

LEGAL GUIDE FOR THE RECREATIONAL BOATER

MAY 22, 2008

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I. NAVIGATION RULES

DUTIES AND PENALTIES

VIOLATIONS OF INTERNATIONAL NAVIGATION RULES AND REGULATIONS (33 U.S.C. 1608)

- a. Whoever operates a vessel, subject to the provisions of this Chapter, in violation of this Chapter or of any regulation promulgated pursuant to section 1607 of this title, shall be liable to a civil penalty of not more than \$5,000 for each such violation.
- b. Every vessel subject to the provisions of this Chapter, other than a public vessel being used for noncommercial purposes, which is operated in violation of this Chapter or of any regulation promulgated pursuant to section 1607 of this title, shall be liable to a civil penalty of not more than \$5,000 for each such violation, for which penalty the vessel may be seized and proceeded against in the district court of the United States of any district within which such vessel may be found.
- c. The Secretary of the department in which the Coast Guard is operating may assess any civil penalty authorized by this section. No such penalty may be assessed until the person charged, or the owner of the vessel charged, as appropriate, shall have been given notice of the violation involved and an opportunity for a hearing. For good cause shown, the Secretary may remit, mitigate, or compromise any penalty assessed. Upon the failure of the person charged, or the owner of the vessel charged, to pay an assessed penalty, as it may have been mitigated or compromised, the Secretary may request the Attorney General to commence an action in the appropriate district court of the United States for collection of the penalty as assessed, without regard to the amount involved, together with such other relief as may be appropriate.

VIOLATIONS OF INLAND NAVIGATION RULES AND REGULATIONS

(33 U.S.C. 2072)

- a. Whoever operates a vessel in violation of this Chapter, or of any regulation issued thereunder, or in violation of a certificate of alternative compliance issued under Rule 1 is liable to a civil penalty of not more than \$5,000 for each violation.
- b. Every vessel subject to this Chapter, other than a public vessel being used for noncommercial purposes, that is operated in violation of this Chapter, or of any regulation issued thereunder, or in violation of a certificate of alternative compliance issued under Rule 1 is liable to a civil penalty of not more than \$5,000 for each violation, for which penalty the vessel may be seized and proceeded against in the district court of the United States of any district within which the vessel may be found.
- c. The Secretary may assess any civil penalty authorized by this section. No such penalty may be assessed until the person charged, or the owner of the vessel charged, as appropriate, shall have an opportunity for a hearing. For good cause shown, the Secretary may remit, mitigate, or compromise any penalty assessed. Upon the failure of the person charged, or the owner of the vessel charged, to pay an assessed penalty, as it may have been mitigated or compromised, the Secretary may request the Attorney General to commence an action in the appropriate district court of the United States for collection of the penalty as assessed, without regard to the amount involved, together with such other relief as may be appropriate.
- d.
 1. If any owner, operator, or individual in charge of a vessel is liable for a penalty under this section, or if reasonable cause exists to believe that the owner, operator, or individual in charge may be subject to a penalty under this section, the Secretary of the Treasury, upon the request of the Secretary, shall with respect to such vessel refuse or revoke any clearance required by section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91).
 2. Clearance or a permit refused or revoked under this subsection may be granted upon filing of a bond or other surety satisfactory to the Secretary.

PENALTIES FOR NEGLIGENT OPERATIONS; DUTIES RELATED TO MARINE CASUALTY ASSISTANCE AND INFORMATION; DUTY TO PROVIDE ASSISTANCE AT SEA; INJUNCTIONS (46 U.S.C. 2301-2305)

EXCERPT FROM TITLE 46 OF THE UNITED STATES CODE
CHAPTER 23-OPERATIONS OF VESSELS GENERALLY
[Enacted on August 26, 1983]

Sec.

2301 Application

2302 Penalties for negligent operations.

2303 Duties related to marine casualty assistance.

2304 Duty to provide assistance at sea.

2305 Injunctions.

2306 Vessel reporting requirements.

46 USC §2301 Application

This chapter applies to a vessel operated on waters subject to the jurisdiction of the United States and, for a vessel owned in the United States, on the high seas.

46 USC § 2302 Penalties for negligent operations

- a. A person operating a vessel in a negligent manner that endangers the life, limb, or property of a person is liable to the United States Government for a civil penalty of not more than \$1,000.
- b. A person operating a vessel in a grossly negligent manner that endangers the life, limb, or property of a person shall be fined not more than \$5,000, imprisoned for not more than one year, or both.
- c. An individual who is under the influence of alcohol, or a dangerous drug in violation of a law of the United States when operating a vessel, as determined under standards prescribed by the Secretary by regulation-
 1. is liable to the United States Government for a civil penalty of not more than \$1,000 for a first violation and not more than \$5,000 for a subsequent violation; or
 2. commits a class A misdemeanor.
- d. For a penalty imposed under this section, the vessel also is liable in rem unless the vessel is-
 1. owned by a State or a political subdivision of a State;
 2. operated principally for governmental purposes; and (3) identified clearly as a vessel of that State or subdivision.

