

An investigation into criminalisation of maritime professionals

Wherever our members are,
so are we



Foreword from the Nautilus Federation Director

The increasing criminalisation of maritime professionals is one of the biggest industry concerns the **Nautilus Federation** deals with. Whilst we have always been at the forefront of the drive to ensure seafarers are not used as scapegoats in the event of a maritime accident, in recent years the pressure to penalise those involved in accidents and incidents at sea has increased dramatically.

A great deal of concern rightly exists about criminalisation and, like piracy, it is a phenomenon where the fear of an incident is as significant as the threat itself.

To better understand the issue and how it affects maritime professionals, we carried out a survey of Federation members across the globe. The results and subsequent advice are detailed in this report, and the findings echo our thoughts that this issue is not being taken seriously enough by shipowners and the authorities. Too many seafarers do not appear to have access to the information they need when heading to foreign ports or the protection they deserve when accidents happen.

We believe there have been numerous occasions where seafarers have been made scapegoats for accidents as authorities, shipping companies and insurers all seek to find someone to blame.

Accidents happen in every industry, but no others treat their workers like criminals when they do, with the implication that they deliberately set out to cause a collision, injury or spillage.

More legislation is being unveiled all the time which threatens seafarers with criminal action for simply undertaking their jobs. And more seafarers than ever are turning away from the industry as a result, at a time when the industry is already struggling to attract new recruits.

Our survey shows first-hand what is happening to our seafarers and confirms that members are increasingly fearful of being prosecuted and questioning their future in the industry as a result.

This survey was conducted as an update to a survey undertaken by Nautilus International in 2010 and the results of that survey are used for comparison to discover if the situation has changed in the past nine years.

Many thanks to all those who took part - by standing together, we can make a difference and work towards fair treatment for all maritime professionals.



Mark Dickinson
Nautilus Federation Director

The Nautilus Federation

Our objectives

- Representing the interests (in the widest sense) of the member unions and their members
- Facilitating closer cooperation between the unions in the furtherance of the mutual assistance and protection of their respective members
- Improving and making more effective – through cross border representation and cooperation – the voice and influence of maritime and shipping professionals
- Promoting the interests of members of the unions as widely as possible
- To take all necessary action regarding national and international legislation, conventions, rules, recommendations and regulations for the furtherance and promotion of the interests of the shipping industry on behalf of the unions' members

The **Nautilus Federation** is a group of likeminded trade unions in the maritime industry that have come together to improve and expand the services offered to members both domiciled (in accordance with their respective constitutions) and non-domiciled (in accordance with the requirements of the International Transport Workers' Federation).

As a Federation, our mission is to foster the development of a strategic partnership between member unions. This is focused on mutual respect, trust and a shared vision for the success of our common understanding of progressive trade unionism, organising and professional support to our respective members.

In doing so, our member unions seek to be an increasingly influential force within a global industry, whilst also broadening the representation of professionals in maritime clusters and shipping industries. The Nautilus Federation seeks to be their collective voice, responding to the challenges and opportunities that the global maritime and shipping industry presents, particularly the criminalisation of the profession.

Our current work programme is dictated by the priorities adopted by the Board of the Nautilus Federation, which include:

- › Maintaining a global joint assistance and support network to help protect members from criminalisation (JASON)
- › Coordinating the delivery of services to relevant seafarers
- › Carrying out topical surveys of our members and producing written reports
- › Enhancing effectiveness at the International Maritime Organisation (IMO) to complement the existing activities of the International Transport Workers' Federation (ITF) and the International Federation of Shipmasters' Associations (IFSMA)
- › Assessing the decisions of the ITF Congress, working to the realisation of resolutions impacting on our industry and analysing the contribution the Federation can make to the policies that were adopted
- › Growing and strengthening the membership by reaching out to other like-minded maritime and shipping unions, thus widening the impact of the work we do in the interests of all maritime and shipping professionals



For more information visit nautilusfederation.org

Criminalisation

Criminalisation of seafarers is the expression used when a master, officer or other maritime professional faces criminal charges as a result of an incident or accident involving their vessel or someone onboard. Often when charges are brought against captains there is an implication there was the intent to commit an offence.

Internationally, local authorities often use local laws to prosecute the person nearest the incident - the seafarer - because of the difficulties in understanding which laws apply and finding who is ultimately responsible. The seafarer is left at risk because of the difficulties bringing together all those who could be involved:

- › Shipowner/manager/operator
- › Company's country of location
- › Flag state
- › Seafarer's home state
- › Coastal state
- › Port state

Common cases which have resulted in criminal proceedings being brought against a seafarer include:

- › Collisions with other ships
- › Accidental pollution or spills
- › The death or injury of a crew member or passenger

The number of cases in which seafarers have been detained or unfairly penalised by the authorities has been increasing at a startling rate in recent times.

As a Federation, we are concerned that seafarers are not supplied with sufficient information on local and international laws for the areas they are sailing in, to avoid falling foul of them when entering a foreign port.



With high-profile accidents such as oil spills: shipowners, insurers, the authorities and the general public are often keen to hold an individual to account, even if they could not have affected the outcome by their actions. In some cases, coastal states will want to be seen to be taking a political stance in pollution cases and by taking aggressive action against individuals such as seafarers.

Executive Summary

When this survey was first conducted by Nautilus International in 2010, 90% of respondents said that they were concerned about the continued criminalisation of the industry, and 66% said it impacted on the way they felt about working in shipping.

