

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

LAW ENFORCEMENT COMMITTEE

**The Beach House Hilton Head Island
Hilton Head Island, South Carolina**

September 16, 2015

SUMMARY MINUTES

Committee Members:

Mel Bell, Chair
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Ben Hartig

Chris Conklin
LTJG Tara Pray

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Zack Bowen
Mark Brown
Dr. Wilson Laney
Charlie Phillips

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Participants/Observers:

James Kejonen
Dr. Jack McGovern
Tony DiLernia
Sean Meehan

Monica Smit-Brunello
Dr. Bonnie Ponwith
Roy Williams
Erika Burgess

Additional Observers Attached

The Law Enforcement Committee of the South Atlantic Fishery Management Council convened in the ballroom of The Beach House Hilton Head Island, Hilton Head Island, South Carolina, September 16, 2015, and was called to order at 11:00 o'clock a.m. by Chairman Mel Bell.

MR. BELL: We'll convene the Law Enforcement Committee. The first item on the agenda is approval of the agenda, and we had one adjustment to the agenda. I think we were asked to have some discussion about VMS ping rate. If that happens, great; but that is the only thing that I had.

MS. McCAWLEY: I'm not on your committee, but I do have something else I would like to bring up under other business if you would allow me; something that I'm bringing from our law enforcement representative on the AP.

MR. BELL: Okay. Any other adjustments to the agenda? Seeing none; then that agenda is approved. The next would be approval of the minutes from the June 2015 meeting. Any changes to the minutes? Seeing none; then the minutes are approved from the June 2015 meeting.

The first item on the agenda is a discussion I guess concerning the operator permits; and this is something Anna had brought up a while back. In fact, we had some discussion about it and Mark showed us his card or his permit, but I guess the utility of those. This is Special Agent, James Kejonen.

MR. KEJONEN: Good morning; my name is James Kejonen. I am Acting Assistant Special Agent-in Charge for District 1 in the Southeast Region. Typically, I'm a Gulf of Mexico guy, but this week I'm a South Atlantic Fishery's guy. This is really going to be a brief opinion on Office of Law Enforcement's opinion on operator cards and that of GC.

Hopefully, it answers some questions or maybe generates some discussion on the continuing use of operator cards. The Office of Law Enforcement has always and continues to support the use of operator cards in the Southeast Region. We believe that operator permits are not only useful as an effective enforcement tool, but they also aid in education and outreach.

They assist in education and outreach because with the repository of operator names and addresses provided in permit applications, fishery managers may provide operators with notices and/or bulletins with updates or changes in the federal fisheries regulations. They also assist in voluntary compliance through the education and outreach component previously mentioned.

Because operator permits are potentially subject to sanction for federal fishery violations; they are an effective enforcement tool because they can help establish the violator had knowledge of the regulations through the aforementioned education and outreach component. Operator cards also help in holding operators who, through due process, have been found to have violated federal fishery regulations responsible for those violations through potential permit sanctions for the violations in addition to potential monetary penalties; and also for the nonpayment of those monetary penalties. That is pretty much the opinion; and I can offer some instances where they would have been useful in the Gulf of Mexico where we don't have them. Hopefully if there are any questions, I can answer them or any discussion.

MR. BELL: I'm sure we'll have some discussion. Jack.

MR. COX: I agree with you. Especially in the commercial industry; a lot of our guys don't have other forms of IDs, driver's licenses and so forth. I think it is really good to have the operator card and I support it. I think right now it is just required for the dolphin wahoo fishery. With that card, there is an identification number for each individual; is that correct?

MR. KEJONEN: I'm not too familiar with them because we don't have them in the Gulf of Mexico; but I'm assuming that it is kind of on the lines of a permit where they are actually issued a number. I know that a picture is included on the card as well; and then all the pertinent identifying information to that operator is also on the permit and on the card itself.

MR. COX: I would just support the most information you can get on a card, maybe at least an identification number; so that way if you run that number, you know where that captain or whoever is holding that card has been in some kind of violation or something. I can't remember if they have the number on it.

MR. BROWN: That card is required for the for-hire fleet, too?

MR. KEJONEN: No, sir, right now it is dolphin wahoo and I believe the rock shrimp fishery as well. Those are the only two fisheries that require it.

MR. DiLERNIA: In the Mid-Atlantic Region if you have a federal permit – if you're operating a vessel with a federal permit, you need an ID card be it for-hire, commercial, whatever. If you are in federal waters operating a vessel under a federal permit, you need a federal ID card with your photograph on it similar to a TWIC's card.

