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

UNITED STATES OF AMERICA UNITED STATES COAST GUARD	:	DECISION OF THE
	:	VICE COMMANDANT
vs.	:	ON APPEAL
	:	NO. 2733
MERCHANT MARINER DOCUMENT	:	
Issued to: DANIEL WALTER SCHWIEMAN	:	

APPEARANCES

For the Government:
Ms. Jennifer A. Mehaffey, Esq.
LT Brian M. Hennessey, USCG

For the Respondent:
Daniel Walter Schwieman, *pro se*

Administrative Law Judge:
Michael J. Devine

This appeal is taken in accordance with 46 U.S.C. Chapter 77, 46 CFR Part 5 and 33 CFR Part 20.

On September 13, 2019, an Administrative Law Judge (ALJ) of the United States Coast Guard issued a Decision & Order (D&O), finding proved against Respondent Daniel Walter Schwieman one charge of violation of regulation, for carriage of more than six passengers for hire on an uninspected vessel of less than 100 gross tons, in violation of 46 CFR § 176.100(a). The ALJ ordered Respondent's Merchant Mariner Credential (MMC) suspended for one month outright, on six months probation. The Coast Guard appeals.

FACTS

At all relevant times Respondent was the holder of a merchant mariner credential. [D&O at 5; CG Ex. 1.]

The vessel ALLORA is a vessel of 20 gross tons and is owned by Offshore, LLC ("Offshore"). [D&O at 5; CG Ex. 5, 6.] On June 16, 2018, the vessel ALLORA did not have a Certificate of Inspection (COI). [D&O at 5, Tr. at 69.]

Ms. M. Nichols ("the charterer") entered into a charter agreement with Offshore, for use of the ALLORA on June 16, 2018. [D&O at 5; CG Ex. 3 at 52-55; Tr. at 159-161.] The charter agreement required the charterer to only use a "qualified operator and crew," and included a "weather policy" that reserved Offshore's right to cancel or delay the charter in the event of dangerous weather conditions, "even if you and the captain believe they are safe." [CG Ex. 5 at 52-53.] The charterer paid $1,200 for use of the vessel. [D&O at 5; Tr. at 66, 161.]

On June 16, 2018, Respondent operated the ALLORA, as master, on the waters of Lake Michigan, with the charterer and eleven passengers on board. [D&O at 5; Tr. at 65-69, 160; CG Ex. 3 at 49-57.] Lake Michigan is a navigable water of the United States. [D&O at 5.]

PROCEDURAL HISTORY

The Coast Guard filed a Complaint against Respondent's credential on November 13, 2018. The Complaint alleged one charge of violation of law or regulation, for carriage, on June 16, 2018, of more than six passengers for hire on the ALLORA, without a valid COI, in violation of 46 CFR § 176.100(a). In aggravation, the Complaint alleged that Respondent had committed similar violations, on the same vessel, on three dates in June, 2017.

On December 4, 2018, the ALJ Docketing Center received *pro se* Respondent's Answer denying all jurisdictional and substantive allegations.

Hearing was convened on June 18, 2019. The Coast Guard case included the testimony of five Coast Guard and state law enforcement officers. Respondent testified on his own behalf. At hearing, the Coast Guard moved for the ALJ to take official notice of various regulations and statutes, as well as Navigation and Inspection Circular (NVIC) No. 7-94, issued September 30, 1994, and a portion of Volume II of the Coast Guard Marine Safety Manual, Commandant Instruction M16000.7B (MSM), specifically paragraph B4-5. [ALJ Exs. I & II.] The ALJ took notice of the regulations and statutes, but deferred ruling on the admissibility of the NVIC and MSM materials. [Tr. at 19.]

The ALJ issued his D&O on September 13, 2019, finding the single charge of violation of regulation proved, and ordering Respondent's MMC suspended for one month outright, on six months probation. The ALJ declined to take official notice of these Coast Guard policy documents, where they had not been provided to the *pro se* Respondent in discovery, and did not cite to those documents in his opinion. [D&O at 4, 9.]

The Coast Guard appealed, and filed a brief perfecting that appeal on November 12, 2019. Respondent filed an appellate response on December 9, 2019. This appeal is now properly before me.

BASES OF APPEAL

The Coast Guard raises the following issues on appeal:

I. *The ALJ abused his discretion in declining to take official notice of certain Coast Guard policy documents, under 33 CFR § 20.806.*

II. *The ALJ erred in interpreting the definition of "passenger for hire," at 46 U.S.C. § 2101, to exclude a vessel's charterer.*

OPINION

I.

