

Criminal probe called for in sinking

Coast Guard says firm may have violated law

by Eric Nalder
Times staff reporter

The U.S. Coast Guard has recommended a criminal investigation into the loss of the Aleutian Enterprise, a fish processing vessel that rolled over and sank in the Bering Sea a year ago, killing nine crewmen and raising major questions about fishing boat safety.

The focus of the case is the Seattle-based ship operator, Arctic Alaska Fisheries Corp., the largest fishing and at-sea fish-processing company in the nation.

The search for evidence reaches into the offices of John Miller, a Republican congressman from Seattle who intervened unsuccessfully at one point to help Arctic Alaska duck compliance with a maritime safety law.

Although Miller's intervention involved a different vessel, a key question now is whether Arctic Alaska knew it was violating the same law on the Aleutian Enter-

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prise and, if so, whether willful violation of the law caused the tragedy.

However, Miller's intervention may have actually muddied the water in a way that will stymie any criminal case. The Coast Guard, too, may have lessened the company's culpability through bureaucratic bungling, lack of notice and lack of enforcement of a maritime safety law, records show.

The U.S. Justice Department has been asked to sort it out.

U.S. Attorney Mike McKay in Seattle confirmed receiving the Coast Guard's request for a criminal probe. He says the case was just recently assigned to an assistant for review so it's too early to predict what will happen.

Coast Guard Capt. Rene Rousel, head of a three-member Coast Guard board that investigated the tragedy, feels strongly that a criminal investigation is in order.

"We found evidence of violation of law and regulation, not only criminally but civilly," he said.

Company spokeswoman Linda Blount says Arctic Alaska follows some of the best safety practices in the industry. She says improvements have been made since the Aleutian Enterprise sank.

A Coast Guard investigation shows there were plenty of problems contributing to the tragedy. Panicked crewmen couldn't get insulated survival suits out of jammed lockers and they were forced to jump into near-freezing waters without any protection. Cardboard packing boxes jammed causeways, apparently preventing some crewmen from even getting out of the doomed ship.

However, the chances of criminal charges seem to hinge, to a large degree, on investigators proving that company officials knew the Aleutian Enterprise was in violation of a 1986 revision of a federal law, known as the "load line" statute.

The load-line statute requires ships to have a line on the hull showing how deep in the water it can be loaded. It also says there can be no open holes in the side of the ship below the deck that aren't equipped with a watertight hatch that can be easily closed in an emergency. Coast Guard officials say the law, as it was redrafted in 1986, clearly included fish processors like the Aleutian Enterprise. But company officials say the law doesn't make clear which boats are covered by it.

It is clear, however, the Aleutian Enterprise didn't have a load line when it sank and there was a hole in the side of the ship, used to dump out fish guts and other trash, that wasn't covered by a hatch.

On a relatively calm day in the Bering Sea, on March 22, 1990, the ship heeled over to one side after a net broke dumping fish onto the deck. As the ship leaned, the trash hole, covered by only a metal flap, sank below the waves; sea water rushed in with a force greater than a broken fire hydrant. The vessel sank in minutes, taking with it nine crewmen, including one who had tried to close the flap. Twenty-two others survived.

The final report of the Coast Guard investigation, which is due out soon, points to the hole in the hull as a major factor in the sinking, Coast Guard officials say.

A turn-of-the-century criminal statute imposes a maximum 10-year prison term and a \$10,000 fine on ship owners or officers who have caused the death of a person through misconduct, negligence, fraud, neglect or violation of laws.

But the Coast Guard didn't enforce the load-line statute on fish processors until after the Aleutian Enterprise sank. Agency officials say there weren't enough inspectors. Numerous other fish processors, including all of Arctic Alaska's, had sailed without complying with the law.

Coast Guard Commandant William Kime, who spent the weekend reviewing the Coast Guard's final report, said by telephone that the Aleutian Enterprise was clearly required to have a load line.

However, company officials have informed Coast Guard investigator Lt. Cmdr. Rich Fitzpatrick that they were misled into believing they didn't have to comply with the law. According to the Coast Guard, they claim that happened in 1989 when Miller intervened in a dispute the company was having with the Coast Guard over load-line compliance on another vessel. They say that when Miller's intervention failed to change the Coast Guard's mind, they weren't notified of that. Fitzpatrick says it will be tough for the agency to prove otherwise.

