Criminalisation of the ship’s master and his crew

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Introduction

The shipping industry is unknown for almost all people and that merchandise is transported over the oceans by more than 100,000 ships registered in 150 countries or more. If you ask people to name a famous ship they will certainly reel off a list that will include the Titanic, the Torrey Canyon and the Exxon Valdez, perhaps the Herald of Free Enterprise and Estonia. More informed folk, and those from France and Spain, will add Erika and the Prestige. In Italy the Costa Concordia must be well known and they can probably name her captain.

It is necessary to consider the changes in social attitudes which affect the way the authorities deal with any sort of accident. Looking back at casualty records of the late 19th and the early 20th centuries, when 200 or 300 people might die in a wreck, there was an acceptance that a sea voyage was accompanied by a certain amount of risk. Grateful passengers would club together and present an address of thanks, together with a gift to the master, who have delivered them safely to their destination after a long sea voyage. But maritime progress and the advancement of technology brought with it a gradually increasing intolerance of any sort of accident, which in the new century become quite extreme.

The master of an internationally trading ship finds himself exposed to the whole gamut of different legal regimes and codes as the ship moves around the world. A minor pollution incident in one country, which may even escape censure, will be treated as a heinous crime in another, with responsible officers marched ashore in manacles and subjected to exceedingly treatment. Even a commercial dispute over cargo short landed, which will be dealt with by a protest note in country A might, in what passes for law in country B, see the ship and the master arrested, charged with theft and held in disgraceful conditions along with criminals, against the posting of a huge P&I club bond. A minor discrepancy in a customs declaration form, over, for instance, the number of painkillers in the dispensary, could see the master of the ship arrested by corrupt authorities seeking to be “bought off”.

It is this exposure of the shipmaster to frequently corrupt and unreasonable officialdom, made infinity wore because of his status as a foreigner, that places the modern master in such jeopardy, purely because of his status and profession.

The unique status of the master as the person who is completely identified with the conduct of the ship also makes him or her into a convenient target for authorities. A master, because of what he is rather than what he has done, can find himself sanctioned because of matters over which he has little personal control.

There has been little justice in a number of French pollution cases, where highly dubious evidence from aircraft, unsupported by any other facts, has been used to obtain convictions. In one notorious case, the owner of the ship pointed out, in vain, that the slick had been not only at right angle to the track of the ship but also ahead of the vessel. The master an officer with long and unblemished record was so disgusted at this treatment that he resolved to leave the sea.

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1 Sidelights Summer 2007 p. 5
2 Sidelights Summer 2007 p. 5
3 Sidelights Summer 2007 p. 5
4 Sidelights Summer 2007 p. 6
5 Sidelights Summer 2007 p. 6
The countries known to use their legal system sometimes in a dubious way, is USA, France, Spain and Greece. Venezuela is well known to arrest both ships and the crew but this is more like piracy supported by the government.

JUSTICE FOR SEAFARERS

A worrying indictment of the plight of seafarers has been delivered by a far-reaching survey of the experiences of seafarers facing criminal charges with seafarers complaining of unfair treatment, intimidation and a lack of legal representation and interpretation services.

The survey by international legal research centre Seafarers’ Rights International (SRI) of 3,480 seafarers in the 12 months period to the end of February 2012 was conducted in eight languages Chinese, English, Japanese, Portuguese, Russian, Spanish, Turkish and Tagalog with responses returned from 18 countries and 68 different nationalities of seafarers.

Of the seafarers surveyed, 8% had faced criminal charges; 4% had been witnesses in criminal prosecutions, while 33% knew of colleagues who had faced criminal charges. Almost 24% of masters in the survey had faced criminal charges.

Questions in the survey specifically asked about the experiences of seafarers who had faced criminal charges. 44% of seafarers reported that they were bodily searched. 87% who faced charges relating to the discharge of their professional duties said that they did not have legal representation; 91% of seafarers who needed interpretation services said that they were not provided with such services; and 89% of seafarers who had faced criminal charges said that they did not have their rights explained to them.

Seafarers were also specifically asked about their perceptions. 80% who had faced criminal charges felt intimidated or threatened. Concerning casualty inquiries and accident investigations, 46% of seafarers who answered the question said that they would be reluctant to cooperate fully and openly with such inquiries. Reasons expressed included: “The information that I would provide might be used against me”; “I would fear incriminating myself”; "Anything you say can be used as evidence against you”.

Overall, 81% of seafarers who faced criminal charges did not consider that they had received fair treatment.

To gain a broader view of criminal charges faced by seafarers, SRI also carried out a review of all incidents involving criminal charges against seafarers reported in Lloyd's List, Trade Winds and Fairplay, for the 12 year period from 2000 – 2011. There were 415 incidents reported in this period, involving 1,580 seafarers. Significantly over the period under review, the numbers of maritime criminal incidents and the numbers of detained seafarers showed a tendency to increase.  

5 Seafarer’s Rights International
High Profile Cases

Exxon Valdez (1989)

March 1989: the US-flagged Exxon Valdez oil tanker ran aground in Prince William Sound, Alaska, spilling hundreds of thousands of barrels of crude oil. The Master faced a number of charges, including operating the vessel while intoxicated, a charge that the jury rejected. However, he was found guilty of negligent discharge of oil and was fined $50,000 and sentenced to 1,000 hours of community service in Alaska. His licence was suspended temporarily.6

Picture: MV Exxon Valdez aground Prince William Sound, Alaska, Internet

Nissos Amorgos (1997)

February 1997: the Greek tanker Nissos Amorgos struck bottom while being piloted down the Maracaibo Channel and some 7,000 tonnes of oil escaped. She was one of three tankers to run aground in the waterway within a period of six weeks. The Master claimed that the tanker had struck a submerged object during the pilot-assisted passage. The Venezuelan navy carried out a survey of the channel and preliminary findings pointed to underwater bank collapses in the Channel, as well as the presence of widespread silting and a number of large “metallic objects” on the bed of the waterway. Nevertheless, the Venezuelan authorities kept the ship arrested for nearly five months, and detained the Master for an additional month without charges subsequent to the release of the ship. The Master was eventually charged and a lengthy series of court proceedings followed. The trial court found the Master guilty of negligence in causing the oil spill, but after a series of appeals, the Criminal Court of

6 Seafarer’s Rights International
Appeal dismissed the conviction on procedural grounds in 2005. No action was taken against the port authorities who were responsible for the state of the Channel, or the pilots.\footnote{Seafarer’s Rights International}

Picture: MV Nissos Amorgos, Internet

**Erika (1999)**

December 1999: Malta tanker *Erika* broke in two 60 miles off the coast of France spilling 31,000 tonnes of oil into the water and eventually sinking. Due to hurricane-strength gales that followed, the oil was scattered across a large portion of the French coast and adversely affected wildlife. Criminal charges were brought against not only the owners and operators, but also against the Master. They were all charged with causing pollution at sea and endangering the lives of others. Although the Master was eventually found not guilty, this result did not transpire until 16 January 2008, some eight plus years later.

Picture: MV Erika going down, Internet

\footnote{Seafarer’s Rights International}
Virgo (2001)

August 2001: Cyprus-flagged *Virgo* was sailing through the high seas near the US shore when it is alleged to have collided with a fishing vessel which sank. Three fishermen drowned. The US charged the seafarers with involuntary manslaughter, and sought to have them extradited from Canada. During the following 18 months, the seafarers were prohibited from leaving Canada while the US, Russia (the state of the seafarers’ nationality), and Cyprus (the flag state) engaged in diplomatic discussions regarding the appropriate forum for criminal proceedings. The seafarers were eventually allowed to temporarily return to their native Russia while the appeal pertaining to extradition was pending. In 2006, the US abandoned its extradition efforts, allowing Russia to commence a criminal investigation and proceedings.8

Prestige (2002)

November 2002: Bahamas-flagged, Greek-operated tanker owned by a Liberian company and chartered by a Swiss-based Russian oil company. While carrying 77,033 metric tonnes of two different grades of heavy fuel oil, one of its 12 tanks burst during a storm off Galicia, in north-western Spain. Fearing that the vessel would sink, the Captain requested permission to enter a Spanish port, which was denied. For the next six days, the Captain continued making unsuccessful requests of the Spanish, French and Portuguese authorities to enter their ports. Six days later, the ship split in half, sinking approximately 250 miles off the coast of Spain and spilling a significant amount of oil that continued to leak over the days and weeks that followed. The 70-year-old Greek Captain was arrested and jailed, charged with hindering salvage of the vessel and causing the break-up of the tanker. He was held for 85 days in a high-security Spanish prison before being released on a €3m bail. He was prevented from leaving Spain and had to report to the police twice daily. After one year, 10 months and 17 days of being prevented from leaving Spain, the Captain was permitted to return home to Greece upon his government’s guarantee that he will return to Spain for any trial that may follow. Spain’s investigation was concluded in June 2010 and the criminal case in Spain is still pending.9

Tasman Spirit (2003)

July 2003: Maltese tanker which grounded at the entrance to Karachi Port, Pakistan, while carrying 67,800 tonnes of Iranian light crude oil and 440 tonnes of heavy fuel oil in the aft bunker tanks. The tanker ran aground in pilotage waters as it approached the port, subsequently breaking in half and spilling a considerable portion of the cargo of crude oil. The vessel’s Master, chief officer, third officer, chief engineer, second engineer, third engineer and the quartermaster, as well as the salvage master, were arrested and charged with conspiring to ground the tanker with criminal intent to cause pollution and injury. They were detained for eight months facing criminal charges. After compensation agreements were negotiated, Pakistan dropped the criminal charges and the seafarers were released.10

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9 Seafarer’s Rights International
10 Seafarer’s Rights International
March 2006: Containership Zim Mexico III knocked down a container crane when manoeuvring in the port of Mobile, Alabama, after the bowthruster failed, killing an electrician working on the crane. The elderly German Master was charged under the US Seamen’s Manslaughter Act, facing up to 10 years in prison if convicted. He was refused bail and remained incarcerated until being eventually sentenced to “time served” on a lesser charge of simple negligence, and released 11 months after the incident.\textsuperscript{11}
Coral Sea (2007)

July 2007: The Croatian Captain, Croatian Chief Mate, and a Filipino bosun were arrested when 51 kg of cocaine were found in a cargo of fruit discharged in the port of Patras. They were charged with smuggling cocaine, despite no evidence being laid against them. The Master and Chief Officer were found guilty and initially sentenced to long periods of confinement. The Chief Officer was subsequently released after more than a year in prison. He suffered severe mental problems and committed suicide. The Master was released after more than 17 months in harsh confinement and acquitted, but he was deported from Greece which made it initially impossible to resume his career with a criminal conviction remaining on his record. He was awarded the ‘Man of the Sea’ Award in 2008 in Lloyd’s List Greek Shipping Awards. \(^{12}\)

Cosco Busan (2007)

November 2007: Containership Cosco Busan collided with a pier of the Golden Gate Bridge in the San Francisco harbour while it was under pilotage resulting in over 200 litres of the oil cargo escaping into the water. The whole crew of the ship was detained initially by the US authorities and six of them, all Chinese nationals, were held for more than a year while the investigation and legal procedures, which led to the conviction of the pilot and ship operator, were completed. \(^{13}\)

Picture; Bird disaster after oil spill from M/V Cosco Busan, Source: Marine log-20.09.2011

Cosco Busan owners and operators to pay $44.4 million civil settlement

Federal, state and Bay-area officials yesterday announced a comprehensive civil settlement with the owners and operators of M/V Cosco Busan, resolving all natural resource damages, penalties and response costs that resulted from the the 5,551 TEU containership striking the San Francisco-Oakland Bay Bridge in 2007 and the subsequent oil spill in the San Francisco Bay.

The collision caused a gash measuring approximately 150 feet long by 12 feet high on the port side of

\(^{12}\) Seafarer’s Rights International

\(^{13}\) Seafarer’s Rights International
the ship, puncturing two of the ship's fuel tanks and damaging the fendering system on the Delta tower of the bridge, and resulting in a significant environmental clean-up.

The event killed thousands of birds, impacted a significant portion of the Bay's 2008 herring spawn, spoiled miles of shoreline habitat and closed the bay and area beaches to recreation and fishing.

The U.S. Department of Justice, the State of California, the city and county of San Francisco and the city of Richmond, Calif., signed and lodged a consent decree that requires Regal Stone Limited and Fleet Management Ltd., the owners and operators of the M/V Cosco Busan, to pay $44.4 million for natural resource damages and penalties and to reimburse the governmental entities for response costs incurred as a result of the 53,000 gallon oil spill that occurred when the vessel struck the bridge on Nov. 7, 2007.

The federal and state natural resource trustees estimate that the spill killed 6,849 birds, impacted 14 to 29 per cent of the herring spawn that winter, oiled 3,367 acres of shoreline habitat and resulted in the loss of more than one million recreational user-days. A result of a multi-governmental effort by federal and state agencies, and municipal governments, the settlement is expected by officials to fully compensate (in addition to previously reimbursed costs) for the natural resources and other damages and costs resulting from the spill.

The portion of the settlement for lost human uses of the shoreline and the bay, $18.8 million, constitutes one of the largest human use recoveries for any oil spill in the United States. Of this, the National Park Service is receiving approximately $9.75 million to improve coastal access and facilities in the bayside, coastal and estuarine areas of Golden Gate National Recreation Area, San Francisco Maritime National Historical Park and Point Reyes National Seashore.

The remaining $9 million will be disbursed either directly to local government as part of the consent decree or through a grant program to fund shoreline recreational projects throughout the impacted spill areas.

On Nov. 30, 2007, 23 days after the spill, the United States filed a lawsuit in federal court against Regal Stone Limited, Fleet Management Ltd. and pilot John J. Cota seeking damages for resource injuries caused by the spill and for costs incurred cleaning up the spill. The U.S. asserted claims under the Oil Pollution Act, the National Marine Sanctuaries Act, the Park System Resource Protection Act and the Clean Water Act.

After investigating many of the impacts from the spill, on Jan. 7, 2009, the California Department of Fish and Game, State Lands Commission, and the Regional Water Quality Control Board – San Francisco Bay Region, filed a complaint in the Superior Court that included causes of action for natural resource damages under the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act, the Oil Pollution Act various other state law provisions and common law. California asserted claims for civil liability and penalties and state costs incurred responding to the spill. Each of these actions is resolved by the settlement, which is subject to a 30-day public comment period.

In conjunction with the consent decree, the federal and state trustees will publish a separate notice in the Federal Register seeking comments on the Draft M/V COSCO BUSAN Damage Assessment and Restoration Plan (DARP). After considering comments from the public, the trustees will produce a final DARP selecting projects that will be funded with approximately $32 million from this settlement. About $5 million will be used to fund bird restoration, $4 million for habitat restoration, $2.5 million for fish and eelgrass restoration and $18.8 million for recreational use improvements. An additional $2 million will fund restoration planning, administration and oversight, with any unused funds to be spent toward more restoration. The draft plan will be available shortly for public comment. Two public meetings will be held to allow for a brief overview of the restoration plan and public comments to be made. Copies of the draft DARP, including injury assessment and restoration project details, are available at www.dfg.ca.gov/ospr/Science/cosco_busan_spill.aspx.
The settlement follows earlier criminal indictments brought by the Environmental Crimes Section of the Environment and Natural Resources Division of the U.S. Department of Justice and the U.S. Attorney's Office for the Northern District of California. John J. Cota, the pilot of the Cosco Busan, and Fleet Management were criminally prosecuted. Cota pleaded guilty in 2009 and was sentenced to 10 months in prison for negligently causing the discharge and killing migratory birds. Fleet was sentenced in 2010 after pleading guilty in the criminal case to negligently causing the discharge and obstructing justice. Fleet was ordered to pay $10 million in criminal penalties, including $2 million for local environmental projects, for its role negligently causing the Cosco Busan oil discharge and obstruction of justice charges for a subsequent cover-up in which it falsified ship records after the crash.\(^{14}\)

**Hebei Spirit (2007)**

December 2007: Hong Kong-registered crude carrier *Hebei Spirit* was anchored when it was hit by an out of control crane barge causing heavy pollution to the South Korean coastline. The Captain and Chief Officer, both Indian nationals, were arrested and charged with criminal negligence for causing marine pollution. An initial investigative report compiled by the South Korean government indicated that blame for the oil spill was shared between the tug captains, the barge captain, and the officers of *Hebei Spirit*. After a series of hearings and appeals, the South Korean courts ultimately reversed the conviction under the Criminal Code, but maintained the marine pollution conviction. The men were released on 11 June 2009 after 550 days in detention.

*Picture: MV Hebei Spirit after the vessel had been by an crane barge. Internet*

\(^{14}\) Source: Marine log-20.09.2011
Tosa (2009)

April 2009: The Panamanian flag VLCC MC *Tosa* was on a voyage from South Korea to Singapore when a Taiwanese fishing boat is believed to have capsized, resulting in the death of two fishermen. Reports indicate that the *Tosa* was at least one hour from the position of the capsize and no evidence of a collision existed on the hull of the vessel. The ship was escorted from the high seas under Taiwanese Coast Guard escort under suspicion of having collided with the fishing trawler. The watch keepers, the Second Officer and AB, as well as the ship’s Master were arrested. The Master, who was off duty and asleep at the time of the incident, was prohibited from leaving Taiwan for nearly two years. He was initially charged with involuntary manslaughter but was later absolved of all charges and released.\(^{15}\)

*Remarks: Above named cases are listed as High Profile Cases at SRI web page*

\(^{15}\) Seafarer’s Rights International
International Law Cases

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May 2011

25 May. United Kingdom of Great Britain and Northern Ireland: Shipmaster Convicted of Operating Vessel While Intoxicated. The captain in charge of a Cornish ferry was found to be nearly four times the legal limit when he was arrested in August 2010. The court found that he had consumed a bottle of vodka while operating THE LADY ELIZAETH which carried as many as forty-three passengers at one time. The shipmaster awaits sentencing. The maximum penalty is two years in prison. Cornish Guardian, “Falmouth skipper faces jail for ‘drunk-driving’ on Cornish ferry,” 25 May 2011.

6 May. United States of America: Shipmaster Arrested for Child Pornography Offense. A federal grand jury indicted the Peruvian captain of the PERA for possessing hundreds of illicit photographs on his laptop. The captain was initially arrested on 24 February 2011 in Mobile, Alabama after the PERA arrived from Port-au-Prince, Haiti. A U.S. Customs and Border Protection officer discovered the evidence in a routine inspection of the captain’s quarters. For unknown reasons authorities initially released him and he was arrested a month later. AL.com, “Ship captain from Peru, homeless man face separate child porn charges from port arrests,” 6 May 2011.

4 May. United States of America: Chief Engineer Pleads Guilty to Obstruction of Justice Crime in Pollution Case. The United States Coast Guard was alerted by crewmembers aboard the M/V CAPITOLA in May 2010 that a “magic pipe” had been constructed to bypass the oil-water separator equipment and dump oily waste water directly overboard. The Greek chief engineer recently admitted that from March 2009 to May 2010 he ordered subordinates to use the device despite having earlier denied the charges. In a related case, the chief engineer’s corporate employer pleaded guilty to the underlying crime of violating the Act to Prevent Pollution from Ships. U.S. Department of Justice, Press Release, 4 May 2011. Brought to our attention by our good friend Dennis Bryant at Bryant Maritime Consulting Newsletter, 5 May 2011, http://brymar-consulting.com.

April 2011

23 April. New Zealand: Shipmaster of Protest Vessel Charged for Navigation Crime. The captain of the SAN PIETRO had been attempting to disrupt an oil survey ship off the East Cape, New Zealand. Authorities boarded the vessel after concern for the crew’s safety. The captain was officially charged with breaching New Zealand’s Maritime Transport Act. The captain and his fellow protestors face a fine of $10,000 or up to 12 months in jail. New Zealand Herald, “Arrest aboard protest boat,” 23 April 2011.

22 April. Kingdom of Denmark: Shipmaster Arrested for Operating Under the Influence of Alcohol. The Polish captain operating the 80-metre-long VESTVIND (Gibraltar) was arrested after his vessel ran aground near Korsoer in central Denmark. Danish authorities told reporters that the pilot had been drinking considerably more than Danish law allows. No pollution was found due to the grounding. MSN New, “Ship runs aground in Denmark, police suspect drunk captain,” 22 April 2011.
13 April. **United States of America: Master of M/V MEL OLIVER Sentenced for Safety Crime.** A federal court in Louisiana sentenced the captain for creating a hazardous condition aboard the vessel in violation of the Ports and Waterways Safety Act. In 2008 the captain was found to have left his vessel under the control of an unlicensed seafarer in the Mississippi River near New Orleans while he returned to his native state of Illinois. The seafarer in control of the M/V MEL OLIVER at that time previously pleaded guilty to operating the vessel without a license. At the time of this incident, the M/V MEL OLIVER was involved in a collision with the M/V TINTOMARA. *Press Release, The United States Attorney’s Office, Eastern District of Louisiana*, “Captain Sentenced for Leaving Operation of Tugboat with Unlicensed Pilot,” 13 April 2011.

10 April. **Republic of Philippines: Four Seafarers Arrested for Sex Crime.** The ship officer and three apprentices were arrested for allegedly raping a woman inside a cabin aboard the *M/V CALBAYOG*. One of the alleged perpetrators, reportedly once a friend of the victim, lured her to the cabin from the Economy Class. The accused seafarers were immediately released from employment and await prosecution. *Sun Star*, “4 arrested for shipboard rape,” 10 April 2011.

4 April. **Kingdom of Tonga: Four Defendants in PRINCESS ASHIKA Ferry Disaster Sentenced.** Two seafarers aboard the vessel and two others involved in management were sentenced for their role in the horrific 2009 sinking that left seventy-four people dead. The two seafarers include the captain who will serve six months of a four-year sentence and the first mate who will serve eighteen months of a three-and-a-half-year sentence. The leading culprit according to the court was the land-based managing director of the operation who was sentenced to five years for manslaughter by negligence and forgery. The fourth man, the acting head of the Tonga’s marine division, received a three-year suspended sentence. The shipping company was also fined $A10,350 which will be set aside for a scholarship fund. *The Sydney Morning Herald*, “Jail terms, fines over Tonga ferry sinking,” 4 April 2011.

March 2011

26 March. **Republic of Colombia: Seafarers Arrested for Drug Smuggling.** A multinational operation involving the United States, Colombia, France, Honduras, and Nicaragua detained the unflagged vessel, confiscated 2.7 tons of cocaine, and arrested five seafarers travelling aboard. The vessel was en route from Colombia to the United States. *Latin American Herald Tribune*, “Drug Bust Off Colombia Nets 2.7 Tons of Cocaine,” 26 March 2011.

