

September 2007

## **Re-balancing the Coast Guard**

**Dennis L. Bryant**

In the interest of full disclosure, I must advise those who read further that I am a retired Coast Guard Captain and a graduate of the US Coast Guard Academy. While I had my occasional frustrations with bureaucracy, I thoroughly enjoyed my 27 years of active duty. I think the Coast Guard is much too valuable an organization to be gutted, but I also think that it is in need of some course corrections.

The Coast Guard is, and always has been, a multi-mission organization. It is an amalgamation of many smaller agencies that bore many names: the Lighthouse Service, the Revenue Cutter Service, the Life-Saving Service, and the Bureau of Marine Inspection and Navigation, to name only a few. Everyone who is familiar with the Coast Guard is amazed at how it accomplishes so much with so few people and so little funding.

In addition to acquiring some smaller agencies, the Coast Guard also gained missions or has had increased emphasis placed on old missions. An example of the latter involves the interdiction of rum-runners during the Prohibition Era. Anti-smuggling was an original mission of the Revenue Cutter Service when it was founded in 1790, but faded into the background over time. Prohibition brought an onslaught of smugglers and placed tremendous strains on the Coast Guard, which for that short time reorganized and refocused its efforts to concentrate on this new threat. The port security mission (now known as maritime security) was first assigned to the Coast Guard in 1917, but was essentially a wartime (or Cold War) mission.

During World War II, the Coast Guard temporarily acquired the mission of administering the US merchant marine. This was made a permanent mission of the Coast Guard after the war ended and has remained so since that time. The US merchant marine is a large and important industry. The foreign merchant marine, on which the US economy heavily relies, is even larger.

The Coast Guard does not operate the merchant marine. It does, though, regulate it. As important, it partners with both the domestic and the foreign merchant marine to enhance marine safety, marine environmental protection, and (increasingly) maritime security. The term "partners with" is key. While the Coast Guard may, in some cases, set the course and lead the effort, this work is of no value if the merchant marine does not, for the most part, willingly follow. The merchant marine is composed of entrepreneurs and of civilian workers. If the

**E-mail**

[dennis.l.bryant@gmail.com](mailto:dennis.l.bryant@gmail.com)

**Internet**

<http://brymar-consulting.com/>

**Maritime Reporter & Engineering News**

<http://marinelink.com/en-US/magazines/Archive.aspx?MID=3>

conditions become oppressive or excessively expensive, these dedicated and skilled individuals will go elsewhere. In a democracy, one place they may go is to their representatives, seeking a change in the arrangement between their industry and the government agency that oversees that industry.

The marine industry is currently of the opinion that the US Coast Guard does not sufficiently appreciate the industry's role and has become so focused on maritime security issues that it is running roughshod over the merchant marine. The perception is that incidents that might have been ignored in the past, or resulted in no more than a warning, are now treated by the Coast Guard as major events, leading to adverse and expensive consequences for individual merchant mariners and for ship and facility owners and operators. The industry has now brought its concerns to the attention of Congress, which held two oversight hearings in July 2007, examining perceived deficiencies in the Coast Guard's administration of the industry.

The first of the oversight hearings looked into allegations that the relationship between administrative law judges (ALJs) who adjudicate suspension and revocation hearings involving US merchant mariners and the Coast Guard officers who both investigate allegations of negligence by mariners and prosecute those charges has become too cozy. The second of the hearings examined whether the Coast Guard is performing an adequate job of carrying out its mission of enhancing marine safety. Neither hearing came to any conclusion. The first hearing, though, brought to light several individual examples of possibly ill-advised or questionable activities regarding the suspension and revocation process. The second hearing showed the industry's great displeasure with the recent security and law enforcement emphasis of the Coast Guard. The hearings have brought calls for legislation to: (1) remove the ALJ function from the Coast Guard, and (2) transfer the marine safety function to a new Marine Safety Administration to be created in the Department of Transportation.

Otto von Bismarck is credited with saying: "Laws are like sausages. It's better to not see them being made." (If he didn't say it, he should have.) Seeking a change in statutes is risky. One never knows what will come out the other end of the process. Therefore, if a problem can be resolved without legislative change, always opt for the non-legislative solution. I would like to propose several course corrections that the Coast Guard may undertake that do not require any particular action on the part of Congress.

