

# **Occupational Safety & Health/Worker's Compensation**

**In The U.S. Marine Cargo Handling Industry**



**A History and Overview for Port  
Industry Executives**



Sponsored By:



## TOP STORIES

School hiring lapses shown  
Workers discover cannon shell  
Project aims to fix leaks at fort

• [More Headlines](#)

• [See More Photos](#)

## LATEST COLUMNS

Kristen Campbell

Mystery happens

Gene Owens

You may need a copyright to protect what you write

George Talbot

Boeing's secret weapon

• [More Columnists](#)

## Mobile

this okidulmsvaco... by mp52483 06/23/2008 8:07 p.m. CT

Bumper Stickers coming! by heatheruab86 06/23/2008 7:41 p.m. CT

• [More](#)

## Baldwin

Caesar's Palace... by mucraker 06/23/2008 2:57 p.m. CT

hmm by Trajun61 06/23/2008 5:06 p.m. CT

• [More](#)

• [All Forums](#)

## For the Love

'God bless the books' 9:04 a.m. CT

E-mail from heaven 1:13 p.m. CT

McCain's campaign ramps up outreach to evangelicals 6:06 a.m. CT

• [More](#)

## Docks accident kills employee

Monday, June 23, 2008

**ROBERT MCCLENDON**  
Staff Reporter

Authorities continued Sunday to investigate an accident on a coal ship at the Alabama State Docks that killed one man and injured another early Saturday.

Tim Huff, a millwright with the State Docks, fell to his death inside the hold of a massive coal-bearing bulk carrier at about 3 a.m. Saturday, docks and union officials said Sunday.

Another man, a crewman on the MV CELERINA, fell while attempting to rescue Huff, officials said.

State Docks spokeswoman Judith Adams, who didn't know the crewman's name Sunday, said he survived the fall and was later rescued by emergency workers.

Exactly what caused the two men to fall remains under investigation, but Michael Bru, vice-president of Local 1984 of the International Longshoreman's Association, said Huff died while doing his job.

As a millwright, it was Huff's responsibility to troubleshoot any equipment problems that arose during offloading. Saturday, he was responding to an offloading bucket that had become stuck in the ship's hold, Bru said.

Huff, who was from Robertsdale, was working his way down a shaft in the coal to reach the bucket when he was overcome by fumes, passed out and fell down the shaft, Bru said.

"The bottom line is there was not enough oxygen. He passed out and fell," Bru said. But "it's the millwright's job to get to the problem, and he was trying to get to the problem so that the work could continue."

The crewman of the MV CELERINA went into the shaft after Huff but was also overcome by the fumes, Bru said.

Although he didn't know exactly how deep the shaft was, Bru said it could have been up to 75 feet deep.

Bru said the accident was the first of its kind at the State Docks.

Adams said Huff is the first State Docks worker to be killed in a work-related incident in her 15 years on the job.

Bru said the job of a millwright requires someone who is willing to take the initiative when things breakdown and Huff fit that description perfectly.

"He was one of the hardest working men on the docks," Bru said. "It takes a go-getter like himself to do a job like this."

Bru also vowed to work to make sure that an accident of this type never happens again.

"We are deeply saddened by the loss of our employee and we will get to the bottom of this," Adams said.



## Fatal Accident at Savannah Port



Updated: July 8, 2008 02:57 PM

**SAVANNAH, GA (WTOC) - Officials at the Savannah ports says a man was killed after an accident this morning at the ocean terminal.**

**Benjamin Bryan, the international vice president of ILA for the Savannah region said the victim was 69-year-old Lee Fluker.**

**City of Savannah spokesman Bret Bell says there were two forklifts moving large amounts of tubular steel. Some steel rolled off one of the forklifts and hit Fluker, he fell to the ground and into the path of the other forklift.**

**The driver of that forklift saw Fluker and stopped short of hitting him, however the tubular steel fell off and crushed Fluker, OSHA is on the scene investigating.**

**Fluker was a member of Local 1414 and worked at the port for about 10 years.**

## 77-Year-Old Man Drowns in the Port of Oakland

Bay City News Service

Article Last Updated: 08/24/2008 01:33:50 PM PDT

OAKLAND (BCN)

August 23, 2008, Aboard The C/V NYK STARLIGHT

A 77-year-old Oakland resident apparently fell off a container ship while he was working in the Port of Oakland and drowned Saturday night, said U.S. Coast Guard Petty Officer Thomas Shay.

