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COMDTINST M16000.10A

USCG Marine Safety Manual



VOLUME V
INVESTIGATIONS
AND ENFORCEMENT

APRIL 2008

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COMDTINST M16000.10A

April 24, 2008

COMMANDANT INSTRUCTION M16000.10A

Subj: USCG MARINE SAFETY MANUAL, VOLUME V: INVESTIGATIONS AND ENFORCEMENT

1. PURPOSE. This Manual established policies and procedures for the activities associated with the investigation of marine casualties, investigation into recreational boating deaths, detecting violations of criminal and other statutes for law enforcement purposes, taking remedial law enforcement action such as civil penalties and suspension and revocation, investigating pollution, and enforcing international treaties.
2. ACTION. Area, district, and sector commanders, commanders of maintenance and logistics commands, Commander Deployable Operations Group, commanding officers of headquarters units, assistant commandants for directorates, Judge Advocate General, and special staff offices at Headquarters shall ensure that the provisions of this Manual are followed. Internet release is authorized.
3. DIRECTIVES AFFECTED. The USCG Marine Safety Manual Volume V: Investigations, COMDTINST M16000.10 dated 27 February 1989 and all Commandant (CG-545) Policy letters issued prior to the date of signature of this manual, except Policy letters 2-06 and 3-06, are hereby cancelled.
4. DISCUSSION.
 - a. This Manual incorporates all CG-545 Policy letters issued prior to the date of this letter with the exception of Policy letters 2-06 and 3-06. This manual outlines the domestic and international law and policy framework for marine safety investigations activities and gives fundamental policy guidance and operational procedures for the Marine Investigations Program.

DISTRIBUTION – SDL No. 149

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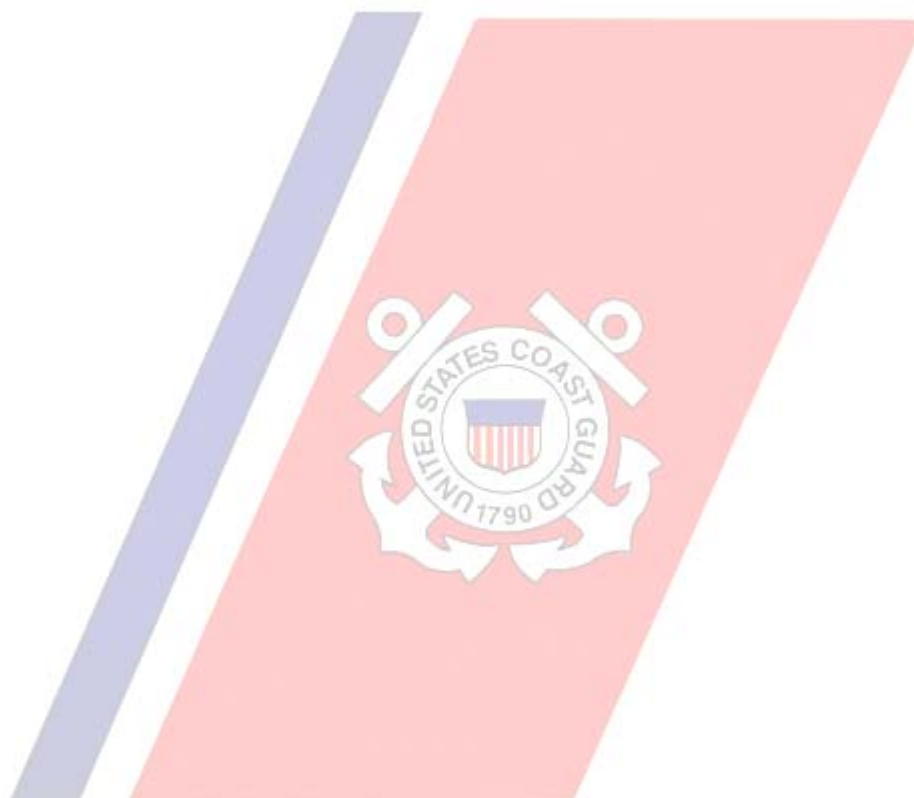
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- b. An electronic copy of the manual can be found in the resources section of CG Central. No paper distribution will be made of this manual. Official distribution will be made via the Coast Guard Directives System websites and CD-ROM.
- c. Comments, improvements, corrections, suggestions, new input and recommendations by district and field personnel are encouraged and should be forwarded to Commandant (CG-545).
5. FORMS/REPORTS. The forms called for in the Manual are available are available in USCG Adobe Forms in Standard Workstation or on the Internet: <http://www.uscg.mil/forms/>, CG Central at <http://cgcentral.uscg.mil> and Intranet at <http://cgweb2.comdt.uscg.mil/CGFORMS/Welcome.htm>. Shipping Articles, form CG-705, stock number 7530-00-F01-0020; Master's Report of Seaman Shipped or Discharged, form CG-735T, stock number 7530-00-F01-0170; and Merchant Marine Inspection Requirements, form CG-835, stock number 7530-00-F01-0250 may be ordered through the Engineering Logistics Center, Baltimore, MD. License To Merchant Marine Officer (Accountable Form), form CG-2849, may be obtained through the National Maritime Center.

JAMES A. WATSON /s/
Rear Admiral, U.S. Coast Guard
Director of Prevention Policy



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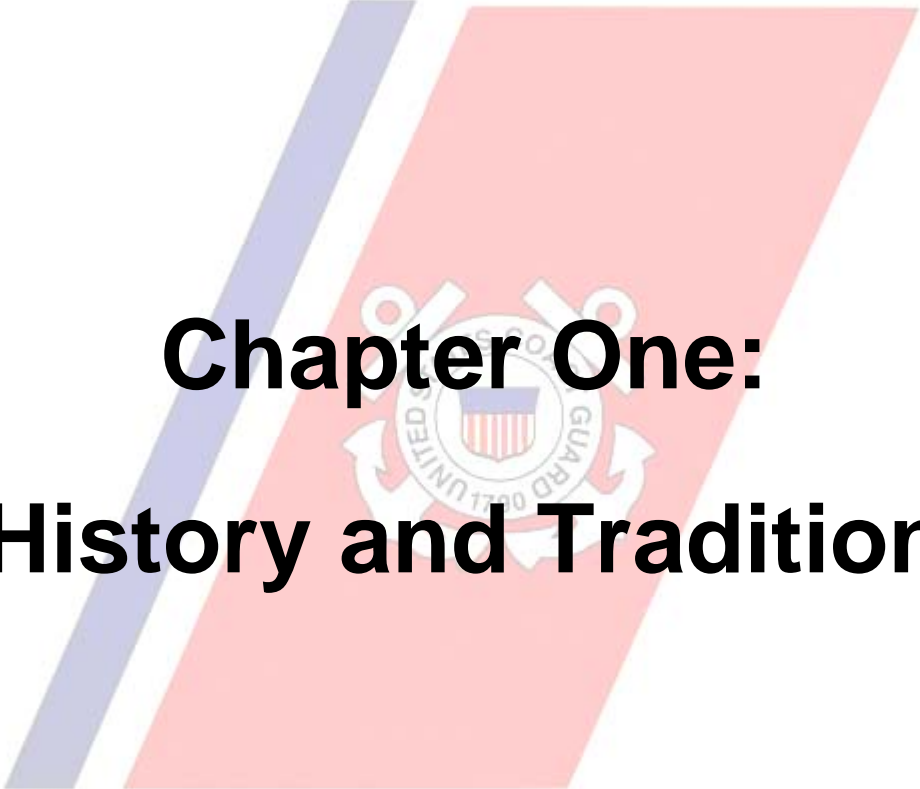
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Volume V: Investigations and Enforcement
PART A: ADMINISTRATION

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Chapter One:
History and Tradition

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A. INTRODUCTION

A.1. GENERAL

The United States Coast Guard (USCG) is the nation's leading marine safety organization and has broad, multifaceted jurisdictional authority and responsibilities. In executing these responsibilities, the Coast Guard relies upon the information it develops through detailed investigation of various occurrences. The specific statutory basis for the Coast Guard's Marine Investigations Program come from various statutes, including Title 46, U.S. Code (USC) Part 6301, which is indeed expansive:

“The Secretary shall prescribe regulations for the immediate investigation of marine casualties under this part or decide as closely as possible - (1) the cause of the casualty, including the cause of any death; (2) whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of federal law committed by any individual licensed under Part E of this subtitle has contributed to the cause of the casualty, so that appropriate remedial action under Chapter 77 of this title may be taken; (3) whether an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of law committed by any person, including an officer, employee or member of the Coast Guard, contributed to the cause of the casualty, or to a death involved in the casualty; (4) whether there is evidence that an act subjecting the offender to a civil penalty under the laws of the United States has been committed, so that appropriate action may be undertaken to collect the penalty; (5) whether there is evidence that a criminal act under the laws of the United States has been committed, so that the matter may be referred to appropriate authorities for prosecution; and (6) whether there is need for new laws or regulations, or amendment or repeal of existing laws or regulations, to prevent the recurrence of the casualty.”

A.2. TRADITIONAL PROGRAMS

After a long series of marine incidents in the early 1800s involving heavy losses of life and property, Congress enacted its first marine safety legislation and created a federal organization, the Steamboat Inspection Service, to preserve and protect the public from preventable marine incidents. The Coast Guard's current marine safety programs retain the philosophical objectives of those historical preservation and protection programs. In the modern world, a myriad statutes and regulations affect the marine environment and the marine industry. This resulted in the creation of several distinct Coast Guard programs concerned with marine safety and related issues: Commercial Vessel Safety (CVS), Port and Environmental Safety (PES), Marine Environmental Response (MER), Waterways Management (WWM), Recreational Boating Safety (RBS), and Bridge Administration (BA). The Marine Investigations Program supports all of these statute driven programs.

B. HISTORY

B.1. ORIGIN IN ACCIDENTS OF THE

The Coast Guard's Marine Investigations Program has been a vital arm of its marine safety activities since the 1830's when the program's predecessor, the Steamboat



1830s

Inspection Service, was established. In 1832 alone, approximately 14% of the steam vessels in operation were destroyed by explosion and over 1000 people were killed. These explosions happened largely because there were no vessel inspection laws or rules of navigation. In some cases, mariner incompetence, negligence, and/or misconduct were contributing causes. The U.S. Congress reacted to these facts by establishing inspection laws and creating the Steamship Inspection Service. Subsequent revisions to the law created both the Vessel Inspection and Marine Investigations Programs, whose precepts are largely unchanged in today's Coast Guard: 1) to ensure that licensed mariners were competent (and to revoke those licenses upon evidence of incompetence); 2) to ensure that the vessel safety laws were observed; and 3) to suggest where new laws or inspection rules were necessary to save lives.

B.2. Two OBJECTIVES OF THE PROGRAM

The two objectives given the Revenue Cutter Service and the Steamboat Inspection Service are every bit as appropriate and as challenging today as they were when issued. The Constitution must be conscientiously upheld, but this priority must be accomplished while at the same time 1) thoroughly determine the causes of incidents, and 2) effectively detecting and apprehending those who would circumvent the laws of our nation for personal reasons and private gain. We must also strive to conduct investigations in such a way that compliance is our goal, not imposing penalties. All the while, we must safeguard lives at sea and the environment by finding out why incidents occur and eliminating those causes, whether those causes have law enforcement consequences or not.

B.3. LEADERSHIP

Over the span of our more than two hundred years, the Coast Guard has earned a reputation as the world's premier maritime law enforcement and marine safety organization. Today, our expertise in these areas is internationally recognized, and we continue to lead the international community forward. Marine safety personnel must, therefore, uphold and enhance our preeminent reputation as the Coast Guard moves into its third century of service.

C. OVERVIEW OF THE MODERN MARINE SAFETY PROGRAM

C.1. INTRODUCTION

The historical missions have evolved into the modern personnel action and marine casualty investigation segments of the Marine Investigations Program; one of the primary purposes in conducting marine investigations is to determine if misconduct or negligence on the part of licensed mariners contributed in any way to causing an incident. Our investigation and law enforcement roles have grown since 1852, however, to include investigation into recreational boating deaths, detecting violations of criminal and other statutes for law enforcement purposes, taking remedial law enforcement action such as civil penalties and suspension and revocation, investigating pollution, and enforcing international treaties such as the International Convention on Load Lines, 1966 (ICLL), the International Convention for the Safety of Life at Sea 1974 (SOLAS), the International Convention on Standards of Training,



Certification and Watchkeeping for Seafarers, 1978 (STCW), and the International Convention for the Prevention of Pollution from Ships, 1973, as amended 1978 (MARPOL 73/78).

C.2. PROGRAM ACTIVITIES

The Marine Investigations Program accomplishes its mission through the investigation of various incidents, and through various follow-up activities designed to ensure these incidents are not repeated. Investigative activities are intended to uncover the causes of incidents, document the events and their causes, and initiate the necessary corrective actions. Investigations also detect and suppress federal law violations. Accordingly, this manual addresses itself primarily to the on-scene investigative process as the principal vehicle for the program.

C.3. FUNDAMENTAL PRINCIPLES OF THE PROGRAM

There are four fundamental principles upon which the conduct of all marine investigations is based. First, Congress clearly intends the Coast Guard to investigate many incidents and to board vessels subject to U.S. jurisdiction to enforce applicable maritime laws. Second, compliance with laws and principles protecting lives and the environment is the Coast Guard's objective, not punishment. Third, the vast majority of the vessels and shore facilities that are subject to Coast Guard jurisdiction are operated by law-abiding mariners and facility personnel who are entitled to be treated with the utmost courtesy and respect. Fourth and finally, the safety of Coast Guard personnel is always a vital concern. The continuing challenge is to optimize the balance of these elements in each situation.

D. PURPOSE, ORGANIZATION, AND USE OF THIS VOLUME

D.1. PURPOSE

D.1.a. General

This manual outlines the domestic and international law and policy framework for marine safety investigations activities and gives fundamental policy guidance and operational procedures for the Marine Investigations Program.

D.1.b. Operational Law Enforcement Program

This manual briefly addresses the Operational Law Enforcement Program to provide a general sense of Coast Guard responsibilities in this area. The underlying intent is to provide marine safety personnel with sufficient guidance to enable them to take prompt action when urgently required, and/or to refer emerging cases to Coast Guard experts in the Operational Law Enforcement Program.



D.2. ORGANIZATION

This manual is organized as follows:

- Part A: General policy and administrative procedures.
- Part B: Policies and information applicable to special types of investigation
- Part C: Policy dealing with enforcement, including suspension and revocation enforcement actions and the Coast Guard's Drug and Alcohol Program applicable to Merchant Mariners.

D.3. USE

Area Commanders, District Commanders, Sector Commanders and unit Commanding Officers shall ensure that they and their personnel are familiar with the provisions of this volume. The volume must be used in concert with appropriate marine safety laws and regulations. In any case of apparent conflict between provisions of this manual and any statute or regulation, the legal requirements shall be observed. The Office of Investigations and Analysis, Commandant (CG-545) should be informed of the conflict so that the matter can be resolved. In case of conflict between provisions of this volume and conventional practice, the appropriate operational commander and Commandant (CG-545) should be contacted for resolution of any doubt.

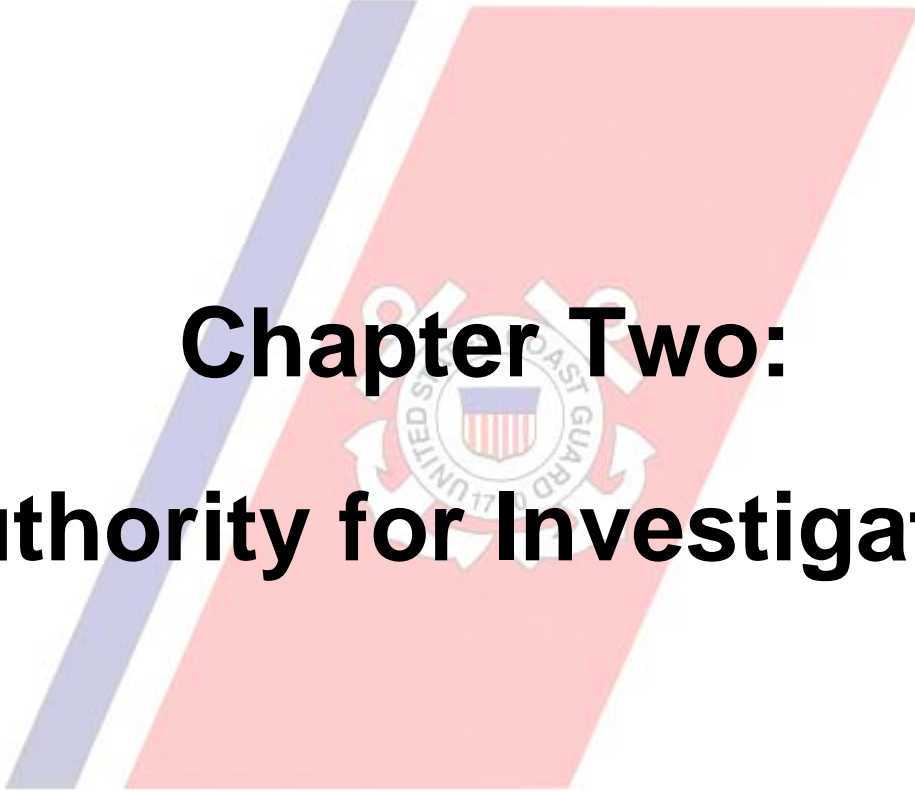
E. STATUS OF THE VOLUME

E.1. INTENDED PURPOSE

This manual is intended only to improve the internal management of the Coast Guard. Neither the manual nor any Coast Guard guidelines, procedures, instructions, directives, rules, or regulations implementing this manual shall create, or shall be construed to create, any right or benefit, substantive or procedural (including without limitation any right or benefit under the Administrative Procedures Act), legally enforceable by any party against the U.S., its agencies or instrumentality's, officers, employees, or any other person. The Coast Guard retains the discretion to deviate from or change this guidance without notice.



USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART A: ADMINISTRATION

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Chapter Two: Authority for Investigation

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I.1. AUTHORITY6



A. AUTHORITY VERSUS REQUIREMENT TO INVESTIGATE

A.1. INTRODUCTION

In considering how operational investigative resources will be deployed, Commanding Officers and their personnel should carefully consider their general legal authority to investigate various types of incidents along with any specific legal mandates related to the incident. The mere existence of legal authority does not automatically mandate that the Coast Guard investigate. There is a distinction between the authorities to investigate versus a requirement to investigate.

A.2. AUTHORITY TO INVESTIGATE

In general terms, the Coast Guard has been granted legal authority to investigate various incidents based upon various statutes and regulations. These legal authorities can loosely be thought of as permission to conduct investigative activities and as granting powers to the Investigating Officer (IO).

A.3. REQUIREMENT TO INVESTIGATE

In some instances, there has been confusion as to the legal authority to investigate versus a legal mandate for the Coast Guard to investigate. The authority to investigate should be viewed separately from the requirement to investigate (if any exists). 46 USC 6301 requires the Coast Guard to investigate certain incidents. The implementing regulations in 46 CFR 4 permit the Coast Guard to determine the level of investigation and investigative effort. In considering whether the Coast Guard is required to investigate, the IO should look for specific statutory or regulatory language mandating the investigation.

A.4. REPORTING OF INCIDENTS

There has been confusion with the requirement that the public report certain incidents versus the Coast Guard's legal authority to investigate that incident or with the legal requirement that the Coast Guard investigate the incident. Reporting requirements should be viewed as completely separate from both the authority to investigate and the requirement to investigate.

A.5. INVESTIGATIONS CONDUCTED UNDER MULTIPLE AUTHORITIES

Of note, IO's often conduct investigations under multiple authorities. Due care must be taken to understand the powers and limitations of each authority in order not to exceed that authority, possibly tainting your case by acting beyond the scope of the authority.

B. LEGAL AUTHORITY – GENERAL

B.1. INTRODUCTION

In general terms, when we speak of legal authority, we are saying that a specific statute or regulation allows or mandates for the Coast Guard to investigate. Jurisdiction covers where, when, and over whom that authority is exercised. When conducting an investigation you must establish both authority and jurisdiction before you begin.

B.2. GEOGRAPHIC

Geographic jurisdiction is defined as the territorial range of authority or control. In



JURISDICTION general, the Coast Guard’s geographical jurisdiction is from the waterfront seaward and all navigable internal/inland waters. Specific jurisdictional boundaries are defined in various statutes depending upon the issue in question.

B. 3. JURISDICTION OVER VESSELS In broad terms, the Coast Guard has authority over all U.S. vessels regardless of location anywhere in the world, and over all vessels located within U.S. waters.

B. 4. JURISDICTION OVER A PERSON In broad terms, the Coast Guard has certain authorities over owners, operators, managing operators, agents, masters, and individuals in charge of U.S. vessels and all vessels in U.S. waters. Additionally, the Coast Guard has authority over personnel holding a U.S. Coast Guard issued Merchant Mariner Credential (MMC).

B. 5. JURISDICTION OVER ACTS In addition to geographical area, vessels, and people, the Coast Guard has jurisdiction over certain acts. These include marine casualties, oil spills, and marine violations, to name a few.

C. GENERAL LAW ENFORCEMENT AUTHORITIES

C.1. INTRODUCTION The Coast Guard has broad authority to conduct many different types of investigations of many different actions in the maritime arena. Coast Guard investigative and law enforcement functions start out very broad in scope.

C.2. LAW ENFORCEMENT FUNCTIONS – 14 USC 89 In general 14 USC 89 authorizes commissioned, warrant and petty officers of the Coast Guard to go on board any vessel subject to the jurisdiction or operation of any law of the United States, whether on the high seas or on waters over which the United States has jurisdiction. These boardings are conducted in order to make inquires, examinations, inspections, searches, seizures, and arrests for the prevention, detection, and suppression of violations of U.S. laws.
[View Cite on Web](#)

C.3. CGIS – 14 USC 95 14 USC 95 authorizes special agents of the Coast Guard Investigative Service to carry firearms, execute and serve warrants, and to make arrests.

D. AUTHORITY TO CONDUCT MARINE CASUALTY INVESTIGATIONS

D.1. INTRODUCTION This section specifically addresses authority to conduct marine casualty investigations as well as other statutes directly relating to marine casualties. It delineates all the areas in which the Coast Guard has jurisdiction to conduct marine casualty investigations. As you read you will see that, along with the general authority to conduct investigations, other authorities or mandates are detailed.



**D.2. 33 USC
 1227 – WATERFRONT
 FACILITIES**

[View Cite on Web](#)

D.2.a. General

33 USC 1227 authorizes the Secretary to investigate any incident, accident, or act involving damage to a waterfront facility, or which affects or may affect the safety or environmental quality of the ports, harbors, or navigable waters of the United States. Additionally, this section gives the Secretary the power to issue subpoenas.

D.2.b. Delegation of Authorities

The Secretary has delegated the authority to Commandant via Department of Homeland Security Delegation Number 0170.1. The delegation is through the Port and Tanker Safety Act of 1978, which amends the Port and Waterways Safety Act (PWSA). The Commandant has delegated authority to conduct investigations and to issue subpoenas under 33 USC 1227 to the Captain of the Port (COTP). The COTP may authorize IOs to issue subpoenas under 33 USC 1227 on his or her behalf. Such authority shall be granted in the IO’s letter of designation.

**D.3. 43 USC
 1348 – OUTER
 CONTINENTAL SHELF**

[View Cite on Web](#)

43 USC 1348 provides for the investigation of casualties resulting from operations on the Outer Continental Shelf (OCS). Additionally, it authorizes the issuing of subpoenas and administering of oaths to witnesses. This authority is delegated to the IO in 33 CFR 140.

**D.4. 46 USC
 3315 – REQUIRED
 DISCLOSURE**

[View Cite on Web](#)

46 USC 3315 requires the disclosure of certain marine casualties by licensed individuals during an inspection or investigation. Note: This is not an additional reporting requirement.

**D.5. 46 USC
 3717 –MSIS**

[View Cite on Web](#)

Requires a Marine Safety Information System (MSIS) and authorizes collection of histories of vessels that operate on the navigable waters of the U.S. The Marine Information for Safety and Law Enforcement (MISLE) data system replaced MSIS.

**D.6. 46 USC
 6101 – REPORTING
 REQUIREMENTS**

[View Cite on Web](#)

46 USC 6101 requires the reporting of marine casualties and incidents involving United States flag vessels occurring anywhere in the world, and foreign flag vessels operating on the navigable waters of the United States.

**D.7. 46 USC
 6301- SCOPE**

[View Cite on Web](#)

46 USC 6301 provides the authority to conduct marine casualty investigations, as well as sets forth the scope of the investigation of marine casualties and incidents.

**D.8. 46 USC
 6304 – SUBPOENA
 AUTHORITY**

[View Cite on Web](#)

Provides an IO who is conducting a marine casualty investigation with the necessary subpoena authority to require the attendance and testimony of witnesses and the production of evidence. It also authorizes a district court of the United States to direct compliance with a subpoena.

E. AUTHORITY TO CONDUCT POLLUTION INVESTIGATIONS

**E.1.
 INTRODUCTION**

This section specifically addresses the authority to conduct pollution investigations as well as other statutes directly related. It delineates the areas in which the Coast



Guard has jurisdiction to conduct pollution investigations. Many of the statutes for pollution investigations are the same as those for marine casualty investigations.

**E.2. 33 USC
1227 – WATERFRONT
FACILITIES**

[View Cite on Web](#)

The same authority that allows marine casualty investigations of waterfront facilities also authorizes the Secretary to investigate actions by or involving waterfront facilities, which affect or may affect the environmental quality of the ports, harbors, or navigable waters of the United States. (See D.2 above)

**E.3. 33 USC
1321 – FEDERAL
WATER POLLUTION
CONTROL ACT
(FWPCA)**

[View Cite on Web](#)

E.3.a. General

Prohibits the discharge of oil or designated hazardous substances into or upon the navigable waters of the U.S., adjoining shorelines, or into or upon the waters of the contiguous zone or waters over which the U.S. exercises exclusive management authority in quantities that may be harmful. Also, jurisdiction is extended to the high seas if you can prove that a discharge will impact the coastline of the United States or natural resources in the Exclusive Economic Zone (EEZ).

Additionally, it authorizes the Coast Guard to issue and enforce pollution prevention regulations; to assess penalties for unlawful discharge of oil and hazardous substances, and for violation of prevention and removal regulations; to require vessels to have evidence of financial responsibility; and to require notification of discharges.

It also authorizes withholding of a clearance or permit if any owner, operator, or person in charge of a vessel is liable or believed to be liable for a civil penalty under the Federal Water Pollution Control Act (FWPCA). Finally, this section gives the Administrator or Secretary the power to issue subpoenas.

E.3.b. Delegation of Authorities

The Secretary has delegated the authority to Commandant via Department of Homeland Security Delegation Number 0170.1. The Commandant has delegated authority to conduct investigations and to issue subpoenas under 33 USC 1321 to the COTP. The COTP may authorize IO's to issue subpoenas under 33 USC 1321 on his or her behalf. Such authority shall be granted in the IO's letter of designation.

**E.4. 33 USC
1417 – OCEAN
DUMPING**

[View Cite on Web](#)

33 USC 1417 authorizes the Coast Guard to conduct surveillance and other appropriate law enforcement activity (such as pollution investigation) to prevent the unlawful transportation of material for dumping and unlawful dumping by U.S. and foreign vessels.



**E.5. 33 USC
 1901-1912 -
 APPS (MARPOL)**

[View Cites on Web](#)

E.5.a. General

33 USC 1901-1912 implements the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relation thereto (MARPOL 73/78). Section [1903](#) authorizes the Coast Guard to enforce provisions of the MARPOL convention, the Act to Prevent Pollution from Ships, and Annex IV of the Antarctic Protocol relating to discharges of vessels on the high seas and Exclusive Economic Zone (EEZ). Also, Section [1907](#) gives the Secretary authorization to conduct investigations into violations of this statute as well as issue subpoenas.

E.5.b. Delegation of Authorities

The Secretary has delegated the authority to Commandant via Department of Homeland Security Delegation Number 0170.1. The Commandant has re-delegates authority to conduct investigations and to issue subpoenas under 33 USC 1907 to the COTP. The COTP may authorize IOs to issue subpoenas under 33 USC 1907 on his or her behalf. Such authority shall be granted in the IO's letter of designation.

F. AUTHORITY TO CONDUCT RECREATIONAL BOATING ACCIDENT INVESTIGATIONS

**F.1. 46 USC
 6301 -
 INVESTIGATION
 MARINE CASUALTIES**

[View Cite on Web](#)

The authority that allows the Coast Guard to conduct marine casualty investigations on commercial vessels also allows investigations on recreational vessels. All jurisdictional boundaries are the same. In general, as the Coast Guard does not have the resources available, these investigations are deferred to the state; however, there are some instances in which either the state does not conduct boating accident investigations or they do not have jurisdiction (i.e. federal waterways). In these cases, the Coast Guard conducts the investigation.

G. AUTHORITY TO CONDUCT PORTS AND WATERWAYS SAFETY INVESTIGATIONS

**G.1. 33 USC
 1227 - WATERFRONT
 FACILITIES**

[View Cite on Web](#)

In addition to marine casualty investigations and pollution investigations, this statute allows the Coast Guard general geographic jurisdiction. This jurisdiction covers investigations occurring in the ports, harbors, or navigable waters of the United States. (See D.2. above.)



H. AUTHORITY TO CONDUCT PERSONNEL INVESTIGATIONS

**H.1. 46 USC
2103
SUPERINTENDENCE OF
THE MERCHANT
MARINE**

46 USC 2103 provides the Secretary with broad authority over superintendence of the merchant marine and involved personnel, and to enforce the laws with respect to vessels and seamen.

[View Cite on Web](#)

**H.2. 46 USC
7701 TO 7707 -
ADMINISTRATIVE
PROCEDURE**

The authority for personnel investigations is found in 33 USC Chapter 77 and 46 CFR Part 5.

[View Cite on Web](#)

**H.3. 46 USC
7705 - SUBPOENAS
AND OATHS**

This cite establishes that those officials designated to investigate or preside at a hearing on matters that are grounds for suspension and revocation have the authority to administer oaths and issue subpoenas.

[View Cite on Web](#)

I. AUTHORITY TO CONDUCT CIVIL PENALTY INVESTIGATIONS

I.1. AUTHORITY

Various laws and regulations give the Coast Guard the authority to issue civil penalties for violations of the law. The regulation governing civil penalty reporting and investigation is 33 CFR 1.07-10 ([View Cite on Web](#)) and calls for Coast Guard personnel to investigate or evaluate apparent violations.

Remember you do not have the authority to issue subpoenas or administer oaths unless authorized by statute and/or you are properly delegated that authority.



USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART A: ADMINISTRATION

A large, stylized graphic consisting of a blue diagonal stripe on the left, a white diagonal stripe in the middle, and a red diagonal stripe on the right, all slanted upwards from left to right. A faint, semi-transparent USCG seal is overlaid on the red stripe.

Chapter Three: Overarching Policies

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**A. MARINE INVESTIGATIONS PROGRAM VISION AND MISSION**

- A.1. VISION** The Coast Guard will investigate marine incidents; recommend corrective actions that reduce recurrences; take all appropriate administrative, civil, and criminal enforcement action required for a given incident; and assure the collection and dissemination of the highest quality information on marine casualties, injuries, pollution, marine violations, and personnel actions.
-
- A.2. MISSION** **The Marine Investigations Program** investigates deaths, injuries, property loss, and environmental damage to determine the associated human performance, equipment, and environmental causal factors; investigates merchant mariner negligence, misconduct, incompetence, and dangerous drug use leading to appropriate remedial MMC suspension or revocation; investigates criminal and civil offenses for assessment of civil penalties or referral for criminal prosecution; analyzes trends and risks in the maritime industries.
-

B. COMMITMENT TO PROFESSIONALISM

- B.1. INTRODUCTION** The Coast Guard has earned an excellent reputation as the world's premier marine safety organization. In order to maintain the high level of performance that led to this reputation, all marine safety personnel must make a personal commitment to professionalism in all aspects of their duties. Investigating Officers (IO) shall maintain the highest standards of ethical conduct as law enforcement officers and public servants.
-
- B.2. Demeanor** IOs must not display a narrow, rigid, or arbitrary application of the law. IOs must always remember that no action should be taken without considering whether it is truly in the public interest.
-
- B.3. LEGAL RIGHTS OF CITIZENS** IO's must afford every person involved in an investigation his or her legal rights and respect the dignity of every human being. IOs should not condone violations of the law, but the proper target of their efforts is the behavior, not the person.
-
- B.4. ATTITUDE** IOs must be courteous and professional. The Coast Guard depends on the law-abiding public for information. IOs can only obtain this information in an atmosphere of cooperation in the interest of marine safety. IOs must believe in the policies of the Marine Investigation Program, and must convince the public of the program's value. Courtesy and tact are the keys to achieving public cooperation. The best possible relationship with the public and mariners is through courtesy, fairness, and impartiality without sacrificing professional dignity and integrity, even under the strongest provocation. IOs are ambassadors of the Marine Safety program and should promote its goals.
-
- B.5. IMPARTIALITY** IOs must have a fair and impartial attitude toward matters under investigation, and must not be influenced by political, economic, or social considerations. Further, IOs must be careful not to let past professional experiences or regulatory agendas bias



their views or the investigation. Allowing such biases will compromise the fact-finding and policy feedback purposes of the investigation. The fact-finding and analysis stages of the investigation should remain two separate stages of the investigation to eliminate or reduce bias. IOs must be cautious in their remarks and actions during the course of an investigation, keeping in mind that remarks, actions, and motives can easily be misinterpreted by the public.

B.6. DISCRETION

B.6.a. Press and Public

Investigations are not strictly confidential, and IOs may release information reasonably demonstrated to be factual to the press or public. IOs must carefully observe, however, the provisions of the Privacy Act and the Freedom of Information Act (FOIA) in these releases. Coast Guard personnel shall not disclose the names of individuals employed on any vessel who provide information about defects and imperfections in matters subject to regulation and inspection ([46 USC 3315\(b\)](#)). To do so subjects an IO to significant penalties.

B.6.b. Other Investigators or Agencies

IOs can benefit from discussing cases with other investigators, particularly more experienced investigators. IOs should be cautious, however, in discussing cases with personnel outside the Coast Guard, even when the Coast Guard is cooperating with other agencies in the investigation. Discussions should avoid speculation, opinion, and the Coast Guard's strategy in the investigation.

C. SAFETY OF COAST GUARD PERSONNEL

C.1. INTRODUCTION

The safety of USCG personnel involved in Marine Safety operations must always be a paramount concern. While a reasonable measure of risk-taking is inherent in our service, IOs must take all reasonable steps to maintain personal safety, including adhering to minimum safe work practices and other policy respectively contained within the Marine Safety Manual, Volume I, Chapter 10 and subsequent appendices (CIM 16000.6) and the Safety and Environmental Health Manual (CIM 5100.47).

C.2. FORCE PROTECTION

Virtually all Marine Safety activities conducted during an investigation occur with the consent of the vessel's master or facility manager and are cordial. In some situations, however, IOs may encounter significant hostility. If any IO believes that they or any other Marine Safety personnel will be in jeopardy in any way, they should discontinue the on-scene investigation until appropriate steps to ensure safety have been taken.

C.3. TWO PERSON INVESTIGATIVE TEAMS

As a matter of policy, IOs shall, wherever operational limitations permit, deploy to the field investigative teams consisting of at least two individuals. Two person teams allow for greatly increased safety and security, as well as improving the quality of on-scene investigation.

C.4. SAFE WORK PRACTICES

To enlist full command support for the Safety and Occupational Health program, each district and command is authorized to develop controls (safe work practices)



suited to the unit's specific needs encompassing, but not limited to, all on-scene activities conducted by IOs.

D. ENFORCEMENT STANCE AND RELATIONSHIP TO RESPONSE ACTIVITIES DURING A MARINE INVESTIGATION**D.1. GENERAL**

Generally speaking, marine casualty investigations that uncover criminal activity do not change the process by which marine investigations are conducted. The same findings of fact are collected and evidence is gathered. Specific issues that come up when potential criminal activity is detected are covered below. From a response stance, marine casualty investigations are secondary to the saving of life at sea, protection of property, and protection of the marine environment. An investigation should never supersede or impinge upon search and rescue or pollution response activities, but must be carried on concurrently. Many investigation activities, particularly those for pollution investigation, are integrated and required parts of pollution response. Further, many investigation activities (such as securing the scene of the incident or directing drug and alcohol testing) are time-critical, and must receive the appropriate priority during a pollution response or search and rescue operation. IOs should ensure that their time-critical needs are included in the standard incident response protocols.

D.2. STATEMENTS TO WITNESSES

Various industry representatives and lawyers have alleged that the Coast Guard attempts to lull mariners and other maritime personnel into a false sense of security with words to the effect of "this is not a criminal inquiry," or "This is just an investigation for cause." Such statements are misleading and shall be avoided. Under no circumstances should an IO "cut a deal" with crewmembers or their attorneys to gain assistance. Similarly, Coast Guard personnel must not make any representation as to a possible grant of immunity. Only certain Department of Justice (DOJ) personnel can grant immunity. Only the District Commander can decide whether to refer a case for criminal prosecution.

D.3. NO PRESUMPTION OF CRIMINAL ACTIVITY

IOs shall bear in mind that one of the purposes outlined in [46 USC 6301](#) is to determine "whether there is evidence that a criminal act under the laws of the United States has been committed, so that the matter may be referred to appropriate authorities for prosecution." It is important to stress that Coast Guard investigators should not begin its investigation with a presumption one way or the other as to criminal acts.

D.4. QUESTIONS ABOUT THE PURPOSE OF AN INVESTIGATION

IOs should cite the specific authority that they are acting under (sometimes several) when asked as to the purposes of an investigation. If asked about the possibility of criminal liability by a witness or involved person before or during an interview, the IO should respond with words to the effect that "the Coast Guard is free to choose civil, criminal, or administrative enforcement when an apparent violation is detected, and any decision to take one type of action does not preclude another type of action."



D.5. RELEASE OF REPORTS OF INVESTIGATION WHEN A CRIMINAL INVESTIGATION IS ONGOING

In general, investigations under this volume that have an associated criminal investigation shall be kept open and shall not be released either internally or to the public until such time as the District Commander and criminal prosecutors give clearance to close and release the case.

D.6. TAINTING OF CRIMINAL PROSECUTION CASES

Because an IO cannot know at the outset whether evidence of criminal act will be encountered in any given case (unless the criminal act is evident, such as murder), IOs must pursue all investigations with such techniques and practices as guarantee that evidence collected and facts uncovered will not taint any future criminal prosecution. This applies in all cases, regardless of the Coast Guard's initial reason for investigation. The procedures outlined in Part B of this volume for fact-finding will assist in protecting evidence for such purposes.

D.7. COOPERATION DURING RESPONSE EFFORTS

Response personnel arriving at the scene of a Marine Casualty involving an actual or potential environmental incident should consider that crewmembers face an unusual situation. On one hand, if crewmembers provide full cooperation and information to Coast Guard personnel, any statements they make could be used in potential criminal, civil or administrative proceedings. On the other hand, failure to cooperate in the response could expose their employer to potential civil penalties, or loss of defenses or limits of liability in civil cases.

D.8. COAST GUARD RESPONSIBILITY FOR RESPONSE AND INVESTIGATION

IOs must recognize that the situation faced by the crew does not in any way affect the Coast Guard's responsibility to respond (including gaining cooperation of the crew to assist) and/or to fully investigate the incident and take appropriate action. The investigation should only be delayed in order to best meet immediate response concerns. The investigation should not be suspended or delayed because of the crew's situation.

D.9. REQUEST FOR ATTORNEYS DURING A RESPONSE

If an individual requests that an attorney be present prior to answering any questions during a response, Coast Guard personnel should contact their servicing SJA office.

D.10. REQUEST FOR ATTORNEYS DURING A MARINE INVESTIGATION

The IO should advise the witness that they are free to consult their own attorney on matters prior to giving testimony. Wherever possible, a mutually agreed upon time and place offering reasonable opportunity to consult with an attorney should be arranged. Such delay for consultation should be reasonable given the ready availability of attorneys.

D.11. APPROACH TO ON-SCENE REFUSALS TO ANSWER QUESTIONS

If the circumstances described above occur on-scene, this does not mean the Coast Guard must stop asking reluctant crewmembers for assistance or stop asking questions. IOs may continue asking questions of reluctant crewmembers just as they would a cooperative crewmember. However, IOs should not single out, harass or badger reluctant crewmembers. Further, any attempt to encourage a reluctant crewmember to participate in a response or investigation should not be in the form of a threat of subsequent prosecution or other action.



D.12. MIRANDA WARNINGS

Miranda warnings are not normally required during marine casualty investigations. Miranda warnings are only required when a suspect is in custody and subject to interrogation. Courts have routinely held that routine Coast Guard boardings (including marine casualty investigations) are not custodial, thus Miranda does not apply. **The servicing Legal Office should be contacted for further guidance as to when Miranda warnings are required.** Also see Chapter 3 of the U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series). Before interrogating a witness in a custodial situation, IOs shall administer Miranda Warnings and scrupulously observe the witnesses' right to counsel.

D.13. SUBPOENAS FOR RELUCTANT WITNESSES

Reluctant witnesses may be subpoenaed to give testimony at a time and place convenient to the IO. Such subpoenas should be issued, however, only when the IO and the Command are willing to enforce such subpoenas. See Section F below for more information.

D.14. APPROACH TO INVALID USE OF FIFTH AMENDMENT PROTECTION

When the IO believes that an individual is inappropriately asserting a Fifth Amendment protection for testimony, the IO should contact the servicing Legal Office. Although highly unusual, when the situation warrants the use of resources, an order may be sought from the federal district court directing the person to testify. Similarly, when appropriate, DOJ may grant immunity thereby voiding Fifth Amendment protection issues.

D.15. OBSTRUCTION OF JUSTICE

A crewmember or attorney who fails to provide information or assistance should not be considered to be obstructing justice. However, if field personnel feel a situation is rising to the level of obstruction of justice, contact the servicing Legal Office prior to taking any action.

D.16. ATTORNEY INTERFERENCE DURING THE INVESTIGATION

The Coast Guard can direct attorneys not to interfere with response or investigative efforts in accordance with 18 USC 1505 and 18 USC 1512. However:

1. Attorneys cannot be prevented from advising their client(s), and
2. The Investigating officer should consult their servicing legal office concerning appropriate measures for controlling the investigation.

D.17. ATTORNEY DEMANDS TO BE PRESENT DURING INTERVIEW OF NON-CLIENTS

In general, exclusion of any person including an attorney is inappropriate. Members of the press and public may in general be excluded from all or a portion of an interview when:

The IO reasonably expects the witness to act as an informant pursuant to [46 USC 3315](#); or

The IO has specific and documented evidence that the person is disrupting the course of the investigation (i.e., exclusion is necessary to maintain control of the investigation).

The IO may avoid any conflict with witness interviews by conducting them at a Coast Guard facility rather than on-scene.



D.18. APPROACH TO ATTORNEYS ON-SCENE DURING MARINE CASUALTY INVESTIGATIONS

In the event an attorney is already on board and has advised his or her client not to speak to the Coast Guard when IO arrives, the following actions should be taken:

Obtain the name of the attorney.

Ask the attorney for the identity of crewmembers, employees or corporations he or she is representing. Try to verify that the client agrees to this representation. Sometimes, a company may dispatch an attorney to the scene who claims to represent the company and the entire crew. Such joint representation may be a conflict of interest. Where the investigating officer identifies a potential conflict, they should contact their servicing legal office for assistance before discussing the matter with the attorney.

Inform the attorney of the provisions of Coast Guard responsibilities during responses and investigations as above.

Call the servicing Legal Office if an attorney representing the one crewmember or the company demands to be present during interviews with other crewmembers.

The Coast Guard may not remove an attorney from the scene unless he or she is physically impeding the response.

E. SUBPOENAS

E.1. General

One of the most powerful tools that an Investigating Officer (IO) has is the subpoena. Subpoena authority is granted under various statutes. They are as follows:

[33 USC 1227](#) (Waterfront Facility Casualties)

[33 USC 1321](#) (Pollution Incidents)

[33 USC 1907](#) (MARPOL Violations)

E.1. GENERAL

[43 USC 1348](#) (OCS Casualties)

[46 USC 6304](#) (Marine Casualties)

[46 USC 7705](#) (S&R Investigations)

An IO can issue a subpoena during an investigation (at any level except preliminary) provided that the authority for the investigation is derived from one of the authorities listed above. An extreme example of the power of the subpoena would be a situation in which an IO (with exceptional reasons) issues a subpoena to a vessel master or agent to provide access to the vessel at a reasonable location at a specific time for examination by an IO.



**E.2. [14 USC 89](#)
INVESTIGATIONS**

The Coast Guard is authorized to conduct investigations under its general law enforcement authorities (ex: security incidents). Coast Guard Officer, Petty Officers and Warrant Officers possess 14 USC 89a authority at all times when on board a vessel in addition to any specific authority they may have to investigate under the statutes listed in paragraph E.1.

**E.3. SERVICE OF
SUBPOENAS**

E.3.a. Compel the Appearance of a Respondent or Witness to an Interview or Hearing

Whenever the IO has reason to believe that a witness or respondent will not appear voluntarily at the stated time and location of an interview or hearing, a subpoena should be served. The subpoena should be prepared in duplicate; the original for service and the duplicate copy showing the date and place of service, and signature (if witness will sign) or fact that the original was delivered by certified mail, with return receipt signed by the addressee only. The duplicate copy of the subpoena or certified mail receipt may be used in evidence if the witness fails to appear. If the subpoena is not served, a written statement shall be provided, including information from the U.S. Postal Service, explaining the non-delivery and the reasons for failure to serve.

E.3.b. Service On Foreign Persons

The Coast Guard's subpoena power extends to foreign nationals within U.S. jurisdiction. These persons occasionally refuse to appear or testify before a Marine Board of Investigation (Marine Board) or an IO, believing that they are not answerable. In such cases, the Marine Board recorder or the IO should present all facts, including copies of the subpoena(s) issued, to their servicing Legal Office. The servicing legal office may coordinate with Customs and Border Patrol (CBP) to prevent the individual's departure from the U.S. under 8 CFR §215. The servicing legal office may also coordinate with the U.S. attorney to seek a "show cause" order from the cognizant federal district court which would require the individual to comply with the subpoena.

E.3.c. Compel the Production of Evidence

The Marine Board and IO are empowered by [46 USC 6304](#) to require production of books, papers, documents and any other evidence. When such evidence is desired, a subpoena shall be served upon the custodian(s) of such material. The material should be described in sufficient detail as to be readily identifiable.



E.3.d. Subpoenas and Cooperative Witnesses

It is sometimes in the interest of the Coast Guard to subpoena cooperative witnesses, as a witness under subpoena is in a more favorable position under the laws relating to the protection of witnesses. Individuals under subpoena are usually less reluctant to give testimony detrimental to friends or relatives or in some way derogatory to themselves. Furthermore, some private agencies (such as drug testing consortiums) routinely require subpoenas for the production of their records, as a protection to themselves. Additionally, some employers require a subpoena before they will permit an employee to miss work in order to testify.

E.4. PAYMENT OF WITNESSES

A notation of the time and date of service shall be made by the serving officer. When the witness appears, the Marine Board recorder or IO shall endorse the original subpoena to show the time and place that the witness participated to substantiate the claim for payment. The witness should also complete Claim for Fees and Mileage of Witness, SF-1157 in order that the recorder or IO may process it for reimbursement. Funds for reimbursement should come from the investigation convening authority. In cases where the person subpoenaed resides far from the location of the hearing or the person's financial position makes the person reluctant to appear, government transportation requests may be issued to furnish transportation. [NOTE: Although a subpoena can be enforced judicially only within the jurisdiction of the federal district court, payments for witnesses' travel beyond the limits of the judicial district are not prohibited.]

E.5. FORCE PROTECTION WHILE SERVING SUBPOENAS

Oftentimes there is a question of personal safety while service subpoenas in person. When in-person service is necessary (instead of certified mail service), force protection must always be considered. The following is a list of force protection options in order of preference:

ABOARD VESSELS:

IOs, properly qualified and equipped IAW the U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series) to carry firearms;

Accompanying armed boarding team members ; properly qualified and equipped IAW the U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series);

ASHORE:

Accompanying Coast Guard Investigative Service agents; and

Accompanying other federal, state, or local law enforcement agents.



E.6. ENFORCEMENT OF SUBPOENAS

When serving a subpoena, the IO should ensure that a reasonable request is made and the person has a reasonable period of time to comply. When an IO is conducting the investigation and when no enforcement action is ongoing, the IO should contact the servicing Legal Office if a subpoena is ignored. The legal officer may seek enforcement of the subpoena through the cognizant federal district court.

During an S&R proceeding, the enforcement of a subpoena after the investigation is directed by the Administrative Law Judge (ALJ). The ALJ will issue an order to comply, and if that order is ignored the enforcement process will be the same as described above.

E.7. SUBPOENA CONSISTENCY

All subpoenas to be issued from a unit SHALL be reviewed and released by the Senior Investigating Officer (SIO) or other senior-level single individual authorized by the Commanding Officer for consistency, regardless as to whether the subpoena is being issued by the OCMI or the COTP.

F. COOPERATION WITH OTHER UNITS/AGENCIES

F.1. INTERNAL AND EXTERNAL REFERRALS

When referring a case to or requesting internal assistance from another Coast Guard unit during the course of an investigation (e.g. CGIS assistance, over-flights, or other CG platforms), the request should be via the District Commander.

In cases where a marine casualty or incident may have been caused by criminal acts or criminal negligence, the CGIS should be contacted as soon as possible, particularly if the collection of evidence from electronic shipboard equipment, such as computers, GPS, LORAN, etc., is being considered. The CGIS has special agents specially trained and equipped to conduct forensic analysis and exploitation of computers and other electronics media for evidentiary value.

When referring a case or requesting assistance external to the Coast Guard during the course of an investigation (e.g. FBI, EPA, or other agencies), the request shall be to Commandant (CG-545) via the District Commander. This includes participation in multi-agency task forces when sharing Coast Guard information with other agencies and/or requesting assistance or offering Coast Guard action.

F.2. FEDERAL LAW ENFORCEMENT AGENCIES

F.2.a. General

Under [14 USC 141](#) the USCG may assist federal, state, and local authorities in executing their responsibilities in areas where USCG personnel are especially qualified. In turn, the USCG may request assistance from these agencies. There is no requirement to provide the requested assistance merely because USCG resources are available.



F.2.b. Use of Force Policy

In all situations in which Marine Safety personnel assist other federal, state or local agencies, the appropriate operational commander shall ensure that Coast Guard personnel are cognizant of and comply with the Coast Guard Use of Force Policy, regardless of the policy of the assisted agency. The Coast Guard Use of Force Policy can be found in the Maritime Law Enforcement Manual, COMDTINST M16247.1 (series).

F.3. STATE AND LOCAL LAW ENFORCEMENT AGENCIES

F.3.a. General

Marine Safety personnel should not normally undertake law enforcement activities under the sole state/local jurisdiction except to provide state or local officers assistance so that these officers may execute their duties.

F.3.b. Cultivating Relationships

IOs should cultivate relationships with State and Local Law Enforcement Agencies in order to foster interagency cooperation. A boating under the influence violation, for instance, is a violation of federal law as well as local and state laws. In this instance, the interests of Marine Safety are best served by the coordinated action of the Coast Guard and State or local agencies.

F.3.c. Conduct of Criminal Law Enforcement.

All investigations and referral of criminal offenses shall be conducted in accordance with the guidance in Part C of this volume regardless of interagency coordination.

F.4. FOREIGN GOVERNMENTS

F.4.a. General

When conducting investigations that involve the need to contact foreign governments, field units should request the assistance of Commandant (CG-545) via the District Commander. Commandant (CG-545) can be reached during the workday at (202) 372-1029, and after hours through the Coast Guard Command Center at (800) DAD-SAFE. As a matter of policy, the Coast Guard will conduct the appropriate level of enforcement action against foreign vessels, companies, operators, etc., under U.S. law prior to referring the matter to the flag state.

F.4.b. Interference with or by Foreign Governments

Coast Guard personnel must never interfere with legitimate foreign law enforcement. Any communication with foreign law enforcement personnel should be reported via the chain of command and may require notification of the State Department and/or activation of the Maritime Operational Threat Response (MOTR) plan in accordance with Appendix D of the U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series). IOs should exercise extreme sensitivity when conducting investigations in the territorial seas or jurisdiction of foreign countries and should not undertake such activities without consulting with the appropriate servicing Legal Office.



**F.5. FOREIGN
 MERCHANT MARINERS**

F.5.a. Foreign Merchant Mariners

When an incident involves a foreign merchant mariner, the IO may find flag administration participation in the investigation to be beneficial. Foreign mariners may be more willing to respond to the IO's questions when they believe their participation will have consequences in their home country.

F.5.b. Remedial Action against Foreign Merchant Mariners

The Coast Guard often lacks jurisdiction over the credentials of foreign Merchant Mariners. In the event that the investigative process uncovers evidence of misconduct or negligence on that mariner's part, remedial action alternatives are relatively few. If the specific misconduct is in violation of applicable federal laws or regulation, the Coast Guard may pursue criminal prosecution or civil penalties, depending upon the infraction. Negligent operation of a vessel, for instance, carries both criminal and civil penalties under [46 USC 2302](#).

If, as in many cases, the misconduct or negligence carries no penalty under U.S. law or was committed outside of the United States' jurisdiction, the IO should take any enforcement action legally available (if any) and refer the matter to the flag state via the District Commander and Commandant (CG-545).

**F.6. NATIONAL
 TRANSPORTATION
 SAFETY BOARD
 (NTSB)**

Both the Coast Guard and the NTSB have jurisdiction to investigate major marine casualties. In an effort to objectively distinguish which agency should have lead during the investigation of a major marine casualty, the Coast Guard created a tool called the "brightline." The brightline determines how much and how recent was the last Coast Guard contact/control over a vessel involved in a casualty. When it is determined that there was sufficient Coast Guard contact within a recent time period, the NTSB will generally take lead in the investigation. The brightline is used solely by Commandant (CG-545) while consulting with NTSB about a major marine casualty. Units are not to undertake direct notification of NTSB or calculation/use of the brightline. Commandant (CG-545) will coordinate contact with NTSB for all issues. A unit shall never contact NTSB directly without authorization from Commandant (CG-545).

**F.7. DEPARTMENT
 OF THE INTERIOR
 (DOI) / MINERALS
 MANAGEMENT SERVICE
 (MMS)**

F.7.a. Coast Guard and MMS Responsibilities

Both the Coast Guard and the DOI's Minerals Management Service (MMS) (formerly the Conservation Division, U.S. Geological Survey) have jurisdiction to investigate casualties occurring on structures on the Outer Continental Shelf (OCS). The CG/MMS Memorandum of Understanding (MOU) of 30 September 2004, and the regulations governing OCS policy ([33 CFR 140-147](#)), provide guidance for conducting investigations of this nature.



F.7.b. Investigative Lead

Investigations should be conducted so as to avoid a duplication of effort. However, the Coast Guard and MMS have differing responsibilities. A Coast Guard report is required for those incidents meeting the requirements of [33 CFR 140.201](#), [33 CFR 146.30](#) or [33 CFR 146.303](#). If the casualty is one in which MMS is the lead agency, the Coast Guard report may indicate that the cause of this casualty is being investigated by the MMS.

F.8. DEPARTMENT OF JUSTICE (DOJ)

F.8.a. Referral for Criminal Enforcement Action

Investigations indicating evidence of criminal violation shall be referred to the U.S. attorney in accordance with [33 CFR 1.07-90](#). Such referrals shall be made by the District Commander (dl) as soon as there is sufficient evidence to support the violation. Where 33 CFR 1.07-90 requires the Commandant's approval prior to referral, the completed Commandant's Action will constitute authority for such referral. If, for any reason, referral to the U.S. attorney cannot await Commandant review of the casualty report, verbal authority may be requested from Commandant (CG-545). A U.S. attorney is not precluded from initiating action without formal Coast Guard referral. When evidence of criminal liability is also within the cognizance of other agencies such as the Federal Bureau of Investigation (FBI), state, or local law enforcement agencies, such evidence may be referred to that agency in a timely manner without approval of the Commandant, however District approval is still required.

F.8.b. "6(e) List"

Upon DOJ accepting the referral and going to a grand jury, an IO may request that the U.S. Attorney place them on the "6(e) list." This is an exception to the General Rule of Secrecy regarding grand jury material under the rules of criminal procedure. If a person is allowed on the 6(e) list, they must not share grand jury information with anyone else who is not on that list. Contact the servicing Legal Office with any questions regarding the 6(e) list.

F.9. FEDERAL BUREAU OF INVESTIGATION (FBI)

F.9.a. Coast Guard and FBI Responsibilities

The Coast Guard entered into an MOU with the FBI on March 23, 1979 for the purposes of counteracting terrorist activities in the marine environment. A second MOU was signed on August 20, 1980 expanding the cooperative effort between the Coast Guard and the FBI to cover all violations of federal law on the high seas, navigable waters, and areas adjacent to the navigable waters. The MOU anticipates that cooperation between the two agencies will be made at the District level. If an activity investigated by the Coast Guard appears to have a potential for FBI involvement, the IO should contact the servicing Legal Office.

**F.9.b. Investigative Lead**

The MOU states that because the Coast Guard and FBI have differing areas of expertise, cooperation is often a better solution than having one agency take lead. Additionally, the FBI does not have the authority to board vessels without a warrant, while the Coast Guard does. The FBI's mandate authorizes them to investigate all federal criminal violations that have not been specifically assigned by Congress to another federal agency.

**F.10. BUREAU OF
ALCOHOL TOBACCO
AND FIREARMS
(ATF)**

The Coast Guard entered into an MOU with ATF on April 26, 2002, for the purpose of providing investigative expertise with regard to fires and explosions on Coast Guard facilities, involve Coast Guard personnel, under investigation by the Coast Guard pursuant to 46 USC 6301 for which the Coast Guard requests ATF assistance, and under investigation by the ATF pursuant to 18 USC 846 for which the ATF request Coast Guard assistance. ATF may provide investigators, lab analysis, fire cause or destructive device determination statements, and training.

**F.11. DEPARTMENT
OF DEFENSE (DOD)****F.11.a. Coordination – General**

The procedures in this section shall be applied in cases of U.S. public vessels involved in a reportable marine casualty (see [46 CFR 4.05-1](#)) with a merchant or recreational vessel of the U.S. or a foreign vessel operating in navigable U.S. waters.

F.11.b. Navy and MSC Vessels

When vessels of the U.S. Navy, including Military Sealift Command (MSC) vessels, are involved, the Judge Advocate General's Corps officer of the naval district in which the casualty occurred shall be advised. When vessels of the U.S. Army Corps of Engineers (USACE) or another governmental department are involved, the district Army engineer or appropriate command shall be advised. The participation of appropriate witnesses shall be requested; if this request is denied, Commandant (CG-545) shall be advised immediately. The investigation shall proceed without these witnesses, in accordance with the procedures set forth in this chapter. [NOTE: As provided by [46 CFR 4.11-1](#), military personnel and civil service employees serving aboard vessels controlled by the Army or Navy may not be subpoenaed to appear as witnesses in an investigation without the consent of the governmental agency concerned.

F.11.c. Contract Operated United States Naval Ship (USNS) Vessels

Under a July 29, 2004 MOU with Commander, MSC, the Coast Guard will investigate all reported marine casualties (see [46 CFR 4.05-1](#)) involving contract-operated USNS vessels, except in specific cases when the MSC requests that there be no investigation. When a casualty investigation is conducted, MSC will assist the Coast Guard to the extent practicable in the investigation and in obtaining necessary witnesses. Civil service and military manned vessels and their masters/commanding



officers will not report marine casualties to the Coast Guard, and the Coast Guard will not investigate such casualties except when specifically requested by the Commander MSC. When requested not to investigate, the Officer in Charge, Marine Inspection (OCMI) should advise Commandant (CG-545) by message or other appropriate means. [NOTE: This policy does not affect the Coast Guard's policy to investigate casualties when a USNS vessel is involved in a casualty with another vessel over which the Coast Guard has jurisdiction.]

F.11.d. Disciplinary Action

The Coast Guard has authority to take disciplinary action under [46 USC Chapter 77](#) against MMCs held by any civil service or contract crewmember signed on vessels of the MSC, when possession of a valid license of seaman's document issued by the Coast Guard is a condition of employment.

**F.12. THE
DEPARTMENT OF
LABOR/OCCUPATIONAL
SAFETY AND HEALTH
ADMINISTRATION
(OSHA)**

F.12.a. Shipyard and Harbor Worker Accidents

Under [33 USC 941](#), the Secretary of Labor conducts investigations of accidents and deaths involving employees covered by that Act. This investigative authority parallels that of the Coast Guard under 46 U.S.C. 6301. [NOTE: See [46 CFR 4.01-3](#) for the reporting exclusion with respect to deaths of shipyard or harbor workers.] Whenever a casualty occurs involving shipyard or harbor workers that is not the result of a shipboard operation conducted by ship's personnel, the casualty falls under OSHA jurisdiction and OSHA should be notified for investigation.

F.12.b. Outer Continental Shelf Activity Accidents

The Coast Guard and OSHA signed an MOU on 19 December 1979 to establish procedures to increase consultation and coordination on the Outer Continental Shelf (OCS). Specifically, Sections IV-B(2) and (3) of the MOU, entitled "Investigation of Accidents" and "Investigation of Allegations" state respectively that in accordance with regulations issued under its authority, the Coast Guard will investigate deaths, injuries, and other casualties or accidents occurring as a result of operations conducted pursuant to the OCS Act. In the course of all such investigations, formal and informal, the Coast Guard will cooperate with OSHA with respect to identifying violations of applicable OSHA regulations related to the casualty or accident. Where a Coast Guard investigation identifies an apparent violation of an applicable OSHA regulation, the Coast Guard will notify OSHA and subsequently will cooperate with OSHA with respect to any enforcement action OSHA may undertake. The Coast Guard will review any allegation from any person of the existence of a violation of an occupational safety or health regulation or other unsafe working condition on the OCS and take appropriate action under the circumstances.



46 CFR 197

F.12.c. Commercial Diving Accidents involving Inspected Vessels and Platforms

Commercial diving accidents involving inspected vessels and platforms are explicitly under the sole investigative jurisdiction of the Coast Guard. While OSHA cooperation and involvement may be useful and even desired, such assistance is without legal jurisdiction and entirely at the discretion of the IO or Marine Board. SCUBA accidents of passengers who were transported aboard inspected passenger vessels shall not be considered commercial diving accidents.

F.12.d. Commercial Diving Accidents involving Uninspected Vessels

Commercial diving from platforms other than inspected vessels fall under OSHA jurisdiction. While the Coast Guard retains overlapping authority to investigate these incidents, such duplication of effort is generally unnecessary and not desirable. Accordingly, the IO shall coordinate closely with OSHA representatives regarding these incidents, and shall undertake an independent investigation only when OSHA or similar state agency intent no investigation of their own.

G. THE IMO CODE FOR THE INVESTIGATION OF MARINE CASUALTIES AND INCIDENTS

G.1. COOPERATION AND COORDINATION

Many international conventions such as the International Convention for the Safety of Life at Sea, 1974 (SOLAS), the International Convention on Load Lines, 1966 (ILLC); and the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) require flag states to investigate marine casualties. The international community has increasingly become aware of the benefits of cooperating in casualty investigations given the international nature of shipping and the fact that flag-state interests often overlap port-state interests. As a result, a series of International Maritime Organization (IMO) resolutions have addressed international cooperation in increasing depth resulting in valuable cooperative investigations over the last several years.

G.2. THE IMO CODE

G.2.a. The IMO Code

The Code provides a systematic approach to investigations and enhances the existing cooperation frameworks. Drawing on the experience of these cooperative investigations, and recognizing the opportunity to improve safety through information sharing, the IMO member states developed the Code for the Investigation of Marine Casualties and Incidents.

G.2.b. Adoption of the Code

The IMO adopted resolution A.849(20) which contains the Code, and has revoked Resolutions A.173 (ES.IV), A.440(IX), and A.637(16). The United States strongly supports Resolution A.849 (20) and the Code. The Coast Guard will implement the code to the maximum extent possible under its existing legal and regulatory authorities.



G.2.c. Mechanism for Cooperation

IMO Resolution A.849 (20) provides a mechanism for cooperation between member states during investigations along with common-approach investigative procedures. Enabling the Lead Investigating State (LIS) as well as Substantially Interested States (SISs) to participate in an accident investigation promotes maximum cooperation. The common-approach procedures define the purposes of casualty investigations and provide a list of information to be gathered, methods for securing physical evidence, and procedures for authenticating documents, reviewing voyage data recorders, and obtaining information from other sources. These procedures have been incorporated into this volume. Also see Navigation and Vessel Inspection Circular ([NVIC 5-98](#)).

G.3. FLAG AND PORT STATE OBLIGATIONS TO INVESTIGATE

G.3.a. Joint Investigation

Upon notification, member states may fulfill their obligations to conduct an investigation by participating fully in the investigation of another SIS. When member states elect to participate in an investigation, they will select an LIS. The LIS devises the strategy of the investigation, governs the investigative proceedings, ensures the laws of the investigating state are observed during the investigation, is custodian of interview records and other evidence, prepares the Report of Investigation (ROI) including the views of SISs, and provides reasonable logistical support.

G.3.b. Independent Investigations

In the event that SISs elect to conduct their own independent investigations after receiving notification of a marine casualty, the various investigations should follow the Code and its procedures, should share evidence, and should be coordinated to avoid conflicting demands on witnesses and access to evidence.

G.4. SHARING OF DRAFT REPORTS OF INVESTIGATION (ROIs)

Upon completion of an investigation (whether independent or joint), SISs should share drafts of their ROI at the earliest opportunity. Final versions of the ROIs should reflect the input received from the other SISs. When SISs cannot agree regarding all or part of the ROI, they are free to submit their own reports to the IMO. The minimum contents of an ROI can be found in section 14 of Enclosure (1) to NVIC 5-98 and have been substantively integrated into Chapter A6 of this volume.

G.5. POINTS OF CONTACT FOR THE UNITED STATES

The Coast Guard has notified the IMO that the responsible authority within the United States to contact regarding cooperation in marine casualty investigations is Commandant (CG-545). Commandant (CG-545) can be reached during the workday at (202) 372-1029, and after hours through the Headquarters Command Center at (800) DAD-SAFE.

G.6. IO RESPONSIBILITIES

IOs should use the Code procedures to the maximum extent possible in all marine casualty investigations in which the U.S. is an SIS.



H. LABOR – MANAGEMENT DISPUTES

H.1. GENERAL IOs shall not become involved in labor/management conflicts. If a contractual infraction did not affect the safety of the passengers, crew, vessel, marine environment, or national security, then action against MMCs or other remedial action should not normally be taken. This policy requires OCMI and their department heads to remember that Coast Guard Officers should not place themselves in roles as labor/management arbitrators. See [46 CFR 5.71](#); Appeal Decision 2470 (Giachetti).

H.2. WORK/REST SCHEDULES AND FATIGUE Labor and management practices can create latent unsafe conditions that ultimately result in an accident, incident, or violation. Accordingly, issues between labor and management are frequently legitimate areas to explore during marine investigation. IOs must investigate work/rest schedules and the possibility of fatigue.

H.3. CONTROL OF THE INVESTIGATION Although such investigations are undertaken by other agencies, the Coast Guard does not conduct investigations to document disabilities, labor conditions, etc., for use in disability litigation or workman’s compensation claim settlement. When such issues are present, parties to the investigation may attempt to use the investigation as a vehicle to “discover” information and documents useful for these purposes. The IO shall retain control of the investigation and assure that only evidence and testimony relevant to the purposes of the investigation are explored and examined.

I. MERCHANT MARINER’S RECORD/WANTED LIST

I.1. General In the past, IOs have taken administrative action against an MMC that was documented in the Marine Safety Information System (MSIS) and often never looked at again. As a result, oftentimes, mariners would have their MMC suspended or revoked in one OCMI zone, only to have it reissued in another OCMI zone. Additionally, very few administrative actions (i.e. letters of warning, suspensions, revocations, etc.) against a mariner’s MMC were ever documented in the Merchant Mariner License & Document (MMLD) data system. In other situations, IOs have receive notification of non-credentialed mariners who failed pre-employment, random, or other mandated drug tests, but because the mariners did not hold an MMC against which administrative action could be taken, there was limited documentation and no information entered in MMLD or shared between OCMI zones. As a result, a non-credentialed mariner who had failed a drug test could later apply and receive a MMC from an OCMI without the OCMI knowing about the failed drug test. With the new Marine Information for Safety and Law Enforcement (MISLE) data system the Coast Guard has corrected this situation.

I.2. Information to be Included in Merchant Mariner’s Record At a minimum, as a part of the Suspension and Revocation (S&R) process the following information should be entered into the MMLD data system regarding a merchant mariner’s record:

A Complaint has been issued against a mariner’s MMC;

A Letter of Warning (LOW) issued and accepted by a mariner;



A Voluntary Surrender made by a mariner (equivalent to Revocation);

A Voluntary Deposit made by a mariner; or

An S&R outcome where a sanction is imposed.

Notification to the National Maritime Center (NMC) should be made via the notify NMC function within the MISLE enforcement activity opened to document the enforcement action taken against the mariner’s Merchant Mariner’s Credential (MMC). For additional information see Chapter C4 of this volume.

Additionally, a new record in the MMLD data system should be created for a non-credentialed mariner who has failed a pre-employment, random, or other mandated drug test documenting the failed drug test since it can be reasonably inferred that the mariner may apply for an MMC in the future.

Notification to the NMC of a failed drug test by a non-credentialed mariner shall be made via the notify NMC function within the MISLE Notification created to document the receipt of the results of the failed drug test.

I.3. Reasons for Locking or Unlocking a Merchant Mariner’s Record

A merchant mariner’s record should be locked in MMLD data system for the following reasons:

- Whenever an S&R outcome is Revocation;
- Whenever an S&R outcome is Revocation Stayed (drug settlement);
- Whenever an S&R outcome is Outright Suspension;
- Whenever there is a “Good Faith” Deposit;
- Whenever there is a Voluntary Deposit;
- Whenever there is Voluntary Surrender;
- Whenever a non-credentialed mariner has failed a mandated drug test; and
- Whenever a merchant mariner is placed on the Wanted List.

Merchant mariner’s records shall not be locked by IOs for any other reason without the permission of Commandant (CG-545). When the reason for locking a merchant mariner’s record is resolved, the record should be unlocked (i.e. administrative clemency is granted, mariner has served the suspension, mariner completed settlement conditions, etc.). For additional information see Chapter C4 of this volume.

I.4. Placing Merchant Mariners on the Wanted List

Formerly, there were two lists that a merchant mariner could be placed upon in MSIS. These were the Seaman Wanted List and the Seaman Locator List. The reason for the two separate lists was to distinguish the difference between needing to find the mariner during the investigation versus the enforcement process. In MISLE, this list is known simply as the Wanted List. Currently, the reasons for placing a person on the Wanted List are listed below:

- Wanted for purposes of an investigation;
- Wanted to deliver civil penalty correspondence;
- Wanted for pending enforcement action;



Wanted to deliver ALJs decision and order; and,

Wanted to acquire an invalid or revoked MMC.

Mariners shall not be placed on the Wanted List for any other reason without the permission of Commandant (CG-545). The list is expected to grow and change with the MISLE system. Any time a mariner is placed on the Wanted List their MMLD file should be locked. Units placing mariners on the wanted list should continue efforts to locate mariners. For additional information on removing mariners from the wanted list and Enforcement Activity status see Chapter C4 of this volume.

I.5. Sending Information to, Locking, and Unlocking a Merchant Mariner's Record

The process to send information to, lock, and unlock a merchant mariner's record is quite simple and should be executed immediately. When the criteria set forth in Sections I.2., I.3., and/or I.4. are met the IO should use the notify NMC function of the MISLE enforcement activity opened to document the enforcement action taken against the mariner. This is the preferred method of notification. Alternatively, the IO may send an e-mail to the NMC at the following e-mail address:

D05-DG-NMCMMLDLock, located in the Global listing.

If not notifying NMC via MISLE, the following information is required to be in the e-mail in this format:

PERSONNEL ACTION: (LAST NAME, FIRST NAME MIDDLE NAME, SSN)

(Subject of e-mail: choose one of the following) **MMLD INFO NOTIFICATION / MMLD LOCK / MMLD UNLOCK**

IDENTIFICATION: 1) Merchant Mariner's License or Document Number
2) Merchant Mariner's MMLD Reference Number

(Reference number is found when you access the Party File via MMLD in MISLE)

ACTIVITY NUMBER: MISLE Enforcement Activity # (may be the Incident Investigation Activity # for locking a record due to putting them on the Wanted List)

REASON FOR NOTIFICATION AND/OR OUTCOME OF ENFORCEMENT: Should be one of the reasons for sending info to, locking, and unlocking a merchant mariner's record listed in Sections I.2., I.3., and I.4.

J. INFORMATION/OTHER RESOURCES

J.1. General

At times IOs get into situations where they are unknowingly dealing with dangerous persons or are unable to locate persons with regards to an investigation or enforcement activity. Commandant (CG-545) has acquired access to various computer applications and other information resources that will remedy some of these problems.



**J.2.
NCIC/NLETS
General**

IOs were given access to National Crime Information Center (NCIC) and National Law Enforcement Telecommunications System (NLETS) information. IOs are law enforcement officers and as such are authorized to conduct law enforcement activities. NCIC/NLETS will better enable IOs to know with whom they are dealing in order to be better prepared to take appropriate law enforcement action. The FBI oversees the use of NCIC/NLETS and has granted the Coast Guard access. The Coast Guard connection to the FBI's NCIC/NLETS system is for official law enforcement support activities only.

The Coast Guard Investigative Service is responsible as the network administrator of NCIC/NLETS use within the Coast Guard, which includes monitoring of use, quality assurance reviews, audits, and investigations of alleged, actual or suspected unauthorized or improper use of NCIC/NLETS.

**J.3.
NCIC/NLETS
POLICY**

Only personnel meeting the prerequisites below may request access to NCIC/NLETS. Access is *not* authorized to investigators that solely conduct pollution incident investigations (PIs). IOs with NCIC/NLETS access *shall not* share account access with any other personnel. NCIC/NLETS *shall not* be accessed unless there is an associated incident investigation or enforcement activity within the MISLE data system. NCIC/NLETS information shall not be released to the public. NCIC/NLETS information shall not be released to parties in interest when conducting marine casualty investigations.

**J.4.
PREREQUISITES FOR
REQUESTING ACCESS
TO NCIC/NLETS**

The following prerequisites must be met prior to requesting access to NCIC/NLETS:

- The IO must have a secret security clearance or higher;
- The IO must be designated in writing as an Investigating Officer;
- The IO must have completed the Basic Investigating Officer Course (IOC) at TRACEN Yorktown; and
- The IO must be fully qualified to conduct marine casualty investigations or suspension and revocation investigations.

Any IO who transfers to another unit or internally within their unit and is no longer filling the position of an IO shall request their access to be denied. Any IO who does not meet the prerequisites and has already been given access to NCIC/NLETS shall request their access be removed. EXCEPTIONS: At units where there are no personnel meeting the prerequisites, the Commanding Officer is authorized access.

**J.5. ACCEPTABLE
USE OF
NCIC/NLETS**

IOs may access NCIC/NLETS when conducting any incident investigation other than a pollution incident investigation and prior to personally delivering official Coast Guard enforcement correspondence or subpoenas. IOs may access NCIC/NLETS when an investigation uncovers criminal activity.



**J. 6.
UNACCEPTABLE USE
OF NCIC/NLETS**

IOs *shall not* access NCIC/NLETS for the following:
“Stand-alone” pollution incident investigations;
Administrative Clemency;
Any National Maritime Center (NMC) purpose (this does not include the IO conducting a preliminary investigation of an applicant based upon a request from the NMC); or
Any **scheduled** boardings/inspections.

**J. 7.
RAMIFICATIONS FOR
AND EXAMPLES OF
UNAUTHORIZED OR
IMPROPER USE OF
NCIC/NLETS**

Any IO who improperly accesses NCIC/NLETS shall lose access to the system and may be subject to criminal and administrative penalties of not more than \$10,000. Additionally, improper use jeopardizes NCIC/NLETS access for the entire Coast Guard.

The most frequent examples of improper use of NCIC/NLETS is conducting criminal background checks of family members, friends, neighbors, or yourself “just to see what happens,” “as a favor,” or “for training” (there are specific ALLOWED test queries that may be run in NCIC on the MISLE user guide website – do not use any other names to ‘train’ for using NCIC).

All incidents of alleged, actual or suspected unauthorized or improper use of NCIC/NLETS shall be reported to and investigated by the Coast Guard Investigative Service.

**J. 8. ACCESSING
AND TERMINATING
ACCESS
NCIC/NLETS**

IOs meeting the prerequisites above may request access to NCIC/NLETS by using the form at <http://cgweb.osc.uscg.mil/csdcontent/warning.htm> [fill in required info and select NCIC/NLETS system]. Additionally, any IO who transfers out of an IO position shall use the same website to request to have their access removed. Upon becoming an authorized user of NCIC/NLETS, the system can be accessed at <http://cglelinxx.osc.uscg.mil/cyblinxx/loginbody.htm> or from the Parties menu with MISLE.

**J. 9. LOCATING
PEOPLE**

Currently, Commandant (CG-545) has access to software that can assist in locating personnel. Upon request, for the purposes mentioned in I.4 above (and possibly other purposes determined on a case-by-case basis), Commandant (CG-545) can attempt to locate a person.

**J. 10.
COMMANDANT (CG-
545)
INVESTIGATIONS
“GO TEAM”**

Within Commandant (CG-545), there is an investigative team that may be available to assist units/districts/areas with major investigations, large scale or complicated investigations, investigations in the international arena, or whenever requested. The team consists of policy experts and professional mariners both Deck and Engineering Officers in the Merchant Marine. Requests for the Commandant (CG-545) Investigations “Go Team” must have approval from all levels of the chain of command.




**J.11.
INTELLIGENCE
COORDINATION
CENTER (ICC)**

The major mission functions that the ICC supports are maritime drug interdictions, marine environmental issues, port safety, fisheries, military readiness, and illegal maritime alien migration to the United States. The ICC supports these functions by serving as the hub of intelligence communications between the Coast Guard and the rest of the National Intelligence Community and Law Enforcement Community. The ICC can be reached at: 1-800-842-0821 Ext.3334.



USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART A: ADMINISTRATION

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Chapter Four:
**Training and Certification of
Marine Investigators**

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A. TRAINING AND CERTIFICATION

A.1. INTRODUCTION

It cannot be stressed enough that proper training is the most important aspect to ensuring our personnel are prepared and motivated to do the job. In efforts to build the Marine Investigation Program core competencies, prerequisites for becoming a Marine Investigator and completing each step in training and certification must be upheld. This chapter will detail the requirements for both.

A.2. TRAINING MANAGEMENT

CG-545 and the Office of Resource Planning, CG-741, share responsibility for overall management of the Marine Investigator training program, to include:

- Development of annual training fund requirements;
- Management of marine investigation training funds;
- Obtaining training quotas from authorized training sources;
- Direct liaison with TRACEN Yorktown and other training sources;
- Management of training quotas obtained for Marine Investigators;
- Development of alternative training methods and procedures; and
- Management of training assignments in cooperation with the Coast Guard Training Quota Management Center (TQC).

A.3. MISSION ESSENTIAL TRAINING REQUIREMENTS

A.3.a. General

CG-545 is responsible for determining mission essential training requirements for all Marine Investigators in order to meet Coast Guard and program operational commitments. Annual training fund requests and allocation of available training funds and quotas will be determined by the cognizant command authority based on mission essential requirements and the needs of the service.

A.3.b. Waivers

Only CG-545 may grant a waiver to any certification or minimum standard for training. Coast Guard commands shall ensure that all IOs assigned for training meet the prerequisites for attending initial training. Personnel not meeting these standards must submit a written request to CG-545 via the chain of command to waive any minimum standard or certification as part of the initial training quota request.

A.4. PERFORMANCE QUALIFICATION SYSTEM (PQS)

In order to become certified with a specialty (e.g. casualty investigator, suspension and revocation investigator, etc.), the IO must complete PQS and sit before a qualification board of other personnel that are certified in that specialty. Any recommended changes to the PQS should be submitted to CG-545 for consideration.

A.5. CERTIFICATION AS AN APPRENTICE MARINE INVESTIGATOR

To be considered a certified as an Apprentice Marine Investigator you must be assigned to an operational billet as a Marine Investigator, be designated in writing as an IO, have attended the basic Investigating Officer Course (IOC) at TRACEN Yorktown and complete the Casualty Investigator (FO) qualification.



A. 6. CERTIFICATION AS A JOURNEYMAN MARINE INVESTIGATOR

To be considered a certified Journeyman Investigator you must have completed a minimum of 2 years as an Apprentice Marine Investigator, have attended both IOC and AIOC at TRACEN Yorktown and completed all of the following qualifications: Casualty Investigator (FO), Violation Investigator (EO) and Suspension and Revocation Investigator (FN).

A. 7. CERTIFICATION AS AN EXPERT SENIOR INVESTIGATING OFFICER (SIO)

Personnel assignments are generally beyond the control of local commands. Incoming Expert Investigating Officers, or Senior Investigating Officers (SIOs) shall be designated in writing as an IO and should at a minimum have previously served four years as an Investigator and have been certified as a Journeyman Investigator.

B. ASSIGNMENT AND DESIGNATION

B.1. ASSIGNMENT TO AN OPERATIONAL BILLET AS A MARINE INVESTIGATOR

B.1.a. General

Personnel assigned to an operational billet as a Marine Investigator should already be familiar with marine safety laws and regulations through training and qualifications, generally, as a marine inspector prior to being assigned to marine investigation duties. Upon assignment, IOs shall acquire a SECRET (or higher) security clearance.

B.1.b. Entry-level Personnel

As a matter of policy, entry level (i.e. first tour in Marine Safety) personnel shall not be assigned to marine investigator billets. Such personnel are not adequately familiar enough with marine safety laws and regulations to execute marine investigations that often drive changes in policy/regulation/law and are fully available to the public.

B.1.c. Internal Rotation and "Short" Tours

The Marine Investigations Program is considered the "graduate school" of the marine safety community. Accordingly, internal rotation through a marine investigation billet is inappropriate; personnel assigned are expected to have had preliminary tours rendering such "ticket" punching unnecessary. As with "short" tours, active duty military Marine Investigators may occasionally be selected for reassignment within a unit or to a new unit prior to completion of their original tour assignment. Such reassignments are based on the needs of the command and are often required to fill critical positions within the Coast Guard. Because of the enormous investment of training and experience required to certify as a Marine Investigator and to gain technical competence, internal rotations and "short" tours are highly discouraged.

B. 2. DESIGNATION

Upon assignment to an operational billet as a marine investigator, personnel shall receive a formal letter of designation from the command authorizing them to investigate within the command's area of responsibility. The designation letter outlines their specific duties and responsibilities, to include any signature authority. The letter of designation does not mean the individual is 'certified' to conduct marine



investigations and is a Marine Investigator. Such individuals are referred to as IOs

B.3. ASSIGNMENT OF CERTIFIED MARINE INVESTIGATORS

Personnel previously assigned, designated, trained, and certified as Marine Investigators are encouraged and may subsequently be assigned to a second marine investigation tour, oftentimes as an SIO. In such instances, no training or additional qualification is required other than area familiarization provided the individual has been redesignated as an IO in writing at the new unit.

B.4. ASSIGNMENT OF RESERVE MARINE INVESTIGATORS

Reserve Marine Investigators are recruited to fill specific billets within a unit, and are therefore not normally internally rotated or reassigned. It is not, however, uncommon for a reserve Marine Investigator to relocate to a new area, either for personal reasons or as a transfer with their civilian employer. In those instances, reserve Marine Investigators must adhere to policy and guidance governing such moves contained in the Reserve Policy Manual, COMDTINST M1001.28 (series). Commanding Officers shall coordinate transfer of reserve Marine Investigators to the extent consistent with the Reserve Policy Manual. Receiving commands may employ certified reserve Marine Investigators as discussed in paragraph B.3. above. Reserve personnel desiring to become Marine Investigators must be designated in writing as an IO and undergo all training, PQS, and certification as active duty marine investigators.

B.5. ASSIGNMENT OF CIVILIAN MARINE INVESTIGATORS

Civilian Marine Investigators are hired to fill specific positions within the Coast Guard. Such civilian Marine Investigators are bound by the training, PQS, and certification discussed in this chapter, but are advised that they lack the general law enforcement authorities granted to Coast Guard military personnel above the rank of E-3 by statute.

C. MARINE INVESTIGATOR BADGES AND CREDENTIALS

C.1. GENERAL

Policies and procedures regarding the issuance of Marine Investigator Credentials and Badges are contained in COMDTINST 5512.2.

C.2. ISSUANCE

In addition to the minimum criteria outlined in COMDINST 5512.2 the following requirements must be followed:

- In order to qualify for a badge the IO must be assigned to an investigating officer billet and must routinely conduct marine casualty investigations or investigations of credentialed merchant mariners;
- A badge may not be issues without marine investigator credentials, and vice versa;
- Marine investigator credentials shall only be generated using the most current system;
- A marine investigator badge and credential issued to a marine investigator shall have matching numbers;
- Only CG-545 authorized credentials may be displayed by a marine investigator;
- CG-545 authorized marine investigator credentials may not be altered in any way.



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C.3. USE

C.3.a. CG-545 will provide a leather carrying case for every marine investigator badge and credential. Marine investigator credentials shall always be carried in the provided carry case, unless the badge is being visibly displayed on the investigators person. Visibly displaying the badge is only authorized while conducting investigations in civilian attire. Generally speaking it is not advisable to display the badge on the marine investigator's person when the Coast Guard is the sole agency responding to a specific incident.

C.3.b. Recommendations for using the marine investigator badge and credentials:

- When Liaison with other law enforcement agencies is necessary;
- When multiple agencies are responding to an incident;
- When access to a scene/facility is necessary;
- Prior to questioning witnesses; or
- When a visible Coast Guard Marine Investigator presence is required (visibly on the marine investigator's person).

C.4. CONTROL

Sector Commanders that have more marine investigators meeting the minimum requirements than they have badges may request a specific number of additional badges from CG-545. The requesting authority must be the Sector Commander. Procurement or duplication of marine investigator badges and credentials is strictly prohibited.

Long term (more than a year) unassigned badges should be returned to CG-545 via registered or express mail in order to remove them from the unit's inventory of badges. CG-545 shall be notified of all status changes with regard to marine investigator badges and credentials. The returning of marine investigator badges shall be included on unit PCS departure check sheets.

**C.5. SECURITY
AND ACCOUNTABILITY**

A quarterly inventory of all badges shall be conducted and maintained at the unit. Damaged or severely worn marine investigator badges, credentials and carrying cases shall be sent to CG-545 via registered or express mail for refurbishment or destruction. In addition to the requirements in COMDINST 5512.2, CG-545 shall be immediately notified of any lost or stolen marine investigator badges or credentials. This notification shall be made within 24-hours and may be accomplished via telephone at 202-372-1029. An investigation shall be initiated in accordance with COMDINST M5830.1, Administrative Investigation Manual, within 24-hours of the incident involving the lost or stolen marine investigator badges or credentials. CG-545 will ensure all information regarding missing badges and credentials is entered into the National Crime Information Center (NCIC) database. Persons in possession of a lost or stolen marine investigator badge or credential will be detained by law enforcement personnel and prosecuted under 18 USC 701, 18 USC 716, and/or 18 USC 1028.

**C.6. RETIREMENT
BADGES**

Orders for retirement badge plaques or badges suitable for mounting in a shadow box for persons who retire with 4 or more years as a marine investigator will be coordinated by CG-545 upon request. Plaques or mounting badges will not include credentials or carrying cases and will be designated as appropriate retirement mementos.

D. CARRIAGE OF FIREARMS**D.1. GENERAL**

The carriage of firearms for IOs is at the discretion of the Commanding Officer and shall be in accordance with the uniform and equipment requirements and maritime law enforcement training requirements (for a boarding team member) found in the U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series). When conducting official marine investigation operations in which firearms will be carried, all IOs will wear the same uniform and will always travel in a minimum of two person teams. More personnel may be required to ensure proper force protection. See the U. S. Coast Guard Maritime Law Enforcement Manual (MLEM) for details.

**D.2. USE OF
FORCE**

All IOs shall follow the Use of Force policy detailed in the U. S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series).

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Chapter Five:
Levels of Effort and
Types of Investigation

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A. DISCRETION

A.1. DISCRETION IN DETERMINING THE APPROPRIATE INVESTIGATIVE LEVEL OF EFFORT

All incidents reported to the Coast Guard, regardless of the source, *will* be investigated, however, the OCMI/COTP must determine on a case-by-case basis what investigative actions are appropriate for a specific case based on the likely value to marine safety, available resources, and risks in a given port. This policy does not limit or change OCMI/COTP authority or responsibility to determine appropriate actions. For example, a minor collision (damage less than \$25,000) of a towboat and a moored casino vessel may highlight significant safety concerns that would demand a formal investigation, or the OCMI/COTP may decide to conduct an informal investigation of three deaths from a fishing vessel sinking if the added cost and complexity of a formal investigation would not bring appreciable benefit. In such cases, the usual process of investigating, determining causal factors, reporting, entering information into MISLE, and record keeping must be followed.

B. DEFINITIONS

B.1. CASUALTIES 46 U.S.C. 6101

B.1.a Major Marine Casualty

An incident that meets any of the following criteria:

- Resulted in the loss of six or more lives.
- Resulted in the loss of mechanically propelled vessel of 100 or more gross tons.
- Resulted in property damage initially estimated at \$500,000 or more.
- Resulted in serious threat, as determined by the Commandant and concurred in by the NTSB Chairman, to life, property, or the environment by hazardous materials.

B.1.b Public/Non-public Vessel Casualty

A casualty involving a public vessel and a non-public vessel that meets any of the following criteria:

- Resulted in at least one fatality.
- Resulted in property damage initially estimated at \$75,000 or more.

A public vessel is a vessel owned by the United States and includes a U.S. Coast Guard Vessel.

B.1.c Significant Marine Casualty

A casualty that is not a Major Marine Casualty but causes serious safety or environmental concerns, involves important safety issues, or causes substantial media interest. Significant marine casualties generally involve the following:

- Multiple deaths or a single death caused by unusual circumstances.
- Hazard to life, property, or the marine environment (e.g. sinking of a chlorine barge).
- Loss of any inspected vessel.



B.1.d Routine Incident

Any marine Casualty reportable under 46 CFR 4.05-1 but of lesser severity than a Significant Marine Casualty.

B.1.e Loss of Life

When determining when an incident is to be classified as a major marine casualty, public/non-public vessel casualty, or a significant marine casualty a life shall be considered lost when:

- A person is known to be dead (e.g. the body has been recovered).
- A person has been categorized as “presumed lost/dead” by agencies leading the search and rescue efforts.
- The circumstances of the incident make recovery of a person alive unlikely.

B.1.f Loss of a Vessel

When determining when an incident is to be classified as a major marine casualty, public/non-public vessel casualty, or a significant marine casualty a vessel shall be considered lost when:

- The vessel is known or presumed to have been destroyed.
- The vessel is presumed to have sunk and its location is unknown.
- The vessel has sunk and its location is known, but it is unrecoverable.
- The vessel is a constructive total loss, i.e. the vessel is so severely damaged that it is not financially worth recovering and/or repairing.

B.1.g Initially Estimated Property Damage

When determining when an incident is to be classified as a major marine casualty, public/non-public vessel casualty, or a significant marine casualty initially estimated property damage only includes the cost of labor and materials to restore the vessel, facility or other properties involved to their conditions before the incident, but not include the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.

C. GENERAL INFORMATION REGARDING LEVELS OF INVESTIGATIVE EFFORT

C.1. INTRODUCTION

All reports of incidents must be investigated to the extent provided for under 46 U.S.C. 6301. The 1995 Quality Action Team on Marine Safety Investigations suggested that three levels of investigation beyond preliminary investigation are necessary: Data Collection, Informal, and Formal. MISLE data entry requirements for all levels of investigation shall be in accordance with the Investigations and Enforcement Process Guide.

C.2. PRELIMINARY Preliminary Investigations are initial investigative efforts undertaken to ascertain



INVESTIGATIONS

whether a report is genuine, how severe the incident is or will become, whether the Coast Guard has jurisdiction, whether other agencies or offices must be notified, and what level of Coast Guard investigative effort is necessary. As such, preliminary investigations have no jurisdictional boundaries until they are complete. Once a preliminary investigation verifies the above information, the cognizant investigative authority assigns the case for investigation as a data collection activity, informal investigation, or formal investigation, depending on severity and value to marine safety.

C.3. DATA COLLECTION ACTIVITIES

Data Collection Activities do not require any significant investigative effort, and usually consist only of collecting basic factual information and entering it into MISLE for future reference and analysis. Only minimum follow-up to verify accuracy and completeness would be conducted if necessary.

C.4. INFORMAL INVESTIGATIONS

Informal Investigations are less exhaustive than formal investigations, but include the determination and reporting of the causal factors of a casualty. Generally, speaking, only incident investigations that include a marine casualty ever reach the level of informal investigation.

C.5. FORMAL INVESTIGATIONS

Formal Investigations are reserved for the more serious incidents investigated under 46 USC Chapter 63 from which the most value can be gained. Marine Boards convened by the Commandant and other formal investigations convened by the District Commander or OCMI/COTP fit into this category. Only incident investigations that include a marine casualty ever reach the level of formal investigation.

D. PRELIMINARY INVESTIGATIONS

D.1. ACTION ON VERIFIED INCIDENTS

D.1.a. General

A preliminary investigation shall be conducted for any report of evidence of a reportable marine casualty as defined in 46 CFR 4.05-1 involving a US or foreign flag commercial vessel. This includes reports of casualties by state numbered commercial vessels (e.g.: state numbered unsuspected towing vessels and fishing vessels) that report casualties under 33 CFR 173.55. A preliminary investigation begins when the Coast Guard is informed of a specific incident or situation, usually via a notification from the public. Oftentimes, a preliminary investigation is conducted solely over the telephone. When the preliminary investigation has gathered and verified sufficient factual information to determine the next course of action, the preliminary investigation is considered completed. The next course of action will be either nothing or the IO will recommend and/or execute, as appropriate, an upgrade in the level of investigation with possible additional notifications.

D.1.b. External Investigative Resources

When a local Memorandum of Understanding is in place, the OCMI/COTP may rely



upon other agencies to perform some or all of the investigative work. When the Coast Guard will take no further action, there is no further data entry beyond a notification within MISLE.

D.1.c. Identifying Major Marine Casualties, Significant Marine Casualties and Public/Non-public Vessel Casualties

Identifying when an incident is a major marine casualty, significant marine casualty or a public/non-public vessel casualty shall be done as early as possible during the preliminary investigation, based on the information available at the time, even when that information may be incomplete or of questionable accuracy. In particular, when determining whether or not the property damage associated with an incident meets or exceeds the cost threshold in the criteria for each incident type the initial estimate should:

- Focus on identifying whether the cost is above or below the threshold and not try to identify a specific cost.
- Not be delayed to wait for the result of a formal assessment unless it can be obtained quickly (i.e. during the preliminary investigation).
- Be assumed to be in excess of the threshold if it initially appears close to the threshold and it is believed a formal assessment may later indicate property damage in excess of the threshold.

D.2. REQUIRED NOTIFICATIONS

D.2.a. General

One of the most critical roles the IO fills is properly notifying the chain of command. Based upon post-incident notification, senior leaders in the Coast Guard are briefed, and CG-545 can fulfill its responsibilities such as notifying the NTSB, other Flag Administrations, DOJ, and the IMO.

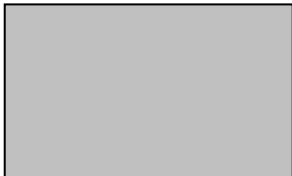
D.2.b. When CG-545 Shall Be Notified

CG-545 shall be notified (directly or via the Commandant Command Center) for the following:

- Major Marine Casualties
- Significant Marine Casualties
- Public/Non-Public Vessel Casualties
- Criminal Referrals

D.2.c. When and How the National Response Center shall be Notified

Under various regulations, the responsible party is required to notify the National Response Center (NRC) of any discharge or release. In some cases the responsible party is not known, possibly because they have deliberately discharged or released, and no report to the NRC has been made. When Coast Guard personnel discover unknown-source discharges or releases, they shall report each such discharge or





release to the NRC so there are accurate tallies. Additionally, they shall remind the responsible party of their obligation to report the discharge or release to the NRC. The NRC shall be notified using their toll-free number: 1-800-424-8802.

D.2.d. How to notify CG-545

During regular business hours, when required, the OCMI shall immediately notify CG-545 via their appropriate chain of command in the most rapid means available in one or more of the following methods:

Phone: (202) 372-1029

Fax: (202) 372-1907

After regular business hours, when required, the OCMI shall immediately notify the Commandant Command Center (who will notify CG-545 if and when appropriate) via their appropriate chain of command in the following method:

Place the call to the Commandant Command Center Duty Officer at 800-DAD-SAFE.

Note: All Major Marine Casualties are required to be reported to the Command Center IAW COMDINST 3100.8A, Critical Incident Reporting. This notification satisfies CG-545's reporting requirement to HQ.

D.2.e. Contents of the Notification

The notifications should contain essential information, including the names of the vessels involved, their official numbers, nationality, the location, known and possible deaths and serious injuries, the nature of the casualty, potential criminal issues, and the MISLE incident investigation activity and case number. The OCMI shall also indicate the type of investigation they intend to conduct (formal/informal) and any recommendations to convene a Marine Board of Investigation or other formal investigation. The notification should also contain any requests made for assistance from the unit to the District Commander, Area Commander, or Commandant.

When the case raises issues related to the performance Coast Guard safety functions, the nature of these issues must be explained. Coast Guard safety functions of particular note include:

- Search and Rescue Activities;
- Marine Inspection Activities;
- Maintenance of Aids to Navigation; and
- Vessel Traffic Services

E. DATA COLLECTION ACTIVITIES



E.1. PURPOSE

Data collection activities are initiated when an upgrade in the level of investigation is required beyond the preliminary investigation. A data collection activity shall be conducted for all reportable marine casualties as defined in 46 CFR 4.05-1 not assigned to Informal or Formal Investigations. Data collection is the minimum level of investigation required when there will be no analysis, conclusions, or recommendations stemming from an investigation. They are intended to document the facts surrounding an incident for the public record and must meet the investigative obligations outlined in 46 U.S.C 6301. Enforcement referrals may be made from a data collection activity with the exception of an enforcement referral based upon information from a marine casualty (this must be informal at a minimum).

E.2. PARTIES IN INTEREST

IOs will not normally designate Parties in Interest for data collection activities resulting from a marine casualty investigation without a formal request for status. However, IOs should solicit all involved parties for evidence and/or witnesses. The IO should evaluate and respond to all requests for party in interest status. Whether or not Parties in Interest are designated, if a party meets the criteria of a party in interest, they can not be prohibited from participating in the investigation

F. INFORMAL INVESTIGATIONS

F.1. PURPOSE

Informal investigations are initiated when an upgrade in the level of investigation is required beyond the preliminary investigation and data collection activity but not to the level of a formal investigation. The purpose of the informal investigation is to expand upon information gathered during the preliminary investigation, discover and document the facts of the incident, conduct analysis, draw conclusions about the causes of the incident, draw conclusions as to whether there is evidence of offenses on the part of any person or organization, and recommend measures to prevent similar incidents from occurring. Accordingly, the scope of the investigation is limited to those topics and pieces of evidence that explain the cause and/or demonstrate evidence of an offense.

F.2. WHEN TO CONDUCT AN INFORMAL INVESTIGATION

An informal investigation should be conducted for any casualty involving a U.S. or foreign flag commercial vessel, including state numbered commercial vessels, and meeting any of the below criteria:

Death: One death. Death cases may be downgraded to Data Collection after credible evidence, such as a death certificate, indicates death from natural causes (including pre-existing medical condition) or suicide.

Injury: One injury which results in fractured bones (other than fingers, toes or nose), loss of limbs, severe hemorrhaging, severe muscle, nerve tendon or internal organ damage, or in hospitalization form more than 48 hours within 5 days of the injury.

Vessel loss: Loss of an uninspected vessel of less than 500 GT, or loss of a barge of



more than 100 GT on inland waters (as defined in 33 USC 2003).

Property damage: An event involving a vessel and resulting in property damage exceeding \$100,000 but less than \$1,000,000. The damage value comprises the cost of labor and material to restore the property (vessels, shoreline facilities, pipelines, OCS facilities, etc.) to its original condition before the occurrence, but does not include damage to natural resources of the cost of salvage, cleaning, gas-freeing, dry-docking, or demurrage. Damage values should be the best estimates available immediately following the accident.

Collision/Allision: Any collision or allision resulting in property damage exceeding \$25,000.

Loss of propulsion or steering: Any loss of propulsion or steering, or partial loss of propulsion or steering (e.g. loss of one engine), even if momentary, affecting an inspected U.S. vessel anywhere or affecting a foreign flag vessel or an uninspected U.S. vessel or 100 GT on U.S. navigable waters.

Flooding or fire: Flooding or fire that adversely affect a vessel's fitness for service on an inspected U.S. vessel anywhere, or affecting a foreign flag vessel or an uninspected U.S. vessel over 100 GT on U.S. navigable waters.

Equipment failure: Failure of Coast Guard approved primary lifesaving equipment or Coast Guard approved firefighting equipment.

Discharge: Medium discharge of oil or medium release of a hazardous substance (as defined in 40 CFR 300.5), or of hazardous cargoes regulated under 46 CFR Subchapter O, in which a vessel is the source or the cause of the discharge or release.

Commercial Diving Casualty: Death or injury of persons diving from a vessel for commercial purposes.

Recreational Diving Casualty: Death or injury of persons diving from a vessel in federal waters for recreational purposes.

F.3. PARTIES IN INTEREST

See 46 CFR 4.03-10

IOs will not normally designate Parties in Interest as a part of an informal investigation of a marine casualty without a formal request for such status. The IO should evaluate and respond to all requests for party in interest status. In some incidents, people and organizations that may be designated in a formal investigation may participate in an informal investigation. As an open proceeding, those parties may request to be present during the interviewing of certain witnesses, to present evidence, and/or request to have certain witnesses interviewed. Whether or not Parties in Interest are designated, if a party meets the criteria of a party in interest, they can not be prohibited from participating in the investigation

F.4. OPEN PROCEEDINGS

Informal investigative proceedings are open to the public. Accordingly, to the extent that such presence does not hinder the progress of the investigation, the press and public may be present while interviewing witnesses.

F.5. OPENING THE INFORMAL

No formal opening is required for informal investigations. Informal investigations are generally opened as directed by the standing orders of the OCMI/COTP. The



PROCEEDINGS

IO is not required to make a public notice regarding the opening of informal investigations, or any formal statement for the record of the investigation. Evidence and testimony are collected in as informal a setting as possible.

G. FORMAL INVESTIGATIONS

G.1. TYPES OF FORMAL PROCEEDINGS

Formal proceedings may be initiated by the OCMI (Unit Formal), the District Commander (District Formal), and by the Commandant (Marine Board of Investigation, also referred to as a Marine Board). The Unit and District Formal Investigations are composed of a single IO designated by the OCMI or District Commander to receive evidence and testimony under formal rules (an additional IO is recommended to act as recorder). The duties of this IO are detailed in 46 CFR Part 4.07. A Marine Board is the highest level of investigative effort and may be initiated via the Port and Waterways Safety Act (PWSA) or 46 USC Chapter 63 further detailed in 46 CFR 4.09-1 (for Marine Casualties). A Marine Board is composed of three or more officers designated by CG-545 to conduct the investigation under formal rules. Funding for formal proceedings is provided by the convening authority.

G.2. WHEN TO CONDUCT A FORMAL INVESTIGATION

A formal investigation should be conducted for any casualty involving a U.S. or foreign flag commercial vessel, including state numbered commercial vessels, and meeting any of the below criteria:

Death: 2 or more deaths.

Injury: 2 or more seriously disabling injuries or 6 or more injures which result in fractured bones (other than fingers, toes or nose), loss of limbs, severe hemorrhaging, severe muscle, nerve tendon or internal organ damage, or in hospitalization form more than 48 hours within 5 days of the injury.

Vessel loss: Loss of an inspected vessel, or loss of an uninspected vessel of 500 GT or more.

Property damage: An event involving a vessel and resulting in property damage exceeding \$1,000,000. The damage value comprises the cost of labor and material to restore the property (vessels, shoreline facilities, pipelines, OCS facilities, etc.) to its original condition before the occurrence, but does not include damage to natural resources of the cost of salvage, cleaning, gas-freeing, dry-docking, or demurrage. Damage values should be the best estimates available immediately following the accident.

Discharge: Major discharge of oil or major release of a hazardous substance (as defined in 40 CFR 300.5), or of hazardous cargoes regulated under 46 CFR Subchapter O, in which a vessel is the source or the cause of the discharge or release.

Foreign Flag Exception: A formal investigation is not required for a casualty involving only a foreign flag vessel (e.g. no U.S. vessel involved, no damage to U.S. property, and no injury of U.S. citizens).



Barge Exception: A formal investigation is not required for the loss of a barge on inland waters as defined in 33 USC 2003.

**G.3. MARINE
BOARD OF
INVESTIGATION**

G.3.a. Introduction

The decision to convene a formal investigation is influenced primarily by the lessons to be derived from the incident. If the information to be derived has considerable national significance, or indicates vessel class problems or areas of technical importance, the Commandant may convene a Marine Board to assure that every aspect of the case is probed. Additionally, broad or intense public interest may warrant the formalities of a Marine Board. A Marine Board is usually composed of three or more members. The senior member shall be chairperson (also referred to as the Chair), the junior member the recorder. CG-545 may also designate specialists or technical experts to assist.

G.3.b. Designation

Designation of Marine Board members will be initiated by message, and subsequently confirmed by precept from the convening authority. Designation of Marine Board members is based on the nature of the casualty and the availability of qualified personnel.

G.3.c. Precept

The precept is a letter written to the prospective Chair designating the members of the Marine Board and providing specific guidance about the topics to be covered during the course of the investigation.

G.3.d. Duties of the Chair

The presiding officer of the Marine Board is the Chair. All members of the Marine Board and all IOs assigned to the Marine Board shall, unless otherwise directed, report to the Chair. The Chair shall control and direct the course of the investigation, including:

- Leadership of investigative personnel;
- Delegating authority to investigative personnel;
- Assigning specific investigative duties;
- Liaison with the cognizant District Commander and OCMI;
- Liaison with CG-545;
- Developing the strategy for the investigation and specific lines of inquiry;
- Managing the ongoing preliminary investigation;
- Developing and formally designating Parties in Interest;
- Setting the rules of conduct for participation of Parties in Interest;
- Recruiting and using any needed Coast Guard or other investigative



resources;

- Conducting regular briefings; and
- Producing the Report of Investigation (ROI).

G.3.e. Duties of the Members

Members of the Marine Board carry out the investigation of the incident under the control and direction of the Chair. While the Chair sets the strategy and assigns duties, the members assume the tactical control of the investigation and will normally oversee specific elements of the preliminary investigation, propose witnesses to interview and evidence to examine, conduct the questioning of specific witnesses, and so on.

G.3.f. Duties of the Recorder

The recorder shall be governed by the instructions of the Chair in matters concerning the composition of the record, including exhibits and attachments, adjournment to other times and places, etc. As a member of the Marine Board, the recorder also acts as an independent contributor with regard to final conclusions and recommendations by the Marine Board. The recorder is responsible for the following:

- Custody of:
 - ❑ Copies of appropriate charts;
 - ❑ Most recent vessel inspection records;
 - ❑ Plans of vessel(s);
 - ❑ Record of previous casualties, possibly related;
 - ❑ Message traffic on casualty;
 - ❑ Copies of statements of persons interviewed;
 - ❑ List of physical evidence;
 - ❑ List of witnesses and status. (Will they be leaving the area and, therefore, need to be called early or have depositions taken?);
 - ❑ Course recorder tapes, automatic bell recorder record, charts, bell books, logs, and other vessel records. (These shall be taken into custody if still aboard the vessel.);
 - ❑ Photos of casualty; detailed photographs of significant areas that can assist witnesses in testifying; and
 - ❑ Photos of vital controls (e.g., engine-order telegraph settings in bridge and engine room, rudder angle indicator, position of rudder, sound powered phone selector settings, etc.).
- Following up on the recovery of victims (their identification, where and when located, and by whom); elements/materials that may help identify victims should be called to the attention of the coroner or local authorities.
- Notifying the cognizant U.S. Attorney via Coast Guard Legal in cases



involving government vessels or potential claims against the government.

- Advising Parties in Interest of their designation and rights.
- Advising Parties in Interest and others who will testify as to what documents (logbooks, charts in use, blueprints, notes, etc.) they are required to bring with them.
- Preparing information for the Chair's opening statement.
- Supervising arrangement of tables and seating; arranging the needs of the witness and board members including such things as drinking water.
- Arranging for staff support to handle the call and return of witnesses, run errands, etc.
- Calling or e-mailing CG-545 each day with a summary of the day's proceedings (to be relayed to the Commandant). This should outline the important points of testimony without evaluation or comment. If practical, the call or e-mail should be made about 0730 Eastern Standard Time, so that the information can be promptly presented to the Commandant at the morning briefing.
- Promptly advising the Chair if it appears that substantial additional expenses must be incurred. After due consideration by the Marine Board, CG-545 should be fully advised.

**G.4. DISTRICT
FORMAL
INVESTIGATION**

G.4.a. Introduction

The authority to convene a District Formal Investigation is found in 46 CFR 4.07-1. As with the decision to convene a Marine Board, the decision to convene a District Formal Investigation is influenced primarily by the lessons to be derived from the casualty. If the information to be derived has considerable regional significance, or indicates vessel class problems or areas of technical importance, the District Commander may convene a formal investigation to assure that every aspect of the case is probed. Additionally, broad or intense public interest may warrant the formalities of a District Formal Investigation. A District Formal Investigation is composed of one specially designated Lead Investigating Officer (LIO) as the presiding officer. The District Commander may also designate specialists or technical experts to assist the LIO.

G.4.b. Designation

The LIO designated to convene a District Formal Investigation will be notified by message, and subsequently confirmed by precept. Designation of the LIO and recorder is based on the nature of the casualty and the availability of qualified personnel. An officer having broad marine experience is selected, usually a SIO or CID with a strong IO background.



G.4.c. Precept

The precept is a letter written to an officer designating him or her as the LIO to conduct a District Formal Investigation and providing specific guidance about the topics to be covered during the course of the investigation. An example of a precept letter is included in the Appendix.

G.5. UNIT FORMAL INVESTIGATION

G.5.a. Introduction

OCMI's are delegated the authority and responsibility to direct the investigation of marine casualties, and to designate IOs to execute these responsibilities. Any such investigations may be conducted under the formal rules in Title 46 CFR Part 4.07 when the issues involved suggest the scrutiny of a formal proceeding, or when press or public interest demand formal proceedings.

G.5.b. Designation

Any marine casualty qualified marine investigator designated as the LIO by the OCMI to conduct marine casualty investigations within their Area of Responsibility (AOR) may conduct Unit Formal Investigations. No additional or case-by-case designation is necessary. The OCMI may also designate IOs or other personnel to assist the LIO with conducting the formal investigation.

G.5.c. Precept

The unit's organization manual will normally contain the specific duties that the IO is expected to execute, and these serve as a precept for Unit Formal Investigations. OCMI's may, when appropriate, issue a precept for a specific investigation.

H. CONDUCT OF FORMAL PROCEEDINGS

H.1. PRELIMINARY INVESTIGATION

H.1.a. Conduct and Scope of the Preliminary Investigation

When an incident occurs, the investigation into the circumstances should begin immediately. When a formal investigation seems appropriate, a preliminary investigation is necessary to determine what witnesses and evidence the formal sessions will examine. The use of a sufficient number of field IOs is vital in swiftly gathering a maximum amount of evidence. This information serves to determine the general topics about which witnesses will testify and the most appropriate order of their appearance. In the case of survivors arriving as a group, it is sometimes best to serve subpoenas for appearance at the unit or another suitable place for preliminary interviews. The preliminary investigation shall not be stopped when it appears that the casualty will become a "unit formal", "district formal," or "marine board" case. When a presiding officer (either the Chair or designated IO) over formal proceedings is named, the OCMI shall transfer control and direction of the preliminary investigation to the presiding officer of the formal proceedings.



H.1.b. Transition from Informal Investigation

During the period after the casualty but before the initiated formal proceedings, the preliminary investigation directed by the OCMI should continue. The information developed during the preliminary investigation must be collated and presented to the presiding officer of the formal proceedings so that hearings can be convened. Upon designation, control of the investigation shifts from the OCMI to the presiding officer. By agreement with the OCMI, the investigative resources at the unit may be employed by the presiding officer to continue or complete the preliminary investigation. The preliminary investigation is deemed complete when the presiding officer has sufficient information to schedule witnesses, admit evidence, and set a date for hearings.

H.1.b. Selection of Witnesses for Formal Proceedings

Based on the preliminary investigation and prior to the convening of formal hearings, the recorder or IO must develop a schedule of witness testimony, along with a brief one-paragraph statement of expected testimony. This list should be circulated to the Parties in Interest (if designated) for comment prior to finalization. The schedule of witnesses should be made publicly available prior to the hearings.

H.1.c. Selection of Evidence for the Formal Proceedings

As with witnesses, based on the preliminary investigation the recorder or IO should develop a list of evidence that they hope to enter as exhibits into the case. In some cases this will require the calling of certain witnesses to authenticate and/or explain the evidence at hand. A list of prospective evidence to be entered as exhibits, along with associated witnesses, should be circulated to the Parties in Interest (if designated) for comment prior to finalization. The list of evidence to be introduced need not be made publicly available prior to the hearings.

H.1.d. Support of Formal Proceedings

Prior to convening of hearings the Marine Board or IO shall be provided with all necessary assistance by the cognizant District Commander. Legal assistance shall be provided during the investigation and, if Coast Guard personnel are called to testify, they shall be provided legal representation. If the Marine Board or IO intends to call Coast Guard personnel as witnesses, the presiding officer should obtain permission from the District Commander. If additional legal resources are necessary, they shall be provided by the Area Commander or Maintenance and Logistics Commander. Technical assistance from Marine Safety Center (MSC) personnel shall be provided as requested by the presiding officer; if necessary, additional assistance may be obtained from Office of Engineering Standards, Commandant (CG-521). The District Commander shall provide clerical personnel to the formal proceedings for use as necessary. **The hiring of commercial court reporting services will be authorized by the inclusion of the following paragraph in the Commandant's precept:**



"When deemed appropriate for the proper and orderly functioning of this Marine Board of Investigation, the District Commander is authorized to negotiate for commercial court reporting services pursuant to 10 USC 2304(a)(4). This authorization satisfies the requirements of USCG Procurement Regulations 11-3.204(b)(1) for Commandant (CG-85) approval prior to negotiation of contracts for personal and professional services. If district funds are not available, comply with the Manual of Budgetary Administration, COMDTINST M7100.3."

H.1.e. Operational Control of Investigating Officers

IOs assigned at any field office remain under the operational control of the OCMI. When a formal investigation is convened (as a Marine Board, District Formal, or Unit Formal), a preliminary investigation will always be required. In some cases, this will require expertise and manpower additional to that provided on the Marine Board or by the LIO. In such cases, the Commandant, District Commander, or Commanding Officer should make arrangements to detail IOs to the operational control of the presiding officer. Without such a detail, unit IOs should expect to continue the preliminary investigation to the extent necessary once the Marine Board and/or IO have arrived on scene.

H.2. PARTIES IN INTEREST

H.2.a. Introduction

The formal designation and inclusion of Parties in Interest is perhaps the most distinctive aspect of a formal proceeding. Because all parties with a stake in the outcome of the investigation are involved from the outset, the investigation develops better and more relevant information than might otherwise be possible.

H.2.b. Definition

A party in interest, as defined in 46 USC 6303 and 46 CFR 4.03-10, includes any individual, organization, or entity that a Marine Board or IO finds to have a direct interest in the investigation being conducted, as well as those specifically listed in the statute.

H.2.c. Designation

A person or organization, other than those specifically listed by statute, becomes a Party in Interest only after formal designation by the presiding officer. The following may be designated as Parties in Interest when they can demonstrate a connection with the casualty or accident under investigation, though this is not an exhaustive or exclusive listing:

- The individual, organization, or other entity whose conduct is under investigation. When their conduct is at issue, this includes an owner, charterer, agent of such owner or charterer, licensed officer, or holder of any certificate of service, or any other person;
- The lawful representative of a person, organization, or other entity who would have been designated a party in interest under criteria (a) above, but



who has lost their life in the casualty under investigation;

- The individual, organization, or other entity that is a manufacturer, owner, shipper, shipyard, supplier, time or space charterer, or other cargo interest, when there is an indication that cargo caused or contributed to the cause of the casualty;
- The individual, organization, or other entity is an underwriter or insurer of a party in interest as designated under the criteria in the first or third bullet above, when the underwriter or insurer has, at the time of investigation, succeeded to the rights of the party in interest by means of subrogation; or
- Any individual, organization, or other entity that can demonstrate the potential for contributing significantly to the completeness of the investigation, or otherwise enhancing the safety of life and property at sea, through participation as a party in interest (e.g., a maritime labor union, pilot's association, standards making organization, or an individual or corporation incurring damages as a result of the casualty).

H.2.d. Status before Designation

People and organizations that not statutorily defined as parties in interest but are designated later as Parties in Interest have no special rights under 46 CFR part 4 until such time as they are designated by the presiding officer. Accordingly, they may not call or examine witnesses or offer evidence until such time as they are formally designated as Parties in Interest.

H.2.e. Representation by Counsel

Under 46 USC 6303, a party in interest may be represented by legal counsel during formal proceedings. Counsel is present to advise the party in interest in the pursuit of the investigation's purposes, and may not act as prosecutor or defense for their client. Accordingly, the presiding officer should make it clear that he or she will exercise appropriate control in conducting the investigation, and that evidence, questions, and testimony deemed irrelevant to the purposes of the investigation will not be allowed. A party in interest (such as a corporation) will normally be required to speak through a single representative.

H.2.f. Special rights under 46 CFR part 4

Each designated party in interest at a formal proceeding, whether conducted by a Marine Board or IO, shall be accorded all the rights set forth in 46 USC 6303. Specifically, those rights are: to be represented by counsel, introduce evidence, cross-examine witnesses, and to call witnesses in his or her own behalf. These rights should be explained at the beginning of the investigation and again, as necessary, when Parties in Interest are designated during the course of the investigation.

H.2.g. Role in the Proceeding

Parties in Interest are designated to assure that the Coast Guard has the fullest



possible accounting of the circumstances surrounding an incident. To that end, the role of the Parties in Interest is to serve the purposes of the investigation. Parties in Interest may not use the formal investigation as a means for discovering material for use in civil legal proceedings or for other reasons. Parties in Interest should be reminded of their proper role during the preliminary meeting with the Marine Board or IO.

H.2.h. Process for Parties to Exercise their Rights

Parties in Interest should be advised during the preliminary meeting that they may call only those witnesses which the Chair or Lead Investigating Officer (LIO) deems relevant to the investigation. Accordingly, Parties in Interest should submit a list of witnesses and a brief paragraph of expected testimony to the Chair or LIO for approval. Similarly, subpoenas may be issued by the Chair or LIO when necessary to obtain evidence or testimony suggested by Parties in Interest and deemed relevant. When Parties in Interest attempt to exceed the scope of the investigation, the Chair or LIO may order them to move on to other subjects or, in an extreme case, terminate the party's examination of a witness.

H.3. OPEN PROCEEDINGS

Coast Guard investigative proceedings, including formal proceedings, are open to the public and press under Title 46 USC Chapter 63. Requests to attend investigative proceedings should not normally be declined unless the presiding officer has a reasonable, articulated belief that public or press attendance will undermine or limit the ability of investigators to obtain information freely. Witnesses should be informed that the contents of their statements/interviews will be made public. Site-safety, as well as procedures for securing the scene and collecting evidence, usually dictate that the public not be allowed free access to the accident scene.

H.4. PRESS AND PUBLIC RELATIONS

H.4.a. Introduction

Often, there is considerable local or national interest in casualties under investigation by a Marine Board. Reporters are entitled to attend open sessions of a Marine Board, as are members of the public; cooperation with news media interests is encouraged to the extent that they do not detract from the decorum of the proceedings or inhibit a witness' willingness to testify. Media coverage of marine casualty investigations will serve to increase the public's awareness of those conditions and practices that precipitate marine casualties, as well as the Coast Guard.

H.4.b. Pre-convening News Release

The presiding officer should, in consultation with the cognizant Public Affairs Office, prepare a brief press release. The release should contain highlights of facts about the casualty known to date, the commencement time and location of the formal proceedings, and the procedures to be followed by the media for obtaining permission to conduct expanded media coverage, which involves any manner of audio or video coverage. It should also specify that media representatives will be required to make pooling arrangements as described in Section B.6.i. below, and that



all members of the press and public are welcome to attend the formal proceedings.

