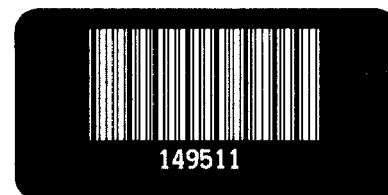


June 1993

SPECIES
PROTECTION

National Marine
Fisheries Service
Enforcement Efforts



RESTRICTED--Not to be released outside the
General Accounting Office unless specifically
approved by the Office of Congressional
Relations.

557426

RELEASED

**Resources, Community, and
Economic Development Division**

B-248630

June 21, 1993

Congressional Requesters

During July 1991 congressional hearings, Gulf of Mexico shrimp fishermen expressed concern that federal agencies were overly aggressive in enforcing Endangered Species Act (ESA) regulations requiring turtle excluder devices (TED) which, when inserted into a shrimp net, create a hole allowing trapped turtles to escape. In light of the shrimp fishermen's concerns and a preliminary review of this issue by staff of the Subcommittee on Coast Guard and Navigation, House Committee on Merchant Marine and Fisheries, you asked us to examine how enforcement practices under ESA compared with the enforcement of other fisheries and marine species protection laws. Specifically, you asked us to provide you with statistical data on the level of federal agencies' enforcement efforts and the penalties being assessed to enforce four major fisheries and marine species protection laws in the southeastern United States: the ESA, the Lacey Act, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and the Marine Mammal Protection Act. These laws either regulate fishing activities or afford protection for selected marine species.

On March 11, 1993, at their request, we briefed Subcommittee staff on the results of our work. This briefing report summarizes the information we presented at that briefing and provides data on National Marine Fisheries Service (NMFS) enforcement activity in the Southeast Region, which is responsible for the Gulf of Mexico area, for fiscal years 1988-92. NMFS, within the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA), has overall responsibility for enforcing the four laws. NMFS relies on the U.S. Coast Guard and other federal and state agencies to assist with detecting and documenting violations of these laws. (Sec. 1 provides background information on the four laws and NMFS enforcement efforts.)

In summary, NMFS' Southeast Region enforcement efforts for fiscal years 1988 through 1992 resulted in the opening of 3,324 cases involving the four laws. Of the total cases opened—including some that were subsequently dismissed—64 percent represented violations of the Magnuson Act and another 22 percent represented violations of the TED regulations under ESA. Cases involving the Lacey Act (9 percent), the Marine Mammal Protection

Act (1 percent), and ESA other than TED regulations (3 percent) accounted for the remaining cases. When viewed on an annual basis, Magnuson Act cases represented the largest number of cases in each of the 5 fiscal years examined. Magnuson Act violations include fishing without a permit and possessing out-of-season fish. For TED violations, the annual number of cases increased significantly from fiscal year 1988 through fiscal year 1990 but then decreased through fiscal year 1992. The significant increase in TED cases, according to NMFS officials, reflected NMFS' efforts to achieve a high degree of compliance by shrimp fishermen with TED regulations. The subsequent decrease in TED cases corresponded with a high degree of observed compliance with the TED regulations. (See sec. 2.)

Both civil and criminal charges were assessed against violators of the four laws. Penalties included written warnings, fines, and, in some cases, jail sentences. On the basis of the data we reviewed, we found that

- about 90 percent of all cases opened were for civil violations, and violators were primarily assessed fines, written warnings, and property forfeitures and
- of the civil violations, 71 percent involved Magnuson Act violations, 18 percent involved ESA TED violations, 8 percent involved Lacey Act violations, and the remaining 3 percent involved Marine Mammal Protection Act and ESA other than TED regulation violations.

The average fine assessed differed by act, but on average amounted to \$2,560. The highest average fines assessed—\$6,132—were for Lacey Act violations, while the average TED fine was \$3,665. In comparison, maximum authorized civil fines under the four acts are substantially higher—\$100,000 for Magnuson Act violations, \$10,000 for Lacey Act and Marine Mammal Protection Act violations, and from \$12,000 to \$25,000 for ESA violations.

Regarding criminal violations of the four laws during the 5-year period, 317 criminal cases were opened. Of the total criminal cases opened—including some that were subsequently dismissed—60 percent were for TED violations, such as failure to use a TED or use of a disabled TED, and 26 percent involved Lacey Act violations, such as the illegal transport of fish across state lines for resale. Non-TED ESA violations accounted for 12 percent of the criminal cases opened. The high proportion of criminal violations represented by ESA cases, according to NMFS officials, reflects the more extensive availability of authority to assess criminal penalties for violations of ESA as compared with the other laws. Overall, penalties

resulting from criminal violations of the ESA and Lacey Act generally involved probation and fines, although violations also resulted in community service and jail sentences. (See sec. 3.)

Agency Comments

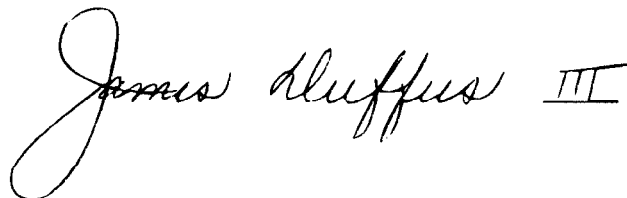
In commenting on a draft of this briefing report, the Deputy Under Secretary for Oceans and Atmosphere, Department of Commerce, said that the briefing report should be clarified to show that the data within it only reflected enforcement efforts in NMFS' Southeast Region. The Deputy also offered some editorial comments. We revised the briefing report as appropriate to reflect these comments.

