



# The Law of Lookouts

By Marilyn Raia

Many have said the most important of the navigation rules is Rule 5, which requires every vessel to have a lookout:

*Every vessel shall at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and the risk of collision.*

The navigation rules, and in particular Rule 5, were designed specifically to prevent vessel collisions and allisions with stationary objects such as piers, bridges or obstructions to navigation.

## The Lookout's Duties

A lookout is considered the eyes and ears of the vessel. As such, the lookout must have good vision and hearing and be trained and experienced enough to recognize what is being observed and heard. The slightest negligence by the lookout can result in loss of the vessel on which he is stationed as well as the property and persons aboard. It can also result in the loss of other vessels, property and persons.

The lookout's view should be unobstructed. Smoke or fog impairing the lookout's vision should be reported to the navigating officer. The lookout must know the significance of whistles, bells, lights and shapes under the prevailing conditions and be able to determine whether a vessel he observes is moving or not. The lookout must watch for overhead obstructions such as power lines in addition to obstructions in the water. The lookout must be able to adequately and timely communicate what is observed to those persons navigating the vessel but does not have any obligation to speculate about the likelihood of a collision or how vessels will move in relation to each other. It has been said the law requires the lookout to engage in "indefatigable care and sleepless vigilance" because the lookout is charged with knowledge of all that can be seen and heard.

The International Rules of the Road adopted by Congress in the 1950's

addressed the need for a lookout in negative language:

*Nothing in these Rules shall exonerate any vessel, or the owner, master or crew thereof from the consequences of ...any neglect to keep a proper look-out....*

The International Rules of the Road were amended in the 1970's and the obligation to have a lookout was stated in positive language, i.e. "every vessel shall maintain a proper lookout...." Moreover, the amended version of the lookout rule imposed an additional duty on the lookout, namely, "to use all available means appropriate in the prevailing circumstances and conditions." The required "available means" have been construed by the courts to sometimes include the use of radar and/or binoculars.

## The Lookout's Position on the Vessel

While the navigation rules themselves do not specify where the lookout should be stationed aboard the vessel, industry custom and case law require the lookout to be posted as far forward and as near the water as possible. However, the configuration of the vessel and the surrounding conditions may dictate otherwise. For example, a lookout on a vessel with an upper and lower wheelhouse may, under certain conditions, have a better vantage point from the upper wheelhouse. And, a vessel that is backing or maneuvering may be held negligent by not having a lookout posted at the stern. A tug towing a barge or other vessel is not required to have a lookout at the stern constantly watching the tow if the weather is fair, the seas are calm and there is no reason to anticipate a perilous condition to develop. However, the failure to post a lookout on a tug to watch a vessel under tow may be negligent under other circumstances. Moreover, depending on the configuration of the tug and tow, negligence may be found when there is no lookout on the towed vessel in addition to a lookout on the tug.

A tug assisting a ship to dock does not have a duty to post a lookout for the ship to prevent it from hitting the

dock or to warn if the vessel's speed when approaching the dock is excessive. Nonetheless, the tug operator has a duty to post a lookout for the tug's own safety.

Certain circumstances may dictate the posting of more than one lookout on a vessel. Heavy weather, fog, darkness, a crowded channel or the vessel's general arrangement may require a lookout on each side of the bow as well as in the wheelhouse. Multiple lookouts may also be required when a vessel passes under a bridge or a series of bridges with a narrow clearance. In such situation, the standard of prudent seamanship likely will require various crewmembers to be stationed around the vessel observing the passage.

## The Consequences of Violating the Lookout Rule

The failure to post a lookout and use all available means to determine if a risk of collision exists may lead to a presumption of fault under the Pennsylvania rule, derived from an 1873 US Supreme Court case, *The Pennsylvania*, 86 U.S. 125 (1873). Under that rule, when a vessel in a collision is found to have violated a statutory rule designed to prevent collisions, such as the navigation rule requiring a lookout, a presumption of fault is raised. The violator must then prove by clear and convincing evidence the violation did not and could not have played a role in the casualty. There must be a causal connection between the violation and the casualty.