H.4.c. Expanded Media Coverage

Expanded media coverage is coverage of proceedings by audio or video recording, television or radio broadcasting, cable television transmission, still or motion picture photography, or by any other audio or video medium of communication to the public. The Coast Guard's policy is to permit expanded media coverage of marine casualty investigations conducted under the provisions of 46 USC 6301 to the maximum extent possible and consistent with the proper and orderly functioning of the investigation.

H.4.d. Requests for Expanded Media Coverage.

A request for expanded media coverage must be submitted to the presiding officer at least one day in advance of the proceeding. All Parties in Interest must be notified of such requests prior to commencement of the proceeding. The presiding officer may permit coverage without the requisite notice if extraordinary conditions establish that the necessity to give notice was not foreseeable. All request shall include:

- The subject, date, and time of the proceeding;
- A description of the type (audio, video, or still photography) of expanded media coverage which is planned; and

Whether a pooling arrangement (see Section B.6.i. below) has been reached, and if so, the designated media representatives.

H.4.e. Ruling on Request for Expanded Media Coverage

When the presiding officer receives a request from the news media for expanded media coverage, they must formally rule on the request within a reasonable time prior to the proceeding. Expanded media coverage shall be presumed to be permissible unless the presiding officer makes a finding establishing:

- A substantial probability that expanded media coverage would interfere with the rights of the parties to a fair hearing;
- A substantial probability that expanded media coverage would unduly detract from the solemnity, decorum and dignity of the proceedings;
- That a particular participant would be more adversely affected by expanded media coverage than would be members of the public in general (e.g., a very young child), and that the expanded media coverage would more adversely affect that participant than would traditional media coverage (e.g., a witness who was disfigured during the marine casualty in question); or
- A violation of the guidelines or additional rules imposed by the presiding officer.

Any member of the press, party in interest, or witness may lodge a written objection to the presiding officer's ruling on expanded media coverage of a proceeding.



Objections should be considered and formally addressed when making decisions on expanded media coverage. The ruling must briefly state the reasons for approval or denial of the request. The ruling should be announced on the record and in writing. Subsequent objections should be considered an appeal of the presiding officer's decision. Such appeals should be handled in accordance with Section G.5. below.

Note: Extreme Close-up video or photography entails zooming in or magnifying to show the subject from a closer perspective than you would ordinarily see.

H.4.f. Limitations on Expanded Media Coverage.

Notwithstanding an authorization to conduct expanded media coverage of a proceeding, the following limitations apply:

- Bench conferences shall not be recorded by audio or by extreme close-up video or photography;
- Confidential communications between counsel and client or co-counsel shall not be recorded by audio or by extreme close-up video or photography; and
- Extreme close-up photography of parties to the investigation or members of the Marine Board is not permitted.

H.4.g. Conduct of Members of the Press

Media representatives shall conduct themselves in a manner consistent with the decorum and dignity of the hearing. The following practices shall be observed in this regard:

- All equipment employed to provide expanded media coverage shall be positioned in as inconspicuous an area as possible and operated to minimize any distraction;
- Identifying marks, call letters, logos, symbols, and legends shall be concealed on all equipment. Personnel shall not wear clothing bearing any insignia or identification of the individual or media organization involved; and
- Equipment involved in expanded media coverage shall not be placed in, or removed from, the hearing room except prior to the commencement or after adjournment of proceedings each day, or during a recess. Neither television film, magazines, videocassettes, nor still camera film or lenses shall be changed within a hearing room except during a recess in the proceedings.

H.4.h. Expanded Media Coverage Equipment Limitations

- **Video:** Only one television organization at a time shall be permitted to operate a television camera in the hearing room. That organization shall employ only one television camera and one camera operator who shall remain in a single location while the hearing is in session.
- **Audio:** The media shall use the hearing room's audio system if technically feasible, ensuring that this does not interfere with the investigative body's use of the system. If the hearing room's system is not technically suitable, then all audio recording shall be done on one audio system, installed by the media at



their expense. Microphones and related wiring shall be unobtrusive and shall not interfere with the movement of those in the hearing room. When requested, copies of recorded testimony will be provided to the investigative body.

- **Still Cameras:** One still photographer using an unobtrusive tripod and cameras that make as little noise as possible shall take all photographs. The photographer shall remain in a single location while the hearing is in session.
- **Lighting:** No additional lighting equipment shall be permitted.

H.4.i. Pooling Arrangements

The media shall be solely responsible for designating one representative to conduct each category of expanded media coverage listed in this instruction. It is also the media's responsibility to arrange an open and impartial distribution scheme and to establish a distribution point outside of the hearing room. If an agreement cannot be reached on these matters, then there shall be no expanded media coverage of the type for which no pooling arrangement was made. The presiding officer shall not be called upon to resolve these kinds of disputes.

H.5. APPEAL OF RULINGS BY THE CHAIR OR LEAD INVESTIGATING OFFICER

Any member of the press, any party in interest, or any witness may appeal a ruling by the presiding officer to the convening authority of the proceeding. Appeals should be submitted in writing to Commandant, the District Commander, or OCMI. All appeals will be processed in accordance with the rules in 46 CFR 1.03 – Rights of Appeal. The decision of the convening authority on appeals shall be included in the record of the formal proceeding.

H.6. DAILY SUMMARY

The presiding officer shall assure that an informal daily summary of each day's session is prepared. This summary should report important testimony without evaluation or comment, clearly phrased in the language of an objective reporter and recounting no more than: "Master X said that he was on the right side of the channel"; "The coroner said that pilot Y's blood alcohol level was 0.10 percent"; and "The Chair denied a request by attorney Z that his client be named a party in interest," etc. It is also desirable to include an advance list of the next witnesses to testify.

For Marine Boards, the daily status report shall be submitted by the most efficient means to CG-545. For District and Unit Formal Investigations, the daily status report shall be submitted by the most efficient means to CG-545, the District Commander (dp) and the OCMI.



I. OPENING THE PROCEEDINGS

I.1. INTRODUCTION

The following section outlines the general process to be followed by the Marine Board or IO in the conduct of formal proceedings. Such proceedings shall be viewed as an opportunity for the Coast Guard to illustrate publicly the importance of marine investigations and the ramifications of such a casualty to safety, mobility, and the environment.

I.2. OPENING THE FORMAL PROCEEDINGS

I.2.a. Preliminary Meeting

Prior to the formal opening of proceedings, the investigative body should meet with all involved Parties in Interest and/or their designated representative or legal council, to discuss how the proceedings will be conducted. The presiding officer will announce the ground rules for the proceedings, which include but are not limited to the following:

- A prohibition of smoking while the formal proceeding is in session (this shall be announced at the opening of the hearing);
- Provision for appropriate rest breaks;
- Provision that, if more than one counsel is present on behalf of a party in interest, only one of them may act as a spokesperson and be identified as such;
- Procedures for making and distributing duplicates of exhibits required by Parties in Interest during recesses or when the formal proceeding is not in session;
- Resolution of witness scheduling and special problems regarding availability of witnesses or evidence;
- Any visits deemed necessary by the presiding officer to the casualty site by the investigative body and Parties in Interest; and
- Procedures for handling objections. Any matters of contention should be resolved at the preliminary meeting, so that the record is not cluttered with subsequent objections.

I.2.b. Opening Statement

At the opening of formal proceedings, the presiding officer shall deliver an opening statement. An example is provided below:

Good morning, ladies and gentlemen. I am [Name, rank, position]. The [name of the convening authority, i.e.:Commandant/District Commander/OCMI] has directed me to chair this [Marine Board of Investigation/ District Formal Investigation/Unit Formal Investigation], which [he/she] has convened under the authority of Title 46 USC 6301 and Title 46 CFR Part 4, to investigate the circumstances surrounding [incident description/date/location.] [We/I] will conduct the investigation under the



rules in Title 46 CFR Part 4.

Introduction of the Marine Board (when applicable)

The officer on my right is [name/rank], who is attached to the [unit/position]. The officer to his right is [name/rank] who is attached to [unit/position]. He is also serving as recorder. [Name/rank], [name/rank], and I will make up the composition of this Marine Board of Investigation. This Marine Board will submit its report of findings, conclusions, and recommendations to the Commandant of the United States Coast Guard.

Introduction of NTSB Representative (when applicable)

Present at this investigation is Mr. [name], representing the National Transportation Safety Board. He is seated to my left. The National Transportation Safety Board is also charged with the responsibility for the determination of cause or probable cause of a major casualty under the provisions of Section 304(a)(1)(E) of the Independent Safety Board Act of 1974. For this reason the National Transportation Safety Board representative will participate fully in this investigation and may make recommendations about the scope of the investigation, may call and examine witnesses, and may submit or request additional evidence.

Public and Press Participation

I would like to request the cooperation of all persons present to minimize any disruptive influence on the proceedings in general and on the witnesses in particular. Smoking will be prohibited. Photography, including television cameras, will only be permitted during this opening statement and during recess periods. The members of the press are, of course, welcome, and an area has been set aside for your use during the proceedings. All cameras shall be removed from the room following this statement. The news media may question witnesses concerning the testimony that they have given after I have released them. I ask that such interviews be conducted outside this room.

Purposes of the Investigation

This investigation is intended to determine the cause of the casualty to the extent possible and the responsibility thereof, subject to final review and approval by the [Commandant/District Commander/OCMI], and to obtain information for the purpose of preventing or reducing the effects of similar casualties in the future. This investigation is also intended to determine if there is evidence that any incompetence, misconduct, unskillfulness, or willful violation of the law on the part of any licensed officer, pilot, seaman, employee, owner, or agent of such owner of any vessel involved or any inspector, officer of the Coast Guard, or other officer or employee of the United States, or any other person, caused or contributed to the cause of this casualty; or if there is evidence that any act in violation of any of the provisions of the



United States Code or any of the regulations issued there under was committed. [This Marine Board is/I am] also empowered to recognize any commendable actions by persons involved, and to make appropriate recommendations in this regard.

Parties in Interest

A person may be designated as a “party in interest” by reason of his or her position or part in the casualty. They are not necessarily suspected of wrongdoing. Parties in Interest are those who, under the existing facts or because of their position, may, in any way, be responsible for or have contributed to the casualty. A person is named a party in interest so that they may have an opportunity to protect themselves if facts develop that are adverse in nature to them. A party in interest may be named during the course of this investigation if it appears that he or she may, in any way, have been responsible for or may have contributed to the cause of the casualty. I may designate additional Parties in Interest if, during the course of the investigation, such designation is necessary and appropriate.

All Parties in Interest have a statutory right to be present, to be represented by counsel, to cross-examine, and to have witnesses called in their behalf. Witnesses who are not designated as Parties in Interest may be assisted by counsel for the purpose of advising them concerning their rights; however, such counsels are not permitted to examine or cross-examine other witnesses or otherwise participate.

I have designated the following individuals and firms as Parties in Interest: [list all Parties in Interest]

Testimony under Oath

[The Marine Board / I] will place all witnesses under oath. When testifying under oath, a witness is subject to the Federal laws and penalties for perjury for making false statements under 18 USC 1001. Penalties included a fine up to \$250,000, or imprisonment up to 5 years, or both.

Call for Assistance

The sources of information into which this investigation will inquire are many and varied. The investigative resources of the Coast Guard have made attempts to locate every available piece of evidence having a pertinent bearing on the casualty.

[This Marine Board/I] will hear all such evidence. Should any person have or believe he or she has information not brought forward but which might be of direct significance, that person is urged to bring that information to my attention.

Recognition of Lives Lost (if applicable)

At this time I would like to ask that all of you stand for a moment of silence in



respect to those persons who have been lost as a result of this casualty.
(All present stand.)

This concludes the opening statement. Thank you for your attention. [The Marine Board/I] will now take the oath, after which I will give the representatives of the media an opportunity to ask me a few questions. Following a ten-minute recess [we/I] will call the first witness.

I.3. MARINE BOARD AND INVESTIGATING OFFICER OATHS / AFFIRMATION

Immediately following the Opening Statement, all members of the Marine Board or the IO (and court reporter if applicable) shall take the following oath on the record: (NOTE: The words "so help me God" are omitted when an affirmation is given.)

"I [name] swear/affirm that I will faithfully perform all the duties incumbent upon me as [a member of this Marine Board of Investigation/the designated Investigating Officer], and that I will examine and inquire into the matter now before me without partiality [so help me God]."

I.4. RECEIVING TESTIMONY

I.4.a. Exclusion of Witnesses

When the recorder calls the first witness, all other witnesses (with the exception of Parties in Interest) should be excused from the room and moved to a separate designated waiting area. This waiting area shall be far removed from the primary hearing location so that witnesses cannot hear or be aware of any testimony presented to the board.

I.4.b. Appearances

Prior to receiving testimony during each session of the proceeding, the recorder or IO shall call for and receive appearances by counsel for the Parties in Interest or for the witnesses. This may be done with a simple request made on the record: "At this time I would like to have appearances for the record. Would counsel for Parties in Interest and witnesses please identify themselves?"

I.4.c. Oaths for Interpreters

When a witness requires an interpreter, the interpreter must be placed under oath prior to placing the witness under oath or examining the witness. Every interpreter employed during an investigation shall be sworn in or affirmed using the following oath/affirmation:

"Do you, Mr./Ms. XXXX, swear/affirm that you will faithfully perform the duties of interpreter in this investigation [so help you God]?"

I.4.d. Oaths for Witnesses

Before giving testimony, witnesses shall be required to stand while the oath or affirmation is administered, after which the witness may sit down. The recorder or



LIO shall administer the following oath/affirmation:

"A false statement given to an agency of the United States is punishable by fine and/or imprisonment under 18 USC 1001. Knowing this, do you solemnly swear that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, [so help you God?]"

I.4.e. Use of Subpoenas

In all instances, Marine Boards and other formal investigations shall be convened under such authority allowing the use of subpoenas. The use of subpoenas is governed by the general policy in Chapter A3 of this volume. The use of subpoenas to assure attendance of witnesses, even when deemed cooperative, is encouraged but is at the discretion of the presiding officer.

I.4.f. Refusal of Witnesses to Testify

As with all investigations, persons may elect not to give testimony, and nothing in existing law supersedes or contravenes the Fifth Amendment. Accordingly, witnesses may refuse to testify during formal proceedings, but the witness's intent to do so should have been well understood by means of the preliminary investigation. Accordingly, witnesses who will take the Fifth Amendment protection and refuse to testify should be placed before the Marine Board during formal proceedings only for the purpose of putting their refusal to testify into the record. As with any investigation wherein a witness refuses to testify, the Chair or Lead Investigating Officer (LIO) may pursue legal action to compel testimony as described in Chapter A3 of this volume in consultation with their servicing District Legal Office.

I.4.g. Preliminary Questions

The cooperation and memory of a witness can best be served by making the person feel at ease. Often when questioning is prolonged or the witness is very nervous, a short recess will ease the witness' apprehension. The witness should be treated in a firm but courteous manner. All questions should be delivered firmly and clearly, and an adequate answer shall be insisted upon before proceeding to the next question. Generally, the following information should be obtained from a witness:

- Name and home address of the witness.
- Whether or not the witness, when designated a party in interest, has counsel.
- Information from the witness' document or license.
- The witness' age and experience. Experience includes how long the witness had been sailing prior to the casualty, the position held at the time of the casualty, and the length of employment in that position on the vessel involved.
- Witness status onboard the vessel if a crewmember, where the witness was and how he was occupied at the time of the casualty.



- A subjective statement of the circumstances that resulted in the casualty. The witness should not be interrupted during this statement. Notes should be made upon which to base specific questions after completion of the statement.
- Sufficient questions to elicit as much information concerning the casualty as the witness can supply.

I.4.h. Order of Questioning

Direct examination should continue until the Marine Board or LIO is satisfied. After direct examination, counsel for the witness is then permitted to ask questions, followed by counsel for other Parties in Interest. The investigative body may raise subsequent questions at any time. The investigative body should be guided by the investigation process outlined in Part B of this volume.

I.4.i. Concluding the Testimony

It is always advisable, before concluding an interview, to ask the witness for any information concerning the casualty that has not been elicited. In view of the Coast Guard's many missions, the investigation should thoroughly cover, if applicable, port and environmental safety, VTS, SAR, and ATON elements in addition to basic requirements of 46 USC 6301. Objections by attorneys may sometimes require deliberation by the investigative body. When this occurs, the investigative body shall go off the record. The witnesses shall be reminded that the Board may recall them if needed.

I.4.j. Recall of Witnesses

If a witness is recalled, the witness shall be informed:

"You are cautioned that the oath (affirmation) you took previously is still binding."

I.5. RECEIVING EVIDENCE

I.5.a. General

The presiding officer may enter exhibits into the record at any time. Not all evidence identified or received during the course of a preliminary investigation need be or should be received as evidence during formal proceedings. Instead, the presiding officer should carefully limit the evidence presented to those items deemed to be relevant and informative. When evidence is proposed by Parties in Interest, the presiding officer must note on the record their decision regarding the receiving of that evidence. The presiding officer may decline to enter a piece of evidence into the record when they do not find the evidence relevant or pertinent. When a piece of evidence is received from the Coast Guard, it will be marked for identification as discussed in Chapter B3, section F. Evidence received as an exhibit will be assigned a sequential exhibit number (1, 2, 3, etc.) for evidence obtained by the Coast Guard, and a sequential exhibit letter (A, B, C, etc.) for evidence obtained by third party sources. The recorder or IO shall maintain a complete listing of exhibits along with



descriptions of each exhibit for the record.

I.5.b. Examination by the Marine Board or Lead Investigating Officer

In many cases, entry of a piece of physical or documentary evidence as an exhibit will not be necessary. The evidence may be examined by the Marine Board or LIO, who will identify the salient characteristics for the record. A still or electronic photograph can then be taken of that aspect, and entered as an exhibit.

I.5.c. Authentication

When documentary evidence is entered as an exhibit, it should be identified during witness testimony and authenticated by the witness, rather than relying upon “hearsay” identification such as authentication by an IO. Documentary evidence that has been authenticated should be captioned and signed by the identifying witness. The recorder must complete authentication of exhibits before exhibits are forwarded or surrendered to the presiding officer, counsel, or Parties in Interest. Physical exhibits, such as glassware, film, or metal, that cannot be legibly and permanently stamped or marked upon their surfaces, the recorder shall affix to each such exhibit an adhesive tape surface that is large enough to receive proper authentication and identification. On exhibits consisting of bolts, nuts, revolvers, or knives, the recorder shall place the exhibit stamp on a tag and affix the tag to the exhibit, preferably by wire.

I.5.d. Marking of Third Party Exhibits

The marking of exhibits is an important part of the record and therefore must be understood. Evidence collected by the Coast Guard is collected and marked (for identification) using the processes in Chapter B3, Section F. Exhibits collected by third parties, however, have not been marked for the purposes of the Coast Guard investigation.

Third party evidence which has not yet been entered as an exhibit should be marked for identification by means of a stamp, and should remain in the custody of the submitting party until received as an exhibit.

When evidence is received as an exhibit, or identified and rejected, it immediately goes into the custody of the presiding officer and remains in custody until final disposition is made. If, at any time, the exhibit is removed from the custody of the presiding officer, a signed receipt shall be substituted therefore, inserted in the place reserved for that particular exhibit. Exhibits referred to in the record of proceedings shall be numbered or lettered by the reporter at the time of marking for identification, or marking for identification and receipt into evidence. They shall be marked as follows:



- A single series of consecutive numbers for the U. S. Coast Guard; and
- A single series of consecutive capital letters for third parties

A single series of numbers or letters shall be used for the entire proceedings, regardless of the number, duration, or places of the proceedings. If exhibits in a particular hearing are, by direction of the presiding officer, made a part of the record in another proceeding, such exhibits shall be marked, stamped, recorded, and indexed, in regular sequence among the exhibits of the record into which they are incorporated, without damage to the original markings. A single series of numbers or letters shall be used for all exhibits whether marked for identification, introduced without previous marking for identification, or marked for identification and later introduced and received. The transcript shall reflect the offering of exhibits to be marked for identification and the receipt of exhibits in evidence in the record. The exhibit referred to in the transcript shall be stamped by the recorder on the face of the exhibit in the lower right-hand corner, if possible; otherwise, it shall be stamped where there is available space on the face of the exhibit. If there is no space on the face of the exhibit, the stamp will be placed on the back of the exhibit. Each page of the exhibit shall be marked.

I.6.
RELATIONSHIP TO
LAW ENFORCEMENT
ACTIVITIES

I.6.a. General

As described in Chapter A3 of this volume, investigations are neither administrative nor criminal. They are fact-finding activities directed toward determining the truth surrounding the circumstances or causal factors involved in the incident. For this reason, all investigations must be conducted in such fashion as to preserve the evidence and analysis for use in whatever enforcement proceedings are deemed necessary and appropriate. This procedural protection applies to the conduct of formal investigations both during formal proceedings and the supporting preliminary investigation. In general, because of the public nature of formal investigations, such investigations shall be suspended when an investigation solely to support criminal prosecution is appropriate, and should not be reconvened without approval of the Department of Justice until such time that criminal enforcement proceedings are complete.

I.6.b. Criminal Acts

When a formal investigation detects evidence of a criminal act, that evidence shall be immediately forwarded to the Coast Guard Investigative Service via the cognizant District Commander in accordance with Part C: Enforcement, Section C.1. of this Manual. The Coast Guard Investigative Service, in consultation with the appropriate servicing legal office, will determine appropriate notification of other agencies, including the DOJ, as necessary.

I.6.c. Civil/Administrative Penalties and Suspension and Revocation (S&R) Proceedings



The investigative body should recommend such civil penalty, administrative penalty, and/or suspension and revocation action as is appropriate to the Cognizant OCMI and/or District Commander. The OCMI and District Commander retain authority and responsibility for the conduct of these enforcement actions. (See Part C of this volume.)

I.6.d. Disposition of Evidence for Use in Law Enforcement

The preservation of evidence for potential use in criminal, civil and/or administrative enforcement proceedings is a procedural requirement of all investigations. Formal investigations shall maintain an evidence locker in accordance with Chapter B3 of this volume such that evidence considered and/or received is available for use in enforcement proceedings. Convenience copies of such evidence (where possible) should be made and retained for the use of the formal investigation.

I.7. COMMENDATIONS

Recommendations by a Marine Board or LIO for official commendations in recognition of heroic, distinguished, or meritorious acts should be made the subject of a separate report and should not be included in a Report of Investigation (ROI). Such commendations include, but are not limited to:

- Gold or Silver Lifesaving Medals
- Maritime Administration (MARAD) Awards
 - Merchant Marine Distinguished Service Medal
 - Merchant Marine Meritorious Service Medal
- Letter of Commendation or Appreciation to a Merchant Mariner (District Commander)
- Public Service Awards
- Other commendations issued by the Department of Homeland Security, Department of Transportation, or Department of State

I.8. ADJOURNING THE PROCEEDINGS

When proceedings must break for any reason (including multi-day hearings), the presiding officer shall adjourn the proceedings. The word close refers only to the end of hearings, after which time no further evidence or testimony will be received. Should the presiding officer mistakenly remark that the hearing is "closed," the word "adjourned" should be substituted in the record. When adjourning, the presiding officer should state on the record, "These proceedings are hereby adjourned until [date/time], when they will reconvene at [location]."

I.9. RECONVENING PROCEEDINGS

When the proceedings reconvene after being adjourned, the presiding officer shall call the proceedings to order on the record: "The proceedings will come to order. Present are [list Marine Board members present and Parties in Interest present]."



J. DOCUMENTING THE PROCEEDINGS

J.1. RECORDING OF SPEECH

Everything spoken during the proceedings must be recorded, unless the presiding officer directs otherwise during the course of the proceedings. If the presiding officer says, "It will be stricken," or words to that effect, those words and the direction to strike them shall remain in the record. Only if the presiding officer directs those words or phrases to be expunged shall they be left out of the transcript. If any other party says, "Off the record," the reporter shall be guided by the instructions of the presiding officer only.

J.2. REPORTER'S CERTIFICATE

The reporter's certificate shall be executed by the reporter and shall be an exhibit to the investigation. When a transcript is prepared, the reporter's certificate should be attached to the transcript of proceeding as the final numbered page.

J.3. TRANSCRIPTION OF RECORDINGS

Transcripts of the proceedings (or portions thereof) should be made only upon the direction of the presiding officer, OCMI, District Commander, or CG-545.

J.4. FORM OF THE TRANSCRIPTS

The record shall be typewritten in standard legal stenographic format. Generally, each page should be numbered in the lower right hand corner. Only one side of the paper should be used, leaving a margin of 1 inch on the left, 1/2 inch on the right, and 1 inch at the top and bottom of each page.

J.5. CONTENTS OF THE TRANSCRIPT

An Official Transcript of Proceedings will consist of the following items in the order given:

- Cover Sheet, numbered page i;
- Index of Witnesses, numbered page ii, iii, etc.;
- Index of Exhibits, numbered page viii, etc.;
- Appearance page, numbered 1, 1a, 1b, etc.;
- Record, numbered page 2, 3, etc.;
- Reporter's Certificate, last numbered page(s);
- Motions or briefs (if any) filed with the presiding officer, proposed findings of fact and conclusions, and any other pertinent correspondence;
- Rulings on motions; and
- Exhibits (original exhibits attached to original appeal record; copies of exhibits attached to copies of appeal record).

J.6. APPEARANCE PAGE

The appearance page immediately follows the Index of Witnesses and the Index of Exhibits and shall contain the title of the case; the docket number; the case number; the place, date, and time of the proceedings; the presiding officer; and all appearances. It shall be numbered page 1, 1a, etc. [NOTE: An appearance page



must be made for each day of the proceedings.]

J.7. COVER SHEETS AND BINDINGS

A cover sheet shall be prefixed to each volume of the record. The cover sheet should identify the case; the place, date, and time of the proceedings; the number of pages (per volume); and the Coast Guard district and port where the proceedings were held. The cover sheet should also be marked, near the lower margin, "Vol. 1 of 12," etc. See Figure A5-1 for an example cover sheet. At the end of each volume of the record, following all appended documents, a heavy blank sheet shall be added to protect the record. All transcribed pages of the record must be securely bound together on the left margin (book style). When the record is long, it shall be bound in volumes, each not exceeding 250 pages and terminating at the conclusion of an individual witness' testimony. Small transcripts may be bound with staples and masking tape to cover the staples. Exhibits should be placed in file-size envelopes and marked by exhibit number and title or a short description of the exhibit.

J.8. CORRECTIONS TO RECORDS, DEPOSITIONS, AND SWORN STATEMENTS

The hearing record is to be transcribed verbatim. Should an error of a substantive nature be noted in the record, the presiding officer shall make the necessary correction(s) to the record. This is done only if, after checking the record, it is in fact found to be in error. Grammatical errors, colloquialisms, or slang expressions used by a witness should be transcribed exactly as stated by the witness. Phonetic spellings of uncommon words may be used. A witness who desires to make corrections to a deposition, written interrogatory, or sworn statement shall draw a line through the information to be corrected with a pen, so as not to make it illegible. The witness then shall legibly print the new information above the lined-out information, initialing each correction and the bottom of each page in the right-hand corner, to indicate that he or she has read each page. Upon completion of the transcription of an official record, deposition, written interrogatory, or sworn statement, it is sometimes noted that a page number is repeated or inadvertently omitted. Should a page number be repeated, the second page of the same number should have the letter "a" placed after the page number. If a page number is omitted, a notation to that effect should be placed at the bottom of the previously numbered page close to the page number (e.g., "(Page 126 omitted)"). Interjections in the record such as "hum," "aha," "ah," "ahem," or "phew," are to be avoided in the transcription of the record as they needlessly clutter the record. However, the following interjections are included in the record as they indicate a definite answer: "uh-huh" (meaning yes); "uh-uh" (meaning no); and "huh?" (meaning the question or answer was not heard or understood).

J.9. DEPOSITIONS AND INTERROGATORIES

These may be oral or written, or a combination of both. Depositions are statements made by a witness, and interrogatories are questions asked of a witness unable to appear at a session of the proceedings, by parties to the proceedings. They are transcribed the same way as that of the proceedings of which they are a result, with the following exceptions:

- The Cover Sheet denotes that it is a deposition of a particular witness in lieu of a hearing or investigation.



USCG MARINE SAFETY MANUAL, VOLUME V: INVESTIGATIONS AND ENFORCEMENT
PART A: ADMINISTRATION
CHAPTER 5: LEVELS OF EFFORT AND TYPES OF INVESTIGATION

- The Index contains only the page numbers of the testimony and attachments thereto (if any), and the exhibits that are made a part of the testimony (if any).
- The Appearance Page denotes that it is a deposition and the name of the witness(es) to be deposed.
- The depositions and interrogatories do not have direct and cross-examination, but merely a notation of whom the examination is made by.
- Parenthetical remarks are made when the witness is not available to sign a deposition, written interrogatory, or sworn statement. Should the witness be sailing or otherwise unavailable for signature, the instrument can be completed and forwarded to the appropriate requesting officer; however, signatures should be obtained if possible. A parenthetical notation beginning at the center of the page to the effect that the reading and signing of the instrument was waived, should be added at the end of the deposition.
- The reporter's certificate is altered to show the name of the witness being deposed.
- In taking depositions or written interrogatories, the presiding officer is required to sign a certificate.
- In the event the deposition is a combination of both written questions and oral questions, both formats should be used.

J.10. SWORN STATEMENTS

Sworn statements have no Cover Sheet, Appearance, or Contents page, unless there are attorneys present, in which case an Appearance page is necessary. A reporter's or presiding officer's certificate is not required. Only the notation that the statement was sworn to and subscribed before the officer who affixes his or her signature to the last page of the statement is necessary.

J.11. PARENTHETICAL ENTRIES

Parenthetical phrases for the marking of exhibits and excusing of witnesses shall start in the center of the page and continue to the right margin. [NOTE: Complete English sentences are used in parenthetical remarks; as in "(A recess was taken)," "(There was discussion off the record)," and "(The witness was excused)."] There is a group of parenthetical remarks that rarely, if ever, occur in transcripts. It consists of a word or phrase immediately following a transcribed sentence but within a paragraph. The most frequent words in this group are "(Laughter)" and "(Applause)." The first letter is capitalized so that the parenthetical remark will be set off more obviously from the main body of the sentence. The participants in proceedings routinely hand each other documents without the need for parenthetical remarks. Either they say on the record that they are handing something to another, or the handing is of no concern to the reader. However, there are two occasions when a parenthetical remark is necessary when something is handed from one person to the other.

- A request or a direction is made for the handing of a paper, and the paper is



then handed silently; or

- The witness answers a question, the questioning attorney hands the witness a paper without saying that the attorney is doing so, and then the witness changes his or her answer. Without a parenthetical remark, the reader would have no clue as to the reason for the change in the witness' answer. A question may require a witness, in the course of testimony, to point to a spot on a photograph or chart, indicate a certain distance, or demonstrate a certain action. If the witness does so without speaking, the following parentheticals should be used:
 - A "(The witness indicated.)"
 - A "(The witness demonstrated.)"
 - A "(The witness marked the photograph.)"

These parenthetical remarks note only that the witness indicated, demonstrated, or marked the photograph. The reporter should never presume in a parenthetical remark to specify any height or distance a witness may have indicated, the manner in which a witness may have demonstrated, or the part of an exhibit that may have been marked. If a witness says, "It hurt me here," no parenthetical remark should be added. An attorney or the presiding officer will sometimes add the comment, "Indicating the left shoulder," or "Indicating the head." Even if no one makes a comment on the record to clarify a vague answer, the reporter should not make presumptions. An error on the reporter's part may be an influence on one of the parties concerned, with no way of correcting the error later. There is no need for the parenthetical remark "(Interrupting)" in a reporter's transcript. When one speaker is interrupted by another in mid-sentence, a dash shall be put at the end of the interrupted remark. Also, there is no need for the parenthetical remark "(Continuing)" in the reporter's transcript. [NOTE: A dash is also used to note a change of thought in mid-sentence of the person speaking.] Likewise, there is no need for the parenthetical remark "(Reading)" in a transcript. The quotation marks that surround a direct quote make it absolutely clear that something is being read, and the marks are far less cumbersome than "(Reading)."

J.12. BREAKS IN TESTIMONY

When the examination of a witness is interrupted by a recess during the day, for a noon lunch break, or at the end of the day, the following format is used:
"Thereupon, JOHN JACKSON resumed the stand and testified further as follows:
DIRECT EXAMINATION (Continued)."

J.13. USE OF INTERPRETERS

When an interpreter's services are used, the following parenthetical phrase is used:

"(A.B. GARCIA was duly sworn to interpret English into Spanish, and Spanish into English to the best of his ability.)"



"Thereupon, JOSE LOPEZ REYES, having been called as a witness by the U.S. Coast Guard and having first been duly sworn, was examined and testified through the interpreter as follows:"

A witness may testify through an interpreter, but occasionally may give an answer in English. An interpreter may be present in case the witness is unable to speak English. The witness may testify for the most part in English, but occasionally may give an answer through the interpreter.

K. CLOSING THE PROCEEDINGS

K.1. INTRODUCTION

The closing of formal proceedings does not conclude the investigation; instead it marks only the end of the public participation in the investigation. Contact with Parties in Interest can and should continue after the formal proceedings have been closed.

K.2. CLOSING STATEMENT

The presiding officer should deliver a summary closing statement detailing the course of the formal proceedings. Such closing statement should not include conclusions of fact or causes, and must avoid the appearance of blame apportionment. In general, the closing statement should mirror the opening statement.

K.3. DRAFTING THE REPORT

The recorder or LIO shall draft an ROI in accordance with Chapter A6 of this volume. The ROI shall contain the information developed using the investigative processes described in Part B of this volume. The printed ROI and associated MISLE data shall serve as the public record of the investigation.

K.4. USE OF MISLE

The ROI shall be developed using MISLE. Accordingly, the recorder or LIO must enter all data regarding the incident required by MISLE, and the entire record of the investigation should be held within MISLE. No separate report should be generated.

K.5. APPROVAL OF THE REPORT

The ROI must be approved by the convening authority. For a Marine Board, the case is forwarded by the Chair to CG-545 for review and approval. For District and Unit Formal Investigations, the LIO forwards the case to the OCMI or District Commander for review and approval. When a case contains safety recommendations, final approval of the case rests with the highest entity in the chain of command to which the recommendations are addressed.

K.6. FINAL DISPOSITION OF RECORDS AND EXHIBITS

K.6.a. Final Disposition of Exhibits

Documentary evidence produced in accordance with 46 CFR 4.05-15(a) or 4.09-5 should be reproduced or read into the record and then returned to the owner. For protection at a later date, the recorder should note (off the record) when, where, and to whom evidentiary material is returned. Real evidence such as items of equipment,



debris, life preservers, etc., may be received or exhibited in evidence if relevant to an issue in the investigation. Body wounds or scars may also be displayed. Real evidence should be clearly and accurately described in the testimony. Where possible, real evidence should be reduced to photographs, lab reports, etc., and the original pieces returned to their owners. The resulting documents should then be marked as exhibits and made part of the record. Photographs of material conditions constitute a highly valuable form of evidence, provided they are not susceptible to misinterpretation. Photographs should be identified as to what they portray, with the date, place, and the photographer's name. If the witness is asked to draw a sketch, it should be drawn off the record. This has been found beneficial because a witness, in making a sketch, will often mumble to himself or say aloud things that are out of context and which are nonsensical in the record. When the witness has finished, the chairperson shall return to the record, ask the witness to explain what was drawn, and have the witness sign and date the sketch. [NOTE: Whenever possible, one color should be used to draw or mark exhibits. If various colors are used, adequate differentiation between colors (e.g., "red is dotted line," "green is dashed line"), must be provided so that later black and white reproduction of the document will be understandable.] It is imperative that the witnesses clearly and concisely refer to the exhibit in an exact manner in order to produce a meaningful record. For example, if a compartment in an exhibit is marked "Compartment A," the witness should refer to it as such, rather than "this" or "that" compartment. Also blow-ups of exhibits should be used to facilitate convenient reading and access by all parties.

K.6.b. Transmittal Of Exhibits

Unless otherwise directed, exhibits shall be transmitted at the same time as the record of proceedings, whether in the same volume or in separate volumes. If any exhibits are not attached to the record (i.e., too large or classified) a memorandum shall be inserted in the appropriate place, giving the full identification data of the exhibit and stating that it is being forwarded under separate cover.

L. NATIONAL TRANSPORTATION SAFETY BOARD (NTSB)

L.1. INTRODUCTION

The purposes and conduct of marine investigations by the NTSB and Coast Guard are compatible and complementary. Accordingly, it is acceptable and desired that formal investigations and NTSB investigations cooperate and even merge. At times, NTSB representatives may be named to and participate in formal Coast Guard investigations, or Coast Guard representatives may be named as party to, and participate in, formal NTSB proceedings. This section outlines the general relationship between the agencies and the rules under which each operates.

L.2. PRELIMINARY INVESTIGATION

Upon receipt of a notification, the Coast Guard should initiate an investigation based upon the reported severity of the incident. When a formal investigation is called for, on-scene IOs should pursue an active preliminary investigation under the informal rules in support of the formal investigation. This is also true in the case of casualties



later to be investigated by the NTSB. In accordance with 46 CFR 4.40-10, the Coast Guard's preliminary investigation should first determine whether the accident meets the criteria for NTSB notification. The OCMI shall then continue to direct on-scene investigation efforts until such time as the investigation transitions to NTSB or other formal control.

**L.3. NOTIFYING
THE NTSB**

In accordance with 46 CFR 4.40-10, the OCMI must determine and inform CG-545 in the most efficient means available if a casualty:

- Is a major marine casualty;
- Involves a public and a nonpublic vessel and at least one fatality or \$75,000 in property damage;
- Involves a Coast Guard and a nonpublic vessel and at least one fatality or \$75,000 in property damage; or
- Is a major marine casualty that involves significant safety issues (multiple deaths, serious hazards, etc.) relating to Coast Guard safety functions (search and rescue (SAR), aids to navigation (ATON), vessel traffic systems (VTS), etc.).

Following notification from the OCMI, CG-545 will notify NTSB. Units shall not contact NTSB directly.

**L.4. THE COAST
GUARD / NTSB
RELATIONSHIP**

L.4.a. NTSB-led Investigations

In accordance with the CG/NTSB MOU and 46 CFR 4.40-15(b), the NTSB shall conduct the investigation of certain major marine and public/nonpublic vessel casualties. When NTSB is leading the investigation, Parties in Interest shall not be designated by the Coast Guard. Although these investigations are conducted by the NTSB in accordance with their procedures, the Coast Guard will participate fully as a party. The OCMI should maintain daily contact with CG-545 during the investigation. Additionally, when the National Transportation Safety Board (NTSB) is the lead investigating agency for an incident and the Coast Guard is not conducting its own formal investigation, the cognizant unit shall, at a minimum, complete an Incident Investigation Activity at the Data Collection level for the incident

L.4.b. Coast Guard-led Investigations

When requested by NTSB in accordance with 46 CFR 4.40-25, the Coast Guard will conduct the investigation of major marine casualties and certain public/nonpublic vessel casualties for the NTSB. In some instances, the NTSB will designate a representative to participate in every phase of the investigation, including on-site investigation, conducted under the provisions of 46 CFR 4.40-25. Consistent with the Coast Guard's responsibility to direct the course of the investigation, the NTSB representative may make recommendations about the scope of the investigation, call and examine witnesses, and submit or request additional evidence. A copy of the record (i.e., the testimony, exhibits, statements, photographs, etc.), of each



investigation in which the NTSB participates, including those conducted by Marine Boards of Investigation, shall be transmitted directly to the NTSB throughout the course of the investigation.

L.4.c. On-Scene Coast Guard Activities

Upon the occurrence of a major marine or a public/nonpublic vessel casualty that meets the criteria of 46 CFR 4.40-15(b), the appropriate Coast Guard commands shall continue routine on-scene activities (SAR, pollution response and emergency services, succor survivors, manage traffic in the affected waterway, or accommodate salvage activities). The OCMI/Captain of the Port (COTP) should take reasonable measures to secure the scene from sightseers and looters until the NTSB or Coast Guard marine investigators have had an opportunity to view the scene and document the evidence.

L.5. PARTICIPATING IN NTSB PROCEEDINGS

L.5.a. Introduction

After the NTSB investigator in charge (IIC) has had an opportunity to determine the central issues of the accident, the various parties participating in the investigation may be assigned to groups, each responsible for gathering certain facts. The number of NTSB investigators assigned and the number of investigative groups formed generally will depend upon the severity of the casualty. In many cases, there will be only one "group." The NTSB prefers that individuals possessing various skills, such as experienced investigators or technicians, be assigned to assist parties within the assigned groups. The Coast Guard will always be designated as a party and, as such, will provide personnel to participate in investigative groups. The OCMI will normally appoint at least one IO to participate in witness interviews. When several groups are formed to investigate a severe casualty, the Commandant or District Commander will appoint an individual to serve as Coast Guard liaison with the NTSB team. Additional personnel may be designated to participate in the investigative groups. Such personnel should have some training and experience in the subject matter to be investigated by the group. Examples of groups that may be proposed include weather, witnesses, structures, recorded communications, course recorder, operations, engineering, and human factors. NTSB procedures require that each group shall be led by an NTSB investigator. Under the direction of the group chairperson, each group will perform the task(s) assigned to it.

L.5.b. Designated Parties

Under the NTSB rules, those persons, agencies, companies, and associations whose participation in the hearing is deemed necessary in the public interest and whose special knowledge will contribute to the development of pertinent evidence are designated parties. A party to an NTSB investigation is normally a marine organization or agency that can aid in developing the facts of the casualty. Individuals normally are not designated as parties. A party under NTSB procedures is afforded rights similar to a party in interest.



L.5.c. NTSB Hearings

It is likely that the NTSB will hold a formal hearing or deposition soon after the on-scene investigation (in approximately 2 to 6 weeks). It is at this time that verbatim testimony and exhibits are formally entered into evidence. As a party to the investigation, the Coast Guard will provide a spokesperson; normally, this shall be the senior officer participating in the on-scene investigation. The NTSB interprets the word spokesperson to mean "the only person allowed to talk on behalf of the party at the hearing." The Coast Guard spokesperson should be prepared to ask questions of witnesses and otherwise participate and fully represent the Coast Guard's interest in the hearing. The policy of the NTSB is to allow only one spokesperson for the complete formal hearing. Certain exceptions have been permitted, such as where the subject matter concerned two program areas. One officer was allowed to examine witnesses of concern to his program while the spokesperson questioned the other witnesses. If exceptions are deemed necessary, approval should be obtained from the IIC. The NTSB rules in 49 CFR 845.13 require that the spokesperson be a suitably qualified technical employee who does not occupy a legal position. In general, the spokesperson will not be an attorney.

L.5.d. Testimony By Coast Guard Personnel

Since the NTSB does not exclude witnesses from the hearing during the testimony of other witnesses, the Coast Guard spokesperson should take the opportunity to familiarize Coast Guard witnesses with both the hearing procedure and the testimony of other witnesses. Coast Guard personnel called as witnesses shall be provided legal counsel.

L.5.e. Proposed Findings, Conclusions, And Recommendations

At the conclusion of the NTSB proceedings, each party has the opportunity to submit proposed findings of fact, conclusions, and recommendations. The Coast Guard spokesperson shall prepare and submit proposed findings of fact, conclusions, and recommendations setting forth the Coast Guard's positions on the casualty, and the evidence developed by the investigation. A copy of all proposed findings of fact, conclusions, and recommendations shall be submitted to CG-545 and to the District Commander in whose district the investigation is held.

L.5.f. Effects Upon Coast Guard Actions

Should information gathered during the preliminary or NTSB investigation indicate that civil or criminal penalty proceedings, S&R proceedings under 46 USC Chapter 77, or court-martial proceedings under the Uniform Code of Military Justice are warranted, an appropriate investigation must proceed independently of NTSB activities. Such action shall not be held in abeyance pending the NTSB report. Coast Guard personnel participating in the NTSB investigation shall not be assigned to conduct UCMJ investigations. However, evidence developed during the course of an NTSB investigation may be used to document a report of violation or for discovery



purposes in S&R proceedings.

**L.6. ACTION ON
NTSB REPORTS**

For those casualties investigated by NTSB, a copy of the NTSB report of investigation will be reviewed by CG-545 to determine what action, if any, shall be taken with respect to the NTSB's safety recommendations. This report will be retained by CG-545. The Coast Guard spokesperson involved in NTSB-led investigations shall complete the MISLE data entry requirements for the casualty. The report and the original of Coast Guard required forms such as the Barge Addendum, CG-2692A should be forwarded to CG-545 via the cognizant OCMI and District Commander.



FIGURE A5-1: COVER SHEET FOR TRANSCRIPTS OF FORMAL PROCEEDINGS

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD

In the Matter of:

THE MARINE BOARD OF INVESTIGATION
INTO THE COLLISION OF THE S/S
FROSTA AND THE M/V GEORGE PRINCE
ON 20 JANUARY 1988 AT MILE 120. 8,
LOWER MISSISSIPPI RIVER

. . . Pursuant to Notice, the above-entitled investigation commenced at 0900, c. s. t. on Saturday, 23 January 1988, at the U. S. Coast Guard Marine Inspection Office, 23rd Floor, 1440 Canal Street, New Orleans, Louisiana, BEFORE:

REAR ADMIRAL WILLIAM P. DAVIS, USCG, Chair;
CAPTAIN JAMES M. DUKE, USCG;
CAPTAIN RONALD D. THOMAS, USCG,
Members,

and

COMMANDER PETER C. LAWRENCE, USCG, Member and Recorder.



FIGURE A5-2: SAMPLE EXHIBIT WORKSHEET

In the Matter of:

THE MARINE BOARD OF INVESTIGATION
INTO THE COLLISION OF THE S/S
FROSTA AND THE M/V GEORGE PRINCE
ON 20 JANUARY 1988 AT MILE 120. 8,
LOWER MISSISSIPPI RIVER

EXHIBITS:

Exhibits submitted by the Coast Guard (Description and Number of Pages)

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)

Exhibits submitted by other parties (Description, Source, Number of Pages)

- (A)
- (B)
- (C)
- (D)
- (E)
- (F)



FIGURE A5-3: SAMPLE REPORTER'S CERTIFICATE

UNITED STATES OF AMERICA;
UNITED STATES COAST GUARD

In the Matter of:

THE MARINE BOARD OF INVESTIGATION INTO THE COLLISION OF THE S/S FROSTA
AND THE M/V GEORGE PRINCE ON 20 JANUARY 1988 AT MILE 120. 8, LOWER MISSISSIPPI
RIVER

I, PEGGY A TRAYLOR, an officially designated and qualified (Reporter, Shorthand Reporter,
Reporting Stenographer or Court Reporter, as appropriate) of the United States Coast Guard, hereby
certify that the foregoing proceedings were taken by me and transcribed by me, and is a true record of
the testimony of all witnesses, and of the proceedings herein contained. I further certify that there is no
interest attached, either financially or by virtue of relationship with any party hereto, on my part.

PEGGY A. TRAYLOR
Shorthand Reporter
U. S. Coast Guard



FIGURE A5-4: SAMPLE DEPOSITION COVER SHEET

OFFICIAL TRANSCRIPT OF PROCEEDINGS
DEPOSITION OF JOHN JACKSON

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD

In the Matter of:

THE MARINE BOARD OF INVESTIGATION INTO THE COLLISION OF THE S/S FROSTA AND
THE M/V GEORGE PRINCE ON 20 JANUARY 1988 AT MILE 120. 8, LOWER MISSISSIPPI
RIVER

Place: Houston, Texas
Date: 2 February 1988

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Order for Taking Deposition
Application for Taking of Deposition
Direct Interrogatories
Cross Interrogatories (if any)
Subpoena (es) (if any used)

EXHIBITS

U.S. COAST GUARD (Description)
(if any)
THIRD PARTY (Description, Source)
(if any)

APPEARANCES:

On behalf of the United States Coast Guard:
LT I. KNOWELL, USCG (if represented)

On behalf of the Parties in Interest:
I. COUNSELWELL, Esq. (if represented)
JOHN SMITH, Party in Interest (if present)

JOHN JACKSON, Deponent

FIGURE A5-5: SAMPLE WRITTEN DEPOSITION



PROCEEDINGS

CHAIR: Good morning, gentlemen. The matter of taking the deposition as duly ordered in the hearing held in New York, involving the matter of the sinking of the M/V NOWHERE on the Houston Ship Canal on October 15, 1972, is now open. Let the record show that the date is 2 February 1988, and the time is now 1000 hours or 10:00 a. m. The reporter has been previously sworn and the evidence is being recorded by means of stenotype equipment.

CHAIR: Are you the gentleman that received the subpoena today for this deposition?

MR. JACKSON: Yes, sir.

CHAIR: Would you kindly stand and raise your right hand.

Thereupon, JOHN JACKSON having been called as a witness by the U. S. Coast Guard and having first been duly sworn, was examined and testified as follows;

CHAIR: The court reporter should append a copy of the subpoena to the record showing his signature as having been served this date in Houston, Texas, to Mr. Jackson. Mr. Jackson, do you have a form of identification with you today?

MR. JACKSON: Yes, sir.

CHAIR: May I see it, please, so that I may read it into the record.

Let the record show that Mr. Jackson has produced a U.S. Merchant Mariner's Document No. Z-1201156, issued to John Jackson, giving his date of birth as 1942 in Ohio, USA. His address at the time of issue was 20 Parker Street, Charleston, Massachusetts. It indicates his height as 5'11"; weight, 165 pounds; fair complexion; brown eyes; and brown hair. It indicates his Social Security No. 292- 35-3622, and that it was issued by the U.S. Coast Guard at the port of Boston, Massachusetts on June 22, 1968. It's endorsed for any unlicensed rating in the engine department, lifeboatman and ordinary seaman.

I will return your document to you at this time. Mr. Jackson, we have questions relating to the incident from the Marine Board and from the attorney representing a party in interest, Mr. Smith. Please answer the questions fully and completely and to the point. If you do not understand the question, I will reread the question upon request.

DIRECT INTERROGATORIES TO BE PROPOUNDED ON BEHALF OF THE U.S. COAST GUARD BY THE CHAIR:

1. For the record, please state your full name and address.

A John Jackson.

2. -----

A -----

3. -----



A -----

4. -----

A Please repeat that question again.

4. -----

A -----

5. -----

A -----

CHAIR: That's the end of the direct interrogatories by the Coast Guard. Now, I'm going to ask you the question or cross interrogatories proposed by the party in interest's counsel.

CROSS INTERROGATORIES PROPOUNDED ON BEHALF OF THE PARTY IN INTEREST:

1. -----

A -----

2. -----

A -----

CHAIR: Mr. Jackson, that concludes the questions proposed by both sides in this matter. The regulations provide that a formal transcript will be prepared of all the testimony you have just presented. Further, you have the right to review and examine that evidence as formally prepared and make any change as to form or substance, accompanying that change with pertinent reasons therefore. Now, do you wish to stand by and examine the prepared transcript of the record, or do you wish to have the record stand as you have testified and waive your right of signature?

MR. JACKSON: I will waive my right to sign and let the record stand as I have testified.

CHAIR: Very well. Do you have anything else that you think you would like to add that you think is important or relevant to this testimony?

MR. JACKSON: No, I don't.

CHAIR: All right. The subpoena as served upon you has been duly spent in this matter and the deposition is now closed. You are excused as a witness, Mr. Jackson.

(The witness was excused.)

(Whereupon, at 11:00 o'clock a. m. , the deposition was closed.)

(Reading and signing of the deposition was waived by the witness.)



FIGURE A5-6: SAMPLE REPORTER'S CERTIFICATE FOR DEPOSITION

UNITED STATES OF AMERICA;
UNITED STATES COAST GUARD
In the Matter of:

THE MARINE BOARD OF INVESTIGATION INTO THE COLLISION OF THE S/S FROSTA AND
THE M/V GEORGE PRINCE ON 20 JANUARY 1988 AT MILE 120. 8, LOWER MISSISSIPPI
RIVER

I, PEGGY A. TRAYLOR, an officially designated and qualified (Reporter, Shorthand Reporter,
Reporting Stenographer or Court Reporter, as appropriate) of the United States Coast Guard, hereby
certify that the foregoing proceedings were taken by me and transcribed by me, and is a true record of
the testimony of JOHN JACKSON, Deponent, and of the proceedings herein contained. I further certify
that there is no interest attached, either financially or by virtue of relationship with any party hereto, on
my part.

PEGGY A. TRAYLOR
Shorthand Reporter
U.S. Coast Guard



FIGURE A5-7 :SAMPLE OFFICER'S CERTIFICATE

UNITED STATES OF AMERICA;
UNITED STATES COAST GUARD

In the Matter of:

THE MARINE BOARD OF INVESTIGATION INTO THE COLLISION OF THE S/S FROSTA AND
THE M/V GEORGE PRINCE ON 20 JANUARY 1988 AT MILE 120. 8, LOWER MISSISSIPPI
RIVER


I, I. KNOWELL, a commissioned officer in the U.S. Coast Guard, do hereby certify that, pursuant to notice of taking deposition, there came before me on the 2nd day of February, A.D., 1988, at 10:00 o'clock a.m., at 7300 Wingate Street, Houston, Texas, the following named person, to wit, JOHN JACKSON, who was by me duly sworn to testify the whole truth and nothing but the truth of his knowledge touching and concerning the interrogatories and cross interrogatories (questions) propounded to him, and he was examined upon his oath, his examination being taken down stenographically by Peggy A. Traylor and transcribed by said individual (or, under her direction). I further certify that I have retained said deposition for the purpose of sealing and forwarding to the Chair of the Marine Board of Investigation presiding in the above-entitled matter, pursuant to his order.

IN WITNESS WHEREOF, I have hereunto set my hand this day of 1988.

I. KNOWELL, LT
United States Coast Guard



USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART A: ADMINISTRATION

A large, stylized graphic consisting of a red parallelogram and a blue parallelogram, both slanted to the right, with a white diagonal line separating them. A faint, semi-transparent USCG seal is overlaid on the red area.

Chapter Six:
Official Records and
Reports of Investigation

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A. OFFICIAL RECORD OF THE INVESTIGATION

A.1. OFFICIAL RECORD

The *Official Record* of an investigation is the MISLE incident investigation activity, which includes the Report of Investigation (when required), and all evidence including testimony, statements, the precept (for formals), the CG-2692A form(s), attachments, any substitute originals and the correspondence record.

A.2. REPORT OF INVESTIGATION (ROI)

The *Report of Investigation* (ROI) includes the narrative document consisting of findings of fact, analysis, conclusions, recommendations, the CG-2692A as completed and corrected by the IO, and all endorsements by the Commanding Officer, Sector Commander, District Commander, and Commandant. The ROI does not include the evidence. ROIs are required in all formal investigations, but are optional in informal investigations and data collection activities. When no ROI has been created, the MISLE incident investigation activity serves as the ROI.

A.3. INVESTIGATION ACTIVITY FILE

The *Incident Investigation Activity* means the referential and incident-specific data contained by MISLE. The Incident Investigation Activity may contain the ROI, correspondence records, all evidence including testimony, statements, the CG-2692A form(s), attachments, any substitute originals or subset thereof.

A.4. CORRESPONDENCE RECORD

The *Correspondence Record* means the sum of all relevant, official correspondence generated as a result of conducting the investigation. At a minimum, the IO should maintain the following in the correspondence record:

- Letters generated by the Coast Guard relevant to the investigation while open;
- Letters from parties in interest relevant to the investigation while open;
- Letter from 3rd parties relevant to the investigation while open; and
- All correspondence related to appeals.

A.5. SUBSTITUTE ORIGINALS

Substitute Original means a photograph or some other medium can be used as a replacement for a piece of physical evidence, where the original is no longer required.

A.6. NOTES AND OTHER INTERNAL DOCUMENTS

During the course of an investigation, an enormous amount of notes, reminders, internal memorandum, etc., not forming a substantive part of the record of the investigative proceedings can accrue. These notes and internal documents are not part of the official record, and must be properly disposed of prior to final agency action.

B. ROIS AND ACTIVITY FILES

B.1. REQUIREMENT FOR MISLE

As a matter of policy, IOs will complete a MISLE Notification as soon as they receive an incident notification of **any** kind (i.e. pollution, civil offense violation,



NOTIFICATION

marine casualty –reportable or not, criminal offense, etc) from the public. In all cases, the IO will conduct a preliminary investigation, whether that preliminary investigation ultimately results in a verified incident or not. This information will be used for comprehensive management of the Marine Safety Program.

B.2. INCIDENT INVESTIGATION ACTIVITY PREPARATION AND REVIEW

B.2.a. Data Collection Activities and Informal Investigations

For data collection activities and informal investigations, responsibility for preparing the MISLE incident investigation activity resides with the lead IO. Review remains the responsibility of the Commanding Officer, who is the owner of the report. Where appropriate, the Commanding Officer may delegate the responsibility of reviewing MISLE incident investigation activities to other senior personnel. Keep in mind that all casualty reports, data, and analysis submitted by CG-545 to the IMO are derived from MISLE. As such, IOs shall follow the current MISLE process guides when entering incident investigations into MISLE and all units shall ensure the appropriate level of review is conducted on MISLE incident investigation activities upon their completion. It is highly recommended that all incident investigation activities, including pollution investigations, be reviewed by the SIO.

B.2.b. Unit and District Formal Investigations

For Unit and District Formal investigations, responsibility for preparing the MISLE incident investigation activity resides with the designated presiding officer. Review remains the responsibility of the Commanding Officer/ District Commander, who is the owner of the report. Where appropriate, the Commanding Officer may delegate the responsibility of reviewing MISLE incident investigation activities to other senior personnel.

B.2.c. Marine Boards of Investigation

For Marine Boards of Investigation, responsibility for preparing the MISLE incident investigation activity resides with the recorder. Review is the responsibility of the Chair and CG-545, who is the owner of the report. The Commandant may delegate this responsibility as appropriate.

B.3. CRITERION FOR REVIEW OF INCIDENT INVESTIGATION ACTIVITIES AND ROIs

In general, reviewers shall assure:

- All relevant matters of fact have been explored
- All relevant matters of fact have been adequately documented, depending on the level of investigation designated (data collection, informal, formal).
- All findings of fact in matters of controversy are justified
- All conclusions are in reference to documented findings of fact and their analyses
- All conclusions are logically consistent with the findings of fact and their analyses



- Causes have been adequately analyzed, depending on the case type
- Human error has been documented and analyzed, depending on the case type
- All evidence of violation has been referred for appropriate enforcement action
- All recommendations are in reference to conclusions
- All recommendations address conditions observed and are supported in the case file.
- All data entry is in accordance with current MISLE process guides.

B.4. REQUIREMENTS FOR ROIS

ROIs are required for any formal investigation. ROIs need not be prepared for informal investigations or data collection activities. IOs should consider preparing an ROI when they feel it would more fully explain the complexities of the incident, or when frequent public or press scrutiny of the incident is likely. In such cases, the ROI shall be deemed the same as the ROI for a formal investigation.

B.5. ENDORSEMENTS OF ROIS

Depending on the party taking agency action, the Commanding Officer, District Commander, and Commandant may endorse an ROI. When such endorsements take place, they shall be integrated into the final version of the ROI, and therefore supersede previous unendorsed versions.

C. RETENTION OF INVESTIGATIVE RECORDS

C.1. DISPOSITION OF INVESTIGATIVE RECORDS

All incident investigation activities shall have the complete record scanned into MISLE. The unit shall maintain all original records in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.12A (series).

Any materials that cannot be scanned by the unit should be sent to Commandant (CG-5453) to be added to the record.

C.2. RETENTION OF RECORDS OF HISTORICAL VALUE

The Coast Guard retains records of historical value for 100 years after final agency action is taken. Historical records include but are not limited to the following:

- Reports of Marine Boards of Investigation
- Investigations into Major and Medium Oil or HAZMAT discharges.

D. FORMAT AND TEMPLATE FOR REPORTS OF INVESTIGATION

D.1. GENERAL

ROIs are not required or desired for all investigations. In those instances where a substantial investigative effort has been made, however, an ROI often serves as the most readable documentation of our findings. Accordingly, IOs are encouraged to



make use of ROIs wherever they will add value.

**D.2. MANDATORY
STRUCTURE**

D.2.a. Required Structure

All ROIs should follow the same basic structure:

- Executive Summary and/or Incident Brief
- Action by the Commandant (where appropriate)
- Action by the District Commander (where appropriate)
- Action by the Commanding Officer/Sector Commander (where appropriate)
- Subject(s) of the investigation
- Findings of fact
- Causal Analysis
- Human Error Analysis
- Conclusions
- Enforcement Referrals (where appropriate)
- Safety alerts (where appropriate)
- Safety recommendations

**D.3. STYLE OF
WRITING**

ROIs are formal, agency action documents dealing in many cases with human tragedy and significant environmental damage. Accordingly, IOs are advised to maintain a highly professional and impartial tone. Speculation is discouraged, as is any informal or conversational style of writing. Each ROI is prepared for the convening authority's endorsement and public promulgation.

**D.4. USE OF
PICTURES,
DIAGRAMS, AND
TABLES**

Any means of conveying complex information simply and easily is encouraged. Accordingly, IOs are encouraged to take full advantage of modern electronic document production capabilities to include photographs, diagrams, tables, and the like in the body of the ROI.



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A decorative graphic consisting of a large, slanted red parallelogram with a white border, and a blue diagonal stripe running parallel to the left edge of the red shape. A faint, semi-transparent USCG seal is overlaid on the red shape.

Chapter Seven:
Appeals of Reports of
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A. DECISIONS TO REOPEN AN ROI

A.1. REOPEN, RECONSIDER OR REVISE AN ROI

A.1.b. Decisions to Reopen, Reconsider, or Revise

Persons affected by the findings of fact, conclusions, or safety recommendations in an ROI may request the Coast Guard entity taking final action to reopen the investigation, reconsider its conclusions, or revise the ROI. The actions on those requests may be appealed using the procedures in 46 CFR 1.03.

A.2. REQUEST TO REVIEW MADE TO ENTITY TAKING FINAL ACTION

Requests to reopen an investigation and/or to revise the ROI must be directed to the Coast Guard entity taking final action. Final action to be taken as a result of an ROI is taken by the convening authority **except** when the ROI contains safety recommendations directed to a senior command.

A.3. ROIs CONVENED AT THE UNIT LEVEL

The following table details which Coast Guard entities take final action for investigations convened by the OCMI/COTP. Such investigations include data collection activities, informal investigations, and unit formal investigations.

No safety recommendations	OCMI/COTP
Safety recommendations for the OCMI/COTP only	OCMI/COTP
Safety recommendations for the OCMI/COTP and the District Commander	District Commander
Safety recommendations for District Commander only	District Commander
Safety recommendations for the OCMI/COTP and Commandant	Commandant
Safety recommendations for the District Commander and Commandant	Commandant
Safety recommendations for the OCMI/COTP, District Commander and Commandant	Commandant
Safety recommendations for the Commandant only	Commandant

A.4. ROIs CONVENED AT THE DISTRICT LEVEL

The following table details which Coast Guard entities take final action for investigations convened by the District Commander. Such investigations are usually District Formal Investigations.



No safety recommendations	District Commander
Safety recommendations for the OCMI/COTP only	District Commander
Safety recommendations for the OCMI/COTP and the District Commander	District Commander
Safety recommendations for District Commander only	District Commander
Safety recommendations for the OCMI/COTP and Commandant	Commandant
Safety Recommendations for the District Commander and Commandant	Commandant
Safety recommendations for the OCMI/COTP, District Commander and Commandant	Commandant
Safety recommendations for the Commandant only	Commandant

**A.5. ROIs
 CONVENED BY THE
 COMMANDANT**

The Commandant always takes final action for investigations convened by the Commandant. Such investigations are usually Marine Boards of Investigation.

**B. REOPENING AN INVESTIGATION, RECONSIDERING AND
 REVISING THE ROI**

**B.1. HOW A
 PERSON REQUESTS TO
 REOPEN,
 RECONSIDER, OR
 REVISE**

As with all such public requests for a formal decision, a person wishing to have the Coast Guard reopen an investigation, reconsider, or revise an ROI should detail their request in writing to the Coast Guard entity taking agency action. The request should, at a minimum, be timely, explain the reasons why the Coast Guard should reopen, reconsider, or revise, and must provide sufficient material in way of evidence, etc., to allow the Coast Guard to fully evaluate the line of argument. A request to reopen an investigation because new evidence has emerged, for instance, should include descriptions of that evidence so that the Coast Guard can evaluate the situation. A timely request is one that, if granted, will likely result in a meaningful improvement to the investigation process as applied to the particular investigation, findings, conclusions, or safety recommendations contained in the ROI.

**B.2. REASONS TO
 RE-OPEN,
 RECONSIDER, OR
 REVISE**

While each situation must be evaluated on its own merits, the following are general reasons to reopen an investigation or revise the ROI:

- There are overt errors of fact in the ROI.
- There is reason to believe that evidence was presented to the IO but not evaluated in the ROI.



- Credible new evidence has emerged which bears directly on conclusions in the ROI.
- Credible new analysis of the existing facts has emerged which bears directly on conclusions in the ROI.
- There is reason to believe that parties in interest were denied their participatory rights under 46 CFR 4.07.

**B.3. REASONS TO
DECLINE**

Again, each situation must be evaluated on its own merits. The following, however, are general reasons to decline to reopen or revise:

- The investigation/ ROI is so old that the value to marine safety in revising the ROI does not justify the effort required to reopen or revise.
- The points raised in the request are so minor that the value to marine safety in revising the ROI does not justify the effort required to reopen or revise.
- The new evidence submitted is not relevant to the Coast Guard's findings and conclusions, and no new finding or conclusion would be warranted.
- The new evidence is not credible.
- The evidence was adequately evaluated during the original investigation.
- The new analysis is not relevant to the Coast Guard's findings and conclusions.
- The new analysis is not credible.
- The analysis was adequately evaluated during the original investigation.
- There is no evidence that parties in interest requested their participatory rights under 46 CFR 4.07 in a timely manner.
- Possible criminal or civil offenses referred for adjudication have been subsequently found not proved.

**B.4. DECLARING
THE INVESTIGATION
REOPENED**

If the Coast Guard entity that convened an investigation determines that further investigation is warranted in the interest of marine safety, that entity may reopen an investigation. An investigation is declared reopened through the same mechanisms that a new investigation is convened, with the precepts appropriately altered to include the body of existing evidence, analysis, findings, conclusions, and recommendations. Generally speaking, the convening authority should include in the precept the specific issues to be addressed rather than requiring an entirely new investigation. The investigation is reopened upon issuance of these precepts.

**B.5. RECEIVING
INFORMATION FROM
THE REQUEST TO
REVISE THE REPORT**

Once an investigation has been reopened, the IO or Marine Board may receive evidence and testimony relevant to the issues for which the investigation was reopened. In general, the procedures for receiving evidence and testimony are the same as those for any other investigation.



B.6. SUPPLEMENTAL REPORT OF INVESTIGATION

When no additional investigation is required, the Coast Guard entity taking final action may simply issue a supplemental ROI. In this case, the investigation need not be declared reopened. When a supplemental ROI is issued, an entry should be made documenting the fact and explaining the nature and reasons for the changes/revisions.

C. HOW A PERSON FILES AN APPEAL

C.1. REQUEST TO REOPEN THE INVESTIGATION OR TO REVISE THE ROI

When a person wishes to have an ROI revised, they must request it in writing to the Coast Guard entity that convened the investigation. The decision of that entity on the request is then subject to appeal under 46 CFR 1.03. Appeals may not be filed without a preceding request to reopen an investigation or to revise the ROI.

C.2. ORAL REQUESTS / APPEALS

As a matter of policy, oral requests to revise an ROI and oral appeals of decisions shall not be accepted. In this instance, the person should be informed that the Coast Guard will take action only on written requests and appeals.

C.4. TIMING OF THE REQUEST

Under 46 CFR 1.03, appeals must be filed within 30 days of the decision or of the last administrative action on the issue at hand. Upon written request, the 30 day period may be extended for good cause.

C.5. CONTENTS OF WRITTEN REQUESTS

An appeal must contain a description of the action or decision being appealed and the person's reason(s) why the decision or action should be revised. In the case of a ROI, it should include a copy of the decision at issue and any underlying evidence which must be evaluated.

D. RIGHT OF FURTHER APPEAL

D.1. APPEALING THE DISTRICT COMMANDER'S DECISION

When the District Commander makes a decision on a person's appeal of the OCMI decision, the District Commander's decision may in turn be appealed to the Commandant under 46 CFR 1.03-25. As with the previous appeal, the person must follow the procedures for appeal contained in 46 CFR 1.03-15.

D.2. APPEALING THE COMMANDANT'S DECISION

A person may request the Commandant review his or her decision, but there is no right of further appeal of the Commandant's decisions under 46 CFR 1.03.



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Chapter Eight:
Public and Media Relations

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A. CONFIDENTIALITY IN MARINE INVESTIGATION

A.1. INTRODUCTION

The first paragraph of Public Affairs Manual, COMDTINST M5728.2 states that “it is the policy of the United States Coast Guard to make available to the public all information concerning the activities of the service except that which is restricted by law, and to do so in a frank, forthright and expeditious manner.” The manual gives you three good, general rules for the release of information: (1) if you are responsible for something, you can talk about it; (2) if you are not responsible for something, don’t talk about it; (3) if you are uncertain, seek guidance before talking about it. This section will provide additional, more specific guidance on what you can and cannot release during marine investigations.

A.2. RECORDS OF MARINE CASUALTY INVESTIGATIONS

By law, the Coast Guard must make available to the public, for inspection or copying, investigative reports, vessel casualty reports, personal injury reports, casualty report transmittal letters, and records of investigations, which are required to be preserved by the Coast Guard.

The record of an investigation of vessel casualty made by a Marine Board or an IO must be made available at any stage of the investigation, upon written application to the Chair of the Marine Board or, in other investigations, to the OCMI having jurisdiction. Availability is contingent upon:

That the record is in a form suitable for release. For example: report forms, messages, written statements, etc., are readily available. Un-transcribed stenographer notes or tapes, undeveloped film, etc., are not readily available.

Making the materials available must not interfere with fact-gathering process.

The material is not exempt from disclosure under the Freedom of Information Act. (Remember that Marine Information for Safety and Law Enforcement (MISLE) printouts can only be released by Commandant – see, Freedom of Information and Privacy Acts Manual, COMDTINST M5260.3.

ROIs by Marine Boards will be considered complete and may be released when Commandant has taken action, except to the extent they contain information related to national security.

ROIs by IOs on vessel casualties not submitted in narrative form will be considered complete and may be released when action has been taken by the final reviewing authority in accordance with other policy.

When releasing information to the press, remember to only release facts that are not in dispute. An example of facts in dispute is conflicting statements regarding the time of the incident. If one mariner says 0100 and another mariner says 0300, you, as the IO, cannot release the time of incident; however, you may state that the incident occurred in the early hours of the morning provided all factual accounts agree.



**A.3. POLLUTION,
PERSONNEL ACTION,
AND CIVIL OFFENSES
INVESTIGATIONS**

Pollution, personnel action, and civil offenses investigations are not open to the public. If one of these investigations reaches the media you may acknowledge that there is an on-going investigation when the CO'TP/OCMI has determined that there is sufficient evidence to believe that a violation of law or regulations was committed. This decision is reached when either the case is closed with a warning or the case is submitted to a Hearing Officer or Administrative Law Judge.

If an investigation is significant in scope and exposure, you may confirm in general terms that an investigation is in progress since the media will gather this information from private sources. Generally, this only applies as a result of a sizable marine casualty or pollution response.

**A.4. CRIMINAL
INVESTIGATIONS**

All inquiries, including those from the media or the public, regarding matters for which criminal prosecution is being considered, or for which referral to DOJ has been made, should be referred to the servicing Legal Office. Upon receiving a request for information about such cases, the servicing Legal Officer should consult with the appropriate DOJ attorneys to ensure that any information provided does not inadvertently violate Federal Rules of Criminal Procedure or court orders, or otherwise compromise ongoing investigations. The same guidance applies to press releases about the case. The servicing Legal Officer should ensure that the Public Affairs Office is appropriately informed of restrictions on information provided about criminal investigations and prosecutions of cases in which the Coast Guard is involved.

**A.5. RULES OF
THUMB**

When dealing with the public or the media, there are some basic rules with regard to the interview and specifics on what to say. They are listed below. If the situation allows, set ground rules on the interview. Explain what information you can give and what you can't give. Never speculate or give personal opinion. If you make a statement, it is always on the record. Never respond with "No comment." Explain briefly why you will not or cannot answer the question. When doing this, make sure it is a valid reason. Some good responses are:

- "I'd rather not speculate . . . let's deal in the facts only."
- "That information is classified."
- "Answering that question may jeopardize the investigation in progress"

B. MECHANISMS FOR PUBLIC INFORMATION

**B.1.
INTRODUCTION**

There are many methods of delivering information to the public. They range from personal interviews to news conferences. They are all listed in COMDTINST M5728.2 (series), Public Affairs Manual and COMDTINST M5260.3 (series),



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Freedom of Information and Privacy Acts Manual. The main methods that IOs encounter are Freedom of Information Act (FOIA) requests and the interviews by the media.

B.2. FOIA REQUESTS

When a member of the public wishes information from records kept by the Coast Guard they must submit a FOIA request. All Marine Casualty records that are closed are maintained and owned by Commandant. FOIA request should be sent directly to CG-5453 so they can be processed. Casualty reports shall not be released by field units.

B.3. INTERVIEWS

Interviews via telephone or in person are the most common form of Coast Guard news release. Generally speaking, if an incident that is being investigated is large enough, the media will contact the Coast Guard. It is important to relay to the media the facts that are not in dispute. This will ensure to the public and the media that the Coast Guard is forthcoming with important information.

Conversely, there are some lesser interest investigations in which you may wish to contact the press. Generally, you would take this course of action if you wanted to increase the public's awareness of those conditions and practices that precipitate marine casualties, as well as adding to their sense of trust and understanding about the operations of the Coast Guard's Marine Safety Program.

C. TIMING OF BRIEFINGS, INTERVIEWS, AND PRESS RELEASES

C.1. INTRODUCTION

There are several issues that come into play when considering the timing of the release of information. In this particular case the issues are primarily related to marine casualty investigations. There must be a balance between getting the information out and respect for the privacy/personal issues of those involved.

C.2. DEATHS OR SERIOUS INJURY

Any time the Coast Guard is called to conduct an investigation and there is a death or serious injury involved, the IO on-scene should never release the names of the victims. As a courtesy to victims' family members, they should be the first to be notified prior to reading about it or seeing it on television.

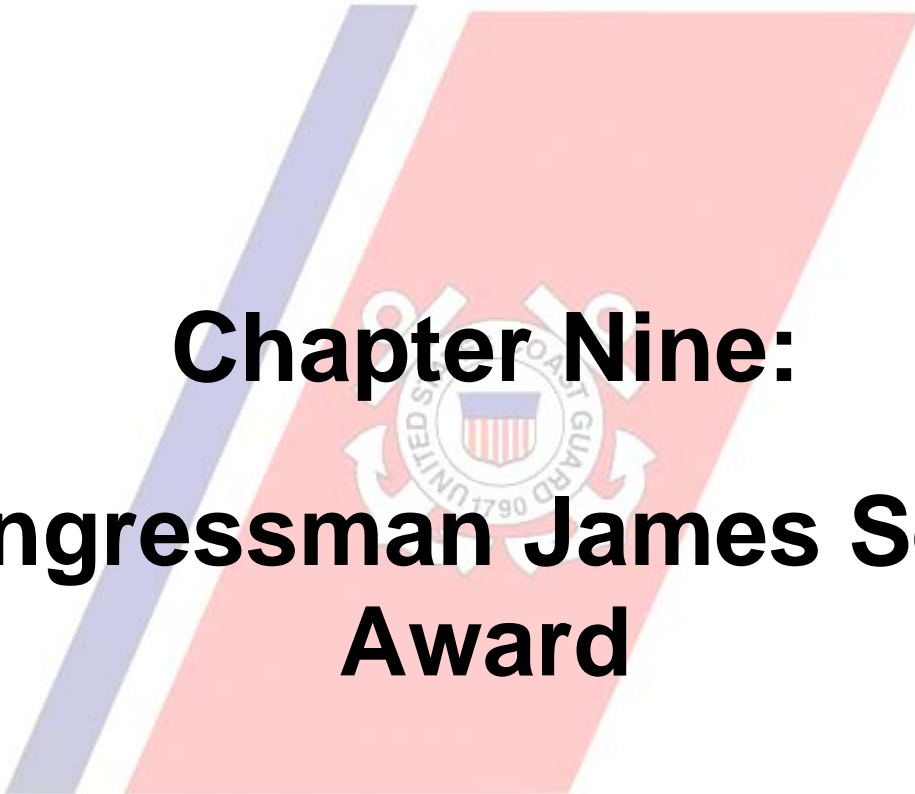
C.3. PARTIES IN INTEREST

Parties in interest have certain rights throughout a marine casualty investigation. As a courtesy, upon completion of an investigation, the final report should not be released to the public until the parties in interest have had a chance to see it. All briefings, interviews, and press releases should wait until that time.

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USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART A: ADMINISTRATION

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Chapter Nine:
Congressman James Sener
Award

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A. PROGRAM OVERVIEW

A.1. PURPOSE

The purpose of the Sener Award program is to:

- **Educate** Coast Guard personnel about the meaning and value of the Marine Investigation Program;
- **Encourage** the conduct of the very finest marine investigation throughout the Coast Guard;
- **Share** the best marine investigation practices;
- **Recognize** units and investigative teams that have demonstrated exceptional investigative skill and have most positively influenced marine safety; and
- **Publicize** the "value add" of the Marine Investigations Program.

A.2. BACKGROUND

The Coast Guard's Marine Investigations Program has been a vital arm of its marine safety activities since 1838 when the program's predecessor, the Steamboat Inspection Service, was established. In 1832 alone, approximately 14% of the steam vessels in operation were destroyed by explosion and over 1000 people were killed. These explosions happened largely because there were no inspection laws or rules of navigation. In some cases, mariner incompetence, negligence, and/or misconduct were contributing hazards. The U.S. Congress reacted to these facts by establishing inspection laws and creating the Steamship Inspection Service. Congressman James Sener of Virginia sponsored the legislation that created the modern Marine Investigation Program on June 20, 1874. Congressman Sener's bill put in place the world's most effective system for identifying and eliminating unsafe conditions in the marine transportation system, perhaps the single greatest step forward known in marine safety. The Sener award honors and recalls his contribution to the safety of mariners, vessels, and the marine environment through marine investigation.

A.3. CORE VALUES AND CONCEPTS

The award evaluation criteria are built on two core values and concepts. These values and concepts are the foundation of the modern Marine Safety Program:

- **Severe incidents require exhaustive investigative response.** Incidents have value to marine safety when they have particularly severe consequences, affect many people, or are of such notoriety that the American public must be assured that corrective action has been or will be taken. We must fully investigate all such incidents.
- **Superior investigation of incidents builds a case for change.** Superior investigation of less severe incidents can be of equal or greater value to marine safety when the information in that report, combined with other similar reports, builds a case for change. We must pursue the case for change through superior investigation of incidents that raise important safety issues, regardless of their consequence.



- A. 4. SCOPE** The criteria focus on the impact a specific marine investigation had on marine safety generally, and on the processes involved in conducting a particular marine investigation that achieved results at the highest level. All criteria directly relate to results and key investigative processes.
-
- A. 5. APPLICATION PROCESS** Area and District Commanders, OCMI's and COTPs may submit applications justifying presentation of the Sener Award for up to three marine investigations completed (closed) by their unit(s) during the preceding calendar year. Applications must be completed in accordance with this guide and are due to CG-545 not later than 01 March. Applications received later than 01 March will not be considered by CG-545 during that award cycle. Awards related to particularly noteworthy investigations completed/closed during previous years may be submitted with justification of late submission.
-
- A. 6. EVALUATION PANEL** CG-545 will empanel selected military and civilian members of the Coast Guard deemed to have expertise in marine investigation and marine safety generally for the purpose of evaluating the applications. The board shall provide to CG-545 prioritized recommendations for the selection of three Sener Award winners. In the event that fewer (or no) applications meet the criteria for the Sener Award, the panel shall recommend that no such award be given during that calendar year.
-
- A. 7. ANNOUNCEMENT OF AWARDS** Following the approval of the Evaluation Panel's selection, CG-545 will present the Sener Award to the Commanding Officers responsible for the selected marine investigations for that specific investigation. Team and/or personnel awards for the specific investigative team involved will be considered as appropriate and forwarded separately. Three Sener Awards will typically be presented annually. Such awards shall be made in as public a forum as reasonably available.

B. KEY CHARACTERISTICS OF THE EVALUATION CRITERIA

- B. 1. CRITERIA AS AN EVALUATION SYSTEM** The criteria guidelines below comprise an evaluation system. The criteria are set of results oriented requirements. While the evaluation panel is not strictly bound to a specific weighting of these criteria, each criteria must be explicitly evaluated. The program anticipates that the panel's evaluations will be returned to the originators and serve as a useful management tool that goes beyond most performance reviews.
-
- B. 2. SYSTEMS APPROACH** All of the criteria specified below originate in the view that system accidents do not result from a single factor, either human error or mechanical failure. Complex systems, such as the maritime transportation system, simply possess too many proven defenses for a single factor to pose a significant threat in itself. Instead, major tragedies appear to result from a strange and unforeseen combination of events and factors, each occurring at exactly the right time and place to enable the next. Together, the threats build or synergize; each single factor is necessary (the accident couldn't happen without it), but insufficient without the others. Thus the criteria



together emphasize the structure underlying these apparently random coincidences that conspire to create tragedies.

C. EVALUATION SYSTEM

C.1. APPROACH

The panel evaluating submissions for the Sener Award will consider the following criteria in recommending a specific marine investigation for selection:

- Professionalism of the investigative effort;
- Timeliness and workload;
- Salience of marine safety issues present in the incident;
- Quality of the findings of fact;
- Quality of the cause analysis;
- Quality of the Human Error Analysis;
- Impact and quality of safety recommendations;
- Impact and quality of public awareness information; and
- Appropriateness of enforcement action initiated.

C.2. PROFESSIONALISM OF THE INVESTIGATIVE EFFORT

The professionalism criterion examines the success of the investigative effort in creating public and inter-agency confidence through the professional handling of the day-to-day marine investigative operation. This criterion addresses:

- Whether the investigative team was successful identifying and productively involving parties-in-interest;
- Whether release of appropriate information about the incident and the course of the investigation was expeditious and responsive;
- Whether the investigative team employed unique, unusual, or noteworthy techniques demonstrating particular expertise in the conduct of marine investigation fact finding or analysis;
- Whether the conduct of the investigation substantially built the Coast Guard's reputation as the premier marine investigation agency; and
- Whether inter-agency or inter-government relationships involved were of particular note or required unusual diplomacy in their handling.

C.3. TIMELINESS AND WORKLOAD

The timeliness and workload criterion examines the success of the investigative effort in balancing the workload and resource issues involved in marine investigation to produce timely public awareness information and a Report of Investigation (ROI).

This criterion addresses:

- Whether the ROI and public awareness information were produced in a



timely fashion;

- How unit workload and resources were allocated to facilitate the production of a significant investigation;
- How efficiently the investigative results were produced;
- Whether atypical investigative resources, whether inside or outside the Coast Guard, were employed by the investigative team; and
- Whether investigative relationships were exploited in a noteworthy fashion to allow the depth and timeliness of the investigative effort.

C.4. SALIENCE OF MARINE SAFETY ISSUES PRESENT IN THE INCIDENT

The salient criterion examines the success of the investigative effort in detecting that salient marine safety issues were present in the incident and in taking advantage of the opportunity available. This criterion addresses:

- Whether the investigation addressed an incident of unusual severity or consequence;
- Whether the investigation addressed an incident of unusual notoriety requiring public assurance of Coast Guard action;
- Whether the investigation addresses an incident of lesser severity that builds a cohesive case for change; and
- Whether the investigation demonstrates unusual willingness and ability to detect and capitalize on critical issues latent in an incident, regardless of severity.

C.5. QUALITY OF THE FINDINGS OF FACT

The findings of fact criterion examines the thoroughness and success of the investigative effort in documenting or divining the actual facts of the incident. This criterion addresses:

- Whether the facts were documented using a systems approach as defined in the SHEL model;
- The investigative difficulty involved in documenting the facts;
- The degree to which sophisticated technical or inferential analysis was used to reliably determine the facts when direct evidence was not available;
- Whether evidence adequately and directly supported the findings of fact;
- The clarity with which these findings were presented; and
- Whether events, actions, and conditions throughout the Marine Transportation System (MTS) were noted for cause analysis.

C.6. QUALITY OF THE CAUSE ANALYSIS

The cause analysis criterion examines the success of the investigative effort in determining and explaining the causes of the incident at all levels using Dr. Reason's model of systems accident causation. This criterion addresses:

- Whether cause analysis could reasonably be conducted based on the findings



of fact;

- Whether the investigation team correctly analyzed the causes following Dr. Reason's systems accident causation model;
- Whether the cause analysis identifies and explains the initiating event;
- Whether the cause analysis identifies and explains successive failures in defenses;
- Whether latent unsafe conditions are properly explained;
- Whether latent unsafe conditions in Organizations, Workplaces, Preconditions, and Defenses are identified;
- Whether active failures in Production and Defenses are identified;
- Whether the trajectory of events through these latent unsafe conditions and active failures is adequately explained;
- Whether unsafe conditions, active failures, and their relationships referenced findings of fact;
- Whether the ROI conveys the language and meaning of systems accident causes; and
- The clarity with which the specific conclusions about cause in the incident were presented.

C.7. QUALITY OF THE HUMAN ERROR ANALYSIS

The Human Error Analysis criterion examines the success of the investigative effort in examining any human error present using the Generic Error Modeling System (GEMS) and in initiating enforcement action based upon that analysis. This criterion addresses:

- Whether human error was present in the incident;
- Whether the investigation team correctly analyzed that human error following the GEMS process;
- Whether the human error analyzed was the active failure in production leading to the initiating event;
- Whether the outcome of the GEMS analysis was accounted for in safety recommendations related to defenses against that error;
- Whether the outcome of the GEMS analysis was accounted for in any public awareness information related to that error; and
- Whether the outcome of the GEMS analysis was accounted for in or influenced the nature of any enforcement action referral related to the active failure.

C.8. IMPACT AND QUALITY OF THE SAFETY

The safety recommendations criterion examines the success and impact of safety recommendations generated by the marine investigation. This criterion addresses:

**RECOMMENDATIONS**

- Whether the safety recommendations address causes at all levels;
- Whether each safety recommendation was demonstrably linked to a specific latent unsafe condition;
- Whether each recommended action could, if implemented, reasonably be seen to eliminate or defend against a latent unsafe condition or active failure;
- Whether the recommended action was technologically or otherwise practically feasible;
- Whether the safety recommendation took account of the Coast Guard's span of control and was addressed to the appropriate authority;
- Whether the safety recommendation was successful (i.e., whether the cognizant level of command accepted the recommended action);
- Whether the recommended action was in fact executed; and
- The size of MTS community positively influenced by the executed action.

C.9. IMPACT AND QUALITY OF THE PUBLIC AWARENESS INFORMATION

The public awareness criterion examines the degree to which public and industry awareness of latent unsafe conditions and active failures was elevated by means of the marine investigation. This criterion addresses:

- The readability and information content of the ROI as a public awareness instrument;
- Whether the marine investigation generated safety alerts or other public awareness efforts;
- The success and sophistication of the marine investigation effort in professionally conveying public awareness information and in responding to public information inquiries;
- Whether the public awareness information addressed causes at all levels;
- Whether public awareness information highlighted actionable and specific latent unsafe conditions;
- Whether the informed public or industry did in fact execute changes based on the information; and
- The size of MTS community positively influenced by the public awareness information.



C.10.
APPROPRIATENESS OF
ENFORCEMENT
ACTIONS INITIATED

The enforcement action criterion examines the degree to which enforcement action was appropriately initiated. This criterion addresses:

- Whether there were actionable violations present requiring enforcement action;
- The sophistication and clarity of decisions related to appropriate enforcement action and methods;
- Whether enforcement action was initiated and was appropriate to the offenses in question;
- Whether enforcement action referrals (if any) provided sufficient basis for reasonable prosecution; and
- The final effect of any enforcement action in terms of individual and public deterrence and remedy.

D. FORMAT OF SUBMISSIONS

D.1. APPLICATION
LETTER

Area and District Commanders, Sector Commanders, OCMI's, and COTPs may submit applications for the Sener Award via the chain of command by standard Coast Guard letter. Such application letters should note the investigation involved, MISLE activity number, and the members of the investigative team. Where the investigative team involves personnel outside the Coast Guard, such personnel should also be noted in the application letter. Although the submitting command may include whatever information they deem relevant to the Sener Award evaluation panel, the application letter should address each of the evaluation criteria above and make a recommendation as to whether team or personal awards are appropriate and whether awards have been given to the investigative team. Chain of command endorsements of the application are not required but highly recommended.

D.2. REPORT OF
INVESTIGATION AND
SAFETY ALERTS

Submissions for the Sener Award must include the text ROI and copies of any Coast Guard generated safety alerts as attachments. Where the only text report is a MISLE narrative, a printout of this narrative must be included.

D.3. MISLE
ACTIVITY

Submissions for the Sener Award need not include printouts of the MISLE activity or case (except as above), though the MISLE activity number must be included in the application letter. Submitters should be apprised that the Evaluation Panel will review the MISLE activity for completeness and quality as part of the evaluation.

D.4.
TESTIMONIALS

Submissions for the Sener Award shall not include testimonials or letters of recommendation from inside or outside the Coast Guard. The Sener award is not to be seen as a campaign or plea for public support.

D.5. OTHER
ENCLOSURES

Submitters for the Sener Award should feel free to enclose such material as they feel amplifies or illustrates the information contained in their application letter. Copies of

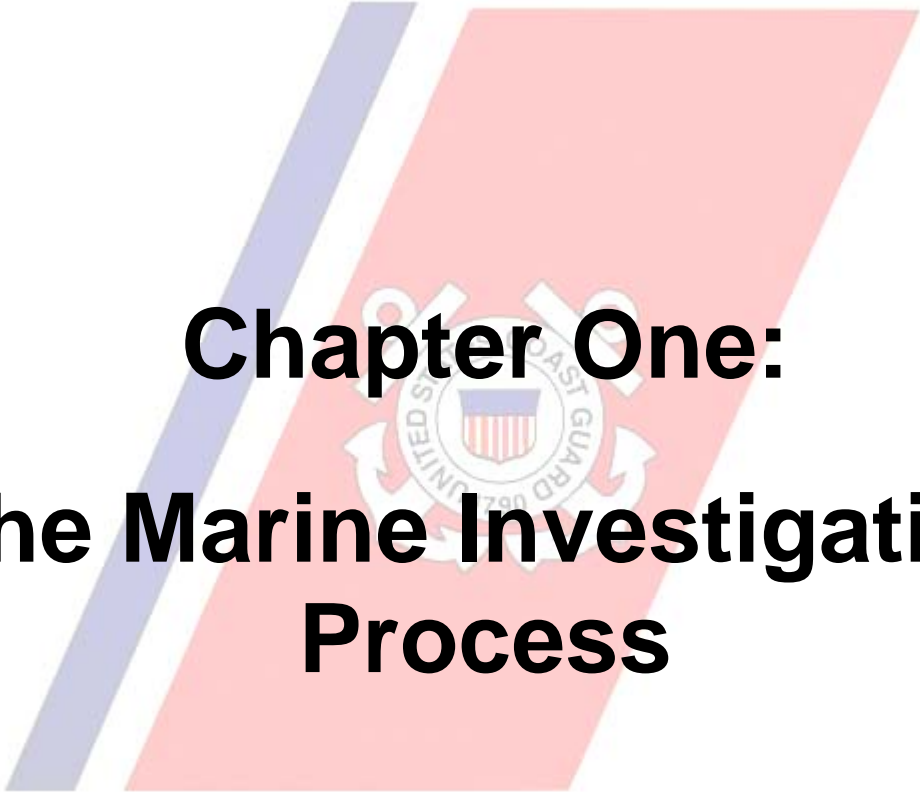


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PART A: ADMINISTRATION
CHAPTER 9: CONGRESSMAN JAMES SENER AWARD

enclosures to the ROI (evidence) such as photos and the like shall not normally be forwarded with the application letter.



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PART B: INVESTIGATION

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Chapter One:
The Marine Investigation
Process

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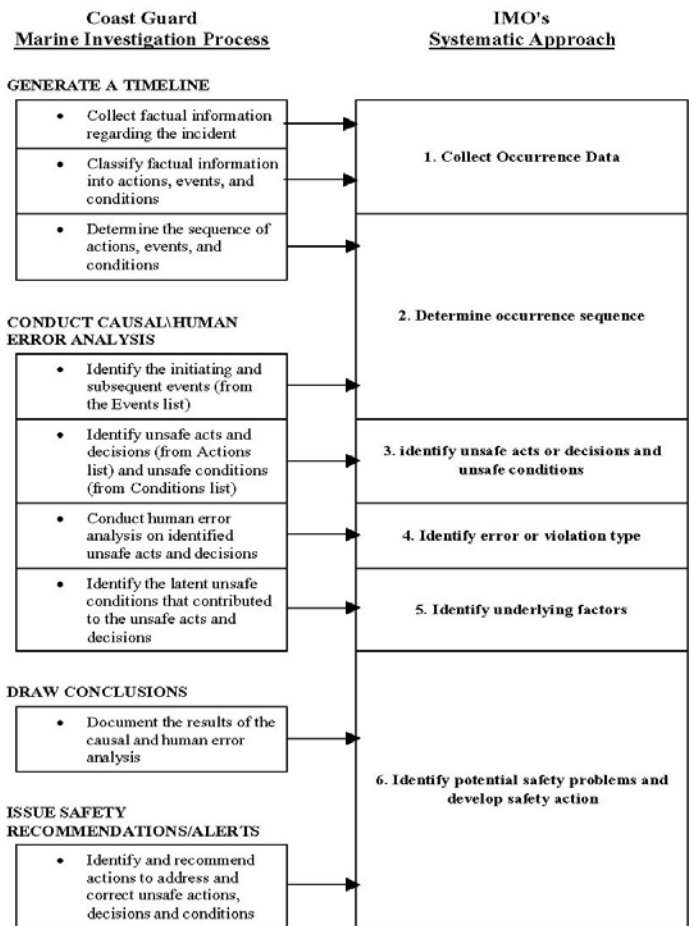
A. THE MARINE INVESTIGATION PROCESS

A.1. INTRODUCTION

A.1.a. General

In complex systems, such as the maritime transportation system, there are many interactions between the operational parts of the system including: mariners, shoreside workers, management, vessel equipment and material, facilities, vessel traffic services, navigational aids, publications, charts, manuals, and the environment. Because of the complexity of the maritime transportation system, there is the constant danger that critical information will be overlooked or lost during a marine investigation. To avoid this, the Coast Guard's Marine Investigation Process, which is based on and mirrors the approach prescribed by the International Maritime Organization (IMO), was developed. The steps of that process are listed in the figure below along with a visual representation of their relationship to the corresponding steps in the IMO's systematic approach.

A.1.b. Comparison of Coast Guard and IMO methodologies





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**A.2. GENERATING
A TIMELINE**

Following the detection/notification of an incident and subsequent fact-finding, the timeline is used to document the “who, what, when and where” of the accident. The IO should use the SHELL model as an interviewing and organizational tool for the collection of factual information regarding the human aspects of the accident that make up the timeline. Once all the pertinent information has been collected and sequentially organized to give the “when” part of the timeline, it is classified into actions, events and conditions. These steps identify the “who, what and where” part of the timeline. See Chapter B4.

**A.3. CAUSAL
ANALYSIS**

After collecting all pertinent information and the development of the accident timeline, the IO conducts Causal Analysis to determine “how and why” it happened. The process of conducting Causal Analysis can be thought of as occurring in several stages:

- Identify the Initiating Event, Subsequent Events, and the Defense Failures that allowed Subsequent Events to occur.
- Identify the Unsafe Act(s)/Decision(s), Condition(s), and Defense Failures that allowed the Initiating Event to occur.
- Identify the remaining Causal Factors with regard to Unsafe Act(s)/Decision(s) and Condition(s) in the model of production.

See Chapter B4.

**A.4. HUMAN ERROR
ANALYSIS**

For every unsafe act or decision identified in the first stage of the causal analysis, the IO should determine the type of human error involved using the GEMS process:

- Determine whether the unsafe act or decision was a Planning Error or Execution Error.
- Determine the classification of Planning or Execution Error.

See Chapter B4.

A.5. CONCLUSIONS

Conclusions are the results of the Causal and Human Error analysis as they relate to the accident. Conclusions should generally be stated in a “cause=effect” statement with as little ‘analysis lingo’ as possible. Conclusions are classified as either *direct* or *inferred*. A *direct* conclusion is made when the analysis of factual information and associated evidence leads to only one possible outcome. An *inferred* conclusion is made when the analysis of factual information and associated evidence leads to one or more possible results and the investigator must rely on his/her or some other person’s professional experience and knowledge to decide which of the possible results is most likely true.

**A.6. SAFETY
RECOMMENDATIONS**

The purpose of Safety Recommendations is to propose corrective actions for identified unsafe conditions or other unwanted outcomes in order to prevent those



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CHAPTER 1: THE MARINE INVESTIGATION PROCESS

conditions from contributing to future casualties. They should be based upon and flow logically from the timeline, causal and human error analysis and conclusions of the investigation. To determine whether a safety recommendation is appropriate, the IO should ask the following questions:

- Has the existence of a specific condition been identified?
- Has that condition been determined to be unsafe?
- Can control be exercised over that condition?
- Has it been determined that controls do not currently exist that adequately address that condition?

Safety recommendations must address actual unsafe conditions rather than hypothetical conditions. Safety recommendations may be made to address any unsafe condition identified during an accident investigation, including those that did not cause nor contribute to the specific accident under investigation. When doing so, IOs will need to include an explanation of the risks and probable consequences associated with the continued existence of the condition, as it will not necessarily be evident. Safety recommendations should only be made to address those unsafe conditions over which some level of control can be exercised through the implementation and use of control measures. Control measures (a.k.a. Defenses) include conventions, laws, regulations, policies and procedures. They should only be made to address unsafe conditions when one of the following is true:

- There are no current control measures in place.
- The current control measures are found to be inadequate.

Safety recommendations should not be made when the unsafe condition was the result of non-compliance with an existing control measure (e.g. a mariner ignored the prohibition against smoking during a transfer operation), a.k.a. A violation. See Chapter B6. Safety recommendations can and should be made regarding how to *improve* compliance with existing control measures.

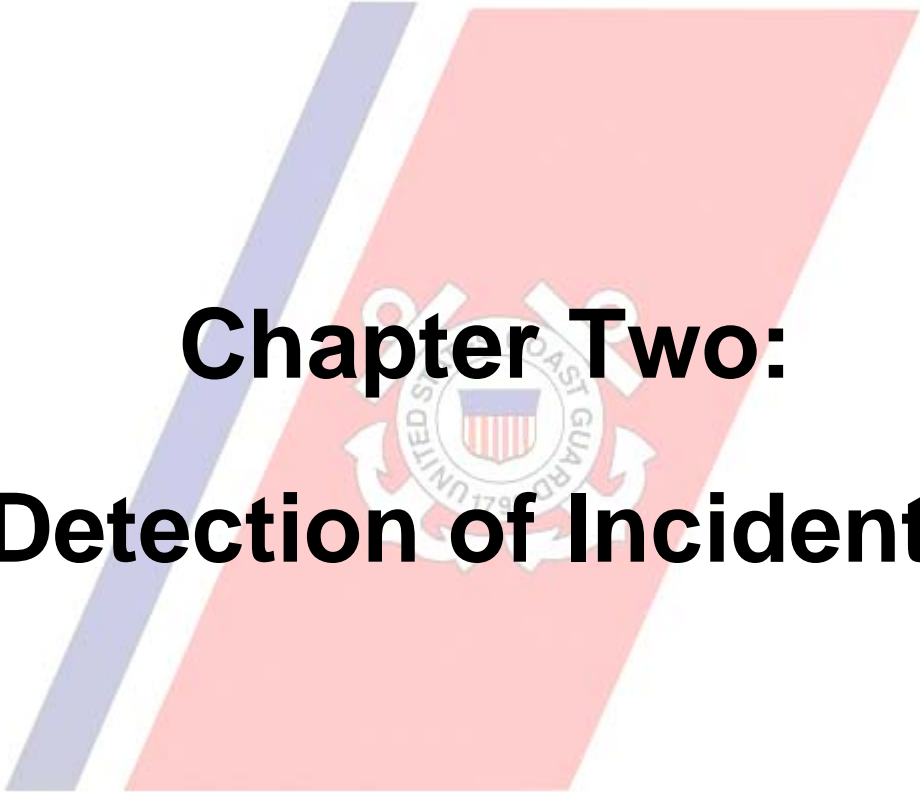
**A.7. VIOLATION
ANALYSIS**

Violation analysis is the isolating of facts in the timeline as well as the human error analysis (when applicable) into the elements of a violation of law and regulation by any person (or sometimes, organization). When there is evidence of a violation, including negligence, misconduct, or willful violation by a mariner holding Coast Guard issued Merchant Mariner's Credentials (MMC), civil penalty and/or criminal matters, the IO refers this evidence for appropriate enforcement and remedial action in accordance with Part C of this volume. See Chapter B5.

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Chapter Two:
Detection of Incidents

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A. INTRODUCTION

A.1. ACTIVE AND PASSIVE DETECTION

The Coast Guard detects incidents in one of two ways: (1) when we are notified by the public or other agencies, called *passive detection*, and (2) when we conduct operations specifically designed to detect an incident, called *active detection*. Both active and passive detection's are important to the Coast Guard's Marine Investigation Program.

A.2. TRENDS IN INCIDENTS

Because Coast Guard units respond to incidents on a case-by-case basis, it is easy to treat the incident out of context. When detecting incidents, IOs should pay particular attention to the incident history of a vessel, organization, person, facility, or area of the waterway. For instance in some cases, apparently unrelated unknown source discharges portray a trend in an area, and may uncover a pattern of violation. Similarly, a repeated history of accidents by a single company (perhaps on many vessels) may indicate an unsafe condition endemic to the company. Accordingly, IOs are strongly encouraged to view their detection efforts within the context of trends of incidents.

B. NOTIFICATIONS FROM THE PUBLIC

B.1. NOTICE OF MARINE CASUALTIES

B.1.a. Required Notice and Report

Commercial vessel owners, agents, operators, masters, and persons in charge are each responsible under 46 CFR 4.05-1 for notifying the Coast Guard that a marine casualty has occurred. Under 46 CFR 4.05-10, the same people are responsible for providing the Coast Guard with a written report (on form CG-2692 series) providing details about the accident.

B.1.b. Timing and Contents of Notice

The notice of marine casualty required by 46 CFR 4.05-1 must be given to the nearest Coast Guard Marine Safety or Inspection Office, or Coast Guard Group Office, as soon as practical after addressing the immediate safety concerns caused by the accident. Under 46 CFR 4.05-10(b), however, a written report can serve the purpose of the notice if that report is filed "without delay." Without delay should not be interpreted to mean the five-day standard found in 46 CFR 4.05-10(a). If operators wish to submit written reports in lieu of the required notice, such reports must be written and delivered quickly in order to allow the Coast Guard to determine appropriate action. The contents of the notice are listed in 46 CFR 4.05-5. Note that reports of hazardous conditions (often the same conditions that cause or resulted from a casualty) are required under 33 CFR 160.215 (See 33 CFR 160.204 for a definition of "hazardous condition"). Also note that the reports under 33 CFR 160.215 may not be delayed under 46 CFR 4.05-10(a).

**B.1.c. Timing and Contents of Report**

The report of marine casualty required by 46 CFR 4.05-10(a) **must** be given to the nearest Marine Safety / Inspection Office within five days of the casualty. The report must contain all relevant information on the CG-2692 (Report of Marine Accident, Death, or Injury), CG-2692A (Barge Addendum), and CG-2692B (Report of Required Chemical Drug And Alcohol Testing following a serious marine incident). Additional requirements related to post-casualty drug and alcohol testing information required in the report are listed in 46 CFR 4.05-12.

B.1.d. Over-reliance on Notices and Reports

While commercial operators are required to report all marine casualties, IOs are cautioned not to rely exclusively upon such reports in detecting incidents. The commercial maritime community is composed of a variety of operations ranging from large companies well versed in the rules for reporting accidents to small one-person operations that may be completely unfamiliar with the relevant regulations and forms. Accordingly, IOs must not assume an entirely passive stance with regard to detection of commercial vessel accidents.

B.2. REPORTS OF ACCIDENTS TO AIDS TO NAVIGATION

Under Title 46 CFR 4.05-20, whenever a commercial vessel collides with or otherwise damages an aid to navigation maintained by the Coast Guard, the person in charge must report the incident to the nearest Officer in Charge, Marine Inspection (OCMI). Such incidents may not be reportable under the rules in 46 CFR 4.05-1 because the resulting damage may fall below the reporting threshold. In this situation, no CG-2692 report is required, and the person in charge may fulfill his obligations merely by phoning in a report.

B.3. REPORTS OF BOATING ACCIDENTS

The statutory requirement to report recreational boating accidents is contained in 46 U.S.C. 6101. The implementing regulations, including the content of the reporting form and submittal procedures, are in 33 CFR 173-174. In summary, the owner or operator of a boat or vessel involved in a boating casualty or accident shall report the casualty or accident to a state reporting authority or, if no approved state reporting authority exists, to the Coast Guard. The report shall be made on either the Coast Guard Boating Accident Report, Form CG-3865, or on a state boating accident report form. Boating Accident investigations are discussed in detail in Chapter B12 of this volume.

B.4. REPORTS OF POLLUTION INCIDENTS

The responsible party (RP) must report all discharges of oil or hazardous material to the National Response Center (NRC). On occasion, IOs or Pollution Investigators (PIs) receive these reports. In such cases, the IO/PI should not assume that the NRC has been notified, and should request that the RP contact the NRC directly at 1-800-424-8802. When the RP is unknown, the IO/PI shall contact the NRC to assure the discharge was reported. The NRC will provide the cognizant Captain of the Port (COTP) with a summarization of the report. Many if not most pollution incident



investigations will be launched based upon notification from the NRC.

**B.5. REPORTS OF
HAZARDOUS
CONDITIONS**

Under the rules in 33 CFR 160.215, the owner, agent, master, operator, or person in charge must report hazardous conditions to the nearest Coast Guard Marine Safety Office or Group Office. Such reports may be made by any means, and no written follow up report is required. A “hazardous condition” is defined as any condition that can adversely affect a vessel, bridge, structure, or shore area, or degrade the environmental quality of any port, harbor, or navigable waterway of the United States. Hazardous conditions can include, but are not limited to; collisions, allisions, fire, explosions, grounding, leaking, damage, injury or illness of a person aboard, or a manning shortage. The intent of hazardous condition reporting is to inform the COTP and Group Commander so that appropriate response action can be initiated. Hazardous conditions may be caused by marine casualties. Not all hazardous conditions, however, result from incidents that the Coast Guard will investigate. Accordingly, IOs must consider each hazardous condition report and decide if an investigation is warranted; however, the report must be documented in the Marine Information for Safety and Law Enforcement (MISLE) data system.

**B.6. THIRD PARTY
REPORTS**

B.6.a. Receiving Third Party Reports

IOs receive many reports from the public regarding maritime operations. In general, IOs should direct callers and visitors to complete a written witness statement. Written statements may be submitted in any form, including letter, but must identify the person making the report, the location of the alleged offense, and the subjects (i.e., vessels, facilities, or people) involved. The person filing it must sign and date the report, and must understand that (to the extent allowed by the Privacy Act) the contents of the report will become a matter of public record. Under exceptional circumstances, IOs may document phone conversation with a person making a report, and use such a document in lieu of a written report. Anonymous reports are not sufficient to establish reasonable cause for the purposes of search and seizure, however they are sufficient to initiate a preliminary investigation.

**B.6.b. Review of Third Party Reports prior to
Investigation**

IOs should review reports thoroughly prior to proceeding beyond the preliminary investigation. In many circumstances, the report will not on its face contain an incident requiring investigation. Refer to Chapter B7.

C. ACTIVE SURVEILLANCE / DETECTION OPERATIONS

**C.1.
INTRODUCTION**

The Marine Investigations Program has historically relied on passive detection techniques. Criminal offenses, civil offenses, and some pollution incidents, however, are not typically reported to the Coast Guard by the people involved, and IOs cannot take a passive approach to detecting these incidents. Accordingly, activities such as harbor patrols, enforcement boardings, and sting operations actively search for



incidents the Coast Guard would not otherwise discover.

**C.2. SURVEILLANCE
/ DETECTION
PATROLS**

C.2.a. General

As described in Volume VI of this manual (Ports and Waterways Activities), Chapter 1, Coast Guard units conduct multi-mission patrols in the enforcement of various laws and regulations, including the detection and investigation of marine casualties and pollution incidents.

C.2.b. Surveillance and Detection in Multi-mission Patrols

The need for surveillance / detection in multi-mission patrols arises from the fact that marine incidents continue in our ports despite our prevention activities. Surveillance / detection patrols are aimed at detecting, marine incidents. When an incident has been detected, an investigation should immediately be launched.

**C.3. CLANDESTINE
COLLECTION**

Some incidents (particularly criminal and civil offenses) leave very little evidence. In these cases, the incident can only be detected and investigated while it is ongoing. With the authorization of CG-2, it may be possible for IOs to survey maritime operations in plain clothes and without identifying themselves. However, these operations, while necessary and effective, may create questions on legal authorities and possible risk to personnel safety. Before commencing any operations involving IOs in plain clothes, commands must consult with their District response and legal offices and CG-2 to ensure compliance with guidance on clandestine operations in MLEM Chapter 2..E.3.b. Commands must develop in advance a concept of operations plan (CONOPS) that outlines the intended activity limits, personnel protection concerns, evidence gathering procedures, and anticipated actions if violations are detected. CONOPS should reflect that the purpose of the activity is to detect ongoing violations of marine safety laws and regulations and for personnel protection reasons should ensure that IOs do not reveal themselves or take action prior to uniformed Coast Guard personnel or CGIS agents arriving at the scene.

D. NOTIFICATION FROM OTHER COAST GUARD UNITS

**D.1.
NOTIFICATIONS FROM
THE NATIONAL
RESPONSE CENTER**

The NRC relays all reports of discharge to the cognizant COTP via MISLE and a “flash fax.” These electronic summaries of the discharge report should be treated by IOs/PIs as any other notification. Because notifications are not screened for duplication at the NRC, units will often receive more than one notification related to a single incident. In these cases, the incident will have two or more NRC report numbers associated with it. Particular attention must be paid to accounting for each and every NRC report (by number) so that the Coast Guard can explain how each report was investigated.

**D.2.
NOTIFICATION OF**

When aviation or afloat units encounter pollution, these units usually report the observation to the District (m) staff and to the cognizant COTP. Such notifications



**POLLUTION
OBSERVATION**

should be treated as any other report of an incident and should be fully investigated. Because these units will typically be unaware of NRC reports there may be duplicate notifications. Particular attention must be paid to accounting for each and every notification so that the Coast Guard can account for how the report was investigated.

**D.3. SITUATION
REPORTS
(SITREPs)**

When significant aviation and/or afloat resources are used during search and rescue operations, units may report their involvement and account for resources by sending a situation report. IOs should assure that all aviation and afloat units, groups, and small boat stations copy them on all SAR SITREPs. IOs should, at a minimum, screen these SITREPs daily for incidents they may not have detected through other means. Because the threshold for Coast Guard investigative action varies, IOs should communicate closely with SAR units to convey investigation program information needs. With close relationships in mind, IOs should have the information needed to assess possible incidents from the SITREP.

**D.4. CASUALTY
REPORTS
(CASREPs)**

Coast Guard cutters, Navy vessels, and vessels under contract to or operated by the Military Sealift Command send CASREPs when an accident occurs or when a piece of important equipment fails. IOs should carefully screen all CASREPs, keeping in mind that MSC vessels may use the CASREP as the primary means of notification for a marine casualty. The Coast Guard will investigate all pollution incidents aboard (via MOU) Navy and Coast Guard vessels. **NOTE: the Coast Guard does not take enforcement action against Navy or Coast Guard vessels.**

**D.5. OPERATIONS
SUMMARIES
(OPSUMs)**

While SAR units send many SITREPs, not all incidents (or responses) warrant a SITREP. In these cases, the only mention may come in the Group or District SAR Controller's daily OPSUM. IOs should maintain a close relationship with District and Group Command Centers, assuring they receive copies of the OPSUM each day. IOs should review the OPSUM each morning for cases of which they may have otherwise been unaware. Similarly, because OPSUMs are reviewed by headquarters program managers, IOs should present their most significant efforts in the daily OPSUM for the district.

E. REPORTS FROM OTHER LAW ENFORCEMENT AGENCIES

E.1. GENERAL

IOs shall maintain a close relationship with other law enforcement agencies for a number of reasons. These agencies, for instance, may be involved in investigating incidents that the Coast Guard also investigates. Such contingencies should be considered, and where possible, a MOU between the local unit and the law enforcement agency should describe what incidents will be jointly investigated, which agency will take the lead in which investigations, how criminal referrals will be made, and how reports of investigation (ROIs) will be drafted, approved, and released. These MOUs should also consider which types of incidents the Coast Guard and other agencies will notify one another of. In units with large AOR's, the IO will (by necessity) rely on these agencies for notifications regarding incidents, particularly



pollution incidents.

E.2. HANDLING OF REPORTS

Reports from other law enforcement agencies should be treated as any other notification regarding an incident. As such, the Coast Guard's action regarding the incident must be determined by weighing the severity of the incident against other priorities, including workload. Reports from other law enforcement agencies, however, should be treated with greater confidence than reports from other sources. Accordingly, less verification and validation needs to be done by IO's.

E.3. MULTI-INCIDENT INVESTIGATION

In many instances, law enforcement agencies show more interest in a pattern of law breaking or a pattern of incidents than in a single, isolated incident. Accordingly, IOs should be sensitive to the law enforcement agency's investigation of a pattern of behavior, and should not force an isolated incident investigation to closure when other law enforcement agencies intend to investigate as part of a pattern of offenses.

F. REPORTS FROM FOREIGN GOVERNMENTS AND THE INTERNATIONAL MARITIME ORGANIZATION (IMO)

F.1. GENERAL

The Office of Investigations and Analysis, Commandant (CG-545) acts as the point of contact for the international community under the terms of the International Code for the Investigation of Marine Casualties and Incidents. Under the code, certain incidents should be referred to the flag administration for its action. When incidents occur aboard U.S. vessels in foreign waters, CG-545 receives referrals from other nations, and occasionally from the IMO.

F.2. REPORTS FROM FOREIGN GOVERNMENTS

Depending upon the nature of their encounter and their domestic laws, foreign governments may refer a nearly completed case or a simple notification. While each reported incident must be weighed against existing workload when considering what investigative action to take, units should weigh cases referred by foreign governments as more serious because Coast Guard action bears on the United States' international reputation. In many cases, the Coast Guard will communicate with the Department of State in reporting what action we have taken. Evidence, interviews, and anything else collected by foreign governments may be used by IOs.

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USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART B: INVESTIGATION

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Chapter Three:
Fact-Finding
And
Evidence Handling

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A. OVERVIEW

A.1. INTRODUCTION

The method for fact-finding while conducting an investigation includes, but is not necessarily limited to the following steps:

- Step One: Inspecting the location;
- Step Two: Gathering and recording physical evidence;
- Step Three: Interviewing witnesses taking into account cultural and languages differences (on site and external);
- Step Four: Reviewing documents, procedures, and records;
- Step Five: Identifying conflicts in evidence; identifying missing evidence; and
- Step Six: Conducting specialized studies.

A.2. ANALYSIS DURING FACT FINDING

During the initial stages of every investigation, IOs should aim to gather and record all the facts that may assist in determining causes. IOs should be aware of the dangers of reaching conclusions too early, thereby failing to keep an open mind and consider the full range of possibilities. It is essential that the fact-finding step of the investigation process be kept separate from the analysis of the collected evidence leading to conclusions and recommendations.

A.3. SCOPE OF FACT FINDING

The objective of the fact finding step of the investigation is to collect as many facts as possible which assist in understanding the incident and the events surrounding it. The scope of any investigation can be divided into four areas: people, environment, equipment, and procedures. Additionally, all casualty investigations will at a minimum cover the information required for reporting to the International Maritime Organization (IMO).

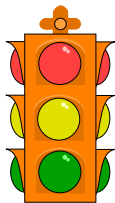
B. OPERATIONAL THREAT ASSESSMENT

B.1. INTRODUCTION

As required by Volume 1, Chapter 10 of this manual, all field units must have safe work practices (SWPs) that explain how to handle the various hazards likely encountered while performing Coast Guard missions. In practice, many field personnel do not consider all the hazards actually present during an investigation, and accordingly do not consider using the protective measures in the SWPs. To use the SWPs appropriately, field personnel must evaluate with each and every on-scene deployment which hazards are present, and what measures they will take to protect themselves. Whenever IOs and their teams go on-scene during an investigation, they must consciously consider and plan how they will handle hazards **prior** to deploying. This is called an *Operational Threat Assessment*.

B.2. EVALUATIONS

IOs should consciously consider each of the specific hazards listed in this section.



Specific SWPs may list acceptable levels of risk for each unit, but in general, the IO should consider their evaluation in terms of a simple metaphor: a traffic light. For each situation, the threat is either: (green) not present or at acceptable risk levels; (yellow) present, but acceptable with defenses; or (red) unacceptable even with defenses. When an IO categorizes any hazard as red, they should not enter the “hot” zone where that hazard is present, and should not allow their personnel to enter the hot zone.

B.3. THREATS FROM UNKNOWN SUBSTANCES

In many situations, the IO responding to a marine incident such as an oil spill may not know precisely what hazards are present on-scene. An unknown substance believed to be oil, for instance, may contain PCBs or other unusual hazards. In the vast majority of responses to unknown substance discharges, the spill is oil, and no such hazards are present. Similarly, be aware that even when a substance is reasonably believed to be oil, the IO may not know whether benzene is still likely present in the oil (for benzene containing oils, this depends on a variety of factors, including age of the oil).

C. SECURING THE SCENE

C.1. INTRODUCTION

An investigation should be carried out as soon as possible after an incident. The quality of evidence, particularly that relying on the accuracy of human recollection, can deteriorate rapidly with time, and delayed investigations are usually not as conclusive as those performed promptly.

C.2. SECURING THE INCIDENT SCENE

Where possible, the site of the occurrence should be left unchanged until the investigation team has inspected it. Where this is not possible, for instance to make essential and immediate repairs following serious structural damage, the scene should be documented by photographs, audio visual recordings, sketches or any other relevant means available with the object of preserving vital evidence and possibly recreating the circumstances at a later date. Of importance is the recording of the positions of individuals at the site, the condition and position of equipment (and controls), supervisory instructions, work permits, and recording charts. Damaged or failed components should be kept in a secure location to await the arrival of the investigative team who may require detailed scientific examination of certain objects.

C.3. READINESS

IOs should be prepared to proceed directly to the scene of an incident to secure the scene and obtain timely interviews of witnesses. Material such as subpoenas, paper, pens, statement forms, recording devices, and tapes normally used in investigations should be readily available.

C.4. INTRODUCTIONS UPON ARRIVAL

When first boarding a vessel or entering a facility, the IO should report his or her presence to the master, senior deck officer, or person in charge and present their badge and credentials. The IO should further inform the master, senior deck officer,



or person in charge what must be done in order to secure the incident scene.

C.6. POTENTIAL WITNESSES

C.6.a. General

IOs should ensure that all potential witnesses are asked not to discuss the incident with one another before being interviewed. They should be separated if possible. Witnesses' recollections may be changed or influenced by others, and IOs should recognize that different witnesses normally recall the same event slightly differently. If all testimony regarding an incident is precisely the same, the IO should consider the possibility that the witnesses have interacted sufficiently to alter their testimony. See also 46 USC Section 6303.

C.6.b. Order of Interviews

The order of interviews will depend upon the manner in which the facts are developed and the accessibility of witnesses. Witnesses should be interviewed as soon after the incident as possible. It is generally best to interview witnesses who have the most complete overview of the incident first. This would be the Master, Chief Engineer, or person in charge. Also, those witnesses who will not forewarn the potential subject of an investigation should be interviewed before those who might reasonably be expected to inform the potential subject. In this manner facts and information are obtained that can be used in detecting inconsistencies or attempts to mislead on the part of witnesses who may be unsympathetic to the investigation.

C.7. DRUG AND ALCOHOL TESTING

C.7.a. General

46 CFR 4.06 and 16.240 require that marine employers conduct drug and alcohol testing on mariners directly involved in a serious marine incident. Drug and alcohol testing should be done as soon as practicable within the 2-hour time limit. While the burden for drug and alcohol testing rests on the marine employer, IOs shall remind mariners and marine employers of their drug and alcohol testing responsibilities while securing the casualty scene.

C.7.b. Authority to Direct Testing under 46 CFR parts 4 and 16

46 CFR 4.06 requires marine employers to take all practicable steps to test individuals involved in a serious marine incident for evidence of drug and alcohol use as soon as possible after addressing the resulting safety concerns delineated in 46 CFR 4.06-1(e). 46 CFR 4.06-1(c) allows law enforcement officers (not necessarily federal) to determine that additional personnel are directly involved in the incident, and thus must undergo drug testing. 46 CFR 16.250 requires Marine employers to require drug and alcohol testing when they have probable cause to believe a mariner is under the influence of drugs or alcohol. Whether designated by the marine employer or a law enforcement officer, drug testing under these authorities is the responsibility of marine employer, not the Coast Guard.

