

Update on U.S. Commercial Fishing Industry Vessel Requirements

Based On

Section 604 of the *Coast Guard Authorization Act of 2010*

(Public Law 111-281)

And

Section 305 of the *Coast Guard and Maritime Transportation Act of 2012*

(Public Law 112-213)

On December 20, 2012, the President signed the Coast Guard and Maritime Transportation Act of 2012 (CGMTA). This law made significant changes to the Coast Guard Authorization Act of 2010 (CGAA) which had previously established safety and equipment requirements for commercial fishing vessels (Chapters 45 and 51 of Title 46 United States Code). The requirements in both laws build upon the standards established in the Commercial Fishing Industry Vessel Safety Act of 1988.

While some provisions of both the CGAA and CGMTA are self-executing and do not necessarily require new or amended regulations (for example; vessel construction standards, survey and classification, and loadline requirements for new vessels), changes made by the laws will be implemented through new or amended regulations. Title 46 Code of Federal Regulations Parts 28 and 42 will be amended to reflect the requirements in these laws and to implement rules where the USCG has authority or discretion. Below, is a quick summary highlight of the pending changes due to both laws, and then on the following pages, a more detailed explanation and discussion of each topic is provided.

The changes will:

- Establish parity with respect to equipment requirements for state-registered and federally-documented vessels operating beyond 3 nautical miles of the baseline.
- Establish the “demarcation line” beyond which certain equipment requirements apply as 3 nautical miles from the territorial sea baseline or 3 nautical miles from the coastline of the Great Lakes instead of the Boundary Line.
- Require installation of a survival craft that ensures no part of an individual is immersed in water on all commercial fishing vessels operating beyond 3 nautical miles of the baseline.
- Require individuals in charge of commercial fishing vessels operating beyond the 3 nautical mile demarcation line to keep a record of equipment maintenance and required instruction and drills.
- Require periodic dockside safety examinations on all commercial fishing vessels operating beyond the 3 nautical mile demarcation line.
- Require training, or demonstration of knowledge and competency, for all individuals in charge of commercial fishing vessels operating beyond the 3 nautical mile demarcation line.
- Require new commercial fishing vessels, built after January 1, 2010, that are less than 50 feet overall in length to be constructed in a manner that provides a level of safety equivalent to the minimum standards established for recreational vessels.
- Require new commercial fishing vessels, built after July 1, 2013, that are 79 feet or greater in length to be assigned a load line.
- Require new commercial fishing vessels, built after July 1, 2013, that are at least 50 feet overall in length and will operate beyond the 3 nautical mile demarcation line to meet survey and classification requirements. Commercial fishing vessels built to class requirements before July 1, 2013 must remain in class.
- Require certain commercial fishing vessels that undergo a major conversion to comply with an “alternate safety compliance program” to be developed for both load line and construction standards requirements.

The information provided in this document has been developed by the U.S. Coast Guard, Fishing Vessels Division, Office of Commercial Vessel Compliance, Washington, DC. For more information on Fishing Vessel Safety, please visit www.fishsafe.info. Or, direct questions to Mr. Jack Kemerer at 202-372-1249, or jack.a.kemerer@uscg.mil.

This document is intended to provide operational requirements information for Coast Guard personnel and is not legally binding on any member of the public. Members of the public may use alternative approaches so long as they comply with existing statutes and regulations.

Enhanced Discussion of Requirements for Commercial Fishing Vessels

Parity for All Vessels: Uniform safety standards and equipment requirements are established by the CGAA for all commercial fishing vessels operating beyond 3 nautical miles of the territorial sea baseline or coastline of the Great Lakes. (**Note:** The CGMTA had no effect on this provision.) In 46 United States Code (USC) §4502(b)(1), “documented” is deleted, so there will no longer be different standards for federally-documented and state-registered vessels operating on the same waters. 46 Code of Federal Regulations (CFR) Part 28, subpart C, will be amended to reflect the change in applicability and other requirements discussed in some of the following paragraphs.

Why the change? The CGAA establishes standards that are uniform for ALL vessels operating on the same waters. Prior to passage of the CGAA, state-numbered vessels operating beyond the Boundary Line were NOT required to meet the higher equipment and safety standards for documented vessels operating in the same area. When the regulations are amended, ALL commercial fishing vessels operating beyond 3 nautical miles of the territorial sea baseline or coastline of the Great Lakes will have to meet the same standards regardless of how they are documented or registered.