23 March. **United Kingdom of Great Britain and Northern Ireland: Ukrainian Master of BEAUMAIDEN (Netherlands) Arrested for Intoxication Offense.** Authorities in Plymouth arrested the captain for having three times the legal limit of alcohol in his system as allowed by British law. The crime is a strict liability offense. The investigation was sparked after the pilot smelled alcohol on his breath. The solicitor for the captain acknowledged he had been drinking but argued that his client had no part in the navigation of the vessel at the time of his arrest. The pilot has stated, however, that the captain entered the bridge. A court fined the captain £1,000, ordered that he pay £85 prosecution costs, and a £15 victim surcharge. *This is Plymouth*, “Captain of cargo ship was three times the drink limit as ship tried to leave Plymouth,” 23 March 2011.

23 March. **Republic of India: Two Turkish Seafarers aboard M/V KORMEL Arrested After Onboard Altercation.** Indian authorities arrested the first crewmember for attacking the first officer while the vessel lay anchored in the harbor outside Mumbai. The captain was also arrested because he did not disclose to Indian authorities that the attacker was a member of the crew. The arrest was sparked by a distress call from the vessel. *Hindustan Times*, “Two arrested for ship terror ‘strike,’” 23 March 2011.

14 March. **Republic of South Africa: Master of BOW BABA Pleads Guilty to Arms Possession Crime.** South African authorities arrested the captain for possessing four rifles, fourteen magazines,
and 1,140 live rounds of ammunition in Richards Bay harbor. A week later he was found guilty of violating South Africa’s Firearms Control Act because he did not have a permit. He was sentenced to R$30,000 or fifteen years imprisonment of which the whole sentence was suspended for five years. IOL News, “Philippine captain guilty of illegal arms,” 14 March 2011.

11th March. Commonwealth of Australia: Master of U-SEA PANACHE (R. of Singapore) Pleads Guilty to Navigational Crime. An Australian court accepted the guilty plea of the foreign captain for navigating through protected portions of the Great Barrier Reef without a permit. The captain stated that he was navigating through this area for the first time and did not know he needed the permit. The court fined him $32,500. The Observer, “Ship’s officer pleads guilty,” 11 March 2011.


6 March. Kingdom of Norway: Master of Missing Vessel BERSERK Charged with Navigational and International Crimes. The Norwegian master is charged with failing to seek permission for the BERSERCK’s voyage to Antarctica and for a search and rescue mission should it be required. Both are mandatory under international treaties. The master also broke Norwegian law because he did not have authority to sail south of the sixty degrees latitude. After arriving off Antarctica, the master and a companion went ashore; while there, a severe storm struck and the BERSERCK signaled for distress. The vessel has not been found and her three crew members on board are presumed dead. The master was later saved and returned to Norway. It is being reported that he may face prison time for the charges. Views and News from Norway, “Charges filed against captain of failed polar expedition,” 5 March 2011.

February 2011

25 February. Canada: Master of MARINE VOYAGER Charged with Navigational Crime. The captain of a coastal ferry in Newfoundland is being charged with failing to keep a proper lookout after his vessel struck another small fishing vessel. The lone person aboard the fishing vessel stated that he saw the ferry coming, but assumed the ferry also saw him, and thus did not move. He also stated, however, that he did not see anybody in the vessel’s wheelhouse or deck. At the time of accident there was a light fog but authorities reported that overall visibility was “good.” The fisherman was not seriously injured and his vessel did not sustain serious damage. CBC News, “Burgeo captain charged after collision,” 25 February 2010.

23 February. United States of America: Shipowner of M/V CAPITOLA Sentenced for Environmental Crime. Cardiff Marine Inc, a Liberian-registered shipping company, pleaded guilty in federal district court and was sentenced to pay a $2.4 million fine for violating the Act to Prevent Pollution from Ships. The company admitted to falsifying the records related to discharges of oily waste, making false statements to the United States Coast Guard, and other acts of concealment. The incident was sparked by whistleblowers in May 2010 when the U.S. Coast Guard was alerted of irregularities, including the use of a “magic pipe,” in the vessel’s engine room. The report released by the Justice Department suggests that the M/V CAPITOLA’s chief engineer complied with the investigation but there was no announcement on whether he or other crew members were also criminally indicted. Press Release, United States Department of Justice, “Liberian Shipping Company Sentenced to Pay $2.4 Million for Falsifying Oil Record Book and Lying to Cover up Illegal Discharges of Waste,” 23 February 2011.

21 February. Socialist Republic of Vietnam: Master and Seafarer Arrested after Tourist Boat Sinks Killing Twelve. The captain and chief engineer were charged by Vietnamese authorities with
“violating water safety rules causing serious consequences.” The wooden junk tourist boat sank while at anchor in Halong Bay with 27 people aboard, most of them sleeping. Tourists from the United States, Australia, Sweden, and Japan were among the 12 that perished. The Telegraph, “Captain charged over Vietnam tour boat sinking,” 21 February 2011.

16 February. State of Eritrea: Detained Australian Shipmaster Deprived of Outside Access. Adrian Troy, a 47-year-old captain with both Australian and British passports, was arrested in December 2010 by Eritrean authorities for unknown reasons. Some speculate that he is being questioned for espionage, but there is no evidence of this with his long career in the pearling industry. The last time anybody has had contact with Capt. Troy is 12 December 2010. Both British and Australian authorities are working to get information from Eritrean authorities regarding the detention, but thus far there has been no response. ABC News, “Eritrea denies access to detained Australian,” 16 February 2011.


12 February. Malaysia: Eighteen Seafarers on Two Vessels Arrested for Illegally Transferring Fuel. Malaysian authorities detained the seafarers and arrested both the M/T PACIFIC BRAVE (R. of Singapore) and M/T PELANGI BERJAYA (Malaysia) after they discovered that 300,000 liters of fuel was allegedly being siphoned from the M/T PACIFIC BRAVE to the M/T PELANGI BERJAYA three miles off the Malaysian coast. The arrest and detention came after neither captain could produce a permit for carrying out the activity. The crew members included 16 Indonesians, one from Myanmar, and one from Malaysia. Upon conviction, the eventual defendants face a maximum fine of RM100,000 or a jail term not exceeding two years, or both, for violating Section 491B(1)(k) of the Merchant Shipping Ordinance. New Straits Times, “Crew of 2 vessels held over siphoning of fuel,” 12 February 2011.

9 February. Georgia: Shipmaster Fined for Environmental Crime. Georgian authorities arrested the cargo ship NARUKSOVO (Russia), operated by Marship-Moscow, after it was found to be spilling “harmful substances” near the Black Sea port of Poti. The vessel’s captain was ordered to pay a fine of 5,000 lari ($2,783) for the incident. The arrest is reportedly the seventh such incident near the port in the past six months. Safety at Sea International, “Ship held over pollution,” 9 February 2011.

1 February. Commonwealth of Australia: Trial Set for Shipmaster of PACIFIC ADVENTURER. An Australian jury will hear arguments in October 2011 in the trial of shipmaster Bernardino Gonzales Santos, a citizen of the Philippines, his employer Swire Shipping, Swire Navigation, Bluewind Shipping, and China Navigation on charges of spilling oil in Australian coastal waters. All parties pleaded not guilty. The trial stems from a March 2009 incident where 270,000 tons of oil was discharged into Maroteon Bay, Australia. Lloyd’s List, “Pacific Adventurer spill trial set for October,” 1 February 2011.

January 2011

31 January. Republic of India: Captain and Crew of NORDLAKE (R. of Cyprus) Charged after Collision with Naval Warship. Indian officials have charged the seafarers with violating IPC § 280 (rash navigation of a vessel), § 337 (endangering life or personal safety of others), and § 427 (causing damage) after their merchant vessel struck the VINDHYAGIRI in Mumbai Harbor. The warship had
400 people on board, including family of naval personnel. There have not been any reports of pollution, and the seafarers have not been formally arrested. One India News, “FIR against crew of foreign vessel that collided with warship,” 31 January 2011.

25 January. Commonwealth of Australia: Seafarers Aboard SIGNE BULKER Plead Guilty and Sentenced for Environmental Crime. An Australian judge in Gladstone sentenced the chief mate and third mate, both Indian nationals, to a total $33,000 fine after they both pleaded guilty to negligently navigating the SIGNE BULKER through protected areas of the Great Barrier Reef on 18 January 2011. The first mate was sentenced to $29,000 and the third mate, who was operating the vessel, to $4,000. The two had reportedly never traveled to Australia, and their choice of the same route as the SHEN NENG 1 had no commercial advantages. Courier Mail, “Bulk carrier captains put Great Barrier Reef at risk, then set sail with a $33,000 fine,” 25 January 2011.

24 January. Commonwealth of Australia: Two Seafarers Aboard SIGNE BULKER (R. of Panama) Charged with Navigational Crime. Australian officials arrested the ship’s first and third officers, both Indian nationals, after their vessel was found navigating through the protected areas of the Great Barrier Reef. Allegedly taking a shortcut, the SIGNE BULKER was stopped near and on the same path as the SHEN NENG 1, the panamax bulk carrier that grounded in April 2010 causing extensive damage to coral and spilling up to four tons of oil. The two seafarers are expected to immediately see a judge on their charges. They must face new Australian laws making “negligent navigation” an offense carrying fines of up to $5.5 million for corporations, $2.2 million or 10 years’ jail for individuals. Herald Sun, “Ship takes shortcut near spill site,” 24 January 2011.

24 January. United Arab Emirates: Shipmaster Sentenced for Theft of Vessel. A Fujairah Appellate Court sentenced the Indian captain of a cargo ship to two years imprisonment and fined him Dhs 100,000 on the charge of stealing a vessel carrying 1,000 tons of diesel. The sentence stems from a 2009 incident when a diesel transporting company reported one of its vessels missing. The vessel recently turned up at a marine base in Marbah, United Arab Emirates, where authorities discovered the ship’s documents had been forged. The captain confessed to the crime. The Gulf Today, “Captain jailed, fined for ‘stealing’ ship,” 24 January 2011.

21 January. United States of America: Master of LA PRINCESA Issued Warning after Grounding. The United States Coast Guard chided the shipmaster for “not reporting that his vessel was struggling to maintain course before its towin lines parted.” The captain had been operating the tugboat when it towed a 580-foot container barge off the coast of Virginia on 12 November 2009, catching the effects of Hurricane Ida. The strong winds separated the towin lines causing the barge to ground off Sandbridge, Virginia. The report cited “unpredictable heavy weather conditions” as the key factor in the incident. Spokespeople for the tug and barge reminded authorities and members of the press that the “there is no requirement to notify the USCG” in their unpredictable situation. The U.S. Coast Guard issued the captain a “letter of warning,” but no disciplinary action was taken. The Professional Mariner, “Master in Va. barge grounding faulted for not seeking help sooner,” 24 January 2011.


20 January. Republic of India: Four Ukrainian Seafarers aboard DYNAMIC STRIKER (Bahamas) Released. A court in Mumbai, India ordered their release after they were detained aboard the vessel for two months. The captain, chief engineer, chief officer, and bosun were initially detained by Indian
authorities after they attempted to flee Indian officials aboard the DYNAMIC STRIKER at the behest

19 January. **United States of America: Seafarer navigating M/V MEL OLIVER Pleads Guilty to
Navigational and Environmental Crime.** The defendant, a United States citizen, pleaded guilty in the
United States District Court for the Eastern District of Louisiana for a felony violation of the Ports and
Waterways Safety Act, and a misdemeanor violation of the Clean Water Act. While working aboard
the M/V MEL OLIVER, a tugboat, the defendant held an apprentice-mate license allowing him to
steer the vessel while the captain overlooked. In the summer of 2008, however, he operated the M/V
MEL OLIVER without supervision when he collided with the M/V TINTOMARA, a 600-foot tanker
ship, causing the release of approximately 282,828 gallons of fuel oil in the lower Mississippi River
near downtown New Orleans. With respect to felony navigation crime, the defendant faces a possible
maximum sentence of 6 years imprisonment, a $250,000 fine, and 3 years of supervised release. With
respect the misdemeanor pollution violation, he faces a possible maximum sentence of 1 year
imprisonment, followed by up to 1 year of supervised release, and a fine of not less than $2,500 and
not more than $25,000 per day. Sentencing in this case is scheduled for April 27, 2011. *United States
Attorney’s Office, Eastern District of Louisiana Press Release,* “Former Ship Mate Pleads Guilty to
Environmental Charges,” 19 January 2011. Brought to our attention by our good friend Dennis Bryant

18 January. **Republic of Macedonia: A Shipmaster is Charged for Crime after Sinking of
ILINDEN.** A court in the City of Ohrid is charging the captain with a criminal offence stemming from
the sinking of the ILINDEN in on 5 September 2009, killing 15 Bulgarian tourists. The trial is set to
begin on 28 January 2011. The captain has been in house arrest since being released from detention.
*Focus Information Agency,* “Ohrid court proceeds with Ilinden ship case,” 18 January 2011; *Focus
Information Agency,* “Kirilica, Macedonia: Ohrid court to hold sitting in Ilinden ship trial,” 18 January
2011.

MUSKAN Sentenced for Smuggling.** A court sentenced the group to one year imprisonment and a
$20,000 fine for illegally exporting charcoal from Somalia to the United Arab Emirates. The
smuggling operation had been performed on an Indian-flagged vessel through the ports militarily
controlled by Islamist insurgents. In addition to the illegally obtained contraband, those vessels have
been banned from sailing to Somalia by the Indian government since March 2010. *International.to,
“Indian Charcoal Thieves and Somali Trader Sentenced to Jail – Bravo TFG,”* 15 January 2011.

14 January. **United States of America: El Salvadorian Seafarer Sentenced for Smuggling.** The
seafarer aboard the was arrested on 18 April 2010 in Galveston Bay after U.S. federal officials
discovered five kilograms of cocaine on board the cargo ship STOLT BASUTTO. The shipmaster
notified authorities of the smuggling operation. The seafarer was sentenced to 10 years in federal

12 January. **United States of America: Chief Engineer of M/V GOULD (U.S.A.) Sentenced for
Environmental Crime.** A federal judge in the Eastern District of Louisiana sentenced the former chief
engineer of the 2,966 gt vessel to pay a criminal fine of $5,000 for violating 18 U.S.C. § 1001. The
seaman pleaded guilty last October to knowingly and willingly presenting a falsified oil record book to
the United States Coast Guard. Last July, the owners of the M/V GOULD had pleaded guilty to
violating the Act to Prevent Pollution from Ships, 22 U.S.C. § 1908(a), and were sentenced to pay a
fine of $1.75 million, submit a community service payment of $350,000, and serve a three year
Engineer of Louisiana Vessel Company Sentenced for Falsifying Oil Record Book,” 12 January 2011.
Brought to our attention by our good friend Dennis Bryant at *Bryant Maritime Consulting Newsletter,*
5 January. Kingdom of Denmark: Shipmaster of DONGENGBORG (Netherlands) Charged for Recklessness After Grounding. Danish officials initially suspected the master had been intoxicated after the general cargo vessel ran aground off Laeso, Denmark on 3 January 2011. After testing the master, however, officials found there was too little alcohol in his system to charge him with illegal intoxication. Reports indicated that he will instead be fined for “reckless driving of a vehicle.” The vessel has since been refloated and anchored. Sea News, Vessel aground, Kattegat, police suspected drunken master,” 5 January 2011.

3 January. United States of America: Captain and Crew of SARAH MOIRA Arrested and Charged for Drug Smuggling. The captain (also the vessel’s owner) and two crewmembers of the 79-foot sailboat, all U.S. citizens, were charged by U.S. officials for various crimes related to the possession, distribution, and importation of 4,497 pounds of marijuana. The United States Coast Guard seized the SARAH MOIRA off the coast of Bay St. Louis, Mississippi. A search warrant had also been issued on the captain’s residence after the crewmembers indicated they were employed by him for the smuggling operation. A trial is scheduled for 14 February 2011 in U.S. District court in Gulfport, Mississippi. Cape Cod Times, “Dartmouth man charged in plot to smuggle drugs,” 3 January 2011.

1 January. Hellenic Republic [Greece]: Nine Seafarers Aboard ROMEO (Bolivia) Arrested for Smuggling. Greek officials intercepted the ROMEO as it traveled from Cyprus to Albania and confiscated 3,000 cartons of contraband cigarettes. The nine seamen on board told authorities that they were unaware of the contraband. No date for trial has been set. Phantis, “Authorities confiscate contraband cigarettes,” 1 January 2011.

December 2010

31 December. United States of America: Three Seafarers on Cruise Indicted for Drug Smuggling. Three Royal Caribbean Cruise Line crew members were indicted for smuggling heroin and cocaine while aboard the 1997-build ENCHANTMENT OF THE SEAS on 18 December 2010. US Immigration officials reported that they were tipped off by a ship security officer and subsequently found 700 grams of heroin and 300 grams of cocaine. The crew members told officials that they received the drugs in the Dominican Republic and were to be given $4,000 upon their delivery in the U.S. Safety at Sea International, “Three cruise crew indicted in US drug case,” 31 December 2010.

28 December. Socialist Republic of Vietnam: Arrested Vietnamese Seafarers Released. The thirty-five Vietnamese fisherman arrested by the Indonesian Coast Guard were released after having been detained on a small Indonesian island. The fisherman were arrested in late 2009 for allegedly fishing illegally in Indonesian waters. According to one media report, from January to October 2010, there have been 94 incidents, encompassing 205 Vietnamese ships and 1,575 fishermen, detained by foreign nations. Troitrenews.vn, “Vietnam fishermen released from Indonesia, arrive home” 28 December 2010.

26 December. Kingdom of Spain: Canadian Seafarer Arrested on Narcotics Charge Awaits Trial. The seafarer was arrested in December 2009 after Spanish authorities discovered $625 million worth of cocaine on the DESTINY EXPRESS. The seafarer was formally charged in February 2010 and as of this writing, there is no date for trial. It has been reported that the Spanish prosecutor is seeking the maximum penalty of seven years imprisonment for the seafarers aboard the vessel, and nine years imprisonment for the ship’s captain. The Chronicle Herald, “Digby seaman in limbo in Spanish jail,” 26 December 2010.

19 December. Republic of Korea [South Korea]: Eight Chinese Fishermen Detained After Collision. South Korean authorities arrested the fisherman after the boat they were fishing on allegedly intentionally collided with and attacked a South Korean patrol vessel. According to South Korea, that vessel had earlier discovered approximately fifty Chinese fishing boats illegally fishing in South Korean waters. The incident was especially violent with at least one Chinese fisherman killed and

14 December. **Netherlands: Shipmaster Arrested on Intoxication Charge.** The 41-year-old Russian captain of a cargo ship was arrested for operating that vessel while having nearly four times the legal amount of alcohol in his system. The Belize-flagged vessel has been carrying scrap iron from Belgium to Great Britain when it ran aground in a river estuary in southwestern Netherlands. The captain was placed in custody for forty-eight hours. *Expatica Netherlands*, “Russian captain arrested for drunkenness: Dutch police” 14 December 2010.


8 December. **United States of America: Shipmaster Arrested for False Identification after Beaching.** The captain of a 30-foot vessel was arrested by authorities in Brevard County, Florida after providing a false name and false identification after his vessel was found beached on county-owned property north of Port Canaveral, Florida. The defendant, who is being held without bond at the Brevard County Detention Center, is also being charged with reckless operation of a vessel, providing an improper look, and the improper display of registration. Authorities noted that the vessel was found to be in an otherwise seaworthy condition and it did not pose a security threat. *Florida Today*, “Man held after boat lands near Cape Canaveral AFS,” 8 December 2010.

7 December. **Commonwealth of Puerto Rico: Seventeen Russian Seafarers aboard CARIB VISION (St. Kitts and Nevis) Detained for Environmental Crime.** According to Russia’s honorary counsel, the seafarers have been detained aboard the vessel since 6 November 2010 because they do not have United States visas. Formal charges have not yet been pressed. *Ria Novosti*, “Russian sailors kept in custody in Puerto Rico,” 7 December 2010.

6 December. **Kingdom of Denmark: Shipmaster Arrested for Operating Under the Influence of Alcohol.** The Dutch master of the 1,279 dwt LITTLE JANE ran his vessel aground off the Danish island of Langeland. Danish authorities arrested the master after he refused a breathalyzer test. After later agreeing to a blood examination on shore, he was found to have 1.09 permillage of alcohol in his system. He was subsequently jailed for the evening, and may be fined upwards of DKK 6,000. *Shipgaz*, “Another drunken captain caught in Danish waters,” 6 December 2010.

5 December. **Republic of Bulgaria: Two Shipmasters Arrested after Collision.** The Syrian captain of the KARAM 1 and Filipino captain of the ALESSANDRO were charged in Bulgaria after a deadly collision in the Black Sea. The two were charged with breaching naval transportation rules and causing the death of one or more persons. The incident occurred on the morning of 29 November 2010 when the two struck each other southwest of Cape Emine. The KARIM 1 sank immediately with only five of the ten seafarers rescued. The search for the remaining seafarers was called off four days later. The much larger ALESSANDRO, a Dutch oil tanker, sustained minor damages and failed to leak any petroleum products. A full investigation is underway. *Novinite*, “Filipino, Syrian Captains Charged in Bulgaria after Shipwreck,” 5 December 2010.
4 December. **United States of America: Boat Captain Arrested and Charged with Manslaughter.** The captain was arrested after failing to appear for his arraignment at a Miami court. He was earlier charged with killing a man during a 4 July boat party just south of the Broad Causeway in North Miami. The incident arose when the captain allegedly pushing the victim into the water after a dispute. The captain then fled the scene, and the victim, who was intoxicated, drowned. *Miami Herald*, “North Miami boat captain in manslaughter case captured after missing court,” 4 December 2010.

2 December. **Russian Federation: Five Foreign Vessels Arrested for Illegal Crabbing.** Russian authorities arrested the vessels in the Sea of Okhotsk for allegedly seizing 300,000 highly-priced red king crabs. The vessels seized were flagged in Cambodia or Panama. The arrests involved the use of arms after the vessels failed to stop and allow authorities to board. All five vessels will be under arrest in the port of Petropavlovsk-Kamchatski until the investigation concludes. *Russian Navy*, “Russian frontiersmen detained 5 foreign crabbers,” 2 December 2010.

2 December. **United States of America: Ship Operator of M/V AVENUE STAR Pleads Guilty to Environmental Crime.** Atlas Ship Management Ltd., a Turkish Corporation, pleaded guilty in U.S. District Court in Tampa, Fla. to federal charges of making false statements and knowingly failing to accurately maintain an Oil Record Book. The United States Coast Guard initially investigated the M/V AVENUE STAR in October 2009 after being alerted by two whistleblowers. Those whistleblowers were each awarded $125,000 by the court. The company was sentenced to pay an $800,000 criminal fine, pay $100,000 in community service an environmental fund, and to implement a comprehensive environmental compliance program that requires detailed inspection and auditing of the defendant’s ships that sail into the United States. The Chief Engineer and Second Engineer aboard the vessel at that time each pleaded guilty last July. *Department of Justice Press Release* “Shipping Company and Senior Crewmembers Convicted of Covering up Oil Pollution,” 2 December 2010. Brought to our attention by our good friend Dennis Bryant at *Bryant Maritime Consulting Newsletter*, 2 December 2010, [http://brymar-consulting.com](http://brymar-consulting.com).

