

# **SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL**

## **LAW ENFORCEMENT COMMITTEE**

**Holiday Inn Brownstone Hotel  
Raleigh, NC**

**December 5, 2011**

### **SUMMARY MINUTES**

#### **Law Enforcement Committee**

Duane Harris, Chair  
Robert Boyles  
John Jolley

Mac Currin, Vice-Chair  
LT Robert Foos  
Ben Hartig

#### **Council Members:**

David Cupka  
Tom Burgess  
Doug Haymans  
Charlie Phillips  
Dr. Michelle Duval

Dr. Wilson Laney  
Dr. Roy Crabtree  
Tom Swatzel  
Jessica McCawley

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Kim Iverson  
Julie O'Dell

John Carmichael  
Roger Pugliese  
Anna Martin  
Myra Brouwer  
Andrea Grabman  
Dr. Brian Chevront

#### **Observers/Participants:**

Monica Smit-Brunello  
Dr. Theo Brainerd  
Otha Easley  
Doug Boyd  
Karen Raines  
Bruce Buckson

Dr. Jack McGovern  
Phil Steele  
Dr. Louis Daniel  
Jennifer Lee  
Dr. Sandra Brooke

Other Participants Attached

The Law Enforcement Committee of the South Atlantic Fishery Management Council convened in the Roosevelt Ballroom of the Holiday Inn Brownstone Hotel, December 5, 2011, and was called to order at 4:00 o'clock p.m. by Chairman Duane Harris.

MR. HARRIS: Okay, I'm going to call to order the Law Enforcement Committee of the South Atlantic Council. The first item is approval of the agenda. Is there any objection to approving the agenda as published? Seeing none, the agenda is approved. The next item is approval of the September 2011 Law Enforcement Committee Minutes. Any additions or corrections to those minutes? Any objection to approving those minutes as published? Seeing none, those minutes are approved. The third item is a briefing on headboat misreporting, and Otha Easley, NOAA Office of Law Enforcement, is going to give us that presentation.

MR. EASLEY: I don't know if we'd call it a presentation but it's a followup on a statement Bonnie Ponwith made a few council meetings ago dealing with logbook submissions from headboat captains. In her opinion, in finding out that some of that information was reported to her to be false by a headboat captain or two, but in my discussion with her she was referring to submissions to the Science Center that were several years old, five to ten years old or so.

She is not concerned with – I won't say not concerned but as far as requesting that enforcement seek out the submitters of that information from that far back, she is not requesting that enforcement do that, but she wants any false submissions that are occurring more presently currently to definitely be followed up on, and I wholeheartedly agree with that.

There are also several citations in the regulations, both civil and criminal, that can address those once we get that information from the Science Center to follow up on. She further stated that she wanted to mention that – or make fishermen aware that submitting false information to the science centers can actually have an exact opposite effect that they think they're trying to I guess guide and tailor the output as far as where that information and how the information is being used.

I don't know if Bonnie had spoken to you about this, Theo, to say a few words on, but if I say anything incorrectly or anything you want to expand on, please chime in. But, again, she said what is important is what happens now and we are prepared and had discussions with Karen Raine, General Counsel for Enforcement, and she is on board, too, to prosecute whatever false allocations or false reports that are submitted to the lab center in the current phase.

DR. BRAINERD: Mr. Chairman, I would just add that Bonnie did say that we're looking at the headboat information to see whether we can identify misreporting and we'll pass on the information to law enforcement and also said that fishermen should be aware that when they misrepresent the information or misreport, that it could turn against them; if they're trying to think that they are gaming the system, it could work the opposite way so they have to make sure that they provide us with correct information and also that it's a legal obligation that they do that. Otherwise, they can be prosecuted.

MR. HARRIS: Thank you, Theo and Otha. Are there questions for Otha or Theo? Ben.

MR. HARTIG: Otha, I'm sorry I had to break while you were making your presentation, but basically what I read from those allegations were mostly when the headboat survey was first beginning. I think in that beginning period there were some problems, but I think since then we've gotten a lot better.

For me to entertain enforcement of something that was introduced early and people were adjusting to the program, to me I would have a problem with that. If that continues more recently, I have no problem prosecuting those cases. But in the beginning of that program there should be some kind of a time granted when all that survey information becomes – you know, everyone is used to the survey and there should be some kind of timeframe that could allotted for that, people getting used to the survey. That's my only comment.

