



**Western  
Pacific  
Regional  
Fishery  
Management  
Council**

December 20, 2010

Office of General Counsel for Enforcement and Litigation  
National Oceanic and Atmospheric Administration  
8484 Georgia Ave., Ste. 400  
Silver Spring, MD 20910  
Attn: Frank Sprtel

The Western Pacific Regional Fishery Management Council (Council) appreciates the opportunity to review and comment on NOAA's draft penalty policy. We offer the following comments:

- 1) The Council supports a new penalty policy if it will improve national consistency in applying penalties and provide greater transparency into the penalty process; however, the Council is always cautious when NOAA strives for "one size fits all" policies. For example, the scale of some federally-managed fisheries (e.g. bottomfish) in the Western Pacific Region pale in comparison to the size of federally-managed fisheries in other places of the nation (e.g. Alaska groundfish). Most if not all commercial fishery participants in the Western Pacific Region are small, "mom and pop" type businesses that have narrow profit margins and all are considered "small entities" under the Regulatory Flexibility Act. For these reasons, a national penalty policy may disproportionately burden small fishing businesses when compared to large-scale, highly capitalized, corporately-owned fishing entities.
- 2) The Council has concerns about the "economic benefit" component of the penalty formula. Page 10 of the draft penalty policy indicates that NOAA will increase a penalty corresponding to the gross value of the illegally harvested catch. Longline fisheries in the Western Pacific Region target high value/low volume fisheries, but often travel thousands of miles in a single 20-45 day trip. Operating costs such as fuel, bait, provisions can be very high when compared to less transient or low value/high volume fisheries. Therefore, the Council suggests that NOAA consider calculating the "economic benefit" of a particular penalty in terms of net revenue vs gross revenue, to factor in the high operating costs of some of the nation's fisheries. If using net revenue is not appropriate, we suggest NOAA develop additional criteria that could be used adjust the economic benefit portion of the formula to offset high operating costs of some fisheries.
- 3) The largest fisheries managed by the Council are the Hawaii longline fishery and the American Samoa longline fishery. Both fisheries target highly migratory species such as bigeye and albacore tuna, respectively. The draft penalty policy is unclear how NOAA will evaluate a violator's potential harm to a resource, and in particular, how this applies to a highly migratory species. In the case of Pacific bigeye tuna, which is experiencing overfishing on a Pacific-wide basis, how will NOAA evaluate a violation in Hawaii longline fishery targeting bigeye tuna in terms of potential harm to the resource, when the fishery only represents less than 2 percent of

the total bigeye catch? In the final penalty policy, NOAA should clearly state how it will consider a violation in regards to the potential harm of a highly migratory resource.

Thank you for the opportunity to comment on the draft penalty policy. We look forward to NOAA addressing our concerns in its final penalty policy. We also look forward to maintaining our strong collaboration on enforcement issues with Ms. Alexa Cole, NOAA General Counsel for Enforcement and Litigation, and NMFS' Office of Law Enforcement-Pacific Islands Division, led by Mr. Bill Pickering.

Sincerely,

A handwritten signature in black ink that reads "Kitty M. Simonds". The signature is written in a cursive, flowing style.

Kitty M. Simonds  
Executive Director