

NEW FISHING VESSEL SAFETY STATUTES
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Section 604 – Fishing Vessel Safety

Section 604 of the “Coast Guard Authorization Act of 2010” P.L. 111-281) makes significant changes to the marine safety statutes that, when implemented, will – it is hoped – making fishing safer.

Highlights:

- Establishes parity for all vessels
- Establishes design construction and maintenance standards for new fishing vessels
- Requires a load line on new fishing vessels over 79-feet.
- Requires training of operators
- Requires periodic examination of vessels
- Clarification of equipment requirements
- Eliminates Exemptions for survival craft on certain vessels
- Miscellaneous provisions, including logging of drill and changing the name of the Advisory Committee
- Establishes two grant programs

For the purposes of this discuss, unless otherwise noted, “fishing vessel” includes: “fishing vessel,” fish processing vessel” and “fish tender vessel”.

ESTABLISHES PARITY FOR ALL VESSELS

Section 604 establishes uniform safety standards for all commercial fishing, fish tender and fish processing fishing vessel operating beyond 3 nautical miles of the coast, and clarifies the equipment requirements for these vessels. No longer will there be different standards for documented and state numbered vessels.

Why strike “documented”?

- The current statute distinguishes between vessels not on the basis of where they operate, but rather on the basis of how they are “registered.”
- State numbered vessels operating beyond the Boundary Line are NOT required to meet the higher standards of paragraph (b). Many are larger than the smallest documented vessels.
- This distinction creates an uneven playing field, AND incredibly complex regulations that are difficult for industry to understand and for the Coast Guard to enforce.
- Standards should be uniform for ALL vessels operating on the same waters.

Why the three-mile line?

- It is the same (‘high seas’) line used for EPIRB carriage requirements.
- Unlike the Boundary Line, it is measured consistently around the country.
- Commercial fishers know where the three-mile line is located.
- It is shown on most charts. The Boundary Line is NOT.
- The line defines the Fisheries Conservation Zone (FCZ) aka the Exclusive Economic Zone (EEZ).

DESIGN CONSTRUCTION, MAINTENANCE STANDARDS AND LOAD LINE

BACKGROUND: The construction and load line requirements a proposal consider in 2006 for that would have required the ‘classing’ and “load lining” of all new and replacement American Fisheries Act vessels.

Construction standards

Section 604 establishes design and construction standards for all new vessels. New fishing vessels and fish tender vessels over 50-foot ‘overall in length’*, built after July 1, 2012, must be “classed” by an approved classification society. (Note: new fish processing vessels are already required to be ‘classed’.)

New fishing and fish tender vessels, built after July 1, 2012, **less than 50 feet 'overall in length'*** will be required to meet standards to be developed using the authorities already available to the Coast Guard (Secretary) in the recreational vessel section (4302) of 46, U.S.C. This will require the development of new regulations for these vessels.

* NOTE: "overall in length" means – "the horizontal distance of the hull between the foremost part of the stem and aftermost part of the stern, excluding fittings and attachments." IT IS NOT THE REGISTERED LENGTH.

In addition fishing, fish processing, or fish tender vessels built BEFORE July 1, 2012 that UNDERGOES A SUBSTANTIAL CHANGE TO THE DIMENSION OF OR TYPE OF VESSEL completed after July 1, 2012 (or a date the Coast Guard establishes standards for an alternate safety compliance program) shall become part of an alternate safety compliance program.

After January 1, 2020 a fishing vessel that is at least 50 feet 'overall length' and that is 25 years of age or older will be required to be part of an alternate compliance program established by the Secretary. The Secretary is required to prescribe the alternate safety compliance program standards by January 1, 2017.

Establishing a requirement that all new fishing and fish tender vessels be built in accordance with classification society rules regarding the design, construction and maintenance will over-time be greatly improve safety on commercial fishing vessels, as old vessels are taken out of service and replaced.

