

## A BRIEF HISTORY OF FISHING VESSELS SAFETY LEGISLATION

Richard C. Hiscock

[www.offsoundings.com](http://www.offsoundings.com)

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First, I would like to make a couple of observations about the history of marine safety statutes.

- Congress has never granted any executive branch agency the broad authority to make all vessels safe.
- The FAA has such authority.
- Marine safety statutes (46 U.S.C. Subtitle II) were enacted in reaction specific tragedies and issues.
- Beginning in the 1830s Congress began adopting laws to protect passengers on steam vessels, and has continued to adopt laws with very specific 'break points' – e.g. tonnage, area of operation, number of persons on board.
- Today there are classes of vessels that are 'inspected' and those that are 'uninspected'.
- 'Inspected' vessels include: freight vessels, nautical school vessels, offshore supply vessels, passenger vessels, sailing school vessels, seagoing barges, seagoing motor vessels, small passenger vessels, steam vessels, tank vessels, fish processing vessels, fish tender vessels, Great Lakes barges, oil spill response vessels, and towing vessels.
- 'Uninspected' vessels are subdivided into those that are 'commercial' and 'recreational'.
  - Towing vessels are among those now listed as 'inspected' vessels; although the regulations to implement this 2004 change have yet to be promulgated.

- o Today 'uninspected' commercial vessels includes: uninspected passenger vessels (6-packs), dredges, and barges not carrying petroleum products or hazardous materials and **FISHING VESSELS**.

## **NOW FOR A BRIEF HISTORY OF EFFORTS TO IMPROVED FISHING VESSELS SAFETY – we will begin in the 1930s.**

### **1930s**

Proposals to regulate motor vessels – including fishing vessels and towing vessels – of more than 15 gross tons in the same manner as steam vessels. Reminder steam fishing vessels were inspected.

### **1940s**

First Fishing Vessel Safety Bill introduced. It proposed to place fishing vessels 15 gross tons or over, operating outside the Boundary Line under the supervision of the Bureau of Marine Inspection and Navigation (BMIN). Hearings were held in October 1941. The BMIN supported the bill. Events of December 7<sup>th</sup> 1941 derailed this bill.

The Motor Boat Act of 1940 (amending the Motor Boat of 1910) was enacted. To improved recreational motorboat safety new requirements for ventilation and back-fire flame arrestors were enacted. This law was not intended to address commercial vessel safety.

### **1950s**

In 1951 several bills were introduced addressing fishing vessel safety.

The "Federal Boating Safety Act of 1958" adopted requiring the number of all vessels propelled by machinery of more than 10 horsepower, established the uniform number system for states, and the reporting of all accidents involving number vessels be reported to the state in which the accident occurred.

## 1960s

Both the Congress and the Executive branch request that the Coast Guard study and report on fishing vessels safety. In 1968 the Coast Guard began the study which was not published until the next decade.

## 1970s

In 1971 the Coast Guard published, *A Cost Benefit Analysis of Alternative Safety Programs for U.S. Commercial Fishing Vessels* probably the most comprehensive study ever carried out on fishing vessel safety in the United States. The study recommended licensing of masters, mandatory safety standards including full inspection and certification of new vessels and mandatory and voluntary standards combined with inspection and certification of existing vessels.

Appropriate fishing vessel safety legislation, incorporating recommendations made in the study, was prepared by the Coast Guard and submitted to the Department of Transportation. A draft proposal, entitled the *Fishing Vessel Safety Act* was forwarded to the Office of Management and Budget (OMB) in 1974. The draft bill proposed the promulgation of regulations (for all documented fishing vessels) covering the construction, maintenance, stability, lifesaving equipment, and would have required "inspection" every three years and the licensing of personnel.

In September of 1975, H.R. 9716 the *Vessel Safety and Fishermen's Benefit Act of 1975* was introduced. The bill authorized the Department of Commerce to issue safety and health standards, inspect fishing vessels, and issue Certificates of Inspection. The bill was referred to committee but hearings were never scheduled and no further action was taken

In **July of 1976**, the Secretary of Transportation forwarded copies of the 1971 study to the Senate Committee on Commerce and the House Committee on Merchant Marine and Fisheries. The Secretary did not recommend the Coast Guard's legislative program, citing the inflationary impact and increased interest in a voluntary safety program by the U.S. Fishing vessel industry. This action by the department stopped the initiative for fishing vessel safety legislation.

In 1978 then Commander William J. Ecker, USCG prepared *A Safety Analysis of Fishing Vessel Casualties* for the 66th National Safety Congress and Exposition. He examined "some of the more frequent types of marine casualties involving fishing vessels and highlighted the salient aspects of these casualties as they relate to circumstances, location, fishing fleet type, and the subsequent result of these casualties, be it loss of vessel, loss of life, or other." He concluded "there would appear to be ample evidence to warrant additional study and research into those incidents resulting in loss of life and loss of vessel for the purpose of ameliorating those circumstances and conditions that frequently precede tragic consequences."

