

VMS/Enforcement Meeting

New Bedford, MA

March 12, 2013

Final Summary

NOAA 2013 Enforcement Guidelines

The committee determined to write a letter for approval by the Executive Committee, making recommendations on NOAA Enforcement Guidelines for 2013. NOAA will not entertain comments on national enforcement priorities until 2014, thus all of these recommendations relate to the Northeast Division for 2013. The recommendations are due March 24, 2013 and include:

- At-sea monitoring should be added to Dockside monitoring, a high priority for the Northeast. There is concern that boardings at-sea should increase, especially for non-groundfish species and fisheries. Enforcement at-sea is a high priority for the Coast Guard, and the number of boardings has been consistent for the last 5-6 years. Inclusion of at-sea monitoring as a high priority for NOAA as well is important to the states, because Joint Enforcement Agreement agents, federally funded, determine their effort and are rewarded based on these priorities. With respect to dockside monitoring itself, the states' approach of developing an understanding of the fishermen and their operations may be preferred to the check-off list of questions approach.
- Seafood fraud, listed under International/Lacey Act, should be clarified as a high priority. Currently, seafood fraud is described in different ways as high (bullets 4 and 7), medium (bullets 1 and 2) and low (bullets 1 and 2) priorities. Also, product substitution and mislabeling should be high priorities even if they take place within only one state.
- Acronyms, such as NMS (Northeast Multi-Species), a high priority under Magnuson-Stevens Act, should be spelled out.
- The following would change three statements into priorities:
 - The third bullet under medium priority, Endangered Species Act, which starts with "NMFS has established specified target bycatch rates..." should be preceded by "Fisheries in which NMFS has established specified target bycatch rates ..."
 - Change the fourth bullet under high priority, International/Lacey Act, to "Commodities in interstate/international commerce under the jurisdiction of NOAA in which public health and safety is at risk".
 - Change the second bullet under medium priority, International/Lacey Act, to "Commodities in interstate/international commerce under the jurisdiction of NOAA in which fraudulent documentation is evident or likely".

Sector liability

At its September 2012 meeting, the Council was asked to discuss the role of the Sector Manager in the enforcement process, specifically, the handling of violations by a member of the Sector. This is the first meeting of the Enforcement committee since that time. The Coast Guard and NOAA have no intention of involving Sector managers in the investigation of violations, but will provide notification of violations to the Sector managers.

OLE, when an Enforcement Action Report (EAR) is submitted by NMFS or USCG to a sector member, sends notice to the sector manager. An EAR merely initiates an investigation, after which a Notice of Violation (NOVA) is issued or not. USCG sends most of its EAR's, perhaps not those resulting in a letter of warning, to OLE. Sector members believe that the sectors will work hard to enforce against violations, through their enforcement committees, of both sector rules and federal regulations.

Liability of sector members for violations committed by its individual members is an important element of all sector agreements. GCHQ stated that a violation of federal regulations is the responsibility of the individual, and other members may be liable for certain violations, on a case by case basis. The Sector office, part of the Sustainable Fisheries Division (SFD), indicates that, by and large, liability is limited to three types of infractions: ACE overages, illegal discards, and misreporting catch. These 3 violations are listed for joint liability in the regulations and the SFD provides standard language as such to Sector managers when they are creating their operation's plan. Some may choose to place additional requirements on their sector, but those would not necessarily be NMFS-enforced. ACE overages and misreporting is handled within season, so as to prevent violations. That is, NERO works with Sector managers on a weekly basis to QA/QC catch information from all sources and troubleshoot discrepancies. When there is agreement, NERO has triggered daily reporting and in a few cases, issued stop fishing orders. This in-season monitoring includes troubleshooting when there is clear evidence that someone fished in two areas, but only submitted one VTR (misreporting), however, this is done at the individual vessel level. If compliance is not forthcoming with a vessel to correct what SFD feels is misreported, it goes to the Sector manager, then OLE. To date, Sector-level misreporting has not been determined by SFD, because of the scrutiny given to individual vessels and the weekly Sector manager reports. There also has not been a year-end ACE overage, given the in-season monitoring and allowance to trade ACE post-fishing year.

Sector members are concerned about what they must report to the Sector manager and what happens if a violation is not reported. The Coast Guard is aware of all EAR's, whether issued by USCG or NMFS. Thus, Sector managers need only report enforcement actions and violations of sector rules in their weekly reports.

There have been rumors of widespread misreporting. If all members of a sector are misreporting, then that Sector's manager may be involved in or under the investigation. Sector

members described how reporting requirements have changed. For instance, Georges Bank cod catches were originally reported, but since 2011 they must be reported to the east or west of a line. Technically, VTR's have always required reporting by chart area fished. However, in the case where a set or tow crosses the line, SFD cannot determine if the proportion of the catch reported in the two VTR's is the actual catch on either side of the line, and this may be the source of these rumors.

