



January 20, 2009

Mr. Don Hansen, Chairman
Pacific Fishery Management Council
7700 NE Ambassador Place
Suite 101
Portland, OR 97220

Dear Mr. Chairman:

When the Council approved a vessel monitoring system (VMS) for the west coast trawl groundfish fleet, many of us supported it – though in some cases reluctantly – because we believed it would allow access to healthy fish stocks while allowing less robust stocks to rebuild. While this has happened to a certain extent, permit holders are now finding several problems with the way the VMS program is being implemented and enforced.

First, the level of fines imposed for even minor infractions including, in some cases, inadvertent or unavoidable incursions into the Rockfish Conservation Area (RCA) can be excessive. Enclosed is a copy of 50CFR Part 660 Subpart G which outlines penalty action which may be taken or is mandated for West Coast groundfish fishery violations. This information has not been widely communicated to the fishing industry and it comes as a shock to permit holders when large monetary sanctions are suddenly issued. Some permit holders have received summary judgment statements for \$20,000 to \$70,000. The non-whiting trawl groundfish fleet has mean gross revenue of around \$225,000. Penalties of this magnitude are devastating.

Second, no distinction seems to be made between presence in the RCA and fishing in the RCA. A vessel transiting at slow speed or blown into the RCA while trying to retrieve fouled gear is treated the same as a vessel illegally fishing. In spite of assurances given by NOAA Enforcement at the time the VMS was established, no real-time method exists to notify NMFS of operational problems.

Third, enforcement needs to be timelier, especially when an incursion is documented by NMFS but is unknown to the permit holder or vessel operator. The VMS unit provides only time and vessel position; enforcement officers infer from these readings whether they believe a vessel is fishing rather than transiting. The subsequent investigation of fish tickets and vessel logs can occur months after the event is documented. Some permit holders have received notice of violations 12 months to as much as four years after the fact. At that point, details of weather, mechanical issues, ship-board problems, etc. may no longer be available and an innocent operator can offer no justification for otherwise defensible actions.

These are just some of the issues that have been discussed among the fleet in recent months; there are no doubt others. Regardless, it is time for some Council oversight of what they have created and some cooperative solutions.

In the past, the Council's Groundfish Advisory Subpanel and Enforcement Consultants have met jointly to discuss problems from industry and enforcement perspectives. Such a meeting has not been held for some time and it is overdue. The Council should direct the two advisory bodies to have such a meeting.

Once there has been some communication and open discussion and the advisory bodies have presented any necessary reports, the Council should schedule time to review how the system is working and suggest modifications to NMFS.

Violations should not be taken lightly. Neither should the legal concept of "innocent until proven guilty." The issues raised here need further airing in a public forum. We must explore ways to improve the reporting and enforcement system and answer the question: "is it working or will monetary penalties force fishermen out of business?" The question is being asked by good, conscientious fishermen and vessel owners - not by people attempting to gain from violations of fisheries regulations.

Sincerely,

Peter Leipzig
Executive Director

Fishermen's Marketing Association

Brad Pettinger
Director

Oregon Trawl Commission

Ancillary G
GAP Agenda
Item F.8
Review of VMS Implementation Regulations.

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Council members, Please consider the following material to be open public comment on Item F. 8 Review of VMS Implementation Regulations.

The councils recent decision to create a simple registration process for vessels participating in the open access sector of the groundfish fishery has raised many questions amongst local fishermen. Many who have never fished groundfish are now anxious to sign up for the fishery. Most thought that they would never be able to participate because of past control dates. My feeling is that the number of vessels signing up to participate will be on the increase.

I am asking the council to require ALL groundfish vessels that take groundfish, other than the nearshore group, be required to maintain an active VMS system.

Along the San Diego coast we have a large canyon that provides the opportunity to take SHELF rockfish and Bocaccio rockfish within 100 yards of the surfline near Scripps Pier. The 60 Fathom depth contour line runs within one mile of the shore and does not take into account the small finger canyons. Because of the steep dropoff, non-VMS vessels can fish undetected over the Federal line in waters up to 80 fathoms deep without going outside the three mile zone. A common scenario in this area is to use a small sportfishing style skiff that is licensed commercially to engage in the take of multiple sport limits of vermilion rockfish. When safely ashore, the vessel owner sells the catch using his commercial license. In addition, the close proximity to Mexican waters provides opportunities for Mexican caught fish to be sold under the authority of a commercial license.

If all vessels landing shelf, slope and sablefish were required to have a permit and an active VMS, this problem would be stopped immediately. Mandatory VMS systems would be better than any other type of permit process and the number of vessels registering for a groundfish permit in all of Southern California would drop significantly.

Conversations with NMFS enforcement agents have convinced me that the only way to stop illegal groundfish take is to use VMS on all groundfish vessels.

Respectfully,
John Law