

US VESSEL DETENTIONS AND CRIMINAL
LIABILITIES FOR OWNERS,
OPERATORS, MANAGERS, CORPORATE
OFFICERS AND CREW MEMBERS

- US Governments *modus operandi*
- *Public policy*
- *Investigations*
- *Prosecutions*
- *Fines, penalties and compliance programs*
- *Publicity*

BASIC ELEMENTS OF CRIMINAL LIABILITY-- *MENS REA*

- Generally to be guilty of a crime, a person must act with *criminal intent* or *mens rea*
- For health and public welfare violations strict liability applies
- Strict liability means that an individual can be found criminally liable without having had any criminal intent, in the traditional sense.

CORPORATE LIABILITY

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- **The fact that the company and its employees, officers and/or directors are outside the US not a bar to the dogged efforts of US prosecutors.**

CRIMINAL STATUTES & SANCTIONS

- **There are a broad array of criminal sanctions available to prosecutors.**
- **Prosecutors can and will:**
 - arrest, detain and/or confiscate vessels to obtain security and/or collect fines/penalties;
 - criminally charge and hold vessel personnel;
 - criminally charge owning/operating and/or management companies; and
 - criminally charge responsible corporate officers, as well as, managing company personnel.

Applicable Criminal Statutes

- False Statement Act (18 USC Sec.1001)
- Act for the Prevention of Pollution from Ships (APPS) (33 USC Sec 1901 *et seq*)
- Conspiracy (18 USC Sec 371)
- Obstruction of Justice (18 USC Sec 1505)
- Tampering with Witnesses (18 USC Sec 1512)
- The Clean Water Act (CWA) 33 USC Sec 1251
- Sarbanes-Oxley Act of 2002, 18 USC Sec 1519

WHAT TO DO AVOID AND RESPOND TO CRIMINAL INVESTIGATIONS?

- At all times:**

- obey all international and US regulations and ensure that company procedures and directives are properly implemented and adhered to;**
- ensure that all ISM and SMS requirements are in place and adhered to by the crews;**
- ensure that crews and employees are well trained and proper reporting procedures are developed;**
- avoid shortcuts, and “CYA” memos;**

WHAT TO DO AVOID AND RESPOND TO CRIMINAL INVESTIGATIONS?

- all entries in the Oil Record Book and logs be truthful and in compliance with MARPOL and all other applicable regulations;
- all personnel must be truthful and forthcoming during all port state control inspections;
- ensure that the OWS equipment, including the oil content meter and incinerator are in good working order and are being properly utilized by the crew;

- **remove all flanges from flexible hoses, and blank-off all flanges at or near the OWS;**
- **ensure that the OWS equipment, including piping is in conformance with all applicable class and port state control requirements;**
- **implement a “no alcohol policy” while the vessel is in US waters;**

WHAT TO DO AVOID AND RESPOND TO CRIMINAL INVESTIGATIONS?

•ENGAGE LEGAL COUNSEL AS *SOON AS POSSIBLE* IN ORDER TO:

• ASSESS THE SITUATION;

**•PROVIDE ADVICE TO THE OWNERS,
OPERATORS, MANAGERS, OFFICERS
& CREW;**

**•ENGAGE INDIVIDUAL COUNSEL
FOR OFFICERS & CREW, AS
NECESSARY AND APPROPRIATE**