

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

In the Matter of:)	Docket Number:
)	
Pacific Ranger, LLC, Matthew James)	
Freitas, Joao Moniz, and Tien Shih Su)	PI1101523
)	
Respondents.)	

ORDER DENYING RESPONDENTS' PETITION FOR ADMINISTRATIVE REVIEW

This order addresses a petition for administrative review filed by Pacific Ranger, LLC, Matthew James Freitas, Joao Moniz, and Tien Shih Su (Respondents). Respondents appeal an Initial Decision issued by an Administrative Law Judge (ALJ). In that decision, the ALJ found Respondents Pacific Ranger, LLC, Matthew James Freitas and Tien Shih Su (Freitas Respondents) jointly and severally liable for four violations of the Marine Mammal Protection Act (MMPA), and for one violation of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA). In that same decision, the ALJ found Respondents Pacific Ranger, LLC, Joao Moniz and Tien Shih Su (Moniz Respondents) jointly and severally liable for a single violation of the MMPA.

For the reasons stated below, Respondents' petition for review is denied.

PROCEDURAL HISTORY

On November 1, 2012, the National Oceanic and Atmospheric Administration (Agency) issued a Notice of Violation and Assessment of Administrative Penalty (NOVA) to the Respondents. The NOAA jointly and severally charged the Freitas Respondents with five counts of prohibited take of a marine mammal in violation of the MMPA, 16 U.S.C. § 1372(a)(1), and with a single count of setting a purse seine fishing net within one nautical mile of Fish Aggregating Device in violations of the WCPFCIA, 16 U.S.C. § 6906(a)(1), and its implementing regulations at 50 C.F.R. § 300.223(b)(1). The Agency's NOVA also jointly and severally charged the Moniz Respondents with a single count of prohibited take of a marine mammal in violation of the MMPA, 16 U.S.C. § 1372(a)(1). The violations arose during the course of multiple fishing trips in 2010 aboard the F/V Pacific Ranger. Respondents denied the charges, and the matter was referred to an ALJ for adjudication. Following an evidentiary hearing and receipt of post-hearing briefs from both parties, the ALJ issued an Initial Decision on November 25, 2014, finding all charges proved against the Respondents. The Freitas Respondents were jointly and severally assessed a penalty of \$11,000 for each of the five MMPA violations, and a penalty of

\$72,000 for the WCPFCIA violation. The Moniz Respondents were jointly and severally assessed a penalty of \$11,000 for the MMPA violation.

Respondents now ask the NOAA Administrator to review the ALJ's Initial Decision. In the petition for review, Respondents challenge the ALJ's application of the MMPA, her witness credibility determinations and the amount of penalties assessed.

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.¹ Although the Administrator has broad discretion in determining whether to grant the petition and may deny it without explanation,² 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 Respondents' petition, I find no significant factual or legal errors in the Initial Decision and no fairness or other policy considerations have been identified that would warrant further consideration of this case. Therefore, Respondents' petition for review is hereby **DENIED**.

¹ 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).

² 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.

3/18/2015
Dated



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