

## **Enforcement Committee Minutes**

**February 1, 2011**

**Renaissance Hotel, Seattle, WA**

Committee present: Roy Hyder (Chair), CAPT Mike Cerne, Martin Loefflad, Ken Hansen, Garland Walker, Dr. James Balsiger, Sherrie Myers, Stefanie Moreland, Major Steve Bear, and Jon McCracken (staff)

Others present: Jane Dicosmo, Bill Tweit, Susan Auer, LCDR Brian Chambers USCG, Ken Lawrenson, USCG, CAPT Gregory Sanial USCG, LT Josh Boyle USCG, Mike FSA, Galen Tromble, Glenn Merrill, Diana Stram, Scott Miller, Sarah Milton, Matt Eagleton, Jerry Hoff, Olav Ormseth, and John Olson

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### **C-1(a) Halibut/sablefish hired skipper**

Jane DiCosimo, Council staff, provided a brief overview of the initial review analysis on the halibut/sablefish hired skipper currently under consideration by the Council. The purpose of this action would be to narrow the restrictions for initial recipients of quota share to use a hired master to harvest their IFQs in all areas where hired skippers are allowed.

During discussion of this hired skipper issue, it was noted that abuse of IFQ leasing exists. The Committee discussed at length the extreme difficulty enforcing abuses of IFQ leasing, noting that the only tool available is tangentially in regulation at 50 CFR 679.41(g)(4), which reads, "The Regional Administrator will not approve an Application of Transfer of QS assigned to vessel categories B, C, or D subject to a lease. . . . ." It was noted during the discussion that a more useful tool to eliminate or enforce the abuse of IFQ leasing would be a prohibition on leasing coupled with a thorough definition of what constitutes unlawful leasing with regards to the IFQ program. The Committee recognized that a leasing prohibition will require further work, but a careful crafted leasing prohibition may provide the enforcement tools necessary to enforce lease abuse.

In summary, the Committee noted the analysis provides a thorough presentation on the enforcement issues relative to the hired skipper proposed action. The Enforcement Committee does not see any difficult enforcement issues associated with the hired skipper proposed action. However, the Committee notes that the proposed Council action will likely not be effective in addressing abuses in leasing without first addressing the specifics of leasing, namely defining leasing and prohibiting leasing. The Committee recommends the Council review its objectives for the hired skipper provision to provide clear definitions of leasing. This would enable those crafting regulations to better meet the Council's objectives.

### **Developing West Coast enforcement priorities and objectives**

The Committee was scheduled to receive a report from Mike Cenci, Deputy Chief for Enforcement, Washington Department of Fish and Wildlife, regarding discussion at the Pacific Fishery Management Council concerning funding priorities for Joint Enforcement Agreement (JEA). Unfortunately, Mr. Cenci was unable to attend the Enforcement Committee meeting due to a conflict with legislative hearings. Major Steve Bear, Alaska Wildlife Troopers, and Bill Tweit, Washington Fish and Wildlife, presented the issue for discussion in Mr. Cenci's absence.

The issue is the reduction in west coast JEA emphasis, in favor of increases in other regions. The west coast states have been involved in a decades-long Cooperative Enforcement Agreement with the National Oceanic Atmospheric Administration Office of Law Enforcement. That partnership was supported with funding through a JEA opportunity available to the nation's coastal states. This funding is critically

important to support marine fishery management of increasing complexity. It was recently learned that the 2011 JEA solicitation period resulted in initial funding reductions from previous levels for all three of the west coast states, while at the same time, at least 11 other states received increased funding. Recognizing the importance of the JEA funding, the Pacific Fishery Management Council wrote a letter to Mr. Eric Schwaab expressing its concern about the inadequacies in the JEA allocation matrix. A copy of that letter is included in the appendix. Major Bear indicated that JEA funding for Alaska appears stable. However, final funding is yet to be resolved by NOAA OLE. Additional information will be made available to the NPFMC at the April meeting, and at that time comments by the Council may be appropriate.

### **C-3(a) BSAI Chum Salmon**

Dr. Diana Stram, Council staff, provided an overview of the proposed Bering Sea chum salmon analysis. The proposed action is to implement new management measures to minimize chum salmon bycatch in the Bering Sea pollock fishery. The purpose of the chum salmon bycatch management in the Bering Sea pollock fishery is to minimize chum salmon bycatch to the extent practicable, while achieving optimum yield.

During a discussion on the alternatives, the Committee, recognizing that the national trend is for individual accountability which often leads to complex regulations, noted that regulations are more enforceable if they are simple and easy to understand. The more complicated the action, the higher likelihood of creating loopholes and legal defenses. In addition, simple regulations are easier for industry to comply with. Complex regulations result in errors and misunderstandings.

Given that the analysis is at the preliminary stage, the Committee recognizes that many of the enforcement and monitoring details of this action still need to be further defined within the analysis in time for initial and final review of this action. The Committee recommends that the Council clarify at this meeting how the rolling hot spot system integrates with existing action alternatives. By clarifying this issue, the Committee will better able to evaluate the compliance and enforcement considerations of this proposed action during initial review in June.

### **D-1(b) Discussion paper on GOA Trawl Sweep Modification**

Jon McCracken, Council staff, provided a brief summary of the GOA trawl sweep modification discussion paper. The Council in October 2010, initiated an amendment package to implement trawl sweep modifications for nonpelagic trawl vessels fishing in the Central GOA. The purpose of this proposed action is to reduce unobserved Tanner crab mortality in the Central GOA.

