

NOAA FISHERIES NORTHEAST ENFORCEMENT DIVISION PRECEPTS FOR DEVELOPING EFFICIENT FISHERIES REGULATIONS

Before approval and implementation of a management plan, the following measures are enforcement's advice as it relates to the plan's efficacy. These principles have been developed from the historical perspective of twenty-five years enforcement of the varied regulations promulgated under the Magnuson Stevens Fisheries Conservation and Management Act.

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 short lobster is clearly a simple prohibition. It is illegal, regardless of where it was taken or how it was harvested or any other variable, condition or stipulation. Also, rules should not change frequently. Frequent changes make rules difficult to follow and to enforce. For instance, fishers may successfully avoid prosecution, even after admitting to breaking a rule, because the rule recently changed.

To the extent possible, consideration should be given to consistently similar management measures among all FMPs.

- **They are based on effort control (i.e., DAS or quotas) versus restricted quantities (trip limits)** - The groundfish trip limits of the 1970s provided a valuable lesson for fisheries managers and Councils. We learned that trip limits create an incentive for a percentage of fishermen to break the law. We learned that trip limits tempt some dealers to fraudulently report overages that never appear in the Agency's statistical database. These actions skewed fish prices downward, resulting in a growing black market. We learned that there are far too many nighttime landings in various New England ports for a handful of agents, stationed in major ports, to effectively patrol and monitor.

Since 1994, with the onset of effort control as the major management measure, the Office of Law Enforcement has maintained high levels of compliance, coupled with successful prosecutions of offenders.

- **The closed Areas that are clearly defined in large, plain shapes for reasonably long time spans with minimal exceptions, exemptions or transiting provisions (except for compelling safety reasons)** provide a sufficient buffer between boundaries and the area to be protected to deter incursions.
- Development of regulations should include NOAA Enforcement and Coast Guard input at critical junctures, including assisting species committees in the development of Enforceability Assessments for all proposals. Enforcement Assessments should include the cost of enforcing management measures, the additional enforcement resources

required for new or expanded management measures, and a prioritized listing of any alternatives based on enforceability.

- **They are assisted by VMS** - Vessel Monitoring Systems are a tremendous asset to enforcement for monitoring days at sea and closed areas. VMS requirements should be considered when developing new plans, and the resources to support it should be provided.
- **The fish is accountable and traceable throughout the wholesale process** - This enables enforcement to intercept unlawful seafood at various funnel points such as interstate highways, airports and secondary dealers. Required documentation and labeling protects markets, prevents downward price trends, enhances enforcement and protects the consumer.
- **They are supported by appropriate penalties, including permit revocation** for the most egregious offenses. NOAA General Counsel's penalty schedule has been upgraded to effectively address violations; however chronic repeat offenders who can not pay penalties and those who commit egregious crimes must be penalized. In these cases, permit revocation is appropriate. Illegal activity should preclude them from participating in controlled fisheries, or receive performance-based allocations, when that participation or performance was based on illegal activity.
- Mandatory reporting should remain a requirement in all FMPs. More efficient methods for collection may be developed, such as electronic catch and dealer reporting.

What is generally not enforceable?

- **Staff intensive regulations** such as trip limits, catch percentages or meat counts or regulations that require monitoring of offloads make effective enforcement difficult. Manpower intensive regulations result in less effective and less consistent enforcement coverage.
- **Complex or convoluted regulations** - multiple gear, exemptions, exceptions, and running clocks - Simple regulations reduce opportunities for lame defenses.
- **Lack of accountability** - marine resources that become "legal" by falsifying records or commingling product or high grading. Traceable products and assets enhance enforcement and protects the resource, the market and consumers.