



## New England Fishery Management Council

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# MEETING SUMMARY

## VMS/Enforcement Committee and Advisors meeting

### Courtyard Marriott, Portsmouth, NH

July 25, 2019

The VMS/Enforcement Committee met on July 25, 2019 in Portsmouth, NH to discuss the cod-end Compliance Assistance Program (CAP), the Groundfish Sector Program Catch Share Review, the Compliance Improvement Recommendations on Groundfish Sector Program Management, and make recommendations on Groundfish Amendment 23 (A23)/Groundfish Monitoring.

**MEETING ATTENDANCE:** Eric Reid (Chair), Mark Godfroy (Vice-Chair), Terry Alexander, Meredith Mendelson (for Patrick Keliher), Capt. Kevin King, Timothy Donovan, and Robert Beal; William Dunlap, Peter Hanlon, and Frederick Ruhlemann (Advisors); Katie Pohl (also an Advisor) and Mitch MacDonald (NOAA General Counsel); LCDR Kathryn Cyr, LT Greg Young, LTJG Cory Murallo and Chris Bradbury (USCG); Jason Berthiaume, Jeffrey Ray, Bill Semrau, Don Frei, LT David Testaverde, Samantha Tolken, and Eric Provencher (OLE); Jeremy Hawkes (NH Fish and Game Dept.); Mark Grant and Amy Martins (NMFS); Jamie Cournane, PhD, Melissa Errend, Robin Frede, and Louis Goodreau (NEFMC staff); Maggie Raymond, Hank Soule, Jackie Odell, Libby Etrie, Heather Cronin, Allison Lorenc, Geoffrey Smith, and Dan Salerno.

### KEY OUTCOMES:

- The Committee and Advisors discussed Compliance Improvement Recommendations for Groundfish Sector Program Management, which is an ongoing project of OLE.
- The Committee and Advisors made recommendations concerning the draft alternatives in Groundfish A23

### Enforcement Committee discussion on the cod-end Compliance Assistance Program (CAP)

The Enforcement Committee and Advisory Panel heard LT Greg DeYoung's report on the program. There was one cod-end CAP boarding in March 2019; the cod-end was purchased in August 2018 and measured 6.55 inches. The USCG is using the weight and spade measurement method. NMFS is currently undertaking regulatory review for use of the Omega Gauge. One more fisherman has started using the cod-end tags.

NOAA planned additional correspondence to stakeholders, improved messaging with OLE, USCG, and port agents, and articles in the NOAA Navigator (letter to Tom Nies, 5/6/2019).

The Committee may meet to recommend the continuation of the CAP program, prior to November 2019.

### **Groundfish Sector Program Catch Share Review**

The technical review is ongoing and being led by MRAG, covering the first six years of the program (fishing years 2010-2015), with information pre-sectors (fishing year 2007-2009) also being examined. Port meetings are currently under way and facilitated by GMRI and they will produce a summary report of the meetings. The port meetings are asking the public to share how the program has functioned and for suggested improvements. Port meetings have been well attended.

### **Office for Law Enforcement (OLE) report – the Compliance Improvement Recommendations on Groundfish Sector Program Management**

Mr. Berthiaume summarized the report, and its recommendations. He clarified that the report is a working document and subject to revision. OLE would like to provide more feedback on completed cases and evolving trends, to the extent practicable. This was one motivation for the drafting of the report. Access to monitoring data is a key element of enforcement.

The following is a summary of the discussion on the report by the Enforcement Committee and Advisory Panel:

- Catch weight accuracy: States currently certify scales for weighing fish. There are typically multiple scales on site, and on trucks. Generally, dealer scales must be certified once a year, but enforcement finds some inaccurate or out-of-date. Hanging scales in trucks take more abuse than those in dealer locations.
- Landings: Offloading windows are considered a way to link hail weights to landings by enforcement. How are hail weights, sent in for every trip, compared with actual landings reported? Offloading windows may be useful in certain cases (scallop meat count), but also may disrupt markets serviced by multiple landings trips (e.g., one trip with many species landed at different dealers). The time outside offloading windows must still be monitored/enforced.
- Business structure: There are many different levels of vertical integration, and restricting trade is a difficult issue. The risk of overages is higher with higher levels of vertical integration and multiple vessel ownership. Amendment 18 set ownership caps. Amendment 23 will add more expense to the entire fishery, while serious illegal activities constitute 2% of the fishermen. You cannot lump all fishermen as violators because of the acts of a small number of fishermen. How are hail weights, sent in for every trip, ever compared with actual landings reported?
- Trip notifications: There is evidence that pre-landing notice is not given. Need to assess what is achieved by increased monitoring and increased enforcement, in Amendment 23. However, some forms of Electronic Monitoring (EM) can increase the ability of agents to target potential wrongdoers. Still, there is a need for more enforcement staff to monitor sufficiently, and the JEA program is a valuable extension of manpower.

Mr. Berthiaume summarized the second section of the report, which is focused on misreporting the areas where fish were caught (i.e., broad stock misreporting).

The following is a summary of the discussion on the report by the Enforcement Committee and Advisory Panel:

As a matter of course, OLE does not cross-reference observer data with VTR data. While observers are not enforcement agents, it has long been NMFS policy that observer information can be used for enforcement purposes. EM information can be used for enforcement purposes, as well.

To highlight the impact of broad stock area misreporting, Captain Kevin King of the U.S. Coast Guard, discussed some analysis they conducted. The Coast Guard estimated 2.5 million pounds of fish was potentially misreported from 2011 to 2015. The analysis identified multi-area trips with potential misreporting based on a 40% difference between 1) the percentage of time of a trip fishing in an area, and 2) the percentage of catch by weight claimed to be caught in that area. A total of 360 trips by 60 vessels were identified as potentially misreporting broad stock areas during the period. The broad stocks impacted were SNE/MA winter flounder, GB Yellowtail flounder, and GOM and GB East Cod.

The Coast Guard conducted a similar analysis for 2014-2018 focusing on cod and haddock in western GOM and Georges Bank. This analysis conservatively identified more than 800,000 pounds of cod and haddock potentially caught in GOM but reported from GB. The Coast Guard monitored at least 15 boats suspected of broad stock misreporting last year but there may be many others that misreport on a smaller scale that go unnoticed.

Michael Palmer, in a separate analysis conducted from 2007-2016, showed that 13 to 22 fishing vessels, in 4 examples examined, were responsible for 80% of catch reporting errors for Eastern George's Bank cod, GOM cod, GOM haddock, and SNE/MA winter flounder. The errors discussed by Palmer are discrepancies between VTR reported landings and dealer weighted landings. It was pointed out that it cannot be assumed that CPUE is the same everywhere as is done in this paper and while Palmer acknowledged there was confusion about the regulations when the Sector program was established, he failed to incorporate that into his findings.

It was brought up that the GOM declaration area should be considered, as it was part of the Sector Management Plan developed in 2011-2012, when conducting analysis like the USCG and the Palmer paper. It was also mentioned that the VTR is an estimate of catch and not as accurate as dealer landings. Changes in reporting requirements created confusion during 2011-2015 (what determines a broad stock area, where you fish or where you haul back) and may have skewed the data. The Coast Guard acknowledged all these potential issues with the analysis, as well as the potential inaccuracies of a CPUE based analysis (efficiency varies across fishermen). The USCG countered that many trips with suspected broad stock area misreporting were, and continue to be, confirmed as misreporting during at-sea boardings. Comparisons between CPUE for trips with an observer versus without an observer, and comparison of CPUE by vessels suspected of misreporting (tens of thousands of pounds in a single tow) versus CPUE of other vessels fishing in the same area also validate the suspicion of broad stock area misreporting. The USCG reiterated the concern that a large amount of fish is being taken from broad stocks without it being accounted and the potential impacts on the stocks. It also gives fisherman that misreport an unfair advantage as they don't need to fish as selectively to avoid "choke" species, and they do not need to buy expensive quota for choke species.

