



New England Fishery Management Council

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MEETING SUMMARY

VMS/Enforcement Committee and Advisors meeting

Sheraton Airport, Warwick, RI

November 3, 2016

The VMS/Enforcement Committee met on November 3, 2016 in Warwick, RI to discuss a cod-end Compliance Assistance Program (CAP), hear a presentation by the Anthropocene Institute, comment on proposed Herring actions, and select new members to the Advisory Panel.

MEETING ATTENDANCE: Terry Alexander (Chairman), Vincent Balzano, Capt. Brian Fiedler, Rene Cloutier (for Jon Cornish), and Patrick Moran; Kirby Aarsheim, Claire Fiz-gerald, Harry Graff (Advisors); Joseph Heckwolf (NOAA General Counsel, also an Advisor); Lt. Kurt Blanchard (RI DEM, also an Advisor); LCDR Ian Callander (USCG, also an Advisor); Louis Goodreau (NEFMC staff); Molly Ogren (Anthropocene Institute), Tom Testaverde, Jerry Levin, Paul Cabral, John Reardon, William Semrau, Don Frei, Natalie Berthiaume, and several members of the public (did not sign in).

KEY OUTCOMES:

- The Committee and Advisors made recommendations on the cod-end CAP
- The Committee and Advisors made recommendations concerning Herring Framework 5 and Amendment 8
- The Committee selected new Advisors

PRESENTATION: COD-END COMPLIANCE ASSISTANCE PROGRAM

Lou Goodreau described the Cod-end CAP, which includes the following elements:

- The dealer/manufacturer will provide cod-end mesh size to a measured specification (not the extension)
- CAP will cover cod end available only for 5-1/2, 6, and 6-1/2 inch mesh sizes (pilot program)
- The dealer will place a tamper proof tag on the cod-end with the date of purchase and mesh-size indicated on the bill-of-sale/invoice
- CAP timeline TBD [6/12/24] months
- Dealer to provide maintenance guidelines/schedule for cod-ends

- USCG will measure cod-ends that are in the CAP and record the date-of-sale and mesh size from the tag, along with the usual measurement data
- After a period of time, the data from USCG measurements will be used to determine the normal life span and when net hardening reduces mesh measurements to identify realistic CAP time line
- NOAA will be consulted concerning the effect on the resource of expected net hardening, from 6-1/2 to 6 inches and from 6 to 5-1/2 inches
- General Counsel Enforcement Section may modify the Penalty Schedule for vessels participating in the Cod-end CAP (to include FIX-IT opportunities)
- CAP does not limit other enforcement actions based on mitigating/aggravating circumstances

Net dealers advise that they measure cod-ends with a paddle to check the standard, tagged size from the manufacturer. A steel tag should be attached in the 'gore'. Three dealers agree to participate in the CAP. If the tag falls off or is removed, the cod-end is measured normally by the USCG. The invoice with the date and mesh size is not sufficient, because it may not be for the particular net (without a tag) in use. Because mesh is a dynamic product that will change, the dealers recommend a fixed time-period should be selected within which the fisherman could continue to use the tagged cod-end; 18 months was mentioned. On the other hand, they agree that, if research shows the cod-end shrinks 1/8 inch in six months, then they should be replaced after that time-period. They question whether steel tags should be placed on cod-ends made by the dealer only, or also on cod-ends made by fishermen. Most dealers thought a maintenance program unrealistic, although one dealer already provides a schedule for washing that helps maintain the mesh size (but this also depends on the intensity of use). The dealers are concerned with any increased liability for something that is out of their control, once cod-end leaves their premises.

Discussion revolved around whether there should be a pilot program to determine a length of time within which cod-ends should not shrink to unreasonable sizes, and a research program to measure the degree of shrinkage or hardening. Some dealers thought the latter is unattainable.

The Coast Guard has a rigorous training program to make mesh measurements consistent, including the technique used and requiring many repetitions. Nevertheless, there is variation between measurements due to individual and environmental conditions. USCG now is testing the OMEGA electronic measuring device, which they may use in coordination with the states. During the pilot program, they will measure and select boardings normally, but will look on CAP participants as proactive. When cod-end certification was discussed by the committee last year, it was ruled out because of NOAA and Coast Guard's limited resources to provide courtesy or regular net certification. The Coast Guard would consider expanded tolerance levels, but only after The Sustainable Fisheries Division has assessed the impact of modified mesh size on the resource. They also are adamant about the illegality of net liners. USCG and the Committee feel that, with an adequate training period and under normal procedures, it might take two years to collect data under the pilot program.

