

**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

_____)	
IN THE MATTERS OF:)	CONSOLIDATED DOCKET No.
)	
PARISH P. WILLIAMS)	SE0903065ES
F/V CHACKBAY LADY)	
)	
RONNIE A. WILLIAMS)	HON. BRUCE TUCKER SMITH
F/V MR. WILLIAMS)	ADMINISTRATIVE LAW JUDGE
)	
HERMAN WILLIAMS, JR.)	
F/V LERIN LANE)	
)	
RESPONDENTS.)	
_____)	

INITIAL DECISION & ORDER

DATE ISSUED:

JULY 21, 2011

ISSUED BY:

HON. BRUCE TUCKER SMITH
ADMINISTRATIVE LAW JUDGE

APPEARANCES:

FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
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FOR RESPONDENTS
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I. Preliminary Statement

On July 13, 2009, brothers and shrimp fishermen Respondent Parish P. Williams, owner of the F/V CHACKBAY LADY, Respondent Ronnie A. Williams, owner of the F/V MR. WILLIAMS, and Respondent Herman Williams, Jr., owner of the F/V LERIN LANE (collectively referred to as Respondents) were boarded by National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement (OLE) and Louisiana Department of Wildlife and Fisheries (LDWF) agents and cited, individually, for failing to fish for shrimp in compliance with the requisite Turtle Excluder Devices (TEDs), thereby violating the Endangered Species Act (ESA), 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). At the time of the boardings and subsequent citations, all three Respondents were fishing for shrimp in the Gulf Area, as defined at 50 CFR §222.102.

On July 19, 2010, each Respondent received a Notice of Violation and Assessment of Administrative Penalty (NOVA) from the National Oceanic and Atmospheric Administration (NOAA or Agency) charging each,¹ as owner/operator of their respective fishing vessels, with two counts of violating the Endangered Species Act (ESA), 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i) on July 13, 2009.² Each count sought a civil penalty of \$8,500.00, for a total of \$17,000.00 penalty per Respondent.

¹Respondent Parish P. Williams received NOVA file number, and subsequent case docket number, SE093065ES. Respondent Ronnie A. Williams received NOVA file number, and subsequent case docket number, SE0903867ES. Respondent Herman Williams, Jr. received NOVA file number, and subsequent case docket number, SE0904403ES.

² Curiously, the NOVA's issued to Respondent Parish P. Williams and Respondent Herman Williams, Jr. contained "knowing and unlawful[]" elements within the charges. However, the NOVA issued to Respondent Ronnie Williams did not contain the scienter language. On April 5, 2011, the Agency issued Amended Pleadings and the scienter language previously contained in the charges against Respondent Parish P. Williams and Respondent Herman Williams, Jr. was removed.

Each Respondent timely filed a written request for hearing before an administrative law judge and Preliminary Position on Issues and Procedures.

On November 23, 2010, the Chief Administrative Law Judge (CALJ) consolidated the three actions into a single proceeding as the events at issue occurred on the same day, close in time and location to one another, and involve substantially similar charges. (Order Granting Consolidation, Nov. 23, 2010). Although the actions were consolidated into a single matter, any penalty/penalties issued are the responsibility of the individual respondent; i.e. the consolidation of the cases does not result in joint and several liability.

On April 26, 2011, this matter came on for hearing at the Administrative Law Judge Courtroom in New Orleans, Louisiana.³ Duane Smith, Esq. appeared on behalf of the Agency; V. Jacob Garbin, Esq., appeared on behalf of all three Respondents.

At the outset of the hearing, the parties announced to the court that they had reached a joint stipulation wherein Respondents admitted all charges as alleged by the Agency. (Tr. at 13). However, the parties disputed the amount of penalties. (Tr. at 14).

At the hearing, NOAA presented the testimony of John F. Mitchell and Steve W. Campbell and offered twenty-four exhibits into evidence, all of which were admitted into evidence.⁴ As part of Respondents' case-in-chief, Respondent Ronnie A. Williams and Respondent Parish Williams testified, offered three exhibits into evidence and at the court's direction submitted three exhibits post-hearing. (Post-Hearing Briefing Order,

³ Citations referencing the transcript are as follows: Transcript followed by the volume number and page number (Tr. at ____). Citations to Agency Exhibits are marked Agency Ex. 1, 2, 3, etc.; Respondent's Exhibits are marked Resp. Ex. A, B, C, etc.; ALJ Exhibits are marked ALJ Ex. I, II, III etc.

⁴ Counsel for Respondents stipulated to the admission of Agency Exhibits 1-20, 22 and 23. (Tr. at 20). The court admitted Agency Exhibit 21 into evidence under judicial notice provisions as permitted by 15CFR §904.251(g). (Tr. at 22).

May 12, 2011). The hearing was concluded in one day. The parties' respective witnesses, as well as exhibits entered into evidence, are identified in Attachment A.

II. Joint Stipulations & Findings of Fact

At the outset of the hearing, the parties announced they had stipulated Respondents failed to comply with the relevant TED regulations. However, as Respondents advised the court, "[w]e could not reach an agreement with Government on a penalty amount, so that's the only reason that we'd have to continue with any part of the trial." (Tr. at 14). At the request of the court (Proposed Joint Stipulations, June 10, 2011), the parties entered into the following written joint stipulations:

1. At all times relevant herein, it was and is unlawful for any person to violate any provision of the Endangered Species Act, or any regulations promulgated thereunder. 16 USC §1538(a)(1)(G).
2. At all times relevant herein, the "Gulf Area" was and is defined as "all waters of the Gulf of Mexico west of 81° W. long[itude] (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports)." 50 CFR 222.102.
3. At all times relevant herein, any shrimp trawler in the Gulf Area was and is required to have approved Turtle Excluder Device (TED) in each net rigged for fishing. 50 CFR §223.203(d)(2)
4. At all times relevant herein, requirements for Turtle Excluder Devices (TEDs) were/are set forth at 50 CFR 223.207.
5. On or about July 13, 2009, in the Gulf Area, agents from the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement (OLE) and Louisiana Department of Wildlife and Fisheries (LDWF) boarded the F/V LERIN LANE, the F/V CHACKBAY LADY and F/V MR. WILLIAMS.
6. At all times relevant herein, the F/V MR. WILLIAMS was and is a registered and flagged vessel of the United States, documentation number 608678. (Agency Ex. 5).
7. At all times relevant herein, the F/V MR. WILLIAMS was and is owned by Respondent Ronnie A. Williams. (Agency Ex. 5, 6).

