Critical Elements of Criminal Prosecutions Involving the Maritime Sector

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I. Introduction

Over the past thirty years, criminal prosecutions of commercial shipping companies, cruise lines, ships' officers, and shoreside managers have become an almost routine aspect of trading in United States ports. While the details of any specific prosecution can offer cautionary lessons for the maritime industry, broader insights can be gained by considering some of the more general characteristics of these prosecutions and the legal principles upon which they are based. This article discusses several of those topics, including the timelines for criminal investigations that affect maritime interests, the intent standards that apply for the federal pollution statutes that form the basis of many of these prosecutions, and the typical targets of these prosecutions. It also examines the doctrine of *respondeat superior*, which enables the government to prosecute maritime companies accountable for the illegal conduct of their employees, and the government's aggressive use of a federal manslaughter statute following a number of fatal marine casualties.[1]

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1. This article stemmed from the Nicholas J. Healy Lecture on Admiralty Law on May 1, 2025, which was a panel discussion entitled *Maritime Criminal Law – What Every Maritime Lawyer Should Know*, moderated by Gregory F. Linsin with panelists David Gerger, with Gerger Hennessy Martin & Peterson, and Stacey H. Mitchell, with Akin. The authors are deeply indebted to both

This article offers insights that will enable the maritime community and both admiralty and maritime practitioners to better prepare for and manage the risks these criminal prosecutions present.

II. WHEN DOES A CRIMINAL INVESTIGATION BEGIN?

Under the United States' criminal justice system, only the Department of Justice has the authority to initiate a criminal prosecution. In cases related to potential violations of maritime pollution laws or other federal statutes affecting the shipping industry, that authority is held concurrently by the Environmental Crimes Section of the Environment and Natural Resources Division of Main Justice in Washington, D.C., and the local U.S. Attorney's Office in which the offense occurred. The Department of Justice's Justice Manual defines the standard for initiating a criminal prosecution as being "probable cause to believe that a person has committed a Federal offense."[2] The same guidelines state that a federal prosecutor should "commence or recommend federal prosecution if he/she believes that the person's conduct constitutes a federal offense, and that the admissible evidence will probably be sufficient to obtain and sustain a conviction [unless other factors mitigate against prosecution]."[3]

Vessel owners and operators as well as admiralty and maritime practitioners must recognize that, with respect to potential

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Mr. Gerger and Ms. Mitchell for their contributions to the panel discussion which inspired this article.

2. JUSTICE MANUAL 9-27.200 (U.S. DEP'T OF JUST. 2018).

3. *Id.* 9-27.220. On March 10, 2026, the Department of Justice issued the first-ever Department-wide Corporate Enforcement and Voluntary Disclosure Policy ("CEP") that "applies to all corporate criminal matters handled by the Department, except for [anti-trust matters]." The CEP has the potential to provide full protection from federal prosecution for companies that voluntarily disclose criminal conduct and cooperate with the Department, but there are many questions as to how the new policy will be implemented and caution is advised before deciding to voluntarily disclose information. *See* Press Release, U.S. Dep't of Just., Department of Justice Releases First-Ever Corporate Enforcement Policy for All Criminal Cases (Mar. 10, 2026), https://www.justice.gov/opa/pr/department-justice-releases-first-ever-corporate-enforcement-policy-all-criminal-cases [https://perma.cc/FQC8-RVUP]; *see* Gregory F. Linsin & Holli B. Packer, *Navigating DOJ's New Corporate Enforcement Landscape: Key Considerations for Environmental Voluntary Self-Disclosures*, MAINBRACE (Apr. 2026), https://www.blankrome.com/news-and-events/navigating-dojs-new-corporate-enforcement-landscape-key-considerations-for-environmental-voluntary-self-disclosures/.

violations of the marine pollution or safety laws, the collection of information and evidence that may ultimately lead to a criminal prosecution very often begins long before any formal notice that a criminal investigation has been opened. In fact, evidence collection to support a criminal prosecution can begin with a report of wrongdoing to the U.S. Coast Guard ("Coast Guard") by a whistleblower[4] or voluntary self-reporting. Evidence collection can also begin after an apparent incident occurs (*e.g.*, oil sheen spotted around the vessel) or through discovery by U.S. Coast Guard personnel or Environmental Protection Agency inspectors during routine boardings or vessel inspections.[5]

These routine regulatory boardings are not designed to collect evidence of criminal violations. If the inspectors observe conditions or receive information that suggests potential violations of the environmental or safety laws, they will pursue those leads through interviews, the inspection of vessel equipment, and the collection of vessel documents without any requirement to notify the Master or the company that they have shifted to a criminal investigation.[6] Understanding this dynamic will better equip the Master and the company's shoreside supervisors to manage the process effectively and avoid creating additional enforcement risks.

The following bullets provide examples of "red flags" that may arise during vessel inspections and may cause the government inspectors or regulators to collect information that could lead to the filing of criminal charges, even though a criminal investigation has not been formally initiated:

4. Whistleblowers may be entitled to a monetary award as an incentive to report wrongdoing. 33 U.S.C. § 1908(a) states, "[i]n the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to conviction." Furthermore, the Clean Water Act, 33 U.S.C. § 1367, prohibits retaliation by employers against whistleblowers for reporting pollution violations.

5. In certain areas of the country, Environmental Protection Agency inspectors have boarded and inspected commercial vessels to evaluate compliance with the requirements of the Vessel General Permit. *See* Jeanne M. Grasso & Kierstan L. Carlson, *EPA Ramps-Up VGP Inspections and Enforcement*, MAINBRACE (Mar. 2022), https://www.blankrome.com/publications/epa-ramps-vgp-inspections-and-enforcement [https://perma.cc/F843-NA4U].

6. *See, e.g.*, United States v. Mitchell, 966 F.2d 92 (2d Cir. 1992).

- When a Coast Guard Port State Control inspector identifies such things as inoperable pollution prevention equipment,[7] questionable Oil Record Book entries,[8] excessive oil leaks in the engine room, poorly managed maintenance programs, or oil stains on the hull, the inspector will likely begin asking questions of the crew to determine whether there are reasonable explanations for the anomalies observed. The inspector's questioning of the officers and crew regarding such findings or related requests for relevant vessel records may well mark the initial collection of evidence that could lead to a criminal referral and prosecution.[9]
- When the Coast Guard component or the Environmental Protection Agency receives a whistleblower report that indicates, for example, a vessel has violated the requirements of the Act to Prevent Pollution from Ships ("APPS"),[10] the International Convention for the Prevention of Pollution from Ships ("MARPOL"),[11] or the terms of the Vessel General Permit, an inspection

7. *E.g.*, inoperable components, unfamiliarity of vessel's engineers with operating requirements, piping that does not match class-approved drawings, blanked flanges, excessive tool marks on bolts, fresh paint on bolts, etc.

8. *E.g.*, inconsistent volumetric entries in Oil Record Book and tank sounding logs, absence of periodic entries indicating routine operation and/or functional testing of Oily Water Separator or incinerator, inaccurate codes for entries, absence of weekly waste oil tank sounding records, absence of receipts for offloading of sludge and/or waste oil, etc.

9. For this reason, it is important to ensure that crew training include instruction regarding the importance of being truthful when responding to questions from Coast Guard inspectors or other government officials. Inaccurate or incomplete responses to such questions can become the basis for criminal false statement or obstruction of justice charges, even though a criminal investigation had not been formally initiated. Crew training in this area should also include clarification as to when it is permissible or advisable to decline an inspector's request for an interview.

10. 33 U.S.C. §§ 1901–1915.

11. APPS was the domestic implementation of two international treaties: the 1973 International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, 1340 U.N.T.S. 184, and the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships ("MARPOL 73/78"), Feb. 17, 1978, 94 Stat. 2297, 1340 U.N.T.S. 61. Unless the reference is specifically to the APPS statute, "APPS/MARPOL" will be used hereinafter to refer collectively to the APPS statute and the treaties.

team will be dispatched to the vessel to evaluate whether the report is accurate. Regardless of whether the inspectors dispatched to the vessel are criminal investigative agents at this initial stage,[12] the vessel Master and shoreside personnel should assume that the potential for an eventual criminal referral is paramount in the minds of the boarding team and that potential will guide their collection and evaluation of evidence.[13]

- When the Coast Guard receives intelligence for another Port State or from aerial surveillance assets regarding potential oil discharges from a vessel or APPS/MARPOL violations, a boarding team will likely meet the vessel at its first U.S. port to investigate the intelligence thoroughly and evaluate whether it warrants a criminal referral.
- When Coast Guard or Environmental Protection Agency inspectors or investigators begin interviewing crew members separately in a closed cabin or office, their investigation has almost certainly progressed to a point where they are actively collecting evidence to support a criminal referral.

