of OSHA over fishing and processing vessels. However, at the time this decision was issued, the Coast Guard had not promulgated regulations under the Act.

The Coast Guard has not published any guidelines on the division of authority between them and OSHA in the fishing industry. Discussions with Coast Guard headquarters indicate that a Memorandum of Understanding between the two agencies on this issue will not be forthcoming in the immediate future.

Activities of longshoremen and stevedores, who are not crew members on inspected vessels, are under OSHA jurisdiction although if an injury results from a failure of ship's equipment, both agencies may have jurisdiction. While this has always been the accepted practice between the two agencies, a new twist has recently been added. OSHA recently issued a citation against Samson Tug & Barge when longshoremen were observed operating a fork lift on a Coast Guard inspected Samson barge. They said measures had not been taken to prevent the lift truck from rolling off the barge. The railing consisting of pipe stanchions and a single strand of wire was deemed inadequate. Samson is contesting the citation on the basis that the Coast Guard has preempted OSHA on inspected barges [refer to the MOU]. Resolution of the conflict is expected shortly and will prob-

Continued on page 8

OSHA (Continued from Page 6)

ably be a sharing of responsibility in spite of the MOU.

In the recent Washington State Supreme Court decision in Inland Boatmen's Union v Department of Transportation (#58524-5 September 17, 1992) that court decided that the Department of Labor and Industries (DLI) could regulate the Coast Guard inspected and certificated State owned ferries under the Washington Industrial Safety and Health Act (WISHA). The DLI had issued several citations to the Department of Transportation for violations of State standards on railings, asbestos danger, excessive noise and lack of safety programs. The Department of Transportation successfully contested the violations before the industrial appeals judge arguing that since these vessels were inspected by the Coast Guard that OSHA and thus the DLI were preempted. Upon appeal to

Superior Court, the decision was reversed holding that federal law did not preempt the regulation of the ferries by the state. Upon further appeal directly to the Supreme Court, the decision of the Superior Court was upheld. The court held that there must be an implicit intent to preempt in order for the federal government to preempt the entire field of maritime safety. Upon finding there was none, the court then went on to see if there was an actual conflict between Coast Guard regulations and WISHA regulations in regard to the specific citations. Finding none, the court held, "that federal law does not preempt Washington worker safety laws aboard the Washington state ferries."

In summary, with the exception of the fishing industry vessels, OSHA has been preempted by the Coast Guard on "inspected" vessels but retains jurisdiction

on uninspected vessels within the territorial waters of the states and territories. On fishing industry vessels, each agency has asserted jurisdiction over some of the vessels. OSHA is clearly preempted in those areas regulated under 46 CFR 28. However, the extent of preemption may go further.

Pirate Attacks Spoiling South-east Asia's Image

The rising incidents of piracy in South-east Asian waters is spoiling the region's image in international shipping circles.

The piracy problem in the region is far more serious than estimated previously, with more than 200 cases reported last year.

A special report released by the United Kingdom-based International Maritime Bureau (IMB) has identified the waters stretching from the northern tip of Sumatra through the Malacca and Singapore Straits, Philip Channel and beyond as the single most dangerous stretch of water internationally.

According to IMB, the region's waters have the most concentrated incidence of piracy attacks in the world. While they may not involve a great deal of money, they pose a great potential for disaster should a collision or grounding occur.

stumbling block for investigations by local law enforcement agencies.

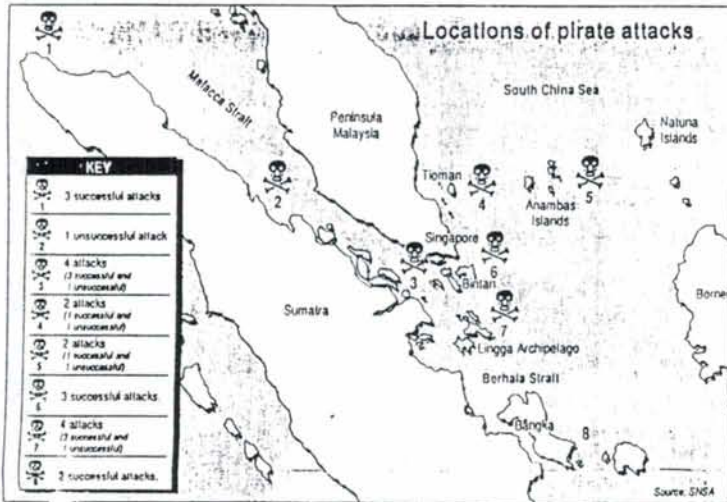
One solution, the report said that while sea patrols of the area may deter attacks, the thrust of efforts should be on land.

From accounts of the various attacks, the report said in most cases the average raid took about 30 minutes and the average haul from the ship's safe was about US\$7,000. The report also focussed on the problems of piracy in the South China Sea and in particular, on the increased number of attacks in the Singapore Straits. It included an annex describing attacks on more than 100 ships in a 32-KM stretch of the Philip Channel, the southern half of the waterway between Singapore and Indonesia, the pirates' favourite stretch of water.

Although offences are generally committed afloat, the pirates themselves must have a shore base. With efforts concentrated on gathering intelligence both before and after an attack, it should be possible to catch criminals in possession of property stolen from vessels. Other suggestions include closed-circuit television cameras installed on all ships - trained on the safe - to help identify the pirates.

It also identified the lack of comprehensive and consistent reports of attacks as a major

IMB will launch an anti-piracy centre in Malaysia, in September, to co-ordinate intelligence and reporting of piracy incidents and to disseminate this to the various law enforcement agencies and ship-owning bodies.



S.E. ASIA

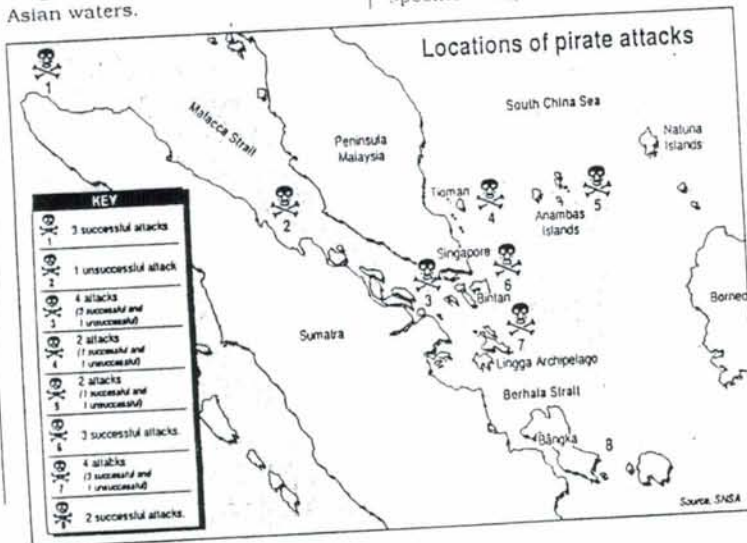
Special task force to Fight Piracy

A Special task force will be set up by the London based International Maritime Organisation (IMO) to halt the surge of piracy in South-East Asian waters.

The proposed task force will comprise representatives from Malaysia, Singapore and Indonesia.

The task force will recommend specific navigational techniques

and precautions to be taken by crew, shipping companies, regional governments and port authority to enforce law and order on the high seas.



The IMO said piracy problems warrant draconian measure to prevent and suppress them. Rescue teams must cooperate and coordinate all moves with the respective authorities cracking down on pirates. The teams must also recommend the use of Inmarsat satellite communications.

Past efforts to contain the piracy problem in South-East Asian region were hampered by political sensitiveness and juridical concerns. A number of proposals have been tossed about but no concrete solution has emerged so far.