November 2010

21 November. **Hellenic Republic [Greece]: Shipmaster and Five Seafarers Sentenced for Sinking Vessel and Environmental Crime.** The Ukrainian captain and five other seafarers aboard the CHRISTINE (Togolese Republic) were convicted of deliberately sinking their vessel and causing pollution after it received a hull breach during a storm. The CHRISTINE sank near the Greek island of Kefalonia as the vessel was en route from the Albanian port of Durres to the Bulgarian port of Burgas. The captain was sentenced five years in prison while the seafarers received four years. *The Voice of Russia*, “Greek court jails Ukrainian sailors,” 21 November 2010.

19 November. **United States of America: Captain of MISTY MORNING Sentenced for Environmental Crime After Sinking Vessel.** The captain, a United States citizen, was sentenced to 50 months in custody for violating the Clean Water Act after intentionally scuttling his vessel in Lake Huron. A court found that the MISTY MORNING had discharged pollutants after the sinking, and that the captain had failed to mark the sunken vessel with navigation aids. The captain was acquitted on the charge that he willfully caused and permitted destruction and injury to the MISTY MORNING in the territorial waters of the United States. The captain, aged 60, was also sentenced and ordered to pay $57,308.05 in restitution to the U.S. Coast Guard. *U.S.C.G. Press Release*, “Cheboygan man sentenced on charges related to boat sinking,” 19 November 2010.

18 November. **New Zealand: Inquiry Places Blame on Both SHONAN MARU 2 and ADY GIL for Collision.** A New Zealand inquiry found that the Japanese captain of the SHONAN MARU 2 could have avoided the collision with the ADY GIL, a Jet Ski, but when he did not, the ADY GIL similarly failed to take evasive action. The incident stems from an incident where the two vessels collided and the anti-whaling activist captain boarded the SHONAN MARU 2, a Japanese whaler. The master of a jet ski was charged last July with trespassing, assault, illegal possession of a knife, destruction of
property, and obstruction of business in Japan for the collision. He was sentenced to two years, suspended for five years. *ABC News*, “Whaler should shoulder blame, says Bethune,” 18 November 2010.

15 November. **New Zealand: Master Convicted for Illegally Fishing.** The master of the MARINE STAR II was arrested in 2009 for not possessing the appropriate maritime qualifications. The vessel was spotted by the Royal New Zealand Air Force operating 300 nautical miles from the shore when it was only certified to operate 100 nautical miles. He subsequently pleaded guilty and was ordered to pay fines totaling $2,000 plus court costs. *Voxy.com.nz*, “Fishing Vessel Operator And Skipper Convicted,” 15 November 2010.

15 November. **Hellenic Republic [Greece]: Shipmaster of STROFADES IV Arrested on Abduction Charges.** A vessel bound for the Gaza Strip had been diverted to Greece after the captain detained 10 aid workers onboard during an altercation with Libyan officials. The vessel’s objective was a humanitarian effort to bring goods to the Gaza Strip. The charity sponsoring the mission stated that the captain “went nuts” and kidnapped the individuals on board as he challenged Libyan authorities. The aid workers have since been released. *Bikyamasr*, “Gaza aid ship activists leave ship,” 15 November 2010.

14 November. **Australia: Shipmaster of Cargo Vessel M/V LAKE MAJA (R. of Liberia) Arrested for Assault.** The master was arrested for allegedly attacking a 30-year-old female seafarer as the vessel traveled on 30 October 2010 from Australia to Indonesia. The victim stated from her hospital bed that she was violently attacked by the master during her watch on the bridge. She also stated that other seafarers rushed to her aid after she hit an emergency button; however, those seafarers were reluctant to act against the master. Australian police arrested the master and he later received bail. He has a court appearance on 15 November 2010. *The Sunday Time* Pakistani captain assaults Lankan ship officer, 14 November 2010.

13 November. **Republic of India: Egyptian Seafarer Arrested for Distributing Religious Pamphlet in Violation of Indian Law.** The engineer of the Kuwaiti vessel AL-MIR-QAB was arrested for “deliberate and malicious intention of hurting religious sentiment” when he distributed material “inviting people practicing Hinduism to a better religion called Islam.” The accused foreign national originally feigned ignorance, but later confessed to having “sourced the material with the intention of inviting people for conversion.” Before joining the crew, the accused had been a student at an Islamic seminary in Alexandria, Egypt. *Indian Express.com* “Conversion Row: police arrest engineer in Kuwaiti ship,” 13 November 2010.

12 November. **Kingdom of Spain: Three Dutch Seafarers Arrested in Spain for Smuggling.** Spanish customs officials arrested the seafarers for smuggling 22 metric tons of hashish on the fishing vessel NANCY II. The illegal drugs had been picked up in the Kingdom of Morocco and the vessel seized on Spain’s southern coast. Spanish officials reported that it was one of the largest drug smuggling seizures in that nation’s history. The Dutch seafarers were brought before a judge in Cadiz. *The Daily Mail*, “Three arrested as dope seized in one of Spain’s biggest drug busts in history,” 12 November 2010.

11 November. **Commonwealth of Australia: Master of PACIFIC ADVENTURER Faces Trial This Year for Environmental Crime.** The 48-year-old Filipino captain and the companies behind his vessel, Swire Shipping, Swire Navigation, China Navigation, and Blue Wine Shipping, will each face one charge of discharging oil into the coastal waters. The trial stems from a March 2009 incident where 270,000 tons of oil was discharged into Maroteon Bay, Australia. A trial date is expected in January 2011. The master faces a maximum fine of A$350,000 if found guilty. *ABC News*, “Oil Polluting ship’s captain faces possible 2011 trial,” 11 November 2010.
7 November. United States of America: Master of KEUKA MAID Arrested for Navigational Crime. The master was charged with reckless operation and interference with free and safe navigation, both misdemeanors, after the KEUKA MAID ran aground on 1 November 2010. He was also charged with operating while the registration was not properly displayed, having the registration certificate unavailable, failure to display a validation sticker, not displaying all-around white lights, not displaying visual distress signals, and carrying expired fire extinguishers. The master is expected to appear in Milo Town Court, in Milo, New York, on 18 November 2010. MPNnow.com, “Keuka Maid captain faces charges after ship ran aground near Milo,” 7 November 2010.

5 November. United States of America: Master of the Canadian Fishing Trawler JOSH II Arrested after Collision. Federal authorities arrested the master after he allegedly rammed the JOSH II into another vessel operated by the U.S. Customs and Border Protection Office of Air and Marine Agents. The allegedly intentional collision occurred when the JOSH II attempted to reenter Canadian waters near Marysville, Michigan in the St. Clair River. The vessel was eventually tracked and arrested before it could enter Canadian waters. The Detroit Free Press, “Feds arrest wanted Canadian fishing trawler captain,” 5 November 2010.

5 November. New Zealand: Shipmaster of RAINBOW WARRIOR Loses Appeal in Navigation Crime. The shipmaster had been convicted for breaching the Local Government Act and Maritime Transport Act when he manoeuvered his vessel in Lyttelton Harbour without a pilot, and subsequently refused on order from the harbourmaster to move his vessel when it deliberately obstructed another vessel, the HELLENIC SEA. The shipmaster stated that he was staging a peaceful protest for awareness of global warming because the HELLENIC SEA was loaded with coal. In dismissing the appeal, the judge indicated that the incident was not particularly serious, but it had been premeditated. The shipmaster was sentenced to pay $130 on each charge. New Zealand Herald, “Rainbow Warrior appeal dismissed,” 5 November 2010.

1 November. Bermuda: Shipmaster Loses Appeal in Smuggling Case. The former master of the casino ship NIOBE CORINTHIAN lost his appeal against his $15,000 fine for illegally importing 100 gaming machines into Bermuda. The master was originally sentenced in July 2007. The petitioner’s attorney argued that he was not guilty because the machines were not intended for Bermuda, or in the alternative, to reduce his sentence to a non-criminal “conditional discharge.” The appellate court rejected both arguments and upheld the conviction. The Royal Gazette, “Gambling ship captain loses appeal,” 1 November 2010.

October 2010

29 October. Republic of Indonesia: Shipmaster Arrested after Deadly Capsizing. Indonesian authorities arrested the master of the KM TERSANJUNG after that vessel capsized and killed 15 of its 66 passengers. The shipmaster contends that another person, a legislative counsel member, was at the helm when strong winds and waves caused the capsizing. The Jakarta Post, “Captain detained in fatal Palue sea disaster,” 29 October 2010.

28 October. Republic of Indonesia: Shipmaster Arrested for Using Illegal Fishing Methods. Indonesian authorities arrested the master and crew of a fishing boat in Indonesian waters for fishing with explosives. Authorities confiscated 12 2-kilogram homemade bombs, TNT powder, and 15 detonators. They were reportedly arrested after being caught in the act. The master may face up to 20 years in prison. The Jakarta Post, “Police arrest 10 fisherman for using explosive,” 28 October 2010.

26 October. Kingdom of Norway: Master and Crew of THE ATLANTIC LADY Detained for Illegal Fishing. The Norwegian Coast Guard detained the vessel on suspicion that THE ALTANTIC LADY did not accurately report the weight of caught fish. Authorities allege that Russian crew illegally weighed their catch after fish splitting, as opposed to before, which is required by Norwegian law.
Authorities allege the real weight of the catch has been understated by a few tons. *ITAR-TASS News Agency*, “Norwegian Coast Guard detains cargo ship with Russian crew,” 26 October 2010.

25 October. **United States of America: Shipmaster Arrested for Operating Vessel While Intoxicated.** The Korean master of the STX DAISY was arrested on 14 April 2010 after he was stopped by the United States Coast Guard in the Strait of Juan de Fuca. During their search, the USCG found “significant quantities of Korean whiskey,” and after giving the master a blood alcohol test, found that he was more than twice the legal limit for being in command of a vessel. The master will serve 14 days in jail, and then be under supervised release for 6 months, during which time he is forbidden from operating a vessel in United States’ waters. *Seattle Times*, “Ship captain gets 14 days for onboard drunkenness,” 25 October 2010.

Note: Many press accounts are making this matter sound as bad as possible through inaccuracy. (See *United States District Attorney’s Office, Western District of Washington Press Release*, “Captain of Korean Freighter Sentenced to Prison, Barred from U.S. Waters for Being Drunk While Commanding Ship,” 25 October 2010). The master was not sent to prison but to jail. Further, the crime was treated as a misdemeanor, similar to driving under the influence, and the punishment was treated as such. Headlines declaring that a “Drunken Captain is Sentenced to Prison” are distorted and inaccurate.

21 October. **Solomon Islands: Shipmaster Arrested for Smuggling.** The captain of a cargo ship was arrested by the Royal Solomon Island Police Forces while the vessel travelled from Yandina, Russell Islands to Honiara. Authorities confiscated approximately 8 bags of illegally obtained copra. Harvesting or removing copra from the Russell Islands has been temporarily banned since August 2009 without prior government approval. *Solomon Star*, “Police arrest ship’s captain, seize copra,” 21 October 2010.

20 October. **United States of America: Chief Engineer of R/V GOULD Pleads Guilty to Environmental Crime.** The Chief Engineer pleaded guilty in U.S. District Court for making false statements to the U.S. Coast Guard. The seaman admitted to routinely ordering crew members to discharge oily wastewater directly overboard in violation of U.S. law. In turn, he falsified the required Oil Record Book to conceal the act. The Chief Engineer faces a possible maximum sentence of five years imprisonment, a $250,000 fine, and three years supervised release. He is expected to sentenced early next year. Relatedly, Offshore Vessels LLC, the owner and operator of the R/V GOULD, pleaded guilty last summer to a similar crime. *The United States Attorney’s Office, Eastern District of Louisiana*, “Crewmember pleads guilty to charges related to pollution on high seas,” 20 October 2010.

20 October. **Commonwealth of the Bahamas: Shipmaster Sentenced for Illegal Fishing.** Bahamian authorities arrested the shipmaster and 28 other Dominican crewmembers last week when they discovered 25,000 pounds of illegally-taken fish. The vessel was seized by Royal Bahamas Defense Force, with the assistance of the United States Coast Guard, in the southeast Bahamas. The fifty-year-old captain was sentenced to pay a fine of $50,000, or spend one year in prison. The crew was deported. *The Tribune*, “25,000 pounds of illegally-taken fish was found on Dominican vessel,” 20 October 2010.

19 October. **Republic of Indonesia: Shipmaster Arrested for Illegally Carrying People into Australia.** The shipmaster’s vessel was intercepted by the Indonesian Navy carrying “hundreds” of Sri Lankan people destined for Australia. The vessel is currently moored in Merak, in western Java, with the passengers refusing to disembark, and appealing for asylum in Australia. Indonesian authorities have indicated that charges will be filed against the shipmaster and five crew members. The shipmaster was previously arrested in 2007 for similar charges. *Asian Correspondent*, “Indonesia arrests Captain of asylum-seeker ship,” 19 October 2010.

19 October. **United Kingdom of Great Britain and Northern Ireland: Vessel Owner Fined for Navigational Accident.** The UK Maritime and Coastguard Agency (MCA) fined the owners of the

18 October. United Kingdom of Great Britain and Northern Ireland: Cruise Ship Captain Arrested for Sex Crime. The sixty-four-year-old captain was arrested by British authorities for soliciting a fourteen-year-old minor and also engaging in a nonconsensual sex act with that minor while she was aboard his cruise ship. The captain has ceased working for the unnamed cruise line since the arrest. Spalding Guardian and Lincolnshire Free Press, “Ship captain jailed for teen sex offences,” 18 October 2010.

14 October: United Kingdom of Great Britain and Northern Ireland: Accused Master of ALAM PINTAR (R. of Singapore) Will Not Be Charged. Despite early accusations, an official from the Maritime and Port Authority of Singapore failed to uncover any malfeasance by the master of the ALAM PINTAR, and thus will not face legal action in the vessel’s flag state. The Chinese master had been accused of falsifying and destroying evidence relating to the 20 December 2009 collision with the ETOILE DES ONDES in the English Channel. Despite the findings, however, the UK Shipping Minister remains adamant that the facts surrounding the collision suggest culpability. Lloyd’s List, “Alam Pintar master to escape charges over fatality,” 13 October 2010.

14 October: Republic of Chile: Rescue of Chilean Miners Shining Reminder of a Shipmaster’s Courage and Leadership in Maritime Disasters. Tales of danger, isolation, and heroic survival fill the pages of maritime lore. It is thus fitting, perhaps, that during the recent Chilean miners rescue drama, Chilean President Sebastián Piñera invoked a key component of the maritime example. President Piñera praised Luis Urzúa, the shift foreman during the mining endeavor, and undisputed leader in his crew’s quest for survival, for doing his duty and seeing off all his men before “leaving last like a ship's captain.” The Guardian, “Chile miners: Rescued foreman Luis Urzúa's first interview,” 14 October 2010.

10 October. Republic of India: Collision Report Finds Shipmaster at Fault. An investigation into the collision between the M/S CHITRA and M/V KHALIJIA-III has found the master of the M/V KHALIJIA-III at fault. The investigation prepared by the Yellowgate police near Mumbai found at least 37 instances of negligence. A spokesman for the police stated that authorities “have not decided yet” whether the master will be arrested. In addition to the police report, however, a separate report by the Directorate General of Shipping alternatively states that one of the radars of the Mumbai Port Trust’s Vessel Traffic Management System did not function properly, and as a result, the master and his staff of the M/V KHALIJIA-III were unaware of the impending dangers. The August 2010 collision led to the loss of cargo, an oil spill of approximately 800 tonnes, and the closing of the navigation channel. Hindustan Times, “City ship collision: Reports find port, captain at fault,” 10 October 2010.

10 October. United Kingdom of Great Britain and Northern Ireland: Passenger Sues Vessel Owner for Negligence after Glacier Causes Injuries to Passengers aboard Cruise Ship. The plaintiffs will argue that the master of the M/V ALEXEY MARYSHEV negligently navigated the cruise ship within 10 feet of a dangerous glacier. The civil suit arose on 9 August 2007 when an enormous slab of ice fell from a glacier located approximately 210 miles north of Norway and reportedly sent a 70 foot wave of ice and water crashing into the cruise ship. At least 15 passengers were injured. A trial date has been set for 22 March 2011. Kent News, “Tory councillor to sue over glacier ‘tsunami’,” 10 October 2010.

5 October. Republic of China (Taiwan): Master of M/T TOSA (R. of Panama) Released after 18 Months. Capt. Glen Patrick Aroza is facing charges of “involuntary manslaughter” in the Republic of
China (Taiwan) for the killing of two fisherman off the Taiwanese coast. The charges stem from an 18 April 2009 incident when the M/T TOSA struck and capsized the fishing vessel HSIN TUNG CHUAN 86. The master has been detained by Taiwanese authorities since the incident. According to sources, the release is the result of a “trade-off over monetary matters.” A verdict on the charges is expected in the next few weeks. *The Times of India*, “Detained ship captain Aroza released,” 5 October 2010.

4 October. **United States of America: A Court in a Civil Suit Finds that a Shipmaster Must Have Complete Control of the Vessel.** A judge in a state court in Louisiana awarded $3.55 million to a plaintiff in his suit against the owner and operator of the M/V CAPTAIN RAYNE after he was injured on the job. The plaintiff had been injured after falling from a crane on the vessel that was allegedly caused by sudden and violent movements by the vessel. At trial, attorneys for the plaintiffs argued that the captain was negligent for failing to maintain adequate control of the vessel during the accident. *PR Newswire*, “Houston’s Arnold & Itkin Wins $4 Million Louisiana Verdict for Injured Worker,” 4 October 2010.

1 October. **United Arab Emirates: Master of M/T KASHMIR Fined for Negligence in Collision.** A Dubai court sentenced the master to pay Dh30,000 in damages for negligently failing to properly anchor his vessel. The decision stems from a 10 February incident off the Jebel Ali port when the M/T KASHMIR, while seemingly anchored, drifted and collided with the SIMA BOUY, sparking a major fire. Both vessels were badly damaged and there were two minor injuries. *Emirates 24/7 News*, “Tanker skipper fined for marine accident,” 1 October 2010.

**September 2010**

29 September. **French Republic: Kingdom of Spain Cleared of Human Rights Violations in Detention of Master of the PRESTIGE (C. of Bahamas).** The European Court of Human Rights dismissed the legal challenge by Apostolo Mangouras, the master of the oil tanker PRESTIGE, for illegally detaining him during the investigation and prosecution of the 13 November 2002 oil spill. Mr. Mangouras was held for 83 days without trial and was forced to pay €3M ($4.06M) in bail for his release. The court ruled that Spain’s imprisonment was not illegal because of a concern that he would escape prosecution, and because of the seriousness of the disaster. *Safety at Sea International*, “Spain wins on Prestige jailing,” 29 September 2010.

22 September. **Republic of Philippines: British Master Fatally Shot While Travelling through Country.** Bruce Anthony Jones, a British subject living in the Philippines, was travelling by car with his wife when two men on motorcycle opened fire. Mr. Jones was fatally wounded and his wife was hospitalized. Both the suspects and the motive are at this time unknown. *The Daily Telegraph*, “British captain shot dead in the Philippines,” 22 September 2010.

21 September. **United States of America: Hellenic Republic [Greece] Ship Operator Sentenced for Environmental Crime.** Irika Shipping S.A., the owners and operators of the M/V IORANA (Hellenic Republic [Greece]), was ordered to pay a $4m penalty for violation of the Act to Prevent Pollution from Ships in a United States district court in Maryland. The company earlier pleaded guilty on July 8, 2010. The penalty includes a $3m criminal fine and $1m in organizational community service payments. The company must also serve 5 years probation. The charges arose after crewmembers notified United States authorities that the chief engineer aboard the M/V IORANA (Hellenic Republic [Greece]) ordered the construction of a “magic hose” to divert oily waste and plastics directly overboard. The four whistleblowers will split a $500,000 award. The chief engineer pleaded guilty in June 2010 to obstruction of justice charges in a related case. *United States Attorney’s Office, District of Maryland, Press Release*, “Ship Serial Polluter Ordered to Pay $4 Million For Covering Up the Deliberate Discharge of Oil and Plastics,” 21 September 2010. Brought to our attention by our good friend Dennis Bryant at *Bryant Maritime Consulting Newsletter*, 11 September 2010, [http://brymar-consulting.com](http://brymar-consulting.com).
16 September. United Kingdom of Great Britain and Northern Ireland: Investigation Underway into Evidence Tampering after Collision. The Marine Accident Investigation Branch’s report on the collision between the ALAM PINTAR (R. of Singapore) and ETOILE DES ONDES, in which a British fisherman was killed, opens the door to the criminal prosecution of the Chinese master of the ALAM PINTAR. The report states that documents on the ALAM PINTAR were altered or removed, including those of the voyage ship recorder. *Lloyd’s List*, “A question of duty,” 16 September 2010.

13 September. Japan: Japanese Authorities Arrest and Detain Chinese Master after Collision. The master of a Chinese fishing boat remains in detention after he reportedly collided with two Japanese Coast Guard vessels in the disputed waters of the East China Sea. All of the other 14 seafarers were released. Both Japan and China claim the waters above what is believed to be significant gas and oil reserves. The nations appear to be working towards a diplomatic resolution. *Bloomberg*, “China Tells Japan to Take ‘Wise’ Decision, Free Fishermen, Boat,” 13 September 2010.

9 September. United Kingdom of Great Britain and Northern Ireland: Master of M/T NORD FAST (R. of Singapore) Pleads Guilty to Operating Under the Influence of Alcohol. The 41-year-old master pleaded guilty at Lyndhurst Magistrates Court shortly after being arrested by police. Authorities were tipped off by the pilot assisting the master in steering the ship into Fawley oil refinery on 8 September 2010. The court sentenced the master to pay a fine greater than £1,600.00. *Tradewinds*, “Tipsy tanker master fined,” 9 September 2010.

