

harvesting at least 90 percent of its ACL, and, in this case, a conditional transfer could occur. The difference here, with yellowtail snapper, is that these percentages of the unadjusted ACL are higher, and so they range from 5 to 20 percent. However, the minimum landings threshold is still the same, 50 to 75 percent, and so it's 50 percent, 65 percent, or 75 percent, and this is how much the donating sector would have to be underharvesting its ACL for five years straight.

MS. BECKWITH: Okay. Any comments or thoughts on this alternative?

MR. HARTIG: The reason for the percentage being larger, wouldn't it be related to the difference in the ACLs between dolphin and yellowtail? Yes. Okay.

MS. BECKWITH: Any desire to do anything different with this alternative? Okay. Seeing none, we will move on. I think that was the last alternative in this action. A couple of other things before we look at timing and tasks motions, but did you want to do anything with the -- Then I think Mark had an action that he wanted to discuss at the end of the current actions.

MR. BROWN: Yes, Madam Chair. **I would like to add an action to take away the vessel operator permit card requirement for the charter/headboat in the dolphin fishery.**

MS. BECKWITH: I will let John get that motion up. The motion would be to add an action to take away the requirement of the operator card for the dolphin wahoo permit for the charter/headboat.

MR. BOWEN: Second, Madam Chair.

MS. BECKWITH: Okay. Zack seconds. Is there any discussion?

MR. BROWN: The charter/headboat permit for the dolphin wahoo for-hire. Operator card for the charter/headboat for the dolphin wahoo for-hire permit. It's charter and headboat.

MR. BOWEN: I think what Mark and I are trying to do is just remove the requirement for the operator card. It doesn't have anything to do with the permit.

MS. BECKWITH: Right. The operator card is required for any charter/headboat, anybody holding the charter/headboat permit, and so you guys are looking to make that requirement no longer part of the permit requirement?

MR. BROWN: I was just reading what it says on the card, on the top of the card.

MR. BOWEN: Correct. If I can add some rationale, I will, if I need to.

MS. BECKWITH: Let's try this. **Add an action to remove requirement to hold the operator card for the charter/headboat fleet in the Dolphin Wahoo FMP.** Then I'm going to let Mark add some rationale first and then follow up with Zack.

MR. BROWN: I am struggling with the wording.

MS. BECKWITH: We've got it. The intent is clear. Let's go to Monica, who is going to tell me that the intent is not clear.

MS. SMIT-BRUNELLO: Well, I assume you don't mean "hold", right? You don't care if they hold it or not, but maybe "have" is the better word?

MS. BECKWITH: To have and to hold the operator card in sickness and in health. Okay. Let's move into some rationale real quick while we wordsmith, as needed.

MR. BROWN: We've discussed this many times over and over again, and I actually brought this up before I was a council member and wondering why we had to have this card for the recreational fishery. I can more understand it for the commercial fishery, but, in the recreational fishery, we're already licensed by the Coast Guard. We already have permits and we already are going through all the process with the regulations, and you can keep track of everybody that's within that process. Maybe in the commercial industry, where people are moving around that are not licensed from boat to boat, it would be more of a necessity to have that, but I don't really see that this is a necessity for the for-hire fleet.

MR. BOWEN: That's kind of my point exactly. I mean, this past year, I had to go through my renewal process for my license, with the first aid and the CPR and the drug test. Just all the paperwork, I just think it's kind of redundant and doesn't really serve a purpose. I have never been asked to see it from any Coast Guard official or DNR person, and so what's the point?

MS. BECKWITH: Yes, and, speaking as someone from the charter industry, I will agree with the sentiment. I feel like we have our captains' licenses. Our captain's license will be the number that we link to our logbooks. In the commercial fishery, if we can make the operator card a little bit more useful and as a real form of identification that our law enforcement folks can utilize, I would agree that our commercial fishery -- Someone may not have a license and they may not have a captain's license or a drivers' license. This may be useful as a form of identification and link an individual to VTR and logbooks. I see the utility in the commercial industry, but I simply have struggled, over the last year-and-a-half that we've been discussing this, to see the utility of it in the charter/for-hire, and I would like to see this be discussed further or considered.

MR. HEMILRIGHT: I was wondering, what was the purpose of this to begin with, this operators permit? It just didn't come out of thin air. While we're wanting to get away from it, why don't we do it for the commercial as well? I mean, I can use all the extra things that Zack and Mark put out there, but what was the purpose from the staff or from the Science Center or the council to implement this in the beginning? What was the purpose of that? I would like to hear that rationale, please.