General Counsel Enforcement Section (GCES) has a penalty schedule that OLE uses for standard or statutory violations. When the Coast Guard issues an EAR, it sends it to OLE who

uses the penalty schedule to impose a fixed fine or forwards the EAR to GCES. Compliance with the CAP would result in a Fix-it ticket being issued instead of a fine. The CAP tag is evidence that a person is trying to comply with mesh size regulations but, if they inadvertently violate them, then they would get a Fix-it ticket. And they cannot continue to fish with that net. GCES needs to know what the expected life span of a net is and how much it will shrink (e.g., 1/8 inch in X months, 1/4 inch in Y months). Because mesh sizes can shrink inadvertently, they are trying to determine the appropriate enforcement response, when fishermen are trying to comply by working with net manufacturers to make sure their net is the correct size, properly maintaining the net, and replacing it at 'normal' intervals.

Fishermen experience wide variation when their cod-ends and nets are measured, and believe that 1/8 inch below a 5-1/2 to 6-1/2 inch mesh is not a reasonable violation. Some remember, in the sixties, that the Coast Guard would measure the net and solder a tag on it, but some fishermen would un-solder the tag and put it on something else. Materials have changed since the nylon used for cod-ends then, and fishermen find different materials lasting from 6 months to two years. They also measure bales of netting when they buy them, and find the netting at or larger than the stated size. Other fishermen agree that enforcement should tag the cod-ends, but they should measure soaked nets before tagging, like state agents did years ago in the shrimp fishery. Not only are fishermen victim to unconventional measuring techniques, but they must wait up to 6 months to receive notice, for instance, that a 1/4 inch underage violation is dropped. This imposes a good deal of stress on the fishermen. Nevertheless, the fisherman feels he was treated fairly. One fisherman had a 6-1/2 inch groundfish net last for four and one-half years; he used it 6 months a year, stored it, and measured it dry before each new season. Six months is too short for the CAP, and fishermen should not have to buy 7 inch netting to assure meeting the 6-1/2 inch standard.

Committee members and Advisors would like to see a steel tag attached to the gore and, if it falls off, normal mesh measurements be done. They are concerned that the tag be tamper-proof and be consistently attached. Some also wish that CAP vessels be targeted for inspection. Following maintenance guidelines would be very helpful. There is concern that fishermen must stop fishing and replace the net, even if they participate in the CAP. Some of the states have worked with the industry to help them continue fishing and fix any shortcomings over time. For instance, it may be reasonable to allow a vessel to continue fishing if the measurement is done at the beginning of the trip but require a cod-end replacement, depending on the degree of violation, if it is done after the last haul. A Fix-it ticket would be in lieu of a monetary fine or NOVA. Requiring spare cod-ends onboard CAP vessels may help, but not in all circumstances.

The Committee expressed concern about the complexity of the program, as did the dealers, but the Coast Guard had indicated that it did not have the resources to run a certification program. There was strong interest and support for the OMEGA gauge. Changing from the current gauge might be reason to have the USCG involved with tagging of cod-ends, rather than the dealers with weight gauges. To encourage data collection by the Coast Guard, multiple Fix-it tickets should be issued. Some expressed support for a penalty schedule with a 1/8 or 1/4 inch underage resulting in a Fix-it ticket, but 1/2 inch in a \$500 fine. Maine measures nets and assigns a +1 or -1 to each measurement; a total of -15 results in a warning, and -20 a violation. It was noted that there are two mutually exclusive goals with this program; the life-span of the cod-end and law

enforcement. For example, an inspection in month 11 finding an underage doesn't indicate when the net fell out of compliance. Several Advisors recommended regular boardings of CAP participants, and a more scientific study to determine the appropriate time-period, anticipating that the final CAP, after the pilot program, would result in tagged cod-ends not requiring measurement for that length of time. Additionally, some felt that participants cannot be penalized under the CAP, but it should be a USCG, industry, and manufacturer collaboration.

CONSENSUS ISSUES TO BE RESOLVED:

The Enforcement Committee will present a revised Cod-end Compliance Assistance Program, at the beginning of this section, at the Council's November 15, 2016 meeting.

The CAP would start as a pilot program, for which fishermen volunteer to participate. At least three net dealers agree to provide the tags. The USCG intends to record the information on the tags during its normal mesh measurement process. At the end of the pilot program, these data would be used to determine the expected life of standard, tagged cod-ends. GCES would use this information to potentially modify the penalty schedule used by OLE and consider CAP participation when assessing penalties.

