

To the Maritime Law Association :

GENTLEMEN :

At the annual meeting of May 5, 1911, we were appointed a Committee to consider the language of, and propriety of amending, the present Pilot Rules for Inland Waters promulgated with the approval of the Secretary of Commerce and Labor on April 1, 1911.

We have prepared for distribution and consideration a criticism of these Rules. In Appendix A of this report we state our view of each section and paragraph.

The power to make "local" rules depends wholly upon Section 2 of the Act of June 7, 1897, and their scope and force are necessarily limited by the provisions of the Act of Congress, viz.:

"That the Supervising Inspectors * * * shall establish such rules to be observed by steam vessels in passing each other, * * * not inconsistent with the provisions of this act as they from time to time may deem necessary for safety."

The Inspectors have therefore no power to make rules under the statutory provisions quoted for other than steam vessels, nor even for steam vessels except in respect of their "passing each other."

Considering the present body of rules, we think that:

(1) All rules which merely restate legislative enactments are both superfluous and injurious—superfluous for obvious reasons, and injurious because the average local navigator will only study what the Inspectors furnish to him, whereas he ought to know that what he is guided by is an Act of Congress, and he ought further to be compelled to study the whole Act and not those parts labelled by the Inspectors as rules of their own.

(2) Any rule which directly or indirectly interferes with any act of Congress by abrogating or restricting any privilege conferred thereby is unlawful and should be repealed.

(3) Any rule which (although within the power of the Inspectors to make) imposes or seems to impose a duty on navigators shown by experience in collision cases to be a source of danger is a bad rule and should also be repealed.

If we are right in these conclusions, there is nothing in the present body of Inspectors' rules that should remain in its present form.

We submit herewith as Appendix B a proposed set of "Special Rules"; in which we have preserved the definition of a "short blast," have revised the rules for signals between vessels on crossing courses, and have restored the Hell Gate rule, which in our judgment was an excellent regulation and should not have been dropped.

We think the official pamphlet should contain the following:

1. The Inland Rules.

2. Boundary lines of the high seas as now published in the current pamphlet (edition of April 1, 1911), pp. 28-30, with the following preface:

"The following lines dividing the high seas from rivers, harbors and inland waters are hereby designated and defined pursuant to Section 2 of the Act of Congress of February 19, 1895. Waters inshore of the lines here laid down are 'Inland Waters,' and upon them the Inland Rules and Pilot Rules made in pursuance thereof apply. Upon the high seas, viz.: waters outside of the lines here laid down, the International Rules apply."

3. Pilot Rules for Inland Waters, except Great Lakes and certain rivers, to be made pursuant to Sec. 2 of the Act of Congress approved June 7, 1897 (Appendix B of this Report).

4. Diagrams intended to illustrate the working of the system of colored lights and pilot rules (pp. 9-11 of the current pamphlet).

5. Rules for lights for certain classes of vessels navigating the harbors,, etc., of the United States (pp. 12-16 of the current pamphlet).

6. Towing Rules promulgated by the Department of Com-

merce and Labor pursuant to Sec. 15 of the Act of May 28, 1908 (Appendix C of this Report).

7. Motor Boat Act (pp. 26-28 of the current pamphlet).

8. Stand-by Act, being Chap. 875 of the Laws of 1890, 26 Stat., 425.

9. Act of Congress declaring it unlawful to obstruct passage of vessels by anchoring in navigable channels (Laws of 1899, c. 425, Sec. 15, 30 Stat. 1152, Appendix D of this Report).

10. Pier-end Act of New York, being Sec. 879 of the Charter of New York (Appendix E of this Report).

September 15, 1911.

Respectfully submitted,

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APPENDIX A.

ANALYSIS OF EXISTING PILOT RULES.

The regulations of April 1, 1911, contain certain "preliminary matter" and thirteen rules.

For convenience of criticism the "preliminary" statements or definitions are here copied in full; the rules are copied only when their language is to be commented upon specially.

"In the following rules the words 'steam vessel' and 'steamer' shall include any vessel propelled by machinery."

