

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

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UNITED STATES COAST GUARD  
Complainant

vs.

LOWELL EDWARD GILLESPIE Jr.  
Respondent

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Docket Number 2016-0029  
Enforcement Activity No. 5719669

**DECISION AND ORDER**  
**Issued: August 08, 2017**

**By Administrative Law Judge: Honorable George J. Jordan**

**Appearances:**

**LCDR Benjamin M. Robinson**  
Sector Columbia River

**LCDR Christopher Jones**  
S&R National Center of Expertise  
**For the Coast Guard**

**Thomas E. McDermott**  
Lindsay Hart, LLP  
**For the Respondent**

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### I. SUMMARY OF THE PROCEEDINGS

The United States Coast Guard (Coast Guard) brought this administrative action under 46 U.S.C. § 7703(1)(A) and its underlying regulations at 46 C.F.R. Part 5, seeking to suspend Lowell Edward Gillespie's (Respondent) Merchant Mariner Credential (MMC or Credential) for two months. On January 25, 2016, the Coast Guard filed a Complaint against Respondent containing one allegation of a violation of Rule 8 of the Inland Rules of Navigation, stemming from an incident that occurred on the Columbia River in Portland, Oregon on August 1, 2015. Respondent filed a timely Answer denying certain jurisdictional and factual allegations and requesting to be heard on the proposed order. He later filed an Amended Answer.

Following several prehearing conferences and the completion of discovery, I held a formal hearing on October 19 and 20, 2016 at the United States Bankruptcy Court in Portland,

Oregon. Both parties were represented by counsel. Following the hearing, both parties filed post-hearing briefs containing proposed findings of fact, conclusions of law, and argument in support of their positions. I have carefully reviewed the entire record in this case, including witness testimony, exhibits, applicable statutes, regulations, and case law, and find the allegation of a violation of law or regulation PROVED.

## **II. FINDINGS OF FACT**

### **Background**

The PORTLAND SPIRIT (ON 903414) is a U.S. Coast Guard-inspected small passenger vessel operated by American Waterways, Incorporated (AWI). [Tr. I-191–192; EX R-Q]. The PORTLAND SPIRIT regularly conducts cruises on the Willamette River in Portland, Oregon. [Tr. I-201]. At times, these cruises occur during marine events such as the Rose Festival, Blues Festival, Fourth of July, and the Red Bull Flugtag. [Tr. I-II-43–44]. I take official notice that the Willamette River is a navigable water of the United States, subject to the Inland Navigation Rules as described in 33 C.F.R. Part 83. See Coast Pilot, Vol. 7, Ch. 10, available at [https://www.nauticalcharts.noaa.gov/nsd/xml2html.php?xml=coastpilot/files/cp7/CPB7\\_E49\\_C10\\_20170721\\_1817\\_WEB.xml](https://www.nauticalcharts.noaa.gov/nsd/xml2html.php?xml=coastpilot/files/cp7/CPB7_E49_C10_20170721_1817_WEB.xml).

On January 23, 2015, Red Bull submitted an Application for Marine Event for an event known as the Red Bull Flugtag, scheduled to take place on a portion of the Willamette River on August 1, 2015. [EX R-G]. The application stated 100 spectator crafts were expected. [EX R-G]. The Coast Guard Waterways Management Division granted a marine event permit on July 30, 2015. [EX CG-01/R-A]. The permit provided that no Special Local Regulation would be issued; the Coast Guard would not assign a Regatta Petrol; and a Local Notice to Mariners would be issued. [EX CG-01/R-A]. On July 8, 2015, the Coast Guard published a local notice to mariners

advising them that the Red Bull Flugtag event would be held on August 1, 2015. [EX R-C, Coast Guard District 13 Local Notice to Mariners 27/15, Dated July 8, 2015 p. 3]. The Coast Guard did not close the river to commercial traffic.

At some point prior to the Flugtag event, the Coast Guard Auxiliary asked for volunteers to work the event. Two Coast Guard Auxiliary boats volunteered. Generally, the role of the Coast Guard Auxiliary is to inform and assist boaters, provide assistance and towing, and pass along information. [Tr. I-116, II-5]. The Auxiliary does not have law enforcement powers. One of the Auxiliary boats was operated by Todd Mains, who holds the positions of coxswain and Auxiliary unit coordinator for MSU Portland. [Tr. I-113]. Mr. Mains' vessel was identified as Auxiliary 051. [Tr. I-131]. He and his crew arrived at the event at approximately 1100 hours. [Tr. I-115]. Richard Kersey was the coxswain of the second Auxiliary boat. [Tr. II-4-5]. His vessel was identified as Auxiliary 052. [Tr. I-132]. Two Multnomah County Sheriff boats were also on scene.

The August 1, 2015 Flugtag event attracted hundreds of small recreational vessels. Some of those vessels anchored in and near the channel and others rafted to anchored vessels. The Coast Guard had not assigned any extra active duty vessels to the Flugtag event. However, upon hearing reports about the large crowds of vessels, Coast Guard Response Boat (RB-S) CG 29213, under the control of BM2 Joseph Lanigan from MSU Portland, did go to the area. BM2 Lanigan requested assistance from a second RB-S, CG 29212, which was under the control of BM2 Ryan Constable.

In addition to the hundreds of boats tied and anchored in the river, people were swimming, kayaking, paddle boarding, and walking between boats socializing. [Tr. I-26-28]. Many people were drinking. [Tr. I-117]. One of the recreational vessels was operated by Ryan

Moon. [Tr. I-26]. Mr. Moon tied his boat up to a row and dropped anchor, and another boat then tied up to his port side. [Tr. I-26–27]. Another recreational vessel was operated by Nicolas Fisher and Rachael Fisher, who had their young children and several friends on board. [Tr. I-54, 78]. The Fishers described the event as chaotic and did not see the event organizers doing anything to control the crowd or make way for vessel traffic, though they did see a couple Flugtag jet skis. [Tr. I-56–57, 72, 81]. Around 1100, the Fishers were asked to move their boat because the PORTLAND SPIRIT would be transiting. They left their original position and moved to a space further southeast, near the Hawthorne Bridge. [Tr. I-57]. Other vessels quickly filled the spaces vacated by the boats that followed the Coast Guard’s and Sheriff’s orders to move. [Tr. I-59].

