

VESSEL MONITORING SYSTEM (VMS) AND DECLARATION REGULATIONS

This agenda item covers:

1. Groundfish fishery declarations by vessels with VMS units, and
2. The process for consideration of a VMS requirement for the Highly Migratory Species (HMS) fishery (on tuna-fishing vessels over 24 meters).

At its April 2013 meeting, the Council considered the problem of vessels with VMS units that are transmitting locations to NMFS but have not made fishery declarations. The circumstances creating this situation are described in Agenda Item E.1.a, Attachment 1. To address the problems created by signals of vessels engaged in unknown activities, the Council accepted the recommendation of the Enforcement Consultants (EC) that “660.13 and 14 of the [groundfish] regulations governing the groundfish fishery be modified as appropriate to make it clear that upon registering a VMS unit with the NMFS Office of Law Enforcement (OLE), an initial declaration of gear type or sector is required.”

Additionally, the Council requested that the EC explore and discuss whether declarations for other fisheries need to be added to the list in the groundfish regulations (see Agenda Item E.1.a, Attachment 1 for a current list of declarations). The EC met via a public conference call on May 24, 2013 and has provided a report and recommendation (Agenda Item E.1.b, EC Report).

The second issue covered under this agenda item is consideration of a regulation applicable to Highly Migratory Species (HMS) requiring VMS on tuna-fishing vessels over 24 meters, as per requirements in Inter-American Tropical Tuna Commission (IATTC) Resolution C-04-06. In March, NMFS SWR requested “that the Council add to a future agenda discussion regarding the mechanism by which implementation of this Resolution would occur” and noted that “Implementation of Resolution C-04-06 could occur one of two ways: under the Tuna Conventions Act of 1950 or under the Magnuson-Stevens Act through the Council process by regulation under the HMS Plan” (Agenda Item E.1.a, Attachment 2). At this meeting, the Council should decide how to proceed on this issue.

Council Action:

1. **Finalize action on whether to require an initial declaration for vessels registering VMS units with NMFS OLE.**
2. **Decide whether the current list of declaration categories in the groundfish regulations is adequate and, if not, recommend modifications.**
3. **Decide on whether to consider implementation of VMS requirements in IATTC Resolution C-04-06 through an amendment to the HMS fishery management plan.**

Reference Materials:

1. Agenda Item E.1.a, Attachment 1: Need For Fishery Declarations For Active VMS Units.
2. Agenda Item E.1.a, Attachment 2: NMFS Highly Migratory Species Report for the March, 2013 Council Meeting – Excerpt.
3. Agenda Item E.1.b, EC Report: Enforcement Consultant Report on Vessel Monitoring System (VMS) and Declaration Regulations.

Agenda Order:

- a. Agenda Item Overview Jim Seger
- b. Reports and Comments of Advisory Bodies and Management Entities
- c. Public Comment
- d. **Council Action:** Adopt Final Declaration Regulations and Consider Process for Compliance with Inter-American Tropical Tuna Commission Requirements for VMS

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NEED FOR FISHERY DECLARATIONS FOR ACTIVE VMS UNITS

The following is an excerpt of the background provided to the Council in the situation summary on this issue for its April 2013 meeting.

Vessel monitoring system (VMS) units provide satellite information on vessel locations and movements. Such units are required for vessels to participate in the commercial groundfish fishery. As part of the implementation of this requirement, purchase subsidies were made available to the fleet through a VMS Enhanced Mobile Transmitter Unit (E-MTU) Reimbursement Program administered by the Pacific States Marine Fisheries Commission ([Agenda Item J.1.a, Attachment 1 \[April 2013\]](#)). As part of the conditions for receiving the subsidy, the purchasers of the units were required to contact the National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE) Help Desk and register their units. When that registration is provided, satellite service providers then begin transmitting location information to enforcement.

In order to participate in the groundfish fishery, a vessel must declare the segment of the groundfish fishery in which it is participating. This declaration then allows enforcement to determine the area closures with which the vessel is required to comply and whether or not it is in compliance with area closures, based on the locational tracks transmitted from the VMS units. Once the first declaration is made, a vessel will always have an active declaration associated with its VMS unit, whether it is participating in the groundfish fishery or some other fishery. Some vessels purchased VMS units, registered with the OLE, and received subsidies, but have yet to enter into the commercial groundfish fishery, and have therefore not made any declarations. As such, OLE and their monitoring partners have no information on the fishing strategy being deployed by the corresponding vessel track. When such a vessel crosses into a closed area, in some cases, enforcement resources have been dispatched to determine the nature of its activities. Such deployment of enforcement resources is costly and detracts from other enforcement and monitoring duties. A diagram of this process is provided as [Agenda Item J.1.b, Attachment 2 \[April 2013\]](#). At present, most, if not all of the vessels with no fishery declarations have been contacted by enforcement, and their status has been determined. Under this agenda item [*Agenda Item J.1 at the Council's 2013 meeting*], the Council is being asked to consider ways in which this situation might be resolved for the long term.