Delmont Blakeney was reportedly trying to free a cargo container off his vessel when it broke free and knocked him into a rail, throwing him overboard just before 11 p.m.

Crewmembers threw Blakeney a lifesaver but he lost consciousness, Shay said. He was reportedly pulled to shore, given CPR and transported to the hospital where he was pronounced dead.

## **Victim of Port Accident ID'ed as Northeast Houston Man**

**By KEVIN MORAN Copyright 2008 Houston Chronicle**  
Sept. 4, 2008, 11:59AM

A man who died in a traffic accident at the Port of Houston has been identified as Donald Earl Soule Jr., of the 1000 block of Grenfell Lane in northeast Houston, the Harris County Medical Examiner's Office reported today. Soule, 56, died shortly before noon Wednesday after a shuttle bus on which he was riding collided with an 18-wheel truck.

The accident occurred at 919 E. Barbours Cut Blvd., which is on port property, spokeswoman Lisa Whitlock said.

The shuttle bus was operated by APM Terminals, a port tenant, Whitlock said. APM spokesman Tim Haas today declined to comment while port and La Porte police investigate the case.

[kevin.moran@chron.com](mailto:kevin.moran@chron.com)

# [Excerpted] Remarks at this Conference

## Double Throughput Or Suffer, U.S. Ports Told

Journal of Commerce

Tuesday, October 16, 2007

By: Bill Mongelluzzo / The JOURNAL of COMMERCE ONLINE

[Last Year's]



**LONG BEACH, Calif. -- If the U.S. container trade continues to increase about 7.5 percent per year, three-quarters of the country's major ports will experience significant capacity problems by 2010, according to a marine architect who has designed container terminals around the world.**

**Ports in the United States handle less than 5,000 TEUs per-acre, per-year, while Asian ports handle more than 16,000 TEUs per acre, Vickerman told a marine terminal management training program Monday sponsored by the American Association of Port Authorities.**

**Although Asian terminal operators have more flexibility in their use of labor and equipment, the main reason they are so productive is that they work three full shifts per day, Vickerman said. Distribution facilities likewise work around the clock, so containers incur very little dwell time at marine terminals. In the U.S., where dock labor is more expensive, most terminals work only one shift per day. This explains the low productivity figures of about 2,661 TEUs per acre at East Coast ports and 4,944 TEUs at West Coast ports. Los Angeles-Long Beach now runs five extra shifts per week, and this increases productivity by moving about 30 percent of the truck traffic to off-peak hours.**



Potential Translation:

Work Harder, Faster, and Longer

Potential Result:

More Accidents; More Deaths



# Potentially Moderating Factors:

- Terminal Operators/Unions/Ocean Carriers Working Smarter; With Compatible Safety Priorities;
- Port Authorities Acting As Independent Catalysts For Safer Workplaces, By Requiring Adherence to Tariff-Established Operational Parameters that Better Define Safety Priorities.

That's Where We Want To Be. Let's See Where We've Been...





