

## ENFORCEMENT CONSULTANTS REPORT ON VESSEL MOVEMENT MONITORING ALTERNATIVES

### **Management Measure 1: Monitoring Restricted Areas with Vessel Monitoring System**

In September 2013, the Enforcement Consultants (EC) briefed the Pacific Council on events documenting the inadequacy of the current Vessel Monitoring System (VMS) ping rate for ensuring the integrity of the Rockfish Conservation Areas (RCAs), and by extension essential fish habitat (EFH) areas, Marine Protected Areas (MPAs), and sanctuaries. In response, the Pacific Council set into motion a process that has led to this particular agenda item. For that, we thank you.

We appreciate the work done by Council staff in preparing the Vessel Movement Monitoring Public Scoping Document and for the research they conducted in exploring alternatives to the traditional Office of Law Enforcement (OLE) type approved VMS units currently being used on the West Coast.

Specific to Management Measure 1, we concur with the purpose and need and background statements contained therein.

Vessels harvesting groundfish on this coast, regardless of gear type, are subject to RCA restrictions. But unlike any other area restriction in the United States where VMS is used to monitor entering a closed area, the regulatory requirement here is to maintain continuous transit. Why? Because as designed, RCAs are not closed areas, but continuous transit restricted area(s) stretching from the Canadian border south to the Mexican border. To access the fishing grounds, vessels need to transit the restricted zones. Ultimately, the management intent is to restrict fishermen from fishing in the RCAs. But VMS cannot tell you whether a vessel is fishing, only the location of that vessel. Thus, the need for a continuous transit requirement and data to demonstrate continuous transit.

With thirteen years' experience, the EC has come to understand a number of things regarding our VMS program. 1) RCA compliance within the trawl sector is quite high. Of the 2,000 plus trawl trips made under RCA restrictions in 2014, fourteen of those trip demonstrated a significant (investigated) RCA incursion. 2) Non-trawl fixed gear compliance has been less impressive, with 138 such incursions. 3) More problematic than the number of non-trawl incursion is the realization that unlike trawl vessels where the gear has a direct relationship to the location of the vessel, the location of a non-trawl vessel may have no relationship to the location of the gear it has deployed. 4) Using VMS to enforce a no fishing restriction is an ineffective endeavor.

Two years ago when Council staff first started making inquiries to VMS providers regarding the costs of various multi-hourly ping rates, the vendors' response was basically to double, triple, or quadruple the transmission costs – sending four times an hour ping rate transmission costs upwards to \$200 a month. Not surprisingly, industry responded saying the cost increases were exorbitant and would put some out of business. In response, the Council tasked staff to research alternatives which would provide an improved data set demonstrating continuous transit, but at an affordable cost.

Looking at Table 5, page 15 of the scoping document, it appears the VMS providers have also responded to the Council's search for more cost effective alternatives by significantly reducing their costs for increased ping rate transmission. For example; Faria Watchdog, which represents approximately half of the 800 plus VMS units deployed on the West Coast, is quoting a \$38.95 monthly transmission cost for a four-hour ping rate – a \$6 increase from their base rate of a one-hour ping rate.

The EC is also intrigued with the Alternative 4 Enhanced VMS (non-type approved) units. Their initial costs are one third to one fourth the cost of a traditional type approved unit and their transmission costs are competitive with the traditional units. Their capability to take location position every 5 minutes, bundled and transmitted every hour will provide a definitive track line which will greatly enhance documentation of the vessel's activity. Adding the winch and sensor capability, these units (once tested and vetted) could prove to be ideal for monitoring non-trawl and drift gillnet gear deployment.

Before commenting on the analysis beginning on page 12, the EC would like to suggest to the Council that under this Management Measure 1 action you are not restricted to choosing one alternative. Depending on the fishery, multiple options may be desired and appropriate, even as a FPA.

Specific to the analysis, we would like to reference Table 3, pages 12-14.

