



16200  
October 18, 2021

[REPRESENTATIVE]  
[REPRESENTATIVE ADDRESS]

RE: Activity No. 5789214  
[PARTY]  
[VESSEL]  
\$800.00

Dear [REPRESENTATIVE]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5789214, which includes your appeal on behalf of [PARTY] as owner of the fishing [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$800.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 U.S.C. § 8103(i)	Citizenship requirements for each unlicensed seaman on a fishing, fish processing, or fish tender vessel engaged in the fisheries in the navigable waters of US or EEZ	\$800.00

The alleged violations were discovered on September 26, 2020, when the Coast Guard boarded the vessel 85 nautical miles southwest of Montauk, NY.

On appeal, you assert that [PARTY] has encountered difficulty in finding citizen crewmembers. Your appeal is denied, as explained below.

According to the record, the commercial fishing [VESSEL] was engaged in fishing for American lobster. When the Coast Guard boarded the vessel on September 26, 2020, there were 4 persons onboard including the master and three crewmembers. While evidence was presented that the master was an American citizen and one crewmember was a permanent resident of the United States, [CREWMEMBER 1] only provided a passport from Guatemala and [CREWMEMBER 2] only had a debit card on his person. Following the boarding, [PARTY] sent a copy of [CREWMEMBER 2] passport from Guatemala to the Coast Guard Hearing Office with no other documentation.

46 U.S.C. § 8103(i)(1) provides in pertinent part:

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.) . . .

Furthermore, 46 U.S.C. § 8103(i)(2) provides, “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.”

In this case, half of the seamen onboard the [VESSEL] were either an American citizen or lawfully residing alien, but the other half of the crew apparently did not fall into either category and were not otherwise allowed to be employed. On appeal, you do not contest these facts but rather propose the circumstances allow an exception “contemplated by 46 USC s8103(C)(3)(C) [*sic*].” I infer that you are referring to 46 U.S.C. § 8103(b)(3)(C), which provides: “The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.”

By your own admission, however, there has been no finding that relates to the [VESSEL] or the lobster fishery. For future reference, 46 CFR § 28.1105 provides the various requirements and procedures for a request to the Coast Guard for a waiver of citizenship requirements from 46 U.S.C. § 8103. Regardless, the issue of an exception was not raised until after the Hearing Officer issued his final assessment letter. According to 33 CFR § 1.07-70(a), “The only issues which will be considered on appeal are those issues specified in the appeal which were properly raised before the Hearing Officer and jurisdictional questions.” Finally, a hearing officer has no authority to grant a waiver under 46 U.S.C. § 8103(b)(3), but the Hearing Officer considered the information provided by your client and did reduce the penalty amount.

I find that there is substantial evidence in the record to support the Hearing Officer’s conclusion that the violation occurred and that [PARTY] is the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. In accordance with the regulations governing civil penalty proceedings, 33 CFR subpart 1.07, this decision constitutes final agency action.

Payment of **\$800.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard – Civil Penalties  
P.O. Box 979123  
St. Louis, MO 63197-9000

Interest at the annual rate of 1% accrues from the date of this letter but will be waived if payment is received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

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

Copy: Coast Guard Hearing Office  
Coast Guard Finance Center