

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE (WDFW) ENFORCEMENT  
REPORT

Deputy Chief Mike Cenci of the Washington Department of Fish and Wildlife (WDFW) will provide an overview and status report on state enforcement activities and accomplishments with respect to protection of Federal fisheries (Agenda Item C.1.b, Supplemental WDFW Report).

**Council Task:**

**Discussion.**

**Reference Materials:**

1. Agenda Item C.1.b, Supplemental WDFW Report.

**Agenda Order:**

- a. Agenda Item Overview
- b. Report of the WDFW Enforcement Division
- c. Reports and Comments of Advisory Bodies and Management Entities
- d. Public Comment
- e. Council Discussion

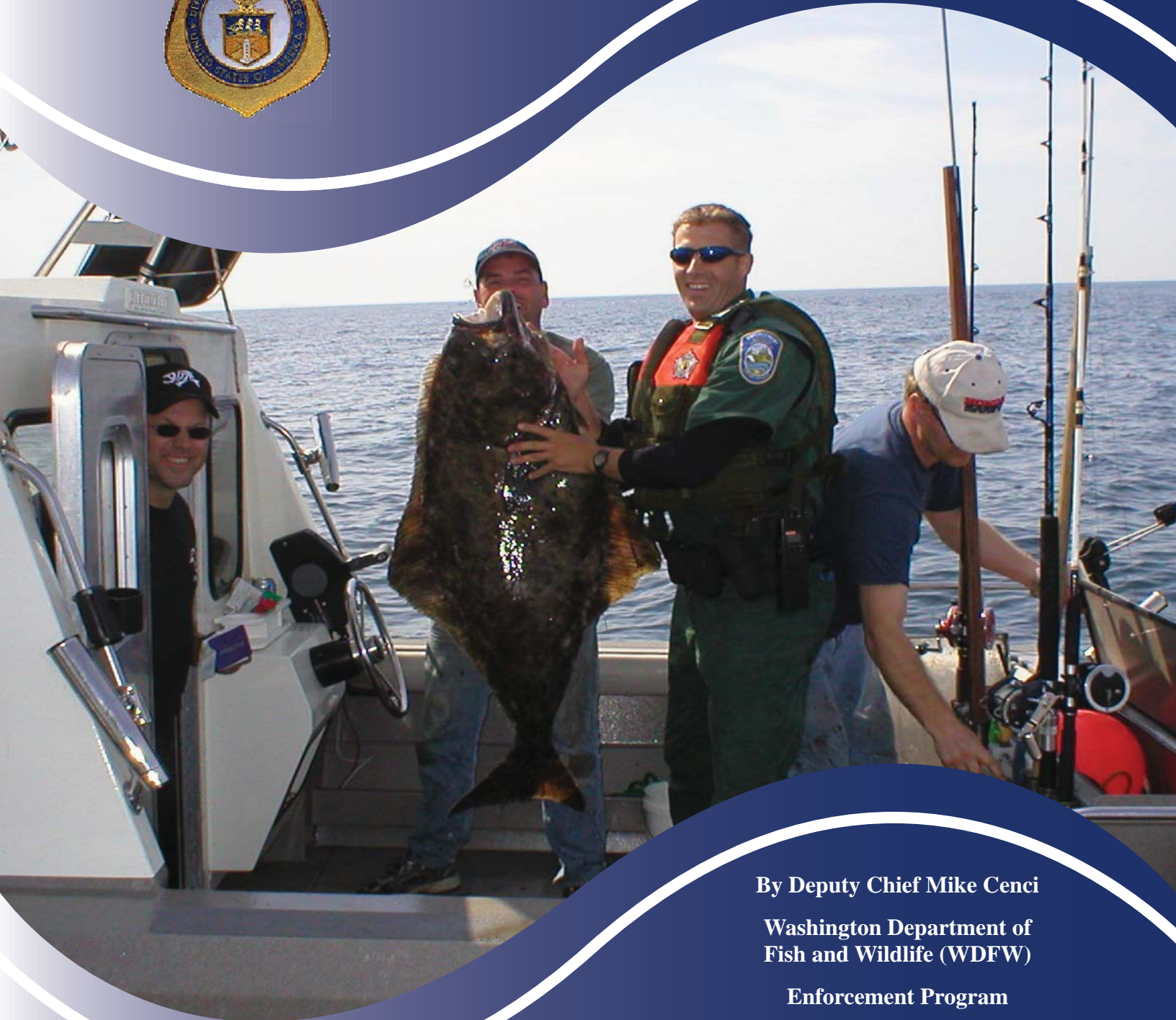
**Jim Seger**  
**Mike Cenci**

PFMC  
10/18/10



# Washington State Final Report for Joint Enforcement Agreement (JEA) between WDFW Enforcement Program and NOAA - OLE

## JEA 2008-2010



By Deputy Chief Mike Cenci

Washington Department of  
Fish and Wildlife (WDFW)

Enforcement Program

November 1, 2010

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# 2008 Agreement Overview

## General JEA Terms:

Open Date:	Closing Date:	Duration:
September 2008	September 2010	Two years

## JEA Financial Demographics:

Category:	Amount (\$):	Notes:
Dockside/Inspection:	\$222,875	
Outreach/Education:	0	
Administrative/Clerical:	94,618	One full time JEA Tech
Miscellaneous:	0	
At Sea Vessel/Personnel:	154,733	
Aviation Cost:	0	No aviation component
Overhead:	165,279	Federal rate of 35%
<b>TOTAL DIRECT OPERATIONS:</b>	<b>637,505</b>	Includes major program \$
<b>Direct Purchases (Total \$):</b>	<b>87,495</b>	
<b>Agreement Total:</b>	<b>\$725,000</b>	

**NOTE:** Major program funds were included under direct operations.

## Amendments:

Amendment #:	Date Executed:	Terms:
One	August 4, 2010	<p>1. JEA Technician Hours will be reduced from 3,840 hours to 3,440 hours.</p> <p>2. ESA Protection – at-sea, will be increased by 120 personnel hours, and 60 vessel hours; with these new hours dedicated specifically towards the ESA listed Southern Resident Killer Whales of the Puget Sound.</p>

**NOTE:** The Agreement was projected to be completed before September 2010. In response, administrative hours were reduced, and hours in an enforcement category originally completed were increased.







# 2008 Agreement Overview

## JEA Priorities Assessment:

### Priority Name:

#### Priority 1: Washington/Oregon/California Salmon

### Impact Summary:

**Off Shore/At Sea Activities:** Coastal commercial salmon troll fisheries were monitored at-sea to ensure compliance with gear, area, seasons, and catch regulations. Coastal recreational salmon fisheries were also monitored at-sea to ensure compliance with gear, season, and catch regulations.

**Schedule/Season:** Patrols were planned to coincide with the seasons as listed in the 2008 - 2010 West Coast Salmon Fisheries Federal Regulations.

**Priority:** Westport (45%), Neah Bay/La Push (25%), Ilwaco (30%).

**Dockside Activities:** At coastal ports of landing, such as Westport, Ilwaco, LaPush, and Neah Bay, Officers inspected both commercial and recreational landings of salmon taken from offshore waters and delivered dockside. Bag limits, species, and size restriction regulations were monitored. Catch accounting regulations pertaining to commercial landings will also be strictly monitored.

**Schedule/Season:** Same as the at-sea schedule.

### Priority Name:

#### Priority 2: ESA Protection (Salmonids, Non Salmonids, and Orca Whales)

### Impact Summary:

**Activities:** Officers patrolled rivers, creeks, Puget Sound marine waters, and ports to ensure protection of ESA listed species. Officers also targeted inland marine, river estuary, and inland river habitat for illegal ESA and listed species habitat violations.

**Schedule/Season:** Year Round.

**Priority:** Watersheds: Skagit, Nooksack, Snohomish, White River, Dungeness, Columbia River, and tributaries.





# 2008 Agreement Overview

## Priority Name:

### Priority 3: Washington/Oregon/California Groundfish

## Impact Summary:

**Off Shore/At Sea Activities:** Officers patrolled the Exclusive Economic Zone (EEZ) for commercial and recreational groundfish and halibut fishing activity. Focus was placed on rockfish conservation areas and fathom curve restrictions which are designed to take pressure off of over-fished species. Patrols were coordinated through NOAA-OLE. Patrol time was divided as follows: 90% groundfish and 10% halibut.

**Schedule/Season:** Primarily April through October.

**Dockside Activities:** Officers monitored commercial landings. They performed dealer inspections including monitoring full off-loads to ensure proper accounting of harvest on mandatory fish reporting documents. Officers investigated catch accounting violations and conducted audits as appropriate. Officers also assisted with Vessel Monitoring System (VMS) follow-up investigations.

**Schedule/Season:** Year round with special emphasis during whiting season.

## Priority Name:

### Priority 4: Interdicting Domestic and International, Illegal, Unreported, Unregulated Fisheries Products

## Impact Summary:

Officers physically inspected international ports of entry, wholesale fish dealers and buyers, along with secondary receivers such as cold storage and retail markets to ensure that federally regulated species have been legally harvested, documented, and marketed.

Lacey and Magnuson Act violation detection was the priority during these inspections. Officers monitored the U.S.-Canada Border for illegal import, export, smuggling activities, and illegal foreign fishing.

Approximately fifteen percent (15%) of the patrols were by vessel, particularly along the border. Land efforts included cargo and document inspections at border crossings, SEATAC airport, and at commercial seaports. Operations included at joint land/sea/border inspections coordinated through OLE.





# 2008 Agreement Overview

Priority Name:

## Priority 5: Olympic National Marine Sanctuary

Impact Summary:

Officers performed both land-side and at-sea sanctuary patrols.

**Schedule/Season:** Year Round

Priority Name:

## Priority 6: Marine Mammal Protection Act

Impact Summary:

Officers provided personnel for marine mammal protection act (MMPA) enforcement. Officers responded to MMPA complaints and patrolled known pinniped haul out areas where past complaints have originated. Officers also participated in several forums related to Orca Whale protection. Special emphasis was placed on Orca harassment by vessels.

**Schedule/Season:** Year Round

**NOTE:** *South Resident Orcas are ESA listed*

J-Pod & Yacht

Andrew Lees



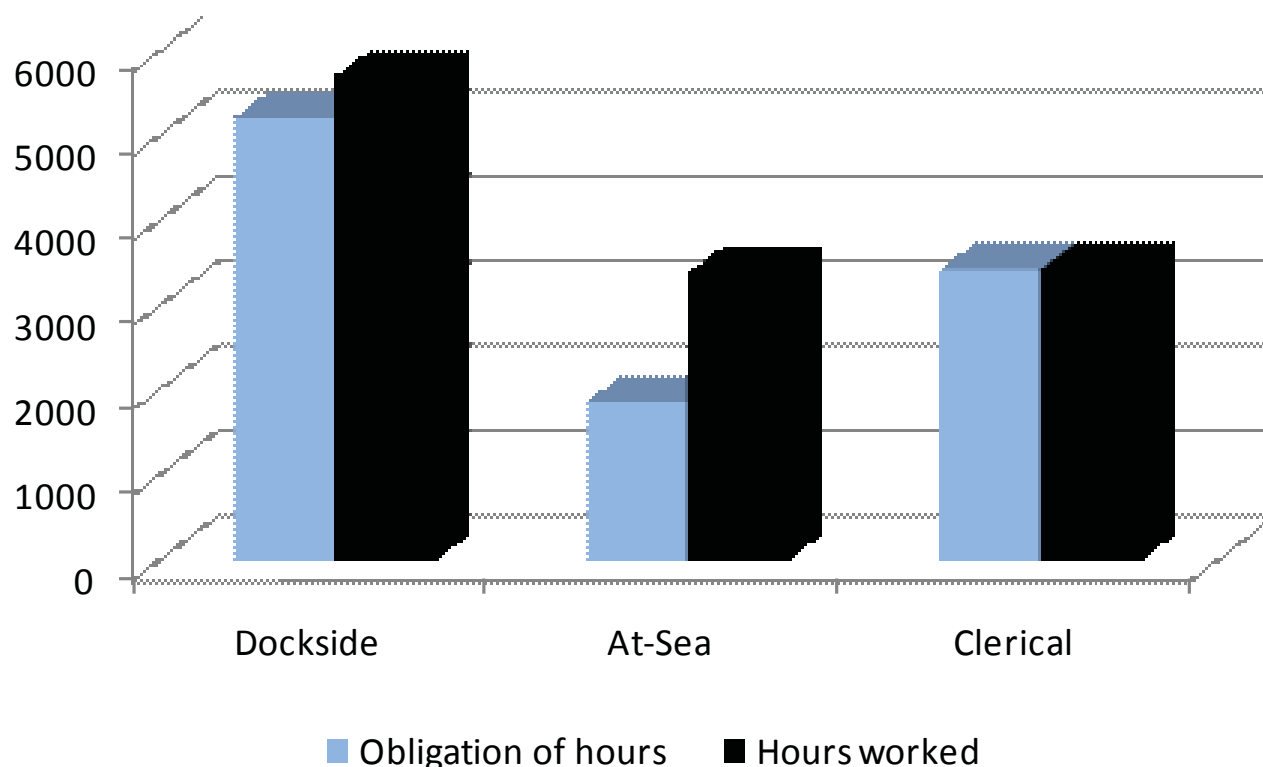


# 2008 Agreement Overview

## Targeted Enforcement Commitment:

Category	Obligation	Completed	Difference	%	Notes
Dockside	5224	5704.5	-480.5	Over 100	
At-Sea	1870 <i>Obligation includes amendment hours</i>	3389.5	-1439.5	Over 100	<i>At Sea personnel v. vessel hours were not split during the first half of this agreement</i>
Clerical	3440	3400	100	100	

## Graph of Commitment v. Actual Hours Worked:





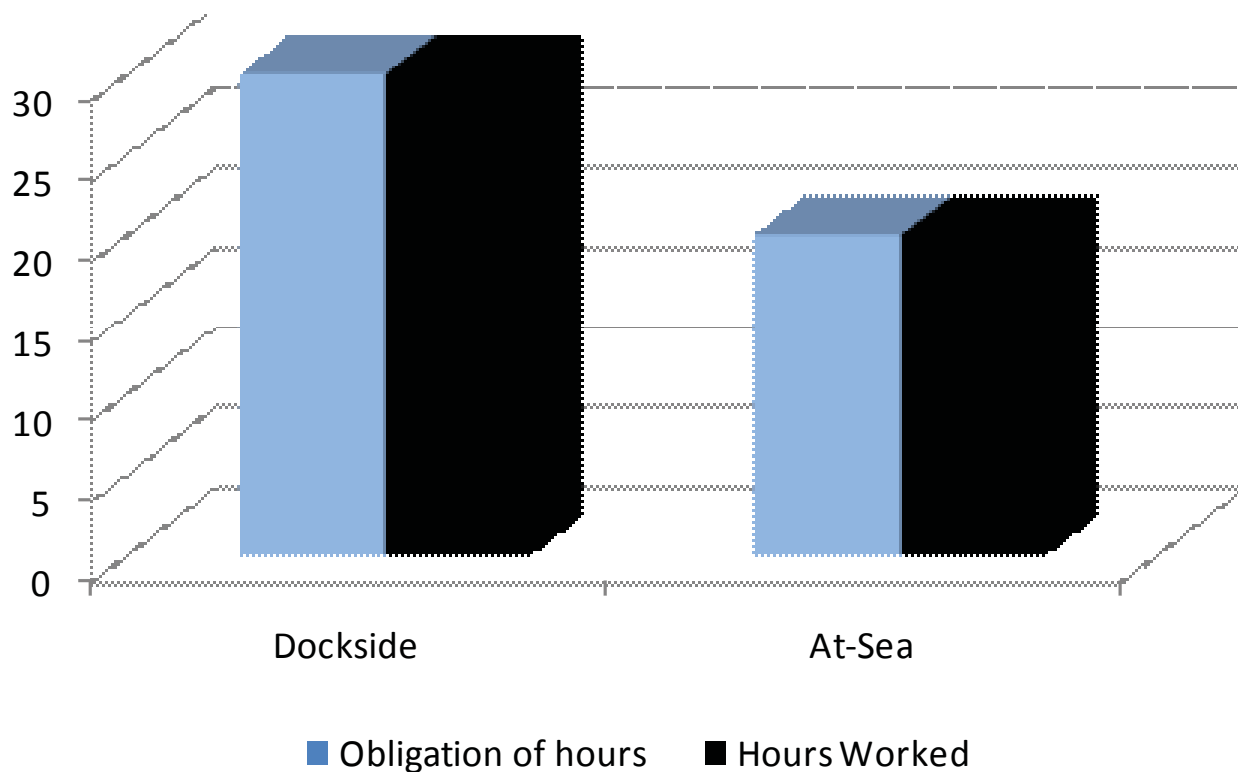


# 2008 Agreement Overview

## Major Program Enforcement Commitment:

Category	Obligation	Completed	Difference	%	Notes:
Dockside	30	30	0	100	
At-Sea	20	20	0	100	

## Graph of Commitment v. Actual Hours Worked:





# 2008 Agreement Overview

## Purchases:

Item:	Purchase Date:	Unit Cost:	Units:	Total Cost:
Vessel Maintenance	3/4/2009	varies	4	\$17,003.68
Outboard Motor	3/25/2009	\$16,190.96	2	\$32,381.92
SME CV701 Recorded & Accessories	10/20/2008	\$795.00	1	\$795.00
SME -WH Waist Holster	10/20/2008	\$35.00	1	\$35.00
Shipping	10/20/2008			\$15.00
20081016E (Forensic Recovery Device FRED)	10/16/2008	\$6,137.83	1	\$6,137.83
Omniscout LT200 live-tracker	4/23/2009	\$399.00	2	\$798.00
Extended battery & charger	4/23/2009	\$395.00	2	\$790.00
Waterproof case	4/23/2009	\$199.00	2	\$398.00
Marine Mapping Services	4/23/2009	\$204	2	\$408.00
Shipping	4/23/2009			\$50.00
Night Vision	7/28/2009	\$3695.00	1	\$3695.00
Undercover Vehicle	10/22/2008	\$24,997.92	1	\$24,997.92
<b>Total:</b>				<b>\$87,485.35</b>

## Notes:

- Vessel maintenance was provided for vessels used for JEA patrols.
- Surveillance equipment and undercover vehicle used in JEA-related cases.





# 2008 Agreement Overview

## Enforcement Actions:

**NOTE:** Due to overlapping agreements, the number of enforcement activities made in priorities one and two only represent the September 2008 to May 2009 time period. All other contacts were recorded for the overlapping 2009-2011 and 2010-2012 JEAs.

Priority 1: Washington/Oregon/California Salmon		
Warnings	Citations	Custodial Arrests
78	99	0
Priority 2: ESA Protection (Salmonids, Non Salmonids, and Orca whales)		
Warnings	Citations	Custodial Arrests
687	870	4
Priority 3: Washington/Oregon/California Groundfish		
Warnings	Citations	Custodial Arrests
101	178	0
Priority 4: Interdicting Domestic and International, Illegal, Unreported, Unregulated Fisheries Products		
Warnings	Citations	Custodial Arrests
42	82	0
Priority 5 (Major Program): Olympic National Marine Sanctuary		
Warnings	Citations	Custodial Arrests
0	3	0
Priority 6: Marine Mammal Protection Act		
Warnings	Citations	Arrests
12	12	0
Market Inspections		
Processors	Wholesalers	Dealers
5	42	12

**NOTE:** There was a three month period, at the beginning of the agreement, in which WDFW Enforcement Program was moving from an online Enforcement Activity Reporting System (EARS) to a paper based program that would allow data to be collected in a way that would meet the JEA requirements.

During that time period, some data was not captured. The above totals include an additional number of arrests and warnings (listed below) that were assumed to be federal/state for each category.

