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The Long, Tragic History of 46 USC 10104, AKA “The Federal Shipboard Sexual Assault Allegation Reporting Law”

*The Long, Tragic History of 46 USC 10104, AKA
“The Federal Shipboard Sexual Assault Allegation
Reporting Law,” AKA “The Skipper Reporting Law.”*

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On November 3, 2020, the [United States Coast Guard Hearing Office](#) issued a Preliminary Assessment Letter (PAL) to [Maersk Line, Limited](#) (MLL) notifying the company that it was facing a fine of \$10,000 for a violation of [46 USC § 10104](#), also known as the *Federal Shipboard Sexual Assault Allegation Reporting Law*. On its face, the November PAL appears to represent a routine civil penalty by the Coast Guard

Hearing Office against an American shipping company - designed to deter future violations of a federal statute. However, the PAL and the \$10,000 fine actually represent something much more significant: The \$10,000 fine issued against MLL is the first known case of enforcement of [46 USC § 10104](#), which was added to the [U.S. Code](#) in 1990. This U.S. Coast Guard (USCG) enforcement action against MLL, for a violation of the sexual assault allegation reporting requirement of [46 USC § 10104](#), represents a significant policy shift by the USCG. This shift has the potential to fundamentally change the way the USCG and the entire U.S. maritime industry handle the issue of shipboard sexual misconduct. While the USCG may finally be poised to take the issue of shipboard sexual assault seriously, the history of [46 USC § 10104](#) and the human suffering that has occurred in the U.S. maritime industry because of the U.S. Coast Guard's unwillingness to enforce the *Federal Shipboard Sexual Assault Allegation Reporting Law* has been tragic.

There is no way to know how many *reported* sexual assaults have gone *unreported* by vessel operators in violation of [46 USC § 10104](#) over the past 31 years. Nonetheless, in an industry with [more than 215,000 U.S. Coast Guard-credentialed mariners](#), the number of illegally unreported shipboard sexual assault allegations is likely in the hundreds or even in the thousands. The reported sexual assaults in the maritime industry likely represent only a fraction of the onboard sexual assaults that have actually occurred. According to the Rape, Abuse & Incest National Network ("[RAINN](#)"), the largest anti-sexual violence organization in the United States, [2/3 of all sexual assaults go unreported](#). The unique conditions of shipboard workplaces such as extended sea passage times, lack of communication with home, stressful and hazardous jobs, and a hierarchical command structure with often only the highest ranking officers communicating with the company office, the number of unreported onboard assaults could even be greater.

One of the most consequential results of the illegal non-reporting of shipboard sexual assault allegations is that the perpetrators have escaped justice and even escaped legal scrutiny, which, as this article will show, has been demonstrated to create more victims in the industry as they inevitably continue their predatory behavior. While not quantifiable, over the course of more than thirty one years, the non-enforcement of [46 USC § 10104](#) and the toleration of sexual assault by the USCG and the U.S. maritime industry has certainly taken a tragic toll on American mariners.

The History of [46 USC § 10104](#)

In November of 1987, Congressman Mike Lowry of Washington State [wrote to the U.S. Government Accountability Office \(GAO\)](#) requesting information on sexual assaults committed against women working aboard vessels in the U.S. maritime industry. The GAO is often referred to as the "congressional watchdog," and the agency is tasked with providing fact-based, nonpartisan information to Congress. Congressman Lowry had been persuaded to seek a GAO investigation into the issue of shipboard sexual assaults against women by the efforts of the [Women's Maritime Association](#) (WMA), based in Seattle, Washington.

The WMA formed in 1980 as a support network for seafaring women and was the first organization of its kind. Members of the WMA included women who worked on fishing boats, seafood processors, oil tankers, tugboats, research boats, deep sea merchant ships, ferries, and warships of the U.S. Navy and Coast Guard. Part of the WMA's founding mission was to "take whatever steps necessary to insure women's right to work, free of harassment." From its inception, members of the WMA began advocating for legislation to eliminate sexual harassment and sexual abuse at sea. Anne Mosness became president of the WMA in 1984, and Mosness is perhaps the person most responsible for the enactment of 46 USC § 10104.

In an interview with the author, Mosness described why she dedicated nearly a decade trying to make the maritime work environment safer for all seafarers:

One summer, my dad needed an extra crewperson for a few weeks on his fishing boat in Alaska. It was wild and fun and after a couple seasons, I bought my own boat. I was delighted to find the Women's Maritime Association and other adventurous women who exchanged information about maritime job opportunities and training programs, balancing relationships and families with careers, skills needed to be valuable workers, safety concerns of being isolated, and especially because we were women entering traditionally male workplaces, and there was always the risk of being subjected to verbal or sexual harassment, or worse.

Occasionally, we'd be told that someone had to deal with intrusive physical touching, intimidation, threats of pay being withheld or loss of employment if sexual favors weren't granted. Extremely disturbing were reports of sexual assaults, including several rapes aboard tankers owned by one of the major American oil companies.

We heard of threats of "sex or swim" and of women tossed off their vessels. In 1982, Lucy Gwin published "Going Overboard," about working on a supply boat running out to the Gulf of Mexico offshore oil fields. Although thrown off the boat, she survived to write the book.

We learned of the Sexual Abuse Act of 1986 that provided specific penalties of imprisonment and fines for sexual crimes that occurred onboard vessels upon the high seas. Yet, law enforcement officers weren't prepared to investigate shipboard sexual violence or even take reports. Many victims feared retaliation, and others simply left the industry where they'd once been excited to work. As captain of my own boat, I didn't fear reprisals, and as a former counselor in a sheltered workshop, I cared deeply about helping people dealing with abusive situations. We reached out to members of Congress, describing the risks women faced and asking them to investigate. Eventually we persuaded Congressman Mike Lowry to write to the GAO so the information we were receiving could be verified and remedies put into place.

Because of Lowry's November 1987 request, which was the result of years of determined work by Anne

Mosness and the WMA, the GAO undertook a study in 1988 to examine the problems experienced by women working on the water. The GAO investigation eventually resulted in two official reports to Congress. The first report was released in December 1988 and titled "[Coast Guard: Information Needed to Assess the Extent of Sexual Assaults on Ships.](#)" The second GAO report titled "[TUNA/PORPOISE OBSERVER PROGRAM: More Needs to Be Done to Identify and Report Harassment of Observers.](#)" was delivered to Congress in November 1990.

The 1988 GAO Report (the "Coast Guard GAO Report") was the most consequential and eventually led to the passage of 46 U.S. Code § 10104. The Coast Guard GAO Report began with a short response to Congressman Lowry outlining the scope of the investigation the GAO had conducted. It began:

Dear Mr. Lowry:

This report responds to your November 4, 1987, request for information regarding sexual assaults on women working in the U.S. merchant marine. In subsequent discussions with your office, we agreed to (1) determine the number of women documented, licensed, and working in the U.S. merchant marine and selected other occupations; (2) determine, to the extent possible, the number of shipboard sexual assaults on women reported to government agencies in the Pacific Northwest states of Washington, Oregon, and Alaska; and (3) examine whether changes are needed in laws and regulations relating to sexual assaults on women working aboard ships at sea.

