

April 13, 2016

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

**RE: Agenda Item D.2, Final Action on Regulations for Vessel Movement and Monitoring**

Dear Chair Lowman and Council Members:

Oceana is writing in support of taking final action at the April 2016 Pacific Fishery Management Council meeting to 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. Improved monitoring measures are necessary for effective fishery management and conservation and it would increase confidence for fishermen, enforcement officers and the public that fishing vessels are not operating in closed areas.

In particular, Oceana writes in support of final action to adopt the Council's preliminary preferred alternatives for management measure 1 (monitoring restricted areas with VMS): **alternatives 1a, 1b and 2 for groundfish fisheries and non-groundfish trawl fisheries, and 3a for the drift gillnet fishery.**

For management measure 2 (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 are intend to support may not be achieved, with real environmental consequences.

As stated in the Vessel Movement Monitoring Public Scoping Document, the location information provided by the current VMS units and ping rates “can be insufficient for enforcement” and management measures are “needed to enhance monitoring of restricted areas.”<sup>1</sup> More specifically, “recent case law... has revealed a need for more VMS data to show a vessel is not fishing in a closed area or is transiting a closed area when required to do so.”<sup>2</sup>

Given what we have learned from the groundfish essential fish habitat (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 ping per 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.

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<sup>1</sup> PFMC. April 2016. Agenda Item D.2, Attachment 1, at 15.

<sup>2</sup> Id, at 3.

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 1a**). While this would be a significant improvement over status quo there would still be uncertainty regarding fishing gear deployment inside EFH Conservation Areas. Therefore if Alternative 1a is adopted, we request the Council and NMFS also consider electronic monitoring technologies (as in **Alternative 1b**) and the option to switch to enhanced VMS units (**Alternative 2**).

What is more we support amending the groundfish definition of continuous transit as stated in the Enforcement Consultants report 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.*<sup>3</sup>

For the drift gillnet fishery, we support **Alternative 3a**, which would increase the ping rate to four times per hour with NMFS type-approved units. As stated in the Enforcement Consultants report some DGN fishermen use other gear types during the day and so we understand not also requiring continuous transit.

While the Council has already voted to require 100% monitoring of the drift gillnet fishery (EM and/or human observers) by 2018, we do not see this as a substitute for improving vessel monitoring with VMS. We are already aware that the drift gillnet sector is opposing electronic monitoring testing,<sup>4</sup> which may mean human observers will ultimately be required. It is our understanding that observers are not a replacement for NOAA enforcement. The burden should be placed on enforcement with improved VMS capabilities to closely monitor closed areas, so that observers can focus on their duties of bycatch monitoring and collecting biological information.

## II. Management Measure 2. Fishery Declaration Enhancement (Gear Testing).

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.

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<sup>3</sup> PFMC. Agenda Item D.2.a Supplemental EC Report April 2016

<sup>4</sup> PFMC. Agenda Item F.2.c Supplemental Public Comment 3, letter from TNC regarding EM and the DGN fishery.

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 EFH conservation areas.  
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.

### III. 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. 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