

*Oversight of the Cruise Ship Industry:
Are Current Regulations Sufficient to Protect Passengers & the Environment*



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Securing Your Future Throughout the World

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Captain Bill Doherty is a 1967 graduate of the Massachusetts Maritime Academy, a licensed US Coast Guard Master-Unlimited tonnage, and qualified First Class Pilot, Prince William Sound, Valdez, Alaska. Captain Doherty is a retired Commander in the United States Navy Reserve, and has served on numerous US Navy warships and was the Head of Maritime Affairs for the Chief of Naval Operations during Operation Desert Storm. Over the course of his career, he has commanded US Naval Ships, as well as tankers, containerships, research vessels, high-speed ferries, and was an instructor at his alma mater. Prior to retirement, his latest position was as Safety Manager for Norwegian Cruise Lines. Captain Doherty now serves as the Director of Maritime Relations for Nexus Consulting, a maritime safety and security firm based in Alexandria, VA.

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Mark Twain (Samuel Clemens) was a Mississippi Riverboat pilot. One day, a woman passenger tried to flatter him saying "My goodness Captain, you must know where every hazard on this river lies!" Captain Clemens replied:

"No Madam. That would be impossible. I just know where the good water is and keep her there."

Ships run aground because someone made a terrible mistake or was negligent.

A Master (Captain) has a responsibility to navigate in a safe and prudent manner, taking into account all circumstances - including but not limited to the existing conditions and the limitations of the vessel involved. Prudence dictates that the Master allows an "exit strategy" of all possible contingencies including grounding, collision, fire, serious illness and a multitude of unforeseen circumstances.

On January 13, 2012, the Italian flag cruise ship, *MV Costa Concordia*, stranded and capsized off the Italian island of Giglio. At least thirty-two lives, (almost all of them passengers) were lost. None of the lives appear to have been lost during the stranding, but occurred at least one hour later when the ship capsized.

Most often in life, we are judged more on how we react to situations and events than the incidents themselves. In the case of the Captain of the *Costa Concordia*, the lack of planning, training, drilling and preparing for the subsequent events was tragic and disgraceful...

Maritime safety and prudence starts with competence; achieved through a combination of training, certification and constant drilling as well as the maintenance of operational and safety equipment. Leadership on ships, as in life, starts from the "top down."

Abandoning those left in your professional care clearly demonstrates the lack of moral fiber of the Master and all those other officers and crew who abandoned not only their passengers but their fellow shipmates, those "professional" mariners, who did in fact remain at station waiting for leadership and guidance that was never provided by those [cowards] who deserted their responsibilities and dignity.

The fact that the passengers were never mustered and briefed in Emergency Stations, evacuation or any other prerequisite safety information is not only imprudent, but illegal.

I have commanded ships of all types for over thirty years, have served ashore in management as Port Captain for major oil companies, taught navigation at America's finest Maritime Academy, and have served as Safety Manager for one of the largest cruise lines in the world.

Cruise ships - as well as all vessels plying the navigable waters of the world - are subject to strict maritime rules and regulations, including but not limited to Safety of Life at Sea (SOLAS) regulations, Standards of Training Certification and Watch keeping (STCW), The International Safety Management (ISM) rules and most importantly, the Rule of the Sea (whereby the Master and officers and crew never abandon the ship until all passengers and crew are accounted for and everything possible has been done to save them).

On a total lack of leadership and responsibility from the ship's Master and senior officers & serious questions regarding the Captain's sobriety and emotional stability...

There seems to be a clear indication of reckless negligence, followed by confusion and chaos in the loss of the *Costa Concordia*. I agree that we have to wait until all the facts are in. However, pictures of that boulder stuck in the side of the ship and the fact that the Master, and most of the senior licensed officers, abandoned their ship and their duties prior to accounting for all souls aboard speak for itself. In fact, several reports portray the Captain, his key licensed officers and a woman (purported to be his girlfriend) in the very first lifeboats scurrying away from the sinking ship and abandoning those remaining souls to the perils of the sea. Emerging reports paint an ever more bizarre portrait of a ship and crew totally out of control.

On February 18, 2012, television news¹ reported that traces of cocaine were reportedly found on the outside of a hair sample of Capt. Francesco Schettino, the Master of the *Concordia*. Notably, the consultant who did the analyses stated that they found no presence of the drug in urine samples or within the hair itself.

My company, Nexus, has from the very beginning of this investigation questioned the "sobriety" (be it under the influence of drugs and/or alcohol) of the Captain and crew members, and how that condition may (and in my opinion most probably) have factored into this disaster.

It is clear that there was no timely or proper post-casualty alcohol or drug testing performed on Captain Schettino, or all those officers and crew who may have had an emergency duty during this disaster. Of course, this type of test must be done in a timely fashion to determine blood alcohol content, and this test was not completed.

Whatever "drug testing" was performed, the mere presence of an illegal substance (Cocaine) on the Captain while he navigated this majestic vessel onto the rocks, taking the lives of thirty two souls in the tragedy, is indication enough of the presence of illegal drugs on the bridge of this ship when she was wrecked. The fact that traces were found on the body of the Captain is nothing less than **STRONG CIRCUMSTANTIAL EVIDENCE** of drug use, by either Captain Schettino himself at the worst case, or by someone very close to him in the best case.

