

Summary Report

Law Enforcement Advisory Panel

The Law Enforcement Advisory Panel (LE AP) convened on Monday, January 29, and Tuesday January 30, 2024, at the Crowne Plaza Hotel, Charleston, SC.

One member of the public offered comments to the AP at the beginning of the meeting.

SAFMC Law Enforcement Committee Chair, Spud Woodward, offered opening remarks.

Update on amendments under development and other Council projects

Council staff updated the AP on the content and status of amendments under development and other projects including Mackerel Port Meetings and Best Fishing Practices Outreach. Staff shared observations during outreach efforts regarding public perception of enforcement and changes in fishermen's behavior to skirt regulations.

Regulatory Amendment 35 (red snapper catch levels and discard mortality) – staff passed along the Council's request for the AP to discuss the concept of rotating area closures as a tool to manage discards in the Snapper Grouper fishery. The AP had the following comments:

- Enforcement capacity (i.e. on-the-water patrols and monitoring) would need to increase considerably to enforce rotating closures. Agencies would have to pool their resources.
- The further offshore a closed area is, the more difficult it is to enforce.
- A positive aspect of an area closure is that enforcement can focus their efforts in that area.
- Generally, 40 to 50 miles offshore is the farthest distance from shore that enforcement can handle. In some areas, available assets only allow enforcement out to 20 to 25 miles.
- Rotating bottom closures would pose a significant challenge from an enforcement perspective. "Rotating" would need to be clarified. Are the same locations opening and closing at different times each year? Or, are the locations of opening/closing areas changing from year to year (or from a multi-year time period to another)? The latter scenario especially creates challenges to effectively communicating open/closed areas to the public.
- A closed area would need to be in place for at least one year before the public can be expected to know about it and abide by the regulations. It took 3 years for the Research Area within the Gray's Reef National Marine Sanctuary to enter the public's awareness.
- Would need to work with the industry to spread information regarding closed areas through electronic platforms (e.g., GPS charts). Industry has a vested interest.
- Closed areas need to be large enough to accomplish their goal and for law enforcement to be able to *prove intent* during a violation. If the area is too small, it is more challenging to prove intent.

- The prosecutorial side of enforcing closed areas is extremely important.
- Patrolling of closed areas is accomplished through Joint Enforcement Agreements (JEA). If more areas were to come online, the JEA budget would need to increase.
- Investigations often take a long time, but when a violator is caught and held accountable, this can have beneficial ripple effects.
- Increasing public awareness of violations could improve compliance.
- Effective communication of closed areas/times can deter violations for much of the public. Reduce ‘ignorant’ violations, so law enforcement can be more focused toward true ‘bad actors’.
- NOAA OLE has a record of 700 cases of MPA violations since 2010. To this day, fishermen still claim they didn’t know about the closures.

Wreckfish (Snapper Grouper Amendment 48)

Snapper Grouper Amendment 48 considers actions and alternatives necessary to improve and modernize the Council’s Wreckfish ITQ program based on recommendations from the ITQ Review. One of those recommendations included modifications to monitoring requirements for the fishery, specifically the offloading site and time requirements and the addition of a pre-landing notification (hail-in) requirement. The Council requested these actions be brought to the AP for discussion and input.

The AP offered the following comments:

- Pre-landing notification (hail-in requirement):
 - The wreckfish fishery is a “self-regulating” fishery, especially considering its small size.
 - Enforcement efforts at the state level depend on guidance from NOAA and the Council. It is important to remember that law enforcement agencies have limited resources and must prioritize their efforts.
 - Requiring a pre-landing notification would help enforcement/monitoring as wreckfish vessels aren’t being intercepted at the dock currently because there is no way for officers to know when the vessels might be landing and offloading catch.
 - Having an estimate of the amount (weight or numbers) of fish being brought to shore would help law enforcement officers determine how long they will be spending inspecting the vessel or monitoring offload
 - A 3-hour pre-landing notification would provide adequate time for law enforcement to respond and meet the vessel at the dock for offloading and the LE AP would not recommend shortening that time period.
 - There is no requirement that the wreckfish fishery be monitored *by law enforcement*, LE AP suggested the Council think of creative ways to monitor this fishery.
- Pre-approved landing locations:
 - Language of the alternative should be “publicly accessible via public roads AND navigable waters.”
 - There may be issues with private residences being approved as landing locations, LE APs preference would be disallowing private residences as pre-approved landing locations.

- Offloading hours:
 - Offloading hours between 6 am and 6 pm would increase opportunity for law enforcement presence during offloading.

