

# Harbormaster Liability; *Reducing Risk*

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Module V

Harbormaster Reference Series

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# **Module V**

## **HARBORMASTER LIABILITY: REDUCING RISK**

**Harbormaster Reference Series**

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## PREFACE

Around the country, coastal municipalities are under increasing pressure to effectively manage shoreline resources and a wide range of water-related activities. The ability to accomplish this improves with the presence of a qualified harbormaster. He or she is primarily responsible for ensuring that information and assistance is provided to all waterway users, that state and local rules and regulations are properly enforced, and that the harbor is safe for multiple uses. These public servants often find themselves at the center of complex management decisions, involving difficult issues and active special interest groups.

In order to assist harbormasters in meeting their expanding roles, the University of Rhode Island's Coastal Resources Center and Rhode Island **Sea Grant**, in conjunction with the Rhode Island Harbormaster Association, developed an educational program specifically for municipal harbormasters. This program consists of forty hours of basic training in a wide array of topics including first aid, law enforcement, boating safety, seamanship, mooring management, harbor planning, environmental awareness and liability mitigation. Six modules of reference material were developed, one for each topic. Combined, they create a comprehensive reference guide for harbormasters. The complete reference series consists of six modules, which are intended to be used as reference material to assist harbormasters in carrying out their official responsibilities. It can be used to provide answers to questions from the users of local waters and waterfronts; it can help harbormasters make better informed management decisions for the activities within their jurisdiction; and it can give harbormasters a better understanding of their role in implementing coastal management policies.

A brief summary of each module follows.

### MODULE I

#### **Public Rights to Coastal Waters: Applying the Public Trust Doctrine**

Part of the expanding role of today's harbormaster is to balance private use of shoreline areas with public demands for greater coastal access. **Private** control or riparian ownership takes many forms ranging from filling submerged land to the placement of moorings. Public interest extends from getting to the shoreline to the harvesting of the fishery resources. This module is the Executive Summary of a national report on the Public Trust Doctrine by David Slade et al. It provides an overview of the legal status of tidelands held in trust by each state for public use and is intended to provide guidance to coastal managers on the application of the Public Trust Doctrine to trust lands, waters and living resources.

### MODULE II

#### **Federal Regulations: Coastal Structures, Environmental Protection and Boating Safety**

Harbormasters are required to perform work in the coastal zone and on coastal waters which are subject to a wide assortment of federal rules, regulations and policies. Federal regulations which are most pertinent for harbormasters are **presented** in this module. The first section presents the federal guidelines for the placement of objects or structures in navigable waters as regulated by the Army Corps of Engineers. The second section presents elements of the Federal Code of Regulations, which are administered by the Coast Guard, pertaining to boating safety and water quality impacted by boating.

### MODULE III

#### **Rhode Island State Regulations: Environmental Protection and Boating Safety**

Harbormasters are the primary front line enforcement people for water dependent uses. Although the authority to enforce conservation laws varies from state to state, harbormasters, at the very least, have

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the ability to monitor the taking of shell and finfish and report any illegal activity to the proper authorities. In addition to protecting the aquatic resources of a state, harbor masters are responsible for enforcing boating safety regulations. The need for active on-the-water patrols and enforcement of boating rules and regulations has increased proportionally to the number of boaters operating on local rivers, harbors, and embayments. This module presents those Rhode Island state laws governing fisheries, water quality and boating safety. It is applicable only to Rhode Island and is intended to be substituted with appropriate laws for other states.

#### **MODULE IV**

##### **Municipal Mooring Area Management**

Pressures to use surface waters for moorings and docks has increased as the boating population swells. In order to meet this demand, harbor masters are looking for safe techniques for increasing mooring density. The first section of this module presents suggestions for efficient management of harbor surface areas.

The second section, through diagrams, reviews the standard mooring assembly for a single point mooring as used throughout the United States. Proper mooring sets, winterization and inspection processes are also discussed.

#### **MODULE V**

##### **Harbormaster Liability: Reducing Risk**

Each time a harbor master goes out on patrol or makes a mooring placement decision, the municipality for which he or she works incurs some liability. This module provides the harbor master and the city or town with basic information on how to limit liability by reducing risks which occur during routine harbor patrols including medical response, mooring management, towing, hazard mitigation.