DR. DUVAL: This was originally -- We talked about this in our Law Enforcement Committee meeting yesterday, Dewey, and I'm sorry that you missed it, but the intent originally was for law enforcement purposes. I think there was a concern about -- Because we have this for both the dolphin wahoo fishery and the rock shrimp fishery. There was a concern about a vessel owner being responsible for infractions as opposed to the person who is actually operating the vessel and fishing, and so that was one of the concerns. Mel probably has the slide up and can speak to it more efficiently than I can.

MR. BELL: If you want to see this, it's actually on one of the attachments we had that we discussed a little bit yesterday, but actually the wording from the FMP is -- The action was to include the operator cards and improve enforcement, aid in data collection, and it should decrease the cost to vessel owners from fishery violations. That was the point Michelle was making. It will make vessel captains more accountable for damaging habitat and violating regulations intended to protect the long-term viability of the stock, and then there is some council conclusions in here that requiring an operator permit, and this is for the dolphin wahoo one, will make vessel captains more responsible for complying with fishery regulations, thus helping to achieve optimum yield.

There was a rationale, and it actually is written down in the plan, and so these slides are just pulled out of the plan. I can't remember how long ago that was, but the only two fisheries that we have it in place for are dolphin wahoo and rock shrimp, and, of course, the dolphin wahoo being the only one that has a recreational or a charter boat component.

What we had talked about yesterday at the Law Enforcement meeting was coming back to this, because law enforcement, when we met, when the AP and the committee met back in August, they had agreed that there was a utility in perhaps having the card. They saw value, and not necessarily for this one specifically, but maybe for commercial.

What we were going to do is kind of get back with law enforcement after this meeting and legal and kind of hash this around a little bit and talk about the whole utility and come up with sort of an options concept here. Either we hold what we've got or get rid of it completely or go to other fisheries, but what do we want to do with it? How do we want to make it useful and actually applicable to something? We're actually looking at this separately to this potential action, and so I mean we could end up at this place where we're taking it anyway, but that's just where we are right now, based on the Law Enforcement Committee meeting yesterday.

MR. CONKLIN: The operator card reminds me of packing up for a yard sale and you just have something in your closet that you can't part with and that you don't really know what you're ever going to do with it or if you could ever part with it. I'm just going to say that, in my entire time on the council, we have spent almost four years talking about, and maybe even before I was on, whether this thing is useful or not and what is the utility of it. In that case, and as many tax dollars as we have -- Not us, but have been allocated to talking about this and coming up with presentations and stuff, I could fully support Dewey's recommendation. Thank you.

MR. PHILLIPS: After listening to the conversation and listening to Mel, knowing that this is going to go to public comment at some point in time, it might be feasible to put a sub-alternative of the charter/for-hire or commercial. That way, we at least get some feedback back from the public, so we know what they want to say, what they might -- It would be a good placeholder to get some feedback, since we're going to public comment at some point in time.

LT PREY: I just wanted a chance to get on the record here for this one. I definitely agree with Chris and Charlie and Dewey and everyone. I can go either way, whether you want them or you don't want them, but we just need some consistency, from the law enforcement perspective.

MR. HARTIG: I think, from the conversations with law enforcement and the information that was put forward in that committee, I think it has usefulness in the commercial fishery. I just think the arguments that you all have put forth make a lot of sense. With your licensing requirements and everything, your identifiers are clear, and so I don't see any use for it in the recreational fishery, but I do still see a use for it in the commercial fishery, based on the information that was presented to us at the Law Enforcement Committee meeting and the discussions we had.

MR. PHILLIPS: To that point, if we put a sub-alternative in there for commercial or not and ask for public comment, the public could tell us that, yes, we want it in snapper grouper or, yes, we want it in mackerel or what fisheries that they feel like it's in, so we could get some direction. I am not saying to not have it, but I'm trying to figure out a way to get public comment that would help give us some directions on where and what to do, if anything.

MR. BELL: Despite the protestations from my esteemed colleague from South Carolina, yes, we've been talking about this for a while, but, really, it was only the August meeting where we actually had law enforcement kind of engaged with it and give us some feedback.

Then yesterday was the first time we really had the report from August, and so, while it seems like a long time, we just recently engaged law enforcement in this question, and so that's why I'm a little hesitant to just kind of rush into a specific action right now before we try to get back with them and figure this out, because their question back to us was the same question. It was, okay, we see some utility in it, usefulness, and what do you guys want to do? Do you want to expand it or do you want to hold what you've got?

There's some kind of back-and-forth that I was envisioning occurring between now and the March meeting on this, and so that's why this is, in my mind, kind of rushing a little bit, but it's an opportunity, I guess, if you want to kill it, but we did really just kind of engage them in the August timeframe.

