



# Coast Guard Hearing Office

*“Hearing Office is our Name,  
Maritime Safety and Security is our Aim”*

Hearing Office Mission: Adjudicate civil penalty cases. The civil penalty process is remedial in nature. Its goals are to gain compliance with statutes and regulations the Coast Guard enforces and to deter future violations. A fair and informal administrative process promotes maritime safety, security and environmental protection.

## GREETINGS

From Robert Bruce  
Chief, Coast Guard Hearing Office



## HEARING OFFICE NEWS

*As our name implies, hearings are an integral part of the civil penalty process and particularly the part of the process performed by hearing officers. A typical provision governing Coast Guard civil penalties is 46 U.S.C. § 2107(a), which states that: “After notice **and an opportunity for a hearing**, a person found . . . to have violated [Title 46, subtitle 2 or an implementing regulation] . . . is liable to the United States Government for the civil penalty provided.” [Emphasis added.] The Coast Guard cannot lawfully assess a civil penalty in accordance with that or a similar provision without giving the charged party an opportunity for a hearing. That does not mean that every charged party needs or wants to have a hearing. In fact, a large majority of charged parties decide to: present their case in the form of written submissions; just pay the penalty; or not respond at all. Of course, failing to respond is not a good idea because it waives most rights in the civil penalty process and results in a penalty being assessed without input from the charged party.*

*Aside from hearings held at our offices in Arlington, Virginia, hearings are conducted by video-teleconference (VTC); generally, at a Coast Guard office closest to the charged party that can support a VTC hearing. That support, in addition to the VTC equipment, includes someone from the unit who will serve as an escort to help facilitate the hearing. Trying to coordinate schedules, conference rooms, equipment, and personnel for a hearing, is often a daunting task for the hearing office administrative staff. It is our expectation that Coast Guard units will always make a good faith effort to promote the civil penalty process by cooperating to the fullest extent possible in arranging for a hearing. It is a fact of life that, if a hearing is properly requested, we must provide it.*

Following this issue of the Hearing Office Newsletter, it will go on hiatus while we look into other ways of communicating with the stakeholders in the civil penalty process, including charged parties. It may return on an occasional basis, if needed to address civil penalty issues of special significance. We are planning to make better use of the Hearing Office web site and make more information available there. If you have other ideas of how the Hearing Office could better communicate with stakeholders, please send them to: robert.w.bruce@uscg.mil.



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Citizenship: § 8103 “engaged in the fisheries”

*LCDR Michele Bouziane*

Title 46 U.S.C. § 8103, subsection (i), which is the subsection the Coast Guard applies to fishing vessels, is reprinted below:

**(i)(1)** Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fish processing, or fish tender vessel **that is engaged in the fisheries** in the navigable waters of the United States or the exclusive economic zone must be--

**(A)** a citizen of the United States;

**(B)** an alien lawfully admitted to the United States for permanent residence;

**(C)** any other alien allowed to be employed under the Immigration and Nationality Act ([8 U.S.C. 1101 et seq.](#)); or

**(D)** an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the

exclusive economic zone surrounding the Commonwealth or another United States territory or possession.

**(2)** Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

**(3)** This subsection does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act ([16 U.S.C. 1802](#))).

(Bold type added.)

The Hearing Office Newsletter has published numerous articles on paragraph (2) of this subsection.

One element of the charge is that the unlicensed crewmember must be on a fishing, fish processing, or fish tender vessel that is **engaged in the fisheries**. The **engaged in the fisheries** element must be proved to establish the violation in paragraph (2).

“Fisheries” is defined in 46 U.S.C. § 108:

...the term ‘fisheries’ includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

Please note: If your unit is going to charge a party under this subsection, the case file *must* contain evidence that the fishing vessel was performing an activity meeting the “engaged in the fisheries” requirement at the time that the vessel was boarded. For example, the narrative portion of the Activity

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*(Continued from page 2)*

Summary Report should describe activities observed that establish that the vessel that was boarded by the Coast Guard was engaged in fishing for shrimp, etc. Further substantiating evidence would be, for example, describing: any deployed nets, trawling apparatus, lobster traps, etc.; any actions in furtherance of fishing, such as hauling in or counting catch; storing or transporting the catch; and how the vessel complied with the lights and shapes requirements of Inland Navigation Rule/ International Rule 26.

A fishing vessel with fish in the hold, returning to port, would be engaged in the fisheries. The definition does not make it clear whether preparations in advance of actual fishing, like transiting to a fishing spot with ice in the hold, is or is not engaging in the fisheries. In such a case, an authoritative Coast Guard interpretation of 46 U.S.C. § 108 might be needed, to prove that the vessel is engaged in the fisheries.

