

## ADMIRALTY & CANOE TRIP COMMITTEES

### WAS THE JETTY AT FAULT IN THE JOSE FERNANDEZ ALLISION?

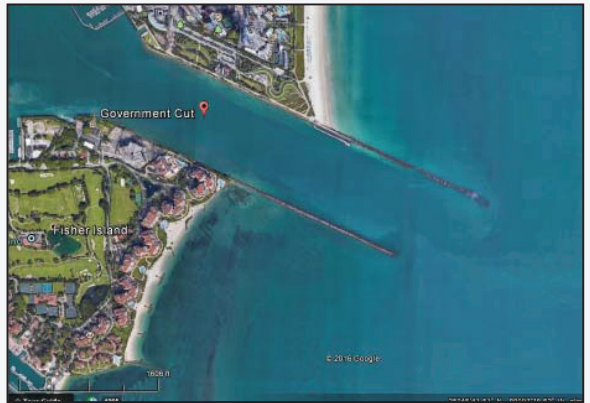


Barbara Cook  
Chair

In the early morning hours of Sunday, September 25<sup>th</sup>, 24-year-old baseball star Jose Fernandez, and two of his friends, both males in their 20's, were killed as a result of Fernandez crashing, apparently at high speed, his 32-foot center console into one of the rock jetties paralleling the sides of Government Cut, Miami's deep



water port entrance for the largest of cruise ships and commercial cargo vessels. It was reported that Fernandez spent the evening in the city's downtown section at a Miami River waterfront bar, with his boat docked alongside. Before the trio left the bar, another friend suggested the crew "keep him close to shore...." if they go out the Cut into the ocean. The Coast Guard reported that a lighted buoy that marks the channel opening at the end of the jetty was working. Laughably, Florida Senator Marco Rubio, a lawyer, sent a letter to the Coast Guard and Army Corps of Engineers asking for a review of the century-old jetty and whether it poses a chronic danger to boaters. "The jetty, which extends out from Miami's port, is difficult to see at night especially at high tide," Rubio said, suggesting the crash was the fault of the jetty.



**THE LAW:** Under "The Oregon" rule, 158 U.S. 186 (1895), when a moving vessel strikes a stationary object (an "allision") a *prima facie* case of negligence is established and it is presumed the moving object is at fault. The burden to prove the vessel was not negligent shifts to the vessel. *Fischer v. S/V Neraida*, 508 F.3d 586 (11<sup>th</sup> Cir. 2007). The general rule of presuming fault does not apply in four circumstances where the allision caused damage to the stationary object: 1) the stationary object is sunken, 2) the allision occurred during normal mooring procedures, and the object damaged should have been able to withstand the allision without damage, 3) where the stationary object, such as a draw or swing bridge, which is considered an obstruction to navigation and has an obligation to keep the waterway open ("The Louisiana Rule", 70 U.S. 164 (1865)) and 4) where the stationary vessel or other object is guilty of some other statutory fault. None of these exceptions apply to the Fernandez allision with the jetty.

**Rule 5:** Under "The Pennsylvania" rule, 86 U.S. 148 (1874), where a vessel violates any stationary duty or Rule of the Road, it must prove *not only that the violation did not cause the collision or allision but could not have contributed to it* to escape liability.

Continued On Next Page...

*Continued From Previous Page...*

Here are some of the Rules of the Road likely found to have been violated by the operator of the vessel, and which apply in any condition of visibility:

- Rule 7: Every vessel shall at all times maintain a proper look-out 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 of the risk of collision.
- Rule 8: Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

All available operational equipment must be used to determine if risk of collision exists. If the vessel is fitted with radar, chart plotting GPS, sonar depth sounder, search lights, depth alarms or other equipment that might indicate an incipient collision and it is operational, it must be used.

Action is required to avoid collision. The action must be positive, made in ample time and with due regard to the observance of good seamanship...be such as to result in passing at a safe distance.