MR. BROWN: The reason I wanted to make that clear is that in the for-hire industry we have a license to operate the vessel, which you already have to go through all the stringent process of getting a license, and it has all your identification on it and everything. In order to run any of the vessels within the for-hire industry, you are already licensed. I was trying to understand why the for-hire industry had to have this permit. I can understand it for maybe the commercial industry, but I didn't really understand it for the for-hire industry.

MR. KEJONEN: I think really for the for-hire industry or the commercial industry, when you look at it as far as it is an operator permit; it is not a permit for the vessel. What it does and I believe in the enforcement opinion is it stops somebody who is a habitual violator from jumping from boat to boat.

Even in the for-hire industry, you've got a lot of boat owners that outsource their captains. It really stops one guy from getting violations on one boat and then heading over to another boat and doing the same thing. It also allows us to know how many captains are actually participating in the industry and not just permitted vessels.

MS. BECKWITH: So in terms of violations, that is sort of what our captain's licenses are for. You can track violations against a captain's license I believe as well. I think one of the issues that we've had as we've thought through these operator cards in the South Atlantic is I agree with Jack, I think it is super functional for the commercial industry.

I don't see the utility in the recreational and the for-hire industry. If we were to retain these operator cards primarily for the commercial industry, they are not useful right now. They haven't been used to make a case. There is no way right now for a person who is hiring someone to actually call OLE and get the history on that person.

That sort of piece of the process hasn't been facilitated. My position has sort of been if we're going to keep them, we need to make them useful. There has to be a process that allows a potential employer of a commercial guy to be able to call in and sort of see if they've had any violations against that operator card or if there has been any information available.

Then in terms of the charter guys for the dolphin wahoo, I don't see the utility in it. I have no interest in seeing that operator card continued for the for-hire industry. But if we wanted to pursue it for the commercial, we should maybe do it for all the commercial permits for the South Atlantic; but recognizing that it has to actually be useful. There has to be some piece where you can actually identify information in some sort of public manner that is easily accessible to a potential employer.

MR. KEJONEN: Yes, I agree with you that somebody should be able to cross-reference those if they are planning on hiring somebody; and that is another component of the card that I don't know where that stands and where you're taking it. There is usefulness if you get a habitual violator and somebody is held jointly and severely and they don't pay; the captain doesn't pay, obviously, the vessel owner does pay.

He goes over on another boat; we can actually take the operator permit and put a sanction on it until he does pay and keep him out of the industry until he comes into compliance. They are useful now. It is just you don't see it on the front end, I guess, with people looking to hire people to be able to check the background, which I think should be available to people that are potentially hiring these captains.

MS. BECKWITH: Well, I guess one of the questions that we had been hoping to have answered is how often that sort of enforcement had actually occurred in our region for our operator cards. When have the cases been made, how many violations have been sort of sanctioned against those operator cards? We had a bit of a presentation I guess at Phil's last meeting. As far as I remember, there were none for our region.

MR. KEJONEN: Like I say, I am a Gulf of Mexico guy, so I wouldn't know. I can check with General Counsel and our office and see if anybody has had a sanction against their card and get back with you and let you know at the next meeting.

MR. BELL: Looking at this thing, obviously there are regional differences, and it just seems like what would be more effective is one standard that applied across all regions and all fisheries; but that is not the way it is set up, I guess. Monica.

MS. SMIT-BRUNELLO: Not specifically to that point, but two other things. I think there have been some cases made on operator cards and we'll get that information. Anna, did you say people can't request that information, employers, because I believe they can?

MS. BECKWITH: What would be that process? I would be curious on sort of how easy it is and how accessible that is to folks. Yes, that would be great information.

MS. SMIT-BRUNELLO: Okay, I will get you that. Other than calling up the permits' office and asking them or something like that, but I'll get you that information.

MR. PHILLIPS: I am agreeing with Anna, if we can't practically use it and give it some teeth, it is not going to help. A lot of these, even if you've got a bad player, he's going to get on another boat and let the crew get the operator card. He's still going to drive the boat. I don't think there is any way we can stop that.

DR. DUVAL: It was just to the regionality of the operator cards. You can get an operator card from either region, from either the Southeast Region or the Northeast Region, so my understanding is it should be the same no matter what. We have fishermen in North Carolina who hold northeast permits and southeast permits. They are required to have that operator card, so I would imagine most of them get it from the Greater Atlantic Regional Office.

MS. BECKWITH: Yes; the operator card that you get through SERO I think is \$50.00 and then the Northeast Region one is free. The one that is free, they give you sort of an ID number; but if you go through the Southeast Regional Office, they give you a different ID number; so I would be also curious to see if they are sort of in – I doubt that they are in one database where you can cross-reference.