46 USC § 2303 Duties related to marine casualty assistance and information

- a. The master or individual in charge of a vessel involved in a marine casualty shall-
 1. render necessary assistance to each individual affected to save that affected individual from danger caused by the marine casualty, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or to individuals on board; and
 2. give the master's or individual's name and address and identification of the vessel to the master or individual in charge of any other vessel involved in the casualty, to any individual injured, and to the owner of any property damaged.
- b. An individual violating this section or a regulation prescribed under this section shall be fined not more than \$1,000 or imprisoned for not more than 2 years. The vessel also is liable in rem to the United States Government for the fine.
- c. An individual complying with subsection (a) of this section or gratuitously and in good faith rendering assistance at the scene of a marine casualty without objection by an individual assisted, is not liable for damages as a result of rendering assistance or for an act or omission in providing or arranging salvage, towage, medical treatment, or other assistance when the individual acts as an ordinary, reasonable, and prudent individual would have acted under the circumstances.

46 USC §2304 Duty to provide assistance at sea

- a. A master or individual in charge of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master or individual in charge can do so without serious danger to the master's or individual's vessel or individuals on board.
- b. A master or individual violating this section shall be fined not more than \$1,000, imprisoned for not more than 2 years, or both.

46 USC § 2305 Injunctions

- a. The district courts of the United States have jurisdiction to enjoin the negligent operation of vessels prohibited by this chapter on the petition of the Attorney General for the United States Government.
- b. When practicable, the Secretary shall-
 1. give notice to any person against whom an action for injunctive relief is considered under this section an opportunity to present that person's views; and
 2. except for a knowing and willful violation, give the person a reasonable opportunity to achieve compliance.

- c. The failure to give notice and opportunity to present views under subsection (b) of this section does not preclude the court from granting appropriate relief.

46 USC § 2306 Vessel Reporting Requirements

a.

1. An owner, charterer, managing operator, or agent of a vessel of the United States, having reason to believe (because of lack of communication with or nonappearance of a vessel or any other incident) that the vessel may have been lost or imperiled, immediately shall-
 - A. notify the Coast Guard; and
 - B. use all available means to determine the status of the vessel.
2. When more than 48 hours have passed since the owner, charterer, managing operator, or agent of a vessel required to report to the United States Flag Merchant Vessel Location Filing System under authority of section 212 (A) of the Merchant Marine Act, 1936 (46 App. U.S. C. 1122a), has received a communication from the vessel, the owner, charterer, managing operator, or agent immediately shall-
 - A. notify the Coast Guard; and
 - B. use all available means to determine the status of the vessel.
3. A person notifying the Coast Guard under paragraph (1) or (2) of this subsection shall provide the name and identification number of the vessel, the names of individuals on board, and other information that may be requested by the Coast Guard. The owner, charterer, managing operator, or agent also shall submit written confirmation to the Coast Guard 24 hours after nonwritten notification to the Coast Guard under those paragraphs.
4. An owner, charterer, managing operator, or agent violating this subsection is liable to the United States Government for a civil penalty of not more than \$5,000 for each day during which the violation occurs.

b.

1. The master of a vessel of the United States required to report to the System shall report to the owner, charterer, managing operator, or agent at least once every 48 hours.
2. A master violating this subsection is liable to the Government for a civil penalty of not more than \$1,000 for each day during which the violation occurs.

The Secretary may prescribe regulations to carry out this section.

II. Rules of the Road

A. Operating Rules

1. Rule 2 – Prudent Seaman Rule

- This rule states that following the Rules of the Road is not an excuse for negligent behavior, and that a boat operator is always expected to use the care of a “prudent seaman” in navigating a vessel. Also, from time to time “special circumstances” arise that require a boater to depart from the Rules to avoid collision.

2. Rule 5 – Lookout Rule

- Every vessel at all times shall maintain a proper lookout, including by sight and by hearing. Purpose is to make a “full appraisal” of the situation and risk of collision. May need additional precautions in fog/low visibility.

3. Rule 6 – Safe Speed

- Vessel shall at all times proceed at a safe speed in order to take proper and effective action to avoid collision and maintain a safe stopping distance.
- Factors: visibility, traffic, maneuverability of vessels, night background lights, sea and weather conditions, vessel draft.

4. Rule 7 – Determining Risk of Collision

- Boaters shall use all available means to determine a risk of collision – when in doubt assume risk of collision.
- use radar, visual observations and radio communications.
- constant bearing/decreasing range.

