

Summary Report

Law Enforcement Advisory Panel

Town and Country Inn
2008 Savannah Highway
Charleston, SC

May 23-24, 2019

Members of the South Atlantic Fishery Management Council (Council)'s Law Enforcement Advisory Panel (AP), convened at the Town and Country Inn in Charleston, SC to discuss topics supporting management of fishery resources in the South Atlantic region. Below is a summary of the AP's discussions and recommendations. Please note that unless noted or in the form of a motion, the comments below are not necessarily consensus or majority statements.

The AP approved minutes from the April 2018 meeting and the agenda for the current meeting.

Update on FMP Amendments

Council staff updated the AP on the status of amendments under development and recently submitted for formal review. Included in the update were the following amendments:

- Snapper Grouper Vision Blueprint Regulatory Amendment 26 (Recreational)
- Snapper Grouper Vision Blueprint Regulatory Amendment 27 (Commercial)
- Snapper Grouper Abbreviated Framework 2 (Vermilion Snapper and Black Sea Bass)
- Snapper Grouper Amendment 42 (Sea Turtle Release Gear and Framework Update)
- Snapper Grouper Regulatory Amendment 30 (Red Grouper rebuilding)
- Snapper Grouper Regulatory Amendment 33 (Red Snapper Season Modifications)
- Snapper Grouper Regulatory Amendment 34 (SMZs off NC and SC)
- Coastal Migratory Pelagics Amendment 31 (Atlantic Cobia)
- Coastal Migratory Pelagics Framework Amendments 6 & 8 (King Mackerel Trip Limits)
- Spiny Lobster Amendment 13 (Update Procedure for Coordinated Management and Bully Net Regulations)
- Dolphin Wahoo Amendment 10 (ACLs, Allocations, Management Measures)
- Comprehensive Recreational Accountability Measures Amendment

Outreach for the For-Hire Electronic Reporting Amendment

The Council approved an amendment in December of 2016 that would require for-hire fishermen with federal permits in the snapper grouper, dolphin wahoo, and coastal migratory pelagic fisheries to report their fishing efforts electronically on a weekly basis. The amendment was approved by the Secretary of Commerce in June 2018. Since June 2016, the Council has conducted outreach to educate charter fishermen on electronic reporting and the tools available to them. Another part of the outreach project was educating law enforcement officers on the amendment, the tools available, and what details in the final rule will affect law enforcement in

the South Atlantic. However, the final rule to implement the amendment has not yet been published.

Council staff delivered a presentation intended to inform law enforcement officers on aspects of the amendment and the proposed reporting requirements. The LE AP provided the following input:

- Ensure the video emphasizes that it is intended for educational purposes and not intended to assist with enforcement of the new regulations.
- Focus on enforcement *challenges* and emphasize that use of the community portion of the law enforcement app is voluntary and should be cleared with supervisors.
- Suggested that training emphasizes checking a vessel's permits as there may be implications for dual-permitted vessels. A vessel with both South Atlantic and Gulf permits must abide by the most restrictive reporting requirements.
- Law enforcement application could potentially be used as a tool to understand fishermen patterns.
- Some officers are not assigned agency cell phones. LE AP members inquired as to whether the app would also be available to use on a computer.
- LE AP members inquired as to whether officers would be able to run a query to display only vessels that have not turned in reports.
- LE AP members commented that enforcement will be difficult on the water, and a process should be devised for checking that reports are turned in.
- Concern over the discrepancies between the proposed South Atlantic and Gulf reporting requirements since they complicate enforcement.
- Consider that location information provided through the South Atlantic's vs. the Gulf's systems will carry different weight in terms of enforcement since the former is self-reported.

Regulations on harvest of dolphin aboard for-hire vessels in the Mid-Atlantic and New England regions

The Mid-Atlantic Fishery Management Council (Mid-Atlantic Council) convened a law enforcement workshop in November 2018 that brought together representatives of state and federal fisheries and law enforcement agencies, and the Mid-Atlantic for-hire community to discuss law enforcement issues, permitting, and data reporting in the region to develop potential solutions. One of the recommendations was for the Mid-Atlantic Council to “communicate with NOAA’s Southeast Regional Office and the South Atlantic Fishery Management Council the need to consider allowing filleting and skinning of mahi mahi (or dolphinfish) at sea in the mid/north Atlantic region.” The South Atlantic Council received this request in a letter dated 4/30/19 and staff clarified with the Mid-Atlantic Council that the request was intended to only cover for-hire vessels. The LE AP discussed the request and provided the following input:

- The Mid-Atlantic Council’s request would indicate that law enforcement officers would need to count and match racks and fillets. This would be burdensome to boarding officers and appears redundant.
- The exception on filleting for fish brought to the U.S. from The Bahamas is effective because the fish are caught outside the U.S. EEZ. The Mid-Atlantic Council’s request would add considerable burden to law enforcement officers if implemented in U.S. waters (i.e., certain regulations would apply in some areas along the east coast but not

others) resulting in considerably more time required for enforcement and more regulatory complexity.

