



UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

IN THE MATTER OF:)	
)	
Adventure King, LLC, and)	Docket No. NE2106798,
David I. Iglesias,)	F/V Kingfisher
)	
Respondents.)	
)	

INITIAL DECISION AND ORDER

Date: June 21, 2024

Before: Christine Donelian Coughlin, Administrative Law Judge
U.S. Environmental Protection Agency¹

Appearances: For the Agency:
Katherine L. Pohl, Esq.
Scott E. Sakowski, Esq.
National Oceanic and Atmospheric Administration
Office of General Counsel, Enforcement Section
Gloucester, Massachusetts

For Respondents:
David I. Iglesias, *pro se*
Tiverton, Rhode Island

I. Procedural Background

The National Oceanic and Atmospheric Administration (“NOAA” or “Agency”) initiated this proceeding when it issued a Notice of Violation and Assessment of Administrative Penalty (“NOVA”), dated June 6, 2023, to David I. Iglesias and Adventure King, LLC (“Respondents”). The NOVA charges Respondents, as the owner and operator, respectively, of the *F/V Kingfisher*, with three counts of violation under the Magnuson-Stevens Fishery Conservation and

¹ The Administrative Law Judges of the United States Environmental Protection Agency are authorized to hear cases pending before the National Oceanic and Atmospheric Administration pursuant to an Interagency Agreement effective for a period beginning September 8, 2011. See 5 U.S.C. § 3344; 5 C.F.R. § 930.208.

Management Act, 16 U.S.C. §§ 1801-1891(d) (the “Magnuson-Stevens Act” or the “Act”), and its implementing regulations. NOVA 1–2.

Count One alleges that Respondents failed to use functioning vessel monitoring system (“VMS”) equipment during a declared Northeast Multispecies Day-at-Sea trip on June 17, 2021 (the “June 17 Trip”), or during a separate trip beginning June 20, 2021 (the “June 20 Trip”), as required by 50 C.F.R. § 648.10(b)(4), (h)(9)(i), in violation of 16 U.S.C. § 1857(1)(A) and 50 C.F.R. § 648.14(d)(3). NOVA 1. Count Two alleges that during the June 20 Trip, Respondents fished for, caught, possessed, landed, and/or sold a bluefin tuna using unauthorized gillnet gear and without an appropriate vessel permit in violation of 16 U.S.C. § 1857(1)(A) and 50 C.F.R. §§ 635.71(a)(2), (17). NOVA 1. And Count Three alleges that Respondents submitted records and reports to the Agency that contained false or inaccurate information related to their catch of the gillnetted bluefin tuna, including filing a Fishing Vessel Trip Report and a Highly Migratory Species (“HMS”) catch report for an entirely fabricated fishing trip, in violation of 16 U.S.C. § 1857(1)(A), 50 C.F.R. §§ 648.14(a)(5), (6), and 50 C.F.R. § 635.71(a)(6). NOVA 2. Through the NOVA and its accompanying Penalty Worksheet, the Agency assessed proposed penalties of \$13,000 for Count One, \$9,500 for Count Two, and \$27,252 for Count Three, for a total of \$49,752.²

In response to the NOVA, Respondents requested a hearing on the alleged violations and the proposed penalties, and the matter was forwarded to this Tribunal. Hr’g Request (July 3, 2023); Transmittal Memo (July 14, 2023). I was designated to preside over this matter by Order dated July 24, 2023. Order of Designation (July 24, 2023). That same day, I issued a Prehearing Order setting various case deadlines, including deadlines for the parties to file the initial disclosures that serve as the presumptive form of discovery in NOAA enforcement actions. See Prehearing Order 4 (July 24, 2023); 15 C.F.R. § 904.240 (setting initial disclosure requirements). The parties duly exchanged their disclosures, and, on October 5, 2023, I issued a Notice of Hearing Order scheduling the evidentiary hearing in this matter to be held beginning on January 23, 2024, in Boston, Massachusetts. Order of Designation (July 24, 2024); Notice of Hr’g Order (Oct. 5, 2023).

On November 24, 2023, the Agency filed an unopposed motion for additional discovery, requesting leave to propound a set of Requests for Admission (“RFAs”) on Respondent. Agency’s Mot. for Additional Discovery in the Form of Requests for Admission (Nov. 24, 2023). I granted the motion. Order Granting Agency’s Mot. for Additional Discovery (Nov. 27, 2023). On January 2, 2024, the Agency filed a motion for leave to have its proposed witness Sarah Towne testify remotely. Agency’s Mot. to Allow Sarah Towne to Testify Virtually or Telephonically (Jan. 2, 2024). Respondents opposed the motion, appending their responses to

² The Agency noted at hearing that the NOVA contained a clerical error related to the assessed penalty amounts, namely that the NOVA itself erroneously switched the penalty amounts assigned to Counts Two and Three. Tr. 22. The Agency clarified that the proposed penalties were correctly outlined in the Penalty Worksheet. Tr. 22.

the Agency's RFAs as an exhibit in support of their opposition. Respondents' Opp'n to the Agency's Mot. to Offer Testimony of Susan Towle [sic] Remotely (Jan. 12, 2024) (enclosing Respondents' Responses to the Agency's Requests for Admission (Dec. 13, 2023)). On January 18, 2024, I granted the Agency's motion to allow Ms. Towne's remote testimony. Order Granting Agency's Mot. to Allow Sarah Towne to Testify Virtually or Telephonically (Jan. 18, 2024).

Throughout these prehearing submissions, beginning at the latest on August 10, 2023, Respondents were represented by counsel. See Notice of Appearance (Stephen M. Ouellette) (Aug. 10, 2023). On January 19, 2024, Respondents' counsel withdrew at Respondents' request. Notice of Discharge of Counsel & Appearance of Respondents *Pro Se* (Jan. 19, 2024). The matter proceeded to hearing on January 23, 2024, with Respondent Iglesias appearing *pro se*. Tr. 6 (Jan. 23, 2024). At hearing, the Agency presented seven witnesses: Officer Kevin Swiechowicz, Alison Ferguson, Samantha Tolken, Carl Lemire, Mark Grant, Brad McHale, and Scott Hurwitz. Respondent Iglesias testified on Respondents' behalf. At the outset of the hearing, I admitted the Agency's exhibits (AX 1–28) into evidence with all parties' consent. Tr. 17. These exhibits included an audio recording of an interview Agency Special Agent Gaffney conducted with Sarah Towne, a former fisheries observer. AX 8 (Observer Interview, Oct. 1, 2021). While NOAA had received permission to have Ms. Towne appear remotely, the Agency ultimately elected to forgo her testimony. Tr. 286. For completeness and for clarity of the hearing record, I also admitted Respondents' Responses to the Agency's Requests for Admission into evidence as "Court Exhibit 1." Tr. 12.

On February 13, 2024, the parties were provided with a certified transcript of the hearing, and I simultaneously issued an Order Scheduling Post-Hearing Submissions that established various post-hearing filing deadlines. The Agency timely filed a Post-Hearing Brief on March 22, 2024. Agency's Post-Hr'g Br. (Mar. 22, 2024) ("Agency Br."). Respondents did not file a post-hearing brief by the April 19, 2024, deadline, obviating the Agency's need to file a Reply, and the record closed on that date.

II. Statement of the Issues

A. Liability

The NOVA alleges multiple violations involving two separate fishing trips. In assessing liability, I must determine whether Respondents unlawfully (1) failed to use functioning VMS equipment during or after a June 17, 2021, declared NE multispecies DAS fishing trip during which they caught NE multispecies, in violation of 50 C.F.R. § 648.14(d)(3) and 16 U.S.C. § 1857(1)(A); (2) on June 20, 2021, fished for, caught, possessed, retained, or landed an Atlantic Highly Migratory Species, namely Atlantic bluefin tuna, without the appropriate vessel permit and/or with an authorized gear type (gillnet gear), in violation of 50 C.F.R. §§ 635.71(a)(2), (17) and 16 U.S.C. § 1857(1)(A); and (3) falsified information in records and reports submitted to the

Agency in violation of 50 C.F.R. §§ 648.14(a)(5), (6), 50 C.F.R. § 635.71(a)(6), and 16 U.S.C. § 1857(1)(A).

B. Civil Penalty

If liability for a charged violation is established, then I must determine the amount of any appropriate civil penalty to be imposed for the violation. In doing so, I must evaluate factors including the nature, circumstances, extent, and gravity of the violation; Respondents' degree of culpability and any history of prior violations; and such other matters as justice may require. See 16 U.S.C. § 1858(a) (enumerating factors to be considered in assessing a penalty under the Magnuson-Stevens Act); 15 C.F.R. § 904.108(a) (same).

III. Factual Summary³

Between June 17, 2021, and July 8, 2021, Respondent Adventure King, LLC, ("Adventure King"), then a limited liability company registered in the State of Rhode Island, owned the *Kingfisher*, a 42-foot gillnet fishing vessel (the "F/V Kingfisher"). AX 2 at 3; AX 5 at 1; Ct. Ex. 1 ¶¶ 1, 4; Tr. 218.⁴ Respondent Iglesias, a United States citizen and Rhode Island resident, was Adventure King's sole member-owner and the F/V Kingfisher's operator and captain. AX 4; Tr. 217, 219; Ct. Ex. 1 ¶¶ 2, 5, 6. At the time, Mr. Iglesias had been a commercial fisherman for approximately 42 years. See Tr. 218 (Mr. Iglesias, testifying he had been a commercial fisherman for 45 years at the time of hearing).

For the fishing year beginning May 1, 2021, the F/V Kingfisher held a federal limited-access individual Day-at-Sea ("DAS") Northeast Multispecies ("NE multispecies") permit and a federal limited-access Monkfish Category D permit. Tr. 30–31; AX 21 at 1; AX 2 at 3; see also Ct. Ex. 1 ¶¶ 7, 11 (admitting F/V Kingfisher held the listed permits between June 17, 2021, and July 8, 2021). The term multispecies refers to "a complex of fisheries or individual species of fish that are managed together because they utilize the same habitat, are inherently captured by the same gear types." Tr. 30. NE multispecies "include cod, haddock, [and] pollock." Tr. 30.

³ The following is a summary of the facts that I have found in this matter based on a careful and thorough review of the record and the credible evidence presented at hearing.

⁴ At hearing, Mr. Iglesias testified that while he was Adventure King's sole member-owner during the LLC's existence, the LLC "has been like canceled before and then reestablished. So I don't think it even exists right now." Tr. 217. Because Mr. Iglesias was Adventure King's sole owner during the relevant time frame, and because, as he does not contest, Mr. Iglesias is jointly and severally liable for all violations alleged herein, Adventure King's current corporate status is not relevant to the outcome of this proceeding. See 15 C.F.R. § 904.107(a) ("A NOVA may assess a civil penalty against two or more respondents jointly and severally. Each joint and several respondent is liable for the entire penalty.").

A. VMS and the F/V Kingfisher's VMS Unit

Vessel monitoring systems are electronic devices installed in fishing vessels that simultaneously act as a global positioning system that transmits the vessel's position to the National Marine Fisheries Service ("NMFS") via satellite and serve as a fisheries declaration and communication device. Tr. 32. NMFS uses VMS data to monitor a fishing vessel's position, time at a position, course, and speed. Tr. 32.

In June of 2016, Respondents had a Woods Hole Group ("Woods Hole") "Leo" VMS unit installed aboard the F/V Kingfisher. Tr. 145; AX 27 at 1; AX 26. The Leo unit consists of three components: An "external communication dome" that identifies and transmits the vessel's position; a tablet that allows the ship captain to submit trip declarations and catch reports and to send and receive other messages; and a "control box" that connects the main power supply of the ship to the dome and "allows the ship captain to monitor . . . the proper functioning and different defaults of the terminal." AX 28 at 2–5, 10; Tr. 133–34. The control box displays a set of indicator lights to inform the vessel operator whether the unit is currently powered on and transmitting: a green light shows the unit is transmitting properly, yellow shows some issue, and red shows the unit is not transmitting. Tr. 134–35, 148; AX 28 at 13. Like most VMS units, the Leo unit's control box does not have a "power" button. Tr. 139; *see* AX 28 at 13 (listing control box's functions). Instead, the unit is hard-wired into a vessel's electrical system, such that it is continuously powered by the vessel's power supply. Tr. 138, 152, 154. If for some reason power to the unit fails, it can continue to operate on battery power for 72 hours. AX 28 at 11; Tr. 145–146.

B. The F/V Kingfisher's VMS Use Between May 14, 2021, and June 23, 2021

On May 14, 2021, Mr. Iglesias called NOAA's Office of Law Enforcement ("OLE") to ask about VMS requirements "in regards to monkfish only trips or multispecies trips." AX 25. More specifically, he inquired "about his VMS requirements on multispecies trips or when he could use the" Interactive Voice Response system ("IVR")—a call-in or online notification system for vessels not required to use VMS. Tr. 117–18; AX 25; *see also* Tr. 37 (describing IVR system); 50 C.F.R. § 648.2 (defining IVR system). Also on May 14, 2021, at 13:00 EDT, Samantha Tolken, who at the time was responsible for answering compliance questions on OLE's behalf, left Mr. Iglesias a voicemail in response to his question. Tr. 112, 119; AX 25. In her message, as contemporaneously recorded in OLE's internal call log, Ms. Tolken informed Mr. Iglesias that "the vessel does not have a VMS requirement for monkfish trips. He should call the IVR in this case. But I also told him that . . . if he wants to land any multispecies he needs to use the VMS and declare a groundfish trip via the VMS unit." Tr. 119; AX 25.

According to a diagnostic report prepared by Woods Hole on or around November 15, 2023, the F/V Kingfisher's VMS unit was "tak[en] off main power supply on [May 14, 2021] at 18:08 UTC," (14:08 EDT), continued transmitting on battery power until May 17, 2021, and then did not restart transmitting VMS signals until June 23, 2021. AX 26 at 2; Tr. 144. Likewise,

OLE's VMS V-Track database, which holds the VMS data transmitted to OLE, reflects that OLE did not receive any VMS positioning reports from the F/V Kingfisher between May 17, 2021, and June 23, 2021. Tr. 116–17 (noting that V-Track showed the F/V Kingfisher's VMS being powered up on June 23, 2021, 22:10 minutes, and that "the VMS unit had previously sent a report 53,523 minutes before"); AX 2 at 1.

