

Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions
NOAA Office of the General Counsel – Enforcement and Litigation

I. Statement of Scope and Purpose

This Policy provides guidance for the assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA.

The purpose of this Policy is to ensure that: (1) civil administrative penalties and permit sanctions are assessed in accordance with the laws that NOAA enforces in a fair and consistent manner; (2) penalties and permit sanctions are appropriate for the gravity of the violation; (3) penalties and permit sanctions are sufficient to deter both individual violators and the regulated community as a whole from committing violations; (4) economic incentives for noncompliance are eliminated; and (5) compliance is expeditiously achieved and maintained to protect natural resources. Under this Policy, NOAA expects to improve consistency at a national level, provide greater predictability for the regulated community and the public, improve transparency in enforcement, and more effectively protect natural resources.

This Policy supersedes all previous guidance regarding assessment of penalties or permit sanctions and all previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel.¹

To assist in the interpretation of this Policy, attached to this Policy are three Appendixes: (1) Appendix 1 is a preliminary penalty assessment worksheet; (2) Appendix 2 consists of seven penalty matrixes, one for each of the seven statutes most commonly enforced by NOAA; and (3) Appendix 3 consists of seven offense level schedules, corresponding to each of the seven matrixes listed in Appendix 2. A more detailed explanation for the use of the Appendixes is described herein.

This Policy provides guidance for the NOAA Office of the General Counsel, but does not, nor is it intended to, create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person or company. The basis for penalties calculated under this Policy, however, will be included in charging documents filed by the Agency. Further, although this Policy provides guidance regarding the assessment of proposed penalties and permit sanctions, NOAA retains discretion to assess the full range of penalties authorized by statute in any particular case.

This Policy will apply to all civil administrative enforcement cases charged on or after its issuance on March 16, 2011. In transitioning to this new Policy, the NOAA General Counsel's Office will monitor penalty assessments closely; any penalty or permit sanction under this Policy that is substantially higher or lower than under the prior penalty schedules will be reviewed before the penalty is put into a charging decision.

¹ This penalty policy does not address, and is not meant to affect, NOAA's summary settlement schedules or related delegations of authority.

II. Statutory Background and Enforcement Framework

A. NOAA Authorities

NOAA has authority and responsibility under more than 30 federal statutes to protect living marine resources, including marine areas and species, and manage sustainable fisheries. A large proportion of NOAA's enforcement cases are brought under seven statutes – the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Marine Sanctuaries Act, the Endangered Species Act, the Marine Mammal Protection Act, the Lacey Act, the Northern Pacific Halibut Act, and the Antarctic Marine Living Resources Convention Act.

B. Role of NOAA Office of Law Enforcement and Federal and State Partners

Officers and agents in the NOAA Office of Law Enforcement, the U.S. Coast Guard, Customs and Border Protection, Immigration and Customs Enforcement, U.S. Fish and Wildlife Service, and State officers authorized under Cooperative Enforcement Agreements, monitor compliance and investigate potential violations of the statutes and regulations enforced by NOAA. In general, when an investigating agent identifies a statutory or regulatory violation he or she may pursue one of several available options, depending on the nature and seriousness of the violation.

Where a violation is less significant or is merely technical, having little to no impact on marine resources, the agent may provide a verbal or written warning or issue a "Fix-It Ticket," which provides the alleged violator with an opportunity to correct the violation within a certain amount of time and waives all penalties if the alleged violator takes the appropriate curative action.

For certain less significant violations, the agent may issue a "summary settlement" notice, under authority delegated to the agent by the NOAA Office of General Counsel. Under the terms of a summary settlement, an alleged violator receives a document explaining the alleged violation and the alleged violator may resolve the matter expeditiously by paying a reduced penalty. The determination of appropriate summary settlement penalties is guided by summary settlement schedules developed by the Office of General Counsel, with input from the NOAA Office of Law Enforcement and, often, the relevant program office. *See* <http://www.gc.noaa.gov/enforce-office3.html>.

Where an agent determines that an alleged violation is significant, or where an alleged violator has one or more prior violations, or does not pay a proposed summary settlement amount, the agent may refer the case to the NOAA General Counsel's Office for Enforcement and Litigation (GCEL) for further civil action or, often working with GCEL attorneys, to a U.S. Attorney's office for criminal prosecution. U.S. Coast Guard officers, state officers operating under Cooperative Enforcement Agreements, and agents from the U.S. Fish and Wildlife Service or Customs and Border Protection, investigate cases, and where appropriate, submit proposed cases to OLE to determine the proper action to take.

C. Role of the NOAA Attorney

A NOAA attorney assigned to a case, in consultation with the investigating agent, evaluates whether evidence in the case demonstrates a violation of a NOAA statute or regulation, and determines whether to recommend charging the alleged violator or declining the case. All charging or declination recommendations by NOAA attorneys are made to the NOAA General Counsel or Deputy General Counsel for final approval. If the NOAA attorney determines that it is appropriate to recommend filing charges, the attorney then has a number of remedial options. For less significant cases, the attorney may recommend a Written Warning; this action is appropriate where the alleged activity has a limited impact on natural resources, the alleged violator demonstrates a high degree of cooperation, the alleged violator takes corrective action that substantially mitigates or eliminates the impact of the violation, or a substantial amount of time has passed from the date of the violation. For more significant violations, the NOAA attorney may recommend charges under NOAA's civil administrative process (*see* 15 C.F.R. Part 904), through issuance of a Notice of Violation and Assessment of a penalty (NOVA), Notice of Permit Sanction (NOPS), Notice of Intent to Deny Permit (NIDP), or some combination thereof. Alternatively, the NOAA attorney may recommend that there is a violation of a criminal provision that is sufficiently significant to warrant referral to a U.S. Attorney's office for criminal prosecution.

III. Summary of the Penalty Policy

A. Approach

Any penalty policy must start with the statutory and regulatory requirements for establishing appropriate penalties. While there is significant variation in the maximum penalties and sanctions authorized under the statutes most commonly enforced by NOAA, the factors used to determine an appropriate penalty or permit sanction under these statutes are similar: the nature, circumstances, extent and gravity of the alleged violation; the alleged violator's degree of culpability; the alleged violator's history of prior offenses; and the alleged violator's ability to pay the penalty. *See* 15 C.F.R. § 904.108(a).² This Policy utilizes these principles to create a system for determining appropriate penalties.

² The most common statutes enforced by NOAA are the Magnuson-Stevens Act (16 U.S.C. § 1801, *et. seq.*); the National Marine Sanctuaries Act (16 U.S.C. § 1431, *et. seq.*); the Endangered Species Act (16 U.S.C. § 1531, *et. seq.*); the Marine Mammal Protection Act (16 U.S.C. § 1361, *et. seq.*), the Lacey Act (16 U.S.C. § 3371, *et. seq.*), the Northern Pacific Halibut Act (16 U.S.C. § 773, *et seq.*), and the Antarctic Marine Living Resources Conservation Act (16 U.S.C. § 2431, *et seq.*). The current maximum statutory penalties permitted by the seven statutes most commonly enforced by NOAA are as follows:

Magnuson-Stevens Act – \$140,000 per violation
National Marine Sanctuaries Act – \$140,000 per violation
Endangered Species Act – \$32,500 per violation (knowing violations - endangered species)
Marine Mammal Protection Act – \$11,000 per violation
Lacey Act – \$11,000 per violation
(footnote continued on next page)

Under this Policy, penalties and permit sanctions are based on two criteria: (1) A “base penalty” calculated by adding (a) an initial base penalty amount and permit sanction reflective of the gravity of the violation and the culpability of the violator and (b) adjustments to the initial base penalty and permit sanction upward or downward to reflect the particular circumstances of a specific violation; and (2) an additional amount added to the base penalty to recoup the proceeds of any unlawful activity and any additional economic benefit of noncompliance. Described as an equation:

Base Penalty [(Initial Base Penalty based on the Gravity of the Offense and Culpability) + (Upward/Downward Adjustment for Specific Circumstances)] + [Proceeds of Unlawful Activity and Any Additional Economic Benefit] = [Penalty Assessment and Permit Sanctions]

We note that this Policy is a departure from NOAA’s prior practice of developing detailed penalty schedules by region and by specific types of violations with broad ranges for both penalty and permit sanctions. This Policy uses a simplified approach of having one penalty and permit sanction matrix for each major statute that NOAA enforces with narrower penalty and permit sanction ranges to be applied nationally. This approach assures that NOAA attorneys are provided with greater guidance in recommending penalties, and should assure fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

B. Criteria for Determining Penalty and Permit Sanction

Initial Base Penalty and Permit Sanction – two factors are considered in determining the initial base penalty and permit sanction amount (collectively, the “initial base penalty”): (1) the gravity of the prohibited act that was committed; and (2) the alleged violator’s degree of culpability, based on an assessment of the alleged violator’s mental culpability in committing the violation. These two factors constitute the seriousness of the violation.³

As detailed more fully below, the initial base penalty is determined by first finding the charged violation on the attached schedules, which list the most common violations that NOAA charges. The schedules are found at Appendix 3. The schedules assign a particular “offense level” to

Northern Pacific Halibut Act – \$200,000 per violation
Antarctic Marine Living Resources Conservation Act – \$11,000 per violation

Notably, at least once every four years, the Department of Commerce adjusts the maximum civil monetary penalties authorized by statute for inflation, pursuant to the Federal Civil Penalties Inflation Act (Pub. L. 101-410) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134). *See* 73 Fed. Reg. 75321 (Dec. 11, 2008).

³ Notably, NOAA regulations require that NOAA consider these factors when determining the proper penalty to assess. *See* 15 CFR § 904.108(a) (“Factors to be taken into account in assessing a penalty . . . may include the . . . gravity of the alleged violation [and] the respondent's degree of culpability . . .”). *See also* 16 U.S.C. § 1858, Section 308 (“In determining the amount of [the] penalty, the Secretary shall take into account the . . . gravity of the prohibited acts committed [and] . . . with respect to the violator, the degree of culpability . . .”).

each violation.⁴ This offense level corresponds to the vertical axis of the attached penalty matrixes, which were developed for each of the seven major statutes that NOAA enforces. The matrixes are found at Appendix 2. The proper penalty range is determined by using the offense level and the alleged violator's degree of culpability, to find a penalty box within the appropriate matrix. The initial base penalty is the midpoint of the penalty range within that box.

