

OLE VMS/Incursion Violation

Investigation Summary

VMS/Conservation Area, i.e. RCA Incursions (all fisheries)		% Trawl/OA & LEP FG	
– SW 2010: 81	NW 2010: 168	Total: 249	52%/48%
– SW 2011: 98	NW 2011: 151	Total: 249	22%/78%
– SW 2012: 76	NW 2012: 151	Total: 227	42%/58%
– SW 2013: 42	NW 2013: 38	Total: 71	
– SW 2014: 6*	NW 2014: 13*	Total: 19*	

Outreach

VMS related Phone Calls (in/out: Declarations, Non Functioning VMS, Inquiries, Compliance Assistance)

Year	#
• 2010	3385
• 2011	3412
• 2012	3805
• 2013	3438
• 2014	1301*

*Through June 30, 2014

Closed through Compliance Assistance 2012-14 (Verbal Warning/Correction Letter)

SW: 27 NW: 41 Total: 68 or approximately 23% of all noted incursions.

Approximately 70% of noted incursions determined to be de minimis/no further action taken.

VMS Incursion / Formal Action Taken

March 2010 – December 2013

YEAR		# of Incidents Evaluated / % NOVA Issuance
• 2010	0 NOVAs / 0 WW	(249/0%)
• 2011	3 NOVAs for Incursions / 1 WW 1 No VMS Unit	(249/1.6%)
• 2012	5 NOVAs for Incursions / 1WW 1 WW for No VMS Unit	(227/2%)
• 2013	6 NOVAs for Incursions / 5 WW 1 WW for No VMS Unit	(71/8%)
• 2014	1 Summary Settlement 7 with GCES awaiting formal action	

OLE West Coast Division / Investigative Summary VMS Related Notice of Violation Assessments (NOVA)

- **2010, March - December**
No NOVA settlements
- **2011**
 - \$10,120 incursion NOVA / \$6120 suspended
 - \$17,000 No VMS Unit NOVA / \$15,800 suspended for 2 years
 - \$11,894 incursion NOVA / suspended for 2 years
 - \$6,552 incursion NOVA / \$2,052 suspended for 1 year
 - \$35,338 incursion NOVA
 - \$55,739 incursion NOVA (5 counts) / \$29,959 suspended for 2 years
 - \$31,049 incursion NOVA / \$26,049 suspended for 2 years
- **2012**
 - \$109,271 incursion NOVA (6 counts)
 - \$33,545 incursion NOVA
 - \$17,345 incursion NOVA / dismissed by ALJ
 - \$20,153 incursion NOVA / \$3,500 suspended 1 year
 - \$12,538 incursion NOVA / \$2,800 suspended 1 year
- **2013**
 - \$12,500 incursion NOVA
 - 2 incursion NOVAs totaling \$65,982 / \$58,982 suspended
 - \$12,614 incursion NOVA
 - \$11,500 incursion NOVA / \$4,500 suspended
 - \$63,738 NOVA, (2 counts: CCA incursion/No LEP)

So What Changed?

January 2010, OIG Report issued, followed by stand down of GCEL resulting in no cases being pursued through 2010 as cases and settlement processes are reviewed.

December 2011 “Score Card/Atta Boy” letters sent to all Trawl Rationalization participants. *Note that NOVAs and WWs are again being issued by GCES. Also note significant drop in RCA related incidents involving the trawl fleet in 2012.*

Additionally, OLE Compliance Program is kicking in. With additional VMS technicians, per our compliance program protocols there is immediate follow up being done upon discovery of VMS related incidents.

As a result of these deterrence actions, in 2013 we see a significant reduction in Conservation Area incursions both in trawl and OA. *Again, note number of NOVAs issued and the settlement amounts that are occurring in 2012 through 2013.*

In 2012 (2) Port Orford Oregon state cases relying on VMS information to support prosecution of alleged trip limit violations are slated for trial, as is the ALJ hearing regarding the alleged Risa Lynn Channel Island Conservation Area incursion.