Discussion turned to stop fishing orders, and how group type violations, such as ACE overharvest, will be treated in terms of prior violations by all the sector members. GCHQ states that they will be treated as a prior offense for the person issued the NOVA and the sector itself, but not all its members, barring extraordinary circumstances. USCG indicated that other vessels, not rogue vessels causing an overharvest, may appeal their "prior" offenses. OLE said that the Sector manager is responsible for handling rogue vessels, and the other sector members will not be charged. Sector members said that dealers are ordered not to buy from rogue vessels, when they are issued a stop fishing order from their sector, and that is the best way to enforce Stop Fishing Orders.

The Sector office indicated that both they and the Sector manager, separately, conduct a weekly analysis of VTR's, dealer landings reports, etc., against the sector's ACE. The process proceeds to daily reporting (and analysis) as overharvesting is approached (80%), and finally a Stop Fishing Order (100%). Typically, these Stop Fishing Orders come from SFD, then from the Sector office to the Sector manager, and OLE and the VMS office are notified.

When a member is ejected from a sector, the manager issues a Stop Fishing Order to the vessel(s) and notifies NMFS. NMFS, in turn, notifies the dealers because the vessel(s) may not continue to fish in the common pool. On the other hand, if NMFS and the Sector agree to an in-season overage (i.e., no major data discrepancies), then SFD issues the Stop Fishing Order. It is illegal for the dealers to buy from these vessels. The Coast Guard questioned if the dealer is required to report attempted landings by such vessels, and what happens to the catch. This apparently is not required, according to GCHQ. The chairman pointed out that a vessel with a Stop Fishing Order still must operate VMS continuously, and may continue to legally fish within state waters or for non-groundfish. Sector board members believe that the internal policies work, at mitigating and enforcing against violations (of sector rules and federal regulations). If a vessel is issued a Stop Fishing Order and another sector member witnessed the banned vessel fishing illegally, then that other sector member could be liable to report it. Authorized dealers have a good understanding of boats that do business with them, as it is largely the same boats all the time, and these dealers should know that a boat has a Stop Fishing Order. The problem arises when such a vessel moves to other dealers and/or areas. The SFD received a letter asking how dealers are to know whether a boat is in or out of a sector. Since that time, the Sector office sends an email instantly, followed by a letter, to authorized dealers indicating that a boat has been ejected from a sector and has a Stop Fishing Order. The committee was satisfied that this

discussion gives a clearer understanding of the enforcement and reporting duties of all parties, Sector officers, the Sector office (SFD), OLE, and USCG.

Closed Areas

The committee plans to review specific closed area alternatives from the Habitat committee and the Closed Area Technical Team in May or June.

In general, the enforcement of small, seasonal closed areas is more difficult than large, straight-lined, permanent closed areas; the latter may be found as a recommendation in the Council's current Enforcement policy. Although progress has been made, calculating towing speeds to determine fishing or non-fishing within small closed areas, enforcement agents must arrive at the moment in order to establish a violation. The dimensions of a closed area matter as well; a very large but extremely narrow closed area, for instance a depth band along the continental shelf, would be difficult to enforce. Fishermen want to know where closed areas are, in order to avoid them, and one that is too small may require a buffer zone around it for this reason. The combination of small inshore closed areas and small boats increases the likelihood of violations. Small closed areas offshore are difficult to enforcement because the response time is longer. The development of a minimum size for closed areas might be useful. Areas that are amenable to enforcement with aircraft are preferable, as opposed to regulated gear areas that require boarding's at-sea to verify that legal gear is being used.

The Northeast VMS Program Manager addressed the Committee to provide some VMS perspective on closed area enforcement. The monitoring of closed areas is the number one priority for the NE VMS Team. They have the capability of entering closed areas of any shape into the monitoring system, although irregular shapes may be more difficult for both at-sea enforcement as well as fishermen trying to avoid closed areas. Of course, a very narrow closed area will limit the number of VMS positions within that area when vessels are operating on 30 or 60-minute reporting rates. VMS Program Manager recommended a review of VMS-only closed areas cases across the regions to determine if there is consistency in enforcement. Recently, in the Northeast, a boat was fishing heavily on the eastern border of the Western GOM closed area where there's a lot of activity. Due to weather, he moved seven miles west and well into the closed area for about five hours; presumably, he could have moved another seven or so miles west and been outside the closed area, but didn't. A fisherman added that it may have been difficult and time intensive for the vessel to move another 7 nm, if the vessel was small and the wind was heavy. In this case, the information was handed over to enforcement, but it would've been wise for the boat operator to contact the Coast Guard at the time he entered the area to explain the situation.