Load line

Section 604 requires fishing vessels over 79-feet in length built after 1 July 2012 to be 'load lined'.

TRAINING OF OPERATORS

Section 604 authorizes and requires a training program for the operators of fishing vessels that operate beyond 3-miles. The program is based on professional knowledge, hands-on training, and gives credit for recent past experience. Those who successfully complete the program will receive a certificate, and will need to complete refresher training at least once every 5 years to keep the certificate current.

This provision was adapted from a 1993 recommendation to Congress for the licensing of operators of fishing vessel that was developed by a Licensing Task Force of the Commercial Fishing Industry Vessel Advisory Committee.

PERIODIC EXAMINATION OF VESSELS

Section 604 authorizes the Coast Guard to examine at dockside, at least twice in a five-year period, fishing vessels that operate beyond 3-miles to ensure that they meet safety regulations.

In addition Section 608 of the Act authorizes the Coast Guard to remove a certificate required by the statute from a vessel that does not comply with the provisions of the certificate.

CLARIFICATION OF EQUIPMENT REQUIREMENTS

Paragraph (a) of Sec. 4502 of the existing statute applies to all vessels. Paragraph (b) now applies to all fishing vessels operating outside of 3 miles (as before vessels operating with more than 16 persons on board, and vessels in the Aleutian trade).

In paragraph (a) the new law deletes (6) "buoyant apparatus" and (7) EPIRBs, and adds a new paragraph (6) that allows the Coast Guard to require "other equipment ... to minimize the risk of injury to the crew during vessel operations ..." (this paragraph was previously in paragraph (b))

In paragraph (b)

- “lifeboats or liferafts” is replaced by “out-of-the-water survival craft” to more accurately reflect the performance standard of the required primary lifesaving equipment;
- Inserts “marine” before “radio” to clarify that the paragraph does not permit cell phones as primary or secondary emergency communications equipment;
- Strikes “radar reflectors”, as they are not necessary on most vessels. The Secretary can require an item such as a ‘radar reflector’ using the authority in paragraph (6).
- Adds “and publications” after charts to reflect what the Secretary currently requires, and strikes “and anchors”.
- Strikes “medicine chest” an anachronistic term, and substitutes “medical supplies sufficient for the size and area of operation of the vessel” which will permit and encourage the Secretary to develop appropriate standards for first-aid and medical supplies for vessels of varying size and area of operation;
- And adds a new paragraph requiring ‘ground tackle sufficient for the vessel’

MISCELLANEOUS PROVISIONS

- Requires the logging of equipment maintenance and required drills;
- Changes the name of the advisory committee to the “Commercial Fishing Safety Advisory Committee” to more accurately reflect its purpose to, “make recommendations to the Secretary on matters relating to the safe operation of vessels to which this chapter applies”. Fishing safety is more than vessel safety; it includes operation of the vessel and its equipment, as well as the safety of the crew.

ELIMINATES EXEMPTION

The exemption (§4506(b)) relative to survival craft on fishing vessel of less than 36-feet operating inside 3 miles is deleted.

With the changes made to correct the parity issues, and the elimination of a survival craft requirement for vessels operating within 3 nautical miles of the coast this exemption is no longer necessary, as it applies to vessels less than 36-feet operating within 3 nautical miles of the coast.

GRANT PROGRAMS

Section 604 establishes two grants programs.

The first authorizes the Secretary to establish Fishing Vessel Safety Grants that would provide funding for training of operators and crew of commercial fishing vessels. It is the intent of the committee that these grants be available to programs and individuals who provide training for both operators and crewmembers of commercial fishing vessels. The grants are to be awarded on a competitive basis to organizations or individuals that are approved by the Secretary and that provide hands on, performance skills based training. The bill authorizes the appropriation of \$3 million for FY 2010 through 2014.

