

Summary Report

Joint Meeting of the Law Enforcement Advisory Panel & Law Enforcement Committee

Crowne Plaza
4831 Tanger Outlet Boulevard
North Charleston, SC

August 4-5, 2016

Transport of Fillets from the Bahamas and Proper Stowage of Spearfishing Gear

During the March 2016 meeting, the Law Enforcement Advisory Panel (LEAP) discussed regulations governing the transport of snapper grouper, dolphin, and wahoo fillets into the U.S. EEZ from The Bahamas. Regulations became effective on January 27, 2016. At that time, the Florida Fish and Wildlife Commission (FWC) was in the process of developing consistent regulations for Florida state waters. The FWC enforcement representative on the LEAP, Capt. Grant Burton, briefed the LEAP and Law Enforcement Committee (LEC) on progress to date, etc. Salient points of the discussion are as follows:

- Concern about regulations that require “stowage of equipment” and smaller, faster vessels that don’t want to lay their rods and reels on the deck. Same for spear fishermen.
- The FWC is working on specifying what constitutes proper stowage of spearfishing gear and may adopt similar language to what is currently in the Code of Federal Regulations (i.e., “not available for immediate use”). However, there may not be a need to modify regulatory language regarding spearfishing gear due to water depths as the vessel transits in federal waters and there is already a prohibition of fishing while in transit.
- FWC’s outreach efforts indicate that the public is in favor of two fillets constituting a single fish and skin being intact. FWC is focusing efforts on education and outreach rather than enforcement for the time being.
- Indications are that new regulations are simple and will be easy to enforce.
- Thus far, boats coming from The Bahamas that have been checked for fillets were those engaged in multiple day trips.
- Capt. Burton distributed informational material pertaining and the draft rule. The draft rule has been presented to FWC and they have approved it but there is no anticipated effective date in the Florida administrative code yet. Information is available on the FWC website.
- FWC is also exercising discretion with first-time offenses. There have been very few cases where the skin is not on the fillet. Biggest issue is public needing to be educated about the new regulations. FWC needs photographs to positively identify fillets and they are working on training materials with NOAA Fisheries and the U.S. Coast Guard (USCG). Also working on target enforcement - social media has revealed instances where people have transited to/from the Bahamas without the proper documentation.

- Establishing a timeline for the education and outreach period may be useful so enforcement personnel can be certain of when to begin issuing citations, etc. Ideally, this would be coordinated among the FWC, the NOAA Office of Law Enforcement (OLE), and the USCG.
- Florida may need to take the lead to coordinate with other agencies since this is mainly their issue.
- Concern was raised regarding Nassau grouper – the species has been recently listed as “threatened” under the Endangered Species Act but can be legally harvested in The Bahamas. Concern about the difficulty of identifying fillets coming into the U.S. EEZ and the need for forensic evidence to ascertain identification.

For-Hire Reporting Amendment

The For-Hire Reporting Amendment contains 3 actions: (1) mandatory, trip-level electronic reporting by federally licensed charter vessels, (2) modification to the existing headboat reporting, requiring trip level reports filed by the Tuesday following each Monday-Sunday reporting week, and (3) reporting of fishing location by charter vessels to the minute of latitude/longitude as currently required for headboat vessels. Public hearings on the amendment were held in January-February 2016 and the amendment will be considered for final approval and submission in December 2016. Gregg Waugh, SAFMC Executive Director, presented an overview of the amendment and solicited input from the LEAP. A summary of the discussion is below:

- Reason for needing better fishing location information is to refine estimates of release mortality for stock assessments.
- Intent is also to coordinate among agencies so that fishermen only have to report once and the data would be disseminated to all pertinent agencies.
- Core data elements – benefits fishermen but also create a cost. Current data elements attempt to balance required data collection items.
- Request for LEAP to look over core data elements and make recommendations pertaining to enforceability of reporting requirements.
- NOAA General Counsel (GC) to provide specific comments on the amendment to Council staff.
- Noted possible need for electronic signatures so NOAA OLE can identify who was actually responsible for input of the data.
- The more “portals” the data go through, the longer the path, the greater the chances of error, and the more difficult it becomes to determine if timely delivery of reports has taken place.
- NOAA GC has provided a checklist to the Southeast Fisheries Science Center (SEFSC) with items that prosecution would need to enforce compliance of reporting requirements.
- What can NOAA OLE do to enforce regulations for fishermen who don’t have a permit (i.e. private rec)?
 - Most people pay the fine issued through the Summary Settlement process.
 - Cases are eventually sent to the Finance Office once a case has gone into a Summary Settlement Agreement. If fine is not paid, then the value that is

owed is sent of the Treasury Department and the fine is collected through them (from tax returns). However, when monies are collected this way, they go to the General Treasury, not to the Department of Commerce.

- There are also provisions in Magnuson that sanction permits for failure to pay for a penalty. There are (1) enforcement actions – penalties for not reporting, or (2) administrative actions – involve the timeliness of reporting requirements.

Mike Errigo, Council staff, gave a briefing on tablet-based e-reporting program, law enforcement smartphone app and MRIP e-validation. A discussion on how to enhance compliance followed:

- The group discussed the option to improve compliance using auto-generated emails, etc.
- Current system – fishermen are not notified of reporting delinquency until they go to renew permit (annually). This opens the door for fishermen to report incomplete or inaccurate data.
- The amendment could have a section with recommendations to NMFS – this is where the LEAP’s recommendations could go.
- Council can also present priorities to NMFS and include an enforcement component. However, NOAA OLE already has priorities so the Council may want to not be too prescriptive on timing of “consequences” for untimely reporting or failure to report.
- The proposed system would be associated with federal permits only. States could adopt the same system, as SC intends to do, but the system would be designed and maintained through NMFS.
- Noted was the need to be thinking that every step of the system can be used to build a case so each step should be evaluated as such. This is why law enforcement agents can exercise discretion.
- NOAA GC addressed the process currently in place through the SEFSC and how this relates to the enforcement role: The SEFSC has its own way of reminding fishermen to turn in reports but they do not have authority to place a permit on hold. The SEFSC alerts the Permits Office when someone is delinquent in their report. When that person renews his/her permit, their application cannot be completed until they submit the missing data.
- A process involving automatically-generated information (emails) would not be as useful from a law enforcement perspective because there needs to be verification that the communication was sent and was received (such as through certified mail).
- The SEFSC and NOAA GC need to work together on a system that would be useful all around. Some form of communication between the agency and the fisherman is desirable because it shows the agency trying to work with fishermen, etc., but this should not be interpreted as an enforcement action.
- It is up to the agency to prove that (1) a report is missing; and (2) the fisherman was indeed fishing prior to that report being due.

- The system cannot be too narrowly defined that it only applies to a specific (small) group of people because there can be a number of reasons for untimely reporting.
- The federal enforcement process is *not* quick. NOAA OLE has to work to build a case and to ready it for prosecution and this can take considerable time. Only the most egregious violators may be dealt with by OLE.
- Authority for penalties (permit sanctions, monetary penalties) has been delegated to NOAA GC. The Magnuson Act specifies a process for issuing penalties, etc. in agreement with the Administrative Procedures Act. Delinquent reporting violations are Level I or Level 2 violations. Under the current “matrix,” these types of violations do not include permit sanctions. Depending on whether it is considered an unintentional violation, the range of penalties may be from a written warning up to \$1,000.
- Page 34 of the Penalty Schedule (available online) has information on various types of violations.
- Even though a permit sanction cannot be used to enforce reporting requirements, there are other types of enforcement actions that can be taken.
- There are very, very few instances in which a permit is not renewed due to a violation.
- How can a limited access permit be made to have more “teeth” than an open access permit? From an administrative side, if a person has an open access permit and didn’t report and that permit is considered abandoned, then that person could still renew that permit. Under a limited entry program, the person would have to *buy* a new permit.
- The Council’s objective is not to take someone’s permit; it is to get the data. The need is to elevate the importance of reporting and that is what a limited entry program would do.
- Could a condition of the permit be that you have to be in compliance with reporting for the permit to be valid? In a practical way, that is already the case.
- Ideal mechanism would “change the culture” and promote compliance over time as well as improve data quality.
- Some Golden Tilefish dealers are currently waiting after season is closed to report. Lack of enforcement on timely reporting in this fishery has resulted in people not reporting until the season is actually closed so that there are overages and those that are reporting on time are at a disadvantage.
- Could the agency charge more money for renewing a permit when the fisherman hasn’t been reporting in a timely manner? NOAA GC would need to look into it to determine legal basis.
- Even though the regulations currently state that a person is not authorized to fish or sell fish because they have not reported, that doesn’t necessarily mean that person is in violation. The person first has to go through the due process to be charged and for an enforcement action to be taken.
- OLE depends on the SEFSC to do the outreach and inform the public of the regulations. They encourage this, in fact, because OLE does not have the capacity to do this. They are in the business of enforcing the regulations and do not

