

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

LAW ENFORCEMENT COMMITTEE

**Sawgrass Marriott
Ponte Vedra Beach, FL**

June 13, 2017

SUMMARY MINUTES

Law Enforcement Committee

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Doug Haymans

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Ben Hartig

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Dr. Bonnie Ponwith
Erika Burgess
Rick DeVictor
Captain Bob Lynn
Karen Raine

Other Observers/Participants attached.

The Law Enforcement Committee of the South Atlantic Fishery Management Council convened at the Sawgrass Marriott, Ponte Vedra Beach, Florida, Tuesday morning, June 13, 2017, and was called to order by Chairman Mel Bell.

MR. BELL: We will go ahead and convene the Law Enforcement Committee meeting. We have already approved the agenda and made an adjustment to Items 3 and 4, just reversing those on the agenda, and we have approved the minutes from the December 2016 meeting. The first item on the agenda is actually the Advisory Panel Report, and that will be given by the new LE AP Chair, Captain Bob Lynn from Georgia DNR. Welcome, Bob.

CAPTAIN LYNN: Thank you. Good morning, everybody. This is definitely my first up to bat, and so bear with me on this. The LE AP did meet in Charleston, South Carolina, on May 18 and 19 of this year. We discussed several items, operator cards being one of the items that we discussed.

In the discussion, we came up with some recommendations, or some ideas, and we discussed basically the use or relativity of operator cards. It was discussed in the AP that, currently, the way the operator cards are being used, it really doesn't provide a great benefit for law enforcement, at the current time. However, there is room for improvement, and the LE AP would work with the council to maybe improve the cards for use, if it's expanded for its use to include all fisheries, to bring it in line with maybe what requirements are needed to put on the cards. Is there any discussion on that?

MR. BELL: We can do this kind of item-by-item. It's sort of listed that way in the agenda, but, related to operator cards, as Bob said, I think there was a lot of discussion. There was a lot of input. The overall, I think, feeling of the AP was that the operator cards could have some utility, and they could have some value. They could serve a useful purpose, but not necessarily in the current form that they're being applied.

Recall, in our fisheries right now, it's just dolphin wahoo and rock shrimp, and so I think there is interest in retaining the operator card function, but some real serious tweaking would need to be done to get them into an approved format. Does that make sense, Bob?

CAPTAIN LYNN: That's correct. That's what was discussed, yes.

MR. BELL: Okay. Any discussion about operator cards related to kind of -- I think the plan was for particularly NOAA OLE to sit down and look at this and maybe propose a way forward, in terms of making improvements and how it could be made to work better, from their perspective, and the idea being that I think they're not ready to toss them out entirely at this point, but either we could fix it or, at some point, then perhaps just toss it, but, as it's set up right now, it doesn't make a lot of sense. It's just two fisheries. Then we could have some discussion about things related to actions that have been taken associated with operator cards, and it's not a lot, and so, in its present form, they are not particularly useful. Do you guys have any input on that?

MS. BECKWITH: It was great discussion, and one of the things -- Of course, we're not considering getting rid of operator cards except in dolphin wahoo, and we've put that amendment on hold for a bit, and so we've got some time. During that time, one of the things that I would like to explore is to see if the Mid-Atlantic and the Gulf would actually be interested in the concept of

an operator card, because I think one of the discussions that came up was part of the utility would be if this was a coast-wide requirement that was all standardized and useful throughout the different regions.

I don't know if we can make some inquiries to some of the other councils, to see if they can look into what GARFO is doing, what it's being used for, and if it might be something of interest, because I think, if it's GARFO and us, even with improvements to the operator card, I simply don't see the utility in the long run, but, if it was coast-wide and the Gulf Council and the Mid-Atlantic was onboard and we were all up to standards and it was in one centralized database that could be used that way, then I think it has some real potential to do some good, both for data collection and for law enforcement.

Short of that, I don't see us winning a lot of battles, and so I guess my first inquiry, personally, would be to see if the other two councils would be interested in consideration of this and then move forward from there.

MR. BELL: Also, that just reminded me. At the end of the -- There is some discussion of that, kind of how to move forward, but I think it's really going to need to be a -- Go ahead.

MS. BROUWER: At the very end of your Law Enforcement AP Report, there is an appendix that basically is a series of questions that Captain Grant Burton from the FWC -- He took it upon himself to call the GARFO office and inquire as to how these operator cards are being used in the Mid-Atlantic, and there is a series of questions that are pretty interesting, and so I included it as an appendix to the AP report, and so that's all in there for you to see.

MR. BELL: Yes, and that was a project that Grant undertook from a previous meeting that we had, and so we have kind of made inquiries into moving in that direction, but I think, ultimately, NOAA OLE is going to have to come in and get -- If they want this to work, they're going to have to work this, because it's a NOAA-managed, or NMFS-managed, system right now, and so some further study needs to be done and some analysis of how to make this better, if we're going to keep it.

Then what I would look for is the LE AP would have some recommendations back to us, as to what they would like to do, and then the council could look at actions necessary to do whatever we might need to do. Any further discussion of operator cards at this point related to -- I will let Bob move through his report, and we'll come back to some things a little bit later. Bob, do you want to continue on?

CAPTAIN LYNN: Thank you. The next item discussed was the enforcement of fishery closures, which really pertained around like a two-day opening of the vermilion snapper reopening to commercial harvest, and basically how would law enforcement handle it and what was our opinion. Those short openings are kind of difficult to manage, from a law enforcement perspective, especially the way the regulation is currently written and the way that we interpret that regulation.

It basically states that the fish have to be harvested, landed, and sold prior to, and it may include any that were held in cold storage by a dealer or processor, and so, basically, if the closure happens, a boat has to anticipate how long it would take it to get back to its point of landing to be able to sell those fish, and so a two-day opening may be good for a boat that could go out and come back

relatively quick, but, a slower-moving vessel that would take some time to go out, and especially to come back to meet the closure, would put a really shortened period of fishing for that vessel.