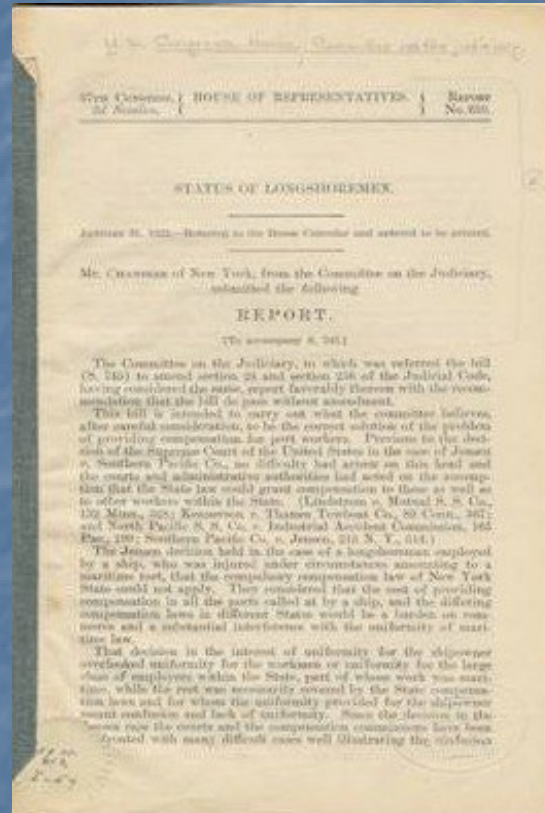
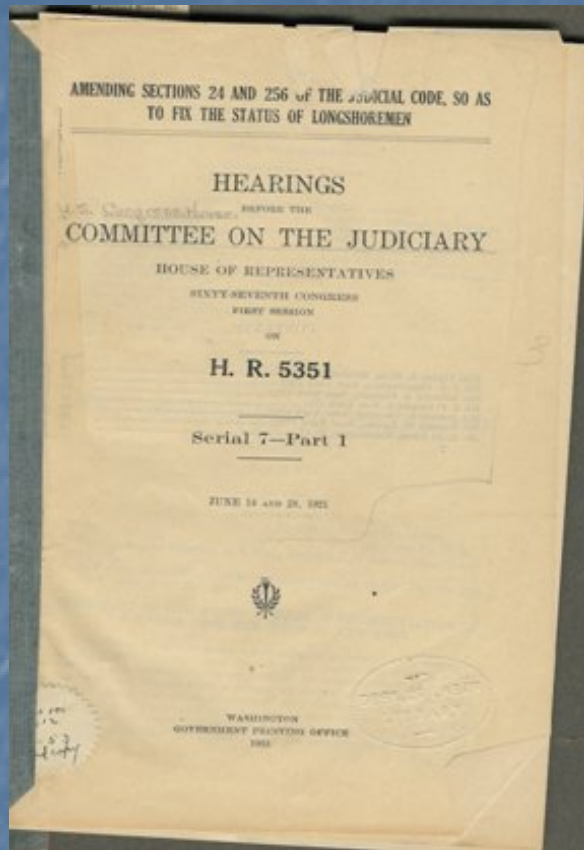
# A Little U.S. History

---

[With Comparable Circumstances at Canadian,  
Caribbean & South American AAPA Member Ports]



# The Jensen Era

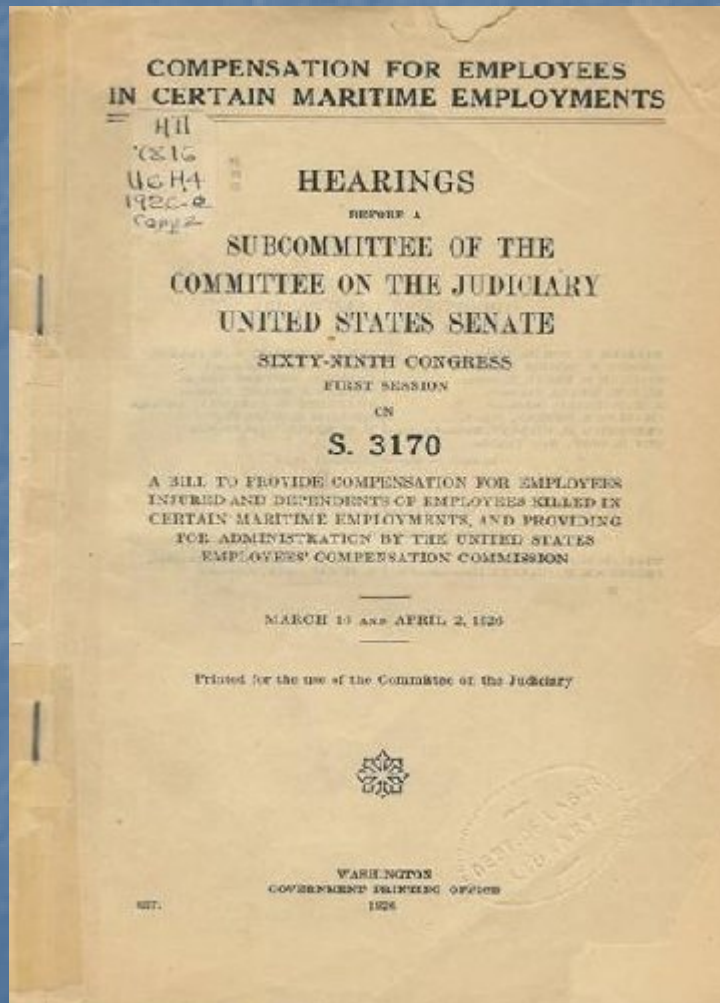


- Southern Pacific v. Jensen (1917)
- Knickerbocker v. Stewart (1920)
- Washington v. Dawson (1924)

