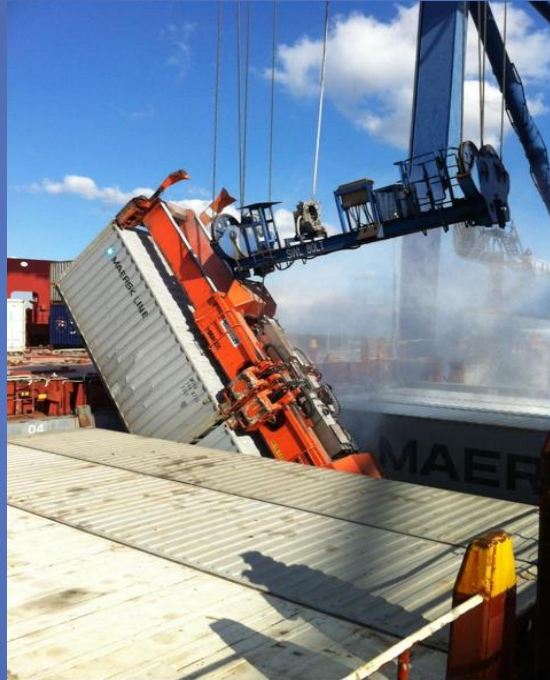


# Occupational Safety in the Marine Cargo Handling Industry



The Fundamental Parts of the Equation  
and The Current Experience

# How The Issues Are Presented

- Visually  
[Through PowerPoint Slides]
- Oral Narrative  
[To Better Understand The Stakeholders & The Relevant Laws and Regulations]
- Real Life Experience  
[Fatal Accidents That Have Occurred at US Ports In CYs 2017/2018]



# Appreciating The Financials

## A Marine Terminal Operator's Hierarchy of Recurring Costs \*

1) . Payroll (Labor)

1) . Property Rental Fees

2). Insurance (General Liability/Worker's Compensation)

\* Higher cost equipment, i.e., container cranes, RTGs , etc., are infrastructure investments often expensed by the local port authority.

# State Workers' Compensation Laws

**1855:** Georgia; Alabama – Employer Liability Acts - Permitted Employees to File Suit and then Prove Employer Negligence/Omissions

**1902:** Maryland – First Neutral, No-Fault, Sole Remedy Worker's Compensation Law

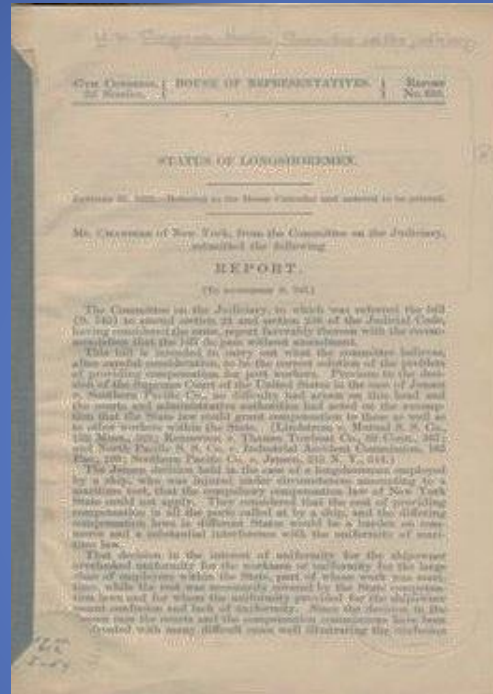
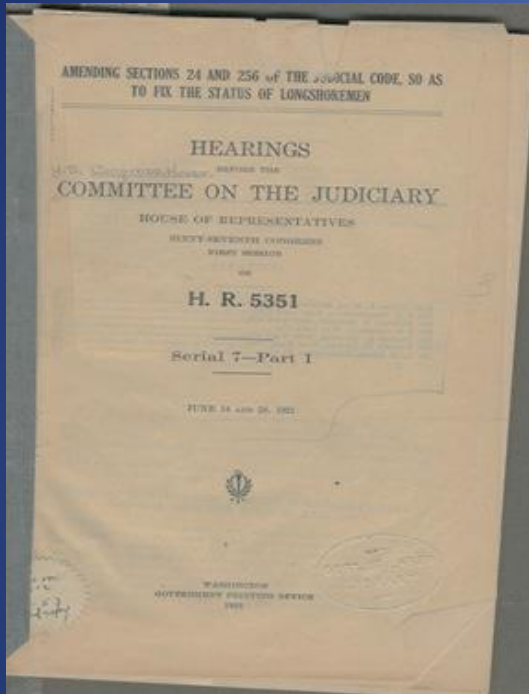
**1949:** All States Had Similar Laws, Basing Compensation Payments on the SAWW (**State Average Weekly Wage**)

**2017/2018:** Nat'l Average Weekly Wage: **\$735.89**





# The Jensen Era



- *Southern Pacific v. Jensen* (1917)
- *Knickerbocker v. Stewart* (1920)
- *Washington v. Dawson* (1924)

Memorializing an internecine turf fight between the U.S. Congress and the Supreme Court, in determining the method (or indeed the existence) of worker's compensation for injuries sustained *on the navigable waters* of the U.S.

