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Considerations for UNOLS treatment of ORVs as Public Vessels

*Prepared by Mark Hartmann, Rhode Island Sea Grant Law Fellow
July 2017*

This document reviews the legal standards providing differential treatment of “public vessel” under federal regulations, including regulatory definitions of that term. In addition, it reviews language in key international legal instruments that provide similar special treatment for selected vessels owned by governments. This document is a supplement to *Status of the U.S. Academic Research Fleet as Public Vessels under U.S. and International Law*, which discusses the application of these and other legal authorities relevant to a determination of whether U.S. academic research fleet vessels are public vessels. The authorities presented here are separated by issuing agency (for regulatory citations). International authorities are presented separately. This document is to be used for research purposes only and is not legal advice.

1 Code of Federal Regulations

This section reviews all instances where public vessels are treated differently than other vessels under federal regulations. Where definitions are provided by regulations, these definitions are included. This section is arranged by numerical order based on the title of the Code of Federal Regulations in which the regulations appear.

1.1 Title 15: Commerce and Foreign Trade

Title 15 of the Code of Federal Regulations includes regulations on commerce and foreign trade.

1.1.1 Oil Pollution Act Regulations – Natural Resource Damage Assessments

“The purpose of this part is to promote expeditious and cost-effective restoration of natural resources and services injured as a result of an incident.”¹ The part applies only to incidents over which the Trustees have jurisdiction.² Incidents “from a public vessel” are not within the jurisdiction of the Trustees.³ “Public vessel” is defined as “a vessel owned or bareboat chartered and operated by the United States, or by a state or political subdivision

¹ 15 C.F.R. § 990.10.

² *Id.* § 990.41.

³ *Id.* § 990.41.



thereof, or by a foreign nation, except when the vessel is engaged in commerce, as defined in section 1001(8) of OPA (33 U.S.C. 2701(8)).”⁴

1.1.2 Ocean and Coastal Resource Management – National Marine Sanctuary Program Regulations

This regulation sets out “areas to be avoided” and provides that “[o]perating a tank vessel or a vessel greater than 50 meters in registered length is prohibited in all areas to be avoided, except if such vessel is a public vessel and its operation is essential for national defense, law enforcement, or responses to emergencies that threaten life, property, or the environment.”⁵ “Public vessel” is not defined.

1.2 Title 19: Customs and duties

Title 19 of the Code of Federal Regulations includes regulations regarding customs and duties.

1.2.1 U.S. Customs and Border Protection, Department of Homeland Security; Department of Treasury – Vessels in Foreign and Domestic trades

This section dictates that “[t]he Customs Service shall publish a General Notice in the Federal Register and Customs Bulletin periodically, setting forth a revised schedule of navigation fees” for a variety of services.⁶ The regulation goes on to say that “Fee 2 shall be collected at the final port of departure from the United States. It shall be collected from a yacht or public vessel which obtains a clearance, but shall not be collected from a vessel clearing directly from a port on the northern, northeaster, or northwester frontier otherwise than by sea.”⁷

1.2.2 U.S. Customs and Border Protection, Department of Homeland Security; Department of Treasury – Special Classes of merchandise

This section governs the applicability of safety standards and regulations prescribed by the U.S. Coast Guard.⁸ The term “boat” in this section excludes “[m]ilitary or public vessels of the United States, except recreational type public vessels.”⁹ “Public vessel” is not defined in this section.

⁴ *Id.* § 990.30.

⁵ *Id.* § 922.164.

⁶ 19 C.F.R. § 4.98(a)(1).

⁷ *Id.* § 4.98(c).

⁸ *Id.* § 12.85.

⁹ *Id.* § 12.85(a)(2).

1.3 Title 20: Employees' Benefits

Title 20 of the Code of Federal Regulations includes regulations related to employee benefits.

1.3.1 *Longshoremen's and Harbor Workers' Compensation Act and Related Statutes – General; Administering Agency; Definitions and Use of Terms*

Certain recreational vessel workers may be excluded from the definition of employee.¹⁰ Public vessels may be considered recreational vessels if they meet criteria set out in the regulation:

a vessel will be deemed recreational if it is a public vessel, i.e., a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, at the time of repair, dismantling for repair, or dismantling, provided that such vessel shares elements of design and construction with traditional recreational vessels and is not normally engaged in a military, commercial or traditionally commercial undertaking.¹¹

1.4 Title 22: Foreign Relations

Title 22 of the Code of Federal Regulations includes regulations related to foreign relations.

1.4.1 *Fees and Funds – Schedule of Fees for Consular Services-Department of State and Foreign Service*

This part prescribes fees for certain consular services. “[T]he fees prescribed herein shall not be charged or collected for American public vessels, which includes any vessel owned or operated by a U.S. Government department or agency and engaged exclusively in official business on a non-commercial basis.”¹²

1.5 Title 29: Labor

Title 29 of the Code of Federal Regulations includes regulations related to labor.

1.5.1 *Occupational Safety and Health Administration, Department of Labor – Safety and Health Regulations for Longshoring*

This part addresses longshoring safety and health regulations. Section 1918.11 prohibits use of cargo handling gear until “until it has been ascertained that the vessel has a current and valid cargo gear register and certificates.”¹³ The regulation states “[p]ublic vessels and vessels holding a valid Certificate of Inspection issued by the U.S. Coast Guard pursuant to 46 CFR part 911 are deemed to meet” these gear registration and certification

¹⁰ 20 C.F.R. § 701.502.

¹¹ *Id.* § 701.501.

¹² 22 C.F.R. § 22.4.

¹³ 29 C.F.R. § 1918.11.

requirements.¹⁴ Here, “[p]ublic vessel means a vessel owned and operated by a government and not regularly employed in merchant service.”¹⁵

1.6 Title 32: National Defense

Title 32 of the Code of Federal Regulations includes regulations related to national defense.