The situation in 2019 is no better. The survey was extended to the Nautilus Federation and the results show the fear of criminalisation is not reducing. Just under 90% of respondents said they feared criminalisation and 70% said it was impacting their feelings of working at sea.

The places in the world where seafarers can feel safe from criminalisation is reducing. In 2010, respondents thought Northern America, Europe and Africa were the most likely places where criminalisation would occur. By 2019, a quarter of respondents did not feel they were safe from criminalisation anywhere in the world.

Pollution remains the biggest issue that respondents believed they could be criminalised for and most consider that the public and political reaction to a spill affects the likelihood of being treated unfairly. Many respondents spoke of the fear of being held criminally responsible for circumstances which were out of their control.

It is reassuring to note that respondents know to call their trade unions first and value the unbiased and unwavering support that they will receive. However, there remains a shortage of information for seafarers, especially with regards to local laws for ports their ships may be sailing in to.

The actual incidents of prosecution remain relatively low, showing that the fear of criminalisation remains higher than the likelihood of it. However, as the case study on Page 16 shows, even minor brushes with the law can be quite frightening, especially as they often occur a long way from home, with no support.

More importantly, these are situations which workers in other

sectors do not have to deal with. In other industries, such as the medical sector, where the implications from something going wrong can be just as severe, criminal convictions are incredibly rare.

There are lessons that can be learnt from other sectors, and the voice of seafarers on the impact of the fear of criminalisation should not be ignored.



2019 Findings

To fully understand the impact of criminalisation on maritime professionals, the Nautilus Federation surveyed seafarers from across the globe on their thoughts around criminalisation at sea, with respondents from Australia, Denmark, Singapore, the UK and the Netherlands, amongst others.

Many questions contained an additional open option to allow respondents to expand on their answers; quotes included in this report are reported as exact comments, save for any spelling mistakes.

The findings are shocking for those not working in the industry: nearly 90% of seafarers surveyed said they were worried about criminalisation of maritime professionals, showing the overwhelming impact the issue has on the sector. Results also show nearly one in five (17%) respondents said they had been involved in a legal incident during their career on the sea, and 70% said the fear of criminalisation has a negative impact on their feelings about working at sea.

“ It seems to be a trend to prosecute mariners these days.



The survey reveals seafarers fear being criminalised due to pollution (85%), as a scapegoat for a third party (51%) and for incorrect paperwork (46%). Many open questions showed hear-say and media reporting can play a big part in increasing these concerns.

When asked if there was a specific reason for a fear of criminalisation, answers included 'Hearing about officers who aren't directly responsible for an incident being prosecuted', 'Because of what I read in maritime articles,' and 'Media hypes things up too much.'

What do you think are the most likely causes of maritime professionals being criminalised?

Pollution	85%
Scapegoating for a third party	51%
Incorrect paperwork	46%
Leaving the vessel and equipment in poor condition	44%
Injuring or killing a person on board	43%
Infringement of local law	43%
Incident relating to alcohol or drugs	29%
Injuring or killing a person shoreside	23%
Cargo damage and loss	16%

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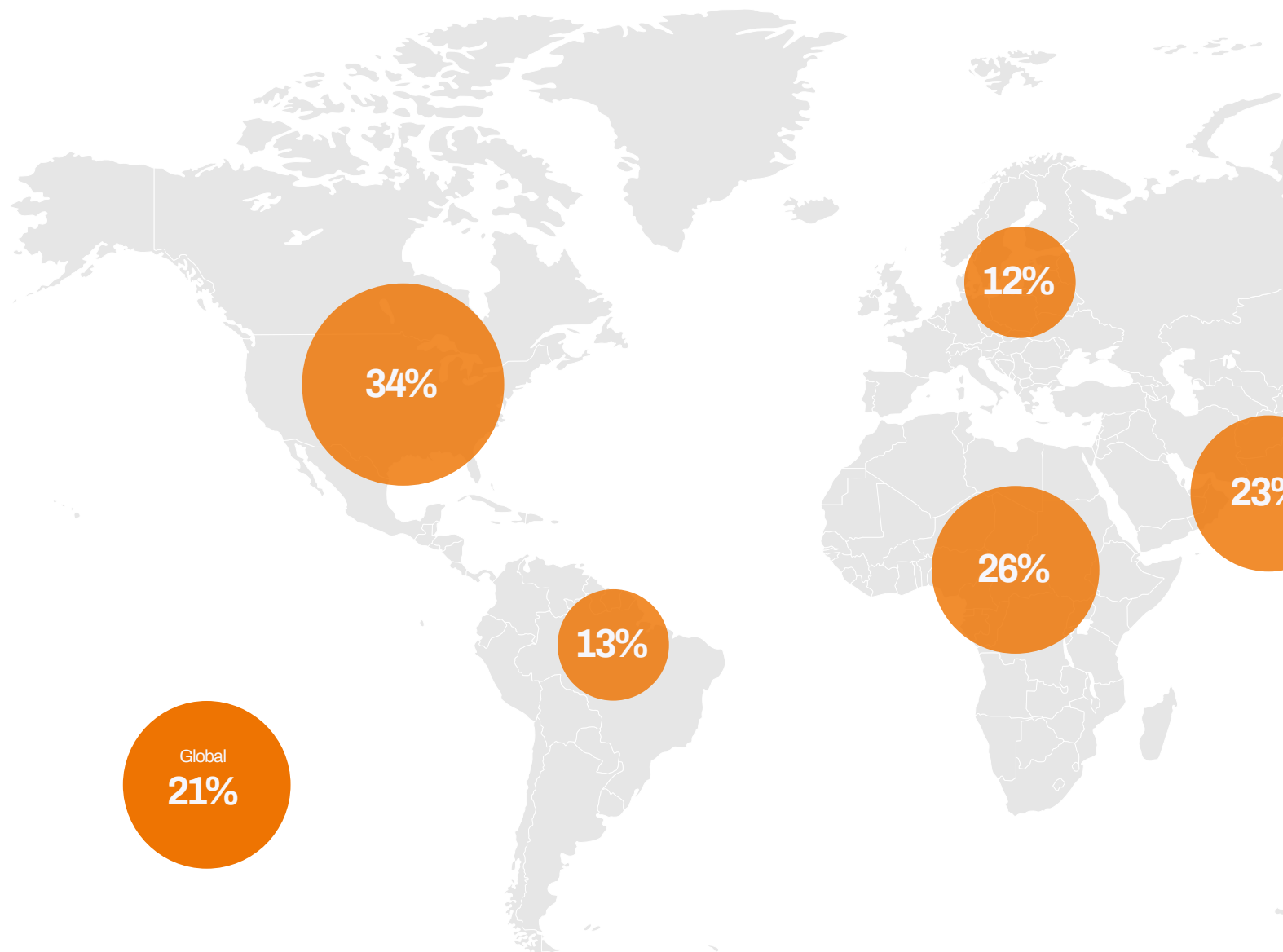
90% of seafarers are worried about criminalisation.

