Fisheries, Aquaculture, and Tourism

Scott R. Gunst, Jr., Esq.
Carrying Passengers For Hire

- Coast Guard Vessel Regulations
- Foreign Constructed Vessels
- Americans With Disabilities Act
- Vessel Operator Licenses
- Fishing Permits
Coast Guard Vessel Regulations

• Uninspected Passenger Vessels
• Inspected Passenger Vessels
Uninspected Passenger Vessels

- Limited to 6 passengers for hire.
- Must be compliant with the federal safety, navigation and pollution prevention regulations.
- Must conduct a safety orientation prior to departing the dock.
- Subject to Coast Guard boarding inspections.
- Coast Guard and Coast Guard Auxiliary perform complimentary vessel inspections.
Inspected Passenger Vessels

- Certificate of Inspection
- Passenger and Crew Count
- Vessel Coast Guard Inspection
- Stability Inspection
- Life Saving Equipment
- May be endorsed to operate as a commercial fishing vessel
Foreign Constructed Vessels

In general no foreign vessel shall transport passengers between ports or places in the United States.
Americans with Disabilities Act

- May not discriminate against any qualified individual with a disability
- Vessel owners and operators must take steps to accommodate passengers with disabilities
- Regulations apply to vessels that are primarily engaged in the business of transporting people
- Vessel owners are allowed to deny or restrict vessel access to individuals if there is a legitimate safety concern
- Must ensure that dock facilities are accessible and usable by individuals with disabilities
Vessel Operator Licenses

- Merchant Mariners Credential (MMC)
- Transportation Worker Identification Credential (TWIC)
- Marine Radio Operator Permit
Merchant Mariner Credential

- Required to have a valid MMC in order to carry passengers for hire
- Valid for five years
- Must apply and meet the regulatory requirements established by the National Maritime Center
MMC Application Requirements

- Complete the Coast Guard Application
- Pass a Coast Guard written examination
- Hold a Transportation Worker Identification Credential
- Pass a dangerous drug chemical test
- Evidence of sea time or vessel experience
- Physical Examination
- Coast Guard criminal and driving record background check
- CPR/First Aid Certification
- U.S. Citizenship
- Sworn in as a Merchant Mariner Officer
Marine Radio Operator Permit

- Required to operate a marine radio on board an inspected vessel
- Must speak English
- Must complete a 24 question written FCC examination
- Issued for an applicant’s lifetime
Fishing Permits

• Maine’s Wholesale & Retail Seafood License
  ▪ Dockside sale of seafood
  ▪ Sale directly to restaurants, hotels, and inns

• Marine Harvesting Demonstration License
  ▪ Allowed to engaged in fishing activities to provide an educational demonstration of marine harvesting techniques

• Recreational Fishing Operator’s License
  ▪ Enables commercial fisherman to take passengers out to recreationally fish when a commercial fishing season is closed
Vessel Owner/Operator Liability

- General Maritime Law & Liability
- Death on the High Seas Act
- Maine’s Wrongful Death Statute
General Maritime Law & Liability

• Federal Courts have original jurisdiction
• Vessel owners and operators owe their passengers a duty of reasonable care under the circumstances
• Owner and master of a vessel and the vessel itself are liable for any injuries to passengers or their baggage for failure to comply with a statute
• Generally there is a three year statute of limitation for which injured passengers may commence a suit
• Congress has also extended liability to injures which occur on land
Death on the High Seas Act

- Representative allowed to bring a civil action against the person or vessel responsible when the death is cause by negligence
- Death must occur beyond three miles offshore
- Allowed to bring an action if the individual dies while the action is pending as a result of the vessel owner or operator’s negligence
- Only applies to a decedent’s spouse, parent, child or relative
- If the death occurs within the territorial waters of Maine then the Act does not apply
Maine’s Wrongful Death Statute

• Applies to an individual who dies onboard a vessel while operating within Maine’s territorial waters as a result of any negligence or wrongful act on the part of the vessel owner.

• Any amount recovered is for the benefit of the surviving spouse and any minor children.

• Two year statute of limitation to file suit.
Limiting Vessel Owner Liability

- Marine Insurance
- Passenger Boarding Document
  - Waivers of Liability
  - Forum Selection Clause
- Limitation of Liability Act
Marine Insurance

- Many types of marine insurance: Hull insurance; crew insurance; cargo insurance and protection and indemnity (P&I) insurance
- Vessel and operational specific
- P&I insurance is the primary policy for third party liability.
- Insurance underwriters will impose operational and restrictions on a vessel owner
- Three activities insurance providers would evaluate: (1) What occurs prior to leaving the dock; (2) What risk reduction plans are in place; (3) What plans are in place should an incident occur.
Passenger Boarding Document

• Details the vessel’s safety plan
• What passengers can expect onboard while onboard the vessel
• A vessel owner’s waiver of liability
• A forum selection clause
Limitation of Liability Act

- Allows the owner of a vessel to limit their liability to the value of the vessel for any claim arising from injury, loss or destruction of property that occurred without the owner’s knowledge.
- Does not apply when the vessel’s owner is also the vessel’s operator.
- A motion to limit liability must be filed within six months upon receiving written notice of a claim for damages.
Aquaculture Farms

- Owner/Operator Liability
- Recreational Use Statutes
- Passenger Vessels
- Bio-Security
- Insurance
Owner/Operator Liability

• A property owner owes a positive duty of exercising reasonable care in providing a reasonably safe premises when that owner knows or should have known of a risk to the customer on their premises

• Recreational Use Statutes
  ▪ Would not apply if tourists pay to visit the aquaculture facility
Bio-Security Plan

• The protection of fish or shellfish from infectious agents
• Goal is to reduce the risk of disease introduction, minimize spread of disease, promote fish health, protect dish health, protect economic investment and reputation and protection of human health
• Customized to that specific aquaculture farm
Aquaculture Insurance

- Primarily property insurance and not liability insurance
- Would want to acquire third party liability insurance which is known as an umbrella policy
- Warning signs should be posted throughout the facility
- Facility inspections should be performed regularly
- Written plan for treating any injuries and documenting any injuries which occur
Business Organizations

- Several Business Organizations to Choose:
  - Sole Proprietorship
  - General Partnership
  - Limited Partnership
  - Limited Liability Partnership
  - Limited Liability Company

- Piercing the Corporate Veil
Scott Gunst, Esq.

719 E. Passyunk Ave.
Philadelphia, PA 19147

267-324-3773
sgunst@lawofsea.com
Not Legal Advice

PLEASE NOTE: The materials appearing herein are provided for informational purposes only and do not constitute legal advice. The information contained herein should not be relied upon as each and every factual situation that may arise could prompt a different recommendation for implementation. These materials and or workshops are not intended to create any attorney-client relationship, and access to or receipt of information included herein or at the workshops do not constitute an attorney-client relationship. You should not take action based upon this information without consulting legal counsel as to your specific situation.