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Office of Inspector General



**NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION**

*NMFS Should Take a Number of Actions to
Strengthen Fisheries Enforcement*

Final Inspection Report No. IPE-15154/March 2003

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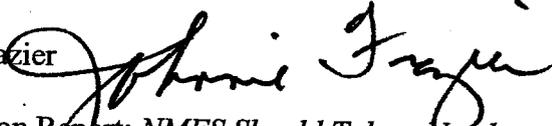
MAR 31 2003



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

MEMORANDUM FOR: Conrad C. Lautenbacher, Jr.
Under Secretary for Oceans and Atmosphere

William T. Hogarth
Assistant Administrator for Fisheries

FROM: Johnnie E. Frazier 

SUBJECT: Final Inspection Report: *NMFS Should Take a Number of Actions to Strengthen Fisheries Enforcement (IPE-15154)*

As a follow-up to our February 25, 2003, draft report, this is our final report on the National Marine Fisheries Service's enforcement efforts. Our review focused on the enforceability of fishing regulations in the fishery management plans and the Office of Law Enforcement's methods of enforcement. The report includes comments from NOAA's March 31, 2003, written response to our draft report. A copy of the entire response is included as an attachment to the report.

We were impressed with the professionalism and dedication of the workforce devoted to protecting marine resources. However, our report outlines a number of concerns about the fisheries regulatory and enforcement process that we believe require attention and improvement. Our report contains a number of recommendations to address our concerns (see page 34).

We are pleased that NOAA has agreed with all of our recommendations, and that you have begun to take action on many of them and provided anticipated completion dates for the recommendations. As such, we ask that you provide an update on your action plan by December 31, 2003.

We thank the personnel in NOAA, including Dr. Hogarth and the Office for Law Enforcement personnel both in NMFS headquarters and in the field offices, for the assistance and courtesies extended to us during our review. If you have any questions about our report or the requested update of your action plan, please contact me on (202) 482-4661, or Jill Gross, Assistant Inspector General for Inspections and Program Evaluations, on (202) 482-2754.

Attachment

cc: Dale J. Jones, Chief, Office for Law Enforcement

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EXECUTIVE SUMMARY

The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) is responsible for managing, conserving, and rehabilitating marine resources within the United States. NOAA's National Marine Fisheries Service (NMFS) is charged with rebuilding and maintaining sustainable fisheries, promoting recovery of protected species, and protecting the health of coastal marine habitats.

The Magnuson-Stevens Fisheries Conservation and Management Act of 1976 placed under federal jurisdiction all living and nonliving marine resources within 200 miles of U.S. coastline, in what is now known as the U.S. Exclusive Economic Zone (EEZ). The act instituted a regional management system to allocate harvesting rights to domestic fisheries and gave responsibility for fisheries management to the Secretary of Commerce (through NMFS) and eight regional fishery management councils. The councils, along with NMFS, prepare fishery management plans that govern domestic fisheries in the EEZ.

NMFS's Office for Law Enforcement (OLE) and the U.S. Coast Guard share responsibility for enforcing federal and council-established regulations designed to protect and conserve marine resources in the EEZ. The Coast Guard primarily handles enforcement at sea. OLE focuses on shoreside enforcement, which includes dockside monitoring and investigative work. In addition, a number of state-level marine enforcement agencies have signed agreements with NMFS and receive federal funds to help enforce federal fisheries regulations.

OIG's Office of Inspections and Program Evaluations conducted a review of NMFS enforcement efforts, focusing on the enforceability of fishery management plans and OLE's corresponding methods of enforcement. We examined OLE's role in the council process; the emerging role of coastal states and territories in federal fisheries enforcement; and the status and importance of information sharing within NMFS, across federal and state enforcement agencies, and with the public. Our major findings are summarized below.

Greater consideration should be given to ensuring fishery management measures are more understandable and enforceable. Fishery management plans are the blueprints for marine protection and conservation. They specify the regulations that govern fisher/vessel activity in a particular area of the EEZ. The Magnuson-Stevens Act sets 10 national standards for fishery management plans, but many of the standards address competing interests. For example, the councils and NMFS are charged with preventing overfishing (usually accomplished by limiting some type of fishing activity) while minimizing the economic impacts of fishing restrictions on fishing communities. We believe that in trying to meet the national standards and regional fishery priorities, complex plans with numerous regulatory exemptions are created, which are often confusing to fishers and difficult for the Coast Guard and OLE to enforce.

NMFS and the councils need to work closely to promulgate measures that are more straightforward and are thus understandable, enforceable, and effective. Once exemptions are introduced, the measure becomes more difficult for fishers to follow and agents to enforce. For example, a measure prohibiting fishing in certain areas of the sea (“closed areas”) is most effective when it applies to all vessels, covers an area that is clearly demarcated, is of sufficient size, and is identified by exact latitude/longitude specifications. For more examples of the actions that can be taken to strengthen management measures, refer to Appendix A on page 36.

We believe that in attempting to meet national standards, the councils and NMFS appear to sometimes lose sight of how or whether the plan can be implemented and enforced. Thus, we recommend that NMFS prepare guidance that will help the councils formulate more enforceable measures (see page 9).

The council planning process would benefit from greater fishery enforcement expertise. As the only federal organization dedicated full-time to salt-water fisheries enforcement, OLE has substantial fisheries enforcement expertise that should be helpful to the fishery management councils. We believe OLE’s involvement in the council planning process is necessary for ensuring that enforcement issues are adequately considered early in the planning process. OLE’s primary option for participating in the council planning process is via involvement with a council’s law enforcement committee and/or advisory panel. These groups provide a good forum for raising enforcement concerns associated with management measures the councils are considering. However, the role and influence of the committees and panels vary: some do not meet regularly, and some do not give proper focus to enforcement issues or do not provide input early enough in the planning process to have an impact on council decision making. We identified a number of helpful practices used by some of the groups that would enhance the effectiveness of all in communicating enforcement concerns to their full councils.

To strengthen the role of the law enforcement committees and advisory panels, (1) NMFS should develop and implement guidance that helps ensure that these bodies have clearly defined roles, meet regularly, and give proper focus to enforcement issues, and (2) OLE should seek greater involvement on the committees and adequately represent enforcement matters at council meetings (see page 13).

NMFS should work with the councils to make greater use of vessel monitoring systems to monitor closed areas. Closing areas to certain fishing activities or equipment has proven to be a successful strategy for rebuilding stocks, and its use will likely increase. OLE and the Coast Guard are responsible for monitoring federally closed areas. Many council plans require fishing vessels to install a vessel monitoring system (VMS) so that OLE can monitor fishing activity electronically—24 hours a day, 7 days a week.

VMS is implemented differently across the country. Although OLE has a national VMS team, it can go only so far to promote the use of VMS. Thus, more leadership from NMFS is needed to ensure lessons are learned and VMS best practices are shared across

the councils and NMFS regions. In addition, the high cost of VMS, a general industry aversion to such electronic monitoring, and the inequitable distribution of VMS costs have generated some continuing resistance to using the technology. Fishers are well aware that NMFS shares VMS costs in some areas, pays them entirely in others, and looks to fishing vessels to bear all costs in still other fisheries. We recommend that NMFS become more proactive in addressing fisher concerns and develop a strategy for implementing VMS in various NMFS regions.

As VMS use has spread, some marine scientists have realized the research value of tracking aggregate fishing activity and have considered developing separate VMS systems for scientific inquiry. Monitoring for scientific purposes would likely be less expensive than monitoring for enforcement because it would not require real-time vessel position transmission. However, requiring ships to carry two sets of VMS equipment—one for enforcement and the other for science—would be problematic and expensive. We believe that NMFS science staff and OLE officials should explore the scientific application of current VMS technology, keeping in mind the unique requirements of enforcement as well as the needs and interests of science. We recommend that NMFS develop minimum standards that would satisfy both scientific and enforcement needs for future VMS applications (see page 16).

OLE should make optimum use of joint enforcement agreements with state marine enforcement agencies. Congress gave NMFS \$15 million in fiscal year 2001 to fund state assistance with federal fisheries enforcement in the EEZ. Once the appropriation was approved, OLE had to quickly develop and implement a program to distribute funding to the states. OLE uses joint enforcement agreements (JEAs) to transfer funds to participating coastal states. Currently, OLE has JEAs with 20 of 23 coastal states and territories that expressed interest in the program.

