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Edited by

Jennifer M. Lincoln, M.S., C.S.P.
Diana S. Hudson, M.P.H.
George A. Conway, M.D., M.P.H.
Rachel Pescatore

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FISHING VESSEL SAFETY IN THE UNITED STATES: THE TRAGEDY OF MISSED OPPORTUNITIES

Richard C. Hiscock
Marine Safety Foundation
Orleans, Massachusetts, U.S.A.
E-mail: rch@gmavt.net

Richard C. Hiscock is the founder, president and principal investigator for ERE Associates Ltd., a marine consulting firm dedicated to vessel safety, in Orleans, Massachusetts, and charter board member of the Marine Safety Foundation. He has been a fishing vessel safety advocate for over 20 years — authoring the “Fisherman’s Digest” for the First Coast Guard District, “Safety Notes for Fishermen,” testifying on fishing vessel safety, and drafting H.R. 1836 to require “licensing, inspection and additional safety requirements for fishing vessels” in 1987. He served on the Fishing Vessel Casualty Task Force in 1999, the Commercial Fishing Industry Vessel Advisory Committee from 1991 to 1998, and edited the Personal Survival and Emergency Drills Course — A National Standard Curriculum in 1995. He is a member of the Society of Naval Architects and Marine Engineers.

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This paper examines the history of fishing vessel safety legislation in the United States, and the missed opportunities that would have saved many lives. For most of the twentieth century, fishermen in the U.S. lived – and died – by the proposition that “as long as only the fisherman is hurt in an accident, it can remain his own business, accomplished at his own risk.”¹ Many still believe that. In 1988, the United States finally adopted legislation² requiring that fishing vessels be provided equipment to increase lives saved, in the event the vessel is no longer habitable. The U.S. has yet to adopt legislation designed to prevent casualties, or minimize their effect, given that they have occurred.³

A COST-BENEFIT ANALYSIS OF ALTERNATIVE SAFETY PROGRAMS FOR U.S. COMMERCIAL FISHING VESSELS

For twenty years we have searched out and stumbled across bits and pieces of history that are the basis for this paper, portions of which have appeared before.⁴

On the eve of World War II, legislation requiring that fishing vessels be inspected was proposed. Recently we discovered legislative initiatives in the 1950s that would have required “inspection” of U.S. Commercial Fishing Vessels. Many lives were lost as a result of these missed opportunities, and commercial fishing is more hazardous today than it should be.

On the brink of the 21st Century it is important to understand our past failures in order to better judge what would succeed in the future. Not for the first time there is an opportunity “to . . . turn the corner from response to prevention.”⁵ Will this be just another missed opportunity?

INTRODUCTION

The level of safety on fishing vessels increased with the transition from sail to steam, but declined again with the introduction of diesel propulsion. In the days of sail – when cod was king – designers and builders sought speed to bring a perishable catch to market quicker, and seaworthy vessels to take the punishing gales on the Grand and Georges Bank. Vessels sailed from Gloucester and Boston and some years many did not return. There was no radio to call for help, nor were there aircraft, and few cutters to come to their aid.

By the 1930s diesel power was readily available, but diesel-propelled vessels were not “inspected,” nor the officers “licensed.” Sailing schooners were converted to diesel trawlers, and the “modern” American fishing fleet was born.

It is ironic to realize that were we to put steam plants into fishing vessels today, they would immediately become “inspected” and carry a complement of licensed officers. It is even more painful to contemplate what the state of our fishing fleet would be today had steam propulsion remained the standard.

PART I – THE DISTANT PAST

Early marine safety statutes established inspection and manning requirements for steam-propelled vessels, including fishing vessels. Subsequent legislation enacted by the United States Congress required the inspection of most passenger and commercial vessels regardless of the means of propulsion.⁶ As a general rule, any vessel that required inspection was also required to have a licensed master or operator.⁷

There were no specific licensing requirements for masters, operators or other personnel for commercial fishing vessels.⁸ A provision of the “Officers Competency Certificates Convention, 1936” did however require licensed masters, mates, and engineers on all documented vessels over 200 gross tons operating on the high seas.⁹ Use of “creative” measurement permitted most fishing vessels to measure less than 200 tons thereby avoiding licensing requirements.

Unlike the statutes establishing the Federal Aviation Administration (FAA) that grant the agency broad authority to regulate all aircraft, Congress has never considered or adopted a statute granting the Coast Guard similar authority to make all vessels safe.¹⁰ Unfortunately, legislation governing marine safety has been enacted only after terrible tragedies.

THE 1930s

The *Morro Castle* and the *Mohawk* disasters in the 1930s resulted in a thorough Congressional investigation of the marine safety statutes and organization. The years 1936 and 1937 were one of the most active periods in the history of marine safety legislation in the U.S., and established much of the legislation that we live with today.¹¹

There were several proposals to regulate motor vessels – including fishing and towing vessels – as steam vessels. Steam vessels – including steam-propelled fishing vessels – were already subject to inspection, manning and equipment requirements.

Towing vessel interests, particularly those from the west coast, along with many fishing vessel interests objected to requiring inspection of diesel-propelled vessels. The major objections were to the increased manning requirements that “inspection” would bring,¹² an objection that is worth keeping in mind even today.

Congress did adopt legislation subjecting “seagoing motor vessel(s) of 300 gross tons and over, except “vessels engaged in fishing, oystering, clamming, crabbing, or any other branch of the fishery or kelp or sponge industry” to the regulations applicable to steam vessels.¹³ But Congress failed to adopt legislation applicable to fishing vessels, and by the end of the 1930s,

“uninspected vessels” were firmly ensconced in the legislative and regulatory framework established by the Congress.

