

**National Oceanic and Atmospheric Administration
National Enforcement Summit**

OVERVIEW OF ASSESSMENT INTERVIEWS

To develop the Summit design, NOAA solicited advice and input from experienced public and private sector parties, who interact with NOAA's enforcement program as members of regulated communities and stakeholders as well as those who have broad experience with state and federal enforcement programs.

Through the U.S. Institute for Environmental Conflict Resolution, NOAA retained Susan Podziba, Public Policy Mediator at Susan Podziba & Associates, to assist in the design and facilitation of the Summit.

Ms. Podziba interviewed individuals from the commercial fishing industry, recreational fishing industry, U.S. government agencies, state enforcement partners, fisheries councils, fisheries commissions, environmental and conservation organizations, academia, and NOAA.

From her interviews, she distilled the following key themes and attitudes, which were identified by multiple individuals across multiple categories of stakeholders.

Achieving Compliance

- **Complex Regulations:** There was a prevailing view among many interviewees that the complexity of regulations results from efforts to balance an array of interests among council members. It is also agreed that this complexity makes the regulations more difficult to enforce, for example, completely closed areas versus closed areas through which fishers may transit. Some suggested that enforcement experts should play a greater role in developing the regulations.
- **Perceptions of fishers as law-abiding or "likely to cheat":** Many interviewees identified the two sides of this dynamic. On one side are those who suggest greater compliance will result from gaining the support of law-abiding fishers whereas others think the economic incentives to cheat motivate most to violate NOAA regulations. Many interviewees raised concerns that in some regions, people do not expect existing fisheries management practices to result in improved fish stocks and therefore, are less likely to comply. Each view of the dynamic suggests differing strategies for increasing compliance.
- **Limitations for deterrence when high penalty amounts and lengthy time periods before settlement yield to significant penalty amount reductions:** A number of interviewees identified a pattern of high penalties associated with Notices of Violation and Assessment (NOVAs), a long period of settlement inaction, and eventually, a significantly reduced penalty. Some viewed this as strategy for deterrence. Others suggested that this pattern created an

expectation that the penalties originally assessed were purposely inflated and therefore, expected they would be reduced. The latter see this pattern as undermining NOAA.

- **Enforcement v. Management Issues:** There is a sense among many interviewees that some of the frustrations regarding enforcement stem from frustrations with management strategies.

Process for Establishing Enforcement Priorities

- **Unknown or Lack of Strategic Planning and Priority Setting Mechanisms:** Many of NOAA's partners have explicit mechanisms for developing and reviewing enforcement priorities. These activities are often created through joint discussions to identify trends and patterns of non-compliance and vetted with government partners and key stakeholders. The final plans and priorities are often made available to the public via the internet. Many suggested a similar process would be useful for NOAA.
- **Efforts to ascertain NOAA enforcement priorities:** Without known public documentation of NOAA's enforcement priorities, some stakeholders spoke of their efforts to ascertain NOAA's priorities based on its enforcement activities. They discussed an inability to identify patterns that would reveal priorities.

Consistency and Transparency

- **Establishing penalty consistency will be difficult to accomplish via guidelines:** Many interviewees discussed the challenges in achieving consistency across penalties nationally, given the variations within and among regions as well as the great number of variables involved with any given violation. Most think guidelines can be created to provide a penalty range, but suggested that regional and national management structures are necessary for attaining a degree of meaningful consistency.
- **Criminal v. Civil:** There is a great deal of confusion among NOAA and its partners regarding triggers for moving cases from the civil to the criminal realm. Some referred to perceived competition with enforcement partners, for example, unwillingness to characterize a violation as criminal because that investigation would then be shared with or led by other agencies.

Communications

- **NOAA as a blackbox:** This term was used to mean different things to different individuals. Some spoke of having no idea how enforcement priorities or penalties were determined or how to obtain such information; others spoke of

submitting requests to NOAA and not knowing when or if they would get responses.

- **Difficulty of using good publicity as a meaningful deterrent:** The use of press releases and publication of enforcement actions is used by other federal agencies to inform the public of their efforts to protect the nation's natural resources and to deter illegal actions. Efforts to issue press releases by and with NOAA seem to have been stymied by a lengthy review process and reluctance by attorneys to release even minimal information. Some pointed to past efforts when press release information was no longer newsworthy by the time it passed through NOAA reviews.
- **Enabling Rumor Mill:** Without clear and accurate information from NOAA, issues related to enforcement are passed via word of mouth, which sometimes promotes inaccuracies.

General

- **NOAA activities are perceived to be personality-driven:** Many interviewees talked of NOAA personnel they held in high regard and with whom they enjoyed strong working relationships. Still, they also talked of their interactions with NOAA as being personality-driven, meaning that there were times things went extremely well and other times things went poorly, depending upon whom they worked with. For many, this pointed to a lack of management, policy, or institutional structure to reign in the idiosyncrasies of personalities in the work place.
- **Regional variations in relationships between NOAA and commercial fishers:** In some regions, fishers feel they are treated like criminals; in other regions, particularly where NOAA is protecting fisheries from illegal foreign vessels, there is a sense of partnership.
- **Limited Enforcement Resources:** Many stated that NOAA needs more enforcement staff to protect the nation's marine resources. Some believe a lack of staff makes it difficult to deter potential violators.
- **Civil enforcement versus long-term criminal investigations:** Many interviewees asked for clarification of the number of violations referred to in the January 2010 Inspector General Report. They were concerned that the percentage of civil violations relative to criminal actions was misleading and suggested a more appropriate measure would be labor hours given that a civil violation may require few hours whereas a criminal investigation may require as much as a year of effort by multiple investigators.