C.7.c. Authority to Direct Testing under 33 CFR part 95



33 CFR 95.035 authorizes the chemical testing of individuals suspected of being *intoxicated* or directly involved in the occurrence of a marine casualty. Chemical tests should be directed whenever an individual appears to be intoxicated. Unlike mandatory chemical testing after a serious marine incident, chemical tests are not automatically required whenever an individual is involved in a marine casualty. Good judgment and careful consideration of the seriousness and circumstances of a marine casualty should be exercised before directing drug testing under 33 CFR 95.035.

NOTE: The standard of intoxication is defined in 33 CFR 95.020 as: 1) an alcohol concentration of 0.08 percent by weight or more in their blood for recreational vessels, 2) an alcohol concentration of 0.04 percent by weight or more in their blood for vessels other than recreational vessels, and 3) the effect of intoxicants consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation for any vessel. 33 CFR 95.010 defines an intoxicant as any form of alcohol, drug, or combination thereof.

C.7.d. Individuals to be Tested

Under the post-casualty drug and alcohol testing regulations in 46 CFR 4.06, law enforcement officers may designate personnel as "directly involved" in a serious marine incident (as defined by 46 CFR 4.03-4), and therefore subject them to mandatory automatic drug testing. The personnel who can be designated as directly involved in the incident are limited to those actually aboard the vessel. This restriction is stipulated in 46 CFR 4.06-1(b) and 4.06-5(a) by the phrase "any individual engaged or employed on board a vessel..." Given this restriction, it is not feasible for the marine employer or law enforcement officer to extend the drug and alcohol testing requirements to someone who was not actually aboard the vessel such as a dispatcher, drawbridge tender, or barge supervisor issuing orders to a vessel master/operator.

C.8. SECURING RECORDS

C.8.a. General

When securing the scene of an incident, IOs should pay particular attention to timely securing of records that may, in some cases, be destroyed or erased. Many electronic records (ARPA playback, voyage recorders, etc.) will automatically be lost after some period of time, generally a few hours. Similarly, IOs should consider securing the Chief Mate's office, where many records (including rough logs and cargo records) will be kept. Most deck and engine officers keep rough notes, which may be the only records available because smooth log entries are not foremost in a mariner's priorities following an incident.

D. THE "SHEL" MODEL

D.1. GENERAL

The SHEL model is a tool used to collect the factual information necessary to fill in the timeline. The SHEL model was developed by Elwin Edwards and refined by



Captain Frank Hawkins as an investigation tool. It allows a marine investigator to explore the interaction of the many operational parts of the maritime transportation system. The model effectively moves the focus from the individual (mariner) to the system. Rather than focusing on any single element in the system, it assumes that any failure in the system results from a mismatch between two or more of its components. The IMO has suggested the SHEL model as a means for exploring the interaction of all parts of the maritime transportation system in an accident, and the Coast Guard has adopted it as the principal means of conducting on-scene fact-finding. The SHEL Model is a categorization of the various conditions that the marine investigator may wish to record. The SHEL model suggests that all of the operational elements of the maritime transportation system belong to one of four categories. Accordingly, the marine investigator should observe the condition of the various elements in those four categories. These categories are simply:

- ❑ ***Software: The information and support systems guiding people.*** Software elements include checklists, manuals, publications, procedures, regulatory requirements, training, education, maps, and charts.
- ❑ ***Hardware: The vessels, facilities, machinery, cargo, equipment, and material people work with.*** Hardware elements include all machinery, gear, electronics, switches, controls, and displays.
- ❑ ***Environment: The internal and marine environment in which people work.*** Environment elements include the internal environment such as workplace environment, room temperature, ventilation, lighting, pitching and yawing, and the marine environment such as sea state, wind, ice, precipitation, and visibility.

Liveware: The people themselves. Liveware elements include all of the people involved in the accident both directly and indirectly.



D.2. GRAPHIC REPRESENTATION OF SHEL

The SHEL model is typically depicted graphically to display not only the four categories or components of the maritime transportation system, but also the relationships or “interfaces” between the elements and the people (liveware) at the heart of the model.

In this diagram:

S is Software,

H is Hardware

E is Environment

L is Liveware

D.3. CENTRAL COMPONENT OF SHEL

The central component of the SHEL model is a person. That person interacts with the other components of the maritime transportation system, and is influenced by mismatches in those interactions. The person is also influenced, however, by factors entirely within themselves that they bring into the maritime transportation system. Such factors to be explored in using the SHEL model include:

- physical factors (height, weight, strength, etc.);
- physiological factors (health, drug and alcohol use, fatigue, etc.);
- psychological factors (personality, attitude, biases, etc.); and
- psychosocial factors (personal relationships, money problems, etc.).

When collecting information about an accident, marine investigators should limit their in-depth examination to those people who were directly involved in the accident. Pursuant to the rules in 46 CFR Part 4, post-casualty drug and alcohol testing should be performed on people directly involved in a marine casualty, when required. Similarly, a 96-hour work/rest history should always be gathered for that person as well. The lists below contain the various areas of examination of liveware. The lists are not exhaustive.

D.4. PHYSICAL FACTORS

Physical Capability. The physical capability of the individual to perform required actions and movements. Consider:

- Age
- Strength
- Height

Sensory Limitations. The sensory limitations of the individual that may affect the person’s performance. Consider:



- Visual limitations. Visual limitations can cause illusions and disorientation, or impair reading of instruments and charts. Examples of visual limitations are: color blindness, visual acuity, depth perception, and requirement for glasses or contact lenses.
- Hearing limitations. Hearing limitations on the part of the individual can leave an individual unaware of faint sounds or sounds in a specific affected hearing range. This factor refers to the individual's capability, not to ambient noise or environmental conditions.
- Smell limitations.
- Touch limitations.

D.5.
PHYSIOLOGICAL
FACTORS

Nutrition Factors. Nutrition potentially affects an individual's ability to respond to action or resist fatigue. Consider:

- Time since last meal
- Food intake during last 24 hours
- Recent weight loss
- Recent dieting

Health Factors. Health factor can directly affect performance. Consider:

- Diseases
- Pains
- Dental conditions
- Pregnancy
- Obesity
- Recent blood donation
- Smoking (reduces dexterity, impairs vision, & affects judgement of time)
- Alcohol/drugs (over-the-counter medication, prescribed medication, coffee, illegal drugs, alcohol abuse, etc.)

Fatigue. Consider:

- Short Term Fatigue. Short-term fatigue can be influenced by the amount of sleep, duration or work period, and the nature of tasks, among other factors.
- Long Term (Chronic) Fatigue. Long term fatigue may depend on work schedule, ability to cope with stress, and sleeping patterns. (Known effects of stress include an impact on short-term memory, concentration, ability to make decisions, risk taking, and taking "short cuts.")



Illusions. Illusions can be induced by the environment, and include:

- Environmental Illusions, such as “black hole,” flicker vertigo, and circular or linearvection.
- Vestibular Illusions can include somatogyral (the leans) or somatogravic (coriolis).

D.6.
PSYCHOLOGICAL
FACTORS

Information Processing. Factors to consider include the possibility that the amount of information to be processed exceeded the individual’s own limitations (mental capacity) leading to poor judgment.

Perceptions. Factors to consider include delayed perceptions, inaccurate perception (mental picture) of the task to be performed, leading to slow reaction or wrong reactions.

Attention. Attention factors consider that the level of attention required during a task may exceed the individual’s own limitations. Consider:

- Attention span
- Fixation
- Distraction

Workload. Workload and its perceived level can be increased through an operator’s or crew’s own actions, causing stress, panic, incorrect prioritization of tasks, and loss of situational awareness.

Attitudes. The attitudes of individuals toward their work, mission, others, and themselves can affect performance. Consider:

- Boredom
- Overconfidence
- “Press on – itis”

Mental / Emotional State. The mental or emotional state of a person influences their approach to situations and can influence their ability to respond in an emergency. These factors may appear as signs of panic, stress, and anxiety including fixation, gazing, and very slow reaction times. Consider:

- Apprehension / fear
- Arousal level

Personality Traits. Personality traits may predispose an individual to a certain response pattern in a given situation. Through interviews with co-workers and



friends, investigators can identify such characteristics as:

- Hostility
- Excitability
- Impulsiveness
- “Macho-ness”

Experience / Recency. Experience and recency include attention to the suitability of a person’s experience, and the recency of that experience, to the situation.

Consider:

- The person’s overall experience
- The person’s recent experience
- The person’s experience on a particular type of equipment
- The person’s experience with a particular procedure

Knowledge. A person’s knowledge about equipment, systems, procedures, or the environment may be inadequate, resulting in reduced confidence, confusion, or inappropriate actions.

Training. Consider:

- The type of training the person has received
- Indications of positive or negative transfer (did they get the message?)
- Weaknesses observed during training

Planning. The planning of an operation, but prior to and during the operation can reflect the operator’s or management’s attitudes. Limited planning can result in incomplete information, biasing decision-making, and bad judgment.

D.7.
PSYCHOSOCIAL
FACTORS

Psychosocial factors have an important role as they influence an individual’s approach to a situation and their ability to handle stress, as well as the degree of fatigue experienced. Consider any event from a person’s social environment that is important enough to negatively influence behaviors or create stress. To evaluate the pressure and stress levels experienced by a person, compare the individual’s perception of events against the perceptions of others. Consider whether any of the following may be relevant:

- Friends
- Family
- Peers
- Interpersonal conflicts



- Cultural differences
- Personal loss (grief, shock, stress)
- Money / financial problems
- Activities
- Life style
- Work

D.8. MISMATCHES BETWEEN COMPONENTS

The rough edges between the components in the SHELL diagram are symbolic of the fact that the *mismatch* between an individual and these components is important. These possible mismatches warrant special attention by the marine investigator because mismatches in the system may point out safety deficiencies. Examples of mismatches between a person and other components include:

- ❑ ***Person to Person (liveware-liveware) Mismatches.*** Mismatches between people and other people include voice communications, working language, phraseology, speech rate, readback/hearback, briefings, personal interactions, crew coordination, and non-verbal cues such as hand signals.
- ❑ ***Person to Policy & Procedures (liveware-software) Mismatches.*** Mismatches between liveware and software include problems in the transfer of information between support systems and the person. Outdated publications, for instance, generate a mismatch by giving the person incorrect information.
- ❑ ***Person to Equipment & Gear (liveware-hardware) Mismatches.*** Mismatches between liveware and hardware include problems in the physical and mental interaction of people and machines. Design limitations, instrument/control design and location, instrument controls and readability, seat design, proper guards and protections and other ergonomic issues are instances of these mismatches.
- ❑ ***Person to Environment (liveware-environment) Mismatches.*** Mismatches between people and environment are facts that affect human performance. For example temperature, humidity, illumination or glare, ambient noise, vibration, air quality, external visibility, pitch and yaw each have an effect on a person's ability to perform his or her task optimally.

The following lists (D9-D12) contain the various areas of examination of mismatches. The lists are not exhaustive.

D.9. PERSON TO PERSON (LIVEWARE-LIVEWARE)

Oral Communication. Tapes and witness interviews can help identify misinterpretations, misunderstandings, and improper language use. Consider:



MISMATCHES

- Noise interference
- Content and rate of speech
- Readback/hearback procedures for oral instructions
- Visual signals that replace, support, or contradict oral or other information. Examples include confusing body language, or other non-verbal cues.

Crew Interaction. Crew interaction includes crew compatibility in terms of personality, experience level, and working habits. These factors can cause people to work for or against each other, or fail to use all available resources.

Passenger Interaction. Like crew interactions, passenger interaction occasionally influences the performance of individuals. Passengers can provide information on crew actions, attitudes, and behaviors.

Worker – Management Factors. Consider:

- The level where decisions and plans are formulated
- The level where resources are allocated
- The supervisory level where actions are monitored and instructions followed
- The influence of management policies on personnel issues (perhaps causing excessive workload or unhealthy work environments)

Labor Relations. Labor relations include, for instance, union influence on workers, management, policies, and work habits; post-merger negotiations, etc.

Supervision Factors. Supervision factors include the existence, availability, and currency of standards, policies, and quality controls, as well as supervisory presence (or absence), monitoring, style, etc.

D.10. PERSON TO POLICY (LIVEWARE-SOFTWARE) MISMATCHES

Written Information. Consider the format, content, and/or vocabulary of manuals, checklists, or any other written documents.

Computers. Consider the compatibility of keyboards or displays, their impact on workload, and inducement of confusion, increased reaction time, task fixation, or blatant errors.

Automation. Consider the effect of automated equipment or procedures on a person’s attitude toward their work, mental picture of the mission, an impact on workload at a critical time.

Regulatory Requirements. Consider the individual’s essential qualifications and certifications for the task, e.g. current licenses or ratings, qualifications for equipment type, infraction history, etc.

D.11. PERSON TO EQUIPMENT (LIVEWARE-HARDWARE) MISMATCHES

Switches, Controls, and Displays. Similarities, differences, and peculiarities between different systems’ switches, controls, and displays may affect an individual’s information processing characteristics. Consider:

- The influence of design, location, and colors
- Influence of volume of information presented, and the instruments, displays,



controls, and switches themselves, on reaction time, workload, confusion, information overload, .etc.

- Suitability of equipment
- Condition of equipment

D.12. PERSON TO ENVIRONMENT (LIVEWARE-ENVIRONMENT) MISMATCHES

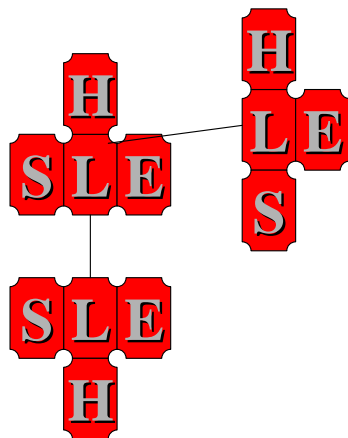
Internal Environment. Consider the climate, personal comfort, workplace environment and physical working conditions.

Marine Environment. Consider the weather, sea state, tides, currents, visibility conditions, precipitation, and rate of change in weather conditions.

Infrastructure. Consider the infrastructure or support services and their contribution toward reducing safety margins, or limiting choices of action, maintenance being one of the key facilities affecting an occurrence.

D.13. USING SHEL IN COMPLEX SYSTEMS

Complex systems often contain many people. The SHEL model can be used to organize information (and guide fact-finding) by considering that people interact with several people, each of them may interact with several more people. Accordingly, in complex systems the SHEL model can be represented with multiple people:



In this diagram, each person (each member of the bridge crew, or the operator of two vessels and a VTS operator) should be represented as the “center” of a SHEL diagram, each interacting with the others.

D.14. USING SHEL TO GUIDE FACT-FINDING

In a practical sense, the number of possible SHEL components affecting each person involved in a marine casualty is very large. If a marine investigator were to describe each possible element of the marine transportation system in detail and then to comprehensively rule out every possible mismatch, the process of conducting fact-finding would be exhausting. Accordingly, the marine investigator should consider the four principal components in the general sense, and should inquire exhaustively into only those areas that are immediately relevant to the accident. Questions about a person’s marital status, for instance, are not appropriate when a person’s performance is either a) tangential to the accident; or b) not in question (i.e., they did nothing wrong). Generally, information about the other conditions (weather and sea state, vessel characteristics, names of people involved and their roles) should be collected



first.

**D.15. ORDER OF
TOPICS IN THE
INTERVIEW**

Marine investigators should remember that extreme care should be used in establishing a rapport with the witness. This involves gradually easing into discussions of subjects most uncomfortable for the witness. Accordingly, following the gathering of basic personal information, marine investigators should begin the interview by obtaining descriptions of the SHEL components involved. Such descriptions might include:

- A list of who was involved in the accident, who was talking with whom, and so on (Liveware to Liveware interactions).
- A list of what equipment was in operation, its condition (Hardware)
- What policies and guidance were in effect, what charts were being used, etc. (Software)

Once the outlines of the SHEL model for that person have been established, the marine investigator will proceed “around the diagram” once again, this time focusing on the interactions. Such questions are slightly more uncomfortable, but build on previous discussion. For example, these questions might include:

- A discussion of how well the bridge team got along (Liveware to Liveware Mismatch)
- How well the pilot could see from the starboard radar (Hardware to Liveware Mismatch)
- Whether the Ship’s ISM policies were actually read, or just a paperwork drill (Software to Liveware Mismatch)

Finally, the marine investigator proceeds into the most uncomfortable aspects of the interview: the factors affecting the witness themselves. Recognizing that people may act to protect their own self-image and/or to hide matters from the investigation, marine investigators should carefully corroborate information provided by a witness pertaining to themselves. Generally, the majority of this information about a person is derived from interviews with other people. For example questions might include:

- “I have to ask: were you using drugs or alcohol?” (Physiological Factors)
- “Did you receive a bonus for reducing the ship’s maintenance expenditures?” (Psychosocial Factors)
- “Do you have problems seeing with your glasses off? Were you wearing them?” (Physical Factors)
- “How were you handling all off those radar contacts at the same time?” (Psychological Factors)



Once these topics have been adequately discussed, the marine investigator should then turn his or her attention to the mismatches in their interaction. **These mismatches are Latent Unsafe Conditions (LUCs) that should be examined in the Causal Analysis.**

E. INSPECTING THE INCIDENT SCENE

E.1. GENERAL

Whenever timely notice of an incident is received, inspection of the incident scene must be a high priority for the IO. Appropriate inspection of the incident scene will reveal much of the information necessary for accurate and complete analyses of the facts and causes.

E.2. INSPECTIONS AND SEARCHES

E.2.a. Inspection during the Course of an Investigation

The Coast Guard has authority to enforce environmental and safety regulations and, as such have legitimate access to ships and facilities governed by these regulations. Coast Guard regulations give notice to regulated entities to anticipate inspection, and various international and federal laws require those ships and facilities to hold certain areas open for inspection. No suspicion whatever is required to initiate an inspection, and an inspection may involve entering and checking any space if reasonably related to applicable administrative and safety regulations, or to the chain of events in an incident.

E.2.b. Reasonableness in the Scope of the Inspection

A vessel or facility inspection is not a basis of authority for USCG personnel to go anywhere aboard a vessel or facility subject to U.S. jurisdiction. The reasonable extent of an inspection is measured by the extent of its intrusion into areas where there is a legitimate expectation of privacy. Courts have ruled that no reasonable expectation of privacy exists in the machinery and cargo spaces of a ship, and in areas subject to common access of those legitimately aboard the vessel.

E.2.c. Proper Inspections

Properly conducted vessel and facility inspections are fully consistent with the Fourth Amendment standards in that they are:

- Limited in scope;
- Serve an important public interest; and
- Involve areas where a lesser expectation of privacy exists.

E.2.d. Evidence of Criminal Activity

When IOs have a reasonable suspicion of illegal activity, but collecting evidence of that activity requires examination of spaces or persons beyond the scope of a normal facility or vessel inspection, the IO shall expeditiously request guidance from their



servicing legal office. IOs SHALL NOT extend normal inspections such that any person’s Fourth Amendment rights are infringed upon.

Notwithstanding any of the above, an IO or other individual properly qualified to conduct law enforcement operations may proceed in accordance with the MLEM.

F. EVIDENCE

F.1. GENERAL

IOs collect evidence to establish truth. Evidence proves or disproves (or tends to prove or disprove) the truth of a fact or matter in question. The word “evidence” means any matter of fact from which an inference may be drawn as to a second matter of fact that is in question. Evidence may be physical, oral, or written (documentary) and may concern an incident, circumstances, or actions relevant to the issues. There are three basic types of evidence:

- Direct Evidence (includes witness statements and testimony)
- Indirect Evidence (a.k.a. circumstantial evidence, generally tends to ‘disprove’ something or indirectly prove something)
- Real Evidence (includes physical and documentary evidence)

IOs should pursue them all.

F.2. WHEN CONTROL OF EVIDENCE IS REQUIRED

F.2.a. General

Whenever evidence (i.e. pollution samples) is taken in support of a criminal investigation, control of evidence with a proper chain of custody in accordance with COMDTINST M16201.1 (series) is required. For any other purposes, control of evidence is at the discretion of the Senior Marine Investigator.

F.2.b. Transfer of Custody

When CGIS Special Agents are involved in a case, original evidence should normally be transferred to them. All original evidence should be secured in a locked evidence locker (locked refrigerator for oil) until transfer/disposition instructions are received from the prosecutor. Access to, and the release of, evidence from an evidence locker should be controlled by as few as personnel as possible who should maintain a log recording evidence received and evidence released. An IOs locking file drawers may serve as an evidence locker, provided the IO has sole access to the drawer, that it remains locked, and that proper chain of custody control forms are rigorously used.

F.3. CONTROL FOR LATER IDENTIFICATION

Whenever control of evidence is required, the IO must prepare careful documentation that will show:

- A description of the evidence (what it is);
- Where it was found (being very specific as to the location: “... from the bottom right drawer of the desk in the office of the Chief Engineer.”)
- Who found the evidence;



- What happened to the evidence after it was collected/seized, (the complete chain of custody.)

F.4. IDENTIFYING EVIDENCE

F.4.a. Process for Identifying Evidence

When collecting evidence, the IO must assign each piece of evidence (i.e. each document or small group of documents) an Evidence Control Number (ECN). The IO should have a list of each piece of evidence they control with a brief description of the evidence, where it is located, who took custody/discovered it, and it's final/current disposition.

F.4.b. Tagging of Physical Evidence

When physical evidence, including pollution samples, are collected (e.g. pollution samples after a pollution incident, lube oil samples after a mechanical failure), they should be placed in an appropriate container (a sample jar for oil samples; a seal-able plastic bag for samples of garbage, plastic, or other pollutants) and sealed with evidence tape, which shall be initialed and dated by the person who collected the sample and then assigned an ECN. Other physical evidence that cannot be feasibly placed in one of the above mentioned or other type containers (i.e. a large overboard valve) shall be appropriately tagged. The tag will be initial and dated by the person who collected the sample and then given an ECN.

F.4.c. Evidence Control Number (ECN)

The ECN is simply an identification giving a "short hand" for identifying evidence. The IO shall assign each piece of evidence an ECN. The following is the recommended format: Activity Number (from MISLE), a sequential number as it is discovered (1, 2, 3, etc.), and the collector's initials.

EXAMPLE: CDR Kelly M. Post collected evidence in support of MISLE Incident Investigation Activity 1024581. This is the second piece of evidence collected for this investigation. The ECN would look like this: 1024581-02-KMP

F.5. COPYING DOCUMENTARY EVIDENCE

Because the general "walk around" (inspection/investigation technique of walking around the scene) rarely occurs at an empty scene, operations will usually be going on at the time that IOs take evidence into custody. In some instances, copies of the documentary evidence will be sufficient, and IOs should plan how they will make copies in this case.

F.6. SELECTING WHICH EVIDENCE TO TAKE

By the very nature of human beings, the most productive and efficient work (with regard to evidence) will be done during the "walk around" – not weeks later while reviewing the files. While there is a temptation to "take everything," this will cause both alarm and ultimately much more work. In order to minimize the amount of irrelevant evidence taken into custody, the IOs and/or Marine Board Recorder should review checklists of equipment, reports, documents, etc., that would be expected to have valuable information to the occurrence. Although additional evidence will inevitably surface, this concentrated time spent at the beginning of the



“walk around” will shorten the overall length of the investigation.

G. PHYSICAL EVIDENCE

G.1. GENERAL

Because an IO will not necessarily know which evidence is relevant to the findings of fact or conclusions regarding cause, physical evidence should be broadly documented and key pieces of evidence should be taken into custody. In general, where a piece of physical evidence may be fully documented through photographs, etc., (e.g. a substitute original) it is preferable not to take the object into evidence. Where enforcement proceedings may result (as in environmental crimes), however, the object should be taken into custody.

G.2. AUTHORITY TO COLLECT AND RETAIN PHYSICAL EVIDENCE

The authority to collect and retain physical evidence is implicit in the Coast Guard’s authorizing statutes for investigation and law enforcement. The IO should contact the servicing legal office immediately if his or her authority to collect and/or retain evidence is challenged during fact-finding.

G.3. RETENTION OF ORIGINAL RECORDS / DOCUMENTS ON BOARD SHIPS

G.3.a. General

Retention of original records and documents on board ships is guided by the IMO Maritime Safety Committee (MSC) and Marine Environment Protection Committee (MEPC) joint circular MSC-MEPC.4/Circ.1. In accordance with this policy, an IO shall only take the original documents when necessary for the investigation. IOs should accept a certified copy if it is legible and conveys the **exact** information as the original (e.g. erasures, pertinent differences in color of ink or style of writing, if any, torn pages, handwritten comments - especially those written in margins, and any indication of possible tampering - white-out, and extra pages taped in). Coordination with the servicing legal office is urged in making the determination of necessity.

G.3.b. Certified Copies

Always provide the opportunity for the Master to certify (under direct supervision) and retain copies. Upon removal of an original, be prepared to provide a certified copy to the master as expeditiously as possible, especially if the document is required for the vessel to attest to their compliance with various laws, regulations or international treaties and protocols. Do not stamp certified copies as “Certified to be True.” When providing certified copies to the vessel, avoid characterizing documents as being truthful. The IO shall provide a letter to the master identifying the original documents removed.

G.4. ISSUING SUBPOENAS TO COMPEL THE PRODUCTION OF PHYSICAL EVIDENCE

G.4.a. General

An IO may serve a subpoena on the custodian of certain evidence necessary for the purposes of an investigation. The subpoena orders the custodian to appear with specific books, papers, records, or documents so that they may be used as evidence and be admitted into the official record of the investigation. See Chapter A3 for more information.



G.4.b. Subpoenas for Cooperative Custodians of Evidence

It is sometimes in the interest of the Coast Guard to subpoena cooperative witnesses, as a witness under subpoena is in a more favorable position under the laws relating to the protection of witnesses. Individuals under subpoena are usually less reluctant to give testimony detrimental to friends or relatives or in some way derogatory to themselves. Furthermore, some private agencies (such as drug testing consortiums) routinely require subpoenas for the production of their records, as a protection to themselves. Additionally, some employers require a subpoena before they will permit an employee to miss work in order to testify.

G.5. VIDEO AND AUDIO TAPE

G.5.a. General

IOs are authorized and encouraged to videotape or otherwise record their inspections/investigation of facilities and/or vessels, particularly following significant occurrences, bearing in mind that still photographs are often more easily presented and used in formal proceedings. Also, keep in mind that while videotaping, conversations will be recorded and should maintain a professional demeanor. Video taping should be limited to open and obvious recording in an area the are permitted to be and may not be conducted covertly.

G.5.b. When Permitted

From a legal standpoint, an IO may videotape or otherwise record anything where the IO has the lawful right to be (i.e., anyplace during the inspection); and/or any conversation in which the IO is participating. As a matter of policy, the IO shall ensure that recorded interviews begin with a statement from the person being interviewed that he or she has no objection to the recording of the interview. IOs should exercise considered judgment in recording interviews, in that recording can cause witnesses discomfort and limit their testimony. Similarly, excessive recording can needlessly complicate the investigative case file.

G.5.c. Concealed Recording Devices

The use of concealed recording devices is not authorized.

G.5.d. Individual Audio/Video Tapes

Each inspection or interview should be recorded on a unique tape or other recording medium (rather than have multiple interviews or inspections on the same tape). The tape should have the following information written on it:

- Date of the recording;
- Time of the recording;
- Person making the recording;
- Subject of the recording, and



- ECN

G.6. PHOTOGRAPHS

Photographs are an excellent way to document physical evidence or information. It provides (and is not limited to) the following:

- Orientation to the scene of the incident;
- An accurate record of details;
- Records relative positions;
- May show (im)proper use/assembly of equipment or materials;
- Documents evidence of marks, spills, etc.; and
- Show deterioration or lack of maintenance.

Pictures should be taken of the overhead view, view from four points, medium range shots for orientation, close-up shots for detail, weather (when applicable), etc. For scale, IOs should place a ruler (or other object of known size) or people in the photo. It also helps to place small objects on a blue background for color detail. IOs should keep a log of photos taken that includes the date, time, location and subject information.

G.7. ELECTRONIC RECORDS

G.7.a. General

Many modern vessels carry enormous amounts of electronic data on Voyage Data Recorders (VDRs). VDRs integrate inputs from many pieces of equipment (including GPS, radars, rudder and engine order telegraph) with audio recordings from concealed microphones located throughout the bridge. Data obtained by the VDR can help to corroborate witness statements, identify or eliminate equipment malfunction, evaluate crew performance, and quantify environmental conditions eliminating much of the guesswork in determining causal factors in the investigation. This could prove critical in determining which regulations, equipment, and operational procedures require modification to prevent these accidents from happening again. This information is recorded in various ways on various kinds of media; they are often recorded-over every twenty-four to forty-eight hours. Therefore, if VDR information is deemed necessary, it should be obtained in a timely manner. The IO should keep in mind that VDR data is readable only with the required software from the VDR manufacturer. CG-545 will provide assistance in this matter.

G.7.b. Divers and ROV's

Many times when dealing with a vessel sinking without the possibility of salvage, the collection of physical evidence is nearly impossible. The use of divers and/or a Remote Operated Vehicle (ROV) can be very useful in obtaining video evidence. Frequently the vessel owners or operators opt to secure and use divers and ROVs. The evidence collected can be obtained by subpoena. The IO should keep in mind that Marine Safety and Security Teams may also have resources available, such as side scan sonar and ROVs.



**G. 8. OTHER
PHYSICAL EVIDENCE**

Other physical evidence may be collected by the IO as deemed necessary. This may include items such as lifesaving equipment, dive gear, paint scrapings, piping, etc. CG-545 can provide assistance with the analysis of physical evidence collected, including lab analysis.

H. DOCUMENTARY EVIDENCE

**H. 1.
INTRODUCTION**

Documentary evidence includes all kinds of documents, records, and writings, and is subject to the same rules of evidence as oral testimony. While the testimony of people making log book entries or the actual documents themselves are the preferred evidence, getting testimony or retaining documents is not possible or desirable in every instance. Further, IOs often collect documentary evidence that tends to corroborate other evidence, such as testimony. Copies of documentary evidence should ensure that the entries are legible. When they are not legible, a typewritten extract should be made.

H. 2. PHOTOCOPIES

Photocopies should be certified on the reverse side as in the following example: "I hereby certify that I have seen the original logbook and that the reverse of this sheet is a true and correct copy of page 46, book I, the Official Logbook of the M/V SEALAND TRADER, for the voyage commencing February 1, 2003 [dated and signed by the IO, including rank and duty station]." The copy should also be authenticated as a true copy and signed by the master of the vessel, along with the date and time.

H. 3. EXTRACTS

When extracts are typewritten, only those entries pertinent to the case need be extracted. They shall be certified as in the following example: "I hereby certify that I have examined the official logbook, compared the above extract to it, and found it to be a true and correct copy of all entries pertaining to Joseph Drake on page 17, book II of the Official Logbook of the M/V SEALAND TRADER for the voyage commencing February 1, 2003 [dated and signed by the IO, including rank and duty station]."

**H. 4. SHIPPING
ARTICLES**

Coast Guard forms CG-705A, and their equivalents constitute contractual agreements between the master and members of the crew on U.S. ships. 46 USC 10302 defines the particulars to be included for foreign or intercoastal voyages (see NVIC 1-86) on U.S. vessels. When the vessel will be making a foreign voyage, they are referred to as "foreign" articles; when the vessel is on a coastwise voyage, they are "coastwise" articles. Shipping articles or properly authenticated extracts made on form CG-2639H (extract of shipping articles – used when photocopiers were not available) provide evidence that a mariner was aboard a specific vessel at the time of an incident.

**H. 5. OFFICIAL
LOG BOOKS**

Logbooks contain important evidence regarding most incidents; the following policy applies to the review of logbooks and use of logbooks as documentary evidence.



Under 46 USC 11301, U.S. vessels making foreign and intercoastal voyages must have an “Official Logbook” and make certain entries in them. Logbook offenses listed in 46 USC 11501 and made in accordance with 46 USC 11502 may constitute prima facie evidence of the facts they recite. Foreign vessels are not required to have an Official Logbook by U.S. law, but almost all home administrations have a parallel requirement.

H.6. OTHER DOCUMENTS

There are numerous documents kept aboard a vessel which may be valuable in determining the facts surrounding an incident. The IO should consider examining the following shipboard documents (when applicable):

- Ship’s register;
- Current certificates;
- Charts and record of chart corrections;
- Oil Record Books for cargo and bunker.
- Oil Transfer Procedures
- Echo Sounder Chart;
- Crew list and crew Merchant Mariners’ Credentials, including state pilots’ licenses.
- Articles of Agreement
- Vessel Response Plans, garbage plans, etc.
- Declaration of Inspection
- Vessel Maneuvering Characteristics
- Bell Books (Bridge and Engine room)
- Radio Log
- ISM Code certification;
- Passenger list;
- Crew qualifications;
- Course recorder
- Bridge Log Book (other than the official log book)
- Deck Log Book;
- Port log, and log abstract;
- Weather Log
- Captain’s Night Orders
- Captain’s Standing Orders
- Personal log books (typically for deck and engine officers only)
- Cargo Orders Book (like the Captain’s Night Orders but issued by the Chief



Mate regarding cargo operations

- Notes kept by deck officers regarding cargo operations, etc., and by oilers regarding their rounds;
- Ship Reporting Records
- Voyage plan
- Engineroom Log Book;
- Chief Engineer's Standing Orders;
- Maintenance record;
- Maintenance manuals;
- Bar records - daily purchases - voyage receipts, etc.;
- Pilot notes, trip sheets, and voyage plans;
- Master-Pilot conference card (typically held by the pilot)

H.7. AUTOMATION RECORDS

Many vessels have automated record keeping for such as engine order logs, alarm logs, shaft speeds, and so on. These devices record the sequence of events in significant detail, including precise times and exact events (e.g. shaft RPM increased at precisely 08:31:20). IOs should exercise caution in evaluating this form of evidence. Specifically, automated logs are only as good as their last calibration, and should not be accepted without some degree of confidence that the times and actions reported are accurate. Accordingly, such documents should be discussed during interviews with the staff responsible for their maintenance to ensure they are valid records.

H.8. COMPANY RECORDS AND POLICIES

The IO should collect all pertinent company policies and records that are applicable to the incident. Many of these will be included in the company's Safety Management System. These documents will be of great assistance if causal or human error analysis is required.

I. ORAL EVIDENCE

I.1. GENERAL

IOs rely principally upon oral evidence to determine the sequence of events in an incident. This evidence is collected in interviews, which are detailed but informal questionings of witnesses or other people with knowledge of the incident. Interviews can be more or less formal, ranging from a brief questioning to determine that bystanders did not witness an event (e.g., people pier-side at the time two vessels collided), to a formal deposition of witnesses who will likely be unavailable to give direct testimony at a later date. This evidence should be collected in forms ranging from the IO's notes to transcriptions of recorded testimony; no chain of custody is normally required for such evidence, though IOs should be prepared to provide an affidavit attesting to the authenticity of notes prepared from oral testimony. For this



reason, telephonic interviews should be limited to those investigations where only a brief summary of the facts is desired or to determine information leading to other sources of information.

**I.2. ON-SITE
WITNESSES**

Interviews shall generally begin with the ship management team, including the Master and Chief Engineer who can provide an overview of the incident, and continue with:

- First hand witnesses present at the occurrence site at the time of the occurrence itself, regardless of rank / position in the organization;
- First hand witnesses present at the occurrence site at the time of the occurrence itself, but from outside the organization. Examples could be berthing or mooring assistance or visiting personnel such as agents or contractors;
- First hand witnesses present at the time of the occurrence but not at the occurrence location itself. Examples could be ship's staff on the bridge of a ship witnessing a mooring incident on the main deck below;
- First hand witnesses present at the time of the occurrence but not at the occurrence location itself and from outside the organization. Examples could be a pilot on the bridge witnessing a mooring incident on the deck below;
- Those not involved with the incident itself but involved in the immediate aftermath, especially those engaged in the recovery process. Examples could be those involved in damage control, shipboard fire fighting or first aid medical treatment;
- Tug, mooring boat, or pilot vessel crews;
- Search and rescue personnel including helicopter crews;
- Shore-based fire fighters;
- Pier / terminal staff;
- Other vessels in the immediate vicinity; and
- Operators of Vessel Traffic Services (VTS).

**I.3. OFF-SITE
WITNESSES**

IOs shall consider interviewing the following off-site witnesses:

Designated person under the ISM Code;
Ship operators ashore;
Technical superintendents ashore;
Company general managers ashore;
Specialist consultants (relevant to the incident);
Port or flag state inspectors;
Regulatory authorities;
Classification Society Representatives;
Safety committee members including crew representatives; and



Designers, shipbuilders, manufacturers and repairers.

I.4. SCOPE OF INTERVIEWS

The scope of an interview will vary depending on the degree to which the person being interviewed was involved in the incident. In general, however, interviews should develop information relevant to the scope of the investigation as a whole, namely the chain of events leading to the incident and the people, environment, equipment, and procedures that contributed.

I.5. PREPARATION FOR INTERVIEWS

I.5.a. General

Within the limits of available time, thorough preparation should be made prior to an interview to ensure that all pertinent details are covered. Preparation should include a detailed study of the material that has already been accumulated, including the scene of the incident. The IO shall become familiar with the laws, regulations, and guidance material applicable to the matter under investigation, along with any job aids. In some cases, IOs may find it valuable to discuss the situation in non-specific terms with experts in the field, whether inside or outside the Coast Guard. Familiarity with these factors will enable the IO to properly prepare a brief, detect any discrepancies and falsehoods in the subject's statements, and discourage the subject from withholding or distorting information. On the basis of such a detailed study, the IO shall carefully determine the following:

- Proper persons to be interviewed;
- Probable degree of willingness of each person to be questioned;
- Reliability of their information, and any factors that may consciously or unconsciously influence, color, or distort such information;
- Manner of interview and psychology to be employed, based on the subject's position, willingness, reliability, personality, and personal weaknesses as revealed by the evidence collected to that point;
- Location of the interview; and
- Outline of questions to which the answers are already conclusively known and which can be used to test the subject's truthfulness.

I.5.b. Background Information

Background information which may be appropriate to review prior to conducting interviews includes, but is not limited to:

- Procedures for the type of operation involved;
- Records of instruction / briefings given on the particular job being investigated.
- Location plans;
- Command structure and persons involved;
- Messages, directions, etc., given from base/headquarters concerning the work; and



- Any other relevant information that may allow the investigator to understand the context of the incident and testimony.

I.6. PRELIMINARY WITNESS STATEMENTS

Once the situation in the immediate aftermath of an incident has been stabilized and the threat to people, property, and the environment has been removed, the IO may require that everyone involved commit their recollections to paper in the form of a written statement. The people involved may request to wait until their lawyers arrive, or refuse to give testimony (written or oral) until such time. In the event that witness statements can be obtained expeditiously, IOs can use these witness statements to further prepare for specific interviews and to revise the order of the interviews.

I.7. CONDUCTING THE INTERVIEW

I.7.a. Introductions

An interview should start with the introduction of the IO and any other people present, the purpose of the investigation and the interview (to find out what happened in the matter of ...), and the possible future use of the information gained during the interview. Because evidence gathered by IOs may later be used as part of a criminal prosecution under many U.S. statutes, IOs are NOT to indicate in any way that the interview cannot or will not be used in criminal proceedings. If asked about the possibility of criminal liability by a witness or involved person before or during a interview, the IO should respond with words to the effect that "the United States is free to choose civil, criminal, or administrative enforcement when an alleged violation is detected, and any decision to take one type of action does not preclude another type of action."

I.7.b. Manner of the Interview

People should be interviewed singly and be asked to go step-by-step through the events surrounding the occurrence, describing both their own actions and the actions of others. The value of a witness's statement can be greatly influenced by the style of the interviewer, whose main task is to listen to the witness's story and not to be influenced. IOs should hold their questions until the witness has completed their narrative, and then use those questions to elucidate unclear areas of the testimony.

I.7.c. Number of Interviewers

People can feel intimidated when confronted by too many interviewers. Experience has shown that interviews can be effectively conducted by two interviewers and if appropriate, the witness may be accompanied by a friend or legal representative.

I.7.d. Suspicion of Criminal Activity

During the course of an interview, the IO may suspect the person being interviewed has committed a criminal violation. In this case, IOs should continue the interview, but shall avoid allowing the interview to become accusatory and focused on the individual actions. Instead, the interview should seek to document as much factual information as possible regarding the occurrence. IOs will not advise people being interviewed of their rights unless the interview has escalated to the level of a custodial



interrogation. Whether a situation is custodial depends on whether a reasonable person in the suspect's position would believe their freedom of movement has been limited in a way that approaches formal arrest (See Also Chapter A3 D.12 – Miranda Warnings). Additional interviews or interrogations of the person should be conducted by personnel trained and authorized to conduct criminal investigation interrogations.

I.8. COOPERATION OF WITNESSES

I.8.a. Refusal of Witnesses to Testify

Occasionally, a witness refuses to answer questions posed by an IO, on the grounds that the answers would be self-incriminating. Individuals have the right not to answer personal questions under the Fifth Amendment, but IOs should not halt their investigations because a witness exerts his or her Fifth Amendment rights. Other witnesses may be available for interview, etc.

I.8.b. Applicability of the Fifth Amendment

The Fifth Amendment applies to personal information (i.e., what that person has done), and not to general information. A person, for instance, might legitimately refuse to answer questions such as "how did this oil spill happen?" He or she, however, would have no Fifth Amendment basis to avoid questions such as "who is your supervisor?" or "what is your company's policy regarding notifying the Coast Guard?"

I.8.c. Compelling Testimony

If the IO does not believe that a witness's claim to Fifth Amendment protection is legitimate, he or she should consult their servicing legal officer. An order may be sought from the federal district court directing the person to testify in accordance with the subpoena, or if appropriate, immunity may be granted by the Department of Justice. See Chapter A3 of this volume for the administrative procedures for seeking such an order or grant of immunity.

I.9. DOCUMENTING THE INTERVIEW

At the end of an interview, the IO should summarize the discussion to ensure that there are no misunderstandings. This summary is invaluable both in clarifying the IO's impressions of the interview and in documenting the interview for the investigative record.

I.9.a. Transcription

During formal investigations, IOs contract for a court reporter to record and transcribe all testimony. Similarly, audio or video recordings of testimony may also be transcribed when paper or electronic records are easier to reference or review than the audio or videotape. Court reporting services currently offer copies of the transcript on computer disks for no or minimal charges. The cost of scanning a transcript into electronic format at a later date, however, may be substantially higher. Transcripts in electronic format are increasingly being used to analyze evidence using word and phrase searches on specific topics. Such use is beneficial when preparing the original ROI and reviewing evidence. Whenever possible, contracts for court



reporting services should include a requirement for production of a copy of the transcript on a 3 ½ ” high density computer disks in ASCII data format or on a compact disc.

I.9.b. Written Statements

Written statements are permanent official records of the testimony of complainants, witnesses, and subjects interviewed during an investigation. Oral statements from witnesses or subjects that have evidentiary weight shall be transcribed or summarized as soon as possible after the interview. This is particularly important if the statements are derogatory. The IO should never make reference to a written statement until after completion of the oral testimony. The statement is one of the IO’s most valuable tools, and care will be exercised to develop all material matters therein.

I.9.b.1. Format of Written Statements

There are two main formats for written statements: narrative and question and answer (Q&A). The Q&A format is good evidence of the fact that a statement was freely given since it records the questions asked and the replies given. It leaves little ground for misinterpretations or claims that important information given the IO has been omitted. The Q&A format is generally most satisfactory when the issues are controversial or involved. Often, written statements will end in the Q&A format after the witness has given an initial statement in narrative format. The narrative format is a practical and effective way to take a statement in which the witness is asked simply to recount what happened chronologically. The IO should be prepared to ask questions after the narrative is complete that clarify or expand areas in the narrative.

I.9.b.2. Contents of Written Statements

In addition to all information relevant to the cause of the incident, the written statement should contain the following (See Appendix 3 for an example written statement):

- Place and date the statement was taken;
- A statement from the witness that the testimony is given voluntarily;
- The full name, address, phone numbers, and social security number of the witness, along with acknowledgment that the IO has provided the witness with a Privacy Act statement;
- A statement at the end of the testimony indicating the witness has read the written statement and finds it a true representation of his or her testimony. The witness’ signature on the last page and initials on every other page. Page numbers in the format “Page ___ of ___ pages.”

I.9.b.3. Refusal to Sign Written Statements

If a witness refuses to sign a written statement extracted from his or her oral testimony, the IO should place an addendum at the end of the statement to the effect



that it was read to or by the maker, who admitted the contents were true but refused to sign the statement. Where possible, the IO should have another person who was also present while the statement was read sign the addendum as well. The addendum should also contain the witness's reason for refusing to sign when it can be discovered.

I.9.c. Letter in Lieu of a Statement

In some cases, IOs may be unable to obtain written statement because witnesses are no longer available for in person interviews. In such cases, the IO may accept a letter containing the pertinent information in lieu of a written statement. IOs should advise witnesses writing letters to ensure they contain the same information required in a written statement, along with answers to specific questions the IO may provide.

I.10. INVESTIGATING OFFICER'S NOTES ON THE INTERVIEW

Any information that is not be included in the official record of the investigation are considered 'investigator's notes.' This can be in the form of 'sticky notes,' notes on legal pads, etc. Investigator's notes should be properly disposed of following the closure of an investigation.

In cases being considered by the District Commander and/or the DOJ for criminal prosecution, investigator's notes may be subject to "Discovery" as items of evidentiary value and therefore should be retained until otherwise directed by DOJ and/or appropriate Coast Guard legal counsel.

J. OTHER INFORMATION**J.1. JOB AIDS AND QUESTIONNAIRES**

Appendix 2 of this manual provides job aids and questionnaires for use when conducting interviews. While they may be of assistance, IOs are cautioned NOT to use them as checklists. Interviews and lines of questioning should be kept to those areas deemed relevant on their face.

J.2. POST CASUALTY DRUG AND ALCOHOL TESTING

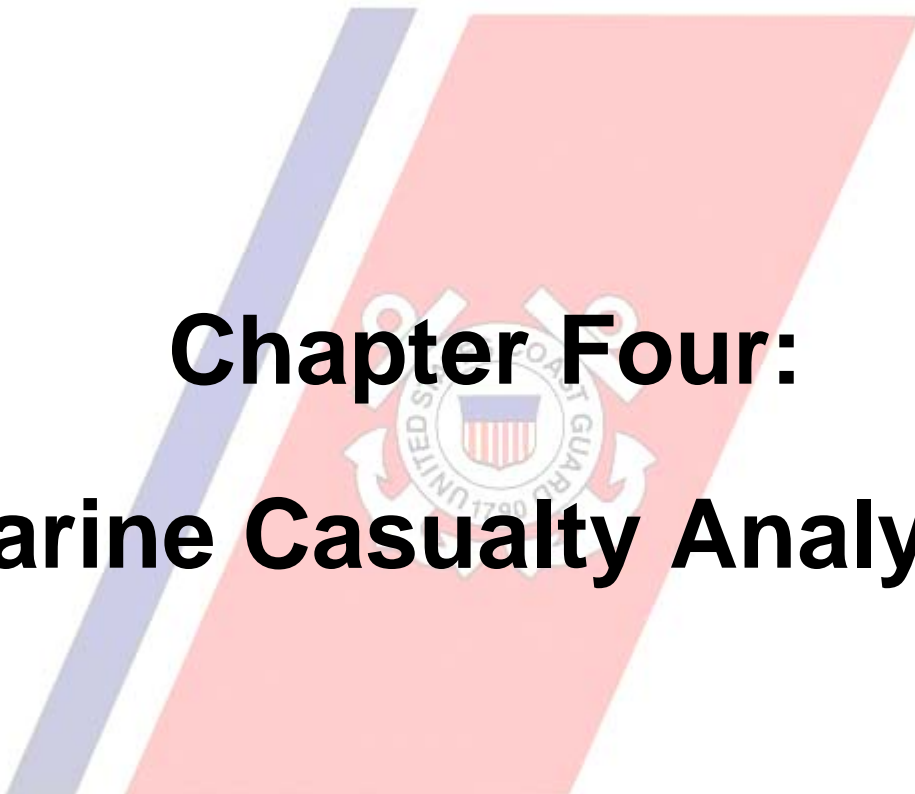
IOs are cautioned that post-casualty drug and alcohol testing is mandatory for persons directly involved in the incident. Nothing in this guidance affects those requirements. For additional guidance on post casualty drug and alcohol testing, see Part C of this volume.

J.3. 96 HOUR WORK/REST HISTORY

Pursuant to the IMO Code for the Investigation of Marine Casualties and Incidents and to Coast Guard policy, IOs should collect a 96 Hour Work / Rest History (including sleep, watch, off-watch duties, recreational time, meals, alcohol consumption, tobacco consumption, and drug (prescription or illegal) consumption) for each person interviewed and directly involved in a marine casualty.



USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART B: INVESTIGATION

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Chapter Four:
Marine Casualty Analysis

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A. GENERATING A TIMELINE

A.1. COLLECTING FACTUAL INFORMATION

The most basic element of conducting a marine investigation is telling the story of what happened. During the initial stages of every investigation, marine investigators should gather and record all the facts that may assist in determining causes. They should be aware of the dangers of reaching conclusions too early, thereby failing to keep an open mind. It is recommended that the fact-finding step of the marine investigation process be kept separate from the analysis of the collected evidence leading to conclusions and recommendations. The objective of the fact-finding step of the investigation is to collect as many facts as possible regarding the accident and the actions/events/conditions surrounding it. The scope of any investigation may be divided into four areas: people (liveware); environment; equipment (hardware); and procedures (software).

A.2. CLASSIFICATION OF INFORMATION

The factual information that is gathered will be classified into three category types. They are:

Actions: Things people do. If a person is not involved, then the classification cannot be considered an Action. [Example: The master agreed to passing arrangements with the other vessel.]

Events: Things that happen to people and things. An event occurs when a non-living thing does some kind of action or when something happens to a either a non-living thing or a person. [Examples: (1) The vessel went aground. (2) The man fell overboard.]

Condition: Existing circumstances or state of being. Conditions may describe a person, place, or thing. [Examples: (1) The shaft bearing was missing a safety guard. (2) Policy did not exist. (3) The man was fatigued. (4) The master has 10 years of sailing experience.]

A.3. DETERMINE THE SEQUENCE OF THE ACTIONS/ EVENTS/ CONDITIONS

This is the chronological ordering of what occurred. This is where the marine investigator determines the order with regard to who did what, what happened, or what condition existed at a particular time or over a period of time. This is the information that generates measurable data from which trends and preventative measures may be derived.

B. CONDUCTING CAUSAL ANALYSIS

B.1. FUNDAMENTAL PRINCIPLES OF CAUSAL ANALYSIS

Marine investigators shall keep the following fundamental principles in mind when explaining how a specific accident occurred:

Shipping, diving, oil exploration, fishing, towing, fuel transfers, passenger operations, and recreational boating are complex production systems. These production systems do not create new cars or refrigerators; instead they produce intangibles such as safe passenger voyages, timely delivery of oil, and so on.

(UNDERLYING FOUNDATION)



Because maritime transportation is a production system, it shares the elements common to every complex production system.

██████████ All accidents (including the most minor) are failures of the system, not simply the human or equipment directly involved.

██████████: No human error is entirely to blame. Human error is a naturally occurring, intrinsic part of human performance. While holding mariners accountable for their actions and taking steps to reduce human errors, marine investigators should bear Principle #2 firmly in mind. The human error could not have resulted in an accident unless conditions in the system (especially the system's defenses) allowed it.

██████████: System accidents have their primary origins in the fallible decisions made by the high-level corporate, regulatory, or plant managers. These fallible decisions are an inevitable part of the decision-making process, and the process of improving systems involves making fallible decisions harmless as opposed to eliminating high-level error.



██████████ The whole point of conducting an investigation and of analyzing the causes of an incident is to improve the system and prevent reoccurrence.

Accordingly, the marine investigator's job is to identify system failures and propose fixes (recommendations).

B.2. HOW SYSTEMS OPERATE

B.2.a. Model of Production

Many psychologists view all organized human or technological systems as production systems. These production systems make energy, a chemical substance, a mechanism, or the mass transportation of any commodity (including people) by road, rail, sea, or air. In this view the many maritime operations, once thought independent, are products of the maritime transportation system. In this system, there are many factors that include charts and publications, aids to navigation, vessel traffic systems, laws and regulations, safety inspections, navigation equipment as well as all the other systems on vessels, including mariners who stand the watch. When these factors come together in precise synchronization, the product is the safe and timely transit, fuel transfer, or use of our nation's waterways. As a complex production system, the maritime transportation system can be described in terms of the five elements of the model of production. Additionally, the maritime transportation system is further described by various factors that reside within each of the five elements.

B.2.b. The First Element: Organizations and Decision Makers

Organizations



In order for a system to operate, it must have an initial direction. At the organizational level, decision makers respond to the pressures, demands, and opportunities in the outside world and set the goals for the system. They also direct, at a strategic level, the ways in which the system will reach these goals. In practice, decision makers take limited financial and other resources (equipment, people, talent, expertise, and time), and direct how they will be spent in order to get the most productivity with the highest degree of safety (a process of balance). In the simplest of terms, decision makers provide the money to begin an operation, and an empty facility (or vessel) which, when properly equipped and staffed, will become an



operating facility. The Organization element is where the goals are set and a means to reach them is provided.

Decision Makers are the high level architects and managers of the system. They set the rules and objectives for the system. In the maritime transportation system, decision makers include lawmakers and regulators, underwriters and cargo lines, corporate CEOs and owner-operator fishers.

B.2.c. The Second Element: Workplaces and Line Managers

Workplace

Below the decision makers are the line managers. They must create specific plans to carry out operations, including the hiring of personnel, the training of personnel, the purchase and deployment of the right type of equipment, systems for managing ongoing operations, and finally, a means for reacting to all the foreseeable problems that arise. Again, in simple terms, line managers take the money and empty facility, provided by the decision maker, and transform it into a facility filled with managers, workers and equipment. The Workplace element is where personnel, buildings, equipment, and vessels have operations that are managed. Generally speaking, the Workplace is where production occurs.

Line Managers are the specialists who take the strategies outlined for them by decision makers and translate them into concrete activities. In large companies, line managers have specialized areas of authority and operation, and are known as the facility manager or departmental titles such as operations, training, sales, and so on. In the maritime transportation system, with regard to larger vessels, line managers may be the master and his/her officers. In a small operation, such as an owner-operator small passenger vessel, the licensed operator may be the line manager, in addition to the decision maker.

B.2.d. The Third Element: Preconditions

Pre-Conditions

Although the line managers and decision makers have provided a system, that system cannot be considered ready to operate until both the workers and the equipment they use are properly prepared. To be ready, the system must possess certain attributes:
Reliable equipment of the right kind;
A skilled and knowledgeable workforce;
Appropriate attitudes and motivation;
Proper work schedules, supply delivery schedules, and maintenance programs,
Proper conditions allowing safe and efficient operations;
Procedures that give clear guidance about how the job is to be done; and
Clear understandings of what undesirable job performance is.
Suitable environment (internal and/or external)
The Precondition element contains the conditions that make people and machinery ready to go to work.

**Production****B.2.e. The Fourth Element: Production and Line Workers**

Once the system is properly manned, equipped, and managed, a product can be created. Production is the precise synchronization of human and mechanical activities (actions or decisions) to produce the right product at the right time. The Production element contains the actual operation of the system. (e.g. safe/timely voyages, fuel transfer, etc.)

Line Workers are the professional and recreational mariners (and shore-side maritime workers) who perform the tasks using many types of machinery in order to get the job done. In the maritime transportation system, line workers are licensed mariners, unlicensed crew, dock workers, VTS personnel, etc.

Defenses**B.2.f. The Fifth Element: Defenses**

In any system there are natural and man-made hazards. Where they can reasonably be foreseen, the system should have safeguards, called Defenses, which protect people and equipment from injury, damage, or production-damaging losses.

Defenses may be human (procedural), such as a buddy system or plotting fixes; or mechanical, such as machinery guards or life jackets; or a combination of both.

Defensive systems perform the following functions:

Create awareness of local hazards and how they might be encountered;

Convey an understanding of how, when, and why hazards occur in the workplace;

Provide means (devices and systems) for detecting the presence of hazards;

Warn people and systems that some hazard is imminent;

Protect potential victims by separating them from the hazard;

Allow people and system to recover from some "off-normal" or hazardous condition (i.e., to correct the situation);

Contain or limit the spread of some hazard, or limit the number of victims affected;

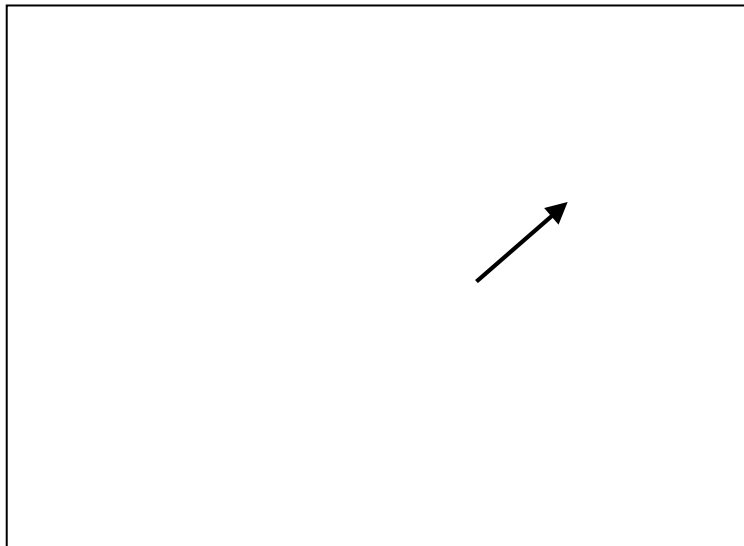
Provide escape from the hazard; and

Rescue injured or threatened individuals from a situation in which negative outcomes have already occurred.



B.2.g. The System as a Whole

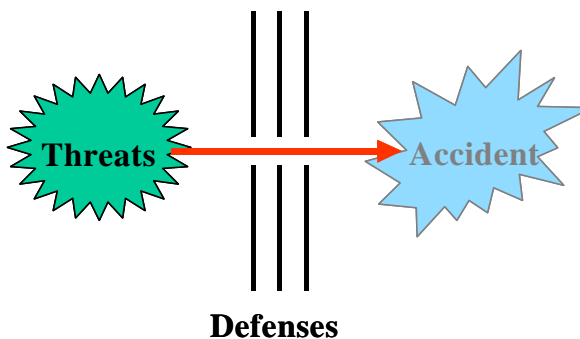
The five elements in the model of production relate in very specific ways. This relationship can be represented as below:



B.3. HOW SYSTEMS FAIL

B.3.a. Introduction: Threats, Defenses, and Negative Outcomes

In general terms, production systems contain defenses against foreseeable threats. Accidents, which can loosely be defined as the occurrence of a negative outcome (event), happen when there are holes in the system’s defenses through which a threat penetrates.



B.3.b. Active Failures and Latent Unsafe Conditions (LUCs)

A system’s defenses can be penetrated for one of two reasons: 1) the system’s defenses are present but do not work properly for some reason; or 2) the system’s defenses are missing or entirely mismatched to the threat they face. These defense penetrations illustrate an important aspect of system failures: they can be active failures and/or they can be latent unsafe conditions (LUCs). Active failures and LUCs do not arise only in the defenses. The threats that penetrate defenses originate



within the system itself. They are the active failures and LUCs originating in each of the five elements of production.

B.3.b.1. Active Failures

Active Failures are unsafe acts and decisions committed in the presence of a hazard (condition). Generally speaking, we are the most interested in active failures committed by line workers during operations (i.e., in the production and defense elements of the system). Unsafe acts and decisions are human errors. Most often, active failures have an immediate impact on safety. The following are examples of active failures:

“Began a turn into the channel (the action) with an inaccurate mental picture of the vessel’s location (hazard).”

“Decided not to evacuate the pumproom (the decision) despite the presence of toxic gas (hazard).”

Active failures described as an action taken or decision made can be found in the actions list of the timeline in the Findings of Fact in a MISLE Incident Investigation.

B.3.b.2. Latent Unsafe Conditions (LUCs)

Latent Unsafe Conditions (LUCs) are hazardous conditions in the system that lie dormant, often for years, only becoming evident when they combine with an unsafe act or decision to become an active failure resulting in a negative outcome (event). Often they arise from decisions made far from the accident scene and, at the time, were believed to be good or necessary. LUCs should describe the condition of the system arising from a fallible decision or action, rather than the decision or action itself. For instance:

“Fatigued,” rather than “decided to stay up late watching movies despite early watch.”

“Worn,” rather than “not properly maintained” or “not replaced on schedule.”

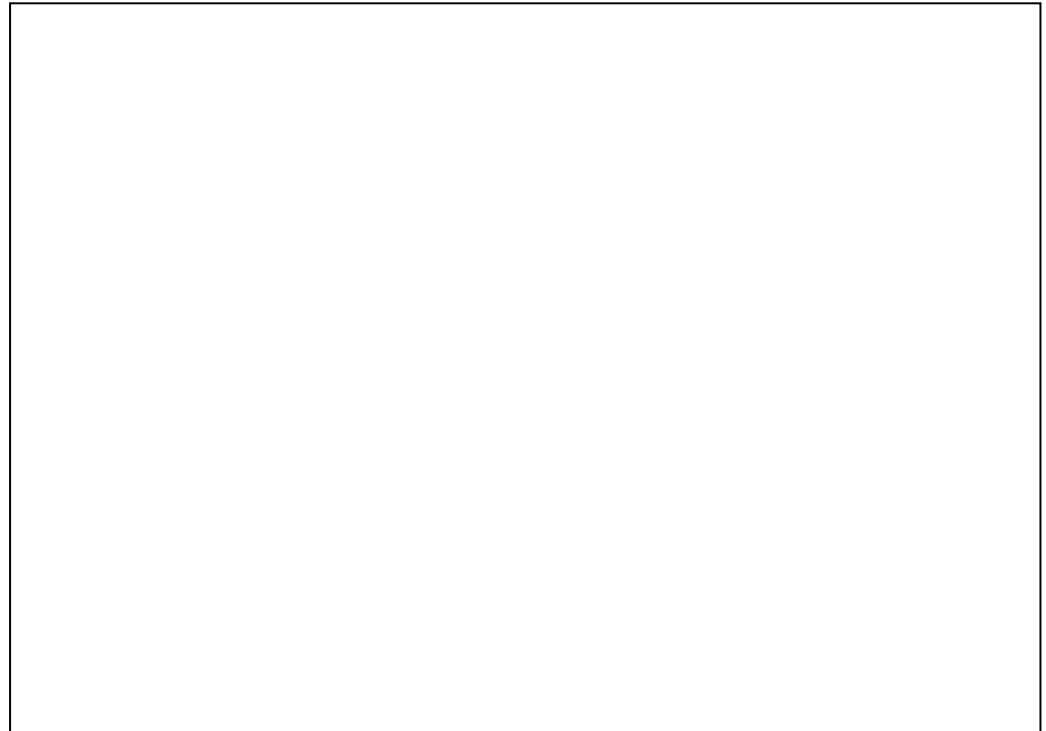
“Inadequate design,” rather than “mistakes during design.”

LUCs can be found in the conditions list of the timeline in the Findings of Fact in a MISLE Incident Investigation.



B.3.c. Causes of System Accidents: “Swiss Cheese Diagram”

The active failures and LUCs in the maritime transportation system all exist for a specific period of time, and they can be thought of as holes in the elements of production (“the cheese”) that appear at a given time and disappear at another time (when the LUC disappears). Because LUCs continuously appear and disappear, they will not, in most cases, align. For this reason, accidents do not constantly occur in complex systems despite the many active failures and LUCs that may be present. When all the holes align at the same time, a threat may progress all the way through the elements of production and become an accident. As the active failures and LUCs are represented as threats passing through the holes, a system accident can be visualized as in the below “Swiss Cheese Diagram”:



B.3.d. Organizational Factors

Just as decision makers set the stage for production at the organizational level with appropriate decisions, they also set the stage for an accident through inappropriate or fallible decisions. In deciding how to use their limited resources, decision makers face difficult choices, and the system does not help them. Money spent on improving the system’s productivity (i.e. making the extra run, carrying the extra cargo) has a relatively clear outcome: higher profit. Money spent on safety or environmental protection has relatively distant and long-term outcomes. Decision makers occasionally inappropriately weigh the system’s feedback and make bad decisions. These fallible decisions create LUCs in the system. Examples of poor decisions include a lack of regulation, poorly planned government deregulation, and too rapid





expansion of routes or services. These decisions create LUCs that act on line managers.

B.3.d.1. Common Organization Factors

The following Organizational Factors commonly occur in system accidents:

LUCs in Resource Management

Human Resources

Staffing/manning (number or qualifications)

Training

Promotion/demotion

Employee benefits

Monetary/Budget Resources

Budgeting Process

Funds

Material Resources (equipment, facilities, etc.)

Material suitability

Lack of material

LUCs in Organizational Climate

Organizational Structure

Chain of command

Delegation of authority

Communications

Operational Culture

Norms and rules

Values and beliefs

Morale

LUCs in Organizational Process

Operations and Internal Oversight

Operational tempo

Time pressures

Production quotas

Incentives

Measurements/appraisals

Schedules

Planning

Risk management

Safety management

Procedures

Objectives

Policies

Human resource

Monetary/budget resource

Material resource

Organizational structure



- Operational culture
- Operations and internal oversight
- LUCs in External Oversight
- Regulations and External Oversight
- Laws/regulations
- Standards
- Oversight
- Enforcement
- Safety promotion
- Resources



B.3.e. Workplace Factors

The consequences of the Organizational Factors manifest themselves differently in the Workplace element of production. If a line manager is competent, motivated, adequately funded, properly staffed, and has adequate time, they can transform a bad decision from above into a less-risky or even safe activity. However, a less competent or poorly supplied line manager can make a bad decision worse, or execute a good decision in such a manner that it has bad effects. The decisions and actions of line managers in implementing the decisions of those above them in the system can create additional LUCs. Examples of line management creating latent unsafe (pre)conditions include inadequate procedures for doing the job, poor scheduling, insufficient training for line workers, and an inadequate maintenance regime.

B.3.e.1. Common Workplace Factors

The following Workplace Factors commonly occur in system accidents:

- LUCs in Human Resources
- Staffing/manning (number or qualifications)
- Training
- LUCs in Monetary/Budget Resources
- Budgeting process
- Funds
- LUCs in Material Resources (equipment, facilities, etc.)
- Material suitability
- Lack of material
- LUCs in Organizational Structure
- Chain of command
- Delegation of authority
- Communications
- LUCs in Operational Culture
- Norms and rules
- Values and beliefs
- Morale
- LUCs in Operations and Supervision
- Operational tempo



- Time pressures
- Production quotas
- Incentives
- Measurements/appraisals
- Schedules
- Planning
- Risk management
- Safety management
- Objectives
- LUCs in Practices and Procedures
- Human resource
- Monetary/budget resource
- Material resource
- Organizational structure
- Operational culture
- Operations and supervision



B.3.f. Preconditions

Preconditions are the LUCs of the line workers and equipment itself. Some LUCs in workplace management can render workers and equipment unready. For instance, an inadequate training program could manifest itself in a variety of LUCs: excessive workload, undue time pressure, and motivation problems, creating ways in which workers would not be ready to go work. The reverse relationship is also true: a single LUC (gear or people not ready to work) could be created by several workplace factors. Examples of latent unsafe (pre)conditions include: improper gear, inexperience or untrained personnel, fatigue, equipment that is worn or unsuited to its use, navigation hazards, etc.

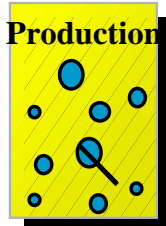
B.3.f.1. Common Precondition LUCs

There are many factors known to degrade the performance of human beings. Enclosure 2 describes these factors in detail as they pertain to the use of the SHELL model and generating the timeline. In short, LUCs related to line workers fall into one of the following general categories:

- Limitations of persons
 - Physical conditions
 - Psychological conditions
 - Psychosocial conditions
 - Physiological conditions
- Person Mismatches
 - With policy/procedures (liveware-software)
 - With equipment/gear (liveware-hardware)
- With the environment



(liveware-environment)
 With other person(s)
 (liveware-liveware)



B.3.g. Production Factors

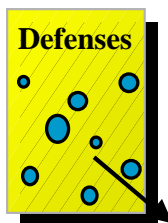
Production Factors are the active failures that occur during an operation or as a part of the operation that result from one or more of the preceding LUCs and lead to the initiating event. Experienced marine investigators will often encounter situations in which a person’s precondition, such as fatigue, appears to have caused a casualty, yet the same person successfully accomplished the same task the day before (or the hour before) with the same precondition. What was different about the task at the time of the accident? The answer lies in the relationship between preconditions and active failures. It is almost impossible to predict exactly when, where, and how a given precondition will manifest itself into an active failure. It is difficult to say when a fatigued person will make a bad decision; all that can be said with certainty is that given enough opportunities (decisions), one decision will eventually be bad because of the fatigue. Examples of Production Factor active failures include omission of steps in a task, use of the wrong procedures, violations of law or regulation, and bad decisions in the presence of a hazard.

B.3.g.1. Common Production Factors

Production Factor active failures are discussed in detail in part C.

B.3.h. Defense Factors

Few Production Factor active failures result in actual damage or injury, even when the system is relatively undefended. For instance, in a grounding scenario a pilot’s decision to initiate a turn too early (an active failure) does not in itself cause an unwanted outcome. Instead, the active failure must be left undetected and uncorrected in order to progress into the grounding. In other words, the system’s defenses against a grounding are missing or inadequate. Examples of Defense Factor active failures and LUCs include disabled warning systems, absence of monitoring (or plotting of fixes), and un-enforced regulations.



B.3.h.1. Common Defense Factors

Defense Factor active failures and LUCs commonly found in system accidents include:

- Defenses that were present but inadequate
- Supervision/oversight
- Policies/procedures
- Engineered defenses
- Briefings
- Training
- Credentials/qualification requirements
- Personal protective equipment
- Defensive equipment



- Information about actual/potential hazards
- Defenses that were present but deliberately disabled
- Policies/procedures
- Engineered defenses deactivated
- Training requirements
- Briefing requirements
- Credentials/qualifications requirements
- Defenses that were never present or once present but now removed
- Supervision/oversight
- Policies/procedures
- Engineered defenses
- Briefings
- Training
- Credentials/qualifications requirements
- Personal protective equipment
- Information about actual/potential hazards
- Defenses that do not exist or are unreasonable
- Technology or systems do not exist
- Technology or systems not reasonable for use
- Human Errors

B.4. ANALYZING CAUSE

B.4.a. Identify the Initiating Event

One of the most difficult aspects of any investigation is identifying the aspects of an accident you are trying to explain. For the purposes of analyzing the causes of an accident, marine investigators must carefully identify the Initiating Event. While a variety of actions, events, and conditions will precede an accident, a point must be chosen at which the accident is considered to start. The marine investigator will initially focus on explaining how the accident began, and will then turn to explaining how it progressed. For the purposes of analyzing the causes of an accident, the Initiating Event is simply the first unwanted or negative outcome in the timeline. In marine casualties the Initiating Event may not be the first “reportable” event. In many cases, the reportable event follows the Initiating Event and (when explained) sheds more light on the causes of the accident. See the flowchart titled, “Part 1: Identify the Initiating Event, Subsequent Events, & Failed Defenses,” in B.6 below.

B.4.b. Identify the Subsequent Events and Failed Defenses that Allowed them to Occur

After identifying the *Initiating Event*. The next step is to identify the Subsequent Events, which are the unwanted events that originate from and follow the initiating event. Next, to explain how the accident progressed from the Initiating Event into all the subsequent events, the marine investigator must identify the defensive failures that connect one event into another. These are the defenses on a vessel or platform arising AFTER the Initiating Event (i.e. given the Initiating Event occurred, what defenses would have prevented the next Subsequent Event; and so on).



See the flowchart titled, “Part 1: Identify the Initiating Event, Subsequent Events, & Failed Defenses,” in B.6 below.



B.4.c. Identify the Production Factors

In the simplest sense, production is the maritime operation that was being conducted at the time of the accident. Once the marine investigator has identified the Initiating Event, he or she should ask what operation was being conducted at the time and just previous. The next common sense question is which people (liveware) were conducting the operation in order to determine what actions were taken or decisions made. In any accident, a person will have made one or many unsafe acts or decisions, either by mistake or sometimes willfully (determined by human error analysis in Enclosure 4). The marine investigator shall identify all unsafe acts and decisions that occurred during production. They must be careful not to confuse production activities (such as navigating) with defensive activities (such as plotting fixes). As a rule of thumb, active failures in production have an immediate and recognizable effect on safety. When it becomes difficult to make a determination as to whether an action or decision is ‘unsafe,’ the Substitution Test may be performed. This is merely asking a professional (or several professionals) of similar grade and experience what they would do in the same situation, and to make a determination of whether the act or decision is unsafe (and why).

While analyzing the information discovered during fact-finding, marine investigators may discover several production active failures (as well as several preconditions, LUCs in the workplace or organization). While each is worthy of attention because they must be eliminated, not all of them necessarily connect to the accident at hand. Marine investigators shall identify those active failures and LUCs with causal connection to the accident. Other active failures (particularly willful violations) and LUCs may also be noted (and should be if severe enough). See the flowchart titled, “Part 2: Identify Production, Unsafe Acts/Decisions, Preconditions, & Failed



Defenses,” in B-7 below.

B.4.d. Identify the Preconditions

Once the marine investigator has identified the active failures in production, they must ask “In what condition did the person (Liveware), Software, Hardware, and/or Environment (SHEL) have to be for them/it to fail?” Preconditions create the potential for a wide variety of active failures. Marine investigators should again remember that they may encounter a large number of latent unsafe (pre)conditions. For instance, a given mariner may have had LUCs of fatigue, drug use, and an aggressive attitude. In this case, it may be difficult to ascertain exactly which precondition has a causal connection to the production active failure. Marine investigators should record all preconditions internal to a person as having a causal connection. Similarly, they may be tempted to “weigh” a given precondition over another (i.e., fatigue was more important than drug use or attitude). Marine investigators should not give opinions as to the relative strength of various preconditions in their causal connection to a given production active failure without significant scientific basis for those opinions. See the flowchart titled, “Part 2: Identify Production, Unsafe Acts/Decisions, Preconditions, & Failed Defenses,” in B-7 below.

B.4.e. Identify the Defense Factors that would Prevent the Initiating Event from Occurring

Once the marine investigator has completed the previous steps, they have identified the *active failures in production* that occurred. Such active failures occur constantly in complex systems. However, relatively few result in accidents. When a system’s defenses were sufficient to detect an active failure and prevent the accident, a “*near miss*” is said to have occurred (though “near hit” may be a more appropriate term). In order to explain an accident, marine investigators must identify the defense factor failures that allowed the active failure to progress into an accident. Many faults may be discovered in the system’s defenses, only some of which will be causally connected to the production active failures and the accident. Failed defenses should eventually be identified for all elements of the Model of Production.

NOTE: Upon identifying viable failed defenses throughout the Model of Production, the next logical step is to conclude that they are necessary, and finally, recommend their implementation. This displays how vital this step is throughout.

B.4.f. Identify the Workplace Factors and Failed Defenses

Once the preconditions have been identified, the marine investigator should focus on the management environment to determine how and why the preconditions were created. Marine investigators should also be careful to consider the absence of management in addition to pro-active management. Marine investigators are cautioned to remember that the line manager’s ability to manage is limited by their available resources. For this reason, it is important to carefully recognize the causal



connection of Organizational Factors when identifying Workplace Factors. Upon determining the Workplace Factors, identify any failed defenses. See the flowchart titled, “Part 3: Identify Workplace and Organization Factors & Failed Defenses,” in B.8 below.

B.4.g. Identify the Organization Factors and Failed Defenses

The basic idea underlying the causal analysis system (and the IMO documents upon which it is based) is that system accidents have their primary origins in fallible decisions made by designers and high-level decision makers. Marine investigators, having identified workplace LUCs, should identify the conditions to which the line managers were responding. Decision makers’ fallible decisions create LUCs that affect line managers. Marine investigators should bear in mind that decision makers rarely have direct access to the consequences of their decisions, and may be almost entirely unaware of the LUCs they have created. Upon determining the Organization Factors, identify any failed defenses. See the flowchart titled, “Part 3: Identify Workplace and Organization Factors & Failed Defenses,” in B.8 below.

**B.5. CONCLUSIONS
FOLLOWING CAUSAL
ANALYSIS**

B.5.a. What do I do with the results of Causal Analysis?

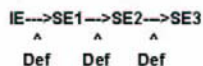
When properly completed, the analysis should lead to conclusions, and then, to Safety Recommendations. If it doesn’t it will show potential gaps in the findings of fact that need to be addressed. Causal analysis should give you the ability to state (regardless of where in the Model of Production) that there were various unsafe conditions (whether or not they were latent) and unsafe acts or decisions that directly led to the Initiating Event and Subsequent Events. Upon identifying the unsafe conditions statements can be made about what could correct/mitigate them. Defense Factors (whether failed or missing) is where correction/mitigation is focused. Further analysis (e.g. Human Error Analysis) should be conducted on the unsafe acts or decisions prior to determining the best corrective/mitigating action.



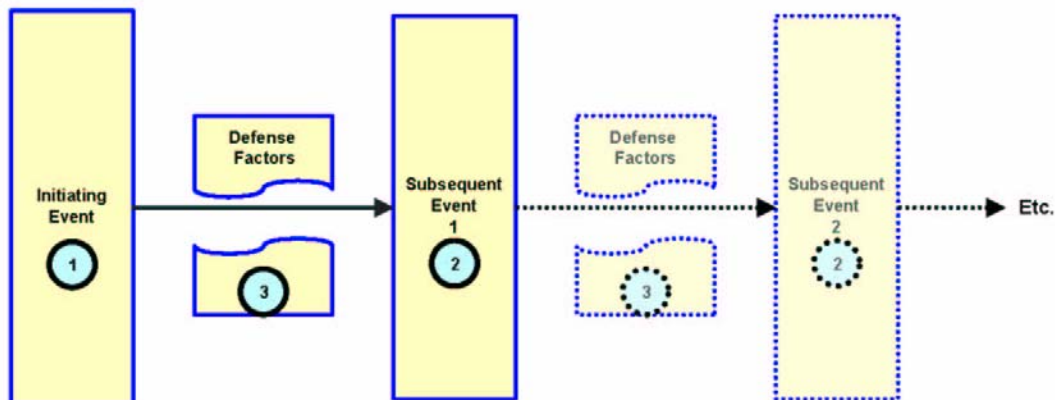
B.6. Figure B.1.

Part 1: Identify the Initiating Event, Subsequent Events, & Failed Defenses:

- 1 Identify the *Initiating Event*
 The *Initiating Event (IE)* is the first unwanted or negative outcome in the timeline. Oftentimes, the IE is NOT the first "reportable" event.
 - 2 Identify the unwanted Subsequent Events (SE), if any, that originated from and follow the IE.
 - 3 For each SE, identify the Defenses that failed to prevent the it from occurring. Use the following thought process: "Given that the IE occurred; what defenses failed to prevent SE1 from occurring." Next, you say, "Given that SE1 occurred; what defenses failed to prevent SE2 from occurring." And, so on.
- Take the following example: A boat goes outside the channel (IE), runs aground (SE1), the hull is punctured (SE2), and oil is spilled (SE3).



A Defense fails when it is inadequate, disabled, removed, or simply does not exist or is unreasonable.

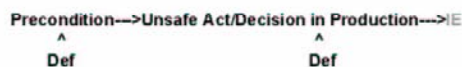




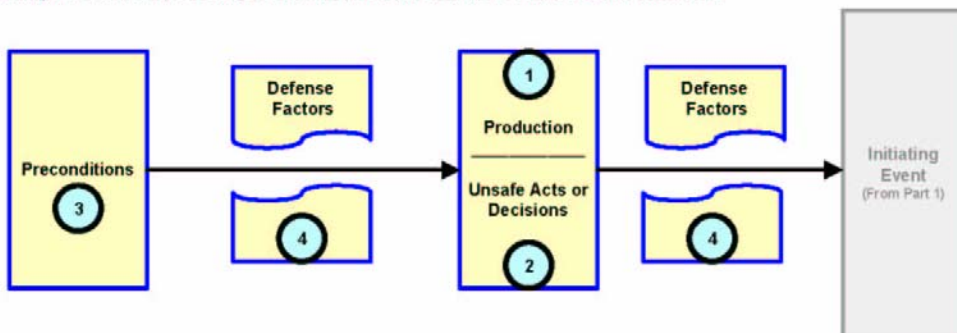
B.7. Figure B.2.

Part 2: Identify Production, Unsafe Acts/Decisions, Preconditions, and Failed Defenses:

- 1 Determine the Production
Production is the maritime operation that was being conducted at the time of the accident.
- 2 Identify all the Unsafe Actions & Decisions from the timeline that occurred during Production before the IE.
 Be sure not to confuse Production Activities (such as navigating) with defensive activities (such as plotting fixes or corrective maneuvering)
- 3 Identify the Preconditions.
Preconditions are the conditions of the Software, Hardware, Environment, and/or Liveware that allow an unsafe act or decision to lead to the IE.
- 4 Identify any failed defenses that would neutralize the Unsafe Acts/Decisions or the Preconditions or both.
 Take the following example: During an inspection (Production), the marine inspector decides to enter a confined space (Unsafe Decision) full of toxic gas (Precondition: Environment Mismatch) and dies (IE).



If there was a defense that neutralized either the precondition (gas free space) or the unsafe act/decision (training on confined space entry procedures) or both, then the IE would not have occurred.

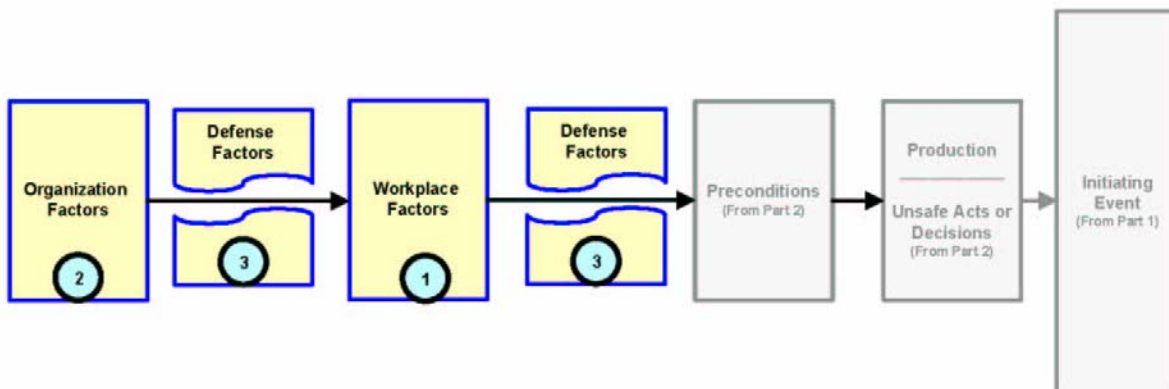




B.8. Figure B.3.

Part 3: Identify Workplace and Organization Factors and Failed Defenses:

- 1** Identify the Workplace Factors
Workplace Factors are conditions related to the management of personnel, vessels/facilities, equipment, etc. necessary for Production.
- 2** Identify the Organization Factors
Organization Factors are conditions that exist at the highest level of an organization that involve the strategic goals, resource management, organizational climate/process, internal/external oversight, etc. that directly effect Workplace management.
- 3** Identify any failed defenses that would neutralize the Organization or Workplace Factors
 Take the following example: As a result of the 'Company Attitude' regarding safety as compared to profit, the tank ship manager's safety budget was 28% less.



C. CONDUCTING HUMAN ERROR ANALYSIS

C.1. INTRODUCTION TO HUMAN ERROR ANALYSIS

C.1.a. General

Over the past few decades, public attention has increasingly focused on human error in major tragedies. Some experts have indicated that as true mechanical failures have been eliminated, attention naturally shifts to the human element. In fact, tragedies have always been caused by human error. In the past, however, the negative consequences of an accident were limited to an immediate vicinity. As our transportation systems have become larger, moving millions of tons of cargo and hundreds of thousands of people, the consequences of a disaster are greater and reach a much bigger area. Almost everyone is affected by a major transportation disaster. As these consequences reach more people, the implications of human error are clearer. To eliminate these principle causes of accidents, human error must be understood and defended against. Accordingly, one of the most important jobs a



marine investigator has is identifying the types or kinds of human errors that occur and be better able to make effective recommendations to change unwanted behavior. As human error is analyzed, it may emerge that certain errors relate principally to specific preconditions. It may also emerge that certain errors are harder or impossible to defend against. These relationships determine what safety recommendations are made and what improvements the Coast Guard undertakes.

C.1.b. Reason's Generic Error Modeling System (GEMS)

In his 1990 book "Human Error," Dr. James Reason integrated two bodies of thought on human error into a single framework referred to as the Generic Error Modeling System (GEMS). GEMS differs from previous error analysis tools in that it integrates the errors that occur at all levels of performance. In creating the annex to the Code for the Investigation of Marine Casualties and Incidents, the IMO adopted GEMS as the preferred tool for investigating human performance. The Coast Guard has also adopted this tool.

C.2. INTRODUCTION TO MODEL OF HUMAN PERFORMANCE

One of the most challenging aspects of accident investigation is describing exactly what type of errors the people involved made and why they made them. To accomplish this, marine investigators need to have a thorough understanding of how people solve problems and perform tasks. In order to fully understand how people perform tasks and solve problems, it will be necessary to describe Rasmussen's skills, rules, and knowledge (SRK) model of human performance.

C.3. HOW PEOPLE SOLVE PROBLEMS AND PERFORM TASKS

C.3.a. General

Dr. James Reason analyzes human error using the Generic Error Modeling System (GEMS), which is based on the work of his mentor, Dr. Rasmussen. The work of Dr. Rasmussen explores how people solve problems and do things. It identifies three levels of performance and suggests that the kind of human error a person makes depends on the level of performance in which they were engaged at the time. In 1981, Dr. Rouse succinctly summarized a common theme in psychology: "people are furious pattern matchers." As such, the human mind attempts to find patterns and select a "pre-packaged" action rather than analyze each situation and calculate the optimal solution. In 1986, drawing on this observation, Dr. Rasmussen identified three levels of human performance. They are: 1) skill-based performance (SB); 2) rule-based performance (RB); and knowledge-based performance (KB).

C.3.b. The Lowest Level of Performance: Skill-Based

Usually human functioning is skill-based (SB). In SB performance, the task is so automatic and the surroundings so familiar that the person doesn't think about how to do it. The person merely mentally visualizes the desired state and it happens, largely without conscious monitoring. Unless we are very new to these activities, we do not have to consciously consider how to perform them, or focus attention on them. All the person must monitor is how well (and how far) the activity is progressing. When it's gone far enough, the person turns the automatic function off. Accordingly, SB performance requires that the person pay sufficient attention, at the



right times or else the automatic function may go too far.

C.3.b.1. Switching up from SB Performance

Complex situations or activities cannot be solely dealt with through automatic functions. While we almost always start in SB performance, people switch up to the next level when an attention check detects a deviation from the “pre-packaged” or planned-for conditions. Usually the discrepancy is minor and correction is found early, so people return to SB performance. Our daily routines largely consist of SB performance with periodic shifts to and from the next level: rule-based performance.

C.3.c. The Middle Level of Performance: Rule-Based

Most people don't recognize that they have an enormous “library” of rules for dealing with every day life, most of which they would have difficulty describing in words. People acquire some of these rules from formal education, but most are learned from experience. When people detect that SB performance isn't working or won't work, they try to figure out the situation. They look for “signs” or indicators. This is rule-based (RB) performance. RB performance has two parts: (1) the perception rule (if you see sign X, then state of the world Y exists); and (2) the action rule (if state of the world Y exists, then action Z is appropriate). To select the right rule and solve the problem, a person in RB performance must select and use the right perception and action rules.

C.3.c.1. Matching Patterns: Selecting the Right Rule

As stated before, people are furious pattern matchers, meaning they look at the signs and match stored rules until they find one that fits. Because situations are complex, slight differences between situations may require different solutions. Typically, people discover this by trying a rule that seems to fit, and monitoring how well it works. When one rule fails to solve the problem even when it appeared to fit the situation, people tend to look for another rule, usually closely related.

C.3.c.2. Switching down to SB Performance

If we have a rule that fits, we use the “prepackaged” answer: if you see sign X, then state of the world Y is true. If state of the world Y is true, then do Z. The action Z is often simply a skill. For example, take the simple act of adjusting the temperature of a bath. If the water feels hot to the hand (sign), the water is too hot (state of the world). If the water is too hot (state of the world), turn on cold water (SB action).

C.3.c.3. Expertise

Although we spend most of our time in SB performance, we rarely have much conscious memory of that performance. With enormous practice and experience, a rule-based activity (even very complex RB activity) can be “pushed” below the conscious threshold and become SB.



C.3.c.4. Switching up from RB Performance

In trying to solve a problem, people match patterns. After trying a number of rules, some very complex situations simply won't match with the rules a person has. Basically, the situation (or problem) is completely new or novel to that person. No prepackaged answers apply, and the person must generate an answer from first principals: knowledge-based performance.

C.3.d. The Highest Level of Performance: Knowledge-Based

When they don't have rules to help them, people try to use their understanding of relationships to actively predict the future (without benefit of experience to help). This is a calculated, "do the optimal best thing" kind of operation, which requires the maximum available conscious attention and thought.

C.3.d.1. Quality of KB Performance

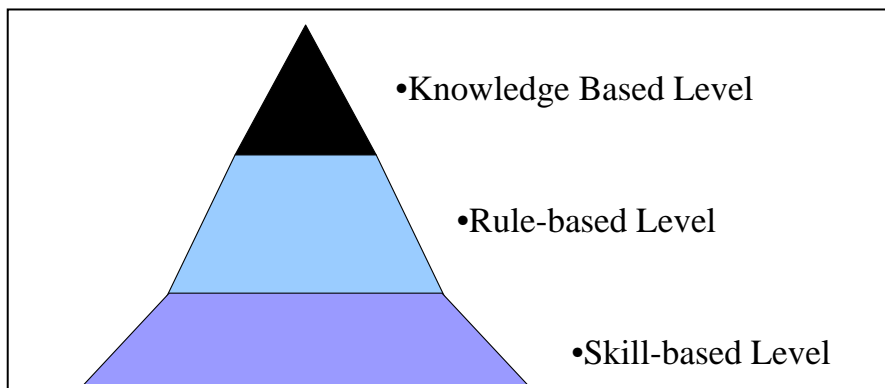
As a rough rule of thumb, people perform best at the SB level, and very well at the RB level. However, people are not very good KB performers. As strange as it seems, novices and experts are equally bad at solving truly new and novel problems. A new, novel situation to a junior person may be a common; hence the old adage "Good judgment comes from experience. Experience comes from bad judgment."

C.3.d.2. Switching down to RB (and SB) Performance

Some situations appear to be new and novel on their face, but when people analyze, calculate, and try to optimize, hidden similarities between the new problem and others may emerge allowing the person to try to push the performance back down to the RB or even SB levels. Like the transition between SB and RB, a person may only be in KB performance for a short time before returning to the RB level.

C.3.e. Rasmussen's Pyramid

Rasmussen's theory suggests that people spend most of their time executing SB tasks, somewhat less time performing RB tasks and decisions, and very little time in KB performance. This relationship can be represented as a pyramid of performance:





**C.4. IDENTIFYING
THE UNSAFE ACT OR
DECISION**

C.4.a. General

The first step in conducting human error analysis is to identify which act or decision to analyze from the actions list on the timeline in the Findings of Fact in a MISLE Incident Investigation. During the course of a typical accident, many decisions are made and actions taken. Of those, many will prove to have been errors. Using the processes outlined in Enclosures 2 and 3, each action and decision shall be separated and organized within the model of production. As a general guideline, if there is difficulty conducting human error analysis, then it is likely that several acts or decisions are being analyzed as one.

C.4.b. Definition of "Unsafe Act" and "Unsafe Decision"

An *Unsafe Act or Decision* is a mis-action or poor decision taken in the presence of a hazard. The term, Active Failure, is used when discussing this definition in terms of causal analysis.

Example: The decision not to wear a life jacket on a cruise ship while underway, for instance, (below decks with limited opportunities to reach the edge) is not an unsafe decision because there is no hazard. Deciding not to wear a life jacket in a small vessel while working near the edge or over the side, however, is an unsafe decision.

C.4.c. Identifying the Hazard

For the purposes of human error analysis, listing or analyzing all the errors or mis-actions a person commits serves no purpose. Instead, focus should be placed upon those errors and mis-actions that are *Unsafe Acts or Decisions*. To do so, the hazard must be clearly identified in whose presence the error or mis-action was performed. If the hazard cannot be identified, then the error/mis-action does not qualify as an unsafe act or decision, and does not require further attention. Hazards are latent unsafe conditions (LUCs) identified in preconditions or defense.

**C.5. EXECUTION
ERROR OR PLANNING
ERROR**

C.5.a. General

The second step in analyzing human error requires a decision as to whether the person's error was in the execution or planning of the action or decision. Execution errors involve memory failures and attention errors, whereas planning errors involve mistakes and violations.

C.5.b. Execution Errors

An *Execution Error* is the mis-performance of an intended sequence of actions (i.e., the person intends to do one thing, but does another). When a person fails to execute the plan they have in mind, an execution error has occurred.

C.5.b.1. Analysis Check: SB Performance?

If a person does something other than what they intended to do, the person must be using relatively little conscious resources, or in SB performance. If a person is not in



SB performance, an execution error was not committed.

C.5.b.2. Analysis Check: More than One Unsafe Act or Decision?

In some cases, it will appear that a person made an execution error, but was in RB performance. As an example: A mariner may be navigating using the navigation rules (RB-performance), panic and turn to port. In these cases there are two separate errors: (1) the RB unsafe decision that led to the mariner panic; and (2) the SB unsafe act of pushing the rudder to port instead of to starboard. When it appears that a person made an execution error, but was in RB performance, the situation should be examined further.

C.5.c. Planning Errors

A *Planning Error* is a mistake or violation that results when the person executes a decision or action as they intended, but that action was inappropriate for the situation. Planning errors are the opposite of execution errors. The error lies not in how the plan was executed, but in the plan itself.

C.5.c.1. Analysis Check: Rule or Knowledge-Based Performance?

Because planning errors involve moderate to high amounts of conscious activity (decisions and problem solving), all planning errors occur in RB or KB performance. If the person was engaged in SB performance, the error is an execution error.

**C.6. EXECUTION ERROR
 CATEGORIZATION:
 ATTENTION OR
 MEMORY**

C.6.a. General

By definition, all execution errors are errors in SB performance. However, the person does have to periodically interrupt the preprogrammed behaviors to check on the progress of the activity. These “attention checks” establish (1) whether the actions are running according to plan; and (2) whether the preprogrammed sequence is still adequate to achieve the desired outcome. In essence, the person checks for deviations from his or her expectations. Execution errors occur when something goes wrong with the periodic attention checks. Specifically, attention checks may go wrong because the person pays attention at the wrong time, pays insufficient attention, or completely forgets to perform the attention check. In analyzing execution errors, it shall be determined whether the error involved a problem with attention or a problem with memory.

C.6.b. Attention Failure

Attention Failures are execution errors that occur because the person’s cognitive “radar screen” or attention is directed elsewhere, leading them to fail to perform an attention check or to make errors in the attention check (i.e., any form of distraction may initiate an attention failure).

C.6.b.1. Analysis Check: Did the Person Remember the Plan?



When it is suspected that a person had an attention failure, the analysis should be checked by verifying that the person remembered what attention checks they were to make, and when they were to be made. An attention failure involves failing to make these checks or mistiming them despite a clear memory of the need to do so. If the person momentarily forgot what they were doing, this is a memory failure, not an attention failure.

C.6.c. Memory Failure

Memory Failures are execution errors that occur because the person's memory is faulty, leading them to forget to perform an attention check, or to make errors in the attention check, such as forgetting what one is looking for (often referred to in today's culture as "a senior moment").

C.6.c.1. Analysis Check: Was Key Information Missing?

When a memory failure is suspected, the analysis is verified by identifying the key piece of information that the person forgot. Examples of key pieces of information include the need to check the progress of an action, or specific signs that the task is not accomplishing its purpose. People often view memory failures as more unprofessional than an attention failure, and claim they remembered all the key items, but simply didn't pay that much attention to a key item, when in fact, more often people have forgotten to look at that item.

C.7. PLANNING

ERROR

CATEGORIZATION:

MISTAKE OR

VIOLATION

C.7.a. General

When an unsafe act or decision results from a failure in the person's plan (rather than their execution of the plan), the problem with the plan originates in one of two ways. In the usual case, the person intends a positive outcome (i.e., they want to solve the problem and choose a good plan). In some unusual cases, however, the person willfully breaks rules in order to attain a positive outcome or for malicious purposes. In analyzing planning errors, it must be determined whether the person's plan was faulty because they made a mistake while trying to solve the problem according to the rules or because they knowingly violated rules.

C.7.b. Mistakes

Practically speaking, all planning errors are errors in problem solving. A problem is any situation that requires a person to revise their current line of action. As previously discussed, people have a strong bias to search for and find a prepackaged solution to problems (i.e., use of RB performance) before resorting to the more mentally intense solution from first principles (i.e., use of KB performance). A *mistake* is a failure in detecting and using rules, or in solving problems from first principles.

C.7.b.1. Analysis Check: Aware of Applicable Rules or Plans?

When a person deliberately violates rules or plans, the person is committing a violation rather than a mistake. Accordingly, if it is determined that the person was



consciously aware of a rule or plan applicable to the situation, but did something else, the unsafe act or decision should be classified as a violation.

NOTE: Natural human behavior is to rationalize past mistakes. For whatever reason, witnesses often find it embarrassing to admit that they simply did not know what to do, or that their plans were fundamentally flawed. Instead, they will often rationalize that they were aware of applicable rules or plans, but made an error in judgment. Extreme caution should be used in relying solely upon a mariner's own testimony about their decisions. Instead, an evaluation of the mariner's general level of knowledge and experience should be made. From this evaluation, the mariner's likely awareness of the rules or plans applicable to the situation may be inferred.

C.7.c. Violations

A *violation* is a deliberate decision to break established rules, procedures, or plans that are applicable to a specific problem regardless of the reason.

C.7.c.1. Analysis Check: Specific Intended Actions Clear?

In many cases a plan, rule, or procedure will exist in order to deal with a specific problem (e.g.: Shipboard Oil Pollution Emergency Plan). The plans, protocols, or rules are often vague in regard to specific actions. In order to qualify as a violation, the person must deliberately decide to violate the specified action. If no action is specified (i.e., the action is up to the mariner's judgment), the unsafe act or decision is more likely a *mistake* than a *violation*.

C.7.d. Types of Planning Errors

As previously discussed, people execute decisions primarily in SB performance, but they make those decisions in RB or KB performance. Violations are deliberate decisions to depart from legitimate problem solving. Mistakes are mis-performances of legitimate RB and KB problem solving. Depending on the type of problem, a planning error may occur in either RB-performance or KB-performance. Generally speaking, people search furiously for RB solutions to a given problem. In doing so, they (a) match observations to a rule-based criteria, and (b) try the rule out. When a particularly difficult problem arises, people will try many rules, refining their observations and so on, trying to solve the problem. In these cases, RB performance may fail, and the person may switch to KB performance. Common examples of RB mistakes and KB mistakes are listed below.

C.7.e. Mistakes

The following information details RB and KB mistakes.

C.7.e.1. RB Mistakes

In any given problem or situation, rules can be thought of as competing for the right to represent the current state of the world (in the person's mind). In this way, the



human mind is a “parallel processor” in that several rules can be “active” at the same time and competing with one another. A given rule’s success in winning in a person’s mind depends on several factors, including:

The degree to which it “matches” the salient features of the situation;

The “strength” of the rule, which depends on the number of times the rule has performed successfully for a person in the past;

The specificity of the rule, meaning that the more specifically a rule describes the current situation, the more likely it is to win; and

The degree that the rule meshes or blends with other rules currently active in the person’s mind.

Rules are organized according to a hierarchy beginning with the most general rule. Exceptions and special cases are organized beneath this top layer. Problems in selecting a rule can arise anywhere in this morass of general and specific rules competing for selection in a person’s mind. For ease of organization, the common RB mistakes can be organized into (a) use of a bad rule, and (b) misuse of a good rule.

C.7.e.1.a. Use of a Bad Rule

A **Bad Rule** is one where the rule itself is faulty for some reason. In this regard, because rules have two parts (1) matching the situation and (2) providing a line of action to solve the problem. A bad rule may be faulty in either of these two areas. This section describes some common mistakes based on application of bad rules.

C.7.e.1.b. Misuse of a Good Rule

A **Good Rule** is a rule that has been proven to be useful in a particular situation. Nonetheless, a person might choose the wrong rule for the situation because two rules are available that appear to match the situation but have very different required actions. This section deals with common mistakes people make selecting good rules that are wrong for the situation.

C.7.e.2. KB Mistakes

The human mind is a very powerful problem-solving machine capable of finding the “deep structure” of a problem (in KB-performance). In explaining the concept of deep structure, Dr. Schank (1982) refers to the similar themes of *Romeo and Juliet* and *West Side Story*. These are two very different stories, one about Renaissance Italy, the other about gang warfare in modern New York. But on a deeper level, they share the same structure. To discover this similarity, however, a person must mentally summarize the plot lines and compare them – a KB-performance activity. KB-performance uses an enormous amount of mental resources, is slow, and happens in sequence (as opposed to RB-performance, where many RB rules might be active at one time). Perhaps even more frequently than with RB performance, people make mistakes while in KB-performance. For ease of organization, these mistakes can be organized into two categories: bias and heuristics.

**C.7.e.2.a. Heuristics**

A *Heuristic* is a mental “rule of thumb.” People often resort to the use of heuristics (mental rules of thumb) that help them to diagnose problems without expending too much mental effort and thus too much time. Often, these heuristics serve them well; however, they are shortcuts and as such mariners may be shortchanging themselves of adequate and accurate information. Rather than processing all available information and following reasoning to its most probable and logical end, taking of a shortcut may give a person a false understanding of the actual situation. Simply put, a heuristic is the mis-diagnosis or mis-reading of a novel situation.

C.7.e.2.b. Bias

A *Bias* is the tendency to apply a certain response regardless of the situation. Biases are fundamentally problems with how a person perceives the “problem space,” and what factors they choose to pay attention to. Simply put, a bias is an improper decision made (usually the same one) regardless of what the novel situation may be.

C.7.f. Violations

As a law enforcement agency, men and women of the Coast Guard tend to think of violations as any departure from binding law or regulation. While planning errors of the violation type may in fact relate to legal violations, marine investigators should not confuse the two while conducting human error analysis. Planning errors of the violation type are deliberate decisions to break established rules, plans, or procedures. Only in some cases (not all), those established rules, plans, or procedures have the force of law (ex: regulations, lawful orders, etc.). This section describes the most common ways in which people deliberately break rules, plans, or procedures.

C.7.f.1. Routine Adaptation

Definition: “Routine violations happen everyday as people regularly modify or do not strictly comply with work procedures, often because of poorly designed or defined work practices. Two factors seem important in shaping a person’s routine violation behavior: (a) the natural human tendency to take the path of least effort; and (b) a relatively indifferent or forgiving environment. In everyday life, if the quickest and easiest way to do something involves violating an apparently trivial rule or procedure that is rarely enforced/sanctioned, people will routinely violate that rule. The presence of this type of violation often indicates that the system itself could be better designed, keeping the operator in mind.” [Reason: 196]

Example: Because landscape architects routinely lay out garden and park walkways on aesthetic grounds rather than according to how people will use the paths, people routinely violate the “stay on the paths” rule in order to walk the most direct route, leaving muddy diagonal tracks across the protected grassy areas.

Summary: The defining characteristic of routine adaptation is that: i) there is an easier action to take than the prescribed action; ii) it is done with some frequency; and



iii) the environment is forgiving.

C.7.f.2. Exceptional Adaptation

Definition: “In contrast to routine violations, an exceptional violation tends to be a one-time breach of a work practice. Typically these less defined types of violation result from “system double-binds” where it is impossible to follow one rule or procedure without violating another.” [Reason: 196]

Example: At the Chernobyl site, safety regulations were deliberately ignored and a safety test was carried too far, ultimately resulting in disaster. However, the goal of violating the safety regulations was not to commit a malevolent act, but actually to improve system safety through the test.

Summary: The defining characteristic of exceptional adaptation is that: i) it is the product of local conditions; ii) they are very infrequent; and iii) the goal is to improve the situation.

C.7.f.3. Sabotage

Definition: “Sabotage is deliberately violating a rule, law, regulation, or work practice with the knowledge that and explicit purpose of causing damage. In other words, the person commits a malevolent act.” [Reason: 195-6]

Example: Engineers aboard the M/V ROTTERDAM, faced with maintenance problems generating large volumes of oily bilge water, decided to build a pipe that bypassed the oily water separator and discharged the oily bilge water directly overboard, which is a knowing discharge of oil into the waters of the United States and is, therefore, a criminal offense. The engineers were willing to violate these laws because their pay was based on keeping maintenance costs down in the engine room, and excessive operation of the oily water separator would have enormously inflated spare part costs (and driven bonuses down dramatically).

Summary: The defining characteristic of sabotage is that the intent is to cause damage.

**C.8.
 PRECONDITIONS
 LEADING TO HUMAN
 ERROR**

In the final step of analyzing human error, the marine investigator considers the preconditions (related to the person) from the Causal Analysis that combined with the unsafe act or decision resulted in the accident. The many factors weighing on the person will have been detected, recorded, and organized during fact-finding using the SHELL model (see Figure B4-5). In practice, however, the marine investigator must direct considerable attention to explaining in the Conclusions how one or many of the SHELL factors led to the human error.

**C.9. CONCLUSIONS
 FOLLOWING HUMAN
 ERROR ANALYSIS**

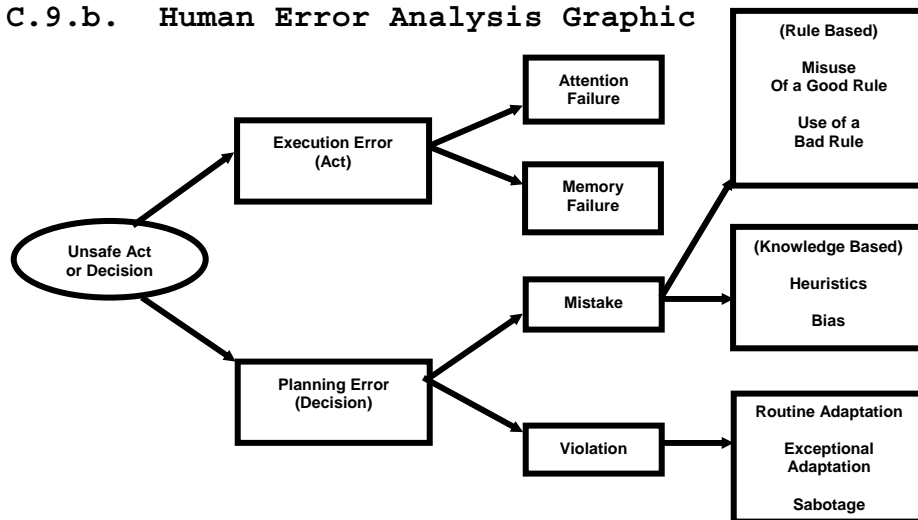
C.9.a. What do I do with the results of Human Error Analysis

As with Causal Analysis, when Human Error Analysis is properly completed, the



results should lead to conclusions, and, then, to Safety Recommendations. Generally speaking, Execution Errors (having something to do with memory and attention) should lead to a conclusion that is a ‘memory jogger’ or ‘attention getter,’ such as a visible or audible alarm at some set point. Planning Errors should lead to a conclusion that deals with training, policy, or procedure. Or in some cases, (such as sabotage) an enforcement referral is appropriate.

C.9.b. Human Error Analysis Graphic



D. JOB AIDS

D.1. INTRODUCTION

The following job aids will assist the marine investigator with the collection, sequencing, classification, and analysis of information. With the exception of witness/investigator statements and summaries of statements (which are evidence), the job aids below are considered to be “investigator’s notes” and should not be included in any files or records. The results of the notes should be included in the final Report of Investigation (ROI), as appropriate.

D.2. LIST OF JOB AIDS

- The following is a list of the job aids provided in Figures 1-12 of this chapter:
- U.S. Coast Guard Witness / Investigator Statement Form
- U.S. Coast Guard Witness / Investigator Statement Form Continuation Page
- U.S. Coast Guard Summary of Statement Form
- U.S. Coast Guard Summary of Statement Form Continuation Page
- SHEL Data Collection Interview Form
- SHEL Data Collection Interview Form (back page)
- Finding of Fact Timeline Worksheet
- Part 1: Identify the Initiating Event, Subsequent Events, & Failed Defenses worksheet
- Part 1a: Identify the Subsequent Events & Failed Defenses (cont.) worksheet
- Part 2: Identify Production, Unsafe Acts/Decisions, & Failed Defenses worksheet



Part 3: Identify Workplace and Organization Factors & Failed Defenses worksheet
Examples of Completed Job Aids

**D.3. JOB AIDS FOR
THE COLLECTION OF
INFORMATION**

The following job aids (Figure B4-1 through B4-6) are to assist the marine investigator in the collection of information necessary to generate a timeline. Their use is self-explanatory.

U.S. Coast Guard Witness / Investigator Statement Form

U.S. Coast Guard Witness / Investigator Statement Form Continuation Page

U.S. Coast Guard Summary of Statement Form

U.S. Coast Guard Summary of Statement Form Continuation Page

SHEL Data Collection Interview Form

SHEL Data Collection Interview Form (back page)



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FIGURE B4-1: U.S. COAST GUARD WITNESS / INVESTIGATOR STATEMENT FORM



U.S. COAST GUARD WITNESS / INVESTIGATOR STATEMENT FORM

(Please Print Clearly)

Witness Name: _____	Employer Name: _____
Street Address: _____	Employer Address: _____
City/State/Zip: _____	City/State/Zip: _____
Phone No: _____	Phone No: _____
Position: _____	License/Doc. # _____

I, the undersigned, make the following statement voluntarily, without threat, duress or promise of reward:

I have read my statement as documented above (and, if applicable, on continuation pages), and to the best of my knowledge and belief, it is true and correct.

SIGNATURE

DATE



FIGURE B4-2: U.S. Coast Guard Witness / Investigator Statement Form Continuation Page



**U.S. COAST GUARD WITNESS / INVESTIGATOR
STATEMENT FORM CONTINUATION PAGE**

(Please Print Clearly)

Lined area for writing the statement.

SIGNATURE

DATE

Page ____ of ____



FIGURE B4-3: U.S. Coast Guard Summary of Statement Form



U.S. COAST GUARD SUMMARY OF STATEMENT FORM

(Please Print Clearly)

Witness Name: _____	Employer Name: _____
Street Address: _____	Employer Address: _____
City/State/Zip: _____	City/State/Zip: _____
Phone No: _____	Phone No: _____
Position: _____	License/Doc. # _____

(OPTIONAL): I, the undersigned, have read the above summary of my statement and verify that it is complete and accurate:

SIGNATURE OF WITNESS

DATE OF INTERVIEW

The above (and, if applicable, continuation page(s)) is an accurate and true summary of my interview with the above named witness.

SIGNATURE OF INVESTIGATOR

DATE OF INTERVIEW



FIGURE B4-4: U.S. Coast Guard Summary of Statement Form Continuation Page



U.S. COAST GUARD SUMMARY OF STATEMENT FORM CONTINUATION PAGE

(Please Print Clearly)

Multiple horizontal lines for writing the continuation of the statement.

SIGNATURE OF WITNESS (OPTIONAL)

DATE OF INTERVIEW

SIGNATURE OF INVESTIGATOR

DATE OF INTERVIEW

Page ____ of ____



FIGURE B4-5: SHEL Data Collection Interview Form

	(Liveware) Subject Person Name: _____ ID: _____ <ul style="list-style-type: none">• Physical Factors (height, weight, strength, etc)• Physiological Factors (health, drug and alcohol use, fatigue, nutrition, medical conditions, etc.)• Psychological Factors (personality, attitude, biases, etc.)• Psychosocial Factors (personal relationships, marital difficulties, money problems, etc.)	(Liveware Mismatch) Others with issues between them and the Subject <ul style="list-style-type: none">• Communication• Passenger Interaction• Crew Interaction• Senior / Subordinate Interaction	(Environment Mismatch) Surrounding atmosphere <ul style="list-style-type: none">• Marine Environment• Internal Environment• Infrastructure	(Hardware Mismatch) Vessel, Facility, Equip. & Cargo <ul style="list-style-type: none">• Switches, controls, & displays• Workspace Factors	(Software Mismatch) Policy, Procedures, Regs <ul style="list-style-type: none">• Access / Format• Inadequate• Disabled• Never present• Removed• Non-existent
Notes (description of Incident)					



**D.4. JOB AIDS FOR
THE SEQUENCING AND
CLASSIFICATION OF
INFORMATION**

The following job aid (Figure B4-7) is to assist the marine investigator in the generation a timeline. Each distinct finding of fact that is gathered during the collection of information should be (as sequentially as possible) entered in the narrative section with a date/time assigned as well as the source of the information. Next the findings of fact are numbered (far left) and then classified by type as an action (A), event (E), or condition (C) in accordance with Enclosure 2. Further classification can be made by choosing and re-labeling the initiating event (IE), the subsequent events (SE1), and the unsafe acts/decisions (UA). Each finding of fact must represent a single action, event or condition.

Finding of Fact Timeline Worksheet



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FIGURE B4-7: Finding of Fact Timeline Worksheet

MISLE Activity #		FINDINGS OF FACT TIMELINE WORKSHEET	Page ____ of ____	



**D.5. JOB AIDS FOR
THE ANALYSIS OF
INFORMATION**

The following job aids (Figure B4-8 through B4-11) are to assist the marine investigator with the analysis of the organized information provided in the timeline. Lines should be drawn connecting the defense (failed or suggested) and the condition or action to which it relates for Part 2 and Part 3 below. Additional lines may be drawn to show 'causal connection' between related conditions/acts/decisions between the different elements in the Model of Production. The worksheets below should be filled out in numerical order as listed.

Part 1: Identify the Initiating Event, Subsequent Events, & Failed Defenses worksheet

Part 1a: Identify the Subsequent Events & Failed Defenses (cont.) worksheet

Part 2: Identify Production, Unsafe Acts/Decisions, & Failed Defenses worksheet

Part 3: Identify Workplace and Organization Factors & Failed Defenses worksheet



FIGURE B4-8: Part 1: Identify the Initiating Event, Subsequent Events & Failed Defenses Worksheet

Part 1: Identify the Initiating Event, Subsequent Events, & Failed Defenses

<u>Initiating Event</u> _____	Defense Factors	Subsequent Event #1 _____	Defense Factors	Subsequent Event #2 _____	Defense Factors	Subsequent Event #3 _____	Defense Factors	Subsequent Event #4 _____
--------------------------------------	------------------------	----------------------------------	------------------------	----------------------------------	------------------------	----------------------------------	------------------------	----------------------------------



FIGURE B4-9: Part 1a: Identify the Subsequent Events & Failed Defenses (cont) Worksheet

Part 1a: Identify the Subsequent Events & Failed Defenses (cont.)

Subsequent Event #	Defense Factors	Subsequent Event #	Defense Factors	Subsequent Event #	Defense Factors	Subsequent Event #	Defense Factors	Subsequent Event #



FIGURE B4-10: Part 2: Identify Production, Unsafe Acts/Decisions, and Failed Defenses

Part 2: Identify Production, Unsafe Acts/Decisions, and Failed Defenses

Preconditions	Defense Factors	Production	Defense Factors	<u>Initiating Event</u> _____
		_____ Unsafe Acts Or Decisions		



FIGURE B4-11: Part 3: Identify Workplace and Organizational Factors & Failed Defenses Worksheet

Part 3: Identify Workplace and Organization Factors and Failed Defenses

Organization Factors (Decision Makers)	Defense Factors	Workplace Factors (Line Managers)	Defense Factors	Completed during:				
				Part 2			Part 1	
				Preconditions	Defense Factors	Production	Defense Factors	Initiating Event



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D.6. EXAMPLES OF COMPLETED JOB AIDS

The completed job aids provided in Figure B4-12 will provide the marine investigator with examples of properly filled out job aids to refer to when conducting investigations of marine casualties.

NOTE: The example investigation and completed job aids do not represent a fully completed investigation with fully completed job aids. Their sole purpose is to display the intended use of each of the job aids.



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FIGURE B4-12: Example of Completed Job Aids



U.S. COAST GUARD WITNESS / INVESTIGATOR STATEMENT FORM

(Please Print Clearly)

Witness Name:	<u>Chuck Barbæ</u>	Employer Name:	<u>N/A</u>
Street Address:	<u>2100 2nd Street, SW</u>	Employer Address:	<u>N/A</u>
City/State/Zip:	<u>Nowhere MD 12345</u>	City/State/Zip:	<u>N/A</u>
Phone No:	<u>(340) 555-1212</u>	Phone No:	<u>N/A</u>
Position:	<u>Passenge</u>	License/Doc. #	<u>N/A</u>

I, the undersigned, make the following statement voluntarily, without threat, duress or promise of reward:

I went on a SCUBA trip with Capt Dave on the M/V ICHABOD on Sept 8, 2003. We left the Waterfront pier at 1:00 p.m. At about 2:00 p.m., it started raining really hard, so we didn't do the second dive and started heading back to the pier. Capt Dave saw that I was freezing and being pelted with heavy rain, and increased speed the all the way. We took a direct route to the pier, going between a cruise ship pier and some pilings. Then I saw the steering station explode and that is the last thing that I remember until I woke up in the hospital.

CBB

I have read my statement as documented above (and, if applicable, on continuation pages), and to the best of my knowledge and belief, it is true and correct.

Charles B. Barbæ
SIGNATURE

September 10, 2003
DATE



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U.S. COAST GUARD SUMMARY OF STATEMENT FORM

(Please Print Clearly)

Witness Name:	<u>Scott Budka</u>	Employer Name:	<u>C/S TROPICAL</u>
Street Address:	<u>via 6 Overseas</u>	Employer Address:	<u>213423 Donaw Much</u>
City/State/Zip:	<u>34127 Trieste Italy</u>	City/State/Zip:	<u>San Juan, PR 12345</u>
Phone No:	<u>(340) 555-1212</u>	Phone No:	<u>(787) 555-1212</u>
Position:	<u>Safety Officer</u>	License/Doc. #	<u>32342343234</u>

Scott Budka was overseeing the safety aspects of mooring the C/S
TROPICAL on September 7, 2003 at 0800. As usual, the vessel secured
the bowline to a mooring dolphin approx. 20 yards from the end of the
City Pier. They come in and moor up this way every week during the
year. At night a light beacon is suspended from the bowline for
illumination.

TF

(OPTIONAL): I, the undersigned, have read the above summary of my statement and verify that it is complete and accurate:

Scott Budka
 SIGNATURE OF WITNESS

September 9, 2003
 DATE OF INTERVIEW

The above (and, if applicable, continuation page(s)) is an accurate and true summary of my interview with the above named witness.

Timothy Farley
 SIGNATURE OF INVESTIGATOR

09SEP03
 DATE OF INTERVIEW



SHEL DATA	(Liveware) Subject Person	(Liveware Mismatch) Others with issues between them and the Subject	(Environment Mismatch) Surrounding atmosphere	(Hardware Mismatch) Vessel, Facility, Equip. & Cargo	(Software Mismatch) Policy, Procedures, Regs
	Name: <u>Ken Olsen</u> ID: <u>Lic# 654321</u> <ul style="list-style-type: none"> Physical Factors (height, weight, strength, etc) Physiological Factors (health, drug and alcohol use, fatigue, nutrition, medical conditions, etc.) Psychological Factors (personality, attitude, biases, etc.) Psychosocial Factors (personal relationships, marital difficulties, money problems, etc.) 	<ul style="list-style-type: none"> Communication Passenger Interaction Crew Interaction Senior / Subordinate Interaction 	<ul style="list-style-type: none"> Marine Environment Internal Environment Infrastructure 	<ul style="list-style-type: none"> Switches, controls, & displays Workspace Factors 	<ul style="list-style-type: none"> Access / Format Inadequate Disabled Never present Removed Non-existent

Notes (description of Incident and other issues)

Approx 5'2" of average build. Has 25 yrs of sea time as a Chief Engineer. He had two years of experience as Chief Engineer onboard the C/S TROPICAL. Mr. Olsen happened to be close friends with Mr. Deaver for at least 5 years. During this incident... Mr. Olsen was wrote the procedures for making the mooring line more visible when securing them to a mooring dolphin. The procedures addressed...



