BRIAN P. POWERS	)	BRB No. 97-705
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SEA RAY BOATS, INCORPORATED	)	DATE ISSUED:_____
	)	
and	)	
	)	
CRAWFORD AND COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	
	)	
MARTIN C. CASTLETON	)	BRB No. 97-1042
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SEA RAY BOATS, INCORPORATED	)	
	)	
and	)	
	)	
CRAWFORD AND COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Respondent	)	DECISION and ORDER

Appeals of the Decision and Order -- Awarding Benefits of David W. Di Nardi, Administrative Law Judge, and the Decision and Order of Edith Barnett, Administrative Law Judge, United States Department of Labor.

John M. Schwartz (Blumenthal, Schwartz & Garfinkel, P.A.), Titusville, Florida, for claimants.

Michael F. Wilkes (Marasco & Wilkes), Rockledge, Florida, for employer/ carrier.

Samuel J. Oshinsky, Counsel for Longshore (Marvin Krislov, Deputy Solicitor for National Operations; Carol A. DeDeo, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order -- Awarding Benefits (96-LHC-1324) of Administrative Law Judge David W. Di Nardi and the Decision and Order (96-LHC-1323) of Administrative Law Judge Edith Barnett rendered on claims filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act).[1] We must affirm the administrative law judges' findings of fact and conclusions of law if they are supported by substantial evidence, are rational, and are in accordance with law. 33 U.S.C. §921(b)(3); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The Board heard oral argument in these consolidated cases on November 13, 1997, in Jacksonville, Florida.

[1]By Order dated July 28, 1997, the Board granted employer's motions to consolidate these cases and to hear oral argument on the issue of claimants' status.

Employer is in the business of designing, constructing and selling fiberglass recreational yachts. Claimants herein worked in the construction phase of the process, and both participated in building the 650 CMY, a motor-powered yacht and employer's longest vessel. Claimant Castleton was twice injured during the course of his employment with employer. On January 23, 1993, he injured his low back and his right leg. He underwent surgery on his back and then returned to work. In March 1994, he injured his eye, and again he underwent surgery. He currently works for employer on a part-time basis. Jt. Ex. 1 at 16-18, 27-28.[2] Claimant Powers was injured on March 13, 1995. He sustained an injury to his arms and wrists due to the repetitive motions of sanding and buffing. He last worked for employer in June 1995. Tr. at 45-48. Employer paid claimants benefits for these injuries under the Florida workers' compensation law. Claimants then filed claims for benefits under the Act.

The sole issue presented to the administrative law judges in these cases is whether employer's recreational vessel, the 650 CMY, is less than 65 feet in length, thereby excluding claimants from coverage under the Longshore Act pursuant to Section 2(3)(F), 33 U.S.C. §902(3)(F) (1994). Administrative Law Judge Di Nardi addressed this issue in *Powers*. He considered both Section 2(3)(F) and its implementing regulation at Section 701.301(a)(12)(iii)(F), 20 C.F.R. §701.301(a)(12)(iii)(F). He found the regulation unambiguous and that for purposes of coverage under the Act, it requires the measurement of a vessel to be made "from one end to the other . . . over the deck." Di Nardi Decision and Order at 22. Thus, he concluded that the measurement should include such fixtures as the swim platform and the bow pulpit, and he rejected employer's argument to the contrary. *Id.* at 27, 31. Judge Di Nardi, therefore, rejected employer's assertion that its largest vessel is 64 feet 6 inches as measured without the fixtures, and he rejected the argument that other regulations governing vessels or different aspects of shipping should be considered *in pari materia*. As a result, Judge Di Nardi determined that the 650 CMY measures 72 feet 7 inches, and he concluded that Powers was a maritime employee during his tenure with employer. Because Judge Di Nardi found that Powers satisfied the coverage requirements, and because he agreed to bifurcate the proceedings, he remanded the case for the district director to address the remaining issues. Di Nardi Decision and Order at 31. Employer appeals this decision, and claimant Powers and the Director, Office of Workers' Compensation Programs (the Director), respond, urging affirmance. BRB No. 97-705.