MR. HARRIS: And I'm assuming that we have a lot fewer headboats now than we did back when this was reported as occurring; is that not the case, Theo or Otha?

DR. BRAINERD: I can't answer to that specific question, Duane, but in answer to Ben's concerns I believe definitely we will take into consideration whether fishermen were not – headboat captains were not familiar with the reporting system at the beginning and if it was a matter of them not being able to respond adequately or whether it was actual with trying to misrepresent what they reported.

MR. BOYD: I'm not on this committee; just a quick question. Does the definition of a headboat in this case also include charter for-hire?

MR. HARRIS: I don't believe it does and somebody can correct me if I'm wrong. Monica, the definition of headboat and charter for-hire are different; aren't they?

MS. SMIT-BRUNELLO: For-hire encompasses charter and headboat; and if it's specific to headboat, then it's just headboat.

MR. BOYD: Okay, so I guess my question is, is monitoring going to be stepped up and enforcement more vigorous on both types of activities or just one?

MR. EASLEY: Any misreporting by any category, once law enforcement hears about it, then we'll add it to our priorities, and that's a different discussion that we'll have later on, too, but, no, it's not going to be overlooked.

MR. HARRIS: Doug, and you and the Gulf have different requirements for reporting on charter/headboats than we do in the South Atlantic, so that may be part of the confusion there. You do have some mandatory reporting where we don't.

MR. BOYD: I don't think you're confused; I think I just had the question.

MR. HARRIS: Okay, any other questions for Otha or Theo with respect to this issue? The next item on the agenda is a presentation on the "Optimization of Surveillance and Enforcement in

Remote Marine Protected Areas”; Dr. Sandra Brooke, who is with the Marine Conservation and Biology Institute and a member of our Coral Advisory Panel.

DR. BROOKE: Well, my apologies to all of you who have seen this talk in some form or iteration before, I’ll try not to belabor the points that I’ve spoken of in the past. This is a project that was funded through the Coral Reef Conservation Program. You see the title right there. Just a little background; we started looking at enforcement effectiveness in large remote areas back in 2009 as an organization in response to this increase in marine protected areas, large remote marine protected areas that are coming online around the world and within the U.S., of course.

Then specifically for the South Atlantic Council, we produced this technical document, and then in 2010, as you all know, the council implemented these large deep coral HAPCs off the east coast, mostly in Florida; and also created a series of marine protected areas, offshore, small, squarish marine protected areas to protect snapper and grouper stocks.

They had all these new sort of spatially managed areas to protect but no increase in enforcement capacity and funding. This project was brought about by – we were looking at enforcement effectiveness just to see if there was anything that we could sort of do – not to tell people how to do their jobs but to sort of facilitate a discussion so that law enforcement and managers could come together and discuss what could maybe be done to make the capacity that they had more effective and what else we could bring online and what changes that we can make to increase effectiveness under the understanding that they weren’t going to get more funding for this.

We reviewed surveillance technologies and produced that document that I spoke of, which is available online, and reviewed the surveillance and enforcement capacity that we already have in the South Atlantic Region, and then we held a workshop with managers and law enforcement experts to facilitate this discussion about what maybe could be done to face some of the challenges in the region.

I’ve just finished a final report that sort of documents what was discussed at that workshop and some of the outcomes, and these are what I’m going to discuss hopefully briefly today. A review of the types of technologies – and again I’m just going to flip through this pretty quickly – there are different types of technologies that can be used to look at what we call cooperative versus non-cooperative, and this doesn’t indicate anything to do whether somebody wants this technology on their boat.

A cooperative technology is one that is usually mandated as part of a fishery’s management plan, like VMS, for example, or is mandated by another agency. Non-cooperative vessels are those that don’t particularly want to be looked at, don’t know they’re being looked at, and these are the harder sort of technologies or the harder vessels to get at because there are usually more of them.

They also include the recreational fleet, which is a challenge in the South Atlantic Region. There are various other different types of technologies right there, and I’m just going to go through these. I think everybody is familiar with VMS. It’s one of the more common and well sort of

used and respected technologies, surveillance technologies. It's usually as part of a fishery. It has produced data that is becoming more prosecutable.

This is the problem with new technologies as they come on board is that there is a burden of proof for prosecution to show that these technologies are actually doing what they say they're doing, but VMS is pretty well established. In the South Atlantic Region it's only used on the rock shrimp, for the rock shrimp fishery.