## 1980s

In June of 1980 J. E. DeCarteret, N. W. Lemley and D. F. Sheehan, Office of Marine Safety, Coast Guard Headquarters, presented a paper entitled *Life Safety Approach to Fishing Vessel Design and Operation* to the Spring Meeting and Ship Technology and Research (STAR) Symposium of the Society of Naval Architects and Marine Engineers (SNAME).

Their conclusions and recommendations echo those of past investigations –

- The casualty statistics for fishing vessels are increasing at an alarming rate, to a limited population, in numbers that mask their significance.
- The fishing vessel industry should increase its efforts to upgrade the safety of its vessels and their operation. Potential for losses of life can be significantly reduced by incorporation of safety-related design features into vessel design and carriage of recently developed emergency equipment.
- Carriage of exposure suits, EPIRBs, and improved liferafts is having a positive effect on lifesaving, however the fatality rate, viewed together with the number of lives saved, points to the need for correction at the root cause -- the vessel and its operation.
- Education and Training Programs sponsored by local or regional fishing associations can have a positive impact on the overall safety of the fishing fleet.

- The USCG Voluntary Dockside Boarding Program should aid the industry education and training programs by pointing out and aiding in solutions of problem areas.

In February 1983 the A-Boats – the F/V *Altair* and *Americus* – capsized and sank in the Bearing Sea with the loss of fourteen fishermen. Captain DeCarteret, chief of the Marine Safety Division in Seattle lead a joint Coast Guard/National Transportation Safety Board (NTSB) investigation that lasted more than two years. The final report recommended that the Coast Guard require stability analysis of new or modified vessels, adopt a modified load line system, and seek authority to promulgate minimum competency standards and require licensing of masters of fishing vessels. The Commandant of the Coast Guard did not concur, preferring to turn the matter over to the new formed Fishing Vessel Safety Initiative Task Force that was pursuing voluntary approaches to fishing vessel safety.

In August 1983 the House Merchant Marine and Fisheries Subcommittee on Coast Guard and Navigation held a series of hearings on Marine Safety. During one of the sessions the Committee heard testimony on fishing vessel safety from three individuals representing very different points of view.

In May 1984 LCDR Tony Hart, USCG and Mr. Frank Perrini published a paper entitled *Analysis of U.S. Commercial Fishing Vessel Losses, 1970-1982* and found “that the fatality rate of commercial fishermen, considering deaths associated with a casualty and accidental deaths, is approximately 7 times that of the overall U.S. industry average

Task Force established and Fishing Vessel Safety Initiative begun.

- One part of the initiative was intended to promote vessel safety through voluntary standards written by the Coast Guard that eventually became NVIC 5-86. The voluntary standards were written primarily for fishing vessel designers, builders, outfitters, and marine surveyors.
- The second part of the safety initiative sought to promote crew safety through a safety manual that was developed jointly by the Coast Guard and North Pacific Fishing Vessel Owners’ Association [NPFVOA]. Eighty percent of the guide pertains to the fishing

industry nationwide and approximately twenty percent is tailored to regional fisheries. [Additional regional manuals – based on the NPFVOA manual – were developed and published for the Gulf and Atlantic coasts.]

- The Fishing Vessel Safety Initiative became part of the Coast Guard Marine Safety Program in January 1987. The policy implementing the safety program was published in Commandant Instruction 16711.10 on 6 November 1987.

In August 1985, tragedy strikes again one that would have a profound effect not only on the families of those who were lost but also on the drive to improve fishing vessel safety. The F/V *Western Sea*, a seventy-year-old purse-seiner, with six persons on board departed Kodiak, Alaska to fish for salmon. There was no indication the vessel was in trouble until the body of crewmember Peter Barry was recovered from the sea by the F/V *Dusk*. An intensive search by Coast Guard cutters and aircraft failed to locate any survivors.

In 1986 three bills were introduced in the House of Representatives specifically addressing fishing vessel insurance and liability issues: H.R. 4407, H.R. 4415 and H.R. 4465. In April 1986 three subcommittees of the House Merchant Marine and Fisheries Committee held hearings on these bills. Rear Admiral J. William Kime, Chief of the Office of Merchant Marine Safety, presented testimony supporting the Coast Guard's voluntary approach to fishing vessel safety.

After much deliberation by the Committee a compromise bill, *The Commercial Fishing Vessel Liability and Safety Act*, was sent to the full House. H.R. 5013 limited the liability of fishing vessel owners to a maximum of \$500,000 in cases of permanent injury, except where there was gross negligence or willful misconduct, and required the carriage of additional lifesaving equipment on fishing industry vessels, including Visual Distress Signals, EPIRBs, liferafts, exposure (immersion) suits, radio equipment and other equipment to reduce the risk of injury.