Newsletter



VOLUME 11, NUMBER 8

SEPTEMBER 1992

FRP UPDATE - WHAT TO EXPECT IN THE 1992 U.S. FEDERAL RADIONAVIGATION PLAN

In a recent briefing on the draft 1992 U.S. Federal Radionavigation Plan as it has been developed to this point, highlights of interest to the maritime community included:

- o For the Global Positioning System:
 - Initial Operating Capability (IOC) will be attained when 24 GPS satellites (Block I/II/IIA) are operating in their assigned orbits and are available for navigation. This is planned to occur in mid-1993.
 - U.S. Coast Guard and FAA will notify civil users when the system is approved for navigation.
 - Standard Positioning Service (SPS) will be available at IOC to all users worldwide without direct charge. SPS will provide horizontal accuracy within 100 meters (2drms, 95%) and 300 meters (99.99% probability) and vertical accuracy within 140 meters (2 sigma) and timing accuracy within 340ns (95% probability).
- o For Maritime Differential GPS (DGPS):
 - U.S. Coast Guard plans to provide DGPS service, free of charge, for harbor/harbor approach phase of maritime navigation utilizing maritime radiobeacons to transmit differential corrections.
 - USCG DGPS will be operational by 1996 with an accuracy better than 10 meters 2drms.
- o For Omega:
 - U.S. does not expect to terminate Omega operations before the year 2005 (also depends on partner nation agreements).
 - Operation after 2005 depends on requirements not met by other systems.
- o For Loran-C:
 - To remain part of radionavigation mix through 2015.
- o For Transit:
 - To terminate and discontinue system operation in December 1996.
- o For Radiobeacons:
 - Differential GPS corrections to be carried by some maritime radiobeacons; non-DGPS beacons may phase-out after 2000.

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**U.S. SECRETARY OF TRANSPORTATION SUGGESTS
EXPEDITIOUS ACTION TO CHANGE COMMUNICATIONS ACT OF 1934**

In a letter to the Chairman of the U.S. Federal Communications Commission, the Secretary of the U.S. Department of Transportation has noted that the U.S. Communications Act of 1934 contains requirements that are inconsistent with the provisions of the 1988 Global Maritime Distress and Safety System (GMDSS) Amendments to the Convention for the Safety of Life at Sea; that the FCC rulemaking action implementing the Amendments in the United States did not indicate plans for seeking an amendment to the Communications Act; and that the Secretary of Transportation supports FCC initiatives to reform expeditiously the Communications Act of 1934.

Copies of the letter are available to RTCM members on request to the RTCM Office by facsimile to 202-347-8540, by telephone to 202-639-4006 or by mail to the address listed on this Newsletter. Request Document ALFA JULIETT ALFA.

**FCC AMENDS RULES TO PERMIT USE OF FACSIMILE AND DATA EMISSIONS
ON MARINE PUBLIC CORRESPONDENCE CHANNELS IN THE 156-162 MHZ BAND**

By Report and Order (R&O) the U.S. Federal Communications Commission (FCC) has amended Part 80 of the Commission's Rules (47 CFR 80) to permit the use of facsimile and data communications on marine public correspondence channels in the 156-162 MHz band (marine VHF) for communications between public coast stations and ship stations. The amendment is substantially in conformance with the Notice of Proposed Rule Making released in October 1991 and reported in the RTCM Newsletter previously.

The rule changes permit the use of the additional communication modes under existing ship or coast station licenses provided mutual arrangements have been made between licensees. Transmitters type accepted before January 1, 1994 for G3E emissions under Part 80 of the Commission's Rules will be authorized to transmit F2C, F3C, F1D and F2D emissions indefinitely without modification of type acceptance. Transmitters type accepted after January 1, 1994 will be authorized to use F2C, F3C, F1D and F2D emissions only if they are type accepted for those emissions under Part 80 of the Commission's Rules (47 CFR 80).

Copies of the Report and Order are available to RTCM members on request to the RTCM Office by facsimile to 202-347-8540, by telephone to 202-639-4006 or by mail to the address listed on this Newsletter. Request Document ALFA JULIETT BRAVO.

ARE YOU A 1993 RTCM ASSEMBLY MEETING EXHIBITOR?

To have your listing included in the 1993 RTCM Assembly Meeting Program, deadline for receipt of Exhibitor Registration Forms by RTCM is October 30, 1992. If you did not receive exhibitor registration packet, fax request to RTCM at 202-347-8540.



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

90-486

DUPLICATE FILE
DUPLICATE FILE

CERTIFIED TRUE COPY

AUG 11 1992

The Honorable Alfred Sikes
Chairman
Federal Communications Commission
Washington, DC 20554

Dear Mr. Chairman:

As a component of the Administration's effort to develop a new maritime policy, we have identified laws and regulations that inhibit U.S. ship operators' ability to compete effectively with foreign-flag ships. The Communications Act of 1934 contains requirements that are inconsistent with the provisions of the 1988 Global Maritime Distress and Safety System (GMDSS) Amendments to the Convention for the Safety of Life at Sea effective February 1, 1992.

Under new regulations, the option of using duplicate equipment and/or shipboard maintenance in place of a radio officer would be accepted as adequate for compliance with GMDSS; however, ships that carry radiotelegraphy equipment must continue to carry radio officers until the Communications Act is amended. U.S. ships that meet the GMDSS technical criteria are nevertheless subject to additional requirements that do not apply to foreign-flag ships implementing GMDSS. Furthermore, the incentive to invest in a safer communications system is essentially eliminated if the operator must continue to comply with outdated statutory requirements. The notice published in March 1992 did not indicate what plan your agency may have for seeking an amendment to the Communications Act of 1934.

As you determine your course of action, I want you to know I support initiatives taken by FCC to reform expeditiously the 1934 Act to permit U.S. ship operators to use the options available under GMDSS.

Sincerely,

Original signed by
Andrew H. Card, Jr.

Andrew H. Card, Jr.

MIB UPDATE

SEPT - OCT 1992

PELIARILITY: THE JONES ACT

Clifton G. Goodier, Esq.
James Walker, Wachter, Fuhrman, Carrer & Demergre

The author is a partner with the New Orleans based law firm Jones, Walker, Wachter, Fuhrman, Carrer & Demergre. He specializes in maritime law.

INVESTIGATING THE CLAIM: CRUCIAL FIRST STEPS

Too many times a Jones Act claim involving a serious back injury arises for counsel containing a partially completed accident report, regarding an accident that occurred eighteen months to two years ago and a letter from plaintiff's counsel describing how he has "nailed down" the witnesses and the medical. There may also be one or two medical reports from plaintiff's counsel and, of course, a copy of a Complaint. Compromised by its absence is plaintiff's statement taken before he obtained counsel, a list of what crew members may have been witnesses or even a statement from a witness. Surely there must be an independent medical examination or medical reports from a company selected physician somewhere in the file. No, just typical medical reports from popular plaintiff's physicians.

Additionally, there is evidence that a rateliner in use by the plaintiff at the time of the accident failed, but that rateliner has been lost. Once again one gets the familiar defense lawyer's sinking feeling. Jones Act cases are hard enough to defend with a good investigation, without it, defense is nearly impossible.

Questions this topic conjures up are "what accidents should be investigated"; "who should investigate these accidents"; and "to what extent should the investigation be carried out?" In what extent should all accidents should be investigated. How many times has a slight back strain become a two level disc herniation with fusion or a burned knee turn into a meniscus injury? Although they were considered minor injuries and not investigated at the time, it is now too late to investigate them with any degree of success.

Who does the investigation, and its thoroughness, depends on the type of injury and all circumstances surrounding it. Ideally, defense lawyers prefer to have accidents investigated by them at the time of occurrence. It is a great advantage to counsel to have been at the scene, interview witnesses and gather evidence at the time of the incident so that a proper defense can be formulated early on. However, the use of lawyers to investigate every accident, no matter how small, may be cost prohibitive.

Clearly, every accident should be initially investigated by the captain or pilot of the vessel at the time of occurrence. Care should be taken to insure they have at least basic training in how to conduct their investigations.

THE WELL DOCUMENTED ACCIDENT REPORT

An accident report should be completed on all matters, no matter how small or insignificant they may seem at the time and even though the crew member does not want to make a claim or doesn't feel it is necessary. This requirement should be placed into the written rules of the company, given to crew members at employment and posted on the vessel.

