



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Washington, D.C. 20230

OFFICE OF THE GENERAL COUNSEL

AUG 2 2013

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

Hermosa Cruz, LLC  
c/o Mr. Harley Londrie  
400 Washington Street  
Port Isabel, TX 78578

RE: In the Matter of Hermosa Cruz, LLC  
Case No. SE 1002279FM  
Appeal of Written Warning

Dear Mr. Londrie:

This appeal concerns a written warning issued to Hermosa Cruz, LLC, owner of the F/V HERMOSA CRUZ, on December 11, 2012. Specifically, Hermosa Cruz, LLC (Respondent) was cited with two violations of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1857(1)(A): (1) possession of seven red snapper during a closed season, as prohibited by 50 C.F.R. § 622.34(m); and (2) possession of nine cobia in excess of the bag limit, as prohibited by 50 C.F.R. § 622.32(c)(1). For the reasons discussed below, I affirm the written warning.

**I. Background**

On May 31, 2010, a U.S. Coast Guard boarding team stopped the F/V HERMOSA CRUZ for routine inspection.<sup>1</sup> At the time, the vessel was trawling for shrimp, 84 nautical miles south of Marsh Island, Louisiana. During the inspection, the Coast Guard Boarding Officer found on board: (1) seven red snapper during a red snapper closed season, and (2) nine cobia in excess of the applicable bag limit. The vessel's master, Ernesto G. Rangel, admitted to the Boarding Officer that the red snapper and cobia were caught as bycatch in the course of the vessel's shrimp trawling efforts and that he had no knowledge of the fishery regulations regarding bag limits.<sup>2</sup> Mr. Rangel agreed to abandon the fish at sea.<sup>3</sup>

<sup>1</sup> See generally, Offense Investigation Report (OIR) filed by Lt. Benjamin J. Krebs, executed on September 22, 2010. The OIR compiles various other documents into a single packet, which are listed on the first page of the OIR as Items A through P.

<sup>2</sup> See OIR Item E, Fisheries Violation Report, dated May 31, 2010, at p. 4 (containing Mr. Rangel's signed statement, "I didn't now [sic] of the fish limits. What ever [sic] we caught we just kept.") and OIR Item K, Statement of Boarding Officer Brian T. Ripka on the Boarding of the Fishing Vessel Hermosa Cruz on 31 May 2010 ("I asked the Person in Charge [Mr. Rangel] about the excess fish. He stated to me that he didn't know about the bag limit. [Mr. Rangel] further stated that all fish were taken as shrimping by catch and stated he would abandon illegal catch at sea.").

<sup>3</sup> See OIR Item E, Fisheries Violation Report, dated May 31, 2010, at p. 4 (containing abandonment statement signed by Mr. Rangel).



The Coast Guard referred the case to the Enforcement Section for the NOAA Office of the General Counsel, and on December 11, 2012, the Enforcement Section served a written warning to Respondent as the vessel owner, and to Mr. Rangel as the vessel operator. On January 10, 2013, Respondent sent a letter requesting review of the written warning.

NOAA's procedural regulations provide that a respondent who receives a written warning from Agency counsel may appeal to the NOAA Deputy General Counsel. The appeal must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning. On appeal, the Deputy General Counsel may, in her discretion, affirm, vacate, or modify the written warning. The Deputy General Counsel's determination constitutes final agency action.<sup>4</sup>

## II. Discussion

Respondent does not contest the two violations. Rather, Respondent maintains that it should not be held responsible for the unlawful actions of the vessel captain and crew, arguing that it has no ability to monitor or control the captain and the crew's actions while they are at sea or to recoup fines for these types of violations, that it has a policy directing its crews "not to bring any fish back," and that the F/V HERMOSA CRUZ derives its revenue solely from the catch and sale of shrimp, not other fish.<sup>5</sup>

As reflected in the body of administrative civil penalty decisions involving the MSA, commercial vessel owners bear broad responsibility for the actions of their crews and have been held vicariously liable under the doctrine of *respondeat superior* for acts that occur within a crewmember's scope of employment.<sup>6</sup> These decisions hold that vessel owners bear such wide-ranging responsibility because they are the primary beneficiary of the vessel's operations and bear the ultimate authority and obligation to ensure that they hire and train law-abiding captains and crews.<sup>7</sup> These decisions also note that limiting the scope of liability for vessel owners would

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<sup>4</sup> 15 C.F.R. § 904.403(b), (c).

