

VMS/Enforcement meeting
Sheraton Harborside
Portsmouth, NH

October 20, 2011

Gear stowage

The purpose of gear stowage requirements is to prevent fishing in closed areas while vessels are transiting through them. New technology may enable a determination that a vessel is fishing, based on the calculated speed with which it is transiting the closed area. The gear stowage requirement began prior to VMS, but now a VMS macro could determine the speed of the vessel.

Additionally, much of the definition of “not available for immediate use”, section (b)(1) of 648.23, may be struck. If the single provision prohibiting a cod-end tripping device while transiting, 648.23 (b)(1)(iv)(C), were enforced, the net would be incapable of fishing. All of the other provisions can injure crew or damage the boat. There was some question if VMS alone could determine if a vessel was steaming or towing. For instance, in bad weather the boat may be steaming so slowly, into the wind, it may appear to be towing.

A member of the public commented with a concern that the on reel stowage regulations in 648.23(b)(1)(iii) and (iv) are inconsistent, in both (B) and (C), and should be re-visited. For instance, the towing wires are detached from the net in one, and from the doors in the other. The Committee concurred that these regulations should be re-examined to determine if there can be one universal set of on-reel stowage regulations.

VMS technology currently assists enforcement in determining whether fishing is occurring in a closed area based on the VMS position reports, associated track-line and calculated average speeds. Future VMS technology may provide additional tools for the enforcement of closed areas. With the current VMS program, the unit doesn't indicate the vessel's actual changes in speed, but the associated monitoring system can calculate and display average speed between successive position reports. Enforcement also has the ability to manually increase position reporting when a vessel is operating in or near a closed area. Currently, if a vessel in a closed area has an average speed indicating possible fishing, enforcement is alerted. As an alternative to some of the gear stowage requirements, Rodney Avila suggested that vessel operators send a VMS macro to enforcement prior to entering and transiting a closed area. Bill Semrau responded that a VMS message with a standard subject line and text could be implemented immediately instead of a macro form which requires a software change. The cost of a message would be based on the character-length of the message.

The original purpose of covering the reel was that that was observable by USCG flyovers, but that may not be necessary now. In general, the cod-end must be removed

for on-reel stowage, but not in the Gulf of Maine. One goal should be to avoid having a fisherman climb up the net, and a decision to modify gear stowage requirements should be based on safety.

There was question about the need for a message at all, because some messages may not be received. The doors should be observable from the air [if the vessel is not fishing], so removal of the cod-end tripper should be sufficient evidence because you cannot fish without it. Also questioned was removal of the cod-end, because it cannot be seen from the air whether it's on the reel or below decks. The most dangerous element of these requirements is the tarp or covering for the reel as, in a 30 knot wind, it becomes like a parasail.

Additionally, the gear stowage requirements were initiated when there were many more boats fishing. There are now perhaps 1/3 the number of boats as at that time, and those fishing today are not as desperate to try and fish a closed area because there is too much money to be lost from legal catches.

As to the effectiveness of VMS, the Coast Guard indicates that it is a great tool. Calculated speeds from VMS are used, but more evidence is needed. The doors are easily seen if on the vessel, during a flyover. A plane travelling at 300 knots has about 4 seconds to observe the doors, though, so, if there is any question, the flyover is repeated and the pilot looks for three feet of line after the boat [indicating gear in the water]. A flyover occurs an hour after the VMS calculates speed, at let's say 3 knots, but by then the speed may be back up to 9 knots. Information on the number of cases made with respect to gear stowage, by fishery, may be forthcoming.

Discussion then turned to how many people are hurt, stowing gear at sea. Many are hurt, and there is one loss of life; a southern boat fishing on Georges Bank. One man went overboard un-hooking the tow wires.

