



## Regulatory Train Wreck

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# Our Situation

- The roles of governing regulatory bodies in the maritime & offshore energy industries have been slowly changing in recent years
- Once exclusively governmental functions are being ceded to private organizations being asked to regulate the same companies paying them
- Conflicts of interest are bound to arise

# Our Situation, continued

- Increased government regulations & costs to mariners exist with less understanding & effectiveness of the new rules
- The conflict between industry viability and excessive governmental oversight needs to be examined and responded to by the marine and offshore industry

# How Did This Happen? History

- **Increasingly costly regulation has squeezed the marine and offshore industries from all sides**
- **Regulatory structure drives costs for training, retention, and personnel upgrades to a critical extent**
- **The regulators are the Coast Guard, the classification societies, and insurance underwriters. The lines between functions have become blurred to the detriment of many parties in recent years**

# Marine Insurance Companies Create Classification Societies -1800s

- Classifications Societies-ABS, Lloyds, DNV- were created by the insurance companies to help reduce losses of vessels and resultant claims. Their approach was to supervise the design, construction, and maintenance of vessels so they could be operated more safely and at less risk to the owners and insurers.

# 1800s – Government Response

- Creation of licensing programs & loadline legislation administered by inspection & regulatory agencies
- Roles were fairly well defined, and ship owners were regulated by both
  - 1) the classification societies on behalf of the insurers, and
  - 2) governments, which are interested in orderly and safe commerce

# Maritime History Trends

- Inspection authority shift from USCG to ABS
- Classification societies market “Specialist Consultants in Risk Management,” sometimes to ship owners
- Ship owners deal directly with classification societies as advisors and approvers of their maintenance programs
- Many governments completely defer oversight functions to classification societies



# Maritime History Trends, Continued

- Operators of training schools are looking for new business and influencing the regulatory process

➤ THE BLURRING OF THESE FUNCTIONS HAS BEEN DRIVEN BY A SERIES OF EVENTS OVER A FEW DECADES...

# PORT SECURITY LAW

- USCG CAPTAIN OF THE PORT (a critical wartime function during WW1 and II) evolved into a hazmat, pollution monitoring, and cleanup role under the Federal Waterways Pollution Control Act of 1973
- Former Bureau of Marine Inspection & Navigation became grossly corrupt and was disestablished
- Strict rules established to avoid all appearance of corruption were successful and remain so today. Very few cases of USCG inspectors doing jobs for favors

# USCG Personnel - Public Law 219

- For decades, the Coast Guard drew a significant portion of its officers, and most of the marine inspectors, from the ranks of licensed merchant marine officers. Under Public Law 219, these officers were offered commissions and regular, long-term employment.
- These marine inspectors knew where to look, what was expected, and how to spot something being covered up.

# Evolution of the Coast Guard Regulatory Function

- OFFICERS – The long-standing internal culture clash that existed between the “M” types and other USCG officers
- ENLISTED PERSONNEL & WARRANT OFFICERS – Rotation assignments were based on experience and performance

# Coast Guard Regulatory Function Evolution

- Top level Coast Guard management change resulted in the reduction of Merchant Marine officers on active duty. The M-type officer pool of expertise was inexorably drained
- Both the number of ships and number of qualified people available to rotate into marine safety jobs decreased

# Coast Guard Regulatory Function Evolution

- From WWII to 1970s, USCG operating focus was Ocean Weather Stations
- Magnuson Act of 1976 created the 200 mile Exclusive Economic Zone & shifted Coast Guard strategy from a "Search and Rescue role" back to its historical role as federal maritime law enforcement agency
- The 1970s also saw the advent of major anti-drug smuggling efforts which drew heavily on ship resources

# Coast Guard Regulatory Function Evolution

- Retention and recruitment suffered "Post Viet Nam era which caused a decline in the level of experience and expertise, including typical field inspectors
- Most of the enlisted people in marine inspections today are from the Marine Science Technician rating

# Coast Guard Regulatory Function Evolution

- Many are not well equipped to make judgments on the overall operation and safety of ships due to lack of seagoing experience



# Coast Guard Inspection Personnel

- At the Coast Guard's middle and upper management level, there are in-depth training programs in marine safety. Specialists are trained in marine engineering and naval architecture at the best schools in the country, but they are typically not in the field doing port state and COI renewal inspections.

