

Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions NOAA Office of General Counsel – Enforcement Section

[Date]

I. Statement of Scope and Purpose

On March 16, 2011, NOAA Office of General Counsel, Enforcement Section issued a new Penalty Policy that provided guidance for the assessment of civil administrative penalties and permit sanctions under the statutes and regulations enforced by NOAA. In that Policy, the NOAA Office of General Counsel committed to periodic review of the Penalty Policy to consider revisions or modifications as appropriate. A revised Penalty Policy was issued on July 1, 2014.

The purpose of this Policy is to continue 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. This revised Policy also reflects legislation passed and regulations promulgated since issuance of the 2014 Policy, in particular:

- The Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015, Pub. L. 114-81, which implemented the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and amended the enforcement provisions of a number of statutes administered by NOAA; and
- The most recent adjustments to the maximum civil monetary penalties authorized under statutes administered and enforced by NOAA, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (*see* 83 Fed. Reg. 706 (January 8, 2018)).

Under this revised Policy, NOAA Office of General Counsel will 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.

The effective date of this Policy is **XX X, 2019**. This Policy supersedes all previous guidance regarding the assessment of penalties or permit sanctions, and all previous penalty and permit sanction schedules issued by the NOAA Office of General Counsel.¹ Currently pending cases charged under the March 16, 2011 or July 1, 2014 Penalty Policy will continue to be governed by the Policy under which they were charged until such cases have been finally adjudicated.

For use in the implementation of this Policy, there are three Appendixes attached: (1) Appendix 1 is a preliminary penalty assessment worksheet; (2) Appendix 2 consists of six penalty matrixes, for the eight statutes most commonly enforced by NOAA; and (3) Appendix 3 consists of eight

¹ This Penalty Policy does not address, and is not meant to affect, NOAA's Summary Settlement or related delegations of authority.

offense level schedules, corresponding to one of the six matrixes listed in Appendix 2. A more detailed explanation for the use of the Appendixes is described herein.

This Policy provides guidance for the NOAA Office of General Counsel, but does not, nor is it intended to, create a right or benefit, substantive or procedural, enforceable at law or in equity, in any person, business or other entity. The basis for penalties calculated under this Policy, however, will be included in charging documents filed by the Agency. Further, although this Policy provides guidance to NOAA attorneys regarding the assessment of proposed penalties and permit sanctions, NOAA retains discretion to assess the full range of penalties authorized by statute in any particular case. The Policy is not binding on administrative law judges who hear NOAA enforcement cases.

II. Statutory Background and Enforcement Framework

A. NOAA Authorities

NOAA has authority and responsibility under more than 30 federal statutes to protect living marine resources, including marine areas and species, and manage sustainable fisheries. A large proportion of NOAA's enforcement cases are brought under seven statutes – the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the National Marine Sanctuaries Act, the Endangered Species Act, the Marine Mammal Protection Act, the Lacey Act, the Northern Pacific Halibut Act, and the Antarctic Marine Living Resources Convention Act. Detailed penalty matrixes and offense level schedules are included in the appendices for these statutes as well as for the Port State Measures Agreement Act.

B. Role of NOAA's Office of Law Enforcement and Federal and State Partners

Law enforcement officers and agents in the NOAA Office of Law Enforcement (OLE), the U.S. Coast Guard, Customs and Border Protection, Immigration and Customs Enforcement, U.S. Fish and Wildlife Service, and State or territorial officers authorized under Cooperative Enforcement Agreements, monitor compliance and investigate potential violations of the statutes and regulations enforced by NOAA. In general, when a law enforcement officer or agent identifies a statutory or regulatory violation, he or she may pursue one of several available options, depending on the nature and seriousness of the violation.

Where a violation is minor or is merely technical, having little to no impact on marine resources, the officer or agent may provide compliance assistance, issue a "Fix-It Ticket," which provides the alleged violator with an opportunity to correct the violation within a certain amount of time and waives all penalties if the alleged violator takes appropriate curative action, or issue a Written Warning.

For certain violations, an OLE officer or agent may issue a "Summary Settlement offer" under authority delegated to OLE by the NOAA General Counsel. Under the terms of a Summary Settlement offer, an alleged violator receives a document explaining the alleged violation and the alleged violator may resolve the matter expeditiously by paying a reduced penalty. Summary Settlement schedules developed by the Office of General Counsel, with input from the NOAA

Office of Law Enforcement and, often, the relevant program office, provide a listing of violations that OLE is authorized to handle via the Summary Settlement process.

Where an officer or agent determines that an alleged violation is significant, or where an alleged violator has one or more prior violations, or does not pay a proposed summary settlement amount, the officer or agent will refer the case to the NOAA General Counsel's Enforcement Section for further action. U.S. Coast Guard personnel, state and territorial officers operating under Cooperative Enforcement Agreements, and law enforcement personnel from the U.S. Fish and Wildlife Service, Customs and Border Protection, or other federal agencies may also uncover potential violations, and where appropriate, may submit proposed cases to OLE to determine the proper action to take.

C. Role of the NOAA Attorney

A NOAA attorney assigned to a case, in consultation with the investigating officer or agent, evaluates whether evidence in the case demonstrates a violation of a NOAA statute or regulation, and determines whether to recommend charging the alleged violator or declining the case. All charging or declination recommendations by NOAA attorneys are made to the NOAA General Counsel, a Deputy General Counsel, or the Chief of the Enforcement Section ("Approving Official") for final approval. If the NOAA attorney determines that it is appropriate to recommend filing charges, the attorney then has a number of charging options to recommend.

For minor violations, the attorney may recommend a Written Warning. Written Warnings may be appropriate where the alleged activity has a limited impact on natural resources, the alleged violator demonstrates a high degree of cooperation, the alleged violator takes corrective action that substantially mitigates or eliminates the impact of the violation, or a substantial amount of time has passed from the date of the violation.

For more significant violations, the NOAA attorney may recommend charges under NOAA's civil administrative process (*see* 15 C.F.R. Part 904), through issuance of a Notice of Violation and Assessment of a penalty (NOVA), Notice of Permit Sanction (NOPS), Notice of Intent to Deny Permit (NIDP), or some combination thereof. Alternatively, the NOAA attorney may determine that there is a violation of a criminal provision that is sufficiently significant to warrant referral to a U.S. Attorney's Office for criminal prosecution.

III. Summary of the Penalty Policy

A. Approach

Any penalty policy must start with the statutory and regulatory requirements for establishing appropriate penalties. While there is significant variation in the maximum penalties and sanctions authorized under the statutes most commonly enforced by NOAA², the factors used to

² As of the date of this Penalty Policy, the current maximum statutory civil penalties under the Magnuson-Stevens Act (16 U.S.C. § 1801 *et seq.*); the National Marine Sanctuaries Act (16 U.S.C. § 1431 *et seq.*); the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*), the Lacey Act (16 U.S.C. § 3371 *et seq.*), the Northern Pacific Halibut Act (16 U.S.C. § 773 *et seq.*), the Antarctic Marine

determine an appropriate penalty or permit sanction under these statutes are similar: the nature, circumstances, extent and gravity of the alleged violation; the alleged violator's degree of culpability; the alleged violator's history of prior offenses; the alleged violator's ability to pay the penalty; and such other matters as justice may require. *See* 15 C.F.R. § 904.108(a). This Policy utilizes these principles to create a system for determining appropriate penalties.

Under this Policy, penalties and permit sanctions are based on two criteria: (1) A "base penalty" calculated by adding (a) an initial base penalty amount and permit sanction reflective of the gravity of the violation and the culpability of the violator and (b) adjustments to the initial base penalty and permit sanction upward or downward to reflect the particular circumstances of a specific violation; and (2) an additional amount added to the base penalty to recoup the proceeds of any unlawful activity and any additional economic benefit of noncompliance. Described as an equation:

Base Penalty [(Initial Base Penalty based on the Gravity of the Offense and Culpability) + (Upward/Downward Adjustment for Specific Circumstances)] + [Proceeds of Unlawful Activity and Any Additional Economic Benefit] = [Penalty Assessment and Permit Sanctions]

This Policy uses a penalty and permit sanction matrix for each major statute that NOAA enforces with penalty and permit sanction ranges to be applied nationally. This approach ensures that NOAA attorneys are provided with sufficient guidance in recommending penalties, and helps ensure fairness and consistency of approach across NOAA statutes, across fisheries, and across the country.

B. Criteria for Determining Penalty and Permit Sanction

Initial Base Penalty and Permit Sanction – Two factors are considered in determining the initial base penalty and permit sanction amount (collectively, the "initial base penalty"): (1) the gravity

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.*) are as follows:

Magnuson-Stevens Act – \$189,427 per violation
National Marine Sanctuaries Act – \$178,338 per violation
Endangered Species Act – \$52,596 per violation (knowing violations - endangered species)
Marine Mammal Protection Act – \$29,239 per violation
Lacey Act – \$27,075 per violation
Northern Pacific Halibut Act – \$242,069 per violation
Antarctic Marine Living Resources Convention Act – \$189,427 per violation
Port State Measures Agreement Act – \$189,427 per violation

The Department of Commerce adjusts the maximum civil monetary penalties authorized by statute for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114-74). Under the current methodology, which has been revised since issuance of the 2014 Policy, inflationary adjustments are made annually and adjusted penalties are generally effective not later than January 15 each year. The last adjustments made under this Act occurred on February 7, 2019 (*See* 84 Fed. Reg. 2445); these adjustments were delayed due to the partial government shutdown and became effective on March 1, 2019.

of the prohibited act that was committed; and (2) the alleged violator's degree of culpability, based on an assessment of the alleged violator's mental culpability in committing the violation. These two factors constitute the seriousness of the violation.³

As detailed more fully below, the initial base penalty is determined by first finding the charged violation on the attached schedules, which list the most common violations that NOAA charges. The schedules are found at Appendix 3.⁴ The schedules assign a particular "offense level" to each violation. This offense level corresponds to the vertical axis of the attached penalty matrixes, which were developed for each of the eight major statutes that NOAA enforces. The matrixes are found at Appendix 2. The proper penalty range is determined by using the offense level and the alleged violator's degree of culpability to find a penalty box within the appropriate matrix. The initial base penalty is the midpoint of the penalty range within that box.

Base Penalty After Application of Adjustment Factors – The NOAA attorney may adjust the initial base penalty upward or downward within the range of penalties and permit sanctions provided in the matrix to reflect the particular circumstances of a specific violation, creating the "base penalty." Two factors are considered in making this adjustment:

- a. The alleged violator's history of prior offenses; and
- b. Such other matters as justice may require, including:
 - i. The conduct of the alleged violator after the violation – whether the violator self-reports, makes a good faith effort to come into compliance promptly, or cooperates with the investigation or, alternatively, whether the violator attempts to avoid detection, interferes with an investigation, lies, or participates in other obstructive activity; and
 - ii. Other considerations, such as a long history of compliance; the economic impact of a penalty on a business; the subsequent rescindment of a regulation; remedial measures taken by the violator; indications of a pattern, course of conduct, common scheme, or conspiracy, and the violator's role in the activity; and the need to decrease the economic incentives for committing a violation where the economic benefits outweigh the potential costs of a penalty.

³ Notably, NOAA regulations generally require that NOAA consider these factors when determining the proper penalty to assess. *See* 15 C.F.R. § 904.108(a) ("Factors to be taken into account in assessing a civil penalty, depending on the statute in question," include the "gravity of the alleged violation [and] the respondent's degree of culpability..."). *See also* 16 U.S.C. § 1858, Section 308 ("In determining the amount of [the] penalty, the Secretary shall take into account the . . . gravity of the prohibited acts committed [and] . . . with respect to the violator, the degree of culpability . . .").

⁴ Where a violation is not listed in the schedules, or where the violation is of a statute for which no schedule has been developed, the attorney determines the offense level by using the offense level of a similar listed violation. If no similar violation can be identified, the attorney chooses an appropriate offense level by assessing the gravity of the violation based on criteria described in this Policy. In these cases, the attorney will document the basis for using the selected offense level when making a penalty recommendation.

Proceeds of the Unlawful Activity and Any Additional Economic Benefit – Finally, once the initial base penalty and adjustments are determined, an additional amount is added to the base penalty to collect any proceeds from unlawful activity gained by the violator through his or her illicit conduct, along with any additional economic benefit received. This additional amount is meant to prevent an alleged violator from profiting from his or her unlawful activity, remove any actual economic benefit to the alleged violator, keep the alleged violator from gaining an unfair advantage over lawful actors, and prevent unlawful activity from continuing as a “cost of doing business.” Absent extraordinary circumstances, the NOAA attorney will add to the base penalty an amount equal to the fair market value derived from noncompliance, along with any additional economic benefit gained through the violator’s misconduct.⁵

Assessment of Statutory Maximum Penalties – Under some fact patterns, the penalty matrix analysis may result in a penalty recommendation that is the maximum civil penalty authorized by the relevant statute. NOAA Attorneys are reminded that statutory maximum penalties are adjusted annually for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Importantly, both that statute and the resulting Department of Commerce regulations that implement the annual adjustments specifically authorize retroactive application of a current maximum penalty to a date of violation that precedes the adjustment in certain circumstances. (See 15 C.F.R. § 6.4).

NOAA attorneys shall apply this statutory/regulatory authorization as follows: a) for any date of violation prior to November 2, 2015, the applicable maximum civil penalty shall be determined by the version of 15 C.F.R. § 6.3 in effect on the date of that violation, and; 2) for any date of violation occurring on or after November 2, 2015, the applicable maximum civil penalty shall be determined by the version of 15 C.F.R. § 6.3 in effect on the date the NOVA is approved for charging by the Approving Official.

IV. Establishing the Base Penalty Matrixes and Schedules

A. Matrixes and Schedules

As noted above, to guide a NOAA attorney’s recommendation of a base penalty, NOAA has developed a penalty matrix using the two factors that constitute seriousness of the violation for the eight statutes that NOAA most commonly enforces: the gravity of the violation and the degree of culpability. The matrixes are set forth in Appendix 2. In addition, NOAA has

⁵ Capturing the proceeds of unlawful activity and a violator’s economic benefit is a well-accepted approach reflected in both NOAA regulations and case law. See 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. . . .”); *In re Pesca Azetca, S.A. de C.V. (F/V AZETCA I)*, 2009 WL 3721029 (NOAA 2009), subsequently affirmed by the Administrator, 2010 WL 1676739 (a sanction amount should be large enough to alter the economic calculus that might lead Respondents and other participants in the fishery to simply account for any possible sanction as the cost of doing business); *In the Matter of Christine Swanson*, 2005 WL 776152 (NOAA 2005) (“Respondents’ unlawful behavior here must invoke a civil penalty which is more than merely the cost of doing business. It must be sufficient to deter this activity in the future and put these operators and owners on notice that severe penalties will be forthcoming if this activity is continued”). Other regulatory agencies, such as the Environmental Protection Agency, also capture violators’ economic benefit in their penalty assessments.

developed corresponding schedules that provide guidance in determining the gravity of the violation (the gravity-of-offense level) for the most common violations. These schedules are set forth in Appendix 3.

For each matrix, two factors – the gravity of the violation and the degree of culpability – form the two axes on the matrix. The vertical “gravity-of-offense” axis is split into four to six different “offense levels,” depending on the applicable statute, with increasing penalties as the gravity of a violation becomes more significant. The horizontal “degree of culpability” axis is split into four levels of increasing mental culpability, depending on whether the violation was the result of unintentional activity (accident or mistake), negligence, recklessness, or an intentional act (*see* Appendix 2).

B. Penalty Ranges

In determining the appropriate penalty range for each box in the matrixes, NOAA examined the maximum available penalties under the particular statute, and interpreted the relevant statutes as calling for graduated penalties from the most serious violation, warranting the maximum penalty, down to the least serious charged violation, warranting a significantly lower penalty. This graduated scheme provides for a fair base penalty assessment taking into account the seriousness of the violation, as envisioned by the statutes.⁶

C. Permit Sanctions

With respect to permit sanctions, where applicable, the statutes that NOAA enforces generally provide broad authority to suspend or revoke permits. While permit sanctions may be an important tool in deterring future violations, we are mindful that vessel or dealer permit sanctions may result in negative financial impacts to parties beyond the alleged violator(s) (e.g., crew/employees, processors/dealers, and commercial markets). Given the impact that permit sanctions may have, permit sanctions are generally appropriate only in cases involving violations that are moderate to major in terms of their gravity. In the context of the Magnuson Act, the penalty matrixes provide for an incremental gradation of permit sanctions ranging from 5-20 days, 10-20 days, 20-60 days, 60-180 days, and 180 days to one year.

In some cases, permit sanctions may also be appropriate where the alleged violator has a history of prior violations that are similar to the violation charged, or where the assessed penalty does not adequately account for the proceeds of the unlawful activity or any additional economic benefit derived from noncompliance because of the statutory cap.

Permit revocation is also appropriate in extraordinary cases. *See* 16 U.S.C. § 1858(g)(i). Revocation may be appropriate, for example, where a permit is obtained by fraud or false information, or where a monetary penalty and permit suspension do not adequately reflect the serious nature of the violation.

⁶ NOAA reserves the right to periodically modify penalty ranges in each matrix to reflect upward penalty adjustments made pursuant to the Federal Civil Penalties Inflation Adjustment Act and the Debt Collection Improvement Act.

V. Determining the Initial Base Penalty Using the Matrix

In determining an initial base penalty, the NOAA attorney first determines an appropriate gravity-of-offense level, using the listed schedules of common violations as a guide (Appendix 3). Where a violation is not listed in the schedules, the attorney determines the offense level by using the offense level of a similar listed violation. If no similar violation can be identified, the attorney will determine an appropriate offense level by assessing the gravity of the violation, using the factors listed below. Once an offense level is established, the attorney will then determine the alleged violator's degree of culpability, following the criteria set forth below. The initial base penalty will be the midpoint of the penalty range in the appropriate matrix box determined using this method. Where the matrix box includes a permit sanction range, there is a presumption that the appropriate permit sanction will also be the midpoint of the permit sanction range in the matrix box. However, the economic impact of a permit sanction on a violator may be considered in determining the proper sanction within the range, taking into account the fishery involved, the nature of the permit to be sanctioned, and the time of year or fishing season to which the sanction applies. Moreover, it may be appropriate to tie the length of a permit sanction to the duration of the alleged violation, especially where the violation provides an unfair advantage, such as in fisheries involving time and area limits.

A. Gravity of the Violation

There are four to six gravity-of-offense levels assigned to each vertical axis of the matrixes, depending on the applicable statute. More particularly, there are four offense levels assigned to the Marine Mammal Protection Act, Endangered Species Act, and Lacey Act, and six offense levels assigned to the Magnuson-Stevens Act, National Marine Sanctuaries Act, Northern Pacific Halibut Act, Antarctic Marine Living Resources Convention Act, and Port State Measures Agreement Act. (See Appendix 2). The matrixes with six offense levels reflect the higher monetary penalties provided for in the applicable statutes, and the need for additional offense level classes to narrow the potential penalty ranges available for a particular violation.

The offense levels reflect a continuum of increasing gravity, taking into consideration the nature, circumstances, and extent of a violation, with offense level I representing the least significant charged offenses, and offense level VI the most significant. The attached schedules assign the most common violations to a corresponding offense level. In determining the appropriate offense level to assign to each violation, a number of factors were considered, including:

- a. The nature and status of the resource at issue in the violation (e.g., whether the fishery is currently overfished, overfishing is continuing, or the stock is particularly vulnerable because of its slow reproduction rate; whether the violation affects measures designed to protect essential fish habitat, endangered/threatened species, or resources within a national marine sanctuary);
- b. The extent of harm done to the resource or to the regulatory scheme or program;
- c. The potential harm to the resource or to the regulatory scheme or program;
- d. Whether the violation involves fishing in closed areas, fishing in excess of quotas, fishing without a required permit, or fishing with unauthorized gear;

- e. Whether the violation provides a significant competitive advantage over those operating legally;
- f. The nature of the regulatory program (e.g., limited versus open access fishery); and
- g. Whether the violation is difficult to detect without an on-scene enforcement presence or other compliance mechanisms such as Vessel Monitoring Systems (VMS) or an observer (e.g., unlawful discards, high-grading of catch, use or deployment of fish aggregating devices, gear conflicts, or failure to use seabird or turtle bycatch mitigation devices).

In making a determination of an initial base penalty, NOAA attorneys will examine the attached schedules and ascertain the proper offense level for a particular violation. To determine the proper offense level where a violation is not listed, NOAA attorneys will either determine the offense level by using the offense level of an analogous violation, or independently determine the level by considering the above listed factors.

B. Degree of Culpability

The second axis of the penalty matrixes focuses on the degree of mental culpability of the alleged violator when participating in the unlawful activity for which the penalty is being imposed. This axis reflects the importance that NOAA places on the alleged violator's degree of culpability prior to and at the time of violation. There are four levels of culpability reflected in the matrixes: intentional, reckless, negligent, and unintentional.

An intentional violation generally exists when a violation is committed deliberately, voluntarily or willfully, i.e., the alleged violator intends to commit the act that constitutes the violation. A person intends a result when he or she both foresees the result that will arise if certain actions are taken and desires the result to occur. Intent may be particularly demonstrated by violations committed as part of a pattern, course of conduct, common scheme or conspiracy, or where a violator has been charged in the past with a similar violation, even if not fully adjudicated.

Recklessness is a conscious disregard of a substantial risk of violating conservation measures that involves a gross deviation from the standard of conduct a law-abiding person would observe in a similar situation. Recklessness occurs where someone does not intend a certain result, but nonetheless foresees the possibility that his or her actions will have that result and consciously takes that risk. Recklessness may also occur where someone does not care about the consequences of his or her actions. Recklessness involves a lesser degree of fault than intentional wrongdoing but a greater degree of fault than negligence.

Negligence is the failure to exercise the degree of care that a reasonably prudent person would exercise in like circumstances. Negligence denotes a lack of diligence, a disregard of the consequences likely to result from one's actions, or carelessness. Negligence may arise where someone exercises as much care as he or she is capable of, yet still falls below the level of competence expected of him or her in the situation. The failure to know of applicable laws/regulations or to recognize when a violation has occurred may itself be evidence of negligence.

Finally, an unintentional act is one that is inadvertent, unplanned, and the result of an accident or mistake. An unintentional act is one not aimed at or desired. This culpability level reflects the strict liability nature of regulatory violations, and the fact that the statutes NOAA enforces are designed to protect marine resources even where a violation is unintended.

In assessing whether an alleged violator's activity constitutes intentional, reckless, negligent, or unintentional behavior, a NOAA attorney will consider the following factors:

- a. Whether the alleged violator took reasonable precautions against the events constituting the violation;
- b. How much control the alleged violator had over the events constituting the violation;
- c. Whether the alleged violator knew or should have known of the potential harm associated with the conduct;
- d. Other similar factors as appropriate.

VI. Base Penalty Following Application of Adjustment Factors

As set forth in Section V above, the gravity of the violation and the degree of culpability are considered in determining the initial base penalty. Once an initial base penalty is established, adjustments are applied to reflect legitimate differences among similar violations. Two adjustment factors are considered: an alleged violator's history of prior offenses, and "other matters as justice may require," including the conduct of an alleged violator after a violation occurs.

Starting from the midpoint of the appropriate matrix box, a NOAA attorney will use the adjustment factors to move up or down the penalty range within a box, or to a different penalty box altogether. These factors may increase, decrease, or have no effect on the base penalty and permit sanction to be assessed. Application of the adjustment factors is cumulative, i.e., more than one factor may apply in a case. In applying the adjustment factors, the NOAA attorney will use the information about the alleged violator and violation available at the time of assessment.

In extraordinary circumstances, the initial base penalty may be adjusted above (or below) the high (or low) end of the base penalty range that would otherwise apply using the guidance described below.

A. History of Prior Offenses

An alleged violator's previous violation of natural resource protection laws is evidence of an intentional disregard for NOAA's statutes or regulations or a reckless or negligent attitude toward compliance with them. Subsequent violations also may be evidence that the prior enforcement response was insufficient to deter future violations. Accordingly, prior violations are a basis to adjust a penalty upward. Factors the NOAA attorney will consider in applying this adjustment include, *inter alia*, the following:

- a. The similarity of the prior violation, i.e., whether past and present violations involve the same or similar acts, the same statutes or regulations, or the same resources;
- b. How recently the prior violation occurred;
- c. The number of prior violations; and
- d. An alleged violator's efforts to correct any prior violation(s).

NOAA will consider all relevant prior offenses that have been finally adjudicated by NOAA, other Federal agencies and state agencies, within 5 years of the current violation (including, but not limited to written warnings, summary settlements, administrative settlements, final orders and judgments, criminal convictions, and consent decrees), with adjustments to the penalty as follows:

- (1) For each prior violation that is similar to the newly-charged violation, the NOAA attorney will move the initial base penalty an entire box to the right in the Appendix 2 Penalty Matrix, with a maximum increase of three penalty boxes (note: where it is not possible to move to the right in the penalty matrix, the NOAA attorney will select the box below the previously determined penalty box);
- (2) For priors that are not similar to the newly alleged violation, the NOAA attorney will increase the penalty within the range of the initial base penalty box determined in Section V above. In determining the amount of the upward adjustment, the age of the violation may be taken into account;
- (3) Applicability of priors should be evaluated with respect to all counts of a case, not just a single count. In a multi-count case, the same prior may be similar to some counts, but dissimilar to others.

NOAA attorneys will use the following guidelines to determine whether a prior violation applies to a newly charged offense:

- (1) The NOAA attorney will consider a violation by a master or crewmember as a prior violation against that master or crewmember for any subsequent violation he or she commits on the same or different vessel.
- (2) The NOAA attorney will consider a violation by the owner of a vessel as a prior violation against that owner for any subsequent violation involving that vessel or owner unless controlling ownership of the vessel has changed.
- (3) Where a master or crewmember has a prior violation, the NOAA attorney will consider it as a prior against a vessel owner subsequently charged jointly and severally with the master or crewmember unless the owner has exercised due diligence in addressing the prior violation. Due diligence is a measure of care exercised by a reasonable and prudent vessel owner under the circumstances. A vessel owner may demonstrate due diligence by requiring current or prospective masters or crewmembers to certify whether they have prior violations or by conducting other verifiable screening for prior violations,

and then providing adequate training to, and closer supervision of, those found to have priors, or by taking other actions to ensure that a master or crewmember with prior violations complies with the law. If, after reviewing the facts of a case, a NOAA attorney determines that a vessel owner has exercised due diligence in ensuring that a master or crewmember with a prior violation does not commit a subsequent offense that nonetheless occurs, the attorney may recommend that the penalty not be adjusted upward.⁷

(4) Where multiple vessels are owned by the same individual or company, the NOAA attorney will consider a violation involving any vessel in the fleet as a prior violation against the individual or company for any subsequent offense involving the same or any other vessel in the fleet.

(5) The NOAA attorney will consider a violation committed by one corporation's vessel as a prior violation against another corporation's vessel where the two corporations are effectively owned or controlled by the same person or persons.

B. Such Other Matters as Justice May Require⁸

As provided for by statute and implementing regulations⁹, a NOAA attorney may move above or below the midpoint of a penalty range within a penalty box by taking into account “such other matters as justice may require.” For significant aggravating or mitigating factors, a NOAA attorney may move outside of the applicable penalty box. There are two categories within this adjustment factor:

i. Activity After Violation – Good Faith Efforts to Comply: Cooperation/Noncooperation

The NOAA attorney may move above or below the midpoint of a penalty range by taking into account the good or bad faith activities of the alleged violator after a violation occurs. Good faith factors, which may mitigate a penalty, include self-reporting, providing helpful information to investigators, and cooperating with investigators in any on-going investigation. Alternatively, actions taken in bad faith that may result in an increased penalty include any attempt on the part of the alleged violator to avoid detection (e.g., concealment or flight); or any evidence that the alleged violator interfered with the investigation by destroying evidence, intimidating or threatening agents or witnesses, lying, or similar activity. No downward adjustment will be made if the good faith efforts to comply primarily consist of coming into compliance or the alleged

⁷ This practice purposely places the burden on owners, who are in the best position to address the prior violations of masters and crewmembers, to establish that they have acted with due diligence or face increased penalties for future violations.

⁸ Various federal environmental statutes provide for a “such other matters as justice may require” factor in assessing civil penalties. *See e.g.*, the Clean Water Act, 33 U.S.C. § 1319(g)(3); the Clean Air Act, 42 U.S.C. § 7413(e); and the Toxic Substances Control Act, 15 U.S.C. § 2615(B).

⁹ *See e.g.*, 16 U.S.C. § 1858(a); 16 U.S.C. § 3373(a)(6); 16 U.S.C. § 773f(a); 16 U.S.C. § 2437(a); and 15 C.F.R. § 904.108(a).

violator simply exhibits the “common courtesy” to law enforcement personnel expected from members of the public.

NOAA strongly encourages self-reporting of violations and cooperation during an investigation because it 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 or evidence is difficult to obtain. Accordingly, where an alleged violator self-reports a violation or provides substantial cooperation during an investigation (such as a truthful and complete statement admitting to the violations)¹⁰, NOAA will consider such action a mitigating factor justifying a downward adjustment in the initial base penalty. Depending on the context and degree of the self-reporting or cooperation, as well as the gravity of the violation, NOAA may move to the lower end of the penalty range within a box or move to a lower penalty box altogether. NOAA will not, however, adjust a penalty downward for self-reporting where discovery of the violation is inevitable.

ii. Other Considerations

Matters that may mitigate or aggravate a penalty may also include: a long history of compliance; the economic impact of an assessed penalty on a business; the subsequent rescindment of a regulation; remedial measures taken by the respondent; indications of a pattern, course of conduct, common scheme, or conspiracy, and the violator’s role in the activity; and the need to decrease the economic incentives for committing a violation where the economic benefits outweigh the potential costs of a penalty.¹¹ Where any other matters are to be taken into consideration, the NOAA attorney must provide a detailed description of the mitigating or aggravating factor on the Preliminary Penalty Assessment Worksheet, and must clearly articulate the basis for the penalty adjustment based on this factor.

VII. Proceeds of Unlawful Activity and Any Additional Economic Benefit

In assessing a penalty, this Policy takes into account the value of proceeds gained from unlawful activity and any additional economic benefit of noncompliance to an alleged violator. The value of proceeds from the unlawful activity and any additional economic benefit to an alleged violator are factored in to prevent violators from profiting from illicit behavior and engaging in improper behavior because the sanctions imposed are merely a “cost of doing business” (i.e., because the economic benefit of their unlawful activity exceeds the cost of a potential penalty).¹² 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. Absent extraordinary circumstances, the value of the proceeds from the unlawful activity and any additional economic benefit to the violator will be calculated and added to the base penalty.

¹⁰ See *In the Matter Michael Straub & Steven Silk*, 2012 NOAA LEXIS 1, at 24 (NOAA Feb. 1, 2012).

¹¹ See *In the Matter of Freitas, et al.*, PI0904338, Initial Decision and Order, at 77-78, 96 (August 23, 2013).

¹² See footnote 5.

The NOAA attorney will examine the following types of proceeds from unlawful activity and any additional economic benefit from noncompliance when calculating an appropriate amount to include in any penalty assessment:

- a. Gross Ex-vessel value of fish, fish product, or other product illegally caught
- b. Gross revenues of charter fishing vessel or commercial wildlife viewing vessel that violated regulatory restrictions
- c. Economic advantage from delayed costs (delay in purchase of required equipment, e.g., turtle excluding devices or vessel monitoring systems)
- d. Economic advantage from avoided costs (fuel saved by transiting through, not around, a protected area; costs of an observer on fishing trips; costs of infrastructure improvements, e.g., fish ladders and screens to protect ESA-listed species)

In some cases, there may be more than one type of proceeds from unlawful activity or additional economic benefit to the alleged violator. In such cases, the NOAA attorney will consider each category of proceeds from unlawful activity or additional economic benefit to calculate a combined total. Factors that are to be considered in making this assessment are described below.

A. Gross Value of Fish, Fish Product, or Other Product Illegally Caught, or Revenues Received

In cases where fish or other product is caught in violation of the statutory or regulatory requirements, the proceeds from unlawful activity will be assessed based on the gross ex-vessel value of the fish or other product. Where the actual value of the fish is known, that is the amount that will be used; when it is not known, the attorney will make a reasonable estimate of the value based on available information. Where a charter fishing vessel or commercial wildlife viewing vessel is involved, proceeds from the unlawful activity will include the gross revenues from the trip that gave rise to the violation.

If the illegal catch or product was seized and forfeited by NOAA, or if the alleged violator voluntarily abandoned the illegal catch or product, the proceeds from the unlawful activity was likely already recouped from the alleged violator and the proceeds for the penalty assessment will typically be zero.

B. Delayed Costs

Delayed costs are expenditures that have been deferred by the alleged violator and result in a failure to comply with the regulatory program. The alleged violator eventually will have to spend the money in order to achieve compliance, but during the period of non-compliance the violator has gained an economic benefit over his or her competitors who have paid to comply. The economic benefit for delayed costs consists of the amount of interest on the unspent money that reasonably could have been earned by the alleged violator during noncompliance.

C. Avoided Costs

Avoided costs are expenditures that are not made by the alleged violator, leading to a failure to comply with the law. These costs will never be incurred. Examples of avoided costs include, *inter alia*:

- a. Cost savings for operation and maintenance of equipment that the alleged violator failed to install;
- b. Failure to properly operate and maintain existing equipment (e.g., fish ladders and screens for the protection of ESA-listed species);
- c. Failure to employ sufficient number of adequately trained staff; and
- d. Failure to establish or follow precautionary methods required by rules or permits.

For avoided costs, the economic benefit equals the cost of complying with the requirement from the time that compliance was required until the date the violator comes into compliance.

VIII. Ability to Pay

The goal of NOAA's enforcement program is to secure compliance with the laws that protect natural resources, not to put alleged violators out of business. Thus, NOAA will consider at the appropriate stage the ability of the alleged violator to pay a penalty as described below. The NOAA attorney will generally not consider an alleged violator's ability to pay in making a recommendation regarding issuance of a NOVA because he or she will not have relevant information available before the NOVA is issued.¹³ Once a NOVA is issued, the burden to demonstrate inability to pay rests with the alleged violator. *See* 15 C.F.R. § 904.108(c)-(e) (describing process for demonstrating inability to pay). The alleged violator must provide requested information that is verifiable, accurate, and complete to enable consideration of this factor in adjusting the proposed penalty.

When an alleged violator cannot afford the penalty prescribed by this policy, or payment of all or a portion of the penalty will preclude the alleged violator from achieving compliance or from carrying out remedial measures more important than the deterrence effect of the penalty, the NOAA attorney may consider, *inter alia*, the following options:

- a. An installment payment plan with interest;
- b. A reduction of the penalty amount in exchange for a comparable increase in the permit sanction component;
- c. A suspended penalty subject to specified conditions; and
- d. Straight penalty reductions.

The amount of any downward adjustment of the penalty for inability to pay is dependent on the individual financial facts of the case.

IX. Application of the Penalty Policy and Periodic Review

Use of Preliminary Worksheet with Rationale for Assessed Penalty – In preparing a recommendation to charge an alleged violation through issuance of a NOVA, NOPS, or both, the NOAA attorney will complete the Preliminary Worksheet attached as Appendix 1 to establish a recommended penalty and/or permit sanction for each alleged violation. Each section of the

¹³ Unlike most statutes NOAA enforces, the Lacey Act requires consideration of ability to pay at the time of charging. *See* 16 U.S.C. § 3373(a)(6); *see also* 15 C.F.R. § 904.108(g)-(h) (describing process for consideration of ability to pay at the charging stage, based on information available to NOAA at that time).

worksheet corresponds to a section of the Policy as summarized in Sections V through VII above.

Multiple Violations – In certain situations, several violations may have been committed. An assessment will be undertaken for each violation charged.

Penalty Assessment Against Vessel Owner and Operator – Absent extraordinary circumstances, the penalty will be assessed jointly and severally against all appropriate actors (e.g., the vessel owner and operator).

Application to Violations of Other NOAA Statutes – This Policy, and the attached matrixes and schedules, address eight major statutes that NOAA enforces. Until NOAA develops base penalty matrixes for other statutes NOAA enforces, the NOAA attorney will use the closest penalty matrix by analogy, i.e., the matrix developed for MSA violations will be used to develop a recommended penalty under other fishery laws with comparable statutory penalties. If the attorney cannot identify a similar violation, the attorney may choose an appropriate offense level by assessing the gravity of the violation based on criteria described in this Policy. In these cases, the attorney will document the basis for using the selected offense level when making the penalty recommendation.

Effective Date – The effective date of this Policy is **XX XX, 2019**. NOAA will continue to apply the March 16, 2011 and July 1, 2014 Penalty Policies to currently pending cases charged under those Policies until such cases have been finally adjudicated. Violations of the Antarctic Marine Living Resources Convention Act that occurred before November 5, 2015 will be charged under the July 1, 2014 Policy.

Periodic Review – The NOAA General Counsel's Office will periodically review this Policy and consider revisions or modifications as appropriate to ensure that it continues to serve the stated purposes of the Policy.

APPLICATION OF POLICY – SPECIFIC EXAMPLES

EXAMPLE 1 – MAGNUSON-STEVENSON ACT

Description of Violation

Commercial fishing vessel, Vessel A, owned and operated by Captain X, lands 5,000 pounds of redbait groundfish, which is 2,000 pounds (approximately 67%) in excess of the applicable 3,000 pound trip limit. The trip limit had been in effect for several months as of the date of the violation. The violation occurs during a routine landing, which is monitored by a NOAA enforcement agent. The excess fish is voluntarily abandoned by Captain X. When interviewed by the NOAA agent, the captain says that the overage is due to a mistake by an inexperienced crewmember who was unaware of the 3,000 pound limit. At the time of the violation, Vessel A is participating in the groundfish fishery as a federally permitted, limited entry fishing vessel. Limited entry vessels qualify for a higher trip limit for redbait groundfish than do open access vessels. Redbait groundfish are not considered an overfished species. No other violations are found in connection with the overage. Captain X has one prior violation for an overage of groundfish, which occurred two years prior to the present violation.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

I. Initial Base Penalty

Offense Level: Level II. The Magnuson-Stevens Act schedule provides for an offense level of II for most fishing overages between 50% and 100%.

Degree of Culpability: Level B. Although the Captain indicated that the violation was unintentional, the Captain's knowledge of the 3000 lb limit and the size of the overage implies negligence in overseeing the vessel's crewmembers, particularly those who were inexperienced.

Initial Base Penalty: The penalty range is II B, \$4,500 to \$7,000, with a midpoint of \$5,750.

II. Adjustment Factors

History of Prior Offenses: Captain X had one similar violation within the previous two years; this increases the penalty range to II C, \$7,000 - \$12,000, with a midpoint of \$9,500, which represents an upward adjustment of \$3,750 over the initial base penalty.

Other Factors: None

Base Penalty After Application of Adjustment Factors: Increase initial base penalty to \$9,500 (\$5,750 + \$3,750 = \$9,500)

III. Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A; Captain X voluntarily abandoned the excess fish.

