

Joint Law Enforcement Agreement Stakeholder Meeting Minutes
Craven County Agricultural Center
300 Industrial Drive, New Bern, N.C.
June 1, 2016, 5 p.m.

The Joint Law Enforcement Agreement Stakeholders Advisory Group met at 5 p.m. on June 1, 2016 at the Craven County Agricultural Center located at 300 Industrial Drive, New Bern, N.C.

Stakeholder Advisory Group:

Present - David Daniels, Brent Fulcher, Dossey Pruden, Tom Roller, Charlie Schoonmaker, Bobby Smith, Duke Spencer, Dave Timpy and Steve Weeks

Absent - Lee Setkowsky

Division of Marine Fisheries: Braxton Davis - Director, Dee Lupton - Deputy Director, Col. Jim Kelley, Maj. Dean Nelson, Capt. Steve Anthony, Gina Griffin and Nancy Fish

NOAA Law Enforcement: Tracy Dunn and Joe Wilson

Public: Hal James, Raynor James, Jerry Schill, Tim Hergenrader, Aundrea O'Neal, Chris Elkins, Jason Spatilson, Gladys Suessle, Ed Suessle, Perry Wood Beasley, Jan Willis, Brian Saunders, Mitch Steen, Iggi Husar, Catherine Stash, Bob Stash, Matthew Schwob, Kim Fink, Donald Willis, Earl Dail, Randall Siler, Jonathan Fulcher, Tyler Brewer, Tamara Leonard, Mary Griswold, Robert Griswold and Thomas Jenkins

Media: Mike Shutak, Carteret News Times

Dee Lupton, Division of Marine Fisheries Deputy Director, who served as the facilitator, called the meeting to order.

Purpose

Lupton reviewed Section 4 of S.L. 2015-201, which directs the division to conduct a study and seek input from stakeholders on the impacts, costs and benefits of a joint enforcement agreement with the National Marine Fisheries Service of the United States Department of Commerce and whether the authorization to enter into such an agreement should be reenacted – currently the division is statutorily prohibited from entering into a joint enforcement agreement. Lupton said the law required that a stakeholder advisory group be established to aid the division in the development of this study. The law specified that the stakeholder advisory group only include persons who are for-hire license holders representing all major recreational fishing areas on the North Carolina coast, commercial fishing license holders on the North Carolina coast, and relevant staff to the division.

A news release soliciting advisors for the stakeholder group was issued in February of 2016 and everyone who applied that held the required licenses was named to the group. Lupton explained the division was now at the stage to receive input from the stakeholder group and that was the purpose of tonight's meeting.

She went on to explain that the division will include this input in the study it is conducting. The study will be submitted to the Department of Environmental Quality by Sept. 1, 2016 for review and then submitted by the department to the North Carolina General Assembly's Environmental Review Commission by Oct. 15, 2016.

Once submitted to the legislature, the report will be available to the public.

The stakeholders and staff introduced themselves.

Joint Enforcement Agreement Presentation

Captain Steve Anthony of the North Carolina Marine Patrol, gave a presentation outlining what a joint enforcement agreement entails and reviewing potential benefits and concerns of entering into such an agreement.

The floor was then open to the stakeholders for discussion.

Discussion

Steve Weeks asked questions about how much money, time, equipment, etc. is contributed by the state and NOAA Fisheries in a joint enforcement agreement. He said it seemed that states involved in these agreements contribute as much as the federal agency.

Tracy Dunn, the Southeast Assistant Director in charge of the Southeast Division, NOAA's Office of Enforcement, said normally those agreements do not require matching funds. He said joint enforcement agreements are set up so 50 percent of the funding goes to the state for direct purchases, depending of the needs of the priorities set out in the agreement and the remaining funds cover overhead costs and total patrol hours. The state provides a fully trained and equipped officer and vessel and the joint enforcement agreement pays for the people on the boat, the boat time and the overhead covers a lot of the maintenance costs.

Weeks talked about the joint enforcement agreement with Massachusetts and said the federal agency provided \$1,295,000 with the state having to contribute \$817,953 in man hours, land based patrol, patrol boat operators, etc. He asked if the joint enforcement agreement works like that. Dunn said that the \$817,953 would have come out of the \$1,295,000. Weeks said that was not the case and Dunn said he would look at that agreement, but agreements used in the Southeast did not work like that.

Weeks said North Carolina lies in an area where the Northeast and Southeast overlap and asked about the species covered under this agreement. Dunn said that was up for negotiation between the state and federal agencies. He said usually three to four priorities were selected to be covered in a joint enforcement agreement.

Weeks asked about the priorities North Carolina focused on. Lupton said when this was previously looked at the priorities were the Snapper-Grouper complex and turtle excluder devices. If the state decided to enter into a joint enforcement agreement, those priorities would be negotiated annually.