8 September. United States of America: Conviction of Foreign Master for Failing to Adequately Stop for United States Coast Guard Upheld by Circuit Court. A jury for the United States District Court for the District of Puerto Rico found that the master of a small vessel failed to “heave to” in accordance with 18 U.S.C. § 2237(a) when he twice failed to stop and allow the USCG to board. A second seafarer was convicted as an aider and abettor. Before being arrested, the vessel had been travelling from Mona Island, near Puerto Rico, to the Dominican Republic. In addition to a litany of evidentiary matters, the foreign defendants appealed the issue of whether they had they requisite *mens rea* to “knowingly fail to obey” the order to heave to. The United States Court of Appeals for the First Circuit held that, as a whole, there was sufficient evidence to uphold the conviction because the USCG came within 25 feet, conspicuously used bright lights, and loudly ordered the crew in both Spanish and in English. The prosecutions case was further bolstered by the defendant’s in court testimony suggesting they tried to “outrun” the USCG. *United States v. Santana-Perez*, No. 09-1101 (1st Cir. September 8, 2010).

8 September. Russian Federation: Boatswain on SENATOR (Russia) Arrested for Allegedly Smuggling Drugs. The seafarer was arrested in the Caspian Sea after Russian officials found hashish and opium aboard the dry cargo ship. The vessel had arrived from the Iranian port of Anzali. The seaman reportedly told authorities that the drugs were for personal use. If convicted of smuggling, the suspect could face a 12 year sentence. *Safety at Sea International*, “Smuggling from Iran alleged,” 8 September 2010.

3 September. United States of America: Chief Engineer of M/V NEW FORTUNE (Marshal Islands) Sentenced for Environmental Crime. A federal court in Oakland, California sentenced the seafarer to 3 years probation, a $5,000 fine, and a $100 special assessment for failing to maintain an Oil Record Book. The records state that the chief engineer ordered the crew to use a “magic pipe” to bypass the vessel’s oil pollution prevention equipment, and subsequently covered the practice up through falsifying records. On 30 July 30 2010, a court sentenced the vessel’s owner, Transmar, to pay a fine of $750,000 and an additional community service payment of $100,000 for its role in the scheme. *United States Department of Justice, Northern District of California, Press Release*, “Chief Engineer Sentenced for Falsifying Records,” 3 September 2010. Brought to our attention by our good friend Dennis Bryant at Bryant Maritime Consulting Newsletter, 9 September 2010, [http://brymar-consulting.com](http://brymar-consulting.com).
2 September. **Commonwealth of Australia: Master of the ROMANCE Found Guilty of Operating Ship Unsafely.** The magistrate court’s decision stems from an incident in 2008 when the ROMANCE ran aground during a storm and left 37 people stranded on the wrecked charter vessel. The master’s penalty is a $2,000 fine; however, no conviction was recorded. *Australian Broadcasting Company News,* “Ship’s master fined for unsafe operations,” 2 September 2010.

**August 2010**

31 August, **United Kingdom of Great Britain and Northern Ireland: Master of British Trawler Pleads Guilty to Navigational Crime.** The plea stems from a 9 January 2009 incident whereby the Netherlands Coastguard observed the master navigating the wrong way down the northbound lane of the Off Texel Traffic Separation Scheme. The master was fined £3,500 and assessed £3,752.20 in costs for being in violation of the International Regulations for Preventing Collisions at Sea. *Press Release, Maritime and Coastal Agency,* “British Trawler Prosecuted for Going Wrong Way in Traffic Separation Scheme,” 31 August 2010. Brought to our attention by our good friend Dennis Bryant at *Bryant Maritime Consulting Newsletter,* 1 September 2010, [http://brymar-consulting.com](http://brymar-consulting.com).

25 August. **United States of America: Seafarer Acquitted for Environmental Crime Sues His Former Shipping Company Employer.** The former chief engineer of the GEORGIOS M has filed a $22.8m lawsuit against his former employer Styga Compania Naviera for its alleged complicity with United States federal authorities in a “magic pipe” case. The seafarer had been incarcerated for 15 months when a jury found him not guilty on all five counts last April. The seafarer alleges that Styga cut a guilty plea with the federal authorities to limit its own financial punishment to $1.3m, while deliberately blaming him for the offence. *Lloyd’s List,* “Acquitted engineer brings $22.8m claim against Styga” 26 August 25, 2010.

24 August. **Bolivarian Republic of Venezuela: Ukrainian Seafarers Sentenced Nine Years for Drug Smuggling.** The captain and second officer of the B ATLANTIC were initially arrested in August 2007 for allegedly smuggling cocaine through Lake Maracaibo. The convictions follow at least three other instances of arrests for drug smuggling by Venezuelan authorities. In November 2008, the ASTRO SATURN was detained and the two Greek officers later sentenced for eight years. Further, the tanker AQUA has been detained in Lake Maracaibo since February, and the bulker JIN YAO was detained last month. The Foreign Affairs Ministry of Ukraine has stated it is interested in holding talks on extradition. *Safety at Sea International,* “Officers Jailed in Venezuela,” 24 August 2010; *Ukrainian News Agency,* “Foreign Affairs Ministry Ready For Talks On Extradition Of Ukrainian Two Drug Smugglers Sentenced In Venezuela,” 19 August 2010.


17 August. **New Zealand: New Zealand Authorities Prevent Korean Master from Operating the TASMAN PATHFINDER Because of Intoxication.** A replacement master was flown in from Japan to operate the TASMAN PATHFINDER in its departure from Wellington Harbour. The original master admitted to being intoxicated. New Zealand authorities did not pursue any further disciplinary action. *The Timaru Herald,* “Extremely drunk’ captain stopped from sailing,” 17 August 2010.
18 August. Kingdom of Denmark: Shipmaster Fined for Environmental and Marine Safety Laws. A court ordered the captain of the 3,700 dwt OSTENAU to pay DKK 40,000 for its “objective responsibility” in a grounding off Dueodde, near the island of Bornholm in Denmark. The vessel suffered engine problems and grounded on that spot while on route from Klaipeda in Lithuania to Bornholm. Tradewinds, “Master fined over grounding” 18 August 2010.

13 August. Commonwealth of Australia: Master of OCEAN EMPEROR Pleads Guilty to Seaworthiness Crime. The Australian Magistrates Court convicted the master on 11 August 2010 of six charges under section 268(1B) of the Navigation Act 1912 after “he failed to report soon as practicable to AMSA a defect in the ship or its boilers, machinery, or equipment that had effected or was likely to effect the seaworthiness or safety of the ship.” He was fined a total of $18,000. Press Release, Australian Maritime Safety Authority, “Ocean Emperor Master Convicted” 13 August 2010. Brought to our attention by our good friend Dennis Bryant at Bryant Maritime Consulting Newsletter, 16 August 2010, http://brymar-consulting.com.

11 August. Georgia: Master of GREAT MAJESTY Fined for Environmental Crime. Georgian authorities originally detained the bulker on suspicion of dumping ballast in the Black Sea, near Poti, Georgia. In response, a court fined the master 10,000 lari ($5,500). Although no other crewmembers have been arrested, authorities intend to detain the GREAT MAJESTY until the fine is paid. Safety at Sea International, “Captain fined over pollution,” 11 August 2010.

10 August. Kingdom of Tonga: A Challenge to Findings in PRINCESS ASHIKA (R. of Fiji Islands) Disaster are Dismissed. The findings of “specified allegations of serious misconduct” will stand despite an attempt by a former transport minister in a Kingdom of Tonga court. The chief justice held that the minister did not have an arguable case and awarded costs against him. The challenge stems from the defense of crewmembers and ship executives after the 5 August 2009 ferry sinking that cost the lives of 74 people. Safety at Sea International, “Ashika challenge thrown out,” 10 August 2010.

9 August. Kingdom of the Netherlands: Prosecutors Seek Higher Fine in the PROBO KOALA Environmental Crime Sentencing. In its appeal, Dutch prosecutors contend that the €1M ($1.3M) fine issued against Trafigura Beheer BV is insufficient considering the nature of the crime. The prosecutors will also seek to prove that the commodities trader committed fraud when it dumped toxic waste off of the Côte d’Ivoire that may have sickened thousands residents and led to the death of 17. Safety at Sea International, “Higher Trafigura fine sought,” 9 August 2010.

July 2010

30 July. United States of America: Vessel Owner and Crew of M/V NEW FORTUNE Sentenced for Environmental Crime. Transmar Shipping, S.A. and vessel’s chief and second engineer pleaded guilty to making false statements and failing to failing to maintain an accurate record log in the discharge of oily wastewater off the coast of California. Transmar Shipping, S.A. was sentenced to pay a fine of $750,000 with an additional community service payment of $100,000. The second engineer received a fine of $500 and a $100 special assessment. The chief engineer is scheduled to be sentenced on 3 September 2010 and, according to statutory guidelines, could face a maximum penalty of six years imprisonment and a $250,000 fine. Press Release, Justice Department, Northern District of California, “Vessel’s Owner, Chief Engineer and Second Engineer Admit to Falsifying Records,” 30 July 2010.

30 July. United States of America: Vessel Owner and Crew of R/V GOULD (USA) Sentenced for Environmental Crime. Offshore Vessels LLC and its crew pleaded guilty to knowingly discharging oily wastewater from the vessel’s bilge tank while on research voyages to Antarctica. The plea requires the company to pay a $1.75 million fine, remit a payment of $350,000 in community service, and serve a three year probationary period. Justice Department Press Release, “Louisiana Vessel
Company Pleads Guilty to Dumping Oil on High Seas, Will Pay $2.1 Million in Penalties,” 30 July 2010.

24 July. Kingdom of the Netherlands: Master of the PROBO KOALA found Guilty of Environmental Crime. A Dutch court sentenced the master to 5 months suspended sentence for concealing the dangerous nature of toxic waste that his vessel dumped off of the Côte d’Ivoire. He was sentenced alongside his employer, the oil trading firm Trafígura, who received a fine of over £800,000 for the same offense. The waste may have sickened thousands of Côte d’Ivoire residents and led to the death of 17. The Independent, “Trafígura found guilty of toxic waste offence,” 24 July 2010.

23 July. United States of America: Engineer Aboard M/V AVENUE STAR Pleads Guilty to Environmental Crime. The Turkish citizen was charged with failing to maintain an accurate oil record book. The United States Coast Guard found the vessel near Tampa, Florida with a hose capable of directly dumping oily waste into the ocean. The engineer faces a maximum sentence of six years in federal prison. Press Release, United States Department of Justice, Middle District of Florida, “Cargo Ship Engineer Pleads Guilty in Tampa to Covering Up Illegal Oil Dumping,” 23 July 2010. Brought to our attention by our good friend Dennis Bryant at Bryant Maritime Consulting Newsletter, 4 August 2010, http://brymar-consulting.com.

21 June. Kingdom of Tonga: Trial Begins for Four Individuals (Two Crewmembers) for Criminal Charges in PRINCESS ASHIKA (R. of Fiji Islands) Ferry Disaster. The former managing director of Shipping Corporation of Polynesia (the vessel’s owner), the ferry’s master, the former first mate, and another representative of Shipping Corporation of Polynesia face charges of manslaughter and sending an unseaworthy ship to sea. The charges stem from a 5 August 2009 sinking in which 74 people lost their lives. The initial manslaughter charge carries a maximum penalty of 25 years, while the seaworthiness charge carries a maximum penalty of 3 years. At the outset, the court proceedings were halted when two of the defendants were unable to arrange for adequate legal representation. Safety at Sea International, “Ferry disaster trial begins,” 20 July 2010.

19 July. United States of America: Master of the Deepwater Horizon Oil Rig Faces Possible Criminal Investigation into the Explosion, Sinking, and Subsequent Oil Spill into the Gulf of Mexico. A joint panel including the United States Coast Guard and the United States Department of the Interior have included the master as a “party of interest” in the ongoing investigation of criminal liability in the 20 April 2010 catastrophe. On that day, the master was one of the last to evacuate the conflagration by diving into the open water and swimming to the already deployed life rafts. BusinessWeek, “Rig Captain May Face Criminal Probe, Attorney Says,” 19 July 2010

10 July. Republic of Malta: Suspended Master Drops Civil Lawsuit. The suit had been filed in response to the master’s formal suspension after he was accused of forgery in an official protest. The master officially protested various safety concerns related to his position as captain of a ferry in the Gozo Channel. The master’s employer had agreed to pay all legal expenses for the dropped suit, and while the master remains suspended with pay at this time, his future remains unknown. Times of Malta, “Shipmaster drops lawsuit against Gozo Channel,” 9 July 2010.

7 July. **Japan: New Zealand Master Sentenced for Illegally Boarding Vessel.** The master of a jet ski charged with trespassing, assault, illegal possession of a knife, destruction of property, and obstruction of business has been sentenced to two years, suspended for five years. The charges stem from his arrest for boarding the whaling ship SHONAN MARU 2 and issuing a bill for USD three million for damages to the ADY GIL, a vessel that the master commanded during a collision with the SHONAN MARU 2 on 6 January 2010. The master pleaded guilty to all but the assault charge. He is expected to be deported back to New Zealand. *BBC,* “Whaling activist Bethune given suspended sentence,” 7 July 2010.

7 July. **Commonwealth of Australia: Master of PACIFIC ADVENTURER Pleads Not Guilty to Environmental Crime.** The Republic of Philippines master is charged with both illegally discharging oil and failing to notify the authorities after the March 2009 oil spill off Queensland, Australia. If found guilty, the master faces a maximum fine of A$350,000 without any jail time. A trial date is yet to be set, and the master is free on bail under a $100,000 surety. *The Sydney Morning Herald,* “Captain, companies face trial over spill,” 7 July 2010.

5 July. **Commonwealth of Australia: A committal hearing has been initiated against Master of PACIFIC ADVENTURER for Environmental Crime.** Prosecutors presented their case against the master and four shipping companies this week to a court in Queensland, Australia. The defendants are being charged with discharging approximately 270,000 tons of oil into Maroteon Bay, Australia in March 2009. The master faces a maximum fine of A$350,000 if found guilty of disposing the oil into this coastal water and failing to report the spill. *Safety at Sea International,* “Pacific Adventurer a month after the spill,” 5 Jul 2010.

**June 2010**

28 June. **United States of America: United States Court of Appeals for the Fifth Circuit Holds Master Negligent for Failing to Monitor Weather.** The court found the master and the vessel owner’s representative responsible for putting the M/V CHIOS BEAUTY directly into the path of Hurricane Katrina, where it later allided with moored vessels during the storm. The court concluded that the master had ample time to find a safe berth in its voyage from Vera Cruz, Mexico to New Orleans, LA, and he was not in a position of peril when he decided to continue onward towards the destination. Although the court found the master factually responsible, he was not legally liable because he was not named in the suit. *Crescent Towing v. M/V CHIOS BEAUTY,* No. 09-30055 (5th Cir., June 23, 2010). Brought to our attention by our good friend Dennis Bryant at *Bryant Maritime Consulting Newsletter,* 29 June 2010, [http://brymar-consulting.com](http://brymar-consulting.com).

23 June. **Republic of Philippines: Officials for Ship Operator Sulpicio Lines Lose Appeal in PRINCESS OF STARS Ferry Disaster.** The defendants appealed a March 2009 decision to dismiss the defendant’s petition to review the findings by the prosecutor. The prosecution maintains that the officials failed to direct the vessel’s master to cancel the voyage despite known dangers. The PRINCESS OF THE STARS subsequently sank and cost the lives of almost 800 people on 21 June 2008. The master was named in the criminal case although it is presumed that he went down with his ship. *Fairplay,* “Sulpicio loses appeal again,” 22 June 2010.

22 June. **United States of America: Prosecutors Drop Case Against Crew of MARGIT GORTHON (R. of Cyprus) for Environmental Crime.** The master, chief engineer, and eight other seafarers walked free from court custody after federal prosecutors failed to build a convincing “magic pipe” case. The case stems from a 4 February 2010 incident in Eastport, Maine when a whistleblower tipped the United States Coast Guard that the vessel’s crew was falsifying official oil records. When officials allowed the whistleblower to leave United States’ custody, the defendants objected and petitioned the court that they be allowed to take his testimony, claiming it was exculpatory. The judge granted the petition, and the case was later dropped. *Lloyd’s List,* “Lemissoler magic pipe case collapses,” 22 June 2010.

18 June. Republic of Philippines: Master Faces Revocation of License after Navigational Accident. The Maritime Industry Authority (MARINA) in Manila proposed this penalty after a bulker hit a quay wall at a private port in Toledo City. The bulker was carrying 17,000 tons of coal and had no permit to operate. MARINA also seeks penalties from the vessel’s operator. Safety at Sea International, “Master faces licence cancellation,” 18 Jun 2010.

16 June. Republic of Ghana: People’s Republic of China Crewmembers aboard M/V RUI NING 3 Arrested for Treatment of Stowaways. The Republic of Ghana is investigating a case of cruelty on the high seas after three Republic of Côte d’Ivoire nationals were thrown overboard near Takoradi on 12 June 2010. One of the three stowaways reportedly drowned, while the two were rescued the following day. MyJoyOnline.com, “Cruelty on high seas as Chinese vessel captain drowns 3 Ivorians,” 15 June 2010.

10 June. Kingdom of Spain: Spanish Prosecutors Recommend Fine for Hellenic Republic [Greece] Master of the PRESTIGE (C. of Bahamas) for Environmental Crime. The prosecutor is recommending that courts fine the former master €43,000 fine for his role in a November 2002 oil spill off the Galician coast. The prosecutor alleges that the master was aware of the ship’s unseaworthiness before the spill and obstructed Spain’s salvage operation. He had previously recommended a 12-year jail sentence. Safety at Sea International, “€2.23Bn sought over Prestige leak,” 10 June 2010.

10 June. Kingdom of Tonga: Four Individuals (Two Crewmembers) Face Criminal Charges over PRINCESS ASHIKA (R. of Fiji Islands) Ferry Disaster. The managing director of Shipping Corporation of Polynesia (the vessel’s owner), the ferry’s captain, the former first mate, and another representative of Shipping Corporation of Polynesia will appear in court on 21 July 2010 on charges of manslaughter and sending an unseaworthy ship to sea. The charges stem from a 5 August 2009 sinking in which 74 people lost their lives. The initial manslaughter charge carries a maximum penalty of 25 years. The seaworthiness charge, which has recently been added, carries a maximum penalty of 3 years. Safety at Sea International, “More disaster ferry charges laid,” 10 June 2010.

9 June. Commonwealth of Puerto Rico: Seven Republic of Lithuania Seafarers Aboard the DELTUVA (R. of Lithuania) Arrested for Alleged Environmental Crimes. The vessel was seized in April 2010 after the crewmembers allegedly dumped bilge water into the port of San Juan. The vessel’s majority owner has since posted a bond for the vessel’s release. The Lithuanians, however, are currently being held in Puerto Rican custody without charge. Safety at Sea International, “Seafarers held in Puerto Rico,” 9 June 2010.

8 June. United States of America: Hellenic Republic [Greece] Operator Cooperative Success Maritime, S.A. Pleads Guilty and Sentenced for Environmental Crime. Three months after the Chief Engineer of the CHEM FAROS pleaded guilty to deliberately dumping oil and waste in violation of a United States law, the vessel’s owner and operator pleaded guilty to making false statements in violation of the Act to Prevent Pollution to Ships. The company was sentenced to pay a $850,000 penalty, of which $150,000 will be paid to the National Fish and Wildlife Fund. The judge also sentenced the company to 5 years probation, during which they will must implement and comply with an environmental compliance plan. Press Release, U.S. Department of Justice, “Ship Management Firm Pleads Guilty and is Sentenced for Violation Federal Pollution Law,” 7 May 2010.
3 June. **Gulf of Aden: Islamic Republic of Pakistan Master of QSM DUBAI (R. of Panama) Killed by Pirates.** The captain lost his life in the ensuing violence after Puntland State of Somalia authorities stormed the recently hijacked QSM DUBAI. Seven pirates were arrested after the killing. *Safety at Sea International*, “Ship freed by captain killed,” 3 June 2010.

1 June. **United States of America: A Federal Appeals Court Holds that “Reasonable Suspicion” is Not Required for the Customs Officials to Search a Foreign Seafarers Living Quarters and Seize Contraband.** The United States Court of Appeals for the Eleventh Circuit held that national security interests at international borders outweighs the privacy interests of seafarers in their cabins and personal possessions. The foreign defendant, a citizen of El Salvador, was arrested for possessing child pornography while aboard MV RIO MIAMI, a foreign vessel, near Miami, Florida. The contraband was found by customs agents who, while searching for agricultural products, entered his cabin and rummaged through his private desk. The customs agents testified that they had no reasonable suspicion to suspect any unlawful material in the desk. *United States v. Hilario Alfaro-Moncado*, No. 08-20377-CR-UU (11th Cir. May 27, 2010).

May 2010

28 May. **United States of America: The WILMINA (Kingdom of Norway) is Restricted from United States of America Ports for Three Years for Environmental Crime.** The United States Coast Guard decided against recommending criminal charges against crewmembers for intentionally dumping oily water directly into the ocean, and covering up these actions through inaccurate record books, in violation of environmental protection laws. Instead, the United States Coast Guard used an “administrative alternative” to punish and deter. During its ban, the vessel’s owner must successfully implement an environmental compliance program to the satisfaction of the United States Coast Guard. *United States Coast Guard News Release*, “Coast Guard restricts Norwegian-flagged Wilmina from U.S. ports for three years,” 27 May 2010, brought to our attention by our good friend Dennis Bryant at *Bryant’s Maritime Consulting Newsletter*, 28 May 2010, [http://brymar-consulting.com](http://brymar-consulting.com).

27 May. **Japan: New Zealand Master Admits Partial Guilt and Awaits Trial for Illegally Boarding Vessel.** The master of a jet ski charged with trespassing, assault, illegal possession of a knife, destruction of property, and obstruction of business has made an admission of guilt to all but the assault charge. The Japanese court system does not accept pleas before trial. The master was arrested for boarding the whaling ship SHONAN MARU 2 and issuing a bill for USD three million for damages to the ADY GIL, a vessel that the master commanded during a collision with the SHONAN MARU 2 on 6 January 2010. If convicted, the master could face a prison term of 15 to 25 years, but there are indications that the prosecutor may only seek a sentence for 2.5 to 3 years. The verdict is expected in June 2010. *Jurist, Legal News & Research*, University of Pittsburgh School of Law, “Japan court begins trial of anti-whaling activist,” 27 May 2010.

21 May. **United States of America: Republic of Turkey Operator of M/T KERIM Pleads Guilty and Sentenced for Environmental Crime.** A federal court judge in Tampa, Florida, USA issued a $750,000 fine and three years probation on the operator of a vessel for failing to properly maintain an oil record book and making a false statement. Between 2006 and 2009 officers and crew were instructed to construct and use a magic pipe to bypass the separator and pump wastewater directly overboard. *Press Release, U.S. Department of Justice*, “Operator of Commercial Ship Inspected in Port of Tampa Fined $725,000 for Oil-Pollution Related Crime,” 21 May 2010.

