

UNITED STATES OF AMERICA
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA	:	DECISION OF THE
UNITED STATES COAST GUARD	:	
	:	VICE COMMANDANT
vs.	:	
	:	ON APPEAL
MERCHANT MARINER LICENSE	:	
and	:	NO. 2687
MERCHANT MARINER DOCUMENT	:	
	:	
	:	
<u>Issued to: EDWARD K. HANSEN</u>	:	

This appeal is taken in accordance with 46 U.S.C. § 7701 *et seq.*, 46 C.F.R. Part 5, and the procedures set forth in 33 C.F.R. Part 20.

By a Decision and Order (hereinafter “D&O”) dated February 20, 2008, Administrative Law Judge (hereinafter “ALJ”) Michael J. Devine of the United States Coast Guard at Norfolk, Virginia, suspended the Merchant Mariner Credentials of Mr. Edward K. Hansen (hereinafter “Respondent”) for one month on two months probation upon finding proved one charge of *violation of law or regulation*. The specification found proved alleged that, while serving as the master of M/V BETTY, Respondent towed the T/B ATLANTIC SULPHUR NO. 1 beyond the boundary line without a valid load line certificate or coastwise load line exemption letter, in violation of 46 U.S.C. §§ 5102 and 5103, and 46 C.F.R. § 42.07-1.

PROCEDURAL HISTORY

The Coast Guard filed an original Complaint in the matter on September 2, 2007, and subsequently amended the Complaint’s factual allegations on September 24, 2007,

and again on December 4, 2007. [D&O at 2] Respondent properly filed Answers to the original Complaint and the first Amended Complaint, on September 21, 2007 and October 16, 2007, respectively. [Id.] Both of Respondent's Answers denied all jurisdictional and factual allegations. [Id.] Although Respondent did not file an Answer to the Coast Guard's second Amended Complaint, he was not required to do so because the Complaint was filed less than 20 days before the hearing in the matter was scheduled to commence. *See* 33 C.F.R. § 20.308(a).

The hearing convened on December 11, 2007, in Norfolk, Virginia. [D&O at 3] During the hearing, the Coast Guard submitted the testimony of six witnesses, including Respondent as an adverse witness, and entered eleven exhibits into the record. [Id.] In addition to testifying on his own behalf, Respondent entered ten exhibits into the record. [Id.]

Respondent filed a timely Notice of Appeal in the matter on March 13, 2008 and perfected his appeal by filing an Appellate Brief on April 18, 2008. The Coast Guard filed its Reply Brief on May 20, 2008. Accordingly, this appeal is properly before me.

APPEARANCE: Respondent was represented by Mr. David N. Ventker, Esq., of Ventker & Warman, PLLC, 101 West Main Street, Suite 810, Norfolk, VA 23510-1687. The Coast Guard Investigating Officers were LT Chester K. Warren and LCDR David M. Sherry of U.S. Coast Guard Sector Hampton Roads, Portsmouth, Virginia.

FACTS

At all times relevant herein, Respondent was the holder of the above-captioned Merchant Mariner Credentials issued by the United States Coast Guard. [D&O at 4]

On September 1, 2007, Respondent, while under the employment of Island Maritime Services, Inc., served as Master of the M/V BETTY, a 197 gross ton, 99.5 foot long U. S. Flagged towing vessel. [D&O at 4; Tr. at 24-26; Coast Guard Exhibits 2, 3] On that date, pursuant to a contract between Island Maritime Services, Inc. and Island Shipping, Respondent took the T/B ATLANTIC SULPHUR NO. 1—a 1578 gross ton, 225 foot long barge—under tow. [D&O at 4; Tr. at 24-26; Coast Guard Exhibits 2, 5] During the voyage, Respondent was supposed to tow the T/B ATLANTIC SULPHUR NO. 1 from Norfolk, Virginia, to Honduras. [D&O at 5; Tr. at 22-26] On the date of the voyage, both vessels operated under the U.S. flag. [D&O at 5; Tr. at 75-83, 101-11; Coast Guard Exhibits 3, 5, 6, 7, 8]