While we're on this subject, the federal government has allocated a pot of money for fishermen that have been told that they are obligated to have VMS as part of a fishery's management plan. They've obligated this money so that the fishermen can get refunded or reimbursed for the cost of the unit. That is a finite pot of money, and there is about six million bucks left in it; and once it's gone, it's gone.

I'll discuss why this is relevant later on, but there is some reimbursement available for fishermen if they are mandated to use it. Automatic identification system; originally it's a VHF broadcasting system, so it's not satellite like VMS is, so it has a limited range. It's basically line of sight like radar. It was originally designed as a navigation aid and originally only required on very large vessels.

Right now the Coast Guard requires this system on vessels greater than 19 meters or 65 feet. It's required in order to enter a U.S. port, but fishing vessels are exempt, so this is why it has not been used for enforcement or surveillance rather of fisheries because fishing vessels are exempt. Well, this could change in the very near future. In late 2008 the Coast Guard proposed a rule to include fishing vessels and passenger vessels under this AIS rule.

It's still 65 feet but it would include fishing vessels, so this sort of opens the door to use this system as a surveillance tool. It provides not only the GPS coordinate and the tracking data, but it also provides vessel identification information. This system would be accessible to all law enforcement, so this is a potential expansion of this technology that might be useful for tracking vessels.

MR. HARTIG: Sandra, what is the AIS acronym?

DR. BROOKE: Sorry, automatic identification system; I apologize. It's an alphabet soup these days. They are limited by their line of sight, but they could be like radar and be deployed from other structures that would increase their range. Then we have space-based AIS, which is ridiculously expensive and not really an option.

So, non-cooperative surveillance; again, this is looking at all other vessels and not those that have technologies on board that track them. Various different types of platforms to hang these sensors and instruments on, satellites, aircraft, vessels and then buoys or aerostats or just pretty much anything up there or out there or down there you can hang an instrument on.

The types of sensors that we have sort of in this range of technologies are visual-imaging systems like cameras and optical systems, radar, acoustics and any variant of those categories

pretty much. And then you sort of model your surveillance package based on how money you've got and on what your objectives are. Satellite-based systems are very expensive. They're large-scale, high resolution, but they're not real time. They're useful to garner information about vessel activity, but you can't necessarily use them very well for active enforcement and real-time response.

There are various different systems you can put on them. Synthetic aperture radar is probably the best for looking at vessels because it's not weather dependent and you can actually – with the resolution that they have these days, you can pick out individual vessels. It's useful under certain circumstances, but, like I said, it's expensive and it's probably not what the South Atlantic Fishery Management Council Region needs.

Manned aircraft; this is standard especially for the Coast Guard. They have these manned aircraft that can go up and do flyovers. They're expensive to purchase and operate, but they certainly have their benefits and they're a very valuable tool. You can hang all sorts of instruments off of them and, of course, you have the eyes in the sky.

Canada and the United Kingdom actually contract out their aircraft, they don't own them, so that's just another approach, but most of ours are Coast Guard and they're owned and operated by the Coast Guard. This I think is the aerial vehicle of the future. They can say up for extended periods of time.

They're unmanned and they don't have that element of danger and then they don't have how long they can stay up that they have with people on board, so you can do extended missions. You can go higher than – some of these aircraft can actually go higher than the FAA flight space, so they can be above the FAA flight space.

Right now the Coast Guard is looking at – they're developing their mission and their acquisitions for UAVs for the next X number of years, I'm not quite sure, but they're going through the process of determining whether and how many of these units they're going to purchase. The big challenge with UAVs right now is FAA regulations for obvious reasons.

The FAA is a little squirrely about these things zooming around in the airspace with nobody flying them, and actually I believe one had to be shot down just recently, which doesn't help the cause, but there are some really cool UAVs out there, and you can either bring them down so people can see them or you can keep them up there as stealth units, which is what the Coast Guard Guardian off Canaveral does.

I think these are very expensive but I think these are the wave of the future as far as aerial surveillance is concerned. Plenty of other platforms; these are less well used, airships, aerostats, and helikites, which are versions of the old blimp. I don't know if anyone remembers Fat Albert down in the Keys. I think that went haywire as well and went flying off towards Cuba.