- Consider that law enforcement would need guidance to address the possible scenario where a fish is caught and filleted north of Cape Hatteras but landed south of that line where the exception on filleting at sea would not apply. If adopted, the proposed regulation needs to be specified for the entire managed area (i.e., the U.S. east coast for dolphin) in order to be enforceable.
- In North Carolina, it is unlawful to possess aboard a vessel or while engaged in fishing any species of finfish that is subject to a size or harvest restriction without having head and tail attached (except mullet and hickory shad when used for bait and tuna landed commercially).
- There appears to be no compelling reason to request an exemption on mutilated fish only for dolphin.
- A 1” by 1” piece of skin on a fillet, as proposed in the Mid-Atlantic Council’s request, is not large enough to ensure proper identification. If a filleting exemption is ultimately implemented, it should mirror what is in place for fish that are caught in The Bahamas and brought to the U.S.

The LE AP approved the following motion:

**MOTION #1: THE LE AP RECOMMENDS THAT NO FILLETING OF DOLPHIN BE ALLOWED IN THE EEZ OFF THE ATLANTIC.
APPROVED BY AP (UNANIMOUS)**

Regulatory Amendment 29 (Best Fishing Practices)

The current preferred alternatives in the amendment would require a descending device be *on board* vessels fishing for or possessing snapper grouper species; require the use of non-offset, non-stainless-steel circle hooks to fish for snapper grouper species north of 28 degrees North Latitude; require the use of non-stainless-steel hooks to fish for snapper grouper species throughout the South Atlantic federal waters; and allow the use of powerheads to harvest snapper grouper species in federal waters off South Carolina. The LE AP was asked to provide input on enforceability and the definition of descending devices used in the document. The LE AP had the following comments:

- LE AP members agreed that the proposed requirement to have descending devices on board and that such devices be “rigged and ready” is not enforceable. The NOAA General Counsel representative on the LE AP indicated that the current language would present problems to making a case.
- If the required devices were to be specified as being “commercially available”, this would aid enforcement.
- As proposed, law enforcement officers would be put in a position to have to “approve” a device.
- Required devices should not only be “rigged and ready” but also “serviceable”.
- Recommend a strong educational campaign.
- When a regulation that is not enforceable is implemented, it creates expectations among the public and results in attempts to hold law enforcement officials accountable.

- Regarding the circle hook requirement, LE AP members generally agreed that specifying a spatial boundary for the regulation is problematic for enforcement.

Priorities for Joint Enforcement Agreements

The Cooperative Enforcement Program enables NOAA’s Office of Law Enforcement (OLE) to join forces with state partners through Joint Enforcement Agreements (JEAs). Currently, JEAs are maintained with South Carolina, Georgia, and Florida. Tracy Dunn, Assistant Director of NOAA OLE’s Southeast Division, provided a briefing on the priority-setting process for law enforcement activities, including JEAs, in the South Atlantic region:

- NOAA OLE receives input from other agencies, Councils, non-governmental organization, and the general public to develop enforcement priorities every 5 years. NOAA OLE will be requesting input in 2021 for the next 5-year plan. However, input is encouraged at any time.
- Councils can pass along concerns/issues to NOAA OLE through the Regional Administrator or directly via other means of communication.
- JEAs are fluid and can be changed based on a region’s needs.

Guidance on prohibition on retention of species in state waters when harvest in federal waters is closed for federally permitted for-hire vessels

Council staff requested guidance on how best to explain the prohibition on retention of managed species in state waters by federally permitted for-hire vessels when the harvest of such species is closed in federal waters in the Fish Rules mobile app. Staff proposed the language below and requested feedback from the LE AP to ensure that the language accurately reflects how this regulation is being enforced.