Before the voyage commenced, Respondent inspected the T/B ATLANTIC SULPHUR NO. 1 and found her to be both seaworthy and suitable for tow. [Tr. at 48, 205] During this inspection, Respondent observed that the barge had a load line marked on its hull in the required locations, that the barge appeared to be structurally sound, and that the barge was free of both cargo and personnel at the time that the voyage commenced. [Tr. at 48, 50, 205] However, Respondent did not check any of the vessel's paperwork. [*Id.*] As a consequence, Respondent was not aware that, at the time of the voyage, the T/B ATLANTIC SULPHUR NO. 1 did not possess a valid load line certificate or a valid load line exemption letter. [D&O at 5; Tr. at 108-111; Coast Guard Exhibit 5; Respondent's Exhibit C]

Coast Guard regulations state that the boundary line for the Chesapeake Bay extends from the Cape Charles Light to the Cape Henry Light. *See* 46 C.F.R. § 7.50. During the voyage at issue here, the M/V BETTY towed the T/B ATLANTIC SULPHUR

NO. 1 past the boundary line of the Chesapeake Bay. [D&O at 5; Tr. at 49, 90-97; Coast Guard Exhibit 4] Using the National Automated Identification System, the United States Coast Guard, Sector Hampton Roads' Command Center plotted the M/V BETTY and its tow at sea, past the boundary line. [Tr. at 90-97; Coast Guard Exhibit 4] The Coast Guard ordered Respondent, via radio, to return to port after he acknowledged that he did not have a load line certificate or exemption letter onboard the barge. [Tr. at 50] Respondent complied. [*Id.*] Subsequently thereafter, on September 20, 2007, the Officer in Charge, Marine Inspection of Coast Guard Sector Hampton Roads, issued a Coastwise Load Line Certificate to the T/B ATLANTIC SULPHUR NO. 1 for a coastwise voyage from Chesapeake, Virginia, to Key West, Florida. [Respondent's Exhibit C]

The ALJ found that Respondent was acting under the authority of his license while serving as the master of the M/V BETTY and found the single charge proved. [D&O at 11-12]

BASES OF APPEAL

Respondent appeals the ALJ's Decision and Order contending that:

- I. *The Coast Guard failed to prove that it had jurisdiction over Capt. Hansen's license;*
- II. *The ALJ committed clear error by finding a violation of a regulation which was neither charged in any complaint or amendment nor referenced at any time during or after the hearing;*
- III. *The ALJ committed clear error by finding that T/B ATLANTIC SULPHUR NO. 1 did not have a proper load line;*
- IV. *The regulations upon which the Decision and Order are based are invalid; and*
- V. *The Coast Guard failed to prove a violation of law and regulation upon which the (Second) Amended Complaint was based.*

A review of Respondent's appeal brief shows that he does not raise specific arguments with regard to his fifth basis of appeal. Instead, in making this unsubstantiated claim, Respondent appears to be reasserting portions of his second and third bases of appeal. Given the thorough discussion of those issues herein, I find that Respondent's fifth basis of appeal is unduly repetitious and will not be further discussed.

OPINION

On appeal a party may challenge whether each finding of fact rests on substantial evidence, whether each conclusion of law accords with applicable law, precedent, and public policy, and whether the ALJ committed any abuses of discretion. *See* 46 C.F.R. § 5.701 and 33 C.F.R. § 20.1001. The ALJ's findings of fact and determinations in this regard will not be disturbed and will be upheld on appeal unless they are clearly erroneous, arbitrary and capricious, or based on inherently incredible evidence. *See Appeal Decision 2541 (RAYMOND) citing Appeal Decisions 2522 (JENKINS), 2492 (RATH) and 2333 (ALAYA)*. As a basis for appellate review, "a finding of fact is clearly erroneous when, although there is evidence to support such finding, the reviewing court upon reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed." *See Appeal Decision 2610 (BENNETT)*. A finding is "arbitrary and capricious" when it is the result of "willful and unreasonable action without consideration or in disregard of facts or law or without determining principle," *See Appeal Decision 2610 (BENNETT)*, in other words, when "there is no rational connection between the facts found and the choice made." *Motor Vehicle Mfrs. Ass'n. of U.S., Inc. v. State Farm Mut. Auto Ins. Co., Inc.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866 (1983). The findings of the ALJ need not be consistent with all evidentiary material in

the record as long as there is sufficient material in the record to support such findings.

See Appeal Decisions 2395 (LAMBERT) and 2282 (LITTLEFIELD).

I.