DR. DUVAL: My point is that if you already have one, you have one. You wouldn't need to go to the Southeast Region to get another one.

MS. BECKWITH: Right, I agree, and most people get them from the Northeast Office because it is free versus \$50.00.

MR. COX: To Michelle's point, they do expire I think every three or four years. I think that is just to keep the picture ID updated. The Coast Guard stopped my captain about a month ago and he didn't have one on so they cited him for it.

MR. HARTIG: To Jack's point; he just said if your vessel has a dolphin wahoo permit on board and you have a captain that is operating your vessel – and I operate in a number of fisheries, and most of the time I don't operate with a crewman when I'm catching dolphin. But if I'm fishing for Spanish mackerel and my captain is running the boat, he still has to have an operator card on that vessel because it has a dolphin wahoo permit. Almost all of us have dolphin wahoo permits, so almost all of your captains have to have that card. I don't know if that is widely known among the commercial fisheries.

MR. BELL: This is established for certain fisheries in some regions and in other regions it is all fisheries?

MR. HARTIG: No; I'm just saying if you have a dolphin wahoo permit on your vessel, any captain you have, no matter what fishery you're fishing in, has to have a dolphin wahoo operator card, because he is operating a vessel with a permit for dolphin wahoo. That is what I'm saying; every commercial vessel just about has a dolphin wahoo permit, so that means essentially every

commercial vessel captain would have to have an operator card. I don't think that is widely known throughout our jurisdiction. I'm sure you didn't know it, Jack, probably.

MR. COX: Mark just showed me his card. I've known about the cards for a long time. I didn't really pay a whole lot of attention to it, because nobody has ever asked us for it. It just started kind of going to the wayside. We didn't really understand why there was a need for it. Mark's card from the SERO office doesn't have any identification number or anything on it. Keep in mind that a lot of these guys in the commercial industry don't have addresses or they change a lot. I would think that would be something we need to add to it.

MR. BELL: We had some questions about this and I appreciate some basic information. Is there a desire of the committee to do something? We say we ought to do this or we ought to do that and I'm not really sure of the mechanism.

MR. COX: Why don't we make a motion that we – and it is probably not going to be exactly crafted right. I'll make a motion that we make the regional identification cards the same; either they're going to be free or they're going to be fifty bucks. It is not fair to charge one side and not charge the other for whatever the fees are.

I would think you would want to put some kind of fee in there and you would want to have an identification number with some kind of database built into it for law enforcement and for folks to research captains and maybe somebody that is going to run their fishing boat.

MR. BELL: That's a recommendation from us in the South Atlantic Council to do that; but this is a bigger – or you're talking about a recommendation just within the context of our Southeast Region?

MR. COX: I'm saying a recommendation that we make the ID card the same price. In other words, it is going to take some money to build a database, so if the cards are fifty bucks – I don't know where the money goes, but you can use some of that money to help build a database, give each individual a card and an identification number; so if there is a violation, you've got some way to track it into the system. The card that Mark just showed me is nothing but a picture and an address on it. There is really not a whole lot to it. I think we need to put some stuff in it. You'll have to help me craft this motion.

MR. BELL: Right; I'm just trying to figure out what we can and can't do. Monica, do you want to weigh in on that?

MS. SMIT-BRUNELLO: All that we can do is some of the things Jack just suggested. That money for the permit that you would receive for the cards and all that; I believe it goes into the General Treasury, and we're not allowed to specify where it should go. I also believe that the Service has quite the process for calculating administratively how much to charge for these various things. I don't know that you putting a dollar amount on there and saying what you think it ought to be – I mean, you could do that but I am not sure that it would go anywhere, because I think that is an NMFS administrative function.

MR. COX: Roy, you could do it; can't you?

DR. CRABTREE: No, we charge administrative fees, and there is an administrative handbook where we go through all those kinds of things. We have the folks from Washington come in and review all that now. GARFO does not charge fees for permits, and it has been that way for some time. I am not up on where they are and what's happening with that. I read this as what you're saying is you want GARFO to start charging; because I can tell you that we are not going to stop charging fees for permits in the southeast. I mean that is just not going to happen.

MR. BELL: Roy, does that cover what you wanted to say?

DR. CRABTREE: I think so.

MR. BROWN: I will tell you that I write a few checks to the U.S. Treasury, and one of them that I have to write to the U.S. Treasury has to do with the Coast Guard's inspection fee. The money that is sent to the U.S. Treasury does not go to the Coast Guard. I went through this and I talked to the Coast Guard about it multiple times.

