



## New England Fishery Management Council

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## MEETING SUMMARY

### VMS/Enforcement Committee and Advisors meeting

DoubleTree by Hilton, Danvers, MA

June 15, 2016

The VMS/Enforcement Committee met on June 15, 2016 in Danvers, MA to discuss comments on NOAA's Office of Law Enforcement (OLE) Northeast Priorities, and discuss a cod-end certification proposal.

**MEETING ATTENDANCE:** Terry Alexander (Chairman), John Quinn, Ellen Goethel, Frank Blount, Capt. Brian Fiedler, Rene Cloutier (for Jon Cornish), Patrick Moran and Tim Donovan (Committee); Peter Hanlon, William Strauss (Advisors); Joseph Heckwolf (NOAA General Counsel, also an Advisor); Louis Goodreau (NEFMC staff); William Semrau, Don Frei, and several members of the public (did not sign in).

#### **KEY OUTCOMES:**

- The Committee made recommendations concerning OLE Northeast Priorities
- The Committee made recommendations concerning cod-end certification

#### **PRESENTATION: NORTHEAST ENFORCEMENT PRIORITIES**

Tim Donovan explained the goal of reviewing priorities now; take advantage of new personnel and resources, review emphasis and focus, development of an investigative support analysis team, and make changes to existing priorities both now and during the review process next year. The current priorities will be reviewed and changed for 2018-2022 during 2017. Starting with the NEFMC committees, Tim will engage the MAFMC and states (ASMFC).

There was concern about streamlining the various data sources and a change in focus on data analysis. GARFO is reviewing fishery dependent data overall, and the investigative support analysis team within OLE is part of that. The team will provide a tool to target the enforcement agents' activities and the priorities; e.g., when targeting thresholds are reached, there may be a change in priorities and activities. A low priority item is not ignored. Priorities are used to allocate resources, people, both in the long-term and the short-term. Massachusetts JEA (Joint Enforcement Agreement) agents focus on both high and low priorities.

Lou Goodreau described the comments received on the priorities, from the Whiting, Herring, Scallop and Groundfish committees (memo dated June 15, 2016).

One comment described a perception that USCG boarding parties did focus on draggers, to the exclusion of lobster boats. Coast Guard priorities shift based on the seasons, and reporting from the industry on potential violations. We meet quarterly, and more often at all levels, with the other enforcement agencies. USCG flexes priorities at sea, and their operational units clearly follow NOAA priority lists. Groundfish has always been in the spotlight, but we do look at lobster boardings.

An enforcement advisor at today's meeting questioned why all the trips, for many years, involved in the current New Bedford case were not identified as illegal. Fish shipments to Fulton Fish Market from New England exceeded the amounts of those species being landed in New England. Do the records show any of these vessels boarded, landings inspected, and shipments checked? Since and in part due to this case, OLE is adding agents and is focusing on data analysis; the type of analysis that may have indicate activity like this case. There was dockside monitoring during the first year of sector management, but it was 50%, random and ineffective. We now have an At-Sea Monitoring amendment being developed. Dockside monitoring applies to several sizes of vessels and, for smaller vessels at least, the government must pay for the program.

Another advisor asked what options, in terms of permit sanctions, were available for egregious violations of reporting requirements, especially for sectors with a high concentration of ownership. General Counsel described the Agency's ability to suspend, revoke, deny, and modify permits, following specific civil procedures. GC uses its Penalty Policy to determine if permit sanctions are appropriate, only for serious violations. Widescale fraud, massive misreporting over a long time, then revocation of permits permanently may be warranted. Questioned whether permit sanctions could be applied while a case was ongoing, GC deferred entering anything on the record that may pertain to an ongoing case.

Outreach, the last item under High Priority, should be the first item. OLE hired two people specifically for outreach in the Northeast, but must clarify the presentation of their High Priorities to indicate that all the items are equal, that one is not higher than another. Concerning the voluntary compliance assistance item listed with outreach, the industry finds it difficult to contact OLE with questions about the meaning of regulations, particularly at night and weekends. OLE is only partly responsible for providing information to the public, for instance, the Sustainable Fisheries division is responsible for issuing Letters to Permit Holders (LPH) when regulations change, so some sort of coordination is needed among divisions and agencies. Nevertheless, the regulations in the Northeast are complex, and fishing trips may start at 9 PM or 1 AM, necessitating a 24 hour contact. A point of contact at any time of the day would be very helpful, to at least provide OLE with the vessel's intent and understanding.

