



The Marine Assistance Industry Journal

A Quarterly Newsletter - Volume 44- July 2021



Chairman's Address

A few years ago, I hired a young man that reminds me of myself when I first started in this industry. I was 18 years old, the best boat driver ever minted, and I knew just about everything.

Fast forward a couple of decades, and not only am I not 18 anymore, but I've also realized my knowledge is limited, and I actually seem to know less and less as time goes on.

When I look back on the conferences I've attended over those years, I think about all the people in the room that I learned from. In the early years, I learned from the owners who came before me; the founders of the industry who made the rules. In recent years, I've also learned from those who came after me; the ones reshaping the industry and questioning the rules.

In some ways, I've never given up on being the kid in the room, thirsty for all the knowledge and information I could collect. Honestly, I'm not sure that's a bad thing.

As we look forward to a return of conferences and face-to-face meetings, I'm anxious to hear what you all learned over the last couple of years. Who knows, maybe one of these years, if I listen enough, I'll get to be as smart as I thought I was all those years ago.

Fair winds and following seas,

Phil LeBlanc
C-PORT Chairman

35th C-PORT Conference and Membership Meeting **January 17 - January 19, 2022** **Hyatt Regency Savannah, GA**

Celebrating 35 years of service to the marine assistance towing and salvage industry, the C-PORT Conference begins with a Welcome reception on Monday, January 17. Conference sessions start Tuesday morning, January 18, and continue through January 19, Wednesday afternoon.

There's time to gain valuable insight from our information packed sessions, speak with our USCG partners, celebrate and honor members during lunch and at the banquet, meet with vendors, and socialize and reconnect with fellow industry professionals and meet a few new ones, too!

Visit the C-PORT website for more information. Registration is open and the hotel reservations link will be live soon! The agenda along with exhibitor and sponsor opportunities are available! There is something for everyone at the C-PORT Conference and Membership Meeting!

The TowBoatU.S. Conference immediately follows.

C-PORT Seeks Nominations for Prestigious Awards -

C-PORT, Conference of Professional Operators for Response Towing, is seeking nominations for a number of prestigious awards to be presented at the 35th C-PORT Conference being held on January 17-19, 2022 at the Hyatt Regency Savannah, GA.

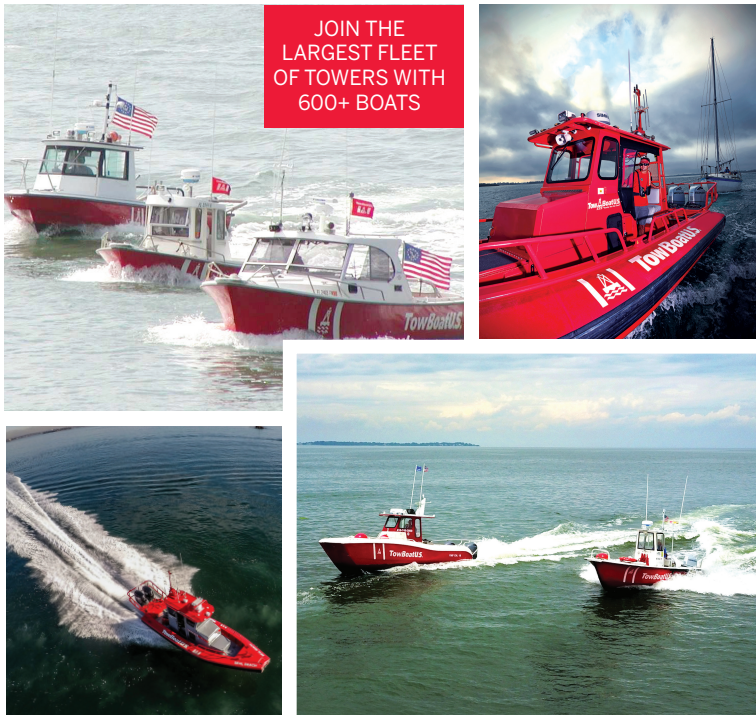
AFRAS Lifesaving Award - AFRAS, Association for Rescue at Sea, annually recognizes a deserving member of C-PORT for their rescue efforts. AFRAS was formed in 1976 to foster traditional maritime search and rescue values through suitable recognition of deserving personnel, and to facilitate cooperation in search and rescue. The Award is conferred on a C-PORT member individual or group of individuals who perform exceptional acts in attempting to save life in the maritime environment. Instances where the rescuer places their own life at risk will be given highest consideration. The Award may be given posthumously.

