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6 **BISMARCK F. DINIUS**

7  
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF LAKE**

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11  
12 **THE PEOPLE OF THE STATE** )  
13 **OF CALIFORNIA,** )  
14 Plaintiff, )  
15 v. )  
16 **BISMARCK F. DINIUS,** )  
17 Defendants. )  
18 \_\_\_\_\_ )

Case No. CR912639

**BENCH BRIEF RE:  
EXAMINATION OF EXPERT  
WITNESSES**

**REQUEST TO RE-OPEN  
CROSS-EXAMINATION OF SGT.  
DENNIS OSTINI**

19 **INTRODUCTION**

20 On Friday, July 31, 2009, while the undersigned was cross-examining Sgt.  
21 Dennis Ostini, the undersigned asked Sgt. Ostini about the provisions of certain  
22 regulations contained in the Federal Inland Navigation Rules. Those rules, which  
23 were enacted by Congress (33 U.S.C. §§ 2001-2038), have been incorporated into  
24 California law pursuant to Harbors & Navigation Code section 655.3 and Title 14,  
25 California Code of Regulations, Section 6600.1. (Attached hereto as Exhibit A are  
26 copies of Harbors & Navigation Code section 655.3; Title 14, California Code of  
27 Regulations, Section 6600.1; and the 38 rules that comprise the Federal Inland  
28 Navigation Rules.)

1 While the undersigned did question Sgt. Ostini about the provisions of *some*  
2 of these rules, the prosecutor began objecting to the line of questioning.  
3 Eventually, following a conference at the bench, the court cut off this line of  
4 inquiry.

5 The undersigned should be allowed to question Sgt. Ostini *fully* about the  
6 provisions of these rules and their applicability to factual scenarios that have been  
7 shown, by evidence elicited in this case, to have existed on the night of the boating  
8 accident in question.

9 Sgt. Ostini is the Supervisor of the Marine Division of the Lake County  
10 Sheriff's Office. He is the lead investigating officer in this case. He was on scene  
11 shortly after the accident occurred. And, he was in charge of the scene.

12 Sgt. Ostini has received training regarding marine accident investigation.  
13 Indeed, he has received such training from one of the experts for the defense in  
14 this case. That training has included instruction regarding the Federal Inland  
15 Navigation Rules. Under these circumstances, Sgt. Ostini can properly be  
16 questioned about the provisions and applicability of these rules. (Evidence Code  
17 section 801.)

18 The defense should not be made to wait to address the provisions of these  
19 rules and their applicability in this case until a time of the prosecutor's choosing.  
20 Rather, the defense should be able to address this subject with Sgt. Ostini and any  
21 other prosecution witnesses who have the knowledge and qualifications to testify  
22 about these rules. And, the defense should be afforded the opportunity to address  
23 the provisions and applicability of these rules prior to the close of the  
24 prosecution's case, as evidence elicited during such questioning could bear on a  
25 motion for judgment of acquittal and/or judgment of partial acquittal at the close

26 ///

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1 of the prosecution's case. (Penal Code section 1118.)<sup>1</sup>

2 Accordingly, the defense respectfully requests permission to re-open cross-  
3 examination of Sgt. Ostini, for the purpose of questioning the sergeant regarding

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5 <sup>1</sup> Indeed, the defense position in this case is that the evidence has shown and will  
6 further show that, as a matter of fact and a matter of law, Russell Perdock violated numerous  
7 provisions of these rules. He violated Rule 5 by failing to "maintain a proper look-out by  
8 sight and hearing as well as by all available means appropriate in the prevailing  
9 circumstances and conditions so as to make a full appraisal of the situation and of the risk  
10 of collision." He violated Rule 6 by failing to "proceed at a safe speed so that [he could] take  
11 proper and effective action to avoid collision and be stopped within a distance appropriate  
12 to the prevailing circumstances and conditions." He also violated Rule 6 by failing to take  
13 into account "the state of visibility", the presence at night "of background light such as from  
14 shore lights or from back scatter" of the lights on his vessel, and the "maneuverability" of  
15 his "vessel with special reference to stopping distance and turning ability in the prevailing  
16 conditions[.]" He violated Rule 7, by failing to "use all available means appropriate to the  
17 prevailing circumstances and conditions to determine if risk of collision exist[ed]." Rule 7  
18 expressly provides that "[a]ssumptions shall not be made on the basis of scanty  
19 information...." He violated Rule 8 by failing to take "positive" action "to avoid collision...."  
20 Pursuant to Rule 4, each of the foregoing rules — Rules 5, 6, 7, and 8 — apply "in any  
21 condition of visibility." (Rule 4.) Further, Rule 2 expressly provides that "[n]othing in these  
22 rules shall exonerate any vessel, or the owner, master, or crew thereof, from the  
23 consequences of any neglect to comply with these Rules...." "Rule 2 establishes the  
24 necessary adherence to *all the navigational rules*, not just one." (*LoVuolo v. Gunning* (1<sup>st</sup>  
25 Cir. 1991) 925 F.2d 22, 26.) Thus, the "rules are intended to supplement, not to cancel out,  
26 each other." (*Ibid.*) Mr. Perdock also violated Rule 13, which requires "any vessel  
27 overtaking any other [to] keep out of the way of the vessel being overtaken." Pursuant to  
28 Rule 13(b), a vessel is deemed an overtaking vessel if it approaches "another vessel from a  
direction more than 22.5 degrees abaft her beam; that is, in such a position with reference to  
the vessel she is overtaking, that at night she would be able to see only the sternlight of that  
vessel...." He also violated Rule 16 by failing to "keep out of the way" of the stand-on  
vessel, which, in this case, was the sail boat. He violated Rule 18, which requires power-  
driven vessels to keep out of the way of sailing vessels. And, he violated Rule 19, which  
requires "every vessel [to] proceed at a safe speed adapted to the prevailing circumstances  
and conditions of restricted visibility." Rule 19 further provides that "[a] power-driven  
vessel shall have her engines ready for immediate maneuver." Rule 19 expressly applies "to  
vessels *not in sight of one another*...." (Emphasis added.) Over a century ago, "[i]n a  
landmark admiralty case, *The Pennsylvania*, 86 U.S. (19 Wall.) 125 (1873), the Supreme  
Court [of the United States] emphasized the ... importance of following navigational rules  
exactly...." (*LoVuolo v. Gunning*, *supra*, 925 F.2d at p. 25.)



1 the provisions and applicability of these rules.

## 2 DISCUSSION

### 3 LEGAL PRINCIPLES RE: OPINION TESTIMONY 4 FROM EXPERT WITNESSES

5 Evidence Code section 805 provides: “**Testimony in the form of an**  
6 **opinion that is otherwise admissible is not objectionable because it embraces**  
7 **the ultimate issue to be decided by the trier of fact.**” (Emphasis supplied.)  
8 “Despite the circumstance that it is the jury’s duty to determine whether the  
9 prosecution has carried its burden of proof beyond a reasonable doubt, opinion  
10 testimony may encompass ‘ultimate issues’ within a case.” (*People v. Prince*  
11 (2007) 40 Cal.4th 1179, 1227.)

