

HOFFMAN, SILVER, GILMAN & BLASCO, P.C.

MEMORANDUM

To: HSGB Commercial Fishing-Related Clients

From: Rick E. Marks

Date: June 13, 2008

Re: Advance Notice of Proposed Rulemaking: USCG Vessel Safety Regulations

The U.S. Coast Guard is proposing substantive amendments to its commercial fishing industry vessel safety regulations. The ANPR was published in the Federal Register on March 31, 2008 (see 73 FR 16815; Commercial Fishing Industry Vessels). *Comments on the ANPR are due by July 29, 2008.*

The USCG is seeking comment through the ANPR process. This particular ANPR is complicated because in it the USCG references several prior year FR notices dating back to 1992 and cites documentation available only via the U.S. Coast Guard Federal Docket portal. In an effort to assist HSGB clients I summarize key elements of the ANPR here. Please contact R. Marks if you have any questions or need additional assistance.

You may view the USCG supporting documents individually at <http://www.regulations.gov> using the "Search for Dockets" tool on the website.

The primary federal contact for this action is M.M. Rosecrans, Chief, Fishing Vessel Safety Division, USCG. He can be reached by phone at #202.372.1245 and email at Michael.m.rosecrans@uscg.mil.

Comments can be submitted as follows:

- (1) Online: <http://www.regulations.gov>;
- (2) Mail: Docket Management Facility (M-30)
U.S. Department of Transportation, West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE.,
Washington, DC 20590
- (3) Fax: 202.493.2251

HIGHLIGHTS OF THE USCG PROPOSED RULEMAKING FOR COMMERCIAL FISHING INDUSTRY VESSELS

Vessel Stability and Watertight Integrity

The USCG is using the recommendations from the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) to consider major new stability and watertight integrity requirements for vessels 50 to 79 feet. Vessels in this size class are currently exempt from stability requirements. Please note that the stability training recommendation may apply to vessels < 50 feet.

The list of potential new requirements is extensive and may include some or all of the following: stability requirements for vessels 50-79 feet; training; repeating stability surveys and updating requirements; additional items to be addressed in stability instructions; revision of certain stability calculations; upgrading and highlighting of minimum weathertight and watertight integrity requirements.

(1) Vessel Stability

The USCG is considering applying stability and watertight requirements to vessels 50 to 79 feet in length and that had a keel laid on or after September 15, 1991 or for vessels that underwent a major conversion or were substantially altered since September 15, 1991.

For vessels whose keel was laid prior to September 15, 1991 the owner may have to provide for a qualified individual to perform a required stability test, maintain the results on file, and provide the master with approved loading instructions.

For vessels whose keel was laid on or after September 15, 1991 or for vessels that underwent a major conversion or were substantially altered since September 15, 1991 the owner may have to provide for a qualified individual to determine the stability characteristics of the vessel including but not limited to lightship and intact stability, downflooding angle, deck arrangement and freeing details, free surface characteristics and intact stability when operating with suspended weights and over the side loads.

If a vessel is planned to undergo a major conversion or substantial alteration in the future the USCG may require these specific documented changes to the stability characteristics from the vessel's baseline.

(2) Stability Training

The USCG is considering requiring *masters and owners* to receive a three-tiered regimen of stability instruction to include principles of stability, factors that increase risk to stability, and vessel-specific training. The USCG may also apply this stability training for masters and owners of vessels 30 feet or more in length. The USGC may apply this requirement to vessel owners since they provide operational guidance to the master in many cases.

(3) Stability Reassessment

The USCG is considering requiring a lightweight survey every 5 years to determine the amount of change to a vessel's stability. If this test is not sufficient to make a determination an inclining test could be required.

Vessel Maintenance and Self-Examination

The USCG is considering requiring owners of vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish tender vessels in the Aleutian trade to conduct monthly self-examinations of their vessels according to criteria provided by the USCG. These examinations would be the responsibility of the owner and master and the details of such tests would be determined by the owner unless specified by regulation.

Immersion Suits

Currently, documented commercial fishing vessels must carry immersion suits whenever operating seaward of the boundary line and in "cold waters" beyond 32 degrees north or south latitude and in the Great Lakes. The USCG is considering extending immersion suit requirements to coastal and beyond-coastal waters that regardless of latitude are cold during certain times of the year. The USCG may require vessels to carry immersion suits for crew members whenever they operate in "seasonally-cold waters". This is not yet defined but could include waters on the entire East Coast and on the West Coast south of Point Reyes, CA. The USCG may consider using the existing boundary line in the definition of seasonally cold waters and extend the immersion suit requirement to undocumented vessels.

Crew Preparedness

The USCG is considering the following requirements for vessels that operate beyond the boundary line, with more than 16 persons on board, or that are fish tender vessels in the Aleutian trade: recurring crew safety/survival training/drill requirements, designation of a safety officer(s); presence of an on board drill conductor; minimum training requirements for safety instructors/drill conductors, and CPR/first aid retraining every 3 years for 1 to 4 crewman per vessel. Additionally, vessels with more than 16 individuals on board may be required to have a second drill conductor on board.

Safety instructors would need a valid USCG letter of acceptance to be renewed every 5 years. Drill conductors and other safety related individuals would need certification from a safety instructor to be renewed every 5 years. Drill conductors will also need to demonstrate that they can effectively communicate with all members of the crew despite any language barriers, either through translation or hands-on demonstration.

EPIRBs

Currently, EPIRBs are required to be registered with NOAA. The USCG is considering requiring that registration to be formally documented to facilitate enforcement.

Survival Craft

The USCG is considering requiring all survival craft to be easily accessible and launchable by just one crew member. The means to comply with this provision could be deferred to the individual vessel owner.

Embarkation Stations

The USCG is considering new measures to upgrade the safety and usability of survival craft embarkation stations. The stations may need to be equipped with emergency lighting and boarding ladders. After a phase-in period, this requirement could be required for the Aleutian Trade Act vessels.

High-Water Alarms

The USCG is considering requiring the use of high-water alarms in enclosed fish sorting and processing spaces. The alarms would be required to sound both in the affected space and in the vessel's operating station.

Excess or Outdated Equipment

Safety equipment that exceeds regulatory minimums would need to be clearly marked for "training use" only or be subject to normal standards during inspection. Outdated equipment can be retained on board but must be clearly designated as such.

Documentation

Compliance with most of these new measures would be facilitated by new documentation requirements. Vessel owners or masters would need to document stability training and assessments, vessel self-examinations, safety and survival training, and the use and maintenance of immersion suits and other safety equipment. Before leaving on a fishing trip, a master would need to file a departure report with the owner attesting to the vessel's stability condition. Operating personnel would have a written record of compliance with the requirements.

USCG Questions to the Fishing Public

The USCG provides 30 specific questions at 73 FR 16821-16822. The USCG intends to utilize public feedback to these questions in the development of the rulemaking.