

Correspondence



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

May 16, 2014

Mr. John Bullard
Regional Administrator
NMFS, Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930

RE: Request to address the need for timely and regular access to observer data by NMFS enforcement personnel

Dear John:

At its April 2014 meeting, the New England Fishery Management Council passed the following motion regarding the enforcement of management measures to address net slippage in the Atlantic herring fishery, recently implemented by Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP):

that the Council send a letter to NMFS requesting that a process be adopted to address the need for timely and regular access to observer data by enforcement personnel

Upon review of the Amendment 5 regulations, the Council's Enforcement Committee concluded that management measures to address net slippage in the Atlantic herring fishery cannot be enforced at-sea unless the slippage event is specifically observed by enforcement personnel. Consequently, enforcement of net slippage provisions must occur shoreside for the most part, after the fishing trip has ended and once observer data and other information has been collected and reviewed. The Council recognizes that data collected by observers at the Northeast Fisheries Observer Program (NEFOP) are available to Agency staff and personnel in the Office of Law Enforcement (OLE) at any time, but developing a clear protocol to ensure that OLE personnel regularly obtain relevant observer data is essential for effective enforcement of the management measures to address net slippage.

The Council also selected final management measures for inclusion in Framework Adjustment 4 to the Atlantic Herring FMP at its April meeting. Framework 4 builds on the management measures implemented in Amendment 5 and proposes a third-party catch verification program for limited access herring vessels, a requirement that herring vessel fish holds be empty of fish before leaving the dock, and measures to further address net slippage in the herring fishery. Framework 4 also includes a requirement for herring vessel captains to notify NMFS of a slippage event through vessel monitoring systems (VMS) on any trips with observers on board. This would provide a real-time identifier for observed trips on which slippage events have occurred, thereby informing NMFS that a particular fishing trip may warrant further investigation for compliance with measures to address net slippage. The VMS reporting requirement proposed in Framework 4 is intended to facilitate the ability of OLE personnel to obtain quick and complete access to relevant observer data, which is critical to ensure the effectiveness of the current (Amendment 5) management measures as well as any additional management measures that may be implemented through Framework 4.

Thank you for your prompt attention to this matter. Please feel free to contact me with any further questions or concerns.

