



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

June 18, 2014

TO: Western Pacific Fisheries Management Council (WPFMC)
FROM: Duane Smith, Enforcement Attorney/Pacific Islands
SUBJECT: NOAA OGC Enforcement Section Report for the 160th WPFMC Meeting

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

Cases charged. Enforcement section is currently prosecuting nine cases:

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 August 2014 in San Diego.

PI11003559, 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 August 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 August 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 SAPPHIRE 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. An administrative hearing was requested but is not yet scheduled.

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. The case remains open.

Cases resolved. Enforcement Section resolved two cases:

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. Respondents accepted responsibility and settled with the Agency for \$7,200.

PI1302417, F/V FETUOLEMOANA- Respondents were charged with one count of violating the Magnuson Act for failing 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. Respondents accepted responsibility and settled with the Agency for \$10,350.

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 adopt 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.

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.