8. Respondent Ronnie A. Williams is a “person” as defined by 16 USC §1532(13) and subject to the jurisdiction of the United States.
9. At all times relevant herein, the F/V CHACKBAY LADY was and is a registered and flagged vessel of the United States, documentation number 913789. (Agency Ex. 3).
10. At all times relevant herein, the F/V CHACKBAY LADY was and is owned by Respondent Parish P. Williams. (Agency Ex. 3, 4).
11. Respondent Parish P. Williams is a “person” as defined by 16 USC §1532(13) and subject to the jurisdiction of the United States.
12. At all times relevant herein, the F/V LERIN LANE was and is a registered and flagged vessel of the United States, documentation number 660271. (Agency Ex. 1).
13. At all times relevant herein, the F/V LERIN LANE was and is owned by Respondent Herman Williams, Jr. (Agency Ex. 1, 2).
14. Respondent Herman Williams, Jr. is a “person” as defined by 16 USC §1532(13) and subject to the jurisdiction of the United States.
15. On or about July 13, 2009, Respondent Ronnie A. Williams operated the F/V MR. WILLIAMS in the Gulf Area.
16. On or about July 13, 2009, the F/V MR. WILLIAMS was actively fishing for shrimp in the Gulf Area.
17. On or about July 13, 2009, at the time of boarding by NOAA OLE and LDWF agents’, the F/V MR. WILLIAMS was loaded with approximately 2,000 lbs of shrimp.
18. On or about July 13, 2009, Respondent Ronnie A. Williams advised NOAA OLE and LDWF agents that he trawled for shrimp for three days without TEDs installed in either rigged net.
19. On or about July 13, 2009, Respondent Ronnie A. Williams advised NOAA OLE and LDWF agents that immediately prior to their boarding the F/V MR. WILLIAMS, he was installing the TEDs.
20. On or about July 13, 2009, Respondent Herman Williams, Jr. advised NOAA OLE and LDWF agents that he was trawling for shrimp without TEDs installed.

21. On or about July 13, 2009, at the time of the NOAA OLE and LDWF agents' boarding, the F/V LERIN LANE had approximately 2,500 lbs of shrimp on board.
22. On or about July 13, 2009, at the time of the NOAA OLE and LDWF agents' boarding, the F/V CHACKBAY LADY was equipped with non-compliant TEDs in both the port and starboard nets.
23. On or about July 13, 2009, at the time of the NOAA OLE and LDWF agents' boarding, the F/V CHACKBAY LADY had approximately 2,000 lbs of shrimp on board.
24. On or about July 13, 2009, Respondent Parish P. Williams operated the F/V CHACKBAY LADY in the Gulf Area trawling for shrimp.
25. On or about July 13, 2009, Respondent Herman Williams, Jr. operated the F/V LERIN LANE in the Gulf Area trawling for shrimp.
26. On July 13, 2009, while in the Gulf Area operating the F/V LERIN LANE, Respondent Herman Williams, Jr. fished for shrimp without the requisite Turtle Excluder Devices installed on either his port or starboard rigging nets at the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14).
27. On July 13, 2009, while in the Gulf Area operating the F/V CHACKBAY LADY, Respondent Parish P. Williams fished for shrimp with noncompliant Turtle Excluder Devices installed on his port and starboard rigging nets at the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14).
28. On July 13, 2009, while in the Gulf Area operating the F/V MR. WILLIAMS, Respondent Ronnie A. Williams fished for shrimp without the requisite Turtle Excluder Devices installed on either his port or starboard rigging nets prior to the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14).

The court accepts and incorporates the foregoing Joint Stipulations as its own Findings of Fact as each reflects a thorough and careful analysis of the documentary evidence, the testimonies of witnesses, the exhibits entered into evidence and the entire record as a whole. Signed copies of the Joint Stipulations are attached hereto as Attachment B.

III. Summary of Decision

On July 13, 2009, while in the Gulf Area operating the F/V LERIN LANE, Respondent Herman Williams, Jr. fished for shrimp without the requisite Turtle Excluder Devices installed on either his port or starboard rigging nets at the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14). A civil penalty in the amount of \$17,000.00 is hereby imposed upon Respondent Herman Williams, Jr. for his July 13, 2009, violations.

On July 13, 2009, while in the Gulf Area operating the F/V CHACKBAY LADY, Respondent Parish P. Williams fished for shrimp with noncompliant Turtle Excluder Devices installed on his port and starboard rigging nets at the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14). A civil penalty in the amount of \$10,000.00 is hereby imposed upon Respondent Parish P. Williams for his July 13, 2009, violations.

On July 13, 2009, while in the Gulf Area operating the F/V MR. WILLIAMS, Respondent Ronnie A. Williams fished for shrimp without the requisite Turtle Excluder Devices installed on either his port or starboard rigging nets prior to the time he was

boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14). A civil penalty in the amount of \$17,000.00 is hereby imposed upon Respondent Ronnie A. Williams for his July 13, 2009, violations.

