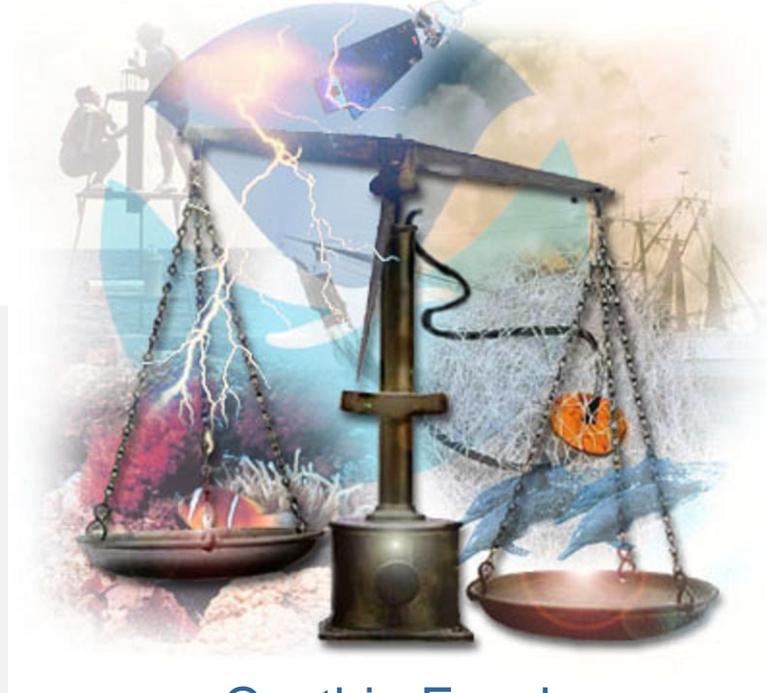




NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions



Cynthia Fenyk
Southeast Enforcement Section
Office of the General Counsel



Enforcement Section Mission

To support the protection and sustainability of marine resources through fair and consistent enforcement of statutes and implementing regulations under NOAA's purview in order to promote compliance with marine resource conservation measures.



What do we Enforce?

More than 30 statutes and implementing regulations nationally, including;

- Magnuson-Stevens Fishery Conservation and Management Act
- National Marine Sanctuaries Act
- Marine Mammal Protection Act
- Endangered Species Act
- Lacey Act
- Northern Pacific Halibut Act
- Antarctic Marine Living Resources Convention Act
- Shark Conservation Act /Shark Finning Prohibition Act





How do we Enforce?

NOAA's Enforcement Program

Investigations: NOAA's Office of Law Enforcement, United States Coast Guard, other Federal Agencies, and State Law Enforcement partners operating pursuant to Cooperative Enforcement Agreements with NOAA

Prosecutions: Thirteen Enforcement Section Attorneys

- Greater Atlantic (2)
- Southeast (3)
- Alaska (2)
- West Coast (2)
- Pacific Islands (1)
- Silver Spring (3)



Enforcement Spectrum



- Education, Outreach, and Compliance Assistance
- Verbal Warnings
- “Fix-it Tickets”
- Written Warnings
- Summary Settlement
- NOVA: Notice of Violation and Assessment of Civil Penalty
- Seizure and Forfeiture
- Permit Sanctions / Denials
- Criminal Referral to the Department of Justice





Penalty Assessment: Statutory Factors

“In determining the amount of [a] penalty, the Secretary shall take into account the **nature, circumstance, extent, and gravity** of the prohibited acts committed and, with respect to the violator, the **degree of culpability**, any **history of prior offenses**, and **such other matters as justice may require.**”

“In assessing [a] penalty, the Secretary may also consider any information provided by the violator relating to the **ability of the violator to pay.**”

16 U.S.C. 1858(a) (Magnuson–Stevens Act)





Penalty Assessment: Mechanics

NOAA's "Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions" (Penalty Policy) was developed as internal policy to be applied by the Enforcement Section to give effect to this statutory mandate.

