

VOLUME 34 • ISSUE 1



# SAMS<sup>®</sup> Newsletter

*Spring Time 2024*

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September 11-14

Editor: John Lowe, AMS<sup>®</sup>  
Cover by Penny Lowe  
Layout/Design by Mark Shea

*...and More!*



**John Lowe, AMS®**  
**Immediate Past President**  
**SAMS® Newsletter Editor**

Hello Everyone,

Well, it looks like we made it through another winter. Things are starting to heat up here in the northeast in terms of weather and business with pre-purchase work getting busy. This is good news but we need to avoid stretching ourselves too thin. The weather this year was not too bad and we were able to work most of the winter. Most surveyors will not do percussion sounding on a hull when temps fall below freezing (even if its only at night) for several days in a row as moisture frozen in a laminate can sound and feel fine when percussion sounded. This can result in a considerable drop in income that forces us to play financial catch up on once the weather changes. In this derby style environment, its easy to take on a large quantity of work which is OK but we need to be mindful to not rush to the point where our work product suffers. Its OK to work a little later at night, drive a bit faster between jobs and skip some social events to make our schedules work out but when you get on board take a deep breath, put the phone down, settle in and do the job that our clients and our reputations deserve. Quick Tip: On my sounding hammers I will tape one side of the head, this side I use on areas that are coated with antifouling paint. If you read this contact me, the first three surveyors who do will get a free drink at New Orleans IMEC. This avoids tracking antifouling paint all over someone's expensive paint job. I started doing this a long time ago but speaking to a lot of members found out they have had similar experiences; this may help avoid a potential problem for some of our new members.

Be Well

I will look for you in the yards.

**Need CE Credits ???**

**Newsletter Material Deadline:** Have an interesting topic? Send it in! If your article is published in the SAMS® NEWSLETTER, you not only contribute news and information, you may be eligible to receive (3) CE Credits\* for your article. The cutoff date for material to be submitted for publication in the next SAMS® Newsletter is July 1, 2024. The editor must receive all articles by this deadline or they MAY NOT be published in the next issue.

**If you are planning to write an article you should know the following:**

1. Your article should be technical in content, and of interest to the profession of marine surveying.
2. The article should be in MS Word.
3. Please use **Times New Roman, font size 12**
4. Length of the article should be 500 to 1000 words.
5. Articles that have been published before, MUST have a letter of permission letting SAMS® re-publish this article.



**Kristoffer Diel, AMS®  
SAMS® President**

**Ahoy, Fellow Surveyors and SAMS® Associates**

**FIRST: - Thank You! SAMS® Office personnel!** SAMS® would not exist without your knowledge and daily effort!  
**AND - Thank You! SAMS® Members** who have entrusted me with the helm of SAMS®.

The last few months have been a steep learning experience. My best analogy is that it is like keeping an 800-legged octopus going in the same/right direction. **AND Thank You!** Regional Directors & Board Of Director members, past and present, who have been supportive.

**The Immediate past:** The SAMS® BOD just completed the annual winter meeting in Jacksonville, on 5-7 March. SAMS® economic position is very solid and there were no serious pressing problems facing us in the near future. However, it was brought up that a majority of SAMS® members are over fifty, and we all need to look around us and reach out to assist the next generation of SAMS® surveyors.

**The present:** I wish to let everyone know that going forward, my major concern is SAFETY. My intent is to increase everyone's awareness and knowledge of the safety issues we surveyors face every day. All surveyors in the commercial world are required to have this training, to access the ships and yards. But Small Craft surveyors also encounter 'confined spaces' and may save a life with proper medical training. Mr. Steve Heinrich is currently leading the SAMS® Safety Committee and has begun formulating a Safety Program that will begin with safety-oriented courses to be presented at each Regional Meeting (and IMEC's). Thank you! Safety Committee members for your time and contributions of knowledge. Anyone interested in helping the Safety Committee, please contact Mr. Heinrich. Going a little deeper on this subject: I assert that CPR, FIRST AID, and CONFINED SPACE SAFETY subjects should be a minimum requirement for all SAMS® surveyors.

**Into the future:** SAMS® has not had a dues increase in about 13 years. **Consider that the cost of living has increased over 35% during that time!** And what were you charging for your survey 13 years ago??? SAMS® needs an increase in operating expenses, BEFORE we go into the red.

**Into the future:** Mr. Tom Benton has been appointed the new Gulf Region Director. Many thanks to Mr. John Huddelston for his past time and efforts dedicated to the Gulf Region and SAMS®.

Ms. Susan West, of the SAMS® Office, has decided to change careers and will be leaving her position on 5 April. The Office has begun the effort to fill the position.

***"Come on down to da bayou!"***

***If anyone has any questions or suggestions regarding the operations of SAMS®, please do not hesitate to contact me at your convenience.***



**Gary Frankovich, AMS<sup>®</sup>  
SAMS<sup>®</sup> Executive Vice President  
Ethics Chair**

First let me thank everyone who supported me to be elected as the new SAMS<sup>®</sup> Executive Vice President.

As most of you know, besides supporting and backing up SAMS<sup>®</sup> President, I'm also the Ethics Chair, and in fact this is what takes up most of my time in this position. Since last October there have been thirteen (13) phone or email complaints, so far only three (3) were actually filed as Official Complaints. Four (4) were survey reports either not delivered in a timely manner, or not delivered at all. All of those were disposed of by making calls to the surveyors and complainants and putting them together. People, when you take someone's money to perform a survey and issue a report, **COMPLETE THE CONTRACT!** When you send the report, ask for a Reply so you know the client received it, if you don't receive the fee, call and see what the problem is, it turned out that one report was never sent because the surveyor never received the fee, and instead of contacting the client, he just never sent the report, turned out the fee was sent to wrong address. It's called **COMMUNICATION**, make use of it. One (1) complaint was solved by eventually discovering it was the client who doctored the report before sending it to his financial institution. I am happy to say that only one (1) of the complaints was actually an Ethics Violation and, it has been dealt with.

Enough of that type of news. Spring has Sprung, where I am, and the pollen is thick. If it hasn't already, it will be arriving to you all soon.

**PLEASE** make your reservations for the **IMEC** in **New Orleans** at the **Sheraton Hotel** early, the room rate is unbelievable for a hotel like that in the Crescent City, it's, going to be great so hope to see you all there.

Be safe, and make money.



**Randell Sharpe, AMS®**  
**Secretary/Treasurer**

I have been figuring out the Secretary Treasurer job over the last few months as I do the tasks assigned to this position. Keeping up with taking minutes of the discussions at the Board Meetings is a challenge but I am getting the hang of it. The jobs of the treasurer are pretty simple due to the excellent office staff accurately handling the day to day tasks of reviewing and paying the bills and expenses of our organization. I can tell you we are in good hands and the organization is properly funded. We reviewed and passed our budget for the 2024 year and SAMS® is financially healthy. We are managing our reserves by investing in safe government bonds and T-bills to earn a reasonable interest income from the reserves.

The regions are doing a good job of running Regional Meetings to both provide excellent continuing education and manage the costs to cover the costs of the regions. Keep up the good work.

There was a question on what our Surveyor Associates should be studying to prepare for their AMS® exams at our last Pacific Regional meeting. Please REREAD the package you received from HQ when you joined SAMS®. There is excellent information in that package on recommended studying while you are an Surveyor Associate to prepare for the AMS® exam. Its all in there, Read It! Don't wait until you are approved for upgrade to start the studying.

My clients often tell me "You must have seen everything." I always respond "No I see something even more amazing on a regular basis". So here is an item I had not seen before until the other day. On a sailboat the backstay is often used as a long wire antenna for a SSB radio for long-range communication. In order to prevent injury to crew in the vicinity of the backstay if they were to touch the backstay when the SSB is broadcasting, the backstay will have two insulators installed one above normal reach by someone standing on deck, and one near the masthead. The key word here is insulator. So what is wrong with this picture? The boat yard worker had to release the backstay to fit in the travel lift. They then discovered they also had to release the SSB antenna wire from the backstay. This is what was found.



Jumper wire connected across the insulator removed from the clip here.  
Antenna wire and jumper cable connected above the insulator. So What Were They Thinking??  
I look forward to meeting you at Regional Meetings or the next IMEX. Be safe out there.



**Kenneth Weinbrecht, AMS®  
Education Vice President**

**NOLA IMEC**

Attached is the agenda for IMEC which is fast approaching. I've tried to set up a good all around program for everyone to enjoy.....but as ever, sometimes things change.

We thought we might be trying to do something a little different this year if we can pull it off.

On Wednesday AM I am trying to arrange at the hotel conference room some local EMT's or some triage nurses to give us a two - three hour class on triage as part of the safety committees hard work and findings. It would cover items such as:

How to treat for burns, falling off a ladder or through an open hatch, broken bones or electrocution, heart attack, severed artery, and CPR. This is not going to be any type of certification but a basic, what do I do in these situations to possibly do initial treatment till medical care can arrive and maybe even save a life.

I for one can tell you that I have had several situations over the years that have required triage and if it wasn't for military training I would have been lost. For some reason things you learned 20 - 30 years ago just stick in your head.

Updates will be published in our summer newsletter if we can arrange it.

Hoping you all have a very prosperous season, and be diligent out there, it's easy to get hurt.

Wednesday 9/11

1300 - 1310 - 9/11 Remembrance

1310 - 1415 - ABYC - Using new standards on old boats. Lithium Ion Battery updates.

1415 - 1445 - Break

1445 - 1545 - Boat History Reports

1545 - 1700 - Safety Committee.

1700 - 1745 - Ethics - They Asked Me To Remove Just A Small Thing On My Report. 1830 - Presidents Reception

Thursday 9/12

0830 - 0900 - Welcome, intro of the board

0900 - 1000 - Crescent River Pilots Association - Challenges Piloting The Mississippi Captain Michael Bopp.

1000 - 1030 - Break

1030 - 1200 - Steve Knox - AMS® / CMS / Dan Rutherford - Marine Surveyors and Adjusters - How To Peacefully And Successfully Exist.

1200 - 1330 - Lunch on your own

1330 - 1430 - Roland Santos AMS® - Recreational Diesel Failures

1430 - 1500 - Break

1500 - 1630 - NTSB - Conception Fire - pending

1630 - 1745 - Southern Forensic Services - Glen Lawson or Titan Salvage - Pending

Friday 9/13

0800 - 0815 - Housekeeping

0815 - 1000 - Revay Coating Consultants - David Revay

1000 - 1030 - Break

1030 - 1200 - Triton Liners, In-Situ Fuel Tank Repairs - Darren Meyers

1200 - 1330 - Lunch on your own

1330 - 1430 - Keith Larson - Fireboy

1430 - 1500 - Break

1500 - 1600 - Fish Boat Inspections Mike Andrews, AMS®, Fishing boat chair

1600 - 1730 - Thermal Imaging - Charlie Hazouri NAMS CMS



**Joseph Lobley, AMS®  
Meeting / Conventions  
Vice President**

### **Greetings to All**

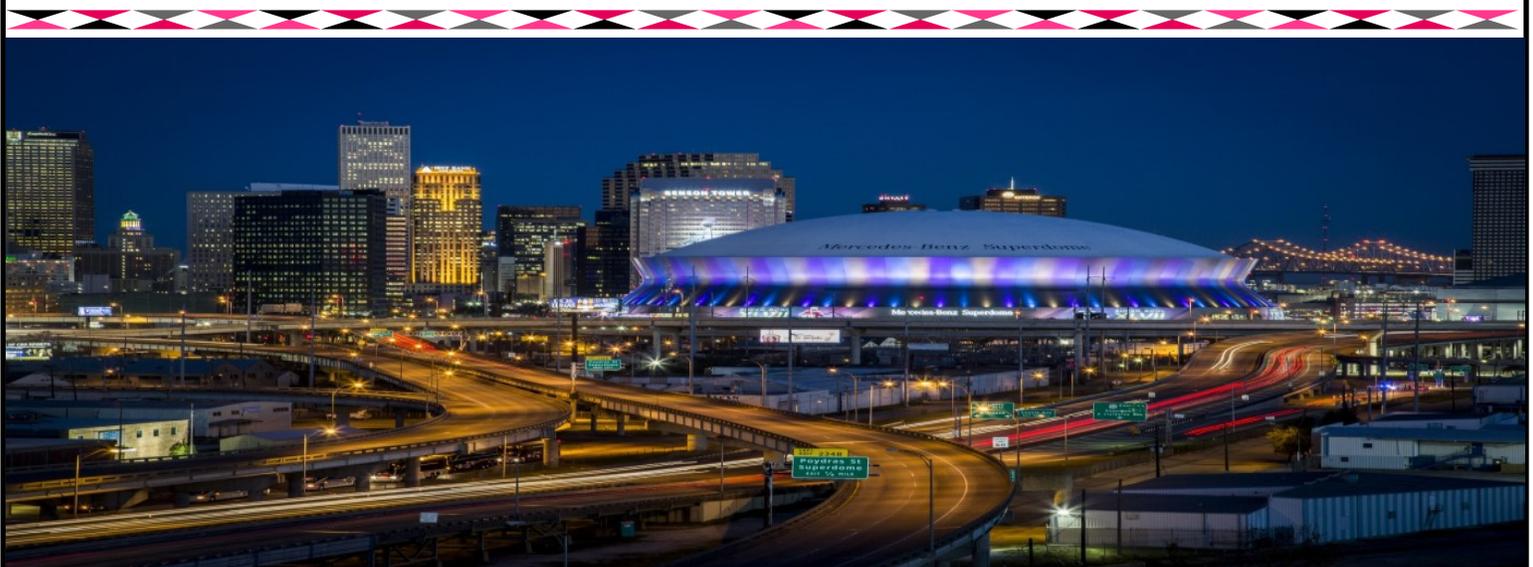
Here is some important information on the upcoming IMECs.