- 84 citations and 63 warnings for priority one, 691 citations and 586 warnings for priority two, 13 citations and 1 warning for priority three, 77 citations and 25 warnings for priority four

**NOTE:** All warnings, citations, and custodial arrests were assumed to be federal/state since EARS did not have the ability to split enforcement actions by the three NOAA categories of: federal only, federal/state, state only. There is now a new form in place that captures this information for present JEAs.

**NOTE:** Federal referrals were not tracked for this JEA.





# 2008 Agreement Overview

## Contacts:

**NOTE:** Due to overlapping agreements, the number of contacts made in priorities one and two only represent the September 2008 to May 2009 time period. All other contacts were recorded for the overlapping 2009-2011 and 2010-2012 JEAs.

Fishery/FMP	Commercial:	Recreational:
<b>Priority 1: WOC Salmon</b>	78	1,552
<b>Priority 2: ESA Protection (Salmonids, Non Salmonids, and Orca whales)</b>	453	11,767
<b>Priority 3: Washington/Oregon/California Groundfish</b>	262	2,929
<b>Priority 4: Interdicting Domestic and International, Illegal, Unreported, Unregulated Fisheries Products (IUU)</b>	939	124
<b>Priority 5 (Major Program): Olympic National Marine Sanctuary</b>	8	149
<b>Priority 6: Marine Mammal Protection Act (MMPA)</b>	61	194
<b>Total:</b>	<b>1,801</b>	<b>16,642</b>

**NOTE:** There was a three month period, at the beginning of the agreement, in which WDFW Enforcement Program was moving from an online Enforcement Activity Reporting System (EARS) to a paper based program that would allow data to be collected in a way that would meet the JEA requirements.

During that time period, some contact data was not captured in monthly reports. The above totals include an additional number of contacts (listed below) that were assumed to be either recreational or commercial, based upon the EARS work category.

- 612 contacts for priority one
- 6,256 contacts for priority two
- 215 contacts for priority three
- 523 contacts for priority four







# Agency Narrative

## WA, OR, CA (WOC) Salmon

### WOC - Calendar Year 2009 - Summer Emphasis Enforcement Activity Snapshot

#### Introduction

The recreational salmon fishery in the EEZ offshore of Washington for 2009 drew a continued and concerted enforcement presence to ensure high compliance with selective fishery rules. The primary focus was on wild Coho Salmon release rules, bag limits and gear. When attempting to determine true angler compliance with fishery rules through information obtained from overt uniformed officer presence, a number of issues must first be considered. While many contacts are random, abnormal or suspicious behavior does attract our attention. The discovery of the violations themselves is contingent upon the skill of the officer to detect it. And finally, the mere presence of the officer can have an effect on angler actions, sometimes affecting compliance at the time. Thus, a targeted violator contact, the failure of officers to recognize violations, or affecting the inability for us to measure changes in compliance when the officer leaves the area, can all result in skewing the picture to some degree. Nonetheless, collecting contact information does provide useful information related to where to put enforcement resources, identifying the most commonly violated regulations, and in comparing one season to the next. The following compliance information for coastal areas should therefore be viewed in the context of a contact to violation ratio, and not necessarily true compliance.

#### CY 2009 Summer Emphasis: Pacific Ocean Recreational Fishery Compliance (includes contacts made during 09-11 JEA)

Marine Area	Total Contacts	Total Violations
1-Ilwaco	2034	326
2-Westport	1661	200
3-LaPush	171	14
4-Neah Bay	289	38

*Officers inspected commercial salmon trollers both on the fishing grounds as wells as dockside. One emphasis patrol involved WDFW oregon state police operating from a USCG cutter. The five day event involved a patrol area that began on the north Washington coast and ended in oregon territory. Both commercial and recreational fisheries were monitored.*





# Agency Narrative

## *Enforcement Officers at work, conducting JEA Patrols*







# Agency Narrative

## ESA Protection

(Salmonids, Non Salmonids, and Orca whales)

### INTRODUCTION

*The presence of steelhead and salmon species listed under the Endangered Species Act drives both recreational and commercial fishing opportunity in Washington State for treaty tribal members and non-tribal members alike. Managers struggle with how to provide harvest opportunity on healthy stocks without impacting rebuilding efforts for weak populations. Minimizing impacts is in part achieved through season structures and closures, mandating the use of fish friendly gear and release techniques, and by implementing selective fisheries. A mass marking effort at hatchery facilities is focused on identifying and protecting naturally-spawning ESA listed fish. One of the key prerequisites to securing ESA authorization for WDFW fisheries is that the rules established to meet ESA requirements will be followed by the fishing public and that we will enforce them. Funding through Joint Enforcement Agreements has helped to provide needed officer presence and protection from gravel to gravel. Whether it is on the spawning grounds or marine areas, WDFW Officers guard against illegal take and habitat destruction.*

## KENNEWICK MEN CHARGED IN THEFT FROM STATE FISH HATCHERY COLLECTION SITE

Three Kennewick men have been charged in Franklin County District Court on several counts involving theft of salmon and steelhead from a Washington Department of Fish and Wildlife (WDFW) fish hatchery collection site on the Snake River in southeast Washington. The three suspects, all of Kennewick, were charged with unlawful fishing, fishing closed waters and closed season, and several other violations in an Oct. 2 incident. The men are accused of illegally taking 22 fish, including three wild steelhead and two wild Chinook salmon. Federal charges are pending on possession of the wild steelhead and salmon, which are listed as threatened in the Snake River under the U.S. Endangered Species Act (ESA).

The alleged ESA violations are being referred to the federal NOAA Fisheries Service for review and possible civil prosecution. Fines for the multiple state charges range up to \$5,000 per count and up to a year in jail. An 18-foot boat, trailer, five fishing rods, and



miscellaneous fishing and boating equipment were seized for forfeiture proceedings. Working on an anonymous tip, WDFW Enforcement Officers Brian Fulton of Pasco and Rob McQuary of Walla Walla observed the three men fishing from a boat at night within the







# Agency Narrative

400-foot area around the broodstock collection area on the Snake River adjacent to the Lyons Ferry Fish Hatchery—an area closed to all fishing, as stated in the state fishing rules pamphlet. The officers confronted the men just before 3 a.m. after they removed the boat from the river at the Lyons Ferry Marina and were attempting to leave the parking lot.

## ILLEGAL NETTER CAUGHT AGAIN DURING ESA CLOSURE

Officer Vance contacted a Yakama tribal member who had just set two closed season gillnets in the exact same spot Officer Vance caught him with a closed season gillnet in last July. The subject, who is known to swim his net out into the Columbia River, has already pled guilty to the first charge of Unlawful Use of a Net 2nd degree. This time he was booked into jail for Unlawful Use of a Net 1st degree, a class C Felony, and an unrelated misdemeanor warrant. Commercial fishing is closed due to the presence of ESA listed species. Officers forwarded the information to SA Eric Morgan who has been collaborating with DFW on a number of ESA cases.

## ESA STEELHEAD SMUGGLING

Officer Snyder was contacted by a woman who had expressed concerns about the poaching of fish on the Columbia River by two men. She identified two suspects that had caught nearly 80 closed season steelhead from the Columbia River. Fishing

for this species was closed due to ESA designation.

Officer Hobbs was off-duty when he observed one of the suspects leaving with his boat and notified Officer Day and Officer Zuchlewski, who were able to observe the man fishing below Wanapum Dam. The officers watched the suspect fish for over four hours with two rods (only one per angler allowed), and observed him catch and retain several illegal fish. Officers greeted him at the boat launch as he attempted to leave. After repeated denials, he finally admitted to catching several fish and revealed his secret hiding spot: a plastic garbage sack laying right at one of the officer's feet. Inside the bag officers found two closed season Steelhead and one wild Coho. Officer Zuchlewski was able to finally obtain a full confession from the man.

The officers contacted Sergeant Sprecher, who went to the defendant's home and obtained consent to search from his wife to enter the house and inspect the freezer, which was full of illegal steelhead fillets. The suspect admitted the steelhead at his residence were also poached during the closed season, so they were seized as evidence. The man is facing numerous charges, to include fishing with two rods, unlawful use of a gaff hook to take fish, failure to submit catch, failure to mark catch record card, and numerous charges of possession of closed season steelhead and Coho salmon. Officer Hobbs was eventually able to contact the second subject. However, the second subject had been tipped off that officers were looking for him, and had thrown away the steelhead from his freezer.







# Agency Narrative

## HABITAT CASE

Officer Cook investigated a hydraulics violation two weeks ago in which the property owner was building an 80-foot concrete and rock wall without an hydraulic project approval on the Pilchuck River near the city of Snohomish diversion dam. ESA listed species inhabit this system. He was told to “cease and desist” the criminal activity but verbally avowed that he would do whatever he wanted to. Officer Cook received two additional reports of his continued building activities. Because of his hostile and violent reputation, Sergeant Lambert and Officer Oosterwyk agreed to go along for another contact.

Sergeant Lambert recognized him as a salmon snagger he arrested two years ago. The subject continued to be belligerent and non-cooperative, so he was taken into custody. While being handcuffed, his mother said to be careful of his wrist; he had just been released from jail the day prior and got injured in a fight while there. While being placed in Officer Cook’s patrol vehicle, he told her, “I’ve got people who will come after you personally!” He laughed all the way to jail, proudly proclaiming that he would be out in two hours because they had no beds, and this was just a gross misdemeanor offense after all. He wasn’t laughing anymore after being booked for intimidating a public servant, a class B felony.

## ILLEGAL GUIDING FOR ESA LISTED FISH

WDFW Detectives and a British Columbia Fisheries Investigator took an undercover fishing trip with a Washington guide operating illegally. The four left from Blaine Marina, and headed to Saturna Island, B.C. to fish for bottom fish. The plan was that if they caught and retained and/or wasted Rockfish, B.C fisheries and oceans would be called in to arrest the suspect and seize his vessel. Within two hours the four had caught an over limit of Rockfish, and two Lingcod (one over 25 pounds), and the take down team was called in.

The suspect had wasted five Rockfish (by high-grading and feeding Rockfish to Eagles) and had retained five (the limit is one per person). He was arrested without incident, and his boat was seized. Then, WDFW Officers Jones and Valentine executed a search warrant on the suspects Blaine residence and vehicle. The suspect’s vehicle was seized for forfeiture. This concludes a three-month investigation of the unlicensed fishing guide who took undercover WDFW Officers on two fishing trips into B.C., where he was unlicensed. In Washington, he arranged and conducted a fishing trip directed at catching ESA listed Nooksack River Chinook, engaged in unlicensed charter fishing for bottom fish in the San Juan Islands and committed other resource violations.





# Agency Narrative

## ESA HPA VIOLATION

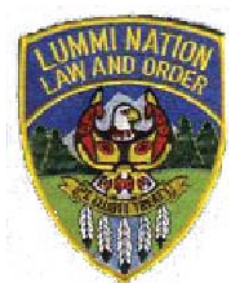
Officers received a call from an informant about a large hydraulics project violation in Salmon Creek in Okanogan County. Upon arrival they met a man, who would later be identified as the property owner, and observed a violation with equipment still on site. The subject would not cooperate with the case nor even identify himself. Officers prepared a search warrant and maintained surveillance of the site. Once Officers served the search warrant for evidence in the case, they discovered the suspect was an attorney, but he still would not cooperate nor identify ownership of the machines.

A camera was seized and the site was assessed and photographed with the assistance of the Habitat Program. About 300 feet of the site was severely impacted with gabion basket placement, all filled from the bed of the creek with spawning gravel and rock. In addition, a bridge had been constructed of creosoted timbers and decking, and a wet crossing installed for use by equipment. Officers analyzed the camera and found numerous deleted photos that showed the same equipment present at the site with the attorney working. The prior equipment owner was contacted and found to have sold the equipment to the suspect. WDFW obtained keys from the CAT company that would work in the machines. A new warrant was served for the equipment, and it was hauled away by officers for forfeiture proceedings. The Colville Tribe, NOAA Fisheries, EPA, Okanogan County, and the U.S. Army Corps of Engineers have all been contacted and are assisting with the case as there is ESA listed steelhead in the creek. Colville Tribal biologists are the lead in restoring steelhead in this creek and are assisting with biological assessment data.





# Agency Narrative



## *Net Recovery*

Officer Jones worked with Lummi Enforcement (joint boat patrol) to remove derelict nets on the lower Nooksack River. A total of ten nets were discovered and removed from below the Marietta Bridge. Of the ten nets discovered, three were still capable of catching fish, and one of those three was actually an illegal net recently set to catch ESA listed spring Chinook. The water level was high curtailing the Officer's efforts and once the water lowers, they expect to find yet even more nets. A few days prior to this patrol, Officer Jones had conducted a one man kayak patrol on another section of the lower Nooksack River and discovered two more illegal, intentionally set, nets to capture spring Chinook.

## **RECKLESS DRIVERS IN POSSESSION OF ESA LISTED FISH**

WDFW Officers received a tip that people were shooting out of a moving vehicle near the Methow River. Officers responded to the area and located the vehicle. All three occupants were intoxicated and multiple firearms were discovered in the back of the vehicle. Back up units arrived from other law enforcement agencies and, after investigating the incident, the driver was arrested for DUI. Located in a cooler in the back were two wild (ESA listed) steelhead and one bull trout. No one would claim any of the fish. NOAA fisheries enforcement was contacted to assist with the ESA piece.







# Agency Narrative

## SOCKEYE

The Fraser River salmon fishery is internationally managed, resulting in federal management and oversight. Due to the presence of ESA listed salmon species, accurate catch accounting is essential to ensure by-catch impacts on those fish are not exceeded. Sergeant Mullins and Sergeant Hobbs conducted a boat patrol in the San Juan Islands during the tribal sockeye opening. They found two non tribal purse seiner's working as tenders for two Lummi seiners who had caught so many fish that vessel holds were plugged on their first set. Tenders originally receiving fish are responsible for catch accounting. One unlicensed non-Indian had a pre-signed, blank, fish receiving ticket from a wholesale fish dealer who was not even present. These highly regulated catch documents cannot be transferred, and are signed under penalty of perjury that they are accurate. Having no way to weight the fish given the lack of a proper scale, the tender's activity was stopped. The other vessel was not weighing the fish or completing fish tickets as the sockeye were taken aboard. One boat already had 40K lbs aboard and the other had 70K lbs aboard. Efforts were made to get the fish buyers back on track so as not to delay their activities, but still achieve catch accounting.







# Agency Narrative

## FALSE CATCH RECORDS

A seafood company contacted WDFW Enforcement and reported that a seiner, participating in the Fraser fishery, had delivered numerous prohibited salmon the previous evening. Officer Rosenberger responded to investigate. A total of eight Chinook, three Chum, and two Coho were seized, and sold to the company. A closer inspection of the fish ticket revealed that the fishermen had been reporting his catch of nearly 70,000 pounds of sockeye in the wrong catch area. Officer Rosenberger located the fishing vessel moored in Squalicum Harbor and interviewed the skipper of the vessel. He discovered that the skipper of the vessel had leased the use of his vessel to the license holder who had been on board fishing the previous day. The skipper blamed the prohibited species violations on his inexperienced deckhands. When asked about the catch areas listed on the fish ticket the skipper stated that he had not fished in Washington for twenty years and had guessed as to the area where he was fishing in. Officer Rosenberger also noted that the license holder had departed the vessel prior to the offload being completed, resulting in the skipper of the vessel (who did not possess an alternate operator license) completing and signing the fish ticket. Officer Rosenberger contacted Olympia and learned that the fishing vessel's fish ticket from the previous opener had also been incorrectly completed. Fish managers were made aware of the company's catch area errors amounting to nearly 160,000 pounds of sockeye being falsely reported in the wrong catch area.



## SQUATTER FINALLY CAUGHT

Officer Jones responded to information given to him from a WDFW employee regarding an upriver squatter illegally taking Endangered Species Act listed wild steelhead on the South Fork Nooksack. The suspect was found on a remote logging road, interrogated, surrendered two wild steelhead from a residence, and admitted to taking fish every year and up to 10 or 12 this year alone. He was cited accordingly.





# Agency Narrative

## Washington/Oregon/California Groundfish

### INTRODUCTION

*The Pacific Coast groundfish fishery is a multi-species fishery. Ninety groundfish species are harvested as target catch or have the potential to be affected indirectly as by-catch. Groundfish are managed by catch limit structures, area and season restrictions, and allowable gear type. Because of the presence of overfished groundfish, access to healthy stocks is largely dependent on minimizing impacts to rebuilding plans. Measures to avoid unhealthy stocks have resulted in a complex set of regulations for commercial and recreational sectors and enforcers alike.*

*There are large monetary incentives to commit some violations, such as falsifying fish harvest reports to ensure limits are not reached in order to keep seasons open. An enforcement presence at landing sites to ensure that all fish are properly sorted, weighed, and then accounted for is critical.*

*Likewise, at-sea patrols to ensure area closures are observed is important as many groundfish do not survive release. Rockfish Conservation Areas (RCA) were put into place for both commercial and recreational sectors in an effort to reduce impacts on overfished rockfish species.*

### COMMERCIAL GROUNDFISH

One of the most complex areas of natural resource enforcement for us is in the area of commercial groundfish protection. Presently, seven populations of rockfish are designated as “overfished.” Commercial fishermen have been severely constrained, even with regard to healthy species where intermingling of weak and healthy stocks can occur. It is critical that groundfish species be properly sorted so that overfished or weak stocks can be accounted for and fisheries constrained if harvest caps are exceeded. In this case, a local fisherman delivered ground fish to the processor and watched as the offload was weighed prior to being sorted. This is a violation of state and federal law due to strict limits on certain species of ground fish. The skipper demanded the fish be sorted by the fish company the following day prior to them being processed so he was not in-

volved in any legal issues. Officer Wickersham, Deputy Chief Cenci, Sergeant Chadwick and National Marine Fisheries Service Special Agent Adkins investigated. This is not the first time. A fisherman was cited prior to this incident after offloading a large over limit of Slope Rockfish (around 190% over his limit) at the same facility. They were inappropriately labeled on the fish accounting ticket as “red rock.” Specific species must be identified in order to track limits. Also, Thornyhead rockfish were not separated into Long and Short spine as required, both have individual limits. The fish ticket had numerous errors with regard to accurate weights of fish. It was later discovered that the plant was guessing weights after processing. The total delivery weight of the offload, found on the internal plant tally sheet was much higher than the reported weight on the fish receiving ticket. The ticket is what we rely on to manage the fishery.







# Agency Narrative

## HALIBUT ENFORCEMENT SUMMARY 2010

**MARINE AREAS 3 & 4  
(LA PUSH & NEAH BAY)**

*The Washington Department of Fish and Wildlife's Statewide Marine Division has concentrated enforcement activities around the recreational halibut season along the north coast for the past several years. The 2010 season was no exception. Enforcement patrols were designed to address Washington's halibut rules and offer a level of protection for other species that can be encountered while pursuing halibut, particularly those stocks that are designated as overfished. Additionally, cross-border activities associated with fishing in Canada were monitored.*

*Concurrent enforcement activities that occurred during the 2010 halibut patrols included, but were not limited to: (1) Ensuring compliance with the Rockfish Conservation Area bottomfish closure; (2) Enforcing Canary and Yellow-eye Rockfish no-retention rules; (3) Monitoring and maintaining compliance with Canadian-caught halibut landings; (4) Enforcing rules of the Olympic Coast National Marine Sanctuary; (5) Monitoring vessel safety compliance; (6) Ensuring general compliance with groundfish fishing regulations.*

The operation has been scaled back over the past few years in response to a high compliance rate, a split season opener, and concerns from the public about being boarded too many times. Enforcement coverage included dock patrols at Neah Bay and Snow Creek, one WDFW patrol vessel out of La Push, two WDFW vessels, one Clallam County patrol vessel out of Neah Bay, and one U.S. Coast Guard helicopter flight out of Port Angeles.