In addition to the obvious when, where, who and what information, all accident reports should include a portion in which the plaintiff describes, in his own words, how the accident occurred (preferably written by the plaintiff, or if he cannot, then by the captain or pilot). There should be a list of each crew member, the watch he was standing and at least an indication of whether or not he was a witness to forestall any future surprise witnesses. The plaintiff should sign the accident report with language indicating that he has read it and agrees with its contents. There should be information as to when and to whom the accident was reported. Also, it is beneficial to *copy* information as to whether or not the plaintiff had ever previously injured the portion of his body injured in the accident (if he denies it, and later you prove prior bodily injury, it is good impeachment evidence; if he admits it, then it is a beginning for investigating into prior injury).

What should be avoided on accident reports are questions such as "how could the accident have been prevented." Too many times, pilots or captains do not have sufficient information to complete this type of information and wind up filling it out anyway with incorrect or inaccurate information that could later be used against the company.

In addition to completing the accident report, the captain or pilot should at least go out to the scene of the accident and "look." Too many times crew members report injuries due to grease on the deck or stairs, poor lighting or defective equipment and yet no one goes to determine if the condition actually exists. If there is a claim of defective equipment involved, then that equipment should be put on the side and saved until such time as someone with some expertise can take a look at it. The possibility of a third party claim against the manufacturer is lost if the equipment in question is not retained.

The accident should be reported as soon as possible by the captain to the claims department and, since most towboats now have fax machines, a copy of the accident report should be faxed.

A CLAIMS DEPARTMENT'S ACTIVE ROLE

Once the claims department is notified, a crucial evaluation must be made at that time. Of course, operators must rely on trained claims personnel to decide what further action must be taken. Obviously, if the accident involves simply a small cut on the hand, with no lost time, then the claims department may want to leave it to the captain to investigate. Further instructions may be given to the captain as to the extent of the investigation. However, even in the smallest of claims, medical should be followed as closely as possible. If a small cut appears to be blossoming into something greater, then further investigative steps should be taken. Also, if the crewman travels the vessel on his time-off and does not return, then further follow-up may be necessary.

Clearly, in any case involving a spinal injury, knee or joint injury, head injury and the like, even though no lost time is present, the claims department should get involved in addition to the captain's investigation. A decision has to be made as to whether or not the claims representative will go to the scene and perhaps take statements, bring an expert ---- such as a surgeon, metallurgist, engineer, etc. A decision will have to be made at that time as to whether or not the lawyer should be involved.

If the claims department decides not to go to the scene, then at least a written statement, or if not possible, a recorded statement should be taken from the plaintiff. At that time, a determination should be made as to whether or not statements should be taken from witnesses. Any third parties who may have been witnesses, or who may have been otherwise involved, should be tracked down and pertinent information obtained. All pertinent documents should be gathered such as logs, notes, etc. and preserved in the file.

If it is determined that statements should be taken, then appropriate statements should be taken or notes regarding interviews or witnesses should be retained. The possibility exists that even long-standing employees of the company may later leave under unfavorable circumstances, and who may have been a favorable witness may change simply because of dislike for the company.

Additionally, the claims department will have to determine whether or not photographs or video recordings are appropriate of the accident scene. The claims department should also secure the equipment that is claimed defective and an evaluation should be made early on as to whether or not it is defective and if so, the possibilities of a claim against a manufacturer may be, at this time, evaluated. Too many times equipment involved in an accident, although saved, is not examined immediately leaving the possibility that the passage of time prohibits a valid evaluation by the expert.

A MEDICAL EXAM: A NECESSARY STEP

Clearly, medical should be followed closely. If the crewman chooses his own physician, then the claims department should make sufficient investigation to determine the reputation of the physician chosen. The claims department should demand timely reports from that physician and insure that those reports are received, reviewed and action taken should the report so warrant. Clearly, an independent medical examination should be set up as soon as possible if the crewman selects his own treating physician. It is too late for the independent medical examination once surgery is performed.

If malingering is suspected, then this is an excellent time for surveillance. Many times if there is malingering or exaggerating and the crewman has not obtained counsel, he will not have been warned about the fact that his activities may be watched to determine whether or not he is being truthful.

Also, vocational rehabilitation and/or vocational counseling, is an excellent idea. These professionals seem to be able to obtain a large amount of information which many times is not obtained by a doctor during his gathering of the crewman's history and which can be useful not only to the defense of the case but also to insure that the injured crewman is returned to

employment as soon as possible. If his injuries are such that he cannot return to his prior employment, these professionals can be used to obtain employment in the highest wage capacity so as to diminish any future claim for lost wages.

In conclusion, good investigation usually makes for good results. Timely, well-thought out and well-conducted investigations cannot be duplicated months or years later when it may be too late. *(MIB)*

Tuberculosis: A Risk for Mariners

Jim Scott, MD

Jim Scott, MD, Director of Maritime Medical Access is also Associate Professor of Emergency Medicine and Assistant Dean of Student Affairs at the George Washington University Medical Center.

Tuberculosis is a disease that many of us think is declining when in actuality, this is not the case. Throughout the world the incidence of tuberculosis continues to increase and newer strains of tuberculosis become more difficult to treat. Even in the United States there is recent evidence that the number of cases is increasing. It is very common in countries of southeast Asia, Latin America and Africa. In these endemic areas, 25% of those people exposed to tuberculosis will become infected; however, only 10% of those who are infected develop the illness. In other words, 90% of patients who become infected with tuberculosis will not develop an acute illness.

SYMPTOMS

The symptoms of tuberculosis usually include: cough, fever, chills, night sweats, occasional chest pains and shortness of breath. Tuberculosis can not only affect the lungs, but other organ systems including the kidneys, skin, eyes and nervous system.

TESTING FOR TB

The simple best way to test for tuberculosis is with a skin test. This skin test is a killed type of tuberculosis microorganism that is injected under the skin to produce a local reaction. There are two common types of skin tests. One is the time which consists of 4 small pin pricks. Each of the pin points is coated with depurated protein derivative (PPD) of the killed tuberculosis. This is a convenient test: easy and free of syringe use.



Commandant Note 16722 reiterates and clarifies Coast Guard policy concerning those who test positive for dangerous drugs. The statute (46 USC 7704) requires the administrative law judge (ALJ) to permanently revoke the seaman's papers for those found to have used dangerous drugs. By regulation, failing a drug test leads to the presumption of use.

The only exception to this revocation is the case where the seaman can show cure. Criteria for showing cure are being established in case law, the most recent being Commandant Decision on Appeal No. 2535 (SWEENEY).

The Coast Guard maintains an active campaign against the use of dangerous drugs in the merchant marine. A sanction of REVOCATION will be pursued by Investigating Officers prosecuting dangerous-drug-use cases before the ALJ.

Voluntary deposits of licenses and documents will not be accepted. The mariner faced with a failed drug test has two options: 1) voluntary permanent surrender of the document, or 2) be charged to a hearing before an ALJ. Again, should the ALJ find the charges PROVED, his only option under law is to revoke the document unless the holder provides satisfactory proof that he is cured.

Good faith deposits, which are used by the mariner to guarantee his appearance at the hearing, will continue to be accepted. Such agreements are made only after the seaman has been charged to a hearing.

Once a document is surrendered or revoked the only chance a merchant seaman has to obtain a new document would be to apply to the Commandant for administrative clemency. There are time limitations and application procedures which must be met before a clemency board is convened. Details are contained in 46 CFR Part 5, Subpart L.

Marine employers, unions, charterboat associations, etc. are urged to make this article available to all merchant seamen and to emphasize that drug use is incompatible with service in the merchant marine and will ultimately lead to loss of employment in this industry.

PRE-EMPLOYMENT DRUG TESTING REQUIREMENTS

Persons who have passed a pre-employment test for his current marine employer or another marine employer, or a periodic test for dangerous drugs, within the previous six months are not required to undergo pre-employment testing again within that period. Persons who have been subject to a random drug testing program meeting the criteria under this regulation during the previous 12 months, have not failed a chemical test for dangerous drugs, and have not refused to participate in required chemical tests are also not required to undergo pre-employment testing.

The only exception to random drug testing requirements is for those individuals not having any duties or functions related to the safe operation of the vessel. With the nature of uninspected passenger vessel operations it is virtually impossible for a mate not to have some effect upon the vessel's safe operation. This means that if a mate does, or is ever likely to do, as much as mind the helm while the operator leaves to use the head, handle a mooring line while docking or undocking, or assist or instruct a passenger in the event of an emergency, that mate is required to be subject to random drug testing for the duration of his employment aboard.