1.6.1 *United States Navy Regulations and Commanding Officer – Customs and immigration inspections*

This part distinguishes between private and publicly owned cargoes on public vessels. Specifically, the regulation provides:

When a ship or aircraft of the Navy or a public vessel manned by naval personnel and operating under the direction of the Department of the Navy is carrying cargo for private commercial account, such cargo shall be subject to the local customs regulations of the port, domestic or foreign, in which the ship or aircraft may be, and in all matters relating to such cargo, the procedure prescribed for private merchant vessels and aircraft shall be followed. Government-owned stores or cargo in such ship or aircraft not landed nor intended to be landed nor in any manner trafficked in, are, by the established precedent of international courtesy, exempt from customs duties, but a declaration of such stores or cargo, when required by local customs regulations, shall be made. Commanding officers shall prevent, as far as possible, disputes with the local authorities in such cases, but shall protect the ship or aircraft and the Government-owned stores and cargo from any search or seizure.¹⁶

1.6.2 *Claims – Admiralty Claims*

This part explains that “[s]uits for salvage may be maintained under the Public Vessels Act” and “suits for salvage against the United States are subject to the two-year limitation of the Public Vessels Act.”¹⁷

1.6.3 *Island under Navy Jurisdiction – Naval Defensive Sea Areas; Naval Airspace Reservations, Areas Under Navy Administration, and the Trust Territory of the Pacific Islands*

This part describes what vessels and what persons can enter “defense areas.” This part defines public vessel as “[a] ship . . . owned by or belonging to a government and not engaged in commercial activity.”¹⁸ The regulations state that “No person, except persons

¹⁴ *Id.* § 1918.11.

¹⁵ *Id.* § 1918.2.

¹⁶ 32 C.F.R. § 700.860.

¹⁷ *Id.* § 752.5.

¹⁸ *Id.* § 761.5.

aboard public vessels or aircraft of the United States, shall enter any defense area . . . [n]o vessel or other craft, except public vessels of the United States shall enter any naval defensive sea area or other defense area.”¹⁹ Furthermore, “no vessel or aircraft, except public vessels and aircraft of the United States, shall enter into or be navigated within any defense area while carrying any excluded person . . . as passenger, officer or crew member” except in certain limited circumstances.²⁰ “U.S. Public vessels” may enter all defense areas.”²¹ In addition, “Persons aboard U.S. public vessels or aircraft entering a Naval Defensive Sea Area or a Naval Airspace Reservation” and “[i]ndividuals on board any foreign public vessel or aircraft which has been granted diplomatic or other official U.S. Government authorization to enter an area covered by this part” may enter indicated defense areas without individual authorization.²²

1.7 Title 33: Navigation and Navigable waters

Title 33 of the Code of Federal Regulations includes regulations related to navigation and navigable waters, including certain regulations related to water pollution control.

1.7.1 General – General Provisions

This part “delegates authority to implement provisions of section 311 of the Federal Water Pollution Control Act (FWPCA), as amended and provisions of the Oil Pollution Act of 1990 (OPA 90). The definitions in subsection (a) of section 311 of the FWPCA and section 1001 of OPA 90 apply.”²³ The FWPCA defines “public vessel” as “a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.”²⁴ OPA 90 defines “public vessel” identically.²⁵ Under this part, the Coast Guard has the authority to “Board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, except for public vessels.”²⁶

1.7.2 General – Coast Guard Auxiliary

This part provides that “[a] vessel, aircraft, or radio station owned by, in the custody of, or under the administrative jurisdiction of the [Coast Guard] Auxiliary will be considered a

¹⁹ *Id.* § 761.7(a).

²⁰ *Id.* § 761.7(b)(2).

²¹ 32 C.F.R. § 761.12.

²² *Id.* § 761.10.

²³ 33 C.F.R. § 1.01–80 (a) (citing 33 U.S.C. §§ 1321, 2701).

²⁴ 33 U.S.C. § 1321(a)(4).

²⁵ *Id.* § 2701(29).

²⁶ 33 C.F.R. § 1.01–80 (c)(5).

public vessel of the United States, public vessel of the Coast Guard, public aircraft, Coast Guard Aircraft, and/or government station, in accordance with federal law.”²⁷

1.7.3 General – Claims

This subpart relieves public vessels from “the requirements for the administrative settlement of claims against the United States for damage to or loss of property resulting from containment or removal activities during Phase III or IV of the National Contingency Plan, under the Federal Water Pollution Control Act.”²⁸ Specifically, “[a] claim is not payable under this subpart if it . . . (b) Arises out of activities to contain or remove a discharge of oil or other hazardous polluting substance from a United States or foreign public vessel or federally controlled facility.”²⁹ The subpart does not define “public vessel.”

1.7.4 Vessel Operating Regulations – Rules for the Safe Operation of Vessels and Safety Management Systems

Public vessels are excluded from regulations regarding company and vessel safety management systems. The subpart “establishes the minimum standards that the safety management systems of a company and its U.S. flag vessels(s) must meet for certification to comply with the requirements of 46 U.S.C. 3201–3205 and Chapter IX of SOLAS, 1974.”³⁰

The regulations state “this subpart does not apply to . . . A public vessel, which includes a U.S. vessel of the National Defense Reserve Fleet owned by the U.S. Maritime Administration and operated in non-commercial service.”³¹ “Public vessel” is not otherwise specifically defined in this subpart.

1.7.5 Maritime Security – National Vessel and Facility Control Measures and Limited Access Areas

“The purpose of this subpart is to implement Presidential Proclamation 7757, and Secretary of Homeland Security order 2004-001.”³² The proclamation and the order, in part, prohibit unauthorized entry into Cuban territorial waters from U.S. territorial waters.³³ The restrictions on unauthorized entry do not apply to “public vessels” as defined in federal statute.³⁴ The applicable statute defines “public vessel” as “a vessel that—(A) is owned, or demise chartered, and operated by the United States Government or a

²⁷ *Id.* § 5.30.

²⁸ *Id.* § 25.801.

²⁹ *Id.* § 25.805.

³⁰ *Id.* § 96.200.

³¹ 33 C.F.R. § 96.210.

³² *Id.* § 107.205.

³³ *Id.* § 107.210(a).