So, you know, they're not problem free, these things, but that is owned by the Air Force, and I don't think it's deployed at the moment, but the Air Force said that they wanted to repair it and redeploy it. These are great because they're obvious and they're a deterrent; so when people

look at them, they don't quite know who is looking at them and why. The Coasties said that they were a great deterrent. They saw a drop in illegal immigration and drug traffic when Fat Albert was flying, so they are a great deterrent and very obvious. Of course, you can put instruments on them to actually record data as well.

Subsurface moorings for acoustic platforms; acoustics is something that we sort of played around with the idea of looking at vessel signatures and trying to figure out what vessels are doing what, but we're really not there yet in terms of acoustics. Acoustics can be used in combination with sort of research monitoring when you're listening for fish and whales just to give you an idea of vessel activity but not necessarily to pinpoint the bad guy that's doing wrong in a certain area.

And then buoys can be used to extend technologies that have limited line of sight like radar and AIS. That was kind of a survey of the technologies, this first part of the project. Then we held a workshop, the expert workshop. Now, we at the organization and certainly myself are not experts, but what we have found is that if you get enough of the right people with the right experience in a room together they will come up with some pretty good suggestions and ways forward, so that was the idea of the workshop.

We started off with a series of presentations. As you see up there, Pat O'Shaughnessy gave an excellent talk on the vessel monitoring systems. To be honest, their VMS system is a lot more sophisticated than what I had researched for the technology. It's quite a remarkable system that can provide an awful lot of information and has a real-time communication with the boat, so it's a great system they're using out there.

Now, VMS is being used right now on the rock shrimp fishery in the South Atlantic, but it's being used for the snapper grouper fishery on headboats as well as commercial vessels in the Gulf, and they've had a lot of good feedback. During the workshop we basically broke out into three breakout sessions.

I wanted to look at surveillance enforcement operations and that included looking at the challenges, the technologies, the assets, what the response capabilities were and the needs and most importantly how could we improve it. I think we all know what the problems are or at least what the majority of the problems are we're familiar with, but the question is how do you get around them?

We know that we need more funding and we're probably not going to get it, so how do we address some of these challenges in the absence of that? Interagency collaboration; the Joint Enforcement Agreement between state and federal law enforcement agencies, given that we don't have enough NOAA OLE personnel on the water, they are understaffed unfortunately, the agreement between them and the state is absolutely critical for covering federal fisheries.

We discussed some of the challenges with that arrangement and again how it could be improved. And then education and outreach, which actually surprised me because it was one of the biggest conversations and was considered one of the most aspects of improving law enforcement in the region, absolutely critical outreach to the public.

There are an awful lot of words in these next slides; I'm sorry. Of course, these were the outcomes, so the outcome and then specific recommendations; there will be a little bit of overlap. Of course, we don't have enough boots on the ground. We don't have enough patrol time. We will never have enough boots on the ground, really, to cover everything everywhere.

NOAA OLE is critically undercapacity to the point that it really burdens those officers and sort of can compromise the relationship and training capacity capability – their capability to keep up the training of state law enforcement officers. We really need more NOAA OLE on the ground. Given that we've got these big areas to enforce or surveil and we don't increased capacity, then it was really considered that we need more remote surveillance technologies because they help focus limited assets.

You can't do much with just that information. You can't prosecute a case just on surveillance information, but what it can do is tell you where to send your very precious boats. There was a recognized need for that. More funding for the JEA Program; always need more money. Lack of criminal provisions; this again is something that surprised me it came up.

The lack of criminal provisions in the Magnuson-Stevens Act, which is the primary Act that governs federal marine fisheries, and most of the cases are made under MSA; all of those provisions in there are civil. They're not criminal so this places the total burden of prosecution on the general counsel attorneys of which we only have three, and Karen, of course, is one of them, but those three attorneys have to deal with all of the federal cases, and it's a huge burden of work for them, and so obviously compromises have to be made and that's unfortunate.

They are, like I said, understaffed and overwhelmed with caseload. Out of this section came the recommendation that the VMS was the best surveillance option for the snapper grouper fishery in the South Atlantic Region and for commercial fisheries monitoring in general, but specifically for the snapper grouper fishery where those offshore marine protected areas were not considered by the LEAP – they were not considered enforceable pretty much.

They're far offshore, they're small and they probably would only be paid attention to during specific details, so VMS would allow law enforcement to watch the snapper grouper vessels at all times. And then, of course, the recreational sector was the biggest challenge to enforce because there are lots of small boats and they don't have tracking devices.

