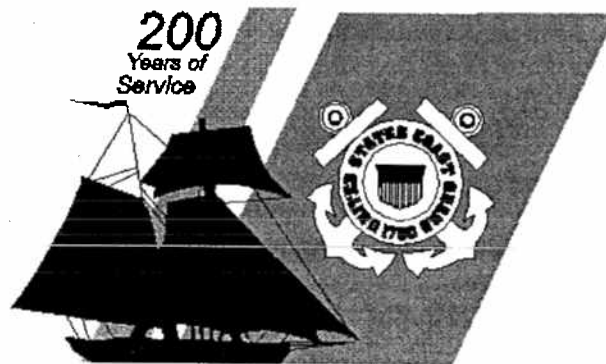




Enforcement Considerations For Regional Fishery Management Councils

Developed by NOAA Office for Law Enforcement,
NOAA General Counsel for Enforcement and Litigation, and
The U.S. Coast Guard

October 2007



**NOAA OFFICE FOR LAW ENFORCEMENT,
NOAA GENERAL COUNSEL FOR ENFORCEMENT AND LITIGATION
AND
UNITED STATES COAST GUARD**

GUIDANCE FOR EFFECTIVE FISHERIES ENFORCEMENT

Fisheries regulations are constantly being written and most of those in place seem to be in a continual state of change. Fishery Management Council, NMFS Sustainable Fisheries, Protected Resources, and Habitat staffs are tasked with the creation and revision of these regulations. Although involving enforcement personnel in the process is essential, it is difficult to include enforcement on every conference call and at every meeting. With that in mind, the following is provided for consideration by those who are assigned a project which include elements of enforcement.

Before approval and implementation of a Fishery Management Plan (FMP), the following measures are enforcement's advice as it relates to the plan's efficacy. The basis for these principles is the historical experience of over thirty years of enforcing the many and varied regulations promulgated under the Magnuson-Stevens Act on a nationwide basis.

Please note that the information in this paper is intended only as general guidance. Depending on the specific design of any regulatory program, the enforcement tools and strategies used in that program may require mixing or even deviation from the individual enforcement precepts mentioned in this paper. The information contained herein in no way limits NMFS and the Coast Guard's ability to employ the enforcement techniques that it considers most appropriate for accomplishing the goals of a specific regulatory program.

Though it may appear that the focus of this paper is on commercial fisheries, the majority of the measures, such as permits, closed areas, etc., are equally applicable to recreational fishermen. Recreational fisheries need better regulations to control harvest and gather data. Failure to curb uncontrolled and unmonitored recreational fishing threatens to derail any gains made by the commercial fishing industry in recovering the biomass.

Each Fishery Management Council has a team of enforcement personnel, including NOAA Office for Law Enforcement (OLE), Coast Guard, and State Enforcement, who should be your sounding board for ensuring that the regulations you are proposing are enforceable and will accomplish the desired outcome.

ENFORCEABLE REGULATIONS ARE:

Simple and easy to understand - The more complicated the rule, the higher the likelihood of creating loopholes and legal defenses. Straightforward requirements that are black and white without exceptions make it more difficult for intentional violators and conspirators to evade enforcement. For example, "possession of an undersize halibut on a commercial fishing vessel"

is clearly a simple prohibition. It is illegal regardless of where taken or how it was harvested or any other variable, condition or stipulation.

Simple regulations are easier for industry to comply with and increase options available to enforcement. Complex regulations result in errors, misunderstandings, and cause industry to simply ignore them. Clear regulations reduce enforcement costs (including time) enabling a greater coverage and/or boarding rate of a fishery at the same cost.

To the extent possible, consideration should be given to consistently similar management measures amongst the FMPs and regulatory areas, as well as between federal and state waters.

Few as possible - Adding too many control measures frustrate the industry as well as enforcement. Too many regulations allow for more possibilities for mistakes to be made and reports to be forgotten; and it gives more work for enforcement. Reports should be consolidated where possible, and instructions made simple. Regulations sometimes have to be very restrictive, but compliance should be easy for the industry.

