



**U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
Enforcement Section**

NOAA Office of General Counsel
Enforcement Section, Southwest Region
501 W. Ocean Blvd. Suite 4470
Long Beach, CA 90802
Telephone: (562) 980-4069
FAX: (562) 980-4084

NOAA Office of General Counsel
Enforcement Section, Northwest Region
7600 Sand Point Way, N.E.
Seattle, WA 98115
Telephone: (206) 526-6238
FAX: (206) 526-6542

MEMORANDUM FOR: Pacific Fishery Management Council

FROM: Paul A. Ortiz, Senior Enforcement Attorney,
NOAA General Counsel Office, Enforcement Section
Southwest Region

Niel B. Moeller, Senior Enforcement Attorney,
NOAA General Counsel Office, Enforcement Section
Northwest Region

DATE: June 1, 2013

SUBJECT: Fisheries-related Civil Prosecution Activity;
January 1, 2013 – May 15, 2013

The NOAA General Counsel Office, Enforcement Section, publishes enforcement case charging and settlement information online, covering all regional offices, updated twice annually: <http://www.gc.noaa.gov/enforce-office.html>

This memorandum supplements the online report, and provides the Council with an interim update on West Coast charging and settlement actions by the Enforcement Section since January 1, 2013.

Next online update (January-June, 2013) will be on or about 8/1/2013.



SOUTHWEST REGION

A) Cases referred to the Enforcement Section:

Four cases were referred for civil prosecution during this period.

B) Enforcement Actions:

- 1) SW1201771, F/V DONNA J – Magnuson Act – Vessel operator charged with one count of harassment/intimidation of a NMFS-authorized observer. NOVA issued 1/23/13, \$18,500.
- 2) SW1001526, F/V PALE HORSE – Magnuson Act – Vessel owner/operator charged with one count of illegal vessel operation in the Non-Trawl RCA. NOVA issued 2/25/13, \$12,614.
- 3) SW0804714, F/V CATHERINE – Magnuson Act – Vessel owner/operator charged with one count of failure to operate a vessel monitoring system unit on a fishing trip in federal waters. Written warning issued 2/25/13.
- 4) SW1003250, F/V RENABEL – Magnuson Act – Vessel owner/operator charged with one count of failure to file a fishery declaration report. NOVA issued 5/2/13, \$1,000.
- 5) SW1100183, F/V GINA B – Magnuson Act - Vessel owner/operator charged with one count of failure to file a fishery declaration report. NOVA issued 5/2/13, \$1,000.

C) Cases Settled/Closed:

- 1) SW0703629, F/V PALO – Magnuson Act - Vessel owner/operator charged with four counts of illegal vessel operation in a non-trawl RCA. Respondent appealed decision of Administrative Law Judge assessing a \$21,786 civil penalty. Decision of Administrative Law Judge upheld by NOAA Administrator, and case became final on 2/11/13.
- 2) SW0800616, F/V HAZEL A – Magnuson Act – Vessel owner/operator charged with two counts of illegal vessel operation in a non-trawl RCA. Respondent appealed decision of Administrative Law Judge assessing a \$8,754 civil penalty. Decision of Administrative Law Judge upheld by NOAA Administrator, and case became final on 2/11/13.

- 3) SW0803838, F/V SAN GIOVANNI – Magnuson Act – Vessel owner and operator charged \$33,545 for two counts of illegal vessel operation in a trawl RCA. Case settled 3/22/13 with penalty suspended pending two years pending no further violations. Respondents must also improve navigational equipment on vessel and distribute compliance information.
- 4) SW1003280, F/V CHERYL M – Magnuson Act – Vessel operator charged \$13,950 for one count of falsifying landing information on a CA Department of Fish and Wildlife landing receipt. Case settled 1/30/13 for \$11,150, and an additional \$2,790 suspended two years pending no further violations.
- 5) SW0904416, F/V KATHRYN – Magnuson Act – Vessel owner/operator charged \$12,538 for one count of illegal vessel operation in a non-trawl RCA. Case settled 3/13/13 for \$10,000, with an additional \$2,538 suspended two years pending no further violations.

D) Hearings held or scheduled:

- 1) SW1002974, F/V RISA LYNN – Magnuson Act – Vessel owner and operator charged \$17,345 for one count of illegal vessel operation in a non-trawl RCA. Administrative hearing held 4/9/13. Awaiting decision of Administrative Law Judge.