Base Penalty After Application of Adjustment Factors – The NOAA attorney may adjust the initial base penalty upward or downward within the range of penalties and permit sanctions provided in the matrix to reflect the particular circumstances of a specific violation, creating the “base penalty.” The following factors are considered in making this adjustment:

- a. The alleged violator's history of non-compliance (i.e., whether there have been any prior violations);
- b. Whether the alleged violator's conduct involves commercial or recreational activity;
- c. The conduct of the alleged violator after the violation – whether the violator self-reports, makes a good faith effort to come into compliance promptly, or cooperates with the investigation or, alternatively, whether there is an attempt to avoid detection, interfere with an investigation, lie, or participate in other obstructive activity;

Proceeds of the Unlawful Activity and Any Additional Economic Benefit – Finally, once the initial base penalty and adjustments are determined, an additional amount is added to the base penalty to collect any proceeds from unlawful activity gained by the violator through his or her illicit conduct, along with any additional economic benefit received. This additional amount is meant to prevent an alleged violator from profiting from his or her unlawful activity, remove any actual economic benefit to the alleged violator, keep the alleged violator from gaining an unfair advantage over lawful actors, and prevent unlawful activity from continuing as a “cost of doing business.” Absent extraordinary circumstances, the NOAA attorney will add to the base penalty an amount equal to the fair market value derived from noncompliance, along with any additional economic benefit gained through the violator's misconduct.⁵

⁴ Where a violation is not listed in the schedules, or where the violation is of a statute for which no schedule has been developed, the attorney determines the offense level by using the offense level of a similar listed violation. If no similar violation can be identified, the attorney chooses an appropriate offense level by assessing the gravity of the violation based on criteria described in this Policy.

⁵ Capturing the proceeds of unlawful activity and a violator's economic benefit is a well-accepted approach reflected in both NOAA regulations and case law. See 15 C.F.R. § 904.108(b) (“A civil penalty may be increased . . . for commercial violators, to make a civil penalty more than a cost of doing business. . . .”); *In re Pesca Azetca, S.A. de C.V (F/V AZETCA 1)*, 2009 WL 3721029 (NOAA 2009), subsequently affirmed by the Administrator, 2010 WL 1676739 (a sanction amount should be large enough to alter the economic calculus that might lead Respondents and other participants in the fishery to simply account for any possible sanction as the cost of doing business); *In the Matter of Christine Swanson*, 2005 WL 776152 (NOAA 2005) (“Respondents' unlawful behavior here must invoke a civil penalty which is more than merely the cost of doing business. It must be sufficient to deter this activity in the

IV. Establishing the Base Penalty Matrixes and Schedules

A. Matrixes and Schedules

As noted above, to guide a NOAA attorney's recommendation of a base penalty, NOAA has developed a penalty matrix using the two factors that constitute seriousness of the violation for each of the seven statutes that NOAA most commonly enforces: the gravity of the violation and the degree of culpability. The matrixes are set forth in Appendix 2. In addition, NOAA has developed corresponding schedules that provide guidance in determining the gravity of the violation (the gravity-of-offense level) for the most common violations. These schedules are set forth in Appendix 3.

For each matrix, two factors – the gravity of the violation and the degree of culpability – form the two axes on the matrix. The vertical “gravity-of-offense” axis is split into four or six different “offense levels,” depending on the applicable statute, with increasing penalties as the gravity of a violation becomes more significant. The horizontal “degree of culpability” axis is split into four levels of increasing mental culpability, depending on whether the violation was the result of unintentional activity (accident or mistake), negligence, recklessness, or an intentional act (*see* Appendix 2).

B. Penalty Ranges

In determining the appropriate penalty range for each box in the matrixes, NOAA examined the maximum available penalties under the particular statute, and interpreted the relevant statutes as calling for graduated penalties from the most serious violation, warranting the maximum penalty, down to the least serious charged violation, warranting a significantly lower penalty. This graduated scheme provides for a fair base penalty assessment taking into account the seriousness of the violation, as envisioned by the statutes.

C. Permit Sanctions

With respect to permit sanctions, where applicable, the statutes that NOAA enforces generally provide broad authority to suspend or revoke permits. While permit sanctions may be an important tool in deterring future violations, we are mindful that vessel or dealer permit sanctions may result in negative financial impacts to parties beyond the alleged violator(s) (e.g., crew, processors/dealers, and commercial markets). Given the impact that permit sanctions may have, permit sanctions are generally appropriate only in cases involving violations that are moderate to major in terms of their gravity. In the context of the Magnuson Act, the penalty matrixes provide for an incremental gradation of permit sanctions ranging from 5-20 days, 20-60 days, 60-180 days, and 180 days to one year.

future and put these operators and owners on notice that severe penalties will be forthcoming if this activity is continued”). Other regulatory agencies, such as the Environmental Protection Agency, also capture violators' economic benefit in their penalty assessments.

In some cases, permit sanctions may also be appropriate where the alleged violator has a history of prior violations that are similar to the violation charged, or where the assessed penalty does not adequately account for the proceeds of the unlawful activity or any additional economic benefit derived from noncompliance because of the statutory cap. Permit sanctions in these circumstances may be sought only with the specific prior approval of the NOAA General Counsel or Deputy General Counsel.

Permit revocation is also appropriate in extraordinary cases. *See* 16 U.S.C. § 1858(g)(i). Revocation may be appropriate, for example, where a permit is obtained by fraud or false information, or where a monetary penalty and permit suspension do not adequately reflect the serious nature of the violation. Permit revocation may be sought only with specific prior approval of the NOAA General Counsel or Deputy General Counsel.

V. Determining the Initial Base Penalty Using the Matrix

In determining an initial base penalty, the NOAA attorney first determines an appropriate gravity-of-offense level, using the listed schedules of common violations as a guide (Appendix 3). Where a violation is not listed in the schedules, the attorney determines the offense level by using the offense level of a similar listed violation. If no similar violation can be identified, the attorney will determine an appropriate offense level by assessing the gravity of the violation, using the factors listed below. Once an offense level is established, the attorney will then determine the alleged violator's degree of culpability, following the criteria set forth below. The initial base penalty will be the midpoint of the penalty range in the appropriate matrix box determined using this method. Where the matrix box includes a permit sanction range, there is a presumption that the appropriate permit sanction will also be the midpoint of the permit sanction range in the matrix box. However, the economic impact of a permit sanction on a violator may be considered in determining the proper sanction within the range, taking into account the fishery involved and the time of year or fishing season to which the sanction applies. Moreover, it may be appropriate to tie the length of a permit sanction to the duration of the alleged violation, especially where the violation provides an unfair advantage, such as in fisheries involving time and area limits.

A. Gravity of the Violation

There are four or six gravity-of-offense levels assigned to each vertical axis of the matrixes, depending on the applicable statute. More particularly, there are four offense levels assigned to the Marine Mammal Protection Act, Endangered Species Act, Lacey Act, and Antarctic Marine Living Resources Convention Act, and there are six offense levels assigned to the Magnuson-Stevens Act, National Marine Sanctuaries Act, and Halibut Act (*See* Appendix 2). The matrixes with six offense levels reflect the higher monetary penalties provided for in the applicable statutes, and the need for additional offense level classes to narrow the potential penalty ranges available for a particular violation.

The offense levels reflect a continuum of increasing gravity, taking into consideration the nature, circumstances, and extent of a violation, with offense level I representing the least significant

charged offenses, and offense level VI the most significant. The attached schedules assign the most common violations to a corresponding offense level. In determining the appropriate offense level to assign to each violation, a number of factors were considered, including:

- a. The nature and status of the resource at issue in the violation (e.g., whether the fishery is currently overfished, overfishing is continuing, or the stock is particularly vulnerable because of its slow reproduction rate; whether the violation affects measures designed to protect essential fish habitat, endangered/threatened species, or resources within a national marine sanctuary);
- b. The extent of harm done to the resource or to the regulatory scheme or program;
- c. The potential harm to the resource or to the regulatory scheme or program;
- d. Whether the violation involves fishing in closed areas, fishing in excess of quotas, fishing without a required permit, or fishing with unauthorized gear;
- e. Whether the violation provides a significant competitive advantage over those operating legally;
- f. The nature of the regulatory program (e.g., limited versus open access fishery); and
- g. Whether the violation is difficult to detect without an on-scene enforcement presence or other compliance mechanisms such as Vessel Monitoring Systems (VMS) or an observer (e.g., unlawful discards, high-grading of catch, use or deployment of fish aggregating devices, gear conflicts, or failure to use seabird or turtle bycatch mitigation devices).

In making a determination of an initial base penalty, NOAA attorneys will examine the attached schedules and ascertain the proper offense level for a particular violation. To determine the proper offense level where a violation is not listed, NOAA attorneys will either determine the offense level by using the offense level of an analogous violation, or independently determine the level by considering the above listed factors.

B. Degree of Culpability

The second axis of the penalty matrixes focuses on the degree of mental culpability of the alleged violator when participating in the unlawful activity for which the penalty is being imposed. This axis reflects the importance that NOAA places on the alleged violator's degree of culpability prior to and at the time of violation. There are four levels of culpability reflected in the matrixes: intentional, recklessness, negligence, and unintentional acts (including accident, mistake, and strict liability).

An intentional violation generally exists when a violation is committed deliberately, voluntarily or willfully, i.e., the alleged violator intends to commit the act that constitutes the violation. A person intends a result when he or she both foresees the result that will arise if certain actions are

taken and desires the result to occur. Intent may be particularly demonstrated by violations committed as part of a pattern, course of conduct, common scheme or conspiracy, or where a violator has been charged in the past with a similar violation, even if not fully adjudicated.

Recklessness is a conscious disregard of a substantial risk of violating conservation measures that involves a gross deviation from the standard of conduct a law-abiding person would observe in a similar situation. Recklessness occurs where someone does not intend a certain result, but nonetheless foresees the possibility that his or her actions will have that result and consciously takes that risk. Recklessness may also occur where someone does not care about the consequences of his or her actions. Recklessness involves a lesser degree of fault than intentional wrongdoing but a greater degree of fault than negligence.

Negligence is the failure to exercise the degree of care that a reasonably prudent person would exercise in like circumstances. Negligence denotes a lack of diligence, a disregard of the consequences likely to result from one's actions, or carelessness. Negligence may arise where someone exercises as much care as he or she is capable of, yet still falls below the level of competence expected of him or her in the situation. The failure to know of applicable laws/regulations or to recognize when a violation has occurred may itself be evidence of negligence.

Finally, an unintentional act is one that is inadvertent, unplanned, and the result of an accident or mistake. An unintentional act is one not aimed at or desired. This culpability level reflects the strict liability nature of regulatory violations, and the fact that the statutes NOAA enforces are designed to protect marine resources even where a violation is unintended.

In assessing whether an alleged violator's activity constitutes intentional, reckless, negligent, or unintentional behavior, a NOAA attorney will consider the following factors:

- a. Whether the alleged violator took reasonable precautions against the events constituting the violation;
- b. How much control the alleged violator had over the events constituting the violation;
- c. Whether the alleged violator knew or should have known of the potential harm associated with the conduct;
- d. Other similar factors as appropriate.

