

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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Washington, DC 20593-0001
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Phone: (202) 267-1527
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16731
January 25, 2002

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV99005036
[REDACTED]
M/V [REDACTED]
\$500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV99005036, which includes your appeal as owner of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 2302(a)	Operation of a vessel in a negligent manner or interference with the safe operation of a vessel so as to endanger the life, limb or property of a person.	\$500.00

The violation is alleged to have occurred on September 11, 1999 when both you and the operator of the M/V [REDACTED] were operating vessels in the vicinity of the Lee Reed Barge wreck, in the Atlantic Ocean at 37°41.4 N Latitude, 075°12.1 W Longitude.

On appeal, you deny the violation and contend that you "did nothing to endanger anyone." You lament that "eight people lied" and assert that your "account of that day has for some reason had no credibility." You cite the statement of your father and contend that your version of the events in issue have been wrongfully overlooked in favor of the opinions of the Master of the M/V

January 25, 2002

[REDACTED]. You further contend that you were “in the wreck location hours before the [REDACTED] arrived” and that, at that time, you were fishing, using two “federal gear types.” You contend that “Captain [REDACTED] put his vessel in a position that forced. . .[your]. . .vessel to move or get hit” and contend that he “drug his grappling anchor across. . .[your]. . .line of fish traps and proceeded to hang into several of them.” You contend that you were forced to circle the M/V [REDACTED] because it was “right in the middle” of the gear that you were fishing. You assert that this action angered the master of the M/V [REDACTED], prompting him to put his vessel in full reverse and strike the M/V [REDACTED] from a distance of 20 feet away, causing damage to both your vessel and your fishing equipment. Your appeal is denied for the reasons described below.

First, I believe a brief recitation of the facts surrounding this incident is in order. On September 11, 1999, at approximately 11:15 a.m., the M/V [REDACTED] and the M/V [REDACTED] were operating in the vicinity of the Lee Reed Barge wreck, in the Atlantic Ocean. You were the operator of the M/V [REDACTED] and, at the time, were using the vessel to fish for sea bass using pots that were in position on the wreck. The M/V [REDACTED] was under the operation of Captain [REDACTED], a U.S. Coast Guard Licensed Captain, who operated the M/V [REDACTED] while it was chartered to take divers on excursions to various wrecks. While there are two distinct versions of the events of the day, it is uncontested that the M/V [REDACTED] arrived at the wreck before the M/V [REDACTED]. Two distinct versions of the facts have been provided as to the events following the arrival of the M/V [REDACTED].

Several people aboard the M/V [REDACTED], including your aunt and uncle, indicated that when their vessel arrived at the wreck, you informed the vessel that you were fishing there, clearly implying that the M/V [REDACTED] should proceed to another location to perform dives. However, the M/V [REDACTED] dropped anchor. The people aboard the M/V [REDACTED] also stated that after dropping anchor, you threatened them and began angrily circling their vessel at a high rate of speed while yelling obscenities and coming dangerously close to the vessel. They contend that the rough seas that day, when combined with your erratic operation of the M/V [REDACTED], may have resulted in the two vessels making contact, although that contact was minimal and did not result in any damage to either vessel. Shortly thereafter, the passengers contend that they became afraid of you and opted to move to a different wreck to dive. They note that, as the vessel pulled its anchor, it “snagged a fish pot” but released the pot without causing any damage.

Your version of the events is much different. You contend that, upon the arrival of the M/V [REDACTED], you approached the vessel and informed the master that you were fishing on the wreck and did not intend to move. You asserted that you were “on fish and would not allow divers on the wreck” at that time. You assert that the Master “deliberately threw the grappling hook” over all of your pots and “started dragging the wreck anchor” and add that you informed the captain “that he was under violation and that [you were] going to give the Coast Guard a call.” You assert that, following this dialog, the master “got mad” and “put his boat in full reverse getting up speed” and that just before he hit your vessel, he “put the boat in forward making the blow much less than it could have been.” You maintain that “[t]he blow was still hard enough that if his boat hadn’t hit [your] washboard and hit the side instead, [you] would have had a large hole and probably taken on water or sunk.” You contend that the contact