The WMA was pleased to learn that a GAO investigation into their concerns was initiated, however the organization expressed concerns about the scope of the study—particularly the fact that the investigation into shipboard sexual assaults was limited to only three Pacific Northwest states. According to the May/June 1988 edition of the WMA newsletter, the WMA believed "the investigation was too limited to adequately determine the extent of the problems women face when they are isolated, in often hostile working environments, without support or legal redress. We have asked that the investigation be continued and expanded to all areas of the country."

Despite the initial concerns, the WMA played an important role in helping the GAO conduct its continued investigations. Through word of mouth and through its newsletter, the WMA leadership urged members who had been the victims of sexual misconduct at sea to write about their experiences and then submit those stories to the GAO. The GAO subsequently interviewed many of the women who submitted testimonials and investigated their claims.

The findings of the [Coast Guard GAO Report](#) were horrific. The Report painted a picture of an industry where sexual harassment and sexual violence against women were rampant, where serious sex crimes committed aboard vessels were almost never reported to law enforcement, and where perpetrators were rarely punished in any way. The GAO discovered evidence of numerous sexual assaults that had been

committed against female mariners aboard ships, none of which were ever reported to the USCG or any other law enforcement agency by the vessels' captains or the shipping companies that operated the vessels.

In one instance, the GAO investigated the rape of an American female mariner—a sexual assault alleged to have occurred on Christmas Eve in 1981 aboard a U.S. flag tanker off the coast of California. According to the GAO report:

This alleged sexual assault occurred on Christmas Eve 1981 aboard a U.S. tanker off the coast of California. The victim, a documented female mariner, alleged that she was attacked and raped while asleep by another seaman aboard the tanker. She managed to escape her assailant and reported the incident to the ship's officers. She then insisted on leaving the vessel to visit a doctor ashore. In investigating the alleged incident, the ship's captain discovered that the victim and another crew member, the ship's third mate, had been drinking prior to the incident and that the victim was in the third mate's bed at the time of the alleged rape (the latter was away from his room on duty at that time). For drinking aboard the ship in violation of ship's rules, the master fired both the alleged victim and the third mate [but not the alleged rapist].

According to a Coast Guard official, the ship's captain did not report the alleged crime. Once ashore, the victim herself reported the assault to the Coast Guard and later to the FBI. We were told by one knowledgeable retired Coast Guard official that three Coast Guard district offices declined to investigate the incident until the victim finally prevailed upon one of them to initiate an investigation. The investigation eventually resulted in a formal hearing before a Coast Guard administrative law judge. The accused was found guilty of misconduct and the ruling was upheld on appeal, resulting in revocation of his seaman's documents.

An important piece of evidence in the Coast Guard administrative hearing and later in a separate civil suit brought by the victim was the tanker company's personnel record on the accused. This record showed that as many as eight women employees had previously complained to employer representatives of some type of offensive sexually related behavior by him. One woman who had previously worked with the accused testified at the hearing that he had repeatedly offered her money if she would sleep with him and had promised her overtime if she would grant him sexual favors.

The terrible ordeal suffered by the female mariner highlighted several serious problems, including: 1) the willingness of a shipping company to employ a senior officer who had already been accused of sexual misconduct by as many as eight different women, 2) the intentional failure of the captain and shipping company to report her rape allegation or any of the previous allegations of sexual misconduct against the officer to the USCG or to any other law enforcement agency, 3) the unwillingness of the USCG to even investigate her rape allegation once the victim herself reported the crime, and 4) the retaliation the victim faced from the ship's captain and the shipping company once she came forward to report that she had been

raped by one of the ship's senior officers.

It was only through incredible persistence that the victim was able to prevail upon the USCG to investigate the crime and to eventually have the officer's license revoked by an administrative law judge. The brave survivor spared an untold number of other women the horror of working aboard a vessel with a known sexual predator, but the effort required to achieve that outcome was truly extraordinary.

In an interview with the author, Anne Mosness described that in her position as president of the WMA she had assisted the victim for several years following her rape. According to Mosness, after prevailing in her civil suit, the woman was reinstated into her position aboard the tanker, but then suffered such unrelenting hostility from her fellow crew members that she soon left maritime work entirely.

In another case, the GAO was told of the rape of an American female mariner aboard a different U.S. flag oil tanker. The story was recounted to the GAO directly by the victim, who contacted the GAO after she read about the ongoing investigation in the WMA's newsletter. According to the GAO:

Requesting that she not be publicly identified, this woman told us that she had experienced several incidents of sexual assault and harassment in her career in the merchant marine. The alleged rape occurred on New Year's Eve of 1982, a year after the widely publicized rape aboard another tanker described in case 3 above. The incident occurred after the victim, the assailant, and several other crew members had returned to their ship after drinking and dancing ashore. The alleged victim had returned alone and gone to her room to sleep. Her assailant came into the unlocked room (company safety regulations, she said, required that rooms be kept unlocked), and because of his greater strength was able to overcome her attempts at resistance and raped her. The alleged victim claimed that she did not cry out for help—or report the incident later—because she feared that she would suffer repercussions if she did. She believed then, and remains convinced, that the burden of proof would have been on her to establish that she had not instigated the affair. It seemed easier, she told us, to live with the secret of being raped, than to expose herself to public embarrassment and censure.

In another case, the GAO investigated alleged sexual harassment and abusive sexual contact against an American female mariner aboard a U.S.-flag grain ship. According to the GAO Report:

The victim, a graduate of the U.S. Merchant Marine Academy, was employed as relief third mate aboard a grain ship bound for Bangladesh from the East Coast. She was dismissed by the ship's captain in Portland, Oregon, allegedly for job misconduct. She disputed the charge, claiming that the captain, opposed to having a woman on his ship, had been trying to have her removed from the moment she came aboard. Because of his blatant hostility, she alleged, including the making of derogatory remarks and references to her in sexually degrading terms, she lived and worked in an atmosphere of constant intimidation and had no support or recourse against the sexual advances of the chief mate, who repeatedly

propositioned her and touched parts of her body. After her dismissal, the alleged victim lodged a grievance through her union representative and a complaint of sexual harassment and other charges with the EEOC. Her case was settled without going to hearing or arbitration under an arrangement in which she received a financial settlement in the amount of wages that would have been due for the uncompleted portion of the voyage and the expunging of all adverse comments from her personnel record.