5. Rule 8 – Action to Avoid Collision

- Boaters required to take action to avoid collision must take the action early and boldly.
- May include alterations in course or speed.
- Action taken must result in passing at a safe distance.

- If necessary, to avoid collision a vessel may be required to slow down or stop to create clearance or provide time to assess situation.

6. Rule 9 – Narrow Channels

- Generally, in narrow channels vessels shall navigate at the outer limits of the starboard side of the channel – stay safe.
- Vessels of less than 60 feet and sailing vessels shall not impede passage of vessels that may only navigate safely in the center of the channel.
- Vessels engaged in fishing shall not impede a narrow channel.
- Vessels shall not cross the channel so as to impede a vessel navigating in the center of a narrow channel (danger signal 5 or more short blasts).
- Vessels wishing to overtake a vessel in a narrow channel should sound one short whistle blast (1 second) if they intend to pass to the starboard of the vessel, or two short blasts if they intend to pass to port. The overtaken vessel must return the same signal before attempting to pass. Overtaken vessel may sound the danger signal if in disagreement.
- Overtaken vessel shall maintain course and speed during the pass, unless other arrangements are made by radio before the pass.
- When approaching a bend or blind spot in the channel, use particular alertness and caution and if necessary, sound one prolonged blast (4-6 seconds). Any vessel approaching from the opposite direction will return the prolonged blast.
- Vessels shall avoid anchoring in a narrow channel.

7. Rule 12 – Special Rules for Sailing Vessels

- If two sailing vessels are approaching each other with risk of collision, the following rules apply:
 - if each vessel has the wind on a different side, the vessel with the wind on the port side shall avoid the vessel with the wind on the starboard side.
 - if each vessel has wind on the same side, the vessel to windward shall avoid the vessel to leeward.

- If a vessel with the wind on the port side is to leeward of a vessel and cannot determine the position of the wind on the approaching vessel, the vessel shall take measures to avoid collisions.

8. Rule 13 – Overtaking a Vessel

- Any vessel overtaking another vessel (approaching from more than 22.5 degrees abaft the beam) shall avoid collision with the vessel being overtaken.
- Vessel in doubt should assume it is overtaking.
- Overtaking vessel cannot later become a burdened crossing vessel.

9. Rule 14 – Head-on Approach

- Occurs when one vessel sees the other almost directly ahead, or at night when a vessel sees both sidelights of the oncoming vessel or masthead lights are in line or nearly inline.
- If in doubt, assume head-on situation.
- In this situation, each vessel should alter course to starboard to avoid collision.

10. Rule 15 – Crossing Situations

- Occurs whenever the situation is not an overtaking situation or a head-on situation.
- The vessel which has the other on her starboard side shall keep out of the way and shall avoid crossing ahead if possible. (Red light means avoid, green light means maintain).

11. Rule 16 – Give Way Vessel

- In the Inland Rules, vessel required to maneuver to avoid collision is called the “give-way” vessel.
- Give-way vessel should maneuver as early and as substantially as possible to the other vessel knows action has been taken to avoid collision.

12. Rule 17 – Stand-On Vessel

- In the Inland Rules, the “non-maneuvering” vessel is called the “stand-on” vessel.

- Stand-on vessel shall maintain course and speed until such time that it becomes clear that the approaching give-way vessel is not taking action to avoid collision when at that time the stand-on vessel **MAY** maneuver to avoid collision.
- If it becomes clear to the stand-on vessel that the give-way vessel is not maneuvering to avoid collision, and collision may only be avoided by the action of the give-way vessel alone, the stand-on vessel **SHALL** take action to avoid collision.
- Stand-on vessel in a crossing situation shall not alter course to port.

13. Rule 18 – Special Vessels

- vessel not under command
- vessel restricted in ability to maneuver
- vessel engaged in fishing
- sailing vessel
- power-driven vessels

14. Rule 19 – Operating in Low Visibility

- Situations where you cannot see the approaching vessel due to fog or reduced visibility.
- Must not exceed safe speed for the conditions.
- Vessels must operate with “due regard for the prevailing circumstances.”
- If necessary to avoid collision in fog, don’t alter course to port for a vessel forward of the beam not being overtaken, or any alteration of course toward a vessel abeam or abaft the beam.
- If a fog signal is heard forward of the beam and no other risk of collision exists, a vessel shall slow to “bare steerageway”.

B. Lights and Shapes

1. Rule 20 - Application

- Lights must burn from sunset to sunrise, and shall be used during restricted visibility.
- No other lights shall be shown that may confuse other vessels or impair the visibility of the navigation lights.

- Lights shall not interfere with keeping proper lookout.
- Shapes shall be used from sunrise to sunset.

