

# Reporting and Surveillance for Sexual Assault and Harassment

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# The Safer Seas Act

- Response to reports of sexual assault of USMMA cadets at sea and failure of USCG to undertake revocation and suspension proceedings based on sexual assault and harassment.
- Safer Seas Act Proposed February 2022
- Made part of the Don Young Coast Guard Authorization Act of 2022.
- The Coast Guard Authorization Act made part of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.
- The Defense Authorization Act signed into law on Dec. 23, 2022

# The Safer Seas Act: Overview

- Various requirements intended to
  - Reduce sexual assault and harassment aboard U.S. vessels
  - Aid the criminal prosecution of and civil actions against those accused of sexual assault and harassment aboard U.S. vessels.
- Horrible drafting – Like many maritime statutes.
- USCG
  - So far, no rulemaking – nothing in the CFR.
  - Ability of federal agencies to give binding answers to silent/ambiguous statutes in doubt – *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.* to be reviewed in *Loper Bright Enterprises v. Raimondo*.
  - Still very important.

# Reporting sexual assault and harassment 46 U.S.C. § 10104: who?

- “Responsible Party” for a vessel:
  - Owner
  - Master
  - Managing Operator
  - Employer of a Seafarer Aboard

# Reporting sexual assault and harassment 46 U.S.C. § 10104: What?


- The name, official position or role in relation to the vessel, and contact information of the person making the report.
- The name and official number of the documented vessel;
- The time and date of the incident;
- The geographic position or location of the vessel when the incident occurred; and
- A brief description of the alleged sexual harassment or sexual assault being reported.

# Reporting sexual assault and harassment 46

## U.S.C. § 10104: when?

- “Immediately” upon learning of the sexual assault or harassment by the “fastest telecommunication channel available.”
- Within 10 days of the initial report, describing any action taken including the results of any investigation.

# Reporting sexual assault and harassment 46 U.S.C. § 10104: to whom

- “A single entity in the Coast Guard.”
  - CGIS TIPS App (for Apple and Android). 
  - [CGISTIPS@uscg.mil](mailto:CGISTIPS@uscg.mil) (recommended for record-keeping).
  - National Command Center Hotline: (202) 372-2100.
- The appropriate authority in a foreign country in whose waters the sexual assault or harassment occurred, if in a foreign country (initial report only).

# Reporting sexual assault and harassment 46 U.S.C. § 10104: application to ARF Vessels?

- Maybe no:
  - Statute defines the responsible party as the owner, master, managing operator, or employer of a seafarer on “a documented vessel engaged in commercial service.”
  - ARF vessels are oceanographic research vessels, and an oceanographic research vessel, by statute, “is deemed not to be engaged in trade or commerce.” 46. U.S.C. § 50503.
  - For ARF vessels there is no responsible party party required to make the report.
- Maybe yes.
  - The statute does not limit the type of *vessels* to which it is applicable.
  - The chapter (101) of Title 46 does not limit the type of vessels to which it applies exempting only scientific personnel
  - The general reporting statute 46. U.S.C. § 10103, applies to seamen aboard Oceanographic Research Vessels



# Reporting sexual assault and harassment 46 U.S.C. § 10104: Compliance

- Reasons for:
  - Avoid potential conflict with USCG
  - Avoid penalties
    - \$25,000 for failure to report immediately.
    - \$500 for each day of non-compliance.
    - Up to at total of \$50,000.
  - Avoid potential civil liability
- Reasons against:
  - Administrative burden.
    - No requirement of investigation
    - Only requirement is accurate reporting

**REPORT OF SEXUAL ASSAULT OR SEXUAL HARASSMENT PURSUANT TO 46 U.S.C. § 10104(a)**

**Person Making the Report**

**Name:**

**Official Position or Role:**

**Contact Information:**

**Email:**

**Phone:**

**The Vessel**

**Name:**

**Official Number:**

**Time and Date of the Incident**

**Geographic Position/Location of Vessel When the Incident Occurred**

**Brief Description of Sexual Harassment or Assault Being Reported.**

**AFTER ACTION SUMMARY PURSUANT TO 46 U.S.C. § 10104(d)**

**Vessel**

**Name:**

**Official Number:**

**Date of Initial Report**

**Action Taken**

**Results of Any Investigation:**

**Action Taken Against the Offending Individual:**

# Surveillance requirements -- 46 U.S.C. § 4901 video surveillance: where?

- Passageways on to which doors from staterooms open.
- In a manner ensuring the visibility of every door in each such passageway

