

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

SAVERIO FRANCIS RESCIGNO

Respondent

Docket Number 2015-0208
Enforcement Activity No. 5155114

DECISION AND ORDER

Issued: January 12, 2016

By Administrative Law Judge: Honorable Michael J Devine

Appearances:

CWO RYAN SINCLAIR
Sector Hampton Roads
AND
LINEKA QUIJANO, ESQ.
USCG S&R National Center of Expertise

For the Coast Guard

SAVERIO FRANCIS RESCIGNO, Pro se.

For the Respondent

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I. PRELIMINARY STATEMENT

The United States Coast Guard (Coast Guard or USCG) initiated this administrative action seeking suspension of Saverio Francis Rescigno's (Respondent) Merchant Mariner Credentials (MMC).

The Coast Guard issued a Complaint on June 30, 2015, and amended the Complaint on October 19, 2015. The Amended Complaint alleges Respondent committed misconduct while serving as the Master of "the vessel MARY M IV, as required by law or regulation." Specifically, the Coast Guard alleges on May 28, 2015: 1) the MARY M IV, O/N 615080, was a United States uninspected¹ passenger vessel; 2) the MARY M IV did not have a valid Certificate of Inspection; 3) Respondent got the vessel underway with sixteen (16) passengers on board, at least one of which was a passenger for hire, on the Atlantic Ocean, a navigable waterway of the United States; 4) Respondent was in violation of 46 Code of Federal Regulations (C.F.R.) § 176.100(a); and 5) Violation of 46 C.F.R. § 176.100(a) is misconduct as described by Title 46 United States Code § 7703(1)(B) and defined by 46 C.F.R. § 5.27.

Respondent submitted timely answers to both the Original and the Amended Complaint indicating that he denied the jurisdictional allegation that he was acting under the authority of his MMC, and the factual allegations contained in paragraphs three (3), four (4), five (5), and six (6). This action is brought pursuant to the legal authority contained in 46 U.S.C. § 7703 and the underlying regulations codified at 46 C.F.R. Part 5.

¹ The charge incorrectly indicates MARY M IV is an uninspected passenger vessel. The Certificate of Documentation and Certificate of Inspection along with the underlying assertion of a violation of 46 C.F.R. § 176.100(a) clearly show that the charge is for a small passenger vessel that is inspected.

The hearing commenced in Philadelphia, Pennsylvania on November 4, 2015. The proceeding was conducted in accordance with the Administrative Procedure Act, as amended and codified at 5 U.S.C. § 551-59, and Coast Guard procedural regulations contained in 33 C.F.R. Part 20. At the hearing CWO Ryan Sinclair and Lineka Quijano, Esq. represented the Coast Guard. Respondent appeared at the hearing and represented himself (pro se). Five witnesses testified on behalf of the Coast Guard and Respondent testified on his own behalf.

During the hearing, the ALJ admitted ten (10) Exhibits (Ex.) from the Coast Guard, without objection from Respondent. Respondent did not offer any exhibits into evidence at the hearing. A list of all witnesses and exhibits can be found in Attachment A.

The Coast Guard also requested official notice of 46 U.S.C. § 2101 regarding the definition of “passengers for hire”; and of the Title 46 C.F.R. Subchapter T regulations regarding small passenger vessels. Although relevant legal authority may be cited and referenced without official notice, Respondent had no objections, therefore, the Coast Guard’s request for the ALJ to take official notice of these references was granted. See 33 C.F.R. § 20.806.

On December 11, 2015, the Coast Guard submitted a Post Hearing Brief containing enumerated Proposed Findings of Fact and Proposed Conclusions of Law. The Court has made findings of fact and conclusions of law as stated within the body of this Decision and Order, therefore separate rulings on the Coast Guard proposed findings and conclusions were not necessary. On December 4, 2015, Respondent submitted a letter indicating he had been unaware of the regulations regarding deactivation of the

vessel MARY M IV's Certificate of Inspection (COI). Since Respondent's letter did not indicate it had been served on the Coast Guard Investigating Officer, the Court provided notice and a reminder to Respondent of the regulations requirement to serve the opposing party. Respondent has not submitted anything else for final argument, however, the matters and concerns raised in Respondent's Post Hearing letter of December 4, 2015, have been considered in this Decision and Order.

