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VMS/Enforcement Committee and Advisors meeting
NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Peabody, MA

June 5, 2013

DRAFT

Closed area options, Enforcement advice to Groundfish-Habitat committees

The Habitat Committee's goal is to protect sensitive habitat from mobile bottom tending gear. The Closed Area Technical Team identified concentrations of juvenile groundfish and large spawners. The Enforcement committee recommends the best procedures to determine compliance. The Groundfish and Habitat committees must combine all of these elements with the fishing industries' knowledge and best practices to develop a comprehensive closed area program.

The committee received a presentation of maps, illustrating the types of closures, year-round to protect juvenile groundfish and seasonal spawning, in different fishing areas.

- A balance of habitat, juvenile, and spawning protection must be achieved within the closed areas. A comprehensive picture showing all the closed areas for each alternative/option on one slide would be useful, overlaying habitat, juvenile and spawning areas for each season and indicating the gears to which they apply. For instance, will recreational party and charter boats be included in any of the closures.
- Allowing the use of distinct types of gear, on certain trips, in certain closed areas is enforceable only with at-sea boardings to assure that none of the gear is used illegally.
- With respect to mobile bottom tending gear, prohibiting the use of ground cables is only enforceable with at-sea boardings, which are limited in number. Requiring disks on the cables, or specifying certain lengths of cable may be more enforceable. If a certification program to mark the approved ground cables is developed, then a procedure for compliance checks must be developed and implemented concurrently.
- Prohibiting ground cables, if fishermen don't circumvent such a rule, may increase the time that the gear is on the bottom, in order to catch the equivalent amount of groundfish as gear with ground cables, and may increase the negative impact on habitat.
- Ground cables raised off the seabed with disks are used in the North Pacific in flounder fishing areas, but they are different seabed types from those targeted in habitat protection areas under development in the Omnibus Amendment.

- The Coast Guard will visit the Yankee Co-op to examine the low impact cables that are currently being tested, before the next VMS/Enforcement meeting.
- The smallest closed area is 13 square NM (Fippennies), but there is more concern about the shape of the area, which is a parallelogram rather than a square, from an enforcement standpoint.
- Some of the habitat management areas represent locations that are not easily towable by mobile bottom tending gear. This may make them somewhat self-enforcing, however, they are also a hedge against future, new-technology operations. Such closures would be monitored by VMS and USCG over-flights, to assure they continue as non-fished.
- Multiple other gear types allowed into areas closed to mobile bottom tending gear are problematic, although this is currently the norm. VMS may track all of these gears through the area, and all VMS vessels must declare if they will use trawl, gillnet, or hook gear, but VMS cannot identify gear details such as cable type and length.
- VMS positions detected within a closed area and other corroborating evidence are necessary to make a case.
- [For VMS to be as effective as in the past, some assurance should be made for closed areas large enough so that a groundfish vessel on hourly reporting has a reasonable chance of positioning while inside the area.]
- Both fishermen and enforcement find it very difficult to determine position relative to a curved, rather than straight, area boundary.
- Curved boundaries of some closed areas (i.e., Massachusetts Bay area near Stellwagen Bank) could be straightened to be more enforceable, with little impact on habitat protection.
- Circular holes inside some closed areas should be closed, by coordinating with existing state regulations.
- The closed area program should take advantage of the fact that the states can regulate all fishing vessels, not just their state registered vessels, within their respective state waters.
- Similar state regulations may generate habitat and spawning benefits in adjacent areas.

The Enforcement committee and advisors approved two motions unanimously:

1. The committee has significant concerns about the enforceability of a no ground cable restriction, and
2. The committee expresses interest in further information on the reduced impact (raised) ground cables to study their enforceability.

Note: Information in [brackets] arrived after the June 5th Enforcement meeting.

Enforcement Policy

The Council's current Enforcement Policy was developed by OLE, USCG, and GCNE in 2007. These three organizations produced a revised version, Enforcement Precepts for Northeast Regional Fishery Management Councils (April 2013). The Enforcement committee made the comments below. These comments were incorporated into a final revised version (attached), and the committee recommends that the Council accept these Precepts to replace its current Enforcement Policy.

Under the *Account for and trace fishery products* section (page 3), the reference to "Fishery managers should create regulations..." is removed. This section now starts "Regulations that require improved documentation..."

Both references to identifying gear types from the air are removed on page 8, one under the POSSESSION LIMITS section and one under the PROHIBITED SPECIES section.