Management agencies should consult with law enforcement before creating regulations and the South Atlantic Fishery Management Council has been very good about this. It's critical to enforcing federal fisheries; there are too few field officers; there is not enough training; the case packages are very complicated. The federal case packages are complicated so state law enforcement needs refreshers and ongoing training just to keep up with the regulations, keep up with the case packages.

Those packages are critical. If there is anything missing, then that compromises general counsel's ability to prosecute so it's a very important step. Collaboration is fostered not necessarily through formal agreements but through interpersonal relationships, and those, of course, vary given who is where and in the case of the Coast Guard for how long.



They have turnover every two years so these interpersonal relationships change fairly quickly. In order to foster those, the participants suggested that there be informal meetings that would foster those collaborations outside of the formal agreements. Education and outreach; there was a whole list of outcomes for this. As I said, it was a very big section and this is just a subset of those. We talked about compliance underneath education and outreach, and it turns out that really none of the agencies have a consistent metric for compliance that really gets how compliant people are. There are flaws with the way it is measured, so that would be a very useful thing to develop is a consistent metric to measure compliance.

There was the recognition that the regulations, the fisheries management plans, the boundaries, the regulations inside the protected area boundaries; they're scattered all over the place. The Florida Keys has one website, Grays Reef has another, the South Atlantic Council Website is excellent; but if anybody wants to get an overview of what is going on or look at some specifically, they kind of have to rummage around.

If they have to rummage around, then it makes it hard work, so, anyway, there was a suggestion that all of this information should be put in one place in a user-friendly GIS sort of Google type of format so that people could find the information they needed easily and quickly, and then we decided that the South Atlantic Fishery Management Council would be place to do that, so we kind of dumped it on them, and they very graciously agreed to consider it.

The Gulf of Mexico actually uses cell phone apps to disseminate information, and this is what everybody to do these days carrying their little smart phones around with them. This was recognizing that social media can be used not just to twitter and tweet or whatever but actually for something useful like telling people where to fish or how to fish. That was one suggestion that the South Atlantic should maybe adopt or look into was to look at these cell phone apps.

Of course, law enforcement would love to have nice square boundaries with lat and long lines and closed areas are obviously the easiest to enforce, but unfortunately biology and stakeholders dictate that is not often case. When we looked at the HAPC boundaries, the western boundary of the largest HAPC is really irregular and sort of irregularly spaced.

It has 200 waypoints, and this was something that LE sort of brought during the workshop that there are too many waypoints, it's too irregular, we like nice square boundaries. There was some discussion about whether this was really a problem. Obviously, LE would rather have square boundaries, how much of a problem it is, it's really not clear and warrants some discussion with how the electronics that people have work with irregular boundaries.

As you can imagine, if you have a nice square that's on lat/long, if you're at one side or other of that latitude and longitude, you're in the right or wrong place. If you have an angle, then somehow you have to interpolate between those two points to figure out which side of that imaginary line you're on.

This could be a serious problem for law enforcement if they can't figure out which side that line they're on, so the boundary issue is going to come up every time there is a protected area or restricted area, and it really needs to be addressed in terms of law enforcement. Another

education sort of outcome was these case outcomes; they need to be publicized. There was a lot of talk about shaming people; but when I looked at the outcomes that had been publicized, the names aren't actually there so it would be kind of an anonymous shaming.

I think the idea was that people see law enforcement out there every so often, but if they know that cases are being made and people are being penalized and what kind of penalties there were getting, there would be this kind of deterrent effect. These are selected recommendations and I touched on some of these already so I won't dwell on them as we come to them.

Investigate the potential affecting capability of changing the civil provisions in Magnuson to criminal. This came up a couple of times that we need to criminalize Magnuson, make them criminal provisions rather than civil. What that would do is it would take all of the burden off of the civil prosecutors because there are apparently a lot more criminal prosecutors and judges in the federal system than there are civil.

This was an idea that came from law enforcement that it would reduce that overburden on the very few attorneys that we have and maybe release some of that and let those cases flow and that more of the cases be dealt with, because some of the cases – only the bigger cases really are being dealt with at the moment.

There are a lot of legitimate small cases that they just can't deal with. There are just not enough people to deal with, and that reduces morale from the officers and it sends the wrong message to the public that they can do things wrong and get away with it. This is a really important thing I think that needs to be addressed.