### HALIBUT OPENER

Instead of a continuous season, this fishery is managed by a number of multiple day openings. One area of concern is the impact of halibut fishing on Yellow-eye Rockfish, which are designated as overfished. Yellow-eye rockfish live at great depths and do not lend themselves to survivability when released. Because of this, and the fact that they are often caught when targeting halibut, some areas have been closed to halibut fishing in an effort to minimize impacts. Officer Klump, Officer James, and Officer Pat Anderson patrolled three days by boat out of Neah Bay. Officers logged 33 boat hours, covered 270 nautical miles, boarded 125 vessels, contacted 379 fishermen, issued 20 citations, and 49 verbal warnings. Violations included fail to submit catch for inspection (undersized lingcod fillets hidden in the bow), exceeding limits for rockfish (one example: 39 overlimit for three people- the limit is 10), possession of undersized lingcod, possession of canary rockfish (another overfished species currently protected), rockfish and lingcod in unlawful condition (mutilated so that size and species cannot be determined), fishing without a license, fishing in the rockfish conservation area (meant to protect Rockfish), fail to record halibut on catch cards and a few vessel safety violations. Additional officers patrolled the halibut fishery further south along the coast and invested similar efforts with similar results.





# Agency Narrative

## RECREATIONAL ROCKFISH PATROL

Officers Miller and Fairbanks performed a boat patrol in Marine Area 3 (La Push) concentrating on commercial salmon troll, closed season halibut, and the Rockfish Conservation Area. On the patrol, the first boat that was checked had three men in possession of 17 canary rockfish, one tiger rockfish, and one undersized lingcod, along with a couple of legal fish. The men were cited accordingly and were given a fishing pamphlet as all three admitted they had never looked at the regulations and didn't seem aware of such a thing.

## RECREATIONAL GROUND FISH CASE

While checking the fleet as they returned from offshore fishing grounds, officers noticed an 18' ski boat speed by with three guys trying hard not to make eye contact. We normally get a wave. This familiar vibe that we identify with as "please, please, please don't check us" usually results in the opposite outcome. The vessel was boarded and the men showed Sergeant Chadwick a five-gallon bucket of rockfish and one lingcod. They claimed "No more fish." Sergeant Chadwick began a more thorough inspection, and by the time he was through, he counted 93 bottom fish and a closed season Chinook salmon. Fish had been hidden in the open bow, the ski locker, and the engine compartment (c'mon, we always look there). The vessel was seized for forfeiture proceedings and secured at the U.S. Coast Guard station.

*The below article is from the Seattle Times, 8-29-2010*

## POACHERS PAYING THE PRICE

Outdoors Notebook Recent fishing violations suggest that officials are cracking down on illegal taking of resources. Fish and game violations are being taken more seriously, with some poachers getting their due in court after making bad decisions. In the early morning hours of Feb. 27, three poachers were busted for illegally catching 39 rockfish while fishing off the Seattle waterfront in Elliott Bay. Officer Erik Olson of state Fish and Wildlife's enforcement division was patrolling near the grain terminal at Pier 86, a popular sport-fishing area, when he came across the anglers. All three had valid fishing licenses, so Olson asked them to open their coolers, which were loaded with rockfish. Olson filed a second-degree commercial-fishing violation and requested monetary restitution. Earlier this month, Olson received a call from the prosecutor and notified him that the case had gone through the court process. King County District Court Judge Vicki Seitz "just hammered them," Olson said. The poachers were denied all motions, bail forfeiture and a reduced fine. The judge sentenced them to 10 days in jail and charged them \$2,682 dollars apiece (\$2,000 in penalties and \$682 in court costs). They were also put on 24 months unsupervised probation, were suspended from shellfishing and fishing for two years and must not have any criminal offenses for the next two years. "I've had plenty of fish and wildlife penalties where the guy doesn't get any time in jail," Olson said. "It looks like the judges are getting a little harsher on these types of activities that have major impacts to the resources." Soon after the judge put the gavel down, it was apparent the violators could flee, so they were immediately brought to jail to serve their sentences. In April, three types of Puget Sound rockfish were listed under the Endangered Species Act. The burnt-red yelloweye and goldfish-orange canary rockfish were listed as threatened, and the bocaccio was listed as endangered. In May, fishing was banned for all rockfish from southern Puget Sound to the Canadian border.







# Agency Narrative

## FINAL RESOLUTION ON LONG-TERM INVESTIGATION

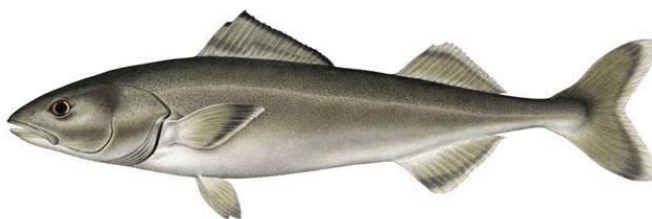
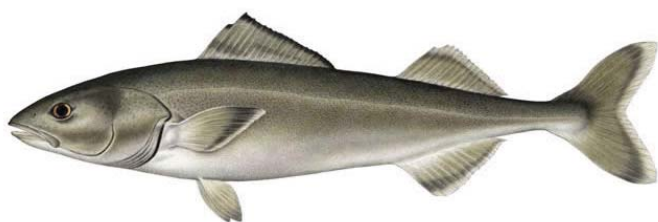
The owner of a crab company entered into a Civil Settlement Agreement with the United States Department of Justice, through National Marine Fisheries Service (NMFS), where the company agreed to pay a \$63,152 penalty to NMFS and Washington Department of Fish and Wildlife (WDFW). The owner of the company agreed to pay the penalty after an investigation conducted by NMFS and WDFW revealed that the company was hiding overages of black cod by falsifying fish tickets and selling the illegal product in interstate and foreign commerce.

Three employees of the company, who were responsible for facilitating the illegal purchase, have pleaded guilty to criminal misdemeanor Lacey Act charges. Jon Schultz, 46, Robert Greenfield, 40 and Kenneth Greenfield, 51, all of Chinook, Washington, were sentenced on the misdemeanor charge of failing to exercise due care while trafficking in illegally obtained fish. Fisherman Kenneth Greenfield was fined \$16,479 and ordered to pay restitution to the State of Washington of \$16,479. His brother, fisherman Robert Greenfield was fined \$11,604 and ordered to pay restitution to Washington State of \$11,604. Schultz, an employee of the crab company was fined \$10,000.

According to the plea agreements filed in the case, in the summer and fall of 2005, Schultz was the Production Manager for the company, located in Chinook, Washington. He was responsible for purchasing sablefish, also known as black cod, from area fishermen including the Greenfields. Federal groundfish regulations establish harvest levels and seasons for the fish. In order to determine how much fish is being taken, fish processing facilities such as the company are required to fill out a "fish receiving ticket" and provide a copy to the fishermen with the accurate date and weight of the catch. In 2005, there were limits on the weekly and monthly catch of groundfish per boat. Schultz admitted in his plea agreement that he failed to accurately record more than 13,500 pounds of sablefish that his company had purchased.

The company reached a civil settlement of the case in March 2009, paying state and federal agencies more than \$60,000 for its failure to accurately report the loads. The settlement amount was split between the National Oceanic and Atmospheric Administration (NOAA) and the Washington Department of Fish and Wildlife (WDFW), with each entity receiving \$31,576. Robert Greenfield admitted in his plea agreement that between May and August 2005, he exceeded the amount of sablefish he was allowed to take by more than 5,100 pounds. Robert Greenfield operates the fishing vessel Remembrance, and failed to pay attention to the fish tickets from the company that indicated he was exceeding his limit.

Kenneth Greenfield operates the fishing vessel Garda Marie and the fishing vessel Renee Maria. Kenneth Greenfield admitted in his plea agreement that between May and August 2005, he exceeded his catch limit for sablefish by more than 8,200 pounds. Kenneth Greenfield admitted he failed to take reasonable care to monitor his catch and limits. In sentencing the men, Magistrate Judge Karen Strombom noted that, "These regulations are intended to protect our fisheries. Those who circumvent these regulations and are caught will end up in federal court."



# Agency Narrative



## WHITING FISHERY

The commercial whiting fishery on the West Coast is constrained by caps on incidentally caught rockfish designated as overfished. NOAA and West Coast States' emphasized enforcement presence at landing sites to ensure full catch accounting, and discovered a number of violations associated with attempts by some to avoid those caps. One such case adjudicated in April involved a 3:00 A.M. visit by a WDFW Officer when he caught a fish plant supervisor in the process of grinding up rockfish so they would not count toward fishery closure. The delivering vessel left the dock with fish still onboard, but was directed back to the offload site. Once all the vessel's catch was accounted for (about 10,000 pounds of restricted rockfish), the whiting fishery was closed since the widow rockfish by-catch cap was attained, leaving millions of dollars of Pacific whiting on the fishing grounds. Originally referred to NOAA General Council, a determination was made that no federal prohibition existed for attempting to destroy fish. The case was given back to WDFW and state criminal charges were filed. The subject pled guilty to a Gross Misdemeanor Crime and was ordered to pay \$2,000.







# Agency Narrative

## Interdicting Domestic and International, Illegal, Unreported, Unregulated Fisheries Products (IUU)

### INTRODUCTION

*Joint Enforcement Agreement (JEA) funding has provided the means to focus efforts on the interstate and international trafficking of fish and shellfish resources through enforcement of the Lacey Act. Washington Department of Fish and Wildlife (WDFW) officers have expanded patrol and inspection activities beyond the typical wholesale fish dealer, increasing their presence at border crossings with Canada and Oregon State, as well as cold storage facilities, shippers, seafood brokering businesses, and retail markets.*

*Water borders are also patrolled for signs of illegal foreign fishing or smuggling. These patrols are conducted independently and in concert with federal agencies that have an interest in cross-border activity. NOAA, U.S. Border Patrol, U.S. Coast Guard, and Immigration & Customs Enforcement have all begun to rely on our vessel platforms and the expertise of our officers in combating these illegal activities.*

### INTERSTATE TRAFFICKING IN STURGEON BROODSTOCK

WDFW Officers teamed up with Oregon State Police to address the trafficking in brood stock sturgeon taken illegally from the boundary waters of the Columbia River. Sturgeon over 60" in length are considered brood stock, and are protected from harvest because they are long-lived, slow growing, and slow reproducing animals. Poachers seek these animals for both their flesh and roe. The roe, known as caviar when processed, can bring as much as \$200 per pound in a processed state, and a mature fish can carry as much as 50 pounds of roe. A long term investigation involving state and federal law enforcement agencies resulted in identifying multiple suspects involved in catching, selling and buying sturgeon illegal to possess, however, not all the cases have been adjudicated. Jessie Sampson of Harrah, Washington, pled guilty in March, 2010 in Skamania County Washington to a reduced charge of Commercial Area / Time 2nd for the sale of two broodstock sturgeon. Sampson spent 35 days in jail and was ordered to pay \$1575 in fines. He was put on probation for 6 months where he cannot fish or have any fish and wildlife violations. He was transferred to Oregon pending

trial for another sale of brood stock sturgeon. In that case, Sampson pled guilty to Unlawful Possession of Food Fish, a Class C felony. He was sentenced to 24 months of supervised probation, credit for time served (five days) , \$392 in fines.







# SHELLFISH THEFT







# Agency Narrative

**W**DFW officers working with the Jefferson County Sheriff's Office, made the arrests after serving search warrants on G & R Quality Seafood—also known as Quil Bay Seafood—in Quilcene. Officers seized hard-shell clams, oysters, a 16-foot fiberglass vessel, five firearms, and a van. The seized shellfish did not bear required certification from the state Department of Health (DOH) and were destroyed as required by state law. Information gathered during the investigation turned over to the Jefferson County Prosecutor's Office, or, depending on any nexus with interstate commerce or transportation, may be addressed in the federal system.

WDFW's investigation was conducted in cooperation with the National Oceanic Atmospheric Administration's (NOAA) Office of Law Enforcement and the U.S. Coast Guard. During the course of the investigation, WDFW Officers, sheriff deputies, NOAA enforcement agents and Coast Guard officers interviewed more than 20 suspects linked to the violations.

Based on the investigation, WDFW detectives believe the seafood company employed harvesters to steal thousands of pounds of oysters and hard-shell clams from state and private tidelands in the Quilcene, Dabob and north Hood Canal areas. WDFW is the primary agency charged with enforcing the DOH's criminal code violations related to sanitary shellfish – and fish and wildlife police officers routinely patrol harvest grounds and market places in an effort to ensure public safety. All shellfish harvested for commercial purposes must be accompanied by a certificate of health, declaring that the product is safe and sanitary for human consumption.

The cert tag follows the product all the way to the end consumer and becomes an important tracking tool. It is believed that many certificates were falsified to reflect that clams stolen from public and private beaches came from beaches where the company had leased property and had certification. If tag information is not accurate, outbreaks from eating contaminated shellfish could never be traced back to the shellfish origin.

We must be clear that during more than a dozen surveillances, WDFW Officers did not detect shellfish being taken from polluted beaches. From what we know, the alleged thefts involved public and private property that are classified as "approved" - in other words, shellfish taken from these areas were safe to eat – potential consumers were just unknowingly eating stolen property.







# Agency Narrative

## OPERATION NIGHT OWL

Officer Beauchene designed and orchestrated a three-day border JEA/IUU Operation dubbed Op NightOwl at the international border. The operation produced hundreds of contacts and several solid commercial cases that were either handled by WDFW, NOAA or CDFO. As WDFW Officers were conducting late-night outbound commercial traffic inspections they contacted geoduck buyer, Vancouver International (well known and a previous SIU investigative target, who paid WDFW/DOH nearly \$40,000 in penalties and fines), with a load of geoduck they had purchased from a South Sound harvester. The inspection revealed that about 700 lbs. of geoduck had bogus certification tags and/or no tags at all. The illegal product had been purchased for \$12.50/lb. All of the uncertified geoduck was seized and destroyed. Numerous criminal citations and/or felony charges are forthcoming. WDFW Officers and NOAA Agents also intercepted nearly 900 lbs of sport caught salmon, halibut and lingcod, which was being imported without the proper documentation. The fish originated at a British Columbia fishing lodge that Canadian Department of Fisheries and Oceans (CDFO) is currently investigating. All the fish were seized by participating CDFO Fishery Officers for follow up in Canada. A complete Operation summary is forthcoming.





# Agency Narrative

## THREE DAY JOINT BORDER PATROL OPERATION

Officer Beauchene organized a three-day border operation emphasis at the U.S./Canada border. Officers and Agents from WDFW, Alaska State Troopers, NOAA, Canada Fisheries and Oceans, U.S.FWS and U.S. Customs and Border Protection participated. Shipments of fish, shellfish and wildlife were inspected for the appropriate documentation and tags. Many inspections were conducted on both inbound and outbound traffic. One truck bringing 17 totes of Pink salmon and roe was refused entry by Customs and fined for an inaccurate manifest report.



U.S. Fish and Wildlife Service (USFWS) seized a black bear hide and meat for a Convention on International Trade in Endangered Species (CITES) permit violation. The individual transporting the bear was a California resident, and he claimed that a friend had given the bear to him while he was in Alaska. Alaska State Trooper Sergeant Hall inspected the bear hide and found that it did not have the seal required for tagging a bear taken from the reported unit. Trooper Hall will follow up on the case. WDFW Officers identified several potential violations for no Wholesale Dealer License and failing to complete a fish ticket. Further investigation will be conducted to determine if a violation was in fact committed.



Officers inspected two vehicles containing geoduck but found no violations. One driver for Evergreen Marine Product out of Vancouver, B.C. appeared to be confused over what copies of the fish ticket he was supposed to possess. A large number of inspections were conducted. Officers inspected several tractor-trailer loads of fresh and frozen fish and shellfish including tuna, oysters, wild Coho, red salmon, sockeye salmon, chum salmon, and pollock.







## BORDER OPERATION

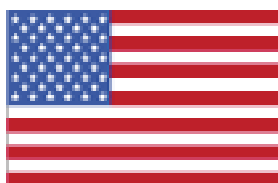
Fish and Wildlife Officers commonly patrol the U.S.–Canada border in an effort to intercept illegal foreign fishing and inspect cross-border shipments of fish and shellfish. Because smuggling activities are common in this area, WDFW has formed partnerships with Canadian and U.S. Border Protection Officials. That partnership proved valuable June 2009 when Fish and Wildlife Sergeant Mullins and Officer Olson observed a large Sea Ray traveling east from Canada. After the vessel passed into U.S. waters, it avoided the Customs checkpoint at Roche Harbor, which is illegal. A Customs patrol boat was dispatched to the area to assist. Once Officers boarded the boat, they discovered that two of the three occupants were felons with outstanding arrest warrants out of Canada. One resume was particularly impressive with attempted murder and other violent felony convictions. When U.S. Customs arrived, it was determined that the two subjects had each been denied entry into the U.S. on three separate occasions. Arrests were made and the vessel and occupants were taken to the Blaine Customs facility for processing. One of the subjects, according to the credit card companies, was found to be in possession of multiple credit cards affixed with false numbers. The two subjects were handed over to the Canadian authorities, minus the vessel, which is currently in the custody of U.S. Customs.

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### OPERATION A & W, SEPT 30 – OCT 2, 2009

#### HIGHLIGHTS OF VIOLATIONS DISCOVERED



**- 17 Totes Pink salmon and roe; Seven Seas to Lone Tree Pt. (INBOUND TRAFFIC-BLAINE)**

**Violations:** About 600 lbs. roe not listed on manifest – fined and refused entry by U.S. Customs.

**- Whale baleen and walrus oosik; (INBOUND TRAFFIC – SUMAS)**

**Violations:** Seized under Marine Mammal Protection Act by NOAA and U.S. Fish and Wildlife.

**- 1 Truck shipment carrying rockfish, enroute to various U.S. destinations (INBOUND TRAFFIC –BLAINE)**

**Violations:** Rockfish were improperly labeled for Lacey Act standards; two Lacey Act violations; two separate companies will be fined.

**- Black bear hide and meat; (INBOUND TRAFFIC – SUMAS)**

**Violations:** Lacked required CITES permit – seized by U.S. Fish and Wildlife; Subsequent inspection by Alaska Wildlife Trooper discovered that the bear hide was not sealed, which is required for bear taken in the reported harvest area. Further Investigations will be conducted.



## Agency Narrative

# Marine Mammal Protection Act (MMPA)

### *Introduction: Southern Resident Orca Whales*

*The Washington Department of Fish and Wildlife (WDFW) has been heavily engaged in Southern Resident Killer Whale protection every season since the federal listing of the Southern Resident population of whales as endangered in 2005. WDFW uniformed officers have conducted between 30 and 40 dedicated Killer Whale protection patrols each of the past six years. Throughout this time, WDFW officers who are assigned to the region have become very proficient at conducting outreach and enforcement activities in the presence of Killer Whales. In 2008, WDFW developed the first effective law (RCW 77.15.740) that was specifically focused on protection of Southern Resident Killer Whales. WDFW's primary focus has historically been on outreach and education but the State law has been successfully used against many of the most egregious violators. To date, WDFW has issued and successfully prosecuted 15 citations under the State law. The majority of these citations were issued to commercial whale watching operators or owners.*

### Elephant Seal

Officer Olson received a phone call from Seattle Police Dispatch informing him of a seal that was in the backyard of a West Seattle home. The seal had a large hook protruding from the side of its mouth, as well as a large fish that was attached to the hook. Officer Olson responded to find an elephant seal in the backyard with a large ratfish affixed to an equally large hook. The hook had punctured through the side of the animal's mouth and could be seen protruding from the cheek. Using his catchpole, Officer Olson set aside all human fears and removed the hook from its mouth.







## Gray Whale Die Off

Gray Whale mortalities are not unusual, but the amount of animals this year were. Officers responded to a number of strandings and deaths in an effort to support NOAA scientists and keep people from carting off the whale parts.



## Sea Lion In The Roadway

Officer Flowers received a call from dispatch at his residence advising that they were receiving multiple calls about a sea lion obstructing traffic on Agate Road. Officer Flowers responded to the area and found a sea lion just flopping along the road shoulder about a half-mile from the water. Officer Flowers captured the sea lion with the assistance of county deputies and he transported the sea lion back to the water.







