



Green Hope LLC; Eduardo Orejuela
c/o Ruth Christiansen
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April 8, 2024

Via Electronic Mail

RE: In the matter of: Green Hope LLC and Eduardo Orejuela
Incident Number: 2314807
Appeal of Written Warning

Dear Ms. Christiansen:

This appeal concerns a Written Warning issued to Green Hope LLC and Eduardo Orejuela (together, “Respondents”) on December 13, 2023, by the National Oceanic and Atmospheric Administration’s (“NOAA”) Office of Law Enforcement (“OLE”). The Written Warning finds that Respondents twice violated 50 C.F.R. § 679.7(o)(1)(i), a regulation pertaining to the Fisheries of the Exclusive Economic Zone Off Alaska, which provides that it is unlawful for any person to “[u]se any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector.” Respondents appeal. For the reasons below, I vacate the Written Warning.

I. Standard of Review

NOAA regulations provide that a respondent may seek review of a written warning by submitting a written appeal to the NOAA Deputy General Counsel within sixty days of receipt of the written warning.¹ An appeal from a written warning “must present the facts and circumstances that explain or deny the violation described in the written warning.”² On appeal, the NOAA Deputy General Counsel “may, in his or her discretion, affirm, vacate, or modify the written warning[.]”³ The NOAA Deputy General Counsel’s determination constitutes final agency action for purposes of judicial review.⁴

II. Legal Framework

One of the purposes of the Magnuson-Stevens Fisheries Conservation and Management Act (“MSA”) is to “promote domestic commercial and recreational fishing under sound

¹ 15 C.F.R. § 904.403(b).

² *Id.* § 904.403(b)(1).

³ *Id.* § 904.403(c).

⁴ *Id.*



conservation and management principles[.]”⁵ To that end, the MSA provides that it is unlawful to violate any provision of any regulation or permit issued pursuant to the MSA.⁶

In 2007, pursuant to the MSA, NOAA’s National Marine Fisheries Service (“NMFS”) promulgated regulations to implement Amendment 80 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands (“BSAI”) Management Area.⁷ The Amendment 80 Final Rule establishes a limited access privilege program intended “to remedy wasteful discarding of certain harvested fish by allocating a portion of available groundfish to certain vessels, allowing vessel operators to ‘fish in a slower and less wasteful fashion,’ increase efficiency, and reduce waste.”⁸

The “Amendment 80 sector” consists of harvesters that hold Amendment 80 quota share.⁹ “Amendment 80 vessels” are the group of specified catcher/processor vessels that may be used to fish in the Amendment 80 sector.¹⁰ “Amendment 80 species” are defined to include specific groundfish species in particular geographic areas, including BSAI flathead sole, BSAI Pacific cod, BSAI rock sole, and BSAI yellowfin sole.¹¹ The Amendment 80 Program¹² annually determines amounts of Amendment 80 species that are available for harvest, and allocates portions of those amounts between the Amendment 80 sector and all other BSAI trawl fishery participants that are *not* part of the Amendment 80 sector—including catcher vessels.¹³ This latter group is known as the “BSAI trawl limited access sector.”¹⁴

The Amendment 80 regulations prohibit any person from using “any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab [prohibited species catch (“PSC”)], or halibut PSC assigned to the Amendment 80 sector.”¹⁵ And they conversely prohibit using “an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the BSAI trawl limited access sector.”¹⁶ These regulations do

⁵ 16 U.S.C. § 1801(b)(3).

⁶ 16 U.S.C. § 1857(1)(A).

⁷ Fisheries of the Exclusive Economic Zone Off Alaska; Allocating Bering Sea/Aleutian Islands Fishery Resources; American Fisheries Act Sideboards, 72 Fed. Reg. 52,668 (Sept. 14, 2007) [hereinafter “Amendment 80 Final Rule”] (codified at 15 C.F.R. pt. 902 and 50 C.F.R. pt. 679).

