
Investigator’s Desk Aid to the Seaman’s Protection Act (SPA) Whistleblower Protection Provision

46 U.S.C. § 2114

Table of Contents

I.	SPA in a Nutshell	2
	A. Coverage.....	2
	B. Protected Activity	4
	C. Adverse Actions.....	6
II.	Procedures for Handling SPA Complaints.....	7
	A. Complaint.....	7
	B. Investigation.....	7
	C. Administrative and Judicial Review	8
	D. Kick-out Provision.....	9
	Attachment 1 (Resources/Links).....	10
	Attachment 2 (Nautical Terms)	11
	Attachment 3 (Reportable Marine Casualty).....	14
	Attachment 4 (Optional Worksheet: Analyzing SPA Whistleblower Complaints).....	15

This Desk Aid represents the Occupational Safety and Health Administration’s (OSHA’s) summary of the scope of coverage and protected activity and the procedures for investigating and adjudicating retaliation complaints under the Seaman’s Protection Act as of the “last revised” date listed below. This guide is intended for OSHA’s use and the guidance herein is subject to change at any time. This Desk Aid is not a standard or regulation, and it neither creates new legal obligations nor alters existing obligations. Furthermore, there may be a delay between the publication of significant decisions or other authority under this whistleblower protection provision and modification of the Desk Aid. The Federal Register, the Code of Federal Regulations, and decisions of the Department of Labor’s Administrative Review Board remain the official source for the views of the Secretary of Labor on the interpretation of this whistleblower protection provision.

Abbreviations Used in this Desk Aid:

SPA	Seaman’s Protection Act
USCG	United States Coast Guard
NTSB	National Transportation Safety Board
ALJ	Administrative Law Judge
ARB	Administrative Review Board

I. SPA in a Nutshell

The Seaman’s Protection Act (SPA) prohibits persons from retaliating against seamen for engaging in certain protected activities pertaining to compliance with maritime safety laws and regulations, including reporting maritime safety issues to the U.S. Coast Guard or any other federal agency. Rights under SPA may not be waived in any contract or release.

Under SPA no person may discharge or otherwise retaliate against a seaman because the seaman engaged in any protected activity.

Days to file	Respondents covered	Kick-Out Provision	Allowable Remedies				Appeal		Burden of Proof
			Backpay	Preliminary Reinstatement	Compensatory	Punitive	Days	Venue	
180	Private-sector and local government employers—vessel on which seaman was employed must be American-owned (including U.S. Flagged), as defined; world-wide coverage	210	Yes	Yes	Yes	Yes 250K Cap	30	ALJ	Contributing

A. Coverage

SPA protects a seaman, i.e., any individual engaged or employed in any capacity on board a U.S.-flag vessel or any vessel owned by a citizen of the United States, as defined in 29 CFR 1986.101(d), except members of the Armed Forces. The term includes an individual contractor performing the work described above, an individual formerly performing, or an applicant for such work.

1. *Is the complainant a seaman in terms of work?*

A person is a “seaman” if he or she is (a) a person engaged or employed in any capacity aboard a covered vessel and (b) is not a member of the Armed Forces. The worker need not be licensed or engaged in the navigation of the vessel in order to qualify as a seaman, as the term encompasses not only such persons, but others working on the covered vessel, such as cooks and fishermen. Because the definition includes persons “engaged” on the covered vessel, independent contractors, such as ship physicians are also seamen. Although the definition above would cover longshoremen and workers engaged in ship repairing, shipbuilding, shipbreaking, and related employment, if such workers file whistleblower complaints alleging protected activity about unsafe or unhealthful conditions within 30 days of the adverse actions, then any merit cases should generally be handled under Section 11(c), and SPA findings should be postponed in accordance with the procedures in the [Whistleblower Investigations Manual](#).

2. *Is the worksite a vessel?*

A vessel is any watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water. In order for the worksite to qualify as a vessel, the watercraft or other artificial contrivance has to be able to stay afloat, but all systems do not have to be functioning.

3. *Is the vessel a covered vessel?*

For coverage under SPA, a vessel must be a U.S.-flag vessel (which by definition is owned by U.S. citizens) or any other vessel owned by a citizen of the United States. If the vessel is a U.S.-flag vessel, it is not necessary to analyze ownership any further. To determine whether a vessel is a U.S.-flag vessel, it is permissible to conduct an internet search for the vessel's website or any other relevant websites. Information on the flagging of the vessel can usually be obtained via the vessel's website.

