



February 9, 2023

**Via United States Postal Service**

Rodrigo Pardo  
[REDACTED]  
[REDACTED]

Re: Granmar Products, Inc.  
Incident Number 2206874  
Appeal of Written Warning

This appeal concerns a written warning issued by the National Oceanic and Atmospheric Administration (NOAA), Office of Law Enforcement (OLE) to Granmar Products, Inc. (“Granmar”) on December 14, 2022 for failure to provide accurate Seafood Import Monitoring Program (SIMP) traceability documentation upon request by the SIMP audit team in violation of 50 Code of Federal Regulations (C.F.R.) § 300.4(b). NOAA’s Office of General Counsel received an appeal of this written warning letter from Rodrigo Pardo (“Respondent”), President of Granmar, on December 14, 2022. In that appeal, Respondent argues that he had no knowledge of why his submissions failed the audits and was under the belief that his supplier had provided all the required information. As explained in detail below, Respondent’s request that the violation be excused is denied, and the written warning is affirmed.

**I. Standard of Review**

NOAA procedural regulations provide Respondent with an opportunity to seek Agency review of a written warning issued by an authorized officer by submitting a written appeal to the NOAA Deputy General Counsel within sixty (60) days of the date of receipt of the written warning.<sup>1</sup> An appeal from a written warning must present the facts and circumstances that explain or deny the violation described in the warning.<sup>2</sup> On appeal, the NOAA Deputy General Counsel has discretion to affirm, vacate, or modify the written warning.<sup>3</sup> The NOAA Deputy General Counsel’s determination constitutes final agency action for purposes of judicial review.<sup>4</sup>

A written warning is the lowest sanction that NOAA issues for violations of the statutes and regulations that it is authorized to enforce. Nonetheless, a written warning may be considered a prior offense, and may be used as a basis for dealing more severely with a subsequent offense.

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<sup>1</sup> 15 C.F.R. § 904.403(b).

<sup>2</sup> 15 C.F.R. § 904.403(b)(1).

<sup>3</sup> 15 C.F.R. § 904.403(c).

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



## II. Legal Framework

The SIMP was implemented in 2018 to trace certain seafood groups from the point of harvest to the point of entry into the United States in order to implement the Magnuson-Stevens Fishery Conservation and Management Act's (MSA) prohibition on the import and trade of fish taken, possessed, transported, or sold in violation of any foreign law or regulation.<sup>5</sup> The program establishes reporting and recordkeeping requirements for imports of thirteen (13) seafood species groups, encompassing 1,100 unique species: abalone (*Haliotis spp.*), Atlantic blue crab (*Callinectes spp.*), Atlantic cod (*Gadus morhua*), dolphinfish/Mahi Mahi (*Coryphaena hippurus*), grouper (Family *Serranidae*), Pacific cod (*Gadus macrocephalus*), red king crab (*Paralithodes camtschaticus*), red snapper (*Lutjanus campechanus*), sea cucumber (Class *Holothuroidea*), sharks (Orders *Squaliformes*, *Carcharhiniformes*, *Lamniformes*, *Orectolobiformes*, *Heterodontiformes*, *Pristiophoriformes*), shrimp (Suborder *Natantia*), swordfish (*Xiphias gladius*), and tuna (*Thunnus spp.* – Albacores, Bigeye, Bluefin, Yellowfin, and Skipjack – *Katsuwonus pelamis*).<sup>6</sup>

The SIMP is a risk-based approach to seafood traceability for seafood species identified as being at particular risk of illegal, unreported, and unregulated fishing or seafood fraud.<sup>7</sup> The importer of record is required to submit documents detailing the harvest of the aforementioned SIMP species via the Automated Commercial Environment (ACE) portal and maintain records containing information on the chain of custody of the fish or fish products sufficient to trace the fish from the point of entry into U.S. commerce back to the point of harvest.<sup>8</sup> The importer must make the chain of custody records available for inspection upon request by a NOAA auditor.<sup>9</sup>

## III. Background<sup>10</sup>

Granmar is an importer based in Miami, Florida that specializes in importing fish and seafood from Central and South America, Asia, Africa, and Europe to the United States.<sup>11</sup> Fish imported by Granmar is used by over 300 different retailers, distributors, independent restaurants, and national restaurant chains.<sup>12</sup>

On May 24, 2022, Granmar imported grouper, a species covered under the SIMP regulations at 50 C.F.R. § 300.324.<sup>13</sup> On May 31, 2022, NOAA's SIMP audit team conducted an audit of Granmar's documents in the ACE portal, entry number ABC-22242160, and requested

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<sup>5</sup> 16 U.S.C. § 1857(1)(Q).

<sup>6</sup> 50 C.F.R. § 300.324(a)(2) & (3); *Seafood Import Monitoring Program*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/international/seafood-import-monitoring-program#:~:text=The%20Seafood%20Import%20Monitoring%20Program%20establishes%20reporting%20and%20recordkeeping%20requirements,seafood%20from%20entering%20U.S.%20commerce> (last visited Dec. 30, 2022).

<sup>7</sup> Magnuson-Stevens Fishery Conservation and Management Act Seafood Import Monitoring Program, 81 Fed. Reg. 88975 (Dec. 9, 2016).

<sup>8</sup> 50 C.F.R. § 300.324(b) and (e).

<sup>9</sup> 50 C.F.R. § 300.324(e).

<sup>10</sup> The facts were developed from the Respondent's website, Respondent's appeal letter dated December 14, 2022, and Office of Law Enforcement (OLE) Incident Report #: 2206874.

<sup>11</sup> *Our Story*, GRANMAR PRODUCTS, INC., <https://granmar.com/about-us/> (last visited Dec. 30, 2022).

