

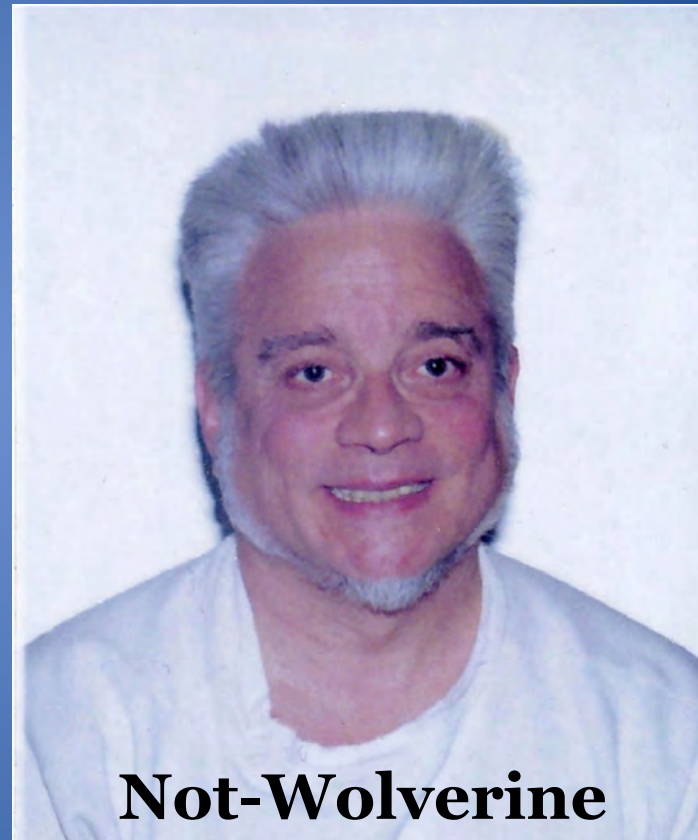
Occupational Safety in the Marine Cargo Handling Industry



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 CY 2012]



Not-Wolverine

Appreciating The Financials

A Marine Terminal Operator's Hierarchy of Recurring Costs

1). Payroll (Labor)

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

State Workers' Compensation Laws

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

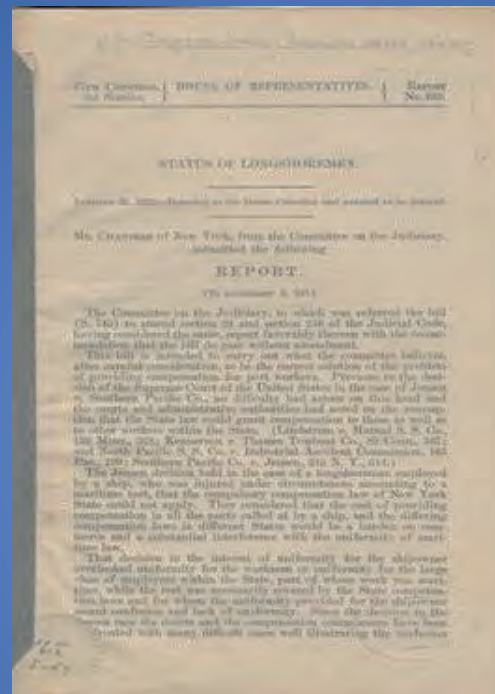
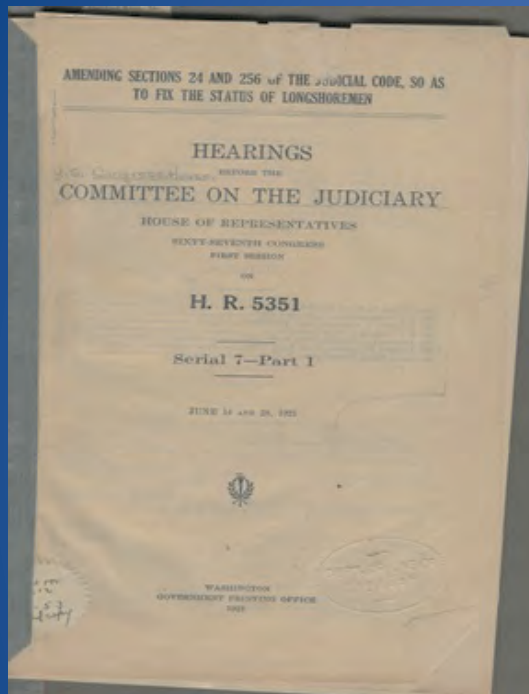
1902: Maryland – First Neutral, No-Fault, Sole Remedy Worker's Compensation Law

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

2012: Nat'l Average Weekly Wage: **\$662.59**



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.