# U.S. Constitution

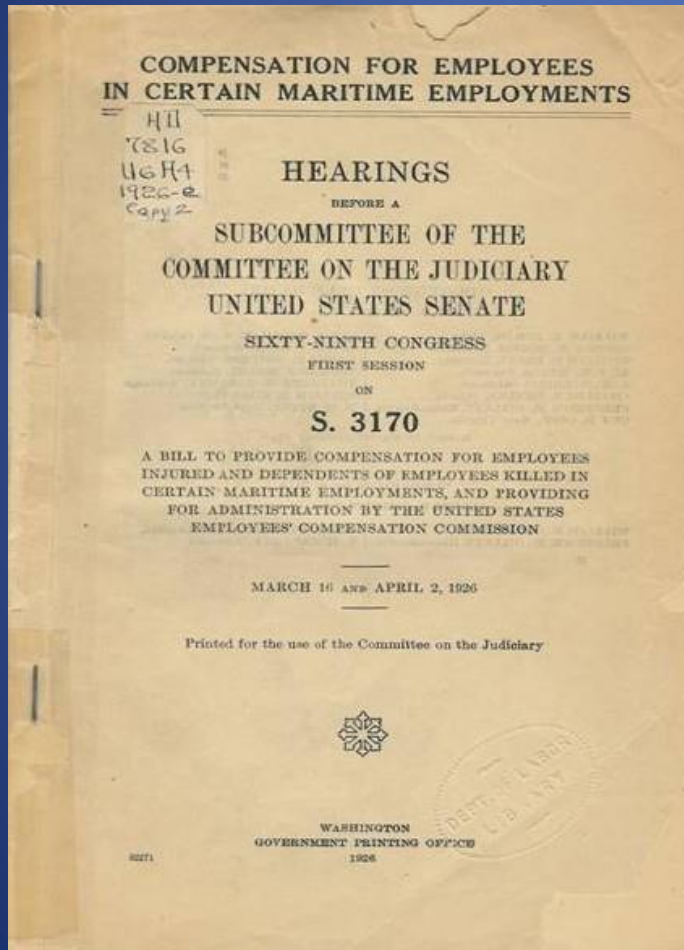
## Article III.

\*\*\*\*

### Section. 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States; ....

# LHWCA of 1927



- Creates a Federal scheme for the payment of compensation to marine cargo handling and shipyard workers injured “*on the navigable waters of the United States.*”

**Validated by the Supreme Court in:**

- *T. Smith & Son v. Taylor* (1928)
- *Minnie v. Port Huron Terminals* (1935)

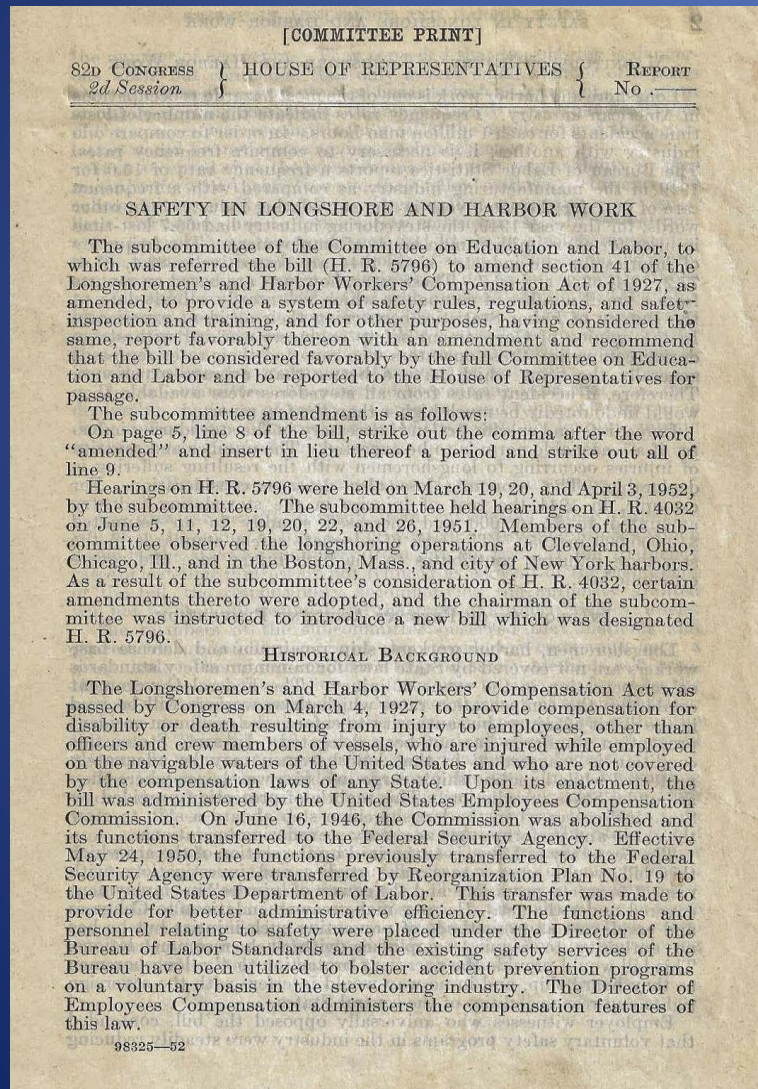
# Compensation Rates (LHWCA) 10 Year Lookback