Fish is accountable and traceable throughout the wholesale process - The intent of this requirement is for there to be traceability of product wherever found. This enables enforcement to intercept unlawful seafood at various funnel points such as airports and customs borders. With required documentation and labeling, everything could be traced back to the responsible harvester.

Supported by appropriate penalties up to and including permit revocation and criminal charges for the most egregious offenses - The penalty schedule of NOAA General Counsel is constantly evaluated to ensure it is sufficient to effectively penalize civil offenders commensurate with their violations. However, chronic repeat offenders who do not possess resources to pay their fines may warrant permit sanctions or revocations. Those who commit egregious crimes must be punished via criminal sanctions up to the felony level. In these cases, incarceration may be the appropriate avenue of attaining justice. (See PENALTY section below for more on this subject)

REGULATIONS ARE MORE DIFFICULT TO ENFORCE IF THEY ARE:

Man power intensive regulations – Regulations requiring monitoring of offloads are manpower intensive. NOAA OLE will never have enough manpower to monitor more than a small fraction of the total offloads. This requires constant shifting effort from port to port, while not having adequate resources to properly be pro-active towards serious offenders. Use of technologies such as VMS and electronic logbooks can allow enforcement to monitor remotely, reducing manpower needs.

Complex or convoluted regulations - Regulations designed to impose bycatch limits are nearly impossible to enforce at-sea. Enforcement of these regulations requires monitoring the entire catch during offload. Once pierside, it is too late for the vessel to do anything about any overages it may have. The fisherman must rely on their ability to estimate catch composition at sea to stay in compliance.

Lack of accountability - Fish can become "legal" merely by doctoring the records, without a rigorous system capable of providing traceable accountability, or the ability to audit. Requiring a paperwork trail to track fish from harvest, to offload, and through the processing and shipping add to good accountability.

Estimates - Regulations requiring a vessel captain to estimate catch, catch composition, and/or discards are difficult to enforce. In certain circumstances estimates may be acceptable for feeding information into the fisheries management process; however, it is difficult for enforcement to prove false reporting of an estimated weight of a discard.

Law Enforcement resource intensive - Finally, any new plan or regulation must take into consideration the finite enforcement resources of the NOAA OLE and the Coast Guard, which requires prioritization of some fisheries over others. Adding complex/convoluted regulations requires additional effort on the part of investigators, whose time is already limited

PENALTIES

Once regulations are in place, penalties are discussed. The goal of regulatory enforcement agencies is to ensure compliance, whereas prosecution agencies exist to assess responsibility and punish violations. The NOAA OLE has both mandates. These two mandates often lead to conflict when we are criticized for not pursuing cases of wrongdoing more aggressively, and then criticized for being too heavy handed when pursuing major civil and criminal violations. NOAA OLE works with other NOAA divisions, the Fishery Management Councils, NOAA General Counsel, and the U.S. Attorney's Office to determine the appropriate prosecution method for an offense. NOAA OLE has one of the most versatile selections of penalties of any agency in the United States. For civil violations, these include verbal warnings, fix-it notices, written warnings, summary settlement fines, as well as monetary penalties permit sanctions, permit suspensions, and permit revocations from NOAA General Counsel. There are also options for hearings with a Civil Administrative Law Judge or with a federal judge in federal civil court. Our goal is to seek the least penalty to gain compliance. If a penalty is too low, it may result in being considered simply the cost of doing business. If a penalty is too high, a person discovering they have committed a civil violation may decide to cover up the error instead of reporting it. Or, they may feel the need to challenge the violation in court, not to claim innocence, but to petition for a lower penalty. For criminal violations, penalties include monetary penalties, home confinement, and/or imprisonment. Criminal investigations and prosecutions are saved for the intentional violators who commit the violation many times, conspire with others, or those who intentionally commit one serious offense where a civil penalty would not be appropriate or adequate.