1. For LEP Groundfish, we endorse Alternatives 2, 3 and 4 with a preference for Alternatives 3 and 4. Given the investment the fleet has made in traditional VMS units, we find Alternative 2 to be acceptable. Our preference for Alternative 3 and 4 is based on their ability to provide an enhanced data set on the status of the gear itself. Specific to Alternative 3, traditional VMS using a 1 hour ping rate would be used as an alert with the EM data set being available to further investigate an alleged incursion.
2. For LEP Midwater Trawl Whiting, we endorse Alternative 1, status quo. Unlike bottom trawl or midwater trawl non-whiting operating outside the primary whiting season, whiting mid-water trawl, non-whiting is not subject to RCA restrictions. VMS is required to verify what type of trawl gear is being used (declaration), and to demonstrate as a trawl vessel, the vessel's location and authorization to fish in the RCA.
3. For Open Access Non-Groundfish, we endorse Alternatives 2, 3, and 4 with a preference for Alternatives 3 and 4. As with LEP Groundfish, we find Alternative 2 to be acceptable, but our preference for Alternative 3 and 4 is again based on their ability to provide an enhanced data set on the status of the gear itself.
4. For Open Access Fixed Gear (non-IFQ), we endorse Alternatives 2, 3, and 4 with a preference for Alternatives 3 and 4. Rationale consistent with endorsement for LEP Groundfish and Open Access Non-Groundfish.
5. For Open Access Non –Groundfish Trawl, we endorse Alternative 1, status quo. Ridgeback prawn and pink shrimp are exempt from RCA restrictions. CCA and EFHCA incursion concerns

have not been an issue with these vessels since inception of the VMS program. Given this fleet's RCA exemptions and compliance history, a ping rate increase does not seem warranted.

6. For LEP Fixed Gear, we endorse Alternatives 2, 3, and 4 with a preference for Alternatives 3 and 4. Rationale consistent with endorsement for LEP Groundfish and Open Access Non-Groundfish.

7. For Swordfish Drift Gillnet, we endorse Alternatives 3 and 4. The Swordfish Drift Gill Net regulations for VMS are markedly different from those for groundfish.

660.713(c)(2) reads: *Pacific loggerhead conservation area*. No person may fish with, set, or haul back drift gillnet gear in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California

As stated previously, VMS cannot determine whether a vessel is fishing. To determine whether a vessel is fishing, an enhanced data set is needed. Alternatives 3 and 4 provide that enhanced data set. Alternative 2 does not. For Alternative 2 to become a viable option, either an area closure or a continuous transit requirement would need to be added to the HMS regulations. Alternative 1- status quo, could become viable if an area closure were added to the HMS regulations.

8. For Albacore (vessels larger than 24 meters), we endorse Alternative 1, status quo. The VMS requirements for the albacore fishery is an international requirement and there are no restricted areas to monitor for this fishery. VMS is used in this fishery to track fleet location and extrapolate effort. The OLE West Coast Division staff have had discussions with their counterparts in Hawaii who monitor this fishery and report an hourly ping rate is sufficient.

### **Summary of EC Recommendations:**

1. For LEP Groundfish, forward Alternatives 2, 3 and 4 as a PPA.
2. For LEP Midwater Trawl Whiting, forward Alternative 1, status quo as a PPA. Alternatives 2, 3, and 4, considered but rejected.
3. For Open Access Non-Groundfish, forward Alternatives 2, 3, and 4 as a PPA.
4. For Open Access Fixed Gear (non-IFQ), forward Alternatives 2, 3, and 4 as a PPA.
5. For Open Access Non –Groundfish Trawl, forward Alternative 1, status quo as a PPA. Alternatives 2, 3, and 4, considered but rejected.
6. For LEP Fixed Gear, forward Alternatives 2, 3, and 4 as a PPA.
7. For Swordfish Drift Gillnet, forward Alternatives 3 and 4. Forward Alternative 2 as a PPA with notation that a continuous transit requirement will be added to the HMS VMS regulations as part of the PPA. The Council may want to consider a prohibition on DGN vessel entry into the Pacific loggerhead conservation area in U.S. waters of the Pacific Ocean east of the 120° W. meridian from June 1 through August 31 during a forecasted, or occurring, El Nino event off the coast of southern California as part of the Alternative 1 status quo analysis.