#### **MODULE VI**

##### **Multi-use Harbor Management: A Case Study for Local Harbor Masters**

Local harbor management has become a key element in state coastal planning, allowing home-rule decision making and management. In many instances the harbor master is quickly becoming the person responsible for local coastal management. This module presents a case study which explains the expanding role of harbor masters and examples of effective interaction with local decision makers and harbor users.

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Mark Amaral and Virginia Lee  
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## INTRODUCTION

Liability is a growing concern among harbor masters and among the officials who employ them. The fear that a harbor master can be held liable has grown with the increase of his/her responsibilities. By virtue of their role on-the-water, a harbor master often finds himself/herself in situations where, if not handled correctly, he/she can be sued by those who he/she attempts to assist. Examples range from medical emergencies, where the harbor master performs first aid or CPR to situations such as towing a disabled vessel. All emergencies to which a harbor master responds must be handled in a diligent and reasonable manner to minimize the risk of being held liable for damages which may occur as a result of his/her actions.

Although harbor masters have always been an integral part of local waterfronts, there is surprisingly little case law on the issue of harbor master liability. Therefore, the information in this Module is based on state and federal regulations and existing policies which have never been directly applied by the courts in a decision involving harbor master liability. Lack of clear legal precedence has made it difficult to paint a clear picture of what a harbor master can do to minimize liability. The situation becomes even more complicated when one realizes that each city and town is slightly different in its assignment of harbor master duties and assessment of risk. Based on those conditions, Module V provides only a basic foundation on which risk management decisions can be made.

Five components of the harbor master's job are specifically reviewed: towing, mooring regulations, emergency response, hazard mitigation, and law enforcement. Each component is discussed in terms of how a harbor master and the city or town for which he/she works can minimize the possibility of being held liable.

Developing a program which clearly outlines the limits of the harbor master's responsibilities, in the context of minimizing the risk of liability, and having the risk management program certified by the local legal department, will provide some protection if the city or town is forced to fight a liability case in court. It also provides the harbor master with a pre-determined operating plan, which he/she can use to guide decisions during emergency situations. To assist towns and cities in developing a specific harbor master risk management program, a list of useful reference sources, by topic, is included at the end of this module. Creating and implementing a risk management program is the most important step to minimizing the possibility of being held liable.

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## HARBORMASTER LIABILITY

Harbormasters, like other civil servants, can be held liable for their actions while operating in their official capacity. In their daily activities they often encounter on-the-water emergencies for medical care, they render towing assistance, and they act as law enforcement officers. In their managerial capacity, harbormasters uphold mooring standards, enforce mooring regulations and direct hazard mitigation activities. Therefore, in order to fully address harbormaster liability, one must review these five activities: towing, mooring regulation, emergency response, hazard mitigation, and law enforcement.

### Towing

Each time a harbormaster is on patrol, there is the chance that he/she may come across a vessel in need of assistance. When this occurs the harbormaster must evaluate the situation and decide on a reasonable course of action.

According to the U.S. Coast Guard, assistance cases fall into two broad categories: distress and non-distress. Distress is defined as imminent danger requiring immediate response and assistance (U.S. Coast Guard, 1990a). If the situation is life-threatening, the historic law of the sea obliges the harbormaster, or any boater, to render assistance.

In cases of distress, the Coast Guard should be notified immediately of the situation and of the intent of the harbormaster. The harbormaster plays a key role in the hierarchy of emergency response as he/she is often the first to arrive on-scene. If the Coast Guard deems it necessary, it may direct other private/public resources, in addition to its own, to respond. If the Coast Guard arrives and finds a stable situation with the **first** responders capable of assisting, it may withdraw its response equipment. However, if the Coast Guard finds the situation unstable, and if the first responders are unable to provide the necessary assistance, it will intervene immediately.

When a harbormaster responds to a distress situation, and provides some form of emergency aid, he/she is afforded protection from liability through Title 46, Section 2303 of the US Code which states:

“Any **person...who** gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty without objection of any person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance for any act or omission in providing or arranging salvage, tonnage, medical treatment, or other assistance where the assisting person acts as an ordinary, reasonable prudent man would have acted under the same or similar circumstances.”