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.*"



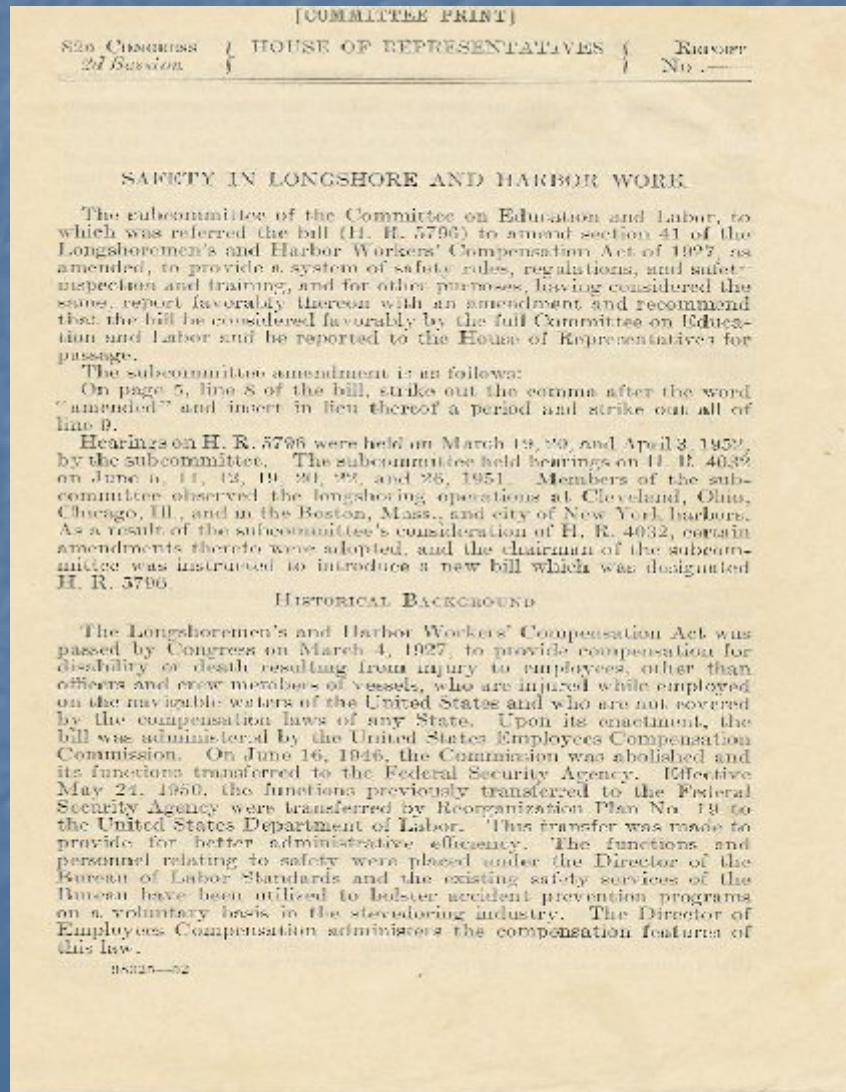
# LHWCA of 1927



- 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.”*
- Clarified by the Supreme Court in:
  - T. Smith & Son v. Taylor (1928)
  - Minnie v. Port Huron Terminals (1935)



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



- ILA/ILWU
  - Boilermakers
  - Steelworkers
- 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

## 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. VAIL, 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*

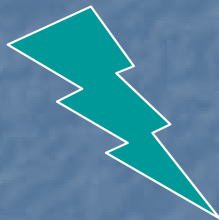
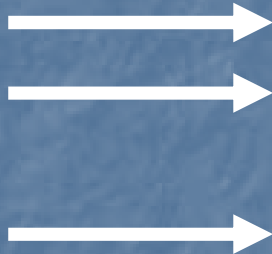
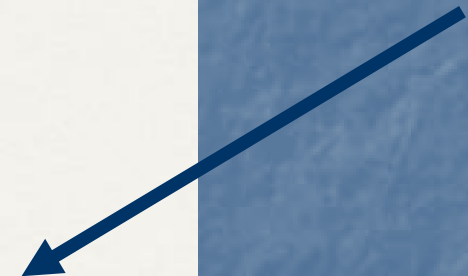
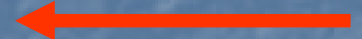
DAVID N. HENDERSON, *Assistant General Counsel*

