

Final Summary Report

Law Enforcement Committee

Westin Jekyll Island
110 Ocean Way
Jekyll Island GA

March 2016

The Law Enforcement Committee met at Jekyll Island, GA on March 8, 2016 and covered the following items:

Law Enforcement Advisory Panel Summary Report

Colonel Chisolm Frampton, LE AP Chair, delivered a report summarizing discussions and recommendations resulting from the March 7-8, 2016 meeting of the Law Enforcement Advisory Panel. Items on the LE AP agenda include: (A) overview of recently completed and developing fishery management plan amendments; (B) discussion of recently implemented regulations regarding transport of snapper grouper, dolphin, and wahoo fillets from The Bahamas; (C) proposed regulations on hogfish management (Snapper Grouper Amendment 37); (D) discussion on proposed changes to reporting requirements for for-hire and commercial vessels in the South Atlantic, (E) discussion on enforceability and compliance of minimum size and bag limits; (F) law enforcement component of System Management Plans for Deepwater MPAs and Spawning SMZs; (G) Turtle Excluder Device (TED) compliance in the shrimp fishery; and (H) election of Chair and Vice-Chair.

A report summarizing the LEAPs discussions and recommendations is attached.

NMFS Commercial Operator Cards

A brief follow up to discussions at the September 2015 LE Committee meeting regarding NMFS Operator Cards was conducted. Some additional research will be carried out prior to the June Council meeting regarding the total picture across Councils pertaining to the use of, and means of issuing, Operator Cards for applicable fisheries. A brief report of these findings will be provided in June.

DRAFT Summary Report

Law Enforcement Advisory Panel

Westin Jekyll Island
110 Ocean Way
Jekyll Island, GA

The Law Enforcement Advisory Panel (LEAP) met on March 7 and 8, 2016 in Jekyll Island, Georgia. The following is a summary of discussions and recommendations on each agenda item.

Recently Completed and Developing FMP Amendments

Council staff updated the LEAP on recently submitted and developing amendments to South Atlantic Fishery Management Plans. The LEAP engaged in a detailed discussion on recent regulations pertaining to the transport of snapper grouper and dolphin and wahoo fillets from The Bahamas implemented through Snapper Grouper Amendment 33/Dolphin Wahoo Amendment 7. Brian Chevront provided a detailed summary of recently implemented regulations. Below are salient points of the discussion that ensued:

- LEAP representatives agreed on the importance of well-coordinated outreach among state and federal agencies (i.e., through existing Joint Enforcement Agreements) to ensure compliance with regulations.
- Public workshops were suggested as an effective means to inform the public on newly implemented regulations.
- USCG representative stated that supplementary materials would be useful to better train officers on identifying species based on the skin attached to the fillet.
- LEAP representatives expressed concern about fishermen attempting to bring large fillets sectioned into smaller pieces. According to the new regulations, two fillets (no matter the size) are considered to represent one fish.
- NOAA GC stated that there would likely be instances when forensic work would be needed for proper identification.
- The LEAP discussed existing language in regulations pertaining to bag and possession limits applicable to private recreational anglers and for-hire. Regulations provide clear guidance on possession limits on charter and headboats engaging in multi-day trips.
- There is currently no clear language in the regulations regarding what constitutes proper stowage for spearfishing gear.
- Council staff will provide example language from state/other federal agency regulations for the LEAP to suggest draft language that could be incorporated in existing regulations for South Atlantic fisheries regarding proper stowage of spearfishing gear.
- The Florida Fish and Wildlife Conservation Commission (FWC) representative stated that the rule pertaining to transport of fillets from The Bahamas is currently in draft form and is expected to be approved in summer 2016.

- NOAA GC clarified that newly implemented regulations pertaining to transport of fillets would not apply to fillets that are flown into the U.S. from The Bahamas.

