

## MOVING HAZARDS: THE WATER

**A tremendous amount of hazardous cargo is shipped on U.S. waterways<sup>1</sup> and there are indeed accidents.**

- History shows that crashes, leaks, spills as well as fires on vessels transporting hazmat can cause large-scale environmental damage while also putting the health of ship workers, clean-up workers, and nearby communities at terrible risk.<sup>2</sup>
- Among the most well-known recent incidents involved the cargo ship *Dali*, which lost power and crashed into Baltimore, Maryland's Francis Scott Key Bridge. The collision not only caused the bridge to collapse, killing six construction workers. It also may have damaged 14 containers filled with alkyl sulfonic acids, corrosive liquids, flammable and other environmentally-hazardous substances, two of which fell into the Patapsco River at the mouth of the Chesapeake Bay.<sup>3</sup>

**The regulatory scheme relies primarily on self-policing by ships and after-the-fact federal enforcement, which does nothing to erase the sometimes irreparable environmental harm caused by serious incidents.**

- Ship owners or operators are supposed to both diagnose and fix problems as well as monitor releases,<sup>4</sup> which they often fail to do properly.<sup>5</sup>
- The U.S. Coast Guard (USCG) is the federal agency responsible for vessel safety<sup>6</sup> and marine environmental protection,<sup>7</sup> but they are only two of the agency's 11 statutorily-mandated missions,<sup>8</sup> and recent reports show a persistent lack of institutional will to make them priorities.<sup>9</sup>
  - Among the many areas where USCG's lack of resources or agency will is impacting safety: vessel inspections, which don't always take place because of a shortage of marine inspectors.<sup>10</sup>
  - USCG inspects a relatively small percentage of foreign ships given the volume of traffic, potentially allowing many non-compliant ships that pose environmental and other safety risks to operate in U.S. waters.<sup>11</sup>

## Victims may turn to the civil courts after a crash or release; however, maritime law can present significant obstacles in a victim’s quest to reach the courthouse.

- Unlike land-based claims, those harmed by vessels must sue under federal maritime law,<sup>12</sup> which, as one expert put it, are not “modern, consumer-oriented” laws, but rather “nineteenth-century legal principles, the purpose being to insulate these companies from legitimate...claims.”<sup>13</sup>
- The federal Limitation of Liability Act<sup>14</sup> (LOLA), an anachronistic maritime law on the books since 1851, provides an avenue for vessel owners to try to drastically limit their liability to the *post-accident value of the vessel and pending freight*, “regardless of the severity of the catastrophe.”<sup>15</sup>
- LOLA was recently invoked by the manager and the owner of the *Dali*, Synergy and Grace Ocean, respectively, who within six days of the Key Bridge disaster filed a joint petition to cap their legal liability at roughly \$43.6 million.<sup>16</sup>
- In recent years, the shipping industry has benefited from heavy lobbying by the cruise industry, which has been credited with blocking congressional repeal of LOLA.<sup>17</sup>

## Notes

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<sup>1</sup> In 2023 alone, vessels transported over 133 million tons of fuel oils, more than 130 million tons of natural gas and other fossil fuel products, over 105 million tons of crude petroleum, and more than 67 million tons of gasoline. Bureau of Transportation Statistics, “Moving Goods in the United States,” <https://data.bts.gov/stories/s/Moving-Goods-in-the-United-States/bcyt-rqmu/#commodities> (viewed April 20, 2024).

<sup>2</sup> For example, Rich McLoughlin, Head of Maritime Engagement at Lloyd Register company Safetytech Accelerator, told *CBS Boston* that “ship captains are seeing cargo fires on their vessels roughly occurring at the rate of one a week, and any of these incidents has the potential for significant loss of life, loss of property, and damage to the environment.” Cheryl Fiandaca, “I-Team: Undeclared dangerous goods pose risk to cargo ships, crew,” *CBS Boston*, May 24, 2023, <https://www.cbsnews.com/boston/news/i-team-undeclared-dangerous-hazmat-goods-risk-cargo-ships-crew/>. In addition, the National Cargo Bureau, a non-profit organization that works with carriers and the Coast Guard, found that 158 of 500 containers it inspected were dangerous goods or hazmat cargo, heading to the United States, and had a failure rate of 70%, “an ‘enormously high number’ that posed serious safety risks to the ship, cargo, and crew.” These findings are especially troublesome given that “[n]inety percent of traded goods are shipped by sea and 10% contain what is called dangerous goods, according to the World Shipping Council.” *Ibid.*

<sup>3</sup> National Transportation Safety Board, *Contact of Containership Dali with the Francis Scott Key Bridge and Subsequent Bridge Collapse*, Marine Investigation Preliminary Report, May 14, 2024, [https://www.nts.gov/investigations/Documents/DCA24MM031\\_PreliminaryReport%203.pdf](https://www.nts.gov/investigations/Documents/DCA24MM031_PreliminaryReport%203.pdf). The Unified Command represented to NTSB that “no hazardous material from containers has reached the water. Salvors are transferring the bulk liquid acid to intact tanks and moving containers ashore.”

