



Coast Guard Hearing Office Detachment

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

Adjudicate civil penalty cases in support of the Commandant's maritime safety and security strategy to compel compliance with federal laws and regulations, and deter violations in the maritime domain. By balancing national interests, fairness, and the fundamental right to due process, we promote protection of the environment, and the safety and security of vessels, facilities, ports, and waterways.

GREETINGS

From CAPT R. Trabocchi, USCG
Commanding Officer, Coast Guard Hearing Office Detachment

Greetings,

Another summer boating season has come to an end and we have again seen a number of boating under the influence violations and a variety of vessel safety violations. As of this writing, all of the violation cases sent to the Coast Guard Hearing Office Detachment have been processed through the preliminary assessment stage. We continue to urge all units and processing officials to not delay sending us those violation cases that you have determined to warrant civil penalty action. In order that the civil penalty process has a meaningful and positive impact on the goal to gain regulatory compliance, we must process these violations on a timely basis. Therefore, please do not delay in forwarding such violation cases to us. Violation case files for pollution, notice of arrival, security (vessel, facility, port) and other non-safety vessel issues can be forwarded upon completion of any investigation or inspection.

In this issue we provide a bit of information about the members of the Coast Guard Hearing Office Detachment. We also describe the civil penalty process options afforded to persons who receive a preliminary assessment letter from us. Finally, we review some topics that we have not addressed before.

These newsletters have provided much information over the last year and we are seeing positive impact of that information on both Coast Guard field personnel and members of the boating public. We very much appreciate your attention to the information provided. Violation case files are better prepared and members of the boating public are better informed when exercising their options to comment regarding violations.

These newsletters will be posted on our website www.uscg.mil/legal/cgho and on the Coast Guard's website HOMEPORT.



HEARING OFFICE NEWS

With modernization, the Coast Guard Hearing Office became the Coast Guard Hearing Office Detachment. The Coast Guard Hearing Office Detachment is an element of the Office of The Judge Advocate General, United States Coast Guard.

The chief of the office is currently the Commanding Officer, a Coast Guard officer in the rank of Captain. This member is a Coast Guard Judge Advocate (attorney) and holds legal and marine safety competencies.

There are two Hearing Officers on staff at this time. The two Hearing Officers are technical personnel and hold competencies entitling them to wear the Marine Safety Insignia. Both are of the rank of Commander.

There are three personnel at this time assigned to the Administrative Support Staff. Two are Yeoman Third Class Petty Officers and the other is a civilian employee. One YN3, with us since August 2007, started out as a Seaman (SN) and struck the yeoman rate coming to us from CGC STEADFAST. The other YN3, with us since 2006, started out as a Fireman (FN), attended Yeoman "A" school and came to us from CGC COCHITO. The civilian employee has been with the Coast Guard Hearing Office Detachment since August 2008, and previously was with the Department of Justice, Executive Office of Immigration Review in the position of Office Automation Assistant.

Although a small staff at the current time, they manage the timely handling and adjudication of all violation case files through an informal, administrative process that assesses civil penalties. The penalty assessed may be a warning or may be a monetary amount. Both warnings and monetary amounts create a violation history for the party. The maximum amount of a monetary penalty is

limited by statute; however, monetary penalties can be very large. The staff of the Coast Guard Hearing Office Detachment takes its work very seriously. Every violation case is carefully reviewed, every mariner is given the opportunity to comment and present evidence, and every final determination, whether warning or monetary assessment, is achieved only after the deliberate weighing of all evidence.

* * * * *

THE PUBLIC IN OUR PROCESS

YN3 Victor A. Anderson and YN3 Christopher J. Brown

Every violation case adjudicated by the Coast Guard Hearing Office Detachment has a “party.” This “party” is a member of the public. It is either a recreational boater, commercial mariner, commercial entity or governmental entity. Regardless, there is always a “party” who receives our preliminary assessment letter. What can that “party” do when it receives our letter? What are the options afforded to this party?

If you are the party receiving a preliminary assessment letter from the Coast Guard Hearing Office Detachment, don’t panic! There are options available to you and you are encouraged to exercise those options.