## Contact Information:

Deputy Chief Mike Cenci  
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE  
Enforcement Program  
600 Capitol Way North  
Olympia WA 98501 1091  
Email: CENCIMAC@DFW.WAGOV



COASTAL PELAGIC SPECIES ADVISORY SUBPANEL REPORT ON WASHINGTON  
DEPARTMENT OF FISH AND WILDLIFE (WDFW) ENFORCEMENT REPORT

The Coastal Pelagic Species Advisory Subpanel (CPSAS) received a report from National Oceanic and Atmospheric Administration (NOAA) counsel Paul Ortiz relating to the proposed Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (“Penalty Policy”). Under the Penalty Policy, penalties are based on three criteria: (1) penalty amount reflects the seriousness of the violation; (2) penalty adjustment to reflect particular circumstances, and (3) additional amount added to the penalty to recoup the economic benefit gained by the violator. The Penalty Policy is intended to standardize or provide a “one size fits all” penalty schedule across all regions and fisheries.

The CPSAS believes the proposed Penalty Policy deprives NOAA attorneys of the needed flexibility to recommend penalties that reflect the unique factual pattern that inevitably surrounds each and every alleged violation. This policy will result in excessive penalties for many technical or minor violations and will impede the fair and expeditious settlement of violations through the administrative process. The CPSAS believes this policy is in response to examples of inconsistent enforcement and imposition of penalties in the East Coast ground fisheries. Simply put, it is wholly unnecessary to create a national policy for a problem that does not exist nationwide.

With that said, the CPSAS believes the proposed Penalty Policy, at a minimum, must address the following:

1. NOAA attorneys must have greater flexibility in determining the base penalty amount. Having one penalty matrix for all Magnuson-Stevens Act violations simply does not allow sufficient discretion to take into account the economic diversity of fisheries and the respective management/conservation measures. NOAA should maintain its current practice of allowing its attorneys to recommend penalties unique to each region, fishery, and type of violation.
2. A single occurrence could lead to multiple violations and resulting penalties. The policy provides no clear guidance on how such violations would be considered for penalty purposes. Again, the desire to standardize penalties and eliminate discretion could very well result in highly punitive and wholly unintended consequences.
3. No one disputes that repeat violators should face stiff penalties and potential license sanctions. However, not all violations, especially prior warnings or minor violations, should be considered prior violations for purposes of increasing penalties. If minor violators would have known that NOAA would later seek this proposed Penalty Policy calling for significantly higher penalties and/or permit sanctions, they may have elected to contest the violation. For this reason, no prior violation before the effective date of this Penalty Policy should be considered prior non-compliance unless it involved a clear intent to violate the statute or an economic benefit in excess of \$10,000.

4. Today's fisheries often require the vessel owner to hire a substitute or alternate operator. If the hired operator has a prior violation and engages in conduct resulting in a subsequent violation while operating the owner's vessel, then that owner is also treated as a prior violator. Under these circumstances, the Penalty Policy should allow the NOAA attorney broad discretion relative to the owner's penalty when it can be established that the owner exercised due diligence to determine whether the operator had a prior violation.
5. The CPSAS received the copy of the Federal Register Notice (Agenda Item C.1.c Proposed Penalty Schedule). This did not give anyone adequate time to read or comprehend the scope of proposed penalty changes. Nor was there any outreach to the industry to see how such changes might adversely affect their livelihoods. Some of these proposed changes are draconian and sweeping in nature. The character of these are difficult to understand and seem aimed to further punish an industry that must now consult numerous regulations before they can ever put a line in the water or drop a net over the side. In short, the vessels and processors are now facing additional liability in their day-to-day operations.

PFMC  
11/7/10



## ENFORCEMENT CONSULTANTS REPORT ON DRAFT NOAA POLICY FOR THE ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES AND PERMIT SANCTIONS

The Enforcement Consultants (EC) reviewed the document *Draft NOAA Policy for Assessment of Penalties and Permit Sanctions – October 18, 2010* and appreciates the opportunity to provide related comment. As you know, your EC is structured in a way to ensure that all enforcement entities with a stake in Council business have an opportunity to be a part of the process and comment on issues before you. Our formal committee comments are generally the result of a team approach. However, given that National Oceanic Atmospheric Administration's Office of Law Enforcement (NOAA OLE) is the subject of the Office of the Inspector General (OIG) investigation, NOAA OLE representatives have recused themselves from our formal comment on this matter.

The EC applauds the NOAA Office of General Counsel – Enforcement and Litigation (GCEL) efforts to develop guidance to NOAA Attorneys on penalties and permit sanctions. The EC did, however, identify three areas of concern related to this new draft NOAA policy: (1) the policy is based on a “one size fits all” strategy, (2) the discretion of the NOAA attorney prosecuting the case is limited and the process is slowed by further GCEL Headquarter review, and (3) the penalty matrix requires penalty ranges higher for the most part than currently seen on the West Coast.

### One Size Fits All

This draft policy is an attempt to provide a nationwide policy but does not take into account nor give flexibility to regional differences and issues. The complexity and differences in the way fisheries are prosecuted on the West Coast sets us apart from other areas of the nation. Violations that are viewed as significant in some areas may be viewed as less severe in other areas. For instance, a grounding event in West Coast rocky shoreline habitat conditions is different than a grounding event in a sensitive coral habitat. Yet based on the new schedule, these two events would be evaluated with the same criteria and penalty assessments. The EC is concerned that regional enforcement efforts would be compromised by an arbitrary system that does not allow for flexibility and localized discretion regarding penalties.

### Limits Discretion and Slows Process

As reported in the draft policy, page 2 bottom paragraph, NOAA attorneys only have an option to recommend charges. Recommendations are a new requirement and NOAA attorneys must forward all recommendation to NOAA GCEL Headquarters in Silver Spring, Maryland, where all cases are reviewed and charging decisions determined. While some oversight may be necessary, the EC feels this extra layer of mandated oversight will only lengthen the time frame of charging notification and case conclusion.

As the EC previously commented upon in June 2010, regarding the *NOAA Fisheries Enforcement Programs and Operations* document (Agenda Item A.3), the EC understands the importance of operators and/or vessel owners receiving timely notification of enforcement actions. The inability to be timely may be related to in-depth or complex investigations requiring

more time to conclude. Having said that, timely prosecution is the expectation and right of every US citizen. Failure to provide this erodes compliance in the long term.

#### Higher West Coast Penalties

According to the OIG report, penalties for east coast violations were disproportionately higher than other parts of the country. This design does not appear to address that issue, and in fact increases current west coast penalties without justification.

This policy establishes a punishment range based on a number of criteria as displayed by the penalty matrix. While the EC agrees that structure should be present in the assessment process, fitting violation categories nationwide into the same boxes increases the penalty of a number of current violations for the west coast fisheries. This may result in unreasonable fine levels depending on the offense and the impact of the violation on legitimate fishing industry and natural resources. Consistent with our comments from June 2010 Council meeting, we (EC) do agree that violations should have clear punishments with ranges that make sense.

On the west coast, the states adopt Federal regulations into state rule, and violations thus can be charged in the state or Federal system. The differences in penalties between state and Federal schedules should be considered when determining reasonableness of the proposed Federal penalty schedule. For instance, Southern Resident Orca whales are listed as endangered under Federal and state law. Vessel harassment is a concern and regulated by a state law. Coming within 100 yards of an Orca whale is punishable in the state system by a \$500 civil fine. Conversely, in the Draft NOAA Penalty Assessment document (Pg. 21 Example 6) coming within minimum distances of a Humpback whale is punishable with a \$4750 civil penalty.

As outlined previously, the EC is of the opinion that the new policy as proposed by NOAA, will adversely affect regional enforcement efforts on the west coast by instituting a one size fits all policy placing limits on regional discretion, slowing the overall process, and placing more severe penalties on west coast fisheries without justification for the increases.

The goal of enforcement is to ensure compliance with management and regulatory systems. It is advantageous to have a number of options for enforcement that can achieve compliance. The EC is supportive of a consistent and objective process for assessing any penalty. The EC suggests that NOAA GCEL take a regional approach to the policy development. In this approach NOAA, regional State partners, and industry representatives can meet to discuss a proposed penalty assessment model. The resulting penalty schedule should result in a more localized and effective tool for compliance.

PPMC  
11/8/10



#### **WEST COAST JEA STATES OF WASHINGTON, CALIFORNIA, AND OREGON**

In response to a request by Council member, Mr. Phil Anderson, the state partners of the Enforcement Consultants (EC) have prepared a briefing paper regarding the reduction of Joint Enforcement Agreement (JEA) funding for the West Coast States for 2011. The state partners respectfully request that the Council consider writing a letter to NOAA supporting an increase in funding for the West Coast States, based on the following theme:

***The protection of recovering fish populations and their habitats, along with increasing regulatory complexity associated with management of West Coast recreational and commercial fisheries requires additional funded enforcement presence, not less.***

The West Coast States have been involved in a decades-long Cooperative Enforcement Agreement (CEA) with the National Oceanic Atmospheric Administration Office for Law Enforcement (NOAA OLE). That partnership was eventually supported with funding through an annual Joint Enforcement Agreement (JEA) opportunity available to the nations coastal states.

The 2011 JEA solicitation period resulted in funding reductions from previous levels for all three West Coast States (WA – 5.32%; OR – 6.74%; CA – 2.57%). At the same time at least 11 other states (10 East Coast States and Hawaii) received increased allocations totaling almost \$1.2 million, with Hawaii nearly doubling.

While the allocation of JEA funds for federal fisheries protection is based on a number of criteria in the NOAA award matrix being pounds of commercial and recreational catch, angler trips, and number of processor/wholesale dealers. The formula is heavily weighted toward the total amount of pounds of federally regulated fish or shellfish that are delivered into a given state. This model design favors abundant and sustainable fisheries. No value is placed on the protection of stocks that have declined. Nor has the thousands of miles of inland rivers and creeks requiring an enforcement presence been considered, something that is necessary to protect migrating species relying on freshwater as part of their life cycle. It is unclear if the reductions for the West Coast were used to fund increases for other regions. We do know that some award enhancements were based on increases in fish landings resulting in a higher funding score for some states, but the rationale behind the others is unclear.



The West Coast States are home to 33 salmon and steelhead stocks listed as threatened or endangered under the Endangered Species Act (ESA), with more salmonid populations listed as a “species of concern”. Eulachon and Green Sturgeon are also listed under the ESA. Enforcement of ESA regulations in either state inland or Federal waters is an important part of the NOAA-OLE function in our region, and is currently addressed in the various JEA agreements as a patrol priority. Since many of these ESA listed species migrate through marine and freshwater boundaries, the three jurisdictions rely on one another to provide adequate protection. Some salmon and steelhead populations are returning to freshwater to spawn in smaller and smaller numbers (single digits in some cases), a far cry from when they numbered in the tens of thousands. Illegal take or spawning habitat damage can result in irreversible impacts to stock recovery.

In addition to the ESA concerns, the West Coast has seven Pacific Coast rockfish populations and Petrale Sole designated as overfished under the Magnuson Stevens Fishery Conservation and Management Act. These fish are long lived and slow to reproduce. The effects of non-compliance with regulations in place to ensure rebuilding plan success can have major stock and industry-wide consequences.

In light of virtually every marine and fresh water area on the West Coast occupied by an ESA listed or an over fished designated species, access to healthy federal fisheries by commercial and recreational interests is often constrained. As a result, fisheries managers struggle with how to provide harvest opportunity on healthy populations without impacting rebuilding efforts for species that require recovery. Minimizing impacts is in part achieved through a combination of season structures, area closures and mandated specialized gear and release techniques meant to increase survivability for incidentally caught fish. As a consequence, we probably have the most complex set of fisheries regulations in the world.

The expertise required to monitor these fisheries necessitates officer specialization in order to be effective. The West Coast fisheries enforcement agencies are facing the most complex set of regulations ever implemented with the onset of Trawl Rationalization, a program involving over 90 species of groundfish. The West Coast fisheries enforcement agencies are facing the perfect storm of limited resources combined with additional demands for service. Now is not the time to reduce funding for the JEA partners.

The West Coast States again appreciate the Council’s consideration in writing a letter to NOAA to express how further funding consideration should be given to overfished species and ESA related issues as it relates to West Coast fisheries protection and enforcement.

PFMC  
11/08/10

## GROUND FISH ADVISORY SUBPANEL REPORT ON THE WASHINGTON DEPARTMENT OF FISH AND WILDLIFE (WDFW) ENFORCEMENT REPORT

The Groundfish Advisory Subpanel (GAP) reviewed the National Oceanic and Atmospheric Administration (NOAA) Notice of Availability for Assessment of Penalties and Permit Sanctions and developed the following comments, which are also endorsed by the Salmon Advisory Subpanel. We discussed the proposed changes with Mr. Paul Ortiz from NOAA General Counsel for Enforcement Litigation. The GAP is very concerned about the “one-size-fits-all” penalty schedule approach being proposed for the whole country. We would like to retain more flexibility at the local level. In our experience, the west coast groundfish penalty schedule provides for strong, yet fair, enforcement.

Specific concerns include:

- Proposed penalties are too steep on the upper end of the range than necessary or appropriate. Moreover, the additive effect of multiple violations and past violations by any member of the crew or the vessel owner are excessively punitive.
- Retain more discretion at the local and regional level than appears to be provided for in the proposed rule.
- Notice of violations should be as soon as practicable, especially if the perceived violation is the result of a simple mistake. In addition, vessel owners should be notified as soon as the violation is seen by enforcement.
- The GAP is concerned about how previous violations by vessel owners, skippers, or crew for a vessel found in violation automatically result in increased penalties. This imposes a great risk on an individual of incurring a larger penalty because of unknown past actions of other individuals.
- Provide option of civil proceeding/jury trial or administrative law judge (ALJ), current practice requires first appealing to an ALJ and then, based on the outcome, going to civil proceeding/jury trial.
- Trawlers on the GAP expressed concern about the higher penalty category for trawl gear violations within National Marine Sanctuaries relative to other fishing gears.
- Relative to duration of time that past violations can be considered in new cases, it is unclear to the GAP what current practice is and what is proposed in the rule. The GAP recommends a two year duration for considering past offenses.
- Related to the issue of past violations causing higher penalties, the GAP recommends that, upon request, NOAA Office of Law Enforcement provide information to vessel owners about past violations by prospective employees. The current document states that

past violations will be considered for any subsequent violation. The GAP believes this may not be appropriate in all cases and recommends changing the language such that past violations may be considered for any subsequent violation.

The GAP recommends the Council develop a letter to NOAA in response to the proposed rule and to convey our comments and those of the other advisory bodies.

PFMC  
11/07/10



HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON DRAFT POLICY  
FOR THE ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES AND PERMIT  
SANCTIONS AS PROPOSED BY THE OFFICE OF GENERAL COUNSEL (OGC) AND  
NOAA AT 75 FR 64987 (OCT. 21, 2010)

Presently National Oceanic and Atmospheric Administration (NOAA) exercises the practice of developing detailed civil penalty schedules “by region and by specific types of violations with broad ranges for both penalties and permit sanctions.” The new proposed penalty policy eliminates a regional approach for developing penalty schedules and replaces it with a national approach. It also establishes “one penalty and permit sanction matrix for each major statute NOAA enforces.” NOAA and the Office of General Counsel argue that these “simplified changes” “should assure fairness and consistency across NOAA statutes, access fisheries, and across the country.” The Highly Migratory Species Advisory Subpanel disagrees. In our opinion the element of flexibility in seeking an early resolution of the dispute by the parties in our region would be unnecessarily hindered by an assessment approach based upon a need for national consistency.

It is important for the parties in our region to resolve their dispute as efficiently as possible. The initial determination of the assessment is the first step in this process. This concern does not mean that NOAA should ignore the needs of greater transparency and predictability for the regulated community and the public.

In our opinion, a national assessment approach ignores the reality that some, if not all, major statutes that NOAA enforces, are involved with fisheries that are pursued on a regional level. The parties in the dispute should be encouraged to use the assessment as a starting point for the resolution of the dispute. The assessment should not be determined solely for the need for uniformity on a national level.

PFMC  
11/9/10



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Silver Spring, Maryland 20910

November 8, 2010

Donald McIsaac  
Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Dear Director McIsaac:

The NOAA Fisheries Office of Law Enforcement (OLE) and the NOAA Office of General Counsel for Enforcement and Litigation (GCEL) are seeking comment from the public and other interested stakeholders on setting annual priorities at the national and regional level.

The priorities adopted will support NOAA's statutory mandates to manage marine resources and Department of Commerce and NOAA strategic goals. We intend to utilize stakeholder recommendations, emphasize partnerships with State and Federal partners, work to increase compliance, and implement the priorities in a manner that will result in effective and fair enforcement programs.

Regional enforcement proposals will be reviewed annually and national priorities every two years.

This request for recommendations follows the August 2010 NOAA National Enforcement Summit that brought together more than 60 stakeholders from the commercial and recreational fishing industries, non-governmental organizations, and state and federal enforcement officials to focus on how NOAA can better manage marine resources through consistent and transparent enforcement of natural resource laws.

NOAA is particularly interested in recommendations from all interested parties on how the agency can develop national and regional priorities that reflect:

- The potential effect and/or threat of non-compliance to the resource (high, medium, low);
- The status of the resource (e.g., endangered, threatened, depleted, overfished, overfishing occurring, etc.);
- Efforts to improve compliance;
- Opportunities for deterrence;
- Catch share programs;
- Efforts on cases outside specific priorities;
- Available resources; and
- Other considerations as warranted.

NOAA will be seeking recommendations during a number of meetings this fall. If the Council or any interested party wishes to provide recommendations, please forward them to the Regional NOAA OLE Special Agent in Charge (listed below) no later than December 15, 2010.

Thank you for your assistance in this matter.

Sincerely,

  
Alan Risenhoover  
Acting Director



Office of Law Enforcement

**Northwest Division**

Special Agent in Charge Vicki Nomura  
7600 Sand Point Way  
Seattle, WA 98115  
(206) 526-6133  
[Vicki.Nomura@noaa.gov](mailto:Vicki.Nomura@noaa.gov)

**Southwest Division**

Special Agent in Charge Don Masters  
501 W. Ocean Blvd  
Suite 4300  
Long Beach, CA 90802-4213  
(562) 980-4050  
[Don.Masters@noaa.gov](mailto:Don.Masters@noaa.gov)

cc: Vicki Nomura  
Don Masters



import specimens of northern fur seals (*Callorhinus ursinus*) for scientific research.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before November 22, 2010.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, <http://apps.nmfs.noaa.gov>, and then selecting File No. 14525 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713-0376, or by e-mail to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Please include File No. 14525 in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Jennifer Skidmore, (301) 713-2289.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to import biological samples from 10 subadult male fur seals over a five-year period for studies on mechanisms of sleep in fur seals. Fur seals will be captured in Russia, held in captivity, sampled while in captivity, and euthanized at the termination of study to obtain their brains. Whole brains and brain tissues will be imported to the U.S. for anatomical and immunohistochemical studies. The first aim of the project is to correlate the release of major neurotransmitters in the brain of the fur

seal during sleep and waking using microdialysis, high-performance liquid chromatography and radioimmunoassay analysis. The second aim of the study is to localize the distribution of the above mentioned cell groups in the fur seal brain as well as to localize the positions of the sites where the microdialysis samples were collected. Samples would be imported from Russia to UCLA for analysis and samples would be exported from the U.S. to South Africa for additional analysis.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 15, 2010.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010-26648 Filed 10-20-10; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 101014509-0508-01]

RIN 0648-XZ62

### Notice of Availability of Draft Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions for Public Review and Comment

**AGENCY:** Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) announces the availability of a draft Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy) for public review and comment.

**DATES:** The draft Penalty Policy will remain available for public review until December 20, 2010. To ensure that comments will be considered, NOAA must receive written comments by December 20, 2010.

