



Research Set-Aside (RSA) Workshop Meeting 3 - Enforcement

Thursday, October 14, 2021

Compiled by
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SUMMARY OUTCOMES

Research Set-Aside Workshop
Workshop Meeting 3 (Enforcement)
Thursday, October 14, 2021

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SUMMARY OUTCOMES

Research Set-Aside Workshop Workshop Meeting 3 (Enforcement)

Workshop Objectives:

- Identify potential program modifications that could prevent reoccurrence of previous enforcement issues.
- Identify how the Council will collaborate with the Atlantic States Marine Fisheries Commission (ASMFC) and other agencies to ensure compliance that addresses enforcement objectives.
- Scientific and Statistical Committee (SSC) Economic Working Group discussion on enforcement

RSA Enforcement: Why are we here?

Presentation by Matthew Seeley, Mid-Atlantic Fishery Management Council Staff
(NOTE: Full presentation is included in Appendix II)

Key Points

- Recap of the Workshop Overview.
- Summary of Workshop 1 (Research) and Workshop 2 (Funding) results.
- Overview of Workshop 3 (Enforcement) objectives.
- Enforcement Issues: outlined in Council's RSA Committee 2012 report.
 - Landings were not properly tracked.
 - Maximizing revenue through an auction presents administrative/enforcement challenges with respect to monitoring and accountability.
 - [Letter to the Regional Administrator](#) (2012) outlining RSA program issues.
- Enforcement recommendations made in 2012 letter to NOAA:
 - Require a pre-landing notification with estimate of the RSA pounds to be landed.
 - Require vessels to report vessel trip report (VTR) serial number when calling in.
 - Implement real-time notification system to alert law enforcement about vessel activities under the RSA program.
 - Require commercial dealers to report RSA amounts purchased from vessels.
 - Require participating RSA vessels to possess federal permit to harvest RSA quota (or state permit if harvesting only in state waters).
- [Reply letter from the Regional Administrator \(2013\)](#).
- Current enforcement concerns:
 - RSA landings are reported as hail weight not actual weight.
 - Lack of sufficient resources to conduct adequate on-the-water enforcement.
 - If not met by enforcement, an individual can state that not all landings are RSA.
 - Complications associated with combination RSA/Non-RSA fishing trips.
 - Administrative burden (federal and state).
 - Lack of sufficient enforcement resources.

- National Environmental Policy Act document did not analyze repercussions of RSA related overages due to non-reporting.

Discussion with the SSC Economic Working Group (WG)

Presentation by the WG – Dr. Lee Anderson (MAFMC SSC) on how economics influence fisheries enforcement at the state and federal level with a focus on RSA program revisions

(NOTE: Full presentations are included in Appendix III and key points of the question & answer dialogue are captured in the appropriate summary section of the discussions below.

Key Points

- Economics can help in understanding the incentives for individuals using the RSA program to subvert the system.
- Some people with RSA quota were taking trips but not declaring the use of that quota.
- Economics of an activity do not have to be phrased solely in terms of dollars.
- The legitimacy of the fishery management process, as seen by fishermen, may depend on the Council and NOAA's ability to provide for favorable accomplishment of the stated management controls.
- Economic modelling may predict the *aggregate* abuse of a system but not individual behavior.
- Probability of being punished and penalty help define what level of cheating will occur.

Discussion Summary

- Need to consider non-RSA fishing and their willingness to comply with regulations as well.
- Not using these equations to quantify what occurred in the past.
- The penalty and chance of being caught in the past were low. The difficulty and time involved in making cases contributed to this. Now that cases have been made and publicized, the perception to cheat may have changed.
- Advancements in electronic reporting and the ability to report closer to real time may increase the chances of being caught cheating and therefore reduce the likelihood to cheat in the future.

Federal RSA Catch Accounting and Monitoring (Reporting, Permitting and Administration)

Presentation by Ryan Silva (GARFO Staff)

(NOTE: Full presentation is included in Appendix IV)

Key Points

- RSA reporting requirements include vessel monitoring system (VMS) or online Interactive Voice Response System (IVR) submitted 6 hours prior to landing, or once fishing was over.
- Effort control exemptions (e.g., trip limits, seasons) offer a financial incentive that can be abused.

- Reducing opportunity for abuse includes vessel monitoring and oversight procedures, containing participants, and communication (NOAA, grantee, states).

Discussion Summary

- Overall, combination trips where harvesting of RSA quota and general quota are blended increase the amount of enforcement challenges.
- Mandatory electronic reporting, where catch data are entered before entering port, should help increase enforcement and compliance. It would be beneficial to *submit* reports prior to getting to the dock.
- Declaring a landing port is extremely important to reduce the chances of landing extra fish prior to reaching the final destination.
- Vessel operators most often operate independent of Principle Investigators (PI) and PI's are not responsible for violations. Having the researchers onboard the vessel may lead to different types of research and a completely different RSA program.
- Some revisions will need to be implemented to improve compliance with the RSA program (e.g., submit pre-land reports, consider dedicated compensation fishing trips instead of blended trips, etc.) while maintaining a program that is as simple as possible and allows operating a redeveloped program efficiently with the given administrative capacity.
- Consider a requirement that vessels must submit at a certain point prior to landing and don't issue any waivers just to increase access to the program. Possible mechanisms include:
 - VMS (although currently not a significant component of Mid-Atlantic fleet).
 - Requiring electronic VTRs for all vessels regardless of their type (e.g., recreational, for-hire, commercial) or registration (state or federal permits).
- We need to have set objectives before we can discuss the redevelopment of the program.
- We may need to consider using some of the RSA funds to support enforcement costs.

Workshop Goal Discussions

State RSA Catch Accounting and Monitoring (Reporting, Permitting and Administration)

RSA Enforcement & Compliance Challenges: The Massachusetts Experience

Presentation by Dan McKiernan (Massachusetts Division of Marine Fisheries)

(NOTE: Full presentation is included in Appendix V).

Summary

- In the Massachusetts program, quotas were issued to researchers or purchased by vessel owners before state managers developed plans about how those fish could be landed (e.g., in or out of season, combined trips, size limits, allowable gear, etc.).
- Inconsistent reporting and permitting standards existed among state jurisdictions.
- After 2011, Massachusetts ceased issuing RSA Letters of Authorization to for-hire vessels due to concerns (e.g., proliferation of vessels participating, potential to compromise recreational surveys, perceived inequities from other constituents, increased enforcement burden, non-compliance with reporting requirements, etc.).

- Selling quota to the for-hire fishery was simply incompatible with that fishery and compromised data collection programs even though RSA trips were not supposed to be sampled as part of MRIP.
- Stakeholders' trust and confidence eroded when RSA participating vessels were observed enjoying liberal harvest rules without adequate oversight.
- Significant administrative burden on states.

Presenter Recommendations

- Eliminate the for-hire sector's participation especially in compensation trips. The hidden costs of overseeing too many participating vessels far outweigh the benefits.
- Develop a set of Best Management Practices (BMPs) on compliance and enforcement for states to consider regarding RSA program enforcement.
- Provide financial support to state permitting and enforcement agencies to administer and oversee the activities.
- Develop a common federal/ASMFC reporting strategy to accurately track RSA landings.
- If multi-year cooperative research projects are considered, promote competition (turnover) in the fleet of cooperating vessels.
- Solve the disparate levels of conservation mandates among states to reduce the incentive to seek RSA quota as the "relief valve". (Example: New York's more restrictive recreational restrictions and low commercial quota).
- Don't fall for the "IFQ's on Training Wheels."

Redevelopment of the RSA Program: New York State Perspective

Maureen Davidson (New York Department of Environmental Conservation)

(NOTE: Full presentation is included in Appendix VI)

Summary

- Required: submission of a pre-departure notice to DEC before initiating RSA fishing activities, (i.e., before the vessel leaves the dock) which notified law enforcement that a trip had been initiated.
- Required: a completed VTR for the RSA trip before returning to the dock.
- Required: all VTRs for RSA trips submitted to DEC within 48 hours of the trip ending.
- Required: the catch for the entire trip must be landed at the port and dock identified in the pre-departure notification.
- Required: VTR submission for every RSA trip that a pre-departure notice was submitted, whether or not any RSA quota was harvested.
- State party and charter boat operators in the RSA Program were required to provide a dated receipt for each passenger, identifying the fishing trip as an RSA trip.
- For the duration of each RSA program, DEC and NOAA Fisheries reconciled harvest data weekly.
- Both agencies worked together to correct data errors and share information as they sought to maintain their separate databases and ensure the data was accurate.
- In 2009, a staff member from Cornell Cooperative Extension (CCE) of Suffolk County Marine Program was assigned to administer the RSA program under the direction of DEC staff. The position was fully funded by National Fisheries Institute.