According to OLE and some of the JEA partners we spoke with, the joint initiative with the states and territories can fill some of the gaps left by a shift in federal enforcement priorities. However, we found that the JEA program is weakened by (1) lack of guidance regarding federal fishery enforcement priorities, the process for determining funding levels, and the funding options available; and (2) OLE's inadequate verification and documentation of state-submitted performance information. OLE needs to prepare clear and specific guidance for the JEA program that sets forth program goals, priorities, and requirements; spending guidelines; agreement approval process for allocating funds; and federal and state roles and responsibilities. OLE also needs to verify state reported performance and expenditures and conduct on-site program reviews (see page 20).

Fishery enforcement would benefit from increased information sharing and cooperation within NMFS and among federal and state agencies. Information is the backbone of enforcement—paper-based and electronic data systems can be used to detect suspicious activities and track repeat offenders. In addition, sharing information across office and agency lines, leads to productive, cooperative enforcement efforts. Thus, to have maximum impact, information should be made available and shared among fishery

management and enforcement organizations, including the various components of NMFS and federal and state agencies.

Within the NMFS regions, we found that data collection activities related to managing fisheries stocks did not always take into consideration enforcement information needs. However, NMFS's Northeast region has recently undertaken an initiative that is addressing the data collection and dissemination needs of the various NMFS data users. The region is exploring methods for electronically collecting and integrating data on vessel permit applications, fisher logbook (i.e., catch) information, and dealer reports to determine which information other NMFS offices use and then develop a common collection format for sharing the data. We recommend that NMFS establish a working group or other mechanism to develop an integrated data collection system that would meet the research, fishery management, and enforcement needs of NMFS and the councils.

We also found problems with OLE's access to fishery observer data, an important source of potential violations. OLE agents who are collocated with observer staff in Alaska report closer working relationships with the observer staff, resulting in more observer-reported violations. NMFS should explore the possibility of collocating more agents with observer program staff whenever practical, and OLE should work with the program's officials to clearly articulate, in a policy statement or directive, what the observers' compliance role shall be and whether and how observer information will be shared. We also recommend that OLE officials address any concerns expressed by NMFS regional officials regarding the sharing of this data and develop guidelines for agents on its proper use. The OIG will also be looking at this issue further as part of its upcoming review of the Fishery Observer Program.

Finally, information from NMFS, Coast Guard, and state enforcement agencies, such as boarding data and prior fishery violations, is difficult to share across agency lines because of incompatible IT systems and because the Magnuson-Stevens Fishery Conservation and Management Act limits the circumstances under which most enforcement information may be shared with nonfederal agencies. While these barriers can be formidable, we believe NMFS and OLE should (1) work to improve access to law enforcement and other information that would help agencies target known violators and collaborate on cases, to the extent that it can, and (2) consider collocating OLE agents with their Coast Guard and state counterparts to facilitate better exchange of information and cooperative working relationships (see page 28).

On page 34, we offer recommendations to address our concerns.



In its March 31, 2003 response to our draft report, NOAA fully concurred with all eleven recommendations. NOAA also had a number of specific comments on several findings and recommendations in the report, including some suggestions for wording changes and points of clarification with respect to our interpretations and findings. We have made

changes to the final report in response to those comments on the draft report, wherever appropriate. A discussion of NOAA's response to each recommendation, including actions it intends to take and anticipated timeframes, follows each relevant section in the report.

INTRODUCTION

This report details our evaluation of the enforceability of fishery management plans developed by fishery management councils pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. We primarily focused on the various measures contained in the plans and the related enforcement actions taken by the National Marine Fisheries Service's Office for Law Enforcement (OLE). OLE is the office within the U.S. Department of Commerce's National Oceanic and Atmospheric Administration that is responsible for federal fisheries enforcement.

Program evaluations are special OIG reviews that provide agency managers with information about operational issues. A primary goal of these evaluations is to encourage effective and efficient operations, and thus eliminate waste in federal programs. By asking questions, identifying problems, and suggesting solutions, OIG hopes to help managers move quickly to address issues and deficiencies uncovered during the review. Program evaluations may also highlight effective operations, particularly if they are useful for agency managers or adaptable to programs elsewhere.

We conducted this review in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency, and under authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated May 22, 1980, as amended. We performed our fieldwork from March 15, 2002, through September 27, 2002. During the review and at its conclusion, we discussed our findings with the Chief and Deputy Chief of the NMFS Office for Law Enforcement and the NOAA Assistant Administrator for Fisheries.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our program evaluation sought to (1) assess the methods used by the Office for Law Enforcement to enforce fishery management plans developed by the eight fishery management councils, as well as the enforceability of the measures contained in the plans, and (2) identify best fishery enforcement practices used in different parts of the United States and other countries.

We used the following methodology to perform our review:

- **E-mail surveys.** We sent an electronic survey to 130 OLE agents and officers asking a number of questions related to fisheries enforcement. (Sixty-eight percent responded.) We also e-mailed a survey to and received responses from the executive directors of the eight fishery management councils.
- **Interviews.** We spoke with the chief and deputy chief of OLE, as well as with other headquarters staff, all five OLE divisional heads (special agents in charge), a number of regional agents, the five NMFS regional administrators, representatives from NMFS science centers, NOAA General Counsel for Enforcement and Litigation, Commerce General Counsel for Administration, and other NOAA and departmental officials. We also spoke with officials from the U.S. Coast Guard (representing

headquarters, several Coast Guard districts, and Coast Guard regional fishery training centers), U.S. Fish and Wildlife Service, and state enforcement agencies.

- **Fishery management councils.** We attended four meetings of fishery management councils (two Mid-Atlantic, one Gulf, and one New England) and spoke with council staff, council members, industry, and environmental groups present at the meetings and in subsequent interviews. We corresponded or spoke with the executive directors for the remaining five councils.
- **Review of fishery documents and relevant federal guidance and legislation.** We examined 39 fishery management plans developed by the councils and 20 joint enforcement agreements between OLE and coastal states. We also reviewed sections of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws, proceedings from the 1993 *Organisation for Economic Co-operation and Development* workshop on enforcement measures, NMFS and U.S. Coast Guard documents, and studies and reports on the vessel monitoring system.

BACKGROUND

The Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) is responsible for managing, conserving, and rehabilitating marine resources within the United States. NOAA's National Marine Fisheries Service (NMFS) is charged with rebuilding and maintaining sustainable fisheries, promoting recovery of protected species, and protecting the health of coastal marine habitats.

NMFS's Office for Law Enforcement supports NMFS's goals and NOAA's mission by protecting, conserving, and managing fisheries in federal waters. OLE's federal jurisdiction extends up to 200 nautical miles from the U.S. coastline, in what is now known as the U.S. Exclusive Economic Zone (EEZ).

OLE and the U.S. Coast Guard share responsibility for enforcing the regulations put in place to protect and conserve marine resources in the EEZ. The Coast Guard primarily handles enforcement at sea. OLE focuses on shoreside enforcement, which includes dockside monitoring and investigative work. In addition, 20 of 23 marine enforcement agencies in coastal states and the U.S. territories of American Samoa and Guam receive federal funds from NMFS to help enforce federal fisheries regulations. The remaining 3 JEA partners have funding requests pending.

Fisheries Management

The Magnuson-Stevens Fishery Conservation and Management Act (originally passed in 1976) was designed to manage fishing efforts within the EEZ. The act instituted a regional management system to allocate harvesting rights to domestic fisheries by establishing fishery management councils (FMCs) in eight regions. These regional councils, along with NMFS, have responsibility for preparing fishery management plans that govern domestic fisheries in the EEZ. The Secretary of Commerce must approve each plan.

Table 1: Fishery Management Plan Summary

FMC	No. of FMC plans	No. of Regulations
New England	5 ^a	46
Mid-Atlantic	6 ^b	52
South Atlantic	5	59
Gulf	7 ^c	68
Caribbean	4	36
Pacific	3	16
Western Pacific	4	39
North Pacific	5	23

Notes:

^a One plan is jointly managed with the Mid-Atlantic FMC.

^b One plan is jointly managed with the New England FMC.

^c Two plans are jointly managed with the South Atlantic FMC.

Source: OIG analysis of fishery management plans

Council membership, as established by the act, consists of individuals knowledgeable in the conservation and management of fishery resources in the geographical area concerned (e.g., commercial and recreational fishers), the NMFS regional administrator, and state fisheries managers. Representatives from the U.S. Coast Guard, U.S. Fish and Wildlife Service, and U.S. Department of State (for international treaty expertise)

are nonvoting members of each council.