The second grant program authorizes the Secretary to establish Fishing Safety Research Grants to provide funding for research on methods of improving the safety of commercial fishing specifically including investigation of enhanced vessel monitoring systems. Addition funding - \$3 million - for this program is added to the Coast Guard's R&D authorization.

4502(a) and (b) would read as follows –

“(a) The Secretary shall prescribe regulations requiring that each vessel to which this chapter applies shall be equipped with —

“(1) readily accessible fire extinguishers capable of promptly and effectively extinguishing a flammable or combustible liquid fuel fire;

“(2) at least one readily accessible life preserver or other lifesaving device for each individual on board;

“(3) an efficient flame arrestor, backfire trap, or other similar device on the carburetors of each inboard engine which uses gasoline as fuel;

“(4) the means to properly and efficiently ventilate enclosed spaces, including engine and fuel tank compartments, so as to remove explosive or flammable gases;

“(5) visual distress signals; and

“(6) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment..

“(7) a placard as required by regulations prescribed under section 10603(b) of this title.”

“(b)(1) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations requiring the installation, maintenance, and use of the equipment in paragraph (2) of this subsection for vessels to which this chapter applies that —

“(A) operate **beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes;**

“(B) operate with more than 16 individuals on board; or

“(C) in the case of a fish tender vessel, engage in the Aleutian trade.

“(2) The equipment to be required is as follows:

“(A) alerting and locating equipment, including emergency position indicating radio beacons;

“(B) **out of the water survival craft** sufficient to accommodate all individuals on board;

" (C) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

" (D) **marine** radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

" (E) navigation equipment, including compasses, nautical charts and **publications**;

" (F) first aid equipment and instruction manuals, and medical supplies sufficient for the size and area of operation of the vessel;

" (G) **ground tackle sufficient for the vessel**;

" (H) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment." .

SEC. 604. FISHING VESSEL SAFETY.

(a) Safety Standards- Section 4502 of title 46, United States Code, is amended--

(1) in subsection (a), by--

(A) striking paragraphs (6) and (7) and inserting the following:

`(6) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment; and'; and

(B) redesignating paragraph (8) as paragraph (7);

(2) in subsection (b)--

(A) in paragraph (1) in the matter preceding subparagraph (A), by striking `documented';

(B) in paragraph (1)(A), by striking `the Boundary Line' and inserting `3 nautical miles from the baseline from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes';

(C) in paragraph (2)(B), by striking `lifeboats or liferafts' and inserting `a survival craft that ensures that no part of an individual is immersed in water';

(D) in paragraph (2)(D), by inserting `marine' before `radio';

(E) in paragraph (2)(E), by striking `radar reflectors, nautical charts, and anchors' and inserting `nautical charts, and publications';

(F) in paragraph (2)(F), by striking `, including medicine chests' and inserting `and medical supplies sufficient for the size and area of operation of the vessel'; and

(G) by amending paragraph (2)(G) to read as follows:

`(G) ground tackle sufficient for the vessel.';

(3) by amending subsection (f) to read as follows:

“(f) To ensure compliance with the requirements of this chapter, the Secretary--

“(1) shall require the individual in charge of a vessel described in subsection (b) to keep a record of equipment maintenance, and required instruction and drills; and

“(2) shall examine at dockside a vessel described in subsection (b) at least once every 2 years, and shall issue a certificate of compliance to a vessel meeting the requirements of this chapter.”; and

(4) by adding at the end the following:

“(g)(1) The individual in charge of a vessel described in subsection (b) must pass a training program approved by the Secretary that meets the requirements in paragraph (2) of this subsection and hold a valid certificate issued under that program.

“(2) The training program shall--

“(A) be based on professional knowledge and skill obtained through sea service and hands-on training, including training in seamanship, stability, collision prevention, navigation, fire fighting and prevention, damage control, personal survival, emergency medical care, emergency drills, and weather;

“(B) require an individual to demonstrate ability to communicate in an emergency situation and understand information found in navigation publications;

“(C) recognize and give credit for recent past experience in fishing vessel operation; and

“(D) provide for issuance of a certificate to an individual that has successfully completed the program.

