



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

OFFICE OF THE GENERAL COUNSEL  
OCEANS AND COASTS SECTION  
1305 EAST-WEST HIGHWAY, SUITE 6111  
SILVER SPRING, MD 20910

Mark Charles Worley

[REDACTED]

January 27, 2025

Via Electronic Mail

RE: In the matter of: Mark Charles Worley  
Incident Number: 2409702  
Appeal of Written Warning

Dear Mr. Worley:

This appeal concerns a Written Warning issued to Marilyn J Vessel, LLC and “Mark Charles Worely”<sup>1</sup> (collectively, “Recipients”) on September 17, 2024, by the National Oceanic and Atmospheric Administration’s (“NOAA”) Office of Law Enforcement (“OLE”). The Written Warning found that the Recipients violated the Magnuson Stevens Fishery Conservation and Management Act (“MSA”), 16 U.S.C. § 1857(1)(A), and 15 C.F.R. § 904, Subpart E, by failing to follow the terms and conditions of their exempted fishing permit (“EFP”).

For the reasons below, I vacate the Written Warning as to Mark Charles Worley.<sup>2</sup>

## I. Standard of Review

NOAA regulations provide that a respondent may seek review of a written warning by submitting a written appeal to the NOAA Deputy General Counsel within sixty days of receipt of the written warning.<sup>3</sup> An appeal from a written warning “must present the facts and circumstances that explain or deny the violation described in the written warning.”<sup>4</sup> On appeal, the NOAA Deputy General Counsel “may, in his or her discretion, affirm, vacate, or modify the written warning[.]”<sup>5</sup> The NOAA Deputy General Counsel’s determination constitutes final agency action for purposes of judicial review.<sup>6</sup>

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<sup>1</sup> As detailed below, *see infra* Discussion, the name “Worely” is likely a scrivener’s error and the correct spelling of the last name should be “Worley.”

<sup>2</sup> This decision addresses only the appeal of Mark Charles Worley, and the Written Warning issued to him, individually. This decision does not vacate or otherwise impact the Written Warning issued to Marilyn J Vessel, LLC for this incident.

<sup>3</sup> 15 C.F.R. § 904.403(b).

<sup>4</sup> 15 C.F.R. § 904.403(b)(1).

<sup>5</sup> 15 C.F.R. § 904.403(c).

<sup>6</sup> *Id.*



A written warning is the lowest sanction that NOAA issues for violations of the statutes and regulations that it is authorized to enforce.<sup>7</sup> Nonetheless, a written warning may be considered a prior offense, and may be used as a basis for dealing more severely with a subsequent offense.<sup>8</sup>

## II. Procedural Background

In his notice of appeal, Mr. Mark Charles Worley of Florida (“Respondent”) stated that he received the written warning via certified mail on December 7, 2024.<sup>9</sup> Accordingly, his appeal—which was received by NOAA on December 28, 2024—is timely.<sup>10</sup>

## III. Factual Background

This appeal is unusual in that Respondent is *not* challenging that a violation of the MSA occurred or that the violation could or should have resulted in a written warning. Rather, Respondent is asserting that the Written Warning was incorrectly issued to *him* and that this is a case of mistaken identity.

The Written Warning stems from the actions of an Alaskan fishing vessel, the *Marilyn J*. The *Marilyn J* had a Pacific Coast Groundfish Fishery Electronic Monitoring Exempted Fishing Permit.<sup>11</sup> Under the terms of the EFP’s Vessel Monitoring Plan (“VMP”), the *Marilyn J* was required to comply with the Electronic Monitoring (“EM”) program rules.<sup>12</sup> Vessels participating in EM install video cameras, gear sensors, and other technologies on their vessels; the data collected in this matter is then turned over to, and reviewed by, NOAA fisheries to ensure compliance with the EM program and the terms of the vessel’s fishing permits.<sup>13</sup> Vessels operating under an EM EFP are exempt from the requirement to carry an observer on each trip, provided they abide by the terms of the EM program and VMP.<sup>14</sup> NOAA may issue a written warning or other penalty for failing to abide by the terms of an EFP, including failure to comply with the VMP.<sup>15</sup>

The *Marilyn J*’s VMP listed two people: Tyler Besecker, as the vessel owner<sup>16</sup>; and “Mark Worley,” as the vessel operator (“Vessel Operator”).<sup>17</sup> A phone number with a

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<sup>7</sup> 15 C.F.R. § 904.400.

