

"All the News
That's Fit to Print"

The New York Times

Weather: Partly cloudy and mild today, southeasterly winds. Cloudy, chance of showers tonight; clearing tomorrow. Temperatures: today 50-53, tonight 38-42; yesterday 36-50. Details on page C9.

VOL.CXXXIV....No. 46,254

Copyright © 1984 The New York Times

—NEW YORK, MONDAY, DECEMBER 10, 1984—

50 cents beyond 75 miles from New York City,
except on Long Island.

30 CENTS

As Fishing Industry Changes, Risk and Loss Seem to Grow

By DUDLEY CLENDINEN

Special to The New York Times

BOSTON, Dec. 9 — In the Gloucester harbor north of here, where fishermen have brought their catch to dock for more than 350 years, the curved hulls and rigging of the fishing trawlers make a pretty sight. But some of the oldest boats, and some of the newest, are not at dock, nor will they be again.

Thirty-seven trawlers, almost a quarter of the Gloucester fleet, have sunk in the last four years, and most lie in deep waters off the coast, in silent monument to a troubled trade. Across the continent, dozens of boats used to fish for Alaskan king crabs have gone down in the Bering Sea.

Phantom Insurers

From Alaska to California, from Maine south and around into the Gulf of Mexico, the commercial fishing fleet is embattled by changing times. Faced here and there with diminished fish stocks and increased foreign competition, the industry has been rocked in recent years by an increased number of sinkings in both high seas and calm, prompting suspicion among fishermen and insurers that some boats have been sent under intentionally.

The industry has also been troubled by insurance companies that turned out to have phantom assets, and mainly, by the economic impact of a fundamental change in the fishermen's attitude toward injuries on the job.

Fishing, especially on the high seas, is hard and dangerous work, and historically the industry has been untouched by governmental safety standards or work rules. A crew member's pay is often based on his share of the catch. "No work, no pay," says August Felando of San Diego, president of the

Continued on Page A18, Column 1

American Tunaboat Association. "So you take risks, especially if you're a young guy. You're going to get hurt,"

But increasingly, instead of negotiating a claim with the boats' insurers, injured seamen, like workers ashore, are taking their accidents to court, and large jury awards and settlements, combined with the insurance claims for sunken hulls, have engendered a wave of canceled policies and steep rises in premiums from those companies still willing to insure the boats.

The annual premiums in many cases are now 7 to 12 percent of a boat's insured value, an increase from 2 percent, or less, as recently as 1982. "I know one vessel whose premium jumped from \$14,000 to \$70,000 a year," said Jack T. Brawner, who monitors the Gulf shrimping fleet from St. Petersburg, Fla., as director of the Southeast Region for the National Marine Fisheries Service. "Insurance is an extremely critical problem here."

The impact has been nationwide, affecting skippers whose boats have been free of claims and ports where sinkings and injury claims have been rare.

A Worldwide Market

"Basically, marine insurance is a worldwide market, and any claim made on the West Coast is going to affect rates on the East Coast and vice versa," says Barry Collier of Seattle, executive director of the North Pacific Fishing Vessel Owners Association.

The 37 sinkings over four years in the Gloucester fleet, which had lost fewer than 30 boats in the previous decade, are only the most dramatic evidence of an industry in trouble.

The New England fleet, for example, lost valuable fishing ground on the Georges Bank recently to the Canadian fleet as the result of a decision by the International Court of Justice at the Hague. Canadian fish, harvested by a restricted number of fishermen from grounds that the Canadians say are more carefully managed, regularly arrive on United States wholesale markets at 25 to 50 percent less than the price of fish caught domestically.

The Alaskan king crab fleet, meanwhile, is reeling from the virtual disappearance of the crabs in the Bering Sea. "No one knows where the crabs went," says John George, director of the Alaska Division of Insurance, "but they aren't there."

Tuna Fleet Under Pressure

The California tuna fleet, which fishes several oceans, is under pressure from the Japanese and from processing plants. Yellowfin tuna prices have sunk 30 to 80 percent in four years.