VI. Base Penalty Following Application of Adjustment Factors

As set forth in Section V above, the gravity of the violation and the degree of culpability are considered in determining the initial base penalty. Once an initial base penalty is established, several adjustments are applied to reflect legitimate differences between similar violations. Adjustment factors include an alleged violator's history of noncompliance, whether the alleged violator's conduct involves commercial or recreational activity, and the conduct of the alleged violator after the violation occurs.

Starting from the midpoint of the appropriate matrix box, a NOAA attorney will use the adjustment factors to move up or down the penalty range within a box, or to a different penalty box altogether. These factors may increase, decrease, or have no effect on the base penalty and permit sanction to be assessed. Application of the adjustment factors is cumulative, i.e., more than one factor may apply in a case. In applying the adjustment factors, the NOAA attorney will use the information about the alleged violator and violation available at the time of assessment.

In extraordinary circumstances, the initial base penalty may be adjusted above (or below) the high (or low) end of the base penalty range that would otherwise apply using the guidance described below, but only with specific prior approval of the NOAA General Counsel or Deputy General Counsel.

A. History of Non-Compliance

An alleged violator's previous violation of natural resource protection laws is evidence of an intentional disregard for NOAA's statutes or regulations or a reckless or negligent attitude toward compliance with them. Subsequent violations also may be evidence that the prior enforcement response was insufficient to deter future violations. Accordingly, prior violations are a basis to adjust a penalty upward. Factors the NOAA attorney will consider in applying this adjustment include, *inter alia*, the following:

- a. The similarity of the prior violation, i.e., whether past and present violations involve the same or similar acts, the same statutes or regulations, or the same resources;
- b. How recently the prior violation occurred;
- c. The number of prior violations; and
- d. An alleged violator's efforts to correct any prior violation(s).

All prior violations will be considered, with adjustments upward as follows: (1) for each prior violation that is similar to the newly charged violation, and has been subject to final administrative adjudication within the past five years (including summary settlement, administrative settlement, final judgment, or consent decree), the NOAA attorney will move the initial base penalty an entire box to the right in the matrix, with a maximum increase of three

penalty boxes (note: where it is not possible to move to the right in the penalty matrix, the NOAA attorney will select the box below the previously determined penalty box); (2) for priors that have been subject to a final adjudication but are not similar to the newly alleged violation, or that are similar to the newly alleged violation but were subject to a final administrative adjudication more than five years prior to the present violation, the NOAA attorney will increase the penalty within the range of the initial base penalty box determined in Section V above.⁶ In determining the amount of the upward adjustment, age of the violation may be taken into account.

Any violation involving the use of a vessel will be considered as a prior violation against that vessel unless controlling ownership changes. A violation by a master or crewmember on a vessel will be considered as a prior violation for any subsequent violation they commit on the same or a different vessel. Where a master or crewmember has a prior violation and commits a later violation on a different vessel with a different owner, the prior violation will be imputed to the new owner unless the new owner exercised due diligence regarding prior violations of the master or crewmember. If two or more vessels are owned by the same person or company, then a violation by one vessel will be an imputed prior for the other vessel or vessels. If two or more vessels are owned by separate corporations, but the same person or company controls these corporations, then a violation by one vessel will be an imputed prior for the other vessel or vessels.

B. Commercial versus Recreational Activity

Where a violation arises from non-commercial activity, the status of the alleged violator – a recreational fisherman, for example – may be a mitigating factor justifying a downward adjustment in the initial base penalty, including a movement left, or up, in the matrix, to a lower penalty range. This adjustment is appropriate because an individual recreational violator is likely to have a lesser impact on the natural resource or regulatory program, typically participates in regulated activities less infrequently than a commercial operator, and by definition has no commercial purpose for his or her activity and therefore does not obtain the same degree of economic gain as a violation committed by a commercial enterprise.

Manifestly, an adjustment for recreational activity is not always appropriate. For example, in the case of a violation involving a vessel grounding in a national marine sanctuary, the operator of a recreational vessel may be just as culpable as the operator of a commercial vessel. Similarly, an intentional take of a protected species by a recreational actor may not warrant a downward adjustment. Nor would a recreational fisherman selling unlawfully caught fish receive a lighter penalty, as this activity would be commercial. Ultimately, a recreational actor will not receive an automatic downward adjustment; rather, consideration of this factor may lower the penalties of a recreational actor in the appropriate case.

⁶ This policy differs from past practice, where only prior violations from the previous five years were considered in assessing a penalty for a new violation. The NOAA attorney may take this change of policy into account when assessing an alleged violator's history of non-compliance under this Policy.

C. Activity After Violation – Good Faith Efforts to Comply: Cooperation/Noncooperation

The NOAA attorney may also move above or below the midpoint of a penalty range by taking into account the good or bad faith activities of the alleged violator after a violation occurs. Good faith factors, which may mitigate a penalty, include self-reporting, providing helpful information to investigators, and cooperating with investigators in any on-going investigation. Alternatively, actions taken in bad faith that may result in an increased penalty include any attempt on the part of the alleged violator to avoid detection (e.g., concealment or flight); or any evidence that the alleged violator interfered with the investigation by destroying evidence, intimidating or threatening agents or witnesses, lying, or similar activity. No downward adjustment will be made if the good faith efforts to comply primarily consist of coming into compliance.

NOAA strongly encourages self-reporting of violations because it indicates a violator's willingness to accept responsibility and provides for greater efficiency in administering NOAA's enforcement program, particularly where a violation is difficult to detect. Accordingly, where an alleged violator self-reports a violation, NOAA will consider such action a mitigating factor justifying a downward adjustment in the initial base penalty. Depending on the context and degree of the self-report, as well as the gravity of the violation, NOAA may move to the lower end of the penalty range within a box or move to a lower penalty box altogether. NOAA will not adjust a penalty downward for self-reporting where discovery of the violation is inevitable.

VII. Proceeds of Unlawful Activity and Any Additional Economic Benefit

In assessing a penalty, this Policy takes into account the value of proceeds gained from unlawful activity and any additional economic benefit of noncompliance to an alleged violator. The value of proceeds from the unlawful activity and any additional economic benefit to an alleged violator are factored in to prevent violators from profiting from illicit behavior and engaging in improper behavior because the sanctions imposed are merely a "cost of doing business" (i.e., because the economic benefit of their unlawful activity exceeds the cost of a potential penalty).⁷ Taking these factors into account also levels the playing field for the regulated community, so violators do not gain economic or strategic benefits over their law-abiding competitors. Absent extraordinary circumstances, the value of the proceeds from the unlawful activity and any additional economic benefit to the violator will be calculated and added to the base penalty.

The NOAA attorney will examine the following types of proceeds from unlawful activity and any additional economic benefit from noncompliance when calculating an appropriate amount to include in any penalty assessment:

- a. Gross Ex-vessel value of fish, fish product, or other product illegally caught
- b. Gross revenues of charter fishing vessel or whale watching vessel that violated regulatory restrictions

⁷ See footnote 5.

- c. Economic advantage from delayed costs (delay in purchase of required equipment, e.g., turtle excluding devices or vessel monitoring systems)
- d. Economic advantage from avoided costs (fuel saved by transiting through, not around, a protected area; costs of an observer on fishing trips; costs of infrastructure improvements, e.g., fish ladders and screens to protect ESA-listed species)

In some cases, there may be more than one type of proceeds from unlawful activity or additional economic benefit to the alleged violator. In such cases, the NOAA attorney will consider each category of proceeds from unlawful activity or additional economic benefit to calculate a combined total. Factors that are to be considered in making this assessment are described below.

A. Gross Value of Fish, Fish Product, or Other Product Illegally Caught, or Revenues Received

In cases where fish or other product is caught in violation of the statutory or regulatory requirements, the proceeds from unlawful activity will be assessed based on the gross ex-vessel value of the fish or other product. Where the actual value of the fish is known, that is the amount that will be used; when it is not known, the attorney will make a reasonable estimate of the value based on available information. Where a charter fishing vessel or whale watching vessel is involved, proceeds from the unlawful activity will include the gross revenues from the trip that gave rise to the violation.

If the illegal catch or product was seized and forfeited by NOAA, or if the alleged violator voluntarily abandoned the illegal catch or product, the proceeds from the unlawful activity was likely already recouped from the alleged violator and the proceeds for the penalty assessment will typically be zero.

B. Delayed Costs

Delayed costs are expenditures that have been deferred by the alleged violator and result in a failure to comply with the regulatory program. The alleged violator eventually will have to spend the money in order to achieve compliance, but during the period of non-compliance the violator has gained an economic benefit over his or her competitors who have paid to comply. The economic benefit for delayed costs consists of the amount of interest on the unspent money that reasonably could have been earned by the alleged violator during noncompliance.

C. Avoided Costs

Avoided costs are expenditures that are not made by the alleged violator, leading to a failure to comply with the law. These costs will never be incurred. Examples of avoided costs include, *inter alia*:

- a. Cost savings for operation and maintenance of equipment that the alleged violator failed to install;

- b. Failure to properly operate and maintain existing equipment (e.g., fish ladders and screens for the protection of ESA-listed species);
- c. Failure to employ sufficient number of adequately trained staff; and
- d. Failure to establish or follow precautionary methods required by rules or permits.

For avoided costs, the economic benefit equals the cost of complying with the requirement from the time that compliance was required until the date the violator comes into compliance.

VIII. Ability to Pay

The goal of NOAA's enforcement program is to secure compliance with the laws that protect natural resources, not to put alleged violators out of business. Thus, NOAA will consider at the appropriate stage the ability of the alleged violator to pay a penalty as described below. The NOAA attorney will generally not consider an alleged violator's ability to pay in making a recommendation regarding issuance of a NOVA because he or she will not have relevant information available before the NOVA with proposed penalty is issued.⁸ Once a NOVA is issued, the burden to demonstrate inability to pay rests with the alleged violator. *See* 15 C.F.R. § 904.108(c)-(e) (describing process for demonstrating inability to pay). The alleged violator must provide requested information that is verifiable, accurate, and complete to enable consideration of this factor in adjusting the proposed penalty.

When an alleged violator cannot afford the penalty prescribed by this policy, or payment of all or a portion of the penalty will preclude the alleged violator from achieving compliance or from carrying out remedial measures more important than the deterrence effect of the penalty, the NOAA attorney may consider, *inter alia*, the following options:

- a. An installment payment plan with interest;
- b. A reduction of the penalty amount in exchange for a comparable increase in the permit sanction component;
- c. A suspended penalty subject to specified conditions; and
- d. Straight penalty reductions.

The amount of any downward adjustment of the penalty for inability to pay is dependent on the individual financial facts of the case.