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MISLE Activity # 1234567		FINDINGS OF FACT TIMELINE WORKSHEET	Page <u>1</u> of <u>2</u>	
5	07JUL98/0900	The M/V ICHABOD is an Uninspected Small Passenger Vsl	MISLE Ref Data	C
6	30AUG03/0930	David Deaver was the master.	Barbee Statement	C
10	08SEP03/1300	M/V ICHABOD departed Charlotte Amalie Waterfront pier w/1 passenger.	Barbee Statement	E/C
11	08SEP03/1400	It began to rain heavily and strong winds picked up w/little visibility	Barbee Statement	C
12	08SEP03/1401	Deaver decided to end the trip.	Barbee Statement	A
13	08SEP03/1402	Deaver began steering a course back to the pier.	Barbee Statement	A
14	08SEP03/1410	The passenger was getting very cold.	Barbee Statement	C
15	08SEP03/1411	Deaver increased speed to maximum.	Barbee Statement	A (U)
7	07SEP03/0800	The C/S TROPICAL (small cruiseship) moored at the City Pier.	Budka Sum Statement	E
8	07SEP03/0900	The bowline was secured to a mooring dolphin approx. 20 yards off the pier.	Budka Sum Statement	C
16	08SEP03/1430	Deaver decided to navigate between the pier and the dolphin.	Barbee Statement	A (U)
9	07SEP03/0901	The bowline was slack with a catenary that hung just above the horizon.	My Statement	C
17	08SEP03/1431	Neither Deaver nor the passenger saw the mooring line.	My Statement	C



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MISLE Activity # 1234567		FINDINGS OF FACT TIMELINE WORKSHEET	Page <u>2</u> of <u>2</u>	
18	08SEP03/1435-0	<i>The M/V ICHABOD hit the bowline.</i>	<i>Bystander Statement</i>	<i>E (IE)</i>
19	08SEP03/1435-1	<i>The piloting station of the M/V ICHABOD was completely destroyed.</i>	<i>Bystander Statement</i>	<i>E (SE1)</i>
20	08SEP03/1435-2	<i>Deaver was decapitated and killed instantly.</i>	<i>Bystander Statement</i>	<i>E (SE2)</i>
21	08SEP03/1435-3	<i>The M/V ICHABOD went out of control.</i>	<i>Bystander Statement</i>	<i>E (SE3)</i>
22	08SEP03/1435-4	<i>The M/V ICHABOD allided with the C/S TROPICAL.</i>	<i>Bystander Statement</i>	<i>E (SE4)</i>
23	08SEP03/1435-5	<i>The passenger was thrown from the M/V ICHABOD</i>	<i>Bystander Statement</i>	<i>E (SE5)</i>
24	08SEP03/1439	<i>The C/S TROPICAL personnel provided response/medical assistance.</i>	<i>Master C/S Statement</i>	<i>A</i>
27	15SEP03/1300	<i>Deaver tested positive for cocaine.</i>	<i>Autopsy Report</i>	<i>C</i>



Part 1: Identify the Initiating Event, Subsequent Events, & Failed Defenses

<u>Initiating Event</u> ICHABOD hit mooringline	Defense Factors		Defense Factors		Defense Factors		Defense Factors	
	<ul style="list-style-type: none"> • Strong material • Break-away design 	<u>Subsequent Event #1</u> pilot station destroyed	<ul style="list-style-type: none"> • Pilot noticed the hazard: visible & audible indicator • Required armor 	<u>Subsequent Event #2</u> Deaver decapitated	<ul style="list-style-type: none"> • Auto 'kill' switch when the wheel is released 	<u>Subsequent Event #3</u> ICHABOD lost control	<ul style="list-style-type: none"> • Same auto 'kill' switch previously mentioned 	<u>Subsequent Event #4</u> ICHABOD allowed w/ C/S



Part 1a: Identify the Subsequent Events & Failed Defenses (cont.)

Subsequent Event # 4 <u>ICHABOD allied C/S</u>	Defense Factors	Subsequent Event # 5 <u>Passenger was thrown</u>	Defense Factors	Subsequent Event # _____	Defense Factors	Subsequent Event # _____	Defense Factors	Subsequent Event # _____
	<ul style="list-style-type: none"> • Passenger securing device similar to seatbelts 							



Part 2: Identify Production, Unsafe Acts/Decisions, and Failed Defenses

Preconditions	Defense Factors	Production	Defense Factors
<ul style="list-style-type: none"> Weather Could passenger Boat in location w/catenary Visibility Possible drug influence Driver was a new employee to the company 	<ul style="list-style-type: none"> Procedures replacing some sort of visible-audible marker on low handlines. Especially during periods of reduced visibility. Drug testing program 	<p><u>Navigating</u></p> <p>Unsafe Acts Or Decisions</p> <ul style="list-style-type: none"> Increases speed Star between the pier and the mooring dolphin 	<ul style="list-style-type: none"> Policy re speed during adverse visibility/ weather conditions Policy re Navigating between a pier and a mooring dolphin

Initiating Event ICHABOD hit mooringline

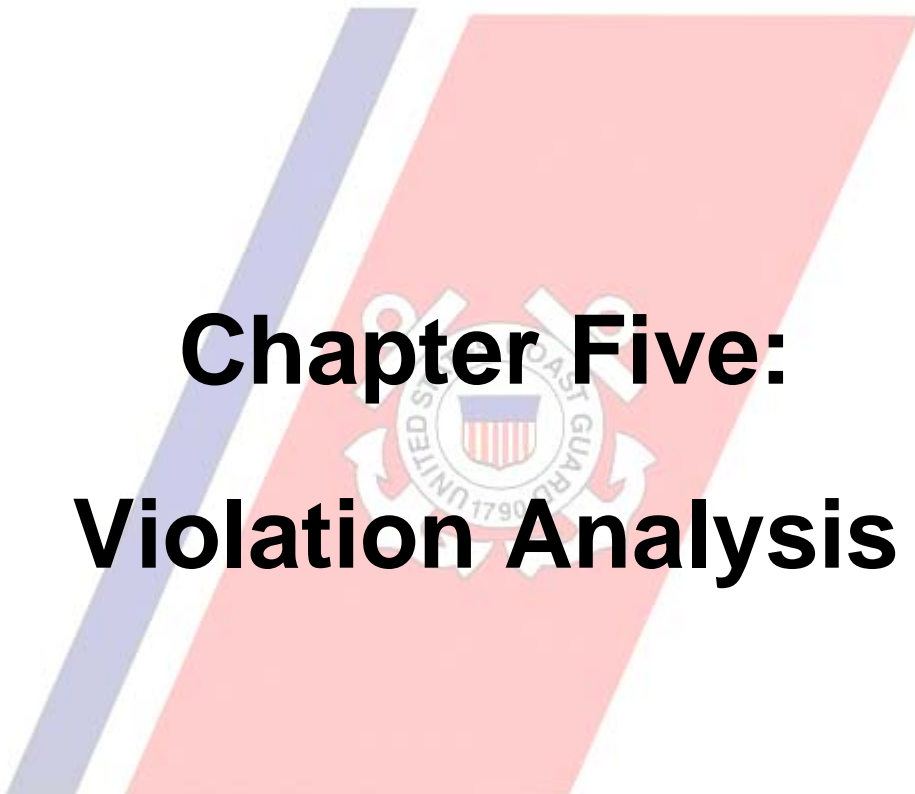


Part 3: Identify Workplace and Organization Factors and Failed Defenses

Organization Factors (Decision Makers)	Defense Factors	Workplace Factors (Line Managers)	Defense Factors
<ul style="list-style-type: none"> • CEO has 'old fashioned' attitude with re to written policy 	<ul style="list-style-type: none"> • CG regulatory spot checks to ensure compliance on UPV companies 	<ul style="list-style-type: none"> • No written procedures on vessel 	<ul style="list-style-type: none"> • CG regulatory spot checks to ensure compliance on UPVs
Completed during:			
Part 2			Part 1
Preconditions	Defense Factors	Production	Defense Factors
Initiating Event			



USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART B: INVESTIGATION

A large, stylized graphic consisting of two overlapping diagonal stripes. The left stripe is light blue and the right stripe is light red. A faint, semi-transparent USCG seal is visible in the background, centered behind the text.

**Chapter Five:
Violation Analysis**

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A. GENERAL

A.1. DRAWING OF LEGAL CONCLUSIONS

IOs may not draw legal conclusions in an ROI. Phraseology such as “Mr. Mitchell violated 33 CFR 124.4” or “Mr. Mitchell violated no law,” is to be **strictly avoided**. With regard to violations, ROIs are to summarize factual information for presentation as evidence that a person or corporation may have violated a certain law or regulation. Final determinations regarding possible violations are determined by Federal Courts, Administrative Law Judges, and Hearing Officers. Throughout this Volume, the term violation will be used for the term ‘alleged’ violation.

A.2. MINIMUM CONTENT OF VIOLATION ANALYSIS NECESSARY PRIOR TO TAKING ENFORCEMENT ACTIONS

At a minimum, IOs must indicate:

- Which law or regulation may have been violated;
- The jurisdictional elements of that law or regulation;
- The facts of the case with evidence of each jurisdictional element;
- The factual elements of that law or regulation;
- The facts of the case with evidence of each factual element; and
- The person or organization culpable for the possible violation.

A.3. STEPS IN VIOLATION ANALYSIS

In general, the IO should complete the following 5 step process in analyzing possible violations of law and regulation:

- Step One:** Identify Laws and Regulations in Force to Determine Jurisdiction
- Step Two:** Identify the People and Organizations Involved
- Step Three:** Consider Human Error (including omissions)
- Step Four:** Ensure there is Evidence for Each Factual and Jurisdictional Element; and
- Step Five:** Refer Violations for Appropriate Enforcement.

B. STEP ONE: IDENTIFY LAWS AND REGULATIONS IN FORCE TO DETERMINE JURISDICTION

B.1. ELEMENTS OF A LAW OR REGULATION

All laws and regulations are composed of two basic sets of elements: the jurisdictional elements governing where and to whom the law applies; and the factual elements governing the acts or conditions involved. To determine whether a given law or regulation was in force at the time of an incident, the IO must evaluate the jurisdictional elements of that law or regulation.

B.2. JURISDICTIONAL ELEMENTS

B.2.a. General

Jurisdictional elements are those facts as defined in a statute that must exist before the federal government, including the Coast Guard, can properly take action for violation of that statute. Jurisdiction is generally limited in terms of specific people or organizations, specific geographical locations, or specific subject matter.

**B.2.b. Jurisdiction over a Person or Organization**

Jurisdiction over a person or organization must be established by demonstrating that the person or organization in question was governed by the law or regulation in question at the time of the incident. Most statutes enumerate the roles of specific individuals or organizations to which it applies, as owner, operator, master, pilot, person in charge, etc. In determining whether a given regulation or statute was in force, IOs must assure that the statute applies to the people or organizations involved.

B.2.c. Jurisdiction over Geographical Locations

Jurisdiction over a person or organization is frequently limited by means of the person's geographic location at the time of the incident. Most of the laws and regulations enforced on foreign entities (foreign vessels, merchant seamen, owners and operators) apply only on the U.S. territorial sea, for instance. Another particularly important example is that many federal criminal laws that the Coast Guard enforces are only applicable in what is known as the "Special Maritime and Territorial Jurisdiction" (SMTJ). See Section G.2 below, 18 USC 7, and 33 CFR 2.05-1(b). In determining whether a given regulation or statute was in force, IOs must assure that the statute applies at the geographic location where the incident occurred. Key elements to consider include whether the incident occurred:

- Entirely on the internal waters of a state;
- On the Great Lakes;
- On a federal reservation;
- On the navigable waters of the United States
- Within the territorial sea
- On or in connection with the Outer Continental Shelf; and
- Within the Exclusive Economic Zone.

B.2.d. Jurisdiction over Subject Matter

Jurisdiction over a person or organization is also frequently limited by means of the operations being performed. Many statutes, for instance, apply only while a given operation, such as transfer of bulk oil products, is ongoing. In determining whether a given regulation or statute was in force, IOs must assure that the statute applies to specific subject matter involved.

**B.3. FACTUAL
ELEMENTS**

Factual elements are those facts as defined in a statute that establish a circumstance, event, or action as it actually takes or took place. Factual elements in statutes and regulations may either specify required actions or conditions, or may forbid an action or condition. Factual elements are not relevant in determining whether a law or regulation was in force; instead they determine whether a violation occurred.



C. STEP TWO: IDENTIFY PEOPLE AND ORGANIZATIONS INVOLVED

C.1. INTRODUCTION

To establish jurisdiction over a person or organization, the IO must accurately identify who was involved. Further, for any subsequent enforcement action to be effective contact information for that person or organization must be complete and accurate.

C.2. PROOF OF PERSON INVOLVED

Evidence of the individual's role as owner, operator, or person directing the movement of the vessel is extremely important. It is important to have evidence in the file as to who the actual owner/operator of the vessel was at the time of the violation. Examples of proof of identify can include but are not limited to:

- Copy of vessel's documentation;
- Copies of vessel's log entries/ship's papers;
- Copies of a person's license (if required for the job they were performing); or
- A witness' statement as to the role of the individuals on board.

C.3. IDENTIFICATION

C.3.a. Address and Phone

Locating and providing a current address and phone number for an owner/operator can be difficult, particularly when dealing with abandoned vessels, smaller commercial fishing vessels, etc. Consider the resources in this section for detailing the person or organization culpable.

C.3.b. Vessel Official Numbers

State and Official Numbers can be traced back through state boating law administrators or MISLE.

C.3.c. Property Ownership Records

Culpable individuals can often be identified by determining the vessel/facility owners/operators, marina operators, harbormasters, customers, and owners of the property on which abandoned vessels are located. Many of these records can be found through state boating law administrators or MISLE.

C.4. CORPORATIONS AND SUBSIDIARIES

The legal relationship between corporations, divisions, and subsidiaries can be extremely complex. In determining who the involved person or organization is, IOs must be sensitive to these complex relationships. While MISLE contains some of this "parent-child" information, IOs should refer to external resources including Data Universal Numbering System Numbers ([DUNS Number](#)). The DUNS Number is Dunn & Bradstreet's distinctive nine-digit identification sequence. The DUNS Number is an internationally recognized common company identifier in global electronic commerce transactions. Since each location of a business may have its own unique DUNS Number, a large organization is likely to have many different DUNS Numbers within its corporate "family." DUNS



Numbers link parents, subsidiaries, headquarters and branches on more than 62 million corporate family members around the world. The DUNS number is unique identifier that should be captured in the MISLE party details for the organization, it is also extremely useful for the collection of debt.

D. STEP THREE: CONSIDER HUMAN ERROR

D.1. INTRODUCTION

Human error is a predictable part of the Marine Transportation System. When performing violation analysis, the IO must be alert to human errors such as: 1) an act expressly prohibited in a law or regulation; and/or 2) an act of professional incompetence, misconduct, or negligence. The term “human error” applies to a wide variety of human behaviors, as described in Chapter B4 of this volume. Skill-based errors, for instance, are significantly different from knowledge-based errors.

D.2. HUMAN ERROR AS DIRECT VIOLATION OF LAW OR REGULATION

Human error encompasses decisions and actions. In some instances, the action performed in error (unintended or willful) will be directly prohibited by law or regulation. In such cases, regardless of intent, the error should be treated as a violation of that regulation or law. The intent of the person involved, however, is relevant in assessing the appropriate level of enforcement. See Part C of this Volume.

D.3. HUMAN ERROR AS NEGLIGENCE

D.3.a. General

Most casualties involve some form of human errors. In determining if the human rise to the level of negligence IO’s should look to the definition of negligence in 46 CFR 5.29: *Negligence* is the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

**D.3.b. Further Research on Negligence**

- IOs should be aware of the following in evaluating whether human error constitutes negligence:
- The presumption of negligence arises when a vessel grounds on a submerged object even if the precise location is unknown (CDOA 2113; HINDS).
- Vessels are presumed not to run aground in the ordinary course when operated by careful navigators (CDOA 1200; RICHARDS)
- When a vessel grounds in a place where it has no business being under the commonly accepted dictates of piloting and good seamanship, the presumption of fault arises on the part of the person piloting. (CDOA 2133; SANDLIN CDOA 2382; NILSEN CDOA 2409 PLACZKIEWICZ)

A “Strong” presumption of negligence arises when evidence is submitted that the respondent was operating a vessel which struck a stationary object:

- When a drifting vessel or vessel under its own power allides with an anchored vessel or a navigational structure, the burden of proving the absence of fault or inevitable accident rests with the moving vessel. (Schoenbaum, Thomas J. ADMIRALTY AND MARITIME LAW sect. 13-2)
- In CDOA 2217 (QUINN), Commandant upheld an administrative law judge (ALJ) finding of negligence, in that as operator of a tow with barges, the respondent failed to navigate the tow so as to “preclude the barges she was pushing from colliding with various moored vessels. The Commandant held that “allisions of the sort which occurred in this case do not ordinarily occur unless the vessel has been mismanaged in some way”.

D.3.c. Gross Negligence

Gross negligence is the highest form of negligence, in which a conscious or voluntary act is performed in reckless disregard of both legal duty and consequences. While gross negligence is commonly used to refer to instances where a person has taken no care, it actually is a failure to take the minimum (i.e., non-expert) precautions an ordinary person would take.

**D.4. HUMAN ERROR
AS MISCONDUCT****D.4.a. General**

When an action, intentional or not, error or not, violates a duly established rule, that action is misconduct. While most commonly associated with willful, voluntary, and intentional actions by a person such as intoxication or failure to join, misconduct need not include these elements. **NOTE:** Often in the Suspension and Revocation (S&R) process, cases might involve both misconduct and a violation of law. IO's should contact their servicing legal office if in doubt about a particular charge,. See Part C of this Volume for more information.

**D.5. HUMAN ERROR
AS PROFESSIONAL
INCOMPETENCE**

When an action, intentional or not, error or not, demonstrates that a credential holding mariner lacks even the basic knowledge and skills required to obtain that credential, that act should be considered a violation. In considering human error as professional incompetence, the IO must rely upon the credential issuing standards of the credential-issuing government and the international STCW provisions.

**D.6. CONSIDER
OMISSIONS**

In performing violation analysis, the IO must also be alert for specific actions which a mariner or other person: 1) was explicitly required to perform by law or regulation, but which they failed to perform; or 2) was required by standards of professional competence, formalized (non-regulatory) rule, or accepted standards of attention to duty, but which they failed to perform. In these cases, the failure to take an action or make a judgment may be considered a violation, just as taking an action would.

**D.7.
SUBSTITUTION TEST**

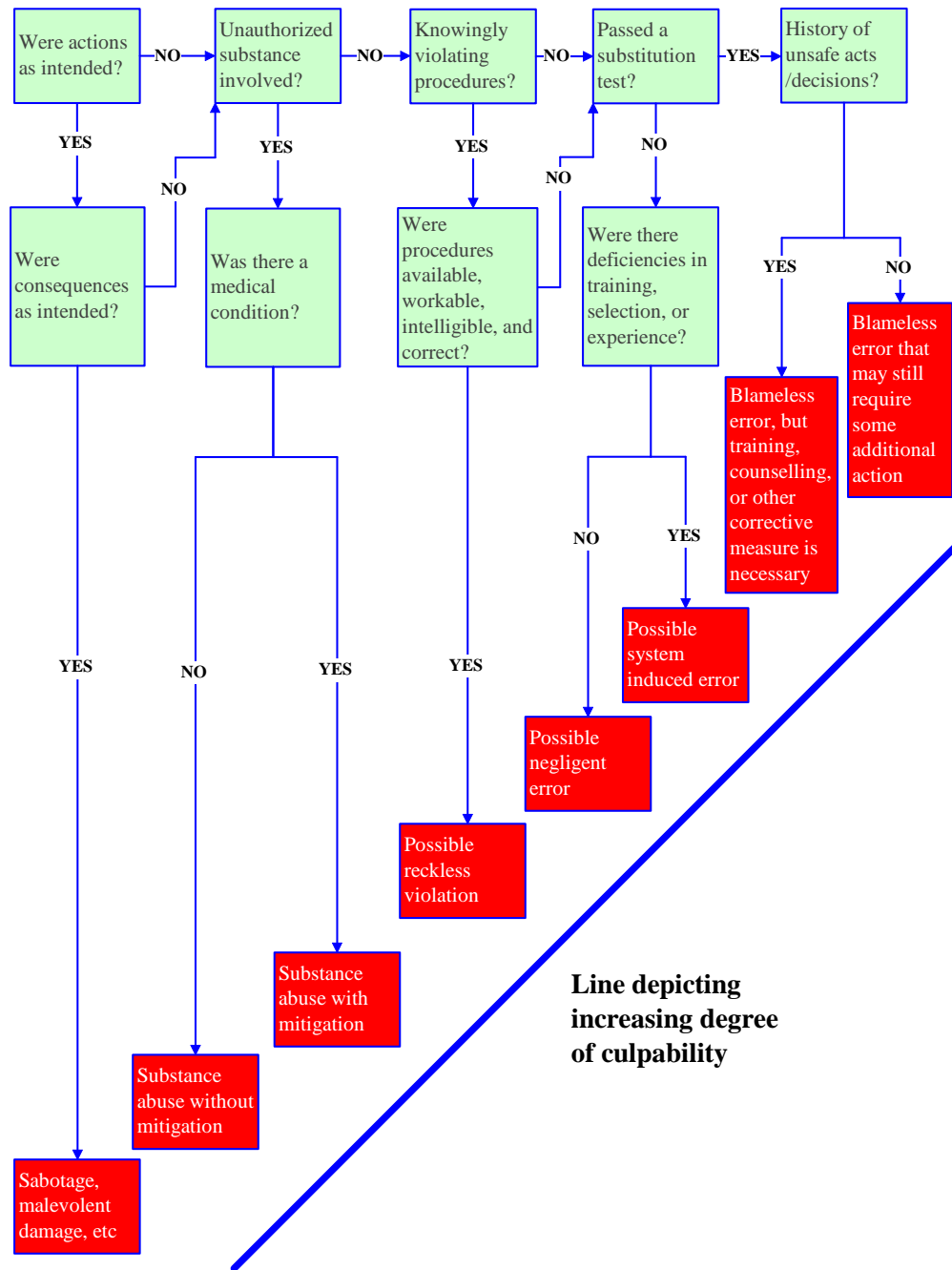
The 'substitution test' is conducted to determine if a specific act or decision is something that any person of the same station (same position, qualifications, etc.) would do in the same situation. This involves asking a person of the same station that if given the same prevailing circumstances (conditions, type and size of vessel, operation, etc.) what they would do. This should be conducted in an 'open-ended' fashion without providing information as to exactly what happened or using a "would you do this – yes or no?" questioning technique. After receiving information about what the person of the same station would do, then you may state what actually happened and ask if the person of the same station would have done the same.



D.8. DEGREES OF CULPABILITY FLOW CHART AND HUMAN ERROR TO OFFENSE MATRIX

D.8.a. Degrees of Culpability Flow Chart

The following flow chart is provided SOLELY to guide the IO in determining the level of culpability that a person or organization may have following an incident. The IO is cautioned that regardless of where a person falls within the ‘degrees’ of culpability some law, regulations, and/or policy may still require specific enforcement action. This tool will help in the preliminary assessment of the level of enforcement action taken in Part C of this Volume.





D.8.b. Human Error to Offense Matrix

The following Human Error to Offense Matrix is provided to assist the IO in ensuring that the human error analysis and violation analysis are consistent. If the results differ, one of the analysis processes may need to be reviewed/revised. This also assists by identifying which offense a given error might rise to. The IO is cautioned that not all errors are offenses, and this matrix suggests no such automatic correlation.

Inattention				X
Mistiming	X			
Misapplication of a Good Rule	X		X	
Use of a Bad Rule	X	X	X	
Bias				X
Heuristics				X
Routine Adaptation		X	X	X
Exceptional Adaptation		X	X	X
Sabotage		X	X	X

E. STEP FOUR: REFER VIOLATIONS FOR APPROPRIATE ENFORCEMENT

E.1. GENERAL

Once the analysis is complete, violations should be referred for enforcement evaluation and appropriate action. The ROI SHOULD NOT CONCLUDE that a violation **did** or **did not** occur. Instead, having met the thresholds for evidence suggested above, the IO should report only that there is evidence of the specific violation warranting further enforcement evaluation.

E.2. ENFORCEMENT REFERRALS IN MISLE

As a matter of policy, IOs will document all notifications of violations from the public in a MISLE notification record. Otherwise, when a violation is detected during the course of a Coast Guard activity, it shall be document in that relevant



‘detection’ activity. Direct entry of enforcement activities without record of the underlying investigation/detection activity is expressly prohibited.

F. SELECTED LAWS APPLICABLE IN THE MARITIME REALM

F.1. INTRODUCTION

IOs must document and take appropriate action on all violations or suspected violations of federal law in the maritime realm. This section addresses a number of laws applicable in the maritime environment of which all IOs should be aware. These laws are an important enforcement responsibility and in some cases will require significant or immediate attention. Duty attorneys are available at all district legal offices and should be contacted when necessary to assist.

F.2. SPECIAL MARITIME AND TERRITORIAL JURISDICTION

F.2.a. General

Certain federal statutes, including a number of those addressed in this section, contain special terms delineating where and to whom they apply. One particularly important example is that many federal criminal laws that the Coast Guard enforces are only applicable in what is known as the “Special Maritime and Territorial Jurisdiction” (SMTJ). See 18 USC 7 and 33 CFR 2.05-1(b).

F.2.b. Definition

The SMTJ term is a challenge to define clearly and accurately in all circumstances. For the purposes of this section, the following guidelines define the SMTJ. The SMTJ applies to:

- A U.S. flag vessel outside the jurisdiction of any state (seaward of the U.S. territorial sea), including such vessels located in foreign waters;
- A U.S. flag vessel located on the waters of the Great Lakes or any of the waters connecting them;
- Lands within exclusive federal jurisdiction on federal reservations, as well as land outside the jurisdiction of any nation (e.g., Antarctica) with respect to an offense by or against a national of the U.S.;
- U.S. flag aircraft while in flight over waters seaward of state waters, and may also apply with respect to those flying over waters seaward of the high water line along the coast and seaward of harbor works or narrow promontories (thus bringing in the majority of the state waters along the Atlantic, Pacific, Gulf, and Great Lakes coasts); and
- Offenses by or against U.S. nationals committed outside the jurisdiction of any nation.

In view of the complexity in the SMTJ, IOs should contact their servicing legal office to discuss the issues should SMTJ jurisdiction come into question.



**F.3. OVERVIEW OF
SELECTED CRIMINAL
LAWS**

A felony is any criminal law whose maximum potential penalty exceeds one year of imprisonment. Misdemeanors are all less serious federal crimes. Classification as a felony or misdemeanor depends upon the maximum penalty provisions of the statute, not the actual sentence adjudged. This section addresses the following categories of offenses the IO should strongly pursue should evidence of same be encountered:

- Obstruction of Boardings;
- Customs Laws;
- Stolen Vessels;
- Violent Acts;
- Firearms Laws;
- Intentional Damage to Vessels;
- False Distress Calls;
- False Official Statements;
- Interstate Flight;
- Bribery of Public Officials;
- Neutrality Act; and
- Property Crimes other than Stolen Vessels.

The IO shall remember that criminal prosecution may only be referred to DOJ by District Commander. For this reason, and to ensure legally prudent use of CG and CGIS skills/authority, IOs/SIOs should contact CGIS and D(l) when one of these crimes is detected.

**F.4. OBSTRUCTION
OF BOARDING**

The following non-felony statutes may apply to individuals who obstruct a Coast Guard boarding without engaging in an assault:

- See 19 USC 70 (master only). Obstructing or hindering an officer going aboard to enforce U.S. revenue or navigation laws subjects the master to an administrative civil penalty.
- See 19 USC 1581(d). Failure to stop on command of an officer of customs subjects the offender to an administrative civil penalty.
- See 46 USC 324. Obstructing or hindering an officer enforcing the licensing or documentation laws subjects the offender to an administrative civil penalty.

**F.5. CUSTOMS
LAWS**

F.5.a. General

See 19 USC 1703. Building, purchasing, or outfitting a vessel for the purposes of smuggling into the United States or defrauding the revenue of the U.S. makes the vessel and its cargo subject to seizure and civil forfeiture. There are no provisions under this statute for sanctions against individuals.



F.5.b. Smuggling into Foreign Nations

This statute may also apply to vessels attempting to smuggle merchandise into the territory of a foreign nation against foreign law (if that nation has laws providing for penalty or forfeiture for violation of U.S. laws respecting the customs revenue).

F.5.c. Hidden Compartments

The most common circumstance where vessels are found to be outfitted for smuggling involves the discovery of hidden compartments. The presence of contraband is not legally required for seizure and forfeiture to proceed. However, most forfeitures under this statute have involved at least residue of contraband.

F.6 STOLEN VESSELS

F.6.a. Applicable Federal Statutes

Instances in which the physical taking of the vessel itself constitutes a federal crime typically involve one or more of the following statutes (each of which must be considered carefully to determine its applicability).

- See 18 USC 661. Taking and carrying away property within the SMTJ. A felony has been committed if the stolen property is worth more than \$100. The theft is not a federal crime unless both the “taking” and the “carrying away” elements occur within the SMTJ.
- See 18 USC 1651. Piracy under the law of nations. Piracy consists of any illegal acts of violence or detention or any acts of depredation committed seaward of the territorial sea of any nation (i.e., seaward of the 12 NM territorial seas of the United States) for private ends by the crew or passengers of a private ship or aircraft and directed against another ship or aircraft. In contrast, mutiny or other internally generated takeover of a vessel by those already aboard is not piracy. By engaging in piracy, a vessel essentially becomes stateless. This statute applies to and may be enforced against any pirate vessel purporting to fly any flag. The determination of whether a vessel is engaged in piracy requires a Commandant’s Statement of No Objection (SNO). Piracy under this law is punishable by life imprisonment.
- See 18 USC 2275. Firing at or tampering with a vessel within U.S. jurisdiction or endangering the persons onboard such vessels is a felony offense.
- See 18 USC 2276. Breaking or entering a vessel with the intent to commit a felony, if committed within the admiralty and maritime jurisdiction of the U.S. but outside the jurisdiction of any state is a felony offense.

F.6.b. Related Crimes

As noted, in the majority of cases involving possible stolen vessels, the physical taking of the vessel is not itself a federal crime. Subsequent acts, however, involving the vessel and/or perpetrator may provide a basis for federal enforcement action. The federal criminal statutes summarized below (each of which must be considered carefully to determine when applicable) are all potentially available whether or not the physical taking was a federal crime.



- See 18 USC 662. Knowing receipt of stolen property within the SMTJ is a federal felony if the stolen property is worth more than \$100.
- See 18 USC 1001. Making false statements or providing false documents to federal officials in the performance of their duty is a felony.
- See 18 USC 2197. Unlawfully using or exhibiting, or attempting to use or exhibit any certificate, license, or document issued to U.S. vessels, officers, or seamen by an authorized officer is a felony. Altering, forging, counterfeiting, or stealing such a certificate is also a felony.
- See 18 USC 2314. The National Stolen Property Act prohibits the knowing transportation of stolen goods worth more than \$5000 in interstate or foreign commerce (i.e, across state lines including maritime boundaries, or between the U.S. territorial sea and the high seas). Once the stolen goods have been transported in interstate or foreign commerce, the federal crime has been committed and returning the property to where it was taken does not defeat federal jurisdiction. This is a felony offense.

F.7. VIOLENT ACTS

Any injury or fatality case with the following characteristics should be scrutinized closely for potential unlawful activity:

- When one or more of the crewmembers onboard is known to have a questionable background or uncertain identity;
- When the vessel leaves its last port of call or departure point unobserved;
- When a vessel is outfitted in a way inconsistent with its use;
- When the vessel is known to have a large sum of money, negotiable instruments, or other valuables aboard; and/or
- When there are inconsistencies in accounts or with relevant known facts.

F.8. VIOLENT ACTS WITHIN THE SMTJ

F.8.a. Murder within the SMTJ

See 18 USC 1111. The statute defines first and second degree murder. First degree murder generally includes premeditated or deliberate killing, and those committed in the course of other crimes like arson, rape, or robbery. Second degree murder includes those killings not within the definition of first degree murder. Attempted murder is addressed in 18 USC 1113.

F.8.b. Manslaughter within the SMTJ

See 18 USC 1112. The statute defines manslaughter as the unlawful killing of a human being without malice: voluntary (upon sudden quarrel or heat of passion); or involuntary (in the commission of an unlawful act not amounting to a felony or without due caution with respect to a lawful act which might produce death). Manslaughter, both voluntary and involuntary, is a felony.



F.8.c. Aggravated Sexual Abuse within the SMTJ.

See 18 USC 2241. Any person knowingly causing another person to engage in a sexual act by using force, threatening or placing the other person in fear of death, serious bodily injury or kidnapping or attempts to do so is a violation of this felony statute, punishable by life imprisonment. Acts which under various state law would be characterized as rape, forcible sodomy, sexual assault, or any related attempts would be prosecuted under this statute.

F.8.d. Assault within the SMTJ.

An assault is generically defined as a reasonable apprehension of a harmful or offensive touching. Physical contact is not required for an assault to have occurred (e.g., an individual points a firearm at another or attempts to stab another but misses). As a practical matter, simple nonviolent acts legally constituting assault may not warrant referral for criminal prosecution. The specific assault statutes below have additional elements or limitations before enforcement action can be initiated.

- See 18 USC 111. This statute prohibits forcible assault on federal officers (listed in 18 USC 1114) while they are engaged in, or on account of, the performance of their official duties. These offenses are felonies.
- See 18 USC 113. This statute prohibits the unlawful application of, or attempted use of, force within the SMTJ. Unlike 18 USC 111, the victim of the assault need not be a federal officer, but could be anyone. Lawful force requires that there be a legal justification for the use of force and that the amount of force used was reasonably necessary. Simple assault and assault by striking, beating, or wounding are misdemeanors. All other assaults, such as with intent to commit any felony, with a dangerous weapon, or resulting in serious bodily injury or force, are felonies. Other assault statutes exist. For example, various fisheries acts contain specific assault provisions.
- See 18 USC 2231. This statute makes it a felony for anyone to forcibly assault, resist, oppose, prevent, impede, intimidate or interfere with any person authorized to serve or execute search warrants or to make searches and seizures while engaged in those duties. The penalties are greater if a deadly weapon is used in the commission of this act.

**F.9. FIREARMS
LAWS**

The serial number of any firearm discovered during an inspection, investigation, or boarding should be checked through EPIC. The unlawful possession of a federally regulated firearm is a felony offense. All unregistered federally regulated firearms, regardless of serviceability, are contraband and are subject to seizure. See the following statutes:

- 18 USC 922(g);
- 26 USC 5801 et seq., The Gun Control Act;
- 28 USC 5861(d), Federally Regulated Firearms; and



USCG MARINE SAFETY MANUAL, VOLUME V: INVESTIGATIONS AND ENFORCEMENT
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28 USC 5861, Serial Number Violations for Federally Regulated Firearms.

**F.10. FALSE
DISTRESS CALLS**

See 14 USC 88(c). This crime involves knowingly and willfully communicating a false distress call to the Coast Guard or otherwise causing the Coast Guard to attempt to save lives and property when no help is needed. An individual violating this statute is subject to a civil penalty and/or felony arrest and is liable for all the costs incurred by the Coast Guard.

**F.11. FALSE
OFFICIAL
STATEMENTS AND
FALSE DOCUMENTS**

See 18 USC 1001. This crime involves knowingly and willfully making false statements or presenting false or forged documents to federal officials. The statute includes misrepresentations to a boarding officer as to the real owner or operator of the vessel and/or using a forged or fraudulent vessel document or paper. Violators are subject to felony arrest.

**F.12. INTERSTATE
FLIGHT TO AVOID
PROSECUTION OR
GIVING TESTIMONY**

See 18 USC 1073. This federal offense occurs when an individual travels in interstate or foreign commerce (i.e., across state lines, including maritime boundaries, or between the U.S. territorial sea and the high seas) with the intent to: (1) avoid state prosecution for a state felony; (2) avoid giving testimony in state felony proceedings; and/or (3) avoid appearing before a state agency empowered to conduct criminal investigations where a subpoena has been issued. This is a felony offense. For additional guidance, see the U.S. Coast Guard Maritime Law Enforcement Manual, COMDTINST M16247.1 (series).

**F.13. BRIBERY OF
A PUBLIC OFFICIAL**

See 18 USC 201. It is a felony offense for a public official to accept bribes or for anyone to offer anything of value to public officials, either directly or indirectly, to influence them in the performance of their official duties. Coast Guard personnel accepting a bribe are also subject to punishment under the Uniform Code of Military Justice.

**F.14. NEUTRALITY
ACT**

See 18 USC 960-967. The Neutrality Act prohibits unauthorized acts by private U.S. citizens that may affect the foreign relations of the United States. Violation of the Act is a felony. The following actions are specifically prohibited:

- Participating in an expedition against a nation with whom the U.S. is at peace; and
- Arming a vessel against a nation with whom the U.S. is at peace.

**F.15. PROPERTY
CRIMES OTHER THAN
STOLEN VESSELS**

Several federal statutes apply to property crimes other than stolen vessels:

- See 18 USC 1363. It is a felony offense if any building, structure, vessel, machinery, building materials, aids to navigation, or shipping are willfully and maliciously destroyed or injured.
- See 18 USC 1361. Willful injury or any depredation against any property of the United States is a felony if the damage exceeds \$100; otherwise it is a misdemeanor.



- See 14 USC 84. It is a misdemeanor offense for any person or public body to remove, change the location of, obstruct, willfully damage, make fast to, or interfere with any aid to navigation established, installed, operated or maintained by the Coast Guard. Each day during which such violations continue is considered a new offense.

**F.16. SCUTTLING
OR INTENTIONAL
DAMAGE TO VESSELS**

F.16.a. Conspiracy to Destroy Vessels

See 18 USC 2271. It is a felony offense to conspire to destroy or castaway any vessel on the high seas or within the U.S. with the intent to injure any insurer or lender.

F.16.b. Destruction by the Owner

See 18 USC 2272. It is a felony offense if an owner willfully or corruptly casts away or destroys any vessel on the high seas or within the admiralty and maritime jurisdiction with the intent to injure an insurer or lender.

F.16.c. Destruction by Non-owner.

See 18 USC 2273. It is a felony offense if an operator who is not the owner willfully or corruptly casts away or destroys any vessel on the high seas or within the admiralty and maritime jurisdiction with the intent to injure an insurer or lender.

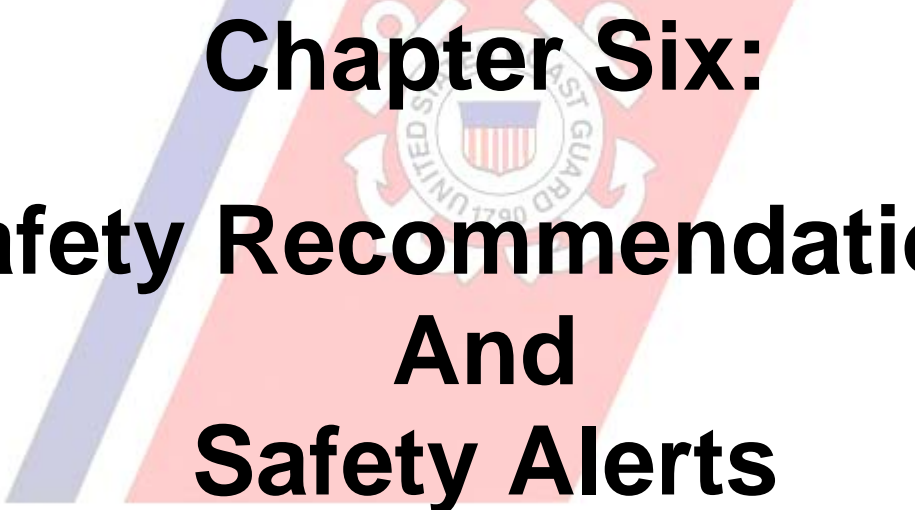
**F.16.d. Destruction or Misuse of Vessel by the
Person-in-Charge.**

See 18 USC 2274. It is a felony offense if, within the territorial waters of the United States, an owner, master, person-in-charge or in command of any foreign or U.S. vessel willfully causes or permits the destruction or injury of a vessel.

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Chapter Six:
Safety Recommendations
And
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A. SAFETY RECOMMENDATIONS IN GENERAL

A.1. PURPOSE The purpose of Safety Recommendations is to propose corrective actions for identified latent unsafe conditions or other unwanted outcomes deemed necessary to prevent those conditions from contributing to future casualties.

A.2. SOURCES OF SAFETY RECOMMENDATIONS Safety recommendations originate from several sources. The principle source for safety recommendations is incident investigations completed by Coast Guard Marine Boards and Investigating Officers (IOs). Investigators from other agencies or organizations, in particular the National Transportation Safety Board (NTSB), also issue safety recommendations. Other sources include task forces, quality action teams, and other temporary groups assigned to study, review and analyze a particular aspect of maritime operations. Members of the public may submit safety recommendations as well. For the purposes of this chapter, we will focus on those safety recommendations issued by Coast Guard Marine Boards and IOs upon completion of marine incident investigations.

A.3. SAFETY ALERTS In some instances, a latent unsafe condition that is identified and, if left unaddressed, poses an immediate threat to safety in a fleet of vessels or particular type of operation. When this occurs, the Coast Guard wants to quickly advise the public of the condition, explain why it is a threat, and propose actions to mitigate that threat. In these circumstances, the issuance of a safety alert instead of a safety recommendation may be a more appropriate mechanism to accomplish this. Guidance on the use of safety alerts can be found in sections F through I of this chapter.

A.4. ADMINISTRATIVE RECOMMENDATIONS During the course of the incident investigation process, recommendations are made regarding the status of the investigation and whether enforcement action may appropriate. Examples include a recommendation that the investigation be closed or that further investigation into possible violations, misconduct, negligence, etc. is warranted. These are not considered safety recommendations. They are part of the internal administrative procedures of the Coast Guard, and as such, SHALL NOT to be included with safety recommendations.

B. DRAFTING SAFETY RECOMMENDATIONS

B.1. BASIS FOR SAFETY RECOMMENDATIONS **B.1.a. General** Safety recommendations should be based upon and flow logically from the findings of fact and conclusions of the incident investigation. To determine whether a safety recommendation is appropriate, the Marine Board or Investigating Officer (IO) should ask the following questions:

- Has the existence of a specific condition been identified?
- Has that condition been determined to be latently unsafe?



- Can control be exercised over that condition?
- Has it been determined that controls do not currently exist that adequately address that condition?

B.1.b. Existence of Latent Unsafe Conditions

Safety recommendations must address actual latent unsafe conditions that have been found to exist rather than hypothetical conditions. Safety recommendations may be made to address any latent unsafe condition identified during an incident investigation, including those that did not cause nor contribute to the specific incident under investigation. When doing so, the Marine Board or Investigating Officer (IO) will need to include an explanation of the risks and probable consequences associated with the continued existence of the condition, as it will not necessarily be evident from the facts and conclusions of the incident at hand. See Chapter B4 of this volume for information on latent unsafe conditions.

B.1.c. Control over Latent Unsafe Condition

Safety recommendations should only be made to address those latent unsafe conditions over which some level of control can be exercised through the implementation and use of control measures. Control measures include conventions, laws, regulations, policies and procedures.

B.1.d. Lack of Adequate Control Measures

Safety recommendations should only be made to address latent unsafe conditions when one of the following is true:

- There are no current control measures in place.
- The current control measures are found to be inadequate.

Safety recommendations should not be made when the unsafe condition was the result of non-compliance with an existing control measure (e.g. a mariner intentionally ignored the prohibition against smoking during a transfer operation).

B.2. CONTENT OF SAFETY RECOMMENDATIONS

B.2.a. General Content and Format

Once it has been determined that a safety recommendation is appropriate, the Marine Board or Investigating Officer (IO) will want to draft it in a clear, simple and easily understood manner. In general, there are three basic questions that a Marine Board or IO wants to answer when making a safety recommendation:

- Who should implement the recommended corrective action?
- What is the recommended corrective action?
- What will be the result of implementing that corrective action?



B.2.b. Who Should Implement the Recommended Action

Each safety recommendation needs to be addressed to someone who has the authority and responsibility over the control measures that would be affected by the recommended corrective action. Factors to consider when determining this include, but are not limited to the following:

- The nature of the latent unsafe condition;
- The extent to which the condition exists (e.g. local, national, international);
- The nature of the recommended action (e.g. procedural, policy-related, regulatory, legislative); and
- The authority needed to implement the recommended action.

Safety recommendations that are addressed to specific Coast Guard units should be addressed to the heads of those units (e.g. Commandant, District Commander, Commanding Officer). Safety recommendations addressed to parties outside of the Coast Guard should be addressed to the organization, not an individual within the organization.

B.2.c. Recommended Action

The Marine Board or Investigating Officer (IO) needs to be unambiguous when describing the recommended corrective action. The text of the safety recommendation should identify the control measure that is the subject of the safety recommendation (e.g. procedures, policy, regulations, laws, conventions, etc.) and explain what specific and direct action should be taken to address the latent unsafe condition. In general, such actions could include:

- Amending existing law, regulations, policy or procedures; or
- Development and implementation of new laws, regulations, policies or procedures;

Marine Boards and IOs should avoid using phrases such as “should consider” or “should review” as these indicate uncertainty and a lack of a compelling need for corrective action.

B.2.d. Result of Action

The Marine Board or Investigating Officer (IO) should explain how they believe the recommended corrective action will mitigate or eliminate the latent unsafe condition or unwanted outcome.

B.3. ADDITION OF SAFETY RECOMMENDATIONS

During the review of safety recommendations within the relevant Coast Guard chain of command, whoever is conducting the review may identify the need for safety recommendations not proposed by the Marine Board or Investigating Officer (IO). These recommendations should be included in the activity/case



file.

C. REVIEWING SAFETY RECOMMENDATIONS

C.1. GENERAL

Each safety recommendation that is issued by a Marine Board or Investigating Officer (IO) is subjected to a process of review and endorsement through the relevant Coast Guard chain of command in order to evaluate its merits for acceptance and implementation. The end goal of this process is the determination of the final action for the safety recommendation.

C.2. REVIEW AND ENDORSEMENT WITHIN THE CHAIN OF COMMAND

If there are units within the chain of command between the issuing Investigating Officer (IO) and the unit responsible for determining final action, those units shall review and endorse each safety recommendation before forwarding them to the next unit in the chain of command. The endorsement should indicate whether the reviewing unit concurs or does not concur with the safety recommendation and provide an explanation for its determination.

C.3. FINAL ACTION

C.3.a. Definition

The Final Action is the official Coast Guard response to a safety recommendation and indicates whether the Coast Guard concurs or does not concur with a safety recommendation. In general, there are three possible determinations for the final action:

- “Concur – Acceptable Action” – Indicates that the Coast Guard agrees that the latent unsafe condition identified in the safety recommendation needs to be addressed and will take the recommended corrective action.
- “Concur- Alternate Acceptable Action” – Indicates that the Coast Guard agrees that the latent unsafe condition identified in the safety recommendation needs to be addressed, but does not agree with the recommended corrective action. Instead, an alternate action will be taken to address the condition.
- “Do Not Concur – No Action Necessary” – Indicates that the Coast Guard does not agree with the determination that additional action needs to be taken to address a latent unsafe condition.

Where it has been determined that the Coast Guard does not concur with a safety recommendation, the unit responsible for determining the final action should include an explanation for its determination. Where it has been determined that the Coast Guard concurs with a safety recommendation, the unit responsible for determining the final action should include a description of the actions it will take to implement the safety recommendation and an estimate for when those actions will be completed. If the actions necessary to implement the safety recommendation have already been completed, this should also be indicated in the final action.



C.3.b. Who Determines Final Action

In general, the authority to determine the final action will reside with the head of the responsible Coast Guard unit. The following guidelines are provided to help establish who will determine the final action:

- For a safety recommendation issued from a unit initiated investigation (formal or informal), the head of the Coast Guard unit that holds the authority and responsibility for the control measure(s) affected by the safety recommendation will determine the final action.
- For a safety recommendation issued from a district formal investigation, the District Commander or Commandant will determine the final action as appropriate.
- For a safety recommendation issued from a Commandant's Marine Board of Investigation, the Commandant will determine the final action.
- For a safety recommendation issued from any investigation addressed to someone outside of the Coast Guard, the Commandant will determine the final action.

Final agency action for all Commandant-level safety recommendations will be coordinated via the Office of Investigations and Analysis, Commandant (CG-545).

D. RELEASING SAFETY RECOMMENDATIONS AND FINAL ACTION

D.1. AUTHORITY TO RELEASE FINAL ACTION

The releasing authority and ultimate responsibility for the final action on a safety recommendation resides with the head of the Coast Guard unit that determined the final action.

D.2. TIMING OF THE RELEASE

The final action on individual safety recommendations may be released to the public upon their completion, regardless of the status of the investigation case from which the safety recommendations were issued.

D.3. MEANS OF RELEASE

Final action on a safety recommendation may be shared broadly within the Coast Guard and throughout the maritime community and general public. Accordingly, the releasing authority may distribute the final action by any appropriate means, subject to the restrictions of the Privacy Act.

E. IMPLEMENTING FINAL ACTION

E.1. IMMEDIATE IMPLEMENTATION

Where the determination has been made that the Coast Guard does not concur with a safety recommendation, the Coast Guard's actions are complete when that determination is documented in the final action. Where the determination has been made that the Coast Guard concurs with a safety recommendation, the Coast Guard's actions necessary to implement the safety recommendation may have



already been taken or are completed immediately. In such instances, those actions should be documented in the final action with an indication of when they were completed.

E.2. FUTURE IMPLEMENTATION

In many cases where the determination has been made that the Coast Guard concurs with a safety recommendation, the Coast Guard's actions to implement the safety recommendation will not be immediate, but extend over a period of time. In such instances, the authority responsible for the final action will also be responsible for tracking and documenting the status and eventual completion of the Coast Guard's implementing actions. Specific information to be documented includes:

- Estimated start date/completion date;
- Estimated effort to complete (resources);
- Actual start date;
- Status of actions, including periodic documentation of actions completed up to a particular point in time, problems or delays encountered, and changes to original plans for implementation; and
- Actual completion date.

E.3. REVISING FINAL ACTION

In some instances, events occur which indicate that a previous determination of final action for a safety recommendation may be incorrect or incomplete. In such cases, the responsible Coast Guard authority has the discretion to review and amend the final agency action. If the final action is amended, the new final action should include an explanation of why the original was amended.

F. SAFETY ALERTS IN GENERAL

F.1. PURPOSE

The purpose of safety alerts is to quickly advise the public of conditions that, if left unaddressed, pose urgent threats to safety in fleets of vessels or particular types of operations and propose voluntary actions for elimination or mitigation of those threats.

F.2. SOURCES OF SAFETY ALERTS

Safety alerts originate primarily from marine casualty investigations completed by Coast Guard Marine Boards and Investigating Officers (IOs). However, the issuance of a safety alert will be considered based upon its merits regardless of its source.

F.3. SAFETY RECOMMENDATIONS

Safety recommendations are intended to propose corrective actions for identified latent unsafe conditions deemed necessary to prevent those conditions from contributing to future incidents. These corrective actions may include changes to policy, law, or regulation. Although similar, safety alerts and safety recommendations differ in the following ways:

- Safety alerts are only based upon conditions identified in the findings of



fact. Safety recommendations are based upon and flow logically from the findings of fact and conclusions drawn through causal analysis.

- Safety alerts are issued to the public in general or may be focused on a general segment of the maritime community. Safety recommendations are issued to a specific person, unit or organization.
- Safety alerts recommend voluntary actions. Safety recommendations may result in the implementation of mandatory requirements and procedures.
- Safety alerts primarily involve immediate actions intended as short-term solutions. Safety recommendations may involve actions being taken over an extended period of time to provide a long-term solution.

Guidance on the use of safety recommendations can be found in Sections A through E of this Chapter.

F.4. LESSONS LEARNED

Lessons learned are another means of advising the public of unsafe conditions, as well as recommending actions that can be taken to mitigate or eliminate them. However, unlike safety alerts, lessons learned are not urgent and are typically published upon completion of an incident investigation as a means of emphasizing the need to prevent unsafe conditions from arising. Except for the urgency of the process, the drafting, approval and release of lessons learned is the same as for safety alerts.

G. DRAFTING SAFETY ALERTS

G.1. BASIS FOR SAFETY ALERT

G.1.a. General

Safety alerts should be based upon the findings of fact from the incident investigation. To determine whether a safety alert is appropriate, the Marine Board or Investigating Officer (IO) should ask the following questions:

- Has the existence of a specific latent unsafe condition been identified?
- What is the extent of the condition? Is it common in the overall maritime community, within a particular class or fleet, or is it rarely found on vessels, facilities or in operations?
- Is there an urgent need to recommend taking actions to mitigate the impact of the identified latent unsafe condition?

G.1.b. Existence of a Latent Unsafe Condition

Safety alerts must address actual latent unsafe conditions that have been found to exist rather than hypothetical conditions. Safety alerts may be made to address any latent unsafe condition identified during an incident investigation.

G.1.c. Extent of the Latent Unsafe Condition

When determining whether a safety alert is appropriate, the Marine Board or the



Investigating Officer (IO) should attempt to ascertain the extent to which the identified condition exists outside of the specific incident that is being investigated. If it is determined to be a common condition that extends over a broad range of vessels, facilities, parties or operations, whether of a certain type or within some geographical boundary, then a safety alert may be appropriate.

G.1.d. Urgency

Safety alerts should generally be limited to addressing those latent unsafe conditions that, if no immediate action is taken, will result in additional incidents in the near future. In most other situations, where the condition is either rare or is less likely to contribute to an incident, then a safety recommendation may be more appropriate.

G.2. CONTENT OF SAFETY ALERTS

G.2.a. General Content and Format

A safety alert should convey the following information:

- A clear and precise description of the latent unsafe condition;
- A short explanation of why the condition is unsafe (i.e. what are the consequences if no action is taken); and
- Recommended action(s) to be taken to eliminate or mitigate the condition.
- If appropriate, a disclaimer indicating that the Coast Guard has not yet concluded whether this or any other condition played a part in the cause or severity of the incident under investigation.

G.2.b. What Is Not Included

Safety alerts are intended to address only latent unsafe conditions identified in the findings of fact and recommended actions to mitigate or eliminate the conditions. They are not to include any reference to conclusions drawn from causal or violation analysis regarding the following:

- Whether an identified condition was the cause or a contributing factor to the incident under investigation, and if so, the extent of its role in the incident; or
- Whether an identified condition, or any actions leading to that condition, are or may be considered a violation of law or regulation.

G.2.c. Language and Terminology

While the Investigating Officer (IO) must ensure that the language used when drafting a safety alert is sufficiently precise, he/she must also take into consideration the audience for which the alert is intended, as the various sectors of the maritime community have different levels of technical expertise and, in many cases, their own terminology. Safety alerts intended for a specific sector



need to use language and terminology that is appropriate for that particular sector. For example, a safety alert intended for the recreational boating community would be phrased differently than one of a similar nature intended for the commercial fishing industry.

G.2.d. Length of Alert

Safety alerts should be as short as possible to allow for rapid and widest dissemination, while still adequately explaining the situation.

H. REVIEWING SAFETY ALERTS

H.1. GENERAL

Each safety alert that is drafted by a Marine Board or Investigating Officer (IO) is subject to a process of review and endorsement through the relevant Coast Guard chain of command in order to evaluate its merits. The end goal of this process is the determination of its approval for release.

H.2. REVIEW AND ENDORSEMENT WITHIN THE CHAIN OF COMMAND

If there are units within the chain of command between the drafting Marine Board or Investigating Officer (IO) and the unit responsible for the approval and release of a safety alert, those units shall review and endorse the safety alert before forwarding it to the next unit in the chain of command. The endorsement should indicate whether the reviewing unit concurs or does not concur with the safety alert and provide an explanation for its determination. By their nature, safety alerts are very time sensitive. Accordingly, reviewers should give safety alerts a high priority for review through the chain of command for approval and release.

H.3. APPROVAL OF SAFETY ALERTS

H.3.a. Definition

The approval of a drafted safety alert is similar to the final action for a safety recommendation. It represents the official Coast Guard response to a draft safety alert and indicates whether the Coast Guard concurs or does not concur that the issuance of a safety alert is necessary and/or appropriate.

H.3.b. Who Determines Approval

In general, the authority to approve a safety alert will reside with the head of the responsible Coast Guard unit. The following guidelines are provided to help establish who will determine the approval of a safety alert:

- For a safety alert drafted from a unit initiated investigation (formal or informal), the head of the Coast Guard unit that holds the authority and responsibility for the area/community affected by a safety alert will determine its approval.
- For a safety alert drafted from a district formal investigation, the District Commander or Commandant will determine its approval.



- For a safety alert drafted from a Commandant's Marine Board of Investigation, the Commandant will determine its approval.

Approval of all Commandant-level safety alerts will be coordinated via the Office of Investigations and Analysis, Commandant (CG-545).

I. RELEASING SAFETY ALERTS

I.1. AUTHORITY TO RELEASE SAFETY ALERTS

The releasing authority for a safety alert resides with the head of the Coast Guard unit that approved it.

I.2. TIMING OF RELEASE

The release of a safety alert should occur as soon after its approval as possible. As with all matters dealing with making information regarding an incident available to the public, the releasing authority must be sensitive to the impact a safety alert may have on grieving families and on the professional image of the Coast Guard.

I.3. MEANS OF RELEASE

Safety alerts may be released through one or more appropriate means at the discretion of the releasing authority. In general, the means of release should be such that it is focused on the target audience of the safety alert. Some typical means of release include:

- Press Release - perhaps the most effective in "getting the word out" it is also one of the least capable at targeting a specific sector of the maritime community.
- E-mail Distribution List - some units have developed, or are developing, e-mail distribution lists of members of the various sectors of the maritime community that operate within their AOR (e.g. all local T-boat operators). This method of distribution allows for improved targeting of a particular group; however, its usefulness is dependent on the e-mail capabilities of the intended audience.
- Internet Publication - many Coast Guard units now have web sites that, in addition to providing unit specific information (e.g. address, phone numbers, missions, etc.), are also used to post announcements and other information intended for public release. If units intend to publish safety alerts on their web site, they should advertise the web address and encourage the public to check it regularly. This method allows for a wide distribution with little effort, but is one of the least capable at targeting a specific sector of the maritime community.
- Periodicals - periodicals such as magazines and newsletters, whether published by the Coast Guard or a commercial organization, can be a very effective means of targeting a specific audience. In many cases though, the delay in writing, proofing and publishing the periodical make this



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means of release ill suited to the urgent nature of a safety alert. However, periodicals may be used as an effective means of following up on the initial release and emphasizing the information provided in the safety alert.

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Chapter Seven:
Marine Casualty
Investigation

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A. MARINE CASUALTIES AND INCIDENTS

A.1. WHAT IS A MARINE CASUALTY?

See 46 CFR
4.03-1

A marine casualty or accident is any incident involving any vessel (except a public vessel) that occurs on the navigable waters of the United States and involving any vessel U.S. vessel (except a public vessel), that results in:

- Damage to or by the vessel or gear; or
- Injury or loss of life to any person.

Some typical marine casualties are:

- Collisions
- Allisions
- Groundings
- Heavy weather damage
- Fires
- Explosions
- Failure of gear and equipment
- Any damage affecting or impairing seaworthiness of a vessel
- Any injury
- Any loss of life, and
- Any injury or loss of life while diving from a vessel using underwater breathing apparatus.

A.2. WHICH REPORTABLE MARINE CASUALTIES DO WE INVESTIGATE?

See 46 CFR 4.05-1
and
46 CFR 4.01-3

A.2.a. General

All incidents reported to the Coast Guard, regardless of the source, *will* be investigated in accordance with 46 USC 6301 and 46 CFR 4.07, however, the OCMI/COTP must determine on a case-by-case basis what investigative actions are appropriate for a specific case based on the likely value to marine safety, available resources, and risks in a given port. The criteria for the investigation of marine casualties and determining level of effort are detailed below.

A.2.b. Criteria for the Investigation of Marine Casualties and Determining the Level of Investigative Effort

Preliminary Investigations A preliminary investigation shall be conducted for any report or evidence of a reportable marine casualty as defined in 46 CFR 4.05-1 involving a U.S. or foreign flag commercial vessel. The following criteria applies:

- When a preliminary investigation reveals that a reportable marine casualty as defined in 46 CFR 4.05-1 has in fact occurred, the level of investigative effort shall be raised to a data collection activity, informal investigation, or formal investigation.
- When a preliminary investigation reveals that a marine casualty meets the MISLE



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Data Entry Exemption below, is not reportable under 46 CFR 4.05-1, or it cannot be verified that a marine casualty has occurred, no additional investigative effort is required and the results of the preliminary investigation shall be documented in MISLE in accordance with the MISLE Process Guides.

- Investigations closed at the preliminary level should be documented in the MISLE notification only; however if an Incident Investigation Activity is generated in MISLE there is no requirement for findings of fact (timeline) entries.

Data Collection Activities A data collection activity shall be conducted for all reportable marine casualties as defined in 46 CFR 4.05-1 not assigned to *Informal Investigation* or *Formal Investigation*. MISLE data entry requirements shall be in accordance with the Investigations and Enforcement Process Guide.

- **MISLE Incident Investigation Data Entry.** Normally, the reported casualty information should be entered into MISLE with only minimum effort expended to verify its accuracy and completeness in accordance with the Investigations and Enforcement Process Guide. The intent of this policy is to reduce the unit workload resulting from investigation of minor marine casualties to an absolute minimum while retaining basic event information for trend and statistical analysis.
- **MISLE Incident Investigation Data Entry Exceptions.** No MISLE data entry beyond the MISLE notification information (see Chapter B2) is necessary or desired for marine casualties meeting the below criteria. For incidents meeting this criteria, the CG-2692 and any other material received should be documented in the notification after minimal review to verify that the incident meets one of the criteria. The unit shall electronically attach the CG-2692 and other 'notification' material to the MISLE notification.
 1. Groundings involving "bump and go" touching of the bottom on Western Rivers (as defined in 33 USC 2003) by uninspected towing vessels and uninspected barges in the navigation channel with no damage, no pollution, no personnel injuries, no breaking apart of the tow, and no assistance required to resume voyage.
 2. Casualties involving only minor injury. A minor injury is any injury that does not result in broken bones (other than fingers, toes, or nose), loss of limbs, severe hemorrhaging, severe muscle, nerve, tendon, or internal organ damage, or in hospitalization for more than 48 hours within 5 days of the injury.
 3. Casualties involving injuries when the injuries result from a pre-existing medical condition and not from a marine operation. (i.e. a mariner with diabetes suffers a spell of blurry vision, and during the spell trips because he did not see a deck fitting and breaks a leg.) If the mariner holds license



or merchant mariner's document the incident should be investigated to determine if suspension and revocation proceedings should be pursued by reason of medical incompetence.

4. Casualties (other than collisions and allisions) reported only because of property damage in excess of \$25,000 where the property damage does not exceed \$100,000.
5. Casualties involving U.S. state-numbered commercial vessels exempt from reporting to the Coast Guard under 46 CFR 4.01-3(a), unless the incident meets the criteria to conduct a formal or informal investigation.

Informal Investigations An informal investigation should be conducted for any casualty involving a U.S. or foreign flag commercial vessel and meeting any of the below criteria. MISLE data entry requirements shall be in accordance with the MISLE Process Guides.

- **Death**: One death. Death cases may be downgraded to the *Data Collection Activity* level of investigation after credible evidence (such as a death certificate) indicates death from natural causes (including a pre-existing medical condition) or suicide.
- **Injury**: One injury which results in fractured bones (other than fingers, toes, or nose), loss of limbs, severe hemorrhaging, severe muscle, nerve, tendon, or internal organ damage, or in hospitalization for more than 48 hours within 5 days of the injury.
- **Vessel loss**: Loss of an uninspected vessel of less than 500 GT, or loss of a barge of more than 100 GT on inland waters (as defined in 33 USC 2003).
- **Property damage**: An event involving a vessel and resulting in property damage exceeding \$100,000 but less than \$1,000,000. The damage value comprises the cost of labor and material to restore the property (vessels, shoreline facilities, pipelines, OCS facilities, etc.) to its original condition before the occurrence, but does not include damage to natural resources, or the cost of salvage, cleaning, gas-freeing, dry-docking, or demurrage. Damage values should be the best estimates available immediately following the accident.
- **Collision**: Any collision or allision resulting in property damage exceeding \$25,000.
- **Loss of propulsion or steering**: Any loss of propulsion or steering, even if momentary, affecting an inspected U.S. vessel anywhere, or affecting a foreign flag vessel or an uninspected U.S. vessel over 100 GT on U.S. navigable waters.



- Flooding or fire: Flooding or fire that adversely affect a vessel's fitness for service on an inspected U.S. vessel anywhere, or on a foreign flag vessel or an uninspected U.S. vessel over 100 GT on U.S. navigable waters.
- Equipment failure: Failure of Coast Guard-approved primary lifesaving equipment or Coast Guard-approved firefighting equipment.
- Discharge: Medium discharge of oil or medium release of a hazardous substance (as defined in 40 CFR 300.5), or of hazardous cargoes regulated under 46 CFR Subchapter O, in which a vessel is the source or the cause of the discharge or release.
- Commercial Diving Casualty. Death or injury of persons diving from a vessel for commercial purposes.
- Recreational Diving Casualty: Death or injury of persons diving from a vessel in federal waters for recreational purposes.

Formal Investigation A formal investigation should be conducted for any casualty involving a U.S. or foreign flag commercial vessel and meeting any of the below criteria. MISLE data entry requirements shall be in accordance with the MISLE Process Guides.

- Death: 2 or more deaths.
- Injury: 2 or more seriously disabling injuries or 6 or more injuries which result in fractured bones (other than fingers, toes, or nose), loss of limbs, severe hemorrhaging, severe muscle, nerve, tendon, or internal organ damage, or in hospitalization for more than 48 hours within 5 days of the injury.
- Vessel loss: Loss of an inspected vessel, or loss of an uninspected vessel of 500 GT or more.
- Property damage: An event involving a vessel and resulting in property damage exceeding \$1,000,000. The damage value comprises the cost of labor and material to restore the property (vessels, shoreline facilities, pipelines, OCS facilities, etc.) to its original condition before the occurrence, but does not include damage to natural resources, or the cost of salvage, cleaning, gas-freeing, dry-docking, or demurrage. Damage values should be the best estimates available immediately following the accident.
- Discharge: Major discharge of oil or major release of a hazardous substance (as defined in 40 CFR 300.5), or of hazardous cargoes regulated under 46 CFR Subchapter O, in which a vessel is the source or the cause of the



discharge or release.

Foreign Flag Exception: A formal investigation is not required for a casualty involving only a foreign flag vessel (i.e., no U.S. vessel involved, no damage to U.S. property, and no injury of U.S. citizens).

Barge Exception: A formal investigation is not required for the loss of a barge on inland waters (as defined in 33 USC 2003).

A.3. HAZARDOUS CONDITIONS

See 33 CFR 160.215

The owner, agent, master, operator, or person in charge must report a hazardous condition to the COTP if such a condition exists under 33 CFR 160.215. A hazardous condition is any condition on the navigable waters of the United States that may adversely affect:

- the safety of any vessel, bridge, structure, or shore area; or
- the environmental quality of any port, harbor or navigable waterway of the United States.

Typical hazardous conditions include (but aren't limited to):

- Collisions;
- Allisions;
- Fires;
- Explosions;
- Groundings;
- Leaking;
- Damage;
- Injury or illness of a person onboard; and
- Manning shortages.

Reporting a hazardous condition to the COTP does not alleviate the person of the responsibility to report a marine casualty, or vice-versa.

A.4. POST CASUALTY DRUG AND ALCOHOL TESTING

See 46 CFR 4.05-12

Following every marine casualty reportable to the Coast Guard under 46 CFR 4.05-10, the marine employer must determine whether there is any evidence of alcohol or drug use by the individuals directly involved. Such evidence may include chemical tests for drugs and alcohol. Any evidence must be preserved and reported to the Coast Guard. Again, this general responsibility applies to all reportable marine casualties, not only to serious marine incidents.

A.5. WHO SHOULD BE TESTED AND WHEN TESTING SHOULD BE INITIATED

See 46 CFR 4.06-1

At the time of a marine casualty, the marine employer must make a good faith determination whether the incident is or will likely become a serious marine incident. If it is or likely will be, the marine employer must decide whom aboard the vessel was directly involved in the incident. A law enforcement officer can also decide who was directly involved, and "add" people to the marine employer's list. Those directly involved people, excluding passengers for hire, must be tested for drugs and alcohol.



People ordered to be tested should not leave their duties in the aftermath of an incident when their performance is necessary to save lives or property, or to protect the environment. Wherever possible, the marine employer must assure alcohol testing is completed within 2 hours of a serious marine incident. Drug testing should be completed as soon as practicable after a serious marine incident.

A. 6. RESPONSIBILITY FOR CONDUCTING THE TESTS AND RESULTS

See 46 CFR 4.06-5
46 CFR 4.06-10,
46 CFR 4.06-60,
and
46 CFR 4.05-10

The marine employer is responsible for assuring that drug and alcohol testing is conducted, but no individual can legally be forced to give a sample for chemical testing. In such refusal cases, the individual's refusal must be documented, and that person may be liable for a civil penalty or be subject to Coast Guard action against their MMC (if they hold one). Evidence of drug or alcohol use, including test results, must be reported and made available to the Coast Guard as soon as possible after receipt.

A. 7. KINDS OF TESTS TO BE CONDUCTED

See 46 CFR 4.06-20
46 CFR 4.06-30,
46 CFR 4.06-40,
46 CFR 4.06-50,
46 CFR part 16.

Chemical tests of an individual's breath for the presence of alcohol may be conducted by an individual trained to do so, and should be supervised by qualified collection personnel, the marine employer, his or her representative, or a law enforcement officer. No specific chemical test for alcohol is required.

In most instances, the marine employer themselves do not collect or analyze samples for the presence of drugs. In these cases, the sample, collection, custody, analysis, and review must be completed according to the regulations contained in 46 CFR Part 16.

A. 8. DESIGNATION AS A PARTY-IN-INTEREST

See 46 CFR 4.03-10

Any person who has a direct interest in the outcome of a marine casualty investigation can be involved in that investigation. Although IOs consider requests to be designated a *Party-in-Interest* on a case-by-case basis. Parties-in-interest are statutorily defined in 46 USC 6303.

Parties-in-interest can be represented by attorneys or other persons, produce evidence for the Coast Guard to consider, call witnesses to give testimony for the Coast Guard, and have the right to examine evidence and testimony given to the Coast Guard. Parties-in-interest exercise their rights by requesting them through the IO, who (because they retain control of the investigation) will determine whether the evidence and witnesses are necessary and relevant to the investigation's purposes.

In a formal investigation, parties-in-interest generally are designated in writing and exercise their rights through the IO during formal public hearings. In an informal investigation, parties-in-interest are generally not designated in writing, but are noted in the ROI, and arrangements regarding the need or interest to be present during interviews and the review of evidence is worked out on a case-by-case basis. See Chapter A5 for more information.



B. MARINE CASUALTY TERMINOLOGY AND ANALYSIS REQUIREMENTS

B.1. POLICY WITH REGARD TO TERMINOLOGY IN MARINE CASUALTY INVESTIGATIONS

The following details policy with regard to terminology used in marine casualty investigations for all levels of investigative effort. The IMO Code was adopted and modified by the Coast Guard to describe the facts and causes of the incidents we investigate, and is integrated as the conceptual underpinning of MISLE. Additionally, it eliminates the confusion that can arise when investigators arbitrarily choose one of the many causes at various levels as the “root cause.” The IMO approach yields that there is no single “root cause.” instead there are **many causal factors** that all contribute in some way to the incident. All other “root cause” language shall be avoided in order to minimize confusion.

B.2. POLICY WITH REGARD TO THE REQUIRED ANALYSIS FOR MARINE CASUALTIES

B.2.a. General

This section details policy with regard to the minimum parts of the analysis in Chapter B4 to be used for marine casualty investigations for all levels of investigative effort.

B.2.b. Preliminary Level of Investigation

Marine casualty investigations that only reach the preliminary level of investigation require no analysis be completed beyond adequate fact-finding to determine that no further Coast Guard effort is required.

B.2.c. Data Collection Level of Investigation

Marine casualty investigations that reach the data collection level of investigation require the generating of a timeline with only enough information to meet the minimum data entry requirements for MISLE as detailed in the MISLE Process Guides.

B.2.d. Informal Level of Investigation

Marine casualty investigations that reach the informal level of investigation require the following:

- Generating a Timeline: All steps necessary to complete the requirements of causal analysis below.
- Causal Analysis: Shall determine the initiating event and all subsequent events. Shall analyze all applicable defense failures or missing defenses between the events. Should determine active failures in production and preconditions leading to them and the missing or failed defenses between them.
- Human Error Analysis: Shall determine all unsafe acts and decisions in production and all failed defenses.
- Conclusions: Shall be generated for any causal and human error analysis factors that lead to Safety Recommendations.
- Safety Recommendations: Shall develop safety recommendations when an unsafe condition is identified over which control can be exercised but are



currently missing or inadequate.

B.2.e. Formal Level of Investigation

Marine casualty investigations that reach the formal level of investigation shall complete all steps within the investigative process: generating a timeline, causal analysis, human error analysis, conclusions and safety recommendations. Additionally, there must be evidence that corroborates every finding of fact.

C. MARINE CASUALTIES AND INCIDENTS REPORTED TO THE INTERNATIONAL MARITIME ORGANIZATION (IMO)

C.1. INFORMATION REQUIRED FOR INCIDENTS REPORTED TO THE IMO

When such information can reasonably be obtained, the following information must be contained in a marine casualty ROI which will be forwarded by CG-545 to the IMO:

Involved Vessels

- Name, IMO number, nationality, port of registry, call sign
- Name and address of owners and operators, if applicable, also, if an overseas ship, of agents
- Type of ship
- Name and address of charterer, and type of charter
- Deadweight, net and gross tonnages, and principal dimensions
- Means of propulsion; particulars of engines
- When, where and by whom built
- Any relevant structural peculiarities
- Amount of fuel carried, and position of fuel tanks
- Radio (type, make)
- Radar (number, type, make)
- Gyro compass (make, model)
- Automatic pilot (make, model)
- Electronic positioning equipment (make, model) (GPS, Decca, etc.)
- Life saving equipment (dates of survey/expiry)

Documents

(Note: Any documents that may have relevance to the investigation should be produced. Where possible original documents should be retained, otherwise authenticated and dated photocopies should be taken.)

- Ship's register
- Current statutory certificates
- ISM Code certification
- Classification society or survey authority certificates
- Official log book
- Crew list



- Crew qualifications
- Deck log book
- Port log, log abstract and cargo log book
- Engine movement book
- Engine-room log book
- Data logger print-out
- Course recorder chart
- Echo sounder chart
- Oil record book
- Soundings book
- Night order book
- Master's/Chief Engineer's Standing Orders
- Company Standing Orders/Operations Manual
- Company safety manual
- Compass error book or records
- Radar log book
- Planned maintenance schedules
- Repair requisition records
- Articles of Agreement
- Bar records - daily purchases - voyage receipts, etc.
- Records of drug and alcohol tests
- Passenger list
- Radio log
- Ship reporting records
- Voyage plan
- Charts and record of chart corrections
- Equipment/machinery manufacturer's operational/maintenance manuals
- Any other documentation relevant to the inquiry

Particulars of the voyage

- Port at which the voyage commenced and port at which it was to have ended, with dates/times
- Details of cargo
- Last port and date/time of departure
- Draughts (forward, aft and amidships) and any list
- Port bound for at time of occurrence
- Any incident during the voyage that may have a material bearing on the incident, or unusual occurrence, whether or not it appears to be relevant to the incident
- Plan view of ship's layout including cargo spaces, slop tanks, bunker/fuel lube oil tanks (diagrams from IOPP Certificate)



- Details of cargo, bunkers, fresh water and ballast and consumption

Particulars of people involved in incident

- Full name
- Age
- Details of injury
- Description of accident
- Person supervising activity
- First aid or other action on board
- Capacity on board
- Certificate of Competency/License:
 - Grade;
 - Date of issue;
 - Issuing country/authority;
- Other Certificates of Competency held
- Time spent on vessel concerned
- Experience on similar vessels
- Experience on other types of vessels
- Experience in current capacity
- Experience in other ranks
- Number of hours spent on duty on that day and the previous days
- Number of hours sleep in the 96 hours prior to the incident
- Any other factors, on board or personal, that may have affected sleep
- Whether smoker, and if so, quantity
- Normal alcohol habit
- Alcohol consumption immediately prior to incident or in the previous 24 hours
- Whether under prescribed medication
- Any ingested non-prescribed drugs
- Records of drug and alcohol tests

Particulars of sea state, weather and tide

- Direction and force of wind
- Direction and state of sea and swell
- Atmospheric conditions and visibility
- State and height of tide
- Direction and strength of tidal and other currents, bearing in mind local conditions

Particulars of the incident

- Type of incident



- Date, time and place of incident
- Details of incident and of the events leading up to it and following it
- Details of the performance of relevant equipment with special regard to any malfunction
- Persons on bridge
- Persons in engine-room
- Whereabouts of the master and chief engineer
- Mode of steering (auto or manual)
- Extracts from all relevant ship and, if applicable, shore documents including details of entries in official, bridge, scrap/rough and engine-room log books, data log printout, computer printouts, course and engine speed recorder, radar log, etc.
- Details of communications made between vessel and radio stations, SAR centers and control centers, etc., with transcript of tape recordings where available
- Details of any injuries/fatalities
- Voyage data recorder information (if fitted) for analysis

Assistance after the incident

- If assistance was summoned, what form and by what means
- If assistance was offered or given, by whom and of what nature, and whether it was effective and competent
- If assistance was offered and refused, the reason for refusal

Engine-room orders

In all cases where a collision or grounding is the subject of an investigation, and the movements of the engine are involved, the master or officer on watch and other persons in a position to speak with knowledge are to be asked whether the orders to the engine-room were promptly carried out. If there is any doubt on the matter, the investigator must refer to it in the ROI.

D. VESSEL FIRES AND EXPLOSIONS

D.1. BASIC FIRE SCIENCE

D.1.a. Elements of Combustion

According to current reference texts, four basic elements must be present for a fire to occur:

- Combustible fuels;
- An oxidizer (such as oxygen in air);
- Energy as a means of ignition (primarily in the form of heat); and
- A self-sustaining reaction between fuel and oxygen.

Removing any one of these four elements will extinguish a fire; all four elements must be addressed to explain a fire or explosion.

**D.1.b. The Oxidation Reaction**

The fundamental chemical reaction in fire is oxidation. In its most simple form, oxidation is simply the combining of atomic oxygen with other elements or compounds found in fuel. When less chemically stable compounds combine with oxygen to form a more stable compound (such as carbon monoxide or carbon dioxide), the reaction is usually exothermic, meaning that it releases energy, primarily in the form of heat. Most oxidation reactions (and thus most fires) fall into this category. It is important to note, however, that many other chemical and physical reactions (usually producing or releasing fuel) occur in a fire.

D.1.c. Flaming Fires

Fires characterized by flame are the most common. In this type of fire, the flame actually is the fire: it is the *gas* that is burning. The light from the flame results from the chemical reaction of various elements; the color depends on the specific elements, their by-products, and the temperature of the combustion gases. In a flaming fire, gases in the fuel are released (or created by the heat), escape, mix with an oxidizing gas such as air, and burn. An example is an oxy-acetylene torch flame.

D.1.d. Glowing Fires

A glowing fire is one in which there is no flame, but the presence of very hot materials on the surface of a solid fuel indicates that combustion is occurring. In this type of fire, it is the *solid fuel* that is actually burning. The light emitted by the burning object's surface depends upon the temperature of that surface itself. In a glowing fire, some sort of forced draft is usually necessary to keep supplying oxygen to the fire. An example is a forced draft charcoal fire.

D.1.e. Explosions

An explosion is simply a type of fire in which the entire combustion occurs in a very short period of time. Generally, vapors, dusts, or gasses are premixed with air in precisely the right ratios (too little oxygen or too much will not allow an explosion), and the mixture is ignited. In this type of fire, it is again the *gas* that is burning. The very fast combustion can produce an enormous release of energy in the form of heat and explosive pressure. Examples include grain dust explosions and petroleum vapor explosions.

D.1.f. BLEVE

When flammable liquids are packaged into airtight containers or pressure vessels, heat or fire can cause pressure caused by the expanding liquid can prevent its evaporation. Effectively, raising the atmospheric pressure in the pressure vessel raises the boiling temperature of the liquid. When a fire continues to add heat, the liquid fuel can pyrolyze, decomposing into highly flammable vapors when the liquid is combustible, tremendously increasing the available fuel load for an explosion. When the container or PV ruptures under the increased internal pressure, the over-pressurized mixture of pyrolyzed vapors and spontaneously boiling liquid erupts with explosive force. This explosion is known as a Boiling Liquid Expanding Vapor Explosion (BLEVE).

When the liquid in the container or PV is combustible, a BLEVE may be immediately followed by detonation of the escaping combustible vapors.

**D.2. SEQUENCE OF
A COMPARTMENT FIRE****D.2.a. Introduction**

In general, fires in a compartment with a normal fuel load go through four well-defined stages in their lifetime. Each stage has its own characteristics and effects on the fuels in the compartment. IOs should be aware of these four stages so that they may accurately assess the stage and progression of a fire through various compartments.

D.2.b. Ignition

The primary igniter for virtually every fire is simple heat. In general, typical class A fires are ignited by hot objects (including electrical-resistance heated wires), friction (which produces heat), radiant heat from exhaust flues, static electricity, exothermic chemical reactions and other sources ignition. In general, for ignition to occur, the heat produced must be hotter than the “ignition temperature” of the fuel it encounters, and sufficient oxygen must be present to sustain the oxidation reaction.

D.2.c. Incipient Stage

The incipient stage begins the moment after ignition. In general, the flames are contained and there is typically a free-burning flame. The compartment will generally have normal oxygen content (~21%), and temperature in the room has not yet begun to rise. As the free-burning flame burns, a plume of hot gasses containing soot, water vapor, and solids, will rise from the flame. These gasses rise to the overhead and displace normal air downward, where the oxygen fuels the growing fire. If there is fuel above the burning flame, it spreads upward and outward, producing the characteristic V-pattern of stains and char.

D.2.d. Free Burning Stage

As the fire grows and more fuel is consumed, enough heat will be produced to ignite other materials in the compartment. The speed of this horizontal or lateral spread of flames depends on the density and combustibility of the fuels in the compartment. In general, a significant amount of plume gasses will be generated, which collect at the overhead and creep downward as they progressively blanket the compartment. Temperatures in this smoke/vapor layer will rise during the free-burning stage, though temperatures near the deck may remain relatively low. When ventilation in the compartment is limited, combustion efficiency will normally decrease, and a fuel and oxygen rich vapor layer is produced above the flames but beneath the smoke layer at the overhead. This fuel and oxygen rich layer will build and move lower until ignited by open flames or radiation, a mini-explosion. Flares of this fuel and oxygen rich layer can ignite other fuels and greatly spread the fire. Once the temperatures in the compartment reach a sufficiently high level (usually over 1100 degrees F), all the materials in the compartment will spontaneously ignite (given sufficient oxygen); this is “flashover.”

D.2.e. Smoldering Stage

As fuel or oxygen is exhausted (oxygen below 16%), open-flame burning diminishes or is extinguished. At this point, the fire changes to the glowing combustion, with high temperatures continuing. Glowing combustion can continue to produce fuel-rich vapors. Should these vapors suddenly encounter a new source of oxygen, the



compartment can “flashback” in an explosive nature. In most cases, however, heat and oxygen (assuming there is no ventilation) further dissipate and the fire is self-extinguished.

D.3. TRACING THE COURSE OF THE FIRE**D.3.a. Introduction**

The fundamental task in fire investigation is reconstructing the sequence of events backwards from the ashes. With the exception of explosion-caused fires, almost every fire begins with a small flame that spreads. Accordingly, IOs should focus their attention on tracing the small flame as it grew into a larger fire. This section discusses general rules of fire behavior useful in tracing the fire.

D.3.b. Fires burn upward

In general, hot gases are lighter than surrounding air, and therefore rise. Absent strong ventilation or a physical barrier, fires will generally burn upwards, though a much lesser degree of downward travel may also occur.

D.3.c. Insufficient fuel causes a fire to burn out

Fires spread because they encounter fuel above or to the side of them that can be ignited. When insufficient fuel is present above and to the sides, the fire is generally self-limiting and will burn out.

D.3.d. Fires can be diverted by ventilation or radiant ignition

Air currents can deflect a flame, causing the fire to spread in a more horizontal fashion than would normally occur (fires burn upward). When evaluating a fire's spread, the IO must pay close attention to all possible sources of air currents. Similarly, horizontal surfaces can block a fire's upward progress. When these surfaces become extremely hot, however, they may become a secondary, radiant source of ignition for fuels adjacent to them. In this fashion, fires may progress vertically despite a horizontal barrier. IOs should be conscious of this possible phenomenon and closely consider the possibility of radiant ignition in secondary compartments.

D.3.e. Vertical spread is enhanced by “chimneys”

Stairways, elevators, air ducts, and so on can carry away heated gasses, providing enhanced draft for fires. These chimney-like arrangements can also serve as a route of rapid vertical flame spread. IOs should be particularly sensitive to pre-fire configurations which may have facilitated the chimney effect.

D.3.f. Downward spread, while less common, can occur

Fires usually spread downward when burning solids or liquids fall down onto combustible materials, or when surfaces (usually decks) become so hot that they become secondary, radiant sources of ignition for the compartments beneath. The flame damage patterns in downward spread situations can be confusing, and IOs should consider seeking advice from fire investigation experts when they believe downward spread may have been a significant factor. In general, the downward spread of a fire will be controlled almost entirely by the amount and type of fuels present in the lower compartment.

D.3.g. Fires generally spread like a hot gas

As a broad generalization, fire tends to spread as though it were a hot gas: upward in



relatively straight lines, and outward around barriers.

D.3.h. Fire suppression efforts affect flame spread

When recreating the spread of a fire, IOs must keep in mind that fire suppression efforts on one fire front can force the fire back into other areas which were not involved. Similarly, fire suppression can force downward spread, and even under obstacles. When a protracted fire-fighting effort was involved, the IO should consider the sequence of attacks made on the fire and their possible effects on fire spread.

D.3.i. Liquid fuels produce different burn patterns

Predictably, liquids tend to pool in the lowest available area. Because liquids do not burn directly (it is the vapors that burn), heavier liquids will tend to “wick” when porous solids are available, causing an unusual burn pattern. Additionally, most solid fuel compartment fires leave less burn trace in the corners of the compartment because these areas are dead air spaces. In liquid fuel fires, however, burning liquids can reach corners causing a more uniform burn pattern.

**D.4. INSPECTING
THE FIRE SCENE**

D.4.a. Sequence of the Inspection

IOs should begin their on-scene inspection by examining the external structures in order to determine both the limits of the fire damage and the areas of heaviest damage. During this walk-through, IOs should note sources of ventilation supplying the fire area. Once the perimeter has been established, the IO should follow a spiral search pattern, working towards the center of the fire. During the course of the search, IOs should note and record using a diagram any dropped equipment or clear signs of fire-fighting efforts. In general, IOs should follow a fire path from the least damaged area to the most damaged area, usually the source of the fire.

D.4.b. Heat Horizon

In general, the height at which significant heat was present in a compartment can be detected by the burning, blistering, or discoloration of paint and other structural materials (the “heat horizon”). In an unventilated compartment, gases will rise and distribute uniformly along the overhead, causing the heat horizon to be level to the floor. When a heat horizon is not flat, this is an indication that ventilation or a chimney effect was in play in the compartment. IOs must remain aware that a vessel list or ventilation during fire-fighting can also cause “tipped” heat horizons. When clear heat horizons are present in a compartment, the IO should consider measuring and recording the heat horizon on a vertical diagram of the compartment.

D.4.c. Smoke Horizon

Similarly, smoke can discolor or stain walls, overheads, and even glass (the smoke horizon). Because smoke rises as a gas, in an unventilated compartment, the smoke horizon will be level with the floor. Tipped smoke horizons may also be signs of ventilation or chimneys. When clear smoke horizons are present, the IO should note them separately from the heat horizon.

D.4.d. Glass

Glass can be a valuable indicator of fire spread. Although glass appears to be a solid, it is in fact a super-cooled liquid. As a liquid, glass will bow and flex until its internal stresses cause it to shatter. When glass shatters, either from mechanical impact or



thermal stress, it breaks in radial and concentric circle patterns, producing the familiar “spider web” pattern. Depending on soot or ash deposits on the broken edges of glass, the IO can tell when in the sequence of the fire the glass was broken. Crazed (microfractured) glass usually indicates a rapid a flash fire causing rapid thermal change and, thus, stress throughout the glass. Melted glass in windows and light bulbs can indicate the direction of fire travel, as glass will melt first where it first encounters flame, causing it to “belly in” toward the direction the flame. When using glass to determine the direction of flame spread, IOs should assure themselves that the glass has not been disturbed during firefighting efforts, which would invalidate any conclusions drawn from it.

D.5. ELECTRICAL FIRES

The central questions with regard to electrical systems in fire investigation are: 1) Was conductor/wiring melting caused by the fire? or 2) Was the fire caused by an electrical failure? Generally, the IO should trace the electrical system in a compartment affected by fire. Examining the insulation, etc., of the unburned portions of the wiring will typically reveal clues on these questions. IOs should also check breakers, fuses, and contacts. Similarly, the IO should remain sensitive to the electrical devices located within the compartment, noting their positions in relation to the burn pattern in the compartment.

D.6. IMO SUGGESTED FIRE AND EXPLOSION QUESTIONS

To the extent that such information is available, IOs should collect the following information about each fire and explosion:

- How was the ship alerted to the fire?
- How was the individual alerted to the fire?
- Where did it start?
- How did it start (if known)?
- What was the immediate action taken?
- Condition of fire-fighting equipment, supported by dates of survey/examination
- Extinguishers available:
- Type available in the vicinity;
- Types available on the ship;
- Types used
- Hoses available/used
- Pumps available/used
- Was water immediately available?
- Were air vents closed off to the space?
- What was the nature of the material on fire and surrounding the fire?
- Fire retardant specification of bulkheads surrounding the fire
- Restrictions caused by (a) smoke, (b) heat, (c) fumes
- Freedom of access
- Access availability for fire fighting equipment
- Preparedness of crew - frequency, duration, content and locations of fire musters and drills



- Response by land-based fire-fighting brigades

E. VESSEL NAVIGATION INCIDENTS

E.1. NAVIGATION CASUALTIES

E.1.a. General

Navigation casualties that occur can be primarily grouped into three major categories: collisions, allisions and groundings.

See 46 CFR 4.05

Because of the complex nature of some of these occurrences, IOs are encouraged to seek expert advice.

E.1.b. Definition of a Collision

A **collision** is the running of two vessels, both of which are underway, against one another. See *Black's Law Dictionary*

E.1.c. Definition of an Allision

An **allision** is the running of one vessel into or against a vessel not underway or against another object not underway, including a buoy, pier, piling, dolphin, or other fixed structure. See *Black's Law Dictionary*.

E.1.d. Definition of a Grounding

A **grounding** is the drifting, driving, or running aground of a ship on a shore or a strand. Accidental grounding takes place where a ship is driven on shore by the winds and the waves. Voluntary grounding takes place where the ship is run on shore either to preserve her from a worse fate or for some fraudulent purpose.

E.2. DETECTION OF NAVIGATION TYPE CASUALTIES

Generally, the vast majority of navigation type casualties will be detected through passive modes as a result of the reporting requirements found in 46 CFR 4.05-1 and 4.05-10. However, IOs should pay particular attention to the incident history of a particular vessel, organization, person, facility, or waterway. In many cases, a repeated history of accidents by a single company (perhaps on many vessels) or a high number of casualties on a specific waterway may indicate a latent unsafe condition endemic to the company or of that particular location. Accordingly, IOs are strongly encouraged to view their detection efforts within the context of patterns of incidents.

E.3. TIMELY ARRIVAL TO AN INCIDENT SITE

It is imperative during the fact-finding stage of an investigation to arrival at the casualty site as quickly as possible in order to secure the scene, collect evidence and interview witnesses. This is particularly important for navigation related casualties such as collisions, allisions and groundings.

E4. SECURING THE INCIDENT SCENE

E.4.a. Securing the Wheelhouse

In cases of a navigation type casualty, the wheelhouse should be secured as soon as possible following the incident. However, an IO should **never** hinder the safe navigation and maneuvering of the vessel. Optimally, the wheelhouse should be left unchanged until the investigation team has inspected it. When this is not possible due to the need for the vessel to make essential and immediate maneuvers, the scene should be documented by photographs, audio visual recordings or sketches or any other relevant means available with the main objective of preserving vital evidence and possibly recreating the circumstances at a later date. Of particular importance is



the recording of the positions of individuals at the site, the condition and position of equipment (and controls), supervisory instructions, guiding procedures and recording charts. Damage or failed components should be kept in a secure location to await the arrival of the investigation team who may require detailed scientific examination of certain key objects. Such key objects should be carefully marked.

E.4.b. Secure Critical Documentary Evidence

The IO shall, to the best of their ability, immediately collect and secure the following critical documentary evidence following a navigation-related casualty. All other documentary evidence can be gathered at a less critical pace during the investigation. (Collected evidence should occur in the presence of a witness.)

- **Charts and Publications** - Collect and secure those charts used in voyage planning and transit as well as all applicable Light Lists and Coast Pilots in use at the time of the casualty. This also includes rapid plots or any job aids that might have been used during the evolution of the incident.
- **Course Recorder** – Course recorder data should be retrieved with any time difference and gyro repeater error noted.
- **Voyage Data Recorder**
- **Engine Control Recorder (Bell Logger)** – Retrieve data from the recorder with any time differences noted. Engine control room may also have a separate Engine Control Recorder.
- **Bell Books** – Collect both Wheelhouse and Engine Bell Books.
- **Log Books** – Official and rough (working) log books in both the wheelhouse and engine control room.
- **Standing Orders and Guiding Procedures** – The master will post standing orders for all watch officers to abide by. These will be in terms of both general guidance to follow during a navigational watch or can be very specific regarding a specific navigational watch or evolution expected during a particular watch. This customarily includes general cautionary guidance such as minimum allowable closest point of approach (CPA) for vessel traffic, course changes and conditions when the master should be called to assist the watchstanders.
- **Radar Recorder** – Some radar equipment, such as certain ARPA models, may have an internal recording device. Contact the manufacturer for instructions on data retrieval.
- **Navigation Equipment** – Some navigation equipment, such as certain models of GPS's and LORAN's, may have an internal recording device. Contact the manufacturer for instructions on data retrieval.
 - ❑ Recall and record the navigational waypoints entered and used during the vessel's transit. This should be done by a navigational watchstander and witnessed by the IO.
 - ❑ Look for labels or notes placed on or near the navigational equipment. This may indicate difficulty in using the equipment.
 - ❑ Note all navigational alarms in use during the transit.
 - ❑ Note if navigational equipment receiver is actually receiving a signal or is



in dead reckoning mode.

E.4.c. Collection of Physical Evidence – A Critical Eye

When an IO first arrives on scene and proper introductions are complete with the vessel master or ship's representative, the IO should immediately proceed to the control station used at the time of the casualty. This may be referred to as the bridge, wheelhouse, pilothouse or steering station. Once there, the IO should start collecting occurrence data but should also take time to look at "big picture" items such as the general condition and layout of navigational and control equipment. IOs should take particular note of the following:

- **Watch Standing Station** – Note where the watchstanders conduct their normal routine or duties.
- **Visibility** – Note the range of visibility from where the navigational watchstander conducts his or her duties. Note obstructions or things that would hinder their view.
- **Windshield** – Is the windshield clean and clear? Is there a usable wash-down system to routinely clean the windshield? Are the windshield wipers functional and in good condition? Is the vessel fitted with sun shades? Does the windshield, by virtue of its design, reflect interior lighting?
- **Chart Room or Table** – Note the location and layout. Does it permit easy access and allow the watch officer to maintain an adequate lookout?
- **Navigation Equipment** – Note the layout and functionality of the navigational equipment. Can the display information be seen visually or alarms be heard in the wheelhouse area.
- **Posted Job Aids** – Often, especially if a vessel has a steady transit, the crew will create job aids or small working charts to use instead of the larger, more cumbersome nautical charts. Check for their use and accuracy. Also, reminders or job aids might be posted throughout the workplace. Note any that you see as they might be indicative of operational difficulties or problems. Vessels on a regular run may also use a Plexiglas overlay and plot positions using a grease pencil.
- **Navigational Procedures or Guidance** – Note the location of vessel operational guidance. Note its accessibility, ease of use, and apparent signs of use such as worn bindings and pages.
- **Deceptive Behaviour of Crew** - Note any attempt by crewmembers to be deceptive.

E.5. COLLECTION OF OCCURRENCE DATA

E.5.a. General Casualty Data –All Cases

To the extent that such information is available, IOs should collect the following information about each casualty:

- Casualty type
- Date and local time of casualty
- Position/Location of casualty – Latitude and Longitude, bearing and distance from a known point or river mile marker reference.



- Vessel(s) involved
- Consequences
- Weather at time of casualty
- Visibility
- Waterbody type
- Sea conditions
- Tidal/current conditions
- Water depth
- Aids to navigation used
- Failure of aids to navigation
- Vessel Traffic Service used

E.5.b. Vessel Related Data – All Cases

To the extent that such information is available, IOs should collect the following vessel related information:

- Name of vessel
- Previous name(s)
- Nationality (Flag)
- Previous nationality(s) (Flag(s))
- Documentation Number (IMO Number, State Number)
- Home port
- Vessel type/service
- Call sign
- Gross tonnage
- Deadweight
- Length overall
- Beam
- Drafts – Fore, aft, midships
 - Leaving port
 - At time of casualty (best estimate)
 - After casualty (best estimate)
- List
- Propulsion type and particulars
- Hull construction
- Hull material
- Classification society
- Previous Class Society
- Registered ship owner
- Ship manager/operator
- Date of contract/keel laid/delivery
- Date of major conversion



- Building yard
- Hull number
- Port at which voyage commenced and port at which it was to have ended, with dates
- Details of cargo
- Last port and date of departure
- Port bound for at time of occurrence
- Any incident during the voyage that may have a material bearing on the incident, or unusual occurrence, whether or not it appears to be relevant to the incident
- Plan view of ship's layout including cargo spaces, slop tanks, bunker/fuel lube oil tanks (diagrams from IOPP Certificate)
- Details of cargo, bunkers, fresh water and ballast and consumption

E.5.c. Documentary Evidence - All Cases

Any documents that may have relevance to the investigation should be produced. Where possible original documents should be retained onboard the vessel, otherwise authenticated and dated photocopies should be taken. However, if an IO is presented with a suspected false record book or license or other documents the IO believes to be false they should take the original documents.

- Ship's register
- Current statutory certificates
- ISM Code certification
- Classification society or survey authority certificates
- Official log book
- Crew list
- Crew qualifications
- Deck log book
- Port log, log abstract and cargo log book
- Engine movement book
- Engine-room log book
- Data logger print-out
- Course recorder chart
- Echo sounder chart
- Oil record book
- Soundings book
- Night order book
- Master's/Chief Engineer's Standing Orders
- Company Standing Orders/Operations Manual



- Company Safety Manual
- Compass error book or records
- Radar log book
- Planned maintenance schedules
- Repair requisition records
- Articles of Agreement
- Bar records - daily purchases - voyage receipts, etc.
- Records of drug and alcohol tests
- Passenger list
- Radio log
- Ship reporting records
- Voyage plan
- Charts and record of chart corrections
- Equipment/machinery manufacturer's operational/maintenance manuals
- Any other documentation relevant to the inquiry

E.5.d. Data Regarding Collisions/Allisions/Groundings

To the extent that such information is available, Investigating Officers (IOs) should collect the following information about each collision, allision or grounding. If it is possible, the IO should acquire a graphical representations of the information as well as oral testimony:

- Time, position, course and speed (and method by which established), when presence of other involved ship first became known or when a possibility of grounding became evident
- Details of all subsequent alterations of course and speed up to collision/allision or grounding by own ship
- Bearing, distance and heading of other ship, if sighted visually, time of sighting, and subsequent alterations
- Bearing and distance of other ship, if observed by radar, timing of observations and subsequent alterations of bearing
- If other ship was plotted and by what method (auto-plot, reflection plotter, etc.), and copy of plot, if available
- Check performance of navigation equipment
- Course recorder
- Engine event recorder
- Lights/day signals carried and operated in ship, and those seen in other ship
- Sound signals, including fog signals, made by ship and when, and those heard from other ship and when
- If a listening watch was kept on VHF radio channel 16, or other frequency, and any messages sent, received or overheard
- Number of radars carried on ship, number operational at time of casualty,



- together with ranges used on each radar
- Whether steering by hand or automatic
- Check that steering was operating correctly
- Details of look-out
- Nature and extent of damage
- Compliance with statutory requirement to give name and nationality to other ship and to stand by after collision

E.5.e. Vessel Navigation/Control information to collect

To the extent that such information is available, Investigating Officers (IOs) should collect the following data regarding each navigation and control system onboard the vessel. Information should include model type, condition and operating status and limitations of the following systems:

- Global Positioning System (GPS) – While this is a very accurate navigational system there may be some signal variation due to solar activity and variations in the magnetic field of the earth. Check with the equipment manufacturer or the National Oceanic and Atmospheric Administration (NOAA) for more information.
 - Signal reception strength
 - Display
 - Waypoints used
 - Alarms
 - Antenna condition
 - Job aids/operations manual
- Radar
 - Ranges used
 - Band used
 - Control settings
 - Target strength
 - Display contrast and brightness
 - Filters used (rain or sea clutter)
 - Panel light intensity
 - Condition of hood
 - Plotting method
 - Display (head up or North stabilised)
 - Repeater error
 - Antenna condition
 - Maintenance records
 - Job aids/operations manual
- ARPA
 - Slave or master?
 - Primary use
 - ✓ Vessel Traffic



- ✓ Navigation
 - Ground lock used?
 - Ranges used
 - Control settings
 - Target strength
 - Display contrast and brightness
 - Filters used (rain or sea clutter)
 - Panel light intensity
 - Plotting method
 - Display (head up or North stabilised)
 - Repeater error
 - Trial manoeuvres used
 - Maintenance records
 - Job ads/operations manual
- LORAN
 - Plotting method (LOP's or LAT, LONG)
 - Adequacy of Lines of Position (LOP's) (intersection angles)
 - Antenna condition
- Radio direction finder (RDF)
 - Reference point employed
 - Correction applied
 - Antenna condition
- Celestial Navigation
- Terrestrial Navigation
 - Fixes obtained
 - LOP's
- Other positioning system
- Fathometer
 - Transponder location
- Fathograph
 - Transponder location
- Speed Log Transponder location
 - Doppler
 - Other
 - Transponder location
- Rate of Swing indicator
- Whistle
- Horn
- Running lights
- Signal lights, signal flags
- MSDD
- Radiotelegraph and/or radiotelephone
- Compasses (magnetic, gyro, repeaters) including error



- Course recorder
- Rudder angle indicator
- Tachometer
- Chart(s) in use
- Coast Pilots, sailing directions, local instructions
- Notices to Mariners
- Safety Management System procedures used
- Company instructions
- Standing orders and night orders;
- Deck and engineroom bell books
- Deck and engineroom logs
- Steering system
- Steering gear
- Throttle or engine control type
- Auto pilot
- Bridge to engineroom signal system
- Public announcement system

E.5.f. Information to Collect from Each Involved Party

To the extent that such information is available, IOs should collect the following information regarding each individual involved in a casualty:

E.5.g. Involved Party Checklist

- First Name
- Middle Name
- Last Name
- Unique ID # (SSN, Passport)
- License Number
- Type of License
- Issuing Authority
- Country
- Expiration Date
- Time License Held
- Document Number
- Type of Document
- Issuing Authority
- Country
- Expiration Date
- Time Document Held
- Age
- Height
- Weight



- Sex
- Restrictions/Limitations/Disabilities
- Nation of Origin
- Native Language
- Language in use aboard ship
- Position served on board
- Date reported aboard
- Familiarization conducted?
- Years/months in grade
- Years/months with company
- Years/months on board
- Years/months in industry
- Date/time reported for watch
- Normal length of watch
- Number of watches/day
- Person's line supervisor
- Employer (company) hours on watch when incident occurred
- Off-watch duties
- Hours awake counting back from incident to last sleep period:
- Hours of sleep in 24 hours before incident:
- Location at time of incident:
- Activity at time of incident
- Equipment being used at time of incident
- People in vicinity at time of incident:
- People interacting with at time of incident

E.5.h. Change Analysis - What was different this time?

In many casualty cases, people are surprised a casualty occurs because they have safely completed the task at hand so many times before. Therefore, IOs should always apply 'Change Analysis' and ask, "what did they do differently this time" or "what conditions were different this time?"

E.6. DIAGRAMS

IOs should make all attempts necessary to get a graphical representation of what each involved party saw during the evolution of a casualty. This is particularly important in navigational type casualties.

In developing the collision case, the use of diagrams is highly desirable. Each principal navigation witness should be required to draw a diagram showing the relative positions of the two vessels at the time they began navigating with respect to each other. This should be followed by similar diagrams at other important points in the witness' testimony. Each diagram should be clearly labeled (e.g., "Relative



positions of the two vessels when I sounded the first one blast signal" or "Relative positions of the two vessels when I ordered full astern," etc.). The final diagram should show the two vessels at the time of impact.

For other navigation casualty types, the use of diagrams by the witness can be useful in visualizing the location of objects in relation to one another. Their use should not be overlooked neither for establishing vessel track lines in collision and grounding cases nor for explaining vessel, machinery, and piping arrangements.

E.7. DIRECTION OF THE INVESTIGATION

Very rarely does a collision occur without fault on the part of one or more of the involved vessels. In most instances, these faults occur because the navigational watch officers of one or both vessels depart from the COLREGs because they are attempting to guess the intentions of the other. IOs must be careful to explore departures from the actions required by the COLREGs. When a departure is found, the IO should carefully consider communications with the second vessel (if any), and should explore the watch officer's beliefs at the time with regard to the second vessel's intentions.

E.8. IMO SUGGESTED QUESTIONS ABOUT COLLISIONS - GENERAL

To the extent that such information is available, IOs should collect the following information about each collision involving foreign flagged vessels:

- Local or other special rules for navigation
- Obstructions, if any, to maneuvering, e.g. by a third vessel, shallow or narrow waters, beacon, buoy, etc.
- Circumstances affecting visibility and audibility, e.g. state of the sun, dazzle of shore lights, strength of wind, ship-board noise and whether any door or window could obstruct look-out and/or audibility
- Geographical plot
- Possibilities of interaction
- Name, IMO number, nationality and other details of other vessel

E.9. IMO SUGGESTED QUESTIONS FOR EACH SHIP

To the extent that such information is available, IOs should collect the following information about each collision:

- Time, position, course and speed (and method by which established), when presence of other ship first became known
- Details of all subsequent alterations of course and speed up to collision by own ship
- Bearing, distance and heading of other ship, if sighted visually, time of sighting, and subsequent alterations
- Bearing and distance of other ship, if observed by radar, timing of observations and subsequent alterations of bearing
- If other ship was plotted and by what method (auto-plot, reflection plotter, etc.), and copy of plot, if available
- Check performance of equipment
- Course recorder
- Lights/day signals carried and operated in ship, and those seen in other ship



- Sound signals, including fog signals, made by ship and when, and those heard from other ship and when
- If a listening watch was kept on VHF radio channel 16, or other frequency, and any messages sent, received or overheard
- Number of radars carried on ship, number operational at time of casualty, together with ranges used on each radar
- Whether steering by hand or automatic
- Check that steering was operating correctly
- Details of look-out
- The parts of each ship which first came into contact and the angle between ships at that time
- Nature and extent of damage
- Compliance with statutory requirement to give name and nationality to other ship and to stand by after collision

**E.10. IMO
SUGGESTED
QUESTIONS ABOUT
GROUNDINGS**

To the extent that such information is available, IOs should collect the following information about each grounding:

- Details of voyage plan, or evidence of voyage planning
- Last accurate position and how obtained
- Subsequent opportunities for fixing position or position lines, by celestial or terrestrial observations, GPS, radio, radar or otherwise, or by lines of soundings and, if not taken, why not
- Chart datum comparison to GPS and other datum
- Subsequent weather and tidal or other currents experienced
- Effect on compass of any magnetic cargo, electrical disturbance or local attraction
- Radar/s in use, respective ranges used, and evidence of radar performance monitoring and logging
- Charts, sailing directions and relevant notices to mariners held, if corrected to date, and if any warnings they contain had been observed
- Depth sounding taken, when and by what means
- Tank soundings taken, when and by what means
- Draught of ship before grounding and how determined
- Position of grounding and how determined
- Cause and nature of any engine or steering failure before the grounding
- Readiness of anchors, their use and effectiveness
- Nature and extent of damage
- Action taken, and movements of ship, after grounding

(Note: information as in cases of foundering may also be required)

**E.11. IMO
SUGGESTED
QUESTIONS ABOUT**

To the extent that such information is available, IOs should collect the following information about each foundering:

**FOUNDERING**

- Draft and freeboard on leaving last port and changes consequent upon consumption of stores and fuel
- Freeboard appropriate to zone and date
- Loading procedures, hull stresses
- Particulars of any alterations to hull or equipment, since survey, and by whom such alterations sanctioned
- Condition of ship, possible effects on seaworthiness
- Stability data and when determined
- Factors affecting stability, e.g. structural alterations, nature, weight, distribution and shift of any cargo and ballast, free surface in tanks or of loose water in ship
- Subdivision by watertight bulkheads
- Position of, and watertight integrity of, hatches, scuttles, ports and other openings
- Number and capacity of pumps and their effectiveness; the position of suction
- Cause and nature of water first entering ship
- Other circumstances leading up to foundering
- Measures taken to prevent foundering
- Position where ship foundered and how established
- Life-saving appliances provided and used, and any difficulties experienced in their use

F. STABILITY RELATED INCIDENTS**F.1. STABILITY****F.1.a. General**

IOs need to have a basic knowledge of stability. However, IOs must also understand that this is a complex field of study and they should contact the CG-545 or the Marine Safety Center (MSC) for any in-depth stability calculations and/or analysis. Stability is the ability of a vessel to return to its original condition or position, after some external force has disturbed it. There are two opposing forces constantly acting upon a floating vessel. The force of gravity (G) acts vertically downward through the ship's center of gravity and the center of buoyancy (B) keeps a vessel afloat acting vertically upward through a vessel. In general, the stability of a vessel depends broadly upon the proper management of these forces.

Further, other forces such as wind, waves and weather act on a vessel and also influence stability. These forces cause a vessel to move in various ways depending upon vessel design, the condition of the vessel loading, and the wind, waves and weather. There are six principal motions of a vessel, each affecting a vessel's control and navigation:

- **Roll** - motion about the vessel's longitudinal axis.
- **Pitch** - motion about the vessel's transverse axis



- **Yaw** - motion about the vessel's vertical axis
- **Heave** - vertical bodily motion of the vessel
- **Sway** – lateral, side to side bodily motion
- **Surge** – longitudinal bodily motion

In their daily operations, mariners are mostly concerned with roll.

There are other factors that directly affect stability. Three more will be discussed:

- **Trim** - The difference between the forward and after drafts, in excess of design.
- **List** – A state of equilibrium in an inclined position to one side (port or starboard).
- **Heel** – To be inclined (either continuously or momentary) to one side (port or starboard).

In general, trim and list are and can be controlled by ship's personnel. Heel is an external force placed upon the vessel.

F.1.b. Stability Incidents

Stability incidents usually result from loading issues/weight shifts, flooding, or both. These incidents include, but are not limited to, sinking/capsizing /foundering with causal factors in flooding, icing, loading (and all operations involving loading), lack of maintaining water/weather tightness, etc. See Section E.11 for IMO questions.

F.1.c. Loading Issues / Weight Shifts

When conducting marine casualty investigations of where loading issues or weight shifts were a factor, the following information should be collected, at a minimum:

- Quantity of weight added or shifted;
- Location of weight added or distance shifted;
- Information on list or heel;
- Draft fore and aft;
- Trim;
- Tank levels; and
- Additional weight normally maintained or newly placed on the vessel.

F.1.d. Flooding

For our purposes, *flooding* is the influx of water penetrating the watertight envelope of a vessel or other structure due to some unintended occurrence. This can be via downflooding or when the hull is breeched.

Progressive flooding is uncontrolled flooding.

Per 46 CFR 28.510, *downflooding* is defined as the entry of seawater through any opening into the hull or superstructure of an undamaged vessel due to heel, trim or submergence of the vessel.



When conducting marine casualty investigations involving flooding, a determination must be made (primarily by inspecting the watertight envelope) as to whether it was downflooding, or the result of a breach of the watertight envelope. Following that determination, other factors, including the following, should be addressed:

- Downflooding;
 - Loading
 - Weather
 - Compartmentation / Watertight / Weather tight integrity maintenance
 - Possible flood rate
 - Dewatering capabilities
 - Flooding alarms
 - Evaluation of lifesaving equipment / procedures
- Flooding (via watertight envelope breach)
 - Location / cause of the breach
 - Compartmentation / Watertight / Weather tight integrity maintenance
 - Possible flood rate
 - Dewatering capabilities
 - Flooding alarms
 - Evaluation of lifesaving equipment / procedures

**F.2. USEFUL
INFORMATION FOR
THE IO**

F.2.a. Ship's Hull Markings

Calculative Draft Marks

Used for determining displacement and other properties of the ship for stability and damage control. These draft marks indicate the depth of the keel below the waterline.

Two possible marking systems:

- Roman numerals 3" in height (prior to 1972)
- Arabic numerals 6" in height

Navigational Draft Marks

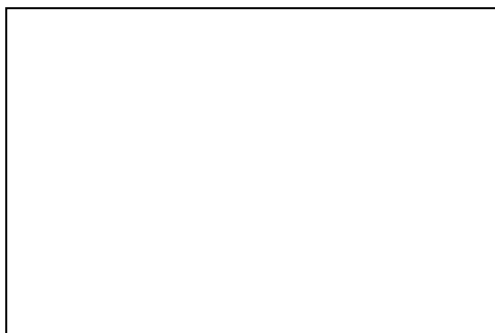
Ship's operating drafts. These draft marks include the depth of any projections below the keel of the ship.

- Arabic numerals 6" in height

F.2.b. Plimsoll Marks (Load lines)

Plimsoll marks are markings of minimum allowable freeboard for registered cargo-carrying ships. They are located amidships on both the port and starboard sides of the ship.

Since the required minimum freeboard varies with water density and severity of weather, different markings are used as in the diagram below:



TF - Tropical Fresh Water

F - Fresh Water

T - Tropical Water (sea water)

S - Standard Summer

W - Winter

WNA - Winter North Atlantic

F.2.c. Flood Rates

The following is a table that provides sample flood rates for various hole diameters at different depths below the waterline based on the formula:

$$Q=C*A*\text{sqrt}(H)$$

- Where Q is equal to the flow rate (varying units based on “C”)
 - C is a constant (3600 for gallons per minute (GPM), 8 for cubic feet per second (CFS), and 825 for tons per hour (TPH))
 - A is the hole area in square feet
 - H is the depth of the center of the hole below the surface in feet.
-



F.2.d. Table of Flood Rates

Hole Diameter (inches)	Depth of Center of Hole from Water Surface (feet)													
	1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	20	28	34	39	44	48	52	56	59	62	65	68	71	73
2	79	111	136	157	176	192	208	222	236	248	260	272	283	294
3	177	250	306	353	395	433	468	500	530	559	586	612	637	661
4	314	444	544	628	702	770	831	889	942	993	1042	1088	1133	1175
5	491	694	850	982	1098	1202	1299	1388	1473	1552	1628	1700	1770	1837
6	707	1000	1224	1414	1581	1731	1870	1999	2121	2235	2344	2449	2549	2645
7	962	1361	1666	1924	2151	2357	2546	2721	2886	3042	3191	3333	3469	3600
8	1257	1777	2177	2513	2810	3078	3325	3554	3770	3974	4168	4353	4531	4702
9	1590	2249	2755	3181	3556	3896	4208	4498	4771	5029	5275	5509	5734	5951
10	1963	2777	3401	3927	4391	4810	5195	5554	5890	6209	6512	6802	7079	7347
11	2376	3360	4115	4752	5313	5820	6286	6720	7127	7513	7880	8230	8566	8890
12	2827	3999	4897	5655	6322	6926	7481	7997	8482	8941	9378	9795	10194	10579
13	3318	4693	5747	6637	7420	8128	8779	9386	9955	10493	11006	11495	11964	12416
14	3848	5443	6666	7697	8605	9427	10182	10885	11545	12170	12764	13331	13876	14400
15	4418	6248	7652	8836	9879	10822	11689	12496	13254	13971	14652	15304	15929	16530
16	5027	7109	8706	10053	11240	12312	13299	14217	15080	15895	16671	17412	18123	18808
17	5675	8025	9829	11349	12689	13900	15013	16050	17024	17944	18820	19657	20460	21232
18	6362	8997	11019	12723	14225	15583	16832	17994	19085	20118	21099	22038	22938	23803
19	7088	10024	12277	14176	15850	17363	18754	20049	21265	22415	23509	24554	25557	26522
20	7854	11107	13603	15708	17562	19238	20780	22214	23562	24836	26049	27207	28318	29387
21	8659	12246	14998	17318	19362	21210	22910	24491	25977	27382	28719	29996	31221	32399
22	9503	13440	16460	19007	21250	23278	25143	26879	28510	30052	31519	32920	34265	35558
23	10387	14689	17991	20774	23226	25443	27481	29379	31161	32846	34449	35981	37450	38864
24	11310	15994	19589	22619	25289	27703	29923	31989	33929	35765	37510	39178	40778	42317
25	12272	17355	21255	24544	27441	30060	32468	34710	36816	38807	40701	42511	44247	45917

G. OCCUPATIONAL INJURY OR DEATH

G.1. GENERAL A qualified medical examiner or coroner usually determines the cause and manner of death. In general, deaths can result from wide variety of mechanisms. This section discusses these common causes of death; IOs should examine the sum total of evidence to assist or support (or not) the medical examiner or coroner’s findings.

G.2. EXISTING MEDICAL CONDITIONS The Coast Guard will investigate for safety purposes injuries and deaths involving existing medical conditions (i.e., heart attack) **only in so far as necessary** to assure that no aspect of marine operations contributed to the casualty.

G.3. SUICIDE, HOMICIDE, ASSAULT AND BATTERY The Coast Guard will not investigate for safety purposes suicide, homicide, or assault and battery. Investigation of these incidents should be carried out as a matter of law enforcement, but not under the authorities granted by 46 USC 6301 *et seq.* This policy does not relieve the OCMI from the responsibility to conduct such preliminary investigation as is necessary to determine that the incident was, in fact, suicide, homicide, or assault and battery, and to refer the case for appropriate action. Such cases should be recorded as preliminary investigations.

G.4. DIVING INCIDENT INVESTIGATIONS **G.4.a. Introduction** Diving incident reporting is quite complex due to the complexity of the legislative authority relied upon to regulate the diving operation. In general, a diving death may



be a marine casualty under 46 CFR 4.03-1 only when the death “involves” a vessel. The term “involving” is not precisely defined in regulation.

G.4.b. Commercial Diving

The regulations for commercial diving operations are located in 46 CFR 197. Diving, in general, requires specific equipment, procedures and techniques (SCUBA, surface-supplied air, or mixed gas), referred to as the “diving mode.” The mode, however, should not be confused with the commercial or non-commercial nature of the dive. For the purposes of marine investigation, commercial diving is diving and related support operations conducted in connection with all types of work and employments, including general industry, construction, ship repairing, shipbuilding, shipbreaking and longshoring. It **does not include**:

- Dives performed solely for instructional purposes, using open-circuit, compressed-air SCUBA and conducted within the no-decompression limits;
- Dives performed solely for search, rescue, or related public safety purposes by or under the control of a governmental agency; or
- Dives performed for scientific purposes (scientific diving) and which is under the direction and control of a scientific diving program.

G.4.c. Non-Commercial Diving

Diving conducted for any purpose other than those outlined in paragraph G.4.b. above shall be considered non-commercial. Recreational SCUBA dives, even when commenced from an inspected small passenger vessel and under the supervision of a dive master, are considered non-commercial diving. A ‘Part 4’ marine casualty investigation shall be conducted for recreational diving involving death or injury of persons diving for recreational purposes from a commercial vessel in federal waters.

G.4.d. Diving Mode

There are 3 basic diving modes:

- SCUBA Diving - A diving mode independent of surface supply in which the diver uses open circuit self-contained underwater breathing apparatus.
- Surface Supplied Air Diving - A diving mode in which the diver in the water is supplied from the surface dive location with compressed air for breathing.
- Surface Supplied Mixed Gas Diving - A diving mode in which the diver in the water is supplied from the surface with a breathing gas other than air.

G.4.e. Fact-Finding - General

The IO should immediately determine if a diving accident is commercial or non-commercial and seek advice from expert resources (primarily, the U.S. Navy’s Experimental Dive Unit). All equipment associated with the dive operation shall be collected for possible analysis. All gauges should be checked and recorded. After retrieving SCUBA tanks and recording the gauge pressure, close the tank valve and simultaneously count the number of full revolutions it takes to fully close it. All policies and procedures shall also be collected.