The block on the Activity Summary Report entitled, "Boarding: Vessel Operating Info" lists the "Observed Activity." If the word "fishing" is filled in here, that is helpful, but not really detailed or descriptive enough. Again, a description like, "the crew was actively setting lobster traps" is more helpful.

Admissions by the master and crew are also helpful. If the master stated that the crew was fishing for shrimp, coupled with evidence that the vessel was clearly a fishing vessel (for example, fishing nets and fishing equipment visible on the vessel; vessel documented with a fisheries endorsement, etc.), that would normally be sufficient to establish that the vessel was engaged in fishing.

CG interpretation of penalty provision of § 8103

Now let's talk about subsection (f), the civil penalty provision of 46 U.S.C. § 8103, "Citizenship and Navy Reserve requirements," which is reprinted below:

**(f)** A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of \$500 for each individual so employed.

In evaluating civil penalties and determining maximum civil penalties, Hearing Officers refer to 33 CFR § 27.3, the Penalty Adjustment Table, which contains annual adjustments for inflation. If you check the entry for 46 U.S.C. § 8103 in the Table, you will find that the inflation-adjusted penalty amount listed is \$800.

That is to say that a person who violates subsection (i) of 46 U.S.C. § 8103 "is liable to the United States Government for a civil penalty" of \$800.

It is the position of the Coast Guard that the Hearing Officer does not have discretion to reduce the penalty amount prescribed by the statute, if a violation is proved, regardless of any mitigating evidence the party may present.

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*(Continued on page 4)*

**K.N.O.T.  
(Knowledge Note or Tip)**



ID of operator in BUI cases

To state the obvious, it is unlawful to operate a vessel while under the influence of alcohol or a dangerous drug. Too often narrative summaries will concentrate on the “under the influence of alcohol or a dangerous drug” element and all but ignore the “operate a vessel” element. Many narrative summaries make conclusory statements, such as the following: “[Name of charged party] was identified as the operator of the vessel.”

If this statement is the only evidence of “operation” of the vessel, it may be inadequate. The Hearing Officer must be given enough details of how the boarding officer determined that the charged party was the operator to find that there is reliable evidence to prove the operation-of-the-vessel element of the alleged violation. A simple conclusory statement that the charged party was the operator does not provide any details to help the Hearing Officer understand what the boarding officer observed that led to that conclusion.

The better Activity Summary Reports clearly establish the operation-of-the-vessel element with important factual information.

Below is an example of one of the better descriptions received by the Hearing Office. The below excerpt is from the “Narrative Overview of the Activity” portion of an actual Enforcement Summary submitted by BM3 Kyle S. Love of Station Marblehead, Ohio. The party’s name has been changed to protect the party’s privacy:

...The vessel’s operator, later identified as John Doe, complied with direction to heave to and allow PO2 Smith and I to board the vessel in position 41-33.50N, 082-49.39W. During our approach I observed John Doe, who was wearing black shorts and a black shirt, operate the

vessel’s throttles and helm and I identified him as the vessel’s operator...

Note, however, that this is just an example, and not boilerplate language to be copied into every case file. The boarding officer’s statement should fairly reflect what the boarding officer actually observed.

The Civil Penalty Case Guide, posted on the Hearing Office webpage, at page 14, lists the following as an example of relevant evidence:

15. For ‘operator’ cases, how it was determined that the person named as operator was identified as operator (observation and / or operator and witness statements) and where the operator was located at the time of the determination.

Operation of the vessel by a party charged with BUI must be clearly set forth in the case file documents. For additional information on this topic, see Hearing Office Newsletter Vol. 14 (XIV) January 2012, p. 5.

\* \* \* \* \*





**DECKPLATE RIVET**



Ensure the Hearing Office is equipped to play the DVD, etc., that you send as evidence.

The Hearing Office appreciates the efforts of charging units to amass important visual evidence, such as Vessel Data Recorder information and Vessel Traffic Service playback, in serious negligent operation cases. It is important, however, to first ascertain if the Hearing Office has the software necessary for Hearing Officers to read such information. In a few instances, units have sent the data accompanied by a computer application, which had to be installed to read the data. Those applications did not work on Hearing Office Standard Work Stations. Moreover, Coast Guard policy does not permit the Hearing Office to maintain stand-alone computers that are not connected to the Coast Guard Data Network.

The Hearing Office has an application called “VLC Player” loaded onto its work stations. The charging unit ought to ensure that the evidence it sends to the Hearing Office is compatible with VLC Player or the other programs available on CG SWS III in the National Capital Region.

