

MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver ^{DO}_{for}
Executive Director
DATE: May 27, 2008
SUBJECT: VMS Exemption for Dinglebar Gear

ESTIMATED TIME
2 HOURS

ACTION REQUIRED:

Final action on VMS exemption for dinglebar gear in the GOA

BACKGROUND

Vessel monitoring system (VMS) requirements were imposed on vessels in the Gulf of Alaska with Federal fishing permits and with dinglebar gear on board, effective July 28, 2006, to help enforce the GOA Coral Habitat Protection Areas, closure areas meant to protect certain types of bottom habitat from gear damage. Dinglebar gear is a variant of troll gear, and has a long, heavy, iron bar attached to the line to keep the hooks close to the bottom. It is used in the fishery for lingcod off of the coast of Southeast Alaska, and was believed to be capable of damaging bottom habitat because it is mobile and the heavy iron bar makes the gear contact the bottom.

In February 2008, the Council requested an analysis to look at exempting the dinglebar fishery for lingcod from the VMS requirement. The VMS requirement has been questioned because the threat posed to protected habitat may be small both because of the small scale of the fishery, and because preliminary evidence suggested that the fishery occurs at shallower depths than those at which the protected coral species are found. Council initial review of this analysis took place in April 2008, and following revisions requested by the SSC and the Council, the public review draft was mailed to the Council in late April. The executive summary is attached as Item C-5(1). The exemption would require a regulatory amendment, and the analysis includes an environmental assessment, regulatory impact review, and initial regulatory flexibility analysis examining the impacts of the exemption.

The alternatives, as revised by the Council in April 2008, are as follows.

- Alternative 1 Status quo; no change in current regulations
- Alternative 2 Exempt dinglebar fishermen from the VMS requirement

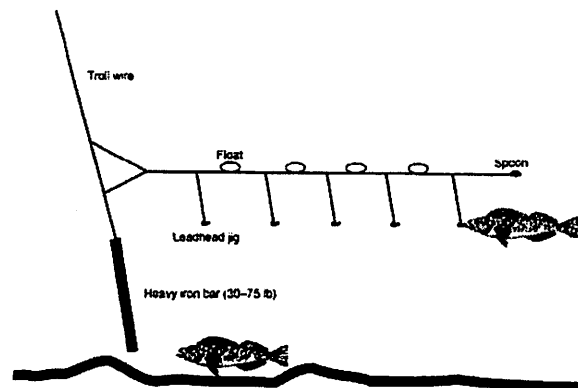
The Council is scheduled to take final action on the amendment at this meeting.

DRAFT FOR PUBLIC REVIEW

**Regulatory Amendment to
Exempt GOA Dinglebar Fishermen from a
VMS Requirement**

**Environmental Assessment/
Regulatory Impact Review/
Initial Regulatory Flexibility Analysis**

April 2008



Lead Agency

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Regional Office
Juneau, Alaska

Responsible Official

Douglas Mecum
Acting Regional Administrator, Alaska Regional Office

For Further Information Contact

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Abstract: This document contains an Environmental Assessment (EA), a Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA) analyzing an action to repeal requirements that vessels with Federal fishing permits and dinglebar gear on board (a type of troll gear) in the Gulf of Alaska carry transmitting VMS units. The analyses in this document address the requirements of the National Environmental Policy Act (NEPA), Executive Order 12866, and the Regulatory Flexibility Act (RFA).

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Executive Summary

Introduction

Vessel monitoring system (VMS) requirements were imposed on vessels in the Gulf of Alaska with Federal fishing permits (FFPs) and with dinglebar gear on board, effective July 28, 2006, to help enforce the GOA Coral Habitat Protection Areas, closure areas meant to protect certain types of bottom habitat from gear damage. Dinglebar gear is a variant of troll gear, and has a long, heavy, iron bar attached to the line to keep the hooks close to the bottom. It is used in the fishery for lingcod, off of the coast of Southeast Alaska, and was believed to be capable of damaging bottom habitat because it is mobile and the heavy iron bar makes the gear contact the bottom.

All federally permitted vessels are prohibited from anchoring or fishing with bottom contact gear in the GOA Coral Habitat Protection Areas, which encompass five areas near the Fairweather Ground and off Cape Ommaney, covering a total area of 13.5 square nautical miles. Dense thickets of *Primnoa* sp. coral have been identified in these areas by NMFS and the Alaska Department of Fish and Game (ADF&G) during survey work using submersible dives. These living habitat structures grow very slowly, are sensitive to disturbance by any bottom contact gear and anchoring, and have long recovery times. The closure areas are relatively small areas dispersed over a large section of the exclusive economic zone (EEZ), making surveillance by enforcement vessels or aviation patrols difficult with existing resources. VMS requirements make it possible to track vessel positions in real time with a high degree of accuracy. Because of this, they are very helpful in enforcing management regulations designed to limit transit or fishing in defined areas.