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12. Uniformed Coast Guard Port State Control Officers have criminal law enforcement and warrantless search and seizure authority under 14 U.S.C. § 522(a). Similarly, criminal investigators from the Coast Guard Investigative Service (CGIS) are special agents who wear civilian clothing and are empowered to enforce U.S. law pursuant to 14 U.S.C. § 525. It is common practice for CGIS special agents to accompany and support Coast Guard Port State Control Officers, which can be an indication that the matter is likely to be referred to the U.S. Department of Justice.

13. Coast Guard inspectors and regulators are not required to advise the crew that the matter is under criminal investigation or that it may eventually be referred to the Department of Justice for consideration of criminal enforcement. There are also no requirements for the Coast Guard to provide a Miranda warning to crewmembers, *i.e.*, a caution that their responses can be used against them and that they have the right to refuse to answer questions, because such interviews are typically not considered custodial in nature, and therefore any of their responses to even casual questions may eventually be used as evidence against the crew and the company. Notably, 14 U.S.C. § 522(a) grants the Coast Guard broad authority to conduct inquiries, examinations, inspections, searches, seizures, and arrests on the high seas and waters under U.S. jurisdiction. The statute explicitly allows Coast Guard officers to board vessels, examine documents, and conduct searches to enforce U.S. laws. *Id.* The statute does not impose a requirement to inform the crew of potential criminal consequences during these activities. *See id.*

- When Coast Guard Port State Control inspectors determine there are "clear grounds" to believe the vessel was not in compliance with environmental protection regulations and conventions, they may initiate an expanded MARPOL inspection.[14] An expanded MARPOL inspection may include additional crew interviews, the operational testing of equipment, the seizure of vessel documents and/or equipment, the opening of engine room piping, the taking of samples, etc. When this occurs, there is a high likelihood that a referral to the Department of Justice for consideration of criminal enforcement is imminent.

These examples are confirmed by the fact that, in virtually every APPS/MARPOL criminal prosecution, the first formal notice to the vessel that the Coast Guard has determined there was "reasonable cause" to believe violations had occurred is in a letter from the Captain of the Port ("COTP") to the Master. That letter serves to notify the vessel that the Coast Guard had requested the Customs and Border Patrol ("CBP") to withhold the vessel's customs clearance to depart the port.[15] By the time the COTP letter is issued, the Coast Guard has already secured all the evidence it believes will be needed to pursue a criminal prosecution, including interviews and often re-interviews of all relevant crew members and the seizure of original vessel documents. The evidence also potentially includes sections of piping and/or vessel equipment, collection of any necessary samples from tanks or piping, photographs of relevant vessel equipment and tanks, and imaging of the vessel's computer hard drives.[16] The Coast Guard has also

14. *See* Int'l Mar. Org. [IMO], *Procedures for Port State Control, 2023*, A 33/Res. 1185 (Jan. 2, 2024), https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.1185(33).pdf [https://perma.cc/MCR9-4PZS].

15. 46 U.S.C. § 60105; 19 C.F.R. § 4.66c(a).

16. Several recent APPS/MARPOL prosecutions have also included charges against the maritime companies for criminal violations of the Ports and Waterways Safety Act ("PWSA"), including the failure to report a hazardous condition, based on the Coast Guard's more detailed inspection of the vessel. *See* 46 U.S.C. ch. 700; 33 C.F.R. § 160.204. The intent standard for proving a criminal failure to notify violation of the PWSA is willful and knowing, meaning the government must prove that the defendant had a

identified which crew members will need to be disembarked before the vessel is cleared to sail. The only remaining step is negotiating a Security Agreement to formalize the posting of a bond and other terms before the Coast Guard will request that CBP issue the customs clearance that authorizes the vessel to sail.[17]

In addition to criminal enforcement actions that develop from routine or targeted vessel inspections for violations of APPS/MARPOL, marine casualties that occur in United States territorial waters have also become another primary source of criminal investigations and prosecutions affecting the maritime community.[18] Thus, the maelstrom of technical and commercial issues related to the safety of the crew, the stabilization of the vessel, the implementation of the response plan, the engagement with the casualty investigations, and the management of the range of civil and commercial liability claims that are an inevitable result of a major marine casualty are only the beginning. The vessel interests should now also assume that there will be an immediate, parallel criminal investigation of the casualty to evaluate whether criminal charges may be warranted against any of the ship's officers, shoreside managers, the vessel owner, or the operator. The likelihood that criminal charges will eventually be filed increases exponentially if the casualty results in significant marine pollution or multiple fatalities.[19] This potential of criminal enforcement should inform all aspects of the company's and the vessel's activities following a casualty. Such activities include ensuring notification requirements are met, engaging qualified criminal counsel to assist the legal team in evaluating and mitigating the risk of a criminal referral, interacting with response personnel, communicating

specific intent to violate the law. *See* United States v. Canal Barge Co., 631 F.3d 347, 356 (6th Cir. 2011).

17. 33 U.S.C. § 1908(e).

18. One of the statutory purposes of a Coast Guard marine casualty investigation is to identify potential violations of criminal law. *See* 46 U.S.C. § 6301(5).

19. *See, e.g.*, United States v. Transocean Deepwater Inc., No. 2:13-cr-1 (E.D. La. July 26, 2013); United States v. BP Expl. & Prod. Inc., No. 2:12-cr-292 (E.D. La. 2012); United States v. John J. Cota et al., No. 3:03-cr-160 (N.D. Cal. 2009) (analyzing criminal prosecution following the *M/V Cosco Busan*'s allision with the San Francisco-Oakland Bay Bridge and resulting oil spill); United States v. Smith, No. 04-CR-0022 (E.D.N.Y. 2004) (analyzing prosecution of assistant captain of the Staten Island Ferry Andrew J. Barberi following collision resulting in deaths of eleven passengers); United States v. Exxon and Exxon Shipping Co., No. A90-015 Criminal (D. AK. 1990).

with casualty investigators, and cautiously evaluating the manner and timing of the company's interactions with federal criminal investigators.[20]

III. The Clean Water Act and APPS/MARPOL as Public Welfare Statutes

One of the biggest challenges for vessel owners and operators who find themselves subjects of an environmental criminal investigation in the United States is recognizing the minimal standard of proof required to establish criminal intent for violations of the Clean Water Act[21] or APPS/MARPOL. Another challenge is the courts' tendency to construe those statutes in a manner designed to further their legislative purpose to protect the marine environment. Even though vessel owners and operators may perceive they are being unfairly singled out, the relaxed standards for criminal enforcement under these statutes are not uniquely applicable to the maritime industry. Rather, they are the legacy of a history of specialized legislation in the United States designed to protect public health and welfare and a record of deferential judicial interpretations designed to advance the purposes of these public welfare statutes. This history includes the opinions interpreting the criminal enforcement provisions of the CWA and APPS, the pollution statutes that most directly affect the maritime sector over the past thirty years.

A fundamental tenet of criminal law in the United States is that criminal statutes are strictly construed and, if there is ambiguity or uncertainty regarding the terms of a criminal statute or its elements, the Rule of Lenity requires that the statute be narrowly construed and the criminal defendant be given the benefit of any doubt.[22] In addition, criminal liability in the United States

20. The risk of aggressive criminal enforcement is significantly higher if the casualty has resulted in fatalities. *See* Section VI, *infra.*

21. Clean Water Act, 33 U.S.C. §§ 1251–1387 (formerly the Federal Water Pollution Control Act of 1972).

22. *See, e.g.*, Thompson v. United States, 604 U.S. 408 (2025) (reinforcing the Rule of Lenity, meaning when statutory language in criminal statutes is ambiguous, it must be interpreted in favor of the accused, thereby refusing to allow "misleading" to automatically mean "false"); Snyder v. United States, 603 U.S. 1 (2024) (invoking the Rule of Lenity); Dubin v. United States, 599 U.S. 110 (2023) (adopting a narrow, "targeted reading" of the statute).

has traditionally required proof of one of four broad tiers of criminal intent or *mens rea*.[23] Felony offenses generally require the government to prove that the defendant acted with knowledge of and a specific intent to violate the law.[24] A somewhat lower intent standard applies to lesser categories of offenses that require proof that a defendant acted knowingly, meaning that the defendant acted with the knowledge that their conduct was likely to cause a prohibited result.[25] Lastly, two lower intent standards apply to less culpable offenses that require proof that the defendant either acted recklessly and consciously disregarded a substantial risk that their conduct would cause a prohibited result or was grossly negligent in that their conduct represented an extreme departure from a standard of care and an utter indifference to foreseeable prohibited consequences.[26] As a rule, the potential penalties are greater for violations requiring proof of a higher, more culpable level of criminal intent.[27]

Beginning in the early twentieth century, the federal courts addressed the criminal enforcement provisions of a new category of statutes enacted to protect public health and welfare. In United States v. Balint,[28] the Supreme Court reviewed a conviction under a federal statute that criminalized the sale of certain narcotics, but the statute did not contain an intent provision as an element of the crime. Reviewing the conviction under the public welfare rationale, the Court upheld the conviction under a strict liability theory, *i.e.*, without the need to prove criminal intent whatsoever. The Court reasoned that the government "may in the maintenance of a public policy"[29] prohibit and punish certain acts to advance the public welfare.[30]

The decision in United States v. Dotterweich[31] was also guided by the public welfare doctrine when the Court considered the

23. MODEL PENAL CODE § 2.02 (AM. L. INST. 1985) (providing purposely, knowingly, recklessly, and negligently as the four tiers of culpability).