A Global Issue

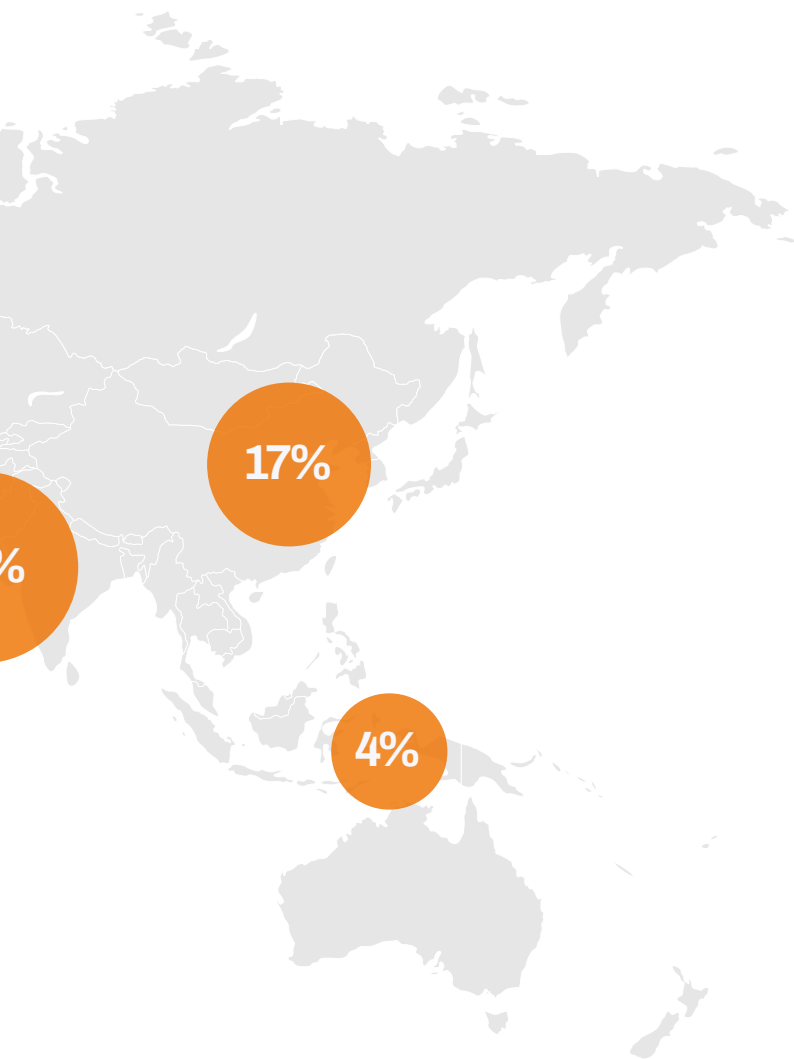
The majority of survey respondents consider the risk of criminalisation to be a global one, and that they can be at risk almost anywhere in the world that they work, with just one in ten respondents (11%) saying there were no parts of the world where they consider the risk of criminalisation greater than others.

Those respondents who did think the risk was higher in some places than others put North America as the place they most feared being criminalised, followed by Africa and the Middle East.

Are there some countries/parts of the world where you fear the risk of criminalisation is greater than others?



As well as the bigger issues around criminalisation, the survey revealed some deeper insight into individual experiences with criminalisation at sea, with many seafarers feeling isolated, persecuted and scapegoated should they be involved in an incident or accident whilst at sea.



When asked about specific reasons for their fear of criminalisation at sea, comments included:

- › 'Everyone makes mistakes. It's just that when a seafarer makes a mistake, it's a crime. They don't have access to any legal support nor the ability to pay exorbitant fines that are imposed... Seafaring as such has lost its charm. The pay which a junior officer like me gets is painfully low when you compare it to the risks, the prolonged period of stay away from family and the ever-growing inflation on land. Adding to all these is the increasing trend of criminalisation of seafarers which makes him/her insecure to the core.'
- › 'I believe in some instances criminal charges may be warranted but I also feel that blame can be/is often placed on mariners when it may not necessarily be warranted.'
- › 'Reading the news, you see it happen more and more that maritime professionals are arrested right after an incident, while in other industries this is not the case. Often it takes long periods of time before people are being released. Ship owners will not always provide legal support, or even drop all support and leave you to fight for yourself.'
- › 'There are many situations that we have little control over but are held responsible for.'
- › 'Nobody likes an accident to happen but it does happen due to several reasons, investigators mostly focus on seafarers' faults.'

