



International Organization of  
**Masters, Mates & Pilots**

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January 4, 2007

Admiral Thad Allen, USCG  
Commandant  
U.S. Coast Guard Headquarters  
2100 Second Street, SW  
Washington, DC 20593

**RE:** Meeting with Masters, Mates & Pilots (MM&P) Officials, December 10, 2007

Dear Admiral Allen,

Thank you very much for taking time to meet with me, George Quick and Mike Rodriguez on December 10, 2007 to discuss issues of importance to the maritime shipboard workforce. Below, I wanted to provide a brief recap of our discussions with the intention that it may assist you in the development of possible solutions to the problems we spoke about.

**Criminalization**

The growing tendency to criminalize seafarers in the wake of maritime accidents is a matter of increasing concern to the entire international maritime community. As a result, the International Maritime Organization (IMO) and the International Labor Organization (ILO) formed a joint working group to address the issue of fair treatment of seafarers during post-accident investigations. The guidelines adopted by the IMO and ILO were considered as guiding principles in the IMO draft of a new Casualty Investigation Code that is on track to become a mandatory code as part of the SOLAS Convention at IMO MSC 84 in May of 2008.

The code would require that a seafarer be informed of the nature of the investigation being conducted, be given access to legal advice regarding the risk of self incrimination and be informed of the possibility that evidence provided to the investigator could be used against him in a legal proceeding. We believe that offering such guarantees in the context of what could potentially evolve into a criminal investigation is in keeping with the fundamental tenets of human rights.

As you know, the authority under which the Coast Guard conducts post-accident investigations is set forth in 46 USC 6301. That statute unambiguously asserts that the goal of Coast Guard casualty investigations is to uncover "*an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of the law*" that can lead to suspension or revocation proceedings, civil penalties

or criminal charges. Consequently, we believe it is unjust to interrogate a seafarer without informing him of the nature of the investigation being conducted and the right to have access to legal counsel.

The establishment of a procedure to inform a seafarer of his rights at the beginning of an investigation would not require any substantive change in U.S. law regarding what action might ultimately be taken against him. Its only consequence would be to grant seafarers the same procedural rights that are afforded under our legal system to all other U.S. citizens who are under investigation.

We realize that development of a solution to this problem could transcend the institutional authority of the Coast Guard and cross over into the jurisdictions of the Department of Justice and the U.S. Attorneys. But despite the difficulties inherent in addressing this type of multi-jurisdictional issue, we believe that finding a solution is essential to maintaining our country's reputation as a nation that respects fundamental human rights: it is a well known fact that foreign crews are reluctant to sign onto ships that will be trading to the United States because of the risk of criminalization of negligence, visa issues restricting shore leave and denial of access to and from ships by terminal security. Given the worldwide shortage of officers, the result is that the most competent senior officers—those who are in the most advantageous bargaining position—are turning down assignments to ships in the U.S. trade. The response of the international maritime community to the treatment of seafarers by the United States on these human rights issues is adversely affecting our reputation and is clearly not in our nation's best interests.

### **Oil/Water Separators**

Bypassing the oily water separator (OWS) to illegally discharge waste oil is unquestionably a crime that warrants prosecution. There is, however, a need to look at this issue in its larger context. Ship engineers don't discharge oily water on a random basis as a malicious act. There is limited tank capacity to retain oily water onboard ships and OWS equipment is notoriously prone to problems. Oil in engine room bilges can be lethal if it catches fire. Residual bunker oils are often contaminated with toxic by-products of the refinery and petrochemical industry added by bunker providers to be burned at sea. There is a threat to the safety and health of ships' crews while oil remains on board in the bilges.

There is a recognized need within the industry for shoreside oily water reception facilities. If there were more reception facilities available at reasonable cost, there would be less oily water going into the water. As you know, millions of dollars in fines are now being levied against ships for illegally discharging oily water. Consideration should be given to using those funds to expand the number of shoreside reception facilities and subsidize their cost. The polluters in the industry would then be contributing to the solution to the problem.

### **Medical standards**

As discussed at our December 10<sup>th</sup> meeting, the changes that the Coast Guard is proposing in medical standards and determining medical fitness through a centralized system at the National Maritime Center (NMC) will impose a costly burden on the industry without any evidence that these measures will lead to a reduction in accidents. A system under which the determination of medical fitness is made by USCG staffers at NMC who have never seen the applicant and must rely exclusively on documentation in the form of test results covering all possible medical conditions will, in many cases, be prohibitively expensive. In our opinion, it would be more practical and cost effective to have medical fitness determined by examining physicians who have been certified by the USCG as meeting appropriate standards.

