ENFORCEMENT CONSULTANTS REPORT ON PART 2-MANAGEMENT
RECOMMENDATIONS FOR 2011-2012 FISHERIES

The Vessel Monitoring System (VMS) has been used as a monitoring tool on Limited Entry (LE) vessels for six years and for the past two years on Open Access (OA) vessels. When the Council first considered VMS as a monitoring and compliance tool for Rockfish Conservation Area (RCA) management, “exceptions” for some vessels were analyzed and ultimately rejected by this Council.

Before you today is a proposal, in part, to reconsider the Council’s VMS exception policy. Specifically, the VMS committee has put forward three exceptions to be considered for further evaluation. Also before you, is a recommendation to reconsider the gear stowage requirements for fixed gear vessels transiting the RCAs, and a recommendation to evaluate the use of VMS technologies that may create some flexibility for drifting in both the limited entry (LE) and open access (OA) fisheries.

The Enforcement Consultants (EC) support the recommendation to evaluate VMS technologies, and are committed to finding ways to provide fishermen flexibility without compromising enforceability. It is important to remember that when the VMS program was first implemented, the Council instructed the VMS Committee to craft a basic low cost system. These parameters have constrained the fleet in some areas. Upgrading monitoring technology could potentially change this and benefits could outweigh additional costs.

When gear stowage was first evaluated within the context of RCA regulations, the discussions were focused on trawl gear stowage. Fixed gear stowage was primarily an afterthought, and as such, the regulation as written may not make sense in this case. Given this context, the EC believes a reevaluation of the fixed gear stowage requirements may be appropriate.

In evaluating the three exemption requests, the EC first asked: What has changed since these exceptions were first proposed and evaluated in the original EA for VMS implementation first done for LE and later OA. We concluded that nothing has changed and no new information has come forward.

In letters to the Council and in public testimony, we have heard a number of complaints about power drain by the VMS units. Primarily these complaints stem from small vessels moored on buoys in isolated areas. Some are suggesting that small vessels be exempt from VMS requirements. The “power issue” is not a small boat problem. VMS requires a fully charged 12 volt system to operate properly. VMS does not draw large amounts of power, but it does need power free from fluctuations, so the size of the vessel is not a function of a properly functioning charging system.

The EC has had discussions with United States Coast Guard (USCG) engineers, VMS vendors, and installers. They advise that the “fix” for any vessel having charging problems is to install two deep cycle marine batteries, with one battery isolated through a switch and dedicated to the VMS unit. A proper ground is also important especially for aluminum vessels on shore power.
When this fix is presented to fishermen, many respond: Who is going to pay for this? Going further, the complaint is also that VMS costs too much and that, “It will put me out of business”. OA fishermen are reimbursed for their VMS units. Transmission costs can run between $30 and $50 a month, or $360 to $600 a year. Add in two new batteries and a switch and you may be up to $1,200 as a cost incurred to meet the VMS requirement. Half of that figure is a onetime cost, the remainder is ongoing. The EC is not saying $1,200 is insignificant, but there are a number of situations fishermen could face that will cost that individual a thousand dollars. The statement, “VMS is putting me out of business” is an exaggeration and demonstrates the core frustration the EC has with engaging fishermen on this issue. The EC suggests using a solution-oriented approach regarding their VMS compliance issues rather than recommending VMS be pulled off certain vessels.

Case in point is the request for the three Bolinas fisherman who are requesting an exemption from VMS. These three individuals have been very energetic in their request for this exemption. The Council has received letters from their city representative, state legislators, and a Congressional representative supporting their position. These letters cite the “small vessel” and the financial burden of VMS previously discussed, and the fact that these fisherman are fishing in “state” waters around the Farallon Islands. These fishermen are not required to carry VMS while fishing in those state waters, but trigger the VMS requirement when they transit Federal waters in returning from the Farallones to Bolinas. By definition, transiting is part of fishing. Historical catch data indicates that Federal groundfish species other than the desired target of deeper nearshore species are delivered to Bolinas, which could bring into question where these fish came from if vessels are left unmonitored.

The Farallon Islands are an important habitat and ecosystem that has been designated a National Refuge by the United States Fish and Wildlife Service (USFWS) and lies in the waters of the Gulf of the Farallones National Marine Sanctuary. Areas of the Farallon Islands state waters have been designated as MPAs by the state of California. The National Marine Fisheries Service (NMFS) has designated RCA areas around the islands. The Bolinas fishermen travel 25 miles across Federal waters to where they want to fish inside the three miles of state waters surrounding the Farallon Islands. There is a 1,000 foot no fishing zone around the Farallon Islands which further restricts this fishing area. Suffice to say that fishing in this 2.5 plus mile strip of ocean water requires a high degree of precision by those attempting to fish legally. Given the eco-sensitivity of this area, it in turn requires a high degree of confidence by the Council in the compliance and monitoring capabilities of the agencies relied upon to implement its fishery management plans. Providing exemptions to these fishermen would erode the compliance and monitoring capability, thus diminishing confidence in the management plans. The EC believes that this is simply the wrong direction and creates a dangerous precedence, particularly since the issues raised by Bolinas fishermen are not exclusive of this group.