2. Rule 21 – Description of Lights

- Masthead Light – positioned on fore and aft centerline, showing 225 degrees forward, extending 22.5 degrees abaft the beam.
- Sidelights – green to starboard, red to port, shows 112.5 degrees from directly ahead to 22.5 degrees abaft the beam.
- Sidelights on vessels of less than 60 feet may be in a single lantern carried forward on the centerline.
- Sternlight – white light, on centerline after, showing 135 degrees.
- Towing Light – same as a stern light, only yellow in color.
- All around light – means light visible for entire 360 degrees.

3. Rule 22 – Visibility of Lights

- On vessels of greater than 150 feet:
Masthead 6 miles, all other lights 3 miles.
- On vessels between 36 feet and 150 feet:
Masthead 3 miles for 60 feet or less, 5 miles for over 60 feet
All other lights – 2 miles.
- On vessels less than 36 feet:
Masthead, stern light and towing light: 2 miles,
Sidelights – 1 mile.

4. Rule 23 – Power Vessel Lights

- Vessels at or over 36 feet must show a masthead light forward, a second masthead light abaft and above the forward masthead light (unless under 150 feet in length), sidelights and a stern light.
- Vessels under 36 feet may merely exhibit an all-around white light and sidelights.

5. Rule 24 – Towing Lights

- **When Towing Astern:** All lights for power-driven, except two masthead lights in a vertical line, unless tow length exceeds 600 feet, then three masthead lights in vertical line.
- **When Pushing Ahead ITB:** No different from power-driven vessel.
- **When Pushing Ahead/Towing Alongside:** Two masthead lights in a vertical line and two towing lights on the stern in a vertical line.

6. Rule 25 – Sailing Lights

- Sidelights and sternlight.
- Vessels of less than 60 feet may display single light serving as sidelights and sternlight from top of mast.
- May also display all-around red over green lights on top of mast provided there is no combine lantern.
- Sailing vessels of under 21 feet may use an “electric torch” displayed in sufficient time to avoid collision in lieu of the lights.
- Sailing vessel over 36 feet propelled by sail and machinery shall display an inverted cone shape forward where it can best be seen.

7. **Special Purpose Vessel Lights and Shapes:**

- a. Vessel Not Under Command
 - i. two all-around red lights in vertical line where best seen
 - ii. two balls in vertical line where best seen
 - iii. sidelights and stern light if underway.
- b. Vessel Restricted in Ability to Maneuver
 - i. three all-around lights in vertical line, red-white-red
 - ii. three shapes in vertical line, ball-diamond-ball
 - iii. if underway, add masthead lights, sidelights and stern light
- c. Dredges
 - i. Red over Red or two vertical balls on side of vessel unsafe to pass

- ii. Green over Green or two vertical diamonds on side of vessel safe to pass
 - iii. Same for dredge at anchor.
 - d. Vessels Engaged in Diving Ops
 - i. Three vertical lights, red – white – red
 - ii. Show rigid replica of “Alpha” Flag for Diver Down.
 - e. Pilot Vessels
 - i. Two vertical lights, white over red
 - ii. Use sidelights and stern light when underway
- 8. Rule 30 – Anchored Vessels and Vessels Aground
 - in forward part of vessel, all around white light at night and one ball during daytime.
 - at stern, all-around white light lower than forward light;
 - Vessels under 150 feet may use single all-around white light as anchor light.
 - Vessels aground (over 36 feet) shall display two vertical red lights or three balls in a vertical line.
 - Vessels under 21 feet don’t need anchor lights away from channel.
- 9. Rule 34 – Whistle Signals
 - When power-driven vessels are in sight of one another, indicate maneuvering by doing the following:
 - a. One Short Blast – I intend to leave you on my port side.
 - b. Two Short Blast – I intend to leave you on my starboard side.
 - c. Three Short Blasts – I am operating astern propulsion.
 - Vessel receiving these whistle signals shall indicate approval by repeating the same whistle signal.
 - Vessel receiving these whistle signals and rejecting them shall sound the danger signal.
 - Vessels departing a berth or a dock shall sound one prolonged blast.

- Use of radio comms relieves vessel from use of these whistle signals – DANGER!

10. Rule 35 – Fog Signals

- Power-driven vessel underway sounds one prolonged blast every two minutes.
- Power-driven vessel stopped but not anchored – two prolonged blasts every two minutes.
- Specialty vessels (towing, fishing, sailing, restricted) sound one prolonged followed by two short blasts every two minutes.
- Vessels at anchor sound rapid bell for 5 seconds every minute, and longer vessels add 5 seconds of rapid gong from stern. In emergency, anchored vessel may also sound one short, one prolonged and one short on the whistle
- Vessels less than 36 feet do not need to sound regular fog signals, but must have sound making device to activate every two minutes.

