

ENFORCEMENT CONSULTANTS REPORT ON REVIEW OF IMPLEMENTING
REGULATIONS FOR THE VESSEL MONITORING SYSTEM

The Enforcement Consultants (EC) met with the Groundfish Advisory Subpanel (GAP) and discussed their concerns over enforcement of Vessel Monitoring System (VMS) regulations. The EC reviewed the GAP statement related to F.8.c, report on review of implementing regulations for the VMS. While NOAA, Office for Law Enforcement (OLE), has provided their perspective, the EC wishes to comment on specifics related to the GAP statement.

Fine amounts based on the egregiousness of the violations: The GAP's statement indicates large fines have been levied for "what could be termed as minor violations". The State Officer or NOAA Agent conduct the investigation on VMS incidents and submits case packages to NOAA Office of General Council Enforcement and Litigation (GCEL). Notices of Violation and Assessment (NOVA's) are issued by the NOAA GCEL, not investigators.

Due to legal constraints and our respect for confidentiality, our ability to provide details in a public forum related to specific case is limited. Like the late Paul Harvey used to say "and now.....the rest of the story". Per NOAA OLE's presentation and statistics related to this issue, of all violation counts investigated, 7 percent have been settled by NOVA or Summary Settlement. In other words, 93 percent of the counts have been cleared with no formal action. If the Council wants more detail, we would be happy to provide information related to specific instances in a closed session.

Stacking of separate incidents into a single case investigation, to include inadvertent incursions in order to build larger cases. As demonstrated by the numbers of cases that were not acted upon, law enforcement engages in an evaluation process to determine if an incursion was related to extenuating circumstances. There are times when Rockfish Conservation Area (RCA) incursions were valid, but a declaration was not made. Other VMS cases did not start out that way, but were secondary to other violation investigations. Our intent is not to stack charges to ensure that weak cases gain strength by marrying them with stronger cases, but to show a pattern that identifies the egregious offender.

Timeliness of notifications for violations and Failure to notify owner of vessel. The EC understands that there is frustration related to lack of notification to owners when an investigation begins. Part of this frustration is tied to owner liability for the actions of their employees. An assumption is made by investigators that if an operator is contacted by law enforcement, he understands he is being investigated. Also, it is assumed that some level of communication is occurring between the operator and owner. Our understanding is that this is not always the case. Depending on timing, notification can jeopardize the investigation itself. So while the EC is willing to consider ways in which to enhance notification, the integrity of the investigation must always be considered. With State partners coming on line with regard to more involvement in VMS enforcement, those additional enforcement resources should help with the timeliness issue.

Analyzing better technology such as higher ping rates: The EC concurs with the GAP, that advances in technology should always be considered and incorporated when cost effective. Beyond the recommendations made by the GAP, improvements in electronic log book reporting would help provide a long-term and accurate real-time record where all parties involved in fishing, fish management and fisheries enforcement could benefit. At the inception of the program, concerns that ping rates at one hour intervals may not be adequate to meet industry and management requirements in articulating fishing vessel activity were raised. The decision that was made was a function of cost. The Council may want to revisit that decision. We wish to make it clear, though, that investigative conclusions are made on the totality of the investigative information and not ping rates alone.

RCA transit rules that deal with baiting and gear stowage while transiting a RCA by vessels that use long line gear. This issue was vetted during VMS program development. No other alternatives have been thus far offered to allow this kind of activity and ensure the enforceability of the RCA program.

Can Enforcement provide charts with RCA lines to fishermen? Can a graphic description of the RCAs be put on a website, coordinates are not user friendly. The EC believes that the groundfish industry is made up of professional fishermen, and have a number of expectations, to include: that the fisherman knows the regulations associated with his fishery and that he is always aware of his location. The EC experienced one situation where the vessel operator told the investigator that he had not updated his chart plotter in five years. It is the responsibility of the agency to provide the regulations, but the fisherman has responsibility to ensure that he is properly equipped and knowledgeable to ensure compliance with those regulations.

Anecdotal evidence suggests sporadic compliance due to the nature of the open access fleet. They want a simple call in procedure to report when they leave a fishery for an extended time. A procedure similar to this already exists. Fishermen leaving the Exclusive Economic Zone (EEZ) or hauling out for more than 7 days simply need to call in. Fishermen leaving the fishery for the remainder of the year need to provide OLE with a letter signed by the vessel owner.

The Council and industry asked for and received a low cost basic VMS / RCA program that after six years has demonstrated a high degree of industry compliance. This has been delivered to provide the groundfish industry with a valued harvest opportunity while protecting over-fished species. Hopefully, these protections will allow species rebuilding so that all might benefit from this valuable public resource. The EC is committed to working with both industry and the Council to improve the VMS system and enhance communication.

PFMC
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