12 “The testimony of experts is admissible to show recognized and accepted  
13 safety standards and practices in their profession, trade or business [citations]; and  
14 ‘is not objectionable because it embraces the ultimate issue to be decided by the  
15 trier of fact.’” (*People v. Glass* (1968) 266 Cal.App.2d 222, 226-227; quoting  
16 Evidence Code section 805; disapproved on other grounds in *People v. Superior*  
17 *Court* (1972) 6 Cal.3d 757, 765.)

18 But, notwithstanding Evidence Code section 805, “an expert opinion is  
19 inadmissible ‘if it invades the province of the jury to decide the case.’” (*People v.*  
20 *Frederick* (2006) 142 Cal.App.4th 400, 412.) “Expert opinions which invade the  
21 province of the jury are not excluded because they embrace an ultimate issue, but  
22 because they are not helpful (or perhaps too helpful).” (*Summers v. A. L. Gilbert*  
23 *Co.* (1999) 69 Cal.App.4th 1155, 1183.) “[W]hen an expert’s opinion amounts to  
24 nothing more than an expression of his or her belief on how a case should be  
25 decided, it does not aid the jurors, it supplants them.” (*Ibid.*)

26 “The manner in which the law should apply to particular facts is a legal  
27 question and is not subject to expert opinion.” (*Ferreira v. Workmen’s Comp.*  
28 *Appeals Bd.* (1974) 38 Cal.App.3d 120, 126.)

1 Yet, expert witnesses may “express opinions to the jury as to ... *applicable*  
2 regulations ... and the *interpretation* of such” regulations in certain respects  
3 “without invading the *court’s* duty to determine questions of law.” (*People v.*  
4 *Ochoa* (1991) 231 Cal.App.3d 1413, 1423, italics in the original; citing *People v.*  
5 *Wood* (1963) 214 Cal.App.2d 298, 303; see also *People v. Humphrey* (1996) 13  
6 Cal.4th 1073, 1099 [concluding in a self-defense case, where pivotal question of  
7 law to be decided was whether the defendant had actually and reasonably believed  
8 in the need to defend, an “expert must not usurp the function of the jury and reach  
9 the ultimate question of reasonableness”].)

10 One particular example of the latitude an attorney in a criminal case has to  
11 inquire as to the opinion of an expert witness is provided by case law relating to  
12 prosecutions involving possession of drugs for sale. This example is familiar to  
13 all legal professionals who have tried a few criminal cases: In possession-for-sale  
14 cases, the defendant’s intention concerning drugs he/she possesses is generally the  
15 ultimate issue, *viz.*, whether he/she intends to sell the drugs. And, in such cases,  
16 an expert witness (generally a police officer with experience in narcotics cases) is  
17 allowed to offer an opinion as to whether the drugs are possessed for sale, based  
18 upon such evidence as quantity, packaging, and the normal drug amount used by  
19 an individual. (*People v. Carter* (1997) 55 Cal.App.4th 1376, 1377-1378.)

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DATE: August 3, 2009

VICTOR O. HARTMAN

VICTOR S. HALTOM  
Attorney for Defendant  
BISMARCK F. DINIUS

# Exhibit A





LEXSTAT CAL. HARB. NAV. CODE 655.3

DEERING'S CALIFORNIA CODES ANNOTATED  
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\* THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED THROUGH CH. 20 OF \*  
THE 2009-2010 REG. SESS., CH. 12 OF THE 2009-2010 2d EX. SESS., EFF. 5/21/09,  
CH. 25 OF THE 2009-2010 3d EX. SESS., THE GOVERNOR'S REORGANIZATION PLAN #1 OF  
2009, EFF. MAY 10, 2009, & PROP. 1F APPROVED, EFF. MAY 20, 2009

HARBORS AND NAVIGATION CODE  
Division 3. Vessels  
Chapter 5. Operation and Equipment of Vessels  
Article 1. Operation and Equipment

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

*Cal Harb & Nav Code § 655.3 (2009)*

**§ 655.3. Rules of the road and pilot rules**

The department may adopt regulations to establish and maintain for the use of vessels and the equipment on vessels on the waters of this state rules of the road and pilot rules in conformity with those contained in the federal navigation laws or the navigation rules promulgated by the United States Coast Guard.

**HISTORY:**

Added Stats 1976 ch 744 § 8. Amended Stats 1997 ch 666 § 4 (SB 810).

**NOTES:**

**Amendments:**

**1997 Amendment:**

Substituted "adopt regulations to establish and maintain for the use of vessels and the equipment of vessels" for "establish and maintain for the use of vessels".

**Cross References:**

Penalties for violation of section: *H & N C § 668*.

**Collateral References:**



Cal Harb & Nav Code § 655.3

Cal. Points & Authorities (Matthew Bender(R)) ch 165 "Negligence," § 165.401.

Cal. Torts (Matthew Bender(R)), § 22.21.

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare §§ 341, 429, 430.

6 Witkin Summary (10th ed) Torts § 889.

Incorporation by reference of U.S. Coast Guard Rules: 14 Cal Code Reg § 6600.1.

Navigation and navigable waters: 33 USCS §§ 1 et seq.

Inland navigation rules: 33 USCS §§ 2001 et seq.; 33 Code Fed Reg Parts 84 et seq.

Regulation of pilots: 46 USCS §§ 8501 et seq.; 33 Code Fed Reg Part 88.

**Hierarchy Notes:**

Harb & Nav Code Note

Div. 3, Ch. 5 Note

Div. 3, Ch. 5, Art. 1 Note



LEXSTAT 14 CA ADMIN 6600.1

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\* THIS DOCUMENT IS CURRENT THROUGH REGISTER 2009, NO. 29, JULY 17, 2009 \*

TITLE 14. NATURAL RESOURCES  
DIVISION 4. DEPARTMENT OF BOATING AND WATERWAYS  
CHAPTER 1. DEPARTMENT OF BOATING AND WATERWAYS  
ARTICLE 5. PILOT RULES AND RULES OF THE ROAD

14 CCR 6600.1 (2009)

§ 6600.1. Incorporation by Reference

(a) The following rules of the road and pilot rules promulgated by the United States Coast Guard are incorporated by reference. Copies may be obtained from sources indicated. They are also available for inspection at the Department of Boating and Waterways, and Archives, Secretary of State, 1020 "O" Street, Sacramento, California 95814.

(1) SUBCHAPTER D--International Navigation Rules, Title 33, Code of Federal Regulations, Part 81-72 COLREGS: IMPLEMENTING RULES and Appendix A--Proclamation of January 19, 1977, and 72 COLREGS.

(2) SUBCHAPTER E--Inland Navigation Rules, Title 33 Code of Federal Regulations, Part 84, Part 85, Part 86, Part 87, Part 88, and Part 89.

(3) Public Law 96-591, December 24, 1980, known as the INLAND NAVIGATION RULES ACT OF 1980, Section 33, *United States Code 2001*.

(4) Subsequent modifications, amendments, and/or changes, to federal regulations pertaining to rules of the road and pilot rules shall be effective in this section upon adoption.

Note: These regulations and statutes are published by the U.S. Coast Guard in NAVIGATION RULES INTERNATIONAL--INLAND (COMMANDANT INSTRUCTION M16672.2. (Series.)) The public may purchase copies of this pamphlet from the Government Printing Office Bookstore, ARCO Plaza Level C, 505 South Flower, Los Angeles, CA 90071. Telephone (213) 239-9844 for cost and availability of this pamphlet.