### **The Portland Spirit’s Upbound Transit**

1. At all times relevant to the allegations in this matter, Respondent held a Coast Guard-issued MMC. [Tr. II-40–45].
2. On August 1, 2015, Respondent had direction and control of the PORTLAND SPIRIT. [Tr. II-47].
3. The PORTLAND SPIRIT started the day at its usual berth, which is at the foot of Salmon Street approximately 500 feet south of the Hawthorne Bridge. [Tr. II-47].
4. The PORTLAND SPIRIT was scheduled to depart on a cruise at 1200 hours for a two-hour lunch cruise. [Tr. II-47].
5. When Respondent arrived at the PORTLAND SPIRIT that morning around 0930 hours, he called the Coast Guard for assistance because he could already see quite a few boats on the river. [Tr. II-48].
6. Respondent contacted the Coast Guard by radio around 1030 hours, BM2 Lanigan, the coxswain of CG 25213, told him that it would be a “huge task” to clear a path for the PORTLAND SPIRIT but they would do their best. [Tr. I-150].
7. Respondent did not ask for an escort during that conversation, and there was no discussion about an escort at that time. [Tr. II-50].
8. At some point prior to the PORTLAND SPIRIT’S scheduled departure, Chief Justin Urbano, the Command Duty Officer for Sector Columbia River, attempted to reach the PORTLAND SPIRIT on channel 16 but was unsuccessful. [Tr. II-33].

9. Chief Urbano continued to relay information to the Waterways Management Division, whom he expected to handle the situation because they are the subject matter experts. [Tr. II-33].
10. After Mr. Mains' Auxiliary boat 051 arrived at 1100 hours, the station boat asked then to start informing recreational vessels that the PORTLAND SPIRIT would be coming through and that they would have to move. [Tr. I-116].
11. The crew of Auxiliary 051 started performing this task in the area between the Hawthorne Bridge and Riverplace Marina, attempting to move upstream toward the Marquam Bridge. [Tr. I-117, I-119].
12. Mr. Moon saw a couple Coast Guard and Sheriff boats using a bullhorn to try to move boats out of the way, but due to the way the boats were tied and anchored and the people in the water, it was a slow and difficult process and as soon as some boats moved out of the way, others took their places. [Tr. I-30–31].
13. At approximately 1140 hours, Respondent radioed BM2 Lanigan about his plans to leave the dock around 1210 hours for the lunch cruise, and the conversation went as follows:

*Respondent:* Uh, how's it lookin' there, for a pass through there?

*BM2 Lanigan:* Each time we clear some people out, more people pull in. We're currently working on a way to maybe try to get you through.

*Respondent:* All right. Is the sheriff's boat still around?

*BM2 Lanigan:* PORTLAND SPIRIT 213. Yes, they're around. But we're also trying to get another asset out here to help us as well.

*Respondent:* All right. Well, I appreciate the help. So we'll probably be ten minutes late leaving the dock. So probably ten after twelve.

*BM2 Lanigan:* PORTLAND SPIRIT, 213 Roger. We're gonna try to maybe escort you through when you do get under way, so we're still working on everything, but we'll see how it goes.

*Respondent:* Okay, thank you.

[EX R-X].

14. Prior to departing, Respondent could see that the waterway was still crowded and it looked like he would need help to get through. [Tr. II-72].
15. However, Respondent did not speak to the Coast Guard again before getting underway. [Tr. II-79].

16. Mr. Mains tried to hail the PORTLAND SPIRIT on Channel 13 to ask about its intentions, but received no response; he then tried Channel 16 with no response. [Tr. I-120, 129].
17. Around noon, Mr. Mains heard one long blast from the PORTLAND SPIRIT's horn and believed the vessel might be preparing to get underway. [Tr. I-120].
18. Mr. Mains aboard Auxiliary 051 had a clear view of the PORTLAND SPIRIT vessel when it was at its berth. [Tr. I-121, I-131].
19. Mr. Moon also had a clear view of the PORTLAND SPIRIT from his boat; it was nearly a straight line of sight but perhaps obscured slightly by the Hawthorne Bridge. [Tr. I-29, 31].
20. Mrs. Fisher could see the PORTLAND SPIRIT at its berth from both the first and second locations of their boat. [Tr. I-84].
21. At approximately 1210 hours, the PORTLAND SPIRIT got underway from its berth north of the Hawthorne Bridge in the Willamette River and headed south. [Tr. II-57–58].
22. The PORTLAND SPIRIT had just over 200 passengers-for-hire onboard. [Tr. II-76].
23. The PORTLAND SPIRIT did not wait for a Coast Guard escort before proceeding into the mass of vessels in the Flugtag area. [Tr. I-72; I-142–143].
24. Mr. Moon saw the PORTLAND SPIRIT move from its mooring north of the Hawthorne Bridge, proceed south underneath the bridge, pause for a few minutes, then continue upriver, first making a 45-degree left-hand turn and then proceeding up the center of the channel. [Tr. I-29; I-32–33].
25. The Fishers also observed and photographed the PORTLAND SPIRIT when it came under the Hawthorne Bridge and made a left-hand turn at approximately 1213. [Tr. I-61, I-84 EX-CG-16a].
26. After transiting the Hawthorne Bridge, the PORTLAND SPIRIT sounded five short blasts, the danger signal prescribed in Inland Navigation Rule 34(d) [33 C.F.R. § 83.34(d)], an indication Respondent failed to understand the intentions or actions of others, or was in doubt whether sufficient action was being taken by others to avoid collision.
27. When the Fishers realized the PORTLAND SPIRIT was coming toward them, they attempted to get their children out of the water, untie lines, and raise the anchor. [Tr. I-61, I-86, EX CG-16b].
28. The Fishers were unable to move their boat before the PORTLAND SPIRIT approached, and Mrs. Fisher used her feet to push the boats apart. [Tr. I-63, I-88; EX CG-12].
29. Due to Mrs. Fisher's actions, the contact between the PORTLAND SPIRIT and the Fishers' boat was limited to the swim platform. [Tr. I-63, I-88].

