

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