Replacement of Boundary Line with 3 Nautical Miles: 46 U.S.C. §4502(b)(1)(A) is amended by the CGAA deleting the words “Boundary Line” and replacing them with “3 nautical miles from the baseline from which the territorial sea of the United States is measured or 3 nautical miles from the coastline of the Great Lakes.” (**Note:** The CGMTA had no effect on this provision.) This change establishes a new demarcation line for vessels subject to specific safety standards. 46 CFR Part 28 must be amended to reflect this change.

Why the change? The “Boundary Line,” used as a demarcation line, was often confusing and its distance from shore was not uniform around the U.S. coastline. Also, it is not shown on most charts. The 3 nautical mile line is measured consistently around the country, is shown on most charts, and is familiar to commercial fishermen.

Survival Craft: 46 U.S.C. §4502(b)(2)(B) is amended by the CGAA deleting the words “lifeboats or liferafts” and replacing them with “a survival craft that ensures that no part of an individual is immersed in water...” This will require all commercial fishing industry vessels operating beyond 3 nautical miles to carry survival craft that more accurately reflect the performance standard for primary lifesaving equipment. (**Note:** The CGMTA had no effect on this provision.) 46 CFR Part 28 must be amended to reflect this change.

Why the change? Life floats and buoyant apparatus do not keep an individual out of the water when used in an emergency. This can be critical to survival, particularly in cold water areas. The change to the type of survival craft required means that life floats and buoyant apparatus will no longer be accepted as survival craft on commercial fishing vessels operating beyond 3 nautical miles.

Records: 46 U.S.C. §4502(f) is amended by the CGAA to add a requirement that the individual in charge of a vessel operating beyond 3 NM keep a record of equipment maintenance, and required instruction and drills. (**Note:** The CGMTA had no effect on this provision.) 46 CFR Part 28 will be amended to reflect this requirement.

Why the change? This provision will ensure there is a maintenance record documenting safety equipment testing and repair required by regulation or manufacturers’ recommendations. These provisions will also ensure that required emergency instruction and drills are being conducted by a qualified individual with crew participation. It will be incumbent upon the master or individual in charge of a commercial fishing vessel to maintain these records onboard the vessel.

Examinations and Certificates of Compliance: 46 U.S.C. §4502(f) is amended to add a requirement that commercial fishing vessels operating beyond 3 nautical miles must be examined dockside at least once every 5 years and be issued a Certificate of Compliance (COC). The 2012 CGMTA further amended §4502(f) by requiring that the first such exam for a vessel must be completed not later than October 15, 2015. Section 608 of the CGAA also added authority for the USCG to remove a certificate from a vessel that does not comply with its provisions. Vessels operating without a certificate required by Title 46 U.S.C. may have their voyage terminated. 46 CFR Part 28 will be amended to reflect these requirements and authorities. **(Note:** The CGAA requirement for a dockside examination at least once every 2 years was changed to at least once every 5 years by the CGMTA.)

Why the change? Currently, dockside safety examinations are voluntary unless a valid safety decal is required for a reason specific to the vessel's operation, such as vessels subject to carriage of a NOAA Fisheries Observer. Approximately only about 10% of the nation's estimated active commercial fishing fleet is examined at the dock during a year. Studies have shown that fatalities and vessel losses occur more frequently on, or with those vessels, that have not been examined or its decal has expired. The Coast Guard does not have authority to inspect fishing vessels, so this requirement for safety examinations will guarantee that a good portion of the commercial fishing fleet is checked for compliance with all the safety and survival equipment requirements.

At-sea boardings for fisheries enforcement and safety equipment checks are conducted on even less than 10% of the estimated commercial fishing fleet. The COC, when issued after successfully completing an exam, is expected to document what the vessel is required to carry for its operating area. Commercial fishing vessels operating beyond the 3 nautical mile line will be required to have a valid COC and be in compliance with its provisions. If a vessel is found operating without a COC or not in compliance with all its required equipment and conditions, the Boarding Officer will have authority to remove the COC and terminate its voyage. If a vessel is found operating in an unsafe condition, it may be required to return to a mooring until the conditions are corrected and is issued a COC if required.

Training for Commercial Fishing Vessel Operators: The CGAA added subsection, 46 U.S.C. §4502(g), that requires the individual in charge of a commercial fishing vessel that operates beyond 3 nautical miles to pass a training program and hold a certificate issued under that program. The program must address certain topical areas and it must be based on professional knowledge, skills, and competencies. The program also must recognize and give credit to the individual for recent past experience in fishing vessel operation. The training certificate will be valid for 5 years after which refresher training will be required to keep the certificate current. **Note:** The CGMTA did not change the training and certificate requirements, however, it did amend subsection (g)(4) so that the database listing the names of individuals completing the training need not be publicly accessible. 46 CFR Part 28 will be amended to reflect these requirements.

