



## **PROMISE OF A WARNING FROM THE BOARDING OFFICER**

*Written By YN3 Victor Anderson, YN3 Christopher Brown*

The Coast Guard Hearing Office receives calls from mariners after they have received our letters making preliminary civil penalty (monetary) assessments against them for violations of marine safety regulations. In these calls, mariners often claim that the Boarding Officer issued a warning for the violations and advised that no civil penalty would be assessed. Other calls concern the Boarding Officer's promise that a warning only will be issued concerning the violations if the mariner fixes the discrepancies and brings proof of compliance to the local Coast Guard unit.

Although well-intentioned, the Boarding Officer cannot foresee what action will ultimately take place concerning a noted violation. Generally, once a violation is noted, the potential for civil penalty action exists. There is one exception to this general rule, and that is when a written warning is issued in accordance with 33 CFR Subpart 1.08.

Boarding Officers do not issue "verbal" warnings. Nor should they make any "promise" that a warning will be issued at a later time or in lieu of civil penalty action. Hearing Officers do not automatically dismiss violations or issue a warning in every case where there is proof of compliance. If a written warning is issued in accordance with 33 CFR Subpart 1.08, then it should be documented as part of the boarding. This is the only type of warning that can be issued by the boarding officer. Please refer to our Newsletter articles concerning written warnings and mariners who show proof of compliance. (*See especially Vol: II, Sep 2008, "Written Warning v. Civil Penalty," and Vol IV: Apr 2009, "Compliance."*)

Processing officials may recommend to the Hearing Officer that a warning be issued for a violation included in a civil penalty case. This should be clearly reflected on the Enforcement Summary and include the rationale and/or support for the recommendation under "Aggravating/Mitigating Factors."