

Science, Service, Stewardship



Review of NOAA Fisheries Enforcement Programs and Operations

Alan Risenhoover
Acting Director
Office of Law Enforcement

**NOAA
FISHERIES
SERVICE**



Mission

To conserve and protect our nation's marine resources through assuring compliance with the laws and regulations established to manage these resources



Four Pillars of OLE

Ecosystem Protection / Conservation

- 1) INVESTIGATIONS & PATROLS - Conduct investigations and patrols to enforce marine resource laws, bring to justice violators and ensure compliance.
- 2) COPPS - Constituent outreach and communication through Community Oriented Policing and Problem Solving (COPPS).
- 3) TECHNOLOGY & VMS - Maximize compliance & fishery management through Vessel Management System (VMS) partnerships.
- 4) PARTNERSHIPS - Enhance and maintain our law enforcement partnerships with other federal, state, local and tribal enforcement agencies, as well as industry, non-governmental organization and “friends group” representatives.



Office of Inspector General Report

Review of NOAA Fisheries Enforcement Programs and Operations (January 2010)

- “In short, we found systemic, nationwide issues adversely affecting NOAA’s ability to effectively carry out its mission of regulating the fishing industry.”
- “If not addressed by NOAA’s senior leadership, these issues have the potential to further strain the tenuous relationship that exists in the Northeast Region, and to become problematic in NOAA’s other regions.”
- “[F]ishing laws and regulations are highly complex, making compliance by those in the industry difficult even with the best of intentions.”



General Findings

1. Senior leadership and headquarters elements need to exercise substantially greater management and oversight of regional enforcement operations.
2. Strengthen policy guidance, procedures, and internal controls in its enforcement operations to address a common industry perception that its civil penalty assessment process is arbitrary and unfair.
3. Reassess the OLE workforce composition to determine if this criminal-enforcement-oriented structure is the most effective for accomplishing its primarily regulatory mission.



Industry Concerns

- Fishing regulations are unduly complicated, unclear, and confusing.
- NOAA's regulatory enforcement processes are arbitrary and lack transparency.
- NOAA's broad and powerful enforcement authorities have led to a fisheries enforcement posture that is overly aggressive and intrusive.



Recommendations

1. Ensure NOAA leadership regularly addresses and provides input into enforcement priorities and strategies with regional management, including formal reporting protocols.
 - Involve integration and coordination with headquarters, fisheries management, and science center elements, and
 - Consider reestablishing the position of ombudsman to serve as an interface with the regulated industry



