



New England Fishery Management Council

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 E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

DRAFT 28, 2014

Mr. Robert Hogan
 Enforcement Section
 Office of the General Counsel
 National Oceanic and Atmospheric Administration
 1315 East West Highway, SSMC-3-15424
 Silver Spring, MD 20910

RE: Submission of comments on Revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions

Dear Robert:

The Council, at its April 23, 2014 meeting, voted to submit the following comments.

The over-arching concerns are 1) Master or crewmen's prior violations being imputed to a new vessel owner, 2) unmarked gear penalty Levels, and 3) no indication of when violations become criminal.

The specifics of concerns 1 and 2 are:

- The manner in which NOAA/NMFS defines a person's intent to commit a violation, and leaving too much room for interpretation by the attorney in the penalty schedule. Who determines the degree of culpability, the attorney, the agent/officer, or both? How do they determine intent when assigning an intentional violation? The latter appears to be a subjective determination.
 - **The Council recommends revision to remove this ambiguity.**
- Particular concern is raised with the proposed liability of the vessel owner for a master or crewman's previous record, on another owner's vessel (page 11).
 - **The Council recommends a clearer definition of when a Master or crewman is liable for a violation; the Master should be the only one liable, unless the crewman is directly involved in the violation, and**
 - **A violation that a Master brought with him from another owner's vessel should never be imputed to the owner.**
- ...the prior violation will be imputed to the new owner unless the new owner exercised due diligence regarding prior violations of the master or crewmember (implies for all

violations on the new owner's vessel). Such diligence may be demonstrated ... by requiring certification (page 11).

- **The Council questions whether labor laws may be violated by requiring certification (an affidavit was given as an example), and if labor laws may be violated by anything in this proposed policy.**
- Under Appendix 3 (Magnuson-Stevens), Violations Regarding Gear and Bycatch Mitigation Requirements, unmarked gear receive Level I or II offense, while, under Violations Regarding Transfer, Purchase, Trade, Sale (and Attempts), damaging gear is combined with stealing gear and receives a Level I or IV offense.
 - **The Council believes that, when mobile gear damages unmarked fixed gear, both parties are at least equally culpable, and, in the more severe case, both be penalized at the same Level IV.**
- The Penalty Matrix and Schedule for the Lacey Act both describe “false-labeling offenses”, of minor and severe effects, but some cases may result in criminal charges.
 - **The Council requests that the matrices and schedules, for the Lacey Act and all others (Magnuson-Stevens, etc.) include a Level to show when violations become criminal.**

We appreciate the opportunity to comment on revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions.