

## **Response to Public Comments on NOAA's Penalty Policy March 16, 2011**

NOAA received written input on the proposed Penalty Policy from regional fishery management councils, industry trade groups, commercial interests, nonprofit organizations, academic institutions, and federal, state, and interstate agencies. A summary of the comments along with NOAA's response to the comments received is presented below. Note: Several entities and individuals made substantively the same comment and therefore elements of those comments have been combined.

### **General Comments**

**Comment 1:** Several commenters expressed concern that the Draft Policy uses a “one size fits all” approach that does not adequately account for regional variations and differences among fisheries, and that more flexibility is needed to deal with these differences. Some commenters also stated that a single nationwide policy would not adequately take into account the unique factual circumstances present in each violation. According to some of these commenters, regional attorneys know the fisheries, participants, and regional circumstances, and should have more authority to assess penalties than is provided in the Draft Policy.

**Response:** We recognize that the Penalty Policy is a departure from NOAA's prior practice of developing numerous, detailed penalty schedules by region and by specific types of violations with broad ranges for both penalty and permit sanctions.

The final Penalty Policy being issued today instead uses a simplified approach of having one penalty and permit sanction matrix for each major statute that NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This approach assures that NOAA attorneys are provided with greater guidance in recommending penalties, and assures fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

NOAA's departure from the approach taken under its prior penalty policies is necessary to address concerns identified by the Office of Inspector General (OIG) in its 2010 reports regarding (i) the appearance of regional disparities in penalty assessments and disparities in penalties for similar violations, and (ii) the perception that NOAA attorneys have too much discretion in determining penalty assessments.

Nevertheless, the Penalty Policy does not take a “one-size-fits-all” approach and does not ignore regional differences in fisheries. The Penalty Policy includes consideration of the specific circumstances of the individual violation, including whether the violation was intentional or inadvertent, whether the violator was engaged in commercial or recreational activity, and the value of the proceeds from the illegal activity (e.g., proceeds from the sale of the illegally caught fish), which will vary by region and fishery, due to the range in value of different fish species. Moreover, certain matrixes and schedules focus on particular regional fisheries (e.g., northern pacific halibut; scallops), and the penalty ranges assigned to each violation, through “offense

levels,” are based on a variety of criteria, including the nature and status of the resource at issue in the violation, the extent of harm done to the resource or to the regulatory scheme or program, the potential harm to the resource or to the regulatory scheme or program, and the nature of the regulatory program (e.g., limited versus open access fishery).

**Comment 2:** One commenter criticized the policy for continuing to allow too much flexibility and discretion.

*Response:* We disagree. The final Penalty Policy being issued today uses a simplified approach of having one penalty and permit sanction matrix for each major statute that NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This approach assures that NOAA attorneys are provided with greater guidance in recommending penalties, and assures fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

**Comment 3:** Several comments expressed concern that the process for assessing a penalty is not transparent. Some commenters suggested that the basis for each penalty assessment should be made available to alleged violators, preferably by providing the Preliminary Worksheet completed by the NOAA attorney. One commenter suggested that penalties should be assessed by someone other than the NOAA attorney arguing the case before the administrative law judge so that the respondent could seek discovery regarding the basis for the assessment.

*Response:* We disagree. The final Penalty Policy being issued today uses a simplified approach of having one penalty and permit sanction matrix for each major statute that NOAA enforces, to be applied nationally, with narrower penalty and permit sanction ranges. This approach assures that NOAA attorneys are provided with greater guidance in recommending penalties, and assures fairness and consistency of approach across NOAA statutes, across fisheries, and across the country. The final Penalty Policy further provides greater transparency for the regulated community and other stakeholders regarding this process, as it specifically describes the formula for how each penalty will be assessed.

Although the Preliminary Worksheet will not be made available because it is a privileged document exempt from release, reflecting attorney-work product involving intra-agency deliberations related to enforcement that may include attorney-client communications, NOAA will provide the basis for its penalty assessment following the guidance in this Penalty Policy in all charging documents, thus providing an alleged violator with an explanation regarding how this Policy was applied to his or her case. Further discovery regarding the basis for the assessment will therefore be unnecessary.

