



Statement

of the

International Organization of Masters, Mates & Pilots

and

Marine Engineers Beneficial Association

and

American Maritime Officers

before the

Subcommittee on Coast Guard and Maritime Transportation

of the

House of Representatives

Committee on Transportation and Infrastructure

on

Regulation of the Maritime Industry

April 26, 2012

Chairman LoBiondo and Ranking Member Larsen,

We welcome this opportunity to comment on the regulation of the maritime industry. The organizations I am speaking for today, the Masters, Mates & Pilots (MM&P), the American Maritime Officers (AMO), and the Marine Engineers Beneficial Association (MEBA) represent substantially all the navigating and engineering officers on American ships in international trade. We have a vital interest in the safety and security regulations that protect shipping, the public and the marine environment from the consequences of maritime accidents or terrorist acts as we are the first to bear the consequences or the blame when things go wrong. We fully support efficient and effective regulation and appreciate the role of the USCG and EPA in safety and environmental regulation.

We wish to bring to your attention today our concern with fatigue and manning levels in the maritime industry and the regulations that seek to address these issues which are the root cause of many accidents. Governments and industry, both nationally and internationally, acknowledge that fatigue is a widespread problem and the NTSB has placed regulations that address the causes of fatigue on its Most Wanted List and has labeled the USCG response to the fatigue problem as

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unacceptable. In its defense, the USCG has cited the complexities of the marine transportation system as an impediment to effective regulation.

In order to understand the complexities of the problem there is a need to recognize the international nature of the maritime transportation system. It is the first industry to become globalized and permit competition in an unregulated and tax free environment through the Flag of Convenience (FOC) system where no genuine link exists between the nationality of the ship owner, the ship manager, the crewing agency, the officers and crew, and the country whose flag the ship flies that is responsible for its regulation. The FOC system allows shipowners to place their ships under the flags of FOC countries that permit the operation of ship registration services as a commercial venture for profit and use lack of regulation, taxation and labor laws as inducements to gain competitive advantage. It is fully recognized within the industry that this has resulted in driving standards downward and reducing shipboard manning levels below that needed to safely operate ships.

The dominance of the FOC system with its lack of effective national regulation has lead to an ever increasing shift to international regulation of shipping through the International Maritime Organization (IMO), a United Nations organization based in London. The IMO is now the de facto regulator of international shipping with national regulation, such as the USCG requirements, conforming to the IMO provisions. Even U.S. domestic regulation of shipping is now shaped or influenced to a large extent by the IMO international standards.

While the IMO plays an important role as a forum for discussion of safety and security issues and for reaching compromises, it unfortunately has a weakness as an effective regulatory body. As a governmental organization under the United Nations its membership includes the many FOC countries that play a major role in decision making as surrogates for the FOC ship owners to escape effective regulation. In addition, the European Union (EU) enforces block voting of its 27 members and that voting block is heavily influenced by the FOC shipowners in the major European ship owning countries. There are EU member states that support more effective regulation of shipping, but are barred by EU rules from speaking in support as individual countries. The result is that many regulations are the result of compromises to gain acceptance at very low minimum standards that jeopardize safety, or if reasonably high standards are accepted they are often stripped of any effective implementation or enforcement measures.

The lack of effective international regulation impacts U.S. interests in two ways. The vast majority of large ocean going ships in international trade in U.S. ports and waterways are FOC flagged operating under competition driven manning levels set by FOC administrations with minimum rest requirements under IMO provisions. And, the international IMO minimum rest hour provisions also become the de facto U.S. standards under USCG regulations.

There is widespread recognition within the international maritime community that fatigue and manning levels have been set below that needed to safely handle the workload of usual shipboard operations. This has led to a work program at IMO to review mandatory rest hour regulations and manning levels. The regulation of rest hours and regulation of manning levels are dual approaches to deal with fatigue and the related safety issues. Rest hour regulation is a bottom up approach and manning level regulation is a top down approach. They are complementary to each other and both should be effectively addressed by regulatory authorities. The IMO, in addition to the rest hour

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regulations, also reviewed guidelines on the Principles of Minimum Safe Manning in an attempt to achieve a two pronged holistic solution to the fatigue problem.

