

Headlines:

USCG – conditions of entry re Cuba removed;
USCG – recreational boating safety;
FMC – user fees;
Offshore New York – Wind Energy Area;
DOJ – owner/operator sentenced to pay \$1.5 million;
FEMA – controlled equipment funding;
House – hearing on maritime budget request;
Senate – bill introduced re HMTF;
Court – ORB conviction overturned;
Court – statute of limitations;
California – proposed regulation withdrawn;
Tokyo – enclosed space entry CIC;
Australia – perpetual certificates (not);
Canada – fatigue-induced grounding;
Denmark – medicine chest substitution;
Panama Canal – bank guarantees;
Panama Canal – Neopanamax Locks transit video;
UK – instability-induced grounding; and
MREN – Responder immunity analyzed.

March 21, 2016



Bryant's Maritime News

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Note: This newsletter is one section of the [Bryant's Maritime Consulting](http://brymar-consulting.com) website. Visit the site for more extensive maritime regulatory information. Individual concerns may be addressed by retaining [Dennis Bryant](mailto:dennis.l.bryant@gmail.com) directly. Much of the highlighted text in this newsletter constitutes links to Internet sites providing more detailed information. Links on this page may be in PDF format, requiring use of Adobe Acrobat Reader. Comments on these postings are encouraged and may be made by email to the editor or by going to the blog page on the website and clicking the envelope that appears at the end of each posting. Be aware that the daily newsletter is a single posting, even though it contains a number of individual items. Gravity waves were found to be hiding behind the dark matter.

USCG – conditions of entry re Cuba removed



The US Coast Guard issued a [news release](#) stating that it has removed the Conditions of Entry on vessels arriving from Cuba. Following a comprehensive assessment, the Coast Guard has determined that Cuba meets the

ISPS Code requirements and has effective security measures in its ports. (3/17/16) [located at <http://www.uscgnews.com/go/doc/4007/2798438/>].

USCG – recreational boating safety



The US Coast Guard seeks public comment on its draft Strategic Plan for the National Recreational Boating Safety Program 2017-20121. Comments must be submitted by 20 April. **81 Fed. Reg. 15115** [located at <https://www.gpo.gov/fdsys/pkg/FR-2016-03-21/pdf/2016-06303.pdf>] (3/21/16).

FMC – user fees



The Federal Maritime Commission (FMC) issued an advance notice of proposed rulemaking (ANPRM) inviting public comment on whether the agency should amend its user fee regulations to raise some fees, lower others, and repeal certain existing fees. Comments are due by 18 April. **81 Fed. Reg. 15002** [located at <https://www.gpo.gov/fdsys/pkg/FR-2016-03-21/pdf/2016-06241.pdf>] (3/21/16).

Offshore New York – Wind Energy Area



The Bureau of Ocean Energy Management (BOEM) issued a **notice** stating that a Wind Energy Area (WEA) offshore New York has been identified. BOEM is now in the Area Identification stage of the leasing process. (3/17/16) [located at <http://www.boem.gov/New-York/>].

DOJ – owner/operator sentenced to pay \$1.5 million



The Department of Justice (DOJ) issued a **news release** stating that the owner and operator of the general cargo ship BBC Magellan have been sentenced to pay \$1.5 million for illegally discharging oil into the ocean and witness tampering. (3/15/16) [located at <https://www.justice.gov/opa/pr/german-shipping-companies-sentenced-pay-15-million-illegally-discharging-oil-ocean>].

FEMA – controlled equipment funding



The Federal Emergency Management Agency (FEMA) issued a **revised Bulletin** providing guidance regarding requirements when applying for, or expending grant funds for, controlled equipment expenditures and using grant-

funded controlled equipment. Controlled equipment includes such items as weaponized vessels. (3/9/16) [located at http://www.fema.gov/media-library-data/1457552476909-8a3ac9d646ee16ffde4f1d2e4c580aa7/IB407_Controlled_Equipment_Revised_FINAL.pdf].

House – hearing on maritime budget request



The Subcommittee on Coast Guard and Maritime Transportation of the House Committee on Transportation and Infrastructure conducted a **hearing** on “The President’s Fiscal Year 2017 Budget Request for Coast Guard and Maritime Transportation Programs”. Testimony was received from: Admiral Paul F. Zukunft, USCG; the Honorable Paul “Chip” N. Jaenichen, Sr., Maritime Administration; and the Honorable Marion Cordero, Federal Maritime Commission. [located at <http://transportation.house.gov/calendar/eventsingle.aspx?EventID=399880>] (3/15/16).

Senate – bill introduced re HMTF



Senator Murray (D-WA) introduced a bill (S. 2729) to require full spending of the Harbor Maintenance Trust Fund, provide for expanded uses of the Fund, and prevent cargo diversion, and for other purposes. Official text of the bill is not yet available, but Senator Murray issued a **news release** explaining the measure [located at <http://www.murray.senate.gov/public/index.cfm/newsreleases?ID=8CoDo48B-BDA5-4A29-843D-E31D2F019E7F>]. (3/17/16).