[2]Jt. Ex. 1 designates the transcript in the *Castleton* case (which was entered as a joint exhibit in the *Powers* case). Castleton Ex. and Emp. Ex. C- are the parties' exhibits in *Castleton*. Tr. is the transcript, and Powers Ex. and Emp. Ex. P- are the parties' respective exhibits for *Powers*.

Based on much the same evidence and testimony, Administrative Law Judge Barnett addressed this same issue in *Castleton*. She cited Judge Di Nardi's decision, and she agreed that the definition of "length" at Section 701.301(a)(12)(iii)(F) is not ambiguous; therefore, she determined she need not refer to other regulations for interpretation. Barnett Decision and Order at 9. She also agreed that permanent fixtures should be included in measuring the length of a vessel. Accordingly, she concluded that employer's 650 CMY is 72 feet 7 inches, and that claimant Castleton is not excluded from coverage. Barnett Decision and Order at 11. Consequently, she remanded his case to the district director for further proceedings. *Id.* at 16. Employer appeals this decision. Claimant Castleton and the Director, respond, urging affirmance. BRB No. 97-1042.

Employer contends the administrative law judges erred in finding its largest vessel, the 650 CMY, to be 72 feet 7 inches in length and in finding claimants to be covered employees. Specifically, employer argues that measurements of vessel length are governed by the Coast Guard and other maritime associations and those rules for measuring do not include the measurements of fixtures such as swim platforms or bow pulpits.[3] Thus, regulations like that of the Department of Labor (the Department or DOL) which involve such measurements should conform to the industry standards to maintain uniformity. Moreover, it asserts that DOL's regulation at Section 701.301(a)(12)(iii)(F) relies on the Coast Guard's definition of the term "length," and DOL, in measuring length, should defer to the Coast Guard's method because the Coast Guard has the "exclusive responsibility and unique expertise" of "promulgating regulations relating to . . . boating safety." Emp. Brief at 10. Employer argues that it was clearly DOL's intent to rely on this expertise and that such intent should not be ignored in interpreting the regulation. Additionally, employer argues that the rule of *in pari materia* should be used thereby reading the DOL regulation in context with other "related" federal laws which exclude such attachments from the length measurement, particularly the Coast Guard's regulation at 33 C.F.R. §183.3, as that regulation pre-dates the Department's.[4] Claimants and the Director

[3]The swim platform is an aft attachment to the hull which provides the swimmer or diver with easy access to the water and boat. It also provides the owner with additional storage space. The bow pulpit is an extension of the deck at the front of the vessel, and its purpose is to store and support the anchor. *See* Jt. Ex. 1 at 65-66.

[4]In *Powers*, employer also argues that Judge Di Nardi erred in applying the Section 20(a), 33 U.S.C. §920(a), presumption to the issue of status. Claimant agrees that Section 20(a) does not apply to issues concerning coverage but maintains that the administrative law judge did not apply the presumption here. Judge Di Nardi specifically stated that the presumption is inapplicable to "the threshold issue of jurisdiction." Di Nardi Decision and Order at 19. After reaching a conclusion on the coverage issue, he stated that his conclusion is "further supported by the fact that the exclusions from coverage are narrowly construed, . . . , and by the judicial policy to resolve all doubtful questions of coverage in the claimant's favor." *Id.* at 29 (internal citations omitted). While we agree with claimant's assertion that the administrative law judge did not apply the presumption to the issue of coverage, we note that he cited the "true doubt" rule as "further support" for his conclusion. The true doubt rule no longer applies to cases arising under the Act. *Director, OWCP v.*

urge the Board to reject employer's arguments, as DOL's regulation is unambiguous and substantial evidence supports the administrative law judges' decisions.

Because it is undisputed that the vessel in question is a recreational yacht, its length determines whether claimants are excluded from coverage under the provision at Section 2(3)(F). The Act specifies:

> The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include--. . .
>
> (F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length; . . .
>
> if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

33 U.S.C. §902(3)(F) (1994). The terms "recreational vessel" and "length" are defined in the implementing regulations. Section 701.301(a)(12)(iii)(F) of the regulations restates the statutory exclusion and provides:

> For purposes of this subparagraph *recreational vessel* means a vessel manufactured or operated primarily for pleasure, or rented, leased or chartered by another for the latter's pleasure, and *length* means a straight line measurement of the overall length from the foremost part of the vessel to the aftmost part of the vessel, measured parallel to the center line. The measurement shall be from end to end over the deck, excluding sheer.

