BENEDICT'S MARITIME BULLETIN

The Quarterly Bulletin of Benedict on Admiralty

Vol. 23, No. 4 • Fourth Quarter 2025

Joshua S. Force, Editor-in-Chief
Robert J. Zapf, Managing Editor

Inside This issue

Beijing Convention Coming Into Force February 17, 2026

By: Francis X. Nolan III*

The United Nations Convention on the International Effects of Judicial Sales of Ships (known as the "Beijing Convention") comes into force on February 17, 2026 following the recent ratification by the Kingdom of Spain on August 21, 2025. To date 34 nations have signed the Convention and are in various stages in the process of ratification. Among these signers are Malta, Liberia and Panama, prominent open registry flags. It is also understood that the European Union is close to clearing the way to permitting its member states to ratify the new Convention, following which a significant number of European nations are expected to sign and ratify the instrument. Panama, the world's largest open registry, ratified the Convention during the week ending October 18, 2025.

The Beijing Convention originated with a Draft Convention on Judicial Sales of Ships, produced by an International Working Group ("IWG") of the Comite Maritime International ("CMI") approved by CMI's General Assembly in 2014 in Hamburg. The author was an active member of that IWG. The IWG was established to address concerns arising from a number of troubling cases around the world. The nature and degree of these concerns are well illustrated in the so-called Goldfish

* Francis X Nolan, III is a member of the bars in the states of New York and California and is a retired partner of Vedder Price PC. He is a past President of the Maritime Law Association of the United States and past chair of its Marine Finance Committee. He is currently serving on the Executive Council of the Comite Maritime International, a member of the CMI IWG on judicial Sales, Co-chair of CMI's IWG on Mobile Offshore Renewables Units and Chair of CMI's new IWG on Fraudulent Registries. He served as legal advisor to the United States delegation to UNCITRAL Working Group VI at UNCITRAL from 2018 to 2022 at the request of the US State Department.

(Continued on page 140)

A NOTE ON CITATION:
The correct citation form for this publication is:
23 BENEDICT'S DEC. BULL. [137] (Fourth Quarter 2025)

Managing Editor's Introductory Note

In this edition, we first present a timely article by Francis X. Nolan, III, a member of our Editorial Board, a Past President of The Maritime Law Association of the United States, and a member of the International Working Group that drafted the United Nations Convention on the International Effects of Judicial Sales of Ships (known as the "Beijing Convention"). The Beijing Convention comes into effect on February 17, 2026. Frank explains the genesis of the need for a new convention on Judicial Sales of Ships and the history behind its formation. He then discusses the principal provisions of the Convention and the reasoning behind the adoption of its specific language. It is an article well worth reading by those practicing in the area.

We next present an article by Gustavo A. Martinez Tristani on the effect on marine insurance litigation of *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955), and *Great Lakes Insurance SE v. Raiders Retreat Realty Co, LLC*, 601 U.S. 65 (2024). He reviews the history of the decisions and significant post-*Wilburn* decisions of various Courts of Appeals, giving a guide to the application of these decisions for practitioners in the area of marine insurance litigation.

We follow with our column "Window on Washington" by Bryant Gardner. In this edition, Bryant further discusses the Trump Administration's efforts to exercise its authority, discussing the Federal Maritime Commission's (FMC) invocation of long-dormant authorities to open an "Investigation into Flags of Convenience and Unfavorable Conditions Created by Certain Flagging Practices." Bryant gives a detailed outline of the FMC's action, and the position of various parties at interest in response. Here, Bryant also summarizes a recent decision of the United States Court of Appeals for the District of Columbia Circuit, *World Shipping Council v. Fed. Mar. Comm'n*, No. 24-1088, 2025 WL 2698837 (Sept. 23, 2025), invalidating a portion of the FMC's rule regarding demurrage and detention billing.

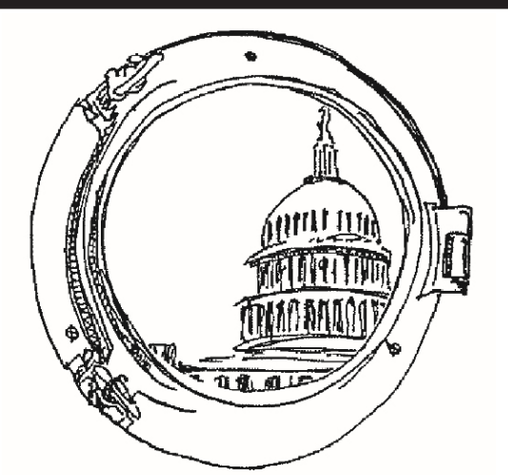
We conclude with the Recent Development case summaries. We are grateful to all those who take the time and effort to bring us these summaries of developments in maritime law.