If the vessel is not a U.S.-flag vessel, further research must be conducted to determine the ownership of the vessel. An internet search for the vessel's website or other relevant websites will usually provide information about ownership. Vessels will have various documentation on board (e.g., Certificate of Inspection, Certificate of Documentation) which will list ownership. Further information can be obtained from the [USCG National Vessel Documentation Center](#).

The investigator must also determine whether the owner of the vessel is a "citizen of the United States." Under the SPA final rule issued on September 15, 2016, (81 FR 63396), a "citizen of the United States" is:

...an individual who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101 (a)(22)); a corporation incorporated under the laws of the United States or a State; a corporation, partnership, association, or other business entity if the controlling interest is owned by citizens of the United States or whose principal place of business or base of operations is in a State; or a governmental entity of the Federal Government of the United States, of a State, or of a political subdivision of a State. The controlling interest in a corporation is owned by citizens of the United States if a majority of the stockholders are citizens of the United States. 29 C.F.R. 1986.101(d).

The State¹ of incorporation, principal place of business, or base of operations may be obtained by doing an internet search for the company's website or other relevant websites. It may also be obtained from a legal database. If the OSHA Region does not have access to a legal database, the Regional Solicitor's Office, which does have such access, may be contacted. The investigator may also consult business directories or obtain information from a State agency handling corporate filings, such as the Secretary of the State or corporation commission.

¹ A "State" is a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands. 29 C.F.R. 1986.101(o).

Another basis of vessel coverage is ownership of the vessel by a Federal, State, or local government agency. Findings may not be issued against Federal or State agencies, but they may be issued against private entities working on such vessels. Members of the Armed Forces, including the Navy and the Coast Guard, are not covered.

The term “seaman” includes a former seaman or an applicant for a seaman position. 29 C.F.R. § 1986.101(m).

4. There are no geographical limitations on SPA coverage. The lack of this limitation is consistent with the way other maritime statutes are interpreted. Since SPA is a purely federal statute and separate from the OSH Act, State Plan statutes do not affect SPA coverage.
5. Under SPA, a “person” is prohibited from retaliating against a seaman for engaging in protected activity. A “person” is one or more individuals or other entities, including but not limited to corporations, companies, associations, firms, partnerships, societies, and joint stock companies. Individual officers, directors, and others responsible for the unlawful retaliation are personally liable and should be included in merit findings.

B. Protected Activity

Protected Activity:

A person may not discharge or in any other manner retaliate against a seaman because the seaman:

1. Provided (or was about to provide) information relating to a violation of maritime safety laws or regulations to the USCG or other appropriate federal agency or department;
2. Testified in a proceeding brought to enforce a maritime safety law or regulation (this includes internal complaints);
3. Refused to perform duties because of a reasonable apprehension of serious injury to the seaman, other seamen, or the public, if the seaman has first requested that the employer correct the dangerous condition;
4. Notified or attempted to notify the vessel owner or the USCG of a work-related injury or illness of a seaman;
5. Cooperated with a safety investigation by the USCG or the NTSB;
6. Furnished information to any public official relating to any marine casualty where there is death, injury, or damage to property occurring in connection with vessel transportation; or
7. Accurately reported hours of duty under Part A of Subtitle II of Title 46 of the United States Code.

Activities protected by the SPA whistleblower provision include the following:

1. Provided (or was about to provide) information relating to a violation of maritime safety laws or regulations to the USCG or other appropriate federal agency or department.
 - a. Did complainant contact the USCG or another federal agency? If so:
 - i. What agency?
 - ii. What office/number/division?
 - iii. What date?
 - b. Did complainant file or submit a [CG-2692, Report of Marine Accident, Injury, or Death](#)?

SPA does not have a provision expressly protecting complaints to the employer. However, OSHA interprets the “about to provide” phrase as including situations in which the seaman indicates that he or she might provide the information to the government, in which the seaman has a history of providing similar violations to the government, or other similar situations. Also, OSHA interprets this phrase as including a seaman’s refusal to lie to the government about maritime safety violations. The protection of internal complaints is also protected by the clause protecting testimony. See 2. below.