24. *Id.* The willful and knowing *mens rea* requirement of the PWSA is one example of the typical intent standard required to establish a felony criminal violation. *See supra* note 16.

25. MODEL PENAL CODE § 2.02 (AM. L. INST. 1985).

26. *Id.*

27. *Id.*

28. United States v. Balint, 258 U.S. 250 (1922).

29. *Balint*, 258 U.S. at 252.

30. *Id.*

31. United States v. Dotterweich, 320 U.S. 277 (1943).

conviction of a corporate officer of a drug distribution company for violating a statute that criminalized the sale of misbranded drugs. Even though the criminal statute did not require proof of criminal intent and there was no evidence that the defendant had knowledge of the misbranding, the Court concluded that a criminal penalty may be imposed without proof of a *mens rea* element when the defendant has a responsible relationship to the public danger and the criminal penalties will enhance the effectiveness of the regulations.[32]

The public welfare rationale was expanded by the Supreme Court in United States v. International Minerals & Chem. Corp.,[33] which involved a criminal prosecution for violation of a statute that required notations on shipping records whenever a corrosive liquid was being shipped across state lines. The statute provided that whoever "knowingly" violated its provisions was subject to criminal prosecution.[34] The District Court originally dismissed the indictment on the grounds that the facts alleged did not sufficiently establish a knowing violation of the statute. The Supreme Court concluded that the statute required proof only that the transporter knew he was carrying a corrosive liquid and was crossing a state line; the government was not required to prove the defendant had knowledge of the regulation because of the "dangerous" and "deleterious" nature of the materials being regulated.[35] The statute was designed to regulate material that was potentially dangerous to public safety, and the Court therefore concluded that Congress intended the intent standard of "knowingly" to require proof only that the defendant had knowledge of the basic facts. The dangerous nature of the material should have put the defendant on notice of the likelihood that it was regulated.[36]

Against this backdrop of the development of the public welfare doctrine, the United States enacted the five primary federal pollution statutes between 1970 and 1980: the Clean Air Act;[37] the Clean Water Act; the Resource Conservation and Recovery Act ("RCRA");[38]

32. *Id.* at 280-81.
33. United States v. Int'l Minerals & Chem. Corp., 402 U.S. 558 (1971).
34. *Id.* at 559.
35. *Id.* at 565.
36. *Id.*
37. Clean Air Act, 42 U.S.C. §§ 7401–7675.
38. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

the APPS statute; and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA).[39] Each of these statutes was designed to protect human health and the environment from hazardous materials, pollution, and dangerous conditions,[40] and the federal courts have consistently interpreted them through the lens of the public welfare doctrine.[41]

Courts have rejected most of the challenges by maritime interests to the scope of the APPS statute and the applicability of the implementing regulations to foreign flag vessels. Those courts have consistently construed the statute, its implementing regulations, and the provisions of MARPOL in the manner to best support their environmental regulatory objectives. They also vindicated the authority of the United States to enforce those regulations in United States ports and territorial waters.[42]

The Clean Water Act, APPS, and the other federal pollution statutes include enforcement provisions ranging from administrative sanctions to civil fines and criminal penalties. The felony enforcement provisions of these statutes require proof of a knowing intent standard.[43] Because these statutes are construed

39. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601–9675.

40. Each of the pollution statutes other than APPS established an extensive regulatory program designed to govern the management, transportation, storage, and disposal of a wide variety of hazardous wastes and pollutants. APPS authorized the Coast Guard to enact implementing regulations and also adopted the international regulatory scheme embodied in the MARPOL treaties rendering many of those regulations enforceable under United States law, including Annexes I, II, III, V, and VI.

41. *See, e.g.*, United States v. Ionia Mgmt. S.A., 555 F.3d 303 (2d Cir. 2009); United States v. Jho, 534 F.3d 398 (5th Cir. 2008); United States v. Royal Caribbean Cruises, Ltd., 11 F. Supp. 2d 1358 (S.D. Fla. 1998).

42. *See generally* Gregory F. Linsin & Ariel S. Glasner, *Judicial Aids to Navigation: Charting the Boundaries of Environmental Criminal Enforcement in the Maritime Sector*, 27 U.S.F. MAR. L.J. 153 (2015).

43. The Water Quality Act of 1987, Pub. L. No. 100-4, 101 Stat. 7, amended the Clean Water Act's criminal provisions by replacing "willfully" with "knowingly" as the intent standard for felony violations. *See* 33 U.S.C. § 1319(c)(2). The Clean Water Act, Resource Conservation and Recovery Act, and Clean Air Act also contain "knowing endangerment" provisions that impose enhanced penalties when a defendant knowingly places another person in imminent danger of death or serious bodily injury. *See id.* § 1319(c)(3); 42 U.S.C. § 6928(e); 42 U.S.C. § 7413(c)(5). The Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, significantly expanded criminal penalties under the Clean Air Act.

as public welfare statutes, courts have generally interpreted the knowing intent standard for these offenses as requiring proof only that a defendant committed the acts that constitute the offense knowingly and not by accident or mistake. To establish a felony violation of APPS or the Clean Water Act, the government is *not* therefore required to prove that the defendant knew what the law prohibited or that they intended to violate the law.[44] Even though these are not characterized as strict liability offenses,[45] the standard for proof of intent under APPS and the Clean Water Act is so low that, unless the actions that constituted the offense were truly accidental, it is challenging to mount a viable defense to the *mens rea* element of these statutes.

The Clean Water Act also contains a criminal misdemeanor provision that makes it a crime to negligently discharge a pollutant from a point source into waters of the United States without a permit.[46] Consistent with the public welfare doctrine, courts have construed this misdemeanor provision to require proof only of simple negligence, which is defined as a failure to exercise a reasonable standard of care.[47] Even though this provision has not been used extensively, it has been charged, along with other offenses, in multiple criminal enforcement proceedings following

44. *See Ionia Mgmt. S.A.*, 555 F.3d at 310–11 (affirming APPS conviction where defendant failed to ensure accurate recordkeeping); *Jho*, 534 F.3d at 403-04 (holding that a vessel's chief engineer has a duty to ensure the Oil Record Book is accurate "(or at least not knowingly inaccurate)"); *see also* 8th Cir. Model Jury Instr. 6.33.1311(A), n.1; 11th Cir. Pattern Jury Instr. 113 (2010).

45. Some of the earliest pollution statutes did not require proof of a *mens rea* element. The Rivers and Harbors Appropriation Act of 1899 ("Refuse Act"), 33 U.S.C. § 407, imposed strict criminal liability for the discharge of refuse into navigable waters. *See* United States v. Standard Oil Co., 384 U.S. 224 (1966) (holding that "refuse" under the Refuse Act includes commercially valuable oil because the statutory purpose is to protect navigable waters from pollutants regardless of their economic value).