- The Penalty Policy uses an "Offense Level Schedule" to determine an Offense Level for the most commonly occurring violations. This Offense Level Schedule is designed to reflect the **nature, circumstance, extent, and gravity of the violation.**
- A "Penalty Matrix" is then used to take into consideration the **degree of culpability** factor and establish a base penalty.
- This base penalty is adjusted based on the violator's **history of prior offenses**, and "**such other matters as justice may require**" (i.e., cooperation, attempt to impede investigation, etc.)
- Once assessed, the violator may provide financial information relating to their **ability to pay** the assessed penalty.



Penalty Matrix

APPENDIX 2

Penalty Matrix for the Magnuson-Stevens Act

Gravity Offense Level	Level of Culpability			
	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-\$4,000	\$4,000-\$6,000	\$6,000-\$10,000	\$10,000-\$20,000
III	\$4,000-\$10,000	\$10,000-\$15,000	\$15,000-\$20,000	\$20,000-\$40,000 Permit sanction of 5-20 days for subsequent violations*
IV	\$10,000-\$15,000	\$15,000-\$25,000	\$20,000-\$40,000 Permit sanction of 10-20 days for subsequent violations *	\$40,000-\$60,000 Permit sanction of 20-60 days *
V	\$15,000-\$25,000	\$25,000-\$40,000 Permit sanction of 10-20 days for subsequent violations *	\$40,000- \$60,000 Permit sanction of 20-60 days*	\$60,000- \$100,000 Permit sanction of 60-180 days*
VI	\$25,000-\$40,000 Permit sanction of 5-20 days for subsequent violations*	\$40,000-\$60,000 Permit sanction of 20-60 days*	\$60,000- \$100,000 Permit sanction of 60-180 days*	\$100,000- statutory maximum 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 Assessment: Objectives

The Penalty Policy is designed 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.





Penalty Policy Revisions

The current Penalty Policy was issued on July 11, 2014. NOAA committed to periodic review of the Penalty Policy to consider revisions or modifications as appropriate.

Availability of draft revisions made to the Policy following periodic review published with the Federal Register on May 2, 2019. Informal comment period ends on June 3, 2019.

- Revisions reflect new legislation enacted and regulations promulgated, and clarifications to improve national consistency.
- Makes adjustments to the maximum civil monetary penalties authorized under statutes enforced by NOAA, pursuant to Federal Civil Penalties Inflation Adjustment Act of 1990 and 2015.
- Draft revisions to the Policy and a link to the FR Notice can be found at: <https://www.gc.noaa.gov/enforce-office3.html>

DRAFT Penalty Matrix

APPENDIX 2

**Penalty Matrix for the Magnuson-Stevens Fishery Conservation and Management Act;
the Antarctic Marine Living Resources Convention Act; and
the Port State Measures Agreement Act¹⁴**



		Level of Culpability			
		A Unintentional	B Negligent	C Reckless	D Intentional
Gravity Offense Level	I	Written warning-\$2,500	Written warning-\$5,000	\$2,500-\$7,000	\$7,000-\$10,000
	II	\$2,500-\$4,500	\$4,500-\$7,000	\$7,000-\$12,000	\$12,000-\$24,000
	III	\$5,000-\$12,000	\$12,000-\$18,000	\$18,000-\$24,000	\$24,000-\$48,000 Permit sanction of 5-20 days for subsequent violations*
	IV	\$12,000-\$18,000	\$18,000-\$30,000	\$24,000-\$48,000 Permit sanction of 10-20 days for subsequent violations*	\$48,000-\$72,000 Permit sanction of 20-60 days*
	V	\$18,000-\$30,000	\$30,000-\$48,000 Permit sanction of 10-20 days for subsequent violations*	\$48,000-\$72,000 Permit sanction of 20-60 days*	\$72,000-\$120,000 Permit sanction of 60-180 days*
	VI	\$30,000-\$48,000 Permit sanction of 5-20 days for subsequent violations*	\$48,000-\$72,000 Permit sanction of 20-60 days*	\$72,000-\$120,000 Permit sanction of 60-180 days*	\$120,000 -statutory maximum Permit sanction of 180-365 days*

* Permit sanctions may be assessed in conjunction with a civil penalty, in lieu of a civil penalty, or may be not assessed, depending on the facts and circumstances of a given case. Where permits allow for a certain amount of fishing quota per year (instead of fishing days), permit sanctions will be assessed as a percentage of the quota, at a rate based on days in the fishing season. For example, in a 365-day season, a rate of 0.27% for each day of permit sanction time will be applied (100% divided by 365 days per year is approximately 0.27% per day). As another example, if the season is 180 days long, then a rate of 0.55% would apply.

