

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

LAW ENFORCEMENT COMMITTEE

**Charleston Marriott Hotel
Charleston, SC**

September 13, 2011

SUMMARY MINUTES

Law Enforcement Committee

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LT Robert Foos

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Myra Brouwer
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Observers/Participants:

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Dr. Mike Travis
Kate Michie

Dr. Jack McGovern
Bob Gill
Rick DeVictor

Other Participants Attached

The Law Enforcement Committee of the South Atlantic Fishery Management Council convened in the Topaz Room of the Charleston Marriott Hotel, Charleston, South Carolina, September 13, 2011, and was called to order at 9:30 o'clock a.m. by Chairman Duane Harris.

MR. HARRIS: At this time I'm going to call to order the Law Enforcement Committee of the South Atlantic Fishery Management Council. The first item on the agenda 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 the minutes from the June 2011 Law Enforcement Committee Meeting. Any additions or corrections to those minutes? Seeing none, is there any objection to approving the minutes? Seeing none, the minutes are approved as published. The next item is the Law Enforcement Advisory Panel Report, which is Attachment 1 in your briefing document. I'll turn it over to Myra.

MS. BROUWER: The report, as Duane mentioned, is Attachment 1. I'm not going to go over the entire thing. The LEAP met in Orlando on July 20th for one day mainly to review the Comprehensive ACL Amendment and to give their recommendations on that as well as Regulatory Amendment 9.

On their agenda as well was to discuss the protocol for selection of the Law Enforcement Officer of the Year as well as to make outreach recommendations in particular for special management zones off of Port St. Lucie, Florida. The report contains all of these recommendations. Some of them have already been provided to the council.

Certainly, the recommendations for the Comprehensive ACL were brought up at the meeting in August. Their recommendations for Amendment 18A will be covered during snapper grouper. What I would like to do is basically just go over the recommendations for changes in the process for selection of the Law Enforcement Officer of the Year Award.

There is an attachment in the briefing book. Attachment 2 is the document that details that procedure as well as the criteria for the award and for eligibility for nominees. If you recall, you did see a similar document to this in June in the Keys. The procedure that was contained in that document for nominating and selecting a Law Enforcement Officer of the Year Award involved the advisory panel passing on three nominees to the Law Enforcement Committee.

At that point the Law Enforcement Committee would select one of those nominees to present the award. Well, in July the Law Enforcement AP had further discussions on that protocol and they are recommending that they be the entity to select the nominee, so they would rather be the entity involved in selecting one nominee and then the Law Enforcement Committee and the council present the award at a regularly scheduled meeting. Those are the changes in the document that you have in your briefing book today.

Another change that was done to the draft document that you saw in June, at one point the LEAP had recommended that attorneys be also eligible. They withdrew that. The June version had

prosecutorial attorneys and state attorneys, and the LEAP took both of those out. They reduced the amount of material that needs to be submitted to nominate somebody.

The June version of the document also contained a ranking system for the nominees. That is no longer there. That's basically the differences between the two. What the Law Enforcement Committee should discuss is whether they like the idea that the AP has brought forward for changing the process or whether they would like to retain what they had seen back in June.

MR. CUPKA: Chairman Harris, I'm not a member of your committee, but I just want to make a couple of comments. It had been our intention to make the award at what I consider our annual meeting, which is this meeting in September, when we have the election of chair and vice-chair and also our new council members begin their service.

That is the intent from now on; but because the AP had made these suggested changes, we felt like we needed to bring it back and get the council to consider it and approve it or whatever action they wanted to take. This year we'll probably be making the award at our December meeting; but after that we'll get back to where we'll make it at our September meeting.

I personally don't have any problem with the suggested change to it. I think it would in some ways maybe mean even more to the person receiving the award if they were selected by their peers rather than just nominated by their peers and then have the committee select it, but that's up to the council however you want to do it. I just wanted to get that on the record before we go any further and thank the AP for their work on this. However the council wants to proceed, we'll work with it.

MR. HARRIS: Thank you, David. Members of the committee, are there any comments or concerns about the recommendations of the Law Enforcement AP? Mac.