<sup>8</sup> 15 C.F.R. § 904.401

<sup>9</sup> Notice of Appeal, p.1.

<sup>10</sup> See 15 C.F.R. § 904.403(b).

<sup>11</sup> Case file, pp. 5, 113.

<sup>12</sup> See case file, pp. 69–70, 113; see also 50 C.F.R. § 600.745, 660.30 (subpart C).

<sup>13</sup> See *Electronic Monitoring*, NOAA Fisheries Office of Science and Technology, <https://www.fisheries.noaa.gov/national/fisheries-observers/electronic-monitoring> (October 23, 2024); see also case file, pp. 69–70, 113–41.

<sup>14</sup> Case file, p. 69.

<sup>15</sup> 50 C.F.R. §§ 600.725, 600.745, 660.12(a)(3).

<sup>16</sup> The *Marilyn J* is actually owned by the *Marilyn J* Vessel LLC. Case file, p. 9.

<sup>17</sup> Case file, p. 113.

Washington state area code and an email address were provided for the Vessel Operator.<sup>18</sup> Mr. Besecker appears to have signed the VMP.<sup>19</sup>

Between December 5, 2023, and January 29, 2024,<sup>20</sup> the *Marilyn J* took three fishing trips.<sup>21</sup> These trips took place along the West Coast, with the first trip at least offloading its catch at Bellingham Bay, Washington.<sup>22</sup> According to the drive reports, the crew of the *Marilyn J* violated their VMP on each of these trips.<sup>23</sup>

In August, 2024, the drive reports were reviewed by a NOAA OLE officer.<sup>24</sup> The officer noted that in September he spoke with “Worley” by phone and informed Mr. Worley that the officer would be issuing a written warning.<sup>25</sup>

The Written Warning is dated September 17, 2024, although there is no indication in the case file of when it was actually mailed or received by Respondent. It is addressed to two recipients: the *Marilyn J* Vessel, LLC (with an address in Sitka, Alaska) and to “Mark Charles Worely” at [REDACTED] Florida [REDACTED].

#### IV. Discussion

In his appeal, Respondent claims there are two problems with the Written Warning: (1) his name is spelled as “Worely” instead of “Worley”; and (2) even with the correct spelling, he is not the correct Mark Worley and that this is a case of mistaken identity.

As to the first issue, from the case file it is clear that the spelling of “Worely” in the Written Warning is indeed a clerical error. The name “Worely” appears only once in the case file—and that is in the copy of the Written Warning. On the other hand, the name “Worley” is referenced repeatedly—on the VMP permit, in the OLE officer’s reports, and in communication logs.<sup>26</sup> So the spelling of “Worely” was in error.

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<sup>18</sup> Case file, p. 113.

<sup>19</sup> *Id.*

<sup>20</sup> The correct dates for the *Marilyn J*’s trips are slightly unclear. The drive reports state that there were three trips for the *Marilyn J*: (1) from December 5, 2023, to December 13, 2023; (2) from January 13, 2024, to January 19, 2024; and (3) from January 22, 2024, to January 29, 2024. Case File, pp. 5–6. However, the Written Warning refers to permit violations occurring between December 5, 2023 through December 22, 2023. Case file, p. 15. No explanation for this discrepancy is given.

<sup>21</sup> Case file, pp. 5–6.

<sup>22</sup> See case file, p. 67. Only the fishing receipt for the first trip was provided in the case file; however, the drive reports were all issued by NOAA Fisheries West Coast Region and the type of fish is consistent with fishing along the West Coast. See case file, pp. 44–66.

<sup>23</sup> Case file, pp. 5–8.

<sup>24</sup> Case file, p. 5.

<sup>25</sup> Case file, p. 9.

<sup>26</sup> See, e.g., case file pp. 2, 7–9, 42, 113.

As to the second issue—whether this is a case of mistaken identity—the evidence here too points overwhelmingly towards Respondent’s position and towards vacating the Written Warning as to Respondent.

Respondent for his part states that he currently resides in Florida, that he has lived in Florida since he was a child, that he has never fished in any West Coast waters, and that at the time of the alleged violations he was not physically present in those waters.<sup>27</sup> Respondent also offered that an internet search showed him a different Mark C. Worley lived in [REDACTED], WA—suggesting that this is a case of mistaken identity.<sup>28</sup> Respondent is likely correct.