As noted in footnote 1 above, the misconduct charge incorrectly indicates MARY M IV is an uninspected passenger vessel. The Certificate of Documentation (CG Ex. 03) and Certificate of Inspection (CG Ex. 05) along with the underlying assertion of a violation of 46 C.F.R. § 176.100(a) clearly show that the charge of misconduct is for failure to comply with a requirement for a small passenger vessel that is inspected. Since the error appears inadvertent and Respondent was clearly on notice of the charge I find this is harmless error. The Court hereby modifies the charge to conform to the proof in regard to the evidence presented at hearing. See Appeal Decision 2687 (HANSEN) (2010) (ALJ has authority to amend pleadings to conform to proof). Respondent clearly had notice of the nature of the alleged violation and contested the matter.

After careful review of the facts and applicable law in this case, I find the Coast Guard **PROVED**, by a preponderance of reliable and credible evidence, the allegations contained in the Charge as modified.

Pursuant to the interests of maritime safety as provided in 46 C.F.R. § 5.5, the ALJ orders Respondent's mariner license shall be **SUSPENDED OUTRIGHT** for a period of three (3) months.

II. FINDINGS OF FACT

The following Findings of Fact are based on documentary evidence, witness testimony, and the entire record as a whole.

1. Respondent is currently, and was at all times relevant to this proceeding, the holder of MMC #000293659. (CG Ex. 1).
2. Respondent is the owner of the vessel MARY M IV. (CG Ex. 3).
3. The MARY M IV is a U.S. documented vessel that is 46.7 feet in length with a tonnage measurement of 40 gross registered tons. (CG Ex. 3).
4. On March 18, 2015, the Coast Guard deactivated the original Certificate Of Inspection for the MARY M IV because of a change in ownership and notified Respondent (owner) that he must schedule an inspection in order to obtain a new Certificate Of Inspection as a small passenger vessel. (Tr. at 23-24; CG Ex. 2).
5. On April 7, 2015 Coast Guard marine inspectors boarded and inspected the MARY M IV and found several safety deficiencies. The Coast Guard required correction of the noted deficiencies before a COI would be issued. (Tr. at 39-43, 45).
6. The deficiencies noted from the April 7, 2015 inspection of the MARY M IV had not been resolved or acknowledged as corrected by the Coast Guard on May 28, 2015.
7. The deficiencies were acknowledged as corrected on or about July 7, 2015, at which time the MARY M IV was issued a new COI. (Tr. at 45; CG Ex. 5).
8. On April 23, 2015, Mr. Willie Henderson, Treasurer of the Postal Anglers Fishing Club, contacted Respondent to reserve the MARY M IV for a fishing trip. Mr. Henderson and Respondent agreed upon a price for the trip. Respondent asked Mr. Henderson to send him \$200.00 as a deposit for the fishing trip. (Tr. at 71, 76-78).
9. On April 23, 2015, Mr. Henderson sent Respondent a \$200.00 check, made payable to "Capt Sam Rescigno." (Tr. at 77-78, CG Ex. 9).
10. On April 28, 2015, Respondent cashed the \$200.00 check. (Tr. at 82).
11. On May 28, 2015, sixteen (16) individuals associated with the Postal Anglers Fishing Club embarked on the MARY M IV for a fishing trip. (Tr. at 84-85).

12. On May 28, 2015, Respondent served as the Master on board the MARY M IV. (Tr. at 61-64, 85-86, 102).
13. As Treasurer of the Postal Anglers Club, Mr. Henderson collected payments from the passengers to make payment to Respondent for the balance due for the May 28, 2015 fishing trip.
14. On May 28, 2015, while on board the MARY M IV, Respondent informed Mr. Henderson the balance owed was \$960.00 and Mr. Henderson then wrote a \$960.00 check, made payable to "Capt. Sam Rescigno," and gave it to Respondent. (Tr. at 85-88, CG Ex. 10).
15. Respondent returned the \$960.00 check to Mr. Henderson before arriving at the pier on May 28, 2015. (Tr. at 87-88).
16. On May 28, 2015, the MARY M IV did not have a valid Certificate of Inspection to operate as a small passenger vessel regulated under 46 C.F.R Subchapter T. (Tr. at 27, 47)

III. DISCUSSION

On May 28, 2015, the MARY M IV (O.N. 615080) a small passenger vessel owned and operated by Respondent, under command of Master Saverio Rescigno, (Respondent) departed port with sixteen (16) passengers for hire for a fishing voyage. (Tr. 61-64, 84-85, 102). Mr. Henderson, of the Angler's club, had provided Respondent with a \$200.00 deposit for the planned fishing trip and the sixteen (16) passengers aboard the vessel that day were there as part of the planned, club fishing trip. (Tr. at 71, 76-78; CG Ex. 09).