AUTHORITY:

Note: Authority cited: *Section 655.3, Harbors and Navigation Code*. Reference: *Sections 650 and 655.3, Harbors and Navigation Code*.

HISTORY:

1. New section filed 3-15-85; effective thirtieth day thereafter (Register 85, No. 11).

2. Change without regulatory effect amending subsections (a) and (a)(4) filed 4-30-2003 pursuant to *section 100, title 1, California Code of Regulations* (Register 2003, No. 18).



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## FEDERAL INLAND NAVIGATION RULES

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Pursuant to Title 14, California Code of Regulations, Section 6600.1,  
the Federal Inland Navigation Rules have been incorporated by  
reference to California law.

# FEDERAL INLAND NAVIGATION RULES

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INLAND NAVIGATION LAWS

Public Law 96-591  
96th Congress

An Act

To unify the rules for preventing collisions on the inland waters of the United States, and for other purposes.

Dec. 24, 1980  
[H.R. 6671]

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Inland Navigational Rules Act of 1980".*

Inland  
Navigational  
Rules Act 1980.  
33 USC 3001  
note.

Sec. 2. Inland Navigational Rules:

PART A—GENERAL

RULE 1

Application

(a) These Rules apply to all vessels upon the inland waters of the United States, and to vessels of the United States on the Canadian waters of the Great Lakes to the extent that there is no conflict with Canadian law.

33 USC 3001.

(b)(i) These Rules constitute special rules made by an appropriate authority within the meaning of Rule 1(b) of the International Regulations.

(ii) All vessels complying with the construction and equipment requirements of the International Regulations are considered to be in compliance with these Rules.

(c) Nothing in these Rules shall interfere with the operation of any special rules made by the Secretary of the Navy with respect to additional station or signal lights and shapes or whistle signals for ships of war and vessels proceeding under convoy, or by the Secretary with respect to additional station or signal lights and shapes for fishing vessels engaged in fishing as a fleet. These additional station or signal lights and shapes or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light, shape, or signal authorized elsewhere under these Rules. Notice of such special rules shall be published in the Federal Register and, after the effective date specified in such notice, they shall have effect as if they were a part of these Rules.

(d) Traffic separation schemes may be established for the purpose of these Rules. Vessel traffic service regulations may be in effect in certain areas.

(e) Whenever the Secretary determines that a vessel or class of vessels of special construction or purpose cannot comply fully with the provisions of any of these Rules with respect to the number, position, range, or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, the vessel shall comply with such other provisions in regard to the number, position, range, or arc of visibility of lights or shapes, as



well as to the disposition and characteristics of sound-signaling appliances, as the Secretary shall have determined to be the closest possible compliance with these Rules. The Secretary may issue a certificate of alternative compliance for a vessel or class of vessels specifying the closest possible compliance with these Rules. The Secretary of the Navy shall make these determinations and issue certificates of alternative compliance for vessels of the Navy.

(f) The Secretary may accept a certificate of alternative compliance issued by a contracting party to the International Regulations if he determines that the alternative compliance standards of the contracting party are substantially the same as those of the United States.

## RULE 2

## Responsibility

(a) Nothing in these Rules shall exonerate any vessel, or the owner, master, or crew thereof, from the consequences of any neglect to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(b) In construing and complying with these Rules due regard shall be had to all dangers of navigation and collision and to any special circumstances, including the limitations of the vessels involved, which may make a departure from these Rules necessary to avoid immediate danger.

## RULE 3

## General Definitions

For the purpose of these Rules and this Chapter, except where the context otherwise requires:

(a) The word "vessel" includes every description of water craft, including nondisplacement craft and seaplanes, used or capable of being used as a means of transportation on water.

(b) The term "power-driven vessel" means any vessel propelled by machinery;

(c) The term "sailing vessel" means any vessel under sail provided that propelling machinery, if fitted, is not being used;

(d) The term "vessel engaged in fishing" means any vessel fishing with nets, lines, trawls, or other fishing apparatus which restricts maneuverability, but does not include a vessel fishing with trolling lines or other fishing apparatus which do not restrict maneuverability;

(e) The word "seaplane" includes any aircraft designed to maneuver on the water;

(f) The term "vessel not under command" means a vessel which through some exceptional circumstance is unable to maneuver as

required by these Rules and is therefore unable to keep out of the way of another vessel;

(g) The term "vessel restricted in her ability to maneuver" means a vessel which from the nature of her work is restricted in her ability to maneuver as required by these Rules and is therefore unable to keep out of the way of another vessel; vessels restricted in their ability to maneuver include, but are not limited to:

(i) a vessel engaged in laying, servicing, or picking up a navigation mark, submarine cable, or pipeline;

(ii) a vessel engaged in dredging, surveying, or underwater operations;

(iii) a vessel engaged in replenishment or transferring persons, provisions, or cargo while underway;

(iv) a vessel engaged in the launching or recovery of aircraft;

(v) a vessel engaged in mineclearance operations; and

(vi) a vessel engaged in a towing operation such as severely restricts the towing vessel and her tow in their ability to deviate from their course.

(h) The word "underway" means that a vessel is not at anchor, or made fast to the shore, or aground;

(i) The words "length" and "breadth" of a vessel mean her length overall and greatest breadth;

(j) Vessels shall be deemed to be in sight of one another only when one can be observed visually from the other;

(k) The term "restricted visibility" means any condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms, or any other similar causes;

(l) "Western Rivers" means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River.

(m) "Great Lakes" means the Great Lakes and their connecting and tributary waters including the Calumet River as far as the Thomas J. O'Brien Lock and Controlling Works (between mile 326 and 327), the Chicago River as far as the east side of the Ashland Avenue Bridge (between mile 321 and 322), and the Saint Lawrence River as far east as the lower exit of Saint Lambert Lock;

(n) "Secretary" means the Secretary of the department in which the Coast Guard is operating;

(o) "Inland Waters" means the navigable waters of the United States shoreward of the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States and the waters of the Great Lakes on the United States side of the International Boundary;



(p) "Inland Rules" or "Rules" mean the Inland Navigational Rules and the annexes thereto, which govern the conduct of vessels and specify the lights, shapes, and sound signals that apply on inland waters; and

(q) "International Regulations" means the International Regulations for Preventing Collisions at Sea, 1972, including annexes currently in force for the United States.

33 USC 1602 note.

## PART B—STEERING AND SAILING RULES

### SUBPART 1—CONDUCT OF VESSELS IN ANY CONDITION OF VISIBILITY

#### RULE 4

##### Application

Rules in this subpart apply in any condition of visibility.

33 USC 2004.

#### RULE 5

##### Look-out

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

33 USC 2005.

#### RULE 6

##### Safe Speed

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

33 USC 2006.

In determining a safe speed the following factors shall be among those taken into account:

- (a) By all vessels:
  - (i) the state of visibility;
  - (ii) the traffic density including concentration of fishing vessels or any other vessels;
  - (iii) the maneuverability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
  - (iv) at night the presence of background light such as from shores lights or from back scatter of her own lights;
  - (v) the state of wind, sea, and current, and the proximity of navigational hazards;
  - (vi) the draft in relation to the available depth of water.
- (b) Additionally, by vessels with operational radar:
  - (i) the characteristics, efficiency and limitations of the radar equipment;
  - (ii) any constraints imposed by the radar range scale in use;

(iii) the effect on radar detection of the sea state, weather, and other sources of interference;

(iv) the possibility that small vessels, ice and other floating objects may not be detected by radar at an adequate range;

(v) the number, location, and movement of vessels detected by radar; and

(vi) the more exact assessment of the visibility that may be possible when radar is used to determine the range of vessels or other objects in the vicinity.