We urge our readers who may have summer associates or interns from law schools working for them to encourage them to submit articles for publication.

As always, we hope you find this edition interesting and informative, and ask you to consider contributing an article or note for publication to educate, enlighten, and entertain us.

Robert J. Zapf
Managing Editor

Window on Washington



America First!

By Bryant E. Gardner*

The Trump administration's "America First" agenda continues to color all manner of its actions in maritime Washington. Previous *Window on Washington* columns this year have covered the President's executive order *Restoring America's Maritime Dominance*[1] and related U.S. Trade Representative actions. Not to be left out of the fray, on National Maritime Day the Federal Maritime Commission (FMC) invoked long-dormant authorities to open an "Investigation into Flags of Convenience and Unfavorable Conditions Created by Certain Flagging Practices."[2]

According to the FMC's order initiating the investigation, it is looking into whether:

> the laws, regulations, and practices of foreign governments, or the competitive methods imposed by owners, operators, agents, or masters of foreign-flagged vessels, might violate statutes administered by the Commission, including 46 U.S.C. Chapter 421, such as by creating unfavorable conditions in the foreign trade of the United States.[3]

Explaining the motive for the investigation, the order states that some foreign countries:

> have engaged in a "race to the bottom"—a situation where countries compete by lowering standards and easing compliance requirements to gain a potential competitive edge. By offering to register and flag vessels with little or no oversight or regulation, countries may compete against one another to gain revenue and associated fees and to minimize expenses associated with inspecting vessels and ensuring compliance with appropriate maintenance and safety requirements.[4]

In addition to concerns with lower safety requirements, the FMC also expresses concern with flag of

---

* Bryant E. Gardner is a partner in the Washington, D.C. office of Winston Strawn LLP. His experience includes a mixture of transactional, government relations, litigation, and advisory work on Federal legislative, regulatory, and contractual matters. He has extensive experience representing regulated entities, government contractors and grantees, public entities, and other clients before the Congress, Federal Courts, Customs and Border Protection, Government Accountability Office, Department of Defense, Federal Maritime Commission, Department of Transportation, Coast Guard, and Maritime Administration. Additionally, he has deep expertise in a broad array of maritime, transportation, and logistics matters.

1 *See* White House, Executive Order, Restoring America's Maritime Dominance (April 9, 2025), https://www.whitehouse.gov/presidential-actions/2025/04/restoring-americas-maritime-dominance/.

2 Federal Maritime Commission, Order of Investigation and Request for Comments, Investigation into Flags of Convenience and Unfavorable Conditions Created by Certain Flagging Practices, 90 Fed. Reg. 21,926-01 (May 22, 2025).

3 *Id.* at 21,926.

4 *Id.*

convenience (FOC) registries' record on seafarers' rights insofar as they are "beyond the reach of any single national seafarers' trade union," resulting in poor working conditions, less-experienced mariners, and fewer labor protections, which contribute to unsafe conditions onboard vessels.[5] Furthermore, the FMC takes aim at "fraudulent ship registrations whereby owners or operators register vessels under a flag without the knowledge or approval of the relevant maritime administration" to evade regulations or conceal illicit activities[6] and the "shadow fleet" operating outside the regular or official frameworks of the global maritime industry. In support, the FMC cites recent incidents involving FOC vessels, including the DALI allision with the Francis Scott Key Bridge in Maryland and the near-allision of the APL QINGDAO with the Verrazano Bridge in New York City.[7] Soliciting comments from industry, the FMC states that it is "particularly interested in input from international standards-setting organizations such as the IMO and the International Transport Workers' Federation."[8]

The FMC is generally known for its role in policing the antitrust immunity afforded to the ocean liner and marine terminal industries. However, Chapter 421 of Title 46, United States Code, provides the FMC with broad powers to regulate foreign practices in the U.S.-international trades, and such authority is not limited to actions of foreign governments alone. Section 42101 provides:

> To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall prescribe regulations affecting shipping in foreign trade, not in conflict with law, to adjust or meet special or general conditions unfavorable to shipping in foreign trade whether in a particular trade or on a particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and other activities and services integral to transportation systems, and which arise out of or result from laws or regulations of a foreign country or competitive methods, pricing practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country.[9]

Section 50101, in turn, provides:

> (a) Objectives.—It is necessary for the national defense and development of the domestic and foreign commerce of the United States have a merchant marine—
>
> (1) *Sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States* and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times;
>
> (2) Capable of serving as a naval and military auxiliary in times of war or national emergency;
>
> (3) owned and operated as vessels of the United States by citizens of the United States;
>
> (4) composed of the best-equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel; and
>
> (5) supplemented by efficient facilities for building and repairing vessels.
>
> (b) Policy.—It is the policy of the United States to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in subsection (a).[10]

Most experts have reported that U.S.-flag shipping accounts for less than 2% of the U.S.-international trade—probably not a "substantial part" of that trade as set forth in the statute.[11]

Other sections of Chapter 421 afford the FMC broad subpoena and discovery powers,[12] as well as robust enforcement powers.[13] The FMC may limit voyages to the U.S., limit the type and amount of cargo transported to or from the U.S., suspend tariffs and service contracts, suspend the right to continue operating under any agreement filed with the FMC (including but not limited to conference agreements, space charters, and other

---

5 *Id.* at 21,927.

6 *Id.*

7 *Id.*

8 *Id.* at 21,929.

9 46 U.S.C. § 42101. *See also* 46 C.F.R. Parts 550 & 551 (FMC regulations implementing Chapter 421, mostly mirroring the statutory language).

10 *Id.* § 50101 (emphasis added).

11 *See, e.g.*, Congressional Research Service, Cargo Preferences for U.S.-Flag Shipping, R55254 (Oct. 29, 2015) ("[Maritime Administration] stopped tracking the amount of U.S. waterborne foreign trade carried by U.S. ships in 2003, when it fell below 2% of total tonnage.").

12 46 U.S.C. § 42104

13 *Id.* §§ 42106–42108.

cooperative working agreements), impose fees of up to $1 million per voyage or $50,000 per day, and "take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States."[14] The FMC is empowered enforce its findings by directing the Secretary of Homeland Security and the Coast Guard to refuse vessel clearances, deny entries, and detain vessels at U.S. ports.[15]

Commenters to the investigation are, for the most part, divided into seafarers' unions favoring robust FMC action, and foreign-flag interests, including owners, owners' associations, and registries favoring the current arrangement.[16] Notably, neither the International Maritime Organization (IMO) nor the International Transport Workers' Federation (ITF) submitted comments, despite the FMC explicitly calling for input from these "international standard-setting organizations."

The Panama Ship registry provided a robust defense of its flag, outlining its compliance with a panoply of international regulations, its staffing and inspection regime, and removal of bad actors from the flag. Panama and other foreign-flag interests looked to the United Nations Convention on the Law of the Sea (UNCLOS) requirement that "[t]here must exist a genuine link between the State and the ship."[17] Citing to precedents from the International Tribunal for the Law of the Sea, they assert that FOC registries meet this requirement by virtue of national legislation that adopts generally accepted international rules applicable to vessels.[18] The foreign-flag interests also take issue with the very use of the FOC term, stating "it is important to differentiate between world class Open Registers and FOC, and registers which are often linked to fraudulent registrations, substandard shipping, and the shadow fleet."[19]

A common theme among the foreign-flag submissions is to highlight their compliance with international regimes and to redirect focus onto the FMC-targeted "shadow fleets," which they assure the FMC they are not through a wide variety of metrics and compliance regimes. Moreover, they assert that shoddy flag registries encourage increased port state inspections resulting in costly detentions, and impede access to financing and insurance—such that owners are, contrary to the FMC assertion, motivated to seek quality open registries, rather than a "race to the bottom."

The foreign-flag commenters also take different political approaches. The comments from the Republic of the Marshall Islands (RMI) are notable in this regard.[20] The RMI comments explain that the registry is run from the D.C. metro area and was established with the assistance of the U.S. as part of the RMI becoming a Freely Associated State with the U.S. pursuant to the Compact of Free Association between the U.S. and RMI; cite to recent positive remarks from Secretary of State Rubio on RMI National Day; highlight trade links and defense ties between the U.S. and the RMI, including the Ronald Reagan Ballistic Missile Defense Test Site located in the Marshall Islands on Kwajalein Atoll; and boast of RMI-registered vessels' "key role in supporting U.S. energy dominance," and U.S. exports generally, thereby helping "ensure energy security for both the United States and its allies."[21] Similarly, Liberia's comment touts the registry's origin in partnership with U.S. Secretary of State Edward Stettinius in 1948, placing itself alongside RMI.[22] Although relations between the current administration and the European Union (EU) are near an all-time low, the Cyprus comments underscore its affiliation with the EU and compliance with EU rules, placing it on a different plane from lesser-known national flags such as Djibouti or Gabon.

