



16731  
June 28, 2001

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

RE: MV00001523  
[REDACTED]  
F/V [REDACTED]  
Warning

Dear [REDACTED]:

The Hearing Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00001523, which includes your appeal on behalf of the owner of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a warning for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR §25.25-13(b)	A personal flotation device light was not provided for each exposure suite, life preserver, marine buoyant device, and buoyant vest.	Warning
46 CFR §28.120	Failure to comply with the requirement for a survival craft.	Warning
46 CFR §28.125	Failure to comply with the stowage requirements for a survival craft.	Warning
46 CFR §28.160	Failure to provide the proper type and amount of required fire extinguishers.	Warning

46 CFR §25.26-50(a)	Failure of the master of a vessel required to have and EPIRB, to ensure that each EPIRB on board is tested and serviced as required by this section.	Warning
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The violations were observed on January 25, 2000, when Coast Guard boarding officers boarded the F/V [REDACTED] 3.5 nautical miles south of Long Key, in the Florida Straits.

On appeal, you neither deny the violations nor deny that you are the responsible party. Instead, you request that the penalties be dismissed because the violations have been corrected and the vessel is now in full compliance with the Coast Guard’s regulations. You assert that in failing to dismiss the case, the Hearing Officer “disregard[ed] the fact that immediate steps were taken to completely resolve the violations listed.” Your appeal is denied for the reasons described below.

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 the F/V [REDACTED] 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. Since you do not deny the violations, I, therefore, find them proved.

You seek dismissal of the violations because you took “immediate steps” to bring the F/V [REDACTED] into compliance with the Coast Guard’s regulations. The Coast Guard’s letter of inquiry dated February 8, 2000 served to inform you of the violations while simultaneously allowing you to bring the vessel into compliance. The letter afforded you the opportunity to “have. . .the penalties reduced or even dismissed” provided that you corrected the violations, successfully completed a Coast Guard Courtesy Safety Examination, and were issued a Commercial Fishing Vessel Safety Decal within thirty days of the letter. Thus, to bring the vessel into compliance with the regulations, you should have completed the aforementioned requirements by March 9, 2000.

The record indicates that you purchased numerous supplies for the vessel on March 1, 2000 and that you had the survival raft inspected on February 29, 2000. The record also shows that you registered the required EPIRB on February 16, 2000 after purchasing the same on January 26, 2000. The record does not, however, evidence that you either successfully completed or even attempted to complete a Coast Guard Courtesy Safety Examination or that you were issued a Commercial Fishing Vessel Safety Decal as required in the letter of inquiry. While I commend your efforts to bring the vessel into compliance with the Coast Guard’s regulations, I cannot conclude that you have fully complied with the requirements set forth in the Coast Guard’s letter

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dated February 8, 2000. Furthermore, it is the responsibility of the Hearing Officer to assess the reliability and credibility of the evidence presented and I cannot overturn his decision absent an abuse of discretion. While the maximum penalty that could have been assessed against you is \$27,500.00, you were initially assessed a penalty of \$1150.00. Your assertion that the Hearing Officer failed to consider the immediate steps that you took to bring the vessel into compliance is without merit. The record clearly indicates that the Hearing Officer did consider your efforts of mitigation when he lowered the initially assessed penalty to a warning for all charges.

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 warning assessed, rather than the \$1150.00 preliminarily assessed or \$27,500.00 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.

Sincerely,

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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