¹⁴ The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*), the Antarctic Marine Living Resources Convention Act (16 U.S.C. § 2431 *et seq.*), and the Port State Measures Agreement Act (16 U.S.C. § 7401 *et seq.*) all have a statutory maximum of \$189,427 per violation, per the February 7, 2019 adjustment (*See* 84 Fed. Reg. 2445). However, maximum civil penalties are adjusted annually for inflation.



Penalty Policy Revisions

Under the revised Policy, NOAA expects to continue to promote consistency at a national level, provide greater predictability for the regulated community and the public, maintain-transparency in enforcement, and more effectively protect natural resources.

While the overall approach to the revised Penalty Policy remains largely the same, notable changes to the previous Penalty Policy include:

- Additional clarity on what would be considered “such other matters as justice may require” under the adjustment factors;
- Clarification on application of prior offenses to penalty assessments;
- Clarification on when and how newly adjusted statutory maximums will apply;
- Reflects legislation and regulations promulgated since 2014 Policy, particularly IUU Fishing Enforcement Act of 2015, and adjustments for inflation



Offense Level Guidance Violation Categories

- VIOLATIONS REGARDING GEAR AND BYCATCH MITIGATION REQUIREMENTS
- VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS, OR OBSERVERS
- VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, AND PERMIT REQUIREMENTS
- VIOLATIONS REGARDING TIME, AREA, EFFORT, OR SECTOR RESTRICTIONS
- VIOLATIONS REGARDING SIZE/CONDITION/QUANTITY OF FISH OR LANDING/POSSESSION REQUIREMENTS
- VIOLATIONS REGARDING TRANSFER, PURCHASE, TRADE, SALE (AND ATTEMPTS)
- VIOLATIONS REGARDING HIGHLY MIGRATORY SPECIES (HMS) VIOLATIONS OF ACTS IMPLEMENTING INTERNATIONAL AGREEMENTS

VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS, OR OBSERVERS	LEVEL
Tampering with observer gear or failing to provide information, notification, accommodations, access, or reasonable assistance to either a NMFS-approved observer or a sea sampler conducting his or her duties aboard a vessel onboard	I
Submitting inaccurate or false data, statements, or reports	I, II, or III
Discarding, releasing, or transferring fish before bringing it aboard or making it available to an observer for sampling	I
Untimely or no notice of landing IFQ species or landing at other than an approved location	I
Failing to record or retain video records	I
Providing inaccurate information to an authorized officer, if accurate information is subsequently provided voluntarily in a timely manner	I
Failing to provide a safe boarding ladder	I
Failing to monitor channel 16	I



VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS, OR OBSERVERS	LEVEL
Submitting inaccurate or false data, statements, or reports. - Adverse impact is insignificant and no economic gain.	I
Submitting inaccurate or false data, statements, or reports - Adverse impact is minor or there is some economic gain.	II
Submitting inaccurate or false data, statements, or reports - Adverse impact is significant or there is significant economic gain.	III

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 Prior Offenses _____
- E. Other Such Matters as Justice May Require:
 - i. Activity After Violation/Cooperation _____
 - ii. Other (Explain) _____

