To: Jocelyn Juliano, South Carolina Sea Grant Consortium

From: AnnaGrace Meeks, NSGLC Research Associate

Re: Liability for Apprentices on Vessels (NSGLC-23-04-07)

Date: November 9, 2023

Summary

The South Carolina Sea Grant Consortium requested information regarding captains’ liability for taking apprentices out on their vessels for learning purposes related to their Commercial Seafood Apprenticeship Program. A captain of a vessel may be held personally liable for injuries passengers sustain while on the vessel if the captain is found to have acted negligently because the captain breached a duty owed to a passenger. In addition to civil liability for a passenger’s injury, a captain could face criminal liability for a passenger’s death on commercial vessels under federal law under 18 U.S.C. § 1115. Further, under 46 U.S.C. § 4502, the Commercial Fishing Industry Vessel Act of 1988, certain safety standards are required for fishing vessels. Failure to follow these safety standards could affect liability determinations. The captains should check their existing insurance policy and speak with their agents regarding their liability coverage and any changes to their liability insurance policies that may advisable before taking apprentices out on their vessels.

Apprenticeship Program Background

As we understand it, the South Carolina Sea Grant Consortium’s Commercial Seafood Apprenticeship Program consists of a four-week program comprised of roughly two weeks for classroom and dockside training and two weeks allotted for scheduling at-sea training. The at-sea training time commitment has not been determined at this time. Depending on the program’s constraints, the goal is for the program to consist of approximately twenty hours of at-sea training for mariculture operations and twenty hours for commercial fishing operations. During those forty hours, apprentices will either be on small inshore vessels visiting mariculture farms or on commercial fishing vessels operating in state waters. The requirements for the program are that the apprentices must be above the age of eighteen and have a commercial fishing license.

Admiralty Jurisdiction

As the apprenticeship program involves at-sea training, it is important to consider the possible applicability of admiralty jurisdiction to any liability claims that might arise program activities.

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1 Supervision provided by Terra Bowling, Research Counsel II, NSGLC and Stephanie Otts, Director, NSGLC.
2 This product was prepared by the National Sea Grant Law Center under award number NA22OAR4170089 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.
The United States Constitution grants federal courts jurisdiction over “all Cases of admiralty and maritime jurisdiction.”\(^3\) Further, federal district courts have original jurisdiction of “any civil case of admiralty or maritime jurisdiction” and “any prize brought into the United States and all proceedings for the condemnation of property taken as prize.”\(^4\) In order for a tort claim to fall within the admiralty jurisdiction of the federal courts there are two requirements: (1) the incident occur on navigable waters and (2) the tort must “bear[s] a sufficient relationship to traditional maritime activity.”\(^5\)

Whether a maritime tort claim falls within the admiralty jurisdiction of the federal courts therefore depends on whether or not the tort was committed on navigable waters.\(^6\) Navigable waters are defined as “waters that are subject to the ebb and flow of the tide and/or presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.”\(^7\) Navigable waters include state waters, admiralty jurisdiction includes the U.S. territorial seas which is measured from the baseline of the coast in a seaward direction for 3 nautical miles.\(^8\)

Admiralty jurisdiction also “extends to and includes cases of injury or damage to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.”\(^9\) Further, admiralty jurisdiction extends to any waterway where commercial shipping and interstate commerce can take place.\(^10\) It is not necessary that the waterway presently be used for commercial shipping, only that it has the capability to withstand commercial shipping.\(^11\)

However, admiralty jurisdiction does not extend to claims that occur on water that is confined in a state that does not form part of or connect to an interstate waterway.\(^12\) Therefore, state law would apply to negligence claims that occur on a body of water that is located solely in one state because a “body of water by itself…cannot act as a highway of commerce between two states or with foreign countries.”\(^13\)

In addition to the location requirement, the alleged tort must “bear[s] a significant relationship to traditional maritime activity” for admiralty jurisdiction to apply.\(^14\) A traditional maritime activity “is not defined by the particular circumstances of the incident, but by the general conduct from which the accident arose.”\(^15\) Navigation, for example, is a traditional maritime activity. In *Foremost Ins. Co. v. Richardson*, the United States Supreme Court held that “two boats regardless of their intended use, purpose, size, and activity, are engaged in traditional maritime activity when

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\(^3\) U.S. Const., Art. III, § 2.
\(^7\) 33 C.F.R. § 329.4.
\(^8\) 33 C.F.R. § 328.4(a). (Admiralty jurisdiction extends 0-3 nautical miles from the shore).
\(^11\) *Id.*
\(^12\) *Alford v. Appalachian Power Co.*, 951 F.2d 30, 32 (4th Cir. 1991). (Holding that a lake “is not a body of water that is navigable for purposes of admiralty jurisdiction.”)
\(^13\) *Id.* at 33.
a collision between them occurs on navigable waters.” Commercial fishing is also a traditional maritime activity. Generally speaking, a traditional maritime activity is “any [activity] traditionally undertaken by commercial or noncommercial vessels.”