IV. Discussion

A. Agency's Burden of Proof

In order to prevail on the charges instituted against a respondent, the Agency must prove the violations alleged by a preponderance of the evidence. 5 U.S.C. §556(d); In the Matter of Porter Watson, 2010 WL 3524743 (NOAA 2010); In re Cuong Vo, 2001 WL 1085351 (NOAA 2001). Preponderance of the evidence means the Agency must show it is more likely than not a respondent committed the charged violation. Herman & MacLean v. Huddleston, 459 U.S. 375, 390 (1983). The Agency may rely on either direct or circumstantial evidence to establish the violation and satisfy the burden of proof. See generally, Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, 764-65 (1984). The burden of producing evidence to rebut or discredit the Agency's evidence will only shift to the Respondent after the Agency proves the allegations contained in the NOVA by a preponderance of reliable, probative, substantial, and credible evidence. Steadman v. S.E.C., 450 U.S. 91, 101 (1981). Inasmuch as Respondents have stipulated to the charged violations, the Agency has met burden of proof requirement.

B. The Endangered Species Act—in brief

In 1973, Congress passed the Endangered Species Act (ESA or Act), 16 USC §§1531 et seq., thereby establishing a program for the conservation of endangered and

threatened species⁵ and the ecosystems upon which they depend. 16 USC §1531(b).

Accordingly, “it is unlawful for any person subject to the jurisdiction of the United States violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 1533 of this title” 16 USC §1538(a)(2)(G).

All species of sea turtles that are found in U.S. waters (Kemp’s ridley, the loggerhead, the leatherback, the green, the Olive ridley, and the hawksbill) are listed as either endangered or threatened under the ESA. 50 CFR §§223.102(b); 224.101(c). (Tr. at 36).

Pursuant to 50 CFR §223.205(b)(2),

[I]t is unlawful for any person subject to the jurisdiction of the United States to . . . [f]ish for,⁶ catch, take, harvest, or possess, fish or wildlife⁷ while on board a vessel, except if that vessel is in compliance with all applicable provisions of §223.206(d).

⁵ “The term ‘endangered species’ means any species which is in danger of extinction throughout all or a significant portion of its range. . . .” 16 USC §1532(6). “The term ‘threatened species’ means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. 16 USC §1532(20).

⁶ “Fishing, or to fish” is defined as:

(1) The catching, taking, or harvesting of fish or wildlife; (2) The attempted catching, taking, or harvesting of fish or wildlife; (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or (4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

50 CFR §222.102.

⁷ The ESA defines “fish or wildlife” as

[A]ny member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

16 USC §1532(8). The relevant regulations have the same definition for the term wildlife. 50 CFR §222.102. Shrimp is defined as,

[A]ny species of marine shrimp (*Order Crustacea*) found in the Atlantic Area or the Gulf Area, including, but not limited to:

(1) Brown Shrimp[];
(2) White shrimp[];
(3) Pink shrimp [];
(4) Rock shrimp [];
(5) Royal red shrimp[]; and
(6) Seabob shrimp [].

According to 50 CFR §223.206(d)(2)(i),

Any shrimp trawler⁸ that is in the . . . Gulf Area⁹ must have an approved TED installed in each net that is rigged for fishing. A net is rigged for fishing if it is in the water, or if it is shackled, tied, or otherwise connected to any trawl door or board, or to any tow rope, cable, pole or extension, either on board or attached in any manner to the shrimp trawler.

Id.

V. Civil Penalties

In assessing a penalty, the undersigned considered a number of factors. “Factors to be taken into account in assessing a penalty . . . may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent’s degree of culpability, any history of prior offenses, and ability to pay; and such other matters as justice may require.” 15 CFR §904.108(a). The Agency recently modified 15 CFR §904.204(m) by removing any presumption in favor of the Agency’s proposed sanction and providing that the undersigned may assess a civil penalty de novo, taking into account all the factors required by applicable law. See 75 Fed. Reg. 35631-32 (June 23, 2010). The Agency designated this change as merely “procedural” in nature, and the new rule will be applied to this case.

50 CFR §222.102. Shrimp, then, as a crustacean, is included in the definition of fish or wildlife as set forth at 16 USC §1532(8).

⁸ “Shrimp trawler” defined as

[A]ny vessel that is equipped with one or more trawl nets and that is capable of, or used for, fishing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

50 CFR §222.102.

⁹ Gulf Area means all waters of the Gulf of Mexico west of 81° W. long. (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports). 50 CFR §222.102.

Respondent Herman Williams

On July 13, 2009, agents with NOAA OLE and LDWF boarded the F/V LERIN LANE and discovered Respondent Herman Williams was fishing for shrimp without any TEDs installed in his nets. Although Respondent Herman Williams opted not to testify at the hearing of this matter, the statement he provided to the boarding agents demonstrates his deliberate violation of the law. In Respondent Herman Williams' written statement Agency Exhibit 8, he readily admits to fishing without TEDs and contends "if I had to pull TEDs in these waters I would have to stop fishing. . . ." (Agency Ex. 8). Respondent Herman Williams has been cited multiple times prior to the July 13, 2009, boarding for failing to shrimp with TEDs installed in his nets. In December 1990, Respondent Herman Williams was criminally convicted of fishing without TEDs, sentenced to three years probation and fined \$5,010.00. (Agency Ex. 22). Then again in October 1999, Respondent Herman Williams' catch was seized and sold for approximately \$4,215.30 as a result of his again fishing without TEDs. Additionally, Respondent Herman Williams was issued a Notice of Violation and Assessment for the October 1999, violation wherein he was fined \$4,000. Respondent Herman Williams failed to pay the penalty and eventually it was written off as non-collectible. (Id.).