- Increased law enforcement presence was needed during the RSA program to discourage and expose cheating.

Presenter Recommendations

- Develop enhanced and joint databases that allow better coordination and collaboration between DEC, NOAA Fisheries, and associated law enforcement agencies.
- Require assigned ports and limited times for landing RSA harvested fish.
- Assign responsibility to NOAA port agents to verify all landings of RSA fish.
- Provide increased law enforcement with the time and necessary support needed to enforce the RSA program.
- Limit participation in the RSA program based on the resources that are available.

Federal RSA Dockside Enforcement (Vessel and Case Adjudication)

Presentation by Assistant Special Agent in Charge Jim Cassin and Special Agent Todd J. Smith (Northeast Region Off ice of Law Enforcement District 2)

(NOTE: Full presentation is included in Appendix VII)

Summary

- The presence of a single large amount of quota, in contrast to a relatively modest daily trip limit, provided an opportunity for the unscrupulous operator to manipulate the system.
- The lack of a finite number of vessels, or trip limit, can make dockside enforcement difficult and create even bigger problems when enforcement is not present.
- The more participating vessels there are, particularly if the majority is centered in one area, the more difficult it is for enforcement to conduct regular inspections especially if there are limited enforcement resources.
- Even with an IVR system, vessel operators sometimes would not close out a trip in the reporting mechanism until days after the trip ended (and sometimes not until the next IVR trip was to begin). This practice could facilitate unreported landings.

Presenter Recommendations

- Develop a method for determining the number of vessels that can participate in an RSA project (i.e., a cap).
- Create a trip limit for vessels on RSA trips (may help enforcement while preventing the market from being flooded and keep prices stable).
- Require a pre-land notification (similar to the one required in the LAGC-IFQ scallop fishery) identifying the weight of RSA species being landed, the port where it is being landed and the vessel trip report number.
- Establish set landing hours for RSA catch to be offloaded (i.e., RSA offloads can only occur between 6:00 AM and 8:00 PM).
- Require participating vessels be equipped with VMS or Automatic Identification System.
- Require that Exempted Fishing Permits (EFP) issued pursuant to 50 CFR 648.12 list the RSA quota in pounds, by species, awarded to each vessel listed on the EFP.
- Limit transfer of RSA quota between vessels to specific events (i.e., vessel sinking).
- RSA funds, or a portion thereof, may need to be budgeted to assist states with increased administrative and/or law enforcement costs.

- Allow states to opt out from participating in the RSA program.

Discussion Summary

- It appears that most issues related to federal dockside enforcement have been addressed in the recommendations but this can't be assured since those who are inclined to violate can often find innovative ways around any regulation.
- Should strongly consider that RSAs be a part of future Joint Enforcement Agreements (JEAs) to facilitate cooperative state/federal communication and action on issues and help address the administrative burden.
- Consider funding the JEAs through a portion of the sale of each RSA quota.
- Recent advancements in the implementation of mandatory electronic reporting, combined with short turnaround times for VTR submissions, should improve enforceability but alone will not solve all of the issues. Ensuring integration across all reporting systems (i.e., eVTRs, SAFIS reports, enforcement reports, etc.) combined with real-time access to this information by all law enforcement entities would be another step forward.
- Allowing commercial operators to sell RSA quota to themselves (if they hold a Dealer permit) creates potential loopholes (Massachusetts, does not allow primary buyers to have such a permit unless they have a permanent place of business).
- Often, judges feel that prosecuting individuals who exceed their RSA quota is too complicated and not worth following through.

State RSA Dockside Enforcement (Vessel and Case Adjudication)

Presentation by Deputy Chief Jason Snellbaker (NJDEP and ASMFC LEC Chair)
(NOTE: Full presentation is included in Appendix VIII)

Summary

- The additional enforcement responsibilities of the RSA program (ensuring compliance with laws and landings limits, etc.) are a significant burden.
- Vessel operators know that enforcement does not have the manpower to be on the dock every day; especially true when numerous vessels participate in the program.
- There are no state laws in New Jersey specific to the RSA program.
- States like New Jersey issue a Letter of Authorization or Scientific Collecting Permit since they lack any other mechanism. However:
 - There is no actual scientific research directly conducted by RSA permit holders.
 - The law does not mention anything about creating additional conditions for an RSA permit. As such, any conditions of a permit created by the NJDEP will not hold up in court and are not enforceable.
 - The only penalty that could be imposed would be a suspension of the scientific collection permit.
 - Issuing a permit for compensation fishing exceeds the authority of the statute.
- Some commercial vessel owners are also federally-permitted dealers and may own restaurants, creating a conflict of interest and enforcement issues.
- For-hire vessels in the RSA program create additional enforcement issues:
 - RSA trips took place during the closed seasons and generated controversy from other for-hire boats operators and recreational fishermen.

- There is not a system of checks and balances on the for-hire side as the vessels are left on their own to record and report species and weights.
- Most states enforce strict possession limits, so patrons leaving vessels with closed-season fish must retain proof of legally possessing RSA fish.
- It is difficult for state enforcement officers to keep track of RSA quota or to know when the quota has been exceeded.
- RSA is used as a defense when vessel legitimately violates laws and prosecutors and judges do not fully understand the complexity of fisheries regulations and the fishing industry.

Presenter Recommendations

- State laws and regulations need to be updated to support enforcement of the RSA program.
- Penalties for violating RSA permit conditions need to be a significant deterrent, including permanent revocation of permits for vessels, owners, and operators.
- Cap the number of RSA participants so enforcement can reasonably maintain compliance.
- Prescreen of participants (coastwide records search) for history of previous violations.

Discussion Summary

- From an enforcement perspective, New Jersey is not supportive of going forward with an RSA program particularly for the for-hire sector. Some applicants were “alternate captains” on vessels and not the owner.
- It might help if ASMFC would consider common standards for enforcement of RSA quota.
- States may need to consider new laws and regulations (particularly pertaining to permitting) to address the RSA program, which would require the involvement of state legislatures in many cases.

Other Enforcement Challenges (e.g., new proposals), Next Steps

- The RSA program should be clear about goals related to helping fishermen, versus generating money for scientific research.
- Quota monitoring experts should be part of the discussion around redevelopment of the RSA program.
- At-sea enforcement boarding sometimes struggles with RSA exemptions due to uncertainty about documentation requirements in different jurisdictions.
- Coordination during any redevelopment of the RSA program is necessary to allow for consistency across states.

Additional Recommendations for Consideration

- Law Enforcement should weigh in on the alternative proposal that was presented during the last workshop to allow for a more balanced appraisal.
- Council leadership should consider connecting with ASMFC about redeveloping the RSA program as a jointly run/coordinated program between the two entities.
- Invite quota monitoring experts to the February workshop.

Appendix I. Workshop 3 Agenda



Research Set-Aside Workshop Workshop Meeting 3 (Enforcement)

Thursday, October 14, 2021
10:00 a.m. – 4:00 p.m. EST

[Webinar Link](#)

Meeting Number (Access code): 2338 758 2383; **Password:** mafmc

Meeting Page: <https://www.mafmc.org/council-events/rsa-workshop-3>

Purpose

The Mid-Atlantic Fishery Management Council and its Research Steering Committee (RSC) are hosting a Research Set-Aside (RSA) Workshop, which will consist of 3 webinars from June to October and 1 in-person meeting in November. The goal of the four workshops is to help the RSC develop a recommendation to the Council with public input on whether and how to redevelop the Mid-Atlantic RSA program. *The goal of Workshop Meeting 3 (Enforcement) is to identify potential program modifications that could prevent reoccurrence of previous enforcement issues.* For additional background information and details on the other workshops, please visit: <https://www.mafmc.org/workshop/rsa>.

Briefing Materials

- RSA Workshop Overview
- Comprehensive Mid-Atlantic RSA Timeline
- RSA Numbers by Species and Year
- New England Fishery Management Council Final RSA Report (2019)

Agenda

10:00 a.m. – 10:30 a.m.