In another case, the GAO found that a crew member aboard a passenger vessel in Hawaii sexually assaulted another female crew member and threatened two female crewmembers with violence in front of several witnesses. The assaulting crew member subsequently received only a 3 month suspension of his U.S. Coast Guard merchant mariner credential as punishment for his conduct. According to the GAO Report:

This case, also involving abusive sexual contact as defined by the Sexual Abuse Act, was one of only two such cases reported to us by U.S. Coast Guard headquarters as a result of a search of its automated database of administrative law judge decisions and orders. The incident in question occurred on December 11, 1986, aboard a U.S. passenger liner moored in Hilo, Hawaii. An intoxicated male crew member of the ship, after verbally abusing a female crew member in a bar ashore, including making lewd and obscene statements to her in a loud and threatening manner, resumed this behavior some minutes later aboard ship. Pursuing two female crew members in a threatening manner, speaking vulgarities, and touching the body of one of them, the assailant followed them into the ship's galley and in front of several witnesses threatened them. As a result of his behavior aboard ship, the assailant was fired from his job and served with a charge of misconduct at the Coast Guard's Marine Safety Office in Honolulu. He was found guilty at an administrative hearing, and his merchant mariner's document was suspended for 3 months with an additional suspension of 6 months remitted on 12 months probation.

For sexually assaulting a female crewmember, and sexually harassing and threatening two female crewmembers with violence while intoxicated, the mariner's ultimate punishment from the USCG Administrative Law Judge was a 3 month suspension of his merchant mariner's credential. After that 3 month suspension, he was free to work anywhere in the industry.

In total, the [December 1988 Coast Guard GAO Report](#) detailed eight separate incidents involving sexual assault against female mariners aboard documented vessels in the U.S. merchant marine, finding that "*more sexual assaults actually take place than are reported to authorities.*" Regarding the reasons that mariners may be reluctant to report sexual assaults and sexual misconduct aboard ships, the GAO report noted the following:

According to a retired senior Coast Guard investigator, a psychologist, attorneys in private practice, and several women who had worked at sea, conditions of work aboard ship impose particular pressures on victims to refrain from reporting sexual assaults and related offenses. Specifically, they said that the shipboard setting constitutes a self contained, confined, and isolated work environment characterized by a

special set of social relationships and interpersonal dynamics. With crew members highly dependent on one another, living and working at close quarters and predominantly male, women crew may experience an atmosphere of resentment, sexual innuendo, harassment, and even intimidation. Under such conditions, they may fear incurring the animosity of male crew members by reporting instances of sexual assault and related offenses. They are also fearful of doing anything that might cause them to lose their jobs, which pay considerably better than jobs on land for which they might be qualified...

One of the victims told us that of the approximately 12 women she knew of who had worked at sea, all but two had some experience of harassment involving force or threats. Most, she said, tended to view this with a certain resignation as something that goes with "the territory." In view of the apparent reluctance of many victims of rape and other sexual offenses to report these incidents to authorities, we have no way of determining how many offenses of this nature may actually be taking place within the merchant marine or in other at sea occupations.

The [Coast Guard GAO Report](#) found that the USCG did not take the issue of sexual assault at sea seriously, and noted that GAO investigators "*found it difficult to compile statistics on sexual assault at sea, because the Coast Guard, lacking a requirement or procedure for systematically reporting and centrally compiling information relating to sexual assaults committed aboard merchant ships, was unable to provide us with information concerning cases not already known to us.*" The GAO Report released in December 1988 also identified a critical gap in federal law: there existed no legal requirement for the master or other individual in charge of a Coast Guard documented to report allegations of shipboard sexual assault to the United States Coast Guard or to any other legal authority.

The [Coast Guard GAO report](#) concluded the following:

Currently, the Coast Guard has no specific requirements for the reporting of shipboard sexual assaults and other offenses covered by the Sexual Abuse Act... While the Coast Guard maintains a marine casualty reporting system that requires ships' masters and other responsible officers to report various shipboard occurrences, including any death or injury that involves incapacitation for over 72 hours, these regulations have been viewed within the Coast Guard as relating primarily to the safe operation of the vessel itself rather than to the welfare and well-being of individual crew members.

Coast Guard officials could not identify any provision of the marine casualty reporting regulations that would require ships' officers to report injuries (defined by us to include both physical and emotional traumas) that do not result in 72-hour incapacitation of the victim. By the same token, these officials were unable to cite any other statutory or regulatory provisions that would require that incidents of sexual assault and related offenses committed aboard ship be reported to the Coast Guard.

Our work revealed no instances of sexual assaults or related sexual offenses reported to the Coast Guard

through the marine casualty reporting system. Moreover, information obtained from women mariners tended to confirm that such incidents are rarely reported to the Coast Guard or other law enforcement authorities.

Because of this identified gap in federal law, the GAO made the following recommendation for executive action in its December 1988 Coast Guard Report:

The Secretary of Transportation should direct the Commandant of the Coast Guard to require that masters of vessels or other responsible officials promptly report to the Coast Guard any complaint of a criminal sexual offense covered by the Sexual Abuse Act of 1986 as soon as possible following its occurrence or report of its occurrence.

Armed with the Coast Guard GAO Report, the WMA began lobbying members of Congress and imploring them to take action to implement the recommendations of the report. The GAO's finding that there existed no federal law or regulation that required allegations of shipboard sexual assault to be reported to any law enforcement agency by the master or operator of the vessel surprised many members of Congress, and action on the findings came quickly. On March 2, 1989, members of the U.S. House of Representatives Committee on Merchant Marine and Fisheries sent a letter to Admiral Paul Yost, Commandant of the Coast Guard, that stated: "*We strongly urge you to follow the GAO's recommendation. Sexual offenses cannot be tolerated as an occupational hazard for females on U.S. - flag vessels.*" The letter was signed by Representatives Walter Jones, Billy Tauzin, Robert Davis and Jolene Unsoeld.

Throughout 1989, Mosness and other WMA members continued to lobby and communicate with their Congressional Representatives, especially Representative Jolene Unsoeld (D-Wa), regarding the need for a shipboard sexual assault allegation reporting requirement, and on March 23, 1989, Representative [Unsoeld introduced a bill in the Congress, H.R. 1647, which would make the GAO recommendation law.](#)

Although H.R. 1647 was not enacted, by the end of 1989 the efforts of the WMA were successful. On December 12, 1989 the GAO's recommendation for the creation of a shipboard sexual assault allegation reporting requirement law was fulfilled with the [enactment of section 214 of the Coast Guard Authorization Act of 1989, P.L. 101-225.](#)

The reporting requirement became classified in the U.S. Code at [46 USC § 10104](#), *Requirement to Report Sexual Offenses*, which reads:

(a) A master or other individual in charge of a documented vessel shall report to the Secretary a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code.

(b) A master or other individual in charge of a documented vessel who knowingly fails to report in compliance with this section is liable to the United States Government for a civil penalty of not more than

\$5,000.