On June 17, 2021, the F/V Kingfisher sailed from Little Compton, Rhode Island on a declared Northeast Multispecies DAS and Monkfish trip. AX 4 at 1 (Fishing Vessel Trip Report signed by Respondent Iglesias, showing June 17–18, 2021 trip); Ct. Ex. 1 ¶ 8. The F/V Kingfisher's VMS was not active during the June 17 Trip. AX 26 at 3 (Letter from VMS purveyor Woods Hole Group to NOAA, stating that the Kingfisher's VMS unit did not transmit any position reports between 5/17/21 and 6/23/21); AX 10 at 2 (printout of database search showing that between June 15 and June 23, 2021, the Kingfisher's VMS reported position data only on June 23). Instead, Respondent Iglesias declared the trip through the IVR. See AX 22 (IVR call-in log showing a June 17–18, 2021 monkfish/multispecies trip for F/V Kingfisher).

During the June 17 Trip, the F/V Kingfisher landed at least 14 pounds of Atlantic cod and several thousand pounds of monkfish and skate, which were then sold to federal dealer Wildfish, LLC, d/b/a Red's Best ("Red's Best"). AX 2 at 2 (database printout showing landings reported by Red's Best for June 17, 2021, sale from vessel "Kingfisher," permit no. 136935); AX 3 at 3 (NOAA dealer reporting data, showing same); Ct. Ex. 1 ¶ 9 (admitting that "[o]n or around June 17–18, 2021, F/V Kingfisher caught and landed at least 14 pounds of Atlantic cod"); see also Tr. 45–46 (per June 17 FVTR, the F/V Kingfisher landed 35 pounds of cod).

On June 20, 2021, the F/V Kingfisher sailed on another fishing trip in federal waters, declared as a monkfish trip. AX 4 at 2; AX 9 at 1; Ct. Ex. 1 ¶¶ 12, 14. The Kingfisher also did not activate its VMS unit during the June 20 Trip. AX 26 at 3; AX 10 at 2.

A subsequent technical inspection of the Kingfisher's VMS indicated the unit was performing as expected. AX 26 at 3 (Nov. 15, 2023, letter from VMS purveyor Woods Hole to NOAA, certifying after technical inspection that the unit was performing as expected).

C. The F/V Kingfisher's June 20, 2021, Catch and Retention of a Bluefin Tuna Using Gillnet Gear

On June 20, 2021, the F/V Kingfisher departed from Little Compton, Rhode Island at approximately 03:55 and returned the next day, June 21, 2021, at 00:30. Ct. Ex. 1 ¶ 14; AX 4 at 2 (Fishing Vessel Trip Report signed by Respondent Iglesias, reporting trip lasting from 03:55 on June 20, 2021, until 00:30 on June 21, 2021); AX 9 at 1 (report by NOAA observer for Kingfisher, noting the same departure and return times). During that trip, the F/V Kingfisher hauled a gillnet that contained an Atlantic bluefin tuna ("BFT") weighing approximately 675 pounds. Ct. Ex. 1 ¶ 15. The F/V Kingfisher retained the BFT. Ct. Ex. 1 ¶ 16.

Northeast Fisheries Observer Sarah Towne accompanied the crew on the June 20 Trip. AX 8 (interview with Towne); *see also* AX 9 (Ms. Towne’s observer report for June 20 Trip); Tr. 226–27 (Mr. Iglesias, testifying as to Ms. Towne’s presence on the vessel). While not reflected in her observer report, Ms. Towne later stated to NOAA investigators that the F/V Kingfisher caught and landed a BFT with gillnet gear during the June 20 Trip. AX 8; *see* AX 9 at 4, 7, 10, 13 (gillnet haul logs and individual animal log from June 20 Trip observer report, including no reference to BFT). Ms. Towne explained that she left the BFT out of her report after Respondent Iglesias and the F/V Kingfisher’s crew members pleaded with her not to report it in her logbooks. AX 8 at 1:54–2:28 (“They said they would get [a permit] on the way in . . . they said please don’t say anything, this is a lot of money for us, and just, they said please don’t say anything. . . . I did feel pressured, and I didn’t say anything, which I know I should have.”); *see also* Tr. 230–31 (ALJ: “Was there any comment about—whether it was from you or from your crew about implying or asking that [Ms. Towne] overlook it if you land [the BFT?]” Mr. Iglesias: “Mm-hmm.” ALJ: “[B]ecause it could mean some money to . . . the crew and to you.” Mr. Iglesias: “Yes, yes.”).

Ms. Towne took photographs and videos of the BFT being hauled aboard the F/V Kingfisher on June 20, 2021. *See* AX 18–20; *see also* Tr. 62 (identifying the source of photos in AX 18 as Ms. Towne and identifying fish shown as a BFT); Tr. 229 (Mr. Iglesias, testifying that Ms. Towne took photographs of the BFT). Ms. Towne’s photographs also depict the vessel’s gillnet. Tr. 63–64 (“[Y]ou can see a gillnet that is deployed over the block and descending to the water.”). Ms. Towne later noted that the BFT was in poor condition, specifically that it “had been dead for at least a couple days.” AX 8 at 1:00-1:09.

The F/V Kingfisher returned to port in the early hours of June 21, 2021. On the way into port, Respondent Iglesias phoned Scott Hurwitz, an employee of Red’s Best, to inform Mr. Hurwitz that the vessel was bringing in a BFT. Tr. 270, 284. Mr. Hurwitz later recalled that he informed Mr. Iglesias that “you don’t have a permit,” to which Mr. Iglesias responded, “I’ll have one when I land.” Tr. 284; AX 1 at 17; AX 13 at 3.

At approximately 00:30 EDT on June 21, 2021, the F/V Kingfisher landed monkfish, skate, Atlantic bluefish, and the BFT. Ct. Ex. 1 ¶ 17. The F/V Kingfisher delivered its entire catch from the June 20 Trip, including the BFT, to Mr. Hurwitz sometime between 00:30 and 04:00 EDT. Ct. Ex. 1 ¶ 18. As did Ms. Towne, Mr. Hurwitz later reported to investigators that the BFT appeared to have been dead for some time before being hauled in. AX 13.

The F/V Kingfisher did not hold a valid HMS permit while on the June 20 Trip, or at any time between 00:30 to 04:00 EDT on June 21, 2021. Ct. Ex. 1 ¶¶ 19, 20. The F/V Kingfisher’s

catch was, therefore, delivered to Red's Best before the vessel had a valid HMS Permit. Ct. Ex. 1 ¶ 21.⁵

The F/V Kingfisher did eventually obtain an HMS permit for tuna—at 05:06 EDT on June 21, 2021, or between 1–4 hours after landing the tuna. AX 5 at 4 (HMS permit); AX 10 at 7; Ct. Ex. 1 ¶ 22 (admitting “F/V Kingfisher purchased and obtained a valid HMS General Category Tuna Permit at 05:06 EST [sic] on June 21, 2021”); *see also* Tr. 61–62 (confirming the permit application time reflected in AX 5’s “status history” section is automatically generated by the system at the time “the data is entered and submitted, the permit is generated and sent”).

This is not the first time Respondents have faced enforcement for retaining a BFT without a permit. On January 30, 2018, Mr. Iglesias received a written warning for possessing, landing, or retaining a BFT without an HMS permit—though this earlier infraction related to Mr. Iglesias’s possession of a comparatively small “hunk” of BFT, rather than an entire fish. AX 23 at 5–6; Tr. 277; *see also* Tr. 66 (testimony of Officer Swiechowicz that he “had previously conducted an investigation in which Mr. Iglesias had retained a, a bluefin tuna from gillnet gear”).

D. Respondents’ False Reporting Related to the June 20 Trip

After returning from the June 20 Trip, Respondents submitted three reports containing inaccurate information to NMFS. These included a fishing vessel trip report with VTR Serial Number: 13036510, a fishing vessel trip report with VTR Serial Number 13036511, and a BFT catch report with confirmation number BFT06/21/20121RI27430. *See* AX 4 at 2, 3 (FVTRs); AX 6 (BFT Catch Report); Ct. Ex. 1 ¶¶ 26, 27 (admitting VTR 13036511 and Catch Report BFT06/21/20121RI27430 contained false information).

The F/V Kingfisher’s Trip Report for the June 20 Trip, VTR Serial Number: 13036510, accurately reported that the vessel had landed 2,500 pounds of monkfish, 3,500 pounds of skate, and 50 pounds of bluefish. AX 4 at 2. However, the Trip Report did not report that the F/V Kingfisher had caught a BFT using gillnet gear during the June 20 Trip, or that Respondents offloaded the BFT to Red’s Best at the same time as the rest of the catch from that trip. *See* Ct. Ex. 1 ¶¶ 17–21.

⁵ Mr. Hurwitz stated during an interview with NOAA OLE that at the time of offloading, Respondent Iglesias showed Hurwitz a copy of an HMS permit for the tuna on Iglesias’s phone, but that it was dark outside. AX 13 at 4. Respondents also previously contended that while they did not have an HMS permit at the time they landed the BFT, Red’s Best required them to have a permit before they completed sale of the BFT. Ct. Ex. 1 ¶ 21. At hearing, however, Mr. Iglesias stated that Respondents no longer had an issue with the contention that they sold the BFT to Red’s Best before obtaining a permit. Tr. 233 (ALJ: “Now there was some mention about . . . when the sale was effectuated. . . . Apparently, some discrepancy in time from when you got paid for the sale and relative to the permit. What’s, what’s that all about?” Mr. Iglesias: “I don’t think . . . I don’t have any, you know, worries about that.”).

Instead, Respondents submitted a second Trip Report, VTR Serial Number 13036511, which represented that the F/V Kingfisher had sailed on a separate trip between 08:00 and 23:30 EDT on June 21, 2021. AX 4 at 3. The Trip Report stated that during this June 21 trip, the vessel had caught a 700-pound BFT and then sold it to Red’s Best. AX 4 at 3. The Trip Report also included other details, for example that the vessel had carried two crew members, had set gear at 30 fathoms, and had fished in Chart Area 537. AX 4 at 3. The reported trip was a fiction: It “never occurred.” Tr. 275:13-14;⁶ see also Ct. Ex. 1 ¶ 23.

Respondents also submitted a BFT catch report for the nonexistent June 21 trip, which stated that the BFT was hooked at approximately 13:00 EDT on June 21, 2021, via troll and lure, and brought the fish in after an approximate fight time of 120 minutes. AX 6. The F/V Kingfisher did not sail on a fishing trip departing on June 21, 2021, at approximately 08:00 EDT and returning at 23:30 EDT, nor did the vessel catch a BFT on that fictitious trip. Ct. Ex. 1 ¶¶ 23–25.

IV. LIABILITY

A. Principles of the Law Related to Liability

1. Standard of Proof

To prevail, the Agency must prove facts constituting the charged violations by a preponderance of reliable, probative, substantial, and credible evidence. *McLaughlin*, Docket No. NE2003013, 2022 WL 2836723, at *8 (NOAA July 6, 2022) (citing 5 U.S.C. § 556(d)); *Cloud*, Docket No. AK1202525, 2017 WL 10845065, at *5 (NOAA Oct. 16, 2017) (same); *Dep’t of Labor v. Greenwich Collieries*, 512 U.S. 267 (1994); *Steadman v. SEC*, 450 U.S. 91, 100–03 (1981)); 15 C.F.R. §§ 904.251(a)(2), 904.270(a)). This standard requires the Agency to demonstrate that the facts it seeks to establish are more likely than not to be true. *McLaughlin*, 2022 WL 2836723, at *8 (citing *Fernandez*, Docket No. NE970052FM, 999 WL 1417462, at *3 (NOAA Aug. 23, 1999) (citing *Herman & MacClean v. Huddleston*, 459 U.S. 375, 390 (1983))). To satisfy this burden of proof, the Agency may rely upon either direct or circumstantial evidence. *Id.* (citing *Vo*, Docket No. SE010091FM, 2001 WL 1085351, at *6 (NOAA Aug. 17, 2001)).

2. The Magnuson-Stevens Act

The Magnuson-Stevens Act was passed in 1976 “to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States.” Fishery

⁶ Respondents also left several required fields on the VTR blank, including the gear code, mesh size, gear quantity, gear size, hauls, and tow/soak time. AX 4 at 3; Tr. 70:5-20. Agency staff provisionally filled in this information based on the F/V Kingfisher’s previous trip reports, with the Agency-supplied information appearing in red. Tr. 70–71; AX 4 at 3.

Conservation and Management Act of 1976, Pub. L. No. 94-265, § 401, 90 Stat. 331 (codified at 16 U.S.C. § 1801 *et seq.*). The Act, as amended, aims to “promote domestic commercial and recreational fishing under sound conservation and management principles.” *Id.*

The Act makes it unlawful “for any person—to violate any provision of this chapter or any regulation or permit issued pursuant to this chapter[.]” 16 U.S.C. § 1857(1)(A). A “person” may be “any individual, . . . any corporation, partnership, association, or other entity.” 16 U.S.C. § 1802(36). Magnuson-Stevens Act violations are strict liability offenses, and therefore state of mind is irrelevant in determining whether a violation occurred. *McLaughlin*, 2022 WL 2836723, at * 9 (citing *Alba*, 2 O.R.W. 425, 673 (NOAA App. 1982)); *see also Northern Wind, Inc. v. Daley*, 200 F.3d 13, 19 (1st Cir. 1999) (holding that scienter is not required to impose civil penalties for violations of the Magnuson-Stevens Act and the implementing regulations); *Nguyen*, Docket No. SE0801361FM, 2012 WL 1497024, at *5 (NOAA Jan. 18, 2012) (“The Magnuson-Stevens Act, and the regulations promulgated thereunder, do not set forth a scienter requirement. Accordingly, any violations are strict liability offenses.”).

3. VMS Regulations

Agency regulations require certain vessels to use VMS to report the vessel’s position. *See* 50 C.F.R. § 648.2 (defining “VMS unit” as “a device installed on board a vessel used for vessel monitoring and transmitting the vessel’s position as required by this part”). The Agency’s regulations further make it unlawful for any person to “[f]ail to comply with the appropriate VMS reporting requirements,” including those “specified in [50 C.F.R.] § 648.10.” 50 C.F.R. § 648.14(d)(3).

VMS reporting requirements differ based on factors including the vessel’s permits and the fish the vessel plans to or does pursue on a given trip. *See* 50 C.F.R. § 648.10 (setting reporting requirements). As relevant here, the regulations provide that:

The following vessels must have installed on board an operational VMS unit that meets the minimum performance criteria specified in, or as modified pursuant to § 648.9(a):

...

