



## FINAL REPORT

### Mid-Atlantic Fishery Management Council Law Enforcement/For-Hire Workshop

November 13-14, 2018  
Philadelphia, PA

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January, 2019

## Executive Summary

Fishing activity on for-hire (party and charter) vessels generally differs from that on commercial or private recreational vessels in that the vessel operator is not the primary fisher, but rather an “agent” hired by the fisher to take them onto the water and provide access to fish. The issue of whether the vessel operator should be legally responsible for infractions (intentional or unintentional) of their customer has been a long-running discussion among some in the Mid-Atlantic for-hire community. Although the for-hire operator may never partake in reeling in or handling the fish, they may still be responsible for ensuring that their customers adhere to fishing regulations, and they can be subject to fines and other legal actions for violations by their customers.

Additionally, concerns have been expressed about the sale of golden tilefish and tuna by operators of recreational vessels that do not possess permits allowing for the sale of those species or possess U.S. Coast Guard (vessel safety) requirements for commercial vessels. High prices that can be obtained from the sale of some of these species may provide greater incentives for this to occur.

The Mid-Atlantic Fishery Management Council (Council) convened a workshop November 13–14 bringing together 39 people representing federal fisheries, law enforcement agencies (National Oceanic and Atmospheric Administration and U.S. Coast Guard), state fisheries law enforcement agencies, the Mid-Atlantic for-hire community, and NOAA Fisheries to discuss these issues and develop potential solutions. Recommendations coming from workshop participants included:

### HMS Permitting and Data Reporting

- The Vessel Trip Report (VTR) and Highly Migratory Species (HMS) reporting mechanisms need to be integrated to reduce duplicate reporting burdens for dual permit holders and to draw parity between the data (e.g., species and disposition) collected under each system.
- Holders of HMS permits with a commercial sale endorsement should be required to report catch and harvest of all species, as well as discarded/undersize fish, to develop consistency with data reported on VTRs.
- Fishery managers need to demonstrate greater use and utility of VTR data (or plans for additional uses) so that for-hire operators better understand the value of the data collected.
- Individuals applying for an HMS permit with a commercial sale endorsement or tilefish open access permits should be required to enter their U.S. Coast Guard (USCG) Safety Sticker number (or expiration date of Certificate of Inspection) and/or additional verification demonstrating that they meet the safety requirements established for commercial vessels.
- The NOAA HMS database and USCG safety inspection databases need to be integrated to allow stronger verification procedures for vessel operators applying for a commercial sale endorsement.
- The Council should evaluate and consider, if warranted, extending the timeline for submission of electronic VTRs (eVTRs) from the current 48 hours after landing to at least 72 hours (but no longer than 7 days) while recognizing that operators may be subject to potentially shorter timeframes imposed by reporting systems to which they may be subject under other permits (e.g., HMS or South Atlantic).

- NOAA should confirm that eVTR systems issue a timestamp when an attempt is made to submit a valid VTR but which cannot successfully be transmitted due to communications or system platforms being temporarily inoperable, and that such submission attempts are considered as fulfilling the requirement that eVTRs be submitted within 48 hours after landing.
- The Council should 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.

### Law Enforcement

- The Council should be cognizant of the impact of increasingly complex regulations on the ability of for-hire operators to comply with regulations and the law enforcement community to *effectively* enforce the regulations.
- The Council should encourage NOAA Law Enforcement, in conjunction with the ASMFC Law Enforcement Committee, to explore the development of consistent regulations in both state and federal waters regarding sharing of fish between for-hire customers on the same fishing trip while at sea.
- The Council should work with appropriate technical committees to consider the impact of allowing the captain and crew of for-hire vessels to retain an individual legal bag limit and allow this provision when feasible in fishery management plans.
- The Council should encourage state members to work with NOAA Law Enforcement, the ASMFC Law Enforcement Committee, and for-hire advisors to develop “best management practices” for for-hire operators to implement that foster greater compliance with regulations by their customers, including provisions for demonstrating due diligence on the part of operators for implementing these practices.
- There is a need for additional communication to for-hire operators for purposes of clarifying their responsibility under federal regulations as well as state-specific requirements.
- The Council should work with member agencies (state and federal) to encourage periodic meetings between state and federal law enforcement agents and each state’s for-hire community to review practices and procedures related to compliance with, and enforcement of, fisheries regulations.
- In developing management measures impacting the for-hire community, the Council should consider the differences between “six-pack” operators and larger headboat vessels relative to the ability to comply with and enforce regulations.

A recurring theme underlying the discussions at the workshop was the need for operators to be cognizant of the differences between state enforcement and federal enforcement of regulations and the complexity that this may create for both adherence to and enforcement of laws.

## **Acknowledgements**

The Mid-Atlantic Fishery Management Council's "Law Enforcement/For-Hire Workshop" resulted from issues raised at the Council's Law Enforcement Committee, Tony DiLernia, Chair. Council Chair Mike Luisi and Executive Director Chris Moore recognized the importance of addressing the issues and provided the needed funding and logistical support to accomplish it. The workshop was guided by a steering committee composed of Tony DiLernia (Chair), LtCdr. David Stutt, Don Frei, Dewey Hemilright Jr, Steve Heins, Adam Nowalsky, Kurt Blanchard, Doug Messeck, and José Montañez. Tremendous logistical support was provided by many Council staff members to effectively carry out the workshop. Workshop participants from the for-hire community and various law enforcement agencies took time away from their businesses and normal duties to join together in a collaborative spirit to share their concerns and experiences toward the development of solutions that will lead to improvements in the enforcement of fisheries regulations in the Mid-Atlantic region.

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## Background

Fishing activity on for-hire (party and charter) vessels generally differs from that on commercial or private recreational vessels in that the vessel operator is not the primary fisher, but rather an “agent” hired by the fisher to take them onto the water and provide access to fish. The issue of whether the vessel operator should be legally responsible for infractions (intentional or unintentional) of their customer has been a long-running discussion among some in the Mid-Atlantic for-hire community. Although the for-hire operator may never partake in reeling in or handling the fish, they may still be responsible for ensuring that their customers adhere to fishing regulations, and they can be subject to fines and other legal actions for violations by their customers. While the operator of a six-pack charterboat can generally observe what their customers are catching/retaining, the operator of a 40-passenger headboat has a more limited ability to monitor the fishing activities of every customer, even if the vessel operator employs one or two mates. This may be particularly difficult when fishing is heavy and vessel crew members are kept busy assisting many customers at any one time.

A number of high profile enforcement actions on for-hire vessels during 2017-2018 raised the profile of the issues related to for-hire operators’ legal responsibilities. Additionally, reports surfaced of a seemingly increasing number of large pelagic species being sold by recreational Highly Migratory Species (HMS) permit holders, who are not held to the same vessel safety requirements as commercial vessel operators. Similarly, reports of the illegal sale of tilefish by recreational anglers became evident as recreational pressure on the tilefish stock was increasing. Concurrently, a number of questions were raised by the for-hire community regarding specific issues related to the completion of Vessel Trip Reports (VTRs) by both holders of permits to fish for species managed by the Council and by holders of permits to fish for HMS.

With these issues becoming increasingly important to the effective management of for-hire fisheries, in mid 2018 the Mid-Atlantic Fishery Management Council (Council or MAFMC) initiated a process to convene the for-hire community, law enforcement representatives from the state and federal levels, and interested public to collectively identify and define the issues and develop recommended solutions. The objective of this process was to explore ways to develop regulations and permitting and reporting processes that are enforceable and easily understood by the fishing community.

## Process

The process of addressing the law enforcement and VTR issues of the Mid-Atlantic for-hire community revolved around a workshop held November 13-14, 2018 bringing together representatives of the federal fisheries law enforcement community (principally NOAA Fisheries and U.S. Coast Guard), state fisheries law enforcement, and the Mid-Atlantic for-hire community to identify issues related to law enforcement of for-hire fisheries, discuss potential solutions, and communicate the results to the Mid-Atlantic Fishery Management Council.

A workshop steering committee was formed to guide the development of the workshop and follow-up. Members of this committee were:

- Tony DiLernia, Chair MAFMC Law Enforcement Committee/For-Hire Captain.

- LtCdr. David Stutt, Vice-Chair MAFMC Law Enforcement Committee/U.S. Coast Guard
- Don Frei, NOAA Office of Law Enforcement.
- Dewey Hemilright Jr, Chair, MAFMC HMS committee/co-liaison to the South Atlantic Fishery Management Council (SAFMC) from the MAFMC.
- Steve Heins, Chair MAFMC Tilefish Committee.
- Adam Nowalsky, MAFMC Law Enforcement Committee/For-Hire Captain.
- Kurt Blanchard, Atlantic States Marine Fisheries Commission (ASMFC) Law Enforcement Committee/ Rhode Island Department of Environmental Management Division of Law Enforcement.
- Doug Messeck, ASMFC Law Enforcement Committee/Delaware Department of Natural Resources and Environmental Control Natural Resources Police.
- José Montañez, MAFMC Council Staff.

This committee formulated a workshop agenda and contributed to outreach activities to inform members of the Mid-Atlantic for-hire community, state and federal fisheries law enforcement, and members of the public of the workshop. On September 20<sup>th</sup> this committee met with the Council Law Enforcement, Highly Migratory Species, and Tilefish Committees via a public conference call. The main focus of that meeting was to evaluate a set of questions that were independently formulated by individuals in the for-hire community and submitted to NOAA and the U.S. Coast Guard (USCG) to determine their applicability to forming the nucleus of a workshop. These topics were slightly modified and formed the primary objectives of the workshop to develop recommendations on:

- Issues related to the sale of fish by private recreational anglers (particularly tilefish and tunas) focusing on the need for vessels selling fish to comply with U.S. Coast Guard safety requirements and/or Federal permits that allow for the sale of fish
- Operator and angler (client) responsibility for fisheries violations that occur on for-hire vessels and law enforcement options for addressing these
- Complexity of fishing regulations impacting enforceability

On November 13-14, 2018, a workshop was held in Philadelphia, PA structured to address these objectives (Appendix A). Thirty-nine individuals (plus three Council staff) participated in this workshop (Appendix B). The questions previously presented to NOAA and USCG, and those agencies' responses (Appendix C) were provided to all workshop participants beforehand to provide a basis from which discussions could build during the time allowed for the workshop.

## Outcomes

### HMS and Tilefish

#### Background Discussion Summary

Brad McHale (NOAA Highly Migratory Species Division) provided an overview of the HMS permitting process and recent actions to tighten up the requirements for receiving a commercial sale endorsement (see presentation Appendix D).

A 2018 action prohibited HMS charter/headboat vessels from selling any catch of HMS unless they obtained a commercial sale endorsement as part of the permit. Only about 7% of for-hire HMS permits were selling catch in recent years although 38% have sought the commercial sale endorsement in 2018. These vessels are subject to USCG safety requirements for commercial vessels.

Lt. Commander avid Stutt (U.S. Coast Guard) said that in October 2016, the Commercial Fishing Vessel Safety Inspection was implemented, establishing safety requirements for these vessels. USCG has become aware of concerns about vessels that possess an endorsement to sell, declare that they are on a recreational trip (and therefore don't need to abide by the safety requirements) but do in fact sell their catch. Violations of this nature are difficult to catch, but USCG is not finding a lot of vessels that they board and declare that they are fishing recreationally but later sell their catch.

One participant stated that two years ago the USCG did a comparison of the database of HMS permits with a commercial sale endorsement and the database of USCG commercial fishing vessel safety inspections – 96% of permits that also had permits that allowed the sale of fish did not have a USCG safety sticker. The problem is that people who have HMS charter/headboat commercial sale endorsements are not compelled to show their USCG safety stickers, and they do not have vessel documentation (DO) numbers (in other words, there is no way to enforce the commercial sale/USCG safety requirements if they are not boarded). The boarding has to take place in order for law enforcement to see the permit. To address this issue, applicants for a HMS commercial sale endorsement should be required to submit their unique USCG safety inspection number at the time of application. Implementing this recommendation would likely require NOAA and USCG to merge these two databases.

Brad McHale felt that it was technologically possible to crosscheck the NOAA Fisheries HMS and USCG vessel safety databases but will require resources and coordination to integrate the two databases. The USCG decal isn't linked to a vessel in perpetuity, but NOAA sometimes crosschecks information from the HMS permit database with the USCG safety database. A Safety Checklist generator can be found at <http://www.fishsafewest.info/checklist/generator.html>. Participants noted that this link needs to be much more accessible, and that preferably it would be linked directly from the online HMS permit application page.

*Mahi mahi* –Workshop participants raised the issue of the inability to fillet mahi mahi (dolphinfish) while at sea. This causes significant inconvenience for both the crew and the customers. Once back at the dock where these fish can be filleted, the crew must spend precious time filleting the fish rather than attending to dockside duties (particularly readying the boat for the next trip), and the customers are anxious to offload and head home. Mahi mahi is managed under a South Atlantic Fishery Management Council (SAFMC) fishery management plan; if taken from or possessed in the Atlantic EEZ, mahi mahi must be maintained with head and fins intact. However, effective January, 2016 mahi mahi harvested in Bahamian waters *on a vessel transiting through the EEZ* can be filleted provided that the skin remains intact on the entire fillet, fishing gear is stowed, and specific documentation is on board demonstrating that the vessel was in Bahamian waters (50 CFR §622.276 ). The 2016 SAFMC action providing an exception to retaining the whole carcass was preceded by a very contentious debate, and



modifying it would require action by both the SAFMC and NOAA Southeast Regional Office (SERO).

### **HMS Consensus Recommendations for the Council**

Following extensive discussion by the participants about the requirements for obtaining a USCG Safety Inspection decal and the requirements for obtaining a Certificate of Inspection (COI) for for-hire vessels carrying seven or more passengers (which are more rigorous than the requirements for a USCG Commercial Fishing Vessel Safety Inspection), the workshop participants agreed to the following recommendations to forward the Council:

- Individuals applying for an HMS permit with a commercial sale endorsement or tilefish open access permit should be required to enter their U.S. Coast Guard (USCG) Safety Sticker number (or expiration date of Certificate of Inspection) and/or additional verification demonstrating that they meet the safety requirements established for commercial vessels.
- The NOAA HMS database and USCG safety inspection databases need to be integrated to allow stronger verification procedures for vessel operators applying for a commercial sale endorsement.
- The Council should 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.

### **VTR Issues**

Several specific questions were posed to NOAA regarding compliance with requirements of VTR (Appendix C). On March 12, 2018, NOAA began mandating that vessel operators holding Federal party or charter permits for species managed by the Mid-Atlantic Fishery Management Council are required to submit VTRs electronically within 48 hours of returning to port. Jim St. Cyr, Supervisor of the Vessel and Dealer Reporting Group of NOAA Fisheries Greater Atlantic Regional Fisheries Office (GARFO) participated via teleconference to address and clarify the resolution to these issues.

Question: If a for-hire vessel lands a fish and reports it on a VTR and then accidentally brings it out on a trip immediately after the initial trip, must it be reported again?

Response: Don't report previously caught fish on a subsequent trip's VTR. Fish should only be reported one time.

Question: What happens if a vessel operator reports catches that exceed the legal limit on a VTR?

Response: All kept and discarded fish must be reported on VTRs. The GARFO Reporting Group will not take any action if reported catches exceed the legally-allowable limit, but NOAA Law Enforcement may follow up to ascertain the reasons. NOAA Law Enforcement recommends that vessel operators finding themselves in this situation should immediately call them to explain why it occurred and to establish that efforts have been made to comply with fishing regulations and reporting requirements.

Question: How do reporting requirements differ for a vessel that has an HMS permit that allows them to sell fish (commercial sale endorsement) versus a vessel holding dual permits for HMS and GARFO-managed species which required a VTR?

Response: Vessels holding dual permits are required to submit both HMS reports and VTRs. Vessels with only HMS permits are not required to submit VTRs.

Question: The HMS app does not require the same data as VTRs. Are any efforts being made to make the two systems similar in terms of data reported?

Response: GARFO is working to integrate HMS reporting with VTRs. They hope to have this accomplished in early 2019 but it might take longer.

Question: If an attempt to submit a VTR is made within the required time limit (48 hours) but the submission process is not successful (e.g., the system is down), are permit holders considered to be in compliance with the 48 hour rule?

Discussion: It appears that the VTRs are time-stamped when a submission is attempted, but this needs to be clarified.

There was some discussion of whether there is any interest in extending the current 48 hour submission requirement for VTRs since some workshop participants indicated that, in certain cases, it can be difficult to submit a VTR within 48 hours, particularly when they are running multiple trips back-to-back. Some participants noted that it would be helpful to have 72 hours to submit VTRs after the trip is completed. It was noted that before extending the reporting timeframe, it might be worthwhile to look into whether there is value in having the trip data more quickly for the purpose of developing catch estimates. It was also noted that the submission requirements for some systems (e.g., HMS) were actually shorter than 48 hours. A general discussion followed regarding the actual use and application of the data collected via VTRs; there was not a clear understanding of how for-hire VTR data are used in fisheries management.

Some discussion occurred related to improving VTR reporting compliance. A need exists for greater education of for-hire operators, particularly those who are new to the business, regarding reporting requirements and the importance of accurate data in fisheries management. Limited discussion occurred regarding reviving the “did not fish” reports and implementing “hail-out/hail-in” features, but neither of these options was supported by workshop participants.

