

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