The key phrase here is “act as an ordinary, reasonable prudent...” which dictates that the harbormaster must act in good faith and in a reasonable, seamanlike manner. Any variance from this standard may increase liability.

In cases of non-distress (situations which threaten only property with no risk to life), the harbormaster is not obliged to render assistance. Most of these instances involve a vessel experiencing mechanical problems and needing only a tow. A towing agreement is negotiated when such a

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vessel, although not in danger, requires outside power. The harbormaster has responsibility for the safety of the persons on board, and should assist them as dictated by the situation, but can be held liable for damage caused by negligent towing.

This potential liability, and the fact that alternatives exist, should dissuade the harbormaster from towing. Other resources that may be able to offer assistance can be contacted. The Coast Guard will issue a Marine Assistance Request Broadcast (MARB) which solicits voluntary response of anyone who can assist the disabled mariner (including Coast Guard Auxiliary Units and good Samaritans) (U.S. Coast Guard, 1988a). A harbormaster may also contact a friend or family member of the boater for assistance.

-Another viable form of assistance may be sought through professional towing companies that work in the area. The harbormaster can provide the disabled boater with information on how to contact these companies, and their current rates. In most instances these firms will contact the boater directly in response to the MARB. Once the boater decides upon a service and a verbal agreement is made, the harbormaster cannot interfere with that contract.

In cases where the harbormaster is not directly participating in the towing operation, some consideration must be given to ensuring the safety and minimizing the anxiety of the people on the disabled vessel until help arrives. The harbormaster should be aware that commercial firms may not always be able to respond immediately and he/she may decide to stay with the vessel until assistance arrives. This decision should be based on certain criteria such as expected weather conditions, time of day or night, proximity to high traffic areas, and the presence of young children.

In actuality, however, harbormasters tow vessels when it appears to be morally and ethically correct or when there are simply no options available. Harbormasters must ensure that:

- (1) his/her employer is completely aware of and consents to the harbormaster's towing;
- (2) the employer has proper liability insurance to cover any damage which may occur during towing;
- (3) all towing is done in a reasonable, seamanlike manner (U. S. Coast Guard, 1983a). In order for a harbormaster to be held liable, it must be proven that there was negligence involved. Some formal and certified training in towing procedures, although not required by law, is useful; and
- (4) if the harbormaster has not been trained in towing, and is not insured, towing should be considered a last option.

It is clear that "good faith" actions of harbormasters are protected, to some degree, by the "Federal Boating Safety Act of 1971," but to what extent remains uncertain. Unfortunately, there is no statutory framework from which to formulate guidelines. Issues such as this are decided by customary law, which means each case is reviewed individually by a judge and jury. Because there are so few cases involving harbormaster liability, judges and jurors lack prior judicial decisions which set precedents. It is therefore difficult to predict the extent to which harbormasters will be protected by the state. In order to limit the potential of being found liable, harbormasters must realize the extent

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of their liability and must make rational, professional decisions which can be supported as reasonable actions before a court of law.

### **Mooring Liability**

The issue of mooring regulation has been the impetus for the creation of many harbor management plans. In almost all cases the regulations include mooring assignments, mooring field arrangement, mooring standards, mooring placement, and inspection of mooring tackle. When harbormasters are charged with overseeing these regulations, the subject of harbormaster liability must be considered.

The major concern focuses on the harbormaster's involvement with setting mooring standards, placing ground tackle and conducting inspections. In order for a harbormaster to avoid or minimize the amount of liability, he/she must exercise reasonable care. This includes:

- (1) setting mooring standards which are appropriate for the area. The harbormaster must be able to justify the standards which have been set. The maximum load the mooring gear is expected to withstand must be identified and documented (Taylor, 1992);
- (2) providing mooring occupants with information on the stress points of moorings and offering advice on dealing with extreme weather conditions; and
- (3) ensuring that all mooring gear under town control is routinely inspected, and that proper records of these inspections are kept. The question of liability continually arises if the town conducts the inspections itself. Liability results not because the town inspects the mooring, but because it does so improperly or fails to correct a situation in which the mooring does not meet specifications.

