

UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
WASHINGTON, D.C. 20230

In the Matters of:)	Docket Numbers:
Lars Axelsson,)	NE0704311 F/V FLICKA
H&L Axelsson, Inc.)	
)	
Dan Axelsson)	NE0704313 F/V DYRSTEN
H & L Axelsson, Inc.)	
)	
Respondents.)	

**ORDER GRANTING IN PART AND DENYING IN PART
RESPONDENTS' PETITION FOR DISCRETIONARY REVIEW**

This matter arises from a petition for discretionary review of an Initial Decision issued by an Administrative Law Judge (ALJ) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. §§ 1801 *et seq.* and National Oceanic and Atmospheric Administration (NOAA) procedural regulations found at 15 C.F.R. Part 904. Respondents Dan Axelsson, Lars Axelsson, and H & L Axelsson, Inc. were charged in two separate cases (NE0704311 and NE0704313) by the NOAA Office of General Counsel for Enforcement and Litigation (Agency) with repeated failures to timely submit weekly Interactive Voice Response (Voice Response) system reports and monthly Fishing Vessel Trip Reports (Trip Reports) to the National Marine Fisheries Service (NMFS) for Atlantic herring fishing occurring from January through August of 2007. In response to these alleged violations the Agency sought the assessment of civil monetary penalties and permit sanctions.¹

Respondents requested a consolidated hearing before an ALJ to contest the amount of the monetary penalties and length of the permit sanctions.² In an Initial Decision dated December 8,

¹ Specifically, Respondents Dan Axelsson and H & L Axelsson were charged in case NE0704311 with failure to timely submit weekly Voice Response reports to NMFS for herring fishing that occurred from January through March of 2007. The Notice of Violation and Assessment and the Notice of Permit Sanction (collectively "Notices of Violation") listed nine (9) counts – one count for each late submission – and sought a joint and several civil penalty of \$90,000 (\$10,000 per count) and a separate four (4) month suspension of Respondents' vessel and operator permits. Separately, Respondents Lars Axelsson and H & L Axelsson were charged in case NE0704313 with failure to timely submit weekly Voice Response and monthly Trip Reports from January through August of 2007. The Notices listed eighteen (18) counts – one count for each late submission – and sought a joint and several civil penalty of \$180,000 (\$10,000 per violation) and a separate eight (8) month suspension of Respondents' vessel and operator permits.

² The Order consolidating both cases was issued by the Chief ALJ after the hearing.

2009, the ALJ found the violations proved, assessed a joint and several civil penalty of \$270,000 (\$10,000 per violation), and imposed permit sanctions against each Respondent ranging from four (4) to twelve (12) months. The ALJ suspended all but \$54,000 (assessed jointly and severally against Respondents) and a one month permit sanction for each Respondent, subject to a two-year probation period. In the event of any subsequent violation by any Respondent during this two-year probation period, the remaining sanctions would become immediately due, namely: (a) the entire suspended civil penalty of \$216,000, due against all Respondents, jointly and severally; and (b) the suspended permit sanctions assessed against each Respondent (7 months for Lars Axelsson, 3 months for Dan Axelsson, 11 months for H&L Axelsson, Inc.). If there were no further violations during the two-year probation period, the remainder of the penalty would be discharged.

Respondents timely submitted a petition for discretionary review with the NOAA Administrator and Agency counsel timely submitted an opposition, both of which were filed in accordance with 15 C.F.R. § 904.273.

I hereby grant in part Respondents' petition for discretionary review and direct the parties to submit briefs addressing the following issue:

- Whether the suspended portion of the sanctions (both the monetary penalties and permit sanctions) imposed by the ALJ are appropriate and reasonably related to the offenses.

I decline to review any other issues raised by Respondents in their Petition.

Respondents' initial brief shall be no longer than 15 pages, double-spaced, 12 point type, and shall be submitted no later than forty (40) days after the date of this order.

The Agency's initial brief shall be no longer than 15 pages, double-spaced, 12-point type, and shall be submitted no later than thirty (30) days after the date on which the Respondent's initial brief is due.

The Respondent's reply brief, if it chooses to file a reply brief, shall be no longer than 10 pages, 12-point type, and shall be submitted no later than fifteen (15) days after the date on which the Agency's brief is due.

All briefs shall cite and rely on documents from the record only and shall include an appendix containing copies of any documents cited or relied upon in the brief. These documents do not count against the page limit for the brief. Copies of portions of the United States Code, the federal regulations, case law or the Initial Decision do not need to be included in the appendix.


All briefs and supporting papers may be served on the Administrator by sending them to Joel La Bissonniere, NOAA Assistant General Counsel for Ocean Services, 1305 East West Highway, SSMC4-6111, Silver Spring, MD 20901.

Copies of all briefs and supporting papers must be served upon the other party's counsel (or the party, if that party is proceeding without a lawyer). Each party shall serve its

briefs so that they are received by the Administrator and the other parties on or before the date on which they are due.

Following the submission of the briefs, a written decision on this matter will be issued and transmitted to the parties in accordance with 15 C.F.R. § 904.273(i).

27 April 2010
Date



Jane Lubchenco, Ph.D.
Under Secretary of Commerce
for Oceans and Atmosphere

CERTIFICATE OF SERVICE

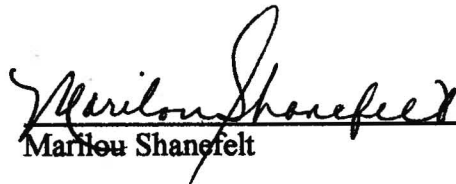
I hereby certify that a copy of the Order Granting in Part and Denying in Part Petition for Discretionary Review was sent by registered or certified mail, return receipt requested, to the individuals listed below on this 28th day of April, 2010.

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