

- a. Craft that do not have a practical capability of being used as transportation on the water are classified by the U.S. Coast Guard as *permanently moored craft* (PMC) and are not vessels as defined by [1 U.S.C. 3](#). This change was announced in the U.S. Coast Guard Notice of Policy, *Craft Routinely Operated Dockside*, [74 FR 21814-21816 \(May 11, 2009\)](#) and became effective on May 11, 2009. Such craft are not subject to U.S. Coast Guard inspection or any U.S. Coast Guard regulations; thus, OSHA is not preempted by the U.S. Coast Guard. Typically, a PMC is a vessel being used as a theater, hotel, restaurant, museum, factory, gaming casino, chapel, storage facility, or similar type of use. The criteria for determining whether a craft has a practical capability of being used as transportation on water shall be determined by the Officer in Charge, Marine Inspection (OCMI), for the area where the facility is located as set forth in the U.S. Coast Guard Notice of Policy. OSHA may exercise its authority to cite employers for violations of working conditions to which their employees are exposed on such craft. If there is any question, contact the OSHA National Office, [Office of Maritime Enforcement](#).
- b. For the purpose of determining which OSHA standards apply, these craft are considered vessels as defined by [29 CFR 1915.4\(f\)](#). This includes special purpose floating structures not primarily designed for or used as a means of transportation on water. Thus, 29 CFR Part 1915 standards apply to PMCs.
- c. There are a few former vessels that are now classified as PMCs, but still have a *certificate of inspection* (COI). U.S. Coast Guard inspection services will continue, with State concurrence, until May 11, 2011, for any PMC that possessed a U.S. Coast Guard-issued COI on May 11, 2009, provided that the PMC is designed to U.S. Coast Guard regulations. As a matter of policy, OSHA will treat these PMCs as inspected vessels until May 11, 2011. After this date such PMCs will not be considered vessels by the U.S. Coast Guard and will be subject to OSHA authority.

### **XIII. Commercial Uninspected Fishing Industry Vessels.**

**A. Authority over Commercial Uninspected Fishing Industry Vessels.** Authority over working conditions (hazards) on commercial uninspected fishing industry vessels is shared by the U.S. Coast Guard and OSHA, with the U.S. Coast Guard being the lead agency. OSHA is precluded under section 4(b)(1) of the OSH Act from enforcing requirements pertaining to working conditions regulated by another federal agency. Applicable U.S. Coast Guard regulations in force that preempt OSHA for commercial uninspected fishing industry vessels are set forth in 46 CFR Part 28 and are summarized in [Appendix B](#) of this instruction. These vessels (fish processors 5,000 gross tons and less, fish tenders 500 gross tons and less, and all fishing vessels; see [Section VIII Definitions](#)) are also subject to the general regulations for uninspected vessels in [46 CFR Parts 24, 25, and 26](#).

1. OSHA will continue to issue citations to the owners, charterers, managing operators, or agents in charge of commercial uninspected fishing industry vessels, for working conditions that are not specifically covered by U.S. Coast Guard regulations within the geographical limits as specified in Section X of this instruction, for the protection of all employees, including seamen. A list of the most common enforceable OSHA requirements for commercial uninspected fishing industry vessels is provided in Appendix A. As in the case of inspected vessels, U.S. Coast Guard regulations do not preempt OSHA from citing shipyard and longshoring employers whose employees are exposed to hazards when working on these vessels.
  
2. Under 29 CFR 1903.6(a)(3) OSHA is allowed to give advance notice to appropriate personnel needed to aid in an inspection. It is sometimes desirable to have U.S. Coast Guard personnel present during OSHA inspections of commercial uninspected fishing industry vessels. Therefore, when practical and feasible, the OSHA Area Director will advise the U.S. Coast Guard in advance of inspections to be conducted aboard these vessels, and OSHA compliance officers will allow U.S. Coast Guard personnel to accompany them at the option of the U.S. Coast Guard.
  - a. OSHA shall advise the U.S. Coast Guard on a case-by-case basis of OSHA's requirement that vessel owners and employers are not given advance notice of the inspection.
  
