



UNITED STATES DEPARTMENT OF COMMERCE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

2014 NOV 19 PM 12:05  
National Oceanic and Atmospheric Administration

In the Matter of:	)	Docket Number:
	)	NE0904013, F/V Bailey Boy
Stephen C. Daniels,	)	
Joseph J. Doak, III	)	
	)	
Respondents.	)	

**ORDER DENYING PETITION FOR RECONSIDERATION**

The National Oceanic and Atmospheric Administration (“NOAA” or “Agency”) issued a Notice of Violation and Assessment of Administrative Penalty (“NOVA”), dated December 13, 2012, to Stephen C. Daniels and Joseph J. Doak, III (collectively “Respondents,” or individually “Respondent Daniels” or “Respondent Doak,” respectively). In the NOVA, the Agency alleged one count in which Respondents, jointly and severally, violated Section 307(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (“Act”), 16 U.S.C. § 1857(1)(A), and regulations promulgated under the Act at 50 C.F.R. § 648.14(e)(1), by “impeding, harassing and interfer[ing] with a NMFS-approved observer,” during a fishing trip from October 20, 2009 to October 26, 2009. By letter dated January 28, 2013, Respondent Daniels requested a hearing before an Administrative Law Judge. A hearing was held on February 11, 2014, in Norfolk, Virginia. After the parties submitted post-hearing briefs, the undersigned Administrative Law Judge issued an Initial Decision and Order on October 24, 2014. The Initial Decision and Order set forth reasons for the findings and conclusions on all material issues of fact and law presented on the record and informed the parties of their right to appeal and petition for reconsideration of the Initial Decision and Order.

On November 13, 2014, Respondent Daniels submitted for filing a single-page document styled Reconsideration of Initial Decision and Order (hereinafter referred to as “Petition for Reconsideration” or “Petition”). There was no certificate of service attached to the Petition nor was there any other indicia that the other parties were provided notice of the Petition.<sup>1</sup> In the Petition, Respondent Daniels disputes whether he and Respondent Doak, “jointly and severally, violated the Act and regulations under the Act by ‘impeding, harassing and interfer(ing) with NMFS-approved observer, during a fishing trip from October 20, 2009 to October 26, 2009.’” Pet. at 1. The remainder of the petition reads as follows:

DISPUTE: Respondent Daniels as past captain and owner of F/V Bailey Boy, clearly posted the rules “OBSERVER DUTIES” in the galley of the

<sup>1</sup> On March 19, 2013, an attorney for the undersigned emphasized the requirement to show proof of service of documents submitted to this Tribunal, and provided Respondent Daniels a copy of the procedural rules and a sample certificate of service.

boat. Respondent Doak was very aware of these rules and his treatment of Ms. Craft, the observer on board the F/V Bailey Boy was not appropriate in any way. In lieu of this fact Ms. Craft never expressed any concern to me or Macon Dough the other crew member on this vessel about Respondent Doak's behavior.

DISPUTE: As far as measuring the cod end of the net, she had 5 other days to measure it, I never said she could not measure it, it was just not possible to measure it at the exact moment she requested.

DISPUTE: In February of 2010, Agent Block contacted me and told me I had to come to her office for an interview (she would not tell me why). Agent Block told me if I did not show up it was a \$10,000 fine and possible loss of my fishing permits. I thought she wanted to see me about Respondent Doak because of all his past issues and fines with NOAA and he was a crew member on my boat. When I arrived she said it was being taped and I did not receive [sic] a copy of the tape until the hearing in February [sic] (which was blank) so I have still never seen the video. I do feel this was very unfair.

To reiterate my post-hearing brief I do apologize for my cussing and [sic] I certainly did not mean to intimidate Ms. Craft. She went on a very difficult trip which was not the fault of anyone, just poor timing. I have taken hundreds of observers and never had a complaint filed against me. I did not have any idea Respondent Doak treated Ms. Craft in such a disrespectful manner.

Since 5 years has past [sic] since this fishing trip, I do not recall all the exact details, but I certainly would have done things differently if I realized Ms. Craft felt fearful.

In conclusion, I would appreciate it if Judge Coughlin would reconsider the fine of \$16,625.

Pet. at 1.

On November 18, 2014, I was designated to preside over this Petition for Reconsideration. The applicable rules regarding petitions for reconsideration provides the following:

Unless an order or initial decision of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or initial decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided, and the alleged errors and relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or initial decision. The filing of a petition for reconsideration shall operate as a stay of an order or initial



decision or its effectiveness date unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the administrative proceeding may file an answer in support or in opposition.


15 C.F.R. § 904.272. The rules regarding filing documents provide that “[p]leadings, papers, and other documents in the proceeding must be filed in conformance with § 904.3 directly with the Judge, with copies served on the ALJ Docketing Center *and all other parties.*” 15 C.F.R. § 904.202(a) (emphasis added). Section 904.3, in turn, provides in pertinent part:

“[s]ervice of documents and papers . . . may be made by first class mail (postage prepaid), facsimile, electronic transmission, or third party commercial carrier, to an addressee’s last known address or by personal delivery. Service of documents and papers will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to third party commercial carrier, electronic transmission or upon personal delivery.”

15 C.F.R. § 904.3(b). Finally, the applicable rules provide, in pertinent part, that “[a]ll pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(b).” 15 C.F.R. § 904.206(a).

Respondent Daniels’ Petition for Reconsideration must be denied. The Rules provide only 20 days after service of the Initial Decision and Order to file a petition for reconsideration. 15 C.F.R. § 904.272. In this case, Respondent Daniels’ Petition was submitted on the last day for it to be considered timely filed. It does not appear that the other parties received notice of the Petition, and the time for properly filing a petition for reconsideration has elapsed. The Rules do not expressly grant the undersigned Administrative Law Judge the authority to enlarge the time for filing a petition for reconsideration.<sup>2</sup> Respondent Daniels’ Petition for Reconsideration was not filed in accordance with the applicable rules, because it was not submitted with proof that service was made in accordance with 15 C.F.R. § 904.3(b). Therefore the Petition is **DENIED**. The time for filing a petition for review of the Initial Decision continues to run from October 24, 2014.

**SO ORDERED.**

  
Christine D. Coughlin  
Administrative Law Judge  
U.S. Environmental Protection Agency

Dated: November 19, 2014  
Washington, DC

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<sup>2</sup> Even if the Rules granted the Judge discretion to enlarge the time for filing, I would decline to exercise that discretion in this case because the Petition is deficient in that it fails to specify, with any particularity, any matters claimed to have been erroneously decided. 15 C.F.R. § 904.272.