The information provided does not have to be accurate as long as the seaman reasonably believes that it is true and relates to a violation of a maritime safety law or regulation.

2. Testified in a proceeding brought to enforce a maritime safety law or regulation (e.g., provided information during a USCG boarding).
 - a. When was the testimony given?
 - b. To whom did complainant give the testimony?
 - c. What was the proceeding/context?

In addition, OSHA interprets this provision to include a seaman’s internal complaints, i.e., complaints made to a master, captain, or other supervisor, relating to a violation of a maritime safety law or regulation.

3. Refused to perform duties because of a reasonable apprehension of serious injury or a serious impairment of health to the seaman, other seamen, or the public, if the seaman has first requested that the employer correct the dangerous condition.
 - a. What specific duty did the seaman refuse to perform?
 - b. Why did the seaman refuse?
 - c. To whom did the complainant report his or her refusal?
 - d. How did the respondent respond to the refusal?

e. Would a reasonable person, under similar circumstances, have concluded that performance of the refused duties would create a real danger of injury or serious impairment of health?

OSHA does not interpret this provision literally. If a seaman requests that the employer correct a condition which he or she reasonably believes could result in serious injury or serious impairment of health, that request is protected activity even if the seaman has not refused to work.

4. Notified or attempted to notify the vessel owner or the USCG of a work-related injury or illness of a seaman. In addition to protecting current seamen, SPA prohibits refusing to hire applicants for seaman positions because they have reported work-related injuries or illnesses to previous employers or to employers to whom they have applied for work.
5. Cooperated with a safety investigation by the USCG or the NTSB.
 - a. When was cooperation given?
 - b. With whom (agency and individual official) did complainant cooperate?
6. Furnished information to any public official relating to any marine casualty where there is death, injury, or damage to property occurring in connection with vessel transportation.
 - a. When was the information provided?
 - b. In what manner was the information provided?
 - c. To which official did the complainant provide the information?
 - d. In what context was the information provided? (Boarding, inspection, investigation...)
7. Accurately reported hours of duty under Part A of Subtitle II of Title 46 of the Code of Federal Regulations.
 - a. When did the complainant report hours of duty?
 - b. To whom did the complainant report hours of duty?

C. Adverse Actions

A person may be found to have violated SPA if the person took an adverse action against the seaman for engaging in protected activity. Such adverse actions may include:

- Firing or laying off
- Blacklisting
- Demoting
- Denying overtime or promotion
- Disciplining
- Denying benefits
- Failure to hire or rehire

- Intimidation
- Making threats, including threats against the seaman’s credentials
- Reassignment affecting promotion or imposing more arduous duty
- Reducing pay or hours
- Shunning or isolation
- Constructive discharge

Please note that this list is by no means exhaustive, and is merely illustrative of a variety of actions taken against employees for engaging in protected activity.

II. Procedures for Handling SPA Complaints

Procedures for handling SPA complaints are contained in [29 C.F.R. Part 1986](#). Below is a summary of the procedural provisions that are most relevant to the OSHA investigation. More information is available in the “[What to expect during an OSHA Whistleblower Investigation](#)” section of OSHA’s website, the [OSHA Whistleblower Investigations Manual](#), and the [Filing Whistleblower Complaints under the Seaman’s Protection Act](#) fact sheet.

A. Complaint

Who may file: A seaman who believes that he or she has been retaliated against in violation of SPA may file a complaint with OSHA. The seaman may also have a representative file on the seaman’s behalf.

Form: The complaint need not be in any particular form. Oral or written complaints are acceptable. If the complainant cannot make a complaint in English, OSHA will accept a complaint in any language.

Timing: The complaint must be filed within 180 days of when the alleged adverse action was communicated to the seaman. Equitable tolling principles may extend the time for filing in limited circumstances, consistent with the guidance in OSHA’s Whistleblower Investigations Manual.

Distribution of complaints and findings to partner agencies: Complaints and findings in SPA cases must be sent to the USCG.

