

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

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

ORDER DENYING RESPONDENTS' PETITION FOR ADMINISTRATIVE REVIEW

This order addresses a petition for administrative review filed by Stephen C. Daniels, principal owner and operator of the F/V Bailey Boy. He appeals an Initial Decision issued by an Administrative Law Judge (ALJ). In that decision, the ALJ found Mr. Daniels and his mate, Joseph J. Doak, III, (Respondents) jointly and severally liable for one violation of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) protecting fisheries observers from assault, harassment, intimidation, and interference.¹

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

PROCEDURAL HISTORY

On December 13, 2012, the National Oceanic and Atmospheric Administration (Agency) issued a Notice of Violation and Assessment of Administrative Penalty (NOVA) against Respondents, jointly and severally charging them with one count of fisheries observer harassment in violation of the Magnuson-Stevens Act, 16 U.S.C. § 1857(1)(L), and its implementing regulations at 50 C.F.R. § 648.14(e)(1). The violation arose in October 2009 and concerns a series of acts committed by both Respondents against a female fisheries observer on board the F/V Bailey Boy. Respondents denied the charge, 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 October 24, 2014, finding the single charge proved and assessing a monetary penalty of \$16,625 imposed jointly and severally against both Respondents.

¹ Pursuant to NOAA Civil Procedures regulations at 15 C.F.R. § 904.107(b), the request for review of the ALJ's decision is considered a request made on behalf of both respondents even though it was filed by Mr. Daniels.

In response to the ALJ's decision, Respondent Daniels timely filed a petition for reconsideration with the same judge. On November 19, 2014, the ALJ denied the petition for reconsideration because it contained multiple defects and there was insufficient time to correct the defects.²

Respondent Daniels now asks the NOAA Administrator to review the ALJ's Initial Decision. In the petition for review, Respondent Daniels challenges the ALJ's factual findings and credibility determinations; he also seeks apportionment of the penalty.

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 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**.

² The judge found that the petition for reconsideration was filed on the last day for it to be considered timely, the petition for reconsideration was not accompanied by proof of service; there was no indication that the Agency was provided notice that the petition had been filed; and the petition did not state, with any particularity, the matters claimed to have been erroneously decided.

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).

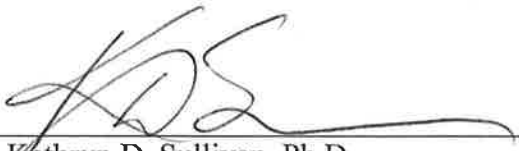
⁴ See 15 C.F.R. § 904.273(c) ("Review by the Administrator of an initial decision is discretionary and is not a matter of right.") and 15 C.F.R. § 904.273(i) ("The Administrator need not give reasons for denying review.").

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.

3/18/15

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 Respondents' Petition for Administrative Review was sent to the individuals listed below on this 20th day of March, 2015:

Via Registered or Certified Mail, Return Receipt Requested:

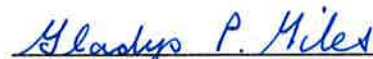
Stephen C. Daniels
P.O. Box 693
Wanchese, NC 27981

Meggan Engelke-Ros, Esq.
NOAA Office of General Counsel
US Department of Commerce
1315 East West Highway
SSMC3, Suite 15405
Silver Spring, MD 20910

Joseph J. Doak, III
4357 Mill Landing Road
Wanchese, NC 27981

Via U.S. Mail and Electronic Mail:

U.S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, DC 20460
OALJfiling@epa.gov



Gladys P. Miles