Maine's Chief of Enforcement said that the state has a VMS Program, through a contract with Polestar and LocPoint, which monitors 20 inshore boats. Their system geo-fences 25 small

conservation areas and automatically increases the reporting rate when vessels enter those areas. This allows more flexibility by allowing these state vessels to fish on the days they wish. However, the NMFS VMS program does not automatically increase the VMS polling of a vessel when it enters a closed area; however, the capability exists to manually increase the vessel's polling to provide more information about the vessel's activity. The contract for the VMS monitoring application will be up for renewal next year, and the VMS Program Manager intends to recommend a requirement for automatic polling functionality. The Coast Guard reminded the Committee that, while a useful tool, not all fishing vessels have VMS, especially inshore.

Gear Marking

The Council requested the NMFS work with the Coast Guard and ASMFC to determine if the inconsistency of lobster gear marking requirements in state waters and the EEZ may lead to unsafe conditions for fishing vessels (letter dated February 13, 2013). NMFS replied by telephone that they only support ASMFC and the request should, therefore, be addressed to ASMFC directly.

Asked if all lobstermen are required to mark their gear with high-flyers, state enforcement representatives indicated that they are not required, within 12 miles. This reference to the territorial sea may be as much as 20-30 miles from shore in some cases. The sinking of the Twin Lights involved entanglement with unmarked lobster gear. Fishermen find lobster gear that is not marked as required, or black and white and cannot be seen. Also, the twine used now will not break. What is necessary, everywhere, is something that identifies traps-in-a-trawl from end to end.

A previous letter sent in 2010 asked that NMFS and ASMFC simply inform permit holders of the regulations, but now the intent is to strengthen gear marking and make it more consistent.

The Coast Guard states that lobstermen lose gear as well, during gear conflicts, and stand to gain from reasonable gear marking requirements. Marine mammal regulations also affect lobstermen, and, if they adhere to breakable lines, then the result is more gear on the bottom that is unmarked. The state enforcement representatives think that, even within 12 miles, negotiations with Maine Lobstermen's Association will be useful. State Enforcement representatives request that, as part of the outreach to Lobstermen Associations, some fishermen be recruited to speak at association meetings concerning gear marking, which may be more effective. There is a new generation of lobstermen who have no prior experience with mobile gear, or with previous rounds of gear conflict negotiations. The committee recommends redirecting the letter to ASMFC, ALWTP, and the State Directors, encouraging them to meet with fishermen and the lobster associations of ME, MA and NH.

Different mesh nets in regulated mesh areas

A request to allow shrimp nets onboard while groundfishing was forwarded to the committee. This would enable fishermen to switch back and forth into multiple fisheries. Currently, the MAFMC allows the use of different mesh sizes on the same fishing trip in the SNE and MA regulated mesh areas. The new redfish exemption, allows both 4-1/2 and 6-1/2 inch meshes, with an observer. Any change in New England may require an omnibus amendment to apply to several plans.

In the whiting effort control program, the reason for requiring one mesh onboard is to prevent fishermen from switching fisheries at sea. Requiring them to land to change gear and fisheries means that the gear can be checked at the dock by enforcement, which is one of the advantages cited in the Council's current Enforcement Policy. Another recommendation in the policy stipulates that if use is prohibited, then allowing the gear onboard should be prohibited. Thereby, the USCG can establish the fishery by aircraft (boat A declared into fishery B and fishing in area C, must be using gear D) and any enforcement agent can check the gear on the dock before or after the trip. If the vessel is allowed to have two different mesh gears onboard, the Coast Guard could not determine which one was being fished without boarding the vessel at-sea. It was mentioned that FW 48 will eliminate the gear stowage requirement, which is cited in the request as one of the stipulations of the change. The committee, alternatively, recommended a different approach to covering the net on the reel.

Referring to the Council's current Enforcement Policy, the committee decided to recommend that the Council take no action, with respect to multiple meshes on board.

Other Business

The FW 48 comment period will be an abbreviated 15 days, in order to be implemented at the start of the fishing year. The Coast Guard intends to comment that elimination of the gear stowage requirement, included in FW 48, not be implemented.

The Council sent a letter (October 4, 2012) advising MAFMC of 1) elimination of gear stowage proposed in FW 48 and 2) recommending alternative gear stowage regulations (as recommended by the Enforcement Committee) for all other Northeast FMP's. The MAFMC replied that its Squid, Mackerel, Butterfish committee will review the request at its April meeting, and the Council will vote on their recommendation in June, when it sets specifications for the 2014 fishing year.

The Enforcement committee met in closed session to accept or decline advisor applications.