Note: This is verbatim from the preliminary definitions of the Inland Rules, except that the words "and steamer" are added. This is a meaningless addition, while the definition itself owes its force to the statute, and not to anything that the Inspectors have power to say or do.

"A vessel is under way within the meaning of these Rules when she is not at anchor or made fast to the shore, or aground."

Note: This is verbatim from the same source and is open to the same criticism as the preceding.

"Risk of collision can, when circumstances permit, be ascertained by carefully watching the compass bearing of an approaching vessel. If the bearing does not appreciably change, such risk should be deemed to exist."

Note: This is verbatim from the statement preliminary to Article 17 of the Inland Rules, and is open to the same criticism as above.

"The whistle signals provided in these rules shall be sounded on an efficient whistle or siren sounded by steam or by some substitute for steam."

Note: This is a re-statement of a part of Article 15 of the Inland Rules, and is therefore unnecessary.

“A short blast of the whistle shall mean a blast of about one second’s duration.”

Note: This is verbatim from Article 28 of the International Rules. As no such definition is found in the Inland Rules, it may properly remain in force.

“One short blast of the whistle signifies intention of or assent to steamer first giving the signal to direct course to own starboard—*except* when two steamers are approaching each other at right angles or obliquely, when it signifies intention of steamer which is to starboard of the other to hold course and speed.”

Note: The first clause of this definition is no more than an inaccurate paraphrase of a portion of Article 18, Rule 1 of Inland Rules. The second clause (beginning at “except”) is not an exception, but is a proper local rule in that it provides a method for a steamer on a crossing course and to starboard of another steamer—and, therefore, the privileged vessel—of signifying her intention of asserting and maintaining the rights conferred upon her by Articles 19 and 21 of the Inland Rules, in which respect the Inland Rules seem incomplete.

“Two short blasts of the whistle signify intention of or assent to vessel first giving the signal to direct course to own port—*except* when two steamers are approaching each other at right angles or obliquely, when the signal signifies desire of or assent to steamer which is to port of the other to cross the bow of steamer to starboard.”

Note: The first clause of this definition is open to the same criticism as the corresponding clause of the preceding one. The second clause (beginning at “except”) is also not an exception, but is a proper local rule providing for the expression of a desire on the part of one or both of two vessels on crossing courses to depart from the provisions of Articles 19 and 21 of the Inland Rules.

“Three short blasts of the whistle shall mean ‘My engines are going full speed astern.’ When vessels are in sight of one another a steam vessel under way whose engines are going

full speed astern shall indicate that fact by three short blasts of the whistle."

Note: The second sentence is a re-statement of Article 28 of the Inland Rules; the first sentence is unnecessary.

"RULE I.—If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle, the danger signal.

"Whenever the danger signal is given the engines of both steamers shall be stopped and backed until the headway of the steamers has been fully checked; nor shall the engines of either steamer be again started ahead until the steamers can safely pass each other, and the proper signals for passing have been given, answered and understood."

Note: The first paragraph of this rule is Rule 3, Article 18 of the Inland Rules, except for the addition of the words "the danger signal." The second paragraph is unnecessary and creates a danger instead of avoiding one, in that it *requires* any vessel receiving a danger whistle to stop and back. This is often a dangerous manœuvre, yet a violation of this rule would at least put the burden upon the vessel not complying with it of showing either that compliance was impossible or that non-compliance did not contribute to collision. This should be left to the rule of special circumstances.

"RULE II.—Steam vessels are forbidden to use what has become technically known among pilots as 'cross signals,' that is, answering one whistle with two, and answering two whistles with one. In all cases, and under all circumstances, a pilot receiving either of the whistle signals provided in the rules, which for any reason he deems injudicious to comply with, instead of answering it with a cross signal, shall at once sound the danger signal and observe the rule applying thereto (Rule I)."

Note: The cross signal rule is in our opinion contrary to the law. Of two vessels on crossing courses, the one

having the other on her starboard side must keep out of the way, by Article 19, and the other vessel shall keep her course and speed, by Article 21. By mutual consent the privilege may be surrendered, but this rule puts it in the power of the burdened vessel by blowing two whistles to compel the other vessel either to give way or to blow the danger signal, indicating that she "fails to understand the course or intention of the other." This is not true, there is no misunderstanding.