Sincerely,



Thomas A. Nies
Executive Director

cc: Council members



New England Fishery Management Council

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April 28, 2014

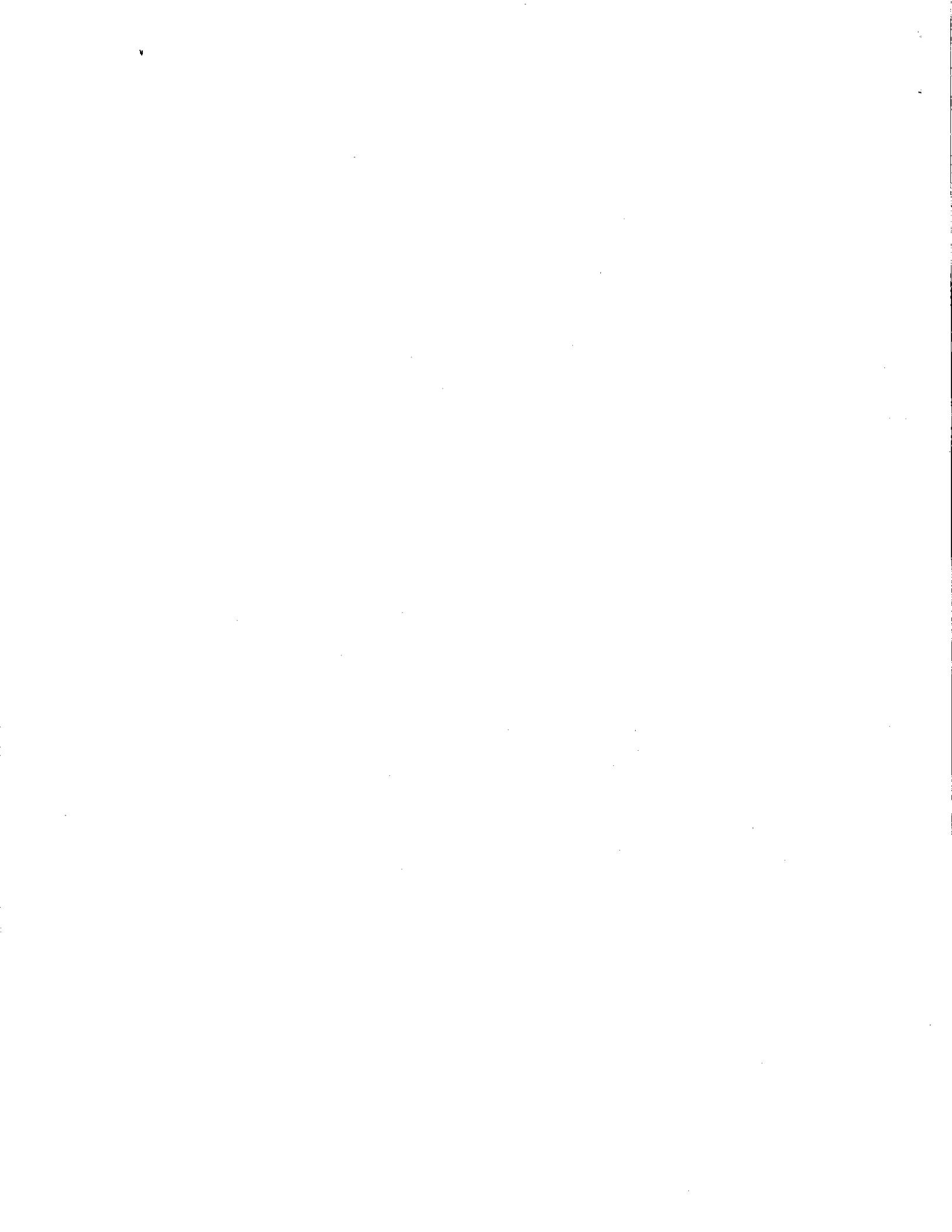
Mr. Robert Hogan
Enforcement Section
Office of the General Counsel
National Oceanic and Atmospheric Administration
1315 East West Highway, SSMC-3-15424
Silver Spring, MD 20910

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

Dear Robert:

The New England Fishery Management Council, at its April 23, 2014 meeting, voted to submit the following comments on revisions to the penalty schedule. Our over-arching concerns are related to 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 Council also requests consideration of increased penalties for non-compliance with some new reporting requirements in the Atlantic herring fishery. More specifically, our concerns and comments are:

- The manner in which NOAA/NMFS defines the intent of a person to commit a violation, leaving too much [discretion] room for interpretation by the attorney in using the penalty schedule. Who determines the degree of culpability, the attorney, the agent/officer, or both? How do they determine the intent when assigning an intentional violation? The latter appears to be a subjective determination.
 - **The Council recommends revision to remove this ambiguity.**
- We have a particular concern 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 was unaware that this has been the case since 2011. In other areas of society, the goal is to rehabilitate offenders and provide for their employment.
 - **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.**
 - **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).
 - **Summary settlements should not be included in prior violations because, in the past and before this proposed rule, individuals would take a summary settlement as the lesser cost of hiring a lawyer and winning.**
 - **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.**
 - **More concise definition is needed of what constitutes "certification" of a master or crewmember's prior violations, including the effect of state laws. For instance, Massachusetts state law permits an employer to ask about prior felonies only.**
- 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, that both be penalized at the same level [Level IV].**
 - **Alternatively, the penalty schedule might be adjusted by separating gear damage from stealing and assigned Levels I and II, thus giving the potential for matching penalty levels in these cases.**
 - **The "gentlemen's agreement" between lobster trawl and mobile gear operators has deteriorated for a number of reasons: 1) lobster trawls have proliferated offshore and most are unmarked; 2) lobster trawls do not follow traditional setting patterns with which mobile gear fishermen are familiar; 3) areas closed to mobile gear for 20 years are opening now and increase gear conflict; and 4) even legally marked gear may not be visible to mobile gear on the surface. Additionally, a lobster trawl of only four traps will exceed \$2,000 (causing damages to even these small trawls be classified as Level IV). All of these factors, including the intent of both parties, must be considered when determining negligence.**
- 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 violations of the Lacey Act and all others statutes (Magnuson-Stevens Act, etc.) include a level that shows when violations become criminal.**

