



Whom do you charge if the boat owner is on board but is not operating the boat?

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Civil penalty case processing officials take note recently the Coast Guard Appellate Authority dismissed a Coast Guard Hearing Officer-assessed Warning against an operator in circumstances where both the operator and the vessel owner had written to the Hearing Officer, stating that: 1) the operator was only temporarily conning the vessel while the owner was showing Coast Guard Boarding Officers around the vessel; and 2) the vessel owner was assuming full responsibility for the deficiencies revealed by the boarding (Activity No. 4037521). Both owner and operator had asked the Hearing Officer to dismiss the case against the operator.

The Enforcement Summary had charged the operator, not the onboard owner. The vessel owner nevertheless supplied the Hearing Officer with proof of compliance (i.e. presented evidence of new flares, placard, registration, etc.). The Activity Summary Report (ASR) had described the vessel as a 38-foot recreational vessel with 16 people aboard. Both owner and operator were named in the report, and the words "Owner on board—not operator" appeared under "Owner Status." The ASR made no mention of the operator "temporarily" operating the vessel while the owner escorted the Boarding Officers.

The decision to charge a particular individual is up to the charging unit, based on the available evidence and the provision of law involved. Sometimes more than one person can be charged for the same violation. If, instead of charging everyone who might be liable, only one person is going to be charged, which person should it be?

Tellingly, the Appellate Authority declined to state that it was unlawful to charge the operator, concentrating instead on the limited role the operator played in this case, and the owner's stated willingness and ability, during the boarding and during the civil penalty phase, to assume all responsibility for the alleged violations and to correct the deficiencies.

Although the appeal decision in this case seems to be limited to its particular facts, it serves as a reminder that civil penalty cases are submitted to achieve compliance with the law and to deter future violations, and that the charging decision can have an impact on how effective the case will be in achieving those objectives.