(3) A vessel issued a limited access monkfish . . . permit, whose owner elects to provide the notifications required by this section using VMS, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

(4) A vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or catches regulated species or ocean pout while on a sector trip; or a vessel issued a limited access NE

multispecies small vessel category or Handgear A permit that fishes in multiple stock areas pursuant to paragraph (k)(2) of this section . . .

50 C.F.R. § 648.10(b) (eff. Oct. 19, 2020). Unless it has obtained a formal letter of authorization allowing it to power down its VMS, a vessel that falls within these categories “must transmit a signal indicating the vessel’s accurate position . . . [a]t least every hour, 24 hr a day, *throughout the year.*” 50 C.F.R. § 648.10(c) (emphasis added).⁷ These categories effectively describe “triggers” after which the vessel must “use VMS.” Thus, for example, if a “vessel issued a limited access NE multispecies permit” “fishes or intends to fish under a NE multispecies Category A or B DAS,” or “catches regulated species . . . on a sector trip,” then that vessel must begin to use VMS and continue to do so for the remainder of the fishing year.

In contrast, “[t]he owner of a vessel issued a limited access monkfish permit who is participating in a DAS program and *who is not required to provide notification using a VMS*” may instead make use of a call-in system under which they provide NOAA with certain information by phone before setting out and upon returning from a fishing trip. 50 C.F.R. § 648.10(h) (emphasis added). The regulations go on to explain in greater detail that “[a] vessel issued a limited access monkfish . . . permit must use the call-in system specified in paragraph (h) of this section, *unless* the owner of such vessel has elected to provide the notifications required by paragraph (g) of this section through VMS *as specified under paragraph (h)(9)(ii) of this section.*” 50 C.F.R. § 648.10(h)(9)(i) (emphasis added). In turn, section (h)(9)(ii) provides that:

A vessel issued a limited access monkfish or Occasional scallop permit may be authorized by the Regional Administrator to provide the notifications required by paragraph (e) of this section using the VMS specified in paragraph (b) of this section. For the vessel to become authorized, the vessel owner must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has installed on board an operational VMS as provided under § 648.9(a). A vessel that is authorized to use the VMS in lieu of the call-in requirement for DAS notification shall be subject to the requirements and presumptions described under paragraphs (e)(2)(i) through (v) of this section. This paragraph (h) does not apply to vessels electing to use the VMS.

50 C.F.R. § 648.10(h)(9)(ii). As with the “triggers” described above, this election is ongoing: “Any vessel issued a limited access monkfish or an Occasional scallop permit that has elected to

⁷ This exemption applies only in limited circumstances, both of which require the vessel to be out of use for fishing purposes. See 50 C.F.R. § 648.10(h)(c) (vessels may be exempted from VMS use where (i) the vessel will be continuously out of the water for more than 72 hours and the owner has obtained a letter from the Regional Administrator, (ii) the vessel signs out of the VMS program for a minimum of 30 days by obtaining an exemption letter from the Regional Administrator and “does not engage in any fisheries or move from the dock/mooring until the VMS unit is turned back on”).

provide notifications through VMS must continue to provide notifications through VMS for the entire fishing year.” 50 C.F.R. § 648.10(h)(9)(i).⁸

4. Highly Migratory Species Regulations: BFT Permits and Gear Restrictions

Pursuant to the Magnuson-Stevens Act, the Agency has implemented regulations to govern the conservation and management of Atlantic Highly Migratory Species (“Atlantic HMS”). 50 C.F.R. pt. 635 (the “HMS regulations”). The HMS regulations designate Atlantic tunas, including BFT, as Atlantic HMS. See 50 C.F.R. § 635.2 (“Atlantic HMS means Atlantic tunas”); 50 C.F.R. § 600.10 (“Atlantic tunas means bluefin . . . tunas found in the Atlantic Ocean.”).⁹

The HMS regulations require the owners and operators of United States– flagged vessels to hold an NMFS-issued permit before fishing for, taking, retaining, possessing, or selling Atlantic HMS. 50 C.F.R. § 635.4(a)(2), (d)(1)–(2). As relevant here:

The owner of each vessel used to fish for or take Atlantic tunas commercially or on which Atlantic tunas are retained or possessed with the intention of sale must obtain an HMS Charter/Headboat permit with a commercial sale endorsement issued under paragraph (b) of this section, an HMS Commercial Caribbean Small Boat permit issued under paragraph (o) of this section, or an Atlantic tunas permit in one, and only one, of the following categories: General, Harpoon, Longline, or Trap.

50 C.F.R. § 635.4(d)(1). In turn, the HMS regulations make it “unlawful for any person or vessel subject to the jurisdiction of the United States” to “[f]ish for, catch, possess, retain, land, or sell

⁸ At the time of the alleged violations, “fishing year” was defined as, “[f]or the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.” 50 C.F.R. § 648.2 (eff. May 1, 2021).

⁹ Atlantic tunas are managed under the authority of both the Magnuson-Stevens Act and the Atlantic Tunas Convention Act (“ATCA”). 50 C.F.R. § 635.1(a). Under both the Magnuson-Stevens Act and ATCA, the United States is required to cooperate directly with other nations to co-manage Atlantic HMS fisheries to ensure conservation, and “promote the achievement of optimum yield of such species throughout their range, both within and beyond the exclusive economic zone.” 16 U.S.C. § 1812(a). Like the Magnuson-Stevens Act, ATCA renders it unlawful “for any person in charge of a fishing vessel or any fishing vessel subject to the jurisdiction of the United States to engage in fishing in violation of any regulation adopted pursuant to section 971d of this title.” 16 U.S.C.A. § 971e(a)(1). The Agency issued the HMS regulations that pertain to Atlantic Tunas pursuant to both the Magnuson-Stevens Act and ATCA, and the regulations broadly prohibit any person or vessel subject to the United States’ jurisdiction from “[v]iolat[ing] any provision of this part, the Magnuson–Stevens Act, ATCA, or any regulations or permits issued under the Magnuson–Stevens Act or ATCA.” 50 C.F.R. § 635.71(a)(28). Therefore, and because the NOVA charges only Magnuson-Stevens Act violations, I do not address separately herein whether Respondents violated ATCA.

Atlantic HMS” such as BFT “without the appropriate valid vessel permit with the appropriate endorsements . . . on board the vessel, as specified in [§ 635.4.]” 50 C.F.R. § 635.71(a)(2).

The HMS regulations also limit the equipment vessels may use or have aboard when fishing for HMS. Most relevant here, the regulations make it unlawful for a person or vessel to “[f]ish for Atlantic tunas . . . with a gillnet or possess Atlantic tunas . . . on board a vessel with a gillnet on board[.]” 50 C.F.R. § 635.71(a)(17). Similarly, gillnets are absent from the HMS regulations’ list of primary gear authorized for fishing for, catching, retaining, or possessing Atlantic BFT. 50 C.F.R. § 635.19(b)(1) (stating that “[a] person that fishes for, catches, retains, or possesses an Atlantic BFT may not have on board a vessel or use on board a vessel any primary gear other than those authorized . . . and listed here,” and providing a list that excludes gillnet gear). A gillnet is “a panel of netting, suspended vertically in the water by floats along the top and weights along the bottom, to entangle fish that attempt to pass through it.” 50 C.F.R. § 600.10.

5. Prohibitions on Maintenance or Submission of False/Inaccurate Information in Fishing Vessel Records

The Agency’s regulations set various reporting requirements for vessel owners and operators which, among other things, are intended to provide the Agency with the data it needs to appropriately manage various fisheries and to assist the Agency in enforcement. *See, e.g.*, Tr. 174–75 (Mr. Grant, testifying as to use of reports for fisheries management); Tr. 129–30 (Mr. Lemire, testifying as to use of reports for enforcement purposes).

Vessel owners and operators like Respondents who fish subject to federal permitting in the Northeastern United States, 50 C.F.R. pt. 648, must timely submit Fishing Vessel Trip Reports (“FVTRs”). 50 C.F.R. § 648.7(b) (eff. Sept. 3, 2020). Specifically, “the owner or operator of any vessel issued a valid permit or eligible to renew a limited access permit under this part must . . . [m]aintain on board the vessel, and submit, an accurate fishing log report for each fishing trip, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator.” 50 C.F.R. § 648.7(b)(1)(i).¹⁰ Each FVTR must include the “(4) Date/time sailed; (5) Date/time landed; . . . (9) Gear fished; . . . and (17) Hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, . . . landed or discarded.” 50 C.F.R. § 648.7(b)(1)(i)(C). It is unlawful for any person subject to these requirements to “[m]ake any false statement or provide any false information on, or in connection with, an application, declaration, record or report under [50 C.F.R. pt. 648],” or to “submit or maintain false information in records and reports required to be kept or filed under § 648.7.” 50 C.F.R. § 648.14(a)(5), (6).

¹⁰ “If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media.” 50 C.F.R. § 648.7(b)(1)(i)(B).

The HMS regulations likewise include reporting requirements. For example, vessels subject to the HMS regulations' permitting requirements for Atlantic tunas "must report" the "discards and/or landings of bluefin tuna through the NMFS electronic catch reporting system within 24 hours of the landings or the end of the trip." 50 C.F.R. § 635.5(a)(4) (eff. July 17, 2018). In turn, it is "unlawful for any person or vessel subject to the jurisdiction of the United States to: . . . Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in []§ 635.5" 50 C.F.R. § 635.71(a)(6) (eff. Apr. 2, 2020).

B. Party Arguments Regarding Liability

1. Party Arguments as to Liability for Count One

In its Post-Hearing Brief, the Agency argues that the evidence presented at hearing establishes that at least as of June 17, 2021, Respondents were "persons" whose vessel fell into a category of vessels required to "use VMS," and that Respondents nevertheless failed to do so between June 17, 2021, and June 23, 2021. Agency Br. 11. The Agency notes that the F/V Kingfisher held a limited access NE multispecies permit during 2021, and that, per Respondents' own admission, they declared an "intention to fish within the NE multispecies fishery using a Category 'A' DAS" on June 17, 2021." Agency Br. 11 (citing Ct. Ex. 1 ¶¶ 4, 7, 8, 11; AX 21; Tr. 30). The Agency further notes that Respondents have admitted they harvested and retained NE multispecies on the F/V Kingfisher's June 17 Trip, namely cod. Agency Br. 12 (citing Ct. Ex. 1 ¶¶ 9–10; AX 3 at 3; AX 4 at 2; Tr. 30). Thus, the Agency argues, as of June 17, the F/V Kingfisher was a "vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE Multispecies Category A [DAS]" and was "required to use VMS." Agency Br. 10 (quoting 50 C.F.R. § 648.10(b)(4)). This, the Agency asserts, Respondents did not do. Agency Br. 11 (citing Tr. 12, 147).

The Agency further argues, as to the June 20 Trip, that while vessel owners and operators are not ordinarily required to make use of VMS during monkfish-only trips, having elected to or been required to provide notifications through VMS during the June 17 Trip, the vessel was then required pursuant to 50 C.F.R. §§ 648.10(b)(3) and (h)(9)(i) to continue using VMS for the remainder of the fishing year (here, April 30, 2022). Agency Br. 13. Because the unrefuted evidence demonstrates that Respondents' VMS was offline between May 14, 2021, and June 23, 2021, the Agency argues, Respondents failed to comply with the applicable VMS reporting requirements, in violation of 50 C.F.R. § 648.14(d)(3). Agency Br. 13–14.

Respondents have raised two arguments related to their liability for the violations alleged in Count One. *First*, Respondents have argued that Mr. Iglesias did not know the F/V Kingfisher's VMS was not working—and, in fact, that he first learned the VMS was not working at hearing. See Tr. 245 ("Apparently it [the VMS] wasn't working. That's what I've learned here today . . . I thought that it was the, the thing that connects up with it, which is the tablet."). Mr. Iglesias testified that the F/V Kingfisher's VMS unit is installed below deck, where he does

not often look at it and where it could become obscured by gear. Tr. 247 (“It’s down below. . . . [S]omebody could have put something in front of it, you know. It’s down there next to a tiny little microwave and, you know, the sink that doesn’t work.”). He also testified that during the June 17 Trip, he assumed that the only issue with the VMS unit was that the unit’s associated tablet was not working. Tr. 245. He stated that the tablet was showing an error message that ordinarily indicates there is a “moisture problem” with the tablet, which he said occurs regularly because of humidity. Tr. 247; *see also* Respondents’ Preliminary Positions on Issues and Procedures 1 (Sept. 22, 2023) (“Respondents’ Initial Disclosure”) (“In this case the VMS link to Respondent[s]’ tablet [was] problematic, resulting in Respondent[s]’ call in by the IVR system. Eventually [sic], the problem was a link between the VMS and the tablet.”). *Second*, Mr. Iglesias suggested at hearing that the Agency’s failure to receive signals from the F/V Kingfisher’s VMS unit could have been the result of an issue with the broader satellite system, rather than an issue with the individual unit. Tr. 248 (“[T]here’s been glitches in the VMS all through the years of them. They’ve had their own glitches. You know I’ve called them up and they’ve said, oh, yeah, the system is down.”).

The Agency responds to Respondents’ arguments through its Post-Hearing Brief, asserting that regardless of whether Respondents were aware that the VMS unit was not transmitting, they have presented no evidence that the F/V Kingfisher was, in fact, operational and transmitting VMS data between June 17, 2021, and June 23, 2021. Agency Br. 14.

2. Party Arguments as to Liability for Count Two

The Agency argues that there is no dispute as to the facts supporting the violations charged in Count Two. Agency Br. 20. The Agency states that Respondents have admitted not only that they are persons within the meaning of the Act as well as owners/operators of the F/V Kingfisher, but also that (1) on the June 20 Trip, the F/V Kingfisher hauled gillnet gear, which contained an Atlantic BFT; (2) the vessel did not have a valid HMS permit when it caught the BFT; (3) the vessel retained the BFT for sale; and (4) Respondent Iglesias did not seek an HMS permit until after landing the BFT at around 00:30 EDT and selling it to Red’s Best. Agency Br. 20 (citing Ct. Ex 1 ¶¶ 15, 17, 20–22; Tr. 269, 271, 233). The Agency asserts that these undisputed facts suffice to establish that “Respondents violated 50 C.F.R. § 635.71(a)(2) when he possessed, retained, landed, and sold the bluefin tuna without any sort of HMS permit.” Agency Br. 20. Likewise, the Agency claims, these undisputed facts demonstrate that Respondents could not have lawfully retained the BFT even if their late-obtained permit were somehow considered valid, as Respondents caught the BFT with an unauthorized gear type—i.e., gillnet gear. Agency Br. 20 (citing Tr. 269; Ct. Ex. 1 ¶¶ 15–16).