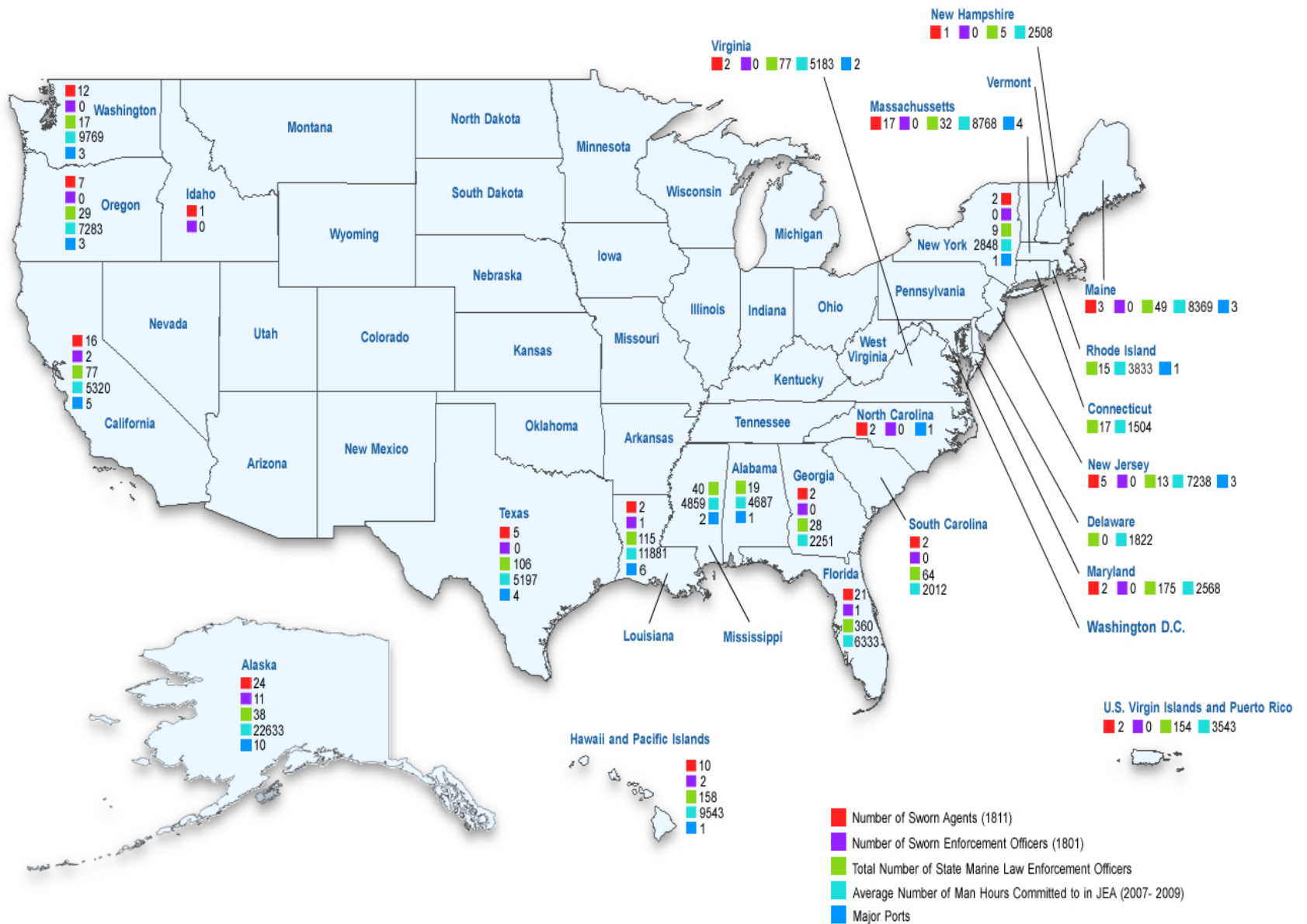
Recommendation 1: Action Plan

- Develop a process for setting enforcement priorities at the regional and national level (July 29, 2010).
 - Set 2 national and regional priorities;
 - Consult with Regional Councils, other NOAA offices, Federal agencies, State agencies, and stakeholders; and
 - Establish a team to evaluate effectiveness.
- Consider reestablishing the position of an ombudsman (Sept. 15, 2010).



Recommendations

2. Determine whether NOAA should continue to approach fisheries enforcement from a criminal-investigative standpoint.
 - Determine the appropriate balance and alignment of uniformed enforcement officers/inspectors and criminal investigators;
 - Approximately 98 percent of enforcement caseload has been regulatory/civil and only about 2 percent criminal cases; and
 - Presently 90 percent of workforce are criminal investigators (special agents)





Recommendation 2: Action Plan

- Freeze on the hiring of criminal investigators until workforce analysis is completed (Oct. 2010).
- Workforce analysis
 - Analysis of tasks/competences of enforcement officers and criminal investigators; benchmarking similar agencies; and workload distribution among NOAA and other Federal and State agencies (May 2010)
 - Develop NOAA recommendations for future workforce composition and external validation (July 2010)
 - Implementation of recommendation on a pilot basis (Oct. 2010)



Recommendations

3. To promote greater transparency, consistency, and oversight:
 - Develop and implement an internal operating procedures manual for determining civil penalty assessments and fine settlement amounts (GCEL)
 - Institute higher-level review of civil penalty assessment determinations (GCEL)
 - Ensure the National Enforcement Operations Manual is current and provides sufficient policy guidance on regulatory and criminal authorities and procedures (OLE)



Recommendation 3: Action Plan

- GCEL internal operating procedures manual being developed, including guidance for making charging decisions, proposing civil penalties, and settling cases (Dec. 2010)
- NOAA General Counsel has instituted higher level reviews of proposed charging decisions (Mar. 2010)
- A penalty policy including revisions to penalty and permit schedules is under way (Dec. 2010)
- Plan being developed for reviewing/revising the Natl. Enforcement Operations Manual (Dec. 2010)



Recommendations

4. Ensure follow-through on GCEL initiatives intended to foster greater industry understanding of and compliance with complex fishing regulations.



