

فيلا
Vela



Issues Facing the Tanker Industry or ...

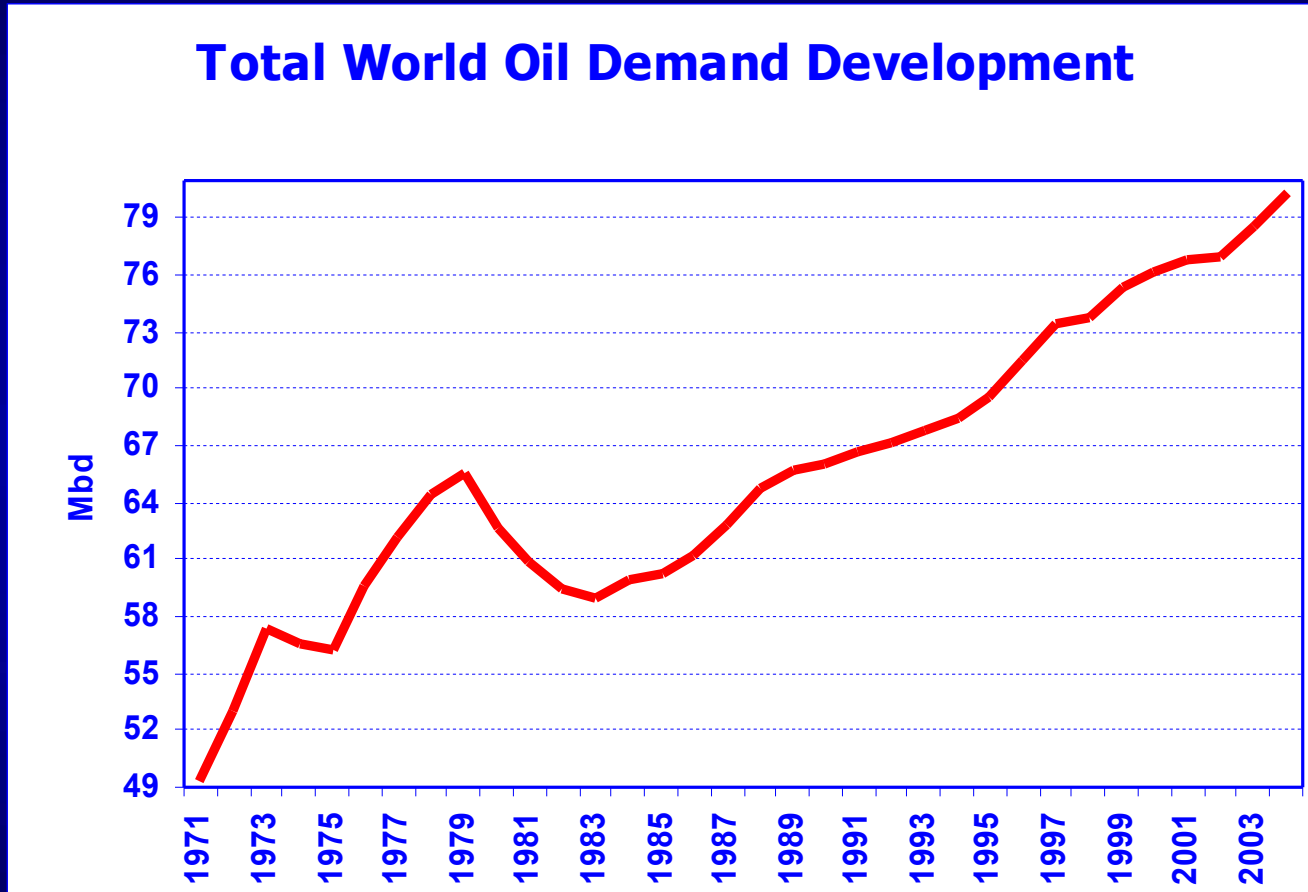
When Doing Your Job is a Crime!