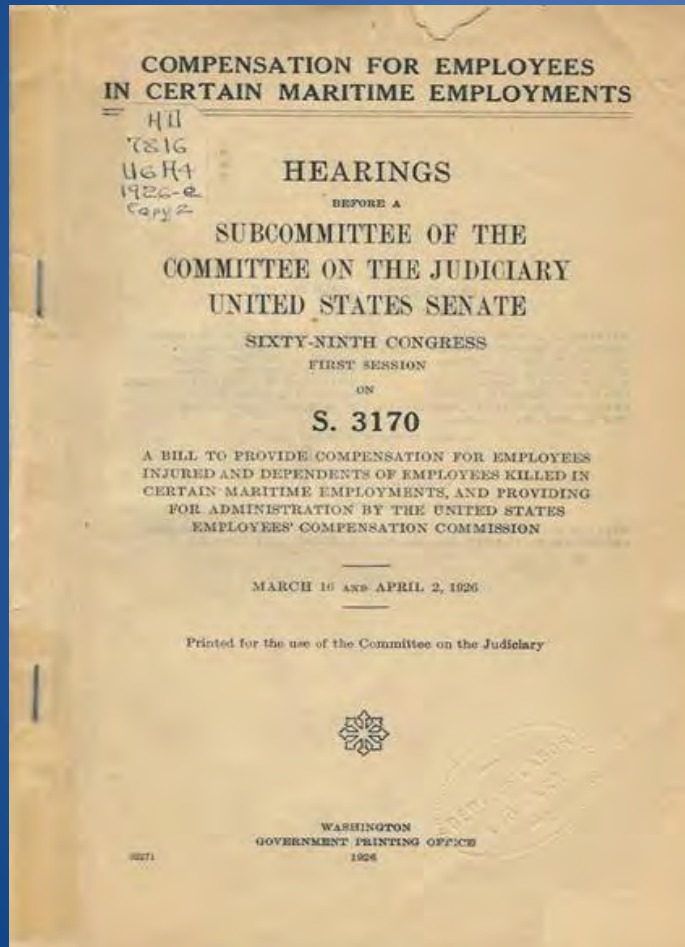
U.S. Constitution

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>
10/01/2012 - 09/30/2013	\$662.59	<u>\$1,325.18</u>	\$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%
10/01/2007 - 09/30/2008	\$580.18	\$1,160.36	\$290.09	4.12%
10/01/2006 - 09/30/2007	\$557.22	\$1,114.44	\$278.61	3.80%
10/01/2005 - 09/30/2006	\$536.82	\$1,073.64	\$268.41	2.53%
10/01/2004 - 09/30/2005	\$523.58	\$1,047.16	\$261.79	1.59%
10/01/2003 - 09/30/2004	\$515.39	\$1,030.78	\$257.70	3.44%
10/01/2002 - 09/30/2003	\$498.27	\$996.54	\$249.14	3.15%



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

The subcommittee of the Committee on Education and Labor, to which was referred the bill (H. R. 5796) to amend section 41 of the Longshoremen's and Harbor Workers' Compensation Act of 1927, as amended, to provide a system of safety rules, regulations, and safety inspection and training, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill be considered favorably by the full Committee on Education and Labor and be reported to the House of Representatives for passage.

The subcommittee amendment is as follows:

On page 5, line 8 of the bill, strike out the comma after the word “amended” and insert in lieu thereof a period and strike out all of line 9.

Hearings on H. R. 5796 were held on March 19, 20, and April 3, 1952, by the subcommittee. The subcommittee held hearings on H. R. 4032 on June 5, 11, 12, 19, 20, 22, and 26, 1951. Members of the subcommittee observed the longshoring operations at Cleveland, Ohio, Chicago, Ill., and in the Boston, Mass., and city of New York harbors. As a result of the subcommittee's consideration of H. R. 4032, certain amendments thereto were adopted, and the chairman of the subcommittee was instructed to introduce a new bill which was designated H. R. 5796.