⁸ Unlike most statutes NOAA enforces, the Lacey Act requires consideration of ability to pay at the time of charging. *See* 16 U.S.C. § 3373(a)(6); *see also* 15 C.F.R. § 904.108(g)-(h) (describing process for consideration of ability to pay at the charging stage).

IX. Application of the Penalty Policy and Periodic Review⁹

Use of Preliminary Worksheet with Rationale for Assessed Penalty – In preparing a recommendation to charge an alleged violation through issuance of a NOVA, NOPS, or both, the NOAA attorney will complete the Preliminary Worksheet attached as Appendix 1 to establish a recommended penalty and permit sanction for each alleged violation. Each section of the worksheet corresponds to a section of the Policy as summarized in Sections V through VII above. The Preliminary Worksheet is a privileged document exempt from release, reflecting attorney-work product involving intra-agency deliberations related to enforcement that may include attorney-client communications, and is therefore not available to respondents; however, the basis of the penalty will be included in charging documents.

Multiple Violations – In certain situations, several violations may have been committed. An assessment will be undertaken for each violation charged.

Penalty Assessment Against Vessel Owner and Operator – Absent extraordinary circumstances, the penalty will be assessed jointly and severally against all appropriate actors (e.g., the vessel owner and operator).

Application to Violations of Other NOAA Statutes – As noted above, this Policy supersedes all previous guidance regarding assessment of penalties or permit sanctions and all previous penalty and permit sanction schedules issued by the NOAA Office of the General Counsel. This Policy, and the attached matrixes and schedules, address the seven major statutes that NOAA enforces. While NOAA develops base penalty matrixes for other statutes NOAA enforces, the NOAA attorney will use the closest one by analogy, i.e., the matrix developed for MSA violations will be used to develop a recommended penalty under other fishery laws with comparable statutory penalties.

Further, although all previous penalty and permit schedules are superseded by this Policy, they may still be used as an historical reference point to be considered in application of this Policy. In transitioning to this new Policy for assessing penalties and permit sanctions, the NOAA General Counsel's Office will monitor the situation closely, and any penalty or permit sanction under this Policy that is substantially higher or lower than under the prior penalty schedules will be reviewed before the penalty is put into a charging decision.

Periodic Review – The NOAA General Counsel's Office will review this Policy shortly after one year from its final effective date and consider revisions or modifications as appropriate to ensure that it continues to serve the stated purposes of the Policy.

⁹ This Policy does not address issues related to charging decisions, such as the appropriate "unit of prosecution" (e.g., whether an unpermitted fishing trip is one violation, or multiple violations for each fishing day). Instead, by separate policy, NOAA will provide guidance for making charging decisions under the statutes NOAA enforces.

APPLICATION OF POLICY – SPECIFIC EXAMPLES

EXAMPLE 1 – MAGNUSON-STEVENS ACT

Description of Violation

Commercial fishing vessel, Vessel A, owned and operated by Captain X, lands 5,000 pounds of redbtail groundfish, which is 2,000 pounds (approximately 67%) in excess of the applicable 3,000 pound trip limit. The trip limit had been in effect for several months as of the date of the violation. The violation occurs during a routine landing, which is monitored by a NOAA enforcement agent. The excess fish is voluntarily abandoned by Captain X. When interviewed by the NOAA agent, the captain says that the overage is due to a mistake by an inexperienced crewmember who was unaware of the 3,000 pound limit. At the time of the violation, Vessel A is participating in the groundfish fishery as a federally permitted, limited entry fishing vessel. Limited entry vessels qualify for a higher trip limit for redbtail groundfish than do open access vessels. Redtail groundfish are not considered an overfished species. No other violations are found in connection with the overage. Captain X has one prior violation for an overage of groundfish, which occurred two years prior to the present violation.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

Initial Base Penalty

Offense Level: Level II. The Magnuson-Stevens Act schedule provides for an offense level of II for most fishing overages between 50% and 100%.

Degree of Culpability: Level B. Although the Captain indicated that the violation was unintentional, the Captain's knowledge of the 3000 lb limit and the size of the overage implies negligence in overseeing the vessel's crewmembers, particularly those who were inexperienced.

Initial Base Penalty: The penalty range is II B, \$4,000 to \$6,000, with a midpoint of \$5,000.

Adjustment Factors

History of Compliance: Captain X had one similar violation within the previous two years; this increases the penalty range to II C, \$6,000 - \$10,000, with a midpoint of \$8,000, which represents an upward adjustment of \$3,000 over the initial base penalty.

Commercial vs. Recreational Activity: the violation occurred in the commercial, limited entry groundfish fishery. The fact that Vessel A was participating in a limited entry fishery was considered in determining the initial base penalty. The limited entry fishery

management program is by definition applicable only to commercial fishing vessels; therefore no further adjustment is warranted.

Activity After Violation/Cooperation: Although Captain X voluntarily abandoned the excess fish, there was no cooperation with authorities in this case to a degree warranting a downward adjustment of the penalty.

Base Penalty After Application of Adjustment Factors: Increase initial base penalty to \$8,000 (\$5,000 + \$3,000 = \$8,000)

Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A; Captain X voluntarily abandoned the excess fish.

Total Penalty (I. + II. + III.): \$8,000

EXAMPLE 2 – MAGNUSON-STEVENSON ACT

Description of Violation

Commercial fishing vessel, Vessel A, owned and operated by Captain X, lands 830 pounds of Atlantic sea scallops that are sold for \$6 per pound, for a total of \$5,229. Because the vessel was issued a valid Limited Access General Category permit, it is limited to landing 400 pounds of scallops. Captain X completes a vessel trip report stating that only 400 pounds of scallops were landed, and submits this report to the National Marine Fisheries Service. The dealer to whom the scallops are sold (Dealer Y) reports to NMFS that it has purchased only 400 pounds of scallops. When interviewed by the investigating agent, Dealer Y denies purchasing the illegal scallops. When the investigating agent interviews Captain X, Captain X admits landing excess scallops and selling them to Dealer Y for cash. Captain X also admits submitting a false trip report. Further, he acknowledges that he has worked out an agreement with Dealer Y to report only 400 pounds. Captain X's admissions lead to the retrieval of Dealer Y's record that reveals the excess 430 pounds of scallops were purchased with cash for \$2,580 (430 lbs. x \$6 per lb.). Neither Vessel A nor Captain X have any prior history of violations. Based on this example, Vessel A and Captain X fished for, caught, possessed, landed, and sold scallops in excess of the 400 pound landing limit and submitted and maintained a false vessel trip report.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalties for the violations against Vessel A/Captain X under the penalty policy.

Initial Base Penalty

Count 1: Possession of excess scallops

Offense Level: Level II. The Magnuson-Stevens Act schedule provides for an offense level of II for overages of General Category area scallops over 50% of the permissible catch.

Degree of Culpability: Level D. The evidence indicates the violation was intentional.

Initial Base Penalty: The penalty range is II D, \$10,000 - \$20,000, with a midpoint of \$15,000.

Count 2: False Trip Report

Offense Level: Level III. The Magnuson-Stevens Act schedule provides for an offense level of III for filing a false report that is material. Accurate reporting is a vital part of the Atlantic sea scallop fishery management program (*See, e.g. In re Atlantic Spray Corp.*, 1996 WL 1352603 (NOAA)), and Captain X conspired with Dealer Y to hide the scallop overage, causing a potentially significant harm to the regulatory program.

Degree of Culpability: Level D. The evidence indicates the violation was intentional.

Initial Base Penalty: The penalty range is III D, \$20,000 - \$40,000, with a midpoint of \$30,000.

Adjustment Factors

History of Compliance: Captain X has no prior enforcement history.

Commercial vs. Recreational Activity: the violation occurred in the commercial, limited entry General Category scallop fishery. The fact that Vessel A was participating in a limited entry fishery was considered in determining the initial base penalty. The limited entry fishery management program is by definition applicable only to commercial fishing vessels; therefore no further adjustment is warranted.

Activity After Violation/Cooperation: Captain X admitted the illegal landing and false reporting without making any further false oral statements and was cooperative. His admission and cooperation assisted the investigating agent's retrieval of evidence and uncovered the dealer's full role in the transaction. This significant degree of cooperation supports a downward adjustment of \$10,000 to the low end of the penalty range for the false reporting count.

Base Penalty After Application of Adjustment Factors: Count 1: No decrease/increase. Count 2: Decrease initial base penalty to \$20,000 (\$30,000-\$10,000=\$20,000).

Proceeds of the Unlawful Activity and Any Additional Economic Benefit

\$2,580, which is added to the penalty for possessing excess scallops.

Total Penalty (I. + II. + III.): Count 1: \$17,580; Count 2: \$20,000; total: \$37, 580.

EXAMPLE 3 – MAGNUSON-STEVENSON ACT

Description of Violation

A foreign-flagged longline fishing vessel owned by Company Z and operated by Captain Y was documented, by a U.S. Coast Guard (USCG) air patrol, fishing inside the U.S. Exclusive Economic Zone (EEZ). USCG witnesses photographed and videotaped the vessel actively engaged in fishing in U.S. waters. In addition, USCG personnel prepared written statements documenting the fishing activities that they witnessed. USCG records provide the specific latitude and longitude inside the U.S. EEZ where the foreign fishing vessel was located. The vessel never came into a U.S. port and was never boarded by USCG or NOAA. Numerous violations by foreign –flagged fishing vessels have occurred in this area, which is extremely remote with little to no nearby enforcement assets. Patrols in this area are rare and expensive; accordingly, violations of this type often go undetected in this area.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

Initial Base Penalty

Offense Level: Level VI. The Magnuson-Stevens Act schedule provides for an offense level of VI for this violation because the gravity of the offense is significant. Many tuna stocks in the Pacific are subject to overfishing. In addition, foreign fishing vessels may not fish inside the U.S. EEZ without a permit, which the vessel did not have. Such violations harm U.S. fishers, because a foreign vessel is appropriating U.S. fishery resources. Moreover, this type of violation is difficult to detect. Overall, the violation had substantial adverse effect on the statutory and regulatory scheme.

Degree of Culpability: Level D. The evidence indicates the violation was intentional. The foreign fishing vessel was more than 20 nautical miles inside the U.S. EEZ.

Initial Base Penalty: The penalty range is VI D, \$100,000-\$140,000, with a midpoint of \$120,000.

Adjustment Factors

History of Compliance: Neither Company Z or Captain Y have any prior violations.

Commercial vs. Recreational Activity: The violation was by a commercial longline vessel, a factor already accounted for in the initial base penalty assessment.

Activity After Violation/Cooperation: There was no interaction with Company Z or Captain Y after the violation.

Base Penalty After Application of Adjustment Factors: No decrease/increase.

Proceeds of the Unlawful Activity and Any Additional Economic Benefit

There was no opportunity to board the vessel, so economic benefit is unclear and no additional penalty is assessed.

