

Atlantic States Marine Fisheries Commission

Law Enforcement Committee

*May 9, 2017
Alexandria, Virginia*

Draft Agenda

The times listed are approximate and the order in which these items will be taken is subject to change.
Other items may be added as necessary.

NOTE: A portion of this meeting will be closed to the public to discuss ongoing enforcement activities. Only members of the Law Enforcement Committee, authorized law enforcement personnel and the LEC Coordinator can be in attendance.

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| 1. Social (Open to Commissioners and Staff) | 8:15 a.m. |
| 2. Call to Order/Roll Call of the LEC Representatives | 8:30 a.m. |
| 3. Approval of Agenda and October 2016 Minutes | 8:40 a.m. |
| 4. Public Comment | 8:45 a.m. |
| 5. Review and Update on Regional Tautog Management Options | 8:55 a.m. |
| 6. Review of 2017 Action Plan Items | 9:10 a.m. |
| 7. Report on Atlantic Herring Addendum I | 9:25 a.m. |
| 8. Discussion of Storm Preparedness, Training and Equipment | 9:35 a.m. |
| 9. New or Emerging ASMFC Species Management Issues | 9:50 a.m. |
| 10. Break | 10:00 a.m. |
| 11. Review and Discuss American Lobster Management Issues | 10:20 a.m. |
| 12. Review and Discuss Ongoing Enforcement Activities
NOTE: This portion of the meeting will be closed to the public | 10:45 a.m. |
| 13. Recess for Lunch | 11:45 a.m. |

The meeting will be held at the Westin Alexandria; 400 Courthouse Square, Alexandria, Virginia 22314; 703.253.8600

14. Reconvene	1:15 p.m.
15. Federal Agency Reports	1:20 p.m.
16. State Agency Reports	1:45 p.m.
17. NOAA Priority-Setting and Planning for ASMFC Input	2:30 p.m.
18. Break	3:00 p.m.
19. Update of Survey for Enforceability Guidelines	3:15 p.m.
20. Discussion of ISFMP Species Management Issues	4:10 p.m.
21. Development of Orientation Process for LEC members	4:20 p.m.
22. New Business	4:45 p.m.
23. Adjourn	4:55 p.m.

**Atlantic States Marine Fisheries Commission
Law Enforcement Committee**

Draft Minutes

October 24-25, 2016

Bar Harbor, Maine

**NOTE: These minutes are unofficial until reviewed and approved by the LEC at the
May 9, 2017 meeting in Bar Harbor, Maine**

Participants:

CHAIRMAN: Michael Eastman (NH Fish & Game Department)
VICE CHAIR: Steve Anthony (NC DMF, Marine Patrol Section)
Kurt Blanchard (RI DEM, Division of Law Enforcement)
Grant Burton (FL FWCC, Division of Law Enforcement)
Jon Cornish (ME DMR, Maine Marine Patrol)
Tim Donovan (NOAA OLE)
Chisolm Frampton (SC DNR, Division of Law Enforcement)
Larry Furlong (PA Fish & Boat Commission, Bureau of Law Enforcement)
Jamie Green (VA MRC, Division of Law Enforcement)
Bob Hogan (NOAA Fisheries, Office of General Counsel)
Tim Huss (NY DEC, Division of Law Enforcement)
Rob Kersey (MD DNR, Natural Resource Police)
Bob Lynn (GA DNR, Law Enforcement Section)
Doug Messeck (DE DNREC, Enforcement Section)
Katie Moore (USCG, Living Marine Resources)
Kyle Overturf (CN DEEP, State Environmental Conservation Police)
Jason Snellbaker (NJ Division of Fish and Wildlife, Bureau of Law Enforcement)
David Sykes (USFWS Office of Law Enforcement)

Staff: Mark Robson, Committee Coordinator
Kirby Rootes-Murdy
Megan Ware

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

1. Call to Order/Roll Call of the LEC Representatives

Chairman Mike Eastman called the meeting to order, welcomed members and guests. Mark Robson called the role of LEC members. The LEC welcomed new LEC member Grant Burton representing Florida. Jon Cornish from Maine announced that this would be his last meeting and that Rene Cloutier would be replacing him as the Maine Representative on the LEC.

