

Vessel Owners: New Sexual Assault, Harassment Obligations under Defense Act Amendments

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Under 2023 amendments to the National Defense Authorization Act (NDAA), owners, masters, and managing operators of U.S. documented commercial vessels, are now required to **immediately [report](#)** incidents of harassment, sexual harassment, and sexual assault.

New Reporting Requirements

The Commandant of the U.S. Coast Guard has issued guidance in [Marine Safety Information Bulletin 1-23](#) on how to report sexual misconduct on U.S. documented vessels. The initial report must include:

- name and/or position,
- ship name and official number,
- location and time where the incident occurred, and
- a brief description of the alleged sexual harassment or sexual assault.

Within 10 days of filing the initial report, a follow up report must be submitted with details about available investigation results to date and actions, if any, taken against the offending individual. Both reports are handled by the Coast Guard Investigative Services (CGIS) and can be sent via email to CGISTIPS@uscg.mil.

Vessel owners and operators should designate a person ashore who will be the primary contact for all sexual assault and sexual harassment (SASH) issues that take place aboard a vessel. Responsible entities are liable to the U.S. Government for civil penalties for noncompliance with the reporting requirements.

Mariner Licensing and Due Diligence in Hiring

In addition to the reporting requirements, newly amended laws ([here](#) and [here](#)) reflect heightened intolerance for SASH perpetrators aboard U.S. commercial vessels. The lesson for vessel owners and operators is to exercise due diligence in crew hiring to determine whether a potential hire is the subject of a complaint, has had a license revoked or suspended, or has been convicted of a sexual offense. Any conviction for such an offense in the past 5 years will effectively prevent the potential hire from obtaining the necessary mariner credentials. Even if not criminally convicted, a mariner under investigation for sexual harassment or sexual assault could find their license suspended or revoked if there has been an “official finding” of such assault or harassment.

The Coast Guard offers employers a [database](#) to verify a mariner's credentials. In addition, an employer may make a request for records from the U.S. Coast Guard's Administrative Law Judge [Docketing Center](#), where SASH complaints and their administrative disposition are kept.

SASH Prevention Training, Recordkeeping, and Enforcement

New SASH prevention obligations have been added to the [safety management systems](#) (SMS) required to be maintained by owners and operators of U.S. documented vessels including annual training on prevention, bystander intervention, reporting, response, and investigation. The Coast Guard will audit to determine compliance and the Secretary of Homeland Security has the authority to suspend SMS certificates and revoke such certificates for lack of compliance, particularly with respect to the reporting requirements described above. The Secretary may also [revoke the clearance](#) of a U.S. documented vessel if it does not have a valid SMS certificate on board. A denial of clearance has the practical effect of preventing the vessel from leaving port.

Installation of On Board Equipment

A. Surveillance

By December 23, 2024, or during the next scheduled drydock, whichever is later, certain U.S. commercial vessels on international voyages **or** with overnight accommodations for at least 10 persons must install video and audio surveillance equipment in passageways on to which doors from staterooms open. The required video and audio [surveillance equipment](#) must ensure the visibility of every door in each such passageway. However, the 2024 deadline will likely get pushed back because the federal regulations implementing the details of this surveillance technology, as well as the master key control system described below, have not yet been drafted. Once drafted, they will be made available for public comment.

B. Master Key Control Systems

U.S. documented vessels subject to inspection under 46 U.S.C. 3301 (which includes, among other vessels, towing vessels, offshore supply vessels, and freight vessels) must, under the 2023 NDAA amendments, install a master key control system. Under the [master key control system](#), only designated individuals will have access to the master key, and all uses of the master key will be recorded in a log book. Such information must be made available to law enforcement, including the FBI and Coast Guard, if requested.

Non-Retaliation Provision for Good Faith Reporting

The [non-retaliation provisions](#) of 46 U.S.C. § 2114 were recently broadened to specifically protect mariners from being retaliated against by their employer if they make a good faith report concerning a SASH incident. Jurisprudence under the pre-existing version of the statute indicates that mere Coast Guard inquiries about an employer's practices, absent a complaint or threatened complaint, will not create a cause of action under section 2114. (See *Garrie vs. Gray*, 912 F.2d 808, 812-813 (5th Cir. 1990).

Conclusion

Vessel owners and operators should be aware of these new legal obligations and have a plan to comply. McGlinchey has a team of [employment](#) and [maritime](#) attorneys available that are familiar with the requirements and can help you comply with these new laws and respond to SASH incidents aboard your vessels.

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