NORTHWEST REGION

A) Cases referred to the Enforcement Section:

One case was referred for civil prosecution during this period.

B) Enforcement Actions:

- 1) NW1202708, Michael Baran - Magnuson Act – Fishery observer cited for releasing confidential catch data collected by another observer to a vessel owner/operator. Written warning issued 3/29/13.
- 2) NW0804614, Ocean Gold Seafoods, Inc. - Magnuson Act – Company cited for violating the terms of its exempted fishing permit in the Pacific whiting fishery by failing to notify the catch monitor prior to receiving fish. Written warning issued 1/28/13.

- 3) NW0803662, F/V PRIVATEER - Magnuson Act – Vessel owner and operator cited for landing a 11,619 pound arrowtooth flounder overage. Written warning issued 1/28/13.
- 4) NW0803474, Jessie's Ilwaco Fish Co. - Magnuson Act – Company cited for violating the terms of its exempted fishing permit in the Pacific whiting fishery by failing to sort catch prior to first weighing. Written warning issued 1/28/13. The warning has been appealed to the NOAA General Counsel Office.
- 5) NW0901366, F/V LILY MARLENE - Magnuson Act – Vessel owner/operator cited for fishing without required observer coverage. Written warning issued 1/28/13.
- 6) NW0902152, F/V WESCO - Magnuson Act – Vessel owner and operator cited for fishing with salmon troll gear in the Yelloweye RCA. Written warning issued 1/28/13.
- 7) NW0902417, Da Yang Seafood, Inc. - Magnuson Act – Pacific whiting first receiver cited for offloading fish without required catch monitoring. Written warning issued 1/24/13.
- 8) NW1000009, F/V NICOLE - Magnuson Act – Vessel owner and operator cited for operating in the trawl RCA. Written warning issued 1/24/13.
- 9) NW0903134, F/V VIGOROUS - Magnuson Act – Vessel owners and operator cited for operating in the non-trawl RCA. Written warning issued 1/23/13.
- 10) NW0900567, F/V GLORIA II - Magnuson Act – Vessel owner/operator cited for failure to submit an HMS logbook. Written warning issued 1/23/13.
- 11) NW0803745, F/V OCEAN BEAUT - Magnuson Act – Vessel owners and operator cited for fishing in the trawl RCA. Written warning issued 1/23/13.
- 12) NW0800923, F/V OCEAN BEAUT - Magnuson Act – Vessel owners and operator cited for fishing in the trawl RCA. Written warning issued 1/23/13.
- 13) NW1000412, F/V DOMINION - Halibut Act/Magnuson Act – Vessel owner and operator charged with one count of fishing for halibut and groundfish in the non-trawl RCA. NOVA was issued 1/17/13, for \$12,466.60. Case settled 5/13/13, for \$11,716.60.

- 14) NW1001318, F/V WESTERN BREEZE - Magnuson Act – Vessel owner/operator and crewman charged with one count of fishing in the trawl RCA. NOVA was issued 1/16/13, for \$12,500.
- 15) NW1001768, F/V JAMIE K - Magnuson Act – Vessel owner and operator charged with two counts of fishing in the trawl RCA and EFH. NOVA was issued 1/15/13, for \$39,982.65. Case settled 3/25/13, together with case NW1102834, for \$7,000, with \$58,982.65 suspended for one year pending no further violations.

C) Cases Settled/Closed (some cases may also appear above):

- 1) NW1001768, F/V JAMIE K - Magnuson Act – Vessel owner and operator charged with two counts of fishing in the trawl RCA and EFH. NOVA was issued 1/15/13, for \$39,982.65. Case settled 3/25/13, together with case NW1102834, for \$7,000, with \$58,982.65 suspended for one year pending no further violations.
- 2) NW1102664, F/V LADY CECELIA – Magnuson Act – Vessel owner and operator charged with three counts of failure to maintain a lookout, failure to notify observer prior to haulback, discarding catch prior to sampling. NOVA was issued 7/19/12, for \$11,500.00. Case partially settled with owner 4/29/13, for \$4,500.00.
- 3) NW1000412, F/V DOMINION - Halibut Act/Magnuson Act – Vessel owner and operator charged with one count of fishing for halibut and groundfish in the non-trawl RCA. NOVA was issued 1/17/13, for \$12,466.60. Case settled 5/13/13, for \$11,716.60.

D) Hearings held or scheduled: None.

