



## **THE REQUIREMENT OF A CERTIFICATE OF DOCUMENTATION (COD)**

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According to 46 CFR § 67.7, “Any vessel of at least five net tons which engages in the fisheries on the navigable waters or the United States or in the Exclusive Economic Zone, or coastwise trade... must have a Certificate of Documentation bearing a valid endorsement appropriate for the activity in which engaged.” Commercial vessel owners and Coast Guard enforcement personnel alike should be aware of the two elements of this regulation so as to ensure that relevant evidence is before the Hearing Officer.

The first element is that the vessel must be at least five net tons. For vessel documentation purposes, gross and net tonnage of a vessel must be determined in accordance with 46 CFR Part 69 (the details of which are beyond the scope of this article). So, in order to meet this element of an alleged violation, some evidence showing the net tonnage should be included in the case file. A tonnage certificate or some other reliable record showing the vessel’s net tonnage is the best evidence that a vessel is eligible for documentation. Please note that the results of calculations made using “MISLE” are not helpful unless the calculations are printed out and included in the case file, along with evidence describing who performed the calculations and how the information used to perform the calculations was obtained.

The second element addresses whether the commercial vessel is engaged in either the fisheries or coastwise trade. If engaged “in the fisheries on the navigable waters or the United States or in the Exclusive Economic Zone,” then a COD is required, which must contain a fishery endorsement. Regulation 46 CFR § 67.21 explains that, “A fishery endorsement entitles a vessel to employment in the fisheries as defined in § 67.3 subject to Federal and State laws regulating the fisheries, and in any other employment for which a registry or coastwise endorsement is not required. A fishery endorsement entitles a vessel to land its catch, wherever caught, in the United States.”

Regulation 46 CFR § 67.3, “Definitions,” explains that “*Fisheries* includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals,

pearls, shells, or marine vegetation in the navigable waters of the United States or in the Exclusive Economic Zone.” It is important to keep in mind that, although a vessel may be designed for the purpose of commercial fishing, that fact alone does not show that the vessel is being used for that purpose (“engages in the fisheries”). Quite often a simple statement by the boarding officer concerning relevant observations (fish in hold, nets deployed, etc.) will suffice, but in order to meet this element of the alleged violation, some form of evidence should be in the case file for the Hearing Officer’s consideration.

Alternatively, if engaged in “coastwise trade,” then a COD with a coastwise endorsement is required. Regulation 46 CFR § 67.19 explains that, “A coastwise endorsement entitles a vessel to employment in unrestricted coastwise trade, dredging, towing, and any other employment for which a registry or fishery endorsement is not required.”

Additionally, 46 CFR § 67.3 explains that, “*Coastwise trade* includes the transportation of passengers or merchandise between points embraced within the coastwise laws of the United States.” Again, it is important to remember that the design of a vessel does not necessarily indicate a vessel’s engagement in a particular activity. Information concerning the vessel’s origination, destination, cargo, passengers, and activity (towing, dredging, transporting, etc.) is necessary to meet this element of the alleged violation, and should be in the case file. If a vessel is engaged in commercial activity that does not clearly require a coastwise endorsement, evidence that the activity constitutes coastwise trade, such as an opinion from Customs and Border Protection, may be necessary to prove a violation.