Welcome

- Research Steering Committee and Council Chairs

Ground Rules and Review of Workshop Structure

- Andrew Loftus (Facilitator)

Workshop Recap and RSA Enforcement: Why are we here?

- Matthew Seeley (Council Staff)

10:30 a.m. – 11:00 a.m.

Discussion with the SSC Economic Working Group (WG)

- Presentation by the WG – Dr. Lee Anderson (MAFMC SSC)
- Discuss how economics influence fisheries enforcement at the state and federal level with a focus on RSA program revisions

- 11:00 p.m. – 12:00 p.m.** **Federal RSA Catch Accounting and Monitoring (Reporting, Permitting and Administration)**
- Presentation by Ryan Silva (GARFO Staff)
 - Discussion of previous issues and proposed revisions
 - Develop recommendations with workshop participant input
 - Public questions/comment
- 12:00 p.m. – 12:45 p.m.** **Lunch**
- 12:45 p.m. – 1:35 p.m.** **State RSA Catch Accounting and Monitoring (Reporting, Permitting and Administration)**
- Presentation by Dan McKiernan (MA DMF) and Maureen Davidson (NY DEC)
 - Discussion of previous issues and proposed revisions
 - Develop recommendations with workshop participant input
 - Public questions/comment
- 1:35 p.m. – 2:25 p.m.** **Federal RSA Dockside Enforcement (Vessel and Case Adjudication)**
- Presentation by Assistant Special Agent in Charge Jim Cassin and Special Agent Todd J. Smith (Northeast Region Office of Law Enforcement District 2)
 - Discussion of previous issues and proposed revisions
 - Develop recommendations with workshop participant input
 - Public questions/comment
- 2:25 p.m. – 2:40 p.m.** **Break**
- 2:40 p.m. – 3:30 p.m.** **State RSA Dockside Enforcement (Vessel and Case Adjudication)**
- Presentation by Jason Snellbaker (NJDEP and ASMFC LEC Chair)
 - Discussion of previous issues and proposed revisions
 - Develop recommendations with workshop participant input
 - Public questions/comment
- 3:30 p.m. – 4:00 p.m.** **Other Enforcement Challenges (e.g., new proposals), Next Steps and Public Comment**
- 4:00 p.m.** **Adjourn**

Appendix II. Presentation: RSA Enforcement: Why Are We Here?



RSA Enforcement: Why are we here?

Research Set-Aside

10/14/2021

Outline

- Recap of the Workshop Overview
- Summary of Workshop 1 (Research) and 2 (Funding)
- Goals for Workshop 3 (Enforcement)
- Enforcement Issues
- Federal and State RSA Catch Accounting and Monitoring (Reporting, Permitting and Administration)
- Federal and State RSA Dockside Enforcement (Vessel and Case Adjudication) Program Costs/Benefits



Recap of the Workshop Overview

■ Workshop 1 (Research)

- Identify how research goals will be prioritized, projects will be screened, and results will inform management/be communicated to the Council and stakeholders.

■ Workshop 2 (Funding)

- Confirm how the program will be administered (federal grant program), discuss funding mechanism, and indicate that projects should be tied to management/assessment needs.

■ Workshop 3 (Enforcement)

- Identify potential program modifications that could prevent reoccurrence of previous enforcement issues.

■ Workshop 4 (Final Recommendations)

- Develop detailed recommendations (with timelines) for the Council identifying whether and how RSA should be redeveloped with input from the SSC Economic Working Group

Summary of Workshop 1 (Research)

- SSC Economic WG: Discussed 7 research-based topics
- Research Priorities
 - Link priorities (set by the Council) and performance metrics to a specific need after communicating with industry.
 - Keep RSA and other funding sources in mind whenever the Council initiates an action.
- Evaluation of Applicants and Proposals
 - Disclose available funding in the proposal and pre-proposal process.
 - Peer review proposals and results (with the SSC).
 - Identify conflicts of interest early in the RSA process.
- Project Review and Presentation
 - Review and reestablish the data sharing policy.
 - The release of funds should be tied to report completion.
 - Develop a communication plan that expands public venues for presentations.

Summary of Workshop 2 (Funding)

- SSC Economic WG: Presented an analysis of the action and modelled results of alternatives in terms of economic efficiency
- Status of the auction system
 - What did and did not work?
 - Consider the cost/benefits of selling quota for low value species and the ability to package species together
 - Ensure all bids are paid in full at potential future auctions
- Compensation fishing
 - Identify whether vessels involved in RSA harvesting should be tied to research
 - State environmental police were burdened but not compensated
 - PIs are responsible for ensuring vessels understand RSA requirements
- Fixed Price
 - If revenue generation is the primary objective, then a fixed-price system may not be the best funding model for RSA.

Goals of Workshop 3 (Enforcement)

- Identify and discuss enforcement concerns tied to reporting, permitting, accounting, and administration.
 - Define the problem – what went wrong?
 - Can we minimize the administrative burden on states that is linked to enforcement?
 - How can enforcement of RSA quota be improved (i.e., reporting, monitoring, on-the-water interactions)?
- Recommend improvements that address overall enforcement concerns.

Enforcement Issues: RSA Committee 2012

- Landings made under the RSA program are not being properly tracked.
- Maximizing revenue through an auction presents administrative/enforcement challenges with respect to monitoring and accountability.
- Vessels making an RSA trip must call-in via the IVR system 24 hours before and after a trip (including lbs. by species)



The screenshot shows the NOAA Fisheries website. At the top left is the NOAA logo. To its right is the text "NOAA FISHERIES" in large blue letters, with "NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION" in smaller blue letters below it. A navigation menu includes "Law Enforcement Home", "About Our Office", "Priorities", "Compliance Assistance", "Newsroom", and "FAQ". The main article title is "RSA Violations Result in Arrest, Guilty Plea for New York Fisherman". The article text reads: "In July 2010, agents for NOAA's Office of Law Enforcement initiated an investigation into **Research Set-Aside (RSA)** violations. On April 11, 2014, the investigation culminated in a guilty plea by a Levittown, New York, fisherman to mail fraud, wire fraud, and falsifying federal records." To the right of the text is a photograph of a fisherman in a yellow raincoat and hat standing in a large metal container filled with fish. Below the photo is a caption: "NOAA special agents uncovered research set-aside violations of unreported fluke valued at nearly \$625,000."

RSA Program Issues Memo

■ Letter to the Regional Administrator (2012)

For all vessels landing RSA quota (commercial and party/charter vessels):

1. Require a pre-landing notification via call-in through the IVR system that the vessel is landing RSA quota with an estimate of the RSA pounds to be landed by species at least one hour before returning to the dock.
2. Require vessels to report their VTR serial number when calling into the IVR system when reporting RSA quota amounts landed.
3. NMFS should implement a notification system via email or other real-time communications mechanism which alerts law enforcement personnel about all vessel activities under the RSA program including trip and landing notifications received from vessels participating in the RSA program.
4. Require commercial dealers who purchase RSA quota to report RSA amounts purchased from vessels separately from other commercial landing purchases. This will improve verification and accounting by NMFS of the RSA amounts landed.
5. Vessels participating in the RSA Program should be required to possess a federal permit to harvest RSA quota. In cases where RSA quota is to be harvested in state waters only, a state permit would be considered as meeting this requirement.

RSA Program Issues Memo (#1)

1. Require a pre-landing notification via call-in through the IVR system that the vessel is landing RSA quota with an estimate of the RSA pounds to be landed by species at least one hour before returning to the dock.

- Reply letter from the Regional Administrator (2013)
- We agree that a pre-landing notification would reduce the potential for under reporting RSA quota. Starting in 2014, vessels will be required to call the IVR system at least 1 hour before landing and identify the amount of landings and port.

RSA Program Issues Memo (#2)

2. Require vessels to report their VTR serial number when calling into the IVR system when reporting RSA quota amounts landed.

- Reply letter from the Regional Administrator (2013)
- We agree that federal vessels should submit their serial number through the IVR system to improve RSA monitoring and oversight.
- We will also encourage state marine resource agencies to require state-only permitted vessels to report through the ACCSP eVTR program.

RSA Program Issues Memo (#3)

3. NMFS should implement a notification system via email or other real-time communications mechanism which alerts law enforcement personnel about all vessel activities under the RSA program including trip and landing notifications received from vessels participating in the RSA program.