Miller says he stepped in on behalf of Arctic Alaska because company officials are his constituents, not, as others have charged, because company officials have donated thousands of dollars and services to his campaigns.

Miller, who was a member of the congressional committee that oversees the Coast Guard budget, called a meeting in his office in April 1989. There a Coast Guard captain in charge of inspections agreed he'd take no further action on the ship in question until his office reviewed the matter. The Coast Guard had previously ruled that the ship needed a load line.

A memo the captain wrote after the meeting was vague about whether the moratorium applied to other Arctic Alaska boats.

On July 31, 1989, then-Coast Guard Commandant Paul Yost wrote Miller a letter informing him the agency would not change its ruling and Arctic Alaska would have to comply with the load-line law. Yost told Miller that fish processors won't be exempt from

the load-line law unless Congress changes it, and doing that "would be inconsistent with" Coast Guard safety efforts."

Miller says after he got Yost's letter he told his staff to discontinue involvement in the matter. The question is whether anyone notified the company of Yost's decision.

To Yost's surprise, there is no record of the Coast Guard sending any notification to Arctic Alaska.

Miller says he didn't notify the company, either, nor does he feel he had any responsibility to do so.

"I don't think a congressman's office is an enforcement agency," he said.

Miller did recently write the investigating board that his office might have notified the company of Yost's decision as part of routine mailings that include agency responses to the congressman's inquiries. But no records of such mailings are kept.

Arctic Alaska officials have insisted to the Coast Guard that they didn't get any notice. Eight months after Yost sent Miller the letter, the Aleutian Enterprise sank without a load line. Since then, the company has hired a safety staff, conducted safety drills on vessels and gone through the load-lining process on 26 of its vessels, says spokeswoman Blount.

Roussel, who has a law degree,

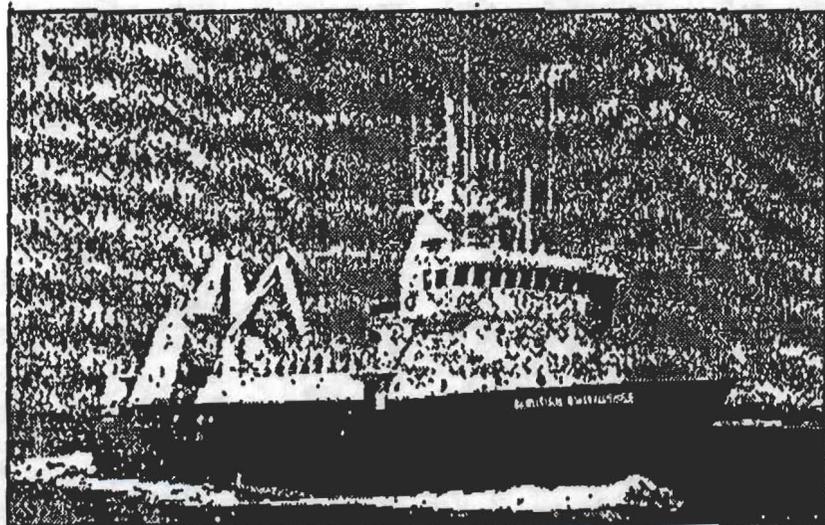
says it shouldn't be necessary to prove that Arctic Alaska was notified about the decision on the other ship when it comes to proving negligence in the Aleutian Enterprise case.

"They didn't have load lines on any of their vessels. They, therefore, did not think that processors required load lines, period, whereas the law required it. That's the futility of it," he said.

However, Arctic Alaska has already won one round in the argument.

When Fitzpatrick, the senior Coast Guard investigator, prepared a civil penalty case against Arctic Alaska for the Aleutian Enterprise accident, he didn't include an allegation that the load-line law was violated. He says he'd have a tough time making that stick because of the lack of evidence of notification. The case he prepared calls for a \$27,000 fine for violations like not having survival suits accessible, but a load-line violation could have cost the company more than \$1 million, since the law provides for a \$5,000 penalty for every day of noncompliance.

Roussel says Fitzpatrick's case is on hold while he and other investigators continue trying to determine whether the Arctic Alaska was given notice. Adds Roussel, "You cannot help but get a little bit passionate in this kind of a case."



The Aleutian Enterprise