

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

IN THE MATTER OF:

RODNEY VERDIN & CHRISTIE V. NORMAN

RESPONDENTS.

DOCKET NUMBER

SE0901351FM

**HON. BRUCE T. SMITH
ADMINISTRATIVE LAW JUDGE**

INITIAL DECISION & ORDER

DATE ISSUED:

OCTOBER 19, 2010

ISSUED BY:

HON. BRUCE TUCKER SMITH
ADMINISTRATIVE LAW JUDGE

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I. Preliminary Statement

On August 13, 2009, the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA or Agency) issued a Notice of Violation and Assessment of Administrative Penalty (NOVA) to Respondents Rodney P. Verdin and Christie V. Norman (collectively, Respondents, or individually, Respondent Verdin; Respondent Norman). The NOVA alleged that Respondents are jointly and severally liable for violating the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or Act), as provided at 16 U.S.C. §1857(1)(A), and its implementing regulation as codified at 50 C.F.R. §622.7(a). Specifically, NOAA charged that on April 1, 2009, Respondents, while within the Exclusive Economic Zone (EEZ) of the United States, fished without a Gulf of Mexico Shrimp (Moratorium) Permit as required by 50 C.F.R. §622.4(a)(2)(xi).¹ Resultantly, the Agency's NOVA sought a civil penalty totaling \$15,000.

On September 12, 2009, Respondent Verdin transmitted to NOAA a written request for an administrative hearing to contest the allegations contained within the NOVA.² Pursuant to 15 C.F.R. §904.107(b), “[a] hearing request by one joint and several respondent is considered a request by the other joint and several respondent(s).” Therefore, Respondent Norman is deemed to have requested a hearing in the instant matter.

¹ The Agency's NOVA erroneously refers to the regulation requiring a permit to fish for shrimp in federal waters as 50 C.F.R. §622.4(xi). Clearly, this is a clerical error and the correct citation is 50 C.F.R. §622.4(a)(2)(xi).

² The date stamp on Respondent Verdin's request indicates that NOAA received the document on September 15, 2009.

On September 18, 2009, NOAA transmitted the request for hearing to the Administrative Law Judge (ALJ) Docketing Center.³ On September 24, 2009, Chief Administrative Law Judge (CALJ) Joseph N. Ingolia issued a Notice of Transfer and Assignment of Administrative Law Judge and Order Requesting Preliminary Positions on Issues and Procedures (PPIPs). NOAA and Respondent Verdin timely filed their respective PPIPs with assigned ALJ Bruce Tucker Smith.⁴ On November 3, 2009, the court held a telephonic pre-hearing conference with the parties.⁵ The court explained to Respondent Verdin the basic form and structure of a NOAA administrative case as it developed, as well as Respondent Verdin's various procedural rights in the present proceeding. Upon inquiry by the court, Respondent Verdin indicated his desire to obtain pro bono counsel. On Respondent Verdin's behalf, the court contacted the Southern University Law Center (SULC) Law Clinic and inquired whether SULC Law Clinic would be interested in providing representation to Respondent Verdin and possibly Respondent Norman. SULC Law Clinic accepted the opportunity and on April 6, 2010, Professor Donald North, Esq., Director of SULC Law Clinic, filed a Motion to Enroll as Counsel of Record.⁶ On April 12, 2010, the court convened a second telephonic pre-

³ A second date stamp on Respondent Verdin's request, as well as a date stamp on NOAA's transmission letter, indicates the ALJ Docketing Center received the documents on September 22, 2009.

⁴ Pursuant to 15 U.S.C. §1541, United States Coast Guard Administrative Law Judges may perform all adjudicatory functions required by Chapter 5 of Title 5 of the United States Code to be performed by an Administrative Law Judge for any marine resource conservation law or regulation administered by the Secretary of Commerce acting through the National Oceanic and Atmospheric Administration.

⁵ Respondent Norman did not participate in the initial telephonic pre-hearing conference.

⁶ The Motion to Enroll as Counsel indicated SULC Law Clinic would undertake representation of both Respondents; however, during the course of the second telephonic pre-hearing conference, Professor North indicated the SULC Law Clinic's representation was limited to that of Respondent Verdin. See Order Memorializing Pre-Hearing Conference issued April 12, 2010.

hearing conference with the parties and set the matter for hearing to occur at the Southern University Law Center courtroom in Baton Rouge, Louisiana, on June 28, 2010.⁷

On June 4, 2010, NOAA issued an Amended NOVA to Respondents adding a second count, which the Agency pled in the alternative to the first count. More specifically, under Count Two, NOAA charged that Respondents are jointly and severally liable for violating the Lacy Act, as provided at 16 U.S.C. §3372(a)(3)(A), by “possess[ing] fish . . . taken or possessed in violation of the laws and regulations of the State of Louisiana.” Accordingly, the Agency sought a civil penalty totaling \$11,000 for Count Two. Also on June 4, 2010, NOAA filed its First Amended PIPs reflecting the addition of a second count in the alternative.

On June 24, 2010, Respondent Verdin filed a Motion in Opposition to Amended Notice and Assessment and Count Two (Motion in Opposition). Respondent Verdin denied the allegations contained within Count Two and further alleged, *inter alia*, that “notice was not provided in the appropriate time for [Respondent] to prepare a proper response” and that the notice provided was violative of the doctrine of multiplicity. See, Motion in Opposition.

On June 28, 2010, this matter came on for hearing at the Southern University Law Center courtroom in Baton Rouge, Louisiana. Duane R. Smith, Esq. appeared on behalf of the Agency. Donald W. North, Esq.; Eugene Martin, Student Attorney; Andre Damon Welbon, Student Attorney; Marcus Roots, Student Attorney; Ashley Jyles, Student Attorney; Harry Landry, Student Attorney; Serena Wilson, Student Attorney; and Brenda Montgomery, Student Attorney; appeared on behalf Respondent Verdin. Despite having receiving all appropriate notices and documents, Respondent Norman failed to appear.

⁷ Respondent Norman did not participate in the second telephonic pre-hearing conference.

With regard to Respondent Verdin's pending Motion in Opposition to the charging of Count Two, the court announced that it would hear the proof and make a ruling, as appropriate, in the written decision. (Tr. at 11)⁸. Respondent Verdin's Motion in Opposition is discussed and denied, infra.

NOAA presented the testimony of two witnesses and offered thirteen exhibits into evidence, all of which were admitted. Respondent Verdin presented the testimony of two witnesses, including his own and offered three exhibits into evidence, two of which were admitted. The parties' respective witnesses, as well as exhibits entered into evidence, are identified in Attachment I. The hearing was concluded in one day.

II. Findings of Fact

The following Findings of Fact are based on 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.

1. On or about April 1, 2009, the F/V LA BELLE ID'EE was a registered and flagged vessel of the United States, documentation number 1128585. (Agency Ex. 1 and 2).
2. At all times relevant herein, Respondent Christie V. Norman owned the F/V LA BELLE ID'EE. (Tr. at 139; Agency Ex. 1 and 2).
3. At all times relevant herein, Respondent Rodney P. Verdin operated the F/V LA BELLE ID'EE. (Tr. at 50, 139; Agency Ex. 3 and 4).
4. Respondent Christie V. Norman is a person as that term is defined and used by the Magnuson-Stevens Act and the Lacey Act. 16 U.S.C. §§3371(e), 1802(36).

⁸ 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.