Vessel Trip Reports (VTR) are haul weights and dealer reports are landings. The two numbers should not match in almost every case, but fishermen have been requested to change VTR reports because they didn't match. OLE did not make these requests, but the situation points to the need for more inter-division communication; one division should not be changing information that another division needs as evidence.

OLE will request both MAFMC and ASMFC to provide feedback on the Northeast Enforcement Priorities.

There are no specific changes needed in the priorities for the herring fishery.

More face-to-face interaction is needed between OLE and industry; Letters to Permit Holders are not enough. This is largely a factor of OLE staffing, and, as the numbers of personnel increase, this should improve.

The 600 pound Limited Access General Category (LAGC) fishery is a concern for multiple commenters. Forensic analysis of the bags is suggested, but suffers from the same lack of staffing as does VMS analysis. This problem may be due to the availability of different bag sizes, for instance, 40 pound (capacity) versus 60 pound bags. The ability to hide or transport bags is problematic, as well. This discussion raised the issue of hidden compartments, which the VMS/Enforcement committee examined in 2013. A rule for hidden compartments was not developed, at that time, because a legal definition was untenable and thus a violation could be established on the contents of the compartment, thwarting enforcement, or false statements, as is now the case.

Striped bass EEZ violations should be a High Priority for OLE. Striped bass violations are a High Priority for the Coast Guard.

What is a minor labelling violation? Seafood fraud/product substitution/false labelling are High Priorities, but minor labelling violations are Low Priority. The Magnuson-Stevens Act deals with false reporting to the government and the Lacey Act applies to false labelling, and false labelling to defraud is a much more egregious violation. Although false labelling falls under the Lacey Act, it may be applied for product that crosses state lines, and OLE will try to clearly define what is meant by false labelling in its Priorities for 2018-2022.

Why are all lobsters checked on draggers? The Coast Guard checks a sample of the lobsters onboard, and more if they find a violation. Massachusetts agents check lobsters, on all boats, where there is a maximum number of lobsters allowed daily (100) with a 500 maximum limit, but, if there is a violation, then all lobsters are checked. There seems to be more effort on

lobsters than fish, but fish should be checked too. Massachusetts will address the tendency of its agents to check more lobsters than fish.

Is there a report showing the number of boardings at sea? OLE has had a quarterly report for years, but at sea boardings is not something they track. They show, for example, 3100 hours on patrols and 25,000 hours on investigations. A new case management system will enable OLE to show more specific numbers, and they will accommodate Council requests for other information, if possible with this system. The Council may make one-time and continuous reporting requests. USCG does not normally publish boardings, but they could do so. The number of boardings by vessel type would be important; lobster, dragger, gill nets, etc. But could a boarding certificate be issued; it seems some vessels get stopped more than others, for example, one boat was boarded four days in a row. They should receive a boarding certificate for Coast Guard boardings. Maine supplies the number of boardings, and 90 percent are lobster boats. All Massachusetts boardings are through the JEA program. The Coast Guard's report for 2015 shows 10,762 boardings, of which 2623 are lobster, 1678 multispecies, 675 scallop, and Black Sea Bass, Herring, etc.

At-sea enforcement of unlawful gear violations in coordination with state and USCG partners is a Medium Priority, and it should be High Priority. Illegal gear of any kind is problematic, and cause conflicts. The Coast Guard recently made cases on lobster and gill net boats, but the boarding parties are not trained for this. The Coast Guard needs to refocus its boarding teams, but does not have the ability to haul traps. ASMFC has a sub-committee currently focusing on Lobster Area 3, and each state's capabilities to go distant from shore and haul traps.

#### ***CONSENSUS RECOMMENDATIONS:***

The Enforcement Committee sent a draft letter to the Council (letter dated June 16, 2016), reporting its findings with respect to OLE's Northeast Enforcement Priorities.

#### ***COD-END CERTIFICATION***

The Committee observed a demonstration of the Omega Mesh Gauge by the Coast Guard. The gauge is used for European Union (EU) fisheries enforcement. The main concerns are the cost (\$3500), warranty (2 years; EU had 2 failed devices during the first two years), battery life and accuracy as the battery degrades and the fact that it does not float. Advantages are the weight (5 pounds compared to the current 5 kilogram brass weight), number of people required (1 versus two or more), the speed of measurement (30 minutes versus 2 hours), and recording the measurements (stored in the Omega and downloaded to computer versus written recording that has several potential points of error; initial written record, unreadable writing, lost or damaged written report, and transcription error to computer). Another issue would be the Omega Mesh Gauge being used by the Coast Guard, while state JEA's continue to use manual measurements.