**Comment 4:** Some commenters suggested that the Policy should make greater use of permit sanctions as an enforcement tool. These commenters suggested increased use of permit sanctions as a deterrent by applying sanctions to a broader range of violations. One commenter also stated that permit sanctions would be a useful tool where deterrence through fines is

impossible because of statutory caps and where violators are judgment-proof or unable to pay an assessed fine.

*Response:* NOAA agrees that permit sanctions are an important tool in deterring future violations, and the Policy provides for use of permit sanctions. At the same time, NOAA realizes that permit sanctions may result in negative financial impacts to parties beyond an alleged violator (*e.g.*, crew members, processors/dealers, commercial markets). Given the impact that permit sanctions may have, the final Penalty Policy continues to provide that permit sanctions generally are more appropriate in cases involving violations that are moderate to major in terms of their gravity. The final Penalty Policy also explicitly provides for the possible use of permit sanctions where the violator has a history of prior violations that are similar to the violation charged, or where the maximum penalty authorized under the applicable statute does not adequately account for the proceeds of noncompliance because of statutory caps. Whether and how permit sanctions may be used in lieu of payment of a penalty where there is an inability to pay is more appropriately a consideration for settlement, and not a charging decision, and so is beyond the scope of this Penalty Policy.

**Comment 5:** One commenter suggested the establishment of a review panel to set base fines.

*Response:* We do not believe that a review panel to assess penalty and permit sanctions is necessary, in light of the higher level review of all charging decisions currently in place, and this new Penalty Policy, which will assure fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

**Comment 6:** One commenter recommended establishing an ombudsman system in place of a national penalty policy.

*Response:* We do not believe establishment of an ombudsman system would address the concerns raised by the OIG in its 2010 reports regarding (i) the appearance of regional disparities in penalty assessments and disparities in penalties for similar violations, and (ii) the perception that NOAA attorneys had too much discretion in determining penalty assessments. The final Penalty Policy will address those issues comprehensively and more effectively for all NOAA cases, when a case is brought and a penalty or permit sanction is proposed.

We further note that the Small Business Administration (SBA) already has a National Ombudsman to whom small businesses, including fisherman, can bring their concerns about excessive or unfair federal regulatory action. Since June 2008, NOAA's charging documents have included a notice regarding the respondent's ability to file a complaint with the SBA National Ombudsman. Thus, as noted in its response to the OIG's September 2010 report regarding NOAA's enforcement program, rather than appointing another ombudsman in NOAA, we are taking a more comprehensive approach to address concerns raised regarding the program. See <http://www.noaanews.noaa.gov/stories2010/PDFs/Response-IGReport-20100923.pdf>.

### **Specific Comments Regarding the Penalty Policy**

**Comment 7:** Several commenters expressed concern regarding the focus in setting the base offense level on a determination of the potential for harm to the resource or regulatory program. Commenters stated that the discussion in the Draft Policy of “potential harm to the resource” and “harm to the regulatory program” was unclear. Some comments also criticized the focus on potential harm to the resource rather than actual harm.

**Response:** The final Penalty Policy has been revised in response to these comments. As revised, the Policy provides that the first step in determining the base offense level of a violation will be to determine the gravity of the violation, consistent with NOAA’s regulations and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). *See* 15 CFR § 904.108(a) (“Factors to be taken into account in assessing a penalty . . . may include the . . . gravity of the alleged violation”); 16 U.S.C. § 1858 (“In determining the amount of [the] penalty, the Secretary shall take into account the . . . gravity of the prohibited acts committed”). The gravity of the violation will be determined by considering the nature, extent, and circumstances of the violation, again consistent with both NOAA regulations and the Magnuson-Stevens Act. The Policy provides additional detail regarding these factors, including the nature and status of the resource at issue in the violation, the nature of the regulatory program, the extent of any actual harm to the resource, whether the violation provides a significant competitive advantage, and whether the violation is difficult to detect. The potential harm to the regulatory scheme or program remains a factor in determining the gravity of an offense, but it is no longer one of the primary considerations in determining gravity. The Policy has also been revised to explicitly provide that actual harm to the resource will be a factor in determining the gravity of the violation.

**Comment 8:** Several commenters also expressed concern regarding the emphasis on the alleged violator’s degree of culpability in assessing the base penalty. The degree of culpability was seen by some commenters as providing too much discretion to NOAA attorneys in assessing a penalty and would be non-reviewable before an Administrative Law Judge. Other commenters stated that the choices for level of intent (*i.e.*, unintentional, negligence, recklessness, willful) appear arbitrary.

