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November 4, 2015

Ms. Dorothy Lowman, Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101
Portland, OR 97220

RE: Agenda Item C.2, Vessel Monitoring and Enforcement

Dear Chair Lowman and Council Members:

We are writing in support of adopting a preliminary preferred alternative at the November Pacific Fishery Management Council meeting that would provide the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement (OLE) with all necessary and sufficient tools for monitoring and enforcing conservation areas. We believe it is in the best interest of the American people that fishermen harvesting a public resource are accountable for when, where, and how that harvest is conducted. Similarly, we support taking action toward allowing certain vessels to retrieve derelict crab pots from trawl and non-trawl Rockfish Conservation Areas (RCAs). Both measures are necessary for effective fishery management and conservation, and they would increase confidence for fishermen, enforcement officers and the public that fishing vessels are not operating in closed areas. Last, we provide specific suggestions for any management measures on “gear testing.”

In particular, Oceana writes in support of adopting a combination of both Alternatives 3 and 4 as preferred alternatives for management measure 1 (Vessel Monitoring Systems and Electronic Monitoring). We support adoption of Alternative 5 for management measure 2 (derelict crab gear removal in RCAs). For management measure 3 (gear testing), we support adoption of regulatory language that would ensure trawl fisheries are not catching fish or impacting essential fish habitat conservation areas while gear testing.

I. Management Measure 1: Monitoring Restricted Areas with VMS.

Improved Vessel Monitoring Systems (VMS) are needed to adequately monitor and enforce conservation areas in federally managed groundfish fisheries including groundfish conservation areas, rockfish conservation areas, essential fish habitat conservation areas, plus various conservation areas designed to protect marine life from bycatch in the highly migratory species swordfish drift gillnet fishery. The inability to properly enforce management measures for integral conservation areas is a major concern. Without adequate enforcement the management goals that these conservation areas intend to support may not be achieved, with real environmental consequences.

As stated in the Vessel Movement Monitoring Public Scoping Document for this agenda item, “management measures are needed to enhance monitoring of restricted areas.”¹ More specifically, “recent case law has revealed a need for more VMS data to show a vessel is transiting a closed area when required to do so.”² Surprisingly, the document states that because drift gillnet closures and essential fish habitat (EFH) conservation areas do not require continuous transit and because it is not currently possible to know the status of a fishing vessel’s gear when in these areas, “VMS is not the tool to manage” these conservation areas.³

Given what we have learned from the EFH five-year review and through discussions with OLE and fishermen, we view improved enforcement capabilities including VMS and electronic monitoring systems as critical for the long-term conservation and enhancement of EFH and the protection of sensitive and rare marine life. In many cases, EFH conservation areas are located in close proximity to high value fishing areas. Therefore, efforts to “minimize to the extent practicable adverse effects to EFH by fishing” are largely dependent on the ability to develop highly tailored and enforceable spatial boundaries for open and closed areas to bottom trawling at a high/fine level of spatial resolution.

The current enforcement of spatial bottom trawl closures (RCAs, EFH, etc.) uses VMS with a ping rate of approximately one hour. At this ping rate with a trawl speed of 2 to 3 knots, effective VMS enforcement will require the size of the area closure to approach three to four miles in diameter. While VMS as currently configured with the one hour ping rate is appropriate for knowing whether or not a vessel went into a large closure, it is insufficient for enforcement of finer-scale conservation areas and it may be insufficient for understanding whether or not a vessel was actively fishing.

Major problems with the current enforcement system are the inability to know the precise path of a trawl vessel and difficulty discerning whether fishing is actively taking place. The relevant consideration for EFH conservation area enforcement is whether the trawl net is in contact with the seafloor. As a result, bottom trawl fishermen have uncertainty about whether they may be committing a violation when they are fishing in close proximity to closed areas, if they drift into a closed area while retrieving their net, or if they drift into a closed area as a result of hanging their gear on a snag or loss of engine power. Conversely, enforcement officials have uncertainty about where exactly fishermen are fishing, whether they are intentionally fishing inside closed areas, and when active fishing is taking place. The practical effect of the current enforcement regime is that it is difficult to design and manage conservation areas that effectively protect sensitive habitat features and allow fishing in close proximity, but outside, of those areas.

A. *Alternative 2 with a Continuous Transit Requirement for all Conservation Areas*

Due to the concerns related to adequately monitoring and enforcing conservation areas we support at the minimum an increase in VMS ping rates from one to four times per hour (**Alternative 2**). While this would be a significant improvement over status quo there would still be uncertainty regarding fishing gear deployment inside EFH Conservation Areas or areas closed to drift gillnets. Therefore if Alternative 2 is adopted, we request the Council and NMFS also

¹ PFMC. November 2015. Agenda Item C.2, Attachment 1, at 2.