### **VTR Consensus Recommendations for the Council**

- The Vessel Trip Report (VTR) and Highly Migratory Species (HMS) reporting mechanisms need to be integrated to reduce duplicate reporting burdens for dual permit holders and to draw parity between the data (e.g., species and disposition) collected under each system.
- Holders of HMS permits with a commercial sale endorsement should be required to report catch and harvest of all species, as well as discarded/undersize fish, to develop consistency with data reported on VTRs.
- Fishery managers need to demonstrate greater use and utility of VTR data (or plans for additional uses) so that for-hire operators better understand the value of the data collected.

- The Council should evaluate and consider, if warranted, extending the timeline for submission of electronic VTRs (eVTRs) from the current 48 hours after landing to at least 72 hours (but no longer than 7 days) while recognizing that operators may be subject to potentially shorter timeframes imposed by reporting systems to which they may be subject under other permits (e.g., HMS or South Atlantic).
- NOAA should confirm that eVTR systems issue a timestamp when an attempt is made to submit a valid VTR but which cannot successfully be transmitted due to communications or system platforms being temporarily inoperable and that such submission attempts are considered as fulfilling the requirement that eVTRs be submitted within 48 hours after landing.

## **Enforcement Issues in For-Hire Fisheries**

### Background Discussion and Summary

Jeff Ray (NOAA Office of Law Enforcement) characterized the varying degree of difficulty in enforcing differing types of fishing regulations in for-hire fisheries. Possession regulations are relatively easy to enforce for individual anglers but more difficult for larger headboats or those vessels that may have a “common pool” of harvested fish. In all cases, the vessel captain must be willing to demonstrate due diligence in ensuring that customers are complying with regulations. No established standards exist for measuring due diligence, particularly since the criteria for such would be unique to each specific fishing situation. Law enforcement officers need to consider that different ways exist for managing fishing regulations on for-hire boats. Some captains are very hands on, while others allow their customers be very self-sufficient in catching fish and adhering to catch/possession limits. A “one-size-fits-all” solution for enforcement approaches likely does not exist.

At the state level of enforcement, Doug Messeck (representing the ASMFC Law Enforcement Committee) emphasized that regulations vary state-by-state as do specific law enforcement approaches. As regulations increase and the complexity of regulations increase, so do the challenges for captains to abide by regulations and law enforcement officers to enforce them. A key tenet in any law enforcement action is to identify the party responsible for committing a violation before any action is taken. Some ASMFC states provided responses to specific law enforcement questions demonstrating similarities and differences in the implementation of common regulatory issues across individual states (Appendix E).

Dan McKiernan (Massachusetts Division of Marine Fisheries) presented a concept that Massachusetts has developed in conjunction with some for-hire operators to foster greater compliance among headboat anglers (see Appendix F for presentation). Modern approaches to fisheries management and conservation (fishing restrictions) are sometimes constraining on for-hire operators, leading to non-compliance, cynicism, and anger toward management. Compounding the enforcement difficulties, individual anglers aboard for-hire vessels are not issued individual permits and therefore revoking a “fishing permit” is not an option as a penalty. In some cases, if out-of-state violators are issued a citation, they may ignore it (not pay) since

they may not come back to the state in the future. He offered the following as aspects to promote compliance:

- Printing of bag and size limit regulations on all tickets sold
- Captain and crew actively promote compliance of regulations with their passengers
- Dedicate effort to inspect the anglers and catches
- Restrict crew fishing activities
- Number and tag individual bags for fish so that specific catches can be associated with specific anglers

#### Breakout Group Reports

Workshop participants were assigned to one of four smaller groups, with each group asked to address the three workshop law enforcement topics as well as provide input into any law enforcement for-hire issue that they felt were not captured in these questions. The combined content of the small group summaries are provided below in Table 1.

Table 1. Potential recommendations leading to better enforcement options and understanding by the for-hire operators. Note: These represent individual group discussions and may not be consensus opinions of all workshop participants.

<p>Enforcement responsibilities and authorities of for-hire captains regarding fishing regulation (e.g., minimum size limit, bag limit) on for hire-trips.</p>	<ul style="list-style-type: none"> <li>• Different needs for larger inspected vessels vs six-pack; “One size fits all” is not a good enforcement practice. <ul style="list-style-type: none"> <li>○ six-pack boats generally expect to fish collectively (fish shared among individuals).</li> </ul> </li> <li>• Aggregate boat limit would: <ul style="list-style-type: none"> <li>○ help alleviate some of the overages;</li> <li>○ address inconsistent catch among boat passengers;</li> <li>○ reduce bycatch and release mortality.</li> </ul> </li> <li>• An aggregate boat limit could not exceed the sum of individual bag limits for the number of passengers on board.</li> <li>• Need to develop “best management practices” for due diligence <ul style="list-style-type: none"> <li>○ due diligence, with an understanding that captains should contact law enforcement about for egregious violators.</li> </ul> </li> <li>• Vessels should have regulations posted and have the ability to measure fish onboard.</li> <li>• Standard protocol/signage for communicating regulations (takes the onus off the captain and crew).</li> <li>• Regulations should be broadcast frequently to the passengers (e.g., three times each day).</li> <li>• Provide coolers and measuring devices to each passenger to promote individual accountability for adhering to size and bag limits.</li> <li>• Post size/bag limits around the boat.</li> </ul>
<p>Legal responsibilities of vessel crew for fisheries violations (e.g., over limit, under size, etc.)</p>	<ul style="list-style-type: none"> <li>• Captains can call law enforcement if someone is breaking the law.</li> <li>• States should have a permit registry and violations should result in revoked permits.</li> <li>• Post-trip enforcement should be conducted away from the boat <i>when practical</i>.</li> </ul>
<p>Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?</p>	<ul style="list-style-type: none"> <li>• Allow captain and crew to keep a bag limit for personal consumption only. <ul style="list-style-type: none"> <li>○ Would allow crew to take home fish to eat instead of having to buy it at the fish store.</li> <li>○ Might help to reduce discards/discard mortality.</li> </ul> </li> </ul>
<p>Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?</p>	<ul style="list-style-type: none"> <li>• Regulations should be consistent between state and federal waters to allow transfer of fish between customers. <ul style="list-style-type: none"> <li>○ Likely to reduce high-grading</li> <li>○ Likely to reduce discard mortality</li> </ul> </li> <li>• Need a joining of state and federal regulations because federal regulations currently allow redistribution of catch, but some states do not.</li> </ul>

## Large Group Discussion of Issues

### **Enforcement and Legal Responsibilities/Authorities of For-Hire Captains**

(regarding fishing regulation on for-hire trips)

The extent to which for-hire captains can enforce regulations on their vessels is not clearly defined. Two provisions are particularly important to assist law enforcement in assigning accountability for fisheries violations: intent to violate and demonstrated effort by captains to ensure that customers abide by the law. Captains can call law enforcement if someone is breaking the law, requesting that the vessel be met at the dock or be inspected on-the-water (some captains currently do this).

The majority of workshop participants emphasized the different needs for larger inspected vessels versus six-pack vessels and that “one size fits all” is not a good enforcement approach.

All breakout groups recommended the development of some form of “best management practices” for captains to follow to help promote compliance among anglers and to demonstrate due diligence to their adherence to regulations (with the understanding that captains should contact law enforcement for egregious violators). The specific components of these best practices would need to be developed by law enforcement and the for-hire community but would likely include:

- Posting of printed regulations on board the vessel in clear view of all anglers (standard guidelines for protocol/signage should be developed).
- Broadcasting regulations frequently to the passengers (e.g., three times each day).
- Providing customers with the tools and ability to measure fish near where they are brought onboard.
- Providing coolers and measuring devices to each passenger to promote individual accountability for adhering to size and bag limits.

In terms of enforcement, workshop participants offered the following recommendations:

- All states should have a permit registry, with violations resulting in revoked permits.
- Enforcement activities at the dock following a fishing trip should be conducted away from the boat *when practical*.

Consensus Recommendation: The Council should encourage state members to work with NOAA Law Enforcement, the ASMFC Law Enforcement Committee, and for-hire advisors to develop “best management practices” for for-hire operators to implement that foster greater compliance with regulations by their customers, including provisions for demonstrating due diligence on the part of operators for implementing these practices.

Consensus Recommendation: There is a need for additional communication to for-hire operators for purposes of clarifying their responsibility under federal regulations as well as state-specific requirements.

Consensus Recommendation: The Council should work with member agencies (state and federal) to encourage periodic meetings between state and federal law enforcement agents and each

state's for-hire community to review practices and procedures related to compliance with, and enforcement of, fisheries regulations.

*Consensus Recommendation:* In developing management measures impacting the for-hire community, the Council should consider the differences between “six-pack” operators and larger headboat vessels relative to the ability to comply with and enforce regulations.

### **Retention of Fish by Crew of a For-Hire Vessel for Personal Consumption**

All break out groups recommended that crew members on for-hire vessels should each be allowed to retain an individual possession limit of fish for personal consumption. Recognizing that existing harvest limits may be predicated on non-retention by crew members, or that some unique law enforcement concerns may need further consideration, the consensus recommendation was phrased to indicate that technical committees should consider modifying regulations to allow such retention, with the clear intention to allow it if it conforms with fishery management objectives.

*Consensus Recommendation:* The Council should work with appropriate technical committees to consider the impact of allowing the captain and crew of for-hire vessels to retain an individual legal bag limit and allow this provision when feasible in fishery management plans.

### **Sharing of Fish on For-Hire Vessels**

Inconsistencies between state regulations and federal regulations create complexities with the issue of sharing fish between customers (or customer-caught fish given to crew) during a for-hire fishing trip. In federal waters, the practice is generally allowed as long as individual retention limits are not breached. However, in some state waters, the practice is illegal since the laws are written to be individual catch limits (generally daily limits), regardless of whether anglers are fishing from the beach or from a boat. Allowing an exception to this practice for anglers fishing from boats in state waters would need to be carefully scrutinized and vetted through the public input process since matters of equity, enforceability, and conservation would need to be considered. The example was provided of an angler fishing for a species (e.g., striped bass, bluefish, etc.) on the beach and being highly successful to the point that they are catching, and giving away, fish as quickly as they can. What impact would this have on conservation?

Adding to the complexity of the issue, workshop participants noted that customers on smaller six-pack charter vessels often embark on fishing trips with the expectation that their catches will be shared and that if one angler catches over their limit, those fish will be distributed to another customer. Whether this is legal or not in specific state waters, the practice is very difficult for law enforcement to catch unless they observe the vessel and individual anglers throughout the entirety of the trip (e.g., undercover operations).

Considering all of these potential issues, workshop participants felt that it was important for fisheries managers and regulators to weigh the impact and benefits of drawing consistency between state and federal on-the-water regulations to allow anglers on the same fishing trip to share fish. Some felt that this provision would reduce discard mortality and high-grading by allowing all customers to reach their daily retention limit more quickly, thereby allowing the vessel to move from those fishing grounds quicker.

A slightly different, (although similar) action would be to enforce catch limits as an “aggregate boat limit” rather than an individual angler limit. Many workshop participants felt that this would have many advantages, including helping avoid some overages of successful anglers, addressing inconsistent catch among boat passengers, and reducing bycatch and release mortality from successful anglers releasing fish that they cannot retain while the less successful anglers continue to fish. However, an aggregate boat limit could not exceed the sum of individual bag limits for the number of passengers on board.

*Consensus Recommendation:* The Council should encourage NOAA Law Enforcement, in conjunction with the ASMFC Law Enforcement Committee, to explore the development of consistent regulations in both state and federal waters regarding sharing of fish between for-hire customers on the same fishing trip while at sea.

### **Complexity of Regulations: Impact on Law Enforcement**

During the workshop planning process, it became clear that many of the compliance and enforcement issues in the for-hire fisheries are related to the complexity of regulations (including the overlap between state and federal regulations, or enforcement of regulations). To address this, a speaker from NOAA Office of Law Enforcement and one representing the ASMFC Law Enforcement Committee were asked to explain their various approaches to enforcement. State and federal law enforcement participants espoused that, from the enforcement perspective, the fewer the regulations that are in place, the easier enforcement becomes. A greater number of regulations make it increasingly difficult for for-hire operators and individual anglers to be cognizant of, and adhere to, all of them. Additionally, with an increasing number of regulations, the chances increase that some may conflict with each other in actual on-the-water implementation.

### **NOAA Law Enforcement Precepts and ASMFC Enforceability Ratings**

NOAA Office of Law Enforcement has developed a set of “precepts” outlining the aspects of regulations which they consider for effective enforcement (Appendix G). Additionally, the following are considered to be aspects of regulations that facilitate enforceability:

- Simple and easy regulation that law enforcement can understand
- Consistency in state and federal regulations so that people are not confused by the law
- Stability in regulations over time
- Does the rule accomplish on-the-water what it was intended when developed by regulators?
- Safety – regulations should not put people in danger at-sea

The presenters stressed that law enforcement officers should be integrated as active participants during discussions of management actions and in the development of regulations to ensure that these actions can be effective.

The ASMFC Law Enforcement Committee has developed “enforceability ratings” for standard regulatory actions that measure the typical effectiveness of enforcement for regulations (Appendix H). These ratings should be considered when management measures are being considered.

From the breakout discussions of the issues, participants provided the following consensus input:



Consensus Observation: Fisheries managers should consider 2 or 3 year management measures when possible instead of 1 year management measures.

Consensus Observation: The lack of stability in regulations is a severe hindrance to both enforcement and for-hire adherence to the regulations. Additionally, changing regulations frequently often doesn't provide fisheries managers with a good evaluation of their effectiveness.

Consensus Observation: Regulations issued at the "last minute" don't provide sufficient opportunity to communicate with for-hire community effectively and should be avoided if possible.

Consensus Observation: The Council should have the "ASMFC Law Enforcement Guidelines" and "NOAA Precepts" in front of them at all discussions of new regulations.

Consensus Recommendation: The Council should be cognizant of the impact of increasingly complex regulations on the ability of for-hire operators to comply with regulations and the law enforcement community to effectively enforce the regulations.

## **Conclusion and Next Steps**

A recurring theme underlying the discussions at the workshop was the need for operators to be cognizant of the differences between state enforcement and federal enforcement of regulations and the complexity that this may create for both adherence to and enforcement of laws. A number of recommendations contained within this report would help to improve enforceability and adherence. Key among these are the recommendations related to improved communication between law enforcement and (state and federal) for-hire communities on a regular basis. Additionally, establishing a "code of best practices" for for-hire operators to implement would help those operators establish their due diligence in affecting adherence to the law on their vessels. However, as evidenced in the discussions related to the impact of the complexity of regulations, considerations of both enforceability and ability of for-hire operators to implement regulations must begin at the fisheries management level, long before those regulations are issued.

The summary of the recommendations from the MAFMC Law Enforcement, For-Hire Workshop was presented to the Council on December 10, 2018 during their regular meeting. Some of these recommendations can be implemented with little or no formal action (e.g., ensuring that Council members consider NOAA and ASMFC law enforcement guidelines when developing management measures) while others will require additional scrutiny and possible modification by Council Committees before being considered for implementation. Council Officers, in conjunction with Council staff, should categorize each recommendation according to their "next step" and follow through with these assignments accordingly. Additionally, some recommendations will need the direct involvement of member and partner agencies (individual states, NOAA and USCG) in which case a special ad hoc committee should be convened to ensure that they are acted upon.

## Appendix A. Agenda: Mid-Atlantic Fishery Management Council Law Enforcement/For-Hire Workshop, November 13-14, 2018

### Law Enforcement/For-Hire Workshop

November 13-14, 2018

*Embassy Suites Hotel, Philadelphia, PA*

**Workshop Objectives:** Develop recommendations to forward to the Mid-Atlantic Fishery Management Council on:

- Issues related to the sale of fish by private recreational anglers (particularly tilefish and tunas) focusing on the need for vessels selling fish to comply with U.S. Coast Guard requirements and/or Federal permits that allow for the sale of fish.
- Operator and angler (client) responsibility for fisheries violations that occur on for-hire vessels and law enforcement options for addressing these.
- Complexity of fishing regulations impacting enforceability.