8. For Albacore (vessels larger than 24 meters), forward Alternative 1, status quo as a PPA. Alternatives 2, 3, and 4, considered but rejected.

### **Management Measure 2: Removal of Derelict Crab Pots from Rockfish Conservation Areas**

Under this action, the current continuous transit RCA requirement would be relaxed allowing VMS equipped vessels to stop in the RCA for purposes of pulling derelict crab gear. As previously stated in our April statement on this issue, the concern regarding removal of derelict crab pots from the RCAs is whether activity occurring within the RCA can be documented and corroborated by means of electronic options. Minus enhanced electronic monitoring with cameras and increased position data, or an observer on board, discerning what the vessel is actually doing will be extremely difficult. Enforcement personnel will not have suitable evidentiary means substantiating RCA restriction compliance. Current VMS requirements only document vessel position every hour. It does not document the activity in which the vessel is engaged.

Even with this relaxing of the Federal continuous transit rule, regulations pertaining to state managed crab fisheries will prevail. States will still use their current programs to address pot removal after the season closes.

Again, as previously stated, the EC believes current Derelict Gear Retrieval programs established by the states have adequately addressed this, negating a need for this management measure.

### **Management Measure 3: Fishery Declaration Enhancements (Gear Testing and Whiting Fishery Declarations Changes)**

#### *Gear Testing*

We understand the purpose of this management measure is to allow vessels an exemption from observer coverage to test fishing gear. Both Alternative 2 and 3 would set up a formal process to allow for a waiver or exemption from observer coverage for a groundfish trip that tests gear.

Groundfish trawl vessels are subject to 100% observer coverage (no exemption) using observers provided by third party providers. Groundfish non-trawl vessels are designated for observer coverage (up to 20%) through a pool process managed by the Northwest Fisheries Science Center Groundfish Observer Program. Through this program, vessels can request an observer exemption for multiple reasons including gear testing. Under the observer program, “fishing” and the subsequent observation (inclusive of gear testing) is limited to an open season. Conversely, Open Access groundfish, except in rare situations, is open year around, leaving LEP fixed gear limited to gear testing during an open season.

Including fixed gear “pool” vessels in Alternative 2 would create a duplicate exemption process. Open access and LEP fixed gear already have an observer exemption process for gear testing.

Alternative 3 would set up a formal exemption process to allow only shoreside IFQ vessels to be exempt from observer coverage for a trip that tests gear. The trip could be made during an open or closed season. MS/CV and CP vessels would remain status quo, not eligible for the observer exemption. Alternative Sub-option 3c (in the document, it is listed as sub-option 2c) would restrict the testing to an open fishing season.

Our understanding is that under Alternatives 2 and 3, vessels would be testing gear with open codends or absent terminal gear. No harvest would be involved and harvest delivery would be prohibited. These points should be made explicit in the document. The vessel would call and declare their trip intent prior to departure. VMS would track their trip location and activity, often times occurring directly offshore but not necessarily in traditional and customary fishing areas.

From an enforcement prospective, the EC has no objections to Alternative 3 (shoreside IFQ vessels) The EC believes given the safe guards and monitoring requirements listed above, the risk of illegal harvest activity during open or closed seasons is extremely low.

Alternative 2 is more problematic. Beyond the process duplication issue, the sheer number of open access vessels, unlimited port access along the entire west coast, and the potential for harvesting low volume / high valued species including near shore species causes concerns.

#### Consideration of Alternative Sub-options 2 and 3:

Last January, a whiting vessel called the OLE office explaining they had been in dry dock the past 2 months doing a main engine and transmission change out and needed to test the gear under power to meet the manufacturer's warranty requirements. The new equipment cost was in the range of \$750K and the operator was more than willing to carry an observer at \$500 a day, but delays in installation had pushed the change out past January 1 and now the whiting season was closed. Per the regulations, the vessel could not test their gear on the West Coast because the season was closed. It would need to steam north to the pollock grounds and test its gear in an open fishery area. The sub options listed under both Alternative 2 and 3 would not provide relief to any vessel found in a similar situation.

