

Science, Service, Stewardship



Update of NOAA Fisheries Enforcement Programs and Operations

**NOAA
FISHERIES
SERVICE**



Outline

- Introductions
- Update on progress to improve NOAA's enforcement programs
- Draft penalty policy
- Council involvement
- Future challenges
- Council feedback



Background

- Under Secretary Lubchenco requests IG review of enforcement nationally, June 2009
- IG Reports:
 - Review of NOAA Fisheries Enforcement Programs and Operations, January 2010
 - Review of NOAA Fisheries Enforcement Asset Forfeiture Fund, July 2010
 - Final Report - Review of NOAA Fisheries Enforcement Programs and Operations, September 2010



NOAA Progress: Management

- NOAA GC HQ prior approval of all significant case matters (charging, settlement, etc.)
- Monthly Enforcement Reports for NOAA Leadership
- OLE workforce review
 - Freeze on hiring special agents
 - Review of OLE activities relative to on-site enforcement, investigations, and outreach
 - Review of state and other federal enforcement activities
- Strict oversight of the asset forfeiture fund



NOAA Progress: New Policies

- Enforcement priorities being developed and will be integrated with NOAA Annual Guidance Memorandum
- New Penalty Policy being developed
- Operations:
 - GCEL Internal Operating Procedure Manual Completed
 - OLE National Enforcement Operations Manual being updated
- Rule change to place burden on NOAA to justify proposed penalties/sanctions
- New policy on the use of enforcement proceeds in the asset forfeiture fund
- New Priority Setting Policies



NOAA Progress: Improved Technologies

- Replacing GCEL's Case Management Information System
 - Completion expected Spring 2011
- OLE case management and database update and expansion to improve federal / state cooperation and performance tracking
 - Implementation beginning in Spring 2011



NOAA Progress: Increased Transparency & Outreach

- Bi-annual web posting of enforcement charging decisions and settlements
- Public comment periods on new policies and priority setting
- National Enforcement Summit, August 3, 2010
- E-Hotline for enforcement complaints
- Compliance assistance & communication strengthened
 - NE pilot program - new compliance liaison position, new outreach position, and 8 new enforcement officers
- Corrective action plans, budget formulation, tracking of revenues and costs



Special Master Review

- Office of the Inspector General report identified 19 complaints as appropriate for further review.
- In September, Secretary Locke appointed a Special Master to review these complaints.
- The Special Master will make recommendations to the Secretary on whether to take action or remit any penalties associated with these complaints.
- The Special Master is currently conducting his review.



Future Challenges

- Increased workload associated with new management programs
 - West coast groundfish trawl catch share program
 - Gulf of Mexico grouper
- Implementation of the workforce analysis will require time
 - Hire enforcement officers
 - Improve compliance assistance
 - Administrative functions
- Regional differences in approaches to enforcement needs



NOAA Draft Penalty Policy

Goals of Draft Penalty Policy:

- (1) Fair and consistent at a national level;
- (2) Penalties appropriate to gravity of violation;
- (3) Penalties sufficient to deter violators and regulated community from further misconduct; and
- (4) Eliminating economic incentives for noncompliance



NOAA Draft Penalty Policy

Under Draft Penalty Policy, penalties are based on three criteria:

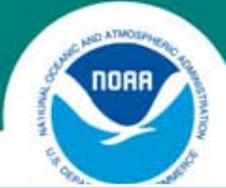
1. Base penalty amount based on seriousness of offense;
2. Adjustment to base penalty based on circumstances of case;
3. Amount added to adjusted base penalty to recoup economic benefit of noncompliance



NOAA Draft Penalty Policy

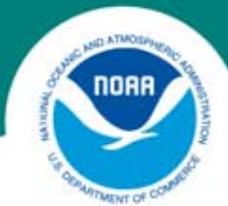
Base penalty is determined by (1) potential for harm to resource (offense levels I-VI); and (2) alleged violator's degree of culpability. To determine base penalty:

- (1) First look at schedules, which will provide offense levels for common offenses (if not listed, use similar violation or assess for seriousness);
- (2) Then look at Penalty Matrix to find appropriate penalty level range;



