



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmfc.org

Law Enforcement Committee Meeting Summary

October 1, 2024

Committee Members: Scott Pearce, Chair, FL; Rob Beal, ME; Delayne Brown, NH; Keith Williams, CT; Sean Reilly / Thomas Gadomski, NY; Brian Scott, NJ; Nicholas Couch, DE; Matt Rogers, VA; Michael Paul Thomas, SC; Robert Hogan, NOAA GC; Katie Moore, USCG

ASMFC Staff: Toni Kerns, Caitlin Stark, Madeline Musante and Kurt Blanchard

Other Participants: Carl Lemire NOAA

The Law Enforcement Committee (LEC) conducted a virtual meeting on October 1, 2024, to discuss Electronic Vessel Tracking for Federal Permit Holders as required under Addendum XXIX to Amendment 3 to the American Lobster Fishery Management Plan and Addendum IV to the Jonah Crab Fishery Management Plan. **Specifically, the LEC was asked by the chair of the American Lobster Management Board (Board) to think about a definition of fishing as it relates to vessel tracking in the federal lobster fishery.**

Ms. Caitlin Starks, ASMFC FMP coordinator presented on the development of this addendum and the current state of the fishery management plan, including Board discussion on the 24/7 tracking requirement under Addendum XXIX and industry concerns over privacy. Caitlin Starks offered insight into the "Work Group" report on potential modifications to the vessel tracking program that would address privacy concerns while maintaining necessary data collection, as well as the LEC recommendations on development of vessel tracking in this fishery.

A general discussion ensued with members of the committee, ASMFC staff and a VMS specialist from NOAA. Topics such as the definition of fishing, geofencing, snoozing and privacy concerns were discussed in detail, with many opinions being offered. A breakdown of these topics are as follows:

Geofencing

Geofencing has a practical use in vessel monitoring for closed areas and crossing of lines of demarcation when used in concert with satellite monitoring. Geofencing is not practical in the application of tracking lobster vessels in the northeast, especially in Maine where due to the geography of the coastline there is poor cellular service. Many federally permitted vessels fish nearshore and without an adequate cellular or satellite service signal which would translate to a significant loss of data.

Snoozing or powering down the device.

The current specifications for the accepted devices in this program do not allow for a snooze or power down function. Trackers may only power down under specific circumstances and must have a letter of authorization from the program administrator to do so. The guidelines for this purpose are well defined and consistent between state and federal programs. The proposal of snoozing, or powering down, while in port and not fishing for short periods of time is not practical for the fisher and or the program administrator. Approval for each request would need to be granted, with consideration of the magnitude of requests. This would create an undue burden on both the fisher and the program administrator.

Privacy Concerns

Concerns over fisher privacy have been raised. With the 24/7 tracking of vessels and the multi-purpose use of these vessels outside of fishing, fishers are concerned that the scope of the program is reaching outside of the permitted activity. As the plan is written, and depending on how the state regulation is adopted, it may be considered prima facie evidence of a violation for just operating a federally permitted lobster / Jonah crab fishing vessel without the vessel tracker being powered on. Law enforcement would not typically prosecute a case of this nature without contacting the vessel operator and providing evidence of the vessel being used for the permitted activity.

Definition of Fishing

The Magnuson Stevens Fishery Conservation and Management Act clearly defines the activity of fishing:

- The term "fishing" means— (A) the catching, taking, or harvesting of fish; (B) the attempted catching, taking, or harvesting of fish; (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C). Such term does not include any scientific research activity which is conducted by a scientific research vessel.

States have adopted similar definitions for each of their respective fishery programs. These definitions may not be identical in wording, but the general context is the same. The committee discussed narrowing this definition to be more specific to lobster fishing and to clarify what elements would need to be met by law enforcement to show a fisher / vessel is engaged in the permitted activity. Topics such as bait being on board the vessel, targeted species being on board the vessel, working condition of the vessel, working condition of the captain and crew, were all discussed. The concept of declaring in and out of a fishery as used in the Federal VHS program was also discussed. With the plan as written, the committee could not come to a consensus of a definition for this purpose.

Additional Considerations

The committee discussed evidentiary elements needed or helpful for making a case for non-compliance relevant to this topic. Having a tracker that has a visual indicator on the device to show if a tracker is powered on or off would aid law enforcement in recognizing compliance. Additionally, having the ability to communicate via the device for a fisher to hail in or out of the fishery may alleviate privacy concerns among fishers.

There was additional discussion on who has the burden of proving a fisher is engaged in the fishery if non- 24/7 tracking is pursued. Would the fisher need to show they are not engaged in the permitted activity or is it the responsibility of the regulator? This burden would typically fall on the regulator. The standard for burden of proof in a criminal or civil case would rest on the prosecution and or plaintiff, respectfully.

The following excerpt is from the Guidelines for Resource Managers on the Enforceability of Fishery Management Measures (May 2024).

VESSEL MONITORING SYSTEM (VMS)

Definition: A requirement to keep a positioning transmitter (transponder) onboard a fishing vessel. The transponder transmits position and movement information at specified time intervals to the management agency.

Average Overall Rating: 3.82

Recommendations:

- As VMS use is expanded, it should incorporate data transmission regarding gear onboard and the fish being targeted. It can increase the efficiency and effectiveness of enforcement patrols and inspections but does not replace on-the-water or dockside enforcement requirements.
- VMS should be considered for any large-scale fishery that is conducted in remote waters or offshore where at-sea and airborne enforcement is difficult or inefficient.

Atlantic States Marine Fisheries Commission

Law Enforcement Committee

October 1, 2024

10:00 a.m. – 12:00 p.m.

(Virtual)

This meeting will be held via Ring Central which is the Commissions new video calling platform. The meeting access info is listed below.

Please join using this link:

<https://v.ringcentral.com/join/833807079>

Meeting ID: 833807079

One tap to join audio only from a smartphone:
+16504191505,833807079# United States (San Mateo, CA)

Or dial:

+1 (650) 4191505 United States (San Mateo, CA)

Access Code / Meeting ID: 833807079

International numbers available: <https://v.ringcentral.com/teleconference>

Agenda

The times listed are approximate; the order in which these items will be taken is subject to change; other items may be added, as necessary.

- | | |
|--|------------|
| 1. Welcome/Call to Order (<i>S. Pearce</i>) | 10:00 a.m. |
| 2. Committee Consent (<i>S. Pearce</i>) | 10:00 a.m. |
| • Approval of Agenda | |
| 3. Public Comment | 10:00 a.m. |
| 4. Introductions | 10:10 a.m. |
| 5. Discuss Electronic Vessel Tracking for Federal Permit Holders in the Lobster and Jonah Crab Fisheries. (Blanchard / Starks) | 10:15 a.m. |
| 6. Other Business/Adjourn | 12:00 p.m. |