30. When the PORTLAND SPIRIT maneuvered through the crowd after passing the Fishers' boat, it overtook Auxiliary 051 and CG 25212. [Ex. CG-09, CG-10].
31. Around the same time, Mr. Moon and others started trying to untie the boat on his port side, which cleared within seconds of the PORTLAND SPIRIT transiting through. [Tr. I-36].
32. Mr. Moon tried to reverse his boat as much as possible to gain additional space. [Tr. I-37].
33. The PORTLAND SPIRIT lightly struck Mr. Moon's boat as it passed. [Tr. I-41; EX CG-10].
34. The resulting damage to Mr. Moon's boat was mostly paint transfer on the port side bow and scratches and paint transfer to the front navigation light. [Tr. I-45; EX CG-11].
35. Respondent continued through the crowd of vessels at bare steerageway and grazed a number of vessels, causing little damage and no reported injuries. [Tr. I-124; II-134; II-161].
36. After clearing these vessels, the PORTLAND SPIRIT continued upriver on its cruise. [Tr. I-64].

#### **The Portland Spirit's Downbound Transit**

37. On the downbound transit, the authorities managed to clear a path and the PORTLAND SPIRIT moved through without incident. [Tr. I-44-45; I-48].
38. Mr. Mains' vessel was tasked with following behind the PORTLAND SPIRIT and assisting vessels if necessary. [Tr. I-125-126].
39. Mr. Mains described the downbound transit as smoother because recreational vehicles got out of the way more quickly. [Tr. I-126].

#### **Post-Incident**

40. The Coast Guard Waterways Management Division pulled the event permit and shut down the Flugtag around 1500 hours for safety reasons. [Tr. II-34].
41. Red Bull, the event organizer, was issued and accepted a letter of warning by the Coast Guard for misrepresenting the scale of the event and failing to keep the waterways clear. [EX R-O].
42. Respondent was issued a letter of warning for a violation of Rule 8 but declined it, and the Coast Guard subsequently brought this proceeding against his MMC. [EX R-P].



### III. PRINCIPLES OF LAW

#### A. General

The purpose of Coast Guard suspension and revocation proceedings is to promote safety at sea. 46 U.S.C. § 7701(a). In furtherance of this goal, Administrative Law Judges (ALJs) have the authority to suspend or revoke Coast Guard-issued credentials or endorsements. See 46 C.F.R. § 5.19(b). These proceedings are conducted under the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.* 46 U.S.C. § 7702(a).

Section 7(c) of the APA places the burden of proof on the proponent of a rule or order, unless otherwise provided by statute. In a suspension or revocation hearing, the Coast Guard bears the burden of proof. 33 C.F.R. § 20.702(a). Under the APA, the fact-finder must consider the “whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence” before assessing a sanction. 5 U.S.C. § 556(d). The standard of proof in administrative proceedings is the “preponderance of the evidence” standard, meaning a party must prove that a “fact’s existence is more likely than not.” Steadman v. SEC, 450 U.S. 91, 98 (1981); Greenwich Collieries v. Dir., Office of Workers’ Comp. Programs, 990 F.2d 730, 736 (3d Cir. 1993); see also Dir., Office of Workers’ Comp. Programs v. Greenwich Collieries, 512 U.S. 267 (1994).

Evidentiary rules under the APA are less strict than in jury trials, and only irrelevant, immaterial, or unduly repetitious evidence need be excluded. See 5 U.S.C. § 556(d); Gallagher v. Nat’l. Transp. Safety Bd., 953 F.2d 1214, 1214 (10th Cir. 1992); Sorenson v. Nat’l. Transp. Safety Bd., 684 F.2d 683, 688 (10th Cir. 1982). Moreover, evidence “need not be authenticated with the precision demanded by the Federal Rules of Evidence” in order to be admissible in an administrative proceeding. Gallagher at 1218; Appeal Decision 2664 (SHEA) (2007).

When evaluating the evidence in the record, an ALJ must make determinations as to its credibility and reliability. The ALJ “is vested with broad discretion in making determinations regarding the credibility of witnesses and in resolving inconsistencies in the evidence.” Appeal Decision 2519 (JEPSON) (1991). This is because, as the presiding official, the ALJ “can fully observe the response, character and demeanor of the witnesses in issue.” Id. Some factors traditionally involved in a credibility determination include:

(1) the demeanor of the witness, (2) the inherent plausibility of the witness's testimony, (3) the consistency of the testimony of the witness with prior statements of the witness, (4) the internal consistency of the witness's statements, (5) the consistency of the testimony with other evidence, (6) the accuracy of the witness's testimony, and (7) the interest of the witness in the outcome of the proceeding. Other factors may also apply but a credibility assessment is commonly made based on the totality of the circumstances after considering any relevant fact that may impact the witnesses [sic] credibility.

St. Claire Marine Salvage, Inc. v. Bulgarelli, No. 13-10316, 2014 WL 3827213, at \*6 (E.D. Mich. Aug. 4, 2014), aff'd (6th Cir. 14-2135) (July 22, 2015). The essence of credibility is whether the testimony in the record is well-supported and believable; “[t]he presence of evidence which conflicts with the testimony of a witness is not, in itself, enough to conclusively show a lack of credibility of that witness when there is substantial evidence that supports his account.” Appeal Decision 2017 (TROCHE) (1975).

## **B. Jurisdiction**

Respondent admitted to all jurisdictional elements relating to the remaining allegations. However, the burden of establishing jurisdiction nevertheless remains. See 33 C.F.R. § 20.310(c); Appeal Decision 2656 (JORDAN) (holding that even though the respondent admitted the charged offense, an appeal must be granted where jurisdiction is not established). Since this case involves an alleged violation of law or regulation, the Coast Guard must prove the alleged

violated occurred while Respondent was “acting under the authority” of his MMC in order to establish jurisdiction. See 46 U.S.C. § 7703. A mariner acts under the authority of an MMC when he or she is required to hold one by law or regulation; or by an employer as a condition for employment. 46 C.F.R. § 5.57(a). See Appeal Decision 2687 (HANSEN) (2010).

It is uncontested that Respondent was captain of the PORTLAND SPIRIT at all times the vessel was underway on August 1, 2015. By law and regulation, the vessel is required to have a licensed master. See 46 U.S.C. § 8902; 46 C.F.R. § 15.515; 46 C.F.R. § 15.805(a)(4). Vessels subject to inspection under 46 U.S.C. § 3301 must be under the direction and control of an individual with an appropriate license or officer endorsement while on a voyage. 46 C.F.R. § 15.515. Respondent’s employer, AWI, also required him to hold an MMC as a condition of his employment. I therefore find jurisdiction clearly established in this case.