Masters operating a vessel with mates or crew not in compliance with regulations for chemical testing as above are subject to administrative action against their licenses.

Tired of burning money?

12 steps to cut workers' comp costs

By Phillip M. Perry

When Giancola Construction took on the services of a self-employed electrician on an ongoing basis, company president Joseph A. Giancola never figured he would have to pay workers compensation premiums on the man. But the Rutland, Vermont-based company was told by its insurance company to break open its wallet. Because the subcontractor received checks regularly, the company had to shell out \$2,000 annually in additional premiums.

"That was a very difficult situation for me," says Giancola. And no wonder. Like many other construction firms, Giancola hires a large number of independent contractors. All that workers comp insurance eats into profits.

Giancola's unsuccessful negotiations to reduce or eliminate those workers comp premiums represent only one obstacle in the construction industry's ongoing battle with what has become its number one headache: rapidly escalating workers comp premiums.

The average cost of a workers comp claim has more than tripled over the past 10 years, increasing at a rate 50 percent faster than the boom in overall health care costs. In many states the problem has reached crisis proportions, with businesses laying off workers or considering closing shop altogether.

Contractors face the highest workers comp premiums of any major industry, according to the National Council on Compensation Insurance (NCCI), Boca Raton, Fla. Some states assign rates of 70 percent of more to high risk job categories in the construction field. "It's gotten to the point where the employer is paying almost as much in workers comp premiums as for the payroll," says Edward Furey, a senior analyst with the organization. Workers comp premiums come to an average of 11 percent of payroll for contractors participating in a pool insurance program in Kansas and Missouri. Companies in other states are facing far higher bills. Among the hardest

hit states are California, Texas, New Mexico, Illinois, Louisiana, Rhode Island and Maine. The challenge for contractors becomes apparent when their workers comp premiums—expressed as a percentage of payroll—are compared with the 2.1 percent nationwide average for all industries as calculated by the NCCI.

To be sure, hydraulic lift equipment has gone a long way toward reducing accidents that lead to workers comp claims. "Aerial lifts and scissor type machines, and other lift equipment has not only been more efficient by saving man hours but also has provided a much safer work environment," says Bill Rogers, executive vice president and general manager of S&R Equipment, Perrysburg, Ohio.

Automatic equipment also conserves the energies of workers to concentrate on their work and cut costly accidents. "Using antiquated equipment, workers would have to use physical movement to climb up," says John Lynch, director of international sales and marketing at Calavar, Waco, Texas. "With modern equipment, workers are less fatigued."

Contractors with higher than average accident records are saddled with far higher premiums. And those who get hit with one or two big medical bills after serious accidents must pay premiums that can make them uncompetitive in their regions.

"Your workers comp costs can spell the difference between being in business and closing your doors," says Dave Neely, general manager of Sunland Construction Company, Houston, Texas.

The medical bills are only the first step in the long financial march. "Hidden costs usually come to five times the amount paid in bills," says Douglas F. Miller, president of Employers' Risk & Insurance Management, Birmingham, Ala.

Not least, says Miller, you lose the expertise on an experienced employee when an accident occurs. You must assign a less skilled individual to perform the work, and that

may involve overtime. There is the administrative costs of filing paperwork and keeping up with the claim. Then there is the time required for following up with the employee and seeing how he is doing.

How can you cut your workers comp costs? Twelve consultants from around the country offer the following techniques:

1. Form an association with other employers
Many contractors have lowered their premiums by joining pools, or associations, of other contractors which obtain better treatment from insurers by lumping together the work force and accident experiences of all of the members. The Associated General Contractors of America (AGC) has a number of these pools in various parts of the country. (For a list, see the sidebar, "AGC Nationwide Workers Compensation Pools.")

"Our pool helps members in two ways," says Hoot Gibson, fund manager for Builders' Association Self-Insurers' Fund, the AGC pool in Kansas City, Mo., which insures 300 contractors in Kansas and Missouri. "First, because the pool performs better than would the employer alone, it hands back a dividend to those employers who have lost experiences that are lower than the others in the group."

"Second, we have a more aggressive hands-on approach toward loss prevention," he says. "Insurance companies have for the most part failed to provide good loss control services." The association encourages employers to conduct many of the premium-reducing activities that are outlined in this article, and works with them to see that the steps are effectively implemented.

Association type insurance begins to be viable when an individual business is paying around \$7,500 in annual premiums, according to the U.S. Chamber of Commerce. However, this figure can vary by state.

Some companies report excellent results from their participation in pools. One example is S&R Equipment, a Perrysburg, Ohio, lift equipment retailer which joined a pool two years ago. "The blended rate coverage meant that our workers comp premiums came to only 40 percent of what it would have been if we had insured on our own," said executive vice president and general manager Bill Rogers. "I would recommend that anyone join a group, if they are able to do so."

There's the rub. Not everyone can do so. If a contractor's experience modification is too high the pool may not allow entry. And if the company's modification is too good, it may actually end up paying a higher premium if it joins the group which blends the experiences of poorer-performing contractors.

Other contractors can't join a pool simply because they are operating in a region with a population too small to support one. "Our premiums are going up every year, and a pool might be one solution," say Giancola. "But there's not much chance for an association in Vermont." Giancola is located in the state's second largest city, which has a population of only 18,000 people.

The largest of contractors have another option: self-insurance. It's legal for employers to the United States Chamber of Commerce. You have to give proof to the state that you have the funds to do it successfully.

How do you know when you are big enough to self-insure? There are many variables, and you need to consult a specialist in the area. But if a business is paying over \$500,000 in annual premiums, it is almost always in its interest to self-insure. Depending on the state and many other variables, self-insurance may also be a viable alternative if the business is paying as little as \$100,000. If premiums are less than that, self-insurance is seldom viable.

Work With Your Employees
2. Institute a safety program "The

How to Cut Your Workers Comp Costs

1. Self insure or join an association.
 2. Start a safety program.
 3. Explain the problem to employees.
 4. Use incentives.
 5. Plan transitional work slots.
 6. Plan transitional work slots.
 7. Pay premiums only on straight time.
 8. Reclassify your employees.
 9. Pay small claims yourself.
 10. Correct clerical errors.
 11. Shop for a carrier.
 12. Join a drug program.
- Note: The legality of some steps will vary by state.

best way we have found to control workers comp costs is to be 100 percent committed to safety on the job," says Robert Rounay, secretary-treasurer of Kaufman Construction, Philadelphia, Pa. "That means starting with the president of the company and going all the way down to the person pushing a rake."

consultants agree. "Safety programs and loss prevention are the most important techniques for controlling costs," says Daniel C. Free, president of Insurance Audit & Inspection, Indianapolis, Indiana.

There's no better way to lower workers comp claims than to prevent things from happening.

Establish a safety committee to identify and correct hazards and activities that can lead to injury. Investigate your operations in a methodical way. What hazards could cause accidents?

Sunland Construction has associated

time loss," says Norman Peterson, president of his own consulting firm in Ashland, Ore. "From 60 to 65 percent of all injury costs represent indemnity to employees for work time loss, not medical bills. Everyone concentrates on the medical, but few concentrate on the indemnity."

"Preplanning early return to work will save from 20 to 30 times what other strategies will save," says

6. Plan transitional work positions. Like other construction firms, Giancola Construction has instituted a transitional work program for employees who can return to the work place but cannot perform their old jobs for awhile. Prior to accidents happening, plan for transitional work positions. These are jobs that injured workers can do so that they are not sitting around at home recuperating.

"The number one way to reduce workers comp money is to reduce

the inside," Marshall's program employs a bingo card technique for encouraging employees to work safely. Incentives work because they reduce injuries by raising the awareness of workers about safety. They focus the attention on the problem. But they must be changed from time to time.

"Don't be repetitious," warns Michael Nicholas, president of California Loss Control, San Dimas, Calif. "Change the program around. Maybe instead of cash awards you give away soccer tickets. But find out what the employees want by asking them."

5. Respond quickly to accidents. "Too many employers do not respond quickly enough when there is an accident," says Gibson. "You have to get involved immediately."