A question was asked, by Mark Alexander, whether the VMS monitoring system could automatically increase position reporting for vessels that cross a closed area boundary. Bill Semrau stated that, while enforcement is directly capable of manually changing the reporting rate of a vessel using the monitoring system tool, to his knowledge the monitoring system is not capable of automatically changing the rate when a vessel crosses a geographic boundary. Bill stated he would research the issue further at an advanced training class he was scheduled to attend next month [Note: Bill discussed the issue with the VMS contractor, in November, who stated that the monitoring system does have this capability, however, it is limited to 2 of the 3 vendors and increased reporting cannot be further defined by activity declaration] Additional positions in a closed area would provide more refined location, course and speed information beneficial to developing a case.

An alternative GPS device has been mentioned, dedicated to more frequent pings in closed areas. But this indicates a succession of positions which is less accurate, according to the Coast Guard, than the current VMS program at calculating course and speed.

General Counsel must determine if course and speed information from VMS alone, is sufficient to prove a case of fishing in a closed area. GCNE is sitting on about 120 cases, some of which are closed area violations. Unfortunately, GCNE is not available to participate on the Enforcement committee at this time.

Most violations involve vessels going in and out of a closed area to fish, rather than fishing while transiting the closed area. Currently, the Coast Guard uses air, surface, and VMS evidence to make the best case. There are levels below the best case, involving just VMS or just surface element. However, it is not feasible to prove a VMS only case in court; for example, scallop dredges have been witnessed towing at 6 knots.

However, the net is either in the boat or not. If the doors are on the boat or against the hull, then it is obvious that the boat is not fishing. This should be evidence enough, to not pursue a case. The other gear stowage elements, covering the reel, detaching towing wires, removing the cod-end, are all dangerous and unnecessary.

Dave Goethal made a motion, seconded by Rodney Avila, to remove sections (A) and (C) from 648.23 (b)(1)(iii), and remove sections (A) and (B) from 648.23 (b)(1)(iv). This motion was subsequently defeated by a vote of 1 for and 3 against.

Could these changes, determining if the net is on the reel with tow wires detached (iii) or the tow wires are detached from the doors (iv), be determined from the air? A helicopter should be able to, however, the Coast Guard uses them inshore and this is a profound change in their operational tactics.

The Coast Guard makes cases for a missing tarp or other gear stowage violations, and it takes additional work to prove that the vessel is fishing in the closed area. The majority of cases are made for improper gear stowage rather than illegal fishing.

If a way to enforce gear stowage to determine that the vessel is not fishing from the air is developed, the Coast Guard supports the removal of the tarp rule because it is not safe. Although it might be best to avoid closed areas, the rolling closures make that impossible for vessels from Gloucester to Portland.

We must know when a vessel is fishing inside a closed area, but safety is our first concern. If a vessel could declare that it will transit a closed area and roll the net, then both that may be accomplished. The Coast Guard agrees that detaching towing wires from the doors or net, and storing the cod-end below decks, are not observable from the air. The Coast Guard needs a sign that the boat is or is not fishing, and currently the tarp covering the reel is that indicator but an alternative method is preferred. One suggestion

is to radio the boat and ask them to raise and lower the net on the reel, but that's not feasible in high wind.

A panel clipped on the reel, not a tarp, was suggested, and appeared simple and safe. Another suggestion was whether the net is on the reel or the reel is empty, which is observable from the air, especially at night, but takes 15 minutes of orbiting compared with a flyover. This would reduce the total number of boats that could be observed during a flight, which is costly.

At this point, the motion by Goethal/Avila above failed on a vote of 1/3.

Another motion was made by Rodney Avila, and seconded by David Goethal, to develop a [physical] panel to replace, rather than eliminate the tarp rule. This motion was approved unanimously (6/0/0).

Below deck stowage and on-deck stowage, sub-sections (i) and (ii) under gear stowage of nets, are still needed. These two definitions relate to spare nets carried onboard by most fishing vessels. Fishermen are unlikely to remove a net from the reel at sea and store it below or on deck. As an aside, however, even if a net is properly stowed on the reel, the vessel may not retain any tuna that may otherwise be taken (e.g., by harpoon), unless they have the proper HMS permit.

