

ENFORCEMENT CONSULTANTS REPORT ON
EXPANSION OF VESSEL MONITORING SYSTEM

The Enforcement Consultants (EC) endorses the vessel monitoring system (VMS) expansion recommendations presented in Agenda Item H.10.c, Ad Hoc Vessel Monitoring System Committee Report, November 2005, and offers the following comments and clarifications.

The original Alternative 5B, which is the core of the Ad Hoc VMS Committee's recommendation, was first developed by the EC based on its understanding of the fisheries, the gear used within those fisheries. In general, longline, pot, trawl, and line gear, when used to target groundfish are effective, and when deployed in rockfish habitat represent a significant threat to the Council's rockfish conservation goals. Conversely, when these gear types are used properly to target species such as anadromous, shellfish, pelagic, and highly migratory species, their deployment is of little consequence to rockfish conservation goals. Given this second parameter, exempting highly migratory species (HMS) line, Dungeness crab pot, and salmon troll seems appropriate.

VMS is a tool, which tells enforcement where vessels are fishing, not whether the gear being deployed is legal. This is an important element to remember when evaluating who should be required to carry VMS and who should be exempt. In general, VMS should be required of vessels using otherwise legal gear in areas closed to harvest by those gear types. HMS pelagic longline gear is currently prohibited within the Exclusive Economic Zone (EEZ), so we did not consider requiring VMS for this gear type under our proposed alternative. The same logic follows coastal pelagic species (CPS) purse seine gear, which is not legal Federal groundfish gear.

"Net" gears are not included in the EC proposal. California gill net is used in state waters to harvest species such as sea bass and highly migratory species. While they do harvest minimal groundfish, they do not target groundfish; nor does HMS net gear. HMS net gear is defined in Federal regulations as gill, set, drift, and trammel nets. While a "set net" is legal Federal groundfish gear, "drift nets" are not. A surface "drift net" must be anchored to the bottom to meet the Federal legal requirements of groundfish set net gear. Much of the fishing done with these net gear types is done exclusively within State waters and therefore, outside the jurisdiction of this Federal regulation proposal. The limited amount of otherwise legal fishing occurring in Federal waters using these gear types generates minimal if any take of groundfish (i.e. shark drift net with 14-inch mesh). Common sense would indicate that these gear types should not be included in the VMS expansion deliberations pursuant to Rockfish Conservation Area (RCA) management goals.

Sheephead pot gear should also be exempted. The score card projects no overfished species fishing mortality for this fishery. Historic landings of groundfish taken from the shelf and slope with this gear area are very low (0.2 and 0.1 ton per year respectively).

The use of spot prawn trawl gear is prohibited in all three coastal states, therefore, as with other illegal groundfish gear, not considered under this proposal. The EC did not spend significant time evaluating the numerous small trawl fisheries' (California halibut, sea cucumber, and ridgeback prawn) primarily operating under State permits in California under this directed groundfish open access expansion proposal. As with shrimp trawl, when deployed properly, including the use of by-catch reduction devices (BRDs), these gear types do not represent significant threats to the Council's rockfish conservation goals. However, given the concern for potential damage of the sea bed caused by bottom contact gear, particularly trawl gear, we do endorse the Council's proposed action of requiring VMS on all non-groundfish trawl vessels as a primary enforcement tool for protecting the integrity of essential fish habitat (EFH) area restrictions and closures.

The Council's 2003 deliberations over VMS deployment identified the directed groundfish open access fishery as the fleet having the highest risk factors regarding the Council's rockfish conservation goals and objectives. These same deliberations identified VMS as "the primary enforcement tool for ensuring the integrity of the RCAs." Rather than implementing a new VMS program using a fleet with numerous unknowns regarding its participants, the Council chose to initiate the VMS program beginning with the limited entry fleet.

During the period September through December 2003, when the RCA restrictions were in place without a VMS requirement, District 13 United States Coast Guard (USCG) at-sea assets discovered 17 incursions (11 by aircraft and six by cutters). Virtually every one of these 17 incursions was investigated as a violation of the RCA fishing restrictions, with four resulting in penalties being assessed and/or catch seizures. Several of these cases are still pending. Since implementation of the limited entry VMS requirement in January 1, 2004, USCG at-sea assets patrolling at a level consistent with pre-VMS patrol efforts have found only two incursions. During that same time period, over 80 incursions have been detected through VMS monitoring. In investigating these 80 plus incursions, 35 case investigations have been initiated with dozens more still under review. Of these 35 cases, 12 have been closed or dismissed, three have resulted in some type of formal charge, with the remaining cases still under investigation. We believe the number of incursion discovered by VMS, versus those discovered by at-sea assets demonstrates the efficiency of VMS as an enforcement-monitoring tool. We also believe the relatively low number of incursions discovered by VMS since January 2004, verses the number discovered by at-sea assets, during the few short months prior to VMS implementation, demonstrates the positive behavior modification we all deem necessary and desirable if our compliance objectives are to be met. The EC believes strongly that this highly desired behavior modification demonstrated within the limited entry fleet is the direct result of VMS monitoring. The limited entry fleet demonstrates daily that as a fleet, they know where they can fish and where they can't fish. The system is working for the limited entry fleet in providing additional fishing opportunity, and the system is working for fisheries management, assuring the integrity of the RCAs.

As you heard from Captain Cenci earlier this week, 36% of his marine division's commercial groundfish activity involved open access violations. Oregon has only six commercial fisheries officers coast wide. NMFS has no ocean going enforcement assets. Southern California is overwhelmed by open access activity. California Department of Fish and Game is understaffed

and over committed. USCG District 11 assets have limited availability for fishery patrols in Southern California due to other high priority missions such as drug interdiction. Limited entry fixed gear fishers have repeatedly told the Council that they are being victimized, with their markets being infiltrated by fish illegally caught by open access vessels. Status quo is not an option for enforcement. The sheer volume of open access activity, with few if any assets to employ, is overwhelming us. We need the Council's help.

The West Coast VMS Pilot Program implemented in January of 2004 has been successful. Given ongoing risks of illegal incursions into the RCAs associated with the directed groundfish open access fishing regime, the EC believes it is imperative that the highly effective enforcement tool, VMS, be expanded to a significant portion of the directed groundfish open access fleet.

EC Recommendations

(1) Per consideration of RCA conservation goals and objectives, expand VMS and declaration requirements to include:

Alternative 5B: longline, pot, trawl, and line gear vessels; excluding pink shrimp trawl, HMS line gear and Dungeness crab pot gear.

As modified: (1) exclude salmon troll
(2) exclude all non-groundfish trawl
(3) exclude sheephead pot

Clarification: 1. No Federal Nexus. Open access vessels that do not fish in Federal water and/or do not retain or possess groundfish are exempt.

2. This recommendation does not include HMS net gear, defined in Federal regulations as gill, set, drift, and trammel nets, nor does it include HMS pelagic longline gear, or CPS purse seine gear.

(2) Per consideration of EFH conservation goals and objectives, expand VMS and declaration requirements to include:

Alternative 4B as modified: Require VMS and declaration reports of all non-groundfish trawl vessels (to include pink shrimp, California halibut, sea cucumber, and ridgeback prawn) as a primary enforcement tool for protecting the integrity of EFH area restrictions and closures.

(3) Implementation date of recommendations 1 and 2: May 1, 2006.