5. Respondent Rodney P. Verdin is a person as that term is defined and used by the Magnuson-Stevens Act and the Lacey Act. 16 U.S.C. §§3371(e), 1802(36).
6. At all times relevant herein, Respondent Rodney P. Verdin fished for shrimp using the F/V LA BELLE ID'EE's skimmer nets. (Tr. 142, 150, 151, 157).
7. For purposes of trawling, seining and skimming, the State of Louisiana divides the shrimping waters into two classes, inside waters and outside waters. La. R.S. §56:495.
8. On April 1, 2009, the outside waters of the State of Louisiana, as that term is defined by La. R.S. §56:495 were closed to shrimp fishing. (Tr. at 68; 122; Agency Ex. 11, 12 and 13)
9. On April 1, 2009, pursuant to La. R.S. §56:497, it was illegal to "take, have in possession, sell, or offer for sale any saltwater shrimp taken from [closed] state waters." (Agency Ex. 11).
10. On April 1, 2009, the Magnuson-Stevens Fisheries Act provided, in part, that "it is unlawful for any person . . . [e]ngage in an activity for which a valid federal permit, license, or endorsement is required under [50C.F.R.] §622.4 without such permit, license, or endorsement." 50 C.F.R. §622.7(a).
11. On April 1, 2009, the Magnuson-Stevens Fisheries Act required that persons fishing for shrimp within the Exclusive Economic Zone of the United States of the Gulf of Mexico were required to possess a federal permit. 50 C.F.R. §622.4(a)(2)(xi).
12. On April 1, 2009, Respondent Rodney P. Verdin did not possess a federal permit to fish for shrimp. (Tr. at 27, 146, 160).
13. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officers Sergeant Mire and Lieutenant Ruff were "working federal fish patrol" and patrolling waters near the Exclusive Economic Line in a Louisiana Department of Wildlife and Fisheries vessel. (Tr. at 22-23).
14. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officers Sergeant Mire and Lieutenant Ruff received a complaint that a fishing vessel was actively trawling for shrimp in closed state waters outside of Oyster Bayou. (Tr. at 23).

15. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officers Sergeant Mire and Lieutenant Ruff observed the F/V LA BELLE ID'EE traveling in a southerly direction from Oyster Bayou. Sergeant Mire estimated the F/V LA BELLE ID'EE was approximately three miles away when he first observed the vessel. (Tr. at 24).
16. On April 1, 2009, when Louisiana Department of Wildlife and Fisheries officers Sergeant Mire and Lieutenant Ruff's patrol vessel was approximately one mile away from the F/V LA BELLE ID'EE, the officers observed the fishing vessel's trawl gear in the water. (Tr. at 24).
17. On April 1, 2009, when Louisiana Department of Wildlife and Fisheries officer Sergeant Mire recorded the coordinates of the F/V LA BELLE ID'EE's location by using a GPS. (Tr. at 24-25).
18. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officers properly calibrated the GPS units aboard their Louisiana Department of Wildlife and Fisheries patrol vessel by transiting to a known location verifying the latitude and longitude of that location to the readout display on their GPS units. (Tr. at 53, 57; Agency Ex. 7 and 8).
19. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officer Sergeant Mire verified the accuracy of his GPS by transiting to the Creole Pass Light. (Tr. at 53-54, 57; Agency Ex. 7). The longitude and latitude coordinates of the Creole Pass Light are published in an official government document known as the "Light List." (Agency Ex. 8).
20. On April 1, 2009, prior to boarding the F/V LA BELLE ID'EE, Louisiana Department of Wildlife and Fisheries officer Sergeant Mire recorded the coordinates of the F/V LA BELLE ID'EE as 29°09'03"/91°08'05. (Tr. at 30, 34-36, 41; Agency Ex. 3 and 4).
21. On April 1, 2009, the coordinates of 29°09'03"/91°08'05 fell wholly within the bounds of federal waters accordingly to NOAA Chart 11356. (Tr. at 42, 43, 49; Agency Ex. 6)
22. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officer Sergeant Mire boarded the F/V LA BELLE ID'EE and observed approximately 400 lbs. of white shrimp in Respondent Rodney P. Verdin's possession. (Tr. at 29, 41; Agency Ex. 5)

23. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officer Sergeant Mire issued Louisiana Department of Wildlife and Fisheries citation no. D 507271 to Respondent Rodney P. Verdin. (Tr. at 34; Agency Ex. 3).
24. Federal waters, also referred to as the “Exclusive Economic Zone” (EEZ) are those waters from the seaward boundary of each of the coastal states territorial sea out to 200 nautical miles. 16 U.S.C. §1802(11); 50 C.F.R. §600.10.
25. The seaward boundary for the coast of the state of Louisiana is three nautical miles. 16 U.S.C. §1802(11).
26. On or about April 1, 2009, the EEZ began at the three-mile limit of Louisiana waters, seaward to the 200 nautical mile limit.
27. “Fishing,” as that term is defined by the Magnuson-Stevens Act, includes “the catching, taking, or harvesting of fish.” 16 U.S.C. §1802(16)(A).
28. Pursuant to the Lacey Act, “[i]t is unlawful for any person--to within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of Title 18)-- to possess any fish . . . taken, possessed, [or] transported . . . in violation of any law or regulation of any State.”
29. Federal waters, or the Exclusive Economic Zone (EEZ) of the Gulf of Mexico of the United States, are those waters seaward of Louisiana outside waters to 200 nautical miles.
30. Louisiana Department of Wildlife and Fisheries Officers determined Respondent Rodney Verdin’s position to be N 29 09’03” W 091 08’15.”
31. On or about April 1, 2009, N 29 09’03” W 091 08’15 were deemed to be federal waters.
32. On or about April 1, 2009, Rodney Verdin was actively engaged in shrimp fishing by means of skimmer nets . (Tr. at 24-25; 142).
33. On or about April 1, 2009, Louisiana Department of Wildlife and Fisheries officer Sergeant Ross M. Mire boarded the F/V LA BELLE ID’EE. (Tr. at 25-30; 75; 104).
34. On or about April 1, 2009, Louisiana Department of Wildlife and Fisheries officer Sergeant Ross M. Mire discovered approximately

400 pounds of white shrimp aboard the F/V LA BELLE ID'EE. (Tr. at 29).

35. On or about April 1, 2009, fishing for shrimp in the United States Exclusive Economic Zone (EEZ) in the Gulf of Mexico without a valid federal permit was a prohibited activity and violative of the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §1851, et seq. and 50 C.F.R. §622.4(a).
36. At all times relevant herein, it was and is unlawful for any person to violate any provision of the Magnuson-Stevens Fishery Conservation and Management Act, or any regulation or permit issued pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. 16 U.S.C. §1857(1)(A).
37. The owner/operator of a vessel may be held jointly and severally liable for the actions of a crewmember that violates the Magnuson-Stevens Act or its underlying regulations under the doctrine of respondeat superior. 15 C.F.R. §904.107.
38. At all relevant times herein, Christie V. Norman authorized Rodney Verdin to operate the F/V LA BELLE ID'EE and fish commercially for shrimp. (Tr. at 205, 240).
39. Christie V. Norman is liable for the actions of Rodney Verdin under the doctrine of respondeat superior. 15 C.F.R. §904.107.
40. Christie V. Norman and Rodney Verdin are jointly and severally liable for violations of the Magnuson-Stevens Act that occurred on or about April 1, 2009.
41. The Lacey Act provides, in relevant part, that “[i]t is unlawful for any person ... within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of Title 18) to possess any fish or wildlife taken, possessed, transported, or sold ... in violation of any law or regulation of any State.” 16 U.S.C. § 3372(a)(3)(A).
42. On April 1, 2009, the coordinates of 29°09'03"/91°08'05 fell wholly within the bounds of the “special and maritime jurisdiction of the United States” according to NOAA Chart 11356. (Tr. at 42, 43, 49; Agency Ex. 6)
43. The Lacey Act defines “fish” to include crustaceans. 16 U.S.C. §3371(a)(1).

