



16200
October 2, 2014

Mr. [REDACTED NAME]
[REDACTED ADDRESS]
[REDACTED CITY, STATE, ZIP]

RE: Case No. 4631242
[REDACTED NAME]
Unregistered Zodiac
[remanded]

Dear Mr. [REDACTED NAME]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 463124, which includes your appeal as operator of an unregistered zodiac. The appeal is from the action of the Hearing Officer in assessing \$1,200.00 in penalties for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.15(a)(1)	Failure to have a number issued on a certificate of number by the issuing authority in the State in which the vessel is principally used.	\$150.00
33 CFR 83.33(b)	(Rule 33)—failure to have some means of making an efficient sound signal for vessels less than 12 meters in length.	\$50.00
46 USC 2302(c)	Operating a vessel under the influence of alcohol or a dangerous drug.	\$1,000.00

The violations occurred on June 21, 2013, when Coast Guard personnel observed the vessel being operated in the vicinity of the Schoonmaker Marina on Richardson Bay near Sausalito, California.

On appeal, you claim that because a *prima facie* case has not been established, this case should be dismissed.

The record shows that you did not respond to the Hearing Officer's initial notification letter dated July 18, 2003, and that, as a result, the Hearing Officer issued her Final Letter of Decision on September 9, 2013. Sometime thereafter, you wrote to the Hearing Officer and requested a reopening of the case. A review of your request in that letter reveals that the Hearing Officer's prior notification letters were sent to an incomplete address (an apartment number was not included) and supports a conclusion that you did not receive either the Hearing Officer's initial notification letter or the case file. Moreover, your request to open presents a different version of the events that transpired on the relevant evening than those set out in the case file.

On March 7, 2014, the Hearing Officer addressed your request and afforded you an additional 30 days within which to respond to the matter. At that time, the Hearing Officer also provided you with a copy of the case file. The case file indicates that the Hearing Office received your response, noting significant errors in the case file, on April 11, 2014. However, the Hearing Officer found that you did not provide sufficient evidence to support a reopening of the case and, thus, allowed the initial Final Letter of Decision to stand.

On review, I believe that you have raised several issues that, contrary to the Hearing Officer's decision, merit further development.

In light of the incompletely developed evidence, this case is returned to the Hearing Officer for further proceedings. The Hearing Officer will contact you regarding further proceedings.

Sincerely,

//s//

L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office
Coast Guard Finance Center