MS. BECKWITH: I suspect that this amendment is not going to move forward at any sort break-neck speed, but I personally agree with Ben. I think that there is utility in this for the commercial fishery. I think that, based on those conversations that we had at the Law Enforcement AP, that it would be great to move that discussion forward and see where that takes us, but the charter subsection of this just does not feel that it's worth putting a lot more effort into maintaining this operator card for our sub-section, but I think for the commercial, yes.

MR. BELL: This is kind of a question for other regions. Does this occur in charter/headboat for -- Is it a requirement in other regions as well? I guess, for dolphin wahoo, being expanded regions, it is, but is there anything else? The other thing we would look at for the operator card is really, at a higher level, is what Tara said of consistency, and it would be nice if there were perfect consistency throughout the whole range of all of our fisheries for all the regions, but there are some differences, right now from region-to-region in things, but, in terms of the headboat and charter boat piece, if dolphin wahoo is the only one that exists, then that would be kind of making the statement there, I guess, to take it out of there.

MR. DELERNIA: First, to answer Mel's question, in the Mid-Atlantic, if you're operating a federally-permitted vessel under the authority of a federal permit, you're required to have a federal operator card, be it commercial or for-hire. If you're running a federally-permitted vessel, the operator, regardless of if they're in a commercial or recreational fishery or whatever, they're required to have a federal operator identification card.

The reason I raised my hand was there's been a lot of speculation of should we or shouldn't we, and I would just like to hear -- I don't think there is anyone here, but perhaps this question should be posed to the Office of Law Enforcement, NMFS Office of Law Enforcement, the agency, to see what their opinion or comment is regarding whether or not the card should be required or not required, and so I raised my hand originally to offer that advice as to if someone could contact the Office of Law Enforcement, but then I had the opportunity to answer Mel's question also. Thank you, Madam Chairman.

MR. HEMILRIGHT: In asking the question, when you're commercial fishing, you have a dolphin wahoo permit, and so I almost think it's redundant to also have a card, and I would love to hear the reason why the commercial has to have it or some of the discussion or the description that you think the commercials need it. If you have a dolphin wahoo permit, that allows you to go fishing. If you don't have the permit, why do you need to have the card also?

MS. BECKWITH: The permit is to the boat, and the operator card is to the individual, such as like, for the charter guys, the permit is to the boat, but the captain's license is to the person, and so

it tries to differentiate the operator card from -- One of the intents is to differentiate the individual from the vessel permit.

MR. BELLAVANCE: In New England, it's the same as Tony described. Any federally-permitted vessel that's being operated by a captain, that captain needs to have that operator permit. I think the intent is state boats have their regulations. You can be a captain on a state boat and not need that permit, but, if you were to choose to operate a federally-permitted boat, you would have to have that card that says I understand that the rules could be different with a federal permit as opposed to the state permit. There are some captains that bounce around, depending on the vessel.

MS. BECKWITH: Okay.

MR. BELL: To Tony's question, if you get a chance to look at the attachment related to the operator card briefing in your materials, it's Slide Number 5, and so OLE was involved in the AP committee meeting we had in August, and, actually, this is probably -- I'm not sure who actually wrote this, but it may have actually come from them. OLE was there and we had the General Counsel there, but there is four kind of major bullet points. I won't read the whole slide, but they did provide some rationale for why they thought it was useful, and so OLE has weighed in on it, both at the AP meeting and even before that a little bit.

MR. GRINER: I agree with Dewey. It is redundant. Even though the permit is for the vessel, if you're commercial fishing, you can't do it without a commercial fishing license issued by your state, and so you end up with a commercial fishing license and this operator card that is just for the dolphin wahoo, but you have to have the commercial fishing license as well, much like the captain's Coast Guard captain's card, and so it is redundant.

MR. HARTIG: All arguments that I have made in the past, but I was convinced that, in some cases, some captains, it's the only identifier they have. They have no driver's license and they have no other way to identify that captain. If that captain gets a sanctioned operator card and he goes to another boat and he doesn't have an operator card, because it was sanctioned, he can't then get on that boat in the dolphin wahoo fishery, because he doesn't have the card. That, Dewey, is what convinced me. That's really the only thing that convinced me, is that it's the only identifier that some captains have without any other means of identification.

DR. CRABTREE: I don't really see it as redundant. I mean, I think you can argue that it's not being used as it was intended, but the idea was that you have federally-permitted vessels and the vessel owner is not the operator. The operator is some hired captain that he is paying to run the boat, and so, if there is a violation on it, we always go after the permit holder, the vessel owner, and the idea was to have some way to get the operator, and particularly, if he's a bad apple, to get him out of the fishery. That was the idea behind it. Now, I think it's a fair question of is it actually working out that way and is it being used, and I can't answer that, but that was the idea behind it, I think.