G.4.e.1. Resources

The following resources should be considered when an IO desires expert opinion



regarding a diving incident:

- Commandant G-3RPC (202) 372-2047
- [Navy Experimental Diving Unit](#)
Commanding Officer
Navy Experimental Diving Unit
321 Bullfinch Road
Panama City, FL 32407-7015
Attn: Code 03, Test & Evaluation
Phone: 850-230-3100 or 850-235-4351
- Coast Guard Liaison Office @ Navy Diving & Salvage Training Center:
Coast Guard Liaison Officer
Naval Diving & Salvage Training Center
350 S. Craig Rd
Panama City, FL 32407
Phone: 850-235-5244
- [Professional Association of Diving Instructors \(PADI\)](#)
- [National Association of Underwater Instructors \(NAUI\)](#)
- [International Association of Nitrox and Technical Divers \(IANTD\)](#)
- [Technical Diving International \(TDI\)](#)
- [Professional Scuba Association \(PSA\)](#)
- [Divers Alert Network \(DAN\)](#)
- [American Nitrox Divers International \(ANDI\)](#)

G.4.e.2. Divers Alert Network

Divers Alert Network (DAN) is a non-profit medical and research organization dedicated to the safety and health of recreational scuba divers and associated with Duke University Medical Center. DAN operates a diving medical information line, conducts diving medical research, and develops and provides a number of educational programs for divers and medical professionals. Upon closure of the investigation, IOs may supply the ROI to DAN when requested. DAN can be contacted at:

DAN America International Headquarters 1-919-684-8111 or 1-919-684-4DAN
(collect)

DAN Europe 41-1-1414

DAN Japan 81-3-3812-4999

<http://www.diversalertnetwork.org/contact/email.asp>

G.4.e.3. Some Suggested Questions

The IO should seek to answer the following questions for commercial diving accidents:

- Does 46 CFR 197.202 apply? If not, do OSHA rules (29 CFR 1910) apply? If so, contact the nearest OSHA office.



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- What weather and water conditions existed? In addition to routine factors, water temperature, current, and visibility at depth may be crucial.
- What manual or table was used to direct the dive?
- What type of diving operation was being conducted:
 - What diving mode was employed?
 - Wet or dry suits?
 - Heavyweight, lightweight, or other gear?
 - What were equipment details?
 - What other clothing was worn?
- What specific type of work was being conducted:
 - construction,
 - salvage,
 - inspection
 - on or near:
 - ✓ pipelines,
 - ✓ offshore rigs,
 - ✓ platforms,
 - ✓ vessels.
- Was diving conducted from a shore facility, offshore platform, or vessel?
- Who were the diving supervisor and person in charge?
 - Were they designated in writing?
 - If not, who was designated to perform these duties?
 - Did the persons acting in these capacities perform as required?
 - What were they doing prior to and during the casualty (see 46 CFR 197.208, 197.210, 197.402, 197.404, 197.410, and 197.420)?
- What was the makeup of the diving team?
 - Were the members of the dive team briefed by the supervisor?
 - What duties were assigned to each person?
 - What were their qualifications and prior experience?
- What types of pressure vessels for human occupancy (PVHO's) were used and how were they configured? [NOTE: Simple diagrams and/or line drawings may be of value here.]
- Was notice of the casualty made in accordance with 46 CFR 197.484, 197.486, and 197.488?
- Is there any pertinent information concerning prior diving, or the medical or working history of the deceased?
- Is there information concerning treatment, if any was rendered?
- Were there any waivers or variances applicable to the diving operation in question? If so, they must have been specific and in writing, with copies available at the dive site.
- Were the PVHO's in compliance with 46 CFR 197.328, 197.330, 197.332, and 197.462? Note date of construction, standards built to, and other nameplate data.



- Had the required periodic tests been conducted and logged (see 46 CFR 197.450, 197.452, 197.454, 197.456, 197.458, 197.460, 197.462, 197.480, and 197.482)?
 - Did breathing gases meet the specifications of 46 CFR 197.340?
 - Did the breathing gas supply system meet the requirements of 46 CFR 197.336, 197.338, and 197.340?
-

G.4.e.4. SCUBA (see 46 CFR 197.430)

- Within decompression limits?
 - Not deeper than 130 feet?
 - Required equipment available?
 - Standby diver and tenders on hand?
-

G.4.e.5. Surface supplied air (see 46 CFR 197.432)

- Not deeper than 190 feet or more than 30 minutes bottom time to 22 feet?
 - Primary and secondary breathing air supplies working properly?
 - For dives below 130 feet, had the decompression chamber been prepared for use at the dive site?
 - Bell or stage used where required? Specify type and how used.
 - Required equipment available?
 - Standby diver and tenders in dive team?
 - Details of decompression profile. Which table was used?
-

G.4.e.6. Surface supplied mixed gas (see 46 CFR 197.434)

- Bell or stage used where required? Type; give details and describe use.
 - Saturation dives meet requirements?
 - Primary and secondary gas supplies working properly?
 - Required equipment available?
 - Standby diver and tenders on hand?
 - Details of decompression profile. Which table was used?
-

G.4.3.7. Liveboat (see 46 CFR 197.436)

- Was the operation conducted within the allowed parameters of environmental conditions? Details of vessel involved.
- Was the dive no deeper than 220 feet?
 - On air?
 - Mixed gas?
 - What was the deepest depth if not all done at one depth?
 - What was the time at depth?
- Was required equipment available?
- Was a standby diver available?
- Were means used to prevent the diver's hose from becoming entangled in the propellers of the vessel?
- Were operations conducted under conditions for which a variance was



required?

- If a variance was issued, by which office, for which unit, and on what date?
-

H. PERSONS MISSING AND PRESUMED DEAD

H.1 GENERAL

Oftentimes when conducting an investigation under 46 USC 6301, a person's status cannot be confirmed as their physical body (or remains) cannot be located. In many of these cases, upon the completion of the incident investigation and any subsequent search and rescue (SAR) action, the family (or someone else) needs an official document attesting to the missing person's official status. Generally, the documentation required is a Death Certificate. However, a Coroner or Medical Examiner will not issue a Death Certificate without any positively identified remains. As a matter of policy, the U.S. Coast Guard does not issue Death Certificates. The U.S. Coast Guard may issue a Letter of Presumed Death.

H.2 LETTER OF PRESUMED DEATH

A Letter of Presumed Death can be issued upon request upon the completion of the incident investigation. As a matter of policy, before a Letter of Presumed Death can be issued, the Search and Rescue Mission Coordinator (SMC), in whose AOR the person went missing, must be consulted to determine the search status, if any. See Figure B7-1.



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Figure B7-1 Letter of Presumed Death

**U.S. Department of
 Homeland Security**

**United States
 Coast Guard**



Commanding Officer
 United States Coast Guard
 Sector San Francisco Bay

Building 14, Coast Guard Island
 Alameda, CA 94501-5100
 Phone: (510)437-3149
 FAX: (510)437-3072

16732
 Date

Name
 Address
 Address

Subj: LETTER OF PRESUMED DEATH

Dear Name:

In accordance with Title 46, United States Code, Section 6301, the United States Coast Guard has conducted an investigation into the disappearance of (missing person) during a recreational sport fishing dive at (location), on or about July 11, 1999. (Missing person) was not found in the ensuing search and is presumed dead.

The United States Coast Guard does not issue Death Certificates. A Coroner or Medical Examiner issues a Death Certificate after remains have been found or positively identified. Since no remains have been found, this letter documents the loss and presumptive death of (missing person) in lieu of a Death Certificate.

The U.S. Coast Guard activity number and case number for the investigation into the disappearance of (missing person) are Activity #_____ / Case #_____. A copy of the investigation can be obtained by submitting a Freedom of Information Act Request to Commandant (G-SII), 2100 Second Street SW, Washington, D.C. 20593-0001.

Sincerely,

U. R. Nottobefound
 Lieutenant Commander, U.S. Coast Guard
 Senior Investigating Officer
 By direction of the Commanding Officer

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Chapter Eight: Pollution Incident Investigation

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A. GENERAL

A.1. INTRODUCTION

This chapter provides policy for pollution incident investigations. In general, the COTP or OCMI shall conduct pollution incident investigations to determine the causes not only of the pollution but also of the incident causing the pollution. Pollution incident investigations should not be conducted solely to determine civil or criminal liability. In general, all reported pollution incidents within Coast Guard jurisdiction, regardless of size, should be investigated. Pollution incident investigations should include an attempt to determine:

- whether a discharge/release has in fact occurred or whether a potential discharge/release is likely to occur;
- whether the Coast Guard has jurisdiction over that discharge/release;
- the source of the discharge/release and the potentially responsible party; and
- whether the discharge/release is a violation of law or regulation.

Every incident reported and subsequent investigation shall be properly entered in MISLE. Doing so documents the incident and allows for appropriate tracking and measurement of prevention and enforcement activity which is critical to program evaluation.

A.2. ENFORCEMENT ACTIONS FOLLOWING INVESTIGATION

Most Coast Guard investigations are pursued under multiple law enforcement authorities. Accordingly, investigations are not administrative, civil, or criminal; they are fact-finding activities. However, upon completion of an investigation, the OCMI/COTP/FOSC will decide whether or not sufficient proof of a violation has been identified and documented to proceed with enforcement action(s) and, if so, the appropriate type of enforcement action(s) to be undertaken, which may include criminal, civil, administrative, or any combination of the three. Proof of a violation of the Federal Water Pollution Control Act (FWPCA) is considered sufficient only when all five elements defining a violation have been identified and documented. These elements are:

1. a discharge of oil or a hazardous substance;
2. from a known source (vessel, facility, etc.);
3. with a known Responsible Party (i.e. owner, operator, person-in-charge);
4. into or upon the navigable waters of the United States; and
5. creating a sheen, sludge, film, or emulsion or meeting the Reportable Quantity (RQ) requirements of 40 CFR 117.

When all five elements of a violation have been identified, appropriate enforcement action shall be taken. During the course of the investigation, other deficiencies or violations (e.g. missing or inoperable pollution prevention equipment) may also be identified. Sufficient identification and documentation of the jurisdictional and factual elements for these deficiencies and violations should be completed before any



enforcement action is considered.

A.3. RELATIONSHIP TO MARINE CASUALTY INVESTIGATION

Where a pollution incident results from, contributes to, or qualifies as a reportable marine casualty as defined in 46 CFR 4.05-1, the pollution and casualty investigations shall be conducted and documented as a single investigation in MISLE. In that the majority of pollution incidents include both investigative and response activities, both the incident and the incident management will be conducted and documented in MISLE. Marine casualty and pollution investigators should arrange a division of responsibilities early in the investigation to avoid duplication of effort and expeditiously complete the investigation.

B. DETERMINING LEVELS OF INVESTIGATIVE EFFORT FOR POLLUTION INCIDENTS

B.1. PURPOSE

This section provides guidance for the investigation, reporting, and record keeping processes associated with pollution incident investigations

B.2. LEVELS OF INVESTIGATIVE EFFORT

In 1995, the Quality Action Team on Marine Safety Investigations suggested that three levels of investigation exist. This section defines and implements the levels of investigation for pollution incidents:

- **Preliminary Investigations** are initial investigative efforts undertaken to ascertain whether a report is genuine, how severe the incident is or will become, whether the Coast Guard has jurisdiction, whether other agencies or offices must be notified, and what level of Coast Guard investigative effort is necessary.
- **Data Collection Activities** do not require any significant investigative effort, and usually consist only of collecting and entering basic factual information into MISLE for future reference and analysis and, when applicable, referral for enforcement action(s).
- **Informal Investigations** and **Formal Investigations** are more exhaustive investigative efforts and are not generally required, unless the pollution incident is a part of a marine casualty as defined in 46 CFR, Part 4.

B.3. CONDUCT OF INVESTIGATIONS AND DOCUMENTATION REQUIREMENTS

B.3.a. General

The following guidance provides instructions and criteria for conducting and documenting the various levels of pollution incident investigations based on the definitions provided in Section B.2.

B.3.b. Preliminary Investigations

All notifications/reports of pollution incidents (i.e. discharges or releases as defined in 40 CFR 300.5) shall be documented in MISLE Notification records except for:



- notifications from the National Response Center (NRC) in which it is obvious the Coast Guard has no investigative or response jurisdiction, and
- notifications relayed from other Coast Guard units (as they should already exist in MISLE).

No data entry beyond the MISLE Notification is required if the preliminary investigation reveals that:

1. the incident is a mystery spill and the Coast Guard takes no action (response, investigation, or otherwise);
2. the incident is outside of the Coast Guard's investigative jurisdiction;
3. the incident can not be verified or is proven erroneous;
4. the incident does not meet the Reportable Quantity (RQ) criteria of 40 CFR 117.3 or 40 CFR 302.4; or
5. the incident is a National Pollution Discharge Elimination System (NPDES) authorized discharge or release.

In these cases, units shall enter the following minimum information in the Notification record:

- Incident detail/location tab: the incident type, notification method, incident date/time, notification date/time, and the incident location;
- Reporting Party tab: the name and phone number of the reporting party;
- Involved Subjects tab: the waterway entered as a referential involved subject; and
- Incident Description tab: brief description of the incident and one of the five reasons above that no investigation beyond a preliminary investigation was conducted.

If the preliminary investigation reveals something other than the five situations described above, the unit should undertake the appropriate level of investigative effort to complete the investigation and continue documentation in MISLE from the MISLE Notification through to the Incident Investigation Activity and Enforcement Activity, as appropriate.

B.3.c. Data Collection Activities

A data collection activity shall be conducted and documented for any reported pollution incident where the preliminary investigation indicates that:

- the five elements of a Federal Water Pollution Control Act (FWPCA) violation detailed in enclosure (1) are identified; or
- the source of the discharge or release is unknown (mystery) but the Coast Guard will take some action (i.e. response).



Documentation of a data collection level investigation of a pollution incident shall include:

- A MISLE notification;
- An incident investigation activity (IIA) with:
 - ❑ if known, the source vessel or facility entered (or mapped in from the case) as a referential involved subject (“other” involved subjects in MISLE are entered non-referentially);
 - ❑ if known, the responsible party entered (or mapped in from the case) as a referential involved party;
 - ❑ the waterway segment in which the discharge occurred entered (or mapped in from the case) as a referential involved waterway;
 - ❑ if the source is known, a Damage to the Environment event timeline entry with a Discharge Details filed;
 - ❑ if the source is unknown (mystery) and the Coast Guard takes some action, a Marine Environment condition timeline entry with Mystery Details filed;
 - ❑ a Marine Environment condition timeline entry with a Condition Type of “Waterway Condition” and Environmental Damage Details filed;
 - ❑ a Marine Environment condition timeline entry with a Condition Type of “Marine Environment” and Marine Environment Details filed; and
 - ❑ the evidence that was collected to prove or attempt to prove the five elements of a violation.

B.3.d. Informal and Formal Investigations

For some large-scale vessel-source pollution incidents, the pollution investigation coincides with a marine casualty investigation. When a single incident spawns multiple investigations, they will all be captured in the same MISLE Case and incident

management/investigation activities (e.g. the casualty investigation of a vessel grounding and the pollution investigation of the resulting discharge of fuel oil will be documented in the same incident investigation activity).

B.4. POLICY WITH REGARD TO REQUIRED ANALYSIS FOR POLLUTION INVESTIGATIONS

B.4.a. General

This section details policy with regard to the minimum parts of the marine investigation process (Chapter B1 through B6) to be used for pollution investigations for all levels of investigative effort.

B.4.b. Preliminary Level of Investigation



Pollution investigations that only reach the preliminary level of investigation require none of the marine investigation process be completed beyond adequate fact-finding to determine that no further Coast Guard effort is required.

B.4.c. Data Collection Level of Investigation

Pollution investigations that reach the data collection level of investigation require the generating of a timeline with only enough information to meet the minimum data entry requirements for MISLE as detailed in the MISLE Process Guides.

B.4.d. Informal and Formal Level of Investigation

Pollution investigations do not generally reach the informal or formal level of investigation without being involved in a marine casualty. These investigations will follow the policy set forth in Section B.2. of Chapter B7 of this Volume.

**C. MARINE CASUALTIES INVOLVING POLLUTION INCIDENTS
REPORTED TO THE INTERNATIONAL MARITIME ORGANIZATION (IMO)**

C.1. GENERAL

When such information can reasonably be obtained, the following information (in addition to the information required in Chapter B7 of this Volume) must be contained in a the ROI which will be forwarded by CG-545 to the IMO:

**C.2. INFORMATION
REQUIRED FOR
INCIDENTS REPORTED
TO THE IMO**

Pollution resulting from an incident

- Type of pollutant.
 - UN number/IMO hazard class (if applicable).
 - Type of packaging (if applicable).
 - Quantity on board.
 - Quantity lost.
 - Method of stowage and securing.
 - Where stowed and quantities in each compartment/container.
 - Tanks/spaces breached.
 - Tanks/spaces liable to be breached.
 - Action taken to prevent further loss.
 - Action taken to mitigate pollution.
 - Dispersant/neutralizer used, if any.
 - Restricting boom used, if any.
-



D. EVIDENCE NEEDED TO PROSECUTE A NOTICE OF VIOLATION CLASS I CIVIL PENALTY

D.1. PURPOSE This section provides guidance regarding the minimum amount of evidence generally necessary to successfully prosecute a Notice of Violation (NOV) and/or a Class I Civil Penalty following a pollution investigation in accordance with reference 33 CFR 1.07.

D.2. DEFINITIONS The following definitions are applicable to evidence required for civil penalty prosecution:

- **Direct evidence** is that evidence which *in itself* (without need for inferences or reasoning) proves the source of the discharge or shows the path of the discharge, such as a witness statement about the discharge, or pictures and video showing the path from the source to the water.
- **Circumstantial evidence** is that evidence which *does not in itself* prove the source of the discharge or show the path, but which does show an association, such as when a given vessel carries black oil and the slick was black oil, or where slick samples match a suspected source.
- **Possible source** means any vessel, facility, etc., carrying/storing the same type of oil as the slick, and located in such a place as to have feasibly caused the slick.

D.3. EVIDENCE FOR THE 'FIVE ELEMENTS'

D.3.a. To Prosecute an NOV

Element	Evidence
A discharge of oil or a hazardous substance	PI Statement
From a known source (vessel, facility, etc.)	PI Statement; MISLE Referential Vessel or Facility
With a known Responsible Party (i.e. owner, operator, person-in-charge)	PI Statement; MISLE Referential Party
Into or upon the navigable waters of the United States	PI Statement
creating a sheen, sludge, film, or emulsion or meeting the RQ	PI Statement



D.3.b. To Prosecute a Class I Civil Penalty

A discharge of oil or a hazardous substance	PI Statement; digital photos are suggested but not required
From a known source (vessel, facility, etc.)	PI Statement; MISLE Referential Vessel or Facility; digital photos are suggested but not required
With a known Responsible Party (i.e. owner, operator, person-in-charge)	PI Statement; MISLE Referential Party
Into or upon the navigable waters of the United States	PI Statement; a scanned chart or GIS image showing the discharge location
creating a sheen, sludge, film, or emulsion or meeting the RQ	PI Statement; digital photos are suggested but not required

D.4. HOW TO ESTABLISH THAT A POSSIBLE SOURCE IS THE VIOLATING VESSEL OR FACILITY WITH A KNOWN RESPONSIBLE PARTY

To properly establish that a ‘possible source’ is the violating “vessel or facility with a known RP,” one of the following sets of criteria must be met:

- ***Optimal Direct Evidence Case***
 1. The path of the RP’s source oil to the water, and
 2. The RP admits to being the source, or
 3. Pictures and/or video showing the path from the source to the water, or
 4. The PI witnesses the discharge.

- ***Minimal Direct Evidence Case***
 1. The path of the RP’s source oil to the water, and
 2. A witness to the discharge stating the source.

- ***Circumstantial Evidence Case***
 1. The path of the RP’s source oil to the water, and
 2. A conclusive match between the slick and the RP’s source oil.

OR

 1. A conclusive match between the slick and the RP’s source oil; and
 2. Conclusive non-matches between all other possible sources and the slick.

D.5. ADDITIONAL REQUIREMENTS / INFORMATION REGARDING EVIDENCE

The following requirements / information provide additional detail regarding the previously mentioned evidence:

- The PI must verify the RP’s primary address (the best address to use by the CGHO for correspondence) prior to initiating any enforcement action.



- The 'path' must be described in the PI statement or have a marked vessel or facility plan scanned showing the path.
- When an RP admits to a discharge, it must be included in a witness statement.
- When a PI witnesses a discharge, it must be included in the PI statement.
- When a witness observes a discharge, it must be included in a witness statement.
- When there is a conclusive match or non-match, the MSL report must be included.
- When there is a conclusive match, samples should be collected at multiple points throughout the path, when able.
- When there are conclusive non-matches with other possible sources, the process of identifying other possible sources must be described in the PI statement.
- When no other possible sources are identified, it should be described in the PI statement.

E. DETERMINING APPROPRIATE POLLUTION SAMPLING ACTION

E.1. PURPOSE

This section provides guidance for PIs regarding pollution sampling during the course of any investigation involving pollution. In general, the OCMI/COTP may elect not to sample in any instance where he or she has determined that enforcement action is unnecessary.

E.2. WHEN TO TAKE SAMPLES

The following information describes when a PI should conduct pollution sampling:

- ***Environmental Crimes:*** Sampling shall be conducted when there is credible evidence of an environmental crime. PIs must be familiar with the elements of the various environmental crimes as described in COMDTINST M16201.1; Criminal Enforcement of Environmental Laws and COMDTINST M16247.1 (series); Maritime Law Enforcement Manual, Chapter 9; and Chapter C8 of this Volume.
- ***Significant Spill Volume Cases:*** Sampling of the source (tanks, piping, etc.) as well as various locations where the spill may have traveled/impacted should be conducted on spills where extensive clean up operations are expected, even when the PI has strong direct evidence of the source of the discharge. This is important for determining if spill samples collected after the original spill samples are derived from the same source.
- ***Optimal Direct Evidence Cases:*** Sampling is not generally necessary when the PI has strong direct evidence of the source of the discharge.



- **Minimal Direct Evidence Cases:** Sampling is advisable when the PI has direct evidence of the discharge, but that evidence is minimal. Weak direct evidence includes a single witness statement reporting the source or two pieces of evidence that seem to contradict one another as to the source, such as a photograph and contradicting witness testimony.
- **Circumstantial Evidence Cases:** Sampling shall be conducted when the PI has no direct evidence of the source of the discharge. In such cases, the RP is typically identified through the possible route of oil and oil sample analysis matches.

E.3. WHERE TO TAKE SAMPLES

The following information describes where a PI should conduct pollution sampling:

- **Smaller Vessels:** Smaller vessels typically discharge through a simple bilge suction and overboard discharge system. Small vessels with compartmentation, however, may have multiple pumps and overboard discharges. When sampling a smaller vessel, it is important to sample each independently discharging bilge space where oil or oily water is found. Samples of fuel may also be taken. In all instances, PIs should consider the type of oil discharged when determining sampling locations.
- **Deep Draft Vessels:** Many oil spills from deep-draft vessels originate from marine casualties. This includes groundings where there is abundant direct evidence of the discharge. This evidence includes photographs of ruptured shell plating, cargo or bunker tank soundings, photographs of the emerging slick, videotape and the like. When sampling a deep draft vessel consider the following:
 - **Bilge Systems:** When deep draft vessel oil spills are not the result of a casualty, Coast Guard investigations have generally implicated the oily water separator (OWS) / bilge discharge system. Accordingly, PIs should focus their attention on the engineroom bilge system in deciding where to take samples. Typically, deep draft vessels draw suction from the bilge but store the oily water mixture in slop / sludge tanks. Using the OWS, separated oil is stored in slop / sludge / waste oil tanks where it is pumped ashore or burned aboard ship. This general set up will require a PI to consider sampling:
 - “Clean” water from outboard of the OWS (where available);
 - Oily water from inboard of the OWS;
 - Oily water from each segregated bilge area; and
 - Oily water or concentrated oils from each slop / sludge / waste oil



tank.

- **Ballast Systems:** Although relatively rare, some vessels are fitted with ballast piping arrangements that could allow ballast in fuel or cargo oil tanks, or that could allow oily water in ballast tanks. PIs must consider the specific bilge / ballast segregation arrangements aboard the ship, copy and review ballast records, and determine whether water / oily water samples should be taken from the ballast tanks. Where segregation is not completely independent, the PI should consider sampling:
 - “Clean” water from outboard of the discharge monitor (where available);
 - Oily water from inboard of the discharge monitor;
 - Water/oily water from each ballast tank; and
 - Oily water / slop / sludge from each involved cargo tank.
- **Cargo Systems:** Cargo system spills usually occur during transfers, but can occur at other times (particularly following internal tank-to-tank cargo transfers). Such spills also have resulted from “over the top” transfers which are prohibited. Where cargo is suspected, each cargo tank should be independently sampled.
- **“The Spill:”** In general, especially for larger spills, sampling towards the mid-point (if possible) and at the leading edges of a spill is advised as it shows weathering trends. Also, additional sampling of impacted areas can be useful to determine if the oil is from the original responsible party or if the spill has become a “spill of opportunity.”

E.4. HOW TO TAKE SAMPLES

Oil samples taken during a pollution investigation shall be taken in accordance with the MSL Oil Spill Sample Handling and Transmittal Guide, and a proper chain of custody shall be maintained. Coast Guard field units shall not maintain duplicate (or “back up”) oil samples. All oil samples that are collected by Coast Guard field units for analysis shall be sent to the MSL as soon as possible following their collection. The longer an oil sample is maintained at a Coast Guard field unit prior to sending it to the MSL, the less likely the possibility will be of determining a sample match. Duplicate oil samples maintained by Coast Guard field units that are analyzed after the original sample may overturn a previously determined sample match.

Confirmation Samples: In some instances, it may be necessary to take a second sample from a suspect source for separate analysis by a state or other agency should the original sample be found to match a slick. Confirmation samples are never for Coast Guard purposes and shall not be stored or maintained by Coast Guard field



units. Before taking confirmation samples, the PI should have a clear reason for doing so, such as a request by state investigators to perform confirmation tests using a state laboratory. MSL can provide portions of the original samples to requesting parties, if authorized by the PI.

E.5. HAZMAT

Currently, only properly qualified response personnel from the Coast Guard National Strike Force may take hazardous materials samples. All other Coast Guard personnel are prohibited from taking such samples. If another agency takes hazardous materials samples for analysis, obtain a copy of their report. For informational purposes, the FBI, EPA, or other state, local, (possibly commercial) laboratories will have to conduct the analysis. The Marine Safety Laboratory (MSL) does not analyze anything other than oil.

F. NATURAL SOURCE DISCHARGE

F.1. GENERAL

Natural source discharges are generally investigated to ensure that the discharge does, in fact, generate from a natural source. These natural sources are usually large veins of oil located beneath the ocean floor. Due to the shifting of plates (underwater earthquakes) or pressure build up, they occasionally discharge varying quantities of crude oil (or other substances). If there is any question as to whether the source is a natural source, treat the pollution incident investigation as if it were an unknown source discharge.

G. ASSESSING SHORELINE IMPACTS

G.1. GENERAL

One important function of an investigation of pollution discharge during a response is to provide the Federal On-Scene Coordinator with information about the areas impacted by a spill. This also serves other investigation purposes in that it helps to establish that the spill occurred on or impacted a navigable waterway of the United States and documents the extent of the spill impacts. Shoreline assessment is an activity taken under the National Contingency Plan evaluating damage caused by the spill to economic and environmental resources. As such, shoreline assessment should properly be executed in conjunction with the natural resource trustees' damage assessment activities (see 40 CFR 300.615(c)(3)(I) and (d)(4)). Natural Resource Trustees such as the Department of the Interior and the National Marine Fisheries Service possess biological, geophysical, and toxicological expertise that PIs will not routinely have. Accordingly, PIs should limit their input to shoreline assessment to:

- a thorough physical description of the waterway affected;
- descriptions of the specific areas affected by a discharge, including the exact location, thickness of oil, etc.;
- a tabulation (raw count) of any directly affected economic and/or environmental resources (wildlife) affected by the discharge with no



qualitative estimate of the degree of damage caused by that impact;

- Nature of the spill, estimate the amount, type and time until shoreline impact;
- Weather: present conditions and area forecasts;
- Water movements, including currents, tides and wave actions;
- Shoreline contour including depth, gradient, etc.; and
- Accessibility of the affected site by land, water and air.

G.2. BEACHES AND THE LITTORAL ZONE

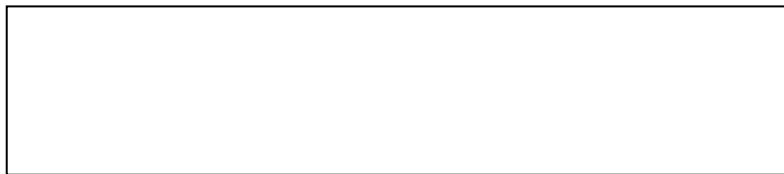
While people often associate the area affected by oil and hazmat spills as just the beach, the much broader area known as the littoral zone must be assessed for effects. The littoral zone extends from the point where land plants end (and beach or shoreline plants begin) to the region below the water where sediment is not disturbed by wave action during fair weather conditions, usually the point where the water reaches a depth of about 10 to 20 meters at low tide. PIs should be familiar with the make up and terminology for the littoral zones both to accurately describe the areas affected by a discharge and to assist the Federal On- Scene Coordinator in prioritizing areas for protection and removal.

G.3. AREAS OF THE LITTORAL ZONE

G.3.a. General

The littoral zone can be divided into three principle areas:

- the **foreshore or intertidal zone**, that area which is exposed at low tide but covered at high tide;
- the **backshore**, that area above mean high tide and influenced by the sea only through storm waves or exceptionally high tides; and
- the **shoreface**, that area of the Littoral Zone which is permanently covered by water except during exceptionally low tides.



G.3.b. Description in terms of wave action

The Littoral Zone can also be divided into three zones based on wave action when such descriptions are more relevant or easily determined. The three wave action zones are:

- the **breaker zone**, where waves become unstable and break;
- the **surf zone**, where waves from the breaker zone become shallower waves called bores and reach up the beach face to the swash zone; and
- the **swash zone**, that beach area which is alternately covered by the upsurge of water (the swash) and exposed as the backwash retreats.

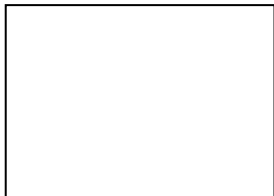


G.4. BREAKERS

Generally speaking, small gentle waves and swells tend to build a beach up through sediment movement, whereas storm waves and breakers tend to tear them down. Breaking waves are very geophysically complex. Breaking waves are caused when large waves from offshore move into shallow water environments where their forward motion is limited by the depth of water. Unable to move forward, they build up. The result of the increased wave height will depend on the slope of the underlying beach, i.e., its profile. There are four basic types of breakers:



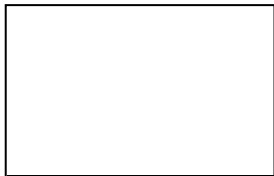
- The **spilling breaker**, characterized by foam and turbulence at the wave crest. The spilling starts some distance offshore and occurs because a layer of water at the crests moves forward faster than the wave. Foam eventually covers the leading face of the wave. These waves are associated with a gently sloping beach profile.



- The **plunging breaker** is the classic surfer's wave with a convex back and concave front. The breaker curls over and plunges downward with considerable force. Plunging breakers generally form on gently sloping beaches but are associated with long swells from distant storms rather than the short waves of local storms more likely to produce spilling breakers.



- The **collapsing breaker** is similar to a plunging breaker except that instead of curling over, its leading face collapses. This occurs because the beach profile is steeper than those creating a plunging breaker, or because local wind conditions are relatively strong.



- The **surging breaker** is found on the steepest beaches and are formed by long, low frequency waves. The front faces and crests of these waves generally remain unbroken as the wave slides up the beach. Where beach faces become vertical (i.e., cliff faces), surging breakers may generate significant pounding and spray as the wave finally collapses during its backwash.

G.5. BEACHES

G.5.a. Beach Profiles

The sedimentary profile of the littoral zone is not a smooth landward slope; instead it is usually characterized by a series of ridges or sediment bars. The **berm** of the backshore zone is a flat-topped ridge that develops at the limit of the wave swash on steeply sloping beaches. The area below the berm is generally referred to as the **beach face**. Shallow sloping beaches tend to develop longshore depressions, often filled with water, called **runnels**. The bar on the other side of a runnel is often called a **swash bar**. Beneath the breaker zone a **longshore bar** may form, particularly during the winter when berms are often absent on some beaches.

G.5.b. Beach Structure

When a wave surges up the beach, the swash carries some sediment ashore, while the backwash takes some sediment seaward. These processes continue to build up or erode a beach until they come into balance, canceling each other out. The point at which they come into balance determines beach steepness, which in turn depends on



the size of the particles in the sediment. On beaches with large particles, water quickly percolates down through the beach sediment and very little material is washed seaward with the backwash. This creates a beach with a steep profile. When a beach has smaller sediment particles, the beach is more waterlogged and the backwash will be greater. Thus, beaches with smaller particles are generally flatter in profile. The degree to which the shoreline experiences violent waves and tidal swings (exposure), however, is also a factor. Using all of these factors, beaches can generally be categorized as being reflective or dissipative. **Reflective** beaches are characterized by coarse sands, small waves, steep slopes, small tidal ranges, short wave periods, harsh swash conditions, and relatively impoverished fauna. **Dissipative** beaches, however, generally have fine sand, large waves, shallow slopes, high tidal ranges, long wave periods, harmless swash conditions, and rich fauna.

G.5.c. Rocky Shore Intertidal Zones

Ecologists have intensely studied zonation on various beaches since the late 1940s. Generally speaking, the intertidal zone can be thought of as being composed of three major zones:

- a high shore area sometimes called the **littoral fringe** characterized by encrusting lichen, bluegreen bacteria, small snails and periwinkles;
- a broad middle shore zone called the **eulittoral zone** characterized by suspension-feeding barnacles, mussels, or sometimes oysters; and
- a narrow low-shore zone called the **sublittoral fringe** located below the low tide line but still influenced by tides and waves characterized by red algae, large kelps and sea squirts.

(Raffaelli and Hawkins, *Intertidal Ecology*, 1996).

G.5.d. Rocky Cliffs and Bedrock Shores

The most exposed rocky shores are rocky cliffs and bedrock shores. On these shores the littoral fringe typically has small snails, bluegreen algae, and encrusting lichens. The black stripe of bluegreen algae is very common and quite distinctive. The eulittoral zone is dominated by encrusting suspension feeders such as mussels and barnacles. Seaweeds in the eulittoral zone tend to form short turf. The sublittoral zone along the colder, nutrient rich shores typically contains large kelp and algal turfs, such as the species-rich kelp forests of the southwestern pacific. (Raffaelli and Hawkins, *Intertidal Ecology*, 1996).

G.5.e. Boulder Shores

Boulder shores have many of these same distributional patterns, but have added biological richness provided by the many overhang and crevice micro-habitats. The large spaces between boulders provide an excellent habitat for crabs and gastropods. These beaches are often mixtures of particle sizes with boulders mixed with finer grained gravels, sands, or even held together by mussel byssus threads (as on the Atlantic coasts).



(Raffaelli and Hawkins, *Intertidal Ecology*, 1996).

G.5.f. Gravel Shores

Gravel shores also have the general rocky shore distributional pattern, though not in the abundance of living things found on rocky cliff, bedrock, or boulder shores. Often, gravel beaches are considered barren because they offer little protection from exposure and but the particle sizes are too large to retain swash water.

(Raffaelli and Hawkins, *Intertidal Ecology*, 1996).

G.5.g. Sandy and Mudflat Intertidal Zones

Ecologists have destructively examined sandy beaches and mudflats (because most organisms live beneath the surface) since the early 1950s. While several systems have been proposed for describing the ecological zones within the intertidal zone, no single framework has emerged as the universally accepted standard. One system divides the beach into four zones:

- the dry sand zone;
 - the **water retention zone** which is farther downshore and is damp but not wet at low tide;
 - the **area of resurgence** which is further still downshore and in which inter-particle water flows in and out of the sediment with the tide; and
 - the **permanently saturated** zone in which there is little exchange of water over the tidal cycle.
- While having the benefit of being readily identified visually, this system provides little information about the flora of the various zones. An alternate zone system suggests that there are three zones:
- one high zone in which only air breathing animals exist;
 - low zone in which only truly aquatic animals exist; and
 - a middle zone.

In general it can be said that the specific distribution of life along a fine-particle intertidal shore depends on the exposure of the shore, the size of the particles, and the stability of the sediments.

(Raffaelli and Hawkins, *Intertidal Ecology*, 1996).

G.6. ESTUARY TYPES AND CIRCULATION PATTERNS

G.6.a. Introduction

The word “estuary” comes from the Latin word *aestus*, meaning tide and the adjective *aestuarium*, meaning tidal. Intuitively, an estuary is the area where fresh water meets salt water at an inlet of the sea. R.W. Fairbridge (1980) gives a much more rigorous definition, however: “An estuary is an inlet of the sea reaching into a river valley as far as the upper limit of tidal rise, usually being divisible into three sectors: (a) a marine or lower estuary, in free connection with the open sea; (b) a middle estuary, subject to strong salt and freshwater mixing; and (c) an upper of fluvial estuary

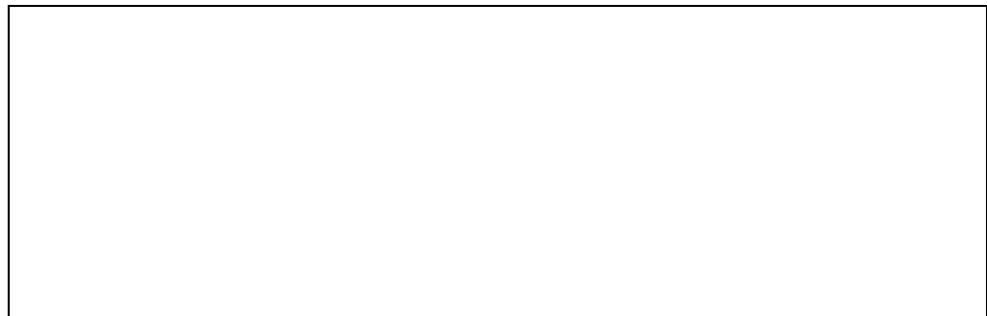


characterized by freshwater but subject to daily tidal action.” PIs performing shoreline assessments or slick reconnaissance should be aware of the specific type and part of the estuary they are surveying because these factors control the circulation, and thus the flushing of the discharge, in the estuary. Estuaries are not uniform in characters, but the differences owe primarily to variations in tidal range and river discharge volumes and rates. There are four general types of estuaries: Negative Circulation Estuaries, Well-Mixed Estuaries, Partially Mixed Estuaries, and Salt Wedge Estuaries.

SALT WEDGE
 ESTUARIES:
 LARGE RIVER
 DISCHARGE,
 SMALL TIDAL
 INFLUENCE

G.6.b. Salt Wedge Estuaries

Salt Wedge Estuaries develop when a river discharges into a virtually tideless sea. The less dense fresh river water spreads out over the surface of the denser saltwater. Because there is virtually no movement due to tide, the salt and fresh waters do not mix quickly, allowing a salt water “wedge” to develop in the river. The position of the salt wedge will vary depending on the river flow. When the flow is low, the salt wedge moves farther upriver; when the flow is high, the salt wedge moves farther seaward. Rivers with high sediment discharges in salt wedge estuaries (like the Mississippi River) tend to form deltas. The relatively strong separation of salt water and fresh water produces a weak landward current in the lower salt water layer, and a strong seaward current (dependent on the river current only) in the upper fresh water layer.



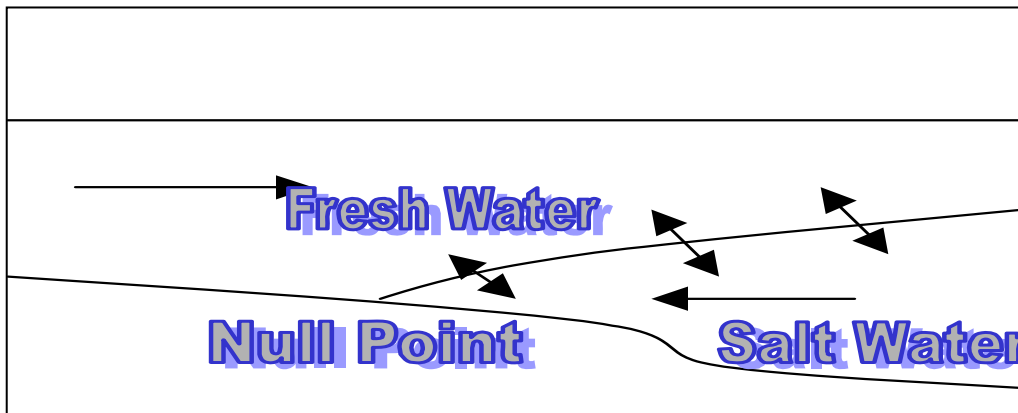
PARTIALLY
 MIXED
 ESTUARIES:
 LARGE RIVER
 DISCHARGE,
 MODERATE
 TIDAL
 INFLUENCE

G.6.c. Partially Mixed Estuaries

Partially Mixed Estuaries develop where rivers discharge into the sea with a moderate tidal range. In these estuaries tidal currents are significant, so the whole salt water mass moves up and down the estuary with the tides. The stresses between the salt and fresh water layers mix saltwater upward and freshwater downward, making the boundary between the layers much less well defined. Because a large volume of salt water mixes with the fresh water, the landward flow in the lower salt water layer is much larger than in a Salt Wedge Estuary. At some point near the head of the estuary there will be a point at which the water is not moving in the lower level as fresh water outflow and sea water inflow collide and cancel. This point is called the **null point**, and its position varies with spring-neap tide cycle and with the seasons. The null point has important consequences for sediment transport, and for the



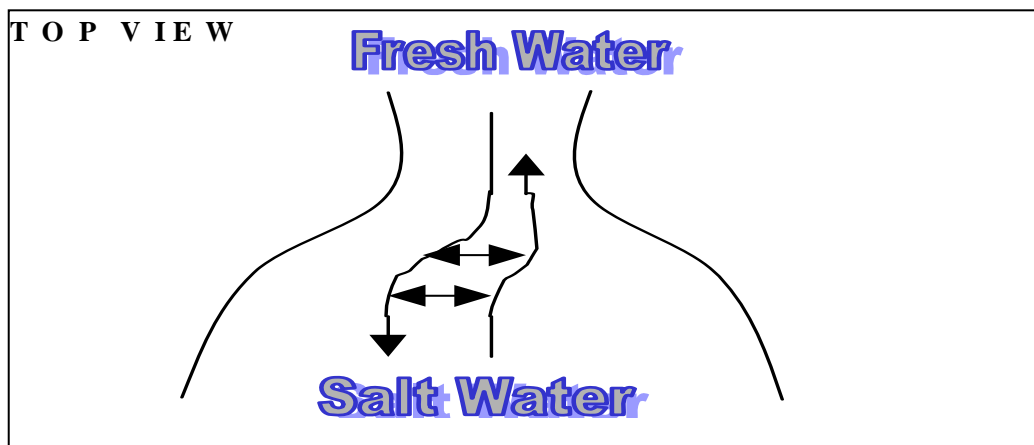
movement of discharged materials with high specific gravities. The James River in Virginia is an example of a Partially Mixed Estuary.

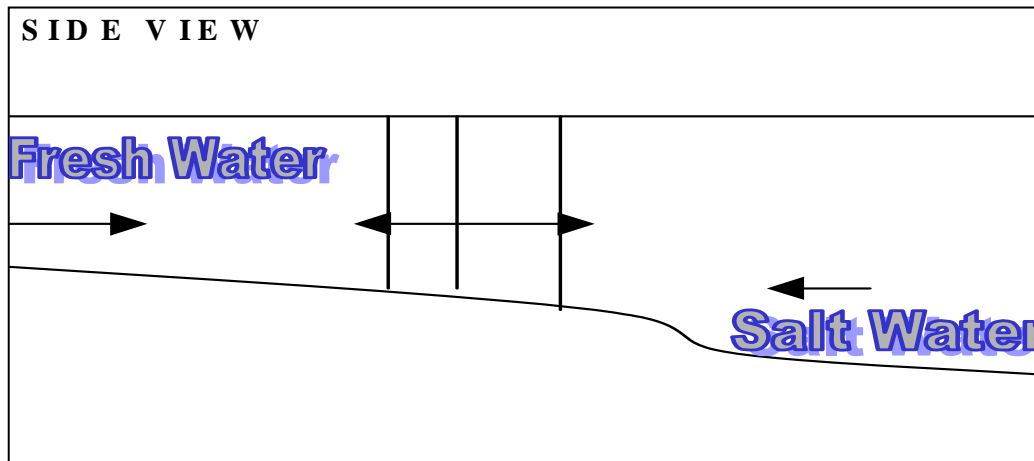


WELL-MIXED
 ESTUARIES:
 BROAD AND
 SHALLOW,
 TIDAL
 INFLUENCE
 EQUIVALENT TO
 RIVER
 DISCHARGE

G.6.d. Well-Mixed Estuaries

Well-Mixed Estuaries develop where the estuary is broad and shallow, and where tidal currents are relatively strong compared to the river flow. In this situation the water column becomes completely mixed such that there are almost no discernable salt water and fresh water layers. These estuaries are usually shallow and funnel shaped, allowing the Coriolis “force” to swing incoming tidal currents and seaward flowing river currents to the right relative to its motion (in the northern hemisphere). In other words, if one were looking seaward from the head of the estuary, the up-estuary flow would be on the left while the down-estuary flow would be on the right. Mixing occurs because of the shear between these two flows. These flow patterns will be crucial in understanding and predicting slick movements and shore impacts.





NEGATIVE
 CIRCULATION
 ESTUARIES:
 HYPER-SALINE
 ESTUARINE
 WATER
 PRODUCED BY
 EVAPORATION

G.6.e. Negative Circulation Estuaries

Negative Circulation Estuaries develop in extremely warm climates when a high evaporation rates and very low river flows at the head of the estuary result in increased estuarine water salinity relative to the ocean, where salinity is almost unchanging irrespective of weather. This hyper-saline estuarine water sinks and flows seawards across the estuarine floor, while seawater flows landward at the surface. Negative Circulation Estuaries are thought to be rare in North America, but can develop in the Caribbean and South Pacific.





USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART B: INVESTIGATION

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Chapter Nine: Personnel Investigations

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CHAPTER 9: PERSONNEL INVESTIGATION

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A. PERSONNEL INVESTIGATIONS

A.1. INTRODUCTION

Violations by personnel of statutes and regulations enforced by the Coast Guard can result in criminal or civil penalties taken against the person and/or administrative proceedings or other alternative administrative action against merchant mariners' credentials (MMCs) issued to the person by the Coast Guard. Procedures for processing civil penalty violations, evidence of criminal violations and enforcement tools available to the Officer in Charge, Marine Inspection (OCMI) and Captain of the Port (COTP) are discussed in Part C of this volume. This chapter provides policy guidance for conducting personnel investigations. Personnel investigations are conducted to promote safety on the high seas and the navigable waters of the United States, and to prevent or mitigate personnel related hazards to life, property, and the marine environment.

A.2. ENFORCEMENT FOLLOWING A PERSONNEL INVESTIGATION

All Coast Guard investigations are pursued under the multiple law enforcement authorities granted to the agency. Accordingly, investigations are not administrative, civil, or criminal; they are a fact-finding mission. Upon completion and based upon the facts of the investigation, the COTP/OCMI and the District Commander will decide upon the appropriate enforcement action (if any), which may be criminal, civil, or administrative, or any combination. Accordingly, all investigations may be said to potentially be "criminal" investigations, though as a matter of policy an IO shall not begin a personnel investigation with a presumption regarding criminal or civil offenses.

IOs **shall under no circumstances indicate** that an investigation is "non-criminal" or "only administrative." If questioned by a witness or involved person regarding legal or civil liability, the IO shall respond with words to the effect that "it is inappropriate for me to give you legal advice, but you are free to confer with counsel if you wish." While it is generally unnecessary to explain enforcement consequences of a personnel investigation, IOs shall explain, if questioned, that the government is free to initiate criminal, civil, or administrative enforcement actions based on the facts of the case, and that taking one enforcement action does not preclude the others.

A.3. STEPS IN CONDUCTING A PERSONNEL INVESTIGATION

In general, the following steps apply to all personnel investigations:

- Step One:** Detection of Incidents;
- Step Two:** Fact Finding;
- Step Three:** Identify Laws and Regulations in Force;
- Step Four:** Review the People Involved;
- Step Five:** Consider Human Error;
- Step Six:** Consider Omissions;
- Step Seven:** Consider the Evidence for Each Element; and
- Step Eight:** Report Alleged Violations.

NOTE: Causal analysis is not normally a part of a personnel investigation.



Accordingly, IOs should perform the fact finding process discussed chapter B3 of this volume, along with the violation analysis discussed in chapter B5. IOs may conduct human error analysis as described in chapter B4 when they believe such information will be of value in considering the appropriate enforcement action.

B. STEP ONE: DETECTION OF INCIDENTS

B.1. GENERAL

In general the majority of detections of incidents leading to personnel investigations come from passive detection. A majority of this type of detection is reported by the public, and is often an investigation that runs with some other incident investigation (i.e. marine casualty). Personnel investigations stemming from vessel casualties should begin as soon as possible and should not await the completion of the marine casualty report of investigation (ROI). If someone conducts the personnel investigation other than the IO conducting the marine casualty investigation, close coordination between the two will be necessary.

B.2. DETECTION METHODS

The following list outlines the various ways that the Coast Guard detects incidents:
Reports From the Public;
Active Surveillance / Detection Operations;
Reports from Other Coast Guard Units;
Reports from Other Law Enforcement Agencies; and
Reports from Foreign Governments and the International Maritime Organization.
See Chapter B2 of this volume for the specifics on each detection method. Generally speaking, there is nothing specific to personnel investigations with regard to detection methods, however, more common detection methods and supporting information are listed below.

B.3. REVIEW OF LOGBOOK ENTRIES

B.3.a. Official Logbook Entries

One source of complaints will be Official Logbooks. Coast Guard marine safety personnel should take every opportunity to examine vessel logs submitted to Coast Guard offices or when on board a commercial vessel. In this regard, liaison with shipping agents and local company representatives can be beneficial with regard to alerting IOs to shipboard problems and arranging visits to arriving vessels. Official Logbooks must be maintained as specified in 46 USC 11301. Additional guidance is provided in the Official Logbook (Form CG 706B) and Navigation and Vessel Inspection Circular ([NVIC 1-86](#)).

B.3.b. Criteria For Investigation

Official logbooks should be reviewed by the final port of voyage in a timely manner to determine if actionable offenses occurred during the voyage. Not every entry logged against a mariner should be considered a complaint. Only when those entries showing a compromise of safety or hazard to life, property, and/or the marine environment or when the seaman has a history of repeated offenses should an investigation be initiated.



B.3.c. Adequacy of Entries

Log entries should be reviewed to ensure that they have been made in compliance with applicable law. If they have not, the master should be advised to the deficiencies to prevent recurrence in future entries. Since a log entry can, under some circumstances, serve as sufficient evidence to prove a complaint in subsequent S&R proceedings, masters should be encouraged to provide ample information in the logbook, even to the point of making a special entry or attaching additional statements received during the master's investigation. When interacting with vessel masters, the importance of attaching statements taken by the master and referring them in log entries so that they will be accepted as parts of the log when presented as evidence should be carefully explained. See figures B9-1 and B9-2 for sample logbook review checklists.

B.4. COMPLAINTS AS A METHOD OF DETECTING INCIDENTS

B.4.a. Written Complaints

Receipt of any letter of complaint concerning a mariner is sufficient reason to commence a personnel investigation. Some form of acknowledgment of receipt shall be made as soon as practicable.

B.4.b. Telephoned Complaints

A telephoned complaint is sufficient to commence a personnel investigation. If possible, the IO should note the identity of the caller and the information received.

B.4.c. Disclosure Of Defects and Protection of Informants

The value of identifying and reporting hazardous or unsafe conditions by concerned mariners to the Coast Guard has long been recognized. Under 46 USC 3315, Coast Guard personnel are prohibited from disclosing, except as authorized by the Secretary, the name of an individual who reports vessel defects or imperfections in matters subject to regulations and inspections. This nondisclosure policy has for some time been extended to unlicensed persons as well. Additionally, 46 USC 2114 protects seaman from recrimination for notifying the Coast Guard of unsafe conditions or practices.

As a matter of policy, most of our reports are "public information" and, therefore, releasable to the public under the Freedom of Information Act (FOIA). Seaman that are protected from disclosure will be entered into the MISLE computer system as a confidential source and will not be named (will be REDACTED by CG-5453) in anything that is releasable (i.e. the report of investigation (ROI)). Additionally, the seaman will not have any Party Associations within MISLE. Instead, any variation of the following statement should be used, "The Coast Guard received confidential information concerning..." Additionally, review the information gathered to ensure that there are no obvious implications as to the source. References to a person covered by this paragraph should be avoided; however, if a reference must be made, the individual shall be referred to as **the confidential source**.

**B.5. INFORMATION OBTAINED FROM CONSULS**

Occasionally, information needed for a personnel investigation must be obtained from a U.S. Consul; this may include court or medical records. OCMI's are authorized to correspond directly with U.S. Consuls for the purpose of requesting routine records needed for personnel investigations. In many instances, however, the Consul may be reluctant to release information without specific authority from superiors or he or she may have difficulty obtaining such records. In such cases, the Office of Investigations and Analysis, Commandant (CG-545) should be notified so that the request for information may be forwarded to the Department of State (DOS). This method also facilitates tracer action if information is lost in transit.

B.6. ISSUANCE OF SUBPOENAS

The IO may issue subpoenas to obtain the attendance of witnesses or production of books, papers, documents, or other relevant evidence needed by the IO. Subpoenas shall not be issued by IOs when acting solely under 14 USC 89 authority. See Chapters A2 and A3 of this volume for further information on various authorities under which an IO can issue subpoenas.

C. STEP TWO: FACT FINDING**C.1. SCOPE OF FACT FINDING**

The objective of the fact finding step of the investigation is to collect as many facts as possible which may help in understanding the potential violation and the events surrounding it. IOs should be aware of the danger of reaching conclusions too early, thereby failing to keep an open mind and considering the full range of possibilities. See Chapter B3 of this volume for more information.

C.2. EVIDENCE**C.2.a. General**

Proper evidence collection and handling are of paramount importance. See Chapter B3 of this volume for more information.

C.2.b. Initial Fact Finding Investigative Efforts

Upon receipt of a complaint, sufficient information should be obtained to determine the proper method and scope of investigation. Wanted List should be checked in all cases. If a verbal complaint is received, probing questions may be sufficient. If the complaint is written, review of local files, communications with Headquarters, and other activities may be helpful in generating sufficient information. The information initially received will determine what method the IO will pursue for further investigation.

C.2.c. Additional Efforts

If the preliminary investigation indicates possible S&R action against an MMC, all available additional information and evidence should be obtained as quickly as possible. The information contained in Official Logbooks and Shipping Articles, for instance, is considered a minimal resource to be supplemented with statements from prospective witnesses, diagrams, photographs, etc. This supplemental information should be obtained even though it may not be used as evidence in subsequent



actions. In very serious or complex cases, or instances of possible protracted delay before final action, statements signed under oath should be obtained from witnesses.

C.3. SHIPBOARD INVESTIGATIONS

C.3.a. Etiquette

When first boarding a vessel, the IO should report his or her presence and purpose to the master or senior deck officer. Reasonable efforts should be made to conserve the master's time.

C.3.b. Privacy

Since most investigations require interviews of crewmembers, the IO should request the use of an area where privacy can be ensured. This will enable the IO to interview personnel privately, with as little distraction as possible. Witnesses should not be interviewed together.

C.3.c. Completion Of Investigation

The IO should, as far as reasonable, stay aboard the vessel until the investigation is completed. This will ordinarily be possible because most "leads" can usually be developed on the ship. The IO should strive to complete the investigation in sufficient time to avoid a delay in sailing.

D. STEP THREE: IDENTIFY LAWS AND REGULATIONS IN FORCE

D.1. GENERAL

IOs should have a working knowledge of the major laws and regulations that the Coast Guard enforces. This ranges from both Titles 33 and 46 of the U.S. Code and Code of Federal Regulations, as well as Title 18, U.S. Code. Additionally, a working knowledge of the Maritime Law Enforcement Manual, COMDTINST M16247.1 (series) and the Investigations Manual, COMDTINST M5527.1 (series) will be of great benefit. All laws and regulations are composed of two basic sets of elements: the jurisdictional elements governing where and to whom the law applies; and the factual elements governing the acts or conditions involved. To determine whether a given law or regulation was in force at the time of an incident, the IO must evaluate the jurisdictional elements of that law or regulation. This section will briefly discuss the content of report of violation and some of the more common offenses that an IO might be called upon to investigate. **The last line of each paragraph will explain to whom the offense applies (i.e. MMC holders, everyone, or non-MMC holders).**

D.2. MINIMUM CONTENT OF REPORT OF APPARENT VIOLATION

At a minimum, IOs must indicate:

- Which law or regulation may have been violated;
- The jurisdictional elements of that law or regulation;
- The facts of the case constituting evidence of each jurisdictional element;
- The factual elements of that law or regulation;
- The facts of the case which constitute evidence of each factual element; and



- The person culpable for the possible violation.

**D.3. FRAUDULENT
MMC APPLICATIONS**

Any MMCs issued upon submission of false information are void. See Commandant Decision on Appeal 2025. When a fraudulent application results in the issuance of an original MMC, the credential is considered void and may be recovered without the process of an Administrative Hearing. When a fraudulent application results in the issuance of a MMC renewal, current policy requires an Administrative Hearing where the proper sanction is revocation. See Appeal Decisions 2205 & 2569. Under 18 USC 1001, intentionally false or fraudulent statements or representations made in any matter within the jurisdiction of any department or agency of the United States are punishable by a \$10,000 fine or 5 years' imprisonment, or both. IOs should consider forwarding cases involving false or fraudulent statements to the appropriate Area, MLC or District legal office for consideration of referring the case to the local U.S. Attorney for prosecution. (MMC holders)

**D.4.
INTOXICATION**

D.4.a. General

33 CFR 95 conveys the Coast Guard's stance on the use of alcohol in the maritime community and established rules to minimize incidents of individuals operating a vessel while intoxicated. 46 CFR 4.05-12 further requires that marine casualty ROIs include information on whether or not the use of alcohol contributed to the casualty. Additionally, 46 CFR 16.240 requires drug and alcohol tests be conducted on individuals involved in serious marine incidents.
(everyone)

D.4.b. Intoxication Standards

33 CFR 95 sets intoxication standards based upon blood alcohol concentration (BAC) levels and/or observed behavior; defines what constitutes reasonable cause for chemical testing of individuals; and establishes certain operating rules for commercial marine personnel serving aboard inspected vessels.

D.4.c. Detection of Intoxication Incidents

The marine employer is responsible for the detection and reduction of incidents involving intoxicated operators aboard commercial vessels. OCMI and COTPs should review the evidence that marine employers submit of intoxication in a timely manner. If the submitted evidence is inadequate to support enforcement action, the marine employer should be informed of specific discrepancies discovered so that adequate evidence is presented in future situations.

D.4.d. Operational Controls

The OCMI or COTP has discretion to decide if operational controls should be initiated. Voyages shall be terminated by use of COTP orders or OCMI termination letters (coordinated through the servicing District office), unless there is another operator who is capable and properly licensed to operate the vessel. See the Maritime Law Enforcement Manual, COMDTINST M16247.1 (series) and Part C of this manual for additional guidance with regard to enforcement.



D.5. FAILURE TO OBEY

Whenever the basis of a complaint is refusal or failure to obey an order, the evidence should show:

- That the order was not in the nature of a request;
- That it was properly communicated to the individual being investigated;
- That it was lawful; and
- That it was directly connected with the safe operations of the vessel.
(MMC holder)

D.6. ABSENCE OVER LEAVE (AOL), ABSENCE WITHOUT LEAVE (AWOL), AND FAILURE TO JOIN

An investigation should be conducted to establish that the absence of the mariner created a situation in which the safety of the vessel, passengers, crew, or marine environment was adversely affected; the fact that the absence created a crew shortage below the complement required by the Certificate of Inspection (COI) usually establishes such an adverse effect.
(MMC holder)

D.7. NEGLIGENCE

When conducting investigations possibly concerning negligence IO's should determine whether they can establish the following elements:
 What a "reasonable and prudent person's" duty in the same conditions would have been; and
 Whether the error was a clear breach of that duty.

Negligent operation of a vessel is generally prohibited under Title 46 U.S.C. 2302(a) when such negligent operation endangers the life, limb, or property of a person. This statute applies only on the U.S. territorial sea, however. Title 46 CFR 5.101(a)(1) and table 5.569 suggest that sanctions are appropriate for acts of negligence by mariners holding and acting under the authority of an MMC. Acts of negligence by non-U.S. mariners when outside the U.S. territorial sea, or when such negligence does not endanger the life, limb, or property of a person should not be considered a violation of U.S. law or regulation. Wake damages and navigation interference are good examples of negligence issues that should be investigated and referred for enforcement.
(everyone)

D.8. OIL POLLUTION INCIDENTS

A personnel investigation shall be conducted in all instances when the actions or non-actions of a mariner apparently caused or contributed to the cause of an oil pollution incident. See Chapter B8 of this volume for further information.
(everyone)

D.9. USE OF NARCOTICS AND OTHER DANGEROUS DRUGS

D.9.a. Action Required Upon Receipt Of Positive Chemical Tests

When a chemical test report indicates a positive result, the IO shall review it closely. If it appears that the test result is flawed due to the circumstances such as those listed below, the viability of pursuing further enforcement action shall be evaluated. If the



report appears to be complete, the IO shall notify the marine employer to ensure that the mariner is removed from any safety sensitive position, and initiate enforcement action. Questions regarding the seriousness of specific flaws and the viability of certain evidence for use in the enforcement process should be addressed to the Office of Investigations and Casualty Analysis, Commandant (CG-545).

D.9.b. Fatal Flaws In Dangerous Drug Use Investigations

Commandant's Decision on Appeal (CDOA) number 2555 vacated a finding of proved for the use of dangerous drugs because of a fatal flaw in the chain of custody surrounding the test specimen in question. In that case, the collector neglected to obtain the donor's signature on the custody and control form. This flaw went undetected through the lab analysis, the Medical Review Officer (MRO) review and subsequent Coast Guard preferring of charges before the Administrative Law Judge (ALJ). The integrity of the chemical testing program relies on the substantial compliance with prescribed procedures. IOs shall conduct a thorough review of all the facts of a case before pursuing enforcement actions. Although the check of a specimen's chain of custody is the responsibility of the MRO, it is important that IOs review supporting material during their investigation to ensure that all applicable regulations have been complied with before initiating enforcement action. Failure to do so could result in wasted time and effort for all involved parties. The most significant piece of documentation available to the IO in a drug use case is the custody and control form. IOs shall become familiar with the Department of Transportation (DOT) regulations, 49 CFR Part 40, and specifically Subpart I Problems in Drug Testing, 40.191 – 40.209, to ensure that complaints are not issued when a flaw in the testing procedures has not been corrected. DOT has listed the following "fatal flaws" in 40.199 concerning the viability of a specimen for use in respect to enforcement:

Specimen Identification Number (ID) on the specimen bottle and custody and control form (CCF) do not match;

No printed collector's name *and* no collector's signature;

The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be redesignated, see 49 CFR 40.83(g));

Because of leakage or other causes, there is an insufficient amount of urine in the primary specimen bottle for analysis and the specimens cannot be redesignated, see 40.83(g)

D.10. GUIDELINES FOR REPORTS OF SEXUAL OFFENSES AND HARASSMENT**D.10.a. Investigation**

Reports of sexual abuse and harassment should be taken seriously and investigated immediately. Interviewing victims of crimes of a sexual nature requires comprehensive knowledge of victim/witness rights and the need to ensure that victims are not subjected to re-victimization through the investigative process. 46 USC 10104 - Requirement to Report Sexual Offenses, requires a master, or other individual in charge, to report complaints of sexual offenses to the Coast Guard. Complaints may also be received from the victim, witness, or other law enforcement



agencies. 18 USCG Chapter 109A - Sexual Abuse, defines the sexual offenses which are required to be reported under 46 USC 10104. The offenses described in Chapter 109A are:

- Aggravated sexual abuse;
- Sexual abuse;
- Sexual abuse of a minor or ward; and
- Abusive sexual contact.

Investigating offenses of a sexual nature requires specialized training and experience. IOs shall immediately forward to the Coast Guard Investigative Service via the cognizant District Commander all alleged, actual or suspected incidents of aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, and abusive sexual contact. The Coast Guard Investigative Service, in consultation with the appropriate servicing legal office, will determine appropriate investigative action and notification of other agencies, including the FBI, as necessary.

D.10.b. Failure To Report A Sexual Offense

46 USC 10104(b) authorizes up to a \$6500.00 civil penalty against a master, or other individual in charge, who knowingly fails to report a complaint of sexual abuse to the Coast Guard. The Investigating Officer (IO) shall process an Administrative Class 1 Civil Penalty against the master, or other individual in charge, if the investigation finds that the master, or other individual in charge knew of the incident, and the complaint was made to the Coast Guard by the victim, witnesses, or other law enforcement agency.

E. STEP FOUR: REVIEW THE PEOPLE INVOLVED

E.1. GENERAL

To establish jurisdiction over a person or organization, the IO must accurately identify who was involved (generally, this is not an issue). Further, for any subsequent enforcement action to be effective contact information for that person must be complete and accurate.

E.2. DEFINITIONS

E.2.a. Merchant Mariner's Credentials (MMC)

MMCs are any License, Certificate of Registry (COR), Merchant Mariner Document (MMD) or STCW Certificate issued by the Coast Guard authorizing service on vessels, as required by various statutes and regulations.

E.2.b. MMC Holder

An MMC holder is a mariner who has been issued any MMC by the Coast Guard.

E.2.c. Suspension and Revocation (S&R) Proceedings

S&R proceedings are proceedings against MMCs under the authority of 46 USC Chapter 77. See Part C of this volume for additional information.



E.2.d. Non-MMC Holder

Generally these mariners are deckhands or some other position aboard a vessel that is not required hold a Coast Guard issued license, certificate of registry, or document. The vessel’s manning requirements determine whether the position is required to be on the vessel.

E.3. PROOF OF PERSON INVOLVED

Evidence of the individual’s role as owner, operator, or other persons working aboard the vessel is extremely important. It is important to have evidence in the file as to who the actual owner/operator and other persons working aboard the vessel were at the time of the violation. Examples of proof of identify can include but are not limited to:

- Copy of vessel’s documentation/Certificate of Inspection (if applicable);
- Copies of vessel’s log entries/ship’s papers;
- Copies of a person’s MMC (if required for the job they were performing);
- Company work schedules; or
- A witness’ statement as to the role of the individuals on board.

E.4. INVESTIGATIONS PERTAINING TO MMCs

See: 46 USC 7703

A jurisdictional element that must be established when taking enforcement action against an MMC are that the person is: a holder of; and/or acting under the authority of a MMC.

The first element must always be present to take enforcement action against an MMC, while the second element is not. Always establish these jurisdictional elements early in the investigation. Additional guidance on jurisdiction over MMC holders and when a mariner is considered acting under the authority of a MMC can be found in Chapter C4 of this manual.

E.5. MARINERS ON PUBLIC VESSELS

A mariner hired to serve on a public vessel on the condition that he or she holds an MMC is subject to S&R proceedings and thus are subject to personnel investigations for their actions. As defined in 46 USC 2101; a vessel that is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and is not engaged in commercial service. A public vessel of the United States is not subject to Coast Guard inspection, and is exempt from certain other navigation and vessel inspection requirements (except vessels owned, operated, or controlled by the Department of Transportation (DOT), as per 46 USC 2109. However, the Commandant has signed an Inspection and Certification Agreement with the Commander, Military Sealift Command (MSC), and the U.S. Army Corps of Engineers (ACOE) concerning disciplinary actions against merchant mariners serving on board MSC and ACOE vessels. IOs shall conduct personnel investigations into the actions of a civil service or contract crewmember when possession of an MMC is a condition of employment.

E.6. INVESTIGATING

The United States Court of Appeals for the Ninth Circuit decided that a state pilot, not required to hold a license under federal law, is not acting under the authority of



PILOTS

the pilot's federal license, although it is required by the state before it will issue the state license. See Soriano v. U.S., 494 F. 2d 681 (9th Cir. 1974). The U.S. District Court for the Eastern District of Louisiana decided that former 46 USC 214 does not, by itself, authorize enforcement proceedings against federal licenses held by pilots acting under authority of state licenses. See Dietze v. Siler, 414 F. Supp. 1105, (E.D. LA., 1976). The Commandant's policy is to follow the Soriano and Dietze decisions in cases involving pilots acting under the authority of state commissions. However, the offenses listed in 46 USC 7703(2)-(5) and 7704 are holder offenses and S&R action may be initiated on the federal pilot's license for state pilots who are required to hold a federal license. Because of the complex nature of state pilot investigations CG-545 should be contacted before any S&R action is taken regarding a federal pilot license. This policy does not affect investigative procedures concerning casualties and civil violations involving state pilots. Pilots acting under authority of federal licenses are subject to investigation and enforcement action under 46 USC Chapter 77, as well as civil or criminal enforcement action. Pilots acting solely under the authority of a state license are subject to civil penalty action for violation of applicable statutes. Any evidence of criminal violation of federal statutes shall be referred to the servicing legal office for a determination as to whether to refer the case to the local U.S. attorney. If a violation is within the jurisdiction of a state or locality, the evidence should be referred to the cognizant state or district attorney. See also Commandant's Decision on Review 17 (POWER).

**E.7. LABOR -
 MANAGEMENT
 DISPUTES**

IOs should not become involved in labor/management conflicts. If a preliminary investigation reveals that a contractual infraction did not affect the safety of the passengers, crew, vessel, marine environment, or national security, no further action should be taken. This policy requires OCMI's and their department heads to remember that IOs should not place themselves in roles as labor/management arbitrators. See 46 CFR 5.71; Appeal Decision 2470 (Giachetti). See Chapter A3 for specific information.

F. STEP FIVE: CONSIDER HUMAN ERROR

**F.1.
 INTRODUCTION**

Human error is a predictable part of the Marine Transportation System. When performing violation analysis, the IO must be alert to human error as: 1) an act expressly prohibited in a law or regulation; and 2) an act of professional incompetence, misconduct, or negligence. The term "human error" applies to a wide variety of human behaviors, as described in Chapter B4 of this volume. Skill-based errors, for instance, are significantly different from knowledge-based errors. In general, when considering whether a human error may be considered a violation (including negligence), the IO should use the following rule: unless the action violated a specific law or an error was made in good faith based on mistaken judgment or misanalysis of an "unsettled" area (i.e., knowledge-based performance), the action or error does not usually rise to the level of negligence or misconduct.

F.2. HUMAN ERROR

Human error encompasses decisions and actions. In some instances, the action



**AS DIRECT
VIOLATION OF LAW
OR REGULATION**

performed in error (unintended or willful) will be directly prohibited by law or regulation. In such cases, regardless of intent, the error should be treated as a violation of that regulation or law. The intent of the person involved, however, is relevant in assessing the appropriate level of enforcement. See Chapter B6 of this volume for specific details concerning various violations of law or regulation.

G. STEP SIX: CONSIDER OMISSIONS

G.1. GENERAL

In performing violation analysis, the Investigating Officer (IO) must also be alert for specific actions which a mariner or other person: 1) was explicitly required to perform by law or regulation, but which they failed to perform; or 2) was required by standards of professional competence, formalized (non-regulatory) rule, or accepted standards of attention to duty, but which they failed to perform. In these cases, the failure to take an action or make a judgment may be considered a violation, just as taking an action would. See Chapter B6 of this volume for specific details concerning omissions.

H. STEP SEVEN: CONSIDER THE EVIDENCE FOR EACH ELEMENT

H.1. GENERAL

Because no two cases are factually the same, it is impossible to provide a cookbook listing of the evidence that needs to be gathered in each incident to support a prima facie case. In general, the government must present sufficient **competent** evidence establishing every element of an alleged violation before a violation can be found to have occurred. Therefore, in analyzing violations, IOs must be aware of what types of evidence would best establish **each element** of a violation.

**H.2. TYPE AND
QUALITY OF
EVIDENCE**

The type and quality of evidence is critical to the violation analysis. No matter how thoroughly a facility inspection, vessel boarding, or pollution investigation was conducted, a violation will not be found to exist if the evidentiary package is not collected and submitted to the hearing officer. Keep in mind, a violation cannot be said to have occurred unless there is sufficient competent evidence to establish every element of the alleged violation. See Chapter B6 of this volume for specific details concerning evidence for each element.

I. STEP EIGHT: REPORT APPARENT VIOLATIONS

I.1. GENERAL

Once analysis is complete, apparent violations should be referred for enforcement evaluation and appropriate action. The report **SHOULD NOT CONCLUDE** that a violation **did** or **did not** occur. Instead, having met the thresholds for evidence suggested above, the IO should report only that there is evidence of the specific



apparent violation warranting further enforcement evaluation.

I.2. MARITIME INFORMATION FOR SAFETY AND LAW ENFORCEMENT COMPUTER SYSTEM (MISLE)

All personnel investigations shall be documented in the MISLE computer system in accordance with applicable CG-545 data entry policy, and the MISLE Investigations and Enforcement Process Guides. As a matter of policy, IO's will document all reports of apparent violation in MISLE in the relevant detection activity. Direct entry of enforcement activities without record of the underlying investigation is expressly prohibited.

I.3. REFERRAL FOR ENFORCEMENT IN THE REPORT OF INVESTIGATION

Where a written ROI is prepared, the IO shall include only statements of the following form: "During the course of this investigation, sufficient evidence of an apparent violation of 46 CFR X.XX was discovered to warrant referral for enforcement evaluation. Final evaluation and agency action on this evidence will be reported separately."

I.4. STATEMENTS OF NO EVIDENCE

IOs shall not include statements to the effect of "there is no evidence of negligence" and so on. In general the absence of a report of apparent violation in MISLE or the ROI speaks for itself. Where the IO is forced to directly answer such questions, a note to the effect of "insufficient evidence of negligence was available/encountered to warrant referral for enforcement evaluation," should be made in the ROI.

J. OTHER INVESTIGATIVE ISSUES

J.1. INTERACTION WITH MARINE BOARDS OF INVESTIGATION

J.1.a. General Principles

The OCM I of the port in which a Marine Board of Investigation is held shall conduct a personnel investigation as soon as sufficient information indicates a possible violation of law or regulation by a person under Coast Guard jurisdiction. This information may be obtained during a preliminary casualty investigation or from evidence received by the Marine Board. The IO or the IO's representative should arrange to attend those sessions that the IO deems appropriate. Under no circumstances should a personnel investigation resulting from a marine casualty interfere with the work of the Marine Board. Liaison between the IO and the Marine Board recorder will provide a smooth flow of information that will be helpful to the IO, and possibly the Marine Board. The following actions might be considered: Advise the recorder of any personnel investigation being contemplated; and Request permission to interview witnesses after the Marine Board has questioned them.

J.1.b. Simultaneous Activities

Personnel investigations should be conducted after a Marine Board has convened only with the approval of the Marine Board Chairperson. If the Chairperson requests an abeyance until the Marine Board adjourns, investigative activities should be suspended. This is often requested so that the Marine Board has flexibility in developing recommendations for submittal to the Commandant. However, this does not preclude initiation of enforcement proceedings during the course of, or



immediately following, the Marine Board’s investigation. If sufficient information in the personnel investigation is developed before the casualty investigation is completed, enforcement action may be initiated. Prior to taking enforcement action, however, the Marine Board Chairperson should be notified and the Chairperson's recommendations respected.

J.1.c. Further Development

If, upon review of the Marine Board’s ROI the Commandant directs further personnel investigation, the IO shall obtain the initial information by the most expeditious means possible.

J.2. DUAL INVESTIGATIONS

On many occasions, information received during a Coast Guard investigation may be of importance to other federal, state, or local law enforcement authorities. These authorities should be notified at the earliest opportunity, to enable them to take early investigative action, if warranted.

J.3. TRANSFER OF INVESTIGATION OWNERSHIP WITHIN THE COAST GUARD

During the initial phase of an investigation, it may become apparent that necessary information is available outside the jurisdiction of the local OCMI. Generally, such information can be obtained by the OCMI with the appropriate area of responsibility (AOR) and forwarded to the IO conducting the investigation. However, if it is determined that all of the information needed is located in another AOR and that anticipated Coast Guard action will be taken there, the investigation may be transferred to that OCMI.

J.4. REFERRAL TO THE DEPARTMENT OF JUSTICE (DOJ)

When a personnel investigation reveals evidence of criminal liability, the IO should discuss the merits of the case with their servicing District Legal Office (dl) and possibly the local Coast Guard Investigative Service (CGIS) special agent for possible referral to the local U.S. Attorney for appropriate action. If the evidence indicates criminal liability within the jurisdiction of a state or locality, it should be forwarded to the District Commander with a recommendation for referral to the appropriate prosecutor.

K. INTERNAL ADMINISTRATIVE PROCEDURES

K.1. SUSPENDED CASES

When a mariner under investigation cannot be located, the IO should complete the case as fully as possible and place the mariner on the Wanted List in MISLE for the purpose of an investigation. No Incident Investigation activity shall be transferred to CG-545 with a mariner still on the Wanted List for the purpose of an investigation. The investigation shall remain open until the mariner is located or there is no possible enforcement action that can be taken against the mariner, i.e. the 1 year grace period on the MMC has passed, or the statute of limitations for an offense under 46 USC Chapter 77 has expired. When the mariner under investigation cannot be located but evidence gathered indicates that S&R action under 46 USC Chapter 77 is warranted, the IO should complete a referral for enforcement creating an Enforcement Activity. The IO should develop the case in the Enforcement Activity as fully as possible and



place the mariner on the Wanted List in MISLE for pending enforcement action. The IO shall place the activity in an "Open-Suspended" status until the mariner is located or the provisions for closing the activity contained in Chapter C4 are met. The activity shall include all the evidence collected, i.e., (but is not limited to) Official Logbook entries, abstracts of Shipping Articles, statements of witnesses, and their names, addresses, and telephone numbers. See also: Chapter C4 on locking mariner's record.

K.2.
COMMENDATIONS OF
MARINERS

OCMI's may submit letters or other types of reports commending merchant mariners and officers to the Director, National Maritime Center (NMC4A). NMC4A encourages such submittals. All marine safety personnel should recognize instances of outstanding performance of duty by mariners and make suitable reports to NMC4A. They may also request information as to the prior record of a mariner for the completion and forwarding of such reports.

K.3. HEADQUARTERS
ASSISTANCE

Close liaison between field offices and CG-545 is desirable. Officers assigned to CG-545 have the advantage of being exposed to a wide variety of cases and situations. In addition, they will be aware of the latest policy concerning various matters as well as non-criminal search tools and methods. IOs are encouraged to telephone CG-545 when necessary to discuss problems of mutual concern.



USCG MARINE SAFETY MANUAL, VOLUME V: INVESTIGATIONS AND ENFORCEMENT
PART B: INVESTIGATION
CHAPTER 9: PERSONNEL INVESTIGATION

FIGURE B9-1: Cargo & Miscellaneous Vessels Logbook Review Checklist

VSL NAME:	VOYAGE # OR DATES:	LOG BOOK #:
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_____ **46 CFR 97.15-3(a)** – TESTS AND EXAMINATION BY SHIP’S OFFICER OF ENTIRE STEERING GEAR, WHISTLE, AND MEANS OF COMMS BETWEEN BRIDGE/PILOTHOUSE AND ENGINE ROOM, DATE OF TESTS AND CONDITION OF EQUIPEMENT.

- VOYAGE > 48 HRS: REQUIRED WITHIN 12 HOURS OF DEPARTURE
- VOYAGE < 48 HRS: REQUIRED AT LEAST ONCE PER WEEK

_____ **46 CFR 97.15-5(a)** – DRAFTS, FORWARD AND AFT, WHEN LEAVING PORT

_____ **46 CFR 97.15-5(b)** – POSITION OF LOAD LINE MARK, PORT & STBD, IN RELATION TO SURFACE OF WATER, AT TIME OF DEPARTURE

_____ **46 CFR 97.15-7(c)** – VSL’S STABILITY VERIFIED W/REQUIREMENTS OF TRIM AND STABILITY BOOK, STABILTY LTR, COI, AND LOAD LINE CERT. ENTRIES MADE AFTER LOADING, PRIOR TO DEPARTURE & AT ALL TIMES NECESSARY TO ENSURE THE SAFETY OF THE VSL

_____ **46 CFR 97.15-17(c)** – TIME AND DOOR LOCATION OF EVERY CLOSING OF LOADING DOORS

_____ **46 CFR 97.15-17(d)** – TIME AND CIRCUMSTANCES FOR ANY OPENING OF LOADING DOORS WHILE VSL IS AT ANCHOR IN PROTECTED WATERS

_____ **46 CFR 97.15-20(e)** – TIME OF UNCOVERING, OPENING, CLOSING/COVERING OF HATCHES OR OTHER OPENINGS AFTER LEAVING PORT

_____ **46 CFR 97.15-30(a)** – OPERATION AND INSPECTION OF THE EMERGENCY LIGHTING & POWER SYSTEMS; ONCE EACH WEEK WHILE UNDERWAY

_____ **46 CFR 97.15-30(b)** – 2 HR OPERATION UNDERLOAD OF THE INTERNAL COMBUSTION ENGINE DRIVEN EMERGENCY GENERATOR; ONCE EACH MONTH WHILE UNDERWAY

_____ **46 CFR 97.15-30(c)** –TESTS OF STORAGE BATTERIES FOR EMERGENCY LIGHTING & POWER SYSTEMS; ONCE EACH 6 MONTH PERIOD WHILE UNDERWAY

_____ **46 CFR 97.15-55(a)** – EACH SUPPLY OF FUEL OIL REC’D O/B, INCLUDING QUANTITY, VENDOR NAME, NAME OF OIL PRODUCER, AND THE FLASH POINT

_____ **46 CFR 97.15-75(c)** – DATE OF TESTS AND CONDITION OF INFLATABLE HOPPER GATE SEALS; TESTED AFTER EACH CARRIAGE OF CARGO

_____ **46 CFR 97.35-5(a)** – ONBOARD TRAINING, MUSTERS, AND DRILLS HELD IAW SUBCHAP W. ENTRIES MUST INCLUDE:

- DATE AND TIME OF DRILL, MUSTER OR TRAINING SESSION
- SURVIVAL CRAFT AND FIRE-EXTINGUISHING EQUIPMENT USED IN DRILL
- IDENTIFICATION OF INOP OR MALFUNCTIONING EQUIPMENT AND CORRECTIVE ACTION TAKEN
- IDENTIFICATION OF CREWMEMBERS PARTICIPATING IN DRILLS OR TRAINING
- SUBJECT OF ONBOARD TRAINING SESSION
- CIRCUMSTANCES WHY FULL MUSTER, DRILL, OR TRAINING SESSION WAS NOT HELD AND EXTENT OF MUSTER, DRILL OR TRAINING SESSION

_____ **46 USC 11301(b)** – BELOW LIST IS NOT ALL INCLUSIVE, SEE STATUTE FOR ENTIRE LIST

- LEGAL CONVICTION OF SEAMAN & PUNISHMENT
- OFFENSE COMMITTED BY SEAMAN
- STATEMENT OF CONDUCT, CHARACTER, & QUALIFICATIONS OF EACH SEAMAN OR STATEMENT THAT MASTER DECLINED TO GIVE OPINION
- ILLNESS/INJURY TO SEAMAN, NATURE OF ILLNESS/INJURY & TREATMENT
- STATEMENT ABOUT ANY MARINE CASUALTIES AND THE CIRCUMSTANCES UNDER WHICH IT OCCURRED

_____ DISCUSS W/SIO ANY ITEMS WHICH WARRANT INITIATION OF CG ENFORCEMENT ACTION



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FIGURE B9-2: Tank Vessels Logbook Review Checklist

VSL NAME: _____	VOYAGE # OR DATES: _____	LOG BOOK #: _____
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_____ **46 CFR 31.10-18(a)** – TESTS AND INSPECTION OF ALL HAND PORTABLE FIRE EXTINGUISHERS, SEMI-PORTABLE FIRE EXTINGUISHING SYSTEMS AND FIXED FIRE EXTINGUISHING SYSTEMS ONBOARD; AT LEAST ONCE EVERY 12 MONTHS

_____ **46 CFR 35.10-1** – ONBOARD TRAINING, MUSTERS, AND DRILLS HELD IAW SUBCHAP W. ENTRIES MUST INCLUDE:

- DATE AND TIME OF DRILL, MUSTER OR TRAINING SESSION
- SURVIVAL CRAFT AND FIRE-EXTINGUISHING EQUIPMENT USED IN DRILL
- IDENTIFICATION OF INOP OR MALFUNCTIONING EQUIPMENT AND CORRECTIVE ACTION TAKEN
- IDENTIFICATION OF CREWMEMBERS PARTICIPATING IN DRILLS OR TRAINING
- SUBJECT OF ONBOARD TRAINING SESSION
- CIRCUMSTANCES WHY FULL MUSTER, DRILL, OR TRAINING SESSION WAS NOT HELD AND EXTENT OF MUSTER, DRILL OR TRAINING SESSION

_____ **46 CFR 35.10-15(a)** – OPERATION AND INSPECTION OF THE EMERGENCY LIGHTING & POWER SYSTEMS; ONCE EACH WEEK WHILE UNDERWAY

_____ **46 CFR 35.10-15(b)** – 2 HR OPERATION UNDERLOAD OF THE INTERNAL COMBUSTION ENGINE DRIVEN EMERGENCY GENERATOR; ONCE EACH MONTH WHILE UNDERWAY

_____ **46 CFR 35.10-15(c)** –TESTS OF STORAGE BATTERIES FOR EMERGENCY LIGHTING & POWER SYSTEMS; ONCE EACH 6 MONTH PERIOD WHILE UNDERWAY

_____ **46 CFR 35.20-5** – MAXIMUM DRAFT WHEN LEAVING PORT

_____ **46 CFR 35.20-7(c)** – VSL’S STABILITY VERIFIED W/REQUIREMENTS OF TRIM AND STABILITY BOOK, STABILITY LTR, COI, AND LOAD LINE CERT. ENTRIES MADE AFTER LOADING, PRIOR TO DEPARTURE & AT ALL TIMES NECESSARY TO ENSURE THE SAFETY OF THE VSL

_____ **46 CFR 35.20-10** –TESTS AND EXAMINATION BY SHIP’S OFFICER OF ENTIRE STEERING GEAR, WHISTLE, AND MEANS OF COMMS BETWEEN BRIDGE/PILOTHOUSE AND ENGINE ROOM, DATE OF TESTS AND CONDITION OF EQUIPEMENT.

- VOYAGE > 48 HRS: REQUIRED WITHIN 12 HOURS OF DEPARTURE
- VOYAGE < 48 HRS: REQUIRED AT LEAST ONCE PER WEEK

_____ **46 CFR 35.25-10(b)** – EACH SUPPLY OF FUEL OIL REC’D O/B, INCLUDING QUANTITY, VENDOR NAME, NAME OF OIL PRODUCER, AND THE FLASH POINT

_____ **46 USC 11301(b)** – BELOW LIST IS NOT ALL INCLUSIVE, SEE STATUTE FOR ENTIRE LIST

- LEGAL CONVICTION OF SEAMAN & PUNISHMENT
- OFFENSE COMMITTED BY SEAMAN
- STATEMENT OF CONDUCT, CHARACTER, & QUALIFICATIONS OF EACH SEAMAN OR STATEMENT THAT MASTER DECLINED TO GIVE OPINION
- ILLNESS/INJURY TO SEAMAN, NATURE OF ILLNESS/INJURY & TREATMENT
- STATEMENT ABOUT ANY MARINE CASUALTIES AND THE CIRCUMSTANCES UNDER WHICH IT OCCURRED

_____ DISCUSS W/SIO ANY ITEMS WHICH WARRANT INITIATION OF CG ENFORCEMENT ACTION

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USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART B: INVESTIGATION

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**Chapter Ten:
Boating Accident
Investigation**

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A. LEGAL AUTHORITY

A.1. BOATING ACCIDENTS ARE MARINE CASUALTIES

Under the authority found in 46 USC 6301, the Coast Guard defines the term *Marine Casualty* in 46 CFR Part 4 to include boating accidents. Accordingly, all authorities and procedures applicable to the investigation of marine casualties also apply to the investigation of boating accidents.

A.2. BOATING ACCIDENT REPORTING STATUTES

The statutory requirement to report boating accidents is contained in 46 USC 6101 and 6102. The implementing regulations, including the content of the reporting form and submittal procedures, are in 33 CFR 173-174. In summary, the operator of any vessel that is used by its operator for recreational purposes OR that is required to be numbered shall submit a casualty or accident report prescribed in 33 CFR 173.57 to the reporting authority prescribed in 173.59 when, as a result of an occurrence that involves the vessel or its equipment: (1) A person dies; (2) A person is injured and requires medical treatment beyond first aid; (3) Damage to vessels and other property totals \$2,000 or more or there is a complete loss of any vessel; or (4) A person disappears from the vessel under circumstances that indicate death or injury. All states are required to have a state reporting authority; however, if no state reporting authority can be reached, or the incident involves a commercial vessel, the owner or operator of the vessel shall report it to the Coast Guard. The report shall be made on a state boating accident form or Coast Guard Boating Accident Report, Form CG-3865. A civil offense violation for failure to report a boating accident should be processed under 46 USC 6103(a). This penalty procedure applies to operators of all vessels, with the exception of public vessels.

A.3. BOATING ACCIDENT REPORTING REGULATIONS

Regulatory requirements for casualty reporting are found in 33 CFR 173.51-59 and 174.101-125. Vessels reporting under these regulations are excluded from the requirements of 46 CFR 4.05.

B. BOATING ACCIDENT INVESTIGATIONS

B.1. STATE INVESTIGATIONS

Under a Memorandum of Agreement (MOA) between each State reporting authority and the Coast Guard, each State agrees to have a State agency receive reports on recreational boating accidents that occur on waters subject to the jurisdiction of the United States. Further under MOA, the State agency shall investigate fatal accidents and when appropriate, non-fatal accidents that result in serious injury. The state agency receiving the boating accident report will review it, when appropriate, conduct an investigation, make a conclusion as to the cause of the incident, and then forward accident and investigation data to the Office of Boating Safety, Commandant (CG-5422). Through the Casualty Reporting System, the states shall inform the Coast Guard of any boating safety problem areas (e.g., a stability problem with a certain type of boat) and specify the problem and measures instituted or recommended.



B.2. COAST GUARD INVESTIGATIONS

The OCMI is responsible for the investigation of boating fatalities occurring within and beyond the state and territorial waters of the United States for which there is no state investigation, and **for all boating accidents involving commercial vessels which meet the reporting requirements of 46 CFR 4.05** (e.g. State numbered uninspected towing vessels and fishing vessels). The District Commander and the OCMI also retain the flexibility to conduct an investigation of any boating accident when the investigation of such an accident is of particular interest for the enhancement of safety or for the public welfare.

The Coast Guard receives boating accident reports from the states and uses the information from the reports, as well as additional sources of information such as narrative reports, to meet its responsibilities under the provisions codified in 46 USC Chapter 43. That responsibility, expressed in its most basic form, is to promote the safety of the recreational vessel, its associated equipment, and the operator and passengers. The Coast Guard also has a statutory obligation to publish statistics (see 46 USC 6102). Each year, information received through the casualty reporting system is compiled and published in a report entitled "Boating Statistics," Commandant Publication (COMDTPUB) P16754 (series).

C. HOW BOATING ACCIDENT INFORMATION IS USED

C.1. GENERAL

The Coast Guard uses information gathered from boating accidents to establish regulations and safety standards for boats and associated equipment; implement a program designed to identify and remedy boat defects; formulate an effective program to educate the recreational boater; update statistical information; determine if there is evidence of violation of any law or regulation; and measure the effectiveness of safety programs.

C.2. BOATING STANDARDS

C.2.a. Authority For Standards

The Federal Boat Safety Act (FBSA) authorized the Coast Guard to establish safety standards for boats and associated equipment. These provisions are now included in 46 USC 4302. In undertaking this responsibility, the Coast Guard has implemented a Safety Standards Program. The primary objective of this program is to reduce the risk to the consumer from unsafe design and construction of boats and associated equipment. Boating accident information is used in this program to develop new boat safety standards, monitor compliance with standards, and identify boat defects.

C.2.b. Development Of Standards

With regard to new boat safety standards, accident data are screened for information that may suggest the need for standards in the areas of accident avoidance, accident recovery, and program administration. Accident avoidance is concerned with how to avoid capsizing, swamping, fire, explosions, or other types of boat casualties. Accident recovery is oriented towards keeping the boat afloat after an accident,



preventing drownings, and using safety equipment, such as signal flares and fire extinguishers. Program administration involves such items as the certification of boats and display of boat labels. Compliance with standards and determination of boat defects are concerned with product assurance; that is, with making sure that the boat as manufactured is safe.

The Boat Safety Standards Check Off List is used by factory inspectors, who are contracted by the Coast Guard, to show specific items that should be checked in determining compliance with these standards, such as manufacturer's certification, safe powering, and ventilation.

C.2.c. Action On Defects

Boating accident information is screened for indications of defective boats or boat equipment. The nature or incidence of boating accidents, as reflected in casualty reports, may provide evidence of manufacturing defects. When a defect is suspected, it is researched thoroughly because it may have serious implications for the manufacturer.

The Coast Guard has the authority to require the manufacturer to notify the original purchaser of the defective boat or equipment; notify subsequent purchasers (if known to the manufacturer); notify dealers and distributors of such manufacturer to whom a boat or associated equipment was delivered; and correct the defect at that manufacturer's sole cost and expense.

C.2.d. Impact

The boating standards program has a strong and favorable impact on safe boating. Through this program the Coast Guard can take timely, effective action based on boating accident investigations. Immediate action can be taken on boat defects through the defect notification program. Future action is possible through the issuance of a safety standard to prevent the accident from recurring. One important reason for conducting boating accident investigations is to monitor the effectiveness of, and compliance with, existing standards.

C.3. BOATING EDUCATION

Although many boating accidents can be attributed to mechanical or environmental factors, most are caused by human factors often involving inadequate boating knowledge and training. To address this problem and minimize accidents due to human error, one of the Coast Guard's goals is to educate the boating public in the skills and knowledge necessary for safe vessel operation. A key to achieving this goal is the ROI, which is instrumental in identifying the human factors involved in a boating accident or casualty. The Coast Guard uses information from ROIs to develop educational guides and policies, which are disseminated to boaters directly or via other agencies and organizations involved in boating education such as the Coast Guard Auxiliary, U.S. Power Squadrons, and state boating authorities. Boating safety information reaches the boater through various media including: press releases,



television, radio, distance learning courses, formal classes, boat shows and convention exhibits, and personal appearances before civic groups, conventions, colleges and universities, and boating interest groups.

C.4. BOATING STATISTICS

Boating accident, investigation and narrative data captured by the Boating Accident Report Database (BARD-Web) System is a critical component of the statistics program. BARD-Web enables all state reporting authorities to electronically transfer accident report data and statistical information to one central location. The better the quality of boating accident report data received at Coast Guard Headquarters, the more valid will be the statistics generated. Narrative information is useful for studies that require specific, detailed information. The publication "Boating Statistics," COMDTPUB P16754, is the Coast Guard's primary boating statistical report; published each year, it has wide public distribution and is available via the CG-5422 website: www.uscgboating.org. Many other statistical studies are completed using data provided by boating accident information sources.

C.5. BOATING SAFETY LAW ENFORCEMENT

As with a marine casualty investigation, information gathered about a boating accident may reveal violations of a law or regulation. In this situation, the case should be referred for appropriate enforcement action. If a state conducts the investigation, however, and prohibits use of its ROI (or any report made by the public) in any action or proceeding against a person, the Coast Guard may only use the information provided by the state only in the same way the state may use it. (see 46 USC 6102(b)).

D. CONDUCT OF BOATING ACCIDENT INVESTIGATIONS

D.1. GENERAL

Under a Memorandum of Agreement (MOA), boating accident investigations shall be conducted by the state agency in charge of conducting boating accident investigations. If no state agency is available to conduct the investigation, or if the incident involves a commercial vessel that results in serious injury, or death, the Coast Guard shall perform the investigation in accordance with the procedures and policies set forth in Chapter B1 through B7 of this volume.

D.2. SUBMITTING BOATING ACCIDENT REPORT FORMS

As detailed in 33 CFR 173.59, the boating accident report must be submitted to the reporting authority where the accident occurred or, if the accident occurred on the high seas, to the state where the vessel number was issued. In some circumstances, this will not be possible. If the vessel has no number, the report is submitted to the state where the vessel is principally used. If no state reporting authority exists, the report should be submitted to the OCMI nearest the place where the accident occurred, or nearest the port of first arrival after the accident.

When the operator has not survived the casualty or is otherwise incapable of submitting the casualty or accident report, the owner shall submit the report. The report must be in writing, dated upon completion, and signed by the person who



prepared it.

If in such cases the operator was also the owner, or when neither is capable of completing the report, the report may be completed and signed by the IO. If someone other than the operator completes and signs the report, adequate notation must be made on the form as to the reason.

**D.3. COMPLETING
THE BOATING
ACCIDENT REPORT
FORM OR CG-3865**

D.3.a. Completing the Boating Accident Report Form

Most states have their own version of the Coast Guard Boating Accident Report form CG-3865. The purpose of the form CG-3865 is to provide the states with the standard data elements that should be captured for each accident. The following are important guidelines when filling out the State Boating Accident Report form or CG-3865:

- Include zip code and phone number for all addresses. If the operator is residing at a vacation residence, give both vacation and permanent addresses. Specify the permanent mailing address of the owner.
- A borrowed boat is not a rented boat. In such cases, the RENTED BOAT block should be checked "No" and indicate the boat is borrowed in the accident description area.
- The number of persons onboard shall include skiers being towed at the time of the accident.
- If the boat is documented, place the official number (O.N.) in the BOAT NUMBER block. All boats equipped with propulsion machinery are required to be numbered or documented. Ensure that the boat or documentation number has not expired.
- If boat is unnamed, indicate this fact in the BOAT NAME block with "N/A."
- The boat model is usually found on the boat "Certification Label."
- The Hull Identification Number is a 12-digit number assigned by the manufacturer, and is usually permanently affixed to the outboard side of the transom.
- For TYPE OF BOAT, "Other" includes hydroplanes and inflatables.
- The hull material, type of engine, and length are listed on the Certificate of Number. When measuring the length of a boat, do not include the bumpkins, motor, or other extensions.
- Indicate the accident location using known landmarks or latitude/longitude.
- For weather, 'fog' is a condition that greatly reduces visibility, whereas haze affects clarity of vision and subdues colors, but does not greatly reduce visibility.
- In several blocks (OPERATION AT TIME OF ACCIDENT; TYPE OF ACCIDENT; WHAT, IN YOUR OPINION, CAUSED THE ACCIDENT;



or WATER CONDITIONS) more than one block may be checked (consider primary cause and contributing factors or secondary causes).

- For TYPE OF ACCIDENT, indicate the type of event(s) that occurred.
- Estimates of the temperature of both the air and water are important in determining possible immersion hypothermia.
- In DAMAGE blocks, include damage as a result of the boat being towed or moved after the accident.

D.3.b. Assisting the Person Filling Out the Report

The IO may be in a position to assist in completing and forwarding the report, or may be required to complete it entirely. The IO should ensure the accuracy of the report as prepared by the operator by reviewing and checking the information given and, if necessary, correcting wrong information or filling in empty blocks. In making such changes, the IO should take care that the information is not obscured and that all corrections are initialed. It is also important to attach all necessary amplifying information to the report, including the IO and witnesses' statements, photographs, blueprints, manufacturer's data, maps or charts, or any other material that may clarify information. The IO should ensure that each operator involved in an accident is aware of the requirement to submit a boating accident report, and should have the necessary forms available. Normally, the report will be submitted by the operator to the state. The state will then enter appropriate data into the BARD system and make such data available to the Coast Guard within 30 days of receipt of the accident or casualty report as prescribed by 33 CFR 174.121..

D.3.c. Checking Forms For Completeness

All boating accident report forms and data submitted to the Coast Guard must be checked by CG-5422 for completeness, as well as the need for future investigative action when there are indications of safety defects or standards violations. Reasonable effort should be made to have the report completed before forwarding. In this regard, the telephone number of the person making the report can be used to verify and/or obtain information.

D.3.d. Transcribing Letter Reports to Form CG-3865

When a report is received in letter form, the information should be transcribed onto the State Boating Accident Reporting form, or in some cases form CG-3865. The IO transcribing the report shall make a notation on the form identifying the source of the information and attach any original letter reports.

D.3.e. Sources of Information Not to be Identified

Under 46 USC 6102(b), if a person provides information regarding a boating accident pursuant to a state law that guarantees against public disclosure of the information, the Coast Guard must observe that confidentiality.



D.4.
INVESTIGATIONS AND
REPORTS NOT
CLASSIFIED AS
BOATING ACCIDENTS

The Commandant does not require or desire the submittal of reports pertaining to marine casualties or accidents unless they fall under the classifications in either 46 CFR 4.05-1 or 33 CFR 173.55.

E. ADMINISTRATIVE CORRESPONDENCE CONCERNING BOATING ACCIDENTS

E.1. GENERAL

Another method of communicating information on boating accidents is through administrative correspondence. The information in this section deals with such correspondence. An example of a subject commonly treated by administrative correspondence is the johnboat. This is a boat of a common type, manufactured by several different companies that may have inherent stability problems. An example of a broad problem area in boating education is hypothermia. Letters on either subject should be addressed to CG-5422. On the other hand, an accident involving a specific boat type with a specific defect (e.g., a steering part on a certain manufacturer's boat) or a specific boating education problem should be explained in the ROI.

E.2. DATA TO BE INCLUDED

When drafting a letter concerning a problem area related to boating standards or boating education, convey the following information:

- Identify the boat and personnel involved;
- Record the time and location of the accident;
- Identify the facts surrounding the problem;
- Identify any evidence of the same problem occurring in other instances;
- Conclude that it is a manufacturing or education problem, or both;
- Recommend that the problem be reviewed by boating standards or education personnel, or both; and
- Identify involvement or use of alcohol and/or drugs, if any.

Administrative correspondence as described above cannot serve as a substitute for a boating accident report or any other required reports. It is, however, an important information source.

F. DEFINITIONS

F.1. BOAT

Any vessel manufactured or used primarily for noncommercial use, or leased, rented, or chartered to another for the latter's noncommercial use; or engaged in the carrying of six or fewer passengers.



F.2. BOATING ACCIDENT REPORTING REQUIREMENTS

A vessel shall report a casualty or accident as required in 33 CFR173.53 and 33 CFR 173.55 when, as a result of an occurrence that involves the vessel or its equipment:

- Loss of life or disappearance of any person under circumstances that indicate the possibility of death or injury;
- Injury that requires medical treatment beyond first aid; or
- Damage to the vessel or its equipment, or other vessels, or other property in excess of \$2,000 or a complete loss of the vessel.

[NOTE: The phrase "medical treatment" is a term in general usage that refers to all injuries receiving aid or attention by a physician or another person trained to practice or to administer medicine. The accident must involve the vessel or its equipment or appurtenances.]

F.3. CAPSIZING

The overturning or upsetting of a vessel.

F.4. ALLISION/ COLLISION

F.4.a. Allision

The striking of any fixed object, above or below the surface of the water, except the bottom (the striking of reefs, shoals, or rocks on the bottom is considered "grounding").

F.4.b. Collision With Floating Object

The striking of a floating object other than a vessel. Above or below the surface of the water, that is not fixed or held in place by any means (e.g., barrels, logs, or other flotsam).

F.4.c. Collision With a Vessel

Any striking together of two or more vessels, regardless of operation at the time of the accident. This includes colliding with the tow of another vessel, regardless of the nature of the tow (e.g., skier, knee-boarder, etc.).

F.5. DOCUMENTED

In receipt of a valid Certificate of Documentation issued in accordance with the provisions of 46 USC Chapter 121 and the regulations contained in 46 CFR 67.

F.6. ESTIMATE OF PROPERTY DAMAGE

The cost to repair property or restore it to its original condition, which is estimated by the owner, operator, or other person in whose opinion, such cost is necessary.

F.7. FALLS OVERBOARD

The unintended spilling out of a person or persons from a vessel without overturning the vessel.

F.8. FLOODING

The filling of a vessel with water, regardless of the method of ingress, although the vessel retains sufficient buoyancy to remain upon the surface.



F.9. GROUNDING An event in which a vessel runs aground, strikes, or pounds upon rocks, reefs, shoals, or the bottom.

F.10. JURISDICTION This is the power to act or the power of a particular governmental agency to administer and enforce the law. Various states differ on waters over which they exercise jurisdiction. If federal and/or state jurisdiction is exercised over a body of water, a report of a boating accident is required to be forwarded to the Coast Guard. Vessels required to report accidents to a state reporting authority may, on occasion, be beyond the jurisdiction of that state. For example, a vessel numbered by a coastal state may sail from that state and travel beyond its territorial waters to the high seas. In such a case, the requirement to report an accident would not be affected, but the state's authority to investigate would be affected. Such a casualty or accident, when the needs of boating safety or law require it to be investigated, may be accomplished by the Coast Guard under its statutory authority. Another example would be the use of a vessel on a private pond or lake. Jurisdiction may or may not be granted to the reporting authority by the laws of that state. However, reports of accidents on such waters are included in "Boating Statistics," COMDTPUB P16754 if the reports satisfy the other requirements for inclusion.

F.11. SINKING An event in which a vessel loses buoyancy and settles below the surface of the water.

F.12. VESSEL **F.12.a. General**
Includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water

F.12.b. Numbered Vessel

Any undocumented vessel that is numbered by the following:

- A state with a numbering system approved under 46 USC 12302; or
- The Coast Guard, when the state does not have an approved numbering system.

F.12.c. Undocumented Vessel

A vessel that does not have and is not required to have a valid Certificate of Documentation as a vessel of the United States.


F.12.d. United States Vessel

Any vessel documented or numbered under the laws of the United States.

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PART B: INVESTIGATION



Chapter Eleven:
Load Line Violation
Investigation

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A. COAST GUARD RESPONSIBILITIES FOR LOAD LINE ENFORCEMENT

A.1. GENERAL

Volume IV of this manual contains information on the administration of load line laws and regulations. U.S. Customs officers and Coast Guard marine safety personnel must observe and verify that vessels comply with 46 USC Chapter 51 and the regulations in 46 CFR Subchapter E. To do this, personnel must determine that the vessel has a valid load line certificate, that load lines are conspicuously marked (in accordance with 46 CFR 42.13-40), that draft marks are marked forward and aft, and that proper log entries have been made. A foreign or U.S. vessel may be checked at any time in U.S. waters to determine whether or not the applicable load line has been, is, or will be submerged. Sections of this chapter are concerned with how to conduct such an inspection and how to determine whether the load line is submerged, or will become submerged. If the applicable load line is submerged or other indications of violation of the load line statutes are observed, the matter must immediately be reported to the cognizant OCMI for investigation. The purpose of such an investigation is to develop sufficient evidence to bring proper enforcement action. Specifically, load line investigations shall note (and the necessary remedial action shall be determined for):

- Failure to have load lines on both sides of the vessel (46 CFR 42.07-5);
- Failure to have load lines conspicuously marked (plainly visible, permanently marked, and of the contrasting color) on both sides of the vessel (46 CFR 42.13-40);
- Failure to have a valid Load Line Certificate aboard; (To be valid, even though a Load Line Certificate may not have expired, an annual load line inspection must have been made within 3 months of the anniversary date on the certificate, and so endorsed on the back of the certificate by the assigning authority (46 CFR 42.09-15(d).)
- Failure to enter in the log the positions of the load line marks, port and starboard, and the drafts forward and aft upon departure (46 CFR 42.07-20);
- Submergence of applicable load lines at departure or arrival (46 CFR 42.07-10);
- Violation of any order of detention made pursuant to 46 USC Chapter 51; and
- Alteration, defacement, obliteration, or concealment of load lines.



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**A.2. STEPS IN
THE INVESTIGATION**

IOs generally have seven steps to complete when conducting a load line investigation:

- **Step One:** The amount of the submergence that exists or will occur shall be determined (remember: a picture is worth a thousand words);
- **Step Two:** The drafts of the vessel forward and aft shall be checked and noted;
- **Step Three:** The IO shall ascertain whether or not entries have been made in the vessel's log regarding the position of the applicable load line marks and the drafts forward and aft for the voyage in question, and make notes of such entries;
- **Step Four:** The IO shall check whether load line entries have been made in the log for several recent voyages and make notes of such entries, particularly of variations in drafts, and submergence of load lines;
- **Step Five:** Copy the vessel's Load Line Certificate and verify the date of issuance, the date of the initial or renewal survey, the date of the most recent annual endorsement, if any, and the name of the assigning authority that issued the certificate shall be noted;
- **Step Six:** Water samples shall be taken and tested.
- **Step Seven:** Enter the appropriate Investigation and/or Enforcement Activity information in MISLE.

**A.3. EQUIPMENT
NEED TO CONDUCT
LOAD LINE
INVESTIGATIONS**

The equipment itemized below is needed to conduct a load line investigation. Commanding Officers shall assure that at least one "load line kit" containing this equipment is readily available:

- Current load line regulations (46 CFR, Subchapter E);
- Two 50-foot tape measures with plumb bobs;
- A 6-foot folding rule;
- A notebook;
- Any available job aids;
- Hydrometers **
- Hydrosampler **
- Small jars for samples of water, when hydrosamplers are not available; and
- Gauge glass, 12 inches long, with 4-6 feet of rubber tubing fitted over glass (by submerging the tube, almost all wave action can be eliminated).

** NOTE: Items are necessary only when close reading of the position of the load line is indicated.



A.5.
JURISDICTION ON
FOREIGN VESSELS

International Load Line (ICLL 66) Certificates on vessels of foreign countries that have ratified the 1966 ICLL are normally accepted as meeting the requirements for a U.S. Load Line Certificate and markings in accordance with 46 CFR Subchapter E. Vessels of foreign countries that have not ratified the ICLL are subject to U.S. laws and regulations and must obtain a Form B Load Line Certificate to operate in U.S. waters. If there is a valid Load Line Certificate aboard the vessel, Coast Guard inspections are normally limited to that specified in 46 CFR 42.07-60(f) as follows:

- **Step One:** Assure the ship is not loaded beyond the limits allowed by the certificate.
- **Step Two:** Assure the position of the load line on the ship corresponds to the certificate. [NOTE: It is important to check this as some countries allow multiple Load Line Certificates to be issued to a single vessel with the master logging which is in use.]
- **Step Three:** Assure the ship has not been so materially altered that it is manifestly unsafe (46 CFR 42.07-60(f)(1)).

Control of a foreign vessel shall be exercised only to the extent necessary to ensure that the ship shall be made fit to proceed to sea safely. This may be interpreted to require offloading of cargo or supplies as necessary to return the vessel to its marks in cases of overloading.

A.5. PROCESS FOR
INVESTIGATION

Load line investigations are civil/criminal offense investigations. Accordingly, IOs should perform the fact finding process discussed chapter B3 of this volume, along with the violation analysis discussed in chapter B5. IOs may conduct human error analysis as described in chapter B4 when they believe such information will be of value in considering the appropriate enforcement action. Causal analysis is not normally a part of load line investigations.

B. TIMING OF LOAD LINE INVESTIGATIONS

B.1. LOADING AND
UNLOADING

Arriving vessels as well as departing vessels are subject to load line checks. Load Line rules are not applicable to vessels during loading and unloading operations because both the departure and arrival load line checks apply principally for the purposes of reserve buoyancy and safety while navigating at sea. If a vessel appears to be overloaded based upon the observation of a submerged load line while still loading, the Marine Inspector or IO should caution the master of the vessel and give the master an opportunity to correct the loading prior to departure. Similarly, the arrival check of drafts and marks should be made prior to the start of unloading/deballasting operations. If the vessel appears to have been overloaded during its voyage, it is essential to obtain the master's explanation of why so that it may be checked immediately. For instance, if the Chief Officer explains that liquid ballast was added during the voyage in order to improve stability, the IO should have all tanks sounded and attach notes to the report on the total ballast present at the time of the visit. The IO should also note the drafts recorded in the ship's



logbooks during the last full voyage.

**B.2. UPON THE
VESSEL'S ARRIVAL**

When an arriving vessel is reported overloaded, the IO must begin the investigation immediately. Investigations upon arrival generally follow the following steps:

- **Step One:** The IO should verify the condition of the ship before unloading/deballasting, and must document load line immersion (if any) on both sides of the vessel as well as the draft marks at the bow and stern (plus the amidships draft, when marked). See Section D.1 below for information on reading draft marks.
- **Step Two:** The IO should secure the scene of the investigation by warning the master not to discharge cargo, ballast, or any other material overboard until the investigation is complete.
- **Step Three:** The IO should record all tank levels by taking soundings or reading ullages in the presence of an appropriate ship's representative.
- **Step Four:** The IO should obtain a minimum of five freeboard readings taken at the ends, amidship and quarterpoints along the hull noting the longitudinal locations, port and starboard sides, along the length of the vessel. [NOTE: Freeboard is the distance from the deck line to the approximate mean surface of the water (46 CFR 42.13-20). The mean surface of the water is determined by estimating the range of the surface waves and taking their midpoint.
- **Step Five:** The IO should record cargo amounts and locations and obtain the cargo loading plan.
- **Step Six:** The IO should check the vessel's logbook to verify the type of voyage the vessel was last on, and should verify the position of the load line marks in comparison with the Load Line Certificate.

A maximum amount of accurate and timely data will thus be available to Coast Guard authorities taking action on the IO's report. Experience indicates that the information taken by the IO at the time of the violation is most important. If an IO fails to check all possibilities, the case may be vulnerable.

[NOTE: IOs must fully understand the explanations that a master may offer for the alleged overloading, even when a language barrier exists.]

**B.3. UPON THE
VESSEL'S DEPARTURE**

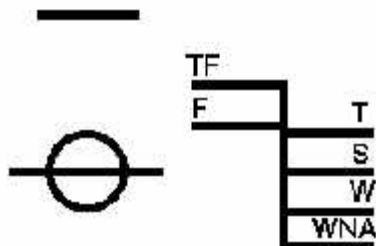
Upon departure, Investigating Officers (IOs) should wait until loading, ballasting, and provisioning of a vessel is completed before recording load line observations. If loading is not completed and the vessel is down to its load line marks, the IO should advise the Chief Officer and Master of this fact; but the responsibility for legal loading rests with the vessel's personnel. [NOTE: A vessel may be legally loaded below its marks due to allowable consumables (46 CFR 42.07-10(d)).] IOs should record the fact that they gave such advice, with rank and name of the officer to whom it was directed in case they have to build an enforcement case or detain the vessel. This is applicable to foreign as well as U.S. vessels.



C. STEP ONE: OBSERVING LOAD LINES FOR SUBMERGENCE

C.1. GENERAL

The position of the applicable salt water load line (on the Great Lakes, the applicable load line) with respect to the surface of the water must be observed on both port and starboard sides. As there are generally some waves, half the distance between the trough and crest is the approximate mean surface of the water.



C.2. FRESH WATER ALLOWANCE (FWA)

When a vessel is in fresh water, it will carry more draft than if the vessel were in salt water due to the density of the water. As described in 46 CFR 42.07-10(d), IOs should realize that a vessel departing a fresh water port for sea may legally have its load line submerged. When that vessel enters salt water, the vessel's draft will decrease, the freeboard will increase, and the load line will no longer be submerged. The opposite is true of a vessel entering port. Due to a decrease in salinity, the vessel's draft will increase and the freeboard will decrease. Such a vessel may not have had its load line submerged at sea, but, as buoyant force decreases in fresh water, the vessel may gain sufficient draft to submerge its load line. To correct for this, IOs must use a "Fresh Water Allowance" (FWA). The FWA is nothing more than a set distance (depending on salinity of the water) that the IO should "add" to the plimsol mark. FWAs do not apply to vessels on the Great Lakes.



**C.3. FINDING THE
"FULL" FWA**

To calculate the maximum or "full" fresh water allowance (FWA) (for use if the vessel were in pure fresh water), observe the difference between the salt water (summer) load line and its corresponding fresh water line (F), as marked on the ship. The upper edge of each line corresponds with the applicable required freeboard.

In most cases, the summer salt water line will be applicable. In this case, the fresh water line (F) is measured in relation to the summer salt water line(s).

FWA = (summer) Salt Water Line – Fresh Water Line

If the tropical salt water line is applicable, the tropical fresh water (TF) line is measured in relation to the tropical salt water line (T).

The full FWA above the winter or winter North Atlantic (WNA) marks would be the same as the distance from the summer load line to the fresh water mark.

**C.4. APPLYING
THE PORT ALLOWANCE
(THE ALLOWABLE
FWA)**

Unless the vessel is in pure fresh water, the "full" FWA should not be allowed. IOs must ascertain how much of the FWA is allowed in a particular port under certain environmental conditions. General allowances are provided in figure B-11-3. However, fluctuations in rainfall such as flooding or drought will alter the salinity. In critical cases the water's specific gravity must be taken.

For instance, if the full FWA of the ship is 6 inches (calculated) and the port allowance for the ship is 2 inches, then the water line of the ship can be legally one-third the observed distance from its applicable load line to the fresh water mark (i.e., only 1/3 of the full FWA is allowable).

Based on the calculations in this section, the IO should be able to state definitely whether or not the vessel is overloaded. If the vessel is definitely overloaded considering the FWA/port allowance, the position of the water line in relation to the load lines and draft marks fore and aft should be recorded.



C.5. BRACKISH WATER

The 1966 ICLL, the 1974 International Convention for Safety of Life at Sea (SOLAS), and the regulations implementing 46 USC Chapter 51 allow the submergence of load line marks when a vessel is in fresh or brackish water (with the exception of load lines on vessels navigating the Great Lakes). Normally, since the position of the load lines is observed in port, where often seawater has been diluted with fresh water, it is necessary to determine the allowance to account for the vessel's rise when passing from brackish water in the port to salt water at sea. A vessel departing for sea should be so loaded that, after allowance is made for the lesser salinity of the water in which the observation is made, it is floating at the load line applicable to the zone or season when it first reaches ocean waters of full salinity. The FWA for a particular vessel is obtained from the Load Line Certificate and a computation made to determine the FWA to be used.

C.6. COMPUTATIONS OF PORT ALLOWANCES FOR BRACKISH WATER

The standard hydrometer density of ocean water (1.025) less the actual density of port water is divided by 0.025; the quotient is then multiplied by the FWA given on the vessel's Load Line Certificate. This will give the port allowance to be used. No FWA may be granted on the Great Lakes or in the St. Lawrence Seaway from Lake Ontario to Montreal for any vessel with a Great Lakes load line. The regulations regarding Great Lakes load lines are found in 46 CFR part 45. The above procedure, expressed by formula, is:

$$\frac{(1.025 - \text{Density at Port})}{0.025} \times \text{Certificate FWA} = \text{Port Allowance}$$

Figure B11-1 sets forth the brackish water allowance for various specific gravities, making it unnecessary to figure each case by this formula.

C.7. AVERAGE DENSITIES OF HARBOR WATERS IN PERCENTAGES

The percentages of average density of harbor waters indicated in Figure B11-3 are for the guidance of IOs when there is no question about a violation of 46 USC Chapter 51. This table gives average readings, however, and may not be accepted in legal action if seriously challenged. Therefore, when there is doubt as to the legality of the vessel's loading, and when the IO believes a penalty should be imposed, the density of the water should be obtained by hydrometer.



C.8. STEAMING ALLOWANCES

As discussed in 46 CFR 42.7-10(d), a vessel departing from an (relatively) inland port will carry some fuel and other stores that will be consumed between the port of departure and the sea. IOs must make allowances for these additional consumables when ascertaining whether a vessel's load line will be submerged when it crosses to sea. The steaming allowance ** is computed as follows: estimate the total weight of the consumed fuel and stores in long tons (2,240 pounds); from the vessel's trim and stability data find the "tons per inch of submersion" or "tons per inch immersion (TPI)"; the total weight divided by tons per inch will give the inches (or fraction of an inch) that may be allowed.

$$\frac{(\text{Total Weight of Consumables})}{\text{TPI}} = \text{Steaming Allowance}$$

[NOTE: When "tons per inch" is based on short tons of 2,000 pounds, weight consumed must be in short tons as well.]

[NOTE: The best way to estimate the total weight of the consumed fuel/water during transit is to review fuel/water consumption records.]

** Steaming allowances do not apply to vessels on the Great Lakes.

C.9. ACCURATE MEASUREMENT IN WAVES AND SWELLS

Because the penalties found in 46 USC 5116 are based on the economic benefit of the overloading, a means must be found to measure accurately the vertical distance between troughs and crests of waves, to obtain the position of the applicable load line with respect to the water line. For accurate measurement, the gauge glass/tubing is the best way to determine the waterline and practically eliminates wave action. The specific gravity of the water should also be obtained at the same time.

C.10. WINTER LOAD LINES

Under the 1966 International Convention on Load Lines (ICLL), only vessels 328 feet (100 meters) or less in length are required to have a separate WNA freeboard. The minimum freeboard for vessels that are required to be marked with a WNA load line, if they are operating in either of the North Atlantic "seasonal winter" zones during a winter season, is contained in 46 CFR 42.20-75(d).

