

Enforcement Considerations
For
NOAA Fisheries and N. Pacific Fishery Management
Council Staff

Developed by NOAA Fisheries Enforcement and the U.S. Coast Guard

April 2005

NOAA OFFICE FOR LAW ENFORCEMENT
And
UNITED STATES COAST GUARD
GUIDANCE FOR EFFECTIVE FISHERIES ENFORCEMENT

Regulations are constantly being written and most of those in place seem to be in a continual state of change. North Pacific Fishery Management Council, NMFS Sustainable Fisheries, Protected Resources, and Habitat staff are tasked with the creation and revision of the regulations. Although involving enforcement personnel in the process is essential, it is difficult to include enforcement on every conference call and at every meeting. With that in mind, the following is provided for consideration by those who are assigned a project which include elements of enforcement.

Before approval and implementation of a management plan, the following measures are enforcement's advice as it relates to the plan's efficacy. The basis for these principles is the historical experience of over twenty years of enforcing the many and varied regulations promulgated under the Magnuson, and later, the Magnuson-Stevens Act on a nationwide basis

Please note that the information in this precepts paper is intended only as general guidance. Depending on the specific design of any regulatory program, the enforcement tools and strategies used in that program may require mixing or even deviation from the individual enforcement precepts mentioned in this paper. The information contained in this paper in no way limits NMFS ability to employ the enforcement technique(s) that it considers most appropriate for accomplishing the goals of a specific regulatory program.

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 an undersize halibut on a commercial vessel is clearly a simple prohibition. It is illegal regardless of where taken or how it was harvested or any other variable, condition or stipulation.

Simple regulations are easier for industry to comply with. Complex regulations result in errors, misunderstandings, and cause industry to simply ignore them.

To the extent possible, consideration should be given to consistently similar management measures amongst the Fishery Management Plans (FMP) and regulatory areas.

Few as possible - Adding too many control measures frustrate the industry as well as enforcement. Too many regulations allow for more possibilities for mistakes to be made and reports to be forgotten; and it gives more work for enforcement. Reports should be consolidated

where possible, and instructions made simple. Regulations sometimes have to be very restrictive, but compliance should be easy for the industry.

Fish is accountable and traceable throughout the wholesale process - The intent of this requirement is for there to be traceability of product wherever found. This enables enforcement to intercept unlawful seafood at various funnel points such as airports and Customs borders. With required documentation and labeling, everything could be traced back to the responsible harvester.

Supported by appropriate penalties up to and including permit revocation and criminal charges for the most egregious offenses - The Penalty schedule of NOAA General Counsel is constantly evaluated to ensure it is sufficient to effectively penalize civil offenders commensurate with their violations. However, chronic repeat offenders who do not possess resources to pay their fines may warrant permit sanctions or revocations. Those who commit egregious crimes must be punished via criminal sanctions up to the felony level. In these cases, incarceration may be the appropriate avenue of attaining justice. (See PENALTY section below for more on this subject)

WHAT IS MORE DIFFICULT TO ENFORCE:

Man power intensive regulations - The halibut and sablefish IFQ regulations are manpower intensive. Enforcement will never have enough manpower to monitor more than a small fraction of the total offloads. This requires constant shifting effort from port to port, while not having adequate resources to properly be pro-active towards serious offenders. Use of technologies such as VMS and electronic logbooks can allow enforcement to monitor remotely, reducing manpower needs.

Complex or convoluted regulations - Regulations such as by-catch limits on catcher vessels are nearly impossible to enforce at-sea. Enforcement of these regulations requires monitoring the entire catch during offload. At that time, it is too late for the vessel to do something about any overages it may have. The fisherman must rely on their ability to estimate catch composition at sea to stay in compliance.

Lack of accountability - Fish can become “legal” merely by doctoring the records, without traceable accountability, or the ability to audit. Records to track fish from harvest, to the offload, and through the processing and shipping add to good accountability.

Estimates - Regulations requiring a vessel captain to estimate catch, catch composition, and/or discards are difficult to enforce. Using estimates may work just fine for managing a fishery. However, enforcement cannot prove the false reporting of an estimated weight of a discard, nor can we establish how close an estimate must be before we can cite someone.

Finally, any new plan or regulation must take into consideration the enforcement resources of the NMFS and the Coast Guard in terms of maximum capable enforcement contacts and

investigative effort. Nationwide enforcement is spread thin, so adding more regulations to enforce, usually means decreasing, or in some cases ceasing, effort in other areas.