Tom Allen,

Manager, Vela Marine International Ltd.,

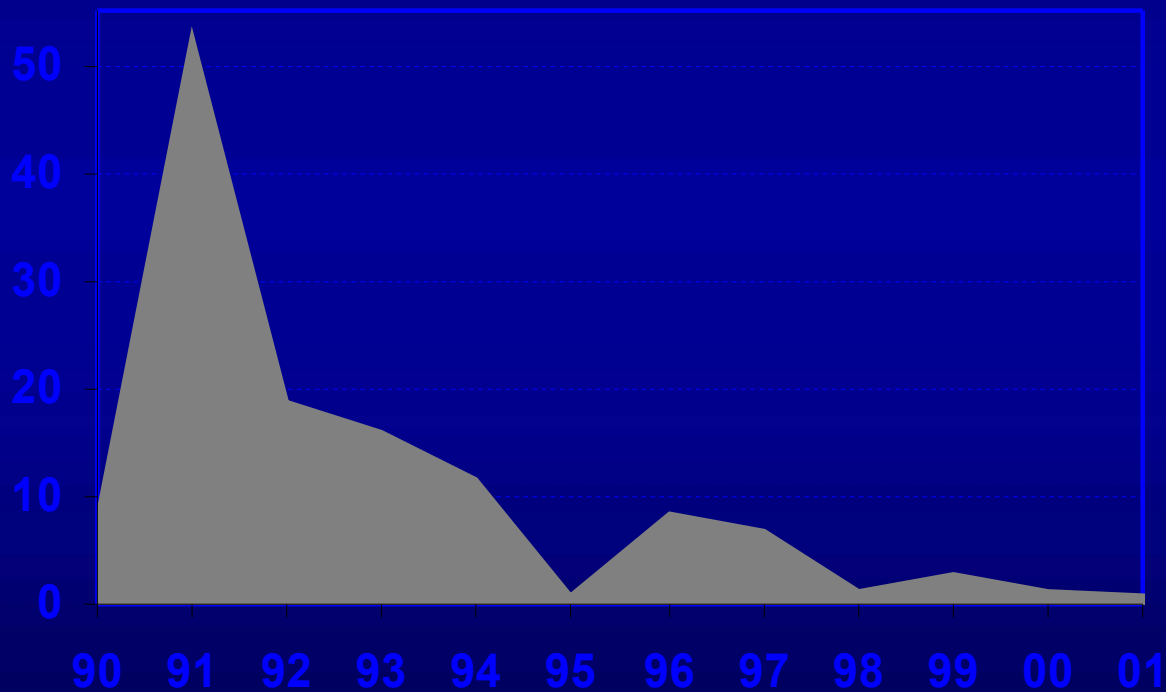
November, 2006

Oil Must Be Delivered



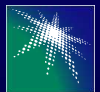
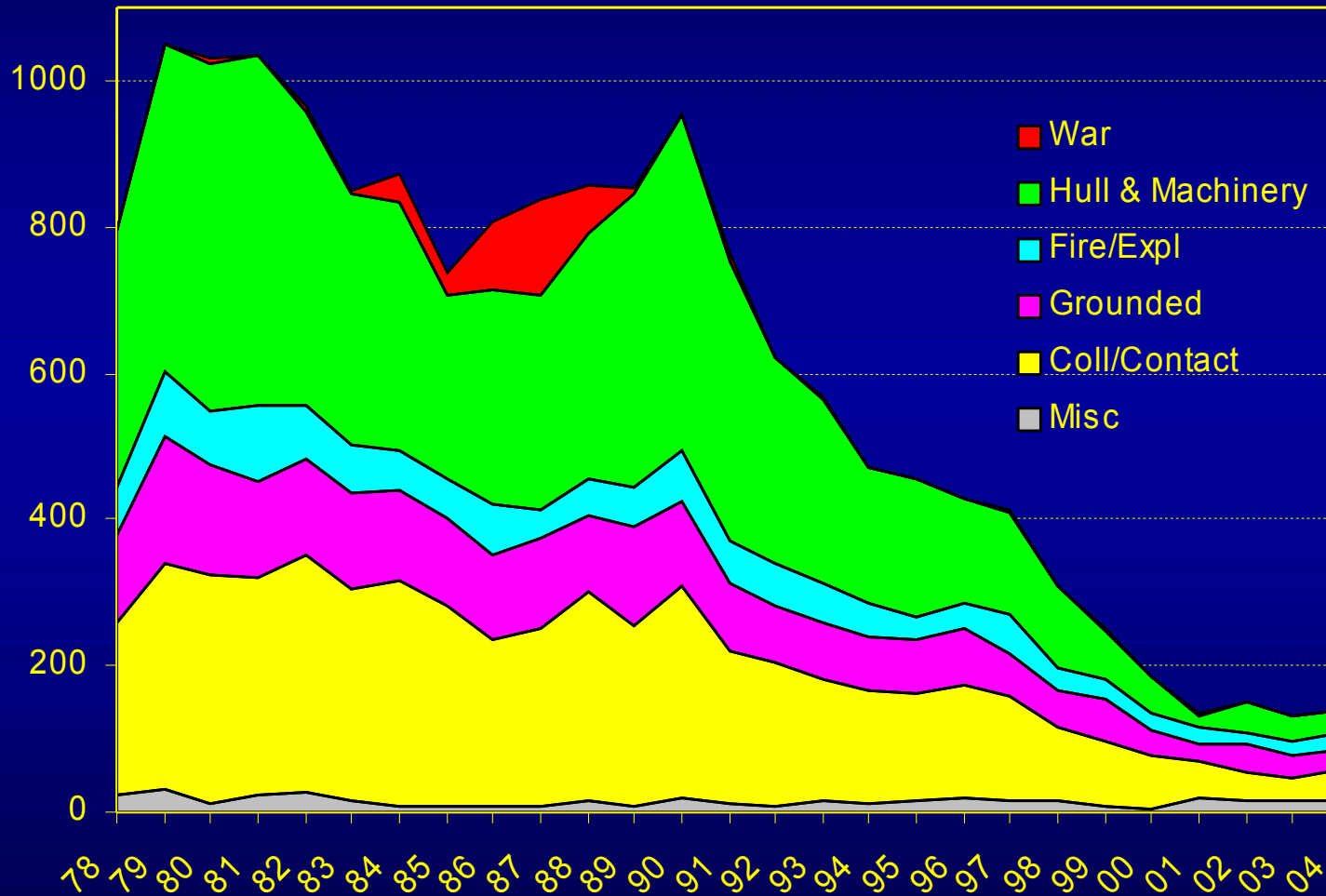
The public and the media have zero-tolerance for failure

Tonnes spilt per billion tonne-mile transported



Tanker incidents: 1978-2004

Number



The Problem

Accidental marine pollution incidents are increasingly the subject of criminal investigations.

Should this man have been detained for more than two years without trial ?



A CRIMINAL ACT ?

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Strict Criminal Liability

- Refuse Act of 1899
- Requires proof that oil has entered the water.
- Migratory Bird Treaty Act of 1918
- Requires proof that a migratory bird died.

→ *Neither law was intended to be used in connection with navigational accidents.*

→ *Neither law was incorporated into OPA 90.*

“Catch-22”

- Per the USCG’s environmental enforcement directive,

“Company officers and employees could be convicted and sentenced criminally even where [they] took all reasonable precautions to avoid the discharge.”

USCG Commandant's Instruction

“The decision to commit necessary Coast Guard resources to obtain evidence that will support a criminal prosecution must often be made in the very early stages of a pollution event.”

Coast Guard Position

- The Coast Guard Commandant has confirmed the agency's enforcement policy on criminal prosecution as being reserved for the most egregious cases and where traditional notions of what constitutes a crime has occurred.

Growing Pressure to Prosecute

- Today, the Justice Department and state enforcement agencies might get involved directly with the investigation ... without the Coast Guard or NTSB's recommendation.

The Dilemma

- Risk incriminating oneself by cooperating per OPA 90's mandate or follow criminal defense attorney's mandate not to cooperate for fear of self-incrimination.

“Chilling Effect”

- The Master of the NEW CARISSA refused to testify before the Coast Guard Board of Inquiry because of fear of possible criminal liability
“... bringing seven days of hearings to a halt, with key questions unresolved.”

Threat of Criminal Liability

- Negatively affects safety
- Hinders accident investigations
- Hinders oil spill response

Accident Investigation

- Accident investigation and reporting are important tools in every safety program.
- Accident investigation aids in determining the cause(s) of an accident, so that we can prevent recurrence.
- Accident reporting allows everyone in the industry to share in the knowledge (lessons learned) obtained during the investigation.