It is kind of weird; I never understood that; but, anyways, they require you to have this fee be paid in order for you to do your inspection annually but yet it goes to the U.S. Treasury. This card; we're required to have this card and the funding doesn't go to anything to support this card, but you do have to pay it to the U.S. Treasury.

MR. CONKLIN: I was just going to speak to Jack's point about not having the number on the card in the South Atlantic. Even if enforcement had the card and I believe they contact the Southeastern Regional Office; I would imagine whoever is in charge of that has information on file and can relay it back to the officer on scene I guess even though there is not a number on it. I don't know if we need a public database for me to go and check and see who is running my boat. I pretty much know them all. You don't let some vagrant just come in town and start working for you.

MR. COX: It is kind of to me like a driver's license without a driver's license number on it. It seems like you've got to have something attached to it that goes into a database; that's all I'm saying.

MS. BECKWITH: I don't know that we're in a spot right now to take any real action. I guess my overall reason to sort of keep bringing this up is a vision for this card would be something that would actually be truly useful for the people on the ground. There must be some discussion that happens between SERO and the Northeast Office.

There are still a lot of questions. Are these databases somehow linked? Are they keeping information? What type of information is available to the public? I mean there are bits and pieces of this that we don't really have a true understanding of how this works; you know, where they have been used in enforcement cases, how that information is used; if it is public and available, so general questions like that.

I think again if these operator cards are going to be useful, then I think we need to sort of pick a lane. They either need to be sort of across all of our permits for primarily probably the commercial and make sure that they are useful or sort of do away with them. But this weird in between that we don't really know what it's for except maybe a picture of the guy with no

accessible information to anyone; it doesn't make a lot of sense. We have the Paperwork Reduction Act. I mean to me this is sort of an extra thing that people sort of go through that I can't sort of tie back in the utility of it.

MS. SMIT-BRUNELLO: I just had some information on violations and those sorts of things; so when it is time, I can fill you in.

MR. DiLERNIA: Again in the Northeast Region or the GARFO Region now, if you have a federal permit, if you are operating a vessel in federal waters with a federal permit, you need federal operator's permit. I know of law enforcement actions on both commercial and the for-hire fleet that have acted and threatened to remove their operator's permits to get rid of some of the bad boys that don't want to play by the rules.

Again, we've heard in reports from law enforcement about the commercial and for-hire vessels, where the operators had to lose their operators permits. I have a question for Roy. When I go back and give my report to the Mid-Atlantic, should I be telling John Bullard, our Regional Administrator; do you want him to start charging for the permits? I mean if that is the message you want me to deliver, I will, but I would rather not.

DR. CRABTREE: No; I would be happy for you to deliver that to him. I'll deliver it, too, because it has been a sore spot for years that northeast doesn't charge and we do charge. I would be happy to waive fees and stop charging. It costs me money to charge for permits. People have to handle the checks, keep up with them. We have to have a safe to put them in, and we have to send it all off to the General Treasury; so it is a net loser for me to do it.

MR. DiLERNIA: I'll be letting John know that you want him to start charging all of his hundreds and maybe thousands of fishermen's permits.

DR. CRABTREE: Before you leave, Tony, I've got a list of things you can raise,

MR. BROWN: Roy, I'm confused. I was trying to understand; I thought I heard both ways from you just now. I was getting ready to ask if I could make a motion that we do away with the fee.

DR. CRABTREE: Well, you can make motions, but the fees – I don't believe the fees are going away. I think the more likely scenario is at some point GARFO will start charging fees.

MR. BROWN: I was just talking to Chris. I didn't realize you could get the permit for free from the northeast. I just found that out today. I've been renewing it over and over, and I'm like, well, how is that?

MR. BELL: Okay, Monica, you want to provide a little information and then I'm going to weigh in here.

MS. SMIT-BRUNELLO: Yes; and just so you know, those fees go into the U.S. Treasury because that is where Congress said they should go. Congress never has specified in the Magnuson Act that those kinds of fees could be put back into the Service for enforcement or anything like that.

That is probably why you write the check to the U.S. Treasury for Coast Guard things, too, because Congress has said that is where those fees will go. That is it on that; but I do have some information that was presented I guess a while ago. Maybe that was Phil's last meeting, I'm not sure, Anna; but for dolphin wahoo operator card cases there have been three notices of violation and assessment for failure to have the card.

Granted the years of violation were one in 2005 and one in 2006 and one in 2007. Rock shrimp operator cards, there were two NOVAs issued. Both of those were for operator card violations and both of those were 2004 cases. There have been permit sanctions on at least seven operator cards for cause; i.e., it was part of the initial penalty or part of assessment.