FIRST FISHING VESSEL SAFETY BILL

In 1941, Representative Thomas A. Flaherty of Massachusetts introduced a bill specifically addressing fishing vessel safety. It proposed “to place fishing boats ... under the supervision of the Bureau of Marine Inspection and Navigation (BMIN).”¹⁴ Specific provisions of the bill would have required that fishing vessels be in “good and seaworthy condition” with “sufficient ... watertight bulkheads ... so that the vessel shall remain afloat with any one compartment open to the sea.” The bill also required that vessels be equipped with: bilge pumps, ring buoys, life preserver for each person on board, lifeboats, a compass, distress signals, emergency rations, a radio telephone, first-aid kit, and a line throwing gun with projectiles. The bill proposed licensing of fishing vessel operators, with the license subject to “suspension and revocation.”

Hearings were held on the bill in October 1941 at which time the bill was supported by the Atlantic Fishermen’s Union of Boston representing Northeast fishermen. However, most other segments of the fishing industry opposed the measure, particularly the provisions for watertight bulkheads and the licensing of operators. Owing largely to the events of December 1941 (the bombing of Pearl Harbor, and the subsequent participation of the U.S. in World War II,) no further action was taken on this bill.

Despite a shrinking fleet, (the Navy acquired many large fishing vessels) the demand and prices for fish grew rapidly during World War II for several reasons. First, due to German U-boat blockades, European nations were unable to send vessels to sea; second, fish became a valuable source of protein for Allied troops, and as other sources of protein became scarce, civilians turned to fish.¹⁵

PART II – POST WORLD WAR II

In the post war era, the U.S. offshore fleet shrank again as domestic demand for fish declined and European nations got back to fishing. But, fishing vessel casualties in the early 1950s took many lives. Evidently, these losses did not go unnoticed. In several casualty reports of the early 1950s, the U.S. Coast

Guard Marine Boards of Investigation make reference to pending legislation that would have placed commercial fishing vessels under inspection.¹⁶¹⁷ Despite the terrible loss of life in the early 1950s, however, no bill requiring the establishment of construction, maintenance or operating standards for commercial fishing vessels was enacted. It is painful to think of the number of lives that might have been saved had such action been taken.

A RETURN TO “BOATING SAFETY”

But in the 1950s Congress did return to the issue of boating safety, for along with post war prosperity came a boom in recreational boating and a consequent increase in boating accidents and fatalities. In 1958 Congress enacted the “Federal Boating Act of 1958” amending Motor Boat Act of 1940 making it applicable to all “motor boats . . . on the navigable waters of the United States” and requiring the numbering of all vessels propelled by machinery of more than ten horsepower and established a system whereby individual states could adopt a uniform numbering and certificate system.¹⁸ The Act further required that accidents involving numbered vessels be reported to the state in which the accident occurred and that the data collected by the states would be reported to the Coast Guard. During the next decade accident data compiled by the Coast Guard indicated the need for additional efforts to promote safety of recreational boats.

The provisions of the Motor Boat Act of 1940 for fire extinguishers, life preservers, flame arrestors, and ventilation of engine and fuel tank compartments remained the only requirements applicable to commercial fishing vessels. The limitations of these provisions became obvious when the U.S. Marine Safety Statutes were codified in 1983.¹⁹ As the Motor Boat Act of 1940 – unlike the FBSA-71 – limits the Coast Guard’s regulatory authority to those few items set forth in the act, the Coast Guard did not have the authority to adopt regulations requiring modern fire fighting, life saving or safety equipment on uninspected fishing vessels.

DOCUMENTATION VERSUS STATE NUMBERING

The numbering requirements of the 1958 Boating Safety Act created different ways to register vessels with the government. A vessel could be documented, which establishes its nationality, or it could be numbered by a state of principle

use. Fishing vessels over five net tons are required by law to be documented and licensed for the fisheries.²⁰ But, many fishing vessels – those that measure less than five net tons – are numbered by the state. Unfortunately, the casualty reporting requirements applicable to documented and numbered uninspected commercial vessels are different. The resulting lack of uniform casualty reporting criteria limits the accuracy of casualty information on fishing vessels. Further the most important provisions of the 1988 Fishing Vessel safety legislation apply only to “documented vessels.”

THE 1970s, STUDY BUT LITTLE PROGRESS

In 1968, the Coast Guard conducted – at the request of both the Congress and the Executive Branch – what is probably the most comprehensive and significant study ever carried out on fishing vessel safety in the U.S. The report, published in 1971, was entitled *A Cost Benefit Analysis of Alternative Safety Programs for U.S. Commercial Fishing Vessels*, and documented the fishing industry’s poor safety record, concluding that one of the major contributing causes of this dismal safety record was that fishing vessels, with few exceptions, have traditionally been exempted from safety regulations. The study recommended licensing of masters, mandatory safety standards including full inspection and certification of new vessels and mandatory and voluntary standards combined with inspection and certification of existing vessels.²¹

In July of 1976, the Secretary forwarded copies of the 1971 study to the Senate Committee on Commerce and the House Committee on Merchant Marine and Fisheries. The Secretary did not recommend the Coast Guard’s legislative program proposals, citing the inflationary impact and increased interest in a voluntary safety program by the U.S. fishing vessel industry. This action by the department stopped the initiative for fishing vessel safety legislation.

In 1978, the Coast Guard established a voluntary dock-side examination program for uninspected vessels. Forty five new billets for a Coast Guard-wide boarding and examination program were requested in the Coast Guard’s FY 1979 budget, to improve safety throughout the U.S. uninspected commercial fleet including commercial fishing vessels.