4 May. Kingdom of Norway: People’s Republic of China Master and Third Officer of FULL CITY (R. of Panama) Sentenced for Environmental Crime. The master has been sentenced to six months imprisonment with four months probation for gross negligence. The third officer was sentenced to 70 days in prison with 49 of those for probation. The sentences stem from a June 2009 grounding off the Kingdom of Norway whereby 2,250 barrels (94,500) gallons of fuel oil spilled. Attorneys for the defendants suggested there would be an appeal. Lloyd’s List, “Full City crew sentenced,” 4 May 2010.

April 2010

29 April. United States of America: Second Engineer of LOWLANDS SUMIDA (R. of Panama) Charged with Environmental Crime. The second engineer was charged with conspiracy and obstruction by a federal grand jury in Corpus Christi, Texas. The United States Coast Guard discovered a magic pipe which could manipulate the discharge of oily wastewater, and inaccurate record books. The defendant faces up to 5 years and a $250,000 fine for the conspiracy charge, and 20 years in prison and a $250,000 fine for the obstruction. Press Release, U.S. Department of Justice

22 April. United States of America: Chief Engineer of LOWLANDS SUMIDA (R. of Panama) Pleads Guilty to Environmental Crime. A chief engineer pleaded guilty in United States federal court in Corpus Christi, Texas for violation a United States statute; specifically, for failing to maintain an oil record book, obstruction, and altering the vessel’s fuel discharge tank through a magic pipe. The United States Coast Guard discovered that oily waste water was being illegally discharged and subsequently unrecorded. He will be sentenced on 7 July 2010. Press Release, U.S. Department of Justice, “Ship Crew Member Pleads Guilty for Obstruction of U.S. Coast Guard Pollution Investigation,” 22 April 2010.

19 April. Commonwealth of Australia: Republic of Korea Master of MIMOSA (R. of Panama) and Two Socialist Republic of Vietnam Officers Pleaded Guilty and Fined for Criminal Maritime Tort. The three crew members pleaded guilty to making an illegal transit through the Great Barrier Reef. They each were ordered to pay $70,000 in fines by the Townsville Magistrates Court in Queensland. Lloyd’s List, “Mimosa crew fined $64,640 each,” 19 April 2010.

15 April. Commonwealth of Australia: People’s Republic of China Master and Chief Officer of SHEN NENG 1 (People’s Republic of China) Arrested and the Chief Officer Detained for Maritime Criminal Tort. The master and chief officer were charged with illegally entering and damaging the Great Barrier Reef. Both were granted bail, but the chief officer was ordered to remain aboard the vessel and to surrender his passport. The Australian, “Stricken coal carrier crew bailed, but chief officer must stay on ship,” 15 April 2010.

13 April. Commonwealth of Australia: Republic of Korea Master of MIMOSA (R. of Panama) and Two Socialist Republic of Vietnam Officers Granted Bail after Arrest for Criminal Maritime Tort. The master and two officers have been granted bail and their case adjourned by the Townsville Magistrates Court in Queensland. The three were arrested for entering a restricted area of the Great Barrier Reef on 3 April 2010 without notice or approval. Lloyd’s List, “Bulker crew bailed after reef arrest [;] Japan-owned vessel alleged to have entered restricted area,” 13 April 2010.

13 April. Japan: New Zealand Master Arrested for Illegally Boarding Vessel. A Japanese court arrested and charged the master of a jet ski for trespassing, assault, illegal possession of a knife, destruction of property, and obstruction of business when he boarded the whaling ship SHONAN MARU 2 and issued a bill for USD three million for damages to the ADY GIL, a vessel that the master commanded during a collision with the SHONAN MARU 2 on 6 January 2010. The charges

**11 April. Commonwealth of Australia: Republic of Korea Master of MIMOSA (R. of Panama) and Two Socialist Republic of Vietnam Officers Arrested for Maritime Criminal Tort.** The master and two officers were arrested for entering a restricted area of the Great Barrier Reef on 3 April 2010 without notice or approval. The defendants face maximum fines of $220,000. *RTT News*, “Australian Federal Police Arrest MV Mimosa Crews for Breaching Barrier Reef Area,” 11 April 2010.

**March 2010**

**28 March. Filipino Master Arrested for Improper Navigation After Collision.** The merchant vessel GLOBAL PURITY (R. of Panama) collided with an anchored Indian Coast Guard ship with 59 crewmembers aboard. The Indian ship suffered severe damage and later sank. The master allegedly lost control of the GLOBAL PURITY before the collision. The Filipino master was booked under sections 280 (Rash navigation of vessel) and 336 (Act endangering life or personal safety of others) of Indian Penal Code. *Daily News & Analysis*, “Captain arrested for causing accident that sank Indian Coast Guard ship,” 28 March 2010.


**3 March. Hong Kong S.A.R. of the P.R. of China: Ukraine Master of NEFTEGAZ-67, Master of YAO HAI, and Hong Kong S.A.R. of the P.R. China Pilots Set to Appeal Sentence for Criminal Tort in Collision Resulting in Wrongful Deaths.** A high court judge indicated that all four seafarers jailed in January may be acquitted and receive substantially reduced jail sentences on appeal. The judge stated that the master of the YAO HAI was likely to succeed in his appeal against conviction, while the other three would likely have their sentences reduced, and possibly also be acquitted. The judge also stated that one pilot was “likely to succeed” in reducing his sentence, and his appeal against conviction “was reasonably arguable.” The judge was not as optimistic with the master of the NEFTEGAZ-67, and said that his appeal was “reasonably arguable,” but could not say that it was “likely to be successful.” Lastly, the judge rejected arguments to detain the master of the NEFTEGAZ-57 in Hong Kong, S.A.R. of the P.R. of China during his bail. *Lloyd’s List*, “Judge may cut sentences in Neftegaz-67 collision case,” 3 March 2010.

**3 March. French Republic: Russian Federation Master of MATTERHORN (R. of Liberia) Fined for Environmental Crime.** A French Republic court followed the prosecutor’s recommendation and imposed a €1 m (USD 1.4 m) fine on the owner and master of the MATTERHORN for causing pollution off the French Republic coast in May 2009. The master was ordered to pay 10% of the fine (€100 thousand (USD 140 thousand) with the remaining being charged to the vessel’s owner. *Lloyd’s List*, “Matterhorn owner and master fined $1.4m,” 3 March 2010.

**February 2010**

**26 February. Hong Kong S.A.R. of the P.R. of China: Ukraine Master of NEFTEGAZ-67, Master of YAO HAI, and Hong Kong S.A.R. of the P.R. China Pilots Sentenced for Criminal Tort in Collision Resulting in Wrongful Deaths.** The Master of the NEFTEGAZ-67 was permitted
to return to Ukraine on bail bond pending appeal against his convictions. The Master of the YAO HAI was also released on bail bond. Hong Kong maritime and legal interests have called the sentences unduly severe while acknowledging the large loss of life. *Lloyd’s List*, "Neftegaz-67 master released on bail," 26 February 2010.

**January 2010**

15 January. **Hong Kong S.A.R. of the P.R. of China: Ukraine Master of NEFTEGAZ-67, Master of YAO HAI, and Hong Kong S.A.R. of the P.R. China Pilots Sentenced for Criminal Tort in Collision Resulting in Wrongful Deaths.** The Master of the NEFTEGAZ-67 was sentenced to 38 months imprisonment for violating collision regulations, and the Master of the YAO HAI was sentenced to 30 months imprisonment for violating the collision regulations. The two pilots were also sentenced to imprisonment. The sentences stem from a collision resulting in substantial loss of life. *Lloyd’s List*, “Neftegaz-67 master released,” 26 February 2010.

13 January. **United States of America: United States Master of LISA E (United States of America) Arrested for Maritime Criminal Tort and Environmental Crime.** A federal grand jury indicted the master of the towing vessel LISA E. He was charged with criminal maritime negligence and oil pollution. The vessel was towing tank barge EMC-423 laden with clarified slurry while in the Chicago Sanitary and Ship Canal when the cargo’s vapors exploded killing a crewman and discharging hydrocarbons into the water. The prosecution avers that the Master was inattentive in his duties by allowing an open flame to be used on the barge’s deck and was therefore criminally negligent. *Press Release*, U.S. Department of Justice, 13 January 2010 as directed by our good friend Dennis Bryant at Bryant’s Maritime Consulting Newsletter, 15 January 2010, [http://brymar-consulting.com](http://brymar-consulting.com).


11 January. **French Republic: Russian Federation Master of MATTERHORN (R. of Liberia) Arrested for Environmental Crime.** The prosecution asked for a €1 m. (USD1.4 m.) fine on the owner and master for deliberate hydrocarbon discharge resulting in pollution. The MATTERHORN was observed by a customs airplane trailing a 14-mile (22.5 km) slick and allegedly ignored the first requests to deviate for Brest. The defense has asked for acquittal because he had followed the owner’s instructions and that the fine be reduced to €800,000 because the matter was from “negligence and imprudence” rather than deliberate. *Lloyd’s List*, ”Matterhorn prosecutor calls for $1.4m fines on owner and master,” 11 January 2010.

7 January. **Hellenic Republic [Greece]: Russian Federation Master of MITRIDAT (Togolese Republic) and Chief Engineer arrested for smuggling.** The Russian master and chief engineer of the MITRIDAT were arrested and taken into custody for smuggling four million packets of cigarettes from Egypt to Bulgaria. *Safety at Sea International*, “Cigarettes prove bad for professional health,” February 2010, p. 13.

**November 2009**

11 November. **Swedish Master Arrested for Operating Dredger While Intoxicated.** The Swedish master in command of a 93m-long tug and barge was arrested in South Shields, United Kingdom after reports indicated he may be unfit to operate the vessel. The master appeared in South Tyneside Magistrates Court and entered no plea. *DredgingToday.com*, “Update: Swedish tug captain’s case sent to British crown court,” 11 November 2009.
October 2009

15 October. United States of America: Hellenic Republic [Greece] Master of M/V THEOTOKOS (Commonwealth of Dominica) Sentenced for Environmental Crime. The master was sentenced to 6 months in prison and 4 months in community confinement after pleading guilty on 15 July 2009 to one count obstruction of justice, one count of violating the Act to Prevent Pollution from Ships, and two counts of violating the Ports and Waterway Safety Act. The charges arose when the United States Coast Guard discovered a 24-inch crack in the vessel’s ballast tank as it entered a port in New Orleans. The master admitted to knowing about the crack and its dangers. The court also banned him from U.S. ports for 3 years. The master is the first individual ever charged under the anti-invasive species law, a law designed to mitigate the introduction of marine invasive species into waters of the United States. Press Release, United States Department of Justice, “Ship Captain Sentenced to 10 Months Confinement for Obstruction, Environmental and Ship Safety Violations,” 15 October 2009.¹⁶

¹⁶ This information is courtesy of John A.C. Cartner. To learn more about the book “International Law of the Shipmaster”
Limitation of Liability

A shipowner have the right to limit his liability for oil pollution damage from a tanker ship according to Civil Liability Convention 1969 or 1992 convention when the oil damage occur at;

(i) in the territory, including the territorial sea, of a Contracting State, and
(ii) in the exclusive economic zone of a Contracting State, established in accordance with international law, or, if a Contracting State has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.\textsuperscript{17}

Civil Liability Convention defined a tank vessel as follow;

“Ship” means any sea-going vessel and seaborne craft of any type whatsoever constructed or adapted for the carriage of oil in bulk as cargo, provided that a ship capable of carrying oil and other cargoes shall be regarded as a ship only when it is actually carrying oil in bulk as cargo and during any voyage following such carriage unless it is proved that it has no residues of such carriage of oil in bulk aboard.\textsuperscript{18}

No claim for compensation for pollution damage under this Convention or otherwise may be made against third party except when the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.

4. No claim for compensation for pollution damage may be made against the owner otherwise than in accordance with this Convention. Subject to paragraph 5 of this Article, no claim for compensation for pollution damage under this Convention or otherwise may be made against:
(a) the servants or agents of the owner or the members of the crew;
(b) the pilot or any other person who, without being a member of the crew, performs services for the ship;
(c) any charterer (howsoever described, including a bareboat charterer), manager or operator of the ship;
(d) any person performing salvage operations with the consent of the owner or on the instructions of a competent public authority;
(e) any person taking preventive measures;
(f) all servants or agents of persons mentioned in subparagraphs (c), (d) and (e); unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.\textsuperscript{19}

\textsuperscript{17} CLC 92 Article II
\textsuperscript{18} CLC 92 Article I
\textsuperscript{19} CLC 92 Article III
1. The owner of a ship shall be entitled to limit his liability under this Convention in respect of any one incident to an aggregate amount calculated as follows:
(a) 4,510,000 units of account for a ship not exceeding 5,000 units of tonnage;
(b) for a ship with a tonnage in excess thereof, for each additional unit of tonnage, 631 units of account in addition to the amount mentioned in sub-paragraph (a); provided, however, that this aggregate amount shall not in any event exceed 89,770,000 units of account.20

Lower amounts applied to incidents occurring before 1 November 2003

Article 6(1) of the 1992 CLC Protocol is amended as follows:
• the reference to “3 million units of account” shall read “4,510,000 units of account”;
• the reference to “420 units of account” shall read “631 units of account”; and
• the reference to “59.7 million units of account” shall read “89,770,000 units of account”.21


The end of MV Erika story

![Picture: MV Erika sinking in the Gulf of Biscay, internet](image)

The Erika, as the Maltese ship was named, leaked about 20,000 tons of fuel into the sea after the vessel sank off the coast of northwest France in a storm in December 1999. The 24-year-old tanker, carrying 30,000 tons of fuel, broke up in a storm with waves as high as 14 meters. While an Italian ship-safety inspector said the Erika was seaworthy, it was later found to have a rusted hull. The spill killed thousands of birds and polluted 400 kilometres (250 miles) of coastline.

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20 CLC 92 Article V
21 CLC 69
Fifteen individuals and corporations where on trial for her sinking, including Total, Giuseppe Savarese the Italian owner of the Erika, his manager Antonio Pollara and captain of the vessel Karun Mathur.

According to the official inquiry by the Dunkerque Tribunal, the Principal Shareholder of Tevere Shipping is Giuseppe Savarese, owner of the Erika since 1996. Savarese lives in London and was personally responsible for finance, administration, legal, commercial, hull and machinery insurance and P&I insurance matters.

The Erika's technical and maritime management company was Panaship, a Ravenna-based corporation incorporated in 1997. The Pollara and Vitiello families each own 50 percent. The company did not employ a specialist in naval architecture or vessel strength which is typical for such companies. With regards to maintenance, Panaship defined the scope and nature of maintenance work in addition to creating and evaluating calls for bids for such work. All decisions were submitted to Giuseppe Savarese. The Classification Society for classed the Erika was RINA or the Foundation Registro Italiano Navale ed Aeronautica, based in Genova. Malta like most Flag States delegates compliance with International Safety Management Code of International Maritime Organization to Classification Societies such as RINA. RINA issued all safety certificates for the vessel.

Total said that the classification society, Registro Italiano Navale had reported that the tanker was in good condition, and that it routinely requires certificates of good condition for vessels more than 20 years old.

(The accident triggered new EU-legislation as regard to transport by sea.)

On January 16, 2008, Total SA, Giuseppe Savarese (the shipowner), Antonio Pollara (the handler) and Rina (the expert company) were sentenced in solidum to pay indemnities of 192 millions € (280 MUSD), plus individual penalties. The judgement, while recognizing the risks inherent to oceangoing vessels, reckons Total SA was "guilty of imprudence", from the fact that Total SA did not take into account "the age of the ship", (nearly 25 years), and "the discontinuity of its technical handling and maintenance".[4]

Individual penalties:

Shipowner, Giuseppe Savarese 75 000 Euro

Rina, 350 000 Euro

On March 30, 2010, Total SA lost their appeal to overturn the court's decision.

MV Erika was a tanker with a DW of 37 283 tonnes and GT of 19 666. If the France government hand tried to kept the ship’s owner responsible for the oil pollution the owner should be entitled to limit his liability according to CLC. As the CLC 1969 was in force at the time for the MV Erika’s disaster the owner was entitled to limit his liability to an amount of 9 159 720 SDR, about 10 000 000 Euro. If CLC 1992 had been used the amount had been 13 764 246 SDR, about 13 765 000 Euro.

Remarks:

“Unless the damage resulted from their personal act or omission, committed with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result.” Was there any intent to cause the MV Erika disaster from the , Total SA, Giuseppe Savarese (the shipowner), Antonio Pollara (the handler) and Rina?
MV Prestige story continue

In September 2012 Spain lost its $1 bn Prestige lawsuit against US class society ABS in a federal appellate court in New York. The US Court of Appeals denied Spain’s September 2010 appeal against a district court verdict that had favored ABS.

The three-judge appellate panel held that Spain did not furnish sufficient evidence to establish its allegation that ABS behaved recklessly in the November 2002 Prestige off the Spanish coast.

With much more than $100m in total legal bills up to both sides, the lawsuit is already legendary in certain quarters as the “biggest lawsuit in maritime history”.

Spain originally sued ABS in New York in May 2003, seeking to recover economic and environmental damages it suffered from the sinking of the 1976-built, 81 564 dwt Prestige and the release of an estimated 63 000 tonnes of heavy fuel oil.

The country lost this case in January 2008, when the district court in New York ruled that Spain’s case was precluded by the International Convention on Civil Liability for Oil Pollution to which the country and Prestige flag state Bahamas are signatories.22

Ten years after the sinking of the Prestige oil tanker off Spain, four men, including the ship's captain, went on trial on Tuesday over the disaster, which caused the worst oil slick in the country's history.

The first day of the trial, held at an exhibition centre in the northern city of Coruna, is expected to be dominated by procedural questions, with the accused only expected to take the stand in November 2012.

Apostolos Mangouras, 78, the Prestige's Greek captain, is charged alongside two other officers and a Spanish official over the oil spill, which polluted thousands of kilometres of beach in Spain, Portugal and France.

Prosecutors are demanding 12 years' jail for Mangouras, who is charged with harming the environment along with Greek chief engineer Nikolaos Argyropoulos and first mate Irineo Maloto, a Filipino who has not been apprehended.

The fourth defendant is Jose Luis Lopez-Sors, head of the Spanish merchant navy at the time, who ordered the ship out to sea when it was losing fuel.

Mangouras attended the opening session of the trial along with Argyropoulos and Lopez-Sors.

The total cost of the environmental damage wrought by the oil slick has been calculated at more than four billion euros ($5.09 billion), most of it for the Spanish state.

The Prestige leaked 50,000 tonnes of fuel into the Atlantic after it sank off northern Spain. It took on water in a storm on November 13, 2002, and drifted for six days before breaking up and sinking.

Over the weeks that followed, the vast oil slick engulfed thousands of kilometres of coastline, prompting 300,000 volunteers from around Europe to come and clean it up.

22 Lloyd's List September 2012
A study published by Spanish researchers in 2010 said fishermen that participated in the clean-up suffered genetic and lung problems.

After three days of procedural matters this week, the defendants are due to make their first appearance in the trial on November 13, the 10th anniversary of the disaster.

The trial is due to last until May 2013 and will hear testimony from 133 witnesses and 100 experts, the court said.

*Picture: MV Prestige breaking up in the Gulf of Biscay, internet*

**The Pacific Adventurer disaster**

*Picture: MV Pacific Adventurer at Sea, internet*
A shipowner has the right to limit his liability according to Limitation of Liability for Marine Claims Convention 1976 and with the London Protocol from 1996 for personal injury and for any other claims as follow:

**Article 1**

**Persons entitled to limit liability**

1. Shipowners and salvors, as herein after defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

2. The term "shipowner" shall mean the owner, charterer, manager and operator of a seagoing ship.

**Article 6**

**The general limits**

1. The limits of liability for claims other than those mentioned in Article 7, arising on any distinct occasion, shall be calculated as follows:

   (a) in respect of claims for loss of life or personal injury,

   (i) 2 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

   (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i): for each ton from 2,001 to 30,000 tons, 800 Units of Account; for each ton from 30,001 to 70,000 tons, 600 Units of Account; and for each ton in excess of 70,000 tons, 400 Units of Account,

   (b) in respect of any other claims,

   (i) 1 million Units of Account for a ship with a tonnage not exceeding 2,000 tons,

   (ii) for a ship with a tonnage in excess thereof, the following amount in addition to that mentioned in (i): for each ton from 2,001 to 30,000 tons, 400 Units of Account; for each ton from 30,001 to 70,000 tons, 300 Units of Account; and for each ton in excess of 70,000 tons, 200 Units of Account.

**Background**

The *Pacific Adventurer* (now renamed the *Pacific Mariner*) is a 25,561 deadweight tonnes multi-purpose “tween deck general cargo vessel, owned and operated by Swire Shipping of Hong Kong. It was built in 1991 and its gross tonnage is 18,391.

That obscurity evaporated on March 11, 2009, during a voyage from Newcastle, New South Wales to Brisbane, Queensland, Australia. In Newcastle, the *Pacific Adventurer* loaded 50 twenty-foot shipping containers, each holding approximately 19.5 tons of ammonium nitrate prills. Of the 50 containers of ammonium nitrate, 19 were loaded on Bay 5 and 31 were loaded on Bay 25, forward of the accommodation spaces. In addition to its deck-load of shipping containers, the *Pacific Adventurer* was also carrying steel coils and aluminum ingots in its cargo holds.

The master was aware that that the voyage to Brisbane may be affected by the passage of tropical cyclone Hamish. Based on the available weather forecasts and consultations with the ship’s managers, it appeared that slow-steaming to Brisbane would provide time for the particularly heavy weather to abate before the *Pacific Adventurer* transited the affected waters.

All the containers were lashed in accordance with the lashing plan and the ship departed Newcastle en route Brisbane at 1738 local time on March 9. Engine speed was set to its minimum sea speed of 75 rpm. At 2000, the wind was from the northeast at force four (11-16 knots) and the sea and swell were 3 meters. The ship was making 12.7 knots and rolling moderately.

On March 10, at 0800, the wind veered as expected, coming from the east-southeast, still at force four. The sea and swell had increased to 4 meters. The ship was making 12.3 knots and continued to roll
moderately. At the direction of the chief mate, the second mate and several crewmembers checked all the deck cargo lashings to ensure that the twistlocks were locked and that the turnbuckles were as tight as possible. Additional lashings were placed on the containers as an added measure. The engine’s speed was varied between 60 and 70 rpm.

At 1600 on March 10, the Australian Bureau of Meteorology (BoM) issued a hurricane force wind warning regarding tropical cyclone Hamish. The report stated that Hamish had maximum winds of 70 knots and was centered at a location 251 miles to the north-northeast of the Pacific Adventurer, moving east-southeast at eight knots. At 2330, the BoM reported that Hamish’s maximum winds were unchanged. It was centered at a location 216 miles to the northeast of the Pacific Adventurer, moving east at three knots (away from the ship, but not at the speed previously forecast).

