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# Sexual Misconduct on Merchant Ships of the United States

## Background

In 1988, the Government Accountability Office studied sexual assaults of female seafarers and recommended a requirement for the Coast Guard to be notified of these incidents (see 46 U.S.C. §10104). Starting in 2009, Congress has addressed sexual assault during seafarer training with specific legislation (see P.L. 110-417, §3507). Since 2014, the Department of Transportation Inspector General has issued three reports regarding sexual assault at the United States Merchant Marine Academy (USMMA).

## Merchant Marine

A country's merchant marine typically is composed of its registered (flagged) ships used for trade and all seafarers who work on these ships—*merchant mariners*. Laws of the United States related to vessels and seafarers are enacted as Title 46, *U.S. Code*, "Shipping." It is the policy of the United States to have a merchant marine that meets national defense objectives and develops domestic and foreign commerce. It also is the policy of the United States that the Navy and merchant marine work together to promote integration of sea power forces. The Coast Guard has superintendence over the merchant marine and its merchant mariners. The Maritime Administration (MARAD) fosters, promotes, and develops the merchant maritime industry of the United States.

## Merchant Mariners

The Secretary of Transportation may provide education and training for the operation of the merchant marine. The Secretary of the Navy must ensure merchant marine officer education and training includes naval science and officer commissioning programs for the operation of merchant vessels as a naval and military auxiliary.

## Licensure and Documentation

Mariners who are *officers* must maintain a *license* to work in the merchant marine. In addition to training, education, and sea service, officers must successfully complete a series of licensing examinations administered by the Coast Guard. Mariners who are *ratings* must maintain a *document* to work in the merchant marine. This document serves as a certificate of service and identification, specifying each rating in which the holder is qualified.

## Merchant Mariner Credential

A *merchant mariner credential* (MMC) combines a license or document, and other maritime endorsements, into a credential resembling a United States passport with a red cover. The Coast Guard issues the MMC and is responsible for determining the suitability, security risk, competence, and qualifications of MMC applicants. Obtaining a Transportation Worker Identification Credential (TWIC)

from the Department of Homeland Security is a security prerequisite for receiving an MMC.

## Officers and Crews

Licensed officers and documented ratings in the merchant marine are comparable to commissioned officers and enlisted personnel in the armed services, respectively. A ship's master captains a merchant ship and its crew, which primarily consists of deck and engine personnel. The deck department is responsible for the ship's cargo, control, command, and navigation. The engine department is responsible for the ship's propulsion, mechanical, electrical, and refrigeration systems.

## Criminal Law Enforcement

The Coast Guard is the lead maritime law enforcement agency of the United States. In this role, the Coast Guard's mission is to enforce federal and international law on the high seas and waters subject to U.S. jurisdiction.

## Merchant Marine Offenses

Specific provisions in Title 46, *U.S. Code*, authorize prosecuting a merchant mariner for the following offenses:

- desertion,
- smuggling,
- assaulting an officer,
- absent without leave,
- quitting without leave,
- willful disobedience while at sea, and
- willful damage of a vessel or its stores.

## Maritime Jurisdiction Crimes

A merchant mariner may be prosecuted for crimes in Title 18, *U.S. Code*, under the special maritime and territorial jurisdiction of the United States (18 U.S.C. §7).

## Administrative Law Enforcement

The Coast Guard may revoke or suspend a merchant mariner's license, document, or credential. An investigating officer conducts administrative investigations of persons applying for or holding an MMC. A Coast Guard administrative law judge (ALJ) conducts suspension and revocation fact-finding hearings for

- conviction of a disqualifying crime,
- posing a security risk to a port or vessel,
- violation of a maritime law or regulation, or
- negligence, misconduct, or incompetence as a seafarer.

## Sexual Misconduct

Federal shipping regulations define seafarer misconduct as "human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general

maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required." Current criminal and administrative provisions making seafarers accountable for misconduct on a merchant ship may not be effective for preventing, or responding to, sexual misconduct. Moreover, available data and studies regarding this conduct have exclusively examined female victims, making it difficult to determine the full extent of seafarer sexual misconduct.

