



**SPOTLIGHT ON SAFETY:
WHY ACCIDENTS ARE OFTEN NOT ACCIDENTAL**

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ABSTRACT

The best search and rescue (SAR) response is the one that does not have to take place. The International Maritime Organization (IMO) and the International Maritime Rescue Federation (IMRF) recognize that *prevention* is a key function of rescue organizations. If the number of maritime casualties is reduced, lives are saved, pollution averted and there are fewer risks to SAR personnel and lower costs for SAR organizations.

The IMO, the International Labour Organization (ILO) and national and private regulatory bodies provide a regulatory regime which, if followed, substantially reduces the risk and severity of maritime casualties. In the shipping economy, however, commercial pressures may lead to conflicts with the regulatory regime. It is therefore no surprise that failure to comply with the regulatory regime is a factor in many maritime casualties.

The General Maritime Law that governs international shipping has effectively insulated upper level managers from the consequences of regulatory non-compliance, provided that they can deny knowledge of it. The International Safety Management (ISM) Code, with its provision requiring that deficiencies be reported to a Designated Person Ashore, is designed to inform managers and bring them into the circle of responsibility. Although technology provides ship operators with the ability to have immediate knowledge of conditions aboard ship, including the degree of compliance with regulatory standards, there is a tendency to discourage reporting so as to maintain management's immunity from personal liability. It is difficult to establish a shared safety culture between the ship and management when the future of the master and crew may depend on not sharing safety information with management.

This problem may be exacerbated by "regulatory capture," which can happen when marine inspectors are pressured by their superiors to "look the other way."

With modern technology, the burden of responsibility can, and must, extend to ship operators, ship owners, classification societies and flag states.

In this paper, the International Organization of Masters, Mates & Pilots (MM&P), in conjunction with Dalhousie University, explores this complex problem, along with possible solutions. The authors also present their personal experiences in attempting to maintain safety standards.

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GLOSSARY

ABS – The American Bureau of Shipping, a classification society, IACS member and Recognized Organization.

ACP – The U.S. Alternate Compliance Program is a voluntary alternate inspection process for U.S.-flagged vessels in which an approved Classification Society (Recognized Organization) may issue certificates of inspection on behalf of the U.S. Coast Guard.

CAR – Corrective Action Report. Under the International Safety Management Code (ISM), ship operators are required to maintain Safety Management Systems (SMS). In the context of these systems, Corrective Action Reports are used to report safety deficiencies to management.

Classification Societies – Classification societies are non-governmental organizations that establish and maintain technical standards for ship construction and operation. They confirm that ship designs and their underlying calculations meet published standards. They also carry out periodic surveys to ensure that ships continue to meet standards. Flag states may authorize classification societies to carry out surveys on their behalf.

DPA – Designated Person Ashore. Under the ISM Code, DPAs serve as a link between shipboard personnel and top management ashore.

Flag State – The nation in which a commercial ship is registered. Flag states have the legal authority and responsibility to enforce regulations (on inspection, certification, safety and pollution) on vessels registered under their flag.

IACS – The International Association of Classification Societies. The IACS is a not-for-profit membership organisation of classification societies that establishes minimum technical maritime safety and environmental standards and requirements and ensures their consistent application. The IACS is recognized as the IMO's principal technical advisor.

IMO – The International Maritime Organization. The United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine and atmospheric pollution by ships. Its primary mission is to create a fair and effective regulatory framework that is universally adopted and universally implemented. It works to create a level playing field, one in which ship operators cannot address financial challenges by compromising on safety, security and environmental performance.

ISM Code – The International Safety Management Code. It is intended to provide an international standard for the safe management and operation of ships and for pollution prevention.

NGO – Non-Governmental Organization.

Port State Control (PSC) – The inspection of foreign ships in national ports to verify that the condition of the ship and its equipment complies with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.

Recognized Organization (RO) – An organization (principally a classification society) authorized to carry out survey and certification functions.

SMS – Safety Management System. Under the International Safety Management Code (ISM), operators are required to maintain a Safety Management System (SMS). The SMS details: how a ship is to be operated on a day-to-day basis; emergency procedures; measures to be taken for safe operation; and requirements for reporting to the DPA ashore.

SOLAS – The Safety of Life at Sea Convention, widely considered the most important international treaty on the safe operation of merchant ships.

1) The Maritime Safety Regulatory Regime and Commercial Pressures vs. Regulatory Compliance and Safety

The international maritime shipping sector, which carries 95 percent of international trade and makes globalization possible, is dominated by the “flag-of-convenience” (FOC) system. This system allows a ship owner to register a ship under the flag of one of more than 30 foreign countries, usually small island nations that operate open registries.

FOC registries are often managed by private corporations as for-profit enterprises that provide ships with an assumed nationality for tax and regulatory purposes. The system allows the ship owner to operate free of the taxes, regulations, labor and environmental laws of his or her home country. It also allows owners to crew their ships with seafarers from low-wage labor supply countries in the developing world.

FOC registries compete with each other to offer the least burdensome tax and regulatory environment. In effect, they create an international industry that operates in a nearly stateless environment. This leads to an uneven playing field and a race to the bottom with substandard shipping enjoying a competitive advantage.

To counter the destabilizing effect of the FOC system and bring some semblance of regulatory uniformity to international shipping, the United Nations has acted through its International Maritime Organization (IMO) to establish minimum safety, pollution and emission standards for ships in the international trade. The London-based IMO has 174 member states. There are also more than 60 non-governmental organizations (NGOs) with consultative status; they include industry trade associations, professional associations, class societies and maritime labor organizations. The IMO provides a forum for oversight and debate on amendments to more than 50 international conventions and codes covering all aspects of shipping, from design and construction to fire protection, equipment performance standards, manning, hours of work and rest, training, pollution and emissions, navigation safety, communications, search and rescue, and safety of life at sea.

The IMO recognizes the International Association of Classification Societies (IACS) as its principal technical advisor in the development of technical and safety standards. The membership of the IACS consists of twelve class societies that verify the structural strength and integrity of essential parts of the ship’s hull and its appendages, and the reliability and function of the propulsion and steering systems, power generation and other auxiliary systems. The IACS is the only NGO at the IMO that is able to develop and apply its own rules.

It should be noted that the IMO has no enforcement power. Its function is to provide a forum for member states to debate both the adoption of new conventions and codes and the need for safety-related revisions in existing conventions and codes. Member states that are signatories to a specific convention have a contractual treaty obligation to conform their national laws to its terms.

Enforcement remains at the national level, under the purview of the administration of each flag state. The majority of ships in international trade are registered in FOC flag states; as sovereign nations, they can interpret, implement and enforce their treaty obligations as best serves their national interests. FOC and traditional national flag states alike are reluctant to place their ships at a competitive disadvantage by implementing regulations that go beyond the international minimum standards as they interpret them.

