



16711

MOC Policy Letter 05-03

OCT 27 2005

M. B. Karr

From: M. B. Karr, CAPT
COMDT (G-MOC)

To: Distribution

Subj: OPERATOR REQUIREMENTS FOR FOREIGN FLAGGED CRUISE SHIPS USING
LIFEBOATS AS TENDERS

Ref: (a) Title 46, U. S. Code Section 8902, "Small Passenger Vessels"
(b) Title 46, U. S. Code Section 3303, "Reciprocity for Foreign Vessels"
(c) Title 46, U. S. Code Section 3505, "Prevention of Departure"

1. Purpose. This policy letter outlines acceptable manning and licensing requirements for foreign flagged cruise ship lifeboats used as tenders to ferry passengers from ship to shore at U. S. ports.
2. Action. Field units shall use the following guidance during examinations of foreign flagged cruise ships. This guidance does not apply to U.S. flag cruise ships for which the Coast Guard has exclusive authority under reference (a) and Title 46, Code of Federal Regulations Subchapter B to specify manning and licensing requirements.
3. Directives Affected. This policy letter supplements the guidance in the Marine Safety Manual, Volume II, Section B, Chapter 4, Subchapter W, "Launches and Lifeboat Uses" relative to launch operator licensing requirements.
4. Background and Information.
 - a. The Non-Conformity: Field units located in cruise ship destination ports raised the concern that often, when a cruise ship lays offshore at anchor, the ship uses its launches or lifeboats (tenders) to ferry passengers between the ship and port and that the operators of those vessels are not licensed individuals under ref (a). The field units pointed to reference (a) as the standard/authority requiring a licensed operator.
 - b. Evaluating the Non-Conformity:
 1. Reference (b) provides reciprocity for vessels of a country having inspection laws and standards similar to those of the United States.

OCT 27 2005

SUBJ: OPERATOR REQUIREMENTS FOR FOREIGN FLAGGED CRUISE SHIPS
USING LIFEBOATS AS TENDERS

2. Notwithstanding reference (b), reference (c) limits such reciprocity in a way that requires passenger vessels embarking passengers in U. S. ports (or visiting U. S. ports with U. S. citizens as passengers) to comply with SOLAS. Although 46 USC 3505 mandates a form of port state control, it also requires a more detailed vessel examination than that performed under port state control authority.
3. In view of 46 USC 3303, the Coast Guard considers a foreign flag state signatory to SOLAS (such as Bahamas) to have inspection laws and standards similar to those of the United States. A flag Administration that issues the SOLAS certificates (the foreign equivalent of a U.S. COI) to a vessel also determines the appropriate certification for the tender operator. Stated simply, **where a foreign tender carries SOLAS certificates or the tender is included on the "Record of Equipment for the Passenger Ship Safety Certificate", 46 USC 8902 does not apply.**

c. Conclusion and Analysis.

1. Ultimately, a flag Administration signatory to SOLAS is responsible for setting manning and licensing requirements for "tender coxswains". Where a cruise line has established a training program for "tender coxswains" and the SOLAS signatory flag Administration (for example, Bahamas) has specifically agreed that the course content substantially covers the competencies that a person undertaking responsibility as a coxswain, for a passenger ship tender should have, the requirements of references (b) and (c) are met.
2. The Coast Guard has obligations as a port state under STCW. The convention at Article X(1) subjects signatory vessels to the control of a port state only "to verify that all seafarers serving on board who are required to be certificated by the convention are so certificated." In our examinations verifying compliance with STCW, we should not impose US-specific licensing standards on the foreign tenders any more so than we would on the foreign "mother ship."
3. For the purpose of applying the reciprocity provisions of 46 USC 3303 to a foreign vessel, the close nexus between a tender and its ship makes it unreasonable to consider the tender as an independent small passenger vessel. A tender is often an integral part of the ship's lifeboat complement, with operations continuously monitored by the ship and not severable from the ship for that reason.

5. Implementation. During regularly scheduled examinations of foreign-flagged cruise ships and as part of vessel lifeboat drills, check licenses, certificates, and related flag Administration issued documentation for personnel operating lifeboats for those lifeboats operated as tenders.

