

## ENFORCEMENT CONSULTANTS REPORT ON OMNIBUS REGULATION CHANGE PRIORITIES

The Enforcement Consultants Committee (EC) has reviewed the documents associated with Agenda Item J.1, Omnibus Regulation Change Priorities, and has the following comments.

We appreciate the thought and depth of information provided in Agenda Item J.1.b, NMFS Reports 1 and 2. We find the criteria for prioritizing to be prudent, with sound rationale.

The EC has comments specific to the below items:

### *Item 45 - At-Sea and Shoreside Flow Scales.*

A recently-completed investigation into the manipulation of flow scales resulting in considerable underreporting of Pollock by some vessels operating in this Alaska-based fishery has culminated in significant fines levied against the perpetrators, as well as changes to the Alaska Region flow scales regulations, as a means of deterring future underreporting. Many of the mothership and catcher-processor vessels that fish in the Alaska Pollock fishery, and are therefore subject to these changes, also fish in the West Coast Pacific whiting fishery. Just as we found in the chafing gear regulations, recently addressed by this Council, consistent regulations for both Alaska and West Coast vessels benefit the regulated fishing industry, as they are more cost effective and have less potential for causing confusion. Both are important considerations for the West Coast Pacific whiting fishery. As such, the EC believes modifying the West Coast flow scale regulations to be consistent with the Alaska regulations is of great importance, with significant industry benefits, and should be prioritized by this Council as a Priority 1 – must do item.

### *Item 39 - Increase VMS Ping Rate*

Over the past year, both the National Oceanic and Atmospheric Administration (NOAA) Fisheries Office of Law Enforcement (OLE) and the EC have briefed and made comments and recommendations to this Council on the adverse ruling by Chief Administrative Law Judge Susan L. Biro in the administrative penalty case of the F/V RISA LYNN (NOAA Case. No. SW1002974). This Magnuson Act case involved a single charge of operating a vessel in a closed area for purposes other than continuous transit, as required by the West Coast Groundfish Fishery (WCGF) regulations.

This case was notable, in that the issues for litigation were narrowed down to whether the vessel monitoring system (VMS) provided sufficient evidence of the vessel's activity. Judge Biro determined that the hourly VMS position report evidence in the case was insufficient to prove the vessel was not operating in "continuous transit" through the closed area, as required by regulation.

Consequently, this Council has been considering whether to increase the VMS ping rate in the WCGF from once every hour to every 15 minutes, as Office of Law Enforcement (OLE) and the EC have recommended, based on Judge Biro's ruling. Rather than continuing the debate on the

15 minute ping rate, the EC feels it would be more prudent to refocus on the overall problem with restricted area enforcement.

VMS is used throughout the world by fishery managers and enforcement entities to monitor closed areas. If an area is closed and a VMS unit “pings” documenting a vessel’s location in the closed area, the vessel is wrong, citation/notice issued. This has worked effectively in areas such as the North Atlantic and Alaska for two decades or more, using a one-hour, and in some areas, a 30 minute ping rate. Additionally, unlike our situation here on the West Coast, there is Federal case law supporting the use of VMS using one-hour ping rates to enforce closed area requirements.

But closed area management is not the scheme used here on the West Coast for groundfish management. Here, we do not have closed areas, we have restricted areas, which is the appropriate way to describe Groundfish Conservation Areas, Cow Cod Conservation Areas, Essential Fish Habitat areas, National Marine Sanctuaries, and many California Marine Protected Areas. They are not closed, but restricted.

Add to this equation the fact that VMS cannot prove if a vessel is fishing. VMS can document location at a specific point in time, but not what that vessel is doing at that location. Thus, the dilemma facing the EC, General Counsel Enforcement Section, and National Marine Fisheries Service (NMFS) in crafting regulations to effectively enforce the “intent” of the Groundfish Conservation Areas management scheme: to prohibit “fishing” with specified gear types, while allowing vessels to come and go within the restricted areas.

The regulatory requirement for conservation areas on the West Coast is to “maintain continuous transit” while in the conservation areas. For over a decade, OLE successfully used VMS with a one-hour ping rate to monitor and enforce this requirement. But that is not the case as of August 2013.

OLE, US Coast Guard, and their state enforcement partners have a problem. We cannot enforce the continuous transit requirement using VMS with a one-hour ping rate. What is needed to effectively enforce the continuous transit requirement is a data stream that demonstrates that a vessel has stopped, or has reduced speed to such a point, which, absent a plausible explanation, it can be concluded that the vessel has failed to maintain continuous transit.

Is increasing the VMS ping rate the only remedy to the stated problem? The EC’s opinion is, certainly not.

As stated previously, what is needed to effectively monitor restricted areas is a data stream that demonstrates that a vessel has stopped, or has reduced speed to such point, which, absent a plausible explanation, it can be concluded that the vessel has failed to maintain continuous transit. The electronic monitoring systems currently being used and evaluated by Pacific States Marine Fisheries Commission, and which will be deployed under various West Coast EFPs beginning in 2015, could certainly provide this type of data stream.

Additionally, there are \$700.00 data loggers, developed by Multi-Tech Systems, currently deployed in the Gulf of Mexico, which capture position reports every 10 minutes, with data

packaged and then transmitted through the Verizon Cellular Network. This is all done at a considerably reduced cost, as compared to VMS satellite transmissions. The units have multiple general purpose input/output ports which should be able to connect to hydraulic and other sensors. However, there are currently no specific sensors available from Multi-Tech Systems, nor is sensor technology currently being deployed in the Gulf of Mexico program. The EC continues to explore this and other technologies.

There appear to be worthy technology solutions to continue exploring in order to solve this problem. The EC is asking the Council to place a high priority on this issue and move it forward for development of a range of alternatives.

The range of alternatives would include: the affected fisheries and vessel types, analysis of the various technologies available (i.e. electronic monitoring systems, data loggers, enhanced VMS units), and increased ping rates, as well as how these technologies could be packaged and deployed. Finally, cost analysis and funding options would have to be considered.

Finally, to accurately reflect the totality of this proposed range of alternatives, the EC suggests the Increased VMS Ping Rate item be retitled as, Vessel Continuous Transit Monitoring.

**EC Recommendations:**

Move Item 39 – Increase VMS Ping Rates and Revise Regulations and Item 45 - At-Sea and Shoreside Flow Scales to Priority 1 - must do, consistent with the schedule for regulation development reflected in the table found on page 7 of the Agenda Item J.1.b, NMFS Report 2, September, 2014.

Retitle the VMS Ping Rate item as, Vessel Continuous Transit Monitoring.

PFMC  
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