44. Shrimp are marine decapod crustaceans. Webster's New International Dictionary, Unabridged (1964).
45. The Lacey Act defines "taken" as referring to the fish that are "captured, killed or collected;" whereas, "taking" refers to the means by which fish are "taken." 16 U.S.C. §3371(j).
46. "Possession," as interpreted by the Lacey Act, is defined as "the detention and control . . . of anything which may be the subject of property."
47. On April 1, 2009, Respondent Rodney P. Verdin utilized skimmer nets to fish for shrimp. (Tr. at 116-117, 140).
48. On April 1, 2009, the F/V LA BELLE ID'EE was equipped with a chart plotter and radar.
49. On April 1, 2009, Respondent Rodney P. Verdin turned the chart plotter off after daybreak. (Tr. at 151).
50. The Lacey Act imposes a "due care" standard of liability. 16 U.S.C. §3373(a)(1).
51. The Lacey Act imputes the knowledge and actions of the agent to the vessel owner.
52. Respondent Christie V. Norman is liable for the acts of Respondent Rodney P. Verdin.
53. Respondent Christie V. Norman and Respondent Rodney P. Verdin are jointly and severally liable for violations of the Lacey Act.

III. 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); see also Dept. of Labor v. Greenwich Collieries, 512 U.S. 267 (1994). Preponderance of the evidence means the Agency must show it is more likely than not a respondent committed the charged violation. See 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, 764-765 (1984). The burden of producing evidence to rebut or discredit the Agency’s evidence will only shift to Respondent after the Agency proves the allegations contained in the NOVA by a preponderance of reliable, probative, substantial, and credible evidence. See Steadman v. S.E.C., 450 U.S. 91, 101 (1981).

B. Count One: Regulated Activities under the Magnuson-Stevens Act

Count One of the Agency’s NOVA issued to Respondents alleges that “on or about April 1, 2009, within the exclusive economic zone of the United States . . . Respondent Christie V. Norman, owner of the F/V LA BELLE ID’EE . . . or an individual under his/her control, and Respondent Rodney P. Verdin, operator of the F/V LA BELLE ID’EE . . . or an individual under his control, jointly and severally, did fish without a Gulf of Mexico Shrimp (Moratorium) Permit as required by [50 CFR 622.4(a)(2)(xi),⁹ in violation of the Magnuson-Stevens . . . Act, as amended, at 16 U.S.C. 1857(1)(A) and 50 CFR 622.7(a).”

1. Review of Statutory & Regulatory Citations within Count One

As cited in Count One, supra, 16 U.S.C. §1857(1)(A) is a general prohibition against violating any statutes or regulations under the auspices of the Magnuson-Stevens Act. In addition to this general prohibition, inter alia, 50 C.F.R. §622.7(a) provides that “it is unlawful for any person . . . [e]ngage in an activity for which a valid federal permit, license, or endorsement is required under §622.4 without such permit, license, or endorsement.” Id. Fishing for shrimp in the Exclusive Economic Zone of the United States in the Gulf of Mexico (EEZ) is an activity that requires federal permit. 50 C.F.R. §622.4(a)(2)(xi).

⁹ See fn 1, supra.

Therefore, for NOAA to prevail on Count One in the instant matter, it was obliged to establish by a preponderance of the evidence that on April 1, 2009, Respondent Verdin fished for shrimp in the EEZ without a Gulf of Mexico Shrimp (Moratorium) Permit in violation of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or the Act.).

2. The Magnuson-Stevens Act—in brief: Purpose, Persons & Proclamations

The Magnuson-Stevens Act was enacted to protect, conserve and manage the fishery resources of the United States and its adjacent waters. 16 U.S.C. §1801(b)(1)(A). In order to achieve this purpose, Congress empowered the Secretary of the Department of Commerce to assess civil penalties and/or impose permit sanctions against **any person** who violates the Magnuson-Stevens Act. (emphasis added). See 16 U.S.C. §1858; see also In the Matter of Corsair Corporation, F/V CORSAIR, 1998 WL 1277924 (NOAA 1998).

“Person,” as that term is defined by the Act, includes any individual, corporation, partnership, association or other entity. 16 U.S.C. §1802(36).

The “Exclusive Economic Zone” (EEZ) is the zone established by Presidential Proclamation 5030, 3 C.F.R. Part 22, dated March 10, 1983, and is that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal states to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured. 16 U.S.C. §1802(11); 50 C.F.R. §600.10. The seaward boundary for the coast of the state of Louisiana is three nautical miles. 16 U.S.C. §1802(11); United States Department of Commerce National Oceanic

and Atmospheric Administration, Ocean and Coastal Resource Management (2006), at <http://coastalmanagement.noaa.gov/mystate/docs/StateCZBoundaries.pdf>. Therefore, the EEZ, or federal waters, as applicable to the instant matter, begins three-nautical miles seaward of Louisiana territorial waters to the 200 nautical mile limit.

3. Undisputed Issues: Persons, Fishing & Permits

a) Persons

There is no dispute herein regarding whether Respondents Verdin and Norman are “persons” as the Magnuson-Stevens Act defines that term. 16 U.S.C. §1802(36). Respondents Verdin and Norman are individuals and thus subject to civil penalties and/or permit sanctions that are authorized by the Magnuson-Stevens Act. 16 U.S.C. §§1802(36), 1858.

b) Fishing

Moreover, there is no dispute herein regarding whether Respondent Verdin was “fishing” as the Magnuson-Stevens Act defines that term. “Fishing” is defined as:

- (A) the catching, taking, or harvesting of fish;
- (B) the attempted catching, taking, or harvesting of fish;
- (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

16 U.S.C. §1802(16).

A review of NOAA jurisprudence reveals that the term “fishing” is consistently interpreted to include virtually any activity conducted by a vessel while its gear is in the water.” In the Matter of: Martuna, S.A. de C.V. (F/V MARIA LUISA), 2010 WL

1676737 (NOAA 2010); In the Matter of: Pesca Azteca, S.A. de C.V. (F/V AZTECA 1), 2009 WL 3721029 (NOAA 2009); In re Pierce, 6 O.R.W. 527 (NOAA 1991) (finding that because the vessel had gear in the water and appeared to be conducting fishing activity there was sufficient evidence to be deemed “fishing” as defined under the Magnuson Act); In re Marques, 6 O.R.W. 1 (NOAA 1990) (“[t]he presence of such cables in the water such as the officers observed when they approached the vessel coupled with the behavior observed by radar are sufficient to establish that a violation has occurred”); In re Murphy, 4 O.R.W. 794 (NOAA 1986) (“[f]or all intents and purposes, ‘gear in the water’ constitutes ‘fishing’”); In re Savage, 3 O.R.W. 22 (NOAA 1983) (“[t]he presence of fishing gear in the water while the vessel was under way... would be sufficient under the definition of fishing... to conclude that there had been a violation”).