In 1978, Rear Admiral (ret.) William J. Ecker, U.S. Coast Guard, (then a Commander) prepared *A Safety Analysis of Fishing Vessel Casualties* for

the 66th National Safety Congress and Exposition.²² He examined “some of the more frequent types of marine casualties involving fishing vessels and highlighted the salient aspects of these casualties as they relate to circumstances, location, fishing fleet type, and the subsequent result of these casualties, be it loss of vessel, loss of life, or other.” He concluded, “there would appear to be ample evidence to warrant additional study and research into those incidents resulting in loss of life and loss of vessel for the purpose of ameliorating those circumstances and conditions that frequently precede tragic consequences.”

THE 1980s

In June of 1980, J. E. DeCarteret, N. W. Lemley and D. F. Sheehan, Office of Marine Safety, Coast Guard Headquarters, presented a paper entitled *Life Safety Approach to Fishing Vessel Design and Operation* at a SNAME meeting,²³ and published a similar article *Proceedings of Marine Safety Council*.²⁴ The authors, drawing on the work of Admiral Ecker and the 1971 analysis of fishing Vessel safety, suggested that training combined with the recently initiated Coast Guard education and voluntary dock-side boarding program should have a positive effect on casualties. Their conclusions and recommendations echoed those of past investigations. Unfortunately, due to budget cuts, the USCG voluntary dock-side-boarding program was terminated, casualties continued and the pressure for action mounted.

In February 1983, the A-Boats – the F/V *Altair* and *Americus* – capsized and sank in the Bering Sea with the loss of fourteen fishermen. Captain DeCarteret, then chief of the Marine Safety Division in Seattle, led a joint Coast Guard/National Transportation Safety Board (NTSB) investigation that lasted more than two years. The final report recommended that the Coast Guard require stability analysis of new or modified vessels, adopt a modified load line system, and seek authority to promulgate minimum competency standards and require licensing of masters of fishing vessels. The Commandant of the Coast Guard did not concur, preferring to turn the matter over to the newly formed Fishing Vessel Safety Initiative Task Force that was pursuing voluntary approaches to fishing vessel safety. The Commandant said, “Being voluntary, it would require no legislation and would have no disruptive effect on industry.”²⁵

In August 1983, the House Merchant Marine and Fisheries Subcommittee on Coast Guard and Navigation held a series of hearings on Marine Safety. During one of the sessions the Committee heard testimony on fishing vessel safety from three individuals representing very different points of view.²⁶

We testified on the need to establish a comprehensive program for fishing vessel safety in the Office of Marine Safety, to improve information on casualties, to coordinate ongoing safety projects, and update the Coast Guard's 1971 safety study, and suggested that Chapter 41 of Title 46 U.S.C. (Uninspected Vessels) be amended using the same flexible language set forth in Chapter 43 (Recreational Vessels) to permit the Coast Guard to develop comprehensive regulations for all uninspected vessels.

No action was taken on the suggestion for safety legislation, but the next year Congress did amend the statutes by defining fishing, fish tender, and fish processing vessels; exempting fishing tender vessels less than 500 gross tons and fish processing vessels less than 5,000 gross tons from inspection; and, adopting a new Chapter 45 setting forth requirements for "Fish Processing Vessels."

In 1984, the Coast Guard Office of Merchant Marine Safety established a fishing vessel safety program with the hope of reducing the number of uninspected commercial fishing vessel casualties by not less than ten percent by 1991 without a net increase of the level of commercial vessel safety resources, and established a full time task force to study how the fishing vessel safety initiative could best be implemented. Based on a paper by LCDR William Morani, a two pronged voluntary program was developed.²⁷

One part of the initiative was intended to promote vessel safety through voluntary standards written by the Coast Guard in five Navigation and Vessel Inspection Circulars (NVIC). These voluntary standards, proposed in NVICs 5-85 through 9-85,²⁸ were revised and consolidated in NVIC 5-86.²⁹ The voluntary standards were written primarily for fishing vessel designers, builders, outfitters and marine surveyors. The second part of the safety initiative sought to promote crew safety through a safety manual that was developed jointly by the Coast Guard and North Pacific Fishing Vessel Owner's Association (NPFVOA).³⁰ Additional regional manuals – based on the NPFVOA manual – were developed and published for the Gulf³¹ and Atlantic coasts.³² The

Fishing Vessel Safety Initiative became part of the Coast Guard Marine Safety Program in January 1987, with the policy implementing the safety program published in a Commandant Instruction in November of that year.³³

TRAGEDY STRIKES AGAIN

In August 1985, the F/V *Western Sea*, a seventy-year-old purse-seiner, departed Kodiak, Alaska to fish for salmon. There was no indication the vessel was in trouble until the body of crew member Peter Barry was recovered from the sea by the F/V *Dusk*. An intensive search by Coast Guard cutters and aircraft failed to locate any survivors. After the death of their son, Robert and Peggy Barry galvanized support from safety advocates, government officials, the legislature and the surviving families of other commercial fishermen lost at sea to renew the campaign for mandatory safety regulations.

