

Summary Report

Law Enforcement Advisory Panel

Town and Country Inn
Charleston, SC

The Law Enforcement Advisory Panel (LE AP) convened at the Town and Country Inn in Charleston, SC, on May 18-19, 2017.

1. Update on developing and recently completed amendments

Council staff provided an overview of the content and status of amendments to Fishery Management Plans that were recently completed and those still under development. The LE AP discussed how to enforce regulations that are different in state and federal waters, as is currently the case for mutton snapper off east Florida. The FWC implemented changes to commercial and recreational regulations for mutton snapper in state waters in January 2017 whereas changes to federal regulations in the EEZ have not yet been implemented so that, for instance, the minimum size limit in Florida state waters for mutton snapper is 18 inches whereas in federal waters it is 16 inches. The Florida Fish and Wildlife Conservation Commission (FWC) representative on the LE AP clarified that fishermen are told that if they catch and land a 16-inch mutton snapper in federal waters, they would have to transit through state waters without stopping to fish for other species in order to avoid being cited for possession of an undersized fish in state waters.

2. Operator permits

The LE AP and LE Committee discussed operator permits and their utility in South Atlantic fisheries during their joint meeting in August 2016. There was general agreement that operator permits (OP) are useful to law enforcement and the LE AP agreed to provide further guidance to the Council on how to improve their utility, perhaps by extending the requirement to other fisheries (currently only required in the Dolphin Wahoo and Rock Shrimp fisheries).

The Council had requested clarification as to how operator permit violations are handled and whether such violations could ultimately result in permit sanctions. Currently, failure to provide a current operator permit results in a "Fix-It Notice" for the first offense, and monetary fines of \$250 and \$500 for the second and third violations, respectively (see http://www.gc.noaa.gov/documents/gces/National_SS_Fix-it_FINAL_1-1-16.pdf). The current (July 2014) penalty policy, including instances where permit sanctions are warranted, can be found at: http://www.gc.noaa.gov/documents/PenaltyPolicy_FINAL_07012014_combo.pdf).

Major Grant Burton, FWC, contacted personnel from the Greater Atlantic Regional Fisheries Office (GARFO) and the Southeast Regional Office (SERO) to obtain information on how OPs are used in each region, etc. Maj. Burton provided the question & answer summary in **Appendix A** to inform the LE AP's discussions and future LE Committee/Council discussions on this topic.

Comments/questions:

- State agency representatives on the LE AP and the USCG representative agreed that an OP, in its current form, is unnecessary for charter vessels.

- State field agents do not accept OPs as form of identification without another source to verify.
- NOAA OLE considers both the vessel owner and the operator responsible for any violations
- Value of OP: makes for a more professional fishery and hold fishermen to a higher standard and, in that sense, benefits commercial fishing.
- Does SEFSC see any value in OP for data collection purposes?
- OP requirement needs to be re-evaluated to be rendered useful.
- A permit can be sanctioned if penalties have not been paid. Whether a permit is sanctioned is evaluated on case by case basis.
- GARFO requires OPs for all fisheries (but not HMS). Would be useful in the SE region to require for several fisheries?
- If OP requirement is to be kept, consider specifying time period for renewal (5 years instead of current 2 years).
- Is there a downside to requiring an OP for several fisheries at once? Need to consider fisheries in Gulf, Caribbean, Mid-Atlantic.
- Perception is that vessel owner is ultimately responsible for penalties incurred on the vessel. NOAA's policy is to hold both owners and operator responsible, however.
- Does NOAA have a way to prevent an operator from "jumping ship" and going to another vessel? If not, the burden would be mostly on vessel owner. NOAA itself can't control this but vessel owners can check to see if a particular operator has prior violations. Owners may have legal recourse against operators but that is outside purview of NOAA.
- OPs in charter industry could keep LE "in-house" for minor violations. For more egregious violations, NOAA would need to refer to USCG. There would be utility for keeping OC in for-hire component if it were to be expanded to other fisheries.
- GARFO and the SE are the only regions with OP requirement.
- Cases in which a permit sanction is issued for failure to pay, the permit remains sanctioned until payment is resolved. Karen will continue to try to find info on fate of OP violations.