B. Investigation

Upon receiving a complaint, OSHA will evaluate the complaint to determine if the complaint contains a *prima facie* allegation of retaliation. In other words, the complaint, supplemented as appropriate with interviews of the complainant, should allege that:

1. The seaman engaged in SPA protected activity;
2. The respondent knew or suspected that the seaman engaged in SPA protected activity;

3. The seaman suffered an adverse action;² and
4. The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

If the complaint meets these requirements, OSHA will ask for a position statement from the respondent and proceed with the investigation. If it does not meet these requirements, and the complainant does not agree to administrative closure of the complaint, OSHA will dismiss the complaint with notice to the complainant and the respondent of the right to request a hearing before a Department of Labor administrative law judge (ALJ). The complainant will then have the opportunity to contest the dismissal by furnishing existing or additional evidence.

As SPA is a “contributing factor” statute, OSHA will find that retaliation occurred if it determines that there is reasonable cause to believe that SPA protected activity was a contributing factor in the decision to take adverse action against the complainant and the respondent has not shown by clear and convincing evidence that it would have taken the same action in the absence of the protected activity. A “contributing factor” is a factor which, alone or with other factors, in any way affects the outcome of a decision.

If OSHA finds reasonable cause to believe that unlawful retaliation occurred, it will issue findings and a preliminary order stating the relief to be provided. The relief may include an order requiring respondent to provide reinstatement, back pay, compensatory damages, punitive damages not exceeding \$250,000, other remedies for the unlawful retaliation (such as a neutral reference), and reasonable attorney fees and costs.

If OSHA does not find reasonable cause to believe that retaliation occurred, it will issue findings dismissing the complaint.

If the complainant and respondent agree to settle the case during the investigation, they must submit the settlement agreement for OSHA’s review and approval.

C. Administrative and Judicial Review

Either the complainant or the respondent may object to OSHA’s findings within 30 days and request a hearing before an ALJ. Filing objections will stay OSHA’s order for all relief except reinstatement, which is *not* automatically stayed. If no objections are filed, OSHA’s findings become the final order of the Secretary of Labor not subject to review.

The ALJ proceeding is a *de novo*, adversarial proceeding in which both the complainant and the respondent have the opportunity to seek documents and information from each other in discovery and to introduce evidence and testimony into the hearing record. OSHA does not typically participate in the ALJ proceeding, unless it has issued merit findings. In the latter situation, the Regional Solicitor’s Office (RSOL) ordinarily represents OSHA. Documents and other information submitted to OSHA during the investigation do not automatically become part of the record in the ALJ proceeding. However, both the complainant and the respondent may introduce evidence that they obtained or used during OSHA’s investigation into the ALJ proceeding. The

² An adverse action is an action that might dissuade a reasonable seaman from engaging in SPA-protected activity. Examples of adverse actions include (but are not limited to) firing, demoting, denying overtime or a promotion, or disciplining the seaman.

ALJ may hold a hearing or dismiss the case without a hearing if appropriate. OSHA, the complainant, or the respondent may appeal the ALJ's decision in the case to the Department of Labor's Administrative Review Board (ARB), which may either accept or reject the case for review. A complainant or a respondent may obtain review of an ARB decision or an ALJ decision which the ARB has declined to review by the appropriate U.S. Court of Appeals.

D. Kick-out Provision

SPA permits a complainant to bring a *de novo* SPA action in federal district court if the Department of Labor has not reached a final decision on the complainant's SPA claim within 210 days of the filing of the complaint with OSHA, and the delay is not due to the bad faith of the complainant.

Attachment 1 - Resources/Links

SPA Fact Sheet:

- <https://www.osha.gov/Publications/OSHA3762.pdf>

USCG Marine Safety Manual:

- <https://media.defense.gov/2017/Mar/29/2001723818/-1/-1/0/THE%20MARINE%20SAFETY%20MANUAL,%20VOLUME%20III,%20MARINE%20INDUSTRY%20PERSONNEL,%20COMDTINST%20M16000.8B>
- https://media.defense.gov/2017/Mar/29/2001723817/-1/-1/0/CIM_16000_7B.PDF

Marine Casualties: Reporting and Investigation Obligations/Drug and Alcohol Testing

- <http://davismarine.com/articles/Marine%20Casualty%20Reporting%20&%20Testing%20Obligations.pdf>

Marine Casualty Reporting Procedures Guide:

- <https://homeport.uscg.mil/Lists/Content/DispForm.aspx?ID=2019&Source=/Lists/Content/DispForm.aspx?ID=2019>
- https://homeport.uscg.mil/Lists/Content/Attachments/2019/NVIC%2001-15_Marine_Casualty_Reporting.pdf

Vessel Locator:

- <https://www.vesselfinder.com/>

USCG Navigation Center:

- <http://www.navcen.uscg.gov/>

Merchant Mariner Credential Verification:

- <https://homeport.uscg.mil/missions/merchant-mariners/merchant-mariner-credential-verification>

Merchant Mariner Licenses/Documentation/Regs/Policy:

- <https://www.uscg.mil/nmc/>

Navigable Waters List:

- <http://www.lrn.usace.army.mil/Missions/Regulatory/Navigable-Waters-List/>

Policy Letter Hours of Rest:

- https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/CG-5PC/CG-CVC/Policy%20Letters/2000/CG-MOC_pol00-04_rev1.pdf
- <https://www.law.cornell.edu/cfr/text/46/15.1111>

Attachment 2 – Nautical Terms

Definition of Seaman and Types of Seaman:

- **Seaman:** Any individual engaged or employed in any capacity on board a U.S.-flag vessel or any vessel owned by a citizen of the United States, as defined in 29 CFR 1986.101(d), except members of the Armed Forces. The term includes an individual contractor performing the work described above, an individual formerly performing such work or an applicant for such work.
- **Captain:** Also sometimes called the “Master.” However, a Master license is generally regarded as the type of USCG license held by a Captain. A Captain is ultimately responsible for the vessel and her crew. The Captain is therefore responsible for the safe and economical operation of the vessel. There are a number of possible combinations of tonnage and endorsements. These are the USCG license qualifications generally held: 100 Ton Master, 200 Ton Master, 500 Ton Master, 1600 Ton Master.
- **First (1st) Mate:** Also sometimes call the Chief Officer. The 1st Mate reports directly to the Captain. Depending on the vessel, the Mate handles or oversees vessel navigation, vessel docking operations, ship assist operations, ship and barge towing operations, deck crew operations, and command of the vessel where directed by the Master. The USCG qualifications generally sought for Mate positions include: 100 Ton Mate, 200 Ton Mate, 500 Ton Mate, 1600 Ton Mate. Other requirements may include towing endorsements, ocean endorsements, GMDSS and STCW 95.
- **Second Officer:** The Second Officer on a ship is next in command. There will also usually be a Third Officer and sometimes there are even more, depending on how big the ship is. These officers take care of the safety of the crew and also have responsibilities like navigating, radio maintenance, cargo control, and equipment maintenance and repair.
- **Able Bodied Seaman, or Able Seaman, or AB:** Carries out job assignments given out by the Captain or Mate. This includes ship assist and barge towing operations. This position may require the Superyacht Crew Training Certification (STCW95) Academy Course. All yacht crews are required to have the STCW 95 certification.
- **Deckhand:** The Deckhand carries out job assignments given out by the Captain or Mate. This includes ship assist and barge towing operations, which may require STCW 95 certification.
- **Chief Engineer, or Chief:** Is in charge of the operation and maintenance of a vessel’s main engines, loading of fuel and cargo, auxiliary machinery, and engineering crew. In addition to the main engineers, the Chief Engineer is responsible for diesel polishing systems, fuel service and transfer systems, generator sets, electrical distribution systems, hydraulic systems, compressed air systems, sanitation systems, service water, heating and air conditioning plant, watermarking unit, and other auxiliaries. However, these are the USCG license qualifications generally held: Chief Engineer Limited, Chief Engineer Unlimited.
- **Designated Duty Engineer:** The Designated Duty Engineer reports to the Chief and assists in the operation of engines, auxiliaries, and other ship systems.
- **Tankerman:** Carries out cargo loading and discharging operations, spill response, and duties associated with tank entry.

- **Qualified Member of the Engine Department or OMED:** Carries out tasks assigned by the Chief or DDE in the engine department.
- **Cook, Chief Cook:** Prepares food for the crew and arranges for purchasing of ship's food stores.
- **Steward or Chief Steward:** Depending on the vessel, the Cook may be identified as Steward.
- **Trainee:** Entry- level position. The next position is Deckhand.