IMEC 2024 is scheduled to be in New Orleans at The Sheraton on Canal Street. The dates are September 11<sup>th</sup> thru the 14<sup>th</sup>. We have a room rate of \$179.00 with the usual amenities. Parking deals with hotels in the city are non-existent but there are parking garages and lots nearby. The hotel is well situated just outside the French Quarter with a short walk to Bourbon St., Harrah's Casino, and the Riverwalk. The Warehouse District is in the hotel's "back yard". This area is also known as the Art's district and is full of galleries, some of the best restaurants in the city, and of course, many watering holes. We have received 122 replies of members confirmed to attend. This typically equates to 250+ attendees and guests. Book your room now!!

IMEC 2025 was supposed to be in the New England Region but I just could not find a viable location with room rates below \$200/night so we will shift slightly south to the Mid-Atlantic Region. We will be at the Hyatt Hotel Inner Harbor Baltimore September 9-12, 2025. We were here in 2013 and had an excellent event. The room rate is \$180.00 per night. This will be our first departure from the typical weekday format of starting Weds and ending on Saturday. We are moving the format to start on Tuesday and finish with the business meeting on Friday. This has been suggested by several hotel sales people in the past as a way lower the room rates since we are not occupying a big number of rooms on Friday night. The hotel has been remodeled and has all the usual amenities and is in a very good location with lots to do close by.

IMEC 2026 was voted on at the last General Membership Meeting to be held in the Florida Region. The cities chosen in order were Tampa, Orlando, and San Juan PR. I am working on this now.

See you in NOLA!





**Angel Zeno, AMS®  
Testing Vice President**

If you live in the Great Lakes area or any other area with seasonal boating you can already feel the boat yards preparing the recreational boats for the new season. In fact, I've been to a few boat repair facilities recently and based on the number of boats that they are preparing for sale, it looks like it's going to be another busy season for surveyors in the area. As you prepare for the new season, and are busy putting fresh batteries in your moisture meter and other testing devices take a look at your survey agreement to assure that you have included the correct statements recommended by AON, if you're not sure what the correct language should be feel free to reach out to the SAMS® International office. If you don't have a survey agreement please consider starting to use one this season.

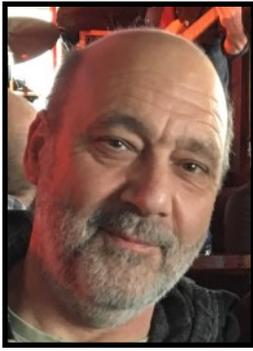
I was talking with a fellow surveyor and he mentioned that he thought that ABYC E-11 was adopted by the USCG for inspecting AC wiring aboard vessels. It's important to note that while following ABYC standards would make for a safer installation, in the United States, ABYC standards are voluntary unless the standard is specifically incorporated by reference in the CFR's. That conversation led me to think what other topics might fall under the category of it makes sense but not referenced in the CFR's. For example, using double hose clamps on below the water line seacocks. According to the CFR's there are only two recreational vessel applications that require the use of double hose clamps, do you know what those two applications are?

For those of you preparing to take the SAMS® AMS® exam I wanted to share my impressions and ideas. First, in my opinion, this may go a long way towards successfully passing the exam. After weeks and months of studying and preparing, rather than just jumping into the exam, take a few moments to clear your head, discuss hobbies or family with the proctor. I'm always surprised to hear someone say that they knew the correct answer but their nerves got the best of them. Second, while taking the exam, try to manage your time as best as you can, if you're not sure of an answer, make a notation on the exam so that you can circle back and revisit the question in more detail after you've had a chance to build confidence answering the questions that you know instinctively. Third, do not leave any question blank, even a guess has a chance of being correct, but a blank answer is automatically wrong.

As you prepare to take the exam, remember, this is an exam on all subjects related to marine surveying. Make sure that you have the breadth of knowledge that will be expected of an Accredited Marine Surveyor. Don't set yourself up for a trap by only studying what you already know, for example, if every vessel you've inspected has been equipped with gasoline outboards, make sure that you also understand the requirements for diesel engines and gasoline engine spaces.

Finally, feel free to call me to discuss your specific preparation method, we can discuss what you feel are your current strengths and weaknesses when it comes to surveying and help formulate a study plan.

As always I want to remind all our members to be sure to let someone know when you're heading out on an assignment, the location and how long you anticipate being on the assignment. And always be sure to check in at the boat yard office to introduce yourself, let them know what boat you're inspecting. Most boatyards that I visit utilize a sign in sheet for surveyors and contractors but if you're like me, I always try to leverage the sign in process into a marketing opportunity. I have found that a large number of my referrals come from the service departments.



**Eddy Assaf, AMS<sup>®</sup>**  
**Public Relations**  
**Vice President**

Hi everyone, hoping everyone is well and ready for this year.

Had a really mild winter here this year, not mild enough for use to work outside mind you, but enjoyable enough to say that we totally missed that sub-zero cold snap that usually last a couple of weeks, and I got to admit I liked it, wasn't as great for those who liked winter sports, the mild winter did ruin their year, very little snow for snowmobiling and skiing and the mild weather stopped the snow makers from working, not even any ice fishing here unless you had a dry suit. The lakes and rivers here froze for about 3 weeks and that was it, missed my ice fishing for this year.

Enough of me, advertising wise we are going along smoothly, still advertising in 17 different spots, some for potential new clients and some for recruiting which we are going to expand by placing more ads in that field, got to think about getting some new blood into the organization, we are all getting older and like everywhere else, eventually we are going to retire, but I find there is fewer to take over after us, which might be a problem in a few years. So, tutor, mentor, encourage certain people you know with a good base of knowledge to come into this trade, if this business had been as good to you as it has for me, get a family member into it, for me it sure beats a 9-5 job, even though some days, that would be considered a small day. I have seen some father-son teams come along and probably more I don't know about, but I'm sure it must be nice to be able to share our passion with someone else close to us and with technology and advancement in the field they can easily surpass us, like I said we are getting older.

We have also changed most of our ads, we came up with a new series of advertisement with a more colorful and direct ads, and what I am doing is switching the ads every 3 months so that they constantly changing in themes and colors to capture the eye as the viewers browse through them.

Yes, we are doing it again, the website is going to be revamped, going with a new modern look and going to try to make this a little more user friendly for potential clients along as for the members. There will be more in members log in, (things that are only for members) which was the goal when expanding this and making the home page a little more functional. The main item in the site is the search engine which one of the reasons for the face lift, our script was done a long time ago and has had quite a few conflicts with the search engine on the site right now, we have been able to work our way around it but still not what the objective was, the site's search engine is the most important part of the site because it gets our future client to us. I want to go a little further than that with the site now, our members articles section (which have never seen the sight of day or an article) will hopefully be more active, we will pull some articles for the newsletters that members wrote and put them there for the public to read along with other surveyors. IF YOY HAVE ANY ARTICLES THAT WOULD BE INTERESTING, PLEASE FORWARD THEM TO ME, WE NEED GOOD ARTICLES for the site, and I know some of you can write very good articles. We are also going to have a section for INDUSTRY ARTICLE, which will be articles already established that we will put up for our members and clients to see.

Cont.

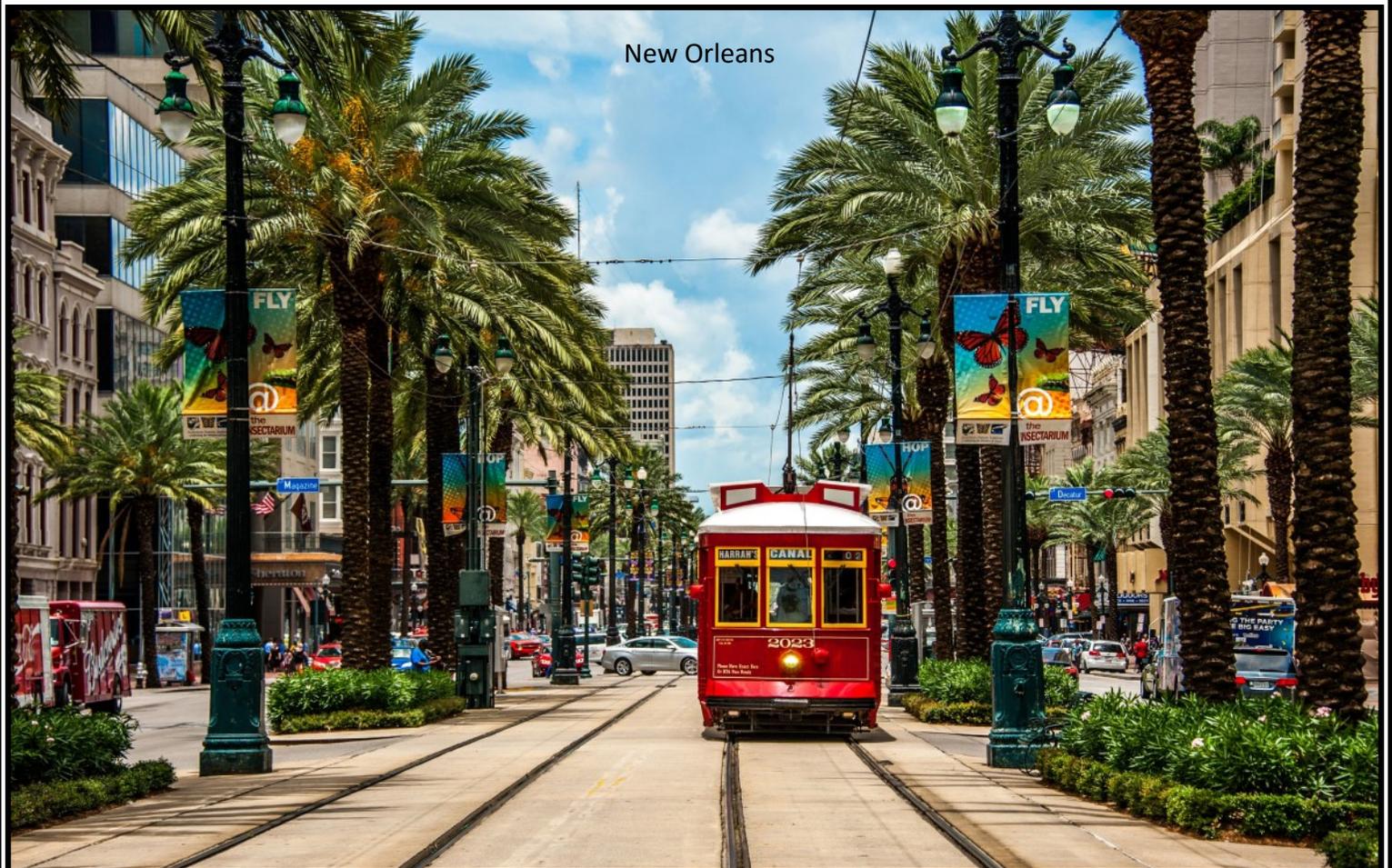
Along with a few other changes, all this is just starting to develop so it's still in the working.

