

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