The “Erika” accident revealed the following:

- Lack of flag state implementation
- Inadequate class response and control
- Lack of transparency
- Double standards with charterers
- An international system with agreed rules but serious lack of implementation and control



Temporary Insanity – Twice!?



Analyze That!



Strict Criminal Liability

- Because of pollution laws ...
 - There remains no way to avoid criminal liability regardless of how diligently an operator attempts to adhere to prudent practice and safe environmental standards.

The New Paradigm

- The lines are blurred between unfortunate accidents and criminal behavior ... so be prepared to deal with the threat of criminal liability in the aftermath of any marine pollution incident.

Proposed Remedies

- 1 - Instruct Masters to accept LOF**
 - 2 – P& I Clubs and ITOPF must focus more on:**
 - A. Action than protection**
 - B. Prevention & drills**
 - 3 – Owners need to take responsibility, not shift blame to crews**
 - 4 – Port States need to allow Ports of Refuge**
- 
- The background of the slide is a photograph of a large, dark-hulled ship, likely an oil tanker, at sea. The ship is viewed from a distance, with its superstructure and masts visible against a clear sky. The water is a deep blue-grey color. The perspective is from a slightly elevated position, possibly from another vessel or a shore-based observation point.

Proposed Remedies (continued)

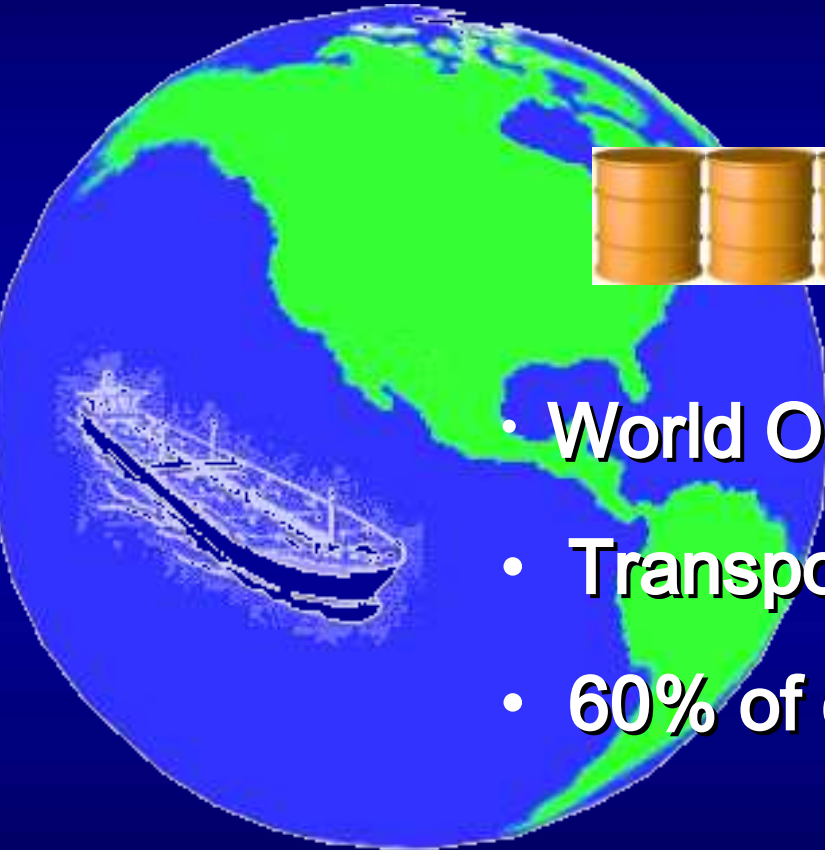
5 – Support MARE Forum recommendations

- ✓ Simple negligence not criminal
- ✓ Unintentional not criminal
- ✓ Willful violation criminal
- ✓ Gross negligence criminal
- ✓ Port state : crews same rights as citizens

Summary

- **Criminalization results:**
 - **Difficult find/retain good people.**
 - **Investigations hampered.**
- **Solutions:**
 - **Sign LOF.**
 - **Allow seafarers rights.**
 - **Criminalization for gross negligence/willful misconduct, not mistakes.**
- **Industry leaders lobby for these measures.**

Vital industry



- World Oil Consumption 3.6 billion ts
- Transported by sea - 2.2 billion ts
- 60% of oil is transported by sea

Thank you

Please Respond!



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