In 1986, three bills were introduced in the House of Representatives specifically addressing fishing vessel insurance and liability issues. H.R. 4407 authorized the Coast Guard to write regulations for new fishing vessel (five net tons and over), and required load lines for fishing vessels over 79 feet. It would also have required crew training and licensing of skippers on new vessels. In exchange the bill would have limited liability on the newly regulated vessels.³⁴

H.R. 4415 modified the liability statutes (Jones Act) and authorized the Coast Guard to require documented fishing vessels on the “high seas” to carry (in addition to the existing requirements) immersion suits, EPIRBs, lifeboats or life rafts, Visual Distress Signals, and communications equipment.³⁵ H.R. 4465 eliminated the existing exemption of inspection of fishing vessels, and required that some fishing vessel be inspected, and would have made additional requirements for inspected fishing vessels, but this bill did not address liability.³⁶

In April 1986, three subcommittees of the House Merchant Marine and Fisheries Committee held hearings on these bills. Then Rear Admiral J. William Kime, Chief of the Office of Merchant Marine Safety, presented testimony supporting the Coast Guard’s voluntary approach to fishing vessel safety. It was the position of the Coast Guard that, “A voluntary program would be as effective as regulations, with little difference in cost to the fishermen, and much less costly to the Government, and would achieve the desired results much more rapidly.” Peggy Barry and several others who lost family on the *Western*

Sea testified passionately for enactment of legislation that would, at a minimum, require modern emergency rescue equipment on U.S. commercial fishing vessels.³⁷ After much deliberation by the Committee a compromise bill, *The Commercial Fishing Vessel Liability and Safety Act*, was sent to the full House. H.R. 5013 limited the liability of fishing vessel owners to a maximum of U.S. \$500,000 in cases of permanent injury, except where there was gross negligence or willful misconduct, and required the carriage of additional lifesaving equipment on fishing industry vessels, including Visual Distress Signals, EPIRBs, life rafts, exposure (immersion) suits, radio equipment and other equipment to reduce the risk of injury.³⁸

On August 13, 1986 after an intense lobbying effort by the American Trial Lawyers Association (ATLA), H.R. 5013 was defeated in the House. The defeat of this legislation placed added emphasis and urgency on the Coast Guard's voluntary initiative, and sparked the development of new bills for introduction in the next Congress.

SECOND TRY

In March 1987, two bills were introduced in the House dealing with fishing vessel safety and insurance liability. Congressman Lowry of Washington, on behalf of Robert and Peggy Barry, introduced H.R. 1836.³⁹ It would have required "new" documented "fishing vessels" to be "inspected" by the Coast Guard, but existing vessels "except when compliance with major structural or major equipment requirements is necessary to remove and especially hazardous condition" would not be subject to the inspection provision, and would have required all other vessels to be equipped with modern survival and rescue equipment, permitted the Secretary (Coast Guard) to prescribe additional requirements for fishing, fish processing and fish tender vessels including, and required the establishment of regulations for the operating stability of "new" or "substantially altered" fishing, fishing processing and fish tender vessels. It also "prohibited" the operation of the vessels "unless emergency assignments for individuals on board the vessel and periodic emergency drills" are conducted, and permitted "termination" of unsafe operations creating an "especially hazardous condition."

The bill called for licensing and training. All crewmembers would be required to be trained "in vessel safety and emergency procedures" using an approved

manual, or by an approved training course. The operator of a documented “fishing industry vessel” would be required to hold a Coast Guard license.

The bill established uniform casualty reporting for all commercial vessels and established a Fishing Vessel Safety Advisory Committee of 17 members to make recommendations to the Secretary on matters relating to fishing, fish processing, and fish tender vessels, including navigational safety, safety equipment and procedures, marine insurance, vessel design, construction, maintenance and operation, and personnel qualifications; review proposed regulations. Finally, the bill proposed to add “safety” to Section 303(a)(2) of the Fishery Conservation and Management Act of 1976. H.R. 1841 was introduced by Congressman Studds of Massachusetts, Chairman of the subcommittee on Fisheries and Wildlife Conservation and the Environment and addressed liability and safety, but did not propose inspection or licensing.⁴⁰ The Studds bill had two sections, or “titles.” Title I dealt with “compensation for temporary injuries on fishing industry vessels.”

Title II of the Studds bill proposed to amend Chapter 45 of Title 46 U.S.C. by replacing the existing chapter applicable only to fish processing vessels with a new chapter applicable to all fishing, fish processing and fish tender vessels. There are many similarities between the safety proposal in the Studds bill and that of the Lowery bill (H.R. 1836) described above. But H.R. 1841 required additional regulations only for “new uninspected fish processing vessels . . . having more than sixteen individuals on board primarily employed in the preparation of fish or fish products.” The requirement for “operational stability” was the same as H.R. 1836 as was the “equivalency” provision for fish processing vessel. But the section on “prohibited acts” did not include a paragraph on requirements for training, as did H.R. 1836. The sections on “termination” and “exemptions” were the same in both bills. The requirements for gathering casualty information from underwriters were the same in both bills, but H.R. 1841 did not call for uniform casualty reporting for all commercial vessels. H.R. 1841 also established an advisory committee, but the name did not mention “safety” as it was called the “Commercial Fishing Industry Vessel Advisory Committee.”

Hearings were held in the House in June 1987 on H.R. 1836 and H.R. 1841.⁴¹ During the hearings Captain Gordon Piche, Program Manager of the Coast Guard Fishing Vessel Safety Task Force, testifying on both bills stated, “the

Coast Guard can support consideration for safety management in H.R. 1841, the stability criteria that is recommended by both bills and the record keeping by the insurance companies.” But, the Coast Guard did not “fully support or cannot support inspection, licensing, termination, and the proposed advisory committee.” The Coast Guard “remains convinced that the voluntary approach is a viable program.”