Immediate reporting is critical, he says. So is the medical management of the claim, the indemnification management to avoid unnecessary legal activity, and working closely with the insurance company. Facilitate the injured worker getting the proper medical attention quickly.

"Employees who see that management is concerned about their safety feel better about their company," says Free. "People want to feel as though they are part of the company, not that the employer is just using them to make money and doesn't care if they get hurt."

Call the worker at home to express your concern about his well being. "Get a dialogue going," says Free. "Ask the employee how the accident happened and what the business can do to keep it from happening again." Rounay of Kaufman Construction takes a proactive approach toward communicating with homebound employees. "We have adjustors in the company follow the man's progress," he says. "We call the man to see if he is all right and to encourage him to come back to work as soon as he can."

You want to make sure that the worker understands that you do not resent the accident. Such feelings on the part of the employee can lengthen recovery times and drive up workers comp costs.

part time employees. "While upper supervisor levels stay the same from job to job, we generally hire foremen level people for specific jobs," says Neely. "They may not be familiar with our safety practices. It's deadly if you don't bring such people into the picture."

The temporary employees are instructed on the same techniques that everyone else used. "All of the employees are motivated when they understand that the people in charge of the organization feel safety is a key issue," he says. "I make sure the people who work for me get that message and pass it down. Everyone has to be singing the same song."

Consultants suggest telling your employees how workers comp premiums are impacting the financial strength of your business. Get them on your side. They need to realize that what hurts the employer hurts the worker and can even endanger continued employment. Knowledgeable employees are apt to support safety programs.

"Make the relationship as cordial as possible, so that when the employee is hurt they feel they are supported by their employer," says Ruth Gastel, director of issues analysis at the New York Insurance Information Institute. Employees who feel good about their employer are more apt to be going along with recommendations regarding early return to work.

"Too, employees should be informed about the no-fault nature of the state workers comp laws. Workers who know their rights are less likely to hire attorneys to represent them, which drives up costs for employers," says Gastel.

4. Use incentives. Incentives reward employees when workplace accidents are few. They can be as simple as having a company-sponsored party every time that the business goes a certain number of days without an accident. Other employers design point systems that award bonuses for a string of safe days.

"The best pre-accident behavior you can elicit is the reduction of hazards," says Albert A. Mangione, director of customer training and loss prevention for service retail industry, at Liberty Mutual Insurance Group, Boston. Licensed to write workers comp policies in 48 states. "If you can put your employees in competition with each other for the reduction of hazards, that would be a tremendous way to reduce loss." This might involve a suggestion program that is added on to a basic safety program in which an employee committee identifies and eliminates hazards.

Taylor Crane and Rigging, for example, is planning to launch a new incentive program shortly. Any employee who works for a quarter without a lost time accident will receive a reward, which may be cash, or clothing such as safety boots or gloves.

"The whole idea is to get the safety awareness level up," says Seth Marshall, president of Safety Pays, a Santa Monica, Calif. company that licenses use of an incentive program. "A company's workers comp dilemma begins and ends with its employees. So the solution must come from

one person the job of safety coordination. He reports directly to general manager Neely. "And on any job of any size we assign a full time safety person who reports to the top safety individual," says Neely.

Safety committees should include personnel from all levels. "Bring in the workers to identify hazards," says Donald Marano, president of Industrial Health, Inc., Salt Lake City, Utah. "Because they are on the line every day, they know about more problems than management."

Then structure a hazard self-inspection done periodically on a surprise basis. Detect and abate those hazards before they cause loss. Safe operation of lift equipment is critical. "The operating and safety manual, given out with the sale of each piece of equipment, should be read and signed for by each operator," says Lynch of Calavar. Free suggests getting computer print outs from your carrier that show a history of claims. Identify accidents as to type: slip and fall, back injuries from lifting, vehicle collisions, wrist injuries from repetitive motions, or other. "See what's causing your losses and then make the workplace safer," he says.

It's not enough to post signs about safety. Their effect wears off rapidly. In contrast, studies show that workplace accidents are reduced by any activity that reminds workers of the need for safety. These activities can be as simple as a periodic lecture on the right way to lift cartons or use ladders, to elaborate incentive programs.

3. Explain the problem to employees. Having a safety committee or a top safety executive isn't enough. Successful companies are developing techniques to drive home the critical need for safety to employees.

One company that has done this successfully is Taylor Crane and Rigging, Coffeyville, Kan. "We have a safety meeting every Monday Morning," says company president Jim Taylor. The meetings start at 7:00 a.m. and generally last from 30 minutes to an hour and a half. The group talks about any accidents that have occurred the previous week. And minor accidents are not ignored, because, Taylor says, they eat into work time.

And "near misses" are discussed a lot at these meetings. How did the near-miss happen? What can be done to avoid it in the future? "We have a form for accidents and another for near-misses," says Taylor. The employee fills it out after the incident occurs. One copy goes to the file, another to the supervisor and a third to Taylor.

"It's hard to get employees to fill out the near-miss forms," Taylor admits. "They don't want to admit they had one."

Taylor claims that the weekly meetings have paid off. "Now we really have guys working on safety as a team," he says. "They work together better than any small company I have seen."

And here's the bottom line: "Last year we worked 45,000 man hours without a lost time accident. We expect that to be the same this year, and we attribute it to the safety program."

Sunland Construction is particularly careful about new or

Write in 309 on inquiry card

Worker's comp, from page 22

Peterson. "Why? Because it deals with the key problem: eliminating time loss."

Getting the worker off the workers comp roll by using transitional work positions will save perhaps fully half of that 60 percent of injury costs represented by time loss, says Peterson. Reducing the time that a worker is off work will cut back on your premium increases. It reduces the involvement of other players in the workers comp system, such as attorneys and clinics. And studies show that people who work recover faster than those who don't.

Once you have outlined a number of transitional jobs, communicate what you have done to the employees.

"Employees should know before they get injured that they will have a job and what they will be doing," says Robert J. Will, a workers comp consultant in Long Lake, Minn. "Write down descriptions of the transitional jobs and give a copy to each employee. And also bring up the subject during initial interviews with job applicants. Employees need to know that if they get hurt at your company they will be back working—not off at the golf course."

All of this takes a new mind set by employers and workers. "There was an old adage that until the worker was 100 percent ready to go back to work, we will not accept him," says Gibson. "That's out the window. Employers must have a return to work light duty program."

Work With Your Broker

The following techniques relate to how you interact with your insurance broker and carrier. Consult with your state insurance department or attorney prior to employing any of them. What's legal in one state is flat out illegal in another.

Your first step here is to make sure that you understand how your premiums are calculated. "Before you can put together a program to cut workers comp costs you have to understand the modification experience rating calculation, which is used to calculate your premium," says Bonnie Brook, president of Stephenson and Brook, a loss control firm in Marblehead, Mass. "Then you can install a system to manage all of the components."

7. Pay premiums only on straight time. A common clerical error is to include overtime in the financial data reported to the insurance carrier. "In most states, you are only required to pay premiums on straight time," advises Edward M. Welch, who teaches labor and industrial relations at Michigan State University. "If employers don't separate out overtime, they end up paying higher premiums."

To solve the problem, make sure your accountants are familiar with your state's workers comp law. They should provide you with a printout that breaks down the categories of labor expense categories. Check the numbers against the reporting form that goes to your carrier.

8. Reclassify your employees. In most states, premiums depend on the classification of your employees. Clerical staffers are in a relatively cheap classification. Vehicle drivers would be in a more expensive one. If your employees are classified incorrectly, you are likely paying too much in

premiums.

Solution? "Insist that your insurance agent give you a full copy of the class code book that has the entire description for each code class and the class code numbers, and the corresponding rate for each class," says Robert J. Will. "See if you can find codes that relate more closely to what your employees do."

It works for Giancola Construction. "We spend a lot of time with classifications," says Giancola. "We do a lot of arguing." In some cases, a worker will be doing more than one kind of work and that confuses the issue. For disputed categories, the company shows the auditors the actual jobs, using job cost sheets to back up the company stand. These job sheets often list the names of the employees and how many hours they worked on what type of duty.

But it's not easy. "We bring in the agent as well as the auditor if we have to," says Giancola. "We have been successful in reclassifying some workers, but it doesn't come easily. It takes a lot of negotiations, and sometimes we are not successful."