originate cases; the initial information comes from the SEFSC. NOAA OLE follows up on the complaints they receive.

- It is widely believed among the commercial industry in the South Atlantic that catch shares will eventually be implemented. This has caused fishermen to over-report (both in dealer reports and logbooks) in the hope that their share would be bigger if a catch share program is eventually put in place. Is there a way to enforce *accurate* reporting? NOAA OLE does have the capacity to prosecute fraud.

Remarks from James Landon, Director of NOAA OLE

- NOAA OLE recently concluded a functional analysis of the law enforcement needs for each region. The analysis was conducted through a contractor.
- NOAA OLE is hiring 7 new officers to enforce fisheries regulations in the South Atlantic region. Mission is seafood traceability and general fisheries enforcement so that special agents can devote time to large criminal and civil cases.
- Late June/early July 2017 will begin the NOAA OLE re-prioritization process – also plan to engage the USCG to make sure they are aware of priorities as well as reaching out to get input on Joint Enforcement Agreements (JEAs) with each of the states.
- Special agents will take on more JEA coordinating activities. Expect more joint missions/synergy between NOAA OLE enforcement and state partners.

Utility of Operator Cards/Permits:

During the September 2015 meeting, the LEC received a presentation on the use of operator cards/permits (OP) in the South Atlantic and Gulf of Mexico Regions. The presentation was requested following discussions on the utility, value, and need for OPs in South Atlantic fisheries and how those who participate in multiple fisheries in different regions may be affected. The LEAP and LEC received a presentation from NOAA GC and discussed improvements/changes, etc:

- Only Northeast (NE) and Southeast (SE) have requirements for OPs. They are required for all fisheries in the NE and are valid for 3 years. OPs are required in two South Atlantic fisheries: Dolphin Wahoo and Rock Shrimp.
- There are 1,552 OPs currently in the South Atlantic.
- OPs are helpful in education and outreach as well as voluntary compliance. They are potentially subject to sanctions due to fisheries violations. Owners and operators are both liable when there is a violation.
- OPs also aid in data collection and “decrease cost to vessel owners from fisheries violations” presumably through making the owner more selective in hiring vessel operators in order to decrease the probability of violations, etc.
- In the SE the OPs are not used for data gathering.
- Why do we need a SE permit when the NE permit covers all the regions (both NE and SE)? If someone in the SE wants an OP they can go to the NE to obtain it and not have to pay the \$50 fee (there is no charge for OPs in NE region and no requirement to provide social security number).