The failure to observe a properly lit vessel or a marked hazard to navigation resulting in a casualty is a clear violation of the lookout rule, resulting in a presumption of fault that would be difficult if not impossible to overcome. In *Yaeger v. the Alten*, 167 F. Supp. 617 (D. Or. 1958), two fishing vessels collided in the Pacific Ocean west of Waldport, Oregon. The master of one of the vessels, the *Breezy Bill*, ordered the running lights to be turned off, but left a 360° white arc light showing on the mast, 25 feet above the waterline. He and the crewman then went below to sleep. The other vessel, the *Alten*, was being navigated by auto pilot with a crewman who had only three months

experience at sea, acting as lookout. For fifteen minutes before the collision, the crewman observed the mast light on the *Breezy Bill* but believed it to be the mast light for the Yaquina lighthouse which was located twenty miles away from the point of collision. The court found both vessels at fault, the *Alten's* fault being premised on the lookout's having mistaken a steady 360° white arc mast light for the lighthouse's flashing mast light.

Failure to have a lookout can also serve as the basis for a vessel owner's liability to a crewmember for personal injuries proximately caused by such violation.

#### Liability for Violation of the Lookout Rule May Be Avoided

The absence or insufficiency of a lookout does not always lead to the imposition of liability. The presumption of fault can be rebutted. A court will consider the circumstances and the customary practice of seamen in making such determination. Whether

a lookout was present is irrelevant to liability when the presence of a lookout would not have prevented the casualty. In *Texas Eastern Transmission Corp. v. Tug Captain Dann*, 898 F. Supp. 198 (S.D.N.Y. 1995) a barge under tow struck an exposed underwater gas pipeline. The court held the tug's failure to post a lookout was not negligence because a lookout could not have seen the exposed underwater pipeline at night.

In *Trinidad Corporation v. S.S. Keiyoh Maru*, 845 F.2d 818 (9th Cir. 1988), two vessels collided just outside the port of Los Angeles. The *Keiyoh Maru* crossed into a restricted pilot boarding area and struck the bow of the *Fort Worth* just inside the restricted area. The *Fort Worth* was not using radar or a lookout to track the movements of other vessels in the area and consequently was unable to avoid the *Keiyoh Maru*. The court of appeals affirmed the district court's ruling that although the *Fort Worth* had violated the rule requiring a lookout, such violation did not play a role in

the casualty because a lookout on the *Fort Worth* could not have anticipated the *Keiyoh Maru* would not respect the restricted areas.

The presumption of fault resulting from the failure to post a lookout may also be rebutted when the vessel with no lookout was the privileged vessel and maintained her course and speed as required under the navigation rules.

The importance of a lookout aboard a vessel in navigation cannot be overstated. The lookout, or multiple lookouts if the situation requires, must be positioned on the vessel to maximize vision and hearing. The lookout must be able to discern the significance of what is heard and observed and report it to the navigating officer. An incompetent, inadequate or absent lookout is a violation of the navigation rules and raises a rebuttable presumption of fault. **PM**

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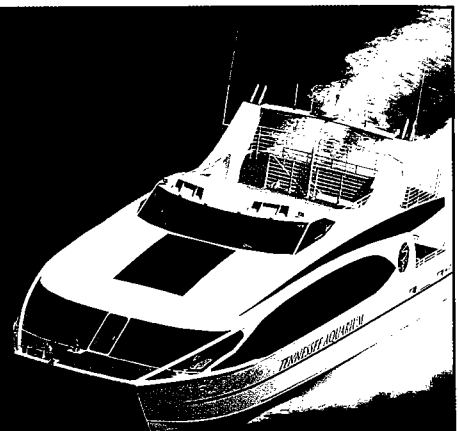
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