

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

IN THE MATTER OF:

D&A FISHWORKS LLC
JIMMIE B. PHRAMPUS
E/V SOUTHWIND

RESPONDENTS.

DOCKET NUMBER

SE0703253FM

HON. BRUCE T. SMITH
ADMINISTRATIVE LAW JUDGE

INITIAL DECISION & ORDER

DATE ISSUED:

MAY 18, 2010

ISSUED BY:

HON. BRUCE TUCKER SMITH
ADMINISTRATIVE LAW JUDGE

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I. PRELIMINARY STATEMENT

On December 11, 2008, 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 D & A Fishworks, LLC and Jimmie B. Phrampus (collectively, Respondents or individually, Respondent D & A; Respondent Phrampus). The NOVA alleged Respondents are jointly and severally liable for four violations of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or Act), as provided at 16 U.S.C. § 1858, and its implementing regulations codified at 15 C.F.R. Part 904. Specifically, Respondents are jointly and severally charged with, while within the Exclusive Economic Zone (EEZ) of the United States, the following: (1) possessing undersized fish and/or failing to release undersized fish; (2) failing to maintain fish intact until offloaded ashore; (3) failing to comply with provisions related to the Gulf red snapper IFQ program; and (4) failing to comply with provisions related the vessel monitoring system (VMS). The Agency alleged such actions are violative of 16 U.S.C. §1857(1)(A), 50 C.F.R. §622.7(n), (o), (gg), and (ee) and sought a civil penalty totaling \$21,000.¹ Concurrently, under the authority of the Magnuson-Stevens Act at 16 U.S.C. §1858(g) and 15 C.F.R. §§904.301, 904.302, NOAA issued a Notice of Permit Sanction (NOPS) to D & A Fishworks, LLC, as owner of the F/V SOUTHWIND, setting forth the same four charges as set forth in the NOVA and seeking suspension all federal fisheries permits issued to the F/V SOUTHWIND for seventy-five days.

¹ The NOVA assessed a civil penalty for each count as follows: Count 1: \$4,500; Count 2: \$1,000; Count 3: \$500; Count 4: \$15,000.

On December 29, 2008, Respondent D & A provided NOAA with a written request for an administrative hearing to contest the allegations contained within the NOVA and NOPS. Pursuant to 15 C.F.R. §904.107(b), “[a] hearing request by one joint and several respondents is considered a request by the other joint and several respondent(s).” Therefore, Respondent Phrampus is deemed to have requested a hearing in the instant matter.

On October 5, 2009, NOAA transmitted the request for hearing to the Administrative Law Judge (ALJ) Docketing Center. NOAA explained that the request for hearing in the instant matter was delayed due to Respondent D & A’s request to present financial-related data to the Agency. On October 8, 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). On November 9, 2009, NOAA and Respondent D & A timely filed their respective PPIPs with the assigned ALJ, the Honorable Bruce Tucker Smith.² On December 18, 2009, the court set the matter for hearing in Ocala, Florida on March 8, 2010.

On March 8, 2010, this matter came on for hearing at the Marion County Courthouse in Ocala, Florida. Cynthia S. Fenyk, Esq. appeared on behalf of NOAA; James L. Moody, Esq. appeared on behalf Respondent D & A. Despite having receiving all appropriate notices and documents, Respondent Phrampus failed to appear.

² 15 U.S.C. § 1541 provides that the United States Coast Guard 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.

NOAA presented the testimony of seven witnesses and offered thirty-seven exhibits into evidence, thirty-six of which were admitted. Respondent D & A presented the testimony of two witnesses and offered no exhibits into evidence. The parties' respective witnesses, as well as Agency exhibits entered into evidence are identified in Attachment I.³ The hearing was concluded in less than one day.

On March 29, 2010, the court convened a telephonic post-hearing conference for purposes of ensuring that the transcript accurately reflected exhibits entered into evidence and setting the post-hearing briefing schedule. Post-hearing briefs were timely submitted by the respective parties; however, only NOAA included a Proposed Findings of Fact and Conclusions of Law section for the court's consideration. Greater weight was not accorded to the Agency's argument by virtue of this section. In the interest of fairness, the court does not accept NOAA's Proposed Findings of Fact and Conclusions of Law and has made its own findings of fact as set forth infra.