<sup>4</sup> U.S. Environmental Protection Agency, “EPA Settles with Shipping Company over Claims of Clean Water Act Violations,” February 12, 2024, <https://www.epa.gov/newsreleases/epa-settles-shipping-company-over-claims-clean-water-act-violations>

<sup>5</sup> Office of Commercial Vessel Compliance, *Port Control in the United States, 2023 Annual Report*, <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/CG-CVC/CVC2/psc/AnnualReports/annualrpt2023a.pdf>

<sup>6</sup> “The Marine Safety mission promotes safety at sea and the prevention of maritime accidents, personnel casualties, and property losses. To fulfill this mission, the Coast Guard investigates maritime accidents and inspects vessels and marine facilities. ...It also establishes safety standards and policies for vessel design and construction, safety

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equipment, and vessel safety checks.” National Academies of Sciences, Engineering, and Medicine, *Leveraging Unmanned Systems for Coast Guard Missions* (2020). Washington, DC: The National Academies Press, <https://nap.nationalacademies.org/read/25987/chapter/4>

<sup>7</sup> Regarding USCG’s marine environmental protection mission, its job is “to protect the marine ecosystem by developing and enforcing regulations to prevent and respond to oil and hazardous substance spills in the marine environment, the introduction of invasive species into the maritime environment, and unauthorized ocean dumping.” National Academies of Sciences, Engineering, and Medicine, *Leveraging Unmanned Systems for Coast Guard Missions* (2020). Washington, DC: The National Academies Press, <https://nap.nationalacademies.org/read/25987/chapter/4>

<sup>8</sup> 6 U.S.C. §468, <https://www.law.cornell.edu/uscode/text/6/468>

<sup>9</sup> U.S. Government Accountability Office, *Coast Guard: Actions Needed to Improve Mission Execution and Resource Management*, GAO-23-106852, June 21, 2023, <https://www.gao.gov/assets/gao-23-106852.pdf>

<sup>10</sup> Ibid.

<sup>11</sup> Specifically, “[i]n 2023, a total of 10,959 individual vessels, from 80 different flag administrations, made 81,854 port calls to the U.S.,” yet only 8,278 safety exams were conducted. The number of exams was nearly 5 percent lower than the previous year. Looking at the number of safety exams by ship type, there were few inspections of foreign hazmat/dangerous goods vessels relative to the number entering U.S. ports, for example, chemical tankers (1,201 exams), oil tankers (988 exams), and gas carriers (674 exams). The fact that 18.4 percent, 13.6 percent and ten percent of those oil tanker, chemical tanker, and gas carrier exams, respectively, uncovered environmental protection, safety, and security-related deficiencies – plus USCG’s discovery of over 820 total deficiencies during its exams of those vessels – clearly indicates the need for significantly more federal oversight of foreign hauling ships. Office of Commercial Vessel Compliance, *Port Control in the United States, 2023 Annual Report*, <https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/CG-CVC/CVC2/psc/AnnualReports/annualrpt2023a.pdf>

<sup>12</sup> 46 U.S.C. §§30102, 30103, <https://www.law.cornell.edu/uscode/text/46/30102> and <https://www.law.cornell.edu/uscode/text/46/30103>, respectively.

<sup>13</sup> Justice Thomas A. Dickerson, “The Cruise Passenger’s Rights and Remedies 2014: The COSTA CONCORDIA Disaster: One Year Later, Many More Incidents Both on Board Megaships and During Risky Shore Excursions,” 38 *Tul. Mar. L.J.* 515 (Summer 2014).

<sup>14</sup> 46 U.S.C. §§30501-30512, §30523, <https://www.law.cornell.edu/uscode/text/46/30501> and <https://www.law.cornell.edu/uscode/text/46/30523>, respectively. For details about the Act, see Testimony of Paul M. Sterbcow, Lewis, Kullman, Sterbcow & Abramson, LLC, before the U.S. House Committee on Transportation and Infrastructure, Coast Guard, and Maritime Transportation Subcommittee, hearing on “Commercial and Passenger Vessel Safety: Challenges and Opportunities,” November 14, 2019, <https://www.congress.gov/116/meeting/house/110181/witnesses/HHRG-116-PW07-Wstate-SterbcowP-20191114.pdf>

<sup>15</sup> 46 U.S.C. §§30501-30512, §30523, <https://www.law.cornell.edu/uscode/text/46/30501> and <https://www.law.cornell.edu/uscode/text/46/30523>, respectively. For details about the Act, see Testimony of Paul M. Sterbcow, Lewis, Kullman, Sterbcow & Abramson, LLC, before the U.S. House Committee on Transportation and Infrastructure, Coast Guard, and Maritime Transportation Subcommittee, hearing on “Commercial and Passenger Vessel Safety: Challenges and Opportunities,” November 14, 2019, <https://www.congress.gov/116/meeting/house/110181/witnesses/HHRG-116-PW07-Wstate-SterbcowP-20191114.pdf>

<sup>16</sup> Linda Chiem, “Baltimore Bridge: Biden’s Visit, Recovery, Supply Chain,” *Law360*, April 5, 2024; Michael Kunzelman and Rebecca Boone, “Cargo ship’s owner and manager seek to limit legal liability for deadly bridge disaster in Baltimore,” *Associated Press*, April 1, 2024, <https://apnews.com/article/baltimore-bridge-collapse-liability-litigation-16de885948e769566e7181ffa35b1753>

<sup>17</sup> See, e.g., Stephanie Mencimer, “Will the Cruise Ship Industry Do BP’s Dirty Work?; How the cruise ship lobby could help BP dodge liability for workers killed on the Deepwater rig,” *Mother Jones*, June 14, 2010, <https://www.motherjones.com/politics/2010/06/cruise-ship-industry-bp-liability/>