

USCG Cruise and Yacht Issues Outline for 2018 Fall MLA Meeting

Shannon Gilreath, CAPT, USCG
Chief, Office of Maritime and International Law

Passenger Vessel Operations vs Recreational Vessel Use

This presentation provides an overview of the Passenger Vessel Safety Act of 1993 and the application of CG regulations for vessel inspections. The Passenger Vessel Safety Act of 1993, Pub. L. 103-206 – made significant changes to laws at the time that regulated passenger carrying, clarified definitions for applicable vessels and use of bareboat charter agreements. While bareboat chartering remains a common practice, some owners and charterers practices or standard agreements give the owner more control than a typical bareboat charter converting the vessel from recreational to commercial service. Other vessel owners may not be aware that they are engaging in commercial service with the master required to be licensed and the vessel meeting certain inspection criteria including obtaining a certificate of inspection.

Guiding Statutory Definitions

Passenger: an individual carried on the vessel except: (i) the owner or an individual representative of the owner or, in the case of a Vessel under charter, an individual charterer or individual representative of the charterer; (ii) the Master (captain); or (iii) a member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services. *46 U.S.C. § 2101 (21)*

Passenger for Hire: a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel. *46 U.S.C. § 2101 (21a)*

Consideration: An economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies. *46 U.S.C. § 2101 (5a)*

Commercial Service: Includes any type of trade or business involving the transportation of goods or individuals *46 U.S.C. § 2101 (5)*

Uninspected Passenger Vessel (UPV): A vessel not subject to inspection by the Coast Guard under *46 USC 3301*, less than 100 gross tons that is: (i) Carrying no more than six passengers, including at least one person for hire; (ii) Chartered with the crew provided by the owner or owner's representative, and carrying six or fewer passengers. *46 U.S.C. § 2101 (42)(B)*

Small Passenger Vessel: Each vessel of less than 100 gross tons that: (i) carries more than six passengers, including at least one for hire; (ii) is chartered with a crew provided or specified by the owner or the owner's representative and is carrying more than six passengers; (iii) is chartered with NO CREW PROVIDED or specified by the owner or the owner's representative and is carrying more than 12 passengers. *46 U.S.C. § 2101 (35)*

Passenger Vessel: A vessel of at least 100 gross tons that: (i) is carrying more than 12 passengers, including at least one for hire; (ii) is chartered and carrying more than 12 passengers. *46 U.S.C. § 2101 (22)*

Recreational Vessel: A vessel manufactured or operated primarily for pleasure or a vessel leased, rented, or chartered to another for the latter's pleasure. *46 U.S.C. § 2101 (25)*

Coast Guard Regulations

Small Passenger Vessel - Inspected - 46 CFR Part 175-187 (T) or 46 CFR Part 114-124 (K)

- Coast Guard Inspected and certificated. Issued a Certificate of Inspection (COI)
- Vessel is less than 100 gross tons
- Carries more than six passengers, including at least one passenger for hire
- Bareboat chartered vessels carrying more than 12 passengers must be Coast Guard inspected

- Chartered vessels with the crew provided by the owner carrying more than six passengers must be Coast Guard inspected
- Operated by licensed Master of appropriate route and tonnage
- Certificate of Documentation for Coastwise Service
- Chemical Testing Requirements (46 CFR Part 16)
- If carrying more than 12 passengers on an international voyage must also comply with SOLAS

Uninspected Passenger Vessel (UPV) - not routinely inspected and certified by the Coast Guard, but must meet requirements of 46 CFR Parts 24-28

- Carries up to six passengers for hire, not including the Master and paid crew
- Sometimes referred to as a “six-pack” operation
- Must be operated by a licensed Master
- Includes chartered, rented, or leased vessels with the crew provided by the owner that carry six passengers or less
- Chemical Testing Requirements (46 CFR Part 16)
- Vessel Vessels \geq 5NT, Certificate of Documentation (COD) for Coastwise Service
- Vessels $<$ 5NT, may be state registered with proper commercial endorsement

CG Policy –Navigation and Vessel Inspection Circular 7-94, Guidance on the Passenger Vessel Safety Act

What tonnage is vessel? How many passengers? Passengers for Hire? Is vessel chartered? Is crew provided by owner or owner’s representative?