The case file is silent as to how the OLE officer identified which address to use for the mailing of the Written Warning to Respondent. The Vessel Operator’s physical address is not listed on the VMP, although a phone number with a Washington state area code is listed.<sup>29</sup> The VMP also lists an email address for the Vessel Operator—and that email address does not match that of Respondent.<sup>30</sup>

Perhaps most significantly, under “Subjects—Persons” in the case file, there are two addresses listed for the Vessel Operator. The first address listed is that for “Mark Charles Worley” at Respondent’s address in Florida.<sup>31</sup> The second address is for a “Mark C Worley” in [REDACTED], Washington.<sup>32</sup>

The same Washington-area code phone number is listed in the case file for both addresses. Respondent’s address does not have any emails listed while the address in Washington state lists multiple email addresses, including one that matches the email address listed for the Vessel Operator on the VMP.<sup>33</sup> There is no indication of how it was determined to send the Written Warning to Respondent’s address versus the address in Washington state. Given that the vessel was fishing out of Bellingham Bay, Washington at the time of the infractions, and that the email address for the Vessel Operator in the VMP matched that associated with the Washington location, it seems more likely than not that the Written Warning should have been addressed to the Mark Worley living in Washington—and not Respondent, living in Florida.

A public records search using Lexis adds further evidence that the Written Warning was addressed to the wrong person. Lexis has records for a “Mark C. Worley” living in [REDACTED], Washington as well as a “Mark Charles Worley” living in [REDACTED] Florida (Respondent). These two records each have different social security numbers and dates of birth—confirming that they are two separate individuals, and not a single person as the case file would imply. Further, the Lexis record for the Washington individual shows he holds fishing licenses for the state of Alaska (where the *Marilyn J* is based) while the Lexis record for Respondent shows he has held fishing licenses in Florida, Mississippi, and Georgia—but has not

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<sup>27</sup> Notice of Appeal.

<sup>28</sup> *Id.*

<sup>29</sup> Case file, p. 113.

<sup>30</sup> Compare *id.*; with Notice of Appeal, p. 1.

<sup>31</sup> Case file, p. 2.

<sup>32</sup> *Id.*

<sup>33</sup> Compare *id.*; with case file, p. 113.

held any fishing licenses for any West Coast states, including Washington or Alaska. Finally, Lexis Public Records lists “Pinnacle Partners, LLC” as a business associate of the Washington individual; the owner of the boat as listed on the VMP (Tyler Besecker) has Pinnacle Pacific LLC listed as a possible employer. While the full names for the Pinnacle entities differ, both entities share the same address on Mercer Island, Washington—showing that there is likely a business connection between the Mark Worley living in [REDACTED], Washington and Mr. Besecker. No such overlap exists between the record for Respondent and Mr. Besecker.

In sum, it appears the Written Warning should have been properly addressed to Mark C. Worley, living in [REDACTED], Washington, as listed in the second address under “Subjects—Persons” in the case file.<sup>34</sup> Sending the Written Warning to Respondent in [REDACTED], Florida, was in error.

#### V. Conclusion

For the foregoing reasons, I vacate the Written Warning as to Mr. Mark Charles Worley of [REDACTED] Florida.<sup>35</sup>

Sincerely,

GUSTAFSON.KRIS  
TEN.LYN. [REDACTED]  
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Digitally signed by  
GUSTAFSON.KRISTEN.LYN. [REDACTED]

Date: 2025.01.27 16:42:16 -05'00'

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

cc: Amy Anderson, NOAA Office of Law Enforcement  
Amy Kauffman, Enforcement Section, NOAA Office of the General Counsel  
Adam Dilts, Chief, Oceans and Coasts Section, NOAA Office of the General Counsel

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<sup>34</sup> See case file, p. 2.

<sup>35</sup> This finding does not reach the underlying merits of the case, i.e., whether the actions of the Vessel Operator aboard the *Marilyn J* violated its EFP. This decision does not preclude NOAA from issuing a new written warning to an individual other than Respondent, nor would it preclude a recipient of the new written warning from later appealing, provided all statutory and regulatory requirements are otherwise met. Further, this vacatur has no impact on the Written Warning issued to the *Marilyn J* Vessel, LLC.