We are aware that the impetus for the changes was the accident involving the Staten Island ferry *Andrew J. Barberi*, in which a medical condition caused the pilot to lose consciousness at a critical point in the transit. It is our belief that the investigation failed to adequately address the root cause of the accident: operating a high-capacity ferry in a high-risk environment with a single person in the wheelhouse. The potential for a single point failure in such an operation is apparent and will not be eliminated by imposing new medical standards.

There has been no documentation of a compelling need for the proposed medical standards and implementing procedures, nor has there been a cost/benefit analysis of their probable impact on the maritime workforce and the maritime industry.

We also note that the European Union has submitted a proposal to IMO that international medical standards for seafarers be included in the current comprehensive review of the STCW Code. That proposal will be acted on this coming March at the IMO STW 39 meeting. The United States is on record with IMO as supporting international standards of medical fitness in cooperation with the International Labor Organization and the World Health Organization. The International Medical Health Association has offered to assist in drafting new international medical standards for the IMO.

In light of the pending international action, we believe it would be appropriate for the USCG to wait until action is taken on international medical standards before acting on U.S. medical standards. As you know, over 95% of the large commercial ships in U.S. ports that are engaged in international trade are foreign flag and will thus be regulated under international medical standards. American maritime workers and U.S.-flag companies are justly concerned that the competitive capability of U.S. ships may be further eroded by the imposition of a costly medical review system that is not applicable to foreign ships and crews working in the same trades and ports.

**National Maritime Center issues**

We appreciate the Coast Guard's efforts to improve the services provided to mariners by the NMC and to bring an end to the problem of excessive delays in processing license applications and renewals. Centralization of decision-making in the new NMC in West Virginia may well lead to efficiencies in processing times and consistency in the application of regulations. We are, however, concerned that centralizing these functions in a structure that is geographically remote from the regulated community will have unintended negative consequences. As you know, effective management requires not only timeliness and consistency, but also consideration of the quality of the decisions and their implications and impact on the public that is being served. The management principle that the best decisions are made by those closest to where they take effect is just as true for government as it is for industry.

The proposal to have medical evaluations performed at the NMC by people who have never seen the applicant is an example of the type of remote, centralized bureaucracy that gives us cause for concern.

One complaint being voiced by our members in this regard is that upon renewal, unlimited licenses with extensive endorsements have been returned in the mail by NMC with limitations placed on the license and with endorsements removed. As you know, an unlimited license represents a considerable investment in education, training, experience, time and money. A Coast Guard license is just as important to a professional mariner as a license to practice law or medicine is to professionals in other fields. It is in no way an understatement to assert that licenses represent the careers and livelihoods of individuals. Stripping an individual of his ability to fully employ his professional skills without consultation or any form of due process is an abuse of discretion. Our members are concerned about how it will be possible to rectify this type of situation when the action has been taken by an unidentified staff person working out of a large, centralized organization located in a geographically remote location.

How the NMC is managed, how policies are established and implemented, and how sensitive the NMC is to the impact of its actions on the community of mariners are all extremely important issues. We suggest that consideration be given to placing the NMC under the supervision of a highly qualified and experienced civilian professional mariner who fully understands the role the NMC plays in the lives of our nation's seafarers.

**Access to and from ships**

In the name of "port facility security," seafarers are now routinely being denied access to their ships and to shore at a number of U.S. port facilities.

The possible conflict between access to a ship at a port facility and the security plans of the port facility was recognized by the IMO during adoption of the International Ship and Port Security (ISPS) Code. The issue was addressed in the mandatory Part A, Sec. 16.3.15, of the ISPS Code, which requires that a Port Facility Security Plan (PFSP) must include *“procedures for facilitating shore leave for ship’s personnel or personnel changes, as well as access of visitors to the ship, including representatives of seafarers’ welfare and labor organizations.”* The United States, as a signatory to the ISPS Code, is obliged to conform its practices to the provisions of the code, yet the USCG does not enforce the provisions of the code regarding shore leave and access to ships. The result is that mariners are denied shore leave, and labor and welfare representatives are denied access to ships. Ship service technicians and suppliers are also being denied access. As a result, in some cases ships are being forced to take on stores while underway in the stream, a risky undertaking. A ship blocking a navigation channel while maneuvering to change crew or take on stores is a hazard to navigation.