That's kind of the way we understood that the regulation was, and so a two-day or a short opening is difficult, I would say, on the fishermen side, with a slow-moving vessel, and I don't see a benefit. We really recommend, or we discussed, if possible, moving any excess, instead of having a short opening, move it to maybe the next year's allowable quota. That would be more beneficial than a short opening.

MR. BELL: Keep in mind that's something for us to discuss. From the enforcement standpoint, they were just asked to weigh in on this from enforceability. We're pushing people -- We're not pushing, but we're setting up a situation where folks have a very limited amount of time to get in and do the things they need to do to land the fish, sell the fish, and document all that properly.

When we do these two-day or whatever it may be sort of pulse openings, it perhaps disadvantages one part of our area than others. In other words, particularly up farther north, where our guys have to run in slower boats, perhaps, to get farther offshore than say day boats in Florida, but that's something for us to consider if that's how we want the fishery prosecuted, but it's not really a low-enforcement-specific thing, but they did comment -- They see all of that, but it puts them in a position, at some point, where folks may be up against the wire, a lot of times, to do what they need to do.

MR. PHILLIPS: I'm not on your committee, Mr. Chairman, but did they talk about just the boat being back at the dock by the landing time or being possibly in the process of unloading? We close at midnight, and so, even if we got back at eleven o'clock and they took some of the fish off the boat, they were in the process, or at least it was obvious that they weren't fishing after it was closed, was there any of that discussion?

CAPTAIN LYNN: Not a lot that I remember. Basically, I am just quoting you from the letter of the law, the spirit of the law, and that would say that they had to be back and all of those conditions would have to be met. Of course, officer discretion is always available, but I'm just quoting you the law. They would have to be back and meet the conditions under that regulation.

MR. BELL: There was discussion of it, but it was however it is worded and, bam, that's the way they're going to interpret it, and so there was some discussion about tied up to the dock or tied up the dock and the fish off the boat, and the one we were looking at, I believe, was the vermilion one. It said specifically -- I can't recall now, but, whatever that specific wording was, that's the way they said that it would be interpreted, but you can see where you could have some variation.

If I'm back on the hill at 11:30 and I'm tied up, but the fish are still on the boat, but it said, very specifically, in there that they had to be, I think, in possession of a dealer in storage or something. The way it was actually worded is prohibition on sale or purchase during closure for vermilion snapper does not apply to fish that were harvested, landed ashore, and sold prior to 12:01 on that particular date and were held in cold storage by a dealer or processor. However it's worded when we do that is how they would interpret it.

MR. CONKLIN: I am a dealer and a processor, and, on my federal dealer permit, my offloading facility is a dock. Cold storage is on a boat that I own, and so would that be considered tied to my

dock at my dealer facility? Plus, I make advances on these trips, and the boats aren't exactly profitable. They are already -- The fish are paid for before they leave the dock, in most cases. I have proved it before, and I don't want to have to prove it again, but advances on trips is purchased fish. Tied to a dock where you're the federal dealer and that's your facility, and the cold storage is a fish box on a boat.

I have had cases where we've had to settle in hallways because people couldn't interpret the law on the enforcement side, but it really puts us in a tough position, and I would like for us to figure out what the -- Not make it prohibitive for people to go out and make a little bit of a living on short openings. Their comments, I guess, about adding it to the next year, in some cases we have done that to the next split season, but there is rules in place that says that we can't just roll fish over from one year to the next unless we do like this huge framework or something. It is difficult, and it's a slippery slope. Certainly, the guys that I represent are not trying to break the law. They just want to make a living.

MR. BELL: That was discussed, and I think what it boils down to is that, to the greatest degree we can, in these announcements or how we structure these openings, we need to be very specific about what our intent is and what it is that we want to see, because what it boils down to is, at some point, an officer encounters a situation, and there is a certain amount of discretion on his part on how to interpret things.

The more black-and-white we can make this, in terms of how we word it, the better, because you will find that, even in the discussion we had, different officers present at the LE AP from different states might interpret that a little differently, and so I think it's incumbent upon us, the council, through NMFS, to make this as clear as possible, so they're not having to kind of -- It's exactly the situation you described.

There could be variations of that all over the board, but I think that's, ultimately, the best thing for enforcement, is it's either -- I know it's not always a perfect world, but it's either this or that, boom, boom, and I would defer to Monica or Karen, based on, in terms of how much detail we can put in an announcement or what authority we have to be -- The level of prescription, in terms of that it is we want to see, but your example does come up.

MR. CONKLIN: I know there is some states that have different definitions of "landed". I think North Carolina's landed is tied to a dock, or on a trailer, and maybe South Carolina is -- We don't even have one, I don't think, and so there is the slippery slope there, but it would be very nice to have a black-and-white answer.

MR. BELL: Right. Michelle, did you want to say something?

DR. DUVAL: Thank you, Mr. Chairman. I'm not on your committee, but, yes, we actually define "landing" in rule, and so it's very clear to our officers what "landing" means. For commercial fishing operations, it's when fish reach the shore or a structure connected to the shore. That's how it's defined, and so that's how our officers will enforce it.

MR. CONKLIN: I really wish that I was able to make that meeting, because that was something that I wanted to talk about. Then, in another instance, I have another facility where we pack and land fish, and this is common up and down the coast, where it is officer discretion. Over the years,

we've been able to get to the dock before midnight or whatever and start to offload. Where the fisherman has enough integrity, and we were instructed by law enforcement to take one fish off of the boat and take it and throw it on my scale and write it down on a trip ticket, and that constitutes in the process of an offload. Then the guys, since they've been up for forty-eight or fifty hours or whatever it is, they can go home and get some rest and come back and finish the job the next day, after the season was closed.

That's the way that other people have conducted business for years, and then we get new enforcement, and they interpret it differently, and then, all of a sudden, these fishermen get in trouble, and I don't think it's fair.