The Agency is correct that Respondents have not contested the facts upon which the Agency relies, whether at hearing or otherwise. Respondents have instead taken aim at the HMS regulations, arguing that it is wasteful to require gillnet vessels to dump incidentally-caught HMS and that it would be more in line with sound conservation principles to allow vessel operators to retain such fish and obtain the needed permit after-the-fact. Respondents’

Initial Disclosure 1–2; Tr. 239 (Mr. Iglesias, testifying as to BFT that “everybody else gets to catch them except for, you know, me. . . . [I]f you’re using a gillnet you can’t have one . . . [and] having a little bit of flexibility, I think, would alleviate the situation”).

3. Party Arguments as to Liability for Count Three

As with Count Two, the Agency argues that Respondents’ admissions suffice to establish liability for the violations alleged in Count Three. Agency Br. 27–28. The Agency notes that Mr. Iglesias has admitted that he caught, landed, and sold a BFT during the June 20 Trip, and that his FVTR for the June 20 Trip omitted the BFT from the catch report. Agency Br. 28 (citing Tr. 274). The Agency continues that Respondents then attempted to hide their unlawful activity by submitting an FVTR and an HMS catch report for a fishing trip that never occurred, which, by necessity, included false information. Agency Br. 28. Thus, for example, as to the FVTR, the Agency asserts that:

Respondent Iglesias lied about sailing his vessel on June 21, 2021 at 8:00 am. AX 4 at 3; Tr. 275:15-17. Lied about traveling to chart area 537. AX 4 at 3; Tr. 275:13-14 (“So this trip never occurred? Correct.”). Lied about fishing at 41 degrees latitude and 71 degrees longitude. *Id.* Lied about fishing at 30 fathoms. *Id.* Lied about catching a bluefin tuna during that trip. *Id.* Lied about returning to port that same day at 11:30 pm. *Id.* Lied about selling the tuna after that trip to Red’s Best. *Id.* None of it happened.

Agency Br. 29. The Agency similarly observes that the information contained in the HMS Report constituted a series of lies about the fabricated June 21 fishing trip. Agency Br. 29. On these facts, the Agency argues, Respondents violated both the part 648 fishery regulations’ and the HMS Regulations’ prohibitions against false reporting. Agency Br. 28, 29.

For their part, Respondents have not contested their liability for Count Three during this proceeding. Instead, at hearing, Mr. Iglesias acknowledged that “I knew in a way I was implicating myself by doing it. . . . It’s a momentary decision, you know. I’m just trying to make some money for the crew and for myself.” Tr. 240–41.

C. Discussion of Liability

1. Respondents are Liable for the Violations Alleged in Count One

Through Count One, the Agency alleges that Respondents failed to comply with applicable VMS reporting requirements, in violation of 50 C.F.R. § 648.14(d)(3) and the Magnuson-Stevens Act, 16 U.S.C. § 1857(1)(A), because, as of June 17, 2021, the F/V Kingfisher was a vessel required to “use VMS” but failed to transmit their vessel’s location “[a]t least every hour, 24 hr a day, throughout the year.” Agency Br. 11–13; NOVA 1.

To show that Respondents unlawfully failed to comply with applicable VMS reporting requirements in violation of 50 C.F.R. § 648.14(d)(3) and the Magnuson-Stevens Act, 16 U.S.C. § 1857(1)(A), as alleged in Count One, the Agency must show, by a preponderance of the evidence: (i) Respondents are “persons” within the meaning of the Act; (ii) the F/V Kingfisher was a vessel required to “use VMS” as specified in 50 C.F.R. § 648.10(b); and (iii) the F/V Kingfisher failed to transmit its location “[a]t least every hour, 24 hr a day, *throughout the year,*” without first obtaining a letter of exemption. 50 C.F.R. § 648.10(c) (emphasis added).

The evidence presented at hearing sufficed to establish that Respondents violated 50 C.F.R. § 648.14(d)(3) beginning on June 17, 2021, when they embarked on a NE multispecies trip and caught NE multispecies (namely cod) without an operating VMS system aboard. Respondents have admitted that they are “persons” for purposes of the Act and that Adventure King and Mr. Iglesias were, respectively, the owner and operator of the F/V Kingfisher during all times relevant to this case. Respondents have further admitted that (1) “the F/V Kingfisher was issued a limited access NE multispecies permit,” and (2) Respondents engaged in a NE multispecies Category A DAS trip on June 17, 2021, during which they caught NE multispecies. Ct. Ex. 1 ¶ 3; Ct. Ex. 1 ¶ 10 (admitting “Atlantic cod is considered a ‘regulated species,’ as defined by 50 C.F.R. § 648.2”); Tr. 46 (“The cod or Atlantic cod is considered northeast multispecies.”); Tr. 107, 221 (Mr. Iglesias, admitting he used an “A day” on the June 17 Trip). From the outset of that trip, the F/V Kingfisher was “[a] vessel issued a limited access NE multispecies permit that fishes or intends to fish under a NE multispecies Category A or B DAS, or catches regulated species or ocean pout while on a sector trip.” 50 C.F.R. § 648.10(b)(4). At that time, therefore, the F/V Kingfisher became a vessel required to “use VMS.” 50 C.F.R. § 648.10(b)(4). And, in turn, the F/V Kingfisher was required to transmit its location hourly for the remainder of the fishing year unless it obtained a written exemption. 50 C.F.R. § 648.10(c).

The evidence convincingly demonstrates that Respondents failed to comply with this reporting requirement. Information and data provided by Woods Hole, the contractor that produced and that monitors the F/V Kingfisher’s VMS, reflects that the F/V Kingfisher’s VMS did not report its position between June 16, 2021, and June 23, 2021. AX 26. Woods Hole more specifically reported that the F/V Kingfisher’s unit transmitted the last message on battery on 5/17/2021 18:08 UTC (unit had been taking off main power supply on 5/14/2021 at 18:08 UTC). “It re-started transmitting position reports on 6/23/2021 at 23:08 UTC (with a power up message at 22:10 UTC).” AX 26 at 2. The VMS unit’s shutdown was also reflected in the Agency’s V-Track database, which OLE uses to view VMS data, and which showed that the F/V Kingfisher “powered up” on June 23, 2021, 22:10 UTC, with a “delta time” of 53,523 minutes from its last transmission—i.e., approximately 37 days prior, on May 17, 2021. AX 2 at 1; Tr. 116–17.

On this evidence, I conclude that it is more likely than not that the F/V Kingfisher’s VMS unit was not operating between June 17, 2021, and June 23, 2021. While Mr. Iglesias testified that he was unaware that his VMS was not functioning during this timeframe, Magnuson-Stevens Act violations are strict liability offenses, meaning Mr. Iglesias’s knowledge is not a

necessary element of the violation. *McLaughlin*, 2022 WL 2836723, at * 9; *Northern Wind*, 200 F.3d 13 at 19. Ultimately, Respondents presented no evidence to suggest that the VMS was operational. Likewise, while Respondent Iglesias speculated at hearing that the absence of data for his June trips might have resulted from the VMS satellite system going offline, he presented no evidence to suggest such an outage occurred. In contrast, Officer Swiechowicz testified that his internal review showed Respondents' VMS unit was powered down, meaning the issue was unrelated to satellite disconnection. Tr. 47 (Officer Swiechowicz, testifying that in investigating the F/V Kingfisher's failure to transmit VMS starting June 17, 2021, he "contacted the ISTO to confirm that there, there was no data transfer issue. And the ISTO confirmed that . . . the vessel monitoring system unit was not powered on until the 23rd of June," which ISTO would know because "they can remotely determine when a fishing vessel monitoring system is, is activated. And to some extent they can determine if there are transmission data problems or satellite reception problems through the administrative side of that interface"). Moreover, Respondent Iglesias's suggestion was undermined by his testimony that he did not look at the VMS to determine if it was transmitting, and by evidence that the VMS was disconnected from its power supply in mid-May. Tr. 268–69; AX 26.

As such, based upon all the foregoing, I hereby conclude that it is more likely than not that the VMS unit in Respondents' vessel did not transmit a signal indicating the vessel's accurate position at least once an hour, 24 hours a day, every day between June 17, 2021, and June 23, 2021, despite being required to do so, resulting in Respondents' violation of the Act and its regulations as alleged in Count One of the NOVA.¹¹

2. Respondents are Liable for the Violations Alleged in Count Two

Count Two of the NOVA alleges that Respondents violated the Magnuson-Stevens Act and the HMS regulations by possessing an Atlantic BFT on board a vessel with gillnet gear and by catching, possessing, retaining, landing, and selling the BFT without an appropriate vessel permit. NOVA 1.

¹¹ Because I find that the F/V Kingfisher was required to use VMS throughout the 2021 fishing year by virtue of embarking on a Category "A" DAS multispecies trip under its NE limited access multispecies permit, I need not find, as the Agency has also argued, Agency Br. 12–13, that the F/V Kingfisher was also "A vessel issued a limited access monkfish . . . permit, whose owner elects to provide the notifications required by this section using VMS." 15 C.F.R. § 648.10(b)(3). I do note, however, that while the VMS regulations specify that a monkfish-permitted vessel may be required to use VMS once they have elected to do so, the regulations also specify a process for making that election. 15 C.F.R. § 648.10(h)(9)(i) (vessels holding monkfish permits must use the IVR system "unless the owner of such vessel has elected to provide the notifications required by paragraph (g) of this section, through VMS as specified under paragraph (h)(9)(ii) of this section") (emphasis added). It is only upon the completion of this process that a vessel has "elected to use VMS" for the remainder of the fishing year. 15 C.F.R. §648.10(h)(9)(ii). No evidence was presented in this matter to suggest that Respondents engaged in the election process described in §648.10(h)(9)(ii).

To establish that Respondents violated the HMS regulations' permitting or gear requirements as alleged in Count Two, the Agency was required to demonstrate by a preponderance of the evidence that Respondents are a "person or vessel subject to the jurisdiction of the United States," and that Respondents (i) "[f]ished for Atlantic tunas . . . with a gillnet or possessed Atlantic tunas . . . on board a vessel with a gillnet on board," 50 C.F.R. § 635.71(a)(17); *see also* 50 C.F.R. § 635.19(b), and/or (ii) "[f]ish[ed] for, [caught], possess[ed], retain[ed], land[ed], or sold Atlantic HMS without the appropriate valid vessel permit with the appropriate endorsements." 50 C.F.R. § 635.71(a)(2).

I agree with the Agency that Respondents' admissions, bolstered by other record evidence, suffice to establish liability for the violations alleged in Count Two. As noted above, Respondents admit that they are "persons" within the meaning of the Act, and Respondents have also admitted that they and their vessel are subject to the jurisdiction of the United States. Ct. Ex. 1 ¶ 3. Respondents further admit that during the June 20 Trip, the F/V Kingfisher not only had gillnet gear aboard but also hauled in a BFT in that gillnet gear. Ct. Ex. 1 ¶ 15. And Respondents have conceded that, having hauled in the BFT, they retained the BFT, with Mr. Iglesias intending to sell or barter the BFT after returning to port. Ct. Ex. 1 ¶ 16 ("Admitted that a bluefin tuna was retained."); Tr. 233–34 ("I didn't know whether I was going to sell it. All I knew was that I had this big, giant tuna fish that I could certainly have fun giving it away . . . [a]nd like I said before, bartering favors."). Respondents therefore impermissibly "possess[ed] Atlantic tuna[] . . . on board a vessel with a gillnet on board." 50 C.F.R. § 635.71(a)(17). Likewise, Respondents violated the prohibition that "[a] person that . . . catches, retains, or possesses an Atlantic BFT may not have on board a vessel or use on board a vessel any primary gear other than those authorized"—a list that excludes gillnet gear. 50 C.F.R. § 635.19(b)(1).

Respondents have also conceded that they did not have a valid HMS permit at any point during the June 20 Trip, including when they hauled in the BFT. Ct. Ex. 1 ¶ 19–20. While Respondents initially claimed that they obtained a permit before selling the fish to Red's Best, Ct. Ex. 1 ¶ 21, Mr. Iglesias testified at hearing that he did not obtain a permit until after returning to port and selling the tuna to Red's Best. Tr. 236 (ALJ: "[D]id [Mr. Hurwitz] take possession of the fish?" Mr. Iglesias: "Yes." ALJ: "Right then, on the spot?" Mr. Iglesias: "Yeah." ALJ: "And then you got the permit after the fact." Mr. Iglesias: "That's correct."). Respondents have pushed back on the Agency's characterization that Respondents "caught" the BFT, given that the catch was incidental. *E.g.* Tr. 241 (Mr. Iglesias: "I wasn't trying to catch this fish."); Ct. Ex. 1 ¶ 16 ("Admitted that a bluefin tuna was retained but has no knowledge of whether the tuna was technically caught in the gillnet."). Regardless, however, Respondents presented no evidence to refute the Agency's showing that, once the fish was gillnetted, the F/V Kingfisher "retain[ed] and land[ed]" the tuna "without the appropriate valid vessel permit with the appropriate endorsements . . . on board the vessel." 50 C.F.R. § 635.71(a)(2).

In sum, I find that it is more likely than not that Respondents possessed an Atlantic BFT on board a vessel with gillnet gear, and that Respondents, at a minimum, possessed, retained, landed, and sold that BFT without first obtaining an appropriate vessel permit, thereby violating

the HMS regulations and the Act as alleged in Count Two.

3. Respondents are Liable for the Violations Alleged in Count Three

Count 3 alleges that Respondents violated the Act and its regulations by submitting false information and records in violation of 16 U.S.C. § 1857(1)(A), 50 C.F.R. §§ 648.14(a)(5), (6), and 50 C.F.R. § 635.71(a)(6).

