

# Alaska Trollers Association

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Captain Michael M. Rosecrans, Chief  
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Fishing Vessel Safety Division  
Docket Management Facility (M-30)  
U.S. Department of Transportation  
West Building Ground Floor, Room W12-140  
1200 New Jersey Avenue SE.  
Washington, DC 20590

RE: Docket No. USCG-2003-16158  
Amendments to USCG Commercial Fishing Vessel Regulations

Dear Captain Rosecrans:

The Alaska Trollers Association (ATA) appreciates the opportunity to provide early comment on the USCG's developing proposal for amendments to the Commercial Fishing Industry Vessel Safety Act. The allowance of additional time for this comment period was very much appreciated.

ATA represents hook and line salmon fishermen operating in both state and federal waters off Southeast Alaska. There are nearly 2700 hand and power troll permits issued in Alaska and about half are fished each year. The troll fleet is 85% resident and roughly 40% live in rural communities. Only three communities in our region have road access and even those towns are hundreds of miles from large urban centers. Troll vessels range in size from 14' skiffs to 60' boats. Cost to the troll fleet stemming from many of the proposed regulations is likely to be significant and negatively impact small business.

Safety at sea is of no greater importance to anyone than those who work on the water. However, a number of the regulations proposed are cost prohibitive and, as data suggests, unlikely to improve safety in the small boat fleet. We request continued exemptions in categories like vessel stability, and regional/fleet consideration on a number of other provisions as outlined in our comments below. New regulations deemed necessary, particularly those that are relatively expensive, should be phased in.

Congress recently considered, H.R. 2830, which includes similar provisions as the advanced rulemaking. Congressional Budget Office review of the bill suggested that the cost of compliance *would be substantial* and that the aggregate cost to private entities would exceed the annual threshold established in UMRA [Unfunded Mandates Reform Act of 1995] for private sector mandates. ATA hopes this, and other practical implementation matters, will give both USCG and Congress pause.

It is important to understand and consider the potential cost of labor, training and documentation for any new requirements. There is also the cumulative cost of new USCG regulations when coupled with both existing USCG and other regulations. The vast majority of small businesses utilizing 50-79 foot fishing vessels gross less than \$4 million per year.

Has USCG conducted an initial regulatory flexibility analysis (IRFA) pursuant to the Regulatory Flexibility Act (RFA) regarding the impact of the associated costs of its proposed measures on commercial fishing vessel owners? If not, **we ask that any proposed rules include an IRFA analyses to better inform public comments.**

## **Vessel Stability**

It still appears that there are no specific, recommended maritime standards to evaluate the stability of smaller vessels. Therefore, we question the validity and appropriateness of the recommendations you are considering for implementation.

National Institute for Occupational Safety and Health (NIOSH) recently suggested,

“...that the USCG develop strategies for preventing vessel capsizing and sinking that are targeted to particular vessel types, fleets, or operating conditions. Examination of each fleet of fishing vessels can indicate why vessels sink.” NIOSH went on to say that, “...fleets require different solutions based on the specific conditions under which they are losing vessels.”

Since weather is indicated as the biggest cause of vessel loss and fatality on the fishing grounds, it seems as like stability testing is unnecessary for the majority of fleets with small vessels and crew sizes. It could be extremely difficult in Alaska to implement the proposed stability regulations, as we have too few service facilities, marine architects, and boat surveyors. This is likely the case in many small fishing villages around the country. In fact, at least one report suggests there aren't enough marine architects in the nation to implement such a requirement. Compliance for an Alaska vessel operator is likely to be a significant cost burden, as most would have to take their boats out of state, or fly someone up to do the testing. The cost relative to the benefit seems completely out of proportion for smaller vessels.

In 2008, Congressional Research Service estimated there were 98,000 commercial fishing boats in the United States. That same year, the state of Alaska licensed 9,700 vessels to commercially fish in Alaska, at an average length of 36 feet. A 2002 CRS report quotes NMFS as recording 70,388 vessels fishing in 1999, but that number likely only applies to fisheries in federal waters. While difficult to get a precise accounting, estimates by the various agencies queried by CRS placed the total number of US commercial fishermen between 150,000 and 200,000. That's a lot of boats and fishermen to test and train.