The Solution: A Need for Changes in Cruise Vessel Laws in Light of the Costa Concordia Disaster...

The International standard for proper evacuation, mustering and embarkation into lifeboats and life rafts is a *maximum* of thirty minutes from the sounding of the Abandon Ship Alarm, until the boats are launched and away from the sinking ship.

Cruise ships are required, periodically (not less than annually), to demonstrate this capability to a governing regulatory body. The ability for the entire ship's crew to work as a team in accomplishing this standard requires training, drilling and then continued drilling and training.

From the time the *Costa Concordia* hit the rocks and stranded, there was almost no communication and/or any distress signal sent from the ship until local authorities were alerted to a problem through cell phone conversations between passengers and their family members ashore. The Master downplayed and transmitted

¹ <http://www.foxnews.com/world/2012/02/19/lawyers-for-costa-concordia-request-new-drug-tests-for-cruise-captain-after/>

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false and misleading information to rescue authorities until the situation became unmanageable and lives were lost.

No alarms were sounded, nor were passenger evacuations conducted in a timely manner. Passengers were given false accounts of the extent of the damage and ordered to return to their cabin rather than assemble at the abandon ship stations. The Master and senior officers abandoned the ship and the passengers by boarding the first lifeboats, leaving passengers and crew aboard to fend for themselves. The Master and ship's crew refused to cooperate with local rescue authorities, and there was no muster or accounting for how many souls were left aboard to be rescued.

The limited resources of the local **Search and Rescue (SAR)** units were overwhelmed and unable to affect an expedient and effective rescue, causing the loss of life of many. No unified command structure was in place, which would have brought maximum resources to bear on rescuing trapped souls aboard the ship. Rescue efforts transformed too quickly to recovery efforts due to lack of resources, information and effective use of an **Incident/Unified Command** structure. Obviously there is a need to insure through proper legislation that no such tragedy ever occurs again, affecting not only US citizens but passengers around the world.

The Cruise Vessel Security and Safety Act of 2010

H.R. 3360: The Cruise Vessel Security and Safety Act of 2010 was a well-intentioned and good piece of legislation, but shortfalls in enforcement, financing and prosecution require amendments. The act lacks strict criminal penalties and addresses individual crimes against cruise vessel passengers. It does not address or provide strong penalties or criminal sentencing for the reckless abandonment demonstrated in the *MV Costa Concordia* disaster.

Our **proposed amendments to the Cruise Vessel Security and Safety Act of 2010** would provide additional protection to US citizens booking passage on any foreign cruise vessels through any ticketing agency in the United States and to all travelers aboard cruise ships calling on any United States port during any segment of their itinerary.

In summary, the amendments proposed by Nexus Consulting Group would:

**Require development and implantation of a Passenger Distress Signal System (PDS).
No timely distress signal was transmitted. "What can passengers do?"**

a) **Passenger Distress Signal**

Passengers need to be empowered with capabilities to alert authorities in event they are concerned that ship personnel are *NOT* alerting rescue and responding authorities to situations aboard the ship in "real time."

b) The PDS system will be tied to the ship's Global Maritime Distress and Safety System (GMDSS)² system, with protections to deny interference of distress signal from the ship.

² The **Global Maritime Distress and Safety System (GMDSS)** is an internationally agreed-upon set of safety procedures, types of equipment, and communication protocols used to increase safety and make it easier to rescue distressed ships, boats and aircraft. GMDSS consists of several systems, some of which are new, but many of which have been in operation for many years. The system is intended to perform the following functions: alerting (including position determination of the unit in distress), search and rescue coordination, locating (homing), maritime safety information broadcasts, general communications, and bridge-to-bridge

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c) Passengers are entitled to let the outside world know if there is something wrong without depending upon people who might have less than honorable motive to delay or interfere with outside response agencies becoming aware of potentially life threatening situations. Can we continue to ask passengers to check their rights in at the dock? We encourage “See Something/Say Something” in all kinds of Emergencies. Anyone can dial “911” on land; shouldn’t passengers have the same rights?

No “timely” distress signal was sent

Aside from a cell phone (which appears to have been the initiating factor in the Italian Coast Guard response – and most likely saved numerous lives on the *Costa Concordia* [calls from passengers to families worrying about their own safety, resulting in calls to the Italian Coast Guard]) there are no methods for passengers to initiate a distress call external from the ship. There are systems on-ship which allow passengers to contact the officers on watch in the ship’s bridge to inform them of a fire, or a man-overboard or a crime on ship, but these systems are on-ship only.

These proposed Passenger Distress Systems (PDS) need to be linked into the ship’s external communication system, in a manner that will not allow any ship personnel to tamper or interfere with transmission, so that when a passenger “sees something” they can “say something.” This system will need a redundancy false alarm component; a system which could work could be tying the on-ship warning system into the on-ship distress satellite system. The initiation of the passenger distress system (PDS) could send a message to company DPA, as well as governmental entities, through systems such as the US Coast Guard’s Automated Mutual-Assistance Vessel Rescue System (AMVERS)³, poised to respond, much like the GMDSS.