Tournament Sales of King & Spanish Mackerel

To respond to concerns over the sale of tournament caught king and Spanish mackerel, the Council requested that NMFS provide information on tournament landings over the last ten years and how those landings were accounted for against the annual catch limit. Staff presented the information gathered for this request to the AP and requested feedback from AP members regarding king and Spanish mackerel tournaments in the South Atlantic. The AP offered the following comments:

- In North Carolina, tournament activity has remained consistent whereas in Georgia and Florida, the number of tournaments has increased in recent years.
- Tournaments that extend beyond a few days (for example, month long tournaments with a declared fish day) are more challenging for law enforcement to monitor.
- In some states (e.g., Georgia), law enforcement officers attend the tournament’s captain’s meeting to note relevant regulations.
- Vessel traffic associated with tournaments can affect fishing activity in some areas, with user conflicts seen between recreational fishermen, commercial fishermen, and tournament participants.
- Dealers in some areas do not purchase fish from tournaments to avoid diminishing the market price and due to food safety concerns.
 - Market price for king mackerel can drop overnight due to tournament sales (from \$6/pound to \$1/pound) and may take weeks to rebound.
 - There are issues with fishermen obtaining tournament fish and selling then to dealers under their own commercial permit. This practice can diminish the quality of the product and ultimately harm the commercial fishery. This practice may also increase the risk to consumers from histamine poisoning.
 - Liability for ensuring that HACCP regulations are followed often lies with the dealer receiving the fish.
- There is often no way to ascertain whether the money from tournament sales goes to charity, as the law requires. The trail ends with dealer reports.
- Consider placing more responsibility on the tournament organizers and stronger penalties to discourage bad behavior.
- Consider whether tournament caught fish can be donated directly to food banks, thus keeping the responsibility with the tournament organizer, and removing the fish from commerce.
- Monitoring tournament sales would take up a significant amount of enforcement time. Consider ending the sale of tournament-caught fish to avoid shifting enforcement resources from other priority areas.

Private Recreational Permit and Education Requirement for the Snapper Grouper Fishery (Snapper Grouper Amendment 46)

Amendment 46 considers the development of a permit for the private component of the recreational fishery that may be paired with an education requirement. Council staff provided an overview of the amendment and requested AP feedback on the current actions and alternatives.

Permit Actions (Action 1 and Action 2)

- Generally, a vessel-based permit would be easier to enforce; however, there could be enforcement issues with vessel rental and delivery operations or if the vessel owner is not onboard.
 - I.e., determining who would be issued a violation since the permit holder is not likely onboard the vessel and could be a corporate entity.
 - For commercial permits, the vessel owner is held responsible.
 - A vessel permit could be verified at a distance by looking at the vessel ID rather than verifying that each angler has a permit.
 - The type of permit should depend on the Council's intent for creating the permit. Improving recreational data? Counting how many Snapper Grouper anglers there are each year? Improve education? Etc.
- The permit should cover all snapper grouper species to make it more enforceable and improve compliance.

Education Requirement Actions (Action 3 and Action 4)

- The education requirement should apply when the permit is issued rather than a delayed implementation.
- Education could focus on the most common violations and gear requirements and would be most effective if agencies coordinate with each other (e.g., HMS, state regulations, etc.).
 - Most common observed violations that could be addressed through better education include hook and descending device requirements as well as MPA and SMZ locations and regulations.
 - Would help to provide links to resources on regulations such as Fish Rules, agency websites, the Council website, etc.
 - Making permit holders aware of new regulations each year would help with compliance.
- Concern about an education requirement being too easy to complete and people finding ways to “game the system”. Consider a test of sorts or at least make a digital signature or recognition that verifies the permit holder has received the information on regulations.
 - Digital signature or verification could also help with litigation of violations.
- Ideally each angler would need to take the education module, but if vessel-based it is still enforceable.

State Exemption (Action 5)

- Possible issues with vessels landing in different states so it would be better to have one permit for the EEZ.
 - What happens in the EEZ is going to be difficult to verify at the state level (i.e., a vessel or angler departing from one state but fishing in the EEZ off an adjacent state or a vessel from a state that has a federal permit exemption launching in a state without an exemption), so a single permit would be much easier to enforce.
- While a single permit is preferred, law enforcement officers are already looking for state and federal permits where applicable.

On-demand Gear for Black Sea Bass Pots (Snapper Grouper Regulatory Amendment 36)

Regulatory Amendment 36 considers revising the gag and black grouper recreational vessel limits and revising commercial black sea bass pot requirements to allow the use of on-demand (also known as ‘ropeless’) black sea bass pots. Staff provided an overview of the scoping document and requested input on enforceability of current identification, marking, stowage, and other requirements for on-demand black sea bass pots as applied to the variety of on-demand gear configurations. The AP had the following comments:

- Adopting on-demand technology may change the expectation for enforcement. There would be no buoys to indicate the location of the gear; hence, officers would not be able to inspect the gear while in the water to confirm other requirements (e.g., side panel configuration, pot dimensions, etc.). If the expectation does change, it should be acknowledged and communicated to law enforcement.
- On-demand gear could be equipped with GPS device or pingers to facilitate locating the pots. North Carolina has a new observer program that requires a call-in. A similar approach could be considered for black sea bass pot endorsement holders to report pot locations. However, in-water gear inspections still would not be possible because officers would not be able to access the pot.
- The Exempted Fishing Permit under which the feasibility of on-demand gear was investigated, included an application that allowed fishermen to locate their pots.
- In addition to in-water inspections for pot specifications, on-demand gear allows the potential for pots to be deployed in closed areas without being detected. Even if gear location reporting is required, fishermen that deploy pots in closed areas are not likely to report those locations.
- The LE AP did not recommend against the use of on-demand gear. However, the AP does note that while on-demand pots provide a biological benefit of fewer whale interactions, they also come with the potential for fewer violations to be identified due to reduced access to the gear in the water.
- The LE AP did not express any opposition to buoy storage within a pot as an appropriate indicator that the pot is not actively being fished during transit through a closed area, special management zone, or marine protected area.