# Surveillance requirements -- 46 U.S.C. § 4901

## video surveillance: When?

- Installation by the later of
  - December 23, 2024 (two years after the enactment).
  - The next scheduled drydock.
  - New vessels?
- Retention for
  - At least one year.
  - At least five years after “incident” to which the “footage” relates.

# Surveillance requirements -- 46 U.S.C. § 4901

## video surveillance: Training on Responding to and Reporting of Sexual Harassment

- Provided by vessel owner (charterer, managing operator, master, or other individual in charge of a vessel) or employer of seafarer aboard a vessel.
- Purpose
  - Ensure employees “retain audio and visual records and other evidence objectively.”
  - Ensure employees “act impartially without influence from the company or others.”
  - Provide “training on applicable Federal, State, Tribal, and local laws and regulations regarding sexual assault and sexual harassment investigations and reporting requirements.”

# Surveillance requirements -- 46 U.S.C. § 4901 video surveillance: What Vessels?

- “(a) In general. --A vessel *engaged in commercial service* that does not carry passengers, shall maintain a video surveillance system.” (emphasis added).
- “(b) Applicability.--The requirements in this section shall apply”
  - Vessels with overnight accommodations for 10 or more
    - On a voyage of 600 miles or more crossing seaward of the Boundary Line
    - “At least 24 meters (79 feet) in overall length and required to have a load line”
  - “ Operating for no less than 72 hours on waters superjacent to the outer Continental Shelf”
  - Registered vessels of at least 500 gross tons

# Surveillance requirements -- 46 U.S.C. § 4901 video surveillance: Applicable to ARF Vessels?

- Most Likely No.
  - 46 U.S.C. § 4901(a) applies to “vessels in commercial service.”
  - ARF vessels are oceanographic research vessels, and an oceanographic research vessel, by statute, “is deemed not to be engaged in trade or commerce.” 46. U.S.C. § 50503.
  - ARF vessels are not in “commercial service.”
- Unlikely Yes.
  - “Commercial service,” the general term for covered vessels, is defined by the specific terms of 46 U.S.C. § 4901(b).
  - But “commercial service is a defined term, “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(4)

# Surveillance requirements -- 46 U.S.C. § 4901 video surveillance : Compliance

- Reasons for:
  - Avoid potential conflict with USCG
  - Make vessel safer.
  - Make vessel more attractive to employees.
  - Avoid potential civil liability – statute is not boundary of due care or seaworthiness.
- Reasons against:
  - Cost
  - Practicality on an ARF Vessel
  - Administrative burden.
    - Training
    - Retaining footage



# Surveillance requirements -- 46 U.S.C. § 3106

## Master Key Control System: The System

- A system provides controlled access to all copies of the vessel's master key of which access shall only be available to the individuals on an established list of, identified by position, allowed to access and use the master key and maintain such list upon the vessel, within owner records and included in the vessel safety management system.
- Crew not included on the list shall not have access to or use the master key unless in an emergency and shall immediately notify the master and owner of the vessel following use of such key.

# Surveillance requirements -- 46 U.S.C. § 3106

## Master Key Control System: The “Log Book.”

- Electronic or written
- In centralized location accessible to law enforcement authorities.
- Containing information on all access and use of the vessel's master key, including--
  - Dates and times of access;
  - The room or location accessed; and
  - The name and rank of the crew member that used the master key
- Available to
  - USCG
  - FBI
  - Other Law Enforcement

# Surveillance requirements -- 46 U.S.C. § 3106

## Master Key Control System: Penalties for Unauthorized Use by Crew

- Up to \$1000.
- Suspension or revocation of credentials.

# Surveillance requirements -- 46 U.S.C. § 3106

## Master Key Control System: Applicability

- Vessels subject to inspection.