Total Penalty (I. + II. + III.): \$120,000

EXAMPLE 4 – NATIONAL MARINE SANCTUARIES ACT

Description of Violation

Recreational vessel A, owned and operated by Captain X, grounds in a seagrass habitat in the Florida Keys National Marine Sanctuary. When interviewed by law enforcement officers, Captain X advises that he had lost his bearings. An assessment of the grounding reveals that over 80 square yards of habitat is impacted, including prop scars and a blowhole.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

Initial Base Penalty

Offense Level: Level III. The National Marine Sanctuaries Act schedule provides for an offense level range of III where, as here, the gravity of the offense is moderate.

Degree of Culpability: Level B. The evidence indicates that although the grounding is unintentional, Captain X attempted to power off, thus creating a blowhole, which is negligent.

Initial Base Penalty: The penalty range is III B, \$4,000 - \$8,000, with a midpoint of \$6,000.

Adjustment Factors

History of Compliance: Captain X does not have any previous violations.

Commercial vs. Recreational Activity: Although there could be a distinction between commercial and recreational activity for grounding cases, in this example, the penalty would be the same.

Activity After Violation/Cooperation: The evidence does not indicate that Captain X was unusually cooperative or uncooperative.

Base Penalty After Application of Adjustment Factors: No decrease/increase

Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A.

Total Penalty (I. + II. + III.): \$6,000

EXAMPLE 5 – MARINE MAMMAL PROTECTION ACT

Description of Violation

Upon arrival at a known haul-out for marine mammals, a state game warden is contacted by a civilian witness who states that she has just observed and photographed a man taking photos of elephant seals. The witness states that, at first, the man was just shooting photos of elephant seals at close proximity with little or no interaction with the animals. After a few minutes however, the man began to toss rocks onto one large bull elephant seal while attempting to take photographs of the animal's reaction. The man then began to pelt the animal's torso with rocks while taking photos. Finally, the man hit the animal on the tail with a large stick, which elicited an aggressive response (charge) from the animal. The man took one final photograph of the animal and then retreated quickly up the beach with the animal in close pursuit for several yards.

With the assistance of the witness, the warden is able to identify the man in a nearby parking lot and interview him. Initially, the man denies any wrongdoing and refuses to give his name or any other information. When the warden explains that his earlier actions had been photographed and that his camera would be seized as evidence of a violation of the MMPA, the photographer becomes very agitated and yells at the warden, stating that he did not hurt the elephant seals and that he just wanted to get a good photograph. Upon further questioning, the photographer states that he wants to be a professional wildlife photographer, that he loves marine mammals and wouldn't do anything to hurt them. No investigation of the health of the elephant seal is conducted.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

Initial Base Penalty

Offense Level: Level II. The Marine Mammal Protection Act schedule provides for an offense level of II for harassing a marine mammal, and an offense level of III for harming one. Because of the use of rocks and a stick to strike the animal, there is a moderate potential for harm to this particular elephant seal. Although there may have been actual harm to the animal because it is struck, there is no evidence on the record to support such a finding, accordingly the actions rise to the level of “harassment,” a level II offense.

Intent Level: Level D. The evidence indicates that the photographer intentionally harassed the animal.

Initial Base Penalty: The penalty range is II D, \$2,000-\$3,000, with a midpoint of \$2,500.

Adjustment Factors

History of Compliance: The Photographer has no prior violations.

Commercial vs. Recreational Activity: Although there is some indication of a commercial motivation for the violation, in that the alleged violator wants to become a professional photographer, there are no facts to support that this violation was conducted for specific commercial activity.

Activity After Violation/Cooperation: The alleged violator was uncooperative, and initially made an uncharged false statement to the investigating officer. These facts support an upward adjustment to the high end of the penalty range (\$3,000).

Base Penalty After Application of Adjustment Factors: Increase initial base penalty to \$3,000 ($\$2,500 + \$500 = \$3,000$).

Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A

Total Penalty (I. + II. + III.): \$3,000

EXAMPLE 6 – ENDANGERED SPECIES ACT

Description of Violation

A Maui resident (Mr. X) was documented approaching an endangered Humpback whale. Regulations under the Endangered Species Act and the National Marine Sanctuaries Act

prohibit approaching endangered Humpback whales within 100 yards in the waters around Hawaii. In this case, two sanctuary outreach and education volunteers spotted Mr. X and his child approaching Humpback whales just offshore. According to eyewitnesses, Mr. X and his child approached to within less than 10 feet. The witnesses provided statements and photographs to enforcement. Mr. X was well aware of the regulations establishing the prohibition on approaching Humpback whales.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

Initial Base Penalty

Offense Level: Level I. The Endangered Species Act schedule provides for an offense level of I for violation of a distance restriction by a non-commercial violator.

Intent Level: Level D. According to eyewitnesses, Mr. X deliberately and directly approached Humpback whales, violating the prohibition against approaching endangered species. The evidence indicates the violation was willful.

Initial Base Penalty: The penalty range is I D, Written Warning to \$2,000, with a midpoint of \$1,000

Adjustment Factors

History of Compliance: Mr. X has no prior violations.

Commercial vs. Recreational Activity: There are no facts to support that this violation was conducted for a specific commercial activity – the activities in question appeared to be recreational. However, because the recreational nature of the activity was already considered in determining the initial base penalty, no downward adjustment is warranted.

Activity After Violation/Cooperation: Although Mr. X refused to speak to the investigating officer, the refusal to speak, standing alone, is not a degree of lack of cooperation that creates a basis for an upward adjustment of the penalty.

Base Penalty After Application of Adjustment Factors: No decrease/increase.

Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A

Total Penalty (I. + II. + III.): \$1,000

APPENDIX 1

Preliminary Worksheet – Recommended Assessment of Penalty and Permit Sanction

Name of Alleged Violator(s) _____

Description of Violation _____

Case Number/Count _____

I. Base Penalty

Initial Base Penalty

A. Offense Level (I through VI): _____

B. Culpability (A through D) _____

C. Matrix Penalty _____

Adjustment Factors

D. History Of Compliance _____

E. Commercial vs. Recreational Activity _____

F. Activity After Violation/Cooperation _____

Total Base Penalty: _____

II. Proceeds of the Unlawful Activity and Additional Economic Benefit

A. Proceeds of Unlawful Activity _____

B. Additional Economic Benefit _____

Total Economic Benefit: _____

III. Total Penalty (I + II) _____

IV. TOTAL PENALTY(from all worksheets) _____

Attorney: _____

Date: _____

APPENDIX 2

Penalty Matrix for the Magnuson-Stevens Act

	Level of Culpability			
Gravity Offense Level	A	B	C	D
	Unintentional	Negligent	Reckless	Intentional
I	Written warning- \$2,000	Written warning- \$4,000	\$2,000-\$6,000	\$6,000-\$8,000
II	\$2,000-\$5,000	\$4,000-\$6,000	\$6,000-\$10,000	\$10,000-\$20,000
III	\$5,000-\$10,000	\$10,000-\$15,000	\$15,000-\$20,000	\$20,000-\$40,000 and permit sanction of 5-20 days for a second violation*
IV	\$10,000-\$15,000	\$15,000-\$25,000	\$20,000-\$40,000 and permit sanction of 10- 20 days*	\$40,000-\$60,000 and permit sanction of 20- 60 days*
V	\$15,000-\$25,000	\$25,000-\$40,000 and permit sanction of 10- 20 days*	\$40,000- \$60,000 and permit sanction of 20- 60 days*	\$60,000- \$100,000 and permit sanction of 60- 180 days*
VI	\$25,000-\$40,000 and permit sanction of 5-20 days for a second violation*	\$40,000-\$60,000 and permit sanction of 20- 60 days*	\$60,000- \$100,000 and permit sanction of 60- 180 days*	\$100,000- statutory maximum and permit sanction of 180 days to 1 year *

*Under catch share or similar programs, where permits allow for a certain amount of fishing quota per year (instead of fishing days per year), permit sanctions will be assigned as a percentage of the quota, at a rate of 0.27% for each day of permit sanction time listed in the matrixes (100% divided by 365 days per year is approximately 0.27% per day).

Penalty Matrix for the National Marine Sanctuaries Act

	Level of Culpability			
Gravity Offense Level	A Unintentional	B Negligent	C Reckless	D Intentional
I	Written warning- \$1,000	Written warning- \$2,000	\$1,000 - \$3,000	\$2,000 - \$4,000
II	\$1,000 - \$3,000	\$2,000 - \$4,000	\$3,000-\$6,000	\$4,000-\$8,000
III	\$3,000 - \$6,000	\$4,000-\$8,000	\$6,000-\$12,000	\$8,000-\$16,000
IV	\$4,000-\$8,000	\$6,000-\$12,000	\$8,000-\$16,000	\$16,000-\$32,000
V	\$6,000-\$12,000	\$8,000-\$16,000	\$16,000-\$32,000	\$32,000-\$70,000
VI	\$12,000-\$24,000	\$24,000-\$48,000	\$48,000-\$96,000	\$96,000-statutory maximum

Penalty Matrix for the Lacey Act

	Level of Culpability			
Gravity Offense Level	A Unintentional	B Negligent	C Reckless	D Intentional
I Marking Offenses (not including false- labeling)	Written warning to statutory maximum			
Offenses other than Marking Offenses* ⁺	N/A – Statute requires negligence	Written warning- \$500	Written warning- \$750	Written warning- \$1000
II	N/A – Statute requires negligence	Written warning - \$1,500	\$1,500-\$2,000	\$2,000-\$3,000
III	N/A – Statute requires negligence	\$1,000-\$3,000	\$3,000-\$4,000	\$4,000-\$6,000
IV	N/A – Statute requires negligence	\$2,000-\$5,000	\$5,000-\$8,000	\$8,000-statutory maximum

Notes:

* “False- Labeling” offenses require a culpability level of intentional.

⁺ If the violation involves fish or wildlife with a fair market value of less than \$350 and involves only the transportation, acquisition, or receipt of fish or wildlife taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, regulation, or the statutory maximum under the Lacey Act, whichever is less. *See* 16 U.S.C. § 3373(a)(1)

Penalty Matrix for the Endangered Species Act

	Level of Culpability			
Gravity Offense Level	A	B	C	D
	Strict-Liability ¹⁰	Negligent	Reckless	Intentional
I Endangered	Written warning- statutory maximum*	Written warning- \$1000	Written warning- \$1500	Written warning- \$2000
Threatened		Written warning- \$500	Written warning- \$750	Written warning- \$1000
II Endangered	Written warning- statutory maximum*	\$2,500-\$3,500	\$3,500-\$6,000	\$6,000-\$11,500
Threatened		\$1,000-\$1,500	\$1,500-\$2,500	\$2,500-\$4,500
III Endangered	Written warning- statutory maximum*	\$6,000-\$11,500	\$11,500-\$17,000	\$17,000-\$23,000
Threatened		\$2,500-\$4,500	\$4,500-\$7,000	\$7,000-\$9,000
IV Endangered	Written warning- statutory maximum*	\$11,500-\$17,000	\$17,000-\$23,000	\$23,000- statutory maximum
Threatened		\$4,500-\$7,000	\$7,000-\$9,000	\$9,000-statutory maximum

* Currently \$650 for unknowingly committing a violation.

