

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 12-91

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Subj: Termination of Unsafe Operations Aboard Commercial Fishing Industry Vessels

1. PURPOSE. The purpose of this Circular is to provide guidance to commercial fishing industry vessel owners/operators and Coast Guard personnel on termination of unsafe operations on commercial fishing industry vessels.
2. BACKGROUND.
 - a. The Commercial Fishing Industry Vessel Safety Act of 1988, P.L. 101-424 (now codified 85 46 U.S.C. Chapter 45), addresses safety of commercial fishing industry vessels in several ways. One of these ways is by addressing unsafe operations.
 - b. Title 46 U.S.C. Section 4505 states that a Coast Guard enforcement official "may direct the individual in charge to immediately take reasonable steps necessary for the safety of the individuals on board the vessel if the official observes the vessel being operated in an unsafe condition that the official believes (emphasis added) creates an especially hazardous condition."
 - c. Termination of unsafe operations may result in the master or individual in charge of a vessel being ordered to return the vessel to a mooring until the hazardous condition is corrected or to cease a specific operation until the especially hazardous condition is alleviated or corrected. It is emphasized that immediate return of a vessel to a mooring is only one of several options available to boarding officers. Other options include but are not limited to:
 - (1) Immediate correction of the hazardous condition;
 - (2) Filing of a Report of Violation against the owner, master, individual in charge of the vessel;
 - (3) Referral to the Marine Safety Office or Marine Inspection Office for investigation and possible Suspension and Revocation action against Coast Guard issued licenses.
3. DISCUSSION.
 - a. This Circular does not replace or modify existing statutes or regulations, but provides guidance and illustrations of conditions under which a commercial fishing industry vessel may be subject to termination action under 46 U.S.C. 45.05.

- b. Boardings of commercial fishing industry vessels are routinely conducted by the Coast Guard. One part of the boarding officer's responsibility is to assess whether a vessel may present an especially hazardous condition warranting termination action. This Circular is intended to provide guidance to all interested parties on conditions which may be deemed especially hazardous and enforcement action which may be appropriate.
 - c. In evaluating the safety of a vessel, there are many considerations that bear upon the decision that an especially hazardous condition exists. It is impossible to list all of the variables that should be considered in evaluating the safety of a particular vessel. However, enclosure (1) lists some of the areas that have proven to be problems in past casualties and should be considered in evaluating a vessel's safety. This list is not all inclusive; it attempts to illustrate the general gravity of conditions which may warrant enforcement action.
 - d. Decisions to terminate operations of fishing industry vessels are made by boarding officers in accordance with district policies. Once the decision has been made to terminate operations, the boarding officer will decide whether to remove individuals and whether to escort or tow a fishing industry vessel to a mooring. This decision will be based on the judgment of the Coast Guard boarding officer considering the particular circumstances at the time of the boarding. Consideration will be given to existing/future weather, sea conditions, the extent of the unsafe condition, the ability of the vessel to effect adequate temporary repairs, etc.
 - e. It is recognized that termination of commercial operations may have a serious economic impact on owners/operators. In all cases, the basis for termination will be the potential for loss of life or injury resulting when an especially hazardous condition exists.
 - f. It is the obligation of the owner and master to ensure that each vessel is properly maintained, equipped, and operated at all times. While at sea, the master has the responsibility to operate the vessel within the limits of its design capabilities.
4. PENALTIES. The owner, charterer, managing operator, agent, master, and individual in charge of a fishing industry vessel, which is operated in violation of the regulations prescribed under 46 U.S.C. Chapter 45, may each be assessed a civil penalty of up to \$5,000. Any vessel which is assessed a penalty under 46 U.S.C. 4507 is liable in rem for the penalty. A person willfully violating this chapter is subject to a fine of up to \$5,000 and imprisonment for up to one year. These penalties are in addition to termination of the operation and Suspension and Revocation proceedings against Coast Guard issued licenses.
5. IMPLEMENTATION.
- a. District commanders are encouraged to give this NVIC wide dissemination.
 - b. This Circular is effective immediately.
 - c. District Fishing Vessel Safety Coordinators shall work closely with District Operational Law Enforcement staff by providing technical assistance to ensure uniform enforcement.

- d. Owners and operators of commercial fishing industry vessels are encouraged to maintain and equip their vessels in a manner consistent with the regulations and good marine practice. Questions regarding this Circular should be addressed to the nearest Coast Guard District Office, Attn: Fishing Vessel Safety Coordinator.



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End: (1) Termination of Unsafe Operations on Board Commercial Fishing Industry Vessels

TERMINATION OF UNSAFE OPERATIONS ON BOARD COMMERCIAL FISHING INDUSTRY VESSELS

The following practices are considered to be unsafe and may create especially hazardous conditions for individuals on board fishing industry vessels. A vessel found with one of these unsafe conditions, while operating (at sea), may be considered for termination by a Coast Guard boarding officer. Termination will result in ordering an individual in charge of a vessel to return the vessel to a mooring or dock until the hazardous condition is corrected, or ordering cessation of a specific operation until the especially hazardous condition is alleviated or corrected. This list does not exclude any other conditions which in the opinion of the boarding officer are especially hazardous.

These items are applicable to United States flag vessels that are commercial fishing, fish processing, or in a fish tendering operation. However, each item may not apply to all vessels. Certain regulations apply only to limited categories of vessels. In all cases, 46 CFR Subpart 28 should be referenced for specific applicability.

UNSAFE PRACTICES

1. Operation without sufficient lifesaving equipment on board. This may include:
 - a. No personal flotation devices (PFD's) or required immersion suits on board, insufficient quantity of PFD's or immersion suits, or PFD's and immersion suits which are unserviceable.
 - b. - No survival craft on board, insufficient survival craft capacity for the number of persons on board, or a survival craft in an unserviceable condition.
2. Operation without either an operable Emergency Position Indicating Radio Beacon or radio communication equipment. Either or both may be required by the regulations. When both are required then one must be operable. The intent is that there be at least one means of communicating distress.
3. Operation without adequate firefighting equipment on board.

4. Excessive volatile fuel (gasoline or solvents) or volatile fuel vapors in bilges.
5. Instability resulting from overloading, improper loading or lack of freeboard.
6. Inoperable bilge system.
7. Intoxication of the operator, as defined in 33 CFR 95.020. Individuals operating vessels other than recreational vessels are considered to be intoxicated when they have an alcohol concentration of .04% by weight or more in their blood; or, the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.
8. A total lack of operable navigation lights during periods of reduced visibility.
9. Watertight closures missing or inoperable.
10. Flooding or uncontrolled leakage.
11. Failure to have a currently endorsed Load Line Certificate, when required.