

## **“Coastal Waters” and the requirement for recreational vessels to carry visual distress signals**

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The Hearing Office often receives civil penalty cases alleging a violation of 33 C.F.R. § 175.110, as the result of a boarding on a recreational vessel. That regulation prescribes the requirements for carrying visual distress signals on recreational vessels, among others. Occasionally, when the Hearing Officer is reviewing such an allegation, evidence that the alleged violation was observed when the vessel was being used on “coastal waters” is lacking or is ambiguous.<sup>1</sup> In such a case, the Hearing Officer may dismiss the alleged violation, or ask for additional evidence.

The definition of “coastal waters” is contained in 33 C.F.R. § 175.105(b). “Coastal waters” includes the waters of the Great Lakes, the territorial seas of the United States, and:

Those waters directly connected to the Great Lakes and territorial seas (i.e., bays, sounds, harbors, rivers, inlets, etc.) where any entrance exceeds 2 nautical miles between opposite shorelines to the first point where the largest distance between shorelines narrows to 2 miles, as shown on the current edition of the appropriate National Ocean Service chart used for navigation. Shorelines of islands or points of land present within a waterway are considered when determining the distance between opposite shorelines.

Cases involving boardings on bays, sounds, harbors, marinas, rivers, and inlets often raise issues about whether the vessel was being used in “coastal waters.” When the location of the boarding is listed as a bay, sound, harbor, marina, river, or inlet, the Hearing Officer will want to know if the place of the boarding was connected to territorial seas or one of the Great Lakes by an entrance that exceeds 2 nautical miles. If such evidence is lacking or is ambiguous, the charge is likely to be dismissed or returned for clarification.

Recent cases have included boardings in the Dana Point marina, CA, Channel Islands harbor, CA, Bodega harbor, CA, Clover Pass near Ketchikan, AK, the Wrangell Narrows, near Petersburg, AK, and the Cape May canal, NJ. Each of those locations includes waters not connected to territorial seas by an entrance greater than 2 nautical miles. The question then becomes, did the boarding occur in nearby waters that are within territorial seas or connected to territorial seas by an entrance greater than 2 nautical miles?

Sometimes, the latitude and longitude provided on the Form 4100 and the Activity Summary Report will answer the question by clarifying the location of the boarding. But in other cases, a latitude and longitude showing a boarding in “coastal waters” is contradicted by boarding officer statements in the case file that the boarding was conducted at the dock or another specific location inside the harbor, marina, or river

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<sup>1</sup> Vessels owned in the United States are also required to carry visual distress signals when used on the high seas.

entrance. Such contradictory evidence creates an ambiguity that the Hearing Officer will have to clarify before finding the charge proved. If the evidence cannot be clarified, or if that the boarding did not occur in “coastal waters,” the alleged visual distress signals charge cannot be proved.

Of course it is possible to prove that a vessel was used on “coastal waters” even if the boarding does not occur on “coastal waters.” Then, the case file would have to include some evidence that, prior to the boarding, the vessel was observed being used on “coastal waters” and did not have visual distress signals onboard.

When conducting boardings in bays, sounds, harbors, marinas, rivers, or inlets, boarding officers should be mindful of whether there is evidence that the vessel was used in “coastal waters” if citing the vessel for not carrying visual distress signals. If the vessel was not observed in use on “coastal waters,” it may well be that there was no requirement to carry visual distress signals at that time. Boarding officers should be well-versed in the requirements they are enforcing, and ought to avoid telling an operator they are required to carry visual distress signals on waters where the requirement does not apply.