#### **Tuesday, November 13**

- 12:00 p.m.** Welcome, Introductions, and Logistics – A. Loftus – 15 minutes
- Opening Comments – T. DiLernia – 25 minutes
- 12:40** **HMS and Tilefish**  
*This topic will focus on clarifying 1) the permitting mechanisms (and enforcement) for the sale of tilefish and tuna by recreational vessels and 2) Coast Guard vessel safety requirements for vessels.*
- HMS Permitting Background Information – Brad McHale (NOAA/HMS) – 15 minutes
  - Coast Guard Vessel Safety Requirements - David Stutt (USCG) – 15 minutes
- 1:10 p.m.** Initial Discussion – 50 minutes
- 2:00 p.m.** Break
- 2:15 – 3:15 p.m.** Group Discussion and develop potential recommendation to HMS permitting and enforcement.
- 3:15 – 4:00 p.m.** **VTR ISSUES**  
*This topic will address law enforcement issues related to Vessel Trip Reports (VTR)*
- Staying in Compliance with VTR Catch Reporting – NOAA/GARFO – 15 minutes.
  - Group discussion and questions – 30 minutes
- 4:00 p.m.** Tee-up questions for law enforcement discussion tomorrow
- 4:30 p.m.** Adjourn

#### **Wednesday, November 14**

- 8:30 a.m.** Convene  
Recap of Day 1 and Plan for Day 2 – A. Loftus/T. DiLernia
- 8:45 a.m.** This subject will address four main topic areas:
- Enforcement responsibilities and authorities of for-hire captains regarding fishing regulation (e.g., minimum size limit, bag limit) on for hire-trips.
  - Legal responsibilities of vessel crew for fisheries violations (e.g., over limit, under size, etc.)
  - Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?
  - Customer on-water questions
    - Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?
- Background – Federal - Don Frei (NOAA LE) – 15 minutes
- Atlantic State Summary – Doug Messeck (ASMFC LE) - 15 minutes
- Massachusetts DMF Current Proposal – Dan McKiernan (MaDMF) – 15 minutes
- 9:30 a.m.** Group questions and discussion
- 10:00 a.m.** Break
- 10:15 a.m.** Reconvene in Small Groups  
*Each small group will address potential recommendations to better address the 4 topic areas (above) that will lead to better enforcement options and understanding by the for-hire operators*
- 11:30 a.m.** Begin report-out of small groups -15 minutes each
- 12:00 p.m.** Lunch On-Site – Box lunches available for purchase
- 1:00 p.m.** Reconvene and complete small group report-outs
- 1:30 p.m.** Group discussion and consensus on recommendations to include in report
- 2:30 p.m.** Break
- 2:45 p.m.** Complexity of Regulations: Impact on Law Enforcement
- Don Frei (discuss NOAA Precepts)
  - Doug Messeck (discuss ASMFC LE Committee Guidelines for Resource Managers and Mechanisms for addressing questions at the state level)
- 3:15 p.m.** Group Discussion – Develop recommendations for resource managers to consider for improving enforceability of management decisions from the Law Enforcement and for-hire Perspective
- 3:45 p.m.** Recap Summary recommendations for MAFMC to consider at December Meeting
- 4:00 p.m.** Adjourn

## Appendix B. Participants in Mid-Atlantic Fishery Management Council Law Enforcement/For-Hire Workshop, November 13-14, 2018

<b>Participants in the Mid-Atlantic Fishery Management Council Law Enforcement/For-Hire Workshop, November 13-14, Philadelphia, PA</b>		
Name	State	Organization
Fred Akers	NJ	
Rick Bellavance	RI	Priority Charters
Howard Bogan	NJ	M/V Jamaica - United Boatmen
John Bunting		MD Natural Resources Police
Vince Cannuli	MD	
Joseph Cimino	NJ	NEW Jersey Dept. of Environmental Protection
Neil Delanoy	NY	Laura Lee Fleet
Greg DiDomenico	NJ	Garden State Seafood Association
Tony DiLernia	NY	MAFMC Member
Michelle Duval		MAFMC Contractor
Skip Feller	VA	Rudee Tours
Carl Forsberg	NY	Viking Fleet
Paul Forsberg	NY	Viking Fleet
Don Frei		NOAA Office of Law Enforcement
Jeff Gutman	NJ	Captain John Sportfishing, LLC
Sonny Gwin	MD	MAFMC Member
Victor Hartley	NJ	F/V Miss Ocean City
Steve Heins	NY	MAFMC Member
Dewey Hemilright	NC	MAFMC Member
Andy Loftus		MAFMC Contractor
Greg Mayer	NC	F/V Fishin' Frenzy
Brad McHale		NOAA Fisheries, HMS Division
Daniel McKiernan	MA	MA Division of Marine Fisheries
Doug Messeck	ASMFC	DE Natural Resources Police
José Montañez		MAFMC Staff
Laurie Nolan	NY	MAFMC Member
Adam Nowalsky	NJ	MAFMC Member
Joshua O'Connor	NOAA	NOAA Fisheries
Chris Petruccelli	NJ	NJ Division of Fish & Wildlife/Bureau of Law Enforcement
Michael Pirri	CT	Flying Connie Charters; CT Charter and Partyboat Assoc.
Mike Plaia	CT	
Jeffrey Ray		NOAA Office of Law Enforcement
Paul Risi	NY	

Michael Ruccio		NOAA Fisheries Greater Atlantic Region
Mary Sabo		MAFMC Staff
Robin Scott	NJ	Ray Scott's Dock
Matt Seeley		MAFMC Staff
Scott Simmons	MD	MD Natural Resources Police
David Stutt	U.S. Coast Guard	MAFMC Member
Wes Townsend	DE	MAFMC Member
David Waldrip	MA	Stellwagen Bank Charter Boat Association
Allan Weiss	PA	Blue Water Fishing Tackle Company
Sara Winslow	NC	MAFMC Member

**Appendix C. Issues for Discussion at MAFMC Law Enforcement/For-Hire Workshop, 2018.**

**IMPORTANT: This material is intended for use in discussions related to law enforcement and reporting issues commonly encountered by participants in Mid-Atlantic for-hire fisheries and should not be construed, or used, as legal advice.**

ISSUE	AGENCY	RESPONSE
1	The sale of golden tilefish and tuna by recreational vessels that do not possess permits allowing for the sale of those species or possess Coast Guard vessel safety requirements for commercial vessels.	
a.	Does a vessel that is permitted by HMS and allowed to sell fish also have to display its DO# on the hull?	<p>NOAA/HMS</p> <p>50 CFR states:            §635.6 Vessel and gear identification.            (a) Vessel number. For the purposes of this section, a vessel's number is the vessel's official number issued by either by the U.S. Coast Guard or by the appropriate state agency.</p> <p>(b) Vessel identification. (1) An owner or operator of a vessel for which a permit has been issued under §635.4, other than an HMS Angling permit, must display the vessel number—            [i – iii specifies criteria for displaying the number]</p> <p>(2) The owner or operator of a vessel for which a permit has been issued under §635.4 must keep the vessel's number clearly legible and in good repair and ensure that no part of the vessel, its rigging, its fishing gear, or any other material on board obstructs the view of the vessel's number from an enforcement vessel or aircraft.</p>

i.	Is there a database tracking expired versus current HMS permits?	NOAA/HMS	Yes, we have a database that has current and historical vessel permit data so we can track that.
b.	How do we compare the databases from HMS and USCG so we can determine who is required to have a USCG fishing vessel safety "sticker?"	NOAA/HMS	This is an ongoing discussion between HMS Management Division and the USCG given the unique attributes and authorities each group is operating under.
		USCG	The NOAA NMFS permitting data base and the CG MISLE database are not currently linked per se and fishery permits issued by NOAA NMFS are done so without a check from NOAA NMFS to see if a vessel has a current dockside safety exam before issuing any fisheries permit including an HMS permit. USCG does not
c.	Is USCG capable of determining, while on the water, which vessels have a General Category permit?	USCG	During boarding inquiries, USCG Boarding Officers query HMS permit holders as to whether or not they have the endorsement to sell and are fishing on it for that particular trip. That information, in addition to communications with NOAA OLE and their access to data, help inform what that vessel's actual activities are.
		NOAA/HMS	50 CFR HMS regulations state: §635.4 Permits and fees. a) General—(1) Authorized activities. Each permit issued by NMFS authorizes certain activities, and persons may not conduct these activities without the appropriate permit, unless otherwise authorized by NMFS in accordance with this part. In certain cases, additional permits may be required to authorize these same or related activities under federal, state or local jurisdictions. (2) Vessel permit inspection. The owner or operator of a vessel of the United States must have the appropriate valid permit on board the vessel to fish for, take, retain, or possess Atlantic HMS when engaged in recreational fishing and to fish for, take, retain or possess Atlantic tunas, swordfish, or sharks when engaged in commercial fishing. The vessel operator must make such permit available for inspection upon request by NMFS or by a person authorized by NMFS. The owner of the vessel is responsible for satisfying all of the requirements associated with obtaining, maintaining, and making available for inspection all required vessel permits.
d.	Is the USCG capable of determining which vessels have the For-Hire permit with or without the for sale endorsement?	USCG	During boarding inquiries, USCG Boarding Officers query HMS permit holders as to whether or not they have the endorsement to sell and are fishing on it for that particular trip. That information, in addition to communications with NOAA OLE and their access to data, help inform what that vessel's actual activities are.

		NOAA/HMS	See USCG response above.
e.	Does a vessel with a Charter HMS permit with or without an endorsement to sell fish, need a USCG dockside Safety Decal?	USCG	Charter/Headboats must have a Coastwise Endorsement on its Coast Guard Certificate of Documentation, or a State Registration that includes or designates commercial operations. Charter/Headboats must have a Coast Guard-licensed master when operating in that capacity, whether the vessel is federally-documented or state-registered.
f.	What are the limitations on commercial/recreational fishing on same trip?	NOAA/HMS	HMS issues commercial permits and recently required the HMS Charter/Headboat to identify their intent to sell via a permit endorsement.
		USCG	When a vessel operator intends to sell their catch, they are a commercial fishing vessel and subject to all the requirements associated with a Commercial Fishing Vessel; have a Fishery endorsement and all necessary fishing permits.
2	Responsibilities of for-hire captains regarding fishing regulation (e.g., minimum size limit, bag limit) on for hire-trips.		
a.	<i>Search of containers and/or personal belongings by licensed operator(s) of a for-hire vessel and seizure of illegal fish</i>		
i.	What are the for-hire operator's responsibilities for how to publicize fishing regulations on board?	NOAA/LE	Currently, there are no federal regulations that require for-hire operators to post fishing regulations on board the vessel, but States may have such requirements. GARFO strongly suggests operators practice due diligence and post current Federal fishing regulations on board the vessel. NOAA's OLE has published a compliance guide that provides a summary of recreational fishing regulations in Federal waters. The guide also includes current State recreational fishing regulations size and bag limits. It is available at: <a href="https://www.greateratlantic.fisheries.noaa.gov/sustainable/recfishing/regs/ne2018midrecguide.pdf">https://www.greateratlantic.fisheries.noaa.gov/sustainable/recfishing/regs/ne2018midrecguide.pdf</a>



ii.	What are the for-hire operator's responsibilities (as defined by either federal or state statute or administrative law) regarding the monitoring and/or enforcement of fisheries law on board a documented vessel?	NOAA/LE	For-hire operators must follow the regulations as defined in 50 CFR Part 648 concerning crew size, minimum fish size, and possession limits. For-hire operators must also follow applicable State regulations, which may differ from Federal regulations.
iii.	Does the captain have the legal right to search a customer's personal fish holding container (i.e., closed bucket, cooler with lid)?	NOAA/LE	An individual operating under a federal operator's permit, for commercial gain or otherwise, is not a government actor or a designated enforcement officer. An operator's permit alone does not create or convey any additional enforcement rights or authority beyond that of a private citizen. All operators and crew members should discuss their legal rights with their personal or company attorney. If an operator or crew member suspects possible fishery violations, notify state or federal law enforcement immediately.
iv.	Does the legal authority for the licensed operator of a for-hire vessel extend to the searching of a customer's food cooler, tackle box, gear/clothing bag on the "mere suspicion threshold" to check on possible fishery violations?	NOAA/LE	Please see above. (2.a.iii)
1	If so, from where does that authority originate?		
v.	Can for-hire operators be designated enforcement officers by a regulatory agency such as NMFS?	NOAA/LE	No, for-hire operators are not designated enforcement officers by NMFS through the ordinary course.
vi.	What level of suspicion is needed to allow a for-hire vessel operator to conduct one or multiple searches of their customers throughout a fishing trip?	NOAA/LE	An individual operating under a federal operator's permit, for commercial gain or otherwise, is not a government actor or a designated enforcement officer. An operator's permit alone does not create or convey any additional enforcement rights or authority beyond that of a private citizen. All operators and crew members should discuss their legal rights with their personal or company attorney. If an operator or crew member suspects possible fishery violations, notify state or federal law enforcement immediately.
vii.	Does a for-hire operator or his crew need to have "reasonable suspicion" to conduct a search?	NOAA/LE	Please see above. (2.a.vi)
viii	What if the customer refuses,	NOAA/LE	Please see above. (2.a.vi)

.	should/may/can force be used to search a customer's fish holding container or any other property such as tackle bags and food coolers?		
ix.	If on-water enforcement results in a physical confrontation, how much force can the operator and/or crew use?	NOAA/LE	Please see above. (2.a.vi)
1	Can that customer then be physically restrained for the rest of the fishing trip?	NOAA/LE	Please see above. (2.a.vi)
x.	If either law enforcement at the dock or the courts deem 'excessive' force was used to restrain a customer who refuses to comply with the operators instructions on searching his personal property, who is responsible?	NOAA/LE	Please see above. (2.a.vi)
xi.	If a for-hire operator is refused permission to search and a confrontation ensues, who will represent the for-hire operator? Is there a corporate legal fisheries counsel provided by NMFS or the Federal Government?	NOAA/LE	Neither NMFS nor the Federal Government provide for-hire operators with legal counsel for confrontations that may arise as a result of the operators' relationship with patrons.  If an operator or crew member suspects possible fishery violations, notify state or federal law enforcement immediately.

b.	<i>Duties of Crew/Vessel</i>		
i.	If the operator does his due diligence at the start of a fishing trip in announcing of regulations, providing posted regulations and measuring devices sufficient for an operator to do to place the burden of compliance on the customer?	NOAA/LE	Under federal regulations 50 CFR part 648, violations on board a vessel carrying more than one person may be attributable to the owner and operator of the vessel. <i>See e.g.</i> , Summer Flounder § 648.106 (c), Scup § 648.128 (c), Bluefish § 648.164 (b), Tilefish § 648.164 (c).  If an operator or crew member suspects possible fishery violations, notify state or federal law enforcement immediately.
ii.	What if a deckhand, charged with putting fish in customer's coolers as part of their job, places a fish "over the legal limit" into a customer's cooler? Who is responsible? How can anyone be sure how many fish may be in a cooler in high bag limit fisheries such as scup, especially co-mingled multi-patron coolers?	NOAA/LE	Under federal regulations 50 CFR part 648, violations on board a vessel carrying more than one person may be attributable to the owner and operator of the vessel.  If an operator or crew member suspects possible fishery violations, notify state or federal law enforcement immediately.
iii.	What if the container in which the fish is placed is not a private cooler but a "bucket" provided by the boat? Does that change the guilty party if a patron is found to have fish over the legal limit or an undersized fish?	NOAA/LE	Under federal regulations 50 CFR part 648, violations on board a vessel carrying more than one person may be attributable to the owner and operator of the vessel.  If an operator or crew member suspects possible fishery violations, notify state or federal law enforcement immediately.
iv.	If a customer has an illegal size fish or is over the legal limit, does the ticket go to the individual or the operator of the vessel no matter if in federal waters or at the dock?	NOAA/LE	Under federal regulations 50 CFR part 648, violations on board a vessel carrying more than one person may be attributable to the owner and operator of the vessel. The individual may also be responsible.  If an operator or crew member suspects possible fishery violations, notify state or federal law enforcement immediately.

c.	<i>Customer on water questions</i>		
i.	Can a person give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?	NOAA/LE	Yes, as long as they do not go over the pooled fish limit for a federally regulated Mid-Atlantic recreational species. For-hire charter party operators must also be aware of the applicable State regulations and limits.
ii.	Can a customer give fish to the crew while at sea in a fishery such as Summer Flounder or Black Sea Bass where the crew is excluded from keeping any fish?	NOAA/LE	Yes, as long as they do not go over the pooled fish limit for a federally regulated Mid-Atlantic recreational species. For-hire charter party operators must also be aware of the applicable State regulations and limits.
iii.	What is the point of excluding the crew from keeping fish, must they or the for-hire operator pay to go on someone else's boat in order to catch dinner?	NOAA/LE	As stated above, a crew member may keep a fish if he or she is given a fish from a customer for their dinner and the vessel is below the pooled fish limit.
d.	<i>VTR ISSUES</i>		
i.	If a for-hire vessel lands a fish and reports it on a Vessel Trip Report (VTR) and then accidentally brings it out on a trip immediately after the initial trip, must it be reported again?	NOAA	No, the fish must be reported only once
1	If the same fish is reported twice, are vessel operators perjuring themselves on the VTR?	NOAA	See response above (d.i)
ii.	If a vessel operator brings filleted fish out on a subsequent trip to eat, are they in violation by having filleted fish on board?	NOAA	Still looking into this question
iii.	If customers retain fish over the legal limit, how should it be reported on a VTR?	NOAA	All kept and discarded fish must be reported on the Vessel Trip Report