If it requires going to NOAA and the Department of Commerce and arguing for this and they might not go for it, I really don't know what effect it would have in the long run, but in the meantime certainly increasing the number of general counsel – we only have three for this region, as I said, and it's a very active region, so it would be nice to have a few more Karen's kicking around.

Implement VMS in the snapper grouper fishery, I've already mentioned that. This would require additional technical staff. Pat doesn't have enough people to deal all of those vessels, but I think this would be a relatively easy sell and it would certainly keep track of the vessels better than anything would.

The AIS rule that the Coast Guard introduced is now before the Office of Management and Budget, and it should be cleared by the end of December. Once it's cleared and the AIS system monitors fishing vessel activity as well, all law enforcement officers can access this data through a website through the NAIS Website, so they would all have access to that data. It will be really interesting to see whether it's usable in the field, so I think that should be investigated.

AIS and radar are limited in their range. It's a line of sight but there are various towers and buoys and the aerostats, the Fat Albert's that would increase the range of radar and cameras. This will give us eyes on the ground at a much greater distance than just the patrol vessels, so again this is something that is relatively inexpensive that should be investigated.

And then, as I said, the boundary placement, how much of a law enforcement challenge are those irregular boundaries? There is no point in drawing boundaries if it's not enforceable. It just kind of wastes everybody's time. Increased training of state law enforcement by NOAA OLE; now, at the moment state law enforcement receive training at their training academies and at their FTO, their field training sessions.

Both of those occurrences are right when the officer is brand new and they're trying to learn a thousand different things. There is really no followup after that. Because OLE is so sort of undercapacity, they can't be everywhere doing ongoing training all the time and working with these guys in the field.

To compensate for some of that, what they could do is schedule regular classroom and training sessions. It's not going to be perfect but I think it needs to be something that they need to pay attention to and make an effort to schedule in their busy schedules, and I think the state law enforcement guys would really benefit from it.

There are also JEA liaisons within each state, but again getting down to the guys on the ground, it would foster collaborations and foster interpersonal relationships and make the guys more comfortable with enforcing these laws and preparing the case packets. The case packets are quite complicated, so definitely increase the training in federal fisheries enforcement.

Joint training programs, joint details, multi-agency details, they're all good. They all take time and effort but they're worth the effort, so just generally increase the amount of interactions the agencies have with each other. It's a tough thing to do; everybody is busy and have gone their own agenda, but that really needs to be done.

There was a suggestion for creating a forum for sharing information since all of these agencies have their own websites, so that could be done through one or other of those agencies. We're nearly there – education and outreach; this centralize data base, as I mentioned, through possibly the South Atlantic Fishery Management Council Website to just get information in one place and get out to people; using social media.

Having enforcement representatives attend and make presentations at fishing clubs; well, that's assuming they get invited, of course. Maybe fishermen don't want them there, but it would be a good idea, people thought. And using the National Marine Sanctuaries and the public scoping meetings for the council to increase outreach efforts on law enforcement; and then make sure that new regulations are distributed quickly because sometimes there is a delay between when the regulations come out and when they're disseminated to the public, and this causes confusion and people end up getting busted for something they didn't know, which is not an excuse but it doesn't make people very happy. I'll shut up now and take questions if anybody has any.

MR. HARRIS: Thank you, Sandra. Are there questions for Sandra? Michelle.

DR. DUVAL: Mr. Chairman, I'm not on your committee but I was wondering if we could possibly get a copy of Dr. Brooke's presentation afterwards?

MR. HARRIS: The answer to that is yes. Other questions? Ben.

MR. HARTIG: Sandra, the acoustics stuff, although it's not going to probably give law enforcement the ability to actually get on the water and find somebody in an area, but it could give us some indication of what kind of rates we're having incursions into those areas. I've talked to some people who have worked with acoustics and certainly some things are identifiable like in the deeper water you're going to be using a heavier lead and when that hits the bottom it will give a certain signal; a fish struggling on your line after it's hooked will give you a different signal, so you could kind of get an idea of the incursions.

And that's relatively cheap as far as everything goes, and we do have a lot of acoustical systems tracking migration now of a number of species; so if we could somehow piggyback that on to some of our closed areas, it may be helpful.

DR. BROOKE: Yes, I completely agree with you. People have talked about using it for actually tracking vessels. I don't think that's a good use of it, but I a hundred percent agree with you, and I think the sanctuaries and anywhere that has mooring buoys, you know, they've got that line that goes down, it's a sub-sea structure, could be used for passive acoustic monitoring, and it will tell you whether somebody has deployed a trawl. It won't tell you exactly where the thing is or which vessel it was, but it will give you that information on incursions and target law enforcement attention, yes.