Included with the preliminary assessment letter is a copy of the violation case file that the Coast Guard Hearing Office Detachment received from the Coast Guard processing official responsible for a particular unit’s violation cases. This case file contains the evidence that the unit personnel gathered to support that a violation occurred and that the party charged is responsible.

The first thing that a party should do after reading over the letter and case file is to READ “Your Alternatives in the Coast Guard Civil Penalty Process” pamphlet, which is included with the preliminary assessment letter. This pamphlet guides the party in the options that are available. One of the options is to pay the preliminary civil penalty amount. Upon the Coast Guard receiving payment, the case is closed and the party doesn’t hear from the Hearing Officer again regarding the violations identified in that particular case. The second option is to set up a payment plan to pay the preliminary civil penalty amount by contacting the Coast Guard’s collection office.

However, the party may have corrected the violation before or after receiving the preliminary assessment letter. In such cases, the Coast Guard Hearing Office Detachment gives the party an opportunity to submit evidence of compliance. By doing this, the party can show that one or more violations in the case file have been corrected.

The party may write the Hearing Officer and submit photographs, copies of receipts, diagrams or any other evidence relating to compliance efforts. This evidence would be considered during the Hearing Officer’s final determination in the case.

The party may dispute the violations or the preliminary assessed amount. Here again, the party may write to the Hearing Officer and submit evidence to show that the violation did not occur, explain why the violation occurred and / or why the penalty amount should be less than the amount preliminarily assessed.

In other words, a party may submit its “case” in writing to the Hearing Officer in lieu of requesting a hearing. However, a party may request a hearing to present its “case.” Any request for a hearing must be done in writing. The request must detail the issues that the party wishes to dispute at the hearing.

Whether the party desires to submit evidence in writing in lieu of a hearing or request a hearing, the party may request an extension for more time to gather evidence or witnesses.

Responses to the preliminary assessment letter must be made within 30 days of receiving the preliminary assessment letter. Parties are reminded to make sure the case file’s “Activity Number” is on any letter sent to the Hearing Officer and to not forget to sign the letter.

If the party receives a “Warning” as a preliminary assessment for any particular violation, the party may do nothing. A “Warning” may be simply accepted by the party or it may be disputed by the party. In such a case, a monetary assessment is not assessed.

In any case in which a preliminary *monetary* civil penalty was assessed, if the party chooses to do nothing, the preliminary civil penalty amount assessed becomes the final penalty assessed after 30 days and the case is forwarded to the collections office for further action.

Parties in the civil penalty process are ENCOURAGED always to read the “Your Alternatives in the Coast Guard Civil Penalty Process” pamphlet sent with every preliminary assessment letter. It is in the best interests of every charged party to know and exercise the options afforded to them in this process.

See our website shown on page one under *Greetings* to view the pamphlet online.



SUMMER LESSONS

CDR Evan D. Hudspeth



As expected this summer, there was an increased number of boating under the influence (BUI), negligent operations (NEGOPS), certificate of number (CON), and personal floatation devices (PFDs) cases, simply due to the volume of recreational boaters and mariners on the water. In this article, we highlight some of the summer lessons learned.

For BUI and NEGOPS cases the charged party is always the operator of the vessel. It remains helpful for the boarding officer to establish who was operating the vessel by including clear and detailed observations as evidence in the case file. Frequently the case file provides substantial evidence to support negligence or boating under the influence. The same substantial evidence to establish who was operating the vessel will assist the Hearing Officer in making a fair determination. There is no difference in the seriousness of driving a car or operating a boat while intoxicated, and the boating public is encouraged to always assign a "designated driver" as an appropriate precaution.