Compliance Updates

For-Hire Reporting

Staff reviewed the update on the Southeast For-Hire Integrated Electronic Reporting (SEFHIER) program that was provided to the Council in December 2023. Overall, there is poor compliance with the reporting requirements in the South Atlantic and the agency is unable to determine the accuracy of submitted data. The Council intends to initiate action to improve compliance, strengthen reporting requirements, and explore validation. The AP provide the following comments regarding compliance with for-hire reporting requirements:

- North Carolina for-hire fishermen have expressed the desire to have a limited entry system.
- Compliance relies heavily on how NOAA OLE wants the states to assist.
- There has been an increase in penalties for non-compliance in the past couple of months. NOAA OLE is shifting from compliance assistance to doing more summary settlements.

- The penalty for not reporting is \$500, which is the same as the penalty for not having the for-hire permit.

Descending device (DD) requirement

- In general, the number of vessels with DDs on board has increased; however, they are not always “readily available” and agencies are continuing to educate the public and conduct outreach about the requirements.
- Need more education on how to use DDs and why.
- Need more education on what “readily available” means and why it is important.
 - Recommendation to clarify the “readily available” requirement on the Council’s Best Fishing Practices webpage.
- Most DDs on board recreational vessels are store-bought. More DIY DDs on commercial vessels.

MPAs and Spawning SMZs

- Closed areas that are far offshore continue to be difficult to enforce.
- Fast response boats are best suited for enforcing MPAs but they are concentrated in South Florida and tasked with border patrol and illegal immigration
- The USCG relies on state partners to enforce fishery regulations, including closed areas.
- North Carolina, which does not have a JEA, is not sending patrols to the EEZ.
- Closed areas not being marked make them more difficult to enforce and enforcement.

The AP had additional comments regarding closed areas during discussion of Regulatory Amendment 35 (see above). The AP requested that the Council be more specific in their inquiries regarding enforcement of closed areas so agencies can better respond (e.g., send out surveys).

Agency Updates

Agency representatives on the AP provided updates on 2022-2023 JEA activities; NOAA OLE activities, and US Coast Guard activities:

- South Carolina JEA activities: The Saltwater Enforcement Team doubled federal referrals from the previous year. There were cases 14 related to red snapper, 3 descending device violations, 1 MPA violation, 6 dealer violations, 1 charter captain with expired permit and possession of red snapper.
- Georgia JEA activities: referred 26 cases to NOAA (mostly red snapper), 8 descending device violations, 2 TED violations, several undersized black sea bass. Six new positions have been created and there are approximately 20 officers dedicated to coastal enforcement.
- North Carolina: No JEA. Cases on descending device violations. Looking at obtaining additional watercraft and adding 2 investigators.
- Florida (including Gulf) JEA activities: 6,000 hrs of JEA activities, including 1,300 hrs dedicated to FKNMS; 267 citations; 290 summary settlements.
- NOAA OLE: providing assistance to states for Illegal, Unreported, and Unregulated (IUU) activities; focused on NARW patrols and speed rule patrols in SC and NC. Will

continue to focus on MPA enforcement and increase monitoring of non-permitted charter vessels this summer.

- USCG: The agency's focus is on combating drugs and illegal immigration, IUU activities, and search and rescue. There has been a decline in recruitment and retention across the agency. Focus will shift away from fisheries so the USCG relies on partner agencies communicating priorities.

Other Business

The AP discussed one item related to the increase in claims that American red snapper (ARS) are in fact Caribbean red snapper (CRS). The two species are genetically distinct but difficult to identify and enforcement officers are increasingly observing instances of undersized ARS being passed off as CRS. CRS are not managed and there is no size limit. Imported fish appear to be a mix of the two species. There may need to be discussion regarding possible changes in management to facilitate enforcement of red snapper regulations.

Advisory Panel Members:

Capt. Scott Pearce, FL FWC, Chair
Capt. Michael Paul Thomas, SCDNR, Vice
Chair
Capt. Chris Hodge, GADNR
Capt. Garland Yopp, NCDMF
Col. Bruce Buckson, retired
Michael Freeman, commercial
Alana Harrison, commercial

Lt. Andrew Loeffler, USCG
Lt. Pat O'Shaughnessy, NOAA OLE*
(represented by Lt. Michael Lind)
Kevin Roberson, recreational
Jamal Ingram, NOAA GC Enforcement
Joshua Burton, recreational*
Tracy Dunn, retired

*Denotes AP members not in attendance