In March, Senator Chafee introduced a companion bill (identical to H.R. 1841) in the Senate,⁴² S. B. 849, “To establish for timely compensation for temporary injury incurred by seamen on fishing industry vessels and to require additional safety regulations for fishing industry vessels.”

The Senate Committee on Commerce, Science, and Transportation held hearings in September in Washington DC and in Wakefield, Rhode Island in December 1987.⁴³ Additional testimony on the bills at both the House and Senate hearings were held. The families of those lost on the *Western Sea* and in other fishing vessel tragedies supported the tough provisions of H.R. 1836. Those representing the fishing industry – including FAIR (Fishermen’s Alliance for Insurance Reform representing eighteen fishing associations) – all testified in support of the liability provisions of H.R. 1841 and in general supported – sometimes reluctantly – the minimal safety provisions in the Studds bill. Most of the fishing industry representatives also recommended establishment of a notice requirement for crewmembers injured while in service of a commercial fishing vessel. All of fishing industry representatives expressed strong opposition to H.R. 1836, particularly to the proposed requirements for training and licensing. In addition, the committee also received written statements from a number of individuals and organizations.

In September 1987, the National Transportation Safety Board (NTSB) published a comprehensive study on *Uninspected Commercial Fishing Vessels* which recommended the establishment of minimum safety training standards requiring that captains and/or owners provide minimum safety training for all crewmembers; requirements for basic lifesaving equipment including immersion suits, flooding detection and dewatering systems, fire detection and fixed firefighting systems; approved lifeboat or life rafts; emergency radios; EPIRBs; safety certification and periodic inspection; prohibition of the use of alcohol or drugs when engaged in commercial fishing operations; education regarding the dangers of toxic gas exposure in unventilated spaces; and the

need to examine and conduct research on stability issues. The NTSB testified at both Senate hearings in support of its recommendations.⁴⁴ In October, the House subcommittees met to consider H.R. 1841.⁴⁵ There was no consideration of 1836. Congressman Studds offered an amendment in the form of a substitute bill incorporating the major suggestions made by witnesses during the hearings. Many of the changes dealt with Title I. Congressman Studds' substitute also proposed some substantial changes to Title II, the safety portion of H.R. 1841. First, it proposed additional navigation and first aid equipment for documented vessels operating beyond the Boundary Line, and authorized the Secretary (Coast Guard) to adopt additional safety regulations for any new (entering into service after December 31, 1987) fishing industry vessel with more than 16 persons on board. It also required the Secretary, in consultation with the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC), to prepare a plan for the licensing of operators of documented fishing industry vessels, and submit it within two years.

The Studds amendment was adopted and the following were then added :

Require "buoyant apparatus" on fishing industry vessels as prescribed by the Secretary. (Rep. Bonker)

Require the Secretary after consultation with the CFIVAC to adopt regulations for the inspection of fish processing vessels. (Rep. Lowery)

Require that the members of the CFIVAC be appointed within 90 days of enactment of the bill. (Rep. Lowery)

Rep. Lowery also offered an amendment that would have required the training of crewmembers on board all commercial fishing industry vessels and the licensing of operators of documented vessels. The amendment was defeated on a voice vote.

The Studds amendment with changes was reported favorably to the House Committee on Merchant Marine and Fisheries. The committee met in April 1988 to consider both Titles of H.R. 1841. Chairman Studds offered a substitute for Title I making the compensation system for temporary injuries mandatory rather than voluntary, requiring an injured seaman, if requested, to undergo a medical examination in order to benefit from the compensation plan provided for in amendment, and removing the bar of civil action if a seaman failed to

give notice of an injury. Studds also offered an amendment to Title II requiring the prominent display of the provisions of Title I and requiring all seamen to report all injuries within seven days.

Representative Lowry offered an amendment to Title II requiring, instead of Coast Guard inspection, that processing vessels be subject to classification by the American Bureau of Shipping (ABS) or a similar organization, and that the National Academy of Engineering carry out a study of the safety problems of fishing industry vessels and make recommendations on vessel inspections.

Efforts by the committee during the spring of 1988 to reach an agreement on the liability provisions of Title I were unsuccessful. The amended bill did not contain any provisions regarding liability. The bill did require that the Coast Guard develop a licensing plan and conduct studies on Fishing Industry Vessel Inspection and Unclassified Fish Processing Vessels. H.R. 1841 contained a new chapter, Title 46 U.S.C., regarding Fishing Voyages, which require fishing and wage agreements and prompt notification of illness, disability, and injury on fishing industry vessels. H.R. 1841, as amended, was favorably reported to the House by a unanimous vote of the committee. The House passed the Bill, as amended, on June 27, 1988. On August 11, 1988 the Senate passed the House version of the bill.

SUCCESS

On September 9, 1988, the President signed into law the “Commercial Fishing Industry Vessel Safety Act of 1988” (P.L.100 424); the first safety legislation enacted in the U.S. applying specifically to commercial fishing vessels. The implementation of the Act began in earnest almost immediately. The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) was appointed and drafting of regulations to implement the Act began by late 1988.⁴⁶ By September of 1991, the regulations were ready, and the Coast Guard developed a “voluntary dockside examination program” allowing a vessel owner to request that the Coast Guard or other recognized “third-parties” examine the vessel for compliance with the new regulations (and other federal requirements) and obtain a decal indicating compliance. In the event that deficiencies were found, recommended action would be suggested, but no penalty would be assessed. The Coast Guard established new positions – primarily civilian – to conduct the examinations.