And the 10,000 boats of the South Atlantic and Gulf Coast shrimp fleets now compete with the fishermen of about 60 foreign countries. Imports, which have been rising, now make up roughly half the shrimp consumed in the United States, says Jack T. Brawner, director of the Southeastern region for the National Marine Fisheries Service, part of the Department of Commerce.

have had a striking effect on the marine insurance market. "It's a national problem, absolutely," says Representative John B. Breaux, Democrat of Louisiana, chairman of the House Subcommittee on Fisheries and Wildlife. Mr. Breaux held informal hearings on the subject in Boston this fall. Mr. Breaux said he planned to schedule formal hearings in the next session of Congress.

Jeff Pike, a regional representative in Representative Gerry E. Studds's office in New Bedford, Mass., said that a resolution to the problems of boat safety and marine insurance "may well, in fact, require Federal legislation."

2 Main Factors Seen

William P. Hutchins, manager of the marine department in the Boston office of Johnson & Higgins, insurance brokers, cited two factors hurting insurers. "The big problem with protection and indemnity insurance is these court awards for injuries, and they are astronomical," he said. "The other problem is that the Coast Guard is not required to inspect these boats on a regular basis. The vessels are old, they're not maintained, the fishing is not all that great."

The Federal Bureau of Investigation is exploring whether it has the jurisdiction and the means to look into some of the Gloucester sinkings, which have raised considerable suspicion in the insurance and fishing industries that they were a way of resolving financial stress by cashing in the boats.

"No representative of the fishing industry will say that people were out there sinking their boats," says Dennis Nixon, a lawyer who teaches admiralty and fisheries law at the University of Rhode Island and who has studied the insurance problems of the fleet for three years. "Twenty-nine of the boats, as I recall off the top of my head, went down in calm waters, and not in shallow water, where they could be raised and examined. They were all in deep water. I think it's unreasonable that all 29 were genuine accidents."

The Gloucester sinkings were the subject of a series of articles this summer in The Gloucester Daily Times by Kevin Sullivan, a reporter who was the first to compile the list and circumstances of the sinkings and to chart the locations where the boats went down.

The fishing community in Gloucester is heavily Italian, and Mr. Sullivan found that beginning in August 1979, six of the sunken boats had been owned, skippered or crewed by members of the Ferrara family, recent immigrants from Sicily. And in some cases, other boats captained or crewed by other Ferraras were nearby to pick up the survivors of the sunken craft. No lives were lost in any of the sinkings.

'Jealousy Is Everywhere'

Mr. Sullivan reported that he asked Vito Ferrara about the sinking of the Giacomo F., which, at \$1.5 million, was the most expensive loss in the history of the Gloucester fleet. "Some guys think we sunk the boat intentionally," Mr. Ferrara was quoted as saying. "But these people, maybe they do not like

Mr. Ferrara did not return telephone calls seeking confirmation of the quotation or further comment.

As various inquiries get under way, the effect on boat owners spreads. Oral Burch, who owns two bottom trawlers in Kodiak, Alaska, said Tuesday that his insurance company had sent him a notice of cancellation.

"There's no reason for it," he said. "We've never had a claim. I've had the boats for 12 to 14 years with no claims. So why?"

Norman Holm of Kodiak, a veteran marine surveyor for insurance companies, had an answer. "Burch's cancellation came from one of the underwriters, one of the last companies still insuring both crabbers and trawlers," Mr. Holm said. "Their losses caught up with them, and they decided to take their losses and get out."

The current issue of The National Fisherman, a trade newspaper, reports a speech given recently by David Weekes, an underwriter for Lloyds of London, on the reasons for the withdrawal of so many insurance companies from the Alaskan market. He noted the large number of sinkings, saying that "during the period Jan. 1, 1982 to July 22, 1983, 48 fishing boats, mostly crabbers, capsized in the Bering Sea and other western Alaskan waters, with 89 fatalities."

The king crab, which seemed so richly plentiful in the Bering Sea in 1980 and 1981, virtually disappeared the fol-



The New York Times/Ira Wyman

man at work off Gloucester, Mass. Thirty-seven trawlers, a quarter of the harbor's fleet, have sunk in the four years, leading to higher insurance premiums that are only one of the financial pressures on the industry.

lowing year, putting a heavy financial burden on those who bought boats when the crabbing was good. Severe limits were imposed on crabbing in the Bering Sea, and so when the boats went out, they went out piled higher than usual with crab pots, to try to catch more crabs in a shorter period of time than usual.