National Marine Fisheries Service
Office of Law Enforcement

PACIFIC COAST ENFORCEMENT HIGHLIGHTS
(NORTHWEST/SOUTHWEST DIVISIONS)

**REPORT TO THE
PACIFIC FISHERIES MANAGEMENT COUNCIL**



April 1, 2012 – March 31, 2013

To report fisheries violations, please call
OLE's National Hotline at 1-800-853-1964

Compliance Assistance

JOINT OPERATIONS

The owner/operated of a San Pedro groundfish vessel received a \$5,000 fine in state court for fishing in the federal Rockfish Conservation Area, the Cow cod Conservation Area. The same vessel and its owner/operator are currently under probation for a past NOAA RCA incursion violation. A term in the settlement agreement under the NOAA violation requires the captain to surrender his California commercial fishing license if he committed any fishing violations during his probationary period.

A NWED special agent coordinated with Customs and Border Protection (CBP) and Canadian Department of Fisheries and Oceans (CDFO) to prepare for potential illegal imports of sockeye salmon. Fraser River sockeye returns are very low and harvest is limited to subsistence only for Canadian tribal members.

An investigation regarding the sinking of a 40' tribal troll vessel in the Olympic Coast National Marine Sanctuary was opened. Initial investigation revealed the captain of F/V KARANA fell asleep at the helm and struck shoal water in the sanctuary causing the vessel to sink. The vessel had approximately 350 gallons of fuel onboard; the captain and his three crew members were safely rescued by the USCG.

NWED & SWED sworn personnel participated in a joint OLE/JEA tri-state operation involving California, Oregon, and Washington states. The focus of the operation was conducting market, restaurant, freight forwarder, and cold storage facility inspections. One team inspected ten businesses and uncovered numerous state violations, as well as two possible Lacey Act violations involving false labeling and mislabeling. A second team conducted twenty inspections over the two day operation that resulted in three state cases.

The SWED boarded and inspected a Hawaiian longline vessel that made port in San Francisco Bay. OLE had received information that a particular longline vessel was known to take part in illegal shark finning. The boarding did not find any violations, however 'spot checks' are being conducted as Hawaii based longline vessels arrive into San Francisco port.

The NWED conducted a joint night boat patrol with WDFW in South Puget Sound focusing on unlawful shellfish harvest.

The SWED conducted an IFQ TRAT vessel inspection of a groundfish vessel in Monterey, CA. The inspection disclosed the vessel had not landed any IFQ fish product this year. However, the owner/operator did not have his IFQ federal permit on board and was reminded before getting underway to correct the discrepancy.

PARTNERSHIPS

Several training sessions have taken place involving state and federal partners. The NWED conducted training with the crew from the USCG Cutters Sea Lion and Terrapin at their annual

Living Marine Resource training. Additional training was conducted for the boarding teams of the USCG Cutters Steadfast, Alert, and the Fir. Information was presented on local issues including endangered species and fisheries activities of concern.

NWED Agents and a Habitat Conservation Division biologist attended a southern Oregon interagency gold mining meeting to discuss issues and concerns for the upcoming summer mining season. The meeting was attended by the U.S. Attorney's Office, Environmental Protection Agency, U.S. Fish and Wildlife Service Office of Law Enforcement, Oregon State Police, and other state agencies.

The NWED met with a U.S. Forest Service patrol captain concerning gold mining issues in southern Oregon and their effects on fish and habitat protected by the ESA.

Community Relations

SWED attended Career Day at the Jackie Robinson Academy in Long Beach, CA. An informational booth was set up in the auditorium where SWED Acting Special Agent in Charge appeared as a guest speaker for the day. Career Day at JRA included government officials from the local, state and federal agencies, including law enforcement representatives from CBP, NPS, and the Long Beach Police Department.

SWED participated in the "*I Love Wildlife campaign*" sponsored by the Department of Justice at the Los Angeles Zoo. More than hundreds of visitors stopped by the OLE booth asking questions about marine wildlife and NOAA's role in protecting them. Most of the visitors were young children, whom were very knowledgeable about the protection of sea turtles and other marine mammals. Other federal and state agencies participated, including US Fish and Wildlife, US Forest Service, and the California Department of Fish and Wildlife.

SWED attended the California Department Fish & Wildlife's 2013 Salmon Information Meeting which was held to provide information to the public regarding the 2013 commercial and recreational salmon allocations.

