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Printed By Tomer Raanan

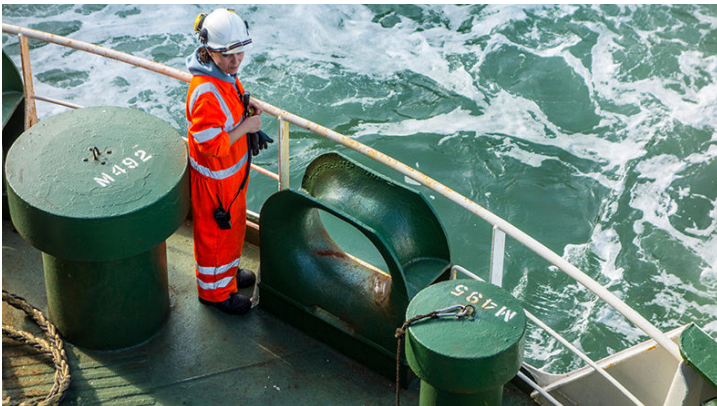
Reliance on whistleblowers weighs on US vessel pollution cases

Sums awarded to whistleblowers in vessel pollution cases can be life-changing, while shipowners and operators may incur hefty fines

12 Sep 2022 | **ANALYSIS**

by Tomer Raanan | tomer.raanan@informa.com

Illegal discharges at sea are near-impossible to uncover without whistleblowers, who are entitled to financial awards from the US government. But although this role is crucial, concerns are being raised about the pressure this places upon seafarers and the over-reliance on them to expose malign practices



CRITICS ARGUE THAT THE HEFTY REWARDS FOR WHISTLEBLOWERS CAN HAVE UNINTENDED CONSEQUENCES, LIKE INCENTIVISING FALSE REPORTING AND IGNORING ACCIDENTAL POLLUTION. Source: Arterra Picture Library / Alamy Stock Photo

A SPATE of vessel pollution litigation in the US has turned the spotlight on dilemmas faced by shipowners, operators and crew members.

While some argue the US government is not doing enough to prosecute polluters, others point to both the complex nuances of cases and too much reliance on the role of the whistleblower.

Under the Act to Prevent Pollution from Ships — the US' implementation of the International Convention for the Prevention of Pollution from Ships, known as Marpol — whistleblowers may receive up to half of the fine levied on the polluting party.

Financial penalties are usually in the millions of dollars but can be substantially costlier. Princess Cruise Lines was fined \$40m for violations on the *Caribbean Princess* (IMO: 9215490) cruise ship.

Companies found guilty are also typically mandated to implement an environmental compliance plan on vessels that call in US ports.

The Environmental and Natural Resources Division of the US Department of Justice, which handles vessel pollution prosecutions, established a vessel pollution programme in the late 1990s. It has collected more than \$750m in these cases since 1989, according to its 2021 review.

“The programme is actually very small, but really good, because they push for the maximum awards, and use the sanctions obtained from polluters for enhancing the environment,” said Stephen Kohn, partner at Washington DC-based law firm Kohn, Kohn & Colapinto, which specialises in whistleblower cases.

But while stakeholders across the maritime industry will overwhelmingly agree that pollution must be minimised, and illegal discharge punished, relying on whistleblowers to come forward is not the sole answer nor a long-term solution.

“While I am in favour of whistleblowing awards, they must be used judiciously, rather than as a rubber stamp on any case where there is a ‘whistleblower’,” said George M Chalos, principal and founding member of Chalos & Co PC.

“In my experience, an overwhelming majority of our organisational clients want to comply with environmental regulations and invest tremendous resources to do so,” he told Lloyd’s List. “I also think most seafarers want to do their job properly. But they have a difficult choice to make — should they come forward to their supervisors about suspicious conduct and maybe get a pat on the back, or should they alert US authorities and claim potentially life-changing financial rewards?”

A US Coast Guard representative told Lloyd’s List they cannot speculate on the number of cases investigated based on whistleblower reports. However, the DoJ makes no secret of their pivotal role in these cases.

“Official statements of the Justice Department strongly confirm the indispensable nature of the whistleblowers. They praise them,” said Mr Kohn.

But he believes that the US government is not dedicating enough resources to its vessel pollution programme.

“They need more prosecutors. They need more commitments from the Coast Guard and need to pursue many more cases once they have the resources. It needs to be properly funded, and they need a specialised office like other agencies have established.”

Chief engineer jailed in US over pollution case

By Tomer Raanan

01 Sep 2022

The illegal discharge took place in March 2021 off the shores of Louisiana, and the US Coast Guard was alerted by a whistleblower, the US Department of Justice said

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Mr Kohn commends the law in practice, as it not only holds people accountable for their actions but brings in money that is reinvested to aid environmental protection. The government usually set aside 25% of the penalties levied for environmentally beneficial purposes, he added.

Data from Kohn, Kohn & Colapinto suggests that whistleblowers have collected over \$40m awards in vessel pollution cases since 1993, though critics argue that the hefty rewards can have unintended consequences, like incentivising false reporting and ignoring accidental pollution.

It could also mean that any environmentally damaging infractions can purposely be left unaddressed until the vessel calls at a US port.

Moreover, an investigation by US authorities can cause significant delays to a vessel's commercial activity. Any financial losses resulting from these delays are not guaranteed to be recovered even if the defendants are acquitted or the case is dropped.

"The problem is that for every case that is reported accurately, how many cases are reported out of greed, or vindictiveness?" said Mr Chalos.

The ENRD often prosecutes companies and individuals in vessel pollution cases for falsifying their vessel's records rather than the discharge itself, which can occur outside of US jurisdiction.

But in addition to the environmental violations, the falsification of records and any other efforts to cover up illegal spills may bring charges that can carry heavy prison sentences, including obstruction of justice.

Assistant Attorney General Todd Kim, who heads the ENRD, has emphasised harsh punishments for environmental offences.

"Criminal enforcement in this sphere is not restricted to the criminal provisions of the environmental statutes," Mr Kim said last December. "Other criminal laws often come into play, most notably the so-called 'Title 18' crimes of fraud, conspiracy and obstruction of justice when they are committed alongside environmental violations. The division aggressively charges these related crimes where appropriate."

Recent cases have seen his words ring true.

Kirill Kompaniets, former chief engineer of Marshal Islands-flagged supramax *Gannet Bulker* (IMO: 9441300), was sentenced to a year and a day in prison for deliberately discharging oily waste off Louisiana's shores and for obstruction of justice. The Russian national will also pay \$5,200 and serve six months under supervised release.

In a separate case, Greece-based New Trade Ship Management and chief engineer Denis Plasabas pleaded guilty to maintaining false and incomplete records in relation to two discharges of oily bilge water from the vessel *Longshore*, which has since been renamed *Clipper Palma* (IMO: 9450806).

The shipmanager was fined \$1.1m in addition to a four-year probation period, during which it must implement an environmental compliance plan on any vessel it operates that calls in US ports.

Greek shipowner fined \$1.1m after pleading guilty in US pollution case

By Tomer Raanan

10 Aug 2022

New Trade Shipmanagement and chief engineer admit maintaining false and incomplete records and illegally discharging oily bilge water on two separate occasions, US justice department says

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But as in many preceding cases, court documents show that it was whistleblowers that alerted the US coast guard of the offence.