RCAs are a management scheme that has created opportunity for fishermen to access healthy stocks while avoiding overfished stocks. VMS is the monitoring tool that provides enforcement the ability to monitor these areas with a high degree of efficiency and a high degree of confidence that the integrity of the RCAs is being maintained. Without VMS, RCA monitoring would be more expensive, inefficient, and highly problematic. Without RCA management, many fishermen would have no access to healthy groundfish stocks and as a result may well be out of business.
In the category of what has changed, the EC discussed the additional value of having VMS on vessels participating in non groundfish fisheries. Unlike when the VMS program was first initiated, the states now have access to VMS information available to them for state prosecutions. The public has made a large investment in VMS monitoring which we believe affords fishery resources better protection while providing harvest opportunity, not just for groundfish but for other species as well. For example, the crab fishery on the West Coast is a highly competitive, highly regulated state fishery occurring in both state and Federal waters. Having VMS information on a high percentage of the fleet has provided monitoring information of vessels attempting to make early sets of gear and sets in areas that are either closed or have different start dates. Given the time of year and weather conditions during much of the crab season, VMS monitoring in this fishery has demonstrated itself to be highly desirable, efficient, and as such, highly valued by enforcement. The same argument can be made for salmon trollers where management and catch reporting lines require additional monitoring.

Rather than considering individual VMS exemption requests from fishermen, suggested by public testimony and correspondence, we believe a more appropriate and comprehensive approach should be used. We recommend that the Council establishes a set of criteria for participants and vessels. Exemptions would not be considered for individuals, but rather for a set or circumstances related to the fishery as a whole. For participation in commercial groundfish fisheries, the current criteria includes requiring VMS with no exceptions. The EC believes this is a sound decision by the Council and should not be altered.

Fines

There was considerable public testimony given at the VMS Committee meeting on this issue as reflected in the VMS Committee report. In this calendar year, the Council has received two presentation from General Council for Enforcement Litigation and one from Office of Law Enforcement (OLE) on the number of VMS related violations investigated since the program’s inception, and the fines that have ensued from those violations.

From those presentations, we have learned that the VMS program is monitoring approximately 900 vessels. Since inception in 2004, approximately 65 Notice of Violation Assessment (NOVAs) have been issued to this fleet of 900 vessels. NOVA penalties have been settled for an average of approximately $17,000. Sixty-five NOVAs issued over a fleet size of 900 equates to approximately 7 percent of the fleet. Given that many of the 65 NOVAs represent repeat offenders, something less than 7 percent of the fleet has been charged with some type of RCA incursion or VMS related violations. Said another way, over 93 percent of the fleet has complied with the RCA/VMS requirements over the course of its six year history.

As we heard from General Counsel Enforcement and Litigation (GCEL) in their presentation, fines are predicated on: the value of the catch, (proceeds that the fishermen have already received with the intent of confiscating that value); the nationally published penalty schedule and past history of violations. GCEL has an administrative process to take into account mitigating circumstances, the ability to pay and/or requesting hearings relating to any fines assessed.

According to the VMS Committee report, testimony was heard regarding the fines that are being imposed for violations of area closures and the devastating effects of some of those fines. This
perception was no doubt influenced by the emotional testimony given by three members of the public who gave comments at various times during the VMS committee meeting.

The EC would prefer to not debate the term “devastating,” because it means different things to different people. However, it is important to understand that when evaluating the reasonableness of a law enforcement action or levied fines, all the facts must be considered. Law enforcement is at a disadvantage when full disclosure by the violator does not occur, as we are bound by strict non-disclosure rules. As such, we recommend that before any conclusions are made about any law enforcement action and outcome, we be provided an opportunity to present “the rest of the story” when the case is adjudicated. There was also comment by participants in the committee process that “no one would intentionally fish in an RCA”. We strongly refute that claim. The committee also heard a perspective from one person that violations of RCA regulations “are not a big deal” when compared to other kinds of violations. The Council has repeatedly said that the RCA closures are important, violations of the RCA represent a significant risk to the industry and to overfished species, and as such RCA violators should expect strong consequences for their actions.

We believe that is what these fines represent, strong sanctions that are not just the cost of doing business, but in fact create a strong deterrent against RCA incursions.

**In Summary**

The EC makes the following recommendations regarding the VMSC report:

- Reject the first three bulleted evaluation recommendations found under the heading “VMS Issues that the Council Should Consider for Further Evaluation” in Agenda Item G.9.b.

- Move forward for further evaluation bullet four regarding long line gear storage.

- Move forward for further evaluation the use of VMS technologies that could create flexibility for drift etc.

PFMC

11/04/09