



## An Act of God – Just What Is That..?



by VINCENT T. PICA, II

Chief of Staff, First District, Southern Region (D1SR)  
United States Coast Guard Auxiliary

Any school child knows, or at least believes, an terrible storm or other natural phenomena that causes damage to your property, or, causes your property (your boat) to damage someone else's (another boat), is an Act of God. Behind this "fact" lies protection for the insurance company that may, or may not, have to pay (check the fine print and be sure of what you are paying for) or for you when your boat sets down on someone else's during a storm and sinks it. Or, does it? What are the facts?



### The 4-Day Nor'easter

Some of you may recall the severe nor'easter we had in the late fall of '05. I do in particular because my son and I moor our boats in a bit of water east of Gunning Point, along with about a dozen other boaters. During that storm, two of those dozen boats broke loose from their ground tackle. One, my son's, ended up about 300 yards to windward, way up in a marsh. The other, my neighbor's ("Joe"), set down on my boat in the storm and sank it. His boat ended up against my dock and sustained considerable damage, just from being banged up against the bollards. After two days of mourning, I said to myself, "Hey, it's a boat. Call the insurance company. Work something out. Buy another boat." And I did. The insurance company was professional in every way (see SSP, "Boat Insurance – Friend or Foe? An Update", 12/09/09)

### Enter Joe, the Neighbor

My neighbor, Joe, was really and truly sorry that it had happened. He came over to the house, hat and checkbook in hand, and offered to pay for the damages. "Joe, don't be silly. It was an Act of God. No one's fault... For cripes'sake, the wind blew for 4 days straight! Go home." And, after many, many attempts at redressing what he felt was his fault, he went home\*.

### What Actually Is an Act of God?

An Act of God from a layman's point of view is any natural act caused without human intervention – hurricane, tornado, earthquake, lightning, etc. From a legal point of view, it is the same. However, to seek a defense as an Act of God, there is a second test. There must be no negligent behavior by, for example, the vessel owner that contributed to the accident. There is a presumption of fault under the law, from the start, that a vessel adrift is adrift due to negligence so it is a difficult "beat to windward" to offset that presumption. If, for example, everyone in the marina doubled their lines because a heavy storm was predicted, and you didn't, you very well may have an issue with the second test. Were you negligent in failing to act as other skippers did?

A recent case having to do with Hurricane Katrina, a vessel named the "Trust Me II" and the marina that she was moored at highlights all of these issues. First, Katrina clearly passes the Act of God test as a natural act caused without human intervention. And there was plenty of damage caused by "Trust Me II" as she broke from her mooring lines and ping-ponged through the marina. And, as noted above, the presumption of fault lies with the owner of the adrift vessel, despite the massive power of Katrina, so the facts have to be compellingly on the side of the vessel owner. So, was there negligence?

The owner of "Trust Me II" didn't go down to the marina herself. She did, however, ask two qualified mariners to check on her vessel and make sure that she had adequate lines. Extra lines were added and one of the mariners testified that "Trust Me II" was secured as well as she could be, given the circumstances. Given the presumption of fault, the judge had to weigh that these facts – boat double checked, lines doubled, all by competent mariners – were sufficient ballast against the presumption of fault under the law.

You won't be surprised to know that the judge, despite several arguments by the marina owner that the vessel could have or should have taken further precautions, ruled in favor of "Trust Me II"'s owner that the facts met the legal test of an Act of God.

But, what if the owner hadn't asked for that extra help...?

Only God knows...

\* several months later, with his youngest daughter in tow, Joe came over with a sealed greeting card, and said, "we're not leaving unless you open the envelope." So, I did. When I looked up, they were already walking down the path to their home. And I held a gift certificate from Westmarine...

BTW, if you are interested in being part of USCG Forces, email me at JoinUSCGAux@aol.com or go direct to the D1SR Human Resources department, who are in charge of new members matters, at DSO-HR and we will help you "get in this thing..."



## FISHING WITH TONY

### SHARKS ARE CLOSER THAN YOU THINK

by TONY SALERNO

You may have heard a tale or two of sharks that venture close to the south shore ocean beaches, quite often within sight of startled beach goings. Well truth be told, stories of such are usually on the nose. And while most of these flesh-eating monsters do pay us a visit from time to time, it is usually not to have an encounter with humans, but rather to feast on the myriad of baitfish that have become so abundant along the entire stretch of south shore beaches along the Northeast in recent years.

Earlier this summer, the first encounter with the prehistoric creatures were sighted and reported between Moriches and Shinnecock Inlets where several basking sharks were seen feasting on a bountiful school of jellyfish that had situated into the area in just 30 feet of water. Unlike most species of sharks, basking sharks are one of a rare breed that is not carnivorous. Instead, this creature spends most of its day feeding on vegetation such as plankton or baitfish such as krill and jellyfish. While basking shark can look threatening while swimming, they are harmless and will often move offshore as inshore waters temps begin to warm up.