A five-minute window could be afforded to the ship from the governmental response entity to the ship to allow for assessment of possible false alarm, and if no positive confirmation from the ship that the PDS is false or manageable on ship, governmental entities can initiate their appropriate response systems.

Clearly, whether intentionally or unintentionally, there was a breakdown in the communication of what the true status of the *Costa Concordia* was and where the incident was heading quickly. At some point, and from accounts it seems to be about 20 minutes after the ship ran aground, the Italian Coast Guard started to realize they had a listing vessel with more than 4200 passengers and crew and a half-million gallons fuel 1000m from the coast of Giglio. The Italian Coast Guard was well behind the curve with night setting in and limited resources to affect the situation.

From the reports, it does not appear that a “May-day” Distress call went out to any and all vessels to support the rescue operation. It certainly appears the Italian Coast Guard had very limited response vessels and staffing to be able to handle the floating city, so what can be done when littoral (close-to-shore) response systems reach or start to reach critical mass?

communications. Specific radio carriage requirements depend upon the ship's area of operation, rather than its tonnage. The system also provides redundant means of distress alerting, and emergency sources of power.

³ **AMVERS** or **Automated Mutual-Assistance Vessel Rescue System** is a worldwide voluntary reporting system sponsored by the United States Coast Guard. It is a computer-based global ship reporting system used worldwide by search and rescue authorities to arrange for assistance to persons in distress at sea. With AMVER, rescue coordinators can identify participating ships in the area of distress and divert the best-suited ship or ships to respond. Participating in AMVER does not put ships under any additional obligation to assist in search and rescue efforts, beyond that which is required under international law.

Require affirmative port authority documentation, which will require a Captain to verify and report that pre-departure Musters and Evacuation Training has been conducted for all embarked passengers and crew, prior to a ship leaving port

At this point in time, there is no disputing the fact that the passengers aboard *Costa Concordia* were never provided with proper Emergency Muster information, nor were they given any information or instruction by any crew members regarding the emergency station, use of lifesaving equipment and what to do in the event of foreseeable emergencies.

News reports and real-time videos of the time from when the ship initially ran aground, and that period between the grounding and the actual loss of the ship (and thirty-two lives), the actions of the entire crew could only be described as “chaotic.”

There was no proper Emergency Signal sounded. In fact unclear; and in most cases downright false and misleading status announcements only added to the confusion and chaos.

Unfortunately; current legal guidelines under the International Convention for the Safety of Life at Sea decree only that a muster drill should take place within 24 hours of embarkation.

It’s proposed that if passengers arrive after the muster has been completed, they will be obliged to carry out individual or group safety briefings. The new policy is effective immediately.

Passengers would now need to attend a pre-departure safety drill after the industry's governing bodies announced new safety measures following the *Costa Concordia* disaster.

The Cruise Lines International Association, European Cruise Council and Passenger Shipping Association said the muster drills would now be obligatory on their ships before departure.

In a joint statement, the cruise ship associations said: "The formal policy is designed to help ensure that any mandatory musters or briefings are conducted for the benefit of all newly embarked passengers at the earliest practical opportunity."

They also pointed out that the new initiative "exceed legal requirements."

While this is a noble and possibly “knee-jerk” reaction to the *Costa Concordia* tragedy, this pre-departure muster and training must be included as statute in the amended “Cruise Ships Security and Safety Act of 2010.”

It’s time to make Pre-Departure Musters, safety briefings and instructions the new “minimum legal requirements.” Suitable hard-copy documentation and verification must be required prior to any Port’s Authorities’ granting “clearance” to depart.

Mandate “zero tolerance” aboard cruise ships

The ship’s Captain Francesco Schettino was reported to navigate the ship to pass very close by the island to render a “salute” to a former Costa Cruise Lines Captain retired on the Island. Captain Schettino and a Ms. Domnica Cemortan, 25, were seen wining and dining together 30 minutes before the disaster. One passenger, Angelo Fabri, said: “the captain was drinking wine” – **a claim that contradicts Schettino’s assertion that he**

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stayed off alcohol. Sr. Fabri went on to say”They were laughing and in high spirits. The last drops of wine went into the captain’s glass.”⁴

While there does not appear to have been any timely post-casualty alcohol testing (which could have proved or disproved whether Captain Schettino was drinking or not, or how much he drank), overwhelming credible circumstantial evidence and eyewitness passenger reports - coupled with his behavior, before, during and in particular after he ran the *Costa Concordia* aground causing her to capsize and sink - clearly indicate and demonstrate the kind of irrational and irresponsible behavior we have all come to associate with persons under the influence.

The question then remains; just what was Carnival Cruise Lines Drug and Alcohol Program, and just how serious was it taken or complied with if the most senior officers were allowed to consume large amounts of alcohol in full view of passengers, immediately prior to conducting critical maneuvers? Maneuvers conducted aboard *Costa Concordia* on the evening of January 13, 2012 were critical enough in this case to cause the deaths of thirty two souls and the loss of one of the world's largest and most majestic passenger vessels.