Several issues should be addressed during the CAP pilot program. First, outreach personnel of OLE should encourage as many fishermen as possible to volunteer. Second, the Coast Guard must determine the length of time that they need to collect a sufficient amount of data. This depends largely on whether they continue boardings on their normal schedule (longer period required) or target vessels participating in the CAP (shorter period). Lastly, during the pilot period and certainly after full implementation, GCES must determine the number of Fix-it tickets versus violations it will issue on a given case. Initially, GCES argues for only one Fix-it ticket per case, but fishermen argue that more people will participate in the CAP if multiple Fix-it tickets are allowed.

MARINE MANAGED AREA MAPPING

Molly Ogren of the Anthropocene Institute made a presentation on Marine Managed Management Areas. After the presentation, there were several comments.

Marine Managed Area Mapping (MMAM) is integrated software that is downloaded and installed on a computer, on the vessel, for which internet access is needed. The Anthropocene Institute works with Maxi, which is a company that currently provides software to fishing vessels in the Northeast. MMAM software is free; it is a public resource.

Ms. Ogren said they are working with Mimi [Derling], their NOAA liaison with Silver Spring, currently work with marine spatial restrictions data from NOAA, and wish to work with VMS data in the future.

HERRING ACTIONS: FRAMEWORK 5

The committee read through the document Herring Measures for Enforcement Committee.

The USCG has no problems with Alternatives, for instance, Option 2 simply makes the current Closed Areas bigger. Lines of latitude and longitude are easy to enforce, and the proactive seasonal closures are known ahead of time (May or June). The Coast Guard will just get the word out to its crews, at those times.

No other committee members or Advisors had comments.

HERRING ACTIONS: AMENDMENT 8

The committee read through the document Herring Measures for Enforcement Committee.

USCG feels that 30 minute square blocks are definitely easier to enforce than contours along the entire coastline, particularly for their small boat crews, but they can work with whatever alternative is selected.

The 12, 25, and 50 nm contour lines, under the proposed alternatives, actually stop at Herring Area 1; they do not extend into the Gulf of Maine, with the exception of Mass Bay up to the Maine border. The 12, 25, and 50 nm contour lines do mimic the 3 nm state-waters line and are enforceable, however, they encompass an increasingly large area to cover.

GCES indicates that curving lines are difficult to plot, and suggests picking points that approximate the contours. They also believe that it is easier for fishermen to orient to straight lines. The Northeast VMS office finds it much simpler to provide 2 sets of coordinates known to be separated by a straight line (rather than a curved line), when assisting a vessel operator at sea. According to GCES, NOAA's GIS expert says that changing to 6 and 25 nm will be difficult to describe because they are not precise enough for closed areas. Descriptions of 3 (state-waters) and 12 (territorial waters) nm are set, but not 25 nm. This would be easier around the Cape Cod but not in Maine waters. Please note that the proposed contours do not extend to Maine waters, except for Mass Bay. Also, Mid-water trawls are allowed to catch herring in the Gulf of Maine (Herring Area 1A) after October 1, only.

About 80 % of the herring catch is outside of the 30 minute blocks, and the area off the 'boot' of Cape Cod is one of user group conflict. Both Maine and Massachusetts have difficulty following contours, and recommend straight lines. Currently, vessels transiting Herring Areas 1A and 1B have a gear stowage requirement and cannot possess more than 2000 pounds of herring, but there are only 12 vessels that would be affected by these proposals.

CONSENSUS RECOMMENDATIONS on Amendment 8:

Square blocks or straight line approximations of contours are easier to enforce. The 12, 25, and 50 nm contour lines encompass increasingly larger areas, and are proportionately harder to

enforce. Curved lines are more difficult to describe than straight lines, and it is more difficult to enforce along irregular coastline (Maine) as opposed to a straighter coast (Cape Cod).

OTHER BUSINESS

There is a transit zone to state-waters west of Block Island, in which recreational boats may possess striped bass. Several boats were stopped recently and cited for possession of Black Sea Bass. Unknown to them, only striped bass may be possessed in this transit zone.

The USCG feels that this transit zone should allow for the possession of other recreational species, for safety reasons. Rhode Island argues that regulations similar to those for striped bass, allowing this possession, are needed for other species.

The committee discussed the need for an omnibus amendment versus species by species regulatory change. Both Rhode Island and the Coast Guard want regulatory change and not voluntary discretion by their respective agencies. The transit zone is in federal waters and species in question may not be possessed under federal regulations. It was noted that Mass Bay is regulated by the state, and Block Island Sound may be a similar circumstance.

Section 305 d of the Magnuson Act allows the Secretary to implement enforcement measures across all FMPs, but not conservation measures. The committee recommends that regulations be changed species by species, and that this particular case of Black Sea Bass be referred to the MAFMC.

The committee then met, in closed session, to select several new Advisors.

The VMS/Enforcement Committee meeting adjourned at approximately 12:30 PM.