9. Pay small claims yourself. If legal in your state, you should consider paying small claims yourself. Typically, an employer will pay the first \$250 or \$500 toward the medical for each accident. The idea here is to save on your premium, in the same way that a deductible reduces your fire insurance premium.

"We try to pick up expenses on the small injuries," says Giancola. "We would just as soon handle them in-house to get a larger deductible."

"There is money to be saved in taking a deductible," says Will. "Also, if the employer tells workers that the business is paying a deductible, the worker is less likely to file a bogus claim because they know their employer will have to pay for it, not some billion dollar insurance company."

But this is a tricky area legally. "You need to be careful to make sure your payments are officially sanctioned by state law," cautions Tom Iverson, branch manager for the

Portland, Ore., office of Employers Benefit Insurance (EBI Cos.), which writes workers comp insurance in over a dozen states.

Caution: In many states if you pay a deductible you will no longer be able to contest the accident as being work related, even if you discover evidence to the contrary. The result can be a big spike in your premiums for an accident that occurred outside the work place.

In most states, the insurance company pays the deductible amount to the medical facility, and you reimburse the insurance company. Don't try to keep your premiums from going up by failing to file papers that report the accident to your carrier. That's the most dangerous thing you can do. "If you fail to report an accident to your insurance carrier, you may be subject to severe fines and penalties," says Iverson.

Moreover, what looks like a small medical problem at first may change for the worse. "Every carrier in the country can show files that started out as a small medical bill and ended up as total disability," cautions Iverson. If a small medical problem mushrooms into a big one, your attempt to hide the insurance carrier may well contest paying the bill.

10. Find and correct clerical errors. You should review all of the paperwork relating to your insurance to locate errors that can be inflating your premiums.

"There is a high risk of clerical errors," says Bonnie Brook. "Audited payroll information can get transposed incorrectly. A line might read \$1 million instead of \$100,000."

Here is some paperwork that Brook suggests reviewing. • Once a year, have your broker provide you with your experience modification work sheet. This shows the calculations which resulted in your premiums due to experience. Are the figures accurate?

• Quarterly, have your broker assist you in getting a loss run from your carrier. This is a printout of all claims against

WORKERS COMP RESOURCES

STATE LAW ANALYSIS. Each April the United States Chamber of Commerce publishes its "Analysis of Workers Compensation Laws." A supplement is published in September. It costs \$15 for chamber members and \$25 for non-members. Write Eric Gamble, research department, U.S. Chamber of Commerce, 1615 H Street N.W., Washington, DC 20062.

COST CUTTING IDEAS. A 300 page book entitled *How to Control Your Workers Comp Insurance Costs* is available for \$295 including shipping and tax, from Robert J. Will, president, Rate Consultants, Inc., 160 North Crystal Bay Road, Long Lake, MN 55356. 612-476-1409.

Also, a series of booklets about workers comp cost reduction is available from Liberty Mutual Insurance Group, 175 Berkeley Street, Boston, MA 02117. 617-357-9500; ask for the public relations department.

INCENTIVE PROGRAMS. Information about starting and running an incentive program is available from Seth Marshall, president, Safety Pays, P.O. Box 1885, Santa Monica, CA 90406. 310-917-9178.

CONSULTANTS. A free list of members of the Society of Risk Management Consultants can be obtained from the association's public liaison director David Warren, 38 Diablo View Drive, Orinda, CA 94564. 510-254-9472

claims examiner?" he poses. "If there are too many, he is likely to miss something."

Suppose such a firm takes three months to follow up on a medical report not received. Says Peterson, "During that time the worker may get \$2,000 a month in time loss, so you end up spending \$6,000 more."

How proactive is the insurance carrier's loss control division, which provides assistance to clients who want to reduce workplace accidents? Some carriers provide plenty of advise others simply go through the motions of what is mandated by state regulations.

12. Join drug testing programs. "In Florida and some other states, you get a 20 percent reduction in your premium if you join a drug testing program," says Gamble of the U.S. Chamber of Commerce. "I think this will spread to additional states because a fair proportion of accidents are caused by drug related activities." Work this out with your insurance

your business for the past three years, with pertinent information such as date of injury, type of claim, and reserves. Check the accuracy of all information. See if loss-reserve amounts are correct. See if certain claims that should have been closed are still open.

* Six months into your renewal date, check with your broker and carrier to make sure the reserves on outstanding cases are appropriate to the activity.

Employers should not abdicate the responsibility for case management to insurance companies, because "insurance companies do not have the financial incentive, in the way the premiums are calculated, to manage the cases quickly and assertively," says Brook. "They become very reactive, concentrating on administering the cases very well. But they do not take a proactive stand in terms of strategizing individual cases."

In utilization reviews, an outside medical expert reviews all of your medical bills for errors and appropriateness of expenses. Amounts are also compared to the published fee schedules in the 17 states which stipulate medical reimbursement amounts for workers comp bills.

Review the ways that cases are handled from beginning to end. Were cases referred to appropriate medical facilities early enough? Were payments made on a timely basis to avoid fines?

11. Shop for the best carrier. "We've had competitive pricing in Michigan for 10 years now, but we still find that some companies don't shop around," says Welch of the University of Michigan. "The premium spread can vary as much as 25 percent to 50 percent."

Those numbers speak for themselves. But remember to shop for factors other than premium. "The cheapest is not always the best," says Peterson. He suggests you consider the quality of the work that the carrier does. A carrier may offer cheaper premiums because there are fewer claims examiners on staff "how many files are there for each

carrier. Find out if your state allows premium reductions for safety programs. While few states do right now, it seems to be growing in popularity.

Most of the consultants emphasized a key point: the most effective way to reduce workers comp costs is to encourage your employees to make safety a top of mind concern. Let them know that you are concerned about their safety and about containing workers comp costs.

"You have to care for your employees," says Douglas F. Miller. "If you take care of your people they will take care of you."

Common Safety Points

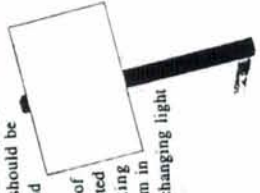
So many workers compensation claims result from back strain that consultants have a special recommendation: require that anyone who lifts a carton wear a back brace belt. This is simple to put on, and helps protect against strain.

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"The belt has a tremendous psychological effect," says Michael Nicholas, president of California Loss Control, San Dimas, Calif. "Every time employees put on a belt they think about the possibility of a strain."

Ankles and knees are other common injury spots. Employees should be reminded of safe techniques for getting in and out of service vehicles.

Because falls are also a common cause of workers comp claims, ladders should be inspected regularly to make sure they are in working condition. Employees should avoid aluminum in favor of wood or fiberglass ladders when changing light bulbs or doing other electrical work. ■



1. THE BELOW LISTED RADIOBEACONS HAVE BEEN MODIFIED TO TRANSMIT EXPERIMENTAL DIFFERENTIAL GLOBAL POSITIONING SYSTEM (DGPS) CORRECTIONS.

PORTSMOUTH HARBOR, NH	N43 04.20,	W70 42.50
MONTAUK POINT, NY	N41 04.03,	W71 51.64
CAPE HENLOPEN, DE	N38 47.15,	W75 05.90
CAPE HENRY, VA	N36 55.58,	W76 00.45
GALVESTON, TX	N29 19.73,	W94 44.1
ARANSAS PASS, TX	N27 50.30,	W97 03.54
WHITEFISH POINT, MI	N46 46.27,	W84 57.45

THE CARRIER OF THESE RADIOBEACONS IS MODULATED WITH A GPS CORRECTION (DIFFERENTIAL) SIGNAL, WHICH MAY BE USED TO GREATLY IMPROVE THE ACCURACY OF GPS. MARINERS SHOULD SEE NO DEGRADATION IN THE USABILITY OF THE RADIOBEACON SIGNAL FOR DIRECTION FINDING, ALTHOUGH A WARBLING OF THE IDENTIFICATION TONE MAY BE NOTICED. AVIATORS SHOULD BE CAUTIONED THAT SOME DIRECTION FINDING EQUIPMENT USED ABOARD AIRCRAFT, MAY NOT OPERATE PROPERLY WITH DGPS-MODIFIED RADIOBEACONS.