The World Shipping Council (WSC), representing the liner industry in D.C., takes a slightly different tack in its comments.[23] WSC underscores that the U.S. created the IMO to ensure consistent regulation of shipping globally, in order to avoid a patchwork of regulations that would have stymied the development of an efficient, coordinated global shipping industry. It therefore encourages to FMC to address its concerns within the IMO framework, in coordination with an alphabet soup of other agencies, including the Environmental Protection Agency (EPA), U.S. Coast Guard (USCG), Maritime Administration (MARAD), National

---

14 *Id.*

15 *Id.* § 42107.

16 *See* Federal Maritime Commission, Investigation: Flags of Convenience and Unfavorable Conditions Created by Certain Flagging Practices, FMC Dkt. FMC-2025-0009, https://www.regulations.gov/FMC-2025-0009-0001/comment.

17 Art. 91(1), S. Treaty Doc. No. 103-39, 1833 U.N.T.S. 397 (Dec. 10, 1982).

18 Comment, Panama Merchant Marine Directorate (Aug. 19, 2025); Comment, Republic of Cyprus, Shipping Deputy Ministry (Aug. 13, 2025).

19 Comment, Cyprus Shipping Chamber (Aug. 20, 2025).

20 Comment, Republic of the Marshall Islands Maritime Administrator and International Registries, Inc. (Aug. 20, 2025).

21 *Id.*

22 Comment, Liberian Registry (Aug. 6, 2025).

23 Comment, World Shipping Council (Aug. 19, 2025).

Oceanic and Atmospheric Administration (NOAA) and the Department of State (DOS), which serve as an interagency team in coordination with the IMO. In other words: *This is bigger than you and there is a way we have been handling this; don't break it.* Particularly with respect to safety aspects, WSC encourages the FMC to defer to USCG as the lead agency. WSC also highlights the interoperability of port and flag-state inspections and checks, the need to tackle shadow fleets through the IMO as opposed to unilaterally, and the market-based consequences for poorly performing registries.

The seafaring unions' talking points more closely resemble the FMC's order of investigation, flagging a "race to the bottom," lack of seafarer protections, and an uneven playing field that advantages cut-rate, low-budget operators and registries at the expense of safety, the environment, and seafarers' rights. The Seafarers' International Union of North America; International Organization of Masters, Mates & Pilots; Seafarers' International Union of Canada; National Union of Seafarers of India; Pakistan Seamen's Union; Brazilian Merchant Navy Officers' Union; and Maritime Union of New Zealand submitted nearly identically comments strongly and fully supporting the investigation.[24] The comments recommended examining the correlation between casualties and FOCs, FOCs' impact upon fair competition, FOCs' compliance with the International Organization Labor Convention and enforcement mechanisms for labor standards on FOC vessels, the correlation between environmental incidents and FOC-flagged vessels, stronger financial guarantees against seafarer abandonment, enhanced port state control scrutiny for FOC vessels, work with allies to address FOC issues multilaterally, development of minimum standards that apply regardless of flag state, and disclosure of ultimate beneficial ownership.[25]

Other U.S. seafaring unions commented separately. The Marine Engineers' Beneficial Association (MEBA) and Transportation Trades Department, AFL-CIO recommended clear standards to define and identify FOC registries, full transparency of beneficial ownership, financial guarantees to protect seafarers, imposition of access limitations pursuant to 46 U.S.C. Chapter 421, enhanced coordination with international enforcement partners to target dark fleets' misuse of the FOC regime, global flag-state reform efforts through the IMO and International Labor Organization (ILO), strengthened port state control, explicit USCG authorities to take punitive action against operators abandoning seafarers, and the promotion of tariffs, fines, or sanctions against FOC nations that fail to meet international maritime obligations.