20 C.F.R. §701.301(a)(12)(iii)(F) (italics in original) (emphasis added).

In asserting that its largest vessel measures 64 feet 6 inches, employer cites the opinions of its experts, Messrs. Marlow, Nightengale and Schofield, employer's products and standards manager, a marine surveyor, and an independent naval architect and engineer, respectively. Mr. Marlow explained that the swim platform and bow pulpit were made from separate molds and then were attached to the hull and deck. All three testified they would measure the vessel in accordance with the Coast Guard rules such that the swim platform and the bow pulpit would be excluded. Therefore, they agreed that the 650 CMY is 64 feet six inches in length.[5] Emp. Ex. P-1 at 3, 8, 10, 16-18; Jt. Ex. 1 at 51, 69,

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Greenwich Collieries, 512 U.S. 267, 114 S.Ct. 2251, 28 BRBS 43 (CRT) (1994); *Santoro v. Maher Terminal, Inc.*, 30 BRBS 171 (1996). However, as this rule was cited only as a supplemental support for his decision, any error made by the administrative law judge is harmless.

[5]Neither Mr. Nightengale nor Mr. Schofield measured a completed yacht; instead,

84, 98, 101-103. Additionally, the specifications of the 650 CMY are:

Overall Length:	64' 6"
Overall Length with standard pulpit:	68' 2 1/4"
Overall Length with standard pulpit and standard swim platform:	72' 7"

Powers Exs. 2-3. Mr. Marlow testified that he was involved in the design process of this particular vessel and that employer purposely made it less than 65 feet long to avoid the additional regulations which apply to longer vessels. Emp. Ex. P-1 at 9.

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they measured the molds. Jt. Ex. 1 at 63, 95.

Claimants described the vessel as measuring 72 feet 7 inches. Jt. Ex. 1 at 14; Tr. at 46, 70, 84. David Cole, an attorney and marine consultant who spent 20 years with the Coast Guard in vessel inspection, also testified that the 650 CMY is 72 feet 7 inches long.[6] Mr. Cole relied on the DOL definition of "length," which he interpreted as meaning from one extreme of the yacht to the other, and concluded that the DOL regulation includes the swim platform and bow pulpit in the measurement. Castleton Ex. 1 at 5-6, 13-15.

The parties agree that the hull, deck, swim platform, and bow pulpit all are created from different molds, and then the separate pieces are bolted and fiberglassed together to form the vessel.[7] Emp. Ex. P-1 at 11-13; Tr. at 49, 61-62. Both claimants consider at least the bow pulpit to be a permanent fixture which is integral to the vessel, and they stated the pulpit is attached by physical and chemical means and removal would be difficult and damaging. Jt. Ex. 1 at 22-23, 133-134, 137; Tr. at 58-59, 64-65, 77. In contrast, employer's witnesses testified that buyers could request that neither attachment be made or that the pulpit could later be removed and the vessel would remain seaworthy. Jt. Ex. 1 at 123; Emp. Ex. P-1 at 12. However, claimants stated they had never seen a 650 CMY leave the yard without a bow pulpit and they had never seen anyone remove one once it was affixed. Tr. at 54, 73. Additionally, both parties agree that if one or both of the fixtures is included in the measurement, the vessel is greater than 65 feet, and if both are excluded, the vessel is less than 65 feet long.