To establish Respondents' liability for falsifying information as alleged in Count Three, the Agency was required to demonstrate by a preponderance of the evidence that (1) Respondents are "persons" within the meaning of the Act who (2) made false statements or provided false information in a report or record provided to the Agency. See 50 C.F.R. § 648.14(a)(5) (making it unlawful for a person to "[m]ake any false statement or provide any false information on, or in connection with, a[] . . . record or report under this part"); 50 C.F.R. § 648.14(a)(6) (making it unlawful for a person to "submit or maintain false information in records and reports required to be kept or filed under § 648.7," which include FVTRs). As to Respondents' liability for falsifying information in an HMS catch report, the falsified information must also have been of a type "required to be recorded, reported, or maintained." 50 C.F.R. § 635.71(a)(6) (making it unlawful for a person subject to U.S. jurisdiction to "[f]alsify . . . information required to be recorded, reported, or maintained, as specified in § 635.5," which include HMS catch reports).

As noted above, Respondents have not disputed their liability for Count Three. To the contrary, Respondents have admitted facts sufficient to establish their liability as to all three of the allegedly false reports the Agency has identified. Respondents have admitted:

- That they are persons subject to the jurisdiction of the United States. Ct. Ex. 1 ¶ 3; see *also* Ct. Ex. 1 ¶¶ 1–2 (admitting Adventure King is an LLC registered in the State of Rhode Island and Mr. Iglesias is a United States citizen).
- The F/V Kingfisher submitted two fishing vessel trip reports with inaccurate information to NMFS. See Ct. Ex. 1 ¶ 26 (admitting Respondents submitted an FVTR, VTR Serial Number 13036511, with inaccurate information to NMFS); Tr. 274 (Mr. Iglesias, admitting he omitted BFT from an FVTR, VTR Serial Number 13036510).
- Specifically, the F/V Kingfisher hauled in, retained, landed, and sold an Atlantic BFT during and after a fishing trip lasting from 03:55 EDT on June 20, 2021, to 00:30 EDT on June 21, 2021, Ct. Ex. 1 ¶¶ 14–18, but the BFT was not listed on their FVTR for the June 20 Trip. AX 4 at 2 (FVTR, VTR Serial Number 13036510, containing no reference to BFT catch); Tr. 274 (Mr. Iglesias, admitting that he omitted the BFT from this FVTR).
- In addition, Respondents submitted an FVTR to NMFS for a trip purportedly

occurring from 08:00 EDT to 23:30 EDT on June 21, 2021, during which they reported catching a BFT, but no such trip occurred. Tr. 275 (Q: “So this trip never occurred?” Mr. Iglesias: “Correct.”); Ct. Ex. 1 ¶ 23 (admitting that “F/V Kingfisher did not sail on a fishing trip departing on June 21, 2021, at approximately 08:00 EST [sic] and retuning at 23:30 EST [sic]”); AX 4 at 3 (FVTR, VTR Serial Number 13036511, reporting a fishing trip from 08:00–23:30 EDT, listing a BFT as species caught).

- The F/V Kingfisher submitted a BFT catch report, confirmation number BFT06/21/20121RI27430, containing inaccurate information to NMFS. Ct. Ex. 1 ¶ 27.¹²
- Specifically, the catch report represented that the F/V Kingfisher undertook a fishing trip from 08:00 a.m. to 11:30 p.m. on June 21, 2021, during which it trolled for and hooked a BFT at approximately 1:00 p.m. using a rod and reel and fought the fish for 120 minutes before hauling it in. AX 6 (bluefin tuna catch report). But no such trip occurred, and none of these catch details were true. Tr. 275–77.

For the foregoing reasons, I conclude that the substantial and undisputed evidence presented establishes that Respondents violated 50 C.F.R. §§ 635.71(a)(5), 648.14(a)(5), and 648.14(6), and, in turn, violated 16 U.S.C. § 5158(c).

V. CIVIL PENALTY

Having found that Respondents are liable for the charged violations, I must next determine the appropriate amount of a civil monetary penalty to be imposed, if any, for the violations.

A. Principles of Law as to Civil Penalties

The Magnuson-Stevens Act provides that any person who violates any provision of the Act or its implementing regulations may be assessed a civil penalty. 16 U.S.C. § 1858(a). The amount of the civil penalty cannot exceed \$230,464 for each violation. *See* 16 U.S.C. § 1858(a) (establishing the maximum statutory penalty amount); 15 C.F.R. § 6.3(f)(15), (24) (adjusting the penalty amount in 16 U.S.C. § 1858(a) for inflation effective January 15, 2024); *see also* 15 C.F.R. § 6.4 (providing the effective date for inflation adjustments). No penalty assessment may

¹² The F/V Kingfisher was “required” to provide the information requested in the catch reporting system by virtue of having landed a BFT. 15 C.F.R. § 635.5(4) (“The owner of a vessel that has been permitted or that is required to be permitted under § 635.4 in the Atlantic Tunas General or Harpoon categories . . . must report all dead discards and/or landings of bluefin tuna through the NMFS electronic catch reporting system within 24 hours of the landings or the end of trip.”).

be made unless the alleged violator is given notice and opportunity for a hearing conducted in accordance with Section 5 of the Administrative Procedure Act, 5 U.S.C. § 554. 16 U.S.C. § 1858(a).

The Magnuson-Stevens Act identifies various factors that must be considered to determine an appropriate civil penalty. Specifically:

[T]he Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay, [p]rovided, [t]hat the information is served on the Secretary at least 30 days prior to an administrative hearing.

16 U.S.C. § 1858(a) (emphasis omitted). Similarly, the procedural rules governing this proceeding provide that:

Factors to be taken into account in assessing a civil penalty, depending upon the statute in question, may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior violations, and ability to pay; and such other matters as justice may require.

15 C.F.R. § 904.108(a).

There is no presumption in favor of the Agency's proposed penalty, and an Administrative Law Judge ("ALJ") is not "required to state good reasons for departing from the civil penalty or permit sanction that NOAA originally assessed in its charging document." *Nguyen*, 2012 WL 1497024, at *8; *see also* 15 C.F.R. § 904.204(m). The ALJ must independently determine an appropriate penalty "taking into account all of the factors required by applicable law." 15 C.F.R. § 904.204(m); *see also* 15 C.F.R. § 904.108 (enumerating factors to be taken into account in assessing a penalty).

B. Party Arguments as to Civil Penalty

Through the NOVA, the Agency proposed a total penalty of \$ 49,752 upon Respondents for the charged violations. NOVA 2. The Agency outlined its rationale for the penalty in a penalty calculation worksheet appended to the NOVA, which reflects the Agency's analysis of the violations using its Penalty Policy,¹³ and which more specifically

¹³ Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions NOAA Office of General Counsel – Enforcement Section (June 24, 2019), available at <https://www.noaa.gov/sites/default/files/2023-06/Penalty-Policy-FINAL-June24-2019.pdf>.

proposed penalties of \$ 13,000 for the violations alleged in Count One; \$ 9,500 for the violations alleged in Count Two; and \$ 27,252 for the violations alleged in Count Three. NOVA, Penalty Worksheet; see Tr. 22 (confirming Agency’s penalty assessment for the individual Counts was reflected in the Penalty Worksheet). However, in its Post-Hearing Brief, NOAA does not reference its Penalty Policy or argue for specific penalty amounts. Instead, the Agency outlines the facts it believes are relevant to assessing an appropriate penalty in this case and requests that I “impose a civil penalty jointly and severally against [Respondents] that ensures both specific and general deterrence.” Agency Br. 32. Respondents elected not to file a Post-Hearing Brief, but Mr. Iglesias did raise several arguments at hearing in favor of a reduced penalty.

As I am, in any event, not bound by the Agency’s penalty calculations, I have assessed the appropriate penalty amount *de novo*, with due consideration to the parties’ arguments.

1. Party Arguments as to Civil Penalty for Count One

The Agency raises several arguments related to penalty assessment for Count One. Primarily, the Agency argues that “VMS is a critical enforcement and management tool.” Agency Br. 15. On the enforcement front, the Agency asserts that by providing a vessel’s exact location, VMS allows law enforcement to ensure that vessels are not entering or fishing in restricted areas—for example, by fishing in protected habitat or by fishing across the United States’ maritime border. Agency Br. 15 (citing Tr. 173–74). In addition, real-time VMS reports allow law enforcement to determine when to conduct dockside boardings. Agency Br. 15 (citing Tr. 79, 130). As to fisheries management, the Agency asserts that VMS monitoring is important “particularly[] for species like Atlantic cod that are overfished.” Agency Br. 15 (citing Tr. 167). Citing testimony from NMFS fishery policy analyst Mark Stewart Grant, the Agency notes that VMS allows fishery managers to know where in the ocean fish have been caught. Agency Br. 15 (citing Tr. 170). For species like cod, which are managed by geographically-defined stocks rather than by species, this allows the Agency to ascribe catch data to the appropriate stock, and in turn allows the Agency’s scientists to appropriately account for the catch in setting restrictions. See Agency Br. 15–16 (citing Tr. 170–71, 173). In addition, historical VMS data allows the Agency to update its management strategies by, for example, moving from managing two cod stocks to four cod stocks. Agency Br. 16 (citing Tr. 171).

The Agency also argues that because vessels are required to pay for maintenance of VMS systems and for VMS transmission services, failure to use VMS creates disparities among fishermen. Agency Br. 16 (citing Tr. 79). Put differently, it would be unfair to compliant vessels to allow noncompliant vessels to avoid these costs. And in this case, the Agency claims, “Respondents’ conduct had real and serious consequences,” in that it “gave Respondents a wide berth to perpetrate Counts 2 and 3 of the NOVA, which could have easily gone undetected.” Agency Br. 19 (citing AX 1 at 8–9).

At hearing, Respondent Iglesias argued in favor of a reduced penalty for the VMS violations. Most prominently, Mr. Iglesias testified that he was not aware until observing the hearing that his VMS unit was not working. Tr. 245. Instead, he testified, he had believed that there was some issue with his tablet and assumed that “the VMS would still [work] even if the tablet wasn’t working.” Tr. 245. Mr. Iglesias claimed this was the reason he called in using the IVR system, and that he “didn’t know that . . . it doesn’t count when you call in.” Tr. 245–46. Mr. Iglesias further testified that in the past he knew the VMS was not operating when “it was shut down because the boat [wa]s dead The VMS has used up all its battery power and killed the boat.” Tr. 246. Mr. Iglesias claimed that he did not look at the VMS unit often because the contractor had installed it “down below.” Tr. 247. Regarding the tablet, Mr. Iglesias testified that he was receiving an error message that the tablet could not be charged because there was “moisture involved.” Tr. 247–48.

Mr. Iglesias also argued that any VMS violation was not severe because he called in the June 17 Trip to the IVR system. Tr. 258 (“I made the effort to, to report it. I did report it. It was almost like reporting it is what got me in trouble, you know what I mean.”). He further argued that the Agency had not missed out on any critical information related to the June 17 Trip, since “if you look at my patterns, I’m pretty much doing, you know, the same thing every year.” Tr. 257. And finally, Mr. Iglesias asserted that the Agency’s proposed penalty was disproportionate to any harm, given that he ultimately landed just 14 pounds of cod. Tr. 258.

The Agency addresses Mr. Iglesias’s arguments in its Post-Hearing Brief. The Agency disagrees with Respondents’ argument that the penalty should be reduced because Mr. Iglesias used the Agency’s IVR call-in system to report the June 17 Trip. Agency Br. 15. The Agency asserts that the IVR system is no substitute for VMS because it does not allow the Agency to monitor or verify a vessel’s activity on the water, does not provide the Agency with information about where or when the vessel fished, and provides vessels “more wiggle room with when their trips start and when their trips end.” Agency Br. 15 (quoting Tr. 80, citing Tr. 120).

The Agency also vigorously disputes Respondents’ implication that the penalty should be reduced because Mr. Iglesias lacked an understanding or awareness that the F/V Kingfisher’s VMS unit was offline during the relevant timeframe. *First*, the Agency highlights the proximity between the Agency staff’s communications with Iglesias about his VMS obligations and the VMS unit going offline. The Agency recalls that on May 14, 2021, at around 13:00 EDT, in response to a direct question from Respondent Iglesias about his VMS reporting obligations, OLE’s Samantha Tolken informed Mr. Iglesias via voicemail that he had no VMS requirement for monkfish trips,” *but* “if he wants to land” any NE multispecies, “he needs to use the VMS and declare a groundfish trip via the VMS unit.” Agency Br. 17 (quoting Tr. 119; AX 25). The Agency observes that, per the VMS vendor and Agency V-Track records, it was just shortly thereafter that the F/V Kingfisher’s VMS was disconnected from its power

source. Agency Br. 17 (citing AX 26 at 2; Tr. 144).¹⁴ In the same vein, the Agency notes, the F/V Kingfisher’s VMS was powered back on June 23, 2021—shortly after Ms. Ferguson notified Respondent Iglesias that the VMS was not in operation. Agency Br. 17 (citing AX 2 at 1). Per the Agency, this timing “seems quite deliberate.” Agency Br. 17.

Second, the Agency states that Mr. Iglesias’s purported lack of awareness of how the VMS unit could have become powered off is inconsistent with his 15-year ownership of the vessel and with his testimony that it might have a power switch “down below that [he] always leave[s] on, and that somebody had inadvertently turned it off.” Agency Br. 17 (quoting Tr. 255, citing Tr. 218).

Third, the Agency observes that while Mr. Iglesias has claimed his tablet was faulty during the relevant period, such that he was never sure if the VMS was on, he also stated that he was not having “a problem with the tablet every one of those trips.” Agency Br. 17 (quoting Tr. 248).

Rather than being unintentional, the Agency asserts, Respondents’ conduct related to the VMS was at least negligent and potentially willful. In this vein, the Agency emphasizes that, at hearing, Mr. Iglesias referred to VMS as an “ankle bracelet of sorts” that he did not “want to use because it costs you money to use it,” and his expressed disbelief that it might be “dangerous to the science of the fishery that [the Agency] might not know where [he is] that day.” Agency Br. 18 (quoting Tr. 154, 251, 257). In addition, the Agency notes that Respondents “did not actively try to remedy any of their purported VMS issues. According to Agency records, Respondent Iglesias never called the OLE to alert them to the issue or to ‘help with some basic troubleshooting of the unit.’” Agency Br. 18 (citing Tr. 108, 123, 156). Nor, the Agency observes, did Mr. Iglesias make use of any of the other avenues available to him (e.g., contacting the VMS vendor) to confirm the VMS unit was operational prior to departing on the June 17 or June 20 Trips. Agency Br. 18 (citing Tr. 137, 141, 251).