Five of those were 2005 cases and two were 2006. There have also been permit sanctions in at least two operator cards for failure to pay a final penalty that they must have been assessed already. They didn't pay, and so they sanctioned the operator cards. That is at least the information I have.

Karen Raine apologizes because she wasn't able to make this meeting because of another issue. They publish cases on the web; and I asked her is there a sanctions website that people could go to; and she said not a sanctions website, but there are cases published on the web. We can talk about maybe putting up something that might be more even easily accessible to the public or to potential employers. Also she says that there could have been written warnings or summary settlement cases that the Office of Enforcement issued that aren't part of the information I just got; so we could also mine that information database and see if we could come up with more information to give you.

MR. KEJONEN: I am aware of one case right now where I think it was a summary settlement that was just recently issued for an expired operator card. I'm wondering, and this goes to you, Dr. Crabtree, if it is possible that they could make it public like they do the HMS permits where you can just go online, punch in the vessel name and it pulls up the information. Obviously, there are probably some privacy issues with addresses and stuff like that; but at least give the operator number to where somebody could call with the operator number and then check with permits or something like that.

DR. CRABTREE: Well, I know that we have a list of all of our permit holders on the website. I assume we have a list of operator permit holders, but I would have to look to be sure about that.

MR. BROWN: Monica, were those violations for the rock shrimp fishery or were those for the for-hire fishery?

MS. SMIT-BRUNELLO: The information says rock shrimp operator cards.

MR. BROWN: Yes; that was the confusion about this card, too. It was originally put out as the rock shrimp fishing card or dolphin wahoo. I think a lot of people that were in the for-hire industry kind of got a little bit mixed up, because I still hear people even nowadays running for-hire vessels that have federal permits that don't even know that they are supposed to have that card.

MR. CONKLIN: I think if law enforcement sees utility in this card and there is a valid use for it, even though we don't see it, I think we should discuss adopting GARFO's mandate that anybody with a federal charter or commercial permit on a boat or operating a boat needs to have this card. That will just take us one more step towards where we need to get, I guess.

MR. BELL: Jack, I wasn't stymieing your motion, but I'm wondering what this body can actually do to affect some perhaps beneficial changes in the system and the process involved. Maybe what we can do is – and we can use the Law Enforcement Committee or me as a conduit to do this.

We can perhaps collect recommendations for improvements or something and then send a letter to somebody – I don't know if that is Roy – in terms of suggested changes in this – and this would be something I would be glad to collect input or whatever. We don't really have the authority to change things, but we could certainly provide input as a body.

Given that a lot of the folks on this body are folks that have these cards or see issues with the system or whatever; we could certainly provide some recommendations. But in terms of changing something, I don't think we have that authority. Does that make sense, Roy?

DR. CRABTREE: Well, yes, you can put together a list of suggestions. Now if you want to require operator cards across all your fisheries; then that is within your authority.

MR. BELL: That's done through the plans then?

DR. CRABTREE: That's done through the plan amendment process; and if you want to get rid of operator cards, it is the same kind of thing.

MR. BELL: In terms of things to improve the system, there are some things that we could address as a council and then there are some things that are outside of our control.

DR. CRABTREE: Right; and now in terms of what kind of information is posted on our website, yes, we would welcome your input on that. In fact, at the last Gulf Council meeting we had a discussion about that very issue and we made some changes to the way we post things on the website response to that. All of those kinds of things we can do. Things like fees and all that are much trickier to do.

MR. BELL: Then maybe the next step might be for us – and again we can use the Law Enforcement Committee to do this – is to collect sort of the suite of recommendations, options, or things that we would like to see done kind of sorted into things that we control, things that Roy controls, things that even Roy doesn't control, and then provide that document.

DR. CRABTREE: Yes, we would welcome your input on that. I just looked at our website, at the list of all the permit holders; and I did not see operator permits, so I've sent an e-mail back to my office asking about that issue.

MR. BROWN: I've got to have the permit, anyway. I carry the commercial licenses and for-hire licenses and everything, too; but like I said, there is a section of the for-hire fleet that a lot of them don't know if they have a federal permit they are required to have it. From what I heard

Roy just say is that can I go ahead and make a motion to require that an operator's card be required among all federally permitted vessels in the South Atlantic?

DR. CRABTREE: You would have to make a motion to ask staff to start preparing a plan amendment – I don't know if you could do it through a framework, but a plan amendment to require operator permits in all the fisheries.

MR. BROWN: Okay, well, I would like to do that. Then that way we'll just carry it across all the permitting.