One would have to wonder just how tolerant airline passengers would be if their pilot of a 777 jumbo-jet, consumed a bottle of wine in the First-class cabin, immediately prior to returning to the cockpit with an attractive passenger to “buzz” the tower, to salute the controllers. Or, say, their heart surgeon consumed a bottle of wine before performing a triple by-pass on them.

There is an assumption, in any profession, particularly those in which we “license” professionals such as Ship Captains, surgeons and airline pilots, that when we place our trust in our lives and well-being in there “competent and responsible” hands, they will perform in a sober and professional manner. From all reports, Captain Schettino violated that sacred trust.

Such a tragedy as the loss of *Costa Concordia*, and the deaths of thirty-two souls should never again be allowed to happen. One of many changes lawmakers will need to address is substance abuse and its effect on the Safety of Life at Sea.

There is a need to expand the **mandatory alcohol/drug testing procedure for post-incidents** to put the onus on the Master and all persons who were or should have been involved in any actions surrounding the incident to be available for timely testing. If a Master does not present him/herself immediately to authorities, the Master will lose his/her license until reviewed, refusal to submit implying presumption of guilt.

International Maritime Organization (IMO) and Alcohol Abuse

Alcohol and drug abuse have been identified both a sea and of course ashore as the direct cause of most casualties. In the International Labor Organization’s (ILO) publication *Drug and Alcohol Prevention Programmes in the Maritime Industry (A Manual for Planners)(Revised)*” they cite ***“In 1993 the International Maritime Organization adopted the International Safety Management (ISM) Code (IMO Resolution A. 741(18)) which "recognized the need for appropriate organization of management to enable it to respond to***

⁴ By Rebecca Evans and Arthur Martin The Daily Mail (UK) 20th January 2012 <http://www.dailymail.co.uk/news/article-2089052/Domnica-Cemortan-Was-Costa-Concordia-captain-Francesco-Schettino-trying-impress-ballerina.html#ixzz1nLWH7jlq>

the need of those on board ships to achieve and maintain high standards of safety and environmental protection”⁵.

The publication goes on to cite:

"Test Results of Affects of Alcohol Consumption of Job Tasks”⁶

- 1st test: Before any alcohol ingestion: 10% could not perform all tasks correctly
- 2nd test: after reaching a blood alcohol concentration of 0.10/100ml; 89% could not perform all tasks correctly, and
- 3rd test: Fourteen hours later, after all alcohol had left their systems, 68% could not perform all tasks correctly

While test was performed on US airline pilots on a flight simulator, there is every reason to believe that these findings apply equally to seafarers!”

The term “seafarer” should be applied to all persons working on ships and not just those in executive or traditional maritime positions, including hotel staff and entertainers directly employed by the ship operators.

IMO STCW 2010 “The Manila Amendments “regarding Alcohol consumption afloat.”⁷

The Manila Amendments of the STCW convention came into force on 1st January 2012. For the first time under STCW, mandatory limits for alcohol consumption are also being introduced (a limit of not greater than 0.05% blood alcohol level (BAC) or 0.25 mg/l alcohol in the breath), although individual flag states may choose to apply stricter limits.

In as much as the *MV Costa Concordia* disaster occurred on January 1, 2012, these statutory limits were effective and ALL hands aboard the *MV Costa Concordia* from the Master down to the lowest entry level seafarers was required to comply with these rules and Costa/Carnival cruise lines was required responsible to enforce these statues. It was the Master of the *Costa Concordia*’s responsibility to “enforce”, not publically violate these regulations.

It’s Time for Zero Tolerance

There is no argument among informed and concerned consumers (Cruise vessel passengers) that they want to be able to “assume” with every level of confidence, that the cruise ships they are embarked upon are being operated responsibly and more importantly, soberly.

The current practices aboard almost every cruise vessel flies in defiance and contrast to the international rules currently in effect regarding alcohol consumption by ANY crewmembers. By definition, all crew members embarked in any capacity have specific emergency stations and duties, and therefore are considered “on duty” at all time. We can’t plan emergencies, and if ever there is a time for sober judgment and capacities, it is in emergencies.

⁵Further, in November 1995 the nineteenth IMO Assembly adopted ‘Guidelines for the Implementation of the ISM Code by Administrations’ (Resolution A. 788(19)). The requirements of these resolutions became mandatory for certain types of ships on 1st July1998 with the remaining types of ships engaged on international voyages being required to comply by 1st July 2002.”.

⁶ Note: This test was published in the New England Journal of Medicine 1990; 323(7) pp. 455-461. Model JG, Mounts, LM. **Drinking and flying: The Problem of alcohol use by pilots.**

⁷**The 2010 amendments** The Manila amendments to the STCW Convention and Code were adopted on 25 June 2010, marking a major revision of the STCW Convention and Code. The 2010 amendments are set to enter into force on 1 January 2012 under the tacit acceptance procedure and are aimed at bringing the Convention and Code up to date with developments since they were initially adopted and to enable them to address issues that are anticipated to emerge in the foreseeable future

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The IMO alcohol regulations must be in effect at all times, twenty-four hours a day while embarked. Witnessing the ...”captain ...drinking wine... and in high spirits. The last drops of wine went into the captain’s glass” openly contradicts the rules and clearly demonstrates Costa/Carnival Lines decision to ignore the Manila Amendments to the STCW Convention.