Some towns have opted to **place** the burden of mooring inspection on the boaters. This is generally a financial decision. However, by doing so, the town relinquishes direct control of the inspection process, and may not be as effective in ensuring that all mooring tackle conforms to the regulations. The harbormaster can choose instead to conduct the inspection and assure that each mooring has in fact been inspected.

- (4) providing adequate swing room for every vessel, under normal conditions so as not to interfere with neighboring vessels. Ideally, each vessel's circle of influence will not interfere with that of other vessels in the immediate area. However, this may not be the most efficient allocation of space. As the manager of a limited resource, the harbormaster must carefully consider options in order to minimize the threat of damage to moored vessels. These options may include mooring vessels of the same profile in the same area, and using space restricted methods such as bow/stern or three point systems to shorten swing area (Amaral, 1992b; Breda and Gjerde, 1992; Merrill, 1992).
- (5) allowing easy transit of harbor areas. This usually means the establishment of fairways through mooring fields to provide for unobstructed movement of traffic. Most large harbors have channels that are maintained by the federal government. There may be some conflict as mooring fields are expanded into the federal channels (Amaral, 1992a). A harbormaster responsible for those moorings may be liable for any mishaps. The

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harbormaster may decide that a federal channel is unnecessary and that a town regulated fairway would be more effective. The town then petitions the Coast Guard to remove the federal channel markers and replaces them with a town system. This places increased responsibility on the town to maintain the navigational aids and ensure that they are on station. If the navigation aids stray, the town may be liable for damage to vessels that follow the incorrect fairway into danger.

- (6) identifying and correcting situations which may cause damage to a moored vessel. If a harbormaster learns that two boats are hitting one another while on town managed moorings, the situation needs to be rectified quickly. The harbormaster must first stop the vessels from hitting. This can be achieved by **removing one** of the vessels from its mooring. The harbormaster then decides where to move the vessel. Is the alternate mooring of adequate size? Has it been inspected? Where is the owner and when will the owner return? Are the town guest moorings available and of adequate size?

Once the initial threat of damage has passed, the harbormaster should decide on a long term solution. This may include shortening the scope, moving the mooring weight or relocating one of the vessels. The final decision must be carefully made. The harbormaster must be sure that the original situation is not duplicated elsewhere and that the movement of the mooring block does not affect additional boats which were not initially involved.

If the town acts as a commercial mooring operator, owning and then renting the mooring gear, its liability is greatly increased. The town can be held responsible for the safety of vessels stored on its moorings, including providing security patrols, preventing chafing during storms and assuring the general well-being of the vessel. Normally, a town acts as surface manager and the physical mooring gear is owned by the boater. This greatly reduces the potential for law suits against the town, which is not responsible for the gear itself, but for the proper allocation of space and general management of the harbor area.

## **Emergency Response:**

### Medical Aid

The potential for the harbormaster to be the first to respond to an on-the-water medical emergency is great. Harbormasters can expect to be challenged by a wide variety of on-the-water medical emergencies ranging from boating accidents and scuba-related injuries to emergencies on or along the shore such as fires and dockside injuries. Being able to adequately respond to emergency situations depends on having the proper equipment and training. At a minimum, harbormasters should have First-Aid and CPR training. Emergency medical technician and other specialized training may also be appropriate. For instance, if the harbormaster patrols an area of high recreational diving use, then he/she should have some training in scuba-related accidents. A medical emergency equipment package, containing items for performing first aid, should be kept **onboard**. Specialized equipment, such as oxygen bottles to administer to scuba accidents casualties, may also be necessary (Platt and Castro, 1991). Having the proper equipment and training is key to reducing liability.

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The first action to take when arriving on the scene of a medical emergency is the primary survey (U. S. Coast Guard, 1986). Immediately after, those who can provide advanced care, usually the fire/EMT department, need to be contacted and briefed on the situation (American National Red Cross, 1988). During the time before their arrival on scene, the harbormaster should provide first aid to the level that his/her training allows. The "Good Samaritan" laws exist to protect those who administer emergency medical assistance. The American Red Cross States:

"Legally, a victim must give consent to an offer to help before a person trained in first aid begins to help him or her. The law assumes that an unconscious person would give consent. If a victim is conscious, ask permission before helping him or her.