HISTORICAL BACKGROUND

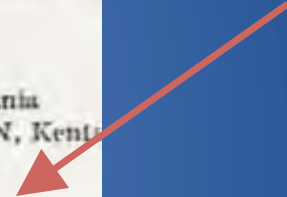
The Longshoremen's and Harbor Workers' Compensation Act was passed by Congress on March 4, 1927, to provide compensation for disability or death resulting from injury to employees, other than officers and crew members of vessels, who are injured while employed on the navigable waters of the United States and who are not covered by the compensation laws of any State. Upon its enactment, the bill was administered by the United States Employees Compensation Commission. On June 16, 1946, the Commission was abolished and its functions transferred to the Federal Security Agency. Effective May 24, 1950, the functions previously transferred to the Federal Security Agency were transferred by Reorganization Plan No. 19 to the United States Department of Labor. This transfer was made to provide for better administrative efficiency. The functions and personnel relating to safety were placed under the Director of the Bureau of Labor Standards and the existing safety services of the Bureau have been utilized to bolster accident prevention programs

- 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

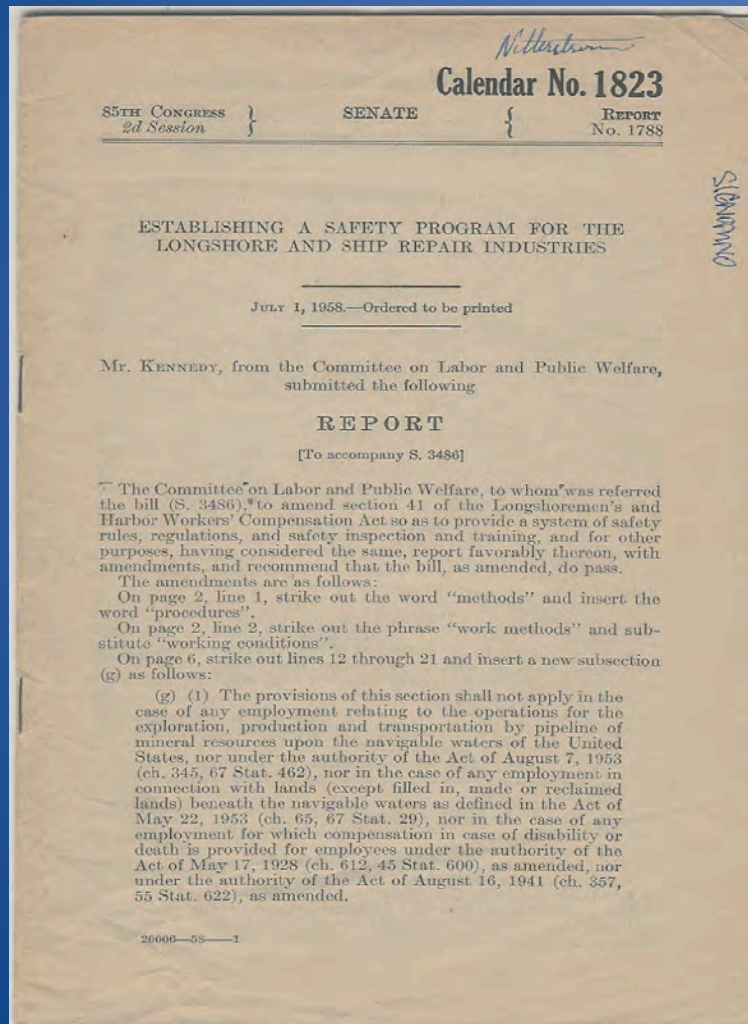
The Political Landscape

U.S. House of Representatives (1955)

COMMITTEE ON EDUCATION AND LABOR	
GRAHAM A. BARDEN, North Carolina, <i>Chairman</i>	
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. HURSEY, <i>Chief Clerk</i>	
JOHN O. GRAHAM, <i>Minority Clerk</i>	
JOHN S. FORSYTHE, <i>General Counsel</i>	
DAVID N. HENDERSON, <i>Assistant General Counsel</i>	
RUSSELL C. DERRICKSON, <i>Investigator</i>	
—	
SUBCOMMITTEE ON SAFETY IN LONGSHORE AND HARBOR WORK	
JOHN F. KENNEDY, Massachusetts, <i>Chairman</i>	
CLEVELAND M. BAILEY, West Virginia	CARROLL D. KEARNS, Pennsylvania