As time passed, though, the weather worsened. At 0200 on March 11, the wind had increased to about gale force eight (34-40 knots) and the sea and swell were estimated at seven and eight meters respectively. The ship’s speed had been reduced to about 9 knots.

At about 0312 on March 11, while the Pacific Adventurer was about seven miles east of Cape Moreton, it rolled violently, to about 40° to port. A container in the center stack on Bay 25 was seen to collapse. All the port-side containers in that bay moved and fell over the side. As the ship rolled back to starboard, the bottom tier of containers on the starboard side of Bay 25 collapsed and the remaining containers fell over the starboard side. The master promptly reported the incident to Brisbane Harbour Control.

As the weather abated, the chief mate went on deck to survey the damage. As the ship rolled to starboard, he observed oil spouting from the port side, below Bay 25. He realized that the ship had been holed when the containers fell overboard. He reported his observation to the master, who reported the spillage to Brisbane Harbour Control. Oil was transferred out of the holed tank and the ship was listed about 3° to starboard. These actions largely stopped further discharges from the port bunker tank. The spill was estimated at approximately 31 tonnes.

At about 0852, a harbour pilot boarded the Pacific Adventurer and confirmed that no oil was leaking from the vessel. He then piloted the ship into Moreton Bay. After further examination at anchorage, the ship berthed at 0848 on March 12. Following a port state control examination, the ship was detained as the result of a number of identified deficiencies.

On the morning of March 13, additional oil was found to be leaking from the Pacific Adventurer. It was then discovered that the leaks came from previously undetected holes in the underwater part of the number one starboard fuel oil tank, below Bay 25. Following an independent survey, the amount of oil leaked from the ship was calculated to be approximately 270 tonnes.

Significant quantities of the spilled oil were deposited on the Queensland coastline south of Cape Moreton. An eight kilometres stretch of shore was heavily oiled and approximately 75 more kilometres of shore, including the Sunshine Coast (a major tourist area) were lightly oiled. A whole-of-government response, led by Maritime Safety Queensland, undertook the response effort, along with numerous volunteers. The 31 lost containers were located by the Royal Australian Navy. The long-term environmental impacts of the incident are being assessed. 23

The immediate clean-up costs are estimated to be A$31 million ($25.5 million US). Under the International Convention on the Limitation of Liability for Maritime Claims (LLMC Convention), to which Australia is party, Swire Shipping, owner of the Pacific Adventurer, is entitled to limit its liability to about A$14.5 million ($11.6 million US).

23 Maritime Reporter September 2009
Although the details are unclear, it appears that, early on in the incident when the full impact of the spill was uncertain, a manager at the Hong Kong office of Swire Shipping made a vague oral commitment to pay full costs arising from the incident. Based on that off-the-cuff statement, the Premier of Queensland, the Honorable Anna Bligh PM, launched a vocal public campaign to persuade Swire Shipping to pay the entire A$31 million. The company countered, correctly, that its liability was capped by law at A14.5 million.

Meanwhile, Maritime Safety Queensland laid charges against the master of the *Pacific Adventurer* for disposal of oil in coastal waters in violation of the Queensland Transport Operations Marine Pollution Act. The master was granted bail after he surrendered his passport. Following hull repairs, the *Pacific Adventurer* was allowed to depart Brisbane on April 16 en route China. The ship was under the command of a new master because the previous master had to remain in Brisbane to answer charges. He faces fines of up to A$350,000. No trial date has been announced. While his conditions of detention may not be onerous, he will remain in limbo until the matter is resolved. As the casualty sequence described above, taken from the preliminary report of the Australian Transportation Safety Bureau, shows, there was no evidence of unreasonable conduct on the part of the master.  

**MV Pacific Adventurer owners plead guilty**

**BRISBANE** 30 September 2011. Owners of the *MV Pacific Adventurer* today advised the Brisbane District Court they would enter pleas of guilty to discharging oil into Queensland's coastal waters under the *Transport Operations (Marine Pollution) Act 1995*.

Marine Infrastructure Minister Craig Wallace said the Crown had informed the court that it would accept pleas of guilty in criminal proceedings resulting from the oil spill of 11-13 March 2009 from the *MV Pacific Adventurer*, when the 185-metre ship lost 31 containers in heavy seas off Cape Moreton.

"Swire Navigation Company Ltd and Bluewind Shipping Ltd, the registered owners of the ship will now face sentencing," Mr Wallace said.

"An investigation into the oil spill was led by Maritime Safety Qld (MSQ) with assistance from both the State and Commonwealth agencies, including valuable support from the Queensland Police Service.

"The fallen containers punctured the ship's fuel tanks and resulted in the estimated loss of 270 tonnes of heavy fuel oil and significant quantities of oil impacting more than 56 kilometres of our coastline on both Moreton Island and the Sunshine Coast.

"I'm very pleased with today's outcome which is a major step towards justice for our coastal waters which were so heavily impacted by this oil spill."

The plea will be entered and sentencing submissions will be heard by the court on 12 October. Maritime Safety Queensland's General Manager Patrick Quirk said charges against the other defendants would be discontinued for a number of reasons.

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24 Maritime Reporter September 2009
"The Crown's case indicated the key cause of the oil spill was the failure of container securing equipment during the severe weather, which had not been properly maintained by the owners of the *Pacific Adventurer,*" Captain Quirk said.

"The prosecutor also considered that the degree of culpability of the master of the ship, Bernardino Santos, compared with that of the owners, didn't justify continuing the prosecution against him.

"The master had only recently been assigned to the ship and problems relating to securing of the equipment started a considerable time before he joined the vessel.

"The remaining two corporate defendants were not the legal owners - Swire Shipping Pty Ltd was the charterer of the vessel and China Navigation Co Ltd was the manager of the vessel.

"The prosecutor formed the view that the prospects of securing a conviction were not sufficient to continue the prosecution against them.

"The Crown also had to evaluate whether there was a reasonable prospect of conviction in relation to each of the defendants, the degree of culpability and the likely length and expense of a trial.

"Ultimately the view taken was the prosecution should only proceed against those whose participation in the offence was significant rather than peripheral defendants, whose guilt in comparison with the principal offender/s is minimal."

In 2009, a funding agreement (regarding private and public sector civil claims arising from the incident) was reached between the owners of the Pacific Adventurer, Swire Navigation Company Ltd, and Blue Wind Shipping Ltd ("Swire") to assist with a range of issues not covered by the formal liability arrangements.

The terms of the civil agreement required Swire to make payments totalling AUD$25 million as follows:

- a limitation fund established according to international law (of about $17.5 million) paid into the Federal Court; and
- a donation for the benefit of the Queensland marine environment (about $7.5 million) paid to a trust fund established by the Australian Government.

All private sector civil claims arising from the spill have now been settled (a total of about $1.7 million).

Remarks: When are governments, which are charged with upholding and enforcing the law, going to stop ignoring those same laws which is suits them? When will they cease using foreign shipping companies as whipping boys to bolster their position with the local electorate? Premier Anna Bligh have you no shame?

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25 The International New Magazine 30 September 2011
26 Maritime Reporter September 2009
Shipmasters faced criminal charges

Nowadays may a shipmaster be detained and sometimes parts of the crew for incidents, which considered to be pure accidents for only some decades ago. The shipowner may be fined and sometimes obliged to pay large sums in compensation.

Charges laid in relation to MV Rena grounding

Early on October 5 2011, the MV Rena – a Liberian-flagged, Greek-owned, 235-meter container vessel – struck the Astrolabe Reef off the coast of Tauranga, a port on the North Island of New Zealand. The vessel was heading to Tauranga from another New Zealand port and was due to continue to an overseas port. It was carrying around 1,400 containers and an estimated 1,700 tonnes of fuel. Since the vessel grounded, it has broken in two with the stern section having almost completely sunk. The bow section remains wedged on the reef. 945 containers have been recovered to port and 1,300 tonnes of heavy oil was recovered from the Rena. Over 1,041 tonnes of waste was collected from along the North coast line of the North Island of New Zealand as a result of the incident.

Master and Second Officer sentenced

The Master of the Rena at the time of collision, Mauro Balomaga, was charged under the Maritime Transport Act 1994 for "operating a vessel in a manner causing unnecessary danger or risk" and under the Resource Management Act 1991 for "discharging a harmful substance from a ship". In addition, four charges were laid against him under the Crimes Act 1961 for wilfully attempting to pervert the course of justice by altering ship's documents subsequent to the grounding. The vessel's Second Officer (Navigation), Leonil Relon, faced almost identical charges except that only three charges had been laid against him under the Crimes Act for wilfully attempting to pervert the course of justice by altering the ships documents.

On 29 February 2012, the Master and Second Officer pleaded guilty to all charges against them. On 25 May 2012, the two men were each sentenced to seven months imprisonment.

Maritime New Zealand (the New Zealand Maritime safety authority) contended that the Master and Second Officer were responsible for the navigation of the ship but had breached the basic principles of safe navigation. The Master had given approval for the Second Officer to deviate from the planned route to Tauranga port to make good time. However, the alterations were not adequately recorded or verified. Dangers to navigation, such as reefs, safe passing distances and adjustments to navigational equipment were neither identified nor highlighted. The final alteration to the course of the vessel put Rena directly on target to hit the Astrolabe Reef. No steps were taken to project the vessel’s position forward or estimate where the alteration would take the ship. The reef appeared as an echo on the radar 10 minutes before the grounding, when there was sufficient time to alter the course and avoid the reef. The Master saw the echo and assumed it was a small vessel. After looking for such a vessel and not finding it, he dismissed it as a false echo. At 2:14am, Rena ran aground on the reef.
Maritime New Zealand stated that, during the course of its investigation into the incident, both officers admitted making alterations to the ship’s GPS log, passage plan and computer following the grounding.

**Owner charged**

Maritime New Zealand has also charged the owner of the vessel, Daina Shipping Co (Daina), in relation to the grounding. Daina is a subsidiary of the Greek-based company, Costamere Inc.

Daina has been charged under the Resource Management Act 1991 for allegedly discharging harmful substances into water from a ship. If convicted Daina is liable of a fine of up to NZ$600,000 and a fine of up to NZ$10,000 for every day that the offending continues. The prosecution of the charges was adjourned without plea until 18 July 2012 but has been adjourned again by consent given the complexity of the case.

Maritime New Zealand has released a statement that no further charges will be laid in relation to the grounding. It appears, therefore, that the time charterer of vessel at the time of the grounding, Mediterranean Shipping Company (MSC), will not be charged in relation to the incident.

This is interesting given a recent New Zealand High Court decision, which found that there is no impediment under the Resource Management Act 1991 to charging the charterer for the discharge of harmful substances from a vessel under charter, despite the charterer having neither possession nor control of the vessel under a time charter arrangement. It appears, on that basis, that it was open to Maritime New Zealand to charge MSC as time charterer of the *Rena* at the time of the grounding. It has, however, decided not to do so. Costamere, the parent company of Daina, appears to agree with this decision issuing a press release on January 10 2012 thanking MSC for its assistance and support. Costamere underlined that "MSC as Time Charterer is not a responsible party to this very unfortunate incident".27

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27 Wilson Harle 2012

*Picture MV Rena Grounded, internet*
The master and the navigation officer of Rena have been released from jail and will be deported to their home country, having served half their sentence.

According to New Zealand laws, prisoners sentenced to less than two years in jail can be released after serving half their term. “They already served the jail time they were required to”, said a Maritime New Zealand spokeswomen.

Although each charge under the Crimes Act carried a maximum penalty of seven years, the judge took into account the two men were foreign nationals, had been in custody for a long time and had met local groups for restorative talks.28

Wellington, New Zealand, Oct 26 (UPI). The owners of a grounded cargo vessel that trigged an oil spill last year entered a guilty plea in a New Zealand court, a government agency said.

Diana Shipping Co., the ship’s owner, entered a guilty plea to charges related to the discharge of harmful substances. The company was fined $300,000.

The completion of this prosecution marks another step in the response to the grounding of the Rena, “MNZ Director Keith Manch said in a statement. There remains a lot of work to be done in the recovery process and MNZ continues to oversee the wreck removal process.”

Wellington early this month reached a $22.8 million settlement with Diana Shipping Co regarding MV Rena´s grounding last year.29

The Shen Neng 1 running aground on the Great Barrier Reef

At 1705 on 3 April 2010, the Chinese registered bulk carrier Shen Neng 1 grounded on Douglas Shoal, about 50 miles north of the entrance to the port of Gladstone, Queensland. The ship’s hull was seriously damaged by the grounding, with the engine room and six water ballast and fuel oil tanks being breached, resulting in a small amount of pollution. (Up to four tonnes of fuel oil spilled)

The ATSB investigation found that the grounding occurred because the chief mate did not alter the ship’s course at the designated course alteration position. His monitoring of the ship’s position was ineffective and his actions were affected by fatigue.

The ATSB identified four safety issues during the investigation: there was no effective fatigue management system in place to ensure that the bridge watchkeepers were fit to stand a navigational watch after they had supervised the loading of a cargo of coal in Gladstone; there was insufficient guidance in relation to the proper use of passage plans, including electronic route plans, in the ship’s safety management system; there were no visual cues to warn either the chief mate or the seaman on lookout duty, as to the underwater dangers directly ahead of the ship; and, at the time of the watch after they had supervised the loading of a cargo of coal in Gladstone; there was insufficient guidance in relation to the proper use of passage plans, including electronic route plans, in the ship’s safety management system; there were no visual cues to warn either the chief mate or the seaman on lookout duty, as to the underwater dangers directly ahead of the ship; and, at the time of the grounding, the

28 Lloyd’s List September 2012
29 UPL.com Oct. 26 2012
protections afforded by the requirement for compulsory pilotage and active monitoring of ships by REEFVTS, were not in place in the sea area off Gladstone.

Picture; The Shen Neng 1 sits off Fraser Island, internet

The captain and watch officer of the Chinese ship blamed for causing unprecedented damage to a coral shoal on the Great Barrier Reef will face court today on federal charges that attract heavy fines and jail.

Australian Federal Police arrested the two Chinese nationals yesterday, as clean-up crews moved to contain oil from the holed bulk carrier Shen Neng 1 that had washed on to the second-largest coral cay on the reef.

The 47-year-old master of the coal carrier and his first mate, 44, who are alleged to have been in control of the vessel when it slammed into Douglas Shoal on April 3 2010, were held in custody last night before their appearance today in court in Gladstone.

A statement by the AFP yesterday backed The Australian's reporting last week that the ship ran aground after leaving Gladstone and steaming through a designated turning point, possibly while the watch officer was not fully alert.

The Shen Neng 1 was refloated on Monday night, but not before it had gouged a 3km-long furrow in the reef about 70 km off Gladstone, smearing the coral with anti-fouling paint from the hull.

The damage to the coral was described by Great Barrier Reef Marine Park Authority chief scientist David Wachenfeld as the worst known to have been caused by a ship grounding.

The charges followed a joint investigation by the AFP and Australian Maritime Safety Authority.
"It will be alleged in court that the men were the master and chief officer-on-watch of the vessel that caused damage to the Great Barrier Reef Marine Park," the AFP said yesterday.
"Investigations showed that the Shen Neng 1 failed to turn at a waypoint required by the intended course of the ship. A waypoint is a location at which a ship is to alter course."
The captain has been charged with having liability for a vessel that caused damage in a marine park, an offence carrying a fine of $55,000.

The officer-on-watch has been charged with being in charge of a vessel when it caused damage to the marine park, an offence that carries a maximum penalty of three years' imprisonment and a $220,000 fine.\(^\text{30}\)

Any Sunday afternoon fisherman ... with a GPS (global positioning system device) could have carried out this function (to avoid colliding with the reef)," he said.

Judge Leanne Clare jailed Wang for 18 months after he pleaded guilty to one court of being in charge of a vessel causing damage in a marine park.

Judge Clare ordered Wang be released after serving three months in custody and entering a $2000, two year good behavior bond.

Mr Rice said the Shen Neng 1, which was headed to China carrying 68,000 tonnes of coal, remained "grounded fast", or stuck, on the reef for more than a week and was responsible for extensive damage as it changed locations repeatedly under tide and weather conditions.

"This is by far the largest damage to the Barrier Reef Marine Park by shipping," he said.

He said the ship caused extensive damage to 116,000 square metres - 17 football fields - of the reef, and a further 209,000 square meters of moderate reef damage.

The court was told the most extensive damage, other than by extreme gouging by the ship's hull, was the amount of toxic paint "shaken and scraped free" on impact.

Mr Rice said the paint from the ship's hull contained large amounts of toxic substances such as copper, zinc and tributyltin (TBT), an aggressive biocide used to prevent growth of algae and marine life on ships.

He said the TBT caused significant damage because its sole purpose to kill marine organisms.

The court was told up to five tonnes of "heavy oil" leaked from the massive ship and that oil had been found of reefs up to 25 km away from the collision zone.

The court was told the Queensland authorities and the owners of the Shen Neng 1 were still in discussion how best to repair the damage caused to the reef, if at all.

Judge Clare, in sentencing Wang said: "Mr Wang appears to be a good man who had a very bad day (during his first sailing adventure out of Australia)."

"(But) this was not a case of momentary inattention. This was gross negligence."

Judge Clare said the fact Wang waited one hour to check on the ships course, rather than every 15-minutes as required, resulted in unspeakable damage to a treasured international heritage site.\(^\text{31}\)

The crew were charged over the grounding, which cost the ship’s insurers $ 4 million.

\(^\text{30}\) The Australian April 15, 2010  
\(^\text{31}\) Herold Sun October 2013
A BULK carrier has been caught dangerously off course in the southern end of the Great Barrier Reef.

Charges have been laid against two officers of the 180 m vessel, the Hong Kong-based Signe Bulker, which was en route to Gladstone with a load of bauxite.

The last reported position for the bulk carrier before it was discovered to be taking an apparent shortcut through the reef was northeast of Gladstone, heading toward the area where the coal carrier Shen Neng 1 ran aground about 70 km east of Great Keppell Island.

Large ships that are travelling through the reef zone off Gladstone would be tracked by satellites. They are forced to report their positions.

The Panamanian-flagged Signe Bulker is owned by Fleet Management Ltd, a Hong-Kong based independent shipping line.

The ship's first and third officers, both Indian nationals, will face federal charges before a judge in Gladstone today.

The Federal Government announced in December it would introduce tougher monitoring of ships entering the reef's southern area to prevent another grounding.

The new rules - an extension of the mandatory ship-reporting system - will cover the southern end of the marine park which includes the area where the Chinese coal carrier Shen Neng 1 ran aground.

A new Australian law also makes "negligent navigation" an offence carrying a fine of up to $5.5 million for a corporation or $2.2 million or 10 years' jail for individuals.

Ships that fail to report their locations through mandatory reporting areas like the reef face fines of $5500 to $132,000.

The Great Barrier Reef Marine Park Authority and the Australian Maritime Safety Authority had no immediate comment.

Queensland maritime officials confirmed they had been made aware of the incident but it was being handled by federal authorities.

25 January. Commonwealth of Australia: Seafarers Aboard SIGNE BULKER Plead Guilty and Sentenced for Environmental Crime. An Australian judge in Gladstone sentenced the chief mate and third mate, both Indian nationals, to a total $33,000 fine after they both pleaded guilty to negligently navigating the SIGNE BULKER through protected areas of the Great Barrier Reef on 18 January.

32 Herold Sun Januari 24, 2011
2011. The first mate was sentenced to $29,000 and the third mate, who was operating the vessel, to $4,000. The two had reportedly never traveled to Australia, and their choice of the same route as the SHEN NENG 1 had no commercial advantages. *Courier Mail*, “Bulk carrier captains put Great Barrier Reef at risk, then set sail with a $33,000 fine,” 25 January 2011.\(^{33}\)

**MV Christine**

A Greek court has sent to prison six sailors, citizens of Ukraine, having found them guilty of deliberately sinking a cargo ship in the Ionian Sea. The captain was sentenced to five and the other sailors - to four years in prison.

The “Christine” vessel under the Togo flag en route from the Albanian port of Durres to the Bulgarian Burgas got a hull breach during a storm and sank. The accident occurred on November 18 near the Greek island of Kefalonia. The crew escaped on a lifeboat. The court of Kefalonia found the sailors guilty of deliberately sinking the ship and polluting the sea with oil products.\(^{34}\)

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\(^{33}\) The International Law of Shipmaster 2012  
\(^{34}\) The Voice of Russia November 2010
Whistle-blowers

The term comes from that the English police called colleagues and public attention on on-going crime, once used whistles.

Whistle-blowers in the marine industry had become a problem as some government listen to them without investigate if what they are saying is trough or false. US are known to believe the stories and used it to criminalise the ship’s master and or the chief engineer and force the ship owner to bond millions of dollars to secure the release of their ships.

Some countries offers whistle-blowers 100 of thousand dollars for information and outer countries granted residence permit.

For instance, what is the true story of the murder on board the MV Maersk Dubai 1996? We will never know as the whistle-blowers did not turn up to give their testimony in the Taiwanese court. Some have been written on the case and someone believes the story and someone might be hesitant.

The Epic of the Maersk Dubai

Ship of Death

May 24, 1996, the "Maersk Dubai" docked in Halifax on her way to the United States. She was a container ship, registered in Taiwan, with largely Taiwanese officers and a Filipino crew, operated by the Yang Ming Line, but under contract to the Maersk line.

In Halifax, some of the crew members informed the Ports Police and the RCMP that the ship's officers had discovered Romanian stowaways on the ship and had put them overboard at sea. The RCMP arrested the officers who had been named. Four of the Filipino crewmen stayed in Halifax to give testimony: Ariel Broas, Esmeraldo Esteban, Juanito Ilagan Jr. and Rodolfo Miguel.

The Romanian government requested extradition of the officers, and a hearing was held. On March 6, 1997, the presiding judge declared that he did not have jurisdiction, as the alleged crimes had been committed on the high seas. He said, however, that if he had jurisdiction he would have bound six of the officers for trial for murder or manslaughter.

No one has officially denied that at least two stowaways were put overboard. Well researched articles in the Globe and Mail, May 3 and 5, 1997, as well as other strong evidence, support the allegation that the crimes had been committed.

For nearly a year the Taiwanese officers lived in hotel accommodation in Halifax and had visits from their families their expenses apparently paid by their employer. They have since gone home, and we understand that they are still working for the Yang Ming Line.
The innocent are punished

Meanwhile, the four Filipino seamen witnesses have been living in minimal accommodation in Halifax, and have taken what jobs they could find, usually at minimum wage, to support themselves and their families in the Philippines.

Because of their determination to see justice done they are unable to return to their former jobs and are convinced that their lives would be in danger if they returned home. In all likelihood they will never dare work at sea again.

