

ENFORCEMENT CONSULTANTS REPORT ON FINAL ACTION ON REGULATIONS
FOR VESSEL MOVEMENT MONITORING

The Enforcement Consultants (EC) have reviewed Agenda Item D.2, Vessel Movement Monitoring (VMM), and have the following comments:

The EC offered the Council an extensive statement at the November 2015 Pacific Council meeting regarding the Council's deliberations on a preliminary preferred alternative (PPA) for VMM:

- Management Measure 1: Monitoring Restricted Areas with Vessel Monitoring System (VMS),
- Management Measure 2: Fishery Declaration Enhancements (Gear Testing and Whiting Fishery Declarations Changes), and
- Management Measure 3: Movement of Individual Fishing Quota (IFQ) Fishpot Gear Across Management Lines

As we did in our November statement, for Management Measure 1, the EC would like to encourage the Council to adopt multiple options for their final preferred alternative (FPA). We believe selecting multiple options provides the necessary monitoring capabilities the Council is seeking along with various economic business planning options for fishermen to consider based upon the fishery in which they participate.

Management Measure 1: Monitoring Restricted Areas with VMS

For Management Measures 1, the EC recommendations have not changed except for: the open access non-groundfish trawl and the highly migratory species (HMS) drift gillnet fishery.

Open Access Non-Groundfish Trawl

In November, our statement read: "For Open Access Non-Groundfish Trawl, we endorse Alternative 1, status quo. Ridgeback prawn and pink shrimp are exempt from Rockfish Conservation Area (RCA) restrictions." In our statement we failed to include sea cucumber as status quo. To correct that omission, we recommend status quo for ridgeback prawn, pink shrimp, and sea cucumber. Ridgeback prawn, pink shrimp, sea cucumber are exempt from RCA restrictions. Historically, there have been few if any Cowcod Conservation Area (CCA) and Essential Fish Habitat Conservation Area (EFHCA) incursion concerns regarding these gear types. Given this fleet's RCA exemptions and compliance history, a ping rate increase does not seem warranted.

California halibut is the exception in that California halibut gear routinely harvests other flatfish and some rockfish as bycatch to the targeted California halibut. In 2015, there were 761 California halibut landings. Of those, 380 retained groundfish, with a total of 235,843 pounds in landings of California halibut and 73,702 pounds of groundfish. Therefore, for California halibut, we recommend Alternative 1a –Increased ping rate to four times per hour with National

Marine Fisheries Service (NMFS) type-approved units, Alternative 1b (maintain ping rate of one per hour with electronic monitoring system with NMFS type-approved units) and Alternative 2 (allow use of enhanced VMS units – non-type approved). These alternatives are consistent with the alternatives recommended for bottom trawl and fixed gear.

HMS Drift Gillnet

In our November 2015 statement, we endorsed Alternatives 1b and 2 and also Alternative 1a with a continuous transit requirement. At the March 2016 Council meeting, through discussions with the HMS advisory bodies, the EC became aware that drift gill net vessels often employ a dual strategy during a trip: fishing with gill net at night and trolling albacore jigs by day. A continuous transit requirement would make this practice illegal and thus severely impact the economic viability of this fishery. Additionally, the Highly Migratory Species Management Team (HMSMT) in their April report provided an analysis demonstrating the distinctly different deployment times and speeds for drift gill net and trolling for albacore with jigs. These different “fishing patterns” would be discernable using VMS and a one-hour ping rate. For these reason, the EC is withdrawing its endorsement of a modified Alternative 1a.

After speaking with the HMS advisory bodies during the March 2016 Council meeting and reviewing the latest analysis of the action, the EC recommends that the Council adopt the No Action Alternative for the drift gillnet (DGN) fishery for the following reasons. As noted previously, the Council-selected preliminary preferred alternative could lead to significant costs for the fleet (e.g., disrupt the ability to fish with more than one gear type on the same trip). Additionally, the Council’s final action in September 2015 to require 100 percent monitoring (either through observers or electronic monitoring) for the DGN fishery by 2018 could produce data which would assist in enforcing area closures, thereby negating the need for selecting an action alternative under this agenda item.

Nonetheless, the EC remains interested in further enhancing enforcement capabilities as intended under this agenda item, and still regards Alternatives 3 and 4 as potentially viable future options for the DGN fleet. Rather than selecting any particular action alternative under this agenda item, the EC believes a Council-recommendation to NMFS could also achieve the purpose and need as defined in the VMM public scoping document. Further, a Council recommendation could provide additional flexibilities and efficiencies for the agency and stakeholders when implementing other planned changes in monitoring and reporting. The EC request the Council make a recommendation to NMFS to further enhance enforcement capabilities as the agency moves forward with the final action to require 100 percent monitoring in the DGN fishery by 2018. Further, we request the Council recommend that NMFS consider the applicability of tools described in Alternatives 3 and 4 of the VMM public scoping document when implementing increased monitoring coverage for this fishery.

The definition of continuous transit is intrinsic to the enforcement of the groundfish conservation area, as discussed with the Council in previous EC statements, the current definition of continuous transit has been deemed inadequate during judicial proceedings. In response General Counsel Enforcement Section attorneys have drafted a modified definition of continuous transit for Council consideration (as listed below).

Referring to Table 1-4, Potential benefits . . . Page 23 in Attachment 1: Public Scoping Document, for Management Measure 1.

EC Recommendation: Management Measure 1.