³⁴ *Id.* § 107.210.

government of a foreign country; and (B) is not engaged in commercial service.”³⁵

1.7.6 Bridges – Drawbridge Operation Regulations

This subpart “contains specific requirements for operation of individual drawbridges. These requirements are in addition to or vary from the general requirements in Subpart A.”³⁶ This discussion does not detail the regulations for each of the approximately 63 different drawbridges that use the term “public vessel.” In general, these regulations require that public vessels “shall be passed through as soon as possible.”³⁷ Under this part, “public vessel” is defined with reference to statute as “a vessel that is owned and operated by the United States Government and is not engaged in commercial service, as defined in 46 U.S.C. 2101.”³⁸

1.7.7 Waterfront Facilities – Identification Credentials for Persons Requiring Access to Waterfront Facilities or Vessels

This part governs identification credentials for masters, crew, and others with access to vessels. Under this part “Every person desiring access to vessels, except public vessels, falling within any of the categories listed below, as a master, person in charge, or member of the crew thereof, shall be required to be in possession of one of the identification credentials listed in § 125.09.”³⁹ Section 125.09 includes a variety of credentials, including, but not limited to: “Merchant Mariner’s Document;” “Armed Forces Identification Card;” and “Transportation Worker Identification Credential.”⁴⁰ “Public vessel” is not defined in this part.

1.7.8 Marine Pollution Financial Responsibilities and Compensation – Offshore Oil Pollution Compensation Fund

This part “prescribes the policies, procedures, and administrative practices regarding offshore oil pollution liability and compensation,” including the offshore oil pollution compensation fund.⁴¹ It defines “public vessel” by reference to the Outer Continental Shelf Lands Act Amendments of 1978, under which a “public vessel” is “a vessel which---, (A) is owned or chartered by demise, and operated by (i) the United States, (ii) a State or political subdivision thereof, or (iii) a foreign government; and (B) is not engaged in commercial service.”⁴² Public vessel is not otherwise used in the part.

³⁵ 46 U.S.C. § 2101.

³⁶ 33 C.F.R. § 117.1.

³⁷ *Id.* § 117.905.

³⁸ *Id.* § 117.4.

³⁹ *Id.* § 125.53.

⁴⁰ *Id.* § 125.09.

⁴¹ 33 C.F.R. § 135.1.

⁴² Pub. L. No. 95-372, 92 Stat. 629 (1978).

1.7.9 Marine Pollution Financial Responsibility and Compensation – Oil Spill Liability Trust Fund; Claims Procedures; Designation of Source; and Advertisement

This subpart sets out the requirements for designation of sources of oil spill discharges or threats of discharges, as well as requirements for advertisement of these designations so that claims can be presented.⁴³ The regulations provide that “if the source of the discharge or threat is a public vessel . . . the Director, NPFC, may advertise procedures for presenting claims.”⁴⁴ This part does not define “public vessel.”

1.7.10 Marine Pollution Financial Responsibility and Compensation – Financial Responsibility for Water Pollution (vessels) and OPA 90 Limits of Liability (vessels and deepwater ports)

This subpart provide “the procedures by which an operator of a vessel must establish and maintain, for itself and for the owners and demise charters of the vessel, evidence of financial responsibility required by [OPA 90] and Section 108 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) (42 U.S.C. 9608).”⁴⁵ The requirement for financial responsibility “does not apply to operators of public vessels.”⁴⁶ “Public vessel” is defined as “a vessel owned or bareboat chartered by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.”⁴⁷

1.7.11 Pollution – Vessels Carrying oil, Noxious Liquid Substances, Garbage, Municipal or Commercial Waste and Ballast Water

This part is made up of subparts A and B. Subpart A mentions “public vessel” in the context of the need for U.S. government response to emergencies in Antarctica, but does not define the term.⁴⁸ Subpart B governs transportation of municipal and commercial waste and does not apply to public vessels.⁴⁹ Subpart B defines public vessel as “a vessel that—(1) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and (2) is not engaged in commercial service.”⁵⁰

1.7.12 Pollution – Control of Pollution by Oil and Hazardous Substances, Discharge Removal

This part “prescribe[s] regulations concerning notification to the Coast Guard of the discharge of oil or hazardous substances . . . ; the procedures for the removal of a discharge of oil; and the costs that may be imposed or reimbursed for the removal of a discharge of

⁴³ 33 C.F.R. § 136.301.

⁴⁴ *Id.* § 136.309.

⁴⁵ *Id.* § 138.10.

⁴⁶ *Id.* § 138.15.

⁴⁷ *Id.* § 138.20.

⁴⁸ 33 C.F.R. § 151.26.

⁴⁹ *Id.* § 151.1003.

⁵⁰ *Id.* § 151.1006.

oil or hazardous substances. . . .”⁵¹ Provisions for removal of discharged oil and related liability to the pollution fund apply to “any owner or operator of a vessel or onshore or offshore facility.”⁵² “Public vessels” are excluded from the definitions of both vessels⁵³ and offshore facilities⁵⁴ and thereby from coverage under the removal provisions. “Public vessels” are defined as “vessel[s] owned or bare-boat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.”⁵⁵

1.7.13 Pollution – Facilities Transferring Oil or Hazardous Materials in bulk

This part applies to facilities capable of transferring oil or hazardous materials, in bulk, to or from a vessel, other than an offshore facility.⁵⁶ A facility capable of transfers to public vessels is subject to this part.⁵⁷ However, public vessels are excluded from qualification as a “mobile facility” or “offshore facility.”⁵⁸

1.7.14 Pollution – Oil or Hazardous material pollution prevention regulations for vessels

This part uses “public vessel” in two subparts. First, public vessels are exempt from producing an oil spill response plans.⁵⁹ Public vessels are defined by reference to statute, which in turn provides that “[w]hile assigned to authorized Coast Guard duty, any motorboat or yacht shall be deemed to be a public vessel of the United States and a vessel of the Coast Guard within the meaning of sections 646 and 647 of this title and other applicable provisions of law.”⁶⁰

The second subpart establishes “requirements for oil spill response plans for nontank vessels,”⁶¹ and also does not apply to public vessels.⁶² The subpart defines “public vessel” as “a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.”⁶³

⁵¹ *Id.* § 153.101.

⁵² *Id.* §§ 153.303, 153.403.

⁵³ 33 C.F.R. § 153.103(w).