Their wives and children have also been in danger. They have been repeatedly harassed and threatened. Two families have had to move from their comfortable middle-class homes and take refuge in the cramped quarters provided by the National Council of Churches in the Philippines (NCCP), where they are under armed guard. The other families are living with relatives and guarded by neighbours and friends. The women have had to stop working and the children have missed a year of school. One and a half years later, one family is still in sanctuary and all have the protection of a voluntary organization.

According to affidavits signed by family members and by officers of the Council of Churches, the wives and children have been repeatedly threatened with death, and attempts have been made to bribe them - all in an effort to keep the men silent.

For a time, the seamen refused to give testimony in the extradition case. They were warned that they would be charged with contempt of court, and replied that they would rather suffer incarceration than further endanger the lives of their families. When they received sufficient assurances that their loved ones were safe, they relented, one by one, and presented their evidence.

Further Litigation

In Texas, a civil suit was launched by the families of the Romanian stowaways, and an attempt was made by the American authorities to compel the seamen to give evidence. The seamen professed that such action on their part would put their families in great danger, and on July 18, 1997, Judge Hilroy Nathanson of the Nova Scotia Supreme Court agreed that the danger was real, and refused to order them to testify.

The seamen applied for refugee status. Their hearing concluded on July 12. On Nov. 13, the two-person panel ruled that the seamen did not fulfil the refugee requirements in that their plight was not the result of membership in a political, religious or social group, and the panel believed the danger to their families had come to an end. (The Society has evidence that the harassment and danger continue.)

A review of this decision has been launched in the Department of Citizenship and Immigration and if it does not bring the desired results, a request will be made for landing rights on humanitarian and compassionate grounds.35

35 www.savintage.com
Why were their families endangered? Was their employer threatened them or was it Filipino seafarers who believed that they were disloyal and came up with unfounded allegations? We will never know.

The master of the MV Maersk Dubai was put on trial in Taiwan after he had been expelled from Canada. The case was closed for lack of evidence. Probably because those, who notified the Canadian authorities, did not testified in the court in Taiwan.

4 companies fined $1 million for ship pollution

A whistleblower's complaint about a cargo ship dumping waste in the ocean led Thursday to a $1 million fine levied against four companies that own and operate a fleet of vessels that regularly call on New Orleans.

The conglomerate also was banned by U.S. District Judge Carl Barbier from operating in the United States for up to five years.

In April, Stanships Inc. of the Marshall Islands, Stanships Inc. of New York, Standard Shipping Inc. and Calmore Maritime Ltd., pleaded guilty to 32 felony counts of violating ship safety and pollution standards, along with obstruction of justice.

A whistleblower aboard the M/V Americana -- part of the conglomerate's fleet -- told the Coast Guard last November that the ship was dumping sludge and oily waste through the use of a pipe to bypass required pollution equipment. Prosecutors said the whistleblower provided cell phone pictures of the device being used at sea.

The ship's owners also were accused of falsifying a record book to hide the illegal discharges.

An ensuing investigation also resulted in the owners being accused of violating safety standards for trying to conceal the failure of the ship's generators. According to prosecutors, the ship arrived at the Southwest Pass -- a major entry point to the Mississippi River -- after losing power for several days at sea. A manager ordered the ship's captain to falsely tell the Coast Guard that the ship had two operating generators. The master eventually ordered tugboats to guide the ship into port.

According to court records, Stanships Inc. of the Marshall Islands, was a repeat offender, committing new violations after it was fined $700,000 for illegal discharges and falsifying records with another ship on Sept. 29.

On April 27, U.S. District Judge Ginger Berrigan revoked the company's probation and banned the company's ships from further trade in the United States.

Barbier ordered $250,000 of the latest fine to go to projects benefiting fish resources.  

Texas Whistle-blowers

This case arises out of a government investigation in six judicial districts into allegations that Overseas Shipholding Group, Inc. (“OSG”) had for years engaged in the practice of discharging oil from its

36 The Associated Press July 28, 2011
In September of 2005, Barroso worked aboard the M/T Pacific Ruby, a tanker ship owned and operated by OSG. On September 15, 2005, Barroso telephoned the United States Coast Guard on behalf of himself and three crew members (including Altura), all Filipino nationals (“the Texas whistle-blowers”). Barroso reported that he had observed the chief engineer illegally bypassing the ship's oil pollution prevention equipment. Barroso told the Coast Guard that the four men were willing to testify against OSG. Based on Barroso's report, the Coast Guard conducted two boarding of the ship. The four Texas whistle-blowers provided information that supported the allegations of illegal activity by OSG.

A grand jury investigation was commenced in the Eastern District of Texas in late 2005. A magistrate judge appointed separate counsel for each whistle-blower from the district's Criminal Justice Act (“CJA”) panel.

On October 7, 2005, Hawthorn was appointed to represent Barroso, and another lawyer, Bill Harris (“Harris”), was appointed to represent Altura. The scope of the representation in each case was to determine whether the client was a target or subject of a criminal investigation, to advise him of his Fifth Amendment rights, and to assist him in his appearance before the grand jury and during interviews with the government.

Based on the Texas whistle-blowers’ testimony, in August of 2006, the chief engineer of the Pacific Ruby, Kun Yun John, and OSG were indicted in the Eastern District of Texas on charges of conspiracy under 18 U.S.C. § 371, false statements under 18 U.S.C. § 1001, and violations under APPS, 33 U.S.C. § 1908(a). The APPS case against OSG was then expanded to include a dozen OSG ships involved in oil dumping incidents in five other judicial districts, including the District of Massachusetts. Twelve whistle-blowers in total provided information as to the incidents that formed the basis for the charges in the six districts.

The APPS, 33 U.S.C. § 1908(a), provides that “[i]n the discretion of the Court, an amount equal to not more than 1/2 of [a criminal APPS] fine may be paid to the person giving information leading to conviction.” In November and December of 2006, government counsel informed Hawthorn that Barroso might be eligible for a monetary whistle-blower award under the APPS. However, on December 4, 2006, the Eastern District of Texas dismissed the APPS counts against OSG and the government appealed.

On December 19, 2006, the government announced an agreement covering the six districts in which OSG was under investigation, including the District of Massachusetts and the Eastern District of Texas. With respect to the cases other than the Texas case, the agreement specified that the parties would recommend that the five cases be consolidated in Massachusetts for plea and sentencing. OSG agreed to plead guilty to representative APPS counts in each of the five cases. Under the terms of the agreement, OSG would pay a total monetary fine of $27.8 million, of which $10.5 million was allocated to APPS violations. The agreement also provided that if the Fifth Circuit reversed the Texas dismissal of the three APPS counts, OSG would plead guilty to those counts as well and a fine under the APPS of $2.4 million would be imposed. If not, OSG would instead plead guilty in the Eastern District of Texas to three additional counts of making false statements in violation of 18 U.S.C. § 1001. The agreement left open the possibility that an additional fine would be imposed in the Texas proceeding. The agreement contemplated that a single plea and sentencing proceeding for the five cases would be scheduled in the Massachusetts district court in the near future, at which time that court would consider whistle-blower awards.

On March 14 and 15, 2007, the government filed motions for whistle-blower awards in the Massachusetts proceeding, detailing the contributions of all of the whistle-blowers (i.e., the four
whistle-blowers in the Texas case and the eight whistle-blowers in the other cases) and recommending that the court award $437,500 to each whistle-blower. The government asked that the court award equal sums to each of the whistle-blowers involved in the consolidated cases as well as to the whistle-blowers involved in the Eastern District of Texas case because the contributions of the twelve whistle-blowers to the overall outcome of the case were roughly equal. This recommendation was made even though the whistle-blowers from the Texas case, including Barroso and Altura, were not witnesses in any of the five cases consolidated in the District of Massachusetts and there had been no APPS conviction in the Eastern District of Texas.

On March 16, 2007, OSG filed a response to the government’s whistle-blower motion, stating that though it did not oppose the government’s motion, it was concerned about a grant of awards to the whistle-blowers in the Texas case. OSG argued that any APPS awards to those individuals should be administered by the district court in Texas. On March 19, 2007, the government replied, explaining that because the four Texas whistle-blowers contributed to the successful overall resolution of the case against OSG, the Massachusetts district court had discretion to issue awards to them.

The plea and sentencing hearing was held on March 21, 2007. In accordance with the plea agreement, the district court imposed a fine of $10.5 million for APPS violations. Under the statute one-half of the total was available for awards to whistle-blowers. At the hearing, OSG argued that the Texas whistle-blowers should not receive whistle-blower awards. The government urged the district court to award fees to all twelve whistle-blowers. The court then voiced “a modest reservation” about issuing awards to the Texas whistle-blowers. The district court then concluded it would make the whistle-blower awards as proposed by the government.

On May 25, 2007, the court issued an order authorizing awards of $437,500 to each of the twelve whistle-blowers.37

**Marine whistle-blowers hotline Australia**

Maritime Safety Queensland is concerned when non-compliant behaviour compromises its key outcome areas of safer, cleaner seas.

Under the *Transport Operations (Marine Safety) Act 1994* (and the *Transport Operations (Marine Pollution) Act 1995*), you can report your marine safety or marine pollution concerns about behaviour that you have witnessed or know about.

Normally, you make reports about non-compliant behaviour to your local Maritime Safety Queensland regional office.

However, in some special circumstances you may feel that you cannot make a report to Maritime Safety Queensland directly. Such circumstances might include:

- where you fear civil or criminal liability because of your relationship to the non-compliant behaviour
- where you are under some kind of obligation not to say anything, like an oath or promise
- where you fear being sued for defamation if you say anything
- where you fear reprisals, such as threats or loss of employment, if you make a report.

37 FindLaw for legal professionals November 23 2011
For these special circumstances, Maritime Safety Queensland has established a whistle-blower’s hotline that can be used to safely make reports of non-compliant behaviour. Such reports are subject to the whistle-blower protections provided in part 15A of the *Transport Operations (Marine Safety) Act 1994* and part 14A of the *Transport Operations (Marine Pollution) Act 1995*.

The whistle-blower protections include:

- no civil or criminal liability for disclosing information to an official that is honestly and reasonably believed to be a contravention of the relevant act
- a defence of absolute privilege against defamation claim
- protection against any contravention of confidentiality, such as an oath or agreement
- protection against reprisals.

**What to report**

You can help make Queensland waters safer by reporting:

- unsafe operators
- unseaworthy ships
- risks of ship-sourced pollution.

**How to report**

Telephone +61 7 3120 7496 and leave a message that will be recorded. The more details you provide to us, the better chance Maritime Safety Queensland has of using the information to protect marine safety and the marine environment.

If you want a return telephone call, leave your name and contact telephone number.

If urgent action is required, please contact your local Queensland Boating and Fisheries Patrol or Queensland Water Police office, and mention that you are a whistle-blower.

**Reporting actual incidents**

Report any instances of actual ship-sourced pollution discharges or marine incidents to your local *Maritime Safety Queensland regional office*.  

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38 The State of Queensland (Department of Transport and Main Roads) June 28 2012
Magic pipe

*Once again the US Coast Guard have detained a vessel and forced the crew out of their shipboard homes for an unlimited amount of time.*

**MV Bottiglieri Challenger**

A Bulk carrier owned by Giuseppe Bottiglieri Shipping of Italy is stranded in Mobile, Alabama, and eight crewmembers are detained, including one as a criminal defendant, after a magic pipe dispute turned sour, writes Rajesh Joshi in New York

An order from Magistrate Judge Sonja Bevins has taken the passport of eight men away from them at the request of the US government, and they must remain in Mobile until the court says they may leave the jurisdiction.

The owner has brought legal actions against the government after getting into a tangle with the US Coast Guard over release terms for the 2010-built, 93 352 dwt Bottiglieri Challenger. The bulker became the target of a USCG pollution probe after a whistle-blower’s tipoff during a port call on January 24 2012.

The ship remains stranded in port, after an acrimonious dispute broke out between Giuseppe Bottiglieri and the authorities over whether the government has authority to require the owner to adhere to certain conditions to secure the release of the ship.

The issue is rarely the posting of a suitable bond. Owners have an absolute right to post a bond for release of their vessel. The issue is the tactics and demands of the government, “owner’s council George Chalos said.

“The USCG unreasonably detains vessels and causes all sorts of damages to crew and the company until the owner finally gives in to otherwise improper demands. The government routinely forces crew out of their shipboard homes and has them detained in the jurisdiction for an unlimited amount of time. The government also insists that the companies waive certain critical defences as a condition for the release of the vessel.

“Then, when the company seeks to challenges the government in the same federal court where the government will seek prosecute the case, the department of Justice lawyers run to courthouse and claim there is no jurisdiction for the judge hear the matter. It is outrageous and absurd stuff”.

The Bottiglieri Challenger issue began when the USCG proposed a standard surety arrangement to secure the release of the ship, including a bond of $ 1.3m and arranging for lodging and paying wages and benefits of the eight men for an indefinite period while the investigation developed.39

For as much as Chalos is devoted to defending seafarers in magic pipe cases, he believes the whistle-blower provision, which allows up to half of a fine to be paid as a reward to a crew member who tips off authorities to a violation, is being abused by foreign crews.

39 Lloyd’s List February 16 2012
“If you are a Filipino seafarer making $300-a-month and have a chance to come to the US and make a half a million by being a whistle-blower, any time there is any sort of issue on board ship, a chief engineer can’t discipline his crew because he is afraid they will stuff rags in the suction line,” Chalos asserted.

“I am not against whistle-blower rewards in the right circumstances but I am against using the provision for false allegations. It is a catalyst for revenge, a shot at the lottery”.

Chalos also believes the US could put money collected from magic pipe fines to more practical use.

“If they really wanted to get at the problem, why not use the money to create shore-side disposal reception sites at all major US port?” he asked, pointing out that a lack of these facilities as one reason crews take their chances with magic pipes.40

**Magic pipe group sues US government**

A group of owner and operators whose ships have been targeted in US magic pipe investigation has sued the US Coast Guard and the US Department of Homeland Security in Washington, seeking to establish that the USCG has no authority to demand indefinite detention of crew as a condition to allow the ship to sail.

The lawsuit is significant in that it caps some recent US federal court rulings in which the judge expressed impatience at the government’s policy of detaining foreign seafarers indefinitely, and set a timetable for the probe to be completed.

Owners and managers of four bulk carriers, Agios Emilianos, Stella Wind, Gaurav Prem and Poluneos, which were detained between April and October 2011 have brought lawsuit.

In each of these cases, the USCG set identical terms to release the ships, a hefty financial guarantee from the owner and a commitment to indefinitely pay, feed and lodge crew members detained in the US, with instructions to these men to “co-operate” with the government.

The lawsuit zeroes in on a clause in the US Act to Prevent Pollution from ships which states that a vessel can be released on the owner filing a bond or the USCG securing surety satisfactory to the Homeland Security Secretary.

The USCG has formed a precedent of extracting a financial bond from the owner and also requiring the crew to stay behind indefinitely, among other conditions. There is no legal authority for the USCG to do so, the lawsuit argues.

The complaint adds that the appeals process available to ship-owners, through the assistant USCG commandant and area commander, is futile because no local or other USCG office can override headquarters in these matters.

The owners want the judge to vacate the security arrangements in each of the four cases, and specifically find that the APPS prohibits the USCG from demanding “anything more than a surety bond or other financial security to clear the departure of a ship implicated in such cases.

40 Fairplay 16 February 2012
The USCG and US government have 60 days to file their response to the lawsuit.

Sources close to the case highlighted Gaurav Prem as a crucial benchmark that the Washington judge is being encouraged to take into account.

As Lloyd’s List reported, the Gaurav Prem master last week obtained bail to return to Thailand despite the US government having made him criminal defendant.41

Illegal Ocean dumping persists despite DOJ crackdown

A Coast Guard inspector boards a cargo ship to conduct an inspection. U.S. Coast Guard by Ronnie Greene email March 30, 2012

When a U.S. Coast Guard inspector boarded the M/T Chem Faros, a 21,145-gross-ton cargo ship that pulled into port in Morehead City, N.C., an oiler with the engine crew quietly handed him a note.

"GOOD MORNING SIR, I WOULD LIKE TO LET YOU KNOW THIS SHIP DISCHARGING BILGE ILEGALLY USING BY MAGIC PIPE," the note said. "IF YOU WANT TO KNOW ILLEGAL PIPE THERE IN WORKSHOP FIVE METERS LONG WITH RUBBER."

The crewman’s hand-scrawled note passed that March day two years ago, triggered an inquiry that unmasked a wave of high-seas pollution and phony recordkeeping as the ship ferried cargo in Asia and the U.S. The crew had used the so-called magic pipe to divert oily waste overboard at least 10 times in six months. Eleven days before the inspection, the chief engineer ordered 13,200 gallons of oil-contaminated waste dumped into the ocean.

41 Lloyd’s List Autumn 2012
The ship’s owner, Cooperative Success Maritime S.A., was fined $850,000 and sentenced to five years’ probation after its guilty plea. And the chief engineer — after cooperating with authorities — was sentenced to one year of probation. “The oceans must be protected from being used as dump sites for waste oil or other hazardous substances,” said Maureen O’Mara, special agent-in-charge of the Environmental Protection Agency’s criminal enforcement program in Atlanta, in June 2010. A company attorney declined comment.

That Department of Justice prosecution is one piece of a larger federal crackdown targeting dumping on the high seas, a form of pollution that taints global waterways and is drawing increased scrutiny.

The weapons in the government’s arsenal: whistleblowers who can reap six-figure rewards for reporting dumping and sometimes providing secret cell phone photos to inspectors; investigators who hunt for “magic pipe” diversion devices hidden aboard massive ships; and ship operators pressed to change their ways or risk a ban from U.S. waters.

Over the past 10 years, a Justice Department Environment and Natural Resources Division report shows, the Vessel Pollution Program has triggered more than $200 million in fines and 17 years in prison for ship officers and executives. Four corporations that own and operate a Panamanian cargo vessel were fined $1 million last July — and banned from doing business in the U.S. for five years for deliberately dumping waste overboard and trying to hide their crimes.

“Imagine this, you are the owner of a ship and you can’t come to the most lucrative market in the world. That’s a big hammer,” Capt. David Fish, chief of the Coast Guard’s Office of Investigations and Analysis, said in an interview with the Center for Public Integrity. “They can sail away, but they’re never coming back.”

Yet even with the number of high profile cases brought, more cases come. That leads some experts to conclude the government has snared only part of the problem.

“It’s still occurring at a fairly regular basis, which as a prosecutor is frustrating,” said John Cruden, president of the Environmental Law Institute in Washington and former deputy assistant attorney general for DOJ’s Environment and Natural Resources Division. “That leads me to think there’s a lot more of this out there than the Coast Guard is finding. We are probably just seeing part of the iceberg of the criminal behavior.”

The law, magic pipes — and whistleblowers

Under federal and international law, ships must properly dispose of oily wastewater and sludge by passing the waste through an oil-water separator on board, or burning sludge in an incinerator. The ship’s crew must record each transfer or disposal in an “Oil Record Book.”

When dumping occurs in international waters, U.S. authorities cannot prosecute the actual pollution because it lies outside their jurisdiction. But they can bring charges when crews file false paperwork, use illegal diversion devices, or lie to investigators.
Many scofflaws use so-called “magic pipes” — detachable pipes that can route waste overboard and then be hidden when inspectors arrive — to bypass the required pollution prevention equipment. Some dump in the dark of night in international waters far from port.

Whistleblowers help bring these cases to light, handing to inspectors the scrawled notes or cell phone photos capturing illegal dumping and homemade diversion pipes hidden on board.

Yet some defense lawyers for shipping companies have questioned the government’s use of whistleblowers, contending that a quest for cash could distort a company’s true environmental record. Ultimately, though, the evidence from crews has factored in several cases.

This January, two companies that owned and operated the M/V Aquarosa, a 33,005-gross-ton cargo ship registered in Malta, were fined $1.2 million and sentenced to three years of probation in a case sprung from 300 cell-phone pictures. The ship’s chief engineer got a three-month prison sentence for obstruction of justice.

On the ship’s first voyage in 2010, court papers say, senior engineers started dumping oil bilge waste. They sometimes used a magic pipe constructed from a long rubber hose and metal flanges welded together onboard.

The investigation began after the shipped pulled into Baltimore port in February 2011, and an engineer handed Coast Guard investigators his cell phone with 300 pictures revealing a magic pipe spewing sludge and oily waste overboard. The crew also dumped oil-soaked rags in plastic garbage bags. Prosecutors are seeking a reward for the whistleblower.

The whistleblowers, MR Lopez stands to collect as much as $92500.

Banned from U.S. seas — but some critics of whistleblowers

Federal case files show how those whistleblowers turn up crucial evidence. In 2010, four crew members who flagged authorities about illegal discharges of oil and plastic from the M/V Iorana, a Greek flagged cargo ship, were awarded $125,000 each. In that case, Irika Shipping S.A. paid a $4 million penalty — $3 million for a criminal fine and $1 million to fund marine environmental projects.

The investigation began in January 2010, court records say, when a crew member, after the ship’s arrival in Baltimore, passed a note telling a Customs and Border Protection inspector that the ship’s chief engineer had ordered the dumping of waste oil overboard through a bypass hose.

“We are asking help to any authorities concerned about this,” the note said, “because we must protect our environment and our marine lives.”

The government’s exhibits at sentencing included pictures of the hoses that flushed waste overseas — and a photo of the vessel with a large painted sign: “Safety First Clean Seas.” An attorney for the company, Dimitri Georgantas, said Friday he doesn't comment on specific cases. But speaking
broadly, he believes the government has "over-reached" in the length of time it holds crews during investigations.

One month earlier, in December 2009, nine crew members of the *M/V Theotokos* shared $540,000 for helping secure the guilty plea of Polembros Shipping Ltd. The ship management company, headquartered in Greece, paid a $2.7 million criminal fine for violating anti-pollution laws and ship safety laws, and making false statements during a U.S. Coast Guard investigation, the DOJ said.

Polembros was ordered to pay a separate $100,000 to the Smithsonian Environmental Research Center, and was given three years of probation — and its 20 vessels were barred from entering U.S. ports and waters for three years. Ship officers also received punishment, including 10 months’ confinement for the ship master. Georgantas, who also represented Polembros, declined comment.

Sometimes, the whistleblowers turn to higher authorities.

Last May, the chief engineer of the *M/V Capitola* pleaded guilty to obstructing a Coast Guard inspection a year earlier.

The investigation, launched at the Port of Baltimore, began after a crew member told a clergy member, on board as part of a pastoral visit, that there had been “monkey business in the engine room” involving a magic pipe. At the crew member’s request, the minister alerted the Coast Guard, and its inspectors found the magic pipe: A bypass hose that dumped waste oil overboard.

Fish, the Coast Guard captain, said the cases are emerging amid a confluence of factors: Information from whistleblowers, detailed inspections on board — and an increased appetite by prosecutors to bring cases.