MR. BELL: Right, and you can imagine that you could have countless variations of this from the Keys all the way through North Carolina, but I think, again, for us as a council, the thing we need to do is make sure that we're very clear -- In the regulations that we end up with, that we're very clear in what our intent is of what we want and what we want them to be looking for. Then, of course, the words you use, like "landed", may have different meanings for different states, but we've got to be aware of that, so that we don't put folks that are trying to enforce federal regulations in a position where they're having to kind of interpret the gray areas and all, and so, the clearer we can be, I think the better.

MS. BURGESS: I wanted to provide the council with Florida's definition in rule of "land". That is land, when used in connection with the harvest of an organism, means the physical act of bringing the harvested organism ashore, and so tied to a dock would not qualify as landed.

MR. BELL: I think we're just kind of bring it ashore. I don't have it in front of me, but it's kind of broad like that too, but, again, it's a matter of -- The law needs to reflect, or the regulations need to reflect, what our intention is. We just need to be clear on that, and then I would ask Monica and others to make sure, or tell me, how specific can we be in the announcements or that sort of thing.

MR. HAYMANS: I don't want to go down the rabbit hole too far, but Bob and I had some of this discussion in my office, and, to me, the intent is that, for any of the fisheries, when we have an opening and closing, that's basically on the fishing grounds, wherever those are, and so we don't go out and check folks to see if they've put hooks in the water before the actual opening hour occurs.

The issue is trying for fairness for these slower boats, and, whenever we get to an individual fishery, to me, it looks like we could set the opening and closing, and that's -- If a boat is checked on the grounds with the hooks in the water after the time of closure, they're guilty. Then we give them X amount of time to get back to the dock. If it closes at 12:01 a.m. on a given day, they've got a twelve-hour, or a twenty-four-hour period to be back to the dock. That is for future plans, when we get into those, and, anyway, that's kind of where we were looking at.

MR. BELL: That makes sense, and, like we said, this came up at the meeting, was that there is -- Perhaps in Florida, south Florida, where you don't have as long of a run time and you're using faster boats, maybe, and it was mentioned that, with these little pulse openings, basically they're for the day boat guy, the guy that can run out there and hit it and turn around and run back, and it's not necessarily conducive for the slower boats up our way.

MR. PHILLIPS: It doesn't necessarily just apply for these short openings. When we're closing at midnight, nobody is packing fish at one o'clock in the morning, and so, a lot of times, you're going to lose a day of fishing if you had to have them off, and so it's not just pulse fishing. It's all of it. If we can figure out, as a council, work with Monica and Roy and figure out what we need to do to change the rule or make clear that this is our intent, maybe that's what we need to do at some point in time fairly quickly, so everybody, law enforcement and fishermen and everybody, can be on the same page. I don't think it's that hard of a fix.

MR. BELL: Right, but the reason the question came up was that, originally, they were asked specifically about the pulse fishery, but you're absolutely right. A closure is a closure, and how you interpret what "landing" means makes a big difference. Bob, do you want to roll on?

CAPTAIN LYNN: All right. We were asked to discuss some cobia regulations, as far as the sale of cobia and who can sell commercially. To be honest with you, we discussed it for a great length of time, and we're still were not sure when we left, and I'll be honest with you, in my opinion. I was probably as confused when I left as I was when I got there about this, and so we do need some clarification on selling cobia to a federally-permitted dealer. I would really, I guess, defer to --

MR. BELL: Monica, is that something that you would like to weigh in on now, just some of the discussions we've had about proper --

MS. SMIT-BRUNELLO: Would you repeat that, please?

CAPTAIN LYNN: It's basically commercially-caught cobia, the sale of those fish. Do they have to be sold to a federally-licensed dealer? How did that go, because law enforcement -- We kicked that ball for a while, and we still didn't really come up with a good answer.

MS. SMIT-BRUNELLO: Well, I've spent a lot of time trying to figure out the best situation with cobia and the way to explain cobia, and my cobia file is, I think, in my bag. I even brought it with me, and Mel and have had numerous conversations since the last council meeting about that.

The difficulty arises because there was never a federal commercial permit required to sell cobia, and all the commercial regulations and the way we think about things are geared really back to the permit, whether you have it or not, and so, since, in this case, there is no permit to require the sale of cobia, and the other wrinkle is because, either recreationally or commercially, at this point, you're limited to two cobia per person per day, until Framework Amendment 4, I think, goes into place, and it gets very complicated.

To the best of my recollection, and I could pull out my notes, but, if you are a federal dealer, and so you have your federal dealer permit, you can only purchase cobia that have been harvested in federal waters from a vessel that has either a commercial king mackerel permit, a commercial Spanish mackerel permit, or a federal for-hire permit. That's kind of where it comes down to.

Now, I know that the recreational sector is closed in federal waters, and so, right now, what is open is -- You can call it commercial cobia, but, in the regulations, it calls it cobia that are to be sold, or cobia that are sold. Recreational is called cobia that are not sold, because there is no permit required, and so it's a bit of a balancing act.

If people are harvesting in federal waters, they're harvesting under the commercial quota, so to speak, and those are cobia that are supposed to be sold. Now, whether you can make someone sell their catch is another matter that I am not even going to go into, but I know it makes it difficult for enforcement, and there have been a lot of questions raised, including who can these people sell to, and so, if you have an individual that doesn't have any federal permits, they're still allowed to go harvest that -- If they're a commercial vessel, and this is what Mel and I came down to, because it's a commercial quota.

Who can they sell to? Well, if they don't have any federal permits, I think that federal dealer, necessarily, cannot buy cobia that have been harvested in federal waters from them, because of the way the regulations are structured. That individual, I presume, would have to sell to a state-licensed dealer.

It gets very complicated, and I think some of this also became a little more complicated when we put the federal dealer amendment into effect and those regulations, and I was going to talk about this during the Mackerel Committee, that I think we need to tweak those regulations, because I don't think the council ever intended -- To the best of my recollection and research, I don't think the council intended that, if you caught federal -- If you harvested cobia in federal waters, the only people who could sell it, federally-permitted people who could sell it, were commercial king mackerel fishermen or commercial Spanish mackerel fishermen or a federal for-hire fisherman.