⁵⁴ *Id.* § 153.103(l).

⁵⁵ *Id.* § 153.103(r).

⁵⁶ *Id.* § 154.100.

⁵⁷ *Id.* § 154.105.

⁵⁸ 33 C.F.R. § 154.105.

⁵⁹ *Id.* § 155.1015.

⁶⁰ 14 U.S.C. § 827.

⁶¹ 33 C.F.R. § 155.5010.

⁶² *Id.* § 155.5015.

⁶³ *Id.* § 155.5020.

1.7.15 Pollution – Oil and Hazardous Material Transfer Operations

“Oil and Hazardous Material Transfer Operations” has two subparts that use the term public vessel. The first subpart “applies to the transfer of oil or hazardous material on the navigable waters or contiguous zone of the United States to, from, or within each vessel with a capacity of 250 barrels or more; except that, this subpart does not apply to transfer operations within a public vessel.”⁶⁴ This subpart has a number of requirements including, but not limited to, regulations on:

- Suspension Order;
- Person in Charge: Limitations;
- Advance Notice of Transfer;
- Requirements for Transfer;
- Discharge Cleanup;
- Connection;
- Declaration of Inspection;
- Supervision by Person in Charge; and
- Equipment Tests and Inspections.

The definitions for this section are those for facilities transferring oil in bulk, as discussed above, which exclude public vessel from the definitions of such facilities.⁶⁵

The second subpart provides “[s]pecial requirements for lightering of oil and hazardous material cargoes” and does not apply to lightering operations involving public vessels.⁶⁶ Requirements include, but are not limited to:

- Pre-Arrival Notices;
- Reporting of Incidents;
- Designation of Lightering Zones; and
- Factors Considered in Designating Lightering Zones.

1.7.16 Pollution – Marine Sanitation Device

This part governs the design, construction, certification, and operation of vessels using marine sanitation devices.⁶⁷ “Person” is defined to exclude any individual on board a public vessel.⁶⁸ “Public vessel” is, in turn, “a vessel owned or bare-boat chartered and operated by

⁶⁴ *Id.* § 156.100.

⁶⁵ *Id.* § 156.105.

⁶⁶ 33 C.F.R. § 156.200.

⁶⁷ *Id.* § 159.1.

⁶⁸ *Id.* § 159.3.

the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.”⁶⁹

1.7.17 Ports and Waterway Safety – General

“Public vessel” is used under “Notification of Arrival, Hazardous Conditions, and certain dangerous Cargoes.” Public vessels are exempt from the requirements of this subpart “except for reporting notice of hazardous conditions.”⁷⁰ “Public vessel” is defined as “a vessel that is owned or demise-(bareboat) chartered by the government of the United States, by a State or local government, or by the government of a foreign country and that is not engaged in commercial service.”⁷¹

1.7.18 Ports and Waterways Safety – Inland Waterways Navigation regulations

This part details regulations regarding inland navigational rules. The use of “public vessel” is specific to particular waterways, including “Suisun Bay, San Joaquin River, Sacramento River, and connecting waters, CA”⁷² and “Connecting waters from Lake Huron to Lake Erie.”⁷³

1.7.19 Ports and Waterway Safety – Navigation Safety Regulations

This part exempts public vessels from requirements for automatic radar plotting aids (ARPA), steering gear on foreign tankers, radio equipment, and voyage planning.

Public vessels are exempt from ARPA requirements. “Each self-propelled vessel, except a public vessel, of 10,000 gross tons or more carrying oil or hazardous materials in bulk as cargo or residue on the navigable waters of the United States, or which transfers oil or hazardous material in any port or place subject to the jurisdiction of the United States, must be equipped with ARPA.”⁷⁴

Foreign tankers, other than public vessels, are required to comply with regulations governing steering gear.⁷⁵ This section defines “public vessel” by reference to statute, which provides that “‘public vessel’ means a vessel that-(A) is owned, or demise chartered,

⁶⁹ *Id.* § 159.3.

⁷⁰ *Id.* § 160.204.

⁷¹ 33 C.F.R. § 160.202.

⁷² *Id.* § 162.205 (prohibiting “motorboats, sailboats, rowboats, and other small craft” from “interfere[ing] with or endanger[ing] the movement of commercial or public vessels”).

⁷³ *Id.* § 162.134 (exempting public vessels “engaged in icebreaking or servicing aids to navigation” from having to comply with regulations that amount to traffic rules dictating which directions a vessel can travel, among other directives).

⁷⁴ *Id.* § 164.38.

⁷⁵ *Id.* § 164.39.

and operated by the United States Government or a government of a foreign country; and (B) is not engaged in commercial service.”⁷⁶

Towing vessels, other than public vessels, are required to “hold a ship-radio-station license for radio transmitters (including radar and EPIRBs), and each operator must hold a restricted operator’s license or higher.”⁷⁷ Public vessel is not defined in this section.

Finally, regulations regarding “tests, inspections, and voyage planning” exempt defined public vessels from voyage-planning requirements. The regulations state that “voyage-planning requirements outlined in this section do not apply to you if your towing vessel is-- . . . (ii) A public vessel that is both owned, or demise chartered, and operated by the United States Government or by a government of a foreign country; and that is not engaged in commercial service.”⁷⁸

1.7.20 Ports and Waterway Safety – Regulated Navigation Areas and Limited Access Areas

This part, among other things, prescribes “general regulations for different types of limited or controlled access areas and regulated navigational areas” and “specific requirements for established areas,” and “list[s] specific areas and their boundaries.”⁷⁹ To accomplish these goals there are approximately 28 different sections that use the term “public vessel.” Each of these sections is specific to a waterway that has been designated a “regulated navigational area,” a “safety zone,” and/or a “security zone.” As a result, each use of “public vessel” may be subject to a different definition or exclusion. A general discussion of these provisions is provided here rather than an exhaustive treatment.

Most commonly, relevant sections explicitly define public vessel in this part to mean a “vessel owned, chartered, or operated by the United States, or by a State or political subdivision thereof.”⁸⁰ Second most commonly, sections lack explicit definitions. Finally, some sections use altered definitions of public vessel that vary the government entity element. With respect to the implications of these definitions, most sections except public vessels from the entire section. Others provide apply to public vessels in only in specific, limited ways.