² PFMC. November 2015. Agenda Item C.2, Attachment 1, at 2.

³ Id. at 8

consider electronic monitoring technologies (as in Alternative 3), the option to switch to enhanced VMS units (Alternative 4), and consider applying continuous transit requirements to all conservation areas (for the relevant fisheries and associated conservation areas), not just trawl rockfish conservation areas.

B. Alternative 3 and Alternative 4 combined are preferred approaches

Given the uncertainty regarding whether or not a vessel is fishing inside a conservation area or not, **we support a combination of Alternative 3 and 4 as preferred alternatives.** Alternative 3 would couple current VMS requirements (once per hour) with electronic monitoring systems that provide camera video stream with a corresponding latitude and longitude coordinates, coupled with hydraulic and drum sensors indicating gear deployment and retrieval. If an incursion into a conservation area is identified this EM technology could be used to confirm the location of the vessel and status of the gear. Electronic monitoring systems (as described in Alternative 3) may be the most important and appropriate tool, potentially avoiding the need to significantly increase VMS ping rates, though these tools may be used in concert. Especially for vessels **where EM is not used, Alternative 4 is preferred**, which would allow the use of enhanced VMS units that would collect latitude and longitude data, for example, every five minutes, and then transmit the data every 60 minutes. VMS data collected at a five minute intervals would provide much improved data indicating fishing over the status quo.

II. Management Measure 2: Removal of Derelict Crab Pots from Rockfish Conservation Areas.

As described in the Vessel Movement Monitoring Public Scoping Document this management measure would create federal regulations to allow certain vessels to retrieve derelict crab pots from the trawl and non-trawl rockfish conservation areas. Oceana is greatly concerned by the increasing number of whales becoming entangled in crab pots and other fishing gear,⁴ and we believe more should be done to remove derelict crab pots from the ocean. We therefore are encouraged by the consideration of new measures that will allow groundfish fishermen to retrieve derelict crab pots from rockfish conservation areas where they are otherwise under continuous transit requirements. Thousands of crab pots are lost each year. While the Dungeness crab fishery largely does not fish inside the trawl RCAs, when pots are found there, fishermen should have the ability to stop and remove them.

At this time **we support Alternative 5**, which would allow limited entry groundfish fishing vessels to retrieve derelict gear from RCAs provided the vessel has either 1) a VMS unit with a ping rate of four times per hour and an observer, 2) a VMS unit plus electronic monitoring, or 3) uses an enhanced VMS unit. In addition to allowing limited entry groundfish fishing vessels to retrieve gear, we support also allowing open access groundfish fishing vessels to retrieve gear under the same conditions.

III. Management Measure 3. Fishery Declaration Enhancement (Gear Testing).

⁴ Sahagun, L. 2015. *A record number of West Coast whales were entangled in crab fishing gear.* Los Angeles Times, at: <http://www.latimes.com/science/sciencenow/la-sci-sn-whale-entanglements-20150428-story.html>

The gear testing management measure would allow an exemption from observer coverage to test legal fishing gear and vessel systems without the intent of catching fish. Current gear testing requests are addressed on a case by case basis by the West Coast Groundfish Observer Program, sometimes in consultation with OLE, and this management measure would formalize an observer coverage waiver process for gear testing.

For this management measure, we request that OLE and the Council consider the following requirements for "gear testing" waivers for trawl fishing gear:

- 1) Require any nets that are deployed have open cod ends.
This would assure that gear testing with trawls do not catch fish.
- 2) Prohibit gear testing inside an EFH conservation area.
This would assure that any gear testing with bottom trawls would not occur in conservation areas known to have sensitive habitat features. Otherwise seafloor habitats could be damaged by trawl footrope gear, even if the vessel was not catching fish.

IV. Conclusion

In summary, improved VMS and electronic monitoring measures will allow more targeted and refined management of conservation areas and help managers better meet the dual objectives of minimizing adverse impacts to habitat while maintaining vibrant fisheries. In addition, with improved monitoring, groundfish fishermen could help clean up lost crab gear, thus reducing the likelihood of ghost fishing and whale entanglement. These measures will provide greater security to fishermen when they fish near conservation areas or transit through them, and it will provide greater confidence in their compliance and enforcement.

Thank you for addressing these important enforcement issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Enticknap", is written over a light blue rectangular background.

