Coast Guard Licensing and Federal Laws: A Primer for Gulf and South Atlantic Shrimpers

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Overview

Upon completion of this module, you will know the requirements and procedures for obtaining a U.S. Coast Guard Masters License. You will also have a greater understanding of several federal laws which have bearing on the Gulf and South Atlantic shrimp fishery. These include the Jones Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Magnuson-Stevens Act.

Part A

Requirements and Procedures for Obtaining a U.S. Coast Guard Masters License.
Why might a shrimp boat captain consider obtaining a Masters License?

For those who are considering leaving the shrimp industry due to economic or age issues, holders of a Masters License can put their skills and experience to use in other maritime industries which require licensing.

**Examples of Maritime Industries Which Require Licensed Operators**

- Charter Fishing Boats
- Tour Boats
- Ferries and Launch Services
- Charter Yachts
- Towboats
- Offshore Oil Industry Vessels
The U.S. Coast Guard Licensing System

- Designed primarily to ensure the safety of passengers and cargo being transported at sea.

- A wide range of license credentials are provided for various vessel personnel ranging from Able Seaman up to Master Unlimited.

Two licenses of interest to shrimp boat operators:

- Operator of Uninspected Passenger Vessels (often referred to as the “6-Pack license”). Allows you to take up to 6 passengers for hire on uninspected vessels.

- Master 25/50 or 100 Ton. Often referred to as “100 ton license”. Usually limited by “route and tonnage” which simply means where you are licensed to operate and what size vessel you can serve as Master on. This license offers more opportunities for alternative employment in maritime industries. Therefore, we will focus on Masters License requirements and procedures.
General License Requirements

• Transportation Workers Identification Credential (TWIC) Card
  – Must apply in person at a TWIC Enrollment Center. Located in most port cities; search for location by state at http://twicinformation.tsa.dhs.gov/twicinfo/schedule.jsp
  – Must provide proof of U.S. citizenship; unexpired U.S. Passport or two items from the following list: (one must be a government issued photo ID)
    • Unexpired Driver's license issued by a State or outlying possession of the United States (this includes an Enhanced Driver's License)
    • Unexpired ID card issued by a State or outlying possession of the United States. Must include a State or State agency seal or logo (such as state port authority ID or State University ID)
    • Original or certified copy of birth certificate issued by a State, county, municipal authority, or outlying possession of the United States bearing an official seal
    • Voter's registration card
    • U. S. military ID card or U. S. retired military ID
    • U.S. Military dependent's Card
    • Expired U.S. passport (within 12 months of expiration)

General License Requirements
TWIC Documentation (Cont.)

• Native American tribal document
• U.S. Social Security card
• U.S. Military discharge papers DD-214
• U.S. Department of Transportation (DOT) medical card
• U.S. Civil marriage certificate
• Unexpired Merchant Mariner License (MML) bearing an official raised seal, or a certified copy
• Unexpired Department of Homeland Security (DHS) / Transportation Security Administration (TSA) Transportation Worker Identification Credential (TWIC) Card
• Unexpired Merchant Mariner Credential (MMC)
If you were born outside of the United States, you will need:

- U. S. Certificate of Citizenship (N-560, 561)
- U. S. Certificate of Naturalization (N-550 or 570)
- U. S. Citizen Identification Card (I-197)

General License Requirements

TWIC Documentation (Cont.)

- Must provide full set of fingerprints. These can be obtained at a local police station (tell them you are applying for a TWIC card)
- Must complete a TWIC Certification and Disclosure Form (You will undergo a background check for security purposes)
- Must sit for a digital photograph
- Must pay the TWIC fee ($132.50 – valid for five years)
- TWICs issued 6 – 8 weeks after enrollment (Note: You don’t have to have the TWIC card in possession when you apply for your Masters License, but you must show that you are in the process of obtaining one by providing a copy of your TWIC fee receipt)
- Can begin application process on-line at https://twicprogram.tsa.dhs.gov/
General License Requirements (Cont.)