Crab boats are generally valued at \$1 million to \$4 million. The stacks of pots reduced their stability in the stormy northern waters, a fact widely thought to contribute to many of the capsizings. But some sinkings, says Mr. George of the Alaska Division of Insurance, "were from 'a moral hazard' — that's where a captain sinks his boat."

The sinkings, more than personal injury suits, Mr. George said, have contributed to sharply higher insurance premiums in the last several years. "There are a lot of people paying \$140,000 a year for their insurance," Mr. George said. "You've got to catch a lot of crabs to pay that — or sink your boat."

Problems With Insurers

In the wake of the sinkings, he said, another problem has emerged for the fleets that operate from Alaska, Oregon and Washington. Marine insurance is an international business based at sea, beyond the reach of state or Federal regulation. "We had a lot of companies writing insurance which basically didn't exist," Mr. George said. His investigators, he said, try to track

the activities of those companies carefully and chase their representatives off land when they are found.

In Gloucester, the multiple sinkings also prompted broad cancellations by reputable insurance companies, which suddenly found themselves under claim for more money than they were making from their investment of the premiums paid in.

One of the boat owners whose policy was so canceled, a man who declined to be named, found another company to insure him. But when two crew members recently brought suit over injuries, one for \$500,000 and one for \$300,000, the second company canceled his policy. After weeks of searching, while his boat stayed at dock, he found a third company to insure him, but he does not want to be quoted talking about it.

"I don't know," he said. "Maybe if I open my mouth, the company would come and say 'Look, we don't need this. You're canceled.'"

Attorney for the Injured

Both injury claims against the Gloucester boat owner are represented by Joe Orlando, a lawyer in Gloucester. Mr. Orlando, 31 years old, is a son, nephew and grandson of fishermen, and he has become the most prominent in New England of a growing number of lawyers around the country who specialize in filing personal injury claims for fishermen.

The lawyers' energy and impact on

the industry have become the talk of the fleet. "In Brownsville, Tex., from the numbers I've heard, approximately a year ago there were only one or two plaintiffs' lawyers," said Kristin Vehrs, Washington representative for the Texas Shrimp Association. "And now there are 12 or 13."

Jim Kostakes, a fish processor in New Bedford, the leading port in the nation in terms of the value of the fish brought in each year, more than \$100 million, also noted the trend. "I know an attorney that drives down from Gloucester every morning, and he's at the docks by 6:30," Mr. Kostakes said. "Every morning," Mr. Kostakes is president of the National Vessel Safety and Insurance Commission, a trade group.

'Profiteering' Is Alleged

Representative Breaux speaks of "allegations that personal injury lawyers are profiteering."

Mr. Felando of the American Tuna-boat Association said that in five years, annual insurance premiums to cover crews in the California tuna fleet went to \$8,500 or \$10,000 a man from \$1,500.

"I think the problem is recognized as one that has reached crisis proportions all around the country," Mr. Felando said. Speaking of the lawyers, he said, "It's just the fact of easy money, and you've got people out there soliciting."

Mr. Orlando, the Gloucester attorney, says he does not go out to solicit cases. "We don't need to," he says, but he defends the practice, and the fisherman's need for legal advice, from a personal perspective.

"I lost two uncles at sea," Mr. Orlando said. "In both cases, the vessels were covered by insurance, but the families received only enough to cover burial expenses."

"Fishermen, just like insurance companies, have the right to be represented," he said. "If I'm in some huge New York law firm, I can walk into the board room of General Motors and solicit their business."

"However, in personal injury law, if a man is disabled, and maybe doesn't speak English very well, and doesn't know what his basic rights are, and someone comes up and says, 'I can help you,' then that's ambulance-chasing."

Law Protects Fishermen

"The only reason I'm in business is because the insurance companies fail to deal fairly with people," Mr. Orlando said. The rights of fishermen are protected by the Jones Act, passed by Congress some years ago to make boat owners responsible for the safety of their crews. This past February, Mr. Orlando represented Mercurio DiMercurio, skipper of a trawler.

Mr. DiMercurio's arm had been badly broken by a steel block falling from the rigging of his boat, owned by a corporation in which he was the majority stockholder. Although he was, in effect, suing himself for negligence, a Federal jury in Boston awarded him more than \$700,000, including interest.

News of that verdict reverberated through the industry, and Mr. Orlando says he has not had to go to trial since. The insurance companies, he said, have settled every claim.