We believe the current risk of illegal harvest to be extremely small, while the burden placed on fishermen by the sub-option is potentially very high. For these reasons, we recommend the Council not forward either sub-option as part of its PPA.

As noted above, Alternative 3 only includes the shorebased IFQ vessels, excluding MS/CV and CP vessels from the exemption. The EC sees no discernable difference between shorebased IFQ vessels, MS/CVs and CVs other than perhaps size and duration of the trips being made by these vessels. Regardless, a trip to test gear would be similar for all these vessels. The Council may want to consider creating an Alternative 4 to include all groundfish trawl vessels.

#### *Whiting Fishery Declaration Changes*

The objective of this management measure is to modify the declaration requirements to allow midwater whiting vessels to participate in the at sea MS/CV and shorebased IFQ whiting fishery on the same trip. Both Alternatives 2 and 3 accomplish that objective.

The EC has no enforcement concerns regarding the proposed management measure, but has been asked the question: Do you have a preference in alternatives? In evaluating what regulations would need to be changed under the alternatives, Alternative 2 would require fewer regulations changes due to crossover provisions contained in the regulations and may provide more definitive information for fishery management purposes.

The discussion of this management measure makes assumptions about where vessels may want to test their gear-in our outside a season opener or closure. The Council may want to consider prohibiting gear testing in areas sensitive to fishing gear contact, such as EFH area closures. This restriction still provides adequate area for gear testing.

### **EC Recommendations:**

#### *Gear Testing*

1. Forward Alternative 3 as a PPA
2. Consider creating and forwarding a new Alternative 4: Set up formal exemption process to allow all groundfish trawl vessels to be exempt from observer coverage for a trip that tests gear. The trip could be during an open or closed fishing season.
3. Clarify that no harvest will be allowed when a vessel is engaged in gear testing.
5. Clarify under all alternatives that gear testing for trawl vessels will be with an open or absent codend.
6. Clarify under Alternative 2 that for gear other than trawl, terminal gear is prohibited. Testing of trap gear must be done in such a way to ensure no catch or harvest.
7. Prohibit gear testing in areas with sensitive habitat concerns i.e. EFH.

#### *Whiting Fishery Declaration*

1. Forward Alternatives 2 as a PPA

### **Management Measure 4: Movement of IFQ Fishpot Gear Across Management Lines**

This management measure would allow shorebased IFQ Program fixed gear vessels to move pot gear across management lines during a single trip. The EC understands the rationale and explanation for this request is because pot vessels, unlike trawl and fixed gear line vessels, cannot in many cases carry all their gear on their deck, necessitating the need to make multiple trips to move their pot gear. IFQ vessels are further restricted in that they can only fish one IFQ management area on a trip, **although there are many**. This differentiates IFQ pot vessels from LEP tier vessels fishing in the LEP fixed gear tier program, in that vessels can fish from the Canadian border south to 36° N. latitude.

Both Alternatives 2 and 3 accomplish the management measure objective. The distinction between alternatives 2 and 3 is deploying the gear in a second management area baited or non-baited.

These IFQ trips are 100% observed, and depending upon which area is being fished, south or north of 36° N. latitude, will use different IFQ quota share/pounds. It is this latter point that drives the restriction on harvesting from more than one area on an IFQ trip. Vessels are not restricted from transiting more than one area, meaning a vessel can harvest from one area, and can deliver into

another area, requiring all parties – the fisherman, observers, and first receiver to know where the harvest occurred.

This management measure is narrow in its application and specific in its intent. The EC has no enforcement concerns as constructed.

**EC Recommendation:**

1. Forward Alternatives 2 and/or 3 as a PPA.

PFMC  
11/15/15