Why the change? Most commercial fishing vessel operators are unlicensed. A licensed operator is only required on vessels over 200 gross tons. The training requirement for operators will help ensure their competency to command the vessel. Individuals in charge of a commercial fishing vessel will have to pass a training program or demonstrate knowledge and competency in seamanship, navigation and publications, collision prevention, stability, fire fighting and prevention, damage control, personal survival, emergency medical care, emergency drills, weather, and emergency communication.

Construction Standards for Newly-Built Smaller Vessels: The CGAA added subsection, 46 U.S.C. §4502(h), that requires commercial fishing vessels less than 50 feet overall in length, built after January 1, 2010, to be constructed in a manner that provides a level of safety equivalent to the minimum safety standards established for recreational vessels. **(Note:** The CGMTA had no effect on this provision.) 46 CFR Part 28 will be amended to reflect this change, but the requirement is already effective by law. The standards/requirements for recreational vessels can be found in 33 CFR Parts 181 and 183.

Why the change? With respect to smaller commercial fishing vessels in particular, there is little guidance and there are few requirements on how the vessel must be constructed to ensure the safety of the vessel and crew. Construction standards imposed by this provision should improve the integrity of these smaller fishing vessels, and, maintaining the vessel to original construction condition is important to ensure better integrity of a commercial fishing vessel as it ages. Casualty data shows that 67% of vessels lost to flooding result from hull or equipment failure. Construction and maintenance standards that have been needed for smaller commercial fishing vessels are addressed by establishment of this requirement.

Note: “Overall in length”, means the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern excluding fittings and attachments. This is different from the “registered length”.

Load Lines: 46 U.S.C. §5102(b) is amended to require commercial fishing vessels 79 feet or greater in length to have a load line assigned. Under the CGAA, this provision applied to commercial fishing vessels built after July 1, 2012, however, the CGMTA changed the effective date to July 1, 2013.

The CGAA also added a provision that requires fishing vessels that undergo a “substantial change to the dimension of or type of vessel” after July 1, 2012, or on a date set by the Coast Guard, to comply with an alternate load line compliance program developed in cooperation with the industry. Again, the CGMTA changed the statutorily imposed effective date from July 1, 2012 to July 1, 2013.

The CGMTA also deleted the phrase “substantial change...” and replaced it with “major conversion.” 46 CFR Part 28 and Part 42 will be amended to reflect these requirements.

Note: *Major conversion* is defined in 46 U.S.C. § 2101(14a) as meaning a conversion of a vessel that: substantially changes the dimensions (e.g. length, breadth, or depth) or carrying capacity of the vessel; changes the type of the vessel; substantially prolongs the life of the vessel; or, otherwise so changes the vessel that it is essentially a new vessel, as decided by the Commandant. *Built* date can be inferred from definitions provided in the U.S. Code and Regulations for “new” and “existing” vessels where determination is made based on when the keel is laid or the vessel was at a similar stage of construction.

Why the change? Generally, most commercial fishing vessels have been exempt from load line requirements. A load line indicates the minimum safe freeboard to which a vessel may be loaded. Conditions evaluated when calculating and assigning a load line include watertight integrity of the vessel, subdivision, and loading capacity. Casualty data has shown that commercial fishing vessels that are overloaded are more vulnerable to loss of stability that can lead to flooding and capsizing, particularly in severe weather or sea conditions. Having and complying with an assigned load line will help ensure safe loading and improved seaworthiness of vessels.

With regard to major conversion determinations, fishing vessels are often modified such that their dimensions are changed or they are converted to a different type of commercial fishing vessel. When that action is taken, the loading conditions and seaworthiness of the vessel can be affected. Re-evaluation of the watertight integrity and safe loading capacity of the vessel may be needed and an alternate load line compliance program is to be developed by the Coast Guard in cooperation with the commercial fishing industry. This program should ensure these substantially changed vessels that have undergone a major conversion meet an equivalent standard of safety for the vessel that would have been met if there had been a load line assigned to the vessel.

Classing of Vessels: 46 U.S.C. §4503 was amended by the 2010 CGAA to add a requirement that commercial fishing vessels at least 50 feet overall in length, built after July 1, 2012 that operate beyond 3 nautical miles must be designed, constructed, and maintained to the standards of a recognized classification society. The CGAA also required that vessels classed before July 1, 2012 shall remain subject to the requirements of a classification society and have on board a certificate from that society. The 2012 CGMTA changed the effective date to July 1, 2013 after which if a vessel 50 feet or more in length is built, it must meet survey and classification requirements. Further, the law defines “built” for vessels subject to 46 U.S.C. §4503. 46 CFR Part 28 will be amended to reflect this change, but the requirement will become effective by law and consequently, new commercial fishing vessels, built after July 1, 2013, will be required to meet survey and classification standards.

