



# Atlantic States Marine Fisheries Commission

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## Law Enforcement Committee Meeting Summary

October 24-25, 2016

**Committee Members:** Michael Eastman, Chair (NH); Steve Anthony, Vice Chair (NC); Chisolm Frampton, SC; Kyle Overturf, CT; Doug Messeck, DE; Grant Burton, FL; Bob Lynn, GA; Jon Cornish, ME; Tim Huss, NY; Jason Snellbaker, NJ; Larry Furlong, PA; Kurt Blanchard, RI; Rob Kersey, MD; Jamie Green, VA; Tim Donovan, NOAA OLE; Bob Hogan, NOAA GC; Katie Moore, USCG; David Sykes, USFWS

**ASMFC Staff:** Mark Robson; Kirby Rootes-Murdy; Megan Ware;

**Other Participants:** Joseph Schneider, NY; Rene Cloutier, ME; David Borden, RI; Pat Keliher ME; Dennis Abbott, NH; Ritchie White, NH; Mike Ray, NOAA OLE

The Law Enforcement Committee (LEC) met over two days during the 2016 annual meeting of the Atlantic States Marine Fisheries Commission (ASMFC) in Bar Harbor, Maine. The LEC welcomed new LEC member Grant Burton representing Florida.

### Species Issues

**American Lobster** – Megan Ware of ASMFC staff briefed the LEC on development of an addendum to address the Southern New England stock. One issue of concern was the possible increase in regulatory complexity in offshore harvest areas, given the recent work of a subcommittee to address existing enforcement limitations in the offshore trap fishery. The LEC will review and comment on proposed management measures as they are developed.

The **Lobster Enforcement Subcommittee** also reported on its work to identify and recommend enhancements to existing enforcement efforts for the lobster trap fishery. The subcommittee was formed to proactively address enforcement needs in response to trap limitation programs and increasing activity in more remote waters. The LEC reviewed language in a draft letter from the ASMFC requesting that NOAA Office of Law Enforcement increase its priority ranking for American lobster work. The ranking is important to providing federal reimbursement to states for enforcement activities targeting the fishery. The NOAA representative to the LEC confirmed that it is timely to submit such a letter now in advance of planning for 2018-2023 priorities. The LEC continued a discussion of the limitations of enforcement vessels for reaching and checking offshore lobster trap lines. Where enforcement actions have occurred, untagged traps are being discovered. The United States Coast Guard District 5 considers American lobster a priority species for their work, but they are not set up to pull and check traps on their vessels.

In addition to increased federal funding to support enforcement efforts, the LEC concluded that the next best area to focus on would be the comprehensive establishment of a vessel monitoring system (VMS) for the lobster fishery, with design characteristics suitable for law enforcement uses.

**Jonah Crab** – Megan Ware provided information on a proposed addendum to address claw harvest and bycatch standards. After reviewing management options the LEC expressed its continued support for a whole-crab-only harvest. Given the direction of the ASMFC to allow claw harvest, the LEC discussed one complication. If a minimum claw size is specified along with a whole-crab minimum size, confusion in the markets could ensue if claws removed from legal whole crabs do not meet the minimum claw size. This confusion would lead to greater difficulty in enforcing any minimum size limit for claw harvest. The LEC also supported reintroducing an option to allow a 5-gallon bucket volume allowance for harvesting crabs for personal consumption as a relatively straightforward means of enforcing a bag limit. The LEC opposes a bycatch definition based on percent composition as difficult to manage and monitor by both the fisherman and a checking officer. They are also difficult cases to successfully prosecute. The ASMFC's *Guidelines for Resource Managers on the Enforceability of Fishery Management Measures, Second Ed. 2015* ranked bycatch limits based on percent composition the 3<sup>rd</sup> lowest of 26 management measures included in the guidelines.