In response to the improper application of port and vessel access measures, primarily by the United States, the IMO issued further guidance to contracting governments to assist them in meeting their obligations under SOLAS Chapter XI-2 and the ISPS Code on the access issue in MSC/Circ. 1112, which states in part, *“There must be a proper balance between the needs of security, the protection of the human rights of seafarers and port workers, and the requirement to maintain the safety and working efficiency of the ship by allowing access to ship support services such as the taking on of stores, repair and maintenance of essential equipment, and other vital activities that are appropriately undertaken while moored at port facilities.”*

We have repeatedly requested that the USCG ensure that Port Facility Security Plans are in compliance with the mandatory provisions of the ISPS Code and relevant IMO circulars regarding shore leave and access to ships. There is a need for a national policy directive from USCG Headquarters on PFSP compliance and enforcement regarding access to ships at terminals under security plans.

### **Chemical Facility Security Plans**

The Department of Homeland Security (DHS) has promulgated regulations that permit flexibility in chemical facility security plans that result in security arrangements and access control procedures that are unique to each individual facility. This non-standardized approach can create serious problems for ships. As you know, many refineries and petrochemical facilities include a port facility section covered under maritime security regulations. If the port facility section of the chemical facility is covered under one security regime and the surrounding chemical facility is covered under another, the ship and its crew are required to operate within the strictures of two separate sets of security hurdles and access limitations. Enforcement of disparate and often conflicting require-

ments creates significant, at times unmanageable, burdens on a mobile workforce, such as ships' crews, who by definition are frequently in transit between numerous facilities.

We believe that in cases in which port and chemical facilities are combined, the entire facility should be considered a port facility and be operated under a Port Facility Security Plan. As an alternative, the port facility section of such combined facilities should include access to non-secure areas outside the chemical facility, so that crew and visitors to the ship would be required to comply with port facility security requirements only.

### **Tiering of ship and facility risks and plans**

It is worth noting that the DHS chemical facility regulations include a system of risk-based tiering aimed at determining the appropriate level of security required in each specific case. Under the regulations, facilities are to be placed in tiers according to the potential probability and consequences of a terrorist act. The security regime required would then be commensurate with the risk-based tier in which the facility had been placed. This approach would seem to have merit for consideration by the USCG for application in the maritime sector.

Much of the objection to maritime security proposals has been the one-size-fits-all approach to security and access control. It is obvious that a cruise liner with thousands onboard and a family-owned towboat with a crew of four present very different levels of risk. A tanker carrying gasoline or toxic chemicals presents a different level of risk than a bulker loaded with iron ore or coal.

By the same token, port facilities and terminals handle cargo that runs the gamut from containers, to LNG, to iron ore and crushed stone. To ease the regulatory burden on low-risk operations, we suggest that the USCG give consideration to using a similar, risk-based tiered approach for establishing the required security levels for ships and facilities.

### **TWIC issues**

The proposed USCG regulations for the use of the TWIC, for card readers and escort requirements, will be impossible to implement on a ship calling at multiple ports, including foreign ports, which employ port worker identity systems that are not interoperable with the TWIC FIPS-based system. Aside from the connectivity problems inherent in a system based on a card reader interactively checking the validity of cards by use of a central server, U.S. ships in the international trades will be dealing with a port worker community composed entirely of non-TWIC holders. The proposed regulations require that such port workers be escorted anywhere on the ship, since for purposes of the regulations, the entire ship is designated as a secure area. As you know, on today's merchant ships, there are perhaps as few as three deck crew members on

watch at any one time: it is obvious that even under the most favorable conditions, three people would never be able to simultaneously escort up to as many as one hundred port workers engaged in cargo operations on the ship. Merchant ships simply do not have the resources to escort the number of non-TWIC holders that will be aboard in foreign port operations.

We note that the TWIC/MTSA Policy Advisory Council has reached the same conclusion and recommends that vessels operating with USCG approved vessel security plans shall be "deemed" to be properly escorting individuals who do not hold a TWIC, but this interpretation would only apply in foreign waters. In effect, the escort provisions are waived for U.S. ships in foreign waters. We believe that this recommendation should not be limited to foreign waters. The same interpretation should apply to U.S. ships in U.S. waters dealing with American port workers. If foreign non-TWIC port workers were to be deemed as being escorted on the basis of having passed through USCG approved ships' access control procedures, it would in fact be difficult to justify burdening U.S. ships in U.S. ports with the requirement to physically escort American non-TWIC port workers passing through the same access control procedures.

