Recommendations in Reference to Action 3 in the Dealer Reporting Amendment from an IPT Sub-Group for the Councils' Consideration

May 24, 2012

A sub-group of the Dealer Reporting Amendment IPT, in addition to NOAA Office of General Counsel Enforcement Section staff, met on May 9, 2012, to discuss Action 3. The meeting participants developed suggested changes to the action for the Councils' consideration. In **Section 1** of this report, participant comments are in italics and suggested addition/subtraction to the current language is highlighted yellow**.** **Section 2** contains a version of the action with all recommended changes accepted.

Section 1. Comments and Recommended Changes to Current Wording

Action 3. Requirements to Maintain a Dealer Permit

More than one alternative may be chosen as a preferred.

Alternative 1 (No Action). Regardless of whether a purchase is made, purchase forms must be submitted for Gulf of Mexico Reef Fish and South Atlantic Snapper Grouper (excluding wreckfish). For the remaining species, a purchase form is required only if a purchase is made. During complete months encompassed by the wreckfish spawning season closure, a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

~~No penalties exist for late or non-reporting.~~

The IPT sub-group recommends the Councils consider the addition of the wording below to the no action alternative as it describes the current process to determine the penalties from reporting violations.

The Secretary of Commerce has redelegated the authority to assess civil monetary penalties and permit sanctions to the NOAA Office of General Counsel. The Magnuson-Stevens Act requires notice and an opportunity for a hearing before an administrative law judge before a monetary penalty or permit sanction may become final. The procedures governing the administrative proceedings for assessments of civil penalties and permit sanctions are found at 15 C.F.R. Part 904. The NOAA Office of General Counsel – Enforcement Section Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Schedule) is found at:
http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf
(See particularly pages 24, 25, 34-36)

~~**Alternative 2**. "No purchase forms" must be submitted at the same frequency, via the same process, and for the same species as specified for "purchased forms" in Actions 1 and 2. If neither a "form" nor a "no purchase form" is submitted, NOAA Fisheries shall suspend the dealer permit until missing reports are submitted.~~

The IPT sub-group recommends the Councils consider the deletion of Alternative 2 as the Councils do not have prosecutorial authority.

~~**Alternative 3.** "No purchase forms" must be submitted at the same frequency, via the same process, and for the same species as specified for "purchased forms" in Actions 1 and 2. If neither a purchase "form" nor a "no purchase form" is submitted, NOAA Fisheries shall refuse the renewal of the dealer permit for a one-year period.~~

The IPT sub-group recommends that the Councils consider the deletion of Alternative 3 as the Councils do not have prosecutorial authority. The IPT sub-group recommends that the Councils consider the addition of the alternative below that would clarify in the regulations that a permit will not be issued or renewed if the dealer is not compliant for the recordkeeping and reporting requirements.

Alternative X. Clarify in the regulations that renewal or issuance of a dealer permit is contingent on compliance with the recordkeeping and reporting dealer requirements.

~~**Alternative 4.** First infraction, a fine in accordance with NOAA GC penalty schedule is administered.~~

The IPT sub-group recommends that the Councils consider the deletion of Alternative 4 as the NOAA Penalty Schedule should be described in Alternative 1, no action. If the intent of the alternative is to automatically administer a fine, following the first infraction, in accordance with the NOAA GC penalty schedule, that is not possible as the Councils do not have prosecutorial authority

The IPT sub-group recommends the highlight language in Alternative 5 to clarify the intent of the alternative in relation to the no action alternative.

Alternative 5. Replace the current "no purchase form" requirements, as stated in the no action alternative, with the following: "No purchase forms" must be submitted at the same frequency, via the same process, and for the same species as specified for "purchased forms" in Actions 1 and 2.

A dealer would only be authorized to receive commercially-harvested species if the dealer's previous reports have been submitted by the dealer and received by NMFS in a timely manner. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a dealer could receive commercially harvested species from a federally-permitted U.S. vessel.

Retain the following requirement: During complete months encompassed by the wreckfish spawning season closure, a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

Section 2. Action 3 with Recommended Changes Accepted

More than one alternative may be chosen as a preferred.

Alternative 1 (No Action). Regardless of whether a purchase is made, purchase forms must be submitted for Gulf of Mexico Reef Fish and South Atlantic Snapper Grouper (excluding wreckfish). For the remaining species, a purchase form is required only if a purchase is made. During complete months encompassed by the wreckfish spawning season closure, a wreckfish dealer is not required to submit a report stating that no wreckfish were received.

The Secretary of Commerce has redelegated the authority to assess civil monetary penalties and permit sanctions to the NOAA Office of General Counsel. The Magnuson-Stevens Act requires notice and an opportunity for a hearing before an administrative law judge before a monetary penalty or permit sanction may become final. The procedures governing the administrative proceedings for assessments of civil penalties and permit sanctions are found at 15 C.F.R. Part 904. The NOAA Office of General Counsel – Enforcement Section Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Schedule) is found at:
http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf
(See particularly pages 24, 25, 34-36)

Alternative 2. Clarify in the regulations that renewal or issuance of a dealer permit is contingent on compliance with the recordkeeping and reporting dealer requirements.

Alternative 3. Replace the current “no purchase form” requirements, as stated in the no action alternative, with the following: “No purchase forms” must be submitted at the same frequency, via the same process, and for the same species as specified for "purchased forms" in Actions 1 and 2.

A dealer would only be authorized to receive commercially-harvested species if the dealer’s previous reports have been submitted by the dealer and received by NMFS in a timely manner. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a dealer could receive commercially harvested species from a federally-permitted U.S. vessel.

Retain the following requirement: During complete months encompassed by the wreckfish spawning season closure, a wreckfish dealer is not required to submit a report stating that no wreckfish were received.