There still is concern with detaching the tow wires from either the net or doors. Any of the individual items from the first motion that failed may be included in subsequent motions, for removal or replacement.

There was discussion about who would develop the clip-on panel to replace the tarp rule, and when they would report to the committee with their results.

The Committee will sponsor a one-day workshop, with fishing advisors and JEA's, at the Coast Guard training center on Cape Cod, to review the entire "not available for immediate use" section, including but not limited to the tarp rule, and develop the appropriate panel replacement to the tarp. They will report their findings at the committee's January 2012 meeting in Portland, ME.

HMS vessel and gear marking

The committee can discuss, but not make recommendation, on this request for comments (76FR171, pages 54738-54739) because neither the council nor the executive committee meet before the November 1, 2011 deadline.

Nevertheless, there is concern with the one inch minimum size for markings on floats or high-flyers, and that no minimum size is specified for the vessel markings at all.

Open session

OLE now is getting good feedback from the fishing industry, since the Outreach specialist, Don Frei, has started. Don has visited all of New England, New York and New Jersey.

Skate ID

The Skate ID Guide should be changed to indicate that the maximum size listed for each species is either the length or the width. [The size listed on the current guide is, in fact, length – nose to tail.]

The Coast Guard indicates that they mostly see wings, which takes away most of the identification.

Fishermen say that you only need to know how to identify Winter skate, because all the other species are prohibited. The Coast Guard sees mostly Little and Winter skates, but usually just a big pile of wings, and it's impossible to say "that's a Barndoor" skate. However, Barndoor skates, even wings, are a different color. Winter skates are easy to identify. But it is difficult to write a violation, because you can't identify the prohibited species; you cannot write it for "not a Winter skate".

On Georges Bank there are Barndoor skates with big, irregular spots, and Winter skates with lots of small spots, which is not clear on the guide. In the Gulf of Maine, anything without spots, should be thrown overboard. The Thorny skate doesn't have spots; they're as big as a Winter skate, and thicker. The pictures on the guide make the Winter and Barndoor skate's spots look similar, but they're not. A Barndoor has fewer spots than a Winter skate, and it's black if you flip it over; a Winter skate is white on the underneath side. You could only prove it genetically. All the features on this chart are gone when you cut the wings. Some fishermen don't lop them off the side, but, like clearnose, cut them as one wing across the nose. There are people in the Gulf of Maine who, when they see those thick wings, try to take Thorny skates, until they learn that they are a prohibited species.

Should the guide be updated, and include wings, and how many people are fishing for skates? Anyone who goes out fishing gets skates. The pictures should have the same background, to show the spots correctly, and they should be to size [so the spot distribution is correct]. For twenty years they were not seen, but now Barndoor skates are showing up in the Gulf of Maine. Some felt the current chart should not be used at all, that it hurts more than helps.

Whiting incidental limits

Incidental possession limits are imposed when a TAC is approached. These limits may make a typical fishing trip uneconomic, and result in high-grading, illegal transfer, or illegal landings. The committee discussed whether incidental limits in the whiting fishery will result in unsafe activity and/or enforcement problems.

The other fisheries, scallops, monkfish, and groundfish, are all high value fisheries. Red hake, which is sold for bait, is the trigger in the small mesh fishery. Silver and red hake are always caught together. People will quit fishing when the silver hake limit is reached, but will discard red hake that's over limit. Currently, one fisherman thought, the problem lies with the assessment for red hake, which must be corrected.

Because red hake is not worth much and landings are difficult to get rid of, the committee sees no safety or enforcement problems resulting from incidental limits.

White hake may be caught in the silver/red hake fishery, but, being a groundfish and not included in small mesh fishery management, it becomes a regulatory discard.