As aptly noted by the Agency, "[e]xtinction is forever." Respondent Herman Williams, Jr.'s statement and history of prior offenses demonstrates his blatant disregard for the law and the preservation of endangered or threatened species. With regard to this particular respondent's ability to pay, the court has reviewed Respondent Herman Williams' income tax returns together with his statements concerning ability to pay as set forth in pleadings. With regard to ability to pay, the court notes that throughout this

proceeding Respondent Herman Williams, Jr. made obvious attempts to misrepresent to the court his financial position.¹⁰ According to Agency Exhibit 24, Respondent Herman Williams, Jr. grossed approximately \$150,500 in less than 3 months during 2010. As reflected by his 2010 federal income tax return, Respondent Herman Williams, Jr. calculated his annual adjusted gross income as \$137,541. (Resp. Ex. F). The court does not find that Respondent Herman Williams, Jr. has presented sufficient evidence of his ability, or inability to pay. Respondent Herman Williams is hereby ordered to pay \$8,500.00 per violation for a total of \$17,000.00.

Respondent Parish P. Williams

On July 13, 2009, agents with NOAA OLE and LDWF boarded the F/V CHACKBAY LADY and determined Respondent Parish P. Williams actively fished for shrimp without compliant TEDs. Based upon the agents' inspection of the nets, the forward portion of the netting was wet yet the portion containing the TEDs was dry. Moreover, only three-quarters of the starboard TED was installed. (Tr. at 73). NOAA OLE Special Agent Steve Campbell testified that Respondent Parish P. Williams' explained the starboard TED was partially unsewn in order to remove a piece of driftwood. However, Special Agent Campbell opined that there was no need to unsew the TED as the debris could have been removed "through the escape opening of the TED." (Tr. at 74). Moreover, the driftwood causing Respondent Parish P. Williams to

¹⁰ On August 27, 2010, the ALJ Docketing Center received correspondence forwarded by Respondent Herman Williams, Jr., which contained his handwritten statement. "At this time and in the far future I know I can not pay this or any large fine." The statement further notes that "the shrimping future very uncertain . . ." On September 27, 2010, the court received a handwritten PPIP from Respondent Herman Williams, Jr. asserted he had not fished for 6 months due to the BP/Deepwater Horizon oil spill. However, he failed to mention that that he was employed for the preceding months as a vessel of opportunity wherein he was paid a significantly large income. In his Amended PPIPs, Respondent Herman Williams, Jr. referenced his current economic condition, specifically his "economic downturn" as caused by the oil spill and asserted an inability to pay due to his economic position.

unsew his TED was “dry to the touch and . . . very light for the size of the piece of wood it was.” (Tr. at 78). Special Agent Campbell therefore concluded that, “[w]ith all things considered and the webbing being dry and debris-free, and other sections of the net being wet and having fishing debris in it, . . . the TED had not been drawn in that trawl.” (Tr. at 78-79).

Respondent Parish P. Williams purchased the F/V CHACKBAY LADY five months prior to the July 13, 2009, boarding. (Tr. at 119-120). To his detriment, Respondent Parish P. Williams assumed the TEDs that came with the purchase of the vessel were in compliance with the applicable laws and regulations. (Tr. at 120). Following the boarding and citation, Respondent Parish P. Williams has since purchased and installed compliant TEDs. (Tr. at 120).

With regard to this particular respondent’s ability to pay, the court has reviewed Respondent Parish P. Williams’ income tax returns, together with his statements concerning ability to pay as set forth in pleadings, and considered his testimony at the hearing. With regard to ability to pay, the court notes that throughout this proceeding Respondent Parish P. Williams made obvious attempts to misrepresent to the court his financial position.¹¹ According to Agency Exhibit 24, Respondent Parish P. Williams

¹¹ On August 27, 2010, the ALJ Docketing Center received a handwritten request for hearing from Respondent Parish P. Williams. Within his request for hearing, Respondent Parish P. Williams stated “[w]e have been adversely affected by the BP Oil Spill. I cannot afford council [sic] because of the same.” On September 27, 2010, the court received Respondent Parish P. Williams’ handwritten PPIP wherein he stated “don’t know what the future holds because of the BP oil spill” and further stated that he was “currently unemployed.” However, he failed to mention that he was employed for the preceding months as a vessel of opportunity wherein he was paid a significantly large income. In his Amended PPIPs, Respondent Parish P. Williams referenced his current economic condition, specifically his “economic downturn” as caused by the oil spill and asserted an inability to pay due to his economic position. During the course of his testimony at hearing,

8 Q. Do you remember putting in a hearing request?

9 A. Yes, I did.

10 Q. Do you remember writing that in handwriting?

11 A. Yes.

grossed approximately \$463,500 in a four month span during 2010. As reflected by his 2010 federal income tax return, Respondent Parish P. Williams calculated his annual adjusted gross income as \$313,385. (Resp. Ex. E). The court does not find that Respondent Parish P. Williams has presented sufficient evidence of his ability, or inability to pay. Respondent Parish P. Williams is assessed a civil penalty in the amount of \$5,000.00 per violation, for a total of \$10,000.00.

Respondent Ronnie Williams

On July 13, 2009, agents with NOAA OLE and LDWF boarded the F/V MR. WILLIAMS and were informed by Respondent Ronnie A. Williams that he had fished for shrimp the preceding three days without TEDs installed in his nets. (Tr. at 94). Respondent Ronnie A. Williams testified at the hearing of this matter that he indeed was fishing without TEDs installed in his nets and only installed the TEDs upon witnessing other vessels being boarded by law enforcement agents. (Id.).

Prior to July 13, 2009, Respondent Ronnie A. Williams was cited for trawling for shrimp with the TED escape opening sewn shut and assessed a civil penalty of \$4,000. (Agency Ex. 23).

Although Respondent Ronnie A. Williams readily admits to having violated the ESA by fishing with TEDs, he disputes the civil penalty amount of \$17,000.00 that

-
- 12 Q. Did you state in that -- was the date of that
13 request approximately somewhere around the
14 30th of July?
15 A. Yes, probably.
16 Q. Do you remember saying, "We've been adversely
17 affected by the BP oil spill and can't afford
18 counsel because of the same"?
19 A. Right.
20 Q. And yet at that time you'd made somewhere in
21 the neighborhood of \$300,000 from BP?
22 A. Probably.

