



July 29, 2010

Mrs. Melissa Kimball



Dear Mrs. Kimball:

This letter responds to you and your husband's continuing activities in promoting and organizing the 2010 Port Huron Float Down after you were advised of the legal and safety implications of continuing activities without the proper planning and permitting.

I understand that you are calling the 2010 Port Huron Float Down a spontaneous gathering of persons and that you are publicly disavowing any organizing responsibility. Despite your disclaimers, the Coast Guard still considers you an organizer of the event.

In making our determination that you are considered an "organizer", we considered your degree and nature of participation in planning or organizing the event and your active solicitation of participants. You are the administrator of a Facebook page promoting and requesting RSVPs. A separate Facebook page with an anonymous administrator is actively promoting the event by answering user questions, providing dates and times, and assisting in arranging transportation. This page links back to the River Rats Society, an organization your husband actively participates in. The River Rats Society website and the website [www.Porthuronfloatdown.com](http://www.Porthuronfloatdown.com), which is linked both to the Facebook pages and the River Rats Society page, actively solicit volunteers for safety patrols. Your actions coupled with your association with the River Rats Society makes you liable for any accidents that occur as a result of the organization's negligence. Further, you have met with local and federal officials regarding the organization of the event.

As the event organizer, I want to remind you of your potential liability. Under the authority of the Ports and Waterways Safety Act, 33 U.S.C. § 1233, and the regulations promulgated under that statute, in particular 33 C.F.R. § 100.15, the Coast Guard may require an individual or organization planning to hold a marine parade to submit a marine events permit. The Coast Guard advised you that in order to hold the 2010 Port Huron Float Down you must submit a marine event permit. Up until now, you have refused to comply with this requirement. If you make the decision to continue promoting and organizing the 2010 Port Huron Float Down, and the event takes place as planned on August 15, or any other unpermitted date, I will consider you in violation of the law and will consider taking enforcement actions.

Any person who violates the Ports and Waterway Safety Act is liable for a civil penalty in the amount of \$2,500 for each violation. See 33 U.S.C. § 1236.

This letter is provided to you as a courtesy to point out areas of liability that you may be exposing yourself to. Our concern is based upon the fact that you are promoting and encouraging an event where an estimated 6,000 persons will enter a waterway with dangerously cold water temperatures, regularly transited by commercial vessels, with river currents that often exceed five (5) mile per hour. In light of all these facts, you continue to organize this event without taking any steps to coordinate the presence and services of emergency medical services. As such, we ask that you immediately cease promoting the event until proper safety protocols can be established for individuals participating in this event.

Sincerely,

A handwritten signature in black ink, appearing to read 'AM Sugimoto', with a large, sweeping flourish extending from the end of the signature.

A. M. SUGIMOTO  
Commander, U. S. Coast Guard  
Staff Judge Advocate  
Ninth Coast Guard District

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commanding Officer  
Coast Guard Hearing Office

4200 Wilson Blvd/MS 7160  
Arlington, VA 20598-7160  
Phone:202-493-6870  
Fax:202-493-6924  
Toll-free: (866) 801-6178

MR. ERIK KIMBALL  
MRS. MELISSA KIMBALL

Activity No. 3835163  
Party: ERIK and MELISSA KIMBALL  
Date of Violation: August 15, 2010  
Subject: the Port Huron Float Down/  
Amount: \$2,000.00  
Date: October 14, 2010  
Re: PAL

Dear Mr. & Mrs. Kimball:

In my capacity as a Coast Guard Civil Penalty Hearing Officer, I have received a report alleging that you, as persons in charge of the Port Huron Float Down, are liable for a civil penalty for violation of Federal law as described on the Charge Sheet enclosure.


