UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matter of:	)	Docket Number:
Richard T. Larocca, F/V Double Vision, and F/V Doubled Vision	)	NE1002244
Respondents.	)	

ORDER DENYING RESPONDENT'S PETITION FOR ADMINISTRATIVE REVIEW

This order addresses a petition for administrative review filed by Richard T. Larocca, individual owner and joint operator of two fishing vessels named the F/V Double Vision and the F/V Doubled Vision (Respondent).[1] Respondent appeals an Initial Decision issued by an Administrative Law Judge (ALJ), finding multiple violations of the fisheries-observer regulations established under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. §§ 1801 *et seq*.

PROCEDURAL HISTORY

This matter was referred to the ALJ after Respondent contested the charges imposed against him by the National Oceanic and Atmospheric Administration (Agency) for violation of fisheries-observer requirements.[2] Respondent also challenged the amount of the Agency's proposed penalty. Following an evidentiary hearing and receipt of post-hearing briefs from both parties, the ALJ issued an Initial Decision on June 17, 2014. In that decision, the ALJ upheld the Agency on all charges but found that that the penalty originally sought by the Agency was too high. Based on consideration of several mitigating factors (including the Respondent's lack of intent to violate the fisheries observer requirements), the ALJ reduced the penalties to $35,000 ($8,750 per count). Respondent has filed a timely appeal raising both factual and legal challenges to the ALJ's decision.

[1] The other two joint operators, Christopher Williams and Mark DeCabia, were not charged with violations of the Federal fisheries laws and are not parties in this case.

[2] The Notice of Violation and Assessment of Administrative Penalty (NOVA) listed four (4) counts of violations and sought civil penalties of $70,000 ($17,500 per count). In each count, Respondent was charged with repeated failures to carry a required fisheries-observer aboard the F/V Double Vision and the F/V Doubled Vision during the months of June through September 2010 in violation of Magnuson-Stevens Act regulations at 50 C.F.R. § 600.725(s).

DECISION ON DISCRETIONARY REVIEW

Under NOAA civil procedure regulations, a party seeking review of an initial decision issued by an ALJ must petition the NOAA Administrator within 30 days after the date the decision was served.[3] Although the Administrator has broad discretion in determining whether to grant the petition and may deny it without explanation,[4] past Administrator decisions have established two criteria to guide the decision of whether to grant discretionary review: (1) whether the initial decision contains significant factual or legal errors that warrant further review by the Administrator; and (2) whether fairness or other policy considerations warrant further consideration by the Administrator. Types of cases that fall within these criteria include, but are not limited to, those in which:

- The initial decision conflicts with decisions of one or more other NOAA administrative decisions or federal court decisions on an important issue of federal law;

- The ALJ decided an important federal question in a way that conflicts with prior rulings of the Administrator;

- The ALJ decided a question of federal law that is so important that the Administrator should pass upon it even absent a conflict; or

- The ALJ so far departed from the accepted and usual course of administrative proceedings as to call for an exercise of the Administrator's supervisory power.

Applying these criteria to the issues presented in Respondent's petition, I find no significant factual or legal errors in the Initial Decision and no fairness or other policy considerations warranting further consideration. I therefore deny Respondent's petition.

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[3] *See* 15 C.F.R. § 904.273(a); *see also* 15 C.F.R. § 904.273(d) (setting forth mandatory requirements regarding the format and content of a petition for review).

[4] *See* 15 C.F.R. § 904.273(c) ("Review by the Administrator of an initial decision is discretionary and is not a matter of right.") and 15 C.F.R. § 904.273(i) ("The Administrator need not give reasons for denying review.").

CONCLUSION

This Order constitutes the final administrative decision in this matter. This Order, and the civil penalty imposed by the ALJ, will become final on the date the Order is served on Respondents, and becomes effective for purpose of judicial review on the date of service.

10-28-14
Dated

Kathryn D. Sullivan, Ph.D.
NOAA Administrator and Under Secretary of
Commerce for Oceans and Atmosphere

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached Order Denying Respondent's Petition for Administrative Review was sent to the individuals listed below:

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10/28/2014
Dated

Gladys P. Miles
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National Oceanic and Atmospheric Administration