D. STEP TWO: READING DRAFTS

D.1. GENERAL

The draft of the vessel, forward and aft, must be noted in every case. Commonly, for U.S. vessels, the draft mark figures on the hull measure 6 inches in height with 6 inches between each figure and the bottom of the figure is the even foot reading corresponding to the mark.

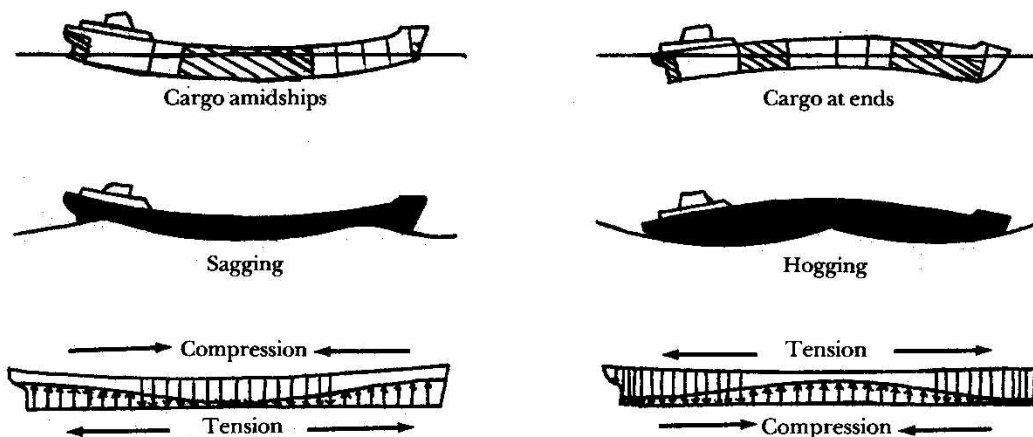
[NOTE: Some vessels may have their draft marks indicated in meters. Typically they are subdivided into two tenths of a meter increments.]

D.2. HOG, SAG, AND LIST

Determination of the load line position by draft figures alone is not necessarily correct, as ships may hog or sag appreciably; load lines are located without



accounting for hogging or sagging. Statutory civil penalties can only be imposed for submergence of the load line mark. Aside from possible hogging or sagging, it is essential to determine whether or not the applicable load line is or is not submerged. If the vessel has a list, an average must be determined for the amount of deck rise on one side and depression in the opposite side.



[NOTE: When loading a vessel, the ship may sometimes be deliberately loaded in a hogging condition in order to maximize cargo carrying capacity.]

E. STEP THREE AND FOUR: REVIEWING LOGBOOKS

E.1. GENERAL

Upon completion of a voyage in which a vessel apparently was loaded to its marks, the vessel's logbook should be examined to determine any instances of questionable or doubtful freeboards in possible violation of load line regulations. In addition to the checks and examinations of fully laden vessels departing U.S. ports that are presently conducted by the National Cargo Bureau (NCB), Customs, or Coast Guard personnel, the official logbook of a fully laden vessel that has bunkered at foreign ports, in possible violation of 46 USC Chapter 51, should be examined to determine if further inquiry into the loading and bunkering of the vessel is warranted.

E.2. EVALUATING LOGBOOK ENTRIES

Sample Case 1

Scenario. The examination of the official logbook at the conclusion of a voyage shows that a vessel (TPI 51.2, fuel consumption 230 barrels (bbls) per day) departed a Gulf of Mexico port approximately 4 inches light (or above) of the load line mark for the voyage; that in 3 days the vessel arrived at a nearby foreign port within the same load line zone; and that the vessel took on approximately 4,700 bbls of fuel oil there. The 3 day passage from the domestic port to the foreign port consumed approximately 690 bbls of oil at 6.6 bbls per ton. This amounts to an approximate 100 ton reduction in displacement; divided by the TPI, this translates into an approximate decrease of 2 inches in draft. The 4,700 bbls of fuel



oil taken on at 6.6 bbls to the ton and 51.2 tons to the inch translates into a decrease in freeboard of approximately 14 inches. The vessel departed the U.S. with 4 inches of freeboard to spare, and gained 2 more inches of reduced draft proceeding to the foreign port (through burning off fuel oil). When the 6 inch draft lightening is subtracted from the 14 inch decrease in freeboard, a possible overloading of 8 inches is indicated. This situation warrants further investigation.

Analysis. There may be a valid explanation in this case. The vessel may legitimately have had a quantity of slop water that was discharged during the passage; this should be indicated by entries in the engineering logbook or the Oil Record Book (ORB). Further interviewing of the master or examination of NCB records, including stability and grain loading plans, may explain the situation. If the condition is explained satisfactorily, no further action is necessary. Further examination of the approved stability grain loading plans of the vessel may indicate that the load at the foreign port was in excess of the stated amount of bunkering, to eliminate a second bunkering port (which is permitted). Also, the cargo and stability plans may have called for the vessel to use evaporators for boiler feed from the sea, when in fact the vessel took on a significant quantity of extra fresh water just prior to sailing from the U.S.

Sample Case 2

Vessel Data. This case illustrates the need to check the actual freeboard at the load line marks, rather than depend on corresponding draft marks to determine violations. The subject vessel is a 75,000 deadweight tons (DWT) tanker with the following characteristics:

LENGTH OVERALL	810 ft
Beam	125 ft
Molded depth	54 ft. 6 in
Assigned summer freeboard	13 ft. 4-1/2 in.
Deck thickness	1-3/16 in.
Keel thickness	1-1/4 in.

Analysis. The actual vessel depth is 54' 6", plus 1-3/16" (deck), plus 1-1/4" (keel), for a total depth of 54' 8-7/16". The corresponding draft for summer freeboard is 54' 8-7/16", minus 13' 4-1/2", or 41' 3-15/16". Although it might appear that any mean draft less than or equal to 41' 3-15/16" does not constitute a violation, this is not true. It is not unusual for a vessel of this size to sag 6 inches. If the mean draft of the vessel was determined to be 41' 1" and it had 6 inches of sag, there would still be a violation of approximately 3 inches. This would be apparent when the load line marks were checked on both sides. Similarly, if the vessel were in a hogged condition, a mean draft greater than 41' 3-15/16" would not necessarily constitute a violation. The governing factor is always whether the actual load line (with the appropriate water density and season corrections) is



immersed.

Need To Check Both Sides Of The Vessel. If the vessel in Sample Case 2 were boarded at the dock and found to be loaded to its marks on the dock-side, it would still be necessary to check the marks on the seaward-side. For a vessel of this beam, a list of only 2 degrees causes a height difference of more than 4 feet between the sides. If the ship were listing 2 degrees away from the dock, the mean freeboard calculations would show a violation of more than 2 feet although none was apparent when boarding from the dock side.

[NOTE: Load line (Plimsoll) marks are placed at the midpoint of the load line length of a vessel, as defined in 46 CFR 42.13-15. This is particularly critical for measurements taken on vessels with design drag or rake of keel, such as tugboats.]

F. STEP FIVE: EXAMINING THE LOAD LINE CERTIFICATE

F.1. GENERAL The Office of Compliance, Commandant (CG-542) generates policy and guidance for the examination of Load Line Certificates. The examination is for the purposes of compliance with the certificate.

G. STEP SIX: DOCUMENTING VIOLATIONS

G.1. VIOLATIONS DISCOVERED If a load line violation is believed to have occurred, MISLE investigation and enforcement activities shall be completed and the enforcement activity will be submitted to the hearing officer, with appropriate evidence.

G.2. VIOLATIONS DISCOVERED ABOARD FOREIGN VESSELS When detention or other intervention is taken against a foreign vessel for load line violations, the officer carrying out such action shall make notifications per MSM Volume IV, with an additional notification to Customs. Customs notification may be made orally. Information on all pertinent circumstances and the action being taken should be conveyed in the notification (see 46 CFR 42.07-60).

G.3. COAST GUARD DATA SYSTEM RECORDS MISLE should be used as an aid in verifying suspected load line violations or in identifying known violators. Any vessel involved in a load line discrepancy of certificates, freeboard/draft readings, or loading can be regarded as a “vessel of particular interest.” Data concerning such vessels shall be entered into MISLE for appropriate investigation/enforcement action.

H. STEP SEVEN: TAKING WATER SAMPLES

H.1. GENERAL When IOs believe that enforcement action should be taken, a sample of water should be taken amidships by securing a clean bottle to a staff, or with a clean hydrosampler. The sample must be taken well away (greater than 10 meters) from any active shipboard or shore side discharges, in that these discharges will affect the hydrosampler/salinity reading and jeopardize potential enforcement action. In the former method, the bottle is stoppered with a clean cork having an attached



string, which is held by the operator. When the staff has submerged the bottle to about one-half the draft of the vessel, the cork is removed by the string and the bottle allowed to fill. The same procedure is used with the hydrosampler by securing a rag or tying a knot in the sampler line to obtain the proper depth of sample water. The water in the bottle or hydrosampler is then tested with a hydrometer at the dock or carried to the office for testing to determine the salinity. (See Figures B11-1 and B11-2 for tables of normal salinity allowances applicable to selected U.S. ports.) It is not necessary to compensate for differences in the temperatures of water when the sample is taken and when the hydrometer was read.



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FIGURE B11-1: BRACKISH WATER ALLOWANCES (IN INCHES) FOR VARIOUS SPECIFIC GRAVITIES

The following table should be used to find the brackish water allowance when the fresh water allowances stated on the vessel's Load Line Certificate range from 2 inches to 5-3/4 inches. Figure B12-2 contains brackish water allowances when the fresh water allowance ranges from 6 inches to 9-3/4 inches.

Hydro-meter Reading																
1.001	1.92	2.16	2.40	2.64	2.88	3.12	3.36	3.60	3.84	4.08	4.32	4.56	4.80	5.04	5.28	5.52
1.003	1.76	1.98	2.20	2.42	2.64	2.86	3.08	3.30	3.52	3.74	3.96	4.18	4.40	4.62	4.84	5.06
1.005	1.60	1.80	2.00	2.20	2.40	2.60	2.80	3.00	3.20	3.40	3.60	3.80	4.00	4.20	4.40	4.60
1.007	1.44	1.62	1.80	1.98	2.16	2.34	2.52	2.70	2.88	3.06	3.24	3.42	3.60	3.78	3.96	4.14
1.009	1.28	1.44	1.60	1.76	1.92	2.08	2.24	2.40	2.56	2.72	2.88	3.04	3.20	3.36	3.52	3.68
1.011	1.12	1.26	1.40	1.54	1.68	1.82	1.96	2.10	2.24	2.38	2.52	2.66	2.80	2.94	3.08	3.22
1.013	.96	1.08	1.20	1.32	1.44	1.56	1.68	1.80	1.92	2.04	2.16	2.28	2.40	2.52	2.64	2.76
1.016	.72	.81	.90	.99	1.08	1.17	1.26	1.35	1.44	1.53	1.62	1.71	1.80	1.89	1.98	2.07
1.018	.56	.63	.70	.77	.84	.91	.98	1.05	1.12	1.19	1.26	1.33	1.40	1.47	1.54	1.61
1.020	.40	.45	.50	.55	.60	.65	.70	.75	.80	.85	.90	.95	1.00	1.05	1.10	1.15
1.022	.24	.27	.30	.33	.36	.39	.42	.45	.48	.51	.54	.57	.60	.63	.66	.69
1.024	.08	.09	.10	.11	.12	.13	.14	.15	.16	.17	.18	.19	.20	.21	.22	.23



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FIGURE B11-2: BRACKISH WATER ALLOWANCES (IN INCHES) FOR VARIOUS SPECIFIC GRAVITIES

The following table should be used to find the brackish water allowance when the fresh water allowances stated on the vessel's load line certificate range from 6 inches to 9-3/4 inches. Figure B12-1 contains brackish water allowances when the fresh water allowance ranges from 2 inches to 5-3/4 inches.

Hydro-meter Reading																
1.001	5.76	6.00	6.24	6.48	6.72	6.96	7.20	7.44	7.68	7.92	8.16	8.40	8.64	8.88	9.12	9.36
1.003	5.28	5.50	5.72	5.94	6.16	6.38	6.60	6.82	7.04	7.26	7.48	7.70	7.92	8.14	8.36	8.58
1.005	4.80	5.00	5.20	5.40	5.60	5.80	6.00	6.20	6.40	6.60	6.80	7.00	7.20	7.40	7.60	7.80
1.007	4.32	4.50	4.68	4.86	5.04	5.22	5.40	5.58	5.76	5.94	6.12	6.30	6.48	6.66	6.84	7.02
1.009	3.84	4.00	4.16	4.32	4.48	4.64	4.80	4.96	5.12	5.28	5.44	5.60	5.76	5.92	6.08	6.24
1.011	3.36	3.50	3.64	3.78	3.92	4.06	4.20	4.34	4.48	4.62	4.76	4.90	5.04	5.18	5.32	5.46
1.013	2.88	3.00	3.02	3.24	3.36	3.48	3.60	3.72	3.84	3.96	4.08	4.20	4.32	4.44	4.56	4.68
1.015	2.40	2.50	2.60	2.70	2.80	2.90	3.00	3.10	3.20	3.30	3.40	3.50	3.60	3.70	3.80	3.90
1.017	1.92	2.00	2.08	2.16	2.24	2.32	2.40	2.48	2.56	2.64	2.72	2.80	2.88	2.96	3.04	3.12
1.019	1.44	1.50	1.56	1.62	1.68	1.74	1.80	1.86	1.92	1.98	2.04	2.10	2.16	2.22	2.28	2.34
1.021	.96	1.00	1.04	1.08	1.12	1.16	1.20	1.24	1.28	1.32	1.36	1.40	1.44	1.48	1.52	1.56
1.023	.48	.50	.52	.54	.56	.58	.60	.62	.64	.66	.68	.70	.72	.74	.76	.78



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FIGURE B11-3: AVERAGE DENSITIES OF HARBOR WATERS, IN PERCENTAGES

Aberdeen, Wash	100	New York, N.Y.-Cont.	
Baltimore, MD	100	North River	
Beaumont, Tex	100		
Boston, Mass High tide Low tide	None 5	Pier 61 High tide Low tide	45 30
Charleston, SC	None		
Everett, Wash	20	Perth Amboy, NJ High tide Low tide	25 40
Galveston, Tex	None		
Honolulu, T.H.	None	Norfolk, Va	60
Jacksonville, Fl	100	Panama City, Fla	None
Key West, Fla	None	Philadelphia, Pa	100
Longview, Wash	100	Portland, Maine	None
Marshfield, Orge Coo's Bay logging dock Rainy season Dry season	40 20	Port Townsend, Wash St. Croix, V.I.	None None
		San Diego, Calif.	None
Coo's Bay Terminal Co dock: Rainy season Dry season	55 45	Oakland: Part Terminal: January to July July to January	20 10
Marshfield: Rainy season Dry season	55 45	Pier 26: January to July July to January	30 10
Port dock: Rainy season Dry season	40 20	Pier 50: January to July July to January	30 10
Mayaguez, P.R.	None		
Mobile, Ala	80	Parr Terminal (Outer Harbor): January to July July to January	25 15
Newport News, Va	60	Savannah, Ga	100
East River (New York): Pier 14	30	Tacoma, Wash	20
		Wilmington, NC	100

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Chapter Twelve:
Offshore Incident
Investigation

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A. OFFSHORE ACTIVITIES

A.1. GENERAL

The regulations for Outer Continental Shelf (OCS) investigations are found in 33 CFR 140.201 through 205. Section 22 of the Outer Continental Shelf Lands Act Amendments (OCSLAA) (43 USC 1348) requires the investigation of every death, serious injury, major fire, pollution incident, and alleged violation of safety regulations issued pursuant to the OCSLAA that occurs as a result of activities on the OCS (including foreign activities).

A.2. DEFINITIONS

A.2.a. The OCS

All submerged lands lying seaward and outside of the area of “lands beneath navigable waters” as defined in the Submerged Lands Act (43 USC 1301(a)) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

A.2.b. Offshore Activities

Any offshore activity associated with exploration for, or development or production of, the minerals of the OCS.

A.2.c. Oil and Gas Exploration

The process of searching for minerals (oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals) which are authorized by an Act of Congress to be produced from “public lands” as defined in section 103 of the Federal Lands Policy and Management Act of 1976 (43 USC 1702(e)) including, but not limited to:

- geophysical surveys where magnetic, gravity, seismic, or other systems are used to detect or imply the presence of such minerals;
- any drilling, whether on or off known geological structures, including the drilling of a well in which a discovery of oil or natural gas in paying quantities is made; and
- the drilling of any additional delineation well after the discovery that is needed to delineate any reservoir and to enable the lessee to determine whether to proceed with development and production.

A.2.d. Mobile Offshore Drilling Unit (MODU)

A vessel, other than a public vessel of the United States, capable of engaging in drilling operations for exploration or exploitation of subsea resources.

A.2.e. Offshore Supply Vessel (OSV)

A vessel that:

- is propelled by machinery other than steam;



- does not meet the definition of a passenger-carrying vessel in 46 USC 2101(22) or 46 USC 2101(35);
- is more than 15 but less than 500 gross tons (as measured under the Standard, Dual, or Simplified Measurement System under 46 CFR part 69, subpart C, D, or E) or is less than 6,000 gross tons (as measured under the Convention Measurement System under part 69, subpart B); and
- regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

A.2.f. Other Support Vessel

A vessel which is moored close to and readily accessible from an OCS facility for the purpose of providing power, fuel, or other services to the operation being conducted on the facility. A 'standby vessel' means a vessel meeting the requirements of 33 CFR Part 143, Subpart E, and specifically designated in an Emergency Evacuation Plan under 33 CFR 146.140 or 146.210 to provide rapid evacuation assistance in the event of an emergency.

A.2.g. Fixed Platform

A bottom founded OCS facility permanently attached to the seabed or subsoil of the OCS, including platforms, guyed towers, articulated gravity platforms, etc.

A.2.h. Floating Production (and Storage) System

A buoyant OCS facility securely and substantially moored so that it cannot be moved without a special effort. This term includes tension leg platforms and permanently moored semi-submersibles or shipshape hulls but does not include MODUs and other vessels.

A.2.i. Tension Leg Platform

Floating structure whose mooring system is constituted by vertical tethers. This characteristic makes the structure very rigid in the vertical direction and very flexible in the horizontal plane. The vertical rigidity helps to tie in wells for production, while; the horizontal compliance makes the platform insensitive to the primary effect of waves.

A.2.j. Spar Platform

A cylinder shaped platform with a deep draft that can be used as production platforms.

**A.3. COAST GUARD
RESPONSIBILITIES**

33 CFR 140.203

A.3.a. Under OCSLAA

Under the direction of the OCMI, IOs will investigate the following incidents occurring as a result of OCS activities:

- Death;



- Injury resulting in substantial impairment of any bodily unit or function;
- Fire which causes death, serious injury or property damage exceeding \$25,000;
- Oil spillage exceeding two hundred barrels of oil in one occurrence during a thirty-day period; and
- Other injuries, casualties, accidents, complaints of unsafe working conditions, fires, pollution, and incidents occurring as a result of OCS activities as the OCMI, deems necessary to promote the safety of life or property or protect the marine environment.

B. RELATIONSHIP TO MINERALS MANAGEMENT SERVICE (MMS)

B.1. GENERAL

Insofar as practicable, OCS investigations shall be conducted pursuant to the procedures outlined in 46 CFR part 4. Representatives of the U.S. Department of the Interior (DOI) MMS may participate in OCS investigations. Such participation includes, but is not limited to the following:

- Participating in a joint on-scene investigation;
- Making recommendations concerning the scope of the investigation;
- Calling and examining witnesses; and
- Submitting and requesting additional evidence.

B.2. INVESTIGATIVE LEAD

To avoid duplicative efforts and to simplify administrative procedures, the primary agency regulating a particular facility, system, or operation shall be responsible for leading the investigation and for reporting on incidents involving that facility, system, or operation. Where only one agency has an investigative interest in an incident, that agency will investigate and report. Where both the Coast Guard and MMS have investigative interest, one will assume the lead role while the other provides supporting participation (see Volume X of this manual for the memorandum of understanding (MOU) between the Coast Guard and MMS). Assumption of lead agency responsibility, the extent of supporting participation, and procedures for coordination will be determined by the circumstances of the incident.

B.2.a. Coast Guard as Investigative Lead

The Coast Guard is the lead agency for incidents involving:

- Collisions;
- Deaths And Injuries. The Coast Guard is the lead agency. MMS participation will be requested in all investigations of deaths and injuries associated with oil or gas drilling or production operations or equipment, including exposure to hydrogen sulfide; and
- Facilities, Equipment, and Materials. The Coast Guard will normally be the



lead agency for incidents involving damage to MODUs, mobile well servicing units (MWSUs), or other vessels, or floating OCS facilities, and failure of or damage to propulsion, auxiliary, or emergency systems and equipment for which the Coast Guard establishes requirements.

See 33 CFR 140.201 through 205.

B.2.b. MMS as Investigative Lead

MMS will normally be the lead agency for all other incidents involving failure of or damage to fixed OCS facilities to specifically include:

- Fires And Explosions. MMS is the lead agency for all fires and explosions that involve drilling or production operations. Coast Guard participation will be requested in all investigations of fires and explosions involving deaths, injuries, and vessels, equipment, or operations for which the Coast Guard is responsible; and
- Pollution Incidents. MMS is the lead agency. Coast Guard participation will be requested in all pollution investigations.

B.2.c. Report of Investigation (ROI)

The lead agency for an investigation shall conduct, review, approve, and release its ROI in accordance with its normal procedures; comments by the supporting agency will be included in the ROI. ROIs shall be made available to parties to the investigation and the public upon final agency action conducted in accordance with the investigative procedures outlined in 33 CFR 140.203. If both agencies participate in the investigation, the lead agency shall forward an information copy of its final ROI to the supporting agency. ROIs prepared by a single agency need not be forwarded routinely to the other, but shall be available upon request.

See 33 CFR 140.201 through 205.

B.2.d. Joint Investigations

In such investigations, the IO shall have the power to administer necessary oaths, subpoena witnesses, and require the production of books, logs, documents, and other forms of evidence. See 33 CFR 140.201 through 205.

C. RELATIONSHIP TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

C.1. GENERAL

An MOU between the Coast Guard and OSHA, dated 19 December 1979, provides for cooperation between the two agencies in identifying violations of safety and health regulations that have caused or may cause injuries or deaths during activities conducted pursuant to the OCSLAA. Specifically, Paragraph IV.A.2 provides that the Coast Guard will review allegations from any person of violations of health or



safety regulations or other unsafe working conditions.

C.2. INVESTIGATIVE ACTIVITIES

In the course of OCS investigations, whether formal or informal, the Coast Guard will cooperate with OSHA with respect to identifying violations of applicable OSHA regulations related to the casualty or incident. Such cooperation will include the following:

- Promptly making investigative information available to OSHA;
- Inviting OSHA attendance at Coast Guard formal hearings; and
- Developing lines of inquiry suggested by OSHA.

When a Coast Guard incident investigation identifies an alleged violation of OSHA regulations, the OCMI shall promptly notify OSHA and shall cooperate with OSHA with respect to any enforcement action that the agency may undertake. Such cooperation may include, but is not limited to, providing transportation as available.

C.3. REVIEW OF ALLEGED VIOLATIONS

The Coast Guard will review any allegation of a violation of OSHA regulations or the existence of unsafe working conditions on the OCS, and will take appropriate action under the circumstances. Copies of complaints or allegations received by OSHA will be referred to the appropriate Coast Guard District Commander for resolution. The Coast Guard shall notify OSHA as promptly as possible of the disposition of allegations forwarded by OSHA.

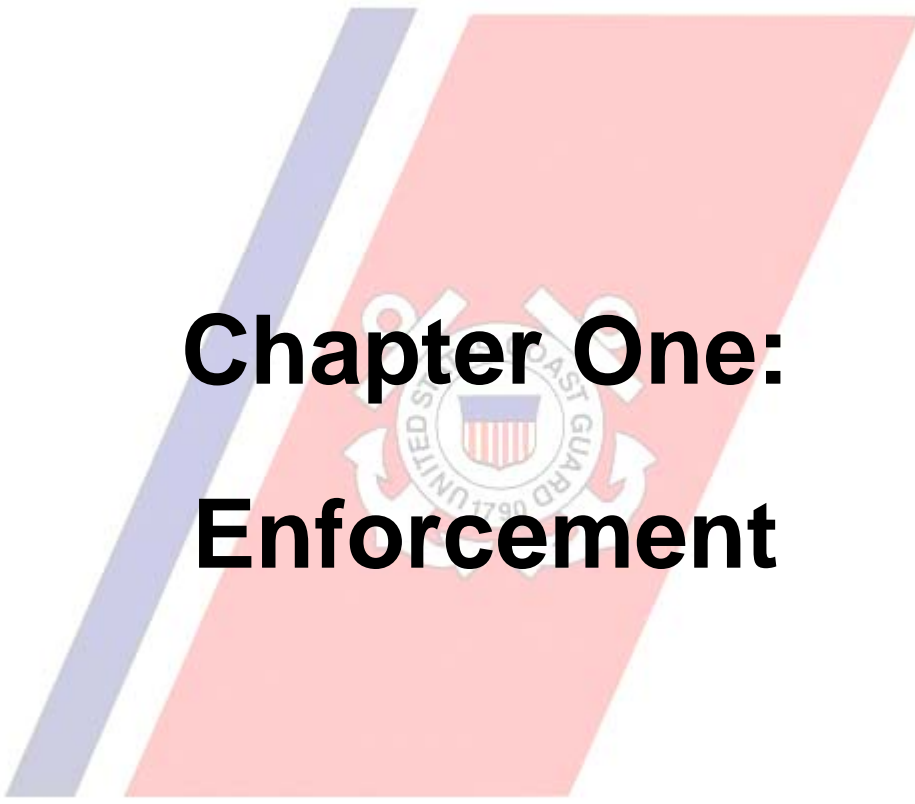
C.4. RESOLUTION OF COMPLAINTS FROM MERCHANT MARINERS

In an MOU dated 8 March 1983, OSHA concluded that it may not enforce the Occupational Safety and Health Act with respect to the working conditions aboard Coast Guard inspected vessels. OSHA retains its authority under Section 11(c) of the Act, which forbids discrimination in any manner against employees who have exercised any right afforded them under the Act. OSHA agreed to refer to the Coast Guard any complaints (except for Section 11(c) complaints) received from mariners working aboard inspected vessels. The Coast Guard has the sole discretion to determine whether the events complained of constitute hazardous conditions, as well as the extent of any remedial actions.

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USCG Marine Safety Manual
Volume V: Investigations and Enforcement
PART C: ENFORCEMENT

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**Chapter One:
Enforcement**

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A. ENFORCEMENT PERSPECTIVE AND SCOPE

A.1. PERSPECTIVE The guidance provided by this Part of this Volume modifies and replaces policy previously located in Volume I of the Marine Safety Manual. This policy signals a strong Coast Guard national law enforcement posture and requires the initiation of appropriate enforcement actions that serve to minimize the risk to people, property, and the marine environment. For all situations where prima facie evidence of a violation exists, administrative, judicial, and/or criminal enforcement actions should be initiated, regardless of how the violation is discovered (i.e., through a port safety boarding, a marine inspection, a marine investigation, or other activity). For instances involving civil violations, enforcement actions should range from issuance of a Letter of Warning for a minor, first time violation which is immediately corrected, to the initiation of civil violation cases.

A.2. SCOPE This chapter provides an overview of marine safety and environmental protection law enforcement. It defines enforcement from a system's perspective and establishes overall enforcement principles. Furthermore, this chapter categorizes enforcement options and provides policy thresholds for initiating various enforcement options. This chapter should be consulted **after the completion** of an investigation, compliance activity, or other marine safety detection activities in accordance with B.3. below.

B. ENFORCEMENT OBJECTIVES AND PRINCIPLES

B.1. GENERAL Law enforcement is the next logical step beyond educational efforts and regulatory controls imposed to minimize maritime risks.

B.2. ENFORCEMENT OBJECTIVES Marine safety law enforcement supports the overall goals of the Marine Safety Program to promote the safety of life and property at sea and protect the marine environment. Marine safety law enforcement actions are intended to correct deficiencies, deter future noncompliance, and minimize risks to persons, property, or the marine environment.

B.2.a. Documentation

Enforcement actions should be formally documented and communicated both externally (i.e., deficiency or violation notifications, letters, incident reports, etc.) to the involved parties and internally within the Coast Guard (i.e., messages, MISLE reports, etc.) as required. Meeting enforcement objectives depends in large part on informed targeting and prioritization of activities. This, in turn, is dependent upon proper documentation of enforcement actions within the Marine Information for Safety and Law Enforcement (MISLE) system and access at all levels of the Coast Guard organization.



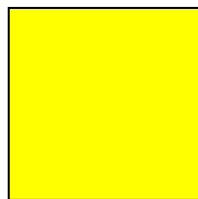
B.2.b. Measurement

Coast Guard enforcement programs require useful measures of effectiveness. Such measures provide Sector Commander / Commanding Officers, district staffs, program managers, and other decision-makers with the information necessary to assess the impact of enforcement actions employed.

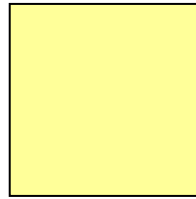
B.3. BASIS FOR ENFORCEMENT ACTION

The elements of an offense are the statutory components of a violation that must be proven by competent evidence in order to find that a person or organization has committed a prohibited or illegal act. The elements of an offense are found in the statute or regulation itself. The elements vary depending on the alleged violation; for this reason, marine safety personnel must refer to the relevant statute or regulation for each violation. The government, in general, has the burden of providing sufficient proof of all of the elements of a violation. Accordingly, prior to initiating any enforcement action, marine safety personnel must assure a complete and comprehensive inspection, boarding, or investigation has gathered the facts, witnesses, samples, photographs, or other evidence necessary to prove the elements. Where such evidence is not readily available at the time of the on-scene boarding, inspection, investigation, or exam, enforcement action should be initiated at a later date after sufficient evidence has been obtained.

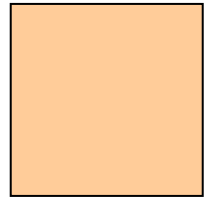
B.3.a. Required Steps to Initiate Enforcement Action



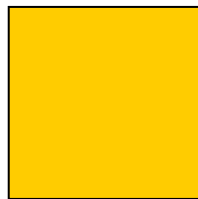
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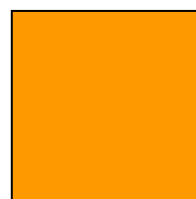
Step 2



Step 3



Step 4



Step 5



Step 6

NOTE: Step 1 through Step 3 should be conducted using MSM Volumes II, VI, VII, & IX, as well as Part B of this volume. Part C of this volume should be consulted starting with Step 4 and proceeding through to Step 6.

B.3.b. Enforcement Stance

Marine safety personnel, units, district and area commanders shall select appropriate



enforcement action(s) necessary to:

- Assure timely compliance;
- Guarantee that penalties are not considered a cost of doing business;
- Effectively deter future violation by the party and by the public at large; and
- Assure that penalties for a given violation in similar circumstances are consistent nationwide.

B.3.c. Selecting the Appropriate Enforcement Action(s)

Marine safety personnel, units, district and area commanders must evaluate the following in determining which enforcement actions are applicable and appropriate:

- Jurisdiction to impose a particular sanction;
- The nature of the offense;
- The seriousness of the offense;
- The deterrent effect of enforcement action on the individuals involved;
- The deterrent effect of enforcement on the general public;
- The Coast Guard's relative ranking of enforcement actions; and
- Competing compliance, investigation, and law enforcement workload.

C. RELATIVE RANKING OF ENFORCEMENT ACTIONS

**C.1. No-
CONSEQUENCE
RECOMMENDATION**

No-consequence recommendations are non-binding recommendations, verbal advisories, and examination result reports provided to a person or organization as a courtesy for safety or environmental protection purposes and which are not related to regulations or laws binding at the time of the Coast Guard law enforcement activities, typically passenger vessel, commercial fishing vessel or towing vessel examinations. Such recommendations are not considered part of the relevant safety/enforcement record for use in future Coast Guard activities. See Chapter C2 of this volume and volume II of this manual for more information.

**C.2. COMPLIANCE
REQUIREMENTS**

Compliance requirements are instructions to correct apparent deficiencies/violations of a minor nature and provide proof of that correction to the Coast Guard before a specific date (e.g. CG-835). Upon receiving timely and satisfactory evidence of correction, the Coast Guard will not to treat the underlying offense(s) as a violation. If timely and satisfactory evidence of correction is not corrected, the Coast Guard may proceed with further enforcement action as necessary to assure compliance and deterrence. In all cases, the compliance requirement will be considered part of the relevant safety record for use in future Coast Guard activities and shall be documented as a stay for compliance enforcement activity in Marine Information for Safety and Law Enforcement (MISLE). See volume II of this manual for more



information on CG-835s.

C.3. WARNINGS

Warnings are formal, written notices of an apparent violation for which no monetary or other sanction is appropriate. In all cases, the warning will be considered part of the relevant safety record for use in future Coast Guard activities. See Chapter C2 of this volume for further information.

**C.4. REFERRAL
FOR OTHER AGENCY
ENFORCEMENT**

Referral for Other Agency Enforcement is the forwarding of all relevant evidence and facts surrounding a specific offense to another agency with enforcement jurisdiction over the responsible party and the offense. Such referrals are considered part of the relevant safety record for use in future boardings, inspections, exams, inspections, and so on. Upon conclusive report from the affected agency that the referral was justified, the Coast Guard will treat the underlying offense(s) as proven violations for the purposes of selecting the appropriate enforcement action and penalty in future Coast Guard activities.

**C.5. NOTICE OF
VIOLATION (A.K.A.
TICKETS)**

A Notice of Violation (NOV) is a formal, written notice of an apparent violation for which a predetermined monetary penalty is appropriate. In all cases, the prosecution will be considered part of the relevant safety record for use in future Coast Guard activities. See COMDTINST M5582.1 (series), NOV User's Guide, and Chapter C3 of this volume for further information.

**C.6. CLASS I
ADMINISTRATIVE
CIVIL PENALTIES**

The Class I Administrative Civil Penalty process is used when the issuance of a warning or NOV is not appropriate. These cases are adjudicated by Coast Guard Hearing Officers. In all cases, the prosecution will be considered part of the relevant safety record for use in future Coast Guard activities. See Chapter C3 of this volume for further information.

**C.7. SUSPENSION
AND REVOCATION**

A Suspension and Revocation proceeding is the presentation of all relevant evidence and facts surrounding a specific offense committed by a mariner who holds and/or is acting under the authority of a Coast Guard issued merchant mariner credential to a Coast Guard Administrative Law Judge for adjudication and appropriate sanction. In all cases, the prosecution will be considered part of the relevant safety record for use in future Coast Guard activities. See Chapter C4 of this volume for further information.

**C.8. CLASS II
ADMINISTRATIVE
CIVIL PENALTIES**

The Class II Administrative Civil Penalty process is used only for certain violations of the Federal Water Pollution Control Act as amended by the Oil Pollution Act (OPA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It may be pursued in egregious and willful violations of these statutes where the maximum penalty associated with a Class I Administrative Civil Penalty is deemed insufficient, or in cases where the Coast Guard desires to require the responsible party to create a compliance program. Class II Administrative Civil Penalty assessments may be made only by Administrative Law Judges using the procedures contained in 33 CFR Part 20. In all cases, the prosecution will be



considered part of the relevant safety record for use in future Coast Guard activities. See Chapter C3 of this volume for further information.

**C.9. CERTIFICATE
OR PERMIT
REVOCATION**

Certificate or Permit Revocation is the restriction of a vessel's operation by modification or removal of Coast Guard issued documents such that an apparent violation ceases to exist. Certificate or Permit Revocation usually accompanies other enforcement action, and has no bearing on whether the Coast Guard views the underlying offense(s) as proven. In all cases, however, certificate or permit revocation will be considered part of the relevant safety record for use in future Coast Guard activities. Due to the fact that certificate or permit revocation may or may not be considered extremely serious, it was placed toward the end of the enforcement relative ranking. See volume II of this manual for further information.

**C.10. REFERRAL
FOR JUDICIAL
PROSECUTION**

C.10.a. Judicial Civil Penalties

The Judicial Civil Penalty process is the presentation of all relevant evidence and facts surrounding a specific offense to Federal District Court Judge for adjudication. A Judicial Civil Penalty may be pursued for a wide variety of violations, but is usually reserved for egregious and willful violations where the maximum penalties associated with a Class I Administrative Civil Penalty is deemed insufficient to meet enforcement goals. In all cases, the prosecution will be considered part of the relevant safety record for use in future Coast Guard activities. See Chapter C3 of this volume for further information.

**C.11. CRIMINAL
ENFORCEMENT**
33 CFR 1.07-90

Referral for Criminal Enforcement is the presentation of all relevant facts and evidence surrounding a specific criminal offense to the U.S. Department of Justice for evaluation. Area, Maintenance & Logistics Command, and District Commanders are authorized to refer cases to the U.S. attorney. Commandant CG-545 approval is required before referral to the U.S. attorney for the following cases where evidence of a criminal offense is disclosed: marine casualties or accidents that result in death, marine boards, and violations of port security regulations. In all cases, referral for criminal enforcement will be considered part of the relevant safety record for use in future Coast Guard activities.

**C.12.
OPERATIONAL
CONTROLS**

Operational controls are the direct assumption of physical control over a person, vessel, facility, or waterway in order to end potentially unsafe or illegal operations. Operational controls include detentions, voyage terminations, COTP, and District Commander orders, and administrative orders under the FWPCA among others. In all cases, however, operational controls will be considered a part of the relevant safety record for use in future Coast Guard activities. See volume II of this manual and/or, COMDTINST M16247.1 (series), Maritime Law Enforcement Manual, for further information. Due to the fact that operational controls can be very minor or extremely serious, it was placed at the end of the enforcement relative ranking.

NOTE: Not discussed in volume II is that, in accordance with ALDIST 256/97 released by both CG-53 and CG-54, the authority to terminate commercial fishing



vessels voyage can be delegated from the District Commander to COTPs.

D. ENFORCEMENT POLICY

D.1. MULTIPLE SIMULTANEOUS ENFORCEMENT ACTIONS

In general, taking one enforcement action related to a specific offense does not preclude the Coast Guard from taking other simultaneous enforcement action. In significant or severe cases, multiple avenues of enforcement action will be both necessary and desirable in view of the general enforcement stance. The only two significant exceptions are those enforcement actions that derive from the Coast Guard's administrative civil penalty authorities (i.e. marine safety personnel may not simultaneously initiate Warnings, Notices of Violation, Class I Administrative Civil Penalties, and Class II Administrative Civil Penalties) and those enforcement actions that derive from the Coast Guard's suspension and revocation authorities (i.e. marine safety personnel may not simultaneously initiate a Warning and the issuance of a Complaint to the same individual for the same offense).

D.2. SELECTING THE APPROPRIATE CIVIL PENALTY RECOMMENDATION

Some statutes set forth factors that must be considered by the Coast Guard Hearing Officer when a civil penalty is assessed. Some of these factors have been listed below. In recommending a penalty, marine safety personnel may consider the information below in conjunction with the recommended penalty levels contained in the enclosures to COMDTINST 16200.3 (series), Civil Penalty Procedures and Administration, to determine an appropriate recommended penalty. NOTE: Penalty Factors were taken from ALCOAST 176/93, 137/95, 149/95, and G-MO message P251943Z Feb 97.

D.2.a. The Economic Benefit to the Offender from the Offense

Consider the degree to which the offender is believed to have benefited economically from violating federal law or regulation. At a minimum, penalties should exceed any economic benefit of violation. In some cases, the economic benefit gained by the offender may be added to the penalty recommendation.

D.2.b. The Nature of the Offense

See D.3. below to determine the relative ranking of the specific offense in terms of recommended penalties.

D.2.c. The circumstances of the offense

Consider whether there were unusual or severe circumstances that contributed to causing the offense.

D.2.d. The Extent of the Offense(s)

Consider the duration of the offense in days. Also consider the total number of



deficiencies and apparent violations encountered while conducting the detection activity. When seeking higher penalties on this basis, itemize the recommended penalty for each discrepancy and articulate the rationale used.

D.2.e. The Gravity of the Prohibited Acts

Consider the impact or threat to health, welfare, the environment, or property. Consider incident specifics such as resulting deaths and injuries, threat or impact to such things as response personnel safety, government response resources expended, drinking water, recreation facilities, ecosystems, wildlife, marinas, etc. For spills, consider the volume of oil or hazardous substance discharged/released, using the spill size categories defined in the National Contingency Plan at 40 CFR 300.6.

D.2.f. The Degree of Culpability/Responsibility

Consider the degree to which the person or organization is culpable for the offense. Specifically, an increasing range of culpability is: none, inattention, neglect, gross neglect, and intentional violation. The enforcement action selected and penalty amount should be more severe in instances of inattention, neglect, gross neglect, or intentional acts.

D.2.g. The Violation History of the Offender

- Prior Similar Offenses. Prior proven violations of the specific law or regulation in question during the previous 12 months must be explicitly considered.
- Prior Offenses of Any Type. For more serious (Category C and D) violations, consider the entire violation history of the person or organization for the past 5 year period.

D.2.h. The Degree of Cooperation

Consider the degree of success of the offender's efforts to minimize or mitigate the effects of the offense (particularly spills). Evaluate and classify using the following categories: prompt and successful response; adequate response; inadequate response; poor or no response.

D.2.i. Warnings for Oil Discharge Offenses

Where there is no history of repeat violations or major deficiencies, the Captain of the Port (COTP) is authorized the discretion to issue a written warning for the following oil discharge offenses:

- All Category A (non-commercial source) discharges of oil where the discharged amount is less than fifty (50) U.S. gallons;
- All Category B (commercial source) discharges where the quantity of oil spilled is less than twenty-five (25) gallons.



D.2.j. Other Penalties

When other penalties have been imposed for the same offense by state or local governments, the Coast Guard may give consideration to deducting some portion of those amounts from the penalty recommended.

D.2.k. Other Matters that Justice Requires

Consider adjusting the penalty up or down based on any other relevant factors not specified above which justice may require.

D.3. OFFENSE CATEGORIES

D.3.a. Category A Offenses

Category A Offenses are those extremely low impact offenses committed by non-commercial entities such as recreational boaters or small-entity commercial entities where there are no significant issues of culpability.

D.3.b. Category B Offenses

Category B Offenses are those low consequence offenses committed by small entity commercial people or organizations where there are no significant issues of culpability but immediate correction is necessary in the interest of safety of life, property, or the environment.

D.3.c. Category C Offenses

Category C Offenses are those grave offenses committed by any commercial or non-commercial person or organization where there are significant issues of culpability.

D.3.d. Category D Offenses

Category D Offenses are those especially grave or criminal offenses committed by any commercial or non-commercial person or organization where there are significant issues of culpability that clearly warrant a substantial penalty.

E. ON-SCENE ENFORCEMENT OPTIONS AND RESPONSIBILITIES

E.1. SELECTING AN APPROPRIATE ENFORCEMENT OPTION

Not all of these options are appropriate in every instance. In general, marine safety personnel shall evaluate the least severe action and proceed toward more severe actions as necessary. While on-scene, qualified marine safety personnel must evaluate and select from the following available on-scene enforcement actions for each apparent violation detected. The following are listed in increasing order of severity:

- Refer for Further Investigation (see Part B of this volume);
- No-consequence Recommendation (see Chapter C2 of this volume);
- Compliance Requirement (see volume II);
- Letter of Warning (see Chapter C2 of this volume);
- Notice of Violation (see Chapter C3 of this volume);



- Temporary Merchant Mariner Credential Suspension (see Chapter C4 of this volume);
- Impose Operational Control (see volume II); and/or
- Forward to unit for Future Enforcement Action.

F. UNIT ENFORCEMENT OPTIONS AND RESPONSIBILITIES

F.1. REVIEW OF ON-SCENE ENFORCEMENT DECISIONS

The Sector Commander / Commanding Officer shall review each enforcement action taken or recommended under his or her authority. Such review is normally delegated to senior department heads, though the Sector Commander / Commanding Officer should retain personal review of the most serious enforcement actions. Based upon that review, the Sector Commander / Commanding Officer may:

- **Initiate Unit Enforcement Actions.** When the Sector Commander / Commanding Officer determines that unit-level enforcement action is appropriate, he or she may initiate a new enforcement action. Many of the more serious enforcement actions cannot be initiated by marine safety personnel while on-scene. They will typically refer these instances along with a recommended course of unit action. In these cases where review of the evidence warrants it, the Sector Commander / Commanding Officer shall initiate the appropriate enforcement action.
- **Return the Enforcement Action to the on-scene marine safety personnel for further documentation or investigation.** When the Sector Commander / Commanding Officer determines that insufficient documentation or evidence exists to warrant the recommended enforcement action, he or she may return the activity to the appropriate field personnel for further documentation or investigation. Where enforcement action has already taken place, that action must be withdrawn pending completion of adequate investigation or documentation.
- **Withdraw and close the Enforcement Action.** When the Sector Commander / Commanding Officer determines that the documentation or evidence provided does not meet the required jurisdictional and factual elements of the discrepancy or violation, he or she may withdraw the enforcement action pending further investigation, or close the enforcement action. When an enforcement action is withdrawn and closed, the Sector Commander / Commanding Officer shall assure that the marine safety personnel that initiated the enforcement action are advised of his or her decision.
- **Upgrade or Downgrade to a more appropriate enforcement action.** When the Sector Commander / Commanding Officer determines that marine safety personnel selected an inappropriate enforcement action given the situation, he or she may upgrade or downgrade to a more appropriate enforcement action. When an enforcement action is upgraded or



downgraded, the Sector Commander / Commanding Officer shall assure that the marine safety personnel that initiated the enforcement action are advised of his or her decision.

- **Forward to the Appropriate Unit.** When the Sector Commander / Commanding Officer determines that he or she lacks the authority or ability to take the appropriate enforcement action (as for Judicial Prosecution), he or she may forward evidence of the apparent violation(s) to another unit through the chain of command.

F.2. INITIATING UNIT ENFORCEMENT ACTIONS

In general, Sector Commanders / Commanding Officers shall evaluate the enforcement actions recommended by marine safety personnel under their command to assure they are appropriate. Where appropriate and necessary, the Sector Commander / Commanding Officer may initiate enforcement actions, including:

- Refer to Other Agency for Enforcement Action (see F.3. below);
- Compliance Requirement (see volume II);
- Letter of Warning (see Chapter C2 of this volume);
- Notice of Violation (see Chapter C3 of this volume);
- Class I Administrative Civil Penalty (see Chapter C3 of this volume);
- Merchant Mariner Credential Suspension and Revocation (see Chapter C4 of this volume);
- Refer for Class II Administrative Civil Penalty Prosecution (see Chapter C3 of this volume);
- Revoke Certificate or Permit (see volume II);
- Refer for Judicial Prosecution (see Chapter C3 of this volume); and/or
- Impose/Request Operational Controls (see volume II).

F.3. REFERRAL TO OTHER AGENCY FOR ENFORCEMENT ACTION

Where the Coast Guard detects violations or deficiencies over which other agencies have sole enforcement jurisdiction, marine safety personnel shall refer such violations to the cognizant federal, state, or local law enforcement agency via the cognizant District Commander.

G. DISTRICT ENFORCEMENT OPTIONS AND RESPONSIBILITIES

G.1. REVIEW OF UNIT ENFORCEMENT DECISIONS

The District Commander shall review each enforcement action referred for his/her action. Based upon that review, the District Commander may:

- **Return the Enforcement Activity to the Unit for further Documentation or Investigation.** When the District Commander determines that insufficient documentation or evidence exists to warrant the recommended enforcement action, he or she may return the activity to the appropriate unit for further documentation or investigation.



- **Return the Enforcement Activity to the Unit to Upgrade or Downgrade to a more appropriate Enforcement Action.** When the District Commander determines that the forwarding unit selected an inappropriate enforcement action given the situation, he or she may return the enforcement activity to the appropriate unit to upgrade or downgrade to a more appropriate enforcement action. Decisions of the District Commander may be appealed to the Office of Investigations and Analysis, Commandant (CG-545) by the Sector Commander / Commanding Officer.
- **Prosecute or Forward the Enforcement Activity to the Appropriate Prosecuting Entity.** When the District Commander determines that the forwarding unit provided a complete enforcement package, the District Commander shall prosecute or forward the enforcement activity to the appropriate prosecuting entity (i.e. Hearing Officer, U.S. Attorney, etc.)
- **Coordination of Multiple Units/Districts.** When the District Commander determines that multiple units/districts share jurisdiction over the subject of the enforcement action the appropriate District Commander(s) shall coordinate all enforcement efforts including the forwarding of evidence of the apparent violation(s) to another unit through the chain of command. When multiple Districts are involved the Office of Investigations and Analysis, Commandant (CG-545) shall be notified via the chain of command.

G.2. ACTION ON UNIT ENFORCEMENT REFERRALS

The District Commander, in determining his or her course of action on referrals, may evaluate the same factors outlined in D.2. above. If the recommended enforcement option is applicable and appropriate, the District Commander should prosecute or forward the case as appropriate.

H. COMMANDANT ENFORCEMENT RESPONSIBILITIES

H.1. GENERAL

The Office of Investigations and Analysis, Commandant CG-545 shall:

- Provide Commandant approval before referral to the U.S. attorney for any case where evidence of a criminal offense is disclosed and the case involves marine casualties or accidents that result in death, marine boards, and violations of port security regulations.
- Coordinate with and obtain TJAG (CG-094) approval before referring a criminal case to the U.S. attorney that involves a potential charge under 18 U.S.C 1115, commonly referred to as the Seaman's Manslaughter statute.
- Provide oversight, management, and control of Enforcement for the Assistant Commandant for Marine Safety, Security and Stewardship;
- Provide guidance to Areas/Districts/field units regarding all Enforcement issues.
- Evaluate the timeliness, effectiveness, and consistency of Enforcement



Action nationwide for long-term fairness and equity.

I. INTRA-GOVERNMENTAL AND INTERNATIONAL ENFORCEMENT COORDINATION

I.1. INTRA-GOVERNMENTAL ENFORCEMENT COORDINATION

I.1.a. U. S. Government Agencies

U. S. maritime law enforcement efforts involve many other federal agencies, including the Minerals Management Service, Immigration and Naturalization Service, U. S. Customs Service, U. S. Army Corps of Engineers, Research and Special Programs Administration, the Federal Communications Commission, Department of Labor, Environmental Protection Agency, Occupational Safety and Health Administration, Federal Bureau of Investigation, U. S. Fish and Wildlife Service, Department of Interior, Maritime Administration, Animal and Plant Health Inspection Service of the U. S. Department of Agriculture, etc. Interagency coordination of effort has been established through Memorandums of Understanding, Memorandums of Agreement, and Interagency Agreements, and is contained in volume X of this manual. In particular, the U. S. Customs Service and Department of Justice often provide significant law enforcement assistance, as detailed below.

I.1.a.1. Customs Service Holds On Vessels

Under the authority of 46 U.S.C. 91, vessels intending to depart the United States for a foreign port must obtain a clearance from the U. S. Customs Service. The Customs Service under 19 CFR 4.61 and applicable U. S. law, will normally withhold or deny clearance based upon a request from the Coast Guard in order to ensure vessel compliance with shipping laws and international conventions. Normally, the U. S. Customs Service will exercise its authority to hold vessels upon request in order to:

- Obtain compliance of specific laws and implementing regulations through the exercise of the following specific citations authorizing detention or denial of clearance:
- U.S. vessel documentation requirements (46 U.S.C.A. 12102) under 19 CFR 4.61(b)(3);
- Applicable load line requirements (46 U.S.C.A. 5113(b) under 19 CFR 4.65a;
- Certificate of Inspection or Control Verification requirements (46 U.S.C.A. Chapter 33) under 19 CFR 4.66;
- Any violation of regulations in 33 CFR 130 regarding requirements for Certificates Of Financial Responsibility for oil pollution, under 33 U.S.C. 2716 (b)(1);
- Permit under the Shore Protection Act of 1988 under 33 U.S.C. 2605 (c); and
- Requirements relating to a Certificate issued under the International Convention for the Prevention of Pollution from Ships (MARPOL) when the vessel in question is subject to a Coast Guard detention order (33 U.S.C. 1904



(f), 19 CFR 4.66c. (b) and (c)).

- Obtain Letter of Undertaking or Surety Bond required under 33 U.S.C. 1321(b) (12) from a vessel owner, operator, or person in charge based upon the existence of either known liability for an existing unpaid FWPCA civil penalty or the existence of prima facie evidence to suspect an FWPCA violation has occurred. Customs Service authority is detailed in 19 CFR 4.66a.
- Obtain Letter of Undertaking or Surety Bond required under 33 U.S.C. 1908 (e), of the Act to Prevent Pollution from Ships, from a vessel owner, operator, or person in charge based upon the existence of either known liability for an existing unpaid MARPOL civil penalty or criminal fine, or the existence of prima facie evidence to suspect a MARPOL violation has occurred. Customs Service authority is detailed in 19 CFR 4.66c.

Note: Customs clearance withholding is not a general enforcement tool. Refer to your District legal office for further guidance.

I.1.a.2. Department Of Justice Assistance

All interactions with the Department of Justice shall be approved in advance by the Area, Maintenance & Logistics Command, and District Commander. The following are a few areas in which they can assist with enforcement:

- Request the U. S. Attorney to prosecute criminal violations. Use of statutes or regulations providing for criminal penalties against individuals may be initiated when appropriate, regardless of whether or not the individuals involved hold a Coast Guard merchant mariner credential. The requesting unit should forward possible criminal violation cases to the cognizant District legal office for review and possible referral to the U.S. attorney for action. Examples include reckless and negligent operation of a vessel, intoxication while operating a vessel, intentional discharges, and failure to notify in pollution incidents or marine casualties.

Request a temporary restraining order (TRO) or injunction from Federal Court to prohibit a person from carrying out a specific act, the violation of which results in arrest. Federal court action should only be sought when all direct enforcement actions have proven insufficient to prohibit individuals from initiating or continuing high risk operations. For example, a TRO or injunction might be sought when a vessel subject to inspection continues to operate without a Certificate of Inspection, despite notification of the inspection requirements and a direction to cease operations (Assisted Operational Control). Consult the cognizant District legal office prior to initiating any such request.

I.1.b. State Governments

Many states with coastal zones and inland waterways open to commercial vessel traffic have established programs which parallel Coast Guard marine safety efforts. With the passage of the Oil Pollution Act of 1990, many states are redefining and



expanding their marine safety and marine environmental protection programs through state legislation and regulation. Coast Guard and state efforts are coordinated through Memorandums of Understanding (MOU) between Coast Guard District Commanders and individual states. These MOUs are agreements of broad scope, coordinating the state's and the Coast Guard's international, domestic, regional, state and local agendas, and providing the foundation for law enforcement cooperation.

I.2.
INTERNATIONAL
ENFORCEMENT
COORDINATION

I.2.a. General

Formal communication between the United States and foreign governments requesting the enforcement of international safety, security or environmental protection requirements (i.e., SOLAS, STCW, ILO 147, MARPOL, etc.) are often an effective means of eliciting increased cooperation. Coast Guard requests will normally be initiated by the appropriate CG-54 program manager, cleared by the chain of command, and forwarded as follows:

- SOLAS, STCW, and ILO 147 Communications. Communications concerning SOLAS, STCW, and ILO 147 are routed to the Director of the Office of Maritime and Land Transit (EB/TRA/MA) at the U. S. State Department for action.
- MARPOL Communication. Communications concerning MARPOL are routed to the Director of the Office of Oceans and International Scientific Affairs (OES) at the U. S. State Department for action.

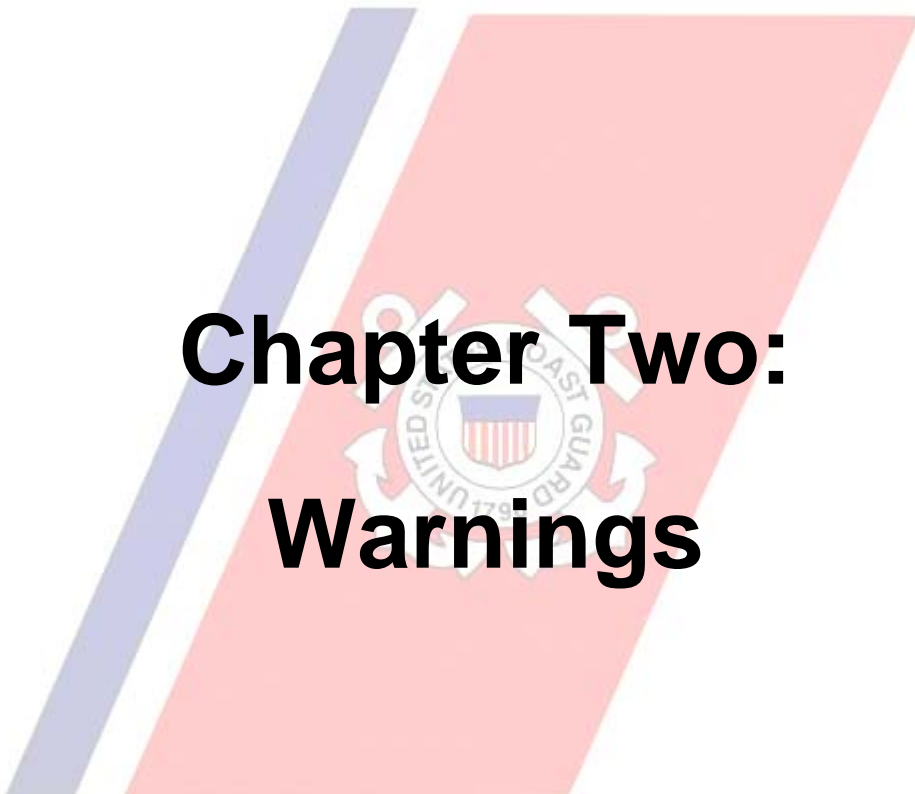
NOTE: Prior to forwarding international referrals for enforcement, the Coast Guard shall exhaust all domestic enforcement options.

I.2.b. Detention Reporting And Deficiency Referrals

International reporting of specific port state detentions/interventions under the applicable international convention or the referral of STCW, MARPOL, SOLAS, or ILO 147 deficiencies for possible flag state control are addressed in volume II of this manual.



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**Chapter Two:
Warnings**

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A. WARNINGS

A.1. GENERAL

Warnings are an enforcement action in the form of a formal, **written** notice of an apparent violation, which no monetary or other sanction is appropriate, with consequences for its refusal. Such warnings may be accepted or declined by the receiving individual. When accepted, the Coast Guard treats the underlying offense(s) as proven violations for the purposes of selecting an appropriate enforcement action and penalty for future enforcement actions. When declined, the Coast Guard will proceed with further enforcement action as necessary to assure compliance and deterrence as detailed below. In all cases, the warning will be considered part of the relevant safety record for use in future Coast Guard activities.

A.1.a. Authority to Issue Warnings

The authority for Officers in Charge, Marine Inspections (OCMIs) and Captains of the Port (COTPs) to issue warnings in lieu of civil proceedings was granted by Presidential Memorandum dated April 21, 1995, which was broadly implemented by the Coast Guard on July 14, 1995 via ALDIST 137/95, SUBJ: REGULATORY REFORM-WAIVER OF PENALTIES, and further expanded in message P 251943Z FEB 97, SUBJ: CIVIL PENALTY PROCESS. The authority for OCMIs and Investigating Officers (IOs) to issue warnings in lieu of Suspension & Revocation (S&R) proceedings comes from 46 CFR 5.105.

A.2. NO "VERBAL" WARNINGS

As a matter of policy, there are **no** "verbal" warnings. What may have previously been called a verbal warning is not authorized. Warnings shall be written and contain the regulatory cite that was violated and consequences for refusal or a statement that the matter is being referred to the appropriate agency with jurisdiction.

A.3. NO LETTERS OF CONCERN

As a matter of policy, there are **no** Letters of Concern (may also be referred to as "Local Letters of Warning"). An example of a Letter of Concern would be the Coast Guard expressing concern (versus issuing a warning and/or operational control) regarding a potentially dangerous situation within the port. The previously issued Letters of Concern *shall* be issued as Letters of Warning (LOWs) or as general correspondence with a reference to the Coast Guard being "concerned" about the issue.

B. USE OF WARNINGS

B.1. GENERAL

Enforcement action is the next step beyond educational efforts, no-consequence recommendations, compliance requirements, and regulatory controls imposed to minimize maritime risks. It supports the overall goal of the Marine Safety, Security and Environmental Protection Program to promote the safety of life and property at sea and to protect the marine environment. The use of warnings saves staff hours in processing violation cases or preparing for a S&R proceeding while still serving the



purpose of educating the public about federal laws and regulations and providing an acceptable level of deterrence against subsequent violations.

B.2. WHEN A WARNING IS APPROPRIATE

Warnings are used when taking enforcement action that does not meet the level of a notice of violation (NOV), Class I administrative civil penalty, or S&R proceeding. Warnings are appropriate for the majority of the offenses routinely encountered except those endangering life, property or the environment. See B.3. below for examples of when it is inappropriate to issue a warning in lieu of pursuing civil penalty or S&R proceedings.

B.2.a. Discharges of Oil

Enforcement action (LOW, NOV or Class I or II Administrative Civil Penalty) shall be initiated on all discharges of oil when the investigation enables you to document each of the five (5) elements of an unlawful discharge. The following categories of discharges of harmful quantities of oil as defined by table 1-C of COMDTINST M16200.3(series), Civil Penalty Procedures and Administration, establish the maximum quantity of oil discharged in which the OCMI/COTP may opt to issue a LOW in lieu of issuing an NOV or pursuing a Class I or II Administrative Civil Penalty:

- All Category A (non-commercial source) discharges where the quantity of oil spilled is less than fifty (50) U.S. gallons; and
- All Category B (commercial source) discharges where the quantity of oil spilled is less than twenty-five (25) U.S. gallons

A warning must be issued whenever Civil Penalty enforcement action is waived. No more than two (2) warnings shall be issued to a party for a discharge meeting the above criteria within a 12 month period.

B.3. WHEN A WARNING IS INAPPROPRIATE

In general, warnings shall not be issued in lieu of Class II Administrative Civil Penalties or Criminal Enforcement actions. The OCMI/COTP retains the authority to not issue a warning for any offenses for which a warning is authorized, if in their discretion the Coast Guard's enforcement goals would be better served by pursuing a higher level of enforcement (either Civil Penalty or S&R).

B.3.a. Marine Safety, Security and Environmental Laws/Regulations

Warnings shall not be issued in lieu of pursuing Civil Penalty action for the following:

- Any violation that represents a significant threat to health, safety, or the environment;
- Any intentional violation;
- A second violation of the exact same offense within a 2-year period;
- Any second violation of different statutes/regulations within a year period; or
- When more than three violations of different statutes/regulations are



discovered during any single detection activity.

B.3.b. Suspension and Revocation Proceedings

Warnings shall not be issued in lieu of pursuing S&R proceedings for the following:

- Acts or Offenses for which revocation is mandatory or is sought as detailed in 46 CFR 5.59 and 5.61;
- Offenses listed in the Table of suggested orders in 46 CFR Part 5 for which the minimum recommended order is a 3 month or more suspension;
- Any second enforcement action against a merchant mariner’s credential within a three-year period.

B.4. MARINE SAFETY PERSONNEL CONSIDERED “BOARDING OFFICERS”

As a matter of policy, marine safety personnel are considered “boarding officers” when applying the written warnings for the violations listed in 33 CFR 1.08. Therefore, when issuing warnings for violations listed in 33 CFR 1.08, there must be coordination between the offices working for the cognizant District Commander in order to meet the procedures required in 33 CFR 1.08-5.

EXCEPTION: Marine safety personnel are to follow the procedures of 33 CFR 1.08-5 for the specific violations listed in 33 CFR 1.08-1(a)(7), 33 CFR 1.08-1(a)(9), and 33 CFR 1.08-1(a)(11) **only** when they apply to uninspected vessels.

NOTE: The requirement that “a written warning may not be issued where the operator is required to be licensed,” under 33 CFR 1.08-1(b)(1) ensures that a licensed operator is held to a higher standard than a recreational boater. As a licensed operator a warning in lieu of civil penalty proceedings is not permitted for those violations listed in 33 CFR 1.08. A civil penalty shall be pursued and the initiation of S&R proceedings may also be appropriate. However, a warning in lieu of S&R proceedings is permitted if appropriate.

C. PROCESS FOR WARNINGS

C.1. GENERAL

Upon completion of the detection activity and a determination based upon review of the criteria above that a warning is appropriate, a LOW shall be drafted using the templates provided in Figures 1, 2 or 3 at the end of this chapter, for signature by the appropriate unit personnel with “by direction” authority. All warnings must be signed by the party issued the warning, or contain a statement detailing proof of receipt by the party as described below.

C.2. ISSUING A WARNING

LOWs may be personally delivered to the party or may be issued via the mail. Proof of receipt by the party is required. If the LOW is personally delivered to the party and the party does not immediately accept it, or the LOW is mailed to the party, a notation should be entered in the signature block of the unit copy explaining the



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disposition of the LOW (e.g. mailed to party via certified mail, mailed to the party with return receipt attached, hand delivered at scene, etc). Warnings are considered accepted when properly served and not declined in writing within 30 days after receipt by the party. Templates of LOWs issued in lieu of both civil penalty action and S&R proceedings are located in the Figures at the end of this chapter.

**C.3. ACTION
AFTER A WARNING IS
DECLINED**

Regardless of whether the warning is issued by the OCMI/COTP in lieu of civil penalty action or by the OCMI in lieu of S&R proceedings, a warning that is declined shall result in the initiation of the next level of enforcement (e.g. Notice of Violation, Class I Administrative Civil Penalty, or S&R proceedings).

**C.4. APPEALS OF
WARNINGS**

Warnings issued under 33 CFR 1.08, may be appealed under the procedures of that regulation. Warnings issued by a Hearing Officer may be appealed under 33 CFR 1.07-70. Warnings issued by an ALJ may be appealed under the S&R process. Warnings issued by an IO may be subject to review or reconsideration if requested in writing. Warnings issued by an IO are not subject to an appeal because an appeal of a LOW issued by an IO would be akin to non-acceptance and the next level of enforcement action shall be initiated, an appeal would be available at that level.

**C.5. FOREIGN
VESSELS**

Issuing warnings to foreign vessels, personnel, companies, etc., shall be treated in the same manner as discussed above.

C.6. DATA ENTRY

The issuance of all LOWs shall be documented in the Marine Information for Safety and Law Enforcement (MISLE) data system in accordance with the applicable MISLE Process Guide. The signed warning shall be scanned and electronically attached to the enforcement activity (see the MISLE Process Guide for scanning instructions). The original signed warning shall be maintained in the case file at the unit in accordance with the Information and Life Cycle Manual, COMDTINST M5212.12A (series) until further notice. Additionally, for violations listed in 33 CFR 1.08, if the signed warning is appealed, it is prima facie evidence for the follow-on civil penalty action and/or S&R proceeding.

See also: Chapter C4 on NMC notifications.



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FIGURE C2-1: WARNING IN LIEU OF CIVIL PENALTY



Commanding Officer
 United States Coast Guard

Building 14, Coast Guard Island
 Alameda, CA 94501-5100

Mr. Joe Somebody
 57 High Street
 Oakland, CA 94501

Subject: WARNING IN LIEU OF CIVIL PENALTY

Dear Mr. Somebody:

Coast Guard personnel from my office visited your facility/vessel/terminal/etc on January 21, 200X, and discovered the following violation:

Violation Cite: 33 CFR 128.210(b)(1)

To wit: While serving as terminal security officer at the San Francisco Passenger Terminal from January 01, 2000 to January 21, 2002, you failed to ensure that comprehensive security survey was updated.

It was determined that justice will be best served by issuing you a warning rather than pursuing a monetary penalty for your conduct as set forth above. You are advised that this warning will become a matter of Coast Guard record and will be considered for any future enforcement actions against you. You may accept or decline this warning by indicating your choice below. Sign and date below and return a copy to the address above within 30 days of receipt. Failure to return a signed copy will result in the Coast Guard considering this warning accepted. Should you choose to decline this warning, civil penalty proceedings will be initiated against you in accordance with 33 CFR 1.07. You may contact me at the number above with any questions.

Sincerely,

NAME
 Rank, U.S. Coast Guard
 Position
 By direction

I hereby accept / decline the above-mentioned warning.

 Name (print & signature)

 Date



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FIGURE C2-2: WARNING IN LIEU OF SUSPENSION AND REVOCATION PROCEEDINGS

**U.S. Department of
Homeland Security**



**United States
Coast Guard**

Commanding Officer
United States Coast Guard

Building 14, Coast Guard Island
Alameda, CA 94501-5100

Mr. Joe Somebody
57 High Street
Oakland, CA 94501

Subject: WARNING IN LIEU OF SUSPENSION AND REVOCATION PROCEEDINGS

Dear Mr. Somebody:

An investigation has revealed the following conduct on your part while serving aboard the M/V SEA LION, O.N. 123456 under the authority of Merchant Mariner's Document No. 123459:

Complaint: Misconduct (46 CFR 5.27)

Violation Cite: (applicable only for Violation of Law or Regulation (46 CFR 5.33) and shall be removed for other offenses)

To wit: While serving as able seaman aboard said vessel on 5 and 6 January 2002, you failed to report for work in violation of Port Authority policy.

It was determined that justice will be best served by a issuing a warning rather than conducting a formal proceeding for your conduct as set forth above. You are advised that if you accept this warning it will become a part of your merchant mariner's record and will be considered during any future enforcement actions and credentialing transactions involving you. By accepting this warning you are not admitting any civil liability on your part or on the part of the M/V SEA LION, or its owner(s) and operator(s). You may accept or decline this warning by indicating your choice below. Sign and date below and return a copy to the address above within 30 days of receipt. Failure to return a signed copy will result in the Coast Guard considering this warning accepted. Should you choose to decline this warning, suspension and revocation proceedings will be initiated against your Merchant Mariner's Credential in accordance with Title 46, United States Code, Chapter 77. You may contact me at the number above with questions.

Sincerely,

NAME
Rank, U.S. Coast Guard
Position
By direction

I hereby accept / decline the above-mentioned warning.

Name (print & signature)

Date



USCG MARINE SAFETY MANUAL, VOLUME V: INVESTIGATIONS AND ENFORCEMENT
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FIGURE C2-3: WARNING IN LIEU OF CIVIL PENALTY PROCEEDINGS FOR VIOLATIONS LISTED IN 33 CFR 1.08-1 FOR UNINSPECTED VESSELS

**U.S. Department of
Homeland Security**



**United States
Coast Guard**

Commanding Officer
United States Coast Guard

Building 14, Coast Guard Island
Alameda, CA 94501-5100

Mr. Joe Somebody
57 High Street
Oakland, CA 94501

Subject: WARNING IN LIEU OF CIVIL PENALTY PROCEEDINGS FOR VIOLATIONS LISTED IN 33 CFR 1.08-1 FOR UNINSPECTED VESSELS

Dear Mr. Somebody:

Coast Guard personnel from my office visited your vessel on January 21, 200X, and discovered the following violation:

Violation Cite: 33 CFR 88.05

To wit: While serving as operator of the uninspected vessel LUCKY LUCY, O.N. 123456 on January 21, 2002, you failed to have on board a copy of the Inland Navigation Rules.

In consideration that justice will be best served by a warning rather than a civil penalty proceeding, in accordance with 33 CFR 1.08, you are hereby given a written warning for your conduct as set forth above. You are advised that this warning will become a matter of Coast Guard record and will be considered during any future enforcement actions involving you in accordance with the following as per 33 CFR 1.08-5(f):

- The warning will be kept on file for a period of not more than one year after the date of issue or in the case of a violation of 33 CFR 159 a period of not more than three years for reference in determining appropriate penalty action if there is a subsequent violation;
- If a record check reveals a prior written warning or violation within the time period designated in 33 CFR 1.08-5(d), the warning will be revoked and civil penalty action instituted;
- If an additional violation occurs within the time period designated in 33 CFR 1.08-5(d) the warning may be used as a basis for the assessment of a higher penalty for the subsequent violation; and
- Within 15 days after the date of issue, the person who is issued the warning may appeal to the District Commander by providing in writing or in person any information or material that denies, explains, or mitigates the violations noted in the warning.

If no appeal is made within 15 days, the Coast Guard will consider this warning accepted.

Sincerely,

NAME
Rank, U.S. Coast Guard
Position
By direction

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Chapter Three:
Civil Penalties

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A. CIVIL PENALTIES

A.1. GENERAL This chapter discusses the roles of the district, unit prevention department personnel, and the civil penalty Hearing Office in the disposition of reported violations of federal statutes or regulations. Its purpose is to promote uniform procedures in the preparation and processing of civil penalty cases. The governing regulations for civil penalty proceedings are found in Title 33, Code of Federal Regulations, § 1.07 (33 CFR 1.07).

A.2. DEFINITIONS

A.2.a. Deficiency

A deficiency is any condition, operation, or act pertaining to a vessel or facility that fails to meet acceptable standards including but not limited to those established by applicable international conventions, U. S. laws or regulations, industry standards, equipment manufacturers recommendations, "good marine practice," etc. Examples include equipment which is considered to be unsatisfactory for its intended purpose; vessel or facility operations which place persons, property, or the environment at risk; or inadequate response by personnel to contingency drills.

A.2.b. Violation

A violation is any deficiency resulting from a failure to meet applicable U. S. statutory or regulatory requirements where sufficient evidence exists to initiate administrative, judicial, or criminal proceedings (including suspension and revocation hearings, civil penalty hearings, and criminal prosecution) as appropriate.

A.2.b.1. Major Violation

Major violations are any criminal or civil penalty violations of federal law or regulation which create an immediate and critical risk to lives, property, or the environment.

A.2.b.2. Minor Violation

Minor violations are all civil penalty violations not classified as major.

A.2.c. Prima Facie Evidence

Prima facie evidence is evidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which, if not rebutted or contradicted, will remain sufficient. Prima facie evidence is evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue which it supports, but which may be contradicted by other evidence.



A.2.d. Nonconforming Vessel or Facility

A vessel or facility is regarded as nonconforming when it fails to comply with one or more applicable requirements of U. S. laws, regulations, or international conventions.

A.2.e. Substandard Vessel or Facility

Based upon the definition of substandard provided by International Maritime Organization Assembly Resolution A.466 (XII), a substandard vessel or facility is defined as any nonconforming vessel or facility whose hull, structure, machinery, or equipment is substantially below the standards required by U. S. law or international conventions, and whose deficiencies as a whole or individually endanger persons, property, or present an unreasonable risk to the marine environment.

Conditions that could result in a vessel or facility being regarded as substandard include but are not limited to the following:

- The absence of principal equipment or arrangement required by U. S. laws or international conventions (e.g., absence of required life boats, life preservers, fire hoses, or fire extinguishers);
- Gross noncompliance of equipment or arrangement with relevant specifications of U. S. laws or international conventions (e.g., serious deficiencies of the lifesaving, firefighting, structural fire protection, steering, propulsion, communications, navigation, or cargo systems);
- Substantial deterioration of the structure or its essential equipment (e.g., severely wasted hull, deck, frames, or hatch covers; or inoperative fire mains, inert gas systems, pollution prevention equipment);

Noncompliance with operational standards required by U. S. law, or international convention (e.g., personnel-related factors such as inability of responsible parties to perform duties, properly conduct drills, or communicate emergency procedures).

B. TYPES OF CIVIL PENALTIES

B.1. NOV/TICKETS

A Notice of Violation (NOV) is a formal, written notice of an apparent violation for which a predetermined monetary penalty is appropriate. In all cases, the issuance and final disposition will be considered part of the relevant safety record for use in future Coast Guard activities.

B.2. CLASS I ADMINISTRATIVE CIVIL PENALTY

The Class I Administrative Civil Penalty process is used when the issuance of a letter of warning (*See* Chapter C2 for guidance on LOWs) or NOV is not appropriate. These cases are adjudicated by the Coast Guard Hearing Office. In all cases, the final disposition will be considered part of the relevant safety record for use in future Coast Guard activities.

**B.3. CLASS II
ADMINISTRATIVE
CIVIL PENALTY**

The Class II Administrative Civil Penalty process is used only for certain violations of the Federal Water Pollution Control Act as amended by the Oil Pollution Act (OPA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). It is typically pursued in egregious and willful violations of these statutes where the maximum penalty associated with a Class I Administrative Civil Penalty is deemed insufficient to meet enforcement goals and in cases where the Coast Guard wants to pursue other non-monetary requirements, such as the creation of an environmental compliance plan or other requirements that may be imposed by an Administrative Law Judge (ALJ). Class II Administrative Civil Penalty assessments may be made only by an ALJ using the procedures contained in 33 CFR Part 20. In all cases, the final disposition will be considered part of the relevant safety record for use in future Coast Guard activities.

B.4. JUDICIAL

The Judicial Civil Penalty process is the presentation of all relevant evidence and facts surrounding a specific offense to Federal District Court Judge for adjudication. A Judicial Civil Penalty may be pursued for a wide variety of violations, but is usually reserved for egregious and willful violations where the maximum penalties associated with a Class I Administrative Civil Penalty is deemed insufficient to meet enforcement goals. In all cases, the final disposition will be considered part of the relevant safety record for use in future Coast Guard activities.

C. CIVIL PENALTY PROCESS**C.1. GENERAL****C.1.a. Application of Civil Penalties**

The Captain of the Port (COTP), Officer in Charge Marine Inspection (OCMI) and Federal On Scene Coordinator (FOSC) should normally initiate the civil penalty assessment process for all major non-criminal violations, for repeat offenders, and any minor violations which are not corrected immediately by the responsible party, or any other time they deem appropriate given the circumstances of a particular case.

C.1.b. Selection of Charged Parties

Civil penalty enforcement actions should target those parties who can most effectively bring about compliance or a remedy and those who need to be deterred from committing future violations. For violations where several parties can with equal effectiveness bring about compliance or remedy, then civil penalty actions selected should target those parties whose failure to comply requires the greatest degree of correction.

C.1.c. Adjudication

Civil penalties, other than more serious FWPCA/CERCLA violations, are adjudicated by the Coast Guard Hearing Office under 33 CFR 1.07 non-adversarial proceedings. FWPCA/CERCLA violations cases may be adjudicated by the Hearing Office as Class I Administrative Civil Penalty cases, adjudicated by Coast Guard Administrative Law Judges as Class II Administrative Civil Penalty cases under 33



CFR 20 proceedings, or referred to the Department of Justice for prosecution as a Judicial Civil Penalty cases.

C.1.d. Letters of Undertaking / Surety Bonds for Foreign Vessels

Whenever a civil penalty case is pursued, the COTP, OCMI, or FOSC should normally require a Letter of Undertaking (LOU) or Surety Bond from the vessel owner, operator, or person in charge of a foreign vessel as a port state control measure to assure payment of any subsequently assessed penalty or fine. Included at the end of this chapter as Figure C3-1 is a standard LOU template.

**C.2. CIVIL
PENALTY CASE**

C.2.a. Initiation of Civil Penalty Cases

Information concerning apparent violations of federal law or regulation can be received from sources other than observing Coast Guard units. For example, local or other federal agency law enforcement personnel, or private citizens, may report to the Coast Guard the occurrence of an alleged reckless or negligent operation of a pleasure boat, or other vessel type. The district commander establishes policy regarding the scope and extent for the investigation of such reported incidents and establishes policy for processing civil penalty cases for their respective units. Upon the completion of an investigation by a Coast Guard unit and the preliminary conclusion that a violation did occur, appropriate documentation is prepared. All required entries shall be made into the Marine Information for Safety and Law Enforcement (MISLE) data system in accordance with the MISLE Investigations and Enforcement Process Guide. When an agency other than the Coast Guard conducts the investigation, that agency's investigative report should be forwarded as part of the civil penalty case and attached to the MISLE enforcement activity as correspondence. When an early determination is made that an investigation might be better conducted by another Coast Guard district, or unit of that district, and the other district has been consulted, the initial report and other information on the incident may be forwarded.

C.2.b. Preparation of Civil Penalty Cases

Depending on the district commander's established policy regarding the processing of civil penalty cases, the case will be prepared either at the unit or district level. All civil penalty cases shall be evaluated to determine whether there is sufficient evidence to establish a "prima facie" (i.e., evidence exists to prove all elements of the violation) civil penalty case. Care must be taken to ensure that all of the evidence in support of the case is present, i.e., the facts available for development of key conclusions should accompany those conclusions. If it is determined that a prima facie civil penalty case exists and it warrants assessment of a Class I Administrative Civil Penalty, the case should be prepared and submitted to the Coast Guard Hearing Office. These evaluations and submissions should be made in accordance with current program guidelines. The case may be closed any time prior to its forwarding to the Hearing Office; for example, this might occur with the issuance and acceptance of a Letter of Warning. If district policy requires civil penalty cases to be reviewed by the district



program manager prior to submission to the Hearing Office, program managers should advise originating units of the disposition of their cases, including the reasons for the actions taken in each case. Prior violations by the party should be included in the case package.

C.2.c. Civil Penalty MISLE Enforcement Activity Contents

A Class I Administrative Civil Penalty enforcement activity shall be created in MISLE in accordance with the MISLE Investigations and Enforcement Process Guide. An enforcement activity can have any number of alleged violations. It may consist of information on several alleged violations (of various laws or regulations) occurring or observed at the same time, or on several similar alleged violations occurring over a period of time, but addressed by the single enforcement activity. A single enforcement activity should address a single party; cases against other liable parties for the same incident are required to be addressed by separate enforcement activities.

C.2.d. Hearing Office Review

The submitted Class I Administrative Civil Penalty case is examined by the Hearing Office. If the Hearing Office determines that there is not sufficient evidence to proceed, that there is any reason why penalty action may otherwise be inappropriate, or dismissed the case without prejudice, the case package and MISLE activity is returned to the submitting unit with a written statement of the reason for return or dismissal. The submitting unit can choose to either close the activity as “Closed – Administrative Action”, or to correct any deficiency and resubmit the case package and MISLE activity for further Hearing Office consideration. There may be other appropriate actions available to the submitting unit in disposition of the case (e.g., referral to the U.S. attorney as a criminal violation case). If the Hearing Office determines that no violation occurred and dismisses the case with prejudice, the case package will be returned to the submitting unit and the MISLE activity will be closed.

**C.3. HEARING
OFFICE ACTION**

C.3.a. General

The below sections give an overview of the role of the Coast Guard Hearing Office in the Class I Administrative Civil Penalty process. They are provided for informational purposes and are not binding on the Coast Guard Hearing Office or any Coast Guard Hearing Officer. For a more detailed explanation of the role of the Coast Guard Hearing Office, see Commandant Instruction M16200.5 (series), Civil Penalty Hearing Officer Procedures.

C.3.b. Notification

Parties to Class I Administrative Civil Penalty cases are provided written notice that civil penalty proceedings have commenced. The required notice will contain those items found in 33 CFR 1.07-20(b), including the amount of penalty that appears to be appropriate. No penalty will be assessed until the alleged violator has been provided opportunity to reply, and the Hearing Office has considered any such reply and it has



been determined the violation(s) did occur.

C.3.c. Counsel / Party Representative

A party has the right to be represented by counsel at all stages of a Class I Administrative Civil Penalty proceeding. Once the Hearing Office is notified that counsel or some other person (e.g., agent, managing operator, employer, or associate) will provide representation for the party, this notice will be entered into the record in the case and all subsequent communications will be directed to that counsel or representative.

C.3.d. In-Person Hearings

An in-person hearing must be requested in writing by the party and must be supported. Civil penalty hearings are open to the public (including the news media and Coast Guard personnel), space permitting, for the purpose of observation. No statements from, or disruptions by, such observers will be tolerated. The degree to which requests to be present is honored, given limited space or some other constraint, is at the discretion of the presiding hearing officer, or a senior supervising hearing officer. Portions of an in-person hearing may be closed if material of a confidential nature is to be offered or discussed. Participation by persons other than the party may be permitted (*see* 33 CFR 1.07-50 and 55). It is not necessary that the hearing officer decide a case at the close of an in-person hearing. The volume or nature of the party's submissions and testimony may require considerable time for complete consideration, or the party may request time to make additional written submissions, or it may be appropriate to permit the program manager to review and rebut. Also, the hearing officer may, at the close of the in-person hearing, state that a violation was shown to have occurred, and then give the party additional time to provide further information before deciding on an appropriate penalty.

C.3.e. Disclosure

The hearing officer must ensure that the party has been fully afforded the opportunity to view the disclosable evidence and other substantive material in the party's case file. The party has a right to examine all materials in the case file and to have a copy of all written documents. This includes new evidence entered into the file after the party has been provided copies of the file or has otherwise been informed of the contents of the file.

C.3.f. Witnesses

A party may request the assistance of the hearing officer in obtaining the appearance of a witness. If the hearing officer determines that the personal appearance of the witness may materially aid in the decision of the case, then an effort will be made to honor the request. Should the hearing officer decide that the appearance or statement of the witness is essential, but is unable to obtain either, the case can be remanded to the submitting unit for further investigation. If the hearing officer decides to deny the party's request, the party remains entitled to produce the witness



by whatever means are available.

C.3.g. Agency Participation

Participation in an in-person hearing by a district program manager representative, unit representative, or some other government entity having an investigative, administrative, or other responsibility in a case may be permitted. Strict guidelines regarding procedures should be developed and explained completely to the agency and the party. The hearing officer will maintain complete control of the hearing at all times.

C.3.h. Requests for Confidential Treatment

Hearing officers should caution parties making requests for confidential treatment of their submissions that the hearing officer's decision to honor such a request is subject to review. Once the material is entered into the record, third parties can request disclosure, and the reviewing authority in the Coast Guard may determine that the material is subject to disclosure. Hearing officers will typically only accept material submitted with a request for confidential treatment after the party has been cautioned, and has reaffirmed the submission and the request for confidential treatment.

C.3.i. Decisions

Each decision (i.e., whether a violation did occur and, if so, what penalty is appropriate) made in a case must be in writing. Decisions are not generally required to contain specific and detailed finding of fact for all possible issues. However, the disputed issues pertinent to the case will typically be covered. The record in a case must contain the information that compels or persuades the findings. The decision can be recorded on "hearing notes," with copies provided for the party with the letter setting forth the decision, or written into the body of the letter itself.

C.3.j. Dismissals - Citations

Individual citations in a case may be dismissed under one of the following circumstances:

- The evidence does not convince the hearing officer that the cited violation, or other violation of which the party has had full and fair notice, did occur; or
- The party to the case is an inappropriate party; or
- There is an extraordinary situation in which an injustice would result if penalty action, including a "warning," were taken.

C.3.k. Dismissals - Cases

Cases may be dismissed if one of the above circumstances exists for each citation in the case, or there is an extraordinary situation in which an injustice would occur if the



penalty case as a whole were to continue. For example, before coming to a decision on the facts in a case, a comparison of certain humanitarian factors (as they affect the party) with the need for completion of the penalty case may persuade the hearing officer to dismiss the case. All dismissals will be explained on the record.

C.3.1. Warnings

The issuance of warnings in Class I Administrative Civil Penalty cases is permitted, at the discretion of the Hearing Officer. The basis for a decision to give a warning in lieu of a monetary penalty should be explained on the record.

C.3.m. Appeals

Appeals of civil penalties are described in 33 CFR 1.07-70 and 1.07-75. Upon receipt of an appeal, the Hearing Office should provide a copy of the appeal and any supporting brief to the Coast Guard unit that submitted the case. The Coast Guard unit will have 30 days to submit comments; any comments made on an appeal should not include new evidence. All of the germane evidence should have been entered into the file before the decision was made.

C.3.n. Reopening of Hearings

The basis for the reopening of a Class I Administrative Civil Penalty case is described in 33 CFR 1.07-80. The Coast Guard unit that submitted the case will be given the opportunity to file comments in opposition to the petition to reopen.

C.4. REPORTS OF VIOLATIONS INVOLVING BOTH CIVIL AND CRIMINAL PENALTY PROVISIONS

Violations of certain statutes enforced by the Coast Guard entail both civil and criminal penalties. For example, 46 U.S.C. 2302 provides for the imposition of a civil penalty or criminal prosecution for grossly negligent operation of a vessel that endangers the life, limb, or property of any person. [NOTE: Discharges of oil or hazardous substances in quantities which may be harmful (see 33 U.S.C. 1321(b)(3)) and the failure to report such discharges immediately (see 33 U.S.C. 1321(b)(5)) are separate offenses.] When such violations are reported, the district commander shall determine whether or not the imposition of a criminal penalty is warranted. If the evidence is sufficient and the circumstances are such that a criminal penalty is appropriate, the case shall be referred to the U.S. attorney for action. The district commander shall act on all reports of dual penalty violations as follows:

- All reckless and negligent operation cases, whether or not death or serious injury are involved, shall be carefully evaluated to determine whether the circumstances and documentary evidence available in the case warrant referral to the U.S. attorney for criminal prosecution.
- Flagrant cases or cases involving repeated offenses may be especially appropriate for referral to the U.S. attorney if the facts warrant such action.
- When cases are referred to the U.S. attorney and prosecution is declined, the district commander may, at his discretion, refer the case to the hearing officer for institution of administrative civil penalty proceedings.



D. CIVIL PENALTY AUTHORITY UNDER THE FWPCA, AS AMENDED

D.1. COAST GUARD RESPONSIBILITIES

Under Section 1321 of the FWPCA, as amended, (33 U.S.C. 1321), the Coast Guard is responsible for ensuring that reports of discharge under Section 1321 are investigated, and authorizes that every proven violation may result in the assessment of a civil penalty. The OCMI/COTP is responsible for the investigation of discharges and referral of appropriate cases to the Coast Guard Hearing Office. The Hearing Office is responsible for administering cases fairly and impartially, in accordance with 33 CFR 1.07, and for issuing decisions based on the facts of the case and the applicable laws and regulations. Action taken by a state or municipality, or a federal agency other than the Environmental Protection Agency (EPA), under Section 1321(b)(6)(B) does not obviate the authority for appropriate Coast Guard civil penalty action to be initiated.

D.2. CIVIL PENALTY ENFORCEMENT ACTION

The Coast Guard is authorized to assess a civil penalty against the owner, operator, or person-in-charge of a vessel or facility from which oil or a hazardous substance was discharged, in violation of Section 1321(b)(3), except for discharges which are forwarded, by interagency agreement or understanding, to a U.S. attorney or the EPA for action. In every case in which there is substantial evidence that a violation occurred, civil penalty enforcement action shall be pursued.

D.3. CIVIL PENALTY ENFORCEMENT OPTIONS

The Commandant's policy is to vigorously pursue a program of measures to achieve the Congressional intent, expressed in Section 1321, that there should be "no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines . . ." Discretion in making enforcement decisions should be exercised by the OCMI/COTP in referring cases and by the Hearing Office in deciding cases to best realize the purposes of the law. The minimum level of enforcement that shall be pursued is the issuance of a Letter of Warning in lieu of a civil penalty assessment. (*See* Chapter C2 for guidance on LOWs for discharges of oil) Evidence may warrant the imposition of a minimal civil penalty, but in any case the penalty should be strong enough to motivate owners and operators to take adequate measures to prevent recurrences. Commandant Instruction M5582.1 (series), Notice of Violation User's Manual, provides guidance on the issuance of NOV's for discharges of oil. In cases that the OCMI/COTP determines that an assessment of a civil penalty in an amount that exceeds the amounts authorized for issuance of a NOV may be appropriate, the case shall be pursued as a Class I Administrative Civil Penalty, Class II Administrative Civil Penalty or Judicial Civil Penalty as appropriate. It must be remembered, however, that in any case, the determination of the appropriate level of civil penalty enforcement must be based on the whole set of facts. While one factor bearing on the gravity of the violation may be slight, another might be serious enough to warrant a substantial penalty. For example, the fact that the amount spilled is extremely small may be offset by the careless conduct of the party. Conversely, a high level of care by the party may be offset by a large quantity discharged.

**D.4. PROPER
PARTY
DETERMINATION**

When a prohibited discharge is established, two questions must be asked: What is the source of the discharge? and, Who is the owner, operator, or person-in-charge of that source? As defined in Section 1321(a)(6) the "owner" or "operator" is any person owning, operating, or chartering by demise a vessel; or any person owning or operating an onshore or offshore facility. In many cases, there is more than one party subject to a penalty under the law. Strict constraints on the selection of a party may actually prevent Congressional and Coast Guard purposes from being served properly. While the civil penalty provisions of Section 1321(b)(6) are based on the principle of strict liability, there is room for discretion in determining the actionable source and the person to be considered the owner, operator, or person-in-charge of the source.

D.4.a. Determining the Source

Some time ago, the "conduit theory" was devised to assist in determining which vessel or facility, of a number of potentially actionable sources, could most appropriately be considered the discharge source for civil penalty purposes. For example, oil may be discharged from a source, flow across or through a facility or vessel of an otherwise innocent party, and enter the water. In such a case, the owner/operator of the source should normally be the actionable party in civil penalty action; the vessel/facility from which the discharge ultimately entered the water is viewed as a conduit only. When the evidence indicates that the facility or vessel across or through which the discharge flowed was not merely a passive conduit, identification of the actionable source is complicated. When two or more entities actively discharged oil or failed to take reasonable measures to prevent its entry into the water, any or all of them may be considered the source. The OCMI/COTP shall evaluate all available evidence, including causal factors and the capability for taking reasonable precautions, to determine the appropriate actionable source (i.e., the point of entry and/or the actual source).

D.4.b. Determining the Owner/Operator

Once the actionable source has been identified, it may be necessary to determine which of several parties is the "owner" or "operator" for civil penalty purposes. Section 1321(b)(6) is a remedial provision intended to spur involved persons to adopt measures necessary for the prevention of oil and hazardous substances pollution by their vessels and facilities. By reaching the owner, operator, or the person-in-charge of a violating vessel or facility, Congress has provided a flexible means of reaching those persons capable of taking such measures. While the question of ownership is normally established easily, the intent of the law is not always served best by proceeding against the owner; sometimes, it is more appropriate for the operator of the vessel or facility to be charged. It is the Commandant's policy that environmental protection laws should be interpreted as broadly as possible, the terms "operator" and "person-in-charge" are recognized as including persons not having complete business control of a vessel or facility. Such persons may be considered proper parties if they



exercise physical or operational control of a discharging vessel or facility. [NOTE: In cases involving multiple parties, where control of the vessel/facility is so fragmented as to preclude a finding that any one person is the operator or person-in-charge, the OCMI/COTP may proceed against the owner.]

D.4.c. OCMI/COTP Determination

The decision as to the proper party in any particular case is vested in the discretion of the OCMI/COTP based on an evaluation of all the facts of that case. This discretion should be exercised in a manner which most reasonably and effectively serves the purposes of the law. The following factors should be considered:

- The degree to which each involved party is responsible for the incident.
- The degree to which each involved party is in a position to prevent future incidents.
- The effect of economic incentives on various involved parties.
- Particular care shall be exercised in identifying the owner, operator, or person-in-charge, in accordance with the guidance above.
- In those cases where a pollutant reaches the water, via a passive conduit of the discharge, a civil penalty should normally be pursued against the owner, operator, or person-in-charge of the actual source of the discharge.

D. 5. CIVIL PENALTY ASSESSMENT UNDER SECTION 1321 (J) (1)

During the investigation of oil pollution incidents, close attention shall be given to possible violations of the pollution prevention regulations as well as the discharge prohibition of the FWPCA, as amended. No violation should be regarded as minor when it has contributed to or will likely contribute to a discharge, is a repeat violation of the exact same offense within a 2-year period, or when there is no good faith effort on the part of the party to achieve rapid compliance. This should normally be reflected in the civil penalty amount recommended. If at all possible, cases involving a discharge of oil or hazardous substances as a result of a pollution prevention regulation violation should be processed simultaneously through civil penalty proceedings. While the size of the violator's business and the impact of a civil penalty on the ability of the owner/operator to remain in business must be considered in the assessment of penalties under Section 1321(b)(6), these are not required to be considered in the imposition of a civil penalty under Section 1321(j)(1); they may be considered at the discretion of the Hearing Office.

D. 6. CIVIL PENALTY ASSESSMENT FOR MARINE SANITATION DEVICE (MSD) VIOLATIONS

In addressing violations of where Section 1322(j) authorizes the assessment of a civil penalty, the OCMI/COTP should seek to bring vessels into compliance with requirements. Recommendations made pursuant to 33 CFR 1.07-10 shall be commensurate with the gravity of the violation and the need to ensure future compliance with the MSD regulations (33 CFR 159).



FIGURE C3-1: Optional Standard Form Letter of Undertaking (LOU)

Secretary of Homeland Security
c/o Commander, U.S. Coast Guard Sector
(address)

Re: (name of vessel, on or about [date], Location)
Applicable regulation or statute

Dear Sir:

In consideration of the United States of America refraining from withholding the clearance required by 46 USC App. 91 of the [name of vessel], arresting the vessel or attaching any property belonging to the Owners of the vessel in connection with claims and actions arising out of alleged violations described above occurring within the navigable waters and the exclusive economic zone of the United States, and arising on or after [Date(s) of alleged violations] (hereafter referred to as the “alleged incident”). The undersigned, {Name of the Bound Party}, hereby agrees:

1. That [Name of agent or attorney-in-fact] as agent [or attorney in fact] for the Owner/[Name of Bound Party] and operator [Name of Bound Party] shall accept delivery of correspondence for the Owner/[Name of Bound Party] and operator [name of bound party] and service of any process on behalf of the Owner/[Name of Bound Party] and operator [name of bound party] in any case, action, administrative hearing, or proceeding related to or arising from civil penalties for violations as generally identified above; that delivery to the agent or attorney-in-fact constitutes effective notice and service on the Owner/[Name of Bound Party] and operator [name of bound party];
2. To file, or cause to be filed, upon demand, a Claim and appearance by the Owner and/or operator of the vessel _____ in any action brought against either or both of them by the United States concerning the alleged violations, and to defend the vessel from any in rem claim asserted against it;
3. In the event a final judgment (after appeal if any) is entered, in favor of the United States against the vessel _____, or her Owner or Operator as a result of such action to pay and satisfy said judgment, plus interest and costs, up to and not exceeding [Maximum amount of Civil Penalty that may be assessed], or any lesser amount settled between the parties, provided said settlement has been made with the written approval of [Name of Bound Party];
4. Upon written demand, to cause to be filed in said hearing or action, a bond in form and sufficiency of surety satisfactory to you, or to the Court, sufficient in amount not to exceed \$[Maximum amount of civil penalty that may be assessed], including interest and costs, to secure your claim against the Owner and/or operator, and [name of vessel] in the



aforesaid judicial action. In the event that the bond referred to in this paragraph is filed, the undersigned shall have no further obligation under Paragraph 3 above.

This letter is to be binding whether the [name of vessel] be lost or not lost, in port or not in port, and is given without prejudice to all rights or defenses which the [name of vessel] and/or her Owner or Operator may have, none of which is to be regarded as waived, with the exception that the Owner and Operator agree that delivery to the agent identified in paragraph 1 above, of correspondence for the Owner/[name of Bound Party] and operator [name of bound party] will constitute effective notice to the Owner/[Name of Bound Party] and operator [name of bound party], and that the Owner/[Name of Bound Party] and operator [name of bound party] will not assert in any subsequent hearing or action any alleged defects in notice or service of process issued and served in accordance with this undertaking. This letter does not constitute an admission of liability by the vessel or its Owner/[Name of Bound Party] and operator [name of bound party].

This letter is also written entirely without prejudice to any claims and rights the United States of America may have pursuant to any applicable Certificate of Financial Responsibility (“COFR”) pertaining to the vessel, none of which claims and rights are to be regarded as waived or discharged. Owner [name of bound party] warrants that it owns the vessel. Operator [name of bound party] agrees that it may be considered an operator of the vessel under applicable United States law.

If no penalty is assessed, or no action is filed in the aforesaid Court within a period of three (3) years from the date of hereof, this letter shall become null and void. If the Owner [name of bound party] fails to appear as required by paragraph 2, or fails to waive objections to jurisdiction, then the undersigned association agrees to pay to the United States the full amount of this letter of undertaking.

It is understood and agreed that the execution of this letter by (name of law firm) on behalf of the Undersigned [Name of Bound Party Underwriter or P&I Club] shall not be construed as binding upon (name of law firm) but is binding only upon the undersigned [Name of Bound Party Underwriter or P&I Club].

Sincerely,

(Name of Bound Party Underwriter or P&I Club)

By: (firm)

(Name of attorney)

As Attorney in Fact for the above limited

Purposes only per (telex, telefax, letter)

Authority from Name of Bound Party (Underwriter or P&I Club) dated _____.



USCG MARINE SAFETY MANUAL, VOLUME V: INVESTIGATIONS AND ENFORCEMENT
PART C: ENFORCEMENT
CHAPTER 3: CIVIL PENALTIES

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USCG MARINE SAFETY MANUAL
Volume V: Investigations and Enforcement
PART C: ENFORCEMENT

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Chapter Four:
Suspension and Revocation

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A. INTRODUCTION

A.1. GENERAL

Violations of statutes and regulations enforced by the Coast Guard can result in the initiation of criminal or civil penalty action against the person responsible for committing the violation and/or the initiation of administrative action against Coast Guard issued merchant mariner credentials (MMCs). Enforcement tools available to the OCMI are discussed in Chapter C1 and procedures for processing civil penalty violations are discussed in Chapter C3 of this manual. This chapter provides policy guidance concerning the suspension and revocation (S&R) process and includes discussions of pre-hearing actions, complaints, answers, settlement agreements, hearing presentation, and post-hearing actions. Alternative actions concerning MMCs, including voluntary surrender agreements, voluntary deposit agreements, and good-faith deposits are also discussed. Letters of Warning are discussed in Chapter C2 of this manual.

A.2. AUTHORITY; 46 USC CHAPTER 77

The basic authority to initiate S&R proceedings is derived from Title 46, United States Code, Chapter 77. 46 USC 7703 establishes the bases for S&R proceedings and authorizes S&R action against a mariner who, while acting under the authority of his/her MMC(s) commits: a violation of a law or regulation intended to promote marine safety or to protect navigable waters, an act of misconduct, or negligence. The statute further authorizes S&R action if a holder of a MMC committed an act of incompetence relating to the operation of a vessel, was convicted of an offense that would prevent the issuance or renewal of the MMC or is a threat to the safety or security of a vessel or a structure located within or adjacent to the marine environment. Moreover, the statute authorizes S&R action if a holder of a MMC was convicted an offense listed in section 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (NDRA) (49 USC 30304) within 3 years of the initiation of a relevant S&R proceeding. At the same time, 46 USC 7704 authorizes S&R action against the holder of a MMC who has been convicted of a dangerous drug law violation, or has been shown to be a user of, or addicted to the use of, dangerous drugs. 46 USC 7702(d)(1) authorizes the Coast Guard to temporarily suspend a mariner's MMC for various offenses discussed below. The Coast Guard also has authority to initiate S&R proceedings against a MMC held by civil service or contract crewmember when possession of the MMC was a condition of employment, i.e. an individual hired to serve on a public vessel on the condition that he/she holds a MMC. This authority is set forth in Memorandums of Agreement with the Commander, Military Sealift Command (MSC), and the U.S. Army Corps of Engineers (ACOE) (see MSM Volume X).

A.2.a. 46 USC 7703 (1); Violation of Law/Regulation, Misconduct or Negligence

46 USC 7703(1) authorizes S&R action against a mariner's MMC(s) if, while acting under the authority of the MMC(s), the mariner commits an act of misconduct, negligence, or a violation of law or regulation which is intended to promote marine



safety or to protect navigable waters.

A.2.b. 46 USC 7703 (2); Conviction

46 USC 7703(2) authorizes S&R action if the holder of a MMC was convicted of an offense that would prevent the issuance or renewal of the MMC. The Commandant considers convictions for offenses detailed in 46 CFR 5.59 and 5.61 to be convictions that would preclude the issuance or renewal of MMCs. The Commandant also considers a conviction for an offense listed in tables 46 CFR 10.201(h) or 46 CFR 12.02-04(c), to be a conviction that would prevent the issuance or renewal of a MMC. See section B.9 for guidance on appropriate sanctions.

A.2.c. 46 USC 7703 (3); NDRA Conviction

46 USC 7703(3) authorizes S&R action if the holder of a MMC was convicted of an offense listed in section 205(a)(3)(A) or (B) of the NDRA of 1982 (49 USC 30304) within 3 years of initiation of S&R proceedings. Offenses listed in section 205(a)(3)(A) or (B) of the NDRA are:

- Operation of a motor vehicle while under the influence of, or while impaired by alcohol or dangerous drugs;
- Traffic violation(s) arising in connection with fatal traffic accidents;
- Traffic violation(s) arising in connection with reckless driving; or
- Traffic violation(s) arising in connection with racing on the highways.

See section B.9 for guidance on appropriate sanctions.

A.2.d. 46 USC 7703 (4); Act of Incompetence

46 USC 7703(4) authorizes S&R action if the holder of a MMC has committed an act of incompetence related to the operation of a vessel. Incompetence is based on the inability of a mariner to perform the duties required of his/her MMC(s). The inability to perform may be due to professional deficiencies, physical disability, and/or mental incapacity.

A.2.e. 46 USC 7703 (5); Security Risk

46 USC 7703(5) authorizes S&R action if the holder of a MMC is a security risk that poses a threat to the safety or security of a vessel or a structure located within or adjacent to the marine environment. See section B.9 for guidance on appropriate sanctions.

A.2.f. 46 USC 7704 (b); Dangerous Drug Law Conviction

46 USC 7704(b) authorizes S&R action against the holder of a MMC who, within 10 years of the initiation of S&R proceedings, has been convicted of violating a dangerous drug law of the United States or of a State. The statute authorizes the suspension or revocation of the mariner's MMC for such violations after the offense is found proved at a hearing. See section E for guidance on use of settlement agreements and section B.9 for guidance on appropriate sanctions.



A.2.g. 46 USC 7704 (c) ; Dangerous Drug Use

46 USC 7704(c) authorizes S&R action against the holder of a MMC who has been a user of, or addicted to a dangerous drug. The statute requires that the MMC be revoked, unless the mariner is cured of his drug use or addiction. See section E for guidance on use of settlement agreements and section B.9 for guidance on appropriate sanctions.

A.2.h. 46 USC 7702 (d) (1) ; Temporary Suspension

46 USC 7702(d)(1) authorizes the Coast Guard to temporarily suspend a mariner's MMC, for not more than 45 days, if certain conditions exist. In temporary suspension cases, the mariner must perform a safety sensitive function on a vessel and there must be probable cause to believe that the mariner:

- Has while acting under the authority of that MMC, performed the safety sensitive function while in violation of law or regulation regarding the use of alcohol or dangerous drugs;
- Has been convicted an offense that would prevent the issuance or renewal of the MMC. The Commandant considers convictions for offenses detailed in 46 CFR 5.59 and 5.61 to be convictions that would preclude the issuance or renewal of MMCs. The Commandant also considers a conviction for an offense listed in tables 46 CFR 10.201(h) or 46 CFR 12.02-04(c) to be a conviction that would prevent the issuance or renewal of a MMC;
- Has been convicted an offense listed in section 205(a)(3)(A) or (B) of the NDRA (49 USC 30304) within 3 years of the initiation of S&R proceedings; or
- Is a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

See section F.4 for guidance on expedited hearings.

A.3. DEFINITIONS

A.3.a. Merchant Mariners' Credentials (MMCs)

Any license, Certificate of Registry (COR), STCW endorsement, or Merchant Mariner Document (MMD) issued by the Coast Guard which serves as the qualification document for all merchant mariners sailing on U.S. flag vessels.

A.3.b. Mariner

Any person who has been issued a MMC by the Coast Guard.

A.3.c. Suspension and Revocation (S&R) Proceedings

Administrative proceedings against MMCs issued by the Coast Guard that afford an opportunity for an oral, fact-finding hearing before an Administrative Law Judge (ALJ) under the authority of 46 USC Chapter 77 as implemented in Title 33, Code of Federal Regulations, Part 20 (33 CFR 20) and 46 CFR Part 5.



A.3.d. Dangerous Drugs

A narcotic drug, a controlled substance, or a controlled substance analog as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802).

A.3.e. Cure

46 USC 7704 requires the MMC of an individual who is a user of, or addicted to a dangerous drugs to be revoked unless the individual can demonstrate cure. Cure has been defined in Commandant Decisions on Appeal (CDOA) 2535 (SWEENEY), 2634 (BARRETTA), and 2638 (PASQUARELLA). An individual is considered cured if:

- He/she successfully completes an accredited drug abuse rehabilitation program designed to eliminate physical and psychological dependence. This is interpreted to mean a program certified by a governmental agency, such as a state drug/alcohol abuse administration, or in the alternative, certified by an accepted independent professional association, such as the Joint Commission on Accreditation of Health Care Organizations (JCAHO); and
- He/she demonstrates a complete non-association with drugs for a minimum of one year following the successful completion of the drug abuse rehabilitation program. This includes participation in an active drug abuse monitoring program which incorporates random, unannounced drug testing during that year; and
- A Medical Review Officer (MRO) has determined that the mariner is drug-free and that the risk of subsequent use of dangerous drugs is sufficiently low to justify the mariner's return to work.

A.3.f. Conviction

An individual has been found guilty by judgment or plea by a court of record of the U.S., the District of Columbia, or any State or territory of the U.S. of a criminal felony or misdemeanor or of an offense listed in section 205 of the NDRA. For the purposes of 46 USC 7703 or 7704, the Coast Guard considers an individual as having received a conviction if the Court action is based on a plea of guilty or no contest or involves deferred adjudication or the imposition of a requirement to attend classes, make contributions of time or money, receive treatment, submit to any manner of probation or supervision, or forgo appeal of the finding of the trial court. The Coast Guard does not consider the conviction expunged without proof that the expungement is due to the conviction's having been in error. See CDOA 2608 (SHEPHERD).

A.3.g. Security Risk

A mariner is considered a security risk if:

- The mariner has a disqualifying criminal offense, as described in 49 CFR 1572.103;
- The mariner has been adjudicated as lacking mental capacity or committed to



a mental institution, as described in 49 CFR 1572.109;

- The individual is included in databases or watchlists relevant to determining whether an individual poses a security threat;
- The Department of Homeland Security determines or suspects the mariner of being a threat to national security; transportation security, or of terrorism.

The above list identifies major categories of individuals who would be found to be security risks. The list is not all-inclusive. In addition to the above, if there is probable cause to believe that a holder of a MMC has committed an act, or is going to commit an act, affecting the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment, an IO may initiate S&R proceedings against the mariner's MMC for being a security risk.

A.4. **JURISDICTION**

Jurisdiction to initiate S&R action against a MMC is established by either the individual being the holder of a MMC issued by the Coast Guard, or by the individual acting under the authority of a Coast Guard issued MMC. The offenses for which the Coast Guard must establish that the mariner was acting under the authority of his or her MMC at the time of the offense are:

- A violation or a failure to comply with a provision of, or regulation issued under, Subtitle II of Title 46 USC; or a violation of or failure to comply with any law or regulation intended to promote marine safety or to protect navigable waters; or
- An act of misconduct; or
- An act of negligence.

The offenses for which the Coast Guard has jurisdiction to initiate S&R proceedings against a mariner's MMC simply because the individual is a holder of a Coast Guard issued MMC are:

- A conviction of an offense that would prevent the issuance or renewal of the MMC; or
- Within 3 years of the initiation of S&R proceedings, a mariner was convicted of an offense listed in section 205(a)(3)(A) or (B) of the NDRA (49 USC 30304); or
- An act of incompetence relating to the operation of a vessel; or
- The mariner is a security risk that poses a threat to the safety or security of a vessel or a structure located within or adjacent to the marine environment; or
- The mariner has been a user of, or addicted to dangerous drugs; or
- Within 10 years of initiation of S&R proceedings, the mariner was convicted of violating a dangerous drug law of the United States or of a State.

A.4.a. Acting Under Authority of a MMC

As defined in 46 CFR 5.57(a), an individual who is employed in the service of a vessel is considered to be acting under the authority of his/her MMC when the holding of



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the MMC is either required by law or regulation, or is required by an employer as a condition of employment. (See A.5. below for special circumstances for pilots). Mariners continue to act under the authority of their MMCs during periods of time away from the ship while they are serving in the service of the vessel. Mariners are also considered to be acting under the authority of their MMCs when they are engaged in official matters related to their credentials, including, but not limiting to, such acts as applying for renewal of their MMC, taking examinations for upgrading or endorsements, requesting duplicate or replacement credentials, appearing at a S&R hearing, participating in the drug testing requirements of 46 CFR 16, etc. The Coast Guard maintains jurisdiction over a mariner with an expired MMC because S&R proceedings are taken against the mariner's entitlement to the MMC. CDOA 2656 (JORDAN) also clearly states that a mariner may be found to have been acting under the authority of an expired MMC and that any subsequently assessed sanctions may be properly imposed on any subsequently issued MMCs (renewals, ect.). It is worth noting, however, that the act of applying for an original MMC is not an action performed under the authority of any subsequently issued MMC, since the application precedes the issuance of the credential. See CDOAs 2025 (ARMSTRONG) and 2062 (O'CALLIGHAN).

A.4.b. Use of a Dangerous Drug/Violation of Dangerous Drug Law

The Coast Guard has jurisdiction to initiate S&R proceedings against the holder of a MMC who has ever been the user of, or addicted to, a dangerous drug or has within 10 years from the initiation of S&R proceedings been convicted of violating a dangerous drug law of the United States or of a State. There is no requirement to show that the mariner was a holder of a MMC at the time of the drug use/addiction or at the time of the conviction, it is only necessary to establish that the mariner is a holder of a MMC when the complaint is issued.

**A.5.
JURISDICTION AND
PILOTS**

The United States Court of Appeals for the Ninth Circuit decided that a state pilot, not required to hold a license under federal law, is not acting under the authority of the pilot's federal license, although it is required by the state before it will issue the state license (*See Soriano v. U.S.*, 494 F. 2d 681 (9th Cir. 1974)). The U.S. District Court for the Eastern District of Louisiana decided that the former 46 USC 214 does not, by itself, authorize proceedings against federal licenses held by pilots acting under the authority of state licenses at the time of the relevant incident (*See Dietze v. Siler*, 414 F. Supp. 1105, (E. D. La., 1976)). The Commandant's policy is to follow the *Soriano* and *Dietze* decisions in all cases involving pilots acting under the authority of state commissions. This policy does not affect investigative procedures concerning casualties and civil violations involving state pilots. Pilots acting under the authority of federal licenses are subject to investigation and may be issued a complaint under 46 USC Chapter 77 or be subject to civil penalty action, as appropriate. Pilots acting solely under the authority of a state license are subject to civil penalty action for violations of applicable laws or regulations. The Maritime Transportation Security Act (MTSA) OF 2002; Public Law 107-295 increased the



maximum civil penalty contained in 46 USC 2302(a) for negligent operations of a non-recreational vessel to \$25,000. IOs should strongly consider whether maximum civil penalties in cases where a Pilot’s negligence contributed to a marine casualty are appropriate. Any evidence of criminal violation of federal statutes may be referred to the local U.S. attorney by the District Commander. If a violation is within the jurisdiction of a state or locality, the evidence should be referred to the cognizant state or district attorney. All criminal referrals shall be made via the cognizant Area, MLC or District legal office.

A. 6. DISCIPLINARY CONCERNS

It is not the intent of the Coast Guard to use S&R proceedings to maintain discipline on merchant vessels. Only if a disciplinary problem constitutes a hazard to life, property, or the environment or the problem constitutes a security risk to the marine transportation system, should S&R proceedings be contemplated.

A. 7. EQUAL ACCESS TO JUSTICE ACT

Procedures for handling applications for awards under the Equal Access to Justice Act are contained in 49 CFR Part 6. The Act provides for retroactive payment of attorney fees and certain defense costs to certain persons issued a complaint under 46 USC Chapter 77. To be eligible, the complaint must have been dismissed, and the respondent must allege that the complaint was not substantially justified and must certify that he or she meets qualifying requirements of the act. The ALJ hearing the S&R case will also rule on the fee claim; the IO for the case may be required to act as the "operating administration counsel" as defined in the Act and in 49 CFR 6. If that IO is no longer available, the OCMI for the unit that issued the complaint may designate another IO to act in this capacity. The burden of proving that the complaint was "substantially justified" rests upon the Coast Guard. "Substantially justified" means reasonable or "having a basis in law and fact." In light of possible additional costs imposed by successful claims under the Equal Access to Justice Act, it is essential that IOs exercise careful judgment in issuing complaints. However, the mere fact that the respondent prevails at the hearing does not mean that the complaint was not substantially justified. In all cases, IOs shall file a brief opposing the claim for fee. Failure to do so may result in a fee award because the claim is unopposed, even if the Coast Guard's action was "substantially justified." Questions should be discussed with the servicing District legal office.

A. 8. MISLE WANTED LIST

The MISLE Wanted List has been established to assist in locating merchant mariners wanted for the following S&R purposes:

- Pending enforcement action; or
- Acquiring invalid or revoked MMC; or
- Delivery of the ALJ’s D&O.

Units are responsible for entering and removing names from the Wanted List in MISLE. IOs should routinely check the Wanted Lists during any personnel investigation. IOs shall contact the unit that placed the mariner on the list for details of action required. The following actions will normally be required:



- Service of any document; maintain contact with mariner and request unit to forward the document for service.
- Service and surrender of MMC; request the D&O, maintain contact with the mariner and encourage him/her to comply with D&O.
- Pending receipt of the D&O, a written notice of suspension or revocation should be provided to the mariner using a format similar to Figure C4-1 located at the end of this chapter. Verify that the mariner's record is locked to ensure that duplicate, renewal, or upgraded MMCs are not issued pending receipt and service of the D&O. You can confirm that the mariner's MMLD record is locked by viewing his/her record in MMLD through MISLE, if the record is locked it will be noted on the main MMLD screen.
- Surrender of MMC; verify that the service of the D&O was made. Seek surrender advising mariner that any use or service under a revoked or suspended MMCs may be considered to be a criminal offense (*See* 18 USC 2197).

If the mariner persists in refusing to surrender, consult the servicing Area, MLC or District legal office to pursue referring the case to the U.S. attorney. If the mariner claims that his or her MMCs are lost, require the mariner to complete a lost MMC affidavit, Figure C4-2 located at the end of this chapter.

A.8.a. MISLE Enforcement Activity Status and Prompt Date

Once the mariner is placed on the Wanted List for one of the three reasons stated above, the Enforcement Activity shall be placed in an "Open – Suspended" status. IOs shall also enter a prompt date that equals the expiration date of the MMC plus one year to account for the grace period provided in 46 CFR Subchapter B. For example; if the mariner's MMC expires on 15 Jan 2007, the date that should be entered as the prompt date shall be 15 Jan 2008. The activity shall remain open until the prompt date passes and then an entry shall be made on the activity summary tab that the activity is being closed since the MMC is no longer valid, but if the mariner is subsequently located, the activity owner shall be contacted. The status should then be changed to "Closed - Administrative Action." When the mariner is wanted for pending enforcement action, the unit shall maintain control and ownership of the activity and retain the case file locally. Mariner's can be removed from the Wanted List in accordance with the below section.

A.8.b. Removing Mariners from the MISLE Wanted List

Once a mariner is located and the appropriate action is taken, the unit with ownership of the activity shall remove the mariner from the Wanted List. Mariners may also be removed from the wanted list if the statute of limitations for the offense has elapsed or the MMC grace period date has passed and the MMC is no longer valid. When a mariner is removed because of the statute of limitations expiration or the MMC is no longer valid, an entry shall be made on the activity summary tab requiring notification if the mariner is subsequently located so that appropriate action



(if any) may be taken. A mariner subsequently located who was wanted to acquire a revoked or no longer valid MMC shall be advised that they must comply with the Administrative Clemency process to be eligible to apply for a new MMC.

A.8.c. MISLE Entries after Removal from Wanted List

When a mariner is removed from the Wanted List because the statute of limitations has expired, an entry similar to the following shall be made on the enforcement activity summary tab: "MM/DD/YY: Statute of limitations for service of Misconduct Complaint expired, SNM removed from wanted list. SNM shall be required to address his alcohol use before processing any future MMC application. MMLD record to remain locked." When a mariner who was wanted for pending enforcement action is removed from the Wanted List because the MMC grace period has expired, an entry similar to the following shall be made on the enforcement activity summary tab: "MM/DD/YY: SNM removed from wanted list, MMD expired MM/DD/YY and is past 1 year grace period. SNM shall be required to address his drug test refusal before processing any future MMC application. MMLD record to remain locked." When a mariner who was wanted to acquire a revoked or invalid MMC is removed from the Wanted List because the MMC grace period has expired, an entry similar to the following shall be made on the enforcement activity summary tab: "MM/DD/YY: SNM removed from wanted list, revoked License expired MM/DD/YY and MMD expired MM/DD/YY and is past 1 year grace period. SNM shall be required to apply for administrative clemency before processing any future MMC application. MMLD record to remain locked."

A.8.d. Release of MISLE Wanted List

The MISLE Wanted List is currently not releasable to the public. Once the list is made releasable, policy will be established to require that Personal information (SSNs, address, etc.) be redacted prior to the list being released to the public. The list may be released to Federal, State, or local agencies with responsibility for investigating and/or enforcing violations of U.S. law.