Coming out of the gates, the FMC's position appears more closely aligned with the seafaring unions, and this is in keeping with President Trump's get-tough "America First" agenda. However, the international open registry system is deeply entrenched, and the open registry stakeholders raise good points in defense, highlighting the need for a measured, consultative approach with international rulemaking bodies and other U.S. agencies of jurisdiction. *Window on Washington* looks forward to a future column reporting how this investigation has turned out, along with the many other groundbreaking maritime initiatives currently on the table in maritime Washington.

Lagniappe from a Tulane Alumnus: Demurrage Update

On September 23, 2025, the United States Court of Appeals for the District of Columbia Circuit handed down a decision invalidating a portion of the FMC's rule regarding demurrage and detention billing in the case of *World Shipping Council v. Federal Maritime Commission*.[26] Since the supply chain bottleneck induced by the pandemic, demurrage and detention fees associated with the failure to reposition shipping containers within allotted time have been front and center before the FMC. In the wake of the pandemic, Congress passed the Ocean Shipping Reform Act, which instructed the FMC to "further clarify reasonable rules and practices related to the assessment of detention and demurrage charges to address the issues identified in the interpretative rule, "including a determination of which parties may be appropriately billed for any demurrage, detention, or similar per container charges."[27]

[24] Comment, Seafarers' International Union of North America (May 28, 2025); Comment, International Organization of Masters, Mates, & Pilots (Aug. 18, 0225); Comment, Seafarers International Union of Canada (Aug. 15, 2025); Comment, National Union of Seafarers of India (July 15, 2025); Comment, Pakistan Seamen's Union (June 17, 2025); Comment, Brazilian Merchant Navy Officers' Union (July 1, 2025); Comment, Maritime Union of New Zealand (July 28, 2025).

[25] Comment, Seafarers' International Union of North America (May 28, 2025); Comment, International Organization of Masters, Mates, & Pilots (Aug. 18, 0225); Comment, Seafarers International Union of Canada (Aug. 15, 2025); Comment, National Union of Seafarers of India (July 15, 2025); Comment, Pakistan Seamen's Union (June 17, 2025); Comment, Brazilian Merchant Navy Officers' Union (July 1, 2025); Comment, Maritime Union of New Zealand (July 28, 2025).

[26] *World Shipping Council v. Fed. Mar. Comm'n*, No. 24-1088, 2025 WL 2698837 (Sept. 23, 2025).

[27] *Id.* at *2 (quoting Ocean Shipping Reform Act, § 7(b)(2), Pub. L. No. 117-146, 136 Stat. at 1275–76 (codified at 46 U.S.C. § 41102 note).

Throughout its rulemaking, the FMC focused on concerns among motor carriers and other parties not in contractual privity with the demurrage and detention biller that they not be held liable for such charges that they had not agreed to.[28] To address those concerns, the proposed rule adopted an approach under which "'only the person who contracted with the common carrier for the carriage or storage of goods may be issued an invoice.'"[29]

On February 26, 2024, the FMC promulgated its final rule, which provides that a "'properly issued invoice is a demurrage or detention invoice issued by a billing party to' one of two parties: '(1) The person for whose account the billing party provided ocean transportation or storage of cargo and who contracted the billing party for' those services (usually the shipper) or '(2) The consignee.'"[30] The rule then reiterates that a "billing party cannot issue an invoice to any other person."[31] In discussing the final rule, the FMC responded to a comment asserting that motor carriers should not be a billable party even when they have contracted with the billing party, to which the FMC responded:

> [A] primary purpose of this rule is to stop demurrage and detention invoices from being sent to parties who did not negotiate contract terms with the billing party. *That concern is not present where a motor carrier has directly contracted with a VOCC* [vessel owning common carrier].[32]

Shortly after issuing the rule, the FMC issued a "correction" clarifying that motor carriers are *not* billable parties under the rule, regardless of any contractual relationship with an ocean carrier.[33]

The D.C. Circuit found the FMC's final rule to be arbitrary and capricious "because the Commission failed to explain the seeming inconsistency between its contractual-privity-based rationale and its categorical bar against billing motor carriers even when in privity with the billing party."[34] Although not raised by the plaintiff WSC, the court also left open the door to challenge the carve-out allowing billing of consignees not in privity with the biller.[35] Accordingly, the panel invalidated the challenged portion of the regulation—46 C.F.R. § 541.4, which confines the field of properly billed parties to contracting shippers and consignees, leaving the balance of the rule intact.[36]

---

28 *Id.* at *5.