## **Appendix D. Introduction to Atlantic Highly Migratory Species Management - Presentation**

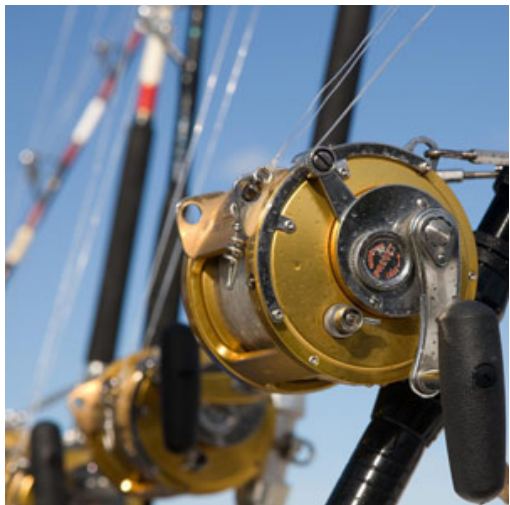


# Introduction to Atlantic Highly Migratory Species Management



**NOAA**  
**FISHERIES**

HMS Management  
Division



Bradley S. McHale  
Highly Migratory Species Management Division  
NOAA Fisheries

# HMS Management History

1976: Magnuson Fishery Conservation & Management Act passed

1990: "MSA" amended, giving authority to Secretary to manage:

- Atlantic tunas; listed by species
- Atlantic sharks; listed by group
- Atlantic swordfish and billfish; listed by family

- Secretarial Authority delegated to NMFS
- NMFS created HMS Management Division in 1992

1996: "MSA" amended again, renamed Magnuson-Stevens Act

- Required NMFS to establish separate HMS Advisory Panels for each FMP (Billfish & HMS)

# HMS Management Overview

Provisions of Magnuson-Stevens Act apply to HMS management (except Council-specific requirements)

- National Standards (Sec. 301)
  - Prevent overfishing
  - Promote safety at sea
  - Minimize bycatch
  - Use best available science
- FMP content requirements (Sec. 303)
  - Contain measures necessary to rebuild overfished stocks
  - Describe and identify essential fish habitat
  - Cumulative impact assessment

Some provisions unique to HMS

- Advisory Panel (Sec. 302(g)(4))
- Certain international considerations (Sec. 304(g)(1))
- Certain FMP requirements (Sec. 304(g)(1))



# ICCAT & ATCA

## International Commission for the Conservation of Atlantic Tunas (ICCAT)

- Management recommendations for tunas, billfish, swordfish, and (increasingly) sharks (generally as bycatch)
- Recommendations binding for United States (quotas, minimum sizes, trade restrictions, statistical documents, vessel lists, etc.)
- HMS Management Division implements ICCAT recommendations as necessary & appropriate through regulations under ATCA

## Atlantic Tunas Convention Act (ATCA) – 1975

- Domestic legislative authority to implement ICCAT recommendations
- Regulates all fishing activities (including research)
- Limits subsequent action that could increase or decrease any U.S. allocation of quota or F agreed to at ICCAT

# HMS AP Process vs. Council Process

## HMS AP

AP recommendations *advisory* in nature

NMFS decides what actions to consider and implement

HMS staff seek input of Science Center staff and other experts

AP meets ~ 2x/year

## Councils

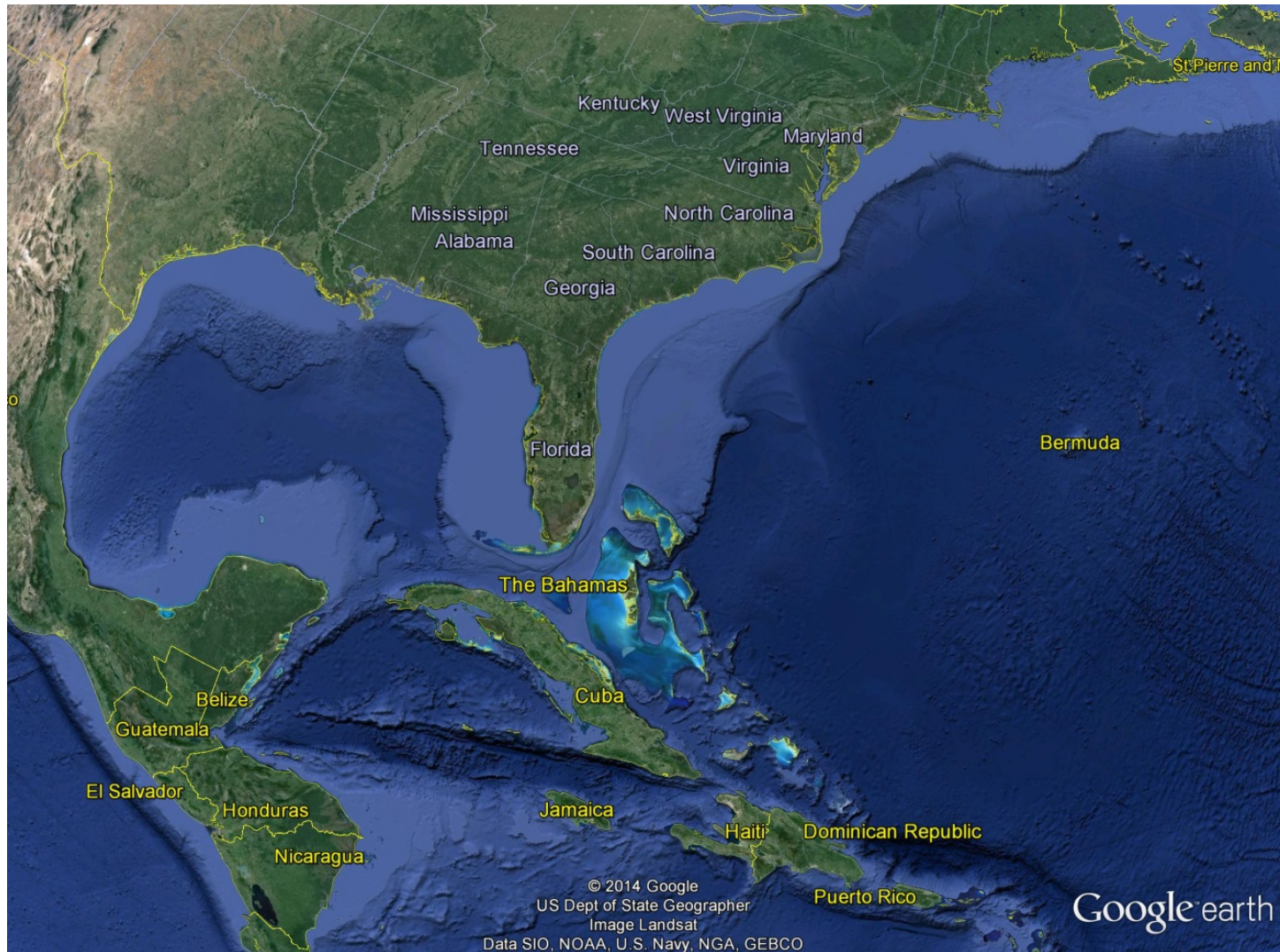
Council members *vote* to approve/disapprove actions to submit to NMFS

NMFS approves or disapproves action

Scientific & Statistical Committees provide expert advice to Council

Councils meet ~ 5x/year

# HMS Area of Jurisdiction



# HMS Regulatory Actions

## FMP Amendment with Environmental Impact Statement

- Scoping & scoping meetings
- Predraft & AP meeting
- Draft Amendment/EIS with proposed rule
- Public hearings & AP meeting
- Final EIS with final rule

## Regulatory Amendment with EIS

- Same as FMP Amendment (predraft optional)

## Regulatory Amendment with Environmental Assessment

- Draft EA with proposed rule
- Public hearings
- Final EA with final rule

## In-season actions and “framework” actions

# HMS Operational Infrastructure(A diffuse system)

## Permits

## Reporting

### Vessels

- Recreational
- Charter/Headboat
- Commercial
- Research

- HMS permits website** (HMS/Tuna/Swordfish Open Access)
- SERO** (SHK/SWO/Tuna Limited Access, Commercial Caribbean Small Boat, & Smoothhound)
- HMS HQ** (EFPs)
- HMS SE** (Tournaments)
- GARFO** (Incidental HMS Squid Trawl)

- GARFO** (Commercial VTR/NE FMP)
- SEFSC** (Logbooks, Tournaments, Observers)
- HMS permits website** (BFT catch, Non-Tournament landings)
- S&T HQ** (Recreational LPS, MD & NC)
- HMS HQ** (EFP)
- OIA HQ** (ICCAT)

### Dealers

- Domestic
- International

- SERO** (SHK/SWO Domestic)
- GARFO** (Tuna Domestic)
- International** (International Fisheries Trade Permit)

- HMS NE** (BFT Domestic)
- HMS HQ** (e-Dealer for SWO, SHK, BAYS)
- SF NSIL** (International BFT, SWO, BET)
- GARFO** (ONLY w/NE permit)
- SEFSC** (SE/GOM FMPs)

# Permit issuance background

- Prior to 1999, HMS vessel permits were issued by GARFO
  - HMS annual average ~ 30,000
  - GARFO annual average ~ 4,350
  - SERO annual average ~ 6,500
- 1999 to Present – HMS Open access permits issued via a web-based program – [hmspermits.noaa.gov](http://hmspermits.noaa.gov)
- Worked with HMS Advisory Panel, NOAA General Counsel, NOAA OLE is developing web-base system
- System links owner, vessel, and permit data and is designed that all info is tied to the vessel identifier USCG Doc. or State Reg.
- Puts onus on the permit holder to comply with not only NMFS regulations, but also USCG and state regs.
- Website also serves as a reporting portal and information resource.

# NMFS Permit Shop

Home Services Contact Help Info Center

Search... GO

## NMFS Permit Shop

Welcome to the National Marine Fisheries Service (NMFS) online Permit Shop, where you can buy and renew federal permits for Atlantic Highly Migratory Species (tunas, billfishes, swordfish, and sharks), update permit information, and report landings of bluefin tuna, blue marlin, white marlin, roundscale spearfish, sailfish, and swordfish.

### Permits



Purchase or renew an HMS permit

[View details »](#)

Shark Endorsement - DEMO ONLY

### Fish Reporting



Report the catch and landings of bluefin tuna, swordfish, and billfishes

[View details »](#)

Mobile app download

### Tournaments



Register an HMS tournament

[View details »](#)

### What's New

#### ■ Preliminary 2018 Commercial BFT Landings

As of November 5, 2018, preliminary commercial landings for the 2018 fishing year are as follows:

[More ...](#)

#### ■ General category fishery reopening for three days, October 31, 2018 Through November 2, 2018

The BFT General category fishery will reopen for three days within the October through November 2018 subquota period, effective 12:30 a.m., October 31 through 11:30 p.m., November 2, 2018. [More ...](#)

#### ■ General category October-November bluefin tuna fishery: transfer and closure (October 5)

NMFS transfers 55 mt of Atlantic bluefin tuna to the General category for the October through November 2018 subquota period and closes the fishery 11:30 pm Friday, October 5, 2018, through November 30, 2018. [More ...](#)

[View details »](#)



National Marine Fisheries Service

Customer Service

Phone: 1-888-872-8862

Monday through Friday 8am to 5pm EDT

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Inbox (6) - brad.mchale@noaa.gov x NMFS Permit Shop Administratic x

https://admin.hmspermits.noaa.gov/basicApplicationData

Apps SharePoint Imported From IE Web TA E2 Travel Admin Permits Marine Forecast HMS Homepage Pay.gov - Home NOAA Fishtank IRM Service Desk GARFO Requests LPS USCG checklist eCFR HRConnect SERO FOIA

Please enter the information requested below to start the application process and click Continue. The "Tab" key may be used to advance from one field to the next.

1 Basic Info. 2 Additional Info. 3 Category 4 Confirm Info 5 Review Cart 6 Select Delivery 7 Confirm Order 8 Pay Now

### Owner Information

First Name . BRAD

Middle Initial

Last Name . MCHALE

Suffix

Owner Type . INDIVIDUAL/SOLE PROPRIETOR

Business/Corporation Name

Address Line One . 55 GREAT REPUBLIC DR

Address Line Two

City . GLOUCESTER

State . MA

Zip Code . 01930

Note: Please do not include dashes or dots in the phone number.

Daytime Phone Number .

Mobile Phone Number

Fax Number

---

### Basic Vessel Information

NMFS requires at least one of the following two vessel identifiers. Please provide both if available. Note: Only VALID U.S.C.G. Vessel Documentation numbers or State Registration numbers are acceptable. Temporary registration numbers are NOT allowed.

Coast Guard Documentation

State Registration MS0032BM

(Coast Guard Documentation OR State Registration. State registration numbers may only contain the characters A-Z and 0-9) \*

I am the owner/operator of this vessel OR I am fully authorized by the owner/operator to complete this transaction.

You MUST check this box in order to proceed with this transaction.

\* Indicates Required Entry

4:44 PM 11/8/2018



## Select Permit

Please review the information. For the permit you select, specify a gear-type, and click select next.

1 Basic Info 2 Additional Info 3 Category 4 Confirm Info 5 Review Cart 6 Select Delivery 7 Confirm Order 8 Pay Now

Below are the permit options for this vessel. DO NOT PROCEED unless you fully understand the differences between each permit and are sure of the permit you wish to select for this vessel.

ANY CORRECTION TO YOUR PERMIT MUST BE DONE WITHIN **45 CALENDAR DAYS** OF THE DATE OF ISSUANCE.

If the permit you are looking for is not listed below, there may be an issue/conflict with the permits already issued to this vessel. Please contact Customer Service at 1-888-872-8862, Monday through Friday, 8am to 5pm EST, for additional assistance.

You currently have a **ANGLING** permit, with **ROD AND REEL** indicated as your primary gear.

**SHARK ENDORSEMENT**  
Shark endorsement will be added to your selected category.

Open Access

**ATLANTIC HMS ANGLING**  
All private vessel owners/operators recreationally fishing for and/or retaining regulated Atlantic Highly Migratory Species (Atlantic tunas, sharks, swordfish and billfish) for personal use in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, must obtain an Atlantic Highly Migratory Species (HMS) Angling permit. 2018 Atlantic HMS Angling permits cost \$20.00 and will be valid from the date of issuance through December 31, 2018.

**ATLANTIC TUNAS GENERAL**  
Owners/operators of vessels fishing commercially for Atlantic bluefin, bigeye, yellowfin, albacore, or skipjack tunas using a combination of rod and reel, harpoon, and/or handlines must obtain a General category permit. This permit is required in the Atlantic, which includes the Gulf of Mexico and Caribbean Sea. Vessels permitted in the General category are eligible to sell giant or large medium bluefin tuna. **This permit is required if fishing in Federal or State waters and because it is a commercial permit the U.S. Coast Guard Safety Gear Regulations will apply. Sale of tuna catch is permitted with this permit. Finally, if fishing is taking place in a registered recreational HMS fishing tournament only, this permit will also allow a vessel to recreationally fish for sharks, swordfish, and/or billfish.**

**ATLANTIC HMS CHARTER/HEADBOAT**  
Owners/operators of charter/headboat vessels fishing for and/or retaining regulated Atlantic Highly Migratory Species (Atlantic tunas, sharks, swordfish and billfish) in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, must obtain an Atlantic Highly Migratory Species (HMS) Charter/Headboat permit. To be eligible for this permit category there MUST be a licensed Coast Guard Captain onboard the vessel during all HMS fishing activities regardless if they are commercial, recreational, or fee based in nature. This permit allows a vessel to fish both commercially for tunas and swordfish, and recreationally for HMS, although not on the same day. This permit is required if fishing in Federal or State waters and because it is a commercial permit the U.S. Coast Guard Safety Gear Regulations may apply. This permit will also allow a vessel to fish in registered recreational HMS fishing tournaments.

**CHARTER/HEADBOAT COMMERCIAL SALE ENDORSEMENT**  
If you want a Charter/Headboat permit, and plan to sell ANY HMS (tuna, swordfish, sharks), then you must add the Charter/Headboat Commercial Sale Endorsement. Note that you will also need to obtain a limited access shark permit if you want to sell sharks. For further information about the Charter/Headboat Commercial Endorsement, click [here](#).

**ATLANTIC TUNAS HARPOON**  
Vessel owners who conduct a commercial harpoon fishery for Atlantic tunas, including large medium and giant bluefin tuna, must obtain a permit in the Harpoon category. Vessels permitted in the Harpoon category may not participate in the General category fishery.

admin.hmspermits.noaa.gov says

**WARNING:** Selection of the Commercial Sale endorsement subjects your vessel to US Coast Guard safety requirements for commercial fishing vessels, including life rafts, emergency positioning beacons, immersion suits, and other equipment. If you cannot meet these requirements, then you should not select this endorsement, and cannot sell HMS.

OK

Cancel

Select Gear Type \*

select

\*  I fully understand the consequences of my choice of vessel permit category. I have also read and understand the **45-day** category change restriction.

You MUST check this box in order to proceed with this transaction.

## Application Data Confirmation

Please, check your permit information, documentation number, and category carefully. ANY CORRECTION TO YOUR PERMIT CATEGORY MUST BE DONE WITHIN 45 CALENDAR DAYS OF THE DATE OF ISSUANCE. While we encourage you to print this page for your records and future inquiries, THIS IS NOT YOUR PERMIT.