In fact, there are actually “crew bars” aboard these ships, specifically for the purpose of facilitating alcohol consumption by crewmembers. These crew bars are a very neat little “profit center” for cruise lines, with crews in excess of 1000. This facilitation, and open alcoholic consumption of ships’ senior officers and well as all crew must be immediately discontinued. We cannot wait for the next Captain Schettino to give the “salute” to innocent passengers. We may not be so lucky next time. The ship might not capsize on rocks - she might sink on impact.

With such large numbers of crew aboard these “Mega Cruise Ships” and the temptations to violate these statutory regulations of the Manila Amendments regarding alcohol consumption, there very well may be the need for third party-trained security officers to regularly and randomly test the entire cruise vessel’s crew, including the Master and senior officers while embarked and underway.

This proposal will definitely be considered radical by many, but the question then is this: is the entertainment of the ship’s crew worth the obvious risks that alcohol consumption brings to the passengers?

It’s time for “last call” for cruise ship Crew Bars and staff alcohol consumption.

Insure greater checks and balances between the IMO, Classification Societies and Flag-States for safety, security and environmental compliance

In recent years, there has been an ever-increasing homogenization of duties, roles and in some cases authority between Flag State Control (regulatory body responsible for enforcement of SOLAS Regulations) and Classification Societies. Here in the United States, there has been a major shift in the hands-on, on-scene inspection roles between United States Coast Guard Marine Inspection personnel and Classification (American Bureau of Shipping, Lloyds’ Register, DNV, etc.) Surveyors.

Here in the United States, many of the actual inspections and surveys included in the details of at US Coast Guard Issued Certificate of Inspection are carried out by authorized Surveyors for Bureaus such as ABS. In essence, licensed contractors are paid to do inspections for the Coast Guard by proxy.

While in most cases here in the USA, the oversight between the US Coast Guard and the approved Classification Societies is adequate, the policy can sometimes lead to a less thorough and less-than-adequate inspection of the safety and materiel condition of the ship.

When more and more inspection duties and authority is shifted to Classification Societies, it leaves the door open for abuse and in some cases “conflicts of interest.”

Classification Societies are *funded in full by ship owners*, and receive no governmental revenue. This creates a relationship between the Society and the ship owner/operator which can influence not only the thoroughness of an inspection, but in the worst cases, the validity of the Certificates of Inspection issued as a result of their opinions.

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Again, there can be little doubt in anyone's mind, that there is SOME relationship between the sudden resignations of President of RINA, Gianni Scerni, resigning less than a week after the loss of *Costa Concordia*. RINA, the Italian Naval Register, is the classification society that issued the *Costa Concordia* a certificate of seaworthiness and safety management certificate in November 2011.

It's time to review, and in some case reverse this shifting of responsibilities and inspection services from Flag State Inspection Agencies to ship owner-funded Classification Societies.

If nothing else, it gives a perception of the "Fox guarding the Hen House."

The International Maritime Organization (IMO) needs to become much more proactive in demanding quality control from those flag states becoming more and more lax in delivering quality seafarer training and certification, and certain classification societies some ship owners seek out for less-than-thorough inspection requirements.

Flag (States) of convenience must be sanctioned for lax standards of inspection and certification.

Stricter compliance and audit of International Safety Management policies and procedures, focusing on training, documentation, drills and oversight

I'd like to take a quick look at the *Costa Concordia* grounding and subsequent mass casualty incident which is still unfolding off the coast of Italy a month and a half after running aground and address just a few of the failed human elements which delayed the response to the grounding and caused over 30 dead or missing passengers.

A key element of International Safety management and a requirement of IMO Standards of Certification Training and Watch-keeping (STCW) regulations, is the establishment of procedures for **Bridge Recourse Management (BRM)** sometimes referred to as "Bridge Team Management" basically synergizing professional personnel and maximum effective use of navigation procedures and equipment such as nautical charts, radar, and electronic navigation systems such as GPS and Electronic Chart Display and Information Systems (ECDIS)⁸

Naturally, while understanding how to operate and obtain pertinent information from such sophisticated navigation systems is an important element of Bridge Recourse Management, the SINGLE most important element is the "Human Factor" particularly the Master and senior Bridge professional licensed officers and rated crewmembers such as Helmsman and Lookouts.'

⁸ An **Electronic Chart Display and Information System** (ECDIS) is a computer-based navigation information system that complies with International Maritime Organization (IMO) regulations and can be used as an alternative to paper nautical charts. IMO refers to similar systems not meeting the regulations as Electronic Chart Systems (ECS).

An ECDIS system displays the information from electronic navigational charts (ENC) or Digital Nautical Charts (DNC) and integrates position information from the Global Positioning System (GPS) and other navigational sensors, such as radar and automatic identification systems (AIS). It may also display additional navigation-related information, such as Sailing Directions and fathometer.

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Obviously, there was a fatal failure in the Costa Concordia's Bridge Recourse management program, costing the lives of thirty-two innocent souls and the loss of a majestic ship.

At this point, it looks like no lives were lost upon the grounding incident or the immediate minutes following the ship running aground. This is important, as it denotes that in this incident, every life lost was preventable and directly tied to the response/ rescue operation. To put it bluntly, passengers on the *Costa Concordia* died due to a failure of ship's Master and key company officials to follow specific elements of the International Safety Management (ISM) and the interface with local port-state authority.

