

APPLICATION OF GARBAGE MANAGEMENT PLAN REQUIREMENTS TO U.S. RECREATIONAL AND FISHING VESSELS (33 C.F.R. PART 151)

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The Coast Guard Hearing Office regularly sees civil penalty cases in which a boarding officer has charged the operator of a U.S. recreational vessel or a fishing vessel with failure to have a garbage management plan onboard in violation of 33 C.F.R. § 151.57. In almost all cases, the vessel involved is 40 feet in length or greater, which is a requirement for applicability of the garbage management regulation. However, in many cases, several other requirements for applicability of the garbage management regulations are not addressed. The failure to submit sufficient evidence to establish that the garbage management regulations apply to the vessel means that the Hearing Officer must dismiss the charge, or the case must be returned for correction. In many cases, it may well be that the garbage management regulations are not applicable and that the boarding officer is incorrectly stating to the operator that they must have a garbage management plan onboard.

Although this article just discusses U.S. recreational vessels and fishing vessels, the garbage management plan regulations may apply to foreign vessels and inspected U.S. vessels. Regardless of the vessel type, it is important to consider the relevant applicability requirements before charging a violation. Many boarding officers seem to believe that if a vessel is 40 feet or more in length, then the garbage management plan regulation applies. But 33 C.F.R. § 151.51(d) says that for a U.S. vessel the regulation applies: (1) to an “oceangoing ship;” (2) 40 feet or more in length; and (3) either engaged in commerce or equipped with a galley and berthing. “Oceangoing ship” is defined at 33 C.F.R. § 151.05 as, among other things, a ship that is operated at any time seaward of the outermost boundary of the territorial sea of the U.S. or that engages in international voyages.

With respect to the requirement that the vessel be engaged in commerce or equipped with a galley and berthing, a recreational vessel should not be engaged in commerce. Therefore, it is necessary for the boarding officer to include evidence that a recreational vessel is equipped with a galley and berthing. For fishing vessels, the definition of engaging in the fisheries is fairly broad, and a vessel engaging in the fisheries would be engaged in commerce, but the case file must include evidence that the vessel was engaged in the fisheries.

Many boardings occur on inland waters or within the territorial sea of the U.S. In these cases, it cannot be assumed that the vessel is an “oceangoing ship.” The boarding officer must have evidence that the vessel is operated at any time beyond the territorial sea of the U.S. or engages in international voyages. Logs or admissions by the operator may provide the evidence to show that the vessel is an “oceangoing ship” and the garbage management plan regulation applies.

All regulations enforced by the Coast Guard have some applicability requirements that must be met. Most of those requirements are fairly straightforward. The applicability elements for the garbage management plan requirements are more involved than most. Accordingly, it is important for personnel interacting with mariners to understand the applicability requirements for garbage management plans, and apply the regulatory requirements correctly.