- 1 Basic Info
- 2 Additional Info
- 3 Category
- 4 Confirm Info
- 5 Review Cart
- 6 Select Delivery
- 7 Confirm Order
- 8 Pay Now

### Permit Information

Permit Type: 2018 ATLANTIC HMS  
 Shark Endorsement: YES  
 CHB Commercial Sale Endorsement: YES  
 Permit Category: ATLANTIC HMS CHARTER/HEADBOAT

### Owner Information

Name: BRAD MCHALE  
 Owner Type: INDIVIDUAL/SOLE PROPRIETOR  
 Business Entity Name:  
 Email: BRAD.MCHALE@NOAA.GOV  
 Address: 55 GREAT REPUBLIC DR  
 GLOUCESTER, MA 01930-  
 Daytime Phone: (978) 2813236  
 Mobile Phone: (978) 5486405  
 Fax Number: 5486405

### Vessel Information

CG Doc. Number:  
 State Reg. Number: MS0032BM  
 Vessel Name: PT - 73  
 IMO Number:  
 Home Port (City, State): GLOUCESTER, MA  
 Principal Port (City, State): GLOUCESTER, MA  
 Vessel Length (to nearest foot): 19  
 Year Built: 2002  
 Crew Size: 2  
 Construction: FIBERGLASS  
 Gross Tonnage: 1  
 Propulsion: GASOLINE  
 Main Engine Horsepower: 130  
 Number of Passengers: 0  
 Hold Capacity (if applicable): 0

I certify under penalty of perjury under the laws of the United States of America that the information given on this form is true and correct, and that I have full authority to execute this form as, or on behalf of, the secured party, lien creditor or encumbrancer indicated herein.

Re-enter Data

Add to Cart

I certify under penalty of perjury under the laws of the United States of America that the information given on this form is true and correct, and that I have full authority to execute this form as, or on behalf of, the secured party, lien creditor or encumbrancer indicated herein.

Re-enter Data

Add to Cart

# HMS Charter/Headboat Permit Revision

## ACTION

- Starting with 2018 HMS Charter/Headboat permits - Vessels are prohibited from selling any catch of HMS unless they obtain a “commercial sale” endorsement as part of the permit.

## BACKGROUND

- USCG updated its policies in 2016 on dockside examinations and vessel safety requirements for commercial fishing vessels
- These new requirements extend to any fishing vessel that can sell fish, including HMS Charter/Headboat vessels
- HMS Charter/Headboat vessels currently have the ability to sell their catch, however, only about 7% of vessels have sold fish in recent years
- To date: 3,300 HMS Charter/Headboat permits issues, 1,250 w/endorsement (38%)

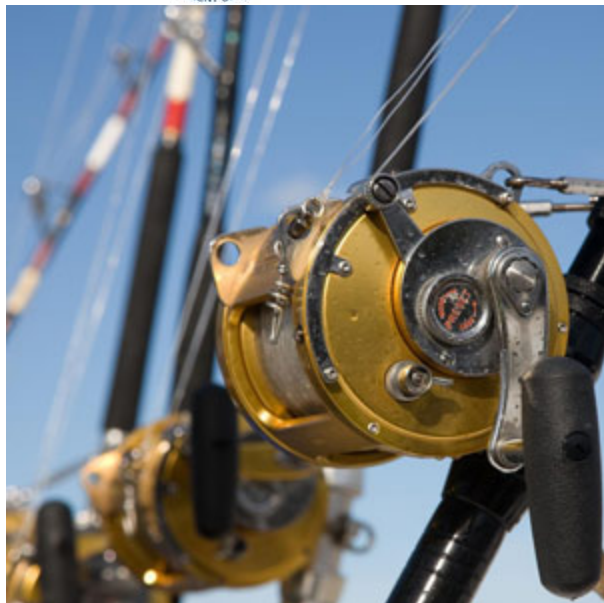
# Purpose of the Action

- This action would create a separate regulatory provision for commercial sale of HMS by Charter/Headboat vessels
- Revised the regulations such that Charter/Headboat vessels that do NOT intend to sell any catch would NOT be subject to the updated USCG safety requirements for commercial fishing vessels
- Charter/Headboat vessels that DO wish to sell their catch WOULD be subject to the USCG safety requirements for “commercial” fishing vessels





# Questions?



## **Appendix E. State-by-State Responses to Four Specific Law Enforcement Questions, November, 2018 and Guidelines on For-Hire Operator Responsibility for Violations**

**IMPORTANT: This material is intended for use in discussions related to law enforcement and reporting issues commonly encountered by participants in Mid-Atlantic for-hire fisheries and should not be construed, or used, as legal advice.**

**Georgia – Bob Lynn**

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

No

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

No. In most cases it is the common practice that the captain is the responsible party of his vessel. If a person admits to a violation or a LE Officer can prove a person is in violation then that person is charged, not the captain.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit?**

Not at sea. Once the person is back at the dock he can give the fish to anyone as long as the person they are giving it to is not over the possession limit for that species.

**What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

Answer above applies to this question also.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

Crew can keep fish if the person gives it away. Transfer cannot happen at sea and crew member cannot be over the legal possession limit for that species.

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**Maine** – Rene Cloutier

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

No

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

Maine law does not “automatically” hold the Captain is responsible. Maine law defines possession as “to have in one’s custody or control, either personally or by another who is under one’s control” If an officer is able to determine that the violation occurred without the consent or knowledge of the Captain the violator would receive the summons otherwise the Captain and the violator would get a summons.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

Most Maine laws concerning bag limits address “take” so giving the fish away doesn’t absolve the fisher from his /her personal bag limit. In the case where giving the fish away does not put either person in a possession or take violation it would be ok.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

Same as above if giving the fish away does not put either person in a possession or take violation it would be ok

---

**Maryland** – Robert Kersey

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

No our regulations do not allow the captain to search, only patrol officers can search vessels and coolers

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

the customer is responsible unless it can be articulated that the captain had knowledge of the violation

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

If they are at their legal limit they cannot continue to fish and give away fish that have a possession or daily catch limit because they would be in violation of the catch limit

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

As long as it doesn't violate possession and license requirements

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### Massachusetts-Major Patrick Moran

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

While the Captain of a for hire vessel in Massachusetts is mandated by regulations to do a number of things prior and during the trip search and seizure is not one of them.

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

The Captain of the vessel is not automatically responsible however we do have language in our CMRs ,(Regulations), that allow an officer to charge the Captain if the violation merits that action. We have done this successfully on numerous occasions. The language is displayed in the attachment.



**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

No regulation against a customer giving another customer a legal fish. If the fish given puts that customer over the limit that person will be charged.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

There is no language that prevents this as long as the fish is legal.

---

### **New Hampshire-Lt. Michael Eastman**

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

There is nothing in NH law or rule that says that a Captain has the right to search customers coolers but I do believe that they make it a part of there policy.

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

In NH, we would look to the customer first under our "possession" law but he Captain could be held responsible as well in our Inclusions law.

207:2 Inclusions. –No person shall at any time of the year take, in any manner, number, or quantity, fish, game, fur-bearing animals, or protected birds, or buy, sell, offer or expose for sale the same, or any part thereof, transport or have the same in his possession, wherever taken or killed, except as permitted in this title; and this prohibition shall be a part of each permissive section or part thereof. A person doing anything prohibited or neglecting to do anything required by this title, with reference to such fish, game, fur-bearing animals, and protected birds, shall be deemed to have violated this section. A person who counsels, aids or assists in a violation of a provision of this title, or knowingly shares in any of the proceeds of said violation by receiving or possessing either fish, game, fur-bearing animals, or protected birds, shall be fined or imprisoned as provided in this title in the case of a person guilty of such violation.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

Any fish that the customer gave away would be included in their limit of fish.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

Yes

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### **New Jersey – Jason Snellbaker**

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

NJ-Nothing in our regulations specifically state Captain's responsibilities.

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

NJ-The Captain is not automatically responsible. It basically comes down to what we can articulate based on the totality of the circumstances and the judge's decision in court.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

NJ-Nothing in our regulations prevents someone from giving a fish away to another person. If the fish given away puts the person who caught it over the limit then the person who caught the over limit fish can be charged for taking over the daily possession limit.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

NJ-Nothing in our regulations prevent this. Usually, it's the crew from the for-hire vessels catching fish and giving them to their customers. This is done when fishing is slow or the crew is looking for better tips.

## New York - Sean Reilly

### Background from NY Laws and Regulations

#### NY ECL General Provisions

11-1301.2. Except when taken pursuant to section 11-0515 or 11-0517 of this article, or when taken in nets as provided by title 15 or article 13, fish named by regulation adopted pursuant to section 11-1303 of this title shall not be taken in excess of the daily or seasonal catch limits established by such regulation.

3. Fish shall not be taken contrary to the restrictions contained in any regulation of the department, made pursuant to any provision of the Fish and Wildlife Law

#### NYCRR 40.1

a(1) A trip limit means the maximum amount of fish that can be possessed on board or landed by a vessel during a period of time, not less than 24 hours, in which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port. A vessel or fisher shall not land more than a possession limit or trip limit per species in any one calendar day,

(b) General provisions.

(1) It is unlawful for any person to take or possess on the waters of the marine and coastal district, as defined in Environmental Conservation Law (ECL) Section 13-0103, or the shores thereof, or anywhere inland from such shores in the counties of Suffolk, Nassau, Queens, Kings, Richmond, New York, Bronx, and those portions of Westchester County within the marine and coastal district bordering on Long Island Sound, fish of the species listed in Tables A, B or C:

(i) other than during the open season specified for the species;

(ii) of a size less than that specified for such species or outside of any slot size limit specified for such species;

(iii) in excess of the possession limit or trip limit specified for such species, except that where a weekly limit or biweekly limit is specifically authorized by the department pursuant to subdivision (i) of this section, such fish shall not be taken or possessed in excess of the weekly limit or biweekly limit specified for such species.

#### 71-0903. Accessories guilty as principals.

1. A person who counsels or aids in a violation of any provision of the Fish and Wildlife Law or a regulation or order of the department pursuant to the Fish and Wildlife Law, or knowingly shares in any of the proceeds of such a violation by receiving or possessing fish, game, wildlife, shellfish, crustacea or protected insects is guilty of the violation which he counsels or aids, or the proceeds of which he knowingly shares.

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger**

**compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

Nothing allowing it but nothing preventing it. The captain does have to complete a VTR accurately with the total catch.

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

Our regulation refers to the fisher and does not put liability on the charter operator or crew. Anyone aiding in illegal take is guilty as well under 71-0903. If crew filets, takes direct possession for storage, or is observed dehooking and placing into container for fare, we will write the crew member or captain if he chooses to take responsibility for the crew's action. We generally don't treat the operating the charter as aiding or knowingly proceeding from the fare's illegal take.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

Legal fish can be transferred between fishermen on the same boat. Our laws and regulations allow take or possess less than legal possession limit so technically the transferred fish would still count against the catchers limit. We do not have an individual stringer rule at this time and we allow pooling of fish in a group.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

Crew members can fish and keep their own fish or be given fish legally possessed by customers with an exception for Porgy over the base limit of 20. The special limit up to 45 may only be taken by paying fares. We do not allow commercial sale from a charter for most species.

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**Pennsylvania – Larry Furlong**

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

No. Our law does not give search and seizure authority to the captain of for hire vessels.

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

The Captain is responsible to ensure all laws of the Commonwealth are abided by AND holds the captain responsible for all violations by the customer.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit?**

Yes

**What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

The customer can only catch, kill or possess up to the daily legal limit of fish. IF he/she gives away a fish that places him and/or another customer over the legal limit, then he, the receiver of the fish AND the captain are in violation.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

Yes. As long as the customer does not violate the legal catch limit, he may give the fish to anyone provided they do not possess more than their legal limit.

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## South Carolina - Christopher Garner

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

No specific laws addressing this

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

Captain or patron (or both) responsibility by our law would always come down to reasonable knowledge and the totality of the circumstances. In SC we have no specific laws that state the

for-hire permit holder, for-hire vessels, for-hire operator are directly liable for violations of rec size, possession, or bag limits.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

No language in our laws that pertain here other than the per person per day daily catch limits.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

No specific laws addressing this issue. We would allow it as long as fish species did not exceed daily catch limits.

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**Virginia -Rick Lauderman**

(note: these responses were added following the November 2018 workshop)

**a. Do your state regulations or enforcement allow the captain of a for-hire fishing vessel to search containers and/or personal belongings for purposes of ensuring passenger compliance with fishing regulations and seizure of any illegal fish (species, size, creel) found during those searches?**

No, the captain only may search a “common hold” area for compliance.

**b. Under your state regulations and enforcement, if a violation (e.g., over limit, under size) is discovered on a for-hire vessel by a state law enforcement officer, is the captain of the vessel automatically responsible (e.g., instead of the customer or crew member who may have caused the violation)?**

Only if the violation is discovered in a “common hold” container.

**c. Can a customer give a legal fish away to another customer if they themselves are not over the legal limit? What if they are at the legal limit and the fish to be given away would make them over the legal limit?**

Yes, as long as the person receiving the fish is following species, size and creel limits. If the customer receiving the fish puts them over the limit it they would be in violation.

**d. Can the crew of a for-hire vessel keep fish (for their personal consumption) that are caught by a customer?**

Yes, as long as the crew member is following species, size and creel limits.

## **State-by-State Guidelines on For-Hire Operator Responsibility for Violations** Compiled by Atlantic States Marine Fisheries Commission Law Enforcement Committee, 2017

**IMPORTANT: This material is intended for use in discussions related to law enforcement and reporting issues commonly encountered by participants in Mid-Atlantic for-hire fisheries and should not be construed, or used, as legal advice.**

### NEW HAMPSHIRE RSA 207:2

207:2 Inclusions. - No person shall at any time of the year take, in any manner, number, or quantity, fish, game, fur-bearing animals, or protected birds, or buy, sell, offer or expose for sale the same, or any part thereof, transport or have the same in his possession, wherever taken or killed, except as permitted in this title; and this prohibition shall be a part of each permissive section or part thereof. A person doing anything prohibited or neglecting to do anything required by this title, with reference to such fish, game, fur-bearing animals, and protected birds, shall be deemed to have violated this section. A person who counsels, aids or assists in a violation of a provision of this title, or knowingly shares in any of the proceeds of said violation by receiving or possessing either fish, game, fur-bearing animals, or protected birds, shall be fined or imprisoned as provided in this title in the case of a person guilty of such violation.

Source. 1935, 124:1. RL 241:2.

### SOUTH CAROLINA

In SC we have no specific laws that state the: for-hire permit holder, patron, for-hire vessels, for-hire operator are directly liable for violations of rec size, possession, or bag limits.

SC would support a regulation similar to the MA regulation, per Colonel Frampton. However, we would still use the discretion that we have available to us now when encountering these violations.

How we handle these violations in SC. If we check a charter (6-pack for-hire) and find violations we charge the Captain of the vessel. This has held up in court for us on numerous occasions. On a head boat we have charged individuals, mates and/or Captain for violations and this has held up in court for officers as well. These charges have held up for us in the different courts we have along our region as with any case some require getting statements from the paying customers (patrons) in order to assist in our prosecution.

## MAINE

### §12858. GUIDE LICENSE VIOLATIONS

1. Guide license violations. A person licensed as a guide may not violate the following provisions.

A. A person licensed as a guide may not knowingly assist a client in violating any of the provisions of this Part.

(1) If the violation committed by the client is a civil violation, a person licensed as a guide who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) If the violation committed by the client is a civil violation, a person licensed as a guide who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year period commits a Class E crime.

(3) If the violation committed by the client is a criminal violation, a person licensed as a guide who violates this paragraph commits a Class E crime. [2003, c. 614, §9 (AFF); 2003, c. 655, Pt. B, §422 (AFF); 2003, c. 655, Pt. B, §318 (RPR).]

B. A person licensed as a guide who has knowledge that a client has violated the provisions of this Part shall, within 24 hours, inform a person authorized to enforce this Part.

(1) A person who violates this paragraph commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

(2) A person who violates this paragraph after having been adjudicated as having committed 3 or more civil violations under this Part within the previous 5-year

period commits a Class E crime. [2003, c. 614, §9 (AFF); 2003, c. 655, Pt. B, §422 (AFF); 2003, c. 655, Pt. B, §318 (RPR).]

## RHODE ISLAND

F. Possession limit compliance.

1. Licensed party/charter vessels: Possession limit compliance aboard licensed party/charter vessels is determined by dividing the number of fish by the number fishermen onboard the boat.
2. Multiple licensed recreational fishermen fishing from a single vessel: Possession limit compliance aboard vessels with multiple licensed recreational fishermen will be determined by dividing the number of fish by the number of licensed recreational fishermen on board said vessel, except for tautog, which has a maximum possession limit per vessel.



3. Size, possession, and daily limit violations on board vessels: In any instance when there is a violation of the size, possession, or daily limit on board a vessel carrying more than one person when the catch is commingled, the violation shall be deemed to have been committed by the owner of the vessel, or the operator of the vessel, if the owner is not on board.
4. A person who takes marine product /species utilizing a vessel and also without the assistance of a vessel is only allowed one possession limit per calendar day unless an alternative period of time is specifically provided in the governing regulation.

