

U.S. Department
of Transportation

**United States
Coast Guard**



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DEPARTMENT OF TRANSPORTATION

U.S. COAST GUARD

STATEMENT OF CAPTAIN ROBERT C. NORTH

ON THE PROPOSAL TO AMEND THE DEFINITION OF A
PASSENGER AND CONSIDERATION IN THE CARRIAGE OF
PASSENGERS FOR HIRE

BEFORE THE

SUBCOMMITTEE ON COAST GUARD AND NAVIGATION

COMMITTEE ON MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

MARCH 3, 1993

DEPARTMENT OF TRANSPORTATION
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Good morning, Mr. Chairman and distinguished members of the Subcommittee. I am Captain Robert North, Deputy Chief of the Office of Marine Safety, Security, and Environmental Protection. I would like to thank you for holding this hearing to give both the Coast Guard and the public the opportunity to address this important topic. The Coast Guard originally drafted a legislative proposal which was the subject of a hearing before this Subcommittee on July 9, 1992. We have worked with your staff and members of the public that testified at the earlier hearing to prepare a new legislative proposal. The proposed Passenger Vessel Safety Act of 1993 reflects revisions in two significant areas. This bill retains existing passenger level thresholds for inspection purposes for passenger vessels and small passenger vessels, and the definitions of "passenger for hire" and "consideration" have been narrowed to reflect the concerns of the recreational boater.

There are three major reasons for this bill. They are: first, to consolidate the multiple definitions of "passenger," which now exist in Title 46 U.S. Code, Subtitle II; second, to clarify the application of the passenger vessel laws; and third, to bring all

chartered vessels carrying more than 12 passengers under Coast Guard inspection.

I will briefly address the major points of the bill. First is the consolidation of the multiple definitions of "passenger." The existing laws contain six definitions for "passenger" which are inconsistent, and therefore difficult for Coast Guard personnel to apply and the public to understand. These include different definitions for the three types of passenger-carrying vessels. The bill creates one definition of "passenger" for all types of passenger vessels. It also retains the existing industry specific exclusions for certain persons who traditionally have not been considered passengers on offshore supply vessels, fishing industry vessels, and sailing school vessels. Creating one definition of "passenger" will simplify the public's ability to understand the laws governing passenger vessels and the Coast Guard's ability to enforce passenger vessel safety laws. This should eliminate many public inquiries and complaints both to Congress and the Coast Guard concerning perceived inconsistencies in the enforcement of passenger vessel requirements.

The second point clarifies the application of the laws for passenger vessels. Presently, application of the laws for the three types of passenger vessels are based on inconsistent criteria, depending on passenger capacity and vessel tonnage. One criterion involves carrying passengers for hire. The other

criterion involves a two-part test which takes into account use of a vessel only for pleasure and guests who have not contributed consideration for carriage. The bill applies the passenger vessel laws more consistently, based on the carriage of passengers for hire, the number of passengers being carried, and the operation or charter status of the vessel.

The bill contains a definition of "passenger for hire" and "consideration" in order to clarify what constitutes a passenger for hire and consideration for application of the passenger vessel laws. The proposed definitions are narrower in scope than the existing definitions in regulations and in application policy. They address the documented concerns of recreational boaters and were developed after consultation with the National Boating Safety Advisory Council and the Boat Owners' Association of the United States (Boat US). We clarified the definitions so that guests on board recreational vessels who provide a voluntary donation of food, beverage or other item which is of a nominal value are not considered passengers for hire.

The third point of the bill brings all chartered vessels carrying more than 12 passengers under Coast Guard inspection. This reflects two areas of concern. First, some arrangements purporting to be bareboat charters have been used to conceal passenger vessel operations and to avoid Coast Guard inspection where presently required. Historically, a bareboat charter is used to charter large, Coast Guard-inspected commercial vessels

for multi-year periods. The charterer accepts the benefits and liabilities of ownership, and the owner relinquishes command, control, and possession of the vessel. The use of instruments called bareboat charters has expanded beyond large commercial vessels to vessels being rented for outings and other short term periods. Commonly, however, the charterer does not understand nor would he want the liabilities and responsibilities of ownership, including compliance with all equipment regulations. Furthermore, by receiving money in exchange for a charter instead of direct payment for passage, the bareboat charter is used to circumvent the maritime safety laws and regulations that set minimum standards for stability, structure, lifesaving equipment and firefighting equipment for inspected vessels and, accordingly, puts the charterer at risk, usually without his knowledge. Not all arrangements pursuant to a document called a bareboat charter, in fact, release control and possession of the vessel. The Coast Guard is placed in the difficult position of evaluating both the rental document and the real nature of the arrangement between the vessel owner and charterer.