LEAP recommendations:

- There is potential utility for an OP requirement. However, there is currently no overwhelming reason for requiring the OP in the Dolphin Wahoo for-hire fishery (unless there are improvements).
- If utility of OPs is to be improved, there needs to be a comprehensive evaluation of requirements.
- Determine utility as data collection tool from SEFSC.
- As it stands, the OP in the SE is not necessarily providing utility but there is potential to use in greater capacity. Should it be improved, it could provide important information not just for enforcement. Perhaps it should be re-evaluated, brought up to current needs and standards, and expanded.
- NC has no JEA so it is not clear how the state can assist, utilize, or enforce the OP.
- Determine how GARFO is using as data collection tool and whether SE region would benefit from similar requirement.

3. Amendment 43: Allowable fishing areas, recreational permit for Snapper Grouper Fishery and best fishing practices

Amendment 43 to the Snapper Grouper FMP current contains actions to address management of red snapper as well as actions to improve recreational data collection. The LE AP had the following comments/recommendations on current actions in Amendment 43:

Action 7. Modify or Establish Management Measures for the Commercial Sector to Allow For Restricted Harvest While Ending Overfishing of Red Snapper in the South Atlantic Region.

- For small trip limit amounts (i.e., 25 pounds) it would be easier to specify trip limit in numbers of fish
- Highgrading is a concern and not easy to prevent; using numbers instead of weight would be useful.
- USCG – boardings are at sea so size is more useful than weight.
- State LE officers would be checking catch at the dock so they are ok using weight.

Action 8. Modify or Establish Management Measures for the Recreational Sector to Allow For Restricted Harvest While Ending Overfishing of Red Snapper in the South Atlantic Region.

- Could regulations be written to specify that only a certain percentage of paying patrons on a headboat can possess red snapper? LE AP had no suggestions. It would be hard to manage from LE perspective.

On potential allowable fishing areas (Alternative 5):

- Would be very unenforceable. How would enforcement prove that a fish came from the allowable area?
- Would be difficult to make cases based on boundaries defined through waypoints following a depth contour for thousands of vessels.
- More protected areas means more officers, more patrols, regardless of the size/shape of area. Better to have protected area close to shore but still difficult to enforce.

Action 9. Establish a Private Recreational Snapper Grouper Permit or Tag Program for Recreational Fishermen to Fish For, Harvest, or Possess Red Snapper in the South Atlantic Region.

- FL fishing license is valid in EEZ. Gulf Reef Fish Survey already in place in Gulf and is free, just for data collection.
- Permit for all recreational anglers in the southeast would create large administrative burden. Try to work with states to enhance current systems?
- Individual or vessel permit? Which one is best for reporting requirements? Vessel permit may be better if reporting will be a requirement.
- Support for development of reporting app

Action 10. Modify Reporting Requirements for Private Recreational Fishermen.

- LE officer would have to have a way to validate that the vessel reported. Otherwise, can't prove non-reporting.
- Consider voluntary reporting as there is no way to currently enforce non-reporting.
- Consider using social media to conduct outreach and enhance compliance.

- Data that are reported voluntarily might be more accurate.

Action 12. Require Use of Best Fishing Practices When Fishing for Snapper Grouper Species With Hook-and-Line Gear to Reduce Mortality and Bycatch of Red Snapper.

- Definition of descending device is broad. Consider being more specific.
- Refer to guidelines of enforceability to ascertain that the proposed alternatives would be enforceable. However, the LEAP sees no issue with most of alternatives proposed (except 2e)
- Consider wording regulation for descending device as “readily accessible” because this would encourage their use.

4. Enforcement of Fishery Closures

At the December 2016 meeting the Council requested that staff “obtain clarification of how enforcement deals with off-loading fish after a fishery officially closes.” The request came during discussion of possibly re-opening commercial harvest of vermilion snapper. The concern at the time was that the opening would be so short (two days) that there would be a high likelihood of some vessels still being out or not being able to complete offloading before the official closure. The LE AP discussed and provided the following:

- Ultimately, the wording of regulatory language that implements in-season closures will determine how a closure is enforced.
- Officers need to weigh whether there’s enough for a case or not. Officers can build a case if that is what needs to be done but use discretion depending on the circumstances.
- Concern that short closures have potential to cause “derby” style fishing. Short openings are not un-enforceable but it does create more difficulties for enforcement. Also higher potential to exceed the ACL and triggering of subsequent accountability measures.
- Suggestion to use very specific language (that is not open to interpretation) to implement an in-season closure and, especially, if fishery re-opens for a short duration.
- If a boat stops harvesting just prior to the closure, does that vessel have enough time to steam back to the dock and not be in violation of the closure? If answer is no, then bandit boats are at a disadvantage or completely cut-out of participating.
- Suggestion to standardize language to make clear what the expectation is regarding vessels being back at the dock or underway at the time a fishery closes.
- Consider that some dealers are also vessel owners, so how would the closure requirements apply to them? Cold storage on board the vessel or at fish house? Cold storage onboard may not count unless explicitly stated. However, officers must use discretion.
- Consider revising language to remove “gray area”; for example, vessels need to be tied up at dock by the time of the closure, etc.