Court – ORB conviction overturned



The US Court of Appeals for the Fifth Circuit vacated the conviction of a vessel’s chief engineer for failing to maintain an oil record book (ORB). The defendant had improperly discharged oily waste water overboard while the ship was in international waters and had concealed that discharge in the ORB, which was then signed by the master. After the ship arrived in a US port, the Coast Guard discovered the improper entry and charged the defendant with, among other things, failing to maintain the ORB as required by federal regulation. Defendant’s motion for acquittal of the ‘failure to maintain’ charge was overruled and he was convicted of all charges. He appealed the ‘failure to maintain’ charge. The appellate court overturned that conviction. Close examination of the applicable federal regulation revealed that only the master or ‘other person

having charge of a ship' is required to keep and maintain the ORB. As the defendant was neither, he could not be convicted of the offense. **United States v. Fafalios**, No. 15-30146 (5th Cir., March 14, 2016) [located at <http://www.ca5.uscourts.gov/opinions/pub/15/15-30146-CR0.pdf>]. *Note: This decision will undoubtedly move the Coast Guard to reexamine and revise the regulation.*

Court – statute of limitations



The US Court of Appeals for the Second Circuit affirmed dismissal of an action brought by various investors against the owner and operator of offshore oil and gas drilling rigs (including the former Deepwater Horizon) for securities fraud. Plaintiffs alleged that the defendants made material misstatements in proxy statements for the planned merger with GlobalSantaFe concerning its environmental compliance, training, and safety standards. Without getting to the merits of the allegations, the court held that the suit was barred by the statute of limitations. **DeKalb County Pension Fund v. Transocean**, No. 14-0894-cv (2nd Cir., March 17, 2016) [located at http://www.ca2.uscourts.gov/decisions/isysquery/ca28accf-98bd-4d30-8d57-f254112e4b07/3/doc/14-894_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/ca28accf-98bd-4d30-8d57-f254112e4b07/3/hilite/].

California – proposed regulation withdrawn



The California State Lands Commission (SLC) issued a **notice** stating that it is formally withdrawing its proposed regulations titled Article 4.9, Marine Invasive Species Act Enforcement and Hearing Process. A new proposal will be published shortly. (3/18/16) [located at <http://www.slc.ca.gov/Laws-Regs/Proposed-MISP4-9.html>].

Tokyo MOU – enclosed space entry CIC



The Tokyo MOU issued a **press release** stating that the Concentrated Inspection Campaign (CIC) on Crew Familiarization for Enclosed Space Entry was carried out between 1 September and 30 November 2015. Of the 6826 inspections conducted, 96% of the ship's provided evidence of the crew having participated in an enclosed space entry and rescue drill at least once every two months as required. [located at <http://www.tokyo-mou.org/doc/Press%20Release%20CIC%20results%20-%20Enclosed%20space%20entry.pdf>] (3/18/16).

Australia – perpetual certificates (not)



The Australian Maritime Safety Authority (AMSA) issued a notice reminding stakeholders that previously-issued Certificates of Proficiency as Rating and Certificates of Safety Training issued in perpetuity (with no expiry date) will expire on 31 December 2016. Affected certificates must be revalidated in accordance with STCW requirements. **Marine Notice 07-2016** [located at <https://apps.amsa.gov.au/MOREview/MarineNoticeExternal.html>] (3/17/16).

Canada – fatigue-induced grounding



The Canadian Transport Safety Board (TSB) issued the **report** of its investigation of the grounding of the tanker Nanny in Chesterfield Inlet, Nunavut on 14 October 2014. As the tanker was departing the inlet, the master ordered port rudder. Mistakenly, the helmsman turned to starboard. It took 51 seconds for the error to be noticed. By then, it was too late to avoid the grounding, which cracked the tanker's ballast tanks. Investigators determined that both the master and the helmsman were fatigued. (3/17/16) [located at <http://www.tsb.gc.ca/eng/rapports-reports/marine/2014/M14C0219/M14C0219.pdf>].

Denmark – medicine chest substitution



The Danish Maritime Authority (DMA) issued a **news release** stating that, due to the current difficulty in obtaining 7.4 Erythromycin for a ship's medicine chest, 500mg tablets of Clarithromycin may be substituted. [located at <http://www.dma.dk/news/Sider/ChangeofmedicinechestsAandBbecauseofsupplyproblems.aspx>] (3/18/16).

Panama Canal – bank guarantees



The Panama Canal Authority (ACP) issued an advisory explaining the four types of bank guarantees available to vessel agents for transit and harbor-related services. **Advisory 10-2016** [located at <https://www.pancanal.com/common/maritime/advisories/2016/a-10-2016.pdf>] (3/14/16).

Panama Canal – Neopanamax Locks transit video



The Panama Canal Authority (ACP) issued an advisory announcing the availability of a video to acquaint stakeholders with the transit process for the new Neopanamax Locks and explain how those locks will operate. **Advisory 11-2016** [located at <https://www.pancanal.com/common/maritime/advisories/2016/a-11-2016.pdf>] (3/17/16)

UK – instability-induced grounding



The UK Marine Accident Investigation Branch (MAIB) issued the report of its investigation of the listing, flooding, and grounding of the vehicle carrier Hoegh Osaka on the Bramble Bank in The Solent on 3 February 2015. The vessel's stability did not meet the minimum international requirements for ships proceeding to sea. The cargo loading plan had not been adjusted for a change to the ship's usual journey pattern and the number of vehicles planned for loading differed markedly from those actually loaded. The assumed distribution of ballast bore no resemblance to the actual situation. **Report 6-2016** [located at <https://www.gov.uk/maib-reports/listing-flooding-and-grounding-of-vehicle-carrier-hoegh-osaka>] (3/17/16). *Note: One or more individuals took their eyes off the ball.*

MREN – Responder immunity analyzed



In the March 2016 edition of Maritime Reporter and Engineering News, you can find my article entitled "**Responder immunity analyzed**". In the article, I discuss the implications of the recent federal court decision that, when acting at the direction of the federal on-scene coordinator, spill responders are entitled to the same immunity as is accorded federal agencies. (3/20/16).

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If you have questions regarding the above items, please contact the editor:

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