

# MTSA/ISPS POLICY ADVISORY COUNCIL

January 10, 2006

## Issue/Decision

Determining Which Foreign Yachts are Subject to SOLAS

44-04 (Change 1)

**DRAFT**

**Issue (44-04 Change 1):** With regards to foreign yachts, what does the term “subject to SOLAS” mean?

**Decision:** In accordance with G-LMI Memorandum of #16614, dated October 5, 2004, a pleasure yacht not engaged in trade (i.e., is not carrying passengers for hire) is generally not subject to SOLAS, irrespective of its size, its numbers of passengers (as defined by SOLAS), or the international nature of its voyage.

The applicability section of SOLAS, Chapter XI-2 incorporates the general SOLAS applicability scheme. Although Chapter XI-2, Regulation 2 states that it applies to “passenger ships” and “cargo ships, including high speed craft, of 500 GT and upwards”, these categories are modified by the general exceptions to applicability of Chapter I, Regulation 3. In other words, the general exceptions of Chapter I carry forward to the specific provisions of Chapter XI-2. Thus, a pleasure yacht not engaged in trade is not subject to the specific provisions of ISPS.

When visiting a yacht, the role of a boarding officer or marine inspector would be to determine which SOLAS documents that it possesses, and whether it possesses these documents voluntarily.

As a rule of thumb, a ship that voluntarily carries one SOLAS document, such as an ISSC, but is lacking a full complement of SOLAS documents indicates that the ship is complying voluntarily with SOLAS, or portions of SOLAS. Oftentimes, owners of ships that voluntarily carry a SOLAS document do so to prove to another nation their certification to an international standard with regards to its safety equipment or security provisions. For example, a privately-owned vessel of 500 GT ITC may voluntarily carry a Cargo Ship Safety Equipment Certificate as evidence that it has certain lifesaving gear onboard as an alternative to complying with a federally mandated safety equipment requirement.

On the other hand, for a ship that engages in trade, this ship would need to carry a complement of flag-state issued certificates in order to comply with SOLAS. These certificates could include a Passenger Ship Safety Certificate (PSSC), Cargo Ship Safety Construction Certificate (CSSCC), Cargo Ship Safety Equipment Certificate (CSSEC), Cargo Ship Safety Radio Certificate (CSSRC), Safety Management Certificate (SMC), and/or an International Ship Security Certificate (ISSC). Possessing a full complement of certificates is one important indicator that the ship is/was at one point engaged in trade.

An owner cannot “turn on” or “turn off” their SOLAS documents. When a flag state determines that a ship is required to meet SOLAS requirements and issues certificates verifying such conditions, the ship must act in accordance with the documents in all operating conditions,

regardless of whether involved in trade or not. Therefore, any vessels that are engaged in trade, or capable of being engaged in trade witnessed by the fact that the vessel possesses a full complement of SOLAS certificates for authorization to engage in trade, are considered Subject to SOLAS.

The below examples are illustrated in an attempt to clarify this statement, and give situations where ships are or are not “subject to SOLAS.”

**Example 1:** A privately owned ship engaged in the trade of carrying passengers arrives in port with a PSSC, SMC, and an ISSC. This ship is “subject to SOLAS”. The vessel would be required to moor at a facility in compliance with 33 CFR Part 105 since the ship carries the complement of certificates needed to demonstrate compliance with SOLAS. Note: If this ship carries 12 or less passengers and is greater than or equal to 500 gt, then the ship should possess a CSSCC and CSSEC, rather than a PSSC.

**Example 2:** A privately owned ship not engaged in trade arrives in port with a PSSC, SMC, and an ISSC. This ship is “subject to SOLAS” because the flag state has issued them certificates indicating they are authorized to engage in trade. The ship would be required to moor at a facility in compliance with 33 CFR Part 105. Despite the fact that there is no evidence that the ship is engaged in trade, the ship carries the complement of certificates necessary to prove that it has the intent to comply with international regulation. Steps that the ship could take to reverse this intent would be to have the flag state remove certain documents or for the flag state to provide documentation onboard the ship stating that the vessel is operating outside of the boundary of the certificates.