In 2007, 95% of Alaska commercial fishing vessels ranged from 21-79 feet in length; 14% of the fleet fished boats 50' and over. There are several 100 year old boats in Alaska's fisheries. 70% of the boats fished in Alaska are over 20 years old – only 7% are 10 years or less. The troll fleet is a mix of age and vessel types, but those boats fished beyond the boundary are most likely to be in the 35-60' range. Salmon trolling typically involves a skipper and one or two deckhands. Many trollers also longline, and a few participate in other types of fisheries throughout the year, depending on markets and harvest opportunity.

Problems on large vessels with big crews can obviously result in tragic losses of life. It doesn't take many such incidents to dramatically increase the industry death toll, which is extremely sad, but must be put in context when considering new statutes and regulations that will affect the rest of the fishing industry and overburdened USCG enforcement personnel.

For instance, the tragic sinking of the F/V Arctic Rose in 2001 accounted for 15 people lost, which made up a full 63% of the casualties that year and 13% for the period January 1998 to July 2008. The stormy

seas and icing conditions faced by the crew of the Arctic Rose and those who ran to her rescue is far and away beyond what the majority of the nation's fishing industry confronts – ever. At the time, it was identified as the worst commercial fishing disaster in 50 years and some who analyzed the accident suggested, among other things, that it was a result of poor engineering of hatch cover configuration and human error. While it's important to reference such losses, and learn lessons from them, it is simply not proper to use statistics relative to just a handful of vessel sinkings to suggest that new, fleet wide, problems have erupted, or that overall fleet safety has not improved since the 1988 Commercial Fishing Vessel Safety Act (Act) was implemented, because it clearly has.

**As reported by NIOSH, the most common situation resulting in vessel loss and/or loss of lives is foul weather, not stability.** Reports from the USCG rank weather as the leading cause of death related incidents in all districts, with a range of 45% in District 5, to 75% in District 13.

Trollers, and many of the other smaller class commercial fishing boats operating in the US, are rarely known to capsize. From 1998-2008, two fatalities were noted as part of a vessel sinking in the Southeast Alaska troll fleet – both on the same vessel, which was taken down in heavy weather.

USCG personnel provided us with data on fatalities from 1998 through July 2008. Ten vessel incidents, with a reported 29 deaths, were attributed to the troll fleet. Upon closer review, it became obvious that 7 of the 10 incidents occurred in the Bering Sea - most likely onboard factory trawlers, since the troll fishery is restricted to East of Cape Suckling. The data also appears to report the FV Arctic Rose as being a troller. Perhaps ensuring that USCG personnel understand gear differences and are properly spelling the names of fisheries would help clarify USCG records and lead to a better sense of safety problems, or lack thereof, as they relate to each fleet.

The data shows that since 1998, there have been 4 deaths reported in the troll fishery for three distinct vessels. One vessel and two lives were lost, most likely due to inclement weather. Two more people died onboard two different vessels, from medical emergencies that had nothing to do with weather, vessel fitness, fishing, or mishaps onboard. This suggests that stability and watertight integrity are not significant problems leading to loss of life in the troll fishery, and it really doesn't appear to be for most of the Alaska fleet. For other small vessels, weather, falling overboard, and getting caught in gear were the most significant issues during the 1998-2008 timeframe – not stability.

The situation for the majority of Alaska fishermen is far different than for the Bering Sea crab and trawl fisheries, around which most of these regulations have always revolved. Those crabbers and trawlers must negotiate big seas with decks burdened by heavy and bulky gear, often confronting ferocious weather and icing conditions. Additionally, many of those vessels are owned by an individual or company, but operated by hired skippers and masters, who are often under tremendous pressure to perform.

The Individual Fishing Quota (IFQ) system for halibut and black cod has greatly improved safety in the Pacific longline fleet, by reducing a fisherman's need to fish regardless of weather conditions. Our salmon fisheries are spread out over several months, which usually results in better safety choices made by skippers whose life's investment is wrapped up in the vessel and whose family is often onboard. The outlier is common sense, and you just can't regulate that.