Scope and Methodology

We conducted our review from July 1992 through March 1993 in accordance with generally accepted government auditing standards. We interviewed officials from NMFS' Southeast Region Office of Enforcement and NOAA's Southeast Office of General Counsel. We obtained and analyzed the data base the Office of Enforcement used to track and report on regional enforcement activities. Although we did not independently verify the data, we worked closely with responsible agency officials to ensure the accuracy of our analysis.

As arranged, unless its contents are announced earlier, we plan no further distribution of this briefing report until 7 days after the date of this letter. At that time, we will send copies to the Secretary of Commerce, appropriate congressional committees, and other interested parties. We will also make copies available to others on request.

If you or your staff have any questions, please contact me on (202) 512-7756. Major contributors to this briefing report are listed in appendix II.

A handwritten signature in cursive script that reads "James Duffus III". The signature is written in black ink and is positioned above the printed name.

James Duffus III
Director, Natural Resources
Management Issues

List of Requesters

The Honorable Billy Tauzin
Chairman, Subcommittee on
Coast Guard and Navigation
Committee on Merchant Marine
and Fisheries
House of Representatives

The Honorable Herbert H. Bateman
The Honorable Jack Brooks
The Honorable Sonny Callahan
The Honorable E (Kika) de la Garza
The Honorable Tom DeLay
The Honorable Jack Fields
The Honorable James A. Hayes
The Honorable William J. Hughes
The Honorable Earl Hutto
The Honorable William J. Jefferson
The Honorable H. Martin Lancaster
The Honorable Greg Laughlin
The Honorable Bob Livingston
The Honorable Solomon P. Ortiz
The Honorable Gene Taylor
House of Representatives

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Abbreviations

| | |
|------|---|
| ESA | Endangered Species Act |
| GAO | General Accounting Office |
| NMFS | National Marine Fisheries Service |
| NOAA | National Oceanic and Atmospheric Administration |
| TED | turtle excluder device |

Background

The National Marine Fisheries Services' (NMFS) Office of Enforcement is responsible for enforcing federal fisheries and marine species protection laws under jurisdiction of the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA). NMFS' Southeast Region's Office of Enforcement enforces these laws in the Atlantic Ocean south of the North Carolina/Virginia border to southern Florida and the Gulf of Mexico from southern Florida to the Texas/Mexico border. In addition, the office's enforcement activities extend to the territories of the U.S. Virgin Islands and Puerto Rico.

NMFS enforcement efforts primarily focus on four acts—the Endangered Species Act (ESA), the Lacey Act, the Magnuson Fishery Conservation and Management Act of 1976 (Magnuson Act), and the Marine Mammal Protection Act. These acts regulate a variety of activities and/or provide protection for certain marine life.

ESA was enacted to protect plants and animals whose survival is in jeopardy. Once a species is listed as endangered or threatened, the act limits activities that could harm the species or its habitat. Violations include killing, hunting, or harassing listed species. Under ESA, NMFS is responsible for protecting most marine plant and animal species, including endangered or threatened sea turtles in marine waters. In October 1987, as part of its overall ESA enforcement efforts, NMFS implemented new ESA regulations requiring shrimp fishermen in the Gulf of Mexico and South Atlantic to use a turtle excluder device (TED) in their nets while fishing or limit the amount of time fishing without a TED. TEDs, which come in a variety of designs, use a trap-door system or escape hole to permit turtles to escape from shrimp nets but, at the same time, limit the amount of shrimp loss. By requiring TEDs, NMFS hoped to decrease the number of protected sea turtles, estimated to be over 11,000 annually, that got caught in shrimp nets and subsequently drowned.

The Lacey Act makes it illegal to import, possess, or transport fish and wildlife taken or exported in violation of state, federal, Indian, or foreign laws. Examples of violations include the interstate transportation of shellfish illegally harvested from closed areas; the possession and subsequent interstate sale of red drum; and the interstate shipment of lobster in unmarked containers.

The Magnuson Act established a system for designing and administering fishery management plans to regulate fisheries within U.S. waters. NMFS' Southeast Region is responsible for enforcing 13 management plans

covering a wide variety of species, such as mackerel, reef fish, spiny lobster, and swordfish. Examples of violations include fishing without a permit, possessing out-of-season fish, or retaining undersize fish.

The Marine Mammal Protection Act placed an indefinite moratorium on the taking or importation of marine mammals and marine mammal products without a permit. NMFS is responsible for enforcing regulations that protect all marine mammals (except for a few mammals, such as the sea otter and manatee, which are the responsibility of the Department of the Interior's Fish and Wildlife Service).

NMFS relies on the U.S. Coast Guard and other federal and state agencies to assist in detecting and documenting alleged violations. When violations are identified, NOAA's Office of General Counsel prosecutes civil fisheries cases and, on request, assists the U.S. Attorney's Office in prosecuting criminal cases. The General Counsel's Office also collects fines levied as a result of civil violations and initiates collection efforts against violators when fines are not paid.

