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Not So Fast

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The propulsion issue of this magazine is a good place to examine the law pertaining to vessel speed. A vessel's speed may be governed by federal, state and/or local law depending on where the vessel is being operated. This article focuses on speed basics under federal law.

The Basic Federal Speed Law

The International Rules for Prevention of Collisions at Sea and the United States Inland Navigation Rules address vessel speed. They both have the same basic speed rule. Rule 6 requires every vessel at all times to "proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions." The term "collision" is interpreted broadly and includes a vessel's wake striking another vessel.

Rule 6 does not define "safe" but does identify some factors to be taken into account when determining what a safe speed is. The factors are well-founded in common sense. They include: 1) visibility; 2) density of vessel traffic; 3) maneuverability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions; 4) the presence of background lights from shore or from the back scatter of the vessel's own lights; 5) the wind, sea, and current conditions; 6) the proximity of navigational hazards; and 7) the draft of the vessel in relation to the depth of the water. Additional factors are considered if the vessel has operational radar such as: 1) the characteristics, efficiency and limitations of the radar; 2) constraints imposed by the radar scale; 3) the effect of sea state, weather, and other sources of interference on the radar; 4) the possibility that small vessels, ice and other floating objects may not be detected by the radar; 5) the number, location, and movement of vessels detected by the radar; and 6) the more exact assessment of visibility that may be possible when radar is used. Although not specifically stated in Rule 6, a court may also consider whether the moving vessel's speed has an adverse effect on nearby vessels and structures.

Vessel Speed in Limited Visibility Conditions

Rule 19 of the International and Inland rules addresses vessel speed in limited visibility conditions. That rule requires every vessel to "proceed at a safe speed adapted to the prevailing circumstances and condition of restricted visibility." It requires a power driven vessel to "have her engines ready for immediate maneuver." It also requires every vessel 1) that hears the fog signal of another vessel apparently forward of her beam; or 2) that cannot avoid a close



quarters situation with another vessel forward of her beam, to reduce speed to the minimum at which the vessel can be kept on course. Moreover, if necessary, a vessel is required to take all her way off.

Some courts have determined safe speed in restricted visibility conditions by analyzing the vessel's stopping distance, using the "half-distance" rule, i.e., a vessel should not operate in fog at a speed that would prevent it from coming to a dead stop in one half of the visibility distance. The rule is based on the possibility that another vessel may be operating on an intersecting course in the fog. If both vessels can stop within one half of the distance of each other, a collision can be avoided.

Effect of the *Pennsylvania* Rule

When two vessels collide, their speed is among the first things considered by a court when determining fault. A violation of the safe speed rules triggers the application of a presumption of fault under the Pennsylvania rule derived from an 1873 US Supreme Court case arising out of the collision of two vessels in dense fog. Under that rule, if, at the time of a collision, a vessel is in violation of a statutory rule designed to prevent collisions, the burden of proof shifts to the violator to show the violation was not, and could not have been, a contributing cause of the collision. It is one of the most onerous burdens in admiralty law and rarely met. If both vessels involved in a collision have committed a statutory violation, both must meet the required burden of proof.

While US naval vessels enjoy certain immunities under the law, they are not exempt from the *Pennsylvania* rule. For example, in *Bernert Towboat v. USS Chandler*, 666 F. Supp. 1454 (D.Or. 1987), the guided missile destroyer **USS Chandler** was traveling up the Columbia River to Portland for the annual Rose Festival. At the same time, a tug was pushing two loaded barges down the river. The USS Chandler was traveling in excess of 21 kts in a 300-yard-wide channel. Its wake caused one of the barges to become holed and list. The list caused much of the cargo on the barge to spill into the river. The barge was beached to prevent sinking and suffered damage. The court held the **USS Chandler's** operation at an excessive speed triggered the Pennsylvania rule. It also held the United States could not prove that the damage to the barge was not caused by the USS Chandler's wake resulting from its speed. The United States also did not prove the existence of any extenuating circumstances requiring the USS Chandler to operate at a speed that posed a threat to life and property. Because it failed in its proof, the United States was held solely at fault for the barge damage.



Defenses to a Violation of the Speed Rules

Although it is a difficult burden to sustain, it is possible for a vessel owner to avoid liability for violating a speed rule. In *Union Oil Company of California v. Tugboat **San Jacinto***, 409 U.S. 140 (1972), the United States Supreme Court explained the circumstances under which violation of the half distance speed rule might be excused. In that case, the loaded oil tanker **Santa Maria** was proceeding on the Oregon side of the Columbia River in clear visibility conditions. At the same time, the tug **San Jacinto** with its tow was proceeding in the opposite direction on the Washington side of the river. As the vessels approached Cooper Point, the watch on the **Santa Maria** was able to see the **San Jacinto** visually and on radar. At that time, the vessels were almost two miles apart and on opposite sides of a 500-foot-wide shipping channel.

There was heavy fog around Cooper Point but it was localized on the Washington side of the channel. As the **San Jacinto** entered the fog on the Washington side off Cooper Point, the watch on the **Santa Maria** lost sight of it. The watch did not track the tug on radar believing it would stay on the Washington side and that there was ample room for the vessels to safely pass each other.

The **San Jacinto** reduced its speed when entering the fog and its captain navigated by visual sight of the Washington coast. As the **San Jacinto** passed Cooper Point, its crew heard one blast of a ship's horn and responded, but did not see the ship. Shortly thereafter, the tug captain saw range lights which he thought were off his starboard bow. To avoid a collision and while still in heavy fog, he swung the **San Jacinto** toward the Oregon side of the river and made a U turn. The watch on the **Santa Maria** saw the tug emerge from the fog at a distance of 900 feet and at a right angle to the tanker. Although full astern was ordered, before the **Santa Maria** could stop, the barge in tow of the **San Jacinto** swung across the channel and struck the bow of the **Santa Maria**, driving the tanker aground.

The district court held the collision was the **San Jacinto's** sole fault and any negligence by the **Santa Maria** was not the proximate cause of the collision. The Ninth Circuit partially reversed, and held the **Santa Maria** was operating too fast on the edge of a fog bank and could not stop within half the distance between it and the **San Jacinto** when the tug emerged from the fog. Finding a violation of the speed rules, the Ninth Circuit held the **Santa Maria** fifty percent at fault because it could not meet its burden under the *Pennsylvania* rule. The United States Supreme Court reversed. While recognizing the purpose of the half distance rule, the court held the rule is premised on the assumption the vessels are on intersecting courses. In this case, the tanker and tug had been on opposite sides



of the channel and the tanker's visibility ahead was almost two miles. No fault could be imposed on the tanker for "not anticipating the tug's totally unorthodox maneuver in darting across such a channel" to come on an intersecting course.

All persons in charge of the operation of a vessel must be sure the vessel is operating at a safe speed. Determining safe speed involves consideration of many factors. The operator of a moving vessel involved in a collision will be required to explain the vessel's speed. The failure to prove the vessel's speed did not and could not have contributed to the collision will result in the imposition of full or partial liability depending on the fault of the other vessel(s) involved in the collision. It is possible, but difficult, to avoid liability for a collision resulting from violation of a speed rule .

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