What does it mean?

Nautilus Federation members have made it clear in this survey that criminalisation is a cause for great concern in the maritime industry. With 87% of respondents worried about the continued criminalisation of the industry and more than two thirds (70%) saying the issue had negatively impacted the way they felt about working in shipping, it's vital for unions to provide as much support as possible for members who find themselves at risk of criminalisation, as well as ensuring it remains an attractive career option for future recruits.

Pollution was the biggest issue respondents thought they could be prosecuted for, and many of those surveyed felt that this was partly due to the media attention spills receive, and the resulting desire for authorities to be seen to hold someone accountable in order to promote their own political agenda.

Other examples of respondents' concerns around incidents likely to lead to criminalisation include infringement of local law (43%), incidents relating to alcohol and drugs (29%) and cargo damage and loss (16%), which highlight how alert seafarers need to be around every element of their role at sea.

Whilst some respondents say they are not worried about the criminalisation of maritime professionals ('If you follow procedures and established good practice then you should have nothing to fear'), they are in the minority.

The survey identified a need for more information for seafarers to alert them of the potential legal issues which may arise if they are involved in an incident or accident at sea or in an unfamiliar country.



Nearly all respondents stated they would approach their union for information and support rather than relying on other sources, including their own employers.

Our members' legal departments receive frequent calls from senior officers who have been caught up in incidents across the globe, seeking advice and

representation in relation to being questioned by the authorities.

Very few survey respondents said they receive information about the different legal requirements of the countries they were visiting.

The results show a clear demand for more information and support for seafarers regarding criminalisation and rights at sea in general. The **Nautilus Federation** is working to make information and support more readily available, including producing a Fair Treatment app for use at sea to record incidents and to access contacts and advice.

The Federation commissioned this survey to see how best to support members and as a result, will implement the following actions:

Provide up-to-date information on the network of support available to members with issues abroad

- This information should be provided in the form of booklets, USB fobs and apps, so that members are able to carry the information with them whilst at sea

Provide members with information on their rights following incidents and when facing a possible criminal investigation or action

- This information should be available in a variety of formats
- Federation publications should carry features on current legislation and the impact on seafarers wherever relevant
- Information on JASON, Nautilus 24/7 and the Fair Treatment Guidelines should also be available on the Nautilus Federation website: nautilusfederation.org

The Nautilus Federation unions should Lobby governments and the EU to ensure that legislation affecting seafarers does not increase the risk of criminalisation

- The Federation and its members should present a copy of the findings of this survey to the relevant authorities

Put pressure on all relevant bodies to ensure that the remaining countries sign up to the Maritime Labour Convention (MLC) and IMO fair treatment guidelines

- This includes ensuring that the MLC continues to be developed

Ensure that any members involved in investigations can access the provisions laid down under international conventions, as implemented by national laws

- This includes ensuring that members are returned to their flag state and judged by a tribunal in a professional capacity rather than a criminal court

Stories from the Sea

Lessons from history

The number of cases of criminalisation of seafarers and reports of unfair treatment continue to rise across the globe. Here are some examples of historic cases affecting seafarers.

There have been a number of landmark cases which have set new lows for the seriousness of charges brought against seafarers who have found themselves involved in a maritime incident. They demonstrate the increasing impact that public and political pressures places on authorities to find an individual to hold to account.



01.

Many seafarers are worried about the increasing focus on complying with anti-pollution rules. In 2018, Nautilus International raised concerns over the prosecution of a cruiseship master by the French authorities on charges of breaching European air pollution legislation. In the first case of its kind, prosecutors called for a €100,000 fine to be imposed on the American master of the P&O Cruises vessel Azura, and the vessel's owners Carnival

– with the company paying €80,000 of the penalty.

The Union said it set a worrying precedent to hold a master responsible for fuel quality after the Marseilles court heard that a spot check on the ship during a port call found the vessel was burning bunker fuel with a 1.68% sulphur content – exceeding the European limit set in 2015 of 1.5%. Prosecutors said the company had ‘wanted to save money at the expense of everyone’s lungs’ and the master ‘knew for a fact’ that the fuel taken on in Barcelona was illegal.

The master’s defence argued that the European environment rules unfairly distinguish between cruiseships and cargoships - which have higher sulphur limits, and that the 1.5% limit should apply only to passenger ferries providing regular services to European destinations (indeed the law was drafted accordingly).

Despite this, the vessel's master was charged, with Carnival commenting after the verdict: “(We were) very disappointed to be prosecuted for this offence, which was based on a European law the French environment ministry had explicitly informed the cruise industry would not be applied to cruise ships and which, in any event, has still not been properly implemented.

The captain was using the fuel in good faith, as directed by us, based on our understanding of the law.” In the context of the current escalation of climate change as a universal concern, and with sulphur levels being lowered outside designated emission control areas to 0.5% internationally on 1 January 2020, members must ensure they observe the new rules and make sure they know their rights, in the event of enforcement action or prosecution. Make enquiries with your company to establish their procedures for ensuring that bunkers comply.