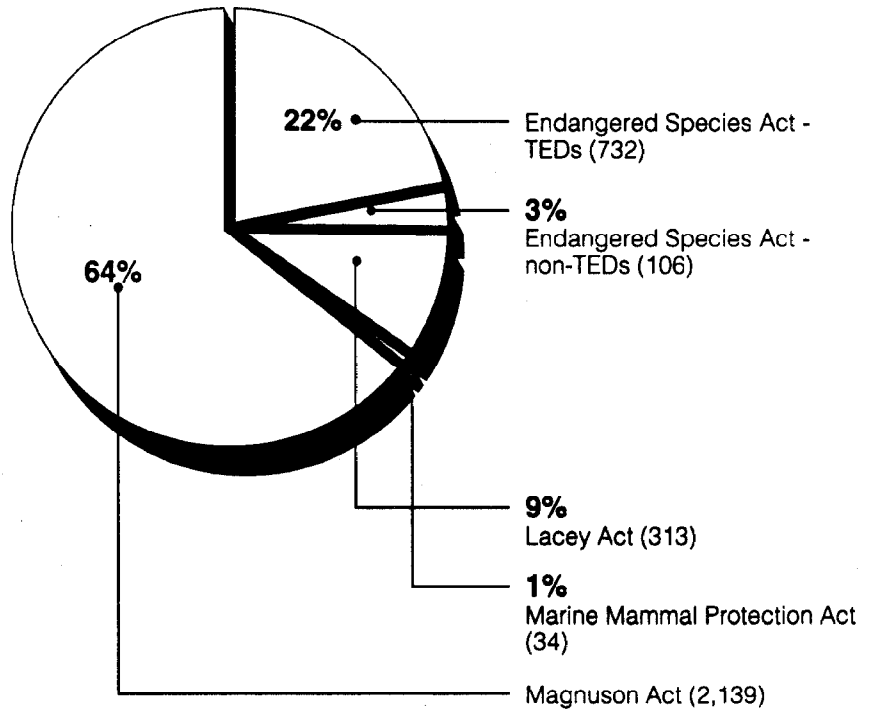
Individuals charged with civil violations may request a hearing before an Administrative Law Judge in the Department of Commerce. After receiving a Notice of Violation and Assessment, the individual has 30 days to submit a written request for a hearing. According to NOAA General Counsel officials, most timely requests for a hearing are settled prior to holding an actual hearing.

NMFS' Office of Enforcement maintains a computerized data base to manage the large volume of data associated with carrying out responsibilities under the various laws and regulations that it enforces. Included in the data base are records that track violation and case investigation data, such as the location of the violation, type of violation, and penalty assessment information. We used the data base to develop most of the statistical information contained in this briefing report.

Enforcement Activity and Trends

NMFS' Southeast Region's Office of Enforcement opened 3,324 enforcement cases involving the four fisheries and marine species protection acts during fiscal years 1988 through 1992. As shown in figure 2.1, 64 percent of the cases involved Magnuson Act violations; 25 percent were for ESA violations, mostly involving TED regulations; and the remaining 10 percent were Lacey Act or Marine Mammal Protection Act violations.

Figure 2.1: Total Number of Cases Opened, Fiscal Years 1988 Through 1992



Note: Total cases 3,324; percentages total 99 percent due to rounding.

Source: GAO analysis of the Southeast Region's data base.

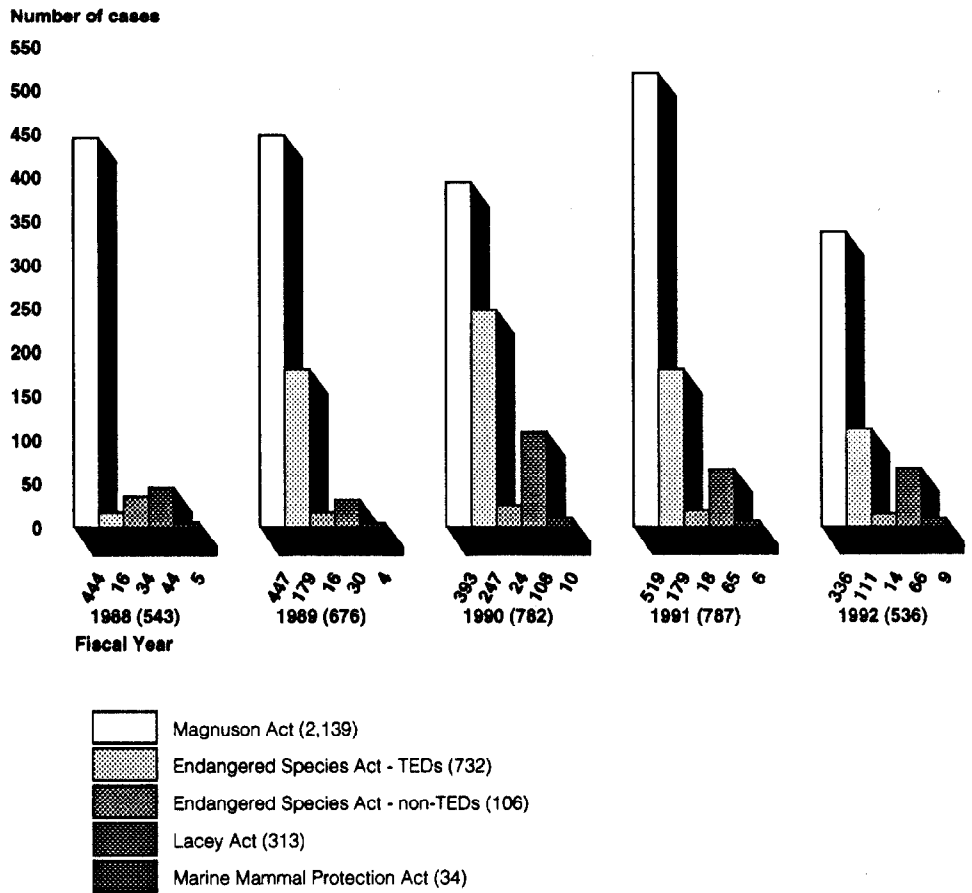
Section 2
Enforcement Activity and Trends