IMO conventions permit flag states to delegate ship inspection and surveying to class societies that meet the requirements of the IMO Code for a Recognized Organization (RO). This is a reflection of the fact that many flag state administrations do not have the technical experience, manpower or global coverage necessary to undertake all the IMO-required inspections and surveys on their own. It is for each flag state to decide how much authority to delegate. In most cases, the RO class society is empowered by the flag state to require repairs or other corrective action and to withdraw or invalidate the relevant certificates required to operate the ship if that action is not taken. Often, the RO class society and its surveyors are the frontline actors in the enforcement of regulations that address ship design and construction, along with the maintenance required to keep ships in safe condition over the course of their life cycles.

Because the ship owner is free to choose which FOC flag state and class society to use, there is commercial pressure on flag states and class societies to satisfy their clients. This obviously puts pressure on RO class society employees, i.e., the surveyors and auditors responsible for certifying regulatory compliance and the condition of the ship. The ship owners themselves are under commercial pressure from other ship owners operating under competing FOC and RO systems of regulatory enforcement and compliance verification.

The IMO's International Safety Management (ISM) Code contains regulations that govern the safe management and operation of ships, along with pollution prevention. The ISM Code requires that companies have a Safety Management System (SMS) that sets out their safety and pollution prevention policies and complies with all mandatory international and national regulations and maritime industry standards and guidance. The SMS contains company policy on all aspects of its safety program. As with other IMO regulations, the flag state can delegate to RO class societies the enforcement, auditing and issuance of certificates of compliance. Ship owners can also delegate to the same RO class societies the preparation of the company's SMS.

One of the principal purposes of the SMS is to provide a link between onboard safety management and a designated person ashore (DPA) who has access to the highest level of management in the company. The designated person is responsible for monitoring the safety of the ship and ensuring that adequate resources and shore-based support are provided.

The system places responsibility on the master and the designated person to communicate information related to: onboard safety deficiencies and non-conformities and their possible causes; regulations pertaining to corrective actions; and recordkeeping of such actions. The intent is to make shore-side management directly responsible and liable for the safe condition and operation of the ship and for documenting the actions taken in this regard. This has major implications, as it undermines the ability of the company to limit its liability based on a lack of knowledge, or privity, of the unsafe conditions. It also calls for creation of a documented record of deficiencies that could prove a case of negligence on the part of the company.

It was hoped that the ISM Code would lead companies to embrace a more positive safety culture. In a well-managed company with experienced staffers who have the authority and resources needed to take action, an SMS will contribute to the development of a positive safety culture. But not all companies are managed well or staffed with the resources necessary to support the master in maintaining a safely operated ship. In these cases, the reporting of deficiencies may be looked upon as a problem rather than as an opportunity to improve safety. In such companies, a master who brings safety management problems to the company is himself a problem and risks being replaced. This can have a chilling effect on other masters who then become reluctant to bring their own safety concerns to management.

The underlying problem with maritime safety is that the regulatory system is subject to commercial pressure from the top down.

Even at the highest level within the IMO, commercial considerations are taken into account in drafting and adopting regulations. To some extent this may be acceptable because, as is the case in any high-risk industry, there must be an appropriate balance between commercial viability and safety. The problem is that the IMO is not a regulatory body in that it does not implement or enforce the regulations in the conventions and codes that its member states adopt. It is left to member flag states to bring their national laws into compliance with the international regulations.

Flag states in the FOC system are essentially competitive flags for hire. They dominate international shipping and they delegate most of their responsibilities and authority to private RO class societies. The RO class societies are employed by companies but act on behalf of flag states in implementing and enforcing international regulations. Companies, in turn, employ RO class societies to prepare their ISM Code safety management systems and conduct audits of SMS documentation and performance. The end result is that companies are regulated by private organizations that they themselves employ and have a choice in selecting.

Despite the apparent conflict of interest, in most cases the system works well: the flag state, the RO class society, the company and shipboard personnel cooperate to achieve a quality operation. In many trades and maritime sectors, quality confers commercial benefits. But there are significant differences in the quality and integrity of FOC flag states and RO class societies, and companies take these differences into consideration when making the choice of which to select. A bad actor with a substandard ship may select a flag state and class society with a reputation for lax enforcement of standards. There may be a penalty for doing so, as it may subject the ship to more stringent Port State Control inspections because of the reputation of the flag state or class society. However, that may be a risk the owner is willing to take to gain a competitive advantage.

Port State Control (PSC) is the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment comply with the requirements of international regulations and that the ship is manned and operated in compliance with these rules.

The inspections were originally intended to be a backup to flag state implementation, but experience has shown that they can be extremely effective—particularly in cases in which the regulatory organizations (flag state, class society) have not fully met their obligations.

PSC came about partly in response to the March 1978 grounding of the *VLCC Amoco Cadiz* off the coast of Brittany, France, which caused a 220,000-ton oil spill.

Nine regional agreements on Port State Control—Memoranda of Understanding, or MoUs—have been signed: Europe and the North Atlantic (Paris MoU); Asia and the Pacific (Tokyo MoU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MoU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MoU); the Mediterranean (Mediterranean MoU); the Indian Ocean (Indian Ocean MoU); and the Riyadh MoU. The United States Coast Guard maintains the tenth PSC regime.

Where vigorously enforced, PSC has been effective in detaining substandard ships, discouraging them from operation in regions with effective PSC, banning substandard ships, publicizing and penalizing substandard ships, their operators, their flag state and the classification society. (In contrast, ships operating in domestic waters only, and not subject to PSC, are often less safe).

2) Maritime Incidents—Risk to Life and the Environment

The shipping industry is prone to repetitive incidents, which have often resulted in loss of life and damage to the environment. With proper oversight—by ship management, inspectors, regulatory authorities, and crew—the deficiencies, which caused these incidents, would have been corrected before disaster struck. Many of the shortcomings identified during subsequent investigations of the casualties were related to survey items: machinery, hull structure or load line issues. Some were related to the operators' safety culture. In many cases, investigators found both survey issues and a lack of safety culture.

In this section we highlight several serious incidents that resulted in loss of life. Although different on the surface and separated by time, distance and vessel type, they have at least one significant factor in common: in every case, the risks were obvious and predictable.

Bulk Carriers: In March 2000, the bulk carrier *Leader L* sank in the North Atlantic off the eastern coast of Canada. Eighteen crew members died. The *Leader L* was one of about 100 bulk carriers to sink in the 1990s; nearly 700 mariners were lost in bulk carrier casualties in this time period. (Associated Press, 2000). There were allegations of serious structural deficiencies in this ship.