#### RULE 7

##### Risk of Collision

(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

33 USC 2007.

(b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.

(c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.

(d) In determining if risk of collision exists the following considerations shall be among those taken into account:

- (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change; and
- (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

#### RULE 8

##### Action To Avoid Collision

(a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

33 USC 2008.

(b) Any alteration of course or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course or speed should be avoided.

(c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.



(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

(f)(i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.

(ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.

(iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the Rules of this part when the two vessels are approaching one another so as to involve risk of collision.

RULE 9

Narrow Channels

33 USC 2009.

(a)(i) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.

(ii) Notwithstanding paragraph (a)(i) and Rule 14(a), a power-driven vessel operating in narrow channels or fairways on the Great Lakes, Western Rivers, or waters specified by the Secretary, and proceeding downbound with a following current shall have the right-of-way over an upbound vessel, shall propose the manner and place of passage, and shall initiate the maneuvering signals prescribed by Rule 34(a)(i), as appropriate. The vessel proceeding upbound against the current shall hold as necessary to permit safe passing.

(b) A vessel of less than 20 meters in length or a sailing vessel shall not impede the passage of a vessel that can safely navigate only within a narrow channel or fairway.

(c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.

(d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within that channel or fairway. The latter vessel shall use the danger signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.

(e)(i) In a narrow channel or fairway when overtaking, the power-driven vessel intending to overtake another power-driven vessel shall indicate her intention by sounding the appropriate signal prescribed in Rule 34(c) and take steps to permit safe passing. The power-driven vessel being overtaken, if in agreement, shall sound

the same signal and may, if specifically agreed to take steps to permit safe passing. If in doubt she shall sound the danger signal prescribed in Rule 34(d).

(ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13.

(f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).

(g) Every vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

RULE 10

Vessel Traffic Services

Each vessel required by regulation to participate in a vessel traffic service shall comply with the applicable regulations.

(a) This Rule applies to traffic separation schemes and does not relieve any vessel of her obligation under any other Rule.

(b) A vessel using a traffic separation scheme shall:

(i) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane;

(ii) so far as practicable keep clear of a traffic separation line or separation zone;

(iii) normally join or leave a traffic lane at the termination of the lane, but when joining or leaving from either side shall do so at as small an angle to the general direction of traffic flow as practicable.

(c) A vessel shall, so far as practicable, avoid crossing traffic lanes but if obliged to do so shall cross on a heading as nearly as practicable at right angles to the general direction of traffic flow.

(d)(i) A vessel shall not use an inshore traffic zone when she can safely use the appropriate traffic lane within the adjacent traffic separation scheme. However, vessels of less than twenty meters in length, sailing vessels, and vessels engaged in fishing may use the inshore traffic zone.

(ii) Notwithstanding subparagraph (d)(i), a vessel may use an inshore traffic zone when en route to or from a port, offshore installation or structure, pilot station, or any other place situated within the inshore traffic zone, or to avoid immediate danger.

(e) A vessel other than a crossing vessel or a vessel joining or leaving a lane shall not normally enter a separation zone or cross a separation line except:

(i) in cases of emergency to avoid immediate danger; or

(ii) to engage in fishing within a separation zone.

(f) A vessel navigating in areas near the terminations of traffic separation schemes shall do so with particular caution.



(g) A vessel shall so far as practicable avoid anchoring in a traffic separation scheme or in areas near its terminations.

(h) A vessel not using a traffic separation scheme shall avoid it by as wide a margin as is practicable.

(i) A vessel engaged in fishing shall not impede the passage of any vessel following a traffic lane.

(j) A vessel of less than twenty meters in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.

(k) A vessel restricted in her ability to maneuver when engaged in an operation for the maintenance of safety of navigation in a traffic separation scheme is exempted from complying with this Rule to the extent necessary to carry out the operation.

(l) A vessel restricted in her ability to maneuver when engaged in an operation for the laying, servicing, or picking up of a submarine cable, within a traffic separation scheme, is exempted from complying with this Rule to the extent necessary to carry out the operation.

#### SUBPART II—CONDUCT OF VESSELS IN SIGHT OF ONE ANOTHER

##### RULE 11

##### Application

Rules in this subpart apply to vessels in sight of one another.

33 USC 2011.

##### RULE 12

##### Sailing Vessels

(a) When two sailing vessels are approaching one another, so as to involve risk of collision, one of them shall keep out of the way of the other as follows:

33 USC 2012.

(i) when each has the wind on a different side, the vessel which has the wind on the port side shall keep out of the way of the other;

(ii) when both have the wind on the same side, the vessel which is to windward shall keep out of the way of the vessel which is to leeward; and

(iii) if a vessel with the wind on the port side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the port or on the starboard side, she shall keep out of the way of the other.

(b) For the purpose of this Rule the windward side shall be deemed to be the side opposite to that on which the mainsail is carried or, in the case of a square-rigged vessel, the side opposite to that on which the largest fore-and-aft sail is carried.

##### RULE 13

##### Overtaking

(a) Notwithstanding anything contained in Rules 4 through 18, any vessel overtaking any other shall keep out of the way of the vessel being overtaken.

(b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam; that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.

(c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.

(d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

##### RULE 14

##### Head-on Situation

(a) Unless otherwise agreed, when two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other.

33 USC 2014.

(b) Such a situation shall be deemed to exist when a vessel sees the other ahead or nearly ahead and by night she could see the masthead lights of the other in a line or nearly in a line or both sidelights and by day she observes the corresponding aspect of the other vessel.

(c) When a vessel is in any doubt as to whether such a situation exists she shall assume that it does exist and act accordingly.

##### RULE 15

##### Crossing Situation

(a) When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

33 USC 2015.

(b) Notwithstanding paragraph (a), on the Great Lakes, Western Rivers, or water specified by the Secretary, a power-driven vessel crossing a river shall keep out of the way of a power-driven vessel ascending or descending the river.



## Action by Give-Way Vessel

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

## RULE 17

## Action by Stand-on Vessel

(a)(i) Where one of the two vessels is to keep out of the way, the other shall keep her course and speed.

(ii) The latter vessel may, however, take action to avoid collision by her maneuver alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

(c) A power-driven vessel which takes action in a crossing situation in accordance with subparagraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

(d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

## RULE 18

## Responsibilities Between Vessels

Except where Rules 9, 10, and 13 otherwise require:

(a) A power-driven vessel underway shall keep out of the way of:

(i) a vessel not under command;

(ii) a vessel restricted in her ability to maneuver;

(iii) a vessel engaged in fishing; and

(iv) a sailing vessel.

(b) A sailing vessel underway shall keep out of the way of:

(i) a vessel not under command;

(ii) a vessel restricted in her ability to maneuver; and

(iii) a vessel engaged in fishing.

(c) A vessel engaged in fishing when underway shall, so far as possible, keep out of the way of:

(i) a vessel not under command; and

(ii) a vessel restricted in her ability to maneuver.