According to NOAA General Counsel officials, the high proportion of Magnuson Act violations is not surprising because of the broad regulatory coverage of the act relative to the other acts, coupled with the large number of recreational fishermen in the Gulf of Mexico. For example, potential violations of TED regulations are primarily limited to shrimp fishermen failing to use a qualified TED or exceeding the amount of time fishing without a TED. Specifically, the act contains various provisions to regulate the harvest of a wide variety of fish species, such as reef fish, spiny lobster, summer flounder, and swordfish. Magnuson Act violations include possessing prohibited fish, fishing without a valid permit, or using illegal fishing gear.

Figure 2.2 shows the number of enforcement cases that the Southeast Region opened each year during fiscal years 1988 through 1992.

**Section 2
Enforcement Activity and Trends**

Figure 2.2: Total Number of Cases Opened by Fiscal Year



Note: Total cases, 3,324.

Source: GAO analysis of the Southeast Region's data base.

As figure 2.2 shows, Magnuson Act cases represented the largest share of enforcement activity in each of the 5 fiscal years reviewed. The higher number of Magnuson Act cases in fiscal year 1991, according to NOAA General Counsel officials, reflected enforcement directed at ensuring compliance with new comprehensive Gulf of Mexico reef fish regulations that were implemented in 1990. Over 200 reef fish cases were opened in both fiscal years 1990 and 1991, compared with 24 violations in fiscal year 1989.

Section 2
Enforcement Activity and Trends

In addition, figure 2.2 shows that the number of TED cases increased significantly from 16 cases in fiscal year 1988 to 247 cases in fiscal year 1990—the first 3 years TED regulations were in force. The increase in TED cases, according to NOAA General Counsel officials, corresponded to increased enforcement efforts during this period to achieve a high degree of compliance with the new regulations. TED compliance data showed that the number of Gulf of Mexico shrimp fishermen (the largest concentration of shrimp fishermen in the Southeast Region) not using TEDs and the number of repeat offenders were increasing. According to NOAA General Counsel officials, in the summer of 1990 a decision was made to charge flagrant TED violators with criminal penalties. At that time, observed compliance with the TED regulations in the Gulf of Mexico was estimated at 68 percent. These officials believed that additional sanctions were needed to increase the incentive to comply with the regulations. By July 1992, observed compliance in the Gulf had reached 96 percent. Compliance also improved, according to NMFS, as shrimp fishermen gained experience using TEDs and became more accustomed with the devices' operation.

The number of Lacey Act cases, as shown in figure 2.2, increased from 30 cases in fiscal year 1989 to a high of 108 cases in fiscal year 1990. Contributing to this increase, according to NMFS, were new enforcement efforts undertaken in 1990 to measure compliance with the Lacey Act requirement that packages of fish or wildlife imported, exported, or transported interstate be clearly marked with information such as the species name, the shipper name, and the import/export number.

Outcomes of Enforcement Efforts

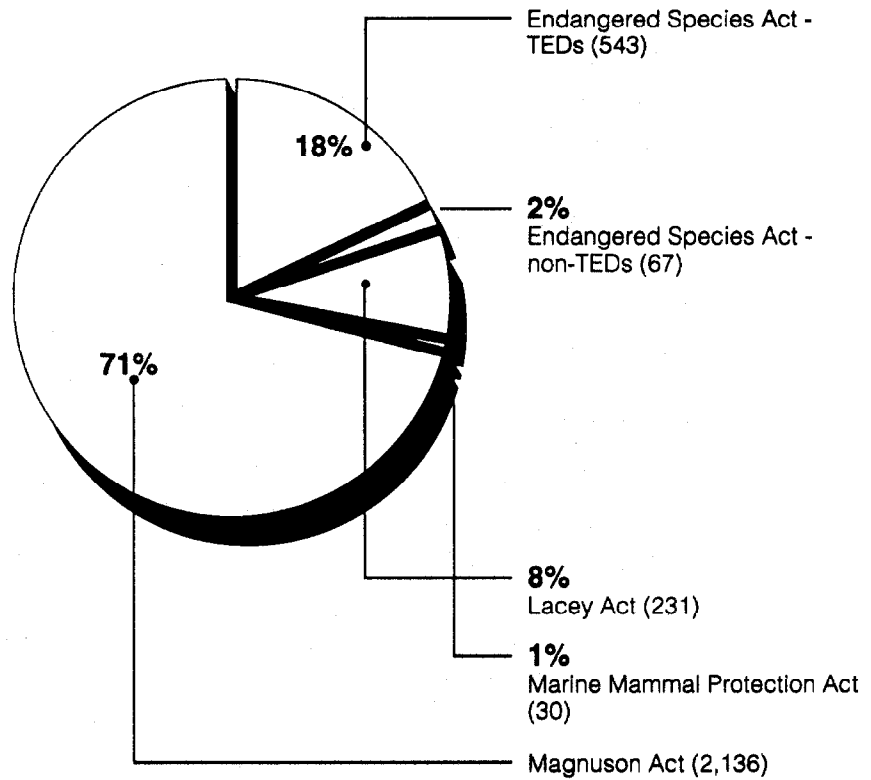
Fisheries and marine species enforcement cases may result in either civil or criminal charges. Of the 3,324 cases opened in fiscal years 1988 through 1992 by NMFS' Southeast Region's Office of Enforcement, about 90 percent involved civil charges and the remaining 10 percent involved criminal charges. Depending on the law violated and the severity of the violation, individuals may receive one or more of the following penalties—a written warning, a fine, probation, jail sentence, and/or other enforcement action.