Because the apprentices would be on vessels visiting mariculture farms or on commercial vessels it is likely that court would find that they would be engaged in a traditional maritime activity. If an apprentice is injured on a captain’s vessel while engaged in an apprentice activity and brings suit against the captain, admiralty jurisdiction could impact how the case is filed. Some admiralty injury and death claims can only be filed in federal court. Others can be heard by either federal or state courts applying admiralty law.

The Jones Act

The Jones Act allows “a seaman injured in the course of employment” to bring a civil action with a right to a trial by jury against the seaman’s employer. A seaman is defined as an “individual that is engaged or employed in any capacity on board a vessel.” Additionally, a vessel worker that spends less than 30% of their time on vessel in navigation does not qualify as a seaman. Although apprenticeships are paid experiences, the focus of the program is on training and they likely will not meet the definition of a seaman as they are not employed by the captain to fish on the vessel. As such, the apprentices would likely be classified as passengers, although it is advisable to confirm this conclusion with a private maritime attorney.

Negligence under Maritime Law

To bring forward an admiralty negligence claim, a plaintiff must sufficiently establish the elements of duty, breach, causation, and damages. Specifically, a plaintiff must prove that the defendant owed the plaintiff a duty. Next, that the duty owed by the defendant to the plaintiff was breached by the defendant’s negligent act or failure to act. Finally, the plaintiff must show that the breach was the proximate cause and cause in fact of the plaintiff’s injuries, and the plaintiff suffered damages as a result.

A captain can face civil liability for a passenger’s injury aboard their vessel. In Ray v. Lesniak, a passenger brought an action for personal injuries in admiralty against a sailboat owner and captain when the passenger was hit by the main sheet during a sailboat race while the captain

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16 Id. at 672.
18 Id. at 367.
19 46 U.S.C. § 30104. (If the employee is an aquaculture worker, their suit cannot be brought under the Jones Act).
21 Chandris, Inc. v. Latsis, 515 U.S. 347, 349 (1995). (“A worker who spends only a small fraction of his working time aboard a vessel is fundamentally land-based and therefore not a crew member regardless of his duties.”)
23 Id.
24 Id.
25 Id.
26 Although this case does not involve a fishing vessel, it is useful in demonstrating that a captain has a duty to warn passengers on their vessel of a foreseeable danger.
completed a gybe maneuver. The captain was found negligent and liable for damages because he had a duty to “properly administer safety briefings…warn [the passenger] that the gybe maneuver was going to be undertaken, not gybe until [the passenger] was no longer sitting in front of the main sheet, and not hit [the passenger] with the main sheet rope.” The U.S. District Court for the District of South Carolina found that it was foreseeable the passenger would be injured because the captain failed to follow safety precautions thereby breaching his duty to properly warn the passenger and was the proximate cause of her injury which caused her damages.

Here, like the passenger who brought a personal injury action against the sailboat captain because he failed to perform a duty to his passenger, a vessel captain can face a similar action if the captain fails to perform a duty to an apprentice in the program. Comparable to the sailboat captain, the vessel captain’s duty to the apprentices may consist of the duty to warn, administer safety briefings, and follow safety precautions. If the vessel captain is found to have had a duty to an apprentice in the program, breached that duty by failing to perform it, was the proximate cause of the apprentice’s injury causing the apprentice to suffer damages as a result, the vessel captain may be found civilly liable in tort for their negligence.

Criminal Liability

In addition to civil liability, a captain may be held criminally liable under federal law for the death of a person on their vessel. If the vessel is considered a commercial vessel, vessel captains can be held criminally liable if their misconduct, neglect, or inattention to their duties on their vessel causes the death of the individual on their vessel.