The fishery management plans set forth measures for meeting conservation or habitat protection goals. Table 1 shows the number of plans developed and managed by each council, and indicates the number of regulations (that is, management measures) that are promulgated to implement each plan. Many of these regulations have multiple restrictions, thus the number of actual regulatory requirements in effect is much higher than the table reflects. Measures might include prohibiting fishing in a particular area, limiting the amount of fish that can be caught on a fishing trip, or regulating the type of fishing gear that can be used. Although the process for developing the plans includes public comment, the ultimate responsibility for determining the conservation and management measures implemented in the EEZ rests on the voting council members and the Secretary of Commerce.

Federal Fisheries Enforcement

Once plans are developed and published, OLE and the U.S. Coast Guard must enforce the hundreds of resulting regulations over an estimated 3.4 million square miles of ocean and 13,879 miles¹ of coastline that support the nation's \$24 billion fisheries industry. These agencies primarily use five methods of enforcement in a variety of combinations, depending on the fishery management measure involved:

- ***At-sea patrols***—enforcement officers board fishing vessels in the zone to monitor compliance with fishery management regulations.
- ***At-sea air patrols***—aircraft fly over large areas of ocean to observe and alert at-sea patrol ships of suspicious vessel activity.
- ***Dockside enforcement***—the off-loading of fishing vessel catch is monitored or compliance with gear restrictions is verified.
- ***Investigations***—any of a range of activities may be conducted, depending on the circumstance—from records' reviews (e.g., reviews of vessel catch reports) to undercover surveillance, often in combination with another enforcement method such as an at-sea boarding.
- ***Technology***—devices can be used to enhance enforcement efforts, such as vessel monitoring systems (VMS), which provide electronic data about a vessel's location via position and communication equipment placed on the ship.

Table 2 lists some of the more common fishery management measures implemented to rebuild stocks and protect marine mammals, and rates their enforceability via the five primary enforcement methods, as described by OLE and others involved in enforcement.

¹ The coastline figure includes both the 12,380 miles of coastline surrounding the 50 states and 1,499 miles attributed to the U.S. Virgin Islands, Puerto Rico, Northern Mariana Islands, Guam, and America Samoa.

Table 2: Enforceability of Selected Fishery Management Measures

METHODS OF FISHERIES ENFORCEMENT					
KEY	At-sea vessel	At-sea air	Dockside	Complex investigations	VMS
FISHERY MANAGEMENT MEASURES					
Closed Seasons -Specific times of the year during which fishing is prohibited.	★	○	○	○	○
Days-At-Sea -A specified number of days that a fishing vessel is absent from port to fish for, possess, or land regulated species.	✗	✗	○	★	★
Fully Closed Area -Areas of the sea where all vessels are prohibited.	★	★	✗	✗	★
Gear-Restricted Areas -Areas where the use and/or possession of specific fishing gear is prohibited.	○	○	✗	✗	✗
Gear Regulations -Prohibitions or requirements related to gear. "Gear" includes the methods and tools to harvest the resource, vessels, horsepower, number of traps, and gear modifications used to protect certain marine species (e.g., turtle excluder devices).	★	✗	○	○	✗
Individual Fishing Quota -Allocation of a specified amount of particular fish species to an individual, vessel, or group of vessels.	✗	✗	★	○	✗
Limiting Amount/Percent Bycatch Landed -Limits on the amount or percentage of nontargeted species allowed on board a fishing vessel.	✗	✗	○	✗	✗
Permits -Prohibits fishing for specific species unless authorized by the issuance and possession of a permit.	★	✗	★	★	✗
Prohibiting Bycatch Retention -Prohibits the retention of nontargeted species aboard fishing vessels.	○	✗	★	○	✗
Prohibited Species -Prohibits possession or retention of specific species.	○	✗	★	○	✗
Record Keeping & Reporting -Tracks fishing effort and catch as input to future management decisions (e.g., vessel logbooks).	○	✗	○	★	✗
Size Restrictions -Prohibits possession of fish below or above a specified size.	★	✗	★	○	✗
Bag/Possession Limits -Specifies amount of a particular species that may be landed per trip. Low volumes are generally measured by numbers of fish that can be easily counted on-board.	○	✗	★	○	✗
Trip Limits -Specifies amount of a particular species that may be landed per vessel per trip.	✗	✗	○	★	✗
Vessel Monitoring System -Requires vessels to keep a positioning transmitter (transponder) on board.	★	✗	○	★	★

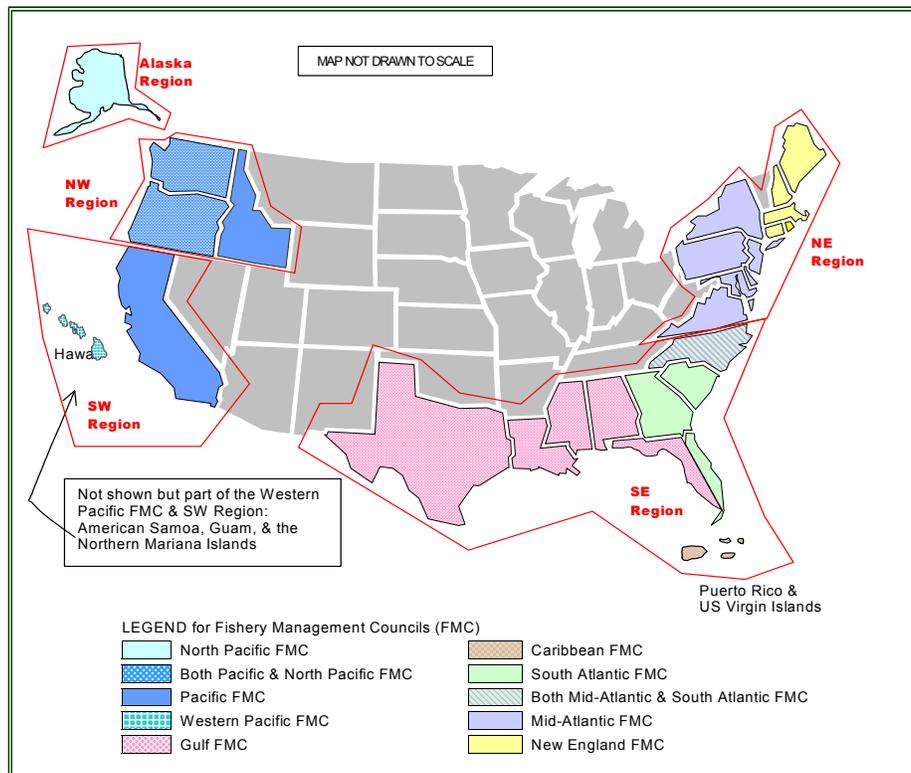
Source: OLE responses to OIG questionnaire, Coast Guard documentation, Atlantic States Marine Fisheries Commission documentation, and interviews.

OLE Structure

OLE is headquartered in Silver Spring, Maryland, and maintains 54 field offices throughout the United States. Five regional OLE divisions operate out of the five NMFS regional offices: (1) Northeast—Gloucester, MA; (2) Southeast—St. Petersburg, FL (3)

Northwest—Seattle, WA; (4) Southwest—Long Beach, CA; and (5) Alaska—Juneau, AK (figure 1).

Figure 1: Boundaries for NMFS Regions & Fishery Management Councils



Source: OIG

Note: The states of Washington, Oregon, and North Carolina are members of two councils.

OLE's staff of 200 includes 120 criminal investigators, 20 enforcement officers, and 60 technical and support personnel and program analysts. Special agents in charge (SACs) head each regional division and report directly to OLE headquarters, where the chief and deputy chief are supported by a staff of nine special agents, analysts, and support staff.

OLE Operations

OLE focuses on investigating civil and criminal violations of the 29 statutes that support NOAA's marine protection responsibilities. These include the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. §1801 et seq.), the Endangered Species Act (16 U.S.C. §1531 et seq.), the Marine Mammal Protection Act (16 U.S.C. §1361 et seq.), the Lacey Act (16 U.S.C. §3371 et seq.), and the National Marine Sanctuaries Act (16 U.S.C. §1431 et seq.).

OLE uses technology to meet some of its compliance and enforcement goals—primarily satellite-based remote vessel monitoring systems. Fishing vessels with VMS carry onboard transmitter units that send signals to a satellite, which in turn logs and interprets

the time and position of the signal and relays the data to computers monitored by enforcement officials on shore.

