

**VMS/Enforcement Committee and Advisors meeting**  
**NEW ENGLAND FISHERY MANAGEMENT COUNCIL**  
**Danvers, MA**

**January 17, 2014**

Attendance at the meeting is attached (attachment 1). Discussions were guided by:

- ASMFC letter to NEFMC (12/18/2013) on lobster gear marking (attachment 2)

**Hidden compartments on fishing vessels**

Joe Heckwolf (GCES) presented a PowerPoint (attachment 2) and reviewed hidden compartment language based on 19 U.S.C. 1703, federal smuggling statute, and made some general recommendations.

Captain Pete DeCola said the Coast Guard does not have FAA-like authority with respect to inspecting any and all physical changes, from the original manufacturer's construction, to fishing vessels. However, the Coast Guard can board a vessel without suspicion of a violation and making false statements to an officer is considered a violation.

Joe Fessenden, of the Maine Marine Patrol, said that a hidden compartment is more than intent, and should result in permit sanctions.

At the end of the discussion, the Committee agreed that there are currently regulations in place that address the underlying issue which is failing to make all catch available for inspection to an authorized officer and making false statements regarding the total catch on board a vessel. Both of these violations are currently addressed in the regulations.

The Committee passed a motion, 4-1-0, made by John Quinn and seconded by Ellen Goethel:

**No additional laws or regulations, or amendment of MSA, be implemented relative to hidden compartments (concealment of fish). Furthermore, the Committee supports the use of all current laws, rules and regulations by law enforcement officials to enforce violations of current fisheries laws which use hidden compartments (concealment of fish) for purposes of violating any laws, rules or regulations.**

## **Fish tote regulations**

Lou Goodreau summarized the proposal from the Northeast Hook Fishermen's Association to remove the requirement for hand-gear vessels to carry a standard fish tote on board. In December, the Council tasked the VMS/Enforcement Committee to discuss the matter. Goodreau also summarized a January 7<sup>th</sup> conference call between the NERO Sustainable Fisheries Division, Office of Law Enforcement, and General Counsel; the Coast Guard and Council staff. The conclusion of the call was that neither NOAA nor the Coast Guard see the fish totes as necessary for the hand-gear vessels and would also support removing a similar requirement for other fisheries (i.e., scallops, black sea bass, summer flounder, red crab). The USCG does not use totes for at-sea enforcement at present. GC would have an extremely difficult time making a case for an overage on a trip limit, based solely on repeatedly filling up totes of fish, dockside weights are needed. Should totes be needed in the future, OLE/USCG will take on the burden of carrying totes on board their vessels.

Joe Fessenden argued that the fish tote is useful to agents and officers to determine if there is reasonable cause to believe that an overage has occurred (with more precise weighing at the dock. He said that agents and officers are not concerned about a few pound overage.

Terry Alexander noted that the hand-gear fishermen typically store their small amount of fish in covered coolers, because they use small vessels without fish holds.

Special Agent in Charge, Logan Gregory indicated that OLE is confident that sufficient estimates can be made without transferring fish from the coolers to the totes on board.

Joe Heckwolf indicated that General Counsel thinks a Council amendment is necessary, and that an administrative action is not warranted, because the fish tote was required in Multispecies Amendment 5. This would be best determined by Gene Martin.

**The Committee agreed by unanimous consent to recommend removing the fish tote requirement from all multispecies hand-gear regulations. The Groundfish Committee is expected to take this up, at its January 23, 2014 meeting, to discuss Amendment 18.**

## **VMS satellite availability**

The NOAA Fisheries Office of Law Enforcement Headquarters in Silver Spring, MD is drafting new National type approval requirements that are intended to address concerns of holding vendors more accountable for their performance based on required type approval standards. Logan Gregory indicated that there is open source information on the internet that some satellites

used by Skymate, one of four approved VMS vendors in the Northeast, will be replaced during 2014.

Ellen Goethel said that most fishermen, especially small boat fishermen, use Skymate because they do not have a generator onboard, which is required to utilize the other vendors. The Skymate system, however, is problematic in unheated wheelhouses during the winter.