- Reply letter from the Regional Administrator (2013)
- We agree that a notification system that enables access by enforcement personnel of RSA activities could improve oversight. Therefore, NMFS will develop a system that alerts the enforcement community and other interested parties to RSA activities to help ensure vessels are reporting properly.

RSA Program Issues Memo (#4)

4. Require commercial dealers who purchase RSA quota to report RSA amounts purchased from vessels separately from other commercial landing purchases. This will improve verification and accounting by NMFS of the RSA amounts landed.

- Reply letter from the Regional Administrator (2013)
- At this time, we are not going to adopt this recommendation as it would only capture a portion of RSA quota that is landed and would be challenging to implement effectively. It would not capture fish landed by party/charter vessels or fish not sold to federally permitted dealers.

RSA Program Issues Memo (#5)

5. Vessels participating in the RSA Program should be required to possess a federal permit to harvest RSA quota. In cases where RSA quota is to be harvested in state waters only, a state permit would be considered as meeting this requirement.

- Reply letter from the Regional Administrator (2013)
- NMFS does not have the authority to prevent an RSA grant recipient from partnering with non-state or federally permitted vessels to harvest RSA quota. However, those vessels would need to adhere to all applicable fishing regulations.

Current Enforcement Concerns

- RSA landings are reported as hail weight
 - Very easy to under report because hail weight is an estimate of pounds landed.
- On-the-water enforcement
 - An undeniable way to track RSA landings and quota.
 - If not met by enforcement, can state that not all landings are RSA.
 - Remove combination fishing trips?
- Administrative burden (federal and state) when tracking permits, landings, quotas, etc.
- **Number 3 (above): Was an enforcement notification system ever developed?**

Current Enforcement Concerns

- Around 2014, Council and state reps noted the lack of sufficient enforcement resources.
- Final NEPA document did not analyze repercussions of RSA related overages due to non-reporting
 - FW 1 developed prior to 2006 Reauthorization of Magnuson Act (i.e., prior to ACL/AM requirements)
 - Jeopardizes compliance with NS1 (prevent overfishing)

RSA Criminal Investigation (as of July 10, 2019)

- Total dollar amount of fines/penalties (ordered, not necessarily paid):

Criminal Fines - \$511,000

Restitution- \$1,428,600

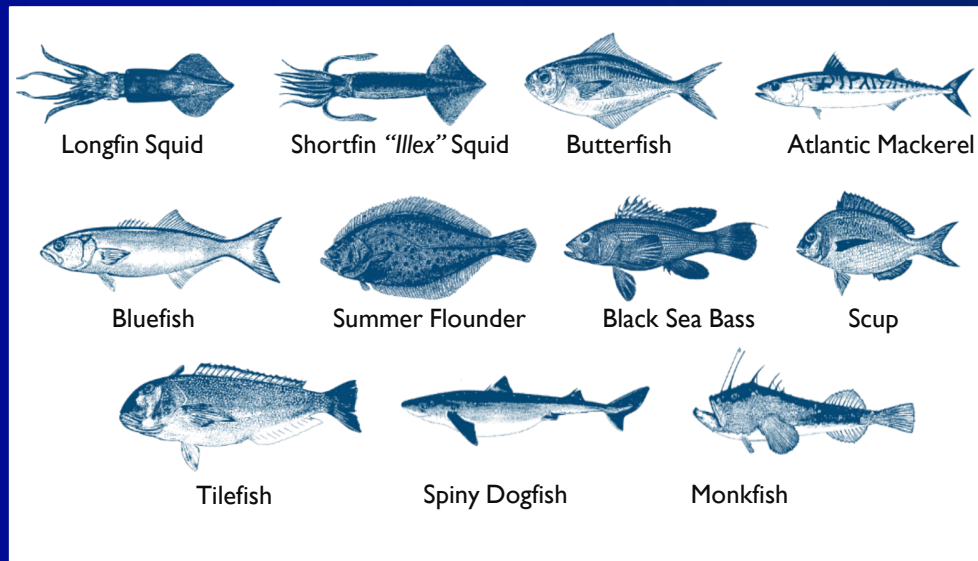
Community Service Payments- \$70,000

Court Special Assessments- \$4,200



Questions?

- **Note:** In-person workshop has been postponed to February 16, 2021
 - Sheraton Baltimore Washington Airport Hotel – BWI, 1100 Old Elkridge Landing Road, Linthicum Heights, MD 21090



Appendix III. Presentation: Economics of Fisheries Regulation Enforcement

Economics of Fisheries Regulation Enforcement

RSA Workshop #3 Enforcement

October 14, 2021

Goal of Enforcement Workshop:

To identify potential program modifications that could prevent reoccurrences of previous enforcement issues.

In order to meet this goal we will need to understand:

1. How monitoring and enforcement works.
2. How did certain participants take more catch than they were entitled to?
3. How did they get caught and what happened to them?
4. How have the flaws or weaknesses in the system been fixed by OLE/GARFO?
5. How can past problems and new ideas help us design a smarter RSA program?

What is the role of economics in this?

To be sure, OLE and GARFO should lead this discussion on enforcement.

What is the role of economics in this?

Economics can make substantive contributions in understanding the incentive structure of individuals using the RSA program to determine when and under what conditions individuals will likely subvert the system.

We can initiate this discussion of incentives by describing the basics of what went wrong last time.

Some people with RSA quota were taking trips but not declaring the use of that quota unless inspected or challenged in some manner.

It is more complicated and nuanced than that, but that is enough detail for now.

The chain of thinking for individuals considering to abuse the system would very likely go something like the following:

“If I fish with no intention of reporting unless physically inspected, what do I stand to gain?

On the other hand what do I stand to lose?

If the expected gains are greater than the expected losses, *maybe* I should go ahead with it.

But if the expected gains are less than the expected losses, *maybe* I should not”.

In formal terms, the case where there are incentives to break the law can be stated as:

$$P_p * \text{Fine} < p_{\text{fish}} * \underline{\Delta} \text{fish}$$

- Expected Loss in \$ < Expected gain in \$
- P_p = Probability of being punished
- Fine = Penalty in \$
- p_{fish} = Price of (illegal) fish
- $\underline{\Delta} \text{fish}$ = Change in harvest when cheating

Take a little closer look

$$P_p = P_{\text{caught}} * P_{\text{Indicted}} * P_{\text{convicted}}$$

Take a little closer look

$$P_p = P_{\text{caught}} * P_{\text{Indicted}} * P_{\text{convicted}}$$

P_{caught}

Take a little closer look

$$P_p = P_{\text{caught}} * P_{\text{Indicted}} * P_{\text{convicted}}$$

P_{Indicted}

Take a little closer look

$$P_p = P_{\text{caught}} * P_{\text{Indicted}} * P_{\text{convicted}}$$

P_{convicted}

Economics does not have to solely in terms of dollars.

$$P_p * \text{Penalty} < p_{\text{fish}} * \underline{\Delta}\text{fish}$$

- Expected subjective Loss < Expected gain in \$
- P_p = Probability of being punished
- **Penalty = Subjective Cost of jail time or of loss of social status, real cost of lost income, etc.,.**
- p_{fish} = Price of (illegal) fish
- $\underline{\Delta}\text{fish}$ = Change in harvest when cheating

Economists predict that in the *aggregate*, if this condition holds there will be more abuse than there would be otherwise.

In fact, empirical studies have shown that this is the case in fisheries and elsewhere.

Also the rate of abuse increases as the difference between gains and losses increases and as the chance of being punished decreases.

“*in aggregate*”

But the phrase “*in aggregate*” is very important because this principle may not do very well in predicting *individual* behavior.

For one thing, different people will likely have their own guess as to the exact size of the parameters \mathbf{P}_p , p_{fish} , and $\underline{\Delta}_{\text{fish}}$.

▪

For a second thing, the tendency of an individual to abuse the system will depend upon where his or her preferences lie on the risk continuum between risk takers and risk averters.

But more important they will each have their own subjective values associated with the penalty which draws on their core values of right and wrong.