I think you meant that, if you had any federal permit, almost, or, if you didn't have a federal permit, you could still sell to a dealer, but, anyway, it gets very complicated, and I will explain that a little bit more later, but that's -- I probably made you more confused, in some respects, because it's a confusing thing.

MR. BELL: Right, and so let's -- We will come back to this, and you can see that Kari has been involved in this discussion too, in trying to formulate a table to simply capture this, but it's not been that simple. I would like to come back to maybe how we could fix this or move forward when we get to the Mackerel Cobia Committee. Doug, did you have something?

MR. HAYMANS: If we're going to tackle that Pandora's Box in Mackerel Cobia, that's fine. I will wait.

MR. BELL: Yes, because it's not really for law enforcement to fix that. It's a regulatory issue, and so my simple take on it is different regulations came into play at different times, and, particularly later on, when we did the dealer amendment, I think it was our vision that basically federal dealers would buy from federally-permitted fishermen and that this would all work out, and we weren't thinking that there isn't a cobia permit.

That's how we got where we are, but, from the enforcement standpoint, it does create some confusion for Bob and others, in terms of what they're looking for. I think the most important thing, and what I have told our folks, is that kind of the default is that, if they have to be sold, they need to be sold to a dealer. If that happens, then what is really, from our standpoint, is we're tracking the capture, the commercial landing towards that commercial ACL, and that's what we want to make sure that we do, that the fish go through the right slot and they get counted the right way, and so that's the most important thing, that they are documented by a dealer, in one form or the other.

You can see this question has come up not just in South Carolina, but in Georgia, and we're all kind of dealing with this, but I would like to kind of address the remedy, what we need to do remedy-wise, in the Mackerel Cobia Committee. You asked a question, and are we good there, Bob?

CAPTAIN LYNN: I think, as of now, I guess as far as law enforcement goes, as long as we can say they were sold, that's kind of the bar that we're going to settle with, as of right now, until further clarification comes out.

DR. DUVAL: Again, I'm not on the committee, but I am little concerned that we have a limited amount of time for the Mackerel Cobia Committee, and, just given the amount of discussion this has generated here, that we could suck up the entire hour-and-a-half, I think, that we have for Mackerel Cobia in just talking about this issue of federally-permitted versus non-federally-permitted and who can sell to whom and that sort of thing.

I think my concern is that we have some conflicting statements in Framework Amendment 4 that would create a group of fishermen, commercial fishermen, who have only state commercial licenses that wouldn't be able to sell to anybody, according to the way this is being interpreted right now, and that's my concern.

There is a statement in Framework 4 that says: Although there is not a federal commercial permit requirement to fish for and sell cobia caught in federal waters, all cobia from federal waters must be sold to a federally-permitted dealer. Therefore, cobia harvested from a vessel fishing without any federal permit may only be sold to a dealer that has a state license, but not a federal dealer permit.

What you are doing is you're saying that all cobia harvested from federal waters must be sold to a federally-permitted dealer, even though there is no federal permit requirement, and so, for those guys who have just a state license, and they're fishing in federal waters because they are legally allowed to do so, but you're saying two different things. One, they can sell only to a state-permitted only dealer, but I would venture that there are -- For vessels without any federal permit that harvest cobia in federal waters -- If they don't have a federal permit, they have to sell to a state-only dealer, but the harvest is from federal waters, and so they must sell to a federal dealer.

You have created this construct where they can't sell their fish to anybody. They are harvesting them in federal waters, because they're open. Therefore, they have to be sold to a federally-permitted dealer, but I only hold a state fishing license, and so you're telling me that I have to sell to a dealer that doesn't have any federal dealer permits, and so who do I sell my fish to? I guess the one thing that I would note is that, in order to get a federal dealer permit, you've got to have a state dealer license anyway.

MR. BELL: Yes, and, when I said there are conflicting regulations, there are conflicting regulations, but I think what I was trying to work with was what is sort of our intent and what's the best thing that can come out of this, in terms of, if you're going to allow the open federal fishery to be executed, then you've got to be a little flexible, perhaps, and, as long as they sold and documented by a dealer, state or federal, you have done the right thing, but not necessarily in accordance with the conflicting regulations.

That's why I said that I don't think that we can fix that right here, and then another thing to keep in mind, as we move forward with cobia in general, and, again, for discussion later, is, from our perspective on the council, what will our role be? If we kind of go down another path, how much energy -- We really need to kind of de-conflict this anyway, but, right now, it's come up because of cobia, specifically, but how much time -- If perhaps the council might end up turning over cobia to ASMFC, then how much energy do we need to spend on trying to fix something that might not be something we're dealing with?

You can spend, and Monica will tell you, weeks and weeks and weeks of trying to figure this out, and I've been back and forth with Monica and Shep, but the problem is that they're just conflicting. As it stands right now, there are conflicting regulations, and we've got to figure out how to de-conflict that, which is going to, again, take a little bit of time, but, from an enforcement standpoint, what enforcement does is they just take the laws given and try, to the best of our ability, to interpret them and execute what needs to be done related to keeping the laws in the field and all, and so they can't really fix this.

They need for us to fix this as well, and so I don't know. I don't know how much time you really want to spend trying to figure out how to de-conflict this, but that's why I was thinking it was more of a function for the -- I realize time is of a constraint, but more of a function for the Mackerel Cobia Committee, perhaps. Anything else on cobia right now?

MR. HAYMANS: Could I ask Monica one thing to maybe think about, until we get to the next discussion on cobia? That is the statement that you made about the charter/for-hire being able to sell because they have the federal permit, and I guess I would ask that we think about the intent or the spirit of the no-sale provisions that we have on every other species for for-hire and how that could be translated over to cobia. To me, the spirit of the law is that for-hire doesn't sell, and so, maybe if we get to that discussion, we could talk about it. Thank you.