Weeks asked if some federal violations would be able to be handled at the state level. Dunn explained joint enforcement agreements are intended to allow smaller federal violations to be handled by the state because the federal court system can't handle the volume.

Dunn said if a case did need to go to the federal court system, then a case file would be put together and submitted to the NOAA Office of General Counsel/Enforcement Section for review. If there is a determination a charge is warranted, then a Notice of Violation and Assessment (NOVA) is issued outlining the charges against the defendant. The defendant has the option to pay the fine, or take it to a civil administrative hearing.

Tom Roller asked if Marine Patrol was already doing work for which they were not getting paid by the federal government. Lupton said that was the case and used turtle excluder device inspections done by Marine Patrol as an example.

Brent Fulcher asked about varying boundary lines for the Exclusive Economic Zone in the Gulf of Mexico. Florida and Texas state boundaries go out to nine miles while other Gulf States' boundaries start at three miles. Fulcher said some Gulf States were considering expanding their boundaries so federal rules on red snapper would not apply to them. He asked what would happen when the state and the federal agencies come into conflict with each other. Dunn said the federal agency would not ask state officers to enforce laws contrary to their state.

Weeks expressed concern that in some cases the federal government gets over \$2 million worth of law enforcement for a little over \$1 million and the state's tax payers are paying the burden. Dunn said that in his experience states come out ahead and that should be the same for all states.

Weeks asked how many federal officers were patrolling North Carolina and it was clarified there was one special agent in the state.

David Daniels said while he was fishing for blue fin tuna in the winter he was checked every day by six or eight people, and then by the Coast Guard, and then Marine Fisheries would check him at the fish house. He thought there were plenty of officers and that we didn't need anymore. He also suggested more time be spent on border and drug issues. Dunn said they run special operations in North Carolina because there isn't a joint enforcement agreement in place and they have to put in their own officers.

Bobby Smith questioned if the state would be willing to go out of compliance with NOAA if it was getting money from NOAA for law enforcement. He also voiced concerns that Marine Patrol officers would be able to handle all the federal regulation questions when he felt they couldn't stay current on the state regulations.

Roller said that the Marine Patrol was very good at answering all of his questions. Smith said that he was trying to say that Marine Patrol didn't need the extra burden of dealing with federal regulations. Roller said that the federal fisheries management process, nor federal councils, were going to go away any time soon so we are just going to have to deal with it.

Fulcher said that he thought that hires of federal officers were increasing instead of decreasing. Dunn indicated that NOAA OLE is currently increasing the number of Enforcement Officers in its staffing with positions that are mostly replacing Special Agents. OLE was under a hiring freeze for some time, during which the number of Special Agents went from 33 prior to the freeze down to 21. With the hiring freeze lifted, EOs have been hired in lieu of Special Agents for the open positions.

Weeks asked if NOAA was using the state enforcement officers at a fraction of the cost that NOAA would have to pay their own. Dunn said that was part of the reason for these agreements and that NOAA will never have the number of people they need to meet their mission goals. Weeks said that the division was currently shorthanded as well and didn't have the number of people to meet its current demands and entering a joint enforcement agreement would put even more demands on state enforcement officers.

Roller voiced concern about enforcement of federal permits, particularly in the for-hire sector. He felt the charter-boat fleet was out of compliance with South Atlantic permit requirements. He felt if limited entry began in the future, the for-hire sector's lack of compliance would cause them lots of problems. He was concerned that state officers don't have the authority to check federal permits because of the lack of a joint enforcement

agreement. He talked about an associate of his that was fishing off shore on a charter boat without the required South Atlantic permits and was checked by the Coast Guard. He did not have the appropriate permits for some of the fish in his possession and he received a huge fine. He asked if the state's Marine Patrol handled that case, how would it have been different. Col. Kelley said if Marine Patrol did not have jurisdiction over it, there would be nothing they could do. But if Marine Patrol had enforcement authority over it, the charges would probably be handled in our district courts with a \$25 fine and court costs. Roller said that if handled through the state's district court, it wouldn't be a \$1,500 fine but would instead potentially be a much smaller fine. Dunn said there would have to be a state law that says that the permit is required, otherwise it would be considered a federal case.

Weeks brought up a case where large fines were imposed. Dunn said the joint enforcement agreement was meant to handle smaller cases. Weeks said that the smaller violations go through the state courts with state fines, but the larger ones are handled through issuing notice of violations which can take years. Dunn clarified that a joint enforcement agreement would not put large cases into the state courts, but only smaller ones.

Fulcher voiced concerns about incidents in the Northeast where federal officers were heavy handed and congressional intervention was needed to help with the situation. He mentioned another incident where federal officers boarded his vessel with guns drawn and ordered the captain to take the boat to the dock the next morning or they would seize it. He felt that incidents like that were overkill and not necessary.