Sergeant Mire, a Louisiana Department of Wildlife and Fisheries (LDWF) officer, testified that on April 1, 2009, he and Lieutenant Ruff, a fellow LDFW officer, received a complaint that “someone was skimming [for shrimp] in state waters right outside of Oyster Bayou.” (Tr. at 23). Accordingly, the LDFW officers transited to the area. Upon reaching the Oyster Bayou area, Sergeant Mire testified that he observed the F/V LA BELLE ID’EE heading in a southerly direction approximately “three miles away south of Oyster Bayou.” The LDWF officers thereupon proceeded toward the F/V LA BELLE ID’EE; Sergeant Mire further testified that when he and Lieutenant Ruff were “about a mile down . . . we could see the skimmer nets in the water.” (Tr. at 24). Agency Exhibit 5, in particular frames 1 and 3, captured photographic evidence that the F/V LA BELLE ID’EE’s nets were in the water when LDWF officers were approximately fifty feet from the stern of the F/V LA BELLE ID’EE. (Tr. at 40). Respondent Verdin’s testimony

corresponds, somewhat, to Sergeant Mire's testimony in that Respondent Verdin testified "[w]hen I first saw him, . . . I was skimming . . . heading toward the southeast . . . and then I was turning, I got straight towards the south." (Tr. at 143-144). However, Respondent Verdin's testimony is somewhat divergent from that of Sergeant Mire's concerning picking up the vessel's nets. Respondent Verdin testified that "they passed on the right-hand side of me . . . [a]nd he made a sign for me to pick up, and I went and picked up all my nets." (Tr. at 144). As discussed, infra, Respondent Verdin's testimony and recitation of the events of April 1, 2009, was largely disingenuous. However, inasmuch as Respondent Verdin testified he was skimming at the time he was approached by LDWF officers and his admission that he was fishing for shrimp, the court accepts that portion of Respondent Verdin's testimony as true.

As discussed supra, when a vessel is found with its gear in the water, then it deemed to be "fishing" as defined under the Magnuson-Stevens Act. There is no dispute herein that Respondent Verdin was fishing at the time LDWF officers initially observed and subsequently approached the F/V LA BELLE ID'EE.

c) Permit

There is no dispute herein that on April 1, 2009, Respondent Verdin did not possess a federal permit to fish for shrimp. Respondent Verdin's testimony established that he did not possess a federal permit to fish for shrimp.¹⁰ According to Sergeant Mire, Respondent failed to produce a federal permit upon request. (Tr. at 27). More specifically, Respondent Verdin informed Sergeant Mire that "he didn't know he needed one." (Tr. at 27). Similarly, Respondent Verdin testified repeatedly that he did not have a

¹⁰ Respondent Verdin repeatedly testified that he did not need a federal permit as he was fishing for shrimp in state waters. (Tr. at 146, 160).

federal permit to fish for shrimp. (Tr. at 146, 160). As discussed supra, fishing for shrimp is an activity that requires a federal permit if such activity is done within the EEZ. 50 C.F.R. §622.4(a)(2)(xi). Accordingly, there is no dispute herein that on April 1, 2009, Respondent Verdin did not possess a federal permit to fish for shrimp in accordance with 50 C.F.R. §622.4(a)(2)(xi). Although the foregoing issues are undisputed, the resolution of Count One hinges upon establishing where Respondent fished for shrimp on April 1, 2009.

4. Disputed Issue: Lex loci

During the course of his testimony, Respondent Verdin freely admitted that on April 1, 2009, he fished for shrimp in closed state waters. (Tr. at 142, 150, 151, 157). Moreover, Respondent Verdin strenuously maintained that he was fishing in state waters at the time Louisiana Wildlife and Fisheries Officers boarded the F/V LA BELLE ID'EE. (Tr. at 160). Respondent Verdin's testimony made frequent reference to his alleged propensity to fish for shrimp in state waters. Testimony concerning Respondent Verdin's usual shrimping grounds is not relevant herein; the court's interest is strictly limited to the location of the F/V LA BELLE ID'EE on April 1, 2009, at the time LDWF officers observed then later boarded Respondents' vessel.

According to Respondent Verdin, on April 1, 2009, the F/V LA BELLE ID'EE was equipped with radar and a plotter; however, at the time Sergeant Mire boarded his vessel "I didn't have the plotter on, but I had turned it off after daylight. And then I had worked with the radar in the daylight." (Tr. at 149, 151). Respondent Verdin testified that according to the radar aboard the F/V LA BELLE ID'EE, he was "probably around two-and-a-half miles" away from the shoreline when Sergeant Mire boarded his vessel.

(Tr. at 148). Respondent Verdin's testimony regarding his location was undermined by both his failure to utilize the plotter aboard the vessel and his less than competent understanding of basic radar concepts. (Tr. at 152-155).

Conversely, testimony elicited from Sergeant Mire described with particularity how he determined the location where the F/V LA BELLE ID'EE fished on April 1, 2009, to be federal waters.

A. When we approached the boat, we got behind it and I marked the position on my GPS. I walked up to the front of the boat.

Q. How far away were you from the vessel when you marked your position on your GPS?

A. I usually get right under his nets. His nets were already picked up by the time I actually got to the boat, but I usually get right on top of his bag. It's just a way I want to get an accurate position on top of the boat.

(Tr. at 24-25).

Sergeant Mire further testified that he recorded the GPS coordinates of the F/V LA BELLE ID'EE "right when I pulled up behind him." (Tr. at 30). After boarding the vessel and discovering Respondent Verdin lacked the requisite federal permit, Sergeant Mire testified he issued a citation to Respondent Verdin. The citation issued to Respondent Verdin included the recorded GPS coordinates as "29°09'03"/91°08'05". (Tr. at 35, Agency Ex. 3).

Sergeant Mire next testified as to the accuracy of the GPS unit aboard his patrol vessel, as well as, his training in the use and operation of the GPS unit. Sergeant Mire received instruction in the use, operation and interpretation of several GPS models during his training at the Federal Law Enforcement Training Center (FLETC) in Brunswick,

Georgia. (Tr. at 54-55). Sergeant Mire advised the court that he is an instructor with the LDWF Academy and instructs on the use of Garmin GPS units. (Tr. at 55).

Sergeant Mire plotted and marked the position of the F/V LA BELLE ID'EE onto his chart, NOAA Chart 11356, using the recorded coordinates of 29°09'03"/91°08'05. (Tr. at 42-44). A copy of Sergeant Mire's chart denoting the position of the F/V LA BELLE ID'EE on April 1, 2009, as well as, marks indicating the three-mile nautical line was entered into evidence as Agency Exhibit 6. The position indicated by Sergeant Mire clearly indicates that on April 1, 2009, the F/V LA BELLE ID'EE was in federal waters at the time the GPS coordinates were recorded. (Tr. at 49).

Sergeant Mire testified that on April 1, 2009, his LDWF patrol vessel was equipped with two Garmin 478 GPS units. Both GPS units turn on automatically when the patrol vessel is started. (Tr. at 55). Proper operation of the Garmin 478 requires four satellites for a three-dimensional fix and three satellites are required for a two-dimensional fix. (Tr. at 56). Sergeant Mire testified that the GPS units aboard his LDWF patrol vessel were set-up to sound an alarm in the event the number of satellites falls below four. (Tr. at 56).

In order to confirm the accuracy of the GPS units aboard his LDWF patrol vessel, Sergeant Mire transits to a known location and verifies the latitude and longitude of that location to the readout display on his GPS units. (Tr. at 53, 57; Agency Ex. 7 and 8). On April 1, 2009, Sergeant Mire verified the accuracy of his GPS by transiting to the Creole Pass Light. (Agency Ex. 7). The longitude and latitude coordinates of the Creole Pass Light are published in an official government document known as the "Light List." (Agency Ex. 8).

As recorded by Sergeant Mire, the coordinates denoting the F/V LA BELLE ID'EE's location at the time LDWF officers approached the vessel were "north 29 degrees, 09.13 minutes. That is written in degrees, minutes, and decimals." (Tr. at 86; Agency Ex. 3 and 4). Those coordinates fall squarely within federal waters.

Respondent Verdin's bare allegation that he was in state waters, without any supporting evidence, fails to rebut the proof of his location as established by NOAA. Therefore, based upon the foregoing, the court finds that NOAA established by a preponderance of the evidence that Respondent Verdin was within EEZ of the United States in the Gulf of Mexico.