MR. BELL: Okay. Bob, do you want to carry on?

CAPTAIN LYNN: As far as other discussion, there were other sidebar discussions, but those were the three big topics that we were really asked to discuss and come up with some points to bring to the council, and so that's about all I've got for right now, unless anybody has any other questions.

MR. BELL: Any questions for Bob related to the meeting or AP activities? We will come back at the end of this, remember, in terms of things that we want to take forward to the AP for their next meeting for consideration, but, if there are any questions for Bob right now, we've got him, and he will be here. No questions? All right. Seeing none, we will move to the next agenda item, and I saw Karen.

We're going to go to Agenda Item 4, Penalties for Reporting Requirements, and this came up as a result of some questions and some discussion we had at a previous meeting, and Karen is going to make a presentation here related to permit sanctions and some discussion of how -- This came up, I think, in the context of bringing in the for-hire reporting requirements and enforceability and how you deal with issues for non-reporting and what sort of leeway we have in terms of sanctions and actions, and so, Karen, I will let you just roll into your presentation.

MS. RAINE: Thank you. I know this is a discussion that we've had a number of times throughout the years, and so, anyway, this is just focused on permit sanctions under the Magnuson Act and not monetary penalties, but I thought we would look just at permit sanctions. Under the Magnuson Act, of course, there are -- The Magnuson Act does provide for permit sanctions for cause or for non-payment, and the Secretary may, and it's not mandatory, but it's optional, and the Secretary may revoke permits, suspend permits for a period of time, deny permits, or impose additional conditions and restrictions on permits issued or applied for.

The factors to take into account under the Magnuson Act, in imposing a sanction, is the nature, circumstances, extent, and gravity of the prohibited acts and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require, which is a pretty broad category, but that's the way the statute is set out.

Importantly, the Magnuson Act sets out that no sanctions shall be imposed under this subsection unless there has been a prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed, either in conjunction with a civil penalty proceeding under this section or otherwise.

Essentially, if there is a violation in which the agency wants to propose a permit sanction, a notice of intent to deny a permit or sanction the permit would go to the alleged violator, and that person would have the opportunity to request a hearing before an administrative law judge, just as the person would if there was a monetary penalty being imposed, and, often, if there is a permit sanction, there is also a monetary penalty.

If there is a permit sanction for non-payment of a civil penalty that became final, the person would have had the opportunity to request a hearing for the initial violation, and it's not that a hearing has to happen, but it's just that the person has to have the opportunity and either can take up the opportunity or pass on it.

Then we have our civil procedure regulations, and there is a section on permit sanctions at 15 CFR Part 904. Subpart D deals all permit sanctions, and so these regulations govern the suspensions, the revocations, the modifications, and denials of permits for enforcement reasons. Again, that would be for a violation, a failure to pay a civil penalty or a criminal fine, or a failure to comply with terms of a settlement agreement, if that was part of it. Again, note that this part does not preclude sanction or denial of a permit for reasons not relating to enforcement.

Our penalty schedules, as I think all of you know, we have a variety of penalty schedules. We have national summary settlement penalty schedules and regional penalty schedules, and so, for our region, of course, we would be looking to the Southeast Summary Settlement Schedules, and these are schedules under which law enforcement can issue tickets without the case initially coming over to the Office of General Counsel.

Then we also have the Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions. The most current version is from July of 2014, and I have the website listed, so that you can go and look at all of these schedules, and that penalty schedule, the policy, sets forth policies on how and when we're issuing penalties and permit sanctions, what we're looking at, and it sets forth a list of the most common, and it's a pretty extensive list, of violations under the various acts, and it sets out a matrix, which is coming up in the presentation.

In any event, the summary settlement schedules that law enforcement can utilize do not include any permit sanctions. They are totally either monetary sanctions or written warnings or fix-it notices.

One thing that I think might be important to note is that, in the Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions, there is a discussion about permit sanctions, and one of the statements is 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 violators, such as the crew, processors/dealers, and commercial markets. Given the impact that permit sanctions may have, permit sanctions are generally appropriate only in cases involving violations that are moderate to major in terms of their gravity.

There is more there, and I just wanted to alert you that permit revocation may be appropriate also in extraordinary cases, such as where a permit might have been obtained by fraud or false information.

Then we have the matrix, and this matrix, you can see we're looking at the gravity of the offense, and they are listed further in the penalty policy. Violations are either Level I, II, III, IV, V, or VI, and that is for the gravity of the actual violation. Then, although the Magnuson Act is a strict liability statute, we are looking at various factors, and they are defined in the policy as to whether the violation was unintentional, negligent, reckless, or intentional. You can see, by looking at the matrix, that permit sanctions are not provided in very many situations. Violations have to reach a particular box on the matrix to be considered.

I did put up here what is provided for in our penalty schedules, both the national and the policy, as far as what the penalties are for the failure to submit or late reports. Under the national policy, the summary settlement policy, there is a provision for the failure to maintain, make, keep, submit, or complete required dealer reports, logbook reports, trip reports, or catch reports, and so law enforcement would look to that, to see whether or not a violation fell into that category.

Now, in the Southeast Summary Settlement Schedule, we also have -- We don't have a separate category for vessel late or failure to report, but we do have one for dealers. When law enforcement is looking at a case, if it is a dealer case, then would look to the Southeast Summary Settlement Policy, and, if it was a vessel, it's provided for in the national.

Now, if a case comes to the Office of General Counsel for a late report or a failure to report, we do have penalties that we would be looking at on the matrix for that, and, essentially, failure to report or a late report could be either a Level I or a Level II violation, and it's a Level I where the adverse impact on the statutory or regulatory program is insignificant and there is no economic gain from the violation, or it's a Level II if there's a minor or some economic gain.

Then, of course, when we get to see which category we're looking at in the box, as far as the violator's culpability, we would be looking at the particular facts of a violation to see whether the violation was unintentional, negligent, reckless, or intentional.