5. Cobia Regulations

In 2015, recreational landings of Atlantic (GA-NY) cobia exceeded the annual catch limit, which triggered the accountability measure for a reduced recreational season in the subsequent year. On June 20, 2016, NOAA Fisheries announced that recreational harvest of Atlantic (GA-NY) cobia in federal waters would close for the rest of the fishing year. The 2016 recreational landings exceeded the 2016 annual catch limit due to landings estimates from Virginia and North Carolina state waters (which did not close with the federal closure), and NMFS closed recreational harvest of Atlantic cobia on January 23, 2017.

In September 2016, the Council approved CMP Framework Amendment 4 for formal review, which included management measures for commercial and recreational harvest of Atlantic cobia that may help slow the rate of harvest and minimize the likelihood that landings will exceed the annual catch limit. The final rule package is under review at the Southeast Regional Office.

Because there is a large portion of Atlantic cobia harvested in state waters, the Atlantic States Marine Fisheries Commission is developing an interstate management plan, and some states have implemented regulations and a season for 2017.

Due to the recreational closure, there has been an increase in participating in the commercial sector of the Atlantic cobia fishery. In the CFR, cobia is a “limited harvest” species with a possession limit of two fish per person per day (§622.383) that applies to both cobia that are sold and cobia that are not sold, for Atlantic cobia and Florida east coast cobia. There is no federal commercial permit requirement for cobia in the Gulf of Mexico or Atlantic. The Mackerel Cobia Advisory Panel and Cobia Sub-Panel discussed a commercial permit requirement and reviewed some of the ambiguity in the regulations pertaining to cobia that are sold, particularly when recreational harvest is closed. Council staff reviewed the state and federal regulations in place for Atlantic and Florida east coast cobia. The following is a summary of the comments during the discussion regarding commercial permit requirements for cobia:

- There is no federal commercial permit requirement for cobia at the moment. Federal possession limit right now is 2 per person for both commercial and recreational. Challenges when it comes to who is fishing commercially for cobia and who can sell to who, etc.
- “Commercial” cobia fishery has not been a targeted fishery historically, although there are more directed trips in some areas during some parts of the year.
- Additionally, due to the recreational closure in the EEZ, there has been more interest in “commercial” cobia, especially in South Carolina because the state waters are also closed to recreational harvest.
- South Carolina has a commercial fishing license requirement that would be required to catch (and sell) cobia during the recreational closure.
- If someone meets all the requirements off SC, do they have to sell to a federal dealer? For other fisheries, it is clear that a federal dealer can only buy from a federally permitted fisherman.
- Recommendation that the Council specify that, to be deemed commercial for cobia, you have to have one of the federal commercial permits.
- USCG requires that all commercial vessels have safety inspection and carriage requirements, etc. That is how a commercial vessel would be identified from their perspective. USCG suggests definition of a commercial fishing vessel include USCG requirements.

- AP and Cobia Sub-panel were supportive of a commercial permit requirement.
- Most important thing is clarification on what constitutes “commercial” vs “recreational” specifically pertaining to cobia. This is an enforcement issue and there needs to be a regulatory indicator to define this. Need stronger definitions.
- During a recreational closure, then commercial fishermen are still allowed to fish and to sell and this determines what constitutes a commercial trip. This can be challenging for LE investigations. A permit could help resolve some of the questions.
- Current regulations allow sale of cobia harvested in or from the EEZ or adjacent state waters to federal dealers when vessel has commercial federal permit or for-hire permit. Is this a requirement for sale??
- State dealers can accept fish from non-federal permitted vessels.
- Must sell to federal dealer whether cobia are caught in federal or state waters if the vessel has a federal permit (commercial or for-hire).
- Allowing ‘commercial’ cobia to be caught on a trip that also has recreational bag limits of other species depends on the state--SC has separate recreational and commercial trips. VA, NC and FL can do combo trips.
- Staff to continue to work with NOAA GC to obtain clarification and provide to LEAP.