⁸ *Fishermen’s Finest, Inc. v. United States*, 59 F.4th 1269, 1273 (Fed. Cir. 2023) (citing Amendment 80 Final Rule at 52,671).

⁹ Amendment 80 Final Rule at 52,671; 50 C.F.R. § 679.2.

¹⁰ Amendment 80 Final Rule at 52,671.

¹¹ 50 C.F.R. § 679.2.

¹² The “Amendment 80 Program means the Program implemented . . . to manage Amendment 80 species fisheries by limiting participation in these fisheries to eligible participants.” *Id.*

¹³ Amendment 80 Final Rule at 52,671; 50 C.F.R. § 679.91(c).

¹⁴ Amendment 80 Final Rule at 52,671.

¹⁵ 50 C.F.R. § 679.7(o)(1)(i).

¹⁶ *Id.* § 679.7(o)(1)(ii).

not, however, prohibit “the *receipt* and *processing* of unsorted catch from the BSAI trawl limited access fishery onboard Amendment 80 vessels.”¹⁷

Where a violation of the MSA occurs, NOAA regulations provide that a “written warning may be issued in lieu of assessing a civil penalty or initiating criminal prosecution[.]”¹⁸ “A written warning may be used as a basis for dealing more severely with a subsequent violation, including, but not limited to, a violation of the same statute or a violation involving an activity that is related to the prior violation.”¹⁹

III. Factual Background ²⁰

The *Green Hope* is a 98-foot trawl catcher vessel operated by Captain Eduardo Orejuela pursuant to an Alaska Department of Fish & Game (“ADFG”) Permit.²¹ The *Green Hope* operates pursuant to Federal Fisheries Permit No. 685, which is held by Green Hope LLC, with endorsements for using trawl gear and operating as a catcher vessel in the Gulf of Alaska (“GOA”) and the BSAI.²² The *Green Hope* is not, however, authorized to harvest as an Amendment 80 vessel.²³

NOAA’s OLE concluded that Respondents nonetheless used the *Green Hope* to harvest amounts of Amendment 80 species assigned to the Amendment 80 sector on two occasions in September 2022 and April 2023.²⁴ These incidents are the focus of the present appeal.

OLE’s Case File includes four ADFG Electronic Groundfish Tickets, which record the *Green Hope*’s deliveries of fish that it caught. Ticket No. E22 740333 shows that, on September 25, 2022, the *Green Hope* delivered to a mothership 26,921 lbs. round weight equivalent (“RWE”) of catch that included Amendment 80 species flathead sole, Pacific cod, rock sole, and yellowfin sole.²⁵ The ticket does not identify the mothership, but as discussed below, the mothership was evidently the *Ocean Peace*, an Amendment 80 vessel.²⁶ And, crucially, the ticket lists the management program for this haul as “A80.”²⁷ Another ticket, No. E22 740335, shows that—also on September 25, 2022—the *Green Hope* delivered to a mothership 100,498 lbs. RWE of catch including the Amendment 80 species flathead sole, rock sole, and yellowfin

¹⁷ Amendment 80 Final Rule at 52,673 (emphasis added).

¹⁸ 15 C.F.R. § 904.400.

¹⁹ *Id.* § 904.401.

²⁰ The facts are developed from OLE’s case file for Incident #2314807 (“Case File”), including Respondents’ appeal email dated February 8, 2024.

²¹ Case File at 4, 14.

²² *Id.* at 5, 11.

²³ *See* Table 31 to 50 C.F.R. pt. 679 (listing the Amendment 80 vessels).

²⁴ Case File at 2, 45.

²⁵ *Id.* at 22.

²⁶ Table 31 to 50 C.F.R. pt. 679.

²⁷ “A ‘management program’ is a unique fishery program with a specific management strategy and/or allocation.” 50 C.F.R. § 679.5(a)(1)(iii).

sole.²⁸ Unlike the catch recorded on Ticket No. 740333, however, Ticket No. 740335 indicates that this catch was made under the “OA” (Open Access) management program.