On the social media side all seems to be working much better than the last time, Lita Smith who runs this for us, and spoke at IMEC in Montreal, gave everyone a boost to help us use this platform and I guess it worked because of the traffic it now generates. It has been proven that this is a great way to get your name out there, so use the system and get it to work for you. Facebook has shown tremendous rise but Twitter hasn't been as productive but also not the best format for SAMS<sup>®</sup> as much as Facebook.

After 5 years of doing this and after I don't know how many times, I ask the members to give their feedback I finally got one call from a member to asked me about advertising in a certain field, and I thank you for that and I am working with him to get it done. I really need your input when it comes to advertising, can't be all over the globe and don't know certain areas. Advertising is a way for the organization to give back to its members but showing how organized and professional we are but if I don't know your area that could use some advertising and now one tells me about it, well there is not very much I can do, so make my life easier and at the same time your need for advertising better for you. Remember that advertising is here for the members, like Facebook, you need to learn how to use it.

Pretty much it, guys and gals, have a safe and prosperous season and needles to safe 1<sup>st</sup> and foremost be safe, we need you around for a little longer.

**Cheers!!**





**Charles W. Solarek, AMS®  
Membership Vice President**

Greetings from the great Pacific Northwest! Spring is just round the corner, or so we are being told. And with the nicer weather most of us should be heading out to the marinas and boatyards to ply our trade. So here is the question of the day: How long has it been since you went out on a survey?

If you have been enjoying some serious down time these past few months, then you are most likely a bit rusty. Think about it. Maybe you have been doing this for a few years, but surveying a boat is a SKILL. It is something that you have learned over a period by completing survey, after survey, after survey. Yet, it is not automatic and therefore even though you may think you can just start right up again, guess again. I know when I have not been actively surveying for a couple weeks (everyone takes vacations), I slow things down and take just a little bit longer to complete the first couple of surveys.

Some other things to consider... Have you checked your tool bag? Powered up the moisture meter? Plugged in that test meter to an outlet to ensure it is in good working order? Plenty of those disposable items still in the bag? What about your camera? Good batteries? Spare batteries? Tried on your "work clothes" (we all put on a few pounds in the winter, right?).

Have you kept up with any new requirements in the CFRs? ABYC? NFPA? What new technology is now out there that you may encounter? Maybe a webinar or two so you get up to speed.

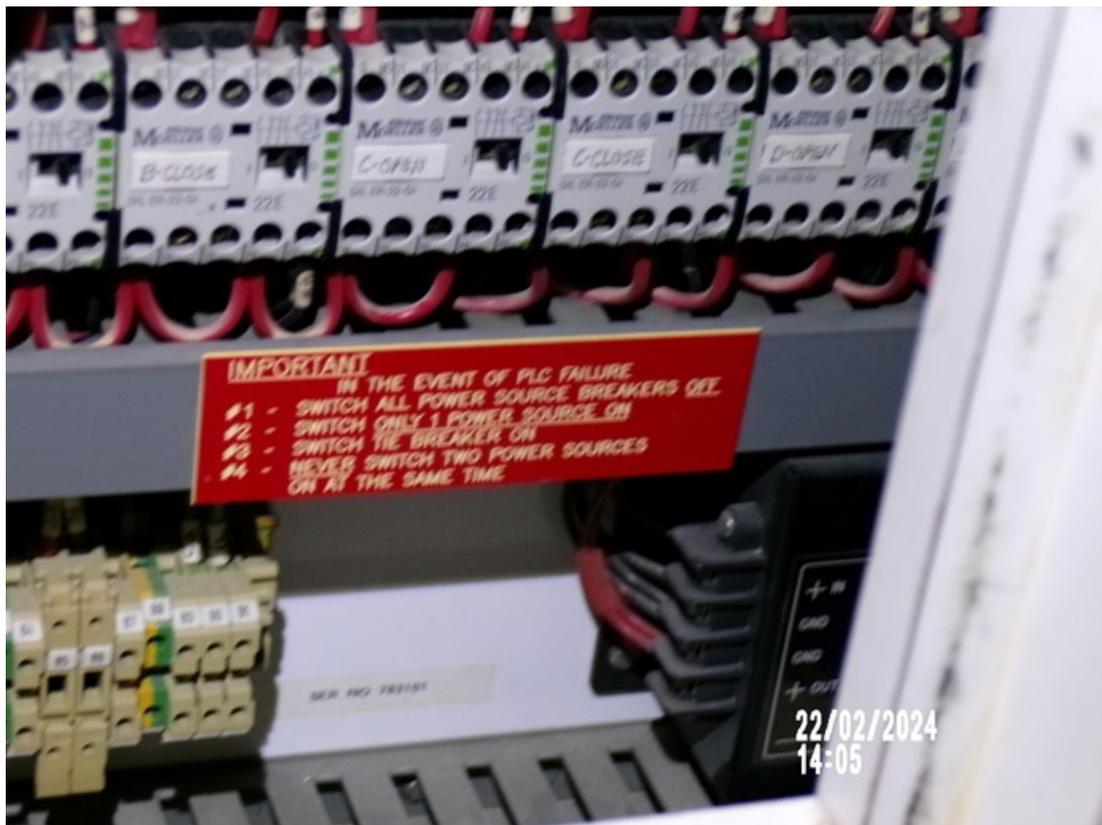
Switching gears, a quick story from a recent survey. As we prepared to leave the dock the boat captain could not switch from shore to ship power. The PLC for automatic power source switching was not functioning. There was no written guidance to be found for this situation. A quick call to the vessel's "caretaker" and the appropriate breakers were located behind the DC portion of the electrical distribution panels. The boat captain and my client were given verbal directions by the caretaker on how to switch the power source.

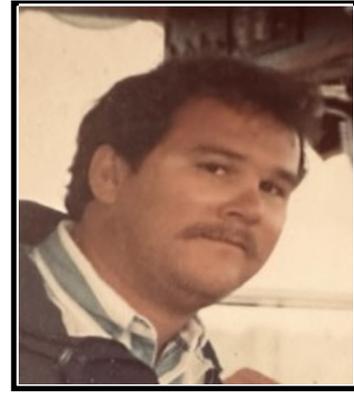
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Once we left the marina and restricted waters, I went to get photos for my report. They are below for your viewing pleasure. The AC panels are on the top, the DC panels the bottom. Neither the boat captain nor my client saw the small red sign behind the breakers. Never say you have seen it all. As soon as you do, someone makes a liar out of you!

Stay safe out there!





**Michael A. Terminel, AMS®  
Pacific Regional Director**

Hope all is well. Before we get started I'd like everyone to take a moment and say a prayer for the crew of the Dali, the pilots on board, the lost souls, and the people of Baltimore, Maryland. I sailed globally on ships for over 30 years. Transiting Drakes Passage, Malacca Straits, the English Channel all took extra care, I took even more precautions mitigating risk when going under bridges or sailing in confined waters or channels. I never liked going under bridges. I would always have all generators and engines online even thou the ships didn't need all the power. Engineers would complain constantly that we were loading up the engines and they would have to blow down afterwards. I spent the last week answering emails and texts from past engineers and mates saying, now I understand why you wanted that power arrangement.

I've been under the Key Bridge, I noticed then that there were no barriers or collision deterrents by the foundations It's a big bridge and the Dali even bigger ship. At 0124 the first alarm went off on the Dali and by 0129 the bridge was down. It didn't take long at all. These ships have very sophisticated Power Management Systems and should have audio and visual playback for the main engine. This is where the data will come from that will say why the vessel lost power and most likely the cause of the failure. I've been on diesel electric ships where engineers have just flipped the wrong breaker and we lost power. It happens more frequently than you think.

This was a major event defined by loss the USCG. How does NTSB get involved?

The NTSB has specific authority under the United States Code and Code of Federal Regulations to investigate "major marine casualties." These are accidents involving vessels that result in one or more of the following:

- The loss of six or more lives.
- The loss of a mechanically propelled vessel of 100 or more gross tons.
- Property damage initially estimated as \$500,000 or more.
- Serious threat, as determined by the USCG commandant and concurred with by the NTSB chairman, to life, property, or the environment by hazardous materials.
- NTSB authority to investigate covers major marine accidents on U.S. waters or those involving U.S.- flagged vessels worldwide. NTSB also have the authority to investigate casualties involving public (owned by the U.S.) and nonpublic vessels. In these casualties the threshold is defined by at least one fatality or damages of \$75,000 or greater.

Scale it down to a 100' yacht going under the bridge in Fort Lauderdale, or a 150' tug with a 400' barge of aggregate going under one of the bridges in Seattle. By the above criteria, you may just find yourself in a NTSB investigation. These vessels get surveyed daily by SAMS® surveyors. Either vessel could lose steering or power and hit a bridge or Railroad crossing. It brings it into perspective now of the average SAMS® surveyor liability exposure. You were the surveyor that just surveyed either vessel mentioned. In the survey it says that all electrical systems were tested. Did you test the reverse power relay on the Power Management System per OEM recommendations? Cause hypothetically that's what tripped causing the black out. You're now defending yourself in court. On this ship they are already looking at the last class surveys and inspections that were done in Chile. I went to the NTSB Marine Accident Investigators school. I can tell you this, that the investigation is far from over. NTSB has unlimited resources. NTSB will present findings and recommendations to the USCG that will probably result in regulatory rule changes. As a USCG Master Mariner, and Surveyor, this one is extremely concerning to me.

Ships have been hitting bridges for a millennium. I'm sure the Vikings even hit one or two. Current events today with internet and social media, it's one that will not be forgotten.

After attending my first SAMS Board Meeting as a regional director, a lot of positives actions will hopefully be brought forward. I've sat on many boards and it's up to the elected board members to listen first, gather information, make the right decisions and to delegate what is best across all regions. Just because it worked 30 years ago, may not be what works today.

A topic of discussion was revamping the way the SA's are evaluated every year to ensure quality control, and an effective evaluation process. The regional directors will be meeting with the VP of Testing in a few weeks to work on this.

As spring is upon us, I'm already doing some spring cleaning on my cars, garage, boats, recreation vehicles and my surveys. Yes, my surveys. Take a good look at the structure of your survey. It's a good idea and recommended to review your survey format annually to make sure their up to date and contain all the needed information and purge what's not needed. Just like your garage, does that really need to be in there!! I recommend all Surveyor Associate's and AMS<sup>®</sup> to review their surveys and make sure they have not slipped and what needs to be there is and what doesn't need to be in there, get rid of it.

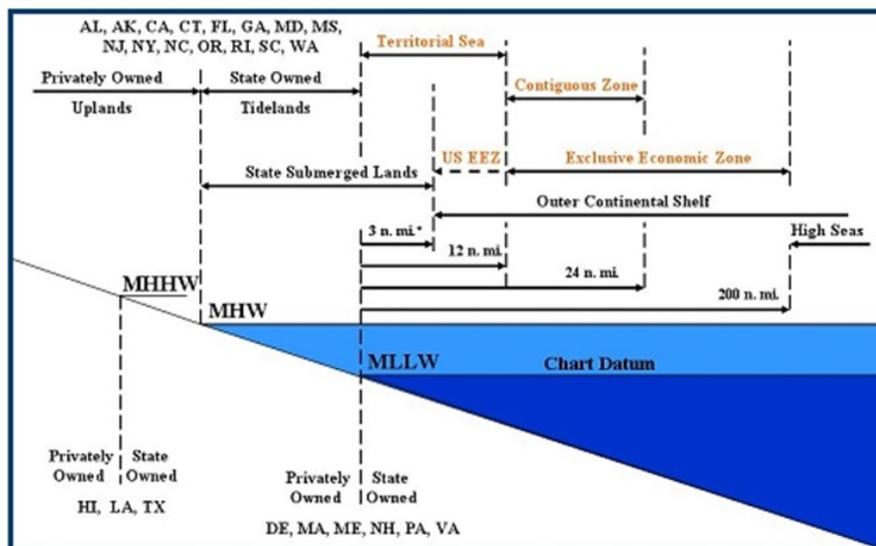
During the Pacific Regional Meeting and the Jacksonville Board Meeting, a common conversation surfaced that brought many different analogies.

1. What's the best way to delineate that the vessel is fit for service.
2. The use of the SAMS<sup>®</sup> Minimum Survey Content was discussed with interesting views.
3. Use of terms, the word certify, assume, serviceable and appears.