## MASSACHUSETTS

Liability for Violations Onboard For-hire Recreational Vessels. With respect to recreational for-hire fishing operations permitted in accordance with 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, an individual patron, as well as the named for-hire permit holder or for-hire vessel operator, may each be held liable for any violations of recreational size, possession or daily bag limits established at 322 CMR that are attributable to the patron fishing onboard the for-hire recreational fishing vessel. In enforcing this provision, law enforcement officers may exercise their discretion on whether to cite the named for-hire permit holder or for-hire vessel operator for such violations in instances where the best industry practices required by 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* have been used on the for-hire vessel.

## PENNSYLVANIA

51.128 Compliance with Laws and Regulations – Charter boat operators and fishing guides shall comply with all Federal, State, and local laws and regulations. Charter boat operators and fishing guides are responsible for ensuring that their employees, passengers, and customers comply with all fishing and boating laws and regulations.

The first section has been primarily used when operators refuse to obtain additional licenses or permits, such as USCG MMC. This has been successfully used to deny permit applications, as a basis for turning information over to USCG for Federal investigation and even to suspend already issued permits. As far as I know it has not been tested by the courts.

The second section is what officers rely on when they encounter violations by customers including unlicensed anglers or those in violation of other regulations. Although this has not been applied as frequently as might be possible (probably due to the officer not realizing the suspects were charter or guide customers) there have been multiple cases this season alone. AS far as I know this has been successful in every incident. I personally only aware of one case which proceeded to court –a Philadelphia case in 2014/2015??- and neither the court nor the defense attorney raised any objection.

## **Appendix F. Massachusetts DMF: Improving Compliance in For-Hire Fisheries-Presentation and Proposal**

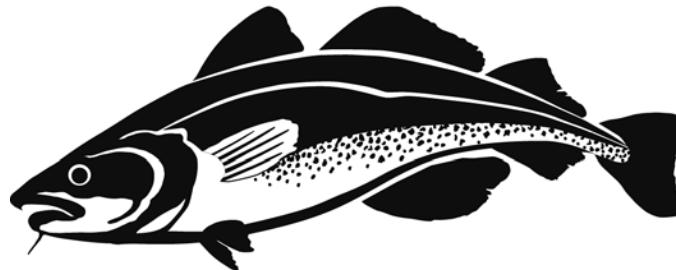
# Improving Compliance in For-Hire Fisheries

**MAFMC Law Enforcement / For-hire Workshop**

**November 14, 2018**

*Daniel McKiernan, Deputy Director*

**Marine Fisheries**  
Commonwealth of Massachusetts



# Issues

- Recent well-publicized black sea bass & scup for-hire violations
  - May 2018 New Bedford
  - September 2017 Montauk
  - May 2015 New Bedford
- ASMFC Management Board recently proposed addendum language to hold operators liable
  - Board opted to “pump the brakes” – and hold this workshop.



# Issues

- Modern conservation restrictions are constraining anglers' harvest – (even as stocks recover).
  - Size limits, Bag limits, Closed Seasons
- Interstate Management Plan sees states competing for miniscule increases in catch.
- Non-compliance evokes cynicism & anger toward fishery management system
  - Private anglers criticizing for-hire operations
  - Compliant or-hire operations criticizing Non-compliant ones



# 5 Background on Permit status

- Recreational anglers aboard party/charter vessels exempt from obtaining a MA Saltwater Rec. Permit.
- Those anglers fishing activities are authorized under the authority of the Vessel's For-Hire Permit.
  - For hire vessels required to post rules and provide measuring devices
- MA DMF frequently uses administrative actions to revoke or suspend permits for severe fisheries violations – both commercial and recreational.
  - But individual anglers aboard for-hire permits are not issued permits – **Nothing to suspend or revoke.**



# Statement of the Problem

- Some for-hire vessels observed by MRIP samplers & MEP of elevated levels of non-compliance.
- Culture of Noncompliance
  - “Abandoned coolers” upon seeing Env. Police
  - Some captains heard coaching clients against complying or cooperating
  - Multiple police officers required to inspect a party boat vessel and its anglers
  - Crews not doing their job. Seen fishing for the “pool” instead of assisting/inspecting anglers – sometimes selling fish!



# Challenges

- Difficult to supervise every angler
  - High Ratio of anglers to crew
- Multi-decade tradition of catching large quantities of scup and sea bass
- Reports of some unruly anglers refusing to cooperate
- Loss of customers to competing operations when rules are enforced.





# Past actions – Part A (2014)

- Captains and/or owners made liable for infractions by clients.

(C) Liability for Violations Onboard For-hire Recreational Vessels. With respect to recreational for-hire fishing operations permitted in accordance with 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels*, an individual patron, **as well as the named for-hire permit holder or for-hire vessel operator, may each be held liable for any violations of recreational size, possession or daily bag limits established at 322 CMR that are attributable to the patron fishing onboard the for-hire recreational fishing vessel.** In enforcing this provision, law enforcement officers may exercise their discretion on whether to cite the named for-hire permit holder or for-hire vessel operator for such violations in instances where the best industry practices required by 322 CMR 7.10(5): *Permit Requirements Applicable to For-hire Vessels* have been used on the for-hire vessel.



# Past actions – Part B(2014)

- All black sea bass and scup filets must have skin attached
- Black Sea Bass and Scup. Recreational fishermen may fillet black sea bass and scup, provided the recreational fisherman complies with the following conditions to determine compliance with the daily recreational bag limits:
  - **a. it shall be unlawful to possess a fillet that does not have all the skin affixed until the recreational fisherman reaches their domicile or temporary residence; and**
  - b. it shall be unlawful to possess more than two times the number of fillets than the recreational bag limits for black sea bass and scup specified at 322 CMR 6.28.



# Past actions – Part C(2018)

- Fines and penalties legislation enacted
  - Non-criminal fines doubled from \$50 to \$100
  - Plus a \$10 per non-conforming fish fine

Out of state anglers may opt to never pay the fines.



# Notable black sea bass/scup violations

- MA **charter** boat fishing out-of-season and were 67 fish (BSB) over the limit (2015). **Permit Revoked**
- NY-based party boat seasonally operating out of New Bedford many clients with violations (2015). **Settlement Agreement with conditions**
- New Bedford based party boat had 37 clients and 33 were in violation (2018). **Settlement Agreement with conditions**



## Tourists cited for overfishing on New Bedford boat (Boston Globe 5/31/18)

*.....The people on board, who were from South Carolina and New York, had caught black sea bass that weighed 560 pounds over the legal limit — including 33 fish that didn't meet the 15-inch-long minimum requirement — and scup that was 90 pounds over the legal limit, police said. Officers also found one undersized striped bass and one undersized tautog on the boat.*



*The South Carolina passengers were part of a church group traveling with their pastor, Moran said. “The pastor told us that since only a few of the congregation could come up to fish, they wanted to catch as much fish as they could to take back for the church fish fry,” he said. “He then asked us to pray for him.”*

*Officers issued multiple citations in response to the violations, and the illegal fish was donated to the New Bedford Salvation Army, police said.*

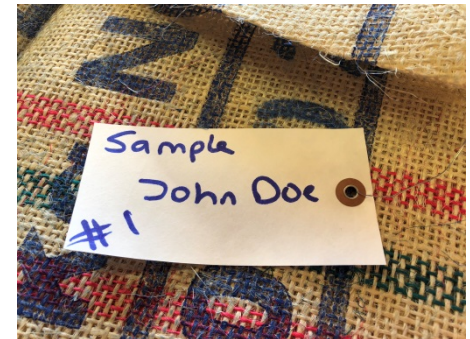
*“This is early in the season,” Moran said. “This just started, and it’s not going to be good for the fishery if this is how it goes all summer.”*



# <sup>13</sup>Possible Solutions to Foster Compliance

(Gleaned from past settlement agreements)

- Printing of bag & size rules on all tickets sold
- Crew needs to promote compliance:
  - Dedicate effort to inspect the anglers & catches.
  - Restrict crew fishing activities
- Segregations of catches (Possible additional separation of Black Sea Bass)
- Issuance of bags by vessel operator
  - Labeling of all “bags” (or containers) with angler name or number
  - Creation of a passenger list to link up with catches



# Questions?





David E. Pierce, PhD  
Director

# Commonwealth of Massachusetts

## Division of Marine Fisheries

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Ronald S. Amidon  
Commissioner

Mary-Lee King  
Deputy Commissioner

### MEMORANDUM

**TO:** Marine Fisheries Advisory Commission

**FROM:** David E. Pierce, Director

**DATE:** October 5, 2018

**SUBJECT:** **Proposed Modifications to For-Hire Compliance Regulations**

#### Summary

This memorandum details proposals for new regulations to enhance compliance in the for-hire fleet, particularly those head boats that participate in the South Coast and Cape Cod area scup and black sea bass fishery. A MFAC Subcommittee was formed to discuss these matters and met on September 10 with a MA Environmental Police (MEP) representative and DMF staff involved with recreational fisheries and regulations. The objective of the subcommittee was to consider and analyze new management strategies that could help improve compliance aboard for-hire vessels without substantially burdening their operators or limiting their ability to safely and profitably conduct business. The results of the meeting were briefly discussed at the September 11 MFAC business meeting, but this memorandum presents more detailed proposals for new rules in 2019.

#### Background

In 2014, DMF promulgated a regulation that held for-hire permit holders (and operators) responsible for the fishing activity of their patrons. Since its implementation, the regulation has been resulted in multiple incidents involving gross non-compliance on for-hire vessels. Three of these incidents have resulted in DMF initiating adjudicatory proceedings to suspend or revoke for-hire permits. This included two hearings to address substantial violations on head boat operations (Viking Starship in 2016 and Captain Leroy in 2018), both of which concluded with a settlement agreement putting additional constraints on the vessel's operations in order to retain its for-hire permit.<sup>1</sup> These agreements are summarized in the bullets below:

- The settlement in the Matter of Forsberg (Viking Starship) required the operation to: (1) provide trip tickets to all patrons informing them of the various rules governing the target species; (2) provide conspicuously posted signs of applicable rules and regulations throughout the vessel; and (3) frequently announce said rules to patrons over their loud speaker. Additionally, Forsberg volunteered to not retain the crew involved in the incident

<sup>1</sup> The other proceeding dealt with a charter boat permit (In the Matter of Botelho, [CBP-167240-15-SO](#)). This matter proceeded to a hearing and the permit was revoked.



and hire a new crew, which would include an additional crew member dedicated to monitoring the patron's catch.

- The settlement in the Matter of Faltus (Captain Leroy) contained similar requirements regarding the conspicuous posting of signs and frequent announcements to remind patrons of the rules. Additionally, it required that the operation maintain a list of all anglers onboard the vessel and provide each angler with a marked bag that corresponded to the name on the list. Lastly, crew were prohibited from conducting fishing activity beyond assisting patrons handle and remove catch and if they observed non-compliance they were to alert the MEP.

Based on these incidents as well as additional feedback, we have concluded that the 2014 rule can serve as a deterrent to unlawful fishing by patrons on for-hire vessels with six patrons or less. In that scenario, up to six anglers can be reasonably monitored to ensure they are not retaining fish in excess of the bag limit or below the minimum size. However, the large head boats operate at a much different scale with scores of anglers fishing and catching fish simultaneously. This situation is much more challenging to monitor and maintain compliance. The ratio of anglers to head boat crew who can check each fish as it is caught is substantially higher.

Indeed, DMF field biologists and contracted employees who conduct at-sea observing and catch sampling aboard head boats have continued to report a substantial and growing level of noncompliance with black sea bass and scup size limit and bag limit rules. First-hand accounts from for-hire vessel operators and our MRIP samplers reveal that some patrons are difficult to control even for those captains and crew that are conservation-minded. However, our MRIP samplers, as well as MEP officers who have conducted boardings, have concluded there is a desire by some head boat operators to tolerate illegal fishing.

Their reports depict captains not moving off productive fishing grounds even after anglers have reached their limit. Even more egregious were reports of crew members not paying attention to anglers' catches, and in some cases, were even seen fishing and allegedly selling their catch to patrons who seek to increase the amount of fish to be taken home. Beyond the two aforementioned head boat cases of gross noncompliance, there have been reports of persistent levels of noncompliance among patrons of other vessels and an overall culture of non-cooperation by an increasing number of anglers toward our staff and MRIP program objectives. When MEP officers board the vessel at the dock to inspect catches, the illegal catch is often abandoned by its owners so that it cannot be attributed to them.

There's little the MEP officers can do to address this beyond writing a violation for civil or criminal fine. Anglers' permits cannot be suspended or revoked by DMF if the anglers are not permitted in the first place. By law and regulation, the patrons are not required to obtain recreational fishing permits because the for-hire vessel is permitted; all fishing is done under the authority of the vessel's for-hire permit. So, anglers who are not permitted in Massachusetts cannot be subject to DMF's adjudicatory hearings to suspend or revoke the permit. Moreover, many are non-residents and may ignore the citation when they return home and opt to not pay the fine.

While developing both the aforementioned settlement agreements, a common refrain from the head boat operators was that their new permit conditions would hurt their businesses. They noted that some anglers, if pressured to comply with regulations, will seek out another for-hire operation where the monitoring of the catch is more relaxed. This was consistent with comments

DMF has heard at public hearings and meetings in the past. It demonstrates that this is a problem that needs to be addressed across the black sea bass and scup head boat fleet.

### **Proposals**

The proposals enumerated below were developed based on past experience addressing non-compliance in the scup and black sea bass head boat fishery. Specifically, they draw upon the permit conditions developed from the Viking Starship and Captain Leroy adjudicatory proceedings, an industry-wide meeting held in 2017 to discuss methodologies to improve compliance, and the September 2018 MFAC sub-committee meeting.

The proposals for head boats participating in the scup and black sea bass fisheries are as follows:

1. Require head boats to generate a passenger list that may be inspected by MEP;
2. Require vessel operators to issue bags, containers, or stringers to each angler;
3. Require each bag, container or stringer be labeled with means that identify the angler (e.g., Figure 1);
4. Require each angler to segregate their catch from other anglers' catch;
5. During the "scup bonus season" (May and June), require each angler to separate scup from all other species;
6. Potentially also require black sea bass be similarly segregated;
7. Explicitly prohibit captain or crew from selling catch at any time to patrons; and
8. During the scup bonus season, prohibit captain and crew from participating in fishing activities except to instruct anglers.

When reviewing these proposals, it is also important to consider whether or not these rules should be more broadly applied. Specifically, I'd appreciate if the MFAC consider and weigh in on whether or not any or all of these rules should apply to all head boats or also apply to charter boats. Additionally, for the proposals specific to the scup bonus season, consider whether the rules should apply more broadly in either time (beyond May and June) or location (beyond south and west of Cape Cod).

### **Rationale**

The proposals attempt to enhance accountability and ease of inspection. These rules would place burden on the vessel operator to establish a list of patrons and issue labeled bags to each customer. The burden will also be placed on individual anglers to separate their catch from other's and segregate their catch (scup and potentially black sea bass) from other species to facilitate inspections by the crew and MEP officers.

The subcommittee agreed that the most egregious violations have been during the scup bonus season when the bag limit is raised from 30 to 45 fish and scup catch rates peak during this period. Moreover, the black sea bass catch is also highest during this time and overages above the 5 fish limit are too common and need to be curtailed. Because many anglers may seek to conceal the black sea bass below the abundant scup, enforcement of the bag limits would be enhanced if we required scup to be separated from the catch of all other retained species.

Restricting the captain and crew from fishing, especially during the scupbonus season when catch rates are at their highest should serve as a reminder that it is the duty of the captain and crew to assist and inspect their customers, not to participate as recreational anglers themselves. Furthermore, reports that some of these crew members are known to fish themselves

in order to catch and sell extra fish (an unauthorized commercial enterprise!) to angling patrons is completely inappropriate and unlawful.

Application of these proposals throughout the fleet of head boats targeting scup and black sea bass would preclude anglers intent on cheating the rules from finding a vessel that will accommodate that behavior. Application more broadly may extend the benefits of enhanced compliance and enforcement.

Figure 1. Prototype of (burlap) bag labeling performed by Captain Leroy II operators to comply with settlement agreement. Burlap bags and labels were issued to the anglers at no cost.



## Appendix G. NOAA Fisheries Northeast Enforcement Division Precepts for Developing Efficient Fisheries Regulations

Before approval and implementation of a management plan, the following measures are enforcement's advice as it relates to the plan's efficacy. These principles have been developed from the historical perspective of twenty-five years enforcement of the varied regulations promulgated under the Magnuson Stevens Fisheries Conservation and Management Act.

Regulations are more enforceable if:

- **They are simple and easy to understand** - The more complicated the rule, the higher likelihood of creating loopholes and legal defenses. Straightforward requirements that are black and white without exceptions make it more difficult for intentional violators and conspirators to evade enforcement. For example, possession of short lobster is clearly a simple prohibition. It is illegal, regardless of where it was taken or how it was harvested or any other variable, condition or stipulation. Also, rules should not change frequently. Frequent changes make rules difficult to follow and to enforce. For instance, fishers may successfully avoid prosecution, even after admitting to breaking a rule, because the rule recently changed.

To the extent possible, consideration should be given to consistently similar management measures among all FMPs.