Other Common Terms:

- **Aft:** Near or toward the stern (back) of the vessel.
- **Astern:** Behind, or a backward direction in the line of a vessel's fore and aft line. When a vessel moves backwards it is said to move astern; opposite to ahead.
- **Barge:** Flat-bottomed boat for carrying cargo on protected waterways, usually without engines or crew accommodations. On inland river systems, barges can be lashed together and either pushed or pulled by tugs and handle cargo of 60,000 tons or more. Small barges for carrying cargo between ship and shore are known as lighters.
- **Bow Thruster:** A propeller at the lower sea-covered part of the bow of the ship, which turns at right angles to the fore-and-aft line and thus provides transverse thrust as a maneuvering aid.
- **Bulkhead:** A name given to any vertical partition which separates different compartments or spaces from one another.
- **Clean Ship:** Refers to tankers which have their cargo tanks free of traces of dark persistent oils, which remain after carrying crudes and heavy fuel oils.
- **Complement:** The number of officers and crew employed upon a vessel for its safe navigation and operation.
- **Crew:** The personnel engaged on board ship, excluding the master and officers and the passengers on passenger ships.
- **Crew List:** List prepared by the master of a ship showing the full names, nationality, passport or discharge book number, rank and age of every officer and crew member engaged on board that ship; it is one of the essential ship's documents presented to the customs and immigration authorities on arrival at a new port.
- **Deck Log or Captain's Log:** A full nautical record of a ship's voyage, written up at the end of each watch by the deck officer on watch. The principal entries are: courses steered; distance run; compass variations, sea and weather conditions; ship's position, principal headlands passed; names of lookouts, and any unusual happenings such as fire, collision, and the like.
- **Draft:** The depth of a ship in the water. The vertical distance between the waterline and the keel is expressed in meters, except in the U.S. where it is in feet.
- **Dry Dock:** An enclosed basin into which a ship is taken for underwater cleaning and repairing. It is fitted with watertight entrance gates which when closed permit the dock to be pumped dry. Sometimes it has two or more compartments separated by watertight doors. Dry docks are also referred to as graving docks.
- **Forecastle:** The raised part of the forward end of a ship's hull, taking its name from the days of sailing ships where the forecastle was effectively a 'castle' on the ship's prow used for defending the ship. On some ships this area may be used for crew accommodation or quarters but on most new ships the space is used for the storage of paints, tackle, deck and engine stores, or tarpaulins.

- **Gangway:** A narrow portable platform used as a passage by persons entering or leaving a vessel moored alongside a pier or quay.
- **Harbor Master or Port Captain:** A person usually having the experience of a certified master mariner and having a good knowledge of the characteristics of the port and its whole area. He or she administers the entire shipping movements that take place in and within reach of the port.
- **Helm:** A tiller or a wheel generally installed on the bridge or wheelhouse of a ship to turn the rudder during maneuvering and navigation. It is in fact the steering wheel of the ship.
- **Hold:** A general name for the large compartments below the main deck designated for stowage of general cargo.
- **Hull:** Shell or body of a ship - applies to the side and bottom of a ship.
- **Inland Waters:** Term referring to lakes, streams, rivers, canals, waterways, inlets, bays as examples.
- **International Waterways:** Consists of international straits, inland and interoceanic canals, and rivers where they separate the territories of two or more nations. Both merchant ships and warships have the right of free and unrestricted navigation through these waterways.
- **Knot:** Unit of speed in navigation, which is the rate of nautical miles (1,852 meters or 6,080 feet) per hour, i.e. 1.852 km/h.
- **Port Side:** The left hand side of a ship facing the front or forward end. The port side of a ship during darkness is indicated by a red light.
- **Starboard:** The right-hand side of a ship when facing the front or forward end. The starboard side of a ship during darkness is indicated by a green light.
- **Stern:** The bow or rear of the ship; an upright post or bar of the bow of a vessel.
- **Vessel:** Means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.
- **Vessel Owner:** Includes all of the agents of the owner, including the vessel's master.

