



U.S. DEPARTMENT OF COMMERCE
National Oceanic & Atmospheric Administration
Office of General Counsel
Herbert C. Hoover Building, Suite A100
14th and Constitution Ave., NW
Washington, D.C. 20230

SEP 23 2013

Via First Class Mail – Return Receipt Requested

Mr. Joaquin N. Fernandez, Jr.
289 Caribbean Drive East
Summerland Key, Florida 33042

RE: In the Matter of F/V Fish Hunter
Case No. SE 1201474FM
Appeal of Written Warning

Dear Mr. Fernandez:

This appeal concerns a written warning issued to Joaquin N. Fernandez, Jr., owner of the F/V Fish Hunter, on June 18, 2013. Mr. Fernandez (Respondent) was cited with one violation of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1857(1)(A), for failing to comply with Vessel Monitoring System (VMS) requirements for Gulf Reef Fish Permit holders. For the reasons discussed below, I affirm the written warning.

I. Background

On May 11, 2011, Florida Marine Patrol officers observed the F/V Fish Hunter approximately six miles south of the Dry Tortugas National Park in the South Atlantic with two occupants and two fishing lines in the water. Three officers, led by Officer Raul Pena-Lopez, boarded the F/V Fish Hunter to conduct a marine fisheries and safety inspection. During the inspection, Officer Pena-Lopez observed a Federal Gulf Reef Fish Permit among the vessels documents. The other officer, Officer Glen, asked where the VMS was located and the operator, Mr. Jordan M. Slipek, indicated below deck. With the operator's permission, Officer Way inspected the VMS and found it turned off. Both the operator and crew stated that they did not turn the VMS off.¹ The operator further stated that he "left port on May 10, 2011" and was "unaware that I needed to turn on the VMS and have the computer on at all times. I am a new captain in this area. . . . I will make sure to get the VMS working properly and will have it on at all times."²

The Florida Fish and Wildlife Conservation Commission referred the violation to the Enforcement Section for the NOAA Office of the General Counsel, and on June 18, 2013, the Enforcement Section served a written warning to the Respondent as owner of the F/V Fish

¹ Incident Summary Report Number FWSB-11-OFF-4196, dated May 16, 2011.

² Sworn Statement of Jordan Slipek dated May 11, 2011.

Hunter, and to Mr. Slipek, as the vessel operator.³ On June 25, 2013, Respondent sent a letter appealing the written warning.⁴

II. Discussion

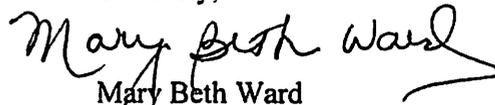
Respondent does not contest the violation. Rather, Respondent maintains that the VMS units on his vessels including the F/V Fish Hunter were from 2007, were not manufactured for the marine environment, and have constantly had electrical issues resulting in their drawing power from the vessel's batteries. In this instance, Respondent states that the F/V Fish Hunter was "undergoing battery failure issues," which in turn caused the VMS unit to "power . . . down."⁵

Respondent does not provide any support for his contention that the F/V Fish Hunter's VMS unit was not working because the vessel's battery had failed, or the broader claim that these VMS units are not suitable for the marine environment. The fact that over two years after the violation the Respondent is only now in the process of researching and purchasing new VMS units⁶ further undercuts Respondent's claim of problems with operation of the existing ones.

Instead, the Florida Marine Patrol's inspection report demonstrates that the VMS unit on the F/V Fish Hunter had not been turned on by the vessel operator, who claimed he was new to the area and unaware of the requirement. The report further demonstrates that the VMS unit was promptly started upon instruction from the Florida Marine Patrol officers and fully functional. The Respondent himself notes that following the inspection, the F/V Fish Hunter "proceeded to operate with a working VMS for the remainder of the multiple day trip."⁷

Based on the foregoing, I affirm the written warning.

Sincerely,


Mary Beth Ward
Deputy General Counsel

cc: Cynthia Fenyk, Attorney-Advisor
Enforcement Section, NOAA Office of the General Counsel

³ Letter dated June 18, 2013, from Cynthia S. Fenyk, Enforcement Attorney, to Joaquin N. Fernandez, Jr.

⁴ Letter dated June 25, 2013, from Mr. Joaquin Fernandez to NOAA Office of General Counsel.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*