



ON STATION

The Newsletter of the American Pilots' Association

September 15, 2009

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A MESSAGE FROM THE PRESIDENT

Though fallout from the COSCO BUSAN accident continues and legal proceedings remain sensitive, I feel compelled to discuss a related matter: the criminalization of marine casualties. I have regularly spoken with leaders from Congress, federal agencies, and shipping interests about the dangerous trend of criminalization and have stressed that this problem threatens the industry as a whole.

Of course, when I criticize “criminalization,” I am referring to criminal charges filed against mariners for unintentional conduct that is at worst negligent, not to intentional or willful wrongdoing or even recklessness. That’s a different matter. But, criminal charges for marine casualties based on simple negligence or strict liability, as in the misuse of the Migratory Bird Treaty Act (a 100-year old law outlawing the hunting of protected birds), are not only irrational, counterproductive, and harmful to the industry and mariners, they are fundamentally unjust. I will continue to speak against this practice.

As we know too well, given the COSCO BUSAN accident, pilots are not immune from this criminalization trend. All of us have followed very closely the criminal proceedings in this case. In fact, the accident and its aftermath have consumed the work of the APA for nearly two years. We have been deeply involved in all aspects of the accident and the various investigative responses to it.

For his role in the accident, the COSCO BUSAN pilot has plead guilty to causing the death of birds subject to the Migratory Bird Treaty Act and to negligently causing the discharge of oil into U.S. waters. In July, the pilot was sentenced to 10 months in prison. According to the Justice Department website, this is one of the longest prison terms given for an environmental crime in several years and may well be the longest for unintentional conduct ever.

On behalf of all APA members, I have both publicly and in meetings with senior government officials, made

clear my strong opposition to the criminal charges in this case. Criminal charges were not appropriate or necessary. The pilot has lost both his state and federal pilot licenses, is a party in numerous multi-million dollar civil suits, and faces huge legal defense costs. He will never pilot again. He, without question, has been sufficiently held accountable without the criminal charges.

This is believed to be the first time a pilot in the U.S. was criminally charged in a ship casualty. Given that pilots in other countries have faced criminal prosecution in the past, however, none of us should have believed we would be exempt from this trend.

There have been several grossly inaccurate reports and discussions regarding the long-term impacts of the criminal prosecution of the COSCO BUSAN pilot in some media and trade magazines -- the *Maritime Executive* magazine in particular. Contrary to what you may have read in these publications, this criminal prosecution is not the first step in a campaign directed at pilots and does not suggest a changing view of the role or responsibility of the pilot.

“Criminal charges for marine casualties based on simple negligence or strict liability...are not only irrational, counterproductive, and harmful to the industry and mariners, they are fundamentally unjust.”

- Captain Mike Watson

The use of criminal laws to address non-intentional conduct in maritime casualties, though unfair and unnecessary, has been going on for many years. Shipping companies and crewmembers have been criminally charged, and ship masters and company officials have been put in jail. We are the most highly trained and proficient mariners in the world and are counted on by the citizens of the state in which we are licensed to exercise independent judgment to protect their waters. It would have been naive to think that pilots, given our critical role in navigation safety, would be immune from the outrageous trend.

Understanding this new reality, we, as professional pilots, must move forward, continue to seek ways to do our job better, but also retain perspective and continue to keep an even keel.

- Captain Mike Watson



IMPROVEMENTS TO PILOT LADDER SAFETY MOVE TOWARD IMO APPROVAL

The 55th session of the International Maritime Organization's (IMO) Subcommittee on Safety of Navigation (NAV55) met in London from July 27-31. APA President Captain Mike Watson participated as head of the IMPA delegation, while APA Executive Director-General Counsel Paul Kirchner attended the meeting as a member of the U.S. Delegation. From the piloting perspective, by far the most important agenda item considered and acted upon by NAV55 was amendments to Chapter V, regulation 23 of the International Convention for the Safety of Life at Sea (SOLAS) aimed at improving the safety of pilot transfer arrangements. As was noted by the Subcommittee, in 2006 alone 8 pilots died world-wide while boarding vessels, and many more suffered serious injuries. Because this agenda item was so important to the piloting profession, nine countries included pilots as part of their official delegations.