MR. HARRIS: I think what you're going to have to get to is a near real-time active acoustic system if you're going to use acoustics, and I think there is some application there. It costs more money and certainly the battery life on those, depending on how often that information is transmitted to the satellite is critical, too. Other questions? Doug.

MR. HAYMANS: Mr. Chairman, I'm not on your committee either, but two questions. Was there an effort to prioritize all of the lists?

DR. BROOKE: We didn't prioritize them. Some of them are expensive and some are time consuming. We considered that it would be up to the council to sort of figure out which ones they wanted to address, and some of these actually can't be addressed by the council, you know, law enforcement.

I think if I was to prioritize them, I'd say VMS for the snapper grouper fishery. Since it's not an enforceable – those MPAs really aren't enforceable where they are. The fishermen I understand – I haven't spoken to them personally, but I understand that the fishermen are somewhat supportive, and it may that they sort of see the writing on the wall that it's going to come, and that money that's available for the VMS units is going to run out. If it happens relatively quickly, then that money will be available to them. The fishermen in the Gulf of Mexico don't seem to be upset with them at all.

MR. HAYMANS: It just seems to me that at least from our small little world, what we hear the most of is the whole prosecutor issue and why the 60-page packet when it's not going to be prosecuted? That to me looks like where the priority needs to go, is to address that one. The

other question I had was how much discussion did you guys really get into regarding marking of those straight-line boundaries?

DR. BROOKE: I agree with you about the prosecutor business; that really needs to be addressed. Marking the boundaries we didn't talking about. We started this project looking at the MPAs and the deep coral HAPCs. Most of the MPAs aren't in terribly deep water and they could be marked. The HAPCs, again, that boundary wiggles all over the place and most of those corals are at 400 meters or so and deeper, so that's not that practical.

Actually right now, when you're discussing priorities, the HAPCs were designed to stop bottom-tending activity and right now it is only the golden crab fishers and a little bit of the royal reds on the periphery that are using that area, so it's possible to do. It would be expensive and logistically challenging in the Gulf Stream and it's probably not a priority at this point for those.

MR. HAYMANS: I guess I was thinking more along the lines of a couple of the marine sanctuaries.

DR. BROOKE: We didn't discuss which ones should be marked. That was kind of an agency decision, but it's an awful lot easier to see something if it's marked.

MR. HARRIS: Okay, Karen has come to the table, and I want to let Karen discuss the prosecutorial issues, and then Mac had his hand up, and that will be the last question and we're going to have to move on.

MS. RAINE: Karen Raine, the now named Enforcement Section for General Counsel. A couple of things that I would just like to comment on; as you all know there are only three of us in the southeast region, but we do have more enforcement attorneys in our region than any other region right now, so that's a positive.

There is a lot of work that we do have. I'm sorry that sometimes there is a perception that we require 60 pages of documentation for a case. I can tell you particularly for straightforward cases I don't want to read 60 pages. Certainly, we do have to have the information, which I think everybody would agree with, we do have to have the information to prove a violation and the regulations are complicated and there are various facets to them.

Certainly, we do work with our law enforcement partners on those various issues. Another thing I thought you might be interested in quickly is some of the recent cases that we have had in our office for – well, at least I'll say for this calendar year from the South Atlantic fisheries, there were a few with some commercial aspects; four cases.

Two of them involved one respondent. One involved a golden tilefish commercial trip limit overage, and there was a \$3,000 NOVA that was issued for that and the fish were seized. There was a case involving exceeding the vermilion snapper bag limit after the commercial closure and/or harvesting or possessing red porgy in excess of the seasonal harvest limitation, and that is a \$12,500 NOVA plus the fish were seized.

The cases involving one respondent; they involved the mackerel fishery, and essentially there were two cases involving three counts of exceeding the commercial trip limits, and there were two false statement charges. The total was I think just around \$53,000 between the two cases. Then there have been six recreational cases involving two or three fish to over 50 fish.

Three of those involved just black sea bass. The penalties ranged from \$900 to \$5,500. Three of them involved the red snapper closure. Some of them also – and something else; it might be failure to maintain fish impact or one of them also involved undersized black sea bass. Those penalties were at a thousand dollars.