In either case she violates the rule requiring her to hold her course and speed.

The practical result is to enable any navigator desiring to "hog the road" to put the other vessel in the wrong unless the road be surrendered. (See *Transfer No. 15*, 145 Fed. Rep., 503, and *Montauk*, 180 Fed. Rep., 697.)

"RULE III.—The signals for passing, by the blowing of the whistle, shall be given and answered by pilots, in compliance with these rules, not only when meeting 'head and head,' or nearly so, but at all times, when the steam vessels are in sight of each other, when passing or meeting at a distance within half a mile of each other, and whether passing to the starboard or port.

"The whistle signals provided in the rules for steam vessels meeting, passing, or overtaking, are never to be used except when steamers are in sight of each other, and the course and position of each can be determined in the daytime by a sight of the vessel itself, or by night by seeing its signal lights. In fog, mist, falling snow or heavy rainstorms, when vessels can not so see each other, fog signals only must be given."

Note: The first paragraph of this rule is an addition to Article 18, Rule 1 of the Inland Rules, in that the statute requires the signals for port and starboard passing to be blown only "where vessels are meeting end on or are nearly end on."

The fact is that the Inspectors have legalized, by their rules or definitions above commented on, the habit of local navigators to blow one and two whistle signals when on crossing courses. This, as above shown, is a real addition to the Inland Rules, and we think a lawful and proper one, but it should be limited to the case of vessels

on crossing courses, and there should be no fixed distance within which signals must be blown.

The second paragraph of this rule is a verbatim copy of Article 18, Rule 9 of the Inland Rules, and is therefore unnecessary.

The next following Inspectors' Rules, namely those numbered IV, V and VI, need not be quoted, as they are taken verbatim from Articles 18 and 24 of the Inland Rules.

"RULE VII.—"When two steamers are approaching each other at right angles or obliquely so as to involve risk of collision, other than when one steamer is overtaking another, the steamer which has the other on her own port side shall hold her course and speed; and the steamer which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steamer, or, if necessary to do so, slacken her speed or stop or reverse.

"The steamer having the other on her own port bow shall blow one blast of her whistle as a signal of her intention to cross the bow of the other, holding her course and speed, which signal shall be promptly answered by the other steamer by one short blast of her whistle as a signal of her intention to direct her course to starboard so as to cross the stern of the other steamer or otherwise keep clear.

"If from any cause whatever the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steamers shall be stopped, and backed if necessary, until signals for passing with safety are made and understood."

Note: The first and third paragraphs of this rule are re-statements of Articles 19, 21, 22, 23 and Rule 3 of Article 18 of the Inland Rules. In our opinion the statutory rules should be permitted to speak for themselves.

The second paragraph declares that the privileged vessel "*shall* blow one blast," and that by the other steamer the "*signal shall* be promptly answered * * * by one short

blast." When this is taken in conjunction with the cross-signal rule previously considered, it excuses, if it does not justify, the common impression of local pilots that a man obtains the right of way by blowing the first signal.

Inspectors' Rules VIII to XIII inclusive are taken almost verbatim from Articles 15, 16, 20, 22, 25 and 27 of the Inland Rules, and are in our judgment unnecessary and confusing.

APPENDIX B.

SPECIAL RULES TO BE MADE PURSUANT TO SECTION 2 OF THE ACT OF CONGRESS APPROVED JUNE 7, 1897.

RULE I.

A short blast of the whistle shall mean a blast of about one second's duration.

RULE II.

When two steamers are approaching each other on crossing courses, so as to involve risk of collision, the steamer which has the other on her own port side may blow one short blast of the whistle, meaning thereby that she will hold her course and speed and will cross the bow of the other steamer. If such signal be given it shall be answered by one short blast of the whistle, which shall mean that the steamer giving such answer will keep out of the way.

RULE III.