(Tr. at 124).

NOAA requests. Respondent Ronnie A. Williams' freely admitted and stipulated to having committed these extremely serious, and flagrant, violations of the ESA.

Moreover, this is not Respondent Ronnie A. Williams' first known violation of the TED requirements. In 1997, he was assessed a \$4,000 civil penalty for trawling for shrimp with the escape openings of the TEDs sewn shut. (Agency Ex. 23). With regard to ability to pay, the court notes that throughout this proceeding Respondent Ronnie A. Williams' made obvious attempts to misrepresent to the court his financial position.¹²

¹² On August 27, 2010, the ALJ Docketing Center received a handwritten request for hearing from Respondent Ronnie Williams. Within his request for hearing, Respondent Ronnie Williams stated "[w]e have been adversely affected by the BP Oil disaster and I cannot afford council [sic] because of the same." On September 30, 2010, the court received Respondent Ronnie Williams' PPIP wherein he stated "[w]ho knows what the future holds . . ." and further stated that he was "unemployed." However, he failed to mention that he was employed for the preceding months, and at the time he filed his PPIP, as a vessel of opportunity wherein he was paid a significantly large income. In his Amended PPIPs, Respondent Ronnie Williams referenced his current economic condition, specifically his "economic downturn" as caused by the oil spill and asserted an inability to pay due to his economic position. During the course of his testimony, particularly upon cross-examination, it was apparent that Respondent Ronnie Williams was attempting to conceal his 2010 income:

11 Q. In 2007 it looks like your adjusted gross
12 income was -- well, your income was \$25,114?

13 A. Right.

14 Q. 2008 it was \$24,503?

15 A. Correct.

16 Q. 2009, \$21,346?

17 A. Right.

18 Q. In 2010 do you know how much you made?

19 A. No. I made more than that because I did work

20 for BP, but that money's done spent and went.

EXAMINATION BY MR. SMITH:

22 Q. Ballpark, about how much did you make in 2010?

23 A. 2010, clear?

24 Q. Well, how much did you make from BP?

25 A. I made from BP -- what does that have to do

1 this?

* * *

14 Okay. I'm guessing. I don't know

15 exactly, but I'm guessing about 250,000.

16 EXAMINATION BY MR. SMITH:

17 Q. How long did you work for BP?

18 A. Five months.

19 Q. From when to when? Do you remember about

20 when?

21 A. Sometime in May. I think we left in May until

22 September. Yes.

23 Q. And the best of your recollection is you made
24 \$250,000?

25 A. Yes, about that.

1 Q. Did you file your taxes yet for 2010?

2 A. Yes, sir. I paid a lot of taxes.

3 Q. How come you didn't produce those records
4 today?

5 A. Because I didn't have them. I gave them this
6 a while back. This was a couple of weeks ago,
7 maybe longer than that, maybe a couple of
8 months ago on this. But I just got back my
9 2010 taxes.

13 EXAMINATION BY MR. SMITH:

14 Q. Did you in fact work for BP during the times
15 that are indicated in this --

16 A. Yes, sir.

17 Q. And did you receive payment for the time that
18 you spent working for BP?

19 A. Yes, sir, I did.

20 Q. Do you have any reason to contest the validity
21 of that business record that's been produced
22 by BP documenting the payments made to you?

23 A. Yes, sir, I do, because I have deckhand shares
24 that come out of here. I paid \$112,000 of
25 deckhand shares, which my tax records will
1 show.

2 Q. Did BP pay the deckhands or did you pay the
3 deckhands?

4 A. BP paid the deck -- but BP gave me all of the
5 money.

6 Q. So all of the money that's there, BP gave you?

7 A. Yes. But out of this money 112,000 went to
8 deckhands.

9 Q. I understand.

10 A. Understand?

11 A. I do.

12 THE COURT:

13 I understand.

14 EXAMINATION BY MR. SMITH:

15 Q. The expenses were paid by BP, correct? They
16 paid for the gasoline?

17 A. For diesel, yes, but not completely all. Not
18 all the groceries and stuff, no. They gave us
19 some groceries, but not --

20 Q. So they gave you some groceries?

21 A. Yes.

22 Q. They gave you fuel?

23 A. Yes.

24 Q. They paid you -- I'm sorry, what is it?

25 A. 447,000.

1 Q. \$447,600?

2 A. Yes.

3 Q. And the time period covered was from when to
4 when?

5 A. I think it's from May until September I

According to Agency Exhibit 24, Respondent Ronnie A. Williams grossed approximately \$447, 600 in a five month span during 2010. As reflected by his 2010 federal income tax

-
- 6 believe. May until October, October 13. This
7 says here from June 2nd until October 13.
10 Q. Mr. Williams, did you request a hearing in
11 this matter?
12 A. Yes.
13 Q. And did you submit a handwritten hearing
14 request to my office that would have been
15 received August 13th of this year, 2010?
16 A. Yes.
17 Q. Do you remember writing that?
18 A. Yes. Well, really my girlfriend wrote it. I
19 was telling her just what to write. If I
20 would have wrote it, you wouldn't have read
21 it.
22 Q. But you told your girlfriend what to write?
23 A. Yes.
24 Q. And then you signed it?
25 A. Yes.
1 Q. And you submitted it to the Court?
2 A. Right.
3 Q. Do you remember writing in that document, "We
4 have been adversely affected by the BP oil
5 disaster and I cannot afford counsel because
6 of the same?
7 A. Yes, correct.
8 Q. And you wrote that somewhere on or about
9 August 13, 2010?
10 A. Yes, about, yes.
11 Q. Isn't it in fact true that as of July 30,
12 you'd been paid \$227,000 from BP?
13 A. Not all me. I pay deckhands weekly as it
14 came. I didn't profit all that money.
15 Q. You submitted tax returns that show annual
16 incomes of normally in the neighborhood of
17 \$20,000 to \$25,000, is that correct?
18 A. Right, yes.
19 Q. You made \$227,000 minus whatever costs you can
20 document in a month -- in a two-month period?
21 A. May, June, July, August. Four-month period.
22 Q. So when you said you've been adversely
23 affected by BP, the spill, and that you
24 couldn't afford counsel, was that a true
25 statement or was that a lie?
1 A. No, that was a true statement. I mean, I
2 couldn't see paying, you know, and then we had
3 to wind up getting him because y'all just kept
4 coming at us. I mean, we had to hire an
5 attorney.