Arthur Sawyer, of the MA Lobstermen's Association, said cost was another consideration for small boat lobstermen. He added that, now, he must declare out of the multispecies fishery each and every day in order to continue lobstering. In the past, a vessel could declare out of a fishery via VMS and it was presumed that they remained out until they declared back in. This, however, was a convenience that the VMS office in the Northeast Region had taken upon itself but was ended, according to Bill Semrau, VMS Program Manager for the Northeast Division.

Bill Semrau went on to describe that there are problems associated with Skymate because of the orbital satellite system on which it depends. He went on to say there is some kind of problem with the transmission of data in packets that Skymate uses. The major problem with VMS requirements, however, is the lack of a process to revoke satellite vendor approval. Bill said that the proposed rule for VMS, due during 2014, will address this issue.

Several fishermen, including Council members, advisors, and public, warned against a revocation policy that does not account for the financial impacts on fishermen who subsequently are faced with purchasing more expensive VMS units and services.

**The Committee agreed by unanimous consent to recommend that the Council comment on the VMS proposed rule in 2014, including any expected financial impacts on fishermen using VMS units.**

Capt. DeCola said the VMS cannot be used to initiate cases in its current state, because it would generate too many false distress cases and overwhelm the search-and-rescue system. Mariners should continue to rely on and use internationally recognized means to communicate distress.

### **Lobster gear marking**

The ASMFC responded to the Council's letter regarding lobster gear marking (attachment 3), and indicated that while synchronizing gear markings is desirable, significant difference in state's regulatory authority hinders implementation and enforcement. The ASMFC recommends increasing lobstermen's awareness of current regulations, and discussing any future changes with them at, for instance, the upcoming Maine Fishermen's Forum and Massachusetts Lobstermen's annual meeting

The Committee requested that commercial fishermen attend the MA Lobstermen's Association annual meeting (MLA), January 24-25, in Falmouth, and the ME Fishermen's Forum (MFF), February 27-March 2, in Rockland, to discuss gear marking with lobstermen. **Terry Alexander plans to attend in MLA and MFF, and Dave Goethel will be asked to attend MFF.**

### **Gear stowage requirements**

Jason Berthiaume described NOAA's progress to add the orange snow fence and the orange cargo net as alternatives to the tarp cover, and to remove the requirement to detach the towing wires. They expect a proposed rule and comment period before the winter is done, and implementation, hopefully, by May 1. Even if the fishermen chose to use the tarp, they would not have to remove the towing wires, under this proposed rule.

Terry Alexander said that, during the original sea trials in November 2011, he used a rolled up net to wrap around his fishing net, and that this was not acceptable to the Coast Guard. Now, Terry proposes a new sea trial of a cargo net [manufactured by IMP in New Bedford], costing around \$400, but is yellow. The Coast Guard will do a fly-over next week of Terry's boat using the yellow cargo net, to determine its feasibility.

Captain Pete DeCola said the Coast Guard didn't need the cargo net to be weight-tested, which may reduce the cost.

Harry Graff confirmed with Jason that the wires may remain attached to the doors, regardless of which net covering alternative is chosen by the fishermen.

Jason Berthiaume indicated that, in the future, new materials that are sea trialed and tested by the Coast Guard should be forwarded to the Regional Administrator through the Council (VMS/Enforcement Committee), but it may be possible to develop a process by which materials are submitted directly from the industry and Coast Guard, during the proposed rule and comment period required for this purpose.

Captain Pete DeCola said that the color of the material did not matter, per se, but that it is helpful if it contrasts with the net. He pointed out that allowing the wires to remain attached to the doors was one of the safety provisions agreed to at the November 2011 meeting at the Coast Guard's Fisheries Training Center on Cape Cod and that Mr. Avila's letter sought to rescind that portion of the agreement.

Jason Berthiaume questioned whether, based on previous sea trials and Council decisions, the color orange was a strict requirement, or could other colors be used. Terry Alexander said that orange cargo nets could be custom manufactured as well, but the cost was \$1200 instead of \$400. Captain Pete DeCola advised proceeding with the orange color, and adding yellow and other

colors after they are tested and approved, by the Coast Guard and NOAA, and forward to the Regional Administrator.

It was pointed out that, during the proposed rule comment period for the orange snow fence and orange cargo net currently being developed, the Coast Guard could comment that it has tested and approved a new color, yellow, for approval by the Regional Administrator. Jason Berthiaume thought that this might be an acceptable way to add a yellow cargo net to the list of approved materials.