SWED and the Southwest Protected Resources Division held an outreach meeting with the Pomo tribe in Point Arena where they gave a PowerPoint presentation. The presentation contained current information as it relates to recovery plans for Coho salmon on the Garcia River and the penalties associated with ESA violations. SWED has been working with the Pomo tribe after receiving complaints concerning illegal poaching activities on the Garcia where individuals are placing gillnets across the Garcia River. Approximately 20 tribal members attended the presentation and expressed interest in working with PRD in monitoring the river for temperature and sediment.

Whale watching operations are asking for more money for enforcement presence in the area of the Puget Sound and San Juan Islands to deter private boaters from violating the Endangered Species Act. It was noted by one representative of whale watching boats that private vessels often get too close to endangered killer whales, even coming between whale watching boats and

the killer whales.

Enforcement Actions

The NWED contacted the owner of Scrimshaw Gallery (CA) to educate them about the "certificate of exemption" clause in the ESA regarding the sale of sperm whale teeth. The owner was providing incorrect instructions to customers that teeth purchased in WA could be transported to other states following their sale. The owner of the gallery said that he would immediately remove those instructions from the website and explain the regulations to future customers.

A Butte County man pled no contest in California state court for killing an endangered green sturgeon. The individual received a \$1,000.00 fine (suspended in lieu of probation) and his fishing rights/license was revoked for a period of three years. The individual was also placed on probation a three years and is required to post on his Facebook page a message apologizing for killing a green sturgeon. This case was mentioned in last year's Annual report to the Council.

The NWED contacted Albertson's Supermarket regarding an advertising campaign that marketed farm raised steelhead as "Fresh Columbia River Steelhead." After a meeting with Albertson's legal counsel, it was revealed that the scale tags printed when fish were purchased by the consumer contained the information that the steelhead was "farm raised." It was also revealed that steelhead actually did come from an aquaculture plant located on the Upper Columbia River operated by Pacific Seafood, in conjunction with the Colville Tribal Nation. Pacific Seafood provided the fliers to Albertson's to display with the steelhead. Albertson's has since decided to remove all signage marketing "Fresh Columbia River Steelhead" to avoid any confusion.

A marine biologist entered into a plea agreement with the DOJ on one misdemeanor count of take under the MMPA's feeding prohibitions. In addition, the biologist admitted to altering a videotape containing evidence of possible take of an endangered humpback whale prior to submitting it for examination. Sentencing is set for later this year.

SWED issued a \$525.00 criminal Central Violations Bureau (CVB) ticket to a squid light-boat operator who was caught on videotape by a member of the public shooting at marine mammals with a long gun off the coast of Malibu, CA. The operator admitted he was individual in the video and had used a pellet gun to shoot at sea lions. Approved deterrent methods allow fishermen/operators to lawfully deter marine mammals who are attempting to damage fishing gear, boats, or while engaged in commercial fishing. The boat operator admitted that he may have hit marine mammals while shooting at them. The pellet gun was seized as evidence.

A case involving the sale of a whale vertebra over the Internet went to a bench trial before a U.S. Magistrate Judge in Los Angeles in November 2012. The case was centered on whether the defendant possessed the whale part pre-act or post-act before it was posted on the internet for sale. After hearing testimony from both sides, the judge ruled that even though the government proved the 'knowledge' element for criminal activity, it had failed to prove the bone was illegally possessed post-act. The defendant was acquitted and the judge ruled that the defendant had to forfeit the whale vertebra to the government.

The Shelter Cove Company entered into a settlement agreement with NOAA GCES involving the Shelter Cove dam ESA investigation. The agreement calls for the complete removal of the dam and restoring proper fish passage to be completed by December 2014.

A northern California man attempted to smuggle 37 pounds of dried abalone through the San Ysidro POE in San Diego, CA. The product was discovered by a CBP officer concealed behind the backseat of the vehicle. The products were also undersized according to Mexican law. Samples sent to the NOAA Forensics lab in Seattle, WA for DNA testing showed that some of the dried abalone is ESA listed black abalone. This case was referred to the USAO in San Diego for criminal prosecution.

Two female Canadian citizens attempted to import 50 pounds of swim bladders, which reportedly came from the ESA listed totoaba, through the Calexico POE. The individuals also had \$22,000 of cash which was undeclared. *Totoaba* is found in the Gulf of California and is prohibited from being fished in Mexico. The product was seized and turned over to USFWS.

A San Diego based seafood importer paid a \$500.00 misdemeanor citation for falsely labeling 4,600 pounds of whiting which was DNA tested by FDA during a random inspection and found to be barred sand bass. The product was imported through the Otay Mesa Commercial POE