### *Recommendations*

- **Maintain current exemption for stability requirements on fishing vessels.**

- Exception: Requiring improved stability technology for new vessel construction.
- Concentrate on stability training for skippers and crew done in tandem with existing educational programs.
- Define ‘substantial vessel modification’ with a set of standards that accounts for variations in vessels types and uses.
- Any inspection and documentation requirements must be reasonable and minimize added cost, management, and workload on skipper and crew.

## **Watertight Integrity**

While watertight integrity is no doubt critical to safe operations, it is not clear what USCG is proposing.

The USCG could expand and improve its suite of informational materials. Recommendations for operational improvements could be made without adding additional legal requirements. Coordinating availability of such information with the Capital Construction Fund program, gear and parts suppliers, and other likely outlets would be of great help to those looking to improve and upgrade their vessels. Information might include a listing of new product categories that would be helpful additions onboard under various circumstances. We find that if people are aware of the availability of such products, they often search them out and invest in them without mandatory requirements.

### *Recommendations*

- Add safe boating practices, including operating limits of vessels in poor weather, to stability training requirements. Hold classes in conjunction with other training.
- Encourage voluntary use of new technology to improve watertight integrity of vessels and make that information available to the fleets.

## **Stability and Watertight Integrity Training**

Making it as convenient and cost effective as possible for people to get information and comply with training requirements will serve both the fleet and the safety mission. People are busy and most in Alaska have to travel long distance, at great expense, to receive safety training. One classroom day of a couple more hours in length is far better than more days or additional travel to a variety of locales.

### *Recommendations*

- Base stability training topics on various types of vessels and conditions expected to be encountered.
- Minimize cost and management demands by combining curriculum and scheduling of training sessions with existing required courses.

## **Safety Instructors**

Whether it's first aid protocols, or the advent of new products, change is inevitable. It's important that anyone responsible for training skippers and crew have great training and ongoing access to the best available information. Time spent in training must be informative and meaningful for fishermen, most of whom already have years of incident-free experience on the water.

### *Recommendations*

- Develop criteria and minimum training standards for safety instructors.
- Establish re-certification requirements and refresher courses for instructors.

## **Mandatory Dockside Exam**

Making dockside exams mandatory will place added strain on both the fleets and USCG. Last season, a good effort was made and 65 Alaska ports had dockside inspectors available for at least some period of time, but even that didn't cover all of our ports. This would mean that fishermen would be forced to run their boats – often very long distances and at great cost – to get a mandatory exam.

While we encourage dockside inspection, we have received considerable complaints over the years by those individuals who take the time to do the voluntary inspections, only to be boarded – sometimes multiple times – during the course of their fishery. This is disruptive and unacceptable, not to mention adding safety risks as people are moved between vessels at sea.

If USCG decides to make inspection mandatory, then the quid pro quo to the fleet should be NO safety inspections on the fishing grounds or when offloading fish. Obviously a vessel will be boarded if USCG personnel have cause for other purposes, but if a boat has a current inspection decal, they should not be boarded or otherwise interrupted. And, if the decal isn't visible to the USCG, a quick radio call and a check of the USCG database should clear that up. Obviously, if there appear to be unsafe vessel conditions or flagrant violations of safety rules, we understand USCG will inspect, but if a person already had a dockside exam, it should not be done unless there are exceptional circumstances.

### *Recommendations*

- Continue voluntary dockside inspection program and encourage fleets to participate.
- If dockside inspection program is made mandatory, implement and adhere to a universal USCG policy that any vessel which has been subject to a dockside inspection within a 12 month period will not be boarded to inspect safety gear, nor will vessel operators have to go through a secondary safety inspection if they are boarded for other purposes other than an identifiable safety risk.

## **Immersion Suits**

The point is well taken about the risks inherent in older survival gear, but at \$300-800 each, new immersion suits can add a substantial cost for small vessel operators. Another concern is that some survival suit sizes (e.g. one size fits all) hamper a person's ability to move in the water.

## *Recommendations*

- If new requirements for survival suits, allow generous phase in period.
- Consider requiring ‘universal’ size immersion suits to be broken into at least a couple sizes (e.g. suit cut for 110-330 pound range doesn’t really fit anyone).