VESSEL MONITORING SYSTEMS (VMS)

The technological sophistication of the modern fisherman is incredible, and demands equivalent technological applications by law enforcement to ensure that regulations and laws are being adhered to while at-sea. VMS allows enforcement to use 21st century technologies to monitor compliance, track violators and provide substantial evidence for prosecution, while maintaining

the integrity of the individual fisherman's effort. VMS uses electronic transmitters placed on fishing vessels to transmit information about the vessel's position to enforcement agencies via satellite. This position information is used by enforcement to focus limited patrol time on those areas with the highest potential for significant violations. It is critical to recognize that VMS cannot replace at-sea enforcement by aircraft, vessels, and boarding teams, but rather complements existing capability by allowing enforcement to target violators, thereby increasing efficiency. VMS is only useful for enforcement of regulations that are location specific. NOAA OLE and the Coast Guard still need to conduct at-sea boardings to verify compliance with other regulations, such as net mesh size and prohibited species.

Although not primarily a safety device, VMS may contribute to increased vessel safety. Some VMS transceivers allow constant two-way communication between the vessel and shoreside monitors. If an accident were to occur, the recorded track of the vessel may aid rescue efforts.

Expansion of VMS into additional domestic fisheries would increase the efficiency of enforcement operations by enabling more efficient patrol planning in those fisheries. The best way to use VMS is in combination with a strong dockside enforcement program. Councils should focus on regulatory frameworks which supports strong offshore monitoring and strong dockside inspection and tracking.

OBSERVERS

The NOAA Fisheries Observer Program authorizes NOAA Fisheries employees or contract personnel to embark on fishing vessels in support of an FMP. It is critical to note that observers are NOT enforcement personnel. Rather, they provide fishery managers with more accurate data with which to make management decisions. Maintaining the integrity of unbiased observer data is at the core of effective fisheries management and is a top enforcement priority. Significant violations include failure to carry a required observer, observer harassment, and biasing of samples. NOAA Fisheries regulations establish national safety standards for commercial fishing vessels carrying observers. These regulations require that any commercial fishing vessel, not otherwise inspected, must pass a Coast Guard dockside safety examination before carrying a NOAA Fisheries observer. Further, an observer may conduct an independent review of the fishing vessel's major safety items and may refuse to sail if there are major deficiencies. This is significant because NOAA Fisheries prohibits a vessel required to carry an observer from fishing if an observer is not aboard.

MATRIX of MANAGEMENT MEASURES

The following matrix is designed to help fishery managers and staff better understand the enforcement aspects related to certain management measures. It is important to note that these guidelines address the enforceability of regulations, not necessarily the merits of the regulation. Where it is applicable and important to enforcement agencies, the guidelines address safety, economics and biology considerations.

This matrix allows fishery managers and staff rapidly identify how enforceable a management measure is by at-sea cutter patrols, aircraft patrols, and dockside enforcement. The matrix is supplemented by an analysis defining each management measure, outlines the enforcement advantages and disadvantages of the measure, and then concludes with a recommendation on how to write regulations to make the management measure the most enforceable.

Fishery Management Measure Enforceability Matrix

	Surveillance – Aircraft/Ship/VMS	At-Sea Boarding	Dockside
Limiting Amount/ Percent Landed	No	No	Yes
Limiting Amount/ Percent Onboard	No	Limited	Yes
Prohibiting Retention	No	Yes	Yes
Requiring Retention	Limited	Yes	No
Size Restrictions	No	Limited	Yes
Closed Areas	Yes	Yes	No
Closed Seasons	Limited	Yes	Yes
Gear/Vessel Restrictions	Limited	Yes	Limited
Limited Access Privilege Programs	No	Limited	Yes
Recordkeeping/ Reporting	No	Limited	Yes
Permits	Limited	Yes	Yes

ENFORCEMENT ADVANTAGES AND DISADVANTAGES OF FISHERY MANAGEMENT MEASURES

LIMITING AMOUNT/PERCENT LANDED

Definition:

- This management measure aims to reduce bycatch retention/mortality by limiting the amount or percentage landed.

Advantages:

- Measure acts as an incentive to focus fishing efforts in areas that minimize bycatch if there is some penalty associated with excessive bycatch (i.e. fishery will be closed as a result of reaching a limit).