Both Judges Di Nardi and Barnett rejected employer's arguments, found that Section 701.301(a)(12)(iii)(F) is not ambiguous, and concluded that the vessel in question, when measured from end to end, is 72 feet 7 inches. Specifically, Judge Di Nardi rejected any attempt by employer to interpret Section 701.301(a)(12)(iii)(F) in terms of the regulations of other agencies, and he rejected employer's attempt to limit the definition of the term "deck" within the DOL regulation. Di Nardi Decision and Order at 25-31. That is, he stated: "I interpret the words 'over the deck' to refer to a location for, figuratively speaking, putting the tape measure." Di Nardi Decision and Order at 25 n.1. Accordingly, he found that the tape measure should be strung from one end of the vessel to the other to measure the vessel's length, and that the fixtures were not excluded from this measurement. *Id.* at 31.

Likewise, Judge Barnett rejected employer's attempts to make the regulation at

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[6]Mr. Cole did not measure either the molds or a completed yacht. He determined the measurements by using employer's schematic of the boat. Castleton Ex. 1 at 14.

[7]There are notches in the deck and hull segments which accept the bow pulpit segment. Tr. at 72.

Section 701.301(a)(12)(iii)(F) ambiguous by arguing for the application of other regulations, and she concluded that the regulation adequately defines the term "length" for its purposes. As to employer's "deck" argument, Judge Barnett quoted Judge Di Nardi, stating:

> The regulation clearly sets forth how to measure, from the foremost to the aftmost end (sic) of the vessel; where to measure, over the deck; and what is to be excluded, the sheer.

Barnett Decision and Order at 9; Di Nardi Decision and Order at 31.

Employer disputes these conclusions and contends the regulation must be read in conjunction with other boating regulations wherein employer alleges it is standard not to include fixtures or attachments when measuring a vessel's length. First, employer argues that the Coast Guard's definition of "length" must be considered when assessing the length of a vessel. Employer's reason for pressing use of the Coast Guard regulation for assessing the length of a vessel, other than that the Coast Guard's business is boating, is that in drafting the regulations to implement the 1984 Amendments to the Act, DOL cited the Coast Guard regulation in the Interim Final Rule with its request for comments, 50 Fed. Reg. 384 (Jan. 3, 1985) (IFR). Specifically, the IFR, as it pertains to the exclusions listed at Section 2(3)(F), states:

> The statute does not, however, define what is meant by the term "recreational vessel" other than providing a way to determine the length of the craft in question. The regulations define how a vessel shall be measured, <u>following the method set forth by the Coast Guard in determining the length of vessels (that is, the length is to be measured from the foremost part of the stem to the aftermost part of the stern)</u>. They do not, however, define the term further and specific comments are requested as to whether and/or what changes should be made to the interim final definition of "recreational vessel."

50 Fed. Reg. at 385 (emphasis added). After receiving 78 comments, the Department issued the Final Rule, 51 Fed. Reg. 4270 (Feb. 3, 1986), which noted and explained approved changes to the IFR. All other portions of the IFR were adopted as published in 1985. The Department received 13 comments on the definition of "recreational vessel"

which recommended it adopt the definition set forth at 46 U.S.C. §2101(25).[8] DOL accepted this recommendation and the current regulation reflects the change. No other changes were made to proposed Section 701.301(a)(12)(iii)(F). 51 Fed. Reg. at 4273. Thus, the definition of "length" did not change between the interim and the final rules. As a result, employer argues that, as DOL specifically stated it derived its rule regarding length from the Coast Guard regulations, the Department must have intended to use the entire regulation in determining the length of a vessel under the Act.[9] The Coast Guard defines "length" as:

> the straight line horizontal measurement of the overall length from the foremost part of the boat to the aftermost part of the boat, measured from end to end over the deck excluding sheer, and measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not

[8]In general, Title 46 of the U.S. Code contains the permanent laws related to commercial shipping, including, *inter alia*, the Commercial Fishing Industry Vessel Act, the Coast Guard Regulatory Reform Act, and the Passenger Vessel Safety Act. Specifically, 46 U.S.C. §2101 contains the definitions for Title II (Vessels and Seamen) to the U.S. Shipping Code, and Section 2101(25) defines "recreational vessel" as a vessel "being manufactured or operated primarily for pleasure [or] leased, rented, or chartered to another for the latter's pleasure." 46 U.S.C. §2101(25); 20 C.F.R. §701.301(a)(12)(iii)(F).