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. At all times relevant herein, the F/V SOUTHWIND was and is a registered and flagged vessel of the United States, documentation number 600680. (Agency Ex. 10).
2. Respondent D & A Fishworks is a for-profit business entity organized as a Florida Limited Liability Corporation (LLC) and its principal, president or alter-ego is Dale Ray Sheffield. (Tr. at 212, 222, 238; ALJ Ex. I).

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.

3. At all times relevant herein, the F/V SOUTHWIND was and is owned by D & A Fishworks, LLC. (Tr. at 50; Agency Ex. 10).
4. At all times relevant herein, Dale Sheffield was and is the president and owner of D & A Fishworks, LLC. (Tr. at 50; 238; ALJ Ex. I).
5. At all times relevant herein, Respondent Jimmie B. Phrampus was an employee of D & A Fishworks, and specifically at all times alleged in the NOVA and NOPS. (Tr. 220-231).
6. At all time relevant herein, Respondent D & A Fishworks maintained the right to hire and fire Respondent Jimmie B. Phrampus. (Tr. at 248).
7. Respondent D & A Fishworks purchased the F/V SOUTHWIND and hired Respondent Jimmie B. Phrampus with the expressed intent of making a profit. (Tr. at 243, 259).
8. At all times relevant herein, the F/V SOUTHWIND held a “Gulf of Mexico Reef Fish Commercial” Federal Fisheries Permit issued by the National Marine Fisheries. (Tr. at 48, 52; Agency Ex. 8, 10).
9. 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).
10. At all times relevant herein, the Magnuson-Stevens Fishery Conservation and Management Act defined a “person” as “any individual, . . . any corporation, partnership, association, or other entity. . .”. 16 U.S.C. §1802(36).
11. D & A Fishworks, LLC is a “person” as defined by 16 U.S.C. §1802(36).
12. Jimmie B. Phrampus is a “person” as defined by 16 U.S.C. §1802(36).
13. 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.

14. At all relevant times herein, D & A Fishworks, LLC authorized Jimmie B. Phrampus to operate the F/V SOUTHWIND and utilize the "Gulf of Mexico Reef Fish Commercial" Federal Fisheries Permit issued by the National Marine Fisheries to the F/V SOUTHWIND. (Tr. at 205, 240).
15. At all relevant times herein, D & A Fishworks, LLC and Jimmie B. Phrampus shared the proceeds of the F/V SOUTHWIND's catch. (Tr. at 206, 215, 227-32).
16. D & A Fishworks, LLC is liable for the actions of Jimmie B. Phrampus under the doctrine of respondeat superior.
17. D & A Fishworks, LLC and Jimmie B. Phrampus are jointly and severally liable for violations of the Magnuson-Stevens Act that occurred June 21, 2007, through August 31, 2007.
18. At all times relevant herein, Red Grouper caught in the Gulf exclusive economic zone (EEZ) must measure at least twenty inches in total length. 50 C.F.R. §622.37(d)(2).
19. At all times relevant herein, it was unlawful to possess undersized fish or fail to release undersized fish. 50 C.F.R. §622.7(n).
20. The exclusive economic zone (EEZ) "is that area adjacent to the United States which . . . 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.
21. At all relevant times herein, the seaward boundary for the west coast of the state of Florida was and is nine nautical miles. <http://coastalmanagement.noaa.gov/mystate/docs/StateCZBoundaries.pdf>
22. On August 16, 2007, while in the Gulf EEZ, Florida Fish and Wildlife Conservation Commission (FWCC) officers boarded the F/V SOUTHWIND and discovered sixty-six undersized Red Grouper fish. At the time the F/V SOUTHWIND was boarded, Jimmie B. Phrampus identified himself as the operator of the vessel. (Tr. at 120; Agency Ex. 21, 22, 23, 24, 25)
23. On August 23, 2007, while in the Gulf EEZ, Florida Fish and Wildlife Conservation Commission (FWCC) officers boarded the F/V SOUTHWIND and discovered six undersized Red Grouper fish.