The ALJ abused his discretion in declining to take official notice of certain Coast Guard policy documents, under 33 CFR § 20.806.

At hearing, the Coast Guard asked for the ALJ to take official notice of two policy documents, NVIC No. 7-94 and pages B4-8 through B4-10 of Volume II of the MSM. [Tr. at 14.] The ALJ questioned Coast Guard counsel on the rationale for taking notice of these documents. [*Id.* at 15-16.] He also called attention to the fact that Respondent, being *pro se*, might be unaware of the materials, making it especially important to provide copies to him in advance of the hearing, which had not been done. [*Id.* at 18-19.] The ALJ deferred the question of official notice, and ultimately rejected the Coast Guard's request in his D&O:

> Since these materials were not provided to respondent in discovery, they are rejected, in keeping with 33 CFR § 20.607. Use of official notice to avoid providing materials in advance of the hearing, particularly with a *pro se* respondent, is contrary to the proper construction of the rules for these proceedings. 33 CFR § 20.103.

[D&O at 9 (footnote omitted) (citing *Appeal Decision 2697 (GREEN)* at 5, 2011 WL 6960131, concerning latitude due to *pro se* litigants).]

The Coast Guard argues that the ALJ's refusal to take official notice of the policy documents was an abuse of discretion, and asks that the documents in question be entered into the administrative record. [CG Appellate Brief at 10.]

In these suspension and revocation proceedings, adjudicators may take official notice in the same manner that judges take judicial notice in the federal courts. 33 CFR § 20.806; *see also* Fed. R. of Evid. 201. Further, official notice may be taken of "other facts within the specialized knowledge of the Coast Guard." 33 CFR § 20.806.

In his D&O, the ALJ acknowledged that judicial notice of internal Coast Guard policy documents has occurred at the request of a respondent against the Coast Guard, in *Appeal Decision 2507 (WEIS)*, 1990 WL 10011232. [D&O at 8.] However, he concluded that in this

case, where the Coast Guard sought official notice of the policy documents in support of its case against a *pro se* mariner, notice would be inappropriate, unfair, and unnecessary. [*Id.* at 9.]

On appeal, the Coast Guard argues that this denial was an abuse of discretion, and that the ALJ's concerns for the due process rights of the *pro se* Respondent were misplaced, where the proffered policy documents "did not provide particular benefit for either party," and did not go to prove any essential element of the case against Respondent. [CG Appellate Brief at 10 (quoting D&O at 9).]

The Coast Guard's appeal on this point does not succeed.

Appellant Coast Guard argues that the ALJ's refusal to exercise his discretionary authority to take official notice was an abuse of that discretion.

> The standard of review for abuse of discretion is highly deferential: * * * A reviewing court conducting review for abuse of discretion is not free to substitute its judgment for that of the trial court, and a discretionary act or ruling under review is presumptively correct, the burden being on the party seeking reversal to demonstrate an abuse of discretion ... [A]buse of discretion occurs where a ruling is based on an error of law, or, where based on factual conclusions, is without evidentiary support.

Appeal Decision 2702 (CARROLL) at 3, 2013 WL 7854263 at 2 (quoting *Appeal Decisions 2692 (CHRISTIAN)* at 3, 2011 WL 1042740 & *2610 (BENNETT)* at 20, 1999 WL 33595178 at 11). In the context of administrative adjudications, federal agencies like the Coast Guard are afforded "wide latitude in taking official notice." *Kaczmarczyk v. I.N.S.*, 933 F.2d 588, 596 (7th Cir. 1991) (quoting *Banks v. Schweiker*, 654 F.2d 637, 641 (9th Cir.1981)). The ALJ's denial of the Coast Guard's request for official notice was a discretionary ruling, and the Coast Guard, on appeal, has not demonstrated any basis to overturn that ruling.

As for the Coast Guard's argument that the ALJ was wrong to invoke the special protections due to *pro se* respondents in this circumstance, this argument is likewise unconvincing. The Coast Guard attempts to distinguish the circumstances of this case from those of *Appeal Decision 2697 (GREEN)*, 2011 WL 6960131, but the special solicitude shown to *pro se* respondents, as articulated in *GREEN*, is a general principle that ALJs are to apply to the

particular circumstances of any proceeding affecting the rights of an unrepresented mariner. That principle was properly applied by the ALJ in this proceeding.