January 25, 2002

between the vessels caused “stress cracks in the fiberglass and the side rail plastic.” Following the alleged collision, you called the Coast Guard in an attempt “to do the right thing by not taking the law into [your] own hands.” You conclude that the statements of the party aboard the M/V [REDACTED] are “excuses to hide what the captain really did” and seem to believe that the eight witnesses conspired against you when they “fabricated a story that was very inconsistent.” You note that you could not have traveled at high speeds during the incidents because your 25 horsepower engine could not have reached high speeds under the weather conditions of the day and contend that the law’s application is a “discrimination” against commercial fishermen.

I will now address your contention that the case file contains insufficient evidence to support the Hearing Officer’s decision to assess a civil penalty. You are charged with negligently operating the M/V [REDACTED] on the morning of September 11, 1999, a violation of 46 USC 2302(a). As used in 46 USC 2302, negligence is the failure to use that care which a reasonable and prudent person would exercise under similar circumstances. It is the operator’s breach of that standard of reasonable care that results in the endangerment of life, limb, or property of a person and which constitutes a violation of the statute.

I find that the Hearing Officer was correct to conclude that you were negligent in your operation of the M/V [REDACTED]. I have thoroughly reviewed the record and conclude that the truth lies somewhere between your version of the events and that of the party aboard the M/V [REDACTED]. I believe that you were present and fishing at the wreck before the arrival of the M/V [REDACTED] and that you approached the master of the M/V [REDACTED] to inform him that you were fishing. I am also certain that you made clear your reluctance to allow divers in your fishing location. You have stated that “you can only catch sea bass on the wreck itself,” that you cannot “fish just anywhere in the open ocean,” and that “this was a small wreck” not sizeable enough to accommodate both your fishing apparatus and the divers aboard the [REDACTED]. While you contend that divers were “unwelcome” because of your “fear of their own safety,” I find your other statements more persuasive. In your letter of appeal to the Hearing Officer, you state that you were “on location FIRST (your emphasis) fishing two federal gear types” and add that you were “making a living” and “catching fish to earn money.” You contend that “[REDACTED] already had his money in his pocket that day” and mention that there were “six other sites within 6 miles” of the wreck that you were fishing. The statements of Mr. [REDACTED] and [REDACTED] make clear that during the incident, you stated that the divers were not welcome “because they would scare the fish away.” The statement of [REDACTED], likewise, notes that you told the divers that you “were in a good fishing situation and [reminded them that] when divers go in the water, the fish are all scared away.” You assert that, following this dialog, “the [REDACTED] bullied his way into the area [you] were fishing in with a boat three times [your] size” and contend that you were “forced” to circle his boat as he set anchor directly into [your] fish traps.” I believe that you became angry when the Master of the [REDACTED] refused to move to a different diving location. At that point, you believed that you had “every right to keep fishing the area [REDACTED] had entered.” Furthermore, your statement, contained in the Coast Guard Form CG-2692, stated that “[t]he Captain deliberately positioned his boat ([REDACTED]) over the top of [your] pots and started dragging the wreck anchor.”