When two steamers are approaching each other on crossing courses so as to involve risk of collision the steamer which has the other on her own starboard side may give a signal of two short blasts of the whistle, meaning thereby that she desires to cross the bow of the other steamer.

If such signal be promptly answered by two short blasts of

the whistle, and not otherwise, the steamer giving the first signal may cross the bow of the other.

If, however, such signal be not promptly answered, or be answered by any other signal, as, for instance, by a signal of one whistle, or by one of several short and rapid blasts (not less than four), or by both such signals, the vessel which gave the first signal of two whistles shall keep out of the way and shall not cross or attempt to cross the bow of the other.

RULE IV.

When two steamers are approaching the Narrows known as "Hell Gate" in the East River at New York, side by side, or nearly so, running in the same direction, the steamer on the right or starboard hand of the other (when approaching from the west), when they shall have arrived abreast of the north end of Blackwell's Island, shall have the right of way, and the steamer on the left or port side shall check her way and drop astern. In like case when two steamers are approaching from the east, and are abreast of Negro Point, the steamer on the right or starboard hand of the other shall have the right of way, and shall proceed on her course without interference, and the steamer on the port side of the other shall keep at a safe distance astern until both steamers have passed through the difficult channel.

APPENDIX C.

Towing Rules promulgated by the Department of Commerce and Labor pursuant to the Act of May 25, 1908, and reading as follows:

REGULATIONS FOR TOWS.

1. Tows of seagoing barges navigating the inland waters of the United States are limited in length to four vessels, including the towing vessel or vessels.
2. Hawsers are limited in length to 75 fathoms, measured from the stern of one vessel to the bow of the following vessel; and should in all cases be as much shorter as the weather or sea will permit.

3. In cases where the prescribed length of hawser is, in the opinion of the master of the towing vessel, dangerous on account of the state of weather or sea, hawsers need not be shortened to that length until reaching the localities named below :

(a) Tows bound for Hampton Roads or beyond, before passing Thimble Light.

(b) Tows bound up the Chesapeake, to the northward of Baltimore Light.

(c) Tows bound up the Delaware, between Fourteen Foot Bank and Cross Ledge lighthouses.

Hawsers may also be lengthened in the same places, under the same circumstances, when tows are bound out.

4. In case of necessity, on account of wind or weather, hawsers of vessels navigating between Race Rock and Gay Head may be lengthened out in the discretion of the master of the towing vessel; but this paragraph shall not apply to Narragansett Bay north of Beavertail light.

5. In all cases where tows can be bunched, it should be done.

(a) Tows navigating in the North and East rivers of New York must be bunched above a line drawn between the Statue of Liberty and the entrance to Erie Basin. When tows are entering Long Island Sound from the westward, the lines may be lengthened out to the prescribed length after passing Fort Schuyler; and when bound for New York from Long Island Sound tows must be bunched before passing Whitestone Point.

(b) Tows must be bunched above the mouth of the Schuylkill River, Pennsylvania.

6. Section 15 of the Act approved May 28, 1908, provides:

That the master of the towing vessel shall be liable to the suspension or revocation of his license for any willful violation of regulations issued pursuant to Section fourteen in the manner now prescribed for incompetency, misconduct, or unskilfulness.

7. Any violation of these regulations shall be reported in writing as soon as practicable to the Board of Local Inspectors of Steam Vessels most convenient to the officer or other person who may witness the violation."

APPENDIX D.

Section 15 of Chapter 425 of the Laws of 1899 (U. S. Stat. vol. 30, p. 1152).

“SECTION 15. That it shall not be lawful to tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft.”

APPENDIX E.

Greater New York Charter, Sec. 879 (Chapter 466 of the Laws of 1901).

“It shall not be lawful for any vessel, canal boat, barge, lighter or tug to obstruct the waters of the harbor by lying at the exterior end of wharves in the waters of the North or East River, except at their own risk of injury from vessels entering or leaving any adjacent dock or pier; any vessel, canal boat, barge, lighter or tug so lying shall not be entitled to claim or demand damages for any injury caused by any vessel entering or leaving any adjacent pier.”