<u>Point In Time</u>	<u>NAWW</u>	<u>MAX</u>	<u>MIN</u>	<u>% Incr</u>
10/01/2018- 09/30/2019	\$755.38	\$1,510.76	\$377.69	2.36%
10/01/2017- 09/30/2018	\$745.89	\$1,471.78	\$367.94	2.46%
10/01/2016- 09/30/2017	\$718.54	\$1,436.48	\$359.12	2.17%
10/01/2015- 09/30/2016	\$703.00	\$1,406.00	\$351.50	2.10%
10/01/2014- 09/30/2015	\$688.51	\$1,377.02	\$344.26	2.25%
10/01/2013 - 09/30/2014	\$673.34	\$1,346.68	\$336.67	1.62%
10/01/2012 - 09/30/2013	\$662.59	\$1,325.18	\$331.30	2.31%
10/01/2011 - 09/30/2012	\$647.60	\$1,295.20	\$323.80	3.05%
10/01/2010 - 09/30/2011	\$628.42	\$1,256.84	\$314.21	2.63%
10/01/2009 - 09/30/2010	\$612.33	\$1,224.66	\$306.17	2.00%
10/01/2008 - 09/30/2009	\$600.31	\$1,200.62	\$300.16	3.47%



# (1951) Organized Labor Initiates Attempts to Legislatively “Perfect” the LHWCA



- ILA/ILWU
- Boilermakers
- Steelworkers
- Carpenters

- Higher than usual number of explosions in shipyards.
- Increased trade volumes w/more cargo gear failures.
- Post 1953: Political incentives to reseat a Democratic president

# The Political Landscape

## U.S. House of Representatives (1955)

### COMMITTEE ON EDUCATION AND LABOR

GRAHAM A. BARDEN, North Carolina, *Chairman*

AUGUSTINE B. KELLEY, Pennsylvania	SAMUEL K. McCONNELL, Jr., Pennsylvania
ADAM C. POWELL, Jr., New York	RALPH W. GWINN, New York
JOHN S. WOOD, Georgia	WALTER E. BREHM, Ohio
JOHN F. KENNEDY, Massachusetts	WINT SMITH, Kansas
WINGATE H. LUCAS, Texas	CARROLL D. KEARNS, Pennsylvania
CLEVELAND M. BAILEY, West Virginia	THRUSTON BALLARD MORTON, Kentucky
LEONARD IRVING, Missouri	THOMAS H. WERDEL, California
CARL D. PERKINS, Kentucky	HAROLD H. VELDE, Illinois
CHARLES R. HOWELL, New Jersey	CHARLES E. POTTER, Michigan
TOM STEED, Oklahoma	RICHARD B. VALL, Illinois
ROY W. WIER, Minnesota	E. Y. BERRY, South Dakota
BOYD TACKETT, Arkansas	
ERNEST GREENWOOD, New York	

FRED G. HUSSEY, *Chief Clerk*

JOHN O. GRAHAM, *Minority Clerk*

JOHN S. FORSYTHE, *General Counsel*

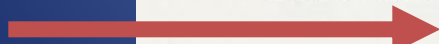
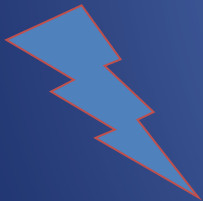
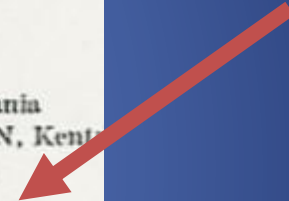
DAVID N. HENDERSON, *Assistant General Counsel*

RUSSELL C. DERRICKSON, *Investigator*

### SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK

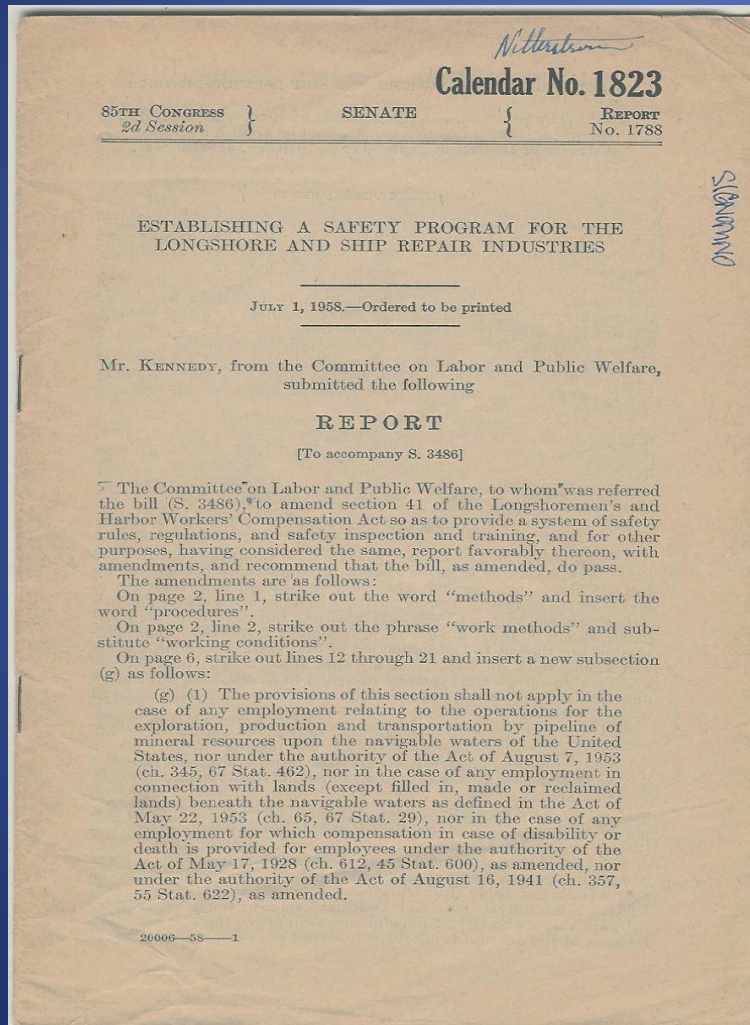
JOHN F. KENNEDY, Massachusetts, *Chairman*