OLE relies on the Coast Guard and state marine enforcement agencies to patrol the waters in the EEZ and inspect ships suspected of illegal activity. Regardless of the organization that conducts the at-sea boarding, OLE investigates the majority of federal fishery violation cases. It also conducts onshore and dockside inspections with assistance from the states under two types of agreements. The first deputizes coastal state and territorial enforcement officials to carry out federal fisheries enforcement in the EEZ, and thus expands the state enforcement agency's jurisdiction to federal waters. Although cooperative agreements between NMFS and many coastal states have been in existence for well over 10 years, they were not fully utilized because state agencies lacked the personnel and equipment to enforce beyond their own boundaries. This hurdle was overcome in 2001 when Congress appropriated \$15 million to NMFS for a joint enforcement initiative between OLE and the states.

The second type of agreement—known as the joint enforcement agreement—was specifically developed to transfer the \$15 million to coastal states and territories for the purpose of federal fisheries enforcement. Congress first initiated the program in 1999, providing \$450,000 for the state of South Carolina. The success of the OLE-South Carolina partnership prompted Congress to fund joint enforcement initiatives with any U.S. coastal state and territory interested in participating. As of October 2002, 20 joint enforcement agreements have been approved.

Other activities. OLE's National Outreach Program uses the Community Oriented Policing & Problem Solving (COPPS) philosophy as the focal point for reaching target audiences. The outreach initiative, established in 1998, promotes voluntary compliance with fishery laws and regulations through public awareness and community interaction. For example, in California, OLE used COPPS to educate the public about regulations protecting the Hawaiian humpback whale. OLE gave presentations to schoolchildren, whale-watching tour operators, and others about appropriate whale-watching behavior, such as the minimum distance humans should be from the whales. As a result, there was a reduction in complaints about whale abuse from previous years that OLE attributes to its outreach efforts.

The agency also issues press releases on enforcement actions as part of its effort to educate the fishing community and other interested parties about fisheries laws and regulations. Such publicity has a deterrent effect. Initially we were concerned that the process for issuing press releases was extremely burdensome and lengthy, thus diminishing the timeliness and impact of enforcement events. However, since we started this review, OLE has made some improvements, and is now clearing time-sensitive press releases in 3 days (down from more than a week). We commend the actions taken so far to issue press releases in a more timely manner.



In its response to our draft report, NOAA indicated that Joint Enforcement Agreement funding was not available to tribes, as the OIG had indicated. The OIG had included the reference to tribes in its draft report based on the *Report on the Coastal and Ocean Activities Implementation Plan* that was provided to the House and Senate Appropriations Committees by the Department of Commerce Assistant Secretary for Administration and Chief Financial Officer on July 9, 2001.

Upon further review, it appears that initially the Department and OLE believed that tribes were eligible for funding. However, under the Magnuson-Stevens Fishery Conservation and Management Act and other authorities cited in the joint enforcement agreement that distributes the funds, this is not the case. The Magnuson Act defines the term “State” as each of the “several States, the District of Columbia, the Commonwealth of Puerto, American Samoa, the Virgin Islands, Guam, and any other Commonwealth territory, or possession of the United States.” Tribes are not included in this definition. We also reviewed the language in the appropriations bill and found that tribes were not specified for cooperative enforcement funding.

FINDINGS AND CONCLUSIONS

I. Fishery Management Measures Need to be More Understandable and Enforceable

Fishery management plans are the blueprints for marine protection and conservation activities. They contain measures that define regulatory actions designed to help conserve and rebuild a species' stock. According to the Coast Guard, next to the science behind a measure, enforceability is the single most critical factor in its success.

The process for developing plans is complicated and results in large numbers of regulations. The Magnuson-Stevens Act sets 10 national standards² for fishery management plans, but many of the standards compete with each other. For example, the councils and NMFS are charged with preventing overfishing (usually accomplished by limiting some type of fishing activity) while minimizing the economic impacts of fishing restrictions on fishing communities. In trying to meet national standards and regional fishery priorities, the councils and NMFS appear to often lose sight of whether and how a measure can be implemented and enforced. This results in complex plans with numerous regulatory exemptions, which are often confusing to fishers and difficult for the Coast Guard and OLE to enforce.

The OLE personnel and Coast Guard officers we spoke with all commented on the difficulties of understanding and enforcing complex regulations that frequently undergo revisions. Consider, for example, the 2003 Pacific coast groundfish regulations: these are summarized in three tables, each of which pertains to a specific gear type. Together, the tables list in excess of 90 trip limitations and gear requirements for more than 20 groundfish species. Table 3: Sample of Pacific Groundfish shows five lines of the 55-line table containing requirements for just one type of gear—limited entry trawl gear—for three Pacific groundfish species (dover sole, thornyhead, sablefish) in a fishery located south of the 40° 10' north latitude (N. lat.) to the U.S.-Mexico border. The table contains only 11 percent of the requirements for fishing with a limited entry trawl gear permit.

² 16 U.S.C. §1851 states that conservation and management measures should (in many cases, where practicable) prevent overfishing while achieving optimum yield; be based on the best scientific information available; manage individual stocks as units throughout their range; manage interrelated stocks as units; not discriminate between residents of different states; allocate privileges fairly and equitably; promote efficiency; allow for variations among and contingencies in fisheries, fishery resources, and catches; minimize costs and avoid unnecessary duplication; sustain fishing community participation and minimize adverse economic impacts; minimize bycatch and bycatch mortality; and promote safety of human life at sea.

Table 3: Sample of Pacific Groundfish Regulations for Limited Entry Trawl Gear

Species/ Groups	JAN-FEB	MAR-APR	MAY-JUN	JUL- AUG	SEP-OCT	NOV-DEC
DTS* complex –South ^{3/4/}						
Sablefish	6,000 lb/2 months		7,000 lb/2 months		6,000 lb/ 2 months	
Longspine thornyhead	8,000 lb/ 2 months	9,000 lb/2 months				7,000 lb/ 2 months
Shortspine thornyhead	2,300 lb/ 2 months	2,400 lb/2 months				2,200 lb/ 2 months
Dover sole	26,000 lb/2 months		25,000 lb/2 months		26,000 lb/ 2 months	

^{3/} Fishery is restricted to inside of 100 fm using small footrope trawls, except for July-August when the fishery is restricted to inside of 75 fm using small footrope trawls; or outside of a management line specified at 250 fm north of Point Reyes (38° N. lat.) except the line will be modified to incorporate some petrale sole fishing grounds during January-February and November-December

^{4/} Fishery is restricted to outside of 150 fm or inside 20 fm (in federal waters) with the following exceptions: (1) north of Point Conception (34° 27' N. lat.) to Cape Mendocino: small footrope trawls are allowed inside 50 fm during January-February and inside 60 fm during March-December; (2) south of Point Conception (34° 27' N. lat.): small footrope trawls are allowed inside 100 fm along the mainland coast (not including the Cowcod Conservation areas) year round; (3) north of Point Reyes (38° N. lat.): the deeper water fishery is restricted to outside of 250 fm (see footnote 3).

fm= fathom

*DTS=dover sole, thornyhead, sablefish.

Source: Pacific council website (<http://www.pcouncil.org/groundfish/gfcurr/2003/table3.pdf>)

This example is not unique. In the Gulf of Mexico, fishers for sharks and some 50 other species must know—for each species—the size limit, trip limit, fishing season, permit requirements, closed areas, and gear prohibitions and requirements.

Regulations that are difficult to understand or have multiple exemptions are harder to comply with and enforce. The Coast Guard, the New England Council’s Law Enforcement Committee, and the Atlantic States Marine Fisheries Commission have all independently prepared documents showing how compliance and enforceability directly correlate with the number and complexity of exemptions: the higher the number and the greater the complexity, the lower the ability to enforce and, presumably, the lower the measure’s success. Responses to our questionnaire to the OLE agents and officers also confirmed this.