Specifically, the loss of lives aboard Costa Concordia was due to failure, for whatever motives, to sound internal and external (distress signals) immediately after the grounding and early damage assessments which clearly indicated at least the *possibility* of a serious emergency.

The **International Safety Management (ISM)** system is an interface and procedural system established by the governing body for vessels on the high-sea, the International Maritime Organization (IMO), and is one based on ISO (International Organization for Standardization) standards which basically mandate that a company must "say what it will do, then do what it says" to be compliant with ISO certification. The IMO doesn't define what or how a company will establish its ISM procedures, but rather outlines the items which a company ISM must cover. The IMO leaves the details to the company to define how the company safety management program will be delivered.

The IMO mandates that for a ship to operate on the high-seas, the company must have a valid "Document of Compliance" which is issued by an organization recognized by the Administration (which is either the government of the country which the ship is registered and "flagged" in, or a recognized compliance body the government may have contracted to perform these task, most often maritime classification societies) which allows a ship within that company to be issued a mandatory "Safety Management Certificate". Under the ISM Code of 2002, resolution A.443(XI) and resolution A.680(17) the IMO mandates companies identify a Designated Person Ashore (DPA) who is the point of contact for ship Captains and governing bodies when issues arise on ships. The company is further mandated to establish all resources and shore-based support to the DPA to support safety and pollution prevention.

These prevention and crisis response systems and procedures must be clearly defined and written in the company ISM policies and more importantly procedures, which are reviewed by the issuing authority of the "Safety Management Certificate" (in the case of the *Costa Concordia*, the SMC was issued in November 2011 by the classification society Registro Italiano Navale (RINA)). This all leads to the first question that must be asked of the incident – "Was the Costa DPA contacted?"

President of RINA, Gianni Scerni, resigned January 18, 2012, less than a week after the *Costa Concordia* was stranded, and capsized, taking thirty-two souls with her. RINA, the Italian Naval Register, is the classification society that issued the Costa Concordia a certificate of seaworthiness and safety management certificate in November 2011.⁹

⁹ The Maritime Executive: President of RINA Resigns, Possible Consequence of Costa Concordia Incident
Wednesday, January 18, 2012

Mandatory criminal and psychological background checks of senior personnel

Criminal and psychological background checks of all licensed officers, crew and key hotel/staff personnel and established standards for refusal to employ those found with certain offenses must be mandated.

At the present time, US Federal laws and regulations require that safety-related transportation professionals; including merchant mariners, undergo screening to ensure that they can safely perform their jobs. Medical certification and background checks are part of the requirements for licensing these mariners. Certification or licensing also includes testing workers' knowledge and skills required for the jobs. These checks are critical because physically or mentally unfit Mariners pose a danger to themselves and to the public. This regulation must be extended to all cruise ship personnel aboard all ships covered by the amended HR 3360 Cruise Vessel Security and Safety Act of 2010.

Scheduled competency testing and recertification of key personnel by external agencies in ISM, IMO, Flag State regulations, procedures, and competencies, particularly regarding safety and lifesaving

For some time now, there has been International concern regarding “inconsistencies” between the quality and thoroughness of critical Safety and Competency Training and Certification, in different flag states. The IMO has commissioned studies noting that in one particular study, regarding “Seafarer Certificate Forgery: The Threat Undermining the Quality of Training” the study results found that of a total of fifty-four administrations participating, 11808 out of 12703 cases of fraudulent documents were from one South Asian Country. Seafarers from that same country constituted over 300 of the *Costa Concordia's* total ship's crew at the time of the disaster.¹⁰

In a recent study published by BIMCO¹¹, Andrew Guest reported “Fears That the [South Asian Country] may lose its coveted status on a list of countries with approved maritime education systems may seem far-fetched but are still causing jitters in the Asian country. ”

”For months, the country that is the biggest supplier of seagoing labour has been under the shadow of an investigation by the European Maritime Safety Agency (EMSA) that could result in some and perhaps all [South Asian Country] certificates of competency no longer being recognized by the European Union (EU).”¹²

Obviously, there is concern among some of Europe's leading maritime nations regarding the quality of training and documentation of seafarers from around the world. It's time the United States take a proactive position on ensuring the validity and competency standards of seafarers responsible for the safety of our US citizens embarked on international cruise ships.

We also propose **Universal Criminal Statutes for Masters and Crew** who leave a serious incident. Minimum sentencing for reckless abandonment, causing injury or death to passengers of at least 5-10 years per death and 3-5 years for injury per passenger should be served in the United States' federal prison system.

¹⁰ IMO Fraudulent Documents <http://www.imo.org/OurWork/HumanElement/TrainingCertification/Pages/FraudulentCertificates.aspx>

¹¹ BIMCO is the largest of the international shipping associations representing ship-owners controlling around 65 percent of the world's tonnage and with members in more than 120 countries drawn from a broad range of stakeholders having a vested interest in the shipping industry, including managers, brokers and agents.

