

Summary Minutes
Enforcement Consultants
Pacific Fishery Management Council
Hyatt Regency Islandia
Garden F
1441 Quivira Road
San Diego, California 92109
October 31, 2005 – November 4, 2005

MONDAY, OCTOBER 31, 2005 – 5:30 P.M.

A. *Call to Order*

Dave Cleary

Members in Attendance

CAPT Mike Cenci, Washington Department of Fish and Wildlife
LT Dave Cleary, Oregon State Police
Mr. Brian Corrigan, 13th District, USCG
Mr. Otha Easley, Southwest Region, National Oceanic and Atmospheric Administration
(NOAA), Office for Law Enforcement (OLE)
Lt. Jacob Gustafson, 11th District, USCG
Mr. Tony Warrington, California Department of Fish and Game
Mr. Dayna Matthews, Northwest Region, NOAA, OLE
Mr. Dan Torquemada, NOAA, OLE

Others in Attendance

Mr. Joe Albert, Northwest Region, NOAA, OLE
Mr. Tim Broadman, Southwest Region, NOAA, OLE
Mr. Steve Capps, Northwest Region, National Marine Fisheries Service (NMFS)
Ms. Yvonne deReynier, Northwest Region, NMFS
Mr. Sean Hastings, Channel Islands National Marine Sanctuary
Mr. Khris Johns, 13th District, USCG
Ms. Heather Munro-Mann, Munro Consulting, Inc.
Mr. Jim Seger, Staff, Pacific Fishery Management Council

B. Council Agenda Items for Possible Comment

The Enforcement Consultants' (EC) reports to the Council were as follows:

Agenda Item H.7.c
Supplemental EC Report
November 2005

ENFORCEMENT CONSULTANTS REPORT ON AMENDMENT 19 (ESSENTIAL FISH HABITAT)

The Enforcement Consultants (EC) have reviewed and discussed Amendment 19 and draft essential fish habitat (EFH) regulations.

The EC has worked with National Marine Fisheries Service on the draft regulations and concentrated heavily on proposed definitions and how they relate to current definitions. Most of our suggestions have been incorporated into the latest draft.

We note the following slight difference still exist in Agenda Item H.7.a, Supplemental Attachment 3- Revised Draft EFH Regulations.

(6)(iii) Bottom Longline: The definition in this section is unchanged. Simply inserting "bottom" to the term being defined may have consequences. We are not sure the reason for the change.

(9)(ii) Midwater trawl. This definition has new language added: "...on any part of the net or its component wires, ropes, and chains." The additional language appears to be redundant and we are not sure it is necessary.

660.306 Prohibitions: Replace section (12) with the following:

Section (12) Fish within the EEZ in the Anacapa Island SMCA (as defined in 50 CFR 660.396), except for the following recreational fishing:

Species: Lobster
Gear: only by hand, or hoop net

Species: Pelagic fin fish
Gear: Hook and line with terminal gear not more than 6 ounces of weight

The last issue we have is found in the draft fishery management plan (FMP) on page 62 and continued to 63.

We see a very good description and discussion about EFH area identification. On page 63, a map shows these areas. The EC would hope that this would be sufficient in the plan and a series of thousands of coordinates describing these areas would not be necessary in regulation. We would expect any sub-areas with EFH restrictions would be described as done in the past where coordinates were used.

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, versus 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.

Agenda Item I.1.c
Supplemental EC Report
November 2005

ENFORCEMENT CONSULTANTS REPORT ON CHANNEL ISLANDS NATIONAL MARINE SANCTUARY

The Enforcement Consultants (EC) have reviewed the materials as they relate to the Channel Islands Marine Sanctuaries. A staff proposal and a proposal drafted by Sanctuary personnel as well as draft EFH regulations were reviewed. In order to try and avoid confusion, we will first comment on each individually, and then attempt to blend the proposals into a single option A full report on the EFH draft regulations will be available for the agenda item.

Supplemental Item I.1.a, Attachment 1

Using Agenda Item I.1.a, Attachment 1, proposed regulations (staff draft):

2.1 No-Take Marine Reserve Closure. It is unlawful to fish¹ or possess fish within the following marine reserve areas (defined by the coordinates below in 2.4 Marine Protected Area Descriptions): Anacapa Island, Carrington Point, Footprint, Gull Island, Harris Point, Judith Rock, Painted Cove, Richardson Rock, Santa Barbara, Scorpion, Skunk Point, and South Point, except for possession as provided below under 2.3 Fish and Fishing Gear in Transit.

This language is clear and simple with the exception of 2.3 reference, which will be discussed further.

2.2 Marine Conservation Area Closure. It is unlawful to fish¹ or possess fish within the Anacapa Island Marine Conservation Area (defined by the coordinates below in 2.4 Marine Protected Area Descriptions), except for (1) fishing and possession of fish caught with (a) recreational fishing with hook and line gear as defined and limited in this regulation or recreational fishing gear for lobster as defined in this regulation and (b) commercial fishing with gear as defined in this regulation and (2) possession as provided below under 2.3 Fish and Fishing Gear in Transit.