Dunn indicated that the investigation of the incident in the Northeast showed the attorney in question to be pretty much out of bounds in his approach to respondents. The investigation also showed that no such problems were found in the Southeast region, which includes North Carolina. He said that there will always be a bad apple from time to time, but those are dealt with. He said overall, their boardings and inspections are done well and the relationship with the fishermen was good.

In reference to the boarding mentioned, Dunn said that if their agents came aboard the boat with weapons drawn it should have been reported to him. No such report was submitted. He said he would look into it because it is not their policy to do that without justification.

Lupton asked because of the overlap of the Northeast and Southeast fisheries in North Carolina, if we would have two joint enforcement agreements. Dunn said that because of the overlap, some of the prosecution would be in the Northeast, but North Carolina would have a joint enforcement agreement with the Southeast.

Dossey Pruden brought up an enforcement manual that he found online and said the Magnusson-Stevens Act, the Lacey Act, the Endangered Species Act, the Marine Mammal Protection Act, and the Highly Migratory Species Act would all need to be covered in a joint enforcement agreement. He talked about local officers having to deal with these laws on a daily basis. Pruden said that Mike Frye, with NOAA Fisheries, told him that he expected state enforcement to go out to patrol 200 miles off shore under a joint enforcement agreement. Dunn said Frye was with administration, not operations, of which Mr. Dunn is in charge, and operations doesn't work like that.

Pruden asked if the Cooperative Enforcement Performance Review Guide was subject to modification. Dunn said that every three years or so they will do a review to make sure that the joint enforcement agreement is performing as intended.

Pruden voiced concerns about administrative cost taking up a lot of the money, and not leaving as much as some may like for the actual enforcement activities. Dunn explained if a state got \$1 million, then \$500,000 would be set aside for purchases of equipment, etc. Of the remaining \$500,000, 35 percent is taken off the top

for overhead. The remainder of that would go to services. Dunn said that NOAA doesn't require anything from the state other than the trained officer. Pruden asked how many hours other states have been putting in. He did not want to see more burden put on state officers than they already had.

Timpy asked that all of the concerns voiced during the meeting be documented. Lupton indicated that there would be minutes available of the meeting.

Timpy wanted to know what the other states think of the joint enforcement agreement since the program's inception in 2000 or 2001 and asked if during that time if any state had not renewed their agreement. Dunn said that U.S. Virgin Islands did not renew the agreement on a few occasions, and also Puerto Rico. Timpy asked if any kind of survey had been done or had any kind of national meetings held? Dunn said every other year they have a National Cooperative Enforcement Program meeting. No reports are generated from those meetings, but Dunn thought that it would be a good idea to reach out to other states for their input.

Pruden asked if the joint enforcement agreement monies were divided out among the states in a tier system. Dunn said that they had a matrix at one time to allocate monies based on the ability of the state to provide the resources. The new director has changed that system and those changes will probably be made to the Cooperative Enforcement Agreement Manual this year he explained.

Fulcher asked how much the Marine Patrol budget had been decreased when it looked like the joint enforcement agreement was going to move forward. Lupton said the budget was initially decreased by \$250,000, and the next year by an additional \$100,000, for a total of \$350,000; but some of that money was restored to the 2015 budget. Fulcher felt that the states were using money they had been budgeting for their fisheries enforcement elsewhere because they were now getting federal money. He said that it would be hard for a state to do without joint enforcement agreement money once that state had become dependent on it.

Timpy wanted clarification of the March 2015 Draft North Carolina Joint Enforcement Agreement. He asked for a better definition of state and federal fisheries regulations in the Exclusive Economic Zone offshore of the state. Dunn said that would depend on the priorities made in the agreement. He said they would be looking for any vessels coming from the exclusive economic zone. Normally, they would operate at the state/federal line. For something like turtle excluder device inspections; however, Dunn said those inspections would not have to be done that far offshore.

Weeks talked about state sovereignty. He told about a case he handled around 1986 where the state joined in a suit with mackerel fisherman against the NOAA. There have been several cases like that. He is concerned that the state will be reluctant to sue to protect their fishermen when they are receiving NOAA monies. He gave the HB2 bill as an example where the federal government has threatened to take funds back if North Carolina does not comply with a federal stance.

Roller voiced concerns that the panel was only made of commercial and for-hire license holders. He didn't believe that it could represent all viewpoints on the issue.

Pruden said that he thought Marine Patrol should be focusing on their jobs and not doing work that the federal government should be doing.

Fulcher wanted to hear the public comment.

Summarize Stakeholder Input

Lupton said it appeared the majority of the panel did not want a joint enforcement agreement. She said it also seemed that most of the members felt the Marine Patrol needed to focus on enforcing state laws that benefit the citizens of North Carolina and that NOAA needs to handle federal enforcement. She said she had also heard several members voice concern that the panel should have also included recreational license holders.

