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PROFESSIONAL MARINER / DECEMBER-JANUARY 2014 / IT'S LEGAL FOR U.S. MARINERS TO CARRY FIREARMS, BUT IT MAY BE IMPRACTICAL BECAUSE OF LIABILITY

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It's legal for U.S. mariners to carry firearms, but it may be impractical because of liability

Nov 26, 2013 12:11 PM

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(page 1 of 2)

In the United States, the relative freedom to carry guns extends to civilian mariners in American or international waters.

Merchant seafarers who wish to bring "defense materials"

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Cadets at Massachusetts Maritime Academy undergo small-arms training, which prepares them for possible future assignments with the U.S. Military Sealift Command.

Courtesy Mass Maritime Academy

aboard their vessels, including firearms meant for emergency use by the crew, must obtain a permit and register the weapons under the U.S. Department of State's

International Traffic in Arms Regulations (ITAR).

In practice, however, virtually no shipping companies provide weapons to their own crews, preferring instead to utilize professional guards. In light of the dangers which mariners face at sea, some commentators argue that commercial mariners ought to have access to weapons in order to defend themselves and their crew in case of attack. According to the National Rifle Association (NRA) in a published statement, "firearms and armed citizens can be as effective a criminal deterrent at sea as they are on land."

One advocate for the idea of an armed merchant fleet is U.S. Rep. Frank LoBiondo (R-N.J.), who is former chairman of the House Subcommittee on Coast Guard and Maritime Transportation. In 2009, LoBiondo introduced the United States Mariner and Vessel Protection Act of 2009 (H.R. 2984). The bill was intended to "provide civil liability protection to crewmembers who use force to defend a U.S. vessel against a pirate attack," according to an e-mailed statement by LoBiondo spokesman Jason Galanes.

Though ships with permits are allowed to have weapons, mariners can face charges if they incur damage or injury through their use, an especially shaky situation when in foreign waters. While the original bill died in committee, the key elements of the bill were integrated into the Coast Guard Authorization Act of 2010, which was signed into law by President Obama.

Section 912 "shields an owner, operator, time charterer, master, mariner or individual who uses, or authorizes the use of, force to defend a vessel of the



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United States against piracy from liability for monetary damages for any injury or death caused by such force to any person engaging in an act of piracy if such force was in accordance with standard rules for the use of force in self-defense of vessels.”

The law also calls for federal officials to work through the International Maritime Organization to seek agreements establishing similar legal protections for foreign waters.

According to the NRA, pirates are emboldened by the fact that “vessels are easy targets due to the high level of probability that seamen are unarmed.” The gun-rights group argues that seafarers should carry firearms for personal protection.

For Capt. James Staples of OceanRiver LLC, however, such protections are not enough to make the proposition more palatable for either the vessel owners or ship masters. Staples regularly sails on Military Sealift Command (MSC) ships, which do have weapon caches in case of emergency, and has used a firearm while embarked. Once off the coast of Oman, his vessel was approached at 0300 by three smaller craft, and the crew fired several warning shots.

According to Staples, because crews on modern ships are so small, individual crewmembers are under enormous stress with just their navigation duties, never mind being relied upon to handle a weapon.

“Sixty percent of the (merchant) sailors I’ve met don’t know how to mix the paint right, let alone handle a weapon in a stressful situation,” Staples said.

Staples emphasized that, in merchant fleets, the captain of a ship may not have access to the backgrounds or criminal histories of his or her seafarers, and providing a weapon to a mariner with a felony would be a criminal act and could imperil the crew. However, for those vessels which do, for whatever reason, carry

weapons on board, Staples emphasized that the crews must be trained in escalation of force, in this respect more like “police training.”

Donald Marcus, president of the International Organization of Masters, Mates & Pilots labor union, echoed Staples’ sentiment that weapons aboard a ship ought only be used as a last resort, “if there are no other alternatives.” Both men agreed that U.S. military personnel are the best guards to have on a vessel in case of risk. This is because international regulations regarding contracted security personnel are less clear-cut than those regarding military, and because soldiers both have more experience and are more extensively trained.

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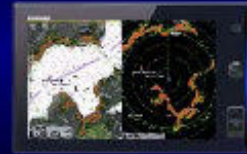
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(page 2 of 2)

Dr. Phillip Belcher, marine director of the International Association of Independent Tanker Owners (Intertanko), also voiced his opposition to such a practice. "Seafarers are not soldiers," Belcher said. He used the analogy of a bank to illustrate this point: A bank may hire armed guards, "but it isn't fair to expect the tellers to keep weapons under the table and be trained in them."