02.

The Costa Concordia made headlines round the world in 2012, when the cruiseship struck a rock after deviating from its planned route, and capsized off the Italian coast. The vessel was left listed on a rocky ledge with a flooded engine room, leading the authorities to evacuate more than 3,000 passengers and 1,000 crew.

Some 32 people died in the disaster, with the Italian master of the ship, Captain Francesco Schettino, convicted of multiple manslaughter, causing a maritime accident and abandoning ship before all passengers and crew had been evacuated.

At the time, Nautilus raised concerns over the ‘vilification’ of Captain Schettino in the press, saying it was ‘deeply disturbed’ by the way in which he was treated by both his employers and the media, as well as the flow of information around the incident in the aftermath.

Following the event, the vessel’s owner, Costa Cruise management, was quoted saying the master had

‘character problems’ and had ‘decided to change the route, and he went into water he did not know’, but also admitted ‘we have no access at this point to all the information that would let us understand correctly what happened’, highlighting the way in which ship masters have been exposed to ill treatment by employers and the media, many of whom are looking for a figure to blame.



The Union also said it was concerned about the way in which the Captain was singled out at such an early stage, which diverted attention from the bigger issues around the principles governing the safety regime for large passenger ships. General Secretary Mark Dickinson said the treatment of the Captain breached the 2006 international guidelines on the fair treatment of seafarers in the event of a maritime accident, agreed by the International Maritime Organisation and the International Labour Organisation.

Captain Schettino, who was jailed for 16 years in 2015, has since said he believes his experiences as a seafarer have served as ‘a sort of preparation for withstanding the overwhelming memories of the accident and for accepting my life today’ and points to the absence of maritime knowledge in the proceedings that led to his imprisonment, with the court lacking an understanding of the principles of seamanship and of crucial factors that led to the accident.

He says it was too simplistic to blame the Costa Concordia disaster on the ship’s deviation from the standard route. He says the accident, and




others since, demonstrate the need for more attention to be paid to the way in which bridge teams interact, communicate and share information.

Following his conviction, a group of maritime professionals across Europe lobbied to overturn the sentence, arguing at the time that ‘the unbalanced criminalisation of the captain, alone judged to be solely responsible for the total operation of the ship, is undermining the basic intention of IMO’s ISM Code’.

They also warned that the way in which the case has been handled could adversely affect the recruitment and retention of seafarers, and damage the cruise shipping industry.

They pointed out that charges against the cruise company and other members of the bridge team were dropped as a result of plea bargaining, leaving the captain as the only person taking the full legal consequences of the disaster. They also said the way in which Captain Schettino was singled out for blame raises the risk of other masters being criminalised after maritime accidents, with his treatment by the police and other authorities – at a time when he was probably suffering from post-traumatic stress in the aftermath of the incident – failing to reflect the international guidelines for fair treatment.





Here, a member from one of the Nautilus Federation unions, describes their dealings with one authority in a situation which may be familiar to many maritime professionals.

My vessel had just completed cargo operations and was about to sail when I was called to the ship's conference room to see the charterer's agent and three immigration officials. The agent informed me that there was a problem with the departure crew list I had supplied that morning, for them to complete the formalities and receive port clearance.

I could see the agent was physically shaking and was told there was a big problem with one crew member's passport number. The crew list recorded the number as XXXXXXXX when in fact it should have been 00XXXXXXXX.

I apologised for the error but highlighted that this had not been raised on the three previous occasions when crew lists had been submitted. I also questioned why the mistake had not been noticed by the charterer's agent who had requested copies of all passports before the vessel arrived, for the sole purpose of checking crew lists before submission to immigration officials.

However, I was formally told by the immigration officer that I had committed an offence and was being recorded on video. This was translated to me by the agent. I was then told to accompany the immigration officers to their office to sign and receive forms relating to the offence.

My passport and C/O passport were seized and I only had my mobile phone in my pocket but no other personal or company effects. I was escorted from the vessel by the three immigration officers, accompanied only by the agent.

I was taken to what I think was police headquarters and put in a room. The immigration officers asked me several more questions, but less formally than before, these were all being translated to me via the agent – although not very well. The officers were constantly compiling a set of documents on a computer as I spoke.

After some time I was taken to another room where my phone was taken off me and I underwent a full body search. This was followed by a photograph being taken front and side view. I was then taken into another interview room.

“ I was sat in a wooden chair with another wooden piece across my lap, although it had a lock I was not locked in. Two more immigration officers then proceeded to ask more questions, again these were poorly translated to me by the charterer’s agent.

A lot of the questions were about my home and family, as well my occupation. They wanted to know if I admitted the offence and accepted the consequences - which would be a fine of around **\$1,500 US**. The one thing I recall vividly was being asked if I wanted my family notifying.



Eventually, I was required to sign and place my fingerprints on a lot of documents which were all in Chinese. The agent explained a little about each one and I think they were mostly a transcript of the interview. I was then taken from the room and left until further documentation was completed.

Nearly five hours after the initial meeting with the immigration officers I paid the fine and was permitted to return to the vessel. Eventually, I was required to sign and place my fingerprints on a lot of documents which were all in a language I couldn't read.

At no time did I think about myself, the ship or the company. I knew the ship and crew were safe. When the officials questioned me about my family I did wonder if I was going to be detained for some time. The only person accompanying me was the agent, who himself was very fearful and not a very good translator, although I was glad he was there.