Further Reading

- <http://www.photographers1.com/Sailing/NauticalTerms&Nomenclature.html>
- <http://www.usmm.org/terms.html>
- <http://ports.co.za/maritime-terms.php>
- <https://www.usace.army.mil>

Attachment 3 – Reportable Marine Casualty

Definition

46 CFR 4.03-1: Marine casualty or accident.

Marine casualty or accident means--

- (a) Any casualty or accident involving any vessel other than a public vessel that--
 - (1) Occurs upon the navigable waters of the United States, its territories or possessions;
 - (2) Involves any United States vessel wherever such casualty or accident occurs; or
 - (3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.
- (b) The term “marine casualty or accident” applies to events caused by or involving a vessel and includes, but is not limited to, the following:
 - (1) Any fall overboard, injury, or loss of life of any person.
 - (2) Any occurrence involving a vessel that results in -
 - (i) Grounding;
 - (ii) Stranding;
 - (iii) Foundering;
 - (iv) Flooding;
 - (v) Collision;
 - (vi) Allision;³
 - (vii) Explosion;
 - (viii) Fire;
 - (ix) Reduction or loss of a vessel's electrical power, propulsion, or steering capabilities;
 - (x) Failures or occurrences, regardless of cause, which impair any aspect of a vessel's operation, components, or cargo;
 - (xi) Any other circumstance that might affect or impair a vessel's seaworthiness, efficiency, or fitness for service or route; or
 - (xii) Any incident involving significant harm to the environment.
 - (3) Any occurrences of injury or loss of life to any person while diving from a vessel and using underwater breathing apparatus.
 - (4) Any incident described in Sec. 4.05-1(a).

³ The action of dashing against or striking upon
Investigator’s Desk Aid to the Seaman’s Protection Act (SPA) Whistleblower Protection Provision
OSHA Whistleblower Protection Program
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Attachment 4: Optional Worksheet: Analyzing SPA Whistleblower Complaints

In order to issue merit findings, answers 1 to 6 must be "yes" and answer 7 must be "no."

	Yes	No
Timeliness		
1. Was the complaint filed within 180 days of the alleged adverse action (or tolling applies)?	<input type="checkbox"/>	<input type="checkbox"/>
Coverage – (See Desk Aid pp. 2-4 and Attachment 1.)		
2. Is the complainant a seaman, i.e., an individual engaged or employed in any capacity aboard a U.S.-flag vessel, which by definition is owned by U.S. citizens, or any other vessel owned by a citizen of the United States, as defined in 29 CFR 1986.101(d)?	<input type="checkbox"/>	<input type="checkbox"/>
Protected Activity (See Desk Aid pp. 4-6 and Attachment 2.)		
3. Has complainant (pick at least one):		
a. Provided (or was about to provide) information relating to a violation of maritime safety laws or regulations to the USCG or other appropriate federal agency or department;		
b. Testified in a proceeding brought to enforce a maritime safety law or regulation (this includes internal complaints);		
c. Refused to perform duties because of a reasonable apprehension of serious injury to the seaman, other seamen, or the public, if the seaman has first requested that the employer correct the dangerous condition;	<input type="checkbox"/>	<input type="checkbox"/>
d. Notified or attempted to notify the vessel owner or the USCG of a work-related injury or illness of a seaman;		
e. Cooperated with a safety investigation by the USCG or the NTSB;		
f. Furnished information to any public official relating to any marine casualty where there is death, injury, or damage to property; occurring in connection with vessel transportation; or		
g. Accurately reported hours of duty under Part A of Subtitle II of Title 46 of the United States Code?		
Employer Knowledge		
4. Did respondent know or suspect that complainant engaged in the protected activity? (Remember that knowledge may be imputed to respondent using a cat's paw theory or the small plant doctrine if warranted by the evidence.)	<input type="checkbox"/>	<input type="checkbox"/>
Adverse Action		
5. Did respondent discharge or take other adverse action against the employee? (Adverse action is any action that could dissuade a reasonable seaman from engaging in SPA protected activity. Common examples include firing, demoting, or disciplining the seaman.)	<input type="checkbox"/>	<input type="checkbox"/>
Nexus (Contributing Factor)		
6. Was complainant's SPA protected activity a contributing factor in respondent's decision to take adverse action against complainant? Evidence that protected activity contributed to an adverse action includes, but is not limited to:		
• Close timing (temporal proximity) between the protected activity or an agency's response to it and the adverse action.		
• Evidence of hostility towards the protected activity.		
• Disparate treatment of complainant as compared to other employees following the protected activity.	<input type="checkbox"/>	<input type="checkbox"/>
• Changes in respondent's treatment of complainant after the protected activity.		
• Indicators that respondent's stated reasons for the adverse action are pretext.		
Affirmative Defense		
7. Is there clear and convincing evidence that respondent would have taken the same action against complainant absent the protected activity?	<input type="checkbox"/> No	<input type="checkbox"/> Yes