MR. BELL: But that wouldn't necessarily solve all the issues. What I'm saying is maybe the first step is let's collect the data, so to speak, from what we've all kind of gone through here; kind of sort this out into things that we can address, that we can't address, and then kind of take a systematic approach to this rather than just kind of trying to piecemeal.

MR. COX: Mel, I agree with you; just give me an idea exactly how you see that coming together and the timing on it.

MR. BELL: What I thought was maybe you and I, since you are on the committee and you were kind of heading in the direction of an amendment; but maybe we could talk about a mechanism to kind of pull this all together, but just kind of do it in an organized fashion. Again, we would be pulling information out of all of you again.

MR. CONKLIN: Or we could just leave it alone and not have to do an amendment and leave it the way it is and just have to live our life the way we've been living it together, Mel.

MR. BELL: Okay, that's an option; it certainly is.

MR. BOWEN: I'm looking at the list. I don't think Mark or Anna is on this committee, so I'm not sure if their motion would be – just not at this time.

MR. BELL: That's true. If you will allow me, I think the best way to do this is kind of let's get our ducks in a row. I will be willing to sit down with –

MR. BOWEN: The only reason I mentioned that is because I sure wanted to make some motions a while ago in that Data Collection meeting.

MR. BELL: No, that's okay. Hold tight on that; we've got a couple other things we need to address here as a committee, so I would like to kind of move off of this subject and onto the next one, if that is all right. It has been a very useful discussion. It is obviously an interest. We do appreciate your input from the Gulf of Mexico. We thank you for coming.

The next thing I had on the agenda was some discussion of VMS ping rates. As I understand it, the issue kind of ties back to Coral Amendment 8 and a requirement for certain ping rates and whether or not the technology supports that or not. You can speak to that as well.

MR. KEJONEN: Yes; right now there is no geofencing set up to whereas once a vessel hits a line; that the VMS automatically starts pinging at every five minutes. Say a vessel was pinging

ten minutes outside of the boundary and then passed through the boundary; they wouldn't ping until an hour later.

You would be able to see the course between pings, obviously, and maybe make some determinations on that. However, the VMS vTrack, which is the software that we use to monitor the VMS units, it is set up once a vessel pings in the Oculina Banks; then it automatically starts pinging every five minutes so then we would have a five-minute notification; but they would have to be inside for the software to set that up. Now, the VMS units can be set up to where almost like a geofence where they hit the line and it will start pinging, but that would require hard-coding some antennas; and then I believe the Boatracs Units would have to be completely replaced because they are not capable of doing that.

MR. BELL: Then do we actually have an inconsistency between a regulatory requirement and what will work? Are we okay, I guess? I'm speaking from ignorance here on what the specifics of the requirement are in the Coral Amendment 8 right now.

MR. KEJONEN: Yes; and this is the way I understand it, so I don't want to misspeak especially on an issue as big as this; but the way I understand it is that it can be done, but you're talking about replacing some units and then obviously replacing antennas with some other units that are capable, but they would still have to be hard-coded into the antenna on top of the boat.

MR. BELL: Okay, does everybody follow that that needs to follow that?

MS. SMIT-BRUNELLO: Well, I just want to make sure I understand. If the vessel has Boatracs on it and that unit is signaling – I forget how often they have to send a signal; but if that signal happens to fall within the time they transit through the Oculina HAPC, then it will increase to every five minutes.

But if it just happened to send the signal, the timing was such that it was right before they went into the HAPC; the next time because of the length across or however you want to describe it, the miles across the HAPC, it might be that it wouldn't ping again until after they were outside the HAPC because that five-minute interval wouldn't pick up?

MR. KEJONEN: Yes; that is correct; but if the unit pings outside of the area, then it will just stay on the one-hour ping rate, which they are normally set up for. If it pings inside, then the software that we monitor would pick up and start doing the every five minutes; but it still wouldn't be the unit, it would be the software that would be telling the unit then to start pinging at that rate.

MS. McCAWLEY: I am not on your committee. I guess my question is are there some units that the fishermen have that do not have the ability to ping at the higher rate and that unit automatically needs to be replaced? Regardless of crossing the boundary and into the area, they just don't have the ability to ping at the every five-minute rate?

MR. KEJONEN: Yes; and I believe that is the Boatracs Unit that doesn't have that ability. Now the other units do have that capability, but they would have to be hard-coded into the antennas.

MS. McCAWLEY: Maybe you don't know how many of the units on these vessels are going to need to be replaced; and I guess my other question is, is there still money in that fund where folks could get a partial reimbursement for their VMS unit depending on which one they chose? I'm just curious.

