

## **Summary Report**

### **Law Enforcement Advisory Panel**

Crowne Plaza  
4831 Tanger Outlet Boulevard  
North Charleston, SC

The Law Enforcement Advisory Panel (LE AP) convened at the Crowne Plaza Hotel in Charleston, SC, on April 18-19, 2018. The LE AP approved minutes from the May 2017 meeting.

#### **Update on developing and recently completed amendments**

Council staff provided an overview of the content and status of amendments to Fishery Management Plans that were recently completed and those still under development. A more focused discussion of Snapper Grouper Vision Blueprint Regulatory Amendments 26 and 27 took place to familiarize the LE AP with proposed actions ahead of scheduled public hearings and to allow for comments/recommendations. The following comments were offered regarding proposed actions directed at the recreational sector in Vision Blueprint Regulatory Amendment 26:

- Requiring a single-hook rig when targeting deep-water species may change the way fishermen deep-drop for these species. According to a recreational fisherman on the LE AP, deep-drop reels use a five- or ten-pound weight and may have up to ten hooks.
- The Council should carefully consider the language used for regulations to facilitate enforcement. It is easier to enforce a prohibition on “possession” for instance, than a regulation that is based on intent (i.e., targeting a particular species or group of species). This is also important in order to prosecute violations.
- The more complex the regulations are, the less likely fishermen are to voluntarily comply.

The following comments were offered regarding proposed actions directed at the commercial sector in Vision Blueprint Regulatory Amendment 27:

- A commercial fisherman on the AP observed that there is a fairly consistent misidentification issue between amberjack and almaco jack, particularly bigger almaco jacks. This may be negatively affecting the almaco jack species more so than amberjack.

Council staff also briefed the LE AP on outreach/training efforts of the For-Hire Electronic reporting Amendment and plans to conduct webinars aimed at law enforcement personnel if the amendment is approved.

#### **Wreckfish ITQ Program Review**

Council staff briefed the LE AP on the status of the review. The LE AP was asked to provide feedback on safety at sea issues and on allowable offloading sites and times requirements for wreckfish. AP members had the following feedback:

- There are no documented safety at sea issues in the fishery probably because there has not been a greenhorn captain out there attempting this fishery. People who fish for wreckfish have been in the fishery since its inception. If you do run into safety at sea issues, it’s going to be with new participants.

- The U.S. Coast Guard maintains the MISLE database to document safety at sea issues. However, the resolution of the data may not allow identification of issues specific to the wreckfish fishery. It would turn up information relevant to commercial fishing vessels.
- Asked about any monitoring or enforcement issues in the fishery, an AP member who is involved in the wreckfish fishery stated that he is not aware of any type of dockside inspection (outside of the Florida Keys) in the past 25 years. Only port samplers are present during offloading. It was suggested that a hail-in/hail-out system may be beneficial in the future.
- The NOAA General Counsel representative stated that, to her knowledge, there have not been any recent wreckfish cases.
- If participation in the wreckfish fishery increases, there may be a need to consider adjusting the current offloading requirements or implementing a hail-in/hail-out system.
- Without a VMS onboard or some type of hail-in/hail-out requirement, officers are not able to conduct dockside enforcement effectively.

### **Regulatory Amendment 28**

Regulatory Amendment 28 addresses long-term management of golden tilefish and includes actions to modify the acceptable biological catch and annual catch limits in addition to possibly changing the start date of the fishing year for the commercial hook-and-line component.

Council staff presented an overview of the amendment. The following comments were provided:

- An AP member who is also a participant in the golden tilefish fishery stated that having the longline and hook-and-line sectors open concurrently creates safety at sea issues for smaller vessels. In addition, hook-and-line fishermen obtain the worst price for their product at the beginning of the year. Also, having separate fishing years may dispel the perception that there has been misreporting between the two sectors. The AP member, who fishes in Florida, recommended a May opening for the hook-and line component.