Total Penalty (I. + II. + III.): \$9,500

EXAMPLE 2 – MAGNUSON-STEVENSON ACT

Description of Violation

Commercial fishing vessel, Vessel A, owned and operated by Captain X, lands 830 pounds of Atlantic sea scallops that are sold for \$6 per pound, for a total of \$4,980. Because the vessel was issued a valid Limited Access General Category permit, it is limited to landing 400 pounds of scallops. Captain X completes a vessel trip report stating that only 400 pounds of scallops were landed, and submits this report to the National Marine Fisheries Service. The dealer to whom the scallops are sold (Dealer Y) reports to NMFS that it has purchased only 400 pounds of scallops. When interviewed by the investigating agent, Dealer Y denies purchasing the illegal scallops. When the investigating agent interviews Captain X, Captain X admits landing excess scallops and selling them to Dealer Y for cash. Captain X also admits submitting a false trip report. Further, he acknowledges that he has worked out an agreement with Dealer Y to report only 400 pounds. Captain X's admissions lead to the retrieval of Dealer Y's record that reveals the excess 430 pounds of scallops were purchased with cash for \$2,580 (430 lbs. x \$6 per lb.). Neither Vessel A nor Captain X have any prior history of violations. Based on this example, Vessel A and Captain X fished for, caught, possessed, landed, and sold scallops in excess of the 400 pound landing limit and submitted and maintained a false vessel trip report.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalties for the violations against Vessel A/Captain X under the penalty policy.

I. Initial Base Penalty

Count 1: Possession of excess scallops

Offense Level: Level II. The Magnuson-Stevens Act schedule provides for an offense level of II for overages of General Category area scallops over 50% of the permissible catch.

Degree of Culpability: Level D. The evidence indicates the violation was intentional.

Initial Base Penalty: The penalty range is II D, \$12,000 - \$24,000, with a midpoint of \$18,000.

Count 2: False Trip Report

Offense Level: Level III. The Magnuson-Stevens Act schedule provides for an offense level of III for filing a false report that is material.

Degree of Culpability: Level D. The evidence indicates the violation was intentional.

Initial Base Penalty: The penalty range is III D, \$24,000 - \$48,000, with a midpoint of \$36,000.

II. Adjustment Factors

History of Prior Offenses: Captain X has no prior enforcement history.

Other Factors: Captain X admitted the illegal landing and false reporting without making any further false oral statements and was cooperative. His admission and cooperation assisted the investigating

agent's retrieval of evidence and uncovered the dealer's full role in the transaction. This significant degree of cooperation supports a downward adjustment to the low end of the penalty range for the false reporting count.

Base Penalty After Application of Adjustment Factors: Count 1: No decrease/increase. Count 2: Decrease initial base penalty to \$24,000 ($\$36,000 - \$12,000 = \$24,000$).

III. Proceeds of the Unlawful Activity and Any Additional Economic Benefit

\$2,580, which is added to the penalty for possessing excess scallops. Count 1: Add economic benefit to base penalty ($\$18,000 + \$2,580 = 20,580$). Count 2: No increase for economic benefit.

Total Penalty (I. + II. + III.):	Count 1:	\$20,580
	Count 2:	\$24,000
	Total:	\$44,580

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EXAMPLE 3 – NATIONAL MARINE SANCTUARIES ACT

Description of Violation

Recreational vessel A, owned and operated by Captain X, grounds in a seagrass habitat in the Florida Keys National Marine Sanctuary. When interviewed by law enforcement officers, Captain X advises that he had lost his bearings. An assessment of the grounding reveals that over 80 square yards of habitat is impacted, including prop scars and a blowhole.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

I. Initial Base Penalty

Offense Level: Level III. The National Marine Sanctuaries Act schedule provides for an offense level range of III where, as here, the gravity of the offense is moderate.

Degree of Culpability: Level B. The evidence indicates that although the grounding is unintentional, Captain X attempted to power off, thus creating a blowhole, which is negligent.

Initial Base Penalty: The penalty range is III B, \$5,000 - \$10,000, with a midpoint of \$7,500.

II. Adjustment Factors

History of Prior Offenses: Captain X does not have any previous violations.

Other Factors: None

Base Penalty After Application of Adjustment Factors: No decrease/increase

III. Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A.

Total Penalty (I. + II. + III.): \$7,500

EXAMPLE 4 – MARINE MAMMAL PROTECTION ACT

Description of Violation

Upon arrival at a known haul-out for marine mammals, a state game warden is contacted by a civilian witness who states that she has just observed and photographed a man taking photos of elephant seals. The witness states that, at first, the man was just shooting photos of elephant seals at close proximity with little or no interaction with the animals. After a few minutes however, the man began to toss rocks onto one large bull elephant seal while attempting to take photographs of the animal's reaction. The man then began to pelt the animal's torso with rocks while taking photos. Finally, the man hit the animal on the tail with a large stick, which elicited an aggressive response (charge) from the animal. The man took one final photograph of the animal and then retreated quickly up the beach with the animal in close pursuit for several yards.

With the assistance of the witness, the warden is able to identify the man in a nearby parking lot and interview him. Initially, the man denies any wrongdoing and refuses to give his name or any other information. When the warden explains that his earlier actions had been photographed as evidence of a violation of the MMPA, the photographer becomes very agitated and yells at the warden, stating that he did not hurt the elephant seals and that he just wanted to get a good photograph. Upon further questioning, the photographer states that he wants to be a professional wildlife photographer, that he loves marine mammals and wouldn't do anything to hurt them. No investigation of the health of the elephant seal is conducted.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

I. Initial Base Penalty

Offense Level: Level II. The Marine Mammal Protection Act schedule provides for an offense level of II for harassing a marine mammal, and an offense level of III for harming one.

Degree of Culpability: Level D. The evidence indicates the man intentionally harassed the animal.

Initial Base Penalty: The penalty range is II D, \$5,000-\$7,500, with a midpoint of \$6,250.

II. Adjustment Factors

History of Prior Offenses: The photographer has no prior violations.

Other Factors: The alleged violator was uncooperative, and initially made an uncharged false statement to the investigating officer. These facts support an upward adjustment to the high end of the penalty range (\$7,500).

Base Penalty After Application of Adjustment Factors: Increase initial base penalty to \$7,500 (\$6,250 + \$1,250 = \$7,500).

III. Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A

Total Penalty (I. + II. + III.): \$7,500

EXAMPLE 5 – ENDANGERED SPECIES ACT

Description of Violation

An Alaska resident (Mr. X) was documented approaching an endangered Humpback whale. Regulations under the Endangered Species Act prohibit approaching endangered Humpback whales within 100 yards in the waters around Alaska. According to eyewitnesses, Mr. X and his child approached to within less than 10 feet. The witnesses provided statements and photographs to enforcement. Mr. X was well aware of the regulations establishing the prohibition on approaching Humpback whales.

The following is a discussion of the methodology used to calculate the amount of the proposed civil monetary penalty for the violation, under the penalty policy.

I. Initial Base Penalty

Offense Level: Level I. The Endangered Species Act schedule provides for an offense level of I for violation of a distance restriction by a non-commercial violator.

Intent Level: Level D. According to eyewitnesses, Mr. X deliberately and directly approached Humpback whales, violating the prohibition against approaching endangered species. The evidence indicates the violation was willful.

Initial Base Penalty: The penalty range is I D, Written Warning to \$3,000, with a midpoint of \$1,500

II. Adjustment Factors

History of Prior Offenses: Mr. X has no prior violations.

Other Factors: Although Mr. X refused to speak to the investigating officer, the refusal to speak, standing alone, is not a degree of lack of cooperation that creates a basis for an upward adjustment of the penalty.

Base Penalty After Application of Adjustment Factors: No decrease/increase.

III. Proceeds of the Unlawful Activity and Any Additional Economic Benefit

N/A

Total Penalty (I. + II. + III.): \$1,500

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:
 - a. Activity After Violation/Cooperation _____
 - b. 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: _____

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 Matrix for the National Marine Sanctuaries Act¹⁵

		Level of Culpability			
		A Unintentional	B Negligent	C Reckless	D Intentional
Gravity Offense Level	I	Written warning- \$1,000	Written warning- \$2,500	\$1,000-\$3,500	\$2,500-\$5,000
	II	\$1,000-\$3,500	\$2,500-\$5,000	\$3,500-\$7,500	\$5,000-\$10,000
	III	\$3,500-\$7,000	\$5,000-\$10,000	\$7,000-\$15,000	\$10,000-\$20,000
	IV	\$5,000-\$10,000	\$7,000-\$15,000	\$10,000-\$20,000	\$20,000-\$40,000
	V	\$7,000-\$15,000	\$10,000-\$20,000	\$20,000-\$40,000	\$40,000-\$80,000
	VI	\$15,000-\$30,000	\$30,000-\$60,000	\$60,000-\$110,000	\$110,000-statutory maximum

¹⁵ The National Marine Sanctuaries Act (16 U.S.C. § 1431 *et seq.*) has a statutory maximum of \$178,338 per violation, per the February 7, 2019 adjustment (*See* 84 Fed. Reg. 2445). However, maximum civil penalties are adjusted annually for inflation.

Penalty Matrix for the Lacey Act¹⁶

		Level of Culpability			
		A Unintentional	B Negligent	C Reckless	D Intentional
Gravity Offense Level	I Marking Offenses (not including false-labeling)	Written warning to statutory maximum			
	Offenses other than Marking Offenses* ⁺	N/A – Statute requires negligence	Written warning- \$1,500	Written warning- \$2,000	Written warning- \$2,500
	II	N/A – Statute requires negligence	Written warning- \$3,500	\$3,500-\$4,500	\$4,500-\$7,000
	III	N/A – Statute requires negligence	\$2,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000
	IV	N/A – Statute requires negligence	\$5,000-\$10,000	\$10,000-\$15,000	\$15,000- statutory maximum

* “False-Labeling” offenses require a culpability level of intentional.

⁺ If the violation involves fish or wildlife with a fair market value of less than \$350 and involves only the transportation, acquisition, or receipt of fish or wildlife taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty assessed shall not exceed the maximum provided for violation of said law, treaty, regulation, or the statutory maximum under the Lacey Act, whichever is less. *See* 16 U.S.C. § 3373(a)(1).

¹⁶ The Lacey Act (16 U.S.C. § 3371 *et seq.*) has a statutory maximum of \$27,075 per violation, per the February 7, 2019 adjustment (*See* 84 Fed. Reg. 2445). However, maximum civil penalties are adjusted annually for inflation.

Penalty Matrix for the Endangered Species Act^{17, 18}

		Level of Culpability			
		A Strict Liability ¹⁹	B Negligent	C Reckless	D Intentional
Gravity Offense Level	I Endangered	Written warning- statutory maximum*	Written warning- \$1,500	Written warning- \$2,000	Written warning- \$3,000
	Threatened		Written warning- \$750	Written warning- \$1,000	Written warning- \$1,500
	II Endangered	Written warning- statutory maximum*	\$3,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000
	Threatened		\$1,500-\$2,500	\$2,500-\$5,000	\$5,000-\$7,500
	III Endangered	Written warning- statutory maximum*	\$10,000-\$15,000	\$15,000-\$25,000	\$25,000-\$35,000
	Threatened		\$3,000-\$5,000	\$5,000-\$10,000	\$10,000-\$15,000
	IV Endangered	Written warning- statutory maximum*	\$15,000-\$25,000	\$25,000-\$35,000	\$35,000-statutory maximum
	Threatened		\$5,000-\$10,000	\$10,000-\$15,000	\$15,000-statutory maximum

* Currently \$1,686 for unknowingly committing a violation.

¹⁷ The Endangered Species Act (16 U.S.C. § 1531 *et seq.*) has a statutory maximum of \$52,596 per violation (knowing violations, endangered species), per the February 7, 2019 adjustment (*See* 84 Fed. Reg. 2445). However, maximum civil penalties are adjusted annually for inflation.

¹⁸ Use the penalty ranges set forth for “Threatened” unless the regulation is one implementing subsection (a)(1)(A), (B), (C), (D), (E), or (F); (a)(2)(A), (B), (C), or (D); (c); (d) (other than regulation relating to recordkeeping or filing of reports); (f); or (g) of section 9 of the Endangered Species Act.

¹⁹ The Endangered Species Act establishes a lower statutory maximum penalty for strict liability offenses.

Penalty Matrix for the Marine Mammal Protection Act²⁰

		Level of Culpability			
		A Unintentional	B Negligent	C Reckless	D Intentional
Gravity Offense Level	I	Written warning-\$500	Written warning-\$1,000	Written warning-\$1,500	Written warning-\$2,500
	II	Written warning-\$2,500	\$2,500-\$3,500	\$3,500-\$5,000	\$5,000-\$7,500
	III	\$2,500-\$5,000	\$3,500-\$7,500	\$7,500-\$10,000	\$10,000-\$15,000
	IV	\$5,000-\$7,500	\$7,500-\$12,500	\$12,500-\$20,000	\$20,000-statutory maximum

²⁰ The Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) has a statutory maximum of \$29,239 per violation, per the February 7, 2019 adjustment (*See* 84 Fed. Reg. 2445). However, maximum civil penalties are adjusted annually for inflation.

