



October 5, 2020

**Via First Class Mail—Return Receipt Requested**

PacStar, Inc.

Attn: Colleen Helligso, Registered Agent

P.O. Box 319

Kodiak, AK 99615

Re: In the Matter of FV *Pacific Star*  
Case No. AK1901433  
Appeal of Written Warning

Dear Ms. Helligso:

This appeal concerns a written warning issued to Respondent, PacStar, Inc., for “failing to return all prohibited species, or parts thereof, to the sea immediately, with minimum of injury, regardless of its condition” in violation of 50 C.F.R. § 679.21 and for “failing to retain up to the maximum retainable groundfish bycatch Improved Retention (IR)/Improved Utilization (IU) species amount” in violation of 50 C.F.R. § 679.27. The Chief of the NOAA Office of General Counsel’s Enforcement Section (Agency counsel), affirmed the written warning on the grounds that the initial request for review pursuant to 15 C.F.R. § 904.403(a) was untimely. For the reasons stated below, I affirm the written warning.

I. Procedural Background

On November 27, 2019, an authorized officer in the NOAA National Marine Fisheries Service Office of Law Enforcement issued a Written Warning Notification to vessel operator Christopher C. Williamson and PacStar, Inc., for the violations described above.<sup>1</sup> PacStar, Inc., received the written warning on December 2, 2019, and through owners Kent and Colleen Helligso, appealed by letter dated January 31, 2020, and postmarked February 11, 2020. On February 25, 2020, Agency counsel affirmed the written warning, finding the request for review was untimely, and denying the appeal for that reason. PacStar, Inc., received Agency counsel’s determination by certified mail on March 3, 2020. PacStar, Inc., through owner Colleen Helligso, timely appealed Agency counsel’s determination by letter to the NOAA Deputy General Counsel dated April 10, 2020, and postmarked April 11, 2020.

II. Procedural Framework

The procedures in 15 C.F.R. § 904.403 set forth a two-part administrative process for review and appeal of a written warning. Pursuant to 15 C.F.R. § 904.403(a), the Respondent of a written warning issued by an authorized officer may first seek review from Agency counsel by sending a

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<sup>1</sup> Christopher C. Williamson has not filed an appeal.



written request for review to the Assistant General Counsel for Enforcement and Litigation<sup>2</sup> within 60 days of receipt of the written warning. The Agency counsel's determination affirming, vacating, or modifying the written warning constitutes the final agency action unless it is appealed to the Deputy General Counsel pursuant to 15 C.F.R. § 904.403(b).

The appeal procedures set forth in 15 C.F.R. § 904.403(b) and (c) apply to a Respondent who receives a determination from Agency counsel affirming a written warning. A Respondent may appeal to the Deputy General Counsel within 60 days of the receipt of Agency counsel's determination. The Deputy General Counsel's determination affirming, vacating, or modifying the written warning constitutes the final agency action.

### III. Discussion

In Respondent's appeal to the Deputy General Counsel, Respondent does not contest Agency counsel's determination that the initial request for review was untimely. Instead, Respondent requests reconsideration, explaining that "to be denied a review on the basis of being late in replying by 11 days is just not acceptable considering your office took more than a year to let us know."<sup>3</sup> Respondent cites a number of reasons for the late filing; including awaiting the birth of a grandchild, the excitement of returning home, the holidays, wrapping up accounting for the year, and preparing tax information for the crew.<sup>4</sup>

The procedural regulations found at 15 C.F.R. part 904, subpart E, are dispositive and support my affirmation of written warning AK1901433. Pursuant to 15 C.F.R. § 904.403(a), Respondent's initial request for review "must be filed at the NOAA Office of the Assistant General Counsel for Enforcement and Litigation ... within 60 days of receipt of the written warning." In this case, Respondent received the written warning on December 2, 2019,<sup>5</sup> and the period for Respondent to file a timely appeal began to run on December 3, 2019.<sup>6</sup> The 60-day appeal period for Respondent expired on January 31, 2020. As the postmark date<sup>7</sup> of Respondent's initial request for review, February 11, 2020, was 11 days after the filing deadline established by 15 C.F.R. § 904.3(a), Respondent's appeal was untimely.

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<sup>2</sup> This position has been retitled as Section Chief for the Enforcement Section.

<sup>3</sup> Respondent's Appeal of Written Warning AK1901433 to the Deputy General Counsel, dated April 10, 2020.

<sup>4</sup> *Id.*

<sup>5</sup> See 15 C.F.R. § 904.3(a) (stating that service of a written warning "will be considered effective upon receipt").

<sup>6</sup> See 15 C.F.R. § 904.4 ("For a NOVA, NOPS or NIDP, the 30 day response period begins to run on the date the notice is received. All other time periods begin to run on the day following the service date of the document, paper, or event that begins the time period.").

<sup>7</sup> See 15 C.F.R. § 904.3(b) ("Service of documents and papers will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), facsimile transmission, delivery to third party commercial carrier, electronic transmission, or upon personal delivery.").

IV. Conclusion

For the reasons set forth above, I hereby affirm the written warning.

Sincerely,

Kristen L. Gustafson  
Deputy General Counsel

cc: Bethany Henneman, Attorney-Advisor  
NOAA Office of the General Counsel, Oceans and Coasts Section