### **C. Violation of Law or Regulation**

A MMC may be suspended or revoked if the holder when acting under the authority of that MMC has violated or fails to comply with 46 U.S.C. subtitle II; a regulation prescribed under that subtitle; or any other law or regulation intended to promote marine safety or to protect navigable waters. 46 U.S.C. § 7703(1)(A) and 46 C.F.R. § 5.33. The Coast Guard charged Respondent with a violation of the Inland Navigation Rules, specifically 33 C.F.R. § 83.08. While the Inland Navigation Rules are not issued under 46 U.S.C. subtitle II, they are clearly regulations intended to promote marine safety or to protect navigable waters and fall within the ambit of 46 U.S.C. § 7703(1)(A) and 46 C.F.R. § 5.33. See Appeal Decision 2639 (HAUCK) (2003).

The Inland Navigational Rules Act of 1980 modified the inland navigation rules to be similar in both content and format to the International Regulations for Preventing Collisions at

Sea (COLREGS). Congress later passed the Coast Guard and Maritime Transportation Act of 2004, which gave the Secretary of Homeland Security (the Secretary) the authority to issue inland navigation regulations. In 2010, the Coast Guard used that authority to move the inland navigation rules from the United States Code to the Code of Federal Regulations. Currently, regulations in 33 C.F.R. parts 83 through 88 comprise the complete domestic inland navigation rules.

On July 2, 2014, the Coast Guard amended these rules to harmonize the inland rules with the COLREGS and to adopt recommendations of the Navigation Safety Advisory Council (NAVSAC) that simplify the inland navigation rules and provide alternatives to equipment requirements for certain vessels. See Changes to the Inland Navigation Rules, 79 FR 37898-01. That version was in effect at the time relevant to these allegations.

*1. Rule 8: Action to Avoid Collision*

The Coast Guard has alleged that Respondent failed to take appropriate action to avoid collision by failing to sufficiently alter course, sufficiently slacken speed, or take all way off by stopping or reversing her means of propulsion in violation of Inland Navigation Rule 8 [33 C.F.R. § 83.08]. The pertinent rule reads as follows:

**§ 83.08 Action to avoid collision (Rule 8).**

- (a) Any action taken to avoid collision shall be taken in accordance with the Rules of this subpart (Rules 4–19) (§§ 83.04 through 83.19) and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- (b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

(c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

(f)(i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of Subpart B (Rules 4–19).

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of Subpart B (Rules 4–19) when the two vessels are approaching one another so as to involve risk of collision.

### 33 C.F.R. § 83.08

The changes to Rule 8 are (1) adding a reference to the Steering and Sailing rules with the intent that action under “Rule 8(a) should be taken with full knowledge and compliance with Rules 4-19” and Rule 8(f).<sup>1</sup> Given that there are relatively few cases interpreting either version of 33 C.F.R. § 83.08, I will consider cases and Commandant Decisions interpreting the COLREGS and the now-repealed statutory Inland Navigational Rules.

The Navigation Rules do not only seek to prevent actual collisions, but also the risk of collisions. See Ocean S.S. Co. of Savannah v. United States, 38 F. 2d 782 (2nd Cir. 1930). The

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<sup>1</sup> “In our reading of Rule 8(f), “not to impede” is applicable to vessels crossing a narrow channel or fairway (see § 83.09(d)-Rule 9(d)), vessels engaged in fishing (see § 83.10(i)-Rule 10(i)), and those vessels of less than 20 meters (see § 83.10(j)-Rule 10(j)). Therefore, these vessels have the freedom of navigation and are able to utilize narrow channels and fairways for their own purposes. However, if vessels are sighted utilizing the narrow channel or fairway, these vessels using the channel for their own purposes are to cease and follow the steering and sailing rules while vacating and allowing the safe passage of the other vessel.” 79 FR 37898-01.

Courts have interpreted Rule 8 to require a navigator “to take sufficient methods to avoid what should have been seen as a potentially dangerous situation. Rule 8 is violated if the vessel had safe means of avoiding the accident available and failed to use them. Among the reasonable actions available to the navigator or driver is the ability to slacken speed or stop vessel and a substantial and timely alteration of course.” Moore v. Matthews, 445 F. Supp. 2d 516, 527 (D. Md. 2006) (internal citations omitted).

## 2. *Special Circumstances (Rule 2)*

Respondent argues as an affirmative defense that the large marine event created a special circumstance. Rule 2 excuses a navigator’s failure to comply with other navigation rules when special circumstances make the failure to follow the rules necessary to avoid immediate danger. 33 U.S.C. § 2002. However, such extenuating circumstances must be strictly evaluated to justify precluding application of any given navigational rule. See, e.g., LuVuolo v. Gunning, 925 F.2d 22, 26 (1st Cir. 1991).

## **IV. DISCUSSION**

### **A. Coast Guard’s Arguments**

The Coast Guard argues that, while Rule 8 requires timely, positive action to avoid collision, Respondent instead “acted positively to bring about a collision by proceeding ahead toward a crowd of hundreds of anchored recreational vessels.” First, Respondent “could observe the potential for risk of collision before he unmoored the vessel and got it underway,” but rather than head downriver where there was no obstruction, he headed towards the marine event. Second, once he stopped and sounded the danger signal, he proceeded ahead towards a channel full of recreational vessels. Citing The New York, 175 U.S. 187, 201 (1899) and Appeal Decision 362 (MILLER) (1949), the Coast Guard argues that “[t]his commitment to maintaining

course despite certain knowledge that other vessels are in its way is irreconcilable with Rule 8 and centuries of maritime law precedent.” Rather than remain stopped or back down, Respondent again engaged the throttles ahead toward the anchored vessels.

The Coast Guard further argues, “Respondent’s choice of the course was also in violation of Rule 8. Changing course after entering the area congested with recreational vessels violated Inland Navigation Rule 8 because it created another close-quarters situation and did not result in passing at a safe distance. Inland Navigation Rule 8 (c), (d).”