The amendments will require pilot ladders to be certified by the manufacturer as complying with IMO Assembly Resolution A.889(21), a resolution adopted in 1999 that addresses pilot transfer arrangements. The new regulation also calls for record-keeping for the purposes of survey and inspection and will require accommodation ladders, when used in combination with pilot ladders, to be secured to the ship's hull to prevent the accommodation ladder from swinging away from the ship during heavy seas. To address concerns raised by pilots regarding poor inspection schemes for ladders, the amended regulation directly refers to SOLAS Chapter I regulations 6, 7 and 8, which already require that pilot transfer arrangements be inspected as part of the ship's safety equipment. This direct reference to Chapter I will make clear that no ship safety equipment certificate should be issued or renewed by government regulators if the pilot transfer equipment has not been properly inspected.

In addition, a major objective was accomplished in that the new SOLAS regulations would prohibit the use of mechanical hoists, a change long sought by pilots. Finally, NAV55 approved an amendment to IMO Resolution A.889(21) that recommends that where rubbing strakes might prevent the safe approach of a pilot boat, the strakes should be cut back to provide at least 6 meters of unobstructed access to the ship's side.

If, as widely expected, the actions of NAV55 are approved by the full Maritime Safety Committee and the IMO Assembly, the amendments to SOLAS and Resolution A.889(21) will enter into force in July 2012.



PILOT - INTERTANKO DISCUSSION GROUP HOLDS LATEST MEETING

The third meeting of the "Pilot-INTERTANKO Discussion Group" was held at the V.Ships offices in Glasgow, Scotland on August 3rd. The V.Ships offices were chosen in order to reduce travel time and expense since members of the Discussion Group attended NAV55 in London the previous week. APA and IMPA President, Captain Mike Watson, and INTERTANKO's Deputy Managing Director, Joe Angelo, led another very productive meeting.

Specific areas of discussion included: Bridge Resource Management training for ships' crews; Pilot - Master/Bridge Crew Interaction; COSCO BUSAN "Lessons Learned"; e-Navigation; Engine and Steering Failures; Pilot Safety; and Criminalization of Marine Casualties. It should also be noted that INTERTANKO has been very supportive of APA and IMPA efforts at IMO to improve the safety of pilot ladders through amendments to SOLAS regulation V/23 and has also been openly critical of the dangerous trend of the criminalization of mariners involved in marine casualties.

The attendees continue to agree that this constructive forum will support the advancement of the organizations' shared objective of improving maritime safety. In fact, it was agreed that discussions should begin regarding the development of a partnership agreement between the parties. The Group will likely meet again in early 2010.

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CONGRESS -- AGAIN -- CRITICIZES COAST GUARD'S LICENSING AND MEDICAL REVIEW



Tying together his concern over the Nation's struggling economy and high unemployment rate with the well-publicized backlogs and delays at the USCG's National Maritime Center (NMC), Rep. Elijah Cummings (D-MD) recently said, "It is inexcusable that any person should be out of work because the government cannot process a professional credential in a timely manner." Congressman Cummings, who chairs the House Subcommittee on Coast Guard and Maritime Transportation, made these comments during a July oversight hearing.

As reported in past editions of *ON STATION*, the USCG has spent the past two years substantially changing the way it processes and issues mariner credentials and how it conducts reviews of mariner physical examinations. The centerpieces of USCG efforts have been eliminating the authority of the 17 Regional Exam Centers (REC) to process and issue credentials, and centralizing this function in West Virginia; issuing new guidelines (NVIC 04-08) on medical reviews of mariners; and consolidating credentials, licenses, certificates of registry, and endorsements into a single merchant mariner credential (MMC). It is the view of many maritime organizations, including the APA and the maritime unions that testified at this hearing that to date these changes have not improved credential processing, but, instead, have created delays and confusion. APA continues to devote considerable time and effort working on behalf of pilots to resolve licensing and medical review issues.

Rear Admiral Kevin Cook, USCG's new Director of Prevention Policy, made clear while testifying at the hearing that the expected "long-term benefits" of the centralization and restructuring of the licensing program were "decreased processing time", "consistency of service", and "improved customer service." But Chairman Cummings cited the Coast Guard's own report, that found that average processing time (nearly 3 months) for the first half of 2009 was actually longer than the last part of 2008. Echoing what many in the maritime sector, including APA, had warned, the Chairman added, "It appears that the Coast Guard did not adequately plan all aspects of the consolidated credential production process and the rollout of the MMC, and this has led to extensive delays in the issuance of credentials."