29 *Id.* at *2 (quoting Federal Maritime Commission, Proposed Rule, Demurrage and Detention Billing Requirements, 87 Fed. Reg. 62,341, 62,350 (Oct. 14, 2022)).

30 *Id.* at *3 (quoting Federal Maritime Commission, Final Rule, Demurrage and Detention Billing Requirements, 89 Fed. Reg. 14,330-01, 14362 (Feb. 26, 2024)).

31 *Id.*

32 *Id.*

33 *Id.* at *4 (citing Federal Maritime Commission, Final Rule; Correction, 89 Fed. Reg. 39,569 (May 9, 2024)).

34 *Id.* at *4.

35 *Id.* at *7.

36 *Id.* at *7.

Contributing Authors to this Issue

Contact Information

Pamela L. Schultz
Kennedys CMK LLP
San Francisco, CA
Pamela.Schultz@kennedyslaw.com

Cameron Cushner
Kennedys CMK LLP
San Francisco, CA
Cameron.Cushner@kennedyslaw.com

Window on Washington

Bryant E. Gardner
Winston & Strawn LLP
Washington, DC
bgardner@winston.com

SUBSCRIPTION QUESTIONS?

If you have any questions about the status of your subscription, please call your Matthew Bender representative, or call our Customer Service line at 1-800-833-9844.

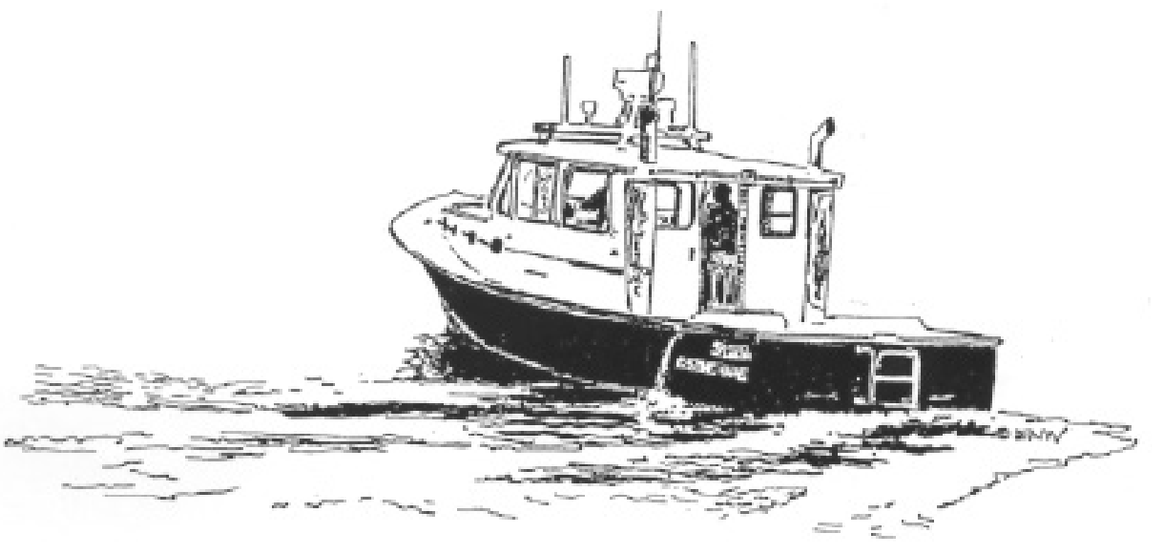
ATTENTION READERS

Any reader interested in sharing information of interest to the admiralty bar, including notices of upcoming seminars, newsworthy events, "war stories," copies of advisory opinions, or relevant correspondence should direct this information to the Managing Editor, Robert Zapf, rjzapf1@verizon.net, or Warren Naicker, Legal Editor, warren.naicker@lexisnexis.co.za.

If you are interested in writing for the BULLETIN, please contact Warren Naicker at warren.naicker@lexisnexis.co.za.

The articles in this BULLETIN represent the views of their authors and do not necessarily reflect the views of the Editorial Board or Editorial Staff of this BULLETIN or of LexisNexis Matthew Bender.

BENEDICT'S MARITIME BULLETIN is now available online at Lexis.com and can be found by selecting the "Area of Law – By Topic" tab and then selecting "Admiralty", and is available on Lexis Advance and can be found by "Browse" > "By Practice Area" > "Admiralty & Maritime Law".



HEADING HOME