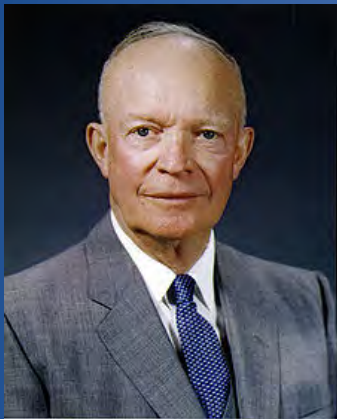
The 85th Congress (1957-1958)



- 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.

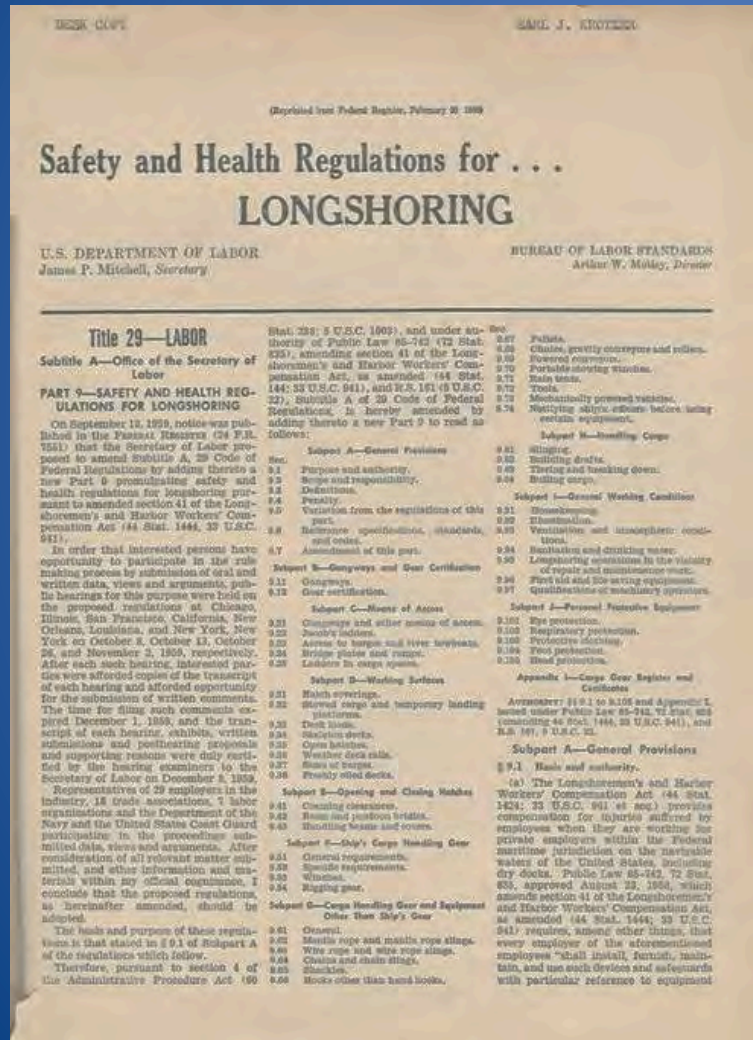
The 1958 LHWCA Amendments

[Public Law 85-742/ 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 1st U.S. Federal Longshoring Industry Safety Regulations