The group decided to vote on the issue.

Duke Spencer made a motion that North Carolina not enter into a joint enforcement agreement, seconded by Dossey Pruden.

It was decided to open the floor up to public comment before the vote.

Public Comment

Hal James, with the Coastal Carolina Tax Payers Association, supported smaller government and doesn't want the federal dollars. He sees entering into a joint enforcement agreement as an intrusion on state sovereignty.

Raynor James, with the Coastal Carolina Tax Payers Association, was for free enterprise and was against the joint enforcement agreement. She doesn't want the intrusion and influence of the federal government and doesn't want the strings that are attached to federal money.

Jerry Schill, President of the North Carolina Fisheries Association, said we should enter a joint enforcement agreement for the right reasons or not enter for the right reasons. He felt it didn't matter what the other states do. He is concerned the state will be reluctant to enter cases such as the mackerel case mentioned by Steve Weeks if it were getting federal money. He said he is against entering a joint enforcement agreement because it doesn't make sense for North Carolina to do so.

Tim Hergenrader expressed concern that there were no seats on the panel for recreational fishermen. Regarding the questions of sovereignty, he pointed out that that he didn't think the state lost its sovereignty when it took federal monies for the dredging of the inlets or with Cherry Point. He said he supports the state entering into a joint enforcement agreement. He said he thinks this process is a sham because the legislature did not allow the recreational sector a seat on the stakeholder panel.

Aundrea O'Neal, with Carteret County Fishermen's Association, said the association is against entering into a joint enforcement agreement.

Chris Elkins, President of the Coastal Conservation Association, said that the panel was a sham because it did not include seats for recreational fishermen. He thought that was done by the design by the legislature. He said his organization supported legislation authorizing a joint enforcement agreement and that North Carolina is the only coastal state in the United States that does not have a joint enforcement agreement. Elkins said the state can carefully write the agreement and can withdraw from the agreement without penalty. He said with the state budget being under such pressure it is foolish to turn down this money.

Jason Spatilson, said he was a commercial fishermen and is against the joint enforcement agreement.

Gladys Sussel said she is from New York and that one of the main reasons she came to North Carolina was because the state still had some freedoms that New York did not. She would hate to see that given up for joint enforcement agreement money. She said tourists come here for the fresh seafood caught by the local commercial industry. With regard to an earlier comment about federal money at Cherry Point, she pointed out that the military is one of the mandates of the constitution.

Perry Beasley said he was against the joint enforcement agreement. He believes that other states are not happy with their joint enforcement agreements but have been unable to reverse them. He thinks that North Carolina doesn't need the federal government to help regulate fisheries.

Iggi Husar said he is a recreational fisherman, a consumer and a businessman. He doesn't see the financial benefit of the joint enforcement agreement to fishermen and wonders what the joint enforcement agreement will do to the price of seafood.

Matthew Schwab said most of his comments have already been mentioned by others and that he appreciates Marine Patrol's work

Kim Fink said she wants North Carolina money to stay in North Carolina.

Donald Willis said he makes his living from the recreational fishing industry and he doesn't understand why North Carolina does not enter into a joint enforcement agreement. Our laws need more teeth, he said and low fines are no good. More enforcement is needed and he believes that more enforcement will make people follow the rules, which will benefit the fishery. He is for the joint enforcement agreement.

Earl Dail said he is a resident of eastern North Carolina and he recreationally fishes and has been in fishing tackle sales for 15 years. He is a member Coastal Carolina Tax Payers Association and he encouraged the panel to list all things the federal government has done good and bad for you. He felt that we need to keep the federal government out of this and that repeat offenders should be heavily fined, but by the state.

Jonathan Fulcher said he is a commercial fisherman and opposes entering the joint enforcement agreement. He thinks the Marine Patrol does a great job and offered thanks.

Tyler Brewer said he is against entering a joint enforcement agreement.

The motion by Duke Spencer that North Carolina not enter into a joint enforcement agreement, seconded by Dossey Pruden, was then brought back to the floor for a vote. Motion carried 6 – 1, with 2 abstentions.

Next Steps

Lupton then advised the group that the division will continue to take public comment on the joint enforcement agreement issue until July 1 and that information, along with the proceedings of the stakeholder meeting, will be included in the legislative report. She reiterated the report will be submitted to the Department of Environmental Quality by Sept. 1, 2016 for review and then submitted, by the department, to the North Carolina General Assembly's Environmental Review Commission by Oct. 15, 2016. Once submitted to the legislature, the report will be available to the public. Lupton also said the audio and minutes of the meeting would be posted on the division's website.

The meeting adjourned at 7:08 pm.