Disadvantages:

- This is a landing provision, and is difficult to enforce at sea, through either surveillance or boardings. Effectiveness is directly proportional to dockside effort expended. Compliance requires continuous presence of dockside surveillance, which is nearly impossible to attain given current NOAA OLE resource constraints.
- High grading may be an issue.

Recommendations:

- Consider prohibitions which regulate areas, seasons, types of gear or types of operations to minimize bycatch.
- Segregating catch at sea would facilitate enforcement.
- On catcher processor vessels, regulations should prescribe that eventual landing limits shall not be exceeded while at sea. This allows for enforcement at sea as well as dockside. If an at sea boarding determines that the trip limit is met, then the F/V should be required to return to port to preclude further resource degradation/economic advantage.

LIMITING AMOUNT/PERCENT ON BOARD

Definition:

- This management measure aims to reduce bycatch retention/mortality by limiting the amount or percentage of a bycatch species allowed on board a fishing vessel.

Advantages:

- This measure is similar to limiting amount/percentage landing, but allows for at-sea enforcement.
- If an at-sea boarding determines that the limit/percentage is met, then the fishing vessel should be required to return to port to preclude high-grading or further retention.

Disadvantages:

- Full and accurate count of catch onboard cannot easily be done at sea during in most fisheries (due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.).
- High-grading may be an issue.

Recommendations:

- Regulations should specify how much target species catch is required to justify retention of bycatch species and in what amounts. This is necessary to prevent a bycatch species from becoming the target species.

- Consider regulations that specifically require types of gear or operations that minimize bycatch. When regulating gear, it is best if the gear types are readily identifiable by aircraft.
- Policies should incorporate industry best practices and consider industry recommendations.
- Segregating catch at sea would facilitate enforcement.

PROHIBITING RETENTION

Definition:

- Regulations designed to prohibit the retention of certain species aboard fishing vessels.

Advantages:

- Allows for at-sea and shoreside enforcement.
- If designed correctly, retention violations are easier to document and enforce than regulations that allow a limited percentage to be retained.

Disadvantages:

- Potentially creates an incentive to hide prohibited species from observers or to underreport prohibited species catch, if it influences the fishing season.

Recommendations:

- Clearly identify when possession of a prohibited species is restricted (i.e. returned to the sea as soon as practicable, etc.).
- Consider prohibitions which regulate types of gear or types of operations to minimize bycatch catches. When regulating gear, it is best if the gear types are readily identifiable by aircraft.
- Policies should incorporate industry best practices and consider any industry recommendations.

REQUIRING RETENTION

Definition:

- Measures requiring fishers to retain of all catch.

Advantages:

- Allows for enforcement by aircraft/vessel surveillance, as catch discards can be observed from a distance.
- Provides managers with a more accurate picture of the impact of a fishery on target and bycatch species, and allows managers to close the fishery when a limit is landed.

Disadvantages:

- Difficult to enforce shoreside.

Recommendations:

- Policies should incorporate industry best practices and consider industry recommendations.
- Clearly define situations where full retention is not required. For example, allowing vessels to bleed their nets to allow for vessel safety.
- Limit or eliminate differences between full retention requirements for vessels operating in the same location or fishery.

SIZE RESTRICTIONS

Definition:

- Possession or fish below or above a specified size is prohibited.

Advantages:

- Violations are easy to document during at-sea and shoreside inspections. If properly implemented, these regulations are typically easy to prosecute.

Disadvantages:

- At-sea processing can limit the effectiveness of enforcement efforts.
- The effectiveness of size limitation for fisheries management is proportional to the enforcement effort expended on dockside and at-sea inspections.
- The enforcement of this type of regulation has the potential to be manpower intensive.
- Size restriction can create an economic incentive for vessels to high-grade their catch.

Recommendations:

- Prohibit processing/filleting at sea for fisheries where size restrictions are used.
- Measurements should include head and tail intact.
- Require standardized measurement procedures, equipment and techniques by state and federal agencies.
- Develop and coordinate consistent regulations across state and federal boundaries.

CLOSED AREAS

Definition:

- Fishing in a specific geographic area is prohibited.