At no time was I able to tell anyone I had been arrested and I felt I had no choice but to comply. The whole experience has certainly left me feeling that the career I love is changing - and not in a good way.



Sector Insight

Maritime is not the only sector where loss of life could result from an incident. However, other sectors rely on professionals who understand their industry, to investigate what has happened. **Natalie Beswetherick**, Director of Practice and Development at the Chartered Society of Physiotherapy, discusses how the health industry deals with accidents and cases of harm to patients under the care of a physiotherapist.

In the UK, Chartered physiotherapists belong to the Chartered Society of Physiotherapy (CSP). It is a not-for-profit membership organisation and is the professional, educational and trade union for its **58,000** members.

The CSP is not a regulator. Physiotherapists are regulated by the Health and Care Professions Council (HCPC) with 16 other autonomous health and care professions. This regulator sits alongside the General Medical Council which regulates doctors and the Nursing and Midwifery Council which regulates nurses and midwives.

The HCPC investigates concerns raised by any member of the public, employer, police or other health care professional that suggest that a registered practitioner is not 'fit to practice'. Being 'fit to practice' means that the physiotherapist has the skills, knowledge and character to practice their profession safely and effectively. It is not just about professional performance. It includes acts by a registrant that may affect public protection or confidence in the profession.

The types of cases the regulator can consider include complaints that the physiotherapist:

- › Carried out reckless or deliberately harmful acts
- › Failed to meet the professional standards to practise
- › Was involved in sexual misconduct or indecency
- › Was dishonest, committed fraud or abused someone's trust
- › Exploited a vulnerable person
- › Was violent or displayed threatening behaviour
- › Had a substance abuse or misuse problem

In cases of criminal convictions, the courts notify these directly to the regulator. Criminal convictions against physiotherapists are uncommon.

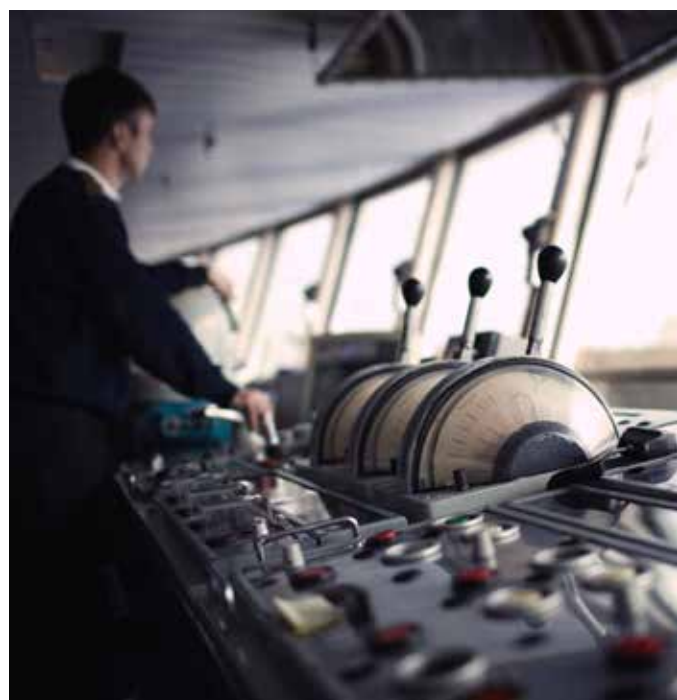
Throughout the process the CSP provides a legal defence team which provides advice and support for any physiotherapist that is subject to investigation by the regulator. The sanctions that the regulator can apply to a registrant who has been found 'unfit to practice' range from a caution, having specified conditions placed on their practice, a suspension from the register for a fixed period of time and the ultimate sanction of being struck off the register. This latter sanction means the registrant is no longer able to work as a physiotherapist in the UK.

Complaints from patients seeking compensation for alleged harm caused by a physiotherapist's malpractice are managed through the CSP's professional liability insurance claims process.

The number of claims made against physiotherapists per annum are relatively low. A review from 2001/02 to 2015/16 found a total of 682 claims over the period. During this time, claims had increased from 17 in 2001/02 to 66 in 2015/16.

All CSP members have professional liability insurance cover of **£7.5million** per single claim. All claims received are subject to robust investigation. The legal team acting for the physiotherapist determines, on the basis of the evidence submitted, that the alleged harm is proven, in which case the level of compensation is agreed with the complainant's legal team. Where the legal team considers harm is not proven, the case is referred to the courts for a judge to determine.

“ Whilst health professionals are as heavily regulated as maritime professionals, the difference between the sectors with regards to criminalisation is stark; with a measured approach to assessing health professionals' ability to carry out their role as opposed to the often knee-jerk reaction employed in the seafaring industry. With criminal convictions against physiotherapists considered uncommon, there is much that could be learned from the industry.



Know Your Rights

We hope Nautilus Federation members never find themselves being unfairly treated following an incident at sea, but this report shows just how important it is to **be prepared** and aware of how to deal with it should maritime professionals find themselves in this situation.

If you are approached by a law enforcement authority, remember:

1. Contact your Nautilus Federation union immediately and before making a statement (if possible)
2. Cooperate with the authorities as far as you are able but do not incriminate yourself
3. Be prepared to take time out if necessary
4. At all times seek independent legal or technical advice if you are unsure of the situation
5. Never be afraid to politely ask any official what their powers are and the purpose of the investigation
6. If you find yourself in a situation where it may look as though somebody suspects you of a criminal offence, then seek immediate legal advice so that you do not prejudice your position
7. No attempt should ever be made to provide false information to investigating authorities nor should documents onboard a vessel be 'lost' or 'destroyed' as such actions could get you into serious trouble



Here is a list of relevant legislation on international protection for seafarers - know your rights and the law should you encounter any incidents or accidents whilst at sea.