(d) A seaplane on the water shall, in general, keep well clear of all vessels and avoid impeding their navigation. In circumstances, however, where risk of collision exists, she shall comply with the Rules of this Part.

## RULE 19

## Conduct of Vessels in Restricted Visibility

(a) This Rule applies to vessels not in sight of one another when navigating in or near an area of restricted visibility.

(b) Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. A power-driven vessel shall have her engines ready for immediate maneuver.

(c) Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with Rules 4 through 10.

(d) A vessel which detects by radar alone the presence of another vessel shall determine if a close-quarters situation is developing or risk of collision exists. If so, she shall take avoiding action in ample time, provided that when such action consists of an alteration of course, so far as possible the following shall be avoided:

(i) an alteration of course to port for a vessel forward of the beam, other than for a vessel being overtaken; and

(ii) an alteration of course toward a vessel abeam or abaft the beam.

(e) Except where it has been determined that a risk of collision does not exist, every vessel which hears apparently forward of her beam the fog signal of another vessel, or which cannot avoid a close-quarters situation with another vessel forward of her beam, shall reduce her speed to the minimum at which she can be kept on course. She shall if necessary take all her way off and, in any event, navigate with extreme caution until danger of collision is over.

## PART C—LIGHTS AND SHAPES

## RULE 20

## Application

33 USC 2020.

(a) Rules in this Part shall be complied with in all weathers.

(b) The Rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with the keeping of a proper lookout.

(c) The lights prescribed by these Rules shall, if carried, also be exhibited from sunrise to sunset in restricted visibility and may be exhibited in all other circumstances when it is deemed necessary.

(d) The Rules concerning shapes shall be complied with by day.

(e) The lights and shapes specified in these Rules shall comply with the provisions of Annex I of these Rules.



Definitions

- (a) "Masthead light" means a white light placed over the fore and aft centerline of the vessel showing an unbroken light over an arc of the horizon of 22.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on either side of the vessel, except that on a vessel of less than 12 meters in length the masthead light shall be placed as nearly as practicable to the fore and aft centerline of the vessel.
- (b) "Sidelights" mean a green light on the starboard side and a red light on the port side each showing an unbroken light over an arc of the horizon of 112.5 degrees and so fixed as to show the light from right ahead to 22.5 degrees abaft the beam on its respective side. On a vessel of less than 20 meters in length the side lights may be combined in one lantern carried on the fore and aft centerline of the vessel, except that on a vessel of less than 12 meters in length the sidelights when combined in one lantern shall be placed as nearly as practicable to the fore and aft centerline of the vessel.
- (c) "Sternlight" means a white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135 degrees and so fixed as to show the light 67.5 degrees from right aft on each side of the vessel.
- (d) "Towing light" means a yellow light having the same characteristics as the "sternlight" defined in paragraph (c) of this Rule.

- (e) "All-round light" means a light showing an unbroken light over an arc of the horizon of 360 degrees.
- (f) "Flashing light" means a light flashing at regular intervals at a frequency of 120 flashes or more per minute.
- (g) "Special flashing light" means a yellow light flashing at regular intervals at a frequency of 50 to 70 flashes per minute, placed as far forward and as nearly as practicable on the fore and aft centerline of the tow and showing an unbroken light over an arc of the horizon of not less than 180 degrees nor more than 22.5 degrees and so fixed as to show the light from right ahead to abeam and no more than 22.5 degrees abaft the beam on either side of the vessel.

RULE 22

Visibility of Lights

The lights prescribed in these Rules shall have an intensity as specified in Annex I to these Rules, so as to be visible at the following minimum ranges:

- (a) In a vessel of 50 meters or more in length:  
a masthead light, 6 miles;  
a sidelight, 3 miles;  
a sternlight, 3 miles;

- a towing light, 3 miles;  
a white, red, green, or yellow all-round light, 3 miles; and  
a special flashing light, 2 miles.
- (b) In a vessel of 12 meters or more in length but less than 50 meters in length:  
a masthead light, 5 miles; except that where the length of the vessel is less than 20 meters, 3 miles;  
a sidelight, 2 miles;  
a sternlight, 2 miles;  
a towing light, 2 miles;  
a white, red, green or yellow all-round light, 2 miles; and  
a special flashing light, 2 miles.
- (c) In a vessel of less than 12 meters in length:  
a masthead light, 2 miles;  
a sidelight, 1 mile;  
a sternlight, 2 miles;  
a towing light, 2 miles;  
a white, red, green or yellow all-around light, 2 miles; and  
a special flashing light, 2 miles.
- (d) In an inconspicuous, partly submerged vessel or object being towed:  
a white all-round light, 3 miles.

RULE 23

Power-Driven Vessels Underway

- (a) A power-driven vessel underway shall exhibit:

- (i) a masthead light forward;  
(ii) a second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 meters in length shall not be obliged to exhibit such light but may do so;  
(iii) sidelights; and  
(iv) a sternlight.

- (b) An air-cushion vessel when operating in the nondisplacement mode shall, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit an all-round flashing yellow light where it can best be seen.

- (c) A power-driven vessel of less than 12 meters in length may, in lieu of the lights prescribed in paragraph (a) of this Rule, exhibit an all-round white light and sidelights.

- (d) A power-driven vessel when operating on the Great Lakes may carry an all-round white light in lieu of the second masthead light and sternlight prescribed in paragraph (a) of this Rule. The light shall be carried in the position of the second masthead light and be visible at the same minimum range.



## Towing and Pushing

33 USC 2024.

- (a) A power-driven vessel when towing astern shall exhibit:
- (i) instead of the light prescribed either in Rule 23 (a)(i) or 23(a)(ii), two masthead lights in a vertical line. When the length of the tow, measuring from the stern of the towing vessel to the after end of the tow exceeds 200 meters, three such lights in a vertical line;
  - (ii) sidelights;
  - (iii) a sternlight;
  - (iv) a towing light in a vertical line above the sternlight; and
  - (v) when the length of the tow exceeds 200 meters, a diamond shape where it can best be seen.
- (b) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a power-driven vessel and exhibit the lights prescribed in Rule 23.
- (c) A power-driven vessel when pushing ahead or towing alongside, except as required by paragraphs (b) and (i) of this Rule, shall exhibit:
- (i) instead of the light prescribed either in Rule 23(a)(i) or 23(a)(ii), two masthead lights in a vertical line;
  - (ii) sidelights; and
  - (iii) two towing lights in a vertical line.
- (d) A power-driven vessel to which paragraphs (a) or (c) of this Rule apply shall also comply with Rule 23(a)(i) and 23(a)(ii).
- (e) A vessel or object other than those referred to in paragraph (g) of this Rule being towed shall exhibit:
- (i) sidelights;
  - (ii) a sternlight; and
  - (iii) when the length of the tow exceeds 200 meters, a diamond shape where it can best be seen.
- (f) Provided that any number of vessels being towed alongside or pushed in a group shall be lighted as one vessel, except as provided in paragraph (iii)—
- (i) a vessel being pushed ahead, not being part of a composite unit, shall exhibit at the forward end, sidelights and a special flashing light;
  - (ii) a vessel being towed alongside shall exhibit a sternlight and at the forward end, sidelights and a special flashing light; and
  - (iii) when vessels are towed alongside on both sides of the towing vessels a stern light shall be exhibited on the stern of the outboard vessel on each side of the towing vessel, and a single set of sidelights as far forward and as far outboard as is practicable, and a single special flashing light.
- (g) An inconspicuous, partly submerged vessel or object being towed shall exhibit:

- (i) if it is less than 25 meters in breadth, one all-round white light at or near each end;
  - (ii) if it is 25 meters or more in breadth, four all-round white lights to mark its length and breadth;
  - (iii) if it exceeds 100 meters in length, additional all-round white lights between the lights prescribed in subparagraphs (i) and (ii) so that the distance between the lights shall not exceed 100 meters: *Provided*, That any vessels or objects being towed alongside each other shall be lighted as one vessel or object;
  - (iv) a diamond shape at or near the aftermost extremity of the last vessel or object being towed; and
  - (v) the towing vessel may direct a searchlight in the direction of the tow to indicate its presence to an approaching vessel.
- (h) Where from any sufficient cause it is impracticable for a vessel or object being towed to exhibit the lights prescribed in paragraph (e) or (g) of this Rule, all possible measures shall be taken to light the vessel or object towed or at least to indicate the presence of the unlighted vessel or object.
- (i) Notwithstanding paragraph (c), on the Western Rivers and on waters specified by the Secretary, a power-driven vessel when pushing ahead or towing alongside, except as paragraph (b) applies, shall exhibit:
- (i) sidelights; and
  - (ii) two towing lights in a vertical line.
- (j) Where from any sufficient cause it is impracticable for a vessel not normally engaged in towing operations to display the lights prescribed by paragraph (a), (c) or (i) of this Rule, such vessel shall not be required to exhibit those lights when engaged in towing another vessel in distress or otherwise in need of assistance. All possible measures shall be taken to indicate the nature of the relationship between the towing vessel and the vessel being assisted. The searchlight authorized by Rule 36 may be used to illuminate the tow.

## RULE 25

## Sailing Vessels Underway and Vessels Under Oars

33 USC 2025.

- (a) A sailing vessel underway shall exhibit:
- (i) sidelights; and
  - (ii) a sternlight.
- (b) In a sailing vessel of less than 20 meters in length the lights prescribed in paragraph (a) of this Rule may be combined in one lantern carried at or near the top of the mast where it can best be seen.
- (c) A sailing vessel underway may, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit at or near the top of the mast, where they can best be seen, two all-round lights in a vertical line, the upper being red and the lower green, but these lights



shall not be exhibited in conjunction with the combined lantern permitted by paragraph (b) of this Rule.

(d)(i) A sailing vessel of less than 7 meters in length shall, if practicable, exhibit the lights prescribed in paragraph (a) or (b) of this Rule, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

(ii) A vessel under oars may exhibit the lights prescribed in this Rule for sailing vessels, but if she does not, she shall have ready at hand an electric torch or lighted lantern showing a white light which shall be exhibited in sufficient time to prevent collision.

(e) A vessel proceeding under sail when also being propelled by machinery shall exhibit forward where it can best be seen a conical shape, apex downward. A vessel of less than 12 meters in length is not required to exhibit this shape, but may do so.

#### RULE 26

##### Fishing Vessels

33 USC 2026.

(a) A vessel engaged in fishing, whether underway or at anchor, shall exhibit only the lights and shapes prescribed in this Rule.

(b) A vessel when engaged in trawling, by which is meant the dragging through the water of a dredge net or other apparatus used as a fishing appliance, shall exhibit:

(i) two all-round lights in a vertical line, the upper being green and the lower white, or a shape consisting of two cones with their apexes together in a vertical line one above the other; a vessel of less than 20 meters in length may instead of this shape exhibit a basket;

(ii) a masthead light abaft of and higher than the all-round green light; a vessel of less than 50 meters in length shall not be obliged to exhibit such a light but may do so; and

(iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

(c) A vessel engaged in fishing, other than trawling, shall exhibit: (i) two all-around lights in a vertical line, the upper being red and the lower white, or a shape consisting of two cones with apexes together in a vertical line one above the other; a vessel of less than 20 meters in length may instead of this shape exhibit a basket;

(ii) when there is outlying gear extending more than 150 meters horizontally from the vessel, an all-round white light or a cone apex upward in the direction of the gear; and

(iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

(d) A vessel engaged in fishing in close proximity to other vessels engaged in fishing may exhibit the additional signals described in Annex II to these Rules.

(e) A vessel when not engaged in fishing shall not exhibit the lights or shapes prescribed in this Rule, but only those prescribed for a vessel of her length.

#### RULE 27

##### Vessels Not Under Command or Restricted in Their Ability To Maneuver

33 USC 2027.

(a) A vessel not under command shall exhibit:

(i) two all-round red lights in a vertical line where they can best be seen;

(ii) two balls or similar shapes in a vertical line where they can best be seen; and

(iii) when making way through the water, in addition to the lights prescribed in this paragraph, sidelights and a sternlight.

(b) A vessel restricted in her ability to maneuver, except a vessel engaged in minesweeping operations, shall exhibit:

(i) three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white;

(ii) three shapes in a vertical line where they can best be seen. The highest and lowest of these shapes shall be balls and the middle one a diamond;

(iii) when making way through the water, masthead lights, sidelights and a sternlight, in addition to the lights prescribed in subparagraph (b)(i); and

(iv) when at anchor, in addition to the lights or shapes prescribed in subparagraphs (b)(i) and (ii), the light, lights or shapes prescribed in Rule 30.

(c) A vessel engaged in a towing operation which severely restricts the towing vessel and her tow in their ability to deviate from their course shall, in addition to the lights or shapes prescribed in subparagraphs (b) (i) and (ii) of this Rule, exhibit the lights or shape prescribed in Rule 24.

(d) A vessel engaged in dredging or underwater operations, when restricted in her ability to maneuver, shall exhibit the lights and shapes prescribed in subparagraphs (b) (i), (ii), and (iii) of this Rule and shall in addition, when an obstruction exists, exhibit:

(i) two all-round red lights or two balls in a vertical line to indicate the side on which the obstruction exists;

(ii) two all-round green lights or two diamonds in a vertical line to indicate the side on which another vessel may pass; and

(iii) when at anchor, the lights or shape prescribed by this paragraph, instead of the lights or shapes prescribed in Rule 30 for anchored vessels.

(e) Whenever the size of a vessel engaged in diving operations makes it impracticable to exhibit all lights and shapes prescribed in paragraph (d) of this Rule, the following shall instead be exhibited:



(i) Three all-round lights in a vertical line where they can best be seen. The highest and lowest of these lights shall be red and the middle light shall be white.

(ii) A rigid replica of the international Code flag "A" not less than 1 meter in height. Measures shall be taken to insure its all-round visibility.

(f) A vessel engaged in mineclearance operations shall, in addition to the lights prescribed for a power-driven vessel in Rule 23 or to the lights or shape prescribed for a vessel at anchor in Rule 30, as appropriate, exhibit three all-round green lights or three balls. One of these lights or shapes shall be exhibited near the foremast head and one at each end of the fore yard. These lights or shapes indicate that it is dangerous for another vessel to approach within 1,000 meters of the mineclearance vessel.

(g) A vessel of less than 12 meters in length, except when engaged in diving operations, is not required to exhibit the lights or shapes prescribed in this Rule.

