

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

IN THE MATTER OF:

Ocean Conquest LLC,
Benjamin Brown Maughan, III, and
F/V Ocean Conquest

Respondents.

Docket Number:

PI-1101249

**ORDER DENYING RESPONDENTS'
PETITION FOR ADMINISTRATIVE REVIEW**

This order addresses a petition for administrative review filed by Ocean Conquest, LLC and Benjamin Brown Maughan, III, respectively the owner and captain of a commercial fishing vessel (F/V) named the Ocean Conquest (Respondents). On appeal, Respondents challenges an initial decision issued by an Administrative Law Judge (ALJ) on July 6, 2015. In that decision, the ALJ found that Respondents knowingly setting purse seine fishing nets on live whales associated with a school of tuna during a commercial fishing trip conducted on the high seas of the Pacific Ocean in violation of the Marine Mammal Protection Act. For this violation, the ALJ assessed a joint and several penalties of \$11,000 against the Respondents.

Respondents now seek review of the ALJ's initial decision. In their petition, Respondents challenge the ALJ's interpretation of key terms under the MMPA, disagree with the ALJ's credibility determinations, and seek a reduction in the penalty or, alternatively, an assessment of no penalty at all. The National Oceanic and Atmospheric Administration (NOAA) opposes Respondents' petition, arguing the ALJ's initial decision is adequately supported by both law and facts. For the reasons stated below, Respondents' petition for review is **DENIED**.

DECISION ON DISCRETIONARY REVIEW

The NOAA Administrator has broad discretion in deciding whether to grant or deny a petition for administrative review.¹ The criteria guiding the Administrator's decision are twofold: (1) whether the initial decision contains significant factual or legal errors that warrant further review by the Administrator; and (2) whether fairness or other

¹ 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."); 904.273(i) ("The Administrator need not give reasons for denying review.").

policy considerations warrant further consideration by the Administrator.² Examples of cases in which a petition for review might be granted 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 judgment 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.³

Applying these criteria to issues raised by Respondents' petition, I find no significant factual or legal errors in the initial decision, and no fairness or policy considerations have been identified that would warrant further consideration of this case. On appeal, Respondents raise the same arguments considered and rejected by the ALJ. These same arguments were also previously raised by the Respondent vessel owner in an earlier petition for review in a separate case that I considered and denied last year.⁴ That matter was subsequently appealed to a federal district court, which upheld the Agency's decision.⁵

In sum, in the current case, Respondents have not identified any reasons to depart from apposite NOAA case precedent or to disturb the ALJ's findings in this particular case. Accordingly, Respondents petition for administrative review is **DENIED**.

² *E.g. Stephen C. Daniels*, 2015 NOAA Lexis 7 (NOAA App. Mar. 18, 2015); *Anthony Black*, 2014 NOAA Lexis 11 (NOAA App. Apr. 14, 2014), *aff'd sub. nom. Black v. Pritzker*, Civil Action No. 14-782 (D.D.C. Aug. 10, 2015).

³ *Stephen C. Daniels*, 2015 NOAA Lexis 7; *Anthony Black*, 2014 NOAA Lexis 11.

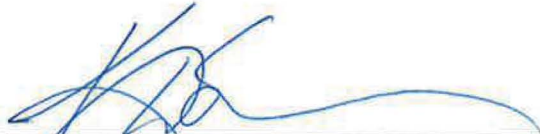
⁴ *See Anthony Black*, 2014 NOAA Lexis 11 (NOAA App. Apr. 14, 2014).

⁵ *Anthony Black*, 2014 NOAA Lexis 11, *aff'd by sub. nom. Black v. Pritzker*, 2015 U.S. Dist. Lexis 104694 (D.D.C. Aug. 10, 2015) (finding that NOAA's interpretation of the MMPA was reasonable).

CONCLUSION

This Order constitutes the final administrative decision in this. This Order, and the civil penalties 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.

11-5-15
Dated



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