

Enforcement Committee Minutes
Fireweed Room, Hilton Hotel, Anchorage, AK
April 2, 2013

Committee: Roy Hyder (Chair), Acting Special Agent in Charge Matt Brown, CAPT Phil Thorne, LT Anthony Kenne, Martin Loefflad, Glenn Merrill, Jon Streifel, Will Ellis, Susan Auer, Nicole Kimball, and Jon McCracken (staff)

Others present included: Jane DiCosimo, Steve MacLean, Doug Marsden, Jonathan Snyder, Vince O'Shea, Kevin Heck, Guy Holt, Karla Bush, Ed Dersham, Doug McBride, Todd Loomis, David Polushkin, Jason Anderson, Rachel Baker, Brent Paine

I. D-1(c) Retention of Area 4A halibut in BSAI sablefish pots

Jane DiCosimo (Council staff) provided a brief update on this agenda item, which would allow fishermen with commercial IFQs for both halibut and sablefish to retain halibut in IPHC Regulatory Area 4A that were caught in sablefish pots. The Committee noted if the action proceeds forward for analysis, there would need to be some level of coordination between IHPC and the Council so both IHPC and federal groundfish regulations comport. The Committee did not comment on the specific enforcement actions that could be adopted that were discussed in the paper at this time.

II. C-2(c) Round Island

Council staff Steve MacLean provided an overview of the EA/RIR/IRFA for a regulatory amendment to address a problem related to enforcement concerns with analysis. Included in the analysis are options for remedying the transit of Walrus Protection Area around Round Island for federal vessels by creating a transit area through the EEZ during specific dates for Round Island, Cape Newenham, and Cape Peirce.

The Committee spent time discussing the potential implications of a Critical Habitat (CH) designation for Pacific Walrus. Although difficult to speculate this early in the process, U.S. Fish and Wildlife Service (USFWS) representative Jonathan Snyder noted that Hagemeister Island, Round Island, Cape Newenham, and Cape Peirce are likely to be considered for CH designation. It was noted that CH restrictions would likely apply to all vessels (both State and federally permitted).

The Committee spent time discussing alternative approaches to transit corridors, which are often complicated to establish and maintain. The Committee discussed that rather than establishing a transit corridor vessels are expected to stay within, another approach could be to choose to modify the current prohibitions on transit through 12 nautical mile circles around the defined walrus haulouts while still adhering to the USFWS guidelines. This could be achieved by establishing a single straight line south of which transit is prohibited, while allowing federally permitted vessels to transit anywhere north of that line. This essentially establishes a navigational transit area, meeting the intent of providing transit provisions through the region for federally permitted vessels, while removing the requirement that the Council or agency define safely navigable waters, or potentially changing right of way requirements in the region. The Committee noted that there appears to be a tradeoff between accommodating the stated objective of the proposed action and developing an approach that would better accommodate Critical Habitat designation for Pacific Walrus.

There was a brief discussion concerning the difficulty of using VMS for monitoring narrow transit corridors for vessels required to use these corridors. VMS only provides limited information on a vessel's position at a specified interval, and there have been several instances where VMS units have been turned off inadvertently or the vessel's fisheries endorsement requiring VMS is removed, consequently allowing a vessel to turn off their VMS unit. Without VMS, the ability of OLE to track vessel movement is limited and requires on-scene enforcement assets. For the narrow corridors proposed due to minimum safe passing distance between vessels, current VMS poll rates are insufficient to adequately monitor these areas, and these poll rates would have to be increased to facilitate better tracking of a vessel through this region. Another difficulty is that most vessels using these transit corridors are not federal fishing vessels, so they are not subject to existing closures or required to carry an operating VMS unit. The Committee discussed the potential advantage of increasing polling rates for vessels with VMS transiting through the corridors. However, even the advantages of increased polling rates would be limited in track vessels transiting through narrow corridors.

The Committee recommends the Council to expand the alternatives to include other approaches such as navigational transit areas. Navigational transit areas allow for safe navigation on a vessel-by-vessel basis and increases the flexibility of the vessels in transiting through these areas. Finally, if transient corridors are utilized, then the Committee recommends development of a work group composed of the different enforcement agencies as well as the user groups directly impacted by the transient corridors.