For CON cases, the vessel operator is typically charged, because as is required with a motor vehicle, the registration must be available for inspection when requested. This requirement comes from Title 33, Code of Federal Regulations, Part 173.25 which states, "No person may use a vessel to which this part applies unless the certificate or lease or rental agreement required by 173.21 is carried on board in such a manner that it can be handed to a person authorized under 173.23 to inspect it." If the vessel is being leased or rented, we frequently see the owner charged with the violation. The owner has a responsibility to ensure that the renter/lessee not only has the CON on board, but also that the renter/lessee knows where it is located in order to produce it upon request. There is an exception for renting/leasing for less than 7 days that allows the CON to remain on shore with the owner but the renter/lessee must have the rental or lease agreement on board.

Finally, for PFD cases, the operator or owner is charged, depending on the circumstances. Attention must be given to the number of persons on board (POBs), because the number of PFDs required is directly related to the number of POBs. Additionally, the age and location of children must be specified. Attention must also be given to state regulations which may differ from and take precedence over federal regulations. If the charge pertains to serviceability, then an explanation must be included to describe how the PFD is unserviceable.

Frequently boaters claim that they were unaware that a Type IV throwable PFD is required when a vessel is greater than 16 feet in length. Depending on the circumstances of the violation the boarding officer may issue a written warning as indicated in 33 CFR 1.08 or process the violation for civil penalty.

* * * * *

ENFORCEMENT OF COMMERCIAL FISHING VESSEL SURVIVAL CRAFT REQUIREMENTS

CDR Mark E. Hammond

Compliance with commercial fishing vessel safety regulations is vitally important. As Rear Admiral Watson stressed in the most recent update of the Commercial Fishing Vessel Safety Digest – "Commercial fishing has consistently remained one of the most dangerous occupations in the nation. While the number of deaths among commercial fishers has been decreasing on average, the rate is still many times higher than any other marine industry. Ensuring that vessels are in full compliance with safety requirements and crews are trained in safety and survival techniques, we all can contribute to improving the safety of the commercial fishing industry."

This article provides a brief overview of the commercial fishing vessel (CFV) survival craft regulations. It focuses on some key areas of emphasis that should be considered when units are processing regulatory enforcement cases for Hearing Officer adjudication.

Applying the CFV survival craft carriage requirements can be challenging. We occasionally receive cases from the field where a party is either improperly cited or the case cannot be processed due to insufficient evidence to support the alleged violation. Common issues are sometime due to a simple oversight but in most cases they are the result of improper application of the regulations or lack of critical information in the case file.

Survival craft carriage requirements are contained in 46 CFR 28.120. This part applies to all U.S. flag, uninspected vessels that are engaged in commercial fishing, fish processing, or fish tender vessels. This applies to documented vessels and vessels numbered (registered) by a state. Specific carriage requirements vary significantly depending a number of factors, including the vessel's documentation status, the number of individuals on board, the vessel's area of operation, and the temperature of water the vessel operates in.

When processing an enforcement case



for an alleged violation of survival craft carriage requirements, careful consideration should be given to capturing and documenting the following essential elements of information.

Vessel details / Number of individuals on board

Specific requirements for survival craft are contained in 46 CFR 28.120 and are listed within tables 28.120(a), 28.120(b), and 28.120(c). The tables breakdown the requirements for the following categories of vessels:

- ⇒ Documented vessels
- ⇒ Undocumented vessels with not more than 16 individuals on board
- ⇒ Undocumented vessels with more than 16 individuals on board

A detailed description of *vessel type* (documented or undocumented) should be included in any boarding write-up as well as an accurate count of the *number of individuals on board*. The vessels must carry the appropriate survival craft in an aggregate capacity to accommodate the total number of individuals on board.

Location, location, location:

Location information is crucial for processing a violation case under the survival craft regulations. This information is used to establish carriage requirements based on distance from the coastline, and is also used in making cold water determinations which can significantly alter specific carriage requirements. It is vitally important to document the *location of the boarding* and to verify its accuracy. It is also important to ascertain and document the *vessel's typical route*. The specific areas of vessel operation that trigger the various survival craft requirements are identified in the regulations as follows:

- ⇒ Beyond 50 miles of the coastline
- ⇒ Between 20 and 50 miles of the coast line
- ⇒ Beyond the boundary line within 20 miles of the coastline
- ⇒ Beyond the boundary line, within 12 miles of the coastline
- ⇒ Inside the boundary line, or lakes, bays, sounds, or rivers
- ⇒ Great Lakes (beyond and within 3 miles of the coastline)

Cold vs. Warm water

Water temperature is another key factor in properly determining survival craft carriage requirements. For example: a 37 foot documented CFV that is operating 10 miles from the coastline in cold waters is required to carry an Inflatable Buoyant Apparatus.