Penalty Matrix for the Northern Pacific Halibut Act of 1982²¹

		Level of Culpability			
		A Unintentional	B Negligent	C Reckless	D Intentional
Gravity Offense Level	I	Written warning-\$2,200	Written warning-\$4,400	\$2,200-\$6,600	\$6,600-\$8,800
	II	\$2,200-\$5,500	\$4,400-\$6,600	\$6,600-\$11,000	\$11,000-\$22,000
	III	\$5,500-\$11,000	\$11,000-\$16,500	\$16,500-\$22,000	\$22,000-\$44,000 Permit sanction of 5-20 days for subsequent violations*
	IV	\$11,000-\$16,500	\$16,500-\$27,500	\$22,000-\$48,000 Permit sanction of 10-20 days for subsequent violations*	\$44,000-\$66,000 Permit sanction of 20-60 days*
	V	\$16,500-\$27,500	\$27,500-\$44,000 Permit sanction of 10-20 days for subsequent violations*	\$44,000-\$71,500 Permit sanction of 20-60 days*	\$71,500-\$132,000 Permit sanction of 60-180 days*
	VI	\$27,500-\$44,000 Permit sanction of 5-20 days for subsequent violations*	\$44,000-\$71,500 Permit sanction of 20-60 days*	\$71,500-\$132,000 Permit sanction of 60-180 days*	\$132,000 - statutory maximum Permit sanction of up to one year*

* 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 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.

²¹ The Northern Pacific Halibut Act (16 U.S.C. § 773 *et seq.*) has a statutory maximum of \$242,069 per violation, per the February 7, 2019 adjustment (*See* 84 Fed. Reg. 2445). However, maximum civil penalties are adjusted annually for inflation.

APPENDIX 3
Offense Level Guidance
Magnuson-Stevens Act Schedule

VIOLATION	LEVEL
VIOLATIONS REGARDING GEAR AND BYCATCH MITIGATION REQUIREMENTS	
<p>Failing to affix vessel markings;</p> <p>Failing to comply with gear tag or marking requirements if not deployed or if deployed without gear limits;</p> <p>Failing to properly deploy seabird avoidance gear;</p> <p>Recreational or subsistence fishing with non-compliant gear;</p> <p>Failing to comply with bait requirements;</p> <p>Failing to comply with discharge or discard restrictions for bait or fish parts;</p> <p>Fishing for, or taking and retaining, any species of salmon by means of gear or methods other than recreational fishing gear or troll fishing gear, or gear authorized for treaty Indian fishing;</p> <p>Possessing, deploying, hauling, or carrying on board a fishing vessel a set net, trap or pot, longline, or commercial vertical hook and line that is not in compliance with the gear restrictions;</p> <p>Failing to comply with By-catch Reduction Device (BRD) requirements;</p> <p>Failing to comply with net and trap construction requirements;</p> <p>Failing to comply with sea turtle mitigation gear requirements;</p> <p>Failing to retain salmon harvested off the coast of Alaska in accordance with regulation;</p> <p>Damaging or stealing gear or fish – damage or loss less than \$2,000.</p>	I
	II

<p>Violating area specific gear requirements;²²</p> <p>Fishing with non-compliant gear;²³</p> <p>Having non-complying gear onboard or failing to have required gear onboard;</p> <p>Failing to have seabird avoidance gear onboard;</p> <p>Failing to comply with gear tag or marking requirements if deployed with gear limits;</p> <p>Failing to comply with salmon handling procedures specified in a Catch Monitoring and Control Plan (CMCP) and pre-offload meeting requirements.</p>	
<p>Violating area specific gear requirements;²⁴</p> <p>Fishing with non-compliant gear;²⁵</p> <p>Falsifying vessel markings.</p>	III
<p>Damaging or stealing gear or fish, damage or loss more than \$2,000;</p> <p>Dumping gear.</p>	IV

²² Violating area specific gear requirements may be either a level II offense or a level III offense, depending on: (1) the nature of the area; (2) how far into the area the vessel traveled; (3) how long the vessel was in the area; (4) the nature of the gear restriction; and (5) the type of gear used. It is an offense level II if the impact to the resource was moderate because, for example, the violation occurred over a relatively small area, the distance and time the gear was used was relatively short, or the gear in question did not cause significant harm to the resource. It is an offense level III if the impact to the resource was major because, for example, the violation occurred over a relatively large area, the distance and time the gear was used was relatively long, or the gear in question causes significant harm to the resource (i.e., a bottom dredge).

²³ Fishing with non-compliant gear may be either a level II or level III offense, depending on: (1) the nature of the fishery; (2) the nature of the gear restriction; and (3) the type of gear used. It is an offense level II if the impact to the resource was moderate because, for example, the fishery was rebuilt or at sustainable levels, or the gear restriction was designed to avoid some, but not all, unwanted impact on non-commercial sizes, species or critical habitats. It is an offense level III if the impact to the resource was major because, for example, the fishery was overfished, or the gear was of the type that was completely prohibited.

²⁴ See footnote 22.

²⁵ See footnote 23.

**VIOLATIONS REGARDING THE FACILITATION OF
ENFORCEMENT, SCIENTIFIC MONITORS, OR OBSERVERS**

<p>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;²⁶</p> <p>Submitting inaccurate or false data, statements, or reports;²⁷</p> <p>Discarding, releasing, or transferring fish before bringing it aboard or making it available to an observer for sampling;</p> <p>Untimely or no notice of landing IFQ species or landing at other than an approved location;</p> <p>Failing to record or retain video records;</p> <p>Providing inaccurate information to an authorized officer, if accurate information is subsequently provided voluntarily in a timely manner;</p> <p>Failing to provide a safe boarding ladder;</p> <p>Failing to monitor channel 16.</p>	I
<p>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;²⁸</p>	II

²⁶ 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 may be either a level I offense or a level II offense, depending on: (1) the gravity of the violation and (2) the type of information involved. It is an offense level I if the failure does not completely prevent the observer from performing their duties, or the withheld information does not significantly affect the accuracy or reliability of the data collection or the monitoring of the resource. It is an offense level II if the failure completely or significantly prevents the observer from performing their duties, or the withheld information significantly affects the accuracy or reliability of the data collection or monitoring of the resource.

²⁷ Submitting inaccurate data, statements, or reports may be a level I, II, or III offense. It is an offense level I where the adverse impact on the statutory or regulatory program is insignificant and there is no economic gain from the violation. It is an offense level II where the adverse impact on the statutory or regulatory program is minor or there is some economic gain from the violation. It is an offense level III where the adverse impact on the statutory or regulatory program is significant, or there is a significant economic gain from the violation.

²⁸ See footnote 26.

<p>Failing to maintain required observer or sea sampler coverage;</p> <p>Failing to maintain or obtain approval of sampling area;</p> <p>Tampering with, discarding, or otherwise destroying observer samples;</p> <p>Submitting inaccurate or false data, statements, or reports;²⁹</p> <p>Discarding, releasing, or transferring fish before bringing it aboard or making it available to an observer for sampling;³⁰</p> <p>Providing false statements to an authorized officer;</p> <p>Opposing, impeding, or interfering with any NMFS-approved observer or authorized officer;</p> <p>Harassing or intimidating any NMFS-approved observer or authorized officer;³¹</p> <p>Failing to provide or maintain safe conditions for an observer where there is no injury to the observer;</p> <p>Failing to notify NMFS prior to fishing or register a fishing trip in the Observer Declare and Deploy System;</p> <p>Refusing to carry an observer or fishing without an observer.³²</p>	
<p>Failing to maintain or operate flow scale or other scales to obtain accurate weights;</p> <p>Failing to comply with flow scale or other scale testing and certification requirements;</p>	<p>III</p>

²⁹ See footnote 27.

³⁰ This offense level only applies where a catch share or ITQ/IFQ system is involved.

³¹ Harassing or intimidating a NMFS-approved observer may be a level II or III offense. It is a level II offense where the harassment or intimidation causes minimal interference with the observer’s work, and there is no economic gain from the violation. It is a level III offense where the harassment or intimidation causes significant interference with the observer’s work, or there is some economic gain from the violation. Note that section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1859) makes these violations criminal offenses. Major violations will be considered appropriate for criminal referral.

³² Failure to carry an observer may be a level II or III offense. It is a level II offense where the adverse impact on the statutory or regulatory program is minor and there is no economic gain from the violation. It is a level III violation where the adverse impact on the statutory or regulatory program is significant or there is a significant economic gain from the violation.

<p>Submitting inaccurate or false data, statements, or reports;³³</p> <p>Harassing or intimidating any NMFS-approved observer or authorized officer;³⁴</p> <p>Failing to provide or maintain safe conditions for an observer where there is injury to the observer;</p> <p>Refusing to carry an observer or fishing without an observer.³⁵</p>	
<p>Refusing to allow a boarding/entry by an authorized officer or inspector to area of custody, or inspection;</p> <p>Assaulting, resisting, threatening, or coercing any NMFS-approved observer or authorized officer.³⁶</p>	IV
<p>Assaulting, resisting, threatening, or coercing any NMFS-approved observer or authorized officer.³⁷</p>	V
VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, AND PERMIT REQUIREMENTS	
<p>No vessel/operator permit onboard;</p> <p>Fishing for, taking, retaining, receiving, processing, or possessing fish without a general/open access permit, or without a required letter of authorization;</p>	

³³ See footnote 27.

³⁴ See footnote 31.

³⁵ See footnote 32.

³⁶ Assaulting, resisting, threatening, or coercing any NMFS-approved observer or authorized officer may be a level IV or V offense. It is a level IV offense where the assault, resistance, threats or coercion causes minor to moderate fear on the part of the observer, minor to moderate interference with the observer’s work, and there is no economic gain from the violation. It is a level V offense where the assault, resistance, threats or coercion causes the observer significant fear, significant interference with the observer’s work, causes the observer to seek to be removed from the vessels, causes the observer provide to remove the observer from the vessel, or there is some economic gain from the violation. Note that section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1859) makes these violations criminal offenses. Major violations will be considered appropriate for criminal referral.

³⁷ See footnote 36.

<p>Fishing for, taking, retaining, receiving, processing, or possessing limited access/entry or catch share species without holding a valid permit if the permit is expired but renewable;</p> <p>Failing to report changes in permit information;</p> <p>Delivering catch to a non-permitted first receiver, or purchasing, possessing, or receiving catch without a dealer or registered buyer permit, provided the transaction is reported consistent with requirements of dealer permit;</p> <p>Providing inaccurate information in connection with application, declaration, record, or report if the information is immaterial;</p> <p>Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failing to submit affidavits or other required forms in a non-quota fishery;³⁸</p> <p>Failing to provide legible logbooks or other reports;</p> <p>Altering, erasing, or mutilating a permit or application (sport/recreational);</p> <p>Failing to comply with VMS/days at sea reporting;³⁹</p> <p>Failing to maintain operating VMS unit (Dockside only).</p>	<p>I</p> <p>I</p>
<p>Fishing for, taking, retaining, receiving, processing, or possessing limited access/entry or catch share species without holding a valid permit, if eligible for a permit;</p> <p>Purchasing, possessing, or receiving from an unpermitted or improperly permitted vessel;</p>	<p>II</p>

³⁸ Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failing to submit affidavits or other required forms in a non-quota fishery, may be either a level I or level II offense. It is an offense level I where the adverse impact on the statutory or regulatory program is insignificant and there is no economic gain from the violation. It is an offense level II where the adverse impact on the statutory or regulatory program is minor or there is some economic gain from the violation.

³⁹ Failing to comply with VMS/days at sea reporting may be either a level I or level II offense. It is an offense level I where there is no adverse impact on the statutory or regulatory program. It is an offense level II where there is an adverse impact on the statutory or regulatory program such as where the DAS violation is related to landing an overage.

<p>Failing to comply in a timely fashion with log report, reporting, record retention, inspection, or other requirements, including failure to submit affidavits or other required forms in a quota fishery;⁴⁰</p> <p>Delivering catch to a non-permitted first receiver, or purchasing, possessing, or receiving catch without a dealer or registered buyer permit, when the transaction is not reported consistent with requirements of dealer permit;</p> <p>Purchasing, possessing, or receiving catch when required reports are delinquent;</p> <p>Failing to provide accurate logbooks or other reports;</p> <p>Failing to complete and obtain an IFQ transaction approval code prior to transporting IFQ species from the landing location;</p> <p>Failing to have sufficient IFQ allocation in either the vessel account or its linked shareholder account at the time of the advance notification of landing;</p> <p>Failing to comply with VMS/days at sea reporting.⁴¹</p>	
<p>Fishing for, taking, retaining, receiving, processing, or possessing limited access/entry or catch share species without holding a valid permit if ineligible for a permit;</p> <p>Altering, erasing, or mutilating a permit or application;</p> <p>Providing false information in connection with application, declaration, record, logbook entry, or report if the information is material;</p> <p>Failing to have an operational and NMFS-approved VMS unit onboard.</p>	III
<p>Fishing for, taking, retaining, receiving, processing, or possessing particularly vulnerable, depleted, or overfished species without a required permit;</p> <p>Tampering with, damaging, destroying, altering, or in any way distorting, rendering useless, inoperative, ineffective, or inaccurate the VMS or VMS unit.</p>	IV
<p>Failing to minimize catch of prohibited species.</p>	V

⁴⁰ See footnote 38.

⁴¹ See footnote 39.