The Coast Guard's civil penalty procedures are contained in Subpart 1.07 of Title 33 of the Code of Federal Regulations (33 CFR 1.07). My role is to determine whether there was a violation. If I find that there was a violation, I must then decide what civil penalty, if any, is appropriate. The maximum civil penalty that may be assessed in this case is \$3,000.00. Based upon the information in the case file that I have, it appears to me that a violation did occur and that a civil penalty of \$2,000.00 is appropriate. However, I will not make a final decision until you have had an opportunity to respond.

You have a right to examine the entire case file, a copy of which is enclosed. You may make a written request for a hearing or submit written evidence in lieu of a hearing; however, our rules allow you only 30 days from when you receive this letter to do either of those things. If you do not ask for a hearing within 30 days, you will lose your right to a hearing. In addition, if you fail to respond within 30 days from receipt of this letter, I will decide the case based upon the evidence I already have. If you have any information that you believe I should consider, you should send it to me within 30 days from receipt of this letter. Whatever you want me to consider should be supported by evidence, or else it might not be very persuasive. As a third alternative, you may decide not to contest the penalty, and simply pay the amount specified above.

The enclosed pamphlet should help you in deciding among your alternatives. Whatever your choice, I urge you to respond promptly. If paying now, please complete the enclosed "Payment Form" and mail it to the address printed on the form. Enclose your check, money order, or credit card authorization along with the form. If you are unable to pay the penalty in full, you may wish to contact our collection office to discuss a payment plan:

Commanding Officer  
U. S. Coast Guard  
Legal Service Command (LSC-5)  
Coast Guard Island, Bldg. 54-A  
Alameda, CA 94501  
Attn: S. Fan

Sincerely,

  
E. HUDSPETH  
Commander, U. S. Coast Guard  
Coast Guard Hearing Officer

Encl: (1) Charge sheet  
(2) Payment Form  
(3) Copy of civil penalty case file 3835163  
(4) Your Alternatives in the Coast Guard Civil Penalty Process

# Marine Violation Charge Sheet

Total Charges/ 1

Current Activity Number/ 3835163

Charged Party: ERIK and MELISSA KIMBALL

ID N/A

1. Charge/ 33 CFR 100.15

Finding/ Proved

Imposed/ Yes

Penalty Amount/ \$2,000.00

Max Penalty/ \$3,000.00

Regulation Description/  
Submission of application.



## UNITED STATES COAST GUARD

Charged Party KIMBALL, ERIK and MELISSA	Enforcement Activity # 3835163	Originating Unit SEC Detroit
<b>Enforcement Summary</b>	Violation Location ST. CLAIR RIVER	
	Violation Date 15 Aug 2010	

Summary of Current Violation(s)		
Law/Reg	Description	Recommended Penalty
33 CFR 100.15	Submission of application.	\$2500

## Narrative Overview of the Activity

The 2010 Port Huron Float Down, an organized water event meeting the definition of "marine parade" found in 33 CFR 100.05, took place on 15 August 2010 (see exhibit CG-07). Due to the nature and location of this event, unusual hazards to the safety of life on a navigable waterway of the U.S were present. Therefore, the organizers were required to submit an application for a marine parade in accordance with 33 CFR 100.15. Erik and Melissa Kimball, organizers of the 2010 Float Down, knowingly promoted, facilitated, and solicited participation in the event without submitting an application as required.

The Port Huron Float Down is an event in which participants float downbound in the St. Clair River from Port Huron, Michigan in inner tubes, makeshift rafts and various similar flotation devices. The 2010 Float Down event was planned for August 15, 2010 in the St. Clair River, starting at Lighthouse Beach and ending at Marysville Beach (see exhibits CG-01, CG-02, CG-03 and CG-04); the St. Clair River is a navigable waterway of the U.S. (see exhibit CG-06). Planning meetings for the 2010 Float Down were attended by event organizers and Federal, State and local law enforcement agencies. Mr. Erik Kimball participated in event meetings held on 18 February 2010 and 24 March 2010, and on the attendance sheet for the 18 Feb meeting he wrote next to his signature the words "Float Org" (presumed to mean "float organizer"). (See exhibits CG-01 and CG-02).