2. COAST GUARD DGPS CORRECTIONS ARE BEING BROADCAST TO TEST AND EVALUATE VARIOUS EQUIPMENT CONFIGURATIONS. IN FEBRUARY 1993, THE BROADCAST BIT RATE OF THE FIRST SIX SITES LISTED IN PARA ONE WILL BE CHANGED FROM 50 BITS PER SECOND TO 100 BITS PER SECOND. WHITEFISH POINT MICHIGAN HAS BEEN BROADCASTING AT 100 BITS PER SECOND SINCE THE DGPS MODIFICATIONS WERE INSTALLED.

3. SOME DGPS USER RECEIVERS MAY REQUIRE REPROGRAMMING OR ADJUSTMENTS TO ACCOMMODATE THE CHANGED BIT RATE. THIS MAY REQUIRE CONSULTING TECHNICAL MANUALS OR RECEIVER MANUFACTURERS.

4. USE NOTICES TO AIRMEN (NOTAMS) AND NOTICES TO MARINERS (NTMS) TO NOTIFY APPROPRIATE COGNIZANT AUTHORITIES AND USERS, INCLUDING FAA REGIONAL OFFICES. AS WITH THE BASIC GPS, DGPS IS STILL EXPERIMENTAL AND IS CURRENTLY A USE AT YOUR OWN RISK SERVICE.

5. CURRENT STATUS OF DGPS BROADCASTS MAY BE OBTAINED FROM THE COAST GUARD GPS INFORMATION CENTER (GPSIC) AT (703)-866-3806.

Navy Utilizes CD-ROM Technology For Hazardous Material Control/Disposal

As far as hazardous wastes and computers are concerned, the U.S. Navy has seen the future and it is in compact disks. The Navy has a CD-ROM on hazardous material control and management sent to more than 7,000 military, government, and commercial sites, according to a report in *Computer Digest*.

The HMC&M CD-ROM is popular, according to Navy officials, and has spawned other projects for the Navy—including a medical disposal instruction (CD-ROM developed at the request of the U.S. Army. This request, and other services, come from the Naval Computer and Telecommunications Area Master Station (Atlantic), Norfolk, Virginia.

The hazardous material control CD-ROM system contains information required for safe and legal procurement, distribution, storage, use, and disposal of hazardous materials needed in daily operations of Navy commands. NCTAMSLANT Team Leader Lexine Langley described why CD-ROMs are a good fit for the Navy: "When you're on a ship you can't just pick up the phone and call somebody." The cornerstone of the HMC&M CD-ROM is the Hazardous Material Information System, which is the Department of Defense repository of material safety data sheet information. The program also contains the ships hazardous material list, used to maintain an inventory of onboard chemicals and hazardous substances. /s/

ST JAN 93

Extra Safety Measures

Today, operators and builders of boats grapple with a broader definition of "safety" than in the past.

"Safety" is taking on a new meaning for members of the marine community as state and local regulatory authorities increasingly treat their industry just like any other. For that reason, workboat builders and operators will need to invest in new technology and training.

"The maritime industry, of course, has always had safety, health and environmental problems," said Frank Parker, vice president of operations at Environmental Technologies Inc., a Magnolia, Texas-based supplier of health and safety equipment. "What's happening now, though, is that the Coast Guard has begun taking a more aggressive position, and so are the maritime industry's customers."

As a result, Parker said members of the marine sector are "looking for the same kind of services we provide to petrochemical plants and manufacturing plants."

Workboat operators and their suppliers cite three areas where the action is heaviest:

- **Confined spaces.** Regulations just published by the Occupational Safety and Health Administration will force companies to spend an estimated \$200 million a year on a variety of equipment, from breathing apparatuses to devices that test compressors feeding air to workers in enclosed spaces.
- **Noise control.** Regulatory pressure is aimed at reducing onboard noise. In practice, this is being accomplished at both the design stage and by retrofitting existing vessels with materials that deaden sound.
- **Injury-prevention.** Preventing worker injuries with equipment and training has become a priority as marine insurance rates continue to soar.

Confined-space concerns

Many of the most sophisticated and costliest safety devices manufactured today are an outgrowth of regulations governing work performed in confined spaces and handling benzene, a known carcinogen.

Recognizing a hazard existed, OSHA issued stringent new rules concerning confined spaces (Regulation 1910, Section 146)

on Jan. 14. OSHA estimates its confined-space rules will prevent 54 fatalities yearly and save a significant number of workdays lost to illness. The maritime industry got a bit of a break; rules directly relating to it won't be official for a few months. But they're coming.

What will spur the purchase of new equipment is the regulation's requirement for increased monitoring of enclosed spaces. Available products measure the presence of potentially toxic gases or explosive contaminants.

"Business is outstanding," said Suzanne Khan, marketing communications analyst for Gas Tech Inc. The Newark, Calif., company's most popular unit for marine use is the Model 4320CO. The 8-lb. detector monitors four types of gases, is equipped with an internal sample-drawing pump, operates via two controls and verifies at regular intervals that the unit is working properly.

The company's Model GX-86 also monitors four gases. It attaches to the user's belt and features a detachable sensor head. Gas Tech's four-model Safe T Mate line was designed for extreme portability, being roughly the size of a cassette-player. Prices range from \$945 to \$2,100.

Another manufacturer is BioSystems Inc., Middlefield, Conn. "Our instruments are used for monitoring a lack of oxygen or excess oxygen in an area," said BioSystems Product Manager Jeff Emond. The devices also alert users to LEL (lower explosion limit) conditions and detect the presence of nine different toxic gases. Among them are carbon monoxide, hydrogen sulfide, ammonia, chlorine and nitrogen oxides.

BioSystems' units sell for between \$1,000 and \$2,500, depending on their ruggedness and the options a customer chooses. The firm's most maritime-oriented product is the Cannonball II, designed for outdoor use. The company also offers the PhD, a portable unit that monitors four gases simultaneously.

Tony Seideman is a freelance writer living in New York City.

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AND COMMUNITY AFFAIRS

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MEMORANDUM

TO: Ellen S. Smith, Director of Federal Relations

FROM: Ross M. Gotler

DATE: April 23, 1993

RE: Inouye Bills

On April 19, Senator Inouye introduced S785, which concerns policy regarding an on-board ship distress system. He also introduced S786, which concerns exempting certain ships from complying to requirements to carry radiotelegraph equipment.

S785, The Radio Officer Act of 1993, strengthens the rules concerning the upkeep of an on board distress system. The Global Maritime Distress and Safety System (GMDSS) is not currently required on United States ships. Provided that the GMDSS is made mandatory on ships of over 1600 tons, Senator Inouye's S785 would require that on these ships, there be on board a person qualified to maintain and repair the GMDSS. Under current GMDSS operating procedure, if there is a GMDSS system on board, shipowners are not required to have GMDSS maintenance capability on board. Testing for competency to maintain and repair the GMDSS would be carried out by the FCC in the form of an updated radio officer and operator examination. Following is the text of the bill and Senator Inouye's statement regarding the bill.

CQ's WASHINGTON ALERT 04/23/93

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS
(CRTEXT 04/19/93 p.S4632)
Senate bills introduced

[pS4632]

INTRODUCTION OF BILLS AND JOINT
RESOLUTIONS

By Mr. INOUE (by request):

S785. A bill to require the Federal Communications Commission to promulgate rules pertaining to the use of the Global Maritime Distress and Safety System if such System is required on board United States ships; to the Committee on Commerce, Science, and Transportation.

Special typefaces used in this bill version:

// \ \ Italic
!! !! Bold roman

103D CONGRESS
1ST SESSION

To require the Federal Communications Commission to promulgate rules pertaining to the use of the Global Maritime Distress and Safety System if such system is required on board United States ships.

=====
IN THE SENATE OF THE UNITED STATES

April 19, 1993

Mr. INOUE (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

=====
A BILL

To require the Federal Communications Commission to promulgate rules pertaining to the use of the Global Maritime Distress and Safety System if such system is required on board United States ships.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,\\

!!SECTION. 1. PROMULGATION OF RULES PERTAINING TO USE OF GMDSS.!!