A. Jurisdiction

Jurisdiction is a question of fact and must be determined before the substantive issues of the case are decided. See Appeal Decision 2620 (COX) (2001). When a mariner is engaged in the service of a vessel the mariner is considered to be acting under the authority of their mariner credentials when the holding of such credentials is required by law and/or for condition of employment. See 46 C.F.R. § 5.57(a). The Coast Guard

has jurisdictional authority to suspend or revoke a mariner's credentials if the mariner violated a law or regulation, committed an act of negligence, and/or committed an act of misconduct while acting under the authority of that credential. See 46 U.S.C. § 7703(1)(A).

The record contains sufficient evidence to prove jurisdiction. Respondent's Answer admitted that he is the holder of MMC#000293659, but denied that he was acting under the authority of his MMC by operating the MARY M IV as master. See Answer to Amended Complaint. Respondent did not contest he was serving as master of the vessel on May 28, 2015, but contended that since he returned the fees paid by the passengers before the end of the trip there were no passengers for hire and therefore no jurisdiction. (Answer; Tr. at 100-02).

In view of the undisputed facts, including Respondent's testimony at the hearing regarding his actions operating the small passenger vessel MARY M IV as Master on May 28, 2015, with passengers on board based on the Postal Anglers fishing club reservation and payment of a \$200.00 deposit, jurisdiction was established. Respondent's return of the additional \$960.00 payment during the return to the pier is not sufficient to defeat jurisdiction. When Respondent got the vessel MARY M IV underway with the Postal Angler Club passengers as agreed on May 28, 2015, jurisdiction was established. Once the bell signaling the attachment of jurisdiction rang it cannot be "unrung" by Respondent's subsequent actions. Therefore, the Court finds Respondent was acting under the authority of his Coast Guard credentials as the Master of the small passenger vessel MARY M IV on May 28, 2015, and jurisdiction is **PROVEN**. See 46 C.F.R. § 5.57(a).

B. Burden of Proof

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. See 46 U.S.C. § 7701. To assist in this goal, Coast Guard Administrative Law Judges have the authority to suspend or revoke mariner credentials if a mariner commits certain violations. See 46 U.S.C. § 7703. Under Coast Guard procedural rules and regulations, the Coast Guard bears the burden of proof and shall prove any violation by a preponderance of the evidence. See 33 C.F.R. §§ 20.701-702; see also Appeal Decision 2485 (YATES) (1989). “The term substantial evidence is synonymous with preponderance of the evidence as defined by the U.S. Supreme Court.” Appeal Decision 2477 (TOMBARI) (1988). See also Steadman v. Securities and Exchange Commission, 450 U.S. 91, 107 (1981). The burden of proving a fact by a preponderance of the evidence “simply requires the Trier of fact ‘to believe that the existence of a fact is more probable than its nonexistence before [he] may find in favor of the party who has the burden to persuade the [judge] of the fact’s existence.’” Concrete Pipe & Products of California, Inc. v. Constr. Laborers Pension Trust for S. California, 622 (1993) (citing In re Winship, 397 U.S. 358, 371-72 (1970) (Harlan, J., concurring) (brackets in original)).

C. Allegation of Misconduct

In this case, the Coast Guard seeks to prove, by a preponderance of the evidence, Respondent committed an act of Misconduct by operating his vessel for a fishing voyage with passengers for hire without a valid Certificate of Inspection as required by 46 C.F.R. § 176.100(a).

Misconduct is defined in 46 C.F.R. § 5.27 as, “human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes,

regulations, the common law, the general maritime law, a ships regulation, or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.” Id. In order to prove Misconduct the Coast Guard must prove, by a preponderance of the evidence, (1) that Respondent is a holder of a merchant mariner credential, document or license; (2) Respondent was acting under the authority of his credentials when the charged violation occurred; and (3) Respondent, as Master of the vessel MARY M IV, committed the specific act or acts of misconduct listed in Charge 1 (operating small passenger vessel without a valid Certificate of Inspection).