**A.9. COMMANDANT
(CG-5451)
ASSISTANCE.**

Close liaison between field offices and Commandant (CG-5451) is desirable. Officers assigned to Headquarters have the advantage of being exposed to a wide variety of cases and situations. In addition, they will be aware of the latest policy concerning various matters. IOs are encouraged to telephone Commandant (CG-5451) when necessary to discuss problems of mutual concern.



B. COMPLAINTS AND ANSWERS

B.1. INTRODUCTION

The complaint and answer are the primary elements of the S&R process. Some of the regulations concerning complaints and answers are:

- Filing of Documents, 33 CFR 20.302;
- Form and Content of Filed Documents, 33 CFR 20.303
- Service of Documents, 33 CFR 20.304
- Complaint, 33 CFR 20.307
- Answer, 33 CFR 20.308
- Service of Complaints, 46 CFR 5.107 & 33 CFR 20.304

B.2. COMPLAINT

The complaint initiates the S&R proceedings, and is made up of the following elements: the caption, the introductory paragraph, the statutes violated, the allegations, a proposed Order, proposed dates and location for the hearing, name and address of the IO, the IO's unit, the rights of respondent and the options of respondent.

B.2.a. Caption

The Caption identifies the case and type of filing and is made up of the following elements:

Title: United States Coast Guard, Complainant

vs.

[Respondent's Name], Respondent

Note: License & MMD Number is referenced in body of complaint, not in the case title.

Docket Number: Assigned by Docketing Center - leave blank in the complaint and answer.

Coast Guard Enforcement Activity Number: MISLE Enforcement Activity number assigned by MISLE.

Type of Filing: Complaint.

B.2.b. Introductory Paragraph

The introductory paragraph advises the respondent that the Coast Guard has initiated an S&R proceeding.

B.2.c. Statutory and Regulatory Authority

The following table gives examples of the proper statute and regulation to cite on the complaint:



If the Coast Guard alleges...	Cite the following Statute:	And the following Regulation:
Negligence	46 USC 7703(1)(B)	46 CFR 5.29
Misconduct	46 USC 7703(1)(B)	46 CFR 5.27
Violation of Law or Reg	46 USC 7703(1)(A)	46 CFR 5.33
Incompetence	46 USC 7703(4)	46 CFR 5.31
Drug Use	46 USC 7704(c)	46 CFR 5.35
Drug conviction	46 USC 7704(b)	46 CFR 5.35
NDRA conviction	46 USC 7703(3)	TBD (no regulation currently exists)
Conviction preventing issuance of MMC	46 USC 7703(2)	TBD (no regulation currently exists)
A security Risk	46 USC 7703(5)	TBD (no regulation currently exists)

B.2.d. Allegations

Allegations are written in numbered paragraphs. There are two types of allegations; Jurisdictional and Factual, which constitute the facts of the alleged offense.

B.3. JURISDICTIONAL ALLEGATIONS

The following table gives examples of the proper wording of the Jurisdictional allegations for the complaint:

If the Coast Guard alleges...	Then use the following jurisdictional allegation:
Drug use or drug law conviction NDRA conviction Conviction preventing issuance of MMC Incompetence Security Risk	Respondent is the holder of the following Coast Guard issued credentials:
Negligence Misconduct Violation of law or regulation	Respondent acted under the authority of that license, certificate, or document on [date] by serving as [type of service] aboard the [vessel] as required by [law or regulation or condition of employment].
	Respondent acted under the authority of that license, certificate, or document on [date] by engaging in official matters regarding that license, certificate or document by [applying for renewal, taking an exam for upgrade or



endorsements, requesting a duplicate or replacement, or appearing at an administrative hearing, etc.].

B.4. FACTUAL ALLEGATIONS

Factual allegations should be written in simple paragraphs in plain English and in general should include the following alleged facts:

- Where/when the alleged actions occurred;
- What occurred; and
- What damage occurred.

The following table gives general guidance to assist in writing the factual allegations for a complaint for various offenses. Sample factual allegations for various offenses are contained in the next section.

If the Coast Guard alleges...	Then the facts should allege:
Drug Use	<ul style="list-style-type: none"> ➤ Date and type of drug test ➤ Collector's name and company name ➤ The respondent signed a CCF ➤ Name of drug test lab that analyzed test ➤ Test results & MRO name
Conviction Cases	<ul style="list-style-type: none"> ➤ Type of Conviction ➤ Court ➤ Date/Location
<ul style="list-style-type: none"> ➤ Drug ➤ DWI ➤ Other 	
Negligence	<ul style="list-style-type: none"> ➤ Date/Time/Location of casualty ➤ Weather/Sea Conditions
Negligence - Allision	<ul style="list-style-type: none"> ➤ Date/Time/Location of casualty ➤ Weather/Sea Conditions
Negligence - Grounding	<ul style="list-style-type: none"> ➤ Date/Time/Location of casualty ➤ Weather/Sea Conditions ➤ Number of Chart demonstrating the location is charted
Violation of Marine Safety Law or Regulation	<ul style="list-style-type: none"> ➤ Date/Time/Location ➤ Cite Regulation or Statute by title and section number
Misconduct	<ul style="list-style-type: none"> ➤ Facts of violation ➤ Date/Time/Location ➤ Cite statutes, regulations, common law, general maritime law, ship's regulation or order, or shipping articles and/or similar sources violated
Incompetence	Type: <ul style="list-style-type: none"> ➤ Professional



- Security Risk
-
- Medical/Mental
 - Facts constituting Incompetence
 - Date/Time/Location
 - Facts documenting the security risk to the safety or security of a vessel, facility, etc.

**B.5. SAMPLE
 FACTUAL
 ALLEGATIONS**

In the following examples, sample factual allegations are provided for complaints issued for some typical offenses of misconduct, violation of law or regulation, negligence, incompetence, and dangerous drug offenses. These examples are not inclusive of every situation that may be encountered; they are intended to illustrate the most common types of situations.

B.5.a. Misconduct

Generally, a factual allegation for a complaint issued for misconduct must, on its face, allege facts, which fulfill the standards of 46 CFR 5.27. The words of the factual allegation must allege that what was done was wrongful. Thus, if the actions alleged could, on the face of the factual allegation alone, be other than wrongful, the word "wrongfully" should be included. The following examples provide factual allegations alleging offenses which amount to misconduct.

B.5.a.1. Failure To Perform Duty

The offense of failing to perform duty is distinct from incompetence in that the former is a failure to perform, whereas the latter is inability to perform. A person may neglect a duty by never entering upon it; such is an omission of action, rather than an act. A duty may be imposed by law, regulation, or custom in effect at the time of the offense. When there is an intervening cause (confinement on the ship or other relief from duty) for failure to perform, the allegation for the offense(s) should be based on the actions from which the relief from duty was based. [NOTE: See CDOA 1533 (DONLAN)] Sample factual allegations:

The Coast Guard alleges that:

1. On or about July 1, 1995, while the [vessel name] was at sea, respondent wrongfully failed (or refused) to perform watertender duties on the 1200-1600 watch.

1. On or about 0800, August 1, 1995, while the [vessel name] was at London, England, respondent wrongfully failed (or refused) to report to work as a deck department day worker.

1. On or about April 1, 1995, respondent was sleeping in the forecandle head and wrongfully failed to perform lookout duty on the 1200-1600 watch.



B.5.a.2. Failure To Perform Duty By Reason Of Intoxication

To sustain a factual allegation of failure to perform duty by reason of intoxication, it must be affirmatively proven that the intoxicated state of the respondent was directly or indirectly coupled with the person's failure to perform. Sample factual allegation:

The Coast Guard alleges that:

1. On or about April 1, 1995, while the [vessel name] was at the port of Oslo, Norway, respondent wrongfully failed (or refused) to stand the 0400-0800 gangway watch because respondent was intoxicated (or was under the influence of alcohol).

B.5.a.3. Disobedience Of A Lawful Command

The authority of the ship's master to issue orders is well established (see 46 USC 11501). A command need not be issued directly by the master, but may be transmitted by the master through subordinate officers. No statute permits a mariner, either expressly or implicitly, to disobey a lawful order of a superior; a mate or engineer as well as the master (certain statutory safeguards provide a remedy to mariners in cases of abuse). The relationship of master to mariner is entirely different from that of the employer and employee ashore. A mariner who questions a master's order does so at risk. Whenever the basis of a complaint is refusal or failure to obey an order, the evidence should show that the order was not in the nature of a request, that it was properly communicated to the person issued the complaint, that it was lawful, and that it was directly connected with the safe operations of the vessel. The factual allegations must tell what the command was and, unless obvious, the manner in which it was disobeyed. Sample factual allegations:

The Coast Guard alleges that:

1. On or about 1300, July 1, 1995, while the [vessel name] was at sea, respondent was given a lawful command by [name of officer] to take his/her regularly assigned lifeboat station.
 2. Respondent wrongfully disobeyed the order by failing to arrive at the station.
-
1. On or about 1300, August 1, 1995, while the [vessel name] was at the Houston, Texas, City Dock, was given a lawful command by [name of CE] to change and clean fuel oil strainers on your watch.
 2. Respondent wrongfully disobeyed the order by failing to change the strainers.
-



B.5.a.4. Assault/Assault And Battery

In the following examples, several types of assault or assault and battery have been set forth. Assault has been defined as an attempt to touch another without permission, or as a placing of another in fear of bodily harm. Battery is, then, a consummation of the first type of assault. Assault with dangerous weapon is a serious breach of safety; assaults by mariners on the master or other officers, whether or not resulting in injury, are grave offenses. Sample factual allegations:

The Coast Guard alleges that:

1. On or about April 1, 1995, while the [vessel name] was at sea, respondent wrongfully assault the master, [name].
 2. Responded brandished a 12-inch wrench in a threatening manner and offering to strike the master.
-
1. On or about 1 June 1995, while the [vessel name] was at sea, respondent wrongfully assaulted and battered a member of the crew, Frank Jones, by beating him with his fists.
-
1. On or about July 1, 1995, while the [vessel name] was at sea, respondent wrongfully assaulted a member of the crew,[name], by threatening him with a 9mm pistol.

B.5.a.5. Desertion

This is the abandonment of a ship in which a mariner has engaged to perform a voyage, before the expiration of the mariner's contract and without leave. In maritime law, desertion means not merely an unauthorized absence from the ship without leave, but unauthorized absence with no intention of returning to its service. Intent, being a state of mind, is not open to direct proof but must be inferred from other facts. Thus, to sustain an offense of desertion, proof of the permanent absence from the vessel is essential to distinguish desertion from failure to join. Removal of all personal effects may indicate the intent to permanently abandon. However, the leaving of any of a mariner's effects aboard the mariner's vessel does not necessarily rebut an indicated intent not to return. An individual may desert whether or not the mariner takes his or her personal effects, and removing personal effects does not always establish desertion. There are many other ways of proving intent (e. g., statements, how long the individual was gone, and where the mariner went). In the case of desertion, 46 USC11501 provides for the "forfeiture of all or any part of the clothes or effects [which the deserter] leaves on board." (Obviously, if Congress had intended that desertion would not have occurred if clothes or effects were left on board, there would not be a provision for the forfeiture of such effects.) Sample factual allegation:



The Coast Guard alleges that:

1. On or about April 1, 1995, respondent wrongfully deserted the [vessel name], at London, England.

B.5.a.6. Theft And Robbery

Theft (larceny) is the taking and carrying away of another's property with intent to permanently deprive. Robbery is the taking of property by force or putting in fear, from the person or presence of another. Wrongful possession of another's property is also misconduct. Sample factual allegations:

The Coast Guard alleges that:

1. On or about June 1, 1995, while the [vessel name] was at Liverpool, England, respondent wrongfully had in his possession certain stores of the [vessel name].
1. On or about April 1, 1995, while the [vessel name] was at sea, respondent wrongfully took possession of personal property (a radio, watch, and two rings) of another member of the crew, [name].
1. On or about March 1, 1995, while the [vessel name] was at sea, respondent robbed another member of the crew, [identity of victim], of his wallet.

B.5.a.7. Failure To Account

The Coast Guard considers that a person serving on a ship who receives money from others and fails to make a proper accounting for it at the prescribed time continues to act under the authority of his or her MMCs, to the extent that the person may be issued a complaint for this offense after completion of the voyage. Sample factual allegation:

The Coast Guard alleges that:

1. On or after a voyage which extended between April 1, 1995, and July 1, 1995, respondent was a purser aboard the [vessel name].
2. Respondent collected [dollar amount] from a passenger, [name].
3. Respondent wrongfully failed to return the money to [name] at the conclusion of the voyage.

B.5.a.8. Possession Of Alcoholic Beverages

Law or regulation does not expressly prohibit the possession of alcoholic beverages aboard commercial vessels, except in certain instances as specified in 33 CFR 95.045. However, a vessel owner or master may prohibit such possession or use, either verbally, by written order, or through an employment contract with crewmembers (Shipping Articles, Form CG-705A, specifically warns crewmembers against having or bringing aboard "grog," i.e., any intoxicating beverage). Sample factual allegations:



The Coast Guard alleges that:

1. On April 1, 1995, while the [vsl name] was at New York, NY, respondent wrongfully brought liquor aboard (or caused liquor to be brought aboard) the [vessel name].

1. On or about June 1, 1995, while the [vessel name] was at sea, respondent wrongfully had intoxicating beverages in his/her possession.

B.5.a.9. Possession, Use, Sale, or Association With Dangerous Drugs

IOs shall not issue a complaint for misconduct if the evidence of drug use is a result of a positive chemical tests administered under 46 CFR part 16 or 33 CFR part 95, in those cases IOs shall issue a complaint for drug use under 46 USC 7704(c). A complaint for misconduct for use of a dangerous drug should be issued when the evidence of use is not a positive drug test, i.e. credible witness(es) observed the mariner using a dangerous drug. The Comprehensive Drug Abuse Prevention and Control Act of 1970 prohibits most activities involving narcotics (including opiates and cocaine) and marijuana. 21 USC 841 prohibits unauthorized manufacture, distribution, dispensing, or possession with intent to do any of the above, of controlled substances (including narcotics and marijuana). 21 USC 952 prohibits importation of controlled substances without a permit, or except in accordance with regulations, as the Attorney General shall prescribe. 21 USC 955 prohibits possession of narcotics and marijuana when arriving or departing the United States unless listed on the manifest. 21 USC 957 prohibits import of controlled substances by anyone not registered to do so. 21 USC 802 defines "controlled substance," "marijuana," and "narcotic drug." 21 USC 812 lists controlled substances, dividing them into five schedules. The complete schedules are listed in 21 CFR 1308. Marijuana, THC, and heroin are in Schedule I; cocaine is in Schedule II. In view of these comprehensive provisions, particularly 21 USC 844, possession of narcotics or marijuana is presumed to be wrongful in the absence of evidence to the contrary. Possession, use, and any kind of dealing with narcotics or marijuana by U.S. merchant mariners is considered among the most serious offenses within the jurisdiction of the Coast Guard, and those for which S&R actions are usually required. If a mariner commits an act of misconduct regarding possession, use, or association involving marijuana, 46 CFR 5.59(a) allows the ALJ to grant a sanction less than revocation upon showing by the mariner that the possession, use, or association was the result of experimentation and that the mariner has submitted proof at the hearing of rehabilitation. See Section B.9 for guidance on appropriate sanctions and Section E for use of settlement agreements. Sample factual allegations:

The Coast Guard alleges that:

1. On or about April 1, 1995, while the [vessel name] was at Galveston, TX, respondent wrongfully had cocaine in his/her possession.



1. On or about August 1, 1995, while the [vessel name] was at New Orleans, LA, respondent wrongfully sold and/or deliver to a crewmember, [name of person], a quantity of opium.

B.5.a.10. Failure To Respond To Summons Or Subpoena

The authority of the Coast Guard to compel the attendance of witnesses or the production of other evidence at an investigation or hearing is provided by 46 USC 7705. If a mariner serving under authority of his or her MMCs is subpoenaed to appear as a witness or produce evidence, and fails to appear, S&R proceedings may be initiated. Sample factual allegation:

The Coast Guard alleges that:

1. On March 31, 1995, respondent was issued a subpoena to appear as a witness in a hearing scheduled for October 1, 1995.
2. The subpoena was duly issued and served by Ensign Frank Benson, Investigating Officer.
3. On October 1, 1995, respondent wrongfully fail to appear at the hearing.

B.5.a.11. Harassment Of Passengers

Passengers on vessels are entitled to protection from invasion of their privacy and from personal rudeness. However, IOs may encounter great difficulty in obtaining evidence to support these allegations. In cases involving minors, parents are reluctant to permit them to appear as witnesses or to be interrogated. Also, when these situations arise on the outbound voyage, passengers debarking in foreign ports can submit their testimony only by deposition. Several cases on appeal involve varying degrees of harassment, from respondent wrongfully entering passengers' staterooms and addressing them with improper language to committing overt acts of physical contact. Where the act of physical contact is sexual in nature, IOs shall refer to B.5.b.3 as sexual abuse or contact is a violation of law. Sample factual allegation:

The Coast Guard alleges that:

1. On or about May 1, 1995, while the [vessel name] was at Hamilton, Bermuda, respondent wrongfully enter the stateroom of a female passenger, [name of victim], and addressed her in improper language.

B.5.a.12. Sexual Harassment

Congress has enacted several laws to protect workers from intimidating, hostile, and offensive work places, and the marine work place is not exempt from these laws. Marine employers shall follow the rules established by the Equal Employment Opportunity Commission (EEOC) to protect workers from such an environment. Complaints made by mariners should be investigated promptly and tactfully. IOs should advise victims unless a witness or other proof can be found to verify that



words or gestures occurred, a case might be hard to prove. If an investigation finds that sexual harassment has occurred aboard a documented vessel, S&R proceedings should be strongly considered against the person who committed the act. The basis for the complaint of misconduct is 42 USC 2000e, and 29 CFR 1604.11, which prohibit sexual harassment in the workplace. Sample factual allegations:

The Coast Guard alleges that:

1. On or about Aug 4, 1995, while the [vessel name] was off loading cargo, respondent wrongfully made sexual gestures towards Seaman [name of victim], making for an offensive work environment, and causing her to leave her station as a line handler.

1. On or about March 15, 1995, while the [vessel name] was underway, respondent wrongfully used his position as watch supervisor, by telling AB [name of victim] that if he wanted to have preferred duties, he should leave his stateroom door unlocked for the respondent's "payback" visits.

B.5.a.13. Failure of Master to Stop Sexual Harassment

Congress has enacted several laws to protect workers from intimidating, hostile, and offensive work places, and the marine work place is not exempt from these laws. If the investigation finds the master of the vessel failed to stop the behavior of the offending person, S&R proceedings shall be initiated. Sample factual allegation:

The Coast Guard alleges that:

1. On or about Aug 4, 1995, as Master of the [vessel name], while the [vessel name] was moored at Pier 24, Port of Chicago, you failed to act upon the complaint of sexual harassment made by Seaman Bronson against 3rd mate Kelly.

B.5.a.14. Improper Treatment Of Crew

Maltreatment of crewmembers by the master and officers, and the abandonment of mariners in a foreign port, are offenses punishable by fine or imprisonment. To constitute an offense under criminal statutes, maltreatment must be cruel and unusual punishment, induced by malice or hatred; the abandonment of a mariner in a foreign port must be done maliciously and without justifiable cause. The "borderline" in determining maltreatment is a fine distinction between extreme and unjustifiable acts and the authority under 46 USC 11501 of the master to punish mariners for disobedience or continued disobedience of lawful orders. For example, the holding in irons of a mariner for continued refusal to bring coffee to the chief mate was held to be cruel and unusual punishment predicated on an unlawful order. In other cases, where mariners were placed in irons for disobedience of a lawful order and punishment was temperately applied, no offense was committed. Sample factual allegation:



The Coast Guard alleges that:

1. On June 1, 1995, while the [vessel name] was at sea, respondent wrongfully imprisoned a member of the crew, [name of crewmember], by confining him in irons in the Number 2 lifeboat.

B.5.a.15. Smuggling Or Failure To Declare Dutiable Merchandise In Domestic Or Foreign Ports

The Coast Guard acts in conjunction with the U.S. Customs Service in the protection of revenue and prevention of smuggling activities; this is a deeply rooted mission, from the birth of the Revenue Cutter Service. As in the prohibition against the importation of dangerous drugs, smuggling statutes provide that possession shall be deemed evidence sufficient for a finding of guilty unless mitigating factors can be shown. These provisions include smuggling into the U.S. and other countries, and situations short of actual importation, where there has been an attempt or intent to evade payment of lawful duties. A complaint issued under 46 USC Chapter 77 involving the illegal importation of merchandise, brought other than on complaint of a Customs Officer, should be processed in cooperation with the Customs Service at the port where the offense occurred. Sample factual allegation:

The Coast Guard alleges that:

1. On or about July 1, 1995, while the [vessel name] was in San Diego, CA, respondent wrongfully brought [attempted to bring] into the United States certain merchandise [articles, commodities] which could not lawfully enter the United States until [(payment of tax or duty), (declaration, invoice, or description of said merchandise on a manifest of ship's cargo) required by the U.S. Customs Service had been met.

B.5.a.16. Stowaways/Aiding Illegal Entry Of Aliens

Stowing away, or the aiding, assisting, or abetting of any person who stows away, on a U.S. vessel with the intent to obtain transportation is prohibited by 18 USC 2199. The bringing into the U.S., harboring, or concealing, or attempting to do so, on board any vessel, of any alien not duly admitted by an immigration officer or not lawfully entitled to enter or reside in the U.S. is prohibited by 8 USC 1324. A case may occur in which a person has been discovered to be on board a vessel illegally, and the person's residence status is undetermined at the time of the investigation. In another instance, a conviction for harboring or concealing an alien may have been obtained under 8 USC 1324, or criminal prosecution for one or more reasons has been undertaken by the U.S. attorney. In cases involving alien smuggling rings, evidence at the S&R proceedings must be supplied through the testimony of the immigration officer, or the master or other ship's officer, having direct knowledge of the offense, rather than relying on the disposition of the case by the federal district court. A situation may arise where a mariner aids a stowaway (other than an illegal alien) by furnishing food and a place of concealment, although there is no evidence



to show that the mariner aided the stowaway to board the vessel. While this is not specifically covered in 8 USC 1324, it is considered misconduct equivalent to aiding the stowaway to board the vessel. Sample factual allegations:

The Coast Guard alleges that:

1. On or about April 1, 1995, while the [vessel name] was at San Francisco, CA, respondent brought [attempted to bring] into the United States, or concealed or harbored [attempted to conceal or harbor], an alien not duly admitted by an immigration officer or not lawfully entitled to enter the United States.

1. On or about June 1, 1995, while the [vessel name] was in Hong Kong, without the consent of the master or owner, with intent to obtain transportation there for, respondent aided [abetted, assisted] to stow away aboard [vessel name] a person, [name of person].

1. On or about September 1, 1995, while the [vessel name] was at Djakarta, Malaysia, respondent wrongfully aided and assisted a stowaway, [name of stowaway], illegally on board, by furnishing him with food and shelter.

B.5.a.17. Failure to Join

In the majority of instances, proof can be established by introduction of the Shipping Articles showing the mariner's signature to sign on the vessel, and the corresponding entry by the master stating the mariner's absence at the end of the voyage or at the time the crew "pays off." Certified copies of relevant Official Logbook entries made in accordance with 46 USC 11502 should supplement this evidence. Sample factual allegation:

The Coast Guard alleges that:

1. On or about August 1, 1995, respondent wrongfully failed to join the [vessel name] at Wilmington, DE.

B.5.a.18. Fraudulent Applications

An original license or certificate of registry that is issued upon submission of false or materially incomplete information is void under the Coast Guard's mariner licensing regulations. *See* 46 CFR 10.205(f)(4); CDOA 2025 (ARMSTRONG). If, during the course of an investigation, an IO determines that a mariner was issued an original license or certificate of registry after submitting an application that contained false or materially incomplete information, IOs should inform the cognizant OCMI of that fact. In such cases, the OCMI must notify the mariner, in writing, that the license or certificate of registry is null and void and inform the mariner that, upon return of the relevant license or certificate of registry, the appeal procedures in 46 CFR 10.204 apply.



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PART C: ENFORCEMENT
CHAPTER 4: SUSPENSION AND REVOCATION

While the authority to void an original license or certificate is in 46 CFR Part 10, no such provision exists in 46 CFR Part 12 to void an original MMD. However, the rationale shall apply to MMDs as the processes for obtaining the credentials are similar. An individual can not possess a valid credential that was obtained by fraud. In order to hold a property interest an individual must have a “legitimate claim of entitlement to it.” (*see Bd of Regents of State Colleges v. Roth*, 408 U.S. at 2709) Therefore an individual is not entitled to a MMD he obtained by providing false or materially incomplete information. If, during the course of an investigation, an IO determines that a mariner was issued an original MMD after submitting an application that contained false or materially incomplete information, IOs should inform the cognizant OCMI of that fact. In such cases, the OCMI must notify the mariner, in writing, that the MMD is null and void and inform the mariner that, upon return of the relevant MMD, the appeal procedures in 46 CFR 1.03 apply

Under 18 USC 1001 intentionally false or fraudulent statements or representations made in any matter within the jurisdiction of any department or agency of the United States are punishable by a \$10,000 fine or 5 years' imprisonment, or both. Such cases can be forwarded to the Area, MLC or District Commander with a recommendation for referral to the U.S. attorney. Current policy requires a mariner who has obtained a subsequently issued (non-original) MMC to be afforded an S&R hearing in such cases. If a fraudulent application is discovered during the application process, the MMC shall not be issued and the provisions of Volume III, Chapter 3, Section B, shall be followed. If it is determined that statements in an application were not fraudulently made but were merely the result of an unintended misstatement or misunderstanding, IOs should remove any reference to fraud from the complaint. *See* Section B.9 for appropriate S&R sanction guidance. Sample factual allegations:

The Coast Guard alleges that:

1. On May 20, 2001, respondent submitted a signed CG-719B “Application for Merchant Mariner Document (MMD), License, or Certificate of Registry” to Coast Guard Regional Examination Center, Toledo OH.
2. Respondent indicated that he/she had no criminal convictions by checking NO to the question “Have you ever been convicted by any court – including military court – for an offense other than a minor traffic violation?”
3. On April 13, 1999, respondent was convicted of assault and battery by the U.S. District Court in Portland, OR.
4. (FRAUD) Respondent wrongfully submitted a fraudulent application.
4. (FALSE INFO) Respondent wrongfully failed to provide full disclosure of his/her conviction record.

B.5.a.19. Absence Without Leave (AWOL) and Absence Over Leave (AOL)

Although both of these constitute unauthorized absences, the former includes the



element of unauthorized departure from the vessel. Consequently, if a complaint against a mariner for absence and evidence indicates that the mariner had authority to depart but did not return when due back, the factual allegation should reflect AOL. No specific intent need be proved; the act supplies the intent. If a mariner on authorized leave is unable to return through no fault of his or her own, the mariner has not committed an offense. For example, if it is verified that the mariner's absence was solely due to the mariner's arrest and detention by civil authorities, followed by acquittal in a civil court, the mariner should be found not guilty of the factual allegation; the same rule applies to an illness, which prevents the mariner's return. However, when such absence is caused by misconduct for which the mariner is convicted in a civil court or there is evidence produced during the hearing for AOL, it does not provide a defense to the complaint of unauthorized absence. S&R proceedings should be brought for these offenses only when it can be established that the absence of the mariner created a situation in which the safety or security of the vessel, passengers, crew, or marine environment was adversely affected. The fact that the absence created a crew shortage below the complement required by the Certificate of Inspection (COI) usually establishes such an adverse effect. Whether the ship was in a foreign or domestic port does not itself determine the effect. Sample factual allegations:

The Coast Guard alleges that:

1. On or about April 1, 1995, respondent was wrongfully absent from the [vessel name] without leave, within 24 hours of the [vessel name]'s sailing from London, England.
1. On or about April 12, 1995, respondent wrongfully remained absent from the [vessel name] beyond his/her authorized leave.
1. On or about April 12, 1995, while the [vessel name] was at sea, respondent was wrongfully absent from his/her duties without authority.

B.5.a.20. Refusal to Submit to a Required Drug Test

46 CFR part 16 prescribes the minimum standards, procedures, and means to be used to test for the use of dangerous drugs. It specifies the following required drug tests: pre-employment, periodic, random, Serious Marine Incident, and reasonable cause. It also defines "refuse to submit" as refusing to take a drug test as set out in 49 CFR 40.191. Some of the reasons why an individual is determined to have refused to take a drug test as set out in 49 CFR 40.191 are:

- Failure to appear for any test (except a pre-employment) within a reasonable time;
 - Failure to remain at the testing site until the testing process is complete;
 - Failure to provide a urine sample for any test required by Part 16;
-



- Failure to cooperate with any part of the testing process, e.g., refusal to empty pockets, behaving in a confrontational way that disrupts the collection process, etc.; or
- An MRO has verified that the individual has an adulterated or substituted test result.

IOs should familiarize themselves with the contents of 49 CFR 40.191. IOs shall issue a complaint for misconduct seeking revocation in any case where a MMC holder refuses to take a required drug test, unless the mariner provides a legitimate reason for refusing to take the test. If a legitimate reason is provided, IOs have the discretion to issue a Letter of Warning, or to issue a complaint seeking an order of less than revocation. *See* Section B.9 for guidance on appropriate sanctions. Sample factual allegations:

The Coast Guard alleges that:

1. On April 13 2003, respondent was informed by his/her marine employer that he/she had been selected for a random drug test.
2. Respondent was told to report to SJ Collection Inc to provide a urine sample.
3. Respondent failed to report to the collection site and never provided a urine sample for testing.

B.5.b. Violation Of Law Or Regulation

The decision to issue a complaint for a violation of law or regulation, vice misconduct or negligence, should be based on the severity of the violation. Example, a master involved in a collision who failed to properly post a look out, as required by Nav Rule 5, can be issued a complaint for a violation of law or regulation, misconduct, or negligence. IOs should research applicable laws and regulations, and their intent with regard to promoting marine safety, and the protection of navigable waters. IOs must look at the facts involved in the casualty and decide whether to issue the complaint for a violation of law or misconduct. Recent legislation, i.e., Oil Pollution Act of 1990, and the Sexual Abuse Act of 1986 have been codified in laws applicable to marine safety. Other laws such as the Civil Rights Act of 1964 (42 USC 2000e), although not codified in laws dealing with marine safety, exist and are applicable to promoting marine safety. IOs should also seek a comparable sanction, i.e., if the law requires imprisonment, revocation should be sought. The following offenses and sample factual allegations deal with acts that may not be codified in laws or regulation specifically dealing with marine safety, but are of growing concern within the marine industry. The law or regulation violated shall be cited in the factual allegations for all violation of law or regulation offenses.

B.5.b.1. Failure to Take Action to Stop Sexual Harassment

42 USC 2000e and the regulations published in 29 CFR, Subtitle B, Chapter XIV-- Equal Employment Opportunity Commission, Part 1604, Section 1604.11 deal



specifically with sexual harassment. The tie to marine safety is made through the effects sexual harassment have on an individual. Sexual harassment creates an intimidating, hostile, and offensive work environment, which affects a crewmember's work performance. 42 USC 2000e requires that employers must ensure the work place is free from such behavior. If an investigation indicates a master was aware of a crewmember being sexually harassed, and no action was taken to stop it, a complaint against the master may be preferred. Sample factual allegation:

The Coast Guard alleges that:

1. On or about May 1, 1995, the respondent was serving as master on board the [vessel name].
2. Respondent received a report of sexual harassment; by Ordinary Seaman Smith, that AB [offender] made suggestive comments that were considered lewd and sexual in nature.
3. Respondent failed to take action, which created a [hostile, intimidating, offensive] work environment, thus affecting the work performance of [name], a violation of 29 CFR 1604.11, and 42 USC 2000e, Title VII.

B.5.b.2. Failure To Report A Sexual Offense

46 USC 10104 requires the master, or person in charge, to report to the Coast Guard all complaints of sexual offenses that occur aboard U.S. documented vessels. The failure to report a sexual offense differs from failure to take action regarding sexual harassment. Sexual offenses, as described in the Sexual Abuse Act of 1986, (18 USC Chapter 109A), are far more serious than sexual harassment because physical contact is involved. The sentencing guidelines for sexual offenses are also more severe than sexual harassment. If an investigation indicates that the master, or person in charge, of a documented vessel fails to notify the Coast Guard of a complaint dealing with a sexual offense, S&R proceedings shall be initiated, and revocation sought. Sample factual allegation:

The Coast Guard alleges that:

1. On or about May 1, 1995, respondent was serving as master on board the [vessel name], a U.S. documented vessel.
2. Respondent received a report by Ordinary Seaman [name], that Bos'n [offender] forced her to have sex by threatening her with bodily injury if she did not consent.
3. Respondent failed to report the incident to the Coast Guard, a violation of 46 USC 10104(a).

B.5.b.3. Sexual Abuse

The guidance for specific violations covered under the Sexual Abuse Act of 1986 are found in 18 USC, Chapter 109A. If an investigation detects a violation described in 18 USC 109A (aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, or abusive sexual contact) a complaint should be issued for a violation of a law



or regulation. Misconduct should not be used, as misconduct in 46 CFR Table 5.569, carries only a 1-3 month suspension. To reflect the seriousness of an offense listed in the Sexual Abuse Act, the recommended sentencing guidelines for a conviction is, at a minimum, imprisonment for not less than 6 months, and/or up to a \$5000.00 fine. Accordingly, a requested sanction of revocation would be appropriate. IOs shall be careful conducting investigations of cases involving sexual abuse due to the nature of the acts. Care shall be taken to ensure that the victim is not further harmed through improper questioning. Sexual offenses on documented vessels are a federal crime under 18 USC Chapter 109A, and may be appropriate for referral to the U.S. Attorney. Sample factual allegations:

The Coast Guard alleges that:

1. On May 1, 1995, while the M/V SEA was moored in Norfolk, VA, respondent offered Seaman [name] brownies laced with LSD.
2. Respondent then had sex with Seaman [name] when she was in an impaired state, a violation of 18 USC 2241(b)(2)(B).

1. On May 1, 1995, respondent forced Ordinary Seaman [name], to have sex by threatening her with death if she did not, a violation of 18 USC 2242.

1. On April 15, 1995, while the M/V SEA was at sea, respondent was found by the master to have molested a minor female passenger, [NAME OF PERSON], by placing his hand on her private parts in a lewd and lascivious manner, a violation of 18 USC 2243.

1. On May 1, 1994, while the M/V SEA was at sea, respondent threatened to "bust" Seaman Smith's skull if she continued to fight off his attempts to fondle her buttock and breasts, after she had asked him to stop, a violation of 18 USC 2144(2).

B.5.b.4. Possession Of A Dangerous Weapon Or Explosive Compound

The carrying or possession by any person of any dangerous weapon or explosive compound aboard a merchant vessel, without previously obtaining the permission of the owner or master of the vessel is prohibited by 18 USC 2277. The wearing of sheath knives aboard ship without the consent of the master is prohibited by 46 USC 11506. This prohibition is repeated on the Shipping Articles, of which the master must inform every mariner offering to serve aboard his or her vessel. Sample factual allegations:

The Coast Guard alleges that:

1. On or about April 1, 1995, while the [vessel name] was at sea, the respondent had in his/her possession a dangerous weapon, a 32 caliber automatic pistol, without



permission of the master, a violation of 18 USC 2277.

1. On or about July 1, 1995, while the [vessel name] was at sea, respondent had in his/her possession an explosive compound, nitroglycerine, without permission of the master, a violation of 18 USC 2277.

B.5.b.5. Possession Or Selling Of A Switchblade Knife

The possession or sale of a switchblade knife aboard a U.S. vessel, in any location, is prohibited by 15 USC 1243. In such cases, the fact that permission was improperly granted by the master is immaterial. Sample factual allegations:

The Coast Guard alleges that:

1. On or about October 1, 1995, while the [vessel name] was at sea, respondent had in his/her possession a switchblade knife, a violation of 15 USC 1243.

1. On or about November 1, 1995, while the [vessel name] was at St. Thomas, V. I., respondent sold a switchblade knife to [name] a fellow crewmember, a violation of 15 USC 1243.

B.5.b.6. Use Of Alcoholic Beverages

Law or regulation does not expressly prohibit the use of alcoholic beverages aboard commercial vessels, except in certain instances as specified in 33 CFR 95. Sample factual allegations:

The Coast Guard alleges that:

1. On or about August 1, 1995, while the vessel was at sea, respondent consumed approximately two cans of beer, while standing the 2400-0400 engineroom watch, a violation of 33 CFR 95.045.

1. On or about 1700, 1 October 1995, while the vessel was at sea, respondent was found to be intoxicated as defined by 33 CFR 95.020.

2. The respondent's alcohol concentration in his/her blood was determined by breath analysis to be .07 per cent, a violation of 33 CFR 95.045.

1. On or about 2200, 25 December 1995, while the [vessel name] was at sea, respondent was found to be intoxicated as defined by 33 CFR 95.020

2. The respondent's superiors observed that his/her (manner, disposition, speech, muscular movement, general appearance, or behavior, as appropriate) was affected by the consumption of an intoxicant (specify intoxicant, if known), a violation of 33 CFR 95.045.



B.5.b.7. Damaging Vessel, Stores, Or Cargo

Willful damage to a vessel, its stores, or its cargo is prohibited under 46 USC 11501. Sample factual allegations:

The Coast Guard alleges that:

1. On or about April 1, 1995, while the [vessel name] was at sea, respondent damaged the Number 4 lifeboat davit with a cutting torch, a violation of 46 USC 11501.

B.5.b.8. Resisting Coast Guard Personnel In Performance Of Duty

The forcible assault, resisting, opposing, impeding, intimidation of, or interference with any federal officer (including Coast Guard marine safety personnel) engaged in performance of official duties is prohibited by 18 USC 111 and 2231. The use of deadly force or dangerous weapons in connection with these offenses carries additional heavy penalties. While such offenses occur infrequently, they interfere with law enforcement activities and a complaint shall be issued whenever they occur. Sample factual allegations:

The Coast Guard alleges that:

1. On or about April 1, 1995, while the [vessel name] was at Seattle, WA, respondent forcibly [assaulted, opposed, impeded, or intimidated] a U.S. Coast Guard officer, Lieutenant [name], during the performance of his official duties, a violation of 18 USC 111.
2. Respondent [assaulted, opposed, impeded, or intimidated] LT [name] by [details].

B.5.b.9. Mutiny And Conspiracy To Commit Mutiny

The several elements related to inciting or conspiring to mutiny (18 USC 2192) and the act of mutiny (18 USC 2193). The offenses may occur while the vessel is in a harbor (foreign or domestic) or on the high seas. A rebellion by mariners against their officers on board a vessel anywhere within the admiralty jurisdiction of the United States may be punished as mutiny. It is the Commandant's policy to seek revocation of MMCs in cases of mutiny or conspiracy to commit mutiny (46 CFR 5.61). [NOTE: Issuance of a complaint should be reserved for aggravated acts, attended by open revolt, usurpation of command, tumultuous rioting, conspiracy to commit such acts, and like offenses. Simple disobedience of orders should be treated as misconduct.] Sample factual allegation:

The Coast Guard alleges that:

1. On or about October 31, 1995, while the [vessel name] was at Staten Island, NY, respondent [combined, conspired, or confederated] with other members of the crew



to make revolt or mutiny on board, a violation of 18 USC 2192.

B.5.b.10. Unlawful Killing Of Another On Board Documented Vessels

This factual allegation is patterned after those for murder and manslaughter under 18 USC 1111 and 1112, respectively. It is the Commandant's position that the wrongful taking of a human life on board ship or on shore, with or without malice, intentional or not, should result in revocation of a mariner's MMCs. If a mariner kills another human while on shore, the complaint should be issued for misconduct. Sample factual allegation:

The Coast Guard alleges that:

1. On or about November 1, 1995, while the [vessel name] was at sea [in foreign or domestic port], respondent intentionally killed [name], a fellow crewmember, with a fire axe, a violation of 18 USC 1111.

B.5.c. Negligence

46 CFR 5.29 sets forth the definition of negligence. Issuing a complaint against a mariner for a particular act of negligence based on specific evidence is always preferable to issuing a complaint to the individual when the negligence is based solely on a presumption. For this reason and whenever practicable, evidence should be vigorously sought and fully developed concerning any specific acts or omissions, which singly, or in combination, constitute negligent behavior. *See Appeal Decisions 2455 (WARDELL) and 2465 (O'CONNELL)*. A watch officer who fails to post a lookout while the vessel is underway at night or under conditions of restricted visibility is negligent. A lookout that is not alert and fails to see an approaching vessel that is visible, and consequently fails to give warning to the bridge, is likewise guilty of negligence. Sample factual allegations:

The Coast Guard alleges that:

1. On or about January 11, 1995, while the [vessel name] was approaching the Galveston, Texas, Sea Buoy, respondent failed to adequately fix the position of the [vessel name], contributing to the grounding of the [vessel name].
1. On or about April 13, 1995, while the [vessel name] was at sea, respondent fell asleep while on lookout duty on the forecastle head.
1. On or about June 29, 1995, while the [vessel name] was navigating on the high seas [in navigable waters of the United States], during conditions of restricted visibility, respondent failed to obtain or properly use information available from radar observations to determine if a close quarters situation was developing and/or risk of collision existed from the [vessel name] detected by radar.



B.5.d. Incompetence

As indicated in 46 CFR 5.31, a complaint for incompetence is based simply on inability on the part of a mariner to perform the duties required by the mariner's MMC(s). The inability to perform may be due to professional deficiencies, physical disability, and mental incapacity or due to drug or alcohol abuse. It must be further verified that the disability continues to exist or may be presumed to exist at the time of the hearing. In each instance, the complaint will simply be "incompetence;" the factual allegation will set forth the appropriate facts. Professional deficiency is, generally speaking, shown by a course of action over a period of time indicating that the mariner should not be allowed to continue to serve in his/her rating. In some cases, such as ignorance of the Navigation Rules resulting in a collision, it may be indicated by one incident. Sample factual allegations:

The Coast Guard alleges that:

1. On February 15, 1995, respondent incorrectly plotted the 2400 dead reckoning position for the [vessel name] and was incompetent by his acts and omissions while standing deck watches on a foreign voyage.
2. Respondent demonstrated that he did not possess and exercise the professional skills of an ordinary, prudent, licensed third mate.

1. On or about January 19, 1995, while the [vessel name] was at sea, respondent suffered from seizures and was thus unable to perform his/her duties as able seaman.
2. On or about February 1, 1995, while the [vessel name] was at sea, respondent suffered from seizures and was thus unable to perform his/her duties as able seaman.
3. On or about March 1, 1995, while the [vessel name] was at sea, respondent suffered from seizures and was thus unable to perform his/her duties as able seaman.
4. Respondent is presently still susceptible to seizures.

1. On or about March 17, 1995, respondent was found to be mentally incompetent by Dr. [name], of the Jupiter Medical Center, because of his/her addition to [alcohol or (name of drug)].

B.5.e. Dangerous Drug Offenses

Congress enacted 46 USC 7704 with the express purpose and intent of removing those individuals who possess or use drugs from service in the United States merchant marine. *See House Report No. 338*, 98th Cong., session 177 (1983). Complaints may be issued against mariners for being a user of, or addicted to dangerous drugs and convictions for dangerous drug offenses under 46 USC 7704 regardless of whether the individual was serving under authority of his or her MMC(s) at the time of the drug use or conviction.



B.5.e.1. Use or Addiction to Dangerous Drugs

IOs shall seek revocation of MMCs if a chemical test administered under 33 CFR part 95 or 46 CFR part 16 indicates that a mariner is a user of dangerous drugs. Mariners suspected of use or addiction shall be issued a complaint in accordance with 46 CFR 5.35. IOs should also issue complaints for use/addiction to dangerous drugs if the evidence of use is from a non-CG required test, i.e. a test conducted on behalf of the marine employee in accordance with company policy, and not required by part 16 or authorized by part 95. CDOA 2560 (CLIFTON) states that “The mere fact that the specimen collection was for a purpose other than one authorized and subject to Coast Guard regulations is not reason to exclude the evidence. Once again, as long as the evidence is relevant and material, and not inherently incredible, it can be considered in a suspension and revocation hearing.” See also CDOA 2542 (DEFORGE) which states “The Coast Guard, following the procedures of 46 CFR 5, may offer evidence from any source, not only a drug test carried out pursuant to Part 16, to establish drug use in violation of 46 USC 7704.” Mariners should be given the opportunity to enter into a settlement agreement (see Section E) if he or she is willing to enter a rehabilitation program and prove non-association with dangerous drugs for 1 year after completion of a rehabilitation program. If the positive chemical test was the result of a required SMI test, IOs shall take the case before an ALJ, this type of case is not eligible for settlement. If the positive test was the result of a post casualty test conducted under the provision of 33 CFR 95, IOs should consider taking the case before an ALJ vice offering a settlement, especially if there is other evidence that the drug use contributed to the casualty. ALJs may stay the order of revocation pending the mariner's completion of a drug rehabilitation program and demonstration of non-association with dangerous drugs for 1 year after completion of a rehabilitation program. Sample factual allegations:

The Coast Guard alleges that:

1. On [date] respondent took a [type test] drug test.
2. A [type sample] specimen was collected by [collector name] of [collection agency name].
3. The respondent signed a Federal Drug Testing Custody and Control Form. (if the test was 46 CFR Part 16 required test)
4. The [type sample] specimen was collected and analyzed by [name of lab] using procedures approved by the Department of Transportation.
5. That specimen subsequently tested positive for [type drug] as determined by [name of MRO] a Medical Review Officer.

B.5.e.2. Conviction of a Dangerous Drug Law

Mariners who have been convicted of any Federal or State dangerous drug law offenses, within 10 years before the beginning of S&R proceeding, shall be issued a



complaint in accordance with 46 CFR 5.35. See Section B.9 for guidance on appropriate sanctions. Sample factual allegations:

The Coast Guard alleges that:

1. Within the last 10 years, the respondent was convicted of possession of narcotics, to wit: heroin, by the U.S. District Court in Portland, Oregon.

1. On or about September 18, 1995, respondent receive a conviction from the State of Louisiana, for the sale and possession of opium.

B.5.e.3. Investigating Officer's Discretion (Marijuana Convictions)

IOs may exercise discretion in not issuing complaints under 46 USC 7704(b) for marijuana convictions only if the following guidelines are met. Prior to issuing a complaint, IOs shall take into account the intent of 46 USC 7704: the safety of life and property at sea. The following questions shall be addressed:

- Is the marijuana conviction more than 5 years old?
- Is there evidence of the mariner's good character since the marijuana conviction?
- Is this the only narcotic related offense on the mariner's record?
- Is there any evidence of rehabilitation efforts?
- Can you articulate reasons for believing that the mariner is no longer associated with drugs?
- Did the marijuana conviction occur while the holder of MMCs rather than acting under the authority of the MMC?
- Did the marijuana conviction involve simple possession (personal quantity) or one time use (experimentation) rather than trafficking?

If the answer to any of the above is no, IOs shall issue a complaint for a drug law violation. See Section B.9 for guidance on appropriate sanctions. If all of the above criteria are met, IOs may issue a Letter Of Warning (LOW) instead of issuing a complaint. If a LOW is issued, details of the case and justification for the course of action shall be documenting in the MISLE warning enforcement activity.

B.5.f. Conviction of an Offense Preventing Issuance/Renewal of MMC

Mariners who have been convicted of an offense that would prevent the issuance or renewal of a MMC, shall be issued a complaint in accordance with 46 USC 7703(2) [Note: there is currently no regulatory cite for this offense]. The Commandant considers convictions for offenses detailed in 46 CFR 5.59 and 5.61 to be convictions that would preclude the issuance or renewal of MMCs. The Commandant also considers a conviction for an offense listed in tables 46 CFR 10.201(h) or 46 CFR 12.02-04(c), to be a conviction that would prevent the issuance or renewal of a



MMC. See Section B.9 for guidance on appropriate sanctions. Sample factual allegations:

The Coast Guard alleges that:

1. On May 27, 2007, the respondent was convicted of Criminal Sexual Conduct-Fourth Degree, by the State of Michigan.
2. This is a conviction that would prevent the issuance of the respondent's license.
1. On September 18, 2005, respondent was convicted of Aggravated Assault by the State of Louisiana.
2. This is a conviction that would prevent the renewal of the respondent's MMD.

B.5.g. Conviction of a NDRA Offense

Mariners who have been convicted of an offense listed in section 205(a)(3)(A) or (B) of the NDRA of 1982 (49 USC 30304) within 3 years of initiation of S&R proceedings shall be issued a complaint in accordance with 46 USC 7703(3) [Note: there is currently no regulatory cite for this offense]. Offenses listed in section 205(a)(3)(A) or (B) of the NDRA are:

- Operation of a motor vehicle while under the influence of, or while impaired by alcohol or dangerous drugs;
- Traffic violation(s) arising in connection with fatal traffic accidents;
- Traffic violation(s) arising in connection with reckless driving; or
- Traffic violation(s) arising in connection with racing on the highways.

See Section B.9 for guidance on appropriate sanctions. Sample factual allegations:

The Coast Guard alleges that:

1. On September 23, 2007, the respondent was convicted of driving while under the influence of alcohol and/or drugs, by the Superior Court of California, County of San Diego, South County Division.
1. On September 18, 2007, the respondent was convicted evading a law enforcement officer with reckless driving, by the Superior Court of California, County of San Diego, South County Division.

B.5.h. Security Risk

Mariners who have been deemed a security risk that poses a threat to the safety or security of a vessel or a structure located within or adjacent to the marine environment, shall be issued a complaint in accordance with 46 USC 7703(5) [Note: there is currently no regulatory cite for this offense]. See Section B.9 for guidance on appropriate sanctions. Sample factual allegations:



The Coast Guard alleges that:

1. As of May 27, 2008, the respondent was included in the Federal Bureau of Investigation's terror watchlist.
2. By inclusion on the FBI's terror watchlist, the respondent poses a threat to the security of a vessel or a structure located within or adjacent to the marine environment.

1. On September 18, 2008, the respondent was denied a Transportation Worker's Identification Credential by the Transportation Security Administration.
2. In denying the issuance of a TWIC to the respondent, TSA determined that the respondent posed a threat to the security of a vessel or a structure located within or adjacent to the marine environment.

B.6. SPECIAL CIRCUMSTANCES

B.6.a. Oil Pollution

A complaint issued for an oil pollution incident may fall under negligence or misconduct, according to the circumstances. An IO must review each case in which S&R proceedings are being considered. As in other S&R investigations, any other courses of action detailed in 46 CFR 5.105 are available. This is a discretionary decision of IOs, based on facts developed by investigation. Sample factual allegations:

The Coast Guard alleges that:

- [Negligence]
1. On or about 1 April 1995, respondent failed to adequately supervise cargo loading operations of the Tank Barge XYZ347.
 2. Approximately 500 gallons of oil was discharged into the XYZ River, a navigable water of the United States.

- [Misconduct]
1. On or about 1 July 1995, while assigned as person in charge of cargo oil transfer, respondent wrongfully was absent from the immediate vicinity of the Tank Vessel [name], which was discharging crude oil.
 2. The respondent was not available to shut down cargo operations in a timely manner after the cargo hose burst.
 3. Approximately 50 gallons of oil entered the navigable waters of the United States.

B.7. OPTIONS FOR RESPONDENTS

When issuing a complaint, the respondent should be advised of the options that are listed on the complaint and summarized below. The respondent should be made aware that he will have to answer the allegations or request an extension within 20 days of receipt of the complaint. If the respondent admits the allegations, an ALJ will issue an order and enter a sanction. If the respondent denies any allegations, an ALJ will schedule a hearing on the matter. If the respondent requests an extension to file his/her answer, the request must explain why more time is needed and will be ruled on by an ALJ. The respondent should also be made aware that if he does not



file an answer, request for extension, or attend any scheduled hearing, he may be found in default. Default constitutes an admission of all facts alleged in the complaint and a waiver of a right to a hearing. If the ALJ finds the respondent in default, a decision could be issued without any hearing. The respondent may request a settlement agreement with the Coast Guard. If an agreement is reached, a proposed settlement will be submitted to the ALJ for review and approval. If the ALJ approves the settlement, a consent order implementing the agreement will be issued.

B.8. RESPONDENT'S RIGHTS

When issuing a complaint, the respondent should be advised of his/her right to:

- Have representation by counsel at the hearing, and that counsel may be, but need not be, a lawyer (**NOTE:** free legal aid may be available through the state bar or legal aid services);
- Have witnesses, records or other evidence subpoenaed;
- Examine witnesses;
- Cross-examine witnesses;
- Introduce relevant evidence into the record; and
- Testify to facts or relevant information on his/her own behalf.

B.9. PROPOSED ORDER

The complaint must contain a proposed order. IOs may use 46 CFR Table 5.569—Suggested Range of an Appropriate Order—to assist them in determining an appropriate proposed order. IOs should also refer to 46 CFR 5.59 and 5.61 for offenses for which revocation should be sought and relevant CDOAs which contain the Commandant's position on the appropriate sanction for various offenses. The proposed order on the complaint should reflect the sanction IOs are seeking to have the ALJ impose at the conclusion of the hearing. IOs may propose the following sanctions:

- Admonishment. This is the least severe sanction that an ALJ can impose and is considered a formal warning from the ALJ.
 - Suspension on Probation. This sanction includes suspension of a specific period of time (e.g., 3 months) and probation of a specific period of time (e.g., 9 months). This is commonly stated as "3 months suspension remitted on 9 months probation." The terms of probation (e.g., successful completion of anger management counseling, not be issued a complaint for violation of the navigation rules, etc.) shall be listed on the complaint. The suspension is deferred during the probation period and will only become effective if the mariner violates the terms of probation.
 - Outright Suspension. This sanction is an outright suspension of a specific period of time (e.g., 12 months). This is commonly stated as "12 months outright suspension."
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- Suspension with Probation. This sanction includes an outright suspension of a specific period of time (e.g., 3 months) and a deferred suspension of a specific period of time (e.g., 12 months) and probation of a specific period of time (e.g., 24 months). This is commonly stated as “3 months outright suspension with 12 months suspension remitted on 24 months probation.” The probation period does not commence until completion of the outright suspension. The terms of probation (e.g., successful completion of anger management counseling, not be issued a complaint for violation of the navigation rules, etc.) shall be listed on the complaint. The deferred suspension will only become effective if the mariner violates the terms of probation.
- Revocation. This is the most severe sanction that an ALJ can impose and requires the respondent to immediately surrender the respondent’s MMC(s) to the Coast Guard.

The following sections provide additional guidance on the appropriate proposed order for certain offenses.

B.9.a. Proposed Order for Drug Use/Addiction Cases

The appropriate order for all use/addiction to dangerous drug cases is revocation. It is clear that Congress felt drug users are a threat to the safety and security of life and property at sea and the marine environment and mariners must prove that they are cured of their drug use/addiction or their MMCs shall be revoked. In general, mariners that have had no previous complaints for drug use/addiction proved, or who have not previously voluntarily deposited or surrendered their MMC due to drug use/addiction may be offered a settlement agreement allowing them to prove cure. If the positive chemical test was the result of a required SMI test, IOs shall take the case before an ALJ, this type of case is not eligible for settlement. If the positive test was the result of a post casualty test conducted under the provision of 33 CFR 95, IOs should consider taking the case before an ALJ vice offering a settlement, especially if there is other evidence that the drug use contributed to the casualty. See section E for more guidance on settlement agreements.

B.9.b. Proposed Order for Drug Conviction Cases

The appropriate order in dangerous drug law violation cases is usually revocation. IOs shall ensure the following provisions are met before recommending a sanction of less than revocation or offering a settlement agreement.

- It has been more than 3 years since the conviction or the conviction is the only drug law violation in the previous 3 years.
- The conviction involved personal use amounts (simple possession, etc.) rather than trafficking/attempt to distribute.
- The mariner can establish cure as defined in section A.3.e.

If either of the first 2 provisions is not met, the proposed order shall be revocation. If the conviction meets the first 2 provisions but the mariner has not established



cure, a settlement agreement may be offered to allow the mariner to establish cure. See section E for more guidance on settlement agreements. If the mariner meets all the above provisions IOs may propose a 12 month suspension remitted on 2 years probation with the condition of the probation being that the mariner is not convicted of a drug law violation during the period of probation.

B.9.c. Proposed Order for Drug Test Refusal Cases

The appropriate sanction to seek for most refusals to submit to a required test for dangerous drugs is revocation. CDOA 2578 (CALLAHAN) states the reason why the sanction for refusal to test should be revocation, "Refusal to submit to a post incident chemical test raises a serious doubt about a mariner's ability to perform safely and competently in the future. Furthermore, if mariners could refuse to submit to chemical testing and face a lesser order, it is difficult to imagine why anyone that may have used drugs would ever consent to be tested. Cf. Exxon Shipping Co. v. Exxon Seaman's Union, 73 F.3d 1287 (3d Cir. 1996). See also CDOA 2624 (DOWNS), and 2625 (ROBERTSON). NTSB Order No. EM-201 (MOORE) modified the revocation sanction of the ALJ that was affirmed by the Vice Commandant because the Coast Guard has articulated a 12-24 month suspension as appropriate (See 46 CFR Table 5.569) for refusal to take a chemical drug test. The decision further stated that NTSB will not uphold a sanction exceeding 24 months suspension without a clearly articulated explanation of aggravating factors. In all cases where IOs seek a revocation sanction, IOs shall provide aggravating factors to support revocation. Aggravating factors may include, but are not limited to: previous positive drug test, previous refusal to submit to drug or alcohol testing, other members of vessel crew testing positive or refusing to submit to testing, or previous violations of drug or alcohol testing regulations or company policy. If no aggravating factors exist, IOs should seek a 24 month suspension. If a respondent provides a legitimate reason for not submitting to a required drug test, IOs may propose an order of less than 24 months suspension. Respondents that admit they are a user of, or addicted to dangerous drugs may be offered a standard drug use settlement agreement. See Section E for more guidance on settlement agreements. A respondent that has refused to submit to a post casualty chemical test shall not be offered a settlement agreement; IOs shall instead take the case to a hearing seeking revocation.

B.9.d. Proposed Order for Misconduct for the Use, Possession, or Association with Dangerous Drugs

The appropriate order for most cases involving misconduct for the use, wrongful possession, sale, or association with dangerous drugs is revocation. If the act of misconduct regarding the wrongful possession, use, or association meet the following provisions:

- Involved personal use amounts;
- Did not involve the sale, distribution, intent to distribute, trafficking, or smuggling of dangerous drugs; and



- The mariner can demonstrate cure

An IO may propose an order of 12 months suspension remitted on 2 years probation with the condition of the probation being that the mariner is not issued a complaint for misconduct for the use, possession or association with dangerous drugs during the period of probation. A Settlement agreement may be offered if the mariner meets the above provisions but cannot demonstrate cure, see Section E for more guidance on settlement agreements.

B.9.e. Proposed Order for Fraudulent Application Cases

The appropriate order for all cases involving misconduct for the submission of a fraudulent application for the issuance of a MMC is revocation. The Commandant has held that where fraud in the procurement of a license is proved in an S&R proceeding, revocation is the only appropriate sanction. *See* CDOA 2613 (SLACK), 2570 (HARRIS), 2569 (TAYLOR), 2346 (WILLIAMS) and 2205 (ROBLES). Several CDOAs have recognized that there is a distinct difference between a fraudulent and a false statement. *See* CDOA 2663 (LAW), 2608 (SHEPHERD), 2456 (BURKE), 1381 (CLINTON) and 809 (MARQUES). In CDOA 2608 (SHEPHERD), the Commandant found that the submission of a false application is a lesser included offense of submitting a fraudulent application. If there is no actual or constructive knowledge that the statement is false, it shall be considered a false statement. Conversely, if there is knowledge (actual or constructive) that the statement is false, it is intended to be misleading, or is recklessly made without knowledge of its truth or falsity, it may be considered a fraudulent statement. Actual knowledge can be described as possessing “specific knowledge” of some material fact. If it is determined that statements in an application were not fraudulently made but merely the result of unintended misstatement or misunderstanding (i.e., a false statement), IOs may propose a sanction of a reasonable number months of outright suspension.

B.9.f. Proposed Order for NDRA Convictions

The appropriate order for cases involving a conviction for an offense listed in the NDRA shall be based on the following guidelines. If within 3 years from the initiation of S&R proceedings:

- There are 2 or more convictions which involved dangerous drugs or alcohol; or
- There is 1 conviction that involved dangerous drugs or alcohol and 1 conviction that did not involve dangerous drugs or alcohol; or
- The State has revoked the mariner’s motor vehicle operator’s license; then

The proposed order should be revocation.

If within 3 years from the initiation of S&R proceedings:

- There is 1 conviction that involved dangerous drugs or alcohol; then

The proposed order should be a reasonable number of months of outright



suspension. The minimum recommended suspension should be at least equal to any remaining suspension period assigned by a State of the mariner’s motor vehicle operator’s license. If the State has suspended a mariner’s motor vehicle license, but has issued the mariner a restricted license allowing operation of a motor vehicle, the suspension period may be remitted on probation.

If within 3 years from the initiation of S&R proceedings:

- There is 1 conviction that did not involve dangerous drugs or alcohol; then

The proposed order should be a reasonable number months of suspension on probation. The minimum probation period should be at least equal to any remaining suspension period assigned by a State of the mariner’s motor vehicle operator’s license.

B.9.g. Proposed Order for Convictions Precluding Issuance of MMC

The appropriate order for cases involving a conviction for any offense similar to those detailed in 46 CFR 5.59 and 5.61, or a conviction for an offense listed in the tables of 46 CFR Subchapter B where the minimum assessment period is more than 1 year is revocation. When the minimum assessment period in the tables of 46 CFR Subchapter B is 1 year, IOs may propose a sanction of a reasonable number of months based on the overall conviction record of the mariner.

B.9.h. Proposed Order for Being a Threat to Safety or Security of a Vessel or Structure

The appropriate order for all cases where the respondent is issued a complaint for being a security risk that poses a threat to the safety or security of a vessel or structure located in or adjacent to the marine environment is revocation.

B.10. PROPOSED DATES & LOCATION

The complaint must contain proposed dates and a location for a hearing. If there are issues with witness availability or reasons why a specific location is desired, you should state them in this section.

B.10.a. Change Of Venue Or Time

Once a complaint has been served, a request to move the hearing to any place other than that specified on the complaint or to change the time or date must be made to the ALJ initially convening the hearing. The ALJ will consider the nature of the request and the stated reason(s) for it; unless a change is ordered by the ALJ, the hearing will be held as scheduled. When a mariner requests a change of venue directly from the Coast Guard, the mariner shall be directed to contact the ALJ at the address and telephone number provided by the IO.

B.11. ADDRESS

The complaint must contain the address, phone number, and fax number of the issuing CG Unit and the name, rank, and title of the IO who filed the complaint. The respondent must also keep the IO informed of any changes to their address



and/or phone number.

**B.12. SERVING
THE COMPLAINT**

The complaint may be served by personal delivery, certified mail, return receipt, or express courier service with receipt capability (*i.e.* Federal Express, DHL, etc.).

B.12.a. Temporary Suspension Complaint

IOs must file a complaint issued in a temporary suspension case immediately after serving it to the respondent with the Docketing Center. The rules for answers under 33 CFR 20.308 do not apply. The Respondent answers at a pre-hearing conference (which may be telephonic). The ALJ will schedule this conference as early as practicable. The Respondent may file motions to have credentials returned and/or discontinue the expedited hearing and have the proceedings follow the normal hearing schedule as detailed in 33 CFR 20, Subpart G. The ALJ will issue a final decision within 45 days of the temporary suspension.

B.12.b. Time Limitations for Serving Complaints

The following are the time limitations established in 46 CFR 5.55 for serving a complaint on the respondent for various offenses:

- A complaint for drug use may be served at anytime, there is no time limitation.
- A complaint for drug convictions must be served within 10 years of the date of conviction.
- A complaint for misconduct for an offense listed in 46 CFR 5.59(a) or 5.61(a) must be served within 5 years of the offense or violation.
- A complaint for all other offenses shall be served within 3 years of the offense or violation.

The time period since the offense or violation shall exclude any period of time when the respondent could not attend a hearing or be served the complaint because they were outside the United States or were in prison or hospitalized.

B.12.c. Service of Complaints Considered Complete

The service of a complaint is considered complete when the method of service is personal delivery and the complaint is:

- Handed to the respondent; or
- Delivered to the respondent's office during business hours; or
- Delivered to the respondent's residence and service is made to a person of suitable age and discretion residing at the respondent's residence.

The service of a complaint is considered complete when the method of service is certified mail or express-courier service and the complaint is:

- Delivered to the respondent's residence and signed for by a person of suitable



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age and discretion residing at the respondent's residence; or

- Delivered to the respondent's office during business hours and signed for by a person of suitable age and discretion.

**B.13. FILING
WITH DOCKET CENTER**

IOs shall file one copy of the complaint with the ALJ Docketing Center at the following address:

ALJ Docketing Center
U.S. Customs House
40 South Gay Street, Room 412
Baltimore, MD 21202-4022
Phone: (410) 962-7434
Fax: (410) 962-1742 or 962-1746

Filing may be by mail, fax, or express courier service (*i.e.* FedEx).

Once the ALJ is assigned, the assignment order will direct the parties where to file subsequent documents.

**B.14. AMENDED
COMPLAINT**

After a complaint has been filed with the Docketing Center and served on the respondent, but prior to the commencement of a hearing, if errors of substance are found in the complaint or in the factual allegations, IOs shall prepare, file with the Docketing Center and serve an amended complaint on the respondent. The amended complaint shall replace the original complaint and shall contain all required elements of a complaint listed above in section B.2.

**B.15. COMPLAINT
AND ANSWER FORMS**

B.15.a. Complaint Forms

Complaint forms were designed so that IOs could address acts of misconduct, negligence, or violations of laws/regulations in the field if no further investigation is needed to initiate S&R proceedings. In most cases, there will be sufficient time to prepare a complaint in the office. IOs should use the electronic form templates provided in MISLE and within the investigations community of CG Central until such time as submission of all S&R filings are required to be made within MISLE.

B.15.b. Answer Forms

Answer forms (Form CG-2639A) were created to give respondents a quick and easy way to file their answer. IOs should provide this form to each respondent. An answer template is located within the investigations community of CG Central and in the CG electronic forms library. The answer form's use is optional and respondents may file any answer that complies with 33 CFR 20.303.



**B.16. TEMPORARY
SUSPENSION
COMPLAINT FORMS.**

Complaint forms specifically designed for expedited hearings are available in MISLE and within the investigations community of CG Central. When used, they should only be served in person upon the respondent and a copy immediately faxed to the ALJ Docketing Center.

C. PROCEDURES PRIOR TO HEARING

C.1. REGULATIONS

The regulations concerning pre-hearings and hearings can be found in:

- Assignment of ALJ: 33 CFR 20.201
- Unavailability of ALJ: 33 CFR 20.203
- Conferences: 33 CFR 20.501
- Discovery: 33 CFR Subpart F (20.601 - .609)
- Hearings: 33 CFR Subpart G (20.701 - .710)

**C.2. FIELD
REQUEST FOR
MARINER'S PRIOR
RECORD
("MERMARPER")**

IOs should seek to obtain prior disciplinary information on merchant mariners. This information is known as a "MERMARPER." MERMARPER records initiated prior to implementation of MINMOD (May 1992) are maintained by the National Maritime Center (NMC) on 3x5 index cards. A MERMARPER request to NMC should indicate the complete name of the respondent, respondent's birth date, respondent's current MMC number, and social security number; requests concerning more than one individual at a time may be combined. IOs should also check the information available in MISLE, including the wanted list as well as contacting NMC for a MERMARPER. MERMARPER requests may be made to NMC by telephone or via the notify NMC function in the MISLE Enforcement Activity. The mariner's prior disciplinary record should be obtained through MISLE and from NMC prior to issuing a complaint, to determine whether:

- A violation of a probationary order is involved;
- An outstanding order is pending service;
- Recidivism is a factor in the current offense; or
- It should be considered as matters in aggravation.

The prior records will neither prove nor disprove the facts of the current offense, and shall not be used as the sole basis for issuing a complaint. If the current offenses are proved in a hearing, however, the prior record will be introduced as matters in aggravation.

**C.3. REVIEW OF
INVESTIGATIVE CASE
FILES**

IOs presenting the case shall be thoroughly familiar with all of the available evidence. IOs shall ensure that all documentary evidence such as Shipping Articles and log entries have been properly extracted and certified.



C.4. ORGANIZATION OF EVIDENCE

IOs must prove to the ALJ, by substantial evidence of a reliable and probative nature, that the allegations made against the respondent are true. Prior to the hearing, IOs should prepare the evidence in chronological order. It is helpful to prepare a list of questions for each witness. IOs are reminded that there is no substitute for adequate planning and careful preparation of a case.

C.5. ASSIGNMENT OF AN ALJ

The Docketing Center assigns an ALJ to hear the case under 33 CFR 20.201. IOs will receive a copy of the assignment order. The order directs the parties where to file motions and other filings.

C.6. SCHEDULING ORDER

The ALJ considers the hearing location request in the complaint and the answer and schedules the hearing with a scheduling order. The following table shows the general guidelines for scheduling:

If the case is a...	Then the ALJ schedules the hearing to begin within...
Temporary suspension case	25 days of the temporary suspension.
Simple S&R Case	45 days of the filing of the Answer.
Complex S&R Case	30 days from close of discovery.

C.7. SUMMARY DECISIONS.

33 CFR 20.901 allows IOs to submit a motion requesting the ALJ issue a summary decision in all or any part of the proceeding if there are no genuine issue of material fact and the CG is entitled to a decision as a matter of law. The motion must be filed no later than 15 days before the date of the hearing and the respondent has 10 days to oppose the motion. Some scenarios which IOs may want to file a motion for a summary decision include, but are not limited to:

- The mariner has a conviction for an offense listed in 46 CFR 5.59 or 5.61 within the previous 5 years.
- The mariner has a conviction for a violation of a dangerous drug law.
- The mariner has submitted a fraudulent application for a MMC with regards to the failure to disclose a conviction that would have prevented the issuance of the MMC.

Questions concerning the use of the summary decision option should be addressed to CG-5451.

C.8. MANDATORY DISCOVERY

In order to prevent surprise in S&R proceedings, the parties are required to share information about the evidence they intend to present at the hearing. The rules for discovery can be found at 33 CFR Part 20—Subpart F. At least 15 days before the scheduled hearing, the parties are to exchange:

- Witness Lists which include the name of each witness and a brief summary of their expected testimony; and



- Copies, marked as exhibits, of each document intended to be introduced as evidence or used in the presentation of the case.

**C.9. OTHER
DISCOVERY**

Any other discovery will only be at the order of the ALJ and will occur only when the ALJ determines that:

- It will not unreasonably delay the proceeding;
- The information sought is not otherwise obtainable;
- The information sought has significant probative value;
- The information sought is neither cumulative nor repetitious; and
- The method or scope of the discovery is not unduly burdensome and is the least burdensome available.

Parties must request further discovery by motion.

**C.10. PREHEARING
CONFERENCES AND
STIPULATIONS**

C.10.a. Authority For Prehearing Conferences

33 CFR 20.501(a) authorizes any party (IO, respondent, ALJ) by motion to request a conference. Unless the ALJ excuses a party, the failure of a party to attend or participate in the conference, results in the party waiving all objections to any agreements reached in it and to any consequent orders or rulings. At the outset of the conference, the judge will normally advise the participants that the proceeding is being conducted in accordance with the provisions of 33 CFR 20.501. Although the conference may be informal, all remarks should be addressed to the ALJ. The ALJ should permit reasonable discussion; however, when a subject is fully ventilated, the ALJ will rule and move on. ALJs may conduct prehearing conferences for the settlement or simplification of issues involved in a case with the consent of the Coast Guard and the respondent. This authority comports with the provisions of the Administrative Procedure Act, which specifically permits such proceedings (see 5 USC 556 (c)(6)). In order to establish maximum flexibility in the conduct of such conferences, no fixed rules are established; however, the following guidelines have been provided to the ALJs and will normally apply:

C.10.b. Discussions At Prehearing Conferences

Matters appropriate for discussion and agreement at the prehearing conference include, but are not limited to:

- Methods of service and filings;
- Motions for consolidation or severance of parties or issues;
- Motions for discovery;
- Identification, simplification, and clarification of issues;
- Requests for amendment of the pleadings;
- Stipulations and admissions of fact and of the content and authenticity of documents;
- Offers of settlement;



- Proposed date, time and place of the hearing; and
- Other matters that may aid in the disposition of the proceeding.

C.10.c. Record Of Prehearing Conference

No one may stenographic report or otherwise record a conference without the authorization of the ALJ. During the conference, the ALJ may dispose of any procedural matters on which they are authorized to rule. Actions taken at the conference, if authorized by the ALJ, may be memorialized in stenographic report, or a written transcript from a magnetic tape or the equivalent, or the ALJ may make a statement on the record at the hearing summarizing the actions taken at the conference.

C.11. DEPOSITIONS.

33 CFR 20.605 contains the regulations governing depositions. A deposition is the recording and transcribing of testimony under oath of a person who is not going to be present at the hearing upon the approval of the ALJ of a motion made by any party. Depositions are generally required because the witness is located beyond the range of a subpoena to require the witness to attend the hearing. A deposition taken under oath and bearing the signature of the deponent is admissible in a proceeding. This testimony is generally taken through oral examinations similar to those employed at the hearing. It may also be videotaped or taken via telephone conference call upon such terms, conditions, and arrangements as are prescribed in the order of the ALJ. For simplification, where only specific answers are required, prepared questions and cross-questions from the respondent are approved by the ALJ, read to the deponent and answered, and returned to the judge, who will admit them subject to the rules of evidence. These are called interrogatories or cross-interrogatories. Live testimony via telephone may be the preferred alternative to a deposition (See section G.8). Assistance in preparing for a deposition may be obtained from the servicing District legal division.

C.11.a. Who May Take Depositions

The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken. Within the Coast Guard, this includes commissioned and warrant officers and those persons specifically engaged in the performance of duties under 46 USC Chapter 77. Outside the Coast Guard, this includes a judge, magistrate, commissioner, clerk of court, notary public, or judge advocate of an armed service. Within a foreign country, a deposition may be taken before a person having power to administer oaths in that location, or before a secretary of an embassy or legation, consul general, consul, vice consul or consular agent of the United States, or before such other person or officer as may be agreed upon by the parties by written stipulation filed with the ALJ.

C.11.b. Requests For Depositions

33 CFR 20.605 provides that an ALJ may order a deposition only upon a showing of



good cause and upon a finding that:

- The information sought is not obtainable by more readily alternative methods; or
- There is a substantial reason to believe that relevant and probative evidence may otherwise not be preserved for presentation at the hearing.

Any party may file a motion requesting that testimony be taken by deposition. The motion must contain the following:

- The purpose and scope of the deposition;
- The time and place it is to be taken;
- The name and address of the person before whom the deposition is to be taken;
- The name and address of each witness from whom a deposition is to be taken;
- The documents and materials which the witness is to produce;
- Whether it is intended that the deposition be used at a hearing instead of live testimony; and
- If the deposition is to be by oral examination, by written interrogatories, or a combination of the two.

Upon a showing of good cause the ALJ may enter, and serve upon the parties, an order to obtain the testimony of the witness

C.11.c. Procedure

The person presiding over the deposition shall place the witness under oath or affirmation, and the other parties shall have the right to cross-examine. The witness being deposed may have counsel or another representative present during the deposition. The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel. The testimony shall be taken stenographically and transcribed at the expense of the party requesting the deposition. Unless waived by the deponent, the transcription must be read by or read to the deponent, subscribed by the deponent, and certified by the person before whom the deposition was taken. See C.11.e. below concerning videotaped depositions.

C.11.d. Objections

Objection to taking a deposition because of the disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins, or as soon as the disqualification becomes known or could have been discovered with reasonable diligence. During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be



adjourned. The objecting party or witness must immediately move the ALJ for a ruling on the objection(s). The ALJ may then limit the scope or manner of the taking of the deposition.

C.11.e. Videotaped Depositions

33 CFR 20.605(n) authorizes testimony at a deposition hearing to be recorded on videotape for subsequent presentation at an S&R hearing. Visual observation of a witness's demeanor can assist the ALJ in making credibility evaluations. Videotaping expenses are to be borne by the party requesting the recording. Testimony may be taken through oral examination or by interrogatories. The person requesting the videotape deposition is responsible for procuring appropriate equipment for playback at the hearing. IOs should verify this to ensure that delays, or worse, do not result from the attempted use of incompatible equipment. The deposition becomes a part of the record of the proceedings in the same manner as a transcribed deposition. The videotape, if admitted into evidence, will be played during the hearing and transcribed into the record by the reporter.

C.12. NOTIFICATION TO OTHER AGENCIES

Often the subject matter of a hearing will be of interest to other agencies, such as the Federal Communications Commission (FCC), the Immigration and Naturalization Service (INS), the FBI, or local law enforcement agencies. As appropriate, local representatives of these interests should be advised of the time and place of such hearings.

C.13. ISSUANCE OF SUBPOENAS

At any time prior to the hearing, IOs may issue subpoenas to secure the attendance of witnesses or the production of books, papers, or other evidence that may be needed by the Coast Guard or by the respondent. During the hearing, the ALJ may issue subpoenas for such purposes or upon request of the Coast Guard or the respondent. 46 USC 7705 provides the authority to issue subpoenas and is implemented in 46 CFR Part 5, Subpart F. The subpoena may be served anywhere within the judicial district in which it is to be returned, or if outside the district, at a place within 100 miles of the place to which it is returnable.

C.14. WITHDRAWAL OF COMPLAINT PRIOR TO HEARING

Occasionally, an IO may want to withdraw the complaint prior to the convening of a hearing: a last minute voluntary deposit or voluntary surrender agreement may be completed, additional evidence may indicate that the complaint is unwarranted, or it may be determined that complaint was not properly served in accordance with 33 CFR 20.304. If the respondent has not served a responsive pleading (i.e. Answer), IOs shall submit a notice of withdrawal to the Docketing Center with a copy to the respondent. If the respondent has filed a responsive pleading, IOs shall file a motion for withdrawal with the Docketing Center with a copy to the ALJ (if an ALJ has been assigned) and respondent.

C.15. PROCEDURES IN LIEU OF A HEARING

Investigations shall be conducted to provide, as thorough information as possible, to determine what official action, if any, should be taken against mariners or the mariner's MMC(s). S&R proceedings need not be used in all instances, but rather



when marine safety, security, or the marine environment has been directly and adversely affected. The severity of the act or offense, the gravity of the situation, availability of other corrective action, the prior history of the mariner, and the likely impact of such action on similar incidents in the future are factors, which should influence the choice of actions taken. Consideration must also be given to the responsibilities of masters, owners, and operators of vessels in maintaining the standards of competence and disciplined conduct in the U.S. Merchant Marine. Civil penalty action against holders of MMCs is authorized at the discretion of the OCMI. Additional civil penalty guidance is contained in Chapter C3 of this manual. The following sections provide guidance on other alternative actions.

C.15.a. Letters of Warning

46 CFR 5.105(e) authorizes IOs to issue Letters of Warning (LOW) in lieu of pursuing S&R action. Details on the issuance of LOWs are contained in Chapter C2 of this Manual.

C.15.b. Voluntary Deposit Of MMCs For Mental Or Physical Incompetence

Under the provision of 46 CFR 5.201, a Voluntary Deposit can only be offered in cases where there is evidence of mental or physical incompetence. A medical condition by itself is not incompetence; for example, an epileptic who can control the condition through medication should not be issued a complaint for incompetence unless evidence is available that his professional performance is hindered by his condition. If the condition prevents the mariner from performing duties directly related to the safe operation or navigation of the vessel, a voluntary deposit may be properly considered. Prior to accepting a voluntary deposit, IOs shall explain to the mariner that the deposited MMCs cannot be returned until the Coast Guard receives satisfactory evidence that the mariner is considered fit for duty without qualification, and that the mariner must initiate action to regain his or her MMCs. If the mariner agrees to these conditions, IOs shall complete a Voluntary Deposit Agreement, Form CG-2639F, in duplicate. After the mariner has signed both copies in ink, IOs shall give the original to the mariner and retain a copy in the case file. The form shall be scanned and attached to the MISLE enforcement activity as correspondence. IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity requesting that the mariner's record be locked while the MMC is on deposit. Form CG-2639F is available within the investigations community of CG Central and in the CG electronic forms library.

C.15.c. Mariners Deemed Incompetent Who Do Not Enter Into A Voluntary Deposit

When a mariner who has been certified by proper medical authority as physically or mentally incompetent will not voluntarily deposit his/her MMCs, S&R proceedings shall be initiated.

C.15.d. Voluntary Deposit Of MMCs For Addiction To Dangerous Drugs As A Cause Of Incompetence



46 CFR 5.201(b) discusses the use of a voluntary deposit where the mental or physical incompetence has occurred resulting from the use of, or addiction to dangerous drugs. The use of a voluntary deposit is only appropriate in those instances where the use and/or addiction is not discovered as a result of a Federal, State or local government investigation, i.e. the mariner voluntarily admits his drug problem. The discovery of a drug problem through the chemical testing mechanisms of 46 CFR 16 or 33 CFR 95 is considered to be discovered as part of an investigation and therefore a voluntary deposit shall not be used.

C.15.d.1. Voluntary Deposits In Drug Investigations

IOs shall screen all requests for voluntary deposit to ensure that the request has not been prompted by a Coast Guard mandated chemical test. This includes mariners who are scheduled to take a test, but feel, or know they will have a positive result, and those who have been notified by a MRO of a positive test. All cases shall be handled through the voluntary surrender, settlement agreement or hearing process. Voluntary deposits, which were prompted by a positive chemical test, shall be considered "null and void" and the MMCs returned to the mariner, together with a complaint and an explanation of the options available.

C.15.d.2. Acceptance Of Voluntary Deposits

Where the mental or physical incompetence of a holder of MMCs is caused by use of, or addiction to dangerous drugs, a voluntary deposit will only be accepted contingent on the following circumstances:

- The holder intends to enroll in a bona fide drug rehabilitation program;
- The holder's incompetence did not cause or contribute to a marine casualty;
- The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State, or local government investigation; and
- The holder has not voluntarily deposited or surrendered his/her MMCs, or had his/her MMCs revoked for a drug related offense on a prior occasion.

If the mariner agrees to these conditions, IOs shall complete a Voluntary Deposit Agreement (Drug or Alcohol), Form CG-2639G, in duplicate. After the mariner has signed both copies in ink, IOs shall give the original to the mariner and retain a copy in the case file. The unit copy of the form shall be scanned and attached to the MISLE enforcement activity as correspondence. IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity requesting that the mariner's record be locked while the MMC is on deposit. Form CG-2639G is available within the investigations community of CG Central and in the CG electronic forms library.

C.15.e. Voluntary Deposit Of MMCs For Alcoholism As A Cause Of Incompetence

46 CFR 5.201(c) discusses the use of a voluntary deposit where the mental or



physical incompetence has occurred resulting from the use of, or addiction to alcohol. The use of a voluntary deposit is only appropriate in those instances where the use and/or addiction is not discovered as a result of a Federal, State or local government investigation, i.e. the mariner voluntarily admits his alcohol problem. The discovery of an alcohol problem through the chemical testing mechanisms of 46 CFR 4.06 or 33 CFR 95 is considered to be discovered as part of an investigation and therefore a voluntary deposit shall not be used. The Coast Guard recognizes alcoholism as a disease and acknowledges that there are successful programs for the prevention and treatment of alcoholism. It is not the Coast Guard's policy to compel merchant mariners with alcoholism to enter such programs, but rather to encourage sincere individuals to obtain the medical help they need. While the Coast Guard cannot endorse or recommend a specific facility or program, IOs should be familiar with locally available resources in order to provide information to merchant mariners requiring assistance of this nature.

C.15.e.1. Voluntary Deposits In Alcohol Abuse Investigations

In considering whether to initiate S&R proceedings for offenses involving alcohol, IOs must recognize the distinction between the disease of alcoholism and mere intoxication or alcohol abuse. It is not intended that misconduct involving mere intoxication should be punished any differently than instances of "sober" misconduct. However, if alcoholism, alcohol abuse, or intoxication is considered to be a factor in the case, it is appropriate to issue a complaint for "incompetence based on alcoholism," in addition to any misconduct complaint. On this basis, cases involving alcoholism should be handled in a manner similar to other cases of physical or mental incompetence. The Respondent may produce probative evidence of rehabilitation which may influence a final determination regarding the mariner's competency. To support the return of voluntarily deposited MMCs, IOs may accept similar evidence.

C.15.e.2. Acceptance Of Voluntary Deposits

Where the mental or physical incompetence of a holder of MMCs is caused by use or addiction to alcohol, a voluntary deposit will only be accepted contingent on the following circumstances:

- The holder intends to enroll in a bona fide alcohol rehabilitation program;
- The holder's incompetence did not cause or contribute to a marine casualty; and
- The incompetence was reported to the Coast Guard by the individual or any other person and was not discovered as a result of a Federal, State, or local government investigation.

If the mariner agrees to these conditions, IOs shall complete a Voluntary Deposit Agreement (Drug or Alcohol), Form CG-2639G, in duplicate. After the mariner has signed both copies in ink, IOs shall give the original to the mariner and retain a copy



in the case file. The unit copy of the form shall be scanned and attached to the MISLE enforcement activity as correspondence. IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity requesting that the mariner's record be locked while the MMC is on deposit. Form CG-2639G is available within the investigations community of CG Central and in the CG electronic forms library.

C.15.f. Written Agreement

A mariner may voluntarily deposit his/her MMCs with the Coast Guard in any case where there is evidence of mental or physical incompetence as described above. A voluntary deposit is accepted on the basis of a written agreement, the original of which will be given to the mariner, which specifies the condition upon which the Coast Guard will return the MMCs to the holder.

C.15.g. Limiting Conditions For Voluntary Deposits

Where the conditions of paragraphs C.15.d.2 or C.15.e.2 above are not met, the mariner may only surrender his/her MMCs in accordance with 46 CFR 5.203, or S&R proceedings must be initiated.

C.15.h. Disposition Of Deposited MMCs

The deposited MMC shall be retained at the unit until the mariner completes the conditions set out in the agreement for the return of the MMC. If the MMC expires while in the CG's possession it shall be destroyed or clearly defaced as expired/void. IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity that the MMC has expired while it was on deposit and that it has been destroyed or marked as expired/void.

C.15.i. Return Of MMCs

A person may request the return of his or her voluntarily deposited MMCs at any time, provided;

- They he or she can demonstrate a satisfactory rehabilitation or cure of the condition which caused the incompetence;
- They have complied with any other conditions of the written agreement executed at the time of deposit; and
- They comply with the physical and professional requirements for issuance of MMCs.

C.15.i.1. Return Where Drug Use/Abuse Was Cause Of Incompetence

Where the voluntary deposit is based on incompetence due to drug use/abuse, the deposit agreement shall provide that the MMCs will not be returned until the mariner:



- Successfully completes a bona fide drug abuse rehabilitation program;
- Demonstrates complete non-association with dangerous drugs for a minimum of 6 months after completion of the rehabilitation program; and
- Is actively participating in a bona fide drug monitoring program, which incorporates random unannounced chemical testing.

C.15.i.2. Return Where Alcohol Use/Abuse Was Cause Of Incompetence

Where the voluntary deposit is based on incompetence due to alcohol use/abuse, the deposit agreement shall provide that the MMCs will not be returned until the mariner:

- Successfully completes a bona fide alcohol abuse rehabilitation program; and
- Is actively participating in a bona fide support group.

C.15.j. Acceptance Of Medical Reports

A medical report indicating that a mariner is fit for duty need not be accepted without question. The designation of fit for duty requires a careful evaluation balancing the mariner's past medical history, his/her current physical/mental condition, and future medical outlook against the mariner's ability to live and perform safely in a shipboard environment. In some instances, IOs may reasonably conduct this evaluation, and the deposited MMCs may be returned to the mariner. IOs may consult with the physician attesting to the mariner's fitness concerning a mariner's prior medical history and shipboard duties for this purpose. Prior to releasing the medical history to the physician, the consent of the mariner shall be obtained. In certain instances, however, a proper evaluation will be considered to be beyond the scope of an IO's expertise and discretion. These instances include cases involving:

- Convulsive disorders, such as epilepsy;
- Psychiatric illnesses; and
- Complicated or conflicting medical data in which the mariner's ability to live and perform safely in a shipboard environment is unclear to IOs.

In such instances, and whenever IOs desire, the mariner's medical history, along with pertinent physician's evaluation, and the IO/OCMI case remarks shall be forwarded to Commandant (CG-5451) who will request a determination from the Chief of the Medical Branch at the National Maritime Center. If it is determined that the mariner is permanently not fit for sea duty, the MMC shall be returned and a complaint for incompetence shall be issued.

C.16. GOOD-FAITH DEPOSITS

Mariners may make a "good-faith" deposit of his/her MMC(s) to IOs conducting an investigation, when the mariner desires that any action be taken at a different port,



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or when the mariner requests a delay for any reason and the IO agrees. This process ensures the mariner's appearance at another time or place. IOs should agree to a change of date or location only if satisfied that it will not prejudice the government's position. Before agreeing to a change IOs should consider the availability of witnesses and the reliability of documentary evidence. Transfer of jurisdiction strictly for the convenience of the mariner should be done only if the mariner is willing to make a good-faith deposit; otherwise, a complaint should be issued. In cases for which there is evidence of misconduct, when the mariner requests that the case be transferred to another CG unit, IOs should issue a complaint; at the initial hearing, the mariner can request a change of venue (location) from the ALJ. The ALJ can so order, provided that change of venue will not adversely affect the government's case and is not requested solely for purposes of delay. In cases when the sailing of a vessel precludes immediate convening of a hearing, subpoenas should not be issued to compel attendance. Rather, the investigative file should be forwarded to the OCMI at the port of destination, with a request for an IO to meet the vessel. A good-faith deposit shall not be accepted from a mariner who must continue to serve under his/her MMC(s) in order to meet the vessel's obligations or if the mariner is attempting to complete an alcohol/drug rehabilitation program. A written agreement may be executed on Form CG-2639I, in duplicate. Both copies shall be signed in ink by the mariner, the IO, and any witnesses. A copy shall be given to the mariner and the other copy maintained in the unit case file. The unit copy of the form shall be scanned and attached to the MISLE enforcement activity as correspondence. IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity requesting that the mariner's record be locked while the MMC is on deposit. Form CG-2639I is available within the investigations community of CG Central and in the CG electronic forms library.

C.17. VOLUNTARY SURRENDER

46 CFR 5.203 contains provisions for voluntary surrender of MMCs in lieu of a hearing to answer a complaint. Before agreeing to accept voluntarily surrendered MMCs, IOs shall ensure that the mariner is:

- Shown a copy of the complaint, and informed the ability to request a time and place for a hearing before an ALJ;
- Advised of the right to counsel at the hearing; and
- Informed of the possible consequences, favorable and unfavorable, of a hearing.

Before accepting a voluntary surrender of a MMC for any act or offense, IOs should inform the mariner that a voluntary surrender is equivalent to a revocation; the only means for the mariner to be allowed to apply for a new MMC is through the administrative clemency process (see 46 CFR 5.901). [NOTE: The Commandant reserves the right to return any MMCs which have been voluntarily surrendered.] IOs shall ensure that the mariner understands the rights and the consequences indicated above before entering into a voluntary surrender agreement. A written agreement may be executed on Form CG-2639E, in duplicate. Both copies shall be signed in ink by the mariner, the IO, and any witnesses. A copy shall be given to the



mariner and the other copy maintained in the unit case file. The unit copy of the form shall be scanned and attached to the MISLE enforcement activity as correspondence. IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity requesting that the mariner's record be locked due to the mariner surrendering the MMC. The notification should also state that the MMC was destroyed or clearly defaced as void/invalid (for cases involving possible criminal charges for forgery). Form CG-2639E is available within the investigations community of CG Central and in the CG electronic forms library.

D. DEFAULTS

D.1. INTRODUCTION The default process replaced the *in absentia* hearing in the S&R process.

D.2. REGULATIONS The regulations that pertain to defaults are found in:

- Default by Respondent; 33 CFR 20.310
- Failure to Appear; 33 CFR 20.705

**D.3. WHEN TO
FILE A DEFAULT
MOTION**

IOs may file a default motion if the respondent fails to file a timely answer to the complaint without a showing of good cause for not timely answering the complaint. If an answer from the respondent is not received within 25 days of serving the complaint, IOs should contact the Docketing Center. If the respondent has not filed an answer, the clerk will supply a certificate of answer attesting that no answer was filed.

**D.4. THE DEFAULT
MOTION**

IOs must file a motion to obtain a default order. The motion must conform to the requirements of 33 CFR 20.302 (Filing of Documents), 20.303 (Form and Content) and 20.304 (Service). The motion must also include a proposed decision. A default motion template is available within the investigations community of CG Central. IOs must file the motion with the Docketing Center, file a copy with the ALJ assigned to the case (if an ALJ has been assigned), and serve a copy on the respondent. IOs must serve a copy on the respondent in person, via certified mail or by express-courier service that has receipt capability (*i.e.* FedEx, DHL, etc.). IOs must also include proof of service of the complaint with the motion for default. If the complaint was served in person, the certificate of service for the complaint should be submitted as proof of service.

**D.5.
RESPONDENT'S
RESPONSE**

The Respondent has 20 days to file a reply to the default motion.

**D.6. PROOF OF
SERVICE OF MOTION
FOR DEFAULT**

Until MISLE requires electronic filing of the motion with the Docketing Center, IOs must submit a certificate of service when filing the motion with the Docketing Center. Except in the case of personal service, the certificate of service does not



show proof of service. Once proof of service is obtained IOs must file a return of service document with the Docketing Center that contains the proof of service of the motion.

D.7. ORDER

Upon finding the respondent in default, the ALJ issues a decision against the respondent. If the ALJ finds that the respondent had good cause not to answer or appear, the ALJ will set aside the finding of default.

D.8. SETTING ASIDE DEFAULTS

With relaxed service rules it is likely that defaults will be set aside (purged) if a respondent can establish that he/she was at sea or otherwise unavailable for legitimate reasons. Respondents can file a motion or a petition to reopen or set aside the default order at any time. If the respondent demonstrates good cause, the default may be set aside. The decision to set aside a default is solely at the ALJ's discretion. If IOs believes that the respondent deliberately avoided service, IOs should oppose the motion or petition. Otherwise, the respondent should be given an opportunity to be heard.

D.9. FAILURE TO APPEAR AT HEARING

If a respondent fails to appear at a hearing or conference, IOs may make a motion with the ALJ requesting that the ALJ enter a default against a respondent. The ALJ will issue an order to show cause why a default should not be entered. The respondent has 30 days to establish good cause for his/her failure to appear.

D.10. AUTOMATIC DISMISSAL OF COMPLAINT

A complaint will be automatically dismissed without prejudice 90 days after the answer period expires if an answer or default motion is not filed with the Docketing Center. If this happens IOs will need to reissue the complaint to the respondent.

E. SETTLEMENT AGREEMENTS**E.1. INTRODUCTION**

A settlement agreement is designed to expedite the administrative hearing process, not by pass it. In a hearing, the ALJ can only impose sanctions against the MMCs. A settlement agreement allows IOs to impose remedial actions such as specific training, or requirements for cure. IOs should review the case prior to making a decision on the use of a settlement agreement. If the MMC(s) are to be suspended or revoked, the respondent shall deposit his/her MMC(s) with the Coast Guard prior to signing the settlement agreement. Settlement agreements must not require routine reports or submissions to the ALJ during the settlement period. If IOs wants to review the respondent's reports at regular intervals during the settlement period, the settlement agreement should spell out those requirements. Ultimately, it is the respondent's responsibility to demonstrate successful completion of the terms of the agreement. A settlement agreement shall not be used when a complaint for professional incompetence is issued. Additionally, if an investigation indicates there was intentional misconduct or negligence that caused serious injury, death, major damage to property, or significant environmental damage, a settlement agreement should not be used. Questions concerning the proper use of settlement agreements



should be addressed to Commandant (CG-5451).

E.2. REGULATIONS

The regulations concerning settlement agreements can be found at:

- Conferences; 33 CFR 20.501
- Settlements; 33 CFR 20.502

E.3. WHEN TO FILE SETTLEMENT AGREEMENTS

IOs can file a settlement agreement at anytime after the complaint is filed. It can be filed with the complaint. If filing the settlement agreement with the complaint, ensure the respondent does not also file an answer. If filing a settlement agreement before an ALJ is assigned, the Docketing Center will assign an ALJ and send the settlement file to the ALJ's office. After an ALJ is assigned, parties should file settlement agreements directly with the assigned ALJ.

E.4. SETTLEMENT TYPES

In general, a settlement agreement allows IOs to impose remedial actions such as specific training, allows for the proof of cure of drug or alcohol use/addiction, or allows IOs to offer a mitigated sanction to mariners that have been cooperative and do not require remedial actions. Settlement agreement templates are available in MISLE and within the investigations community of CG Central.

E.4.a. Drug Use/Addiction

Mariners that have had no previous complaints for drug use/addiction proved, or who have not previously voluntarily deposited or surrendered their MMC(s) due to drug use/addiction may be offered a settlement agreement allowing them to prove cure. A mariner that has previously successfully completed the cure requirements shall only be offered a settlement to prove cure again, if it has been at least 3 years from the completion of the cure requirements and a Substance Abuse Professional (SAP), meeting the requirements of 49 CFR 40.281 or a Medical Review Officer (MRO), meeting the requirements of 49 CFR 40.121, has determined that the mariner is still a viable candidate for cure. If the mariner does not meet the above or if the positive chemical test was the result of require SMI testing IOs shall not offer a settlement and should instead take the case to a hearing seeking revocation. The mariner must admit to the jurisdictional and factual allegations of the complaint. To ensure a nationally consistent approach to dealing with drug users, the drug settlement agreement template approved by CG-5451 and available within the investigations community of CG Central and in MISLE shall be used. This standard agreement requires the respondent to provide proof of cure as defined in CDOA 2535 (SWEENEY), CDOA 2634 (BARRETTA) and CDOA 2638 (PASQUARELLA). The settlement agreement states that the MMC(s) are revoked, but that the revocation is stayed to allow the respondent to establish cure. The settlement agreement establishes a deadline for the respondent to enroll in, and



successfully complete an accredited drug rehabilitation program and provides that the stayed sanction of revocation takes effect immediately upon notice of non-compliance by IOs to the Docketing Center. IOs shall require that the respondent provide a minimum of 12 (this may be increased by IOs if the particulars of the case warrant) random, unannounced drug tests during the 1-year non-association period that commences after successful completion of the rehabilitation program, to be spread reasonably throughout the year, that are conducted in accordance with Department of Transportation procedures found in Title 49, Code of Federal Regulations (CFR), Part 40. The respondent shall be required to attend a substance abuse monitoring program (such as AA/NA) for a minimum period of one-year following successful completion of the drug rehabilitation program. At a minimum, the respondent should be required to attend at least 2 meetings a month, this may be increased by IOs if the particulars of the case warrant. The respondent is also required to obtain and file a copy of a letter from a MRO attesting that mariner is drug-free and that the risk of subsequent use of dangerous drugs is sufficiently low to justify the mariner's return to work. If a respondent fails a drug test while completing the rehabilitation program and requests that the time to complete the program be extended, IOs may extend the deadline subject to the provisions of E.5 below. The MRO must concur with the assessment that the respondent is still a viable candidate for rehabilitation. If a respondent fails one of the random drug tests required during the 1-year non-association period, IOs shall file a notice of failure to complete. If the respondent successfully completes all the requirements of the settlement agreement, the order will be modified to reflect that the MMC(s) was suspended outright for the period of deposit. The length of the suspension will be the time required to complete the drug rehabilitation program and the mandatory 1-year non-association period required after completion of the rehabilitation program (typically 13 – 15 months).

E.4.a.1. Amending Standard Drug Use Settlement Agreement

Mariner's that have completed an accredited drug rehabilitation program before a complaint has been issued or a settlement agreement offered should be given credit for the completion of rehabilitation. The drug use settlement agreement should be modified to reflect that the parties agree that the Respondent has successfully completed an accredited rehabilitation program. The mariner shall be required to demonstrate 1-year of non-association with dangerous drugs and their MMC(s) shall be in the Coast Guard's possession during the 1 year period. All drug use settlements must include the requirement for the Respondent to deposit his/her MMC(s) for a minimum of 1 year to demonstrate non-association.

E.4.b. Drug Conviction and Misconduct for Use, Possession, or Association

Settlement agreements may be offered to respondents convicted of drug related offense(s) and those issued a complaint for misconduct for use, possession, or association with dangerous drugs that meet the provisions of Sections B.9.b and



B.9.d respectfully with the exception of being able to demonstrate cure. If the respondent is shown by a recent evaluation of a SAP, meeting the requirements of 49 CFR 40.281, or a MRO, meeting the requirements of 49 CFR 40.121, or by other evidence to be a user of, or addicted to, dangerous drugs, the standard drug settlement agreement shall be used. If the respondent is shown by a recent evaluation of a SAP, meeting the requirements of 49 CFR 40.281, or a MRO, meeting the requirements of 49 CFR 40.121, to not be a user of, or addicted to, dangerous drugs, then the standard drug settlement agreement shall be amended by removing the requirement to enroll in and successfully complete a drug rehabilitation program and reducing the minimum number of random drug tests to 6 during the 1-year non-association period. All other conditions of the standard drug settlement agreement shall apply.

E.4.c. Alcohol Use/Addiction

Settlement agreements may be offered to respondents who are willing to admit to the jurisdiction and factual allegations of the complaint and desire to seek treatment for their alcohol related problems. If the alcohol use/addiction was discovered as the result of post casualty testing, IOs shall not offer a settlement and should instead take the case to a hearing seeking revocation. The following conditions shall be required of the respondent:

- Completion of a state or local government licensed or recognized alcohol rehabilitation program; and
- Participation in AA meetings for a one-year-period after completion of the rehabilitation program, at a minimum of two meetings per month.

Proof may be provided by submitting attendance records, certificates of achievement, or certification from his/her sponsor attesting to attendance and participation in support group meetings. The sanction for failure to comply with the above conditions should be revocation.

E.4.d. Mitigated Sanction With Conditions

IOs may offer a mitigated sanction with conditions to mariners that have been cooperative during the investigation and have made a good faith effort to reach compliance, but would benefit from additional remedial actions. Any remedial action proposed should be designed to correct the cause of the misconduct or negligence. Remedial training relating to the incident; and/or therapy or professional counseling. The settlement agreement shall have a table that lists the appropriate orders for compliance and non-compliance with the terms of the agreement. The sanction for non-compliance should match the proposed order from the complaint.

E.4.e. Mitigated Sanction

IOs may offer a mitigated sanction to mariners that have been cooperative during the investigation and have made a good faith effort to reach compliance and if their actions that led to the issuance of the complaint do not necessitate remedial actions



such as specific training, or requirements for cure. The mitigated sanction should be based on low end of the range from 46 CFR 5, Table 5.569 – “Suggested Range of an Appropriate Order.”

E.5. EXTENSION OF AGREEMENT

Settlement agreements that require conditions to be met within a specific timeframe may be extended by mutual agreement of the IO and the respondent for up to 90 days without the approval of the ALJ. IOs shall file a notice of extension of settlement agreement with the Docketing Center. If IOs opposes the extension of the agreement, the respondent shall be directed to file a motion with the ALJ requesting an extension, and IOs shall file a reply detailing the reasons in opposition of the extension. If the agreement needs to be extended by a period greater than 90 days, the party requesting the extension shall file a motion requesting the extension with the ALJ. A notice of extension of settlement agreement template is available in MISLE and within the investigations community of CG Central.

E.6. FAILURE TO COMPLY WITH AGREEMENT

The penalty for non-compliance shall be contained in the agreement and shall be self-effecting. Thus, if the respondent does not comply with the conditions of the settlement agreement the sanction is automatically imposed against the MMC(s). If IOs discover non-compliance with the terms of the settlement, IOs may file the notice of failure to complete settlement agreement with the Docketing Center immediately after discover of the non-compliance or may wait until the end of the period of the agreement to file such notice. The notice of failure to complete must be served on the respondent and a certificate of service filed with the Docketing Center at the time of filing the notice. The notice may be served by mail, personal delivery, fax, or express-courier service. A notice of failure to complete settlement agreement template is available in MISLE and within the investigations community of CG Central.

E.7. COMPLYING WITH AGREEMENT

If the conditions of the settlement agreement are complied with, IOs shall file a notice of completion of settlement agreement with the Docketing Center and the order will be modified to reflect the agreed upon sanction. The notice of completion must be served on the respondent and a certificate of service filed with the Docketing Center at the time of filing the notice. The notice may be served by mail, personal delivery, fax, or express-courier service. A notice of completion of settlement agreement template is available in MISLE and within the investigations community of CG Central.

F. HEARINGS**F.1. LEGAL ASSISTANCE**

Legal assistance can be requested from Area, MLC or District legal offices for any S&R case which the prosecuting unit needs assistance in preparing for the hearing or representing the Coast Guard at the hearing. Anytime a request for legal assistance is denied, notification of the denial shall be made to Commandant (CG-5451). Another source of legal assistance can be found at the 5 Sectors that are billeted



with an attorney in the Investigations division. The following Sectors have attorney billets: New York, Delaware Bay, New Orleans, Houston, and LA/LB. Coordination of the use of this resource should be made between the Senior Investigating Officers for the involved units.

F. 2. HEARING COSTS

The ALJ Docketing Center is responsible for costs associated with conducting a hearing. This includes transcripts, court reporters, and the hearing room.

F. 3. WITNESS FEES

Duly subpoenaed witnesses, other than Federal government employees may request payment for their attendance by submitting Standard Form 1157. The party that called the witness must pay witness fees. Fees and allowances will be paid as provided by 28 USC 1821, except that an expert witness may be paid a higher fee to be fixed by the District Commander. The unit shall request funding from their servicing Area, MLC or District legal office for paying all fees for witnesses subpoenaed by IOs. If funding is not available, the unit is responsible for paying the witness fees.

F. 4. PREHEARING INTERVIEWS

IOs should attempt to anticipate the sequence of events in the hearing. IOs should interview witnesses beforehand to evaluate the information that they will give under oath. The names, addresses, and telephone numbers of potential witnesses who were not subpoenaed previously should be readily available. If, during the course of the hearing, testimony from such persons is necessary, IOs may request a continuance of the hearing and issuance of subpoenas from the ALJ.

F. 5. EXPEDITED HEARINGS

46 USC 7702(d) authorizes the Coast Guard to temporarily suspend and take possession of a mariner's MMC(s) for up to 45 days. If this occurs, a hearing must be held within 30 days of the temporary suspension (i.e., CG taking possession of the MMC). The regulations that cover expedited hearings can be found in 33 CFR Part 20 (1201 – 1209). IOs must file the temporary suspension complaint with the Docketing Center immediately after it is served on the respondent. The rules for answers under 33 CFR 20.308 does not apply. The respondent will answer at a pre-hearing conference, which may be telephonic, the ALJ will schedule this conference as early as practicable. The respondent may file motions to have his/her MMC(s) returned and/or discontinue the expedited hearing and proceed under the normal hearing process (Subpart G of 33 CFR 20). The ALJ will issue a final decision within 45 days of the temporary suspension. The rules governing Appeals in Subpart J of 33 CFR 20 apply.

F.5.a. Pre-hearing Conference

At the pre-hearing conference, IOs shall be prepared to:

- Identify and simplify issues in dispute and prepare an agreed statement of issues, facts, and defenses;
- Establish simplified procedures;
- Discuss witnesses and exhibits (the ALJ will issue an order directing the



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exchange of witness lists and exhibits); and

- Schedule the hearing.

Any issues that remain in dispute after the pre-hearing conference will be adjudicated at a hearing conducted under Subpart G of 33 CFR 20.

F.6. DECORUM

The Commandant has long stressed the remedial nature of the hearing; thus, a balance of dignity and informality is desirable. Coast Guard personnel shall be attired in the uniform of the day and shall conduct themselves in an appropriate manner at all times. The ALJ may announce any special instructions for the hearing.

F.7. PRODUCTION OF MMCs

Since a complaint is typically issued against all MMCs issued to a mariner, the respondent must understand the requirement to bring all of his/her MMCs to the hearing. Failure to produce them will delay the orderly procedure of the hearing. For the record, the respondent shall be asked whether he/she has produced all MMCs that have been issued to him/her. Outstanding MMCs shall be produced prior to conclusion of the hearing or otherwise accounted for.

F.8. OFFENSES

F.8.a. Dismissal

If, at any point during the hearing, IOs determine that a complaint has been incorrectly issued to a mariner or that the complaint or factual allegation(s) has no basis, IOs shall move to dismiss the complaint/factual allegation, with or without prejudice. Dismissal with prejudice means that the respondent may not be issued a complaint again for that offense; dismissal without prejudice means that the respondent may be issued a complaint again for that offense at a later date. If it is determined that an offense was committed, but the complaint was incorrectly drafted or served, IOs should request dismissal without prejudice and issue a new complaint.

F.8.b. Amendment of Complaint at Hearing

The ALJ may, on his or her own motion or the motion of the Coast Guard or respondent, permit the amendment of the complaint and factual allegations to correct minor errors by deletion or substitution of words or figures, provided that a legally sufficient factual allegation remains. When errors of substance are found in the complaint or factual allegations, the ALJ shall order the defective complaint or factual allegation dismissed with or without prejudice. If dismissed without prejudice, IOs may then prepare and serve a new complaint/factual allegation on the respondent.

F.9. OPENING STATEMENTS

F.9.a. By the IO

If the respondent denies the complaint and allegations, IOs shall make a statement outlining the matters they expect to prove, including any relevant details that may not have been captured in the factual allegations. IOs should explain his/her theory of the case, the elements of the offense, and the evidence that will prove each element. If the respondent changes his answer and admits to the complaint and



allegations, the opening statement need only summarize the evidence upon which the complaint and factual allegations were based.

F.9.b. Opening Statement in Negligence Cases

Whether issuing a complaint against a mariner for actual or presumed negligence, IOs should briefly, but clearly, outline in the opening statement the basis for the Coast Guard's determination that the respondent's acts or decisions were negligent; the nature of the applicable standard of care by which the respondent's action were measured; and the exact nature of the evidence which will be presented to prove the allegation. The importance of this initial step in the hearing cannot be overemphasized. It affords IOs the first and best opportunity to focus the ALJ's attention on the exact issues the Coast Guard feels are pertinent and to begin establishing the validity of the Coast Guard's case.

F.9.c. By/On Behalf of the Respondent

The respondent or the respondent's counsel will have an opportunity to state the respondent's side of the case; this opportunity may be waived or deferred. If the respondent changes his answer and admits to the complaint and allegations the respondent or respondent's counsel may present evidence or make a statement regarding mitigating circumstances that he/she believes to be material. Should this evidence or statement be inconsistent with an answer of admit, the ALJ must reject the answer, change it to deny and proceed with the hearing.

F.10. EVIDENCE

33 CFR 20, Subpart H (20.801 – 809) contains the rules for evidence in a S&R hearing. See also Chapter B3 of this manual for a discussion of evidence. IOs and respondents may present their case or defense by oral, documentary, or demonstrative evidence; submit rebuttal evidence; and conduct any cross-examination that may be necessary for a full and true disclosure of the facts. Hearsay evidence is admissible in S&R proceedings; the ALJ will consider the fact that evidence is hearsay when determining its probative value. One difference between the old evidence rules in 46 CFR Part 5 and the rules in 33 CFR Part 20 is the limitation on the admissibility of admissions made by a Respondent. The rule is now limited only to casualty investigations conducted under 46 CFR Part 4. The exception for impeaching the credibility of the respondent's evidence still applies. Admissions made during all personnel action investigations are now admissible. *See* 33 CFR 20.1311

F.10.a. Prima Facie Evidence

Prima facie evidence is that which is sufficient on its face to establish a fact as alleged. For example, an official logbook entry concerning an offense enumerated in 46 USC 11501, made in substantial compliance with 46 USC 11502 will establish, prima facie, the facts it contains. A prima facie case, by contrast, is a collection of evidence that is sufficient for a finding that a factual allegation is proved. However, it is subject to rebuttal by the defense, after which the ALJ must decide whether to



believe all the evidence of the prima facie case. An official logbook entry does not establish a prima facie case unless it contains every element of the factual allegation. IOs have the burden of proving the case by a preponderance of the evidence [See CDOA 2472 (GARDNER)].

F.10.b. Standard Of Care in Negligence Cases

IOs may establish an applicable standard of care in several ways. These include, but are not limited to, submission of expert witness testimony concerning prudent marine practices; reference to existing laws or regulations such as the Navigation Rules or navigation safety regulations which require specific acts under various conditions; reference to existing CDOAs which address prudent marine practices; reference to other well known publications which address the subject such as; Griffin On Collision, Knight's Modern Seamanship, Tug, Tow and Pilotage, and United States Coast Pilots.

F.10.c. Presumption of Drug Use

46 CFR 16.201(b) establishes a presumption that an individual who test positive in a drug test conducting under Part 16 will be presumed to be a user of dangerous drugs. IOs, in order to establish the presumption, must prove:

- That the respondent was the individual who was tested for dangerous drugs;
- That the respondent failed the test; and
- That the test was conducted in accordance with Part 16.

This proof establishes a prime facie case of use of a dangerous drug and shifts the burden of going forward with evidence to the respondent to rebut this presumption. In considering the proof of all the above elements, it should be kept in mind that minor technical infractions of the regulations do not violate due process unless the infraction breaches the chain of custody or violations the specimen's integrity. If the respondent produces no evidence in rebuttal, the ALJ may find the complaint of use of a dangerous drug proved on the basis of the presumption alone. See CDOA 2603 (HACKSTAFF), 2592 (MASON), 2584 (SHAKESPEARE), 2560 (CLIFTON), 2555 (LAVALLAIS), 2379 (DRUM) and 2279 (LEWIS).

**F.11. OFFICIAL
MARINE RECORDS**

IOs, the Coast Guard representative, any other commissioned officer of the Coast Guard, or any official custodian of extracts from shipping articles, logbooks, or records in the custody of the Coast Guard may authenticate and certify the extracts. Authentication and certification must include a statement that the person authenticating the record has seen the original, compared the copy with it, and found the copy to be a true one. This person shall sign his/her name and identify himself/herself by rank or title and by duty station.

F.11.a. Shipping Articles, Form CG-705A, 735T, Or Equivalent

These constitute the contractual agreement between the master and members of the crew; 46 USC 10302 sets forth the particulars to be included for foreign or



intercoastal voyages (See NVIC 1-86). When the vessel will be making a foreign voyage, they are referred to as "foreign" articles; when the vessel is engaged on a coastwise voyage, they are called "coastwise" articles.

F.11.b. Official Logbooks

Under 46 USC 11301, vessels making foreign and intercoastal voyages are required to have an "Official Logbook" and to make certain entries in them. Logbook entries may be introduced at hearings. Those concerning offenses listed in 46 USC 11501 and made in accordance with 46 USC 11502 may constitute prima facie evidence of the facts they recite. Official logbook entries concerning offenses that are not enumerated in 46 USC 11501 do not constitute prima facie evidence. Nevertheless, if the entry is made in substantial compliance with 46 USC 11502, it is admissible and may receive added weight from the ALJ. [NOTE: If logbook entries are relied upon to prove a factual allegation, they should be examined carefully to ensure that they recite sufficient facts to prove all matters alleged. The bare conclusion, even in a logbook, that the mariner committed a certain offense, is not sufficient.]

Photocopies shall be certified on the reverse side as in the following example: "I hereby certify that I have seen the original logbook and that the obverse of this sheet is true and correct copy of page 47, book I, the Official Logbook of the (vessel name), for the voyage commencing February 1, 1994 [dated and signed by the IO, including rank and duty station]." When the extracts are typewritten, only those entries pertinent to the case need be extracted. They shall be certified as in the following example: "I hereby certify that I have examined the Official Logbook, compared the above extract with it, and found it to be a true and correct copy of all entries pertaining to [name] on page 17, book II of the Official Logbook of the (vessel name) for the voyage commencing June 31, 1995 [dated and signed by the IO, including rank and duty station]."

F.11.c. Other Logbooks

Deck logs, weather logs, engineroom logs, and etc., may be introduced as evidence. The ALJ may admit any relevant oral, documentary, or demonstrative evidence, unless privileged. Relevant evidence is evidence tending to make the existence of any material fact more probable or less probable than it would be without the evidence.

F.11.d. Use Of Foreign Records

An official record or document of a foreign country may be evidenced by an authenticated copy, summary, or excerpt, under the Federal Rules of Evidence, Rule 902(3). That Rule provides that foreign records may be authenticated by a certificate made by a secretary of an embassy or legation, a consul general, consul, vice consul, or consular agent of the U.S. and authenticated by the seal of that person's office. A foreign official, so authorized by the laws of that official's country may also authenticate his or her country's documents. In many cases, properly authenticated foreign records of court actions, hospitalizations, etc., are important evidence. Prior to the hearing, IOs should make every reasonable effort to obtain such records.



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Foreign records must be translated, as necessary, and authenticated by an appropriate official. Assistance may be obtained from the servicing District legal division.

F.12. OFFICIAL NOTICE.

33 CFR 20.806 authorizes the ALJ to take official notice of such matters as could courts, or of other facts within the specialized knowledge of the Coast Guard as an expert body. IOs should use this mechanism whenever appropriate to further focus the ALJ's attention on areas of relevant interest, whether specified in regulation or not.

F.13. WRITTEN TESTIMONY

33 CFR 20.808 allows the ALJ to enter into the record the written testimony of a witness. The principal requirement is that the other party must be supplied with the testimony prior to the hearing and the witness must be made available for cross-examination that can be written as well. The statement must be sworn to, or affirmed, under penalty of perjury. Such testimony is useful for expert witnesses and technical witnesses. It is not very useful for witnesses who are testifying as to what they saw or heard.

F.14. EXAMINATION OF WITNESSES.

Testimony at hearing sessions may be received from witnesses actually present or telephonically from witnesses whose attendance is not available. Telephonic testimony is authorized by 33 CFR 20.707 and ALJs have been encouraged to use this means to assist in achieving financial savings and judicial efficiency. The specifics should be resolved via a pre-hearing conference or at a hearing session prior to the call being initiated. Experience has shown this means to be effective for "routine" testimony from distant witnesses including those aboard vessels equipped for voice communications via satellite. Telephone testimony becomes more complicated when complex legal issues and/or exhibits are involved. The following examination procedures apply whether witnesses are present or their testimony is taken via telephone.

F.14.a. Preliminary Examination

IOs have the burden of establishing a prima facie case by the introduction of testimony of witnesses and documentary evidence (such as excerpts from Official Logbooks). When issuing subpoenas for witnesses, IOs must consider the time necessary for direct and cross-examination, to conserve the time of all parties involved. For example, if IOs believe that the testimony of a single witness will consume most of a day, IOs should avoid summoning other witnesses for that day.

F.14.b. Direct Examination

IOs must present evidence from witnesses through proper questioning; IOs should be aware of the testimony that can reasonably be expected from the Coast Guard's witnesses. It is helpful to have a prepared outline of the questions that will be asked of each witness. This enables IOs to review those questions in advance to ensure they are not legally objectionable. In questioning a witness, IOs must avoid "leading the witness"; that is, asking questions that suggest a desired answer. Before



questioning a witness with respect to a document to be entered into evidence, IOs must "lay a foundation" by showing the document to the witness and asking if the witness recognizes it and, if so, what he/she recognizes it to be; the document is then submitted into evidence. If the document is admitted into evidence by the ALJ, IOs may thereupon question the witness with respect to the document. If there is an objection, either to the form of a question or to an answer by the witness, the ALJ will afford an opportunity to both sides to argue on the validity or non-validity of the objections. All factual allegations must be proved through direct examination of witnesses and introduction of evidence.

F.14.c. Cross-Examination

When the Coast Guard has completed questioning the witness, the defense may cross-examine. The scope of cross-examination should be confined to matters brought up in the direct examination, although proper questions may be asked to impeach the credibility of the witness. As a practical matter, however, respondents (and non-professional counsel) frequently introduce matters not brought out in direct examination. Although this is technically improper, it may be allowed unless the issue becomes so clouded that the record is distorted or unnecessarily expanded. Leading questions are proper on cross-examination and may be employed freely, except for the purpose of eliciting new matter.

F.14.d. Re-cross And Redirect Examination

After cross-examination, IOs may question the witness further on redirect examination; the respondent may then re-cross-examine. There is no limit to the number of times that either party has to examine a witness, although parties are generally satisfied with a brief redirect or re-cross-examination. However, ALJs may limit re-examination. In particular, redirect is often restricted to matters included in the preceding cross-examination.

F.14.e. Respondent's Rebuttal in Negligence Cases

When only a presumption of negligence exists, IOs have the discretion to determine whether or not a complaint should be issued. As previously indicated, this decision should be based on a careful evaluation of all pertinent information available. However, if a complaint is issued and the respondent presents evidence at a hearing concerning his version of events, IOs should be ready to rebut that evidence. IOs should not rely on the ALJ to announce during the hearing whether the respondent has provided a "credible, no-fault explanation" for his actions. IOs should therefore expect as a worst-case scenario that the ALJ will consider the presumption of negligence to have been rebutted and that the burden to proceed will shift back to the Coast Guard. At a minimum, IOs should be well prepared to strenuously cross-examine the respondent and/or the respondent's witnesses. Other options include the calling of Coast Guard rebuttal witnesses, expert or otherwise, and the presentation of any additional Coast Guard rebuttal evidence, to counter the respondent's explanation.