**American Eel** – Kirby Rootes-Murdy reviewed the modifications to the eel aquaculture plan from the state of North Carolina. The LEC discussed the removal of warrantless search provisions that were part of the 2016 plan. Despite this change, the LEC reaffirmed its support of the proposed aquaculture operation. Recognizing that the North Carolina General Assembly has provided statutory direction to disallow such warrantless searches, the LEC felt that the remaining general permit conditions and limitations of the proposal, along with its limited application to a single Permittee, would be sufficient to monitor and ensure compliance. On a broader level, the LEC established that under nearly all situations with which it is familiar, issuance of permits or licenses allows for such searches and is considered a vital component of enforcement to ensure compliance with regulations and harvest limits. The LEC is concerned about the possible precedent of removing what is considered an effective compliance tool; namely the ability to conduct warrantless inspections and searches directly related to the actions of permitted or licensed individuals, and where such inspections or searches are made a condition of the permit or license. That ability was a primary consideration of the LEC in rating "Permits" among the most enforceable management measures in its *Guidelines for Resource Managers on the Enforceability of Fishery Management Measures, Second Ed. 2015*.

**Summer Flounder** – Kirby Rootes-Murdy requested input from the LEC on current state safe harbor provisions and the related idea of landings flexibility for summer flounder that is being considered in the ongoing development of a summer flounder 'Comprehensive' amendment. Members pointed out that these items should be understood or seen as two separate issues. For the first issue, Safe Harbor requests are essential to address safety-at-sea concerns, and should be kept separate from management considerations of multi-state landings allowances and quota transfers. Members pointed out recent increases in safe harbor

requests in the summer flounder fishery, often from the same individuals or vessels. It is a concern that safe harbor requests may be abused in the interest of off-loading catches for business or convenience purposes. Several states have now adopted policies for handling legitimate safe-harbor requests, and the LEC supports development of a single, standardized policy that all states could adopt. On the second issue as states move towards more and more management policies that allow flexibility in landings (e.g. aggregate, dual-landings permits, out-of-state) the result is inevitably less and less enforceability. The LEC expressed concern that abuse of safe harbor requests is already leading to harvest of flounder that are not accounted for, or ultimately become commercial discards. It was highlighted that this byproduct of abuses of safe harbor may be contributing to fishing mortality that is currently accounted for in a limited capacity, and may have implications on recent stock assessment findings (2015 and 2016 Summer Flounder Stock Assessment Update). Moving forward, Kirby will work to get information on active/in-active permits and dual-state permit holders at the state level to better understand the number of individuals or vessels that may benefit from 'landings flexibility', and share this information with the LEC as soon as possible. Kirby will likely schedule a call with the LEC prior to the joint ASMFC and MAFMC Meeting in December 2016.

### **Other Issues**

The LEC reviewed proposed **2017 Action Plan** items and confirmed that its work will address the tasks outlined in Goal 3 of the plan.

Members shared information on their states' participation levels in the **Interstate Wildlife Violators Compact**. In most cases adherence to the compact includes recognition of another state's action to suspend or revoke licenses of a resource violator, and an equivalent suspension in the cooperating state. Members discussed problems of sharing data on license suspensions, and inconsistencies among the states in how provisions of the compact may be applied. While the language of the compact is general in nature, some states do not apply it to commercial or fisheries violations. The LEC Coordinator will review and compile information for more in-depth review by the committee.

Dan McKiernan requested information from the LEC on state regulations or statutes that address **combining recreational and commercial landings** on the same trip. Members provided general information from their states, which varied widely in approaches. Mark Robson was directed to forward additional details of state regulations for Massachusetts' use when those are provided.

The work of the **Aerial Enforcement Subcommittee** was reported to the LEC. There are two primary issues. First, the current *Enforceability Guidelines* ratings of management measures include separate ratings for "Aerial Enforcement". The LEC has concluded that these ratings are not justified as a stand-alone category. Rather, as with vessels, vehicles and other equipment, aerial resources are part of the suite of tools that enable at-sea and dockside enforcement. The LEC recommends that this category be removed from the rating system, conduct an updated survey with the current LEC members, and amend the guidelines document. The second issue relates to funding of aerial enforcement work by NOAA through joint enforcement agreements

(JEAs) with the states. NOAA OLE reported on changes underway that will guide how state enforcement activities will be reimbursed through JEAs.

Commissioner Dennis Abbott presented information on a fund-raising **effort to honor Chris Schoppmeyer** for his years of dedication to the Town of Newmarket, NH, and for his distinguished career in conservation enforcement. Funds will be used to secure land for a local park dedicated to Mr. Schoppmeyer.

Members shared information from their respective agencies on recent **staffing and training activities**. Several LEC members reported on the high-value training offered by the National Association of Conservation Law Enforcement Chiefs Leadership Academy. The LEC currently has two members of the Academy steering team and three additional recent graduates.