Snapper Grouper Amendment 37 (Hogfish)

Amendment 37 to the Snapper Grouper Fishery Management Plan (FMP) contains twelve actions pertaining to management of hogfish in federal waters of the South Atlantic. The LEAP received an overview of the actions and alternatives in the amendment and had the opportunity to request clarification and make recommendations. The LEAP had the following recommendations:

- The FWC supports the Council’s preferred alternative for **Action 1** (splitting the hogfish stock into two a Georgia through North Carolina (GA-NC) stock and a Florida Keys/East Florida (FLK/EFL) stock and defining the boundary between the FLK/EFL stock and the West Florida stock (managed by the Gulf of Mexico Fishery Management Council). The Council’s preferred is to set that boundary at a line running due west just south of Cape Sable, FL.
- The USCG representative stated that, for training purposes, the USCG uses the jurisdictional boundaries between fishery management councils. As such, the jurisdictional boundary between the two Councils would be their recommendation for a preferred alternative. However, staff clarified that the Gulf of Mexico Council intends to also define the boundary for hogfish management at a line running due west just south of Cape Sable, FL. The USCG stated that this would be agreeable to the agency.
- LEAP representatives expressed some concern over potential specification of daily trip limits for the commercial sector. FWC will provide further comments as needed.
- It was noted that, in South Florida, vessels that possess both SA and Gulf permits would be required to have VMS thus possibly facilitating enforcement of daily commercial trip limits.

Amendments to improve reporting for for-hire and commercial vessels in the South Atlantic

Gregg Waugh delivered a presentation of proposed changes to reporting requirements for charter vessels in the South Atlantic. Dr. Bonnie Ponwith presented data on commercial dealer reporting compliance and compliance with size limits. The LEAP was asked to provide recommendations on ways to enforce the proposed requirements. Salient points of the subsequent discussions are listed below:

For-hire reporting:

- LEAP representatives expressed some concern about enforcing weekly reporting mainly due to the need to have a near real-time database that is available to enforcement officers.
- Permit sanctions require due process that takes time. Open access vs. limited-entry permits handled differently. Not every violation has permit sanction associated with it.
- NOAA GC expressed concern about validation. Also, how many portals is the information going to go through? Currently, reports have long trajectory. What edits would need to be made?

- It is important that officers (“boots on the ground”) are not removed from the enforcement process when dealing with delinquent reports.
- LEAP members indicated that reporting requirements should be handled administratively, i.e., away from law enforcement. However, it is important that there be a connection with law enforcement along the process.
- Sanctions should be applicable for a set period of time to facilitate enforcement.
- NOAA GC cautioned against using “permit sanction” in regulatory language. Permits are only sanctioned after due process, which involves validation of information and opportunity for hearing.
- There is information online on penalty schedules. There are not many instances where a permit has been sanctioned as a result of MSA violations.
- Compliance in the recreational sector in the Gulf is higher than in the SA due to limited entry permits.
- LEAP may need to meet again this year before the For-Hire Amendment is finalized.

Commercial dealer reporting:

- A question was asked of Dr. Ponwith as to whether “no fishing reports” adhere to the same observed frequency of reporting as fishing reports. Concern is the fishermen may perceive that “no fishing reports” are less important when, in fact, they are just as important.
- Up to seven weeks are still going by before 100% of dealer reports are obtained by the SEFSC.
- LEAP members also asked how often does the SEFSC find discrepancies during data validation.
- Currently, SEFSC and SERO coordinate to send letters/email for delinquent reports. If the dealer is still not compliant, a “hold” is placed on the permit. NOAA CG clarified, however, that “permit sanctions” have to go through a rigorous due process. It should be clarified what constitutes a permit being placed “on hold.”
- LEAP members asked whether any cases had been made in the past due to delinquent reporting. NOAA CG indicated that none have been made in recent years. The SEFSC would have to initiate legal action against a delinquent dealer for a case to be made.
- Accuracy of reports is important and the system needs to be set up so that dealers and fishermen are given a reasonable amount of time to submit data.
- SEFSC uses paper logbook to “ground truth” vessel electronic reports.
- Dealing with a non-compliant entity takes time. The focus should be on increasing compliance through education and outreach.
- Fish misidentification can influence compliance with size limits (e.g., greater amberjack vs. lesser amberjack)

Recommendations:

- Encourage LE involvement throughout process of designing a reporting system.

- Law enforcement should be the last means to ensure compliance. Focus on education and outreach. A dedicated outreach effort involving all agencies (federal and state) is critical to increase compliance and achieve effective enforcement.
- While LE officers can be a great source of outreach, the latter should be from a management perspective. It is important to educate fishermen as to why they should comply with reporting requirements.