RUSSELL C. DERRICKSON, *Investigator*

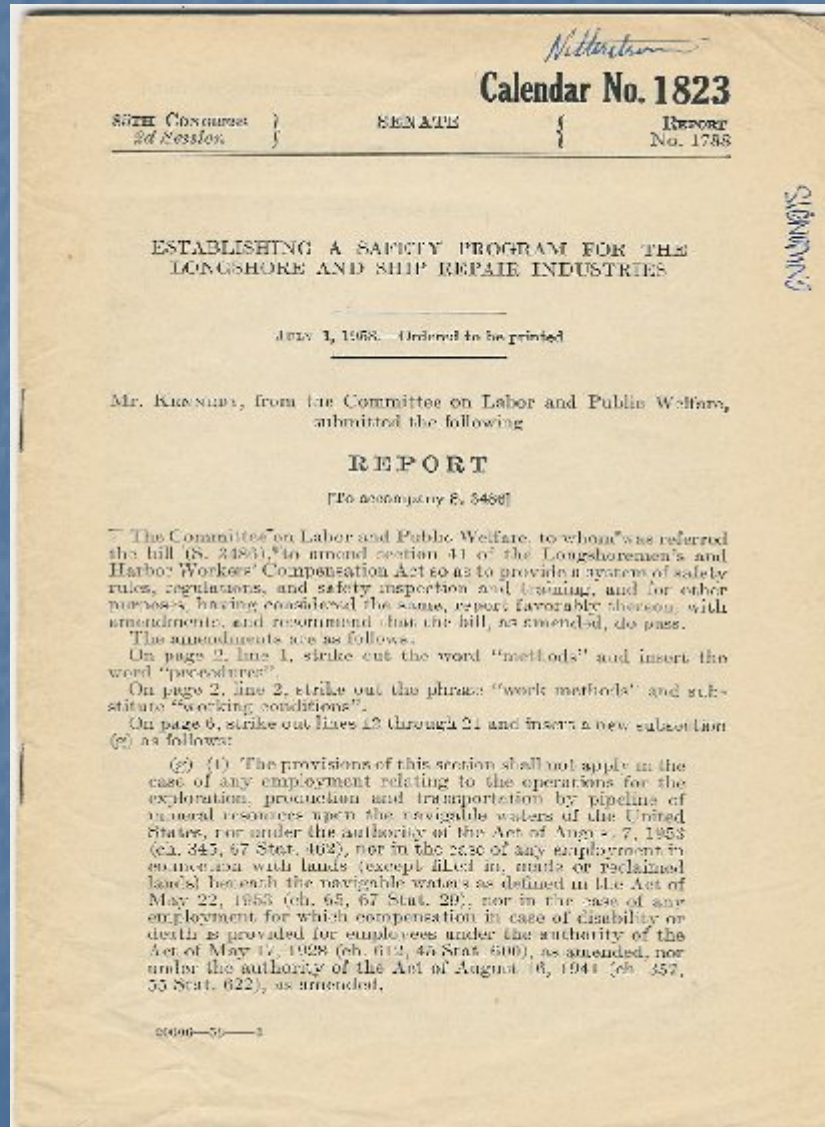
## SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK

JOHN F. KENNEDY, Massachusetts, *Chairman*

CLEVELAND M. BAILEY, West Virginia	CARROLL D. KEARNS, Pennsylvania
------------------------------------	---------------------------------