**Response:** We disagree. Like gravity of an offense, an alleged violator’s degree of culpability is emphasized under both NOAA regulations and the Magnuson-Stevens Act as a factor to consider when assessing a penalty. *See* 15 CFR § 904.108(a) (“Factors to be taken into account in assessing a penalty . . . may include the . . . respondents degree of culpability”); 16 U.S.C. § 1858 (“In determining the amount of [the] penalty, the Secretary shall take into account . . . with respect to the violator, the degree of culpability”). Moreover, culpability is a well-established legal principle used in many enforcement programs. The choices for levels of intent – unintentional, negligence, recklessness, and intentional – have long been utilized in both civil and criminal law, and are clearly defined through statutes, regulations, and case law.

Nevertheless, in response to these comments, the Policy was revised to provide more detailed definitions of the four culpability levels in order to provide both clarification to the regulated community and guidance to NOAA attorneys in assessing penalties. The term “willful” used in

the Draft Policy has been changed to “intentional” in the final Penalty Policy, as that term may be more easily understood by the regulated community.

We also disagree with the comment that an alleged violator’s degree of culpability is non-reviewable. At an administrative hearing, a NOAA attorney bears the burden and must present evidence of an alleged violator’s culpability, just as with all other elements of an alleged offense. Alleged violators have the same opportunity to refute evidence regarding the degree of culpability that they have to refute other evidence. An administrative law judge reviews this evidence, taking into consideration the alleged violator’s arguments, in determining whether a violation occurred and in assessing a penalty or permit sanction.

**Comment 9:** One commenter advocated the use of Economic Deterrence Theory in place of degree of culpability in setting the base offense level. According to this commenter, the Draft Policy places too much significance on culpability while paying too little attention to the probability of detection for a given violation. This commenter recommended that the base penalty matrix focus more on probability of detection by replacing degree of culpability with probability of detection on the horizontal axis of the penalty matrixes. Under this approach, violations with lower probabilities of detection would receive higher base penalties in order to deter such violations. Culpability would be used as an adjustment factor resulting in an increased penalty for intentional acts. This commenter stated that the way to determine the perceived probabilities of detection by the regulated community for each violation would be to conduct a survey of fishermen and ask what they perceive the respective probabilities of detection to be.

**Response:** The final Penalty Policy provides for the probability of detection as a factor in determining the gravity of a violation in circumstances where the probability of detection is easily ascertained (*e.g.*, where there is no on-scene enforcement presence or other compliance mechanisms such as Vessel Monitoring Systems or an observer). Applying that concept more broadly as the commenter suggests, however, is not feasible. NOAA does not have adequate data to determine the probabilities of detection for each violation nationwide. Further, conducting a survey to determine the perceived probabilities of detection for each violation nationwide is infeasible and its accuracy would be questionable, as the regulated community may have an incentive to report lower perceived probabilities of detection to bring about lower penalties.

**Comment 10:** Several commenters raised specific concerns about the use of an alleged violator’s history of non-compliance (*i.e.*, prior violations) as an adjustment factor.

- First, some commenters stated that not all violations, including prior warnings, technical violations, and minor violations, should be considered prior violations for the purpose of adjusting penalties upward.
- Second, some commenters stated that this adjustment factor should be limited to intentional or reckless conduct.
- Third, some commenters stated that this adjustment factor should not include prior conduct that has not been fully adjudicated, as NOAA’s current policy includes only prior violations that have been reduced to final administrative decisions in the past five years.

- Fourth, some commenters requested clarification regarding how long prior violations will be considered. Some commenters suggested a limit of two years, others suggested five years.
- Fifth, several commenters stated that prior violations occurring prior to the issuance of the Draft Policy should not be considered because violators may have settled a case in the past to avoid costly litigation, not realizing that the settlement would count as a prior violation later. One commenter suggested that no prior violations before the effective date of the Policy should be considered unless the violation was intentional or resulted in an economic benefit greater than \$10,000. Another commenter suggested that violations occurring prior to the Inspector General's investigation should not be used to increase the size of a penalty.
- Sixth, several commenters stated that vessel owners should not be subject to the prior violations of crew members, and vice versa, because there is no way for an owner to know of a crew member's compliance history. Some commenters also stated that prior violations should not be imputed from a captain to a vessel owner, or vice versa, because they have little or no control over each other. Some of these commenters suggested the establishment of a registry or database of prior violations so that vessel owners may conduct sufficient due diligence before hiring a crew member who may have a prior violation.
- Finally, one commenter stated that applying the prior violation adjustment to a fleet owner for each vessel would be overly punitive, as the chances of a new violation are greater than with a single-vessel owner.

