

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

IN THE MATTER OF:)	Docket Number:
)	
DAVID D. STILLWELL)	SE1200825FM
ROCCO J. SCALONE)	F/V MISS STEPHANIE
)	
Respondents.)	

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

This order addresses a fishery enforcement case brought by the National Oceanic and Atmospheric Administration (NOAA) against David D. Stillwell and Rocco J. Scalone, respectively the owner and operator of a commercial fishing vessel (F/V) named the Miss Stephanie. On September 25, 2012, the Agency charged Respondents with one count of failing to comply with protected species conservation measures in violation of the Magnuson-Stevens Fishery Conservation and Management Act and related regulations at 50 C.F.R. § 622.7(ff) (2012). Specifically, the Agency alleged that Respondents failed to carry or possess five of the seven items of sea turtle mitigation gear required under 50 C.F.R. § 622.10(b) for owners or operators of vessels issued a commercial vessel permit for Gulf of Mexico reef fish. For this violation, the Agency proposed a total penalty of \$5,000 assessed jointly and severally against Respondents.

Upon receipt of the charging document, Respondents requested a hearing before an Administrative Law Judge (ALJ) to contest liability and prevent the assessment of penalties. Following this evidentiary hearing and the receipt of post-hearing briefs from both parties, the ALJ issued an Initial Decision and Order on May 29, 2015. In that decision, the ALJ found in favor of the Agency and assessed a civil penalty of \$5,000. The Respondents filed a motion for reconsideration with the ALJ. The ALJ denied the motion for reconsideration on April 12, 2016, finding that the motion was not timely, and alternatively that Respondents had not demonstrated any error of fact or law in the ALJ's Initial Decision and Order.

On April 20, 2016, Respondents filed a petition for administrative review. In the petition, Respondents challenge the ALJ's factual findings and credibility determinations. Respondents request a reversal of the Initial Decision or, in the alternative, seek issuance of a written warning. For the reasons stated below, Respondents' petition for review is **DENIED**.

DECISION ON DISCRETIONARY REVIEW

On appeal, the NOAA Administrator has broad discretion in deciding whether to grant or deny a petition for administrative review.¹ Two criteria guide the Administrator's decision: (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.² Examples 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 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, I decline to review the challenges to the ALJ's factual findings and credibility determinations raised by Respondents in their petition. In their petition, Respondents raise the same arguments considered and rejected by the ALJ. Respondents have not identified any significant factual or legal errors in the ALJ's liability findings, and no fairness or policy considerations have been identified that would warrant further consideration of the ALJ's Initial Decision. Accordingly, Respondents' petition for administrative review is **DENIED**.

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.").

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.

CONCLUSION

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

8-4-16

Dated



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