



Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pcouncil.org
Dan Wolford, Chairman | Donald O. McIsaac, Executive Director

December 14, 2011

Northwest Division
Special Agent in Charge Vickie Nomura
7600 NE Sand Point Way NE
Seattle, WA 98115

Southwest Division
Special Agent in Charge Don Masters
501 W. Ocean Blvd, Suite 4300
Long Beach, CA 90802

Subject: Annual National and Regional Enforcement Priorities, Comment Deadline December 15, 2011

Dear Ms. Nomura and Mr. Masters:

At its November 1-7, 2011 meeting in Costa Mesa, California, the Pacific Fishery Management Council (Pacific Council) reviewed the letter from National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement (OLE) Director Bruce Buckson, dated October 12, 2011 concerning NOAA Enforcement priorities. The Pacific Council considered public comment and written statements from four established advisory bodies, including their Enforcement Consultants committee comprised of NMFS, Washington State, Oregon State, California State, and US Coast Guard law enforcement representatives, before tasking the transmittal of this letter. The Pacific Council sincerely appreciates the NOAA OLE outreach efforts on this important matter, and asks that you distribute this letter appropriately for full consideration in relevant decision-making.

NOAA OLE is seeking input with respect to (1) "setting annual priorities at the national and regional level," and (2) "how the agency can develop national and regional priorities that reflect:

- The potential effective and or threat of non-compliance to the resource
- The status of the resource
- Efforts to improve compliance
- Opportunities for deterrence
- Catch share programs
- Efforts on cases outside specific priorities
- Available resources
- Other considerations as warranted"

In response, this letter (1) recommends a process or a road map that prioritizes living marine resource protection issues, and (2) identifies regional priorities so that they can be compared nationally in an effort to set direction. The planning model used on the west coast normally results in a consistent set of living marine resource enforcement priorities between the state and Federal enforcement programs.

IDENTIFYING A PROCESS

Our experience on the West Coast demonstrates that the processes associated with the Pacific Council and Joint Enforcement Agreements (JEAs) maximize the effectiveness of law enforcement by defining Pacific Coast and the nation's marine fisheries protection priorities, supporting comprehensive cooperative planning efforts, and enabling inter-jurisdictional fisheries enforcement operations. The Pacific Council has convened an Enforcement Consultants advisory body that actively participates in the Pacific Council process and advises the Pacific Council on regulations and outcomes associated with implementation. The enforcement representatives on that panel report that the Pacific Council takes their enforcement concerns seriously when making regulatory decisions. This connectivity is central to success in identifying priorities and carrying them out in a manner that results in real protection for the resource.

The Pacific Council view is that, at least in the broad sense, national priorities should mirror regional priorities, and vice-versa. Priorities should be set at the regional fisheries council level and cascade down in the form of direct patrol and investigative operations. Pacific Council protection priorities are heavily considered when developing the operational portion of JEAs. Field operations are then led by state enforcement personnel that can leverage patrol resources when there is limited Federal presence, complement the investigative role of NOAA Agents, determine compliance, identify and report on regulatory deficiencies, and bridge jurisdictional gaps.

REGIONAL ENFORCEMENT PRIORITIES

The Pacific Council believes that the highest priority should be effective and efficient enforcement of the Pacific Council's enforcement priorities and Federal regulations protecting endangered species. When it comes to enforcing Federal regulations, uniformed state officers, wardens, and troopers have a role, and NOAA OLE agents have a role. Federal and state operations must be complementary of one another in a way that addresses the considerations Director Buckson notes in his letter to the Pacific Council; e.g. status of the resource, opportunities for deterrence, available resources, etc. In the Pacific Council's view, the enforcement priority-setting mission cannot be accomplished without analyzing the roles of Federal and state officers at the same time.

NOAA is considering a change in enforcement strategy that places uniformed NOAA Officers in the field at the expense of filling vacant Special Agent positions. The West Coast States have developed and implemented an enforcement model that capitalizes on the strengths of the Federal and state JEA partnership to address Federal and Pacific Council enforcement priorities. The West Coast model has the ability to leverage over 600 general authority officers

that are already present and engaged in the community-based resource protection effort. The model takes advantage of the State partners' infrastructure in place, as well as trained, equipped and supervised personnel, already deployed to meet uniformed patrol needs. An important part of the time-tested West Coast model is the important role current NOAA Special Agents fulfill—as the necessary corresponding “detective force” with state and United States Coast Guard (USCG) partners.

We are concerned NOAA does not have adequate infrastructure in place to properly support a uniformed contingent, as is currently proposed. This approach appears to be duplicative of the state's ability to perform uniformed Federal fishery patrol functions. Investing in a “new” program versus using existing cost-efficient and available state resources does not make good sense in a time of increased fiscal challenges at the Federal and state levels.

Effectiveness on complex enforcement issues/priorities requires both patrol and detective or investigative functions. The patrol and detective/investigative functions are fundamentally different from each other. One aspect of enforcement requires call-for-service patrol officers focused on the responsibilities of day-to-day and emphasis patrols. The other aspect requires an investigative agent that is not consumed with the responsibilities that come with day-to-day patrols, and instead can focus and commit the time required to investigate large, complex cases. While many investigations are often a result of an initial uniformed officer, an investment in an agent/detective force is necessary if violations discovered at the field level are elevated.

Someone needs to have the time and latitude to focus on egregious offenses such as large-scale fraud. The expertise needed to be competent and successful in detecting, investigating, and eventually taking action on major fisheries cases necessitates a well-trained work force. It is critical to hire and train NOAA investigators with the requisite skill set to perform these complex fisheries investigations and ensure their effectiveness.