#### Seafarer Gender Demographics

The Department of Labor reports that of the entire transportation and material moving workforce, 20% are women. Commercial data sources suggest women are 12% of all U.S. merchant mariners. The combined average for female students at the federal and four of the state merchant marine officer academies is 17%. Excluding the United States, the estimate for women in the global seafarer workforce is 24,059, which is less than 3% of all certified seafarers. Yet, this is a worldwide increase of 46% since 2015. Within this global population, 7,289 are officers (30%) and 16,770 are ratings (70%). Also, women are estimated to be 15% of officer cadets globally. (BIMCO/International Chamber of Shipping, *Seafarer Workforce Report*, 2021, pp. 30-32.) [Percentages are rounded.]

#### Criminal Offenses

Under Title 46, *U.S. Code*, it is a merchant marine offense punishable by imprisonment for up to two years for a seafarer to assault a ship's officer. There is no similar offense under Title 46 for nonconsensual sexual contact.

#### Crime Reporting

A master of a vessel must report to the Secretary of the department in which the Coast Guard is operating a complaint of a sexual offense prohibited under chapter 109A of Title 18, *U.S. Code*. This requirement applies only to a *complaint by the victim* of a sexual offense. If acquired by any means other than a victim's complaint, reporting a ship master's knowledge of a sexual offense, or reason to believe one has occurred, does not appear to be required.

#### Services to Victims and Crime Victims' Rights

The Crime Victims' Rights Act (CVRA) and the Victims' Rights and Restitution Act (VRRRA) appear to be applicable to victims of sexual offenses committed on merchant ships within U.S. special maritime jurisdiction. If so, these victims would have a "right to be reasonably protected from the accused" and the Coast Guard would be required to designate officials responsible for providing victim services information. It is unclear if existing victims' programs in the Coast Guard cover victims of maritime offenses that the Coast Guard has a responsibility to detect and investigate.

#### Criminal Activities

A *large passenger vessel* is not a merchant ship, but these vessels operate subject to Title 46, *U.S. Code*, and maritime law enforcement authority. They are required to have a crewmember certified pursuant to federal standards on the "appropriate methods for prevention, detection, evidence preservation, and reporting of criminal activities in the international maritime environment." This certification requirement does not apply to merchant ships.

#### Sexual Harassment Investigations

The merchant marine is not an *armed service*, but comparatively, a military ship commander must investigate sexual harassment allegations (10 U.S.C. §1561). A parallel rule seemingly does not apply to merchant ships, including ships in MARAD-funded national security programs.

#### Temporary Suspension of MMC

A license, document, or credential may temporarily be suspended if there is probable cause to believe its holder has become ineligible. When sexual misconduct is alleged, a temporary suspension, pending an investigation or a hearing, appears to require a conviction for rape or aggravated sexual abuse, probable cause to believe an individual engaged in sexual misconduct is not sufficient.

#### Whistleblowers and Retaliation

Federal law protects seafarers from retaliation for reporting violations of maritime safety rules and regulations to the Coast Guard (46 U.S.C. §2114). This provision does not apply to reports or complaints of sexual misconduct on a vessel or by a vessel's crewmember; it is not an analog to military whistleblower protection (10 U.S.C. §1034).

#### Officer Training and Training Ships

Under Title 46, *U.S. Code*, there are six financially assisted state maritime academies (SMAs) that train merchant marine officer aspirants. They each have a federal training ship and typically employ a superintendent and others who hold appointments as officers in the U.S. Maritime Service. Sexual assault protection and prevention laws enacted in 2016 that apply to USMMA and its training ships do not apply to the SMAs and their training ships (P.L. 114-328, §§3510, 3511).

Table I. Selected U.S. Code Provisions

Sec.	Title 18 - Crimes & Criminal Procedure
2241	Aggravated sexual abuse
2242	Sexual abuse
2244	Abusive sexual contact
3771	Crime victims' rights
Sec.	Title 34 - Crime Control & Law Enforcement
20141	Services to victims
Sec.	Title 46 - Shipping
3508	Crime scene preservation training for crewmembers
2114	Protection of seamen against discrimination
7703	Bases for suspension or revocation
10104	Requirement to report sexual offenses
11501	Penalties for specified offenses
51318	Policy on sexual harassment, dating violence, domestic violence, sexual assault, and stalking
51322	Protection of cadets from sexual assault on vessels

Source: CRS analysis of Titles 18, 34, and 46, *U.S. Code*.

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