“in aggregate”

For purposes here, however, it may be useful to consider the issues that may be subsumed in aggregate analysis but are important in a broader view of individual behavior because of the light that it will shine on the appropriate structure of the RSA program.

$$P_p * \text{Penalty} < p_{\text{fish}} * \underline{\Delta} \text{fish}$$

Expected subjective Loss < Expected gain in \$

More complicated than the inequality

Incentives

Tendencies

Concepts of right and wrong

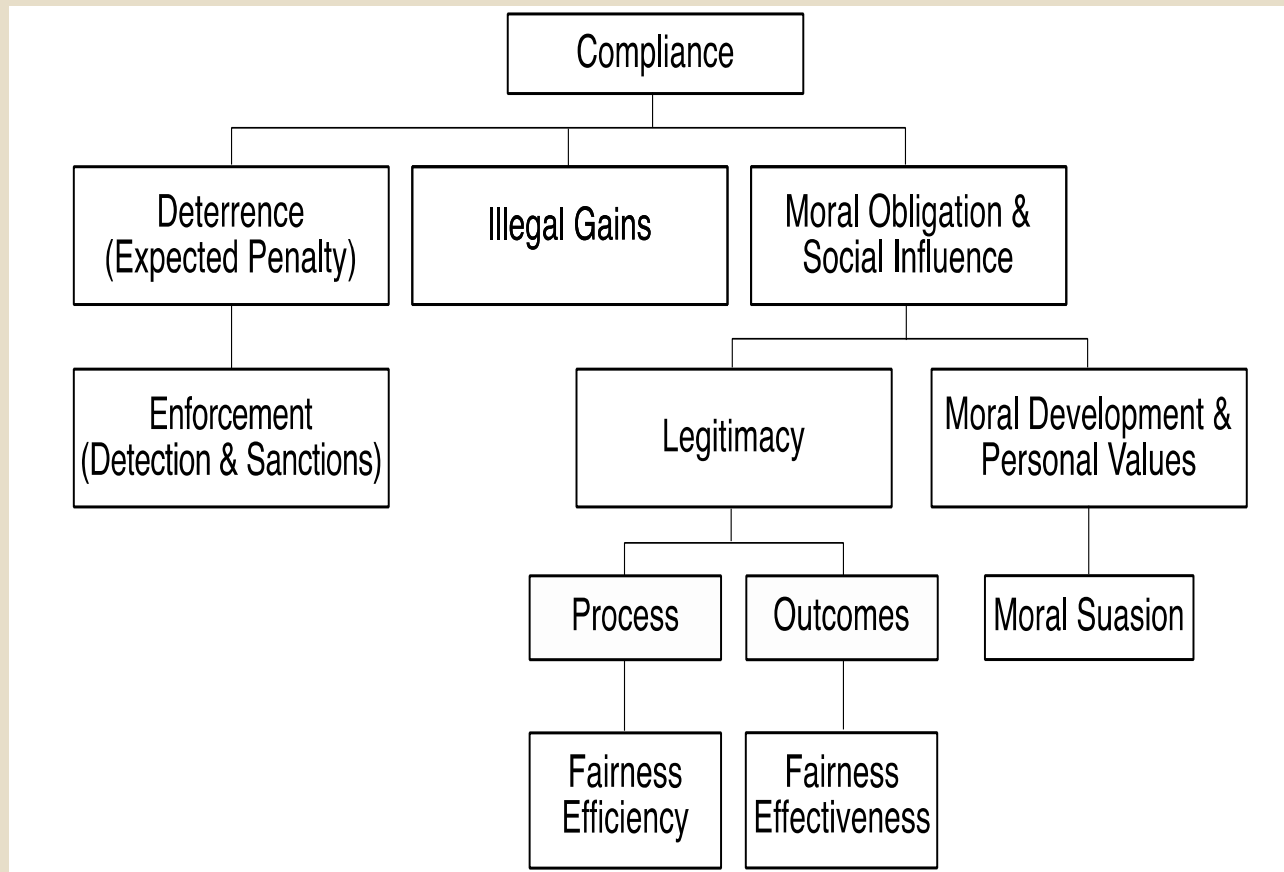


Figure from Sutinen and Kuperan (1999)

- The legitimacy of the fishery management process, as seen by fishermen, may depend on the Council and NOAA's ability to provide for favorable accomplishment of the stated management controls.
- - Is the fishery performing as intended or "as advertised" for everyone?
- - Is the fishery management compliance system operating fairly and observed to operating fairly?
- - Is the enforcement procedural and legal system perceived to lead to justice?

What can be done to prevent the recurrence of the problems?

Unlike the policy choices discussed in the first two workshops where it is the role of the Council to determine what should be done, the rules and regs for operating and monitoring the program will be for the most part determined by Council, OLE, and Regional Office Staff, with budgeting and regulatory constraints.

$$P_p = P_{\text{caught}} * P_{\text{Indicted}} * P_{\text{convicted}}$$

Penalty = Subjective Cost of jail time or of loss of social status

The policy variables that follow from this analysis are the probability of capture and the amount of the penalty or the size of the fine.

Unfortunately, these cannot be freely chosen by OLE, GARFO, or the MAFMC.

What can be done to prevent the recurrence of the problems?

Notwithstanding this fact, there are plenty of topics on which participant input will be useful and they will be introduced as we proceed with the agenda.

While listening to these presentations, think back to the basic inequality regarding incentives.

$$P_p * \text{Penalty} < p_{\text{fish}} * \underline{\Delta} \text{fish}$$

The participants can provide information on how to reduce the potential for abuse.

My hope is that as we listen to presentations on the workings of the RSA program we develop suggestions that could “prevent reoccurrences of previous enforcement issues”.

In Summary...

- Probability of being punished and penalty help define what level of cheating will occur
 - Our managers have little control only these policy variables
 - Other values come into play
 - e.g. morality, legitimacy
- Nevertheless, basic model helps frame discussion to come

**Appendix IV. Presentation: Research Set Asides: Federal RSA Catch
Accounting and Monitoring**

Science, Service, Stewardship



Research Set Asides (RSA)



Ryan Silva

Cooperative Research Liaison

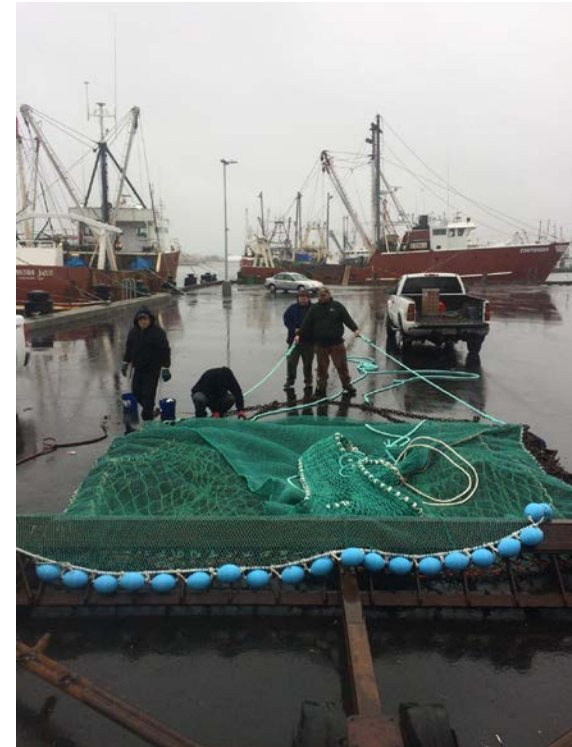
Sustainable Fisheries Division, Greater Atlantic Region

**NOAA
FISHERIES
SERVICE**



Exempted fishing permits

- Compensation fishing effort control exemptions
- Permitting process
 - Application
 - Review
 - Issuance (permit and permit reporting instructions)
 - Circulated to OLE, USCG, states
 - EFPs list the vessel and operator, exemptions, project period, terms and conditions, and must be signed
 - Monitoring - GARFO, OLE, states, grantee
- EFP administration





Reporting requirements

- RSA trip reporting: VMS or Online IVR
- Pre-trip and pre-land
 - Project
 - Operator
 - VTR serial #
 - Landing time and location
 - RSA quota on board (pre-land)
- Pre land must be submitted 6 hours prior to landing, or once fishing is over



2014 Vessels	Federal	State	Comm*	Rec*	Combo*	# Trips
103	88	15	43	7	28	> 2,000

* Federally permitted only



Compliance measures

- Oversight procedures
 - Trip matching with VTR and dealer reports
 - RSA quota monitoring
 - Reporting compliance
- Vessel cap
- Vessel and operator sanction check
- Vessel removal





Final Thoughts

- RSA compensation fishing and exemptions are necessary
- Effort control exemptions offer a financial incentive that can be abused
- Reducing opportunity for abuse
 - vessel monitoring and oversight procedures
 - containing participants
 - communication (NOAA, grantee, states)
- Limited resources to provide oversight