The hearing concluded with Cummings asking Admiral Cook to come back to him later in the year with a clear deadline for eliminating the backlog.

SENATE ADDS PROVISION TO COAST GUARD AUTHORIZATION ACT AIMED AT PROTECTING BUZZARDS BAY

The last edition of *ON STATION* provided an overview of the substantial amount of maritime-related legislation that was introduced just before Congress departed for its August recess. In that overview, it was noted that the Senate version of the Coast Guard Authorization Act (S.1194) did not contain any provision of substantial interest to pilots. This changed later in July when the Senate Commerce Committee "marked up" the bill during an executive session.

An additional section intended to protect the maritime environment of Buzzards Bay was added to S.1194. This section was added, without objection by any member of the Committee, by Massachusetts Senator John Kerry. The provision requires any single-hull tank barge carrying 5,000 or more barrels of oil or other hazardous material while transiting Buzzard Bay to be under the direction and control of a pilot licensed by the Commonwealth of Massachusetts.

APA will continue to monitor this and other legislation with potential impact on pilots and the piloting profession.

LEGISLATION TO FACILITATE SAFE SHIPPING IN THE ARCTIC INTRODUCED BY MEMBERS OF ALASKA DELEGATION

Rep. Don Young (R-AK) and Sen. Lisa Murkowski (R-AK) have introduced nearly identical legislation, H.R.. 2865 and S.1514 respectively, that both say will ensure safe, secure, and reliable maritime shipping in the arctic regions. The legislation emphasizes that the Arctic Ocean and adjacent waters are becoming increasingly accessible to ships. Although neither bill mentions state pilotage directly, both provide that "it is in the interests of the United States to work with the State of Alaska" to ensure the arctic region is "safe for mariners" and "protective of the natural environment."

STIMULUS BILL SAID TO INCLUDE MILLIONS FOR SURVEY AND CHARTING

In August, Commerce Secretary Gary Locke announced that the "Recovery and Reinvestment Act of 2009", better known as the stimulus bill, will include \$40 million for much-needed hydrographic surveys and charting projects across the U.S. Emphasizing that ocean transportation annually "contributes more than \$742 billion to the national economy," Secretary Locke indicated funding would be provided to conduct 39 surveys, charting nearly 2,000 square miles in the Chesapeake Bay, and in the coastal waters of Alaska, Washington, California, Louisiana, Alabama, Florida, and Virginia.



COAST GUARD ESTABLISHES MEDICAL ADVISORY COMMITTEE

Amidst pressure and criticism from Congressional oversight committees regarding the Coast Guard's handling and processing of merchant mariner physical examinations, the agency has announced the establishment of the Merchant Mariner Medical Advisory Committee or MMMAC. According to announcement in the *Federal Register*, this new federal advisory committee will "advise, consult with, report to, and make recommendations to the [Coast Guard] on matters relating to the medical evaluation process and evaluation of merchant mariners."

While the MMMAC will be comprised of 14 members, only four are permitted to be "professional mariners. The remaining ten committee members will be "health-care professionals." While the *Federal Register* announcement solicited applications for membership, it is unclear when members would be chosen and meetings would commence.

RECENT ANNOUNCEMENTS FROM THE NATIONAL MARITIME CENTER

Below is a partial listing of recent announcements posted on the NMC's website. Many of these announcements impact pilots, and the APA encourages everyone to check the NMC website (www.uscg.mil/nmc/) regularly.

- ◆ **Verifying Credentials.** A new web-based tool has been launched that allows mariners, employers, and port states to verify the validity of a Merchant Mariner Credential (MMC). MMCs can be verified by (1) credential type and serial number, (2) mariner reference number, or (3) last name, DOB and last four of SSN. To access the tool, go to the USCG's Homeport website (<http://homeport.uscg.mil/mycg/portal/ep/home.do>), click "Merchant Mariners" on the left side of the screen, then click "Merchant Mariner Credential Verification."
- ◆ **Form 719B Still Valid.** Even though form 719B (Application for License and Merchant Mariner Document) has an OMB expiration date of July 31, 2009, this form is still considered valid and should be used. The USCG is revising the form and will announce when the new form is in effect.
- ◆ **Use Mariner Reference Number.** In order to protect against potential identity theft, the NMC advises any mariner checking on the status of his or her license or credential (either on-line or by telephone) to use only the Mariner Reference Number, never a social security number.