2. Party Arguments as to Civil Penalty for Count Two

The Agency raises three arguments related to the nature, circumstances, and gravity of the violations alleged in Count 2. *First*, the Agency notes that, because of their migratory patterns, Atlantic BFT must be managed on an international scale—a requirement reflected in international agreements to which the United States must adhere, which include “minimum sizes, fishing-gear requirements, and the amount of bluefin tuna each country can harvest in a given year.” Agency Br. 21 (citing Tr. 183). The Agency explains that federal permits are a

¹⁴ The Agency’s argument suffers, negligibly, from a profusion of time designations. Per Woods Hole, the F/V Kingfisher’s VMS was disconnected from its power source at 18:08 UTC. AX 26 at 2. During daylight savings time (for example, in May), this would convert into 14:08 EDT rather than 13:08 as the Agency posits. 15 U.S.C. §§ 260a(a), 261(a); Agency Br. 17. Regardless, the Agency’s point that the VMS was powered down very soon after Ms. Tolken left her voicemail is well taken.

critical part of this international management regime, in that the issuance of permits “allows HMS managers to know how many people are participating in the fishery,” and “with that permit comes a number of different conditions, gear types that can be used, seasons, size limitations, as well as reporting requirements.” Agency Br. 21–22 (quoting Tr. 185). The Agency argues that HMS permits level the playing field between fishermen, in that BFT quota is allocated based on the number of vessels who have elected to get a permit, making it unfair to condone fishing without a permit. Agency Br. 22.

Second, as to gear restrictions, the Agency refers to testimony from supervisory fishery management specialist Brad McHale that “gillnets have never been authorized in the Atlantic tuna fishery,” partly because “gillnets are considered a “very efficient” gear type”—i.e., they “catch a lot of fish.” Agency Br. 22 (quoting Tr. 187). Combined with the limited quota for Atlantic BFT, the Agency argues, this efficiency would make for “a dangerous mix for sustainable management.” Agency Br. 22. The Agency also points to incidental problems that might arise from allowing vessels to gillnet BFT, specifically that doing so “would necessarily increase the amount of gillnets in the water, which is harmful to species that inadvertently get caught in gillnets, such as sea turtles, dolphins, and other marine mammals.” Agency Br. 22 (citing Tr. 188).

Third, and finally, the Agency argues that eating BFT caught in gillnets poses a dangerous risk to human health. Atlantic BFT are “histamine producing fish”: After they die, their flesh begins to build up histamines in their flesh, which can cause histamine poisoning in humans. Agency Br. 22 (citing Tr. 54–55, 199). Because gillnets are often deployed for several days before being hauled in, it is not possible to know when exactly the fish in those gillnets died and, in the case of BFT, how long they have been producing histamines. Agency Br. 23 (citing Tr. 54). The Agency notes that while Mr. Iglesias stated at hearing that he was willing to personally take the risk of histamine poisoning, downstream customers who purchased gillnetted fish would not be able to make an informed decision on the same point for themselves. Agency Br. 23 (citing Tr. 89).

The Agency next addresses Respondents’ culpability for the HMS violations, noting that “it is undisputed that Respondents acted intentionally.” Agency Br. 23. The Agency notes that Mr. Iglesias himself testified that when the F/V Kingfisher hauled in the BFT, he told Sarah Towne: “it’s illegal for me to catch this fish. I know that.” Agency Br. 23 (quoting Tr. 229). Later, when Mr. Hurwitz told Mr. Iglesias that he did not have a permit to sell BFT, Mr. Iglesias responded only that “I’ll have one when I land.” Agency Br. 23 (quoting Tr. 284).

As to “other matters as justice may require,” the Agency argues that a significant penalty is necessary to deter Mr. Iglesias from repeating the misconduct alleged in Count Two. The Agency emphasizes that, rather than take responsibility for his own misconduct, Mr. Iglesias has repeatedly attempted to shift blame for the violation onto others. Specifically, the Agency points to Mr. Iglesias’s testimony that (1) his crew pressured him to keep the fish; (2) when the fish was hauled in, he said to his at-sea observer, Ms. Towne, that it was “totally up

to you, if you want to let us catch this fish or not;” (3) he is aware that other fishermen routinely obtain HMS permits for their BFT catches after-the-fact; and (4) it was Red’s Best employee Scott Hurwitz who “recommended I do what I did.” Agency Br. 24 (quoting Tr. 229, 235, citing Tr. 228, 230, 235–236). The Agency argues that none of these excuses are borne out by other evidence, and that indeed Mr. Iglesias later attempted to walk back his own attempts to blame his crew and Ms. Towne for the violations. Agency Br. 24 (citing Tr. 228, 230, 285; AX 8 at 6:10). Thus, the Agency argues, Mr. Iglesias’s reflexive refusal to accept responsibility for his misconduct is indicative of the need for a “significant penalty in order to achieve specific deterrence.” Agency Br. 24.

In addition to his purported blame-shifting, the Agency points to Mr. Iglesias’s demeanor at hearing as supportive of a heightened penalty. Agency Br. 25. The Agency identifies various instances that it casts as conveying both a lack of remorse for his misconduct and a lack of respect for the proceeding. Agency Br. 25. The Agency suggests that if the assessed fine was insufficient to convey the gravity of the proceeding to Mr. Iglesias, a higher penalty may be necessary. Agency Br. 25.

Finally, the Agency argues that any penalty must take into account Respondents’ history of prior similar misconduct, specifically a written warning that Respondents received in 2018 for possessing, retaining, or landing an Atlantic BFT without the appropriate permit. Agency Br. 26 (citing AX 23 at 5–6). The Agency argues that this past violation cannot be distinguished from those currently alleged by virtue of having involved a smaller quantity of fish. Agency Br. 26. Instead, the Agency claims, the appropriate conclusion is that Respondents’ behavior is escalating. Agency Br. 26.

Asked at hearing for his arguments in favor of a reduced penalty for Count Two, Mr. Iglesias argued that as to BFT “everybody else gets to catch them except . . . me.” Tr. 239. He elaborated that “if you’re using a gillnet, you can’t have one,” and expressed his opinion that “just a little bit of flexibility, I think, would alleviate the situation.” Tr. 239. He suggested that it was unfair to gillnet fishermen that “30,000 others can” catch BFT “at the drop of a hat,” and asserted that “there’s plenty of guys that while they’re fishing will rod and reel, and catch a tuna, and be able to land it,” and that “I’m pretty sure the lobstermen do it.” Tr. 239.

As the Agency noted in making its affirmative case for a significant penalty, Mr. Iglesias also repeatedly attempted to shift some responsibility for Respondents’ violations to others. Mr. Iglesias indicated that Ms. Towne gave him the “green light” to catch the BFT, Tr. 232, 241, and testified that it was Mr. Hurwitz who instructed him in how to paper over the unlawful catch. Tr. 235 (“Scotty and the fish dealers knew exactly what was going on. They are the ones who recommended I do what I did.”). He also expressed his belief that he was being unfairly singled out, including because, to his understanding, fishermen who do not haul gillnets are routinely allowed to catch BFT and obtain the necessary permit after-the-fact. Tr. 235–36 (“[T]he guys can go after the huge money tuna fish and not have to jump through many hoops

at all. All of a sudden, these guys can just catch fish by, you know, dialing it up on their phone on the way in.”).

The Agency addresses Respondents’ penalty arguments in its Post-Hearing Brief. First, the Agency notes that Respondents’ disagreement with the regulations surrounding retention of BFT in gillnet gear do not transform Respondents’ misconduct into “some noble act of civil disobedience.” Agency Br. 26. Instead, the Agency argues, the evidence demonstrates Respondents were motivated entirely by the hope of financial gain, and that they took every opportunity to hide their misconduct. Agency Br. 26 (citing Tr. 226, 231). The Agency similarly disputes Respondents’ characterization that they retained the BFT as part of a “principled refusal to waste food.” Agency Br. 26. The Agency argues that this principle should not alter the calculus here, because (i) multiple witnesses questioned whether the BFT Respondents caught was fit for consumption; (ii) allowing Respondents to decide to keep a fish because it was incidentally caught would undermine the HMS permitting scheme and serve as an unfairness to the other 30,000 HMS-permitted vessels, and (iii) as with Respondent’s’ objections to the HMS regulations, the evidence does not suggest Respondents were taking a political position. Agency Br. 26–27 (citing Tr. 57 192, 272; AX 8 at 1:00.) Rather, “[t]hey sold the fish for \$3,424.00 and tried to conceal how and when it was caught from the Agency”—a value the Agency asserts I should add to any civil penalty imposed in this matter to account for Respondents’ unlawful gain. Agency Br. 27.

Finally, the Agency argues that I should give little weight to Respondents’ eventual acknowledgement of liability for Count Two, because that candor did not develop until well after Respondents had been presented with the weight of evidence against them, including Ms. Towne’s photo and video evidence of the F/V Kingfisher’s crew hauling in the BFT, and Mr. Hurwitz’s admission to investigators that he had received the BFT from Mr. Iglesias at the same time as the other gillnet catch from the June 20 Trip. Agency Br. 27.

3. Party Arguments as to Civil Penalty for Count Three

The Agency first addresses the nature, circumstances, extent, and gravity of the offense, arguing that catch reporting “is not a meaningless bureaucratic exercise,” but rather a critical component of the Agency’s fisheries management and enforcement functions. Agency Br. 30. To establish the importance of complete and accurate FVTRs, the Agency relies on testimony from Mark Grant, Fisheries Policy Analyst for the NE multispecies program, who stated that VTRs “are one of the basic units of data that goes into all of [NOAA’s] science.” Agency Br. 30 (quoting Tr. 174). Mr. Grant also testified that VTRs are used to ensure that fishing quotas are not exceeded in the short term, Tr. 174, and that in the long term information from VTRs “underlies all of [NOAA’s] stock assessments” and contains important historical data as science evolves. Tr. 174-75. Thus, Mr. Grant testified, inaccurate information in VTRs leads to ineffective fisheries management—or, as he put it: “You don’t know what you don’t know.” Tr. 174–75; Agency Br. 30. The Agency also relies on testimony from OLE Investigative Support Manager Carl Lemire, who testified to VTRs’ role as enforcement tools. Per Mr. Lemire, VTRs

are “crucial” to his team’s work, as they use VTRs for data analysis, verifying self-reported catch amounts for law enforcement investigations, and for determining when a vessel may be in violation of regulations. Tr. 129–30; Agency Br. 30.

Likewise, the Agency argues that accurate and complete HMS reporting is necessary for the Agency to carry out its mission. The Agency highlights testimony from Supervisory Fishery Management Specialist Brad McHale that, when it comes to HMS, ““every single fish matters.”” Agency Br. 30 (quoting Tr. 191). Mr. McHale testified that the Agency identifies every Atlantic BFT in commerce and tracks it until it is sold at retail, meaning accurate reporting matters because the Agency is ““counting fish, by fish, by fish to assess what’s transpiring.”” Agency Br. 30 (quoting Tr. 197, citing Tr. 192). Mr. McHale further testified that HMS catch reports allow the Agency to ““get a sense of what is transpiring in the fishery, so [it] can adapt not only for the biology of the fishery, but also for the socio and economic dynamics as well.”” Agency Br. 31 (quoting Tr. 198). Thus, the Agency argues, “[f]alse reports threaten the Agency’s ability to carry out its mission.” Agency Br. 31.

Turning to Respondents’ culpability, the Agency notes that Respondent Iglesias has admitted that he falsified fishing reports intentionally. Agency Br. 31. Then, addressing “other matters,” the Agency argues that, as with Count Two, Respondent’s prior misconduct, “casual approach to this case,” blame-shifting, and lack of remorse mitigate in favor of a heightened penalty for Count Three. Agency Br. 31. Indeed, the Agency argues, Mr. Iglesias’s testimony showed a particular lack of remorse for Respondents’ false reporting violations. Agency Br. 31. In support of this position, the Agency points to statements Mr. Iglesias made at hearing that suggested his false reports were not problematic because he ultimately reported the BFT catch. Agency Br. 31 (citing Tr. 86 (“And then would you also say that I recorded everything I caught during those trips in one way or another?”)). The Agency also notes that Mr. Iglesias “freely admitted, under oath, to falsifying reports that contain an express warning that making false statements on the form is punishable by up to five years in prison.” Agency Br. 31 (citing Tr. 273–76; AX 4 at 2–3; 18 U.S.C. § 1001).

Finally, the Agency argues that a significant penalty is warranted for Count Three because Mr. Iglesias “enlisted multiple people into his conspiracy to misreport the fish” including his crew—who pressured Ms. Towne not to report the catch—as well as Ms. Towne and Mr. Hurwitz, both of whom did not disclose the catch until they were later approached by law enforcement. Agency Br. 31–32.

Asked at hearing for any factors or arguments he wished the Tribunal to consider for penalty mitigation with regard to the false reports alleged in Count Three, Tr. 240, Mr. Iglesias offered (1) that he did not want to waste the fish; (2) that he was “sort of green lighted along the way to do it;” and (3) that he “wasn’t trying to catch the fish.” Tr. 241–42. Asked to elaborate upon his “green lighting” argument, Mr. Iglesias explained that he was referencing the instance in which he looked to Ms. Towne when the crew first pulled in the BFT, and she allegedly said, “let’s land this fish.” Tr. 229, 243. However, when asked whether he “really

th[ought Ms. Towne] had the authority to” authorize his catch of the BFT, Mr. Iglesias responded, “No, of course not, no.” Tr. 243.

C. Penalty Analysis

1. Nature, Circumstances, Extent, and Gravity of the Violations

I have considered the substantial evidence of record regarding the nature, circumstances, extent, and gravity of the violations in this matter in making my penalty assessment.

a. Count One

In general, I have found the Agency’s arguments persuasive in my review of the nature, circumstances, extent, and gravity of the violation at issue in Count One. The record establishes the general significance of the relevant VMS requirements. Among other things, VMS provides a “check on geographic information” by allowing the Agency to confirm locations given in vessel trip reports, “ensures that vessels are not in those areas they shouldn’t be” like protected habitats and other nations’ waters, and allows the Agency to update its understanding of geographically-delineated fishing stocks as fishery science evolves. Tr. 171, 173–75 (testimony of Mark Stewart Grant). In contrast, gaps in VMS reporting impede the Agency’s capacity to know the exact location of the fishing vessel out at sea, thereby limiting the Agency’s ability to assure compliance with its regulations or to obtain complete information in support of fishery management. *See* Agency Br. 15–16. Thus here, Respondents’ failure to use VMS during the June 20 Trip made it less likely that their subsequent misconduct would be uncovered, Agency Br. 18, insofar as an active VMS would have readily shown the F/V Kingfisher did not undertake a June 21, 2021, trip to troll for BFT.