*Response:* We continue to believe that consideration of prior violations is appropriate under many circumstances. For example, considering minor or negligent violations as prior violations for the purpose of adjusting penalties upward is appropriate because repeated violations may indicate a pattern and practice of noncompliance, which the Policy deters through higher penalties. We have adjusted the final Penalty Policy, however, to limit the consideration of prior violations to those violations that have been subject to final administrative adjudication (including through summary settlement, administrative settlement, or consent decree). Violations that have been charged but not adjudicated will not be considered prior violations.

With respect to how far back in time prior violations will be considered, the final Penalty Policy provides that similar violations occurring within the past five years will result in an upward adjustment by moving an entire base penalty box to the right in the matrix, while prior violations occurring more than five years prior will increase the penalty within the range of the box already determined based on the gravity of the violation and the alleged violator's culpability. The final Penalty Policy also provides that, when moving within a box, the NOAA attorney will consider how recently the prior violation occurred, so that violations occurring recently may result in a greater upward adjustment than violations occurring many years ago. Thus, the Penalty Policy provides the NOAA attorney with the flexibility to take all of an alleged violator's prior conduct into account to an appropriate degree, without setting arbitrary time lines for when a prior violation will no longer count. To the extent the new Penalty Policy differs from past policy regarding prior violations, the final Penalty Policy states that the NOAA attorney may take that into consideration.

Regarding the potential for vessel owners to face increased penalties based on prior violations of crew members, the Policy has been revised to provide that where a master or crewmember has a prior violation and commits a later violation on a different vessel with a different owner, the prior violation will be imputed to the new owner, unless the new owner exercises due diligence regarding the master or crew members' compliance history. Due diligence includes, for example, efforts to determine whether a crew member has a prior violation before hiring him, and where a prior is identified, ensuring that the crew member understands that noncompliance will not be tolerated. We note that NOAA has, when appropriate, provided information regarding prior violations of prospective crew members to vessel owners when that information is requested.

Finally, applying the prior violation adjustment to a fleet owner for each vessel is appropriate to deter violations by fleet owners. Owners are in the best position to prevent violations, and imputing prior violations to fleet owners provides a strong incentive for fleet owners to ensure that violations do not occur on any of their vessels.

**Comment 11:** Several commenters raised concerns with the distinction between commercial and recreational violations as an adjustment factor. These commenters disagreed with the notion that violations committed by recreational actors are less serious than those committed by commercial actors. According to one commenter, recreational fishing is less monitored than commercial fishing and is engaged in by more individuals. One commenter stated that the adjustment for recreational violations is duplicative of the "potential for harm to the resource" factor and suggested removing it. Other commenters stated that a recreational actor who takes a protected species intentionally may be more culpable than a commercial actor and, therefore, does not deserve a downward adjustment.

*Response:* We disagree. Providing a downward adjustment for recreational violations is appropriate. Recreational violators, by definition, do not have a commercial goal. Moreover, each recreational actor participates less frequently in any given activity than a commercial entity and, as a result, has less impact on marine resources. A person engaging in any commercialized recreational activity, such as the owner or operator of recreational tour boats or recreational fishing boats, is treated as a commercial violator under the Penalty Policy. Similarly, if a recreational fisher sells an illegally caught fish, that fisher will be treated as a commercial violator.

It is important to emphasize that the downward adjustment for recreational violations is not automatic. Rather, the final Penalty Policy provides that consideration of this factor may lower penalties of a recreational actor in the appropriate case. If the facts of a case are such that a downward adjustment is inappropriate where, for example, a recreational actor intentionally violated the law or caused significant harm to a marine resource, the NOAA attorney need not apply the downward adjustment. Accordingly, removing the downward adjustment for recreational violations is unwarranted.