For example, a closed season, which limits fishing during specific times of the year, is a clearly understandable and useful prohibition when there are no exemptions that allow fishing on certain days or in certain areas. Without such exemptions (1) at-sea boarding can be used to detect and stop violations as they occur; (2) dockside enforcement can detect a violation during off-loading; (3) at-sea air surveillance can detect vessels fishing in an area where the species occurs and coordinate a boarding or dockside check; (4) complex investigations can target suspect vessels by analyzing seafood dealer and vessel records, and where feasible, check for sales of the species at auctions or fish

markets (or check their records for sales of the species); and (5) VMS can monitor when vessels are leaving the port. When exemptions exist, only at-sea enforcement vessels and air patrols can adequately document the exact time and location of fishing, and thus determine whether a violation occurred. While councils typically include exemptions to ameliorate the adverse economic impact of regulations on fishing communities, these concessions often undermine a plan's ability to attain its overall conservation and management goals.

There is no overall guidance to the councils to assist them with formulating enforceable fishery management measures. NMFS needs to take a leadership role to ensure that the councils (1) consider the enforceability of different measures and (2) when weighing multiple options, let a measure's clarity and enforceability in a specific fishery be a factor for its selection.

The fishery management councils, NMFS, and OLE should work closely to develop measures that are both clear and enforceable. For example, a number of actions can be taken to simplify and aid enforcement of most management measures, such as the following:

- Closed areas are most effective if they are off limits to all vessels, have a clearly defined shape with straight lines, and specify exact latitude and longitude. The area should also be large enough to make patrolling feasible. In addition, if vessels are allowed to transit through the closed area, they should be required to stow fishing gear and transit through the area in designated lanes. Designated lanes allow for better remote monitoring and enable air and sea patrols to target their resources on those vessels deviating from the transit lanes.
- Gear restricted areas and gear regulations are more enforceable when the "possession" of gear is restricted. Restricting the "use" of gear (i.e., fishers are allowed to carry the gear on board but not use it) limits the method of enforcement to at-sea boardings when the gear is deployed and hauled on-board. This is impractical for both the fisher, who should not be expected to stop fishing, and the at-sea patrol, which should not have to wait until the fisher is ready to haul the gear on-board.
- Prohibited species regulations are most effective if there are no exemptions as to how or where fish are taken.

(See appendix A for additional actions that can strengthen enforcement of fishery management measures.)

RECOMMENDATION. NMFS should prepare guidance that will help the councils formulate more enforceable measures



NOAA concurred with the recommendation. In its response, NOAA reported that the NMFS Office of Law Enforcement has, in the past, drafted and disseminated such guidance to some of the fishery management councils. However, NMFS has agreed that it will now prepare enforcement guidance for each council. These documents will be tailored for the fisheries in each region and will be produced with input from its enforcement partners and other stakeholders. NMFS anticipates completing distribution of the enforcement guidelines to the councils by December 1, 2003.

II. The Council Planning Process Would Benefit From Greater Fishery Enforcement Expertise

OLE should seek greater involvement in council activities so as to be proactive in educating fishery management councils about the enforceability of measures they are considering. As the only federal organization dedicated full-time to salt-water fisheries enforcement, OLE has substantial fisheries enforcement expertise. Currently, most special agents in charge, or their designees, attend council meetings and are members of council subcommittees or advisory bodies that consider enforcement issues. However, the role and influence of the committees and panels vary: some do not meet regularly, and some do not give proper focus to enforcement issues or do not provide input early enough in the planning process to have an impact on council decision making.

Law enforcement committees/advisory panels

All fishery management councils have either a committee or an advisory panel on law enforcement, or both, whose purpose is to communicate enforcement issues and concerns to the full council. Committee members are usually council members. Panels typically draw their membership from state and federal marine enforcement experts, but may include council members and other federal enforcement specialists, such as representatives from the U.S. Department of Interior Fish and Wildlife Service or NOAA's Office of General Counsel. Representatives from OLE and the Coast Guard usually sit on either the law enforcement committees or advisory panels. The type and level of activity of these committees and panels vary.

- The **New England** council has a law enforcement committee that has not met in more than a year but has in the past prepared and distributed enforcement guidance to council members.
- The **Mid-Atlantic** council has an active law enforcement committee whose primary activities appear to be general enforcement education and award presentations to the Coast Guard for its enforcement efforts.
- The **Gulf of Mexico** council has a law enforcement committee and an advisory panel. The committee focuses on general enforcement policies, while the panel evaluates specific provisions of draft amendments and other aspects of enforcement.
- The **Caribbean** council has a law enforcement committee that reviews, monitors, and makes recommendations on proposed measures and regulations.
- The **South Atlantic** council has a law enforcement committee and a law enforcement advisory panel, although the division of responsibilities between the two is unclear: both provide advice and guidance on proposed fishery management provisions.
- The **Western Pacific** council has two standing committees, one on enforcement and the other on closed-area vessel monitoring.

- The **Pacific** council has an advisory panel consisting of enforcement specialists who meet prior to council meetings.
- The **Northern Pacific** council has an enforcement committee that is activated “as-needed.”

These committees and panels provide a formal mechanism for OLE to voice enforcement concerns to the councils. However, these bodies are not always effectively raising enforcement problems or identifying ways to make regulations more enforceable. NMFS should take steps to strengthen the influence of the committees and panels and expand their role, wherever possible, to ensure that enforcement is adequately considered during the fishery management planning process. In addition, OLE agents should seek ways to expand their involvement in the committees and to sharpen their focus on enforcement issues.

Our review identified a number of noteworthy practices that some law enforcement groups use to promote adequate attention to enforcement issues among council members. NMFS should consider promoting the use of these practices by all eight councils and law enforcement committees/panels.

Regularly scheduled advisory panel meetings. While all councils have a law enforcement committee or panel, we found that some do not meet regularly, and in at least one case, has not met in three years. The advisory panels for the Pacific, Western Pacific, and Gulf of Mexico councils meet regularly for the purpose of informing their councils about plan-related enforcement issues. The Pacific and Western Pacific panels hold their meetings prior to or the evening of council meetings, ensuring that members will be present and available. The Gulf panel holds semiannual meetings that are announced in the federal register.

Multiagency involvement. The Gulf panel draws its membership from a broad base—law enforcement officers from the Gulf states, as well as representatives from OLE, the Coast Guard, the U.S. Fish and Wildlife Service, and NOAA’s Office of General Counsel. The General Counsel’s involvement brings a unique perspective to enforcement issues that council members might not normally consider.

Voting chair. A voting council member (i.e., not OLE or the Coast Guard) chairs the New England council’s law enforcement committee to ensure that committee views are adequately voiced at council meetings. An OLE representative is vice chair, thereby bringing federal enforcement expertise and continuity to committee and council deliberations. As mentioned earlier, the Coast Guard is an official though nonvoting member of all eight councils, thereby lending its expertise in both fisheries enforcement and vessel safety. However, the Coast Guard has numerous missions, including search and rescue, boat safety, drug interdiction, and alien migrant interdiction, all of which may supersede fisheries enforcement as a regional priority or on a daily basis. Moreover,

Coast Guard officers rotate assignments every 2 years, and therefore may not consistently have the expertise, at least initially, to adequately represent enforcement concerns.

Charter. Only the Pacific advisory panel has a well-documented charter explaining its objectives, membership, election, attendance, and reporting procedures. The charter clarifies the purpose, roles, and responsibilities of the group and defines how it will function.

Designated time on council meeting agenda. The Pacific panel has a standing time slot on the full council's meeting agendas to allow for discussion of enforcement concerns.

Precepts document. The New England law enforcement committee issued guidance to council members for preparing enforceable fishery management plans. The precepts and subsequent addendum contained advice similar to that found in this report—keep regulations simple and avoid exemptions.

OLE participation early in the planning process. The New England council informed us that it will soon assign OLE agents and Coast Guard officers to monitor the committees responsible for developing the initial management measure options. Many decisions impacting enforcement are deliberated early in the fishery management planning process. Involving enforcement experts early will facilitate consideration of a potential measure's enforceability during the council deliberation process and increase the likelihood that the council's plan will reflect these considerations.

RECOMMENDATION. To strengthen the role of the law enforcement committees and advisory panels, (1) NMFS should develop and implement guidance that helps ensure that these bodies have clearly defined roles, meet regularly, and give proper focus to enforcement issues, and (2) OLE should seek greater involvement on the committees and adequately represent enforcement matters at council meetings.



NOAA concurred with the recommendation and, through the Regional Administrators and the OLE Special Agents in Charge, will communicate the need to strengthen law enforcement committees and panels to the councils. Since the councils, their chairs, and the council executive directors are key to the implementation of this recommendation, NOAA predicts that it will take time to thoroughly address the recommendation. It anticipates that the recommended actions will be completed by April 15, 2004.