1. Charge 1

Respondent admitted he is the holder of MMC #000293659. The Coast Guard notified Respondent of the requirement to obtain a new Certificate of Inspection because of the change in ownership of the MARY M IV. (CG Ex. 02 and 03). The testimony and record indicate the Coast Guard inspected the vessel and notified Respondent, as master and owner of the MARY M IV, of deficiencies requiring correction before issuance of a new Certificate of Inspection. (Tr. at 21-26, 35-47, CG Ex. 04). Title 33 C.F.R. § 176.100(a) provides that a vessel to which it applies may not be operated without a valid Certificate of Inspection. The testimony of LCDR Cowan, Inspector Elks and MK2 Sparanga established that the vessel MARY M IV was a small passenger vessel that had been inspected, but not yet issued a new valid Certificate of Inspection before the fishing voyage of May 28, 2015. Respondent has not disputed that fact.

The Coast Guard asserts the violation is proven because Respondent operated the vessel MARY M IV as a small passenger vessel on May 28, 2015, after accepting payment from at least one passenger for hire.²

Respondent contends he did not accept the \$960.00 payment for the May 28, 2015, voyage from Mr. Henderson, therefore the Coast Guard lacks jurisdiction because he did not operate the MARY M IV as a small passenger vessel with passengers for hire on that date.

Mr. Henderson testified about having had a previous fishing trip with Respondent and that he scheduled a trip for his Anglers Club with Respondent and sent a \$200.00 check for a deposit for the scheduled trip. (Tr. at 71-79). There is no dispute the vessel got underway on May 28, 2015, with sixteen (16) passengers and conducted a fishing trip. If acceptance of the \$200.00 deposit from Mr. Henderson, or the initial acceptance of a \$960.00 check from Mr. Henderson constitutes payment by a passenger for hire, then the charged violation is proven.

Respondent testified he returned the \$960.00 check to Mr. Henderson and did not receive payment for taking the sixteen 16 passengers fishing. Respondent acknowledged that he did not return the \$200.00 deposit for the trip provided by Mr. Henderson in April, but contended that in keeping with industry practice deposits for fishing trips are not refundable.

The Coast Guard asserts that: (1) Respondent accepted the deposit of \$200.00 to operate the vessel for a fishing trip; and (2) that he initially received and accepted the additional \$960.00 from the passengers. The Coast Guard contends returning the funds

² See 46 U.S.C. § 2101(35).

because of the expectation of a Coast Guard inspection cannot eliminate either jurisdiction or the act of misconduct. I find the evidence shows Respondent accepted the \$200.00 deposit and operated the vessel MARY M IV for a fishing voyage for hire on May 28, 2015. Respondent's actions in returning the \$960.00 check to Mr. Henderson in an attempt to avoid Coast Guard enforcement action is insufficient to eliminate jurisdiction. Once Respondent got the vessel underway on May 28, 2015, with the passengers, pursuant to the agreement reached with Mr. Henderson of the Postal Anglers Club, he had executed the contract and took the passengers fishing on his vessel for hire. The \$200.00 became part of the payment for the fishing voyage at that point. Whether retention of the deposit is industry standard or not, it cannot change the fact of getting underway on a voyage based on the agreement reached in accepting the deposit. Moreover, industry standards cannot circumvent the intent of the law and regulations to support safety at sea. See 46 U.S.C. §§ 7701-7704; 46 C.F.R. § 5.5; cf. The T. J. Hooper, 60 F.2d 737, 1932 A.M.C. 1169 (2d Cir. 1932). I find that once Respondent got the vessel underway on May 28, 2015 the deposit payment of \$200.00 then constituted accepting payment by at least one passenger for hire. I also find that accepting the \$960.00 check from Mr. Henderson also constituted acceptance of payment for taking passengers for hire and returning the check did not void his initial acceptance. Therefore, based on the evidence in the record as a whole, the Court finds Charge 1 Misconduct **PROVEN.**

IV. ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent and the subject matter of this hearing are properly within the jurisdiction of the Coast Guard and the ALJ in accordance with 46 U.S.C. §§ 7703-7704, 46 C.F.R. Part 5, and 33 C.F.R. Part 20.