III. WHEN THING GO WRONG

A. COAST GUARD SEARCH AND RESCUE

14 U.S.C. § 88

(a) In order to render aid to distressed persons, vessels, and aircraft on and under the high seas and on and under the waters over which the United States has jurisdiction and in order to render aid to persons and property imperiled by flood, the Coast Guard may:

- (1) perform any and all acts necessary to rescue and aid persons and protect and save property;
- (2) take charge of and protect all property saved from marine or aircraft disasters, or floods, at which the Coast Guard is present, until such property is claimed by persons legally authorized to receive it or until otherwise disposed of in accordance with law or applicable regulations, and care for bodies of those who may have perished in such catastrophes;
- (3) furnish clothing, food, lodging, medicines, and other necessary supplies and services to persons succored by the Coast Guard; and
- (4) destroy or tow into port sunken or floating dangers to navigation.

(b)(1) Subject to paragraph (2), the Coast Guard may render aid to persons and protect and save property at any time and at any place at which Coast Guard facilities and personnel are available and can be effectively utilized.

(2) The Commandant shall make full use of all available and qualified resources, including the Coast Guard Auxiliary and individuals licensed by the Secretary pursuant to [section 8904\(b\) of title 46, United States Code](#), is rendering aid under this subsection in nonemergency cases.

(c) An individual who knowingly and willfully communicates a false distress message to the Coast Guard or causes the Coast Guard to attempt to save lives and property when no help is needed is--

- (1) guilty of a class D felony;
- (2) subject to a civil penalty of not more than \$5,000; and
- (3) liable for all costs the Coast Guard incurs as a result of the individual's action.

(d) The Secretary shall establish a helicopter rescue swimming program for the purpose of training selected Coast Guard personnel in rescue swimming skills, which may include rescue diver training.

Selected Cases:

No government obligation to rescue.

Although one of Coast Guard's statutory missions is to provide rescue services to mariners in distress, it is under no obligation to provide rescue services on demand.

[Fondow v. U. S.](#), 112 F.Supp.2d 119 (D.Mass. 2000).

Once a search is commenced, a duty of care attaches.

Coast Guard endeavored to aid passengers of boat through the use of a pilot boat as a search asset, thereby triggering duty of due care, where Coast Guard's petty officers had specific reason to believe someone was in danger because they had report from professional mariner that someone in the water was heard yelling for help near a specific buoy in the harbor, and officers knew that a pilot boat with rescue capabilities was returning to the area to check out the situation, and after officer evaluated the fact that the Coast Guard was able to get the pilot boat back to the scene within minutes of the report, officer decided to wait for the return call from the pilot boat.

[Hurd v. U.S.](#), 2002 WL 730284 (4th Cir. (S.C.) 2002). (Not reported.)

Government liability when condition is worsened.

Negligence of United States Coast Guard in rescue operation will create liability only if it was the proximate cause of loss or damage and only if position of plaintiff was worsened in reliance on Coast Guard's undertaking.

[U.S. v. DeVane](#), 306 F.2d 182 (5th Cir. (Fla.) 1962).

See also, [Fondow v. United States](#), 112 F.Supp.2d 119 (D.Mass. 2001).

When dealing with the race to rescue fishermen trapped in the air bubble of a capsized fishing boat, the Coast Guard's efforts and decisions did not worsen the conditions of the fishermen or cause harm by reliance on the Coast Guard's unsuccessful undertaking of the rescue (discussing Good Samaritan law and parts of National Search and Rescue Manual).

Communication of false distress message

Accused's plea of guilty to wrongfully soliciting another to violate federal statute by communicating a false distress message to the Coast Guard was not improvident on ground that plea inquiry did not elicit facts establishing that his act was prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces; soliciting a false distress call that could be seen and heard by civilians who knew his status in the Coast Guard brought discredit upon the armed forces, and fact that two searches were instituted by station personnel in response to call, as related by accused in plea inquiry, established that his act of solicitation was prejudicial to good order and discipline.

[U.S. v. Dobson](#), 59 M.J. 751 (C.G. Ct. Crim App. 2004).

No Armchair Admirals

Actions of Coast Guard motor lifeboat in attempting rescue of owner and his sailboat dragging anchor toward a lee shore in bad weather are not to be judged with wisdom of an armchair admiral after the fact; and a rescuer at sea is liable only for negligent conduct which worsens the position of the victim or for reckless and wanton conduct. Coxswain of motor lifeboat was not obligated to risk his crew or boat to rescue distressed sailboat or even boat owner's life, and his judgment was reasonable in concluding the anchor was dragging, directing cutting of anchor line to avoid fouling propellers, and passing messenger line in an attempt to tow before resorting to removal of owner by helicopter to save his life, but not his boat.