¹⁰ The Endangered Species Act establishes a lower statutory maximum penalty for strict-liability offenses.

Penalty Matrix for the Marine Mammal Protection Act

	Level of Culpability			
Gravity Offense Level	A	B	C	D
	Unintentional	Negligent	Reckless	Intentional
I	Written warning- \$200	Written warning- \$500	Written warning- \$750	Written warning- \$1000
II	Written warning- \$1,000	\$1,000-\$1,500	\$1,500-\$2,000	\$2,000-\$3,000
III	\$1,000-\$2,000	\$2,000-\$3,000	\$3,000-\$4,000	\$4,000-\$6,000
IV	\$2,000-\$3,000	\$3,000-\$5,000	\$5,000-\$8,000	\$8,000-statutory maximum

Penalty Matrix for the Northern Pacific Halibut Act of 1982

	Level of Culpability			
Gravity Offense Level	A Unintentional	B Negligent	C Reckless	D Intentional
I	Written warning- \$2,000	Written warning- \$4,000	\$2,000-\$6,000	\$6,000-\$8,000
II	\$2,000-\$5,000	\$4,000-\$6,000	\$6,000-\$10,000	\$10,000-20,000
III	\$5,000-\$10,000	\$10,000-\$15,000	\$15,000-\$20,000	\$20,000-\$40,000 and permit sanction of 5-20 days for a second violation*
IV	\$10,000-\$15,000	\$15,000-\$25,000	\$20,000-\$40,000 and permit sanction of 10-20 days for a second violation*	\$40,000-\$60,000 and permit sanction of 20-60 days*
V	\$15,000-\$25,000	\$25,000-\$40,000 and permit sanction of 10-20 days for a second violation*	\$40,000-\$65,000 and permit sanction of 20-60 days*	\$65,000-\$120,000 and permit sanction of 60-180 days*
VI	\$25,000-\$40,000 and permit sanction of 5-20 days for a second violation*	\$40,000-\$65,000 and permit sanction of 20-60 days*	\$65,000-\$120,000 and permit sanction of 60- 180 days*	\$120,000- statutory maximum and permit sanction of up to one year *

*Under catch share or similar programs, where permits allow for a certain amount of catch per year (instead of fishing days per year), permit sanctions will be assigned as a percentage of the quota, at a rate of 0.27% for each day of permit sanction time listed in the matrixes (100% divided by 365 days per year is approximately 0.27% per day).

Penalty Matrix for the Antarctic Marine Living Resources Convention Act

	Level of Culpability			
Gravity Offense Level	A Unintentional	B Negligent	C Reckless	D Intentional
I	\$1,000-\$4,000	\$3,000-\$6,000	\$5,000-\$8,000	\$7,000-statutory maximum
II	\$6,000-\$8,000	\$7,000-\$9,000	\$8,000-\$10,000	\$9,000-statutory maximum
III	\$8,000-\$10,000	\$9,000-statutory maximum	statutory maximum	statutory maximum
IV	statutory maximum	statutory maximum	statutory maximum	statutory maximum

APPENDIX 3
Offense Level Guidance
Magnuson-Stevens Act Schedule

VIOLATION	LEVEL
VIOLATIONS REGARDING GEAR	
Failing to affix vessel markings; Failing to comply with gear tag or marking requirements if not deployed or if deployed without gear limits; Failing to properly deploy seabird avoidance gear.	I
Violating area specific gear requirements; ¹¹ Having non-complying gear onboard or failing to have required gear onboard; Failing to have seabird avoidance gear on board; Failing to comply with gear tag or marking requirements if deployed with gear limits.	II
Violating area specific gear requirements; ¹² Fishing with non-compliant gear; Falsifying vessel markings.	III
Dumping gear.	IV

¹¹ Violating area specific gear requirements may be either a level II offense or a level III offense, depending on: (1) the nature of the area; (2) how far into the area the vessel traveled; (3) how long the vessel was in the area; (4) the nature of the gear restriction; and (5) the type of gear used.

¹² See footnote 11.

**VIOLATIONS REGARDING THE FACILITATION OF
ENFORCEMENT, SCIENTIFIC MONITORS, OR OBSERVERS**

<p>Failing to provide information, notification, accommodations, access, or reasonable assistance to either a NFMS-approved observer or a sea sampler conducting his or her duties aboard a vessel;¹³</p> <p>Submitting inaccurate or false data, statements, or reports;¹⁴</p> <p>Discarding, releasing, or transferring fish before bringing it aboard or making it available to an observer for sampling;</p> <p>Providing inaccurate information to an authorized officer, if accurate information is subsequently provided voluntarily in a timely manner.</p>	<p>I</p>
<p>Failing to provide information, notification, accommodations, access, or reasonable assistance to either a NFMS-approved observer or a sea sampler conducting his or her duties aboard a vessel;¹⁵</p> <p>Failing to maintain required observer or sea sampler coverage;</p> <p>Failing to maintain or obtain approval of sampling area;</p> <p>Submitting inaccurate or false data, statements, or reports;¹⁶</p> <p>Discarding, releasing, or transferring fish before bringing it aboard or making it available to an observer for sampling;¹⁷</p> <p>Providing false statements to an authorized officer;</p>	<p>II</p>

¹³ Failing to provide information, notification, accommodations, access, or reasonable assistance to either a NFMS-approved observer or a sea sampler conducting his or her duties aboard a vessel may be either a level I offense or a level II offense, depending on: (1) the gravity of the violation and (2) the type of information involved.

¹⁴ Submitting inaccurate data, statements, or reports may be a level I, II, or III offense. It is an offense level I where the adverse impact on the statutory or regulatory program is insignificant and there is no economic gain from the violation. It is an offense level II where the adverse impact on the statutory or regulatory program is minor or there is some economic gain from the violation. It is an offense level III where the adverse impact on the statutory or regulatory program is significant, or there is a significant economic gain from the violation.

¹⁵ See footnote 13.

¹⁶ See footnote 14.

¹⁷ This offense level only applies where a catch share or ITQ/IFQ system is involved.

Opposing, impeding, or interfering with any NMFS-approved observer or authorized officer.	
<p>Failing to maintain or operate flow scale or other scales to obtain accurate weights;</p> <p>Failing to comply with flow scale or other scale testing and certification requirements;</p> <p>Submitting inaccurate or false data, statements, or reports;¹⁸</p> <p>Harassing or intimidating any NMFS-approved observer or authorized officer;¹⁹</p> <p>Refusing to carry an observer or fishing without an observer.</p>	III
Refusal to allow a boarding/entry by an authorized officer or inspector to area of custody, or inspection.	IV
Assaulting, resisting, threatening, or coercing any NMFS-approved observer or authorized officer.	V
VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, AND PERMIT REQUIREMENTS	
<p>No vessel/operator permit onboard;</p> <p>Fishing without a general/open access permit or no vessel permit issued;</p> <p>Fishing for, receiving, processing, or possessing limited entry or catch share species without holding a valid permit if the permit is expired but renewable;</p> <p>Failing to report changes in permit information;</p>	I

¹⁸ See footnote 14.

¹⁹ Note that section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (186 U.S.C. § 1859) makes these violations criminal offenses. Major violations will be considered appropriate for criminal referral.

<p>Purchasing, possessing, or receiving catch without a dealer or registered buyer permit, provided the transaction is reported consistent with requirements of dealer permit;</p> <p>Providing inaccurate information in connection with application, declaration, record, or report if the information is immaterial;</p> <p>Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failing to submit affidavits or other required forms in a non-quota fishery;²⁰</p> <p>Failing to provide legible logbooks or other reports;</p> <p>Failing to comply with VMS/days at sea reporting.²¹</p>	
<p>Purchasing, possessing, or receiving from an unpermitted vessel;</p> <p>Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failure to submit affidavits or other required forms in a quota fishery;²²</p> <p>Failure to provide accurate logbooks or other reports;</p> <p>Failing to comply with VMS/days at sea reporting.²³</p>	II
<p>Fishing for, receiving, processing, or possessing limited entry or catch share species without holding a valid permit if ineligible for a permit;</p> <p>Altering, erasing, or mutilating a permit or application;</p>	III

²⁰ Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failing to submit affidavits or other required forms in a non-quota fishery, may be either a level I or level II offense. It is an offense level I where the adverse impact on the statutory or regulatory program is insignificant and there is no economic gain from the violation. It is an offense level II where the adverse impact on the statutory or regulatory program is minor or there is some economic gain from the violation.

²¹ Failing to comply with VMS/days at sea reporting may be either a level I or level II offense. It is an offense level II where there is an adverse impact on the statutory or regulatory program such as where the DAS violation is related to landing an overage.

²² See footnote 20.

²³ See footnote 21.

<p>Providing false information in connection with application, declaration, record, or report if the information is material;</p> <p>Having a non-operational VMS unit onboard.</p>	
<p>Fishing for, taking, or retaining particularly vulnerable, depleted, or overfished species without a required permit;</p> <p>Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS or VMS unit;</p> <p>Failing to carry a VMS unit onboard;</p> <p>Failing to have approved operational VMS unit onboard.</p>	IV
<p>Failing to minimize catch of prohibited species.</p>	V
VIOLATIONS REGARDING TIME, AREA, EFFORT, OR SECTOR RESTRICTIONS	
<p>Fishing with excess crew.</p>	I
<p>Entering a closed area or transiting a closed area with gear not properly stowed;</p> <p>Failure to comply with permit restrictions or IFQ transfer requirements.</p>	II
<p>Fishing in a closed area or during a closed season;</p> <p>U.S. vessel fishing illegally in EEZ.</p>	III
<p>Foreign fishing vessel fishing in U.S. waters without a permit or transiting U.S. waters with fishing gear not properly stowed.</p>	VI