- In the Atlantic herring fishery, fishermen are required to submit released catch affidavits when slippage events occur on trips with observers on board. Slippage is defined as catch that is discarded/released prior to being observed, sorted, sampled, and/or brought on board the fishing vessel. The Council is currently developing new regulations that would require herring fishermen to report the occurrence of slippage events through vessel monitoring systems (VMS). This reporting requirement will enhance the effectiveness and enforceability of measures to address slippage, which are an important component of a larger catch monitoring program recently implemented in the herring fishery. Slippage events appear to fall under “Illegally discarding fish or violating fish retention requirement”, a Level II offense, and self-reporting of such events seems to fall under “Failing to comply with VMS/days at sea reporting”, with offense Levels I and II depending on the impact on the regulatory program.
 - **The Council requests consideration of increasing penalties for non-reporting and/or non-compliance with requirements related to the released catch affidavit.** The Council supports higher penalties for non-compliance with self-reporting as a further incentive to ensure the effectiveness of net slippage provisions.

We appreciate the opportunity to comment on revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions. Please contact me if you have questions.

Sincerely,



Thomas A. Nies
Executive Director

Center 1400 M Street Northwest,
Washington, DC 20005.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The purpose of this workshop is to convene East Coast fishery managers to explore the existing and potential impacts of climate change on East Coast fisheries governance and identify key management questions, concerns, and information needed to guide future research and coordination between management bodies. Participants will work collaboratively to develop specific next steps for addressing climate change and fisheries governance issues. Invited participants include managers and staff of the New England Fishery Management Council (NEFMC), Mid-Atlantic Fishery Management Council (MAFMC), South Atlantic Fishery Management Council (SAFMC), Atlantic States Marine Fisheries Commission (ASMFC), and NOAA Fisheries (NMFS).

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526-5251 at least five days prior to the meeting date.

Dated: February 21, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014-04183 Filed 2-25-14; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD144

Revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) announces the availability of draft revisions to NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions (Penalty Policy) for public review and comment. The revisions to the policy will improve enforcement consistency nationally, increase predictability in enforcement, improve transparency in enforcement, and more effectively protect natural resources.

DATES: The draft revisions to the Penalty Policy will remain available for public review until April 28, 2014. To ensure that comments will be considered, NOAA must receive written comments by April 28, 2014.

ADDRESSES: Interested persons may submit comments by any of the following methods:

- *Electronic Submissions:* Submit electronic public comments to penaltypolicy@noaa.gov;
- *Fax:* 301-427-2211; Attn: Robert Hogan;
- *Mail:* Enforcement Section, Office of the General Counsel, National Oceanic and Atmospheric Administration, 1315 East West Highway, SSMC-3-15424, Silver Spring, MD 20910, Attn: Robert Hogan.

The draft revisions to the Penalty Policy are available electronically at the following Web site: <http://www.gc.noaa.gov/documents/enforcement/draft-penalty-policy.pdf>. Commenters may also request a hard copy of the draft revisions to the Penalty Policy by sending a self-addressed envelope (size 8.5 x 11 inches) to the street address provided above. Comments submitted in response to this notice are a matter of public record. Before including an address, phone number, email address, or other personal identifying information in a comment, please be aware that comments—including any personal identifying information—can and will

be made publicly available. While a request can be made to withhold personal identifying information from public review, NOAA cannot ensure that it will be able to do so.

FOR FURTHER INFORMATION CONTACT:

Robert Hogan at the above address or by telephone at 301-427-8283.

SUPPLEMENTARY INFORMATION: The draft revisions to the Penalty Policy are intended to provide updated guidance for the assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA. As explained more fully in the text of the Penalty Policy, the purpose of the Policy is to ensure that: (1) Civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and permit sanctions are sufficient to deter both particular violators and the regulated community from committing violations; (4) economic incentives for noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources.

Under the draft revisions to the Penalty Policy, NOAA expects to continue to improve consistency at a national level, provide greater predictability for the regulated community and the public, improve transparency in enforcement, and more effectively protect natural resources. The major changes to the existing Penalty Policy made by this draft revision include:

- (1) Addition of more detail in some penalty schedules to better describe the most commonly-occurring violations;
- (2) Clearer distinctions among multiple-level violations to ensure consistent application of the Penalty Policy;
- (3) Revision of the treatment of prior violations so that prior adjudicated violations older than 5 years are no longer considered an aggravating factor;
- (4) Ensuring consistent application of the Penalty Policy to recreational offenses by replacing the commercial/recreational distinction as a penalty adjustment factor with additional Level I and II penalties that capture recreational violations;
- (5) Creating a new penalty adjustment for "such other matters as justice may require" by combining the "Activity After Violation" factor with new considerations.