5. Application of Strict & Vicarious Liability under the Magnuson-Stevens Act

The Magnuson-Stevens Act, and the regulations promulgated thereunder, do not set forth a scienter requirement. Northern Wind, Inc. v. Daley, 200 F.3d 13, 19 (1st Cir. 1999) (citing Tart v. Massachusetts, 949 F.2d 490, 502 (1st Cir. 1991) for the proposition that "scienter is not required to impose civil penalties for regulatory violations when the regulation is silent as to state of mind"). Accordingly, any violations of the Act are strict liability offenses. Id. (internal citations omitted).

Joint and several liability, as it applies in cases arising under the Magnuson-Stevens Act, is set forth at 15 C.F.R. §904.107 and provides that:

(a) A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each joint and several respondent is liable for the entire penalty but, in total, no more than the amount finally assessed may be collected from the respondents.

* * *

(c) A final administrative decision by the Judge or the Administrator after a hearing requested by one joint and several respondent is binding on all

parties including all other joint and several respondent(s), whether or not they entered an appearance unless they have otherwise resolved the matter through settlement with the Agency.

Id. (emphasis added).

It is not necessary that a vessel owner exercise detailed control over the operations of their vessel in order to be held liable for the illegal activities of its master and crew. It is sufficient that the owner of the vessel, and the major beneficiary of its operations, authorized the fishing expedition that was illegally conducted. Since it acquires a share of the vessel's production, so must it bear a major responsibility, along with the captain, for the latter's unlawful acts. To hold otherwise would be to allow vessel owners to escape responsibility for the transgressions of the captains that they hire, authorize to operate their boats, and have the authority to fire. Such a holding would substantially inhibit the effective enforcement of the Magnuson Act and the applicable regulations. In the Matters of James Chan Song Kim, Askar Ehmes, Ulheelani Corporation, 2003 WL 22000639 (NOAA 2003); In the Matter of Atlantic Spray Corporation, 1996 WL 1352603 (NOAA 1996); In the Matter of Corsair Corporation, F/V CORSAIR, 1998 WL 1277924 (NOAA 1998); In the Matter of Atlantic Spray Corporation, 1997 WL 1402870 (NOAA 1997).

Joint and several liability is imposed on the vessel's owner if the violation occurs within the scope of the crewmembers duties. See In the Matter of Corsair Corporation, F/V CORSAIR, 1998 WL 1277924 (NOAA 1998); see also In the Matter of Blue Horizon, Inc., 6 O.R.W. 467 (NOAA 1991) (holding that owners of a fishing vessel are jointly and severally liable for the acts of an employee if the acts are directly related to duties that the employees have broad authority to perform).

The doctrine of respondeat superior also applies to individuals who claim to be independent contractors. In the Matter of Kenneth Shulterbrandt, William Lewis, 1993 WL 495728 (NOAA 1993); See also, In the Matter of Charles P. Peterson, James D. Weber, 1991 WL 288720 (NOAA 1991). The rationale behind applying the doctrine of respondeat superior to independent contractors is that the contract may be “characterized as a joint venture if there is the intention of the parties to carry out a single business undertaking, a contribution by each of the parties to the venture, and inferred right of control and a right to participate in the profits.” Id. “Generally, the test used to determine whether the doctrine applies is whether the vessel owner had, at the time of the violation, the right to control the actions of the wrongdoer.” Id.

Testimony elicited at the hearing of this matter revealed that Respondent Norman “owns the boat and [Respondent Verdin] run[s] the boat.” Respondent Verdin testified the arrangement to be akin to “a lease purchase” agreement. (Tr. at 139). Thus, Respondent Norman hired Respondent Verdin for the express purpose of earning a profit for either or both parties, clearly, “in furtherance of its ends.” See In the Matters of James Chan Song Kim, Askar Ehmes, Ulheelani Corporation, 2003 WL 22000639 (NOAA 2003). Consequently, Respondent Verdin’ actions are imputed to the vessel’s owner Respondent Norman, under 15 C.F.R. §904.107 and the doctrine of respondeat superior, as that doctrine is described in NOAA jurisprudence discussed supra. Therefore, Respondent Norman is jointly and severally liable for the actions of Respondent Verdin.

6. NOAA Established Count One by a Preponderance of the Evidence

Based upon the forgoing, the court hereby finds that the Agency proved by a preponderance of reliable, probative, substantial, and credible evidence that “on or about

April 1, 2009, within the exclusive economic zone of the United States . . . Respondent Christie V. Norman, owner of the F/V LA BELLE ID'EE . . . or an individual under his/her control, and Respondent Rodney P. Verdin, operator of the F/V LA BELLE ID'EE . . . or an individual under his control, jointly and severally, did fish without a Gulf of Mexico Shrimp (Moratorium) Permit as required by [50 CFR 622.4(a)(2)(xi)]¹¹, in violation of the Magnuson-Stevens Fishery Conservation and Management Act, as amended, at 16 U.S.C. 1857(1)(A) and 50 CFR 622.7(a).” Respondent Verdin failed to produce any evidence to rebut or discredit the Agency’s evidence. Therefore, the court finds that Count One is **PROVED**.

C. Count Two: Prohibited Activities under the Lacey Act

As discussed supra, the Agency amended its NOVA and PPIPs to plead a second count in the alternative. Count Two alleges that “[o]n or about April 1, 2009, Respondent Christie V. Norman, owner of the F/V LA BELLE ID'EE . . . or an individual under his/her control, and Respondent Rodney P. Verdin, operator of the F/V LA BELLE ID'EE . . . or an individual under his control, jointly and severally, did, within the special maritime and territorial jurisdiction of the United States, possess fish or wildlife taken or possessed in violation of the laws and regulations of the State of Louisiana, in violation of 16 U.S.C. 3372(a)(3)(A).” (Amended NOVA; First Amended PPIP).

For NOAA to prevail on Count Two in the instant matter, it was obliged to establish by a preponderance of the evidence that on April 1, 2009, within the special maritime and territorial jurisdiction of the United States, Respondent Verdin possessed

¹¹ See fn 1, supra.

fish or wildlife taken or possessed in violation of the laws and regulations of the State of Louisiana.

1. The Lacey Act—in brief: Purpose & Protections

Originally enacted in 1900 and amended several times since, “[t]he purpose of the Lacey Act is to protect those species of fish and wildlife whose continued existence is presently threatened by gradually drying up the international market for endangered species, thus reducing the poaching of any such species in the country where it is found.” U.S. v. Bernal, 90 F.3d 465, 467 (11th Cir. 1996) (internal quotation marks omitted) citing S.Rep. No. 91-526, 91st Cong., 1st Sess., reprinted in 1969 U.S.C.C.A.N. 1413, 1415-16. The Lacey Act sets forth numerous prohibited acts at 16 U.S.C. §3372; violators of the Act are subject to civil and criminal penalties, in addition to permit sanctions. 16 U.S.C. §3373.

2. 16 U.S.C. §3372: Prohibited Acts by Persons

NOAA has charged Respondents with having violated 16 U.S.C. §3372(a)(3)(A), which provides that, “other than marking offenses[,] [i]t is unlawful for any person--to within the special maritime and territorial jurisdiction of the United States (as defined in section 7 of Title 18)-- to possess any fish . . . taken, possessed, [or] transported . . . in violation of any law or regulation of any State.” (Id.). The verbiage of the statute and its application to the facts herein, is discussed infra.

Like the Magnuson-Stevens Act, the Lacey Act broadly defines the term “person” to “include[] any individual, partnership, association, corporation, trust . . . or any other entity subject to the jurisdiction of the United States.” 16 U.S.C. §3371(e). It is undisputed herein that Respondents are “persons” as the Lacey Act defines that term.