“(3) The Secretary shall prescribe regulations implementing this subsection. The regulations shall require that individuals who are issued a certificate

under paragraph (2)(D) must complete refresher training at least once every 5 years as a condition of maintaining the validity of the certificate.

`(4) The Secretary shall establish a publicly accessible electronic database listing the names of individuals who have participated in and received a certificate confirming successful completion of a training program approved by the Secretary under this section.

`(h) A vessel to which this chapter applies shall be constructed in a manner that provides a level of safety equivalent to the minimum safety standards the Secretary may establish for recreational vessels under section 4302, if--

 `(1) subsection (b) of this section applies to the vessel;

 `(2) the vessel is less than 50 feet overall in length; and

 `(3) the vessel is built after January 1, 2010.

`(i)(1) The Secretary shall establish a Fishing Safety Training Grants Program to provide funding to municipalities, port authorities, other appropriate public entities, not-for-profit organizations, and other qualified persons that provide commercial fishing safety training--

 `(A) to conduct fishing vessel safety training for vessel operators and crewmembers that--

 `(i) in the case of vessel operators, meets the requirements of subsection (g); and

 `(ii) in the case of crewmembers, meets the requirements of subsection (g)(2)(A), such requirements of subsection (g)(2)(B) as are appropriate for crewmembers, and the requirements of subsections (g)(2)(D), (g)(3), and (g)(4); and

 `(B) for purchase of safety equipment and training aids for use in those fishing vessel safety training programs.

`(2) The Secretary shall award grants under this subsection on a competitive basis.

`(3) The Federal share of the cost of any activity carried out with a grant under this subsection shall not exceed 75 percent.

`(4) There is authorized to be appropriated \$3,000,000 for each of fiscal years 2010 through 2014 for grants under this subsection.

`(j)(1) The Secretary shall establish a Fishing Safety Research Grant Program to provide funding to individuals in academia, members of non-profit organizations and businesses involved in fishing and maritime matters, and other persons with expertise in fishing safety, to conduct research on methods of improving the safety of the commercial fishing industry, including vessel design, emergency and survival equipment, enhancement of vessel monitoring systems, communications devices, de-icing technology, and severe weather detection.

`(2) The Secretary shall award grants under this subsection on a competitive basis.

`(3) The Federal share of the cost of any activity carried out with a grant under this subsection shall not exceed 75 percent.

`(4) There is authorized to be appropriated \$3,000,000 for each fiscal years 2010 through 2014 for activities under this subsection.'.

(b) Conforming Amendment- Section 4506(b) of title 46, United States Code, is repealed.

(c) Advisory Committee-

(1) CHANGE OF NAME- Section 4508 of title 46, United States Code, is amended--

(A) by striking the section heading and inserting the following:

`Sec. 4508. Commercial Fishing Safety Advisory Committee';

and

(B) in subsection (a) by striking `Industry Vessel'.

(2) MEMBERSHIP REQUIREMENTS- Section 4508(b)(1) of that title is amended--

(A) by striking `seventeen' and inserting `eighteen';

(B) in subparagraph (A)--

(i) in the matter preceding clause (i), by striking `from the commercial fishing industry who--' and inserting `who shall represent the commercial fishing industry and who--'; and

(ii) in clause (ii), by striking `an uninspected' and inserting `a';

(C) by striking subparagraph (B) and inserting the following:

`(B) three members who shall represent the general public, including, whenever possible--

`(i) an independent expert or consultant in maritime safety;

`(ii) a marine surveyor who provides services to vessels to which this chapter applies; and

`(iii) a person familiar with issues affecting fishing communities and families of fishermen;'; and

(D) in subparagraph (C)--

(i) in the matter preceding clause (i), by striking `representing each of--' and inserting `each of whom shall represent--';

(ii) in clause (i), by striking `or marine surveyors;' and inserting `and marine engineers;';

(iii) in clause (iii), by striking `and' after the semicolon at the end;

(iv) in clause (iv), by striking the period at the end and inserting `; and'; and

(v) by adding at the end the following new clause:

`(v) owners of vessels to which this chapter applies.'.