[Korpi v. United States, 961 F.Supp. 1335 \(N.D. Cal. 1997\).](#)

The Coast Guard can force you to abandon your vessel in life-threatening circumstances.

The Coast Guard is authorized to perform any and all acts to rescue and aid persons and protect and save property at any time and any place where its facilities and personnel are available and can be effectively used. This includes the authority to force or compel mariners to abandon their vessels when a life-threatening emergency exists, and there is an immediate need for assistance or aid.

See U.S. Coast Guard Addendum to the United States National SAR Supplement Chapter 4 – General SAR Policies Section 4.2, “Forcible Evacuation of Vessels.”

B. COMMERCIAL TOWING

The United States government is not required to undertake any particular rescue operation. However, as a practical matter, it will undertake a rescue if it has the necessary personnel and resources available and the vessel is in distress.

As a matter of policy, vessels not in distress will be assisted by the Coast Guard even if disabled. Coast Guard policy is contained in the United States Supplement to the International Aeronautical and Maritime Search and Rescue Manual (IAMSAR), which can be found at:

http://www.uscg.mil/HQ/G-O/G-OPR/manuals/cgadd/CGADD_wCH1.pdf

The Coast Guard’s decision-making process about whether to provide assistance is guided the following 10 factors to assess whether a mariner is “in distress.”

- (a) Nature of the situation;
- (b) Position or lack of known location;
- (c) Type, size, reported condition of vessel, food, water, emergency signaling devices, and survival/life saving equipment onboard;

(d) Visibility, including daylight or darkness conditions; [**NOTE:** A lack of visibility, in-and-of-itself, does not necessarily constitute a distress situation. Other factors, such as equipment limitations, proximity to shipping lanes, etc., must be considered prior to case classification.]

(e) Tide and current conditions, and the ability of the vessel to anchor;

(f) Present and forecasted weather including wind and sea conditions, air and sea temperature;

(g) Special considerations such as number of personnel onboard, age, health, and special medical problems; [**NOTE:** “Special medical problem” requires use of common sense, e.g. an otherwise healthy person, who simply has a limb in a cast, does not necessarily constitute a special medical problem.]

(h) Ability of the vessel to maintain reliable communications with a source of assistance. CB radio communications should be considered only under ideal conditions. They are not authorized on Coast Guard vessels for communication and Coast Guard shore units have no requirement to have CB capability; [**NOTE:** Another on scene vessel can act as the communications platform for a disabled boater. Although the Coast Guard discourages boaters from using cellular telephones for emergency purposes, they *may* be considered a reliable form of communication. If the cellular telephone connection is good, and there is no danger of losing the connection, then, in the absence of any other factors listed that would raise SMC’s level of apprehension, the case should be classified as non-distress and treated as such. In such cases, the Command Center should act as a communications intermediary and should closely monitor the case to ensure the disabled boater does, in fact, receive the assistance required. It is acceptable for the SMC to dispatch a resource while broadcasting a MARB, but it is the intent of the policy to allow commercial providers the opportunity to respond.]

(i) Degree of concern of the mariner for the safety of the occupants of the vessel - ask the questions, "Do you have safety concerns?" and if so, "What are they?"; and

(j) The potential for the situation to deteriorate after evaluating the relevant factors.