Whereas the same vessel if operating the same distance from the coastline in warm waters is required to carry a Life Float. For the purposes of this regulation, cold waters means water where the monthly mean low water temperature is normally 59° F or less. Detailed information regarding cold water determinations with associated chartlets broken-down by month, for the Atlantic and Pacific Ocean are contained in Navigation and Vessel Inspection Circular No. 7-91; available via: homeport.uscg.mil within the "Library" tab.

Exceptions

The requirements discussed above do not apply to vessels less than 36 feet, with three or fewer individuals on board that operate within 12 miles of the coastline. For vessels greater than 36 feet with 3 or fewer individuals on board and operating within 12 miles of the coast line, they may substitute a Buoyant Apparatus for the survival craft requirement.

Always remember, details are important! A well documented, detailed violation case can go a long way toward gaining compliance with laws and regulations and deterring future violations, and thereby ultimately improving the safety of the commercial fishing industry.

* * * * *

KNOT

(Knowledge Note Or Tip)



Doing a commercial fishing vessel (CFV) inspection? Did you read the above? Great! But wait! To properly determine whether the vessel is equipped with the right survival craft you need to know what are the different kinds of survival craft. Here's some help from the Coast Guard's Commercial Fishing Vessel Safety Flyer Issue 16, Survival Craft.

Inflatable Life Raft:
Series 160.151 / .051



Life Float::
Series 160.027



Inflatable Buoyant Apparatus:
Series 160.010



Buoyant Apparatus:
Series 160.010



Rigid liferaft:
Series 160.018 / .118



A buoyant apparatus may be substituted for the otherwise required survival craft on a vessel more than 36 feet in length with 3 or fewer persons on board and which operates within 12 miles of the coastline.

There are strict regulations regarding the requirements for survival craft and a careful reading of 46 CFR 28.120 is absolutely necessary when determining whether a vessel's survival craft meets regulatory requirements.

* * * * *

JUST FOR FUN

Alicia Scott



**HOW WELL DO YOU KNOW YOUR
U.S. COAST GUARD?**

Test your knowledge to see if you can fill in the blanks or answer the right question! No cheating although should you need help you can find the answers on the last page of this newsletter.

1. _____ Is the only member of the U.S. Coast Guard to earn the Medal of Honor.

2. The U.S. Coast Guard, at the time known as the Revenue Cutter Service, was founded on _____ th _____ by _____.

3. The formal name for a member of the Coast Guard is...

- A. Joe Coastie
- B. Guardian
- C. Coast Guardsman
- D. Coastie

4. Semper Paratus the theme song of the U.S. Coast Guard, was originally written in the year _____ by CAPT _____ and then later revised in 1943 and 1969.

5. Raymond Loewy was one of the best known industrial designers in the 20th century, not only has he designed famous logos that we recognize today such as Shell, Greyhound and Lucky Strike, He created a very popular service mark in 1964 known as the _____.

6. In the Coast Guard you may hear the term _____ used by the officer in charge for a job well done.

7. What are the U.S. Coast Guard Colors?

- A. Red, Blue, White
- B. Yellow, Blue, Red
- C. Purple, Red, White
- D. White, Blue, Orange

8. This award was established in November of 1973 and is awarded in the name of the Commandant of the United States Coast Guard.

- A. Coast Guard Meritorious Unit Commendation
- B. Coast Guard Unit Commendation
- C. Presidential Unit Citation
- D. Coast Guard E Ribbon

9. What tragedy that happened on April 14, 1912 led to the establishment of the Ice Patrol.

- A. The Assassination of President Lincoln
- B. The Sinking of the R.M.S. Titanic
- C. The Death of Jack Dawson
- D. The Bombay Explosion in the Bombay Harbor.