VIOLATIONS REGARDING TIME, AREA, EFFORT, OR SECTOR RESTRICTIONS	
<p>Fishing with excess crew;</p> <p>Entering a closed area or transiting a closed area with gear not properly stowed;⁴²</p> <p>Subsistence or sport/recreational fishing: a) out of season (including zero bag limit closures); b) in a closed area, or c) illegally in the EEZ;</p> <p>Engaging in recreational fishing while aboard a vessel engaged in commercial fishing or possessing in excess of regulatory limits fish caught as bycatch while trawling;</p> <p>Fishing for, or taking and retaining, any species of salmon in violation of any notice, or in violation of any applicable area, season, species, zone, gear, daily bag limit, or length restriction;</p> <p>Fishing in violation of a maximum retainable amount.</p>	I
<p>Fishing in a closed area or during a closed season;⁴³</p> <p>Entering a closed area or transiting a closed area with gear not properly stowed;⁴⁴</p> <p>Failing to comply with permit restrictions or IFQ transfer requirements;</p> <p>Fishing in multiple IFQ management areas on a single trip except as authorized.</p>	II

⁴² Entering or transiting a closed area may be either a level I offense or a level II offense, depending on: (1) the nature of the area; (2) how far into the area the vessel travels; and (3) how long the vessel is in the area. It is an offense level I if the impact to the resource or regulatory regime was minor because, for example, the closed area in which the violation occurred was relatively large, or the distance and time in the closed area was relatively short. It is an offense level II if the impact to the resource or regulatory regime was moderate because, for example, the closed area in which the violation occurred was relatively small, or the distance and time in the closed area was relatively long.

⁴³ Fishing in a closed area may be either a level II offense or a level III offense, depending on: (1) the nature of the area; (2) how far into the area the vessel travels; (3) how long the vessel is in the area; (4) the type of gear deployed; and (4) the amount of fish harvested in the closed area. It is an offense level II if the impact to the resource was moderate because, for example, the fishery was rebuilt or at sustainable levels, the distance and time in the closed area was relatively short, or little to no fish were actually caught in the closed area. It is an offense level III if the impact to the resource was major because, for example, the fishery was overfished, the distance and time in the closed area was relatively long, the gear was of the type that was completely prohibited, or a large amount or high value of fish were caught in the closed area.

⁴⁴ See footnote 42.

<p>Fishing in a closed area or during a closed season;⁴⁵</p> <p>U.S. vessel fishing illegally in U.S. EEZ;</p> <p>Failing to Collect or Submit Fees under a Buyback Program.</p>	<p>III</p>
<p>Using any fishing vessel to engage in fishing in federal or state waters, on the high seas or in the waters of another country after the Secretary has made a payment to the owner of that vessel under section 312(b)(2) of the Act;</p> <p>Foreign fishing vessel transiting U.S. waters with fishing gear not properly stowed;</p> <p>U.S. vessel transiting foreign waters with gear not properly stowed.</p>	<p>V</p>
<p>Foreign fishing vessel fishing in U.S. waters without a permit;⁴⁶</p> <p>U.S. vessel fishing in foreign waters without permission.⁴⁷</p>	<p>VI</p>
<p>VIOLATIONS REGARDING SIZE/CONDITION/QUANTITY OF FISH OR LANDING/POSSESSION REQUIREMENTS</p>	
<p>Fishing for, receiving, trading, landing, or possessing fish in excess of what is allowed by regulation, permit, notice, or other means, where the overage exceeds the catch limit by up to and including 50% or has a fair market value of \$500 or less;</p> <p>Taking, receiving, trading, or possessing more general category scallops than allowed by regulation, permit, notice, or other means, up to 50% overage;</p> <p>Taking, receiving, trading, or possessing more limited access area scallops than allowed by regulation, permit, notice, or other means, between 3% and 5% overage;</p> <p>Catching undersized or oversized fish/lobster or failing to maintain fish/lobster in required/proper condition;</p>	<p>I</p>

⁴⁵ See footnote 43.

⁴⁶ The nature of the fishing activity may warrant a lower gravity level in some cases (e.g., violations involving subsistence fishing by the crew).

⁴⁷ See footnote 46.

<p>Possessing prohibited species;⁴⁸</p> <p>Engaging in directed fishing, where the fish harvested exceeds the allowed amount.⁴⁹</p>	
<p>Fishing for, receiving, trading, landing or possessing fish in excess of what is allowed by regulation, permit, notice, or other means, where the overage exceeds the catch limit by between 50% and 100%;</p> <p>Taking, receiving, trading, or possessing more general category scallops than allowed by regulation, permit, notice, or other means, by more than a 50% overage;</p> <p>Taking, receiving, trading, or possessing more limited access area scallops than allowed by regulation, permit, notice, or other means, between 5% and 50% overage;</p> <p>Possessing of prohibited species;⁵⁰</p> <p>Illegally discarding fish or violating fish retention requirement;</p> <p>Failing to land sharks with fins naturally attached or possessing shark fins onboard a fishing vessel without such fins being attached to the corresponding carcass(es);⁵¹</p> <p>Engaging in directed fishing, where the fish harvested exceeds the allowed amount;⁵²</p> <p>Retaining or delivering unprocessed groundfish in excess of directed fishing standards in a single calendar year between 100% and 200% of limit.</p>	<p>II</p>

⁴⁸ A possessing prohibited species violation may be either a level I offense or a level II offense, depending on: (1) the amount involved and (2) the extent of adverse impact on the regulatory program. It is an offense level I if the possession involves relatively low numbers of the species or the impact on the regulatory program is minor. It is an offense level II if the possession involves relatively high numbers of the species or the impact on the regulatory program is more severe.

⁴⁹ Directed fishing violations may be either a level I or level II offense, depending on: (1) the fishery and (2) the amount or percentage of fish harvested in violation of the directed fishing restrictions. It is an offense level I if the fishery is at rebuilt or sustainable levels, or the fish harvested exceeds the allowed amount by less than 50%. It is an offense level II if the fishery is at non-sustainable or overfished levels, or the fish harvested exceeds the allowed amount by 50% or more.

⁵⁰ See footnote 48.

⁵¹ Landing of shark without their fins naturally attached, and possession of fins that are not attached to the corresponding carcass(es), may be a level II or III offense depending on the number of fins involved. It will generally be a level II offense in cases involving 5 or few fins and a level III offense in cases involving more than 5 fins.

⁵² See footnote 49.

<p>Fishing for, receiving, trading, landing or possessing fish in excess of what is allowed by regulation, permit, notice, or other means, where the overage exceeds the catch limit by 100% or more;</p> <p>Taking, receiving, trading, or possessing more limited access area scallops than allowed by regulation, permit, notice, or other means, by more than a 50% overage;</p> <p>Failing to land sharks with fins naturally attached or possessing of shark fins onboard a fishing vessel without such fins being attached to the corresponding carcass(es);⁵³</p> <p>Retaining or delivering unprocessed groundfish in excess of directed fishing standards in a single calendar year over 200% of limit.</p>	III
<p>Removing the fins from a shark and discarding them at sea, or transferring a shark fin that is not naturally attached to the corresponding carcass from one vessel to another at sea.</p>	IV
<p>Violating food safety regulations.</p>	VI
<p>VIOLATIONS REGARDING TRANSFER, PURCHASE, TRADE, SALE (AND ATTEMPTS)</p>	
<p>Selling, bartering, offering to sell, offering to barter, or purchasing any salmon taken in the course of recreational salmon fishing;</p> <p>Importing any fish without submitting complete and accurate information as required under the Seafood Import Monitoring Program.⁵⁴</p>	I
<p>Purchasing, receiving, transferring, trading, or selling more fish than allowed by regulation, permit, notice, or other means; illegal transfer from vessel at sea;</p>	II

⁵³ See footnote 51.

⁵⁴ Importing any fish without submitting complete and accurate information as required under the Seafood Import Monitoring Program may be a level I, II or III offense. It is a level I offense where there are one or two minor omissions or inaccuracies that have no impact on NOAA’s ability to make a determination on the admissibility of the shipment. Where there are multiple omissions or inaccuracies, but they do not impede NOAA’s ability to assess the admissibility of a shipment, it is a level II offense. It is a level III offense where false information was knowingly submitted or where the omissions or inaccuracies are numerous or adversely impact NOAA’s ability to make a determination on the admissibility of the shipment.

<p>Purchasing, receiving, transferring, trading, or selling otherwise unlawfully landed fish;⁵⁵</p> <p>Importing any fish without submitting complete and accurate information as required under the Seafood Import Monitoring Program;⁵⁶</p> <p>Failing to maintain records as required under the Seafood Import Monitoring Program.</p>	
<p>Purchasing, receiving, transferring, trading, or selling otherwise unlawfully landed fish;⁵⁷</p> <p>Importing, exporting, transporting, selling, receiving, acquiring, or purchasing in interstates or foreign commerce any fish taken, possessed, transported or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party;</p> <p>Importing any fish without submitting complete and accurate information as required under the Seafood Import Monitoring Program;⁵⁸</p> <p>Importing, exporting or re-exporting fish subject to the Seafood Import Monitoring Program without a valid IFTP;</p> <p>Failing to make records required to be maintained under the Seafood Import Monitoring Program available for inspection.</p>	III
<p>VIOLATIONS REGARDING HIGHLY MIGRATORY SPECIES (HMS) VIOLATIONS OF ACTS IMPLEMENTING INTERNATIONAL AGREEMENTS Western and Central Pacific Fisheries Convention Implementation Act Atlantic Tunas Convention Act U.S.-Canada Albacore Tuna Treaty</p>	
<p>Failing to release tuna which will not be retained immediately and with minimal injury;</p> <p>Removing tail tag before permitted;</p> <p>Failing to report taking of a tagged tuna;</p>	I

⁵⁵ Purchasing, receiving, transferring, trading, or selling otherwise unlawfully landed fish may be either a level II or a level III offense. It is a level III offense where there is an adverse impact on the statutory or regulatory program, such as where the violation is related to receiving an overage.

⁵⁶ See footnote 54.

⁵⁷ See footnote 55.

⁵⁸ See footnote 54.

<p>Vessel not clearly marked;</p> <p>Failing to submit, or ensure submission of, an entry or exit notification for the Eastern High Seas Special Management Area;</p> <p>Failing to comply with protection and reporting measures relating to specific species of concern (e.g., sea turtles and oceanic whitetip, silky, and whale sharks).</p>	
<p>Fishing in excess of catch limits (HMS Angling and Atlantic Tunas General Category);</p> <p>Selling, offering for sale, or transferring any recreationally caught Atlantic bluefin tuna, swordfish, billfish, or other HMS;</p> <p>Fishing within 100 yards of corkline of purse seiner fishing for bluefin tuna;</p> <p>Failing to request a purse seine vessel, net, or fish inspection;</p> <p>Failing to maintain reports, submit reports in a timely manner, or submitting incomplete or inaccurate reports (Dealer);</p> <p>Failing to report landing of commercial-sized bluefin tuna (Dealer);</p> <p>Failing to tag a tuna (Dealer);</p> <p>Retaining tuna caught under tag and release program;</p> <p>Discarding catch when required to retain all catch;</p> <p>Fishing for or retaining undersized tuna, swordfish, or other HMS;</p> <p>Landing tuna or other HMS in other than prescribed forms;</p> <p>Fishing for, catching, possessing, retaining, or landing HMS without the appropriate permit;</p> <p>Failure to submit, or ensure submission of, a transshipment report;</p> <p>Failing to properly mark a container holding tuna for export;</p> <p>Submerging lights underwater, suspending or hanging lights over the side of the vessel, or using lights in a manner other than as needed for vessel operations.</p>	<p>II</p>
<p>Purchasing, transferring, or receiving tuna, swordfish, or other HMS for a commercial purpose without a license or from a vessel without the appropriate permit;</p>	<p>III</p>

<p>Transferring, purchasing, or receiving Atlantic bluefin tuna, swordfish, or other HMS from any person or vessel without a valid dealer permit;</p> <p>Transshipping to or with an unauthorized vessel or without a required observer, receiving transshipments from more than one fishing vessel at a time;</p> <p>Purchasing, receiving, transferring, selling, offering for sale, importing, exporting, or having custody, possession, or control of tuna or other HMS taken in violation;</p> <p>Selling, offering for sale, or transferring any Atlantic bluefin tuna, swordfish, or other HMS to any person other than a permitted dealer.</p>	
<p>Fishing in excess of quota, allocation, or incidental catch limits;</p> <p>Purchasing or transporting with a buy boat any tuna that is captured incidentally by longlines.</p>	IV
<p>Using a fishing vessel equipped with purse seine gear to fish in a closed area;</p> <p>Setting a purse seine around, near or in association with a Fish Aggregating Device (FAD) or deploying or servicing a FAD during a FAD closure or prohibited period;</p> <p>Using a fishing vessel to fish in the Pacific Ocean using longline gear inside and outside the Convention Area on the same fishing trip when prohibited;</p> <p>U.S. vessel fishing in foreign waters without permission with gear not properly stowed;</p> <p>Fishing during closure.</p>	V
<p>U.S. vessel fishing in foreign waters without permission.⁵⁹</p>	VI

⁵⁹ See footnote 46.

National Marine Sanctuaries Act (NMSA) Schedule

The following criteria will be used to assess the impact to the resource in order to determine the appropriate charging level for violations of the NMSA:

Minor impact – Adverse effects on sanctuary resources or qualities where the environment will return to the condition that existed prior to the violation.