Let's touch on how you say the boat is fit for duty. Who built it, a well-known shipyard, or a cookie cutter boat builder. Should it matter who built it? It's a 180' Westport motor yacht or is it a Boudreaux & Thibodeaux Mud Boat for the bayou. (a N'awlins pun) Is it a proven concept or is it an unknown entity. I think this is an important fact in how we determine the vessels suitability. At the board meeting and the regional meeting a few dialogues broke out on this. It's not as cut and dry as we think it is, it's a slippery slope.

In our discussion, we heard terms to describe use as, "I follow OEM recommendations, intended use, USCG recommendations, insurance coverage area, a geographical operational area and boat owners intention of operation area". Some said, it's what the boat owner told us, or it is the manufacturer interpretation of use.

First, if the broker or vessel owner told you verbally, were going to be in near coastal waters, and you write that in your report. If there is an accident they can deny ever saying it. In court, the lawyers, and jury hear, the surveyor wrote it's good in near coastal waters. This can mean a lot of things.



The USCG definition of “coastal waters” is contained in 33 C.F.R. § 175.105(b). “Coastal waters” includes the waters of the Great Lakes, the territorial seas of the United States, and: Those waters directly connected to the Great Lakes and territorial seas (i.e., bays, sounds, harbors, rivers, inlets, etc.) The datum below I found helpful.

The USCG definition of near-coastal means ocean waters not more than 200 miles offshore from the U.S. and its possessions, except for MMCs endorsed as Operator of Uninspected Passenger Vessel for which near-coastal is limited to waters not more than 100 miles offshore from the U.S. and its possessions.. I’ve seen the term near coastal defined as anywhere from outside of the boundary line to 200 NM offshore. I see both terms in submitted surveys for review.

Would you tell a 22’ aluminum fishing vessel he or she is good in coastal or near coastal waters? The answer I hope is no. I've seen Near Coastal on a lot of surveys. I heard a lot of seasoned surveyors say. I leave that up to the OEM recommendations. I thought at first that this is probably a good idea. Then I saw these OEM statements from two of the leading pacific northwest boat builders that build vessels for recreation and charter vessels on the west coast. They were describing use of 22’ to 30’ vessels aluminum vessels. If you use the OEM recommendations and you write #1 below down in your survey and a 30’ aluminum boat means all waters above.

1. “Offering proven performance and dependability based on decades of practical use across all marine environments and sea conditions.”
2. “Every hull is float tested in our factory - something many boat builders cannot claim. Sourdoughs are tough and unafraid to battle the elements. Storm front rolling in? Not a concern for the Sourdough. With a bigger main cabin, monster fishing deck, and increased stability, the Sourdough inspires you to “Be Your Own Guide”.

I don’t know about you, but those two OEM recommendations scare you know what out of me. You better read the actual manufacturers recommendation before you write that in the survey.

Some of the things come to mind that can be taken way out of context is:

1. Use across all marine environments and sea conditions.
2. Every hull is float tested in our factory
3. Weather rolling in? Not a concern for the Sourdough
4. The Sourdough inspires you to “Be Your Own Guide”

You’re in a court of law defending yourself over a loss of life lawsuit. The boat owner took the boat offshore 100 miles fishing with his two kids. Just those two boats, and those four statements if you wrote, follow OEM recommendations. You can probably guess the outcome.

Your ex-clients wife stands up in court, with pictures of her three kids and husband who were lost at sea on a huge poster board for the jury to see. She says under oath “We bought a Sourdough, the storm front rolled in on them, but they said not a concern, they said my husband could be “my own guide”, the surveyor certified that the hull was float tested, and the surveyor said it could be used across all marine environments and sea conditions. The jury deliberates for 10 minutes. I think we can all see the outcome here. The takeaway is to be careful what you write, and you must be able to back it up.

I was surprised of how many surveyors didn’t have the SAMS<sup>®</sup> Recommended Survey Report Content<sup>®</sup> for Yacht and Small Craft at the regional meeting. If you don’t have it, send me an email, I’ll send it to you. It's important that we use it in every CV survey we do. The “Recommended Survey Report Content” should be used as a minimum benchmark for identifying a specific level of professional expertise, knowledge and substance but is not intended to preclude increased accomplishment. As we conduct a spring cleaning of our surveys, ensure that the content, topics are outlined and addressed in your survey.

As we conduct spring cleaning of our surveys, please look at the words that we use. Words that I see over and over, and a couple were found in my surveys before the spring cleaning were arbitrary at best. A word I see a lot is assuming. It was or it wasn't. If we use assume, serviceable and appears these are based on based on a whim or personal preference and without reason. The word assume has many definitions. Cambridge states "to accept something to be true without question or proof". With that statement, should it be in any of our surveys?

Now let's look at serviceable. Webster's states "capable of being put to good use and intended or able to serve a purpose without elaboration" Can you say that a ICOM M504 is serviceable? No, if it stops working, you throw it away. It's not worth repairing. Now if a Furuno Radar Model FAR-2xx8 NXT Series fails, this is a radar that could be serviced. Let's say while you were inspecting and testing the radar you note that the magnetron is weak. You might say that the radar was powered up, inspected, all ranges tested and function tested. You note that the magnetron is weak, recommend replacing the magnetron and is serviceable by a Furuno Factory Technician. The word serviceable here is the act of the technicians work on the equipment. Not that the radar is serviceable without an action. You would not say that for an off the shelf Garmin radar plotter combo.

The next word is appeared, it is an even trickier word. The word is a verb, it's meant to describe action. Definitions includes, "Seem to be true, probable, or apparent" or "Give a certain impression of being something or having a certain aspect" This is not a very good interpretation of what we are trying to say.

As we spring clean, take a look at your report. Read every word in it. Check your grammar, punctuation, spaces between words, and content. Since taking over as regional director and reviewing surveys I see many different writing techniques and styles. I see trends in certain regions. This tells me that what works in one area may not be what works in another. We write our reports and surveys for a specific audience. Be specific, don't be vague, try not to use words that the audience does not understand and please don't be preachy.

I sailed deep sea for a N'awlins company for over 25 years. As we prepare for N'awlins IMEC, a few terms y'all need to know:

LAISSEZ LES BON TEMPS ROULER

French for let the good times roll, N'awlins motto

DRESSED

When you order a po-boy, "dressed" means you want lettuce, tomatoes, pickles, and mayo on it.

LAGNIAPPE

A little something extra (pronounced LAN-yap). This could be a free dessert at the restaurant or a treat on the pillow at your hotel.

MAKE DODO

(Pronounced doe-doe.) Go to sleep. Comes from the French faire dodo, which is from faire dormir.



## Attention All AMS<sup>®</sup> Members

The SAMS<sup>®</sup> Nominating Committee is accepting nominations for the upcoming election of officers at the Annual Business Meeting on Saturday, September 14, 2024 in New Orleans, LA. Any AMS<sup>®</sup> members interested in running for an elective office should apply in writing with accompanying documentation to show the Nominating Committee your qualifications, knowledge and understanding of SAMS<sup>®</sup> Policies and By-laws. The letters should be addressed to the SAMS<sup>®</sup> International Office. To the attention of the Chairman/Nominating Committee. Must be received by April 26th. Nominations can also be made from the floor during the Annual Business Meeting, per SAMS<sup>®</sup> Policy.



SAMS<sup>®</sup> would like to send condolences to all those affected by this tragedy



**Richard Reichelsdorfer, AMS®  
Great Lakes Regional Director**

Greetings from Wisconsin. Spring is finally here, various annuals are emerging from the ground, outdoor surveys are taking place, docks are going in and we are forecast to get 8 inches of snow in a couple days.

I hope that everyone has kept busy over the winter and that business is on the upswing. By the time you read this we will have completed our spring Regional Meeting in Fort Wayne, with a factory tour of Formula Boats. Speaking of the Regional Meetings, I am looking for the next venue, as well as someone to help with the planning of the meeting. The location of the next meeting is quite open as our most recent meetings have had a good spread around the region.

The 2024 IMEC will be held in New Orleans September 11-14. If you have not attended an IMEC, I highly recommend that you do and with this one being in New Orleans, what could go wrong.

I hope everyone feels rested and ready for the spring rush that is coming our way. The Mid-Atlantic had a great turnout for the Regional Meeting we held in early February. I want to thank all of you who supported the event by presenting, along with those who attended and shared their knowledge/questions with the group. The Mid-Atlantic will have our next Regional Meeting around the same time next year (early February) and we are planning to rinse and repeat here in Wilmington, NC. If you have any topics that you want to cover, please do not hesitate to email me the idea and even better if you have someone in mind who is qualified to present the suggested topic. At the meetings I always find myself involved in conversations about recommendations, why-nots, or questions about SAMS®. If I cannot directly answer those questions, I have a running document on my desktop that I save and present when time or opportunity allows. If you have any questions, changes, or ideas that you would like me to raise to the SAMS® leadership I am more than happy to be the medium.

On a side note, I carry a “custom” tool that I cannot take credit for, nor do I know exactly where the idea was created so forgive me if you are holding the patent (I would absolutely give you credit if I knew the creator). I took one of my phenolic hammers and cut the head off, then I took a fiberglass golf club and did the same. I epoxied the shaft of the golf club to the bored out hammer head, and now I have an extended hammer. It is fantastic for tapping out the hull sides while a boat is in the slings or even walking the decks and not needing to bend over/crawl around. I get a lot of laughs from clients and boatyards, but this simple and cheap conversion has saved my knees and my time. If you don’t have a long hammer setup like this, give it a whirl. It is an easy tool to make in your garage and you will certainly find it useful.

That’s all for now, I hope everyone has a great season!



**Jared H. Houghtalen, AMS®  
Mid - Atlantic Regional Director**

Hello and welcome to this portion of the world where the sun is shining and the recreational boating season is ramping up. The spring boat show season has started and I believe that we will start to see a few more calls.



**Christopher Day, AMS®  
North Florida Regional Director**

It has been a slow start this year and that trend seems to have reached back a few months before the start of 2024. This also seems to be the trend with most of the brokers that I have spoken to: Inventory is up, the call volume is down, and the “Propeller Kickers” are on the docks. This is just bringing the market back to a “Pre-Covid” market trend that I was tracking prior to things going “Covid Crazy”:

1. Everyone has a Christmas Cash Hang Over and reels back their spending during the first couple of months or so. You may get a call or few prior to April 15<sup>th</sup>, but they are spread out.
2. After Tax Season is done and everyone has their tax returns, the buyers come forth looking to spend that “Free Money” and the existing boat owners are starting to get their Insurance Renewals.
3. The boating season ramps up and the calls start to come in thru about August.
4. The calls will then taper off as school gets back into session and Football is back on TV.
5. The calls may start to come in for appraisals as people are looking to either sell or Donate their boats after the season is over and OR they got their last use out of the boat. This will typically last until about Thanksgiving or up to the first week or two of December.
6. The cycle will start all over again.

Now keep in mind, this is for the recreational boater out in the market: The weekend warrior, the fair weather fan, the boater that will take the entire extended family out for a few hours at a time during the weekend. We have all watched the internet videos with the overstuffed boats, the crazy inlets and the train wrecks that happen at boat ramps. Those are the boaters that make up a good chunk of our business: be it Pre-Purchase or Claims. AND THEN, we add the first time boat buyer to the mix. That is an entire different conversation for a different time or newsletter.

My point here is that it takes seasoned surveyors to handle not only the inspections, the reports and collect money, but to also plan their businesses accordingly to stretch it through some of the thin times we face over the course of a year. So, hang in there! ! !

The Marine Survey Industry has one of the highest average ages of participants than the rest of the recognized industries out there. Most of these participants are either retiring, stop surveying full time, or are passing away. SAMS® has seen this trend through its membership numbers and the trend may not stop in the near future. While presenting at Chapman’s over the past 10 years, I have seen a lot of young faces pass through the Small Yacht and Craft Survey Class. This is hopeful, but we need to somehow foster a younger surveyor and groom them to be the next generation of seasoned surveyor within the SAMS® Organization. So if you have the capability, bring a prospect to work with you and get them interested in marine surveying. Let them carry your tool bag and teach them the ropes. Let’s help boost our membership numbers. This also correlates to bringing SAMS® Affiliates on board the membership roster. Currently, we have almost 30 affiliates on our roster (Based on our SAMS® Website). If you know of a quality marine service that you think would compliment the SAMS® organization, have them fill out an application and have them become an affiliate member. They get good exposure and WE have a vetted affiliate that we can leverage for meetings and referrals to clients.