Civil Cases

As shown in figure 3.1, most of the 3,007 civil cases opened during fiscal years 1988 through 1992 were for Magnuson Act violations. TED violations accounted for 18 percent of the civil cases.

Section 3
Outcomes of Enforcement Efforts

Figure 3.1: Number of Civil Cases Opened, Fiscal Years 1988 Through 1992



Note: Total cases, 3,007; percentages have been rounded.

Source: GAO analysis of the Southeast Region's data base.

The most frequently assessed penalties for civil cases were monetary fines, written warnings, and property forfeitures—primarily fish. Of the 4,434 individuals charged with civil violations,¹ 2,108 were assessed fines, 1,079 were issued written warnings, 981 forfeited property, and 471 had

¹Because a civil case can involve more than one individual, the number of individuals is greater than the number of cases opened.

**Section 3
Outcomes of Enforcement Efforts**

charges dismissed. Table 3.1 shows the results of civil cases for the four laws.

Table 3.1: Civil Penalties Assessed, Fiscal Years 1988 Through 1992

| Name of act | Number of individuals charged with civil violations | Percent of individuals penalized who were assessed the civil penalty identified ^a | | | | |
|--------------------------|---|--|-----------------|--------------------|-----------------|--------------------|
| | | Assessed fines | Written warning | Forfeited property | Other outcomes | |
| | | | | | Dismissed cases | Other ^b |
| ESA - TED | 921 | 49% | 34% | 1% | 10% | 7% |
| ESA - non - TED | 90 | 34 | 2 | 24 | 26 | 21 |
| Lacey | 319 | 55 | 8 | 29 | 16 | 17 |
| Magnuson | 3,058 | 47 | 24 | 28 | 9 | 12 |
| Marine Mammal Protection | 46 | 26 | 9 | 2 | 46 | 17 |

Note: Percentages have been rounded.

^aFor most of the acts discussed, the percentages total greater than 100 percent because some individuals received more than one type of penalty. For example, an individual assessed a civil fine may also be required to forfeit fish. In instances where an individual received more than one of the penalties, the individual is included in the percentage for each of the penalties received.

^bThis percentage includes cases with other outcomes, such as suspended cases, cases awaiting review by NOAA's Office of General Counsel, or cases where a hearing request was pending.

Source: GAO analysis of the Southeast Region's data base.

As shown in table 3.1, fines were the highest percentage of penalties assessed for individuals charged with civil violations under the four laws. Also, the largest percentage of written warnings occurred when individuals were charged with civil violations under the TED regulations or the Magnuson Act; forfeiture of property was a relatively rare penalty for TED and Marine Mammal Protection Act violations.

Maximum civil fine amounts authorized under the four acts vary widely. Magnuson Act violators can be fined up to \$100,000 per violation compared with \$10,000 per violation for Lacey Act and Marine Mammal Protection Act violations. The maximum ESA civil fine ranges from \$12,000 to \$25,000 depending on the violation—with a maximum of \$12,000 for TED violations. According to NOAA's Office of General Counsel, the highest dollar penalties are assessed for repeat offenders with serious violations. Fines are assessed on the basis of established penalty schedules. Table 3.2 provides the number of individuals assessed fines under the various laws

Section 3
Outcomes of Enforcement Efforts

in the Southeast Region, the average amount of the fine assessed, the total fines assessed, and the range of fines assessed.

Table 3.2: Civil Fines Assessed, Fiscal Years 1988 Through 1992

| Name of act | Number of individuals assessed a fine ^a | Average fine assessed | Total fines assessed | Actual range of fines |
|--------------------------|--|-----------------------|----------------------|-----------------------|
| ESA - TED | 460 | \$3,665 | \$1,685,957 | \$100 - 12,000 |
| ESA - non - TED | 32 | 2,204 | 70,540 | 250 - 7,500 |
| Lacey | 178 | 6,132 | 1,091,438 | 63 - 10,000 |
| Magnuson | 1,455 | 1,806 | 2,627,585 | 69 - 25,000 |
| Marine Mammal Protection | 18 | 633 | 11,398 | 200 - 2,000 |

^aIncludes 35 individuals whose charges were subsequently dismissed.