In any event, it is not clear that Respondent's *pro se* status was a determinative factor in the ALJ's refusal to take notice of the policy documents not provided during discovery: "Use of official notice to avoid providing materials in advance of the hearing, *particularly* with a *pro se* respondent, is contrary to the proper construction of the rules for these proceedings." [D&O at 9 (emphasis added and footnote omitted).]

The ALJ clearly articulated his reasons for rejecting the Coast Guard's request for official notice, citing and applying 33 CFR § 20.806, § 20.601, and § 20.607. On appeal, the Coast Guard seeks to transform § 20.806's grant of discretionary authority over official notice into a mechanistic mandate. While this effort is unsuccessful, there is a simple remedy for Coast Guard representatives who wish to rely on relevant internal policy documents in future suspension and revocation proceedings: provide those documents during discovery, and avoid uncertainty about the limits of official notice.

II.

The ALJ erred in interpreting the definition of "passenger for hire," at 46 U.S.C. § 2101, to exclude a vessel's charterer.

On June 16, 2018, the ALLORA, under Respondent's command, carried the vessel's charterer, Ms. Nichols, and her eleven invitees. The ALJ's D&O held that Ms. Nichols was not a "passenger": "The statutory and regulatory definitions of 'passenger' do not include the charterer. 46 U.S.C. § 2101(29); 46 CFR § 175.400. Therefore, evidence of the payment by [Ms.] Nichols to Offshore, LLC to charter the vessel does not prove the vessel carried a passenger for hire." [D&O at 12.] Aside from this exemption, the ALJ found that, on June 16, 2018, the ALLORA was carrying eleven passengers for hire. [*Id.* at 5.]

The Coast Guard contends that the ALJ erred in his interpretation and application of the definition of "passenger," at 46 U.S.C. § 2101(29).[1] According to the Coast Guard, the charterer

[1] A recodification of 46 U.S.C. § 2101 became effective on August 18, 2018. Pub. L. 115-232, Div. C, Title XXXV, § 3541, Aug. 13, 2018, 132 Stat. 2326. The recodification altered the numeration, but not the substance, of many of

should have been included in the tally of passengers for hire aboard the ALLORA, bringing that count to twelve. [CG Appellate Brief at 11-13.]

The Coast Guard concedes that the ALJ's classification of the charterer as a non-passenger is not, in this case, material—there is no argument that the presence of a twelfth passenger for hire would change the outcome of the case, either on the merits or as to sanction. However, as the Coast Guard points out, the question of whether an individual charterer should be considered a passenger for hire while aboard the vessel he or she chartered, where the charter in question was not a bareboat charter, is a legal question of some practical importance. Authoritative resolution of this question will enhance the Coast Guard's ability to consistently enforce the laws relating to carriage of passengers for hire, and aid vessel operators in abiding by those laws.

46 U.S.C. § 2101(29)(A) defines a passenger as "an individual carried on the vessel except—(i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer; (ii) the master; or (iii) a member of the crew . . . . " Here, the ALJ found that Ms. Nichols was a charterer, within the meaning of § 2101(29)(A)(i), and therefore not a passenger. [D&O at 12.]

The Coast Guard argues that the 46 U.S.C. § 2101(29)(A)(i) exemption of an individual charterer from the definition of passenger "is properly limited to bareboat or demise charters." [CG Appellate Brief at 13.] According to the Coast Guard, because the ALJ found the June 16 charter agreement was *not* a bareboat or demise charter, Ms. Nichols did not fall under the "charterer" exemption from the passenger definition. [*Id.*] The Coast Guard claims to find support for its position in the legislative history of § 2101, and cites Coast Guard policy guidance.

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the subsections cited by this opinion. For example, on June 16, 2018, the day of Respondent's alleged violation, the citation to the statutory definition of "passenger" was 46 U.S.C. § 2101(21). In 2020, at the time of this opinion, the correct citation is to § 2101(29). This opinion cites to the presently effective subsections.

The Coast Guard argument on appeal fails. The clear statutory language is devoid of any basis for the Coast Guard argument. Full explanation calls for a broad review of the regulatory structure for passenger, small passenger, and uninspected passenger vessels.