⁷⁶ 46 U.S.C. § 2101.

⁷⁷ 33 C.F.R. § 164.72(a)(3).

⁷⁸ *Id.* § 164.80.

⁷⁹ *Id.* § 165.1.

⁸⁰ *Id.* § 165.935.

1.7.21 Boating Safety – Vessel Numbering and Casualty and Accident Reporting

This subpart requires that vessels subject to its regulations be numbered.⁸¹ It does not apply to “[m]ilitary or public vessels of the United States, except recreational-type public vessels.”⁸² “Public vessel” is not defined in this part.

1.7.22 Boat Safety – State Numbering and Casualty Reporting Systems

This part provides for state numbering requirements for certain vessels, which are limited to recreational-type vessels. “Recreational-type public vessels” are excluded from certain conditions for issuance of a certificate of number by a state.⁸³ This part does not provide a definition for public vessel.

1.7.23 Corps of Engineers, Department of Army – Danger Zone and Restricted Area Regulations

This part is similar to regulated navigational areas and limited access areas in that there are a large number of area-specific regulations for danger zones and restricted areas where government operations could endanger the public or the security of government property. There are two uses of the term public vessel in this part. The first use is in regards to a section entitled “San Francisco Bay in vicinity of the NSC Fuel Department, Point Molate restricted area.” “Persons and vessels not operating under supervision of the local military or naval authority or public vessels of the United States” cannot enter the area without specific permission.⁸⁴ Regulations for “Apra Inner Harbor, Island of Guam; Restricted area,” prohibit “[a]ll swimmers and all vessels and craft except public vessels of the United States” from entering the area without permission.⁸⁵

1.8 Title 46: Shipping

This section reviews federal regulations related to public vessels related to shipping. Each relevant topic is separately discussed.

1.8.1 Procedures Applicable to the Public – Marine Casualties and investigations

For the purposes of the investigation of marine casualties:

public vessel means a vessel that—(a) is owned, or demise chartered, and operated by the U.S. Government or a government of a foreign country, except a vessel owned or operated by the Department of Transportation or any corporation organized or controlled by the Department (except a vessel operated by the Coast Guard or Saint

⁸¹ *Id.* § 173.15.

⁸² 33 C.F.R. § 173.11.

⁸³ *Id.* § 174.31.

⁸⁴ *Id.* § 334.1090.

⁸⁵ *Id.* § 334.1430.

Lawrence Seaway Development Corporation): and (b) is not engaged in commercial service.⁸⁶

Vessels falling under this definition of “public vessel” are excluded from the definition of marine casualty or accident. “Marine casualty or accident means—(a) any casualty or accident involving any vessel other than a public vessel.”⁸⁷ In addition, public vessels are excluded from the reporting requirements in regards to marine casualties, except for the requirements of subpart 4.40.⁸⁸

Under subpart 4.40 “Coast Guard-National Transportation Safety Board Marine Casualty Investigations,” “public vessel” is separately defined as “a vessel owned by the United States, except a vessel to which the Act of October 25, 1919 . . . applies.”⁸⁹ The change is relevant because, “[t]he commandant determines from the preliminary investigation whether: . . . The casualty involves a public and a non-public vessel and at least one fatality or \$75,000 in property damage.”⁹⁰ If the casualty is serious enough, “the [National Transportation Safety] Board shall conduct an investigation” when “the commandant and the Board agree that the Board shall conduct the investigation, and the casualty involves a public and a non-public vessel and at least one fatality or \$75,000 in property damage.”⁹¹ Although this section does not define “marine casualty”, it does define “Major Marine Casualty.”⁹²

1.8.2 Merchant Marine Officers and Seamen – Merchant Mariner Credential

“Public vessel” under this part is defined as “a vessel that—(1) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and (2) is not engaged in commercial service.”⁹³

1.8.3 Merchant Marine Officers and Seamen – Manning Requirements

This part discusses the limitations and qualifying factors of manning requirements.⁹⁴ Here,

⁸⁶ 46 C.F.R. § 4.03-40.

⁸⁷ *Id.* § 4.03-1.

⁸⁸ *Id.* § 4.01-3.

⁸⁹ *Id.* § 4.40-5. These vessels are “steam vessels owned or operated by the United States Shipping Board, or any corporation organized or controlled by it.” Pub. L 66-65, 41 Stat. 305 (1919).

⁹⁰ *Id.* § 4.40-10.

⁹¹ 46 C.F.R. § 4.40-5.

⁹² *Id.* § 4.40-5 (“Major marine casualty means a casualty involving a vessel, other than a public vessel, that results in: (1) The loss of six or more lives; (2) The loss of a mechanically propelled vessel of 100 or more gross tons; (3) Property damage initially estimated at \$500,000 or more; or (4) Serious threat, as determined by the Commandant and concurred in by the Chairman, to life, property, or the environment by hazardous materials.”).

⁹³ *Id.* § 4.40-5.

⁹⁴ *Id.* § 15.701.

public vessels are exempt from the requirements of the Officers Competency Certificates Convention, 1936.⁹⁵ Under this section, “the master, mates and engineers on any vessel to which this section applies must hold a license or MMC officer endorsement to serve in that capacity issued by the Coast Guard.”⁹⁶

1.8.4 Load Lines – Domestic and Foreign Voyages by Sea

This part does not define “public vessel” but creates an exception to its requirements for “U.S. public vessels other than those vessels of 150 gross tons or over and engaged in commercial activities.”⁹⁷ The regulations of this part dictate load line requirements for vessels, including but not limited to setting “forth the minimum requirements for load line marks on various categories of vessels. It also sets forth requirements for surveys relating to the assignment of load lines, the issuing of load line certificates by authorized issuing authorities, and the carriage of load line certificates aboard vessels.”⁹⁸ The regulations also “provide for the enforcement of load line requirements and control over vessels when it is believed such vessels may be in violation of applicable load line requirements.”⁹⁹

1.8.5 Passenger Vessel – General Provisions

This part lays out regulations regarding passenger vessels and “set[s] forth uniform minimum requirements for passenger vessels. The regulations are necessary to carry out the provisions of law affecting passenger vessels and such regulations have the force of law.”¹⁰⁰ The regulations address:

- Inspection and Certification;
- Construction and Arrangement;
- Fire Protection Equipment;
- Vessel Control and Miscellaneous Systems and Equipment;
- Operations; and
- Disclosure of Safety Standards and Country of Registry.