46. 33 U.S.C. § 1319(c)(1). The jurisdictional reach of the Clean Water Act extends to "waters of the United States," which includes navigable inland rivers, ports, and ocean waters out to three nautical miles from the baseline. *See* 33 U.S.C. §§ 1362(7), (8); Seafreeze Shoreside, Inc. v. United States Dep't of the Interior, 123 F.4th 1, 11 (1st Cir. 2024), *cert. denied sub nom.*

47. United States v. Ortiz, 427 F.3d 1278, 1283 (10th Cir. 2005) (defining simple negligence as failure to use reasonable care); United States v. Hanousek, 176 F.3d 1116 (9th Cir. 1999), *cert. denied*, 585 U.S. 860 (2000) (upholding Clean Water Act negligence conviction where defendant failed to adequately supervise pipeline project resulting in oil discharge).

major marine casualties that involved substantial damage to the marine environment.[48]

The two primary pollution statutes in the United States that are utilized most frequently in criminal enforcement cases against vessel owners and operators, the Clean Water Act and APPS/MARPOL, were enacted to protect the marine environment from the discharge of harmful pollutants. Those statutes contain exceptionally low intent requirements, and because they are construed as public welfare statutes, courts routinely interpreted them in a manner that supports their public welfare objectives. These enforcement risks exist for all companies subject to environmental regulation in the United States, including the maritime community. A clear-eyed understanding of the enforcement risks these statutes present, however, can help the maritime community prepare to meet those challenges.

IV. TARGETS OF CRIMINAL ENFORCEMENT

In assessing the risk of criminal enforcement, one must importantly understand which and why companies and individuals are potentially the subjects of criminal enforcement in the maritime sector. What are the statutory factors that determine which companies or individuals will be targeted, and how do prosecutorial policies shape the outcomes of criminal investigations and determine which targets will eventually be charged?

Organizations

The APPS statute states it is unlawful to act in violation of MARPOL, APPS, or the implementing regulations the Coast Guard issues,[49] and it prohibits any "person" from knowingly violating MARPOL, APPS, or its regulations.[50] APPS defines the term "person" to include an individual, firm, public or private

48. *See, e.g.*, United States v. Transocean Deepwater Inc., No. 2:13-cr-1 (E.D. La. 2013); United States v. BP Expl. & Prod. Inc., No. 2:12-cr-292 (E.D. La. 2012); United States v. John J. Cota, No. 3:03-cr-160 (N.D. Cal. 2009) (criminal prosecution following the *M/V Cosco Busan*'s allision with the San Francisco-Oakland Bay Bridge and resulting oil spill); United States v. Exxon and Exxon Shipping Co., No. A90-015 Criminal (D. AK. 1990).

49. 33 U.S.C. § 1907(a).

50. *Id.* § 1908(a).

corporation, or partnership.[51] Additionally, if a ship is subject to MARPOL, its owner,[52] operator,[53] or person in charge is liable for any fine or penalty that may be imposed under APPS. If reasonable cause exists to believe the ship, the owner, the operator, or person in charge may be subject to a fine or penalty, the ship's departure clearance may be revoked.[54] If a vessel's departure clearance is revoked, APPS also provides that departure clearance may be granted upon the posting of a "bond or other surety satisfactory" to the Coast Guard.[55] In practice, once the Coast Guard determines that reasonable cause exists to believe a vessel has violated MARPOL, APPS, or its regulations, the Coast Guard has required *both* the vessel owner and operator to execute an Agreement on Security that commits both companies to perform various tasks to facilitate the government's investigation. Such tasks include paying for the housing and per diem of those crew members who are required to remain in the district and to continue paying the full wages of those crew members for the duration of the investigation.[56] Typically, both the vessel owner and operator jointly bear the significant financial burdens that these Agreements on Security impose, and those burdens often continue for a year or more while the Department of Justice completes its investigation and makes final prosecutive decisions.

In contrast to the financial obligations the Agreement on Security imposes jointly on the owner and operator at the commencement of an APPS/MARPOL investigation, the record of prosecutions for criminal violations of APPS/MARPOL since the 1990s demonstrates that the Department of Justice makes clear

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51. *Id.* § 1901(a)(10).

52. An "owner" means any "person" who holds title to the ship. *Id.* § 1901(a)(8).

53. An "operator" means a demise charterer or any "person . . . who is responsible for the operation, manning, victualing, and supplying of the vessel . . . ." *Id.* § 1901(a)(9).

54. *Id.* § 1908(e).

55. *Id.*

56. While there have been numerous challenges to the inclusion of these terms in Security Agreements, the courts have uniformly upheld the authority of the Coast Guard to require these terms under its APPS authority. *See, e.g.*, Angelex Ltd. v. United States, 272 F. Supp. 3d 64, 69 (D.D.C. 2017), *aff'd*, 907 F.3d 612 (D.C. Cir. 2018); Watervale Marine Co. v. U.S. Dep't of Homeland Sec., 807 F.3d 325 (D.C. Cir. 2015).

distinctions between the culpability of a vessel owner and an operator when evaluating criminal responsibility for the violations.[57] The history of APPS/MARPOL prosecutions of organizations can be generally divided into three categories: 1) cases in which the vessel-owning company and the vessel management company, *i.e.*, the operator, are both subsidiaries of the same parent company; 2) cases in which the vessel management company is a true third-party technical manager and the vessel owner does not perform a role in the technical management of the vessel; and 3) cases in which the vessel management company is a third-party manager, but the vessel owner has also inserted itself in some way into the technical operation of the vessel.

In the first category, the Department of Justice has often decided to charge or require plea agreements from both the vessel-owning company and the operator.[58] Obviously, charging a vessel-owning company—which most often is a single-asset, non-operational entity—and having it placed on probation with parallel responsibility for implementing the mandatory Environmental Compliance Plan does not truly advance the government's interest in ensuring compliance with the environmental laws during the term of probation. Rather, in most instances, the government has appeared to insist on charging both companies to double the number of chargeable counts and thereby increase the potential fine amount. The parent company in these cases generally does not have a strong basis for objecting to both companies being charged. In fact, it can be mutually beneficial for both the government and the defense to have both parties included in the plea agreement because that will

57. One of the key factors for the Department of Justice in determining the identity of the vessel operator is identifying which company holds the Document of Compliance ("DOC") for the vessel. Because the DOC holder is responsible for verifying that the ship's Safety Management System ("SMS") complies with the requirements of the International Safety Management ("ISM") Code for hiring, training, and supervising the crew, and for ensuring the vessel's pollution prevention equipment is properly maintained and functional, the Department of Justice has tended presumptively to view DOC holders as the vessel operator for purposes of allocating liability under APPS.

58. *See* United States v. Prive Overseas Marine, LLC, No. 2:24-cr-00074 (E.D. La. 2024) (finding Prive Overseas Marine, LLC (based in Dubai) and Prive Shipping Denizcilik Ticaret (based in Turkey), both owned by the same parent company, liable); United States v. Empire Bulkers Ltd., No. 21-0126 (E.D. La. 2023) (finding both Joanna Maritime Limited (the owner) and Empire Bulkers Limited (the operator), related Greek-based companies, liable).

allow for a lower number of representative counts to support the imposition of the negotiated fine.

The second category of cases is the most telling. A review of the APPS/MARPOL prosecutions in which the third-party technical manager is the DOC holder and the owner has no direct role in the technical management or operation of the vessel demonstrates that the Department of Justice has decided in nearly every case to pursue criminal charges against the third-party vessel operator and has declined to prosecute the vessel owner.[59]

The Department of Justice does not issue press releases to explain publicly its decision not to pursue criminal charges against a potential target. Nevertheless, these unpublicized decisions to decline prosecution of vessel owners contain important lessons for enforcement risk mitigation. As discussed above, the Coast Guard requires both the owner and operator to execute the Agreement on Security, post a bond, and disembark the identified crew members before the customs hold is lifted. Thus, in every criminal referral of an APPS/MARPOL case to the Department of Justice, both the owner and operator are identified as subjects of the investigation. The Department of Justice then conducts additional investigation to evaluate culpability for the violation. One could therefore

59. *See* United States v. Interorient Marine Servs. Ltd., No. 8-cr-00366-DEW-KK (W.D. La. 2019) (finding that Interorient expressly agreed under the Technical Management Agreement not to allow any conduct by the crew that could cause a breach of laws or regulations, including those of the flag state and the jurisdictions in which the vessel traded and the vessel owner did not sign or receive copies of the crews' employment contracts, had no contact with the manning agencies, did not train, supervise, or evaluate the crew, did not manage the technical superintendents' attendance to the vessels, did not have access to the crews' performance evaluations, and did not have the authority to "fire" any crew member); United States v. MST Mineralien Schiffahrt Spedition und Transport GmbH, No. 0:16-cr-00134-JNE-LIB (D. Minn. 2016) (finding that MST employed, hired, trained, and supervised the crew and was also the DOC holder, and responsible for the development, implementation, and maintenance of the SMS, and even though the owner was a related financing structure organized in conjunction with MST, the owning structure had no operational control of the crew or the vessel); *see also* United States v. New Trade Ship Mgmt. *S.A.*, No. 3:22-cr-1802 (S.D. Cal. 2022); United States v. Navimax Corp., No. 1:18-cr-00086-MN (D. Del. 2018); United States v. Hai Soon Ship Mgmt. Pte Ltd., No. 1:18-cr-00056-HG (D. Haw. 2018); United States v. Chandris (Hellas) Inc., No. 15-cr-00894 (S.D. Tex. 2015); United States v. AML Ship Mgmt. GMBH, No. 15-cr-00007-TMB (D. Alaska 2015); United States v. Norbulk Shipping UK Ltd., No. 15-cr-00294 (D.N.J. 2015).

