



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
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March 4, 2015

TO: Western Pacific Fisheries Management Council (WPFMC)
FROM: Duane Smith, Enforcement Attorney/Pacific Islands
SUBJECT: NOAA OGC Enforcement Section Report for the 162nd 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 five cases under review for consideration of a civil penalty.

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

Two 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 (WCPFCIA). Respondents were assessed a total penalty of \$110,000. An administrative hearing was held in San Diego in December 2014 – awaiting decision of Administrative Law Judge.

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 was held in San Diego in December 2014 – awaiting decision of Administrative Law Judge.

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 was held in San Diego in December 2014 – awaiting decision of Administrative Law Judge.

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 - 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.

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 have requested a hearing.

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 have requested a hearing.

PI1402558, F/V CAPT MILLIONS III – Respondents were charged with 17 counts of failing to follow required seabird take mitigation measures. Respondents were assessed a total penalty of \$34,000. The case remains open.

PI1305092, F/V CAPTAIN KEVIN – Respondents were charged with 3 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.

Cases resolved. Enforcement Section resolved five Pacific Islands Region cases:

PI1301140, F/V AMERICAN EAGLE – Respondents were charged with six counts 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 \$66,000. Respondents admitted liability and paid a compromise civil penalty of \$59,400.

PI1201620, F/V AMERICAN TRIUMPH – Respondents were charged with two counts of violating the Marine Mammal Protection Act by harassing an observer by conduct that had the purpose or effect of unreasonably interfering with the observer's work performance, or that created an intimidating, hostile, or offensive environment, and through knowingly setting purse seine gear on a whale. Respondents were assessed a total penalty of \$15,000. Respondents admitted liability and paid a compromise civil penalty of \$14,100.

PI1203122 F/V AMERICAN TRIUMPH – Respondents were charged with one count of violating the Western and Central Pacific Fisheries Convention Implementation Act by setting on a FAD during the FAD closure. Respondents were assessed a total penalty of \$128,500. Respondents admitted liability and paid a compromise civil penalty of \$72,669.75.

PI1302727, F/V AMERICAN VICTORY – 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 Western and Central Pacific Fisheries Convention Implementation Act by setting on or servicing a FAD during the FAD closure. Respondents were assessed a total penalty of \$145,700. Respondents admitted liability and paid a compromise civil penalty of \$111,351.10.

PI1302848, F/V PACIFIC HORIZON – Respondents were charged with one count of violating the Magnuson Act for fishing 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 Respondents admitted liability and paid a compromise civil penalty of \$17,550.

Cases on appeal to NOAA Administrator. There is currently one case pending a decision by the Administrator on whether to grant discretionary review:

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 - awaiting decision by the Administrator on whether to grant Respondents' petition for discretionary review.

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 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.