Recognizing that the highest priority should be maintaining the cohesive web of the successful Federal-state partnership in current existence on the west coast, we offer the following as issue-specific marine resource priorities.

PRIORITY ONE

ESA-listed fish/Overfished species: Given that virtually every west coast marine and associated freshwater tributary is occupied by ESA-listed or overfished species, providing access to healthy populations while avoiding impacts to recovering species is a typical challenge for the Pacific Council. As a result, commercial and recreational opportunities are tied to some of the most complex management strategies in the nation. Trawl rationalization involving over 90 species of groundfish provide one example. Adequate enforcement of related measures is the key to being able to successfully prosecute fisheries without negative effects on stock rebuilding efforts.

Anadromous species provide a second example. For these species, adequate enforcement means providing a law enforcement presence throughout the range of migrating fish, not just

saltwater areas. Pacific salmon, steelhead, and Eulachon rely on thousands of miles of freshwater spawning and rearing habitats far inland from the Pacific Coast. If illegal take of sensitive species and habitat destruction goes unchecked, the repercussions will be felt in fisheries that occur elsewhere.

Unfortunately, West Coast ESA listings are not limited to just fish. Several marine mammals have this distinction, and require law enforcement presence to monitor and control human interactions.

Related State Activities:

- ESA-listed fish protection in marine/freshwater: patrolling closed seasons and take prohibitions, enforcing selective fishery regulations, detecting and enforcing hydraulic and other habitat laws.
- ESA-listed marine mammals: enforcing vessel interactions with Southern Resident Orca Whales, human interactions with other listed marine mammal species along the coast.
- Overfished groundfish stocks: patrolling marine protected areas and conservation lines, enforcing laws related to Trawl Rationalization and other sectors of the groundfish fishery, monitoring catch accounting.

Related Federal Activities:

- Coordinate cooperative compliance programs in watersheds with a history of water diversion, barriers to fish passage, and screening.
- Assisting in and coordinating investigations involving egregious hydraulics violations and habitat damage.
- Investigate large-scale ESA take case referrals.

PRIORITY TWO

Protection of Healthy Stocks: At-sea and dockside law enforcement presence during commercial and recreational fisheries under a Federal management plan is important to both a fair playing field for participants and fishery sustainability.

Related State Activities:

- Patrolling the Exclusive Economic Zone (EEZ) by vessel to ensure compliance with limits, gear requirements, area closures and seasons.
- Patrolling dockside to ensure compliance with limits and seasons. Particular focus should be on species, daily, trip, weekly, monthly and cap limits and total catch accounting.

Related Federal Activities:

- Investigate field referrals involving significant catch accounting violations and fraud.

PRIORITY THREE

Lacey Act Enforcement / Domestic Undocumented fish: In general, when fish and shellfish resources have been taken in violation of state, Federal, or tribal law, have a nexus with commerce, and are transported across a state or an international border, a violation of the Federal Lacey Act has occurred. Expanding patrol and inspection activities beyond fishing grounds and typical fish delivery sites is critical to taking the profit out of poaching, protecting the integrity of legitimate commercial industry, and determining whether catch was fully accounted for. Successfully tracing products through a highly mobile market is reliant on an investment of time conducting inspections at border crossings with Canada, Mexico and adjoining states, as well as cold storage facilities, shippers, and retail markets.

State Officers/Troopers have the broad inspection authority over commercial businesses engaged in dealing, shipping, transporting, storing, selling, or buying natural resources that is necessary to detect large-scale abuses.

Related State Activities:

- Border inspections on inbound and outbound commercial fisheries products to ensure compliance with harvest and catch accounting regulations
- Ground and air shipper inspections
- Market place inspections that detect undocumented fish, illegal commercialization, and misbranding or mislabeling events that undermine commercial fishing business and defraud consumers

Related Federal Activities:

- Focus on large scale violations involving the movement of illegally taken or marketed fish with interstate or international nexus
- Lead and coordinate multi-jurisdictional approach to investigations

PRIORITY FOUR

Illegal Foreign Fishing Incursions: Obviously the presence of vessels fishing illegally disadvantages our fishermen and industry through competition for limited resources. But just as important, it compromises fishery management plans. Other ancillary impacts occur through unreported catch and failing to follow strategies that were designed for fishery sustainability. Given how tightly resources are managed today, a small number of non-compliance events can have profound impacts on legitimate U.S. commercial fishing operations.

Related State Activities:

- On the water patrol presence
- Collaborating with other law enforcement entities with joint border concerns

Related Federal Activities:

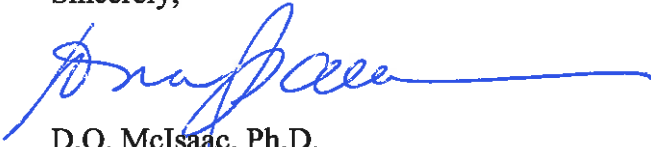
- Coordinate the cross jurisdictional investigative response.
- Investigate large scale illegal harvests

USCG COMMENTS

The US Coast Guard is an important partner in the West Coast enforcement efforts. The Pacific Council understands that the USCG will be providing comments separately and strongly encourages their consideration in your decision-making process.

Thank you for this opportunity to provide comments on enforcement priorities on behalf of the Pacific Council.

Sincerely,



D.O. McIsaac, Ph.D.
Executive Director

C: Pacific Council members
Enforcement Consultants
Mr. Bruce Buckson
Mr. Terry Duhn