They aren't resolved yet, but I will say that on the general counsel website there is a listing not only of South Atlantic or Gulf cases but cases around the country involving cases where NOVAs have been issued or settlements, and it's on the general counsel website that you can look those up. I know that we used to provide more detailed council reports, but now everything is being publicized in that way. I don't know if there are any questions that I might be able to help with.

MR. CURRIN: I guess, Rob, perhaps you can answer this for me and it's regarding the AIS requirement that the Coast Guard is looking into. I know currently it was stated that only vessels over 65 feet were required to have AIS; but with the consideration of requiring them on fishing vessels, will they be required on fishing vessels under 65 feet?

LT. FOOS: I'm not sure what the answer to that question is. I know that there will shortly be new AIS regulations issued, and I'm not sure if that's going to address 65 feet greater or less in regards to fishing vessels.

MR. JOLLEY: Just one question; the percentage of those penalties that have been paid; we're reading a lot in the newspaper about penalties that don't get paid; do you have any information on that?

MS. RAINE: Well, for these cases, a lot of them have not been resolved yet, but I will say that the two commercial cases that I initially talked about, the golden tilefish and exceeding the vermilion snapper, they've both been paid at the full amount. One is being paid and one was paid.

The other cases are still in the resolution, but most – well, I'm thinking about marine sanctuary cases in particular because I've done a number of those recently, but I think that we do pretty well in getting payment. Certainly, there is a process that if someone ignores us, there is a process that we do go through a collection process to ensure that our penalties are being paid attention to.

For example, if somebody ignores us, there is a collection process and it will even go so far as going through a dunning situation. If someone doesn't pay, there is a process whereby we can refer the cases to the IRS so that monies can be taken out from anything they might be getting back from their taxes, that type of thing, so there is a process.

MR. HARRIS: Thank you; I have lots more questions for you, but we don't have time today, but I will get with you. Dr. Brooke, do you have something else?

DR. BROOKE: I've always got something else to say, unfortunately. I just wanted to say that there is a lot more information. Actually I didn't address your question, but we did recommend that NOAA looks at the case packets and see if they would be streamlined and if there is anywhere they could streamline them because they are burdensome.

The final report for this project I given to Anna but I'm waiting for final reviews from law enforcement personnel and make sure that I get it right; so once that is done, that report will be available if anybody is interested.

MR. HARRIS: Yes, I think the council is interested in that. Karen, I do want you to address at some time in the future the difference between criminal and civil prosecutions because that is a recommendation of this group, and I think that is very interesting to me. Okay, is there any other business to come before the Law Enforcement Committee? David.

MR. CUPKA: I thought Otha wanted to bring up enforcement priorities.

MR. EASLEY: Mr. Chairman, I could have brought it up at the council full session, but we can do that here. It's just a quick message that several months ago Hal approached the council and said enforcement is going through this priorities determining effort and asked and requested input from the council, and the whole process requesting input from industry, NGOs, constituents from all over.

And so now we're coming towards the end of that period, and I wanted to let you know that our draft priorities have been put up on the internet – and I say ours; that's NOAA's enforcement priorities, so that includes general counsel as well. Those draft priorities on OLE's and general counsel's internet. The comment period for those closes in 60 days from posting.

In essence, we're good until January 9<sup>th</sup>. My quick talk right here is a request that you'll go to those priorities and take a look at them and please give us some input, some feedback because it means a lot and it's not overlooked. Every comment is going to be addressed and please help us out. Thank you.

MR. HARRIS: Make sure we do that if you will remind me. And I failed – Otha, go ahead.

MR. EASLEY: I was just about to fail to do what you said you were going to fail to do. I wanted to introduce our new Chief of Enforcement Bruce Buckson here. He might want to say a few words to you as well.

MR. HARRIS: Come on up, Bruce, and that's what I failed to do is recognize you at the beginning of the meeting in my haste to get moving with the agenda. Bruce, welcome.

MR. BUCKSON: Thank you very much and I will make this very short because you are way behind schedule. Hello! Thanks.

MR. HARRIS: Thank you for being here. As Robert said, you need no introduction to this council, but welcome. We're glad you're here and we appreciate you taking the time to come visit with your friends again. Is there any other business to come before the Law Enforcement Committee. David, that's it.

(Whereupon, the meeting was adjourned at 5:00 o'clock p.m., December 5, 2011.)

Certified By: \_\_\_\_\_ Date: \_\_\_\_\_

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