Lingcod is not a species covered in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This fishery is managed by the State of Alaska. However, rockfish are caught and retained as bycatch in lingcod fisheries; rockfish are covered under the GOA groundfish FMP, and a Federal fishing permit is required to harvest and retain rockfish. The VMS requirement is consequently required for the lingcod fishery. The requirement is controversial, however, because of the small scale of this fishery (small numbers of operators, small size of the vessels, short period of the fishery, and relatively small revenues generated), and because preliminary evidence suggested that the fishery occurs at shallower depths than those at which the protected coral species are found.

Purpose and Need

The Council requested a discussion paper to examine this issue in April 2007, and in February 2008 passed a motion initiating this analysis. The VMS requirement incurs operating costs, both for initial purchase and installation, and annual transmission and maintenance costs, to dinglebar fishermen prosecuting the lingcod fishery. It is possible, however, that dinglebar fishermen have no incentive to fish in the protected HAPCs. As a result, the VMS enforcement requirement may be an unnecessary burden to the participants. Typically, the fishery occurs in shallower areas than is encompassed by the protected HAPCs.

The Council formulated the following problem statement to initiate this analysis:

Dinglebar fishermen fishing for lingcod are required to carry VMS to enforce regulations to prohibit fishing in HAPC. However, the threat they pose to Gorgonian corals protected within HAPC may be small, and insufficient to justify the costs of VMS. For example, log book evidence suggests that most dinglebar fishing takes place at average

depths above 50 fathoms. Other evidence suggests that most of the protected HAPCs occur below 80 fathoms.

Alternatives

The alternatives, as revised by the Council in April 2008, are as follows:

- Alternative 1 Status quo; no change in current regulations
- Alternative 2 Exempt dinglebar fishermen from the VMS requirement

Impacts of the Alternatives

Elimination of the VMS requirement for vessels fishing with dinglebar gear is only likely to affect essential fish habitat and socio-economic factors. The alternatives have the potential to affect these resource components through alternatives that could end effective enforcement of the restricted no-fishing zones for dinglebar gear, and change the cost of operating in the dinglebar fishery. Environmental impacts are discussed in Section 4.

With respect to the analysis of essential fish habitat impacts, logbook data on fishing depth and area data from VMS of the 2007 dinglebar fishery were analyzed to examine to what degree overlap occurs or is likely to occur between the protected areas and the fishery. In 2007, the VMS information indicates that fishermen were fishing in the vicinity of, but not in, areas closed to fishing. Activity in those areas, of course, would have been illegal, and the VMS units themselves may have provided a deterrent effect.

Based on the logbook data for the last ten years, most dinglebar lingcod fishing takes place at average depths of less than 50 fathoms. Since these are self-reported average depths, the actual fishing depth may vary from these records. In the last five years, no fishing has been reported at depths greater than 80 fathoms, and no more than 6% of the reported average fishing depths occurred below 50 fathoms. The bottom habitat in the protected areas is generally deeper than typical fishery depths. Of the five prohibited zones that comprise the GOA Coral Habitat Protection Areas, about 0.5% of Fairweather FN1, about 9% of the Fairweather FN2 and about 14% of Fairweather FS1 are above 80 fathoms.

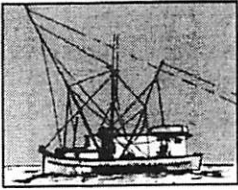
In addition to the logbook analysis, 2007 VMS data were correlated with information about bottom habitat to determine whether or not vessels were operating in areas that were similar to those in which fishing was prohibited. The fishery primarily occurs in a shallower area of folded sandstone, while information about the protected areas suggests the habitat consists of bedrock and glaciated sedimentary rock. Additionally, although there are shallower pinnacles encompassed within one of the Fairweather restricted areas (FN2), apparently similar pinnacles are evident in the areas open to fishing, but the fishery did not occur in these areas.

Based on this discussion, the analysis concludes that there does not appear to be much incentive to fish dinglebar gear in the restricted areas, even in the absence of the VMS requirement. Neither of the alternatives is expected to have a significant adverse impact on the protected habitat. Alternative 2 does, however, have adverse impacts, as it reduces barriers to fishing the protected areas.

The impacts on the socio-economic environment are analyzed in the Regulatory Impact Review (Section 7) and the Initial Regulatory Flexibility Analysis (Section 8). The primary impact of Alternative 2 would be a reduction in the costs of operating VMS for the vessels involved and for society.

The following table summarizes the impacts each alternative would have on groundfish target fisheries, enforcement, fishery management, and the Observer Program.