Efforts have been made to increase the safety of bulk carriers, which have been among the vessels most vulnerable to casualty (*see illustration on the following page*). But the ships continue to sink. As recently as March 2017, the bulk carrier *Stellar Daisy*, the largest such vessel ever to sink, went down in the South Atlantic, taking with it 22 of 24 members of the crew.

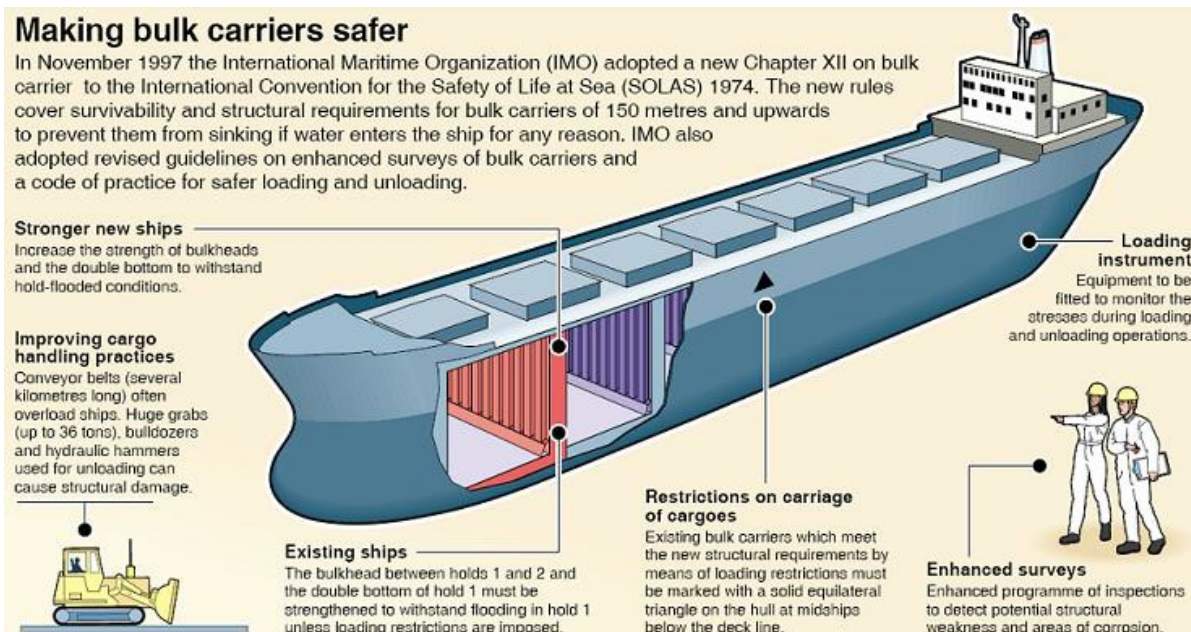


Figure 1. Making bulk carriers safer (Bulk Carrier Guide, 2010a).

Tankers: Although international efforts to improve the safety of tankers have met with some success, incidents still occur—often with catastrophic effects on the environment—and a flawed international regulatory system can shield those responsible.

In 2002, the structurally deficient tanker *Prestige* sank off the coast of northern Spain, spilling over 60,000 tons of heavy fuel oil. In an outrageous case of injustice, the master of the vessel, 81-year-old Captain Apostolos Mangouros, was held accountable and imprisoned, even though the Spanish government had refused his request to provide a place of refuge when the foundering vessel was in distress (Maritime Executive, 2016). The owner of the ship had knowledge of its condition and should not have permitted it to sail. It subsequently broke-up, with disastrous effects on the Spanish coast. (Maritime Knowledge, 2018).

Ferries: The continuing loss of ferries and tour boats around the world has led to calls for improved regulation of these vessels.

In the Philippines, the Sulpicio Lines ferry *Princess of the Stars* capsized in a typhoon in 2008, causing the death of more than 800 people. In 1987, in what is considered the deadliest peacetime disaster in maritime history, another Sulpicio Lines vessel, the *Dona Paz*, sank after a fiery collision. The ferry was seriously overcrowded: nearly 4,400 people died, many times the number that the company said it was certified to carry, and almost three times the number listed on its manifest. There were just 24 survivors.

In 2009, in the South Pacific Kingdom of Tonga, another domestic ferry, the *Princess Ashika*, sank with considerable loss of life. Investigators were told later by an officer for the Ministry of Transport that “any fool (could) tell how bad the ship was...” (Kavaliku, 2010, p. v).

The Russian riverboat *Bulgaria* sank in 2011 on the Volga River; 122 people died, many of them school children (Appendix F).

A particularly horrifying ferry disaster occurred in 2014, when the Korean ferry *Sewol* capsized, trapping over 300 people—mostly students on a school trip—inside.

The American-flag bulk carrier *Marine Electric* sank in 1983, largely due to its deteriorated condition. There were only three survivors; the other 31 members of the crew died. The *Marine Electric* has been referred to as ‘The Wreck That Changed the Coast Guard Forever’ (Zilnicki, 2019). Yet the loss of the *El Faro* with all hands (33 souls) occurred in 2015, more than three decades after the *Marine Electric* sank.

Did the safety culture really change as a result of the *Marine Electric* disaster?

3) Pressures on Front Line Personnel: Ships Officers and Crew

Mariners are guided through darkness, fog, and foul weather by radar and a multitude of other electronic navigational aids. The electronic era, and Satellite Telephone, has in some cases also induced micro-management from ashore; often by managers with little or no seagoing experience. While the electronic age has given us new tools to assist in progressing from one port to another, intense commercial pressures have increased for: on time arrivals, timely departures, and fuel conservation wherever possible.

The fact is, ships do not make money at the berth. So, while we have all of this electronic navigation to illuminate the way, and “*help*” from management ashore, what keeps the ship safe? **The best set of eyes and ears to ensure safety and regulatory compliance for any ship is its crew.** Unfortunately, the seamen are often underutilized in keeping a ship within regulatory compliance. Indeed, in some cases they are pressured to keep quiet and keep the ship moving. **Ships make money at sea!**

Under the International Safety Management Code (ISM), operators are required to maintain a Safety Management System (SMS). A requirement of an approved SMS is reporting, and documentation, of deficiencies via “Corrective Action Reports” (CAR’s). Maritime companies do not like having a documented trail of failures to comply with the ISM Code or other regulatory requirements. Multiple infractions may make them susceptible to increased scrutiny by Port State Control or other regulatory agencies. This could jeopardize schedules, increase repair costs at an inconvenient time, or leave a trail for a charge of negligence and liability in the event of an accident. Hence management can develop a negative attitude towards ship’s personnel who originate CAR’s and open up the documentation trail. Thus, officers can be reluctant to write CAR’s for fear of retaliation, which can be subtle in nature, such as lack of advancement, or more acute as job loss.

