

# National Shipbuilding Research Program Facilities, Tooling & Risk Management Panel



**Mobile, Alabama**  
**November 3, 2010**

# Legislative & Regulatory Update

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# Legislative & Regulatory Update

- Longshore & Harbor Workers Compensation Act
  - Recreational Vessel Exclusion
- *Deepwater Horizon* Incident
  - Deepwater Drilling Moratorium
  - Proposed Jones Act amendments
  - Proposed Death on High Seas Act Amendments
  - Proposed Limitation of Liability Act Amendments



# Longshore & Harbor Workers Compensation Act

- The American Recovery & Reinvestment Act of 2009
- Recreational Vessel Exclusion Amendment
- Proposed DOL Rulemaking



# Recreational Vessel Exclusion

## *Original*

*Sec. 2. When used in this Act—*

*\* \* \* \* \**

*(3) The term “employee” means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including ship repairman, shipbuilder, and ship-breaker, but such term does not include—*

*\* \* \* \* \**

*(F) Individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;*

*\* \* \* \* \**

*if individuals described in clauses (A) through (F) are subject to coverage under a State workers’ compensation law.*



# Recreational Vessel Exclusion As Amended

Sec. 2. *When used in this Act—*

\* \* \* \*

*(3) The term “employee” means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including ship repairman, shipbuilder, and ship-breaker, but such term does not include—*

\* \* \* \*

**(F) Individuals employed to build any recreational vessel under sixty-five feet in length, or individuals employed to repair any recreational vessel, or to dismantle any part of a recreational vessel in connection with the repair of such vessel;**

\* \* \* \*

*if individuals described in clauses (A) through (F) are subject to coverage under a State workers’ compensation law.*



# Proposed DOL Rulemaking

*August 17, 2010*

What is the effective date?

- February 17, 2009
- Traumatic incident: on or after
- Asbestosis: manifests on or after
- Hearing Loss: audiogram on or after



# Proposed DOL Rulemaking

*August 17, 2010*

## What is a Recreational Vessel?

- Employs Coast Guard Regulations
- Any unchartered passenger vessel used for pleasure and carrying no passengers for hire
- Any chartered passenger vessel used for pleasure with no crew provided and with fewer than 12 passengers (no passengers for hire)



# Proposed DOL Rulemaking

*August 17, 2010*

What is not a Recreational Vessel?

- Uninspected Passenger Vessels
- Small Passenger Vessels
- Passenger Vessel



# Proposed DOL Rulemaking

*August 17, 2010*

## Issues:

- When is this determination made?
  - When Built?
  - When Bought?
  - When Registered?
- Is Commercial/Corporate Ownership a Factor?
- What About Foreign Owned Vessels?
- “Dismantling” *any* Recreational Vessel Covered?
- Walking “in and out of” Coverage?



# Proposed DOL Rulemaking

*August 17, 2010*

## Walking “in and out of” Coverage:

- Covered by the Act if “some” of the employee’s work is qualifying maritime employment
- This work must be:
  - More than “infrequent” or “episodic”
  - considered a “regular” part of the job



# *Deepwater Horizon* Incident

- Deepwater Drilling Moratorium
  - Enjoined by Federal Court
  - Second Moratorium Issued
- Jones Act (Proposed)
  - Adds Non-Pecuniary Damages, i.e.:
    - “loss of care, comfort, and companionship”
    - pain & suffering
  - Eliminates Requirement that Vessels Trading Between U.S. Ports be U.S. Built, Flagged, and Crewed



# *Deepwater Horizon* Incident

- Death on High Seas Act (Proposed)
  - Adds Family Members as Plaintiffs
  - Adds Second Moratorium Issued
- Limitation of Liability Act (Proposed)
  - Eliminates Provision Limiting Damages to Value of the Vessel