**Comment 12:** Some commenters stated that the economic benefit factor, as provided in the Draft Policy, was vague, would be difficult to prove at hearing, could involve conjecture, and

may require reliance on circumstantial evidence. One commenter expressed concern that the economic benefit calculation is outside the experience of NOAA attorneys, and that NOAA agents and attorneys have no training or guidance on calculating economic benefit. Some commenters also expressed concern that the economic benefit factor would lead to excessive fines that could create financial hardship for small businesses. One commenter suggested that the economic benefit factor should be used only in the case of violations involving intentional or reckless violations. Another commenter recommended that NOAA rely on the U.S. Environmental Protection Agency's economic benefit models until NOAA develops its own models.

Several commenters criticized the use of gross value of proceeds in calculating the economic benefit because gross value may result in large fines. One commenter suggested using net value rather than gross value in calculating the economic benefit for some regions in order to factor in the higher operating costs associated with participating in some fisheries. Alternatively, this commenter suggested developing additional criteria to use to adjust the economic benefit portion of a fine to offset the high operating cost of some fisheries. Another commenter stated that the Draft Policy did not explain how the economic benefit factor will account for violations of allocation regulations, such as those used in Alaska. In such a case, according to this commenter, the calculation should be based on net income, not gross value.

*Response:* The final Penalty Policy has been revised to take into account the value of proceeds gained from unlawful activity and any additional economic benefit of noncompliance to an alleged violator, when penalties are assessed. As explained in the Policy, the value of proceeds from the unlawful activity and other economic benefit to an alleged violator are appropriate factors to consider in order to prevent violators from profiting from illicit behavior and engaging in improper behavior as a "cost of doing business," knowing that their unlawful activities are more economically advantageous than the cost of a potential penalty. Taking these factors into account also levels the playing field for the regulated community so violators do not gain economic or strategic benefits over their law-abiding competitors. To address criticisms raised in public comments, however, the final Penalty Policy focuses on the value of the proceeds from the unlawful activity, in addition to other forms of economic benefit, including economic advantages derived from delayed costs and avoided costs. Emphasizing the proceeds from the unlawful activity, such as gross value of illegally caught fish or gross revenues from other unlawful activity, provides a clear standard for how NOAA will calculate this amount in most cases. Relying on proceeds from the unlawful activity will also obviate the need for models to calculate economic benefit.

Relying on gross value, rather than net value, in calculating proceeds from the violation is appropriate under the statutes and regulations that NOAA enforces. *See, e.g.,* 15 C.F.R. § 904.108(b) ("....A civil penalty may be increased . . . for commercial violators, to make a civil penalty more than a cost of doing business...."). NOAA's authorities emphasize the need for penalties that are more than the cost of doing business, and use of net value would not achieve that objective. Additionally, considering gross value is consistent with the lost value that would occur if NOAA seized an alleged violator's catch. Finally, because gross value is calculated by using the fair market value or fair market proceeds, it is much easier to calculate and more transparent than net value. Net value calculations require evidence regarding business-related

expenditures such as salaries and wages, fuels costs, and the cost of gear, which could lead to protracted discovery and higher litigation costs for all concerned.

**Comment 13:** With respect to the offense level schedules, one commenter criticized the choice between two offense levels for some violations, which may undercut consistency. This commenter suggested assigning only one offense level for each category of violation. Another commenter suggested that the Policy explain more clearly the method used to calculate the level of harm for the violations listed in the offense level schedules.

*Response:* The gravity-of-offense level schedules in Appendix 3 of the Penalty Policy have been revised to provide one base offense level for each of the common violations listed, and to add additional types of violations, to enhance the consistency of penalty assessments and provide greater transparency for the regulated community. Further explanation regarding how the gravity level for each listed violation was determined is unnecessary, as the final Penalty Policy lists multiple factors that were used to determine the appropriate base offense level to assign to each violation.

**Comment 14:** Several commenters expressed concern over the potential for the Draft Policy to lead to higher penalties in some regions and some fisheries. Some of these commenters stated that penalties under the Policy could be unreasonably high. One commenter was particularly concerned about imposing quota reductions of two percent for each ten-day period of permit sanctions imposed on vessels operating under a catch share or other quota program.