Yet one constant, he said, is money. “In any environmental contamination, it’s in reverse correlation to the economy. The economy is down, companies cut corners, and they generally cut corners in maintenance.”
Conclusion

More than 90% of Nautilus International members are concerned about criminalisation of the maritime profession, and two third say fears about possible legal action are affecting their attitude to working at sea.

The findings come from a survey of almost 600 members carried out by the Union to coincide with the launch of month of Seafarers’ Rights International (SRI) a new body that will seek to protect crew members from unfair and unjust laws around the world.42

Seafarers’ Rights International

Seafarers Right international, SRI, is an independent body and will identify and tackling the rights of seafarers. They will operate whiting and across different national jurisdiction and are subject to different international laws. In some cases, there may be doubt as to what, if any, law is applicable or enforceable.

Seafarers´ Rights international will carry out work including;

• conducting independent research into important issues and monitoring legal developments affecting seafarers
• promoting, research, education and training in seafarers´ legal rights and remedies
• providing strategic legal support to contribute to political, industrial, campaigning and lobby agendas
• raising awareness on issues of seafarers´ law, rights and remedies
• producing publications such as online toolkits, guidelines for lawyers, checklist for seafarers and dedicated website43

When the ship master is cast as a criminal

Seafarers’ Rights International survey exposes shocking treatment of crew.

We are all tremendously enthused by human rights these days, with whole chambers full of top lawyers readily available to defend anyone before the highest court in the land, even invoking powerful international assemblies of jurisprudence if all else fails.

Human rights is a sort of allegory for our times, bathing the individual in a roseate glow of self-regard, protected by all manner of curious laws that require his or her rights to be respected.

It is, you might think, a jolly good thing too, with over-powerful states and bossy officialdom seeking to bury the rights of the many for the convenience of the few.

42 Nautilus International October 2010
43 Nautilus International October 2010
In such an age when human rights is so universal, it begs the question why seafarers are so lacking in this respect, given the modern tendency to criminalise them with a brutal enthusiasm not seen in the past.

You might suggest that seafarers moan too much in this respect. After all, in 2012 we criminally charge all manner of people for making professional errors; from doctors who killed their patients to nurses who got the decimal point wrong for the dose of medicine they were prescribing and lorry drivers whose attention wandered at the wheel.

But a shocking scale of criminal sanctions attached to seafaring has emerged in a recent report by Seafarers’ Rights International.

SRI polled 3,480 seafarers in eight languages over a 12-month period and secured responses from 68 nationalities. Its findings indicate what appears to be a shocking indictment of authorities hurling criminal charges at seafarers like confetti.

As we wring our hands over the seeming reluctance of young people all over the world to take up a sea career, one statistic from the SRI report stands out. Nearly one quarter of all masters reported that they had faced criminal charges.

This makes one ask why on earth anyone would aspire to senior rank, undertake all those years of study and examinations and the long years climbing the pole in this experience based profession.

Are shipmasters so singled out by the authorities because they are uniquely criminal in their behaviour, cavalier with human life or the environment or slapdash in exercising their professional duties?

Just as known career criminals become the first suspects when a crime is committed, one might think that the habits of ship masters must make the lives of the waterfront detectives astonishingly rewarding.

But your average criminal, ashore in many jurisdictions, will face a relatively easy ride compared to seafarers, if the SRI statistics are accurate — and there is no reason to doubt them.

Your friendly neighbourhood burglar or armed robber can count on legal representation when charged; not so 87% of seafarers. The authorities patiently read the burglar or armed robber his rights; not so for 89% of seafarers, who feel unfairly treated, intimidated and threatened.

Some years ago, my friend Malcolm MacLachlan, author of The Shipmasters’ Business Companion, took the trouble to count the offences under UK law for which a shipmaster might face criminal charges.

It was a mind-boggling number. I recall it soaring into the firmament, thanks to the modern tendency to criminalise anything that moves. Multiply this with the possibilities for criminal charges on an international voyage, sailing through numerous jurisdictions and you would think that a prudent ship master would permanently wear handcuffs, to save the inquisitors trouble.

This stems from a number of problems, not least the position of the master as the one wholly responsible for everything that goes on on-board that ship, whether it arrives a couple of tonnes short in some frightful third world port or carries one aspirin too many in its medicine locker, to be
triumphantly revealed by some oafish official with the intelligence of a parking attendant and the morals of a thief.

The opportunities offered by port state control in many parts of the world are manifold, corrupt officials delightedly searching out some trivial infraction of a local law, then throwing the book at the master.

But even in countries that fully understand human rights, it is clear that seafarers fall into a black hole, unsupported by the ship owners, by foreign affairs departments in their home countries, by flag states and, unless they are members of an efficient union, pretty much everyone else. We owe a debt of gratitude to SRI for highlighting these disgraceful statistics and placing the situation clearly before us.

But what are we going to do to bring more balance and fairness, justice and decency, to the way that seafarers are treated? Because if we do not act soon, the crewing situation will become intolerable and for all the reasons above.44

“Seafarers need to stop being abandoned, criminalised and attacked. Only then can the industry look forward to give young talented professionals a career path that will make them feel valued, empowered and trusted.45

**Whistle-blowers**

**STATUTE**

(a) Criminal penalties; payment for information leading to conviction

A person who knowingly violates the MARPOL Protocol, Annex IV to the Antarctic Protocol, this chapter, or the regulations issued thereunder commits a class D felony. In the discretion of the Court, an amount equal to not more than 1/2 of such fine may be paid to the person giving information leading to conviction.46

The USA’s law, APPS, 33 U.S.C. §1908(a) entitled a whistle-blower up to one half of the fine paid by the ship owner for pollution the seas and Australia have open “Marine whistle-blowers hotline Australia”.

Seafaring whistle-blowers, frequently seeking a financial bounty, have become one of prosecutors’ most potent weapons against maritime polluters, providing the backbone for a growing number of cases the federal government has pursued in Baltimore and other port cities across the country.

“They can snap their pictures, take their notes and wait until they get to a port like Baltimore and get a payday,” the lawyer, Gregory F. Linsin, said in court.47

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44 Seafarers Right International, Web page 10 May 2012
45 Ms Fitzpatrick, the head of Seafarers Right International
46 APPS, 33 U.S.C. §1908(a)
47 THEO EMERY Published: February 13, 2012
Chalos has raised questions about the government’s investigations of ships. Earlier this year, he helped bring a lawsuit, filed by eight shipping companies, challenging the conditions that the Coast Guard and Homeland Security imposed before releasing vessels that allegedly kept false Oil Record Books. The U.S., in a court filing this week, maintained that its procedures are proper.

Chalos also challenges the government’s use of whistleblowers.

“I would say the majority of ship owners want to be compliant and they pay a lot of money to set up these compliance programs and procedures,” Chalos said. “But they can’t outbid the government. Some whistleblower who decides he wants to make some money can thwart all those efforts. … They don’t report it to the owner, because they know if they wait until they come to the U.S. and they have pictures of some alleged illegal act, they are going to get a reward.”

Cruden, the former DOJ official, said the cases are difficult by their nature. The dumping comes, often, in the dark of night on seas far from port. Ships, many flying under foreign flags, sometimes dock at port a day or two.

“I’m well aware that corporations do not like these laws, because their own employees are finding things and basically turning them in,” he said. “But the problem is, how else would you know?”

“From at least Jan. 1, 2006, to March 20, 2007, crew members aboard M/T Kriton, operated by Ionia Management, made false entries in the ship’s oil record book indicating that they had regularly used the ship’s oil pollution prevention equipment. Evidence at trial proved that the equipment was rarely, if ever, used and, instead, crew members pumped the ship’s oil-contaminated wastes and sludge directly from the ship into the ocean using a rubber hose. At least 968 tons of oil-contaminated waste was unaccounted for in the Kriton’s oil record books. In addition to falsifying oil record books, Ionia Management submitted false statements in environmental compliance checklists that it was required to submit to the U.S. Coast Guard as part of its probation from the 2004 conviction in the Eastern District of New York. After the Coast Guard investigation of the Kriton began in March 2007, the ship’s Chief Engineer and Second Engineer destroyed the rubber hose used to pump waste to the ocean.

“We hope and expect that this prosecution and the stiff sentence imposed sends a clear message to all who intend to pollute the world’s waters that such conduct will not be tolerated,” said U.S. Attorney O’Connor.”

48 Ronnie Greene email, March 30, 2012
49 Environmental Crime Blog
Do, U.S. Attorney O’Conner and other law representatives for the U.S. government care what is written in the UNCLOS? To make false entries in an oil-record book is against the law in almost any country including USA.

UNCLOS stipulate that any incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.

A $4 million penalty and $3 million for criminal fine and $1 million to fund marine environmental projects, is that a fair penalty for a false entry in an oil-record book?

**UNCLOS 1982**

There are also safeguards set out in UNCLOS, the United Nations Convention of the Law of the Sea, specifically under Article 230, which constitute an internationally agreed balance between public concerns about pollution on the one hand and the recognised rights of the accused including the liberty of foreign seafarers, on the other. Article 230 effectively bars coastal states from imprisoning foreign seafarers for any pollution offence beyond their territorial waters, or for one within those waters, unless involving a wilful and serious act of pollution. However, there have been concerns expressed within the international maritime community that these restrictions have not always assisted the defendant.  

“**Article 230**

*Monetary penalties and the observance of recognized rights of the accused*

1. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.

2. Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.

3. In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.

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50 The Swedish Club, Triton No 1 2012
Below is a few future Articles reproduced, for this examination relevant paragraphs, of UNCLOS, the United Nations Convention of the Law of the Sea.

"Article 27

Criminal jurisdiction on board a foreign ship

1. The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:
   (a) if the consequences of the crime extend to the coastal State;
   (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
   (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
   (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

2. The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.

3. In the cases provided for in paragraphs 1 and 2, the coastal State shall, if the master so requests, notify a diplomatic agent or consular officer of the flag State before taking any steps, and shall facilitate contact between such agent or officer and the ship's crew. In cases of emergency this notification may be communicated while the measures are being taken.

4. In considering whether or in what manner an arrest should be made, the local authorities shall have due regard to the interests of navigation.

5. Except as provided in Part XII or with respect to violations of laws and regulations adopted in accordance with Part V, the coastal State may not take any steps on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed before the ship entered the territorial sea, if the ship, proceeding from a foreign port, is only passing through the territorial sea without entering internal waters.

Article 58

Rights and duties of other States in the exclusive economic zone

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

Article 87

Freedom of the high seas

1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
   (a) freedom of navigation;
   (b) freedom of overflight;
   (c) freedom to lay submarine cables and pipelines, subject to Part VI;
(d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI;
(e) freedom of fishing, subject to the conditions laid down in section 2;
(f) freedom of scientific research, subject to Parts VI and XIII.

2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

**Article 94**

**Duties of the flag State**

1. Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.

2. In particular every State shall:

   (a) maintain a register of ships containing the names and particulars of ships flying its flag, except those which are excluded from generally accepted international regulations on account of their small size; and
   (b) assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.

3. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:

   (a) the construction, equipment and seaworthiness of ships;
   (b) the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;
   (c) the use of signals, the maintenance of communications and the prevention of collisions.

4. Such measures shall include those necessary to ensure:

   (a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;
   (b) that each ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship;
   (c) that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.

5. In taking the measures called for in paragraphs 3 and 4 each State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.

6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.

7. Each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and
causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State into any such marine casualty or incident of navigation.”

Article 97
Penal jurisdiction in matters of collision or any other incident of navigation

1. In the event of a collision or any other incident of navigation concerning a ship on the high seas, involving the penal or disciplinary responsibility of the master or of any other person in the service of the ship, no penal or disciplinary proceedings may be instituted against such person except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

2. In disciplinary matters, the State which has issued a master's certificate or a certificate of competence or licence shall alone be competent, after due legal process, to pronounce the withdrawal of such certificates, even if the holder is not a national of the State which issued them.

3. No arrest or detention of the ship, even as a measure of investigation, shall be ordered by any authorities other than those of the flag State.\textsuperscript{51}

\textsuperscript{51} From UNCLOS
The ship's flag state

**MARPOL**
- Annex 1

**OPA 90**
- Strict unlimited liability
- American waters

**UNCLOS**
- Port State Control

**EU Directive on ship-source pollution**

**CLC Convention**
- Strict liability
- the right to limit responsibility
- National water

*Picture: How to handle oil pollution on the High Seas*
In the aftermath of a casualty, particularly in high profile incidents where pollution is involved, history has an unfortunate tendency to repeat itself as far as unfair treatment of seafarers is concerned. Local authorities and prosecutors will inevitably face immense pressure from the public to deal effectively with those assumed to be responsible for the incident – and it is often the crew who suffer the consequences. Situations such as that faced by Captain Mangouras, the master of the Prestige, suggest that there is a need for laws which more effectively underpin the human rights of the accused in highly-charged cases of this sort.\(^{52}\)

**Protecting the Seafarer – International Law**

There is valid concern within the industry that the trend towards an assumption of criminality on the part of the seafarer and owner is likely to deter good quality individuals from a seafaring career. In a climate of criminalisation, another legitimate concern is that enquiries may never reveal the true cause of an incident for crew may fear self-incrimination. None of this can be good for the shipping industry, nor for the ordinary citizen who relies upon quality seafarers safely steering those crucial goods and energy carriers to deliver his everyday needs in a safe and timely manner. The issues surrounding the alleged unfair treatment of seafarers have arisen despite the fact that mandatory safeguards for the protection of individuals, and seafarers in particular, already exist under international law.\(^{53}\)

The IMO have adopted two guidelines on Fair treatments of Seafarers. "Guideline on fair treatment of seafarers, Resolution (resolution LEG.3(91) adopted on 27 April 2006 and “Guidelines on fair treatment of seafarers in the event of a maritime accident”, Circular letter No 2711 26 June 2006.

I am sure all seafarers wish that the guidelines become compulsory in all nations around the globe.

Imagine that you are detained in a foreign country for months or even years, you do not understand the language, and you will not even be able to read a newspaper because you do not have the same alphabet. For instance, the Greek citizens which was detained in Karachi for several month.

Meanwhile we can only wish that authorities will follow the Nautilus International’s checklist for fair treatment of seafarers. The Union has provided some advice, based on general principles laid down in international laws, as a useful safeguard for seafarers to be used in conjunction with national laws in the country concerned.\(^{54}\)

**If the vessel is boarded by officials**

- request to see proper identification of any law enforcement officer and record full details of the identification
- notify owner/operator, flag state, and any consular authorities of the incident and any enquiries made
- cooperate reasonably with the law enforcement authorities involved without incriminating yourself or waiving any of your legal rights
- request to be informed of your rights under the national law of the boarding state in a language that you can understand
- assert your rights with the flag state to be dealt with by the authorities of the flag state\(^{55}\)

\(^{52}\) The Swedish Club, Triton No 1 2012  
\(^{53}\) The Swedish Club, Triton No 1 2012  
\(^{54}\) Nautilus International  
\(^{55}\) Nautilus International
If a search is carried out

- refuse to allow a search of either yourself or your personal belongings unless a valid search warrant is produced
- if there is no search warrant, but the law enforcement officers still insist on the search, clearly state that you do not consent to the search – preferably in front of witnesses
- do not use force to prevent a search
- request legal representation before any search is carried out of your person or your belongings
- request contact with Nautilus International or a local trade union official before any search is carried out of your person or your belongings
- remain present during any search of your belongings, preferably also with another crew member present, and note any personal items removed or damaged during the search

If an interview is conducted

- Request legal representation before agreeing to answer any questions
- You have the right not to incriminate yourself, make no admissions without taking legal advice
- If you decide to speak without a lawyer present, or cannot avoid doing so, then request that there are witnesses present whom you can trust, including a Nautilus or local trade union official
- Request the use of a translator before giving a statement or answering any questions if the language spoken by the law enforcement officers is not your own, or if English is being spoken and you are not a native speaker
- Do not rely on promises of immunity made by law enforcement officers in exchange of any statement or for answering questions
- Valid officers of immunity from criminal prosecution can generally not be made by law enforcement officers
- If the interview is to be conducted outside the ship, refuse to leave unless accompanied by a lawyer and an interpreter, and only after your consular authorities have been notified your whereabouts
- Do not use force to resist your removal from your ship
- If intimidated, notify your lawyer and/or consular authorities

If you are detained or arrested

- Request to be informed at the time of your arrest/detention the reason for it and any allegation against you
- Request legal assistance and confidential communication with counsel
- Request consular assistance

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• Request the right to an interpreter (approved by consular authorities) and to translation of essential documents
• Assert the right to be brought promptly before a judge to have the lawfulness of your detention reviewed
• Assert the right to have a trial within a reasonable time and not to be detained pending trial without good reason
• Declare right not to be subjected to arbitrary arrest or detention, and not to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law.

**Universal Declaration of Human Rights (UDHR)**

The UDHR provides that everyone has the right to leave any country and return to his own. It is therefore normally difficult to justify withholding of a passport, let alone hotel arrest or detention in custody, on the mere ground that the individual has been charged with an offence, unless there is at least a reasonable possibility that he could, if convicted, be punished by a term of imprisonment.  

**Article 13. UDHR**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

For instance, *Cosco Busan* where the whole crew of the ship was detained initially by the US authorities and six of them, all Chinese nationals, were held for more than a year while the investigation and legal procedures, which led to the conviction of the pilot and ship operator, were completed.

**MARPOL and CLC 92**

MARPOL prohibited any discharge into the sea of oil or oily mixtures from ships when a ship is within a special area or a tanker is closer than 50 nautical miles from nearest land.

At the high seas a tanker is allowed to discharge oil if the content does not exceed 30 litres per nautical mile and the tanker is proceeding en route. The total quantity of oil discharged into the sea 1/30 000 of the total quantity of the particular cargo of which the residue formed a part.

From a ships machinery spaces it is allowed to discharge oily mixtures if the ship is not within a special area, the ship is proceeding en route and the oil contents of the effluent without dilution does not exceed 15 ppm.

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58 The Swedish Club, Triton No 1 2012
59 From MARPOL Annex I
MARPOL stipulate no penalties if a ship does not follow the requirements in MARPOL. If oil or oily mixtures is discharged into a State’s territorial sea or their economic zone the State’s law will be applied.

The Swedish Act on Measures against Pollution from Vessels stipulates, “Fines or prison sentence of a maximum of two years shall be imposed on the person who intentionally or negligently contravenes a prohibition according to chapter 2 section 2 (oil may not be emitted from vessels).

Violation towards MARPOL on the high seas is a matter only for the flag state.

If a disaster occur in the territorial sea of a contracting State or in the exclusive economic zone of a Contracting Convention State the ship owner has the right to limit his liability according to CLC 92 (Civil Liability Convention 92). Both Spain and France have ratified the CLC. Both the Erika and Prestige disasters have proved that both Spain and France have tried to avoid the CLC.

Industry concern regarding the protection of Seafarers

The term “criminalisation of seafarers” which was first used in the pages of Lloyd’s List in 2003, has now entered the industry lexicon to describe what many see as a growing trend towards making seafarers carry the can.60

This makes one ask why on earth anyone would aspire to senior rank, undertake all those years of study and examinations and the long years climbing the pole in the experience based profession if the seafarers will be criminalised and attacked in foreign port detained and abandoned by the ship owner.

Maritime Labour Convention 2006

The MLC (Maritime Labour Convention) may be in force during 2013. That means, in the future, every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be subject of inspection in accordance with the convention.

Inspections that may be carried out in the accordance with the convention shall be based on an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on ships entering a port of the Member concerned meet the requirements of this convention (including seafarers’ rights). 61

Hopefully the MLC will improve the seafarers working conditions and assist them if they are accused for criminal actions.

Key issues for Ship owners/Managers and Crew

If a casualty is not managed properly to protect both crew and company, the consequences could be dire and include the risk of severe penalties (custodial as well as monetary) for all concerned and a real danger of reputational damage. There can be little doubt that the approach taken by the media affects both public opinion and, potentially, the actions taken by the authorities. By keeping these issues in

60 Lloyd’s List June 21, 2012
61 Maritime Labour convention 2006
mind it may be possible to minimise the damaging impact of a casualty. Effective casualty management is essential following a high profile incident and an awareness of the potential for unfair treatment of the crew should be at the heart of the incident response.  

**Awareness of International Safeguards relating to the Fair Treatment of Seafarers**

For a ship owner and his crew to have a fighting chance of protecting the crew in the aftermath of a casualty it will be crucial that they, and their advisors, have an awareness of the safeguards available to seafarers under international law, both mandatory and non-binding. It is also important to ensure that local authorities and prosecutors are aware of those safeguards, preferably before charges are brought and the decision to prosecute is taken. They should also be aware of the potential for cross-border measures to be taken against them in particular circumstances. A ship owner’s representative, for example, should be aware that he could potentially be vulnerable to a European Arrest Warrant being issued in the aftermath of a casualty abroad.

**Information management – External and Internal**

Many parties with conflicting interests will pressure owners for the urgent provision of information. It will be crucial to put in place dedicated channels of communication to ensure that information is gathered and analysed as soon as possible so that a consistent approach can be adopted. Internal communications should also be carefully considered and managed, in particular in relation to the creation of post-incident documents. Particular care should be taken regarding the release of information and documents relating to causation. Such information should be carefully considered with your lawyers in the first instance.

**Media Strategy**

A common media strategy should be agreed upon with your lawyers and any external communication should be carefully considered in order to protect the crew and company’s reputation, to mitigate the risk of litigation or criminal prosecution and to manage public perception. In applicable cases, reassuring the public as to the existence of an international regime for the provision of compensation or crew release may assist in assuaging anxiety which will inevitably exist where significant pollution damage has occurred. Past cases have demonstrated that managing public perception regarding the availability of international regimes and possible compensation can assist in reducing the level of claims.

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62 The Swedish Club, Triton No 1 2012  
63 The Swedish Club, Triton No 1 2012  
64 The Swedish Club, Triton No 1 2012  
65 The Swedish Club, Triton No 1 2012
Lawyers warns of problems ahead

The shipping industry needs to stop paying lip service to seafarers and start treating them like an asset and not a commodity, Deirdre Fitzpatrick, executive director of Seafarers Right International (SRI) told the General meeting.

In a keynote address to members, Mr Fitzpatrick, who has spent her career protecting and promoting the rights of seafarers, told members she understood that words alone would not make this happen – but that SRI would work to highlight the issues and concerns of seafarers to the wider industry.

“The rights of seafarers affect all stakeholders in the industry”, she said. It is the industry’s interest that we tackle issues properly and professionally so we can resolve the problems we are facing at the moment.

Seafarers need to stop being abandoned, criminalised and attacked. Only then can the industry look forward to giving young talented professionals a career path that will make them feel valued, empowered and trusted.66

66 Nautilus telegraph November 2011