Despite the obvious weaknesses, such as setting the penalty for a violation of the law's reporting requirement at only a \$5,000 civil fine, the enactment of the reporting law was a triumph for Anne Mosness and the WMA. They had worked for nearly a decade to see a common-sense shipboard sexual assault allegation reporting law enacted, and they had finally succeeded. But Mosness and the WMA would eventually learn that the passage of a law creating a reporting requirement did not guarantee its enforcement in the real world.

[Chapter 109A of title 18](#), also known as the "Sexual Abuse Act" or the "Sexual Abuse Act of 1986" made specific types of sexual misconduct federal crimes. The sex crimes listed in Chapter 109A of title 18 include *aggravated sexual abuse*, *sexual abuse*, *sexual abuse of a minor or ward*, *abusive sexual contact*, and *offenses resulting in death*. Of those crimes, *abusive sexual contact*, defined in [18 U.S. Code § 2246](#), is the lowest level sex crime punishable under the Sexual Abuse Act. *Abusive sexual contact* would include acts that would often be colloquially referred to as "groping," "fondling," "goosing," or other inappropriate sexual touching. While it might be obvious that 46 USC § 10104 requires an allegation of rape committed onboard a documented vessel to be reported to the Coast Guard or to the Secretary, it is critical for masters and operators of vessels to understand that the threshold for sexual offenses that must be reported is much lower than rape.

The conduct prohibited by [Chapter 109A of title 18](#) applies to acts committed "*in the special maritime and territorial jurisdiction of the United States*," which is defined in [18 U.S. Code § 7](#):

The term "special maritime and territorial jurisdiction of the United States," as used in this title, includes:

(1) *The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.*

(2) *Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.*

The clear reading of [46 USC § 10104](#) together with [Chapter 109A of title 18](#) and [18 U.S. Code § 7](#) is the following: if a crewmember aboard a U.S. Coast Guard documented vessel that is operating in the *special maritime and territorial jurisdiction of the United States* reports that he or she was the victim of "*intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any*

person,” or if a crewmember reports that he or she was the victim of an even more serious sexual assault prohibited by Chapter 109A of title 18, such as rape, the master or other individual in charge of the vessel *must* report the victim’s allegations to the U.S. Coast Guard or to the Secretary of the Department in which the U.S. Coast Guard is operating. [46 U.S. Code § 10104](#) does not permit the master or other individual in charge of a documented vessel to make his or her own judgment as to the validity of the victims’ allegations of sexual assault. If the master or other individual in charge of the vessel receives a complaint of a sexual offense prohibited under chapter 109A of title 18, he or she is required by law to report the complaint to the U.S. Coast Guard, regardless of their own opinion as to the validity of the allegations.

This law applies across the board to all USCG documented vessels. [According to the Department of Homeland Security](#):

Vessel documentation refers to the system under which a vessel receives a certificate of documentation (COD) from the U.S. Coast Guard. A COD is required for the operation of a vessel of at least 5 net tons in certain trades including: (1) Fisheries on the navigable waters of the United States or its Exclusive Economic Zone; (2) foreign trade or trade with U.S. overseas territories; and (3) coastwise trade (trade between U.S. ports without leaving U.S. territorial waters) as described in [46 U.S.C. 12102](#) and [46 U.S.C. chapter 121, subchapter II](#). The COD is also a required element, in 46 U.S.C. 31322, to establish a vessel’s entitlement to preferred mortgage status. Under 46 U.S.C. 31326, preferred mortgages have priority over other liens on vessels, and they offer an enhancement to the security available to lenders.

According to MarineTitle.com, which maintains a database containing a full listing of all Coast Guard documented vessels, there are (as of September 2021) [more than 220,000 vessels which possess current and valid certificates of documentation](#). According to MarineTitle.com’s database, the [current approximate number of endorsements for documented vessels](#) are 1) Coastwise: 49,112, 2) Fishery: 22,277, 3) Registry: 13,585, and 4) Recreation: 167,311. The clear reading of 46 U.S. Code § 10104 is that the shipboard sexual assault allegation reporting requirement applies to all of those Coast Guard documented vessels when they are operating in the *special maritime and territorial jurisdiction of the United States*.

In the years immediately following the enactment of the reporting law, it became clear to Anne Mosness and the members of the WMA that there remained widespread unfamiliarity and even ignorance of the reporting law throughout all sectors of the maritime industry, even among Coast Guard officials at Coast Guard Headquarters and in the field. The Coast Guard had not sought the enactment of the *Federal Shipboard Sexual Assault Allegation Reporting Law*, and had not sought out a new role as the federal law enforcement agency that would eliminate sexual misconduct aboard documented vessels. Even if the Coast Guard had supported the newly enacted reporting law, the law posed a daunting enforcement challenge. Accounting for growth in the number of documented vessels over the past 31 years, and removing recreational vessels from the tally, in 1990 there were tens of thousands of Coast Guard documented commercial vessels that would need to be notified of the new law and then monitored for compliance

following the codification of 46 U.S. Code § 10104.

In a letter to Rep. Jolene Unsoeld in April 1992, Mosness expressed frustration that the law Unsoeld had championed in Congress was not being enforced by the Coast Guard. In her letter of April 1992, Mosness described two recent cases in which it was alleged that female merchant mariners had been enslaved and falsely imprisoned aboard documented vessels and stated that the Coast Guard was still not taking the issue of sexual violence against women in the maritime industry seriously. "While some Coast Guard personnel make an effort to be sensitive to these issues," Mosness wrote in her letter to Unsoeld, "when I asked one what he would do if he received a report of rape onboard a fishing vessel, he responded that in his experience *'it takes two to tango.'*"

In May of 1992 Representative Unsoeld wrote to Admiral William Kime, Commandant of the U.S. Coast Guard, regarding the concerns of Mosness and the WMA. In her letter to the Commandant, Unsoeld wrote:

I am still receiving complaints that the Coast Guard is not adequately educating its personnel on the Sexual Abuse Act and not implementing the legislation to require reporting of sexual assaults. In fact, the Women's Maritime Association has asked me to request another GAO investigation of whether the recommendations of the 1988 report have been implemented and to assess regional and field office training programs and procedures. I would therefore appreciate your assistance in providing me with the information on specific steps the Coast Guard has taken to implement the GAO findings. In addition, I would like copies of any Coast Guard regulations or guidelines issued based on the GAO findings and/or the law requiring reporting of shipboard sexual assaults. I also request a listing of the cases reported since enactment of this law.

On Sept. 1, 1992, Unsoeld received a reply from Acting Coast Guard Commandant, Rear Admiral Robert Kramek. Kramek wrote:

The Coast Guard has not yet promulgated specific regulations in response to 46 U.S. Code § 10104. Regulatory projects, including for merchant mariners and the many regulations for chemical testing for dangerous drugs for merchant mariners and the many regulations with mandatory deadlines resulting from the Oil Pollution Act of 1990, have delayed complete revision to 46 CFR, Parts 4 and 5. However, the need for immediate regulatory action is mitigated by the fact that 46 U.S. Code § 10104 is quite clear and specific. Masters must report complaints of sexual offenses.