Then I went through -- Well, I'm sure many of you know that, in 2010 and 2011, our Enforcement Program underwent a revision, or an amendment, if you will, and so, since March 16 of 2011, we have had this national matrix penalty policy, and 2011 was the date of the first one, and then the 2014 policy was just updated, and some things were updated with penalties and that type of thing.

I went through all of the cases since March 16 of 2011, and I will tell you that you can find these cases also on the public database, and that's on our website, but I looked at, for purposes of this presentation, I looked at only cases that were either late reporting or failure to file. If they were incomplete filings, I didn't look at those. If there was some sort of falsity or fraudulent nature to the violation, I wasn't looking at those. I was looking at strictly if something was late or a failure to report.

Since that time, approximately eighteen cases have been charged, and it's generally vessels that have been charged. There was at least one shore-side processor and one dealer, and this is nationwide. This is not limited to the Southeast Region. The penalties from my office have ranged, well, from the national office and not just the Southeast Office, have ranged from written warnings to \$6,000, and permit sanctions have not been issued in these particular cases.

Now, I don't know what penalties might have -- How many summary settlements or what all there might have been, because that kind of information is through the Office of Law Enforcement and not my office, and so that's sort of a really brief overview on permit sanctions and how and when they're being used.

MR. BELL: Are there questions for Karen?

MR. HAYMANS: Thank you, Karen. I appreciate you providing the presentation in advance, because I used your links, and I learned a lot by going through the national and the southeast and all this kind of stuff, and so I have four questions, which may lead to a lot more, but we'll go from there, starting with a leap to Amendment 43 for red snapper.

Action 9, Alternative 3, basically would deny the issuance of a permit if there is a non-reporting claim, and so I guess would ask, can the region -- Is that denial elevated to NOAA GC in order to deny the permit, or is that something that the Regional Office can do?

MS. RAINE: Well, without having that in front of me, I will just sort of harken back to something earlier. There needs to be sort of an APA, if you will, process, which is the opportunity for a hearing and that type of thing through an enforcement process, if it's an enforcement-related matter. If it's not related to an enforcement action -- What that may or may not be, I think that needs to be looked at in the terms of each reported action, but, if -- I think it would certainly have to be looked at if somebody does not report and there seems to be an enforcement action, and that has to come through the process. For enforcement reasons, permits cannot be summarily denied.

MS. SMIT-BRUNELLO: Right now, if a person does not report, as you know, when their permit is expired and it come up for renewal, they won't renew that permit unless that individual has reported, and so I guess it depends how it's phrased as well in the amendment that you're talking about.

MR. HAYMANS: Right, and this goes beyond the red snapper denial, if we require reporting for that. It goes to the limited entry, where we've maintained that we won't renew, but then somebody can just go get a new permit. To me, that's where the word "deny" comes in, but, to me, that's important.

You're not necessarily sanctioning the permit that they haven't reported on, but you're denying the issuance of another permit, and so I question whether or not the region would be able to deny the permit and whether that's a law enforcement action or not, but that kind of leads to -- In looking through the penalty schedule then, and the severity of the regulations, I guess I would ask if this council, and other councils as well, see reporting as important enough to create a limited-entry fishery -- To me, that's probably, aside from allocating the resource, that's probably the most serious thing that the council can consider, is not letting other people into the fishery. If we see requiring a limited entry in order to enforce reporting, do you think that NOAA GC would see the severity of reporting as elevated? In other words, can we get it beyond a Level II?

MS. RAINE: Well, this schedule does take into -- I will just say that this schedule does take into account both limited and open permit systems right now.

MR. HAYMANS: So that then would argue that someone couldn't come back and get a permit if they have been cited for not reporting. I don't see how they could get issued another permit if an open-access permit can be denied.

MS. RAINE: I will tell you that I'm not really quite sure how to answer your question, because it depends whether it's an enforcement action or not, and, in an enforcement sense, whether or not somebody's ability to get a permit has been permanently revoked. You can see, from the matrix, that permit sanctions are not used in an everyday sense. They are thoughtfully considered for when and how they're going to be used,

MR. HAYMANS: Right, and I understand. The last two, quickly, is, on Slide 5, the policy for assessment of civil administrative penalties, it speaks to the fact that the penalty not only affects the vessel, but the crew, the processors, the dealers, and all that sort of thing, and so, with regard to limited entry for for-hire, for the most part, we're talking about one or perhaps two people, if it's the charter boat fleet. It's usually the charter owner and maybe a mate.

I would ask that perhaps the consideration of that statement, as it regards the charter business, may not hold. In other words, you could sanction a permit and only affect the one person, or perhaps the mate as well, but you're not getting into the dealers and the commercial markets and all those sort of things, and so I will use that to close with my final statement, and that is that I would, at some point, Mr. Chairman, if it were appropriate, I would ask this council, and perhaps this council and the CCC, to look at requesting elevation of non-reporting to a higher level, which may legally then deny or suspend a permit for non-reporting purposes.

MR. BELL: All right. I think, again, what brought all of this up was the discussion of implementation of a new system regarding reporting, and we think reporting is important, or we wouldn't want it, and so what you're basically saying is we need to elevate non-reporting offenses to a little higher focus or more -- Just go higher, in terms of priority or severity, in terms of impact. I get it.

MR. BREWER: Thank you for the presentation. Whether we're talking about limited entry for commercial or recreational, whoever we're talking about, if there is a requirement that an individual or a business report, be it by logbook or fish trip tickets or whatever, it looks like it's already on the books that, if they don't comply with that requirement to report, they're going to be at a Level I or Level II violation and that the fine is going to be \$500, minimum, for each time period in which there was a requirement to report, be that weekly or monthly or yearly, whatever it is. It looks like that can go up to a maximum of six penalties for failure to report, and am I -- Have I misunderstood that?