reasonably infer that the Department of Justice determined that it would not pursue charges against the owner in this category of cases because the owner 1) did not have a role in the hiring, training, or supervision of the crew; 2) was not responsible for certifying to the flag that the vessel's SMS was compliant with the requirements of the ISM Code;[60] 3) was not responsible for ensuring compliance with APPS and MARPOL aboard the ship; and 4) was not responsible for maintaining or repairing the pollution prevention equipment aboard the vessel.[61]

The third category of APPS/MARPOL cases is also instructive. We have identified only one instance in which the Department of Justice pursued APPS/MARPOL charges against both the vessel owner and the third-party technical manager.[62] Following its maiden voyage from the shipyard in China, the *M/T Aquarosa* was detained in the Port of Baltimore for possible APPS/MARPOL violations based on a whistleblower report to the Coast Guard. Efploia Shipping Co. ("Efploia") was the DOC holder and third-party technical manager of the vessel. Aquarosa Shipping A/S ("Aquarosa") was the vessel-owning company. Representatives of Aquarosa were present at the shipyard in China during the construction of the vessel and were actively engaged in efforts to ensure the vessel was completed and delivered on time so as not to lose a highly lucrative charter. Aquarosa took delivery of the vessel on time despite their knowledge of various technical problems, including problems with the vessel's Oily Water Separator and its

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60. The ISM Code is an international standard for the safe management and operation of ships and for pollution prevention. Mandated under SOLAS Chapter IX, it requires shipping companies to establish an SMS to identify risks and establish safeguards for personnel, vessels, and the environment. Int'l Mar. Org. [IMO], *International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code)*, Res. A.741(18), *adopted on* 4 Nov. 1993.

61. In many of these cases, the vessel owner had engaged a technical manager or consultant to communicate periodically with the vessel for the limited purpose of confirming that the third-party operator was properly operating and maintaining the condition of the vessel. These communications did not involve the owner's technical consultant giving direction to or supervising the third-party operator or the crew members. The government recognized in those cases that this limited contact by the owner's technical consultant was a prudent measure designed to protect the owner's financial interest in the vessel and did not rise to the level of technically managing the vessel.

62. United States v. Efploia Shipping Co. S.A., No. 1:11-cr-652 (D. Md. 2011); United States v. Aquarosa Shipping A/S, No. 1:11-cr-671 (D. Md. 2011).

15 ppm Oil Content Meter ("OCM"). Nine days after the vessel was delivered, the crew reported the OCM was not functioning properly and multiple warranty claims, some related to the malfunctioning OCM, were filed with the shipyard and Aquarosa. Because they could not process the machinery space bilge water, the crew of the vessel discharged oily bilge water overboard without processing through properly functioning pollution prevention equipment. These discharges were not recorded accurately in the vessel's Oil Record Book ("ORB").

Following an investigation, the Department of Justice insisted on pleas by both the vessel owner, because its representatives had rushed the vessel into service despite the known technical problems, and its third-party technical manager, because the crew members it hired had supervised and performed the illegal discharges and falsified the vessel's ORB. The facts of the *Aquarosa* case are a clear example of what a vessel owner should *not* do if it wishes to insulate itself from potential APPS/MARPOL liability based on misconduct by the vessel's crewmembers. Vessel owners and their commercial managers should exercise caution to ensure that their efforts to maximize commercial return from the vessel's operations do not compromise the vessel's ability to maintain full compliance with safety and environmental requirements.

The Clean Water Act provides that any person who knowingly violates a provision of the statute or the terms of a permit issued under the statute commits a felony[63] and a person who negligently violates the act or a permit is guilty of a misdemeanor.[64] Under the Clean Water Act, a "person" is broadly defined to include "an individual, corporation, partnership, [or] association . . . ."[65] Despite there being far fewer cases in which vessel owners or operators have been charged with either knowing or negligent Clean Water Act violations, the limited record in those cases demonstrates that the Department of Justice has charged either or both the vessel owner and operator when the facts support the conclusion that the company had a responsible relationship to the violation.[66]

63. 33 U.S.C. § 1319(c)(2).

64. *Id.* § 1319(c)(1).

65. *Id.* § 1362(5).

66. *See* United States v. Transocean Deepwater Inc., No. 2:13-cr-1 (E.D. La. 2013); United States v. BP Expl. & Prod. Inc., No. 2:12-cr-292 (E.D. La. 2012); United States v. DRD Towing Co., Nos. 2:10-cr-00190, 00191 (E.D. La. 2010)

Individuals

Every criminal APPS/MARPOL enforcement case in the United States has included charges against the vessel's Chief Engineer. Some cases have also included charges against junior engineers and, occasionally, the Master and/or First Mate.[67] Typically, the APPS/MARPOL charge is filed against one or more of the engineers, and in cases where the Master and/or the First Mate are charged, it is often for other Title 18 offenses involving the destruction of evidence, tampering with witnesses, making false statements to the Coast Guard inspectors, or obstruction of justice.

While the vast majority of the criminal APPS/MARPOL cases involve charges only against shipboard personnel, the government routinely conducts interviews, reviews vessel documents and corporate records, and analyzes voluminous email and other electronic communications. It engages in these activities to evaluate whether there is evidence to indicate that any shoreside superintendent or manager directed or had knowledge of the unlawful conduct on the vessel. In one such case, the vessel operator and subject of the investigation, Pacific-Gulf Marine, Inc., made the decision to disclose voluntarily to the government the results of its internal investigation. The investigation included interview reports from numerous shoreside managers that contained confessions, admissions, and other incriminating information relating to a chronic history of improper bypasses and discharges overboard of hundreds of thousands of gallons of oil-contaminated bilge water without processing through

(discussing a guilty plea to felony violation of the Ports and Waterways Safety Act and a misdemeanor violation of the Clean Water Act after tug and barge collided with tank ship resulting in the discharge of fuel oil into the Mississippi River; company admitted that it had created a hazardous condition by assigning employees without proper Coast Guard licenses to operate certain vessels and by paying licensed captains to operate vessel for 24 hours a day without a relief captain); United States v. Bouchard Transp. Co., No. CR-04-10087-MBB (D. Mass. 2004); United States v. Eklof Marine Corp., No. 1:97-00075 (D. R.I. 1997); United States v. Rivera, 131 F.3d 222 (1st Cir. 1997) (en banc); United States v. Exxon and Exxon Shipping Co., No. A90-015 Criminal (D. Alaska 1990); *see also* Steven P. Solow & Ronald A. Sarachan, *Criminal Negligence Prosecutions Under the Federal Clean Water Act: A Statistical Analysis and Evaluation of the Impact of Hanousek and Hong*, 32 ENV'T L. REP. 11153 (2002).

67. Nearly all APPS/MARPOL prosecutions are based on a failure to maintain an accurate Oil Record Book in violation of Coast Guard regulations promulgated pursuant to APPS. *See* 33 C.F.R. § 151.25.

properly functioning pollution prevention equipment.[68] Even though the company's voluntary disclosure of the results of its internal investigation shined a light on a pattern of chronic mismanagement of environmental responsibilities by its shoreside managers, the U.S. Department of Justice determined that it would not pursue charges in that case against the shoreside managers.

One case in which the U.S. Department of Justice did pursue criminal APPS/MARPOL and related Title 18 charges against shoreside managers involved the improper discharge of more than 400 metric tons of oil-contaminated wheat from the *S.S. Juneau* into the South China Sea.[69] The *Juneau* was a U.S. flagged converted oil tanker that a food assistance program had chartered to deliver a shipment of wheat to Bangladesh. The owner and operator of the *Juneau*, Sabine Transportation Company ("Sabine"), was based in Cedar Rapids, Iowa. While the *Juneau* was en route to Bangladesh, a fuel line at the bottom of one of the cargo holds developed a leak and saturated the lower portion of the wheat in that hold with fuel oil. The Bangladeshi authorities rejected the oil-contaminated portion of the cargo, and the documentary record demonstrated that the shoreside managers of Sabine in Iowa debated for weeks how they were going to dispose of the oil-contaminated cargo. Ultimately, Sabine's management rejected a bid for the shoreside disposal of the contaminated cargo in Singapore and instead brought a riding gang on board the ship to dispose of the oil-contaminated cargo as the ship transited the South China Sea.