The Coast Guard has taken several other specific actions to comply with the letter and spirit of these laws and the recommendations of the GAO report. These actions include:

-The Coast Guard made specific reference to the provisions of the 46 U.S. Code § 10104 in its 1991 publication explaining the Federal requirement for commercial fishing industry vessels. This publication

has been widely distributed throughout the commercial fishing industry.

-References to the Sexual Abuse Act and the provisions of 46 U.S. Code § 10104 will be included in the next revision to Volume 5 of the Coast Guard's Marine Safety Manual, which provides policy guidance to the Coast Guard's marine safety investigators.

-Copies of the requirement to report sexual offenses contained in Title 46 (46 U.S. Code § 10104) are provided to each of the students in the Coast Guard's Marine Safety Investigating Officer's Course in Yorktown, Virginia. This course is used for training all of the Coast Guard's Marine Safety Investigating Officers...

I have directed that every member of the Coast Guard receive specific training in the prevention of sexual harassment and sexual misconduct in the workplace. I have clearly stated my position on this subject in many forums and I am sure reports of this nature in the merchant marine community are fully pursued by our investigating officers. I am unaware of any cases in the merchant fleet reported to the Coast Guard since December 1989, which have not been fully investigated. If you are aware of any such cases, please let me know so appropriate action can be taken."

Sincerely,

Robert E. Kramek

Rear Admiral, U.S. Coast Guard

By the fall of 1992 the Coast Guard had taken small steps to notify the maritime industry and its own personnel of the new reporting requirement of 46 U.S. Code § 10104, but there was no real effort to enforce the reporting requirement, and for women working in the industry, nothing had changed. The fall 1992 edition of the WMA newsletter stated that the WMA,

"had hoped...the maritime work environment would become safer for women and we could focus more on sharing sea stories, job information and skills, mentoring younger women, and providing a forum for women engaged in a unique and challenging way of life...However, even in this year, we have received reports of nine cases of rape, false imprisonment and abusive touching. That doesn't count the stories of public humiliation, assignment of inappropriate and unsafe tasks, discrimination or withholding wages for sexual favors... We have met with several Congresspeople, industry representatives, the Coast Guard, Navy and media... Since we are the voice for women employed on vessels, and we hear their concerns, fears, frustrations and hopes, we echo them on these pages. We will continue working with the Coast Guard and other enforcement agencies and the fishing industry and merchant marine to publicize the laws, develop educational material and clear reporting procedures...

The WMA continued to advocate for the Coast Guard to promulgate specific regulations to implement 46 U.S. Code § 10104 and to deter shipboard sexual assaults. One of the most important Coast Guard requirements advocated by the WMA was a requirement for every documented vessel to display a placard aboard the vessel that clearly stated the sexual misconduct allegation reporting requirements of 46 U.S. Code § 10104 and that also included a toll free phone number that mariners could call to report sexual misconduct occurring aboard their vessel. These ideas had also been suggested by the GAO in its December 1988 Report to Congress.

As 1993 began, Anne Mosness and members of the WMA continued to lobby the Coast Guard and Congress to implement these ideas. In a letter to the Coast Guard dated January 28, 1993, Anne Mosness of the WMA wrote,

We feel strongly, as stated within the Coast Guard training manuals on the subject, that 'prevention is the best tool to eliminate sexual harassment.' The only way for the industry to even know there are laws on the books is for the Coast Guard to acknowledge their seriousness and publicize them, through placards, printed information, adapting the Coast Guard harassment video to civilian use and inclusion of information in regulatory hearings and meetings. A clear reporting procedure, with either a toll-free number with trained personnel to take reports or trained personnel available at each Coast Guard station and vessel would increase the likelihood that reports would be made. It is a lot to ask for, but nothing less would allow the continuation of an atmosphere of tolerance and the sense that some ships are beyond the law. An aggressive, unified stance now would educate everyone to the seriousness of the problems, and lessen the opportunity for the lowest of lifeforms on a vessel to harass, intimidate or terrorize co-workers.

Representative Jolene Unsoeld also continued to question what the Coast Guard was actually doing to implement 46 U.S. Code § 10104 and to address the problems of sexual misconduct in the maritime industry that had been exposed in the 1988 and 1989 GAO Reports. On February 10, 1993, Representative Unsoeld wrote a letter to Admiral Kime, the Commandant of the Coast Guard, in which she asked the Commandant about the implementation of a 46 U.S. Code § 10104 placard requirement for documented vessels, among other issues. In her letter to the Commandant Unsoeld wrote:

I continue to have questions about the Coast Guard's actions to discourage sexual assaults at sea and to set up an efficient process for reporting complaints...I do not believe that one paragraph in the back of that pamphlet [Federal Requirements for Fishing Vessel Safety] will reach many civilian officers.... How does the Coast Guard convey information on the Sexual Abuse Act and the Skipper Reporting Law to unlicensed mariners?...In the area of reporting...I hear concerns that the Coast Guard reporting system does not allow for efficient data collection and compilation. What is the process and how and when can it be improved? I am told that the 800 number used to report other shipboard emergencies cannot be used for sexual assault complaints. Is this true and, if so, why not?

On March 26, 1993 Admiral Kime responded to Unsoeld's letter. The Commandant replied:

Dear Mrs. Unsoeld:

This is in response to your letter of February 10, 1993, in which you were seeking information about the Coast Guard's actions in support of the Sexual Abuse Act of 1986 and the Skipper Reporting requirement in 46 U.S. Code § 10104. I hope the following information is helpful in addressing your concerns.

In the area of education, the Coast Guard has tried several routes to improve the awareness of both of the laws that you discussed in your letter.

- The Coast Guard asked the Defense Mapping Agency to publish a Notice to Mariners concerning the Skipper Reporting Act...Unfortunately, the Defense Mapping Agency did not feel that subject was appropriate for publication in the Notice to Mariners and denied our request.

- The Coast Guard has written a letter to the members of the Commercial Fishing Industry Vessel Advisory Committee for distribution among their constituency. A copy of this letter is also enclosed. In this letter, we are encouraging marine employers to promulgate specific regulations against sexual harassment on their vessels. With this type of regulation, the Coast Guard can then pursue suspension and revocation actions against licensed or documented merchant mariners under a charge of misconduct—a violation of a ship's regulation or order.

- Questions regarding these two laws have been added to the test question data base for merchant mariner licensing examinations, requiring anyone now testing for a license to be familiar with these provisions.