For similar reasons, I disagree with Respondents’ position that a reduction in penalties is warranted because Mr. Iglesias’s use of the IVR call-in system on June 17, 2021, served as a sufficient substitute for activating the F/V Kingfisher’s VMS. As the Agency’s witnesses testified, the IVR call-in system is not a substitute for VMS. Tr. 80, 120. The call-in system does not allow the Agency to monitor or verify a vessel’s activity on the water. *See* Tr. 104–05 (Ms. Ferguson, describing the IVR system as “the way that the vessels report in real time that they are starting and ending trips”). Additionally, “VMS provides a far more accurate calculation of the time at sea that is used and will be deducted from a vessel[’s]” DAS, whereas, the IVR call-in system allows vessels “more wiggle room with when their trips start and when their trips end.” Tr. 80. Put differently, the call-in system leaves the Agency comparatively in the dark as to where or when the vessel fished, or the extent of the fishing effort.

Likewise, while I have considered Mr. Iglesias’s argument that Respondents retained a relatively minimal quantity of cod during the June 17 Trip, Tr. 258, I note that the ultimate size of the catch does not excuse Mr. Iglesias’s failure to ensure that his VMS was in operation before that trip began. As the Agency’s witnesses described, VMS requirements are intended

to allow the Agency to accurately track a vessel's location during, and the precise duration of, certain fishing trips. Tr. 80, 173–74. These aims are entirely thwarted when the VMS is not active during such trips.

I do depart from the Agency's arguments in two respects. First, as discussed further below, the evidence does not clearly establish that Mr. Iglesias left his VMS offline with the intention of skirting Agency observation or his regulatory obligations. *Infra.* Part V(C)(2). Rather, it is possible, if not likely, that (i) the VMS was inadvertently powered down as Mr. Iglesias claims, or (ii) Mr. Iglesias disconnected or switched off the power to his VMS unit near the start of the new fishing year to save money, and then forgot to turn it on again. *Infra.* Part V(C)(2).

Second, I disagree with the Agency regarding the extent of the misconduct alleged in Count 1. Respondents failed to power up their VMS unit as required for a span of less than a week, encompassing only two fishing trips. Only the first was the type of NE multispecies trip the VMS regulations expressly intended to capture. As regrettable as Respondents' conduct became during the second trip, that trip began as a monkfish-only trip—a kind of trip during which, Mr. Iglesias had recently been advised, he did not need to use VMS. Tr. 119 (Ms. Tolken informed Mr. Iglesias via voicemail on May 14, 2021, that he did “not have a VMS requirement for monkfish trips,” but “if he wants to land” any NE multispecies, “he needs to use the VMS and declare a groundfish trip via the VMS unit”); AX 25 (Ms. Tolken's contemporaneous call notes memorializing same). The record further indicates that Mr. Iglesias powered the system back on shortly after Agency staff brought to his attention that it had been left offline. Tr. 108–10 (Ms. Ferguson, repeatedly testifying that she spoke with Mr. Iglesias about his VMS on the 22nd and 23rd of June, 2021); AX 2 at 1 (excerpt of V-Track spreadsheet showing the F/V Kingfisher's VMS began transmitting on June 23, 2021, along with a note that “[t]he vessel owner and operator, David Iglesias, was contacted a couple days after the [June 17] trip” and had since powered up the VMS). Taken together, I find that these facts support a downward adjustment in the penalty for Count One.

b. Count Two

As with Count One, the record demonstrates the importance of the permitting requirements and gear restrictions at issue in Count Two. The Agency's witness Brad McHale convincingly testified as to the importance of HMS vessel permits and, as relevant here, of the need for vessels to obtain those permits *before* setting out to catch Atlantic Tunas. He explained that permits “defin[e] the universe of U.S. flag vessels that express desire to either pursue these fish or retain these fish,” which in turn “set[s] the foundation for a lot of the management rules and regulations . . . [including] the amount of fishing pressure we anticipate those vessels to expend on these resources.” Tr. 185. He further explained that permitting “serves as somewhat of an effort control,” because “[v]essels that do not have this permit are unauthorized to fish for, retain, or possess these fish.” Tr. 185–86. Particularly relevant here, Mr. McHale repeatedly emphasized that strict compliance with the requirement to obtain an

HMS permit before fishing is a matter of fairness. Asked about the harm to the program where, as alleged here, a vessel obtained a permit after-the-fact of catch, Mr. McHale responded “does it affect the program itself? Not necessarily. . . . [B]ut it affects the integrity of the fishery and the level of the playing field amongst those that are participating in that fishery.” Tr. 189; *see also* Tr. 190 (“[I]t does come back to . . . that permit is authorizing the activity and is needed at the time of the catch event. And that creates par[ity] across the entire fleet.”). Mr. McHale noted that this need for fairness is particularly salient in the BFT fishery because “there is such a limited quota,” meaning “every single event [of noncompliance] . . . starts to compromise another individual’s ability to catch and land things while they are abiding by the regulations” Tr. 190–91.

Mr. McHale also persuasively testified as to the need to prohibit gillnet use for catching BFT. He noted that gillnets have never been an authorized gear type for BFT. He explained that this is likely because gillnets are “a very efficient gear type”—meaning “it does what it’s designed to do[:] . . . catch a lot of fish”—and with “large specimens like [the BFT at issue] here, as well as a limited quota . . . it was determined not to authorize that gear type for some of those reasons.” Tr. 187–88. He also noted that “there have been concerns with bycatch in that particular gear type” *i.e.*, “species fishermen may encounter when they’re pursuing the species they are actually trying to catch, but are undesirable for a litany of reasons,” such as “turtles, marine mammals, porpoises, dolphins, . . . seals.” Tr. 188.

Separately, Officer Swiechowicz testified that the use of gillnets to catch BFT may raise health issues. He noted that BFT are histamine-producing fish, meaning that “[u]pon their demise, they begin to rapidly decompose and release histamines into the tissue of the fish,” and so “[i]f they are not cared for and cooled in a very specific manner, they could pose a danger to consumer safety such as histamine allergic reactions or histamine poisoning.” Tr. 53–54; *see also* Tr. 199–200 (Mr. McHale, noting that the FDA uses time of landing as part of its hazard assessment for tunas). He suggested that gillnet fishing increases this risk, observing that “[b]y the nature of the gillnet fishery, you may not – a bluefin tuna may become entangled in the net and be dead for an uncertain amount of time prior to its collection by the fishermen. So there would be no way to determine how long that fish has been deceased and producing histamines.” Tr. 54. In contrast, “[t]he authorized gear types in the highly migratory species fishery in the United States are all direct-line involvement fisheries,” that is, gear types where the gear is actively or regularly tended, “allow[ing] better, more accurate control and understanding of exactly when the fish was harvested.” Tr. 54.

In addition to supporting the Agency’s penalty assessment for Count 2, this evidence serves to rebut Respondents’ arguments that requiring fishermen to discard inadvertently-caught BFT is inherently wasteful and unfair. I sympathize with Respondents’ frustration that the Agency’s regulations required them to toss a “mythological” windfall back into the ocean. Tr. 231. But Respondents’ sense of unfairness does not excuse their misconduct. Setting aside the obvious point that disagreement with regulations does not nullify them, the Agency has

demonstrated the health– and fishery– related need to prevent landing of gillnetted BFT.¹⁵ Furthermore, as the Agency’s witnesses testified, the permitting regulations themselves are intended to promote fairness by doling out limited quota. Indeed, at least some of Respondents’ irritation with the way in which HMS permitting is managed appears to relate to their perception that many others engage in unlawful conduct without being curtailed. *E.g.* Tr. 235–36 (“[T]he guys can go after the huge money tuna fish and not have to jump through many hoops at all. All of a sudden, these guys can just catch fish by, you know, dialing it up on their phone on the way in.”). If anything, this would speak to the need for more consistent enforcement of the permitting requirements, not less. Finally, to the extent Respondents genuinely believe the Agency’s regulations should be changed to allow post-hoc permitting and retention of inadvertently gillnetted fish, they are not without avenues to make that case. As the Agency notes, Respondents took no such public stand here: Respondents retained the BFT to sell surreptitiously for profit, not to make a political point. *E.g.* Tr. 272.¹⁶

In contrast to this fairness argument, I have credited Respondents’ point, elicited through cross-examination of the Agency’s witnesses, that the Atlantic BFT fishery is doing well from the United States’ perspective—specifically that “right now, bluefin tuna is not overfished and is not [expected] to be experiencing overfishing.” Tr. 205. I have also considered Respondents’ position, confirmed by Mr. McHale, that inadvertent gillnetting of BFT is rare. Tr. 203: (Q: “Do you have any statistics at all on how many [BFT] have been landed by gillnets over the last say 10, 20 years?” A: “I do not . . . “[b]ut minimal at best.”). On these facts, I find no need to set an especially severe penalty to generally deter violations like those alleged in Count Two.

c. Count Three

As with the preceding two Counts, the record establishes the importance of the reporting requirements at issue in Count Three to NOAA’s fisheries management and enforcement functions. As Mr. Grant credibly testified, accurate FVTRs allow Agency staff to ensure fishing quotas are not exceeded in the short term and to accurately update stock assessments or conduct other scientific analyses. Tr. 174–75. Inaccurate reports have the opposite effect, undermining the “basic units of data that goes into all of [NOAA’s] science.” Tr.

¹⁵ Mr. Iglesias’s personal willingness to eat incidentally gillnetted tunas, Tr. 231–32, does not diminish the unrefuted evidence that doing so can present serious health risks.

¹⁶ When asked at hearing for his perspective on “what happened with respect to you landing this bluefin tuna,” Tr. 226, Respondent Iglesias directed the Tribunal’s attention to a contemporaneous photo of the catch, AX 18, and to a series of large empty containers on the F/V Kingfisher. Tr. 228. Mr. Iglesias explained that “as you can see, the containers are empty. It wasn’t the best day in the whole world that day. It was very much at the end of the day. And when that fish came up, you know, I have to share what I catch with my crew. It’s usually on a like a — they get 40 percent of the catch. So anything that’s coming up, you know, they’re, they’re wanting to keep, you know.” Tr. 228.

174. On the enforcement side, accurate FVTRs allow the Agency to verify self-reported catch amounts and to identify potential violations. Tr. 129–30.

Likewise, the record reflects that accurate HMS catch reports are necessary for both science and management. As Mr. McHale put it, “[t]he science can only be as accurate as the information that informs it.” Tr. 195–96. In turn, accurate and timely reporting is necessary for accurate management. Per Mr. McHale:

[A]s a manager that is tasked with the stewardship of this marine natural resource, the decisions I’m then making on behalf of the Agency . . . it’s only as good as the information I have before me. And so if the information is inaccurate or delayed, or something to that effect where it’s compromising that, that in turn compromises the decisions I’m making, which then have those ramifications across the board.

Tr. 196–97. As to the specific need for accurate reporting of when BFT are caught, Mr. McHale testified that the timeliness of reporting is important because “things can change that dramatically quick in a fishery.” Tr. 197. He also observed that, as with the use of gillnets, inaccurate reporting of when a tuna was caught raises health concerns. Tr. 199 (noting that “the timing of landing is a piece of information that helps feed [the] processes” used by the FDA and other health agencies to track the sale of tuna in the interest of public health). Taken together, this evidence supports a finding that, in general, misreporting when or how a particular tuna was caught is not an inherently *de minimis* violation.

This general finding is, however, dwarfed by the specific circumstances, extent, and gravity of the violations alleged in Count Three. The evidence is clear that Respondents lied in their FVTRs and HMS Catch Report solely to obscure their other misconduct. In these circumstances, I do not consider it to be a mitigating factor, as Respondents suggest, that Respondents technically reported landing a BFT. *See* Tr. 240 (Mr. Iglesias, testifying that he was “trying to work within the system”). While Respondents nominally reported the catch, they fabricated almost every detail of that catch. *Supra* Pt. IV(C)(3). Worse, as Respondents have admitted, they fully intended to use the false reports to avoid the consequences of their unpermitted catch using unauthorized gear—an effort directly contrary to the reports’ purpose. *See, e.g.*, Tr. 237 (Mr. Iglesias, noting Red’s Best “wouldn’t take it unless you provide some cover for them”); Tr. 240–41 (“I knew in a way I was implicating myself by doing it. . . . It’s a momentary decision, you know. I’m just trying to make some money for the crew and for myself.”). And perhaps worse still, Respondents enlisted various others to carry out this cover-up. Tr. 230–31 (Mr. Iglesias, admitting he and the crew pressured Ms. Towne not to report the BFT); Tr. 235–36 (Mr. Iglesias, testifying he conferred with Mr. Hurwitz about how to get a BFT permit after-the-fact). This is a serious offense, and I have considered the severe gravity of Respondents’ misconduct and the need for specific deterrence in setting the appropriate penalty.

2. Respondents' Culpability

With respect to Respondents' culpability, the evidence is convincing that Respondents acted negligently in committing the violations in Count 1 and that Respondents acted intentionally in committing the violations in Counts 2 and 3.

As to Count One, I am unconvinced by Mr. Iglesias's suggestion that the F/V Kingfisher's VMS unit was, at least initially, shut off unintentionally and without his knowledge. Regardless, even if I credited Mr. Iglesias's claim that the VMS was turned off inadvertently, I find that Mr. Iglesias failed to take reasonable steps to comply with the VMS regulations.

As to whether the VMS was mistakenly powered down: The unrefuted evidence is that VMS, including Leo units like the one installed aboard the F/V Kingfisher, are hard-wired into the vessel. The unit's technical documentation states as much. *E.g.* AX 28. And this point was reiterated by Carl Lemire, the investigative support program manager for NMFS, who testified that VMS includes "a junction box that is used to let the operator know if the VMS is on and operating," and that "there is a power cord from that junction box that connects with . . . the vessel's power supply." Tr. 133–34. Thus, "there's no button to power it up. . . . [A]s long as there is voltage going to it, it automatically is, is powered." Tr. 139. Mr. Iglesias acknowledged that this was his understanding as well. Tr. 268–69 ("I have no interaction with that thing at all. . . . I'm assuming it's working because the boat is working, you know, because usually . . . if the batteries are working, the VMS is working.").