(Tr. at 100-110) (emphasis added).

return, Respondent Ronnie A. Williams calculated his annual adjusted gross income as \$200,509. (Resp. Ex. D). The court does not find that Respondent Ronnie A. Williams has presented sufficient evidence of his ability, or inability to pay. Therefore, Respondent Ronnie A. Williams is assessed a civil penalty of \$8,500.00 per violation, for a total of \$17,000.00.

WHEREFORE,

VI. Order

IT IS HEREBY ORDERED, that the following penalties are appropriate and imposed:

A civil penalty, in the total amount of \$17,000.00, imposed on Respondent Herman Williams for the reasons set forth supra.

A civil penalty, in the total amount of \$17,000.00, is imposed on Respondent Ronnie A. Williams for the reasons set forth supra.

A civil penalty in the amount of \$10,000.00, is imposed on Respondent Parish P. Williams for the reasons set forth supra.

PLEASE TAKE NOTICE, that a failure to pay the civil penalty to the Department of Commerce/NOAA within thirty (30) days from the date on which this decision becomes final Agency action will result in the total penalty becoming due and payable, and interest being charged at the rate specified by the United States Treasury regulations and an assessment of charges to cover the cost of processing and handling of the delinquent penalty. Further, in the event the penalty, or any portion thereof, becomes more than 90 days past due, Respondents may also be assessed an additional penalty charge not to exceed 6 percent per annum.

PLEASE TAKE FURTHER NOTICE, that any petition for review of this decision must be filed within 30 days of this date with the Administrator of the National Oceanic and Atmospheric Administration as subject to the requirements of 15 CFR §904.273. If neither party seeks administrative review within 30 days after issuance of this order, this initial decision shall become the final decision of the Agency. A copy of 15 CFR §904.273 is attached hereto as Attachment C.

IT IS SO ORDERED.

Done and dated this the 21st day of July, 2011,
at New Orleans, Louisiana.

A handwritten signature in blue ink that reads "Bruce T. Smith". The signature is stylized and written in a cursive-like font.

HONORABLE BRUCE TUCKER SMITH
ADMINISTRATIVE LAW JUDGE

ATTACHMENT A – EXHIBIT & WITNESS LIST

NOAA EXHIBITS – AS OFFERED/ADMITTED CHRONOLOGICALLY

1. United States of America, Department of Homeland Security, United States Coast Guard: National Vessel Documentation Center Certificate of Documentation and Abstract of Title for the F/V LERIN LANE (4 pages)
2. United States of America, Department of Commerce, National Oceanic and Atmospheric Administration: National Fisheries Service Federal Fisheries Permit—Gulf of Mexico Shrimp (Moratorium) issued to Herman Joseph Williams, Jr. and application for same (7 pages)
3. United States of America, Department of Homeland Security, United States Coast Guard: National Vessel Documentation Center Certificate of Documentation and Abstract of Title for the F/CHACKBAY LADY (5 pages)
4. United States of America, Department of Commerce, National Oceanic and Atmospheric Administration: National Fisheries Service Federal Fisheries Permit—Gulf of Mexico Shrimp (Moratorium) issued to Parish Peter Williams and application for same (5 pages)
5. United States of America, Department of Homeland Security, United States Coast Guard: National Vessel Documentation Center Certificate of Documentation and Abstract of Title for the F/V MR. WILLIAMS (5 pages)
6. United States of America, Department of Commerce, National Oceanic and Atmospheric Administration: National Fisheries Service Federal Fisheries Permits—Gulf of Mexico Shrimp (Moratorium) issued to Ronnie Anthony Williams and application for same
7. Six color photographs of the F/V LERIN LANE and Respondent Herman Williams, Jr. taken by SA Omar Purcell on July 13, 2009 (3 pages)
8. Handwritten statement by Respondent Herman Williams dated July 13, 2009 (1 page)
9. Photography log and eleven color photographs of the F/V CHACKBAY LADY and Respondent Parish P. Williams taken by SA Omar Purcell on July 13, 2009 (12 pages)
10. Handwritten statement by Respondent Parish P. Williams dated July 13, 2009 (1 page)
11. NOAA Fisheries Office of Law Enforcement Photograph Log listing six photographs and twelve color photographs (13 pages)
12. GPS verification form dated July 13, 2009 (1 page)
13. Five color photographs
14. Four color photographs
15. Six color photographs
16. Investigation Report by Special Agent James Kenjonen dated December 11, 2009 (4 pages)
17. NOAA Form 88-151 Enforcement Action Report, number 159327, issued to Parish P. Williams on July 13, 2009 (1 page)

18. NOAA Form 88-151 Enforcement Action Report, number 159328, issued to Ronnie A. Williams on July 13, 2009 (1 page)
19. *Curriculum Vitae* of John F. Mitchell, Research Fisheries Biologist, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Southeast Fisheries Science Center, Harvesting Systems and Engineering Branch (4 pages)
20. National Oceanic and Atmospheric Administration Civil Administrative Penalty Schedule (5 pages)
21. National Oceanic and Atmospheric Administration Penalty Matrix for the Endangered Species Act (2 pages)
22. NOAA Office for Law Enforcement Incident Data Sheet listing prior offenses committed by Respondent Herman Williams, Jr. (10 pages)
23. NOAA Office for Law Enforcement Incident Data Sheet listing prior offenses committed by Respondent Ronnie A. Williams (4 pages)
24. Danos & Curole Staffing, LLC—Vessel of Opportunity Program payroll records reflecting payments to Respondent Herman Williams, Jr., Respondent Ronnie A. Williams and Respondent Parish P. Williams (7 pages)