Any company intent on retaliation, no matter how subtle, will exploit an available issue to disqualify the complainant. Effectively, within the maritime industry, these companies work against the ISM Code to their own advantage, and to cover any wrongdoing at the management level. We have classification societies and Port State Control that visit ships but do not review CAR files, nor ask officers if there are any outstanding deficiencies not included in the CAR file. Often, the presumption by agencies is that because the ship has passed annual inspections and is properly certificated there are no problems. Closer scrutiny is definitely needed. If the CAR file

is historically without mention of any safety violations or non-compliance issues, this should raise a red flag for the auditor.

In addition, in the United States, we have the “Alternate Compliance Program” (ACP), under which classification societies perform marine inspection duties that were once the sphere of the U.S. Coast Guard. On the one hand, the classification society is there to inspect for non-compliance, which could possibly cause delays. On the other hand, it is being paid by the ship’s owner to authorize the various certificates needed for marine operation, so the ship can sail. This manifests as a serious conflict of interest. Classification societies are self-financing and so require revenues to continue to operate, not to lose clients that can go to an alternative society. In the United States, under the ACP, the U.S. Coast Guard is the agency that issues the Certificate of Inspection, and other certificates, based on the inspection of the classification society. It should be a double check; it is not.

One of the findings of the USCG Marine Board of Investigation into the sinking of the *SS El Faro* was the USCG’s lack of manpower for marine inspection oversight. The Coast Guard, when under ACP, is relying heavily on the classification society to perform proper inspections. In the case of the *SS El Faro*, the Board’s findings showed a distinct failure by both the ABS and the USCG.

What was the operator’s accountability in the loss of the *El Faro*? No official was held to account. Contrast this with a Russian court’s decision in 2014 regarding the 2011 sinking of the riverboat *Bulgaria*. In this case, managers and others found guilty of failure to comply with regulations were imprisoned (see Appendix F). Alternatively, in a legal case of retaliation by a major U.S. shipping company, *Captain John Loftus v. Horizon Lines*, the ship’s master was awarded over \$1.154 million dollars. The judge called the actions of management “REPREHENSIBLE.” Here, there was violation of federal law by some of the highest corporate executives in the company to cover their own mismanagement and to silence a ship’s master who was reporting major safety issues to protect his ship and crew. (See Appendix A)

The case parallels that of Jeff Hagopian, who was abruptly terminated from his job as captain of Noble Drilling’s *Noble Danny Adkins* after filing a report of safety violations.

Hagopian had been a captain with the company from 2010 to 2015. Each year, he had received highly positive, complimentary performance evaluations.

He reported two violations to Noble’s alternate designated person ashore: a false “red entry” in the logbook which claimed the crew had performed the quarterly launching and maneuvering of the lifeboats; and an attempt to mislead USCG inspectors during the vessel’s annual Certificate of Compliance Inspection about the defective condition of the gravity davit that deploys the fast rescue craft.

Eleven days after filing his report, he received a phone call from his direct supervisor and Noble’s human resources manager claiming the company had “lost confidence” in his “ability to manage the vessel.”

Unbeknownst to Hagopian was the fact that his safety report had exposed directives by management to not be forthright with the U.S. Coast Guard. And while the company constantly stressed its safety policy,

it had actually just begun four years of criminal probation after pleading guilty to eight felony counts related to safety and oil pollution violations and major non-conformities with the safety management system on the *Noble Discoverer*.

Hagopian filed a lawsuit against Noble Drilling under the “Seaman’s Protection Act” in U.S. District Court for the Southern District of Texas. It was settled out of court in February 2017 (case # 3:2016-cv-00099).

As Captain Hagopian has stated, “Law enforcement, regulatory agencies and classification societies are all failing the mariner due to conflicts of interest, politics, cronyism and corporate pandering. Safety regulations should be enforced more vigorously to help support anyone who is trying to protect their crew and vessel without fear of retaliation.”

Rear Admiral Paul F. Thomas said it best in the Spring (2016) Issue of USCG Proceedings in discussing Safety Management Systems and the ISM Code: “An effective SMS must not only be very well developed in terms of process and procedures; it must also be deployed from the boardroom to the boiler room. There shouldn’t be any disconnect between the auditors and the surveyors, or between the CEO and the seaman. We all must work together to discover and eliminate such disconnects.” (Rear Admiral Thomas, 2016, p. 4)

4) Pressures on Safety Inspectors

The safety inspection regulatory regimes, such as classification society and flag state, are the top level of the safety system. If they fail, the only safety check is an effective Port State Control regime, which does not apply in many cases.

The pressures on the safety inspection system may come at several levels: the organization level, and, often as a result, the personal level.

a) At the organizational level (“regulatory capture”)

The Safety Inspection System is subject to conflicting pressures: on the one hand, pressure from industry seeking to reduce the regulatory burden and the “cost” of safety; on the other hand, public pressure to maintain safety. Industry pressure is generally ongoing, through public fear of job losses due to the cost of safety, and through political pressure (often as a result of lobbying and political contributions). Pressure from the public generally only comes after a major tragedy, such as the sinking of the *El Faro* or the *Marine Electric*, and usually subsides after a few years.

b) At the level of individual safety inspectors

Why do safety inspectors often pass over and not identify obvious deficiencies for needed repairs? In some cases, it may be a genuine oversight, or a lack of training (itself a serious issue). However, in many cases it is pressure from their managers, (themselves subject to pressure from more senior managers). There may also be pressure from colleagues to be “part of the team,” to not rock the boat.

Those who endear themselves to management and get the job done on time and at less cost are likely to be rewarded with better personnel reviews as well as promotions. The desire for career advancement may interfere with taking the actions necessary to protect the safety of the public. Absent a collective response and/or legal protections, it may be difficult for individual inspectors within an organization to withstand these pressures. (See Appendix B)

5) Pressures on Management

*“And in competitive markets, whatever is possible becomes necessary.”
(Shaxson, 2011, p. 130)*

Pressures on ship management include the need to compete based on price and other factors such as timely delivery of cargo. Many ships are an important link in a “just in time” supply chain aimed at maximizing efficiency, minimizing cost and improving customer satisfaction.

Delays, due perhaps to rectifying “minor” safety issues raised by ship’s crew or the class society, can interrupt this supply chain, with a significant impact on the shipping firm’s customers. These customers may seek another “more reliable” shipping firm, one where the crew does not cause delays by reporting defects, one where the classification society is “more reasonable.” Senior management is under pressure from the stock market, from shareholders, and from the board of directors, to keep costs down, to keep ships running on time. Middle managers, in turn, come under pressure from senior management to achieve these goals.

6) Accountability

The public has the right to expect, and must demand, that those tasked with protecting public safety be competent to perform the responsibilities they are assigned, act with integrity, and place their responsibilities to the public ahead of all other considerations.