Nominations are to include a full description of the circumstances and events giving rise to the nomination and include such factors as: Location of the incident; prevailing weather conditions; skill displayed; determination to conduct the rescue operation and exceptional courage demonstrated; and degree of risk involved.

C-PORT Distinguished Service and Meritorious Service Awards - These awards honor C-PORT members who demonstrate the professional standards that our association promotes. These marine assistance professionals go above and beyond their dedication to providing service to the boating public through extraordinary and exemplary actions. Nominations are to include a full description of the circumstances and events giving rise to the nomination.

Nominations for all awards may be emailed to teardone@cport.us or mailed directly to the C-PORT office at 4251 NE 27th Ave., Lighthouse Point, FL 33064. Nominations will be accepted for service to the boating community performed in 2020 as well as the boating season 2021. All nominations must be received by October 15, 2021.

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Lawn-Mowers and Salvage Awards

The federal court in Massachusetts just took a lawn-mower to a salvor's \$750,000 salvage claim mulching it down to a paltry \$65,000. Here's maybe why.

First, I wasn't involved. That's important because like any good trial lawyer, the tale of the tape is sort of important for business!

Second, this situation supports what a lot of salvors don't like hearing me say: "High-value saves don't always translate into equally high-value salvage awards." That is, just because you might've secured a 20% award for that Bertram you kept afloat doesn't mean you're getting a 20% award for saving the m/v QUEEN MARY 2. Salvage awards don't increase linearly with the value of the vessel saved. It always comes down to the unique circumstances of each case.

Third, always (always) drill down on the peril. I get the sense that with policemen, every suspect is brandishing an automatic and with big game fishing, every fin that gets away would've won the tournament. See the pattern? Every occupation has a mindset. What you do as a salvor is dangerous, but not every peril is going to result in the vessel's loss. Vessels can go aground and roll around and get badly damaged, but that doesn't mean they'll always be lost. It's that point the Court picked up on when it unpacked the issue of peril. The Court basically boiled the peril down to the worst case (breaking anchor and grounding on sand) and concluded that the "risk to the vessel, itself, while real was not overwhelming." My thought is always check your mindset and approach any analysis of peril with a cool eye taking time to consider what the defense might argue.

Fourth, big marks were given by the Court for the salvor's basically heroic on-scene efforts given the sea conditions. I think this element should've been given more weight in calculating the final salvage award.

Fifth, and this is where I think the Court goes astray and where I disagree with this decision, the Court gives a lot of weight to the issue of the 'materials' and labor used in effecting the salvage. The Court labels the "towline" as the only material and the labor costs as \$6,300 concluding: "These minimal costs weigh against a liberal award." What? I've never seen these two components given such weight and I think it's contrary to the case law – maybe it'll prove an appealable issue.

Sixth, I don't know why the Court used the Blackwall factors instead of Salcon 89? I like the way the SALCON 89 factors are organized as opposed to the Blackwall factors which place "labor expended" as the first factor! (This list organization might explain how this Court, respectfully, gave this factor too much weight.) I always push SALCON 89 as the applicable law.

My takeaway? The salvor did a great job and should've been awarded six-figures. That it wasn't may be a mix of what I've noted here and the intangibles that can arise at trial. Who knows? Big kudos though to the salvor for taking it all the way. More salvors should follow its lead and take their salvage claims to decision whether in court or in an arbitration.

If you want a copy of this decision, just go to www.salvageaward.com and enter your email address. This article is provided for your general information, is not legal opinion and should not be relied upon. Always seek legal counsel to understand your rights and remedies.

Underway and making way.

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Attorney John Fulweiler is not affiliated with C-PORT. The views and opinions expressed in his article are his alone.

This is an excerpt from the US Coast Guard Maritime Commons blog. While published in 2020, the comments made by Cmdr. Jennifer Hnatow, USCG Domestic Vessel Compliance, are relevant today. A breakout session is planned for the C-PORT Conference, January 2022, to discuss this important topic.

Practice makes permanent: Does your crew know what's in your TSMS (Towing Safety Management System)?