(h) The signals prescribed in this Rule are not signals of vessels in distress and requiring assistance. Such signals are contained in Annex IV to these Rules.

33 USC 2028.

RULE 28

[Reserved]

RULE 29

Pilot Vessels

(a) A vessel engaged on pilotage duty shall exhibit:

(i) at or near the masthead, two all-round lights in a vertical line, the upper being white and the lower red;

(ii) when underway, in addition, sidelights and a sternlight; and

(iii) when at anchor, in addition to the lights prescribed in subparagraph (i), the anchor light, lights, or shape prescribed in Rule 30 for anchored vessels.

(b) A pilot vessel when not engaged on pilotage duty shall exhibit the lights or shapes prescribed for a vessel of her length.

RULE 30

Anchored Vessels and Vessels Aground

(a) A vessel at anchor shall exhibit where it can best be seen:

(i) in the fore part, an all-round white light or one ball; and  
(ii) at or near the stern and at a lower level than the light prescribed in subparagraph (i), an all-round white light.

(b) A vessel of less than 50 meters in length may exhibit an all-round white light where it can best be seen instead of the lights prescribed in paragraph (a) of this Rule.

(c) A vessel at anchor may, and a vessel of 100 meters or more in length shall, also use the available working or equivalent lights to illuminate her decks.

(d) A vessel aground shall exhibit the lights prescribed in paragraph (a) or (b) of this Rule and in addition, if practicable, where they can best be seen:

(i) two all-round red lights in a vertical line; and

(ii) three balls in a vertical line.

(e) A vessel of less than 7 meters in length, when at anchor, not in or near a narrow channel, fairway, anchorage, or where other vessels normally navigate, shall not be required to exhibit the lights or shape prescribed in paragraphs (a) and (b) of this Rule.

(f) A vessel of less than 12 meters in length when aground shall not be required to exhibit the lights or shapes prescribed in subparagraphs (d)(i) and (ii) of this Rule.

(g) A vessel of less than 20 meters in length, when at anchor in a special anchorage area designated by the Secretary, shall not be required to exhibit the anchor lights and shapes required by this Rule.

RULE 31

Seaplanes

Where it is impracticable for a seaplane to exhibit lights and shapes of the characteristics or in the positions prescribed in the Rules of this Part she shall exhibit lights and shapes as closely similar in characteristics and position as is possible.

33 USC 2031.

PART D—SOUND AND LIGHT SIGNALS

RULE 32

Definitions

(a) The word "whistle" means any sound signaling appliance capable of producing the prescribed blasts and which complies with specifications in Annex III to these Rules.

(b) The term "short blast" means a blast of about 1 second's duration.

(c) The term "prolonged blast" means a blast of from 4 to 6 seconds' duration.

33 USC 2032.

RULE 33

Equipment for Sound Signals

(a) A vessel of 12 meters or more in length shall be provided with a whistle and a bell and a vessel of 100 meters or more in length shall, in addition, be provided with a gong, the tone and sound of which cannot be confused with that of the bell. The whistle, bell and gong shall comply with the specifications in Annex III to these Rules. The bell or gong or both may be replaced by other equipment



having the same respective sound characteristics, provided that manual sounding of the prescribed signals shall always be possible.

(b) A vessel of less than 12 meters in length shall not be obliged to carry the sound signaling appliances prescribed in paragraph (a) of this Rule but if she does not, she shall be provided with some other means of making an efficient sound signal.

#### RULE 34

##### Maneuvering and Warning Signals

(a) When power-driven vessels are in sight of one another and meeting or crossing at a distance within half a mile of each other, each vessel underway, when maneuvering as authorized or required by these Rules:

(i) shall indicate that maneuver by the following signals on her whistle: one short blast to mean "I intend to leave you on my port side"; two short blasts to mean "I intend to leave you on my starboard side"; and three short blasts to mean "I am operating astern propulsion".

(ii) upon hearing the one or two blast signal of the other shall, if in agreement, sound the same whistle signal and take the steps necessary to effect a safe passing. If, however, from any cause, the vessel doubts the safety of the proposed maneuver, she shall sound the danger signal specified in paragraph (d) of this Rule and each vessel shall take appropriate precautionary action until a safe passing agreement is made.

(b) A vessel may supplement the whistle signals prescribed in paragraph (a) of this Rule by light signals:

(i) These signals shall have the following significance: one flash to mean "I intend to leave you on my port side"; two flashes to mean "I intend to leave you on my starboard side"; three flashes to mean "I am operating astern propulsion";

(ii) The duration of each flash shall be about 1 second; and  
(iii) The light used for this signal shall, if fitted, be one all-round white or yellow light, visible at a minimum range of 2 miles, synchronized with the whistle, and shall comply with the provisions of Annex I to these Rules.

(c) When in sight of one another:

(i) a power-driven vessel intending to overtake another power-driven vessel shall indicate her intention by the following signals on her whistle: one short blast to mean "I intend to overtake you on your starboard side"; two short blasts to mean "I intend to overtake you on your port side"; and

(ii) the power-driven vessel about to be overtaken shall, if in agreement, sound a similar sound signal. If in doubt she shall sound the danger signal prescribed in paragraph (d).

(d) When vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the

intentions or actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle. This signal may be supplemented by a light signal of at least five short and rapid flashes.

(e) A vessel nearing a bend or an area of a channel or fairway where other vessels may be obscured by an intervening obstruction shall sound one prolonged blast. This signal shall be answered with a prolonged blast by any approaching vessel that may be within hearing around the bend or behind the intervening obstruction.

(f) If whistles are fitted on a vessel at a distance apart of more than 100 meters, one whistle only shall be used for giving maneuvering and warning signals.

(g) When a power-driven vessel is leaving a dock or berth, she shall sound one prolonged blast.

(h) A vessel that reaches agreement with another vessel in a head-on, crossing, or overtaking situation, as for example, by using the radiotelephone as prescribed by the Vessel Bridge-to-Bridge Radiotelephone Act (85 Stat. 164; 33 U.S.C. 1201 et seq.), is not obliged to sound the whistle signals prescribed by this rule, but may do so. If agreement is not reached, then whistle signals shall be exchanged in a timely manner and shall prevail.

#### RULE 35

##### Sound Signals in Restricted Visibility

In or near an area of restricted visibility, whether by day or night, the signals prescribed in this Rule shall be used as follows:

(a) A power-driven vessel making way through the water shall sound at intervals of not more than 2 minutes one prolonged blast.

(b) A power-driven vessel underway but stopped and making no way through the water shall sound at intervals of not more than 2 minutes two prolonged blasts in succession with an interval of about 2 seconds between them.

(c) A vessel not under command; a vessel restricted in her ability to maneuver, whether underway or at anchor; a sailing vessel; a vessel engaged in fishing, whether underway or at anchor; and a vessel engaged in towing or pushing another vessel shall, instead of the signals prescribed in paragraphs (a) or (b) of this Rule, sound at intervals of not more than 2 minutes, three blasts in succession; namely, one prolonged followed by two short blasts.

(d) A vessel towed or if more than one vessel is towed the last vessel of the tow, if manned, shall at intervals of not more than 2 minutes sound four blasts in succession; namely, one prolonged followed by three short blasts. When practicable, this signal shall be made immediately after the signal made by the towing vessel.