**ADDRESSES:** Interested persons may submit comments by any of the following methods:

- **Electronic Submissions:** Submit electronic public comments via the Federal e-Rulemaking portal <http://www.regulations.gov> or [penaltypolicy@noaa.gov](mailto:penaltypolicy@noaa.gov);

- **Fax:** 301 427-2210; Attn: Frank Sprtel;

- **Mail:** Office of General Counsel for Enforcement and Litigation, National Oceanic and Atmospheric Administration, 8484 Georgia Avenue, Suite 400, Silver Spring, MD 20910, Attn: Frank Sprtel.

The draft Penalty Policy is available electronically at the following Web site: <http://www.nmfs.noaa.gov/ole/penaltypolicy.html>. Commenters may also request a hard copy of the draft Penalty Policy by sending a self-addressed envelope (size 8.5 x 11 inches) to the street address provided above. Comments submitted in response to this notice are a matter of public record. Before including an address, phone number, e-mail address, or other personal identifying information in a comment, please be aware that comments—including any personal identifying information—can and will be made publicly available. While a request can be made to withhold personal identifying information from public review, NOAA cannot ensure that it will be able to do so.

**FOR FURTHER INFORMATION CONTACT:** Frank Sprtel at the above address or by telephone at 301 495-7147.

**SUPPLEMENTARY INFORMATION:** The draft Penalty Policy is intended to provide guidance for the Assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA. As explained more fully in the text of the draft Penalty Policy, the purpose of the Policy is to ensure that: (1) Civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and permit sanctions are sufficient to deter both particular violators and the regulated community from committing violations; (4) economic incentives for noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources. Under this Policy, NOAA expects to improve consistency at a national level, provide greater predictability for the regulated community and the public, improve

transparency in enforcement, and more effectively protect natural resources.

Under the proposed penalty policy, penalties and permit sanctions are based on three criteria: (1) A base penalty amount and permit sanction reflective of the seriousness of the violation; (2) an adjustment of the base penalty and permit sanction upward or downward to reflect particular circumstances of a specific violation; and (3) an additional amount added to the adjusted base penalty to recoup the economic benefit of noncompliance. We note that the new penalty policy is a departure from NOAA's prior practice of developing detailed penalty schedules by region and by specific types of violations with broad ranges for both penalty and permit sanctions. The new policy uses a simplified approach of one penalty and permit sanction matrix for each major statute NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This approach assures that NOAA attorneys are provided with greater guidance in recommending penalties, and should assure fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

When finalized, this draft Penalty Policy will supersede previous guidance regarding assessment of penalties or permit sanctions and previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel. This Penalty Policy provides guidance for the NOAA Office of the General Counsel, but does not, nor is it intended to, create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person or company.

The full penalty policy, along with examples, matrixes, and schedules, can be found at <http://www.nmfs.noaa.gov/ole/penaltypolicy.html>. NOAA is seeking public comment on all portions of the penalty policy, but specifically asks for comment in the following areas: (1) The handling of recreational, versus commercial, activity in assessing penalties—specifically, whether to create separate matrixes and/or schedules for recreational activity in the penalty policy, or to leave such distinctions as an “adjustment” factor, as currently written; (2) the evaluation of prior violations in assessing penalties—specifically, whether to create upward penalty assessments based on prior charged conduct, or only to consider prior conduct that is fully adjudicated; (3) whether the proposed use of permit sanctions in the penalty policy is appropriate; (4) whether any additional upward or downward “adjustment”

factors should be considered in assessing penalties under the penalty policy; (5) whether the matrixes and schedules in the penalty policy (Appendices 2 and 3), adequately reflect an appropriate range of penalties for particular violations; and (6) whether there should be any change in the proposed method of calculating economic benefit in the penalty policy.

Dated: October 15, 2010.

**Lois J. Schiffer,**

*General Counsel, National Oceanic and Atmospheric Administration.*

[FR Doc. 2010-26417 Filed 10-15-10; 4:15 pm]

**BILLING CODE 3510-12-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-533-843]

#### **Certain Lined Paper Products From India: Notice of Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain lined paper products (CLPP) from India. For the period September 1, 2008, through August 31, 2009, we have preliminarily determined that Navneet Publications (India) Limited (Navneet) did not make sales of subject merchandise at less than normal value (NV) (*i.e.*, sales were made at *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate appropriate entries without regard to antidumping duties. For the same period, we have preliminarily determined that U.S. sales have been made below NV by Super Impex. If these preliminary results are adopted in our final results, we will instruct CBP to assess antidumping duties based on the difference between the export price (EP) and NV. See “Preliminary Results of Review” section of this notice. Interested parties are invited to comment on these preliminary results.

**DATES:** *Effective Date:* October 21, 2010.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Moore (Navneet) or Cindy Robinson (Super Impex) AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue, NW., Washington, DC 20230; telephone (202) 482-3692 or (202) 482-3797, respectively.

### Background

On September 1, 2009, the Department issued a notice of opportunity to request an administrative review of this order for the period of review (POR) of September 1, 2008, through August 31, 2009. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 45179 (September 1, 2009).

Pursuant to a request from the Association of American School Paper Suppliers, (petitioner),<sup>1</sup> the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to 32 companies, including Navneet and Super Impex for the period September 1, 2008, through August 31, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 54956 (October 26, 2009). (*Initiation Notice*). On October 26, 2009, the petitioner timely withdrew its request for a review of Blue Bird (India) Limited (Blue Bird).

On November 3, 2009, the Department notified interested parties of its intent to use CBP data for respondent selection. See Memorandum to The File, Through Melissa Skinner, Office Director, Office 3 and Through James Terpstra, Program Manager, Office 3 from Stephanie Moore, Case Analyst titled “Customs and Border Patrol Data for Selection of Respondents for Individual Review.”

On November 10 and December 3, 2009, the Department received comments regarding respondent selection from the petitioner. On January 29, 2010, the Department selected Navneet and Super Impex as companies to be individually examined

<sup>1</sup> On September 30, 2009, the Department received a timely request to conduct an administrative review of the following 32 companies: Abhinav Paper Products Pvt. Ltd.; American Scholar, Inc., and/or I-Scholar; Ampoules & Vials Mfg. Co., Ltd.; Bafna Exports; Blue Bird India Ltd.; Cello International Pvt. Ltd (M/S Cello Paper Products); Creative Divya; Corporate Stationery Pvt. Ltd.; D.D International; Exmart International Pvt. Ltd.; Fatechand Mahendrakumar; FFI International; Freight India Logistics Pvt. Ltd.; International Greetings Pvt. Ltd.; Lodha Offset Limited; Magic International Pvt. Ltd.; Marigold ExIm Pvt. Ltd.; Marisa International; Navneet Publications (India) Ltd.; Paperwise Inc.; Pioneer Stationery Pvt. Ltd.; Premier Exports; Riddhi Enterprises; SAB International; SAR Transport Systems; Seet Kamal International; Solitaire Logistics Pvt. Ltd. (Eternity Int'l Freight, forwarder on behalf of Solitaire Logistics Pvt. Ltd.); Sonal Printers Pvt. Ltd.; Super Impex; Swati Growth Funds Ltd.; V & M; and Yash Laminates.

Draft Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions  
NOAA Office of the General Counsel – Enforcement and Litigation

I. Statement of Scope and Purpose

This Policy provides guidance for the assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA.

The purpose of this Policy is to ensure that: (1) civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and permit sanctions are sufficient to deter both particular violators and the regulated community from committing violations; (4) economic incentives for noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources. Under this Policy, NOAA expects to improve consistency at a national level, provide greater predictability for the regulated community and the public, improve transparency in enforcement, and more effectively protect natural resources.

This Policy supersedes all previous guidance regarding assessment of penalties or permit sanctions and all previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel.<sup>1</sup>

To assist in the interpretation of this Policy, attached to this Policy are three Appendixes: (1) Appendix 1 is a preliminary penalty assessment worksheet; (2) Appendix 2 consists of seven penalty matrixes, one for each of the seven statutes most commonly enforced by NOAA; and (3) Appendix 3 consists of seven offense level schedules, corresponding to each of the seven matrixes listed in Appendix 2. A more detailed explanation for the use of the Appendixes is described herein.

This Policy provides guidance for the NOAA Office of the General Counsel, but does not, nor is it intended to, create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person or company.

II. Statutory Background and Enforcement Framework

NOAA has authority and responsibility under more than 30 federal statutes to protect living marine resources, including marine areas and species, and create sustainable fisheries. A large proportion of NOAA's enforcement cases are brought under seven statutes – the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Marine Sanctuaries Act, the Endangered Species Act, the Marine Mammal Protection Act, the

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<sup>1</sup> This penalty policy does not address, and is not meant to affect, NOAA's summary settlement schedules or related delegations of authority. Further, NOAA will consider maintaining any policies brought to its attention during the comment period that are deemed important to maintaining NOAA's enforcement goals.



Lacey Act, the Northern Pacific Halibut Act, and the Antarctic Marine Living Resources Convention Act.

Officers and agents in the NOAA Office of Law Enforcement, the U.S. Coast Guard, Customs and Border Patrol, and State officers authorized under Cooperative Enforcement Agreements monitor compliance and investigate potential violations of the statutes and regulations enforced by NOAA. In general, when an investigating agent identifies a statutory violation he or she may pursue one of several available options, depending on the nature and seriousness of the violation.

Where a violation is less significant or technical, having little to no impact on marine resources, the agent may provide a verbal or written warning or issue a “Fix-It Ticket,” which provides the alleged violator with an opportunity to correct the violation within a certain amount of time and waives all penalties if the alleged violator takes the appropriate curative action.

For certain less significant violations, the agent may also issue a “summary settlement” notice, under authority delegated to the agent by the NOAA Office of General Counsel. Under the terms of a summary settlement, an alleged violator receives a document explaining the alleged violation and the alleged violator is permitted to resolve the matter expeditiously by paying a reduced penalty. The determination of appropriate summary settlement penalties is guided by summary settlement schedules developed by the Office of General Counsel, with input from the NOAA Office of Law Enforcement and, often, the relevant program office. *See* <http://www.gc.noaa.gov/enforce-office3.html>.

Where an agent determines that an alleged violation is significant, or where an alleged violator has one or more prior violations, or does not pay a proposed summary settlement amount, the agent may refer the case to the NOAA General Counsel’s Office for Enforcement and Litigation (GCEL) for further civil action or, often working with GCEL attorneys, to a U.S. Attorney’s office for criminal prosecution. U.S. Coast Guard officers, state officers operating under Cooperative Enforcement Agreements, and agents from the U.S. Fish and Wildlife Service or Customs and Border Protection, investigate cases, and where appropriate, submit proposed cases to OLE agents to determine the proper action to take.

A NOAA attorney assigned to a case, in consultation with the investigating agent, evaluates whether evidence in the case demonstrates a violation of a NOAA statute or regulation, and determines whether to recommend charging the alleged violator or declining the case. If the NOAA attorney determines that it is appropriate to recommend filing charges, the attorney then has a number of remedial options. For less significant cases, the attorney may recommend a Written Warning; this action is appropriate where the alleged activity has a limited impact on natural resources, the alleged violator demonstrates a high degree of cooperation, the alleged violator takes corrective action that substantially mitigates or eliminates the impact of the violation, or a substantial amount of time has passed from the date of the violation. For more significant violations, the NOAA attorney may recommend charges under NOAA’s civil administrative process (*see* 15 C.F.R. Part 904), through issuance of a Notice of Violation and Assessment of a penalty (NOVA), Notice of Permit Sanction (NOPS), Notice of Intent to Deny Permit (NIDP), or some combination thereof. Alternatively, the NOAA attorney may determine

that the violation is sufficiently significant to warrant referral to a U.S. Attorney's office for criminal prosecution.

### III. Summary of the Penalty Policy

Any penalty policy must start with the statutory and regulatory requirements for establishing appropriate penalties. While there is significant variation in the maximum penalties and sanctions authorized under the statutes most commonly enforced by NOAA, the factors used to determine an appropriate penalty or permit sanction under these statutes are similar: the nature, circumstances, extent and gravity of the alleged violation, the alleged violator's degree of culpability, the alleged violator's history of prior offenses, and the alleged violator's ability to pay the penalty. *See* 15 C.F.R. 904.108(a).<sup>2</sup> This Policy utilizes these statutory principles to create a system for determining appropriate penalties.

Under this Policy, penalties and permit sanctions are based on three criteria: (1) a base penalty amount and permit sanction reflective of the seriousness of the violation; (2) an adjustment of the base penalty and permit sanction upward or downward to reflect particular circumstances of a specific violation; and (3) an additional amount added to the adjusted base penalty to recoup the economic benefit of noncompliance. Described as an equation:

[Base Penalty based on Seriousness] + [Upward/Downward Adjustment for Specific Circumstances] + [Economic Benefit] = [Penalty Assessment and Permit Sanctions]

We note that this Policy is a departure from NOAA's prior practice of developing detailed penalty schedules by region and by specific types of violations with broad ranges for both penalty and permit sanctions. The Policy uses a simplified approach of having one penalty and permit sanction matrix for each major statute that NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This approach assures that NOAA attorneys are

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<sup>2</sup> The most common statutes enforced by NOAA are the Magnuson-Stevens Act (16 U.S.C. 1801, *et. seq.*); the National Marine Sanctuaries Act (16 U.S.C. 1431, *et. seq.*); the Endangered Species Act (16 U.S.C. 1531, *et. seq.*); the Marine Mammal Protection Act (16 U.S.C. 1361, *et. seq.*), the Lacey Act (16 U.S.C. 3371, *et. seq.*), the Northern Pacific Halibut Act (16 U.S.C. 773, *et seq.*), and the Antarctic Marine Living Resources Conservation Act (16 U.S.C. 2431, *et seq.*). The current maximum statutory penalties permitted by the seven statutes most commonly enforced by NOAA are as follows:

Magnuson-Stevens Act – \$140,000 per violation  
National Marine Sanctuaries Act -- \$140,000 per violation  
Endangered Species Act – \$32,500 per violation (knowing violations - endangered species)  
Marine Mammal Protection Act – \$11,000 per violation  
Lacey Act -- \$11,000 per violation  
Northern Pacific Halibut Act -- \$200,000 per violation  
Antarctic Marine Living Resources Conservation Act -- \$11,000 per violation

Notably, at least once every four years, the Department of Commerce adjusts the maximum civil monetary penalties authorized by statute for inflation, pursuant to the Federal Civil Penalties Inflation Act (Pub. L. 101-410) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134). *See* 73 Fed. Reg. 75321 (Dec. 11, 2008).

provided with greater guidance in recommending penalties, and should assure fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

Base Penalty and Permit Sanction – Under this Policy, two factors are considered in determining the base penalty and permit sanction amount (collectively, the “base penalty”): (1) the potential for harm to the resource or regulatory program; and (2) the alleged violator’s degree of culpability, based on an assessment of the alleged violator’s intent in committing the violation. These two factors constitute the seriousness of the violation.

As detailed more fully below, the base penalty is determined by first finding the charged violation on the attached penalty schedules, which list the most common violations that NOAA charges (*see* Appendix 3). The schedules assign a particular “offense level” to each violation.<sup>3</sup> This offense level corresponds to the vertical axis of the attached penalty matrixes, which were developed for each of the seven major statutes that NOAA enforces (*see* Appendix 2). The proper penalty range is determined by using the offense level and the alleged violator’s degree of culpability, to find a penalty box within the appropriate matrix. The final base penalty is the midpoint of the penalty range within that box.

Adjustment Factors -- After determining the appropriate base penalty based on seriousness of the violation, the base penalty may be adjusted upward or downward to reflect the particular circumstances surrounding a specific violation, within the range of penalties and permit sanctions provided in the matrix. The following factors are considered in making this adjustment:

- a. The alleged violator’s history of non-compliance (i.e., whether there have been any prior violations);
- b. Whether the alleged violator’s conduct involves commercial or recreational activity;
- c. The conduct of the alleged violator after the violation – whether there is a good faith effort to comply or evidence of cooperation, or whether there is an attempt to avoid detection, interfere with an investigation, lie, or participate in other negative activity.

Economic Benefit – Finally, once the base penalty and adjustments are determined, an additional amount is added to the penalty to reflect the economic benefit gained by the alleged violator through his or her conduct. This additional amount is meant to remove any actual economic benefit to the alleged violator, and prevent unlawful activity from continuing as a “cost of doing business.” Absent extraordinary circumstances, the NOAA attorney will add to the base penalty, as adjusted, an amount equal to the economic benefit of noncompliance.

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<sup>3</sup>Where a violation is not listed in the schedules, the attorney determines the offense level by using the offense level of a similar listed violation. If no similar violation can be identified, the attorney chooses an appropriate offense level by assessing the seriousness of the violation based on criteria described herein.



#### IV. Establishing the Base Penalty Matrixes and Schedules

As noted above, to guide a NOAA attorney's recommendation of a base penalty, NOAA has developed a penalty matrix using the two factors that constitute seriousness of the violation for each of the seven statutes that NOAA most commonly enforces: potential harm to the resource or regulatory program and degree of culpability. The matrixes are set forth in Appendix 2. In addition, NOAA has developed corresponding schedules that provide guidance on the potential for harm (the harm "offense level") for the most common violations. These schedules are set forth in Appendix 3.

For each matrix, two factors – potential for harm to the resource or regulatory program and degree of culpability – form the two axes on the matrix. The vertical "potential for harm" axis is split into six different "offense levels" with increasing penalty ranges as the potential for harm to the resource and seriousness of the violation become more significant.<sup>4</sup> The horizontal "degree of culpability" or "intent" axis is split into four levels of increasing mental culpability, depending on whether the violation was the result of unintentional activity (accident or mistake), negligence, recklessness, or an intentional or willful act (*see* Appendix 2).

In determining the appropriate penalty range for each box in the matrixes, NOAA examined the maximum available penalties under the particular statute, and interpreted the relevant statutes as calling for graduated penalties from the most serious violation, warranting the maximum penalty, down to the least serious violation, warranting significantly lower penalties. We believe that this graduated scheme provides for a fair base penalty depending on the seriousness of the violation, as envisioned by the statutes.

With respect to permit sanctions, where applicable, the statutes that NOAA enforces generally provide broad authority to suspend or revoke permits. We note that while permit sanctions may be an important tool in deterring future violations, we are mindful that vessel or dealer permit sanctions may result in negative financial impacts to parties beyond the alleged violator(s) (e.g., crew, processors/dealers, commercial markets, from lost fishing effort). Given the impact that permit sanctions may have, permit sanctions generally are more appropriate in cases involving violations that are moderate to major in terms of their seriousness. We have therefore provided an incremental gradation of permit sanctions in the matrixes ranging from 0-20 days, 20-40 days, and 40-60 days depending on the seriousness of the violation.

Notably, there are certain circumstances where a permit sanction may be appropriate for offense levels lower than those indicated in the matrixes. For example, NOAA occasionally encounters an alleged violator in possession of large amounts of catch, where the value of the catch is in excess of statutory penalty limits. Historically, in these types of cases NOAA has charged a monetary fine, but then added a permit sanction as an additional penalty. NOAA retains the

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<sup>4</sup> Although there are six potential for harm offense levels for all of the statutes (I through VI), the offense levels have been compressed into four tiers for the Marine Mammal Protection Act, Endangered Species Act, Lacey Act, and the Antarctic Marine Living Resources Convention Act, to reflect the lower maximum penalties specified in these statutes.

discretion to continue this practice in the future to allow recoupment of the economic benefit of noncompliance above statutory penalty limits through an appropriate permit sanction.

Permit revocation is also appropriate in extraordinary cases. *See* 16 U.S.C. 1858(g)(i). Revocation may be appropriate, for example, where a permit is obtained by fraud or false information, or where a monetary penalty and permit suspension do not adequately reflect the serious nature of the violation. Permit revocation may be sought with prior approval of the NOAA General Counsel.