For the other area of concern, the valid bareboat chartering of a vessel which has not been Coast Guard inspected and that carries more than 12 passengers almost always presents a lower level of safety compared to a Coast Guard inspected vessel of the same size and passenger capacity. Usually, as a recreational vessel, the bareboat chartered vessel is equipped with only minimal safety equipment. Bareboat chartered vessels carry large groups

of people for such events as wedding receptions, graduation parties and business meetings. In recent years, an increase in this type of operation has placed more and more people at risk. We are concerned that it is only a matter of time before a major casualty occurs on a vessel operating under such a charter. Numerous lives could be lost because of a lack of structural integrity, lifesaving gear or fire fighting equipment. The charterer and passengers on such a vessel may expect -- and should be afforded -- the same level of safety as on an inspected passenger vessel of similar size and capacity.

By including chartered vessels in the definition of passenger vessel and small passenger vessel, these vessels will be required to meet the same safety standards as vessels which are time-chartered conducting essentially the same business.

This change will require that a vessel which is chartered, with no crew provided and carrying more than 12 passengers, be Coast Guard inspected and certificated as a passenger vessel or small passenger vessel. The inspection threshold of 12 will allow for continuing the practice of bareboat chartering small yachts carrying 12 or fewer passengers for recreational purposes. For enforcement purposes, the Coast Guard will only look at whether a vessel is operating under a charter and how many passengers are on board. It will not have to evaluate and judge whether an arrangement is a true bareboat charter and vessel owners will be able to include operational restrictions without concern for the Coast Guard evaluation of a bareboat charter.

The safety of the passenger vessel industry will be improved by bringing chartered vessels carrying more than 12 passengers under inspection.

Finally, there are two other issues which are addressed by this bill. It redefines "offshore supply vessel" to allow offshore workers to be carried on an offshore supply vessel without the vessel being defined as a small passenger vessel. There is currently an open regulatory project which will establish a new Subchapter in Title 46 C.F.R. for offshore supply vessels and lift boats. If the bill is enacted, these regulations will be adapted to address carriage of offshore workers. Offshore supply vessels carrying offshore workers will be inspected under the same regulations as other offshore industry vessels.

The bill also requires all submarines carrying one or more passengers for hire to be inspected. This is a market which has recently started to expand. Due to the inherent hazards associated with operation of submarines, we feel that they should all be inspected.

In summary, this bill addresses a number of important issues: Coast Guard enforcement efforts against illegal passenger vessel operations are hampered by the present confusing passenger definitions; recreational boaters are sometimes inadvertently categorized as operators of passenger vessels; and there are

inequities in the level of safety between bareboat chartered vessels and Coast Guard inspected vessels of the same type involved in like operations. We support this bill to remedy these problems.

Again, I thank you for this opportunity, and will be pleased to answer any questions you may have on this issue.

CAPTAIN ROBERT C. NORTH, U.S. COAST GUARD

Captain Robert C. North is presently serving as Deputy Chief, Office of Marine Safety, Security and Environmental Protection, U.S. Coast Guard Headquarters, Washington, DC. Previous assignments include: Chief, Traveling Inspection and Evaluation Staff, U.S. Coast Guard Headquarters; Group Commander and Captain of the Port of New York and New Jersey; Executive Officer, Marine Inspection Office, New Orleans, LA; Assistant Chief of the U.S. Coast Guard Marine Safety School; Deck Watch Officer aboard the CGC WESTWIND; and numerous other marine safety headquarters and field office assignments.

Captain North is a native of Baltimore, MD. He is a graduate of the Baltimore Polytechnic Institute, State University of New York Maritime College at Fort Schuyler and the U.S. Army War College, Carlisle, PA. His military decorations and awards include the Legion of merit, Meritorious Service Medal, Coast Guard Commendation Medal, Coast Guard Achievement Medal, and numerous unit citations and special operations service awards. He is married to the former Sharon Sells of Corpus Christi, TX and presently resides in Chester, MD.