CLEVELAND M. BAILEY, West Virginia	CARROLL D. KEARNS, Pennsylvania
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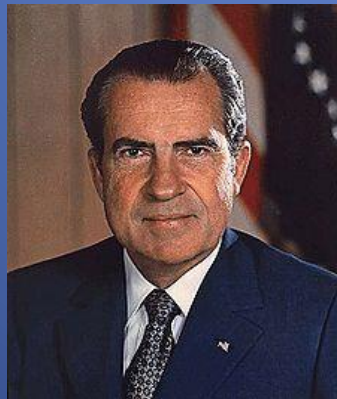
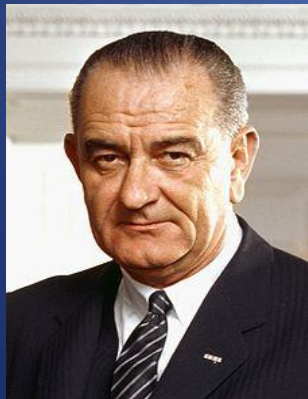
# The 85th Congress (1957-1958)



- Sustained organized labor efforts to widen LHWCA coverage and increase safety protection.
- Political impetus now gradually translated into labor support for one prospective Democratic presidential candidate.

# The 1958 LHWCA Amendments

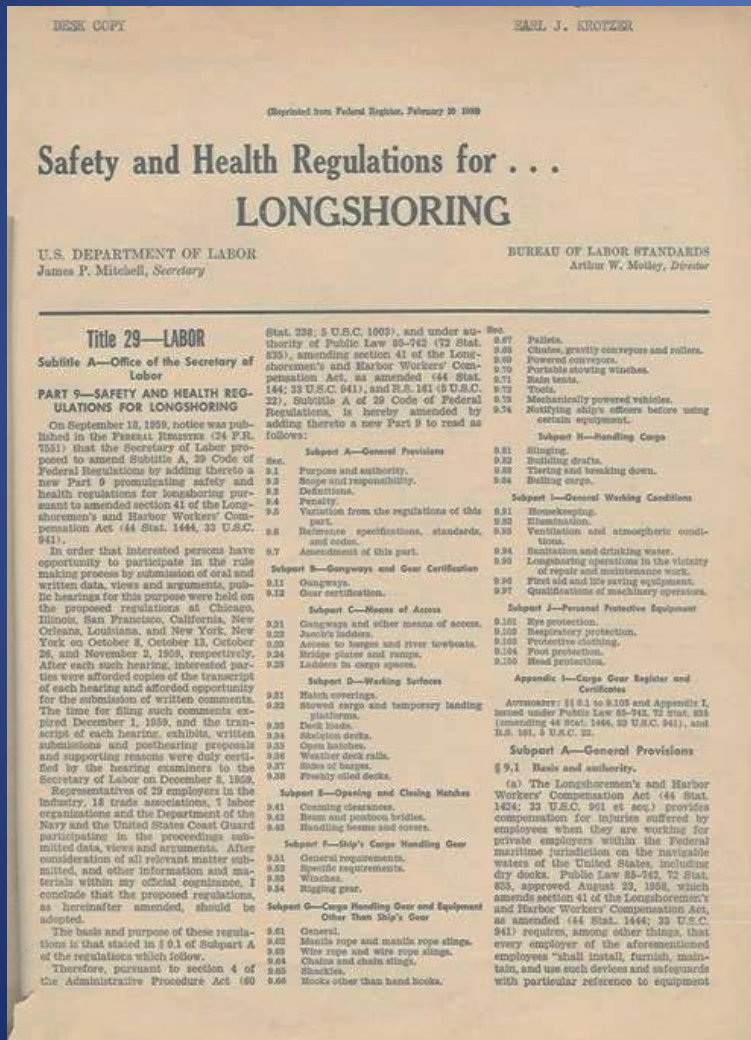
[Public Law 85-742/ The Kennedy Maritime Safety Act]



- Political compromise brokered by Senate Majority Leader Lyndon Johnson, with JFK as strongest proponent.
- Resisted by Ike; needed by Richard Nixon to appease Labor in his (1960) bid for Presidency.
- Expanded §41 of LHWCA, to provide for safety standards, enforcement and training.
- Put in the enforcement hands of DOL (LSB).