There is concern that hardening of the net, due to sand, sun and wear, would be a problem still, whether the Omega gauge or current measurement practices are used. A 5-3/4 inch mesh will shrink to 5-3/8 inches, eventually. Over ten years, a 6.5 inch mesh will shrink to 5 inches.

General Counsel cautioned that a certified net would not mean that cod-end mesh violations would never be issued, and questioned how the rule change would occur; framework/amendment, penalty schedule, or regulatory change.

OLE would consider aggravating or mitigating factors, as well (thwarting enforcement agents, false statements, etc.). Regulations on the books are final and must be enforced as written, and the mesh does harden and swell (resulting in shrinkage of the opening).

Both General Counsel and OLE do support a certification program, of some kind.

General Counsel considers gear violations as a high priority, but thought that net shrinkage should not be an enforcement focus. Also, does 1/4 inch reduction in mesh size have a negative effect on the resource?

Committee members feel that cod-end certification should be pursued, that consideration should be given to the degree of measurement (5-3/8 versus 5 inches), that the regulations should be changed, and that a margin for error be incorporated, like the former meat count.

A gear dealer described the changing nature of mesh size effects; with Days-at-sea (DAS) management during the 1990's it was a critical component of controlling fishing mortality, but now with quota based management and sectors, it is primarily a control on by-catch.

A certification program originating with mesh manufacturers (using industry practice) would be considered by General Counsel, but a formal regulation could require that only certified cod-ends be used or are an option, but a regulatory mechanism to achieve this needs to be worked out.

The Regional Administrator has the authority to change mesh regulations, but General Counsel wishes to check the specifics.

The following was posed as a consensus statement:

A codend must be purchased with a certified measurement from the manufacturer. A steel band must be attached in the gore with a date stamped on it (and the mesh size). The certification would have a time certain expiration date (6, 12, 18 months). When USCG boards the vessel they would see the codend was certified, but (could) perform their normal measurements to see if it is still legal. If it has shrunk (or hardened), then a warning is issued to fix it by a date certain as specified above (6, 12, 18 months), with no violation.

***CONSENSUS ISSUES TO BE RESOLVED:***

Several aspects of this potential motion need to be resolved, before a formal certification program and regulatory/regulations change could occur, including:

- Would certification be a regulatory/regulations amendment, or a recommendation to USCG on how to approach mesh measurement.
- Legally, manufacturers' protocols must be specified, and what would we do to make the steel bands tamper-evident and trace them back to the original purchase.
- A more lenient enforcement response is warranted with a cod-end certification program.
- Enforcement cannot be boxed in; agents must be able to use their discretion and issue violations. A certification program is one way to handle the mesh hardening issue.
- Is there a resource damage issue.
- A regulation cannot be written that specifies the penalty ahead of time, in this case, a warning.
- A distinction between mesh manufacturers and dealers is critical; the manufacturer must provide the mesh size, but the dealer must place the steel band on the cod-end at the point of sale. The invoice now includes the manufacturer, the mesh size, and the date of sale.
- Sectors are responsible for their members, in this case, making sure they use certified cod-ends.
- Eighteen months is too long; the time certain should be 6 months.
- Will someone be responsible to certify the certified netting; all manufacturers' processes may not be the same.
- How will switching the steel bands from net to net be detected.
- The Coast Guard uses its discretion to measure mesh now; it does not measure every net on every boarding.
- If regulations must be changed via framework/amendment, then including the Omega gauge should be considered. The Coast Guard would need more testing.
- Should the warning be issued only if it is not an egregious violation when measured. For example, the regulations specify 6-1/2 inches in certain fisheries, but the next *legal* mesh size is 6 inches for other fisheries.
- With only five manufacturers, a common procedure to certify netting may be possible.
- The certification of cod-ends should not be a recommendation to USCG, but rather a rule.
- The intent of certification of cod-ends is a good one, and should be pursued.

The Committee plans to develop a motion for a cod-end certification program during the next Council meeting.

#### ***OTHER BUSINESS***

Written warnings are issued for 60 pounds of undersized fish on a 60,000 pound haddock trip over a couple of days, which is immaterial. The Committee will request the Council to charge it to take up this issue at the next VMS/Enforcement meeting.

The Coast Guard advised that the AIS system may be shut off while fishing, outside of 12 miles.

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