6. Updates on electronic reporting and outreach projects

The LE AP received a presentation from Francine Karp, Harbor Light Software, on the development of a law enforcement application (app) that would assist with upcoming electronic reporting requirements for charter vessels in the SE region. In addition, Council staff updated the LE AP on two projects recently funded to conduct outreach and training on the use of the charter vessel electronic reporting system and law enforcement app and to develop a reporting app for private recreational anglers who fish for snapper grouper species (and possibly for cobia in VA).

Input on LE app:

- May need to engage NOAA’s IT staff to coordinate use and development of the LE app to ensure it adheres to NOAA’s security policies since it may contain sensitive information.
- FWC: only individuals with smart phones issued by agency are captains and above. Officers in the field have flip phones. Right now, officers are not allowed to use personal phones to conduct official business. This would be a challenge as far as participation. Handful of investigators have smart phones. Majority have Windows 7.
- GA: Officers don’t have issued cell phones; only sergeants and above do. All have computers, however, on their vehicle or boats. They use Windows 7. GA is tentatively looking at getting smart phones for officers in January 2018. Interested in participating in pilot.
- SC: majority of officers do have smart phones but not all have laptops.
- NC: officers have smart phones. Would be interested in participating; however, NC does not have JEA so this may present a challenge.
- NOAA: officers have smart phones and laptops with Windows 7. Interested in participating in pilot.

Input on outreach and training and reporting app for private recreational anglers:

- LEAP suggested coordinating with agencies to conduct outreach. Also link with JEA technician to publicize trainings. Council staff should be in touch with agency reps and they can provide access to meetings where officers and fishermen can get training, etc. Also get in touch with port agents so info can get out to fishermen. Would be ideal to conduct trainings for both officers and fishermen as it would create opportunity to build on partnership, etc.
- Consider that these apps could be used to collecting evidence so need to look at how/whether this evidence would be admissible in court.

7. Retention of recreational bag limits when citations are issued

The LE AP was asked to provide more information on how illegal catch is handled in light of recent comments to staff about violators being allowed to retain their catch. The concern is twofold: that such illegally harvested fish are going unreported and their numbers could be substantial, and negative public perception. The LE AP provided the following on this topic:

- USCG does not seize the catch; that is the directive they have been given from NOAA.
- NOAA OLE has gotten away from seizing catch on small recreational cases. Now document with a photo if a case is to go forward. Storage of seized product can be problematic. Cases do sometimes include information on value of catch (mainly commercial catches).
- GA – currently does not report catch that is seized, but does seize catch if a citation/case is made.
- SC – Officer discretion and on case-by-case basis. Seize less catch now than in the past now that digital photography is admissible in court.
- FWC – depending on circuit or county, officers can bring photos. For the most part, catch that is seized is either put back in the ocean (dead or alive) or is donated. For commercial seizures, there is a way to report the catch even when it is seized.
- NC – operates similar to FL.
- State agencies are conservation agencies, so they prefer to release fish if alive.
- NOAA has the option to seize the catch (requires a lot of steps), and a short time period to work on a case to seize, and find storage. If there is a need to seize the catch, then OLE does but if there is no strong need they don't.
- Is there a threshold for NOAA OLE for when to seize catch? OLE is looking at some policies now based on value of catch being put in an escrow account.

8. Guidance on working with media/public affairs offices to publicize cases

In an effort to continue to help raise awareness of fisheries law enforcement efforts, Council staff reviewed resources currently being used to access agency-specific activities relative to law enforcement and requested discussion on how to better coordinate with agencies to improve publicity. Agency representatives on the LE AP offered to provide staff contact information for their respective agencies to Council staff to help coordinate efforts. LE representatives agreed to work with Council staff to help publicize LE cases, etc. NOAA OLE cautioned that information on certain cases would not be able to be released to the public until after an investigation is completed, etc.

9. Election of Chair and Vice-Chair

The LE AP elected Capt. Bob Lynn (GADNR) as their Chair. Major Jason Walker (NCDMF) will continue to serve as Vice-Chair.

10. Other Business

Jeff Radonski, NOAA OLE, briefed the AP on the draft 2017-2019 Law Enforcement priorities and requested comments on SE Region LE priorities.

Appendix A

SERO (Southeast Regional Office) & GARFO (Greater Atlantic Regional Fisheries Office Input on Operator Permits

Is the permittee information accessible to field personnel and how?