- If a federally permitted vessel fishing in federal waters catches a species that is closed to harvest in federal waters, the vessel is not allowed to retain that fish.
- If a federally permitted vessel fishing in state waters catches a species that is closed to harvest in federal waters but open in state waters, the vessel is not allowed to retain that fish.
- If a federally permitted vessel fishing in federal waters catches a species that is closed to harvest in state waters but open to harvest in federal waters, they may retain that fish if they do not stop to fish in state waters when returning to port. All gear must be stowed.

The LE AP agreed the proposed language was adequate. In addition, it was suggested that the mobile app also clarify that regulations in state waters of North and South Carolina are quickly adjusted to mirror any changes to federal regulations.

Enforcement of “heads and fins intact” requirement for snapper grouper species

Council staff requested clarification on how the requirement to maintain head and fins intact is being enforced for tomtate as the species is mainly used for bait. Current federal regulations are as follows: *South Atlantic snapper-grouper in or from the South Atlantic EEZ must be maintained with head and fins intact, except as specified in paragraph (b) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.* This requirement was established in

Amendment 4 to the Snapper Grouper FMP in 1992. The amendment includes the following rationale: *this action will increase enforceability of minimum sizes and no retention provisions and is being added at the request of the NMFS Office of Enforcement. It is the Council's intent that the preparation of fish for immediate consumption onboard the vessel from which the fish were caught is not prohibited.* In 1999, Snapper Grouper Amendment 9 established an aggregate recreational bag limit of 20 fish per person per day inclusive of all snapper grouper species that were not under a bag limit at the time and excluding tomtate and blue runners (there would be no bag limit on tomtate and blue runners). The Council's conclusion in the amendment document states that *tomtate and blue runners were excluded because they are used for bait. There would be no bag limit for these species and fishermen would be allowed unlimited retention.* Note that the Council removed blue runner from federal management in January 2014.

LE AP members stated that there have not been any documented issues with anglers cutting up tomtate for bait. It was recommended that the Council discuss the topic at a future meeting to clarify their intent.

Elections

Capt. Scott Pearce (FWC) was elected vice-chair. Capt. Bob Lynn, (GADNR) will continue to serve as chair.

Other Business

Recreational Bag Limit Sales

The prohibition on bag limit sales of dolphin was implemented through Amendment 2 to the Dolphin Wahoo FMP (which was part of the Comprehensive Annual Catch Limit Amendment) on April 16, 2012. The Council has recently received multiple public comments, particularly from for-hire captains in South Florida and the Florida Keys, requesting that this prohibition be re-examined to allow bag limit sales of dolphin landed on for-hire trips.

The Dolphin Wahoo AP and Mackerel Cobia AP discussed this topic at their most recent meetings. Generally, the Dolphin Wahoo AP was in favor of allowing bag limit sales of dolphin caught on for-hire trips. Members of this AP cited that allowing bag limit sales provides locally caught dolphin to area restaurants, may help eliminate waste when clients do not take all fish landed, can improve the profitability of for-hire operations, and can help retain crew.

The Mackerel Cobia AP was opposed to allowing bag limit sales of any Council-managed species, due to concerns over proper accounting of fish sold from for-hire trips and resource-related concerns that may result from incentivizing additional harvest of fish. The Mackerel Cobia AP felt that allowing bag limit sales of dolphin would create an unfair advantage for some for-hire operations that could benefit from a new revenue stream that would not be readily available to other for-hire operations, so while the AP was opposed to allowing bag limits sales, should Council allow bag limit sales for any species, then bag limit sales should be allowed for all species to allow for a "level playing field" among for-hire operations in the South Atlantic Region.

- The LE AP agreed that sales of recreationally caught fish is problematic for enforcement and expressed concern that if it were allowed for one species, others would eventually follow.
- Efforts to combat illegals sales of recreationally caught fish in Florida would be undermined if regulations were changed to allow bag limit sales.
- Florida does allow sale of dolphin caught on a vessel that has both a for-hire and commercial permits (see rule language below).

68B-41.007 Prohibited Sale; Vessel for Hire Exception.

- (1) The captain of a Vessel for Hire may sell a dolphin that was harvested aboard a charter vessel pursuant to subsection 68B-41.004(1), F.A.C., if the captain is properly licensed (by both state and federal authorities) to harvest dolphin for commercial purposes.
- The LE AP made the following consensus recommendation:
LEAP RECOMMENDS THAT THE COUNCIL NOT CONSIDER RECREATIONAL SALES FOR ANY MANAGED SPECIES.

Meetings

The AP discussed holding two meetings per year: an in-person meeting in the spring (April, May) and a webinar meeting in the fall (October, November).