



# Atlantic States Marine Fisheries Commission

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## MEMORANDUM

March 3, 2014

**To: Atlantic Striped Bass Management Board**

**From: Law Enforcement Committee**

**RE: Enforcement of Fishing Prohibitions in the Exclusive Economic Zone (EEZ)**

At the Winter 2014 meeting of the Atlantic States Marine Fisheries Commission (ASMFC), the Striped Bass Management Board requested input on how enforcement is working in the EEZ. The context of this discussion is that the Board is considering making a recommendation to NOAA Fisheries to allow catch and release fishing in the EEZ. However, before doing so the Board wants to fully understand how the current prohibition on targeting/harvest/possession is working in the EEZ. The ASMFC Law Enforcement Committee (LEC) met via conference call on February 26, 2014 to address this issue.

**Committee Members Present:** Kurt Blanchard (RI); Elizabeth Buendia (USCG); John Cornish (ME-alternate); Dominick Fresco (NJ); Larry Furlong (PA); Honora Gordon (USFWS); Jamie Green (VA); Logan Gregory (NOAA OLE); Bob Hogan (NOAA OGC); Tim Huss (NY); Drew Idelit (DE-alternate); Lloyd Ingerson (MD); Kyle Overturf (CT); Gentry Thames (SC-alternate); Carter Witten (NC-alternate).

**ASMFC Staff:** Mark Robson; Kate Taylor; Mike Waine; Marin Hawk

**Other Law Enforcement:** Tracy Dunn (NOAA OLE); Jeff Radonski (NOAA OLE); Robert Kersey (MD NRP)

The Law Enforcement Committee offers the following comments relating to striped bass fishing regulations in the EEZ.

### **Illegal Harvest Activity**

**LEC members reported that varying levels of illegal harvest have occurred in New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Maryland and Virginia.** Enforcement is ongoing and a number of successful cases have been publicized. However, enforcing a prohibition of harvest in the EEZ can be complicated by local factors. For example in Virginia, recently the fish were concentrated farther offshore, making it difficult to locate and monitor activity without use of aircraft. In federal waters in the vicinity of Block Island, private and for-hire vessels have attempted to take advantage of contiguous state boundaries to elude enforcement checks.

### **Current Enforcement**

**LEC members reported successful enforcement efforts to address illegal take and possession in the EEZ.** However, there was agreement that enforcement of possession in the EEZ is a very involved process when fish are otherwise legal to take in state waters. Covert and overt operations are used to target areas of known activity. States are coordinating cases with NOAA and USCG where appropriate. When cases have been made and publicized in a local area, this has resulted in diminishment of illegal activity for some period of time.

### **Enforcement of Targeting vs. Possession**

**The consensus of the LEC was that enforcing targeting prohibitions in the EEZ is extremely difficult, and in fact not occurring to any degree.** Some states reported that targeting does occur, but making cases in court is difficult where intent must be proven. Most state regulations are written to address possession and take. Successful cases citing targeting generally require a level of surveillance that is not feasible. Further, such cases would need to demonstrate fishing behavior that is consistent with repetitive effort and techniques for catching striped bass in the EEZ in order to be successfully prosecuted. Another complication ensues when anglers may be legally targeting another species, e.g., bluefish off of New Jersey.

### **Catch and Release Allowance in the EEZ**

**The consensus of the LEC was that allowing catch and release fishing would only exacerbate enforcement of illegal harvest and possession.** In many cases, allowing catch and release fishing would offer a reason to be fishing in the EEZ at a time and location where an angler might not otherwise be fishing. This provides additional cover to illegally take a fish and transport it back to state waters. The LEC discussed existing catch and release opportunity for striped bass in Chesapeake Bay. But in that circumstance, fishing activity can be more closely monitored and is allowed in a relatively small area.

### **Penalties**

At least one state reported that there has been good support for cases and an interest in increasing penalties. At the federal level, many cases are handled through a summary settlement. Written Warnings, Summary Settlements and NOVAs are civil/administrative penalties, not criminal fines. Written Warnings are non-monetary penalties. Summary Settlements are monetary penalties based on the number of fish possessed, and NOAA Office of Law Enforcement personnel are authorized to issue specific monetary penalties for specific violations. For illegal possession of up to 10 fish and a first offense, the penalty is \$100 per fish. If the alleged violator has a prior offense for possession of striped bass in the EEZ, the penalty is \$250 per fish up to 10 fish. Possession of more than 10 fish can result in assessment of a Notice of Violation and Assessment (NOVA). NOVAs are also civil/administrative penalties, but are handled through the NOAA Office of General Counsel. Criminal violations are either misdemeanors or felonies, depending on the nature of the violation. Felony criminal fines have been applied to only a handful of cases where significant illegal operations (conspiracy, destruction of evidence, resisting boarding, etc.) greatly exceeded simple recreational fishing violations.