Herring Amendment 5

The draft EIS of Amendment 5 to the Herring FMP is approved by the Council. There are four elements to the proposed catch monitoring program under Amendment 5 (with options for each element): FMP adjustments, catch monitoring at sea, river herring by-catch, mid-water trawl access to groundfish closed areas. [See the pie chart on page 2 of the presentation.] The committee and advisors were given the PowerPoint presentation and a CD with the entire draft Amendment 5 for review.

It is anticipated that a special, one-day council meeting will be held to approve the final Amendment 5 at the end of February or early March, and the comment period will be in February. Thus, an enforcement meeting in January 2012 would be the best time for the committee to make recommendations on any safety, enforcement, and VMS issues in the amendment.

Some committee members found unenforceable options immediately, but formal discussion of and recommendations on the amendment will take place at the next enforcement meeting. At the beginning of each section, are listed the enforcement committee's recommendations on any options that were previously reviewed in 2009. The goal for the committee is to prepare an enforcement and safety analysis at the next meeting.

Schedule meetings for next year

Based on the discussion above, the committee decided to schedule a gear stowage workshop in November, December, or January. [*Subsequently, the gear stowage workshop is scheduled for November 29, 2011*]

The committee planned to meet in January, in Portland, ME, to finalize the enforcement and safety analyses of Herring Amendment 5. Portland was chosen because it is a center of the herring fishery. [*Subsequently, the updated timeline for Amendment 5 DEIS targets a 45-day NEPA comment period and public hearings sometime during Feb. 17-April 2, 2012. The Council will make final decisions at the April 24-26 Council meeting. The Enforcement Committee should meet in late February, rather than January. Public hearings are anticipated during March 5-20*]

For all quarterly meetings during 2012, an open session to receive fishing industry comments on enforcement effectiveness and safety concerns will be an agenda item.

Other business

The committee was concerned that there was not adequate time to comment on proposed Vessel Replacement and Upgrade provisions (76FR193, pages 61661-61663, published October 5, 2011), and wanted to put it on the Council agenda for November. The Advance Notice of Public Rulemaking encourages comments from the public on the availability of suitable replacement vessels, and the impact this has on safety at sea. The comments are due on December 5, 2011. The Coast Guard re-authorization act of 2010, addressing vessel construction standards, also will impact this discussion. [*Subsequently, it was impossible to place this item on the council agenda for action, because the deadline had passed. Individuals and organizations are advised to make their comments directly.*]

The committee previously recommended that limited access and limited access general category scallop vessels be allowed to declare trips inside the demarcation line (section 4.2.4 of draft scallop framework 23). They currently declare from port. The committee reiterates its concern that, if this requirement is changed by the council for scallops, all vessels now required to use VMS and declare from port (Monkfish, Red Crab, Herring, Surfclam/Ocean Quahog, Northeast Multispecies) be changed as well. In general, if a requirement is changed for one FMP, then it should be changed for all FMP's, unless there are specific reasons it must be different in another fishery. Consistency across FMP's is strongly recommended by the enforcement committee.

The previous discussion raised the issue of how to implement a change of a requirement across all FMP's. Should the council charge all species committee's to implement the change in their next action, or the council develop an omnibus amendment, or NMFS take administrative action? This led to a discussion of General Counsel (GCNE) participation; GCNE traditionally had a representative on the advisory panel, and several other GCNE personnel usually attended enforcement meetings, depending on the agenda. They have not participated since December 2010, and their advice is very important, for instance, in this case. *The committee decided to include an agenda item at its next*

meeting to request that GCNE provide an advisor(s) for all enforcement committee meetings.

Additionally, effective September 19, 2011, the trip start hail message for groundfish trips is no longer required. The trip end hail is still required for both sector and common pool vessels on groundfish trips. There was also discussion of the length of time that it takes to send some VMS messages. Any fisherman who is uncertain as to whether their message was delivered, should call the NE VMS Team at 978-281-9213. [Fishermen are advised to leave their computer running at least 2 or 3 hours after sending a VMS message, to facilitate delivery.]