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CGD17INST 16711.0

1 0 APR 2013

SEVENTEENTH DISTRICT INSTRUCTION 16711.0

Subj: COMMERICAL FISHING VESSELS (CFVs) CARRYING PASSENGERS OR PASSENGERS-FOR-HIRE WITHIN THE FEDERAL NAVIGABLE WATERS OF ALASKA

- Ref: (a) Title 46, United States Code (USC), §2101
- (b) Title 46, Code of Federal Regulations, (CFR), Subchapter B
- (c) Title 46, Code of Federal Regulations, (CFR), Subchapter C
- (d) Title 46, Code of Federal Regulations, (CFR), Subchapter H
- (e) Title 46, Code of Federal Regulations, (CFR), Subchapter T

1. PURPOSE. This instruction establishes policy to Officers in Charge, Marine Inspection (OCMI) for determining regulatory compliance standards for commercial fishing vessels carrying passengers or passengers-for-hire.
2. DIRECTIVES AFFECTED. None.
3. ACTION. OCMI's shall conduct outreach and educational efforts as appropriate to owners and/or operators engaged in commercial fishing activities while carrying passengers or passengers-for-hire within their Area of Responsibilities (AORs). These types of commercial ventures are difficult to identify in the field, so a proactive approach is recommended to ensure that operators are aware of the regulatory compliance standards to which they will be held. This is to include identifying locally advertised operators and hands-on communications with local passenger vessel industry associations. Operators of commercial fishing vessels that carry passengers or passengers-for-hire will be strongly urged to receive and complete both dockside exams as an Uninspected Passenger Vessel (UPV) and Commercial Fishing Vessel (CFV).

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4. DEFINITIONS.

In accordance with reference (a) the following definitions are provided:

- A. ***Passenger*** means 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; 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;
- B. ***Passenger*** on a fishing vessel, fish processing vessel, or fish tender vessel, means an individual carried on the vessel except;
- i. an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;
 - ii. a managing operator;
 - iii. an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;
 - iv. an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or
 - v. an observer or sea sampler on board the vessel pursuant to a requirement of State or Federal law.
- C. ***Passengers-for-hire*** means 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.
- D. ***Consideration*** means an economic benefit, inducement, right, or profit, including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of monetary contribution or donation of fuel, food, beverage, or other supplies.
- E. ***Uninspected passenger vessel (of at least 100 gross tons)*** means an uninspected vessel:
- i. Carrying not more than 12 passengers, including at least one passenger-for-hire; or
 - ii. That is chartered with the crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers.
- F. ***Uninspected passenger vessel (of less than 100 gross tons)*** means an uninspected vessel;

- i. Carrying not more than six passengers, including at least one passenger-for-hire; or
 - ii. That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more the six passengers.
5. **BACKGROUND.** Alaskan fishing lodges and other tourism driven entities are seeking to diversify their business and customers' fishing and hunting experiences by offering opportunities to embark on commercial fishing vessels and participate in real time fishery activities and act as "one of the crew". Currently, there is no process or guidance outlined by the U.S. Coast Guard to address these ventures to ensure that owners and/or operators are operating in accordance and in compliance with appropriate Federal regulations for mariner licensing, manning requirements, drug and alcohol testing, and the carriage of proper lifesaving and firefighting equipment. If any vessel is under 100 gross tons and carries in excess of six passengers or passengers-for-hire, or over 100 gross tons and carries in excess of twelve passengers or passengers-for-hire, then it is required to be inspected to the inspection standards of Title 46, CFR, Subchapter H or T as outlined in references (d) and (e).
6. **DISCUSSION.** Those persons who meet the definition of a "passenger" or "passenger-for-hire" will not be considered a crewmember while onboard commercial fishing vessels. Any requirement by the State of Alaska that those persons meeting the definition of a "passenger" or "passenger-for-hire" obtain a "Commercial Fishing Crewmember License" does not change their status as a "passenger" or "passenger-for-hire" as required by reference (a). Ensuring strict compliance with the Passenger Vessel Safety Act of 1993 is a key function of the OCMI. The traditional "non-passenger" crewmember of a commercial fishing vessel will be afforded the protections of the Commercial Fishing Industry Vessel Safety Act of 1988.
7. **IMPLEMENTATION.** The policy of CGD17 is that a vessel carrying "passengers" or "passengers-for-hire" while fishing commercially shall be required to comply with **both** the UPV and CFV regulations as required in reference (c), as well as those regulations applicable to mariner licensing, manning requirements, chemical testing, and documentation of vessels as outlined in Title 46, CFR, Parts 10, 15, 16 and 67 (respectively). The OCMI shall require these operations to comply with all applicable requirements, subject to the provisions below, and with the safety of passengers and crew as the highest priority.
 - A. ***Licensing:*** Each UPV must be under the direction and control of an individual holding a license or MMC endorsed as an operator of an uninspected passenger vessel. Every UPV over 100 gross tons must be under the direction and control of a credentialed master, pilot, or mate as appropriate. CFV operators, regardless of vessel size, that are carrying "passengers" or "passengers-for-hire", shall be credentialed.
 - B. ***Manning:*** If the vessel is underway more than 12 hours in a 24 hour period, the vessel must provide a minimum of a two-watch system as required by 46 CFR Part 15.705.

