

**CFSAC regulatory reform subcommittee recommendation - J. Dzuga -2/21**  
Fishermen's Partnership Support Services /18

**TOPIC: Parity- State registered and documented fishing vessels**

**SUBJECT: Evaluation of existing USCG regulations, guidance/ interpretative documents, and collections of information.**

- Existing Regulation
- Y Proposed Regulation re: NPRM # USCG-2012-0025
- Guidance
- Collection of Information

**ADVICE AND RECOMMENDATIONS:**

- Repeal  Replace Y Modification

**Specific recommendation for how the proposed regulation should be modified:**

We recommend the requirement for uniform safety training standards and equipment requirements for all Commercial Fishing Vessels (CFVs) (whether documented or undocumented) that operate beyond 3 nautical miles of the baseline of the territorial sea or the coastline of the Great Lakes. This would be done by revising subpart C to provide parity between state registered and documented fishing vessels, as per the intent of Congress in 2010 Authorization Act (CGAA).

U.S. Code (b) (1) from the CGAA states "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 baseline from which the territorial sea of the United States is measured or beyond 3 nautical miles from the coastline of the Great Lakes..."

It is important to note above the words in the US Code "...the Secretary shall...". The US Code does not say "...may..." when it refers to all CFVs beyond 3 miles. Thus the Proposed Regulation should have taken regulatory action on the topic of parity between state registered or documented CFVs since this is a "statutory mandate that took effect upon enactment of the CGAA in October 2010...". The NPRM is in error to refer to parity as under its "discretionary" preview and should be "incorporated in Coast Guard regulations without the exercise of any Coast Guard discretion" as stated specifically in the NPRM for the other mandated topics.

**Background:**

The CG Authorization Act of 2010 (CGAA) strategically eliminated the term "documented" and "non-documented" CFVs from the existing CFV US Code. The legislative act was to enact federal safety requirements onboard all CFVs, despite state or federal registration status with respect to standards for survival equipment and crew

safety training. Thus it is referred to as a *parity* issue. It is also important to recognize that the CG Authorization Act of 2010 superseded the existing Commercial Fishing Vessel Safety Act of 1988, which established different levels of safety rules for state-registered vessels and federally documented CFVs. Furthermore NPRM # USCG-2012-0025 even states that “the CGAA and CGMTA mandated action with respect to the following topics”- the first of these topics listed being vessel parity.

Congress planned to establish parity among all CFVs via the CGAA because it recognized there were no measures in the process of obtaining state-registration that would likely decrease safety risks to commercial fishing vessels. State registered CFVa are not restricted to near coastal state waters and from personal interviews (Dzugan) we know some travel up to 100 miles out to sea. All along the U.S. coastline both state-registered and federally documented CFVs operate on the same waters and in the same weather, often beyond three miles, engage in the same fishery, use the same fishing gear, and have similar crew sizes. State numbered vessels are constructed of the same materials and are of equal design, size and age in many cases. Thus they are exposed to the same risks due to the nature of fishing operations.

However, NPRM # USCG-2012-0025 contains language that deletes some very basic safety equipment and all safety training requirements for state-registered CFVs. We believe that deleting this requirement would be contrary to the 2010 CGAA. In the CFSAC Task Statement 17-01 under subsection II. B., it states that “... *review shall not include agency actions that are mandated by law.....*”. Accordingly, the rulemaking should be modified so that it gives the parity to CFVs that Congress clearly anticipated. In addition, providing this parity will greatly reduce confusion between types of vessel registration and make it easier for owners to be in compliance. It would further harmonize Coast Guard regulations to eliminate uncertainty and enhance clarity in the fishing industry.

**How and to what extent modification will reduce costs/burdens to industry:**

Some costs of the Proposed Regulation have already been discussed in NPRM #USCG-2012-0025. The proposed change will reduce costs in terms of litigation due to confusion between US Code and regulations regarding parity. Regulator confusion can also cause lost fishing time and fines. This modification will also reduce vessel losses and fatalities which have a cost to the industry in terms of insurance premiums and cost of human life and vessels. Several independent studies since 1995 (Perkins, Lincoln, Lucas at al) have demonstrated that safety training has played a role in reducing fatalities since passage of the Safety Act of 1988. Evidence of this decrease can be found in the 66% drop in fatalities in this industry from the 1980’s to the present.

**The extent to which risks to health or safety would likely increase:**

There is no evidence in the scientific literature that documented fishing vessels are at a high or lower risk of casualties than state-registered vessels operating in the same

fishery.<sup>1</sup> The risks are identical on state registered and documented vessels which fish side by side, in the same fishery, in the same sized vessel, and with the same size crew. However, since a slight majority of CFVs are state registered and would not have the protective benefits of safety training or equipment, this would greatly increase the number of people at risk and makes the NPRM ineffective.