10. In the Year _____, the first Coast Guard Air Station was established in Morehead City, North Carolina.

* * * * *

DECKPLATE RIVETS

⚓ For the rules of the road violations, location always matters. If the vessel is in COLREGS waters, the proper violation cite comes from 33 USC 1600 and its related provisions. If the vessel is in INLAND waters, the proper violation cite comes from 33 USC 2001 and its related provisions. Implementing rules and additional provisions can be found in 33 CFR 80 – 90.



⚓ A boating under the influence (BUI) violation requires knowing whether the State has identified a different blood alcohol concentration (BAC) level than the .08 for operators of recreational vessels. If so, the State level applies. Always, the federal level of .04 for operators of commercial vessels applies.

⚓ Not all regulations apply to all vessels. For example, when determining whether a vessel's ventilation system is in accordance with regulation, be sure to read the applicable regulations and pick the one that applies. 46 CFR 25-40-1(a) applies to all motorboats or motor vessels except open boats, etc. 33 CFR 175.201 applies to vessels built after 7/31/1980 that use gasoline engines, etc. A violation of 33 CFR 175.201 means that the vessel doesn't meet in some fashion the requirements of 33 CFR 183.610 (a), (b), (d), (e), and (f), and 183.620(a).

At all times, it is necessary to thoroughly read the applicability sections of the regulations to correctly identify a violation.

☪ A copy of the entire violation case file is routinely provided to the party with the Hearing Officer's first letter to the party. The violation case file is no place for comments that detract from the highest standards of professionalism. See THE REFLECTION OF PROFESSIONALISM article in our newsletter, Vol I, May 2008.

☪ Processing officials should pay close attention to the exhibits in a violation case file. All exhibits should be labeled. All exhibits should be listed on the Enforcement Summary exhibit list with the exact label found on the exhibit. Anything other than the Enforcement Summary, Activity Summary Report (ASR), CG-4100 (or PDA printout) or compliance incentive letter should be considered as an exhibit. Remember if the party can't match the exhibit list to the exhibit labels or if it appears an exhibit is missing, the case file is deficient and will be returned for correction.

* * * * *

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's some metrics that provide a glimpse into "how it goes" at the Coast Guard Hearing Office Detachment:

Number of case files received by the Coast Guard Hearing Office with violation dates in 2007: 1,448

Number of case files received by the Coast Guard Hearing Office with violation dates in 2008: 935

Number of case files received by the Coast Guard Hearing Office with violation dates in 2009: 611

Number of case files received by the Coast Guard Hearing Office Jul 2009—Sep 2009 regardless of violation date: 414

Number of preliminary assessments issued Jul 2009—Sep 2009: 423

Number of final assessments issued Jul 2009—Sep 2009: 203

Number of violation case files returned to the program manager for deficiencies Jul 2009—Sep 2009: 11



Number of hearings held Jul 2009—Sep 2009: 9
* * * * *



The Coast Guard Hearing Office Detachment has new mailing information. We have not moved but our address has been modified to facilitate use of a centralized mailing facility. Letters and packages failing to have the exact mailing information as displayed below are undeliverable to us. Please note the following and correct your records.

Our address should appear as follows on all mailings:

Commanding Officer
U. S. Coast Guard
Coast Guard Hearing Office Detachment
CG HO MS 7160
4200 Wilson Boulevard, Suite 600
Arlington, VA 20598-7160

* * * * *

ANSWERS TO JUST FOR FUN!

1. DOUGLAS MUNRO
2. AUGUST 4, 1790 BY ALEXANDER HAMILTON
3. C—COAST GUARDSMAN
4. 1927 BY CAPT FRANCIS SALTUS VAN BOSKERCK
5. RACING STRIPE
6. BRAVO ZULU
7. D—WHITE, BLUE, ORANGE
8. A—COAST GUARD MERITORIUS UNIT COMMENDATION
9. B—THE SINKING OF THE RMS TITANIC
10. 1920