Due to the widely diverse operating conditions within the maritime transportation system, the connectivity issues with ships that do not have a land based communications system to interface with a central server, the difficulty in maintaining electronic equipment at unprotected access points in the marine environment, and the questionable need for the sophistication that a TWIC card reader system provides in many operations, it is suggested that the ship-board use of TWIC card readers be made optional with the ship owner. In most cases adherence to the ships' access control procedures approved by the USCG should provide an appropriate level of security.

### **Change in licensing program**

Today, the Merchant Mariner's Document (MMD), a laminated card that can be carried in a wallet, serves as both an identity card and a certificate of competency at the unlicensed level. Officers are issued a separate license, which they are required to post aboard the ships on which they are serving, as a certificate of competency.

In 2005, by means of a Legislative Change Proposal, the Coast Guard sought to change the statutory authority governing the issuance of MMD's and licenses and give itself authority to change by regulation the form and substance of merchant mariners' credentials. The legislation failed as a result of opposition from the merchant mariner community.

Now the Coast Guard is attempting to achieve by regulation the result that Congress rejected in 2005. As you are aware, the USCG is moving forward on a proposal to consolidate the MMD and license into a single credential, in booklet form, which is similar to a passport. The authors of the proposal postulate that

the TWIC will replace the MMD as an identity document and that the new consolidated credential should serve as a certificate of competency at both the unlicensed and licensed levels. They argue that the mariner will then have to carry only two documents, a TWIC as an ID card and the new consolidated credential as a certificate of competency. Unfortunately, however, the TSA has based the TWIC biometric credential on the FIPS standard, which is unique to the United States, rather than on the ICAO standard, which is internationally recognized and the basis for the ILO Seafarer Identity Document (SID). In an attempt to address the problem, the NMC is proposing to include the SID biometric identifier bar code on the new consolidated credential so that it can be used by U.S. seafarers in foreign ports in lieu of a SID-based identity document. Although we greatly appreciate the fact that NMC has recognized the existence of a problem, the solution that is being proposed creates other problems.

The statute requires that officers' and engineers' licenses be posted aboard ship. The new consolidated credential in booklet form is not only unsuitable for posting, if it is to be used in place of a SID identity card, it must be removed from the ship and carried ashore by the holder. In some ports, ID cards are held by the port authorities as a means of controlling who is aboard the ship and who is ashore. Mariners are understandably reluctant to leave their licenses in the hands of unknown port officials. In addition, there is the risk of losing the license ashore. If the license is lost while the mariner is ashore, the ship cannot legally operate and may be detained by port state control officials until the issue is resolved, which can be after a considerable period of time and at great expense to the shipping company.

We have consistently advocated that the officer's license be retained as a document separate from the MMD and the TWIC. We have also consistently advocated that the MMD and TWIC be combined into a single document. Representatives of the USCG have stated on the record, in public comments, that it is the agency's long-term goal to combine the MMD and the TWIC, but that at this time the technology does not exist to place the amount of information contained in endorsements on licenses onto a combined MMD/TWIC card. If, however, the officer's license is retained in its present format as a separate document with all endorsements, there is no reason why the limited amount of information contained on an MMD could not be combined on a single card with the information required by TWIC. This would simplify the application process for the mariner, and would result in a situation in which unlicensed personnel would require only one document, a MMD/TWIC, while licensed officers would only have to carry two documents, a MMD/TWIC and a license. Retaining the license and combining the MMD/TWIC would further reduce the paperwork as well as the number of documents required of mariners.

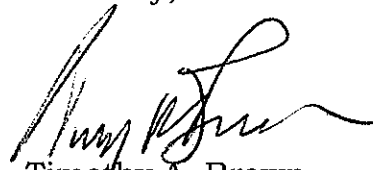
We fail to understand the justification for the proposed change in the licensing/documentation program and we have not been informed of any compelling

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reason to pursue the changes in documentation that are being proposed over the opposition of the licensed officer community.

Admiral Allen, we would very much like to have a continuing dialogue with you and your staff regarding the issues that concern the licensed officers of the U.S. merchant marine. We greatly appreciate the time you have given us to express our views. If any further clarification on the above issues or any other matters concerning licensed officers is needed, please feel free to have your staff contact MM&P Vice President George Quick at (410) 850-8700, extension 20, or Executive Assistant to the President Michael Rodriguez at (410) 850-8700, extension 23.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy A. Brown". The signature is fluid and cursive, with a large initial "T" and "A".

Timothy A. Brown  
International President

cc: RDML James A. Watson  
Director of Prevention Policy