I would like to thank all the participants of the North Florida Regional meeting held on March 16<sup>th</sup>. We had 80 participants and a great array of speakers that helped put on another successful regional meeting at the Pelican Yacht Club. Congratulations to all the door prize winners and a thanks to those who donated prizes and helped organize the meeting at the yacht club.

For now. . . Keep answering those phone calls, perform in-depth inspections, and write quality reports.



**Rolando Santos, AMS®  
South Florida Regional Director**

Looking forward to hosting my first Regional Meeting which will be held April 20<sup>th</sup> 2024 at the Moose Lodge located in Lake Placid, FL. I encourage all that are interested in hearing and meeting some of the TOP Marine Forensic investigators in the Marine Industry to attend. It's a great opportunity and to have a good showing will reinforce to these gentleman that WE are interested in hearing their sage advice. Should be a good regional.

**Report Content:**

In my short time doing this job I would like to comment that as Marine Surveyors we should always exhibit the highest level of professionalism for the art. Your client expects all of you to get it right! As a Marine Surveyor you are a finder of fact. When you peel the onion this is your job at the core.

**Find and report**

What should you do when you find issues like:

- Hull debonding?
- Corrosion?
- Wastage?
- Engine issues?
- Electrical (AC or DC)?
- AC problems?
- Etc?

Do you attempt to diagnose and then make recommendations to the client? Do you think you have the skill and training to fully understand the problem and short / long-term ramifications? You should be saying to yourself "NO". Stay in your wheelhouse! Report the FACTS of what you found and then suggest to the client that they hire the appropriate technical craft to diagnose and remediate the problem discovered by your Marine Survey Report. Those experts can consist of:

- Engine Surveyor or OEM representative
- Thermography Specialist
- Marine Electrical Technician and/or Electrical Engineer
- Corrosion specialist
- Air Conditioning Specialist
- Naval Architect
- Fiberglass Specialist
- Etc.

Last subject matter is **Fair Market Value**. I can't cover this subject in this forum and I am exploring the options to put on some training.

My observations are that I am finding too many reports with FMV's with next to no justification. I have seen these reports coming from AMS<sup>®</sup>'s and Surveyor Associate's. The FMV conclusions come in many forms but the bottom line is that the justification for the FMV is not supported and in most cases the value are too high. I think all members understand that it is not proper in any universe to report or attempt to support a FMV that the seller, broker and in some cases the buyer "wants". YOU have to do your own independent work & due diligence. Report the FACTS and if for some reason you are challenged you should be able to let the FACTS speak for themselves. Please use the available databases which come in many forms. I am a big fan of SoldBoats which covers mostly recreational marine assets. If you do more commercial style assets like push boats, research vessels, tugs, barges, crew boats, ships, etc. there are websites from many sources that cite the sold prices plus there are manufacturers and publications detailing recent builds with their costs. Developing a concise and accurate FMV sometimes is easy but most of the time it is hard work. As a Marine Surveyor it is our job to get it right!





**John Hines, AMS®  
Canadian Regional Director**

Hello from the northern climes. I am writing this on March 22<sup>nd</sup>, and I am one of the lucky ones as I am in Nova Scotia, on the rainy side of the country. Even with all this late blast of wintery weather, it has been a pretty good winter. I was surveying a lobster boat a few days ago in an area where the sea is usually ice covered until April. There was no ice in sight. A very unusual winter. In all, we're thawing out and we should soon be able to get back into the full swing of things.

I am still feeling my way around this position, but seem to be getting the hang of it. Thanks very much to Chuck for his help.

Our Regional Meeting is being held in Toronto on April 9<sup>th</sup> and 10<sup>th</sup> and we hope to have a good turnout. There have been a lot of changes in the regulations up here over the last couple of years and we are lucky to have a representative from Transport Canada as a presenter via video. We also have the vice-president from one of the marine insurance companies onboard for a talk on industry expectations. As well, we have presenters on rigging, electrical wiring, and lithium battery systems. Things should be interesting.

With the season opening, many boats in this area that have been laid up since October-November are coming back online. Many of them haven't been touched since they were put on the hard. I get calls to do a survey on the day the boat is going to be launched. I will usually turn these down. As most of us have probably found out the hard way, these surveys usually don't go well. There can be problems with the yard's launch system or in the launch schedule. Also, boats don't like sitting idle. Things that were working well when they were last used now have gremlins. Everything from engines not starting, electronics not powering up, or parts for the rigging missing. What should have been a straightforward one-day survey can end up taking two or three days with a lot of time sitting around waiting for things to be repaired. This can drive the client's costs way up and at this time of year, getting someone to repair problems is very difficult and I usually don't have that kind of open time. I find that it works to suggest to the client that they should take a few days to run up their systems to make sure time won't be wasted sitting around and that the number of findings in their survey report will be reduced.

I hope everyone has a good opening of the season and that they are as busy as they wish to be.

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**Liquefaction**  
**Lest we forget...** By Ruchin C. Dayal, AMS®  
Asia Pacific Regional Director  
[Article](#) - click here



**Brian Williams, AMS®  
Northeast Regional Director**

Good day from Puerto Galera, Philippines I'm fortunate to be here for two weeks of diving and had a break to write down some notes for the newsletter. While I'm here and being a boat person with lots of boats in the harbor it's easy to realize how spoiled we are as Americans. To this point I have been on many "vessels for hire" It amazes me how many will have 6-12 passengers and there is not a life preserver or any type of throwable flotation device in sight much less a fire extinguisher. The engine of choice seems to be a 75 horsepower two stroke out board, pull start with tiller steering. I guess California emissions has not reached this part of the world yet. Most vessels have a five gallon can "not a gas can but a plastic jug repurposed" full of gasoline on board "seems safe to me". The vessel we were on today to ferry us to a further dive site was a unique outrigger type glass over plywood on frames, Powered by a six-cylinder Lehman diesel boat. The fuel tank was a five gallon can with two hoses stuck in it with a rag over the top sitting unsecured next to the helm chair. There was a man at the stern operating a manual bilge pump for most of the voyage and the helm steering was a repurposed steering column out of a Kia (I don't think the blinkers worked). There were at least a few life preservers scattered around if you looked. I was able to peek into the engine room through an opening next to the helm and saw the two batteries sitting on top of the transverse outrigger support with no securing and a lot of wires connected not sure what they all powered as there seemed to be no electrical system other than the starter on the boat. The exhaust was a long black PVC drainage tube with a continual upward slope extending from the transom supported by some kind of cord. At this point I took off the surveyors hat before I jumped overboard thinking I might be safer floating in the ocean than on this old vessel that did manage to get us out to the dive site and back without incident, I'll chalk it up to a supply chain and making due with what they have available to them to keep it running. On the flip side the people are very welcoming and couldn't be nicer. Also haven't seen an electric car, scooter, or skateboard yet. Maybe that's because the power seems to go out two to three times a day.



The boat.



The exhaust tube.



The fuel tank.



Bilge pump operator.

All names have been withheld to protect the innocent! This is in no means me trying to degrade the great people of the Philippines, they have a simple and relaxed way of life with little to no regulation in the resort marine atmosphere. All in all, it's been a great trip so far and I would do it again in a minute.

On some other notes I was able to take part in some continuing education and attend some great conferences over the winter and as always came away with some good knowledge and made a few new contacts, some that I would already consider friends.

Hope to see you all at IMEC.

Well, that's all the Down Time I will be getting for a while. I'm sure to be busy upon returning home!

## The Meeting That Changed The Marine Surveying Industry

Ken Weinbrecht, AMS<sup>®</sup>  
Education VP

I was asked to write about the experience I had in Brunswick, ME in 1986, the real start of SAMS<sup>®</sup>.

Some might know this but my first survey was well before SAMS<sup>®</sup> was founded and it started by reading a book. "Marine Surveying Basic Procedures And Formats by Dale Watts, published in 1973. I purchased in from National Fisherman Magazine it 1974 (no longer published and might not be available anywhere except my personal copy that I donated to the SAMS<sup>®</sup> Library last month). In it was everything that you needed, from forms to reference manuals etc. to start surveying.

But I felt a little uncomfortable just hitting the field with a book and some forms even though what I had learned in the Coast Guard especially doing boarding inspections on the yachts that raced in the Newport to Bermuda race. Many were wood and I kind of hung around a lot of wood boat yards as a kid before going into the Coast Guard and I pointed out a few things to the owners who were quite impressed that a 20 year old had a keen eye to see some things. As a matter of fact during my inspection of one of the beautiful wood yachts the owner said that I should become a marine surveyor when I get out of the Coast Guard. Marine surveyor, what the hell is that?

So when I did get out of the Coast Guard, (married with a 2 year old, I needed to provide for my family). I looked up marine surveying and found in the yellow pages (really... a phone book) a surveying organization and called them. They said they were having a meeting in Newark NJ and that I would be more than welcome to attend. I thought this was going to be my start.....but after the meeting I felt so discouraged because I was snubbed by the people there except one, who basically said that I would not fit into their group, he was nice about it but basically told me the way it was.

*I had made a mortal sin.....I asked how much do you charge to do a survey? I thought I was going to be drawn and quartered and fed to the pigs after I said 10 Hail Mary's and 5 Our Fathers.*

So...it was back to Dale Watts and his book of forms, my only guide. I sat down on my typewriter (no personal computers then) and typed up my own forms, made copies using carbon paper and mailed the original to the customer with glued or stapled on photos. UGH.....that was so time consuming and I never really thought about how much time it took, but in the long run I managed to tweak the forms and develop my own format. I wasn't really charging enough but I was always told, you have to spend money to make money and crawl before you walk. It was a learning experience. I enrolled in the Westlawn School Of Yacht Design, set up a table in my den, bought all of the books about design and inspection and was on my way.

By the way.....I forgot to mention that I went to an all boys HS in Brooklyn and took machine design and drafting. After graduation I was hired by Gibbs & Cox, a naval architecture firm in Manhattan, and was going to college at night, but decided on going into the Coast Guard because working during the day and carrying 15 credits at night was too much.

Looking back now, I lost money on some of the surveys but I always learned something. I went to every boat yard on Long Island NY and gave out my business cards. I went into one service shop one day and the owner said. "Son come into my office".... I thought I had broken the ice!! In his office was a huge cork board and there wasn't an inch of space on it. He said, if you can find some space, put your card there and he just smiled. So I looked and there was my competition, I removed his card, gave it to him and stuck my card there.....he smiled and said, I never did like that guy anyway. I started getting some calls.

Then one day in the summer of 1986 an ad showed up in the National Fisherman newspaper and it turned the world of marine surveying upside down. This is a copy of the original ad.

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SURVEY  
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Limited space available.  
October 23-26, 1986  
Brunswick, Maine

The meeting was put on by Jeff Johnson and as you can see the main speaker, Ian Nicolson who was the guru that many people looked up to in the surveying industry and who is still very active with "Boat How To" a great online learning site full of extremely important information and very well presented.

So I packed a bag and drove my 11 year old Chevy Blazer (8 miles per gallon) to Brunswick Maine from Long Island, expecting to see about 50 - 60 people at the meeting. I was astounded, there were upwards of about 300 people there. I didn't know anyone, but after the first 15 minutes of talking with people, we were all there to become marine surveyors and some of those acquaintances have lasted forever. There were lobsterman, mechanics, naval architects, laborers, commercial fisherman, people that were surveying and having a difficult time learning the profession.

I also learned about ABYC at that meeting and in 1986 joined when they had a small building in Amityville L.I. and have been a member ever since. Their standards really helped me understand what I had to look for in a survey. Their contributions to our profession and the industry have been tremendous.

The Maine meeting was a great success but unfortunately Jeff Johnson of the International Maritime Technical Institute (IMTI) had some health issues and the institute kind of fell apart. I was really disheartened that IMTI had fallen.

But wait...then came along Jim Robbins and Fred Lowe who founded the Society Of Accredited Marine Surveyors as basically a spin off of IMTI in early 1987, and the rest is all mentioned in Downing's article.

