



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

OFFICE OF THE GENERAL COUNSEL

AUG 27 2014

Via First Class Mail--Return Receipt Requested

Yankee Fisherman, LLC
817 Jefferson Avenue
P.O. Box 13
Newport News, VA 23607-0817

RE: In the Matter of Yankee Fisherman, LLC and Randy Mason
Case No. SE1104783FM
Appeal of Written Warning

Dear Sir or Madam:

This appeal concerns a written warning issued to Yankee Fisherman, LLC and Randy Mason, respectively owner and operator of the fishing vessel (F/V) Gulf Stream III (Respondents). Respondents were cited with one violation of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. § 1857(1)(A), and regulations at 50 C.F.R. § 622.7(a) (2011) for fishing without a valid Federal Gulf of Mexico Shrimp Permit. For the reasons discussed below, I affirm the written warning.

I. Background

On August 12, 2011, Louisiana Department of Wildlife and Fisheries officers (State officers) observed the F/V Gulf Stream III trawling and adrift in the Federal exclusive economic zone (EEZ), approximately 16.5 nautical miles off the coast of Louisiana.¹ The State officers boarded the vessel and conducted a license and creel compliance check. Respondent Mason identified himself as the vessel's Captain and admitted that he had been shrimping; there were also approximately 2,000 pounds of shrimp in the vessel cooler.² Upon request, Respondent Mason failed to produce a Federal Gulf of Mexico Shrimp permit for the current year. Instead, he displayed a permit that expired on June 30, 2011.³ As a result, the State officers issued a State citation for "[violating] Federal shrimp regulations,"⁴ and referred the matter to NOAA Fisheries Service, Office of Law Enforcement (OLE) for separate investigation and enforcement action.

¹ See generally, Offense Investigation Report (OIR) filed by Special Agent Steve Campbell, executed on November 4, 2011. The OIR compiles various other documents into a single packet, which are listed on the last page of the OIR as Attachments (Att.) 1 through 8.

² See OIR, Att. 4, Louisiana Department of Wildlife and Fisheries Offense Report filed by Agent Cody Soileu, executed on August 12, 2011.

³ See *id.* and Att. 5, Photo/Video Log, dated August 12, 2011, Frame 1 (photo of federal Gulf of Mexico Shrimp Permit issued to the F/V GULF STREAM III).

⁴ See OIR, Att. 3, Louisiana Department of Wildlife and Fisheries Citation # D 562483, dated August 12, 2011.



The Federal investigation revealed that the permit at issue was not renewed until August 22, 2011,⁵ and that Respondents had previous unrelated violations.⁶ On April 29, 2014, the Enforcement Section of NOAA Office of the General Counsel issued a written warning to Respondents Yankee Fisherman, as the vessel owner, and to Respondent Mason, as the vessel operator, for “fishing without a valid permit.” The written warning is based on an Enforcement Action Report prepared by the OLE and issued to Respondent Mason, citing a violation of 50 C.F.R. § 622.7(a) arising from the operation of the F/V Gulf Stream III with “no (expired) GOM Federal Shrimp Permit.”⁷ On May 6, 2014, Ms. Patti Young, bookkeeper for Yankee Fisherman, sent a letter appealing the written warning.

II. Legal Framework

NOAA’s procedural regulations provide a respondent who receives a written warning from NOAA Agency counsel the opportunity to appeal to the NOAA Deputy General Counsel. On appeal, the Deputy General Counsel may affirm, vacate, or modify the written warning. The Deputy General Counsel’s determination constitutes final agency action for judicial review purposes.⁸

III. Discussion

Respondent Yankee Fisherman does not contest the violation. Rather, Respondent requests re-consideration of the written warning on the grounds that: (1) the bookkeeper’s father died unexpectedly in April 2011; (2) the vessel owner’s wife, who filled in for the bookkeeper in her absence, did not know that the permit application needed to be filed; (3) upon the bookkeeper’s return, the permit renewal application had been misplaced; and (4) the vessel owner was not made aware that the permit expired “until . . . Captain Randy Mason of the F/V Gulf Stream II was fishing with an expired limited access permit on August 12, 2011.”⁹

Regulations implementing the MSA require a valid commercial vessel permit to be issued to and present on board any vessel that fishes for or possesses shrimp in or from the Gulf of Mexico

⁵ See OIR, Att. 7, Permit Information Management System, dated October 5, 2011.

⁶ See OIR at p. 6.

⁷ OIR, Att. 8, Enforcement Action Report Citation # C1101426, dated November 3, 2011. Although the Agency’s written warning refers to the regulation requiring a Gulf of Mexico permit as 50 C.F.R. § 622.61, the written warning adequately describes the offense, and Respondent Yankee Fisherman does not contest the violation. Therefore, I find that this minor clerical mistake in the written warning is harmless error. See *U.S. Fish and Wildlife Service v. Kennedy*, 7 O.R.W. 123 (FWS 1993) (incorrect citations in notice of violation are harmless where the narrative description of the charging document adequately describes an offense, and there is no claim by respondent that he was unaware of the nature of the alleged violation); see also *United States v. Garcia*, 954 F.2d 273, 276 (5th Cir. 1992) (incorrect citations in the charging document are harmless unless defendant is misled to his prejudice).

⁸ 15 C.F.R. § 904.403 (b), (c).

⁹ See Appeal Request at p. 1.

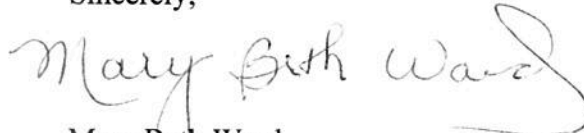
Exclusive Economic Zone (Federal EEZ).¹⁰ Fishing or possessing shrimp in or from the Federal EEZ on a vessel without a valid permit constitutes a violation of the regulations.¹¹

In this case, Respondent Yankee Fisherman held a federal Gulf of Mexico Shrimp permit since April 2007, and had undergone the yearly renewal process since that time.¹² In addition, Respondent Yankee Fisherman, at the time of the citation, held numerous other Federal fisheries permits, and accordingly should be well aware of both the timing and procedures for renewing its permits. It is incumbent on vessel owners to ensure a timely renewal of permits on its vessels, and it is incumbent on vessel operators to ensure they have the necessary permits before proceeding out to sea to fish.¹³ While Respondent Yankee Fisherman's bookkeeper was understandably absent for a period of time following her father's unexpected passing, the responsibility was that of the Respondents – both the vessel owner and vessel operator – to ensure their activities remained in compliance with the law.

IV. Conclusion

Based on the foregoing, I affirm the written warning.

Sincerely,



Mary Beth Ward
Deputy General Counsel

cc: Duane R. Smith, Attorney-Advisor
Ms. Patti Young
Mr. Randy Mason

¹⁰ 50 C.F.R. § 622.4(a)(2)(xi)(A) (2011).

¹¹ 50 C.F.R. § 622.7(a) (2011).

¹² See OIR, Att. 7, Permit Information Management System, dated October 5, 2011.

¹³ See *In the Matter of Billy G. Midgett and Willie Etheridge*, 1993 WL 495713, at 152 (NOAA April 14, 1993) (noting the duty of operators to “know the regulations of the fishery in which he works and abide by them”).