### **B. Respondent’s Arguments**

Respondent argues Rule 8 does not apply because of the presence of many vessels anchored and drifting in the Channel. He asserts that “Rule 8 is intended for situations in which *two* vessels in navigation encounter one another and need to communicate their intentions in order to avoid collision. There are multiple references in Rule 8 to a singular ‘vessel’ and no references to more than two vessels encountering one another.” Respondent adopts Captain Pecota’s view that “when confronting more than one other vessel, Rule 2(b) applies.” [Resp. Brief at 4] (Internal citations omitted). Respondent also argued at hearing that Rule 8 could not apply because “there was no other vessel in navigation that was encountering the PORTLAND SPIRIT. It was the PORTLAND SPIRIT that was underway and what they really were confronted with were illegally anchored small craft in the channel. They’re not underway.” [Tr. I-10].

Additionally, Respondent asserted “[t]he keystone to the outcome of this proceeding is a determination of when the risk of collision (with any of the hundreds of boats between the Hawthorne and Marquam Bridges) was deemed to exist. . . . The critical issue is at *what point* of the transit was the risk of collision deemed to exist?” [Resp. Brief at 3]. Respondent argues that

“he was unaware of the extent of the congestion and the lack of a path cleared by the USCG until his vessel was underneath the Hawthorne Bridge, where his view became less obstructed. [Resp. Brief at 3]. Respondent asserts he “acted very reasonably in assuming the Coast Guard had a plan to clear a path for him” and that he “chose the best option available to him once he deemed the risk of collision to exist upon arriving under the Hawthorne Bridge. Under the special circumstances before him, Captain Gillespie avoided immediate danger by navigating carefully through the congestion at the slowest speed possible.” [Id.]

### **C. Analysis**

There are three principal issues before me: (1) whether Rule 8 applied; (2) if so, whether Respondent violated Rule 8; and (3) under the circumstances that existed at the time, whether Rule 2 permitted any deviation from the mandates of Rule 8. At the outset, I note that this proceeding involves the potential suspension of a Coast Guard-issued MMC; as such, it is distinct from cases involving liability for monetary damages. Respondent argued that the small craft in the channel during the Flugtag event were illegally anchored in violation of Rule 9, and his argument would likely have merit in a civil case for damages. However, in a suspension proceeding, a mariner’s violation of law or regulation is not excused by a corresponding violation on the part of another person. It may, however, be considered as a mitigating factor when assessing a sanction.

Respondent appears to argue that the Coast Guard had an obligation to inform him that his vessel would have difficulty passing through the area of the Flugtag event. It is true that although the Coast Guard communicated with Respondent that morning, no Coast Guard personnel told him the channel was completely blocked. However, both Chief Urbano and Mr.



Mains testified that they tried unsuccessfully to hail the PORTLAND SPIRIT on the radio to discuss the situation before its departure.

The evidence also clearly shows that the Coast Guard did not promise an escort and Respondent did not attempt to ascertain details about an escort before starting his upbound transit. Further, Respondent stated that he did not ask about an escort when he spoke to the BM2 Lanigan at 1030 hours because “Coast Guard Group Portland knew. He was there. He knew. I mean, that’s – all three of us knew.” [Tr. II-50]. Respondent also said that during the 1140 conversation with BM2 Lanigan, he did not pick up anything from the communications that led him to believe he would have trouble getting through. [Tr. II-53]. Given the conversation, which is transcribed at Finding of Fact # 10, and during which BM2 Lanigan said, “Each time we clear some people out, more people pull in. We’re currently working on a way to maybe try to get you through” and “We’re gonna try to maybe escort you through when you do get under way, so we’re still working on everything, but we’ll see how it goes,” I do not find Respondent’s testimony credible. Rather, I find the conversation at 1140 hours would have put a reasonable mariner on notice that the situation on the river was both difficult and fluid; moreover, the Coast Guard escort was not guaranteed and no details regarding the potential escort were discussed. Additionally, while Hawthorne Bridge may have blocked the full extent of the crowd of vessels, Respondent should have noted from his dock that many vessels were blocking the channel ahead.

*1. Did Rule 8 Apply?*

Respondent has made two main arguments about why Rule 8 should not apply. First, he contends that Rule 8 only applies when the vessels are underway, and the PORTLAND SPIRIT was the only vessel underway at the time of the incident. Consequently, he believes the other vessels were an “obstacle to navigation” rather than “another vessel with whom [he] should be

communicating by the actions of his vessel to avoid a collision . . .” [Tr. I-10]. However, it is clear that the Navigational Rules “apply to all vessels upon the inland waters of the United States.” Rule 1(a). Thus, a vessel underway is equally obligated to avoid allisions with stationary vessels as it is to avoid collisions with other moving vessels. See, e.g., In re Luhr Bros. Inc. v. Crystal Shipowning, PTE, 325 F.3d 681, 689 (5th Cir. 2003). Moreover, the evidence clearly showed that the small craft in the Flugtag area were variously moored, anchored, adrift, and underway throughout the event. Thus, to the extent Respondent’s argument that the PORTLAND SPIRIT was the only vessel underway at the time might make any difference to the Rule 8 violation, it is erroneous and must be discounted.

The second and more fully developed of Respondent’s arguments is that Rule 8 cannot apply when more than two vessels are present.<sup>2</sup> I do note that some provisions of Rule 8 utilize the terms “the other vessel” or “two vessels,” and as to those provisions Respondent’s assertion that Rule 8 does not apply may have support. However, paragraphs (a), (c) and (e) are not limited to two-vessel scenarios. “Originally enacted by Congress, the INRs established the ‘rules of the road’ for proper navigation based on long-standing principles and were intended to prevent collisions in inland waterways. Indeed, the INRs “apply to all vessels upon the inland waters of the United States.” 33 C.F.R. § 83.01(a) (INR 1). Mike Hooks Dredging Co. v. Marquette Transp. Gulf-Inland, L.L.C., 716 F.3d 886, 891–92 (5th Cir. 2013).