- There is no regular contact with unlicensed mariners by the Coast Guard. In disseminating information to this group, we must rely on the marine employers. These laws are a specific topic of the curriculum of the Coast Guard's Investigating Officer and Law Enforcement Boarding Officer Courses, so our officers are informed of these provisions and can act accordingly if incidents are reported to them during their investigative visits.

- The idea of requiring a placard which outlines these requirements has been discussed. However, there is concern that these placards are now so abundant that they are being ignored. As a result, other alternatives such as the Notice to Mariners were explored. We are still exploring additional educational means.

In the area of reporting:

- The Coast Guard Marine Safety program recently (January 1, 1993) implemented a new Personnel Action module in its computerized Marine Safety Information System. This new module has the capability to note specific offenses and should aid us in data collection and compilation. Data is entered directly by field personnel as cases are investigated.

- The Coast Guard discontinued the 800 number used to report shipboard emergencies because of the lack of use. Reports of sexual assault should go directly to the Marine Safety Office in the local area.

I hope you find this information helpful. I am available to meet with you at any mutually convenient time if you so desire.

J. W. Kime

Admiral, U.S. Coast Guard

Commandant

A regulation to require every documented vessel to display a placard with the requirements of 46 U.S. Code § 10104 was perhaps the most important implementation sought by the WMA. The placard was a common-sense way to alert the entire industry of the new law, and would perhaps have been the most effective method. But Admiral Kime claimed in his letter to Unsoeld that “*there is concern that these placards are now so abundant that they are being ignored.*” It is difficult to view that policy decision by the Coast Guard as anything other than an effort to avoid making the law widely known and understood.

The idea for a nationwide toll free number to report shipboard sexual offenses to the Coast Guard was also a priority of the WMA. Yet Kime wrote to Unsoeld that the Coast Guard was shutting down the existing 800 number and directing mariners to contact the “*Marine Safety Office in the local area.*” In the age before widespread internet access availability, it was unclear how victims or masters who were required to report allegations of shipboard sexual assault would find the numbers for local Marine Safety Offices, or even determine which office was the appropriate one to contact when reporting an allegation of sexual assault that occurred offshore, or halfway around the world. The problem of efficient data collection and compilation had also been raised in the Coast Guard GAO Report. But contrary to Kime’s claims in his letter to Unsoeld, as this public MERPAC comment will show, no effort would ever be made by the Coast Guard to create an efficient system for reporting and tracking allegations of shipboard sexual assault sent to the Coast Guard in accordance with the reporting law.

In 1994, Rep. Unsoeld lost her bid for re-election and was swept from office in what was called the “Republican Revolution.” With Unsoeld gone, there were no strong champions of the reporting law left in Congress. Anne Mosness, exhausted from the long fight to see legislative reform enacted to protect female seafarers, moved on to other things. In 1994, she resigned her role as President of the WMA and over the next couple years, became co-chair of three political action committees focused on fisheries issues in the Pacific Northwest and devoted the rest of her career to environmental and fisheries issues. **The Coast Guard never issued implementing regulations regarding 46 U.S. Code § 10104.** With no one writing letters to the Commandant of the Coast Guard regarding their enforcement of 46 U.S. Code § 10104 and with no action on the part of the Coast Guard to enforce the law or monitor compliance, the law quickly

faded from memory, while remaining firmly established in the U.S. Code.

In July of 2020, Maritime Legal Aid & Advocacy (MLAA), a non-profit legal advocacy organization working to end shipboard sexual misconduct in the U.S. maritime industry, [submitted a request to the U.S. Coast Guard](#) under the [Freedom of Information Act](#) (FOIA) seeking records related to 46 USC § 10104. In its FOIA request, MLAA sought the following records from the Coast Guard:

1. *All reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law.*
2. *All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*
3. *All Documents related to any investigation of sexual misconduct of any kind initiated against any USCG credentialed mariner, including investigation reports and related documents, by the USCG or the CGIS since 46 U.S. Code § 10104 was added to the Code of Federal Regulations in 1989, with any personally identifiable information about the victim or the accused omitted from the report, only if required by law. "All documents" includes, but is not limited to, reports, correspondence, agreements, minutes, memoranda, e-mails, databases, and notes. This request includes all documents that have ever been within USCG's custody or control, whether they exist in "working," investigative, retired, electronic mail, or other files currently or at any other time.*

On December 22, 2020, nearly 6 months after submitting its FOIA request, MLAA received an interim response letter from the U.S. Coast Guard. While the Coast Guard did provide some documents related to investigations of sexual misconduct by credentialed mariners, the documents provided by Coast Guard in response to MLAA's FOIA request did not contain any reports of sexual offenses received by the USCG pursuant to 46 U.S. Code § 10104, nor did the the Coast Guard's response contain any documents related to the enforcement of the *Federal Shipboard Sexual Assault Allegation Reporting Law*.

On April 1, 2021, in response to two interim response letters from the Coast Guard, MLAA filed an [appeal to the Coast Guard of the partial denial of its FOIA request](#). In MLAA's FOIA appeal to the Coast Guard, MLAA clarified its request regarding documents related to 46 U.S. Code § 10104 as follows:

Regarding 46 U.S. Code § 10104, MLAA is primarily seeking answers to three very important questions

that are of great interest to the maritime community:

- 1) *whether or not USCG credentialed masters and other persons in charge of documented vessels are reporting allegations of sexual offenses prohibited under chapter 109A of title 18 U.S. Code to the USCG in accordance with the Federal Shipboard Sexual Assault Allegation Reporting Law (46 U.S. Code § 10104),*
- 2) *whether the Federal Shipboard Sexual Assault Allegation Reporting Law is, or has ever been, enforced by the USCG, and*
- 3) *whether or not the USCG has ever investigated or punished a person or a corporation for failing to report an allegation of a sexual offense prohibited under chapter 109A of title 18 U.S. Code in accordance with the Federal Shipboard Sexual Assault Allegation Reporting Law.*

In response to MLAA's FOIA request and two subsequent appeals, as of November 4, 2021, the U.S. Coast Guard has been unable to produce even a single report of sexual offenses that had been submitted to the Coast Guard in accordance with 46 USC § 10104 over a more than 30 year period.

Through extensive research, FOIA requests, and through conversations with Coast Guard officials, including a phone call with a Coast Guard Assistant Senior Investigating Officer at Coast Guard Sector New York in July of 2020, it became clear to the author that the Coast Guard has never created any kind of official reporting or tracking system for reports of sexual offenses sent to the U.S. Coast Guard in accordance with 46 USC § 10104. Further, that the Coast Guard was unable to locate or produce any reports of sexual offenses that had *ever* been received by the Coast Guard pursuant to 46 USC § 10104.