3. Special & Maritime Jurisdiction of the United States

As set forth supra, the Lacey Act refers to “the special maritime and territorial jurisdiction of the United States.” As defined at 18 U.S.C. §7, the term “special maritime and territorial jurisdiction of the United States,” provides, in part, that:

The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, **and** any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

18 U.S.C. §7(a).¹²

On April 1, 2009, Respondent Norman, a citizen of the United States, owned the U.S. flagged F/V LA BELLE ID’EE.¹³ As found proved supra, Respondent Verdin’s position as recorded on Agency Exhibits 3 and 4, was within the EEZ of the Gulf of Mexico of the United States. Accordingly, the violation at issue occurred within the special and maritime jurisdiction of the United States as required by the Lacey Act.

4. Shrimp are “Fish” under the Lacey Act

The Lacey Act defines “fish or wildlife” as “any wild animal, whether alive or dead, including without limitation any wild mammal, bird, reptile, amphibian, fish,

¹² “Although section 7 appears in Title 18 which concerns crimes and criminal procedure, its inclusion in the Lacey Act is applicable to the civil penalty provision as well as the criminal provision. Nothing in the Lacey Act or the legislative history indicates otherwise. Congress apparently intended that the reference to 18 U.S.C. §7 was for definitional purposes only, in order to describe what is meant by special maritime and territorial jurisdiction of the United States. Although Congress does not specifically explain the purpose of this provision, presumably the inclusion was intended to extend coverage of the Lacey Act to jurisdictional areas not defined in other sections.” In the Matter of Brownsville Shrimp Cases, Respondents 3 O.R.W. 828 (citing H.R. Rep. No. 276, 97th Cong., 1st Sess. 13 (Oct. 19, 1981) at 17).

¹³ Once it is established that a vessel is a registered vessel of the United States, the special maritime jurisdiction of the United States applies. United States v. Ross, 439 F.2d 1355, 1358 (9th Cir. 1971), cert. denied, 404 U.S. 1015 (1972).

mollusk, crustacean, arthropod, coelenterate, or other invertebrate, whether or not bred, hatched, or born in captivity, and includes any part, product, egg, or offspring thereof.”

16 U.S.C. §3371(a).

Shrimp is commonly defined as “any of numerous mostly small and marine decapod **crustaceans** (suborders Dendrobranchiata and Pleocyemata) . . . and including some (especially family Penaeidae) that are commercially important as food; also: a small **crustacean** (as an amphipod or a branchiopod).” Webster’s Third New International Dictionary, Unabridged (1964) (emphasis added). A review of jurisprudence on the subject of shrimp and its taxonomy is in accordance with the foregoing designation. Deepsouth Packing Co. v. Laitram Corp., 406 U.S. 518 (1972) Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1, 15 (1928); compare In The Matter Of: Darrin M. Coulon, 2004 WL 882794 (NOAA 2004) (citing 50 C.F.R. §222.102 wherein “[s]hrimp is defined as any species of marine shrimp (Order Crustacea).”

5. “Taking, Possessing or Transported” Defined

The Lacey Act defines “taken” as “captured, killed or collected;” whereas “taking” refers to the means by which the fish or wildlife are “taken.” 16 U.S.C. §3371(j). Although “possession,” as that term is used by the Lacey Act, “possession” is typically defined as “the detention and control, or the manual or ideal custody, of anything which may be the subject of property, for one’s use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one’s place and name. Act or state of possessing. That condition of facts under which one can exercise his power over a corporeal thing as his pleasure to the exclusion

of all other persons.” In the Matter of: Cape San, Inc., 4 O.R.W. 1033, fn 8 (NOAA 1987) (quoting Black’s Law Dictionary at 1047 (5th ed. 1979)).

Respondent Verdin’s use of trawl gear, i.e., nets and bags, as discussed supra, evinces the means of taking. Careful parsing of 16 U.S.C. §3372(a)(3)(A) reveals that a person must actually possess, in the special and maritime jurisdiction of the United States, the fish or wildlife that was taken, possessed, transported or sold, to violate 16 U.S.C. § 3372(a)(3)(A). Therefore, there must be some evidence of goods (in this case, shrimp) over which respondent is exercising dominion or control. In the instant matter, on April 1, 2009, at the time the F/V LA BELLE ID’EE was boarded by LDWF officers, Respondent Verdin was in possession of approximately 400 lbs. of white shrimp. Respondent Verdin does not dispute he was in possession of white shrimp. Accordingly, there is no dispute herein that Respondent Verdin “possessed” “fish” that was “taken” as those terms are defined by the Lacey Act.

6. Louisiana State Laws Violated

The final element of 16 U.S.C. § 3372(a)(3)(A) requires that the fish possessed violates “any law or regulation of any State.” 16 U.S.C. §3372(a)(3)(A).¹⁴ Pursuant to Louisiana Revised Statute §56:497(A)(1), “[n]o person shall take, have in possession, sell, or offer for sale any saltwater shrimp taken from state waters except in open seasons.”¹⁵ Given Louisiana’s numerous lakes, bayous, marshes and swamps, the Louisiana state waters are divided into two classes: inside waters and outside waters. La.

¹⁴ “Generally, the phrase ‘any law or regulation’ has been interpreted to mean laws and regulations designed and intended, first and foremost, to protect wildlife. U.S. v. Romano, 929 F.Supp. 502, 506 (D. Mass. 1996).

¹⁵ The State of Louisiana Department of Wildlife and Fisheries Commission is vested with the authority to fix “[t]he open seasons for all or part of the state waters.” La. R.S. §56:497(A)(2). A review of the legislative history appended to La. R.S. §56:497 establishes that it is intended as a conservation measure.

R.S. §56:495(A). Inside waters refer to bayous, swamps, marshlands and lakes. Outside waters refer to the shoreline out to three-nautical miles. (Tr. at 63-65). On April 1, 2009, both state inside waters and outside waters were closed to shrimping. (Tr. at 29; Agency Ex. 9 and 10). Despite his knowledge that state waters were closed to shrimp fishing, Respondent Verdin repeatedly testified that at the time the F/V LA BELLE ID'EE was boarded, the shrimp already aboard were "caught . . . from Whiskey Pass to Raccoon Point. . . I caught [sic] them inside the state closed waters." (Tr. at 150, 151; 157). Therefore, there is no dispute herein that Respondent Verdin violated Louisiana law by fishing for shrimp in closed waters.

7. Liability: Due Care Requirement

"In cases involving civil liability, the Lacey Act imposes a standard of due care. In the Matter of: Louis Martinez, Lista Enterprises Seafood, Inc., 6 O.R.W. 607 (NOAA 1991); In the Matter of the Shore Group, 6 O.R.W. 199, 201 (NOAA 1990). The Brownsville Shrimp Cases, 3 O.R.W. 828 (NOAA 1984), the seminal decision on Lacey Act violations, explained that "[d]ue care simply 'requires that a person facing a particular set of circumstances undertake certain steps which a reasonable person would take to do his best to insure that he is not violating the law.'" In the Matter of: Roger E. Brooks Alton R. Pierce, 6 O.R.W. 535 (NOAA 1991) (quoting Brownsville Shrimp Cases, 3 O.R.W. at 840). Therefore, whether or not due care has been exercised depends upon the unique facts and circumstances of each case. Brownsville Shrimp Cases, 3 O.R.W. 828, 839-40 (NOAA 1984).

Individuals with special knowledge, such as those in a commercial context, are held to a higher standard. In the Matter of: Rascals, Inc., 6 O.R.W. 714 (NOAA 1992); In the Matter of: Albert, 5 O.R.W. 374 (NOAA 1988). “Under the Lacey Act standard of ‘due care’, the masters of commercial vessels are charged with being aware of the location of their vessels. It is the fishermen’s responsibility to know where they are, to have adequate navigational equipment to ascertain the location of closed areas and boundaries, and to avoid these areas if they are going to fish.” Id. Moreover, “[a]s long as an individual should have known in the exercise of due care of the existence of the underlying law, then he is subject to a civil penalty.” In the Matter of: Don M. Rynn Leonard Shrimp Producers, Inc., 6 O.R.W. 516 (NOAA 1991) citing Brownsville Shrimp Cases, 3 O.R.W. 828, 840 (NOAA 1984).