Source: GAO analysis of the Southeast Region's data base.

As shown in table 3.2, civil fines assessed under each of the acts are usually substantially below fine amounts authorized in the acts. The average fine assessed differed by act—with an overall average of \$2,560. The table also shows that average Lacey Act fines have been substantially higher, while Marine Mammal Protection Act fines have been significantly lower, than average fines under the ESA and the Magnuson Act.

Frequently, civil fines that individuals are ultimately required to pay are lower than the amounts originally assessed. Under a NOAA Office of General Counsel policy, assessed fines can be reduced up to 50 percent. Assessed fines can be reduced more than 50 percent after giving consideration to factors such as (1) an individual's ability to pay, if properly documented, or (2) new information that could result in recalculation of the penalty, for example, a settlement ending multiple cases. Also, reductions in assessed fines can occur, according to General Counsel officials, when a fine is withdrawn or is replaced with a nonmonetary penalty, such as a written warning, or when an assessed fine is modified by an Administrative Law Judge. Data available for civil cases settled in the Southeast Region during the first three quarters of fiscal year 1992 show that fines were not reduced for 72 percent of the TED cases. When there were reductions, they averaged 25 percent. On average, Magnuson Act fines were reduced by 33 percent, Lacey Act fines by 50 percent, and ESA non-TED fines by 24 percent. Two Marine Mammal Protection Act cases did not have their fines reduced.

NOAA's Office of General Counsel has pursued various collection methods to obtain payment of assessed fines when they became overdue. The office primarily relied on two methods, referral to the U.S. Attorney's Office for collection and to the Internal Revenue Service to be treated as taxable income to the individual owing the fine. On occasion, the office has referred overdue fines to a credit reporting agency, but they are infrequently used. Between fiscal years 1988 and 1992, additional steps were taken to collect overdue fines from 11 percent of the 2,108 individuals assessed civil fines during this period.

The Office of General Counsel referred 65 individuals' overdue fines to the U.S. Attorney's Office to initiate collection actions—46 of these individuals had been assessed fines for TED violations. In addition, one individual with an overdue fine was referred to a credit reporting agency. Finally, for violations cited since 1988, 173 individuals with unpaid fines totalling about \$591,200 were referred to the Internal Revenue Service, including 57 individuals with unpaid fines from TED violations totalling almost \$244,000.

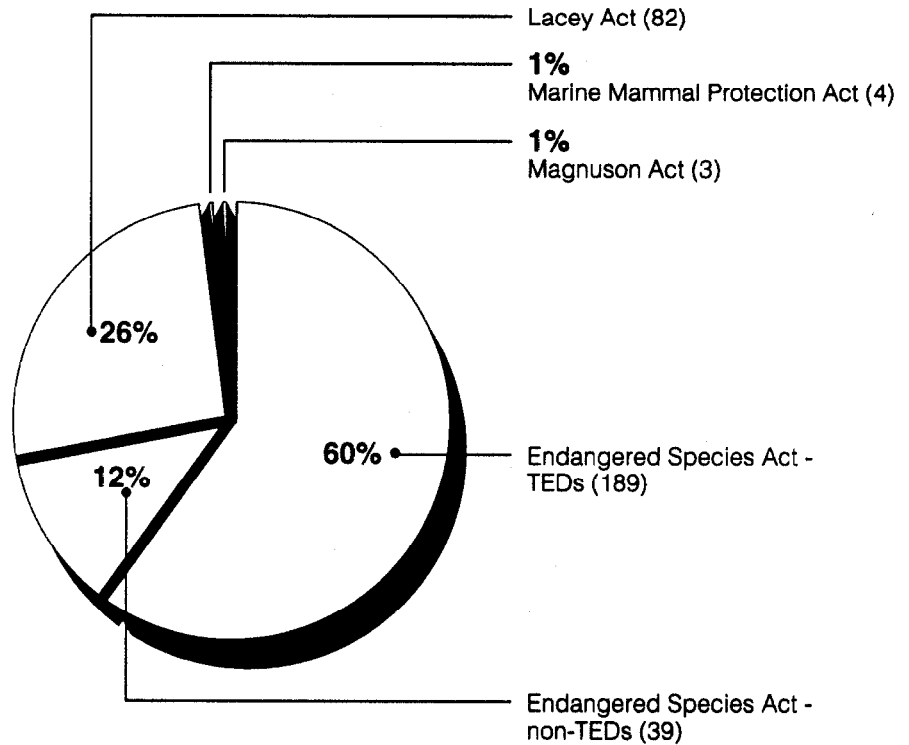
An individual charged with a civil violation can contest the penalty by submitting a written request for a hearing before a Department of Commerce Administrative Law Judge. For cases that were opened between fiscal years 1988 and 1992, NOAA's Office of General Counsel received 554 requests for hearings, of which 175 involved TED violations. Hearings were held for 72 of the requests, including 28 TED cases. Officials from the General Counsel's Office estimate that between 80 and 90 percent of the hearing requests are settled before a hearing is held.

Criminal Cases

Each of the four acts allow violators to be charged criminally under certain circumstances. Figure 3.2 shows that almost all criminal cases opened from fiscal year 1988 through fiscal year 1992 by the Southeast Region's Office of Enforcement involved ESA or Lacey Act violations.