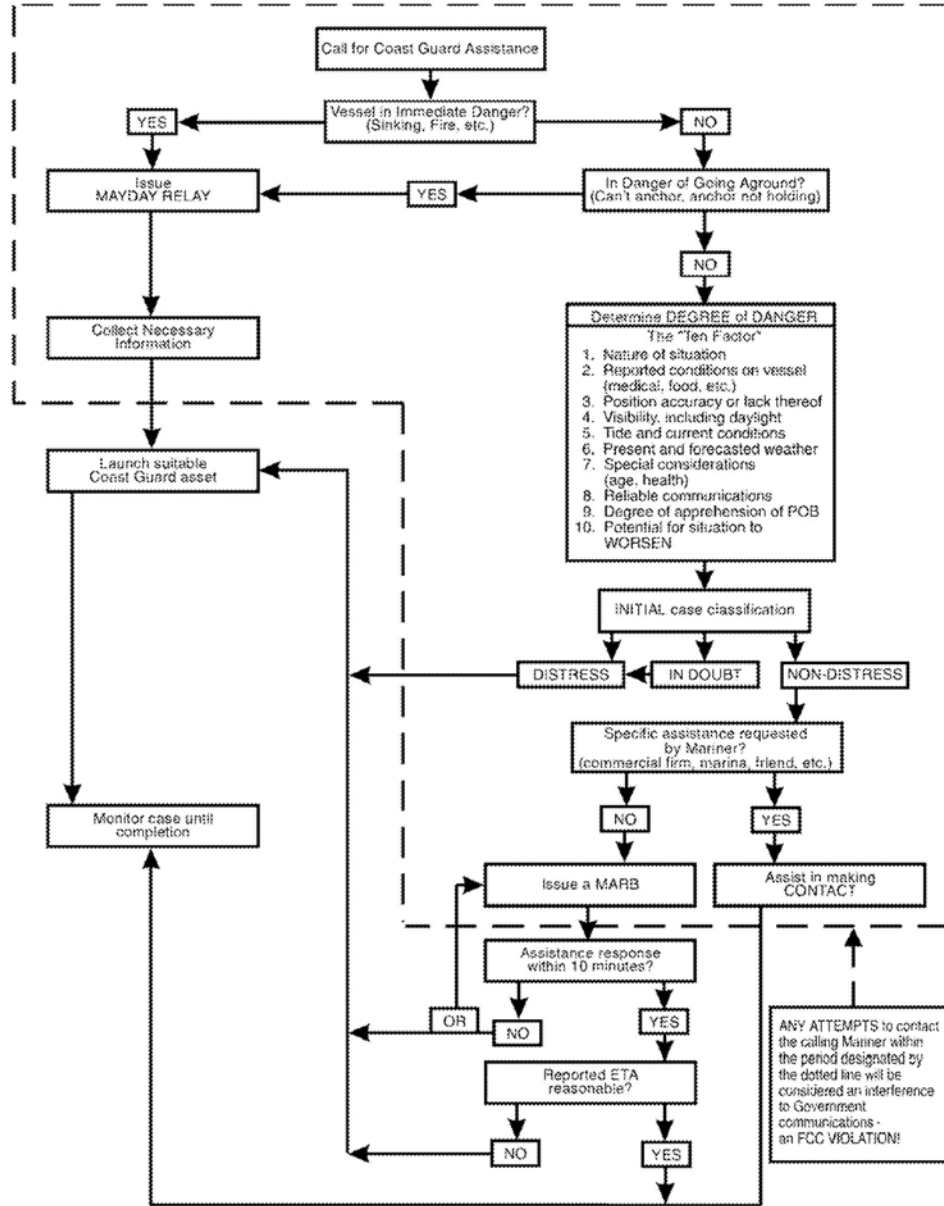


Figure 41 USCG SAR Mission Coordinator (SMC) Maritime Assistance Decision Flowchart

B. RIGHT OF SALVAGE AWARD

Similar to rescue of life, the Coast Guard is under no duty to provide salvage services to vessels or property.

Salvage decision is protected by discretionary function exemption.

Coast Guard's decision in its discretion not to undertake the salvage of a sinking vessel was within the discretionary function limitation to the Suits in Admiralty Act and thus the Government was not liable to a vessel owner for the Coast Guard's failure to undertake the salvage. [Hood v. United States](#), 695 F.Supp. 237 (E.D.La. 1988).

“Pure Salvage.” The private right of a salvage award is an ancient remedy embodied in the general maritime law that encourages rescue of property and discourages embezzlement by salvors. *See Admiralty and Maritime Law*, Thomas J. Schoenbaum, Vol. 2 § 16 (2004). A salvage award is based upon several criteria relating to, among other things, the value of the saved property, the perils faced, and the expertise employed by the salvors.

Article 13 of the IMO International Convention on Salvage (adopted 1989, entry into force 1996) sets forth the following criteria for salvage awards:

1. The reward shall be fixed with a view to encouraging salvage operations, taking into account the following criteria without regard to the order in which they are presented below:

(a) the salvaged value of the vessel and other property; (b) the skill and efforts of the salvors in preventing or minimizing damage to the environment;

(c) the measure of success obtained by the salvor;

(d) the nature and degree of the danger;

(e) the skill and efforts of the salvors in salvaging the vessel, other property and life;

(f) the time used and expenses and losses incurred by the salvors;

(g) the risk of liability and other risks run by the salvors or their equipment;

(h) the promptness of the services rendered;

(i) the availability and use of vessels or other equipment intended for salvage operations;

(j) the state of readiness and efficiency of the salvor's equipment and the value thereof.

“Contract Salvage.” A contract can reduce the amount of salvage award if entered into prior to the provision of salvage services.

D. The Limitation Action

An “innocent” owner can limit the amount of damages he or she might have to pay following a marine casualty. To be eligible for limitation, any negligence or fault must be without the owner’s “privity or knowledge.”

46 U.S.C. § 30505. General limit of liability

(a) In general.--Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight.

(b) Claims subject to limitation.--Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

(c) Wages.--Subsection (a) does not apply to a claim for wages.