(e) When a pushing vessel and a vessel being pushed ahead are rigidly connected in a composite unit they shall be regarded as a



## PART E—EXEMPTIONS

## RULE 36

## Exemptions

power-driven vessel and shall give the signals prescribed in paragraphs (a) or (b) of this Rule.

(f) A vessel at anchor shall at intervals of not more than 1 minute ring the bell rapidly for about 5 seconds. In a vessel of 100 meters or more in length the bell shall be sounded in the forepart of the vessel and immediately after the ringing of the bell the gong shall be sounded rapidly for about 5 seconds in the after part of the vessel. A vessel at anchor may in addition sound three blasts in succession; namely, one short, one prolonged and one short blast, to give warning of her position and of the possibility of collision to an approaching vessel.

(g) A vessel aground shall give the bell signal and if required the gong signal prescribed in paragraph (f) of this Rule and shall, in addition, give three separate and distinct strokes on the bell immediately before and after the rapid ringing of the bell. A vessel aground may in addition sound an appropriate whistle signal.

(h) A vessel of less than 12 meters in length shall not be obliged to give the above-mentioned signals but, if she does not, shall make some other efficient sound signal at intervals of not more than 2 minutes.

(i) A pilot vessel when engaged on pilotage duty may in addition to the signals prescribed in paragraphs (a), (b) or (f) of this Rule sound an identity signal consisting of four short blasts.

(j) The following vessels shall not be required to sound signals as prescribed in paragraph (f) of this Rule when anchored in a special anchorage area designated by the Secretary:

- (i) a vessel of less than 20 meters in length; and
- (ii) a barge, canal boat, scow, or other nondescript craft.

## RULE 36

## Signals to Attract Attention

If necessary to attract the attention of another vessel, any vessel may make light or sound signals that cannot be mistaken for any signal authorized elsewhere in these Rules, or may direct the beam of her searchlight in the direction of the danger, in such a way as not to embarrass any vessel.

33 USC 2036.

## RULE 37

## Distress Signals

When a vessel is in distress and requires assistance she shall use or exhibit the signals described in Annex IV to these Rules.

33 USC 2037.

Any vessel or class of vessels, the keel of which is laid or which is at a corresponding stage of construction before the date of enactment of this Act, provided that she complies with the requirements of—

(a) The Act of June 7, 1897 (30 Stat. 96), as amended (33 U.S.C. 154–232) for vessels navigating the waters subject to that statute;

(b) Section 4233 of the Revised Statutes (33 U.S.C. 301–356) for vessels navigating the waters subject to that statute;

(c) The Act of February 8, 1895 (28 Stat. 645), as amended (33 U.S.C. 241–295) for vessels navigating the waters subject to that statute; or

(d) Sections 3, 4, and 5 of the Act of April 25, 1940 (54 Stat. 163), as amended (46 U.S.C. 526 b, c, and d) for motorboats navigating the waters subject to that statute; shall be exempted from compliance with the technical Annexes to these Rules as follows:

(i) the installation of lights with ranges prescribed in Rule 22, until 4 years after the effective date of these Rules, except that vessels of less than 20 meters in length are permanently exempt;

(ii) the installation of lights with color specifications as prescribed in Annex I to these Rules, until 4 years after the effective date of these Rules, except that vessels of less than 20 meters in length are permanently exempt;

(iii) the repositioning of lights as a result of conversion to metric units and rounding off measurement figures, are permanently exempt; and

(iv) the horizontal repositioning of masthead lights prescribed by Annex I to these Rules:

(1) on vessels of less than 150 meters in length, permanent exemption.

(2) on vessels of 150 meters or more in length, until 9 years after the effective date of these Rules.

(v) the restructuring or repositioning of all lights to meet the prescriptions of Annex I to these Rules, until 9 years after the effective date of these Rules;

(vi) power-driven vessels of 12 meters or more but less than 20 meters in length are permanently exempt from the provisions of Rule 23(a)(i) and 23(a)(iv) provided that, in place of these lights, the vessel exhibits a white light aft visible all round the horizon; and

(vii) the requirements for sound signal appliances prescribed in Annex III to these Rules, until 9 years after the effective date of these Rules.

Regulations.  
33 USC 2071.

Sec. 3. The Secretary may issue regulations necessary to implement and interpret this Act. The Secretary shall establish the following technical annexes to these Rules: Annex I, Positioning and Technical Details of Lights and Shapes; Annex II, Additional Signals for Fishing Vessels Fishing in Close Proximity; Annex III, Technical Details of Sound Appliances; and Annex IV, Distress Signals. These annexes shall be as consistent as possible with the respective annexes to the International Regulations. The Secretary may establish other technical annexes, including local pilot rules.

Violations.  
33 USC 2072.

Sec. 4. (a) Whoever operates a vessel in violation of this Act, or of any regulation issued thereunder, or in violation of a certificate of alternative compliance issued under Rule 1 is liable to a civil penalty of not more than \$5,000 for each violation.

Civil penalties.

(b) Every vessel subject to this Act, other than a public vessel being used for noncommercial purposes, that is operated in violation of this Act, or of any regulation issued thereunder, or in violation of a certificate of alternative compliance issued under Rule 1 is liable to a civil penalty of not more than \$5,000 for each violation, for which penalty the vessel may be seized and proceeded against in the district court of the United States of any district within which the vessel may be found.

(c) The Secretary may assess any civil penalty authorized by this section. No such penalty may be assessed until the person charged, or the owner of the vessel charged, as appropriate, shall have been given notice of the violation involved and an opportunity for a hearing. For good cause shown, the Secretary may remit, mitigate, or compromise any penalty assessed. Upon the failure of the person charged, or the owner of the vessel charged, to pay an assessed penalty, as it may have been mitigated or compromised, the Secretary may request the Attorney General to commence an action in the appropriate district court of the United States for collection of the penalty as assessed, without regard to the amount involved, together with such other relief as may be appropriate.

(d) The Secretary of the Treasury shall withhold or revoke, at the request of the Secretary, the clearance, required by section 4197 of the Revised Statutes of the United States (46 U.S.C. 91) of any vessel the owner or operator of which is subject to any of the penalties in this section. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to the Secretary.



CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of eighteen years and not a party to the above-entitled action; my business address is 428 J Street, Suite 350, Sacramento, California 95814.

On the date below, I served the following document(s):

**BENCH BRIEF RE: EXAMINATION OF EXPERT WITNESSES  
REQUEST TO RE-OPEN CROSS-EXAMINATION OF SGT. OSTINI**

☒ BY MAIL. I caused an envelope containing the above-specified document(s), with postage thereon fully prepaid, to be placed in the United States Mail at Sacramento, California addressed as follows:

☐ BY PERSONAL SERVICE. I caused such document(s) to be delivered by hand to the offices of the person(s) listed below:

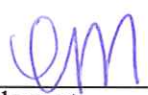
☐ BY FACSIMILE SERVICE. I caused the document(s) to be served via facsimile to the person(s) listed below:

☒ BY E-MAIL SERVICE. I caused the document(s) to be served via e-mail to the person(s) listed below:

Jon Hopkins  
District Attorney  
Lake County  
225 North Forbes Street  
Lakeport, CA 95453  
e-mail: [jonh@co.lake.ca.us](mailto:jonh@co.lake.ca.us)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 3 2009, at Sacramento, CA 95814.

  
\_\_\_\_\_  
Declarant