At the time the F/V SOUTHWIND was boarded, Jimmie B. Phrampus identified himself as the operator of the vessel. (Tr. at 144, 166; Agency Ex. 26).

24. On August 29, 2007, in the Gulf EEZ, Florida Fish and Wildlife Conservation Commission (FWCC) officers boarded the F/V SOUTHWIND, and discovered eight undersized Red Grouper fish. At the time the F/V SOUTHWIND was boarded, Jimmie B. Phrampus identified himself as the operator of the vessel. (Agency Ex. 32)
25. At all times relevant herein, Red Grouper fish landed in the Gulf EEZ must remain with head and fins intact until the fish are offloaded ashore. 50 C.F.R. §622.7(o); §622.38(a).
26. On August 23, 2007, while in the Gulf EEZ, Florida Fish and Wildlife Conservation Commission (FWCC) officers boarded the F/V SOUTHWIND and discovered strips of Red Grouper fish being used as bait. At the time the F/V SOUTHWIND was boarded, Jimmie B. Phrampus identified himself as the operator of the vessel. (Tr. at 161, 166; Agency Ex. 31).
27. At all times relevant herein, owners or operators of a vessel landing individual fish quota (IFQ) Gulf Red Snapper fish must provide advance notice to the National Marine Fisheries Service (NMFS) Office of Law Enforcement. 50 C.F.R. §622.16(c)(3)(i).
28. At all times relevant herein, it was unlawful to fail to comply with any provision relating to the Gulf Red Snapper fish individual fish quota (IFQ). 50 C.F.R. §622.7(gg).
29. None of the agency's witnesses who boarded the F/V SOUTHWIND on August 16, 23 and/or 29, 2007 (Officers Chambers, Hooker, Loyed, Jones and DiMartino), and who personally examined Respondent Jimmie B. Phrampus' catch, actually saw Respondent Phrampus in possession of Red Snapper fish.
30. At all times relevant herein, "[a]n owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, . . . must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times whether or not the vessel is underway, unless exempted by NMFS under the power down exemption. . . . An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. [A] VMS must

transmit a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day." 50 C.F.R. §622.9.

31. On August 29, 2007, while in the Gulf EEZ, Florida Fish and Wildlife Conservation Commission (FWCC) officers boarded the F/V SOUTHWIND and discovered the vessel's VMS unit inoperable. At the time the F/V SOUTHWIND was boarded, Jimmie B. Phrampus identified himself as the operator of the vessel. (Tr. at 189-90; Agency Ex. 32 and 33).
32. On January 10, 2007, D & A Fishworks, LLC president and owner, Dale Ray Sheffield, purchased a Thrane & Thrane VMS unit, for installation aboard the F/V SOUTHWIND. On February 16, 2007, the Thrane & Thrane VMS unit purchased by Dale Ray Sheffield, as president and owner of D & A Fishworks, LLC, for use aboard the F/V SOUTHWIND was activated. (Agency Ex. 6).
33. The Thrane & Thrane VMS unit aboard the F/V SOUTHWIND was operable from March 28, 2007, through May 20, 2007. (Tr. at 45, 99; Agency Ex. 7)
34. The Thrane & Thrane VMS unit aboard the F/V SOUTHWIND ceased transmitting May 20, 2007 through August 20, 2007. (Tr. at 45; Agency Ex. 7)
35. The Thrane & Thrane VMS unit aboard the F/V SOUTHWIND transmitted one report on August 20, 2007. (Tr. at 93; Agency Ex. 7, 18)
36. The Thrane & Thrane VMS unit aboard the F/V SOUTHWIND failed to regularly transmit reports from August 20, 2007 through August 31, 2007. (Tr. at 99, 105; Agency Ex. 7, 8).
37. The Thrane & Thrane VMS unit aboard the F/V SOUTHWIND resumed regular transmissions of reports on August 31, 2007. (Tr. at 105; Agency Ex. 7).
38. Neither Respondent offered proof that either of them was exempt from the VMS reporting requirements set forth in 50 C.F.R. §622.9(a)(2). Neither did either Respondent provide evidence that either had reported the transmission failure(s) to NMFS as required by 50 C.F.R. §622.9(d).