The first section of Subpart B in the Inland Navigation Rules (Rules 4–10) (33 C.F.R. §§ 83.04 through 83.10) is entitled “Conduct of Vessels in Any Condition of Visibility.” These rules

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<sup>2</sup> In support of his argument, Respondent called Captain Samuel Pecota, who has been a mariner for over 35 years and currently serves as the academic dean of California Maritime Academy. Captain Pecota is not an attorney; had never before testified in a court about the rules of the road; and did not review any case law in preparation for this hearing. [Tr. II-163]. Although Respondent proffered Captain Pecota as an expert during the hearing and I permitted him to offer opinion testimony, much of his testimony involved conclusions of law rather than application of the facts to the law. “As a general rule an expert’s testimony on issues of law is inadmissible.” United States v. Bilzerian, 926 F.2d 1285, 1294 (2d Cir. 1991); see also Torres v. County of Oakland, 758 F.2d 147, 150 (6th Cir.1985); Strong v. E.I. DuPont de Nemours Co., 667 F.2d 682, 685–86 (8th Cir.1981). Thus,

are of general applicability—unlike the meeting, overtaking and head-on situations which apply to two vessels in sight of each other (Rules 11-18) (33 C.F.R. §§ 83.11 through 83.18).

Accordingly, while Rule 8 clearly requires the presence of at least two vessels, the presence of additional vessels does not render Rule 8 wholly inapplicable.

## *2. Did Respondent Violate Rule 8?*

Rule 8 is broken into several paragraphs, each of which sets out a different facet of the rule. As I previously discussed, paragraphs (b) and (d) are not at issue here. Paragraph (a) requires that “[a]ny action taken to avoid collision ... shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.” Paragraph (c) provides, “[i]f there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it ... does not result in another close-quarters situation.” Finally, paragraph (e) “requires a vessel to slacken speed, to stop or to reverse, if necessary, to avoid collision or allow more time to assess the situation.” Beene v. Terrebonne Wireline Servs., Inc., No. CIV. A. 90-409, 1992 WL 193501, at \*3 (E.D. La. Aug. 4, 1992), aff’d, 990 F.2d 627 (5th Cir. 1993).

The weight of the evidence shows that Respondent had at least a partial view of the river conditions in the Flugtag area. Mr. Moon, Mrs. Fisher, and Mr. Mains all testified they had clear views of the PORTLAND SPIRIT from their vessels before it moved away from its moorings. In particular, Mr. Mains said he had a line of sight to the wheelhouse from his vessel’s position on the river. [Tr. I-131]. Mr. Mains testified that at the time the PORTLAND SPIRIT got underway, “there were so many boats in front of us on both sides, behind us, every which way.” [Tr. I-121].

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any conclusions Captain Pecota reached about the scope and applicability of Rule 8 to multi-vessel scenarios or the invocation of Rule 2 impermissibly encroach on my role as judge.

Respondent's own testimony was that he had a "pretty clear" view toward Riverplace Marina, except for some portions blocked by the bridge and abutments, and "could still see there was boats out there." [Tr. II-51]. The chartlets included in the record also show that Respondent should have had a reasonable amount of time to assess the situation after the PORTLAND SPIRIT left its berth and before he transited under the Hawthorne Bridge. Even if Respondent could not see the full extent of the waterway congestion, he was certainly aware—or should have been aware—that the area was unusually crowded. However, Respondent took no additional action to determine whether his vessel could safely make the upbound transit.

Coupled with the Coast Guard's statements that they were not having much luck clearing a path, the views he had of vessels on the river should have alerted Respondent to the potential difficulties in getting through. I also note that Mr. Mains tried to hail the PORTLAND SPIRIT on both radio channels 13 and 16 when he heard one short blast on the vessel's horn, indicating it was about to get underway, but nobody aboard the PORTLAND SPIRIT responded. [Tr. I-120, I-129]. Then, when Respondent reached the Hawthorne Bridge, he stopped and waited for a brief period before proceeding upriver.<sup>3</sup>

It is clear Respondent had sufficient time to assess the risk of collision and formulate a plan to avoid such collisions. In a recent case, the Eastern District of North Carolina found that a ferry captain violated Rule 8(a) by failing to timely reduce speed and indicate the ferry's intentions and doubt. The court found that notwithstanding a pleasure vessel's obligation not to impede the passage of the ferry, the ferry "still remained obligated to take timely action to avoid collision." Goodwin v. Cockrell, No. 4:13-CV-199-F, 2015 WL 12851580, at \*9 (E.D.N.C. Oct. 14, 2015), amended, No. 4:13-CV-199-F, 2015 WL 12851581 (E.D.N.C. Dec. 30, 2015). Here,

the presence of hundreds of small craft was clearly an obstacle to the PORTLAND SPIRIT, but this did not relieve Respondent of his obligation to avoid collisions.

Under the conditions that existed at the time, it is clear the PORTLAND SPIRIT did not have a significant amount of sea room after clearing the Hawthorne Bridge. However, Respondent should have been able to assess the situation prior to clearing the bridge. The PORTLAND SPIRIT is a highly maneuverable twin-screw vessel, and Respondent testified that he could work the props against each other to create a turning force even if there was no way on; he “could almost turn it on itself.” [Tr. II-81–82]. Respondent’s excuses as to why he was unable to turn the vessel back downriver are unconvincing. He stated he could not back up because he knew other boats were behind him somewhere but did not know where those boats were, yet also stated he had a lookout positioned on the stern to watch for pleasure boats as he passed through the Flugtag area. [Tr. II-59–60]. He also referred to the age of the bridge and the fact there were abutments. I note that the horizontal clearance under the lift span of the Hawthorne Bridge is 200 feet [EX CG-05], and thus he could not safely turn under the bridge itself, but he did not adequately explain why he could not have altered course prior to reaching the bridge or doubled back after clearing the bridge.

There is other evidence in the record of the PORTLAND SPIRIT’s maneuverability. Dan Yates, the part-owner of the vessel and president of AWI, testified that one of his captains was forced to “turn[] around and [go] the other way” during the Blues Festival because the vessel was unable to safely pass through vessel traffic congregated near the Hawthorne Bridge. [Tr. I-211]. The Coast Guard also established that the vessel is sufficiently maneuverable that it is not required to carry a rescue boat; Mr. Yates testified that the vessel was consistently able to

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<sup>3</sup> Mr. Moon testified that the PORTLAND SPIRIT waited for about ten minutes. However, I do not find his testimony on this particular issue credible. The record indicates that timeline more closely matches Respondent’s

execute the rescue drill in about six and a half minutes and had to make some sort of turn to do that. [Tr. I-198–199].