## V. Determining the Base Penalty Using the Matrix

In determining an appropriate base penalty, the NOAA attorney first determines an appropriate “potential for harm” offense level, using the listed schedules of common violations as a guide (Appendix 3). Where a violation is not listed in the schedules, the attorney determines the offense level by using the offense level of a similar listed violation. If no similar violation can be identified, the attorney will determine an appropriate offense level by assessing the seriousness of the violation. Once an offense level is established, the attorney will then determine the alleged violator’s degree of culpability, following the criteria set forth below. The base penalty (including the permit sanction) will be the midpoint of the penalty range in the appropriate matrix box determined using this method.

### A. Potential Harm to the Resource or Regulatory Program

There are six “potential for harm” offense levels assigned to each vertical axis of the matrixes, although these offense levels have been compressed into four for the Marine Mammal Protection Act, Endangered Species Act, Lacey Act, and Antarctic Marine Living Resources Convention Act (*see* Appendix 2). The six separate offense levels assigned to the Magnuson-Stevens Act, National Marine Sanctuaries Act, and Halibut Act reflect the higher monetary penalties provided for in these statutes, and the need for additional offense level classes to narrow the potential penalty ranges available for a particular violation.

The offense levels reflect a continuum of increasing potential harm to the resource or regulatory program, with offense level I representing the lowest potential harm, and offense level VI the greatest. Offense levels I and II apply to minor violations, which pose a relatively low likelihood of harm or degree of harm to the natural resource, or where the adverse effect on the statutory or regulatory purposes or procedures for implementing or enforcing the program is mostly administrative, technical or limited. Offense levels III and IV apply to moderate violations, which pose a significant likelihood of harm or degree of harm to the natural resource, or have a significant adverse effect on the statutory or regulatory purposes or procedures for implementing or enforcing the program. Offense levels V and VI apply to major violations, which pose a substantial likelihood of harm or degree of harm to the natural resource, or which may have a substantial adverse effect on the statutory or regulatory purposes or procedures for implementing or enforcing the program.

The attached schedules assign the most common violations to an offense level within the matrix. These schedules were created by evaluating the potential for harm resulting from a violation, considering the likelihood and degree of harm to the natural resource or regulatory program that the statute or regulation is intended to protect. The emphasis is placed on the potential harm posed by a violation rather than on whether harm actually occurred. The presence or absence of direct harm in a noncompliance situation is immaterial because it is something over which the alleged violator may have no control and, in cases where the alleged violator does have control, detection of evidence of the harm is easily frustrated. Thus, under this policy, a lower civil penalty is not assessed simply because the violation does not result in actual harm.

In making a determination of a proper penalty, NOAA attorneys will examine the attached schedules, and evaluate the proper offense level for a particular violation. Some violations in the schedules have a range of offense levels assigned to them; in these cases, the NOAA attorney will apply the offense level that corresponds to the potential for harm from the particular violation under review. To determine the proper offense level where a violation is not listed, NOAA attorneys will either determine the offense level by using the offense level of an analogous violation, or independently determine the level by considering the following factors:

- a. The nature and status of the resource at issue in the violation (e.g., is the fishery currently overfished or is the stock particularly vulnerable because it is slow to reproduce; did the violation involve measures designed to protect essential fish habitat, endangered/threatened species, or resources of a national marine sanctuary);
- b. Whether the violation involves fishing in closed areas, fishing in excess of quotas, fishing without a required permit, or fishing with unauthorized gear;
- c. Whether the violation provides a significant competitive advantage over legally operating fishers;
- d. The nature of the regulatory program (i.e., limited versus open access fishery);
- e. Whether the violation is difficult to detect without an on-scene enforcement presence or other compliance mechanisms such as Vessel Monitoring Systems (VMS) or an observer (e.g., unlawful discards; high-grading of catch, use or deployment of fish aggregating devices; gear conflicts; failure to use seabird or turtle interaction devices); and
- f. The potential damage to the regulatory scheme or program.

B. Degree of Culpability or Intent

The second axis of the penalty matrixes focuses on the degree of culpability or intent of the alleged violator when participating in the unlawful activity for which the penalty is being imposed. This axis reflects the importance that NOAA places on the degree of willfulness, recklessness, and/or negligence prior to and at the time of violation by the alleged violator.

There are four levels of culpability reflected in the matrixes: willfulness (intentional acts), recklessness, negligence, and accident or mistake (unintentional acts).

A willful violation generally exists when a violation is committed deliberately, voluntarily or intentionally. Willfulness may be particularly demonstrated by violations committed as part of a pattern, course of conduct, common scheme or conspiracy. Recklessness is a conscious disregard of a substantial risk of violating conservation measures that involves a gross deviation from the standard of conduct a law-abiding person would observe in a similar situation. Negligence is the failure to exercise the degree of care that a reasonably prudent person would exercise in like circumstances. The failure to know of applicable laws/regulations or to recognize when a violation has occurred may itself be evidence of negligence. Finally, an unintentional act is one that is inadvertent, unplanned, and the result of an accident or mistake, that should result in an assessment at the lowest penalty range, and reflect the strict liability nature of regulatory violations.

In assessing the degree of willfulness, recklessness, negligence, or unintentional behavior, a NOAA attorney should consider the following factors:

- a. Whether the alleged violator took reasonable precautions against the events constituting the violation;
- b. How much control the alleged violator had over the events constituting the violation;
- c. Whether the alleged violator knew or should have known of the potential harm associated with the conduct;
- d. Whether the alleged violator knew or should have known of the legal requirement that was violated; and
- e. Other similar factors as appropriate.

It should be noted that the factor regarding knowledge of the legal requirement should not be used as a basis to reduce the penalty. To do so would encourage ignorance of the law.

## VI. Penalty Adjustment Factors

As set forth in Section V above, the seriousness of the violation and the degree of culpability are considered in determining the base penalty. Further, any system for calculating penalties and permit sanctions must have enough flexibility to make adjustments that reflect legitimate differences between similar violations. These include history of noncompliance, whether the alleged violator's conduct involves commercial or recreational activity, and the conduct of the alleged violator after the violation.

Starting with the midpoint of the appropriate matrix box, the attorney will use the adjustment factors to move to a different box, or up or down on the scale of the box. These factors may



increase, decrease, or have no effect on the penalty and permit sanction to be assessed. Application of the adjustment factors is cumulative, i.e., more than one factor may apply in a case. In applying the adjustment factors, the NOAA attorney will use the information about the alleged violator and the violation available at the time of assessment.

In extraordinary circumstances, the base penalty may be adjusted above (or below) the high (or low) end of the base penalty range, with prior approval of the NOAA General Counsel.

### **History of Non-Compliance**

An alleged violator's previous violation of natural resource protection laws is evidence of a willful disregard for NOAA's statutes or regulations or a reckless or negligent attitude toward compliance with them. Subsequent violations also may be evidence that the prior enforcement response was not sufficient to deter future violations. Accordingly, prior violations are a basis to adjust a penalty upward. Factors the NOAA attorney will consider in applying this adjustment include, *inter alia*, the following:

- a. How similar was the prior violation?
- b. How recent was the prior violation?
- c. The number of prior violations; and
- d. The alleged violator's efforts to correct any prior violation(s).

All prior violations will be considered, with adjustments upward as follows: (1) for each prior violation that is similar to the newly charged violation, that has been charged (e.g., issuance of a written warning, summary settlement, or NOVA) within the prior five years, the NOAA attorney will move an entire base penalty box to the right in the matrix, with a maximum increase of three penalty boxes (note: where it is not possible to move to the right in the penalty matrix, the NOAA attorney should select the box below the previously determined penalty box); (2) for priors that are not similar to the newly alleged violation, that have not yet been charged but occurred within the prior five years, or that have been charged more than five years prior to the present violation, the NOAA attorney will increase the penalty within the range of the box determined in Section V above.

Any violation involving the use of a vessel will be considered as a prior violation against that vessel unless controlling ownership changes. A violation by a master or crewmember on a vessel will be considered as a prior violation for any subsequent violation they commit on the same or a different vessel. If two or more vessels are owned by the same person, then a violation by one vessel will be an imputed prior for the other vessel or vessels. If two or more vessels are owned by separate corporations, but the same person or company controls these corporations, then a violation by one vessel will be an imputed prior for the other vessel or vessels.

## **Commercial versus Recreational Activity**

Where a violation arises from non-commercial activity, the status of the alleged violator – a recreational fisherman, for example – may be deemed to be a mitigating factor justifying a downward adjustment in the base penalty, including a movement left, or up, in the matrix, to a lesser penalty range. This is appropriate because a recreational violator is likely to have a lesser impact on the natural resource or regulatory program and typically does not obtain the same degree of economic gain as a commercial enterprise. Of course, an adjustment for recreational activity is not always appropriate: for example, in the case of a violation involving a vessel grounding in a national marine sanctuary, the operator of a recreational vessel may be deemed to be just as culpable as the operator of commercial vessel.

## **Activity After Violation – Good Faith Efforts to Comply; Cooperation/Noncooperation**

The NOAA attorney may also move above or below the midpoint of the range by taking into account the good or bad faith activities of the alleged violator after a violation occurs. Good faith factors, which may mitigate a penalty, include promptly reporting noncompliance, talking with and providing helpful information to investigators, and cooperating with investigators in any on-going investigation. Alternatively, actions taken in bad faith, which may result in an increased penalty, include any attempt on the part of the alleged violator to avoid detection (e.g., concealment or flight), or whether there was evidence that the alleged violator interfered with the investigation by destroying evidence, intimidating or threatening agents or witnesses, lying, or similar activity. No downward adjustment will be made if the good faith efforts to comply primarily consist of coming into compliance.

## **VII. Economic Benefit**

This Policy includes the consideration of the economic benefit of noncompliance to an alleged violator when penalties are assessed. The economic benefit to an alleged violator is taken into account to prevent violators from engaging in improper behavior as a “cost of doing business,” knowing that their illicit activities are more economically advantageous than the cost of a potential penalty. Taking into account economic benefit also levels the playing field of the regulated community, as violators do not gain economic or strategic benefits over their law-abiding competitors by violating the law. Absent extraordinary circumstances, an economic benefit component will be calculated and added to the base penalty.

The NOAA attorney will examine the following types of economic benefit from noncompliance in recommending the economic benefit component:

- a. Gross value (not net) of fish or other product illegally caught
- b. Gross revenues (not net) of charter fishing vessel or whale watching vessel that violated regulatory restrictions
- c. Economic advantage from delayed costs (delay in purchase of required equipment, e.g., turtle excluding devices or vessel monitoring systems)

- d. Economic advantage from avoided costs (fuel saved by transiting through, not around, a protected area; costs of an observer on fishing trips; costs of infrastructure improvements, e.g., fish ladders and screens to protect ESA-listed species)

In some cases, there may be more than one type of economic benefit to the alleged violator. In calculating economic benefit, the NOAA attorney will consider each of these categories of potential economic benefit to calculate a combined economic benefit. Factors to be considered in assessing economic benefit are described below.

### **Gross Value of Fish or Product Illegally Caught or Revenues Received**

In assessing the economic benefit of the violation where fish or other product was caught in violation of the statutory or regulatory requirements, the benefit will be assessed based on the gross ex-vessel value of the fish or other product. Where a charter fishing vessel or whale watching vessel is involved, economic benefit should include the gross revenues from the trip that gave rise to the violation.

If the illegal catch was seized and forfeited by the alleged violator, or if the alleged violator voluntarily abandoned the illegal catch or product, the economic benefit was likely already recouped from the alleged violator and the economic benefit for the penalty assessment will likely be \$0.

### **Delayed Costs**

Delayed costs are expenditures that have been deferred by the alleged violator and result in a failure to comply with the regulatory program. The alleged violator eventually will have to spend the money in order to achieve compliance, but during the period of non-compliance the violator has gained an economic benefit over his or her competitors who have paid to come into compliance. The economic benefit for delayed costs consists of the amount of interest on the unspent money that reasonably could have been earned by the alleged violator during noncompliance.

### **Avoided Costs**

Avoided costs are expenditures that are nullified by the alleged violator's failure to comply. These costs will never be incurred. Examples of avoided costs include, *inter alia*:

- a. Cost savings for operation and maintenance of equipment that the alleged violator failed to install;
- b. Failure to properly operate and maintain existing equipment (e.g., fish ladders and screens for the protection of ESA-listed species);
- c. Failure to employ sufficient number of adequately trained staff; and
- d. Failure to establish or follow precautionary methods required by rules or permits.

For avoided costs, the economic benefit equals the cost of complying with the requirement from the time that compliance was required until the violator comes into compliance.

### VIII. Ability to Pay

The goal of NOAA's enforcement program is securing compliance with the laws that protect natural resources, not putting alleged violators out of business. Thus, NOAA will consider at the appropriate stage the ability of the alleged violator to pay a penalty as described below. The NOAA attorney will generally not consider the alleged violator's ability to pay in making a recommendation regarding issuance of a NOVA because he or she will not have relevant information available before the NOVA with proposed penalty is issued.<sup>5</sup> Once a NOVA is issued, the burden to demonstrate inability to pay rests with the alleged violator. *See* 15 C.F.R. 904.108(c) – (e) (describing process for demonstrating inability to pay). The alleged violator must provide requested information that is verifiable, accurate and complete to enable consideration of this factor in adjusting the proposed penalty.

When an alleged violator cannot afford the penalty prescribed by this policy, or payment of all or a portion of the penalty will preclude the alleged violator from achieving compliance or from carrying out remedial measures more important than the deterrence effect of the penalty, the NOAA attorney may consider, *inter alia*, the following options:

- a. An installment payment plan with interest;
- b. A reduction of the penalty amount in exchange for a comparable increase in the permit sanction component;
- c. A suspended penalty subject to specified conditions; and
- d. Straight penalty reductions.

The amount of any downward adjustment of the penalty is dependent on the individual financial facts of the case.

### IX. Application of the Penalty Policy and Periodic Review<sup>6</sup>

Use of Preliminary Worksheet with Rationale for Assessed Penalty – In preparing a recommendation to charge an alleged violation through issuance of a NOVA, NOPS, or both, the NOAA attorney will complete the Preliminary Worksheet attached as Appendix 1 to establish a recommended penalty and permit sanction for each alleged violation. Each section of the

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<sup>5</sup> Unlike other statutes NOAA enforces, the Lacey Act requires consideration of ability to pay at the time of charging. 16 U.S.C. 3373(a)(6); *see also* 15 C.F.R. 904.108(g) – (h) (describing process for consideration of ability to pay at the charging stage).

<sup>6</sup> This Policy does not address issues related to charging decisions, such as the appropriate “unit of prosecution” (e.g., whether an unpermitted fishing trip is one violation, or multiple violations for each fishing day). Instead, by separate policy, NOAA will provide guidance for making charging decisions under the statutes NOAA enforces.



worksheet corresponds to a section of the Policy as summarized in Sections V through VII above. The Preliminary Worksheet is an internal NOAA document reflecting attorney work product that will not be available to respondents; however, the basis of the penalty will be included in charging documents.

Multiple Violations – In certain situations, several violations may have been committed. An assessment will be undertaken for each violation charged.

Penalty Assessment Against Vessel Owner and Operator – Absent extraordinary circumstances, the penalty will be assessed jointly and severally against all appropriate actors (e.g., the vessel owner and operator).

Application to Violations of Other NOAA Statutes – As noted above, this Policy supersedes all previous guidance regarding assessment of penalties or permit sanctions and all previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel. This Policy, and the attached matrixes and schedules, address the seven major statutes that NOAA enforces. While NOAA develops base penalty matrixes for other statutes NOAA enforces, the NOAA attorney should use the closest one by analogy, i.e., the matrix developed for MSA violations should be used to develop a recommended penalty under other fishery laws with comparable statutory penalties.

Further, although all previous penalty and permit schedules are superseded by this Policy, they may still be used as an historical reference point to be considered in application of this Policy. In transitioning to this new Policy for assessing penalties and permit sanctions, the NOAA General Counsel's Office will monitor the situation closely, and any penalty or permit sanction under this Policy that is substantially higher or lower than under the prior penalty schedules will be subject to a higher level review before a charging decision is made.

Periodic Review – The NOAA General Counsel's Office will review this Policy within one year from its final effective date and revise or modify it as appropriate to ensure that it continues to serve the stated purposes of the Policy above.

## **APPLICATION OF POLICY – SPECIFIC EXAMPLES**

### **EXAMPLE 1 – MAGNUSON-STEVENSON ACT**

#### **Description of Violation**

Commercial fishing vessel, Vessel A, owned and operated by Captain X, lands 5,000 pounds of redbait groundfish, which is 2,000 pounds (approximately 67%) in excess of the applicable 3,000 pound trip limit. The trip limit had been in effect for several months as of the date of the violation. The violation occurs during a routine landing, which is monitored by a NOAA enforcement agent. The excess fish is voluntarily abandoned by Captain X. When interviewed by the NOAA agent, the captain says that the overage is due to a mistake by an inexperienced crewmember who was unaware of the 3,000 pound limit. At the time of the violation, Vessel A is participating in the groundfish fishery as a federally permitted, limited entry fishing vessel. Limited entry vessels qualify for a higher trip limit for redbait groundfish than do open access vessels. Redbait groundfish are not considered an overfished species. No other violations are found in connection with the overage. Captain X has one prior violation for an overage of groundfish, which occurred two years prior to the present violation.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

#### **Base Penalty**

Offense Level: Level III. The Magnuson-Stevens Act schedule provides for an offense level range of II to III, but here the potential for harm to the resource or regulatory program is moderate. The overage violation poses some degree of harm to the fishery resource because the overage is significantly in excess of the applicable limit, and occurred in a limited entry fishery. Had the overage gone undetected, the violation would have provided a significant competitive advantage to Captain X over legally operating fishers.

Degree of Culpability: Level B. Although the Captain indicated that the violation was unintentional, the Captain's knowledge of the 3000 lb limit and the size of the overage implies negligence in overseeing the vessel's crewmembers, particularly those who were inexperienced.

Matrix Penalty: The penalty range is IIIB, \$5,000-\$10,000, with a midpoint of \$7,500

#### **Adjustment Factors**

History of Compliance: Captain X had one similar violation within the previous two years; this increases the penalty range to III C, \$10,000-\$15,000, with a midpoint of \$12,500, which represents an upward adjustment of \$5,000 over the base penalty.

Commercial vs. Recreational Activity: the violation occurred in the commercial, limited entry groundfish fishery. The fact that Vessel A was participating in a limited entry fishery was considered in determining the base penalty. The limited entry fishery management program is by definition applicable only to commercial fishing vessels, therefore no further adjustment is warranted.

Activity After Violation/Cooperation: Although Captain X voluntarily abandoned the excess fish, there was not cooperation with authorities in this case to a degree warranting a downward adjustment of the penalty.

Adjustment to Base Penalty: Increase base penalty to \$12,500 ( $\$7500 + \$5000 = \$12,500$ ).

### **Economic Benefit**

N/A; Captain X voluntarily abandoned the excess fish.

**Total Penalty (I. + II. + III.): \$12,500**

### **EXAMPLE 2 – MAGNUSON-STEVENSON ACT**

#### **Description of Violation**

Commercial fishing vessel, Vessel A, owned and operated by Captain X, lands 830 pounds of Atlantic sea scallops that are sold for \$6 per pound, for a total of \$5,229. Because the vessel was issued a valid Limited Access General Category permit, it is limited to landing 400 pounds of scallops. Captain X completes a vessel trip report stating that only 400 pounds of scallops were landed, and submits this report to the National Marine Fisheries Service. The dealer to which the scallops are sold (Dealer Y) reports to NMFS that it has purchased only 400 pounds of scallops. When interviewed by the investigating agent, Dealer Y denies purchasing any illegal scallops. When the investigating agent interviews Captain X, Captain X admits landing excess scallops and selling them to Dealer Y for cash. Captain X also admits submitting a false trip report. Further, he acknowledges that he has worked out an agreement with Dealer Y to report only 400 pounds. Captain X's admissions lead to the retrieval of Dealer Y's record that reveals the excess 430 pounds of scallops were purchased with cash for \$2,580 (430 lbs. x \$6 per lb.). Neither Vessel A nor Captain X have any prior history of violations. Based on this example, Vessel A and Captain X fished for, caught, possessed, landed, and sold scallops in excess of the 400 pound landing limit and submitted and maintained a false vessel trip report.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalties for the violations against Vessel A/Captain B under the penalty policy.