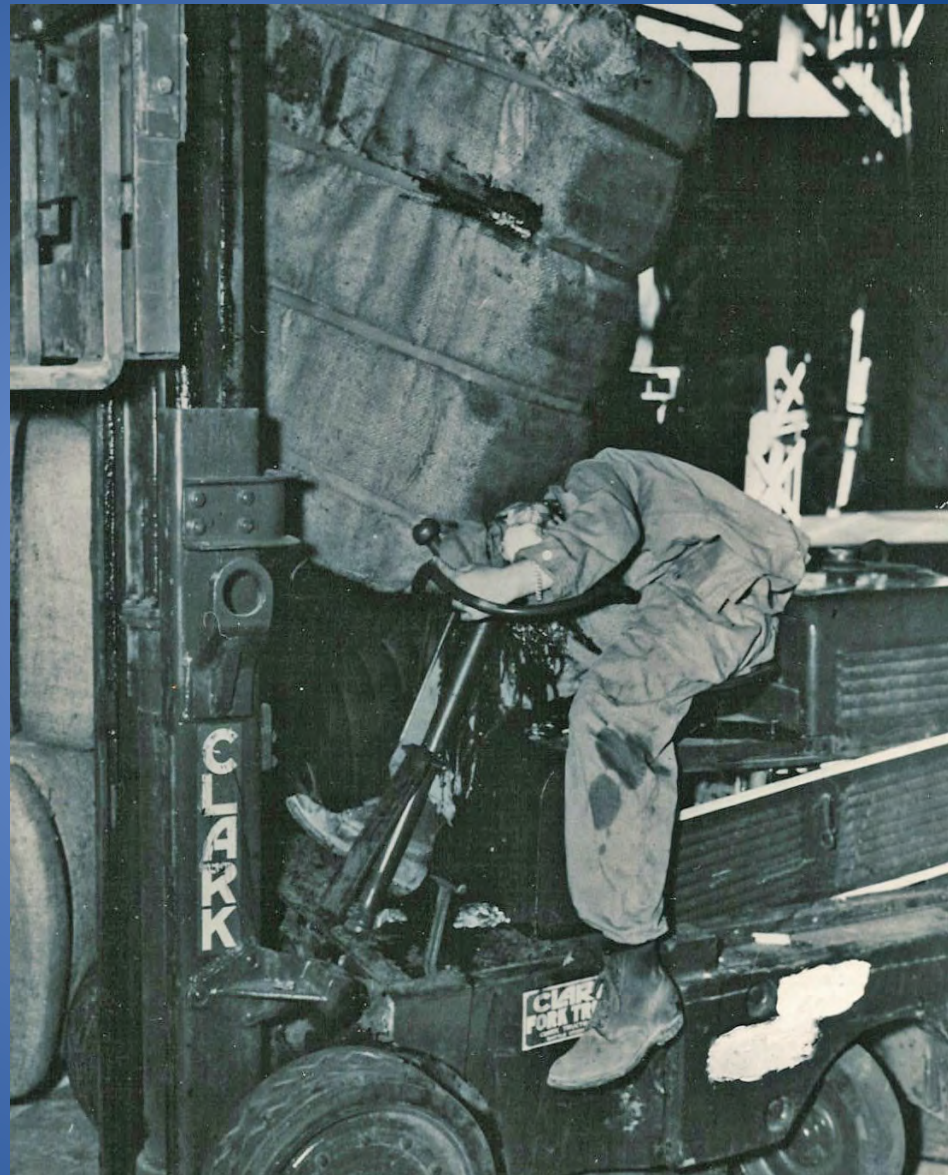
- Published in the FEDERAL REGISTER, February 20, 1960