2. Title 46 C.F.R. Subchapter T requires vessels under 150 gross tons carrying more than six passengers, and at least one for hire, to have on board a valid Certificate of Inspection when operating as a small passenger vessel. 46 C.F.R. §175.110; 46 C.F.R. §176.100.
3. Respondent accepted a deposit payment of \$200.00 in April 2015 from Mr. Henderson on behalf of his Anglers club to operate his vessel the MARY M IV for a fishing trip with passengers for hire.
4. The vessel MARY M IV did not have a valid Certificate of Inspection on May 28, 2015.
5. Respondent operated the vessel MARY M IV on May 28, 2015, with passengers for hire for the fishing trip arranged by Mr. Henderson.
6. Respondent initially accepted a payment of \$960.00 from Mr. Henderson for taking passengers fishing on May 28, 2015.
7. Respondent returned the check to Mr. Henderson before arriving at the pier where Coast Guard personnel were waiting to board and inspect his vessel.
8. Respondent's action of accepting a \$200.00 deposit and initially accepting a \$960.00 check for the balance of payment for the fishing trip on May 28, 2015, is sufficient evidence that Respondent operated his vessel with at least one passenger for hire on May 28, 2015.
9. Therefore, the allegations in Charge 1 "Misconduct" are found **PROVEN** by a preponderance of the reliable and credible evidence including CG Ex. 02, 08, 09 and 10 and the testimony in the record considered as a whole.

V. SANCTION

These proceedings are remedial, not penal in nature, and "are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea." 46 C.F.R. § 5.5; Appeal Decision 2294 (TITTONIS) (1983). If a charge is proven, sanctions are to be determined based on the concerns of safety at sea and pursuant to the regulations.

In this case, the Coast Guard seeks three (3) months outright suspension based on the charged offense and surrounding circumstances. The Coast Guard's Post Hearing

Brief also seeks a delay in the effective date of the sanction to May 1, 2016, to coincide with the timeframe in which Respondent was operating the voyage in question during 2015. There are no special circumstances presented by the Coast Guard to support such an action in relation to imposition of a sanction. As noted above, the purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. See 46 U.S.C. § 7701. To assist in this goal, Coast Guard Administrative Law Judges have the authority to suspend or revoke mariner credentials if a mariner commits certain violations. See 46 U.S.C. § 7703. Additionally, these proceedings are intended to be remedial and not penal in nature. See 46 C.F.R. 5.5. The request to defer the sanction until May during fishing season creates an appearance of seeking more of a punitive sanction and is denied.

Based on a review of the evidence in the record as a whole, the Court determined the Charges were proven by a preponderance of the evidence. All of the evidence presented regarding the charge is also relevant and considered with regard to determining a sanction pursuant to 46 C.F.R. § 5.569. The parties may also present matters that support either aggravation or mitigation. Title 33 C.F.R. Part 20, Subpart M (Supplementary Evidentiary Rules) provides guidance on what may properly be presented as evidence in aggravation or mitigation.

The Coast Guard proposed a sanction of outright suspension for three (3) months and requested it not commence until May 2016. The question of determining a sanction, including aggravation and mitigation is addressed as follows.

The Coast Guard did not expressly argue aggravating circumstances in this matter, however, the Court finds Respondent's attempt to evade responsibility to be a proper matter of aggravation. Although Respondent attempted to evade responsibility he

also has no previously documented infractions over long service as a mariner. His argument regarding frustration of having to wait for marine inspectors to return and clear deficiencies during the fishing season does not excuse non-compliance with regulations designed to ensure the safety of passengers.

The record shows Respondent is an experienced mariner and has no previous record of any suspension and revocation violations. Respondent's previous good record is considered as a matter in mitigation.

The applicable guidance for the violations in this matter from the suggested range of orders contained in 46 C.F.R. Part 5 (Table 5.569) would be 1-3 months of suspension for misconduct by failure to comply with U.S. law or regulation.

It is within the duties of the ALJ to order any of a variety of sanctions. See 46 C.F.R. § 5.569; see also Appeal Decision 2569 (TAYLOR) (1995); Appeal Decision 2680 (MCCARTY) (2006). However, the undersigned is not bound by 46 C.F.R. § 5.569 or the average order table. See Appeal Decision 2578 (CALLAHAN) (1996); Appeal Decision 2475 (BOURDO) (1988). Consideration of mitigating or aggravating factors and evidence may justify a lower or higher sanction than the range suggested in the suggested range of an appropriate order table. See 46 C.F.R. § 5.569(d). Respondent's contention that he was somehow unaware of the requirement to have a valid Certificate of Inspection is not persuasive. He is bound to know the law and regulations as a licensed mariner. Respondent's actions in returning the check to Mr. Henderson support a finding of knowledge of the regulations concerning passengers for hire and that he was in violation of the regulations.

