

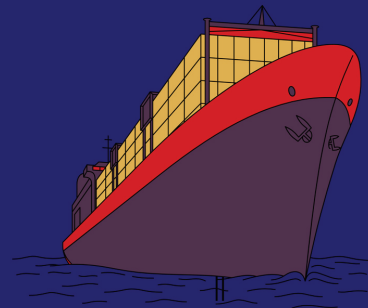
OWNER'S OBLIGATIONS

1. Reporting all hazardous conditions (loss of propulsion, flooding, fire, cargo spills, structural hull failures, etc.) and serious marine casualties (death or serious personal injury, loss of property or damage affecting the seaworthiness of the vessel).

2. Retaining vessel voyage records (such as deck logs, navigation charts, stowage plans, etc.) following a marine casualty and making them available to the Coast Guard upon request is required under U.S. federal regulations. With regard to other documents, a party can refuse to produce them until directed by a court to do so.

3. Investigating whether there was any evidence of drug or alcohol use by individuals directly involved with the casualty. Regardless of whether there is any reason to believe alcohol or drug use were contributing factors, employers are required to perform such drug and alcohol testing. In certain casualties chemical testing is required and the results must be submitted to the Coast Guard.

4. Avoiding conflicts of interest. Parties attempting to coerce witnesses or induce false testimony in connection with a marine casualty can be fined \$5,000.00 or imprisoned for up to a year. Attorneys can be disciplined for knowingly assisting a client in suppressing or concealing evidence. Thus, where the Coast Guard is also focusing on crew members as potential targets, serious consideration should be given to appointing separate counsel for crew members.



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Executive Summary

OVERVIEW OF UNITED STATES COAST GUARD INVESTIGATORY POWERS AND THE RIGHTS AND OBLIGATIONS OF VESSEL OWNERS



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COAST GUARD'S MISSION

The Coast Guard is delegated with numerous responsibilities, among which are ensuring port safety, maritime safety, and protection of the environment. In fulfilling this role, they have significant investigatory powers.

Federal regulations establish procedures for Coast Guard investigations of marine casualties. The primary purpose of such investigations are remedial in nature, *i.e.*, to determine the cause or causes of a casualty in order to prevent a recurrence and thereby promote maritime safety and protect the marine environment.

There are two types of marine casualty investigations – formal and informal. In formal proceedings, “parties in interest” are designated as a matter of course, witnesses and investigators are sworn, and all proceedings are generally recorded and transcribed.

POTENTIAL LEGAL CONSEQUENCES STEMMING FROM A COAST GUARD INVESTIGATION

Recommendation that criminal action be taken against an individual or company

Suspension or revocation proceedings brought against a U.S. mariner's license or document

Recommendation that civil penalties be imposed for violation of federal laws

RIGHTS AND POWERS

1. Power to issue subpoenas for use in obtaining all forms of evidence.
2. Gathering physical evidence, obtaining documentary evidence, and signed statements or sworn testimony.
3. Post-casualty drug and alcohol testing.

AUTHORITY OF COAST GUARD TO CONDUCT SEARCHES

The Coast Guard has broad authority to conduct safety and document inspections on any US-flagged vessel anywhere in the world, regardless of whether there is any suspicion of criminal activity.

The Coast Guard also has broad authority to conduct inspections and examinations of any foreign flag vessel in U.S. waters for violation of U.S. laws.

The Coast Guard has more limited authority when it comes to conducting warrantless searches for criminal activity aboard foreign flag vessels. To conduct such searches the Coast Guard must have probable cause that the suspect committed or was committing an offense, or reasonable suspicion of criminal activity aboard the vessel.

ADMISSIBILITY OF EVIDENCE OBTAINED

Both formal and informal investigations are non-adjudicatory and thus, will have no effect on determining liability in any subsequent civil proceedings. Coast Guard reports are inadmissible in such proceedings as well.

However, a master's sworn testimony is generally admissible against a vessel's owner.

OWNER'S RIGHTS

In a formal proceeding, parties in interest are entitled to receive notice of the procedures, cross-examine witnesses, call witnesses on their behalf, and have the right to be represented by counsel at all stages of the investigation.

In a formal or informal proceeding, all witnesses appearing before Coast Guard marine casualty investigations (whether parties in interest or not) are accorded a number of statutory rights, including the Fifth Amendment right against self-incrimination.

Note: *To benefit from the privilege, the witness must invoke it the first time the incriminating question is asked or the privilege will be waived!*

The Fifth Amendment is a “personal” right and thus, can be asserted only by an individual and not by a corporation.

A crewmember can refuse to cooperate with the investigation. However, any mariner holding a license or document issued by the U.S. Coast Guard may have that license or document suspended for refusing to comply with a Coast Guard subpoena.

There is no Fifth Amendment protection against exposure to civil penalties or suspension or revocation proceedings involving a mariner's license or document.