# Regulatory Improvements

- **Significant Regulatory improvements implemented in recent decades**
  - **COLREGS**
  - **US Inland rules rewritten into a coherent variant of COLREGS**
  - **Revision of the Merchant Mariner's Document in the 1990s**

# Regulatory Improvements

- 1970s Bridge to Bridge Radio Telephone Act improves operational safety
- 1980s license simplification
- 1989 Exxon Valdez disaster
- 1990 Oil Pollution Act – OPA 90
- SOLAS and USCG mutual approvals of safety gear

# Regulatory Messes

- 1978 - Attempt to harmonize US practices with IMO and international practices: Adoption of Convention on Standards of Training, Certification, and Watchkeeping
- 1995 Version – STCW 95 based on European standards with strong input from people who run the schools results in excessive required training and is difficult to understand by experienced Mariners

# Regulatory Messes

- And then I what?
- Getting sound advice is very difficult, even from the regulatory agencies themselves.
- It is beginning to resemble taxation where people go to tax preparers because the rules are so confusing.

# Regulatory Messes

- “The only good thing about STCW 95 was they didn’t charge me for walking in the door.”

# Regulatory Messes

- STCW 95 training requirements are expensive and time consuming
- Excessive cost is inflicted on every mariner today

# Regulatory Messes

- Many very capable people came up through the hawse pipe, not college
- STCW 95 makes it exceedingly difficult for a sailor supporting a family to afford to get a license
- Industry talent is going to be lost; STCW 95 is also locking out Veterans.



# Regulatory Messes

- Current cost to the mariner of an upgrade isn't worth the lack of a significant pay boost at the next level
- Some employers who are not paying for the upgrades of their employees will eventually feel the brunt of this as senior qualified people age, retire, or go to other industries

# Regulatory Messes

- USCG competing camps reduce effectiveness due to bureaucratic infighting
- For example, a GMDSS license costs the mariner \$2,000 plus expenses and 2 weeks of time
- Yet 7 years after the “required” license date was mandated, the USCG has still not finished installing DSC equipped radios at USCG units

# Regulatory Messes

- Bureaucratic ineptness in RECs works to the detriment of mariners
- Mariner licensing now being done by civilian employees with no marine experience
- Government inefficiency costs are imposed on mariners. Mariners and oilfield personnel needing licenses are not treated with common courtesy or professionalism by civilians at RECs.

# Recommendations

- Management oversight is needed at top levels to fix the REC problem
- Civilian positions in the federal government are not a lifetime entitlement of the person warming the chair. They can be filled with better people.
- Call and write your Congressman after your next visit to the REC while you are still hopping mad.

# 9/11 Impacts Marine Transportation

- More stringent access controls to port facilities
- USCG returns to legal authority and basic techniques of surveillance and control, enhanced by information technology
- Waterway patrols increased

# AIS Implementation and “Maritime Domain Awareness”

- Automated Identification System hardware on ships > 300 gross tons lacks significance
- Electronic industry benefits from a forced market but this system doesn't address what we are trying to keep from entering the country such as illegal immigrants, explosives, etc.

# Implementing ISPS

- Exorbitant spending on new security regulations, plans, and training manuals to implement them, **but to what end?**
- Ship crews are not armed, so they cannot effectively resist an attack.

# Recommendations

- The offshore and marine industries (through trade associations, owners, classification societies, and their congressional representatives) need to get the excessive regulation brought back to a reasonable level. This will not be an easy task.
- New requirements may make some regulators feel good, but do they really do anything besides increase paperwork and inflict more training requirements and costs on people and companies?



# SELF REGULATION SYSTEMS

- Several self regulation systems in existence have worked well. Certification of dynamic positioning operators has been done internally by the offshore marine industry for decades, with good results.
- Self regulation with appropriate spot checks and audits may be the best way to achieve the appropriate level of regulation in some areas.
- Some companies and parts of the industry are incapable of self regulation. We we need to be clear and honest about that inability.

# What needs to be done?

- The overall objective of the regulatory system is to insure that safe, reliable vessels are operated by competent crews.
- Three questions must be asked every time a new requirement is brought up:
  - 1) Will this make operations safer?
  - 2) How do you justify that contention?
  - 3) What is the cost and time required to implement the requirement?

# Summary & Key Points

- Start writing letters to the Commanding Officer of the USCG Marine Safety Office you deal with, the Chief of Marine Safety of the USCG District you are in (his or her boss).
- Hire a person with a good background tasked with keeping an eye on what's happening in regulatory situation.
- Pay attention outside your office to what's happening in the regulatory world. Recent trends do not bode well.