On August 13, 1986 after an intense lobbying effort by the American Trial Lawyers Association (ATLA), H.R. 5013 was defeated in the House. The defeat of this legislation placed added emphasis and urgency on the

Coast Guard's voluntary initiative, and sparked the development of new bills for introduction in the next Congress.

In March 1987, two bills were introduced in the House dealing with fishing vessel safety and insurance liability. H.R. 1836 was introduced by Congressman Lowry of Washington and H.R. 1841 by Congressman Studds of Massachusetts, Chairman of the subcommittee on Fisheries and Wildlife Conservation and the Environment.

Hearings were held in the House in June 1987 on H.R. 1836 and H.R. 1841. During the hearing Captain Gordon Piche, Program Manager of the Coast Guard Fishing Vessel Safety Task Force, testifying on both bills stated, "the Coast Guard can support consideration for safety management in H.R. 1841, the stability criteria that is recommended by both bills and the record keeping by the insurance companies." But, the Coast Guard did not "fully support or cannot support inspection, licensing, termination, and the proposed advisory committee." The Coast Guard "remains convinced that the voluntary approach is a viable program."

After many hearing and many amendments the "Commercial Fishing Industry Vessel Safety Act of 1988" was passed, and signed into law on September 9, 1988.

## **1990s**

Commercial Fishing Industry Vessel Advisory Committee appointed.

1991 regulations adopted to implement the Act.

1992 Coast Guard submitted "A plan for Licensing Operators of Uninspected Federally Documented Commercial Fishing Industry Vessels" to Congress.

The CFIVAC reluctantly endorsed the Coast Guard's licensing plan, but requested an opportunity to develop a response to a letter from Congressman Young of Alaska who asked for specific input from the Committee. A 'licensing working group' met in the fall of 1992 and drafted a proposal incorporating the 'hands-on training requirements' preferred by the Committee into the "plan" as

submitted to Congress. In December the full Advisory Committee approved most of the revised plan, and recommended that it should apply to all vessels 36-feet or more in length, not just “documented vessels.” In May of 1993 the Coast Guard submitted a revised executive summary, including the recommendations jointly agreed to by the CFIVAC and the Coast Guard. Despite repeated meetings with congressional representatives, no legislation to adopt the “licensing plan” was ever introduced in Congress.

As called for in the Act the National Research Council (NRC) of the National Academies of Sciences and Engineering carried out the inspection study. The project was assigned to the Marine Board of the NRC, and a Fishing Vessel Safety Committee was selected. It’s comprehensive report, *Fishing Vessel Safety – A Blueprint for a National Program* was published 1991. At its May meeting that year the CFIVAC reviewed the report and endorsed most of the recommendations including the establishment of an inspection program.

In November 1992 the Coast Guard sent to Congress its plan to require inspection of commercial fishing industry vessels, requesting authority (legislative changes) that would authorize the Coast Guard to –

- Establish a self-inspection program for vessels less than 50-feet in length.
- Require third-party inspection for vessels greater than 50-feet but less than 79-feet in length.
- Require Coast Guard inspection of vessels greater than 79-feet in length.
- Required load lines on new vessels 79-feet or more in length and on existing vessels 79-feet or more in length within ten years.
- Require that all new fishing industry vessel 79-feet or more length be designed and built to class standards.
- Authorize the Coast Guard to impose additional hull and machinery standards for existing fishing industry vessels 79-feet or more in length.

In its report to Congress the Coast Guard noted, “... that material condition of the vessel and equipment was a direct cause for over 85 percent of the known vessel-related casualties.”

There are outstanding regulation projects that have been in “progress” since the mid-1990s are yet to be finalized. The major one – which has now been rolled into the proposal that is working its way through the process – is the establishment of stability / water-tight integrity standards for fishing vessels that are less than 79-feet in length.

## **2000s**

No new regulations finalized.

2007 CG Authorization Act (H.R. 2830) passed the House. The Senate did not pass an Authorization bill in the 110<sup>th</sup> Congress.

In the 111<sup>th</sup> Congress the House passed (H.R. 3619), the “Coast Guard Authorization Act of 2010” in October 2009.

## **2010s**

The Senate passed their Authorization bill (H.R. 3619) in May 2010.

After much negotiation between House and Senate staff, the House passed H.R. 3691 as amended by the Senate on September 28, and then the Senate and House approved a final amended bill on September 29<sup>th</sup>

The bill was signed by the President on 15 October 2010 and became P.L. 111-218 on 18 October.

Section 604 of the law makes significant improvements to the 1988 Act and adds requirements for training of operators of commercial fishing vessels as well as design, construction and maintenance standards for new vessels.

(See separate document on Sec. 604)