- Complete application packets can be downloaded at http://www.uscg.mil/nmc/credentials_forms.asp
- Must complete Coast Guard Form 719B--Application for License as an Officer, Staff Officer, or Operator and for Merchant Mariner’s Document
- Must have a physical exam (Coast Guard Form 719K Physical Examination Report)
- Must have a drug test (Coast Guard Form 719P Chemical Testing Report)
- Must have CPR/First Aid Card
- Must have three character reference letters
- Must provide training course certificates (if applicable)
- Must provide a copy of your Social Security Card with the application; original of the card must be shown prior to issuance of the license

Master Near Coastal 25/50/100 Ton License

- Must provide evidence of appropriate sea service (Coast Guard Form 719S Small Vessel Sea Service Form)
- The tonnage awarded is determined by the size vessels you have gained experience on in the last 3 years – it’s called “recency experience.”
- You must have 720 days of underway experience; 90 of those 720 days in the last 3 years; 360 of those 720 days outside the boundary line*.
- You must pass a written exam taken at a Coast Guard Regional Examination Center or other Coast Guard approved location. There is a $155 fee for the examination and issuance of the original license which is valid for 5 years.

*(see next slide)
What Is the Boundary Line?

- Not the same as the COLREGS line!
- The COLREGS line is shown as a dashed purple line on nautical charts and signifies the boundary line between International and Inland Navigation Rules.
- As a general rule, the Boundary Line follows the trend of the seaward, high water shorelines and across the entrances to small bays, inlets, and rivers. However, the Boundary Line is 12 miles offshore along the Gulf of Mexico.
- Consult 46 CFR Part 7 regarding the specific location of the Boundary Line for any particular waterway. (http://law.justia.com/us/cfr/title46/46cfr7_main_02.html)

Master Near Coastal 25/50/100 Ton License

Examples of topics covered on the written examination:

- Navigation Rules
  - Conduct of vessels in any condition of visibility
  - Conduct of vessels in restricted visibility
  - Lights and shapes
  - Sound and light signals
  - Differences between International and U.S. Inland Rules of the Road
- Plotting and General Navigation
  - Use of a nautical chart and the meaning of the various symbols and abbreviations thereon
  - Determining and laying of compass courses and distances on a chart and allowing for set and drift of currents
  - Fixing a vessel's position by bearings and fixed objects
  - Practical application of variation and deviation of the magnetic compass and simple methods of determining compass error
  - Aids to navigation, including the basic buoyage system of the United States
  - Electronic navigation equipment
Examination Topic Examples (Cont.)

- Deck General
  - Characteristics of weather systems
  - Ship handling
  - Emergency procedures
  - Fire fighting
  - Marine engine operations
  - Marine radiotelephone
  - Lifesaving equipment
  - Pollution prevention
  - Damage control and temporary hull repairs
  - Handling vessels in heavy weather
- Master 25/50/100 Ton
  - Rules and regulations for T-boats
    - Fire fighting equipment and regulations
    - Lifesaving appliance regulations and operations
  - Trim and stability
  - Certificates and documents required

Exam Preparation

*The written examination will require a lot of study before you arrange to take the test!* There are two basic approaches to consider, self-study or enrollment in a Coast Guard approved course. If you decide to self-study, you must contact the Coast Guard National Maritime Center (Phone: 1-888-427-5662) to determine where you need to go to apply and take the exam. The Center is also available on-line at http://www.uscg.mil/nmc/. Here are some publications you will find useful:

- USCG Navigation Rules International-Inland *(Note to shrimpers—this is the publication you are required to have at your helm station. Commit it to memory! Most licensed captains will tell you this is the most difficult part of the exam.)*
- Piloting, Seamanship and Small Boat Handling by Charles F. Chapman
- A Manual for the Safe Handling of Inflammable and Combustible Liquids (US Coast Guard Publication CG-174)
Sample Questions

• To see examples of the type of questions on the exam, go to http://www.uscg.mil/nmc/deck_exams.asp

Exam Preparation (Cont.)