2. Approval of Agenda and May 2016 minutes

3. Public Comment

There was no public comment.

4. Discussion of Emerging ISFMP Issues

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.

5. Review and Discussion of 2017 Action Plan Items

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

6. Interstate Violator Compact and Application to Marine Fisheries

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. In Maine, there are few examples of where an out-of-state violation would affect Maine license holders and the Compact may not be worth the effort. Connecticut will suspend a license of a state fisherman if that fisherman had a license suspended in New York. Several members mentioned that without a lot of shared fishermen, the Compact may not be worth the time and effort required to track activity. In Maine, if someone loses their shellfish license they do not forfeit their lobster license. In Rhode Island, all licenses to fish are taken if found guilty of an applicable violation. Virginia has an active license suspension process. They suspend all privileges (Commercial and Recreational). Currently they process 2-6 cases per month involving license suspensions. Virginia would like to mirror other states and usually applies suspensions to repeat offenders. Suspensions typically are for 2 years although they are permitted to go as high as 5 years. Virginia's participation in the Compact only applies to recreational fishermen. Although they have an active suspension process, the LEC representative was not aware of any database at their disposal to inform them if a violator has permits or licenses in other states. Members discussed the uncertainty regarding the Compact's application to commercial violations. Language in the Compact merely states "licenses". Not all states may be entering all license suspensions into a shared database. And in some cases, fishermen in Virginia with suspended licenses will go into the Potomac River and since the Potomac River Fisheries Commission is not a state, they cannot participate in the Compact anyway. North Carolina is currently working on Compact issues. For their recreational license holders, most violations are infractions that would not constitute suspension. They are looking at the commercial fishery, but lawmakers may not opt to move towards more active license suspension. In Virginia, their laws stipulate that all licenses are taken. Their fishermen want to change the law to apply only to licenses related to the violation in question. New Jersey is working on this issue with its Legislature at this time. Most of New Jersey's regulations have suspensions built in, and a violator may appeal to the Commission in that state if license suspensions include those not directly part of the violation in question. In New York, the key problem is maintaining the record of violations. Data input is where they are behind in the process, with over 4,000 records yet to be entered. Members discussed the need to address application of the Compact to commercial fisheries violations if it is ever to be taken up. The

issue of data-sharing must be a component of any plan to expand the Compact coverage. It was noted that the western states are applying the Compact to commercial guide licenses. For marine fisheries, the added complication is that the Compact does not address federal violations. Mark Robson will continue to gather information on this issue and present something to the LEC at a later date.

7. Review of Proposed Jonah Crab Claw Harvest Regulations

Megan Ware briefed the LEC on proposed new regulations allowing a statewide claw harvest. 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 3rd lowest of 26 management measures included in the guidelines.

8. Break

9. Review Warrant and Search Provisions among LEC Jurisdictions

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*.

10. Review and Discussion of ongoing enforcement activities (Closed Session)

Members discussed ongoing enforcement cases and activity.

11. Other Business and Recess for the Day

Dan McKiernan requested information from the LEC on state regulations or statutes that address combining recreational and commercial landings on the same trip. It is becoming an issue in Massachusetts where co-mingling is not addressed. Members provided general information from their states, which varied widely in approaches. It is prohibited in New York. In New Jersey, language is scattered among the regulations, mostly affecting commercial gear possession. Mark Robson was directed to forward additional details of state regulations for Massachusetts' use when those are provided.

12/13. Reconvene on Day Two

14. Update on Future Safe Harbor Issues and Input

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. Rhode Island and New York have now adopted policies for handling legitimate safe-harbor requests, and New Jersey is considering similar guidelines. 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.