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

- Work on terminals therefore, not covered

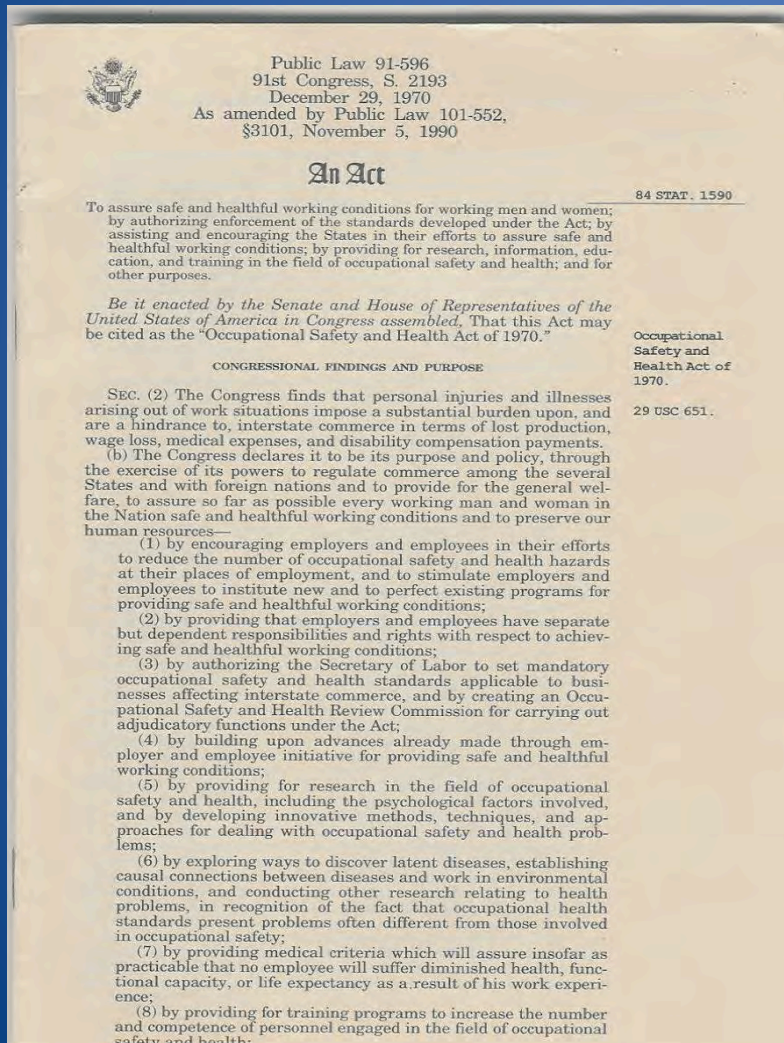
Other Laborers
and Industrial
Workers Wanted
To Be Protected
On The Job, As
Well.

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



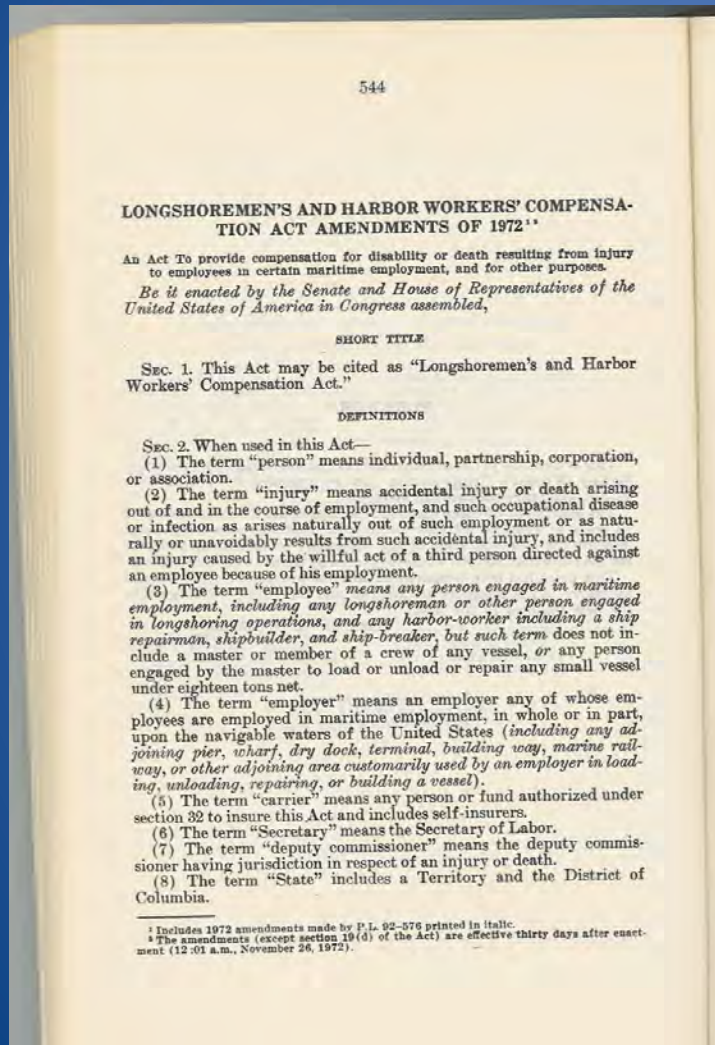
The Occupational Safety & Health Act of 1970