**Example 3:** A privately owned yacht, greater than 500 GT ITC, not engaged in trade arrives in port with a CSSEC being the only SOLAS document onboard. This yacht is not “subject to SOLAS”. The vessel would not be required to moor at a facility in compliance with 33 CFR Part 105 since the vessel is in possession of a single document that only proves to the vessels’ flag state that it carries an equivalent amount of lifesaving equipment that is called for under flag state requirements.

**Example 4:** A privately owned yacht, greater than 500 GT ITC, not engaged in trade arrives in port with a CSSEC being the only SOLAS document onboard. This yacht is not “subject to SOLAS”. This vessel would not be required to moor at a facility in compliance with 33 CFR Part 105, as in Example 3. The fact that the vessel possesses a certificate reading “Cargo Ship” does not automatically make it a cargo vessel as defined in MTSA. MTSA defines a cargo vessel in 33 CFR 101.105 as a vessel that carries, or intends to carry any goods, wares, or merchandise for consideration. A yacht not engaged in trade would not meet the MTSA definition of cargo vessel and not need to moor at a Part 105 facility.

**Example 5:** A privately owned ship of 500 GT ITC with 50 passengers onboard and engaged in trade (i.e., is carrying one or more passengers for hire) arrives in port with PSSC. This yacht is “subject to SOLAS”. The vessel would be required to moor at a facility in compliance with 33 CFR Part 105 since the vessel meets the applicability of SOLAS as a passenger ship. It is anticipated that the COTP would be able to identify port call non-compliance with 33 CFR Chapter I, Subchapter H before the ship’s mooring, since vital information will be provided through the Notice of Arrival regulations in 33 CFR Part 160. When the ship moors, the COTP should also investigate the reasons the ship does not carry an ISSC, and an SMC.

**Example 6:** A privately owned yacht, greater than 500 GT ITC, not engaged in trade arrives in port with only an ISSC. Upon investigation, the Master reveals that the vessel carries this document on a voluntary basis, due to his concerns of international security threats. This yacht is not “subject to SOLAS”. This yacht would not be required to moor at a facility in compliance with 33 CFR Part 105, since the yacht obtained the certificate voluntarily.

**Example 7:** A privately owned yacht, greater than 500 GT ITC, not engaged in trade arrives in port with an ISSC and CSSEC. The yacht obtained the CSSEC in order to meet the safety requirements of their flag state. It obtained the ISSC when reading the applicability of ISPS and believing that the Code was applicable to vessels not engaged in trade. Learning that the applicability of ISPS mimics the applicability of SOLAS, the Master learns that he is not required to possess the ISSC, but voluntarily decides to maintain its provisions. This yacht is not “subject to SOLAS”. As in Example 6, this yacht would not be required to moor at a facility in compliance with 33 CFR Part 105, since the yacht obtained the certificates voluntarily.

**Example 8:** A privately owned yacht of 499 GT ITC and not engaged in trade arrives in port with no SOLAS documents. This yacht is not “subject to SOLAS”. MTSA regulations would not require the yacht to moor at a facility in compliance with 33 CFR Part 105.

In the above examples, we state that any ships that are engaged in trade, or capable of being engaged in trade witnessed by the fact that the vessel possesses SOLAS certificates for authorization to engage in trade, are considered Subject to SOLAS. There is one exception to this rule of thumb and that example will be given in Example 9.

**Example 9:** The owner of a privately owned passenger ship provides his vessel to a charter party [bareboat]. At the time of the charter, the passenger ship carries the complement of documents necessary to determine that it is “subject to SOLAS”. Since the charter is a bareboat charter, the passenger ship would not maintain the status of being “subject to SOLAS”. The passenger ship would not need to moor at facilities in compliance with 33 CFR Part 105 for the duration of the charter. At the end of the charter and the return of the passenger ship to the original owners, the passenger ship would return to a “subject to SOLAS” designation.

**Example 10:** The owner of a privately owned passenger ship provides his vessel and a crew to a charter party [Time or Voyage charter]. At the time of the charter, the passenger ship carries the complement of documents necessary to determine that it is “subject to SOLAS”. Since the charter is not a bareboat charter, the passenger ship would maintain the status of being “subject to SOLAS”. The passenger ship would need to moor at facilities in compliance with 33 CFR Part 105 for the duration of the charter, as well as periods before and after the charter.