When Coast Guard counsel refer to a demise or bareboat charter, they reference one of the three canonical categories of charters in the shipping industry, the other two being voyage and time charters:

> Historically, a bareboat charter agreement was used to charter large, Coast Guard-inspected commercial vessels for multi-year periods. Under a legitimate bareboat or demise charter, the owner of the vessel relinquishes complete control of the vessel to the charterer. The charterer provides the crew and is legally responsible for the safe operation of the vessel, and for all liability associated with the vessel.

H.R. Rep. 103-99 at 4 (1993).

Prior to passage of the Passenger Vessel Safety Act of 1993 (PVSA), operators of uninspected vessels of under 100 gross tons were exploiting the bareboat charter legal framework by "chartering" their vessels to putative demise charterers for short day cruises. These charter agreements allowed uninspected vessels to operate in a manner that was functionally indistinguishable from inspected small passenger vessels, carrying dozens of guests[2] or non-passenger "charterers" at a time. The PVSA closed that loophole.

After passage of the PVSA, the demise or bareboat charter category was no longer relevant to determining whether or not a vessel was required to comply with inspection requirements. For a conventional vessel of less than 100 gross tons, such as the ALLORA,[3] inspection is required when that vessel:

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[2] Prior to passage of the PVSA, the definition of "passenger" on a small passenger vessel was:

> an individual carried on the vessel except- (i) the owner or representative of the owner; (ii) the master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services; (iii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter; (iv) an employee of the demise charterer of the vessel engaged in the business of the demise charterer; (v) a guest on board a vessel being operated only for pleasure who has not contributed consideration for carriage on board; or (vi) an individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board.

46 U.S.C. § 2101(21)(B) (1988).

[3] Different standards, not relevant to this opinion, apply to ferries, submersible vessels, and wing-in-ground (hover) craft. *See* 46 U.S.C. § 2101(45). Definitions of ferries, submersible vessels, and wing-in-ground craft can be found at subsections (10), (47), and (54) of § 2101.

(1) Carries more than six passengers, including at least one for hire;

(2) Is chartered with a crew provided or specified by the owner or the owner's representative and is carrying more than six passengers; or

(3) Is chartered with no crew provided or specified by the owner or the owner's representative and is carrying more than 12 passengers.

46 U.S.C. § 2101(45).

As shown in the quoted statutory language, post-PVSA, in assessing the compliance of a vessel and its operator with small passenger vessel regulation, the only relevant charter categories are "charter with crew" and "charter without crew." In this case, the ALJ determined that the June 16, 2018 charter had to be classified as a "charter without crew," despite some circumstantial evidence suggesting that Ms. Nichols might not have been free to select a captain of her choosing. [D&O at 14.] This conclusion was significant, because, had the ALJ found that the June 16, 2018 cruise was a "charter with crew," he would not have been required to proceed to the further analysis of whether any of the passengers on board were "passengers for hire"—if the trip was a crewed charter, the ALLORA, carrying more than six passengers, would have clearly fallen under 46 U.S.C. § 2101(45)(2), and therefore been categorized as a small passenger vessel subject to inspection.

Because the Coast Guard did not present evidence sufficient to establish a crewed charter, and the ALLORA was not carrying more than 12 passengers (regardless of whether Ms. Nichols was included in that passenger count), the analysis shifted to 46 U.S.C. § 2101(45)(1), requiring inspection where a vessel "[c]arries more than six passengers, including at least one for hire." Therefore, proving that at least one passenger was a passenger for hire was an essential element of proving Respondent's violation of small passenger vessel regulation.

All of this explication may illuminate the real significance of the Coast Guard question on appeal: the necessity of demonstrating that at least one passenger is for hire means that, in a 46 U.S.C. § 2101(45)(1) situation, the exemption of the charterer from the passenger definition becomes significant. In most cases, as in this one, establishing that an individual charterer is a person "for whom consideration is contributed as a condition of carriage on the vessel" is easier

than establishing whether or not any consideration was contributed as a condition of carriage for the charterer's invitees (the undoubted passengers). 46 U.S.C. § 2101(30). If Ms. Nichols, and other charterers like her, could be categorized as passengers, the Coast Guard would have an easier time establishing violations of the small passenger vessel regulations where an un-crewed charter carries seven to twelve passengers.

