



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the General Counsel
Enforcement Section (Pacific Islands)
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September 28, 2015

TO: Western Pacific Fishery Management Council (WPFMC)
FROM: Duane Smith, Enforcement Attorney/Pacific Islands
SUBJECT: NOAA OGC Enforcement Section Report for the 164th 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 two cases under review for consideration of a civil penalty.

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

PI1305092, F/V CAPTAIN KEVIN – Respondents were charged with three counts of fishing in the area closed to longline fishing off the Main Hawaiian Islands. Respondents were assessed a total penalty of \$49,604.70. Respondents have requested a hearing.

PI1401544, LADY LUCK – Respondent was charged with one count of harassing an observer and assessed a total penalty of \$5,500. Respondent has requested a hearing.

PI1402055, (No vessel) – Respondents were charged with one count of taking a marine mammal and assessed a total penalty of \$5,000.00. Respondents have not yet responded to the NOVA.

PI1500705, HA-1603-CP – Respondent was charged with one count of taking a marine mammal and assessed a total penalty of \$2,500.00. Respondent has requested a hearing.

Cases resolved. Enforcement Section resolved 18 Pacific Islands Region cases since the last report:

In August 2014, the Administrative Law Judge issued his Initial Decisions in two cases involving U.S. purse seine vessels fishing in violation of the 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 appealed these cases to the U.S. District Court in D.C. On August 10, 2015, that court found in favor of NOAA on all counts, denied the Plaintiffs' Motion for Summary Judgment, granted the Agency's Motion for Summary Judgment, and upheld a combined penalty assessment of \$1,515,122.29.

PI1003559, F/V ISABELLA – Respondents were charged with five 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 (later amended to \$37,000). An administrative hearing was held in San Diego in December 2014. On September 21, 2015, the ALJ found the Agency proved liability and assessed a penalty of \$37,000.

PI1100409, F/V DANIELA - Respondents were charged with three 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

(later amended to \$21,000). An administrative hearing was held in San Diego in December 2014. On September 21, 2015, the ALJ found the Agency proved liability and assessed a penalty of \$21,000.

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 (WCPFCIA). Respondents were assessed a total penalty of \$110,000. An administrative hearing was held in San Diego in December 2014. On September 10, 2015, the ALJ found the Agency proved liability and assessed a penalty of \$110,000.

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. On June 5, 2015, the ALJ assessed a penalty of \$54,366.48.

PI1301236, F/V SEA FOX – 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, and one count of violating the WCPFCIA by setting on a fish aggregating device (FAD) during the FAD closure. Respondents were assessed a total penalty of \$79,000. Respondents initially requested a hearing, but on August 23, 2015, Respondents admitted liability and agreed to pay a compromise civil penalty of \$69,243.68.

PI1304447, F/V DANIELA – Respondents were charged with two counts of violating the Marine Mammal Protection Act by taking a marine mammal through knowingly setting purse seine gear on a whale, and two counts of violating the WCPFCIA by setting on or servicing a FAD during the FAD closure. Respondents were assessed a total penalty of \$170,000. Respondents initially requested a hearing, but on August 23, 2015, Respondents admitted liability and agreed to pay a compromise civil penalty of \$153,000.

PI1301234, OCEAN CHALLENGER – Respondents were charged with two counts of setting purse seine gear on a Fish Aggregating Device (FAD) during the FAD closure. Respondents were assessed a total penalty of \$135,000. On September 20, 2015, Respondents admitted liability and agreed to pay a compromise civil penalty of \$123,750.

PI1301237, OCEAN WARRIOR – Respondents were charged with two counts of setting purse seine gear on a Fish Aggregating Device (FAD) during the FAD closure. Respondents were assessed a total penalty of \$220,000. On September 20, 2015, Respondents admitted liability and agreed to pay a compromise civil penalty of \$202,000.

PI1305117, SEA DIAMOND – Respondents were charged with one count of assaulting/harassing an observer. Respondents were assessed a civil penalty of \$81,000 and a permit sanction of 120 days. Respondents initially requested a hearing but on July 14, 2015, Respondents admitted liability and agreed to pay a compromise civil penalty of \$16,500 with the remaining penalty of \$64,500 and 120 days permit sanction suspended for a period of 48 months after which it will be waived by NOAA, provided that the Respondents do not commit a subsequent violation of the observer harassment, interference, intimidation, or assault provisions of the Agency's regulations implementing the Magnuson-Stevens Fishery Conservation and Management Act.

PI1402558, F/V CAPT MILLIONS III – Respondents were charged with seventeen counts of failing to follow required seabird take mitigation measures. Respondents were assessed a total penalty of \$34,000. Respondents admitted liability and agreed to pay a compromise civil penalty of \$30,600.

PI1403597, CAPT SILVER – Respondents were charged with one count of harassing an observer and assessed a total penalty of \$5,000. Respondents admitted liability and agreed to pay a compromise penalty of \$4,500.

PI1403658, AS 493 CF – Respondent was charged with one count of illegally anchoring and one count of illegally fishing in the Fagatele Bay Unit of the National Marine Sanctuary of American Samoa. Respondent admitted liability and agreed to pay a compromise penalty of \$3,600.

Cases on appeal to NOAA Administrator. There is currently one Pacific Islands Region case pending review by the Administrator.

PI1101249, F/V OCEAN CONQUEST- Respondents were charged with one count of violating the Marine Mammal Protection Act by setting their purse seine net on a whale. Respondents were assessed a total penalty of \$11,000.00. An administrative hearing was held in September 2013. On July 6, 2015, the ALJ found the agency proved liability

and assessed a penalty of \$11,000. Respondents filed, and the Administrator granted, a petition seeking the Administrator's review of the ALJ's decision. The case is now under consideration by the Administrator.

Cases on appeal to U.S. District Court. There is currently one Pacific Islands Region case pending review at District Court.

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 WCPFCIA. Respondents were assessed a total penalty of \$149,250.00. After a fully contested administrative hearing, the ALJ found the Agency had proved its case against Respondents on all counts and imposed a total penalty of \$127,000. Respondents sought discretionary review by the NOAA Administrator. The NOAA Administrator denied review and adopted the ALJ's Initial Decision as the Final Decision. Respondents appealed this case to the U.S. District Court in D.C.