After the *Marine Electric* sank in 1983, the owner—Marine Transport Lines—pleaded guilty to criminal negligence and was fined \$10,000. No one in senior management was convicted of a crime, or even penalized by the company. But, a few years later, the CEO and his team were removed because the cost of new (safer) ships had reduced the company’s profitability.

In the case of major marine incidents, the senior managers of shipping firms are very rarely successfully prosecuted. Senior management, albeit often not making the day-to-day front-line decisions, established the safety culture of the organization. In many, if not most cases, this corporate culture discouraged reporting of regulatory violations and safety concerns up the management chain, effectively insulating management from responsibility for the firm’s actions.

Earlier this year (2019), more than a decade after the Philippine ferry *Princess of the Stars* sailed into Typhoon Frank and capsized with the loss of over 800 lives, criminal charges of reckless imprudence were filed against Edgar S. Go, Sulpicio Lines first vice president and team leader of the firm’s crisis management committee. (Supreme Court of the Philippines, 2019)

The charging document alleged that “the DOJ (Department of Justice) panel found that Go was involved in making decisions on whether a vessel should be allowed to sail such that he should have cancelled or discouraged the voyage considering the severe weather (Typhoon Frank) at that time.” Originally, the loss was blamed solely on the master.

In the case of the tourist boat *Bulgaria*, unlike most cases, not just operating personnel but senior company officials, regulatory officials and a senior inspector were sentenced to significant terms of imprisonment (see Appendix F).

U.S. Coast Guard Final Action Memo on the October 2015 Sinking of the *SS El Faro*:

“This tragic story points to the need for a strong and enduring commitment at all elements of the safety framework. First and foremost, the company must commit to safety culture by embracing their responsibilities under the ISM Code. Secondly, Recognized Organizations (ROs) must fully and effectively perform their duties and responsibilities. Finally, the Coast Guard must, and will, provide the final safety net with sustainable policy, oversight, and accountability” (Commandant Admiral Zukunft, 2017, p. 3).

7) Conclusion: The Way Forward—Effective Regulatory Oversight & a Real Safety Culture

We have shown that the regulatory framework, based on IMO standards, is generally adequate, and is capable of being periodically updated as may be required.

In most cases it is the lack of compliance with existing standards, be they ship construction and maintenance, or safety management procedures, which is the root cause of safety incidents.

The following proposals geared toward American regulations could be adopted worldwide:

1. Greater uniformity by flag and port states in implementation of international safety regulations, with strict enforcement by Port State Control, including the ability to look behind certificates of compliance issued by flag states or other inspection organizations.
2. The right and obligation of ship’s officers to raise “Corrective Action Reports” (CAR’s) and have them addressed in a timely manner.
3. Classification society inspectors, or USCG/port state control personnel, should be “required” to review the CAR file “every” time they board a vessel. There should be accountability to ensure compliance with the system as intended.
4. Consider ending, or modifying, the Alternate Compliance Program. ACP is a “pay for play” program, where there is a direct conflict of interest for the regulatory agency (such as ABS, or another classification society).
5. Protection of crew and other personnel by a legal framework, such as the American “Seaman’s Protection Act” (See Appendix D), and by enforcement of the rights established under the Maritime Labour Convention of 2006.
6. Ensure the company’s operational team includes management personnel with extensive seagoing experience who can review policy and be available for consultation with the ship’s senior officers.

7. Legal (criminal) accountability, such as the Canadian “Westray Bill” (See Appendix E), for officers and directors of an organization as well as the organization itself, including Regulatory Organizations, where their action, or lack of action, results in injury or death.

8) Authors’ Notes and Acknowledgements

This Paper is based on the authors’ and contributors’ professional knowledge and experiences. In particular, three of the contributors were penalized by their employers and ultimately terminated as a consequence of their attempt to comply with regulations and safety protocols.

These whistle-blowers would like to take this opportunity to thank the many colleagues, including some in senior positions, who supported them; the many others, including prominent politicians, who understood the significance of their situation; and the families who stood by them through many frustrating times. They would also like to thank their lawyers, whose sense of fairness and justice led them to carry on, at some risk to themselves, without a clear prospect of reward.

The authors also thank Jeff Hagopian, former captain at Noble Drilling, for sharing his safety experience on the *Noble Danny Adkins*.

Finally, they would like to acknowledge the efforts and enthusiasm of student co-author Tara Sherrard, for whom this project presented an opportunity to learn the somewhat disillusioning difference between the ‘Paper’ academic world, and the ‘Real’ world experienced by many.

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APPENDIX A
John Loftus Case under the ‘Seaman’s Protection Act’

Whistleblower captain fired by Horizon awarded \$1 million – Marine Log, 20 July 2016

JULY 20, 2016 — In a landmark Seaman’s Protection Act decision, a U.S. Department of Labor Administrative Law Judge has awarded a former Horizon Lines master more than \$1 million of damages after being fired in 2013 following his reporting of safety violations aboard his then command, the Horizon Trader. *[According to the Equasis data base, the 1973-built containership’s status is now “Broken Up (since 15/01/2015)”]*

In a decision in the case (John Loftus v. Horizon Lines, Inc. and Matson Alaska, Inc.) handed down on July 12, 2016, Administrative Law Judge Jonathan C. Calianos, writes:

“I find that Horizon violated Loftus’s right to be free from retaliation under the SPA. See 46 U.S.C. § 2114(a). Loftus proved by a preponderance of the evidence that he engaged in protected activity in October of 2011, August of 2012, and February and April of 2013 by reporting and threatening to report to the USCG and ABS what he believed to be safety violations on the ship he sailed as Master. Further, I find that Horizon knew of Loftus’s protected activity and that his protected’ activity was a contributing factor in Horizon’s decision to take adverse action against him. Horizon did not prove by clear and convincing evidence that it would have demoted Loftus absent his protected activity. Accordingly, I find that Loftus is entitled to \$655,198.90 in back pay plus interest compounded on a daily basis, \$10,000 in compensatory damages for emotional distress, \$225,000 in punitive damages, and reasonable litigation costs including attorney fees.”

At the time of trial, Captain Loftus was 66 years old. A U.S. Merchant Marine Academy graduate, he had worked in the maritime industry for approximately forty-two years with least twenty years of experience specifically sailing as Master.

The ruling notes that “all of the experts in this case are unanimous that Loftus was at the top of his game when it came to safety concerns” and cites one of them as saying “Captain Loftus, in my experience and opinion, was the most safety conscientious Master in the entire Horizon Lines fleet.”

It also says that Loftus’s commitment to safety “is evident from the numerous Corrective Action Requests he submitted to Horizon over the years, as well as his repeated communications with regulatory agencies regarding his safety concerns.”

The ruling says that “Loftus was clearly a thorn in Horizon’s side.”