On the other side of the coin, the more aggressive thresher shark have settled within a couple of miles from shore feasting on the enormous and numerous pods of menhaden (bunker) schools that infest Long Island's ocean beaches each June and July. These mass schools of bunker attract large schools of giant striped bass and bluefish as well as southern visitors such as black drum, which of course attracts anglers from all walks of life. In addition to the trio of gamesters relentlessly wreaking havoc on the hapless menhaden, the threshers have joined the bountiful feast where many striper addicts have found themselves spool out or landing threshers to nearly 400-pounds thus far this summer, particularly in the waters around Sandy Hook. If you believe this is a rare occurrence, think again as scores of this fine-eating beasts are landed on a daily basis close to shore.

Speaking of sharks close to home, my good pal and fishing buddy Mike Barone is an avid shark angler that believes that most times shark anglers over run good shark grounds closer to home, for areas well offshore that may be ridden with blue sharks or poor results. Such was the case this past weekend when radio chatter indicated the shark bite was nearly nonexistent 20 to 30-miles south of Moriches Inlet, while Mike along with his bother John Barone and Aunt Doris Elio aboard their vessel the "Senior Moment" found themselves fighting and releasing a 9-foot 500-pound tiger shark just a mere 6 miles from Moriches. Actually, it was John that fought the beast the entire time while the others looked on. Not only was it a great day of sharking, it was also a great day going light on the gas tank.

### Tides for Moriches Inlet starting with July 20, 2011

Day	High/Low	Tide Time	Height Feet	Sunrise/Sunset	Moon Time	% Moon Visible
Wed. 20	Low	4:44 AM	0.2	5:36 AM	Set	79
20	High	11:22 AM	2.9	8:18 PM	Rise	11:03 AM
20	Low	5:08 PM	0.6			10:45 PM
20	High	11:32 PM	2.9			
Thur. 21	Low	5:19 AM	0.4	5:37 AM	Set	71
21	High	12:04 PM	2.9	8:17 PM	Rise	12:01 PM
21	Low	5:56 PM	0.7			11:11 PM
Fri. 22	High	12:16 AM	2.7	5:38 AM	Set	62
22	Low	5:59 AM	0.5	8:16 PM	Rise	1:00 PM
22	High	12:46 PM	2.9			11:39 PM
22	Low	6:54 PM	0.8			
Sat. 23	High	1:02 AM	2.5	5:39 AM	Set	53
23	Low	6:47 AM	0.6	8:16 PM		1:59 PM
23	High	1:29 PM	2.9			
23	Low	7:58 PM	0.8			
Sun. 24	High	1:51 AM	2.4	5:40 AM	Rise	43
24	Low	7:45 AM	0.7	8:15 PM	Set	12:10 AM
24	High	2:15 PM	2.9			2:59 PM
24	Low	8:59 PM	0.8			
Mon. 25	High	2:45 AM	2.4	5:41 AM	Rise	34
25	Low	8:45 AM	0.6	8:14 PM	Set	12:47 AM
25	High	3:07 PM	2.9			3:57 PM
25	Low	9:54 PM	0.7			
Tus. 26	High	3:44 AM	2.4	5:42 AM	Rise	25
26	Low	9:41 AM	0.5	8:13 PM	Set	1:30 AM
26	High	4:03 PM	3.0			4:54 PM
26	Low	10:44 PM	0.5			
Wed. 27	High	4:43 AM	2.5	5:43 AM	Rise	17
27	Low	10:33 AM	0.4	8:12 PM	Set	2:21 AM
27	High	4:59 PM	3.2			5:47 PM
27	Low	11:33 PM	0.3			
Thur. 28	High	5:37 AM	2.7	5:44 AM	Rise	9
28	Low	11:24 AM	0.3	8:11 PM	Set	3:20 AM
28	High	5:49 PM	3.4			6:35 PM
Fri. 29	Low	12:20 AM	0.1	5:45 AM	Rise	4
29	High	6:25 AM	2.9	8:10 PM	Set	4:25 AM
29	Low	12:15 PM	0.1			7:17 PM
29	High	6:36 PM	3.6			
Sat. 30	Low	1:06 AM	-0.1	5:45 AM	Rise	1
30	High	7:11 AM	3.1	8:09 PM	Set	5:35 AM
30	Low	1:06 PM	0.0			7:54 PM
30	High	7:20 PM	3.7			
Sun. 31	Low	1:51 AM	-0.2	5:46 AM	Rise	0
31	High	7:56 AM	3.2	8:08 PM	Set	6:48 AM
31	Low	1:55 PM	-0.1			8:28 PM
31	High	8:05 PM	3.7			