

Meeting Summary
Law Enforcement Technical Committee Webinar
December 14, 2015
1:00 PM EST – 3:45 PM EST

Chairman Rama Shuster convened the meeting at 1:00 pm. The agenda was adopted with the addition under other business of a discussion of enforcement concerns for Amendment 39 and related actions. Staff reviewed the Scope of Work document.

AP Member Background Checks for Violations in State Waters

Doug Gregory reviewed the Council process for doing background checks on advisory panel (AP) appointees. Previously, the Council requested background checks from the NOAA Office of Law Enforcement. However, the Council would like to begin getting background checks at the state level as well. To determine if this is possible, each state representative is asked to provide the following information.

1. Can your agency provide the Council with records of violations, if any, if provided with the names, current address, and date of birth of AP appointees?
2. Can your agency specifically provide records of violations for federally managed species only?
3. What is the protocol for requesting this information from your agency?
4. How long will it take you agency to conduct such background checks?

Rama Shuster noted that the enforcement representatives might need to confer with their agency attorneys concerning any legal implications, but could give preliminary answers today. Mr. Gregory noted that there were three APs scheduled for appointments in June, so he would like to have the protocols worked out by March. This will be put on the agenda for the March LETC meeting. Captain Shuster then asked each state representative for his or her input.

Brandi Reeder (TX) – Each AP candidate would need to provide a signature authorizing a background check. Texas could provide an overall history of violations, but it would be more difficult to provide a history of violations regarding only federally managed species. Texas has species codes for the more commonly encountered species, but not all species. Protocol would be for the Council to make an open records request which would go through the open records request attorney. Turnaround would be 10 days.

Chad Herbert (LA) – The AP candidate should sign a waiver giving Louisiana permission to check his wildlife history and provide that history to the Council. This is not a requirement, but it would be advantageous. Louisiana has the necessary species codes and could probably provide a breakdown for federally managed species. Protocol would be to provide the request to Captain Hebert who would pass it through to the legal section. Turnaround would probably be within a week.

Rusty Pittman (MS) – The procedure for Mississippi would be the same as for Louisiana, but Mississippi does not have species codes. The AP candidate should sign a waiver. The request could go through Lt. Col. Pittman, who would have it reviewed by the agency attorneys.

Scott Bannon (AL) – The Council should provide a letter stating what the request is for, and it should include a waiver signed by the AP candidate. Providing the candidate’s driver’s license number would make it easier to track that individual. Turnaround would be about a week.

Rama Shuster (FL) – The procedure would be the same as that described by the other state representatives. However, ample time should be provided for the legal review.

Doug Gregory asked whether a generic request and waiver form would be acceptable, and if the waiver could be submitted electronically. LETC members responded that they would need to check with their attorneys regarding electronic submissions. A generic request would be acceptable, but the LETC would like to be provided with a draft request for legal review.

Doug Boyd asked whether each state holds the owner or a crew member responsible for violations. The responses were as follows.

Rama Shuster (FL) – Florida holds the operator responsible for state violations, and the owner for federal violations.

Scott Bannon (AL) – Alabama generally holds the individual responsible for the violation, but on some occasions where there are multiple violations on a vessel or the total number of fish on the vessel is over the limit, the captain will get the violation. The owner is generally not cited because, with a misdemeanor violation, the person being cited has to be present.

Rusty Pittman (MS) – Mississippi cites the violator. If there are numerous charges they cite the captain. As with Alabama, the person being cited has to be present,

Chad Herbert (LA) – Louisiana is the same as the other states. The person committing the violation is cited.

Brandi Reeder (TX) – Texas is the same as the other states with the exception of water safety. If a boat is not registered, Texas can cite either the captain or the person who allowed the boat to be operated without being registered.

Chad Herbert asked if the Council was looking for a complete history or just convictions. Mr. Gregory responded that the Council was only looking for convictions.

Review of Officer of the Year Program

Charlene Ponce reviewed the Officer of the Year Program. She reminded LETC members that she had sent them the award description and nomination forms a few weeks back, and will be sending a reminder out in January. She would like to get the nominations from the states and NOAA Enforcement by February 1, 2016. The LETC will review the nominations at its March meeting and will select the top three candidates. The Council will review these candidates in June and make a final decision on the winner. The award will be presented to the winning officer at the August Council meeting.

Scott Bannon asked if the nominee could be a part-time officer. Ms. Ponce replied that the nominees had to be full-time officers.

Rama Shuster noted that a similar program already exists on the Atlantic side. He explained that, for the Atlantic program, he forwards the nomination requests on to the Florida regions. The regional field commanders submit nominations to headquarters where a single nominee is selected to send on the program.

Rama Shuster expressed appreciation on behalf of all the enforcement officers for the Council approving this program.

LETC Representative Duties at Council Meetings

Doug Gregory noted that the Council has invited a LETC member from the state in which the Council meeting is held to each Council meeting since August. These representatives have generally just sat in the audience and not participated. He suggested having the LETC representative give a brief presentation to the Council on Joint Enforcement Agreement (JEA) activities in the preceding year for that state. Mr. Gregory also expressed appreciation for law enforcement presence at Council meetings, which sometimes get controversial. LETC members expressed approval for the proposal. A suggestion was made that the presentation be expanded to allow the LETC representative to bring any other notable state activities to the attention of the Council. One LETC member who had been the designated representative at an earlier Council meeting stated that it was awkward to come to the meeting but then have no involvement. He suggested that the LETC representative be given a seat at the Council table. However, it was noted that the representative could only provide the perspective of his state, not the entire Gulf. A NOAA Enforcement representative, usually Tracy Dunn, typically attends Council meetings and sits in the audience usually in or near the front row. Staff suggested that the LETC representative either sit in the front row near the podium along with Tracy Dunn, or be given a seat at the staff table, where he would be visible to be called upon if the Council needed a state enforcement perspective on an issue. One member expressed support for sitting at the staff table, noting that he felt uncomfortable having his back to the audience.