Moderate impact – Adverse effects on sanctuary resources or qualities where the environment may fully recover in the long-term or there are some lasting effects from the violation.

Major impact – Adverse effects on sanctuary resources or qualities where the environment will not likely return to the condition that existed prior to the violation.

	Minor	Moderate	Major
Duration	Short-term	Medium-term	Long-term or Permanent
Geographic extent	Small	Medium	Large
Magnitude or intensity	Measurable changes	Noticeable changes	Acute or obvious changes
Sensitivity or quality of resource	Not sensitive and is common	Some sensitivity	Highly sensitive or unique
Resiliency	High ability to return to pre-impact condition	May be lasting effects	Unable to return to pre-impact condition

VIOLATION	LEVEL
VIOLATIONS REGARDING SEABED / LAKEBOTTOM ACTIVITIES	
Anchoring in a prohibited manner or area, causing no, unknown or minor impact to the resource; Collection with minor impact to the sanctuary.	I
Anchoring in a prohibited manner or area, causing at least moderate impact to the resource; Alteration or destruction of seabed or lake bottom, including dredging, drilling, coring, and construction with minor impact to the sanctuary; Breaking, taking, cutting, removing, damaging, or possessing any bottom formation with minor impact to the sanctuary.	II

<p>Mineral or hydrocarbon exploration, development, or production with minor impact to the sanctuary;</p> <p>Alteration or destruction of seabed or lake bottom, including dredging, drilling, coring, and construction, with moderate impact to the sanctuary;</p> <p>Breaking, taking, cutting, removing, damaging, or possessing any bottom formation with moderate impact to the sanctuary;</p> <p>Collection with moderate impact to the sanctuary.</p>	III
<p>Mineral or hydrocarbon exploration, development, or production with moderate impact to the sanctuary;</p> <p>Anchoring in a prohibited manner or area, causing major impact to the resource.</p>	IV
<p>Mineral or hydrocarbon exploration, development, or production with major impact to the sanctuary;</p> <p>Alteration or destruction of seabed or lake bottom, including dredging, drilling, coring, and construction, with major impact to the sanctuary;</p> <p>Breaking, taking, cutting, removing, damaging, or possessing any bottom formation with major impact to the sanctuary;</p> <p>Collection with major impact to the sanctuary.</p>	V
VIOLATIONS REGARDING FISHING	
<p>Possessing prohibited gear;</p> <p>Using prohibited gear such as pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns, or similar devices known as spearguns;⁶⁰</p> <p>Fishing in prohibited areas such as Wildlife Management Areas, Ecological Reserves, Special Use Areas, or a Sanctuary Protected Area (SPA) – 15 fish or less.⁶¹</p>	I

⁶⁰ This can be a level I or II violation. It will be a level I violation when involving recreational fishers and a level II violation when it involves commercial operators.

⁶¹ The gravity level can be increased in situations involving fewer fish where the fish caught are mature, long-lived, and slow reproducing species, whose loss can have significant effects on population dynamics.

Using prohibited gear such as pole spears, air rifles, bows and arrows, slings, Hawaiian slings, rubber powered arbaletes, pneumatic and spring-loaded guns, or similar devices known as spearguns; ⁶²	II
Using prohibited gear such as bottom longlines, traps, and nets; ⁶³	
Fishing in prohibited areas such as Wildlife Management Areas, Ecological Reserves, Special Use Areas, or a Sanctuary Protected Area (SPA) – more than 15 fish but less than 30. ⁶⁴	
Using prohibited gear such as bottom longlines, traps, and nets; ⁶⁵	III
Fishing in prohibited areas such as Wildlife Management Areas, Ecological Reserves, Special Use Areas, or a Sanctuary Protected Area (SPA) – over 30 fish.	
Trawling.	IV
VIOLATIONS REGARDING EXPLOSIVES	
Possessing explosives, electrical charges, poisons, or similar destructive devices.	I
Using explosives, electrical charges, poisons, or similar destructive devices with less than major impact on sanctuary resources.	III
Using explosives, electrical charge, poisons, or similar destructive devices with major impact on sanctuary resources.	VI
VIOLATIONS REGARDING VESSEL / AIRCRAFT	
Motorized personal watercraft operations in prohibited areas; Aircraft disturbance of marine mammals or seabirds, including low overflight;	I

⁶² See footnote 60.

⁶³ This can be a level II or II violation. It will be a level II violation when involving recreational fishers and a level II when involving commercial operations.

⁶⁴ See footnote 61.

⁶⁵ See footnote 63.

Using moorings in a prohibited manner; Operating vessel or aircraft in prohibited areas or in a prohibited manner (including groundings) that results in minor impact to the sanctuary.	
Operating vessel or aircraft in prohibited areas or in a prohibited manner (including groundings) that results in moderate impact to the sanctuary, or in Area to be Avoided.	III
Operating vessel or aircraft in prohibited areas, or in a prohibited manner (including groundings) that results in major impact to the sanctuary.	V
VIOLATIONS REGARDING HISTORICAL / CULTURAL RESOURCES	
Disturbing, damaging, destroying, moving, removing, salvaging, recovering, injuring, altering, or possessing historical or cultural resources (or attempting the same) that results in minor impact to the sanctuary; Using grappling hooks, suction, conveyors, dredging, wrecking, or anchoring devices that results in minor impact to the sanctuary.	I
Disturbing, damaging, destroying, moving, removing, salvaging, recovering, injuring, altering, or possessing historical or cultural resources (or attempting same) that results in moderate impact to the sanctuary; Using grappling hooks, suction, conveyors, dredging, wrecking, or anchoring devices that results in moderate impact to the sanctuary.	III
Disturbing, damaging, destroying, moving, removing, salvaging, recovering, injuring, altering, or possessing historical or cultural resources (or attempting same) that results in major impact to the sanctuary; Using grappling hooks, suction, conveyors, dredging, wrecking, or anchoring devices that results in major impact to the sanctuary.	V
VIOLATIONS REGARDING DISCHARGES, DEPOSITS AND ABANDONMENT OF VESSELS	
Discharging or depositing, from within sanctuary boundaries, minor amounts of any non-exempt material or other matter (e.g., hydrocarbons or hazardous substances, fuel, oil, oily bilge waste; unprocessed, non-hazardous trash or raw material, or entangling material) that results in minor impact to the sanctuary;	I

Discharging or depositing, from beyond sanctuary boundaries, any non-exempt material or matter that subsequently enters and injures a Sanctuary resource and results in minor impact to the sanctuary.	
Discharging or depositing, from within sanctuary boundaries, any non-exempt material or other matter (e.g., hydrocarbons or hazardous substances, fuel, oil, oily bilge waste; unprocessed, non-hazardous trash or raw material, or entangling material) that results in moderate impact to the sanctuary; Discharging or depositing, from beyond sanctuary boundaries, any non-exempt material or matter that subsequently enters and injures a Sanctuary resource and results in moderate impact to the sanctuary; Depositing wrecks / desertion or abandonment of vessel. ⁶⁶	III
Depositing wrecks / desertion or abandonment of vessel. ⁶⁷	IV
Discharging or depositing, from within sanctuary boundaries, any non-exempt material or other matter (e.g., hydrocarbons or hazardous substances, fuel, oil, oily bilge waste, unprocessed, non-hazardous trash or raw material, or entangling material) that results in major impact to sanctuary; Discharging or depositing, from beyond sanctuary boundaries, any non-exempt material or matter that subsequently enters and injures a Sanctuary resource and results in major impact to the sanctuary; Depositing wrecks / desertion or abandonment of vessel. ⁶⁸	V
VIOLATIONS REGARDING LIVING MARINE RESOURCES	
Attracting fish.	I
Injuring, moving, removing, taking, possessing, harvesting, landing, damaging, disturbing, or possessing (or attempting the same) living marine specimens (e.g., sharks, rays, coral, live rock, tropical fish, invertebrates, algae, marine plants, etc.) with minor impact to the sanctuary.	II

⁶⁶ This can be a level III, IV or V violation depending on the nature of the vessel, the location of the vessel; the potential for the vessel to be hazardous to navigation, sanctuary resources, or other sanctuary users.

⁶⁷ See footnote 66.

⁶⁸ See footnote 66.

Injuring, moving, removing, taking, possessing, harvesting, landing, damaging, disturbing, or possessing (or attempting the same) living marine specimens (e.g., sharks, rays, coral, live rock, tropical fish, invertebrates, algae, marine plants, etc.) with moderate impact to the sanctuary.	III
Releasing or introducing non-native species into the sanctuary.	IV
Injuring, moving, removing, taking, possessing, harvesting, landing, damaging, disturbing, or possessing (or attempting the same) living marine specimens (e.g., sharks, rays, coral, live rock, tropical fish, invertebrates, algae, marine plants, etc.) with major impact to the sanctuary.	V
MISCELLANEOUS	
Defacing, damaging, or removing any signage, boundary markers, stakes, mooring buoys, boundary buoys, trap buoys, scientific equipment, navigation aids, notices, or placards that results in no damage or minor damage to a sanctuary resource; Conducting activities without a permit that cause minor impact to a sanctuary resource; Violating a sanctuary permit condition or term.	I
Defacing, damaging, or removing any signage, boundary markers, stakes, mooring buoys, boundary buoys, trap buoys, scientific equipment, navigation aids, notices, or placards that results in moderate damage to a sanctuary resource.	II
Defacing, damaging, or removing any signage, boundary markers, stakes, mooring buoys, boundary buoys, trap buoys, scientific equipment, navigation aids, notices, or placards that results in major damage to a sanctuary resource; Conducting activities without a permit that cause moderate impact to a sanctuary resource.	III
Conducting activities without a permit that cause major impact to a sanctuary resource.	V

Lacey Act Schedule

VIOLATION	LEVEL
MARKING VIOLATIONS	
Importing, exporting, or transporting in interstate commerce any container of fish (including shellfish) which has not been marked in accordance with applicable regulations and/or laws.	I
OTHER THAN MARKING VIOLATIONS	
<p>The following offenses when the amount of wildlife in question is a small quantity or the effect on the resource or the conservation scheme is relatively minor:</p> <p>False labeling offenses;</p> <p>Attempt to or import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;</p> <p>Attempt to or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;</p> <p>Within the special maritime and territorial jurisdiction of the United States, attempt to or possess any fish or wildlife taken, possessed, transported, or sold in violation of any foreign or Indian tribal law.</p>	III
<p>The following offenses when the amount of wildlife in question is a large quantity or the effect on the resource or the conservation scheme is relatively severe:</p> <p>False labeling offenses;</p> <p>Attempt to or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish or wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law;</p> <p>Attempt to or import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States or in violation of any Indian tribal law;</p> <p>Within the special maritime and territorial jurisdiction of the United States, attempt to or possess any fish or wildlife taken, possessed, transported, or sold in violation of any foreign or Indian tribal law.</p>	IV

Endangered Species Act Schedule

VIOLATION	LEVEL
TAKING VIOLATIONS	
Collecting parts (Endangered or Threatened).	I
Harassment (Endangered or Threatened), or attempt to do so; Stellar Sea Lion violations including approaching designated rookery or haul-out in buffer area or on land.	II
Wounding, injuring, hunting, or capturing an Endangered or Threatened Species, or attempting to do so; Stellar Sea Lion violations including fishing within a designated rookery or haul-out buffer area, or discharging a firearm within 100 yards of a sea lion.	III
Killing an Endangered or Threatened Species, or attempting to do so.	IV
TRANSPORTATION AND TRANSACTIONS VIOLATIONS	
Import/Export for personal use (Endangered or Threatened); Possess, deliver, carry, transport, sell or ship illegally taken Endangered or Threatened Species in interstate or foreign commerce for personal use; Trade in violation of CITES for personal use.	II
Import/Export for commercial use (Endangered or Threatened); Possess, deliver, carry, transport, sell or ship illegally taken Endangered or Threatened Species in interstate or foreign commerce for commercial use; Trade in violation of CITES for commercial use.	III

VIOLATIONS RELATED TO ENFORCEMENT, MONITORING, AND OBSERVERS	
Observer interference; Interference with a lawful investigation or inspection.	IV
OTHER VIOLATIONS (ENDANGERED OR THREATENED SPECIES)	
Violating distance restrictions for watchable wildlife (non-commercial); Failure to maintain records as required by federal regulation or permit.	I
Violating certificate of exemption regulations; Violating distance restrictions for watchable wildlife (commercial); Failure to allow inspection of records as required by federal regulation or permit.	II
Violating the conditions of a permit issued for research or propagation; Failing to comply with the terms and conditions of an incidental take permit; Dumping fish or other matter (including nets or other gear).	III
Refusing to allow a boarding, entry to an area of custody, or inspection; Interfering with an investigation; Violations of speed restrictions by vessels greater than or equal to 65ft (19.8m) in overall length. ⁶⁹	IV

⁶⁹ This offense is also listed under the Marine Mammal Protection Act (MMPA), but should be charged using the Endangered Species Act penalty schedule absent exceptional circumstances warranting charging under the MMPA.