Jason Berthiaume added that the Regional Administrator will move the gear stowage regulations from the Squid, Mackerel, Butterfish section into the General Provisions section, during the current process.

**NOAA may implement the new gear stowage rules prior to May 1, 2014. During the public comment period required for this change, USCG may recommend additional specifications for materials approved by the Regional Administrator; specifically, allowing a yellow cargo net that USCG plans to sea test before that date. NOAA also plans to move the gear stowage regulations from the Squid, Mackerel, Butterfish section into General Provisions.**

## **Other Business**

### Advisory Panel

**The VMS/Enforcement Committee is requesting the Executive Director to seek more applicants for the Advisory Panel.** There are currently 12 advisors, and there could be up to 15. The Committee is most interested in a balance in the Advisory Panel, and *thus seeks more commercial fishermen.*

### Safety

Separately, the Committee considered the NY Times article forwarded by the Regional Administrator, who advised avoiding rules that make fishing more dangerous. Matt Baryshyan stated that irresponsibility at sea may result in, not only killing oneself, but killing others as well, and something should be done. He was especially concerned about the instance highlighted in the article, where there was only one fisherman on deck, saying that always there should be at least two. Ellen Goethel pointed out that not every fisherman “wants to die”, referring to the title of the article. Wearing a flotation device, in certain circumstances, is more dangerous than the potential for falling overboard. Jim Kendall strongly recommended that the Council promote more safety training. Terry Alexander responded that the Regional Administrator was recommending the Council not make regulations that endanger people. He said that his four-

man crew, because of Council regulations and the resultant economic impact on crew shares, is now a three-man crew.

Beth Casoni described how 100 men had gone through safety training, in the past 1-1/2 years, provided by the MA Lobstermen's Association, in concert with the Massachusetts Fishermen's Partnership. She said the scheduling is the key; not during June through November when lobstering is peak. Many men fish alone, with no way to get back on the boat if overboard at an average age of 57-58 years old, in Massachusetts. Pete DeCola indicated that a "culture of safety" must be promoted, and training must be targeted to be effective. Most fatalities are from sinking, capsizing, and man overboard. Floatation devices are the key factor in survival. Perhaps federal monies could be found to assist with the more widespread use of PFD's, as they are expensive. New construction standards, for instance, will grandfather (not be required of) most vessels in the fleet.

Beth Casoni described the auto-tether, a wireless kill-switch, that shuts the boat off when you go overboard wearing it. They have sold six to lobstermen. Jim Kendall said that there is a "culture of [inevitable doom]" in the fishery. He recommended revisiting the seven-man crew size maximum limit in the scallop fishery. Terry Alexander has purchased 50 inflatable life-belts, at \$200 each, for his crew over the years, and found them to be unused, lying in the corner. Pete DeCola said a change in culture, from doom to safety, must come from within oneself, which is difficult to legislate or regulate.

Matt Baryshyan thought that training and awareness are important, especially for people without much experience. He has arranged many safety seminars up and down the coast, for younger fishermen, and heard that entire crews will go to sleep when things are slow.

Training and providing new safety devices are the job of the Coast Guard, the states, and the organizations. The goal of the Council's species Committees is to achieve their ABC's. The VMS/Enforcement Committee is responsible to examine the effects on safety of new and existing regulations. For example, we now have regulations that force one man to go out on a boat, where there used to be two, due to economic pressure. Terry Alexander indicated that science drives all the Council's actions, and when they try to consider safety, one of our National Standards, it gets pushed back.

**The Committee agreed by unanimous consent to continue to consider safety in fishing operations in all of its recommendations. NEFMC Final 2014 Priorities state that the Committee will "continue to support enforcement, safety and VMS issues".**

The public is encouraged to listen to the last half of recording 2 of this meeting, which will be posted on the NEFMC webpage:

[http://www.nefmc.org/issues/enforce/cte\\_audio/140117/140117.html](http://www.nefmc.org/issues/enforce/cte_audio/140117/140117.html)

Committee membership

Captain Pete DeCola announced that this was his last VMS/Enforcement meeting, and complimented the Committee on, in particular, its honest exchange of views. We very much appreciate Pete's efforts with the VMS/Enforcement Committee and the way in which he carried out his responsibilities with the Coast Guard, and wish him well in his new career.