Returning to the specifics of this case: at hearing, "The Coast Guard focused much of its case on proving the June 16, 2018 charter was not a valid bareboat charter." [D&O at 14.] The ALJ recognized that the bareboat charter inquiry is no longer the relevant inquiry, in determining whether or not Respondent was operating the uninspected ALLORA in violation of small passenger vessel regulations. [*Id.*] However, the ALJ acknowledged that "Respondent's assertion that he operated the vessel under a bareboat charter may be considered as a potential defense to the charged violation, because a bareboat charter under certain circumstances would fall outside of the ambit of 46 CFR § 175.110(a)." [*Id.*] The ALJ found that the June 16, 2018 charter was not a bareboat charter, and therefore no defense was available.

Because the ALJ answered the bareboat charter question in the negative, the legitimacy of a "bareboat charter defense" to violation of the small passenger vessel regulation is not directly presented on appeal. Nevertheless, it is worthwhile to clarify the applicable law and state unequivocally that, after the passage and enactment of the PVSA, it is unnecessary to consider any "bareboat charter defense."

As noted above, prior to passage of the PVSA, uninspected vessel operators were using bareboat charter agreements to circumvent the inspections required of passenger vessels and small passenger vessels. While the written terms of a charter agreement might indicate it was a bareboat charter, in the execution of that charter, the charterers might not have been actually given the level of control required to establish a true bareboat charter. Determining whether a given voyage had been under a legitimate bareboat charter was a difficult and fact-intensive inquiry.

The Department of Transportation and Coast Guard, in proposing the PVSA, recognized that the exploitation of the bareboat charter framework was putting putative charterers at unrecognized risk:

> the definition of passenger vessel . . . will now include demise charters (bareboat charters) carrying more than 12 passengers. The fact that a vessel is a bareboat charter should not matter for purposes of vessel safety and documentation laws. Often, short-term charters do not effect a complete transfer of control of the vessel to the charterer, resulting in a relationship more akin to a passenger on a passenger vessel than to an owner on a pleasure vessel. In some cases, the charter exists solely to avoid Jones Act, documentation, and Inspection requirements. This change will result in safer charters and should result in fairer competition between bareboat charters and traditional passenger vessels

Secretary of Transportation's Proposal to Redefine Passenger and Passenger Vessel: Hearing Before the Subcomm. on Coast Guard & Navigation of the H. Comm. on Merchant Marine & Fisheries, 102d Cong. 43 (1992) (U.S. Coast Guard, section-by-section analysis of proposed bill).

More than simply including some bareboat charters in the inspections regime, the PVSA was intended to eliminate the need for Coast Guard enforcement officers to conduct *any* "bareboat charter analysis" before finding a vessel in violation of the small passenger vessel regulations:

> For enforcement purposes, the Coast Guard will only look at whether a vessel is operating under a charter and how many passengers are on board. It will not have to evaluate and judge whether an arrangement is a true bareboat charter and vessel owners will be able to include operational restrictions without concern for the Coast Guard evaluation of a bareboat charter.

Passenger Vessel Safety Act of 1993: Hearing Before the Subcomm. on Coast Guard & Navigation of the H. Comm. on Merchant Marine & Fisheries, 103d Cong. 27 (1993) (statement of Captain Robert North, USCG, Deputy Chief, Office of Marine Safety, Security, & Environmental Protection).

Based upon the foregoing, it is unnecessary and pointless to fully analyze a "bareboat charter defense" to charges of operating an uninspected small passenger vessel. The relevant inquiry is limited to whether a crew has been provided or specified by the owner of the vessel or the owner's representative. All of the authorities cited by the ALJ on the bareboat charter defense

predate the PVSA. When determining whether a given vessel is subject to inspection as a passenger vessel or small passenger vessel, Coast Guard counsel, and ALJs, should look to the currently effective text of Title 46 and its implementing regulations.

On appeal, the Coast Guard extrapolates from the ALJ's conclusion that no bareboat charter existed to argue that Ms. Nichols could not be classified as a non-passenger "charterer," and quotes, for support, NVIC 7-94:[4]

> The new general definition of "passenger" . . . specifically excludes . . . in the case of a chartered vessel, an individual charterer or representative of the charterer. . . . [O]nly one individual on board may exercise this statutory exemption . . . .
>
> . . . This amendment does not alter the existing threshold for Uninspected Passenger Vessels less than 100 gross tons that carry not more than 6 passengers. *These vessels although often referred to as charter vessels, are not entitled to this "charterer" exemption unless the actual charter arrangement or contractual engagement is such that the charterer takes over control of the vessel.*

[CG Appellate Brief at 12 (quoting NVIC 7-94, Encl (1) at 21, and supplying emphasis)].[5]