¹ *To fish* is defined for the purpose of this regulation is defined as in the *Code of Federal Regulations* (50 CFR part 660 Section 600.10): *Fishing*, or *to fish* means any activity, other than scientific research conducted by a scientific research vessel, that involves: (1) The catching, taking, or harvesting of fish; (2) The attempted catching, taking, or harvesting of fish; (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or (4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

2.2.a Recreational hook and line fishing gear definition. Recreational hook and line fishing gear is defined for the purpose of this regulation as the current definition in the State of California Fish and Game, Code of Regulations for recreational hook and line fishing gear, absent any reference to the use of weights; such gear used in this area may not be augmented with any weights such that the total weight of the terminal gear is greater than six ounces, not counting the weight of any natural bait.

2.2.b Recreational lobster fishing gear definition. Recreational lobster fishing gear is defined for the purpose of this regulation as the current gear and methods allowable under the State of California Fish and Game Code of Regulations in the immediately adjacent open area.

2.2.c Commercial fishing gear definition. Commercial fishing gear is defined for the purposes of this regulation as the current definition in the State of California Fish and Game Code of Regulations for allowable lobster gear and methods in the immediately adjacent open area. It is unlawful to retain fish other than lobster when using commercial fishing gear allowable under this regulation.

2.2.d Size and Bag Limits. It is unlawful to possess fish caught under this regulation in the Anacapa Island Marine Conservation Area different than the allowable size limit in place in the immediately adjacent open area, or in an amount greater than the daily retention limit in place in the immediately adjacent open area.

The proposal is acceptable with one exception. The language in 2.2 a, b, and c makes reference to the definitions found in the California Fish and Game Code. We would recommend that rather than relying on access to the Code in order to view this language, which can change on a State level without Council input, the actual language should be provided in the regulation .

2.3 Fish and Fishing Gear in Transit. It is unlawful to possess or transport (1) fish taken legally in open waters and/or (2) fishing gear, through the no-take marine reserve areas described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use. It is unlawful to possess or transport (1) fish taken legally in open waters with gear other than allowed under 2.2 above and/or (2) fishing gear not allowable under 2.2 above, through the marine conservation area described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

The EC recommends that the above section should be structured differently to clearly differentiate between No-take Marine Reserves and Marine Protected Areas by splitting the two sections. Also, the current language indicates that illegally taken fish could be possessed if you remain within the parameters of the Reserve or Protected Area. The following is the suggested language:

2.3 Fish and Fishing Gear in Transit.

No- take Marine Reserve

It is unlawful to possess or transport (1) fish ~~taken legally in open waters~~ and/or (2) fishing gear, through the no-take marine reserve areas described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

Marine Protected Areas: It is unlawful to possess or transport (1) fish taken ~~legally~~ in open waters with gear other than allowed under 2.2 above and/or (2) fishing gear not allowable under 2.2 above, through the marine conservation area described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

2.3.a Stowed Gear Definition. For the purposes of this regulation, (1) stowed recreational hook and line fishing gear is defined as hook and line gear with all line reeled to the reel or rod tip and no fishing gear other than a swivel attached to the line, with the rod and reel placed on the vessel in a manner different than when actively fishing; (2) stowed recreational lobster fishing gear is defined as placed on or below a vessel surface and tied to such surface in a manner would not allow immediate deployment; and (3) stowed commercial fishing gear is defined as placed on or below a vessel surface and tied to such surface in a manner that would not allow immediate deployment.

The EC met with the Groundfish Advisory Subpanel (GAP) and representatives from the Sanctuary and discussed the definition of stowed gear. The GAP very concerned about the requirement to stow. They suggested that the term be dropped instead of trying to define it. The EC thinks that this is possible, however, note that this term is used in California State regulations.

Language in Sub-section (2) raised some concern with members of the GAP as it related to the stowing or securing of recreational lobster gear. Some vessels may not have the capability to comply with this regulation due to the lack of space onboard the vessel. In order to address these concerns we recommend language that would require hoop nets to be un-baited and mandate that lines be detached from the gear.

In regards to Sub-section (3), the EC recommends that the same language used in the Federal Regulations concerning the stowage of fixed gear while transiting Rockfish Conservation Areas (RCA's) be used to address this issue in Sanctuaries.

Agenda Item I.1.b, Supplemental CINMS Report Model Regulations

In discussion with Sanctuary personnel, the common view was that the regulations as drafted were insufficient to provide the level of desired protection in several areas. The EC believes that in many cases the resources that the Sanctuary is attempting to protect are unrelated to fishing. We recommend the following language in order to alleviate this concern and protect all of the things desired:

Unless already prohibited by 50 CFR part 660, or the section above on fishing regulations in a marine reserve or marine conservation area, it is unlawful to harvest, remove, take, injure, destroy, possess, collect, move, or cause the loss of any living or dead organism, geological resource, cultural or historical resource, or other Sanctuary resource, or attempt any of these activities.

