

U.S. Department of
Homeland Security

United States
Coast Guard



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NOAA/NMFS
NOAA Fisheries Chief Science Advisor and Director, Science Programs
1315 East-West Highway
Silver Spring, MD 20910-3282
Attn: Dr. Richard Merrick

Dear Dr. Merrick:

It has come to my attention that the National Marine Fisheries Service (NMFS) and other line offices of NOAA intend to charter private vessels that are often identified as commercial fishing vessels as their primary service. The purpose for the charters is to conduct surveys or other scientific research associated with NOAA's missions.

Our common goal must be to ensure these NOAA-chartered vessels are operated in a safe manner to protect individuals, their private property, and the marine environment and in compliance with applicable laws or regulations. As such, the Coast Guard must ensure that these vessels are properly manned and equipped for the service in which they are engaged.

Chartering (employing) a "fishing vessel," carrying personnel in addition to the crew, and conducting oceanographic or scientific research with the vessel, while not commercially engaging in fishing, changes the type of service of the vessel. Thus the vessel, by statute, is no longer considered a "fishing vessel." For further clarity on statutory definitions please refer to Enclosure (1) of this letter.

The applicability of navigation and vessel inspection laws and regulations to a particular vessel is determined by the type of operation in which the vessel is engaged, not necessarily the design of the vessel. It is further based on factors including the vessel's trade or service, route, length, tonnage and/or number of passengers. Statutes establish general requirements for vessel inspection and authorize the Coast Guard to prescribe specific standards by regulation.

As noted above, I wish to make sure you understand that the Coast Guard deems that a commercial fishing vessel "chartered" by NOAA for other purposes is no longer considered a "fishing vessel" for purposes of Coast Guard laws and regulations, regardless of its original design, purpose and any previous classification or designation by the Coast Guard (see Enclosure (1) for statutory definitions for clarity). The most appropriate service of the vessel must then be determined to identify the regulatory requirements to which the vessel must comply. Coast Guard's determination of possible service may include:

- An uninspected passenger vessel, (UPV)
- An inspected passenger vessel, (PV)

- An inspected (or designated) oceanographic research vessel, (ORV)

Each such vessel and service type determination may require changes to the vessel's documentation and subject it to Coast Guard inspection or special examination. This is important for NOAA and the vessels owners / operators to understand prior to entering into a chartering agreement because civil penalties and or operational controls of the vessel could result from violations of the applicable laws.

As an example, a vessel designated as an ORV, requires either a Certificate of Inspection (COI), for vessels 300 gross registered tons (GRT) or greater, or a Letter of Designation if under 300 GRT. Both must be addressed by the cognizant Officer in Charge, Marine Inspection (OCMI) in accordance with regulations found in 46 CFR Part 3 and Part 188.

The designation as to vessel service type is voluntary, must be decided by the owner/operator/charterer, and is for the purpose of providing relief from otherwise applicable vessel inspection(s) and manning requirements. An advanced ORV designation is a necessary prerequisite for a vessel to benefit from these exemptions. Without this designation (COI or Letter of Designation aboard the vessel), scientific personnel on board are considered either crew or passengers. Request for an ORV designation must be made in writing and submitted to the local Coast Guard OCMI in accordance with 46 CFR § 3.10-1 (vessels <300 GRT) or § 2.01-1 (vessels ≥300 GRT). If the vessel is found to be employed exclusively in oceanographic or limnological research and/or instruction, then an ORV designation can usually be granted.

Should you wish to discuss the Coast Guard's regulatory statutes or guidance further, please feel free to contact me at 202-372-1210, or my Chief, Fishing Vessels, Mr. Jack A. Kemerer at 202-372-1249.

Sincerely,



Jennifer F. Williams
Captain, U. S. Coast Guard
Chief of Commercial Vessel Compliance

Enclosure: (1) Regulatory Sites, Definitions and Explanations

Copy: RADM David Score, NOAA Director, Office of Marine and Aviation Operations with Enclosure 1

Enclosure 1:

Regulatory Sites, Definitions and Explanations

- A *fishing vessel* is defined as “a vessel that *commercially* engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.” 46 U.S.C. § 2101(11a)
- *Commercial service* to include “any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.” 46 U.S.C. § 2101(5)
- *Oceanographic Research Vessel* is a vessel that the Secretary (USCG) finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research and biological research. 46 U.S.C. § 2101(18) Note, in prior administrative rulings, the study of celestial navigation, seamanship, scuba diving, and other topics, in conjunction with oceanographic research or instruction, has voided a vessel’s claim of exclusive employment (Marine Safety Manual Volume II, section B4 H paragraph 4.)
- A *Passenger* is every person other than the crew or other persons engaged on board a vessel in the business of the vessel. 46 U.S.C. § 2101(21) (Research vessels may not carry passengers for hire, as this would constitute engaging in “trade or commerce.” (46 CFR §24.10))
- *Scientific Personnel* are those persons who are on board a CG-designated oceanographic research vessel only to engage in scientific research, or to instruct, or receive instruction, in oceanography or limnology. 46 U.S.C. § 2101(31) Note, scientific personnel on oceanographic research vessels are not considered to be seamen or passengers, but are considered as persons when requirements are based on total persons on board. (See 46 CFR §188.05-33.)