1. Limited Entry Program (LEP) Midwater Non-whiting and Bottom Trawl, Alternatives 1a, 1b, and 2, FPA.
2. Open Access Non-Groundfish (Other Gears), Alternatives 1a, 1b, and 2, FPA.
3. Open Access Fixed Gear (Non-IFQ) Alternatives 1a, 1b, and 2, FPA.
4. Open Access Non-Groundfish Trawl No Action, Status Quo, FPA.
Except: CA halibut, Alternatives 1a, 1b, and 2.
5. LEP Fixed Gear, Alternatives 1a, 1b, and 2, FPA.
6. Swordfish Drift Gillnet, No Action, Status Quo, FPA
Request the Council make a recommendation to NMFS to further enhance enforcement capabilities as the agency moves forward with the final action to require 100 percent monitoring in the DGN fishery by 2018.
Request the Council recommend that NMFS consider the applicability of tools described in Alternatives 3 and 4 of the VMM public scoping document when implementing increased monitoring coverage for this fishery.
7. Change the groundfish definition of Continuous Transit to read:
Continuous transiting or transit through means that a vessel crosses a groundfish conservation area or EFHCA on a heading as nearly as practicable to a direct route, consistent with navigational safety, while maintaining headway throughout the transit without loitering or delay.

Management Measure 2: Fishery Declaration Enhancements (Gear Testing and Whiting Fishery Declarations Changes)

Gear Testing

Our comments under this section reference the Description of Alternatives for Gear Testing section starting on page 37 of the VMM Public Scoping Document.

As discussed in our November 2015 statement, Alternative 1, 2 and 3 would set up a formal process to allow for a waiver or exemption from observer coverage for a groundfish trip that tests gear.

Groundfish trawl vessels are subject to 100 percent observer coverage (no exemption) using observers provided by third party providers. Groundfish nontrawl vessels are designated for observer coverage (up to 20 percent) through a pool process managed by the Northwest Fisheries Science Center Observer Program.

Alternative 1 would create a separate exemption process for trawl vessels subject to 100 percent observer coverage and Observer Program “pool” vessels (includes open access and LEP fixed gear) which for the pool vessels could create a confusing duplication of process.

Alternative 2 would set up a formal exemption process to allow only shoreside IFQ vessels to be exempt from observer coverage for a trip that tests gear. The trip could be made during an open or closed season. Mothership (MS)/catcher vessel (CV) and catcher-processor (CP) vessels would remain status quo, not eligible for the observer exemption.

Alternative 3 would set up a formal exemption process for groundfish trawl vessels.

Our understanding is that under the alternatives, vessels would be testing gear with open codends or absent terminal gear. No harvest would be involved and harvest delivery would be prohibited. These points should be made explicitly clear in the document. Vessel operators would call and declare their trip intent prior to departure. VMS would track vessels’ trip location and activity, often times occurring directly offshore but not necessarily in traditional fishing areas.

From an enforcement perspective the EC has no objections to Alternatives 2 and 3. The EC believes given the safe guards and monitoring requirements in place, the risk of illegal harvest activity during open or closed seasons is extremely low.

Alternative 1 is more problematic. Beyond the process duplication issue, the sheer number of open access vessels, unlimited port access along the entire west coast, and the potential for harvesting low volume / high valued species, including near shore species, causes concerns.

We believe the risk of illegal harvest by trawl vessels participating in the trawl rationalization fishery during gear testing operations to be extremely small. Additionally, we do not see any discernible differences between an IFQ shoreside catcher vessel and a mothership catcher vessel. For these reasons, we recommend the Council adopt Alternative 3 as their FPA.

Whiting Fishery Declaration Changes

The objective of this management measure is to modify the declaration requirements to allow midwater whiting vessels to participate in the at sea MS/CV and shorebased IFQ whiting fishery on the same trip. Both Alternatives 1 and 2 accomplish this objective.

Beyond consideration that Alternative 1 may be more efficient for industry, Alternative 1 would require fewer regulation changes due to crossover provisions contained in the regulations and may provide more definitive information for fishery management purposes. For these reasons the EC recommends Alternative 1 as the Council’s FPA.

EC Recommendations: Management Measure 2.

Gear Testing

1. Alternative 3, FPA

2. Clarify in rule that no harvest will be allowed when a vessel is engaged in gear testing.
3. Clarify in rule that gear testing for trawl vessels will be with an open or absent codend.
4. Prohibit gear testing in areas with sensitive habitat concerns as defined: i.e. EFHCA no bottom trawl and EFHCA no bottom contact.

Whiting Fishery Declaration

1. Alternatives 1, FPA

Management Measure 3: Movement of IFQ Fishpot Gear Across Management Lines

This management measure change would allow shorebased IFQ program fixed gear vessels to move pot gear across management lines during a single trip. Both Alternatives 2 and 3 as described on page 47 of the public scoping document accomplish the management measure objective. The distinction between Alternatives 2 and 3 is deploying the gear in a second management area baited or non-baited.

These IFQ trips are 100 percent observed and depending upon which area is being fished, south or north of 36° N. Latitude, will use different IFQ quota share/pounds. It is this latter point that drives the restriction on harvesting from more than one area on an IFQ trip. Vessels are not restricted from transiting more than one area, meaning a vessel can harvest from one area, and can deliver into another area, requiring all parties, the fishermen, observers, and first receivers to know where the harvest occurred.

The management measure alternatives are narrow in their application and specific in their intent. The EC has no enforcement concerns as constructed. Although not an enforceability issue, the EC notes Alternative 2 (allowing deployment of baited gear) may be more efficient for fleet operations.

EC Recommendation: Management Measure 3.

1. Select Alternatives 2 or 3, FPA.

PFMC
04/11/16