If the Federal Communications Commission (hereafter referred to as the "Commission") requires the use of the Global Maritime Distress and Safety System (hereafter referred to as the "GMDSS") on board United States ships of more than 1,600 gross tons, the Commission shall require, by rule--

- (1) that one individual tested and certified by the Commission as competent shall be capable of on board maintenance and repair of the GMDSS; and
(2) that testing and certification standards for radio officers and operators on board such ships be upgraded to include competency standards for at-sea operation, maintenance, and repair of the GMDSS.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

[pS4632]

By Mr. INOUE (by request):

S785. A bill to require the Federal Communications Commission to promulgate rules pertaining to the use of the global maritime distress and safety system if such system is required on board U.S. ships; to the Committee on Commerce, Science, and Transportation.

RADIO OFFICER ACT OF 1993

* Mr. INOUE. Mr. President, the FCC issued its rules to implement the global maritime distress and safety system [GMDSS] on March 16, 1992. In that

rule the Commission permits shipowners to pick any two of three options for ensuring that GMDSS equipment is properly maintained: First, duplication of equipment, second, on-shore maintenance at the next port, or third, on-board maintenance capability. For cost reasons, shipowners are likely to select the first two options. The rule requires that there be a person on board who is qualified to operate GMDSS equipment, but having someone on board who can maintain and repair the equipment is optional. The FCC has yet to decide the qualifications for the GMDSS operator. #

Current law already requires ships greater than 1,600 tons to have certain radio telegraphy equipment on U.S. ships and radio officers on board qualified to operate it. The FCC examination for radio officers has not been updated since 1961 and the FCC concedes that it should be updated. Representing radio officers, the American Radio Association petitioned the FCC to update the exam.

Mr. President, this bill would require that any mandate for GMDSS for ships over 1,600 tons would include a requirement to have someone on board who is qualified by FCC examination to maintain and repair that equipment at sea. In addition, the bill would require the FCC to update the radio officer exam to include competency in at-sea maintenance, repair, and operation of GMDSS.

Given the harsh sea environment and the increased complexity of electronic equipment on modern seagoing vessels, safety may be compromised if no on-board personnel can maintain and repair that equipment.

The logical approach may be to upgrade the radio officer's exam to include GMDSS maintenance and repair, especially since current law requires the radio officer's presence on-board anyway.

Mr. President, GMDSS will require over a decade to be fully implemented. The presence of a radio officer, trained in GMDSS maintenance and repair, will provide a safe transition.

[ps4633]

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Senator Inouye, along with Senator Akaka, also introduced S786, the Communications Act of 1934 Amendment Act of 1993. The Act would amend the Communications Act to exempt United States flagships from being required to have radiotelegraph equipment and radio officers on board. This technology, Morse Code, is currently being replaced by the new GMDSS safety system. Thus, if these flagships have the GMDSS and are operating under the guidelines for GMDSS usage, they would no longer be required to have the older equipment on board. Following is the text of the bill along with a statement by Senator Inouye concerning the bill.

CQ'S WASHINGTON ALERT 04/23/93

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS
(CRTEXT 04/19/93 p.S4632)
Senate bills introduced

[ps4632]

INTRODUCTION OF BILLS AND JOINT
RESOLUTIONS

By Mr. INOUE (for himself and Mr. AKAKA) (by request):

S786. A bill to provide for an exemption for certain United States flag ships from radio operator and equipment requirements; to the Committee on Commerce, Science, and Transportation.

Special typefaces used in this bill version:

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 Bold roman

103D CONGRESS
1ST SESSION

S. 786

To provide for an exemption for certain United States flag ships from radio operator and equipment requirements.

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IN THE SENATE OF THE UNITED STATES

April 19, 1993

Mr. INOUE (by request) (for himself and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To provide for an exemption for certain United States flag ships from radio operator and equipment requirements.

//Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,\\

!!SECTION 1. EXEMPTION FOR COMPLIANCE WITH GMDSS PROVISIONS.!!

Section 352(a) of the Communications Act of 1934 (47 U.S.C. 352(a)) is amended--

(1) by redesignating paragraphs (5) through (8) as paragraphs (6) through (9), respectively; and

(2) by inserting after paragraph (4) the following new paragraph:

"(5) a United States ship operating in accordance with the Global Maritime Distress and Safety System provisions of the Safety Convention;"

[pS4633]

STATEMENTS ON INTRODUCED BILLS AND JOINT
RESOLUTIONS -- By Mr. INOUE (for
himself and Mr. AKAKA) (by request):

S786. A bill to provide for an exemption for certain U.S.-flag ships from radio operator and equipment requirements; to the Committee on Commerce, Science, and Transportation.

[pS4633]

COMMUNICATIONS ACT OF 1934 AMENDMENT ACT OF 1933

Mr. INOUE. Mr. President, on behalf of the American Institute of Merchant Shipping [AIMS] I am introducing legislation which would amend part II of title III of the Communications Act of 1934. AIMS is a national trade association representing 24 U.S.-flag carriers which own or operate about 12 million deadweight tons of tankers, dry bulk carriers, container ships, and other oceangoing vessels in the domestic and international trades of the United States.

Specifically, the bill would amend section 352 of the Communications Act to exempt U.S.-flag ships from the requirement to carry radiotelegraph equipment and radio officers provided the vessels are operated in accordance with the global maritime distress and safety system [GMDSS] provisions of the Convention for the Safety of Life at Sea, and Federal Communication Commission [FCC] rules concerning GMDSS.

As the former chairman of the Merchant Marine Subcommittee and the current chairman of the Communications Subcommittee, I am aware that this proposal has its supporters and opponents. There is merit on both sides of the issue, and it is an important issue which can only be resolved by Congress. For that reason, I regard this measure as a vehicle for hearings so that members may have an opportunity to hear all interested parties-the Coast Guard, the FCC, U.S.-flag carriers, and maritime labor. Then we will be in a position to decide whether the legislation is necessary.

Mr. President, as with most maritime matters, the issues are somewhat complex and have their roots in longstanding laws and practices. In addition, the most dynamic technology of the 20th century-telecommunication-is added to the mix. The issues have become even more difficult.

In 1914, almost 80 years ago, following the sinking of the Titanic, the first International Convention for the Safety of Life at Sea [SOLAS] was adopted. It required that certain ships maintain a continuous Morse code radiotelegraphy listening watch to ensure that calls from a ship in distress would be received. The same requirement applied to coastal stations during their hours of service.

Until 1988, the use of Morse telegraphy as the primary international distress and calling system for ships at sea remained relatively unchanged since 1889, according to the Coast Guard. In 1988, however, the global maritime distress and safety system amendments to the Safety of Life at Sea Convention were adopted.

According to the FCC, GMDSS differs from the current distress and safety system in several ways. First, communication equipment are based primarily on the areas in which the ship operates, rather than the size of the ship. Second, the GMDSS is primarily a ship-to-shore system, designed to communicate with rescue authorities on shore, where the current system is primarily ship-to-ship. Finally, the GMDSS will ultimately replace the current manual Morse telegraphy system with satellite technology and digital selective calling radios. This equipment uses voice and automated narrow-band direct printing telegraphy for communications, and the key to GMDSS is that it is based on automated equipment.

Under GMDSS, all SOLAS cargo vessels over 300 tons must be able to perform nine crucial communications functions:

- Ship-to-shore distress alerting;
- Shore-to-ship distress alerting;

Ship-to-ship distress alerting;
Search and rescue coordination;
On-scene communication;
Transmission and receipt of locating signal;
Transmission and receipt of maritime safety information;
General radio communications; and
Bridge-to-bridge communications.

In 1992, the FCC amended its rules dealing with maritime radio services to implement the GMDSS, and noted that the GMDSS system will ultimately change international distress communications from manual ship-to-ship system based on Morse code telegraphy to an automated ship-to-shore system based on the aforementioned satellites and digital technology. The FCC expressly stated, however, that the changes in its rules,

* * * do not relieve ships from the requirements specified in the Communications Act of 1934, as amended. Ships that carry radiotelegraphy equipment must continue to carry radio officers until the Communications Act is amended.

The measure I am introducing would amend the Communications Act and provide such an exemption.
