

MAGNUSON-STEVENSON FCMA – PERMIT SANCTIONS

For the South Atlantic
Fishery Management Council

By GCES/SE May 2017

16 U.S.C. 1858(g) (1)

Under listed circumstances for cause or non-payment, the Secretary **may** –

- (i) revoke permits
- (ii) suspend permits for a period of time
- (iii) deny permits
- (iv) impose additional conditions and restrictions on permits issued or applied for

16 U.S.C. 1858(g)(2)

Factors taken into account in imposing a sanction

(A) the nature, circumstances, extent, and gravity of the prohibited acts

and

(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require

16 U.S.C. 1858(g)(5)

“ 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.”

15 CFR Part 904 Subpart D - Permits

Procedural regulations governing permit suspension, revocation, modification, and denial for enforcement reasons (*e.g.*, for a violation, a failure to pay a civil penalty or criminal fine, or a failure to comply with terms of a settlement agreement).

This subpart does not preclude sanction or denial of a permit for reasons not relating to enforcement.

PENALTY SCHEDULES

Summary Settlement Schedules

National Summary Settlement Schedule

Southeast Summary Settlement Schedule

Policy for the Assessment of Civil Administrative Penalties
and Permit Sanctions, July 1, 2014

<http://www.gc.noaa.gov/enforce-office3.html>

Summary Settlement Schedules

- National & Regional Schedules
- Establish penalties that may be issued by OLE for specified violations
- Do not include permit sanctions

Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions, July 1, 2014

“... 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 violator(s) (e.g., 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”

Permit revocation may be appropriate in extraordinary cases, e.g., where a permit is obtained by fraud or false information.

Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions, July 1, 2014

Appendix 2 – Penalty Matrix for the Magnuson-Stevens Act

Gravity Offense Level	Level of Culpability			
	A	B	C	D
	Unintentional	Negligent	Reckless	Intentional
I	Written warning-\$2,000	Written warning-\$4,000	\$2,000-\$6,000	\$6,000-\$8,000
II	\$2,000-\$4,000	\$4,000-\$6,000	\$6,000-\$10,000	\$10,000-\$20,000
III	\$4,000-\$10,000	\$10,000-\$15,000	\$15,000-\$20,000	\$20,000-\$40,000 Permit sanction of 5-20 days for subsequent violations*
IV	\$10,000-\$15,000	\$15,000-\$25,000	\$20,000-\$40,000 Permit sanction of 10-20 days for subsequent violations *	\$40,000-\$60,000 Permit sanction of 20-60 days *
V	\$15,000-\$25,000	\$25,000-\$40,000 Permit sanction of 10-20 days for subsequent violations *	\$40,000-\$60,000 Permit sanction of 20-60 days*	\$60,000-\$100,000 Permit sanction of 60-180 days*
VI	\$25,000-\$40,000 Permit sanction of 5-20 days for subsequent violations*	\$40,000-\$60,000 Permit sanction of 20-60 days*	\$60,000-\$100,000 Permit sanction of 60-180 days*	\$100,000-statutory maximum Permit sanction of 180 days to 1 year *

*Under catch share or similar programs, where permits allow for a certain amount of fishing quota per year (instead of fishing days per year), permit sanctions will be assigned as a percentage of the quota, at a rate of 0.27% for each day of permit sanction time listed in the matrixes (100% divided by 365 days per year is approximately 0.27% per day).

Late/Failure to Submit Reports Penalties

- NATIONAL SUMMARY SETTLEMENT SCHEDULE - Failure to maintain, make, keep, submit or complete required dealer reports, log book reports, trip reports, or catch reports (if no related violation)

1st Violation - \$500

2nd Violation - \$750

- SOUTHEAST SUMMARY SETTLEMENT SCHEDULE - Dealer failure to report

1st Violation - after receipt of notification of late reporting \$750 for each overdue time period charged up to 6 time periods; this category can be used again after 1 year without same charged violation

2nd Violation - \$1,000 for each overdue time period charged up to 6 time periods

3rd Violation - \$1,500 for each overdue time period charged overdue up to 4 time periods

- PENALTY POLICY - Appendix III-Offense Level Guidance-Magnuson-Stevens Act Schedule Violations Regarding Permits, Reporting, Documentation, and Permit Requirements

“Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failing to submit affidavits or other required forms in a non-quota fishery, may be either a level I or level II offense. It is an offense level I where the adverse impact on the statutory or regulatory program is insignificant and there is no economic gain from the violation. It is an offense level II where the adverse impact on the statutory or regulatory program is minor or there is some economic gain from the violation.

“Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failure to submit affidavits or other required forms in a quota fishery,” is a level II offense.

Late/Failure to Submit Reports GCES National Case Information Since March 16, 2011

Approximately 18 cases charged – generally vessels, at least 1 shore side processor and 1 dealer

Penalties have ranged from written warnings to \$6,000

Permit sanctions have not been issued

QUESTIONS?