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Something different for a change: Coast Guard Boardings

There is always much discussion about Coast Guard boardings on many boating forums. Usually the first question asked is, how can they do this? How can they board and search my boat without a warrant? Then the discussion usually moves on to the subject of armed boarding officers and abuse of authority. Many people claim their boat was trashed by the boarding party and they acted like storm troopers. So what is the real story here?

First, a little history. After the revolutionary war the new government found itself with very little revenue to fund the running of our country. Alexander Hamilton was the Secretary of the Treasury at the time and he knew that if they could only collect the taxes on goods being imported into the country the country would have enough revenue to survive. But, before and during the revolution, smuggling, to avoid paying taxes to Britain was not only very common, it was considered patriotic. Unfortunately, after the war people just kept right on smuggling. Hamilton knew that if he could have ships and officers who could stop the smugglers off the coast before they unloaded their cargoes he could collect much of the revenue that wasn't being paid.

So he asked Congress to appropriate money for ten small cutters to enforce the revenue laws. The officers of these ships were given naval commissions but were also appointed as officers of the customs. This gave them the authority to stop and board ships in US waters and US flagged vessels anywhere, to inspect those ships and the ships papers, and crew. That authority continues to this day.

Title 14 of the United States Code, Chapter 89 is the principal source of Coast Guard enforcement authority.

“The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States. For such purposes, commissioned, warrant, and petty officers may at any time go on board of any vessel subject to the jurisdiction, or to the operation of any law, of the United States, address inquiries to those on board, examine the ship's documents and papers, and examine, inspect, and search the vessel and use all necessary force to compel compliance. When from such inquiries, examination, inspection, or search it appears that a breach of the laws of the United States rendering a person liable to arrest is being, or has been committed, by any person, such person shall be arrested or, if escaping to shore, shall be immediately pursued and arrested on shore, or other lawful and appropriate action shall be taken; or, if it shall appear that a breach of the laws of the United States has been committed so as to render such vessel, or the merchandise, or any part thereof, on board of, or brought into the United States by, such vessel, liable to forfeiture, or so as to render such vessel liable to a fine or penalty and if necessary to secure such fine or penalty, such vessel or such merchandise, or both, shall be seized.”

Also as part of this they are Officers of The Customs;

From Wikipedia: http://en.wikipedia.org/wiki/United_States_Coast_Guard“14 USC 143 and 19 USC 1401 empower Coast Guard petty officers, warrant officers, and commissioned officers as customs officers. This places them under 19 USC 1589a, which grants customs officers general law enforcement authority, including the authority to:

(1) carry a firearm;(2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.”

So that is a lot of authority! Hamilton knew this. So as the service was beginning he wrote an open letter to all of the new Officers of the Revenue Cutter Service outlining their duties and the manner in which they were to carry out those duties. The one thing he would not tolerate was abuse of authority. His letter, <http://www.uscg.mil/history/FAQS/hamiltonletter.html> stated, in part, :

“While I recommend in the strongest terms to the respective officers, activity, vigilance and firmness, I feel no less solicitude, that their deportment may be marked with prudence, moderation and good temper. Upon these last qualities, not less that the former, must depend the success, usefulness and consequently continuance of the establishment in which they are included. They cannot be insensible that there are some prepossessions against it, that the charge with which they are intrusted [sic] is a delicate one, and that it is easy by mismanagement, to produce serious and extensive clamour, disgust and alarm.

They will always keep in mind that their countrymen are freemen, and, as such, are impatient of everything that bears the least mark of a domineering spirit. They will, therefore, refrain, with the most guarded circumspection, from whatever has the semblance of haughtiness, rudeness, or insult.”

That letter is still taught to this day to all Coast Guard personnel, at all levels, and is still the mantra of the service.

This authority has been challenged numerous times in the courts and always been upheld. There are reasons for this. One of the simplest is, at sea it's very difficult to obtain a warrant. A Coast Guard cutter can't carry a judge or justice of the peace around with them to issue warrants. Another is the ease of flight. A vessel can simply sail off over the horizon while you chase them. Another is the ease of hiding any suspicious activity. On a small boat this may be difficult to do, but on a ship it is very easy to simply hide things on board somewhere where it can't readily be seen. It also involves customs issues and national security issues. So the authority has always been upheld by the courts and never taken away by Congress.

A lot has changed since 1790. The Coast Guard has taken on many duties that Alexander Hamilton never foresaw. After WWII, and up until the 1980's all Coast Guard boarding parties

were unarmed. If they came from a Patrol Boat or larger cutter then the boat was armed but rarely was use of force necessary. In the 1970's the smuggling of drugs and the subsequent war on drugs led to some dangerous confrontations with smugglers. The change to arming boarding parties was hotly debated throughout the Coast Guard. Many people felt that we would lose our reputation as the Good Guys, the guys in the "white hats" as opposed to the guys in black hats. But world events don't stop because you want to maintain your image and in the early 1980's the Coast Guard began arming all boarding parties and all Coast Guard boats as well as the larger cutters. Drug smuggling, interdiction of refuges, illegal immigration and terrorism changed that aspect of the Coast Guard forever. Of course the necessity to arm also led to much more extensive and intensive training in law enforcement and use of force policies as well as fire arms training. Since 9/11 the Coast Guard has even created a marine law enforcement specialty rating, but all Coast Guard military personnel are law enforcement officers.

Then September 11, 2001 came along. Life in the US changed forever and so did the Coast Guard. National security had always been a Coast Guard mission. The Coast Guard has been involved in every war the US has fought and has always been a military armed force. (For that matter, for a number of years after the birth of our country it was the only "navy" we had.) But now the national security mission went to the top of the priority list. This required not only new training and new equipment but also a refocusing of emphasis from search and rescue and marine safety to national security.

But the one thing that did not change and has never changed is the manner in which this was to be carried out. Even Commandant Thad Allen (he retired in June 2010) issued a message to all Coast Guard personnel, quoting Alexander Hamilton and re-emphasizing the necessity to use prudence and tact. This simply means acting in a professional manner. No Rambos are allowed.

So what does this mean to the average Joe or Jill boater. It means that if you are hailed by a Coast Guard vessel, no matter the size, or a Coast Guard helo, you should simply pull back the throttles and stop. On a sailboat, heave too, maintain a small amount of way for steerage but essentially stop. Allow the boarding party to come aboard. Boarding a boat from another boat at sea is dangerous enough as it is. Make it easy.

They will ask you to have everyone on your boat on deck where they can be seen, and on large boats will usually ask everyone to move to the stern. They will ask the owner or skipper for the boat's papers, which you are required by both Federal and state laws to have on board, and will ask if there are guns on board. No, it is not illegal under Federal law to have guns on your boat. It may be under some state and local jurisdictions. This is for their own protection. They will examine your safety gear and take a look through the boat. If everything is in order they will leave. If there is a violation, say not enough life jackets, they will write a citation, a ticket, just like getting a traffic ticket, which you will then have to deal with. However, more serious things can lead to search, seizure or termination of a voyage.

For instance, the example of not enough life jackets. The boarding officer has the authority to terminate your voyage, that is, make you return to shore until the problem is fixed. Once you have fixed the problem you may continue. If you are intoxicated, they will give you a breath test.

If you fail you may be arrested and you will get a fine. There are many other laws, which can be enforced.

What about suspicious activity? Suppose you try to outrun them. This is really foolish and stupid and even though your boat might be faster in the short run you will get caught, and then they will want to know why you ran. Just as on shore, attempting to elude the police is considered immediate probable cause for suspicion of a crime.

What if one of your passengers has been dumb enough to bring their drugs with them? That could net you a fine. As “captain” you are responsible for everything that goes down on your boat. That includes what your passengers do.

When it comes to the carrying of firearms, try to remember that this is a law enforcement officer. Just as when a state patrol officer stops a car on the highway, the boarding officer does not know what they are going to encounter on your boat! Coast Guard people have lost their lives. It could be you and your family out for a nice sail, or someone smuggling illegal aliens into the US. It can just as easily be a drug smuggler or a terrorist. The boarding officer does not know this until they are on board your boat!