This part does not define “public vessel,” but it excepts “any vessel with title vested in the United States and which is used for public purposes.”¹⁰¹ Another exception is created for “Former public vessels of at least 100 gross tons but less than 500 gross tons.”¹⁰²

⁹⁵ *Id.* § 15.701.

⁹⁶ 46 C.F.R. § 15.701(b).

⁹⁷ *Id.* § 42.03-5 (1) (vii).

⁹⁸ *Id.* § 42.01-10 (b).

⁹⁹ *Id.* § 42.01-10 (c).

¹⁰⁰ *Id.* § 70.01-1.

¹⁰¹ 46 C.F.R. § 70.05-1 (a)(3).

¹⁰² *Id.* § 70.05-18 (a)(2).

1.8.6 *Cargo and Miscellaneous Vessels – General Provisions*

This part “set[s] forth uniform minimum requirements for cargo and miscellaneous vessels.”¹⁰³ These minimum requirements include:

- General Marine Engineering Requirements;
- General Electrical Engineering Requirements;
- Lifesaving Appliances and Arrangements; and
- American Bureau of Shipping’s Standards.¹⁰⁴

This part does not define public vessels, but does not apply to certain vessels, including “any vessel with title vested in the United States and which is used for public purposes,” except vessels of the Maritime Administration.¹⁰⁵

1.8.7 *Mobile Offshore Drilling Units – Inspection and Certification*

This part “prescribes rules for the design, construction, equipment, inspection and operation of mobile offshore drilling units operating under the U.S. flag.”¹⁰⁶ There is no definition of public vessel in this part. However, “public vessels of the United States” are excluded from the definition of “mobile offshore drilling unit.”¹⁰⁷

1.8.8 *Towing Vessel – Certification*

Under “Towing Vessel” public vessels do not have to comply with the following regulations:

- Certification;
- Vessel Compliance;
- Towing Safety Management System;
- Third-Party Organizations;
- Operations;
- Lifesaving;
- Fire Protection;
- Machinery and Electrical Systems and Equipment; and
- Construction and Arrangement.¹⁰⁸

These exclusions apply to public vessels as defined in 46 U.S.C. § 2101,¹⁰⁹ which defines “public vessel” as “a vessel that—(A) is owned, or demise chartered, and operated by the

¹⁰³ *Id.* § 90.01–1.

¹⁰⁴ *See generally id.* Part 90.

¹⁰⁵ *Id.* § 90.05–1 (a) (4).

¹⁰⁶ 46 C.F.R. § 107.01.

¹⁰⁷ *Id.* § 107.111.

¹⁰⁸ *Id.* § 136.105.

¹⁰⁹ *Id.*

United States Government or a government of a foreign country; and (B) is not engaged in commercial service.”¹¹⁰

1.8.9 Nautical Schools – Sailing School Vessels

Regulations under “Nautical Schools” do not apply to “any vessel with title vested in the United States and which is used for public purposes except vessels of the U.S. Maritime Administration.”¹¹¹

1.8.10 Small Passenger Vessels – General Provisions

This part does not supply a definition for the term “public vessel,” but does offer an exception for “[f]ormer public vessels of at least 100 gross tons but less than 500 gross tons.”¹¹² This exception requires that the vessel must have applied for the exception by June 21, 1994 and that the vessel’s operation falls under other certain requirements.¹¹³ If the exception applies, the vessel will be relieved from compliance with certain requirements for small passenger vessels.¹¹⁴

1.8.11 Oceanographic Research Vessels – General Provisions

This part sets out “uniform minimum requirements” for designated oceanographic research vessels that are subject to Coast Guard inspection requirements.¹¹⁵ This part does not apply to “any vessel with title vested in the United States and which is used for public purposes,” with the exception of vessels of the U.S. Maritime Administration.¹¹⁶

1.8.12 Lifesaving Appliances and Arrangements – Lifesaving systems for Certain Inspected Vessels

This part “sets out the requirements for lifesaving appliances and arrangements for [] inspected U.S. vessels” on “international voyages that are subject to the International Convention for the Safety of Life at Sea, 1974, and its Protocol of 1978, as amended (SOLAS).”¹¹⁷ Additional subparts set out requirements for vessels not subject to SOLAS.¹¹⁸ Public vessels are not subject to requirements applicable to vessels not subject to SOLAS.¹¹⁹

¹¹⁰ 46 U.S.C. § 2101.

¹¹¹ 46 C.F.R. § 169.103.

¹¹² *Id.* § 175.118.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* § 188.01–1.

¹¹⁶ 46 C.F.R. § 188.05–1.

¹¹⁷ *Id.* § 199.01.

¹¹⁸ *Id.*

¹¹⁹ *Id.* § 199.10(h)(2).

This part defines “public vessel” as “a vessel that—(a) Is owned, or demise chartered, and operated by the U.S. Government or a government of a foreign country including a vessel operated by the Coast Guard or Saint Lawrence Seaway Development Corporation, but not a vessel owned or operated by the Department of Transportation or any corporation organized or controlled by the Department; and (b) is not engaged in commercial service.”¹²⁰

1.9 Title 40: Protection of the Environment

Title 40 of the Code of Federal Regulations includes regulations issued by the Environmental Protection Agency for protection of the environment.

1.9.1 Water Programs – Discharge of Oil

When defining discharges of oil, the regulations in this part dictate that certain discharges are not determined to “be harmful,” including “[d]ischarges of oil from a properly functioning vessel engine (including an engine on a public vessel) and any discharges of such oil accumulated in the bilges of a vessel discharged in compliance with MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A.”¹²¹ Harmful discharges may result in penalties.