Every captain, engineer, pilot, or other person employed on any steamboat or vessel, by whose misconduct, negligence, or inattention to his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct, or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

This statute is applicable only in cases of passenger death caused by a captain’s misconduct or neglect of their duties and applies only to commercial vessels, not recreational or pleasure boaters.

Commercial Fishing Industry Vessel Act of 1988

Certain categories of vessels are subject to inspection by the Coast Guard: freight vessels, nautical school vessels, offshore supply vessels, passenger vessels, sailing school vessels, seagoing barges,

28 Id. at 480.
29 Id.
30 This is not an exhaustive list of the duties a captain can owe to the apprentices.
seagoing motor vessels, small passenger vessels, steam vessels, fish processing vessels, fish tender vessels, Great Lakes barges, oil spill response vessels, towing vessels. 46 U.S.C. § 3301. An “uninspected vessel” is defined as “a vessel not subject to inspection under [46 U.S.C.] section 3301 . . . that is not a recreational vessel.” Inspected vessels will have more stringent safety requirements than uninspected vessels.

The Commercial Fishing Industry Vessel Act applies specific safety standards for fishing vessels, fish processing vessels, and fish tender vessels. Fishing vessel is defined as “a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.” The Act includes safety measures, including requirements for fire extinguishers, life preservers, visual distress signals and other equipment to minimize the risk of injury to the crew. The Coast Guard has promulgated regulations that provide additional safety measures and equipment requirements. The Act and implementing regulations apply to vessels numbered by a State or the Coast Guard.

Any of the vessels used by the apprenticeship program regulated by the Coast Guard would be required to meet the safety standards established in the Act and the Coast Guard regulations. Failure to do so may indicate liability, so it would be important to ensure that all vessels participating in the apprenticeship program are meeting any established safety requirements or policies. It is important to note that not all vessels in the apprenticeship program, especially smaller vessels used in aquaculture operations, would be subject to the safety requirements. Those vessels, however, should ensure that they are meeting a reasonable standard of care for safety requirements.

Insurance

Captains participating in the apprenticeship program should check with their insurance agents to review their insurance policy for changes that may be advisable as a result of taking apprentices out on their vessels. Further, in South Carolina, the state maintains a state accident fund that provides workers compensation coverage. “Students of... state supported colleges and universities while engaged in work study, distributive education, or apprentice programs on the premises of private companies are covered by [the state accident fund]. Moreover, the state insurance reserve fund is “authorized to provide insurance for State…institutions and personnel employed by the State…in its institutions…to protect the personnel against tort liability arising in the course of their employment.” The insurance can also be provided for “students of...state supported colleges and university while [the] students are engaged in work study...or apprentice programs on the premises of private companies.”

35 46 C.F.R. § 28.50.
36 Id. at § 4502.
40 S.C. Code Ann. § 42-7-60.
42 Id.
If the South Carolina Sea Grant Consortium’s apprenticeship program is considered a university-based program, the apprentices can likely benefit from the state insurance fund and possibly receive insurance from the insurance reserve fund if they suffer an injury compensable by the fund while on the captains’ vessels and the captain’s vessel is considered to be “the premises of a private company.” This provision was likely written to cover traditional land-based workplaces, so it’s unclear about whether the protections would extend to at-sea activities on private fishing or aquaculture vessels.

Conclusion
In conclusion, a vessel captain can be held civilly liable for the injury of a passenger on their vessel if the captain owes a duty to the passenger, breaches that duty, the breach is the proximate cause of the passenger’s injury, and the passenger sustains damages as a result. Moreover, admiralty jurisdiction could apply if the tort is committed while on navigable waters and the tort bears a significant relationship to a traditional maritime activity.

Further, a captain can be held criminally liable in cases of death of a passenger. Under 18 U.S.C. § 1115, a captain of a commercial vessel whose misconduct, negligence, or inattention to their duties on the vessel causes the life of any person to be destroyed can be fined, imprisoned not more than ten years, or both. In addition, under the Commercial Fishing Industry Vessel Act of 1988, certain safety standards are required for fishing vessels if the vessel’s owner or operator holds a fishery permit that allows the landing and selling of catch, and the permit is utilized during the trip.

Captains participating in the program should adhere to all federal safety standards, ensure apprentices receive proper safety training, and review their insurance coverage to ensure they are adequately protected in the event of an accident. South Carolina Sea Grant may also wish to inquire with the South Carolina Accident Fund regarding potential coverage for apprentices injured while engaging in program activities.