MS. RAINE: It depends which schedule you're looking at. For the dealer reports for the Southeast, there is a summary settlement schedule that can be used that has a number of times that it can be used, and the same is true for vessels in the Southeast, one or two violations. I will say that law enforcement has the option to use the summary settlement schedule. If there is a set of circumstances that they think the summary settlement schedule is not appropriate for, then they refer the case to the Office of General Counsel to look at, and so we would be looking at the higher penalty schedule.

MR. BREWER: My question is there appears to be, under the summary schedule, a penalty schedule that is already in place for failure to report.

MS. RAINE: Yes, and there is also a penalty schedule in place for -- I will say, for those who don't know, if a summary settlement penalty is not paid within the timeframe given, then that case is referred to our office to look at, to look at higher penalties, the penalties within the penalty matrix, which are generally going to be higher, but there are schedules in place right now to cover these situations, yes.

MR. BREWER: Thank you.

MS. RAINE: I will say, again, the penalty matrix is nationwide and it's not just the Southeast Region, and so, when these schedules were developed, they weren't looking just at the Southeast Region or just at any particular situation. They were looking nation-wide, because there was a concern, as many of you know, back in 2010, about consistency throughout the nation with our penalties.

MR. BREWER: You're talking about what was going on up in New England, I think, and you don't have to respond.

MR. BELL: Roy, did you have something?

DR. CRABTREE: Just a couple of -- Doug, I think you were making the case that, in the for-hire permits, there wouldn't be as many negative financial impacts to parties beyond the -- I am not sure that I buy that. One big negative financial impact that I see is the family that booked the charter boat and planned their entire vacation around it and has already paid and there and traveled and now the boat they chartered is -- The permit is sanctioned, and they can't go fishing. It seems, to me, there are a lot of impacts outside of that.

Permit sanctions have always been very difficult, and I have never really regarded the notion that we're going to be sanctioning permits commonly as realistic, but I do think, if we were more

diligent in assessing these \$500 penalties when people are late, they would stop being late. I don't think there are that many of these businesses that are going to be able to deal with several thousand dollars' worth of fines on a regular basis because they're not reporting on time, but the problem is, other than we won't renew your permit when you come in until you submit all your reports, it's typically been more education and outreach and call the dealer and get the reports in and not this heavy-handed kind of approach on things. Somewhere in there, there is right balance, but I just don't think it's realistic to think that we're going to be sanctioning permits with great regularity.

MR. BELL: Right, and, to that, in talking with Karen prior to this and kind of going through it, and I compare it to our system for the state that I work with every day. For us to pull a permit and sanction a permit, it's a big deal, and we do have to abide by the APA and go through that whole process and all.

The other thing we can do is write tickets, summary settlements and tickets, but, when that is finally adjudicated and all, it's a hundred-and-ten-bucks or something, or less, but I did find the summary settlement schedule with penalties on the federal side, as Roy mentioned, is pretty severe, and I wouldn't think you would have to write more than a couple of those to get somebody's attention. I think it would be much easier, given that schedule of fines and all, compared to what we're dealing with.

MR. HAYMANS: Roy, I absolutely agree. I absolutely agree. I firmly believe that the financial penalty is the way to go. However, the backbone, or one of the principle tenets, of the limited-entry amendment is the fact that non-reporting could be enforced by denying someone that permit as limited entry, and so my whole argument is there is another way to do this, and that's why I kept asking for this presentation.

Now that we've got it, we see that we really can't deny somebody a permit, because it's not in the schedule, and so, if we're going to get to that point of denying somebody a permit, the schedule needs to be changed, but I agree that the financial penalty, to me, is the preferred method, and I think that's as far as we need to go, if it were enforced.

DR. CRABTREE: I think there are multiple ways you could go with this, but I still, based on many years of experience dealing with limited-entry permits and open-access permits, believe that going to limited entry is a very powerful way to improve compliance with all of these things.

Regardless of whether it happens often or not, it's hanging out there, and it's in every fisherman's mind, because I hear this all the time. It will professionalize the fishery, and the key to getting all of this reporting to happen is a professionalized fishery of profitable businesses, and I have seen that happen in the Gulf of Mexico with these limited-entry programs, and I believe firmly that it will happen here if we go down this path.

You have to have professionals who are making money to make these programs succeed, and that's difficult to do in an open-access fishery, where people are constantly coming in and out of it. Whenever times are good, more people come in, and so that's my point. I just think it's a broader context that you have to look at this in.

MR. PHILLIPS: I think a lot of this misreporting, or non-reporting, is just stuff that people didn't know happened. A lot of it, at the docks, the secretaries do it, the bookkeepers do it, and you

change bookkeepers, and she's got her list of fifteen or twenty or thirty things that she is supposed to do, or maybe she doesn't know how to -- Maybe she missed it, or maybe she doesn't get the timing right, or maybe she doesn't know how to work the computer. We get an email from SAFIS if we don't send a report in, and we see that, oh, she was out sick for three days and she missed it and was catching it.

Then we get it, but, if there is a method where -- If you're supposed to be reporting, if there's just some kind of automated email that comes out, so people can be reminded that you didn't get something in, it would help a lot, just something that simple, and then, if they still don't do it, then you've really got a reason, like you were told, you were told, you were told, and then they don't have an excuse. Then let's go ahead and do whatever sanctions or penalties we need to do, but having something, just a reminder, like, okay, tighten up, and that would help a lot of our reporting right there.

MR. BELL: To that, let me just say that's what Roy was getting at, I think, earlier. When you start a new system like this, there is going to be a period of working with people and educating and outreach and get the system up and running and this is how it works. There is not a need to rush right to the most severe penalties you can come up with.

DR. CRABTREE: I think there is another side of this that we don't address. I mean, there is the stick and the carrot, and the fines and the penalties are the stick, but there is the carrot too, and we have buffers between catch targets and ABCs in most of these fisheries. Those buffers are there for management uncertainty, to keep us from going over the quotas.

If we would come in and tie the magnitude of these buffers to how good compliance was in the previous year, I think you would see people, through peer pressure, start complying, because, all of a sudden, it's in their financial best interest to comply, because they're going to get to catch more fish the next year if their level of compliance is high.