Ben Enticknap
Pacific Campaign Manager and Senior Scientist

November 4, 2015

Dorothy Lowman, Chair
Pacific Fishery Management Council
1100 NE Ambassador Place, #101
Portland, OR 97220

RE: Agenda Item C.2 (Vessel Movement Monitoring Alternatives)

Dear Chair Lowman and Council Members,

We write in support of the Pacific Fishery Management Council's (Council) ongoing efforts to address a number of vessel and gear movement issues across several fisheries. In particular, we support efforts to improve the Vessel Monitoring System (VMS) data collection program. Improvements to VMS technologies and to the VMS data stream can better ensure compliance with area-based regulations designed to protect marine ecosystems in accordance with the MSA definition of Optimum Yield. These improvements will help the Council ensure sustainable fishing opportunities that meet the Council's conservation obligations. To this end, we request the Council take the following actions:

- Adopt revised purpose and need statements and advance Vessel Movement Monitoring (VMM) alternatives for further development and analysis:
 - Advance all of the alternatives under Management Measure 1 (Monitoring Restricted Areas with VMS) without identifying Preliminary Preferred Alternatives (PPA).
 - Advance all the alternatives under Management Measure 2 (Removal of Derelict Crab Pots from Rockfish Conservation Areas) with Alternative 5 as the PPA and with the addition of an option to include Open Access vessels.
 - Advance all of the alternatives under Management Measure 3 (Fishery Declaration Enhancements), without identifying PPA's.
 - Revise the purpose and need statement to clarify that no catch is allowed when vessels engage in gear testing.
 - Explicitly clarify that cod ends must be open if gear testing includes towing a net.
 - Advance all of the alternatives under Management Measure 4 (Movement of IFQ Fish Pot Gear across Management Lines) with Alternative 2 as the PPA.
- Develop and analyze more explicit alternatives to address long-term VMS data collection and management burden issues.
- Coordinate the VMS-related measures in this action with ongoing actions in other fishery management plans (FMP) that address closed areas and/or monitoring issues.

On the following pages we offer more detail on these summarized recommendations.

Advance the alternatives for further development and analysis, and adopt the refined purpose and need statements presented in the updated public scoping document

We are supportive of advancing this regulatory package. The range of alternatives includes a broad and versatile array of measures that can improve monitoring and enforceability of area-based restrictions. It is also responsive to industry concerns about cost, flexibility, efficiency, and opportunity. We offer the following detailed suggestions on the range of alternatives and the purpose and need statements:

Management Measure 1 (Monitoring Restricted Areas with VMS)

We recommend that the Council advance all of the alternatives under Management Measure 1 (Monitoring Restricted Areas with VMS) without identifying a PPA or PPAs. We also support the proposed purpose and need statement revisions, which better express the recent evolution of Management Measure 1. While originally focused on the narrow issue of enforcing continuous transit requirements for groundfish vessels in the Rockfish Conservation Area (RCA), this alternative set now addresses the broader need for better information on vessel movements and activities around and within a variety of restricted areas across multiple fisheries.

We note the concerns expressed in the document about closed areas which prohibit fishing but do not require continuous transit (e.g., Essential Fish Habitat (EFH) Closed Areas and drift gillnet closures). Specifically, the document states that *“it’s not possible to know the status of [the vessel’s] gear when the vessel is in the area. In addition, it’s possible that some areas may be small or narrow enough to be fished and go undetected by NMFS. Therefore, VMS is not the tool to manage restrictions.”*¹

Alternative 3 (video-based electronic monitoring) and Alternative 4 (enhanced VMS) may best address this potential gap in monitoring and enforcement, but in recognition of the fact that Alternative 2 (increased ping rates) may also represent a viable solution, we would like to see additional analysis on this specific concern before identifying a preferred alternative. Providing a variety of options to the fleet so that individual fishermen can choose the option that is best for their operation is a sensible approach, therefore we suggest that the Council forego selection of a PPA or PPAs for this alternative set until additional development and analysis of the alternatives is completed.

Finally, we suggest three additions to the range of alternatives. First, in light of the aforementioned enforcement concerns over use of traditional VMS to manage closures other than the RCA, we suggest consideration of an alternative to require continuous transit for all area closures. It is not clear to us what activities other than fishing are necessary and appropriate for industry in some closed areas (e.g., EFH closed areas) but not others (e.g., RCA).

Second, we support the inclusion of sub-alternatives under Alternative 2 that would allow for reduced ping rates for specific fisheries, up to and including the status quo of 1 ping per hour. If

¹ See PFMC, [Vessel Movement Monitoring Public Scoping Document](#), November 2015, p. 8

a vessel is participating in a fishery with no area-based restrictions, that vessel should have the option to reduce battery drain and transmission cost by reducing its ping rate.

Third, the addition of two enhanced VMS units with gear sensor capability and lower costs has the potential to greatly enhance data collection and management capability. Therefore we suggest that the Council consider adding an alternative that would mandate that existing VMS units, when they are retired by the vessel for any reason, be replaced with enhanced units. Under this new proposed alternative, vessels would be allowed to keep existing units as long as they remain functional and type-approved, but upon replacement there would be a transition to enhanced units.