PENALTIES

Once regulations are in place, penalties are discussed. The goal of regulatory enforcement agencies is to ensure compliance, whereas prosecution agencies exist to assess responsibility and punish violations. The NOAA Fisheries Office for Law Enforcement (OLE) has both mandates. These two mandates often lead to conflict when we are criticized for not pursuing cases of wrongdoing more aggressively, and then criticized for being too heavy handed when pursuing major civil and criminal violations. OLE works with various NOAA and NMFS divisions, the Fishery Management Councils, NOAA General Counsel, and the U.S. Attorney's Office to determine the appropriate prosecution method for an offense. OLE has one of the most versatile selections of penalties of any agency in the United States. For civil violations, these include verbal warnings, fix-it notices, written warnings, summary settlement fines, as well as monetary penalties permit sanctions, permit suspensions, and permit revocations from NOAA General Counsel. There are also options for hearings with a Civil Administrative Law Judge or with a federal judge in federal civil court. Our goal is to seek the least penalty to gain compliance. If a penalty is too low, it may result in being the cost of doing business. If a penalty is too high, a person discovering they have committed a civil violation may decide to cover up the error instead of reporting it. Or, they may feel the need to challenge the violation in court, not to claim innocence, but to petition for a lower penalty. For criminal violations, penalties include monetary penalties, home confinement, and/or imprisonment. Criminal investigations and prosecutions are saved for the intentional violators who commit the violation many times, conspire with others, or those who intentionally commit one serious offense where a civil penalty would not be appropriate or adequate.

MATRIX of MANAGEMENT MEASURES

The U.S. Coast Guard and NOAA OLE completed a matrix to help fishery managers and staff better understand enforcement aspects related to certain management measures. It is important to note these guidelines address the enforceability of the regulation, not necessarily the merits of the regulation. Where it is applicable and important to enforcement agencies, the guidelines address safety, economics and biology considerations.

These guidelines provide a matrix to rapidly identify how enforceable a management measure is by at-sea cutter patrols, aircraft patrols, and dockside enforcement. The matrix is supplemented by an analysis defining each management measure, outlines the enforcement advantages and disadvantages of the measure, and then concludes with a recommendation on how to write regulations to make the management measure the most enforceable. For ease of organization, the management matters are listed and described alphabetically.

**Matrix Defining the
Enforceability of Fishery Management Measures**

	At-Sea Ship	At-Sea Aircraft	Dockside
Limiting Amount/Percent Landed	Impractical	Impractical	Reasonable
Limiting Amount/Percent Onboard	Possible with some difficulty	Impractical	Reasonable
Prohibiting Retention	Reasonable	Impractical	Reasonable
Closed Areas	Reasonable	Reasonable	Impractical
Closed Seasons	Reasonable	Possible with some difficulty	Reasonable
Gear/Vessel Restrictions	Reasonable	Possible with some difficulty	Possible with some difficulty
ITQs/IFQs	Possible with some difficulty	Impractical	Reasonable
Recordkeeping & Reporting	Possible with some difficulty	Impractical	Reasonable
Permits	Reasonable	Possible with some difficulty	Reasonable
Size Restrictions	Reasonable	Impractical	Reasonable

KEY

-  Reasonable
-  Possible with some difficulty
-  Impractical

LIMITING AMOUNT/PERCENT LANDED

Definition: This management measure aims to reduce non-target species retention (and minimize its mortality) by limiting the amount or percentage landed.

Advantages:

- There is an incentive to limit the amount of non-target species retained if the fishery will be closed as a result of reaching a limit.

Disadvantages:

- Since this is a landing provision, it is difficult to enforce at sea. Effectiveness is directly proportional to dockside effort expended.
- High grading may be an issue.

Recommendations:

- Consider prohibitions which regulate types of gear or types of operations to minimize non-target catches.
- Policies should incorporate industry best practices and consider any industry recommendations.
- Segregating catch at sea would facilitate enforcement.
- On catcher processor vessels, regulations should prescribe that eventual landing limit shall not be exceeded while at sea. This allows for enforcement at-sea as well as dockside. If at-sea boarding determines that the trip limit is met, then the F/V goes home to preclude further resource degradation/economic advantage.

LIMITING AMOUNT / PERCENTAGE ON BOARD

Definition: This management measure aims to reduce non-target species (and minimize its mortality) by limiting the amount or percentage of a non-target species allowed on board a fishing vessel.