### **Penalties for Non-Reporting**

The Council has expressed concern over many years about a perceived lack of adequate enforcement for violations of reporting requirements. For instance, Council members have voiced concern that the current system may allow the introduction of questionable data when fishermen apply for a permit renewal. The Council received presentations and held discussions on this topic during the March and June 2017 meetings. The Council Coordinating Committee discussed the topic of penalties for non-reporting at their February 2018 meeting in order to gauge support from other Councils on working together to have non-reporting penalties increased. While there was not much support for increasing penalties for non-reporting, the discussion rather focused on the need to ensure the existing penalties are being employed and enforced as intended. The following comments were made during the LE AP's discussion of this topic:

- The Southeast Fisheries Science Center (SEFSC) is not required to inform fishermen when their reports are late. However, the SEFSC routinely sends compliance assistance letters to fishermen to prompt them to submit reports. If the SEFSC wants a case to go forward, they must supply the information to law enforcement for an investigation.
- Non-reporting cases are typically handled through written warnings or summary settlements instead of permit sanctions. "Given the impact that permit sanctions may have, permit sanctions are generally appropriate only in cases involving violations that

are moderate to major in terms of their gravity. Permit revocation may be appropriate in extraordinary cases, e.g., where a permit is obtained by fraud or false information”.

- NOAA Office of Law enforcement (OLE) can access logbook data directly. Other programs (e.g., SAFIS) have to contact OLE to submit information on non-compliance.
- There have not been many non-reporting cases in the Southeast. A more robust enforcement effort, with the penalties that are currently in place, may be all that is needed before considering any changes to penalty schedules, etc.
- The Council could help to make law enforcement more effective by weighing in on law enforcement priorities. NOAA OLE will readjust their emphasis based on that guidance.

### **Spiny Lobster Amendment 13**

Spiny Lobster Amendment 13 contains actions that would align regulations in the EEZ off Florida with Florida State regulations for bully-nets, dive and bully-net trip limits, degradable panel requirements, and artificial habitat harvest restrictions. Part of the purpose of this amendment is to update management measures to aid law enforcement efforts. The LE AP had the following input:

- Consistency across the board will help law enforcement, but it will also help commercial and recreational fishermen. If the information is kept consistent, it discourages poaching and holds people accountable.
- An AP member asked whether it would make more sense to ban bully nets in federal waters as opposed to imposing regulations that will not be called into effect.
- Regarding regulations on spiny lobster trap construction, specifying the material for traps (wood type) is not relevant from an enforcement perspective since a case will not be made solely on the material used for constructing the trap.
- Florida’s regulation regarding construction of artificial reef habitat and prohibition on the harvest of spiny lobster near an artificial reef is very broad. Resource users cannot be reasonably put on notice as to what is allowed and what is not.
- Obtaining evidence to show someone was within ten yards of artificial reef habitat in federal waters is problematic. NOAA OLE does not have dive teams available. Such work is done through agency partnerships. FWC noted that the ten-yard regulation was intended to give divers a reference for how far away they needed to stay from artificial habitat.
- Regulations that are intended to modify behavior are not always enforceable. The Council should carefully consider proposing regulations that are not enforceable in a practical way.
- The USCG pointed out that currently, fishermen harvesting lobster in The Bahamas are returning to Florida with punctured lobster. Florida state law allows this as long as the gear that was utilized to harvest the lobster in Bahamian waters is legal under Bahamian law. However, the possession of punctured lobster in the EEZ is currently illegal. This is similar to the issue the Council dealt with regarding transport of fillets from The Bahamas.

### **Specifications for Spanish mackerel gillnets**

At the recent Mackerel Cobia AP meeting, Spanish mackerel gillnet fishermen brought up concerns about inconsistencies in how gillnet mesh size is measured. Current regulations require a minimum mesh size of 3.5 inches stretched mesh. In some areas a gauge is used to measure

stretched mesh, in other areas the tool is not used creating inconsistent measurements. Fishermen feel this requirement is outdated since it was originally intended to ensure that one-pound or one-and-a-half-pound fish were being caught, and it was before there were trip limits or size limits in the fishery. In the South Atlantic, Spanish mackerel fishermen currently operate under a trip limit and a twelve-inch minimum size limit. The LE AP provided the following input:

- Finding consistency is difficult when the regulation does not specify how the mesh is to be measured.
- Asked whether the AP sees any issues with the Mackerel Cobia AP's suggestion to specify the net is to be measured by pulling the mesh taut and measuring from the center end knot to the other center end knot, the USCG representative indicated that is how the measurement is being carried out currently.
- A question was raised as to whether fishermen should be allowed to fish two nets equaling 800 yards or whether there is specific rationale for why only one net is allowed.
- Regarding the Mackerel Cobia AP's recommendation to reduce the mesh size to a three-inch minimum for lighter webbing but retaining the 3.5 minimum mesh size for heavier gauge webbing, LE AP members stated the change would not be amenable to enforcement and suggested the mesh needs to be of one standard measure.