The charged party must be able to view the evidence in the same way that the Hearing Officer can view it. VLC Player is available to the public for free on the web; if the evidence can be viewed on VLC Player, then the charged party can be informed of the free availability of VLC Player. But that is only helpful if the video or audio file is a type that VLC Player will play. If the file type requires some software that is not generally available to play, it is better to print out relevant screen shots and use those in the case file.

The full name of VLC Player is VideoLAN VLC Media Player 2.0.0 Software. This particular version is Coast Guard-approved. If your unit does not already have it, you will need to apply for a waiver.

\* \* \* \* \*

**WHAT’S IN A NUMBER?**

A number is nothing in and of itself. A number is a creation used in counting and measuring. Numbers can convey “magnitude “ or “degree.” Numbers are relative and can be expressed as a ratio or percentage. Sometimes numbers are used simply as convenience for certain functions such as telephone numbers, lock combinations, etc. Today we hear much about business measures or business metrics. Often these “metrics” are used to measure the success or failure of a desired outcome.

Here are some Coast Guard Hearing Office metrics (as of March 31, 2013) that provide a “how goes it” glimpse into our work:

Number of case files received by the Hearing Office with violation dates in 2009: 1444

Number of case files received by the Hearing Office with violation dates in 2010: 1500

Number of case files received by the Hearing Office with violation dates in 2011: 1630

Number of case files received by the Hearing Office with violation dates in 2012: 1513

Number of case files received by the Hearing Office with violation dates in 2013: 910

Number of case files received by the Hearing Office in 2013 regardless of violation date: 1444

Number of preliminary assessments issued in 2013: 1417

Number of final assessments (FLAP, FLAN, FLW, and FLD) issued in 2013: 896

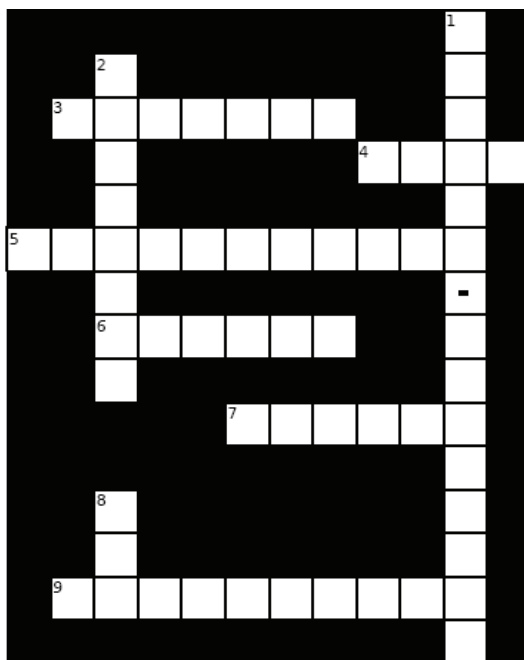
Number of violation case files returned to the program manager for deficiencies in 2013: 129

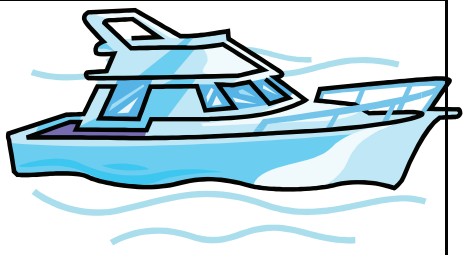
Number of hearings held in 2013: 6

**IT'S NOT A JOKE STAY AFLOAT**

Written By Alicia Scott

**Find the correct word to complete the Safety Tip.**



| Across  | Down   |
|---|--|
| 3) The master of a U.S. documented vessel must be a United States _____.                                | 1) If your vessel is in an accident on the water, though no one is hurt, you must report this. |
| 4) This is a special ID to enter secure areas of maritime facilities and vessels regulated by the MTSA. | 2) If your fishing vessel sinks, you will want and need this item.                             |
| 5.) The original _____ of Number must be on board when operating the vessel.                            | 8) Don't drink and operate your boat or you may be charged with a _____.                       |
| 6) Use these to signal other boats or Coast Guard in an emergency.                                      |            |
| 7) You must have these on when boating at night.  |  |
| 9) You must have one of these on board for every person on your vessel.                                 |  |

ANSWERS: 1) MARINE-CASUALTY 2) LIFERAFT 3) CITIZEN 4) TWC 5) CERTIFICATE 6) FLARES 7) LIGHTS 8) BUI 9) LIFEJACKET