III. NMFS Should Work With the Councils to Make Greater Use of Vessel Monitoring Systems to Monitor Closed Areas

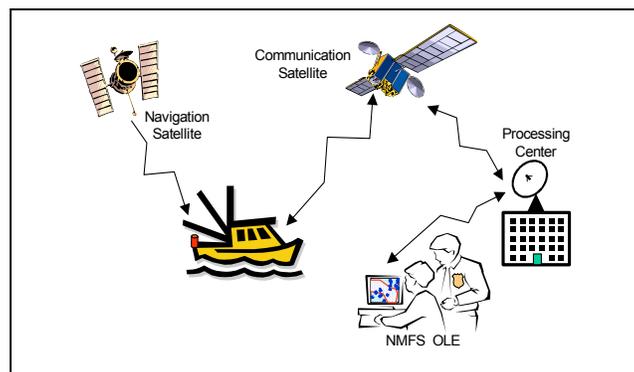
OLE and the Coast Guard are responsible for monitoring closed (“marine protected”) areas in the EEZ, most of which have gear or fishing restrictions to protect habitats, species, and fishery stocks, and/or promote species recovery. Closing areas to certain activities or equipment has proven to be a successful strategy for rebuilding stocks, and its use will likely increase. In the past, the best methods for monitoring closed areas have been at-sea vessel and air patrols. However, these patrols are expensive and limited in that at-sea air patrols only assist by directing Coast Guard cutters to potential illegal activity and at-sea patrols are not around-the-clock and may only cover a small portion of a closed area. Dockside monitoring is unreliable for determining catch locations for three reasons: (1) it depends on fishers’ self-reporting—yet those who knowingly fish in an illegal area are unlikely to acknowledge it, (2) it is time consuming—overseeing a vessel unload its catch takes several hours, and (3) it is limited—an enforcement officer can only monitor one vessel at a time.

A vessel monitoring system or similar technology can enhance enforcement of a closed area regulation by enabling NMFS to monitor the location of multiple vessels inside the area 100 percent of the time.

VMS operations

Ships equipped with VMS have electronic devices onboard that receive positioning data from a navigation satellite and transmit the data to a communications satellite, which in turn relays the information to a land-based station. The land station then transmits the data to OLE. Some systems support two-way communications between the vessel and OLE or other outside entities (see figure 2). In these instances, the VMS equipment is linked to a personal computer that receives navigational information and transmits it to OLE via a secure two-way communications hookup. OLE is able to electronically notify the vessel if it is in or approaching a closed area. The two-way communications system has won over many fishers who were initially opposed to VMS because it also allows contact with corporate offices and home-based computer systems.

Figure 2: Vessel Monitoring System



Source: OIG

VMS technology was piloted in Hawaii in June 1994, prompted by a requirement in the Western Pacific council's fishery management plan that all pelagic longline ships carry and use such systems as a condition of obtaining a permit to operate from Hawaii ports. Because Hawaii's VMS application was a pilot, NMFS has paid all equipment, installation, repairs, and data communication costs since the program's inception, while the vessels have covered the cost of any non-VMS communications.

The number of VMS programs has since grown, and the councils and OLE have proposed instituting still more programs (see table 4).³

Table 4: Vessel Monitoring System Programs (Current and Proposed* as of October 2002)

Fishery Management Plan/Species	Estimated No. of Vessels	Equipment Costs paid by:	Communication Costs paid by:	OLE Division	Fishery Management Councils
Atlantic sea scallop	284	Vessel	Vessel	Northeast	New England
Atlantic herring	26	Vessel	Vessel	Northeast	New England
Northeast groundfish	42	Vessel	Vessel	Northeast	New England
Atlantic highly migratory species	300	Vessel	Vessel	Southeast	N/A
South Atlantic rock shrimp*	400	Vessel	Vessel	Southeast	South Atlantic
Reef fish*	165	Vessel up to \$1,200	Vessel	Southeast	Gulf
Pelagic fisheries of the Western Pacific	125	NMFS	NMFS	Southwest	Western Pacific
Lobster	15	NMFS	NMFS	Southwest	Southwest
Krill	1	Vessel	Vessel	Southwest	N/A
Limited-entry groundfish*	500	Vessel	Vessel	Southwest/ Northwest	Pacific
Alaskan groundfish	500	Vessel w/rebate	Vessel	Alaska	North Pacific
Mackerel	8	Vessel	Vessel	Alaska	North Pacific

Source: NMFS Office for Law Enforcement, fishery management plans, U.S. Coast Guard.

Each council, with the NMFS region and OLE, is responsible for defining VMS standards for specific VMS applications. As a consequence, time is spent defining the protocol, equipment and costs for every VMS program. Although OLE has a national

³Monitoring systems are initially proposed during fishery management plan deliberations. Implementation depends on plan approval; thus many plans may be in the "proposal" phase for several months.

VMS team, it can go only so far to promote the use and consistent application of VMS. Thus, more leadership from NMFS is needed to ensure lessons are learned and best practices are shared across the NMFS regions.

In most cases, vessels pay the bulk of VMS costs, which can be substantial: the price of equipment ranges from \$2,500 to \$6,000; installation costs \$750; and annual maintenance and communications expenses are approximately \$1,750. The high cost of VMS—coupled with the industry’s general aversion to such government intrusion—has generated some continuing resistance to using the technology. Exacerbating fisher reluctance is the inequitable distribution of VMS costs. Fishers are well aware that NMFS shares costs in some areas and pays them entirely in others. In Alaska, for example, fishers can obtain a \$2,000 cash rebate for equipment costs, while the VMS proposal pending in the Southeast calls for the government to pay costs over \$1,200. In New England, fishers pay for equipment, installation, and communications.

OLE’s costs to support VMS go up as the system’s use expands to additional fisheries or as a fishing fleet expands. For a single fishery, OLE’s up-front system costs are approximately \$40,000, and annual maintenance costs are about \$11,000. As vessels are added to a system, OLE incurs additional costs and must then increase funding to cover equipment and staff expenses. OLE estimates that one VMS technician is needed for every 300 vessels equipped with the system, and one enforcement agent is needed for every 750 vessels. However, dollar for dollar, VMS is more cost-effective than traditional methods of surveillance—the system can monitor fleet activities 24 hours a day, 7 days a week at a fraction of the cost of Coast Guard at-sea air and vessel patrols. Thus, while a VMS program creates new costs and increases OLE’s workload, it enables more effective use of other federal assets.

RECOMMENDATION. NMFS should develop a strategy for implementing VMS across the regions.



In response to the draft report, NOAA stated that progress has already been made with this recommendation—both the equipment infrastructure and personnel support are in place. As a next step, NMFS anticipates reviewing all of the fishery management plans to determine where VMS could best support fishery compliance efforts and then passing that information on to the councils and key stakeholders. An April 15, 2004 deadline has been set to accomplish these tasks.

Scientific use of VMS information

As VMS use has spread, scientists have realized the research value of tracking aggregate fishing activity, and at least one council (the Gulf council) has considered using a monitoring system to facilitate scientific inquiry. Monitoring for scientific purposes would likely be less expensive than monitoring for enforcement because scientists would probably not need the real-time positioning information that OLE requires. However, requiring ships to carry two sets of VMS equipment—one for enforcement and the other

for science—makes little sense, and neither the fisher nor NMFS should be expected to bear the additional costs.

RECOMMENDATION. NMFS should develop minimum scientific and enforcement standards to be used for NMFS vessel monitoring applications.



While NOAA agreed with the recommendation, it expressed concerns about scientific data collection needs potentially superseding VMS enforcement functions. NOAA stated that VMS is an important *enforcement* tool and that, where appropriate, scientific applications should be included in future VMS applications. This also assumes that scientific applications will consider existing or future enforcement applications of VMS. The OIG concern is that scientific vessel tracking applications will be considered and applied outside of the existing VMS infrastructure.

Since OLE is a relatively small enforcement office exists within a large, scientific organization, it is important that NOAA ensure that VMS enforcement requirements are not diminished. However, the data needs for protecting and managing the resources cannot be ignored. NOAA and NMFS must find a way to balance the needs of the agency to protect and manage resources while ensuring compliance with regulations that are designed to achieve the same management goals. Such cooperative efforts should also be geared to ensure that the efforts of both government and industry are not duplicative. NOAA's anticipated completion data for development of the VMS standards is October 31, 2004.