[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

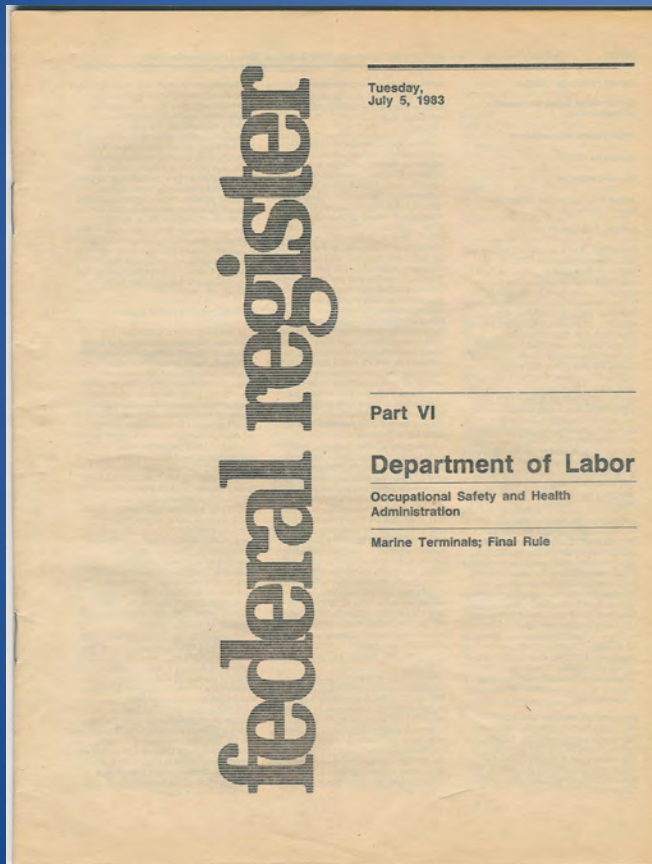


- Brings existing Federal program of compensation ashore
- Now, additionally covers "*related employments*"
- Substantially boosts amount of compensation paid to recipients

OSHA Regulations
Having Application at
Marine Cargo Handling
Workplaces

The Marine Terminals Standard

[29 CFR 1917]

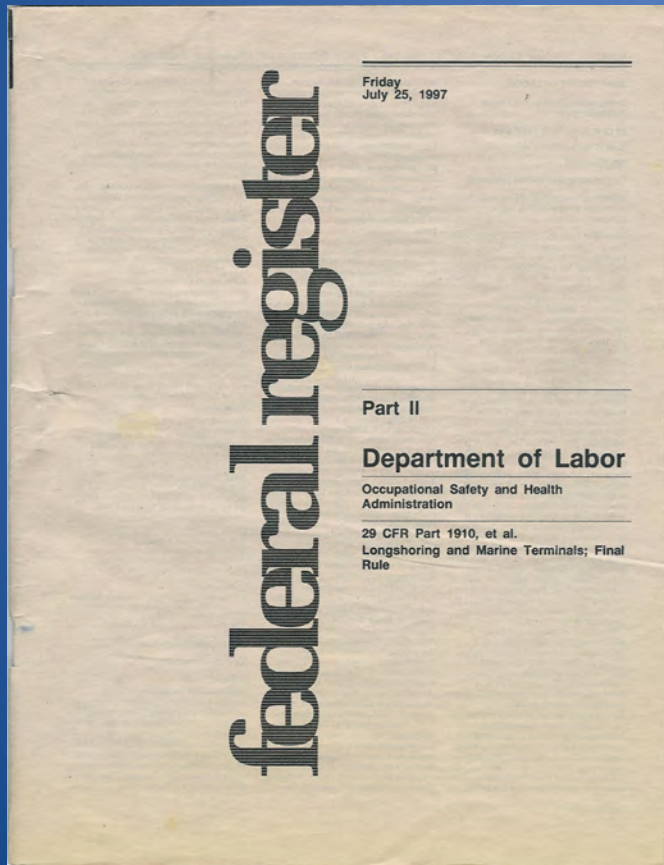


Applies From the
Terminal's Gate to the Foot
of the Gangway

(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



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 2012

31 January 2012

Mobile, Alabama

Dusty Roberts, a 21 year old ILA Checker, while noting the marks on steel coils in a State Docks warehouse, was struck by a reversing 10 Ton capacity forklift.