You should also make a reasonable attempt to get consent from the parent or guardian of a victim who is a minor or who is mentally or emotionally disturbed. If a parent or guardian is not available, you may give first aid without consent. Consent is also implied for a person who is unconscious, badly injured, or so ill that he or she cannot respond.

State "Good Samaritan" laws give legal protection to rescuers who act in good faith and are not guilty of gross negligence or willful misconduct. The type of rescuer covered and the scope of protection vary from state to state. Know your state's laws."

When the local Fire/EMT department arrives on-scene they will generally assume the responsibility of providing the necessary medical assistance. Their training and equipment is designed specifically for this task and often far exceeds the training of the harbormaster.

Harbormasters must be cognizant that the accident may evolve into a criminal investigation. In addition to providing medical assistance, the harbormaster should, if possible, survey the surrounding area and note: names of witnesses; weather, tide and traffic conditions; presence of alcohol or other drugs; engine and helm settings; and damage to the boat(s) or other structures. He or she should ensure that the equipment and vessels involved in the accident are not tampered with (Kirstein and Loeser, 1992). If responding to a scuba injury, the harbormaster should be sure to: obtain pertinent information about the dive from the victim or dive buddy; make sure the dive buddy stays with the victim; and transfer all dive equipment with the patient (Plan and Castro, 1991).

The criminal investigation will usually be conducted by the State Boating Safety division or by the local police department. Like the fire/EMT departments who have advanced medical training, the criminal investigators have specialized skills to complete a proper and thorough investigation and, therefore, should be contacted immediately after an accident. During the investigation the harbormaster should be able to provide the lead agency with valuable information such as knowledge about the local area and notes taken at the accident scene.

### Fire Fighting

Fighting fires on land or on sea is a dangerous proposition even for those with extensive training. Harbormasters, when arriving on the scene of a fire, should first contact the local fire department and if applicable other state and federal resources such as the Coast Guard. The first priority is to save the lives of those **onboard** the burning vessel. Once the people are safe, the harbormaster may consider fighting the fire. Before this is attempted the harbormaster needs to understand the limits of

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his/her ability and realize that it may be wise to wait until additional help arrives. If the harbormaster does decide to fight the fire then he/she should have the proper equipment and training. For instance, different extinguishing agents are used for different classes of fire and if improperly matched, the extinguishing agent will have a limited affect on the fire (U.S. Coast Guard, 1983b). Any harbormaster who expects to be in a position where he/she will have to fight a fire should have the necessary fire fighting training and proper equipment to minimize the possibility of being found negligent.

## Hazard Mitigation

### Prior to a storm event

The harbormaster has the responsibility of ensuring that the proper steps are taken along the waterfront to safeguard the area.

There should be a hurricane preparedness plan which specifies the responsibilities of the town and each private boating facility (U.S. Federal Emergency Management Agency, 1992). This plan should incorporate individual private facility plans so the harbormaster knows what precautions will be taken, what resources are available and what assistance may be needed.

The harbormaster must be aware of state laws which grant the authority necessary to incorporate these potential responses into a local plan. A local ordinance is required to execute the plan, it should define the responsibilities of the boaters, marina operators, and waterfront owners.

During the preparation for the storm, the harbormaster may consider closing the harbor to additional traffic, storm-proofing vessels if owners are unable to, and instructing owners to leave their yachts (Office of Emergency Management, 1992). Each of these actions is designed to protect property and must be carefully weighed against the individual rights of the vessel owner.

### During a storm event

There is the likelihood that a harbormaster will have to respond to a distress call from a vessel owner who initially decided to stay on his/her vessel and subsequently changed his/her mind. This scenario is common and dangerous. Whenever possible, the primary response should be by the Coast Guard, if the delay will not threaten the life of the boat owner. When immediate action is necessary, a response crew should be sent. The composition and responsibilities of this crew should have been established well before the storm event. The town manager, emergency response personnel, and the legal department should determine what the appropriate conditions for emergency operations are.