#### **Coastal Migratory Pelagics for-hire permit clarification**

A recent amendment to the Coastal Migratory Pelagics Fishery Management Plan prohibited bag limit sales for king mackerel and Spanish mackerel. Council staff recently received an inquiry from a fisherman who wanted to know if he could sell trip fish that he caught under his bag limit. He said that on the back of his for-hire permit, it stated that fish caught under this charter/headboat permit could only be sold when the commercial mackerel season is open, which is no longer true in the South Atlantic. Council staff alerted the NMFS Permits Office of the issue, and the language was promptly corrected to read as follows: "With the exception of cobia, fish caught under this charter/headboat permit may not be sold." Cobia may be sold, as long as the commercial season is open.

#### **U.S. Coast Guard Law Enforcement Priorities**

Lieutenant JG Jerry Brown, USCG Sector Charleston, addressed the LE AP to request input on how the USCG can be more efficient regarding fisheries enforcement, particularly off South Carolina and Georgia. Lt. Brown stated the USCG in Georgia and South Carolina conducts week-long Living Marine Resources (LMR) pulse operations once or twice per month. The USCG works with local partners and seeks ways to coordinate operations during the best times of the year. Members of the LE AP had the following feedback:

- Increase that communication factor, possibly have organized task-force type meetings to share information and be better able to focus efforts and direct assets. NOAA OLE and state partners are willing to help coordinate.
- In North Carolina, law enforcement officers have been holding meetings with local USCG stations, and those meeting have been extremely helpful. The biggest challenge is keeping up with USCG personnel changes to keep the communication channels open.
- Suggest a joint detail in North Carolina just prior to grouper season opening.
- NOAA OLE has recently been sending enforcement officers along USCG cutters in the Florida Keys. The agency is adding a thirty-six-foot offshore boat (will be stationed in

Charleston) that could go out to the MPAs. NOAA and the USCG could benefit from partnering on operations.

### **Regulations recommended for removal**

Council staff briefed the AP on regulations that could be submitted to the NMFS to recommend their removal under Executive Order 3777. The LE AP was asked to comment on the draft list of recommendations (compiled by NMFS Southeast Regional Office and Council staffs). LE AP members had the following recommendations:

- Aggregate bag limits are difficult to enforce. Suggest removing and utilizing single species' bag limits instead.
- Standardize length measurements (fork length vs. total length) in the regulations to make it easier on the angling public.
- Look at the regulations that have not been applied in the last five or 10 years and find out why they haven't been used.
- Remove requirement for operator permits unless the program is to be expanded to other fisheries to render it more useful.

### **Coral, Golden Crab, and Shrimp Amendment**

The Council is considering an amendment to the Coral, Golden Crab, and Shrimp fishery management plans to add a new Golden Crab Access Area in the northern zone; change the boundary for the Oculina Bank Extension; modify, if appropriate, the regulations for shrimp trawlers transiting through closed; and require VMS on golden crab vessels. Council staff briefed the AP on the changes being considered. The Council has requested mapping be conducted in the Golden Crab Northern Zone to determine whether coral resources are present in that area prior to proceeding with consideration of an additional access area. The AP provided the following:

- NOAA OLE reiterated that VMS does not work well as an enforcement tool in the golden crab fishery because of the way the fishery is prosecuted. It would be difficult to use VMS to prove a violation in a closed area because the gear drifts during deployment and retrieval. The location of the gear would not be known, and vessel speed may not be useful for determining if fishing is occurring. However, NOAA OLE encourages the use of VMS for a variety of other reasons.
- NOAA OLE clarified that there is an electronic monitoring reimbursement account to help offset the cost of VMS, but reimbursement is dependent on availability of funds in the account.
- Buffer zones around closed areas are not very useful. They essentially render the closed area smaller. It is better to have all-or-nothing regulations when it comes to closed areas.
- Regarding modifying the boundary of the Oculina Bank Extension, the FWC representative reassured that the agency would enforce whatever new parameters are specified for the area. He recommended clear demarcations and making modifications that are enforceable.
- Regarding consistency of regulatory language for shrimp trawler transit provisions the recommendation is "transit" means direct, non-stop progression through the area, "fishing gear appropriately stowed" means a trawl net or try net may remain on deck, but the trawl doors must be disconnected from such net and must be secured.