A follow-up inquiry into the incident by the Coast Guard resulted in the initiation of a criminal investigation by the U.S. Department of Justice, and Sabine entered into a plea agreement for, *inter alia*, multiple violations of APPS/MARPOL related to the improper discharge of oil-contaminated cargo from the *Juneau*.[70] Thereafter, Sabine's Chairman of the Board, Rick Stickle, the President, Vice-President of Operations, Port Engineer, and the

68. Joint Factual Statement in Plea Agreement, United States v. Pacific-Gulf Marine, Inc., No. 1:06-cr-0302 (D. Md. 2006), Dkt. No. 2.

69. United States v. Stickle, 355 F. Supp. 2d 1317 (S.D. Fla. 2004), *aff'd*, 454 F.3d 1265 (11th Cir. 2006).

70. United States v. Sabine Transp. Co., No. 1:03-cr-63 (N.D. Iowa 2003). Because the *Juneau* was a U.S. flagged ship, the APPS/MARPOL prohibitions applied to the vessel wherever she sailed on the high seas.

Master and Chief Officer of the *Juneau* were indicted for conspiring to arrange for the unlawful discharge, directing the unlawful discharge, and for attempting to deceive the Coast Guard about the incident. All the individual defendants, except Rick Stickle, entered into plea agreements. Following a jury trial, Rick Stickle was convicted on all counts and thereafter sentenced to a term of 33 months imprisonment.[71]

Even though the publicly available records do not always reflect the scope of APPS/MARPOL investigations, one can reasonably assume that, where there is evidence of APPS/MARPOL violations aboard a vessel, the government will thoroughly examine the documentary record and question available witnesses to determine whether (i) similar violations occurred aboard other ships in the fleet and (ii) if any shoreside managers or superintendents directed, condoned, or were aware of the violations.

V. *RESPONDEAT SUPERIOR* LIABILITY

Presume you are a responsible and conscientious vessel owner or operator. You own and operate a modern fleet of vessels. You developed and implemented a robust SMS to ensure your vessels are well-maintained and fully equipped to operate in strict compliance with international safety and environmental standards. You adopted comprehensive policies requiring the vessels' crew and shoreside superintendents to comply at all times with the requirements of SOLAS, MARPOL, and the other international regulatory requirements. You also engaged the services of a reliable manning agency that hires only highly qualified officers and crew, and you ensured that the officers and crew receive ongoing training to educate them regarding the company's policies and its high standards for safety and environmental compliance. You also ensured the crew are aware of the company's open reporting system and that they are required to use it, anonymously if they wish, to report internally any information they may have regarding any noncompliant operation onboard the vessel.

Even if all of these conditions were true, a Chief Engineer aboard one of your vessels could decide he does not want to be troubled to process the machinery space bilge water properly, give directions for the oil-contaminated bilge water to be discharged

71. Stickle*,* 355 F. Supp. 2d 1317.

overboard without processing it through properly functioning pollution prevention equipment, and knowingly fail to properly record the discharges. Under the standards for *respondeat superior* liability in the United States, your company may still be held criminally responsible for what was, essentially, the unprincipled and unauthorized conduct of a rogue Chief Engineer.

The doctrine of *respondeat superior*, sometimes referred to as vicarious liability, defines the conditions under which any company, not just a vessel owner or operator, may be held civilly or criminally liable for the actions of its employee or agent. In the United States, the doctrine of vicarious liability initially allowed an employee's actions to be imputed to the company with respect to tort liability.[72] New York Cent. and Hudson R.R. Co. v. United States,[73] the seminal case establishing corporate criminal liability for the actions of a corporation's agent, involved the criminal prosecution of a railroad company for the illegal actions of an assistant traffic manager. The Supreme Court upheld the constitutionality of the prosecution and offered the following reasoning:

> It is now well established that in actions for tort the corporation may be held responsible for damages for the acts of its agent within the scope of his employment.
>
> And this is the rule when the act is done by the agent in the course of his employment, although done wantonly or recklessly or against the express orders of the principal . . . .
>
> A corporation is held responsible for acts not within the agent's corporate powers strictly construed, but which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized . . . .[74]

The Court concluded that it saw

> no valid objection in law, and every reason in public policy, why the corporation which profits by the transaction, and can only act through its agents and officers, shall be held punishable by [criminal] fine because of the knowledge and intent of its agents to whom it has entrusted authority to

72. *See, e.g.*, Philadelphia & Reading R.R. Co. v. Derby, 55 U.S. 468 (1852).
73. New York Cent. & Hudson R.R. Co. v. United States, 212 U.S. 481, 495 (1909).
74. *Id.* at 493-94 (citations omitted).

> act . . . and whose knowledge and purposes may well be attributed to the corporation for which the agent acts.[75]

Courts have consistently upheld *respondeat superior* liability for the criminal conduct of a corporate defendant's employee in application to a wide variety of federal criminal offenses.[76] To establish vicarious liability, the government must prove that the employee was acting within the scope of his employment or authority and that the employee was subjectively motivated, at least in part, to benefit the corporation.[77] The government is not required to establish that the company actually received a benefit as a result of the employee's misconduct. In fact, the "benefit" requirement can be met even when the employee's misconduct causes substantial harm to the company.[78]

The *respondeat superior* theory of liability is the legal predicate for all plea agreements involving vessel owners or operators for violations of APPS/MARPOL, the Clean Water Act, and related Title 18 offenses. The government's rationale is that a Chief Engineer is acting within the scope of their employment as the senior officer in the Engine Department when they direct other members of the Engine Department to bypass the pollution prevention equipment and discharge untreated oil-contaminated bilge water overboard and then knowingly fail to properly record the discharges. That rationale also holds that the Chief Engineer is directing this misconduct, at least in part, because they believe it will benefit of the company. This rationale has been unsuccessfully challenged at trial in several APPS/MARPOL prosecutions. In one such case, Ionia Management S.A. ("Ionia") was indicted for violations of APPS/MARPOL, falsification of vessel documents, conspiracy, and obstruction of justice. At trial, the government called several crew members to testify about the noncompliant

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75. *Id.* at 495 (1909) (citations omitted).

76. *See* United States v. Ionia Mgmt. S.A., 555 F.3d 303 (2d Cir. 2009).

77. *See* United States v. Singh, 518 F.3d 236, 250 (4th Cir. 2008) (explaining that vicarious liability also "arises if the employee or agent has acted for his own benefit as well as that of his employer"); *see also* United States v. Am. Radiator & Standard Sanitary Corp., 433 F.2d 174, 204-05 (3d Cir. 1970).

78. United States v. Sun-Diamond Growers, 138 F.3d 961, 971 (D.C. Cir. 1998), *aff'd*, 526 U.S. 398 (1999) (holding requirement that employee act for the corporation's benefit satisfied so long as some potential benefit can be inferred, even if the conduct causes substantial harm to the corporation).

operations, but the government did not attempt to elicit testimony directly from those crew members as to whether they believed the illegal discharges would somehow benefit the company. Rather, the government

> "presented evidence from which one could infer that these employees were acting with an intent to benefit Ionia. The jury could reasonably have concluded that the crew participated in the pump outs and records falsification with the intention of, for example, (1) following orders and maintaining the chain of command aboard the [vessel]; (2) saving Ionia the time and expense of properly maintaining and using the oil pollution prevention equipment; and (3) enabling the [vessel] to continue to dock at U.S. ports despite having false records."[79]

Relying on such inferences to satisfy the elements of *respondeat superior* liability, the jury convicted Ionia on all counts, and the court denied Ionia's post-trial motion for a judgment of acquittal.[80] The court of appeals also rejected Ionia's challenge to the sufficiency of the evidence to establish corporate criminal liability and affirmed the convictions.[81]

A recent opinion from the Third Circuit clarifies the gossamer-thin level of proof the courts will deem sufficient to support the convictions of a vessel owner and operator based on the *respondeat superior* theory of liability. In United States v. Evridiki Navigation Inc.,[82] a panel of the Third Circuit affirmed the convictions of the vessel owner and operator for APPS/MARPOL violations and related Title 18 offenses. The appellants argued on appeal that the evidence demonstrated the chief engineer was acting merely to protect himself by concealing his incompetence for permitting the pollution prevention equipment to fall into disrepair. The Court

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79. Ruling on Defendant Ionia's Post-Trial Motions, United States v. Ionia Mgmt. S.A., No. 3:07-cr-134, at *11 (D. Conn. Dec. 12, 2007).