**VIOLATIONS REGARDING SIZE/CONDITION/QUANTITY
OF FISH OR LANDING/POSSESSION REQUIREMENTS**

<p>Fishing for, receiving, trading, landing, or possessing fish in excess of what is allowed by regulation, permit, notice, or other means, where the overage exceeds the catch limit by up to and including 50% or has a fair market value of \$500 or less;</p> <p>Taking, receiving, trading, or possessing more general category scallops than allowed by regulation, permit, notice, or other means, up to 50% overage;</p> <p>Taking, receiving, trading, or possessing more limited access area scallops than allowed by regulation, permit, notice, or other means, between 3% and 5% overage;</p> <p>Catching undersized or oversized fish/lobster;</p> <p>Possession of prohibited species.</p>	<p>I</p>
<p>Fishing for, receiving, trading, landing or possessing fish in excess of what is allowed by regulation, permit, notice, or other means, where the overage exceeds the catch limit by more than 50% and has a fair market value of between \$500 and \$2,000, or where the overage exceeds the catch limit by between 50% and 100% and has a fair market value of more than \$2,000;</p> <p>Taking, receiving, trading, or possessing more general category scallops than allowed by regulation, permit, notice, or other means, over 50% overage;</p> <p>Taking, receiving, trading, or possessing more limited access area scallops than allowed by regulation, permit, notice, or other means, up to 50% overage;</p> <p>Illegally discarding fish or violating fish retention requirement.</p>	<p>II</p>
<p>Fishing for, receiving, trading, landing or possessing fish in excess of what is allowed by regulation, permit, notice, or other means, where the overage exceeds the catch limit by 100% or more and has a fair market value of \$500 or more;</p> <p>Taking, receiving, trading, or possessing more limited access area scallops than allowed by regulation, permit, notice, or other means, by more than a 5% overage.</p>	<p>III</p>

Violating food safety regulations.	VI
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VIOLATIONS REGARDING TRANSFER, PURCHASE, TRADE, SALE (AND ATTEMPTS)	
Purchasing, receiving, transferring, trading, or selling more fish than allowed by regulation, permit, notice, or other means; illegal transfer from vessel at sea.	II
Purchasing, receiving, transferring, trading, or selling otherwise unlawfully landed fish; ²⁴	
Purchasing, receiving, transferring, trading, or selling otherwise unlawfully landed fish. ²⁵	III
Damaging or stealing gear or fish.	IV
VIOLATIONS OF ACTS IMPLEMENTING INTERNATIONAL AGREEMENTS Western and Central Pacific Tunas Convention Act and Atlantic Tunas Convention Act	
Failing to release tuna which will not be retained immediately and with a minimum of injury; Removing tail tag before permitted; Failing to report taking of a tagged tuna.	I
Fishing in excess of catch limits (Anglers & General); Selling, offering for sale, or transferring any recreationally caught Atlantic bluefin tuna; Fishing within 100 yards of corkline of purse seiner fishing for bluefin tuna;	II

²⁴ Purchasing, receiving, transferring, trading, or selling otherwise unlawfully landed fish may be either a level II or a level III offense. It is a level III offense where there is an adverse impact on the statutory or regulatory program, such as where the violation is related to receiving an overage.

²⁵ See footnote 24.

<p>Failing to request a purse seine vessel, net, or fish inspection;</p> <p>Failing to maintain reports, submit reports in a timely manner, or submitting inaccurate reports (Dealer);</p> <p>Failing to report taking of commercial-sized bluefin tuna (Dealer);</p> <p>Failing to tag a tuna;</p> <p>Retaining tuna caught under tag and release program;</p> <p>Fishing for or retaining undersized tuna;</p> <p>Landing tuna in other than prescribed forms;</p> <p>Fishing for, catching, possessing, retaining, or landing Atlantic highly migratory species (HMS) without the appropriate permit;</p> <p>Failing to properly mark a container holding tuna for export.</p>	
<p>Purchasing, transferring, or receiving tuna for a commercial purpose without a license or from a vessel without the appropriate permit;</p> <p>Transferring, purchasing, or receiving Atlantic bluefin tuna from any person or vessel without a valid dealer permit;</p> <p>Selling, offering for sale, or transferring any Atlantic bluefin tuna to any person other than a permitted dealer;</p> <p>Failing to comply with sea turtle mitigation gear and handling requirements by international agreement.</p>	<p>III</p>
<p>Fishing in excess of quota, allocation, or incidental catch limits;</p> <p>Purchasing or transporting with a buy boat any tuna that is captured incidentally by longlines;</p> <p>Purchasing, receiving, transferring, selling, offering for sale, importing, exporting, or having custody, possession, or control of tuna which are known to be, or should have been known to be, taken in violation.</p>	<p>IV</p>

<p>Using a fishing vessel equipped with purse seine gear to fish in a closed area;</p> <p>Setting a purse seine around, near or in association with a Fish Aggregating Device (FAD) or deploying or servicing a FAD during a FAD closure or prohibited period;</p> <p>Using a fishing vessel to fish in the Pacific Ocean using longline gear inside and outside the Convention Area on the same fishing trip when prohibited;</p> <p>Fishing during closure.</p>	<p>V</p>
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National Marine Sanctuaries Act Schedule

VIOLATION	LEVEL
GENERAL VIOLATIONS	
SEABED / LAKEBOTTOM ACTIVITIES	
<p>Minor alteration of seabed or lake bottom that is easily fixed; Collection with minor impact to the sanctuary.</p>	I
<p>Anchoring in a prohibited manner or area; Mineral or hydrocarbon exploration, development, or production with minor impact to the sanctuary; Alteration or destruction of seabed or lake bottom, including dredging, drilling, coring, and construction with minor impact to the sanctuary.</p>	II
<p>Mineral or hydrocarbon exploration, development, or production with moderate impact to the sanctuary; Alteration or destruction of seabed or lake bottom, including dredging, drilling, coring, and construction, with moderate impact to the sanctuary; Collection with moderate impact to the sanctuary.</p>	III
<p>Mineral or hydrocarbon exploration, development, or production with major impact to the sanctuary; Alteration or destruction of seabed or lake bottom, including dredging, drilling, coring, and construction, with major impact to the sanctuary; Collection with major impact to the sanctuary.</p>	V

FISHING	
<p>Possessing prohibited gear;</p> <p>Using prohibited gear such as pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns, or similar devices known as spearguns;</p> <p>Fishing in prohibited areas such as Special Use Areas.</p>	I
<p>Using prohibited gear such as bottom longlines, traps, and nets;</p> <p>Fishing in prohibited areas such as a Wildlife Management Area.</p>	II
<p>Fishing in prohibited areas such as an Ecological Reserves.</p>	III
<p>Trawling.</p>	IV
EXPLOSIVES	
<p>Possessing explosives, electrical charges, poisons, or similar destructive devices.</p>	I
<p>Using explosives, electrical charges, poisons, or similar destructive devices.</p>	III
<p>Using explosives, electrical charge, poisons, or similar destructive devices with major impact on sanctuary resources.</p>	VI
VESSEL / AIRCRAFT	
<p>Motorized personal watercraft operations in prohibited areas;</p> <p>Aircraft disturbance of marine mammals or seabirds, including low overflight;</p> <p>Use of moorings in a prohibited manner.</p>	I
<p>Operate vessel or aircraft in prohibited areas or in a prohibited manner (including groundings) that results in minor impact to the sanctuary.</p>	II

Operate vessel or aircraft in prohibited areas or in a prohibited manner (including groundings) that results in moderate impact to the sanctuary, or in Area to be Avoided.	III
Operate vessel or aircraft in prohibited areas, or in a prohibited manner (including groundings) that results in major impact to the sanctuary.	V
HISTORICAL / CULTURAL	
Disturbing, damaging, destroying, moving, removing, salvaging, recovering, injuring, altering, or possessing historical or cultural resources (or attempting the same) that results in minor impact to the sanctuary; Use of grappling hooks, suction, conveyors, dredging, wrecking, or anchoring devices that results in minor impact to the sanctuary.	I
Disturbing, damaging, destroying, moving, removing, salvaging, recovering, injuring, altering, or possessing historical or cultural resources (or attempting same) that results in moderate impact to the sanctuary; Use of grappling hooks, suction, conveyors, dredging, wrecking, or anchoring devices that results in moderate impact to the sanctuary.	III
Disturbing, damaging, destroying, moving, removing, salvaging, recovering, injuring, altering, or possessing historical or cultural resources (or attempting same) that results in major impact to the sanctuary; Use of grappling hooks, suction, conveyors, dredging, wrecking, or anchoring devices that results in major impact to the sanctuary.	V
DISCHARGES & DEPOSITS	
Discharging or depositing, from within sanctuary boundaries, minor amounts of any non-exempt material or other matter (e.g., hydrocarbons or hazardous substances, fuel, oil, oily bilge waste; unprocessed, non-hazardous trash or raw material, or entangling material) that results in minor impact to the sanctuary; Discharging or depositing, from beyond sanctuary boundaries, any non-exempt material or matter that subsequently enters and injures a Sanctuary resource and results in minor impact to the sanctuary.	I

<p>Discharge or deposit, from within sanctuary boundaries, any non-exempt material or other matter (e.g., hydrocarbons or hazardous substances, fuel, oil, oily bilge waste; unprocessed, non-hazardous trash or raw material, or entangling material) that results in moderate impact to the sanctuary;</p> <p>Discharge or deposit, from beyond sanctuary boundaries, any non-exempt material or matter that subsequently enters and injures a Sanctuary resource and results in moderate impact to the sanctuary;</p> <p>Deposit of wrecks / desertion or abandonment of vessel.</p>	<p>III</p>
<p>Discharge or deposit, from within sanctuary boundaries, any non-exempt material or other matter (e.g. hydrocarbons or hazardous substances, fuel, oil, oily bilge waste, unprocessed, non-hazardous trash or raw material, or entangling material) that results in major impact to sanctuary;</p> <p>Discharge or deposit, from beyond sanctuary boundaries, any non-exempt material or matter that subsequently enters and injures a Sanctuary resource and results in moderate impact to the sanctuary.</p>	<p>V</p>
<p>LIVING MARINE RESOURCES</p>	
<p>Attracting fish.</p>	<p>I</p>
<p>Injuring, moving, removing, taking, possessing, harvesting, landing, damaging, disturbing, or possessing (or attempting the same) living marine specimens (e.g., sharks, rayscoral, live rock, tropical fish, invertebrates, algae, marine plants, etc.) with minor impact to the sanctuary.</p>	<p>II</p>
<p>Injuring, moving, removing, taking, possessing, harvesting, landing, damaging, disturbing, or possessing (or attempting the same) living marine specimens (e.g., sharks, rayscoral, live rock, tropical fish, invertebrates, algae, marine plants, etc.) with moderate impact to the sanctuary.</p>	<p>III</p>
<p>Injuring, moving, removing, taking, possessing, harvesting, landing, damaging, disturbing, or possessing (or attempting the same) living marine specimens (e.g., sharks, rayscoral, live rock, tropical fish, invertebrates, algae, marine plants, etc.) with major impact to the sanctuary.</p>	<p>V</p>