In the [December 1988 Coast Guard GAO Report](#), the GAO noted that the Coast Guard then already maintained a marine casualty reporting system that required ships' masters and other responsible officials to report various shipboard occurrences, including any death or injury that involved passengers, and the incapacitation of a crewmember for over 72 hours. But the GAO also noted that "*Coast Guard officials could not identify any provision of the marine casualty reporting regulations that would require ships' officers to report injuries (defined by us to include both physical and emotional traumas) that do not result in 72-hour incapacitation of the victim.*"

The Coast Guard has not historically viewed protecting mariners from unsafe or hostile working conditions, or from shipboard sexual misconduct, as among its responsibilities. As the GAO noted in its Coast Guard GAO Report, the marine casualty reporting regulations "*have been viewed within the Coast Guard as relating primarily to the safe operation of the vessel itself rather than to the welfare and well-being of individual crew members.*" By the Coast Guard's logic, the reason for reporting to the Coast Guard that a crewmember has been incapacitated for more than 72 hours has nothing to do with the fact that the crewmember is in pain or might die. The reason for reporting the incapacitation is that the vessel no longer

maintains its full complement of required mariners, which creates a potential safety hazard for the vessel itself.

Perhaps the most efficient way to implement the sexual assault allegation reporting requirement of 46 U.S. Code § 10104 would have been to add the requirement to the list of marine casualties required to be reported to the Coast Guard through its existing marine casualty reporting system. Adding reports of sexual offenses to the list of incidents required to be reported would also have immediately put the entire maritime industry on notice of the new reporting law. But that never happened. There are 8 categories of marine casualties that must be reported to the Coast Guard on Coast Guard form [CG-2692](#), "*Report of Marine Casualty, Commercial Diving Casualty, or OCS-Related Casualty*." The reporting categories are listed in [46 CFR § 4.05-1\(a\)](#) "*Notice of marine casualty*," which requires the reportable marine casualty to be immediately reported to the Coast Guard after addressing resultant safety concerns:

(a) Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Sector Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in -

(1) An unintended grounding, or an unintended strike of (allision with) a bridge;

(2) An intended grounding, or an intended strike of a bridge, that creates a hazard to navigation, the environment, or the safety of a vessel, or that meets any criterion of paragraphs (a) (3) through (8);

(3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel;

(4) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems;

(5) A loss of life;

(6) An injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties; or

(7) An occurrence causing property-damage in excess of \$75,000, this damage including the cost of labor and material to restore the property to its condition before the occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.

(8) An occurrence involving significant harm to the environment as defined in § 4.03-65.

According to [46 CFR § 4.05-10](#) the owner, agent, master, operator, or person in charge of the vessel must file the written report of marine casualty on form [CG-2692](#) within 5 days, a requirement that is in addition to the immediate notice required under [46 CFR § 4.05-1\(a\)](#).

As an example of how Coast Guard's marine casualty reporting system works, if a person employed aboard a documented vessel in commercial service sustains an injury that requires professional medical treatment beyond first aid and renders the individual unfit to perform his or her routine duties, that injury must be immediately reported to the nearest Coast Guard Sector Office, Marine Inspection Office or Coast Guard Group Office via phone, email, or VHF radio. The injury must also be reported to the USCG in writing on form CG-2692 via mail, email, or fax within 5 days of the injury. When received by the USCG, this reportable marine casualty (the injury to the crewmember) is then entered into the USCG's "Marine Information Safety and Law Enforcement System" (MISLE) and assigned a MISLE Activity Number. A Coast Guard Safety Officer then investigates the report, and when the investigation is completed and closed, an Incident Investigation Report is prepared for public release.

The USCG maintains an online database of Incident Investigation Reports that can be searched by the public. The publicly searchable database of Incident Investigation Reports is maintained and accessed via a website known as the "[Coast Guard Maritime Information Exchange \(CGMIX\)](#)." In the author's investigation of the CGMIX reporting system in 2021, he searched the CGMIX for Incident Investigation Reports and for information about the number of Incident Investigation Reports contained within the database. According to the CGMIX website, the database contains Incident Investigation Reports for closed investigations of reportable marine casualties dating from October 2002 to present.

Because the public-facing CGMIX database interface will not return more than 5,000 results for a date range query, the author was not able to determine exactly how many Incident Investigation Reports are contained in the database. To estimate the number of Incident Investigation Reports in the database, he conducted open searches of five one-year date ranges. A search of the one-year period from January 1, 2015 to December 31, 2015 returned 2,071 Incident Investigation Reports. A search of the one-year period from January 1, 2016 to December 31, 2016 returned 3,467 Incident Investigation Reports. A search of the one-year period from January 1, 2017 to December 31, 2017 returned 3,242 Incident Investigation Reports. A search of the one-year period from January 1, 2018 to December 31, 2018 returned 3,496 Incident Investigation Reports. A search of the one-year period from January 1, 2019 to December 31, 2019 returned 3,444 Incident Investigation Reports.

These 5 searches revealed that the database contains 15,720 Incident Investigation Reports for the five year period from January 1, 2015 to December 31, 2019—an average of 3,144 per year. Using a more conservative average of 2,500 per year, over the 31 year period that would mean that over the past 31 years that 46 U.S. Code § 10104 has been part of the U.S. Code, approximately 77,500 reportable marine casualties have been reported to the USCG on form CG-2692 by owners, agents, masters, operators, or

persons in charge of vessels in commercial service. Using a yearly average of 3,000 reports would result in approximately 93,000 reports.

What seems clear from the high number of Incident Investigation Reports contained in the CGMIX database is that the commercial maritime industry takes at least some of the USCG's vessel safety reporting requirements seriously. They take seriously the reporting requirements the Coast Guard requires them to take seriously, and they do not take seriously the requirements the Coast Guard does not require them to take seriously.

The author has been unable to locate any reporting form ever created by the Coast Guard for reporting allegations of shipboard sexual assault as required by 46 U.S. Code § 10104, or any system for the public to view the completed investigation reports involving allegations of shipboard sexual assault reported to the USCG pursuant to 46 U.S. Code § 10104. This failure to create a formal reporting system for allegations of shipboard sexual assault, and the failure to incorporate allegations of shipboard sexual assault into the USCG's marine casualty reporting systems (CG-2692 and CGMIX) raises the very important question of how exactly allegations of shipboard sexual assault are being reported to the USCG pursuant to 46 U.S. Code § 10104. The answer seems to be that they simply are not being reported.

On November 3, 2020, the [United States Coast Guard Hearing Office](#) issued a Preliminary Assessment Letter (PAL) to [Maersk Line, Limited](#) (MLL) notifying the company it was facing a fine of \$10,000 for a violation of [46 USC § 10104](#), also known as the *Federal Shipboard Sexual Assault Allegation Reporting Law*. The result of a Coast Guard Freedom of Information Act appeal filed by MLAA appears to confirm that the November 3, 2020 fine issued against Maersk is the first time the law has ever been enforced by the Coast Guard.