Recommendation 4: Action Plan

- Proposed revision to remove any presumption in favor of the civil penalty or permit sanction assessed by NOAA (published March 18, 2010)
- Hold a Northeast Fishermen's forum and ensure availability of GCEL attorneys at Fishery Management Council meetings
- GCEL will provide public access to enforcement charging information (e.g., number of cases charged, penalties assessed, number of cases settled) (Sept. 2010)



Recommendations

5. Develop, implement, and effectively utilize reliable, integrated case management information systems
 - Weaknesses in current case management systems
 - Missing or inconsistently entered data
 - Limited ability to generate information on recidivism rates
 - Information on closed cases not comparable between OLE and GCEL systems



Recommendation 5: Action Plan

- Upgrade GCEL's computer system to provide integrated information and case reporting
- OLE and GCEL systems will “communicate with each other” to provide consistent reports
- Prepare a combined monthly enforcement report to facilitate oversight of NOAA's enforcement program
 - number of cases opened and closed
 - status of open cases,
 - disposition of closed cases, and
 - number and types of cases referred to GCEL and DOJ



Follow-up Efforts

OIG is currently reviewing 3 additional areas:

1. A forensic review of the asset forfeiture fund.
2. Assess GCEL progress on findings and recommendations.
3. Specific complaints regarding alleged abuses of authority by NOAA enforcement personnel, disparate treatment, and excessive fines.



How Can the Councils Help?

How do we reduce complexity, simplify requirements, and improve compliance with our regulations and ensure our enforcement programs are effective and transparent?

- Regulatory Improvements
- Process Improvements
- Outreach and communication improvements
- Other ideas?



Potential Regulatory Improvements

Effective regulations:

- Simple and easy to understand
- Few as possible and/or concise
- Fish is accountable and traceable throughout the wholesale process



Enforcement Considerations For Regional Fishery Management Councils

Developed by NOAA Office for Law Enforcement,
NOAA General Counsel for Enforcement and Litigation, and
The U.S. Coast Guard

October 2007





Potential Regulatory Improvements

Compliance and/or enforcement is more difficult if regulations are:

- Man power intensive (monitoring offloads or weighing, etc)
- Complex or convoluted
- Lack accountability (effective paperwork trail)
- Use estimates (estimated weight of catch, catch composition, discards, etc)
- Law enforcement resource intensive (resource limits of OLE, Coast Guard, and States)



Fishery Management Measure Enforceability Matrix

	Surveillance – Aircraft/Ship/VMS	At-Sea Boarding	Dockside
Limiting Amount/ Percent Landed	No	No	Yes
Limiting Amount/ Percent Onboard	No	Limited	Yes
Prohibiting Retention	No	Yes	Yes
Requiring Retention	Limited	Yes	No
Size Restrictions	No	Yes	Yes
Closed Areas	Yes	Yes	No
Closed Seasons	Limited	Yes	Yes
Gear/Vessel Restrictions	Limited	Yes	Limited
Limited Access Privilege Programs	No	Limited	Yes
Recordkeeping/ Reporting	No	Limited	Yes
Permits	Limited	Yes	Yes



Potential Process Improvements

- Early and effective involvement of OLE and GCEL in the regulatory process
 - plan development teams
 - fisheries management action teams
 - feedback on current regulatory/enforcement issues
- Expanded use of Council Enforcement Committees
- GCEL attendance at Council meetings
- Better draw on industry knowledge and experience
- Do we need a “Compliance and Enforcement Analysis” for regulations?



Potential Outreach and Communication Improvements

- Workshops or fishermen forums
- Additional or clearer compliance guides
- Improved web pages or portals for regulations
- “Ask an Agent” or frequently asked question lists
- Additional dock-side communications
- Ombudsman (national and/or regional)
- Fisheries Enforcement E-mail list-serv
- Increased use of social media (e.g., Twitter)
- Communications training for staff