  - b. Specific occupational hazards noted by OSHA compliance officers that are addressed by U.S. Coast Guard regulations will be referred to the local U.S. Coast Guard office in writing through the use of the OSHA-90 form with a cover letter. This procedure will allow Integrated Management Information System (IMIS) queries to be conducted on referrals submitted to the U.S. Coast Guard by OSHA. Otherwise, the violations will be cited by OSHA compliance officers under OSHA procedures and standards.
  
3. Pursuant to appropriation limitations, as of the date of this instruction, OSHA is precluded from conducting programmed safety inspections of worksites with 10 or fewer employees in the industries with the following North American Industrial Classification System (NAICS) classifications: 114111 (Finfish Fishing), 114112 (Shellfish Fishing), and 114119 (Other Marine Fishing). NAICS should be consulted for descriptions of these industries. Certain restrictions on the assessment of penalties also apply to these establishments. Field personnel are reminded to review OSHA Instruction CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, May 28, 1998, for applicable limitations placed on OSHA activities by Congress in the OSHA appropriations provision in effect at the time of the inspection.

**B. OSHA Requirements Enforceable on Commercial Uninspected Fishing Industry Vessels.** OSHA may exercise its authority to cite employers of commercial

uninspected fishing industry vessels for all violative working conditions on a vessel when such exist within OSHA's geographical authority, and when such violations are not specifically addressed by U.S. Coast Guard regulations. Primarily these employers are those who employ fishing industry employees (primarily processing line workers); however, the working conditions of longshoremen and employees engaged in ship repairing, shipbuilding, and shipbreaking are always covered by OSHA.

1. An employer who is an owner, charterer, managing operator, or agent in charge of a commercial uninspected fishing industry vessel may be cited for hazards to which any of their employees, including seamen, are exposed if the hazard is not regulated by the U.S. Coast Guard.
  - a. OSHA compliance officers will ensure compliance with 29 CFR Part 1910 standards except where 29 CFR Part 1915 standards apply to ship repair, shipbuilding, and shipbreaking; and where 29 CFR Part 1918 standards apply to longshoring operations. OSHA's Shipyard Employment "Tool Bag" Directive, Appendix A, has a complete listing of those 29 CFR Part 1910 standards that can be applied in a ship repair situation.

NOTE: Factory production operations (*fish processing* as defined in Section VIII, paragraph G), and associated equipment operations, including cleaning, maintenance, and repair are exclusively covered by the 29 CFR Part 1910 General Industry Standards (this includes Lock-Out and Tag-Out under 1910.147). Repairs and maintenance to structural components of the vessel, and mechanical, electrical and other systems that are not directly associated with the factory production operations are covered by the 29 CFR Part 1915 standards. Such repairs and maintenance covered by 29 CFR Part 1915 would include repairs and maintenance of bulkheads, decks, and overheads of the factory area and any systems in the factory area that are not related to the factory production operations and are not covered by U.S. Coast Guard regulations.

- b. Recognized hazardous situations that cause or are likely to cause death or serious physical harm to the employer's employees for which there are no specific OSHA or U.S. Coast Guard regulations, will be cited under section 5(a)(1) of the OSH Act.
- c. The reporting of accidents under 29 CFR 1904.39 by employers to OSHA is required for all situations where OSHA has geographical authority (i.e., U.S. inland waters, State territorial seas, and waters that are not *U.S. navigable waters* in States covered by OSHA) over the working condition(s) (i.e., section 4(b)(1) of the OSH Act does not apply to the reporting of accidents, regardless of the existence of any U.S. Coast Guard accident reporting regulations). (See Section X, Geographical Considerations, and Appendix A of this instruction for specific conditions that are subject to OSHA