The three most important actions that the Coast Guard can take to improve both its relationship with the marine industry and its leadership of the marine safety, marine environmental protection, and maritime security programs are: outreach, outreach, and outreach (don't ask me to repeat myself). It is vital that the Coast Guard (at the national, regional, and local level) meet with the industry, explain its goals, and listen to the comments of industry with an open mind and a willingness to adopt changes. It is counter-productive for the Coast Guard to call a meeting with the industry to discuss issues and then dictate to them. It sends the wrong signal when the Coast Guard representatives at a business meeting are attired in the operational dress uniform or when Coast Guard personnel on routine marine safety boardings carry side arms.

Outreach is not a one-time effort, but a continuing process. Most Coast Guard personnel are not merchant mariners and have not managed a shipping company. They don't understand all the things involved in operations on a merchant ship or within the marine industry. Therefore, they should not pretend that they do have that level of understanding!

Rather, the Coast Guard representatives should meet with industry and explain their particular goals (such as enhanced maritime security in the Port of Jacksonville). They should then partner with the industry – the mariners, the ship owners and operators, the facility managers, the local interests (i.e., pilots, marine information exchanges, marine police, etc.), and the labor unions – to achieve that goal in a cooperative manner with the minimum of unintended adverse consequences. In almost every instance, there are multiplicities of methods by which the goal can be reached. Through true partnerships, the goals can be refined and achieved in a cooperative manner with minimal collateral damage. Dictating the solution will not only create unneeded discontent, but will also result in application of the law of unintended consequences.

Outreach, as important as it may be, is not the only measure that the Coast Guard should undertake. The agency should immediately terminate its zero-tolerance policy. As even the Coast Guard now knows, anyone can make a mistake. Perfection is a laudable but unachievable goal. Not every infraction needs to be treated as a federal case. While the agency will contend that it cuts the industry an appropriate amount of slack, the perception is otherwise. More emphasis must be placed on partnering to rectify shortcomings rather than “sending a message” by taking disciplinary action, imposing a civil penalty, or detaining a vessel. The goal should be education and improvement. In this regard, counseling and use of warning letters, except in the most extreme cases, are more likely to achieve the desired results.

Other measures that the Coast Guard should adopt to improve its stature in the marine community include the expediting of rulemakings and the publication of the results of marine casualty investigations. Various rulemaking projects, which are important to the marine industry, have languished for years, while the Coast Guard pursues the mission de jour or reorganizes once again. These rulemakings must come to resolution and be promulgated. The Coast Guard has a poor track record when it comes to publication of the results of its marine casualty investigations. These investigations are undertaken for the primary purpose of identifying the cause and reducing the likelihood that a similar casualty will occur in the future. This goal cannot be met if the results of the investigation are not shared with the marine community. Other safety agencies (particularly the UK Marine Accident Investigation Branch – MAIB) routinely publish their reports and post them on the Internet. There is no sound reason that the Coast Guard cannot do the same.

Finally, a few comments must be made regarding the Coast Guard's suspension and revocation process. The agency has been operating this as an ad hoc process for years. Marine casualty investigators are generally (but not always) well trained in the task of identifying whether there has probably been an act of misconduct, incompetence, negligence, unskillfulness, or willful violation of the law by a US merchant mariner. That training and experience is not the

skill-set required to handle the increasingly legalistic process of prosecuting a suspension or revocation proceeding before an ALJ. In today's litigious environment, mariners retain experienced attorneys to defend their license or merchant mariner's document. Sending a non-lawyer into that proceeding as the government's representative will often have one of two results: either the non-lawyer representative gets overwhelmed or the ALJ takes steps to protect the non-lawyer and the government's position. It should not be presumed that this happens all the time, but once is too often. Rather than put the non-lawyer in this difficult position and possibly cause the ALJ to step out of his or her neutral role, there is an alternative. The Coast Guard should promptly adopt the policy of having the prosecution of its suspension and revocation proceedings handled exclusively by Coast Guard lawyers assigned to the Office of the Judge Advocate General. The combatants at these proceedings will then have the same basic qualifications and the ALJ can retain the appropriate level of impartiality.

The Coast Guard has come under criticism in the past for over-emphasis of one mission and too little emphasis of another mission. Many times the criticism is misplaced. When the complaints have hit the mark though, as they have here, the Coast Guard has shown the judgment and maturity to undertake a re-evaluation and to make the appropriate course corrections. There is no doubt that it will do so in this instance and rebalance its priorities. Hopefully, the above comments will be perceived as constructive criticism and will receive appropriate consideration.