Advantages:

- Allows for the potential for at-sea enforcement. If at-sea boarding determines that the limit / percentage is met, then the fishing vessel may be directed home to preclude further retention.

Disadvantages:

- Full and accurate count of catch onboard cannot easily be done at sea during in most fisheries (due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.).
- High-grading may be an issue.

Recommendations:

- Regulations should specify how much primary catch is required to justify retention of non-target species, and in what amounts. This is necessary to preclude non-target species from becoming a targeted catch.
- Consider prohibitions which regulate types of gear or types of operations to minimize non-target catches.
- Policies should incorporate industry best practices and consider any industry recommendations.
- Segregating catch at sea would facilitate enforcement.
- This provision works best with frozen product. Also, where there are only two species retained, segregation would help enforcement.

PROHIBITING RETENTION

Definition: This enforcement measure aims to restrict retention by prohibiting the retention of a certain species aboard fishing vessels.

Advantages:

- Prohibition violations are easier to document and enforce than regulations that allow a limited percentage to be retained.
- Allows for at-sea enforcement. Once fish are landed, detecting a violation for retention of prohibited species is easy if enforcement is present.

Disadvantages:

- May create an incentive to hide prohibited species from observers or to underreport prohibited species catch if it influences the fishing season.

Recommendations:

- Consider prohibitions which regulate types of gear or types of operations to minimize non-target catches.
- Policies should incorporate industry best practices and consider any industry recommendations.

CLOSED AREAS

Definition: Fishing in specific area is restricted.

Advantages:

- Fairly easy to monitor if below recommendations are followed.
- Very easy to monitor with VMS. However, even with VMS cueing, a response asset is generally required to document the violation for prosecution.
- Easy to document presence in the closed area by aircraft overflight and over the horizon cutter monitoring. It is tougher to document fishing activity, depending on the fishery and gear type.

Disadvantages:

- Without VMS, the effectiveness is directly proportional to the surveillance effort.

Recommendations:

- Clearly defined areas. Use exact latitude/longitude and straight lines. Avoid simply stating distance offshore, center point and radius, or depth contours.
- Regular shaped areas. In most situations, closed areas are easier to enforce if they are square or rectangle shaped, since it is more clear cut that a vessel is west/east, north/south of an indicated line, and therefore, in or outside a closed area.
- Large closed areas are preferred in most situations. Small closed areas with open areas in between make it easier to cheat by enabling a vessel to quickly enter and exit a closed area. However, if making smaller areas opens fishing grounds, then there may be less incentive to violate the closed area restriction.
- If possible, close an area to all activity; limit grand-fathering and other exemptions. Where practical, areas should be closed to all types of fishing as well as transiting fishing vessels.
 - ◆ If transit is allowed, fishing gear should be stowed and transit must be continuous (no loitering/stopping). Stowage requirements must be clearly defined.
 - ◆ Regulated gear areas are difficult to enforce, because still require an enforcement unit to verify that fishing vessel is using legal gear in the closed area.

CLOSED SEASONS

Definition: Fishing during specific times of the year is prohibited

Advantages:

- Large vessel fisheries are easy to monitor since vessels are in port or in other fisheries.
- Gear intensive fisheries (pots, etc.) are noticeable if a vessel gears up for a trip.
- The presence of species in a closed season should be detected if it shows up in the market if retention is not allowed anywhere.

Disadvantages:

- Small vessel fisheries are more difficult to monitor. Smaller quantities are easier to hide in the market.
- Fisheries with multiple gear types for the same species are especially difficult to enforce if only one gear type has a closed season.

Recommendations:

- See Closed Areas: ensure closures are clearly defined; limit exemptions to the closed season, and dates/times should be defined to the minute.
- Regulations should fully 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, gear may not be set prior to the opening. For short duration fisheries, prohibit all fishing with any gear type 72 hours before and after the fishery.
- Monitoring the fishing vessels with VMS during closed seasons can greatly aid enforcement.

GEAR/VESSEL RESTRICTIONS

Definition: Specific gear types or gear modifications are prohibited. “Gear” is meant to include not only the primary methods and tools to harvest the resource, but also includes the vessels, horsepower and other such variables. Certain regulatory gear may be required to minimize catch of non-target species and/or protect certain marine species (i.e., pelagic vs non-pelagic trawls or seabird avoidance gear).

Advantages:

- Gear is easy to inspect dockside and in most cases, readily visible at sea.