# 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.



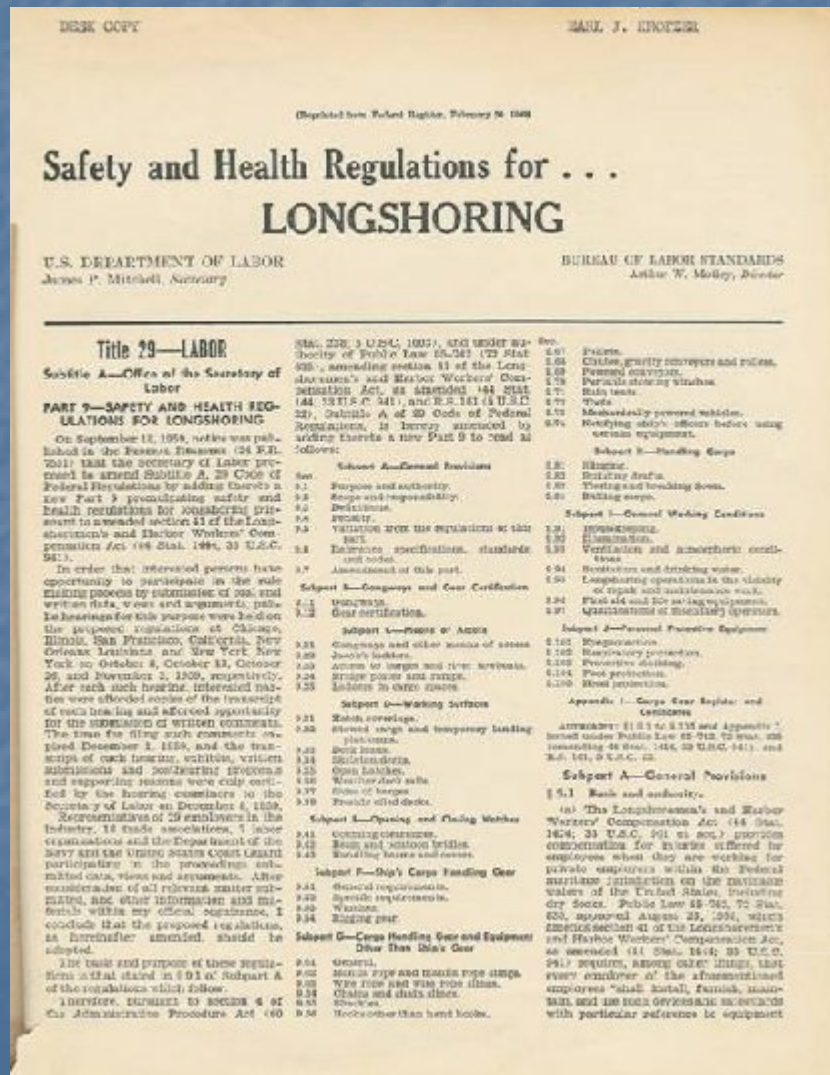
# The 1958 LHWCA Amendments [Public Law 85-742]



- Political compromise brokered by Lyndon Johnson, with JFK as strongest proponent.
- Resisted by Ike; needed by Richard Nixon 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 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





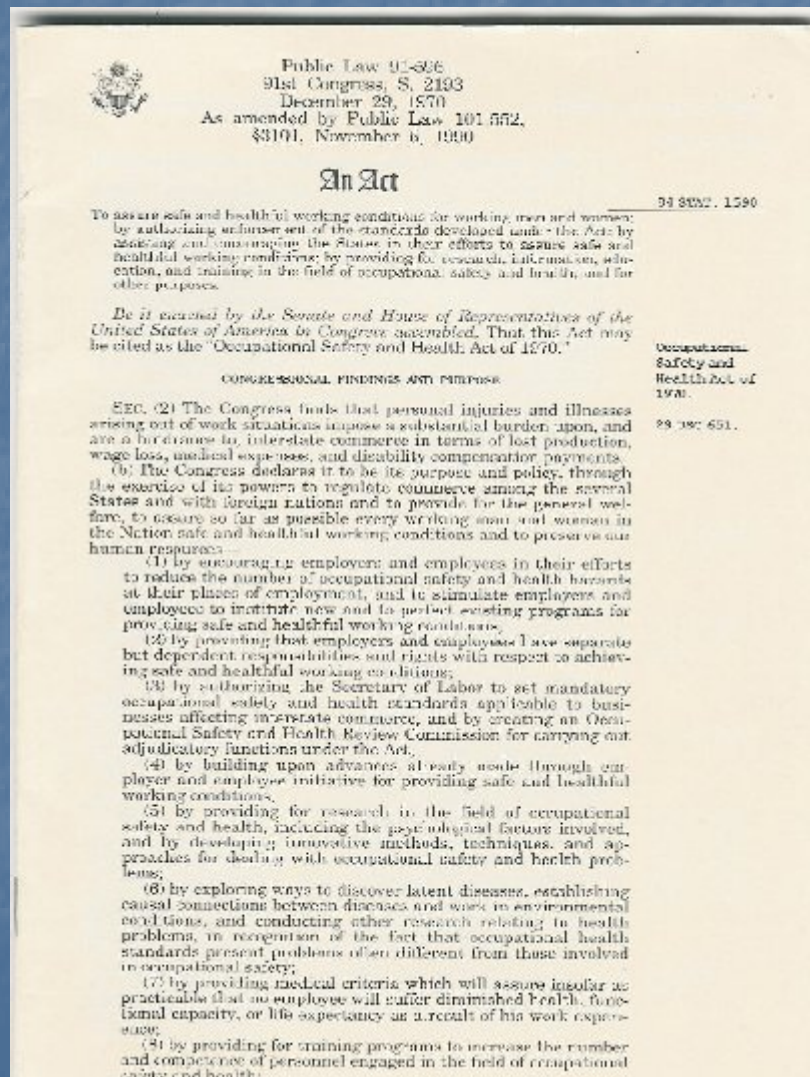
Other Laborers and Industrial Workers Wanted To Be Protected On The Job, As Well.