Article 292 of the UN Convention on the Law of the Sea: Prompt release of vessels and crews

1. Where the authorities of a state party have detained a vessel flying the flag of another state party and it is alleged that the detaining state has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within ten days from the time of detention, to a court or tribunal accepted by the detaining state under article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree
2. The application for release may be made only by or on behalf of the flag state of the vessel



3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining state remain competent to release the vessel or its crew at any time
4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining state shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew

Article 293 of the UN Convention on the Law of the Sea: Applicable law

1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention
2. Paragraph 1 does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono* ('according to the right and good'), if the parties so agree



Supporting Seafarers:

Seafarers' Rights International

Seafarers' Rights International (SRI) was launched in 2010 to promote, implement, enforce and advance all seafarers' and fishers' rights and remedies. This includes human rights and the rights of other persons onboard vessels.

SRI undertakes research, education and training throughout the international maritime industry, and advocacy in international, regional and national forums. It also holds a database of materials for the benefit of the international community.



SRI has two main projects and a number of areas of research, these include:

Fair treatment

It is an inherent risk in the working lives of seafarers that they may be subjected to criminal charges either of a professional or a non-professional nature, simply from carrying out their duties. They are at risk of committing an offence without any awareness or intention to do so

Maritime Labour Convention

The Maritime Labour Convention 2006 (MLC) is an international agreement of the International Labour Organisation (ILO) which sets out seafarers' rights to decent conditions of work.

Areas of research

- › Abandonment of seafarers
- › Deaths and injuries at sea
- › Wages and ship arrest
- › Fishers and plunderers
- › Piracy
- › Cabotage



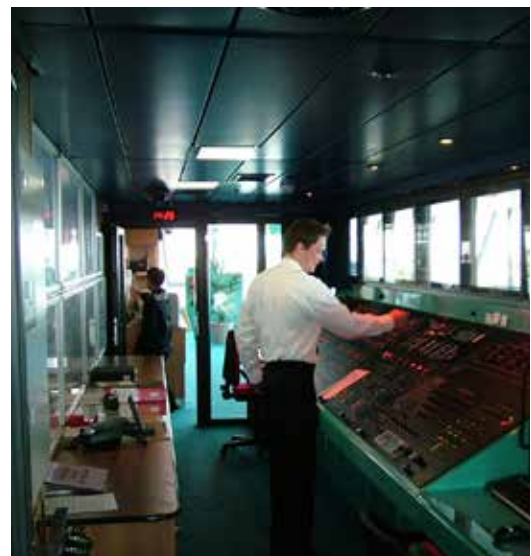
ITF inspectors

The ITF has a network of around 130 inspectors, based in ports all over the world.

ITF inspectors are union officials who are either full time or part time working on issues concerning the ITF FOC Campaign. Many ITF inspectors are former seafarers or dock workers.

Their job is to inspect ships calling in their ports, to ensure the seafarers have decent pay, working conditions and living conditions onboard. They conduct routine inspections and also visit ships on request of the crew. If necessary they assist with actions to protect seafarers' rights as permitted by law.

All ITF inspectors speak English as well as their own native language and - in some cases - other languages.



JASON

To combat the criminalisation of seafarers, the Nautilus Federation launched the Joint Assistance and Support Network (**JASON**), supported by Nautilus 24/7, which is a round-the-clock multilingual helpline.

Through JASON, the Nautilus Federation facilitates mutual assistance and support for seafarers who are members of a Federation union. A major objective is to ensure that the IMO/ILO Guidelines on Fair Treatment of Seafarers in the event of a maritime accident are followed.



If you are in a port, territorial waters or vessel which has no Federation union presence/flag connection, you are advised, in accordance with the IMO/ILO Fair Treatment Guidelines, to seek assistance from a local union and inform your own union. Again, you can contact Nautilus 24/7 to assist you in this process.

Other areas JASON can support with:

- › Liaising with you and between you and your own union
- › Providing you with legal advice and relevant information
- › Providing you with pastoral support, reassurance, visiting/arranging visits by port welfare staff or seafarers' missions
- › Helping you to obtain release in cases of detention
- › Advising on/engaging expert lawyer(s), interpreters and consular access
- › Arranging personal, medical and psychological support
- › Responding as necessary to any urgent need for assistance
- › Keeping your own union up to date with the situation/developments
- › Asserting your human and economic rights
- › Ensuring you are treated with dignity and respect by the authorities
- › Ensuring the authorities provide you with appropriate subsistence e.g. food and accommodation

What to do after an incident or accident at sea

Members are advised to contact a union of the Nautilus Federation as soon as possible, and before making any statements to any authorities. If the accident happened in a port or territorial water of a country in which a Federation union is situated, or your vessel is flagged in a such a country, you can contact that union directly.

Visit www.nautilusfederation.org for a list of Nautilus Federation unions and contact details.

Alternatively, contact Nautilus 24/7, a multilingual service which will take a message and contact a Federation union official who can call you back and provide you with prompt advice and assistance. Go to www.nautilusint.org for the LiveChat online connection to Nautilus 24/7 and the list of freephone numbers from 45 countries. You can also email helpline@nautilus247.org or send an SMS text message to +44 (0)7860 017 119.