# The 1<sup>st</sup> U.S. Federal Longshoring Industry Safety Regulations



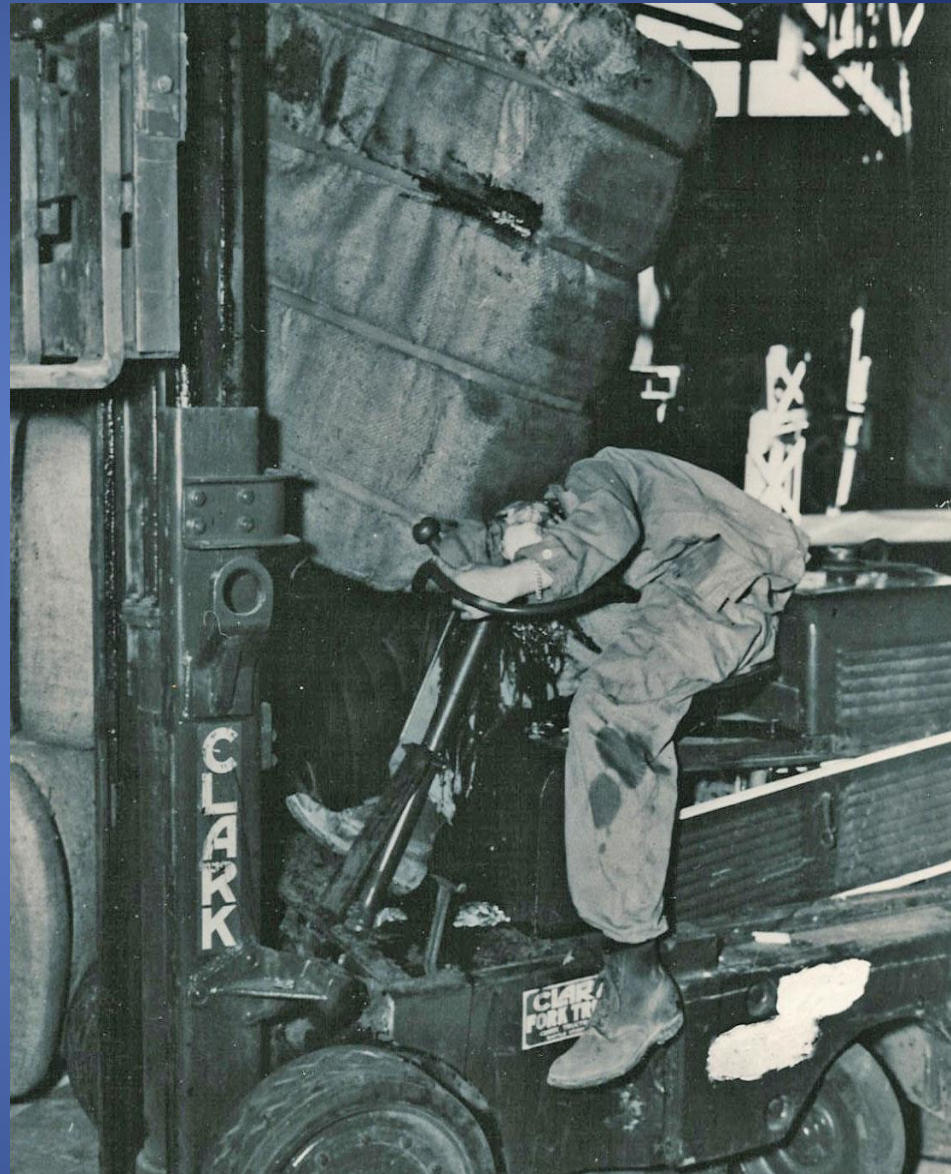
- Published in the FEDERAL REGISTER, February 20, 1960

- Applicability tracked the jurisdiction of enabling legislation (LHWCA), i.e., to work "on the navigable waters"

- Work on terminals therefore, not covered

Other Laborers  
and Industrial  
Workers Wanted  
To Be Protected  
On The Job, As  
Well.

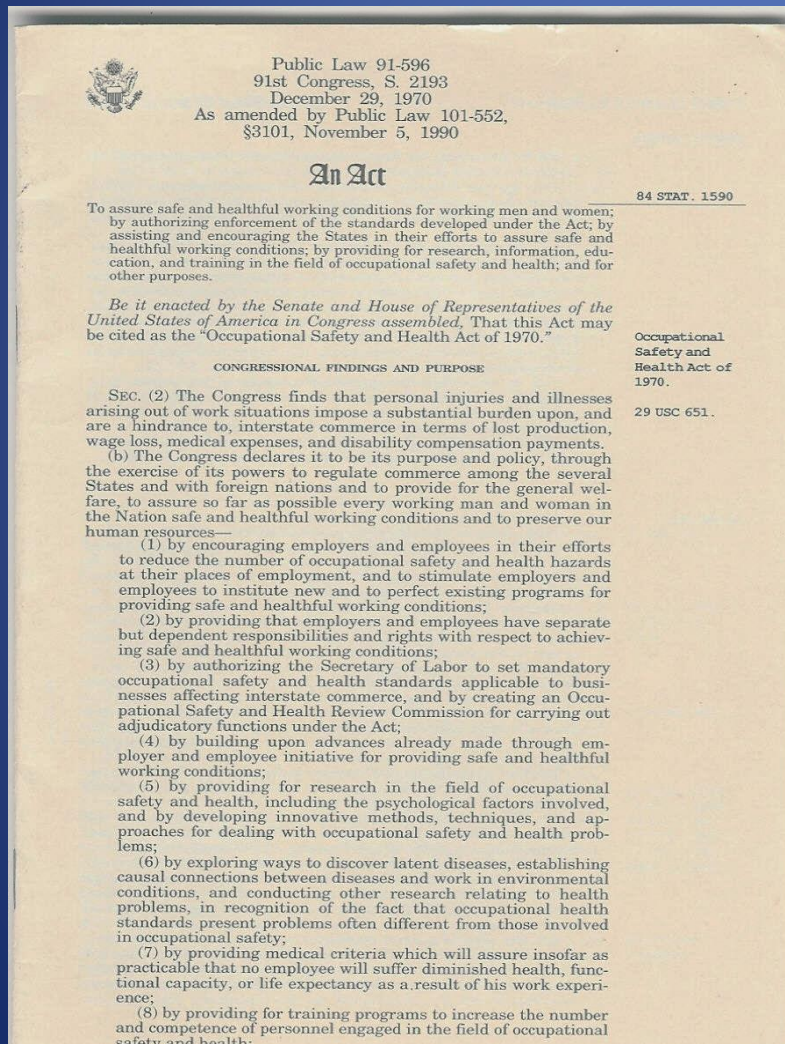
To Achieve That  
Goal, They Must  
Take Their  
Message To  
Congress:





# The Occupational Safety & Health Act of 1970

## [Public Law 91-596]



- Signed into law by Richard Nixon, December 29, 1970
- Extended to all workplaces
- Adopted all existing Federal Safety Standards (including the Longshoring safety regulations under LSB care)
- “on the navigable waters” limitations of LHWCA (for safety/health purposes) no longer apply

# LHWCA Extensions of 1972

544

## LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT AMENDMENTS OF 1972<sup>1,2</sup>

An Act To provide compensation for disability or death resulting from injury to employees in certain maritime employment, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SHORT TITLE

Sec. 1. This Act may be cited as "Longshoremen's and Harbor Workers' Compensation Act."

### DEFINITIONS

Sec. 2. When used in this Act—

(1) The term "person" means individual, partnership, corporation, or association.

(2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(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 a ship repairman, shipbuilder, and ship-breaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

(4) The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

(5) The term "carrier" means any person or fund authorized under section 32 to insure this Act and includes self-insurers.

(6) The term "Secretary" means the Secretary of Labor.

(7) The term "deputy commissioner" means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term "State" includes a Territory and the District of Columbia.

<sup>1</sup> Includes 1972 amendments made by P.L. 92-576 printed in *italics*.

<sup>2</sup> The amendments (except section 19(d) of the Act) are effective thirty days after enactment (12:01 a.m., November 26, 1972).

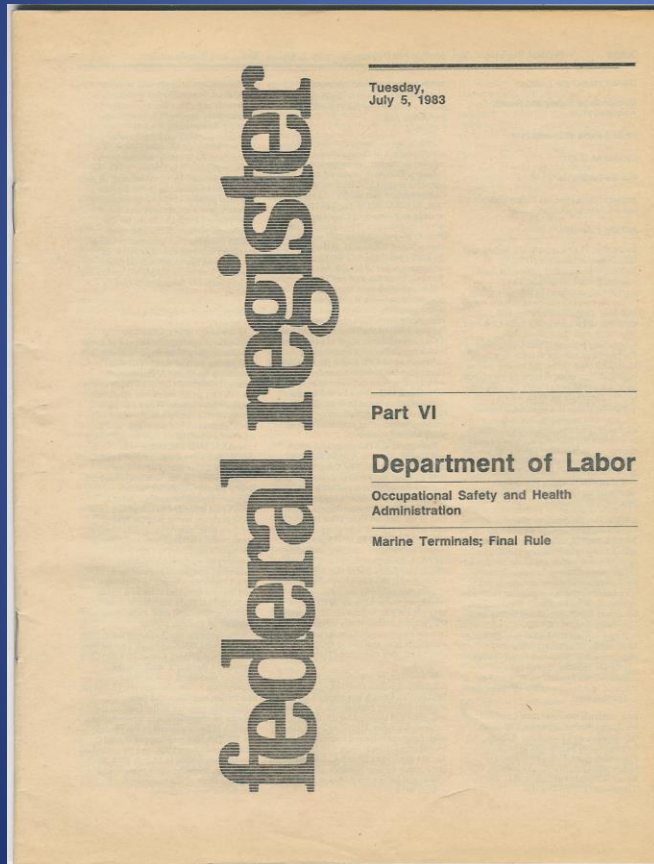
- Brings existing Federal program of compensation ashore
- Now, additionally covers "*related employments*"
- Substantially boosts amount of compensation paid to recipients