<sup>12</sup> *Id.*

<sup>13</sup> 50 C.F.R. § 300.324(a)(2).

further documents from Granmar. On the same day, Granmar emailed the SIMP audit team the requested traceability documents. The documents were reviewed and violations were found as follows: (1) the harvest events were not entered correctly into the ACE system, and (2) the chain of custody could not be verified for several landing events as no documentation was provided. A SIMP results letter outlining the missing documents was emailed to Granmar.

On November 21, 2022, NOAA Special Agent Heather Nicotri (SA Nicotri) was referred a SIMP audit failure for Granmar, ACE portal entry number ABC-22242160, for failure to provide accurate SIMP traceability documentation upon request by the SIMP audit team as required by 50 C.F.R. § 300.4(b). SA Nicotri mailed Granmar a written warning letter on December 13, 2022, which was received on December 14, 2022. Following receipt of that written warning, Respondent timely appealed.<sup>14</sup>

#### **IV. Discussion**

Review of the facts of this case and applicable law demonstrates that the written warning correctly cites Granmar for violating 50 C.F.R. § 300.4(b). Respondent requests that the written warning, which cites Granmar for failure to provide accurate SIMP traceability documentation upon request by the SIMP audit team, be vacated because: (1) Granmar has no knowledge of Mexican laws or regulations that may apply to its suppliers based in Mexico; (2) Granmar has no knowledge of what was missing from its responses to the NOAA auditor's requests; and (3) requests from the NOAA auditor that were forwarded to the Mexican suppliers may have been misunderstood due to an error in translation.<sup>15</sup> However, 50 C.F.R. § 300.4(b) does not have an intent requirement, meaning that an importer may violate that section even without knowledge. Accordingly, Respondent's lack of knowledge is not a defense to the identified violations, and it was appropriate for OLE to issue Granmar a written warning for violation of 50 C.F.R. § 300.4(b).

Respondent's first argument, that Granmar has no knowledge of Mexican laws, regulations, or paperwork that may apply to its suppliers<sup>16</sup> is irrelevant. Granmar was cited for failing to comply with 50 C.F.R. § 300.4(b), a regulation that applies to importers of seafood to the U.S., rather than for failure to follow any Mexican laws or regulations that may apply to their suppliers.<sup>17</sup> Furthermore, Granmar has not alleged any conflict of laws between Mexican and U.S. law that would prevent them from complying with U.S. law.

Respondent's second argument that Granmar has no knowledge of what was missing from its responses is not a proper defense. Respondent states in his appeal that Granmar "has no knowledge as to exactly what was missing from the multiple responses by [its] supplier" and "believed that when the email exchange ceased regarding this entry, all information requested had been successfully submitted by [its] supplier."<sup>18</sup> However, SA Nicotri provides in her investigative report that a SIMP results letter was emailed to Granmar on May 31, 2022 outlining

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<sup>14</sup> See Respondent appeal letter dated December 14, 2022.

<sup>15</sup> Email from Rodrigo Pardo to NOAA Administrative Appeals (Dec. 14, 2022) (on file with author).

<sup>16</sup> *Id.*

<sup>17</sup> Manny Antonaras, Written Warning Issued to Granmar Products, Inc. (Dec. 13, 2022).

<sup>18</sup> *Id.*

the missing documents.<sup>19</sup> The results letter clearly outlines the findings of the audit and details the deficiencies in Respondent's entry number ABC-22242160.<sup>20</sup> Furthermore, SIMP regulations are strict liability requirements that do not provide an exception for importers that unknowingly fail to maintain the records.<sup>21</sup> Thus, Granmar's lack of knowledge that its records were incomplete does not provide a sufficient defense.

Respondent's final argument is that its suppliers "would have furnished all the information that was being requested by any U.S. agency" had there not been a translation gap.<sup>22</sup> Respondent indicates in his appeal that Granmar had forwarded all emails from the SIMP audit team to its suppliers in order that the suppliers furnish the required information. Therefore, any information that the suppliers failed to furnish may have been due to an error in translation. Respondent argues that "[s]omeone 'dropped the ball', but it was not [Granmar]."<sup>23</sup> However, this argument is unpersuasive since SIMP regulations apply to importers of fish and fish products into the U.S. rather than their suppliers.

Under 50 C.F.R. § 300.324(b) and (c), the importer of record is required to provide the harvest data in ACE, either directly or through an entry filer. Furthermore, the importer of record is required to maintain records of chain of custody for a period of two years from the date of import.<sup>24</sup> Thus, Granmar's argument that its suppliers did not provide the correct documentation does not absolve Granmar but instead serves to further demonstrate that it did not maintain the necessary records from the date of import but instead had to rely on its suppliers for the required information. Granmar is responsible for complying with the SIMP regulations as the importer and cannot avoid citations for violations by attempting to place the blame on its suppliers.

## V. Conclusion

Based on the foregoing, I hereby affirm the written warning. This determination constitutes final agency action.

Sincerely,

**GUSTAFSON.KRISTE**  
**N.LYN.1521761314**

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Kristen L. Gustafson  
Deputy General Counsel

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<sup>19</sup> Heather Nicotri, Investigative Report Incident # 2206874, at 3 (Nov. 30, 2022).

<sup>20</sup> Letter from Dale Jones, Seafood Import Monitoring Program Lead, to Granmar Products, Inc. (May 31, 2022) (on file with author).

<sup>21</sup> 50 C.F.R. § 300.324(e).

<sup>22</sup> See Email from Rodrigo Pardo *supra* note 14.

<sup>23</sup> *Id.*

<sup>24</sup> 50 C.F.R. § 300.324(e).

Cc: Adam Dilts, Chief, Oceans and Coasts Section  
Pallavi Javor, Attorney-Advisor  
NOAA Office of the General Counsel, Oceans and Coasts Section