You may also want to consider enrolling in one of the many Coast Guard approved courses. There are several advantages to this approach. The course fee includes all of the study materials you would have to purchase separately for self-study. In many cases, most of the course work can be completed on-line from your home according to your schedule. Proctored exams are offered at many locations and the certificate issued upon course completion will be accepted in lieu of the standard Coast Guard examination. To search for a course by location or type visit this web site: (http://www.uscg.mil/nmc/approved_courses.asp)
Part B

Some Federal Laws Which Have Bearing on the Gulf and South Atlantic Shrimp Fishery

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A Few Federal Laws Every Shrimper Should Know

• Federal Environmental Laws
  – Magnuson Stevens Fishery Conservation and Management Act
  – Endangered Species Act
  – Marine Mammal Protection Act
  – Migratory Bird Treaty Act
  – National Marine Sanctuaries Act

• Maritime Laws
  – Commercial Fishing Industry Vessel Safety Act
  – Jones Act

Federal Environmental Laws
The Magnuson Act

- Enacted in 1976
- Authorized the federal government to regulate fishing 3 – 200 nautical miles offshore.
- Established 8 regional fisheries management councils.
- All federal fisheries managed under Fisheries Management Plans prepared by the councils.

National Standards

1. Prevent overfishing while achieving optimum yield;
2. Use the best scientific information available;
3. Stocks of fish should be managed as a unit throughout range.
4. Conservation and management measures should not discriminate between residents of different states.
5. Conservation and management measures shall, where practicable, consider efficiency in utilization of resources.
National Standards, (Cont.)

6. Conservation and management measures should allow for variations among fisheries, fisheries resources, and catches.

7. Minimize costs and avoid unnecessary duplication.

8. Take into account the importance of fishery resources to fishing communities and minimize adverse impacts to the communities.


10. Promote the safety of human life at sea.

Management of Shrimp Fishery

• Gulf of Mexico Fishery Management Council
  – http://www.gulfcouncil.org/

• South Atlantic Fishery Management Council
  – http://www.safmc.net/
Endangered Species Act

• Passed by Congress in 1973 to protect species in danger of extinction and the ecosystems on which they depend.

• The Act seeks to accomplish this lofty goal by:
  1. Requiring agencies and individuals to consider impact of actions on listed species.
  2. Prohibiting the “taking” of listed species.
  3. Protecting “critical habitat.”

What does “Take” Mean?

“... to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”
Harm

• NMFS defines “harm” as any act which actually kills or injures wildlife.

• Harm includes significant habitat modification that impairs essential behavioral patterns such as:
  – Breeding
  – Spawning
  – Migrating
  – Feeding

Harassment

• An intentional or negligent act which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns.

• Different from harm in that:
  – Must be intentional act;
  – Habitat modification is not harassment; and
  – Annoyance very hard to prove.
Incidental Take Permits

• Section 10(a)(1)(B) of the ESA requires individuals engaged in lawful activities that may “adversely impact” protected species to obtain “incidental take permits.”
  – Applicant must prepare Conservation Plan identifying techniques, gear types, and other steps that will be used to minimize impact.

• For more information, visit NOAA Fisheries ESA Permits FAQs website at

Penalties for Violations of ESA

• Civil Penalties
  – Up to $25,000 fine for each violation.

• Criminal Penalties
  – up to $50,000 and up to one year in prison.

• Intent to violate law not required, rather government need only prove person knew he was engaging in the activity that resulted in the violation.
Bycatch Reduction Devices

Marine Mammal Protection Act of 1972

- Protects all marine mammals
- MMPA prohibits, with certain exceptions, the “take” of marine mammals in U.S. waters.
  - Take means “harass, hunt, capture, or kill”
  - Harassment under the MMPA is similar to harassment under the ESA.
Marine Mammal Authorization Program

- All commercial fisheries are placed in one of three categories based on the relative frequency of incidental serious injuries and mortalities of marine mammals in the fishery.
  - Category I: Frequent serious injuries and mortalities incidental to commercial fishing;
  - Category II: Fisheries with occasional serious injuries and mortalities;
  - Category III: Fisheries with a remote likelihood or no known serious injuries or mortalities.