1.9.2 Water Programs – Oil Pollution Prevention

This part uses several terms that exclude “public vessels,” including “facility,” “offshore facility,” and “vessel.” These terms determine the application of the regulations. “Facility means any mobile or fixed, onshore or offshore building, property, parcel, lease, structure, installation, equipment, pipe, or pipeline (other than a vessel or a public vessel).”¹²²

“Offshore facility means any facility of any kind (other than a vessel or public vessel).”¹²³

“Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel.”¹²⁴ Public vessel is not itself defined in this part.

1.9.3 Water Programs – Designation of Hazardous Substances

This part applies to the discharge of designated hazardous substances under the FWPCA.¹²⁵ The definitions of “offshore facility” and “vessel” exclude public vessels as defined. “Offshore facility means any facility of any kind located in, on, or under, any of the navigable waters of the United States . . . other than a vessel or a public vessel.”¹²⁶ “Vessel

¹²⁰ *Id.* § 199.30.

¹²¹ 40 C.F.R. § 110.5.

¹²² *Id.* § 112.2.

¹²³ *Id.* § 112.2.

¹²⁴ *Id.* § 112.2.

¹²⁵ *Id.* § 116.1.

¹²⁶ 40 C.F.R. § 116.3.

means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.”¹²⁷ The part defines “public vessel” as “a vessel owned or bareboat-chartered and operated by the United States, or a State or political subdivision thereof, or by a foreign nation, except when such a vessel is engaged in commerce.”¹²⁸

1.9.4 Superfund, Emergency Planning, and Community Right-to-Know Programs – National Oil and Hazardous Substances Pollution Contingency Plan

This part sets forth the organizational structure of the National Oil and Hazardous Substances Pollution Contingency Plan and procedures for preparing for and responding to discharges.¹²⁹ Here, the definition of “public vessel” reads “Public vessel as defined by section 311(a)(4) of the [FWPCA], means a vessel owned or bareboat-chartered and operated by the United States, or by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.”¹³⁰ Public vessels are also excluded from the definitions of “offshore facility”¹³¹ and, in part, “vessel.” Vessel is defined with reference to two distinct statutory definitions in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and FWPCA:

[v]essel as defined by section 101(28) of CERCLA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water; and, as defined by section 311(a)(3) of the CWA, means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel.¹³²

Under this definition, public vessels are not “vessels” under regulations issued pursuant to the FWPCA but are vessels under regulations issued pursuant to CERCLA.

1.9.5 Superfund, Emergency Planning, and Community Right-to-Know Programs – Designation, Reportable Quantities, and Notification

This part excludes “public vessels” from the definition of “offshore facility,” which means “any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel.”¹³³

¹²⁷ *Id.* § 116.3.

¹²⁸ *Id.* § 116.3.

¹²⁹ *Id.* § 300.1.

¹³⁰ *Id.* § 300.5.

¹³¹ 40 C.F.R. § 300.5.

¹³² *Id.* § 300.5.

¹³³ *Id.* § 302.3.

1.9.6 Air Pollution Control – Control of Emissions from New and in-Use Marine Compression-Ignition Engines and Vessels

This regulation requires that certain vessels be labeled to identify the engine. Specifically, “for engines intended for installation on domestic or public vessels, include the following statement: “THIS ENGINE DOES NOT COMPLY WITH INTERNATIONAL MARINE REGULATIONS FOR COMMERCIAL VESSELS UNLESS IT IS ALSO COVERED BY AN EIAPP CERTIFICATE.””¹³⁴

1.9.7 Air Pollution Control – Control of NO_x, sox, and PM Emissions from Marine Engines and Vessels Subject to the Marpol Protocol

This part implements the Act to Prevent Pollution from Ships (APPS), which implements Annex VI of the MARPOL Protocol in the United States.¹³⁵ “[U.S.-flagged] public vessels are excluded from this part.”¹³⁶ In this part, “public vessel” means “warships, naval auxiliary vessels, and other vessels owned or operated by a sovereign country when engaged in noncommercial service. Vessels with a national security exemption under 40 CFR 80.606 or 1042.635 are deemed to be public vessels.”¹³⁷

Public vessel is used one more time in this part. The regulation states “[a]n engine manufacturer, vessel manufacturer, or vessel owner may also ask to apply the provisions of this paragraph (g) to engines originally certified for public vessels.”¹³⁸

1.10 Title 49: Transportation

Title 49 of the Code of Federal Regulations includes regulations related to the Department of Transportation.

1.10.1 Hazardous Materials Regulation

The regulations governing carriage of hazardous materials by vessel do not apply to “[a] public vessel not engaged in commercial service.”¹³⁹ “Carriage by vessel” “prescribes requirements . . . to be observed with respect to the transportation of hazardous materials by vessel.”¹⁴⁰ “Public vessel means a vessel owned by and being used in the public service of the United States. It does not include a vessel owned by the United States and engaged in a trade or commercial service or a vessel under contract or charter to the United States.”¹⁴¹

¹³⁴ *Id.* § 1042.135.

¹³⁵ *Id.* § 1043.1.

¹³⁶ 40 C.F.R. § 1043.10(a)(1).

¹³⁷ *Id.* § 1043.20.

¹³⁸ *Id.* § 1043.40(g).

¹³⁹ 49 C.F.R. § 176.5.

¹⁴⁰ *Id.* § 176.1.

¹⁴¹ *Id.* § 171.8.

1.10.2 *National Transportation Safety Board*

The purpose of this chapter is to describe the organization, functions, and operation of the National Transportation Safety Board (NTSB).¹⁴² One of the NTSB's responsibilities is the "investigation, determination of facts, conditions, and circumstances and the cause or probable cause or causes of: . . . [m]ajor marine casualties and marine accidents involving a public and a non-public vessel or involving Coast Guard functions."¹⁴³

"Public vessel" is defined with respect to Coast Guard-NTSB Marine Casualty Investigations to "mean[] a vessel owned by the United States, except" a steam vessel owned or operated by the United States Shipping Board.¹⁴⁴

2 *International Law*

This section reviews the provisions of key international agreements that include language relevant to the status of U.S. Academic Research Vessels. The agreements covered here include the United Nations Convention on the Law of the Sea (UNCLOS), International Convention for Safety of Life at Sea (SOLAS), International Convention for Prevention of Pollution from Ships, and International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW).