The planning meetings were scheduled so that event organizers and various involved government agencies could discuss the inherent safety concerns associated with an event of this nature. The 2009 Float Down brought to light the size of this event, drawing over 5,000 participants and overwhelming emergency response and LE personnel with medical emergencies. Additionally, participants blocked the waterway, which had to be closed for all vessel traffic due to the inability of participants to steer or navigate away from the navigational channel. The strong river current and reduced maneuverability exacerbated the safety hazards posed by this event. Because of these lessons learned, the USCG, along with state and local officials, outlined specific safety concerns and permit requirements for safety guidelines (e.g. lifejackets, public intoxication, child protection), accountability procedures, medical concerns, and communication procedures for the proposed 2010 Float Down.

Mrs. Melissa Kimball, wife of Erik Kimball, developed and maintained a Float Down Facebook page in which she promoted the event and facilitated participation by disseminating information regarding the event to the public. The page included a detailed map of the event route, launch zone, intended destination, and locations of public land, parking and viewing areas (see exhibit CG-04). Melissa Kimball was identified as the administrator of the Float Down events Facebook page in an article in the Port Huron Times Herald newspaper. In that article, Mrs. Kimball was quoted as stating the way that we understand it, they (presumed to mean LE authorities) cannot stop us. She further stated that she anticipated as many as 6,000 participants. (See exhibit CG-05, page 2).

Mrs. Kimball was notified by correspondence from CG District 9 Legal dated 29 July 2010 (see exhibit CG-03) that the Coast Guard had determined that she was an organizer of the Float Down based on her actions in promoting and soliciting participation in the event. Mrs. Kimball was strongly advised in that correspondence that as the event organizer she would be in violation of law and subject to Coast Guard enforcement action if the event took place without her following the proper permit application process and adhering to the required permit safety stipulations for the event.

As a result of this event, multiple Federal, State, and local resources were utilized to provide for the safety of all participants in this event. The St. Clair River had to be shut down by a CG enforced safety zone for approximately 6.5 hours in order to prevent commercial and recreational traffic from endangering the Float Down participants (see MISLE



Activity # 3835163

Activity #3822854, Waterway Operational Control). Participants were found floating over a wide portion of the waterway, including across the international border with Canada. In addition to CG resources, several state and local agencies aided in enforcing the CG safety zone and assisted in search and rescue operations. Total operational costs for the event exceeded \$106K (see exhibit CG-08). Seven commercial deep-draft vessels were forced to anchor or moor due to the safety zone river closure. These vessels were delayed in their transit.

The documentary evidence attached to this case establishes that Erik and Melissa Kimball served as organizers of the 2010 Float Down, and that they willfully failed to comply with the proper requirements for a marine parade application despite Coast Guard efforts to assist them in compliance.

//s//KATIE R. STANKO, LT//Investigating Officer

**Charged Party's Particulars**

<b>Name</b> KIMBALL, ERIK and MELISSA		<b>Capacity in which Charged</b> person in charge	<b>ID</b> N/A
Street			
<b>City</b>	<b>State</b>	<b>Zip</b>	<b>Country</b> US
<b>Phone</b>		<b>Fax</b>	

**Involved Subjects**

<b>Waterway Name</b> ST. CLAIR RIVER	<b>Local Name</b> LAKE ST. CLAIR	<b>Description</b> CHANNELS IN LAKE ST. CLAIR
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**Past Violation(s) History**

U.S. Department of  
Homeland Security

United States  
Coast Guard



Commanding Officer  
Coast Guard Hearing Office

4200 Wilson Blvd/MS 7160  
Arlington, VA 20598-7160  
Phone:202-493-6870  
Fax:202-493-6924  
Toll-free: (866) 801-6178

ERIK AND MELISSA KIMBALL

Activity No. 3835163  
Party: ERIK and MELISSA KIMBALL  
Date of Violation: August 15, 2010  
Subject: the Port Huron Float Down/  
Amount: \$0.00  
Date: April 29, 2011  
Re: **FLD**