As a Charter Member and board member for over 25 years, I have watched this organization grow from 50 people to well over 800 and all of the past Boards of Directors, our Executive Directors Mary, Rhea and our office staff as well as our Regional Directors have contributed to the growth and prosperity of SAMS®. The undying volunteer participation of all of those people has made our organization the *tail that is wagging the dog*; but we cannot let our guard down. We must be ever diligent in our ethics, professionalism and standards. What we do in the field reflects on all of us, so keep in mind the ramifications of doing something for greed or making someone happy because they want your report changed or over valuing a vessel or acting in an unprofessional behavior. Our society is strong and financially secure because of our high ethical standard and CE program.

Remember.....You are part of the tail that is wagging the dog !!

---

Konrad Fliszczyk - Affillite

Boat Bids is Canada's first dedicated consumer marine auction created by boating enthusiasts. Boat Bids has developed an all encompassing marketplace that allows users to both sell and purchase new and used boats. Throughout the week long auction period, users can obtain transportation quotes, insurance quotes, arrange surveys and apply for a financing pre-approval with our incredible partners.

Best of all there are NO listing fees or seller commissions. We welcome private owners, brokers and dealers. We do not take anything from their bottom line. Auctions invoke an emotional buying experience and provide transparency of what the market is willing to pay for a boat. It can bring both excellent sales results and often times a very good deal.

In order to protect buyers against sellers misrepresenting their boats, Boat Bids has implemented a Buyer Fee Guarantee. If a buyer finds that a boat has been misrepresented resulting in a significant defect, the buyer can initiate a claim within 7 days of the auction close. Buyers are required to retain a SAMS® Surveyor to complete a detailed and comprehensive survey within 21 days. If the significant defect falls within our criteria, Boat Bids will fully refund their buyer fee. Note: Buyers are responsible for any costs incurred to perform the survey.

We are excited to work with SAMS® members to perform detailed surveys for both buyers and sellers!

We would love to hear your feedback. We may be reached at [info@boat-bids.com](mailto:info@boat-bids.com)

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Downing Nightingale, AMS®  
Charter Member  
Past President 1992-1993

## **SAMS®** **BEHIND THE SCENE** **(ancient & modern)**

**October 1986**  
Brunswick Maine

The International Marine Technical Institute put on a 4 day educational seminar. 236 marine surveyors (90% not affiliated with any professional organization). As our history records, that there was a strong desire from the independent surveyors for a second professional society with a newer and open philosophy. The following April, a letter of invitation to join something called the Society of Accredited Marine Surveyors, signed by Jim Robbins and Fred Lowe, who had been in attendance in Brunswick arrived.

**April 1988**  
Singer Island

First meeting of a new organization called SAMS®. 27 new SAMS® members attended. There was no organization at that time so I took the attendance, and scribbled some minutes to make it an official meeting. Where was it going to go? When we left, we agreed to meet in Nashville in 6 months with a Bylaws draft and some volunteer “officers”. During the lunch break, Jim Robbins took Mickey Strocchi and the undersigned to lunch. We discussed, we needed a presence, some sort of an office with a mailing address, advertising, a phone number (an 800 toll free number, remember those?) and a fax. Mickey offered an available mailbox next to his and I had room for a phone with and answering tape and a fax machine. At that time, SAMS® consisted of a cardboard whiskey box, with the member file folders, which Jimmy handed to Mickey and Myself with the instructions, “Take it to Jacksonville and make it work”. The first advertising was placed and the first calls for a survey came in and Jimmy took the first SAMS® roster to Lloyds for a meeting in London.

SAMS® was now alive.

Next, New Orleans. To say the least, New Orleans was interesting. Afterwards, it was referred to as the Battle of New Orleans. Marine surveyors are an independent thinking bunch, ever more so when you get them in the same room. But, we made progress, shook hands and agreed to meet again. We now had Bylaws and a working (volunteer) Board, an office and a “part time” secretary.

SAMS® was on a roll.

Fast forward 37 years. Last week (3/13/24) I attended the winter Board meeting held each year in Jacksonville; so the Board has the opportunity to visit our international office with our Executive Director and three staff members on the day before Board meeting.

Last week's agenda included Board reports on:

Public relations: (VP, Eddy Assaf, AMS<sup>®</sup>) Advertising is a major budget items as it keeps our name in front of the public and brings in clients to our members.

Budget review: (Secretary/Treasurer, Randy Sharpe, AMS<sup>®</sup>) the Board and staff are stewards of our members dues.

Continuing Education: (VP, Ken Weinbrecht, AMS<sup>®</sup>) (he was at Brunswick Meeting). We are professionals and must keep enhancing our knowledge of our industry. (Kenny again) reported on the speakers at our upcoming educational IMEC.

Meetings & Conventions: (VP, Joe Lobley, AMS<sup>®</sup>) Joe is planning, visiting and contracting for meeting venues 2 years in advance.

Membership: (VP, Chuck Solarek, AMS<sup>®</sup>) New members are the life blood of any organization and when you are a specialized professional society, qualifications of applicants is of utmost importance. He coordinates with the Regional Directors on every application. He also reviews the required continuing education credits of our members.

Testing: (VP, Angel Zeno, AMS<sup>®</sup>) You all know about the AMS<sup>®</sup> test (or you think you do). The test is under constant review to keep it relevant. Security of the test is very important so that there is no unfair advantage for anyone (subtle). Review test results, ie: if one question often missed, then it needs to be reworded or removed.

International Office: Rhea Shea, Executive Director. All of the above would not work without Rhea, Mark & Cheryl. This article would be too long if I tried to list everything they do keeping up with over 800 members.

During a working lunch the meeting continued with old and new business, to list just some topics: Text seminar review, Survey review sheet, RSRC, NASBLA, Ft. Lauderdale Mariners club, Regional Director handbook, Policy Manual, Surveyor Associate CE policy update, Website, Ethics quiz, Roster book, Membership applications, IMEC speakers, USPAP, Regional Director reports and more.

0900 – 1630 straight through with the working lunch. Got through the whole agenda !

Now you know a little of what went on and what goes on BEHIND THE SCENE.

Fourteen of your fellow marine surveyors (Board of Directors & Regional Directors) took several days off of THEIR WORK (at no pay) for YOUR BENEFIT to manage OUR organization.

Over these 37 years, there have been 20 Presidents and probably a couple of hundred VOLUNTEER Board Members **working for YOU.**

**THANK YOU Gentlemen and Ladies for your dedication to SAMS<sup>®</sup>.**

We encourage you to also volunteer to help SAMS<sup>®</sup> continue its mission in enhancing the marine surveying profession.

**Joseph A. Derie, AMS®  
SAMS® Commercial Workboat Chair  
SAMS® Tug & Barge Chair**



CAPT Joseph A. Derie, NAMS-CMS; AMS®, SAMS®; CMI  
Chair, SAMS® Commercial Workboat Committee  
Chair, SAMS® Tug & Barge Committee  
Southwest Passage Marine Surveys, LLC

**OSHA AND CONFINED SPACES – PART 1  
SURVEYING COMMERCIAL FISHING VESSELS AND BARGES**

This is the first of a three-part series of articles on OSHA and confined spaces.

OSHA has regulatory authority on commercial vessels under two CFRs. 29 CFR 1910 *Occupational Safety and Health Standards* and 29 CFR 1915 *Occupational Safety and Health Standards for Shipyard Employment*.

OSHA has authority on all commercial and recreational vessels, whether un-inspected or inspected, while they are in a shipyard.

As I have written before, the US Coast Guard has regulatory responsibility regarding safety aboard uninspected commercial vessels at all times. The Occupational Safety and Health Administration (OSHA) also has regulatory responsibility regarding safety aboard these vessels while they are in US waters (OSHA Instruction, Directive Number: CPL 02-01-04, effective date: 02/22/2010, Subject: *OSHA Authority Over Vessels and Facilities on or Adjacent to U.S. Navigable Waters and the Outer Continental Shelf (OCS)*). Due to this memorandum, surveying uninspected commercial vessels should be done using the required standards of the USCG, general OSHA, 29 CFR 1910 *Occupational Safety and Health Standards*, and if the vessel has a crane or derrick, OSHA 29 CFR 1919 *Gear Certification*.

One area of importance that is covered by both 29 CFR 1910 and 29 CFR 1915 is confined spaces. 29 CFR 1910.146 *Permit-required confined spaces* “contains requirements for practices and procedures to protect employees in general industry from the hazards of entry into permit-required confined spaces. This section does not apply to agriculture, to construction, or to shipyard employment (parts 1928, 1926, and 1915 of this chapter, respectively).” Surveyors surveying uninspected vessels should be knowledgeable of this regulation, especially 29 CFR 1910.146(c)(2) *General requirements* which states: “(2) If the workplace contains permit spaces, the employer shall inform exposed employees, by posting danger signs or by any other equally effective means, of the existence and location of and the danger posed by the permit spaces.”

A further note states: “NOTE: A sign reading “DANGER - PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER” or using other similar language would satisfy the requirement for a sign.” Where I have found this sign required mostly is on uninspected deck barges and uninspected fishing

vessels. In fact, OSHA has issued and OSHA Fact Sheet “*Confined Space Safety on Commercial Fishing Vessels*” which anyone surveying these vessels should have a copy of. The Fact Sheet has sections on “*Atmospheric Hazards in Confined Spaces on Vessels,*” “*Examples of Potential Hazards,*” “*Safe Confined Space Entry Practices,*” and “*Definitions.*”

Examples of Potential Hazards are “Ballast Tanks or Voids, Lazarette, Chain Locker,” “Sewage Tanks, Refrigeration Spaces,” “Fuel, Lube or Hydraulic Oil Tanks,” and “Slop Tanks, Holds or Voids where organic matter, like fish or fish slime, may collect and decomposes.”

Generally, the biggest concerns when surveying an uninspected commercial fishing vessel are the anchor locker or a fish hold. I once surveyed a fishing vessel whose owner had died, and the vessel had been sitting for several years. I told my client that I would not enter the fish hold and he agreed that taking pictures from the deck was acceptable. Another time I was surveying a hulk that had been sitting for a number of years, and I had to remind a USCG inspector that they should not enter the anchor locker. Again, pictures from the deck were acceptable.

When it comes to barges, you should make it clear to your client that you will view the below compartments from the deck and will enter them only if they have been certified gas-free by a marine chemist. If not, take 360° pictures with your camera well secured to your arm extended into the compartment. A quick review of the photos should tell you of any problems in the compartment, and if you see something of concern, discuss it with your client or whoever is escorting you around the vessel.

Of note I occasionally run across a true void in a barge, this is a compartment that is completely enclosed, without a watertight door or manhole or other access. My report always recommends opening and inspecting the void the next time the vessel is in a shipyard, and at that time, install a watertight door or manhole for ease of inspection. Due to loss of oxygen, moisture, and corrosion, much can happen that affects the structure in a void, and they must be inspected time to time.

The “*Safe Confined Space Entry Practices*” section of the OSHA Fact Sheet “*Confined Space Safety on Commercial Fishing Vessels*” contains a number of mandatory practices. They are all important but the two most important are:

- “Ensure that a Shipyard Competent Person or Marine Chemist evaluates each confined space in accordance with OSHA requirements,” and
- “Personnel performing tank watch duties should never enter a space to attempt a rescue. A high percentage of confined space fatalities involve workers attempting to rescue a coworker.”

This is hard to do knowing a buddy is in the compartment, but it keeps a potential rescuer from becoming part of the problem.

Parts 2 and 3 of this series of articles will be in future newsletters and will discuss OSHA’s *Permit Required Confined Spaces* pamphlet and 29 CFR 1915 *Occupational Safety and Health Standards for Shipyard Employment*.

As always, I hope anyone who wants to discuss this column or has questions about surveying commercial workboats, tugs, barges or 46 CFR Subchapter M should contact me at 503-236-6818.



## **Steve Heinrich, AMS<sup>®</sup> Safety Committee Chair**

SAMS<sup>®</sup> has a Safety Committee that was organized in 2022. The mission of the SAMS<sup>®</sup> Safety Committee is to identify resources that will allow our members to learn about safe working practices and relevant safety equipment, and present this information to the SAMS<sup>®</sup> General Membership.

As surveyors, we are responsible for our own safety, and SAMS<sup>®</sup> does not require adherence to the rules and mandates of any agency or governing body regarding the safe conduct of our survey tasks. Each surveyor decides how to run their businesses, including what precautions to take to protect themselves from injury.