SERO: No

GARFO: Yes, we post a list of valid permit holders on our public website that is refreshed daily. It contains name and mailing address only. We also have an internal data lookup where users can see all of the operator information and the scanned picture we use to make the card. Law Enforcement personnel can gain access to this internal site.

What is the permit information used for in addition to a list of who has the permit? Data collection?

SERO: Currently operator permits in the Southeast are not used for gathering data, distributing information, or enforcement to a large extent.

GARFO: Yes, data collection. Operators must complete the Vessel Trip Report and write down their operator number.

After the permittee receives the permit are there any additional requirements (i.e. reporting trip data)?

SERO: No

GARFO: see #2. If a person has an operator card and is just acting as a crew member on the trip, they do not have to do any reporting.

What was the original reason for the creation of the permit? I was told as a form of ID for those that have no other means to be identified but the CFR requires them to have an additional form of ID with them for Southeast but not for the Greater Atlantic.

SERO: To enable enforcement to affect the vessel operators, as opposed to just a vessel owner, who may not even be on the vessel. I heard there were captains who would not follow the rules, and if they got caught they'd just go work on another vessel whilst the permit holder of the vessel they had been fishing on received the penalty.

Analysis in the Dolphin Wahoo FMP for the action to include operator cards states, "This action will improve enforcement and aid in data collection. It should decrease costs to vessel owners from fisheries violations." "Will make vessel captains more accountable for damaging habitat or violating regulations intended to protect the long-term viability of the stock."

The operator permits in the rock shrimp fishery were requested by industry (mostly vessel owners) because in this fishery many owners are not the operators. Owners wanted a way for the vessel operator rather than the vessel owner to be held liable for violations.

GARFO: Not sure. GARFO does not require an additional form of ID. For GARFO, my guess is that it was created as a registry and a way to uniquely identify the boat operator.

Is the permit information used to contact the permittee for fisheries notices/rules changes or any other form of outreach?

SERO: Outreach and education may have been some of the rationale behind the operator cards, but not aware of any outreach or education done through the operator cards.

GARFO: We currently don't use the contact information for mailings that often, we mostly use the vessel contact data for mailings. We do use the information for phone calls about VTRs.

Are there any prerequisites in order to apply and receive the Operator Permit (i.e. background check, USCG license, etc)?

SERO: No

GARFO: No background information or additional ID needed. Just complete the application and submit a picture.

Southeast Operator Permit can be used in Northeast fishery, however, Greater Atlantic Operator Permit cannot be used in place of Southeast Operator Permit. Do you know why? Seems like the permits should be restricted to that fishery for data collection purposes.

Note: it was later determined that both permits are accepted in both fisheries.

SERO: Did not know the cards were not equally transferable for Dolphin Wahoo and/or Rock Shrimp fishers. Don't know why they are not.

Why does Southeast Operator Permit require Social Security# and Greater Atlantic does not?

SERO: SERO uses Tax Identification Numbers (Social Security Numbers and Federal ID Numbers) for all its programs to uniquely identify entities (people and businesses). GARFO does not.

GARFO: SERO uses the SSN as a way to uniquely identify people, plus it can be used for fee collection. Using the DOB seems sufficient enough for us to uniquely identify people. We generate our own unique operator number for each person that they use on their VTR. We don't charge for our permits in GARFO and we did not want the additional PII.

What do you think the effects would be, positive or negative, if:

(a) both Greater Atlantic and Southeast Operator Permits were combined into one coverall permit? (b) the Southeast Operator permit was removed.

SERO: We don't know what the effects would be yet. We would analyze the effects of removing the operator card requirement in an amendment, as the Council moves forward.

GARFO: a) Positive in that a unified system for consistency and streamlining of the process would likely help all interested parties, fishermen, and enforcement. Having one system would make future uses of the data much easier. Negative from the time burden associated with aligning the regulations to have the same requirements. Plus there would be more staff burden to handle all of the operator's applications and staff time needed to develop IT systems to better share the data. Also, legacy data would likely need to be migrated into this system, which would require some time and resources.

Why is there a \$50 fee associated to the permit and not for the Greater Atlantic Operator permit?

SERO: The Magnuson Stevens Act calls for the collection of fees to cover the "administrative cost" of the program. The \$50 charged by SERO covers the Administrative Cost of issuing the card and managing the data, as described in Chapter 9 of the [NOAA Finance Handbook](#). All NMFS regions are supposed to collect fees, however GARFO never has. I don't know why they don't.

GARFO: SERO charges for the services of processing and issuing the permit. We don't charge for any permits in GARFO.