MR. CURRIN: I don't have any real concerns about it. I guess there is something in the back of my mind that bothers me a little bit about the AP making the final selection because of perhaps closeness to some of the nominees, closeness to the whole process, but I'm certainly willing if that's their desire. And I agree with David; I think it would mean more to the recipient having been chosen by their peers. I'm willing to go along with that and just keep a close eye on it. If there are any problems, then we can certainly change it.

DR. LANEY: Mr. Chairman, I'm not on your committee, but I was curious and would ask Myra, I guess, if she could elaborate a little bit on why the committee elected to not include attorneys and judges and other folks that are very much a part of the enforcement process in the candidate pool.

MS. BROUWER: Yes, Wilson, I'll try to recollect the recommendation. Basically what I remember was that they wanted the award to go to folks that were enforcing fisheries' regulations on the ground, that were involved in this sort of thing with the public, that were involved in outreach and information; and so because of that, it seemed to the group that the attorneys didn't really fit very well in that category. I believe that was the main reason for that decision.

DR. LANEY: I understand that, I believe, but I just for the record point out having been peripherally involved in some enforcement operations with some of our folks, I know how important it is to have attorneys and judges that are willing to prosecute the cases. I think that's a critical element in the whole enforcement process. I just wanted to go on record to say that.

MR. BOYLES: Mr. Chairman, I agree with Mac's comment. I don't know that the council should abdicate its responsibilities to recognize a law enforcement officer. I'm wondering if there is a hybrid that we could explore. I don't know, I just find something about – you know, if it's an award that we sanction as a council, then I think the council should have some involvement in the selection; maybe not the exclusive selection. I don't know; I'm just trying to my hand around it and I'm troubled by it. Troubled is the wrong word; I'm just not comfortable with that.

MR. CUPKA: Well, I understand some of Robert's and Mac's – I won't say concerns but thoughts on this. Again, I don't think we're leaving it entirely up to them. The council would still be vetting their choice. It would have to be approved by the council, and we would certainly be overseeing it.

I can't imagine them selecting someone that would be a problem, but it would be up to the council and the committee to review their selection and make sure we concur with it. There is I think a little bit of checks and balances there if we need to do something. Again, it's up to the council of what do you think.

MS. BROUWER: I'd like to add that the nominations have already been submitted, and so there are five nominations, one from each of the state agencies and one from the U.S. Coast Guard. That will likely be the number of nominations that we get each year, and I've already received them.

MR. HARRIS: Further comments? If we're going to change the criteria that we've already adopted per the Law Enforcement Advisory Panel's recommendations, we'll need a motion to that effect. What are the wishes of the committee? Perplexed? Robert.

MR. BOYLES: Mr. Chairman, again, I apologize, I am perplexed. The advisory panel selecting one nominee, I'm just concerned about the train wreck in the very, very unlikely event that there is some disconnect between the nominee and the council. I think we put ourselves in one heck of a bind. Again, the prospect of that happening I cannot foresee, but it is a possibility. I am troubled by that.

MR. CURRIN: And just a question I guess for Myra; was there any discussion by the LEAP about the possibility that one of the LEAP members might be nominated and how they would handle that?

MS. BROUWER: Mac, there was no discussion about that that I recollect.

MR. CURRIN: I could see that as becoming a problem, perhaps. From what I've observed at least, there are a number of very deserving people that are a part of our AP, and I would hate to

see that affect their consideration or impact the selection because they were selected or nominated.

I don't know; I guess you've got the same problem that they're picking out three and sending it to the council and then you've still got the problem that there is somebody on the LEAP that has been nominated. I agree with Robert. I guess it's just something in the back of my mind that if an entity an award, the entity ought to be making that selection.

It just seems to make sense to me, and I think that's the little problem I have in the back of my head. Again with Robert, I don't think that we will ever have a problem with this group, and I'm willing to give it a try, as I sated earlier; and if there is a problem that comes up, then we can change the procedure and let the Law Enforcement Committee and the council take it over at that point; or make sure if the LEAP has any concerns because of the process – it's brand new – that they can then defer it to the council if they have a situation that makes them feel uncomfortable.

MR. CUPKA: Mr. Chairman, Mac brings up some very good points. Not to put Myra on the spot, but I was just curious and wanted to ask her if she would be willing to make comment on how strongly the AP felt about this. Was it just a suggestion or did they feel pretty strongly, if you even can answer that? Again, I'm not trying to put you on the spot, but I wondered how strongly they felt about this change.