In the spring of 2013, the Port Orford trials end in not guilty verdicts by two separate juries. The juries found the one hour ping rate provided enough reasonable doubt, to find the defendants not guilty.

In August 2013, we receive the ruling by the ALJ in the Risa Lynn case, that a 1 hour ping rate does not demonstrate a vessel has not maintained continuous transit through a closed Conservation Area.

Going Forward

- OLE and state enforcement programs have had to re-assess use of VMS data in jury trials. Is the technology beyond the capacity of a jury to comprehend?
- OLE is using a much more conservative approach in the types of incursions it refers for agent investigation, i.e. bigger buffers. This is not to say that we have redefined what we believe to be an incursion.
- OLE is relying even more on Log Book data to substantiate alleged Conservation Area incursions, ego: Log Books are important, E Log Books are desired.
- EC Concerns:
 - Through 2013 we saw continued improvement in the frequency of Conservation Area Incursions monitored by VMS due to significant and effective monitoring and deterrence strategies being put into play. The strategy worked!
 - As a result of the 2013 case outcomes, will compliance now erode?
 - Time will tell.
 - What is certain, is that per the ALJ ruling which now stands as Federal case law, the one hour ping rate is inadequate to prove failure to maintain continuous transit through RCAs, GCA, CCA, YCA, EFH, and MPAs.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Office of Law Enforcement
7600 Sand Point Way NE, F/ENS
Seattle, WA 98115-0070

August 14, 2014

Sent via Certified Mail: «Certified_Mail»

«First_Name» «Last_Name»
«Company_Name»
«Address_Line_1»
«Address_Line_2»
«City», «State» «ZIP_Code»

*Re: F/V «FV» # «Vessel_ID»
«OLE Incident #»*

Dear Mr. «Last_Name»:

On «Date», your vessel was monitored by the NMFS Vessel Monitoring System (VMS) in the «Insert GCA». Specifically, your vessel was monitored crossing the «insert fathom line» between Federal Register Points «XX» and «XX». At the time of the «Insert Groundfish Conservation Area» incursion monitored by the NMFS VMS system, your vessel was declared as «insert gear type declaration code».

This letter is being sent to provide you timely notification of a potential violation of the Pacific Coast groundfish fishery regulations, so that you can both initiate your own inquiry into the matter and hopefully prevent further violations from occurring.

The enclosed Federal Pacific Coast groundfish regulations at 50 CFR § 660 «Trawl fishery § 660.130(e); Fixed gear fishery § 660.230(d); Open access fishery § 660.330(d)» prohibit the operation of any vessel within an applicable Groundfish Conservation Area (GCA) or Essential Fish Habitat area (EFH) with unauthorized gear onboard, except for the purpose of continuous transiting.

The Federal Pacific Coast groundfish regulations at 50 CFR § 660.11 (also enclosed) define the following terms:

1. “Operate a vessel means any use of a vessel, including, but not limited to, fishing or drifting by means of the prevailing water current or weather conditions.”
2. “Continuous transiting or transit through means that a fishing vessel crosses a groundfish conservation area or EFH conservation area on a constant heading, along a continuous straight line course, while making way by means of a source of power at all times, other than drifting by means of the prevailing water current or weather conditions.”



Operating a vessel with unauthorized gear onboard within a groundfish conservation area may be considered a violation of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act) and its implementing regulations for the Pacific Coast groundfish fishery. Violations of the Magnuson Act may subject a vessel, its owner, and its operator to substantial penalties up to \$140,000 for each violation, together with possible permit sanctions, and seizure and forfeiture of the vessel and its cargo. NOAA's Policy for the Assessment of Civil Administrative Penalties and Permit Sanctions can be found at:
http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf.

If you have different information, or disagree with this letter, please contact NOAA Fisheries Office of Law Enforcement at (888) 585-5518, Monday thru Friday from 8:00 AM to 4:30 PM Pacific Time.

Sincerely,