When finalized, the revised Penalty Policy will supersede the previous

Penalty Policy regarding the assessment of penalties or permit sanctions, and previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel. This Penalty Policy provides guidance for the NOAA General Counsel's Office in assessing penalties but is not intended to create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person or company. NOAA retains discretion to assess the full range of penalties authorized by statute in any particular case.

The full draft revisions to the Penalty Policy, along with examples, matrixes, and schedules, can be found at <http://www.gc.noaa.gov/documents/enforcement/draft-penalty-policy.pdf>. NOAA is seeking public comment on all portions of the Penalty Policy, but specifically asks for comment on the above identified major changes to the existing Penalty Policy.

Dated: February 21, 2014.

Benjamin Friedman,
Deputy General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 2014-04195 Filed 2-25-14; 8:45 am]

BILLING CODE 3510-12-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD149

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold public hearings for Red Snapper Allocation—Amendment 28.

DATES: The public hearings will be held from Monday, March 10 through Monday, March 24, 2014 at nine locations throughout the Gulf of Mexico. The public hearings will begin at 6 p.m. and will conclude no later than 9 p.m. There will be a "call-in session" on Thursday March 20th; instructions will be available on our Web site. For specific dates and locations, see **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Meeting address: The public hearings will be held in the following locations: Orange Beach and Mobile, AL; Gulfport, MS; Panama City and St. Petersburg, FL; Kenner, LA; and Corpus

Christi, San Antonio and League City/ Webster, TX.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Assane Diagne, Economist, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630; fax: (813) 348-1711; email: assane.diagne@gulfcouncil.org.

SUPPLEMENTARY INFORMATION: The items of discussion in the public hearings are as follows:

Red Snapper Allocation—Amendment 28

Consider the reallocation of red snapper resources between the commercial and recreational sectors.

The public hearings will begin at 6 p.m. and conclude at the end of public testimony or no later than 9 p.m. at the following locations:

Monday, March 10, 2014, Fairfield Inn & Suites by Marriott, 3111 Loop Road, Orange Beach, AL 36561, (251) 543-4444;

Tuesday, March 11, 2014, Renaissance Riverview Plaza Hotel, 64 South Water Street, Mobile, AL 36602, (251) 438-4000;

Wednesday, March 12, 2014, Holiday Inn Select, 2001 N. Cove Boulevard, Panama City, FL 32405, (850) 769-0000; Courtyard Marriott Gulfport Beachfront, 1600 East Beach Boulevard, Gulfport, MS 39501, (228) 864-4310;

Thursday, March 13, 2014, La Quinta Inn & Suites New Orleans Airport, 2610 Williams Boulevard, Kenner, LA 70062, (504) 466-1401;

Monday, March 17, 2014, Hilton Garden Inn, 6717 South Padre Island Drive, Corpus Christi, TX 78412, (361) 991-8200;

Tuesday, March 18, 2014, Embassy Suites San Antonio International Airport, 10110 US Hwy 281 N., San Antonio, TX 78216 (201) 525-9999;

Wednesday, March 19, 2014, Hilton Garden Inn Houston/Clear Lake NASA, 750 W. Texas Avenue, Webster, TX 77598, (281) 332-6284;

Thursday, March, 20, 2014, call-in session; visit www.GulfCouncil.org for instructions.

Monday, March 24, 2014, Hilton Carillon St. Petersburg, 950 Lake Carillon Drive, St. Petersburg, FL 33716, (727) 540-0050.

Copies of the public hearing documents can be obtained by calling 813-348-1630 or visiting www.GulfCouncil.org.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during these hearings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 20, 2014.

Tracey L. Thompson,
Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014-04070 Filed 2-25-14; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD123

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to San Nicolas Island Roads and Airfield Repairs Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Department of the Navy (Navy), Naval Base Ventura County (NBVC), California, for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to the San Nicolas Island (SNI) roads and airfield repairs project. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to NBVC to incidentally take, by Level B harassment only,