Since adopting the Act and the implementing regulation, the fishermen who learn how to *use* the modern emergency rescue equipment required on the vessels they work on now have a better chance of surviving vessel casualties. But unfortunately far too many vessel casualties still occur and too many lives are lost. Many of these casualties could be prevented by the application of recognized design, construction, maintenance and operating standards. The Act provided opportunities to make progress in these areas, but again, opportunities have been missed.

PART III – MORE MISSED OPPORTUNITIES

The passage of “Commercial Fishing Industry Vessel Safety Act of 1988” was a great victory for all who had worked so hard to make commercial fishing safer for the American fisherman. But as the drafters intended when including requirements for additional study of licensing and inspection, this is a work in progress. Unfortunately opportunities to promote fishing safety continue to be missed.

The consideration of the licensing began soon after the Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) was appointed. By early 1990, the Licensing Subcommittee of the CFIVAC made a detailed report regarding the licensing proposal, and specifically recommended a plan for the “certification” rather than licensing of commercial fishing vessel operators, and the plan adopted by the CFIVAC included “competency” requirements. The Committee laid out a number of specific recommendations to the Coast Guard for inclusion in its report to Congress on the licensing plan.

Two years later, in January 1992, the Coast Guard submitted “A plan for Licensing Operators of Uninspected Federally Documented Commercial Fishing Industry Vessels” to Congress. This “original” Coast Guard plan followed the traditional pattern for Coast Guard licensing, requiring an examination rather than “hands-on-training” as recommended by the CFIVAC.

The CFIVAC reluctantly endorsed the Coast Guard’s licensing plan, but requested an opportunity to develop a response to a letter from Rep. Young of Alaska who asked for specific input from the Committee. A ‘licensing working group’ met in the fall of 1992 and drafted a proposal incorporating the “hands-on training requirements” preferred by the Committee into the “plan” as

submitted to Congress. In December, the full Advisory Committee approved most of the revised plan, and recommended that it should apply to all vessels 36 feet or more in length, not just “documented vessels.” In May of 1993 the Coast Guard submitted a revised executive summary, including the recommendations jointly agreed to by the CFIVAC and the Coast Guard. Despite this effort, no legislation to adopt the “licensing plan” was ever introduced in Congress.

As called for in the Act the National Research Council (NRC) of the National Academies of Sciences and Engineering carried out the inspection study. The project was assigned to the Marine Board of the NRC, and a Fishing Vessel Safety Committee was selected.⁴⁷ Its comprehensive report *Fishing Vessel Safety – A Blueprint for a National Program* was published 1991.⁴⁸ At its May meeting that year the CFIVAC reviewed the report and endorsed most of the recommendations including the establishment of an inspection program.

In November 1992 the Coast Guard sent to Congress its plan to require inspection of commercial fishing industry vessels, requesting authority (legislative changes) that would authorize the Coast Guard to:

Establish a self-inspection program for vessels less than 50 feet in length;

Require third-party inspection for vessels greater than 50 feet but less than 79 feet in length;

Require Coast Guard inspection of vessels greater than 79 feet in length;

Required load lines on new vessels 79 feet or more in length and on existing vessels 79 feet or more in length within ten years;

Require that all new fishing industry vessels 79 feet or more length be designed and built to class standards; and

Authorize the Coast Guard to impose additional hull and machinery standards for existing fishing industry vessels 79 feet or more in length.

Coast Guard noted, in its report to Congress, “that material condition of the vessel and equipment was a direct cause for over 85 percent of the known vessel-related casualties.”⁴⁹ That neither the licensing nor the inspection plan

ever received serious consideration by Congress is evident in that no bills were introduced or hearing held on the issues. Nonetheless, the tragedies continued, and at the end of the 1990s a series of casualties, this time involving fishing vessels on the East Coast of the U.S., prompted yet another look at fishing vessel safety.

Between December 1998 and January 1999 eleven fishermen died when their vessels were lost along the East Coast.⁵⁰ While these terrible losses were consistent with losses that occur all around the U.S. every year, the timing of the casualties garnered a lot of media attention. The Coast Guard responded by forming a “Fishing Vessel Casualty Task Force” made up of representatives of the federal agencies that interact with the fishing industry (Coast Guard, National Marine Fisheries Service, Occupational Safety and Health Administration, National Transportation Safety Board, and the National Oceanic Atmospheric Administration) and several industry advisors including managers, trainers, investigators, insurance, and fishermen.

The Task Force met in Washington DC in mid-February 1999, and released its report in April.⁵¹ The Task Force posed the following question to policy makers, “Do the continued high loss rates in the commercial fishing industry represent an acceptable risk by today’s standards?” The Task Force concluded, “... the risk is not acceptable, that pushing for breakthrough levels of reduced fishing industry losses is the right thing to do, and that the time is right to take on this challenge.”

The Task Force recommended operator licensing, safety inspections, stability standards, better investigations, and improvements to the Coast Guard program. Out of these recommendations the Coast Guard developed an “Action Plan” including short term goals, program initiatives, and long-term proposals, including:

- Improving drill enforcement;

- Completing the regulatory project on stability and watertight integrity begun in 1992;

- Improving casualty investigations and analysis;

- Improving communication (with the industry);

Seeking authority and funding for mandatory vessel examinations;

Seeking authority and funding for mandatory safety training; and

Requesting that the geographic marker used for safety equipment be changed from the Boundary Line to the baseline from which the territorial Sea is measured.

This Action Plan is yet another opportunity to “work for a breakthrough to significantly lower casualty losses.” It remains to be seen whether significant progress will be made, or whether this will be yet another lost opportunity.

POSTSCRIPT

In the recently published report on the loss of the F/V *ADRIATIC*, the “Action by the Commandant” seems to indicate a change in direction for the U.S. Coast Guard. The Commandant now supports seeking authority for ‘mandatory examinations of inspections’ and ‘operator licensing.’⁵² This is an encouraging development! We can only hope that the momentum is sustained. It would be a tragedy to miss yet another opportunity.

FOOTNOTES

1. Hand DE, Cleary Jr WA, Perrini F [1980]. Fishing vessel safety standards. Fish Boat pp 41 on.
2. P.L. 100-424, the “Commercial Fishing Industry Vessel Safety of 1988,” 9 September 1988.
3. Planning Staff Office of Merchant Marine Safety. U.S. Coast Guard Headquarters. Washington, D.C.; [16 April 1971]. A Cost-Benefit Analysis of Alternative Safety Programs for U.S. Commercial Fishing Vessels. [footnote 2 on page V-3 of Vol. I]
4. (a) Hiscock RC [1982]. A Review of Fishing Vessel Safety – Past and Present. Proceedings of the Marine Safety Council. pp. 51-53.
(b) Hiscock RC [1982]. Industry or government will decide safety of fishermen. National Fisherman Yearbook, pp. 104-107.
(c) Hiscock RC [1983]. Testimony before Subcommittee on Coast Guard and Navigation, 2 August 1983. Serial No. 98-20.
(d) Cameron D B [April 1986]. Fishing vessel safety in New England. New England Section of SNAME. pp.18-26.
(e) Magno R G, Hiscock, R C [1991]. Commercial fishing vessel safety ... a legislative history. Proceedings of the Marine Safety Council. 48: 6 pp. 2-10.

5. Downey ML Chairman. U.S. Department of Transportation [1999]. A Coast Guard For the Twenty First Century, Report of the Interagency Task Force on U.S. Coast Guard Roles and Missions. Washington, D.C.
6. Shephard HC [1945]. History of United States Navigation and Vessel Inspection Laws. Historical Transactions 1893-1943. Society of Naval Architects and Marine Engineers. pp. 517-524.
7. 46 U.S.C. Subtitle II, Part F.
8. 46 U.S.C. 3301 requires the “inspection” of “Fish Processing Vessels” (over 5,000 gross tons) and “Fish Tender Vessels” (over 500 gross) are exempt.
9. 46 U.S.C. 8304
10. P. L. 85-726, Federal Aviation Act of 1958.
11. Shephard, p. 519
12. U.S. House of Representatives, 74th Congress, First Session, Committee on Merchant Marine and Fisheries. [1935]. Hearings on “Safety of Life and Property at Sea” [Part 1] Hearings on revision of inspection laws.
13. P. L. 722, 20 June 1936. [H.R. 12419]
14. H.R. 3254. “A bill to safeguard and protect further the lives of fishermen at sea and to place fishing boats under the supervision of the Department of Commerce, Bureau of Marine Inspection and Navigation.” Introduced by Mr. Flaherty. February 11, 1941, 77th Congress, first session.
15. Dewar, ME [1983]. Industry In Trouble – The Federal Government and the New England Fisheries. Temple University Press, Philadelphia, PA. p. 14
16. F/V *Four Sisters*, April 1950, F/V *Gurdun*, January 1951, F/V *Mary M*, 26 November 1951, F/V *Paolina*, 13 February 1952, and F/V *Anna C*, March 1952.
17. <http://www.uscg.mil/hq/g-m/moa/casua.htm>
18. P. L. 85-911, 2 September 1958
19. P.L. 98-89, August 26, 1983, 97 Stat. 500. See specifically: 46 U.S.C. 4101 for the statutes applicable to Uninspected vessels.
20. 46 U.S.C. 12108(b)

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21. Planning Staff Office of Merchant Marine Safety [1971]. Cost-Benefit Analysis of Alternative Safety Programs for U.S. Commercial Fishing Vessels. U.S. Coast Guard Headquarters. Washington, D.C.
22. Ecker WJ [1978]. A Safety Analysis of Fishing Vessel Casualties. Prepared for the 66th National Safety Congress and Exposition. U.S. Coast Guard Headquarters. Washington, D.C.
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26. U.S. House of Representatives, 98th Congress, First Session [1983]. Serial No. 98-20: Hearings before the Subcommittee on Coast Guard and Navigation. Committee on Merchant Marine and Fisheries. July 19, 27, August 2, September 29 1983.
27. Morani JR WJ [1985]. An alternative to federal regulations – the voluntary approach. U.S. Coast Guard Fishing Vessel Safety Task Force. Washington, D.C.: Office of Merchant Marine Safety.
28. U.S. Department of Transportation. U.S. Coast Guard (G-MTH) [1985]. Navigation and Inspection Circular 5-85: Proposed Voluntary Stability Standards for Uninspected Commercial Fishing Vessels. Navigation and Inspection Circular 6-85: Radio and Shipboard Navigation Equipment; Proposed Voluntary Standards for Uninspected Commercial Fishing Vessels. Navigation and Inspection Circular 7-85.
- U.S. Department of Transportation. U.S. Coast Guard [1985]. Fire Safety Measures; Proposed Voluntary Standards for Uninspected Commercial Fishing Vessels. Navigation and Inspection Circular 8-85. Lifesaving Equipment and Protection of the Crew; Proposed Voluntary Standards for Uninspected Commercial Fishing Vessels. Navigation and Inspection Circular 9-85. Hull, Machinery and Electrical Installations; Proposed Voluntary Standards for Uninspected Commercial Fishing Vessels.