APA HOSTS LEADER OF USCG'S NEW "INVESTIGATIONS CENTER OF EXPERTISE"

The APA hosted Commander Kathy Moore, the officer in charge of the Coast Guard's new National Center of Expertise (NCOE) for marine casualty investigations, at the Washington offices of the APA on September 9th.

While meeting with APA Executive Director-General Counsel, Paul Kirchner, and Deputy Director, Clay Diamond, Commander Moore explained that the NCOE, which will be located in New Orleans, would have three primary functions: (1) Provide "advanced training" to USCG Investigating Officers (IO); (2) Serve as a deployable "strike team" that could be sent to assist local USCG IOs with significant investigations; and 3) Function as an "internal helpdesk" to provide assistance to USCG sectors and IOs. Commander Moore further explained that the investigation



From left to right: Clay Diamond (APA), Commander Moore (USCG), and Paul Kirchner (APA)

NCOE will eventually be staffed by three USCG officers and six civilian employees, who are expected to have significant experience with marine investigations and whose duties will include training other IOs, coordinating/conducting relevant courses and seminars, and advising USCG policy-makers, regulation developers and field units on trends, best practices, leading indicators, problematic issues or other functional area concerns.

This NCOE is one of seven such commands the USCG has or will establish. The other NCOEs are: Towing Vessel Center (Paducah, KY), Cruise Ship Center (Miami, FL), Liquefied Gas Carrier Center (Port Arthur, TX), Outer Continental Shelf Center (Morgan City, LA), Suspension and Revocation Center (Martinsburg, WV), and the Vintage Vessel Center (Duluth, MN).

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HERSMAN CONFIRMED AS NEW CHAIRMAN; OTHER CHANGES AT NTSB

After being nominated by President Obama earlier in the month, on July 24 Deborah A.P. Hersman was confirmed by the Senate to serve as Chairman of the National Transportation Safety Board (NTSB) for a full two-year term. She was sworn in as NTSB's 12th chairman on July 28th. Hersman has been a member of the NTSB for five years and during this time has been "board member on scene" at 16 major transportation accidents, including the 2007 COSCO BUSAN allision with the San Francisco-Oakland Bay Bridge. Before joining NTSB, Ms. Hersman was a senior staff member with offices in the U.S. Senate and House and focused on transportation issues.

Shortly after Hersman was nominated as the new chair, Mark Rosenker, who has chaired the NTSB since 2005, announced his resignation from the Board. Two other Board Members nominated by the previous administration also recently resigned their positions on the Board. Kathryn O'Leary Higgins, who joined the board in 2006, departed in August and Steven R. Chealander, who has served on the Board since 2007, left in February.

A new Board Member, Christopher A. Hart, was sworn into office on August 12. Mr. Hart, who was on the NTSB from 1990 to 1993, has served as Assistant Administrator at the FAA and Deputy Administrator of the National Highway Traffic Safety Administration. The NTSB, which should have five Board Members seated, is currently operating with only three members. The third member is Robert Sumwalt, who was sworn in as a Board member in 2006 and whose term expires in 2011. Mr. Sumwalt was a commercial airline pilot for 32 years.

While the three current NTSB members have considerable experience with other modes of transportation such as aviation and highways, no current member of NTSB has any practical experience with matters related to maritime transportation.

In addition to changes in Board Membership, the NTSB has also experienced turnover with key senior staff. Joseph Osterman, who had served as the Board's Managing Director since 2005, departed in July. As of the time *ON STATION* went to print, NTSB has not announced a replacement for Mr. Osterman.



*New NTSB Chairman,
Deborah A.P. Hersman*

KIRCHNER IS PANELIST AT WEST COAST OIL SPILL CONFERENCE

Paul Kirchner, APA Executive Director-General Counsel, was a panelist at the "Clean Pacific Conference" held from September 14-16 in Portland, OR. The conference was hosted by the member agencies of the West Coast States/British Columbia Oil Spill Task Force

The overall focus of the conference was on environmental protection and the intertwined relationships between governmental regulatory agencies, maritime operators, and those charged with prevention, recovery and response efforts. The conference featured numerous speakers from federal and state governments, as well as a number of speakers representing various segments of the maritime community.

Mr. Kirchner participated in a session entitled "A Comprehensive Approach to Marine Safety: What Works and Lessons Learned." The other panelists were representatives from the U.S. Coast Guard, California's Office of Spill Prevention and Response, and the California Department of Fish and Game.

