

## **DRAFT NOAA ENFORCEMENT PRIORITY SETTING PROCESS**

Office of Law Enforcement, National Marine Fisheries Service  
Office of the General Counsel for Enforcement and Litigation  
National Oceanic and Atmospheric Administration

### Goal:

Establish a process for setting annual priorities at the national and regional level to support NOAA's statutory mandates to manage marine resources, Department of Commerce and NOAA strategic goals, utilize stakeholder input, increase compliance, emphasize partnerships with State and Federal partners, and result in effective and fair enforcement programs.

### Process, key dates, and products:

Over the course of the upcoming year, the Office of Law Enforcement (OLE) and the General Counsel for Enforcement and Litigation (GCEL) will follow the schedule set forth below for determining national and regional priorities.

- August 3 – National Enforcement Summit – public review of draft priority setting process
- September 1 – Adopt final process for priority setting
- September 1 to December 31 – Consult with stakeholders on potential priorities based on national and regional summaries of input from:
  - Stakeholder meetings
  - Consultation with NOAA Fisheries Regional Offices
  - Sanctuary Advisory Councils and Sanctuary management
  - Regional fishery management council enforcement committees
  - Take reduction team meetings
  - State enforcement agency and cooperative enforcement meetings
  - Interstate marine fisheries commission meetings
  - US Coast Guard consultations
  - US Attorneys' Office meetings
  - NOAA Fisheries and National Ocean Service headquarters offices
  - Additional groups and opportunities identified by each region
  - General public
- January – National meeting of NOAA leadership to develop draft national and regional priorities:
  - Development of two broad national priorities
  - Provide guidance for priority setting at the regional level

- January - The priorities developed through this process will also be used to inform NOAA's out-year budget submissions through incorporation in its annual program decision memo.
- February 1 to February 28 – OLE and GCEL headquarters and regional offices will develop draft national and regional priorities based on the national leadership meeting.
- March 1 to April 30 – OLE and GCEL will provide an opportunity for public input through posting on the website, public meeting, or otherwise as appropriate on the proposed national and regional priorities and proposals.
- May 1 to May 30 – OLE and GCEL, based on public input, revise draft proposals to:
  - Identify national and regional priorities for each OLE/GCEL region
  - For each priority, establish a proposal to address the priority which includes:
    - Specific identification of the problem,
    - A specific approach or approaches to address the problem,
    - Identify desired outcomes, milestones, and performance measures associated with the project, and
    - Methods for evaluating for success.
- June 1 – Draft regional priorities and proposals submitted to the Director, OLE, and Assistant General Counsel, GCEL, for review and approval.
- July 1 – Draft plan outlining national and regional priorities submitted to NOAA Assistant Administrator for Fisheries and General Counsel for review and approval.
- August 1 – National and regional priorities approved by the Assistant Administrator and General Counsel and posted to OLE and GCEL websites. These priorities would also be used to inform NOAA's annual guidance memo and out-year budget requests.
- October 1 – Implementation of national and regional priorities reflected in new fiscal year operating plans.

Public engagement:

Throughout the process, OLE and GCEL will work closely with stakeholders to identify priorities and proposals to address them. To ensure a wide range of input, NOAA will solicit suggestions on the development of national and regional priorities for enforcement services through postings on the OLE and GCEL websites.

Evaluation:

Regional enforcement proposals will be reviewed annually and national priorities every two years. The evaluation of enforcement proposals will at a minimum include an evaluation of:

- Annual and quarterly milestones
- Budget tracking
- OLE and GCEL case tracking systems
- State enforcement agency information
- Coast Guard information

Background:

See: Appendix 6 to the March 18, 2010, NOAA action plan in response to the OIG Report “Review of NOAA Fisheries Enforcement Programs and Operations.”

**Plan and Schedule for Developing  
Procedure for Identifying Enforcement Priorities  
Prepared by the NOAA Fisheries Service and NOAA Office of the General Counsel  
March 17, 2010**

The purpose of most enforcement programs is to assure effective compliance with the law so that the purposes of the laws can be met. For NOAA that means assuring that people comply with a number of laws designed to protect such natural resources as fisheries, ocean ecosystems, sanctuaries, threatened and endangered species, and marine mammals. NOAA carries out its enforcement obligations with tools to provide compliance, deterrence, and punishment, all with a goal of encouraging people to meet their legal obligations under these laws. NOAA's enforcers—agents and officers in the Office for Law Enforcement, and attorneys in the Office of General Counsel of Environment and Litigation, along with our partners and colleagues from the Coast Guard, the Fish and Wildlife Service, the U.S. Attorneys offices across the country, other federal agencies, and from States, work together. Our goal is a fair enforcement program that achieves results. We are mindful that NOAA's programs affect lives, livelihoods, and natural resources and inform our actions with those considerations in mind. Fairness means assuring a level playing field—that those who comply with the law are not at a disadvantage compared to those who do not—and also assuring that all people, even those who may have broken the law, are treated fairly and with respect.

Setting priorities is a means of allocating resources to help assure an effective enforcement program. Any process for setting priorities must take into account that the goal is to assure compliance with all the laws NOAA has responsibility for implementing, and that those who are regulated must know and expect that if they break the law they may well face an enforcement action. Thus, priority areas of emphasis are a basis for targeting resources along with resource allocation for more general enforcement in addition to the priority areas.

