

June 2005

Crossing the boundary lines

Dennis L. Bryant

Not long after the rules of the nautical road were standardized in the latter portion of the nineteenth century, it was recognized that there needed to be a clearly defined boundary between where masters of ships should adhere to the International Regulations for Prevention of Collisions at Sea (COLREGS) and where the U.S. Inland Navigation Rules were applicable. Congress met the challenge in 1895 when it enacted the Boundary Line Act, giving the U.S. Coast Guard (originally the Secretary of the Treasury) authority to establish “appropriate identifiable demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, for the purpose of determining the applicability” of the navigation rules. The boundary or demarcation line for U.S. coastal waters was duly established and appears on U.S. nautical charts. Note – until 1980, the United States had three sets of internal navigation rules. In 1980, Congress subsumed the Western Rivers rules and the Great Lakes rules into the Inland Rules. The COLREGS Demarcation Lines are defined at Title 33, Code of Federal Regulations (CFR) Part 80.

Over time, the value of concept of a boundary line was recognized for purposes other than just the rules of the nautical road. In 1980, Congress officially authorized the U.S. Coast Guard to “establish appropriate identifiable lines dividing inland waters of the United States from the high seas” for other purposes. Wasting no time, in 1981, the Coast Guard promulgated its Boundary Line regulations – now located at Title 46, CFR Part 7.

The new boundary lines are used to delineate the application of: the statute establishing the length of towlines (33 USC 152); the load line statute (46 USC 5102); the seagoing barge statute (46 USC 2101(32)); the seagoing motor vessel statute (46 USC 2101(33)); the statute regarding small freight vessels operating in Washington and southeast Alaska (46 USC 3302(d)(1)(A) and (B)); the Officers' Competency Convention Act (46 USC 8304); the statute regarding fire-retardant material on U.S. passenger vessels (46 USC 3503); and the statute regarding safety standards for U.S. fishing industry vessels (46 USC 4502(b)(1)(A)). The Coast Guard also uses the boundary line to determine the application of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW Convention) (46 CFR 15.1101). The boundary line may also apply with regard to determination of whether a vessel is “seagoing” as that term is used in the Limitation of Liability Act (46 USC App. 183 and

E-mail

dennis.l.bryant@gmail.com

Internet

<http://brymar-consulting.com/>

Maritime Reporter & Engineering News

<http://marinelink.com/en-US/magazines/Archive.aspx?MID=3>

188). The boundary line regulation previously applied to the Vessel Bridge-to-Bridge Radiotelephone Act (33 USC 1203), but since 2002 that statute has become applicable to vessels operating within the 12-nautical mile U.S. territorial sea.

At first blush, the two sets of regulations appear to be the same – and in many respects they are. Except as otherwise described in either the COLREGS demarcation line regulations or the boundary line regulations, the lines follow the general trend of the seaward, high water shorelines and lines continuing the general trend of the shoreline across entrances to bays, inlets and rivers. There are, though, various small differences, related directly to why the Coast Guard sought a separate authority for the second set of rules. For example, in 1985, the Coast Guard moved the boundary line several hundred yards offshore at Bakers Haulover Inlet, Florida to enable inland dredges to work the harbor inlet and approaches without having to undergo inspection for certification. The cost and man-hours necessary to prepare for and accomplish the inspection were not considered justified by the agency considering the short distance from the inlet entrance that the dredges would be operating.

While there may have been collisions that were caused, at least in part, by confusion over whether the international or inland rules of the nautical road applied, it has proven difficult to locate any reported litigation on this point. Generally, the boundary or demarcation line is mentioned only in passing in the reported cases.

One case, though, containing an extended discussion of the demarcation line is the Louisiana Boundary Case decided by the U.S. Supreme Court in 1969. The state of Louisiana brought suit against the federal government, arguing that it was entitled to exclusive possession of and power over (including the power to tax oil and gas wells) over certain lands underlying the Gulf of Mexico. The submerged lands in question were more than three geographical miles from the coast. Among other things, Louisiana argued that the demarcation line, as established by the Commandant of the Coast Guard, defined the coast of the United States and that Louisiana was entitled to exclusive possession of all submerged lands off its coast up to three miles seaward of the demarcation line (referred to by the Court as the Inland Water Line). The Court went through an extended analysis of the history and purpose of the demarcation line, holding that its purpose was limited to application of the rules of the nautical road. Justice Black filed a vigorous dissent, stating in part that use in this case of the demarcation line as established by the Commandant of the Coast Guard “will put a stop to eternal litigation and help relieve this Court of the heavy burden repeatedly brought upon us to make decisions none of us have the time or competence to make.”

Whether the U.S. Supreme Court has the time or competence to decide boundary line controversies is beyond the scope of this brief discussion. Fortunately, though, application of the COLREGS demarcation line and the boundary line has, at least for now, been limited to specific purposes. Mariners must continue, though, to fully understand when they cross the boundary lines and the implications thereof.