Note: The 2012 CGMTA added a subsection (e) to 46 U.S.C. §4503 that states the term “*built*” means, with respect to a vessel, that the vessel's construction has reached any of the following stages: (1) The vessel's keel is laid. (2) Construction identifiable with the vessel has begun and assembly of the vessel has commenced comprising of at least 50 metric tons or one percent of the estimated mass of all structural material, whichever is less.

Alternate Safety Compliance Program: The 2010 CGAA added a subsection (d) to 46 U.S.C. §4503. This provision requires the Coast Guard to prescribe and develop, in cooperation with the commercial fishing industry, an alternate safety compliance program for commercial fishing vessels that operate beyond the 3 nautical mile line, if the vessel: is at least 50 feet overall in length, is built before July 1, 2012, and is 25 years of age or older (in 2020); or, is built on or before July 1, 2012, and undergoes a substantial change to the dimension of, or type of vessel, completed after July 1, 2012, or a later date set by the Coast Guard. The 2012 CGMTA changed the dates of applicability from July 1, 2012 to July 1, 2013.

Alternate safety compliance programs may be developed for specific regions and fisheries. In general, the alternate safety compliance programs must be prescribed by 2017 and implementation begun by 2020. 46 CFR Part 28 will be amended to reflect these requirements.

Note: The meaning of “built” as described in the Note under the “Classing of Vessels” is also applicable to commercial fishing vessels that will be subject to alternate safety compliance programs.

Why the changes? Casualty data shows that approximately two thirds of commercial fishing vessels lost to flooding result from hull or equipment failure; poor maintenance is often a factor. The older the vessel, the more likely it is to experience a catastrophic event. The Coast Guard does not have authority to require inspection of fishing vessels. Except for fish processing vessels built after 1990, commercial fishing vessels have not been required to meet construction standards such as survey and classification requirements. Thus, there has been little authority or ability to enforce construction standards and material condition on commercial fishing vessels. Standards to ensure a well-built and maintained vessel and application of equivalent safety standards on older and modified commercial fishing vessels are needed to improve the safety of the vessel. Construction and maintenance standards have been needed for some time and had never been fully addressed in the law or regulations previously.

Clarification of Existing Equipment Requirements: Section 604 of the 2010 CGAA also clarified or changed certain existing equipment standards by amending parts of 46 U.S.C. §4502(a) and §4502(b) as noted in the following paragraphs. 46 CFR Part 28 will be amended to reflect these added requirements or changes to existing requirements.

Applicable to all commercial fishing vessels:

46 U.S.C. §4502(a) was amended to add a new paragraph (6) that grants authority for the Coast Guard to require “other equipment required to minimize the risk of injury to the crew during vessel operations if the Secretary determines that a risk or serious injury exists that can be eliminated or mitigated by that equipment.” (This used to be found as 46 U.S.C. §4502(b)(2)(G) before the amendment.)

Applicable to commercial fishing vessels operating beyond 3 nautical miles of the baseline of the territorial sea or 3 nautical miles from the coastline of the Great Lakes:

46 U.S.C. §4502(b)(2)(D) was amended by specifying that radio communication equipment must be “marine radios” for effective communication with land-based search and rescue facilities. This implies that cellular telephones will not be accepted as primary or secondary emergency communication equipment.

46 U.S.C. §4502(b)(2)(E) was amended by striking the requirement for “radar reflectors” and “anchors.” The revision added “publications” to the requirement for navigation equipment, compasses and nautical charts. The publications may include U.S. Coast Pilot, Coast Guard Light List, tide tables, and Inland Navigation Rules.

46 U.S.C. §4502(b)(2)(F) was amend by replacing the requirement for “medicine chests” with “medical supplies sufficient for the size and area of operation of the vessel.” This will permit the development of standards for first-aid kits and other emergency medical equipment for vessels operating in different areas.

46 U.S.C. §4502(b)(2)(G) was amended to require “ground tackle sufficient for the vessel.” This would include appropriate anchoring capability for the vessel, a requirement that was deleted by the change made to §4502(b)(2)(E) as noted above. Further, with respect to that change, there are no standards for radar reflectors, and they may not be necessary on most vessels.

Note: None of the above changes was affected by the CGMTA.

Why the changes? The impact of these changes will be to more accurately reflect equipment that is better suited for and needed in today’s commercial fishing industry for vessels based on their operating areas.