



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the General Counsel
Enforcement Section (Pacific Islands)
1845 Wasp Boulevard, Building 176
Honolulu, HI 96818
Tel: (808) 725-5204 Fax: (808) 725-5216

6.D.3(1)
161 CM

October 14, 2014

TO: Western Pacific Fisheries Management Council (WPFMC)
FROM: Duane Smith, Enforcement Attorney/Pacific Islands
SUBJECT: NOAA OGC Enforcement Section Report for the 161st WPFMC Meeting

NOAA OGC Enforcement Section information is readily available on our website. The Enforcement Section website found at <http://www.gc.noaa.gov/enforce-office.html>, contains links to the Agency's penalty policy, procedural regulations, enforcement charging information – including cases charged and settled, and Administrative Law Judge opinions. The council and any interested members of the public are invited to make use of this resource.

Cases referred from law enforcement. Enforcement section currently has three cases under review for consideration of a civil penalty.

Cases charged. Enforcement section is currently prosecuting fourteen cases from the Pacific Islands Region:

Seven cases were recently charged and the Agency is awaiting confirmation of service on the Respondents before releasing any case information.

PI1100830, F/V ISABELLA – Respondents were charged with making two sets in one of the high seas pockets, when they were closed to purse seine fishing, in violation of the Western and Central Pacific Fisheries Convention Implementation Act. Respondents were assessed a total penalty of \$110,000. An administrative hearing is scheduled for December 2014 in San Diego.

PI1003559, F/V ISABELLA – Respondents were charged with 5 counts of violating the Marine Mammal Protection Act by setting their purse seine net on whales. Respondents were assessed a total penalty of \$49,000. An administrative hearing is scheduled for December 2014 in San Diego.

PI1100409, F/V DANIELA - Respondents were charged with 3 counts of violating the Marine Mammal Protection Act by setting their purse seine net on whales. Respondents were assessed a total penalty of \$24,375. An administrative hearing is scheduled for December 2014 in San Diego.

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. The Parties agreed to litigate the amount of the penalty based on a stipulated record - awaiting decision of Administrative Law Judge.

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.

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 two Pacific Islands cases:

PI1305122, PRINCESS JASMINE II – 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 \$14,422.61. Respondents failed to respond to the NOVA and the case was referred to collections.

PI1400276, HANA HOU – Respondents were charged with one count of violating the National Marine Sanctuary Act for approaching a Humpback whale within 100 yards. Respondents were assessed a total penalty of \$4,500 (having earlier failed to respond to a summary settlement of \$750). Respondents were allowed to accept responsibility and settle the case for the initial summary settlement amount due to extenuating circumstances related to the NOAA office move to Ford Island.

Cases on appeal to U.S. District Court. There are currently six cases pending review in District Court:

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 sought discretionary review by the NOAA Administrator in both cases. The Administrator denied review and adopted the ALJ's Initial Decisions in both cases as the Final Decision. The Respondents have now appealed both cases to the U.S. District Court in D.C.