RESPONDENTS' EXHIBITS

- A. 2007, 2008 and 2009 income tax returns for Respondent Ronnie A. Williams
- B. 2007, 2008 and 2009 income tax returns for Respondent Parish P. Williams
- C. Schedule C, Form 1040, 2006, 2007, 2008 and 2009 for Respondent Herman Williams, Jr.
- D. 2010 income tax return for Respondent Ronnie A. Williams
- E. 2010 income tax return for Respondent Parish P. Williams
- F. 2010 income tax return for Respondent Herman Williams, Jr.

NOAA WITNESSES

1. John Francis Mitchell
2. Steve W. Campbell

RESPONDENT WITNESSES

1. Ronnie A. Williams
2. Parish P. Williams

IN THE MATTERS OF:)	CONSOLIDATED DOCKET NO.
)	
PARISH P. WILLIAMS)	SE0903065ES
F/V CHACKBAY LADY)	
)	
RONNIE A. WILLIAMS)	HON. BRUCE TUCKER SMITH
F/V MR. WILLIAMS)	ADMINISTRATIVE LAW JUDGE
)	
HERMAN WILLIAMS, JR.)	
F/V LERIN LANE)	
)	
RESPONDENTS.)	
)	

DATE ISSUED:

ISSUED BY:

APPEARANCES:

FOR RESPONDENTS
V. Jacob Garbin, Esq.
Law Offices of William S. Vincent, Jr.
2018 Prytania Street
New Orleans, LA 70130

It is hereby stipulated by and between the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA or Agency) and Respondent Parish P. Williams, Respondent Ronnie A. Williams and Respondent Herman Williams, Jr. (collectively referred to as Respondents) as follows:

1. At all times relevant herein, it was and is unlawful for any person to violate any provision of the Endangered Species Act, or any regulations promulgated thereunder. 16 USC §1538(a)(1)(G).
2. At all times relevant herein, the "Gulf Area" was and is defined as "all waters of the Gulf of Mexico west of 81° W. long[itude] (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports)." 50 CFR 222.102.
3. At all times relevant herein, any shrimp trawler in the Gulf Area was and is required to have approved Turtle Excluder Device (TED) in each net rigged for fishing. 50 CFR §223.203(d)(2)
4. At all times relevant herein, requirements for Turtle Excluder Devices (TEDs) were/are set forth at 50 CFR 223.207.
5. On or about July 13, 2009, in the Gulf Area, agents from the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement (OLE) and Louisiana Department of Wildlife and Fisheries (LDWF) boarded the F/V LERIN LANE, the F/V CHACKBAY LADY and F/V MR. WILLIAMS.
6. At all times relevant herein, the F/V MR. WILLIAMS was and is a registered and flagged vessel of the United States, documentation number 608678. (Agency Ex. 5).
7. At all times relevant herein, the F/V MR. WILLIAMS was and is owned by Respondent Ronnie A. Williams. (Agency Ex. 5, 6).
8. Respondent Ronnie A. Williams is a "person" as defined by 16 USC §1532(13) and subject to the jurisdiction of the United States.
9. At all times relevant herein, the F/V CHACKBAY LADY was and is a registered and flagged vessel of the United States, documentation number 913789. (Agency Ex. 3).

10. At all times relevant herein, the F/V CHACKBAY LADY was and is owned by Respondent Parish P. Williams. (Agency Ex. 3, 4).
11. Respondent Parish P. Williams is a "person" as defined by 16 USC §1532(13) and subject to the jurisdiction of the United States.
12. At all times relevant herein, the F/V LERIN LANE was and is a registered and flagged vessel of the United States, documentation number 660271. (Agency Ex. 1).
13. At all times relevant herein, the F/V LERIN LANE was and is owned by Respondent Herman Williams, Jr. (Agency Ex. 1, 2).
14. Respondent Herman Williams, Jr. is a "person" as defined by 16 USC §1532(13) and subject to the jurisdiction of the United States.
15. On or about July 13, 2009, Respondent Ronnie A. Williams operated the F/V MR. WILLIAMS in the Gulf Area.
16. On or about July 13, 2009, the F/V MR. WILLIAMS was actively fishing for shrimp in the Gulf Area.
17. On or about July 13, 2009, at the time of boarding by NOAA OLE and LDWF agents', the F/V MR. WILLIAMS was loaded with approximately 2,000 lbs of shrimp.
18. On or about July 13, 2009, Respondent Ronnie A. Williams advised NOAA OLE and LDWF agents that he trawled for shrimp for three days without TEDs installed in either rigged net.
19. On or about July 13, 2009, Respondent Ronnie A. Williams advised NOAA OLE and LDWF agents that immediately prior to their boarding the F/V MR. WILLIAMS, he was installing the TEDs.
20. On or about July 13, 2009, Respondent Herman Williams, Jr. advised NOAA OLE and LDWF agents that he was trawling for shrimp without TEDs installed.
21. On or about July 13, 2009, at the time of the NOAA OLE and LDWF agents' boarding, the F/V LERIN LANE had approximately 2,500 lbs of shrimp on board.
22. On or about July 13, 2009, at the time of the NOAA OLE and LDWF agents' boarding, the F/V CHACKBAY LADY was

equipped with non-compliant TEDs in both the port and starboard nets.