46 U.S.C. § 2101(29)(A) defines a passenger as "an individual carried on the vessel except—(i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer; (ii) the master; or (iii) a member of the crew . . . . " As shown above, the legal concept of a "bareboat charter" has no relevance to the enforcement of small and uninspected passenger vessel regulations. Almost thirty years ago, Congress enacted a law, on the Coast Guard's proposal, to eliminate, in small passenger vessel inspection enforcement actions, the need "to evaluate and judge whether an arrangement is a true bareboat charter." *Passenger Vessel Safety Act of 1993: Hearing Before the Subcomm. on Coast Guard & Navigation of the H. Comm. on Merchant Marine & Fisheries*, 103d Cong. 27 (1993) (statement of Captain Robert North, USCG, Deputy Chief, Office of Marine Safety, Security, & Environmental Protection). There is no purpose to be served by

[4] One of the documents that the ALJ declined to take official notice of, as discussed supra.
[5] The present case involves a vessel carrying more than 6 passengers; hence the quoted passage, by its own terms, does not apply.

returning to such an analysis, and no basis for the notion that the exclusion of a charterer from the definition of "passenger" depends on the terms of the charter involved.[6]

Setting aside the legislative history, basic principles of statutory interpretation also refute the Coast Guard's argument.

Statutes should be read in their entirety, and are assumed to be internally consistent. If the term "charter" in 46 U.S.C. § 2101(29)(A)(i) were limited to bareboat charters, 46 U.S.C. § 2101(45)(B), discussing a vessel "chartered with a crew provided or specified by the owner or the owner's representative", would make no sense, because a bareboat charter would not involve the crew being provided or specified by the owner.

Moreover, a sub-subsection of the 46 U.S.C. § 2101(29) passenger definition, applying exclusively to sailing school vessels (SSVs), § 2101(29)(D) exempts from the definition of "passenger" "an employee of the *demise charterer* of the vessel engaged in the business of the *demise charterer* . . . ." This specificity demonstrates that the drafters of § 2101 understood demise (or bareboat) charters to be a subset of all charters, and were capable of indicating when only that subset was covered by a given provision.

It is a basic principle of statutory interpretation that laws should be read so as to give every word meaning—the canon against surplusage. *See, e.g., Potter v. U.S.*, 155 U.S. 438, 445-46 (1894) ("The charge is of a willful violation. . . . The word 'willful' is omitted from the description of offenses in the latter part of this section. Its presence in the first cannot be regarded as mere surplusage; it means something."). *See also Administrator v. Winters*, NTSB Order No. EA-1405, 1980 WL 29165 at 1 (respondent's proposed regulatory interpretation "violates elementary principles of regulatory construction which dictate that all provisions of a regulation be given effect in the absence of an [irreconcilable] conflict."). If, as the Coast Guard

[6] Earlier, the NVIC states that "for the purposes of the Act a charter is an agreement where the charterer has the use of the vessel and may take on legal obligations . . . . If the purported charter operation is not controlled by a written charter agreement . . . the vessel should be considered as carrying 'passengers for hire.'" NVIC 7-94, Encl (1) at 6. The quotation in the Appellate Brief diverges significantly from this statement.

suggests, 46 USC § 2101(29)(A)(i)'s use of the noun "charterer" refers exclusively to demise charterers, § 2101(29)(D)'s use of the qualifier "demise" becomes surplusage.

For the foregoing reasons, I reject the Coast Guard's suggestion that the 46 U.S.C. § 2101(29)(A)(i) charterer exemption from the passenger definition is only applicable to bareboat charterers—"bareboat charter" is not even a relevant or meaningful classification in the context of small passenger vessel regulation. The ALJ's interpretation of the statutory passenger definition was not erroneous, and his conclusion that Ms. Nichols qualified for the statutory charterer exemption from the definition of passenger was supported by substantial evidence in the record.[7]

CONCLUSION

The ALJ's ultimate findings and conclusions were neither erroneous nor an abuse of discretion. His decision complies with 33 CFR § 20.902, and he exercised his lawful discretion in assessing the credibility of the evidence presented.

ORDER

The ALJ's Decision and Order, dated September 13, 2019, is **AFFIRMED.**

ADM, USCG

Signed at Washington, D.C. this 20 day of NOV, 2020.

[7] The statement quoted above from NVIC 7-94 that "only one individual on board may exercise this statutory exemption" remains valid.