MS. BROUWER: I do not remember them feeling very strongly about it. I think basically after discussing it, they said, well, let's bring it to the council and the committee and see what they think. I think they could go either way. We have discussed this draft document and the procedure at a number of meetings. I think they could go either way. They just wanted for you guys to have the chance to discuss this latest recommendation.

DR. LANEY: Well, Mr. Chairman, I'm not on your committee but a question of Myra for clarification. You indicated that you envisioned that in the future there would be five nominations every year; one from the U.S. Coast Guard and one from each of the four states; so that does that eliminate the other federal agencies that have fisheries responsibilities for enforcement?

MR. BROUWER: No, and that's a good point, Wilson. You're correct, that would not eliminate – and I recall Otha sending an e-mail saying that NOAA Law Enforcement would not have a nominee this year, but in subsequent years that may not be the case.

MR. BOYLES: Mr. Chairman, at risk of being irrelevant, we have seen some e-mail traffic in the last week with respect to advisors to the council process and perhaps confusion over the role of advisors, and I'm bridging those comments made with my concern about the LEAP selecting one nominee. I'm fine with the criteria; I'm fine with the process.

It's the one nominee that in essence becomes the LEAP naming the recipient. I think in that case, given that traffic on other advisory panels that we've seen, I think it's really incumbent upon the council to be more engaged in this process and for the council to own the selection of this. I'd really urge us to go that way.

MR. CURRIN: There are kind of two ways I see that might help solve the problem; two ways to go. One is have them send us three with a priority. Let them pick their top candidate out of the three and pass those along to us. That gives us some option to – I mean it's not much different than the process we had outlined that we brought into the last meeting.

I guess the other way we could go is let them proceed as they have suggested, but give them an out in the process or procedure such that if they arrive at a situation where they are uncomfortable or at a crossroads or quandary, that they could then punt to the council with a slate of nominees, so it gives them an out. The former may be preferable to me at this point.

MR. HARRIS: Well, we have criteria that have been adopted by the AP in the past and the council; so unless there is a desire to make a change at this point based on this latest recommendation of the LEAP, then we stick with that. I've refrained from commenting on how I feel to hear what the committee had to say.

I feel the same way Mac and Robert do about being somewhat uncomfortable in punting the selection to the LEAP and the council not being involved. I like what Mac suggested about asking them to just give their top priority and still sending us the three names and then the council making the final selection.

I think that's somewhat of a hybrid, if you will, between what is there now and I don't know that it needs the change in the criteria, but we could simply ask them, okay, you've submitted three names, which would be your top choice, and then the council comes back and then makes the final decision. It's somewhat uncomfortable in one respect but it is somewhat of a hybrid between what they've asked for recently and what we have on the books at the present time. Further discussion? Mac.

MR. CURRIN: I'll make that in the form of a motion, Duane, that we change our procedure or process such that we request a slate of three nominees from the LEAP and have them designate a top candidate from the three.

MR. HARRIS: Second by Robert Boyles. Discussion on the motion? Is there any objection to the motion? Seeing none, that motion is approved. David.

MR. CUPKA: My next question, Mr. Chairman, would be has any thought been given how we're going to proceed with what we've got this year. Myra has indicated I think that we've got five nominees. To my knowledge the AP has not followed either their suggested changes or what the committee just agreed to here. We need to give some thought about how we're going to deal with this year's selection and see how we can move ahead with that.

MS. BROUWER: Right, the way they left it after their July meeting is the nominees would be submitted to me so that I could then distribute it back to the LEAP and coordinate either a conference call or a webinar or some way that the AP could meet and discuss the nominations and then make their selection. The AP is prepared to do that before December. They just wanted to see what the committee would do as far changing the protocol; but I think if I went back to the AP and I said, well, this is how the council wants to proceed, here are the five

nominees, and let's go ahead and select three out of those and ranked them appropriately, we could do that by the December meeting.

MR. CUPKA: Well, I'm sure you could but then the council would have to take action, so I guess what I'm saying is it may be March this year before an actual presentation is made, and then we can get back on schedule, but that's fine.