*Response:* In response to comments, the penalty matrixes were modified in the final Penalty Policy to narrow further the high and low end of the penalty ranges, and to ensure appropriate penalty gradations among the gravity-of-offense levels and ranges of culpability. These changes enhance the consistency of penalty assessments, provide greater transparency for the regulated community, and where appropriate, bring penalty assessments under the Policy closer to penalties currently assessed.

The final Penalty Policy was also revised to address the comment regarding quota reductions. Under catch share or similar programs, where permits allow for a certain amount of catch 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 percent for each day of permit sanction time listed in the matrixes. This figure is based on a calculation of 100% of the potential catch share divided by 365 days per year, which results in a total of 0.27 percent per day.

We note that the approach and goal of the new penalty policy is fairness and even-handedness across the country. In the final Penalty Policy, the penalty matrixes narrow the penalty ranges significantly to reduce discretion and provide consistency. We will continue to provide for higher level review and approval by the General Counsel or Deputy General Counsel of all charging and penalty setting decisions, and will use our more narrowly focused discretion to ensure a fair and smooth transition.

Moreover, as a component of the transition, the final Penalty Policy specifically provides that the previous schedules may still be used as a historical reference point to be considered in application of the new Policy. The old penalty schedules--which were numerous, had broad ranges, were regionally focused, and varied widely across the country--will continue to be available on the NOAA Enforcement website for public information. We will continue to publish charges and penalties assessed in Notices of Violation and Assessments under the new policy so the public can see transparently how the new policy affects penalties. Where a penalty to be assessed under the new Penalty Policy is substantially above or below the old penalty ranges, the General Counsel or Deputy General Counsel will take particular note of that fact in establishing a penalty, and the public will be able make a comparison from the publicly available information.

**Comment 15:** One commenter suggested that the Policy should provide a clear and consistent benefit for self-reporting of violations. According to this commenter, encouraging self-reporting would lead to increased efficiency.

*Response:* The final Penalty Policy has been revised to provide an explicit benefit for self-reporting. NOAA acknowledges that self-reporting indicates a violator's willingness to accept responsibility and provides for greater efficiency in administering NOAA's enforcement program, particularly where a violation is difficult to detect. Under the revised Policy, where an alleged violator self-reports a violation, such self-reporting will justify a downward adjustment in the base penalty. The Policy explains how downward adjustments for self-reporting will be considered and accounted for by the NOAA attorney. Importantly, NOAA will not adjust a penalty downward for self-reporting where discovery of the violation was inevitable.

### **Other Comments**

**Comment 16:** Several commenters expressed concern that the Policy does not address the "unit of prosecution" (i.e., whether a single offense may be charged as multiple violations).

*Response:* This Policy does not address issues related to charging decisions, such as the appropriate "unit of prosecution." As explained in the Policy, NOAA will provide additional guidance for making charging decisions under the statutes NOAA enforces.

**Comment 17:** Two commenters stated that NOAA should emphasize education of the regulated community to avoid violations, rather than solely focusing on imposing penalties for violations. One commenter also recommended subsidizing the cost of required gear in order to avoid violations.

*Response:* These comments are not relevant to the content of the final Penalty Policy. We further note that NOAA's goal is to maximize compliance in order to ensure sustainable use of living marine resources for the benefit of those who abide by the law and the coastal communities that depend on them. NOAA therefore agrees that education and outreach to the regulated community are both extremely important, and that compliance is far preferable to penalizing violations after they occur. NOAA is therefore currently developing a compliance

assistance program to enhance our enforcement program, as more fully described in its response to the OIG's September 2010 Report (*see* <http://www.noaanews.noaa.gov/stories2010/PDFs/Response-IGReport-20100923.pdf>).

**Comment 18:** Several commenters pointed to the potential for delayed resolution of charges resulting from additional review by NOAA Headquarters. Another commenter suggested that NOAA make greater use of dockside enforcement mechanisms such as “fix-it” tickets and summary settlements. Meanwhile, another commenter expressed the need for additional levels of review, including in some cases review by the applicable NOAA program office, the NOAA Administrator, and the Secretary of Commerce.

**Response:** These comments are not relevant to the content of the final Penalty Policy. In terms of timeliness, NOAA is committed to expeditiously identifying and addressing potential violations of the laws it enforces. Regarding increased use of alternative enforcement mechanisms, the final Penalty Policy notes that “fix-it” tickets and summary settlements are already available for less significant or technical violations that have little impact on marine resources.