¹² https://www.bimco.org/News/2012/02/15_Feature_Week_07.aspx

No financial limits on responsibilities (Unlimited Liability) to parties involved

Amid the Costa Concordia tragedy, it seems very likely that cruise passengers will have to file any lawsuits in Genoa, Italy, where the cases will be subject to Italian law. Courts in the United States have consistently upheld the choice of law clauses contained in cruise passenger tickets absent evidence that "enforcement would be unreasonable and unjust," "the clause was invalid for such reasons as fraud or overreaching", or "the enforcement would contravene a strong public policy of the forum in which the suit is brought".

More importantly, as part of this comprehensive system, the Athens Convention allows the carrier to limit its liability for passenger personal injury or death in the absence of its reckless misconduct. The current monetary limitation in U.S. dollars is approximately \$72,000. The operative words are "in the absence of [the carrier's] reckless misconduct." Specifically, Article 13 of the Athens Convention provides that the carrier will lose its right to limit liability where it is proven that the damage resulted from an act or omission done with intent to cause damage or recklessly and with the knowledge that such damage would probably result.¹³

It seems clear that loss of a human life is worth more than \$72,000. In 1990; Congress passed the Oil Pollution Act of 1990 (OPA90) lifting any liability limits for oil spills. The question then would be, is our environment worth more than human life? The Athens Convention has to be dissolved and ANY limitations of liability for loss of life or injuries aboard Cruise Ships must be removed in the amended HR 3360 "Cruise Ship Security and Safety Act of 2010."

Ticketing "Fine Print"

Cruise lines have made the "fine print" contained in the tickets too one sided¹⁴. Passengers are engaging in a "contract" between themselves and the ship operator. They should not be compelled to "waive" any rights to claims under the jurisdiction of this Act, merely to be granted boarding.

Tickets purchased in USA through ANY Agent, or sub agent for any Cruise Ship, whatever her National Registry, working directly or indirectly for Cruise ship operator or owner must include the statement: "All rights and protections under the amended Cruise Vessel Safety and Security Act of 2010" are granted under this

¹³ What are Costa Concordia Cruise Passengers' Rights under the Athens Convention?

JANUARY 18, 2012 by Leesfield & Partners, P.A. (@leesfield)

¹⁴ (Reuters) By Tom Hals, Andrew Longstreth and Steve Stecklow Tue Feb 21, 2012 6:14am GMT "The cruise business - led by industry giant Carnival Corp. & PLC, whose Italian subsidiary owned and operated the doomed Costa Concordia - has put in place over the years a legal structure that ring-fences operators from big-money lawsuits. The rules for seeking redress are spelled out in complex, multi-page ticket contracts that passengers may not receive until right before boarding. Victims are often required to file suits in remote jurisdictions. The wording has been the subject of decades of court battles. Thomas Dickerson, a New York state judge who has written extensively on travel law, says the legal hurdles resulting from the industry's victories over the years give operators the upper hand in litigation and make the business highly profitable. The industry faces "fewer payouts because of all the roadblocks," he said. Cruise industry officials say their contracts streamline the litigation process, prevent frivolous claims and lower cruise costs for passengers.

In the case of the Costa Concordia wreck, the ticket contract stated that "all claims, controversies, disputes, suits and matters of any kind whatsoever ... shall be instituted only in the courts of Genoa, Italy." Many survivors are now discovering the challenges of the Italian court system. Italian lawyers rarely accept cases on a contingency basis, so clients may have to pay them up front to take a case. And personal-injury cases can drag on for years, especially if there is a parallel criminal investigation. The Costa Concordia's captain is under investigation for allegedly abandoning ship. That probe must be completed before evidence will be made available to plaintiff attorneys in civil cases, said Alexander Gutierrez, a Rome lawyer who has litigated major personal-injury cases."

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contract for passage. These rights should extend to any excursions of activities purchase or engaged while on the ship during this passage.

Ticket fine print must be eliminated. Passengers should not be forced to surrender ANY rights for claims under the intent of this Act (HR3360). Just as we now have warnings on cigarette packages, Cruise Ship tickets should advise passengers of the right to retain all legal and civil rights.

Cruise Vessel Emergency Response Trust Fund

The proposed amendment provides funding for responses to **Cruise Vessel Security and Safety Act of 2010** events provided certain criteria are met. The responsible party is liable for federal emergency rescue, response, salvage and cleanup costs and damages as detailed in **Cruise Vessel Security and Safety Act of 2010**. Federal agencies assisting in a response action may be reimbursed. Several other federal agencies may provide financial support for removal actions.

The **Cruise Vessel Emergency Response Contingency Plan** is the federal government's blueprint for responding to large cruise vessel emergencies. The proposed **National Cruise Vessel Emergency Response Contingency Plan** is the result of our country's efforts to develop a national response capability and promote overall coordination among the hierarchy of responders and contingency plans. All of these actions contribute to providing financial incentives for compliance.

Failure to carry out Rescue Operations, utilizing an adequate Contingency Plan and failure to establish an Incident Command system, utilizing a Unified Command... Never Again

It bothers me very much that three days after the tragic grounding, local (Italian) rescue agencies quickly shifted from “rescue” operations to Salvage/Recover operations (shifting priorities and resources from any concentrated effort to save those who may still be trapped below decks on this over-turned but not sunken ship, protecting the pristine environment of the island). In fact, news reports stated that local churches prayed on the Sunday following the tragic disaster to “spare the Island of Giglio from an environmental disaster which would destroy their tourism and economy, and ‘Oh yeah,’ the souls of those lost in the disaster”.