## **Life Rafts**

How will the USCG determine that a life raft can be handled by any one person? That sounds great, but may not always be practical.

There has been some discussion about requiring new life rafts, which have some important improvements over the earlier models. We contend that many of those old rafts have been, or are being, phased out of the fleet as folks can best afford to do so, or sooner upon the recommendation of their repacking company. If new raft requirements are imposed, getting the word out and allowing for a lenient, phased approach will be essential due to cost. Size of a different raft might also create a storage puzzle depending on the size and configuration of the vessel, so this should be kept in mind for phase in on smaller boats.

## **Documentation, Training, and Drills**

Documentation and assorted regulatory requirements for the fishing industry is becoming increasingly expensive and unwieldy. To help reduce administrative burdens, we ask USCG to develop and distribute materials to assist the fleet more easily comply. This should also help Coast Guard inspectors. Note that we are not suggesting logbooks that become a legal requirement, but instead, a service and tool to assist the fleet keep track of requisite USCG documentation.

Proximity to training is an issue in Alaska and should also be kept in mind for any new/different requirements.

## *Recommendations*

- Drills and some types of crew training must continue to be allowed onboard the vessel, for both convenience and cost.
- Develop a booklet with a series of check off lists, such as: a) safety requirements by vessel size; b) list of training and drill requirements by category, etc.
- Distribute booklets through the mail to license/permit holders; local USCG offices; gear and supply stores; federal and state management agencies, gear group offices, and other convenient outlets.
- Use care not to overburden skipper and crew with heavy administrative demands, which should also yield better information.

## **Other**

There are a variety of ways the USCG could work with fishermen and the other agencies, without rulemaking, to improve safety on the grounds.

### *Recommendations*

- Identify other, less costly, options and make recommendations that the fleet can easily implement to enhance vessel and crew safety.
- Encourage new technology for improved safety related devices and systems.
- Consider regional and fleet differences when drafting safety regulations.
- USCG representatives to the regional councils should be encouraged to discuss with the council's and fishing public any safety issues related to timing and conduct of a fishery.
- Disseminate information on safety issues and new requirements in a timelier manner.
- Eliminate from the Act regulations and requirements that have been found not to enhance safety.
- Develop suggested non-regulatory policies and procedures for vessel owners, as a means to improve safety (e.g. boat/gear protocols for operating in hazardous sea conditions; use of inflatable pfd's). To streamline costs, add this to the documentation 'lists' book discussed above.
- Weather forecasts are often hit and miss and timely information can be slow getting to the fleets; or, at times the weather report loop is so long as to be ineffective, due to busy operations and listener fatigue. We recognize the weather service has been working to improve the weather report and alert systems, but it still needs work. Continued outreach to vessel owners could help generate new ideas.
- Lack of cell phone coverage on the grounds has become something of a safety issue, particularly with the loss of the marine operators. USCG might want to consider working with cellular companies to encourage improved systems with better coverage.

### **Additional Questions**

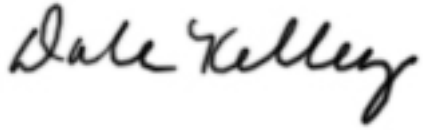
While I liked the idea of a specific question and answer section, and would not mind seeing that format again, I found many of the questions posed to be more appropriate for large vessel operations, or they required substantial research about thousands of small businesses who operate under a variety of circumstances. ATA does not have the resources to do that. Hopefully some of the answers specific to our fleet will be easily found in the information above.

In sum, ATA requests USCG reconsider some of its proposed safety provisions that are costly and impractical for small boats, yet do little to improve safety. Hopefully you will continue to work with the commercial fishing industry to identify real and specific problems, by region and fishery. This should lead to more meaningful solutions for any areas that are truly in need of statutory or regulatory remedies.

Finally, I want to thank USCG for going above and beyond the call of duty each and every day, as you heroically serve and protect the fleets, the state and nation.

Please do not hesitate to contact me if ATA can be of assistance on this or other issues of importance to commercial fishermen.

Best regards,

A handwritten signature in black ink that reads "Dale Kelley". The signature is written in a cursive style with a large, prominent initial "D".

Executive Director