In 2019, marine inspectors detained 41 towing vessels for Code 30 deficiencies. Code 30 deficiencies reflect a vessel's failure to implement a TSMS or a lack of familiarity with a TSMS. Hnatow said the most common themes related to Code 30 deficiencies were a lack of adequate shore support through owner or managing operator, or the crew's failure to demonstrate an active TSMS training regimen.

"When Coast Guard marine inspectors go out for a scheduled inspection, or post marine-casualty, part of what their looking for is to ensure the vessel has the equipment required by Subchapter M but also that the crew understands how to use it," Hnatow said. "Practice makes permanent. The more you practice correctly – whether you have the Coast Guard option or the TSMS option – it's going to be automatic in the event of an emergency. That's why our marine inspectors ask those questions."

Hnatow also offered several suggestions for promoting a holistic safety culture onboard a vessel, that is embraced from the most junior crewman to the executive staff:

- Making the TSMS available for the entire crew to read by posting it online or having a hard copy in a common area.
- Encourage ownership of the TSMS by assigning a crew member – even an unlicensed position – the responsibility for maintaining the hard copy of the TSMS.
- Company leadership should promote regular TSMS training as a special event and ensure the crew understands the value of regular training. Case studies can be used to provide context and illustration.
- Talk openly about results of audit and surveys. Talk to the whole crew on what they did well and where they need to improve.

"TSMS is about constantly improving the safety of the vessel," Hnatow said. "That's everyone's responsibility."

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The US Coast Guard set the random drug testing rate for covered crew members for 2021. The most recent data collected showed a positive rate greater than 1%. As such, the minimum random drug testing rate is set at 50% for 2021. All captains and crew in safety sensitive positions must be enrolled in a US Coast Guard approved random drug testing program.

As the United States continues to reopen and millions have received vaccination against Covid-19, the US Coast Guard has rescinded the mask wearing order in outdoor settings, following soon to be updated CDC guidance. An outdoor area is defined as: "An outdoor area on a vessel is a space that is permanently open to the weather on one or more sides and, if covered by a deck or canopy, any spot on the overhead is less than 15 feet from the nearest opening." The federal mask requirement remains for entering and while indoors at transportation hubs.

The MSIB notes that this updated guidance does not supersede any "federal, state, local, tribal, or territorial laws, rules, and regulations that still require the wearing of masks in outdoor areas of conveyances and while outdoors on transportation hubs." Our vessels are included in the definition of conveyance, even though we operate predominately single-handed on the vessel.

The US Coast Guard National Maritime Center (NMC) released a bulletin regarding the expired CG-719 Forms. NMC acknowledged that the current CG-719 forms show an expiration date of 03/31/2021. These forms are in their periodic renewal process. Until final approval is received, NMC is advising mariners to continue to use the CG-719 forms as posted on their website.

Ms. Mayte Medina elected as International Maritime Organization's Maritime Safety Committee Committee Chair as posted on Maritime Commons, USCG Blog. Over the years, Ms. Medina has worked closely with C-PORT in support of the marine assistance industry. C-PORT congratulates Ms. Medina on this important position.

Ms. Mayte Medina of the U.S. Coast Guard was unanimously elected as the Committee Chair during the first day the 103rd session of the International Maritime Organization's (IMO) Maritime Safety Committee (MSC) on May 5th, 2021.

As the senior technical body within the IMO, the MSC is responsible for all issues related to the protection of life and property at sea. Under Ms. Medina's leadership and guidance, a number of significant issues were considered and positively advanced during this session, including impacts of COVID-19 on shipping, autonomous ships, piracy in the Gulf of Guinea, and fuel oil safety.

Ms. Medina is the first woman to chair the IMO's highest technical body. A graduate of the U.S. Merchant Marine Academy, she has been with the U.S. Coast Guard since 1997, and is currently Chief of the Office of Merchant Mariner Credentialing at Coast Guard Headquarters in Washington, DC. Ms. Medina is an internationally recognized expert on mariner training and certification and previously served as the Chair of the IMO's Human Training and Watch-keeping Sub-committee. In addition, she has been involved in the development of many other domestic and international maritime safety, security, and environmental protection standards. Well known and highly respected worldwide, her election is well-deserved and highly



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Ransomware Attacks Are Up, Spawning Widespread Harm -

We are constantly hearing about Cyber and Ransomware attacks in the news. The Wall Street Journal's headline on May 12, 2021, was "Ransomware Attacks Are Up, Spawning Widespread Harm". Recent examples include the Chinese hack on Microsoft's Exchange Servers in March and the DarkSide hack of Colonial Pipeline earlier this week. It is important to note, although most of what we hear about are attacks on large corporations and government entities; these same attacks are occurring in small to mid-size businesses. These attacks are not large enough or disruptive enough to society to make the front page of The Wall Street Journal, but they can be devastating for businesses.