- NOAA GC indicated that there is some usefulness in having OP. NOAA OLE concurs. Whether there is consistency between the NE and SE requirements would be up to the Councils.
- In SE region, the OPs are not listed on the website along with other permit information. The Council feels this information should be made available.
- Is there any utility in OPs for the for-hire sector? If the requirement is to remain, then changes may be needed to make it more useful.
- NOAA OLE agrees that OPs could be more robust. Could attach whether an operator has undergone certain training? (as in HMS fisheries).
- There is usefulness on the management side to know the universe of operators for education and outreach and to the extent that the Council wanted to link any kind of data to the OP.
- Perhaps the SE region needs to look at what is being done in the NE and work towards consistency.
- One reason the Council chose DW to require OP is because that fishery interacts with almost all other fisheries. So almost everyone has an OP. Requirement in rock shrimp fishery was as form of identification.
- If you operate in the SE and then go to the NE, do you need two OPs? Either one can be used but this could be made clearer in the regulations.
- That the OPs can be issued in the NE for SE fishery participants defeats the purpose of the cards being used for education. The NE region has access to information on South Atlantic fisheries but the Council is not getting that information.
- Would be useful to merge the operator cards for the NE and SE.

Guidance on subsequent OP discussions:

LEAP to provide recommendations to Council on how to improve utility of operator cards. This will require time for evaluation and development of specific recommended changes.

Council would like LEAP to address whether cards are useful for other fisheries in the South Atlantic besides Dolphin Wahoo and Rock Shrimp.

Possible changes to OP requirements include:

- Make names of operators who have final adjudicated violations more available to the public.
- Part of evaluation could entail comparison with requirements for state fishing licenses.
- Perhaps take a look at regulatory language regarding requirement of a “valid form of ID” and whether that includes an operator card.
- Operator cards could be linked to logbook to keep track of people’s reporting habits and violations, etc.

Tasks:

- Provide application for OP & other state requirements such as SPL, etc.
- Include NE region in meetings/webinar to make sure there is consistency.
- Council to provide guidance on what they want the card to be used for; LEAP to provide information to Council on utility for law enforcement.
- NOAA GC to obtain clarification prior to September 2016 Council meeting on how OP violations are handled.
- Capt. Burton (FWC) and Cpl. Henderson (SCDNR) were tasked with obtaining further information as described above. With the assistance of Council staff, to inform subsequent LEAP discussions.

Marine Protected Areas (MPAs) Mapping

The Anthropocene Institute's Marine Managed Area project is an active public-private partnership between the Anthropocene Institute (AnthInst) and the NOAA Marine Protected Area Center. Staff demonstrated the interactive mapping tool and solicited feedback from the enforcement perspective to maximize its effectiveness. Below are salient points of the discussion that followed:

- Aim of project is to provide free, online interactive maps of each region – compatible with smart phones, tablets, computers – to be used on the water
- AnthInst has contract with Navionics to get restricted areas, etc. included in their products. Navionics is free software and many people are now using it so it is a good company to partner with.
- Metadata are not included so coordinates are not available.
- For purposes of law enforcement, the coordinates would need to be available. On the other hand, while providing them in electronic form is useful, it may create more work if the coordinates have to be validated. Is it possible to get software to display coordinates with cursor hover? Maybe an additional layer?
- Maps include a “Feedback” feature to allow users to provide recommendations
- Outreach geared towards retailers would be useful.
- Mapping tool only includes areas that are “permanent.”
- Target audience is general public, boating public, and recreational fishermen.
- Law enforcement standard for restricted areas is a NOAA chart.

Inclusion of SAFMC Managed Areas in Navigation Charts

The Council finalized development of an amendment to designate Spawning Special Management Zones (Snapper Grouper Amendment 36) and is addressing the issue of including managed areas on NOAA charts. Kyle Ward, Southeast Navigation Manager with NOAA's Office of Coast Survey, updated the LEAP and LEC on NOAA protocol and procedures for charting to clarify how the Council's proposed or existing managed areas would qualify to be included in NOAA navigation charts.

- The Army Corps of Engineers (ACE) and USCG partner with NOAA to create charts. ACE maintains navigation channels and USCG maintains navigation buoys.