[9]The legislative history of the 1984 Amendments does not assist our discussion on this issue. The House and Senate comments indicate only that the exclusions under Section 2(3) are not intended to expand or reduce coverage and that they represent the attempt to single out categories of occupations which "lack a substantial nexus to maritime navigation" or "do not expose employees to the type of hazards normally associated" with longshore work. Senate Report 11621 on Conference Report on S.38 (Sept. 20, 1984); House Report 9730 on Conference Report on S.38 (Sept. 18, 1984).

included in the measurement.

33 C.F.R. §183.3. Employer argues that the absence of the list of exclusions from the DOL regulation should not have dissuaded the administrative law judges from considering the Coast Guard's definition to be the proper one in order to avoid an unreasonable result (in this case, two length measurements for the same vessel).

We reject this contention. The words of regulations are to be given their plain meaning. *Solano Garbage Co. v. Cheney,* 779 F.Supp. 477 (E.D. Ca. 1991). The Department obviously was aware of the entirety of Coast Guard's definition when it adopted its regulation relating to Section 2(3)(F), given the internal reference to the Coast Guard's rule. Despite the IFR statement that DOL's definition of length follows that of the Coast Guard, DOL clearly omitted from its regulation the second sentence of the Coast Guard regulation which identifies vessel attachments to be excluded from the measurement. We perceive, as the Director argues, that the intent behind this omission is equally, if not more, persuasive than the statement indicating reliance on the Coast Guard's definition. In point, the Director states:

> the regulatory silence of the DOL regulation, in comparison to the Coast Guard regulation, reasonably reflects that the Secretary of Labor intended the opposite result to prevail under the DOL regulations, *i.e.* that all such fittings and attachments are to be included.

Dir. Brief at 4. Knowing that the Coast Guard excluded certain segments of a boat from the length measurement and yet drafting a definition which omitted the exclusions can reasonably be interpreted as a conscious effort by the Department to differentiate the two definitions because they serve different functions. *See United States v. Capobianco,* 836 F.2d 808 (3d Cir. 1988)(it is a rule of statutory construction that omissions are deemed intentional). Thus, the Director's interpretation of the regulation is reasonable, and we hereby accord it due deference. *See generally Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *Director, OWCP v. General Dynamics Corp. [Bergeron]*, 982 F.2d 790, 26 BRBS 139 (CRT) (2d Cir. 1992); *Texports Stevedore Co. v. Director, OWCP [Maples]*, 931 F.2d 331, 28 BRBS 1 (CRT) (5th Cir. 1991). Therefore, we conclude that DOL's definition of length under the Act, although based on the Coast Guard definition, does not duplicate the Coast Guard definition, as it requires the measurement to be made from the foremost part of the vessel to the aftmost part of the vessel, including attachments.[10]

[10]Contrary to employer's argument that DOL's regulation is somehow limited by the term "deck" because it is not defined in the statute or the regulations and is a term of art which excludes all attachments, *see* Emp. Brief at 16; Jt. Ex. 1 at 102-103, the administrative law judges rationally rejected this argument in light of their overall interpretation of the regulation that the entire length of the vessel with attachments is to be measured.

Employer next avers that the doctrine of *in pari materia* applies in this case. That is, statutes involving the same subject should be interpreted together. *See* Black's Law Dictionary. Employer contends the Department's definition of length should be interpreted with other statutes which also define the length of a vessel. Primarily, employer relies on the Coast Guard regulation discussed above; however, it also cites, for example, the Coast Guard's definition of length under 46 C.F.R. §175.400 (Small Passenger Vessels) and the definition of length under the Panama Canal Regulations, 35 C.F.R. §135.42(a)(2)(i), to show that regulations regarding the measurement of vessels are, and should remain, uniform. The Director disagrees. He asserts that the doctrine cannot be applied "absent a showing that the two statutes in question share common goals and 'serve the same function.'" Dir. Brief at 4.

The rule of *in pari materia* is one of statutory construction. It is a practical rule in that it presumes "a legislative body generally uses a particular word with a consistent meaning in a given context." *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972). In addressing this doctrine, the Supreme Court stated that this "rule is but a logical extension of the principle that individual sections of a single statute should be construed together, for it necessarily assumes that whenever Congress passes a new statute, it acts aware of all previous statutes on the same subject[.]" *Id.* at 244. However, the Court stated that using one statute to interpret another is only sensible if the two statutes are "intended to serve the same function." *Id.* at 245. In *Erlenbaugh*, where the two statutes in question were enacted by Congress at the same time and were a part of a comprehensive effort to deal with organized crime, the Court nevertheless declined to consider them as if they were one because they each play a distinct role in achieving the broad, common goal. *Id.* Specifically, one statute is very narrow and applies to illegal gambling while the other is much broader and pertains to all unlawful activity, focusing on the use of facilities in interstate commerce. The Supreme Court held that introducing exceptions enumerated in the narrow law to the more general law would unnecessarily and improperly decrease the coverage of the broader law. Thus, without an indication of Congress's intentions, the Court declined to carve an exception to the general rule. *Id.* at 247.

In this case, the length of the vessel is used to ascertain whether an employee is covered by the Act when he is injured on the job. The Coast Guard rules and other laws listed by employer are not laws which were enacted for workers' compensation purposes but are for general maritime purposes, *e.g.*, whether a particular vessel must adhere to certain regulations for navigation, safety or other boating purposes. The objectives of the statutes are dissimilar: the statutes and regulations cited by employer were created at different times for purposes different from the Act. Consequently, numerous definitions for the term "length" can be found. For example, the regulations at 46 C.F.R. §175.400, relating to small passenger vessels under 100 gross tons, and at 35 C.F.R. §135.42(a)(2)(i), regulating the tonnage of vessels traversing the Panama Canal, contain language for measuring vessel length different from both the Coast Guard's regulation and DOL's regulation. Still other definitions may be found in the Shipping Code and the Code on Conservation. *See* 46 U.S.C. §14522(a) (regulatory management); 46 U.S.C. §8904(a) (manning small vessels); 16 U.S.C. §5502(6) (fishing compliance on the high seas). Thus, as there are many definitions of "length," employer's assertion that the Act and its

implementing regulation should be read in conjunction with other statutes and regulations related to boating is not persuasive. The regulation at issue was adopted by DOL at a different time and for a different purpose than the other statutes and regulations. We, therefore, reject employer's assertion that the definition for measuring vessel length in non-workers' compensation laws must be considered in determining the length of a vessel under the Act. *See Erlenbaugh*, 409 U.S. at 247.

Employer also submits excerpts from boating association rules and standards to show that, industry-wide, length is generally determined by measuring the hull of a boat, excluding all attachments. *See* Emp. Exs. C-9-11. We reject the assertion that we should

rely on these "rules" to resolve this case, as they are not legally binding precedents.[11]

In summary, we hold that the length of a recreational vessel is measured from the foremost part of the vessel to the aftmost part, including fixtures attached by the builder, for purposes of determining whether an employee is a maritime employee covered by the Act. Specific to this case, we affirm the administrative law judges' findings that the 650 CMY measures 72 feet 7 inches, as the parties agree that is the length of the vessel if both the swim platform and bow pulpit are included in the measurement. Therefore, we affirm the administrative law judges' decisions finding claimants to be covered employees, as they are supported by substantial evidence.

Accordingly, the administrative law judges' decisions are affirmed.

SO ORDERED.

_____
BETTY JEAN HALL, Chief
Administrative Appeals Judge

_____
JAMES F. BROWN
Administrative Appeals Judge

_____
NANCY S. DOLDER
Administrative Appeals Judge

[11]Moreover, we note that in at least one "authority" cited by employer, a portion of the pertinent rule supports claimants' position and not employer's. Specifically, in Section S-8 in *Boat Measurement & Weight* issued by the American Boat & Yacht Council, Inc. in 1989, the Council defines "length," lists the exclusions from the measurement, and then states: "[i]ntegrally formed, molded or welded components and appendages such as bow pulpits, swim platforms, attached structures for the propulsion systems, and structural rib rails installed by the builder are included in the length." Emp. Ex. C-9.