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. The Magnuson-Stevens Act—in brief

1. 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. See 16 U.S.C. §1858; see also In the Matter of Corsair Corporation, F/V CORSAIR, 1998 WL 1277924 (NOAA 1998).

The term "person" is broadly defined by the Act to include any individual, corporation, partnership, association or other entity. 16 U.S.C. §1802(36). Therefore, it is wholly possible that a business entity may be assessed a civil penalty as a person for any

violation of the Magnuson-Stevens Act or any regulation adopted thereunder. See In the Matter of Northern Wind Seafood, Inc., 1998 WL 1277922 (NOAA 1998).

The term “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 west coast of the state of Florida is nine 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>.

2. 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 are strict liability offenses. Id. (internal citations omitted).

The law is well-settled that an employer may be vicariously liable for its employee’s acts committed in the scope of employment while furthering the employer’s business. In the Matter of: Robert R. Flores and Astara, 2009 WL 2053602 (NOAA

2009) (internal citations omitted). Therefore, “the owner of a vessel may be held liable for the actions of a crewmember that violates the Magnuson-Stevens Act or its underlying regulations.” Id., citing In the Matters of James Chan Song Kim, Askar Ehmes, Ulheelani Corp., 2003 WL 22000639 (NOAA 2003). Joint and several liability, as it applies in cases arising under the 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).

“The idea behind respondeat superior is to subject an employer to liability for whatever is done by the employee by virtue of his employment and in furtherance of its ends.” In the Matters of James Chan Song Kim, Askar Ehmes, Ulheelani Corporation, 2003 WL 22000639 (NOAA 2003); see also Weinberg v. Johnson, 518 A.2d 985, 988 (D.C. 1986). 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 is used to “prevent vessel owners and operators from reaping the benefits of illegal fishing activities while avoiding the responsibility that goes along with such tactics.” 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). When a corporation owns a vessel it acquires a share of the vessel’s proceeds from the fishing trip and thus, the corporation benefits financially from the illegal acts of the vessel’s captain during the fishing trip. Id. Therefore, the vessel owner should not be allowed to escape responsibility for the transgressions of the captain the vessel owner hires to operate its boat and has the authority to fire. Id.

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.

Here, Respondent D & A contends that because Respondent Phrampus was an independent contractor, Respondent D & A is thereby insulated from liability. This argument ignores settled law that in NOAA cases, an owner is jointly and severally liable with an operator for any infractions committed by either; accordingly, the “independent contractor” defense is not available herein.

Testimony elicited at the hearing of this matter revealed that Respondent D & A hired Respondent Phrampus for the express purpose of earning a profit for D & A (Tr. 220-231), clearly, “in furtherance of its ends.” See In the Matters of James Chan Song Kim, Askar Ehmes, Ulheelani Corporation, 2003 WL 22000639 (NOAA 2003).

Likewise, Respondent D & A retained the authority to fire Respondent Phrampus. (Tr. at 248).

Dale Ray Sheffield, president and owner of Respondent D & A, testified that he was generally inexperienced in commercial fishing at the time he hired Respondent Phrampus. (Tr. at 258). He testified that he did not concern himself with the day-to-day operations aboard the F/V SOUTHWIND and that he even had failed to purchase liability insurance for the vessel or Respondent Phrampus or the crew. (Tr. at 259-260).

Respondent Phrampus, as the operator of F/V SOUTHWIND, was an employee of Respondent D & A. Consequently, Respondent Phrampus’ actions are imputed to his employer, Respondent D & A, under 15 C.F.R. §904.107 and the doctrine of respondent superior, as that doctrine is described in NOAA jurisprudence discussed supra. Therefore, Respondent D & A is jointly and severally liable for the actions of Respondent Phrampus.

The facts of this case are straightforward and were generally uncontested by Respondent D & A.

C. Analysis

The Agency has charged Respondents, jointly and severally, with four violations of 16 U.S.C. §1857 (1) (A), which is a general prohibition stating that “[i]t is unlawful for any person to violate any provision of this chapter or any regulation or permit issued pursuant to this chapter.” *Id.* Accordingly, NOAA further charged Respondents, jointly and severally, with having violated 50 C.F.R. §622.7(n), (o), (gg) and (ee). Each violation is discussed in brief, infra.