If you treat the boarding party politely, they will in all likelihood treat you the same way; thank you for your patience and leave. If you are rude and obnoxious, they probably will be too. Push and they will push back. But they should always be firm but polite!

Certainly mistakes have been made and some people have been not just inconvenienced. I can remember a case where a boat that somehow mistakenly got on the “watch list” was boarded five or six times on a voyage from Florida up the coast to New Jersey. Certainly, there was a lack of communication. Others have been boarded in the middle of the night while asleep at anchor. There is hardly any justification for such an action.

But those are not the norm. Most boardings are done politely, professionally and as quickly as possible so as to be the least inconvenient. Boating is supposed to be fun. Coast Guard people feel the same way. However, when things like this go wrong they should be reported to the Coast Guard District legal officer or to the Legal Office in Coast Guard Headquarters. If your boat was damaged in a boarding and you were not at fault, you can file a claim with the Coast Guard. There is no excuse for acting unprofessionally when you wear the uniform and have the authority to go along with it. I was always taught that if you abuse it you lose it!

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So what happens if you are drinking alcoholic beverages?

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The law says you may not OPERATE a vessel under the influence. The legal limit under the Code of Federal regulations is 0.08 BAC. But that only applies on waters where the USCG has jurisdiction. <http://law.justia.com/us/cfr/title33/33...44.0.20.3>. For persons operating a vessel that is NOT a recreational boat it is 0.04. BAC

Most of the states and territories have adopted 0.08 limit although there are a few hold outs at 0.10. Ask you state boating law administrator. Every state has one. See http://nasbla.org/i4a/member_directory/...howTitle=1

Policy is another thing. Each state has its own boarding policy and so does the USCG.

For those of you who don't know this the USCG can board and search a US vessel anywhere without warrant and any vessel on US waters where the Federal government has jurisdiction. What does that mean? Coast waters, tidal waters, routes of navigation for commerce and lakes that are interstate, such as Lake Tahoe. Random boardings are done mostly for safety checks, but occasionally recreational boaters will get swept up in drug sweeps (yeah they do those). Be cool, have all your equipment available and be patient. Usually you will only be given a breathalyzer under the following circumstances; you obviously appear intoxicated, they saw you drinking, you were operating a boat in an erratic manner or a reckless (the law says negligent or grossly negligent) manner, or an accident has occurred.

Normally if you are anchored out, tied to the dock, or beached, you are not operating. You have to be "underway" just as it says in the Navigation rules. Tied up or anchored is not underway. If you must move in an emergency that is an extenuating circumstance and will be taken into consideration if anything ever comes of it.

Here is what the Federal Regulation says:

"For purposes of this part, an individual is considered to be operating a vessel when:

- (a) The individual has an essential role in the operation of a recreational vessel underway, including but not limited to navigation of the vessel or control of the vessel's propulsion system.
- (b) The individual is a crewmember (including a licensed individual), pilot, or watchstander not a regular member of the crew, of a vessel other than a recreational vessel. "

In the definitions it defines underway as:

"Underway means that a vessel is not at anchor, or made fast to the shore, or aground"

As I said, each state has their own policy on boardings. In most states a patrol can stop you and ask to board and inspect your gear and registration, etc. Searching your boat is another matter. That would require probable cause or a warrant. However the exception is, USCG and local law enforcement often do joint patrols. The Coasties can board you and if they find a violation of state law they will simply hand it over to the local who now has probable cause.

By the way, when I say Coast Guard, I should add that the Coast Guard Auxiliary (the volunteer arm) does not have law enforcement authority, BUT, and this is a big but, they can be used as transportation

for regular USCG and local or state enforcement. So don't assume that just because it says Coast Guard Auxiliary patrol on the side, that there are no law enforcement persons on board.

What all of this amounts to is, boardings are a legitimate law enforcement activity used to enforce laws.