Because the vessels in question are not participants in the commercial groundfish fishery, an amendment to the groundfish regulations might or might not be sufficient to resolve this situation. A possible solution relying just on the groundfish regulations might use the reimbursement program through which the VMS units were issued as the nexus providing authority. That program requires vessels applying for a reimbursement to "have validated their compliance with the applicable regulations through OLE." It may be possible that the groundfish regulations could be modified to require vessels receiving such units for potential use in the groundfish fishery to make a declaration report under 660.13, regardless of whether they have commenced fishing in the groundfish fishery. 660.13 provides options for declaring participation in non-groundfish fisheries [*this is the approach recommended by the EC and preliminarily adopted by the Council at its April*

2013 meeting]. It is uncertain how a new requirement might be applied retroactively for vessels already having received their reimbursement that have not entered the groundfish fishery.

Alternatively, it might be that an omnibus regulatory amendment applicable to all the Council fishery management plans are needed *[this is the approach was not recommended at the April 2013 meeting]*. . . .

The current list of declarations provided in 660.13(d)(5)(iv) is as follows

- (1) Limited entry fixed gear, not including shorebased IFQ,
- (2) Limited entry groundfish nontrawl, shorebased IFQ,
- (3) Limited entry midwater trawl, non-whiting shorebased IFQ,
- (4) Limited entry midwater trawl, Pacific whiting shorebased IFQ,
- (5) Limited entry mid water trawl, Pacific whiting catcher/processor sector,
- (6) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership),
- (7) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl,
- (8) Limited entry demersal trawl, shorebased IFQ,
- (9) Non-groundfish trawl gear for pink shrimp,
- (10) Non-groundfish trawl gear for ridgeback prawn,
- (11) Non-groundfish trawl gear for California halibut,
- (12) Non-groundfish trawl gear for sea cucumber,
- (13) Open access longline gear for groundfish,
- (14) Open access Pacific halibut longline gear,
- (15) Open access groundfish trap or pot gear,
- (16) Open access Dungeness crab trap or pot gear,
- (17) Open access prawn trap or pot gear,
- (18) Open access sheephead trap or pot gear,
- (19) Open access line gear for groundfish,
- (20) Open access HMS line gear,
- (21) Open access salmon troll gear,
- (22) Open access California Halibut line gear,
- (23) Open access Coastal Pelagic Species net gear,
- (24) Other gear,
- (25) Tribal trawl,
- (26) Open access California gillnet complex gear.

NMFS HIGHLY MIGRATORY SPECIES REPORT FOR THE MARCH, 2013 COUNCIL
MEETING - EXCERPT

NATIONAL MARINE FISHERIES SERVICE SOUTHWEST REGIONAL OFFICE
UPDATE ON LEGAL AND REGULATORY ACTIVITIES

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Implementation of IATTC Resolution C-04-06 on Vessel Monitoring Systems

NMFS Southwest Region (SWR) previously reported that IATTC Resolution C-04-06 requires that parties with tuna-fishing vessels 24 meters or more in length establish a satellite-based vessel monitoring system (VMS). NMFS SWR had planned to wait for final rulemaking on the High Seas Fishing Compliance Act (HSFCA) revised regulations before moving forward on implementing Resolution C-04-06. However progress on the HSFCA rulemaking has slowed, thus the SWR requests that the Council add to a future agenda discussion regarding the mechanism by which implementation of this Resolution would occur. Implementation of Resolution C-04-06 could occur one of two ways: under the Tuna Conventions Act of 1950 or under the Magnuson-Stevens Act through the Council process by regulation under the HMS Plan.

Background

IATTC Resolution C-04-06 will affect all vessels authorized by NMFS to fish for tuna in the Eastern Pacific Ocean (EPO) that are 24 meters or greater in length. In 2012, 15 West Coast commercial vessels of this size class landed tuna or tuna-like species. Tables 1 and 2 illustrate the number of West Coast vessels potentially impacted by Resolution C-04-06. Table 1 addresses only the vessels that landed tuna or tuna-like species in the years 2002-2012.

Table 1. Number of U.S. West Coast vessels authorized to fish in the EPO at least 24 meters in length that landed tuna or tuna-like species from 2002 through 2012. The gear types include multi-purpose, troll/jig, and purse seine from the coastal pelagic species fleet.