OSHA Regulations  
Having Application at  
Marine Cargo Handling  
Workplaces

# The Marine Terminals Standard

## [29 CFR 1917]

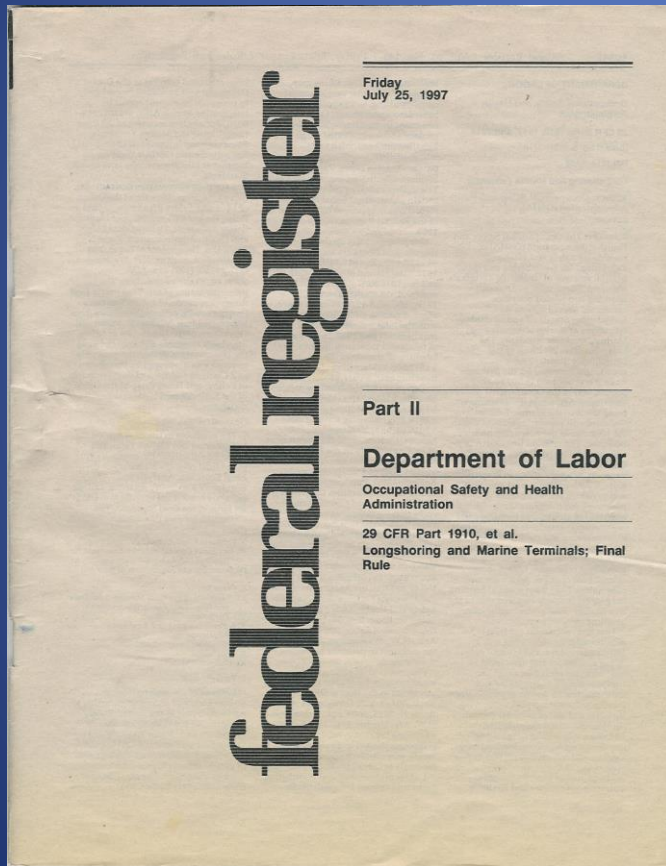


Applies From the  
Terminal's Gate to the Foot  
of the Gangway

(and everything in-  
between)

# Longshoring Standard

[29 CFR Part 1918]



Applies From the Foot of  
the Gangway, to All Cargo  
Handling Operations  
Being Conducted Aboard  
Any Vessel

Lots Of Regulations...

---

What's Their Purpose?



# Decrease Human Suffering



# Offset Financial Loss





# Help Prevent Even Greater Financial Loss



# Culture Effective Labor Relations





# Goal No. 1

Accorded The Highest Priority, Taking Precedence Over Any  
Other Consideration:

**All Workers Get To Go Home In The Same  
Good Physical Condition They Came To  
Work In.**

No Ocean Carrier, Marine Terminal Operator, Stevedore,  
Labor Union or Port Authority Can Possibly Hope To  
Attain the Desired Increased Levels of Efficiency,  
Productivity or Profit, Without First Attaining Consistent  
Success In Achieving Goal No. 1.

# Fatal Accidents at US Ports

## CY 2017 [2<sup>nd</sup> Half]

# 10 July 2017

## Philadelphia, PA



Pat Kelly, an ILA Checker, was fatally crushed while attending to paperwork inside his company pickup truck.

He was parked in the shade provided by a five high stack of containers, when a toploader turned the corner of that stack with a fully extended spreader, clipped the top box and brought three down.



# 23 August 2017

## Houston, Texas

Christian Fitzgerald, an ILA checker assigned dockside duties relative to a shipment of steel coils being discharged from a general cargo vessel at City Dock, was backed over by a large capacity industrial truck.



20 October 2017  
Port Arthur, Texas



Jesus Ceuvas, a marine terminal worker at the German Pellets facility, was engulfed and suffocated by tons of wood pellets while working inside one of the company's silos.

# Fatal Accidents at US Ports CY 2018 [Jan to Date]



# 03 January 2018

## San Diego, California



Phil Vargas, an ILWU industrial truck operator (and trainer), was ejected from his forklift when it struck a warehouse support column. His machine kept on moving, and its rear wheels ran him over.

# 22 February 2018

## Claymont, Delaware



Billy Burns, a front loader operator at a bulk cargo facility, drowned when his machine went over the edge of an elevated section of wharf.

# 27 March 2018

## Houston, Texas



Francisco Montoya, an ILA hatch foreman, was assisting in the discharge of steel pipe from a vessel berthed at the City Dock.

After hooking up a draft, he stood on an adjacent stow which was supported by laminated plywood dunnage. The stow buckled, causing Montoya to fall into the hatch. He was followed by the pipe stow which pinned and killed him.



# 08 August 2018

## Charleston, South Carolina



Dwight Collins, an ILA worker, was en route to a dockside parking area when his personal automobile suddenly picked up great speed and struck a bollard.

He suffered internal injuries, which ultimately caused his death several days later.

# 16 August 2018

## Houston, Texas



Cody Carter, a 28 year old ILA container repair worker, was crushed under the weight of an empty 20' intermodal container when the door end of the box slipped off the forks of an industrial truck supporting it.

16 September 2018  
Paulsboro, New Jersey



Basim Gilliard, a 26 year old longshore worker, was crushed by steel plates which had slipped off the blades of a forklift truck while in a cargo hold of M/V VIRTUOUS STRICKER.

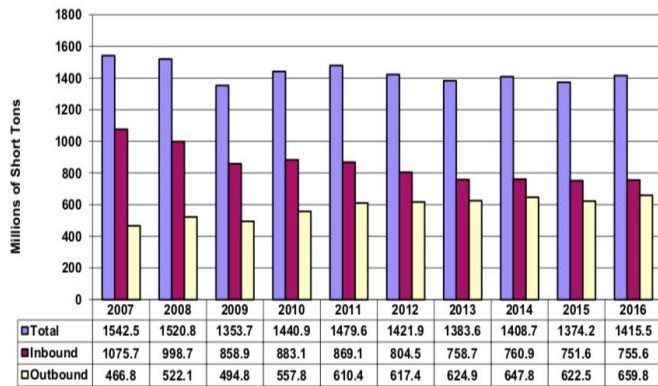


# Total Waterborne Commerce of the U.S. (2007-2016)

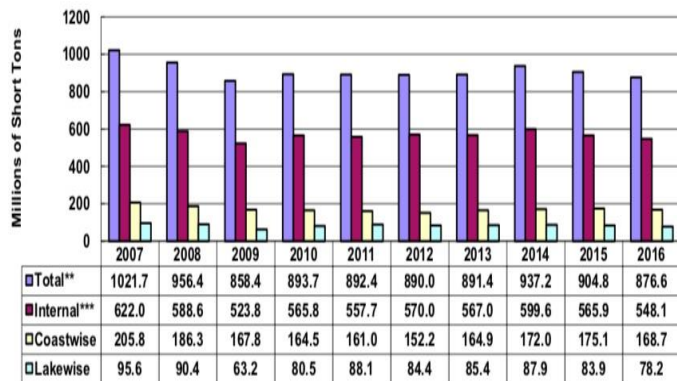
In 2016 (latest year w/refined data):