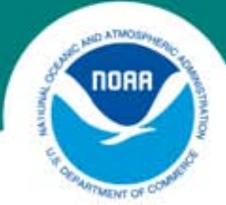
Magnuson-Stevens Act Schedule

Magnuson-Stevens Act Schedule	
VIOLATION	OFFENSE LEVEL
VIOLATIONS REGARDING GEAR	
<p>Minor-Moderate Violations Examples: Violating area specific gear requirements, having non-complying gear onboard, or fishing with non-compliant gear; falsifying or failing to affix vessel markings; failing to comply with gear tag or marking requirements; dumping gear.</p>	II - III
<p>Moderate Violations Example: Fishing for Western Pacific bottomfish management unit species (MUS) using prohibited gear.</p>	IV
VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS OR OBSERVERS	
<p>Minor - Moderate Violations Examples: Failing to provide information, notification, accommodations, access, or reasonable assistance to either a NFMS-approved observer or a sea sampler conducting his or her duties aboard a vessel; submitting false or inaccurate data, statements, or reports; discarding, release, or transferring fish before bringing it aboard or making it available to an observer for sampling.</p>	II-III



Magnuson-Stevens Penalty Matrix

Harm to the Resource or Regulatory Program, Offense Level	Level of Intent			
	A Unintentional	B Negligent	C Reckless	D Willful
I	Written warning-\$1,000	Written warning-\$1,500	Written warning-\$2,000	Written warning-\$2,500
II	Written warning-\$2,000	\$2,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000
III	\$2,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000	\$15,000-\$25,000
IV	\$5,000-\$15,000	\$15,000-\$25,000	\$25,000-\$50,000 and permit sanction of 10-20 days*	\$50,000-\$80,000 and permit sanction of 20-60 days*
V	\$15,000-\$25,000	\$25,000-\$50,000 and permit sanction of 10-20 days*	\$50,000-\$80,000 and permit sanction of 20-60 days*	\$60,000-\$100,000 and permit sanction of 60-180 days*
VI	\$25,000-\$50,000	\$50,000-\$80,000 and permit sanction of 20-60 days*	\$60,000-\$100,000 and permit sanction of 60-180 days*	\$100,000-statutory maximum and permit sanction of 1 year-permit revocation*

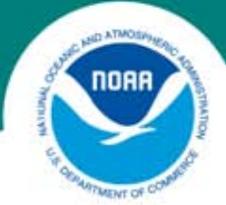


NOAA Draft Penalty Policy

Adjustment factors include:

- (1) history of non-compliance;
- (2) commercial vs. recreational activity; and
- (3) level of violator's cooperation

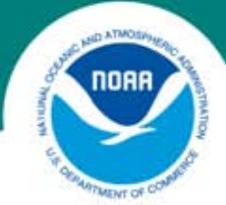
Economic benefit – gross value of catch



NOAA Draft Penalty Policy

Concerns Expressed in Public Comments:

- (1) Regional vs. National penalty policy;
- (2) Calculation of prior violations;
- (3) Lack of consideration of probability of detection;
- (4) Distinctions between commercial and recreational fisherman



How Can the Councils Help?

How do we reduce complexity, simplify requirements, and improve compliance with our regulations and ensure our enforcement programs are effective and transparent?

- Regulatory Improvements
- Process Improvements
- Outreach and communication improvements
- Other ideas?



Potential Regulatory Improvements

Effective regulations:

- Simple and easy to understand
- Few as possible and/or concise
- Fish is accountable and traceable throughout the wholesale process



Enforcement Considerations For Regional Fishery Management Councils

Developed by NOAA Office for Law Enforcement,
NOAA General Counsel for Enforcement and Litigation, and
The U.S. Coast Guard

October 2007

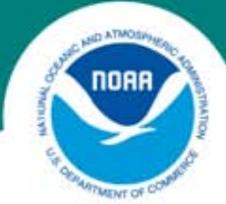




Potential Regulatory Improvements

Compliance and/or enforcement is more difficult if regulations are:

- Manpower intensive (monitoring offloads or weighing, etc)
- Complex or convoluted
- Lack accountability (effective paperwork trail)
- Use estimates (estimated weight of catch, catch composition, discards, etc)
- Law enforcement resource intensive (resource limits of OLE, Coast Guard, and States)



Potential Process Improvements

- Early and effective involvement of OLE and GCEL in the regulatory process
 - plan development teams
 - fisheries management action teams
 - feedback on current regulatory/enforcement issues
- Expanded use of Council Enforcement Committees
- GCEL attendance at Council meetings
- Better draw on industry knowledge and experience



Potential Outreach and Communication Improvements

- Workshops or fishermen forums
- Additional or clearer compliance guides
- Improved web pages or portals for regulations
- “Ask an Agent” or frequently asked question lists
- Additional dock-side communications
- Fisheries Enforcement E-mail list-serv
- Increased use of social media (e.g., Twitter)
- Communications training for staff



Council Feedback

- What actions have the individual Councils taken to improve enforceability of regulations?
- What do the Councils see as our critical future enforcement needs?
 - Priority setting process
 - Upcoming management actions
- How are enforcement needs changing or will change with the implementation of future programs?
 - Catch share programs