- **They are based on effort control (i.e., DAS or quotas) versus restricted quantities (trip limits)** - The groundfish trip limits of the 1970s provided a valuable lesson for fisheries managers and Councils. We learned that trip limits create an incentive for a percentage of fishermen to break the law. We learned that trip limits tempt some dealers to fraudulently report overages that never appear in the Agency's statistical database. These actions skewed fish prices downward, resulting in a growing black market. We learned that there are far too many nighttime landings in various New England ports for a handful of agents, stationed in major ports, to effectively patrol and monitor.

Since 1994, with the onset of effort control as the major management measure, the Office of Law Enforcement has maintained high levels of compliance, coupled with successful prosecutions of offenders.

- **The closed Areas that are clearly defined in large, plain shapes for reasonably long time spans with minimal exceptions, exemptions or transiting provisions (except for compelling safety reasons)** provide a sufficient buffer between boundaries and the area to be protected to deter incursions.

- Development of regulations should include NOAA Enforcement and Coast Guard input at critical junctures, including assisting species committees in the development of Enforceability Assessments for all proposals. Enforcement Assessments should include the cost of enforcing management measures, the additional enforcement resources required for new or expanded management measures, and a prioritized listing of any alternatives based on enforceability.
- **They are assisted by VMS** - Vessel Monitoring Systems are a tremendous asset to enforcement for monitoring days at sea and closed areas. VMS requirements should be considered when developing new plans, and the resources to support it should be provided.
- **The fish is accountable and traceable throughout the wholesale process** - This enables enforcement to intercept unlawful seafood at various funnel points such as interstate highways, airports and secondary dealers. Required documentation and labeling protects markets, prevents downward price trends, enhances enforcement and protects the consumer.
- **They are supported by appropriate penalties, including permit revocation** for the most egregious offenses. NOAA General Counsel's penalty schedule has been upgraded to effectively address violations; however chronic repeat offenders who can not pay penalties and those who commit egregious crimes must be penalized. In these cases, permit revocation is appropriate. Illegal activity should preclude them from participating in controlled fisheries, or receive performance-based allocations, when that participation or performance was based on illegal activity.
- Mandatory reporting should remain a requirement in all FMPs. More efficient methods for collection may be developed, such as electronic catch and dealer reporting.

#### **What is generally not enforceable?**

- **Staff intensive regulations** such as trip limits, catch percentages or meat counts or regulations that require monitoring of offloads make effective enforcement difficult. Manpower intensive regulations result in less effective and less consistent enforcement coverage.
- **Complex or convoluted regulations** - multiple gear, exemptions, exceptions, and running clocks - Simple regulations reduce opportunities for lame defenses.
- **Lack of accountability** - marine resources that become "legal" by falsifying records or commingling product or high grading. Traceable products and assets enhance enforcement and protects the resource, the market and consumers.

# **Atlantic States Marine Fisheries Commission**

## ***Guidelines for Resource Managers on the Enforceability of Fishery Management Measures***

**Developed by ASMFC's Law Enforcement Committee**

**Second Edition  
2015**



***Vision: Sustainably Managing Atlantic Coastal Fisheries***

## Introduction

The Law Enforcement Committee (LEC) of the Atlantic States Marine Fisheries Commission (ASMFC) prepared the *Guidelines for Resource Managers on the Enforceability of Fishery Management Measures (Guidelines)* in 2009. In keeping with ASMFC direction to periodically review and update the guidelines, the LEC has prepared this second edition, effective September 1, 2015. The core of the new *Guidelines* is an enforceability matrix for fishery management measures. The matrix table was developed from the responses to a survey of LEC members. The enforceability ratings cover a variety of management strategies that are employed in marine fisheries management programs. We include ratings for these strategies based on overall, dockside, at-sea and airborne enforceability. The LEC strongly encourages managers to take into account the enforceability of all management regulations that are developed. We believe the *Guidelines* can support and strengthen the effectiveness of ASMFC efforts to conserve our marine fisheries resources on behalf of the public we serve.

## Acknowledgements

The LEC gratefully acknowledges current and past members who contributed time and expertise to the *Guidelines*. We thank NOAA Fisheries Northeast Division of the Office of Law Enforcement, NOAA General Counsel Northeast Enforcement Section, and United States Coast Guard Districts One and Five, authors of the *Enforceability Precepts for Northeast Regional Fishery Management Councils (June 2013)*, for sharing their publication with us and allowing us to incorporate selected material from that document. We thank Toni Kerns and Tina Berger for assistance in developing the survey and matrix. We also acknowledge the opportunity afforded our committee by the commissioners and staff at ASMFC to revise the 2009 *Guidelines*, and to make them available for general use and reference.

## How to Use This Document

The *Guidelines* are organized into three sections for ease of reference.

### SECTION ONE (Page 3)

This section provides guidance in the form of **general enforcement precepts** that should be considered when evaluating fishery management options or strategies. These precepts apply regardless of the species or area under consideration.

### SECTION TWO (Page 5)

This section presents the relative **enforceability ratings** of specific management options. Using a matrix table, readers may quickly identify the relative enforcement characteristics of the management strategies, including their overall, dockside, at-sea and airborne ratings.

### SECTION THREE (Page 7)

This section provides details regarding the **enforcement strategies and recommendations** for the management measures covered in the *Guidelines*.

## **SECTION ONE General Enforcement Precepts**

### **SIMPLICITY**

The most enforceable regulations are generally always those that are simple, realistic, easy to understand, and presented in an accessible way to the regulated community.

Simple, straightforward regulations are easier for the regulated community to understand and remember which is critical for voluntary compliance. They are also more enforceable because violations of simple regulations are easier to detect and to prove. For example, a simple regulation such as “possession of an undersized fish on a commercial fishing vessel” stands on its own. A violation of this regulation would apply regardless of where the fish was taken, how it was harvested, or any other regulatory variable. Conversely, complex regulations are more susceptible to confusion, misunderstandings, and differing interpretations among the regulated community, law enforcement personnel and the court system.

The proliferation of regulations frustrates industry as well as law enforcement personnel. Cumulative, piecemeal modification of regulations to address fishery or environmental changes inevitably leads to more complex and occasionally even contradictory regulations unless all of the regulations for a particular species are carefully reviewed together when modifications are made.

Every effort should be made to write regulations in simple, clear language that avoids jargon or technical terminology. And where possible, all related regulations for a given species should be bundled or linked together in the appropriate regulatory format.

### **CONSISTENCY**

Regulations should make every effort to minimize exceptions and exemptions. Wherever possible, managers should adopt the same management measures among different jurisdictional fishery management plans, across different state boundaries, and between state and adjacent federal waters.

Anytime you have an exception to a regulation, such as under a conservation equivalency, you have potentially made the regulation more difficult to enforce. The LEC recognizes that conservation



equivalency is an important tool for fishery resource managers working within the collaborative structure of the ASMFC. However to the extent possible, states should make every effort to work within a regional or coast-wide regulatory framework. This is especially important where two or more states share contiguous waters or concentrated fishing areas. When individual states choose conservation equivalency, this document should be used to select management measures that are the most enforceable.

To the extent possible, there should be consistent definitions of terms for management measures, gear types or use, measurement standards, regulatory areas, and between federal and state waters.

### **STABILITY**

Regulations should avoid frequent changes. Significant changes to regulations require a concerted outreach and education effort to adequately inform the public. This principle especially applies to recreational angling, where bag or size limits that change from year to year diminish enforceability and increase the likelihood of unintentional violations.

Enforcement personnel may require several years just to provide adequate training or to get the equipment necessary to implement new or modified regulations. More frequent changes in regulations might result in very little effective enforcement during those short regulatory time frames.

### **EFFECTIVENESS**

In general, the most effective regulations from an enforceability perspective are those based on controlling effort (closed area or season), and not the outputs (catch quota, trip limits). Effective regulations promote rather than hinder voluntary compliance. Effective regulations take into account and are matched up with available enforcement staffing, funding, technologies and equipment.

In addition to adding complexity, the proliferation of new regulations often requires new or significantly enhanced enforcement resources. If new resources are not provided, enforcement will need to shift effort from what is currently being enforced. This can result in an arbitrary prioritization of enforcement effort that may or may not correspond to the conservation needs of the species affected.

Certain management measures can enhance effectiveness. For example, regulations that can be enforced through more than one means, or at more than one point during fishing operations, allow enforcement some flexibility in using available resources in the most efficient way possible. Any regulations that strengthen documentation and labeling of fish and fish products would enable law enforcement personnel to more effectively track products back to the harvester and/or the initial

purchaser and to intercept unlawful seafood at various points between harvest and final sale for consumption.

Enforcement tools such as electronic reporting and vessel monitoring systems (VMS) have greatly improved the effectiveness of certain regulations by allowing enforcement staff to focus effort on high priority areas. These tools do not replace traditional enforcement but rather complement patrol work and inspections.

**SAFETY**

Regulations should be designed such that they do not create an unintended safety-at-sea issue. For example, specified allowable days for fishing may increase pressure to go out to sea when weather conditions are unsafe. Likewise, establishment and design of closed areas should take into account safe and direct transit needs of fishermen when weather conditions change rapidly.

**SECTION TWO**  
**Enforceability Ratings**

The 2009 *Guidelines* included a survey of voting members of the LEC to numerically rate the enforceability of 19 management measures based on four categories: overall, dockside, at-sea and airborne enforceability. For this revised edition of the *Guidelines*, 15 LEC members completed a new survey using a simpler, qualitative ranking and an expanded list of 26 management measures. Each management measure was rated for its overall, dockside, at-sea and airborne enforceability using a 3-tiered scale of “no” “limited” and “yes”. Additionally, the overall enforceability of each management measure was rated numerically on a scale of one to five (1=poorest, 5=best).

The results of the updated survey are presented below in a visual matrix. Management measures were arranged in descending order of their average overall numerical ranking from the survey. Color coding represents the relative enforceability of the 4 enforcement categories (overall; dockside; at-sea; airborne) based on survey responses using the 3-tiered qualitative scale (yes; limited; no). Color selection was based on the following 3 rules:

- 1) If any one tier (yes; limited; no) received greater than or equal to 65% of responses, the representative color for that tier (green, yellow or red) was shown.
- 2) If only two tiers were selected, the representative color of the tier with the greater response was shown (green, yellow or red).
- 3) If all three tiers received selections, and none were equal to or greater than 65%, then that cell was shown as yellow (limited).

This matrix was updated in 2017 but an updated document has not been produced yet. "See Revised 2017 Matrix" at the end of this document.

### ENFORCEABILITY OF MARINE FISHERIES MANAGEMENT MEASURES

MANAGEMENT MEASURES	Average Ranking	OVERALL RATING	DOCKSIDE RATING	AT-SEA RATING	AIRBORNE RATING*
Bag and Possession Limits (low volume)	4.67	Green	Green	Green	Red
Minimum/Maximum Size Limits	4.67	Green	Green	Green	Red
Permits	4.67	Green	Green	Green	Red
Prohibited Species	4.67	Green	Green	Green	Red
Closed Seasons	4.60	Green	Yellow	Green	Yellow
Closed Areas	4.53	Green	Red	Green	Green
Gear Marking Requirements	4.07	Green	Yellow	Green	Red
Gear Regulations except Method of Take	4.07	Green	Yellow	Green	Yellow
Method of Take	4.07	Green	Yellow	Green	Yellow
Bycatch Prohibitions	4.00	Green	Green	Green	Red
Slot Limit	4.00	Green	Green	Green	Red
Trophy Fish Allowance	4.00	Green	Green	Green	Red
Vessel Monitoring Systems (VMS)	3.87	Green	Yellow	Green	Yellow
Gear Restricted Areas	3.67	Green	Red	Green	Yellow
Electronic Reporting	3.67	Yellow	Yellow	Yellow	Red
Trip Limits (Daily)	3.47	Green	Green	Green	Red
Days at Sea	3.27	Yellow	Yellow	Yellow	Yellow
Annual Quotas	3.07	Yellow	Yellow	Red	Red
ITQ/IFQ/LAP	3.00	Yellow	Yellow	Yellow	Red
Bycatch Limit (weight or volume)	2.73	Yellow	Yellow	Yellow	Red
Trip Limits (Aggregate)	2.73	Yellow	Yellow	Green	Red
Catch-Release Fishing	2.60	Yellow	Yellow	Yellow	Red
Bycatch Limit (percent of total catch)	2.27	Yellow	Yellow	Yellow	Red
Harvest Tolerances (wt./vol./percent)	2.27	Yellow	Yellow	Yellow	Red
Targeting Prohibition	2.21	Yellow	Yellow	Yellow	Red
Limited Drag or Soak Time	1.93	Yellow	Red	Yellow	Yellow

**\*Important Note:** the matrix design indicates limited applicability for most airborne ratings. The LEC stresses that this does not imply that airborne resources are ineffective. While airborne enforcement may be restricted in applicability, there are clearly times and places when it is the most effective means of enforcement, thus an important enforcement tool.

## **SECTION THREE**

### **Enforcement Strategies and Recommendations**

This section provides information about each of the management measures that were considered in the *Guidelines*. Included is a brief definition of the measure, its numerical ranking based on the survey results and some points for consideration when drafting regulations. For ease of organization the management measures are listed alphabetically.

### **ANNUAL QUOTAS**

**Definition:** A specified amount of a particular species is allowed to be landed per fishing year (or fishing season). Typically a quota is established for the entire fishery, and occasionally is subdivided by region or time. Quotas are not usually employed for recreational fisheries.

**Average Overall Rating:** 3.07

**Recommendations:**

- A straightforward opening and closing of fishing to meet quota objectives is preferred over measures that will extend fishing, such as trip-limit triggers or progressive area closures, which complicate enforcement efforts.
- Incentives to under-report or not report are greater, so available enforcement resources must always be considered to ensure proper accounting of catch. Requirements for electronic reporting, daily or weekly reporting, on-board monitoring or tagging regulations can aid the enforcement effort. A well-designed catch documentation scheme to track fish from harvest to offloading, and through the processing and shipping phases, adds transparency and effective accountability.

### **BAG/POSSESSION LIMITS (low volume)**

**Definition:** A specified amount of a particular species is allowed to be landed per trip, per fisherman or per vessel. Low volume limits are generally established as some number of fish that is easily counted on board. They typically apply to recreational fisheries. In some cases, commercial fishers may also be subject to low bag or possession limits.

**Average Overall Rating:** 4.67

**Recommendations:**

- This measure remains one of the most easily definable ways to quantify allowable harvest. It is easy to enforce and prosecute. It is simple.
- Bag and possession limits should be consistent across state and federal boundaries. The standard of measurement should be clear if the limit is based on weight.

- A possession limit is superior to a landing limit and allows for at-sea as well as dockside enforcement.
- Requiring fish to remain intact facilitates identification. Particularly for large-party charters, processing at sea or filleting out catch on board complicates enforcement. Where processing at sea is allowed, enforcement staff should be consulted. Supporting regulations requiring that skin must remain on filets, counting two filets as one fish regardless of size, or requiring retention of “racks” may aid enforceability in specific circumstances.
- Enforcement personnel find that frequently changing bag limits are difficult for fishermen to follow. Maintain limits for a minimum of 3 years to ensure consistency of enforcement and greater compliance.

### **BYCATCH LIMIT (Weight/volume)**

Definition: Bycatch limits restrict, but do not prevent, the incidental harvest of non-targeted or otherwise protected species in the course of legal fishing activity.

Average Overall Rating: 2.73

#### Recommendations:

- These limits, often large weights or volumes, are difficult to enforce and even more difficult to prosecute.
- Enforcement would be enhanced if bycatch was required to be segregated from the targeted species. Accurate count of catch onboard cannot easily be done at sea due to species mixing, loading, icing, safety of boarding party in accessing the fish hold at sea, etc.
- Enforcement of bycatch limits typically are time and labor intensive.
- Bycatch limits and measurement standards should be consistent across jurisdictions.

### **BYCATCH LIMIT (percent of total catch)**

Definition: Bycatch limits restrict, but do not prevent, the incidental harvest of non-targeted or otherwise protected species in the course of legal fishing activity.

Average Overall Rating: 2.27

#### Recommendations:

- These limits, especially when there may be large quantities on board, are difficult to enforce and even more difficult to prosecute.
- Enforcement would be enhanced if bycatch was required to be segregated from the targeted species.

- Enforcement is very time and labor intensive to verify the percentage of the catch that is bycatch, and to successfully document excessive bycatch volumes.
- Bycatch limits and measurement standards should be consistent across jurisdictions.
- Regulations should specify how much target species catch is required to justify retention of bycatch species and in what amounts. This is necessary to prevent a bycatch species from becoming the target species.

## **BYCATCH PROHIBITION**

Definition: Incidental retention or possession of non-targeted or otherwise prohibited species caught during normal fishing operations is prohibited. Any bycatch must be discarded immediately. It may not be retained.

Average Overall Rating: 4.00

### Recommendations:

- A bycatch prohibition is the easiest and most effective enforcement measure for bycatch.
- The enforceability of a bycatch prohibition is reduced if adjacent or nearby jurisdictional waters allow limited bycatch quantities (weight, volume or percent of catch).
- Because of perceptions of waste from discarding bycatch, other regulations (gear specifications, soak times, area restrictions) may be implemented to minimize the likelihood of catching incidental or non-targeted species in large quantities. Enforcement challenges presented by these other regulations may negate the enforceability advantage of a full bycatch prohibition.
- Clearly identify when possession of a prohibited species is restricted (i.e., returned to the sea as soon as practicable).