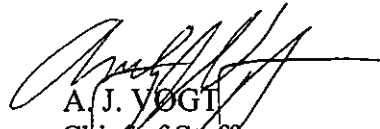
- C. **Chemical Testing:** Those crewmembers on CFVs that are carrying “passengers” or “passengers-for-hire” who perform duties and functions directly related to the safe operation of the vessel, perform duties and functions of patrolman or watchman, or are specifically assigned the duties of warning, mustering, assembling, assisting, or controlling the movement of passengers during emergencies will comply with the chemical testing requirements of Title 46, CFR, Part 16 (reference (b)). Only crewmembers are subject to drug and alcohol testing: “passengers” and “passengers-for-hire” will not be tested for drugs and alcohol.

For the purposes of chemical testing, a *crewmember* means an individual who is:

1. Onboard a vessel acting under the authority of a credential whether or not the individual is a member of the vessel’s crew; or
 2. Engaged or employed onboard a vessel owned in the United States that is required by law or regulation to engage, employ, or to be operated by an individual holding a credential except for the following:
 - i. Individuals on fish processing vessels who are primarily employed in the preparation of fish or fish products, or in a support position, and who have no duties that directly affect the safe operation of the vessel;
 - ii. Scientific personnel on an oceanographic research vessel;
 - iii. Individuals on industrial vessels who are industrial personnel, as defined in this chapter; and
 - iv. Individuals not required under Title 46, CFR, Subchapter B, Part 15 who have no duties that directly affect the safe operation of the vessel.
- D. **PFDs & Immersion Suits:** Title 46, CFR, Part 28.110 requires all CFVs to have one immersion suit, exposure suit, or wearable personal floatation device of the proper size for each individual on board as specified in Table 28.110 and part 25, subpart 25.25. Subpart 25.25-5 (c) specifies that each vessel carrying passengers for hire...must have one life preserver as required by Title 46, CFR, Subchapter Q of a suitable size for each person on board.
- E. **Lifesaving Equipment Carriage:** Vessels acting in the capacity as a CFV with “passengers” or “passengers-for-hire” onboard will carry the required amount of lifesaving equipment (of adequate capacity) for all persons onboard, including “passengers” or “passengers-for-hire”, as required by Title 46, CFR, 28.120.
- F. **Safety Orientation:** A CFV carrying “passengers” or “passengers-for-hire” that is documented and operates beyond the Boundary Line will comply with safety orientation requirements of Title 46, CFR, 28.270. All other CFVs carrying “passengers” or “passengers-for-hire” will comply with the safety orientation requirements of Title 46, CFR, 26.03.

G. ***Vessel Documentation:*** All vessels of 5 or more net tons that engage in coastwise trade must be documented as vessels of the United States. All vessels engaged in operations of a CFV and UPV must be endorsed for both coastwise and fisheries service, as required by Title 46, CFR, Part 67.

8. **ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS:** This directive will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this Manual must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Council on Environmental Policy NEPA regulations at 40 CFR Parts 1500-1508, DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates.
9. If you have any questions or concerns regarding this policy letter, please contact my Commercial Fishing Vessel Coordinator, Mr. Kenneth Lawrenson at (907) 463-2810 or LT Tom Pauser at (907) 463-2812.


A. J. VOGT
Chief of Staff