

Unlawful discarding of Regulated Northeast Multispecies

Enforcing unlawful discarding of regulated Northeast multispecies is extremely challenging. Most investigations are reactive in nature, responding to complaints from the fishing industry or the observer program. Proactive enforcement focused on discarding can only be done at sea which adds to the complexity and presents other limitations.

The act of discarding fish can happen relatively quickly. It is easy for violators to actively look for enforcement while discarding fish at sea. NOAA's Office of Law Enforcement (OLE) receives and handles a number of discarding investigations, however, OLE is often unable to conclude investigations due to a lack of evidence. Even in instances where enforcement is on scene to witness a discarding violation, it can still be difficult to make a case. For example, the fish being discarded could be unmarketable or undersized which would otherwise be legal to discard. Enforcement cannot always make this determination on scene as fish are being actively discarded. To support an unlawful discard case, it would almost be necessary to either measure the fish before they are discarded or recover the fish being discarded to determine their size or disposition. Recovering discarded fish at sea would be difficult and could pose safety issues. Consequently, even if an unlawful discarding event is witnessed by enforcement, it can be difficult to make a case for these reasons.

In cases where we have been able to take some investigatory steps, there typically has to be some supporting information, such as information from crew, observer, or member of the industry. It is rare that we can initiate an investigation based on witnessing this behavior, even when conducting a patrol focused on targeting discarding violations. Most discarding incidents reported to OLE are generated from observer referrals. Most of these lack sufficient evidence for many of the reasons listed above and the data collection process utilized by the observer program.

The sector quota and leasing system does not provide enforcement with the ability to track quotas in real time. This limits enforcement's ability to use quotas as a reliable indicator of potential discarding violations. The annual quota calculations used in the sector system enables unscrupulous operators to strategically plan to discard when they believe a low probability of detection exists. This contrasts with other fisheries such as the common pool system where an overage landed on a single trip, cannot be offset by leasing additional quota.

Unlawful Discarding Incident Dispositions (Fishing years 2017 and 2018)

Total incidents –	12
Closed due to lack of evidence –	8
Ongoing investigations –	2
Written warnings –	1
Closed due to lack of resources -	1

Unlawful Discarding Incidents Reporting Source (Fishing years 2017 and 2018)

Observer generated –	8
Industry complaint -	3
Enforcement generated –	1

Unlawful Discarding Violations Penalties

Unlawful discarding investigations that result in enforcement action can be handled with either Compliance Assistance, a Written Warning, or a Notice of Violation and Assessment (NOVA). Summary settlements are another method of addressing a violation, but unlawful discarding is not included in the summary settlement schedule and therefore cannot not be applied for this offense. However, offenses associated with a discarding violations may be included in the summary settlement schedule. For example, a \$500 summary settlement could be issued for a failure to maintain, keep, or submit accurate reports.

A NOVA may be issued for an unlawful discard violation in accordance with General Counsel’s Penalty Policy Schedule, which utilizes a complex matrix to determine NOVA penalty amounts. Unlawful discarding is generally considered a Level II offense, with penalties ranging from \$2,000 to \$20,000. Factors considered in assessing a civil penalty may include the nature, circumstances, extent, and gravity of the alleged violation; the respondent's degree of culpability, any history of prior violations, and ability to pay; and such other matters as justice may require.