Enforceability of Marine Protected Areas (MPAs) and Spawning Special Management Zones (SMZ): Evaluation for System Management Plans

The Council has developed draft System Management Plans (SMPs) for existing MPAs and proposed Spawning Special Management Zones (SMZs) that would be put in place through implementation of Amendment 36 to the Snapper Grouper Fishery Management Plan (being approved for formal review at March 2016 meeting). The intent of the SMPs is to evaluate existing research and monitoring, outreach, and enforcement efforts for the existing MPAs and establish a means to obtain information and evaluate the efficacy of the proposed SMZs, if implemented. The SMPs contain planned activities for each component (research and monitoring, outreach, and enforcement) to better characterize and measure the overall effects of the closed areas in managing fishery resources of the South Atlantic region. Federal and state law enforcement representatives should discuss planned enforcement activities and needed resources for effective enforcement, respectively.

Chip Collier presented an overview of the law enforcement component of the SMP for Deepwater MPAs. Salient points of the subsequent discussion are below:

- Importance to acknowledge the usefulness of aviation for offshore enforcement of closed areas, especially when used with vessel.
- NOAA GC reminded the LEAP that a case had been made on the North Florida MPA and she encouraged obtaining the Case Decision. The latter is on the NOAA OLE website (Case is for F/V *Lady Diane* dated 2/4/2013)
- FWC may revise current enforceability ratings for Florida MPAs based on recent asset availability. Suggestion to change enforceability rating for North Florida MPA to “moderate” (currently rated as “high”).
- NOAA GC indicated that drones are not being used for enforcement at this time.
- Use of aircraft can be greatly enhanced through Joint Enforcement Agreements (JEAs) that would benefit enforcement in general, not just that of MPAs.
- The LEAP reviewed the goals of the enforcement component of the SMP and had not suggested changes.
- The LEAP provided specific suggestions on Actions Items 1, 2, 3, 7, and 9.

Turtle Excluder Device (TED) Compliance

The April 18, 2014 Biological Opinion (BiOp) is the current Endangered Species Act (ESA) authorization for the shrimp fisheries in the South Atlantic and Gulf of Mexico. The BiOp required NMFS to develop a policy to evaluate compliance in both regions and that it be completed within a year of the BiOp publication. In May 2015, NMFS issued a draft compliance policy for Turtle Excluder Devices (TEDs), including compliance thresholds. A revised policy was issued by the agency in February 2016. The LEAP received a briefing from Michael

Barnette, Southeast Regional Office staff, on revisions to the draft policy and answered questions from LEAP members.

- TED policy applies to state and federally permitted shrimp vessels
- Gulf and SA Fisheries Foundation has been conducting outreach to improve compliance. Also reached out to SFA and other organizations. TED compliance currently reflects those efforts.
- Goal is to move data collection on TED compliance away from Gear Monitoring Team (GMT) and law enforcement and rely on observers. However, NMFS will continue to utilize all sources of data (USCG, JEAs, OLE, etc.) to avoid bias and increase sample size.
- Observers are currently being trained on TED inspections. Still need to determine how data will be delivered, etc.
- As compliance is being tracked, information is also being gathered on the source of issues (i.e., angle of TED, etc.). Over the past year there have been more maintenance and technical issues than blatant violations.
- NC does not have JEA so other means of gathering data will need to be used.
- There are still many unknowns but still need to make sure industry is in safe state regarding closures – no one wants an unintended closure but it is a moving target. Important to go through “what if” scenarios.
- Agency does not want to be too prescriptive.
- TED compliance should continue to be JEA priority in southeast.
- TED Compliance policy is expected to be finalized in March 2016.
- Policy is currently just for otter trawls.

Election of LEAP Chair and Vice-Chair

The LEAP discussed chair/vice chair terms and LEAP compositions

- LEAP’s role is to advise SAFMC on enforceability of proposed regulations and this needs to be kept in mind when considering changes to current membership. However, some LEAP members feel that expanding membership (to industry) would be good for outreach efforts.
- Perhaps meet in conjunction with other APs or invite participatory audience.
- Avoid concurrent sessions of LEAP and SAFMC Committees.
- LEAP would like to have input on selection of additional members, perhaps through recommending individuals to apply.
- Can also explore bringing in representatives from other APs to provide their expertise to discussions as needed.
- Recommendation to go back to meeting twice a year.