MR. KEJONEN: I believe there are 22 Boatracs units that would need to be replaced, and I am not certain about the reimbursement of funds. I was told that there may be some money, but it would be on a first- come, first-served basis; but I would have to check on that to make sure.

MS. McCAWLEY: I think that this all started because we received a question from a fisherman about what the outreach was going to be to the folks about the VMS units and everything. Do you have a plan yet – and maybe you don't know this since you're dealing more in the Gulf; but do you know if there is an outreach plan to the fishermen and a plan to talk to these particular people or talk to the fishermen as a whole or send them some materials or what?

MR. KEJONEN: I don't know what the outreach plan is; but typically whenever there are new regulations that go in place, the Office of Law Enforcement does go out and do outreach before any violations are issued and take the steps to make sure that everybody is aware of the changes in the regulations to the best that we can.

MR. BELL: This sounds like the transition to this is some people are going to have to buy some new equipment.

MR. HARTIG: I think one thing that was a little bit bothersome is that as a vessel approaches an MPA, what I had heard before was the ping rate was increasing as you approached that MPA. If that is not the case; that is a problem. I would hope somehow, if we can, that as a vessel approaches an MPA, the ping rate is increased; and then as they go through at some level that you already know, five minutes or whatever it is; but the difference between an hour and ten minutes or five minutes is substantial for a trawl vessel in an area that we don't want them in.

They could have incursions that could be catastrophic in that amount of time. Somehow in this situation we need to figure out as you approach the MPA your ping rate increases. As you're moving through it, it can be at whatever level you have that you think is appropriate; but somehow between an hour and five or ten minutes, there has to be a difference as you approach that MPA.

MS. McCAWLEY: My other question, also one from ignorance; can you explain to us how the ping rate is enforced now or maybe there isn't a regulation out there that has a particular ping rate or how you plan to enforce the ping rate that is in the amendment?

MR. KEJONEN: I can't answer whether there is a regulation regarding the ping rate on the units; but right now they ping at every hour, and the vTrack System allows us to watch those vessels on an hourly basis where they're at to give us a track line; and usually even from the hour rate we can usually tell fishing patterns in a lot of the fisheries just by the activity of the pings and where they're located.

MS. McCRAWLEY: I guess my question is if you suspect some type of violation; then do you just meet that boat at the dock; do you call them up later and say here's your ticket? I'm just curious how this works.

MR. KEJONEN: Well, in the Gulf of Mexico we've made several cases off VMS, and a lot of them relate to the use of live bait in the HMS Fishery. What these vessels do is they will stop at known live bait sites, which are typically oil rigs offshore or platforms offshore. They will fish for live bait for 24 to 48 hours, load the boat up, they have live wells on the boat, and then they go out and they fish pelagic longline with the live bait.

We can tell from that pattern when they hit those known areas what they are usually up to, so what we'll do is send a boat out; and usually what we would like to do is find the gear and just not the boat so we can prove that they were fishing with the gear. Then you pull up the gear, find the live bait on the gear, and then you wait until they come back in and then you make your case. You can make cases on just VMS data alone. Obviously, you've got some other work involved to support the violation, but the VMS is an excellent tool for getting you where you need to be.

MR. BROWN: I had a different question, but you just said something that kind of peaked my interest; so it is illegal to use live bait on longlines in the Gulf?

MR. KEJONEN: Correct.

MR. BROWN: Wow! It is different in different areas, obviously, because when we were talking all the dolphin stuff, I was talking to one of the longliners and they were telling me how they do that in Hawaii and Trinidad and certain areas. They buy a large amount of goggle eyes and fish for them. I didn't know it was illegal in the Gulf. Anyway, so who monitors the ping rate? Where is the facility that actually monitors it; and is it on a 24-hour basis or is it only like a daytime basis, and is it recorded? How does that work?

MR. KEJONEN: Every region has their own VMS monitoring teams and VMS enforcement and technicians. In the Southeast Region they are located in the Southeast Regional Office in the Office of Law Enforcement; and they are monitored 24 hours in a day or 24 hours a day in the fact that data is always reporting.

They typically work 8:00 to 5:00 or whatever their working hours are; and then you can always go back and check the data or you can check the data remotely and see where they are pinging, too. You can get that software on your laptop or on your own computer.

MR. PHILLIPS: The boat; do they know when that hourly ping goes out? Do they know that some way? Partially what I'm thinking is say if you are dragging on a line and the ping goes out and you think, okay, I've got an hour; I could drag inside and then get back out ten minutes before my next ping goes off. But if they don't know when the ping rate is going, they don't know – they probably wouldn't take that chance. That is a possibility. I don't think it happens, but it is a possibility.