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Number of vessels	11	11	8	7	8	7	6	12	9	11	15

Table 2. Number of U.S. West Coast vessels 24 meters or greater in length currently authorized to fish in the Eastern Pacific Ocean. Purse seine vessels are in the coastal pelagic species (CPS) fleet.

Gear-type	Number of Vessels
Multi-purpose	21
Troll/Jig	9
Purse seine (CPS)	2
Charter	22
TOTAL	54

Some vessels that landed tuna or tuna-like species in the EPO have a Western and Central Pacific Fisheries Commission (WCPFC) Area Endorsement, which require that the vessels have operational VMS prior to receiving the endorsement. Four vessels with WCPFC area endorsements landed tuna or tuna-like species in 2012; seven from 2002 through 2012. Provisions of Resolution C-04-06 are consistent with VMS requirements of WCPO fisheries. Finally, the VMS provisions of IATTC Resolution C-04-06 are also consistent with current VMS requirements in the groundfish fleet.

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ENFORCEMENT CONSULTANTS (EC) REPORT ON VESSEL MONITORING SYSTEM (VMS) AND DECLARATION REGULATIONS

The EC has reviewed the documents pertaining to Agenda Item E.1: “Vessel Monitoring System (VMS) and Declaration Regulations” and has the following comments.

We continue to support our comments and recommendations found in our April EC Statement, “Agenda Item J.1 Regulations for Vessel Monitoring System (VMS) Declarations:”

“Modify 660.13 and 14 as appropriate to make it clear that upon registering a VMS unit with the NMFS Office of Law Enforcement, an initial declaration of gear type or sector is required. Subsequent changes to gear type or sector would require a declaration change as is the current requirement for all limited entry permitted, non-groundfish trawl, and open access vessels.”

Per the Council request, we have evaluated the current declaration list with an eye towards clarity of vessel intent and possible expansion. The current declaration list has 26 possible declarations covering all FMPs, some significant state managed fisheries, (i.e. Dungeness crab, non-groundfish trawl, California gill net, etc.), and Tribal trawl. Inclusive in this list is the declaration “other gear.”

When an individual calls the 1 (800) number to declare a gear type, the technician interviews the individual to ascertain the proper gear type declaration. This is also done when the message is received after hours. If more clarity is needed regarding the proposed fishing activity, the technician makes a follow up call to the declaring party to ascertain specifics and thus confirm the proper declaration. In all cases, the declaring party receives a confirmation number referencing the declaration.

In the case of an “other gear” declaration, the technician files information in the comments section regarding specifics determined during the interview. Since inception of the VMS program there have been 1,914 “other gear” declarations. In 2012 there were 3,859 declarations with 384 being “other gear.” The dominant fishing activities that technicians have posted under the “other gear” declaration’s comments section are Charter Party Fishing Vessel (CPFV)/Charter/Sport, Hagfish, and Scientific Research Permits. The CPFV/Charter/Sport component is primarily CPFV/Charter and Commercial HMS vessels declaring sport trips as well as a few sablefish line vessels declaring sport.

To give you a sense of the potential frequency of occurrence under this notation, we queried state records and confirmed that in 2012 California had 15 CPFVs landing commercial groundfish and 29 vessels landing Hagfish. For Oregon, 2 charter vessels landed commercial groundfish and 15 vessels landed Hagfish. And in Washington, three charter vessels landed commercial groundfish and 15 vessels landed Hagfish.

In our discussion, we determined the current declaration list inclusive of “other gear” coupled with technician notations in the comments section, has worked well for National Marine

Fisheries Service (NMFS) Office of Law Enforcement (OLE) and agencies making direct inquiries to OLE. We also determined that the “other gear” category comments were not available to USCG coast watch offices and as such required further inquiry by these offices.

To rectify this situation, the US Coast Guard (USCG) requirements have been forwarded to the VMS analysts at OLE Headquarters and a presentation on the issue has been made to the OLE information technology project manager. A declaration report that the USCG can access from within the VMS system will require some programming which has been requested through the NMFS IT work order system. Until the work order is completed, the USCG can request vessel declaration information by calling the VMS declaration number or by sending a request via email to the VMS Program Manager of the VMS Technicians.

Recommendation:

Option (1): Maintain the status quo declaration list and associated comments.

Option (2): Expand the declaration list, to include three potential additions:

- (1) Hagfish/Slime Eels
- (2) Scientific Research Permit
- (3) CPFV/Charter/Sport

GROUND FISH ADVISORY SUBPANEL REPORT ON REGULATIONS FOR VESSEL
MONITORING (VMS) DECLARATION REGULATIONS

The Groundfish Advisory Subpanel (GAP) received a report from Mr. Dayna Matthews, of National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE), regarding the issue of vessel monitoring systems (VMS) being used on vessels in fisheries other than groundfish.