VIOLATIONS RELATED TO TURTLE EXCLUDER DEVICES (TEDS)		
Discrepancies <u>unlikely to capture more turtles than vessels with fully compliant TEDs</u> , including but not limited to:		I
TED ANGLE	> 55 to < 58 degrees	
BAR SPACING	Bent bar > 4" to < 5"	
WEBBING FLAP NETTING	Hole / gaps in TED netting between 2"- 4"	
DOUBLE COVER (DC) OPENING		
1 ⁷⁰ Forward Cut	19" to < 20"	
2 Flap attachment	> 24" to 36"	
3 OVERLAP	> 15" to 16"	
4 Leading Edge Cut	54" to < 56"	
71" OPENING		
1 Forward Cut	18" to < 26"	
2 Flap length	> 24" to 36" beyond posterior edge of grid	
3 flap attachment	> 6" to 12" beyond posterior edge of grid	
4 Leading edge Cut	54" to < 71"	
5 Escape opening	64" to < 71"	
44" INSHORE OPENING		
5 Escape Opening	42" to < 44" Horizontally 15" to < 20" Vertically	
Discrepancies <u>likely to capture more turtles than vessels with fully compliant TEDs</u> , including but not limited to:		
TED ANGLE	58 to < 61 degrees	
BAR SPACING	Bent bar 5" to < 7"	
WEBBING FLAP NETTING	Holes/gaps in TED netting greater than 4"	
FLOTATION	Undersized floats on bottom shooting TEDs	

⁷⁰ Numbers correspond to Step Numbers on NOAA's Guide for Checking TEDs, available at <http://www.sefsc.noaa.gov/labs/mississippi/ted/regulations.htm>.

DOUBLE COVER (DC) OPENING		
1 Forward Cut	16" to < 19"	
2 Flap attachment	> 36"	
3 OVERLAP	> 16" to < 18"	
4 Leading Edge Cut	52" to < 54"	
71" OPENING		
1 Forward Cut	16" to < 18"	
2 Flap length	> 36" beyond posterior edge of grid	
3 Flap attachment	> 12" beyond posterior edge of grid	
4 Leading edge cut	52" to < 54"	
5 Escape Opening	44" to < 64"	
44" INSHORE OPENING		
5 Escape Opening	34" to < 42" Horizontally 10" to < 15" Vertically	
Discrepancies <u>likely to capture most turtles encountered</u> , including but not limited to:		
TED ANGLE	61 to < 71 degrees	
BAR SPACING	Bent Bar 7" or more; Missing Bar	
FLOTATION	Insufficient number of floats on bottom shooting TEDs	
DOUBLE COVER (DC) OPENING		
1 Forward Cut	< 16"	
3 OVERLAP	18" to < 20"	
4 Leading Edge Cut	< 52"	
71" OPENING		
1 Forward Cut	< 16"	
4 Leading edge cut	< 52"	

III

5 Escape Opening	18" to < 44"	
44" INSHORE OPENING		
5 Escape Opening	24" to < 34" Horizontally 4" to < 10" Vertically	
<p>Discrepancies <u>likely to capture all turtles encountered</u>, including but not limited to:</p> <p>No TEDS installed</p> <p>TEDs fastened shut by any means (e.g., sewn, reeved, positioning of floats, etc.)</p>		IV
TED ANGLE	≥ 71 degrees	
FLOTATION	No floats on bottom shooting TEDs	
DOUBLE COVER (DC) OPENING		
3 OVERLAP	≥ 20"	
71" OPENING		
5 Escape Opening	< 18"	
44" INSHORE OPENING		
5 Escape Opening	< 24" Horizontal < 4" Vertically	

Marine Mammal Protection Act Schedule

VIOLATION	LEVEL
TAKING VIOLATIONS	
Take by unauthorized capture of a marine mammal from the wild for the purpose of unauthorized rehabilitation.	I
Harass or Collect Parts of a Marine Mammal, or attempt to do so.	II
Feed, Harm, Hunt, or Capture of a Marine Mammal, or attempt to do so.	III
Kill a Marine Mammal, or attempt to do so.	IV
TRANSPORTATION AND TRANSACTION VIOLATIONS	
<p>Unauthorized importation of marine mammal parts or products (non-commercial imports/personal use);</p> <p>Unauthorized sale, purchase, and/or transport of marine mammal parts or products (non-commercial sales);</p> <p>Failing to register any bones, teeth or ivory of any dead marine mammal collected from a beach or from land within 1/4 of a mile of ocean. The term ocean includes bays and estuaries.</p>	I
<p>Violations related to illegal importation, exportation, transportation, selling, possessing, or purchasing;</p> <p>Violations related to illegal importation, purchasing, possession, landing, transport, or sale of tuna, and violations related to recordkeeping, reporting, or FCO requirements.</p>	III
COMMERCIAL FISHERIES VIOLATIONS	
<p>Failure to register (i.e., fishing without authorization);</p> <p>Failure to display annual sticker/decal, fail to carry certificate on board, or failure to file annual report;</p>	II

<p>Failure to immediately return incidentally taken marine mammals to the sea with a minimum of further injury;⁷¹</p> <p>Failure to report taking of a marine mammal.⁷²</p>	
<p>Failure to immediately return incidentally take marine mammals to the sea with a minimum of further injury.⁷³</p>	III
<p>Assaulting an observer, failure to take observer or impeding, intimidating, impairing, or interfering with an observer or observations;</p> <p>Providing false information;</p> <p>Failure to immediately return incidentally take marine mammals to the sea with a minimum of further injury;⁷⁴</p> <p>Commercial whaling.</p>	IV
VIOLATIONS RELATED TO LABELING STANDARDS	
<p>Violations related to Federal Trade Commission regulations;</p> <p>Violations related to tracking fishing operations;</p> <p>False statement/endorsement on a tuna tracking form;</p> <p>Violations related to canning operations (other than record keeping/reporting).</p>	IV
VIOLATIONS RELATED TO ENFORCEMENT, MONITORING, AND OBSERVERS	
<p>Observer interference;</p> <p>Interference with a lawful investigation or inspection.</p>	IV

⁷¹ This can be a Level II, III or IV violation depending on whether the failure resulted in harassment (level II); harm (level III); or death (level IV).

⁷² This can be assessed at a higher gravity level when the failure to report does or could impact whether a fishery remains open or is closed.

⁷³ See footnote 71.

⁷⁴ See footnote 71.

OTHER VIOLATIONS	
<p>Violations related to unauthorized/non-permitted fishing, fishing methods, or fishing gear;</p> <p>Violations related to notification requirements;</p> <p>Permit violations; violations related to labeling standards.</p>	III
<p>Violations of native agent regulations or permit conditions;</p> <p>Violations of speed restrictions by vessels greater than or equal to 65 ft (19.8 m) in overall length;⁷⁵</p> <p>Exceeding Dolphin Mortality Limit (DML) or intentionally deploying net on dolphins after DML has been reached;</p> <p>Pinger violations not covered on Summary Settlement or Fix-It schedules.</p>	IV

⁷⁵ This offense is also listed under the Endangered Species Act penalty schedule and should be charged under that penalty schedule absent exceptional circumstances warranting charging under the Marine Mammal Protection Act schedule.

Northern Pacific Halibut Act Schedule⁷⁶

VIOLATION	LEVEL
VIOLATIONS REGARDING GEAR	
Failure to have setline gear or skate marker buoys properly marked; Subsistence fishing with non-compliant gear; Failure to properly deploy seabird avoidance gear; Possessing halibut taken with gear other than hook and line (300 pounds or less); ⁷⁷ Possessing halibut taken with hook and line gear aboard a vessel containing gear other than hook and line (e.g., trawl nets, traps or pots).	I
Failure to have onboard required seabird avoidance gear; Using automatic hook stripper to release halibut.	II
VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT, SCIENTIFIC MONITORS, OR OBSERVERS	
Disfigurement of halibut that prevents minimum size or catch limit determination; Untimely or no notice of landing IFQ species or landing at other than an approved location.	I
Refusing to permit inspection of hold/vessel by authorized officer upon request.	III

⁷⁶ For violations where there is not a specific offense level listed in this Schedule, see the Magnuson-Stevens Act Schedule.

⁷⁷ IPHC regulatory Area 2A off Washington, Oregon and California only.

VIOLATIONS REGARDING PERMITS, REPORTING, DOCUMENTATION, AND PERMIT REQUIREMENTS	
<p>Submitting Prior Notice of Landing outside of time limit specified for submission;</p> <p>Making inaccurate entries in a halibut fishing log, other logbook or report;</p> <p>Failure to have license on board;</p> <p>Failure to update or submit fishing log or Saltwater logbook within time specified;</p> <p>Subsistence fishing for halibut without having been issued a Subsistence Halibut Registration Card (SHRC) but qualified to be issued SHRC;</p> <p>Retaining IFQ species without a valid IFQ permit - 300 pounds or less of halibut.</p>	I
<p>Material errors in log of halibut fishing operations, Landing Report, or record of purchases or receipts of halibut;</p> <p>No Prior Notice of Landing submitted prior to offload;</p> <p>Subsistence fishing for halibut without having been issued a Subsistence Halibut Registration Card;</p> <p>Subsistence fishing for halibut without having been issued and without the requisite qualifications to receive a Subsistence Halibut Registration Card.</p>	II
VIOLATIONS REGARDING TIME, AREA, EFFORT, OR SECTOR RESTRICTIONS	
<p>Sport fishing for halibut out of season.</p>	I
VIOLATIONS REGARDING SEASON, TRIP, SIZE/CONDITION/QUANTITY OFFISH, SALE OR LANDING/POSSESSION REQUIREMENTS	
<p>Taking or possessing halibut under minimum size or over maximum size;</p> <p>Sport, charter or subsistence fishing during closed season;</p> <p>Exceeding the daily sport bag limit or possession limit;</p> <p>Exceeding the subsistence personal, bag or possession limit;</p>	I

<p>Exceeding the line limit;</p> <p>Exceeding angler endorsement;</p> <p>Sale of sport- or subsistence-caught halibut less than 300 pounds;</p> <p>Charter fishing in two regulatory areas during same trip;</p> <p>Failing to begin or end charter fishing trip in required community;</p> <p>Violating any Charter Halibut Permit restriction or requirement;</p> <p>Failing to report tagged halibut to IPHC personnel;</p> <p>Failing to retain carcass(es);</p> <p>Mutilating halibut.</p>	
<p>Commercially harvesting undersized halibut – less than 10 undersized halibut;</p> <p>Possession of subsistence-caught and/or sport-caught halibut on a vessel with commercial-caught halibut onboard;</p> <p>Sale of sport-caught or subsistence-caught halibut, more than 300 pounds.</p>	<p>II</p>

Antarctic Marine Living Resources Convention Act Schedule

VIOLATION	LEVEL
HARVESTING AND TRANSSHIPPING VIOLATIONS	
Transshipping in the Convention area in violation of regulations or binding conservation measures.	IV
Fishing for or harvesting Antarctic Marine Living Resources (AMLR) without a permit or contrary to permit conditions, regulations or binding conservation measures.	V
TRAFFICKING VIOLATIONS	
Submitting an application for preapproval less than 15 working days before the date of the first receipt, importation, or re-export.	II
Receiving AMLRs from a vessel without a Harvesting Permit.	III
Importing, exporting or re-exporting AMLRs taken by vessel with no harvesting permit, without a dealer permit or preapproval, unaccompanied by a complete, valid and validated Dissostichus Catch Document (DCD), or contrary to the provisions of any permit.	IV
Shipping, transporting, selling, purchasing, importing, exporting, or having custody, control or possession of AMLRs harvested in violation of any binding conservation measure.	V
MONITORING AND ENFORCEMENT VIOLATIONS	
Refusing to permit a boarding by, or provide assistance to, a CCAMLR inspector; Assaulting, resisting, opposing, impeding, intimidating or interfering with a CCAMLR inspector; Resisting arrest or interfering with arrest of another; Submitting or otherwise providing false or inaccurate information; Failing to cooperate with a port inspection; Frustrating timely identification of harvesting vessel or gear.	V

Port State Measures Agreement Act Schedule

VIOLATION	LEVEL
VIOLATIONS REGARDING ADVANCE NOTICE OF ARRIVAL	
Failure of a foreign vessel to timely provide complete and accurate advance notice of arrival information as required. ⁷⁸	I
Failure of a foreign vessel to timely provide complete and accurate advance notice of arrival information as required. ⁷⁹	II
Submitting false advance notice of arrival information; As a foreign vessel, entering a U.S. port without having been granted authorization.	III
VIOLATIONS REGARDING THE FACILITATION OF ENFORCEMENT	
Providing inaccurate or incomplete information to an authorized officer, failure to cooperate with an inspection.	II
Providing false information to an authorized officer; Opposing, impeding or interfering with an authorized officer, including by attempting to restrict access to any relevant area or the vessel or to any gear, equipment or documentation (e.g., permits, license, catch documents, logbooks).	III
Refusing to allow boarding and inspection by an authorized officer or to allow an authorized officer access to any areas of the vessel or to any gear, equipment or documentation (e.g., permits, license, catch documents, logbooks).	IV
Assaulting, resisting, or coercing any authorized officer.	V

⁷⁸ Failure to timely submit complete and accurate advance notice of arrival information can be a level I or level II offense. It is a level II offense when the lateness, inaccuracy or omission adversely impacts NOAA's ability to make a determination on whether or not to grant port entry to the vessel.

⁷⁹ See footnote 78.