The Coast Guard failed to prove that it had jurisdiction over Capt. Hansen's license.

The first issue raised in Respondent's appeal is one of jurisdiction. Respondent argues that the Coast Guard failed to establish jurisdiction in his case because it "failed to offer sufficient evidence to show that a license was required as a condition of employment or as a matter of law in the face of a direct challenge to jurisdiction...[by Respondent]...during the proceedings." [Respondent's Appeal Brief at 11] In addition to asserting that Respondent proved by his testimony that a mariner credential was not required for his service as Master of the M/V BETTY, Respondent contends, pursuant to 46 U.S.C. § 8905(b), that the M/V BETTY was exempt from the applicable statutory manning requirements¹ because it "is an uninspected towing vessel of less than 200 gross tons" that was "used to move oil products." [*Id.*]

Past Commandant Decisions on Appeal state that jurisdiction is critical to the validity of a proceeding and make clear that when jurisdiction, or proof thereof, is lacking, dismissal is required. Appeal Decisions 2656 (JORDAN), 2104 (BENSON), 2094 (MILLER), 2090 (LONGINO), 2069 (STEELE) and 2025 (ARMSTRONG). Accordingly, if I find Respondent's jurisdictional contentions persuasive, irrespective of any determination as to the charged offense, I must grant Respondent's appeal and dismiss the case. Appeal Decision 2656 (JORDAN).

¹ 46 U.S.C. § 8904 states that a towing vessels greater than 26 feet in length must be operated by a licensed mariner.

Critical to determining jurisdiction in this instance is whether Respondent was operating under the authority of his credentials at the time of the alleged violation. To establish jurisdiction in a *violation of law or regulation* case, the alleged violation must be proven to have occurred while the mariner was “acting under the authority” of a Merchant Mariner Credential. *See* 46 U.S.C. § 7703. Acting under the authority of a credential is explained in 46 C.F.R. § 5.57 which states:

- (a) A person employed in the service of a vessel is considered to be acting under the authority of a license, certificate or document when the holding of such license certificate or document is:
 - (1) Required by law or regulation; or
 - (2) Required by an employer as a condition for employment.

In his D&O, the ALJ stated that Respondent was “acting under the authority” of a mariner credential at the time of the alleged violation:

In this case, the Coast Guard has established that the M/V BETTY is a U.S. flagged towing vessel greater than twenty-six...feet in length and is therefore required to be under the direction of a Coast Guard licensed master. The Coast Guard has also established that Respondent was the master of the M/V BETTY on September 1, 2007, as it operated in the Chesapeake Bay area. Since a license was required for Respondent to operate the M/V BETTY, Respondent is found to have been acting under the authority of his Coast Guard license while he operated the M/V BETTY. (citations omitted)

[D&O at 6] The ALJ’s finding is supported by 46 U.S.C. § 8904(a) which states that “[a] towing vessel that is at least 26 feet in length measured from end to end over the deck (excluding sheer), shall be operated by an individual licensed by the Secretary to operate that type of vessel in the particular geographic area, under prescribed regulations.” Such a towing vessel “must be under the direction and control of a person holding a license or MMC officer endorsement as master or mate (pilot) of towing vessels.” 46 C.F.R. §

15.610. The record shows that Respondent was the master of the M/V BETTY on September 1, 2007, as it operated within and beyond the Chesapeake Bay area. [D&O at 6; Tr. at 22-26; Coast Guard Exhibit 2] Therefore, because the M/V BETTY is at least 26 feet in length, the vessel was required to be operated by a licensed individual. Accordingly, the record contains sufficient, reliable, and credible evidence to support the ALJ's conclusion that Respondent was operating the vessel under the authority of his license.

Respondent argues however that he raised a material issue to jurisdiction that the Coast Guard failed to adequately rebut. In Coast Guard Suspension and Revocation actions, a Respondent must prove that an exemption applies to his situation by a preponderance of the evidence. *See* 33 C.F.R. §§ 20.701 & 20.702. The ALJ found Respondent's assertions with regard to the exemption contained at 46 U.S.C. § 8905(b) to be without merit. The ALJ did so upon concluding that "46 U.S.C. § 8905(b)...applies only to vessels in the offshore oil industry." [D&O at 6] The ALJ concluded that because "Respondent has provided no evidence that his towing vessel was involved in the offshore oil industry," Respondent could not argue that the M/V BETTY was exempt from applicable manning requirements. [D&O at 7] The only support that Respondent offered for the exemption was his own testimony, within which he asserted that he "pushed oil," along with various other things such as pre-stressed concrete, during the 1980s. [Tr. 35] Given the lack of evidentiary support for Respondent's assertion, I do not find that the ALJ erred in determining that the exemption did not apply to Respondent's situation. Respondent simply did not meet his burden of showing, by a

preponderance of the evidence, that the exemption in 46 U.S.C. § 8905 applied to his case. Accordingly, Respondent's first basis for appeal is rejected.