Section 3
Outcomes of Enforcement Efforts

Figure 3.2: Number of Criminal Cases Opened, Fiscal Years 1988 Through 1992



Note: Total cases, 317; percentages have been rounded.

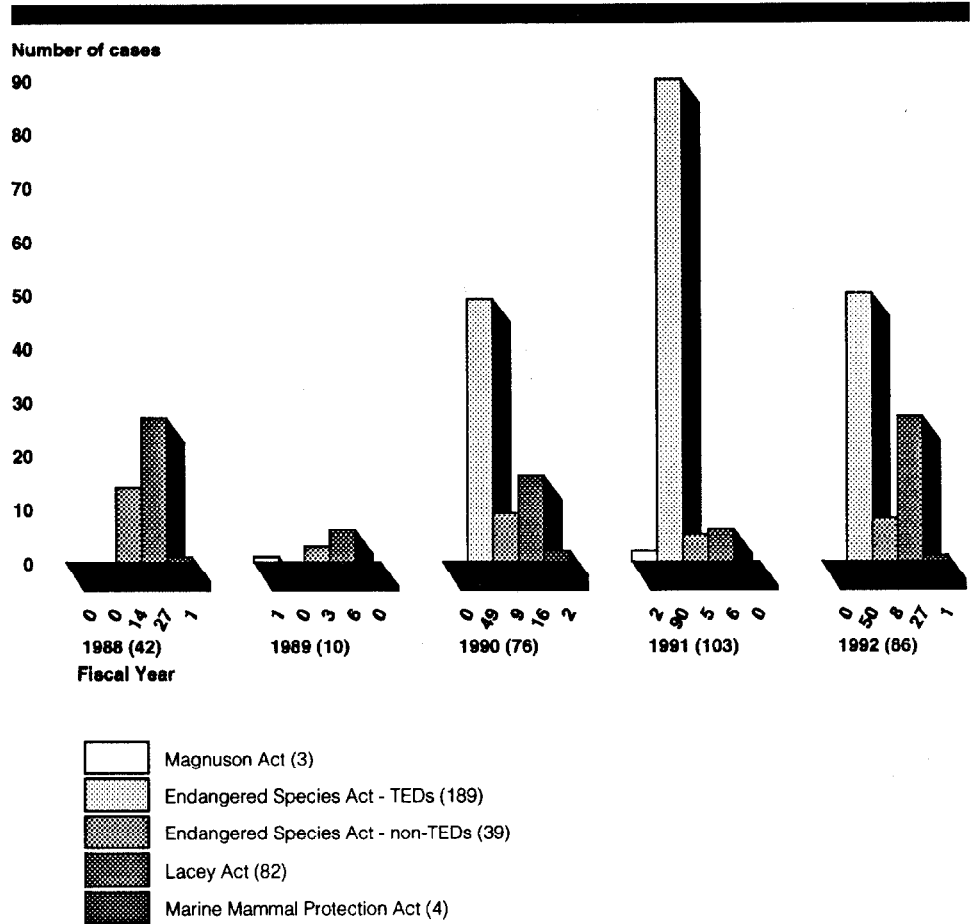
Source: GAO analysis of the Southeast Region's data base.

Of the four acts examined, the ESA and the Lacey Act allow the most extensive use of criminal penalties. For example, criminal violations of the TED regulations include shrimp vessels fishing with no TEDs or disabled TEDs (TEDs sewn shut or altered in any way that would prevent a turtle from escaping) installed in their nets. Lacey Act criminal violations include the knowing and illegal taking of fish or wildlife in state waters and their subsequent transport across state lines for resale. In contrast, under the Magnuson Act an individual cannot be charged criminally for fisheries management violations. Only actions such as forcefully impeding an investigation or submitting false information to the Secretary of Commerce, or certain acts committed by foreign vessels, may result in criminal charges.

Section 3
Outcomes of Enforcement Efforts

Figure 3.3 provides data on the number of criminal cases opened by the Southeast Region under each act for fiscal years 1988 through 1992.

Figure 3.3: Number of Criminal Cases Opened by Fiscal Year



Note: Total cases, 317.

Source: GAO analysis of the Southeast Region's data base.

As shown in figure 3.3, most of the criminal cases involved TED violations and were opened during fiscal years 1990-92. As discussed earlier, NOAA's Office of General Counsel decided in the summer of 1990 to refer flagrant violators of TED regulations to the U.S. Attorney's Office for criminal

Section 3
Outcomes of Enforcement Efforts

prosecution. The office made this decision because monitoring of shrimp fishermen's compliance with the regulations showed that an increasing number of shrimp fishermen were not using TEDs and that there was an increase in repeat offenders.

The 317 criminal cases opened during fiscal years 1988-92 involved criminal charges assessed against 342 individuals. Of these, 195 were charged with TED violations, 40 with ESA non-TED violations, and 95 with Lacey Act violations. Thirteen cases were subsequently dismissed. Table 3.3 shows the outcomes for the 330 individuals charged with ESA and Lacey Act violations in the Southeast Region.