(3) TERMINATION- Section 4508(e)(1) of that title is amended by striking `September 30, 2010.' and inserting `September 30, 2020.'.

(4) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 45 of title 46, United States Code, is amended by striking the item relating to such section and inserting the following:

4508. Commercial Fishing Safety Advisory Committee.'.

(d) Loadlines for Vessels 79 Feet or Greater in Length-

(1) LIMITATION ON EXEMPTION FOR FISHING VESSELS- Section 5102(b)(3) of title 46, United States Code, is amended by inserting after 'vessel' the following ', unless the vessel is built after July 1, 2012'.

(2) ALTERNATE PROGRAM FOR CERTAIN FISHING VESSELS- Section 5103 of title 46, United States Code, is amended by adding at the end the following:

'(c) A fishing vessel built on or before July 1, 2012, that undergoes a substantial change to the dimension of or type of the vessel completed after the later of July 1, 2012, or the date the Secretary establishes standards for an alternate loadline compliance program, shall comply with such an alternative loadline compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary.'

(e) Classing of Vessels-

(1) IN GENERAL- Section 4503 of title 46, United States Code, is amended--

(A) by striking the section heading and inserting the following:

'Sec. 4503. Fishing, fish tender, and fish processing vessel certification';

(B) in subsection (a) by striking 'fish processing'; and

(C) by adding at the end the following:

'(c) This section applies to a vessel to which section 4502(b) of this title applies that is at least 50 feet overall in length and is built after July 1, 2012.

'(d)(1) After January 1, 2020, a fishing vessel, fish processing vessel, or fish tender vessel to which section 4502(b) of this title applies shall comply with an alternate safety compliance program that is developed in

cooperation with the commercial fishing industry and prescribed by the Secretary, if the vessel--

- `(A) is at least 50 feet overall in length;
- `(B) is built before July 1, 2012; and
- `(C) is 25 years of age or older.

`(2) A fishing vessel, fish processing vessel, or fish tender vessel built before July 1, 2012, that undergoes a substantial change to the dimension of or type of vessel completed after the later of July 1, 2012, or the date the Secretary establishes standards for an alternate safety compliance program, shall comply with such an alternative safety compliance program that is developed in cooperation with the commercial fishing industry and prescribed by the Secretary.

`(3) Alternative safety compliance programs may be developed for purposes of paragraph (1) for specific regions and fisheries.

`(4) Notwithstanding paragraph (1), vessels owned by a person that owns more than 30 vessels subject to that paragraph are not required to meet the alternate safety compliance requirements of that paragraph until January 1, 2030, if that owner enters into a compliance agreement with the Secretary that provides for a fixed schedule for all of the vessels owned by that person to meet requirements of that paragraph by that date and the vessel owner is meeting that schedule.

`(5) A fishing vessel, fish processing vessel, or fish tender vessel to which section 4502(b) of this title applies that was classed before July 1, 2012, shall--

- `(A) remain subject to the requirements of a classification society approved by the Secretary; and
- `(B) have on board a certificate from that society.'

(2) CLERICAL AMENDMENT- The table of sections at the beginning of chapter 45 of title 46, United States Code, is amended by striking the item relating to such section and inserting the following:

- `4503. Fishing, fish tender, and fish processing vessel certification.'

(f) Alternative Safety Compliance Program- No later than January 1, 2017, the Secretary of the department in which the Coast Guard is operating shall prescribe an alternative safety compliance program referred to in section 4503(d)(1) of the title 46, United States Code, as amended by this section.