II.

The ALJ committed clear error by finding a violation of a regulation which was neither charged in any complaint or amendment nor referenced at any time during or after the hearing.

Respondent's second basis of appeal is essentially a "due process" argument, *to wit*: the specific regulation found proved by the ALJ—46 C.F.R. § 42.07-5(b)—"was not referenced in the pleadings or at the hearing." [Respondent's Appeal Brief at 11] Respondent argues that he did not receive adequate notice of the charged violation and "could not defend against [a] regulatory violation...which appeared for the first time in the Decision and Order of the ALJ." [Respondent's Appeal Brief at 12]

Although he fails to cite to it within his Appeal Brief, the issue of notice within a Complaint, the basis of which is a violation of law or regulation, is covered in 46 C.F.R. § 5.33. This section mandates that when the Coast Guard alleges a *violation of law or regulation*, "the complaint must state the specific statute or regulation by title and section number, and the particular manner it was allegedly violated." Similarly, 33 C.F.R. § 20.307 states that the Complaint must set forth the "[s]tatute or rule allegedly violated." However, amendments made after conclusion of a hearing are not unprecedented. Appeal Decision 2393 (STEWART). The test of whether a pleading may be amended is not based on the timing of the amendment, but on whether there has been notice and an opportunity to litigate the amended charge. Kuhn v. Civil Aeronautics Board, 183 F.2d 839, 841 (D.C. Cir. 1950); Appeal Decisions 2326 (McDERMOTT); 1956 (HANSON); 2393 (STEWART); 2209 (SIEGELMAN). Strict adherence to the regulatory dictates of

46 C.F.R. § 5.33 and 33 C.F.R. § 20.307 is not required to satisfy the requirements of due process. In suspension and revocation proceedings, the ALJ has the authority to amend pleadings to conform to proof. *See Appeal Decision 1792 (PHILLIPS)*, *see also Appeal Decision 2041 (SISK)* (amendment of a specification is desirable if a matter is litigated). As a consequence, “administrative pleadings in these proceedings are not stringently bound by the procedural pleading requirements governing civil and criminal judicial forums.” *Appeal Decision 2478 (DUPRE)*. Instead, “the purpose of a Complaint...is to provide the ‘legal and factual bases under which the Coast Guard is proceeding.’” *See Appeal Decision 2676 (PARKER) citing Appeal Decision 2655 (KILGROE)*. Specifically, the Complaint is meant to “fulfill...a notice requirement” and the specifications contained therein provide notice to the charged party so that he has an adequate opportunity to prepare his defense. *See Appeal Decisions 2676 (PARKER), and 2630 (BAARSVIK)* “The essential inquiry is the understanding of the parties as to whether the unpleaded [or improperly pleaded] issue was being contested. . . . It must be clear that the parties understand exactly what the issues are when the proceedings are had. Actuality of notice there must be, but the actuality, not the technicality, must govern.” *Kirkland v. District of Columbia*, 70 F.3d 629, 633, D.C. Cir. 1995) (citations omitted)

The record shows that the Coast Guard filed three complaints in this case. The Coast Guard’s first Complaint, dated September 2, 2007, was withdrawn and fully replaced by a subsequent Complaint dated September 24, 2007. In that document, the Coast Guard alleged that Respondent committed a *violation of law or regulation* and supported the allegation by the following factual specification:

The Coast Guard alleges that on 24 September 2007:

1. The Respondent wrongfully towed the tank barge ATLANTIC SULFUR NO. 1, O.N. 283904, beyond the boundary line without a valid load line certificate or coastwise load line exemption letter, a violation of U.S. Laws and Regulations set forth in 46 United States Code Part C, Chapter 51, and 46 Code of Federal Regulations Subchapter E, Part 42.