IV. SAFEGUARDING THE MARINE ENVIRONMENT

A. Oil Pollution Act of 1990, 33 U.S.C. 1321

§ 1321 (b)(1) The Congress hereby declares that it is the policy of the United States that there should be **no discharges of oil or hazardous substances** into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 et seq.] or the Deepwater Port Act of 1974 [33 U.S.C.A. § 1501 et seq.], or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson-Stevens Fishery Conservation and Management Act [16 U.S.C.A. § 1801 et seq.]). [Emphasis added.]

§ 1321 (b)(2)(B)(5) Any person in charge of a vessel or of an onshore facility or an offshore facility **shall, as soon as he has knowledge of any discharge** of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. [Emphasis added.]

B. Civil Enforcement

Failure to comply with the foregoing obligation to self report can – and usually will – result in enhanced civil penalties.

Class I civil penalty – maximum \$25,000

Class II civil penalty – maximum \$125,000

Failure to comply with orders to remove discharge leads to triple penalty.

§1321 (B) Failure to remove or comply

Any person described in subparagraph (A) who, without sufficient cause--

(i) fails to properly carry out removal of the discharge under an order of the President pursuant to subsection (c) of this section; or

(ii) fails to comply with an order pursuant to subsection (e)(1)(B) of this section;

shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or an amount up to 3 times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure.

C. Criminal Measures under Oil Pollution Act of 1990, 33 U.S.C. 1319

Felony for either negligent or intentional violations.

Case:

Fact that defendant might have been prosecuted under either this section [33 U.S.C. 1319] or section 407 of this title [33] providing differing penalties for willfully discharging gasoline into navigable waterway was of no significance where Congress intended a more severe penalty in the event that the discharge was deliberate and willful. *U.S. v. Hamel*, 551 F.2d 107, (6th Cir. 1977).

V. COAST GUARD LEGAL AUTHORITIES RELATING TO SECURITY

A. LAW ENFORCEMENT

The United States Coast Guard still enjoys the broadest law enforcement authority of any federal agency.

14 U.S.C. § 89(a) The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance. When from such inquiries, examination, inspection, or search it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore, or other lawful and appropriate action shall be taken; or, if it shall appear that a breach of the laws of the United States has been committed so as to render such vessel, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel, liable to forfeiture, or so as to render such vessel liable to a fine or penalty and if necessary to secure such fine or penalty, such vessel or such merchandise, or both, shall be seized.

Case.

“The government responds that the Coast Guard needed neither a warrant nor consent to board and inspect the vessel. If that were the case, any misrepresentation by the Coast Guard to the crew of the vessel would be irrelevant. In fact, the Coast Guard does not need a search warrant or consent to board and inspect a vessel in United States waters.” *United States v. Petraia Maritime Ltd.*, 483 F.Supp.2d 34 (D. Me. 2007).

Reasonableness of officer conduct measured under *Bivens* analysis.

B. PORT AND HOMLAND SECURITY

(1) SAFETY ZONES

A safety zone is a water area, shore area or water and shore area to which, for safety or environmental protection purposes, access is limited. Safety zones may be established by the USCG District Commander or the local USCG Captain of the Port. It

is created for the protection of vessels, structures, waterways, and shore areas. If a safety zone is created, access is limited to persons, vehicles, vessels or objects authorized by the COTP. It may be described as a specific geographical location, or it may be a zone that follows a vessel through the harbor.

Safety zones are created typically during emergency situations, such as a vessel that has grounded or is on fire, so that emergency resources can get to the vessel to perform emergency services. Safety zones are also common during oil spill operations, and can be long term around a grounded or sunken vessel or uncharted shoal. Safety zones have also been established permanently around high risk waterfront facilities.

Boaters may not enter a safety zone without the permission of the USCG. Unlawful entry into a safety zone may result in civil or criminal sanctions under 33 USC 1232.

A permanent safety zone, established by regulations, is called a Regulated Navigation Area. These areas exist around the Navy Base and Nuclear Power Plants.

(2) SECURITY ZONES

Security zones are designated areas of land, water, or land and water established for such time as is necessary to prevent damage or injury to any vessel or waterfront facility; to safeguard ports, harbors or waters of the United States, or to secure the obligations of the United States. The purpose of the security zone is to safeguard vessels, harbors, ports and waterfront facilities from destruction, loss or injury from sabotage or other subversive acts, accidents or other causes of a similar nature.

Within the zone, the USCG Captain of the Port may control the access and movement of all vessels, persons, and vehicles (including their removal) and may take control and possession of any vessel. Violations of security zones may result in seizure and forfeiture of your vessel, imprisonment for not more than ten years, and fines not to exceed \$10,000 and \$25,000 civil penalty. 33 U.S.C. § 192.