MR. HARRIS: Yes, we have a Law Enforcement Committee in December with their recommendations and make the decision at that time, and we wouldn't have time to get the person that receives the award there by that meeting unless they can jump on a jet real fast and fly to Raleigh. Mac.

MR. CURRIN: That's a very good point, David, because then we're looking at selecting another one in June so that it could be presented next September, so we have one presented in March and then select another one June; I don't whether that jams the LEAP up.

I guess the other way we could proceed on that is this year ask them to go ahead and make the selection between now – that will take us out of it and we could present that in December and then implement this policy for the following year where they would send us three – that would give us a little more – with their top priority. If you wanted to do that, I guess that would maybe buy us a little bit more time and not push things up too close together in March and June.

MR. HARRIS: Is it a problem if we do delay the presentation until March? I understand what you're saying, Mac, but I'm not too uncomfortable with it. David.

MR. CUPKA: Yes, and actually we'd be making the selection and the process would be finished before March. It's just that we'd be making the presentation in March and then it would be September before we made the next one. It would be six months later. I guess the other alternative would be to wait until September of next year, but that's really pushing it back. I don't think we'd be selecting that close, Mac. I think there will be some time in between there. It's just that the presentations would be March and September.

DR. LANEY: Well, again, Mr. Chairman, I'm not your committee but given that you already have five nominees, could the Law Enforcement Committee go ahead and just use the existing guidelines to make a selection. Then you could present that at the December meeting and then still go ahead and enact your new process, and that would put a little bit more space between those awards, if that's the council's desire.

MR. HARRIS: What is the desire of the committee? As I read it right now, we'll make the selection – the LEAP will get together between now and the December meeting by webinar or conference call, make their three recommendations to the council, the council will make the decision in December, and we'll make the award presentation in March. That is how I read now unless there is a desire to change. Robert.

MR. BOYLES: Mr. Chairman, I'm wondering if there is a provision whereby we receive the nominees and perhaps the recommendation from the LEAP – that they take care of their business

via webinar or e-mail and can the council do that as well to affirm that decision and then make the presentation in Raleigh.

MR. HARRIS: I'll defer to the chairman on that. Mr. Chairman, can we do it by conference call?

MR. CUPKA: I think you can if that's the way you want to proceed. I'm a little leery sometimes in not having people face to face because I don't think you get as full a discussion, but again that's up to the committee on how they want to proceed. That is another option and I think we could make that work.

MR. BOYLES: Mr. Chairman, I'd make that in the form of a motion, if you need it, that we ask the LEAP to convene and determine their nominees for consideration by the council and then the council to convene electronically for the sole purposes of selecting the LE Office of the Year to be recognized in Raleigh. I make that in the form of a motion if you desire.

MR. HARRIS: Well, it is a motion. Is there a second to the motion? Let's see, we've got to have members of the committee; sorry, John. Mac seconded the motion. The motion is to ask the LEAP to submit their nominee to the council and the council meet via conference call/webinar to select a Law Enforcement Officer of the Year and present the award at the December meeting. Discussion? Mac.

MR. CURRIN: Yes, a point of clarification. I want to make sure in deference to our previous vote that they not only submit nominees but their top candidate as well.

MR. HARRIS: I apologize, John, I did not realize you were on the committee. I didn't have you on my list, so John is on the committee, everyone. Okay, there is a motion and a second on the table. Robert.

MR. BOYLES: Mr. Chairman, clarification; the first word "nominee" should be plural, "nominees to the council".

MR. HARRIS: I'll read the motion now. **The motion is to ask the LEAP to submit their nominees to the council and that the council meet via conference call/webinar to select the Law Enforcement Officer of the Year and present the award at the December meeting. Further discussion on the motion? Is there objection to the motion? Seeing none, that motion is approved.**

The next item is the timing and task motion and I think we've completed that. Is there other business to come before the Law Enforcement Committee? Seeing none, we are adjourned.

(Whereupon, the meeting was adjourned at 10:00 o'clock a.m., September 13, 2011.)

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South Atlantic Fishery Management Council

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So that we will have a record of your attendance at each meeting and so that your name may be included in the minutes, we ask that you sign this sheet for the meeting shown below.

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September 13, 2011
Charleston, SC 29403

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