[Complaint at 2] The Coast Guard amended this Complaint on December 4, 2007.

Although the substance of the Amended Complaint remained the same—Respondent towed the ATLANTIC SULFUR NO. 1 beyond the boundary line without a valid load line certificate or coastwise load line exemption letter—the document changed the date of the alleged violation to September 1, 2007, removed the word “wrongfully” from the factual specification, and added specificity to the description of the legal and regulatory authority for the violation. [Amended Complaint at 2] While the original Complaint alleged that Respondent committed a *violation of law or regulation* as “set forth in 46 United States Code Part C, Chapter 51, and 46 Code of Federal Regulations Subchapter E, Part 42,” the Amended Complaint stated that Respondent committed a *violation of law or regulation* “as set forth in 46 U.S.C. § 5102, 46 U.S.C. § 5103, and 46 C.F.R. § 42.07-1.” [*Id.*]

In his D&O, the ALJ found that Respondent committed a violation of 46 C.F.R. § 42.07-5 because he did not ensure that the load line marks on the T/B ATLANTIC SULFUR NO. 1 were “attested by a valid load line certificate” or exemption certificate. [D&O at 7-8] Respondent contends that because the specific regulation, 46 C.F.R. § 42.07-5, was not alleged during these proceedings, either in the Complaint or while the case was pending before the ALJ, he was not accorded proper notice of the alleged violation.

Although the specific regulatory cite of the violation found proved was not alleged in the Complaint, the substance of the alleged violation—that Respondent towed the T/B ATLANTIC SULFUR NO. 1 beyond the boundary line without a valid load line certificate or exemption letter—was identified in the factual specification of both the original Complaint and the Amended Complaint. Moreover, at the hearing, issue of the requirement for, and expiration of a load line certificate was argued by the Respondent [TR at 35-37]; both the IO and the Respondent offered the Load Line Certificate as evidence [TR at 39]; and the Respondent argued that failure to have a load line certificate did not pose a danger to navigation safety. [TR at 55-57.]

Regardless of any deficiencies in the pleadings of this case, Respondent clearly had notice of the nature of the alleged violation, and actually contested the issue. Accordingly, Respondent's second appeal basis is without merit and rejected. It should be noted, however, that neither the Complaint nor the ALJ's D&O cited the proper regulation. Based on the evidence adduced in the record, and the facts found in the D&O, I find that Respondent actually violated 46 C.F.R. § 42.07-50(b): "The master and/or owner of a vessel that is operated, navigated or used in violation of the provisions of the load line acts or the regulations in this subchapter will be subject to the penalties as set forth in law . . ." These penalties include suspension and revocation action. *Id* at (b)(5). The requirement for a valid load line certificate is within the subchapter referenced in the prohibitory regulation. (46 C.F.R. §42.07-5(b)). I will correct this error in the decritical paragraph.

III.

The ALJ committed clear error by finding that T/B ATLANTIC SULPHUR NO. 1 did not have a proper load line.

Respondent's third basis of appeal is that the ALJ erroneously found that the T/B ATLANTIC SULFUR NO. 1 did not have a proper load line. While Respondent acknowledges that the T/B ATLANTIC SULFUR NO. 1 is subject to the statutory load line requirements, he contends that the ALJ erred in finding the violation proved.

[Respondent's Appeal Brief at 13] Respondent supports his assertion with two theories:

1) Respondent did not have a duty to ensure that the barge was in compliance with the load line requirements, and 2) The applicable load line requirements do not mandate that a load line certificate be carried by Respondent; he need only ensure that load lines are marked on a vessel.

A.

The first issue presented in Respondent's third basis of appeal is whether Respondent had a duty to ensure that the T/B ATLANTIC SULFUR NO. 1 was in compliance with the applicable load line requirements. Citing 46 U.S.C. § 5103(b), Respondent contends that the duty to comply with the load line requirements applies only to the "owner, charterer, managing operator, agent, and individual in charge of a vessel." [Respondent's Appeal Brief at 13] As a result, Respondent asserts that because "[t]he regulation is conspicuous for its failure to reference the term 'master,'" Respondent bore no responsibility with respect to the vessel's load lines. [*Id.*] In his argument, Respondent misquotes the applicable statute and ignores the portion of the ALJ's D&O which properly states that "Title 46 U.S.C. 5103(b) holds that the '[t]he...master, and individual in charge of a vessel shall mark and maintain the load lines permanently and

conspicuously in the way prescribed by the Secretary.” [D&O at 9] The “master” is, as the ALJ properly noted, included among the parties that 46 U.S.C. § 5103(b) lists as being required to “mark and maintain the load lines” on a vessel. Accordingly, the ALJ’s did not err in determining that Respondent was included among the parties responsible for ensuring compliance with the applicable load line requirements.