The Coast Guard mentioned that an accuracy requirement for Daily Catch Hails would provide an enforceable regulation to discourage misreporting. Catch hails are only required to be good faith estimates and are not enforceable. The Coast Guard observes vessels fishing in the GOM with no or low amounts of cod and haddock reported, but boarding teams find significant amounts (thousands of pounds) of cod or haddock during boardings. Under the current regulations there is no violation in this scenario. An accuracy requirement for daily catch hails, either a percentage or poundage range, would enable boarding officers to issue a violation, during a boarding. Issuing violations for failing to accurately report daily would deter more egregious stock area misreporting.

The discussion turned to alleviating the broad stock misreporting problem with EM. The current EM test fleet reports on a haul-by-haul basis using eVTR's and does not include vessels with broad stock area trips, but this could be done. Several hundred pounds of fish are caught in one haul typically, varying among vessels. The Coast Guard supports EM to help document cases such as broad stock misreporting and cod discards. Enforcement access to video data (raw or audited) is important. Measures for weighing discards are in their infancy. No offshore vessels are participating in the electronic monitoring pilot program, and they should be included before implementation. Additionally, electronic monitoring must be tested in harsh weather. Haul-by-haul reporting also may be problematic. Targeted enforcement may be an alternative to multiple monitoring methods (i.e., EM and ASM).

For some Sectors, ASM costs as much as \$700 a day. Sector fishermen report daily when fishing in multi broad stock areas, as defined by their VMS declaration code. What is needed is more analysis of the information available already. The VTR is an estimate of catch and not as accurate as dealer landings. Sector Management started with the managers receiving training sessions from NOAA, and these should be revived. Sector managers should be notified about problems with reporting. The Sectors do have enforcement committees. Misreporting is an enforcement issue and communication is essential in alleviating it. Some Sectors require their Sector Managers to be reasonably sure that reporting is accurate. OLE and sector managers should meet periodically and interchange ideas. Sector Managers can help to automate audit systems in partnership with OLE, and identify education, communication, and mis-reporting issues.

OLE considers this document a work-in-progress. This discussion is a good lesson on what has happened in the past, and a lead-in to A23 that provides for modifications in the future.

## **Groundfish Amendment 23**

### **Presentation – Robin Frede**

Robin Frede presented the A23 summary (attached), describing the timeline, alternatives under consideration for Sectors only (at-sea monitoring) and both Common Pool and Sectors (dockside monitoring).

The following is a summary of the discussion and recommendations on the draft Amendment 23 alternatives by the Enforcement Committee and Advisory Panel:

There are many options, all of which are enforceable, but which may be improved operationally by modifying transit areas, stowage rules, VMS ping frequency, and landing windows to improve

enforceability. A large amount of time is spent working on Observer cases and, if replaced by Electronic Monitoring (EM), enforcement resources could be re-allocated to other concerns.

At-sea Monitoring (ASM) or Electronic Monitoring (EM) is an option for Sectors to work into their annual plans; 100% coverage, for instance, is for an individual vessel not the whole sector or fleet. OLE is concerned with sub-legal sized fish under the Maximum Retention EM option, as they would have difficulty distinguishing farmed from wild sub-legal fish in the market chain. Currently, sub-legal fish landed under EFP are tagged. Sector managers will build the coverage rate into their annual plan, and many will not choose just one option coverage type (i.e., human, audit, maximum retention) for all their vessels. Coverage rates are expected to be 31% for FY 2020; increasing that percentage and allowing sectors to choose different coverage types may cause problems, because waivers must be issued if an Observer is unavailable. Individual vessels would have one 'plan', either ASM or EM but not both, possibly with one switch per year. Operationally, vessels may need to switch methods, as well as camera and sorting locations, depending on weather/season. The vessel monitoring plan must specify: the number and placement of cameras, where sorting occurs, and a measuring device visible to the cameras for discards. Groundfish must be shown to the camera, not dogfish. Success of EM depends on the boat type and gear (i.e., gillnet vs. trawl), which may be changed with an addendum to the vessel's plan. It may be difficult to apply EM solutions to high-volume, trawl operations. Cameras can identify species (except hake), weight and length, and EM has been used in winter. It might be beneficial to require that the vessel monitoring plan be onboard.