**2,292,000,001 Short Tons**

**Foreign Waterborne Inbound and Outbound Traffic**  
2007-2016, Millions of Short Tons



**Domestic Waterborne Commerce of the U.S.**  
2007-2016, Millions of Short Tons, by Type of Traffic



Cargo-Related Fatal Accidents Occurring at US Ports (2016):

**11**

(Source: Bureau of Labor Statistics)

Source: USACE

# The Industry's Performance: Fatal Accidents ~ 2016

## Occupational Fatalities (CY 2016) NAICS 488320



[07] [CAMERA07] [Thu Oct 23 2008] [09:08:02]









1180118-20

SEABOARD  
MARINE

TERMINAL

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腾讯拍客



# Current East and Gulf Coast Labor & Management OSH Initiative, Designed To Advance the Industry's Occupational Safety & Health Experience:

## ILA~USMX JOINT RESOLUTION ON PORT SAFETY & HEALTH

**WHEREAS**, the International Longshoremen's Association, AFL---CIO (ILA) and the United States Maritime Alliance, Ltd. (USMX) recognize the necessity of maintaining a proactive approach in relation to occupational safety & health (OSH) issues which must be soberly and responsibly addressed by both parties; and

**WHEREAS**, the ILA and the USMX have created a Joint Safety Committee (JSC) comprised of three (3) ILA Members, three (3) USMX Members and a Technical Facilitator, to initiate the industry's review of relevant OSH issues; and

**WHEREAS**, the JSC has made significant progress in creating a greater awareness of OSH issues on an industry wide basis, and will continue to assist labor and management interests throughout the various port districts in successfully approaching OSH issues, *to wit*:

■ Providing guidance and knowledge to ILA, its Local Unions; USMX and its member Port Associations in relation to a diverse range of OSH issues; utilizing 29 CFR Parts 1917 & 1918 as mandatory OSH rules and supplementing such rules at the discretion of the JSC.

■ Working closely with the National Maritime Safety Association (NMSA), Port Associations, individual employers and ILA Local Unions to develop uniform OSH practices, policies and procedures to be followed at all Master Contract ports. This would include efforts to initiate the development of a greater number of industry-wide safety training procedures and, to the extent practicable, job specific standards for all relevant crafts.

■ Requiring every Master Contract port to establish an ILA---Employer joint safety committee (where none presently exist) to review and investigate accidents, to monitor and improve workplace OSH conditions and to develop and enforce reasonable, effective and compassionate disciplinary procedures.

■ Monitoring local port compliance with all provisions of the Master Contract Drug and Alcohol Testing Program, including Random testing provisions & enforcement protocols.

■ As necessary, appoint subcommittees that are comprised of knowledgeable and well motivated local ILA and Port Employer Members to supplement the work of the JSC.

**NOW, THEREFORE**, the undersigned adopt the following amendments to the ILA---USMX Master Contract:

**1).** The Joint Safety Committee (JSC) shall be a standing committee and shall discharge the following responsibilities:

a). It shall provide OSH---related guidance and knowledge to USMX and ILA (including local Port Employers and Labor Locals) with the goal of making each and every Master Contract marine cargo handling activity a safe place for all employees to work.

b). It shall monitor each local port's compliance with the Master Contract Drug and Alcohol Testing Program.

c). It shall serve as a clearinghouse; in coordination with the National Maritime Association (NMSA) Technical Committee, for reporting and analyzing all serious accidents occurring at Master Contract marine cargo handling operations.

d). At the request of Management and ILA leadership at any Local Port or District, or on its own initiative, the JSC shall be empowered to investigate any serious accident occurring at Master Contract marine cargo handling operations.

e). It shall be authorized to appoint subcommittees that are comprised of knowledgeable and well---motivated local ILA and Port Employer Members to supplement the work of the JSC.

f). It shall submit quarterly activity reports to ILA and USMX leadership, detailing the work of the JSC.

g). It shall ensure that each Master Contract port establishes a local joint safety committee comprised of equal numbers of subjectively well---versed and well---motivated labor and management representatives. Labor representatives so appointed shall not hold concurrent elective office.

Such local committees shall have the authority to review and investigate accidents, to establish local OSH procedures and policies (in consultation with and approval of the ILA---USMX Joint Safety Committee) and to develop and enforce appropriate disciplinary procedures; provided that such procedures remain consistent with those already agreed upon and in place at the relevant port(s).

Dated: January 15, 2014

International Longshoremen's Association, AFL-CIO

By: Harold J. Daggett  
Harold J. Daggett, President

United States Maritime Alliance, Ltd.

By: David E. Adams  
David E. Adams, Chairman & CEO

West Coast  
Collective  
Bargaining  
Agreement Has  
Included, for Many  
Years,  
the Supplemental  
Pacific Coast  
Marine Safety Code

**PACIFIC COAST  
MARINE SAFETY CODE**

**2014 REVISION**



**ILWU-PMA**

*“Be Careful Out There.....!”*

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