This particular session was focused on the lessons-learned from the COSCO BUSAN incident, and Mr. Kirchner addressed, in particular, the "Role of the Pilot" and the "Master-Pilot Information Exchange." APA's official views on these important topics can be found by going to www.americanpilots.org, clicking "APA Activities" and viewing the 1997 Resolution on the Role of the Pilot and the 1997 Best Practices paper covering the Master Pilot Exchange. Mr. Kirchner also discussed the APA's Bridge Resource Management for Pilots training program and its value in developing lessons-learned from marine casualties and delivering those lessons to the pilot-ing profession.

NOAA NOW PURSUING NAVIGATION RESTRICTIONS TO PROTECT KILLER WHALES

On July 29 NOAA proposed new regulations for the Pacific Northwest that would prohibit vessels from: (1) getting within 200 yards of a killer whale, (2) stopping in the path of a killer whale while in inland waters, and (3) entering killer whale "conservation areas" during defined seasons. NOAA will host several public meetings in Washington State to hear comments on the new regulations, specifically Anacortes (September 24), Seattle (September 30), and Friday Harbor (October 5).



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APA NEWS & INFO

TAMPA PILOT RECOGNIZED BY COAST GUARD SECTOR

Captain Jeff Hilliard, with the Tampa Bay Pilots, was recently awarded the U.S. Coast Guard's "Certificate of Merit" by Commander Aylwyn Young, Executive Officer of U.S. Coast Guard Sector St. Petersburg. Captain Hilliard received this recognition for his role in the rescue of a passenger who fell overboard from a cruise ship in the Port of Tampa.



CDR Aylwyn Young (left), awards the Coast Guard "Certificate of Merit" to Captain Jeff Hilliard.

The passenger, who had fallen from the cruise ship and clung to a buoy for hours, was spotted by the Tampa pilot boat, and Captain Hilliard and the pilot boat crew played a significant role in the rescue. See the previous edition of *ON STATION* for more details of this rescue.

MORE IMPROVEMENTS TO APA'S WEBSITE

In our on-going efforts to better serve APA-member groups and individual pilots, more improvements have been made to the APA website. The site now includes a "Newsletter Archive" section, where past editions of *ON STATION* can be accessed. In addition, under "APA Activities," relevant speeches, testimony, position papers, and best practices can be viewed.

Look for more upgrades and additions in the future by going to www.americanpilots.org.



APA OFFICES TO UNDERGO FACE-LIFT

The long-planned refurbishment and expansion of the APA offices in Washington, DC is scheduled to commence in December. During the work, which is expected to take about 5 weeks, APA staff will work out of temporary spaces in the same office building. No disruption of services or communications is anticipated.



Jerry Neely (left), with her husband of 64 years and past APA President, Captain Pat J. Neely

IN MEMORIUM

Geraldine (Jerry) Neely 1928-2009

With great sadness, we report the passing of Mrs. Geraldine "Jerry" Neely. Mrs. Neely, who was born in Houston, Texas in 1928, passed away at her home in Concan, Texas on May 28th.

She is survived by her husband, Captain Pat J. Neely, past APA President, their son, Mason Dale Neely, and daughter Vicki Ann Wilkerson.

All of us extend our sincere condolences to the Neely family. In lieu of flowers, the family requests donations be made to the Daughters of the Nile Endowment, Shriner's Hospitals, or the charity of your choice.

ELECTIONS, SELCTIONS, APPOINTMENTS, ETC.

- ◆ The Puget Sound Pilots have announced their officers for 2009 - 2010: **Captain Frantz A. Coe** (President-Director), **Captain Eric M. Von Brandenfels** (Vice President-Director), **Captain Calvin C. Hunziker** (Secretary/Treasurer-Director), **Captain Gary D. Hurt** (Director), **Captain Delmar G. Mackenzie** (Director), **Captain Stuart E. Mork** (Director), and **Captain Michael D. Wood** (Director).
- ◆ The following pilots have been elected as 2009-2010 officers for the Pascagoula Bar Pilots Association: **Captain Ronald T. Robertson** (President & APA Trustee), **Captain Robert T. Baker** (Vice President), **Captain Fredrick A. Lundy** (Secretary/Treasurer).
- ◆ The Port Everglades Pilots' Association has announced that its new Co-Managing Pilots are **Captain Andy Edelstein** and **Captain Bruce Cumings**.