15. Update on Aerial Enforcement Subcommittee Discussions

The work of the 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. NOAA reported on the efforts to justify JEA

expenditures to the states. The overall issue is that NOAA must be able to document what it is getting for federal dollars spent. Questions remain about how best to measure that, whether through tickets, arrests, or compliance measurements. With changes underway, funding will be more closely tied to OLE priorities. Over time, 25-50% of a state's funding will be required to tie back to those priorities. The use of aircraft for reimbursement, or the purchase or maintenance of aircraft must be directly related to a priority. If a state justified use of a plane for a JEA priority, it will need to show hours, patrol areas and directed actions leading to enforcement in line with the priority task.

16. Federal and State Agency Reports

NOAA OLE reported that they have begun working on enforcement prioritization and will be asking for input from the ASMFC via the LEC. The LEC will have time to work on any review and recommendations for the May 2017 meeting. With regard to purchase of equipment or infrastructure by the states, that must now be linked closely to priorities identified in federal planning and the Joint Enforcement Agreements.

USCG presented their written report on enforcement activities. Most cases have been lobster boardings and striped bass violations.

USFWS reported that they are hiring international enforcement specialists to focus on the growing demand for illegal wildlife. Positions will be in China, Indonesia and other countries where illegal wildlife is making its way to the United States.

Virginia reported on active oyster season and inability to fill positions with current budget issues.

New York reported recent academy graduation of 31 officers now undergoing field training. A new academy starts in February 2017.

Florida reported they now have 353 sworn officers. During the recent oyster season, they pulled officers from all over the state and had 164 participating in that limited season. Funding for patrol of the Florida Keys National Marine Sanctuary. At this time, Florida has 13 total vessels available for their offshore patrol work in the Atlantic and Gulf of Mexico.

Maryland graduated 27 officers in November, 2016. Most of those officers will be assigned to the Eastern Shore. They will now have 245 officers.

Pennsylvania is up to a staff of 85 officers, with 18 recent graduates. They are expecting more vacancies in the near future with a spate of retirements. They are using some undercover operations effectively to make good cases.

South Carolina reported heavy activity associated with floods and hurricanes.

New Hampshire reported development of a new canine program to be used on the seacoast of that state.

North Carolina reported that they are still dealing with storms. There are over 1,000 people still in shelters.

Maine reported that they are experiencing challenges with trap disputes in the lobster fishery. They deal with 4-5,000 traps in their state. They recently made a big case on untagged traps being used in southern Maine. Drug issues are becoming a priority, and represent the significant problem Maine is having with drug use among the populace.

Rhode Island reported hiring of 3 new officers. They recently had a toxic algal bloom that forced the closure of 90% of their waters to shellfish harvesting. The opening and closing of waters has created an emergency situation in their state. The algal bloom first affects mussels, then softshell clams, then oysters.

New Jersey reported new hiring of 4 officers, leading to 11 officers working in the field. They are working with new aquaculture regulations for Delaware Bay. A number of significant cases were made on tautog violations, and New Jersey recently increased the penalty to \$100/fish illegally possessed.

Delaware reported that a search warrant had been served on one of their fish dealers where illegal activity was underway.

Georgia reported that their brown shrimp fishery had quieted down as the summer progressed, and that white shrimp activity was picking up. They have increased boardings of shrimp vessels to inspect TEDs, and are finding most vessels compliant.

17. Break

18. Lobster Enforcement Subcommittee Report and Discussion

Members of the Subcommittee 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.

19. Review of LEC Comments and Recommendations to ASMFC Boards

Mark Robson reiterated the value of including specific examples and details of enforcement challenges when the LEC comments on draft management measures. The more concrete examples we can provide regarding enforcement difficulties associated with particular types of management measures, the better.

20. Review of Out-of-State Shipment/Sale Tracking for Enforcement Needs

This item was withdrawn from discussion for lack of information on the topic.

21. New Business or updated ISFMP Issues

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.

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.

Jason Snellbaker reported on current tank-testing of fish tags that may be useable for the tautog fishery. One metal tag is being tested, in line with recommendations of the tautog enforcement subcommittee.

22. Adjournment