- a. Where a foreign tender carries SOLAS certificates or the tender is included on the "Record of Equipment for the Passenger Ship Safety Certificate", tender operators shall meet the certification/licensure requirements established by the flag Administration. This may include a certified lifeboatman who has completed a company training program accepted by the flag Administration.

OCT 27 2005

SUBJ: OPERATOR REQUIREMENTS FOR FOREIGN FLAGGED CRUISE SHIPS
USING LIFEBOATS AS TENDERS

- b. During Control Verification Examinations, the inspector should ask to see a copy of the accepted training program and/or a copy of the flag Administration's acceptance letter for the training program.
- c. In rare cases where a foreign tender carries a USCG-issued Certificate of Inspection, because it does not hold SOLAS certificates discussed above, tender operators shall be licensed deck officers (under STCW or under appropriate USCG licensing requirements).

#

Cc: CG LANTAREA (Am)
CG PACAREA (Pm)
CG Marine Safety Center
All Districts, Sectors, Activities, MSOs, and MSUs

From: Sedlak, John
Sent: Friday, April 08, 2005 7:51 AM
To: Krajewski, Jason LT
Cc: Karr, Michael CAPT
Subject: RE: Read on 46 USC 8902
Jason,

Thank you for the clear opinion on the relevant laws. I will discuss this in detail with Captain Karr and may take advantage of your offer for a more formal written opinion.

John Sedlak

From: Krajewski, Jason LT
Sent: Friday, April 08, 2005 7:07 AM
To: Darr, Charles LCDR; Sedlak, John
Cc: Karr, Michael CAPT; Beistle, Thomas CDR; Weller, George; Fink, Ernest CAPT; Fitzgerald, Daniel; Baumgartner, William CAPT
Subject: RE: Read on 46 USC 8902

Mr. Sedlak,

Thanks for the additional information concerning your question about the applicability and scope of 46 USC 8902. I understand from our conversation that field units located in cruise ship destination ports have raised the concern that often, when a cruise ship lays at anchor, launches or lifeboats (tenders) are used to ferry passenger vessels between the ship and port and that those vessels are not operated by a licensed individual. The field units have pointed to 46 USC 8902 as the standard/authority requiring that the operator be licensed. I also understand from our conversation that the ICCL has established a training program for "tender coxswains" and that at least one SOLAS signatory flag state (Bahamas) has agreed that the course content "substantially covers the competencies that a person undertaking responsibility as a coxswain, for a passenger ship tender should have." (Bahamas Maritime Authority letter of April 5, 2005 to CDR Thorne) My advice follows the general advice provided in the below E-mail by LCDR Darr that "**foreign tender operators must be licensed in accordance with flag administration standards**" and is based on the following rationale:

46 USC 3303 provides reciprocity for vessels of a country having inspection laws and standards similar to those of the United States. This reciprocity is limited under 46 USC 3505 which requires those vessels (notwithstanding 3303) to comply with SOLAS. Therefore, a foreign flag state that is signatory to SOLAS (such as Bahamas) is considered to have inspection laws and standards similar to those of the United States. Under this analysis it is the issuer of the SOLAS certificates (or foreign equivalent of a U.S. COI) that determines whether a licensed individual is required. Stated simply, **where a foreign tender carries SOLAS certificates or is listed on the ship's SOLAS certificates, 46 USC 8902 is not applicable.**

In addition I am persuaded by the Coast Guard's obligations under STCW. The convention at Article X(1) subjects signatory vessels to the control of a port state only "to verify that all seafarers serving on board who are required to be certificated by the convention are so certificated." Along the same lines, I note LCDR Darr's assertion below that [we don't impose US-specific licensing standards on the foreign tenders any more so than we would on the foreign "mother ship."]

Lastly, I am persuaded that the close nexus between a tender and its ship makes it unreasonable to consider the tender as an independent small passenger vessel. A tender is often an integral part of the ship's lifeboat complement, and not severable from the ship for that reason. The consideration offered for transportation on a tender is also not severable from the consideration offered to be a passenger on the ship. That is to say that there is no separate fee for

transportation on the tender, and that the tender is not available to non-passengers of the ship.

I hope this is helpful, and remain available to discuss further. Should you require a formal written opinion please indicate as much in a reply, and I will forward a memo for CAPT Baumgartner's review and signature.

R/ LT K.