I am reminded that one and a half years ago, thirty three Chilean miners became trapped miles below ground in what seemed to be a hopeless situation. Instead, as the world watched, a quiet nation at the Southern tip of the Earth mobilized. From their President on down, mine officials, engineers, construction workers and others banded together with just about the entire Chilean population - and they created a miracle.

The whole world watched and prayed as what appeared to be a hopeless situation evolved through little glimmers of hope and tireless work on the part of the people of Chile into that miracle.

There wasn't a dry eye in the world, as the first through the last miner came up that elevator to safety, a full SIXTY-NINE DAYS after that accident.

On Friday, the 13th of January, 2012 an Italian flag passenger ship, driven by an Italian Captain, went aground off an Italian Island. The Captain's actions caused the grounding, his subsequent lack of competence, leadership, and most of all courage led to at least thirty-two souls dead or presumed dead.

Granted, we all saw a couple of salvage teams diving, as the magnificent vessel slides closer and closer to sinking, but there was NEVER any national mobilization of forces and resources, both governmental or non-

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governmental, to try to save those remaining souls who could be trapped in the hundreds of pockets throughout the ship in a timely manner.

Three days after the sinking, with the ship is lying on its side rescues efforts turned to recovery efforts. The Costa Concordia is less than 150 feet wide at her maximum beam. Last year the Chileans drilled over a mile into the rock and extricated thirty three miners trapped for 69 days! It appears that the Italian Captain isn't the only guy or responsible party or agency that ran (or fell) away from lives in peril on the sea.

Just a comparison as to how some nations react to tragedy. Some turn it into victories; others sit around and wait for time to complete the tragedy.

Never was there any demonstration of an implementation of a Contingency Plan; nor the establishment of any kind of Incident Command System, which could have maximized rescue recourses through a “Unified Command.”

If I were asked to give you the very best examples of successful examples of “Unified Command” response I would be torn between three. Probably the most famous would be the rescue of a half million British troops off the beaches of Dunkirk, France in 1939; and more recently the successful rescue of every single one of the thirty-nine Chilean Coal Miners, buried miles beneath the surface of the Earth, and of course, our own Incident Unified Command response to last year’s Deepwater Horizon oil spill, utilizing Contingency Planning and Response Plans and Finance Structure through the Oil Pollution Act of 1990 (OPA 90). Contingency Planning, the Incident Command and Unified Command Systems work. It’s time to translate these into a unified maritime safety program.

Establish and fund the Cruise Vessel Emergency Response Trust Fund

Under the proposed amended **Cruise Vessel Security and Safety Act of 2010**, the owner or operator of a vessel on which a violation or emergency incident occurs (also known as the Responsible Party) is liable for all of the costs associated with the incident and any damages resulting from the incident (not limited to pollution but for the real costs of the rescue efforts, both governmental and non-governmental).

Once every possible effort has been made to rescue every person involved in a Cruise Vessel Emergency, the **USCG** and **FBI’s** first priority is to ensure that responsible parties pay to effect effective and appropriate emergency response to their own emergency incidents. However, when the responsible party is unknown or refuses to pay, funds from the **Cruise Vessel Emergency Response Trust Fund** can be used to cover removal costs or damages resulting from cruise vessel emergency responses.

The primary source of revenue for the **Cruise Vessel Emergency Response Trust Fund** is a \$10.00 per passenger day fee on all US citizen passengers aboard any cruise ship on which passage (tickets) were sold in the United States, and all passengers aboard all cruise ships which embark passengers in United States (or its territories) ports, whether passengers are US citizens or foreign Citizens.. Other revenue sources for the **Cruise Vessel Emergency Response Trust Fund** include interest on the fund, cost recovery from the parties responsible for the Cruise ship emergency incidents and any fines or civil penalties collected. The Fund is administered by the **U.S. Coast Guard's Cruise Vessel Emergency Funds Center (NCVEFC)**.

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Require adequate **Certificates of Financial Responsibility (COFR)** for ALL cruise vessels where any part of this act applies. COFR shows the funding availability and name of **Company-Qualified Individual (QI)** authorized to disburse funds by responsible party (ies).

The **Cruise Vessel Emergency Response Trust Fund** can provide up to \$1 billion for any one cruise vessel emergency incident and claims in connection with any single incident. The main uses of **Cruise Vessel Emergency Response Trust Fund** expenditures are:

State Authority access for response actions.

Costs incurred in emergency response.

Payment of claims for uncompensated response and salvage costs and damages, and

Research and development and other specific appropriations.

Summation: Paraphrasing Robert Kennedy paraphrasing Bernard Shaw: “Some men see things as they are and say ‘Why?’ I dream of things as they that never were; and say ‘Why Not?’”

Why not make HR 3360; The Cruise Ship Security and Safety Act of 2010” strong enough to prevent future *Costa Concordia* disasters?

Respectfully;

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