80. *Id.*

81. Ionia Mgmt. S.A., 555 F.3d at 303-11; *see also* United States v. Oceanic Illsabe Ltd., 889 F.3d 178, 194-98 (4th Cir. 2018) (explaining evidence was sufficient for the jurors to infer the corporate owner and operator were vicariously liable for the chief engineer's failure to maintain an accurate oil record book and that he acted, at least in part, to benefit the companies).

82. United States v. Evridiki Navigation Co., No. 22-2032, 2023 WL 3734961 (3d Cir. May 31, 2023).

rejected this argument by noting that multiple engineers had made inaccurate entries in the Oil Record Book, "[a]nd that *suggests* corporate non-compliance as a means of saving expenses, like from fixing the separator system or from disposing of unpurified bilge at a reception facility."[83] The Court added that, even if the chief engineer was attempting to conceal discovery of his own misconduct, "he still *could have acted*, at least in part, to serve corporate interests, and such an inference by a jury *does not 'fall below the threshold of bare rationality*.'"[84]

The overwhelming case authority in the United States demonstrates that corporate criminal liability based on the doctrine of *respondeat superior* will be upheld even when it is based on circumstantial or hypothetical evidence that *merely* "suggests" the wrongdoer "could have acted" to benefit the corporation. Under this standard, criminal misconduct engaged in by even a relatively low-level employee for apparent personal motives and in clear violation of express corporate policies prohibiting the misconduct can still be used as the basis to establish vicarious liability of the corporation.[85] The litigation costs and risks to challenge such a finding would also be substantial.

VI. AGGRESSIVE USE OF SEAMAN'S MANSLAUGHTER STATUTE

The federal criminal law that has become colloquially known as the Seaman's Manslaughter statute was first enacted in 1838 to penalize misconduct by shipboard personnel aboard steam vessels that resulted in the deaths of passengers on board.[86] The statute has been moved and revised several times since then, and in 1948, the current version was codified at 18 U.S.C. § 1115.[87] The current statute provides, in part, that

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83. *Id.* at *2 (emphasis added).

84. *Id.* (emphasis added) (citation omitted).

85. *See* Preet Bharara, *Corporations Cry Uncle and Their Employees Cry Foul: Rethinking Prosecutorial Pressure on Corporate Defendants*, 44 AM. CRIM. L. REV. 53, 65 (2007) ("[A] multinational corporation may theoretically be indicted, convicted, and perhaps put out of business based on the alleged criminal activity of a single, low-level, rogue employee who was acting without the knowledge of any executive or director, in violation of well-publicized procedures, practices, and instructions of the company.").

86. Act of July 7, 1838, ch. 191, § 2, 5 Stat. 304.

87. Act of June 25, 1948, ch. 645, § 1115, 62 Stat. 683, 757.

> [e]very captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of another person is destroyed . . . shall be fined under this title or imprisoned not more than ten years, or both.[88]

The Fifth, Ninth, and Eleventh Circuits have held that the *mens rea* requirement in the above quoted section of the Seaman's Manslaughter statute requires proof of only simple negligence and not gross or criminal negligence even though the offense is punishable by a term of imprisonment of up to ten years.[89]

Eagan Marine

One example of the misapplication of the Seaman's Manslaughter statute stemmed from a casualty involving an explosion on board a slurry oil barge while underway on a river in Illinois.[90] The casualty resulted in the death of a deckhand and the subsequent discharge of oil into the river. The government initially filed a civil suit against the tug owner, Eagan Marine, seeking damages on the grounds that Eagan Marine and its employees were grossly negligent and violated safety regulations such that the company should not be permitted to limit its liability for the oil discharge pursuant to OPA 90. The gravamen of the government's factual allegations in the civil suit was that the master had acted in a grossly negligent manner by directing the decedent to warm up a pump using a propane torch and that the flame had caused the

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88. 18 U.S.C. § 1115. The statute also defines separate offenses if a death is caused by the vessel owner, charterer, inspector, or other public officer or, if the owner or charterer is a corporation, any executive of such corporation, and establishes somewhat higher intent standards for defendants in those two categories. *Id.*

89. United States v. Boylan, 167 F.4th 1266 (9th Cir. 2026); United States v. Alvarez, 809 F. App'x 562 (11th Cir. 2020); United States v. O'Keefe, 426 F.3d 274 (5th Cir. 2005). The *mens rea* requirement under 18 U.S.C. § 1115 differs significantly from that of 18 U.S.C. § 1112, which is the general federal involuntary manslaughter statute. 18 U.S.C. § 1112 requires proof of "gross negligence" or conduct performed "without due caution and circumspection," a higher standard than the simple negligence required under 18 U.S.C. § 1115. *Boylan*, 167 F.4th at 1269. Courts have consistently distinguished the two statutes, emphasizing that 18 U.S.C. § 1115's language and legislative history support a lower threshold of culpability.

90. United States v. Eagan Marine Corp., No. 08-C-3160, 2011 WL 8144393 (N.D. Ill. Oct. 13, 2011).

explosion and subsequent discharge of oil. Following a bench trial, the district court judge found that the government had failed to prove, by a preponderance of the evidence, that the deceased crew member was using a propane torch on the cargo pump of the vessel at the time of the incident and thus allowed Eagan Marine to limit its liability.[91] The government did not appeal this adverse decision.

After conclusion of the civil lawsuit, the Department of Justice secured an indictment against Eagan Marine and the master of the tug, alleging a violation of the Seaman's Manslaughter statute and a negligent violation of the Clean Water Act. Following a bench trial, the district judge found both Eagan Marine and the master guilty: the master was sentenced to six months in prison, Eagan Marine was placed on probation for three years, and both defendants were found jointly responsible for restitution in the amount of $6.75 million. On appeal, the defendants argued that the government should not be allowed to file criminal charges based on allegations that the master had ordered the deceased crew member to use a propane torch on the cargo pump after the government had failed to prove that key fact in the prior civil action. The Seventh Circuit agreed that the criminal charges were precluded based on the factual findings and the judgment in the prior civil action and reversed the convictions.[92] The Eagan Marine case is a glaring example of the aggressive pursuit of felony criminal charges in the wake of a fatal marine casualty that pushed the boundaries of reasonable statutory interpretation and the cautious exercise of prosecutorial discretion.

Deepwater Horizon

After a period of intensive media attention and public pressure and two-and-a-half years after the *Deepwater Horizon* disaster that resulted in the death of eleven crew members aboard the drill ship and the release of an estimated 4.9 million barrels of oil into the Gulf of Mexico, the Department of Justice announced in November 2012 that it had reached criminal plea agreements with BP Exploration and Production, Inc. ("BP"), the operator of the rig, and Transocean Deepwater Inc. ("Transocean"), the rig owner. Pursuant to its plea agreement, BP agreed to plead guilty to eleven

91. *Id.* at *3.
92. *See* United States v. Eagan Marine Corp., 843 F.3d 663 (7th Cir. 2016).

counts of violating the Seaman's Manslaughter statute based on the allegedly negligent actions of its well-site leaders aboard the rig, one negligent Clean Water Act count, a violation of the Migratory Bird Treaty Act, and an obstruction of Congress count. BP agreed to pay a total of $4 billion in criminal fines and penalties. Transocean agreed to plead guilty to a negligent Clean Water Act violation and pay $400 million in fines and penalties.[93] That same month, the Department of Justice also filed a criminal indictment against Robert Kaluza and Donald Vidrine, the two BP well-site leaders who were aboard the *Deepwater Horizon* on the night of the tragedy, and charged both individuals with eleven violations of the Seaman's Manslaughter statute, eleven violations of the federal involuntary manslaughter statute,[94] and a negligent Clean Water Act violation. As would become painfully evident over the next three years, the criminal indictments of Kaluza and Vidrine were an overly aggressive exercise of the government's criminal enforcement authority in an apparently misguided effort to vindicate the tragic loss of life that resulted from a catastrophic marine casualty.