The mothership *Ocean Peace*’s September 25, 2022, electronic log book (“ELB”) entry lists both of these deliveries, including the respective ticket numbers.²⁹ But the ELB entry lists “OA”—not “A80”—as the management program for *both* of these deliveries. The *Ocean Peace*’s Vessel Production Report for the Open Access management program on September 25, 2022, shows that it produced 49.19 metric tons (mt) RWE, and discarded an additional 9.26 mt, for a total of 58.45 mt RWE of catch disposition reported under the Open Access management program.³⁰ As OLE recognized, this total closely approximates the total weight of the fish that the *Green Hope* delivered to the *Ocean Peace* that day: 57.80 mt.³¹

A second, similar incident occurred in April 2023. ADFG Electronic Groundfish Ticket No. E23 003754 records a delivery from the *Green Hope* to a mothership on April 26, 2023.³² According to the ticket, the harvest was made pursuant to the “A80” management program, and included 32,721 lbs. RWE of catch including the Amendment 80 species flathead sole, Pacific cod, rock sole, and yellowfin sole. A separate fish ticket—No. E23 003755—records another delivery from the *Green Hope* to a mothership on April 26.³³ This sale included 49,108 lbs. RWE of catch including the Amendment 80 species Pacific cod, rock sole, and yellowfin sole. But unlike Ticket No. 003754, Ticket No. 003755 records “OA” as the applicable management program.

As in the previous incident, a daily ELB entry for the mothership *Ocean Peace* records both of these April 2023 deliveries.³⁴ And the entry lists “OA” as the management program for *both* deliveries. The *Ocean Peace*’s Open Access management program Vessel Production Report for April 26, 2023, shows that it produced 37.13 mt RWE, and discarded an additional 1.25 mt, for a total of 38.38 mt RWE of catch disposition reported under the Open Access program.³⁵ This number closely equates to the total weight of the deliveries that the *Green Hope* made to the *Ocean Peace* on April 26: 37.12 mt.³⁶

²⁸ Case File at 23.

²⁹ *Id.* at 27.

³⁰ *Id.* at 29–31.

³¹ This number is derived by adding the total “Sold Weight” on tickets E22 740333 (26,920.65 lbs.), *id.* at 22, and E22 740335 (100,497.72 lbs.), *id.* at 23, and then converting that number to metric tons.

³² *Id.* at 33.

³³ *Id.* at 34.

³⁴ *Id.* at 38.

³⁵ *Id.* at 40–41.

³⁶ This number is derived by adding the total “Sold Weight” on tickets 003754 (32,721.32 lbs.), *id.* at 33, and 003755 (49,107.97 lbs.), *id.* at 34, and then converting that number to metric tons.

On December 13, 2023, OLE emailed Respondents a Written Warning finding that Respondents violated 50 C.F.R. § 679.7(o)(1)(i) by using a non-Amendment 80 vessel to catch an amount of Amendment 80 species assigned to the Amendment 80 sector.³⁷

Respondents appealed on February 8, 2024, in an email from Ruth Christiansen, Director of Government and Industry Affairs for Ocean Peace, Inc.³⁸ Respondents ask “that this written warning be reconsidered,” because, in their view, the only evidence supporting the Written Warning is the notation of “A80” rather than “OA” as the management program applicable to the hauls documented on Ticket Nos. E22 740333 and E23 003754. They assert that this reference to “A80” was mistaken. In substance, then, Respondents argue that they did not actually violate 50 C.F.R. § 679.7(o)(1)(i). Respondents point to the mothership *Ocean Peace*’s electronic logbook entries recording the hauls in question as “OA” harvest rather than Amendment 80 harvest. Respondents also state that their “internal catch tracking” shows that the two hauls in question were accounted for as Open Access, and that a “review of [their] eFish catch information for A80 shows these two hauls ... never appeared as A80 catch.” Respondents did not submit documentation of their “internal catch tracking” or eFISH information in connection with the instant appeal.