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: _____

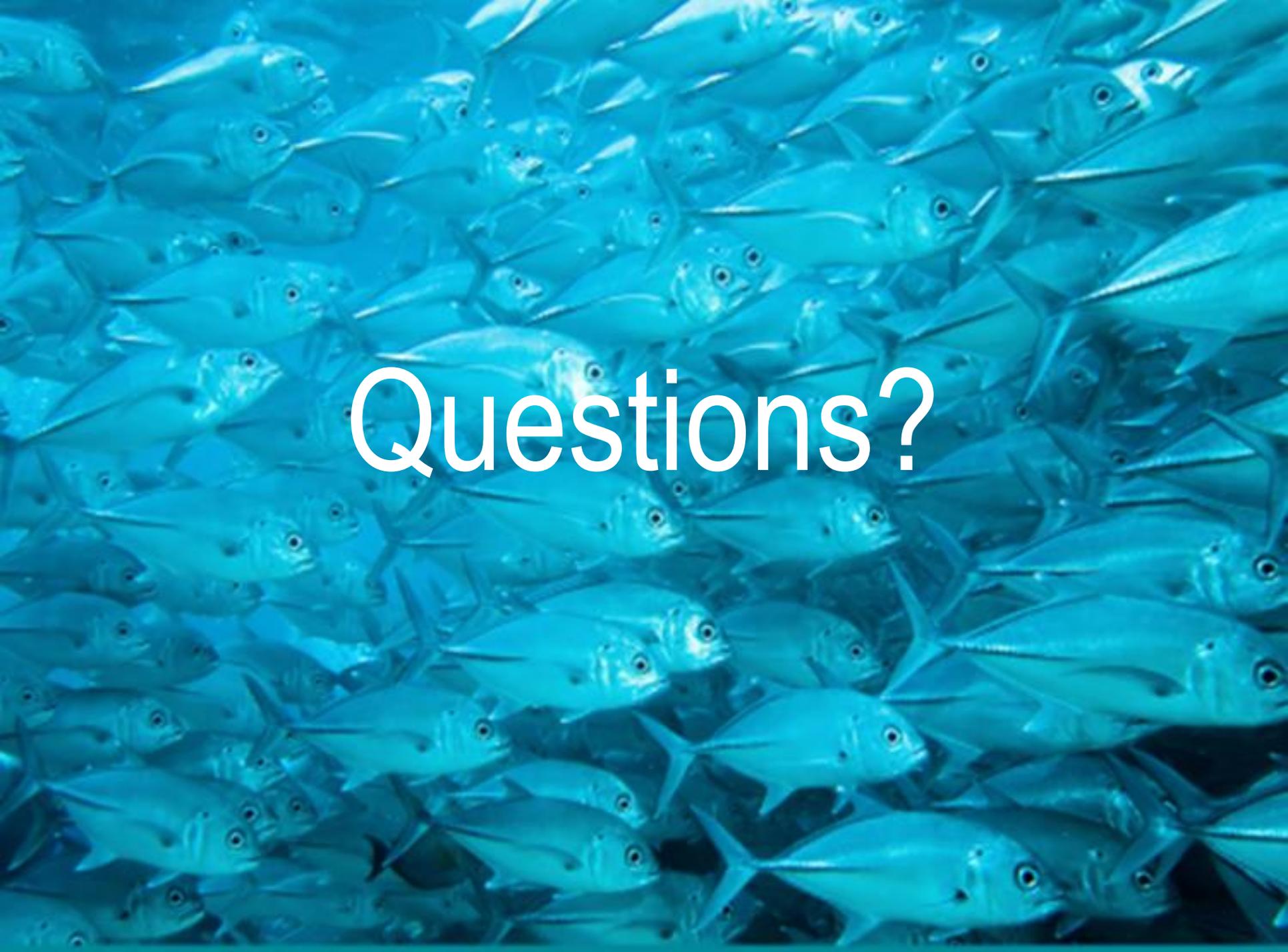
III. Total Penalty (I + II) _____

IV. TOTAL PENALTY(from all worksheets) _____

Attorney: _____

Date: _____



A large, dense school of blue fish, likely sardines or anchovies, swimming in the water. The fish are packed closely together, filling the entire frame. The water has a deep blue-green tint. Overlaid in the center of the image is the word "Questions?" in a large, white, sans-serif font.

Questions?