



FISHERIES & TOURISM

FACT SHEET SERIES

Maritime law, liability, and insurance

According to maritime law, once tourists step on your fishing boat or visit your aquaculture site, they become *passengers for hire*, you are responsible for their welfare, and issues of liability and insurance become extremely important.

Duty of reasonable care

You are responsible for the safety of passengers on your boat. The courts call this a *duty of reasonable care*, defined as “the degree of care that a prudent and competent person engaged in the same line of business...would exercise under similar circumstances.” You must take steps to ensure your passengers’ safety, and be prepared to handle accidents or emergencies, including having safety equipment and conducting a safety review before any trip. Consulting the Coast Guard is recommended.

Maritime liability

The owner and the master of a vessel, and the vessel itself, can be liable for any personal injury to passengers or damage to belongings, if caused by neglect or failure to comply with any statute regarding the inspection and regulation of vessels or manning requirements of vessels, or if caused by a known defect in the steaming apparatus or hull of the vessel. There is a three-year statute of limitation.

Under the Death on the High Seas Act, heirs of a decedent may bring civil action against the person or vessel

responsible when death was caused by neglect or wrongful acts on a vessel that was beyond three nautical miles from U.S. shores.

Under Maine’s Wrongful Death Statute, heirs may bring action under Maine law against the vessel’s owner, if the death was the result of wrongful or negligent acts that occurred while the vessel was operating in Maine waters. There is a two-year statute of limitations.

Jurisdiction

Your tourism business falls within *admiralty jurisdiction*, which covers legal incidents that occur on navigable waters,

or when the injury on land was caused by or related to a vessel on navigable waters. Under the forum selection clause, you can establish by contract (such as within your ticket agreement or passenger waiver) the place where any possible litigation would be heard, for example your home port.



Cathy Billings

Limiting liability

Creating a safety plan, conducting safety drills, and having passengers sign a waiver prior to the tour may help limit liability. Waivers are generally void, but can demonstrate that you have been thoughtful in developing a safety plan.

According to the Limitation of Liability Act, if a vessel owner hires a master to operate his or her boat, the owner may limit his or her liability to the fair market value of the boat. If you are an owner/operator, this does not apply.

Liability insurance

Maritime insurance is available to cover liability from wrongful/negligent acts resulting in injuries or loss of property. The most common is *protection and indemnity* coverage, covering the vessel owner or aquaculturist for loss of life and personal injury to tourists and staff. Additional protection, typically an *umbrella policy*, can be sought for other events. Insurance companies may demand stricter safety requirements than what is stated by law. Consulting an insurance agent and/or an attorney is recommended. ■



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This fact sheet is part of a series intended to provide resources for fishermen and aquaculture farmers who seek to augment their earnings through tourism. More information, including the legal research upon which these fact sheets are based, can be found at seagrant.umaine.edu/fisheries-tourism.

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