MISCELLANEOUS	
<p>Defacing, damaging, or removing any signage, boundary markers, stakes, mooring buoys, boundary buoys, trap buoys, scientific equipment, navigation aids, notices, or placecards that does not result in damage to a sanctuary resource;</p> <p>Violating a sanctuary permit condition or term.</p>	I
<p>Breaking, taking, cutting, removing, damaging, or possessing any bottom formation with minor impact to the sanctuary;</p> <p>Defacing, damaging, or removing any signage, boundary markers, stakes, mooring buoys, boundary buoys, trap buoys, scientific equipment, navigation aids, notices, or placecards that results in damage to a sanctuary resource.</p>	II
<p>Breaking, taking, cutting, removing, damaging, or possessing any bottom formation with moderate impact to the sanctuary.</p>	III
<p>Releasing or introducing non-native species.</p>	IV
<p>Breaking, taking, cutting, removing, damaging, or possessing any bottom formation with major impact to the sanctuary.</p>	V

Lacey Act Schedule

VIOLATION	LEVEL
MARKING VIOLATIONS	
Importing, exporting, or transporting in interstate commerce any container of fish (including shellfish) which has not been marked in accordance with applicable regulations and/or laws.	I
OTHER THAN MARKING VIOLATIONS	
<p>The following offenses when the amount of wildlife in question is a small quantity or the effect on the resource or the conservation scheme is relatively small:</p> <p>False labeling offenses;</p> <p>Attempting to or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;</p> <p>Within the special maritime and territorial jurisdiction of the United States, attempt to or possess any fish or wildlife taken, possessed, transported, or sold in violation of any foreign or Indian tribal law.</p>	III

<p>The following offenses when the amount of wildlife in question is a large quantity or the effect on the resource or the conservation scheme is relatively severe:</p> <p>False labeling offenses;</p> <p>Attempting to or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;</p> <p>Within the special maritime and territorial jurisdiction of the United States, attempt to or possess any fish or wildlife taken, possessed, transported, or sold in violation of any foreign or Indian tribal law.</p>	<p>IV</p>
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Endangered Species Act Schedule

VIOLATION	LEVEL
TAKING VIOLATIONS	
Collecting parts (Endangered or Threatened).	I
Harassment (Endangered or Threatened), or attempt to do so; Stellar Sea Lion violations including approaching designated rookery or haulout in buffer area or on land.	II
Wounding, injuring, hunting, or capturing an Endangered or Threatened Species, or attempt to do so; Stellar Sea Lion violations including fishing within a designated rookery or haul-out buffer area, or discharging a firearm within 100 yards of a sea lion.	III
Killing an Endangered or Threatened Species, or attempt to do so.	IV
TRANSPORTATION AND TRANSACTIONS VIOLATIONS	
Import/Export for personal use (Endangered or Threatened); Possess, deliver, carry, transport, sell or ship illegally taken threatened or endangered species in interstate or foreign commerce for personal use; Trade in violation of CITES for personal use.	II
Import/Export for commercial use (Endangered or Threatened); Possess, deliver, carry, transport, sell or ship illegally taken threatened or endangered species in interstate or foreign commerce for commercial use; Trade in violation of CITES for commercial use.	III

VIOLATIONS RELATED TO ENFORCEMENT, MONITORING, AND OBSERVERS	
Observer interference; Interference with a lawful investigation or inspection.	IV
OTHER VIOLATIONS (ENDANGERED OR THREATENED SPECIES)	
Violating distance restrictions for watchable wildlife (non-commercial); Failure to maintain records as required by federal regulation or permit.	I
Violating certificate of exemption regulations; Violating distance restrictions for watchable wildlife (commercial); Failure to allow inspection of records as required by federal regulation or permit.	II
Violating the conditions of a permit issued for research or propagation; Failing to comply with the terms and conditions of an incidental take permit; Dumping fish or other matter (including nets or other gear).	III
Refusing to allow a boarding, entry to an area of custody, or inspection; Interfering with an investigation; Violations of speed restrictions by vessels greater than or equal to 65ft (19.8m) in overall length. ²⁶	IV

²⁶ This offense is also listed under the Marine Mammal Protection Act (MMPA), but should be charged using the Endangered Species Act penalty schedule absent exceptional circumstances warranting charging under the MMPA.

VIOLATIONS RELATED TO TURTLE EXCLUDER DEVICES (TEDS)	
<p>Discrepancies unlikely to kill any turtles encountered, including but not limited to:</p> <ul style="list-style-type: none"> • TED angles between 56-57 degrees. 	I
<p>Discrepancies likely to kill some turtles encountered, including but not limited to:</p> <ul style="list-style-type: none"> • TED angles between 58-60 degrees; • Bar spacing off by up to 3”; • Holes/gaps in TED netting; • Double-Cover TED overlap between 16-17” (stretched). 	II
<p>Discrepancies likely to kill most turtles encountered, including but not limited to:</p> <ul style="list-style-type: none"> • TED angles between 61-70 degrees; • Double-Cover TED overlap between 18-19” (stretched). 	III
<p>Discrepancies likely to kill all turtles encountered, including but not limited to:</p> <ul style="list-style-type: none"> • No TEDs; • TEDs sewn shut; • TED angles above 70 degrees; • No floats on bottom-shooter TED; • Double cover TED overlap of 20” or above (stretched). 	IV

Marine Mammal Protection Act Schedule of Offenses

VIOLATION	LEVEL
TAKING VIOLATIONS	
Harass or Collect Parts of a Marine Mammal, or attempt to do so.	II
Harm, Hunt, or Capture of a Marine Mammal, or attempt to do so.	III
Killing of a Marine Mammal, or attempt to do so.	IV
TRANSPORTATION AND TRANSACTION VIOLATIONS	
Import, export, transport, sell, possess, purchase; Violations related to illegal importation, purchasing, possession, landing, transport, or sale of tuna, and violations related to record keeping, reporting, or FCO requirements.	III
COMMERCIAL FISHERIES VIOLATIONS	
Failure to register (i.e., fishing without authorization); Failure to display annual sticker/decal, fail to carry certificate on board, or failure to file annual report; Failure to report taking of a marine mammal.	II
Assaulting an observer, failure to take observer or impeding, intimidating, impairing, or interfering with an observer or observations; Providing false information; Commercial whaling.	IV

VIOLATIONS RELATED TO LABELING STANDARDS	
Federal Trade Commission; Violations related to tracking fishing operations; False statement/endorsement on a tuna tracking form; Violations related to canning operations (other than record keeping/reporting).	IV
VIOLATIONS RELATED TO ENFORCEMENT, MONITORING, AND OBSERVERS	
Observer interference; Interference with a lawful investigation or inspection.	IV
OTHER VIOLATIONS	
Violations related to unauthorized/non-permitted fishing, fishing methods, or fishing gear; Violations related to notification requirements; Permit violations; violations related to labeling standards.	III
Violations of native agent regulations or permit conditions; Violations of speed restrictions by vessels greater than or equal to 65 ft (19.8 m) in overall length; ²⁷ Exceeding DML or intentionally deploying net on dolphins after DML has been reached; Pinger violations not covered on Summary Settlement or Fix-It schedules.	IV

²⁷ This offense is also listed under the Endangered Species Act penalty schedule and should be charged under that penalty schedule absent exceptional circumstances warranting charging under the Marine Mammal Protection Act schedule.

Northern Pacific Halibut Act Schedule of Offenses

VIOLATION	LEVEL
VIOLATIONS REGARDING GEAR	
Failure to have setline gear or skate marker buoys properly marked; Failure to properly deploy seabird avoidance gear.	I
Failure to have aboard required seabird avoidance gear; Using automatic hook stripper to release halibut.	II
VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS, OR OBSERVERS	
Disfigurement of halibut that prevents minimum size or catch limit determination.	I
No Prior Notice of Landing submitted prior to offload.	II
Failure to permit inspection of hold/vessel by authorized officer upon request.	III

VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, AND PERMIT REQUIREMENTS	
<p>Submitting Prior Notice of Landing outside of time limit specified for submission;</p> <p>Making inaccurate entries in a halibut fishing log, other logbook or report;</p> <p>Failure to have license on board;</p> <p>Failure to update fishing log within time specified.</p>	I
<p>Material errors in log of halibut fishing operations, Landing Report, or record of purchases or receipts of halibut;</p> <p>No Prior Notice of Landing submitted prior to offload;</p> <p>Subsistence fishing for halibut without having been issued a Subsistence Halibut Registration Card;</p> <p>Subsistence fishing for halibut without having been issued and without the requisite qualifications to receive a Subsistence Halibut Registration Card.</p>	II
VIOLATIONS REGARDING EXCEEDING A QUOTA, HARVESTING, AND SELLING HALIBUT	
<p>Exceeding remaining available IFQ quota by more than 100%;</p> <p>Commercial fishing for halibut without obtaining an IFQ permit;</p> <p>Deliveries of IFQ catch to other than a registered IFQ buyer and/or sale of IFQ halibut by other than an registered IFQ buyer.</p>	III

VIOLATIONS REGARDING SIZE/CONDITION/QUANTITY OF FISH OR LANDING/POSSESSION REQUIREMENTS	
<p>Taking or possessing halibut under minimum size or over maximum size;</p> <p>Exceeding the daily sport bag limit or possession limit;</p> <p>Mutilating halibut.</p>	I
<p>Commercially harvesting undersized halibut – less than 10 undersized halibut ;</p> <p>Possession of subsistence-caught and/ or sport caught halibut on a vessel with commercial caught halibut onboard;</p> <p>Exceeding the daily personal limit of 20 subsistence halibut/person/day by more than 5 halibut.</p>	II

Antarctic Marine Living Resources Convention Act Schedule

VIOLATION	LEVEL
HARVESTING VIOLATIONS	
Harvesting Antarctic Marine Living Resources (AMLR) contrary to permit, area, catch limit or gear requirements, regulations or binding conservation measures.	III
TRAFFICKING VIOLATIONS	
Submitting an application for preapproval less than 15 working days before the date of the first receipt, importation, or re-export.	II
<p>Importing or exporting AMLRs taken by vessel with no harvesting permit, without a dealer permit or preapproval, unaccompanied by a complete and validated Dissostichus Catch Document (DCD), or contrary to the provisions of any permit;</p> <p>Shipping, transporting, selling, purchasing, importing, exporting, or having custody, control or possession of AMLRs harvested in violation of any binding conservation measure;</p> <p>Receiving AMLRs from a vessel without a Harvesting or Dealer Permit.</p>	III
MONITORING AND ENFORCEMENT VIOLATIONS	
<p>Refusing to permit a boarding by, or provide assistance to, a CCAMLR inspector;</p> <p>Assaulting, resisting, opposing, impeding, intimidating or interfering with a CCAMLR inspector;</p> <p>Resisting arrest or interfering with arrest of another;</p> <p>Providing false or inaccurate information;</p> <p>Frustrating timely identification of harvesting vessel or gear.</p>	IV