January 25, 2002

The Coast Guard Investigative Report indicates that you had 100 feet of line attached to each pot and that you were fishing in water 70 feet deep. The report concludes, "The current set the buoys of the fish pots to the east of the wreck, which would give the appearance that the pots were not on the wreck." For that reason, I believe that the Captain of the [REDACTED] presumed that there would be no problem dropping his anchor near the wreck. Unfortunately, you perceived the Captain's actions to be hostile and, enraged, began circling the M/V [REDACTED] in an attempt to chase the vessel away. While you admit to circling the M/V [REDACTED], you seem convinced that doing so was not negligence. Your position rests firmly on your belief that, because you were in the area first, you had the right to continue fishing, regardless of whether there were divers in the area or not. Because you were convinced that the master of the [REDACTED] had deliberately set out to bully you away from your lucrative fishing spot, you felt compelled to circle the vessel and protect both your gear and financial interests in the fish. The record indicates that there were 3 to 4 foot seas that day and you admit that the winds were blowing at 20 knots. The statement of [REDACTED] notes that, as you circled the M/V [REDACTED], "[a]t one point [you] moved up to within 3-5 feet" from the vessel's stern. Most of the other passengers' statements mention that you were circling the boat at a high rate of speed and that you threatened to cut the M/V [REDACTED]'s anchor line. Under the weather conditions of the day, I agree with the Hearing Officer that you negligently operated the M/V [REDACTED]. A prudent operator, exercising reasonable care, would not circle closely to another vessel at a high rate of speed. As the Hearing Officer stated, such action created a situation that could have lead (and may have led) to a collision between the two vessels and thus, endangered the lives of all parties involved.

The record does not support your assertion that the master of the M/V [REDACTED] deliberately backed into your vessel. Other than your statements, there is no evidence of damage to either your vessel or your equipment. In fact, the Coast Guard investigative report states that "there was no damage to either vessel that supported claims of a ramming or contact of any kind between the vessels." Furthermore, the statements of the 6 passengers and 2 crewmen aboard the M/V [REDACTED] clearly indicate that any contact between the vessels was the result of your aggressive navigation of the M/V [REDACTED]. Their statements indicate that the Master of the M/V [REDACTED] took immediate steps to move his vessel away from yours as you came too close. The statement of [REDACTED] noted that "[o]n one pass behind our boat. . .[you were]. . .extremely close and Captain revved our engine, it looked like our Captain was trying to pull away from the other boat as a large swell pushed the two boats together." I am convinced that you navigated your vessel too close to the M/V [REDACTED] and that, as a result, large sea swells may have forced the vessels to touch.

Finally, I am not persuaded by your assertion that the passengers of the M/V [REDACTED] attempted to conspire against you to "cover-up" the true events of September 11, 1999. The Commanding Officer, Coast Guard Marine Safety Office Hampton Roads, stated that the "inconsistencies" contained in the witness statements were "fairly typical of untrained observers who have been through a harrowing experience." He further noted that "[i]nconsistencies are normal and expected because of differences in vantage point; the focus of the witnesses attention; what the witness was doing at the time; and the level of apprehension of the particular individual." Furthermore, the record evidences that any "inconsistencies" contained in the

January 25, 2002

witness statements concern minor details, not, as you suggest, different recollections of the events in total. All of the witnesses contend that you circled the M/V [REDACTED] at a high rate of speed, coming dangerously close to the vessel, and none of the statements support your assertion that the M/V [REDACTED] deliberately rammed into you. Instead, the weight of the evidence indicates that your negligent operation of the M/V [REDACTED] created a potentially dangerous situation.

I understand that the commercial fishing industry is both highly dangerous and competitive. I also understand that, more often than not, the success or failure of any given fishing season depends upon every day's catch. You, like any other fisherman, are protective of your equipment and fishing locations because those entities support you. Even in light of the specific concerns of commercial fishermen, those fishermen cannot and do not "own" the ocean. Just as the waters of the Atlantic are valuable to you for your livelihood, they are, likewise, valuable to others for both commercial and recreational purposes. Indeed, sharing is an integral part of any person's use of this planet's natural resources. While I understand that your reaction to the situation was prompted by what you perceived to be deliberate encroachment on your fishing gear and territory, your perception of the situation does not excuse your behavior. Even if the M/V [REDACTED] had deliberately dragged its anchor through your fishing pots, that action would not have justified your subsequent behavior. Acting out of rage, you caused a situation that was dangerous for both yourself and the passengers and crew of the M/V [REDACTED]. Your motivation, however well founded, cannot excuse the situation that resulted.

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 \$500.00 rather than the \$1100.00 preliminarily assessed 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 **\$500.00** 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

RE: CIVIL PENALTY

16731

January 25, 2002

of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment 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