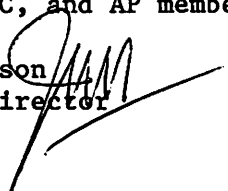


M E M O R A N D U M

TO: Council, SSC, and AP members

FROM: Jim H. Branson 
Executive Director

DATE: May 6, 1987

SUBJECT: NOAA Penalty Schedules for Fisheries Violations

ACTION REQUIRED

Recommendations to NOAA/NMFS on draft penalty schedules.

BACKGROUND

The Council has been requested to review the draft schedule of penalties for federal groundfish fishery violations [item C-9(a)]. Jon Pollard will discuss the schedule and answer any questions.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 1668
Juneau, Alaska 99802
Telephone (907) 586-7414

April 30, 1987 **MAY - 5 1987**

MEMORANDUM FOR: Jim H. Branson
Executive Director
North Pacific Fishery
Management Council

FROM: Benjamin Rosenthal *BR*
Staff Attorney - GCAK

SUBJECT: Agenda item C - 9; Amendment of penalties assessed
for federal groundfish violations in the Bering
Sea and Gulf of Alaska.

The National Oceanic and Atmospheric Administration Office of General Counsel, Alaska Region, and the National Marine Fisheries Service have proposed amendments to the penalty schedule that covers federal groundfish fishery violations. Enclosed for advanced dissemination and discussion at the May NPFMC meeting as agenda item C-9 is a copy of the draft penalty schedule.

Mr. Jon Pollard will present the schedule at the meeting and will be prepared to answer any questions on it.

Please contact me if you wish to discuss this matter further.

cc: GCAK - John L. Pedrick, Jr.
Jonathan C. Pollard

F/AKR3 - J. Craig Hammond



DRAFT

Groundfish Fisheries off the Coast of Alaska 50 C.F.R. Parts 672 and 675

The penalties suggested below are for violations of the regulations governing fishing for groundfish off Alaska, under either the Gulf of Alaska or Bering Sea and Aleutian Islands FMPs. Any amount stated may be raised or lowered depending on the facts and circumstances of particular cases, including the amount of fish, if any, involved in a violation. Part I states the base penalties that will be the starting point for an assessment for first time offenses against domestic vessels, plus any adjusting factors peculiar to the specific violations. Part II outlines the general adjusting factors that may or may not be applicable. Base penalties listed for the specific violation may be doubled for certain second offenses under this part. Part III generally outlines when permit sanctions will be considered as part of the penalty.

I. Penalties

A. Permit Violations.

1. Fishing for groundfish without first obtaining a valid permit: §§ 672.4(a), 672.7(a); 675.4(a), 675.7(a).
 - a. Base penalty: \$ 1,000.
 - b. Adjusting factors: See II below.

2. Failure to provide written notification of any change to the information required to be provided on the permit application: §§ 672.4(d), 675.4(d).
 - a. Base penalty: \$ 500.
 - b. Adjusting factors: See II below, except -
 - (i) Gravity/extent of the violation - Add \$ 1,000 for each week after the first week the information is due, not to exceed \$ 5,000 total add-on.

3. Altering, erasing, or mutilating any permit: §§ 672.4(f), 675.4(f)
 - a. Base penalty: \$ 500.
 - b. Adjusting factors: See II below.

4. Failure to carry permit aboard when vessel is fishing for groundfish or failure to present permit for inspection by an authorized officer: §§ 672.4(h), 675.4(h).

a. Base penalty: \$ 500.

b. Adjusting factors: See II below.

B. Reporting Violations.

1. Failure to submit a complete and accurate State of Alaska fish ticket (or equivalent document for groundfish landed outside Alaska) within the prescribed time frames for each sale or delivery of groundfish: §§ 672.5(a), 675.5(a)(1) and (2).

a. Base penalty: \$ 5,000.

b. Adjusting factors: See II below, except -

(i) Gravity/extent of the violation - For each week after the first week a fish ticket is not submitted, add \$ 1,000, not to exceed \$ 5,000 total add-on.

2. Failure to timely submit a complete and accurate weekly report within the prescribed time frames: §§ 672.5(a)(3)(iv) and 675.5(a)(3)(iv).

a. Base penalty: \$ 5,000.

b. Adjusting factors: See II below, except -

(i) See I.B.1.b.i. above.

3. Failure to timely provide accurate and complete check in or check out information: §§ 672.5(a)(3)(i) and (ii) and 675.5(a)(3)(i) and (ii).

a. Base penalty: \$ 1,000.

b. adjusting factors: See II below.

4. Failure of a U.S. fish processor to accurately complete and return a written survey conducted by the Regional Director of plant processing capacity: §§ 672.5(b), 675.5(b).

a. Base penalty: \$ 1,000.

b. Adjusting factors: See II below.

5. Failure of vessel owner or operator to accurately complete and return a written survey conducted by the Regional Director of harvesting capacity: §§ 672.5(c).

a. Base penalty: \$ 1,000.

b. Adjusting factors: See II below.