IV. OLE Should Make Optimum Use of Joint Enforcement Agreements with State Marine Enforcement Agencies

Federal funding for state enforcement of federal fishery laws is extended under joint enforcement agreements (JEA). Funding was first used for this purpose in fiscal year 1999 when Congress provided NMFS with \$450,000 to support South Carolina's participation in the federal enforcement effort. Congress provided another \$500,000 for that state in FY 2000; and in FY 2001, it gave NMFS \$15 million to provide funding to all coastal states and territories interested in assisting with federal fisheries enforcement.⁴

NOAA and OLE were under considerable time constraints to initiate and develop a joint enforcement program and to quickly allocate funds to the states. Fiscal year 2001 appropriations, signed December 21, 2000, included the \$15 million congressionally initiated funding for the cooperative enforcement program, leaving OLE with no lead-time prior to the program's inception. Thus, several problems we found with the program in the following section are attributable to the rapid pace in which the program, to OLE's credit, was implemented.

As of September 2002, 20 of 23 coastal states and the territories of Guam and American Samoa had entered into JEAs with NMFS. All of the agreements provide funding for dockside monitoring and at-sea patrols, and about one-third also include air patrols. Seventeen provide funding for enforcement equipment and vessels, and 19 fund increased outreach and education activities for recreational and commercial fishing communities, schools, and the general public. The agreements also provide funds for clerical and investigative support staff and for hiring new state marine enforcement officers.

OLE and its coastal partners prepare and sign JEAs annually. Although funds allocated under the annual agreement can be distributed and used over multiple years, most states receive and spend the money in the specific year the JEA covers. (Appendix B lists participating states, enforcement priorities, and funding details for the JEAs in place in FY 2001.⁵)

Both OLE and the states believe JEAs can potentially fill some of the gaps left by shifting federal enforcement priorities. We agree. For instance, in areas where Coast Guard patrols have been reduced to allow for increased homeland security activities, coastal entities participating in JEAs picked up some of the slack. Also, as OLE has decreased dockside enforcement in favor of expanded investigative activities into seafood processing and other large-scale operations, the agency has used JEAs to help maintain a dockside presence. Along the coast from Maine to Virginia alone, OLE and the states have agreed in the JEAs to add some 19,000 surveillance hours—the equivalent of about

⁴ NMFS has the authority to enter into such agreements under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1861(a)), Endangered Species Act (16 U.S.C. § 1540(e)(1)), National Marine Sanctuaries Act (16 U.S.C. § 1437(h)), Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. § 5106(h)), Northern Pacific Halibut Act (16 U.S.C. § 7731(a)), and the Lacey Act (16 U.S.C. § 3375(a)).

⁵ Since many agreements were signed late in fiscal year 2001, data was not available for fiscal year 2002 funds at the time this report was written.

seven additional full-time agents—to OLE’s dockside monitoring time. This collaboration also provides OLE agents and officers with valuable intelligence, and may deter potential violations. One agent noted that he believes fishers are more apt to voluntarily comply with federal regulations when they know that state enforcement agencies are monitoring for federal violations.

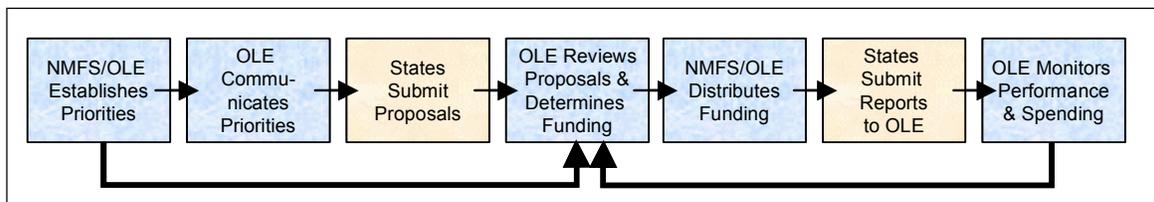
As important as joint agreements are to OLE’s enforcement strategy, the JEA program is weakened by administrative and operational deficiencies that prevent states from exercising their full enforcement potential and NMFS from realizing the optimum benefits of these partnerships. Specifically, (1) the program has no clear guidance on enforcement priorities, the process for determining funding levels, or the options for disbursement; and (2) OLE verifies little of the information provided by states. OLE needs to prepare clear and specific guidance for the JEA program that sets forth program goals, priorities, and requirements; spending guidelines; agreement approval and evaluation criteria; and federal and state agency roles and responsibilities. OLE also needs to increase its verification of state-level reporting and conduct site visits to evaluate program activities.

A. NMFS/OLE needs to develop priorities and funding guidance for the JEA program

Congress’s decision to provide funding for federal enforcement to all coastal states in FY 2001 jumpstarted the JEA program with little time to develop a structure or formal guidance. The only written information the states received was a sample agreement and operating plan. To develop proposals for the 1-year funding cycle that has since occurred, some states worked with the OLE special agent in charge, while others worked directly with OLE headquarters to determine the contents of the agreement, such as activities and capital purchases. Once the agreements were signed, funds were transferred—approximately \$12 million to 20 JEA partners over a 14-month period (from June 2001 until August 2002).

To ensure that federal funds provided under these agreements are used properly and to best result, OLE should provide structure to the JEA program by implementing a clear, multistep process for negotiating, approving, and monitoring JEAs. Figure 3, loosely based on the methods used for awarding grants and contracts, highlights elements of such a process.

Figure 3: Recommended Elements of a Strong JEA Process



Source: OIG

Setting/communicating priorities

OLE enforcement priorities and needs differ from one division to the next, and thus the focus and goals of joint agreements differ as well in response to regional fishery priorities and conditions. For example, the fishing industry in the Northeast consists primarily of small, commercial vessels; the Southeast consists of small scale commercial and recreational fishers who, because of the mild weather, can fish throughout the year; both the Northwest and Southwest divisions are concerned with salmon recovery in addition to other fisheries; and in Alaska, large commercial fishing trawlers are an industry staple that can shape enforcement strategies. Regional enforcement needs are further shaped by such considerations as the presence of marine sanctuaries or individual fishing quotas, and by Coast Guard priorities for a particular area (for example, drug interdiction versus fisheries enforcement). Establishing regional priorities for federal fisheries enforcement is the first step in a successful JEA process.

OLE division heads are directed to meet quarterly with the NMFS regional administrator and NOAA General Counsel to discuss federal fisheries enforcement issues. However, such cooperative efforts appear to work better in some regions than in others. We heard from some OLE agents and officers and state enforcement officials that OLE did not adequately or systematically communicate NMFS goals and priorities to the states. As a result, some proposals for JEA funding may have reflected a state's choice of activities, rather than federal concerns. OLE special agents in charge sometimes attempt to convey federal priorities to the states they work with, but there is no concerted, coordinated effort involving the NMFS's regional administrator and NOAA's regional General Counsel for Enforcement and Litigation, both of whom are particularly familiar with the regulations and regional fishery management and enforcement problems, to establish and communicate regional JEA priorities. In addition, representatives from the U.S. Coast Guard and several state enforcement officials said that, at least initially, the Coast Guard did not have any involvement with the agreements, even though the level and type of activities that states conduct could impact where and how the Coast Guard allocates its resources.

Establishing federal fishery priorities continues to allow JEA partners the flexibility to assess and determine its resource needs. For example, if monitoring a marine sanctuary is identified as a top concern in a particular OLE division, the JEA partner—in preparing its request—would determine whether it needs additional staff or equipment to provide adequate oversight. Similarly, if state vessels or dockside patrols are needed to help monitor compliance with fishery management plan regulations, then those priorities should be addressed in JEA funding proposals.

Allocating funds

There is no transparent, documented process for allocating JEA funds to the states. Given regional differences and the ever-changing nature of fishery management requirements, funds should be directed where they are needed most. Current variations in state funding levels have little rational basis and underscore the importance of having a

clear and well-documented decision-making process for funds distribution. In the absence of such a process, state agencies may expect allocations to remain constant from year to year, even though federal enforcement needs in the area may change or a state's prior-year performance may have been inadequate.

OLE allocated funds in FY 2001 case by case—as agreements were signed—but has little documentation or explanation to show how it determined funding levels. Determining funding levels and signing agreements on a case by case basis may promote funding inequities: OLE may make conservative funding decisions initially to ensure it does not run out of funds, or larger awards at first, and smaller ones as funding dwindled. Either way, states that submit proposals early or late in the process may be short-changed.