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



# The Occupational Safety and 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\*\*

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,

### BRIEF 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 33 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.

\* Includes 1972 amendments made by P.L. 92-570 printed in italic.

\*\* The amendments (except section 33(4) of the Act) are effective thirty days after enactment (P.L. 92-570, November 26, 1972).

- Brings Federal program of compensation ashore
- Now, additionally covers "related employments"
- Substantially boosts amount of compensation paid to recipients (66 2/3% of average wkly wage)



# Applicability of Initial OSHA Regulations to Marine Cargo Handling Operations

---

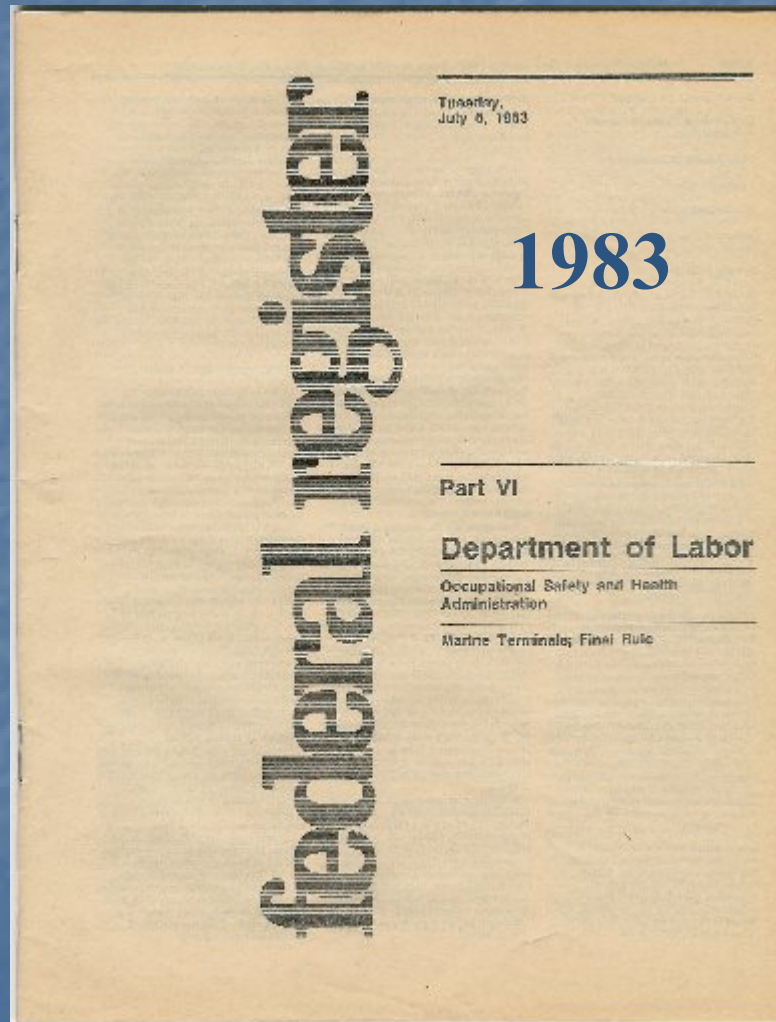
**Vertical Rules:** Designed specifically for application to a given industry. Applies in lieu of any other rule. In the case of longshoring operations (aboard vessels), 29 CFR Part 1918.

**Horizontal Rules:** All regulations contained within 29 CFR Part 1910, OSHA's Rules for General Industry.

Confusing & Contradictory... Labor & Management Rebel!