NOAA's Office for Law Enforcement, in consultation with NOAA's Office of General Counsel, will develop a process for setting enforcement priorities at the regional and at the national level. The goal will be establishment of two priority areas for each region annually, and two national priority areas to last two years, with reassessment at the end of one year. For each priority identified, the offices will develop a plan to characterize the problem to be addressed (e.g., fishing for a particular stock when the fishery is closed; harassment of a particular marine mammal) and an approach to address it that will include both compliance guidance and enforcement tools. At the end of the priority time (one year for regional priorities, two years for national priorities) the offices will identify an internal team to assess the effectiveness of the approach in addressing the problem and obtaining better compliance and resource protection.

We will seek input and feedback on this proposed plan for setting enforcement priorities at the planned Enforcement Summit on June 22, 2010, in Washington, D.C., and as part of the additional outreach surrounding the Summit, and finalize the plan by July 29, 2010.

Overall priority-setting approach

The Assistant Administrator for Fisheries and the NOAA General Counsel will convene a meeting during January of each year to start the priority-setting process. Each will have

consulted with appropriate stakeholders before the meeting, including Fishery Management Councils, other NOAA offices, and affected federal and state agencies. The purpose of the meeting is to assess the effectiveness of enforcement actions over the previous year and to develop proposed areas of priority for use in the coming fiscal year. At the end of the meeting the group will develop a paper setting forth a process for a priority-setting approach for each Region and for selection of two national priorities, criteria for selecting priorities, and a timeline. Priority setting will look across all NOAA statutory authorities and obligations and help to assure a comprehensive program.

Criteria may include: areas of emphasis in the Department of Commerce and NOAA strategic plans; extent of non-compliance; risks to the resource of non-compliance; whether people are intentionally choosing not to comply with the laws because of economic or other motivation; the likelihood that a targeted enforcement program will succeed in protecting the resource; interests, concerns, and actions of other federal and state partners; whether the statutes emphasized have been given sufficient enforcement focus in the past.

We are aware that certain enforcement -- such as undercover operations -- must be kept confidential and enforcement targeting must include a means to assure that such approaches may be used and may be kept confidential.

#### Regional priority setting

Using the procedures, criteria, and timeline above, the Special Agent-in-Charge (SAC) in each Region will conduct a meeting, with outreach both inside and outside the federal government before the meeting, to identify two priority enforcement areas for the coming fiscal year for that Region. The priority-setting process will evaluate resources available to implement the priority approaches. A tentative list of priority areas will be developed and made public. The SAC will provide an opportunity for public input (through posting on the website, public meeting, or otherwise as appropriate) on possible priorities. No later than May, the SAC will develop a draft plan that identifies two priority areas of enforcement for the coming fiscal year, and a plan for implementing those priorities. The draft will be provided to the Director of OLE no later than June 1. The Director will review and, if appropriate, revise the draft priority approach. A final priority plan for each region must be approved by the Assistant Administrator for Fisheries, with a goal of such approval by July 31 of each year. The Director of OLE will then work with the Region to assure implementation of the plan as of the beginning of the coming fiscal year.

#### National priority setting

Using the procedures, criteria, and timeline above, the Director of OLE, in consultation with the Assistant Administrator for Fisheries and the General Counsel, will conduct a meeting, with outreach both inside and outside the federal government before the meeting, to identify for proposal several national priority enforcement areas that will apply during the coming two fiscal years. Identification should take into account those areas identified for the Regions and any national goals. After the first year, the process may result in identification of one additional area of priority for the coming year. The priority-setting process will evaluate resources available to implement the proposed priority approaches. A tentative list of national priority areas will be developed and made public. The Director of OLE will provide an opportunity for public input (through posting on the website, public meeting, or otherwise as appropriate) on proposed

national priorities. No later than June, the Director of OLE will develop a draft plan that identifies up to two national priority areas of enforcement for the coming fiscal year, and a plan for implementing those priorities. The draft will be provided to the Assistant Administrator for Fisheries no later than July 15. The Assistant Administrator for Fisheries will review, consult with the General Counsel, evaluate available resources, and if appropriate, revise the draft priority approach. A final priority plan for national priorities must be approved by the Assistant Administrator for Fisheries, with a goal of such approval by July 31 of each year. The Director of OLE will then work with the General Counsel's office and the regions to assure implementation of the plan as of the beginning of the coming fiscal year.

#### Evaluation

At an established time during each fiscal year, the Assistant Administrator for Fisheries and the General Counsel will provide for an evaluation of the effectiveness of implementing the enforcement priorities for that year and provide input to the Regional and National processes based on that evaluation.

#### Conclusion

To assure a fair and effective enforcement program, establishing targeted priorities to be implemented at the same time as a more general enforcement program should help improve effectiveness. After the priority-setting and implementing approach set forth here has been used for two years, the Assistant Administrator for Fisheries and the General Counsel will convene a meeting to assess whether it has improved compliance and made enforcement, and as a result protection of the nation's marine resources more effective and will make adjustments as appropriate.