23. On or about July 13, 2009, at the time of the NOAA OLE and LDWF agents' boarding, the F/V CHACKBAY LADY had approximately 2,000 lbs of shrimp on board.
24. On or about July 13, 2009, Respondent Parish P. Williams operated the F/V CHACKBAY LADY in the Gulf Area trawling for shrimp.
25. On or about July 13, 2009, Respondent Herman Williams, Jr. operated the F/V LERIN LANE in the Gulf Area trawling for shrimp.
26. On July 13, 2009, while in the Gulf Area operating the F/V LERIN LANE, Respondent Herman Williams, Jr. fished for shrimp without the requisite Turtle Excluder Devices installed on either his port or starboard rigging nets at the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14).
27. On July 13, 2009, while in the Gulf Area operating the F/V CHACKBAY LADY, Respondent Parish P. Williams fished for shrimp with noncompliant Turtle Excluder Devices installed on his port and starboard rigging nets at the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14).
28. On July 13, 2009, while in the Gulf Area operating the F/V MR. WILLIAMS, Respondent Ronnie A. Williams fished for shrimp without the requisite Turtle Excluder Devices installed on either his port or starboard rigging nets prior to the time he was boarded and thereby was in violation of the Endangered Species Act, 16 USC §1538(a)(1); 50 CFR §§223.205(b)(1), (b)(2), 223.206(d)(2)(i). (Tr. at 13-14).

IT IS SO STIPULATED.

For Complainant:



Digitally signed by Duane Smith
DN: cn=Duane Smith, o=GCE/SE,
email=duane.sm@noaa.gov, c=US
Date: 2011.06.13 12:49:26 -0400

Duane Smith, Esq.
NOAA Office of General Counsel
263 13th Avenue, Suite 177
St. Petersburg, FL 33701

For Respondent Ronnie A. Williams:

V. Jacob Garbin, Esq.
Law Offices of William S. Vincent, Jr.
2018 Prytania Street
New Orleans, LA 70130

equipped with non-compliant TEDs in both the port and starboard nets.

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For Complainant:



Digitally signed by Duane Smith
DN: cn=Duane Smith, c=US, email=duane.sm@noaa.gov, c=US
Date: 2011.06.13 12:49:26 -0400

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For Respondent Ronnie A. Williams:

V. Jacob Garbin, Esq.
Law Offices of William S. Vincent, Jr.
2018 Prytania Street
New Orleans, LA 70130

equipped with non-compliant TEDs in both the port and starboard nets.

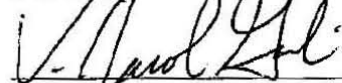
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IT IS SO STIPULATED.

For Complainant:

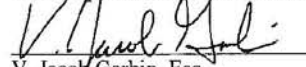
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NOAA Office of General Counsel
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For Respondent Ronnie A. Williams:



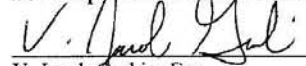
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New Orleans, LA 70130

For Respondent Herman Williams, Jr.:



V. Jacob Garbin, Esq.
Law Offices of William S. Vincent, Jr.
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New Orleans, LA 70130

For Respondent Parish, P. Williams:



V. Jacob Garbin, Esq.
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New Orleans, LA 70130

ATTACHMENT C: PROCEDURES GOVERNING ADMINISTRATIVE REVIEW: 15 CFR §904.273

§ 904.273 Administrative review of decision.

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the Judge within 30 days after the date the decision is served. The petition shall be addressed to the Administrator and filed at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue NW, Washington, DC 20230.

(b) Review by the Administrator of an initial decision is discretionary and is not a matter of right. A petition for review must be served upon all parties. If a party files a timely petition for discretionary review, or action to review is taken by the Administrator upon his or her own initiative, the effectiveness of the initial decision is stayed until further order of the Administrator.

(c) Petitions for discretionary review may be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or precedent:

(3) A substantial and important question of law, policy, or discretion is involved (including the amount of the civil penalty); or

(4) A prejudicial procedural error has occurred.

(d) Each issue must be separately numbered, concisely stated, and supported by detailed citations to the record, statutes, regulations, and principal authorities. Issues of fact or law not argued before the Judge may not be raised on review unless they were raised for the first time in the initial decision, or could not reasonably have been foreseen and raised by the parties during the hearing. The Administrator will not consider new or additional evidence that is not a part of the record before the Judge.

(e) No oral argument on petitions for discretionary review will be allowed.

(f) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies are allowed.

(g) If the Administrator declines to exercise discretionary review, such order will be served on all parties personally or by registered or certified mail, return receipt requested, and will specify the date upon which the Judge's decision will become effective as the

final decision of NOAA. The Administrator need not give reasons for declining review.

(h) If the Administrator grants a petition for discretionary review, he or she will issue an order specifying issues to be briefed and a briefing schedule. Such issues may constitute one or more of the issues raised in the petition for discretionary review and/or matters the Administrator wishes to review on his or her own initiative. Only those issues specified in the order may be argued in the briefs and considered by the Administrator. No oral argument will be permitted.

(i) After expiration of the period for filing briefs under paragraph (h) of this section, the Administrator will render a written decision on the issues under review. The Administrator will transmit the decision to each of the parties by registered or certified mail, return receipt requested. The Administrator's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **INITIAL DECISION & ORDER** on the following parties in this proceeding as indicated below:

Duane Smith, Esq.
National Oceanic and Atmospheric Administration
Office of General Counsel, Southeast Region
263 13th Avenue, South
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Telephone:
By FedEx & email: duane.smith@noaa.gov

V. Jacob Garbin
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ALJ Docketing Center
United States Coast Guard
40 South Gay Street, Room 412
Baltimore, MD 21202-0001
Fax: 410-962-1746
By FedEx

Done and dated this 21st the day of July, 2011,
at New Orleans, Louisiana.

A handwritten signature in blue ink, appearing to read 'Katy J.L. Duke'.

KATY J.L. DUKE, ESQ.
ATTORNEY ADVISOR