IV. Discussion

This appeal turns on whether the “amount” of Amendment 80 species that Respondents caught was “assigned to the Amendment 80 sector.”³⁹ Plainly, fish tickets E22 740333 and E23 003754 indicate that the hauls were made under the “A80” management program. But Respondents contend that these references to Amendment 80 reflect “nothing more than a clerical mistake.” Respondents assert that all other sources of information—including the electronic logbook entries of the mothership to which the *Green Hope* delivered the two hauls at issue, as well as Respondents’ “internal catch tracking” and eFISH information—show that the two hauls actually were recorded as open access harvest and accrued against open access quotas—not against any Amendment 80 quotas. Respondents’ version of events is consistent with NMFS’s expectations in the Amendment 80 Final Rule, which contemplated that catch that is harvested by non-Amendment 80 vessels and assigned to the BSAI trawl limited access sector could be received and processed by Amendment 80 catcher/processor vessels, including where those vessels have a common owner.⁴⁰

The record thus contains conflicting evidence as to whether Respondents used the *Green Hope* to catch an amount of Amendment 80 species assigned to the Amendment 80 sector. The only evidence in the affirmative is the “A80” notations on fish tickets E22 740333 and E23 003754. And the *Ocean Peace*’s logbook entries corresponding to these deliveries contradict

³⁷ *Id.* at 44–45. The Written Warning was addressed to “Green Hope, LLC” and “Edwardo [sic] Orejuela” and was sent to an Ocean Peace Inc. email address.

³⁸ *Id.* at 47.

³⁹ See 50 C.F.R. § 679.7(o)(1)(i) (prohibiting any person from using “any vessel other than an Amendment 80 vessel to catch any amount of Amendment 80 species, crab PSC, or halibut PSC assigned to the Amendment 80 sector”).

⁴⁰ Amendment 80 Final Rule at 52,673, 52,679.

that evidence, because the entries identify the deliveries at issue as occurring under the open access management program. Respondents have also represented to NOAA that their internal accounting and eFISH documentation confirm that these hauls were *not* counted toward any quota share assigned to the Amendment 80 sector.

Having considered all of the information before me, I do not conclude that Respondents violated Section 679.7(o)(1)(i). I therefore exercise my discretion pursuant to 15 C.F.R. § 904.403(c) to vacate the Written Warning.

In so doing, I express no view as to whether the incorrect entry of management program information on two Alaska Department of Fish & Game fish tickets constituted a violation of any recordkeeping and reporting regulations, or as to whether any such violation is attributable to Respondents. The Written Warning did not allege a recordkeeping and reporting violation. But Respondents acknowledge that “it is clear that a clerical mistake was made.” I remind Respondents that it is unlawful for any person to “[f]ail to submit or submit inaccurate information on, any report, application, or statement required under” Part 679 of Title 50 of the Code of Federal Regulations (which sets forth regulations for the Fisheries of the Exclusive Economic Zone Off Alaska).⁴¹ Moreover, the “operator of a catcher vessel, catcher/processor, mothership, or tender vessel . . . are each responsible for complying with the applicable [recordkeeping and reporting] requirements” at 50 C.F.R. § 679.5.⁴²

V. Conclusion

For the foregoing reasons, I hereby vacate the Written Warning.

Sincerely,

GUSTAFSON.KRISTE
N.LYN.1521761314

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Kristen L. Gustafson
Deputy General Counsel
NOAA Office of the General Counsel

cc: Amy Anderson, NOAA Office of Law Enforcement
Adam Dilts, Chief, Oceans and Coasts Section, NOAA Office of the General Counsel
John Hare-Grogg, Attorney-Advisor, NOAA Office of the General Counsel

⁴¹ 50 C.F.R. § 679.7(a)(10)(iii).

⁴² *Id.* § 679.5(a)(2)(i).