After a March 2013 incident when Chief Mate **[Name redacted]**, second in command of the Trader, was severely injured while performing a task on deck, the ruling finds that Horizon engaged in “machinations” in forming a disciplinary team and an investigation team to mask the true reasons for its

actions—to discipline Loftus for his protected activity and used “smoke and mirrors” to justify the decision it had already reached.

Whistleblowing Ship Master Wins Case Against Matson and Hails Seaman’s Protective Act as Powerful Tool to Require Ship Owners to Maintain Safe Ships – Captain 11 July 2018

Captain John Loftus, an advocate for merchant marine safety, won a decision from the Administrative Review Board of the Department of Labor that sustained a \$1.1 million judgment against a company that punished Loftus for reporting unsafe conditions aboard the company ships.

The decision, delivered on May 24, 2018 may also open the gate wider for seamen to qualify for protection under the “Seaman’s Protective Act” and help prevent tragedies similar to the loss of the SS El Faro.

“Seamen need to be able to stand up and report deficiencies,” Captain Loftus said. “It is the first line of defense in preventing major accidents”.

“Think about the cost in lives and money from the Deepwater Horizon incident,” he continued. “If Seamen on the EL FARO were not in fear of job jeopardy, then deficiencies may have been brought directly to the attention of the USCG, and that may have precluded that horrific tragedy.”

Captain Loftus, who won an initial judgment against Horizon Lines, now owned by MATSON, hailed the decision as a victory against ship owners who harass maritime officers for reporting deficiencies.

“The court has seen through MATSON’S ruse, just as they saw through the fabricated scheme for my termination by Horizon Lines,” he said. “The message has now been sent, by not one, but two levels of the court system: Retaliation against seamen who report safety issues to regulatory agencies will not be tolerated.” Matson was denied on every count of their multi-point appeal.

Matson has until July 23 to file an appeal.

The Seaman’s Protective Act (SPA) was enacted in 1984 and amended into its current version in 2010. The purpose of the SPA is to augment the Coast Guard’s limited enforcement resources by encouraging seamen to report possible violations of safety regulations. It does so by prohibiting retaliation against seamen who report possible regulatory violations to the United States Coast Guard (USCG) or American Bureau of Shipping (ABS). In so doing, the SPA promotes safe working conditions for all Mariners while protecting the environment and public safety.

Part of MATSON’S appeal was based on trying to have the case dismissed as non-qualifying under the “Seaman’s Protective Act.” MATSON became responsible for Horizon Lines liabilities after it purchased the company.

Captain Loftus said MATSON passed up a chance to take the high road, and in continuing the appeal aligns itself with Horizon Lines corporate managers who broke the law and fostered an attitude that has contributed to such tragedies as the loss of the SS El Faro.

“Matson has followed down the path of those executives, who did not really stand for safety at sea, but rather wanted the façade of safety at sea,” Captain Loftus said.

“Isn’t that the exact type of thinking that was prevalent within the TOTE organization, and was a factor in the loss of the S.S. EL FARO?” the Captain asked.

“Instead of trying to prop up the illegal nature of these former executives,” Captain Loftus said, “MATSON would better serve the Maritime Industry by using this legal case, as an example of what management should NOT do.

“In the 2016 Spring Issue USCG Proceedings, for example, Rear Admiral Paul F. Thomas, USCG discusses the SMS and ISM Code, and puts it very succinctly:

“An effective SMS must not only be very well developed in terms of process and procedures; it must also be deployed from the boardroom to the boiler room. There shouldn’t be any disconnect between the auditors and the surveyors, or between the CEO and the seaman. We all must work together to discover and eliminate such disconnects.”

“My hope going forward is that with this two-tier court decision, and affirmation, seamen will be better protected from retaliation, and that safety will become stronger to help prevent major accidents,” Captain Loftus said.

Excerpts from the Post-Trial Brief of John Loftus submitted to the Administrative Law Judge in the case of John R. Loftus, *Complainant v. Horizon Lines, Inc. and its successor-in-interest Matson Alaska, Inc., Respondent.* ALJ NO.: 2014-SPA-00004 (July 2015)

Deliberate Disregard of SPA (Seaman’s Protection Act) Can Not Be Encouraged

An employer exhibits a reckless disregard for the law and its employees’ rights when it fails to conduct whistleblower protection statute training and fails to institute any procedure to ensure disciplinary actions will not violate applicable whistleblower laws. *Anderson v. Amtrak*, ALJ No. 2009-FRS-00003 (August 26, 2010) at pgs. 26-27; *Anderson v. Amtrak*, ALJ No. 2009-FRS-00003 (October 21, 2010) (on Rehearing) at pgs. 12-13; *Barati v. Metro North Railroad*, 939 F.Supp.2d 143 (D.Conn. 2013).

In *Anderson*, the ALJ found punitive damages were required where the company failed to “require a human resources manager or a lawyer to review any termination to assure compliance with the many legal requirements that attach to such adverse actions, especially when, as here, a federal statute clearly is implicated.” *Id.* at 26. Such is the case here. Moreover, Horizon’s culpability is compounded by the fact that the adverse action was taken by the Chief Compliance Officer with the endorsement of the General Counsel.

That failure is further enabled by Horizon’s egregious failure to train or instruct its managers regarding the conduct prohibited by the Seaman’s Protection Act. Ignorance of the law is not a defense to anything, but especially not to violations of whistleblower protection statutes. Incredibly, Horizon did not bother to train or instruct its highest managers regarding the SPA, with the result they were totally ignorant of the SPA’s protected activities and prohibitions.

[Name redacted] became the Chief Compliance Officer in 2008. As CCO he was responsible for compliance with all applicable laws and regulations, and reported directly to the Horizon Board of

Directors. *Id.* The CCO confirmed Horizon never gave him any training or instruction regarding the Seaman's Protection Act and he was not aware of what is protected activity under the SPA. Likewise, the Horizon Director of Environmental Compliance confirmed Horizon never provided him with any instruction or training regarding the SPA. And the Horizon Vessel Superintendent confirmed Horizon never gave him any training or instruction on the SPA.

As Horizon's General Counsel and Chief Legal Officer, they are presumed to have knowledge of the Seaman's Protection Act and what it prohibits. And yet it was the General Counsel [Name redacted] who agreed with CCO's abrupt decision to retaliate after the April 11th meeting, based solely on the CCO's frustration over Loftus' insistence on reporting the safety violations to the USCG and ABS.

Deliberate ignorance must not become a shield against punitive damages. The reckless disregard of whistleblower laws at the highest corporate levels must not become a strategy to minimize punitive damages. Otherwise, companies will learn the perverse lesson that the best way to avoid punitive damages is simply to cultivate a culture of deliberate ignorance based on no training and no instruction and no enforcement of whistleblower statutes. That is precisely the wrong message to send. An award of maximum punitive damages based on such reckless corporate disregard will send exactly the right message.