- Certain vessels are required to carry charts – mandate is to create charts for largest vessels (SOLAS; e.g., container ships).
- NOAA Navigation Services is trying to gauge how small vessels are using charts. There is currently a variety of smart phone apps that small mariners are using (example: Whale Alert app)
- Charting of MPAs has to be requested by the “cognizant federal government agency” and applies to areas where vessel access is restricted or prohibited. Areas that prohibit a type of gear, for instance, are not eligible to be included in NOAA charts.
- Also restrictions on size of area (if too small it wouldn’t be charted).
- Charted areas cannot impact legibility (i.e., “chart clutter”) or other features important to navigation.
- Cautionary note: Once an area has been added to a chart it is difficult to remove.
- Is NOAA considering changing colors that are used in electronic charts? There are international standards that NOAA uses.
- What would it take to incorporate SMZs or MPAs into NOAA charts? They have to meet the standards that NOAA requires to include items on their charts.
- MPAs and SMZs specified by the Council may not be on NOAA charts because transit is allowed. This is based on current NOAA guidance. But Council feels they have met the requirements. Also the Oculina Experimental Closed Area is included in NOAA chart.
- Any new item specified in the CFRs and requested by NOAA Fisheries needs to be submitted to NOAA Office of Coast Survey for inclusion in nautical chart. Each area would be evaluated individually.
- NOAA CG concurred that MPAs should be included in NOAA charts.
- **LEAP recommendation: ask that NOAA Fisheries request inclusion of SAFMC closed areas (MPAs and proposed Spawning SMZs) in NOAA nautical charts.**
- Paper charts have to be obtained through Print on Demand providers. Even NOAA agencies have to go through those providers, which are private.
- USCG does require some vessels (non-SOLAS class) to carry nautical charts. USCG is going through re-evaluation process. However, the majority of vessels impacted by SAFMC regulations are small vessels that are not mandated to carry official NOAA charts (ENC version). Council could work with private providers/retailers to create products that stakeholders can use.
- Concern that there may be fishermen without ready-access to electronic charts and difficulty in obtaining paper charts. They may be expected to have some sort of navigation aid on their vessel but maybe it is hard for them to obtain this.
- Smaller vessels (i.e., fishing vessels) don’t have a requirement to carry charts. From a law enforcement perspective, fishermen are expected to know where they are.
- Is there a way that certain info can be turned on/off in e-charts? Yes, this is forthcoming and the ability is there to do it.
- Council intends to get info to retailers like Navionics but there are other areas that are more difficult.

- Council's website is the only site where MPA info is available and it is difficult to find. Fishermen know the MPAs exist but they claim to have had to manually add the corner coordinates to their electronic charts. Council staff to make it easier for people to get access. Would fishermen like data on a chip that they can put on their GPS? What would be the best way to get info the public? All formats would be OK; text files are easy to import. Council staff intends to request the LEAP to review the files before they are made available to fishermen or posted on the website.
- It was noted that the LEAP has consistently recommended straight lines on restricted areas.
- Need to improve outreach on website to alert users of changes/updates (FWC has way of doing this).

Update on Proposed Modifications to Cobia Management Measures:

Kari MacLauchlin, Council staff, briefed the LEAP and LEC on proposed changes to recreational management measures for cobia. The LEAP had no recommendations on proposed cobia actions and did not have any law enforcement concerns.

Joint Enforcement Agreements Update:

The state representatives on the LEAP delivered updates on activities funded through their respective JEAs. In general, states are going over the number of hours that their JEA contracts require and accomplishing a number of fisheries enforcement activities that would not be possible without JEA funding.

It was noted that there have been policy changes within NOAA OLE that have caused a shift in priorities so that resources are now more appropriately allocated. Priority setting process will take place summer of 2017 and it will be important for Councils to help NOAA OLE to refine priorities.

Other Business:

- All of Council's MPAs are Type 2 so there are people inside those areas legally. Charleston Deep Artificial Reef MPA is working quite well for fish but there is also a lot of monofilament out there. How could the DNR/public help in improving voluntary compliance? Could law enforcement use something similar to Citizen Science? As time goes on, there will be more and more temptation to use these areas in ways that they are not intended.
- Perhaps patrolling of MPAs should be moved up in LE priorities for JEA contracts, etc.
- 24-hour OLE hotline (800) 853-1964