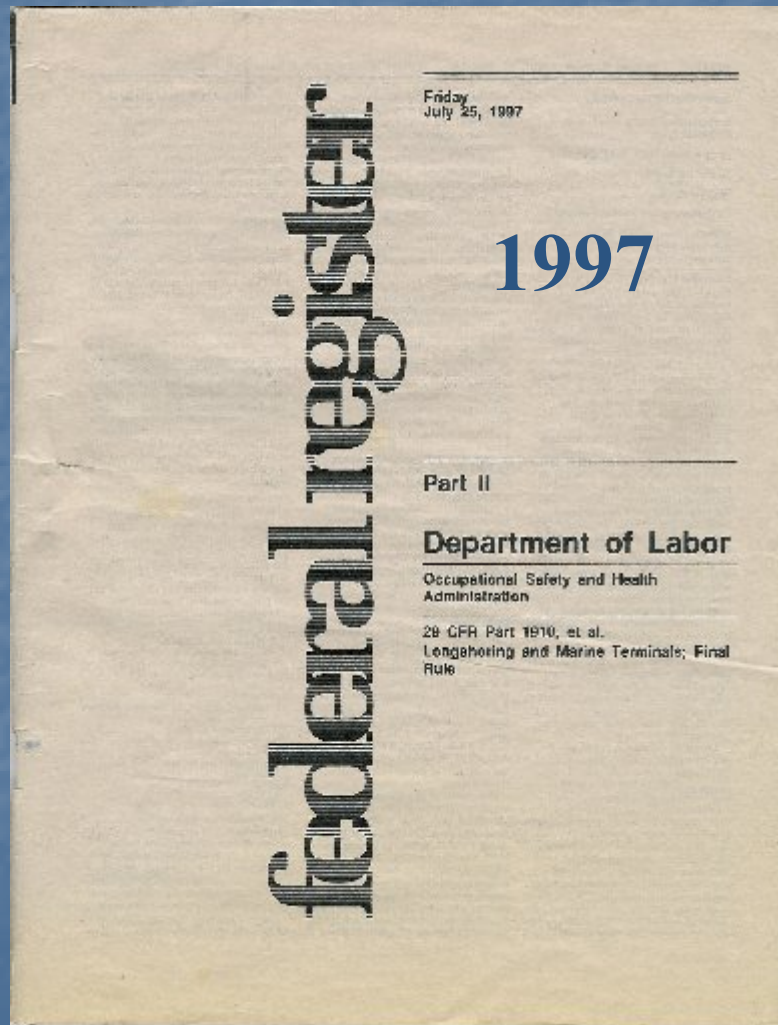
# The Marine Terminals Standard



- 29 CFR Part 1917 reduced the volume of applicable regulations by 75%
- Custom tailored in unison with labor & management interests
- Included criteria for safely conducting all modern cargo handling operations
- Applies from gate to gangway



# “Modernized” Part 1918 (Shipboard) Standards



- Afloat marine cargo handling rules had very little change since the 1960's
- Needed to subjectively track, without any variance, the shoreside (Part 1917) rules



Lots Of Regulations

What's the Purpose?

# Decrease Human Suffering





# Offset Financial Loss (With Loss Of Life)

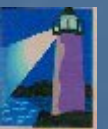


# Prevent Even Greater Financial Loss



# Accidents: Direct/Indirect Costs

- **Worker's Comp: "The Manual Rate"**
- **All In Costs: 4-15 Percent of Total Payroll**
- **Therein lies the difference between profit and loss in an industry with razor thin profit margins**



# Labor Relations

ILA seeks safety talks

Journal of Commerce

*Wednesday, December 01, 2004*

*By: The JOURNAL of COMMERCE ONLINE*

The president of the International Longshoremen's Association has called for port safety meetings with employers and federal agencies following recent accidents that killed a union dockworker in New Jersey and injured three others in South Carolina.

"Safety remains a top priority with the ILA as it is with our employers," said ILA President John Bowers. "However, something is wrong when ILA members are killed or critically injured at the work sites. We need to address this problem immediately."



# HazMat Cargoes



QuickTime™ and a  
decompressor  
are needed to see this picture.









# 3 Longshoremen Dead at Port Everglades

Why?

# Loading The M/V Madeleine



# Hayman Sooknanan



# James Cason



# Rene Duterte





# The Venting Tank Container





# Crewmember with Blower



# Recovering the Bodies



# 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.

[www.blueoceana.com](http://www.blueoceana.com)