Safety issues may be transferred from Observers (ASM) to crew (EM). Difficulty with counting high-volume tows applies to both ASM and EM; Observers have difficulty counting high volumes of fish. Hard drives from EM are collected after the trip, *at some time certain*. There are concerns about ownership and confidentiality of video data. GC believes that the purpose of EM is to collect information and estimate discards; enforcement is an ancillary use. The retention time of the video data may be longer, if it is to be used for enforcement purposes. Policies for retention, confidentiality, ownership and use of EM video data should be known before Amendment 23 is implemented.

The choice of a Sector Monitoring Tool is on an individual vessel basis, some Sector Managers believe. Electronic monitoring must be approved by NOAA before it can be implemented as a monitoring tool. While EM is being developed as a monitoring tool, enforcement will be consulted in terms of retention times needed to assure compliance. If possible, the additional costs of EM that apply particularly to enforcement should be itemized by NOAA, because the industry is being asked to pay for monitoring but not enforcement. However, OLE considers EM one more tool to be used for evidence collection, with no additional requirements. OLE is mainly concerned about the maximum retention option; it is difficult to ascertain whether sub-legal and legal-sized fish are discarded together.

The discussion resulted in the following consensus:

**Consensus #1: All sector at sea monitoring options (4.1.1), including the Electronic Monitoring tool, are enforceable.**

The 'higher value' option (3A) under Dockside Monitoring (DSM) (4.1.2.1) was discussed. Dealers are required to report accurately, and discrepancies between them and DSM seem unlikely. The dockside monitor is there to verify that the catch is accurate. OLE gets involved if the Dealer and DSM cannot reconcile a trip, or a series of trips, or the DSM becomes an issue. Also, the higher value option transfers

the penalty for under-reporting from the dealer to the vessel [through quota adjustments]. DSM can confirm that fish are being weighed and landed, at a licenses dealer. GC would apply its penalty structure to both options, if there are discrepancies. Discrepancies should be noted by the DSM, and OLE should respond to a trend of discrepancies. The DSM program may be self-enforcing, because three different entities are involved; dealer, fisherman, and dockside monitor. The discussion resulted in the following consensus:

**Consensus #2: Dealer data should be the landing of record.**

Monitors cannot be involved in the fishing industry, including their family members, which is difficult in remote ports. Dealer transactions are done quickly, and it may be problematic if the dealer and fisherman must wait for a DSM to arrive. Nevertheless, there is less enforcement support for Amendment 23, if remote ports are not covered. The discussion resulted in the following consensus:

**Consensus #3: There should be no exemption from dockside monitoring for remote ports.**

As for vessels with low landings, they can land 4 or 5 boxes then take 500 boxes down the road. A mandatory DSM program for the commercial groundfish fishery (sectors and common pool) at 100% coverage of all trips is required under Option 2 (Groundfish Amendment 23, section 4.1.2.1.2). The discussion resulted in the following consensus:

**Consensus #4: Vessels with low landings should have no exemption from dockside monitoring.**

How will OLE handle fish hold inspections for vessels that land one trip at multiple dealers. Should the DSM check the hold at the last port/dealer? There is a safety issue; must allow for insurance coverage. The discussion resulted in the following consensus:

**Consensus #5: The dockside monitor can examine the fish hold at any time during unloading.**

There are concerns about exempting part of the fishery from at-sea monitoring (ASM) and/or dockside monitoring (DSM), despite their targeting scallops, fluke, monkfish, skate, etc. There are issues with Groundfish DAS accounting, which are required for some monkfish and skate trips. In general, straight lines are easier to enforce (either line), and transiting rules should apply east of the line chosen. The committee and advisors focused on the at-sea aspects of the exemption. The discussion resulted in the following consensus:

**Consensus #6: An exemption from at-sea monitoring (ASM) and/or dockside monitoring (DSM) west of either line (west of 72 degrees 30 minutes west longitude, or west of 71 degrees 30 minutes west longitude) is enforceable, with VMS declaration and the application of transit rules east of the line.**

**Other Business**

Advisors should be aware that they must reapply.

The Compliance Improvement document is a work-in-progress and may need more review.

Enforcement priorities for 2020 should be discussed by the VMS/Enforcement committee.

Transit rules defined by "net not available for immediate use" may need changes concerning below deck rules and cod-end removal, to reflect current fishing practices.

The Committee/AP meeting adjourned at approximately 4:00 PM.