- Officer discretion would come into play if a vessel was traveling a long distance, such as during a cold weather closure of the EEZ, and the vessel was found stopped but with the nets/doors disconnected.

## Updates

### **Law enforcement App for charter vessel reporting**

A mobile application (app) to assist law enforcement officers verify compliance with reporting requirements has been under development as part of a pilot project on electronic reporting for for-hire vessels in the South Atlantic Region. The app is nearing completion and it was requested that the LE AP provide their feedback. Francine Karp, of Harbor Light Software, has led development of the app and provided a demo to the LE AP via webinar. The AP had the following comments:

- It is definitely applicable and will be a useful tool on the South Atlantic region. However, officers could be limited on where the app can be used based on distance from cell phone towers.
- A question was raised regarding whether database records could be downloaded and stored in the phone memory to allow officers access to the data when out of cell phone range. It was established that the information could be downloaded, similar to how eTRIPS operates.

### **Enforcement in protected areas**

Enforcement of closed/restricted areas is one of the top enforcement priorities for the Council. LE AP members provided updates on enforcement of the Oculina Experimental Closed Area, the deepwater Marine Protected Areas (MPAs), and the newly implemented Spawning Special Management Zones (SMZs):

- Florida FWC - In the last twenty-four months, there have been 190 hours of enforcement activity in the deepwater MPAs, three state citations, 24 federal citations, 48 state warnings and six federal warnings while conducting patrols. Most of the citations are relevant to harvesting snapper grouper species in closed waters. There have been 28 cases involving commercial vessels and 208 recreational vessels were boarded in the East Hump MPA, North Florida MPA, St. Lucie Hump MPA, and the Oculina Bank. Patrolling of MPAs was not listed as a priority for the current JEA contract with Florida but will be a priority for next year.
- Georgia DNR – no patrols are being done (in areas other than Gray’s Reef) since the agency does not have a boat that is large enough to get out to the MPAs or the manpower to carry out this type of patrol/enforcement.
- North Carolina DMF – same situation as Georgia.
- South Carolina DNR – There have been seven MPA patrols during the past year (since July 1, 2017) during the JEA contract period. Officers have received tips during several Governor’s Cup Tournaments of boats fishing in closed areas. The agency has responded by stepping up patrols and is currently trying to do one per month.
- USCG – data were unavailable at the time.
- NOAA OLE – no assets to conduct patrols on their own but officers have been working extensively with state partners. A new 36-foot boat will be available in the South Atlantic this year and the intent is for NOAA OLE to conduct patrols of the MPAs along the South Atlantic coast.

### **Other Business**

Council staff sought clarification on fishermen bringing back snapper grouper species from The Bahamas and what is and is not allowed per current regulations since several inquiries were received at the Council office and there appeared to be some conflicting information. Agency representatives clarified that fishermen are bound by the federal regulations for snapper grouper once they enter the EEZ and must be in compliance with EEZ regulations. State of Florida officers enforce direct transit from federal waters. If a prohibition for the species is in place in the EEZ, then fishermen entering the EEZ are held accountable to the regulations in place at the time. It was suggested that the informational brochure (developed cooperatively with the FWC and currently available on the Council's website) be revised to better reflect this guidance. In addition, more information should be provided to better identify the species covered under the regulations.

Council staff also requested clarification on how the regulation on the use of longlines in the snapper grouper fishery is being enforced. Specifically, staff asked whether a pelagic longline is included in the current regulations. The confounding issue revolves around the definition of a longline in the Code of Federal Regulations using the words "cable" and "suitable for use". AP members maintain that the regulation's intent is that, if the gear can be utilized in the manner of a longline, then it is considered longline gear. However, it was pointed out that "suitable" may or may not mean "capable." It was suggested that the Council clarify their original intent for the regulation to better address fishermen's inquiries on this issue.

An AP member requested that a presentation on the Council's Citizen Science Program be given to the LE AP at their next meeting.

A question was raised on what the protocol on seizing catch is when a citation is issued. At a previous LE AP meeting, the NOAA OLE representative at the time indicated work was ongoing on a policy to address the topic. The current NOAA OLE representative on the AP clarified that the catch is not normally seized unless it is needed as evidence to prove a case. Policy development is ongoing.

The LE AP requested meeting twice per year and that election of the vice-chair be conducted at the next scheduled meeting. In addition, the AP would like to discuss term limits for chair and vice-chair.