Mr. Iglesias speculated that it was possible the technician who installed the VMS unintentionally assigned it to a breaker that also connected to a switch below deck, and "that switch got flipped off somehow." Tr. 255; *see also id.* ("I don't know this for sure, but this is what I'm thinking."). Mr. Iglesias's noncommittal testimony that such a switch *might* exist on a vessel he has owned and captained for 15 years, Tr. 218, does little to refute the firm testimony from the Agency's witness.

Furthermore, on May 14, 2021, approximately a month before the June 17 Trip, Mr. Iglesias reached out to NMFS for guidance regarding his VMS obligations. According to Samantha Tolken, then an investigative support technician for NOAA OLE, Mr. Iglesias called the Agency to ask "about his VMS requirements on multispecies trips or when he could use the IVR." Tr. 118. Later that day, at 13:00. EDT, she left him a voicemail in which, per her contemporaneous records, she informed Mr. Iglesias "that the vessel does not have a VMS requirement for monkfish trips. He should call the IVR." Tr. 119; *see also* AX 25 at 1. According to records from the F/V Kingfisher's VMS provider, the unit was "tak[en] off main power supply on 5/14/2021 at 18:08 UTC," or 14:08 EDT—an hour after Ms. Tolken's voicemail. AX 26 at 2. All of the foregoing, coupled with Mr. Iglesias's expressed frustration regarding the costs and battery issues associated with VMS use, supports that Mr. Iglesias may have disconnected or otherwise powered down the F/V Kingfisher's VMS in May and then negligently failed to turn it back on.

Regardless, Mr. Iglesias's actions were negligent when he failed to take any steps to confirm that the unit was functioning before embarking on the June 17 Trip. In the same voicemail in which Ms. Tolken informed Mr. Iglesias that he did not need to use VMS and could instead use IVR for monkfish-only trips, she "also told him that if he wants to land any sort of GF, which is short for groundfish, which is another common name for multispecies, . . . he needs to use the VMS and declare a groundfish trip via the VMS unit." Tr. 119. Mr. Iglesias therefore had recent notice of the need to power up his VMS before departing on a multispecies trip.¹⁷ Mr. Iglesias also admitted that he suspected there was some issue with the VMS before heading out on the June 17 Trip—in fact, he remarked that he called in to the IVR because the tablet associated with the VMS wasn't working properly. Tr. 245. Mr. Iglesias nevertheless failed to take *any* steps to determine whether his VMS was online during the June 17 Trip.

Such steps were available and within Mr. Iglesias's capacity. Per Mr. Lemire, it is possible to determine whether a VMS unit is operating by looking at the control box, which has LED lights that indicate whether the unit is operating as intended or whether there is an issue with the VMS. Tr. 134–35 ("If it's a green light on the decks of the power display, you're operating, good to go. If there's red lights, or yellow lights, or flashing lights, you know you have some sort of issue with your VMS."). The operating manual for the F/V Kingfisher's VMS confirms that this holds true for the Leo model. AX 28 at 13 (depicting the different indicator lights on the Leo VMS control box and explaining their meaning, including that "[i]n case of a power failure, the displays switch to a flashing mode"). Mr. Iglesias testified that despite the issues with the F/V Kingfisher's VMS tablet ahead of the June 17 Trip, he did not take the time to check the control box to see whether the rest of the unit was also powered down. Tr. 268–69 (Mr. Iglesias, admitting he does not check the vessel's VMS because he assumes that if the vessel is on, the VMS is on). Taken together, these circumstances evidence that Respondents acted carelessly and with a lack of diligence in failing to confirm that their VMS unit was active starting with the June 17 Trip, and support the conclusion that Respondents acted negligently in committing the violation alleged in Count One.

As to Counts Two and Three, Respondents do not meaningfully dispute that their conduct was intentional. Mr. Iglesias (i) chose to bring the gillnetted Atlantic BFT aboard the

¹⁷ Mr. Iglesias testified that he was not aware that he could not simply use the IVR to call in when he suspected there might be an issue with the F/V Kingfisher's VMS. This testimony is contradicted by the undisputed evidence that Ms. Tolken communicated with him on the same subject just a month prior. And even without that specific contact, Mr. Iglesias's claimed unfamiliarity with his VMS obligations would not suffice to render his noncompliance "inadvertent." Mr. Iglesias has been a fisherman for 45 years. Tr. 218. As a participant in a highly-regulated industry, he has a responsibility to remain apprised of the regulations which apply to their actions, including the VMS requirements at issue in Count One. *See Alba*, 2 O.R.W. at 672 ("[A] participant in a regulated industry . . . has a responsibility to familiarize himself with the regulations which apply to him."); *see also Peterson*, 6 O.R.W. 486, 490 (NOAA July 19, 1991) ("When one engages in a highly regulated industry, that person bears the responsibility of knowing and interpreting the regulations governing that industry.").

F/V Kingfisher, thereby keeping possession of the gillnetted fish, Tr. 229; (ii) chose to retain, land, and sell the BFT without the required permit, Tr. 269–70; (iii) chose to obscure the catch by omitting the BFT from the F/V Kingfisher’s June 20, 2021 FVTR, Tr. 274; and (iv) most egregiously, chose to file two high-completely fictional reports to cover up these other violations so that he could sell the BFT with impunity, Tr. 274–77. While Mr. Iglesias repeatedly attempted to shift blame for these choices onto others, even he admitted that the responsibility for each decision was, ultimately, his own. Tr. 264–65 (Mr. Iglesias, agreeing he was responsible for “everything” associated with the vessel, including “knowing what you have to discard” and “following the rules”); Tr. 265 (Mr. Iglesias, testifying as to Ms. Towne: “I don’t know whether I was taking her advice at that point or not. . . . I think it somehow coupled with . . . my wishes [to land the fish]”); Tr. 230 (Mr. Iglesias, testifying as to Ms. Towne: “[I]t’s not her fault at all”).

While an operator’s knowledge of the law is generally assumed, *e.g. Alba*, 2 O.R.W. at 672 (“[A] participant in a regulated industry . . . has a responsibility to familiarize himself with the regulations which apply to him.”), Mr. Iglesias’s testimony also establishes that he fully understood what he was doing was unlawful at the time of these violations. He testified that when the F/V Kingfisher first hauled up the BFT in its gillnet, “I said to . . . the observer . . . listen, it’s illegal for me to catch this fish. . . . I know that.” Tr. 229. He acknowledged that Mr. Hurwitz informed him in advance that he did not have the necessary permit to land and sell the BFT. Tr. 236. And he admitted that he prepared false reports because he thought that Red’s Best wouldn’t take the fish “unless you provided some cover for them,” and “I knew in my heart of hearts that this was probably going to put me into jeopardy and there might be, you know, some . . . repercussions.” Tr. 236–37. I find that Respondents’ demonstrably heightened culpability—particularly Mr. Iglesias’s clear-eyed, deliberate attempt to evade the law through the false reporting violations alleged in Count Three—warrant a commensurately heightened penalty. *See Reposa*, 2003 WL 21734021, at *18 (finding that falsification of VTRs is a serious offense “especially . . . given the fact that it appears that the Respondents willfully violated the Magnuson-Stevens Act and then attempted to cover their wrongdoings”).

3. History of Violations

The record establishes that in 2018, NMFS issued Mr. Iglesias a written warning for possessing, retaining, or landing an Atlantic BFT without a permit. AX 23 at 5–6. At hearing, Mr. Iglesias testified that he received the warning for his possession of a “hunk” of tuna he had retained for personal consumption. Tr. 271, 277; *see also* Tr. 91 (Officer Swiechowicz, who authorized the written warning, testifying that “there was no indication of the attempted sale of that fish”). Mr. Iglesias did not challenge the warning. Tr. 67. The Agency argues that Mr. Iglesias’s past violation involved the same type of misconduct alleged here, and that I should take the prior violation into account in setting Respondents’ penalty. Agency Br. 26. More specifically, the Agency asks me to consider that Mr. Iglesias’s misconduct is worsening, as he has moved from retaining unpermitted catch for personal use to sale. Agency Br. 26.

While the prior violation was different in scale from the violations alleged here—as demonstrated by the fact that it was resolved via written warning—that earlier warning put Respondents on specific notice of the requirements described in this case. Nevertheless, at hearing Mr. Iglesias repeatedly referenced his apparently unaltered belief that retaining incidentally caught or unpermitted BFT for personal use or bartering is both common and appropriate. Tr. 89 (“[S]ometimes we eat fish that we catch that might not be perfectly legal because it’s dead in a net, taking those histamine risks.”); Tr. 233 (Mr. Iglesias, testifying as to the BFT at issue here, that “I didn’t know if I was going to sell it. All I knew was that I had this big, giant tuna fish that I could certainly have fun giving it away, you know.”). I have therefore considered Respondents’ history of noncompliance in calculating an appropriate penalty.

4. Ability to Pay

A respondent who wants the ALJ’s initial decision to account for the respondent’s inability to pay must, 30 days prior to hearing, submit to Agency counsel “verifiable, complete, and accurate financial information” such as “the value of respondent’s cash and liquid assets; ability to borrow; net worth; liabilities; income tax returns; past, present, and future income; prior and anticipated profits; expected cash flow; and the respondent’s ability to pay in installments over time.” 15 C.F.R. § 904.108(d), (e). Neither Respondent timely submitted such information.¹⁸ Respondents are therefore “presumed to have the ability to pay the civil penalty.” 15 C.F.R. § 904.108(c); *see Nguyen*, 2012 WL 1497024, at *8 (ALJ, Jan. 18, 2012) (same).

5. Other Matters as Justice May Require

In considering other matters as justice may require in determining the penalty amount, I find that further upward adjustment of the penalty amount is warranted to account for the economic benefit Respondents received from their sale of the BFT they caught during the June 20 Trip. In contrast, I disagree with the Agency that Mr. Iglesias’s conduct at hearing warrants a heightened penalty.

As to economic benefit, the evidence shows that Respondents received \$ 3,424 from their sale of the Atlantic BFT that is the subject of the violations cited in Counts Two and Three. AX 3 at 2 (dealer report reflecting total price for BFT).¹⁹ I agree with the Agency’s argument

¹⁸ At hearing, Mr. Iglesias requested to introduce into evidence three previously-undisclosed letters authored by his daughters, which purportedly included information regarding Respondents’ ability to pay the proposed penalty. Tr. 20–21. I sustained Agency counsel’s objection to the introduction of this late-proposed evidence which, in any event, Respondents did not purport to include the “verifiable, complete, and accurate financial information” necessary to permit consideration of Respondents’ ability to pay. Tr. 278–80; *see* 15 C.F.R. § 904.108(d).

¹⁹ The NOVA erroneously listed Respondents’ economic benefit as \$ 3,252. NOVA, Penalty Worksheet at 3. The Agency’s Post-Hearing Brief identifies the correct value, as reflected in the relevant dealer report. Agency Br. 27.

that Respondents should not benefit financially from their illegal conduct by retaining the proceeds of this sale. *DaSilva*, 2015 WL 6395679, at *16 (“A civil penalty must take into account the value of the catch obtained through unlawful means to alter the economic calculus that might lead a participant in a fishery to simply account for a potential fine as a cost that can be absorbed with the proceeds from such unlawful activity.”). I have therefore accounted for this economic benefit in my penalty assessment.

I am not, however, persuaded by the Agency’s argument that Respondents’ penalty should be further increased based on Mr. Iglesias’s alleged lack of seriousness at hearing. See Agency Br. 25. Having observed Mr. Iglesias, I construed his intermittent quips as reflexive attempts by a *pro se* litigant to diffuse the tension of an adversarial hearing, rather than as a sign of disrespect for the proceeding or the Tribunal. I have therefore not considered this aspect of Mr. Iglesias’s conduct at hearing in making my penalty calculation.

Upon consideration of all the foregoing, including the aforementioned consideration of the factors listed in 16 U.S.C. § 1858(a) and 15 C.F.R. § 904.108(a), I assess a civil penalty in the amount of \$ 43,674 for Respondents’ liability for the charged violations in this case.

VI. DECISION AND ORDER

Respondents are liable for the charged violation in this case. A civil monetary penalty of **\$ 43,674** is imposed for the charged violations. Once this Initial Decision becomes final under the provisions of 15 C.F.R. § 904.271(d), Respondents will be contacted by NOAA with instructions as to how to pay the civil penalty imposed herein.

PLEASE TAKE NOTICE, that any petition for reconsideration of this Initial Decision must be filed with the undersigned within 20 days after the Initial Decision is served. 15 C.F.R. § 904.272. Such petition must state the matter claimed to have been erroneously decided, and the alleged errors and relief sought must be specified with particularity. *Id.* Within 15 days after a petition for reconsideration is filed, any other party to this proceeding may file an answer in support or in opposition. *Id.* The undersigned will rule on any petition for reconsideration.

PLEASE TAKE FURTHER NOTICE, that any petition to have this Initial Decision reviewed by the NOAA Administrator must be filed with the Administrator within 30 days after the date this Initial Decision is served and in accordance with the requirements set forth at 15 C.F.R. § 904.273. A copy of 15 C.F.R. §§ 904.271-273 is attached.

PLEASE TAKE FURTHER NOTICE, that this Initial Decision becomes effective as the final Agency action 60 days after service, unless the undersigned grants a petition for reconsideration or the Administrator reviews the Initial Decision. 15 C.F.R. § 904.271(d).

PLEASE TAKE FURTHER NOTICE, that upon failure to pay the civil penalty to the Agency within 30 days from the date on which this decision becomes final Agency action, the Agency may request the U.S. Department of Justice to recover the amount assessed, plus interest and costs,

in any appropriate district court of the United States or may commence any other lawful action.
15 C.F.R. § 904.105(b).

SO ORDERED.



Christine Donelian Coughlin
Administrative Law Judge
U.S. Environmental Protection Agency²⁰

Dated: June 21, 2024
Washington, D.C.

²⁰ The Administrative Law Judges of the U.S. Environmental Protection Agency are authorized to hear cases pending before the National Oceanic and Atmospheric Administration pursuant to an Interagency Agreement effective for a period beginning September 8, 2011. This agreement was entered into under a statutory loan program that allows administrative law judges at one federal agency to perform the duties of administrative law judges at another federal agency. See 5 U.S.C. § 3344.