Why is this Important?

- Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fisheries are classified as a Category III fishery.
- All incidental injuries or mortalities of marine mammals that occur during commercial fishing operations must be reported to NMFS.
  - An injury is a wound or other physical harm.
Use of Deterrents

• Lethal Deterrents (Intentional Killing) is strictly prohibited unless:
  – Killed in self-defense or to save the life of another person.

• Non-Lethal Deterrents are allowed to discourage dolphins from
  – Damaging fish catch, gear or other private property, and
  – Endangering personal safety.

Penalties for Violations of MMPA

• Seizure and forfeiture of entire cargo of vessel
• Civil penalty imposed on vessel up to $25,000
• Individual Penalties:
  – Civil penalty up to $10,000 per violation
  – Criminal penalty up to $20,000 per violation and one year imprisonment.
Migratory Bird Treaty Act of 1918

- Prohibits “taking” migratory birds or their eggs, feathers, or nests.
  - With respect to seabird/fishery interactions, taking refers to birds killed or injured during fishing operations.
  - No exemption of unintentional take.
- Penalties for Violations
  - Maximum fine of $15,000
  - Maximum imprisonment of six months

National Marine Sanctuaries Act

- Sanctuaries in South Atlantic/Gulf Region.
  - Grey’s Reef
  - Florida Keys
  - Flower Garden Banks
- Commercial fishing is permitted unless expressly prohibited by sanctuary regulations.
  - Check sanctuary regulations before conducting fishing operations within a sanctuary.
Enforcement

• The violation of any law or regulation governing U.S. fishery can result in an enforcement action.

• Compliance monitored and enforced by officers and agents with:
  – NOAA Office of Law Enforcement
  – U.S. Coast Guard
  – Customs and Border Patrol
  – Authorized state agencies.

Enforcement Options

• Minor Violations
  – Verbal or Written Warning or “Fix-It Ticket”
  – Summary Settlement Notice

• Significant Violations/Repeat Offenders
  – Cases referred to NOAA General Counsel’s Office (civil) or the U.S. Attorney’s Office (Criminal)
NOAA General Counsel Options

- Written Warning
  - Activity had limited impact on natural resources
  - Violator demonstrated high degree of cooperation
  - Violator took corrective action to mitigate impact.
- Civil Penalties
  - Notice of Violation and Assessment of penalty
  - Notice of Permit Sanction
  - Notice of Intent to Deny Permit
- Referral to U.S. Attorney for criminal prosecution.

What to Do

- You have 30 days from receipt of the NOVA/NOPS to respond.
- If you neither request a hearing within the time permitted, nor enter into a settlement agreement, you are liable for the civil penalty amount assessed in the NOVA.
  - If you are unable to pay the assessed penalty, contact NOAA immediately to request forms to submit information regarding your ability to pay.
Hearings

• If issued an NOVA/NOPS, you have a right to an administrative hearing.
  – Cases heard by Administrative Law Judges (ALJ).

• If you disagree with the ALJ’s decision you may:
  – Petition the judge for reconsideration of his decision
  – File for administrative review by the NOAA Administrator
  – Seek judicial review of judge’s final decision or the NOAA Administrator’s decision in district court.

Maritime Laws
Commercial Fishing Vessel Safety Act

• Passed in 1988 to improve the safety record of the commercial; fishing industry.
• In addition to imposing additional safety requirements, Act requires written fisheries wage agreements with crewmembers stating
  – Period of time agreement is in effect.
  – Terms of any wage, share, or other compensation arrangement.
• Illegal to engage services of a crewmember on vessels 20 gross tons or more without such a written agreement.

USCG Commercial Fishing Vessel Safety Digest

• Available for download at:
http://www.amsea.org/downloads.html
Jones Act

• Protects maritime workers injured or killed on the job.

• Fishermen, meeting the legal definition of “seaman,“ may sue their employers to recover compensation for injuries.

• May also sue vessel owner if vessel considered “unseaworthy.”

• Seaman also entitled to “maintenance and cure.”

The End

• Questions & Comments?
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