<sup>5</sup> See Appeal Request at p. 1.

<sup>6</sup> See, e.g., *In the Matter of James Chan Song Kim, Askar Ehmes, Ulheelani Corporation*, 2003 WL 22000639, at \*10 (NOAA January 7, 2003) ("Just as a trucking company or taxi fleet is responsible for the accidents and violations by their operators and vehicles, owners and operators of fishing vessels are liable under the Magnuson-Stevens Act for the actions of their employees and crew."); *In the Matter of Atlantic Spray Corporation*, 1996 WL 1352603, at \*25-26 (NOAA August 8, 1996) ("[T]he fact that owner corporation is the holder of the vessel permit, ties them to, and makes them responsible for fishing activities conducted under this permit. Where permitted fishing vessels are responsible for the conduct of illegal fishing activities, the owners of those vessels are held accountable.") (internal citation omitted).

<sup>7</sup> See, e.g., *In the Matter of Tommy Nguyen, William J. Harper, and F/V CAPT. TOM*, 2012 WL 1497024, at \*10 (NOAA January 18, 2012) ("It is not necessary that a vessel owner exercise detailed control over the operations of his vessel in order to be held liable for the illegal activities of its master and crew. It is sufficient that the owner of the vessel, and the major beneficiary of its operations, authorized the fishing expedition that was illegally conducted. Since it acquires a share of the vessel's production, so must it bear a major responsibility, along with the captain, for the latter's unlawful acts. To hold otherwise would be to allow vessel owners to escape responsibility for the transgressions of the captains that they hire, authorize to operate their boats, and have the authority to fire.").

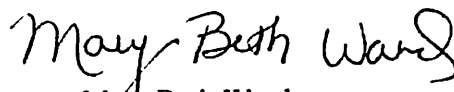
inhibit effective enforcement of the MSA and frustrate the MSA's resource conservation and management goals.<sup>8</sup>

The actions comprising the two violations at issue here – *i.e.*, the unlawful possession by crewmembers of bycatch – are a foreseeable consequence of any commercial shrimp trawling business. Respondent acknowledges as much, detailing past problems with fishing activities by its crews that resulted in Respondent being held liable for injuries on the vessel.<sup>9</sup> In terms of efforts to stop these types of activities from occurring, Respondent states it has a “policy” with vessel crews “not to bring any fish back” and instructions not to fish onboard the vessel, but it did not provide any documentation to demonstrate that such a policy is in place, and it did not detail any consequences to captains or crews for failure to follow this policy or procedures to ensure compliance. Indeed, Respondent concedes that its efforts produce no substantive effect in terms of curtailing the activities of its crews.<sup>10</sup> Additionally, the captain's failure to ensure the lawful conduct onboard the vessel and lack of knowledge regarding fishery regulations, as reflected in his statements to the Boarding Officer at the time of inspection, shows deficiencies in Respondent's hiring and training procedures.

The totality of the factors and circumstances discussed above, including the broad responsibility borne by commercial vessel owners for the actions of their crews, the importance of effective enforcement of the MSA, and the lack of effective controls in hiring, training and supervision of the HERMOSA CRUZ's captain and crew, supports a finding that Respondent appropriately shares responsibility for the unlawful activities detailed in the written warning.

Based on the foregoing, I affirm the written warning.

Sincerely,

  
Mary Beth Ward  
Deputy General Counsel

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

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<sup>8</sup> See, e.g., *In the matter of Brant McMullan & Roger A. Gales*, 2010 WL 8606351, at \*16-17 (NOAA December 7, 2010) (noting that allowing vessel owners “to escape responsibility for the transgressions of the captains that they hire, authorize to operate their boats, and have the authority to fire . . . would substantially inhibit the effective enforcement of the Magnuson Act and the applicable regulations.”).

<sup>9</sup> See Appeal Request at p. 1.

<sup>10</sup> See Appeal Request at p. 1 (“The problem is, there is no possible way for the company to monitor them out at sea, leaving them to do what they want. That includes in this case, bringing back fish they should or should not have.”).