Respondent Verdin has worked as a commercial shrimper for approximately 12 years. (Tr. at 140). Thus, Respondent Verdin had the requisite special knowledge and experience to be held to the higher commercial standard of due care. Matters of LaFrance, 7 O.R.W. 238, 239-40 (NOAA 1993). In order to satisfy the “due care” requirement, the onus was upon Respondent Verdin to make a “reasonable effort” to determine the law of the waters where he fished. See Albert, 5 O.R.W. at 382. Based upon Respondent Verdin’s testimony as discussed supra, it is apparent that on April 1, 2009, he was well aware of the laws applicable to both federal waters and state water but simply did not care.

The defense of the innocent owner is not available in actions under the Lacey Act. In the Matter of: The Shore Group, 6 O.R.W. 199 (NOAA 1991) (citing United States v. 2,507 Live Canary Winged Parakeets (Brotogeris Versicolorus), 689 F.Supp. 1106,

(S.D.Fla. 1988)). Therefore, Respondent Norman, as the owner of the commercial fishing vessel herein, should also be held to the commercial standard of due care.

8. NOAA Established Count Two by a Preponderance of the Evidence

Based upon the forgoing, the court hereby finds that the Agency proved by a preponderance of reliable, probative, substantial, and credible evidence that “[o]n or about April 1, 2009, Respondent Christie V. Norman, owner of the F/V LA BELLE ID’EE . . . or an individual under his/her control, and Respondent Rodney P. Verdin, operator of the F/V LA BELLE ID’EE . . . or an individual under his control, jointly and severally, did, within the special maritime and territorial jurisdiction of the United States, possess fish or wildlife taken or possessed in violation of the laws and regulations of the State of Louisiana, in violation of 16 U.S.C. 3372(a)(3)(A).” Amended NOVA.

Respondent Verdin failed to produce any evidence to rebut or discredit the Agency’s evidence. Therefore, the court finds that Count TWO is **PROVED**.

IV. Miscellany

A. Respondent Verdin’s Motion in Opposition to Amended Notice and Assessment and Count Two

On June 4, 2010, the Agency issued an Amended Notice and Assessment (Amended NOVA) charging Count Two in the alternative to Count One. On June 24, 2010, Respondent Verdin filed a Motion in Opposition to the Amended NOVA averring “[n]otice was not provided in the appropriate time for the defendant to prepare a proper response” and that “[n]otice as provided violates the provisions of multiplicity.”

Pursuant to 15 C.F.R. §904.207(a), “[a] party may amend its pleading as a matter of course at least 20 days prior to a hearing.” The hearing of the instant matter was held on June 28, 2010. The Agency’s filing of the Amended NOVA on June 4, 2010, satisfies

dictates of 15 C.F.R. §904.207(a). Respondent Verdin had sufficient time to file his response to the Amended NOVA. 15 C.F.R. §904.207(b) (providing that “[a] party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period is longer, unless the Judge otherwise orders”). Accordingly, Respondent Verdin’s argument that he was not provided sufficient time to respond to the Amended NOVA must fail.

Concerning the issue of multiplicity, that doctrine “is based upon the double jeopardy clause of the Fifth Amendment, which assures that the court does not exceed its legislative authorization by imposing multiple punishments for the same offense.” U.S. v. Roy, 408 F.3d 484, 492 (8th Cir. 2005); United States v. Harris, 79 F.3d 223, 231 (2d Cir.1996) (internal quotation marks omitted). “The constitutional immunity from double jeopardy is a personal right which, if not affirmatively pleaded by the defendant at the time of trial, will be regarded as waived.” United States v. Perez, 565 F.2d 1227, 1232 (2d Cir.1977); see also United States v. Papadakis, 802 F.2d 618, 621 (2d Cir.1986). Given that this doctrine is predicated on criminal charges and the Agency has not sought criminal sanctions, the doctrine of multiplicity is simply inapplicable herein and such argument must fail.

Respondent Verdin’s Motion in Opposition further argues that “[d]emand has been made that the defendant pay two fines that result from a single transaction or occurrence. . . . [R]espondent is being charged under a federal violation and then relying on the same facts to prove a state violation resulting from the same set of circumstances.” Respondent Verdin has misconstrued the charges as pled by NOAA. NOAA, pursuant to

its Amended NOVA and First Amended PPIPs, has pled the two charges in the alternative; meaning, the Agency is not seeking civil penalties under both counts but only under one or the other. Therefore, the argument that NOAA seeks payment of two fines by Respondent Verdin must fail. Moreover, Respondent Verdin misapprehends the two charges. Both Count One, violation of the Magnuson-Stevens Act, and Count Two, violation of the Lacey Act, are federal violations. Violation of a state law is part and parcel of establishing a Lacey Act violation. Inasmuch as Respondent Verdin testified he knowingly violated Louisiana state law by shrimping closed waters, this argument also fails.

Concerning Respondent Verdin's fourth point of contention, "it serves no purpose to violate the statute as written." Respondent Verdin then cites 16 U.S.C. §1377. This argument must also fail for its inherent vagueness. Moreover, the court cannot conceive how Respondent Verdin believes 16 U.S.C. §1377 to further his argument against the Amended NOVA.

Accordingly, Respondent Verdin's Motion in Opposition is **DENIED**.

B. Respondent Verdin's Lack of Candor

The court would note that Respondent Verdin's testimony was rife with intentional inaccuracies regarding his location when the F/V LA BELLE ID'EE was boarded. At the hearing of this matter, as on April 1, 2009, it was abundantly clear to the court that Respondent Verdin was attempting to "play the line" and muddy the waters on his location. Respondent Verdin's testimony demonstrates that he fails to appreciate the gravity of his actions or he simply does not care, or possibly both.

C. Pro Bono Representation by Southern University Law Center's Legal Clinic

“Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.” ABA Model Rule 6.1: Voluntary Pro Bono Publico Service Comment 1. The laws concerning instant matter are decidedly difficult; however, Southern University Law Center's Legal Clinic student attorneys' work was herein exceptional. These student attorneys, along with clinical instructor Professor Donald North, Esq., honored the legal profession by donating their time and energy to Respondent Verdin. The court is most appreciative of the hard work of the student attorneys of the Southern University Law Center's Legal Clinic.

V. Ultimate Findings of Fact

1. On or about April 1, 2009, the F/V LA BELLE ID'EE was a registered and flagged vessel of the United States, documentation number 1128585. (Agency Ex. 1 and 2).
2. At all times relevant herein, Respondent Christie V. Norman owned the F/V LA BELLE ID'EE. (Tr. at 139; Agency Ex. 1 and 2).
3. At all times relevant herein, Respondent Rodney P. Verdin operated the F/V LA BELLE ID'EE. (Tr. at 50, 139; Agency Ex. 3 and 4).
4. Respondent Christie V. Norman is a person as that term is defined and used by the Magnuson-Stevens Act and the Lacey Act. 16 U.S.C. §§3371(e), 1802(36).
5. Respondent Rodney P. Verdin is a person as that term is defined and used by the Magnuson-Stevens Act and the Lacey Act. 16 U.S.C. §§3371(e), 1802(36).
6. On April 1, 2009, Rodney P. Verdin was actively engaged in shrimp fishing by means of skimmer nets . (Tr. at 24-25, 116-117, 140, 142, 150, 151, 157).