The Recommendations on page 11 for GEAR/VESSEL SIZE AND EFFICIENCY RESTRICTIONS now say possession of gear on board if not allowed for the targeted fishery, rather than any fishery, is prohibited.

A Recommendation for "Uniform sector exemptions across all Sectors" is added to the SECTORS/CATCH SHARES/LAPs section on the last page.

Other comments not changed in the Precepts:

1. The phrase "or aerial, electronic monitoring, or other vessel surveillance" should be removed from the Advantages of REQUIRING RETENTION on page 8.
2. Joint Enforcement Agents (JEA) should be considered for dockside monitoring, under the SECTORS/CATCH SHARE/LAPs section.
3. Improving the actual catch recorded by at-sea monitors and observers should be a Recommendation, rather than considered an Advantage, under SECTORS/CATCH SHARES/LAPs.

Hidden Compartments

The Coast Guard presented a PowerPoint to facilitate discussion among Committee members on the ongoing problem with hidden compartments (attached), and indicated the current legal framework is inadequate to address this matter. The briefing provided a historical background of hidden compartment cases in the Northeast, recent examples of hidden compartments, and identified concerns from living marine resource management, fishing vessel safety, and homeland security standpoints. The briefing also included a proposal (as amended) for the Enforcement Committee to recommend that the Executive Director or the Chairman send a letter to the Secretary of Commerce recommending the addition of the following prohibited act under Section 307 of the Magnuson-Stevens Act during the current reauthorization process:

The prohibition of anyone knowingly building, purchasing, fitting out in whole or in part, [or using, a hidden compartment,] for the purpose of ~~employing it to~~ defrauding law enforcement officers authorized to conduct boardings and inspections under Section 311 of the Magnuson-Stevens Act.

Hidden compartment cases vary in size and complexity, and the current legal framework is limited in its ability to deal with this varying scope. Other items discussed by the committee included:

- GCES noted that they are able to consider the existence of hidden compartments when they are filled with fish in overage or illegal fish cases as a measure of intent, which result in higher penalty assessments. Hidden compartments indicate to GCES that the violation is knowing and intentional.
- Some members of the Committee expressed that a definition of “hidden compartment” is needed, but will be difficult but will be difficult to define.

The following two motions were approved:

A motion to table was approved (9/0/0) due to the need for further discussion on this matter.

A motion was approved to request NOAA General Counsel to work on the wording to prohibit and to define hidden compartments, and report to the next Enforcement meeting (9/0/0).

NOAA General Counsel agreed to conduct research on case law and would report back at the next Enforcement Committee meeting.

Other Business

Drew of the Fisheries Survival Fund stated that several scallopers violated closed areas two years ago, received revenue for their landings, and have not been prosecuted yet. This lack of prosecution is very detrimental to scallop area management. The Coast Guard concurred with this concern as they spent a significant amount of time and resources establishing these cases, and they were sent to NOAA. Additionally, scallopers are now facing 32 DAS and two closed area trips, but several vessels are landing very large amounts of scallops, apparently more than seven crew/shuckers can cut. There is a perceived lack of law enforcement for fishing vessels shucking scallops inside the DAS demarcation line. Enforcement is essential to successful fishery management, including scallop area management.

Gear stowage rules remain in place, and NOAA is working to develop additional gear stowage methods to address the remaining safety at-sea concerns. This would likely include a more holistic approach that would pertain to all fisheries. The Mackerel-Squid-Butterfish (MSB) Committee recently approved the VMS\Enforcement Committee's original recommendation, but the measure will not be taken up by the MAFMC at this time. The MSB Committee would first like to step back and learn more about the development of the measure before it is presented to MAFMC. NMFS recently disapproved removing the gear stowage requirements for groundfish under Framework 48. NOAA indicates that they will work on addressing the safety at-sea concerns of those requirements. They plan to use the RA's authority to publish new gear stowage regulations. They had planned on moving forward with the orange mesh as previously recommended, but were not aware if this method was unanimously approved. NMFS is still looking into this as well as removing the requirement to detach the doors. They are looking for the best options to improve safety at sea. Coast Guard wants to develop a list of approved materials, to provide flexibility. NMFS plans to coordinate with the USCG and the VMS\Enforcement Committee to develop a gear stowage method that would address the safety at-sea concerns. Fishermen should be notified that the gear stowage rules continue to apply to groundfish trips. NMFS will work on notifying the fleet.

Natalie Berthiaume was introduced as the new OLE Communications Specialist, and the Committee will lose the services of LCDR Lyle Kessler who is reassigned to Louisville, KY. We wish them both well.