### **Base Penalty**

#### **Count 1: Possession of excess scallops**

**Offense Level:** Level III. The Magnuson-Stevens Act schedule provides for an offense level range of II to III, but here the potential for harm to the resource or regulatory program is moderate. The overage amount is significantly higher (107%) than the legal amount and occurred in a limited entry fishery controlled by individual quotas and the 400 pound landing limit. Had the overage gone undetected, the violation would have provided a significant competitive advantage to Vessel A and Captain X over legally operating fishers.

**Degree of Culpability:** Level D. The evidence indicates the violation was intentional.

**Matrix Penalty:** The penalty range is III D, \$15,000-\$25,000, with a midpoint of \$20,000.

#### Count 2: False Trip Report

**Offense Level:** Level III. The Magnuson-Stevens Act schedule provides for an offense level range of II to III, but here the potential for harm to the resource or regulatory program is categorized as moderate. Accurate reporting is a vital part of the Atlantic sea scallop fishery management program (*See, e.g. In re Atlantic Spray Corp.*, 1996 WL 1352603 (NOAA)). Moreover, Captain X conspired with Dealer Y to hide the scallop overage, causing a potentially significant harm to the regulatory program.

**Degree of Culpability:** Level D. The evidence indicates the violation was intentional.

**Matrix Penalty:** The penalty range is III D, \$15,000-\$25,000, with a midpoint of \$20,000.

#### **Adjustment Factors**

History of Compliance: Captain X has no prior enforcement history.

Commercial vs. Recreational Activity: the violation occurred in the commercial, limited entry scallop fishery. The fact that Vessel A was participating in a limited entry fishery was considered in determining the base penalty. The limited entry fishery management program is by definition applicable only to commercial fishing vessels, therefore no further adjustment is warranted.

Activity After Violation/Cooperation: Captain X admitted the illegal landing and false reporting without making any further false oral statements and was cooperative. His admission and cooperation assisted the investigating agent's retrieval of evidence and uncovered the dealer's full role in the transaction. This significant degree of cooperation



supports a downward adjustment of \$5,000 to the low end of the penalty range for the false reporting count.

Adjustment to Base Penalty: Count 1: No decrease/increase. Count 2: Decrease base penalty to \$15,000 (\$20,000-\$5,000=\$15,000).

### **Economic Benefit**

\$2,580, which is added to the penalty for possessing excess scallops.

**Total Penalty (I. + II. + III.): Count 1: \$22,580; Count 2: \$15,000; total: \$37, 580.**

### **EXAMPLE 3 – MAGNUSON-STEVENSON ACT**

#### **Description of Violation**

A foreign-flagged longline fishing vessel owned by Company Z and operated by Captain Y was documented, by a U.S. Coast Guard (USCG) air patrol, fishing inside the U.S. Exclusive Economic Zone (EEZ). USCG witnesses photographed and videotaped the vessel actively engaged in fishing in U.S. waters. In addition, USCG personnel prepared written statements documenting the fishing activities that they witnessed. USCG records provide the specific latitude and longitude inside the U.S. EEZ where the foreign fishing vessel was located. The vessel never came into a U.S. port and was never boarded by USCG or NOAA. Numerous violations by foreign –flagged fishing vessels have occurred in this area, which is extremely remote with little to no nearby enforcement assets. Patrols in this area are rare and expensive; accordingly, violations of this type often go undetected in this area.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

### **Base Penalty**

Offense Level: Level VI. The Magnuson-Stevens Act schedule provides for an offense level of VI for this violation because the potential for harm to the resource or regulatory program is major. Many tuna stocks in the Pacific are subject to overfishing. In addition, foreign fishing vessels may not fish inside the U.S. EEZ without a permit, which the vessel did not have. Such violations harm U.S. fishers, because a foreign vessel is appropriating U.S. fishery resources. Moreover, this type of violation is difficult to detect. Overall, the violation had “substantial adverse effect on the statutory or regulatory purposes” of eliminating unregulated foreign fishing inside U.S. waters.

Degree of Culpability: Level D. The evidence indicates the violation was intentional. The foreign fishing vessel was more than 20 nautical miles inside the U.S. EEZ.

Matrix Penalty: The penalty range is VI D, \$100,000-\$140,000, with a midpoint of \$120,000.

### **Adjustment Factors**

History of Compliance: Neither Company Z or Captain Y have any prior violations.

Commercial vs. Recreational Activity: The violation was by a commercial longline vessel, a factor already accounted for in the base penalty assessment.

Activity After Violation/Cooperation: There was no interaction with Company Z or Captain Y after the violation.

Adjustment to Base Penalty: None.

### **Economic Benefit**

There was no opportunity to board the vessel, so it is not clear how many fish were caught or the species composition of the fish caught. However, based on the amount of time that the vessel was fishing inside the EEZ, and the typical catch within this area, circumstantial evidence establishes that it is more likely than not that the economic benefit was well in excess of \$20,000. Accordingly, the penalty is increased to the statutory maximum.

**Total Penalty (I. + II. + III.): \$140,000\**

## **EXAMPLE 4 – NATIONAL MARINE SANCTUARIES ACT**

### **Description of Violation**

Recreational vessel A, owned and operated by Captain X, grounds in a seagrass habitat in the Florida Keys National Marine Sanctuary. When interviewed by law enforcement officers, Captain X advises that he had lost his bearings. An assessment of the grounding reveals that over 80 square yards of habitat is impacted, including prop scars and a blowhole.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

### **Base Penalty**

Offense Level: Level III. The National Marine Sanctuaries Act schedule provides for an offense level range of II to IV, and here the potential for harm to the resource or regulatory program is moderate.

Degree of Culpability: Level B. The evidence indicates that although the grounding is unintentional, Captain X attempted to power off, thus creating a blowhole, which is negligent.

Matrix Penalty: The penalty range is III B, \$5,000 - \$10,000, with a midpoint of \$7,500.

### **Adjustment Factors**

History of Compliance: Captain X does not have any previous violations.

Commercial vs. Recreational Activity: Although there could be a distinction between commercial and recreational activity for grounding cases, in this example, the penalty would be the same.

Activity After Violation/Cooperation: The evidence does not indicate that Captain X was unusually cooperative or uncooperative.

Adjustment to Base Penalty: None

### **Economic Benefit**

N/A.

**Total Penalty (I. + II. + III.): \$7,500**

## **EXAMPLE 5 – MARINE MAMMAL PROTECTION ACT**

### **Description of Violation**

Upon arrival at a known haul-out for marine mammals, a state game warden is contacted by a civilian witness who states that she has just observed and photographed a man taking photos of elephant seals. The witness states that, at first, the man was just shooting photos of elephant seals at close proximity with little or no interaction with the animals. After a few minutes however, the man began to toss rocks onto one large bull elephant seal while attempting to take photographs of the animal's reaction. The man then began to pelt the animal's torso with rocks while taking photos. Finally, the man hit the animal on the tail with a large stick, which elicited an aggressive response (charge) from the animal. The man took one final photograph of the animal and then retreated quickly up the beach with the animal in close pursuit for several yards.

With the assistance of the witness, the warden is able to identify the man in a nearby parking lot and interview him. Initially, the man denies any wrongdoing and refuses to give his name or any other information. When the warden explains that his earlier actions had been

photographed and that his camera would be seized as evidence of a violation of the MMPA, the photographer becomes very agitated and yells at the warden, stating that he did not hurt the elephant seals and that he just wanted to get a good photograph. Upon further questioning, the photographer states that he wants to be a professional wildlife photographer, that he loves marine mammals and wouldn't do anything to hurt them. No investigation of the health of the elephant seal is conducted.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

### **Base Penalty**

Offense Level: Level II. The Marine Mammal Protection Act schedule provides for an offense level of II for harassing a marine mammal, and a range of to III to IV for harming one. Because of the use of rocks and a stick to strike the animal, there is a moderate potential for harm to this particular elephant seal. Although there may have been actual harm to the animal because it is struck, there is no evidence on the record to support such a finding, accordingly the actions rise to the level of "harassment," a level II offense.

Intent Level: Level D. The evidence indicates that the photographer intentionally harassed the animal.

Matrix Penalty: The penalty range is II D, \$2,000-\$3,000, with a midpoint of \$2,500.

### **Adjustment Factors**

History of Compliance: The Photographer has no prior violations.

Commercial vs. Recreational Activity: Although there is some indication of a commercial motivation for the violation, in that the alleged violator wants to become a professional photographer, there are no facts to support that this violation was conducted for a specific commercial activity.

Activity After Violation/Cooperation: The alleged violator was uncooperative, and initially made an uncharged false statement to the investigating officer. These facts support an upward adjustment of \$1,000.

Adjustment to Base Penalty: Increase base penalty to \$3,500 ( $\$2,500 + \$1,000 = \$3,500$ ).

### **Economic Benefit**

N/A

**Total Penalty (I. + II. + III.): \$3,500**



## EXAMPLE 6 – ENDANGERED SPECIES ACT

### Description of Violation

A Maui resident (Mr. X) was documented approaching an endangered Humpback whale. Regulations under the Endangered Species Act and the National Marine Sanctuaries Act prohibit approaching endangered Humpback whales within 100 yards in the waters around Hawaii. In this case, two sanctuary outreach and education volunteers spotted Mr. X and his teenage daughter approaching Humpback whales just offshore. According to eyewitnesses, Mr. X and his daughter approached to within less than 10 feet. The witnesses provided statements and photographs to enforcement. Mr. X was well aware of the regulations establishing the prohibition on approaching Humpback whales.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

### **Base Penalty**

Offense Level: Level II. The Endangered Species Act schedule provides for an offense level range of II to IV, but here the likelihood of harm to the endangered Humpback whales was low.

Intent Level: Level D. According to eyewitnesses, Mr. X deliberately and directly approached Humpback whales, violating the prohibition against approaching endangered species. The evidence indicates the violation was willful.

Matrix Penalty: The penalty range is II D, \$6,000 - \$11,500, with a midpoint of \$8,750.

### **Adjustment Factors**

History of Compliance: Mr. X has no prior violations.

Commercial vs. Recreational Activity: There are no facts to support that this violation was conducted for a specific commercial activity – the activities in question appeared to be fully recreational in nature. Because the activities were recreational, and did not result in financial gain (as opposed to a company that might take kayakers out to observe Humpback whales), it is appropriate to move down a box in the matrix, reducing the penalty to a II C penalty range, \$3500 - \$6000, with a mid-point of \$4750.

Activity After Violation/Cooperation: Although Mr. X refused to speak to the investigating officer, the refusal to speak, standing alone, is not a degree of lack of cooperation that creates a basis for an upward adjustment of the penalty.

Adjustment to Base Penalty: Decrease base penalty to \$4750 (\$8750 - \$4000 = \$4750).

**Economic Benefit**

N/A

**Total Penalty (I. + II. + III.): \$4,750**

## **APPENDIX 1**

### **Preliminary Worksheet – Recommended Assessment of Penalty and Permit Sanction**

Name of alleged violator(s): \_\_\_\_\_

Description  
of Violation: \_\_\_\_\_

#### **I.**

A. Offense Level (I through VI)

B. Intent Level (A through D)

C. Matrix Penalty

#### **Base Penalty**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### **II.**

A. History of Compliance

B. Commercial vs. Recreational Activity

C. Activity After Violation/Cooperation

#### **Adjustment Factors**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### **III. Economic Benefit**

Economic Benefit \_\_\_\_\_

*(Economic benefit of fish caught illegally measured at gross ex-vessel value)*

**IV. Total Penalty (I. + II. + III.)** \_\_\_\_\_

*(Penalty per violation must be no more than statutory maximum.)*

**TOTAL PENALTY (from all worksheets)** \_\_\_\_\_

*(Ability to pay will generally not be considered in the initial assessment of a penalty, except in Lacey Act cases. The NOAA attorney will consider reducing the penalty post-charging if the alleged violator raises ability to pay as an issue and produces appropriate documentation)*

NOAA Enforcement Attorney \_\_\_\_\_

Date \_\_\_\_\_

## APPENDIX 2

### Penalty Matrix for the Magnuson-Stevens Act

	Level of Intent			
Harm to the Resource or Regulatory Program, Offense Level	A Unintentional	B Negligent	C Reckless	D Willful
<b>I</b>	Written warning-\$1,000	Written warning-\$1,500	Written warning-\$2,000	Written warning-\$2,500
<b>II</b>	Written warning-\$2,000	\$2,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000
<b>III</b>	\$2,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000	\$15,000-\$25,000
<b>IV</b>	\$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*
<b>V</b>	\$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*
<b>VI</b>	\$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*



\*Under catch share or similar programs, where permits allow for a certain amount of catch per year (instead of fishing days per year), permit sanctions will be assigned as a percentage of the catch, at a rate of 2% for each 10 day permit sanction listed in the matrixes.

**Penalty Matrix for National Marine Sanctuaries Act**

	<b>Level of Intent</b>			
<b>Harm to the Resource or Regulatory Program, Offense Level</b>	<b>A Unintentional</b>	<b>B Negligent</b>	<b>C Reckless</b>	<b>D Willful</b>
<b>I</b>	Written warning-\$1,000	Written warning-\$1,500	Written warning-\$2,000	Written warning-\$2,500
<b>II</b>	Written warning-\$2,000	\$2,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000
<b>III</b>	\$2,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000	\$15,000-\$25,000
<b>IV</b>	\$5,000-\$15,000	\$15,000-\$25,000	\$25,000-\$50,000	\$50,000-\$80,000
<b>V</b>	\$15,000-\$25,000	\$25,000-\$50,000	\$50,000-\$80,000	\$60,000-\$100,000
<b>VI</b>	\$25,000-\$50,000	\$50,000-\$80,000	\$60,000-\$100,000	\$100,000-statutory maximum

**Penalty Matrix for the Lacey Act**

	<b>Level of Intent</b>			
<b>Harm to the Resource or Regulatory Program, Offense Level</b>	<b>A</b> Unintentional	<b>B</b> Negligent	<b>C</b> Reckless	<b>D</b> Willful
<b>I</b>	Written warning-\$200	Written warning-\$500	Written warning-\$750	Written warning-\$1000
<b>II</b>	Written warning-\$1,000	\$1,000-\$1,500	\$1,500-\$2,000	\$2,000-\$3,000
<b>III-IV</b>	\$1,000-\$2,000	\$2,000-\$3,000	\$3,000-\$4,000	\$4,000-\$6,000
<b>V-VI</b>	\$2,000-\$3,000	\$3,000-\$5,000	\$5,000-\$8,000	\$8,000-statutory maximum

**Penalty Matrix for Endangered Species Act**

	<b>Level of Intent</b>			
<b>Harm to the Resource or Regulatory Program, Offense Level</b>	<b>A</b>  Unintentional	<b>B</b>  Negligent	<b>C</b>  Reckless	<b>D</b>  Willful
<b>I</b>  Endangered	Written warning-\$500	Written warning-\$1000	Written warning-\$1500	Written warning-\$2000
Threatened	Written warning-\$200	Written warning-\$500	Written warning-\$750	Written warning-\$1000
<b>II</b>  Endangered	Written warning-\$2,500	\$2,500-\$3,500	\$3,500-\$6,000	\$6,000-\$11,500
Threatened	Written warning-\$1,000	\$1,000-\$1,500	\$1,500-\$2,500	\$2,500-\$4,500
<b>III-IV</b>  Endangered	\$2,500-\$6,000	\$6,000-\$11,500	\$11,500-\$17,000	\$17,000-\$23,000
Threatened	\$1,000-\$2,500	\$2,500-\$4,500	\$4,500-\$7,000	\$7,000-\$9,000
<b>V-VI</b>  Endangered	\$6,000-\$11,500	\$11,500-\$17,000	\$17,000-\$23,000	\$23,000-statutory maximum
Threatened	\$2,500-\$4,500	\$4,500-\$7,000	\$7,000-\$9,000	\$9,000-statutory maximum

**Penalty Matrix for Marine Mammal Protection Act**

	<b>Level of Intent</b>			
<b>Harm to the Resource or Regulatory Program, Offense Level</b>	<b>A</b>  Unintentional	<b>B</b>  Negligent	<b>C</b>  Reckless	<b>D</b>  Willful
<b>I</b>	Written warning-\$200	Written warning-\$500	Written warning-\$750	Written warning-\$1000
<b>II</b>	Written warning-\$1,000	\$1,000-\$1,500	\$1,500-\$2,000	\$2,000-\$3,000
<b>III-IV</b>	\$1,000-\$2,000	\$2,000-\$3,000	\$3,000-\$4,000	\$4,000-\$6,000
<b>V-VI</b>	\$2,000-\$3,000	\$3,000-\$5,000	\$5,000-\$8,000	\$8,000-statutory maximum



**Penalty Matrix for Northern Pacific Halibut Act of 1982**

	<b>Level of Intent</b>			
<b>Harm to the Resource or Regulatory Program, Offense Level</b>	<b>A Unintentional</b>	<b>B Negligent</b>	<b>C Reckless</b>	<b>D Willful</b>
<b>I</b>	Written warning-\$1,000	Written warning-\$1,500	Written warning-\$2,000	Written warning-\$2,500
<b>II</b>	\$3,000-\$7,000	\$7,000-\$15,000	\$15,000-\$25,000	\$25,000-\$35,000
<b>III</b>	\$7,000-\$15,000	\$15,000-\$25,000	\$25,000-\$35,000	\$35,000-\$70,000
<b>IV</b>	\$15,000-\$25,000	\$25,000-\$35,000	\$35,000-\$70,000	\$70,000-\$115,000
<b>V</b>	\$25,000-\$35,000	\$35,000-\$70,000	\$70,000-\$115,000	\$85,000-\$145,000
<b>VI</b>	\$35,000-\$70,000	\$70,000-\$115,000	\$85,000-\$145,000	\$145,000-statutory maximum

**Penalty Matrix for the Antarctic Marine Living Resources Convention Act**

	<b>Level of Intent</b>			
<b>Harm to the Resource or Regulatory Program, Offense Level</b>	<b>A</b> Unintentional	<b>B</b> Negligent	<b>C</b> Reckless	<b>D</b> Willful
<b>I</b>	\$1,000-\$4,000	\$3,000-\$6,000	\$5,000-\$8,000	\$7,000-statutory maximum
<b>II</b>	\$6,000-\$8,000	\$7,000-\$9,000	\$8,000-\$10,000	\$9,000-statutory maximum
<b>III-IV</b>	\$8,000-\$10,000	\$9,000-statutory maximum	statutory maximum	statutory maximum
<b>V-VI</b>	statutory maximum	statutory maximum	statutory maximum	statutory maximum

# APPENDIX 3

## Offense Level Guidance

### Magnuson-Stevens Act Schedule

<b>VIOLATION</b>	<b>LEVEL</b>
<b>VIOLATIONS REGARDING GEAR</b>	
<p>Minor-Moderate Violations</p> <p>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</p> <p>Example: Fishing for Western Pacific bottomfish management unit species (MUS) using prohibited gear.</p>	IV
<b>VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS OR OBSERVERS</b>	
<p>Minor - Moderate Violations</p> <p>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
<p>Moderate Violations<sup>7</sup></p> <p>Examples: Assaulting, resisting, opposing, impeding, harassing, intimidating or interfering with or impeding, threatening or coercing any NMFS approved observer or authorized officer; refusing to carry an observer or fishing without</p>	III-IV

<sup>7</sup> Note that section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (186 U.S.C. § 1859) makes these violations criminal offenses. Major violations will be considered appropriate for criminal referral.