From: Darr, Charles LCDR
Sent: Wednesday, March 23, 2005 5:45 PM
To: Sedlak, John
Cc: Karr, Michael CAPT; Beistle, Thomas CDR; Krajewski, Jason LT; Weller, George; Fink, Ernest CAPT; Fitzgerald, Daniel
Subject: RE: Read on 46 USC 8902

Generally speaking, our historical interpretation has been that the foreign tender operators must be licensed in accordance with flag administration standards. One way to look at it is that we don't impose US-specific licensing standards on the foreign tenders any more so than we would on the foreign "mother ship." This could certainly be a very limited license (like our yacht club launch licenses for instance). The MSM (Vol. II, Pg. B4-70) states by policy that "operation and manning, including licensed operators, shall be required in accordance with the regulations for passenger vessels." This language is a bit defective, because it appears to "require" by policy and it refers to the "regulations for passenger vessels," which wouldn't apply due to relatively small tonnage of a tender.

When you return, I would like to hear some specific facts and understand the context of the question. The facts would be very important to any ultimate advice.

v/r,

Bud

From: Sedlak, John
Sent: Wednesday, March 23, 2005 3:38 PM
To: Beistle, Thomas CDR; Darr, Charles LCDR; Krajewski, Jason LT
Cc: Karr, Michael CAPT
Subject: Read on 46 USC 8902

Gentlemen,

If you have time, could I get a read on the referenced law and whether we have any flexibility to accept less than a licensed individual for foreign-flag tenders (lifeboats used to ferry passengers from the foreign cruise ship to the pier).

I'll be back Tuesday, March 29. Could we talk then?

John S

Sedlak, John

From: Danscuk, Stephen
Sent: Wednesday, July 06, 2005 11:24 AM
To: Sedlak, John
Cc: Varghis, Jacob; Boyle, Steven CDR; Blalack, Victor CDR
Subject: RE: Operator Requirements for Foreign-Flagged Cruise Ships Using Lifeboats as Tenders

Attachments: MOC Policy Ltr XX-05.doc

John: sorry for missing yesterday's deadline for comments.
The attached file contains some very minor suggested edits to the draft MOC Policy Letter
Pacarea (Pm) generally concurs with the policy letter's content.



MOC Policy Ltr
XX-05.doc (73 K)

— Added "policy" between "This" and "letter" in Para 3.

OK, see final

Several additional comments:

Its unclear from paragraph 5a of the policy letter how an PSC inspector will determine whether the company's lifeboatman training program has received flag administration approval, or what the flag administration's licensing regime actually is for C/S tender operators.

Wondering if this policy letter should either reference, or refer to the issue of C/S tenders having to utilize a MTSA 105 facility, despite the C/S anchoring out (MTSA Policy Advisory Council decision 35-04.)

Steve

Stephen J. Danscuk
Port Security Specialist
U.S. Coast Guard Pacific Area
Tel: (510) 437-5839
Fax: (510) 437-2961
Email: sdanscuk@d11.uscg.mil

This is a separate issue and is not addressed in this Policy letter.
(Note: they should use a port 105 facility)

-----Original Message-----

From: Sedlak, John
Sent: Wednesday, June 22, 2005 5:32 AM
To: Hurst, John CDR; Danscuk, Stephen; Beistle, Thomas CDR; Darr, Charles LCDR; Krajewski, Jason LT; 'tedt@iccl.org'
Cc: Karr, Michael CAPT
Subject: Operator Requirements for Foreign-Flagged Cruise Ships Using Lifeboats as Tenders

Gentlemen,

We have recently had a great deal of correspondence relating to foreign cruise ships using lifeboats as tenders while in U.S. ports and the personnel operating these tenders.

I've informally consulted with field units, district passenger Vessel Program Outreach/Coordination Specialists, and ICCL concerning these issues and, with some excellent help from G-LMI, have prepared a MOC Policy letter to provide guidance to the field.

Please review this policy letter and provide comments to me no later than COB July 5, 2005. I will incorporate the comments as appropriate and prepare a final version for Captain Karr's approval.

Sincerely,

John Sedlak, PE
CVE Program Manager
Foreign & Offshore Vessel Division
Office of Compliance
Tel: 202 267 0489

Fax: 202 267 0506
email: JSedlak@comdt.uscg.mil

<< File: MOC Policy Ltr XX-05.doc >>