Intertanko, in conjunction with several other maritime industry organizations, publishes a set of best management practices for dealing with both Somalia- and

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Gulf of Guinea-based piracy that prioritizes risk-avoidance and reliance on military and private guard details over arming the mariners.

Civilian seamen who wish to carry firearms while embarked must be trained in their use. Many maritime security companies, certified by the U.S. Coast Guard, offer weapons training certification for merchant mariners. The International Maritime Security Network (IMSN) provides training services to mariners, most serving aboard MSC vessels who are required to be trained in the use of small arms, said Jay Stock, an IMSN official. The courses are open to seamen in other parts of the maritime industry. IMSN runs courses at least two weeks of every month, covering safe handling and maintenance of rifles, pistols and shotguns.

Stock said the direct arming of merchant mariners is “not a good idea.” Security “should be left to the professionals,” and armed sailors present the “possibility for danger and damage” to the ship, the cargo and the crew itself, he said.

Capt. Tim Nease, chief executive of IMSN, echoed this, stating that “sailors wear a lot of hats already.” Asking them to take on the defense of the ship is too much, because the ship would still have need of their skills as mariners in the event of a pirate attack. Should a private company desire such training for employees, IMSN would insist on a long-term contract to ensure recertification at least once per year, Nease said.

MSC certifies the training provided by the IMSN, and the crew of its ships comprise the vast majority of those mariners who regularly undertake the course. The MSC communications office said none of its officials would comment for this story.

Though security firms are the usual sources of training for MSC ships, maritime academies such as Massachusetts Maritime Academy (MMA) offer their own training courses. Capt. Bradley Lima, one of the instructors of MMA’s small arms course, said the academy’s training is supposed to impart only familiarity, rather than proficiency. The course is designed to teach someone how to safely handle,



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load and shoot a pistol, rifle and shotgun. For a “proficiency course” designed to make one accurate with those firearms, one would need to go to a military academy, Lima said.

The course usually consists entirely of MMA cadets, the majority of these being third mates- and third engineers-in-training. A weapons course entails both liability and resource concerns for an institution, as a firing range, trained instructors and a weapons cache are required. These factors combine to render such training “very uncommon” among private academies such as MMA, according to Lima.

Another player in the maritime security field is Risks Inc., a Florida-based security company, led by Orlando Wilson, which offers security detailing services. Wilson said most of those who are sailing while armed are contracted guards, who are usually ex-military, and that it ought to stay that way.

“It’s not just the gun, it’s the experience that comes with using it” over an extended period, Wilson said. He noted the difficulties of bringing firearms into port; his own guards often must leave their weapons in offshore armories before debarking, or else risk arrest.

Even professional guards are not immune to errors of judgment, as both Staples and Wilson illustrated by allusion to the *Enrica Lexie* incident. In February 2012, Italian marines aboard the Italian-flagged oil tanker, owned by Dolphin Tankers, opened fire on an Indian fishing vessel off the coast of Kerala, killing two fishermen. The incident triggered an extended diplomatic row between the two countries and a temporary travel embargo on the Italian ambassador to India.

The case of *Enrica Lexie* is troubling because the chances that civilian mariners could land themselves or their crew in trouble are much higher than for their military counterparts. In 2009, one crewman aboard a Hercules Drilling Co. jackup drill rig in the Gulf of Mexico brought a personal firearm aboard the vessel in

violation of the company safety policy. While showing the gun to an off-duty crane operator, he accidentally shot the man to death. The fatality became a Jones Act wrongful death case, and a U.S. appeals court ultimately ruled that Hercules was not liable because the shooting did not take place in the course of employment.

While Hercules managed to escape damages in this case, it serves as a keen reminder as to the risks which both mariners and shipowners face when firearms are brought aboard vessels. The consensus among U.S. shipping company leadership is a cautious mistrust of allowing firearms aboard.

The legal case for the practice of armed sailors doesn't stand on solid ground either, according to maritime attorney Jonathan Waldron of Blank Rome LLP. Waldron emphasized that contracted civilian guards face the same restrictions as the merchant mariners themselves.

"The base of the matter is that if there are guns on the ship, then the ship is liable" for damages and sanctions, Waldron said. The transport of military material and personnel faces different international regulations during innocent passage.

Seafarers face far different conditions than people who labor on land, and this provides a unique set of challenges for any attempt to arm them. Unstable footing, extended time in confined quarters and other factors combine to provide complications unique to the situation of an armed mariner.

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