Management Measure 2 (Removal of Derelict Crab Pots from Rockfish Conservation Areas)

We recommend that the Council advance all the alternatives under Management Measure 2 (Removal of Derelict Crab Pots from Rockfish Conservation Areas) with Alternative 5 as the PPA and with addition of an option to include Open Access vessels. Removal of derelict gear offers a variety of benefits provided it can be done in a way that can be effectively monitored and enforced. As such, we also support the proposed revisions to the purpose and need statement that clarifies which vessels will be allowed to retrieve gear “provided that the activity can be monitored by NMFS.”² Alternative 5 strikes a balance by offering several different options that address enforcement concerns while providing the opportunistic ability to retrieve derelict gear that industry seeks. As such we recommend the Council identify Alternative 5 as the PPA, but we do suggest the Council modify Alternative 5 to add an option that would broaden the measure to include Open Access vessels. If these vessels meet the monitoring requirements inherent in Alternative 5, it makes sense to provide them the opportunity to retrieve derelict gear as well.

Management Measure 3 (Fishery Declaration Enhancements)

We recommend that the Council advance all of the alternatives under Management Measure 3 (Fishery Declaration Enhancements), without identifying a PPA or PPAs. These measures can provide important efficiency, flexibility, and cost-savings to the industry and with minor revisions and clarifications to the gear testing alternatives, the measures should be conservation-neutral. We suggest that the Council revise the purpose and need statement for gear testing to clarify that no catch is allowed when vessels engage in gear testing. As drafted, the purpose and need statement refers to authorizing an activity (and exempting that activity from observer coverage) when that activity occurs “without the intent of catching fish.”³ Intent is notoriously difficult to define or enforce. We suggest it be dropped from the language in favor of a simple statement that no catch (retained or discarded) is allowed. Similarly, we request that any alternative authorizing gear testing explicitly state that cod ends must be open if gear testing includes towing a net. We also suggest that gear testing with a net should not be allowed in EFH Closed Areas.

² Ibid, at p.21

³ Ibid, at p.29

Management Measure 4 (Movement of IFQ Fish Pot Gear across Management Lines)

We recommend that the Council advance all of the alternatives under Management Measure 4 (Movement of IFQ Fish Pot Gear across Management Lines) with Alternative 2 as the PPA. With an explicit prohibition on harvesting fish from multiple management areas on the same trip in place already and the 100 percent monitoring requirement also in place to ensure compliance with that prohibition, there is no reason to disallow baiting of the pots prior to deployment.

Develop and analyze more explicit alternatives to address VMS data collection and management burden issues.

We are sensitive to the concerns expressed by the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement (OLE) regarding long-term plans for the collection, storage, and management of data. However, we are concerned that this important question is not adequately explored, analyzed, or addressed in the document at this time. We suggest that detailed alternatives be developed and analyzed for this issue prior to selection of Final Preferred Alternatives. We also suggest that because OLE is and will remain a key user of this information, including any information collected from enhanced VMS, the alternatives should include options for the responsibility to remain wholly or partially with OLE.

Coordinate the VMS-related measures in this action with ongoing actions in other FMPs that address closed areas and/or monitoring issues.

The Council is currently developing several actions that address area-based restrictions or fishery monitoring issues which may overlap these VMM measures in key ways. Specifically, the Council is considering modifications to EFH Closed Areas and the RCAs through an amendment to the Groundfish FMP. The Council is also considering new regulations for the use of Electronic Monitoring (EM) in the Groundfish fishery. Finally, the Council is developing a long-term Swordfish Management and Monitoring Plan,⁴ and in September 2015 adopted Final Preferred Alternatives for new monitoring measures in the drift gillnet fishery (DGN) that may result in increased utilization of EM, perhaps up to 100%.⁵ Coordination of this VMM action with these other FMP actions should be a priority, to avoid inconsistency and identify potential efficiencies. For instance, increased ping rates in the DGN fishery may be necessary in the near term to facilitate enforcement of the prohibition on fishing in the Pacific Leatherback Conservation Area or other DGN closures, but a future transition to EM in that fishery would potentially negate the need for those increased ping rates. Another key consideration is the design of new or modified EFH Closed Areas. Higher-resolution and/or enhanced VMS data may allow for closures that more closely approximate a sensitive area, either through a smaller footprint, or more complex boundaries, or both.

⁴ See PFMC, [September 2015 Decision Summary Document](#), p.3. See also PFMC, [Pacific Coast Swordfish Fishery Management and Monitoring Plan](#), September 2015

⁵ See PFMC, [California Large Mesh Drift Gillnet Fishery Management Final Preferred Alternatives](#), September 2015

We appreciate and support the Council's proactive work to improve its monitoring regime and also to address several industry concerns related to vessel movement in a way that preserves key vessel movement monitoring tools. We look forward to additional analysis on these important management measures and to final Council action next year. As always, we appreciate the opportunity to provide comments to the Council.

Sincerely,



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