There was discussion concerning enforcement of modified trawl sweeps on smaller GOA vessels. In many cases, the vessel size may limit the ability to measure the spacing length of elevating devices at-sea, therefore measurement of spacing lengths of elevating device may need to be completed at dockside.

The Committee also noted that the implementation of Bering Sea trawl sweep modification for flatfish vessels in January 2011 is a new program that will likely contribute insights and lessons that will aid in developing a GOA trawl sweep modification program. In addition, the ongoing enforcement and monitoring of the BS trawl sweep modification on flatfish vessels will also likely inform the development of enforcement and monitoring measures in the Central GOA nonpelagic sweep modification requirement. This action on safety is consistent with a recommendation to NMFS and NPFMC in the final report on the sinking of the F/V Alaska Ranger.

### **Enforcement Concerns for Trawl Gear Area Restrictions**

CAPT Mike Cerne, U.S. Coast Guard, presented a short discussion paper on enforcement concerns for trawl gear area restrictions. The Council over the years has considered action which would prohibit

nonpelagic trawling in a specific area, while at the same time allow pelagic trawl vessels to fish in that same area. Prohibiting one type of trawling while allowing another type of trawling in the same area presents numerous enforcement challenges. This paper was presented to the Enforcement Committee in order to give the Council the background relating to the definitions enforcement personnel must work within, as well as the challenges to at sea enforcement, and changes to boarding procedures that would have to be addressed in order to effectively monitor this type of regulation. The discussion paper is included in the appendix.

### **Incorporating safety issues in analyses**

The Committee spent some time discussing ways in which to incorporate safety issues for proposed actions by the Council. This was initiated at the request of the Council. Included in the 5-year review of crab rationalization report was a report that analyzed the safety performance of the BSAI crab fleet since 2005. After hearing that report, the Council asked the Enforcement Committee to develop, where necessary, guidance for incorporating safety issues in analyses of proposed actions.

The Committee recommends that Council request staff to include in the enforcement and monitoring section of proposed actions a discussion of potential safety issues associated with the action. Requiring the inclusion of potential safety issues in the enforcement and monitoring section of analyses, would help ensure potential safety issues are brought up early in the development of management action thereby allowing the Council, Enforcement Committee, and the industry to address the safety issues early in the process. The Committee recognized that many of the Council's proposed actions would not likely result in any safety issues. To eliminate any confusion of whether safety was considered in the action, the Committee recommends that a statement be included in the enforcement and monitoring section of the analysis noting the absence of identified safety issues associated with the action. In those cases where there appears to be a safety issues associated with a proposed action, one source of expertise for Council staff would be Kenneth Lawrenson, Coordinator for the Fishing Vessel Safety Program at the U.S. Coast Guard. The Committee also noted an intent to conduct a review and comment on safety issues as proposed actions may affect NMFS certified observers.

### **C-4(a) Discussion Paper on HAPC – Skate sites**

Sarah Melton, Council staff, and Matt Eagleton, NMFS, provided to the Committee a presentation of a discussion paper on Habitat Areas of Particular Concern (HAPC) concerning skate nursery sites. The purpose of the proposed HAPC sites is to protect eggs and developing embryos of skate species in the eastern Bering Sea.

The Committee recommends the Council maintain square or rectangular closures. In most situations, closed areas are more practical to enforce if they are square or rectangle shaped, since it is more clear cut that a vessel is west/east, north/south of an indicated line, and therefore, in or outside a closed area using VMS or aircraft overflight. This clarity also benefits fishing vessels to avoid inadvertently entering a closure.

The Committee noted that the proposed action includes options for restricting bottom trawling while allowing pelagic trawling in the proposed HAPC sites. As noted in the attached discussion paper prepared by the U.S. Coast Guard, at-sea enforcement of areas where pelagic trawl gear is permitted and nonpelagic trawl gear is prohibited is problematic. Aerial surveillance and VMS remain the most effective means to monitor closed or restricted gear areas. While aircraft can readily identify the type of vessel by gear, identification of pelagic and nonpelagic trawl gear by aircraft is virtually impossible. Also of note is the challenges outlined in the attached discussion paper regarding the enforcement of the performance based bottom trawl definition in the pollock fishery. Finally, it will be difficult to monitor compliance with the small discreet closed areas since this would require excessive use of the major enforcement assets that are used to patrol the Bering Sea.

### **3 mile territoriality boundary issue**

Stefanie Moreland, ADF&G, presented an update on the status of changes in the 3 mile line for the Alaska coastline on NOAA charts. These changes were the result of the Baseline Committee action establishing baselines for the State of Alaska that had not yet been established. The NOAA Office of Coast Survey also recently completed a nation-wide project to digitize the U.S. baselines and to establish the resulting 3 nautical mile territorial line for Alaska based on the newly-established baselines. In some areas, the new Alaska baselines resulted in a change in the 3 nautical mile line that substantially reduced area previously considered to be under state jurisdiction. Ms. Moreland gave the two examples of Kachemak Bay (Cook Inlet) and Uyak Bay (west side of Kodiak) where the management of the state waters Pacific cod fisheries may be affected.

The committee discussed coordinated outreach needs and efforts to date to advise affected industry of these changes.