Advantages:

- Fairly easy to enforce when regulations include the below recommendations.
- The use of electronic monitoring (e.g. VMS) provides for relatively easy to monitoring, if the regulatory scheme is properly developed. However, even with VMS cueing, a response asset is generally required to document the violation for prosecution. Enforcement agencies also use aircraft and surface patrols to verify the accuracy of the VMS picture.
- Easy to document presence in the closed area by aircraft and vessel surveillance. Depending on the fishery and gear type, it is difficult for enforcement agencies to document fishing activity without an at-sea boarding.

Disadvantages:

- Without VMS, effectiveness is directly proportional to the surveillance effort.
- Regulated gear areas are difficult to enforce, because they still require at-sea boardings to verify that fishing vessel is using legal gear in the closed area.

Recommendations:

- Clearly defined areas. Use exact latitude/longitude and straight lines. Avoid simply stating distance offshore, center point and radius, or depth contours.
- Regular shaped areas. In most situations, closed areas are easier to enforce if they are square or rectangle shaped, since it is more clear cut that a vessel is west/east, north/south of an indicated line, and therefore, in or outside a closed area.
- Large closed areas are preferred in most situations. Small, irregularly closed areas with open areas in between make it easier to cheat by enabling a vessel to quickly enter and exit a closed area. However, if making smaller areas opens fishing grounds, then there may be less incentive to violate the closed area restriction.
- Temporary, short-term closures can be difficult to enforce, as communicating the requirement to the fishing fleet can be challenging.
- Limit the number of closed areas that geographically shift through a season. This increases the confusion of enforcement officials on the current status of an area. It also increases the

likelihood of unintentional violation because of confusion and makes at-sea enforcement more difficult because fishing trips have to be reviewed in sections based on the closed areas that were in-force during segments of the fishing trip.

- Close the area to all fishing activity; limit grand-fathering and other exemptions.
- If transit is allowed, regulations should state that all fishing gear must be stowed while in the closed area and transits must be continuous (i.e. no loitering/stopping). Stowage requirements must be clearly defined. If vessels need to stop/loiter in a closed area, include a requirement to notify enforcement.
- Regulated gear areas are difficult to enforce, because they still require at-sea boardings to verify that fishing vessel is using legal gear in the closed area.

CLOSED SEASONS

Definition:

- A specific fishing activity is prohibited during certain times of the year.

Advantages:

- Large vessel fisheries are easier to monitor since vessels are in port or in other fisheries.
- Gear intensive fisheries (pots, etc.) are noticeable if a vessel gears up for a trip.
- Monitoring the fishing vessels with VMS during closed seasons can greatly aid enforcement.
- The presence of a particular species during a closed season may be detected in the market if retention is prohibited everywhere.

Disadvantages:

- Small vessel fisheries are more difficult to monitor, particularly those where the vessels are launched from trailers rather than moored to piers. Smaller quantities are easier to hide in the market.
- Fisheries with multiple gear types for the same species are especially difficult to enforce if only one gear type has a closed season.

Recommendations:

- See Closed Areas: ensure closures are clearly defined; limit exemptions to the closed season, and dates/times should be defined to the minute.
- Regulations should fully describe what activity is allowed to occur before, during, and after the closure. For example: all gear must be hauled in prior to the closure, gear may not be set prior to the opening. For short duration fisheries, prohibit all fishing with any gear type 72 hours before and after the fishery.
- Monitoring the fishing vessels with VMS during closed seasons can greatly aid enforcement.

GEAR/VESSEL RESTRICTIONS

Definition:

- Specific gear types or gear modifications are prohibited. Gear includes not only the primary methods and tools to harvest the resource, but also includes vessels, horsepower and other such variables. Certain regulatory gear may be required to minimize catch of bycatch species and/or protect certain marine species (i.e., pelagic vs. demersal trawls or protected species avoidance gear).

Advantages:

- Gear can be inspected dockside and at-sea, in most cases.

