



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the General Counsel
Enforcement Section (Pacific Islands)
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159 CM

March 17, 2014

TO: Western Pacific Fisheries Management Council (WPFMC)
FROM: Duane Smith, Enforcement Attorney/Pacific Islands
SUBJECT: NOAA OGC Enforcement Section Report for the 159th WPFMC Meeting

Cases referred from law enforcement. Enforcement section is reviewing eight cases referred for consideration of a civil penalty.

Cases charged. Enforcement section is currently prosecuting seven cases:

PI1101249, F/V OCEAN CONQUEST- Respondents were charged with one count of violating the Marine Mammal Protection Act by taking a marine mammal through knowingly setting purse seine gear on a whale. Respondents were assessed a total penalty of \$11,000.00. Administrative hearing held September 17, 2013 - awaiting decision of Administrative Law Judge.

PI1101523, F/V PACIFIC RANGER- Respondents were charged with five counts of violating the Marine Mammal Protection Act by taking a marine mammal through knowingly setting purse seine gear on a whale, and one count of violating the Western and Central Pacific Fisheries Convention Implementation Act. Respondents were assessed a total penalty of \$149,250.00. Administrative hearing held September 18, 2013 - awaiting decision of Administrative Law Judge.

PI1201802, F/V SAPPHERE III - Respondents were charged with three counts of violating the Magnuson Act by harvesting fish in the Papahānaumokuākea Marine National Monument. Respondents were assessed a total penalty of \$59,616.48. Administrative hearing scheduled for April 28, 2014.

PI1204062, F/V LADY LUCK - Respondents was charged with one count of violating the Magnuson Act by interference and/or intimidation of a NMFS-authorized fishery observer. Respondent was assessed a total penalty of \$9,000. Administrative hearing scheduled for April 30, 2014.

PI2104167, F/V VUI VUI – Respondents were charged with one count of violating the Magnuson Act by unlawfully fishing using longlines in the Main Hawaiian Islands (MHI) longline prohibited area. Respondents were assessed a total penalty of \$17,770. The case remains open.

PI1302417, F/V FETUOLEMOANA- Respondents were charged with one count of violating the Magnuson Act for failed to comply with a term or condition governing longline gear configuration in 50 C.F.R. § 665.813(k), by using a vessel longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to 50 C.F.R. § 665.801 to fish for western Pacific pelagic MUS using longline gear, south of the Equator (0° lat.), with float lines shorter than 30 meters. Respondents were assessed a total penalty of \$11,500. The case remains open.

PI1302848, F/V PACIFIC HORIZON – Respondents were charged with one count of violating the Magnuson Act for failed to comply with a term or condition governing longline gear configuration in 50 C.F.R. § 665.813(k), by using a vessel longer than 40 ft (12.2 m) registered for use with any valid longline permit issued pursuant to 50 C.F.R. § 665.801 to fish for western Pacific pelagic MUS using longline gear, south of the Equator (0° lat.), with float lines shorter than 30 meters and two counts of violating the Endangered Species Act for takes of endangered and threatened species. Respondents were assessed a civil penalty of \$30,250. The case remains open.

Cases resolved. Enforcement Section resolved one case:

PI1300352, F/V GLORIA PARK – Respondents were charged with one count of violating the Magnuson Act by fishing in the large vessel prohibited area around Tutuila, Manua, and Rose Atoll. Respondents were assessed a total penalty of \$13,945. Respondents accepted responsibility and settled with the Agency for \$12,695.

Cases on appeal to the Administrator. There are currently six cases pending the Administrator’s decision on whether to grant discretionary review:

In August, the Administrative Law Judge issued his Initial Decisions in two cases involving U.S. purse seine vessels fishing in violation of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA). In the first case, involving the F/V American Triumph, the Court assessed a civil penalty of \$562,068.27 for six counts of setting on or within one nautical mile of a fish aggregating device (FAD) and one count of deploying a FAD during the 2009 FAD closure in violation of the WCPFCIA. In the second case, which consolidated five cases against the F/V Ocean Encounter, F/V Ocean Conquest, F/V Sea Honor, F/V Sea Quest and F/V Pacific Ranger, the Court assessed a civil penalty of \$953,053.94 for 5 counts of setting their purse seine net on whales in violation of the Marine Mammal Protection Act, 10 counts of setting on or within one nautical mile of a FAD and two counts of deploying FADs during the 2009 FAD closure in violation of the WCPFCIA. The Respondents filed a Motion for Reconsideration in both cases seeking reversal of the Court's entire decision. The ALJ denied both of those motions. The Respondents in both cases have now petitioned the NOAA Administrator for Discretionary Review.

Information available on Enforcement Section Website. As a reminder, the Enforcement Section website, <http://www.gc.noaa.gov/enforce-office.html>, posts case information that includes cases charged and Administrative Law Judge opinions.

In addition, we are looking to modify our penalty schedules and have requested comments from the public until April 28, 2014. Information can be found on our office’s website or in the Federal Register at 79 FR 10776.