Given the maneuverability of the PORTLAND SPRIT, I find Respondent had sufficient space to hold position and then reverse course once it was safe to do so. Respondent did initially slow and take most way off, but he then sounded the danger signal, turned to port, and proceeded upriver at dead slow speed, creating additional close-quarters situations with numerous vessels and minor collisions with several small boats. Even though the pleasure boats were impeding his passage in violation of Rule 9 of the Inland Navigation Rules, 33 C.F.R. § 83.09, Respondent still remained obligated to take timely action to avoid collision. Additionally, any action must be taken with due regard to the observance of good seamanship and proceeding into the midst of hundreds of anchored and drifting small recreational vessels is inconsistent with good seamanship. The Syracuse, 76 U.S. 672, 676 (1869). Accordingly, he violated Rule 8.

To the extent that the Coast Guard was attempting to escort the PORTLAND SPIRIT through the area, Respondent also went ahead of such escort. Mr. Mains testified:

*Q:* As the Portland Spirit approached your vessel, were you engaged in an escort of the Portland Spirit?

*A:* I suppose you could say that, except that we were not making much headway. We were kind of up against these recreational boats that were mostly moored, so we weren't -- usually when I think of an escort, I think that both boats are moving, but our boat was more or less stationary.

*Q:* Were you overtaken by the Portland Spirit?

*A:* Yes, ultimately, yes.

*Q:* Can you describe that?

*A:* We were focused on the boats that we were moving. We were working with the people and explaining to them that they had to get out of the way, and then my crewmen once again told me that the Portland Spirit was behind us and I turned around and I was surprised that the Portland Spirit was right there behind us. And at

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assertion that he briefly paused.

that point I had to get my boat out of the way. That became my primary task.

[Tr. I-122–123]. BM2 Lanigan also testified that he was unable to get in front of the PORTLAND SPIRIT because the vessel did not wait for him; he said “I had to take station on port order because by the time I left Station 21 and got across the river, he was already in a position where I couldn’t get in front.” [Tr. I-143]. I cannot credit Respondent’s statements that the Coast Guard failed to provide him an escort when it is clear he never verified the details of the arrangement, did not wait for the escort before beginning his transit, and proceeded ahead of both the official Coast Guard small boats and the auxiliary vessels.

Once the PORTLAND SPIRIT passed his vessel, Mr. Mains was concerned that passengers on the recreational vessels would be injured and decided to focus his attention on providing assistance if needed. [Tr. I-123–124]. He saw the PORTLAND SPIRIT scraping by vessels and at least one person using his hands to push his vessel away from the PORTLAND SPIRIT. [Tr. I-124]. The record clearly establishes that, in addition to the risk of collision, the PORTLAND SPIRIT actually did collide with at least one other vessel.

### *3. Rule 2 Does Not Excuse Respondent’s Rule 8 Violation*

Respondent argues his actions were a justified departure from these Rules necessary to avoid immediate danger under the special circumstances rule. Here, Respondent argues he was confronted with *hundreds* of other vessels anchored and rafted together in the commercial navigation channel and the “presence of more than two vessels may preclude full compliance with the Rules; action required with respect to one vessel may conflict with the action required with respect to one or more of the others.” [Resp. Brief at 5 (quoting Christopher B. Liana and George P. Wisneskey, Handbook of the Nautical Rules of the Road (2d Ed.) at 16)].

In Appeal Decision 2070 (PAYNE) (1976), the appellant's theory was that the special circumstances rule applied to this case because as many as 16 small pleasure boats were present when he approached the southeast entrance of a strait. The Commandant found the "special circumstances rule cannot be held to apply since, at this point, there was no evidence of immediate danger to justify a departure from the established rules. ... In Griffin on Collision, §228, p. 516, the author states that the special circumstances rule 'is not to be treated as a license to disobey the ordinary rule when the navigator takes it in his head to do so. There must be a sudden danger or an unexpected development.'"

The Ninth Circuit has recently interpreted Rule 2, stating:

By its terms, Rule 2 limits "special circumstance[s]" to those circumstances "which may make departure ... necessary to avoid immediate danger." In other words, vessels may justify departure from the COLREGS in order to avoid immediate danger, but not for more generic special circumstances. This interpretation is echoed in one of the leading admiralty law treatises: "Courts, had they been so minded, could have sailed a whole armada of exceptions through the opening made by this Rule. Actually, it has been very narrowly construed, and will not excuse a violation of the plain mandate of the more specific Rules..." Grant Gilmore & Charles L. Black, Jr., *The Law of Admiralty* \*726 508 (2d ed.1975).

Crowley Marine Servs. Inc. v. Maritrans Inc., 447 F.3d 719, 725–26 (9th Cir. 2006).

Similarly, the Second Circuit has held that "the presence of more than two vessels in not a per se 'special circumstance.'" Ching Sheng Fishery Co. Ltd. v. United States, 124 F.3d 152, 161 (2d Cir.1997). Instead, "[t]his rule applies to facts 'where there is an immediate danger, perfectly clear; and the departure from the rules must be no more than is necessary.'" In re Otal Investments Ltd., No. 03 CIV.4304, 2006 WL 14512, at \*7 (S.D.N.Y. Jan. 4, 2006), aff'd in part,



rev'd in part sub nom. Otal Investments Ltd. v. M.V. Clary, 494 F.3d 40 (2d Cir. 2007) (quoting Yang-Tsze Ins. Ass'n v. Furness, Withy & Co., 215 F. 859, 861-62 (2d Cir.1914)).

Respondent was aware of the marine event and had been told that the Coast Guard and police were having problems clearing a path before he began the upbound transit. He did not call the Coast Guard again before getting underway to find out whether the situation had improved or worsened in the half-hour between his last conversation with BM2 Lanigan and his departure from the Salmon Street berth. Respondent proceeded under the Hawthorne Bridge even after the full magnitude of the blockage was apparent, ultimately risking collisions with dozens of boats and causing at least one known collision. The special circumstances exception in Rule 2 is not intended for situations of one's own making; in other words, if a safer course is available to a vessel, it cannot voluntarily proceed into a situation where the risk of collision is high and then claim that the collision rules do not apply. Accordingly, Rule 2 did not excuse a departure from Rule 8 under the circumstances of this case. I find that Respondent violated Rule 8 and that the allegation is PROVED.

## **V. FACTORS CONSIDERED IN DETERMINING AN APPROPRIATE ORDER**

Having found the allegations proved, I must now issue an appropriate order in this matter. 33 C.F.R. § 20.902(a)(2). “An Administrative Law Judge has wide discretion to formulate an order adequate to deter the [a mariner's] repetition of the violations he was found to have committed.” Appeal Decision 2475 (BOURDO) (1988).

