

# Marine

## News

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## The Mississippi River Oil Spill

# Why it's Crucial to have Proper Crew Onboard



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On July 23, 2008, an accident between a cargo ship and a loaded oil barge being pushed by an uninspected towing vessel on the Mississippi River proves that having the proper crew on board is important. The liability associated with running a vessel without the proper number of qualified crew can ruin a company with one significant incident.

Although the investigation continues, the preliminary reports from the Coast Guard hearing indicate that the towing vessel was being operated by a crew member with a Coast Guard Apprentice Mate License and was not authorized to operate the boat without the supervision of a licensed master. It appears that the licensed master left the vessel to attend to a personal matter and did not notify the company or call for a replacement. In addition to not having a licensed master on board, the mate was apparently operating the vessel well beyond the hours of service regulations and, in fact, may have fallen asleep at the helm at the time of this incident.

Unfortunately, as it becomes more difficult to hire quality crew members, this type of incident is becoming more common. The above example is not an isolated event. We are aware of numerous other less publicized maritime incidents involving situations where vessels were being operated by undermanned crews. These situations include not just operating a vessel without the proper licensed crew member at the helm, but also operating the vessel with a properly licensed crew member that is, due to staffing problems, operating the vessel beyond the hours of service allowed under the regulations. Unfortunately, in these situations, even if the vessel is being operated by the licensed crew member at the time of the incident, it is very difficult for the vessel owner to

defend the case as the opposition will point out that the vessel continually operates in violation of Coast Guard regulations.

Failing to adequately crew a vessel can result in both significant penalties and civil litigation. If an accident occurs and the Coast Guard determines that a vessel is being operated without a sufficient crew, the Coast Guard can fine the company, suspended Coast Guard licenses and instigate a criminal prosecution of the company and its crew. If the crew issue is discovered without an accident, the Coast Guard could shut down the operation of the vessel, prohibit the vessel from entering port until the proper crew is obtained or levy a fine against the owner.

Although Coast Guard penalties can be significant, the economic damage caused by an incident involving an improperly manned vessel could easily bankrupt most small marine operators. While the specific damages resulting from the Mississippi River incident are still unknown, the vessel owner's liability will include civil damages that result from the closure of the Mississippi River for six days, the clean up of the oil spill, the economic and environmental damage resulting from the oil spill, damage to the cargo ship and its cargo, the loss of product from the sunken barge and the wreck removal costs. If anyone doubts the river's significant economic impact on Southeastern Louisiana, consider the damages resulting from the six day closure of the river. Damages will range from delay damages related to the inability to move cargo through New Orleans to the inevitable class action involving hospitality workers and taxi drivers for the damages they suffered from the lack of tourists that were deposited in New Orleans by cruise ships during this time.

Operating the vessel with an improper crew can also invalidate certain insurance coverage. The courts have ruled that a vessel that is not manned by a competent master and crew is unseaworthy at the time that it left the dock. In an action on a policy such as a hull insurance policy, the insurer may exclude coverage by showing incompetency of the crew. Thus, if you operate a vessel

without a properly licensed crew, and an accident occurs, the insurance company may decline paying for any of the damage to the vessel or its cargo.

Comprehensive discussion of the manning requirements for all types of vessels is beyond the scope of this article. By way of illustration, we will consider the rules that pertain to towing vessels. 46 U.S.C. §8904 states that a towing vessel of at least twenty-six feet in length must be operated by an individual licensed by the Coast Guard to operate that type of vessel in that particular geographic area. As such, each towing vessel must be operated by a captain that is licensed with the appropriate level license. With that being said, any time a vessel is being operated by a crew member that does not have an adequate license, the company opens itself to significant exposure.

In many of the cases that we have been involved in, the vessel has a licensed captain on board but it is impossible to show that the captain is always at the helm if he does not have a licensed replacement. For example, it is common to have a crew consisting of a vessel captain, a licensed mate and a deckhand. However, if the vessel logs indicate that the vessel operates 24 hours a day, it will be very difficult to convince a jury that the captain only sleeps when the vessel is not in motion. In reality, everyone knows that the mate is operating the vessel while the captain sleeps. Even if the captain is at the wheel at the time of an incident, the logs clearly indicate that he is violating the regulations by working more than 12 hours in a 24-hour period. The company will likely be found liable for operating a vessel with a captain whose ability is impaired because he has been forced to operate over and above his hour of service limit.

Furthermore, we have started to see several cases where vessel operators have tried to side step the manning regulations by invoking the "Cajun Exemption." Unfortunately, despite the buzz in the industry, the Cajun Exemption does not allow vessel owners to operate their vessels without a licensed crew.

The Cajun Exemption is found in 46 U.S.C. §8905 where Section B states that the requirement to have a licensed captain operate a towing vessel is waived if the vessel is engaged in the offshore mineral and oil industry

and the vessel has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure.

During a recent deposition that I was involved in, a port captain for a reputable towing company testified that the Cajun Exemption applied to all of his vessels because they were all "working offshore." When questioned about the exemption, he admitted that, under his reasoning, there is absolutely no reason to have a licensed captain because he believed that the exemption applied to all vessel operators because all vessels are engaged in "offshore" operations.

Contrary to this assertion, the Cajun Exemption does not apply to all vessel operators working in the mineral and oil industry. The regulation is specifically tailored to situations where the vessel "has offshore mineral and oil industry sites or equipment as its ultimate destination or place of departure." The regulation applies to offshore supply and towing vessels that travel from coastal sites to offshore platforms and installations. Therefore, the concept allows the captain to pull the vessel out of port and allow the mate, or other competent crew, to operate the vessel during the long journey out to its offshore location. The statute does not envision going from inland port to another inland port as an "offshore destination."

The courts have considered the term "offshore" and define it as the water seaward of the "baseline from which the territorial sea of the United States is measured." Thus, for the Cajun Exemption to apply, you must be either be going to or from a location seaward of the territorial sea of the United States. Applying this definition, the Cajun Exemption does not provide the relaxed operating regulations that many companies believe. Any company operating under this exemption is taking a significant risk if they are not certain that this narrowly tailored regulation applies to their situation.

Operating your vessels under perfect conditions is risky enough. Try to minimize your risk by ensuring that you comply with all Coast Guard regulations by having an adequate number of qualified crew on board. Also, be wary of any relaxed staffing rules that you hear through the grapevine, due to the technical language of these rules they may not apply to you.