New England Fishery Management Council  
Tannery Building - 50 Water Street-Mill 2 - Newburyport, Massachusetts 01950

**ATTENDANCE SHEET**  
**Travel Authorization #14-13**

ATTENDANCE AT: VMS/Enforcement Committee and Advisory Panel Meeting

DATE: Friday, January 17, 2014

LOCATION: DoubleTree, Danvers, MA

CERTIFIED BY: [Signature]

**IMPORTANT... Any information provided on this form is subject to Freedom of Information Act (FOIA) disclosure and may be made available to anyone requesting such.**

<u>NAME</u>	<u>MAILING ADDRESS</u>	<u>TELEPHONE</u>
<input checked="" type="checkbox"/> T. Alexander		
<input checked="" type="checkbox"/> F. Blount*		
<input checked="" type="checkbox"/> E. Goethel		
<input checked="" type="checkbox"/> J. Quinn		
<input checked="" type="checkbox"/> Capt. Pete DeCola		
<input checked="" type="checkbox"/> L. Gregory – NOAA/OLE Representative		
<input checked="" type="checkbox"/> T. Hatfield		
<input checked="" type="checkbox"/> J. Heckwolf – NOAA GC		
Lt. Ellen Motoi		
<input checked="" type="checkbox"/> Patrick Moran – MA Env. Police		
<input checked="" type="checkbox"/> J. Fessenden – ME Marine Patrol		
<input checked="" type="checkbox"/> Matthew Baryshyan		
<input checked="" type="checkbox"/> Richard Bellavance, Jr.		
<input checked="" type="checkbox"/> Lt. M Eastman– NH Fish & Game		
Lt. K. Blanchard – RI DEM		
<input checked="" type="checkbox"/> Harry Graff ✓		
Lt. Ellen Motoi, USCG		
Kyle Overturf – CT DEP		
<del>M. Russo</del>		
<input checked="" type="checkbox"/> Lou Goodreau		
<input checked="" type="checkbox"/> Rachel Feeney		



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## Atlantic States Marine Fisheries Commission

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*Dr. Louis B. Daniel, III, (NC), Chair*

*Douglas E. Grout (NH), Vice-Chair*

*Robert E. Beal, Executive Director*

*Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015*

December 18, 2013

Thomas A. Nies, Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, Massachusetts 01950

*Tom,*  
Dear Mr. Nies,

This is in response to your May 15, 2013 letter regarding the New England Fisheries Management Councils' (Council) concerns over inconsistencies in lobster gear markings regulations and the potential for unsafe fishing conditions. In response to your letter, the Commission organized a meeting of the state directors from Massachusetts, New Hampshire, and Maine; and representatives from the Atlantic Large Whale Take Reduction Team, the Council, and the National Marine Fisheries Service to review these issues.

The Commission agrees that there may be some benefit in synchronizing gear markings between state waters and the Exclusive Economic Zone. States must consider several factors when implementing gear marking regulations including the potential for trawlers to get hung up on unmarked gear, for fishermen to lose gear if their lines break too easily, and for whale entanglement if lines don't break easily enough. However, the significant difference in the state's regulatory authority hinders the implementation and enforcement of similar regulations throughout the fishery. For example, in Maine the gear marking regulations extend out to twelve miles and are set in statue, while in Massachusetts and New Hampshire the regulations only extend out to three miles.

Increasing awareness of and compliance with the current regulations, especially for new fishermen, was discussed as a top priority to address the concerns of the Council. The Commission will work with the states to disseminate appropriate regulatory information directly to fishermen and at lobster-related events, such as Maine's Fishermen's Forum and Lobster Conservation Management Team meetings. The Commission will also take this opportunity to discuss with the fishermen any potential future changes to gear marking regulations. Additionally, the Commission has requested guidance from the Commission's Law Enforcement Committee on the issues pertaining to enforceability in territorial waters.

Thank you for bringing these concerns to our attention. We are committed to promoting safe fisheries practices and reducing loss of fishing gear. Please let me know if you have any questions or comments.

Sincerely,

Robert E. Beal

cc: American Lobster Management Board

L13-147