He was pinned between the industrial truck's counterweight and one such coil and suffered the internal injuries that claimed his life.

19 January 2012

Long Beach, California

Steve Saggiani, a foreman and ILWU member, while on deck aboard the C/V COSCO JAPAN, was crushed by a container that had fallen out of its on-deck stow.

Investigation revealed that a protruding edge at one of container's inboard corner fittings had been caught by one of the gantry crane's hoist wires. Once the crane operator began trolleying back to shore, the container tumbled down, landing on Mr. Saggiani.

02 July 2012

Anchorage, Alaska

Police are investigating why a truck driven by a security guard working at the Port of Anchorage drove off a dock Monday night into Knik Arm, killing the driver.

The driver was identified as Joseph Renteria, 42, a long-term employee of Doyon Universal Services, which provides security at the port.

22 February 2012

Port Newark, New Jersey

Ms. Earlene Brundage, a longshoreworker, was killed early tonight in an industrial accident while unloading a container ship at a Newark port, officials said.

The 47-year-old member of ILA Local Union 1235 was working at the Port Newark Container Terminal about 7:15 p.m. when she was caught between two of the railroad-car-sized metal containers that had been taken from a ship in Newark Bay, a port spokesman said.

28 March 2012

Savannah, Georgia

A member of the International Longshoremen's Association Local 1475 was killed Wednesday morning when she was struck by a forklift while working at Georgia Ports' Ocean Terminal.

Dianne Pinckney Cobb, 57, had worked part-time as a Local 1475 clerk and checker for seven years before getting full-time status with the union a year ago.

The accident happened about 10:15 a.m. at Berth 13 beside the M/V ARIETTA, a 590-foot bulk carrier that arrived shortly before midnight from Wilmington, N.C.

14 May 2012

Port Manatee, Florida

Mr. Robert Dixon, a 48-year-old dockworker and member of ILA Local Union 1402, was killed Monday morning in an industrial accident at Port Manatee.

The victim was walking across a loading area in the lower hold of a refrigerated vessel carrying bananas, when he was pinned underneath a 5,500-pound cargo handling bin, according to sheriff's reports.

17 May 2012

Seattle, Washington

Paul Stuart, a forklift operator and member of ILWU Local Union 19, was killed in an industrial accident at Terminal 18 on Harbor Island last night.

Reports indicate that he was crushed between the forklift he was operating and a semi-automatic twist lock bin he had been loading onto a flat rack, for ultimate transfer to a containership docked at the facility.

28 June 2012

Houston, Texas

A 30-year-old crew member fell from the weather deck into a cargo hold to his death overnight on board the M/V THORKO ATLANTIC, a bulk cargo vessel ship docked in the Houston Ship Channel.

Year	Total
1971	1,512,583,690
1972	1,616,792,605
1973	1,761,552,010
1974	1,746,788,544
1975	1,695,034,366
1976	1,835,006,819
1977	1,908,223,619
1978	2,021,349,754
1979	2,073,757,628
1980	1,998,887,402
1981	1,941,558,947
1982	1,776,740,579
1983	1,707,661,011
1984	1,836,020,619
1985	1,788,434,822
1986	1,874,416,280
1987	1,967,458,261
1988	2,087,993,484
1989	2,140,442,372
1990	2,163,854,373
1991	2,092,108,462
1992	2,132,095,154
1993	2,128,221,188
1994	2,214,754,086
1995	2,240,393,059
1996	2,284,065,249
1997	2,333,142,046
1998	2,339,500,081
1999	2,322,557,251
2000	2,424,588,877
2001	2,393,298,249
2002	2,340,291,913
2003	2,394,251,814
2004	2,551,939,029
2005	2,527,622,229
2006	2,588,440,451
2007	2,563,971,539
2008	2,477,094,228
2009	2,210,751,710
2010	2,334,398,600

Total Waterborne Commerce of the U.S. (1971-2010)

In 2010:

2,334,398,600 Short Tons

Cargo-Related Fatal Accidents
Occurring at US Ports:

7 (Source: Bureau of Labor Statistics)

Source: USACE

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







“Be Careful Out There.....!”

www.blueoceana.com