Bareboat Charter Vessel – Discussed in PVSA, NVIC 7-94, and Case Law

- Vessel is chartered, leased, rented to an individual through a written agreement
- The owner does not provide the crew; the charterer selects and pays the crew
- A licensed Master is not required to operate the vessel if recreational
- The owner can recommend a list of Masters for the charterer to hire, but cannot stipulate that the owner make a selection solely from the list provided
- The owner can require the charterer to hire a crew with a preset level of qualifications (e.g. Coast Guard issued Merchant Mariner’s Credentials)
- All food, fuel, and stores are provided by the charterer
- All port charges and pilotage fees, if any, are paid by the charterer
- Insurance is obtained by the charterer, at least to the extent of covering liability not included in the owner’s insurance
- The charterer may discharge for cause, the Master or any crew member
- The vessel must be surveyed upon its delivery and return
- The charterer stands in the shoes of the owner of the vessel. The charterer has complete command, control, and possession of the vessel as it were his or her own.
- The charterer assumes responsibility for the vessel operations within the maritime laws and regulations for the duration of the charter
- Any provision that tends to show retention of control of the vessel such as the owner being aboard during the charter of the vessel contradicts the claim that a valid bareboat charter exists

To constitute demise or bareboat charter, the vessel owner must so far relinquish “possession, command, and navigation” of the vessel as to be “tantamount to, although just short of, an outright transfer of ownership.” *Guzman v. Pichirilo*, 369 U.S. 698, 699-700 (1962)

“The presence of an owner’s crew on board” is “very strong presumptive evidence” that the owner has not in fact put his vessel into the possession of the charterer “which only very cogent circumstances will overthrow.”

Stephenson v. Star-Kist Caribe, Inc. 598 F.2d 676, 680 (1st Cir. 1979) citing *Hansen v. E.I. Dupont DeNemours & Co. Inc.*, 33 F.2d94, 96 (2d Cir 1929)

Examples

Online Chartering App Hypothetical

- Fact dependent
- How much control does the owner retain?
- Who provides the crew?
- How is the crew selected?
- Number of passengers / size of vessel
- Taxi service?

Boat Bed and Breakfast Hypothetical

- Only one individual can serve as the charter
- Location of the vessel
- Does this constitute carriage of passengers if not underway?

Consult with Local Officer in Charge Marine Inspections (OCMI)

- Navigability determination
- Licensing requirements
- Application for inspection
- Discuss bareboat charter agreement

Enforcement Options Available to Coast Guard

Civil Penalties – as adjusted for inflation per 33 CFR 27.3

46 U.S.C. 8101(f) and (g) – Manning and Licensing for Inspected Vessels - \$18,107 maximum per violation

46 U.S.C. 3318 (a) – Vessel Inspection Generally, \$11,478 maximum per violation

46 U.S.C. 2115 –Alcohol and Dangerous Drug Testing \$7,370 maximum per violation

Captain of the Port Orders – 33 U.S.C. § 1232

Failure to comply with order \$90,063 per day, each day constitutes a separate violation

Willful, knowing violations commit Class D felony

Criminal Referrals for Seaman’s Manslaughter – 18 U.S.C. § 1115 – When a chartered vessel is involved in a marine casualty which there is misconduct or negligence involved which results in a death has the potential for criminal liability for the master, crew, owner, or charter. “Every captain, engineer, pilot or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, ... through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years or both.

When the owner or charter of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct, or violation of law, by which the life of any person is destroyed “

Other Current Events Related to Recreational / Yacht Issues

State registered vessels operating overseas (33 CFR Parts 173-174)

- Some state registered vessels appear to be operated exclusively overseas and never within the state
- Primary operation appears inaccurate “pleasure” listed rather than “rent or lease” or something else

- Recently several state registered vessels have been boarded by foreign nations on the high seas with consent by the U.S. with no U.S. citizens on board, and vessel is engaged in illegal activities including drug smuggling.

National Defense Authorization Act FY 2019 Section 3529

- Applies to recreational vessels over 300GT
- Coast Guard must publish regulations for these vessels comparable to UK's Large Commercial Yacht Code
- Deadline for regulations is 1 year from enactment of Act (August 2019)
- Interim compliance is UK's Large Commercial Yacht Code
- Exempts vessels from complying with general inspection requirement of seagoing vessel over 300GT (46 U.S.C. § 3301 (7) if recreational vessel, does not carry cargo or passengers for hire and complies with yet to be established regulations
- Additional disclosure required of owners including place of residence; "beneficial owner" must be disclosed