The aggravating circumstance of attempting to evade responsibility may be considered in applying the general guidance in the appropriate order Table contained in 46 C.F.R. § 5.569. Although the suggested range of sanctions is merely guidance and exceeding the range of sanctions may be appropriate if supported by sufficient aggravation, I find that the upper end of the suggested range is a sufficient sanction in this matter in view of Respondent's previous good record. In view of the record as a whole, including all of the testimony and exhibits admitted at the hearing, the evidence establishes that in keeping with the interests of maritime safety as provided in 46 C.F.R. § 5.5, the appropriate sanction in this matter is that Respondent's mariner credentials shall be **SUSPENDED OUTRIGHT** for a period of three (3) months.

VI. ORDER

IT IS HEREBY ORDERED, that factual allegation 1 of the Amended Complaint is changed to read: "1. On May 28, 2015, the MARY M IV O/N 615080 was a small passenger vessel."

IT IS FURTHER ORDERED, that the Merchant Mariner's Credential and all other credentials issued by the U.S. Coast Guard to Saverio Francis Rescigno, Jr. are **SUSPENDED OUTRIGHT FOR A PERIOD OF THREE (3) MONTHS**.

IT IS FURTHER ORDERED, Respondent must immediately surrender his Merchant Mariner Credential and any other Coast Guard issued credentials to the Coast Guard, Sector Delaware Bay, 1 Washington Avenue, Philadelphia, Pennsylvania 19147-4395. The period of suspension will not commence until Respondent deposits his credentials with the Coast Guard. If you knowingly continue to use your credentials during a period of outright suspension, you may be subject to criminal prosecution.

PLEASE TAKE NOTICE that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 C.F.R. § 20.1001 – 20.1004.

(Attachment B).

Michael J Devine
US Coast Guard Administrative Law Judge

Date:

ATTACHMENT A

WITNESS AND EXHIBIT LISTS

WITNESS LISTS

COAST GUARD WITNESSES

CG Witness 1	LCDR Trevor Cowan
CG Witness 2	Jake Elks
CG Witness 3	MK2 Timothy Sparanga
CG Witness 4	Willie Henderson
CG Witness 5	Leonard Brundage

RESPONDENT WITNESS

Resp's Witness 1	Saverio Rescigno
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EXHIBIT LIST

COAST GUARD EXHIBITS

- CG Ex. 01 Copy of Merchant Mariner Information (MMLD) for Respondent's Merchant Mariner Credentials
- CG Ex. 02 Deactivation of Certificate of Inspection Letter to Respondent dated March 18, 2015
- CG Ex. 03 Certificate of Documentation MARY M IV dated February 5, 2015
- CG Ex. 04 CG 835 forms dated April 7, 2015 issued to Respondent by USCG Marine Inspector Jake Elks
- CG Ex. 05 MARY M IV Certificate of Inspection dated July 7, 2015
- CG Ex. 06 U.S. Coast Guard Passenger Statement Form, Willie Henderson
- CG Ex. 07 U.S. Coast Guard Passenger Statement form, Leonard Brundage
- CG Ex. 08 MARY M IV Brochure
- CG Ex. 09 Cleared check print out of check dated April 23, 2015 made out to Respondent from the Postal Angler's fishing club in the amount of \$200.00 for May 28, 2015 fishing trip.
- CG Ex. 10 Copy of check for \$960 from Postal Angler's Club made out to Respondent dated May 28, 2015

RESPONDENT EXHIBITS

None

ATTACHMENT B

NOTICE OF ADMINISTRATIVE APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.

- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.

- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.

- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.

(b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --

(1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,

(2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

(a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.

(1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

(i) Basis for the appeal;

(ii) Reasons supporting the appeal; and

(iii) Relief requested in the appeal.

(2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.

(3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or

within another time period authorized in writing by the Docketing Center, the brief will be untimely.

- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.

- (c) No party may file more than one appellate brief or reply brief, unless --
 - (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.

- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.

- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.