Change in HMS Vessel Marking Requirements for Commercial Passenger Fishing Vessels

(Action Pursuant to the Process for Modification of Routine Management Measures under the Biennial Framework in the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species)

Decision Support Document
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Background

The vessel marking implementing regulations at 50 CFR 660.704, pursuant to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP) require all commercial fishing vessels and recreational charter vessels to display their official numbers on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck (horizontal or flat surface) so as to be visible from enforcement vessels and aircraft. The Council received testimony from commercial passenger fishing vessel (CPFV) representatives that meeting this requirement would detract from the beauty of some of the charter vessels and degrade the attraction factor for future clients. The National Marine Fisheries Service (NMFS) received a letter from Mr. Bob Fletcher requesting relief for the Southern California CPFV fleet in meeting these requirements. In their June 2006 report the HMSMT stated that, when this regulation was developed, the intent was to place this requirement on HMS commercial fishing vessels, but that charter vessels would be exempt, similar to exemptions granted under the Groundfish FMP. At their September 2006 meeting the Council adopted three alternatives for public review, described below.

Alternatives

(1) No Action. Retain current Federal regulations:

Sec. 660.704 Vessel identification.

(a) Official number. Each fishing vessel subject to this subpart must display its official number on the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft.

(b) Numerals. The official number must be affixed to each vessel subject to this subpart in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

Pros: Enforcement officers argue that requiring official marking on CPFVs helps to distinguish them from foreign fishing vessels that may conduct illegal fishing operations in the U.S. Exclusive Economic Zone (EEZ). This is principally an issue close to the U.S.-Mexico border because many CPFVs transit into Mexican waters to fish and at times Mexican flag purse seine vessels have been reported illegally crossing into the U.S. EEZ in pursuit of tuna.
Cons: CPFV operators argue that the marking requirements would detract from the attractiveness of their vessels, which is a factor in advertising for new customers. Markings on the side of the wheelhouse would make it difficult to have rod stowage in this location since the fishing rods would obscure the vessel number. Not having this stowage would inconvenience their customers. Operators respond to the enforcement argument by pointing out that CPFVs are easily distinguishable from foreign commercial fishing vessels that might enter the U.S. zone by their distinctive aerial profiles even without displaying an official number. Furthermore, this is principally an issue for CPFVs in Southern California while CPFVs in Washington and Oregon are also inconvenienced.

(2) Provide a specific exemption for HMS commercial passenger and recreational charter fishing vessels to the vessel marking requirements described above.

The pros and cons of this alternative are essentially the same as no action: removing the requirement would address the concerns raised by CPFV operators but might cause some problems with vessel identification by enforcement officers. Providing the exemption would be consistent with the exemption provided recreational charters boats under the Groundfish FMP.

(3) Require HMS commercial passenger and recreational charter fishing vessels to display the official number on an appropriate weather deck so as to be visible from enforcement aircraft.

Pros: Requiring marking only on a weather deck would have less aesthetic impacts than placing them on a vertical surface. For vessels that could do so, the top of the wheel house could be used, an area not visible to prospective customers. Aircraft are the primary enforcement platform in this context; surface craft have the option of boarding to confirm vessel identification.

Cons: Smaller vessels (e.g., “six packs”) may not have sufficient weather deck space for markings. The marked weather deck would need to be kept clear of equipment (e.g., bait wells) and customers in order for the markings to be visible to aircraft. Surface enforcement vessels would have to hail and/or board the vessel to confirm identification.

Applicability of National Environmental Policy Act (NEPA)

As with the bag limit action (see Agenda Item C.2.a, Attachment 2), changing this requirement would be a Federal action (rulemaking); therefore, the environmental effects of vessel marking must be considered to comply with NEPA. Applicable regulations and policies implementing NEPA establish procedures that must be followed for any Federal action in order to determine if it will result in significant environmental impacts, and if so, to disclose the impacts and identify measures to mitigate such impacts. Each Federal agency may identify types of actions that are “categorically excluded” from further NEPA review. These are “actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency ... and for which, therefore, neither an environmental assessment nor an environmental impact statement is required” (40 CFR 1508.4). Preliminary information on this action is sufficient to reasonably conclude that no significant environmental effects would result from the changes in vessel marking and the Council may take final action without the need for the type of detailed environmental impact analysis found in an environmental assessment or environmental impact statement. (See Agenda Item C.2.a, Attachment 2 for further discussion of the procedures related to categorical exclusion.) As part of the rulemaking process, NMFS would prepare the necessary documentation for compliance with NEPA.