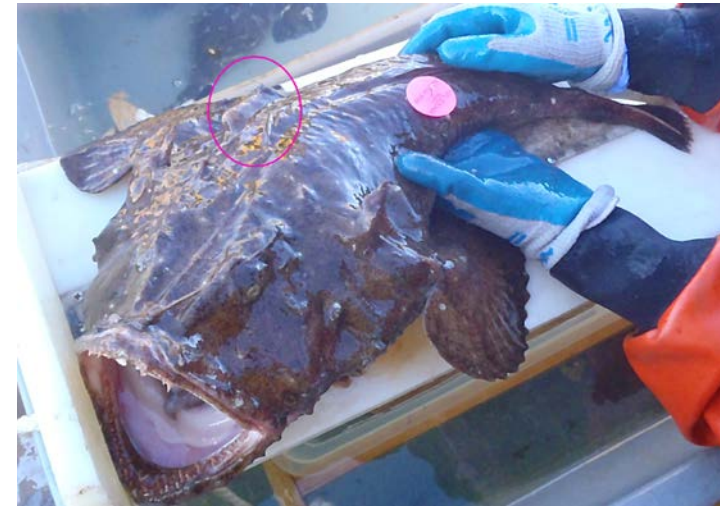




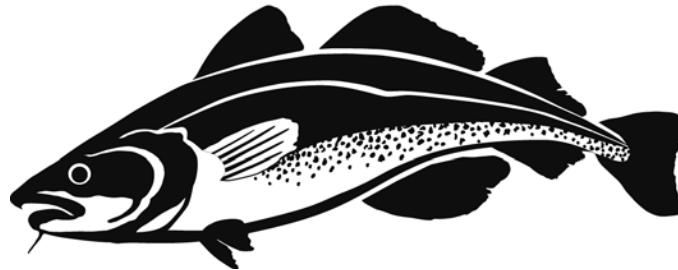
Image Credits:

- Cornell Cooperative Extension of Suffolk County
- University of Massachusetts, Dartmouth
- Virginia Institute of Marine Science

**Appendix V. Presentation: RSA Enforcement & Compliance Challenges:
The Massachusetts Experience**

RSA Enforcement & Compliance Challenges: The MA Experience

Marine Fisheries
Commonwealth of Massachusetts



MA DMF involved with Mid-Atlantic RSA commercial & recreational quotas

Commercial:

- **LOA's issued for multi-year BSB & Scup ventless trap study**
 - **1 MA vessel; 1 RI vessel**
 - **BSB & Scup landed during research trips and during compensation trips**
- **Additional Commercial vessels (Resident & Non-resident) issued LOA's for compensation trips**

Recreational:

- **For-hire party and charter boats**
Participants peaked in 2011 totaling 11 boats and four species



Federally issued quotas sold to vessels in state managed fisheries

Quotas were issued to researchers or purchased by vessel owners before state managers developed plans about how those fish could be landed.

- Would the purchased quotas be landed in-season? Out of season?
- Harvested from **state waters**? Or just in federal waters?
- During a spawning closure?
- On top of the trip limit while the vessel is actively fishing in the open fishery?
- As fish below the minimum size?
- To any dealer or just those dealers federally reporting?
- With non-conforming gear?



Administrative Burden & Challenges

- Inconsistent reporting and permitting standards among jurisdictions
- RSA quota holders required to comply with federal permit conditions and obtain state permits (LOAs) as well.
- Administrative burden: LOA's issued to vessels with permit conditions. Amendments must be made when quota is transferred among vessels.
- Enforcement burden: Obvious need for off-load inspections. Proliferation of participating vessels and RSA trips increases burden. No federal/state JEA support for enforcing RSA related permit conditions. (**Design failure!**)
- Commercial quota monitoring for most RSA-species is the responsibility of the state. Reconciliation needed to resolve problems esp. mis-reporting of landings to RSA vs. Non-RSA quotas.



Administrative Burden (Continued)

- Inconsistent reporting and permitting standards among jurisdictions
- IVR call-in was required (by NMFS) for vessels to call in up to a day in advance and then had 24 hours after trip was over to “close the trip”
- Federal vessels were also required to submit FVTR’s so the IVR and VTR could be cross-checked. No such system existed for state-only permit holders.
- DMF imposed its own conditions on **for-hire vessels** in 2011:
 - Landing RSA quota only allowed to be landed when the fishery was closed for that species. **Unpopular**
 - Required vessels call-in as the trip was ending to allow MEP inspection. **Compliance was poor.**



After 2011 DMF ceased issuing RSA LOA's to for-hire vessels

Reasons:

- Number of participating vessels proliferated
- State was expected to manage, monitor, and enforce the program without support (administrative burden)
- Widespread lack of confidence in accuracy of reports
- Recreational data collection (MRIP) was compromised
- Disparate recreational angler rules between RSA-vessels and non-RSA vessels created animosity among anglers & for-hire businesses and competitive disadvantage among vessels in-state: "Have's vs. Have-not's"
- DMF Concerns about angler non-compliance



Excerpt from email sent to MEP by another state's Law Enforcement member

"Many of the vocal fisherman refer to the RSA permit as a "license to steal." Some of the non-LE staffers seem to be somewhat in denial about the potential for problems. They think they have it under control.

When a fisherman or party/charter boat has this permit, they always have an alibi. If we don't meet them at the dock there is a good chance the extra, above the normal trip limit or catch limit, will go unreported. If we stop them, they flash the permit.

Basically it sets them up to be able to catch the regular daily limit plus whatever the total balance of their RSA is every day if we don't meet them at the dock. If we didn't meet them at the dock, they didn't catch any RSA on that day.

They also allow them to trade their purchase to other fishermen. They can trade it in, purchase more, and purchase more even if they traded some in. Think of the nightmare keeping track of it....

If funding was available I'd rather see the entire available RSA be divided among all the licensed fishermen to allow them all to have higher daily catch limits."



Selling quota to the recreational fishery was simply incompatible

- Commercial fisheries for many species are based on quota-based catch controls and Dealer reports serve as an independent verification of the landings.
- Recreational fisheries are not quota-based nor is there in-season monitoring of the quota. There is no independent verification of landings.
- Recreational rules are a combination of seasons, bag limits, and minimum sizes.
- Purchase of RSA “quota” by for-hire vessels resulted in an incompatible monitoring system for this recreational fishery.



RSA compromised the recreational data collection for for-hire sector

- MRIP samplers were instructed not to sail on for-hire party boat nor interview charter boat participating in RSA fishing on that trip, because of the bias created by (legal) non-conforming retention.
- Difficult for the MRIP staff to determine which trips were RSA fishing trips prior to arriving at the dock. Lack of communication between the captain, the NMFS call-in system and the MRIP sampler. Many party-boat trips were aborted by the MRIP sampler.
- Some intercepted anglers on charters may be unaware the trip was an RSA trip so this could result in estimated elevated catch rates estimates
- Not sampling certain for-hire vessels when using RSA quota reduces the number of available vessels, reduces the number of trips accomplished if it can't be rescheduled, and can bias the results – if the RSA-quota vessel is a “high liner” (likely!)
- Conclusion: RSA program resulted in decreased precision of harvest estimates for the for-hire sector.



Erosion of Trust & Confidence in Management

- Stakeholders' trust and confidence eroded when RSA participating vessels observed enjoying liberal harvest rules without adequate oversight.
- For some compensation trips, ex-vessel prices earned for the quota were substantially higher than the forecasted value in the project proposal.
- When the same commercial fishing partners (vessels) are used for cooperative research, trust erodes.
- Level of oversight and monitoring insufficient to overcome perceptions of alleged cheating by RSA vessels (commercial and for-hire).
- Inadequate compliance inspections and lack of transparency about the program undermined the program.



Take-home points

- Program was promoted by NFI & NMFS without factoring administrative burden on states. More (vessels) was not better.
- Incompatibility of RSA quota with recreational management system
- Compromised recreational data collection
- Erosion in trust and confidence in management



Recommendations

- Eliminate the for-hire sector's participation especially in compensation trips. The hidden costs of overseeing too many participating vessels far outweighs the benefits.
- Develop cooperatively with states a set of some BMP's for compliance and enforcement.
- Provide financial support to state permitting and enforcement agencies to administer and oversee the activities.
- Develop a federal/ASMFC common reporting strategy to accurately track and attribute RSA landings.
- If multi-year cooperative research projects are considered, promote competition (turnover) in the fleet of cooperating vessels.
- Solve the disparate levels of conservation mandates among states to reduce the incentive to seek RSA quota as the "relief valve". (Example: NY's more restrictive recreational restrictions and low commercial quota.)
- Don't fall for the "IFQ's on Training Wheels" again....