**We heard you! Our initiatives are designed to deliver safety training based on the feedback from SAMS<sup>®</sup> surveyors.**

Three surveys have been presented to our members, one in February of 2022, one in June of 2023 and one at the IMEC in Montreal in October 2023. Feedback from SAMS<sup>®</sup> members provided in the survey responses, regarding their preferences for the format of safety education and safety topics of greatest interest, have guided the initiatives of the SAMS<sup>®</sup> Safety Committee in 2024, which are outlined below.

1. Safety Training resources identified for our members with an emphasis on internet-based courses.
2. Safety equipment reviews from SAMS<sup>®</sup> members. These reviews are not endorsements by SAMS<sup>®</sup>, strictly reviews from our members.
3. Safety articles in the quarterly newsletters.  
Safety training at Regional Meetings and IMEC.

One additional initiative, below, is intended to allow us to deliver safety education content in all regions and create a committee membership that more closely matches the broader SAMS<sup>®</sup> membership diversity by geography. Recruiting new Safety Committee members, especially in regions outside of the eastern seaboard.

**SAMS<sup>®</sup> Safety Committee is an opportunity to share your knowledge of safe working practices in the surveyor work environment, knowledge which could protect your fellow surveyors from a preventable and avoidable injury.**

The Safety Committee meets the third Tuesday of every month using Google Meet and our members have presented at the International Meeting in Montreal and written articles for the SAMS<sup>®</sup> newsletter. If you are interested in joining the Safety Committee, we would welcome your membership and input. Please call or email me with your contact information.

Steve Heinrich, SAMS<sup>®</sup> Safety Committee Chairman  
Phone: 715-255-0515, email: [steve@flagshipmarinesurvey.com](mailto:steve@flagshipmarinesurvey.com)

Safety Topic	Regulating body	Training Resources
Personal Flotation Device	USCG	<a href="https://uscgboating.org/recreational-boaters/life-jacket-wear-wearing-your-life-jacket.php">https://uscgboating.org/recreational-boaters/life-jacket-wear-wearing-your-life-jacket.php</a>
Heat Exhaustion	<a href="https://www.osha-slc.gov/niosh">National Institute for Occupational Safety and Health (NIOSH)</a>	<a href="https://www.osha.gov/sites/default/files/osa_heattraining_guide_0411.pdf">https://www.osha.gov/sites/default/files/osa_heattraining_guide_0411.pdf</a>
Confined Space	OSHA	NFPA 350: Safe Confined Space Entry and Work, Online Training Series
Jack stands and Blocks for vessels	OSHA Standard 1926.753 - Hoisting and Rigging	<a href="https://training.fpsafety.com/courses/boat-blocking-storage-safety/">https://training.fpsafety.com/courses/boat-blocking-storage-safety/</a>
Hearing Protection, Hearing Conservation	OSHA	<a href="https://www.oshacademy.com/courses/training/159-hearing-protection-basic/159.php">https://www.oshacademy.com/courses/training/159-hearing-protection-basic/159.php</a>
Controlling Hazardous Energy (Lock-out Tag-out)	OSHA	<a href="#">Online: OSHAcademy Course 621 Controlling Hazardous Energy (Lockout/Tagout), \$16</a> <a href="#">OSHA Education Center Lockout/Tagout, \$25</a>
Ladder	OSHA 1926.1053 (a)	<a href="https://osha.oregon.gov/edu/courses/pages/portable-ladder-safety-online-course.aspx">https://osha.oregon.gov/edu/courses/pages/portable-ladder-safety-online-course.aspx</a>

## Seaman's Manslaughter Statute Sinks Dive Boat Captain

By James E. Mercante

November 30, 2023

**T**here was a time when sea captains really did go down with the ship. Like the captain of Titanic; he did all he could do and then remained in the wheelhouse as the unsinkable ship did just that.

Leaving passengers stranded on a vessel in extremis is not only against maritime tradition, but the optics are very bad, particularly with a jury. It is also highly improbable that a veteran sea captain could truly be judged by a jury of his or her 'peers.' The captain of the dive boat *Conception* learned this lesson the hard way.

The *Conception* was anchored off the California coast by the Channel Islands when it caught fire before dawn on Labor Day in 2019. It was the last day of a three-day scuba diving excursion. Thirty-three passengers and one crew member perished; they were all trapped in the bunkroom below the main deck—trapped is the key word. There was only two means of escape from the bunkroom where all the passengers slept but tragically both of those exits led up to the same space, the salon deck, where the fire was already raging. One of those two exits was just a small overhead hatch that was impeded by bunk beds. No crew member fought the fire.



Photo: Ventura County Fire Department via AP

Firefighters respond to a fire aboard the *Conception* dive boat fire in the Santa Barbara Channel off the coast of Southern California on Sept. 2, 2019. After a 10-day trial, on Nov. 6, 2023, a federal jury convicted the captain for the 34 deaths under the Seaman's Manslaughter Statute.

After a 10-day trial, a federal jury on Nov. 6, 2023, found Captain Jerry Boylan guilty of one count of Misconduct or Neglect by a Ship's Officer for the 34 deaths. This was the deadliest maritime disaster in recent U.S. history. The captain of the 75-foot wood and fiberglass vessel was the first one to jump overboard. He left behind the crew and passengers all of whom perished except the four crew members that joined him.

Photo: Damien Dovarganes/AP



Defendant Jerry Boylan, captain of the *Conception*, arrives in Federal court in Los Angeles, Tuesday, Oct. 24, 2023.

The jury found that Captain Boylan committed a series of failures including abandoning his ship instead of rescuing passengers still alive and trapped below deck and in need of assistance to escape, not posting the required night watch or roving patrol throughout the evening hours, failing to train the crew on fire-fighting procedures,

failing to use the public address system to warn passengers and crew about the fire and failing to provide any firefighting directions to crewmembers after the fire erupted.

### Maritime Lore

There is no law, other than maritime lore, that obligates a captain to actually go down with the ship. It's just that the captain, the member of the crew with the most knowledge of the ship and its systems, is expected to remain in charge and be the last person to leave the vessel. Turpin and MacEwen, *Merchant Marine Officer's Handbook* §§18-20 (Cornell Maritime Press, Inc., 1979). See also, "Death Before Dishonor: Go Down with the Ship?" James E. Mercante, *New York Law Journal*, May 15, 2014. It is more of an expectation than a legal duty, and it is what the general public (including judge and jury) have come to expect.

In 2003, the Staten Island Ferry *Andrew Barbieri* struck a concrete pier on Staten Island at full speed, killing 11 people and injuring 70. The captain fled the scene and was later convicted and jailed. In 2012, the captain of the *Costa Concordia* abandoned the cruise ship after it crashed into a

reef and was sinking off the coast of Italy, leaving hundreds of passengers and crew aboard. Thirty-two died. The captain claimed he 'fell' into a lifeboat. He too was convicted of manslaughter and sentenced to 16 years in prison.

### Seaman's Manslaughter Statute

The federal maritime law that has become known as the Seaman's Manslaughter Statute (SMS) predates the civil war and was designed to hold owners, captain and crew responsible for maritime disasters that result in death. 18 U.S.C. §1115 (Misconduct or Neglect of Ship Officers). The statute states in part that every captain employed aboard a vessel by whose misconduct, negligence or inattention to his duties on such vessel, the life of any person is destroyed, shall be fined under this title or imprisoned not more than 10 years or both.

The first SMS indictment of Captain Boylan was dismissed reportedly because it contained no 'gross negligence' charge. Thus, it appears that some 'gross negligence' is now required for a criminal indictment to stand under the SMS.

The deadly fire resulted in not only multiple civil lawsuits against the vessel owner, and U.S. Coast Guard under the Suits in Admiralty Act, but also changes in maritime regulations, Congressional reform of the vessel owner's limitation of liability act and an 87-page National Transportation Safety Board (NTSB) Marine Accident Report. The massive NTSB report contains multiple recommendations directed not only to the vessel owner (Truth Aquatics Inc.) and the Passenger Vessel Association, but also includes several safety recommendations to the U.S. Coast Guard.

### Legal Blunder?

One legal and insensitive blunder seemingly not well thought out, in this author's opinion, was that vessel owner Truth Aquatics filed an admiralty proceeding in federal court just three days

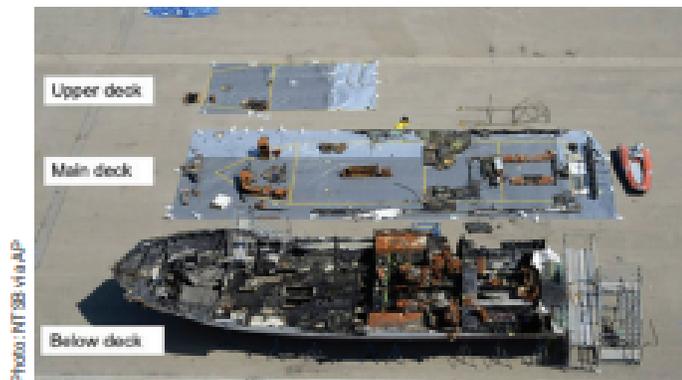


Photo provided by the National Transportation Safety Board (NTSB) shows the wreckage of the dive boat *Conception* on a dock in Southern California.

after the deadly tragedy to limit its liability under maritime law to zero. This action was filed before the wreck was even brought to the surface and before the deceased were positively identified. The zero-dollar amount was the post-casualty value of the remains of the vessel, which burned to the waterline and sank.

A vessel owner's limitation action is standard procedure in marine casualty cases—but timing is everything. The ill-timed filing sparked a public outcry and prompted two heated California lawmakers to race to Congress seeking change. This resulted in the Vessel Owner Limitation of Liability Act of 1851 (46 U.S.C. §30501) being substantially amended for the first time in over 150 years to remove an entire class of passenger vessels from its protection. While the Limitation Act has been amended only twice before in 1884 and 1935, no prior amendment or maritime casualty had resulted in such removal of a class of vessels from the limitation defense.

The Small Vessel Passenger Act (SPVA) became law on Dec. 23, 2022. It amends 46 U.S.C §30502 of the Limitation Act to exclude "covered small passenger vessels" from its application. The amendment will impact many small passenger

vessel owners such as crew boats or crew transfer vessels used to transport passengers and crew to work sites. The SPVA defines 'small passenger vessel' as ones carrying not more than 49 passengers on an overnight domestic voyage and not more than 150 passengers on any voyage that is not an overnight domestic voyage. 46 U.S.C §30501.

The Coast Guard convened a formal Marine Bureau of Investigation, but it remains ongoing as evidence collection and witness interviews were placed on hold until the criminal proceeding was concluded.

According to the NTSB, a definitive ignition source could not be determined due to the extensive destruction by fire. The likely source however included the electrical distribution system, unattended lithium batteries being charged, or improperly discarded smoking materials in a combustible trash can.

At trial, the captain focused blame on the vessel owner, but the U.S. attorney argued that 'the captain is responsible for everything that happens on the ship, including passenger safety'. This is not necessarily true as a matter of maritime law but it was difficult to rebut in a case this tragic. The captain's counsel was an appointed public defender not a maritime attorney. If the captain had license and marine defense insurance, such specialty insurer would have retained experienced maritime counsel to defend. Like any insurance, it's good to have it when needed.

Captain Boylan faces up to 10 years in federal prison and will be sentenced on Feb. 8, 2024.

**James E. Mercante** ([jmercante@rubinfiorella.com](mailto:jmercante@rubinfiorella.com)) is a partner at Rubin, Fiorella, Friedman & Mercante and president of the Board of Commissioners of Pilots of the State of New York.

## A Career-Ending Collision at Sea

By James E. Mercante

February 28, 2024

It is said that a collision at sea will ruin your whole day. It can also be fatal and ruin careers. One such collision punctuates this in a big, expensive, and tragic way. Ten Navy sailors died and 31 were injured. The two ships sustained millions in damage. The careers of the commanding and executive officers aboard the Navy warship ended on that fateful voyage—true to the adage that it takes years to build a reputation and minutes to destroy it.

The 9,000-ton guided-missile destroyer USS John S. McCain (the McCain) collided in the Singapore Strait with a 39,000-ton oil and chemical tanker Alnic MC (the Alnic). What resulted was a textbook case of maritime law involving issues of collision liability, apportionment of fault, federal admiralty procedure, choice of law, ship owners' Petition for Exoneration from or Limitation of Liability and the preclusion against service members suing the military.