MR. KEJONEN: I would think that they probably wouldn't, because I think it would start when the VMS unit is turned on. It is not like it is at 12:00 o'clock, then 1:00 o'clock, then 2:00

o'clock. I think it is whenever that unit is turned on and then every hour from that point on it would ping; so I guess maybe if they knew.

MR. DiLERNIA: I'm curious as to why they can't use live bait on the longlines in the Gulf; could you tell me why?

MR. KEJONEN: Yes, to help reduce billfish bycatch.

MR. DiLERNIA: Okay. Before the committee closes, Mr. Chairman, I do have some more information on the operator permits in GARFO, if you want to know.

MS. SMIT-BRUNELLO: Just a couple of things and then a suggestion. Right now, Jessica, the regulations state that among other things when you're in the Oculina Bank HAPC you have a VMS minimum ping rate of one ping per five minutes. It is in the regulations. Of course, those just went into effect last month.

The other thing is if you will remember when we put out the proposed rule for Coral Amendment 8, or you may not remember, but we thought some of these units were going to have to be replaced; but then we got information that that wasn't the case and those fishermen with Boatracs wouldn't need to replace their VMS units, so that is what the final rule stated. I think maybe we could do a little recon, so to speak, before we come back for the full council report and see if we could find out whether law enforcement still has that fund with money in it to replace VMS units and try to get you a little more information on that.

MR. BELL: That would make sense to me.

MS. BURGESS: Monica, could I add one more thing to that recon? I've had the regulations in front of me, too, and it is a little different how I read it. It says for the purpose of the paragraph – and I am going to break away from that for a second. The idea is that you can transit through the Oculina with rock shrimp aboard as long as it is continuous transit.

The regulation says, "For the purpose of this paragraph, transit means a directed nonstop continuous course maintaining a minimum speed of 5 knots as determined by an operating VMS and a VMS minimum ping rate of one ping per five minutes." That ping rate is used to prove that you are in continuous transit. If your ping rate doesn't click on to that once every five minutes until you are well into the area, can you prove continuous transit?

MS. SMIT-BRUNELLO: Well, you've asked a good question, and I don't have a case before me right now. I used to prosecute cases, but I don't do that anymore. I guess transit – one of the reasons that you allowed transit; as you remember we discussed this earlier in the week with that other Oculina issue about gear stowage. This is how we've interpreted the regulations, and I guess I am going to leave it up to our enforcement attorneys to talk about what you need to prove the violation.

One idea was for them to be able to have rock shrimp in the Oculina HAPC. It was almost a three kind of thing or two with transit. You had to maintain your speed of 5 knots; and that was as determined by the VMS ping rate of five minutes; and then you had to stow your fishing gear, and that meant gear out of the water. We've talked about that earlier this week, but, Jessica, I am

not sure how to answer your question of how I could prove a violation, but we'll try to get you more information.

MR. BELL: Maybe we let Monica do a little more research. I am still kind of struggling for a sense of is there an action that needs to be taken or do we need to fix something? Maybe we could research a little bit more in terms of some aspects of this. Any other issues? We'll kind of hear a little bit more about this in full council. Are we good right now on this particular topic? Okay, I've got one more area that Jessica wanted to cover; and then, Tony, did you have something really quick that you wanted to input here related to GARFO?

MR. DiLERNIA: Yes, regarding the operator's permits; before Dr. Crabtree puts a sign on his door that says for free permits go north, let me just point out that the operator's permits in the GARFO area specify the critters you are fishing for and none of the species in the South Atlantic Region are listed on that operator's permit. Okay, the operator's permits say sea scallops, multi-species, spiny dogfish, monkfish, lobster, herring, surf clam, quahog, mackerel, eligo, elects, butterfish, scup, black sea bass, golden tile, skates, red crab and bluefish.

MR. BELL: Maybe no free permits. Jessica, what was it you wanted to bring up as an additional item?

MS. McCRAWLEY: I'll just talk to you about it; and then if it needs to come up before the full committee, then I can do that in full council, but I'll talk to you about it offline.

MR. BELL: Okay, great. Any other business to come before the committee? Seeing none; then we'll adjourn the Law Enforcement Committee.

(Whereupon, the meeting was adjourned at 11:55 o'clock a.m., September 16, 2015.)

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**South Atlantic Fishery Management Council –
September 2015 Council Meeting
Hilton Head Island, SC**

Date: Thursday, September 17, 2015

Committee: Law Enforcement

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