**Appendix VI. Presentation: Redevelopment of the RSA Program: New
York State Perspective**



Department of
Environmental
Conservation

Redevelopment of the RSA Program

Monitoring and Enforcement Workshop
New York State Perspective



October 14, 2021

Background

- New York State participated in the Research Set Aside (RSA) Program from 2002 through 2014.
 - The RSA Program was suspended in 2014.
- New York participants took part in the fish auction to bid on fish allotments for harvest conducted by National Fisheries Institute (NFI).
 - New York also allowed the participation of state party and charter boat (for-hire) permit holders.



Background: Summer Flounder and Black Sea Bass Landings

Year	Number of Commercial Vessels	Summer Flounder (lbs)	Black Sea Bass (lbs)	Number of P/C Vessels	Summer Flounder (lbs)	Black Sea Bass (lbs)
2009	80	298,010	24,449	29	12,944	597
2010	67	277,923	28,750	45	7,786	3,261
2011	61	190,521	21,109	34	1,543	3,784
2012	63	289,814	14,212	15	2,006	5,271
2013	65	175,634	24,350	19	1,804	7,268



Monitoring Participation

- Required: valid NOAA Fisheries Exempted Fishing Permit (EFP), prior to application for New York State's RSA Program.
- Required: New York State Exempted Fishing License (EFL).
 - **EFL allowed the possession of specific species of fish in a limited amount without regard to possession limits or open seasons in New York State.**
- New York State licensed party and charter boats participating in the RSA Program were authorized to **land specific fish species during times the recreational seasons for these fish were closed.**



Reporting

- Required: submission of a pre-departure notice to DEC before initiating RSA fishing activities, i.e., before the vessel leaves the dock.
- Required: a completed VTR for the RSA trip before returning to the dock.
- Required: all VTRs for RSA trips submitted to DEC within 48 hours of the trip ending.



Reporting: Party and Charter

State party and charter boats were also required to submit:

1. A trip detail report for each species harvested after each fishing trip, which included Identifying the passenger and number of fish harvested
2. An RSA quota harvest progress report showing the reduction in the RSA limits after each trip



Monitoring & Enforcement

- The submission of the pre-departure form initiated an RSA trip for a New York fishing vessel and informed DEC Law Enforcement of the pending trip.
- Required: the catch for the entire trip must be landed at the port and dock identified in the pre-departure notification.
- Required: VTR submission for every RSA trip that a pre-departure notice was submitted, whether or not any RSA quota was harvested.



Monitoring & Enforcement

- State party and charter boat operators in the RSA Program were required to provide a dated receipt for each passenger, identifying the fishing trip as an RSA trip.
- For the duration of each RSA program, DEC and NOAA Fisheries reconciled harvest data weekly.
- Both agencies worked together to correct data errors and share information as they sought to maintain their separate databases and ensure the data was accurate.



Program Administration

- Data collected from the pre-departure notice and the VTRs were entered into a database developed for the RSA program.
- RSA quota transfers continued to be reported to DEC until early the subsequent year as participants sought to off load unharvested quota to participants that overharvested or were able to land and sell additional fish quotas.



Program Administration

- Increased participation in the state RSA program in 2009 created the need for additional assistance for DEC to operate the state RSA program.
- A staff member from Cornell Cooperative Extension (CCE) of Suffolk County Marine Program was assigned to administer the 2009 RSA program under the direction of DEC staff.
- The assignment of the CCE staff member at the DEC Bureau of Marine Resources was fully funded by NFI.



Deficiencies

- Increased law enforcement presence was needed during the RSA Program to discourage and expose cheating.
- There was no reconciliation conducted between VTRs and dealer reports to detect incongruous transactions
 - Dealer reports were allegedly modified to match inaccurate VTRs.
- The administrative burden on the involved agencies was significant, but illegal activities were not discovered through administrative efforts but through law enforcement action.



Suggested Administrative Improvements

- Enhanced and joint databases can allow better coordination and collaboration between DEC, NOAA Fisheries, and associated law enforcement agencies.
- Assigned ports and limited times for landing RSA harvested fish
- Port agents responsible for verifying all landings of RSA fish



Suggested Administrative Improvements

- Increased law enforcement with the time and necessary support is essential for the proper operation and successful management of any future RSA Program.
- Before initiating new state RSA Program, it's recommended that the functions and framework of a successful program be identified by both federal and state officials.



Questions?



Thank You

- Maureen Davidson
- Interstate Fisheries Coordinator
- Maureen.Davidson@dec.ny.gov
- 631-444-0430

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Department of
Environmental
Conservation

Appendix VII. Presentation: Research Set-Aside Enforcement: Challenges and Suggested Changes for Program Improvement



Research Set-Aside Enforcement: Challenges and Suggested Changes for Program Improvement

Northeast
Region Office
of Law
Enforcement
District 2

Special Agent Todd J. Smith

October, 2021



NOAA
FISHERIES
ENFORCEMENT

Investigation Overview

- This investigation involved the unlawful landing, sale and reporting of summer flounder (fluke), in Freeport, Point Lookout and Mattituck, New York by fishermen granted the privilege of participating in the mid-Atlantic Research Set-Aside program (RSA) administered by NOAA.
- This RSA program annually auctioned up to three percent of the coast-wide quota of federally regulated species to raise money for scientific research to promote sustainable fisheries.
- Four vessels were documented landing almost 600,000 pounds in excess of the NY landing limit and failing to attribute it to RSA quota.
- The RSA program has been called a "License to Steal", with one fisherman referring to it as "Research Steal-Aside".
- One fisherman stated that RSA was used originally as a legitimate way to make money, but became a scheme to land overages.

Enforcement Challenges



RSA Quota

Challenges

- The presence of a lump sum of quota, in contrast to a relatively modest daily trip limit, provided an opportunity for the unscrupulous operator to manipulate the system.
- The lack of a finite number, or trip limit, can make dockside enforcement difficult and create even bigger problems when enforcement is not present.

Suggested Change

- Create a trip limit for vessels on RSA trips, *i.e.* 300 lbs. Having a set trip limit may yield additional industry interest in that it would help prevent the market from being flooded and keep prices stable.



Number of Participating Vessels

Challenges

- The number of participating vessels in the RSA program in 2014 was 94; the majority of which were located in one State.
- The more participating vessels there are, particularly if the majority is centered in one area, the more difficult it is for enforcement to conduct regular inspections especially if there is limited enforcement resources.

Suggested Change

- Develop a method for determining the number of vessels that can participate in a RSA project, *i.e.* every 20,000 lbs. of RSA quota awarded to a project = 1 RSA harvesting vessel.

Interactive Voice Recording (IVR) System*

- IVR System was utilized by NOAA to track RSA Landings.
- As seen in the example below, the IVR call out from one RSA trip is submitted one minute prior to calling in for the next RSA trip (trip ended on 12/14/2011).
- Closing out an RSA trip days after the trip ended could help to facilitate unreported landings (provides more time for vessel/dealer collusion on reporting).
- *The development/requirement of eVTR 's may render the IVR system obsolete.

SUMMER FLOUNDER	NY	0	12/13/11	1:45 PM	12/17/11	9:45 AM
SUMMER FLOUNDER	NY	0	12/17/11	9:46 AM	12/23/11	8:20 AM

Additional RSA Program Suggested Changes

- Require a pre-land notification (similar to the one required in the LAGC-IFQ scallop fishery) identifying the weight of RSA species being landed, the port where it is being landed and the vessel trip report number.
- Have set landing hours for RSA catch to be offloaded, *i.e.* RSA offloads can only occur between 6:00 AM and 8:00 PM.
- Require participating vessels be equipped with VMS or AIS.
- Require that Exempted Fishing Permits (EFP) issued pursuant to 50 CFR 648.12 list the RSA quota in pounds, by species, awarded to each vessel listed on the EFP.
- Limit transfer of RSA quota between vessels to specific events, *i.e.* vessel sinking.
- RSA funds, or a portion thereof, may need to be budgeted to assist States with increased administrative and/or law enforcement costs.
- Allow States to opt out from participating in a RSA program.