C. Fishing Violations.

1. Fishing for, taking or retaining groundfish in a closed area, during a closed season, contrary to the terms of a field order, after a catch limit has been reached or in violation of a gear restriction: §§ 672.20(b), 672.20(e)(2), 672.22(c), 672.23; 672.24(b)(1) and (2); 675.20(a)(7) and 675.22.

a. Base penalty: \$ 2,500 for vessels less than 25 feet in length; \$ 3,500 for vessels over 25 feet but under 100 feet; \$ 5,000 for vessels 100 feet or longer. If fishing in a closed season is within one hour of the opening or closing, \$ 1,500 for vessels up to 100 feet; \$ 2,500 for vessels 100 feet or over.

b. Adjusting factors: See II below, except -

Gravity/extent of the violation - In addition to seizing the vessel's catch, add value of groundfish taken in a closed area, etc., not to exceed statutory maximum. This factor is not applicable to vessels operating within one hour of the opening or closing.

c. In addition, permit sanctions may be considered if the total sanction does not recoup the sum of twice the value of the catch and the base or for any reason referred to in Part III.

2. Possess, have custody of, ship, transport, import, export, offer for sale, sell or purchase illegally taken fish: §§ 672.7(b), 675.7(b).

a. Base penalty: See I.C.1.a. above.

b. Adjusting factors: See I.C.1.b. and c. above.

D. Prohibited Species.

1. Retention of prohibited species (up to 20 fish):
§§ 672.20(d), 675.20(c).
 - a. Base penalty: \$ 1,000.
 - b. Adjusting factors: See II below, except -
 - (i) Gravity/extent of the violation - In addition to seizing the vessel's catch, add \$ 100 per fish for each prohibited species retained.
2. Retention of prohibited species (catch exceeding 20 fish):
 - a. Base penalty: \$ 2,500 - \$ 5,000 depending on the dimensions of vessel size specified in I.C.1.a. above.
 - b. Adjusting factors: See II below, except -
 - (i) Gravity/extent of the violation - In addition to seizing the vessel's catch, add value of catch.
3. Failure to minimize catch of prohibited species: 675.20(c)(2).
 - a. Base penalty: \$ 2,500 - \$ 5,000 depending on the dimensions of vessel size specified in I.C.I.a. above.
 - b. Adjusting factors: See II below.
4. Failure to sort catch as soon as possible and return any prohibited species to the sea immediately with a minimum of injury: §§ 672.20(d)(2), 675.20(c)(3).
 - a. Base penalty: \$ 1,000.
 - b. Adjusting factors: See II below, except -
 - (i) Gravity/extent of the violation - Consideration may be given to the overall condition of prohibited species found on board and the amount of time between the time of haul and time of sorting or detection.

E. Gear Violations.

1. Failure to have proper biodegradable escape panels on sablefish pots: § 672.24.
 - a. Base penalty: \$ 500.
 - b. Adjusting factors: See II below, except -
 - (i) Gravity/extent of the violation - Add \$ 100 per pot for each pot (after the first pot) that does not have the proper panel.

F. Enforcement Violations.

1. Refusing to permit an authorized officer to board and inspect a vessel: § 672.7(c), 675.7(c).
 - a. Base penalty: \$ 5,000.
 - b. Adjusting factors: See II below, except -
 - (i) Gravity/extent of the violation - Add up to \$ 10,000 if the refusal to permit a boarding threatens or endangers an authorized officer, or if there is reason to believe that the refusal prevents detection of a violation.
2. Forcible assault of an authorized officer: §§ 672.7(d), 675.7(d).
 - a. Base penalty: \$ 25,000.
 - b. Adjusting factors: See I.F.1.b. above.
3. Forcibly resist, impede, intimidate, or interfere with an authorized officer: §§ 672.7(d), 675.7(d).
 - a. Base penalty: \$ 10,000.
 - b. Adjusting factors: See I.F.1.b. above.
4. Resist a lawful arrest: § 672.7(e), 675.7(e).
 - a. Base penalty: \$ 10,000.
 - b. Adjusting factors: See I.F.1.b. above.

When to be ranges

5. Interfere with, delay, or prevent, by any means, the apprehension or arrest of another, knowing that such person has committed a prohibited act: § 672.7(f), 675.7(f).

a. Base penalty: \$ 5,000.

b. Adjusting factors: See I.F.1.b. above.

6. Failure to immediately comply with instructions issued by an authorized officer, including failure to stop a vessel when directed to do so or when the signal "L" has been flashed; failure to guard channel 16; failure to lay to and maneuver so as to permit a boarding; failure to provide a safe and, where necessary, illuminated boarding ladder: §§ 672.8, 675.8.

a. Base penalty: \$ 2,000

b. Adjusting factors: See I.F.1.b. above.

G. Observers violations.

1. Refusal to take aboard observers when requested by the Regional Director: § 672.27.

a. Base penalty: \$ 5,000.

b. Adjusting factors: See II below.

2. Forcible assault of an observer: § 672.7(g).

a. Base penalty: \$ 25,000

b. Adjusting factors: See I.F.1.b. above.

3. Forcibly resist, impede, intimidate, or interfere with an observer: § 672.7(g).

a. Base penalty: \$ 10,000

b. adjusting factors: See I.F.1.b. above.