7. On April 1, 2009, the outside waters of the State of Louisiana, as that term is defined by La. R.S. §56:495 were closed to shrimp fishing. (Tr. at 68; 122; Agency Ex. 11, 12 and 13)
8. On April 1, 2009, Respondent Rodney P. Verdin did not possess a federal permit to fish for shrimp. (Tr. at 27, 146, 160).
9. On April 1, 2009, when Louisiana Department of Wildlife and Fisheries officers Sergeant Mire and Lieutenant Ruff's patrol vessel was approximately one mile away from the F/V LA BELLE ID'EE, the officers observed the fishing vessel's skimmer nets in the water. (Tr. at 24).
10. On April 1, 2009, prior to boarding the F/V LA BELLE ID'EE, Louisiana Department of Wildlife and Fisheries officer Sergeant Mire recorded the coordinates of the F/V LA BELLE ID'EE as 29°09'03"/91°08'05. (Tr. at 30, 34-36, 41; Agency Ex. 3 and 4).
11. On April 1, 2009, the coordinates of 29°09'03"/91°08'05 fell wholly within the bounds of federal waters accordingly to NOAA Chart 11356. (Tr. at 42, 43, 49; Agency Ex. 6).
12. On April 1, 2009, the coordinates of 29°09'03"/91°08'05 fell wholly within the bounds of the "special and maritime jurisdiction of the United States" according to NOAA Chart 11356. (Tr. at 42, 43, 49; Agency Ex. 6).
13. On April 1, 2009, Louisiana Department of Wildlife and Fisheries officer Sergeant Mire boarded the F/V LA BELLE ID'EE and observed approximately 400 lbs. of white shrimp in Respondent Rodney P. Verdin's possession. (Tr. at 29, 41; Agency Ex. 5).
14. At all relevant times herein, Christie V. Norman authorized Rodney Verdin to operate the F/V LA BELLE ID'EE and fish commercially for shrimp. (Tr. at 205, 240).
15. Christie V. Norman is liable for the actions of Rodney Verdin under the doctrine of respondeat superior. 15 C.F.R. §904.107.
16. The Lacey Act imposes a "due care" standard of liability. 16 U.S.C. §3373(a)(1).
17. Respondent Christie V. Norman and Respondent Rodney P. Verdin are jointly and severally liable for violations of the Magnuson-Stevens Act and the Lacey Act that occurred on April 1, 2009.

18. Respondent Rodney P. Verdin has not submitted verifiable financial information in accordance with 15 C.F.R. § 904.108(c).

VI. Penalty Assessment

Inasmuch as the Agency pled the Counts One and Two in the alternative, the court shall impose only the civil penalty associated with Count One—violation of the Magnuson-Stevens Act.

The Magnuson-Stevens Act authorizes the imposition of a civil penalty of up to \$100,000 and permit sanctions commensurate to the violations involved.¹⁶ In assessing penalties and or permit sanctions, the court must consider a number of factors including 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." 16 U.S.C. § 1858(g)(2); 15 C.F.R. § 904.108(a).

The Southeast Region Magnuson-Stevens Act Penalty Schedule in effect at the time of the violations shows a penalty range for first time violators as follows:

Violations Regarding Size/Condition/Quantity of Fish: \$500 - \$50,000; Permit Sanctions 0 - 45 days

Violations Regarding Fishing/Possessing: \$500 -\$50,000; Permit Sanctions 0 - 45 days

In the instant matter, the Agency proposed a civil penalty of \$15,000. Both the Magnuson-Stevens Act and Agency regulations provide that a respondent's inability to pay the penalty can be considered but a respondent must provide information to support that position. 16 U.S.C. § 1858(a); and 15 C.F.R. § 904.108. A respondent must submit financial information to NOAA at least 15 days before the hearing and the failure to do so

¹⁶ Civil monetary penalties are subject to the Federal Civil Penalties Inflation Adjustment Act of 1990 and are adjusted regularly for inflation. The current adjustment established the statutory maximum at \$130,000. See 15 C.F.R. § 6.4.

may support an inference that he cannot support that defense. 15 C.F.R. § 904.108(c); (e). Although Respondent Verdin indicated in his PPIP that he contested the proposed penalty, Respondent Verdin nonetheless failed to provide any substantiating documentation to NOAA. Therefore, such failure bars Respondent Verdin and Respondent Norman from asserting financial inability to pay the assessed penalty herein.

Considering the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, (there was no probative evidence of any history of prior offenses), and ability to pay; the penalty proposed for the violation of the Magnuson-Stevens Act violation committed by Respondents is appropriate.

WHEREFORE,

VII. Order

IT IS HEREBY ORDERED, that a civil penalty in the amount of FIFTEEN THOUSAND DOLLARS (\$15,000) is hereby jointly and severally assessed against Respondents Christie V. Norman and Rodney P. Verdin under Count One of the NOVA. No permit sanction shall be imposed as NOAA did not seek the imposition of same.

PLEASE TAKE NOTICE, that a failure to pay the civil penalty to the Treasurer of the United States 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 C.F.R. §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 C.F.R. §904.273 is attached hereto as Attachment II.

IT IS SO ORDERED.

Done and dated this the 19th day of October, 2010,
at New Orleans, Louisiana.

Handwritten signature of Bruce T. Smith in black ink.

HONORABLE BRUCE TUCKER SMITH
ADMINISTRATIVE LAW JUDGE

VIII. Attachment I: Exhibit & Witness Lists

NOAA EXHIBITS – AS OFFERED/ADMITTED CHRONOLOGICALLY

- 01: United States Coast Guard Vessel Documentation data; Certificate of Documentation; United States Coast Guard General Index or Abstract Title (4 pages)
- 02: Original Affidavit executed by Cheryl A. Franzen on October 22, 2009, as Custodian of Records for NOAA, National Marine Fisheries Service, Southeast Region, Permits Office of the Constituency Services Branch (1 page)
- 03: State of Louisiana Department of Wildlife and Fisheries Enforcement Division Citation No. D 507271 (1 page)
- 04: State of Louisiana Department of Wildlife and Fisheries Law Enforcement Division Offense Report (2 pages)
- 05: Louisiana Department of Wildlife & Fisheries Enforcement Division Photograph/Video Log form; seven photos (3 pages)
- 06: NOAA Chart 11356 (1 page)
- 07: Louisiana Department of Wildlife & Fisheries Enforcement Division GPS Verification Form (1 page)
- 08: United States Coast Guard Light List, Volume IV, Gulf of Mexico: Econfina River, Florida to the Rio Grande, Texas (2009) (2 pages)
- 09: Louisiana Register, Vol. 34, No. 12 (December 20, 2008), pages i, 2545-2546 (3 pages)
- 10: Louisiana Register, Vol. 35, No. 04 (April 2009), pages i, 625 (2 pages)
- 11: La. R.S. §56:497 “Saltwater shrimp seasons; bait shrimp.” (6 pages)
- 12: La. R.S. §56:34 “Class four violation.” (2 pages)
- 13: La. R.S. §495.1 “Trawling vessels; size of trawls; butterfly nets.” (7 pages)

**RESPONDENT EXHIBITS AS OFFERED/ADMITTED
CHRONOLOGICALLY**

A: NOAA Form 88-151 "Enforcement Action Report" No. 163923 dated
June 30, 2009 (1 page)

C: NOAA Chart 11356 (1 page)

NOAA WITNESSES

1. Sergeant Ross M. Mire, Louisiana Department of Wildlife and Fisheries
2. Lieutenant Leslie G. Ruff, Louisiana Department of Wildlife and Fisheries

RESPONDENT WITNESSES

1. Rodney Verdin
2. Richard L. Stifle, NOAA's National Marine Fisheries Service, Office of
Law Enforcement

IX. Attachment II: Procedures Governing Administrative Review

§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.