Coast Guard regulations detail the factors to be considered in determining an appropriate order. 46 C.F.R. § 5.569. “The selection of an appropriate order is the responsibility of the Administrative Law Judge, subject to appeal and review. The investigating officer and the respondent may suggest an order and present argument in support of this suggestion during the

presentation of aggravating or mitigating evidence.” 46 C.F.R. § 5.569(a). I am not bound by the Coast Guard’s recommendations.

In determining an appropriate sanction, an ALJ may consider the following factors: (1) remedial actions which have been undertaken independently by Respondent; (2) the prior record of Respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and (3) evidence of mitigation or aggravation. See 46 C.F.R. § 5.569(b). These rules include a Table entitled “Suggested Range of an Appropriate Order,” stating Table 5.569 “is for the information and guidance of Administrative Law Judges and is intended to promote uniformity in orders rendered. This table should not affect the fair and impartial adjudication of each case on its individual facts and merits.” 46 C.F.R. § 5.569(d).

The regulations explain how an ALJ may apply the “Suggested Range of an Appropriate Order” Table, noting that:

The orders are expressed by a range, in months of outright suspension, considered appropriate for the particular act or offense prior to considering matters in mitigation or aggravation. For instance, without considering other factors, a period of two to four months outright suspension is considered appropriate for failure to obey a master’s written instructions. An order within the range would not be considered excessive. Mitigating or aggravating factors may make an order greater or less than the given range appropriate. Orders for repeat offenders will ordinarily be greater than those specified.

46 C.F.R. § 5.569(d).

In Coast Guard suspension and revocation cases, “[t]he sanction imposed in a particular case is exclusively within the authority and the discretion of the ALJ,” who is not bound by the scale of average orders. Appeal Decision 2628 (VILAS) (citing Appeal Decisions 2362 (ARNOLD) and 2173 (PIERCE)). “In the absence of a gross departure from the Table of

Recommended Awards, the order of the ALJ will not be disturbed on review.” Appeal Decision 2628 (VILAS) (citing Appeal Decision 1937 (BISHOP)).

**A. Coast Guard Arguments on Sanction.**

The Coast Guard’s position is that a two-month suspension is a modest request. Although the suggested sanction range does not address the allegation of violation of law or regulation charged in this matter, the violation is substantively analogous to negligently performing duties related to vessel navigation, for which the suggested range is 2-6 months suspension. 33 C.F.R. Table 5.569. Given Respondent’s commitment to his action on August 1, 2015, the Coast Guard believes some suspension period is necessary for this proceeding to fulfill its remedial purposes; the Coast Guard also points to instances in the hearing where Respondent attempted to excuse his conduct by attaching fault to other parties. Finally, the Coast Guard states that an “outright suspension is justified by the fact that Respondent’s actions not only created a risk of collision but actually resulted in collisions with significantly smaller vessels in an environment filled with kayakers, tubers, and swimmers.”

**B. Respondent’s Arguments**

In his brief, Respondent argued that there was no violation and did not address sanction in the event I found the allegation proved. Respondent argues that his obligation under the Inland Rules was to navigate his vessel upriver as best he could to avoid or minimize contact with other vessels, and contends the record shows he “accomplished this incredibly challenging task successfully, despite the daunting odds. His actions to avoid collision should be applauded, not criticized.”

### **C. Conclusions as to Sanction**

The proposed sanction in this case is premised on one allegation of Violation of Law or Regulation for violating Rule 8. The Coast Guard argues this violation is substantively analogous to negligently performing duties related to vessel navigation for which the penalty range is 2-6 months. I have also considered “Failure to comply with U.S. law or regulations,” which merits 1-3 months suspension; “Improper performance of duties related to vessel safety,” which ranges from 2-5 months suspension; and “Failure to perform duties related to vessel safety,” which calls for 3-6 months suspension. 33 C.F.R. Table 5.569.

Upon reviewing the facts in this case, I find that “Failure to comply with U.S. law or regulations” is the most appropriate range to consider. Also I do not find aggravating factors sufficient to warrant an increased sanction beyond the Table, thus the most severe sanction the Table of Appropriate Orders supports is 3 months. I have also considered that Respondent is an experienced mariner who has held a credential for seventeen years and that he has no prior record with the Coast Guard. Another factor is that the Coast Guard originally offered a letter of warning in this matter.

The decision to undertake a voyage, the course of that voyage, or stay at the dock is the responsibility of the Master. The evidence does establish that, once Respondent had placed his vessel at risk of collision with other vessels, he did the best he could to minimize the damage associated with his actions. Respondent showed significant skill in maneuvering with bare steerageway. However, he could have used that same level of seamanship in maneuvering away from the marine event.

I also note that there were other factors which exacerbated the situation: Red Bull, the event organizer, made little or no attempt to keep the event under control. The Coast Guard was

initially unprepared for the size of the event and was slow in deciding what action to take, eventually revoking the marine event permit and cancelling the event. The Coast Guard did not close the channel at any point that day. Finally, the recreational vessels blocking the channel were in violation of Rule 9 and were an impediment to legitimate traffic on the river.

However, as a prudent mariner Respondent should have recognized the likelihood of a large number of vessels impeding his normal route, and that the Inland Navigation Rules do not allow for flexibility and the laws must be obeyed. In light of the evidence presented, I find a higher sanction than the minimum one month penalty suggested in the Table is warranted here. I therefore assess a sanction of two months suspension, one month outright and one month remitted on twelve months probation.

### **ORDER**

**IT IS HEREBY ORDERED** that the Allegations in the Complaint are found **PROVED**; and

**IT IS HEREBY FURTHER ORDERED** that Respondent's Mariner's License is **SUSPENDED** for **ONE MONTH**; the Respondent's Credentials are to be surrendered to the Coast Guard immediately; and

**IT IS HEREBY FURTHER ORDERED** that Respondent's Mariner's License is **SUSPENDED** for an additional; **ONE MONTH**, remitted on **TWELVE (12) MONTHS PROBATION**. The period of probation will commence upon completion of the outright suspension.

**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.

**SO ORDERED.**

**George J. Jordan**  
**US Coast Guard Administrative Law Judge**

Date: August 08, 2017