II. Adjusting Factors: General.

The adjusting factors set forth below may or may not be applied, depending on the facts and circumstances of any given case. The various factors listed are not meant to be exclusive; other factors may be present in any particular case which warrant consideration. These adjusting factors may be applied

to assess a penalty within or above or below the suggested base amount.

*Range deleted
to allow
discretionary*

- A. Gravity/extent of the violation: This factor generally is intended to reflect consideration of the value of or harm to the resource which was involved in a violation. This factor may be used only if the vessel's catch is not recoverable or is unable to be valued as part of the proposed penalty.
- B. Culpability: an amount may be added for a willful/intentional violation.
- C. Surrounding circumstances: an amount may be added for a lack of cooperation with authorized officers (unless separately charged).
- D. Prior offenses: Base penalties may be doubled for a violation if the prior offense is:
 - (1) similar to the subsequent offense(s) and is within five years of the subsequent offense(s);
 - (2) or is sufficiently grave.
- E. Mitigating circumstances: Certain factors may warrant a downward adjustment of a penalty in any given case, including (but not limited to) -
 - (1) malfunction of navigational equipment over which vessel operator had no control;
 - (2) reasonable mistake of fact;
 - (3) extraordinary cooperation;
 - (4) multiple violations (if the same act constitutes a violation of several regulations or is a continuing offense, the penalty may be reduced to avoid a total penalty which is excessive).

III. Permit Sanctions: General.

In addition to the aforementioned penalties, permit sanctions may be contemplated if:

- A. The proposed penalty assessment exceeds the statutory maximum;
- B. The harm to the resource is sufficiently egregious;
- C. The action of the vessel is deemed intentional; or
- D. The vessel operator or owner has an extensive history of fishery violations.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

OFFICE OF THE ADMINISTRATOR

April 3, 1987

TO: Regional Attorneys
FROM: GCEL - Maggie Frailey *mf*
SUBJECT: First Quarter Settlement Report

Attached is the summary of settlement reports for the first quarter of 1987. GCSE's figures are still dominated by Lacey Act shrimp "settlements" dictated by the Dolan formulas. GCNE's quite respectable percentages would have been even higher if not for several scallop cases settled according to the RIANDA formula, and for some suspended penalties following compliance with reporting requirements in the exempted fisheries program under the Multispecies FMP.

cc: GC - Dan McGovern
✓ DGC - Jim Brennan

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SETTLEMENTS REPORTED FIRST QUARTER 1987

ATTORNEY REGION	CASES	NOVA Amount	SETTLE Amount	PERCENT	SUSPEND Amount	NOVA + Seizure	SETTLE + Forfeit	S + F N + S	AVERAGE NOVA	100% Cases	AMOUNT	NEW %
Pollard	8	\$ 24,100	\$ 16,700	69.3	\$ 750	\$ 24,140	\$ 16,740	69.3	\$3,013	2	\$ 1,500	71.1
Rosenthal	5	38,750	28,650	73.9		77,712	67,612	87.0	7,750			87.0
Alaska	13	62,850	45,350	72.2	750	101,852	84,352	82.8	4,835	2	1,500	83.1
Juliand	31	130,196	66,778	51.3	13,000	182,475	107,032	58.7	4,200			58.7
Marks	7	34,730	19,380	55.8	6,000	35,822	20,472	57.1	4,961	1	1,000	58.3
Matera	24	57,104	25,950	45.4	11,800	59,867	28,713	48.0	2,379	2	600	48.5
McAvoy	14	36,943	22,338	60.5	2,000	39,873	25,268	63.4	2,639	1	400	63.7
Taylor	7	23,725	10,325	43.5	3,800	25,088	11,688	46.6	3,389	1	250	47.1
Northeast	83	282,698	144,771	51.2	36,600	343,125	193,173	56.3	3,406	5	2,250	56.6
Bancroft	1	500	300	60.0		500	300	60.0	500			60.0
Mitchell	7	55,500	30,926	55.7		55,500	30,926	55.7	7,929			55.7
Northwest	8	56,000	31,226	55.8		56,000	31,226	55.8	7,000			55.8
Antrim	18	127,000	43,625	34.4	73,375	132,181	48,806	36.9	7,056			36.9
Kelley	8	39,400	19,032	48.3	20,084	51,710	31,702	61.3	4,925			61.3
Kyle	25	186,250	41,100	22.1	91,800	186,250	41,100	22.1	7,450	1	50	22.1
Southeast	51	352,650	103,757	29.4	185,259	370,141	121,608	32.9	6,915	1	50	32.9
Beuttler	2	1,800	1,000	55.6		1,920	1,120	58.3	900			58.3
Eames	7	25,242	19,867	78.7	800	25,942	20,567	79.3	3,606			79.3
Hochman	1	11,600	8,700	75.0		11,600	8,700	75.0	11,600			75.0
Southwest	10	38,642	29,567	76.5	800	39,462	30,387	77.0	3,864			77.0
TOTALS	165	792,840	354,671	44.7	223,409	910,580	460,746	50.6	4,805	8	3,800	50.8