The GAP affirms its statement from the April 2013 meeting; the Enforcement Consultants' April and June 2013 recommendations; and the Council's action in April 2013 to modify regulations 660.13 and 14 as appropriate (See [June 2013 Agenda Item E.1.b, EC Report](#), paragraphs 2 and 3). A simple declaration of gear type or sector at the time of VMS registration is the best solution.

Furthermore, the GAP also agrees with the Enforcement Consultants' June 2013 recommendation option 1 for the "other gear" declaration. Making a programming change in the NMFS Information Technology system so that comments in the "other gear" section are available to the United States Coast Guard is easier than expanding the declaration list and will solve the issue.

Regarding an amendment to the Highly Migratory Species Fishery Management Plan for consideration of VMS requirements in the Inter-American Tropical Tuna Commission arena, the GAP has no comments since this is primarily an HMS issue.

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HIGHLY MIGRATORY SPECIES ADVISORY SUBPANEL REPORT ON
VESSEL MONITORING SYSTEM (VMS) DECLARATION REGULATIONS

E. Enforcement Issues

E.1 Vessel Monitoring System (VMS) Declaration Regulations under Council Action, the third item reads, “Decide on whether to consider implementation of VMS requirements in Inter-American Tropical Tuna Commission (IATTC) Resolution C-04-06 through an amendment to the Highly Migratory Species (HMS) Fishery Management Plan.”

The HMSAS requests that the Council write NOAA/NMFS, Deputy Secretary for International Fisheries and request the Department of Commerce, NOAA/NMFS to reconsider its tentative interpretation of the IATTC Resolution C-04-06 and make the correct interpretation of that the resolution does not, and never was intended to apply to gear types other than long line vessels in excess of 24 meters.

A close reading of the Resolution makes this clear:

1. In 2004 when the resolution was passed there was no conservation and management program for albacore.
2. The resolution starts out by saying “vessels 24 meters or more in length”. Length has never been used in IATTC resolutions to distinguish vessels of the same gear type except to distinguish smaller longline vessels from “large longline” vessels with freezing capacity. Divisions between vessels in other gear types have been distinguished by class or capacity. Length has always been applied only to longline vessels in the IATTC and other RFMOs.
3. In addition, the resolution states “harvesting species for which the Commission *has established conservation and management measures.*” As noted above, in 2004 when the resolution was passed, the IATTC had no established conservation and management measures for albacore. In fact, the first measure mentioning albacore was the measure sought by the U.S. albacore harvesters which resulted in Resolution 2005-02 (limiting effort) that wasn’t passed until a year later. Until the 2013 annual meeting, Resolution 2005-02 was the only IATTC resolution which applied to albacore.
4. The tentative position that NOAA/NMFS took at the last IATTC Annual meeting in Veracruz, Mexico, that the U.S. is “out of compliance” with resolution C-04-06, places the U.S. Government in an extremely awkward position, which makes it difficult, if not impossible, to criticize those other members that are truly out of compliance. However, based on the above arguments, we believe the U.S. is not out of compliance.
5. In conclusion, there are no closed or managed areas for the albacore fishery and therefore there is no biological benefit from the VMS requirement and VMS would be a financial hardship on the fishermen.

HIGHLY MIGRATORY SPECIES MANAGEMENT TEAM REPORT ON VESSEL
MONITORING SYSTEM (VMS) DECLARATION REGULATIONS

Resolution C-04-06 adopted by the Inter-American Tropical Tuna Commission (IATTC) requires VMS on tuna-fishing vessels over 24 meters. National Marine Fisheries Service (NMFS) identified two mechanisms to implement this requirement for U.S. vessels: under the Tuna Conventions Act or under the Magnuson-Stevens Act (MSA) through the council process. NMFS is offering the Council an opportunity to comment on the appropriate mechanism.

NMFS previously provided information to the PFMC (Agenda Item I.1.b, Attachment 1, March 2013) on implementation of this resolution and the potential number of U.S. tuna-fishing vessels that may be affected. Updated information provided by NMFS to the HMSMT indicates that approximately 35 West Coast vessels over 24 meters are permitted to fish for tuna in the IATTC Convention area during 2013. Of these, 18 vessels already have VMS, so there may be only 17 vessels that would be required to obtain VMS to fish for tuna.

The HMSMT does not have a preference for the mechanism to implement the requirements as long as there is an adequate process for public notification and comment. The HMSMT notes that the MSA process may take into consideration state and federal arrangements for data sharing. The HMSMT understands that implementation under the Tuna Conventions Act may be completed more quickly and will include at least a meeting or conference call with affected constituents, as well as an advanced notice of proposed rulemaking, which offers public comment opportunity.

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