Other Business

The LETC discussed Reef Fish Amendment 39 and related amendments, specifically the Generic Electronic Logbook Amendment. Rama Shuster noted that the LETC has not reviewed Amendment 39 since last March, and the members were not that familiar with it at that time. He felt that it was worth having the LETC review it again since it has a large enforcement component, particularly:

- How to extend state authorities into federal waters
- How to apply enforcement to vessels from other states when there are regulatory inconsistencies
- Transit issues
- Dockside enforcement

Brandi Reeder noted that Texas does not have a transit provision and therefore no transit issues that may exist for other states. In Texas state waters and in the extended jurisdiction under regional management, vessels would need to comply with state regulations regardless of where the vessel is from. However, she expressed concern about issues in related amendments, specifically electronic logbooks for for-hire vessels. She felt this is a great idea, but was concerned about implementation. Under the headboat collaborative EFP, there are about 39 vessels that have hail-out/hail-in notification requirements. The sheer volume of notifications from these vessels is overwhelming. Furthermore, the notifications are a moot point if enforcement does not have immediate access to the information contained in the electronic logbooks in order to verify the information. Under this situation, hail-out/hail-in is not a useful tool. Enforcement would have to be either on-the-water or after the fact.

LETC members discussed having a for-hire IFQ system. Members felt that this has been an enforceable system for the commercial sector and could work for the for-hire sector as well. However, since recreational landings are reported in numbers of fish, it would be helpful if the for-hire IFQ were in numbers rather than pounds. Also, the commercial sector has a fixed number of pre-approved landing sites that have been inspected by enforcement while the for-hire sector has many more locations.

LETC members expressed concern about Amendment 39's emphasis on dockside management. The states manage several species, and enforcement should have the ability to enforce regulations on the water as well as at the dock. With respect to private recreational vessels which may leave from private docks, dockside enforcement could mean that enforcement officers would need to go into people's back yards or cover over hundreds of miles of residential canals. This could create potential officer safety issues. Rusty Pittman noted that Mississippi has cut back on its number of hours of dockside enforcement, but has implemented mandatory recreational trip reporting. This allows Mississippi officers to check vessels using an app.

Scott Bannon stated that dockside enforcement was not as much of an issue in Alabama, but he was concerned about transit of fishermen from states where fishing is closed to states where fishing is open, and how that would be enforced. Rama Shuster stated that it is difficult to comment on all of the options. For that reason, and because Amendment 39 and related amendments have a large enforcement component, he would like to see the LETC stay actively involved in all future progressions of these actions including all meetings and workshops.

The LETC discussed enforcement in EEZ waters under regional management. It was suggested that an officer making an on-the-water inspection of a catch in the EEZ could enforce regulations for species other than red snapper, but if the vessel had red snapper aboard, the officer could only inform and try to educate the vessel operator that he could be in violation of a state's red snapper regulations once he crossed the state boundary. Rusty Pittman stated that in Mississippi, if a vessel lands red snapper while the Mississippi season is closed, but the operator claims that the fish were legally caught off Louisiana, the officer will ask to see a valid Louisiana offshore fishing permit and non-resident fishing license. If the operator has the permit and license, he would be allowed to land his fish in Mississippi as long as the fish met Louisiana's creel and size limits.

Jeff Mayne stated that it was his understanding that if a state adopted a regional management plan, NMFS would adopt the same regulations in federal waters off that state, which would allow

state officers to enforce state regulations in federal waters off that state. An out-of-state vessel would need to obtain the appropriate non-resident state license in order to fish the waters off of that state. He did not agree with allowing all EEZ waters to remain open any time any state waters were open. Rama Shuster stated that he did not see Amendment 39 operating in this way. In order to do so, he felt that:

1. The state must extend its authority into federal waters
2. The vessel must be registered in that state, and
3. The state plan must be consistent with the federal management plan, and the federal plan must delegate authority to the state.

In addition, some states may need to implement statutory changes in order to enforce state regulations in federal waters.

Following discussion, the LETC passed the following motion in order to emphasize the need for enforcement concerns to be discussed as Amendment 39 and related amendments proceed.

Motion: Request that the LETC remain updated on any changes in development of Amendment 39 and related actions in order to retain enforcement capabilities while moving forward with regional management. (RS, BR)

Motion carried without objection.

The webinar was adjourned at 2:45 pm, Eastern Time.

Law Enforcement Technical Committee Members Present

Rama Shuster, FWC, Chair
Brandi L. Reeder, TPWD, Vice-chair
Scott Bannon, ADMR
Mark Kinsey, NOAA/OLE (designee for Tracy Dunn)
Cynthia Fenyk, NOAA/GCES
Chad Hebert, LDWF
Rusty Pittman, MDMR

Council Members

Doug Boyd

Others

Dale Diaz
Tracy Dunn, NOAA/OLE
Jeff Mayne
1 other

Council Staff

Steven Atran
Bernie Roy
Doug Gregory
Charlene Ponce
Carrie Simmons