

Status of the U.S. Academic Research Fleet as Public Vessels under U.S. and International Law

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Read Porter

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Rhode Island Sea Grant Legal Program

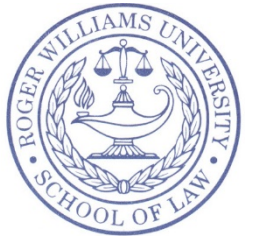


Rhode Island Sea Grant Law Fellow Program

- Matches highly-qualified law students with outside organizations
- Provides legal research and analysis on topics related to ocean and coastal law and policy
- Non-partisan and non-advocacy: no litigation or lobbying

Law Fellows contributing to this project:

- Mark Hartmann
- Erika Wheat



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Scope of review

- Identify federal (CFR) and international (IMO) regulations that treat “public vessels” differently than other vessels.
- Provide a comprehensive overview of the definitions of “public vessel” under U.S. and international law.
- Analyze whether and under what conditions UNOLS vessels are considered “operated by the U.S. Government.”

Why public vessel status matters

- Public vessels have long been treated differently from other vessels:
 - Sovereign immunity from admiralty liability and seizure in US (and waivers of immunity)
 - Exclusions from maritime and environmental regulatory programs
 - Protection under international law on high seas and in foreign jurisdiction
- Public vessel status does not require explicit declaration



Public vessels and admiralty liability

- Public Vessels Act:
 - “A civil action in personam in admiralty may be brought. . . for-- (1) damages caused by a public vessel of the United States” 46 USC § 31102
 - “[G]overnment ownership and *use as directed by the government for a public purpose* suffice without more to make a ship a public vessel” (*Petition of U.S.*, 3d Cir. 1966).
 - Includes vessels where a private contractor is responsible for day-to-day operations: e.g., MSC (*Petition of U.S.*), ARF (*Nelsen v. RCUH*, D. Haw. 1990)
- PVA incorporates the Suits in Admiralty Act (46 USC § 31103):
 - “If a remedy is provided by this chapter, it shall be exclusive of any other action... against the officer, employee, or **agent** of the United States...” 46 USC § 30904
 - “in order to find that a charterer is an agent of the United States, 1) the United States must exercise significant control over the charterer's activities—either day to day control or overall control and direction of the mission, and 2) the charterer must be engaged in conducting the business of the United States.”
 - *Kila* is public vessel, but not operated by agent: *Nelsen* 1992



Public Vessels and Regulatory Programs

- 22 explicit definitions under US law, with minor variations on common elements:
 - “a vessel owned or bareboat chartered and operated by the United States[] ... except when the vessel is engaged in commerce.” [OPA, 33 USC § 2701]
- Application to ARF vessels dependent on whether vessels are “operated by the US”
- Definitions not interpreted by courts until September 2017



Ironshore – new case interpreting statutory public vessel definition

- “When Congress opted to exempt ‘public vessels’ from OPA liability, it did so against a backdrop of federal law that had consistently interpreted the term ‘public vessels’ to include government owned ships crewed by private contractors acting on behalf of the government. We harbor no doubt that Congress intended the OPA term ‘public vessels’ to be interpreted in the same manner as ‘public vessels’ under the Public Vessels Act.” *Ironshore*, 1st Cir. 2017
- **Statutory definitions cover the same vessels as the PVA, including MSC vessels**
 - Consistent with prior USG attorney interpretations in favor of consistency
 - Suggests that ARF vessels are public vessels under effectively all statutory and regulatory definitions

Public vessels under international law

- Variations of language with similar elements to US definitions, e.g.:
 - “a warship or other government ship operated for non-commercial purposes” UNCLOS art. 31 (liability to coastal state)
 - “[s]hips owned or operated by a State and used only on government non-commercial service” UNCLOS art. 96 (high seas)
 - “[t]he present Convention shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.” MARPOL art. 3 / UNCLOS art. 236
- ARF vessels clearly within many definitions (e.g., MARPOL), but caution needed as status may differ by section (e.g., UNCLOS art. 31).



More information:

- Marine Affairs Institute, *Status of the U.S. Academic Research Fleet as Public Vessels under U.S. and International Law* (2017) – overview of public vessel issue
- Mark Hartmann, *Considerations for UNOLS treatment of ORVs as Public Vessels* (2017) – review of federal regulations addressing public vessels
- Erika Wheat, *Common Law Jurisprudence on Public Vessel Status in the United States: Annotated Cases* (2017) – review of facts for key public vessel cases



Thank you!

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