MR. HAYMANS: Could I just ask Roy to clarify the very tail-end of that statement about being the bad apple?

DR. CRABTREE: If you have an operator who is violating, the owners of the vessels are paying the fines, and the operator could be fired by the owner of that vessel and just jump on another vessel and keep on fishing and pop around, but, if he has to have an operator card, you could pull his operator card. Then he would be illegal to operate the vessel.

MR. HAYMANS: In essence, that's limited entry without limited entry for operator cards?

DR. CRABTREE: No, it's not limited entry, but it's just a way to fine them and hold them somehow accountable for their actions. Now, whether it has worked out that way and whether or not loopholes and problems with it have made it ineffective, I don't know. That's a question for law enforcement, but I think that was part of the intent when it was first put in place.

MR. HAYMANS: Okay, and so my point in the question was you are denying a person a license based on a violation or egregious violations or history of violations, but you're denying him the ability to get that operator card, and I would like to hold that for future discussions.

DR. CRABTREE: Yes, and, like I said, I don't know if it has actually happened that way. There are loopholes with it and problems with it, but I think that was part of the thought behind it when it went into place, but, because it is an open-access card, it may not have been effective, because it was not limited access.

MR. BOWEN: To Roy's point, from my experience, I can just tell you that it has not panned out, because I've been stopped numerous times by local, state, and federal law enforcement and never been asked. I've been asked for my captain's license and federal permits and state license and state permits, but never have I been asked for an operator card.

MR. PHILLIPS: I will make this quick. I do know of a snapper grouper boat captain who was not the owner. The boat got stopped, the owner paid a fine, and the captain was levied a fine. To my knowledge, he never paid it, but he went to work on other boats. I don't think there was anything to stop him from working on other boats as either a captain or a crew, but captains do get fines, in snapper grouper at least.

MR. HEMILRIGHT: Maybe you would change this definition to only owner/operators of charter or headboats. Therefore, you could have bad apple charter fishermen who would just jump from boat to boat, given all the descriptions that everybody has given here of bad apples. You were talking about crew members hopping from boat to boat, and so you might change this to only owner/operators, because there is hired captains out there for for-hire boats or headboats. They're not all owner/operators. Therefore, you would need to put that in there, because you have bad apples there, just like somebody was saying about bad apples for crew members or different things like that. That would make it a parity there. It's for owner/operators, and so you might add that in there, into your motion, and take that out, so, that way, it would stick with what you're trying to do.

MS. BECKWITH: I am going to go Chris next and then Mark. Then we'll double back around, if needed.

MR. CONKLIN: Thanks. Out of all the presentations we've got on this, I have not heard what Dr. Crabtree said about that being the reason to separate the permit holder and the operator, and now it makes so much sense, and so thank you. In that case, if that is the validity of the card, then -- On my boats, I would not want a captain being a renegade and doing something wrong and me getting the ticket for it, and so I certainly would support the operator card, but now it's going to be up to law enforcement to have consistency in learning and enforcing it, if that's the case, and so maybe you would just want to get rid of this action, or the motion, altogether. Let's just keep having it.

DR. CRABTREE: I think a fair question for law enforcement at some point is, is it working out? Is it being useful? I think Doug made a good point. Because it is an open-access card, it may be failing at achieving what we originally wanted it to do.

MR. BROWN: Roy, to my knowledge, I have never heard of this card actually being used to weed out the bad apples, as you would say. I do know that I remember somebody told me that they had intercepted a few people, in Florida I think it was, and checked to see if they had the card. They got fined because they didn't have the card, but, as far as its original intent, it's so plain. It doesn't have really any way that you can go back and do any research on this person or anything. Right now, it's not really being utilized in what was planned for this card. Right now, it's not really doing anything for us, and so, as far as whether or not it's in place for just the for-hire fleet or the for-hire and commercial, it doesn't really matter, because it's not doing what it was intended to do. In order for that to happen, you're going to have to spend some money.

DR. CRABTREE: My point is I think that's a question to ask law enforcement, for them to look at is it being used or is it not, and have them report back to us.

MS. BECKWITH: I am going to let Mel speak to that point, and then we're going to go ahead and wrap this up, because this will not be the last time we get to have this discussion.