an observer; refusal to allow a boarding/entry to area of custody, or inspection; forcibly assaulting officer, or resisting arrest; providing false statements to an authorized officer; harassing, interfering, or intimidating an observer.	
<b>VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, AND PERMIT REQUIREMENTS</b>	
<p>Minor - Moderate Violations</p> <p>Examples: No vessel/operator permit onboard; no vessel permit issued; failing to report changes in permit information; altering, erasing or mutilating a permit or application; purchasing, possessing, or receiving catch without a dealer permit; purchasing, possessing, or receiving from an unpermitted vessel; providing false information in connection with application, declaration, record or report; failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failure to submit affidavits or other required forms; failure to provide accurate or legible logbooks or other reports.</p>	II – III
<p>Moderate - Major Violations</p> <p>Example: fishing for, taking or retaining particularly vulnerable or depleted species (e.g., deepwater shrimp) without a permit; tampering with, damaging, destroying, altering or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS or VMS unit; failure to comply with VMS/days at sea reporting or having approved operational unit onboard; fishing for license limitation species without holding a valid license limitation permit; fishing for, receiving, processing or possessing limited entry or catch share species without holding a valid permit..</p>	IV-V
<b>VIOLATIONS REGARDING TIME, AREA, EFFORT, OR SECTOR RESTRICTIONS</b>	
<p>Examples: fishing in a closed area or during a closed season; entering a closed area or transit in a closed area with gear not properly stowed; failure to comply with permit restrictions or IFQ transfer requirements; fishing with excess crew; fishing illegally in EEZ; fishing for, taking, retaining, possessing or landing any coral reef MUS in any low-use marine protected area (MPA), or otherwise, when prohibited.</p>	III – IV
Foreign fishing vessel fishing in U.S. waters without a permit.	VI

<b>VIOLATIONS REGARDING SIZE/CONDITION/QUANTITY OF FISH OR LANDING/POSSESSION REQUIREMENTS</b>	
Examples: fishing for, taking, or retaining particularly vulnerable or depleted species (e.g., wild live rock or live hard, precious, live pink, or live black coral) unless otherwise allowed; fishing, receiving, trading or possessing more fish than allowed by regulation, permit, notice, or other means; catching undersized or oversized fish/lobster; illegally discarding fish or violating fish retention requirement; possession of prohibited species or fishing/possession while in possession of non-allowed species.	II - III
Violating food safety regulations.	VI
<b>VIOLATIONS REGARDING TRANSFER, PURCHASE, TRADE, SALE (AND ATTEMPTS)</b>	
Examples: Purchasing, receiving, transferring, trading, or selling more fish than allowed by regulation, permit, notice, or other means; illegal transfer from vessel at sea; damaging or stealing gear or fish; dumping fish.	III-IV
<b>VIOLATIONS OF ACTS IMPLEMENTING INTERNATIONAL AGREEMENTS (Western and Central Pacific Tunas Convention Act &amp; Atlantic Tunas Convention Act)</b>	
<p>Minor - Moderate Violations</p> <p>Examples: fishing in excess of catch limits (Anglers &amp; General); fishing within 100 yards of corkline of purse seiner fishing for bluefin tuna; failing to request a purse seine vessel, net or fish inspection; failing to submit reports in a timely manner, or submitting inaccurate reports (Dealer); failing to release tuna which will not be retained immediately and with a minimum of injury.</p>	II-IV
<p>Major Violations</p> <p>Examples: using a fishing vessel equipped with purse seine gear to fish in a closed area; setting a purse seine around, near or in association with a Fish Aggregating Device (FAD) or deploying or servicing a FAD during a FAD closure or prohibited period; failing to comply with sea turtle mitigation gear and handling requirements; using a fishing vessel to fish in the Pacific Ocean using longline gear inside and outside the Convention Area on the same fishing trip when prohibited; fishing during closure; fishing in excess of quota,</p>	V – VI



allocation, or incidental catch limits; fishing for or retaining undersized tuna; purchasing or receiving tuna for a commercial purpose without a license; failure to file or maintain reports (dealer); failing to report taking of commercial sized bluefin tuna (dealer); landing tuna in other than prescribed forms; retaining tuna caught under tag and release program; transferring, purchasing, or receiving Atlantic bluefin tuna from any person or vessel without a valid dealer permit; selling, offering for sale, or transferring any Atlantic bluefin tuna to any person other than a permitted dealer.	
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## National Marine Sanctuaries Act Schedule

<b>VIOLATION</b>	<b>LEVEL</b>
<b>GENERAL VIOLATIONS</b>	
<b>SEABED / LAKEBOTTOM ACTIVITIES</b>	
Examples: anchoring in a prohibited manner or area; mineral or hydrocarbon exploration, development, or production; alteration or destruction of seabed or lake bottom, including dredging, drilling, coring, and construction; collection (jade).	II-IV
<b>FISHING</b>	
Possessing or using prohibited gear; fishing in a prohibited area or prohibited manner.	II-III
Trawling	IV-V
<b>EXPLOSIVES</b>	
Examples: Possessing or using explosives, electrical charges, poisons, or similar destructive devices.	II-III
<b>VESSEL / AIRCRAFT</b>	
Examples: motorized personal watercraft operations in prohibited areas; aircraft disturbance of marine mammals or seabirds, including low overflight; mooring.	I-II
Operate vessel or aircraft in prohibited areas, or in a prohibited manner.	II-IV
<b>HISTORICAL / CULTURAL</b>	
Examples: Disturbing, damaging, destroying, moving, removing, salvaging, recovering, injuring, altering, or possessing historical or cultural resources (or attempting the same) ; use of grappling hooks, suction, conveyors, dredging, wrecking or anchoring devices.	III-IV
<b>DISCHARGES &amp; DEPOSITS</b>	
Examples: Discharge or deposit, from within Sanctuary boundaries, any non-exempt material or other matter (e.g., hydrocarbons or hazardous substances, fuel, oil, oily bilge waste; unprocessed, non-hazardous trash or raw material, or entangling material); discharge or deposit, from beyond Sanctuary boundaries, any non-exempt material or matter that subsequently enters and injures a Sanctuary resource; deposit of wrecks / desertion or abandonment of vessel.	III-IV

<b>LIVING MARINE RESOURCES</b>	
Examples: attracting fish; injuring, moving, removing, taking, possessing, harvesting, landing, damaging, disturbing, or possessing (or attempting the same) living marine specimens (e.g., sharks, rayscoral, live rock, tropical fish, invertebrates, algae, marine plants, etc.).	III-IV
<b>MISCELLANEOUS</b>	
Examples: Breaking, taking, cutting, removing, damaging, or possessing any bottom formation; defacing, damaging, or removing any signage, boundary markers, stakes, mooring buoys, boundary buoys, trap buoys, scientific equipment, navigation aids, notices, or placecards; violating a Sanctuary permit condition or term; releasing or introducing non-native species.	II-IV

## Lacey Act Schedule of Offenses

VIOLATION	LEVEL
<b>Marking Violations</b>	
Import, export, or transport in interstate commerce any container of fish (including shellfish) which has not been marked in accordance with applicable regulations and/or laws.	I-III
<b>Non-Marking Violations</b>	
Examples: Attempt to or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law; Within the special maritime and territorial jurisdiction of the United States – attempt to or possess any fish or wildlife taken, possessed, transported, or sold in violation of any foreign or Indian tribal law; including attempts.	V-VI

## Endangered Species Act Schedule

VIOLATION	LEVEL
<b>Taking Violations</b>	
<p>Moderate Violations</p> <p>Examples: Wounding, injuring, hunting, or capturing an Endangered or Threatened Species; harassment (Endangered or Threatened); collecting parts (Endangered or Threatened); Stellar Sea Lion violations including approaching designated rookery or haulout in buffer area or on land, fishing within a designated rookery or haul-out buffer area, discharging a firearm within 100 yards of a sea lion.</p>	III-IV
<p>Major Violations</p> <p>Examples: Killing an Endangered or Threatened Species; taking via significant Habitat Modification or Degradation (Endangered or Threatened).</p>	V-VI
<b>Transportation and Transactions Violations</b>	
<p>Examples: Import/Export (Endangered or Threatened); possess, deliver, carry, transport, sell or ship illegally taken threatened or endangered species in interstate or foreign commerce; trade in violation of CITES.</p>	III-IV
<b>Violations Related to Enforcement, Monitoring and Observers</b>	
<p>Examples: observer interference; interference with a lawful investigation or inspection.</p>	III-IV
<b>Other Violations (Endangered or Threatened Species)</b>	
<p>Minor- Moderate Violations</p> <p>Examples: violating certificate of exemption regulations; violating the conditions of a permit issued for research or propagation; violating distance restrictions for watchable wildlife; failure to maintain records as required by federal regulation or permit; failure to allow inspection of records as required by federal regulation or permit.</p>	II-IV



<p>Moderate - Major Violations</p> <p>Examples: Failure to comply with the terms and conditions of an incidental take permit; failure to comply with all applicable TED regulations and enforcement provisions; refusing to allow a boarding, entry to an area of custody, or inspection; dumping fish or other matter (including nets or other gear); interfering with an investigation; violations of speed restrictions by vessels greater than or equal to 65ft (19.8m) in overall length.</p>	<p>IV-VI</p>
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## Marine Mammal Protection Act Schedule of Offenses

VIOLATION	LEVEL
<b>Taking Violations</b>	
Harass, or Collect Parts of Marine Mammal	II
Harm, Hunt, Capture of Marine Mammal	III-IV
Killing of Marine Mammal	V-VI
<b>Transportation and Transaction Violations</b>	
Examples: Import, export, transport, sell, possess, purchase; violations related to illegal importation, purchasing, possession, landing, transport or sale of tuna and Violations related to record keeping, reporting or FCO requirements.	III
<b>Commercial Fisheries Violations</b>	
Minor Violations  Examples: Failure to register (i.e., fishing without authorization); failure to display annual sticker/decal, fail to carry certificate on board, or failure to file annual report; failure to report taking of a marine mammal.	II
Major Violations  Examples: Assaulting an observer, failure to take observer or impeding, intimidating, impairing, or interfering with an observer or observations; providing false information; commercial whaling.	V-VI
<b>Violations Related to Labeling Standards</b>	
Examples: Federal Trade Commission; violations related to tracking fishing operations; false statement/endorsement on a tuna tracking form; violations related to canning operations (other than record keeping/reporting).	III-IV

<b>Violations Related to Enforcement, Monitoring and Observers</b>	
Examples: observer interference; interference with a lawful investigation or inspection.	III-IV
<b>Other Violations</b>	
Examples: Violate native agent regulations or permit conditions; violations of speed restrictions by vessels greater than or equal to 65 ft (19.8 m) in overall length; violations related to unauthorized/non-permitted fishing, fishing methods or fishing gear; exceeding DML or intentionally deploying net on dolphins after DML has been reached; violations related to notification requirements; permit violations; violations related to labeling standards.	III-IV
Pinger violations not covered on Summary Settlement or Fix-It schedules.	V

<b>Northern Pacific Halibut Act Schedule of Offenses</b>	
<b>VIOLATION</b>	<b>LEVEL</b>
<b>VIOLATIONS REGARDING GEAR</b>	
Examples: fishing for halibut with other than hook and line gear, possessing halibut taken with other than hook and line gear; failure to have setline gear or skate marker buoys properly marked; fishing for halibut, or possession of halibut on board a vessel that is equipped with or possesses an automated hook stripper; sport fishing for halibut with other than a handline or rod with no more than two hooks attached.	II-III
<b>VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS OR OBSERVERS</b>	
Examples: Failure to obtain, at the location and times specified, a valid clearance and hold inspection both before fishing for or unloading halibut; failure to submit to a hold inspection as requested by a fishery officer; failure to permit inspection by authorized officer upon request .	II - III
<b>VIOLATIONS REGARDING PERMITS,REPORTING, DOCUMENTATION AND PERMIT REQUIREMENTS</b>	
Examples: commercial fishing for halibut, or operating a charter vessel fishing for halibut, or receiving halibut without holding a valid IPHC license; failure to keep an accurate log of halibut fishing operations, or to keep an accurate record of purchases or receipts of halibut; failure to carry license onboard; making false entries in a fishing log or on a fish ticket; failure to update fishing log within time specified; subsistence fishing for halibut without a Subsistence Halibut Registration Card.	II-III
<b>VIOLATIONS REGARDING TIME, AREA, OR EFFORT RESTRICTIONS</b>	

Examples: Fishing for, landing, or retaining halibut during a closed period, in a closed area, or in an area where the IPHC has announced that the catch limit has been taken; possession of halibut aboard a vessel in an area where commercial halibut fishing is not permitted; possession of halibut during a closed period while fishing for other species of fish; sport fishing for halibut out of season.	II-IV
<b>VIOLATIONS REGARDING SIZE/CONDITION/QUANTITY OF FISH OR LANDING/POSSESSION REQUIREMENTS</b>	
Examples; take or possess halibut less than 32 inches with head on, or less than 24 inches with head off; exceeding the daily bag limit or possession limit; catching undersized halibut; possession of subsistence-caught halibut on a vessel with commercial or sport caught halibut onboard; exceeding the daily personal limit of 20 subsistence halibut/person/day by more than 5 halibut; disfigurement of halibut that prevents minimum size or catch limit determination; exceeding halibut fishing period limit.	I-II

<b>Antarctic Marine Living Resources Convention Act Schedule</b>	
<b>VIOLATION</b>	<b>LEVEL</b>
<b>HARVESTING VIOLATIONS</b>	
Examples: harvesting Antarctic Marine Living Resources (AMLR) contrary to permit, area, catch limit or gear requirements, regulations or binding conservation measures.	III-IV
<b>TRAFFICKING VIOLATIONS</b>	
Examples: importing or exporting AMLRs taken by vessel with no harvesting permit, without a dealer permit or re-export permit, unaccompanied by a complete and validated Dissostichus Catch Document (DCD), or contrary to the provisions of any permit or DCD; shipping, transporting, selling, purchasing, importing, exporting, or having custody, control or possession of AMLRs harvested in violation of any binding conservation measure; receiving AMLRs from a vessel without a Harvesting or Dealer Permit.	III-IV
<b>MONITORING AND ENFORCEMENT VIOLATIONS</b>	
Examples: Refusing to permit a boarding by, or provide assistance to, a CCAMLR inspector; assault, resist, oppose, impede, intimidate or interfere with a CCAMLR inspector; Resisting arrest or interfering with arrest of another; frustrating timely identification of harvesting vessel or gear.	IV-V



U.S. Department of  
Homeland Security

United States  
Coast Guard



Commander (d)  
Thirteenth Coast Guard District

915 2<sup>nd</sup> Avenue  
Seattle, WA 98174  
Staff Symbol: d  
Phone: (206) 220-7090  
Fax: (206) 220-7092

16214

OCT 12 2010

Dr. Donald McIsaac  
Executive Director, Pacific Fishery Management Council  
7700 NE Ambassador Place, Suite 101  
Portland, Oregon 97220-1384

Dear Dr McIsaac,

I understand that LCDR Chambers was able to speak briefly about Illegal, Unregulated, Unreported (IUU) enforcement at the September Council meeting. I wanted to follow up with a more detailed summary of our IUU enforcement and patrol efforts on the West Coast. I hope that you can include this as part of the briefing material for the next meeting, in order to notify the public about our efforts, as well as to inform industry how they can help report and provide information to the Coast Guard and our law enforcement partners.

Coast Guard enforcement activity in response to IUU fishing falls under the same mission category that includes protection of the U.S. Exclusive Economic Zone (EEZ) and boardings on foreign vessels pursuant to treaty or bi-lateral agreement. Our mission to protect the EEZ from foreign fishing is highlighted by our operations near the U.S.-Russia Maritime Boundary Line. Cutters and aircraft routinely patrol the boundary line to deter and detect foreign fishing vessels operating in U.S. waters. In the Pacific Northwest, we do not have as persistent a threat of illegal foreign fishing, however, in July we did receive a report from the Whiting fleet of a Canadian vessel fishing in U.S. waters. The vessel was fishing in an area off Cape Flattery where the U.S. and Canadian governments have not reached firm agreement on the exact location of the border. Law enforcement cases generated in that region are referred to the vessels' home country for resolution. In this case, my office was able to pass reports and evidence to the Canadian Department of Fisheries and Oceans.

The second portion of this mission category is to conduct at-sea inspections on foreign vessels as authorized by treaty. On the West Coast, this often entails boardings of Canadian Albacore trollers operating in the U.S. EEZ under the U.S./Canada Albacore Treaty. In waters south of Alaska, patrols fall under the auspices of the North Pacific Anadromous Fish Commission and in the Western Pacific, under the Western and Central Pacific Fisheries Commission or the Inter American Tropical Tuna Commission.

The recent case discussed by LCDR Chambers began with a report from the tuna fleet that was passed to Brian Corrigan, of my staff, and to our District Fourteen Command Center in Honolulu. The reported location was between 800 and 1000 miles west of the Washington Coast. With agreement from the Pacific Area Commander, in Alameda, and the District Seventeen Commander, in Juneau, a C-130 patrol aircraft was dispatched from Air Station Kodiak, Alaska; once the plane arrived on scene, they were contacted by the tuna fleet and received information over the radio. The aircraft patrolled for over eight hours and located over 65 fishing vessels in the area. Although, we were unable to identify any IUU activity, I am encouraged that the service was able to take reports from industry, confer with our partners at NOAA/NMFS and respond by deploying assets to the scene.

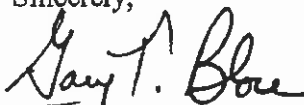
A strong international enforcement posture protects the stocks our fishermen rely on and sets an example for other nations to provide similar levels of enforcement and monitoring. Ensuring the integrity of the U.S. EEZ is a national focus, both as a homeland security mission as well as a mission that protects economic and biologic interests along the coast. I take both of these missions seriously.

I ask that the fishing industry continue to provide the Coast Guard, along with our partners at NOAA/NMFS and the states, with reports of illegal fishing activity. From a response standpoint, the more information we can gather about a suspected violation, the better. Detailed position, course and speed data helps us arrive on scene in the right location; information about the exact nature of the violation helps us plan which asset or crew has the best training or equipment to respond. For international violations, information about the vessels and crew nationality helps us coordinate with other governments and regional fisheries management organizations.

Continued, detailed reporting will help the Coast Guard and NOAA/NMFS gauge the level of illegal activity in the area, measure changes from year to year and allow us to better prioritize the operating areas of our patrolling assets.

Please feel free to contact my representatives to the Council, Lieutenant Commander Brian Chambers (x7305) or Mr. Brian Corrigan (x7309); they are my points of contact for fisheries management and enforcement issues.

Sincerely,



G. T. BLORE

Rear Admiral, U.S. Coast Guard  
Commander, Thirteenth Coast Guard District



# NOAA OFFICE OF LAW ENFORCEMENT SUMMIT

Agenda Item C.1.c  
Supplemental WDFW PowerPoint (Anderson)  
November 2010

## West Coast Participants

Tony Warrington – CDFG

Steve Bear – Alaska State Trooper

Earl Comstock – Alaska Charter Association

Bob Alverson – FVOA

Don Masters – NOAA OLE

Douglas Fear – USCG

Steve Joner – Makah Tribe

Bud Walsh – Davis, Wright, Tremaine



# Problem Statement

- The Office of the Inspector concluded that a lack of management attention, direction, and oversight led to regional enforcement elements operating independently; in the Northeast Region, this has contributed to aggregate fine assessments that are inconsistent with those in the other five regions. From 2004-2009, fines in the Northeast were 2.5 times higher than the second highest region and five times or more greater than the other four regions



# NOAA National Law Enforcement Summit

## Office of Inspector General Findings

1. NOAA senior leadership need to exercise greater management and oversight
2. NOAA needs to strengthen policy guidance, procedures and internal controls
3. NOAA needs to reassess its workforce composition



# NOAA LAW ENFORCEMENT SUMMIT

- Establish a process for annual priority setting at the national and regional level
- Increase compliance, emphasize partnerships, and utilize stakeholder input
- September-January consult with stakeholders
- January NOAA develops draft priorities
- February – August, internal and external review and approval process



# Protecting the Nation's Marine Resources



## West Coast Approach