Defendants Kaluza and Vidrine filed several motions to dismiss various counts in the indictment, including the eleven Seaman's Manslaughter statute counts. The Defendants argued that they were simply well-site leaders on the drillship who had no role in or responsibility for the marine operations of the vessel and, thus, were not persons covered under 18 U.S.C. § 1115, *i.e.*, "captain, engineer, pilot, or other person employed on any . . . vessel." The District Court agreed with the Defendants and dismissed the Seaman's Manslaughter statute counts.[95] The government filed an interlocutory

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93. These plea agreements were ultimately accepted by the court, and the agreed-upon sentences were imposed. *See* United States v. Transocean Deepwater Inc., No. 2:13-cr-1 (E.D. La. 2013); United States v. BP Expl. & Prod. Inc., No. 2:12-cr-292 (E.D. La. 2012).

94. The *mens rea* required to establish a violation of the general federal involuntary manslaughter statute is gross negligence, rather than the simple negligence required to prove a violation of the Seaman's Manslaughter statute. *See supra* note 88.

95. The highly unusual configuration of this indictment, *i.e.*, charging both defendants with violations of the Seaman's Manslaughter statute and the involuntary manslaughter statute for each of the eleven deaths, strongly suggests that the Department of Justice was itself unsure that the defendants came within the scope of the Seaman's Manslaughter statute.

appeal, but the Fifth Circuit affirmed the judgment of the District Court dismissing the Seaman's Manslaughter statute counts.[96] Following remand, the Department of Justice made the highly unusual decision on December 12, 2015, to dismiss with prejudice the remaining eleven involuntary manslaughter counts against Kaluza and Vidrine. In explaining this decision, a Justice Department spokesperson said

> the charges were dropped "because circumstances surrounding the case have changed since it was originally charged, and after a careful review the department determined it can no longer meet the legal standard for instituting the involuntary manslaughter charges."[97]

In explaining its decision to dismiss these charges, the Justice Department did not cite to any newly discovered evidence or recent adverse legal rulings. Rather, after a "careful review," the government determined it could not meet the legal standard for "instituting" the involuntary manslaughter charges. The rulings from the District Court and the Fifth Circuit that the defendants were not persons covered under the Seaman's Manslaughter statute and the decision by the Justice Department to dismiss the involuntary manslaughter charges because it could not by its own admission meet the legal standard for instituting the charges are sobering confirmations of the government's prosecutorial overreach in the wake of the country's largest marine casualty.[98]

Table Rock Lake Tragedy

The *Stretch Duck 7*, a commercial duck boat that was operating on Table Rock Lake in the Ozarks, sank during a sudden storm on July 19, 2018, resulting in the death of 17 passengers. None of the passengers were wearing a life jacket, and following a Coast Guard investigation, questions were raised as to whether the weather

96. United States v. Kaluza, 780 F.3d 647 (5th Cir. 2015).

97. Oliver Milman, *Manslaughter Charges Dropped Against Two BP Employees in Deepwater Spill*, THE GUARDIAN (Dec. 3, 2015), https://www.theguardian.com/environment/2015/dec/03/manslaughter-charges-dropped-bp-employees-deepwater-horizon-oil-spill [https://perma.cc/5FGC-RKYW].

98. Engineer Kurt Mix's 2013 obstruction of justice conviction regarding deleted text messages was overturned due to juror misconduct. Former executive David Rainey was acquitted in 2015 of lying to investigators about oil flow rates.

forecasts had been sufficiently monitored by the captain of the duck boat and the shoreside managers of the operating company. Less than four months later, the captain and two of the shoreside managers were charged with 17 Seaman's Manslaughter counts and other offenses related to their allegedly grossly negligent operation of the vessel. The defendants filed a pre-trial motion to dismiss the indictment, arguing that the indictment alleged admiralty jurisdiction as the basis for the charges but that admiralty jurisdiction did not extend to conduct occurring on Table Rock Lake because it was not navigable in fact under controlling Eighth Circuit precedent. The District Court adopted the magistrate judge's report and recommendation that concluded 18 U.S.C. § 1115 is applicable only to conduct that occurs within the admiralty jurisdiction of the United States. The Seaman's Manslaughter counts and the negligent operation counts were dismissed because the District Court determined that Table Rock Lake was not navigable in fact for federal admiralty jurisdiction.[99] The government appealed these dismissals, and a divided panel of the Eighth Circuit upheld the dismissal of the indictment.[100] The awkwardness of the government's jurisdictional argument before the Eighth Circuit was highlighted by its need to claim that the language in the indictment that alleged Table Rock Lake was "within the admiralty jurisdiction of the United States" was mere surplusage. Circuit Judge Graz pointed out in his concurring opinion the unreasonableness of the government's argument regarding the jurisdictional scope of 18 U.S.C. § 1115. He specifically noted that adopting the government's jurisdictional position would mean that "[a]n owner of a canoe or small fishing boat whose ordinary negligence results in a death on a farm pond in Nebraska could be charged with Seaman's Manslaughter under federal law."[101]

The prosecution in *McKee* is another example of the government's aggressive use of the Seaman's Manslaughter statute following a fatal marine casualty based on flawed statutory construction or questionable jurisdictional theories. Despite this statute being an important tool for vindicating the loss of life in a

99. United States v. McKee, No. 3:18-cr-05043 (W.D. Mo. Dec. 3, 2020).
100. United States v. McKee, 68 F.4th 1100 (8th Cir. 2023).
101. *Id.* at 1111.

major marine casualty,[102] its use should be properly constrained by the cautious exercise of prosecutorial discretion and strict adherence to the principles set forth in the Justice Manual.

VII. CONCLUSION

The risks of criminal enforcement against the maritime sector in the United States for violations of environmental and safety statutes are a daily reality. Similar threats are present in the aftermath of any major maritime casualty occurring in the territorial waters of the United States. Having a clear-eyed view of the scope and legal predicates for these challenges is essential to developing policies and practices that will help a company and its clients minimize the risks of becoming a target of these enforcement actions.

Courts have consistently upheld the authority of the Coast Guard to direct CBP to withhold customs clearance, seize evidence, and require extensive financial and procedural cooperation from the vessel owner and operator before a vessel is permitted to sail. The evidentiary burden for the government to establish a violation of the marine pollution statutes is low, and courts are disposed to interpret those public welfare statutes in a manner designed to effectuate their legislative purpose. In addition, the doctrine of *respondeat superior* as currently interpreted by the courts permits the government to establish vicarious liability for a company even when its compliance policies are exemplary and the company has in no way benefitted from the misconduct of its employee. These conditions underscore the importance of ensuring that a company's SMS policies, including the safety management commitment, risk assessment, emergency preparedness, reporting procedures, and defined personnel responsibilities, are fully understood and implemented across all components of the company. Additionally, company-led internal investigations and audit programs are essential to monitor compliance. Also, the value of an internal open reporting system that permits shipboard personnel to report violations to the company, anonymously if desired, cannot be overstated. When an open reporting system functions properly, it

102. *See, e.g.*, United States v. Boylan, No. 24-3077, 2026 WL 595711 (9th Cir. Mar. 3, 2026) (affirming Seaman's Manslaughter convictions of the former captain of the dive boat *Conception* for his negligence that resulted in the death of thirty-three passengers).

can enable the company to identify and investigate allegations of noncompliance, coordinate with the flag state, implement corrective actions if needed, and insert appropriate corrective I Code entries in the vessel's Oil Record Book to defuse effectively any enforcement risk with minimal disruption to vessel operations.[103]

Finally, rigorous compliance with the SMS policies will help minimize casualties by establishing structured, mandatory procedures for hazard identification, risk mitigation, and emergency response. In the event of a marine casualty, established response plans should be followed. These plans should include promptly reporting the incident to the vessel's flag state or the U.S. Coast Guard and notifying the appropriate parties, such as the designated person ashore, the P&I club, and legal counsel. Crew members should be informed of their rights, particularly their Fifth Amendment protections, that may be implicated if a parallel criminal investigation is initiated. When a case has progressed to a criminal referral, crew members are typically appointed independent counsel who often work pursuant to a joint defense agreement with company counsel. The response should emphasize informed cooperation with authorities while facilitating the preservation of evidence and data. Vessel owners and operators should promptly consult with qualified criminal counsel to help ensure that the consequences of a casualty are adequately contained and that the vessel's interests and those of the crew and shoreside management are vigorously protected.

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103. *See* Jeanne M. Grasso & Gregory F. Linsin, *MARPOL Enforcement in the United States*, MAR. PRO. (May 2011), https://www.blankrome.com/publications/marpol-enforcement-united-states [https://perma.cc/EU3V-EEGG].