

## ENFORCEMENT CONSULTANTS REPORT ON LEGISLATIVE MATTERS

The Enforcement Consultants request that the following comments related to the Magnuson-Stevens Fishery Conservation and Management Act reauthorization be added to any letter forwarded by the Council.

1. Provide language allowing the full access by State Officers to vessel monitoring system (VMS) information along with the ability to use VMS for the detection and prosecution of State law violations.
2. Allow access by State Officers to VMS information if a cooperative enforcement agreement is in place, deputizing the State Officers, versus a Joint Enforcement Agreement.
3. Specifically identify VMS as a tool available to State enforcement entities.

GENERAL COMMENTS REGARDING MAGNUSON-STEVENSON FISHERY  
CONSERVATION AND MANAGEMENT ACT REAUTHORIZATION (MSA)

The Enforcement Consultants (EC) seek the support of the Council in writing a letter to National Oceanic and Atmospheric Administration (NOAA), Senator Stevens and other appropriate interests addressing enforcement issues related to the MSA reauthorization.

The EC has two concerns regarding the current administration of the vessel monitoring system (VMS) Program: full access and application of VMS when pursuing violations of state law. The States have been attempting to gain equal access (defined as real time live terminal access) to the VMS data since the program first became an enforcement tool in the West Coast. Due to a restriction in the MSA, NOAA cannot allow the States full access to VMS information and that information cannot be used to support state violations.

Two drafts of the MSA are currently circulating - one out of Senator Stevens' Office and the Administration's version. Both versions make an effort to address the issue of state access by allowing access if the State maintains a current Joint Enforcement Agreement (JEA). The issue of application is not specifically addressed.

The EC believes that full access should be provided to the states. Currently, a State Officer can contact NOAA and gain information through him; but, only where there is a violation of federal law in progress. State Officers are not allowed to view the system or obtain information in "real time". NOAA agents may not be available when a State Officer is working and requires the information. While both drafts make some general reference to "data systems", it is our recommendation that access to the "VMS" be specifically spelled out.

To authorize full access, cross deputization should be all that is required. The Western Coastal States have had cross deputization agreements with National Marine Fisheries Service (NMFS) Office for Law Enforcement for about 20 years. Requiring a JEA for access could become problematic. What if a JEA, which is the current vehicle for getting money to the States for federal fisheries enforcement work, is not possible due to lack of funding, or the program simply goes away? It is our view that a cross deputization program should be sufficient, since this is what gives the state enforcement programs the authority to enforce federal regulations, and thus provides the nexus.

The Council, NMFS, and the Coastal States have worked extremely hard since the inception of the Council to make enforcement of the regulations proposed by this body and ultimately promulgated by both NMFS and the states, seamless in their application. The EC believes that VMS tracking information should be available for the detection and prosecution of violations of state law. Neither version appears to allow specifically for this to occur. Many fisheries violations occur near and across state/federal water boundaries. Federal regulations are adopted by the West Coast States, and additional, more restrictive state regulations are often implemented to further protect species with a federal management plan. The use of VMS for prosecution of state violations further capitalizes on the monetary investment(s) made by industry, the states, and the Federal Government.

The EC is also concerned about language in the Administrations' draft that expands federal enforcement authority and compensation to agencies outside of primary state fish and wildlife entities with marine natural resource law enforcement responsibilities. New examples could include County Sheriff's Offices and Municipal Police. The West Coast States compete each year with the other States in the Nation that border the Oceans, the Gulf, and the Great Lakes for finite federal funding through JEA. Protection responsibilities continue to increase for us, such as monitoring landings, imports and exports, compliance with the Endangered Species Act, selective fishing strategies or closed or restricted areas like essential fish habitat, marine protected areas and fish conservation areas.

Considering the continuous increases in protection responsibilities, any expansion of eligibility for funding, beyond marine natural resource law enforcement entities currently receiving funding, will result in the dilution of our ability to provide the needed services. The West Coast States already exhaust available funding before the need for presence expires.

**The sections in both drafts that address VMS are as follows:**

Senator Stevens Draft – Page 45; SEC. 202 ACCESS TO CERTAIN INFORMATION

Administrations Draft – Page 19 (C)

**The section in the Administrations' draft that pertains to funding and enforcement authority is:**

Page 44 (2,f)