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MOC Policy Letter No. 04-04
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To: Distribution

Subj: STATUS OF FISHERY OBSERVERS/AGENTS ONBOARD UNINSPECTED PASSENGER VESSELS ENGAGED IN RECREATIONAL FISHING WITH REGARD TO NUMBER OF PASSENGERS CARRIED ONBOARD

Ref: (a) 46 U.S.C. 2101(21)(c)
(b) 46 U.S.C. 2101(21)(a)
(c) 46 U.S.C. 2101(42)(b)
(d) 46 U.S.C. 2101(35)

1. This policy letter is promulgated to clarify the U.S. Coast Guard's position with regard to the status of fishery observers/agents carried onboard uninspected passenger vessels (UPV) while engaged in underway recreational fishing activities.

2. Reference (a) provides for an exception to the definition of "passenger" for observers or samplers for commercial fishing vessels whereas reference (b) does not for passengers on UPVs engaged in recreational fishing. References (c) and (d) clearly define what constitutes a UPV and Small Passenger Vessel (SPV), respectively. Unless Coast Guard policy is adjusted, an observer/agent embarked onboard a UPV already carrying six passengers means there are now seven passengers onboard and the vessel has become a SPV. Removal of a paying passenger so that a non-paying observer/agent can be onboard appears contrary to Congressional intent.

3. Reference (b) discusses several elements that must be present to discount the individual onboard as not a passenger. The first is not contributing consideration. Observers/agents do not pay to embark on these vessels so there is no contribution of consideration. Secondly, the observers/agents are paid for onboard services in that they receive compensation for their work onboard. This compensation is provided, in part, indirectly by the vessel in terms of the fees and taxes paid to the Federal and respective State governments. Lastly, these observers/agents are engaged in the business of the vessel such that they ensure that the recreational fishermen embarked on the vessel comply with applicable laws and regulations associated with recreational fishing. As such, these observers/agents are to be considered as persons in the crew and not as passengers for the determination of the number of passengers onboard these vessels. Each individual carried onboard shall be provided with a suitable personal flotation device.

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