I think that is another way of getting at this, where we would be able to reward the fishery if compliance is good, and there would be penalties on the fishery if their compliance was bad, and I think you would see fishermen police themselves, and dealers as well, if that was the case, because the dealers have just as much interest in having quotas and more fish coming in as anybody does.

MS. BECKWITH: I agree that that could be a carrot, but, in order to achieve that in the for-hire industry, we would have to move to sector separation to achieve that.

MR. BOWEN: I am not on the committee, but, to Charlie's point, and I had to step out to try to book some trips, and so I missed the beginning of this conversation, but, Charlie, the bookkeeper -- In what you do and the bookkeeper for what we do in the for-hire, we don't change bookkeepers. I am the bookkeeper, and I've been the sole bookkeeper for twenty years, and so I just wanted to clarify that. It's just a different entity, but it is a different, separate entity, and we are -- I will save that for later.

MR. BELL: Just to kind of big-picture, we're talking about a new system, primarily, that we're bringing onboard. It's going to take us a little while to get this up and running, and it's going to take a little while to get compliance. We don't know what compliance is going to look like on day

one. The target we're shooting for is to get this up and running by January of 2018, thinking that there is going to be kind of a, perhaps, a voluntary basis for a while, as we're up and running, but however that's going to work out.

We don't know what compliance will look like. Once we get into this and it's a mandatory thing and we're tracking compliance and our system is up and we're managing that properly, then we'll kind of know what we've got, but I can tell you, from our system for boats in South Carolina that we've had for a long time, on day one, year one, for us, we didn't really necessarily get 100 percent compliance, and we still don't have 100 percent compliance.

This is going to be a learning thing as we get into it, but there are, I think, a suite of options available under existing regulations now to deal with that. I think one of the most important things is going to be, from a standpoint of the tracking of compliance, the folks that are tracking that, in terms of receiving the reports, there is going to have to be a clear handoff of information to enforcement when it's time to follow-up on that.

That process still needs to probably be worked through, between the Science Center and enforcement, in terms of how they're going to do that and how the information will flow and what sort of periodicity they're looking at and tolerances, and that's got to be worked out within the Service, but just keep that in mind big picture, that I think, at the moment, we've got some pretty good options related to enforcement, when enforcement comes. Any other questions for Karen related to this?

MR. HEMILRIGHT: I'm not on the committee, but I had a couple of questions. Could you go back to the slide that showed like eighteen vessels or one dealer or something to that effect? Is this eighteen cases have been charged, and is that commercial vessels?

MS. RAINE: Well, these are cases that have been charged nationwide, and I am going to assume, although I do not know, and I would have to go back and check, that it's basically commercial, and I will say -- I don't know if any of them were for-hire or not. I just don't know.

MR. HEMILRIGHT: One follow-up question. Given that there is only what appears to be twenty, approximately, cases, twenty out of how many thousands?

MS. RAINE: Well, if you're talking about cases, I don't know. Again, the cases that have been charged and the cases that have been settled are on our website, nationwide, and so you can go and you can -- Anybody can go and look and see what the penalties have been for cases that we are charging, and, again, when I was looking at this, I was looking at just simply late reporting counts and failure to file counts. There are other cases that involve permit types of violations, that deal with false reporting or incomplete reports and that type of thing, but I was just focusing on this very small subset.

MR. HEMILRIGHT: I would just -- I guess I didn't understand. I was like, out of all of these not cases, but, since March 16, 2011, how many thousands of reports are coming from dealers and vessels, and what percentage -- It doesn't appear like there's been many charges, and so everybody must be doing a good job.

MS. RAINE: I will say that I don't know about the summary settlements or other action that law enforcement might have taken. This is just focused on cases where the Office of General Counsel has charged someone.

MS. BECKWITH: To sort of follow up on Dewey's point, the point he's really trying to make is that it is difficult to make a law enforcement case, and I know, previously, I had thrown out the idea that we could conceivably create an administrative component, where, if reports are sixty or ninety days late, that that is not -- That permit is non-renewable for 365 days, and then take it out and create an administrative action instead of a law enforcement action, and that idea was not popular the first time that I brought it up, but I still think it's a viable option forward that would facilitate some of these enforcement issues, or reporting compliance issues, without actually creating a law enforcement case.

MR. BELL: All right. Any other questions for Karen? All right. Obviously, this is an area of interest, and it will become even more interesting as we get this for-hire reporting system up and running, and, again, we'll have an understanding of what compliance looks like once we're up and running.

We've got a few minutes left, and I did want to get to our last agenda item, which was a discussion of anything that we want for the LE AP at their next meeting to mull over for us or agenda items. Does anybody have anything right now, off the top of your head? This is something that we can certainly get input on between now and the meeting.

MR. HARTIG: I think we're going to be talking about mesh sizes and how to measure mesh sizes, and certainly the LE AP would be a great place to discuss a uniform way to do at least federal mesh size measurement. It would be interesting to see how all the states approach that. Of course, some states don't have gillnets.

MR. BREWER: You have to look no farther than the State of Florida. I think we've had that issue go up to our state supreme court, believe it or not.

MR. BELL: Okay. Mesh sizes. Again, I'm probably putting you on the spot here, but if you think about this between now and this fall. I believe they will meet again this fall, and you can shoot items to me or to Myra, if you come up with topics that you would like for them to consider. Then we will construct the agenda for the LE AP based on that, but is there anything else right now? Okay. Think it over and let us know. That is the last item that I had on the agenda. Is there any other business to come before the Law Enforcement Committee right now? Seeing none, then we will adjourn the Law Enforcement Committee.

(Whereupon, the meeting adjourned on June 13, 2017.)

Certified By: _____ Date: _____

Transcribed By:
Amanda Thomas
July 20, 2017

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- ✓ Monica Smit-Brunello *
- ✓ Erika Burgess *
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JUNE 2017 COUNCIL MTG DAY 2 6/13/17

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