Unfortunately, in order to gain acceptance by the FOC interests at IMO, the international mandatory rest hour provisions adopted¹ still permit a 91 hour work week as a normal standard. It is anticipated this will be implemented by the USCG as the regulatory standard for U.S. ships in both international and domestic services. The rest hour provisions clearly do not adequately address the shipboard fatigue problem and should not be accepted as a goal or target under normal conditions. It should be borne in mind that typical shipboard assignments are for three or four months of continuous duty with minimum sleep under regulations that require only a minimum six hour rest period and four hour rest period of time free from work per day, and even this requirement can be waived for up to two weeks. The regulations are the result of compromises needed to gain acceptance by FOC interests rather than an analysis by human factors professionals on the effects of work/rest periods on cognitive ability and safety. It is anticipated that, following past practice, the USCG will adopt the compromised minimum international standards as our national standards although there is no reason not to adopt higher U.S. standards other than rule making convenience.

Fortunately, the IMO's top down approach to define a methodology for determining safe manning levels may prove more hopeful. Guidelines on the Principles of Minimum Safe Manning² were recently adopted by the IMO in November of 2011 and they contain comprehensive guidance that should be used in determining safe manning levels that take into account many of the operational requirements that affect shipboard workload. The guidelines contain a framework for assessment of workload and available crew complement to meet that workload. A recently approved amendment to the SOLAS Convention³ requires national administrations (USCG) to take the Principles of Minimum Safe Manning into account in a transparent procedure when establishing manning levels. Present U.S. manning levels have not been set using the new IMO guidelines and there is a need to begin a review and assessment of current manning levels.

The new requirement that manning levels be established following a transparent procedure should be interpreted as requiring all ships, U.S. and foreign, in international trade calling at U.S. ports to carry onboard a copy of the methodology used and steps taken under the framework for determining manning levels in Annex 5 of the Principles of Minimum Safe Manning. This should include factors considered and determinations made on operational functions, operational factors, task capability, and workload assessments that form the basis for an administration's evaluation and issuance of a minimum safe manning document. Transparency is essential if the crew and Port State Control (PSC) are to assure the ship is actually being operated under conditions that formed the basis of their administrations evaluation. Transparency is also essential if U.S. and foreign ships in

¹ Manila Amendments to STCW Code, Section A- VIII/1, *Fitness for duty*

² IMO Assembly resolution, A 27/Res. 1047, adopted on 30 November, 2011

³ Amendment to SOLAS Convention, CHAPTER V/Regulation 14 – Ships' manning

“2 For every ship to which chapter I applies, the Administration shall:

.1 establish appropriate minimum safe manning following a transparent procedure, taking into account the relevant guidance adopted by the Organization*.....”

* Refer to the Principles of minimum safe manning, adopted by the Organization by resolution [A 27/Res. 1047].

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U.S. ports are regulated on a level playing field with equal compliance with regulations that protect U.S. environmental interests.

While it is recognized that fatigue mitigation is an issue across the entire ship's complement, it is of greater concern when fatigue impairs the ability of the senior officers responsible for critical decision making affecting safety. International and national regulation of work/rest periods have set the same standards across the entire ship's complement from the lowest rating to the master without regard to the criticality of the position held. Although all members of the crew complement serve important safety functions in times of emergency, there is a vast difference in the potential consequences of fatigue induced cognitive impairment between that of a support level crew member and a master's impaired decision making that may produce an *Exxon Valdez*. Today's container ships and tankers are some of the largest most complex ships in the world exceeding in length and tonnage our largest aircraft carriers. Their size alone represents a significant threat to the environment in the event of an accident. A risk based assessment of potential consequences based on ship size and type, and the critical role of particular crew members in decision making affecting safety, should be a factor in setting the composition of the manning levels as well as work/rest periods.