I. Charges: Regulated Activities

At the time of Respondents alleged violations, 50 C.F.R. §622.7 provided as follows:

In addition to the general prohibitions in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

...

(n) Except as allowed under § 622.37(c)(2) and (3) for king and Spanish mackerel, possess undersized fish, fail to release undersized fish, or sell or purchase undersized fish, as specified in § 622.37.

(o) Fail to maintain a fish intact through offloading ashore, as specified in § 622.38.

...

(ee) Fail to comply with any provision related to a vessel monitoring system as specified in § 622.9, including but not limited to, requirements for use, installation, activation, access to data, procedures related to interruption of VMS operation, and prohibitions on interference with the VMS.

...

(gg) Fail to comply with any provision related to the Gulf red snapper IFQ program as specified in § 622.16.

50 C.F.R. §622.7 (n), (o), (ee), (gg).

a. Possession of Undersized Fish

Count 1 of the Agency's Notice of Violation and Assessment of Administrative Penalty (NOVA) and the Notice of Permit Sanction (NOPS) issued to Respondents alleges that "on or about August 16, 23, and 29, 2007, and within the EEZ, . . . , Respondent[s] . . . , jointly and severally, possessed undersized fish or fail[ed] to release undersized fish (red grouper), as specified in §622.37, in violation of the Magnuson-Stevens . . . Act, as amended, at 16 U.S.C. 1857 (1)(A) and 50 CFR 622.7(n)."

For NOAA to prevail on Count 1 in the instant matter, it was obliged to establish by a preponderance of the evidence that Respondents possessed undersized Red Grouper fish in the EEZ of the Gulf of Mexico on August 16, 23, and 29, 2007, dates when it was illegal to do so.

August 16, 2007 Boarding

NOAA offered the testimony of former FWCC Officer Edward K. Chambers regarding Respondents' August 16, 2007, undersized fish violation. Officer Chambers testified that in his capacity as a law enforcement officer with FWCC he performed offshore patrols of fisheries to include offshore charters, commercial and recreational. (Tr. at 111). Officer Chambers further testified he boarded the F/V SOUTHWIND on August 16, 2007, "just inside the eastern boundary of the Florida Middle Grounds." (Tr. at 112). Upon boarding the F/V SOUTHWIND on August 16, 2007, Respondent Phrampus advised Officer Chambers that he was captain of the vessel. Officer Chambers

testified he inspected the catch aboard the F/V SOUTHWIND and it was apparent that Respondent Phrampus was in the possession of numerous fish measuring less than the requisite twenty inches. (Tr. at 113; 124). Photographic evidence obtained by Officer Chambers clearly reveals the undersized Red Grouper aboard the F/V SOUTHWIND. (Agency Ex. 27). Officer Chambers, in the presence of Respondent Phrampus, measured the catch aboard the F/V SOUTHWIND and determined that approximately sixty-six Red Grouper fish were undersized, ranging from sixteen to nineteen and a half inches long. (Tr. at 113-15, 122-124; Agency Ex. 21, 27). Officer Chambers completed federal form titled "Undersized Catch Measurement." (Agency Ex. 25). Respondent Phrampus had the opportunity to dispute the measurements and/or the count. Respondent Phrampus initialed the document indicating his agreement with Officer Chambers' measurements and counts. Respondent Phrampus provided a handwritten statement to Officer Chambers admitting that on August 16, 2007, he was in possession of sixty-six undersized Red Grouper. (Tr. at 122-26; Agency Ex. 25, 26). The sixty-six undersized fish were seized by the FWCC. (Agency Ex. 23).

August 23, 2007 Boarding

NOAA offered the testimony of FWCC Officers Doug B. Loyed and John W. Jones concerning Respondents' August 23, 2007, undersized fish violation. As FWCC law enforcement officials, Officers Loyed and Jones testified they were assigned the responsibility of conducting offshore patrols and performing fisheries and boat safety inspections while offshore. (Tr. at 141, 151). While on offshore patrol on August 23, 2007, Officers Loyed and Jones boarded the F/V SOUTHWIND, which was at anchor in the Gulf EEZ, and observed undersized Red Grouper fish and a bucket of Red Grouper