29. U.S. Department of Transportation. U.S. Coast Guard (G-MTH) [1986]. Navigation and Inspection Circular 5-86. Voluntary Standards for U.S. Uninspected Commercial Fishing Vessels.

30. Vessel Safety Manual [1986]. North Pacific Fishing Vessel Owner's Association. First Edition. Subsequent Editions 1990 and 1992.

31. Gulf Coast Fishing Vessel Safety Manual [1989]. Produced and funded in Cooperation with the National Marine Fisheries Service Saltonstall-Kennedy Program. Adapted from the Vessel Safety Manual produced by NPFVOA.

32. Rhode Island Sea Grant, in cooperation with United States Coast Guard [1991]. Atlantic Coast Fishing Vessel Safety Manual. Saltonstall-Kennedy Program, Rhode Island Sea Grant and the National Council of Fishing Vessel Safety and Insurance. Adapted from the Vessel Safety Manual produced by NPFVOA.

33. COMDTINST 16711.10, 6 NOV 1987.

34. H.R. 4407 "To limit the liability in the operation of fishing vessels that comply with improved safety requirements." Introduced by Mr. Jones.

35. H.R. 4415 [1986]. "To impose certain limitations on damage awards in actions for personal injury incurred by seamen on fishing vessels and to require additional safety regulations for fishing vessels." Introduced by Mr. Studds (for himself and Mr. Davis and Mrs. Schneider).

36. H.R. 4465 [1986]. "Amending title 46, United States Code, to require inspection by the Coast Guard of fishing vessels, to require certain safety equipment to be aboard such vessels, and for other purposes." Introduced by Mr. Lowery (for himself and Mr. Miller).

37. U.S. House of Representatives, 99th Congress, First and Second Session [April 17, 1986]. Hearings before the Subcommittee on Merchant Marine. Committee on Merchant Marine and Fisheries. Serial No. 99-36

38. U.S. House of Representatives, 99th Congress, Second Session [1986]. Report to accompany H.R. 5013. Commercial Fishing Industry Vessel Liability and Safety Act of 1986. Report 99-767.

39. H.R. 1836 [1987]. "To establish crew licensing, inspection and additional safety requirements for certain fishing vessels." Introduced by Mr. Lowry of Washington. The Barrys drafted this bill with the assistance of the author.

40. H.R. 1841 [1987]. "To establish for timely compensation for temporary injury incurred by seamen on fishing industry vessels and to require additional safety regulations for fishing industry vessels." Introduced by Mr. Studds (for himself, Mr. Jones, Mr. Davis,

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Mr. Young, Mr. Lowry, Miss Schneider, Mr. Hughes, Mr. Miller of Washington, Mr. Bennett, Mr. Lipinski and Mr. Bateman.

41. U.S. House of Representatives, 100th Congress, First Session [1987]. The Subcommittee on Fisheries and Wildlife Conservation and the Environment The Subcommittee on Coast Guard and Navigation The Subcommittee on Merchant Marine. Committee on Merchant Marine and Fisheries. Hearing on H.R. 1836 and H.R. 1841. Serial No. 100-21

42. S. 849 “To establish for timely compensation for temporary injury incurred by seamen on fishing industry vessels and to require additional safety regulations for fishing industry vessels.” Introduced by Mr. Chafee of Rhode Island (for himself and Mr. Kerry of Massachusetts) March 26 (legislative day, March 24), 1987.

43. U.S. Senate, 100th Congress, First Session [1987]. Hearing before the Committee on Commerce, Science, and Transportation. On S. 849 “To establish for timely compensation for temporary injury incurred by seamen on fishing industry vessels and to require additional safety regulations for fishing industry vessels.” September 16, 1987 [Washington, D.C.] December 7, 1987. [Wakefield, RI]

44. National Transportation Safety Board [1987]. Safety Study Uninspected Commercial Fishing Vessel Safety. Washington, DC: NTSB/SS-87/02.

45. U.S. House of Representatives, 100th Congress, Second Session [1987]. Report to accompany H.R. 1841. Commercial Fishing Industry Vessel Safety and Compensations Act of 1987. Report 100-729.

46. Norman Lemley was the first Executive Director of the CFIVAC.

47. This committee included familiar names, such as, John DeCarteret and Bruce Adee of the A-Boat investigations, and Norman Lemley representing the U.S. Coast Guard.

48. Committee on Fishing Vessel Safety, Marine Board Commission on Engineering and Technical Systems [1991]. Fishing Vessel Safety – A Blueprint for a National Program. National Research Council. Washington, D.C.:National Academy Press.

49. U.S. Coast Guard Commercial Fishing Industry Vessel Safety Act of 1988 (P.L. 100-424). Report to Congress for the Inspection of Commercial Fishing Industry Vessels. Sent to the President of the Senate and Speaker of the House, 12 November 1992.

50. F/V *Predator*, Sinking, 28 December 1998; F/V Beth Dee Bob, sinking, 7 January 1999; F/V *Cape Fear*, sinking 8 January 1999; F/V *Adriatic*, sinking 19 January 1999.

51. Committee on Fishing Vessel Safety [1999]. *Dying to Fish – Living to Fish*. Washington, D.C.: U.S. Department of Transportation. See: <http://www.uscg.mil/hq/g-m/moa/docs/fishing.htm>

52. Investigation into the Circumstances Surrounding The Loss of the Commercial Fishing Vessel *Adriatic*, O.N. 579941, Eight NM East of Barnegat Light, New Jersey on January 18, 1999, with the loss of four lives. MC99000698, August 4 2000. See: <http://www.uscg.mil/hq/g-m/moa/casualty.htm>