Chilling Effect Must Be Remedied

The profound chilling effect of what Horizon did to Captain Loftus is obvious, and must be remedied. Loftus confirmed "the whole maritime industry is very small," and "everybody knows about everybody." Loftus was known as a safety conscious Master not afraid to report violations to the USCG and ABS. He confirmed management "wanted to get rid of me because I was the most vocal master in the fleet that held their feet to the fire for regulatory compliance." Asked why he brought this case, Captain Loftus explained: "Horizon Lines, you know, through what they did to me sent a very clear, cogent, and unnerving message to anybody that was contemplating regulatory agencies. . . . I would like this huge umbrella of intimidation lifted from other Masters."

An award of maximum punitive damages will remedy that intimidation by sending an unmistakable industry-wide message that such conduct will not be tolerated. The CCO said it himself: If you tolerate violations and do not hold people accountable "then it infiltrates throughout the organization and becomes acceptable when it's not."

The same is true for the maritime industry at large. What message does it send to the maritime industry if the Chief Compliance Officer and the General Counsel of a company are totally ignorant of the SPA, blatantly violate that federal statute in order to destroy an excellent Captain's career and reputation, and then are assessed anything less than the maximum amount of punitive damages?

If all these facts do not justify a maximum award of punitive damages under the Seaman's Protection Act, then what does?

Further details can be found in the following:

LINKS:

Marine Log Article on ALJ decision, 20 July 2016 - Whistleblower captain fired by Horizon awarded \$1 million <https://www.marinelog.com/shipping/safety-and-security/whistleblower-captain-fired-by-horizon-awarded-1-million/>

Captain article on ARB decision, 11 July 2018 - Whistleblowing Ship Master Wins Case Against Matson and Hails Seaman's Protective Act as Powerful Tool to Require Ship Owners to Maintain Safe Ships
<https://gcaptain.com/whistleblowing-ship-master-wins-case-against-matson-and-hails-seamans-protective-act-as-powerful-tool-to-require-ship-owners-to-maintain-safe-ships/>

US DEPARTMENT OF LABOR, OFFICE OF ADMINISTRATIVE LAW JUDGES
BOSTON, MASSACHUSETTS – Case ALJ NO: 2014-SPA-00004
<https://www.marinelog.com/images/PDF/Loftus-Decision2.pdf>

US Dept. of Labor, Administrative Review Board Decision - ARB 16-082
https://www.oalj.dol.gov/PUBLIC/ARB/DECISIONS/ARB_DECISIONS/SPA/16_082.SPAP.PDF

APPENDIX B
Union Letter regarding the Safety of Canadian Ships

(Drafted by the author, John Dalziel, for the National President of the Public Service Alliance of Canada, after safety inspectors approached Mr. Dalziel (in his capacity as a union representative) with concerns about being able to address safety issues on board certain Canadian ships. This Appendix highlights the pressures which may be felt by safety inspectors to limit their inspection activities, and the importance of their Unions vigorously supporting them).

SHIPS CREWS

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PAGE 02/06



September 27, 2011

Keith Ashfield
Minister of Fisheries and Oceans
via email: keith.ashfield@parl.gc.ca

Denis Lebel
Minister of Transport
via email: denis.lebel@ogri.gc.ca

Dear Minister Ashfield and Minister Lebel;

PSAC *AFPC*
RE: Safety of Canadian Ships

We the undersigned are writing to express our concerns, and those of the Public Service Alliance of Canada (PSAC), regarding the safety of Canadian ships.

It is our understanding that concerns have been brought forward internally using the various appropriate channels by PSAC members. We also understand that, in addition to PSAC members, related concerns have also been brought forward by more senior departmental officials. Despite this effort by both PSAC members and their management colleagues, there appears to be no clear evidence that these concerns have been fully addressed.

We would note that these safety concerns have been raised over the past decade with reasonable belief and in good faith. We would further note that some PSAC members have not felt comfortable in bringing forward these concerns, for fear of reprisal.

Transport Canada has vigorously promoted Safety Management Systems for many years now. A fundamental precept of Safety Management Systems is the right and responsibility of all parties to bring forward their legitimate safety concerns in good faith and without fear of reprisal; to have these concerns discussed objectively; and to have appropriate action taken. If this is not your understanding of what your government has been promoting, we would ask that this be clarified for all concerned.

Perhaps the most immediate concern of those raised relates to the ongoing condition of specific government-owned vessels; some of which are of a considerable age. In some cases, these vessels could place many hundreds of lives at risk. We note that the respective Ministers are the Authorized Representative, as defined in CSA2001, for these vessels. The duties and responsibilities of the Authorized Representative for safety are outlined in CSA2001, as well as in other legislation, including the *Canada Labour Code* and the *Criminal Code*. In addition, under CSA2001, the Minister of Transport is responsible for the safety inspections of Canadian flag ships.


We trust that we all agree that it would be regrettable if any unfortunate government action were to put PSAC in the position of having to vigorously defend those individuals who have put public safety first and foremost.

Your acknowledgment and timely written response to the foregoing would be appreciated. We would ask that you take those concerns related to the safety of Canadian ships seriously, and take swift action to address this situation.

Sincerely,



John Gordon
National President
Public Service Alliance of Canada



Peter Stoffer
Sackville-Eastern Shore
New Democratic Party

c.c. Christine Collins, Union of Canadian Transportation Employees
Jeannie Baldwin, Public Service Alliance of Canada
Lisa Raitt, Minister of Labour
John Wiersema, Interim Auditor General of Canada
RCMP

APPENDIX C

Books and Blogs by Robert Frump / Rachel Slade

Bob Frump, ever since his days investigating and reporting on the loss of the *Marine Electric* in 1983 (with 31 lives), has been a prolific writer and an ardent supporter of maritime safety.

His book ‘Until the Sea Shall Free Them’ on the loss of the *Marine Electric* is a classic and an informative work on the tragedy and its causes.

His more recent book ‘The Captains of Thor’ goes into the background factors leading to the loss of the *El Faro* in 2015 with all hands (33 lives).

LINKS:

Blog – on loss of the *Marine Electric*

<https://frumpblog.com/2018/02/16/the-wreck-of-the-ss-marine-electric-35-years-ago/>

Book – Captains of Thor: what really caused the loss of the *El Faro*

<https://frumpblog.com/2018/09/03/the-captains-of-thor-what-really-caused-the-loss-of-the-ss-el-faro/>

Blog – A Captain Who Blew the Whistle Speaks Out About Safety Cultures Today (But in today’s climate where safety is besieged and captains often bear the brunt of poor safety processes and bad maintenance, one answer almost certainly is to air the voices of professionals who wish to speak out. In that spirit, here is the post.)