## **CATCH-RELEASE FISHING**

Definition: A fish or marine organism cannot be retained but must be immediately released at the site of capture without any unnecessary harm or destruction. This is typically applied to certain recreational fisheries. Temporary possession may be allowed for proper identification, photographing, or determining compliance with applicable regulations.

Average Overall Rating: 2.60

### Recommendations:

- Regulatory language should clearly specify the conditions for any temporary possession of a catch-release species on board (Identifying, measuring, photographing).

## CLOSED AREAS

Definition: Fishing in a specified area is prohibited.

Average Overall Rating: 4.53

### Recommendations:

- It is critical to have clearly defined areas. Use exact latitude/longitude and straight lines with regularly shaped areas as much as possible. Avoid general descriptions such as distance offshore, or a center point and radius. Do not use depth contours to define closed areas.
- Closed areas are more likely to be understood by fishermen, and to result in less unintentional non-compliance, if they are regular in shape, and where possible, oriented north-south and east-west in concert with latitude/longitude boundaries.
- While clearly defined, regularly shaped and large areas simplify enforcement, advances in tracking and monitoring technology are mitigating factors that might allow for smaller, irregularly shaped closed areas, especially when such areas are more likely to garner support and compliance, enhance safety at sea, or better protect fish and habitat.
- Successful prosecution of violations must generally include the capability to conduct vessel monitoring, aerial and at-sea surveillance. Even with VMS capability, law enforcement must document the violation at-sea to gather sufficient evidence for prosecuting the violation.
- Depending on the fishery and gear type, restrictions on only certain activities within a closed area may require at-sea boarding to document a violation.
- The more complete the closure to all fishing activity, the easier it is to enforce and successfully prosecute violations.
- Large, contiguous areas are preferable to more numerous, smaller areas.
- If possible, the area should be closed to transit with fishing gear onboard. If transit is allowed, regulations should clearly specify the proper stowage of fishing gear during transit through the closed area. Transit must be specified as continuous, direct and expeditious. If an allowance for loitering or stopping is included in regulations, there should be a mandatory call-in or reporting requirement.
- Gear closure areas or regulated mesh areas are very difficult to enforce. If regulations only prohibit the use of a particular gear type within a closed area, possession of that gear within the closed area should be prohibited.
- Temporary or short-term rolling closures are very difficult to enforce and increase the likelihood of unintentional violations because communicating the requirement to the fishing fleet can be challenging. In addition, shifting closed areas within a season increases the confusion of enforcement officials on the current status of an area.

## **CLOSED SEASONS**

Definition: A specific fishing activity is prohibited during certain times of the year.

Average Overall Rating: 4.60

### Recommendations:

- It is important to clearly define the date and times of seasonal closures, even to the minute.
- Describe what activity is allowed to occur before, during, and after the closure. For example: “all gear must be hauled in prior to the closure and gear may not be set prior to opening the closed area.”
- For high-value, short-duration fisheries, fishing for other species with the same or similar gear should be prohibited for at least 72 hours before and after the established closed season.
- Minimize exemptions or exceptions to prohibited activities during the closed season. If possible, avoid allowance of gear placement or transport prior to the opening of a closed season.
- Enforcement is enhanced if retention, possession, purchase and sale of species included in a seasonal closure are all prohibited. Possible violations could then be inferred if a covered species is encountered in the market during a closed season, and would prompt an investigation into the origin of any fish or product encountered and how it got to market.
- Fisheries in which smaller vessels participate are more difficult to monitor during closed seasons. Small quantities of fish can be more easily hidden in the marketplace, or sold outside of normal market channels or dealers when the season is closed.

## **DAYS AT SEA**

Definition: A specified amount of days are allotted for fishing for a particular species. Days at Sea are typically allocated to individuals or groups.

Average Overall Rating: 3.27

### Recommendations:

- In its simplest form, without any exceptions or exemptions, this is enforceable. However it is manpower intensive unless VMS or other electronic tracking is implemented.
- Additional complicating regulations, such as associated trip limits, should be avoided.



## **ELECTRONIC REPORTING**

Definition: Data transmission, electronic logbooks or other digital recording systems are used to record harvest activity on a vessel. Enforceability is based primarily on use in commercial fishing operations.

Average Overall Rating: 3.67

### Recommendations:

- Reporting systems should be established to record and transmit data as soon as possible after actual harvest activity occurs.
- Delayed reporting should be specified to occur on a daily or weekly basis. Long delays between harvest activity and required reporting intervals greatly reduce the effectiveness of enforcement monitoring.
- Data storage systems should be readily accessible to enforcement personnel in the field or on the water.

## **GEAR MARKING**

Definition: Regulations require specific marking of gear to identify the owner or permittee, to mark the location of gear that may not be visible at the surface, or for other identification purposes.

Average Overall Rating: 4.07

### Recommendations:

- Regulations specifying the marking of gear should be clear and unambiguous as to the exact markings to be used, tags or tag placement, information included on any markings, visibility requirements or size of markings, and all other marking details to ensure standardized criteria can be enforced.
- Exceptions or exemptions to any gear marking requirements hinder overall enforcement efforts.
- To the extent possible, markings should be required to be located where they can be easily and quickly inspected by enforcement personnel.

## **GEAR REGULATIONS (excluding method of take)**

Definition: Specific gear types or gear modifications are restricted or prohibited. “Gear” might include not only the primary methods and tools to harvest the resource, but also include the vessel, horsepower, the number of traps, mesh size and other such variables. In some cases gear regulations might stipulate a particular type or design (e.g., bycatch reduction devices or escape panels on traps).

Average Overall Rating: 4.07

Recommendations:

- Limitations on the amount of fixed gear/hooks, traps or pots is extremely difficult to enforce and manpower intensive to monitor on the water.
- Regulations stipulating how gear is to be deployed (e.g., soak time, net or trawl depth) are difficult to enforce because of inspection requirements once the gear is deployed or being actively worked.
- Monitoring and checking gear requires specialized equipment and training, and enforcement agencies may incur liability costs while handling gear.
- If a gear limitation is employed to restrict or control catch, an associated catch limitation should also be implemented. For example, a mesh size restriction to control the size of fish caught should have a companion minimum or maximum fish-size regulation.
- Standardize gear requirements, measurement procedures, equipment and techniques across all appropriate jurisdictions and time periods.
- Trap limits are more enforceable in conjunction with trap tags being required on all traps at-sea (i.e., not transferable from trap to trap while underway).
- If a specific type of gear is prohibited for use in a fishery, then carriage of the gear type should also be prohibited.

## **GEAR RESTRICTED AREAS**

Definition: Areas where the use of specific fishing gear is prohibited. Regulations may also prohibit the possession of such gear in the specified area.

Average Overall Rating: 3.67

Recommendations:

- These are manpower intensive regulations to enforce. A gear restricted area often requires a boarding to determine if specific gear is legal, such as nets of a specific mesh size.
- In general, gear prohibitions are more enforceable than gear restrictions. Areas prohibiting nets are more enforceable than areas restricting certain net mesh sizes. Trap prohibitions are more enforceable than restrictions on certain trap types or sizes.
- Prohibit possession of restricted gear, rather than prohibiting “use” in a gear restricted area.
- Do not allow the use of similar gears within the area. Law enforcement assets may be able to differentiate between a trap boat and a dragger from a distance, but will probably have to conduct a boarding to differentiate between two types of draggers.

## **HARVEST TOLERANCE (weight/volume/percent)**

Definition: A catch is allowed to exceed a legally defined limit of allowable harvest by a defined amount. This may allow retention of over or undersized animals or retention of a defined amount of harvested species over a specified landing limit.

Average Overall Rating: 2.27

### Recommendations:

- Tolerances are often applied to large catches or landings, and so they may require extensive time and labor to verify the weight, volume or percentage of the catch that exceeds a specified limit.
- Additional tools or equipment may be required to assess amounts of catch exceeding a specified limit.

## **ITQ/IFQ/LAP**

Definition: Individual or vessel quotas, where a specified amount of the total allowable harvest of a species is allotted to that individual or vessel. Such individual allotments may be taken over the course of a fishing season or year. This management measure is considered as it applies to commercial fishing operations only.

Average Overall Rating: 3.00

### Recommendations:

- Enforcement is limited by the ability to monitor and verify individual quota limits and reported harvests under that quota. Real-time access to landings information is essential.
- Regulations must limit the number and location of authorized landing points to ensure proper harvest monitoring and dockside enforcement.
- Specific call-in procedures should be established to maximize dockside enforcement capability.
- Monitoring and enforcing individual quotas is labor intensive. Because of variable and extended time frames during which an individual could fish, it is difficult to focus enforcement efforts for maximum effectiveness.

## **LIMITED DRAG OR SOAK TIME**

Definition: This management measure limits the amount of time between deploying and hauling back the gear, normally to allow for live discards of bycatch. This management measure is considered as it applies to commercial fishing operations only.

Average Overall Rating: 1.93

Recommendations:

- This management measure received the lowest overall rating out of the 26 measures considered in the *Guidelines*.
- Ensuring that specified time limits are followed requires close, at-sea enforcement of fishing operations, and/or onboard observer capabilities.
- Electronic reporting, onboard video monitoring, and vessel monitoring systems provide needed additional support for enforcement monitoring.

### **MAXIMUM/MINIMUM SIZE LIMIT**

Definition: Possession of fish below/above a specified size, or inside/outside a defined “slot” limit, is prohibited.

Average Overall Rating: 4.67

Recommendations:

- This type of regulation is considered among the more straightforward and enforceable regulations, at least as it would apply to small quantities of catch.
- Standardized measurements, procedures, equipment and techniques must be used across jurisdictions to be effective.
- Exceptions allowing at-sea or onboard processing hinder enforceability. There should not be any allowable filleting at sea. Measurement standards should stipulate head and tail intact.
- Maintain size limits for a minimum of 2-3 years to maximize compliance.
- Clearly spell out exactly how a species is to be measured in the regulation.
- Specified size tolerances are not necessary, and complicate officer discretion in dealing with individual violations.

### **METHOD OF TAKE**

Definition: A regulation stipulating a particular type of gear or fishing operation for legally harvesting a species. *See also “Gear Regulations (excluding method of take)”*.

Average Overall Rating: 4.07

Recommendations:

- If a certain gear type is prohibited, that gear should not be allowed onboard if otherwise legal fishing gear or operations are being employed.
- Regulations should specifically prohibit the possession of any net with prohibited mesh sizes from being onboard the vessel; similarly, if a net, pot, longline or other gear type is required to be modified to reduce bycatch, then the possession of any gear not properly modified should be prohibited, not just prohibited from use.

## **PERMITS**

Definition: Fishing (usually for an identified species) is only authorized by the issuance and possession of a permit.

Average Overall Rating: 4.67

### Recommendations:

- This is considered among the more straightforward and enforceable regulations.
- Successful enforcement depends on real-time access to permit-holder databases. Technologically sound permit tracking systems should be implemented or already in place for any permit requirement.
- Laws or rules should provide for permit suspension and revocation upon successful prosecution of fishing violations.
- Permit numbers should be required to be displayed on commercial fishing vessels. Permits must be in possession of the fisherman or vessel at all times.

## **POSSESSION/BAG LIMITS (low volume)**

Definition: A restriction on the number of animals of a given species that may be caught and/or possessed by a fisherman, a group of fishermen, or onboard a vessel.

Average Overall Rating: 4.67

### Recommendations:

- This is considered among the more straightforward and enforceable regulations, at least as it would apply to small quantities of catch.
- Enforcement is enhanced if any allowed bycatch species is required to be segregated from a larger catch of another or multiple species.
- Allowable quantities should be clearly stipulated and standardized across all appropriate jurisdictions.

## **PROHIBITED SPECIES**

Definition: Possession or retention of a particular species or group of species is prohibited.

Average Overall Rating: 4.67

### Recommendations:

- This is considered among the more straightforward and enforceable regulations.

- For difficult-to-identify species, it may be necessary to include species groupings in a prohibition, or to ensure adequate identification training and tools for both fishermen and enforcement personnel.
- Prohibitions should be restricted to a species or group of species across the board. There should be no exceptions for where it was taken or how it was harvested.
- Any permitted species kept on board must remain in a form easily differentiated from similar prohibited species.

## **SLOT LIMIT**

Definition: Retention and/or possession of any species outside of a specified size range is prohibited. A slot limit may prohibit possession between a certain size range, or it may prohibit possession above or below a certain size range.

Average Overall Rating: 4.00

### Recommendations:

- Regulations should clearly stipulate the range of the slot size and measurement standards should be consistent across all appropriate jurisdictions.
- Provisions allowing onboard filleting of fish or other processing of animals greatly hinder enforcement of slot limits.

## **TARGETING PROHIBITION**

Definition: A regulation that prohibits the act of fishing for a particular species, to the exclusion of effort to catch other species.

Average Overall Rating: 2.21

### Recommendations:

- This management measure is among the least enforceable of the 26 considered in the *Guidelines*.
- Enforcement would require a level of physical observation and surveillance beyond the scope of most agencies.

### **TRIP LIMITS (daily)**

Definition: A specified amount of a species is allowed to be caught and possessed onboard or landed by weight, volume or number, on a daily basis. In most situations this applies to commercial fishing regulations. It is a form of possession limit intended to slow down the rate of harvest in a commercial fishery.

Average Overall Rating: 3.47

#### Recommendations:

- Enforcement is typically restricted to dockside, and requires adequate measuring capability while offloading. Checking and verifying a trip possession limit at sea is extremely difficult.
- A “possession limit” as opposed to a “landing limit” would allow more at-sea enforcement.
- There is a significant time and labor commitment to enforcing such limits, even at dockside.
- When daily trip limits are implemented a limited number of designated landing points, and advance reporting of landing would enhance enforcement.
- Limit any at-sea processing to ensure accurate identification of species subject to trip limits at dockside.
- The trip limit or possession amounts should be consistently defined and used across all appropriate jurisdictions, along with any measurement standards and techniques that are to be applied.
- Allowance for multi-jurisdictional trip limits greatly hinders successful monitoring and enforcement.

### **TRIP LIMITS (aggregate)**

Definition: A specified amount of a species is allowed to be caught and possessed onboard or landed by weight, volume or number, covering a specified number of days’ daily trip limits. In most situations this applies to commercial fishing regulations. It is a form of possession limit intended to slow down the rate of harvest in a commercial fishery. Aggregate limits allow a vessel to remain at sea fishing, rather than having to come to port with each day’s harvest limit.

Average Overall Rating: 2.73

#### Recommendations:

- Most of the difficulties or concerns with enforcing daily trip limits would still apply to aggregate trip limits.
- It is even more difficult to enforce an aggregate trip limit at sea.
- This type of regulation allowing for a vessel to remain at sea and catch multiple daily trip limits essentially precludes any significant at-sea enforcement.
- It is extremely difficult to monitor the actual number of days at sea spent fishing, or matching up a total aggregate landing with the number of days spent fishing.

## **TROPHY FISH ALLOWANCE**

Definition: Usually applied in recreational fisheries, it allows retention of one or more fish over a specified maximum size or slot limit.

Average Overall Rating: 4.00

### Recommendations:

- Any allowance for filleting or processing at sea hinders enforcement of such provisions.
- Measurement standards should be consistent across all appropriate jurisdictions.

## **VESSEL MONITORING SYSTEM (VMS)**

Definition: A requirement to keep a positioning transmitter (transponder) onboard a fishing vessel. The transponder transmits position and movement information at specified time intervals.

Average Overall Rating: 3.87

### Recommendations:

- As VMS use is expanded it should incorporate data transmission regarding gear onboard and the fish being targeted. It can increase the efficiency and effectiveness of enforcement patrols and inspections, but does not replace on-the-water or dockside enforcement requirements.
- VMS should be considered for any large-scale fishery that is conducted in remote waters or offshore where at-sea and airborne enforcement is difficult or inefficient.



## Revised Matrix – September 2017

MANAGEMENT MEASURES	Average Ranking	OVERALL RATING	DOCKSIDE RATING	AT-SEA RATING
Closed Seasons	4.86			
Minimum/Maximum Size Limits	4.79			
Permits	4.79			
Prohibited Species	4.57			
Bag and Possession Limit (low volume)	4.50			
Trip Limits (Daily)	4.29			
Vessel Monitoring Systems (VMS)	4.29			
Bycatch Prohibitions	4.14			
Slot Limit	4.14			
Gear Regulations excpt Method of Take	4.07			
Closed Areas	3.93			
Gear Marking Requirements	3.93			
Electronic Reporting	3.64			
Gear Restricted Areas	3.64			
Method of Take	3.64			
Trophy Fish Allowance	3.50			
Annual Quotas	3.36			
ITQ/IFQ/LAP	3.07			
Trip Limits (Aggregate)	3.07			
Bycatch Limit (weight or volume)	3.00			
Days at Sea	3.00			
Bycatch Limit (percent of total catch)	2.86			
Catch-Release Fishing	2.50			
Targeting Prohibition	2.50			
Harvest Tolerances (wt./vol./percent)	2.43			
Limited Drag or Soak Time	2.36			