III. Revocation of VMS access for State fishery managers

Karla Bush and Nicole Kimball (ADFG) provided an overview of the recent revocation of access to the current VMS database for State fishery managers by the NOAA Office of Law Enforcement Head Quarters. Since 2007, ADFG has had an agreement in place that allowed individual State managers/biologists to have access to the current VMS database through individual specific accounts. State enforcement personnel continue to have access to current VMS data. A letter was sent from Commissioner Campbell to NOAA OLE HQ outlining the need for current VMS access for area managers/biologists in December 2012. NOAA OLE HQ responded stating that it was their policy through the Joint Enforcement Agreement with all partner states to provide direct access to state enforcement personnel only, and it was determined that ADFG fishery managers' accounts had been provided in error (letters are attached at the end of the minutes). While ADFG managers can continue to access VMS data by request to NOAA OLE HQ, OLE HQ has stated that these recurring requests will be addressed on a monthly basis, which would clearly not support use of the data to manage fisheries. Alaska Regional OLE staff continues to try to communicate ADFG's need for access to current VMS data to OLE HQ staff.

ADFG managers need access to current VMS data for multiple fisheries jointly coordinated and managed with NMFS through Federal FMPs (specifically crab, scallop, and Pacific cod fisheries):

- To access fishery effort in-season and to anticipate when to close a fishery so as to be close to, but not exceed, catch limits (how many and which vessels are actively participating)
- To collect biological samples (tracking tenders or fishing vessels for delivery locations & ETA in order to have port samplers available)
- To access fleet distribution/harvest areas – the State is authorized to close areas if they have concerns about localized depletion
- To verify vessels are staying out of closed waters, most notably for SSL protection measures
- To verify actual fishing locations to amend fish tickets if the fish ticket notes an erroneous statistical area
- To notify Alaska Enforcement staff if a enforcement issue is identified

It was recognized by the Committee that the MSA provides the authority for sharing confidential data with state fishery managers for the purposes of managing fisheries. Given the authority for sharing current VMS data with State area managers/biologists and enforcement personnel exists, it appears to be a matter of the policies that establish the method of data sharing (access to current data through the database versus on a request basis) with State area managers/biologists. From the Committee's perspective, sharing access to the database (for real time information) with State managers/biologists is essential to effective management and enforcement of species managed under Federal FMPs.

To that end, the Committee recommends the Council send a letter to OLE HQ encouraging reinstatement of current VMS data for Alaska area managers/biologists. The Committee recommends the letter should note the MSA authority for sharing confidential data with State fishery managers, emphasize the collaborative approach of fisheries management in Alaska shared management under several FMPs, and the critical nature of the data necessary to manage the Alaska fisheries.

IV. Update on definition of halibut charter guide

Jane DiCosimo (Council staff) reported on a schedule for interagency staff meetings in April. Those meetings are intended to coordinate Federal and State efforts to develop proposed regulatory text for Council consideration to revise the definition of charter halibut fishing activities, including compensation and assistance. The first interagency meeting was held on April 1.

CAPT Phil Thorne provided a very brief update concerning work on halibut charter definition. Since the Council's February 2013 action relating to the alignment of the Federal and State definition of sport fishing guide services, NOAA OLE and the Coast Guard have had initial discussions relating to what alignment of these definitions may mean to enforcement on the water. It was noted in the update that OLE and the Coast Guard are cognizant that there is concern that charter-like activities are occurring in area 2C that may be outside of the intent of the Council's Charter Halibut Permit (CHP) program, and that any regulation changes that flow from Council decisions will likely affect how enforcement is conducted at-sea. Once the Council clearly states their intent through a preliminary preferred alternative, we will examine that intent for charter-like activities in an effort to provide clarity on what could reasonably be expected to be enforced at-sea.

V. Implementation recommendation of other VMS features for vessels already subject to VMS requirements

LT Anthony Kenne gave a short presentation on the progress NOAA OLE and the Coast Guard have made in looking at areas where consideration of enhanced VMS capabilities may be beneficial for the monitoring and enforcement of impending Council decisions. This first step looked at council actions currently in process that may benefit from the application of VMS capabilities that are not currently in use in the Alaska Region, including geo-fencing, increased poll rates, or gear, area, or species declarations. There was also discussion relating to management uses of VMS data. The committee has asked for an expanded review of management applications of VMS technologies. This preliminary review also highlighted several areas where additional data is required, and NOAA OLE has sent out work orders to the VMS vendors approved for the Alaska Region in an effort to determine potential costs and scope of work associated with expanding VMS capabilities on these vessels.