Table 3.3: Criminal Penalties Assessed, Fiscal Years 1988 Through 1992

| Penalty assessed | Percent of individuals who were assessed the criminal penalty identified by act ^a | | |
|-------------------------------|--|-------------|-------|
| | ESA TED | ESA non-TED | Lacey |
| Jail sentence ^b | 3% | 23% | 4% |
| Community service | 5 | 18 | 2 |
| Probation | 40 | 43 | 23 |
| Fines | 39 | 40 | 23 |
| Other outcomes: | | | |
| Cases awaiting action | 47 | 23 | 34 |
| Criminal prosecution declined | 6 | 5 | 16 |
| Miscellaneous ^c | 1 | 15 | 18 |

Note: Percentages have been rounded.

^aThe percentages total greater than 100 percent because individuals often received more than one type of criminal penalty. For example, an individual assessed a criminal fine may also be required to participate in a community service program. In instances where an individual received more than one of the penalties, the individual is included in the percentage for each of the penalties received. Three TED cases and eight Lacey Act cases were subsequently dismissed.

^bOf the 19 individuals assessed a jail sentence, 9 had their sentences suspended, including 4 of the 6 individuals charged with TED violations who received jail sentences.

^cThis percentage includes cases with other outcomes, including a not guilty verdict or a plea bargain.

Source: GAO analysis of the Southeast Region's data base.

As shown in table 3.3, individuals charged under both acts primarily received probation and/or fines as their penalty. The table also shows that when jail sentences and community service penalties were assessed, they were most often associated with ESA non-TED violations.

Comments From the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
Chief Financial Officer
Assistant Secretary for Administration
Washington, D.C. 20230

MAY 14 1993

Mr. James Duffus, III
Director, National Resources
Management Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

Thank you for the opportunity to review your draft report entitled "Fisheries and Marine Species Protection: National Marine Fisheries Service Enforcement Efforts."

We have reviewed the enclosed comments of the Acting Under Secretary for Oceans and Atmosphere and believe they are responsive to the matters discussed in the report.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gloria Gutierrez".

Gloria Gutierrez
Acting Chief Financial Officer and
Assistant Secretary for Administration

Enclosure

Appendix I
Comments From the Department of
Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

MAY 7 1993

Mr. James Duffus III
Director, Natural Resources
Management Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

Thank you for your letter requesting the Department's comments on the draft General Accounting Office report entitled "Fisheries and Marine Species Protection, National Marine Fisheries Service Enforcement Efforts."

The report needs to clarify throughout that the data and the report itself deal only with the Southeast Region. For example, on page 2, the first sentence of the first full paragraph reads, "In summary, NMFS enforcement efforts for fiscal years 1988 through 1992 resulted in the opening of 3,324 cases ..." As currently worded, this implies that the sum total of cases opened by the NMFS Office of Enforcement was 3,324, but in fact that figure represents only the number of cases opened in the Southeast Region. This type of general reference appears in many places including the Congressional transmittal, text, tables, and figures, and should be changed to reflect that only the one region's data are being referenced.

It is also unclear whether repeated references to "enforcement" are intended to include the prosecution and adjudicative processes although the NMFS Office of Enforcement is not responsible for either. Additional requested changes follow:

On page 2, the third line should be changed to read, "agencies to assist with detection and documentation of these laws."

On page 10, first full paragraph, the second sentence should be changed to read, "Examples of violations include..."

On page 10, second full paragraph, the third sentence should be changed to read, "Examples of violations include..."

On page 18, the last line should be changed to read, "The maximum civil ESA fine ranges from \$12,000 to \$25,000..." We believe that even though this information appears in a section entitled "Civil Penalties Assessed, Fiscal Years 1988 Through 1992," the cap on the civil fines should be specified at \$25,000. The maximum fine under the ESA is \$50,000 which can only be levied for a criminal violation.



Now on p. 1.

Now on p. 1.

Now on p. 8.

Now on p. 8.

Now on p. 16.

**Appendix I
Comments From the Department of
Commerce**

2

Now on p. 17.

On page 19, the last line should reflect all of the factors the National Oceanic and Atmospheric Administration (NOAA) Enforcement Operations Manual lists as possible reasons for deviating from the general rule and which might support settling for less than 50 percent of the assessed penalty. The manual identifies the inability to pay if properly documented; stage in the proceeding; and recalculation based on new information, e.g., a settlement ending multiple cases, or imposition of other sanctions. In addition, factor 3 as now worded implies that NOAA will have a hearing in a case only where the monetary penalty likely to be imposed exceeds the cost of putting on the hearing. The level of settlement policy is intended to balance the savings to the United States, and thus the taxpaying public, realized by avoiding the administrative and judicial hearings and associated work, with the remedial effect of making the assessment program economically painful to a violator. Often cases where a fine of only several hundred dollars is at issue will merit a full hearing.

Now on p. 19.

On page 22, in the first full paragraph, the fifth sentence should be changed to read, "Only actions such as forcefully impeding an investigation or submitting false information to the Secretary or certain acts committed by foreign vessels may result in criminal charges."

Now on p. 20.

On page 23, the second to the last line should read, "NMFS decided to refer flagrant violators of the TED regulations to the U.S. Attorney's offices to charge criminally." The NOAA General Counsel does not have the authority to charge anyone criminally.

We appreciate the opportunity to comment on the draft report.

Sincerely,



Diana H. Josephson

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