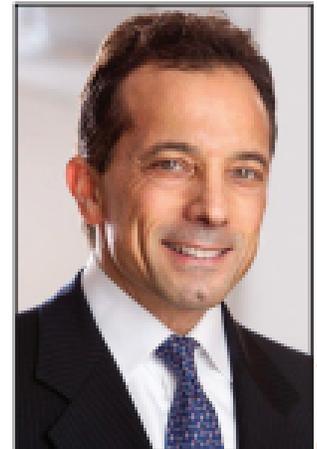
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JAMES E. MERCANTE ([jmercante@gylaw.com](mailto:jmercante@gylaw.com)) is a partner at Gallo Vitucci Klar (in merger with his former firm Rubin, Fiorella, Friedman & Mercante) and a retired Navy captain and president of the Board of Commissioners of Pilots of the State of New York.

A five-day bench trial was held before Senior Judge Paul A. Crotty of the U.S. District Court for the Southern District of New York in November 2021. The massive case was split into two trial phases: Phase 1 being the trial to apportion liability

between the tanker owner and the United States, and Phase II to adjudicate the death and injury claims. Crotty's 49-page decision dated June 15, 2022, admirably navigates through the collision facts in minute by minute granular detail worthy of a movie script. *In the Matter of the Complaint of Energetic Tank as Owner of the M/V ALNIC MC, for Exoneration from or Limitation of Liability*, 607 F. Supp 3d 328 (SDNY 2021).

It's hard to fathom a more comprehensive collision analysis. Indeed, the Navy took notice



James E. Mercante

Courtesy photo

of this decision and has incorporated portions of Crotty's collision analysis in its Bridge Resource Management training course taught to Surface Warfare Officers.

The awards for injury and death will be determined by a jury in Phase II, which trial has yet to begin. Alnic's appeal of Crotty's apportionment of fault ruling was just argued in the U.S. Court of Appeals for the Second Circuit on Jan. 18, 2024 before Judges John Walker, Susan Carney and Michael Park. The decision is pending.

### Casualty Facts

The Aug. 21, 2017, collision occurred in one lane of a traffic separation scheme within the Singapore Strait. As the trial testimony

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Crotty ruled the Alnic to be 20% at fault while the McCain's fault was 80%. Interestingly, Alnic's fault included its post-impact omissions, which is rarely seen.

revealed, the McCain was cruising alongside and overtaking the oil tanker. Thus, the tanker had the right of way under navigation rules. The McCain lost steering and veered left suddenly into the path of the tanker. Alnic's bow pierced the McCain's port side which flooded the McCain's compartments with seawater within seconds. *In re Energetic Tank*, 607 F.Supp 3d at 329.

Prior to impact, the tanker captain was staring in the cross-hairs of a U.S. Navy warship cutting right across its bow. But the captain apparently froze. Crotty determined from the



Photo: Todd Frazzetta/Wikimedia

The guided missile destroyer USS John S. McCain.

fact and expert testimony that the tanker kept steaming ahead in the direction of the McCain without timely reducing speed, stopping or taking the ship off autopilot.

With the tanker still on autopilot, the Alnic's bow was forced to its left due to the impact. The ship autocorrected to the right and sheered through the McCain's hull, killing 10 unwary Navy sailors asleep in their bunks.

The injury claimants argued that the ship should have been placed in manual steering within a traffic separation scheme. This is not a foreign concept. The Board of Commissioners of Pilots in New York (on which the author serves) has a policy and procedure that requires all vessels navigating in pilotage waters to be manually steered "by an alert and attentive member of the vessel's crew." This includes cruise ships arriving in New York.

### Alnic's Limitation Action

The admiralty proceeding was commenced in New York by the tanker owner (Energetic Tank) filing a petition for exoneration from liability or to limit its liability to \$16,768.00,

which was the post-casualty value of the Alnic. 46 U.S.C. §30501. A limitation action is a standard maritime defense afforded to any vessel owner, including a foreign ship owner who is either sued here or invokes United States as the jurisdiction.

The tanker was Liberian-flagged and managed by a company based in Greece. In 1914, the U.S. Supreme Court made clear in litigation involving the sinking of the RMS Titanic that a foreign vessel owner is entitled to the same statutory maritime defenses afforded to a U.S. owner. *Ocean Steam Navigation v. Mellar*, 213 U.S. 718 (1914); See also, James E. Mercante, "In the Wake of The Titanic: An Unsinkable Law", *New York Law Journal*, April 12, 2012. A limitation action allows all claims to be asserted in one proceeding against the vessel owner (like an interpleader).

Here, the claims included damages to both ships, multiple personal injuries and 10 fatalities. The military personnel were precluded by Supreme Court precedent (*Feres Doctrine*) from bringing suit against the United States for injuries arising out of or in the course of activity incident to military service. *Feres v. United States*, 340 U.S. 135 (1950).

To add insult to injury, the commanding officer was court-martialed and found guilty of dereliction of duty. The executive officer and other senior ranking officers were disciplined, effectively ending Navy career paths. The Navy issued a scathing report that was admitted in evidence.

### **The Target-Joint and Several Liability**

The petitioner (owner of the Alnic) fought vigorously at trial to prove the McCain was

100% at fault. This was the only outcome that would sit well with the tanker owner because the military personnel were barred from suing the United States, and therefore took aim at the tanker. But, more importantly, under the maritime law of joint and several liability, Alnic was well aware that had it been found even 1% at fault, the service member injury and death claimants would recover the entirety of the judgments from the tanker owner.

This scenario became a stark reality when Crotty ruled the Alnic to be 20% at fault while the McCain's fault was 80%. Interestingly, Alnic's fault included its post-impact omissions, which is rarely seen. After the crash, Alnic failed to timely stop engines, and took no action to switch to manual steering. The McCain's faults were legion, including loss of steering, crew ignorance of the high tech steering controls, multiple navigation rule violations, no danger signal sounded, unaware that one screen touch could have stopped the ship.

### **Pyrrhic Victory**

The parties stipulated to the damages sustained to the two ships with the high-tech Naval warship McCain suffering \$185 million in damages. The Alnic damages were only \$442,445. Thus, while 20% apportionment of fault may seem like a win for the Alnic, it was far from it. Under joint and several liability, the tanker owner was obligated to pay 20% of the McCain's \$185 million in damages, amounting to nearly \$37 million dollars. The United States (which had the larger allocation of fault) was obligated to pay the tanker 80% of its damages, only \$354,000.

Accordingly, with the tanker owner also now facing the totality of the injury and death awards, the Alnic interests argued that despite the *Feres Doctrine's* direct lawsuit preclusion, the Alnic should be entitled to contribution and/or indemnity from the United States for its 80% allocation of fault.

The district court rejected this argument and Alnic took this legal issue up on appeal together with the apportionment of 20% fault. Findings of fact as to apportionment of fault in a collision case are subject to the difficulty to surmount 'clearly erroneous' standard of proof on appeal. Crotty cited precedent that there is "no formula for apportioning liability." The allocation requires consideration of matters not readily amenable to precise analysis but that percentages be accompanied by "sufficient explanation to provide a reviewing court with some general understanding of the basis for the decision." 607 F.Supp 3d at 360.

#### **Limitation Action**

The district court also considered Alnic's defense of limitation of liability to the tanker's value. The act protects the vessel owner from unlimited vicarious liability for damages caused by on board negligence of the captain or crew. *Tanden v. Captain's Core Marina of Bridgeport*, 752 F.3d 239, 244 (2d Cir. 2014).

The court ruled that petitioner having failed to prove at trial that it (as owners of the tanker) lacked privity or knowledge of the acts and omissions that led to the collision, Alnic's petition to limit its liability was denied. See 607 F.Supp 3d at 371. Lack of proper crew training and crew competence were shoreside management issues.

Choice of law was and remains important in this case. The district court applied the federal maritime law of the United States in its collision liability analysis. But, despite the Alnic having chosen to file its petition here and all claims are by U.S. citizens, the court vowed to apply the law of Singapore to the injury and death claimants' remedies. *In the matter of Energetic Tank*, 2020 WL 114517 (SDNY 2020). This issue was argued on appeal as well and awaits ruling, with claimants suggesting that U.S. law should apply as well to damages.

There has been a call on for quite some time for Naval Surface Warfare Officers to qualify and obtain licenses issued by the U.S. Coast Guard (like Merchant Mariners) to operate ships. The McCain and similar Navy ship collisions perhaps makes this a Mayday call. Meanwhile, the sailor families await their day in court and fair compensation for their loss.

# BAD BOAT PICS



If you have any bad boat pics send them into the editor.

John Lowe - [captursa@aol.com](mailto:captursa@aol.com)



## IMPORTANT MEMBER INFORMATION



### **2024 SAMS<sup>®</sup> International Meeting & Educational Conference (IMEC) September 11 - 14 Sheraton Inn, New Orleans**

#### CE Credits:

Don't forget to check the website under "Education" for ideas to obtain CE's.

#### Upcoming IMEC'S





## MEMBER'S CORNER DECEMBER 2023 - MARCH 2024

The following members are now  
Accredited Marine Surveyors with the  
earned designator:

### “YACHTS & SMALL CRAFT”

*Christian Adam Andrews, Danvers, MA*  
*Gabriel Batista, Milford, CT*  
*Manfred (Manny) Bohn, Vonore, TN*  
*Richard Blessing, Nokomis, FL*  
*Barton Cerra, Wakefield, RI*  
*Andrew Dwyer, West Brook, CT*  
*Bedford Cook Glascock, II, Annapolis, MD*  
*Matthew Hoxie, Sebastian, FL*  
*Cory Peterson, Annapolis, MD*

### “HULL & MACHINERY”

*Richard John Anthony Gayton, Seal Cove, ME*  
*Javed Siddiqi, Orange, CA*

The following people have been  
accepted into SAMS® as:

### “SURVEYOR ASSOCIATES”

*Lucas Patrick Byrne, Plantation, FL*  
*Matthew P. Donley, Sturgeon Bay, WI*  
*David Mark Hatcher, Jr., Saint Augustine, FL*  
*Patrick Daniel Igoe, Mattapoisett, MA*  
*Steven A. Markley, Stuart, FL*  
*Scott Miller, Cape Charles, VA*  
*Daniele Piludu, Bronx, NY*  
*Leilani Tupper, Rancho Cordova, CA*

### APPLICANTS SEEKING SAMS® MEMBERSHIP:

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*Jean-Sebastien Deschambault, Granby, QC, Canada*  
*Anthony P. DiLorenzo, Syracuse, NY*  
*Stephen Dinklage, Brick, NJ*  
*Jean Pierry Ferreira, Itajai/SC, Brazil*  
*Patrick Fitzsimmons, Wayne, Walworth, NY*  
*Konrad Fliszczyk, Oakville, ON, Canada*  
*Patrick H. Gordinier, Stevensville, MD*  
*Michelle E. Gorman, Galveston, TX*  
*Joshua Francis Vaughan Hannigan, Guaymas, Mexico*  
*Brittney Harris, Dadeville, AL*  
*Oleg Kolesnykov, Kenner, LA*  
*Mereidi Liebner, Girdwood, AK*  
*Rhalen Allen Mertz, Longview, TX*  
*Peter C. Mitalas, Saint Johns, FL*  
*Dustin Norlund, Toronto, ON, Canada*  
*Kelly Gene O'Day, Nayarit, Nuevo Vallarta, Mexico*  
*Jack Richard Oettinger, Port Charlotte, FL*  
*Arnulfo Martinez Pacheco, Mexico City, Mexico*  
*Laura Peterson, Palm City, FL*  
*Kevin Brian Quinn, Fort Lauderdale, FL*  
*Rolando Santos, Miami, FL*  
*Nick Spisak, Miami, FL*  
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*James Andrew Whittaker, Tortola, BVI*  
*William Walter Williams, Decatur, AL*



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National Fire Protection Association.....	Kenneth Weinbrecht, AMS®.....	<a href="mailto:oceanbaymarine@yahoo.com">oceanbaymarine@yahoo.com</a> .....	631-924-4362

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***SAMS<sup>®</sup> 2024  
International Meeting  
&  
Educational Conference (IMEC)  
September 11th - September 14th***



**Sheraton New Orleans  
500 CANAL STREET  
NEW ORLEANS, LOUISIANA, USA, 70130**

***For More Information Contact:***

***Society of Accredited Marine Surveyors<sup>®</sup>, Inc.  
800-344-9077 / 904-384-1494  
samshq@marinesurvey.org / www.marinesurvey.org***