Historically and increasingly, fishing vessel owners are having their fishing vessels re-measured to less than 5 net tons in order to buy a foreign hull and thus use it legally in a U.S. commercial fishery or to avoid more stringent fisheries management or safety regulations that would apply to a documented fishing vessel. This tactic is well known and used and results in some state numbered vessels being larger (and better able to withstand seas and weather) than some smaller documented vessels (which comparatively are thus more at risk to seas and weather to their- in some cases- smaller size). Documentation or non-documentation is a poor determinate of risk.

In particular, we have concern over the exclusion in this proposed rule making of safety training for operators of CFVs which was mandated by the Coast Guard Authorization Act (CGAA) of 2010. Research has shown that survivors of sinkings were 1.5x to 2x more likely to have had safety training (95% CI 0.9, 2.4- NIOSH 2007 & Lucas.D 2018). For example, during the Alaska Ranger sinking, 10 (21%) of the people on board had received formal safety training and that training was associated with entering a liferaft. For those with recent formal training, 80% were about to board the liferaft whereas only 38% of fishermen without recent training entered a raft. From interviews with the survivors, those with training who did not enter rafts were also instrumental in keeping the spirits of others high, reminding them that help was on its way and thereby sustaining hope of rescue.<sup>2</sup>

The USCG's NPRM states that of the 36,115 fishing vessels that operate beyond the three nautical mile threshold 18,878 vessels- the majority- are undocumented fishing vessels. By delaying or refusing to bring parity to state registered and documented CFVs, which was the clear intent of Congress in the 2010 USCG Authorization Act, the Coast Guard is preventing the protective effects of safety equipment and training being brought to state registered vessels which also work in one of the highest risk occupations. In a survey of 5 recent years of CFV fatalities in Alaska, NIOSH found that that 5 vessel fatalities were on undocumented vessels- 20% of the total fatalities. None of these fishermen had taken or required to take safety training The sea does not care if a

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<sup>1</sup> Lucas DL, et al 2014, *Application of a transitional research model to assess the progress of occupational safety research in the international commercial fishing industry. Safety Science 64: 71-81.*

<sup>2</sup> *Ageing Survival Equipment, NIOSH presentation to the US Coast Guard Fishing Industry Safety Advisory Committee, Oakland, CA. 2010.*

fishing vessel is registered with the federal government or a state. The crewmembers of both types of vessels are worthy of the protective measures of safety equipment and training. Excluding non-documented CFVs from the NPRM will increase risk.

**How and to what extent the regulation, guidance, or information collection has led to the elimination of jobs or inhibits job creation:**

There is nothing in this modification that will lead to the elimination of jobs or inhibit job creation.

**Provide quantitative and/or qualitative data to support and illustrate the impact, cost, or burden, as applicable. If the data is not readily available include information as to how such information can be obtained by the Committee or the Coast Guard.**

The Coast Guard has already provided data in the NPRM on the impact, cost and burden of this regulation for documented fishing vessels beyond 3 miles (17,237 CFVs). It also knows the additional number of state numbered vessels this modification would affect (18,878). Since the USCG has determined that the cost benefit is not unduly burdensome to documented vessels, it should have the same positive effect on fishing vessels that are registered with a state.

Most state registered CFVs operating beyond 3 miles already have the equipment required by documented vessels- navigation information, compass, anchors, radar reflectors, general alarms, communication equipment, bilge systems/alarms, electronic position fixing devices. Thus the cost of parity to these vessels is very minimal. If additional equipment was required that was not practical or did not have a risk/cost benefit, a fishery could apply for an exemption through the regional USCG FV Safety Coordinators. Scores of these exemptions have been given when the risk/cost benefit was not practical for a local fishery. There is no cost to industry for applying for an exemption. What undocumented CFVs lack is formal training in the use of their equipment in an emergency.

There will be a small increase in costs due to training additional CFV operators caused by this modification and minimal record keeping for state registered vessels. However, safety training has been available on all coasts since the mid 1980s and varies from \$0 to \$250. The Alaska Marine Safety Education Assn. (AMSEA), Fishermen's Partnership Support Services, NPFVOA, Seattle Fishermen's Memorial fund, and others have provided millions of dollars in partial and full scholarship to fishermen's safety training and brought training to fishermen's home ports. AMSEA alone has trained over 20,000 Drill Conductors mostly at no cost or at a cost well under \$90 per fishermen. AMSEA has also documented 177 people who were helped during a vessel emergency due to the training they received. The benefits of a reduction in fatalities and vessels due to safety training far out weight the minimal costs. It is highly ineffective for the proposed regulation to exclude more than half the number of CFVs beyond 3 miles from the protective effects of training and minimal equipment. A fisherman's life on a state numbered CFV is equal to the value of a fisherman's life on a documented vessel.