In addition, the EC noted that the Sanctuary listed all of the pelagic fish species that were allowed to be taken in Marine Conservation Areas with hook and line and spear fishing, and that list mirrors the regulations of the State of California. The Staff proposal does not address this issue, and in order to be consistent, the list of species that can be taken should be listed in the Federal Regulation.

One other item listed in the Sanctuary proposal caused us some concern - the anchoring of vessels in Marine Reserves, which do not allow take of fish. The EC does not feel that anchoring should be allowed if it involves the possession of fish species. We were advised that the anchoring allowance was consistent with California State regulations, but where it involved the possession of fish, the proposal would be inconsistent with current federal regulations. If fish were not allowed to be possessed during anchoring, then the proposal and current regulation would be in alignment. For Marine Conservation Areas, which do allow some take, as long as the species in possession complied with regulations for the area being anchored in, this activity would be allowed.

Please find attached the EC's regulation proposal for the Channel Islands.

SUMMARY OF EC PROPOSED REGULATIONS FOR CHANNEL ISLANDS

2.1 No-Take Marine Reserve Closure. It is unlawful to fish^b or possess fish within the following marine reserve areas (defined by the coordinates below in 2.4 Marine Protected Area Descriptions): Anacapa Island, Carrington Point, Footprint, Gull Island, Harris Point, Judith Rock, Painted Cove, Richardson Rock, Santa Barbara, Scorpion, Skunk Point, and South Point, except for possession as provided below under 2.3 Fish and Fishing Gear in Transit.

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defined and limited in this regulation or recreational fishing gear for lobster as defined in this regulation and (b) commercial fishing with gear as defined in this regulation and (2) possession as provided below under 2.3 Fish and Fishing Gear in Transit.

2.2.a Recreational hook and line fishing gear definition. Recreational hook and line fishing gear is defined for the purpose of this regulation (~~as the current definition in the State of California Fish and Game Code of Regulations~~) **INSERT NEW LANGUAGE HERE** for recreational hook and line fishing gear, absent any reference to the use of weights; such gear used in this area may not be augmented with any weights such that the total weight of the terminal gear is greater than 6 ounces, not counting the weight of any natural bait. **INSERT PELAGIC FINFISH SPECIES LIST HERE**

2.2.b Recreational lobster fishing gear definition. Recreational lobster fishing gear is defined for the purpose of this regulation as the current gear and methods allowable under (~~the State of California Fish and Game Code of Regulations~~) **INSERT NEW LANGUAGE HERE** in the immediately adjacent open area.

2.2.c Commercial fishing gear definition. Commercial fishing gear is defined for the purposes of this regulation as the current definition in the ~~State of California Fish and Game Code of Regulations~~ **INSERT NEW LANGUAGE HERE** for allowable lobster gear and methods in the immediately adjacent open area. It is unlawful to retain fish other than lobster when using commercial fishing gear allowable under this regulation.

2.2.d Size and Bag Limits. It is unlawful to possess fish caught under this regulation in the Anacapa Island Marine Conservation Area different than the allowable size limit in place in the immediately adjacent open area, or in an amount greater than the daily retention limit in place in the immediately adjacent open area.

2.3 Fish and Fishing Gear in Transit.

No- take Marine Reserve

It is unlawful to possess or transport (1) fish ~~taken legally in open waters~~ and/or (2) fishing gear, through the no-take marine reserve areas described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

Marine Protected Areas: It is unlawful to possess or transport (1) fish taken ~~legally~~ in open waters with gear other than allowed under 2.2 above and/or (2) fishing gear not allowable under 2.2 above, through the marine conservation area described in 2.4 Marine Protected Area Descriptions except while in a vessel in active transit though the area in question with all fishing gear stowed and not in use.

2.3.a Stowed Gear Definition. For the purposes of this regulation, (1) stowed recreational hook and line fishing gear is defined as hook and line gear with all line reeled to the reel or rod tip and no fishing gear other than a swivel attached to the line, with the rod and reel placed on the vessel in a manner different than when actively fishing; (2) stowed recreational lobster fishing gear is defined as ~~placed on or below a vessel surface and tied to such surface in a manner would not allow immediate deployment~~ un-baited hoop-net gear with all lines detached from the net; and (3) ~~stowed commercial fishing gear is defined as placed on or below a vessel surface and tied to such surface in a manner that would not allow immediate deployment~~ Insert language from Federal Regulations here concerning the stowage of fixed gear while transiting the RCA.

Unless already prohibited by 50 CFR part 660, ~~or the section above on fishing regulations~~ in a marine reserve or marine conservation area, it is unlawful to harvest, remove, take, injure, destroy, possess, collect, move, or cause the loss of any living or dead organism, geological resource, cultural or historical resource, or other Sanctuary resource, or attempt any of these activities.

Anchoring – the EC requests guidance from the Council on how to deal with the anchoring issue where State law may be in conflict with Federal Regulations.

ADJOURN

PFMC
10/17/05