Early contact with the Nautilus Federation is essential if you are to gain the necessary support and assistance and to ensure that you are given the best professional and technical advice available.

If you are in a port, territorial waters or vessel which has no Federation union presence/flag connection, then you are advised, in accordance with the guidelines, to seek assistance from a local union and inform your own union. Again, Nautilus 24/7 will be able to assist you in this process.

What do the guidelines say seafarers should do?

Seafarers should understand that when they make a statement to port, coastal or flag state investigators, their words could be used in a future criminal prosecution.

You should therefore ensure that you have access to legal advice before making any statements. JASON can help you with this, so make sure to check this before speaking to anyone.

Although the guidelines are not mandatory, the above principle — the right to not self-incriminate — is also enshrined in the mandatory IMO Casualty Investigation Code (International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or a Marine Incident) and is an important principle in many legal systems.

What other rights do I have under the guidelines?

You are entitled to access by consular officials from your home state and are allowed to communicate privately with family members, your union, welfare organisations, the shipowner, and legal representatives.

Fair Treatment Guidelines

The information below is intended as a handy checklist for members of the Nautilus Federation unions, so they can **quickly remind themselves** about their rights and how to get advice and assistance should they be involved in a maritime incident.

Your first steps in times of trouble

If you are involved in a maritime accident, the following general advice might be useful. It is based on general principles, including those laid down in international law. There may also be safeguards in the national law of the country concerned which should also be asserted.

If the vessel is boarded by officials

- › Ask to see proper identification of any law enforcement officer and record full details of the identification
- › Notify owner/operator, flag state, and consular authorities of the incident and any enquiries made
- › Cooperate reasonably with the law enforcement authorities involved without waiving any of your legal rights
- › Request to be informed of your rights under the national law of the boarding state in a language that you can understand
- › Assert your rights as a citizen of the flag state to be dealt with by the authorities of the flag state

If a search is carried out

- › Refuse to allow a search of either yourself or your personal belongings unless a valid search warrant is produced
- › If there is no search warrant but the law enforcement officers still insist on the search, clearly state that you do not consent to the search, preferably in front of witnesses
- › Do not use force to prevent a search
- › Request legal representation before any search is carried out of your person or your belongings
- › Request contact with your trade union or a local trade union official before any search is carried out of your person or your belongings. Remember to refer to Nautilus Federation contacts or contact Nautilus [24/7](#)

- Remain present during any search of your
- › belongings, preferably also with another crew member present, and note any personal items removed or damaged during the search

If an interview is conducted

- › Request legal representation before agreeing to answer any questions
- › You have the right not to incriminate yourself. Make no admissions without taking legal advice
- › If you decide to speak without a lawyer present, or cannot avoid doing so, then request that there are witnesses present whom you can trust, including your trade union or a local trade union official. Note the assistance available through **JASON**
- › Request the use of a translator before giving a statement or answering any questions if the language spoken by the law enforcement officials is not your own, or if English is being spoken and you are not a native speaker
- › Do not rely on promises of immunity made by law enforcement officers in exchange for any statement or for answering any questions. Valid offers of immunity from criminal prosecution can generally not be made by law enforcement officials
- › If the interview is to be conducted outside the ship, refuse to leave unless accompanied by a lawyer and an interpreter (if necessary), and only after your consular authorities have been notified of your whereabouts
- › Do not use force to resist your removal from your ship
- › If intimidated, notify your lawyer and/or consular authorities

If you are detained or arrested

- › Request to be informed at the time of your arrest/detention of the reason for your arrest and of any charges against you
- › Request legal assistance and confidential communication with counsel
- › Request consular assistance
- › Request the right to an interpreter (**approved by consular authorities**) and to translation of essential documents
- › Assert the right to be brought promptly before a judge to have the lawfulness of your detention reviewed
- › Assert the right to have a trial within a reasonable time and not to be detained pending trial without good reason
- › Assert your right not to be subjected to arbitrary arrest or detention, and not to be deprived of liberty except on such grounds and in accordance with such procedures as are established by law

I need immediate advice and assistance. What should I do?

There is a list of Nautilus Federation unions and their contact details on the Nautilus Federation website: www.nautilusfederation.org/policy/jason. The list is also available in the Nautilus Federation Fair Treatment of Seafarers guide in the event of a maritime accident.

The current member unions of the Nautilus Federation are:

- Australian Institute of Marine and Power Engineers (AIMPE)
- Australian Maritime Officers' Union (AMOU)
- ACV Transcom-Maritime (Belgium)
- Fédération Générale des Transports et de l'Environnement (FGTE-CFDT, France)
- Danish Maritime Officers (DMO)
- Finnish Ship's Officers' Union
- International Organization of Masters, Mates and Pilots (IOMMP, USA)
- Marine Engineers' Beneficial Association (MEBA, USA)
- Merchant Navy Officers' Guild - Hong Kong (MNOG-HK)
- Nautilus International (CH)
- Nautilus International (NL)
- Nautilus International (UK)
- New Zealand Merchant Service Guild (NZMSG)
- Norwegian Union of Marine Engineers (NUME)
- Officers' Union of International Seamen (OUIS)
- Seafarers' Union of Croatia (SPH-SUC)
- Singapore Maritime Officers Union (SMOU)
- Singapore Organisation of Seamen (SOS)
- Swedish Maritime Officers' Association (SMOA)
- La Unión de Capitanes y Oficiales de Cubierta (UCOC, Panama)
- La Unión de Ingenieros Marinos (UIM, Panama)