	Alternative 1: no action	Alternative 2: Exempt dinglebar gear from the VMS requirement.
<p>Does the alternative accomplish the objectives for this action?</p> <p>These are:</p> <ul style="list-style-type: none"> • Prevent damage to corals from the use of dinglebar gear • Ensure regulations are applied without imposing undue costs on fishermen using dinglebar gear. 	<p>The status quo provides the most protection for the HAPC where fishing with bottom contact gear is prohibited, because VMS is used for enforcement. However, there is a question about whether dinglebar fishermen would have an incentive to operate in these areas, in the absence of the VMS. It imposes recurring costs on dinglebar fishermen, although whether these constitute "undue costs" is unclear.</p>	<p>This alternative provides less protection for HAPC, since VMS would no longer be used for enforcement. This alternative reduces the costs faced by fishermen.</p>
<p>Costs of the alternative</p>	<p>No change - Baseline.</p>	<p>The protected HAPC has important ecosystem functions, and takes a long time to recover from damage. There is no scientific information on the impact of dinglebar gear on this habitat. Some fishermen indicate that they do not tend to fish this gear on the bottom, but acknowledge that it can come in contact with the bottom. It has been asserted that bottom contact is commonplace in this fishery. There is no scientific information on this issue. Fishermen may not have an incentive to fish in the protected HAPC areas. In the absence of such an incentive, VMS units would not be needed in an enforcement or deterrent role, although the Coast Guard advocates VMS for vessel safety reasons. While there would be an adverse impact on HAPC, the EA determined that it would not be significant.</p>
<p>Benefits of the alternative</p>	<p>No change - Baseline.</p>	<p>Expect industry cost avoidance, on the order of about \$630 a year per vessel. Aggregate social costs (which include the cost of public subsidies) may range from \$9,500 to \$12,100, and are more likely in the lower half of this range.</p>
<p>Net benefits of the alternative</p>	<p>No change - Baseline.</p>	<p>Because it is impossible to provide quantitative estimates of the incremental contribution of the VMS requirement to the present value of the ecosystem services provided by the protected coral habitat, it is impossible to provide a net benefit estimate.</p>



Alaska Trollers Association

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May 27, 2008

Eric Olson, Chairman
North Pacific Fishery Management Council
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Mr. Chairman and Council Members:

The Alaska Trollers Association (ATA) supports the North Pacific Fisheries Management Council's preliminary motion to exempt the dinglebar fleet from Vessel Monitoring System (VMS) regulations. ATA appreciates the Council's willingness to consider the substantial financial burden that would be incurred by the dinglebar fleet versus the minimal gains that VMS would provide for habitat protection. ATA urges your support for this motion.

ATA understands and supports the intent of HAPC restrictions to protect sensitive coral habitats. However, ATA believes that VMS requirements for the dinglebar fleet will do very little to further that goal and the cost and inconvenience would provide a deterrent for participation in this important entry level fishery.

According to the analysis provided in the Draft Initial Council Review (DICR, p.10, Fig. 3), the dinglebar fleet grossed between \$9K and \$14K per vessel from 2002 to 2007. Written testimonies from affected fishermen outline the relative cost and liability of installing and maintaining VMS systems outweighing the net benefit of participating in the dinglebar fishery. Considering discussions ongoing at the New England Fishery Management Council regarding their VMS program, we believe that many of these concerns are justified.

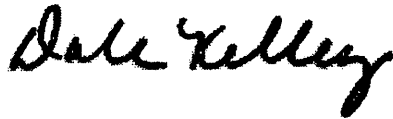
Although there is a reimbursement program available to those that are required to operate with a VMS, it is on a funding available basis and does not cover the added costs of activation, deactivation, and installation in geographic regions like Southeast Alaska, which lack service and expertise with VMS units. Furthermore, the issue of lost fishing time remains unaddressed. Although the failure rate is considered 'low' at 5%, those who experience such a failure will have their dinglebar operations effectively terminated for the year, due to the short duration of the fishery. The Fairweather Grounds, where much of the federal waters effort is concentrated and where the two most likely to be impacted HAPCs are located, are only open 1-2 weeks per year. Although a dinglebar vessel might be allowed to finish a trip, it could not make another one until the VMS unit is repaired or replaced.

ATA does not see that an expensive and potentially risky VMS program provides significant gains in habitat protection or enforcement logistics, because the HAPCs in Southeast are located in areas with depths greater than the dinglebar fleet actually fishes. Most dinglebar fishing occurs less than 50 fathoms and the majority of the HAPCs are located in 100 fathoms or more. According to the DICR (p. 22) the area around Cape Ommaney has had little effort since 1999.

In this day and age, it is important for fleets to keep costs down and options open. As members of our fleet confront rising fuel costs and reduced chinook and halibut quotas, those who also participate in dinglebar fisheries are anxious to avoid any additional and unnecessary expense. Hopefully you will agree that the benefits of implementing VMS in the dinglebar fishery do not justify the cost to the fleet.

Thank you in advance for considering ATA's point of view.

Best regards,

A handwritten signature in black ink that reads "Dale Kelley". The signature is written in a cursive, slightly slanted style.

Executive Director