Disadvantages:

- Restrictions on gear employment (i.e. set/trawl depth) are more difficult to enforce. For example, a limitation on amount of fixed gear/hooks is difficult to regulate/enforce.
- Normally gear needs to be inspected at-sea to ensure gear is in compliance while engaged in the act of fishing. This becomes resource intensive as it may require multiple checks at sea and is intrusive, as it will require the gear to be inspected while at sea, possibly impacting the vessel’s fishing operations and fostering ill feelings towards enforcement officers.

Recommendations:

- If use is prohibited, then allowing the gear on board should be prohibited.
- Gear restrictions should be standardized across state and federal boundaries.
- Federal and state enforcement officers should develop and use standard procedures, equipment and techniques.

ITQs/IFQs

Definition: Individual Quotas Programs. These delineate a specified amount of particular fish species to be allocated to an individual, a particular vessel, a processor, or a community.

Advantages:

- IQs are often praised for their safety benefits. By allowing a fishermen a set quota to be caught over a long period of time the fishermen is able to choose when to fish rather than being forced -to fish during bad weather based on arbitrarily determined time periods (derby fisheries).
- Once an IQ is met, enforcement can treat additional fish above the quota as prohibited species.

Disadvantages:

- Manpower intensive. Spreads out fishing effort. Instead of specific fishing seasons to monitor, a fishery may last nearly year round, and possibly require more assets for the extended season.
- Individual quota holders have the incentive to underreport their landings throughout the fishing season.

Recommendations:

- Effectiveness depends on monitoring landings.
- Electronic reporting provides real time debiting of an IQ account. That is beneficial to enforcement, to the fisherman, and to the RAM Division. Electronic reporting has also proven to decrease errors in reporting.
- VMS should be required in IQ fisheries. This allows NMFS and CG enforcement to ensure vessels are fishing where they are authorized, and it also allows NMFS and CG to deploy their people, vessels, and aircraft to where fishing and offload activity is taking place.
- If at-sea quota debiting is allowed, the use of certified scales, observers, and video monitoring should be considered to ensure accuracy.

RECORDKEEPING AND REPORTING

Definition: A requirement to keep records of specified information on board the vessel. As technology permits, the data from records could be transmitted to managers for decision-making depending on the fishery and the requirement for catch or effort information.

Advantages:

- At-sea boarding can verify the presence and use of logbooks and other records and dockside monitoring of offloads can verify accuracy of catch data.

Disadvantages:

- Full and accurate count of catch onboard is difficult at sea for unprocessed fish. (Due to species mixing, loading, icing, safety of boarding party in accessing fish hold at sea, etc.).

Recommendations:

- Regulations need to identify the time requirements for completing reports and entering logbook data (per set, daily, end of trip). By specifically describing the time requirement, the type of enforcement required (at-sea, dockside) can be better determined.
- Standard logbook format for all federal fisheries.
- Use of electronic reports can simplify data collection that can be used by enforcement. Electronic reports can be used as a way to provide enforcement near real-time data before or during a boarding. Electronic reporting has also proven to greatly reduce reporting errors.

PERMITS

Definition: Document which indicates allowable gear type, fishing areas, and/or species which are allowed to be retained.

Advantages:

- Easy to track and identify.
- Revocation or suspension of permit is an effective penalty provision
- Easy method for enforcement to determine lawful operations.

Disadvantages:

- Permits are largely used by enforcement to identify allowed fishing activity, but the bureaucracy for amending them, or when a permit is turned in and then re-issued, creates a system where mistakes can be made and fishermen may not have the patience to wait for accurate permits to be processed before going fishing.

Recommendations:

- For most circumstances original, not copies, must be carried on board the vessel at all times.
- Permit transfers must follow strict guidelines and should require adequate notification to enforcement agencies.
- Standardize permit format across fishery management plans where possible.

SIZE RESTRICTIONS

Definition: Possession or fish below or above a specified size is prohibited.

Advantages:

- Violations are easy to document and prosecute

Disadvantages:

- Effectiveness is limited by the amount of processing done at sea.
- Effectiveness is proportional to the effort expended in dockside checks and at-sea boardings. Has potential to be manpower intensive.
- High-grading (fishing after trip limit is met and keep a high-grade (in most cases - larger) fish and discard a lesser grade fish) can occur.

Recommendations:

- Prohibit processing/filleting at sea. Measurements should include head and tail intact.
- Standard measurement procedures, equipment and technique by state and federal agencies.
- Maintain same regulations across state and federal boundaries.