Dear Mr. & Mrs. Kimball:

I received your most recent response letter concerning the above case on March 18, 2011 which has been included in the case file for consideration. Your letter was in response to the rebuttal comments provided by the charging unit, a copy of which was sent to you with my letter dated February 28, 2011. Since I have not received further correspondence from you or the charging unit regarding this case, I will now make my final decision.

The Coast Guard alleges that you were the event organizers for the "2010 Port Huron Float Down" which occurred on August 15, 2010, and that you did not submit an application for the event as required in 33 CFR § 100.15. As a result, a preliminary assessment letter (PAL) was issued to you on October 14, 2010 notifying you of the allegation, and providing you with a copy of the case file for review and response. In the PAL a preliminary penalty amount of \$2,000 was assessed.

According to 33 CFR § 100.15(a), "An individual or organization planning to hold a regatta or marine parade which, by its nature, circumstances or location, will introduce extra or unusual hazards to the safety of life on the navigable waters of the United States, shall submit an application to the Coast Guard..."

Setting aside the many opinions, speculations, and conclusionary statements provided by both parties in this matter, and instead focusing on the evidence, I have come to the following conclusions:

- Based on relevant regulations, the Port Huron Float Down is a "marine parade" and therefore an application to hold the event is required. The purpose of this application is to allow the Coast Guard ample time to consider safety issues, and then either approve or disapprove the application.
- Coast Guard Sector Detroit was already *well aware* of this *annual* marine event, and in preparation, arranged for planning meetings to discuss safety issues well ahead of time, inviting key stakeholders. These proactive actions by the Coast Guard seemingly made the need for a formal application somewhat unnecessary.
- Based on your prior involvement with this annual marine event, at the very least, you were the initial point of contact and source of information for the 2010 Port Huron Float Down.
- In spite of attempts by various entities to cancel the event, and your compliance with the Coast Guard's suggestion that you stop providing information concerning the event, the event happened without an official organizer.
- I do not consider the act of advertising and assisting in the initial coordination of an event to equate to an individual "planning to hold" an event. In order for an event of this magnitude (greater than 2,000 participants) to be organized, it takes more than attendance at meetings and publishing information on a "Facebook" events page to be considered the event organizer. Evidence in the case file clearly indicates that there are several other individuals and organizations involved in the actual planning and holding of the event that would be more fittingly considered event organizers, to include the City of Port Huron, the Moose Lodge, and most notably Coast Guard Sector Detroit. Presently the evidence provided in the case file does not clearly indicate that you had ownership of the event, or that you had the resources or capabilities to actually "hold" the event.

Having reviewed the entirety of the evidence in the case file, I *cannot* conclude that you were planning to hold the event, and therefore that you were responsible for submitting an application to the Coast Guard. I am therefore dismissing the charge, and no monetary penalty will be assessed. This is my final determination in this matter.

This dismissal is without prejudice to the right of the District Commander who began this matter to re-file this case if more evidence becomes available, as allowed under 33 CFR 1.07-65. If that happens, you will have a further opportunity to respond. Otherwise, you may consider this matter closed.

Sincerely,



E. HUDSPETH

Commander, U. S. Coast Guard  
Coast Guard Hearing Officer

Encl: (1) Charge sheet



# Marine Violation Charge Sheet

Total Charges/ 1

Current Activity Number/ 3835163

Charged Party: ERIK and MELISSA KIMBALL

1. Charge/ 33 CFR 100.15  
Imposed/ Yes

Finding/ Dismissed w/out Prejudice

Penalty Amount/ \$0.00

Max Penalty/ \$8,000.00

Regulation Description/  
Submission of application.