Disadvantages:

- Restrictions on gear employment (i.e. set/trawl depth) are difficult to enforce. For example, a limitation on amount of fixed gear/hooks is difficult to regulate/enforce.
- Normally gear or vessel restrictions need to be inspected at-sea to ensure compliance while the vessel is engaged in the act of fishing.

Recommendations:

- If a specific type of gear is prohibited for use in a fishery, then carriage of the gear type should also be prohibited.
- Gear restrictions should be standardized across state and federal boundaries.

LIMITED ACCESS PRIVILEGE PROGRAMS

Definition:

- These programs delineate a specified amount of particular fish species to be allocated to an individual, a particular vessel, a processor, or a community.

Advantages:

- LAPPs are often praised for their safety benefits. By allowing a quota that can be caught over an extended period of time, fishermen are able to choose when to fish, rather than being forced to fish during bad weather based on mandated time periods (e.g. derby fisheries).
- Once an individual fisherman has met their quota, additional fish are treated as prohibited species, as discussed above.

Disadvantages:

- Manpower intensive. LAPPs spread out fishing effort over longer periods, requiring extended enforcement presence rather than the pulsed presence required of derby fisheries.
- Individual quota holders have the incentive to underreport their landings throughout the fishing season.
- LAPPs can create an economic incentive for vessels to high-grade their catch.

Recommendations:

- Effectiveness depends on monitoring landings.
- Electronic reporting should provide real-time debiting of an individual's quota account. That is beneficial to enforcement, to the fisherman, and fishery managers.
- VMS should be considered for LAPP fisheries.
- If at-sea quota debiting is allowed, the use of certified scales, observers, and video monitoring should be considered to ensure accuracy.

RECORDKEEPING AND REPORTING

Definition:

- A requirement to keep records of specified information on board the vessel. As technology permits, the data from records could be transmitted to managers for decision-making, depending on the fishery and the need for near real-time catch/effort information.

Advantages:

- At-sea boardings can verify the presence and use of logbooks and other records.
- Dockside monitoring of offloads can verify accuracy of catch data.

Disadvantages:

- Full and accurate count of catch onboard is difficult at sea for unprocessed fish, due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.

Recommendations:

- Regulations need to identify the time requirements for completing reports and entering data into logbooks (e.g. per set, daily, end of trip). By specifically describing the time requirement, enforcement can better determine whether to focus effort at-sea or shoreside.
- Require a standard logbook format for all federal fisheries.
- Use of electronic reports can simplify enforcement. Electronic reports can be used as a way to provide enforcement near real-time data before or during a boarding. Electronic reporting also reduces reporting errors. Converting from an all paper process to electronic process is essential for good enforcement and good fisheries management. Paper only exacerbates managing the fishery and makes enforcement difficult. A benefit of converting to electronic reporting along with a VMS program is that electronic log books, observing systems, real-time catch reporting, real-time landing reporting, etc. can all be carried on the VMS platform.

PERMITS

Definition:

- Document which indicates allowable gear type, fishing areas, and/or species which are allowed to be retained.

Advantages:

- Easy to track and identify.
- Revocation or suspension of permit is an effective penalty provision.
- Easy method for enforcement to determine lawful operations.

Disadvantages:

- Permits are largely used by enforcement to identify allowed fishing activity, but the bureaucracy for amending and issuing them creates a system that can be frustrating for fishermen to follow.

Recommendations:

- Require original permits, not copies, to be carried on board the vessel at all times.
- Permit transfers must follow strict guidelines and should require adequate notification to enforcement.
- Standardize permit format across fishery management plans where possible.

**NOAA OFFICE OF LAW ENFORCEMENT
PRECEPTS FOR DEVELOPING EFFICIENT, ENFORCEABLE
AQUACULTURE REGULATIONS**

In order to support the development of aquaculture in the EEZ, the NOAA Fisheries Service Office of Law Enforcement advocates the following guidance for the development of enforceable aquaculture regulations.

These precepts are supported by more than 25 years of experience successfully enforcing statutes and regulations that support the conservation and management of living marine resources and protection of the marine environment.

This is a sister-document to the publication, "Enforcement Considerations for Regional Fishery Management Councils", released in October, 2007 by the NOAA OLE, General Counsel for Enforcement and Litigation and the US Coast Guard.