2.1 *United Nations Convention on the Law of the Sea (UNCLOS)*

UNCLOS¹⁴⁵ contains several articles protecting the sovereign status of certain government vessels. These provisions are reviewed in this section.

2.1.1 *Territorial Sea and Contiguous Zone*

UNCLOS provides for the rights of coastal and flag states within territorial seas. Flag states are responsible for loss or damage to a coastal state "resulting from the non-compliance by a warship or other government ship operated for non-commercial purposes with the laws and regulations of the coastal State concerning passage through the territorial sea or with the provision of this Convention or other rules of international law."¹⁴⁶

Another regulation using the international terminology for "public vessel" covers immunities by stating "nothing in this Convention affects the immunities of warships and other government ships operated for non-commercial purposes."¹⁴⁷

¹⁴² *Id.* § 800.1.

¹⁴³ *Id.* § 800.3.

¹⁴⁴ 49 C.F.R. § 850.5.

¹⁴⁵ U.N. Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

¹⁴⁶ *Id.* art. 31.

¹⁴⁷ *Id.* art. 32.

2.1.2 *High Seas*

Article 96 of UNCLOS states “[s]hips owned or operated by a State and used only on government non-commercial service shall, on the high seas, have complete immunity from the jurisdiction of any State other than the flag state.”¹⁴⁸ However, article 102 removes immunity for government vessels whose crew has mutinied.¹⁴⁹

2.1.3 *Protection and Preservation of the Marine Environment*

UNCLOS also grants immunity to certain vessels from environmental regulations. The relevant article reads “The provisions of this Convention regarding the protection and preservation of the marine environment do not apply to any warship, naval auxiliary, other vessels or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service.”¹⁵⁰

2.1.4 *Settlement of Disputes*

The last article to mention government vessels engaged in non-commercial service is in respect to settling disputes. However, such settlement concerns military and law enforcement activities.¹⁵¹

2.2 *International Convention for Safety of Life at Sea (SOLAS)*

The SOLAS convention and its associated regulations provide a wide range of requirements for vessel design, construction, and operation for vessel safety. The convention applies to all vessels under the flag of a contracting state;¹⁵² however, applicability of its regulations differs from chapter to chapter.¹⁵³

2.2.1 *Safety of Navigation*

Application of Chapter V of the SOLAS regulations contains requirements for safety of navigation. The chapter limits application of these regulations to exclude certain government vessels: “[u]nless expressly provided otherwise, this chapter shall apply to all ships on all voyages, except: . . . warships, naval auxiliaries and other ships owned or operated by a Contracting government and used only on Government non-commercial service.”¹⁵⁴

¹⁴⁸ *Id.* art. 96.

¹⁴⁹ *Id.* art. 102.

¹⁵⁰ *Id.* art. 236.

¹⁵¹ *Id.* art. 298.

¹⁵² International Convention for the Safety of Life at Sea art. II, Nov. 1, 1974, 1184 U.N.T.S. 278, as amended.

¹⁵³ *Id.* annex, ch. 1 reg. 1(1)(b) (“The classes of ships to which each chapter applies are more precisely defined, and the extent of the application is shown, in each chapter.”).

¹⁵⁴ *Id.* annex, ch. V reg. 1(1.1).

2.2.2 Carriage of cargoes and oil fuels

Regulations regarding the carriage of certain radioactive cargoes do not apply to certain government vessels. Regulations for ships carrying “INF cargo”¹⁵⁵ state that “[t]his part and the INF Code do not apply to warships, naval auxiliary or other vessels owned or operated by a Contracting Government and used, for the time being, only on government non-commercial service.”¹⁵⁶

2.2.3 Management for the safe operation of ships

The regulations governing “management for the safe operation of ships” do not apply to certain government vessels. Specifically, “[t]his chapter does not apply to government-operated ships used for non-commercial purposes.”¹⁵⁷

2.2.4 Special measures to enhance maritime security

The regulations pertaining to “special measures to enhance maritime security” do not apply to “warships, naval auxiliaries or other ships owned or operated by a Contracting government and used only on Government non-commercial service.”¹⁵⁸

2.3 International Convention for Prevention of Pollution from Ships (MARPOL)

The MARPOL Convention and its annexes¹⁵⁹ address issues related to pollution from ships. The text of the MARPOL Convention limits the application of the convention as a whole. Specifically, it states that “[t]he present Convention shall not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.”¹⁶⁰

Annex I to the Convention, which contains regulations for the prevention of oil pollution, reiterates this limitation of application with respect to prevention of pollution during transfer of oil cargo between oil tankers at sea (STS operations). This chapter provides that “[t]he regulations contained in this chapter shall not apply to STS operations where either of the ships involved is a warship, naval auxiliary or other ship owned or operated by a state and used, for the time being, only on government non-commercial service.”¹⁶¹

¹⁵⁵ INF Cargo is defined as “packaged irradiated nuclear fuel, plutonium, and high-level radioactive wastes carried as cargo in accordance with class 7 of the IMDG Code.” *Id.* annex ch. VII Reg. 14 § 2.

¹⁵⁶ *Id.* annex, ch. VII reg. 15(1.1).

¹⁵⁷ *Id.* annex, ch. IX reg. 2(2).

¹⁵⁸ *Id.* annex, ch. XI-2 reg. 2(3).

¹⁵⁹ International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, 1340 U.N.T.S. 184, as modified by Protocol of 1978 Relating Thereto, Feb. 17, 1978, 1340 U.N.T.S. 62.

¹⁶⁰ *Id.* art. 3(3).

¹⁶¹ *Id.* annex I, reg. 40(5).

2.4 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

The STCW Convention does not apply to certain government vessels. Specifically, “[t]he Convention shall apply to seafarers serving on board seagoing ships entitled to fly the flag of a Party except to those serving on board: . . . warships, naval auxiliaries or other ships owned or operated by a State and engaged only on governmental non-commercial service.”¹⁶²

¹⁶² International Convention on Standards of Training, Certification and Watchkeeping for Seafarers art. III, 1978 (with annex), Jul. 7, 1978, 1361 U.N.T.S. 190, as amended.