### After a storm event

The primary objective is to secure the harbor, so that boat owners can safely begin the recovery phase. The **first** steps might be to institute security measures to prevent looting, and crowd control to protect curiosity-seekers and prevent them from getting in the way. Although the harbormaster may not be responsible for protecting each and every vessel that has washed up on the beach from

being looted, the town does have a responsibility for maintaining civil order. The second stage of the recovery phase includes documenting damage to public property along the waterfront and maintaining a file of the boats that have been damaged, who the owners are, and what action is being taken. Property that is not claimed and has subsequently been taken into the town's custody is subject to the provisions of Rhode Island state law, Title 46, Chapter 10 which calls for the appointment of a commissioner of wrecks and shipwrecked goods. It is the responsibility of the commissioner to inventory and store any found property in the town's custody. If a vessel is in a stable position and in no danger of sustaining additional damage then a salvor cannot intervene without permission of the owner. The same is true for equipment or other goods which wash up on the shore. A person who finds the property of another has no legal right of ownership even if he/she 'salvages' it. Legally, in Rhode Island, found goods and equipment are placed in custody of the local commissioner of wrecks.

The process of comprehensive hurricane preparedness for recreational harbors is quickly being developed along the East coast. Because it is a relatively new concept, and because the harbormasters' role is rapidly expanding, there is scant legal precedent to be used to clearly identify the responsibilities and legal duties of the harbormaster.

### **Boating Enforcement**

Harbormasters, in many instances, act as law enforcement officers; however, not all harbormasters are sworn police officers. This raises questions regarding the legal authority and responsibility of harbormasters who have not graduated from a police academy.

Harbormasters in Rhode Island are **empowered to** enforce boating safety laws through Title 46, Chapter 22, Section 17, of the state laws which states:

“The department of **environmental** management, harbormasters, assistant harbormasters, police officers authorized to make arrests, and employees of the department of environmental management, authorized to make arrests under provisions of § 2-18-8, 20-1-12, and 20-1-15, shall have the authority to enforce the provisions of this chapter and, in the exercise thereof, shall have the authority to stop and board any vessel subject to this chapter.”

Other laws relating to vessel operations and equipment (i.e., Marine Sanitation Devices and Personal Water Craft) specifically delegate enforcement authority to harbormasters.

Harbormasters are appointed under § 46-4-2 which states, “The council of any city or town is hereby authorized and empowered to appoint a harbormaster for the harbors within the confines of the city or town...” § 46-4-2 also grants the authority to each city and town to “ordain and establish such bylaws and ordinances and establish such fees and **compensation...necessary** and expedient for carrying out the provisions of this section...” This authority is reinforced by §46-22-14 which allows cities and towns to create ordinances regulating the operation and equipment of vessels as long as the ordinance is consistent with state law. In response to these laws and others (§§ 46-4-5 to 46-4-7) many towns have developed local ordinances for the regulation of waterway activities. In these instances, harbormasters are enforcing local ordinances, **not** state law. This provides greater latitude to the city or town for managing local waterways, collecting fines and implementing fees.

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To minimize liability, it is important to clearly identify the responsibility and authority of harbor masters, assistant harbor masters and police officers, the source of that authority, and the laws to be enforced (local and/or state). Once the harbor master is appointed, he/she may stop and inspect a boat in order to enforce boating safety laws. However, it is advised that probable cause (i.e., expired registration) be evident before a vessel is stopped and boarded. Any officer, upon boarding a vessel, should ensure that necessary safety equipment is on board. A harbor master has the right to board to inspect safety equipment, but not to conduct a thorough search for narcotics or other contraband. Searching the medicine cabinet for life jackets may be deemed illegal.

The law allowing harbor masters to stop and search a boat without probable cause exists, but has yet to be tested in the courts. Logically, it could be compared to a vehicle stop and the associated land-based court rulings. A police officer cannot stop a vehicle without probable cause (i.e. a broken tail light, a speeding violation), even to ensure that the vehicle meets safety standards.

These are just some of the subtleties that harbor masters need to be aware of. It is recommended that before a harbor master begins on-the-water patrols, he/she has some formal training in law enforcement. This does not imply that a harbor master needs to be a fully appointed police officer who has attended the state police academy. A harbor master can effectively fulfill his/her enforcement responsibilities with common sense and some basic training in law enforcement techniques.

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