MR. BELL: Yes, they were asked that question. That was part of it. If you go back, and it's Attachment 3 under the Law Enforcement. You can look at it later, but you can see in the minutes, if you want to go through the minutes, the different things that were discussed and briefed, and that was one of them. There wasn't a lot of use of it, or a lot of cases, but you will see that NOAA OLE and NOAA GC both weighed in and said it had utility.

Also, where we kind of left off was the LEAP was supposed to kind of get back with us again to provide some sense of how we could make it more useful, and that's what I was saying yesterday. If you will allow kind of me or the committee to reengage with the LEAP, we can kind of look into the utility and then the council needs to decide, because that's what they were asking us, what do you guys want to do with this. Then we can make a decision, based on what we feel is useful or not useful, and move from there. That's why I just saw this as a little premature, given where we sort of left off with the LEAP in August.

MS. BECKWITH: I am going to ask that we move this to a vote. We can come back and discuss this at the next meeting again, I'm sure. **The motion is to add an action to remove the requirement to have the operator card for the charter/headboat fleet in the Dolphin Wahoo FMP. Is there any opposition to this motion? Seeing none, the motion carries.**

MR. HAYMANS: Just for clarification, to Roy's comment just a moment ago, I don't believe I indicated that the operator card was open access. My line of questioning was whether it was or wasn't, and the reason was, yesterday, during the Law Enforcement Committee that Mel has been discussing, I asked the question a couple of times. Slide 6, the first sentence, says, **if an operator permit has been sanctioned, during the permit sanction period, the individual operator may not work in any capacity aboard a federally-permitted fishing vessel.** That, to me, is a de facto limit to his ability to fish, and so I guess I would ask Monica to clarify whether or not that operator card can be sanctioned such that the operator cannot work in the fishery.

MS. SMIT-BRUNELLO: I think the language you're reading came from the FMP, the Dolphin Wahoo FMP. At that time, I think it was the intent of the council to first put this requirement in this FMP and then they would have it in all the other FMPs that the South Atlantic Council has and manages. That never went much further. It went the next amendment up, and I think it was rock shrimp, and so it's required in there. While that language is in the FMP, and I will double-check that that's correct, it's the purview of NOAA General Counsel to determine, somewhat, the

sanctions and those sorts of things and which violations are appropriate for a certain amount of a civil penalty and which ones are appropriate for permit sanctions and all those sorts of things.

I heard you ask Karen, I think, the question yesterday as to whether you could have that kind of permit sanction on an operator card permit. She directed us, I think, to look at the penalty schedule and see whether the penalty schedule that General Counsel uses and is available to the public -- Whether those kinds of restrictions could be put on an operator permit, so to speak.

I haven't gone and looked there to see whether there is some violation that could result in an operator being -- His or her permit being sanctioned so that they couldn't fish anywhere, and I kind of doubt that that's true, whether it would rise to the occasion where they wouldn't be able to, but I don't know until I go look at that, but I would be happy to look at that, because that was one thing too, is that you could have a specific permit sanction -- The council thought you could have a permit sanction on that specific permit, the operator card. I call it a permit and the card interchangeably, and so I will look at that.

MS. BECKWITH: We do have Karen on the webinar, if we can unmute her for a second and see if she's got anything to add, and then we have got to move on.

MS. RAINE: Monica is right. Again, we always look at our penalty schedule to determine whether or not, for a particular violation, there might be a permit sanction, and I also refer to that as permit sanctions, which could certainly include the operator cards. Currently, on our penalty schedule, while there are not a lot of violations that might call for a permit sanction, there are some, and, to my way of thinking, if, on a penalty there is something that says permit sanction, I don't think that is limited to -- (The rest of Ms. Raine's comment is not on the audio recording.)

MS. BECKWITH: Karen, hold on one second.

MR. COLLINS: Okay. We're back on.

MS. BECKWITH: Okay. Perfect. Thank you so much, Karen. Are there any specific questions for Karen? Doug.

MR. HAYMANS: Thank you, Madam Chair. Can the council affect the penalty schedule, or at least the level of egregiousness of a violation?

MS. RAINE: The delegation for penalties has been made to the Office of General Counsel, and what I have advised the council throughout the years is not that you can determine an actual penalty, but it is very helpful, or at least it has been to me, and I think to others, when you have a discussion on the egregiousness of a particular prohibition or regulation if it's violated, and that can certainly be looked at in determining the gravity of the offense.

MS. BECKWITH: Thank you. Is there anything else? Okay. Thank you so much, Karen.

MS. RAINE: You're welcome.

MS. BECKWITH: Okay. Next up would be I need someone to make a quick motion to accept the IPT-suggested edits for Actions 1 through 4.

MS. MCCAWLEY: **So moved.**