

U.S. Department  
of Transportation

United States  
Coast Guard



COMMANDANT  
U. S. Coast Guard

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16731

[REDACTED]

[REDACTED]

[REDACTED]

October 3, 2002

RE: MV01000800

[REDACTED]

Unnamed ([REDACTED])

\$200.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV01000800, which includes your appeal as owner/operator of the unnamed fishing vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$200.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 28.110	Failure to meet the requirements for life preservers or other personal flotation devices.	\$50.00
46 CFR 28.145	Failure to equip vessel with proper types and amounts of required distress signals.	\$50.00
46 CFR 28.150	Failure to have the required EPIRB on board.	\$100.00

The violations were observed on November 3, 2000, when Coast Guard boarding officers boarded the [REDACTED] while it was docked at Pier 400, San Pedro, California.

On appeal, you deny the violations and contend that you are a "safety conscious boater" who should not "be monetarily punished" for your immediate response to the boarding in issue. With specific reference to the violations in issue, you contend that there were two life preservers and the correct number of distress signals on board the vessel during the boarding. You further

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contend that your vessel was not required to have an EPIRB because it has no bunks or galley and is only 22 feet long. Your appeal is denied for the reasons described below.

I will begin by addressing the alleged violation of 46 CFR 28.110. The regulation makes clear that “each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device of the proper size for each individual on board.” The Coast Guard Form 4100 Boarding Report of the incident indicates that there was only one Type I PFD on your vessel on the evening of the incident, while there were two persons on board. On appeal, you contend that “2 life preservers were on board...[the]...vessel at [the] time of [the] boarding,” however, you admit that you were told that both were not the required type. Since the record evidences that you purchased one type I PFD on the day of the boarding and because you acknowledge that the PFD’s on board on the relevant day may not have been of the appropriate type, I find the violation proved.

I will now address the alleged violation of 46 CFR 28.145. You contend that “all types and amounts of distress signals were on...[your]...vessel at [the] time of [the] boarding,” however, you admit that they were “out of date.” Because you admit that the distress signals were expired, I find the violation proved.

Finally, I will address the alleged violation of 46 CFR 28.150. You seem to believe that your vessel is not required to have an EPIRB because it has no bunks, no galley and is only 22 feet in length. 46 CFR 28.150 makes clear that “[e]ach vessel must be equipped with an emergency position indicating radio beacon (EPIRB) as required by 46 CFR part 25, subpart 25.26. In relevant part, 46 CFR 25.26-5(b) makes clear that:

a fishing vessel...**less than** 11 meters (36 feet) in length...shall ensure that the vessel does not operate on the high seas or beyond three miles from the coastline of the Great Lakes, unless it has installed in a readily accessible location at or near the principal steering location—

- (1) A manually activated Category 2 406 MHz EPIRB; or
- (2) A float-free, automatically activated Category 1 406 MHz EPIRB...

(emphasis added). Your arguments seem to center around a reading of 46 CFR 25.26-5(c), which states as follows:

The owner of a fishing vessel, fish processing vessel or a fish tender vessel 11 meters **or more** in length that does not have installed galley or berthing facilities, shall ensure that the vessel does not operate on the high seas or beyond three miles from the Great Lakes unless it has on board a float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks.

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(emphasis added). Since your vessel is only 22 feet in length, 46 CFR 25.26-5(c) does not apply to your vessel. Therefore, pursuant to 46 CFR 25.26-5(b), your vessel is required to have an EPIRB if it was operated on the high seas. 46 CFR 25.30-1 makes clear that the term “high seas” “means the waters beyond a line three nautical miles seaward of the Territorial Sea Baseline...” The Supplemental report of the boarding indicates that you were “operating beyond 3NM from [the] baseline.” Since you do not dispute this fact, I am convinced that your vessel was required to have an EPIRB, and find the violation proved.

The Coast Guard’s primary purpose in enforcing its regulations is to ensure maritime safety and to protect the environmental quality of the navigable waters of the United States. Compliance with Coast Guard regulation helps prevent environmental damage, loss of life, personal injury and property damage. The Coast Guard’s regulation of fishing vessels like yours is particularly important because of the inherent dangers associated with the commercial fishing industry. Your failure to comply with the Coast Guard’s regulations could have resulted in serious consequences for your vessel, your crew and yourself. Therefore, I will not mitigate the penalties assessed by the Hearing Officer any further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer’s determination that the violations occurred and that you are the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$200.00 rather than the \$1,350.00 preliminarily assessed by the Hearing Officer or \$16,500.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$200.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 100160  
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment

RE: CIVIL PENALTY MV01000800

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penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR  
Deputy Chief,  
Office of Maritime and International Law  
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office  
Commander, Finance Center