NOAA FISHERIES

Northeast Region
Office of Law
Enforcement
District 2

Questions?

Appendix VIII. Presentation: Research Set Aside from a State Law Enforcement Perspective

Research Set Aside from a State Law Enforcement Perspective

- Deputy Chief Jason Snellbaker
- NJ Division of Fish & Wildlife
- Bureau of Law Enforcement
- (609) 748-2050

Lack of Manpower

- The greatest issue most natural resource police agencies face is a lack of manpower. There simply are not enough officers to maintain compliance sufficiently.
- The additional responsibilities of the RSA is an enforcement burden.

“Laws without enforcement are merely suggestions.”

- When an unscrupulous RSA participant enters port and they are not inspected by an officer it creates the opportunity to cheat.
- Vessel operators know enforcement does not have the manpower to be standing on the dock every day. This is especially true when numerous vessels are participating in the program simultaneously.
- New Jersey had approximately 15 for-hire vessels and 12 commercial vessels apply to participate in the RSA program in 2010.
- 25 vessel operators associated with the RSA applications had prior fishing violations.

Specific Laws Applicable
to RSA

THERE ARE NONE!!!

What do States do to compensate for not having specific RSA regulators?

Issue Letter of Authorization or Scientific Collecting Permt

NJ Example:

Section 23:4-52 -
Collecting
mammals, reptiles,
amphibians, fish
and birds, and their
nests and eggs for
scientific purposes;
certificate

- The Division of Fish, Game and Shellfisheries may grant to a properly accredited person, 18 years of age or over, a certificate permitting him to collect mammals, reptiles, amphibians, fish, and birds and their nests or eggs, **for strictly scientific purposes only**. In order to obtain the certificate the applicant and therefor shall (a) present to the division, written testimonials from two well-known scientists, certifying to the good character and fitness of the applicant to be intrusted with the privilege, (b) pay to the division the fee of \$20.00 for the scientific collectors certificate. The certificate shall be in force for 1 year only, from the date of its issuance, and shall not be transferable without approval of the director. The foregoing sections of this article shall not apply to a person holding such certificate, except as provided for in The Endangered and Nongame Species Conservation Act, P.L. 1973, c.309 (C. 23:2A-1 et seq.).
- **Upon proof that a holder of the certificate has collected a mammal, reptile, amphibian, fish, bird or taken the nest or eggs of a bird, mammal, reptile, amphibian or fish for any purposes other than those named in this section, the certificate shall become void and the holder shall be further subject to the penalties provided therefor in this article.**
- N.J.S. § 23:4-52
- Amended by L.1975, c.116, s.11, eff. June 3, 1975.

Problems with Scientific Collecting Permits



There is no actual scientific research directly conducted by these permit holders.



Law does not mention anything about creating additional conditions of the permit.



Conditions of a permit created by the NJDFW will not hold up in court and are not enforceable.



The only penalty that could be imposed would be a suspension of the permit.



Issuing a permit for compensation fishing exceeds the authority of the statute.

Permit Conditions Created by States to Monitor RSA

- Permits carried onboard vessel.
- Call-In or other electronic notifications prior to embarking/landing/offloading with specified information to be provided.
- No vessel shall exceed pounds authorized to harvest.
- Size, Season, and Bag Limits.
- Gear and Species Restrictions.
- Weighing & Post Trip Reporting.
- Prohibiting filleting at sea.
- Forbidding sale of fish on for-hire vessels.
- Allowing sale only to Federally certified dealers on the commercial end.

Noteworthy Concern from Law Enforcement

Some commercial vessel owners are also Federally permitted dealers.

There are even examples of these commercial vessel owners and dealers owning restaurants.

This conflict of interest jeopardizes the system of checks and balances and creates opportunity and greater incentive to cheat.


For-Hire Vessels

- RSA trips took place during the closed seasons.
- Generated controversy from other for-hire boats operators and recreational fisherman.
- Generated complaints to Law Enforcement from the public not aware of the RSA program.
- Unlike the commercial sector where vessels are obligated to offload and sell to a dealer, there is not a system of checks and balances on the recreational side. The for-hire vessels are left on their own to record and report species and weights.
- Most states enforce strict possession, so patrons leaving vessels with closed-season fish must retain proof of legally possessing RSA fish.

Additional Concerns

- How does a State officer keep track of the quota?
- How does the officer know when the quota is caught or if the vessel exceeded the quota while standing on the dock?
- Growing number of participants as time goes on could increase the burden for enforcement.
- RSA used as a defense when vessel legitimately violates laws.
- Difficult to prosecute cases in court with prosecutors and judges that do not fully understand the complexity of fisheries and the fishing industry.

Possible Solutions

- State laws and regulations need to be updated to support enforcement of the RSA program.
 - Penalties for violating RSA permit conditions need to be a significant deterrent, including **permanent** revocation of permits for vessels, owners, and operators.
 - Cap the number of RSA participants so enforcement can reasonably maintain compliance.
 - Prescreening of participants (coastwide records search).
- 
- A large yellow triangle is positioned in the bottom right corner of the slide, pointing towards the top right.

Summary

State enforcement agencies often lack the appropriate resources to efficiently monitor the RSA program.

Both the commercial and recreational vessels have the incentive to not report all landing in order to preserve their RSA quota.

State enforcement agencies need to be backed by enforceable laws and regulations.

Penalties for violating the RSA program need to be a deterrent, including permanent revocation of permits to the vessel owners and operators.



Questions?

Appendix IX. Workshop 3 Registrants

First Name	Last Name	Affiliation
Panelists		
John	Almeida	NOAA General Counsel
Lee	Anderson	MAFMC Scientific and Statistical Committee (Econ WG)
Chris	Batsavage	MAFMC Research Steering Committee
Eleanor	Bochenek	NFI-SMC, Retired Rutgers University
James	Cassin	NOAA Office of Law Enforcement
Joe	Cimino	New Jersey DEP
Maureen	Davidson	New York DEC
Geret	DePiper	MAFMC Scientific and Statistical Committee (Econ WG)
Michelle	Duval	MAFMC Research Steering Committee
Travis	Ford	NOAA Fisheries
Emily	Gilbert	NOAA Fisheries
Laura	Hansen	NOAA Fisheries
Emerson	Hasbrouck	Cornell Univ.
Dewey	Hemilright	Council Member (Law Enforcement Committee)
Mark	Holliday	MAFMC Scientific and Statistical Committee (Econ WG)
Jorge	Holzer	MAFMC Scientific and Statistical Committee (Econ WG)
Shannah	Jaburek	NOAA GARFO Sustainable Fisheries Division
Yan	Jiao	MAFMC Scientific and Statistical Committee (Econ WG)
Matthew	Kahley	U.S. Coast Guard
Toni	Kerns	Atlantic States Marine Fisheries Commission
Michael	Lanning	NMFS GARFO
Scott	Lenox	Council Member (Law Enforcement Committee)
Andrew	Loftus	Facilitator
Dan	McKiernan	ASMFC Commissioner – MA
Brandon	Muffley	MAFMC Staff
Adam	Nowalsky	MAFMC Research Steering Committee
Eric	Powell	Successful applicant/SCEMFIS
Stephen	Pearson	MAFMC Staff (IT support)
Paul	Rago	MAFMC Scientific and Statistical Committee (Econ WG)
Sean	Reilly	NYSDEC Police
Paul	Risi	MAFMC Research Steering Committee
Mary	Sabo	MAFMC Staff
Matthew	Seeley	MAFMC Staff
Ryan	Silva	MAFMC Research Steering Committee
Todd	Smith	NOAA Office of Law Enforcement
Jason	Snellbaker	NJ Marine Enforcement Unit/ASMFC LEC
Kate	Wilke	MAFMC Research Steering Committee

General Public and Other Participants		
Katie	Almeida	The Town Dock
Cynthia	Ferrio	GARFO
James	Fletcher	
Caleb	Gilbert	NOAA Fisheries
Jay	Hermesen	GARFO
June	Lewis	
Nichola	Meserve	MA Division of Marine Fisheries
Cheri	Patterson	NH Fish and Game Dept.
Jeffrey	Ray	NOAA Office of Law Enforcement
Scott	Sakowski	
Brad	Schondelmeir	MA Division of Marine Fisheries
Jim	St.Cyr	NOAA GARFO
Mike	Waine	American Sportfishing Association