A 2021 report by PunkPanda found that businesses lost at least \$114 billion annually from data breaches, with approximately 25% of these breaches occurring due to negligence. With more SMBs (small midsize businesses) going online to connect with customers or manage remote workflows, these risks are only bound to grow. (Forbes Article 3/22/2021)

Along with the increased ransomware activity, cybercriminals continue their "profitable" business through phishing/social engineering campaigns. This is a perfect example of "social engineering fraud":

Business email compromises are a form of social engineering fraud whereby attackers impersonate a CEO or executive authorized to conduct wire transfers and induce employees to transfer money to a fake client account. The COVID-19 pandemic has led to an increase in cyber-related crime as fraudsters use social engineering techniques to exploit systems and procedures made more vulnerable by remote working, they say. (Business Insurance February 16, 2021)

Even Social Engineering fraud has evolved in the past few years. The next example highlights "Reverse Social Engineering":

Company A (a seafood distributor) has secured a Cyber Privacy Liability policy from their Insurance agent. Securing the policy required an extensive review of A's internal protocols surrounding employees' internet usage, email and computer password updates, and checks and balances surrounding online bank account and credit card transactions. Unfortunately, with all of these protocols in place, a hacker was still able to infiltrate Company A's system (in this real-life example, they infiltrated Company A by hacking into an old printer seldom used but still hooked up to their network). While inside Company A's system, the hacker was able to find Company A's accounts receivables and saw that a large sum of money was owed to them by Company B (Company B is a local food shop that does not have a Cyber Liability policy in place). Still, inside Company A's network, the Hacker emailed Company B advising of a new Bank Account to send the outstanding balance to. Company B received the email, verified the email address, and forwarded payment to the new Bank Account. By the time this has been discovered, the Hacker is long gone along with the stolen funds from Company B. Until recently, this coverage was not readily available under Cyber Liability Policies.

With these types of claims on the rise, it's important to take a step back and note your internal vulnerabilities then talk about them with your Insurance professional. A good Cyber Liability program will include such coverages as:

- Network Security and Privacy Liability Funds Transfer Fraud
- Regulatory Coverage
- Payment Card Industry (PCI) Fines and Penalties
- Data Recovery
- Breach Costs
- Media Liability coverage
- Notification Costs
- Computer Fraud
- Data Recovery Costs Social/Reverse
- Social Engineering Fraud

For more information, contact:

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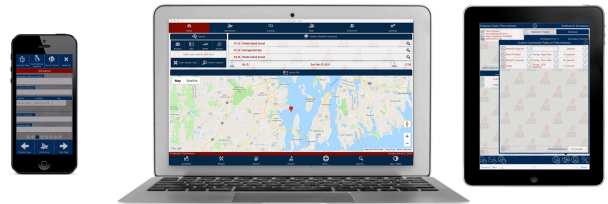
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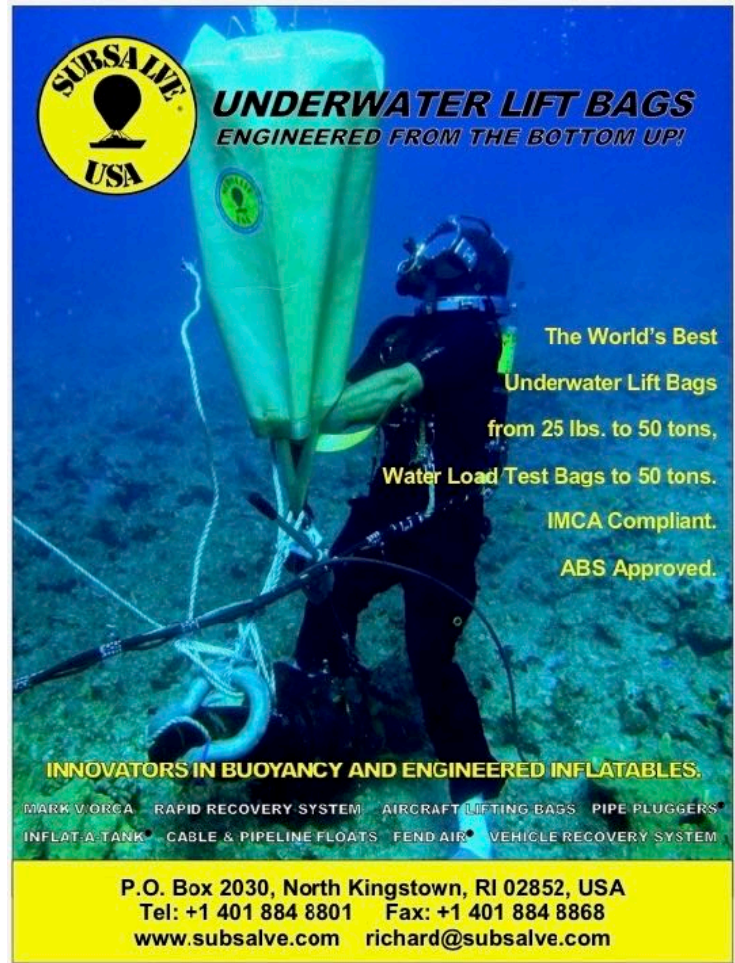
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Risk Management Training Courses are available on the C-PORT website, www.cport.us. The program centers on these concepts:

- Risk: “possibility of loss or injury”
- Risk Management: “The identification, analysis, assessment, control, and avoidance, minimization, or elimination of unacceptable risks.

C-PORT is committed to encouraging its member’s growth and development through education and is dedicated to providing good business practices throughout its membership. With the increase in accidents and economic pressures facing our industry, many companies have lost sight of the importance of training and proper risk management skills. Our mission is to provide our members with programs that will enable their growth and development into the future, while minimizing the impact of looming USCG regulation in response to Congressional directive and safety records.

Contact Tina Cardone at tcardone@cport.us or 954-261-2012 with any questions regarding this program. Captain and crew special pricing is listed on the website.

Marine Assistance Company Operations Guideline, exclusively for C-PORT company members. These guidelines promote safe operations and provide regulatory guidance. C-PORT company members may obtain access to this document at the C-PORT website www.cport.us, or contact Tina Cardone at tcardone@cport.us or 954-261-2012.

Insurance Program for Marine Assistance Companies - Administered by Starkweather & Shepley Insurance Brokerage, Inc. - Designed for organizations dedicated to marine assistance and towing. This Program offers an extensive portfolio of quality insurance products and services to address a wide range of marine exposures. -800-788-8225; lwagner@starshep.com.

ACAPT- Accredited for Commercial Assistance and Professional Towing- The ACAPT program provides best practices guidance for the marine assistance towing and salvage industry. Participants are highlighted as having taken the initiative to meet or exceed their own company qualifications against industry best practice criteria and government regulations. Visit the C-PORT website at www.cport.us and complete the application, or contact Tina Cardone at tcardone@cport.us or 954-261-2012 with any questions regarding this program.

BOSAR for Commercial Assistance- Created through the support of NASBLA’s BOAT program and the USCG Office of Boat Forces, is designed for the marine assistance operator, providing reinforcement of knowledge gained by virtue of their captain's license and experience. It also enhances their ability to work as a true partner with local agencies and the US Coast Guard. This course is open to any marine assistance company who wants to host the training. Instructors and course materials are provided by C-PORT. Contact Tina Cardone at tcardone@cport.us or 954-261-2012 if you have an interest in hosting a class.



C-PORT was founded in 1986 to act as a liaison between the marine assistance industry and public agencies and organizations involved with boating safety, marine assistance, marine salvage and other marine-related operations. Its mission is to represent, promote, protect, and defend its member companies through communication, relationship development, and education. Our members are dedicated to providing prompt, professional and timely assistance to all boaters and to actively partner and cooperate with local law enforcement and U.S. Coast Guard. They are professionals, dedicated to the growth and development of their respective businesses, and committed to furthering the advancement of our waterways and the boating community. For more information, contact C-PORT at (954) 261-2012 or visit www.cport.us.

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