F.14.f. ALJ's Examination/Excusal Of The Witness

The ALJ may, at any time, question a witness to clarify the issue before the ALJ. It is suggested that the ALJ wait until both direct and cross-examination are completed. When both parties and the ALJ have concluded their examination, the witness should be excused. The witness shall be admonished not to discuss the testimony, or any matter of which he/she has become aware through the hearing, with anyone until the conclusion of the hearing or unless directed to do so by competent authority.

F.14.g. Medical Evidence In Incompetence Cases

The testimony of a physician or clinical records may not be required in all hearings. When such evidence is necessary for the presentation of the Coast Guard's case, and is so ordered by the ALJ, the costs associated with the examination and production of records or testimony will be borne by the Coast Guard. The respondent may produce medical evidence in his/her own behalf, at his/her expense. If the respondent fails, or refuses, to undergo any such examination, the failure or refusal receives due weight and may be sufficient for the ALJ to infer that the results would have been adverse to the respondent.

**F.15.
CONTINUANCES AND
ADJOURNMENTS**

For good cause IOs or the respondent may move by making a motion to "continue" the hearing from day to day, or to adjourn the hearing to another date or location. In ruling on this motion, the ALJ must first consider the future availability of witnesses and the prompt dispatch of the vessel(s) involved. When the respondent makes such motions, IOs should prepare to counter them if such an order would be detrimental to the Coast Guard's case. When a hearing is continued or adjourned, the ALJ will return all MMC(s) to the respondent upon demand, provided that a prima facie case has not been established that the respondent poses a definite danger to the safety of life or the vessel. In CDOA 2535 (SWEENEY) and CDOR 18 (CLAY), the Commandant determined that when the Coast Guard proves use of an illegal drug, the mariner poses a threat to public health, public safety, and safety of life at sea until he has proven he is cured. Therefore, in drug use cases IOs should enter a motion requesting the ALJ to retain the MMC(s) during the continuance or adjournment. See CDOA 2638 (PASQUARELLA).

**F.16.
DISPOSITION OF
MMCS WHEN
REVOCATION IS
STAYED PENDING
CURE**

When an individual has initiated the process of cure, but has not completely satisfied the specific requirements outlined in CDOA 2535 (SWEENEY), 2634 (BARRETTA), and 2638 (PASQUARELLA) the ALJ may enter a finding of proved and an order of revocation, but stay this order to allow the individual to complete cure. In accordance with 46 CFR 5.707(a), persons who's MMC(s) have been revoked as a result of dangerous drug use are not entitled to temporary MMC(s) while the revocation is being appealed. Similarly, persons who are seeking a continuance of a hearing in order to complete cure shall not be entitled to the use of their MMC(s) during the continuance and their MMC(s) shall be deposited with the Coast Guard until they have met the cure requirements. This was first addressed in Commandant Decision on Review #18 (CLAY). In that case, the Commandant



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held that once a *prima facie* case of illegal drug use is established to the satisfaction of the ALJ, the mariner poses a danger to public safety such that sufficient cause exists to withhold the license or document until cure is complete. This decision recognized clearly that once it is proved that the mariner used an illegal drug, the license or document must be revoked, or, in the alternative, the license or document must be withheld until the respondent proves that he or she is cured. This position was also stated in CDOA 2638 (PASQUARELLA), which stated "To be clear on this issue, an ALJ cannot direct the return of a mariner's credentials until the mariner has obtained an MRO determination in accordance with 46 CFR 16.201(f) and both steps of the SWEENEY and CLAY cure process have been satisfied." OCMI's shall immediately advise Commandant (CG-5451) of any request for issuance of temporary MMC(s) or return of MMC(s) during a continuance that does not conform to this policy.

F.17. MOTION TO DISMISS

IOs present evidence first, and then rests their case. At the conclusion of the Coast Guard's presentation, the respondent may move to have any or all of the offenses from the complaint and factual allegations dismissed on the grounds that the evidence fails to establish a *prima facie* case against the respondent. This motion may be made orally during the hearing, or in writing. Usually, this argument is a summation of all of the evidence submitted by the Coast Guard with the conclusion that the evidence is insufficient to prove the offenses and factual allegations; IOs may submit an oral or written rebuttal of this claim. The ALJ may deny or grant any or all such motions, or may reserve a decision until the defense has completed its case. In deciding on the motion, the ALJ will determine if there is any substantive evidence that properly and reasonably establishes all essential elements of the offense or factual allegation in question. If substantive evidence of the offense or factual allegation exists, the motion will be denied.

F.18. RESPONDENT ACTIONS.

The respondent's case is presented in the same manner as the Coast Guard's except that the examination roles are reversed (the Coast Guard has the right of cross-examination). When an attorney represents the respondent, the ALJ will usually refrain from direct involvement in the presentation of the defense. In those cases where a respondent represents himself/herself, or is represented by someone who is not an attorney, the ALJ may interject during the hearing to ensure that all relevant facts within the witness' knowledge are presented. When the testimony of the last defense witness is completed, the ALJ will ask the respondent if he/she "rests"; if the answer is affirmative, no further testimony will be taken for the respondent. A list of common objections and a brief description of each can be found at the end of this chapter. (See Figure C4-5: Common Witness Objections.)

F.19. REBUTTAL.

When the defense has rested, the ALJ will afford the Coast Guard an opportunity to present evidence to rebut the defense testimony. IOs should make full use of the rebuttal process to further strengthen the case or impeach the testimony of witnesses, including the respondent's. Care should be taken that this presentation is



truly rebuttal evidence, not a reopening of the Coast Guard's case.

F.20. CLOSING ARGUMENTS

After all evidence has been presented, the parties may present oral or written argument in the following order:

1. Opening summation by the Coast Guard;
2. Argument by the respondent or the respondent's counsel; and
3. Closing argument by the Coast Guard.

F.21. ARGUMENTS IN MITIGATION OR AGGRAVATION

IOs may enter the mariner's prior disciplinary record in argument of mitigation or aggravation of the sanction. In addition to obtaining a mariner's MERMARPER, IOs should also verify the mariner's S&R and civil penalty history in MISLE. IOs may also include a recommended order to the ALJ. The recommendation can be amplified by calling particulars of past offenses to the attention of the ALJ. For example, a finding of "Proved" in an assault and battery case may be argued to be aggravated because of the mariner's prior record of assault and battery, which demonstrates a tendency for repeated violence. IOs may also offer evidence of other matters in aggravation such as a pilot's disciplinary record with a state pilot commission. In accordance with 33 CFR 20.1315, IOs may also enter as part of the mariner's prior record, information concerning the following:

- Any written warning issued by the Coast Guard and accepted by the respondent;
- Final agency action by the Coast Guard on any S&R proceeding in which a sanction or consent order was entered;
- Any agreement for voluntary surrender entered into by the respondent;
- Any final judgments of convictions in State or Federal courts;
- Final agency action resulting in civil penalty or warning being imposed against the respondent in proceedings administered by the Coast Guard under 33 CFR 1.07; and
- Any official commendatory information concerning the respondent of which the Coast Guard is aware.

The respondent may offer evidence of, and argument on, prior maritime service, including both the record introduced by IOs and any commendatory evidence. The respondent may offer evidence and argument in mitigation of any charge proved, and IOs may offer evidence to rebut the respondent's evidence and argument.

F.22. PROPOSED FINDINGS

Proposed findings of fact and conclusions of law may be filed with the ALJ who will establish a schedule for filing at the conclusion of the hearing. This is an optional filing. Failure to comply within this time will be regarded as a waiver of this optional filing.

F.23. ORAL

If both sides waive proposed findings and the case is simple, the ALJ may issue an



DECISIONS

order from the bench. The order is in writing but the findings of fact, conclusions, and reasons are oral. If parties wish a copy, they will be transcribed by the ALJ's office.

F. 24. DECISION & ORDER

The order will normally apply to all licenses, certificates, and/or documents, except that in cases of negligence or professional incompetence, the order may be directed against specific licenses or documents in qualified ratings. The period of suspension should be described in terms of specified time periods, not specific dates. *See* 46 CFR 5.567(c) and (e). An order of revocation or outright suspension must direct the respondent to surrender his/her license, certificate and/or document immediately upon service of the order to the Coast Guard. *See* 46 CFR 5.567(d). Failure to comply may subject the respondent to penalties prescribed by 18 USC 2197. In cases involving special circumstances, the surrender may be ordered on a certain date. *See* 46 CFR 5.567(d). **Note:** ALJs have the authority to tailor an order appropriately in cases involving seasonal activity. *See* CDOA 1793 (FARIA), 1883 (TREVOR), 1887 (VIGILANT), and 2475 (BOURDO). The following table lists the possible outcomes and orders.

If the allegations are...	Then the ALJ...
Proved	Can order any of the following: <ul style="list-style-type: none"> ➤ an admonition (setting forth the offense(s) for which the Respondent is admonished) ➤ outright suspension ➤ suspension on probation ➤ combination of both ➤ stayed revocation ➤ revocation
Proved and are in violation of a previously-ordered period of probation	Issues the order, noting that the previously ordered probation is revoked, and the sanction remitted on such probation is in force and represents a part of the sanction ordered in the instant case. <i>See</i> CDOA 2481 (CROWLEY)
Proved and concerns cases of negligence	May issue an order directed against specific licenses or documents in qualified ratings. <i>See</i> 46 CFR 5.567(b)
Proved and the ALJ determines that the respondent is professionally incompetent in the grade of the license, or certificate he or she holds, but is considered competent in a lower grade	May issue an order revoking the current license, or certificate and ordering the issuance of one in a lower grade
Not proved	Must issue an order of dismissal

F. 25. ORDERS

In the event an order is tailored to include a specific period of probation, the



**INCLUDING A
 SPECIFIC
 PROBATIONARY
 PERIOD.**

respondent should be admonished:

If...	Then...	And ...
You violate the terms of this probation	The Coast Guard may bring a suspension and revocation proceeding against you	The suspended period of suspension may be put in force.
Another suspension and revocation proceeding is proved for violations during the period of probation	The Coast Guard will request that the probationary suspension be enforced	The minimum period of suspension that can be ordered is [period of probationary suspension]. The actual period will likely be higher.

G. POST-HEARING PROCEDURES .

G.1. REVIEWING THE CASE

IOs should carefully review the case to see if any information should be forwarded to other units for action, e.g. District program managers should be sent all information pertaining to activities under their control (e.g., cases involving damage to aids to navigation should be brought to the attention of the District aids to navigation branch). IOs shall maintain close liaison with ALJs's staffs to assist, as necessary, in assuring that D&O's are served and that orders for outright suspension or revocation are complied with. If attempts for service and/or, when applicable, surrender is unsuccessful; IOs shall add the mariner to the MISLE Wanted List.

G.2. COMPLETED CASE FILE

When final personnel action has been completed, IOs shall review the case file and remove unnecessary material, such as notes or reminders, intraoffice notes expressing unsubstantiated opinions, and the like. The requirements of the Freedom of Information Act (FOIA), Privacy Act, and the regulations promulgated there under should be considered in reviewing the file. After receipt of a request for release of a file, it is highly improper to remove any part of it (see Volume I of this manual). The official record of all S&R proceedings is maintained at the ALJ Docketing Center. The unit copy of the case file shall be maintained in accordance with the Information and Life Cycle Management Manual, COMDTINST M5212.A (series).

G.3. NOTIFYING

NMC shall be notified following the below procedures when personnel action



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**NMC OF PERSONNEL
ACTIONS**

results in any of the following sanctions:

- Letter of warning has been issued and accepted;
- MMC has been suspended;
- MMC has been revoked;
- Mariner has voluntarily surrendered MMC; or
- Mariner has voluntarily deposited MMC.

IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity. The following information will automatically be included in the notification:

Subject line: PERSONNEL ACTION: LAST NAME, FIRST NAME, MIDDLE NAME, SSN

Text of email:

IDENTIFICATION:

- 1) Merchant Mariner's License and/or MMD Number
- 2) Merchant Mariner's MMLD Reference Number (ref number is found when you access the Party File via MMLD in MISLE)

ACTIVITY NUMBER: MISLE enforcement activity #

REASON FOR NOTIFICATION: Select "Sanction Imposed" on the options window after selecting the "Notify NMC" button within the MISLE Enforcement Activity and amend the standard text, if necessary, to clearly convey the applicable information to NMC.

- Sanction Imposed. Standard text: A sanction of [warning, deposit, surrender, suspension, or revocation (mapped from the imposed sanction tab)] has been imposed against subject mariner's [MMC info, mapped from Party ID tab].

It is imperative for NMC to receive this data promptly to prevent the possible issuance of duplicate MMCs. When any mariner's MMCs is suspended, surrendered or revoked for any reason and not delivered into Coast Guard custody, this fact should also appear in the notification as well as a statement as to the disposition of the MMC (i.e., MMC destroyed or clearly defaced as void/invalid).



**G.4. DEPOSIT OF
MMCs AFTER
SUSPENSION**

When an ALJ issues an order that the MMC(s) are to be suspending for a period of time, the MMC(s) shall be deposited with the cognizant OCMI. A receipt shall be issued to the mariner and the MMCs retained locally. The MMCs should be returned upon expiration of the suspension period by being picked up in person or by being sent by certified mail, return receipt requested, to the mariner or to someone so designated by the mariner in writing. IOs shall notify NMC via the notify NMC function in the MISLE Enforcement Activity that the MMC has been returned. Select “Sanction Satisfied” on the options window after selecting the “Notify NMC” button within the MISLE Enforcement Activity and amend the standard text, if necessary, to clearly convey the applicable information to NMC.

- Sanction Satisfied. Standard text: Subject mariner has satisfied the imposed sanction and their MMC was returned, please unlock mariner’s record.

However, it is contrary to the policy of the Commandant to return MMD's to seamen outside of the United States. This policy was initiated to prevent MMD's from falling into unauthorized hands. [NOTE: Mariners may be shipped as replacements at foreign ports without MMD's]. Any request for the return of MMD's to a foreign address shall be denied. Mariners claiming that their MMCs have been lost may apply for duplicates during the suspension period but duplicates shall not be issued until the suspension expires. The suspension period shall not start until duplicate MMC requests are filed with the appropriate REC. For mariners choosing not to apply for duplicate MMCs, a lost MMC affidavit shall be required in a form similar to Figure C4-2. The affidavit is to be signed in the presence of an IO or notarized. The original shall be scanned and attached to the MISLE enforcement activity as correspondence.

**G.5. DISPOSITION
OF MMCs AFTER
REVOCATION**

When an ALJ issues an order of revocation, the MMC(s) shall be surrendered to the cognizant OCMI. If the MMC(s) is not surrendered, IOs shall add the mariner to the MISLE Wanted List. Revoked MMCs should be held pending any appeal that may be made. If no appeal is made or, if an appeal made is unsuccessful, revoked MMCs shall be destroyed or for cases involving possible criminal charges for forgery, the MMC shall be clearly defaced as void/invalid and maintained in the case file. If the mariner claims that his or her revoked MMCs were previously lost, he/she shall be required to file a lost MMC affidavit in a form similar to Figure C4-2. The affidavit is to be signed in the presence of an IO or notarized. The original shall be scanned and attached to the MISLE enforcement activity as correspondence.

**G.6. REOPENING A
HEARING**

G.6.a. Added Evidence.

33 CFR 20.904(a) allows the ALJ to reopen the record if it is believed that any change in fact or law warrants it, or that in the public’s interest the record should be reopened to take added evidence. Any party may move to reopen the record within 30 from the closing of the record. The motion to reopen must clearly state the facts and the grounds for the reopening request. If the respondent files a motion to reopen, IOs, if opposing the motion, must file a response, failure to do so will waive



the objection.

G.6.b. Setting Aside Conviction

33 CFR 20.904(e)(1) provides that the respondent may at any time file a petition to reopen the record for the ALJ to rescind any order suspending or revoking a MMC(s) if the order was the result of a conviction for:

- A violation of a dangerous-drug law;
- A violation of an offense that would prevent the issuance or renewal of the license, certificate, or document; or
- A violation of an offense described in subparagraph 205(a)(3)(A) or (B) of the National Driver Register Act of 1982 (49 USC 30304).

The respondent must submit a specific order of the court that states the conviction has been unconditionally set-aside for all purposes. However, the ALJ may not rescind the order on account of any law that provides for a subsequent conditional setting-aside, modification, or expunging of the order of the court, by way of granting clemency or any other relief after the conviction has become final, whether or not punishment was imposed.

G.6.c. Proof of Cure After Revocation Due to Drug Use

33 CFR 20.904(f) provides that the respondent may file a motion with the Docketing Center within three years of the hearing to have the hearing reopened to modify an order of revocation. This affords the respondent an alternative method to seek authorization to be issued a new MMC following the provisions of Title 46, Code of Federal Regulations, Part 5, Subpart L (5.901-5.905), and may be used in lieu of the Part 5 process (see Chapter C5 for additional guidance).

H. APPEAL PROCESS

H.1. INTRODUCTION The Coast Guard as well as the respondent has a right of appeal. IOs can also file a brief when respondent appeals an ALJ decision.

H.2. REGULATIONS Regulations concerning appeals can be found at:

- Appeals; 46 CFR Subpart J (5.701 – 5.715)
- Appeals; 33 CFR Subpart J (20.1001 – 20.1004)

H.3. WHEN AND WHERE TO FILE AN APPEAL. Notices of appeal and briefs are filed at the ALJ Docketing Center. A party can file after the ALJ issues the decision and order in the case. The notice must be filed within 30 days of service of the decision.

H.4. WHAT CAN BE Parties can appeal the following issues:



APPEALED

- Whether each finding of fact is supported by substantial evidence.
- Whether each conclusion of law accords with applicable law, precedent, and public policy.
- Whether the ALJ abused his or her discretion.
- The ALJ's denial of a motion for disqualification.

H.5. STEPS TO FILING AN APPEAL.

The following table lists the steps to filing an appeal:

Step	Action
1	File a notice of appeal within 30 days of issuance of decision.
2	Request a transcript from the ALJ Docketing Center.
3	Prepare your brief. The brief must detail the: <ul style="list-style-type: none"> (i) basis for the appeal; (ii) reasons supporting the appeal; and (iii) relief requested in the appeal. When you rely on material contained in the record for the appeal, the appellate brief must specifically refer to the pertinent parts of the record.
4	File your brief with the Docketing Center within 60 days of issuance of decision. If you cannot make the deadline, request an extension.
5	Review the reply brief. If necessary, request leave to file an additional brief.

H.6. THE APPELLATE PROCESS.

The following table lists the major stages in the appellate process:

Stage	Description
1	Notice—must be filed within 30 days of decision.
2	Preparation Stage—review transcript and decision and write appellate brief.
3	Appellate Brief—must be filed within 60 days of decision.
4	Reply Brief—must be filed within 35 days of appellate brief.
5	Appellate record is forwarded from Docketing Center to Commandant (CG-0941).
6	CG-0941 prepares appeal decision for Commandant or Vice Commandant
7	Commandant or Vice Commandant review and approval.
8	Service of appeal decision.



- 9 Appeal to NTSB—must be filed within 10 days of service of Commandant’s decision.

H.7. APPEAL TO THE NTSB

The provisions in 49 CFR 825 allow appeals to the National Transportation Safety Board (NTSB) of decisions of the Commandant to sustain orders of suspension, revocation, or denial of Temporary MMCs. A stay of the suspension or revocation order may be granted when the mariner is otherwise eligible for temporary documents while the mariner appeals his/her case to the NTSB (see 46 CFR 5. 715). This permits the mariner to continue service while the appeal is pending (the same as when an appeal to the Commandant is pending).

H.8. APPEAL TO THE FEDERAL COURT

The appellant may further seek relief from an adverse decision in the federal court. When a mariner files suit in federal court seeking to have an adverse decision overturned, the servicing District legal division, Commandant (CG-5451) and (CG-0945) shall be immediately notified. Generally, mariners are required to exhaust all administrative remedies (that is, appeal to the Commandant and the NTSB) prior to filing such suits. The Coast Guard is bound by the decision of the court in such a case.

H.9. STAY OF DECISION AND ORDER OF ALJ DURING APPEAL TO COMMANDANT

Subject to the provisions of 46 CFR 5.707, temporary MMCs may be authorized while a mariner is appealing a decision to the Commandant. Temporary MMCs shall not be authorized when the order of revocation resulted from a complaint issued for an offense enumerated in 46 CFR 5.59. The request shall be made in writing and submitted to the ALJ who heard the case. If the transcript of the hearing record has been forwarded to the Commandant, the request shall be forwarded to Commandant (CG-5451). If the ALJ denies the request, the individual may appeal, within 30 days of the ALJ’s notification of the denial, to Commandant (CG-5451). The Coast Guard official (ALJ or CG-5451) taking action on the request must take into consideration whether the service of the individual is compatible with the requirements for safety at sea and consistent with applicable laws. Depending on the circumstances, the individual, for safety reasons, may only be permitted to serve in a lesser capacity than their regular license would otherwise authorize. The temporary license is distinct from the regular license. [See CDOA 2483 (TOMBARI)]. After authorization by the ALJ or the Commandant, temporary MMCs may be issued by the National Maritime Center (NMC) and the individual must meet any additional requirements deemed necessary by the NMC. Temporary MMCs are valid for a period not to exceed 6 months. Where the appeal process exceeds this period, the mariner may request renewal of any temporary MMCs by filing a request for extension with the Commandant (CG-5451). When granted, the expired MMCs shall be surrendered and a replacement issued for the period authorized. At the time of issuance, the previously issued MMCs shall be surrendered to the issuing REC or NMC and forwarded to Commandant (CG-0941) for inclusion in the appeal file. A temporary MMD shall be issued in the format shown in Figure C4-3. To allow the mariner to post the license in a conspicuous



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place, as required by 46 USC 7110, the temporary license is issued on Form CG-2849, License to U.S. Merchant Marine Officer. The face of the license is completed in the same manner as is an original, and is signed and dated by the OCMI or the OCMI's representative, with the following modification to be placed above the signature block: "Temporary License issued under 46 CFR 5.707, to expire six months from date of issue. This License replaces License Number 123456 issued at (PORT) on (DATE)." If the final decision on the appeal upholds the original order to suspend or revoke the mariner's MMCs, all temporary MMCs must be surrendered immediately. If the original MMC will expire in less than 6 months, the validity of the temporary MMC is limited accordingly. If the Commandant authorizes issuance or renewal of a temporary MMC but the original has expired, the licensee shall apply for renewal of the original MMC before the temporary MMC is issued.

**H.10. STAY OF
DECISION ON APPEAL
OF COMMANDANT
DURING APPEAL TO
THE NTSB**

Subject to the provisions of 46 CFR 5.715, temporary MMCs may be authorized by the Commandant while a mariner is appealing a decision to the NTSB. Temporary licenses shall be issued as described above, and temporary MMD shall be issued in the format shown in Figure C4-4. The temporary MMCs shall be valid for a maximum of 6 months (or until a decision has been reached). If review has not been completed and an order not served by the NTSB within 6 months, the temporary MMCs may be renewed as described above. At the time of issuance, the previously issued MMCs shall be surrendered to the issuing REC or NMC and forwarded to Commandant (CG-0941) for inclusion in the appeal file.

**H.11. SERVICE OF
SANCTION WHILE ON
APPEAL.**

A mariner who has surrendered his/her MMC to the cognizant OCMI, and then appeals a decision of an ALJ to the Commandant or a decision of the Commandant to the NTSB, immediately begins serving the imposed sanction provided he/she has not requested a stay of the ALJ's decision. If a stay is granted and the issuance of a temporary MMC is authorized, the mariner does not begin serving his/her sanction until all appeals are exhausted and, if issued, the temporary MMC is surrendered to the issuing OCMI. See NTSB decision EM-134 (SIMMONS).



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FIGURE C4-1: Notice of Suspension/Revocation

**U.S. Department of
 Homeland Security**

**United States
 Coast Guard**



Commanding Officer
 United States Coast Guard
 Sector San Francisco Bay

Building 14, Coast Guard Island
 Alameda, CA 94501-5100
 Phone: (510) 437-3149
 FAX: (510) 437-3072
 Email:

16722
 January 22, 200X

Mr. Joe Somebody
 57 High Street
 Oakland, CA 94501

**Subject: NOTICE OF SUSPENSION [REVOCATION] OF YOUR COAST ISSUED MERCHANT
 MARINER’S CREDENTIAL**

Dear Mr. Somebody:

This notice is to inform you that by order dated [date of D&O] of the U.S. Coast Guard Administrative Law Judge at Alameda, CA, your [Merchant Mariner’s Document / Coast Guard License / Certificate of Registry] Number [#####] was [revoked / suspended for XX months]. You are therefore precluded from operating under the authority of said credential. The Judge’s order is being sent to this office and will be delivered to you upon receipt. You are also cautioned that continued service under the above credential may be considered a violation of Title 18, United States Code, Section 2197, a crime punishable by fine or imprisonment for not more than five years, or both.

Sincerely,

NAME
 Rank, U.S. Coast Guard
 Position
 By direction



FIGURE C4-2: Lost Credential Affidavit

LOST CREDENTIAL AFFIDAVIT

1. I, _____, hereby notify the U.S. Coast Guard that I have lost the following listed Coast Guard issued Merchant Mariner's Credentials:

2. Circumstances concerning the loss, to the best of my knowledge, and my attempts to find the missing MMCs are as follows:_____

I further certify that if this (these), or any other Coast Guard issued MMCs are located, it (they) will promptly surrendered as directed by the order of the Administrative Law Judge issued

_____.

Dated

_____ Print name

_____ Signature



FIGURE C4-3: Temporary Merchant Mariner’s Document in accordance with 46 CFR 5.707

United States Coast Guard Temporary Merchant Mariner’s Document

Office: _____, Place: _____, Date: _____

(Mariner’s Name), the holder of MMD (MMD Number), having filed a written request with the Administrative Law Judge (ALJ), on (date), for the issuance of a Temporary MMD as a substitute for the document which the applicant held prior to the date of an order entered by a Coast Guard ALJ, on (date), the said applicant is hereby granted this Temporary MMD in accordance with Title 46, Code of Federal Regulations, 5.707. This Temporary MMD is considered identical in type and character to the applicant’s permanent document. This Temporary MMD is issued to be effective for a period of 6 months from the date of issuance hereof, and it will expire on (date) or upon service of the Commandant’s decision on the applicant’s appeal, whichever occurs first. If this MMD expires before the Commandant’s decision is rendered, it may be renewed upon request to any Coast Guard Officer in Charge, Marine Inspection.

WARNING: Title 18, Unites States Code, 2197 provides for severe monetary penalties and imprisonment of persons for unlawful use of this MMD. Use beyond its expiration date may subject the holder of this document to the penalties of the above statute and, in addition the holder may be subject to being issued a complaint for misconduct under the provisions of Title 46, U.S.C., Chapter 77. Upon expiration of this MMD, it shall be forthwith surrendered to the United States Coast Guard.

IDENTIFICATION

Merchant Mariner’s Document

Merchant Mariner’s Document

Issued at: _____

On: _____

Endorsed as:

Born: _____

Height: _____

Place: _____

Weight: _____

Citizenship: _____

Color Hair: _____

Social Security #: _____

Color Eyes: _____

Address:

Signature of Seaman

Issued By (Title)

THE ISSUANCE OF THIS MMD DEFERS THE RUNNING OF THE SUSPENSION/REVOCATION PERIOD ORDERED, UNTIL SUCH TIME AS THIS DOCUMENT IS SURRENDERED TO THE U. S. COAST GUARD.



FIGURE C4-4: Temporary Merchant Mariner’s Document in accordance with 46 CFR 5.715

United States Coast Guard Temporary Merchant Mariner’s Document

Office: _____, Place: _____, Date: _____

(Mariner’s Name), the holder of MMD (MMD Number), having filed a written request with the Commandant, U.S. Coast Guard, on (date), for the issuance of a Temporary MMD as a substitute for the document which the applicant held prior to the date of an order affirmed by the Commandant, on (date), the said applicant is hereby granted this Temporary MMD in accordance with Title 46, Code of Federal Regulations, 5.715. This Temporary MMD is considered identical in type and character to the applicant’s permanent document. This Temporary MMD is issued to be effective for a period of 6 months from the date of issuance hereof, and it will expire on (date) or upon service of the National Transportation Safety Board’s (NTSB) decision on the applicant’s appeal, whichever occurs first. If this MMD expires before the NTSB’s decision is rendered, it may be renewed upon request to any Coast Guard Officer in Charge, Marine Inspection.

WARNING: Title 18, Unites States Code, 2197 provides for severe monetary penalties and imprisonment of persons for unlawful use of this MMD. Use beyond its expiration date may subject the holder of this document to the penalties of the above statute and, in addition the holder may be subject to being issued a complaint for misconduct under the provisions of Title 46, U.S.C., Chapter 77. Upon expiration of this MMD, it shall be forthwith surrendered to the United States Coast Guard.

IDENTIFICATION

Merchant Mariner’s Document

Merchant Mariner’s Document

Issued at: _____

On: _____

Endorsed as:

Born: _____

Height: _____

Place: _____

Weight: _____

Citizenship: _____

Color Hair: _____

Social Security #: _____

Color Eyes: _____

Address:

Signature of Seaman

Issued By (Title)

THE ISSUANCE OF THIS MMD DEFERS THE RUNNING OF THE SUSPENSION/REVOCATION PERIOD ORDERED, UNTIL SUCH TIME AS THIS DOCUMENT IS SURRENDERED TO THE U. S. COAST GUARD.



FIGURE C4-5: Common Witness Objections (see: Trial Objections Handbook for more information)

Ambiguous - If you do not understand the question being posed to the witness.

Argumentative - A questioner may never argue with a witness.

Asked and Answered - If a question has been asked and answered already (i.e. the question is being repeated to emphasize a fact), it may not be asked again.

Assumes Facts not in Evidence - A question should not be based on assumptions that have not been taken into the record.

Beyond Scope of Testimony - Technically you may not cross-examine or redirect a witness on subjects not brought out in their testimony. However the ALJ has wide discretion to allow this if the goal is to impeach the witness.

Calls for Conclusion - Question calls for the witness to express and opinion.

Compound Question - Compound questions are two questions asked simultaneously. Witnesses should be asked single, simple questions.

Hearsay - Hearsay evidence under 33 CFR 20.803 is admissible; however the ALJ may consider the fact that the evidence is hearsay when determining its weight.

Immaterial - The question must bear on the subject of the hearing.

Irrelevant - The question must bear on a subject in dispute. If the other party agrees with you on a certain issue, then any further questions on that issue are not relevant. (Relevancy and materiality appear similar but are distinct).

Calls for Narrative - The question must lead to a direct answer.

Opinion - The question calls for an opinion.

Non- Responsive - The witness must answer only the question posed, not volunteer additional information.

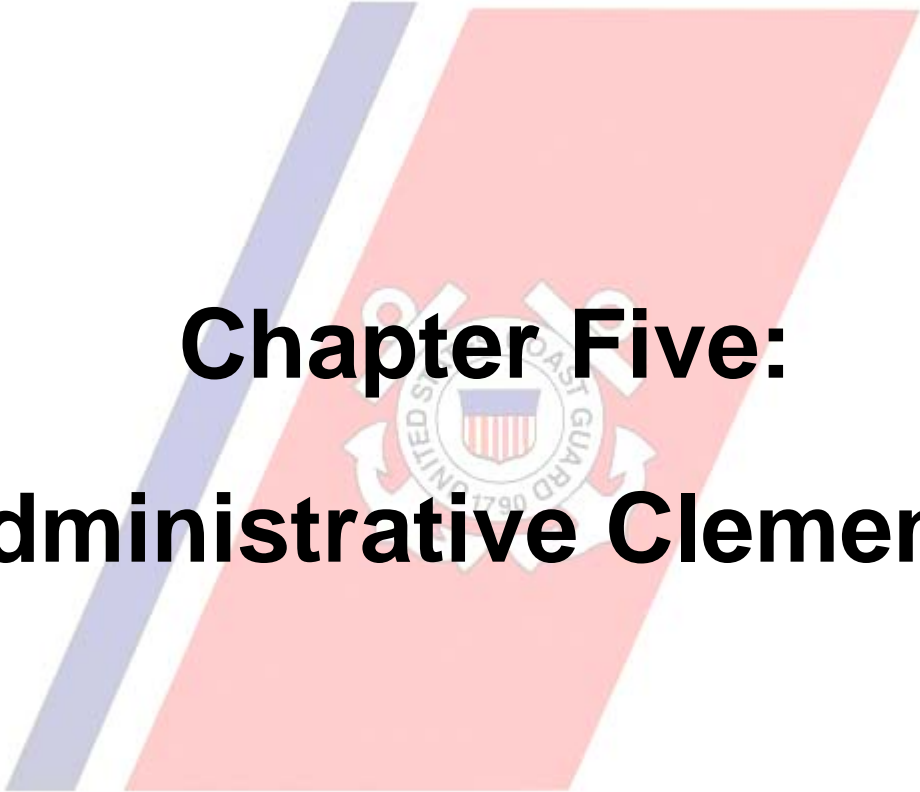
Lacks Personal Knowledge - Question calls for witness to answer on subjects beyond their personal knowledge.

Leading Question - Generally, leading questions may not be asked during direct examination.

Speculative - The question calls for the witness to speculate or guess.



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A large, stylized graphic consisting of two overlapping diagonal stripes. The left stripe is light blue and the right stripe is light red. A faint, semi-transparent USCG seal is visible in the background, centered behind the text.

Chapter Five:
Administrative Clemency

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A. ADMINISTRATIVE CLEMENCY

A.1. GENERAL

46 USC 7701(c)
 46 CFR 5.901 - 5.905
 46 CFR 10.223
 46 CFR 12.02-21

Merchant mariners whose Merchant Mariner Credential(s) (MMC) have been revoked or have voluntarily surrendered such MMC(s) must seek authorization to be issued a new MMC following the provisions of Title 46, Code of Federal Regulations, Part 5, Subpart L (5.901-5.905), or 33 CFR 20.904(f). These regulatory provisions for mariners to seek authorization to be issued a new MMC are commonly referred to as the administrative clemency process. See Section A.5. below for further guidance on the applicability of each process. Administrative clemency is a voluntary process for merchant mariners. As such, the mariner has specific tasks that must be completed to ensure a favorable decision. The administrative clemency process resides solely under the discretion of the Office of Investigation and Casualty Analysis, Commandant (CG-545). The information contained within this chapter will aid the Officer in Charge, Marine Inspection (OCMI) in determining if the applicant:

- meets the intent of the regulations;
- is eligible for a waiver of the time limitations; and
- has met the Administrative Clemency Review Board’s (ACRB) definition of rehabilitation and/or non-association for drug or alcohol-related offenses

A.2. APPLICANT’S RESPONSIBILITY

It is the applicant’s responsibility to provide the necessary documentation for administrative clemency regardless of the clemency process that applies. When a mariner contacts the Coast Guard, the OCMI shall review the clemency processes and documentation requirements with the mariner and provide the mariner with a copy of Figure C5-2, Administrative Clemency Cover Sheets, to assist the mariner in preparing a complete application package. For application packages going to the ACRB (see A.5. below for the distinction), the applicant has **60 days** to submit a complete package starting with their first documentation submission.

A.3. ADMINISTRATIVE CLEMENCY CHECKLIST

OCMIs shall use the Administrative Clemency Checklist (Figure C5-1) located at the end of this chapter to ensure mariner application packages are complete and shall attach a copy of the completed checklist as correspondence in the MISLE Administrative Clemency enforcement activity. OCMIs must ensure that administrative clemency applicants meet those minimum requirements prior to forwarding the application package for consideration.

A.4. IO’S RESPONSIBILITY

A.4.a. Initial Contact by the Applicant

In general, acting as the OCMI representative, it is the IOs responsibility to provide a copy of the Administrative Clemency Cover Sheets (Figure C5-2) to every applicant (regardless of the clemency process that applies), review and verify the documentation submitted by the applicant, and submit a recommendation on behalf of the OCMI to the ACRB based upon the documentation provided and the time limitation requirements of 46 CFR 5.901. When the applicant contacts the IO, a



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cursory interview should be conducted to determine whom the clemency request should be addressed to in accordance with A.5. below.

A.4.b. Requests Going to the ACRB

If the request should go to the ACRB in accordance with A.5. below, the IO should see if the individual meets the requirements set forth in 46 USC 7701(c), 46 CFR 5.901 through 5.905, and this chapter. In order to reduce the number of resource hours spent on a clemency activity, the IO shall avoid accepting documentation from the applicant in a piecemeal fashion. Regardless, the applicant should be advised that he/she has **60 days** to submit a complete package starting with their first documentation submittal. Upon conclusion of the 60 days the IO shall forward the package via the chain of command to the ACRB with a unit recommendation (*see* A.6. below).

A.4.c. Requests Going to the Coast Guard Docketing Center

If in accordance with A.5. below the clemency request (referred to as a motion to reopen under 33 CFR 20.904(f)) should be filed with the Coast Guard Docketing Center, the IO should provide the mariner with the Docketing Center's contact information and direct the mariner there for further assistance on filing requirements.

**A.5. TO WHOM IS
ADMINISTRATIVE
CLEMENCY REQUESTED**

As stated in A.4.a. above, the IO is responsible for assisting the mariner in where to direct the administrative clemency application package. The application package will either be sent to the ACRB at the Office of Investigations and Casualty Analysis, Commandant (CG-545) by the IO or to the Coast Guard Docketing Center by the mariner depending upon which criteria below is met.

A.5.a. When the clemency request goes to the ALJ Docketing Center

A mariner who has had his/her Merchant Mariner's Credential (MMC) revoked by an Administrative Law Judge (ALJ) within the previous 3 years, should be encouraged to file a motion to reopen the case with the Coast Guard Docketing Center in accordance with 33 CFR Part 20.904(f). The mariner must submit evidence that explains why the basis for revocation is no longer valid. The mariner shall be given a copy of the Administrative Clemency Cover Sheets (Figure C5-2) as guidance as to the Coast Guard's position on what constitutes sufficient evidence of rehabilitation. The Coast Guard will submit a response to all motions to reopen in accordance with A.7. below.

A.5.b. When the clemency request goes to the ACRB

If three years have passed since the revocation of the MMC, or the mariner surrendered his/her MMC, the mariner must apply for Administrative Clemency from the Commandant following the procedures of this chapter. The OCMI has a



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chance to make a recommendation for or against the granting of administrative clemency in accordance with A.6. below.

A.6. OFFICER IN CHARGE, MARINE INSPECTION (OCMI) RECOMMENDATION

As stated in A.4. above, prior to making a recommendation for or against administrative clemency, the IO shall verify all the documentation provided as well as the time limitation requirements of 46 CFR 5.901. The OCMI or their representative (with by direction authority) shall use a standard CG Memo to document their recommendation to the ACRB. OCMI's are required to forward all cases that have been opened, even those with negative endorsements, to the ACRB for final disposition. Example: The applicant has provided all the required documentation except for a driving record check, or employment verification. The OCMI shall document all attempts made to contact the applicant for the missing documentation in the MISLE Enforcement Activity. If the applicant fails to provide the requested documentation within 60 days from the first documentation submittal, the OCMI would forward the case with a negative endorsement. This information is necessary to aid Commandant (CG-545) in answering any inquiries that may result. Regardless, all administrative clemency application packages that do not meet the minimum submittal requirements (included in the administrative clemency checklist) and the time limitation requirements of 46 CFR 5.901, should normally be given a negative endorsement. If the OCMI provides a positive endorsement, the reasons shall be fully detailed in the endorsement memo. Those application packages that do not conform will be returned to the submitting unit.

A.7. RESPONSE TO MOTION TO REOPEN

Generally, the Office of Investigations and Analysis, Commandant (CG-545) will represent the Coast Guard in all cases where a motion has been filed with the Coast Guard Docketing Center to reopen the Hearing. The ACRB Administrator will review the information submitted by the mariner for compliance with this chapter and will either favor or oppose the motion. In a case where a Hearing is scheduled, Commandant (CG-545) will request that an IO assigned to the OCMI nearest the mariner's location be designated to represent the Coast Guard.

A.7.a. Appeals by the Coast Guard

If the Coast Guard opposes the motion to reopen and the ALJ grants the motion and subsequently orders that the mariner be issued a new MMC, the Coast Guard may appeal the ALJ's Decision in accordance with 33 CFR 20.1001. The Coast Guard **shall** appeal a granted motion to reopen and subsequent order authorizing the issuance of a new MMC for the following reasons:

- the respondent failed to meet the minimum waiting period of one year as required by 46 CFR 5.901;
- the respondent failed to meet the requirements to be granted a waiver of the minimum three waiting period for offenses listed in 46 CFR 5.59 and 5.61(a);



- the respondent failed to meet the minimum requirements of an administrative clemency application package as detailed in this chapter; or
- the documents provided by the respondent could not be verified or were false.

All notice of appeals for administrative clemency cases shall be approved by Commandant (CG-545) prior to filing with the Docketing Center.

A. 8. ADMINISTRATIVE CLEMENCY DATA ENTRY

A MISLE Enforcement Activity shall be opened upon receiving any documentation as part of an administrative clemency application package or a motion to reopen the record of a S&R proceeding. For clemency requests going to the ACRB, a prompt date should be set for 60 days upon the opening of the Enforcement Activity. This Enforcement Activity shall be created from the enforcement activity that documents the surrender or revocation of the MMC(s). All documentation submitted by the applicant and the OCMI's endorsement memo should be scanned and attached as Correspondence. The Enforcement Activity shall be completed in accordance with the applicable sections of the appropriate MISLE Process Guide. If all documentation has been attached to the MISLE activity, the submission requirements of Section B have been met and control of the activity transferred to CG-545, there is no requirement to forward a hard copy of the application package. The IO should alert CG-545 via email or phone that a package has been forwarded in MISLE. If a hard copy of the package is forwarded, it shall meet the requirements of Section B.

A. 9. CLEMENCY PROCESS AFTER A DECISION IS RENDERED

Once a decision has been rendered, the ACRB or the ALJ will provide documentation to the applicant granting or denying clemency. If granted, the applicant will be required to contact the National Maritime Center (NMC) to complete the application process in accordance with 46 CFR, Parts 10 and/or 12. The NMC and the submitting unit will be notified that clemency has been granted; that the application shall be processed as an application for an original MMC. If clemency is denied, the applicant and the submitting unit will be notified of the cause for denial, and of the requirements for submission of the next application. *See C.7.* below for guidance with regard to resubmission of a mariner's clemency application.

B. SUBMITTING A CLEMENCY APPLICATION PACKAGE

B. 1. REQUIRED FORMAT

All administrative clemency packages that are forwarded to CG-545 shall be submitted in a folder with the checklist (Figure C5-1) attached on the left side of the folder and the cover sheets (Figure C5-2) and supporting documentation attached on the right side. The IO shall remove the cover sheets that do not apply. A copy of the MISLE activity summary document is not required.



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B.2. INVESTIGATING OFFICER TO CONTACT REFERENCES

As stated in A.4. above, IOs shall verify each document submitted by the applicant. The IO shall contact each reference and make a notation at the bottom of each letter stating that the information has been verified.

B.3. MINIMUM CONTENTS

The checklist (Figure C5-1) provides a complete list of items needed to perfect the administrative clemency application package. The following is a list of the **minimum** documentation required:

- Complete and signed application for original license, certificate of registry and/or MMD;
- Letter from Applicant including waiver request if applicable;
- Letters from employer(s) **since** the revocation or surrender of the MMC;
- Letters of character reference;
- Proof of rehabilitation or cure;
- FBI Criminal background and Drivers record check*;
- Any other information the applicant may wish to be considered.

*The use of NCIC/NLETS is **not** authorized to conduct these record checks.

B.4. TIME LIMITS

In accordance with 46 CFR 5.901, the minimum waiting period for offenses listed in 46 CFR 5.59 and 5.61(a) is **THREE** years. A revocation or surrender of a MMC for a mariner's refusal to take a drug test shall be considered an offense listed in 46 CFR 5.59 and the three-year waiting period applies. All other offenses require a **ONE**-year waiting period.

B.5. WAIVERS

46 CFR 5.901 allows for a waiver of the three-year minimum waiting period. There is no waiver provision for the one-year period. All requests for a waiver of the three-year waiting period shall be in writing and forwarded with the applicant's administrative clemency package. The mariner's request should explain why he or she feels that the three-year waiting period should be waived and provide ample documentation to justify their request. IOs should advise the mariner that there is no obligation to grant a waiver and any omissions or non-compliance with other minimum requirements would reduce the likelihood of the waiver being granted. Waivers for offense described in B.5.b. and B.5.c. below will only be granted once to an applicant for clemency.

B.5.a. Good Character

The applicant must demonstrate "Good Character" within the community for a period exceeding three years from the date of occurrence that resulted in the surrender. For example, the mariner committed an offense in 1989, but the applicant's MMC was not surrendered until 1994. The applicant applies for clemency in 1995, but since three years have not passed since the surrender the applicant must seek a waiver of the time limitations. If the applicant has met the "good character"



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criteria between 1989 and 1995, a waiver may be granted. For the waiver to be granted the three years must be continuous; jail time, or time spent avoiding prosecution does not count. "Good Character" can be demonstrated by:

- Absence of any negative incidents with law enforcement authorities;
- Self-motivated efforts towards and completion of a rehabilitation program;
- Evidence of steady employment;
- Appropriate support of family and financial responsibilities;
- Letters of reference from members of the community, including neighbors, business associates, church officials, community representatives, fellow employees, etc.;
- Active participation in positive social and community activities; and
- If drugs or alcohol were contributing factors to the surrender or revocation, the applicant must also show cure and/or rehabilitation.

B.5.b. Misconduct, Conviction for Wrongful Simple Possession or Drug Use

If the surrender or revocation resulted from misconduct or conviction for wrongful simple possession of a dangerous drug (personal quantity, this does not include distribution, intent to distribute, trafficking, or smuggling), use of a dangerous drug, or refusal to take a drug test; the applicant must have:

- Successfully completed a bona fide drug abuse rehabilitation program and;
- Demonstrated complete non-association with dangerous drugs for a minimum period of one year following completion of the rehabilitation program and;
- Be actively participating in a bona fide drug abuse-monitoring program.

B.5.c. Alcohol Use, or Related to Alcohol, e.g. NDRA violations

If the surrender or revocation resulted from alcohol use, or related to alcohol, e.g. NDRA violations, the applicant must have:

- Successfully completed a bona fide alcohol abuse rehabilitation program and;
- Be actively participating in a bona fide alcohol abuse-monitoring program.



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B.6. APPLICANT'S LETTER

For an applicant's letter to be accepted the following format shall be followed:

- The letter shall be legibly written or typewritten (preferred) on an 8.5 x 11 sheet(s) of paper;
- The letter must address the applicant's prior problem and how he/she has overcome the problem, e.g. drug or alcohol rehabilitation, remedial training, counseling, etc., and how he or she intends to avoid the prior problem in the future;
- The letter must also address the applicant's employment history since the surrender or revocation. A chronological listing to include: the dates employed, name of business, position held, and a point of contact for the employer (name and phone number) is the preferred format. All periods of extended unemployment, e.g. workmen compensation, welfare, medical reasons, etc., must be explained; and
- If applicable, the letter must state that a waiver of the three-year waiting period is requested.

B.7. APPLICANT'S LETTER (S) OF EMPLOYMENT

For an applicant's letter(s) of employment to be accepted the following format shall be followed:

- The letter shall be legibly written or typewritten (preferred) on an 8.5 x 11 sheet(s) of paper, and on company letterhead if possible; and
- The employer(s) must address the applicant's work history, e.g. performance of duties, interaction with fellow employees, etc.; whether the applicant is or was subject to random drug testing; duration of employment, and if no longer employed, the reason why the applicant left.
- The letter must have the employer's contact information.

B.8. APPLICANT'S LETTER (S) OF REFERENCE

For an applicant's letter(s) of references to be accepted the following format shall be followed:

- The letter shall be legibly written or typewritten (preferred) on an 8.5 x 11 sheet(s) of paper, and include a phone number where the individual may be reached during the day; and
- Letters should address the applicant's prior problem. This is important for the reference letter to have any real meaning. The ACRB wants to see if others have noted how the applicant's lifestyle has changed. Letters from close family members are acceptable, however, the ACRB would prefer to see letters from coworkers, work supervisors, drug and alcohol sponsors or counselors, community leaders, e.g. council members, church leaders.

B.9. PROOF OF CURE OR REHABILITATION

The regulations require the applicant to provide proof of rehabilitation or cure in order to show that the reason for the revocation or surrender is no longer valid. The



following Sections establish CG policy for demonstrating rehabilitation or cure.

B.9.a. Proof of Cure in Drug USE Cases

When revocation or surrender resulted from drug use, refusal to test, or violation of a dangerous drug law and the mariner has been determined to be a user of a dangerous drug, proof shall include:

- Completion of a state or local government licensed or recognized primary rehabilitation program (inpatient or outpatient).
- One year of non-association with dangerous drugs following completion of the rehabilitation program. The one-year period can be included in any after care program directed by the rehabilitation center. Non-association shall be demonstrated by:
 - The submission of at least 12 random unannounced drug tests conducted in accordance with 49 C.F.R. Part 40, spread reasonably throughout the one year non-association period; or
 - If employed within the marine industry, or any other transportation mode that requires random drug testing, and the applicant has received a letter from an MRO attesting that the applicant is a low risk to return to dangerous drug-use, the IO may use those test results as part of the minimum 12 random tests required; and
 - Participation in AA/NA (or similar support-type group) meetings for the entire one-year-period at a minimum of 2 meetings per month. Proof may be provided by submitting attendance records, certificates of achievement, or certification from his or her sponsor attesting to attendance and participation in support group meetings. Proof of attendance shall be provided up to the time of application; and
- A letter from a MRO attesting that the applicant is a low risk to return to drug-use in accordance with 46 CFR 16.201(f).

B.9.b. Proof of Cure in Conviction of a dangerous drug law Cases

When the revocation or surrender resulted from a conviction of a dangerous drug law or refusal to test, and the mariner has been determined to not be a user, proof shall include:

- A recent SAP or MRO evaluation attesting that the applicant is not a user of, or addicted to dangerous drugs.
- One year of non-association with dangerous drugs. Non-association shall be demonstrated by:
- The submission of at least 12 random unannounced drug tests conducted in accordance with 49 C.F.R. Part 40, spread reasonably throughout the one year non-association period; or

If still employed within the marine industry, or any other transportation mode that



requires random drug testing, and the applicant has received a letter from an MRO attesting that the applicant is a low risk to return to dangerous drug-use, the IO may use those test results as part of the minimum 12 random tests required.

The one-year of non-association may be waived if:

- The applicant has been subjected to random drug testing and has not tested positive or refused to take a test within the last year; and
- The applicant provides at a minimum, 6 current random DOT tests; and
- The applicant's employment history and personal references indicate a demonstrated change of lifestyle.

B.9.c. Proof of Cure in Alcohol-related Offense Cases

When the revocation or surrender resulted from an alcohol related offense, proof shall include:

- Completion of a state or local government licensed or recognized rehabilitation program; and
- Participation in AA meetings for one-year after completion of the rehabilitation program at a minimum of 2 meetings per month. Proof may be provided by submitting attendance records, certificates of achievement, or certification from his or her sponsor attesting to attendance and participation in support group meetings. Proof of attendance shall be provided up to the time of application.

B.9.d. Proof of Rehabilitation in Misconduct, Negligence, and Violation of Law/Reg Cases

When the revocation or surrender resulted from Misconduct, Negligence, Violation of Law or Regulation, proof shall include some evidence of:

- Remedial training relating to the incident; and/or
- Therapy or professional counseling.

B.9.e. Proof of Cure in Physical or Mental Incompetence Cases

When the revocation or surrender resulted from physical or mental incompetence, proof shall include:

- A report from a physician specializing in the condition that resulted in the physical or mental incompetence. The report shall attest that the cause of the incompetence is no longer valid, and the applicant is fit for duty.

B.10. CRIMINAL RECORDS AND DRIVING RECORDS

OCMIs shall require the applicant to provide a copy of their official criminal and driving records. The applicant shall obtain a copy of their criminal record from the FBI (see B.10.a. below for instructions) and their driving record from the Department of Motor Vehicles from the State in which they reside. OCMIs shall not accept background checks that appear to be altered, or that are more than two



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months old when the mariner submits his or her completed application. OCMI's shall make it clear to the applicant that full disclosure is very important and that any attempt to deceive or mislead the ACRB will normally result in denial of the application. Additionally, the applicant must understand that in the event the ACRB grants clemency, the NMC has to follow their guidance and the provisions of 46 CFR Parts 10 and/or 12 concerning the issuance of an original MMC, and they may require additional information prior to making a determination on the issuance of the MMC. If a conviction or violation is found by the NMC, the applicant may be required to comply with the NMC's waiting periods before re-applying. IO's *shall not* access NCIC/NLETS to conduct these record checks.

B.10.a. Criminal Records

The applicant shall, as permitted by 28 CFR, Part 16.30, request a copy of their criminal record directly from the Federal Bureau of Investigations (FBI) at the following address:

Federal Bureau of Investigations
CJIS Division
Attention: SCU, Module D-2
1000 Custer Hollow Road
Clarksburg, West Virginia 26306-0171

A set of rolled, inked fingerprint impressions, name and date and place of birth must accompany the request. As of April 2008, the fee for each request is \$18.00 (see 28 CFR 16.33 for current fee) and should be paid in the form of a certified check or money order payable to the Treasury of the United States. The local Regional Examination Center (REC) or law enforcement agency may assist the mariner in preparing the necessary Fingerprint card(s) for submission to the FBI. This is not a quick process and the applicant should plan accordingly so as to obtain a copy of their record for submission with their clemency application within the 60-day time requirements. To ensure authenticity, the mariner shall be directed to open the envelope containing the report only in the presence of the IO.



B.10.b. Driving Records

The applicant shall, as permitted by 46 CFR 10.201(i)(4) and 12.02-4(d)(4), request a copy of their national driving record directly from the National Highway Traffic Safety Administration maintained National Driver Register (NDR) at the following address:

National Driver Register
Nassif Building
400 7th Street, S.W.
Room 612A (NPO-124)
Washington, DC 20590-0001

There are two methods for the applicant to acquire their driving record from the NDR.

Request a Form NDR-PRV from NDR and submit the completed form to them; or
Provide the NDR the following information on a notarized letter:

- Full legal name;
- Other names used;
- Complete mailing address;
- Driver license number;
- Eye color;
- Social security number;
- Height;
- Weight; and
- Sex.

B.10.c. OCMI Discretion

In addition to the above minimum requirements, the OCMI may require the mariner to provide additional local/state criminal/driving records to ensure that all local criminal/driving information is captured. Remember that the mariner may live in an area different from their work location or state of residence; therefore, you may require the mariner to provide records from several states. In general these records may be obtained from various agencies such as the State Police, District Attorney's Office, or Department of Motor Vehicles. Some applicants may not be able to obtain their records due to local/state laws that prohibit the release of criminal records, even to the individual to whom the records pertain. When these records are required by the OCMI, the mariner must get a letter from the local/state agency to



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which that pertains (to be verified by the IO.)

B.11.
APPLICATION FOR
NEW LICENSE OR
DOCUMENT

Applicants must provide a completed, signed application for MMD and/or license required for an original issue. All blocks must be completed. Any "Yes" answers in the convictions section shall be fully detailed in an attached statement. It is extremely important that the applicant provide full disclosure of ALL convictions and sufficient details on the circumstances associated with the other "Yes" answers. Applicants are not required to submit photos or physicals with the application. Physicals are only required for clemency requests for physical incompetence.

C. ADMINISTRATIVE CLEMENCY REVIEW BOARD

C.1. GENERAL

The ACRB shall consist of staff members of the Office of Investigations and Casualty Analysis, Commandant (CG-545). The ACRB Administrator is responsible for receiving and conducting an initial review for completeness of all Administrative Clemency application packages. Packages not complying with the requirements of the chapter will be returned to the submitting unit for correction. The ACRB should not be convened unless there are at least three members present, one of which should be a professional mariner who is a staff member of CG-545.

C.2.
RECOMMENDATION OF
THE ACRB

The recommendations of the ACRB are presented to the Chief, Investigations Division (CG-5451) (the designated representative for the Commandant) only after the ACRB has convened and all sitting members have reviewed the applicant's package and their individual concerns have been adequately addressed. On behalf of the Commandant, CG-5451 may endorse the ACRB's recommendation or require that they reconvene to address specific issues that are unique to the case.

C.3. FINAL
AGENCY ACTION
REGARDING
ADMINISTRATIVE
CLEMENCY REQUESTS

The Commandant's decision is final agency action and there is no Coast Guard mechanism for appeal, however, the mariner may request reconsideration of the decision. Any request for reconsideration should be submitted to Commandant (CG-5451) via the OCMI (see C.6. below).

C.4. NOTIFYING
THE CLEMENCY
APPLICANT

If a mariner's application for clemency is granted or denied, CG-5451 will duly notify the mariner and the submitting unit of the decision via written correspondence. This correspondence will also outline the steps the mariner needs to take to complete the process or deficiencies noted in the applicant's package and what minimum requirements the mariner must meet prior to resubmitting their application for clemency. It is the mariner's responsibility to meet those requirements and to coordinate the resubmission to CG-5451 via the OCMI.



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C.5.
RESUBMISSION OF
APPLICATION FOR
ADMINISTRATIVE
CLEMENCY

The ACRB Administrator will maintain a mariner's original clemency application package on file for a minimum of three years. If the mariner's resubmission occurs within the first three years after denial, the mariner needs only to submit the necessary documentation stated in the denial letter to the ACRB via the OCMI. The OCMI shall verify the documentation submitted and attach the same as correspondence in the MISLE Administrative Clemency Enforcement Activity and ensure that all issues in the denial letter are resolved prior to resubmitting. The OCMI shall provide a recommendation of approval or denial based on the mariner's compliance with the requirements of the denial letter. If the mariner waits beyond three years there should be no expectation that their previous application is still on file with CG-545 and he/she shall be directed to submit a new clemency application complying with all requirements of this Chapter.

C.6. REQUEST FOR
RECONSIDERATION OF
DECISIONS
REGARDING
ADMINISTRATIVE
CLEMENCY

Any request for reconsideration should be processed through the OCMI for the mariner's initial clemency application. The request should be addressed to Commandant (CG-545) for processing. The mariner's request shall address the basic premise as to why he or she feels that the Coast Guard's decision is in error or that the reversal of the decision is warranted. Upon review, a response will be forwarded to the mariner and the submitting unit.



FIGURE C5-1: Administrative Clemency Checklist

ADMINISTRATIVE CLEMENCY CHECKLIST

Before submitting the Administrative Clemency application to CG-545, OCMIs shall ensure that the following documentation is complete:

	Yes	No	N/A
Complete & signed application for an original License/MMD			
Letter from the applicant; includes waiver request Y / N			
_____ Letters from Employers (indicate # of ltrs)			
_____ Letters of character reference (indicate # of ltrs)			
FBI criminal background delivered to IO in sealed envelope			
Driving record from the State of _____			
Certificate/letter of completion of rehabilitation program if applicable			
12 random DOT drug tests spread reasonably throughout the 1 year period since completion of rehabilitation program if applicable			
Attendance at support group (AA/NA) for 1 year since completion of rehabilitation program with a minimum of 2 meetings per month if applicable			
Medical Review Officer (MRO) low risk letter if applicable			
Evaluation from a Substance Abuse Specialist (SAP) or MRO if applicable			
Remedial Training if applicable			
Therapy or professional counseling if applicable			
Physician's report if applicable			



FIGURE C5-2: Administrative Clemency Cover Sheets

Applicant's Letter

For an **applicant's letter** to be accepted the following format shall be followed:

1. The letter shall be legibly written or typewritten (preferred) on an 8.5" x 11" sheet(s) of paper;
2. The letter **must** address the applicant's prior problem and how he or she has overcome the problem, e.g. drug or alcohol rehabilitation, remedial training, counseling, etc., and how he or she intends to avoid the prior problem in the future;
3. The letter **must** also address the applicant's employment history since the surrender or revocation. A chronological listing to include: the dates employed, name of business, position held, and a point of contact for the employer (name and phone number) is the preferred format. All periods of extended unemployment, e.g. workmen compensation, welfare, medical reasons, etc., must be explained; and
4. If applicable, the letter must state that a waiver of the three-year waiting period is requested.

Applicant's Letter



Application for MMD/License

Applicants must provide a completed, signed application for MMD and/or license required for an original issue. All blocks must be completed. Any “Yes” answers in the convictions section shall be fully detailed in an attached statement. It is extremely important that the applicant provide full disclosure of ALL convictions and sufficient details on the circumstances associated with the other “Yes” answers. Applicants are not required to submit photos or physicals with the application. Physicals are only required for clemency requests for physical incompetence.

Application for MMD/License



Letters of Employment

For an applicant's **letter(s) of employment** to be accepted, the following format shall be followed:

1. The letter **shall** be legibly written or typewritten (preferred) on an 8" x 11" sheet(s) of paper, and on company letterhead if possible; and
2. The employer(s) **must** address the applicant's work history, e.g. performance of duties, interaction with fellow employees, etc.; whether the applicant is or was subject to random drug testing; duration of employment, and if no longer employed, the reason why the applicant left.
3. The letter **must** have the employer's contact information.

IOs shall contact each reference and make a notation at bottom of each letter stating that the information has been verified.

Letters of Employment



Letters of Reference

For an applicant's **letter(s) of references** to be accepted the following format shall be followed:

1. The letter shall be legibly written or typewritten (preferred) on an 8" x 11" sheet(s) of paper, and include a phone number where the individual may be reached during the day; and
2. Letters should address the applicant's prior problem. This is important for the reference letter to have any real meaning. The ACRB wants to see if others have noted how the applicant's lifestyle has changed. Letters from close family members are acceptable, however, the ACRB would prefer to see letters from coworkers, supervisors, drug and alcohol sponsors or counselors, community leaders, e.g. council members, church leaders.

-
-

IOs shall contact each reference and make a notation at bottom of each letter stating that the information has been verified.

Letters of Reference



Criminal Background and Driving Record

The applicant is responsible for obtaining his/her driving record from their local Motor Vehicle Administration and submitting the results with the administrative clemency request.

For a criminal background check, the FBI requires a set of rolled, inked fingerprint impressions, name, date and place of birth to accompany the request. As of April 2008, the fee for each request is \$18.00 (see 28 CFR 16.33 for current fee) and should be paid in the form of a certified check or money order payable to the Treasury of the United States. This is not a quick process and the applicant should plan accordingly to obtain a copy of their record for submission with their clemency application. To ensure authenticity, the applicant should be directed to open the envelope containing the report only in the presence of the Investigating Officer. The applicant shall send his/her criminal background request to the following address:

Federal Bureau of Investigations
CJIS Division
Attention: SCU, Module D-2
1000 Custer Hollow Road
Clarksburg, West Virginia 26306-0171

Criminal Background and Driving Record



Proof of Cure for Drug Use

When revocation or surrender resulted from drug use, refusal to test, or violation of a dangerous drug law and mariner is determined to be a user, proof shall include:

1. Completion of a state or local government licensed or recognized primary rehabilitation program (inpatient or outpatient); **and**
2. One year of non-association with dangerous drugs following completion of the rehabilitation program. The one-year period can be included in any after care program directed by the rehabilitation center. Non-association shall be demonstrated by:
 - a. The submission of at least 12 random unannounced drug tests conducted in accordance with 49 C.F.R. Part 40, spread reasonably throughout the one year non-association period; **or**
 - i. If still employed within the marine industry, or any other transportation mode that requires random drug testing, and the applicant has received a letter from an MRO attesting that the applicant is a low risk to return to dangerous drug use, the IO may use those test results as part of the minimum 12 random tests required; **and**
 - b. Participation in AA/NA (or similar support group) meetings for the entire one-year-period at a minimum of two meetings per month. Proof may be provided by submitting attendance records, certificates of achievement, or certification from his or her sponsor attesting to attendance and participation in support group meetings. Proof shall be provided up to the time of application; **and**
3. A letter from a MRO attesting that the applicant is a low risk to return to drug-use in accordance with 46 CFR 16.201(f).

Proof of Cure for Drug Use



Proof of Cure for Conviction of a Dangerous Drug Law

When the revocation or surrender resulted from a conviction of a dangerous drug law or refusal to test, and it has been determined that he or she is not a user, proof shall include:

1. A recent SAP or MRO evaluation attesting that the applicant is not a user of, or addicted to dangerous drugs; **and**
2. One year of non-association with dangerous drugs. Non-association shall be demonstrated by:
 - a. The submission of at least 12 random unannounced drug tests conducted in accordance with 49 C.F.R. Part 40, spread reasonably throughout the one year non-association period; **or**
 - i. If still employed within the marine industry, or any other transportation mode that requires random drug testing, and the applicant has received a letter from a MRO attesting that the applicant is a low risk to return to dangerous drug-use, the IO may use those test results as part of the minimum 12 random tests required.
3. The one-year of non-association may be waived if:
 - - a. The applicant has been subjected to random DOT drug testing and has not tested positive or refused to take a test within the last year; **and**
 - b. The applicant provides at a minimum, six current random DOT tests; **and**
 - c. The applicant's employment history and personal references indicate a demonstrated change of lifestyle.

Proof of Cure for Conviction of a Dangerous Drug Law



Proof of Cure for Alcohol Related Offenses

When the revocation or surrender resulted from an alcohol related offense, proof shall include:

1. Completion of a state or local government licensed or recognized alcohol rehabilitation program;
and
2. Participation in AA meetings for one-year following completion of the rehabilitation program at a minimum of two meetings per month. Proof may be provided by submitting attendance records, certificates of achievement, or certification from his or her sponsor attesting to attendance and participation in support group meetings. Proof shall be provided up to the time of application.

Proof of Cure for Alcohol Related Offenses



Proof of Cure for Misconduct, Negligence, Violation of Law or Regulation

When the revocation or surrender resulted from Misconduct, Negligence, Violation of Law or Regulation, proof shall include evidence of:

1. Remedial training relating to the incident; **and/or**
2. Therapy or professional counseling.

Proof of Cure for Misconduct, Negligence, Violation of Law or Regulation



Proof of Cure for Physical or Mental Incompetence

When the revocation or surrender resulted from physical or mental incompetence, proof shall include:

A report from a physician specializing in the condition that resulted in the physical or mental incompetence. The report shall attest that the cause of the incompetence is no longer valid, and the applicant is fit for duty.

Proof of Cure for Physical or Mental Incompetence



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Chapter Six:
Drug and Alcohol Program

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A. DRUG AND ALCOHOL PROGRAM

A.1. INTRODUCTION This chapter describes and provides guidance on the Drug and Alcohol Program; it does not contain any enforcement guidance. See chapters C2, C3 and C4 for enforcement guidance.

In 1988, the Coast Guard, in concert with other U. S. Department of Transportation (DOT) modal administrations, published regulations to prescribe the minimum standards, procedures, and means to be used to test for the use of dangerous drugs and alcohol in the marine industry. Title 46, Code of Federal Regulations, Parts 4 and 16 (46 CFR 4, 16) prescribe which commercial vessel crewmembers are required to be chemically tested and under what circumstances the testing must be done. The intent of the regulations is to provide a means to minimize the use of intoxicants by merchant marine personnel and to promote a drug free and safe work environment by deterring the illegal use of controlled substances. DOT has developed and published 49 CFR Part 40 regulations that describe in detail how Coast Guard-required drug tests are to be conducted.

A.2. CODE OF FEDERAL REGULATIONS (CFR) REFERENCES

- 46 CFR 16: Chemical Testing: occasions for testing and procedures for the marine employer (when and who to test).
- 49 CFR 40: Procedures for Transportation Workplace Drug Testing Programs: procedures for all DOT-regulated drug testing, includes technical regulations for collection and testing (how to test and test results).
- 46 CFR 4.06: Mandatory Chemical Testing Following Serious Marine Incidents Involving Vessels in Commercial Service: post casualty testing must be conducted to determine if drugs or alcohol were contributing factors in a serious marine incident (SMI).
- 33 CFR 95: Operating a Vessel While Under the Influence of Alcohol or a Dangerous Drug: sets the standard for alcohol intoxication and contains authority for chemical testing, primarily for alcohol.

An Internet site with daily updates of the Code of Federal Regulations may be accessed at <http://www.gpoaccess.gov/ecfr>.

A.3. DEFINITIONS

A.3.a. Merchant Mariners' Credentials (MMCs).

Any license, Certificate of Registry (COR), or Merchant Mariner Document (MMD) issued by the Coast Guard which serves as the qualification document for all merchant mariners sailing on U.S. flag vessels.

A.3.b. Serious Marine Incident (SMI)

A SMI, as defined by 46 CFR 4.03-2, includes the following events:

- A discharge of 10,000 gallons or more of oil into the navigable waters of the United States, whether or not resulting from a marine casualty,
- A discharge of a reportable quantity of a hazardous substance into the navigable



waters or into the environment of the United States, whether or not resulting from a marine casualty, or

- A marine casualty or accident required to be reported to the Coast Guard, involving a vessel in commercial service, and resulting in any of the following:

One or more deaths,

An injury to any person (including passengers) which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a commercial vessel, which renders the person unable to perform routine vessel duties;

Damage to property in excess of \$100,000;

Actual or constructive total loss of any inspected vessel; or

Actual or constructive total loss of any uninspected, self-propelled vessel of 100 gross tons or more.

46 CFR 16.105

A.3.c. Crewmember.

A crewmember is an individual who is:

- On board a vessel acting under the authority of their MMCs, whether or not the individual is a member of the vessel's crew; or

- Engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding MMCs, except the following:

Individuals on fish processing vessels who are primarily employed in the preparation of fish or fish products, or in a support position, and who have no duties that directly affect the safe operation of the vessel;

Scientific personnel on an oceanographic research vessel;

Individuals on industrial vessels who are industrial personnel, as defined in 46 CFR 90.10-15; and

Individuals not required under 46 CFR 15 who have no duties that directly affect the safe operation of the vessel.

46 CFR 16.105

A.3.d. Operation.

Operation means to navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel's main or auxiliary equipment or systems, which includes:

- Determining the vessel's position, piloting, directing the vessel along a desired trackline, keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position, or speed, and maintaining a lookout;

- Controlling, operating, monitoring, maintaining, or testing: the vessel's propulsion and steering systems; electric power generators; bilge, ballast, fire, and cargo pumps; deck machinery including winches, windlasses, and lifting equipment; lifesaving equipment and appliances; firefighting systems and equipment; and navigation and communication equipment; and

- Mooring, anchoring, and line handling; loading or discharging of cargo or fuel; assembling or disassembling of tows; and maintaining the vessel's stability and



watertight integrity.

46 CFR 16.105

A.3.e. Marine Employer.

Any one or more of the following may be considered a marine employer:

Owner of a vessel;
Managing operator;
Charterer;
Agent;
Master; or
Person in charge of the vessel.

33 CFR 95.010

A.3.f. Law Enforcement Officer.

A Coast Guard commissioned, warrant, or petty officer; or any other law enforcement officer authorized to obtain a chemical test under Federal, State, or local law.

46 CFR 16.105

A.3.g. Medical Review Officer (MRO).

A MRO is a licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing SAMHSA accredited laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results. A MRO will be qualified in accordance with the requirements of 49 CFR part 40.

33 CFR 95.010

A.3.h. Intoxicant

An intoxicant is any form of alcohol, dangerous drug, or combination thereof.

46 CFR 16.105

A.3.i. Dangerous Drug

A narcotic drug, a controlled substance, or a controlled-substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

46 CFR 16.105

A.3.j. Service Agent

Any person or entity that provides services specified under this or 49 CFR Part 40 to employers and/or crewmembers in connection with DOT drug testing and Coast Guard alcohol testing requirements. This includes, but is not limited to, collectors, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet the qualifications set forth in applicable sections of 49 CFR Part 40. Service agents are not employers for purposes of this part and cannot act as the Designated Employer Representative (DER).

46 CFR 16.105

A.3.k. Consortium/Third Party Administrator (C/TPA)

A service agent who provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to



administer, as a single entity, the DOT drug testing programs for its members.

46 CFR 16.105

A.3.1. Sponsoring Organization

Any company, consortium, corporation, association, union, or other organization with which individuals serving in the marine industry, or their employers, are associated.

46 CFR 16.105

A.3.m. Refuse to Submit

A refusal to take a drug test as set out in 49 CFR 40.191.

49 CFR 40.3

A.3.n. Designated Employer Representative (DER)

An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40. Service agents cannot act as DERs.

A.4.
 APPLICABILITY

A.4.a. General

Certain crewmembers are subject to the regulations of 46 CFR Part 16. If MMCs are required by at least one person on the vessel, then that person, and possibly more could be subject to the regulations based upon their safety sensitive position and responsibilities on the vessel. Each vessel must be evaluated independently using the definitions of "crewmember" and "operation" to determine person-specific applicability. With the exception of serious marine incident testing requirements, the regulations contained in 46 CFR Part 16 are not applicable to foreign flag vessels or those vessels that do not require licensed personnel. Examples of vessels where licensed personnel are not required (and therefore these regulations do not apply) are towing vessels under 26 feet in length and commercial fishing industry vessels under 200 gross tons.

A.4.b. Safety Sensitive Positions

In addition to the licensing requirement for enrollment in a chemical testing program, the regulations require a marine employer to establish a chemical testing program for employees who occupy a safety sensitive position on a vessel. Crewmembers in a safety sensitive position include those who:

- Occupy a position, or perform the duties and functions of a position required by the vessel's Certificate of Inspection (COI);
- Are required by law or regulation to hold a Coast Guard license to perform their duties;
- Perform duties and functions directly related to the safe operation of the vessel;
- Perform duties and functions of watchmen or patrolmen required by Coast Guard regulations; or
- Are specifically assigned the duties of warning, mustering, assembling, assisting, or



controlling the movement of passengers during emergencies.

A crewmember in a safety sensitive position can also include individuals employed as bartenders, dealers, game operators and service personnel on vessels such as riverboat gambling casinos. These individuals shall be in a USCG chemical testing program if their duties include, but are not limited to, directing and mustering passengers in emergencies, passing out life jackets, or controlling, operating lifesaving/firefighting equipment.

A.4.c. Fishing Industry Vessels

Personnel employed on fishing industry vessels of less than 200 gross tons are not subject to the chemical testing regulations of 46 CFR 16 because these vessels are not required to be operated by individuals holding a Coast Guard-issued license. However, they are subject to the post SMI chemical testing required by 46 CFR 4.06. Also, tankermen required by 46 CFR 105 on commercial fishing vessels dispensing petroleum products are subject to the chemical testing requirements of 46 CFR 16 since they meet the definition of crewmember (see A.3.c. above).

A.4.d. Marine Employer Financial Status

The financial status of a marine employer, whether operating "for profit" or "not for profit" (i. e., charity), does not change the requirement for chemical testing.

A.4.e. Employee Payment Status

The payment status of an employee, whether he or she is a paid employee or serving as a volunteer, does not change the requirement for chemical testing if that person is a crewmember (see A.3.c. above).

A.4.f. Uninspected Sailing School Vessels

Students on board uninspected sailing school vessels technically meet the definition of crewmember due to their involvement in the operation of the vessel. However, their primary purpose on board is as paying passengers, who the regulations are intended to protect. Due to the instructional nature of the vessel's operation, the licensed operator is ultimately operating the vessel. Therefore, sailing school students are not subject to chemical testing requirements of 46 CFR 16.

A.4.g. Cargo Handling Personnel On Unmanned Barges

The regulations governing cargo handling (46 CFR 35-35 and 151.45-4) dictate the crew duty requirements for cargo transfer operations of unmanned barges. Both require that an individual with the proper license, MMD endorsement, or letter of designation (for subchapter O cargoes) be on duty to perform transfer operations. That individual is deemed to meet the definition of crewmember and is subject to the testing requirements of 46 CFR 16.



A.4.h. Foreign Nationals

Crewmembers of foreign flag vessels while operating in U.S. waters are subject to the post SMI chemical testing requirements of 46 CFR 4.06. Foreign nationals who are employed on a U. S. flag vessel in a position which is required to undergo chemical testing are required to meet the requirements of 46 CFR 4.06 and 46 CFR Part 16.

A.5. TESTING METHODOLOGY

A.5.a. Chemical Testing For Dangerous Drugs

Chemical testing conducted under 46 CFR Parts 4 and 16 is limited to testing for five dangerous drugs or drug classes: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP) **only**. All dangerous drug analysis is conducted on urine samples. Urine samples collected in order to meet the requirements of these regulations may not be tested for any other drugs. If an employer wants to test for additional drugs, or use a different cutoff level, the employer must keep such a program completely separate from the Coast Guard required program, including separate sample collections.

A.5.b. Other DOT/Federal Agency Drug Tests

Drug test taken under the authority of another DOT Operating Administration or another Federal Agency cannot be used to satisfy the requirements for a Coast Guard required drug and alcohol test program. Even though all DOT Operating Administrations use the same drug testing procedures (49 CFR 40), the requirements of a DOT Operating Administration or Federal Agency concerning when a test is required and procedures for handling test results oftentimes will differ.

There is one exception to this: If a credentialed person or credential applicant takes and passes a DOT or Federal Agency drug test within the past six months, that drug test result may be used **ONLY** for meeting the drug test requirement for credentialing (Periodic Test).

A.5.c. Alcohol Testing

The alcohol testing requirement in 46 CFR 4.06 and the alcohol testing authorized in 33 CFR 95 may be conducted using either blood, saliva or breath samples. If a blood sample is to be used, only a qualified medical person may collect the sample. **The blood specimen is to be handled using established chain-of-custody procedures.**

Saliva and breath testing devices must be capable of determining the presence of alcohol in a person's system, must be used in accordance with the manufacturer's procedures and must be currently listed on a Conforming Products List maintained by National Highway Traffic Safety Administration (NHTSA). This testing may be conducted by anyone trained to perform such tests. The Coast Guard does not mandate the use of Evidential Breath Testing devices.



**A.6. COLLECTION
REQUIREMENTS**

A.6.a. Dangerous Drug Testing Specimens

All dangerous drug analysis is conducted on urine specimens. Specimen collection requirements, such as who may collect urine specimens, collection procedures, and security precautions, are found in 49 CFR 40.

Coast Guard personnel shall not under any circumstances, provide urine collection materials, or perform as the collection site person. Coast Guard personnel may suggest local sources for those materials and services. A listing of potential sites for post-accident specimen collection is available at <http://homeport.uscg.mil/Missions>Investigations>Drug and Alcohol Program> “Drug testing Service Providers”. There are additional commercial vendors available that can do drug and alcohol testing on a short notice requirement.

The Department of Transportation (DOT) split sample procedures are mandatory for the maritime industry. Marine employers shall ensure the DOT split sample procedures are followed. Specimen handling, analysis, and reporting requirements are also discussed in 49 CFR 40. It is the responsibility of the marine employer to ensure that the collection of urine samples are conducted within 32 hours of a Serious Marine Incident (SMI) occurrence, unless precluded by safety concerns directly related to the incident. If safety concerns do not allow collection within 32 hours, the collection must be completed as soon as the safety concerns have been addressed. If urine samples are not collected within 32 hours of the SMI or immediately after the safety concerns have been addressed, the reason why must be documented on form CG-2692B.

46 CFR 4.06-3(a)

A.6.b. Alcohol Testing Samples

DOT alcohol testing procedures in 49 CFR part 40 are NOT applicable for the marine industry. Testing for the presence of alcohol may be conducted using blood, saliva or breath samples. If a blood sample is to be used, the sample is to be collected ONLY by a qualified medical person. A saliva or breath test can be conducted by an individual trained on how to perform the test. The timeliness of testing is especially important due to the rapid elimination of alcohol from the body. It is the responsibility of the marine employer to ensure that the alcohol tests are conducted within 2 hours of a SMI occurrence, unless precluded by safety concerns directly related to the incident. If safety concerns do not allow testing within 2 hours, the testing must be completed as soon as the safety concerns have been addressed. Testing is not required to be conducted more than eight hours after the SMI and the reason why the testing was not conducted must be documented on form CG-2692B. Whenever possible, efforts can be made to ensure that a law enforcement officer conduct the alcohol test if such testing would be more timely than testing arranged by the marine employer, or if there is any concern that testing would not otherwise be accomplished.

**A.7. LABORATORY
ANALYSIS**

Analysis of drug test specimens must be conducted at a Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory. A current list of laboratories that meet the minimum standards to engage in urine drug testing for federal agencies is listed in the Federal Register during the first week of every



month under the Department of Health and Human Services category. Federal Registers may be accessed at <http://www.gpoaccess.gov/fr/index.html>. The list of laboratories will also be posted in the DAPI general information section of the Drug & Alcohol Program (DAPI) Community on CGCentral.

A. 8. EMPLOYEE RESPONSIBILITIES

Employees must provide a urine specimen for drug testing, and a blood or breath sample for alcohol testing, when directed by their marine employer or a law enforcement officer. An employee cannot be compelled to submit to drug or alcohol testing, however a refusal to test by an employee could subject the individual to suspension and revocation proceedings and/or civil penalty actions (see section E below for more info on refusals).

B. MARINE EMPLOYER RESPONSIBILITIES

B. 1. GENERAL

The marine employer is responsible for establishing and administering a drug and alcohol testing program for their employees. The Coast Guard has developed a guide booklet to assist marine employers with complying with this requirement. This booklet may be viewed or downloaded at <http://homeport.uscg.mil> Missions>Investigations>Drug and Alcohol Program “Marine Employers Drug Testing Guidance”. Failure, on the part of a marine employer, to implement a program or to conduct chemical testing for dangerous drugs or for evidence of alcohol subjects the employer to the civil penalty provisions of 46 U.S.C. Section 2115. 33 CFR Part 27 provides the current maximum penalty which may be assessed and the Statute provides that the penalty may be assessed per day for each violation and each day of a continuing violation constitutes a separate violation.

B. 2. CONFIDENTIALITY

The marine employer will safeguard the confidentiality of the testing program and shall not release drug testing results or other personal information except to the person who was tested, to a third party that the tested person specifies in writing, to the Coast Guard, the National Transportation Safety Board (NTSB), or upon being presented with a valid court order in a legal proceeding.

B. 3. EMPLOYEE ASSISTANCE PROGRAM (EAP)

The marine employer must establish an Employee Assistance Program (EAP) that includes education and training programs on drug use for crewmembers and the employer’s supervisory personnel. Supervisors must receive at least 60 minutes of training. The education program, at a minimum, must include the display and distribution of:

- Information on drug use/abuse;
- The employer’s drug and alcohol policy; and
- The display of a community substance abuse hot-line telephone number for crewmember assistance.

The training program, at a minimum, must include training on:

- The effects and consequences of drug and alcohol use on personal health, safety and the work environment;
- The behavioral indications of drug use/abuse; and



The documentation of training completed by crewmembers and the employer’s supervisory personnel.

B.4. REPORTING POSITIVE AND NON-NEGATIVE DRUG TESTS

B.4.a. Individuals With MMCs (Merchant Mariner Credentials)

Current marine employers, potential employers and sponsoring organizations must make a written report to the Coast Guard of all positive drug tests results from any required testing of any individual with MMCs. Positive test results must be reported from both the present and prospective employers. The marine employer must make this report regardless of whether the individual was hired or not hired, and regardless of whether the position required the individual to have MMCs. Marine employers and sponsoring organizations should be encouraged to also report all non-negative results from any required tests and all positive results from any non-DOT test conducted.

B.4.b. Individuals Without MMCs

Marine employers are not required to report positive or non-negative pre-employment or random drug test results to the Coast Guard for persons without MMCs. However, employers are prohibited from hiring or using these individuals to fill safety sensitive positions. Positive and non-negative post-SMI required chemical test results must be reported regardless of whether or not the individual has MMCs.

B.5. REPORTING A REFUSAL TO TEST
[46 CFR 4.06-5](#)
[49 CFR 40.191](#)

A crewmember that holds a MMC who refuses to provide a test sample should be reported to the nearest Coast Guard Sector or Activity for action to be taken in accordance with applicable laws and regulations. Any crewmember that refuses to provide a test sample, regardless of whether or not they possess MMCs must be removed from safety sensitive positions.

A MRO report of a substituted and/or adulterated drug test specimen is considered a refusal to test. If a crewmember refuses to remain at a collection site to give an additional specimen when directed to do so by a collection agent, it will be considered a refusal to test.

Guidance on appropriate actions to take against individuals that refuse to test can be found in section E below and personnel investigation guidance can be found in Chapter B.11 of this manual.

B.6. MANAGEMENT INFORMATION SYSTEM (MIS)

The marine employer must collect drug and alcohol testing program data for input to the Management Information System (MIS). This data is collected for each calendar year, January 1 to December 31, and must be submitted by March 15 of the following year to:
 Commandant (CG-545)
 United States Coast Guard
 2100 Second Street, S.W.
 Washington, DC 20593-0001



USCG MARINE SAFETY MANUAL, VOLUME V: INVESTIGATIONS AND ENFORCEMENT
PART C: MARITIME PERSONNEL
CHAPTER 6: DRUG AND ALCOHOL PROGRAM

The DOT MIS form and data can be submitted using the Internet at <http://damis.dot.gov>. A user name and password is required for submission and can be obtained from <http://homeport.uscg.mil/> Missions>Investigations>Drug and Alcohol Program "Using the Department of Transportation Reporting Website".

The MIS form and its instructions are available at all Coast Guard Sectors and Activities, and can be downloaded or printed from the world wide web at from <http://homeport.uscg.mil/> Missions>Investigations>Drug and Alcohol Program "DAPI Program Forms".

Instructions for completing the form can also be found in 46 CFR 16.500.

Forms may be submitted on behalf of a marine employer by a drug testing consortium or an employer representative. It is the employer's responsibility to ensure that the data submitted is correct.

Consortiums may submit one MIS form for their entire pool, provided a list of those marine employers and vessel identification numbers for each marine employer covered by the submitted MIS form is attached.

**B. 7. SEASONAL
EMPLOYEES**

Marine employers must ensure seasonal employees who do not meet one of the pre-employment testing exemptions (see C.1.a. below) are pre-employment tested upon their return each season. These employees shall be included as part of the random testing pool during the time they are in the actual employment of the company. If a marine employer wants to retain an individual as an unpaid employee during the "off-season" and that individual remains in the employer's random testing pool and fully participates in any required testing, he/she can be treated as a "returning" employee when they return to the payroll and will not need to be pre-employment tested. The same would hold true for a seaman returning to the same company after an absence (i.e. vacation or normal time off from being part of a blue/gold crew) during which the seaman was still considered an employee of the company (i.e. still receiving medical and/or other benefits). Individuals changing positions or ships within a company's fleet are not considered "new hires" and do not need to be pre-employment tested.

**B. 8. SHARING
CREWMEMBERS AND
INDEPENDENT
MARINERS**

Many marine employers allow their employees to temporarily work for other marine operators. There are also many individuals who make themselves available for employment, particularly as deckhands on charter boat operations. In order to ensure that the chemical testing requirements are not compromised, marine employers who share crewmembers with another employer or hire independent mariners must ensure that the chemical testing rules are followed. These employers must:

- Conduct pre-employment tests. These tests can be waived if the marine employer determines that an individual has been in a random testing program for 60 days within the previous 185 days and has not tested positive or refused to take a chemical test. This documentation is to be retained by each marine employer who hires this individual.
- Ensure that serious marine incident testing and reasonable cause testing is



conducted on any crewmember when required by the regulations.

- Presently, there is nothing to prevent a charterboat operator from sharing crew members with another operator or from hiring independent consortium members as long as the chemical testing rules are followed.
- Ensure that all employers of a “shared” crewmember are made aware of any positive test or refusal to test by the crewmember.

**B.9. CHECK OF
EMPLOYEES’ DRUG AND
ALCOHOL TESTING
RECORD**

B.9.a. Marine Employers requesting information

49 CFR 40.25 requires a marine employer, after obtaining the employee’s (or potential employee) written consent, to request information on that individual from all DOT regulated employers who have employed the individual for any time during the previous 2 years. This applies only to employees seeking to be placed in a safety sensitive position (i.e., a new hire, an employee transferred into a safety sensitive position). If the individual will not provide their written consent, the marine employer may not place them in any safety sensitive position. Employers need to request the following information:

Alcohol test with a result of .04 or higher alcohol concentration (for marine employers this will be non-DOT alcohol test results and should be identified as such.);

- Verified positive drug test;
- Refusals to be tested (including verified adulterated or substituted drug test results);
- Other violations of DOT agency drug and alcohol testing and/or Coast Guard alcohol testing requirements; and
- For employees who have violated a DOT drug and alcohol regulation, documentation of the employee’s successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have this information, the marine employer must seek to obtain this information from the employee. If there is a DOT alcohol violation that will occur as the result of being employed in a safety-sensitive position regulated by another DOT modal administration (e.g., FAA, FMCSA). If the alcohol violation was incurred under Coast Guard authority, the mariner must present evidence of completing the requirements of their Agreement by which they had their credential returned to them.
- If feasible, this information must be obtained and reviewed before the employee is placed into a safety sensitive position. If not feasible, the information should be obtained and reviewed as soon as possible. However, this individual should not fill a safety sensitive position for a period of more than 30 days after the date the information was requested, unless the information has been obtained or a good faith effort to obtain the information has been made and documented.
- The employer must also ask the employee whether they have tested positive, or refused to test, on any pre-employment drug test taken in conjunction with an application for a safety sensitive position, but not obtained, within the last 2 years.



B.9.a.1. Actions After Receiving Information

If the marine employer receives information that the employee had violated a DOT agency drug and alcohol and/or a Coast Guard alcohol regulation, they must not use the employee in safety sensitive positions unless they have obtained information that the employee has subsequently complied with the DOT return-to-duty requirements for a DOT drug test violation and completed any Coast Guard requirement for an alcohol violation. Also, if the employee admits to having had a positive test or a refusal to test, the employer may not use the employee in safety sensitive positions until and unless the employee documents successful completion of the return-to-duty requirements. See section D.3.a. for guidance on the DOT return-to-duty requirements.

B.9.b. Marine Employers providing information

Marine employers who are requested to provide information on previous employees must:

- Ensure that they have received and reviewed the employee's specific written consent (should be an original signature and not a facsimile);
- Immediately release the requested information to the employer making the request;
- Ensure that the information includes any of the requested information that was obtained from their request for information from previous employers; and
- Release the information in any written form (e.g. fax, e-mail, letter) that ensures confidentiality.

B.10. REQUIRED RECORDKEEPING

B.10.a. Positive Test Results and/or Test Refusals

Marine employers are required to keep records of tests reported positive or test refusals by the MRO for a period of 5 years.

B.10.b. Negative Test Results

Marine employers are required to keep records of tests reported as negative or negative-dilute for at least 1 year.

B.10.c. Pre-employment records

Marine employers must have records that will demonstrate that an individual has passed a pre-employment test or has been subject to random testing in support of the pre-employment waiver requirements.

B.10.d. Record of all testing performed

Marine employers must have test records that indicate:
The total number of individuals chemically tested annually for dangerous drugs in each of the categories of testing required;
The number of individuals who tested positive and for what types of drugs; and
The number of test refusals (Adulterated, substituted).



B.10.e. Request for Employee Drug and Alcohol Testing Results

Marine employers who have requested drug and alcohol test result information on employees must keep a written, confidential record of the information obtained or the good faith effort they made to obtain the information. These records must be kept for 3 years from the date the employee first performed in a safety sensitive position.

B.10.f. Release of Employee Drug and Alcohol Testing Results

Marine employers who have released drug and alcohol test result information on employees, in accordance with 49 CFR part 40.25, must keep a written record of the information released, including the date, the party to whom it was released and a summary of the information provided.

C. OCCASIONS TO CONDUCT DRUG AND ALCOHOL TESTS

C.1. PRE-EMPLOYMENT

A crewmember must pass a chemical test for dangerous drugs before an employer may employ them. A prospective crewmember that submits a urine sample cannot be employed in a safety sensitive position until a verified negative test result is received by the employer.

C.1.a. Pre-employment waivers

An employer may waive a pre-employment test if the prospective employee has:
Passed a chemical test for dangerous drugs within the previous six months with no subsequent positive tests or refusals to test during the remainder of the six month period; or
Been subject to random testing for 60 days within the previous 185 days and did not fail or refuse to participate in chemical testing for dangerous drugs. "Being subject to random testing" does not mean the individual has to have actually been tested, but has been eligible to be tested.
An employer is not required to exempt prospective employees from pre-employment testing.

C.2. PERIODIC

Periodic tests are the responsibility of the individual mariner, not the marine employer, for transactions involving their MMCs. Drug test results must be submitted with their MMC application. The test results must be completed and dated not more than 185 days prior to the submission of the application. Mariner's that can provide satisfactory evidence that they have passed a DOT 5-panel drug test within the previous 6 months or provide evidence that during the previous 185 days they have been subject to random drug testing program for at least 60 days and have not failed nor refused to take any required drug test, do not have to submit drug test results with their application.



C.3. RANDOM

Random, for purposes of the drug testing regulation, means that each crewmember has an equal chance of being selected each time random selections are made. The random selection must be by a valid scientific method. Random drug testing shall be unannounced, meaning there is no prior notice to the individual being test. When an individual has been notified of the requirement to take a random drug test, that individual must immediately comply with the notification to test. If the individual employee does not immediately comply, it can be considered a refusal to test.

An employee's chance of selection must continue throughout his or her employment. This means that the marine employer cannot allow periods when an employee is "free" from chance of selection, or allow high-risk/low-risk selection periods to exist. An employer may randomly select vessels, rather than individuals, testing all applicable crewmembers.

The dates of testing must also be random. For example: randomly picking names each payday is not acceptable, because the date is predictable and the employees could "beat" the test.

No other tests, such as post accident or pre-employment can be counted toward the required percentage for the random testing. Marine employers may form or otherwise use sponsoring organizations, or may use contractors, to conduct their random chemical testing program.

C.3.a. Annual Rate

Commandant will publish in the Federal Register the minimum annual percentage rate for random drug testing of covered crewmembers. The annual random drug testing rate has been set at 50% since 1988. However, the annual rate may be adjusted based on data received through Management Information System (MIS). If data received for two consecutive calendar years indicates that the positive rate was less than 1.0 %, the random drug testing rate may be reduced to 25%.

C.3.a.1. How To Determine The Number Of Tests Required

The number of random tests conducted each year must be based on the number of employees employed by the marine employer to serve as crewmembers, **not** the number of billets on board the employer's vessels. For example; if a marine employer employs 12 crewmembers throughout a year to fill 6 crewmember billets on board their vessel, the number of random tests required would be based on 12 employees. Thus, using a required rate of 50%, 6 random tests would need to be conducted during that year.

C.3.b. Program Requirements for inspected vessels

A marine employer must establish a program for random drug testing of crewmembers on inspected vessels who:

- Occupy a position, or perform the duties and functions of a position, required by the vessel's Certificate of Inspection;



- Perform the duties and functions of patrolmen or watchmen required by Coast Guard regulations; or
- Are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies.

C.3.c. Program requirements for uninspected vessels

A marine employer must establish a program for random drug testing of crewmembers on uninspected vessels who:

- Are required by law or regulation to hold a Coast Guard issued license to perform their duties;
- Perform duties and functions directly related to the safe operation of the vessel;
- Perform the duties and functions of patrolmen or watchmen required by Coast Guard regulations; or
- Are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies.

C.4. REASONABLE CAUSE

C.4.a. Reasonable cause testing for dangerous drugs (46 CFR 16.250)

A marine employer shall require any crewmember that is reasonably suspected of using a dangerous drug to be chemically tested for dangerous drugs. When the marine employer determines that reasonable cause to require a test exists, the individual must be informed of that fact and directed to provide a urine sample as soon as practicable. The evidence to support the establishment of reasonable cause, the direction given to the crewmember to provide a sample, and any refusal or other response should be documented. On vessels that are required to have an official ship's log, the above information shall be entered in the logbook.

A reasonable cause drug test shall be done in accordance with 49 CFR Part 40.

C.4.a.1. Definition of reasonably suspected

Reasonably suspected or reasonable cause means a probability exists, based on some evidence, that a crewmember has used a dangerous drug. Generally, this should be based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Where practicable, these observations should have been made by two persons in supervisory positions. Indicators include but are not limited to:

- An individual's speech (slurred and incoherent), behavior (lack of coordination and balance), or appearance;
- Drugs and drug paraphernalia in clothing and personal property, or concealed in staterooms or elsewhere; or
- Smoke, breath and body odors.
- Since illness, injury, or other factors, as well as drugs could cause these circumstances and conditions, the decision to test for reasonable cause must be



made with prudence and common sense.

C.4.b. Reasonable cause testing for intoxication (33 CFR 95.035)

These regulations apply to all vessels (commercial, recreational, domestic or foreign) on U. S. waters. Only a marine employer or a law enforcement officer may direct an individual operating a vessel to undergo a chemical test for evidence of drug or alcohol use. Reasonable cause exist when:

- The individual was directly involved in the occurrence of a marine casualty; or
- The individual is suspected of being intoxicated, which can be established by direct observation of the individual's operation of any vessel and there is an apparent effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior.

Where practicable, these observations should have been made by two persons. When the individual is directed to undergo a chemical test, the individual must be informed of that fact and directed to undergo a test as soon as practicable.

Unlike mandatory chemical testing after a SMI, chemical tests are not automatically required whenever an individual is involved in a marine casualty. Good judgment and careful consideration of the seriousness and circumstances of a marine casualty shall be exercised before directing chemical testing. A chemical test for drugs directed under this authority should be conducted in accordance with 49 CFR 40.

**C.5. POST
ACCIDENT**

Post accident drug and alcohol testing regulations apply to all U.S. commercial vessels operating anywhere in the world and all foreign-flagged vessels operating upon the navigable waters of the U.S.

C.5.a. Reportable marine casualties

Following every marine casualty reportable to the Coast Guard under 46 CFR 4.05-10 (i.e., Reportable Marine Casualties), the marine employer must determine whether there is any evidence of alcohol or drug use by the individuals directly involved. Such evidence may include chemical tests for drugs and alcohol. Any evidence must be preserved and reported to the Coast Guard.

C.5.b. SMI or Probable SMI Casualties

When a marine casualty occurs, the marine employer must make a timely, good faith determination as to whether the occurrence is or is likely to become a SMI. A marine employer shall require all persons engaged or employed on board the vessel(s) whom the employer determines to be directly involved to be chemically tested for dangerous drugs and alcohol. An individual whose order, action or failure to act is determined to have, or cannot be ruled out as, having caused or contributed to a SMI can be considered "directly involved". A law enforcement officer may also determine that a person was directly involved. If this happens, the marine employer



shall then take all practicable steps to collect a sample.

46 CFR 4.06-3

C.5.c. Collection timeframe

Individuals ordered to be tested should not leave their duties in the aftermath of an incident when their performance is necessary to save lives or property, or to protect the environment. Individuals required to be tested are not to drink any beverage that contains alcohol, including mouthwashes until after the test has been conducted or after eight hours from the time of SMI. It is the responsibility of the marine employer to ensure that the alcohol tests are conducted within 2 hours and urine samples are collected within 32 hours of a SMI unless precluded by safety concerns directly related to the incident. If safety concerns do not allow testing within 2 hours or collection of a urine sample within 32 hours, the testing/collection must be completed as soon as the safety concerns have been addressed. Alcohol testing is not required to be conducted more than eight hours after the SMI. Whenever possible, efforts can be made to ensure that a law enforcement officer conduct the alcohol test if such testing would be more timely than testing arranged by the marine employer, or if there is any concern that testing would not otherwise be accomplished. Marine employers are required to have the drug test specimens collected within 32 hours of the incident. If this is not possible, the drug test specimens should be collected as soon as possible after the incident.

C.5.d. Post Accident Testing Reporting Requirements

A Coast Guard form CG-2692B, Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident, must be submitted to the appropriate Officer in Charge, Marine Inspection following any serious marine incident. If alcohol tests cannot be conducted within 8 hours or urine samples are not collected within 32 hours of the SMI or immediately after the safety concerns have been addressed, the reason why must be documented on form CG-2692B. This form should be submitted with a form CG-2692, Report of Marine Accident, Injury or Death. All persons tested, regardless of citizenship, or whether or not they have MMCs shall be indicated on the CG-2692B. The drug test results will not always be available when the CG-2692 and CG-2692B are submitted, therefore the marine employer must report the test results, positive or negative, when they receive them.

D. POSITIVE/NON-NEGATIVE DRUG AND ALCOHOL TESTS

**D.1. POSITIVE
DRUG TEST DEFINED**

A positive drug test of a urine sample is a test result that a designated Medical Review Officer (MRO) verifies as positive for one or more drugs or drug classes. The marine employer must ensure that all test results are sent from the SAMHSA certified laboratory to the employer's designated MRO for verification. The verification process involves the MRO contacting the employee with the lab confirmed positive test and conducting an interview to determine if there is a legitimate explanation for the positive test. Only when the MRO verifies a person's



confirmed positive test result from the lab and reports the test as positive to the marine employer has that person then failed the drug test. The MRO also reviews the chain-of-custody and other procedures to insure that there is no possibility of error or "mix-up". If there is a legitimate explanation or a possibility of error, the MRO will either cancel the test or downgrade it to a "negative test". The use of marijuana for medicinal purposes, the ingestion of marijuana that has been added to prepared food products (i.e., brownies, pasta), or the passive inhalation of marijuana smoke or the environmental exposure or accidental ingestion of any drug or drug class is not a valid reason for the MRO to determine a negative test result. See 46 CFR 40.151.

D.2. NON-NEGATIVE DRUG TEST DEFINED

A non-negative drug test of a urine sample is a test result that a designated Medical Review Officer (MRO) verifies as adulterated or substituted. These test results are to be considered a refusal to test and are a primary indication that the mariner has attempted to subvert the testing process. Adulterated is when an additive has been added to the urine specimen to "mask" the presence of a drug. Substituted is when the specific gravity and creatinine values are so low that the submitted specimen is considered not consistent with normal human urine. A substituted specimen can be the result of ingesting large quantities of fluids or using a liquid that will look like urine, i.e., apple juice, lemonade.

The marine employer must ensure that all test results are sent from the SAMHSA certified laboratory to the employer's designated MRO for verification. The verification process involves the MRO contacting the employee with the lab confirmed adulterated or substituted test result and conducting an interview to determine if there is a legitimate explanation for the test result. Only when the MRO verifies a person's confirmed adulterated and/or substituted test result from the lab and reports the test as adulterated and/or substituted to the marine employer has that person then refused to take the drug test. The MRO also reviews the chain-of-custody and other procedures to insure that there is no possibility of error or "mix-up". If there is a legitimate explanation or a possibility of error, the MRO will either cancel the test or downgrade it to a "negative test"

D.3. REPORTS OF POSITIVE AND NON-NEGATIVE TESTS

Marine employers must report positive tests to the Coast Guard for persons holding MMCs. Additionally, marine employers must report any non-negative drug test results to Coast Guard for MMC holders.

D.4. NEGATIVE - DILUTE DRUG TEST REPORTS

On occasions, drug test will be reported as negative dilute by the MRO to the marine employer. When certain test level criteria (specific gravity and creatinine) are met, the MRO will direct the marine employer to send the individual immediately for another test using direct observation collection procedures. If the test report is negative dilute again, that will be the final test result. No further action is required to be taken.

D.5. CONSEQUENCES OF POSITIVE AND NON-

Any crewmember who fails any required drug test or has a drug test violation must be removed from duties which directly affect the safe operation of the vessel as soon as practicable (or denied employment in the case of a pre-employment test)



NEGATIVE TEST

until/unless the MRO determines that person is drug free and at low risk to return to drug use. This requirement applies to all persons who fail drug tests, whether or not they hold a MMC. In addition, the requirements given in 49 CFR part 40, subpart O must be complied with when returning to work.

D.6. ALCOHOL TESTS THAT SHOW THE PRESENCE OF ALCOHOL.

Alcohol tests that are performed with a breath testing device will show the presence of alcohol a level of 0.02 BAC or higher. The Coast Guard requires one of the following three specimen sources for an alcohol test: Blood, saliva and breath. Urine specimens that have been tested for alcohol are not acceptable.

E. REFUSAL TO TEST

E.1. GENERAL

The marine employer is responsible for assuring that drug and alcohol testing is done, but no individual can be forced to give a sample for chemical testing. In refusal cases, the individual's refusal must be documented, and that person may be liable for a civil penalty and/or be subject to Coast Guard action against their MMCs for that refusal to test.

E.1.a. Refusals by Individuals with MMCs

Employees must provide a urine sample for drug testing, and a blood, saliva or breath sample for alcohol testing, when directed by their marine employer. An employee cannot be compelled to submit to drug or alcohol testing, however a refusal to test by an employee is considered misconduct. S&R proceedings and/or civil penalty actions should be taken against employees who refuse to test.

E.1.b. Refusals by Individuals without MMCs

Employees must provide a urine sample for drug testing, and a blood, saliva or breath sample for alcohol testing, when directed by their marine employer. An employee cannot be compelled to submit to drug or alcohol testing, however a refusal to test by an employee shall be reason for immediate removal of the employee from being employed in a safety-sensitive position.

F. DRUG AND ALCOHOL PROGRAM INSPECTOR (DAPI)

F.1. WHAT IS A DAPI?

A Drug and Alcohol Program Inspector (DAPI) is a Coast Guard inspector whose primary focus is to increase compliance with the chemical testing requirements in the marine industry.

A DAPI has two roles. First, they are to educate and assist marine employers in



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developing a compliant chemical testing program. Although it is unrealistic to expect a DAPI to visit each and every marine employer within his or her district, they are expected to respond to any questions or problems a marine employer might have.

The DAPIs second role is to enforce the chemical testing regulations. DAPIs will conduct vessel inspections and visit marine employers within the District to ensure compliance with the chemical testing regulations. The scope of the inspections will include record keeping and reporting, specimen collection, Medical Review Officer activities, employee assistance programs, proper designation of crewmembers to be tested, and proper conduct of required tests.

DAPI positions were established in the geographical center of the applicable vessel distribution in each district. The ports where DAPIs are located are Providence, Norfolk, Miami, New Orleans, St. Louis, Toledo, San Francisco Bay area, Portland (Oregon), Honolulu, and Anchorage. DAPIs are required to travel throughout each district, to create and foster an extensive outreach program. A DAPI can be assigned to either the local District office or District Sector Office. Due to the nature of the DAPI position, units with DAPIs should not assign the DAPI collateral duties or other responsibilities (e.g. morale officer).

F.2. DAPI
ENFORCEMENT TOOLS

DAPIs have several enforcement tools available to them in the event they encounter noncompliance. For inspected vessels, a DAPI may pull a vessel's Certificate of Inspection or issue a civil penalty. For uninspected vessels, a DAPI may obtain a Captain of the Port Order, which prevents a vessel from operating. Civil penalties can also be issued to operators of uninspected vessels. Individuals refusing to participate in a chemical testing program can be issued civil penalties. Furthermore, holders of Coast Guard licenses or Merchant Mariner documents (MMDs) may be subject to suspension and revocation proceedings.

F.3. CHEMICAL
TESTING PROGRAM
AUDITS

There are two checklists that have been developed for use by DAPIs and vessel inspectors. The first checklist is a simple five questions with minimal proof requirements being sought by a vessel inspector. The purpose is a simple compliance tool. If there are no apparent surface problems with the drug test program and other aspects of the vessel inspection, the drug test program audit may be considered complete. The second checklist is more detailed and is for use by a DAPI when doing a full audit of a marine employer's drug and alcohol test program. This audit tool will be done when questions or concerns have arisen concerning compliance have been brought to the attention of Coast Guard. Both of these checklists are available on request from CG-545.

F.4. DAPI PQS

Newly assigned DAPIs will be required to complete a set of Program Qualification Standards (PQS). The PQS will focus on applicable laws and regulations pertaining to chemical testing as well as audits or inspections of a marine employer's chemical testing program.



While not a requirement, it is desirable that DAPIs have an Investigations background (e.g. complete Investigating Officer's Course, obtain Investigator Qualifications). It is highly recommended that those individuals who are newly assigned to a DAPI billet and new to the Marine Safety program receive no less than 2 weeks OJT with a Coast Guard Inspector and 2 weeks with a Coast Guard Investigator.

G. LETTERS OF REGULATORY COMPLIANCE

G.1. WHAT IS A LETTER OF REGULATORY COMPLIANCE (LORC) ?

A Letter of Regulatory Compliance (LORC) is a letter from Commandant (CG-545) that states that the Coast Guard has reviewed the drug and alcohol program for a marine employer, (or consortium), and that chemical testing policy meets the intent of the regulations set forth in the Coast Guard regulations found at 46 CFR parts 4 and 16 and the DOT regulations found at 49 CFR part 40. An LORC *is not a Coast Guard approval or endorsement* for a company. It is a Coast Guard acknowledgement that the subject program has been reviewed and is not deficient in meeting the regulatory requirements and procedures.

G.2. ARE LORC'S REQUIRED?

A marine employer is not required to obtain an LORC. However, by obtaining an LORC, the drug and alcohol program audit performed annually by the Coast Guard will potentially go smoother for a marine employer. An inspector will not have to dedicate extensive time and energy auditing the drug and alcohol testing program because the Coast Guard (CG-545) has already reviewed the program and determined that it is not deficient in its form.

G.3. HOW ARE LORC'S OBTAINED?

The standards that a marine employer or a Consortia/Third Party Administrator (C/TPA) can be found at <http://homeport.uscg.mil> Missions>Investigations>Drug and Alcohol Program "Letters of Regulatory Compliance". These standards are available in Word and Adobe format for download and completion. There are instructions on this site for completion of the standards. Regulatory text is not to be submitted but rather how shall a marine employer or C/TPA, in their language, will implement and operate their program is being sought.

After a marine employer or consortium has developed a written drug and alcohol testing program, they should contact the local Coast Guard District Drug & Alcohol Program Inspector (DAPI). The DAPI contact information can be found at <http://homeport.uscg.mil> Missions>Investigations>Drug and Alcohol Program "Nationwide DPAI Program Contact Information". The DAPIs should be able to guide marine employers during the development phase of their chemical testing program, as well as the reviewing stage. The DAPI can review the program locally to check for compliance with the regulations. Should some aspect of the program be deficient the local DAPI will work with the marine employer or consortium in making corrections. After the local DAPI has reviewed the program, it will be forwarded to Coast Guard Headquarters in Washington, DC for a final review. When the program



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is determined to be in compliance with the regulations, Commandant CG-545 will issue an LORC, which should be kept with their chemical testing program.



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Chapter Seven:
Criminal Enforcement

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A. CRIMINAL ENFORCEMENT PROCESS

A.1. GENERAL

This Chapter provides guidance for Marine Safety personnel conducting operations that may result in criminal enforcement and is intended to ensure a uniform process for all marine safety personnel to follow. All marine safety personnel that conduct field activities should be familiar with this policy. The Coast Guard is the primary federal agency responsible for the enforcement of laws and treaties of the U.S. on the high seas, in the Exclusive Economic Zone (EEZ), in coastal areas, and in and along the navigable waters of the U.S. Many of these laws provide for administrative, civil and criminal sanctions for violations of statutory requirements or implementing regulations. Some of these laws authorize criminal sanctions for negligent conduct, some require knowing or willful misconduct, and some establish strict criminal liability for violations. **It is extremely important that investigations of potential violations of laws that conducted by marine safety personnel are performed in a manner that will protect all enforcement options.** Marine safety units and personnel, should work in concert with the Department of Justice (DOJ) and other federal, state, and local agencies, to effectively use resources in support of any criminal prosecution in which the Coast Guard has jurisdiction.

In addition to the guidance below the Maritime Law Enforcement Manual (MLEM), COMDTINSTR M16247.1D, Chapter 11, Vessel Safety; Appendix C, Statutory reference; and Appendix G ,Case Package Preparation provides guidance on criminal law enforcement.

For specific guidance related to law enforcement procedures associated with marine pollution refer to Maritime Law Enforcement Manual (MLEM), COMDTINSTR M16247.1D, Chapter 9, Marine/Environmental Pollution Law Enforcement.

A.2. POLICY AND PROCEDURAL OVERVIEW

Marine safety personnel actively enforce laws by detecting, investigating, and reporting violations of law. In general, the role of marine safety units and personnel is early detection and prompt reporting of potential violations so the cognizant District Commander can, in accordance with 33 C.F.R. § 1.07-90, determine whether to pursue referring the matter to the Department of Justice (DOJ) for criminal prosecution. While that determination sometimes needs to be made very quickly, it must nevertheless be based on a reasoned assessment of accurately transmitted facts and recommendations. Potential criminal violations should be reported without delay to ensure a proper investigation is conducted. District Commanders should ensure there is sufficient evidence of a suspected criminal violation prior to referring a case to DOJ. District legal staffs and the Coast Guard Investigative Service (CGIS) should be consulted and can assist with investigative resources, legal expertise, and liaison with federal prosecutors in evaluating each case and advising the District Commander on referring the case for prosecution. Although U.S. Attorneys do not need a referral from the Coast Guard to prosecute a case, the referral process



provides a standardized, Coast Guard-wide mechanism for bringing important cases to the attention of the appropriate U.S. Attorney. Additionally, since the U.S. Attorney does not require a Coast Guard referral to prosecute a case, the Coast Guard must act quickly to ensure the District Commander is prepared to respond favorably or unfavorably to the Department of Justice (DOJ) regarding the prosecution of potential criminal cases of which the Coast Guard has primary jurisdiction.

B. RESPONSIBILITIES DURING CRIMINAL ENFORCEMENT PROCEDURES

B.1. MARINE SAFETY PERSONNEL

Marine safety personnel are the first line of defense against the violation of laws in the marine environment. As such they should be extremely familiar with this Chapter.

B.2. SENIOR INVESTIGATING OFFICER (SIO)

For all instances in which marine safety units and personnel detect potential criminal activity the Senior Investigating Officer (SIO) will coordinate communications between the unit, the District Commander, D(m) and D(l). The District Commander will interface with the Coast Guard Investigative Service.

B.3. CAPTAIN OF THE PORT (COTP) / OFFICER IN CHARGE, MARINE INSPECTION (OCMI) / COMMANDING OFFICER

In most cases the enforcement of laws over which the Coast Guard has jurisdiction is the responsibility of the Captain of the Port (COTP), Officer in Charge, Marine Inspection (OCMI), and/or Commanding Officers of Sectors and marine safety units.

B.4. DISTRICT COMMANDER

- (1) Each District’s Prevention Division provides subject matter oversight and guidance on all marine safety and environmental protection issues. They are the link with higher Coast Guard authority on such issues and the supply source for any additional marine safety or environmental protection resources that may be required.
- (2) The District Legal Office is responsible for advising the District Commander on all criminal referrals, coordinating the District Commander’s referral of criminal cases to DOJ, and acting as the designated liaison point with DOJ for all referrals and litigation matters, and prosecuting all Class II civil penalties under the CWA. The Legal Office will advise on the sufficiency of evidence to meet the standard of proof beyond a reasonable doubt, on the elements of various offenses, and on restrictions on enforcement action under domestic and international law. The Legal Office will also provide guidance on an appropriate security in lieu of withholding customs clearance in all cases with significant potential for criminal referral.

B.5. COAST GUARD INVESTIGATIVE SERVICE (CGIS)

CGIS Agents work for the Commandant under the direction of the regional Special Agent in Charge. CGIS Agents are available to investigate criminal violations of all laws enforced by the Coast Guard. While CGIS agents do don’t directly exercise 14



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USC 89(a) authority, they can assist uniformed personnel who pose that authority during a Coast Guard inspections, investigations or other boarding. The request for an agent's services on a case should be made through a unit's commanding officer. Oral requests should be followed by written confirmation. Where criminal activity is suspected, Commanding officers requesting CGIS services should also consult with the servicing District legal office. CGIS should be notified and consulted regarding all cases that may be referred to DOJ for criminal prosecution. CGIS Agents are trained criminal investigators who are familiar with the legal issues associated with the prosecution of a criminal case. Additionally, CGIS Agents regularly work with agents of other Federal, State, and local law enforcement agencies and frequently become aware of violations of environmental laws and ongoing criminal investigations through these sources. Frequently, after a case is accepted for prosecution, but before it goes to trial, the DOJ attorney prosecuting the case will require case investigation assistance in the form of service of grand jury subpoenas, further witness interrogation or other such follow-up. While it is often difficult for IO's and inspectors to commit the time necessary to fulfill this need, a CGIS Agent can serve as "case agent" for DOJ Attorneys on Coast Guard investigations and have experience in performing this function. All unit commanders should keep in mind that, once a case is accepted for criminal investigation by CGIS, CGIS agents are required to follow procedures outlined in the CGIS Investigations Manual, COMDTINST M5527.1 (series), including procedures on briefing the chain of command on cases being investigated.

**B.6. DEPARTMENT
OF JUSTICE**

DOJ makes the final decision on whether, and under what conditions, to prosecute criminal violations of marine safety and environmental laws. Primary responsibility for the approval and prosecution rests with the U.S. Attorney's office in the judicial district in which the violation is alleged to have occurred. Criminal enforcement of marine environmental protection laws might also involve DOJ Environmental Crimes Section in Washington, DC, via an agreement with cognizant U.S. Attorney's office. The effective investigation and successful prosecution of criminal cases often requires early consultation with DOJ. Consequently, it is imperative that all Coast Guard offices and units coordinate as soon as possible, through the District Legal Office, with the U.S. Attorney's office. For any case which may result in referral to DOJ, consultation with the District Legal Office is required prior to any cooperative work with federal prosecutors in order to assure proper use of Coast Guard authorities. Such early consultations ensure coordination during rapidly developing investigations, help to develop consensus regarding the appropriate focus of investigative efforts, and avoid the unproductive use of investigative resources. To avoid potential 4th amendment suppression issues, DOJ should not be consulted on the specific facts of an investigation during a boarding by Coast Guard inspectors or investigators whereby they are exercising 14 USC 89a authority.

**B.7.
FEDERAL/STATE
AGENCIES**

Under 14 U.S.C. § 141(b), the Coast Guard is authorized to avail itself of officers, employees, advice, information and facilities of Federal, State or local government agencies as may be helpful in the performance of its duties. U.S. maritime law



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enforcement efforts involve many agencies. Interagency coordination of effort has been established through Memorandums of Understanding, Memorandums of Agreement, and Interagency Agreements, and these documents are contained in Volume X of the MSM. Many states have significant environmental criminal enforcement programs and resources that can be utilized as additional sources of expertise and resources in dealing with criminal investigations of environmental law violations. Examples are forensic laboratories, HAZMAT testing, surveillance equipment, and so on. When State or local government personnel are utilized under the authority of 14 U.S.C. § 141(b), the Coast Guard is authorized to make payments for per diem and travel for these persons to the same extent prescribed for Federal employees. Coast Guard investigators should attempt to identify State and local environmental enforcement agencies, services and other resources that could assist in investigation of environmental violations.

B.8.
ENVIRONMENTAL
CRIMES TASK FORCES

Many U.S. Attorney offices and State law enforcement offices have formed Environmental Crimes Task Forces to address the problems inherent in coordinating enforcement actions by the numerous Federal, State and local law enforcement agencies that have jurisdiction over environmental crimes. The focus and makeup of these task forces differ depending on the individual U.S. Attorney or State agency that established the task force. Coast Guard participation in these task forces serve as a good means to inform other enforcement agencies of Coast Guard missions and interests in the environmental area, to establish a means of coordinating enforcement actions among agencies for major environmental cases, to identify resources and capabilities outside of the Coast Guard that may be useful in accomplishing Coast Guard missions, and to establish good working relationships among enforcement agencies and prosecuting attorneys involved in the enforcement of environmental laws. Task forces shall not be used as a referral process for Coast Guard cases.

C. MARINE INVESTIGATIONS

C.1. GENERAL

The Coast Guard conducts marine investigations under various legal authorities for a variety of purposes, including detection of administrative, civil, and criminal offenses, determination of causes, and creation of safety alerts and recommendations. These investigations begin with no presumption of criminal or civil misconduct. The results of any Coast Guard investigation, however, may be used as part of a criminal, civil or other enforcement action where such enforcement action is deemed appropriate and necessary. Because the criminal offenses involved may not be readily apparent at the outset, it is critical that all marine investigators (including pollution investigators) conduct their investigations in a fashion that will preserve the evidence and facts for use in a criminal setting. It is similarly critical that all marine investigators be conversant in the criminal offenses that the Coast Guard enforces. Where an apparent criminal offense is detected during the course of an investigation, marine investigators should seek the advice of their servicing legal office. Further, where Title 18, U.S. Code offenses are detected, marine investigators should seek the



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involvement of the CGIS through their District Commander. The SIO is responsible for all such coordination.

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Appendix

FORM #	TITLE	REV. DATE
CG-705	Articles of Agreement	12/89
CG-719B	Application for Merchant Marine Document	03/04
CG-2636	Notice of Violation	06/04
CG-2639A	Answer Form	06/04
CG-2639E	Voluntary Surrender Agreement	06/04
CG-2639F	Voluntary Deposit Agreement	06/04
CG-2639G	Voluntary Deposit Agreement (Drug or Alcohol)	06/04
CG-2639I	Good Faith Deposit	06/04
CG-2692	Report of Marine Accident, Injury or Death	06/04
CG-2692A	Barge Addendum	06/04
CG-2692B	Report of Required Chemical Drug and Alcohol Testing Following a Serious Marine Incident	04/06
CG-3865	Boating Accident Report	N/A