It is generally recognized within the maritime community that past reductions in manning have shifted an excessive workload on to the master. The elimination of the staff officers, the radio operator and purser, as well as the elimination of the non-watch standing chief mate has resulted in their administrative duties being shifted to the master. The elimination of the junior third watch standing mate has removed the chief mate from a non-watch standing full time administrative and operational role to standing a navigational watch eight hours a day in addition to his many other duties. Compounding the problem, the ever increasing tasks required for remaining in regulatory compliance and its documentation falls principally on the master. It may seem counter intuitive, but the burden of ensuring and documenting regulatory compliance has become a safety issue in that it diverts substantial amounts of time away from the traditional shipboard tasks that are the basis of good seamanship and ship safety. While the burden of meeting the regulatory tasks continues to increase, so does the potential for civil and criminal liability. Ship's masters and other ships officers often face prison terms and are, in fact, imprisoned around the world for regulatory non-compliance and industrial accidents. The criminalization of simple professional errors, often the result of fatigue or excessive workload, is without justification when there is no oversight regarding the sufficiency of the personnel available to carry out shipboard responsibilities.

The obvious solution is the return of the chief mate to a non-watch standing position so time would be available to divide the necessary administrative, operational and regulatory compliance tasks between the master and chief mate. It could be argued that this is a manning issue that might be resolved through the collective bargaining process. But, in today's competitive environment within the shipping industry, management and labor that agreed to an increase in manning that was not followed by their competitors would be at an economic disadvantage. Reduced manning levels have been equated by some in the industry with efficiency and profitability. However, when the drive for efficiency and economic advantage jeopardize safety there is a need for regulatory intervention.

We are requesting that consideration be given by Congress to mandating a study to review the specific issue of manning levels and their relationship to workload, fatigue and safety on

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management level officers and watch standing officers on U.S. flag ships. To assure objectivity we suggest that the study be conducted by independent human factors professionals experienced in workplace fatigue and take into account the guidelines and the framework for assessment and evaluation of workload in the IMO “Principles of Minimum Safe Manning” and the results of the extensive scientific studies available on the effects of fatigue on performance. The goal should not be meeting the minimum rest hours in a 91 hour work week, but scientifically based recommendations to the USCG on how to evaluate appropriate manning levels to avoid excessive fatigue effecting performance and safety.

In the past the USCG has side stepped the manning level issue and sought to address shipboard fatigue with guidance on Crew Endurance Management (CEM) that has been largely unsuccessful on merchant ships as the problem is not one of time management, but one of a lack of human resources. The CEM approach simply shifts the blame for unavoidable fatigue created accidents on to the management level officers rather than recognizing inadequate manning as the cause.

The issue of fatigue and degradation of performance leading to accidents should be treated with a similar approach and gravitas as those pertaining to oil pollution as in many cases fatigue is the root cause. Our organizations and its members extend our full cooperation and support in carrying out any study as responsible partners in furthering maritime safety.

Timothy A. Brown
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PROFESSIONAL EXPERIENCE

2010-Present	International Secretary-Treasurer, MM&P
2001-2010	Vice President, Pacific Ports, MM&P
1996-2000	Executive Assistant to the International President, MM&P
1979-1996	Sailed in all licensed deck officer capacities aboard ocean-going merchant vessels third officer through master

LICENSES

Master, Any Gross Tons Upon Oceans #455540
Member, California Bar Association (Inactive) #147754

EDUCATION

United States Merchant Marine Academy, BS, 1979
University of California, Hasting College of the Law, JD, 1989

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
Truth in Testimony Disclosure

Pursuant to clause 2(g)(5) of House Rule XI, in the case of a witness appearing in a nongovernmental capacity, a written statement of proposed testimony shall include: (1) a curriculum vitae; and (2) a disclosure of the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness. Such statements, with appropriate redaction to protect the privacy of the witness, shall be made publicly available in electronic form not later than one day after the witness appears.

(1) Name:

DONALD J. MARCUS

(2) Other than yourself, name of entity you are representing:

International Organization of Masters, Mates & Pilots, IMA/AFM-CIO

(3) Are you testifying on behalf of an entity other than a Government (federal, state, local) entity?

YES

If yes, please provide the information requested below and attach your curriculum vitae.

NO

(4) Please list the amount and source (by agency and program) of each Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by you or by the entity you are representing:

None.


Signature

4-20-12
Date