In its FOIA request and in its appeal, MLAA requested that the Coast Guard Hearing Office produce "All Documents related to an investigation or punishment of any person or corporation for a failure to notify the USCG of a complaint of a sexual offense prohibited under chapter 109A of title 18, United States Code, pursuant to 46 U.S. Code § 10104 since the law was added to the Code of Federal Regulations in 1989."

In a letter directed to MLAA on September 16, 2021 in response to the Freedom of Information Act appeal, the Hearing Office responded:

A search of the Coast Guard Hearing Office, which is under the cognizance of the USCG Judge Advocate General, for documents responsive to your request produced a total of 156 pages. Of those pages, I have determined that 131 pages of the records are withheld in the entirety pursuant to 5 U.S. Code § 552(b)(7)(A). Additionally, I have determined that 25 pages of the records are withheld in their entirety pursuant to 5 U.S. Code § 552(b)(5).

FOIA exemption 7(A) protects from disclosure records or information compiled for law enforcement purposes, the release of which could reasonably be expected to interfere with enforcement proceedings. I have determined that the information you are seeking relates to an ongoing law enforcement investigation. Therefore, I am withholding all records, documents, and/or other material, which if disclosed prior to completion, could reasonably be expected to interfere with law enforcement proceedings and final agency actions related to those proceedings.

The remaining 25 pages were withheld pursuant to FOIA exemption 5, which protects inter-agency or intra-agency memorandums or letters. Because the 156 pages withheld pursuant to FOIA exemption 7A relate to an ongoing law enforcement investigation, it can be assumed that all of these documents relate to the MLL fine.

MLL is an American company headquartered in Virginia and a subsidiary of [A.P. Moller-Maersk](#), a Danish business conglomerate that is one of the largest vessel operators in the world. During 2020 A.P. Moller-Maersk generated nearly \$40 billion in revenue. The MLL subsidiary of A.P. Moller-Maersk claims that it “operates the largest U.S.-flag fleet in commercial service” and that its business includes providing “transportation, ship management and maritime technical services to government and commercial customers.”

The U.S. Coast Guard Hearing Office is located at Coast Guard headquarters in Washington, D.C. According to the [website of the Coast Guard Hearing Office](#),

The mission of the Hearing Office is to adjudicate civil penalty cases. The civil penalty process is remedial in nature. Its goals are to gain compliance with statutes and regulations that the Coast Guard enforces and to deter future violations. A fair and informal administrative process promotes maritime safety, security and environmental protection.

The November 3, 2020 PAL stated the following:

Activity No. 5783941

Party: Maersk Line, Limited

Date of Violation: February 3, 2015

Subject: MAERSK IDAHO

Amount: \$10,000.00

Date: November 20, 2020

Re: Preliminary Assessment Letter (PAL)

MAERSK LINE LIMITED

2510 WALMER AVE STE C

NORFOLK, VA 23510

Dear Sir or Madam:

In my capacity as a Coast Guard Civil Penalty Hearing Officer, I have received a report alleging that you, as managing operator of the MAERSK IDAHO, are liable for a civil penalty for violation of Federal law as described on the Charge Sheet enclosure.

The Coast Guard's civil penalty procedures are contained in Subpart 1.07 of Title 33 of the Code of Federal Regulations (33 CFR 1.07). My role is to determine whether there was a violation. If I find there was a violation, I must then decide what civil penalty, if any, is appropriate. The maximum civil penalty that may be assessed in this case is \$10, 245. Based upon the information in the case file that I have, it appears to me that a violation did occur and that a civil penalty of \$10,000 is appropriate. However, I will not make a final decision until you have had an opportunity to respond.

You have 30 days from receipt of this letter to take one of the following actions [See Enclosure (4)]:

You can submit evidence in lieu of a hearing

You can pay the proposed penalty now thru www.pay.gov

You can set up a payment plan by calling our collections department at (510) 437-3644

You can request a hearing in writing and submit what you want to raise and dispute at a hearing

...

Sincerely,

S.M. Griffin

Commander, U.S. Coast Guard

U.S. Coast Guard Hearing Office

To such a large company, a \$10,000 civil fine would not seem to be a significant amount of money. However, Maersk's MLL subsidiary has been determined to vigorously oppose the imposition of the fine. In response to the Coast Guard's \$10,000 PAL, MLL responded with a request for an enormous volume of documents, including many that likely never existed.

The maritime industry is highly regulated, and much of that regulation is enforced by the Coast Guard. But when it comes to the critical safety issues of shipboard sexual harassment and sexual assault, the Coast Guard has made conscious decisions to allow shipping companies to self-regulate. Over the course of decades, the Coast Guard has chosen not to enforce important laws such as 46 U.S. Code § 10104 and consequently the Coast Guard intentionally allowed sexual predators to operate with near impunity within the maritime industry.

The tragic result of allowing companies and unions to self-police should not be surprising to anyone. When companies are allowed to self-regulate an important safety issue, inevitably they will eventually make decisions that are in their own financial self-interest, and not the interests of crewmember safety.

The only real solution to the issue of shipboard sexual misconduct is increased regulation, increased oversight, and a dramatic increase in enforcement of laws against shipboard sexual misconduct by the Coast Guard.

The issue of sexual misconduct in the maritime industry should be treated as seriously as the issue of oil pollution. Mariners and companies are subject to criminal liability for the non-reporting of oil discharges into the marine environment. They should also be subject to criminal penalties for failures to immediately report allegations of shipboard sexual harassment and sexual assault to the Coast Guard.

The Coast Guard must also use the powers delegated to the agency by Congress to create implementing regulations for 46 U.S. Code § 10104 so that the reporting law becomes part of the Code of Federal Regulations, and the Coast Guard should begin the rule-making process immediately.

Additionally, the Coast Guard should add allegations of shipboard sexual harassment and sexual assault to the list reportable marine casualties that must be reported to the Coast Guard through the existing marine casualty reporting system. Immediate reporting as well as a follow-on written report of sexual misconduct allegations must be required.

The criminal penalty for non-reporting of shipboard sexual misconduct allegations should also apply to an additional officer besides the master of the vessel. Too often, the ship's master himself is responsible for shipboard sexual misconduct, and an additional officer should also be held criminally liable for not immediately reporting allegations of shipboard sexual misconduct to the U.S. Coast Guard.

Placards outlining the reporting requirements of 46 U.S. Code § 10104 should be required to be placed on the vessel's bridge and in other areas of the vessel in the same way that oil pollution placards are required to be posted on vessels, and a dedicated 1-800 number, email address, and smartphone reporting application should be developed that allow mariners 24 hour direct access to a Coast Guard Investigative Service Special Agent who is trained to take immediate action on allegations of shipboard sexual misconduct.

These are a few ideas to get the ball rolling. There is much more the Coast Guard can do. Thank you for taking the time to read this.

J. Ryan Melogy

Maritime Legal Aid & Advocacy

maritimelegalaid.com

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