B.

The next issue presented is whether the operative load line requirements mandate that a load line certificate be carried aboard a vessel or, contrarily, whether the marking of the vessel’s load lines, in and of itself, equates to compliance with applicable law and regulations. Respondent contends that the statute that he “was actually charged with having violated...[does not require a]...certificate or other piece of paper be carried by...[Respondent]...it requires only that the vessel be marked with load lines.” [Respondent’s Appeal Brief at 17] Respondent concludes that “[i]nasmuch as such marks were in place, there is no evidence the marks, as placed, were improper or incorrect, there is no evidence of a statutory violation.” [*Id.*] In so asserting, Respondent misapprehends the applicable load line requirements.

When a vessel is assigned load lines, the lines are required to be marked in accordance with 46 C.F.R. Part 42. *See* 46 C.F.R. § 42.07-1. 46 C.F.R. § 42.07-5(b) makes clear that “the load line marks placed on a vessel shall be attested to by a valid load line certificate as required by §42.07-45(b).” 46 C.F.R. § 42.07-45(d) further states that each load line certificate is issued for a period of five years and may only be extended for up to 150 days.

A review of the record shows that, during his testimony, Respondent stated that the T/B ATLANTIC SULPHUR NO. 1 did not have any paperwork, including a valid load line certificate, on board it at the time of the voyage. [Tr. at 50] Moreover, the record shows that although the T/B ATLANTIC SULFUR NO. 1 had previously held a valid load line certificate, it expired in 1999, long before the voyage at issue in these proceedings. [Coast Guard Exhibit 5] In addition, the record shows that the T/B ATLANTIC SULPHUR NO. 1 did not receive a load line exemption letter until September 20, 2007. [Respondent's Exhibit C] Accordingly, the record does not support a conclusion that the ALJ was arbitrary, capricious, or clearly erroneous in determining that the T/B ATLANTIC SULFUR NO. 1 did not have a valid load line certificate or exemption letter at the time of the relevant voyage. Because the record contains substantial evidence to support the ALJ's conclusion that the violation occurred, the ALJ's finding in that regard will not be disturbed.

IV.

The regulations upon which the Decision and Order are based are invalid.

Respondent next argues that because the statutory basis upon which the current load line regulations were issued no longer exists, the applicable load line regulations, issued under the former statutory mandates, are invalid. A review of prior Commandant Decisions on Appeal shows that in Coast Guard suspension and revocation proceedings, a "regulation that was duly promulgated according to law is entitled to a presumption of validity." See Appeal Decision 2328 (MINTZ) citing Appeal Decision 1999 (ALT AND JOSSY). Irrespective of the operation of this presumption, prior Commandant Decisions on Appeal have held that an administrative proceeding, such as this one, is not the proper

forum for challenging the validity of statutes and regulations. See Appeal Decisions 2330 (STRUDWICK), 2328 (MINTZ), 2203 (WEST), 2202 (VAIL), and 1999 (ALT and JOSSY). Accordingly, Respondent's fourth basis of appeal is rejected

CONCLUSION

The findings of the ALJ had a legally sufficient basis. The ALJ's decision to suspend Respondent's mariner credentials for one month on two months probation (ending on April 20, 2008) was not arbitrary, capricious, clearly erroneous, or based on inherently incredible evidence. Because competent, substantial, reliable, and probative evidence exists to support the ALJ's decision, Respondent's appeal arguments are without merit.

ORDER

The order of the ALJ, dated February 20, 2008, at Norfolk, Virginia, is AMENDED, to the extent that the violation of law and regulation found PROVED includes 46 C.F.R. § 42.07-50. The order, as amended, is AFFIRMED.

Signed at Washington, D.C. this 8th day of June, 2010.


S. Brice-O'Hara
Vice Admiral, U.S. Coast Guard
Vice Commandant