<https://frumpblog.com/2019/02/16/a-captain-who-blew-the-whistle-speaks-out-about-safety-cultures-today/>

Books:

https://www.amazon.com/Robert-Frump/e/B001HD3UKG/ref=sr_tc_2_0?qid=1360982830&sr=1-2-ent

Book by Rachel Slade: Into the Raging Sea: Thirty-Three Mariners, One Megastorm, and the Sinking of El Faro.

“Slade’s account of the *El Faro* tragedy is a cautionary tale for leaders who think they have all the answers, for employees who choose not to speak up... and for organizations that rely on systems and processes that don't provide the information their people need to make the best decisions.”

<http://www.rachelslade.net/>

<https://gcaptain.com/book-review-into-the-raging-sea-and-the-sinking-of-el-faro/>

APPENDIX D
The American Seaman's Protection Act

**Seaman's Protection Act, 46 U.S.C. §2114 (SPA) as amended by
Section 611 of the Coast Guard Authorization Act of 2010, P.L. 111-281**

§2114. Protection of seaman against discrimination.

(a)

(1) A person may not discharge or in any manner discriminate against a seaman because--

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred;

(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public;

(C) the seaman testified in a proceeding brought to enforce a maritime safety law or regulation prescribed under that law;

(D) the seaman notified, or attempted to notify, the vessel owner or the Secretary of a work-related personal injury or work-related illness of a seaman;

(E) the seaman cooperated with a safety investigation by the Secretary or the National Transportation Safety Board;

(F) the seaman furnished information to the Secretary, the National Transportation Safety Board, or any other public official as to the facts relating to any marine casualty resulting in injury or death to an individual or damage to property occurring in connection with vessel transportation; or (G) the seaman accurately reported hours of duty under this part.

(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the performance of duties as ordered by the seaman's employer.

(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) A seaman alleging discharge or discrimination in violation of subsection (a) of this section, or another person at the seaman's request, may file a complaint with respect to such allegation in the same manner as a complaint may be filed under subsection (b) of section 31105 of title 49. Such complaint shall be subject to the procedures, requirements, and rights described in that section, including with respect to the right to file an objection, the right of a person to file for a petition for review under subsection (c) of that section, and the requirement to bring a civil action under subsection (d) of that section.

LINK:

<https://www.whistleblowers.gov/statutes/spa>

APPENDIX E The Canadian Westray Bill



The amendments announced in the “Westray Bill,” was created as a result of the 1992 Westray coal mining disaster in Nova Scotia where 26 miners were killed after methane gas ignited causing an explosion. Despite serious safety concerns raised by employees, union officials and government inspectors at the time, the company instituted few changes. Eventually, the disaster occurred. After the accident the police and provincial government failed to secure a conviction against the company or three of its managers.

The Westray bill was federal legislation that amended the Canadian *Criminal Code* and became law on March 31, 2004. The Bill established new legal duties for workplace health and safety, and imposed serious penalties for violations that result in injuries or death. The Bill provided new rules for attributing criminal liability to organizations, including corporations, their representatives and those who direct the work of others.

The amendment added Section 217.1 to the *Criminal Code* which reads:

“**217.1** Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.”

The amendment also added Sections 22.1 and 22.2 to the *Criminal Code* imposing criminal liability on organizations and its representatives for negligence (22.1) and other offences (22.2).

LINKS:

<https://www.ccohs.ca/oshanswers/legisl/billc45.html>
<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

APPENDIX F
Management and Regulatory Accountability

The sinking of the riverboat *Bulgaria*
July 10, 2011, Volga River, Russia
122 lives lost, including dozens of school children



Figure 6. A senior Russian official blamed “irresponsibility and greed” for the sinking of the riverboat *Bulgaria*, which resulted in 122 deaths (The Shipping Law Blog, 2011).

Excerpts from the special meeting on the investigation into the cause of the sinking of the *Bulgaria* river cruise ship. (President of Russia Webpage (2011)).

President of Russia Dmitry Medvedev: Good afternoon,

Colleagues, after the tragedy in Tatarstan on Sunday, I spoke with the Chairman of the Investigative Committee [Alexander Bastrykin] and gave a number of instructions. At the moment, as I understand it, the suspects have been identified and the investigations are underway. I would like to hear first from Mr. Bastrykin on the investigations into what caused this terrible tragedy, and on the lessons we should draw from it. This was a matter I addressed at the meeting on Monday, and I gave the relevant instruction to the Prosecutor General [Yury Chaika].

Mr Chaika, I am talking of course about the inspections of the entire river fleet, the situation with licences, ticket sales, permits for tourism activity, and other related circumstances that directly or indirectly contributed to this tragedy. I want to hear from you in brief what has been done so far

...

I hope the investigation will be as thorough as possible. A large investigations group with serious resources has been set up for this purpose.

One other thing I want to point out is that we cannot of course hope to replace our entire fleet of river and sea vessels over the course of just a few years. This is a complex and costly undertaking. To be honest, practically no new river boats have been built or purchased over these last 20 years.

But this does not mean that the organisations responsible for their state should just stamp the documents allowing them to operate. There is no point in putting the blame on a few scapegoats – those who stamped a document here or there. All those involved in organising this whole process must answer now, so that in the future, all officials, regardless of their rank, realise that the penalties for letting ships be used in this state might be not just disciplinary, but criminal liability.

This criminal liability should be reflected in real punishment. The investigation must thus be as thorough as possible, and, as the Chairman of the Investigative Committee said, must be based on the results of thorough comprehensive expert reports.

Let me repeat that the task is not just to establish the direct causes of this accident since the situation is more or less clear now already, but to prevent this kind of tragedy from happening again in the future. This is a job not just for the Government, but for the law enforcement agencies too. Work on it (President of Russia Dmitry Medvedev, 2011).

LINKS:

President of Russia Webpage (2011). *Special meeting on the investigation into the cause of the Bulgaria river cruise ship's sinking*. Retrieved from <http://en.kremlin.ru/events/president/news/11962>

President of Russia Webpage. (2011). *Minute of silence following the sinking of the cruise ship Bulgaria*. [Digital image]. Retrieved from <http://en.kremlin.ru/events/president/news/11889>

Radio Free Europe. (2014). *Sentences pronounced in 'Bulgaria' tourist boat tragedy*. Retrieved from <https://www.rferl.org/a/boat-sinking-bulgaria-kazan-trial-sentence-inyakina/25448050.html>

Russian Legal Information Agency. (2014). *Transport officials receive sentences for Bulgaria shipwreck*. Retrieved from http://www.rapsinews.com/judicial_news/20140707/271670086.html

The Shipping Law Blog. (2011). *The sinking of the "Bulgaria"*. [Digital image]. Retrieved from <http://www.theshippinglawblog.com/2011/07/article-sinking-of-bulgaria-2011.html>