The enforceability of a regulatory scheme is critical to its' success. While these principles have been developed primarily within the context of Magnuson Stevens Fisheries Conservation and Management Act and Lacey Act enforcement, they are equally applicable to the Offshore Aquaculture Act.

The OLE proposes a three-pronged approach to ensure compliance and facilitate successful monitoring of aquaculture products, consisting of inspection, auditing and investigation.

The OLE offers the following precepts as guidance in the development of efficient and enforceable offshore aquaculture regulations.

In general, regulations are enforceable if:

- **They are simple and easy to understand** - The more complicated the rule, the higher likelihood of creating loopholes and legal defenses. Straightforward black and white requirements, applied to without exceptions or exemptions make it difficult for intentional violators and conspirators to evade detection and enforcement. Rules should not change frequently, as frequent change makes rules difficult to follow and to enforce. As an example, fishers may successfully avoid prosecution even after admitting to breaking a rule, because the rule recently changed. Regulations should apply to all species and plans covered under the Act, as opposed to being specie or plan specific. Consideration should be given to adopt consistent management measures between federal and state plans.
- **Few as possible** - Adding too many control measures frustrates both the industry and enforcement. Too many regulations allow more possibility for mistakes to be made and reports to be forgotten and create diminimus work for enforcement. Reports should be consolidated when possible, and instructions made simple. Regulations sometimes have to be very restrictive, but compliance should be easy for the industry.
- **Products and their containers should be clearly marked** - Cultured seafood products should be marked in a manner distinctly different than wild counterparts. This may include marking or tagging all whole, cultured fish or shellfish with a distinctive mark or tag; clearly marking all boxes, crates, or other containers of product as "cultured", with the originating aquaculture facility identified; and providing a bill of lading that accurately lists the weight, number and

price of the product. An example of how this would assist enforceability of regulations is the allowance for possession of cultured fish that is marketed while it is smaller than the minimum size for a wild caught fish of the same species. Without individual tagging, it would be impossible to tell the legal, small cultured fish from illegal small wild fish.

- **Products must be accountable and traceable.** - Seafood must be identifiable and traceable from production to the retail level. Enforcement can then intercept unlawful seafood at funnel points such as interstate highways, airports and secondary dealers. Required documentation and labeling also protects markets, prevents downward price trends and protects consumers.

The OLE recommends required the permitting of aquaculture dealers to add accountability and to protect legitimate processors and harvesters. Facilities in land-based, high seas, state waters and foreign locations, far from the federal waters in which NOAA regulated wild counterparts are located could be problematic for enforcement. A permitting system would address some of these problems.

Technology, such as electronic reporting, can allow enforcement to monitor remotely, reducing manpower needs while facilitating the identification of anomalies warranting further investigation.

- **The regulatory scheme for aquaculture must be supported by appropriate penalties.** Available penalties should permit revocation, fines, sanctions and criminal charges. Egregious or habitual offender's crimes should face criminal charges.

In general regulations are not enforceable when they include:

- **Staff intensive regulations** - Trip limits, catch percentages, fillet counts or regulations that require in-person monitoring make enforcement difficult. Staff-intensive regulations result in less effective, inconsistent enforcement coverage. Enforcement will never have enough manpower to monitor more than a fraction of the harvested, processed and sold product.
- **Complex or convoluted regulations** - Simple regulations reduce opportunities for spurious defenses. There should be few exceptions to regulatory requirements and those regulations must be applied without exception. Some regulations are nearly impossible to enforce, such as monitoring of harvest from at-sea facilities.
- **Lack of accountability** – Illegal marine resources can be laundered by falsifying records, commingling product or false labeling. Traceable products and assets enhance the OLE's ability to protect the resource, the market and consumers.
- **Law Enforcement resource intensive** – Any regulation must consider the enforcement resources of the OLE in terms of maximum capable enforcement contacts and investigative effort. Nationwide, enforcement is spread thin, so adding more regulations to enforce, can decreasing enforcement in other areas.