OLE informed us that in the future, it will review all proposals concurrently and make funding decisions after comparing the needs and requirements of each state—an approach we endorse.

Funding guidance

The JEA is a unique funding instrument and is not subject to the regulations that govern traditional financial assistance awards (grants and cooperative agreements). Our discussions with state enforcement officials revealed uncertainty about NMFS procedures regarding JEA funding disbursement and allowable uses of funds. For example, some state officials told us that they did not know that they could spread their JEA allocations over several years—an important planning and budgeting feature, given the uncertainty of OLE funding for successive agreements—and so did not hire staff that they might have otherwise. By choosing multiyear disbursements, state agencies that need to hire staff can do so with the assurance that money to cover the added positions will be available over the course of the elected disbursement period.

However, other than the initial letter informing the state marine enforcement director about the program, the only other information provided to the state funding recipients was an agreement template with sample operations and cost estimates. Although the initial letter stated that funding could be disbursed over a 3-year period, two of the nine JEA state officials we spoke with were not aware that multiyear disbursements were an option and thus did not hire additional enforcement officers for fear that JEA funds would not be available in subsequent years.

RECOMMENDATION. Issue clear and specific guidance for the Joint Enforcement Agreement program that

- (1) establishes and communicates federal fisheries enforcement priorities to the states;
- (2) outlines a formal, documented approval process for allocating funds; and
- (3) explains JEA funding options and uses as well as other essential program information and requirements that the recipients must meet.



Although NOAA concurred with the recommendation, it advised the OIG, in its response, that a letter was sent to the coastal state enforcement directors in February 2001 advising them of the potential to enter into a three-year agreement, that proposals must support the OLE mission, and that proposals covering high OLE priority areas would be prioritized for the receipt of funding. Specific OLE priorities were not included in the letter, although letter recipients were encouraged to contact the divisional special agent in charge to discuss the proposal. The final report reflects knowledge of the letter. However, based on the documentation we found and our discussions with OLE and state enforcement officials, we reaffirm our recommendation that additional JEA guidance and a more formal funding process are needed for this program. NMFS has agreed to follow through on its existing plans to improve the joint enforcement program guidance and anticipates that it will be in place prior to the beginning of the 2004 funding process.

Finally, the OIG recognizes that NOAA and OLE were under considerable time constraints to initiate and develop the joint enforcement program and to disburse funds to the states, thus the lack of program guidance and controls is an indication of time, not management, limitations.

B. JEA monitoring needs strengthening

OLE currently collects and reviews monthly, quarterly, and annual performance and financial information from the states. We found that the reporting requirements and OLE's review of state-submitted information appear adequate, but efforts to verify this information and evaluate program accomplishments need improvement.

Verification and monitoring by OLE divisions

OLE is responsible for ensuring that JEA funds are spent appropriately. The agreements require states to submit the following:

- ◆ *Monthly activity reports* summarizing vessel and dockside patrol hours and showing how funding is being used (e.g., the number of contacts made, citations issued, and law enforcement personnel and equipment used, defined by hours).
- ◆ *Quarterly reports* listing invoices and including copies of receipts for JEA-funded expenditures.
- ◆ *Annual report* summarizing the activities, hours, and costs incurred during the 12-month JEA period and comparing this information with the projected costs and objectives contained in the agreement.

Each month, an OLE official at headquarters reviews and updates a matrix that lists participating states and the number of hours spent per month on JEA activities (e.g., education and outreach, dockside, at-sea boardings), determines the total number of JEA hours and compares them with agreed-upon hours, and calculates the percent of hours

used versus the average monthly and daily hours needed to complete the agreement. The matrix also includes the total number of dockside contacts made, vessels boarded, and state and federal cases initiated. At the OLE division level, a staff member reviews the monthly reports for content, trends, and the state's adherence to its JEA commitments and operational plan. However, the divisions do not document their findings or share them with either headquarters or the states.

Quarterly invoice information is input into a separate matrix that lists the dollar value of direct purchases authorized in the JEA, the expenditures reported, and the percent of authorized procurement dollars spent. Annual report information is compared to OLE's monthly summaries, and discrepancies questioned.

While this analysis appears extensive, OLE does not have controls or a formal ongoing process for verifying the accuracy of information provided by the states. Many agents expressed concern about the potential for abuse. One agent's random check of a state's JEA boarding report confirmed that such abuse is in fact occurring: a vessel captain listed on the report informed the agent that he had not spoken to a state officer in months. It was later determined that the state officer falsely reported contact with a number of vessels.

GAO's *Standards for Internal Control in the Federal Government* discuss a number of internal control mechanisms that agencies should implement to assure program accountability for both financial transactions and program performance.⁶ Ongoing monitoring is one type of internal control presented by GAO that would benefit the JEA program.

We believe that the OLE divisions are in the best position to verify state performance reports on an ongoing basis and thus strengthen the agency's ability to make sound funding decisions. In an ongoing monitoring program, special agents in charge would be responsible for periodically preparing and submitting a written report to headquarters on state performance. For example, such reports could include the results from a randomly selected sample of vessel captains that are asked to corroborate state reported activities and a review of invoices and subsequent on-site confirmation that JEA capital equipment and other purchases are accounted for, reasonable, and benefit the intent of the program. This written narrative could also include instances where states did not fully cooperate with OLE agents on enforcement initiatives and any other pertinent details.

In addition, when problems are detected, the special agent in charge or other designated agent should discuss them with state JEA officials, and OLE headquarters should incorporate these findings into the state's performance record for reference when annual funding determinations are made.

⁶ U.S. General Accounting Office, *Standards for Internal Control in the Federal Government*, November 1999, GAO/AIMD-00-21.3.1.

RECOMMENDATION. NMFS should develop a process to verify state-reported activities and expenditures on an ongoing basis, and document its monitoring results for use in making annual funding decisions.



NOAA concurred with the recommendation and expects to be in full compliance by December 31, 2003. OLE is establishing a monitoring and control process that will include several audit and inspection functions. In addition, it has been working with its state partners on the reporting format and state use of a single standardized reporting software.

Periodic program reviews by headquarters

GAO's *Standards for Internal Control in the Federal Government* also discusses the importance of conducting separate program reviews. While the scope and frequency of the review generally depend on the risks associated with the program, such reviews are valuable for providing a long-term program assessment, and as a mechanism to validate and adjust ongoing monitoring efforts.

We believe periodic site visits to OLE divisions and JEA partners for the purpose of observing and evaluating program activities are another mechanism for ensuring proper use of federal funds. OLE management agrees that such on-site evaluation is needed to measure and verify internal program controls and program accomplishments, and the agency plans to implement this approach. Among other things, site visits should determine whether

- actual performance met planned or expected results;
- alternatives for carrying out the objectives of the agreement, that might yield desired results more effectively or at a lower cost, have been adequately considered;
- best practices across the JEA program partners exist and the extent they can be shared;
- laws and regulations applicable to the program have been complied with;
- management control systems for measuring, reporting, and monitoring a program's effectiveness are adequate; and
- performance measures of program effectiveness are valid and reliable.

In addition, other than the three states that requested funding be received over 3 years, OLE made lump-sum payments to the remaining 17 JEA partners once the agreements were approved. According to a NOAA grant official, full funding is normally provided at the start of a federally funded project or program only when such disbursement is specified in the appropriations language. However, since the transfer of funds to the states for joint enforcement efforts is authorized through the Magnuson-Stevens Fishery Conservation and Management Act and other legislation (see footnote 4), the agreement is not required to follow many of the financial and management controls that are in place

for funding traditional federal assistance programs (cooperative agreements and grants) and procurement contracts. While no wrong doing with the use of JEA funds under the up-front disbursement system came to our attention, we did not specifically review use of JEA funds. Thus, we believe that NMFS and OLE should monitor the states' use of lump sum funding to determine if there are any significant vulnerabilities that would demonstrate the need to put more funding controls, such as quarterly disbursement of funds, in place for JEAs.

RECOMMENDATION. NMFS should develop guidance for and conduct periodic, on-site program reviews to measure and verify internal program controls and program accomplishments. The evaluation findings should be shared with state JEA officials.



In its response to the draft report, NOAA concurred with the recommendation and will implement it in conjunction with establishing audit and inspection functions.

V. Fishery Enforcement Would Benefit From Increased Information Sharing and Cooperation Within NMFS and Among Federal and State agencies

Information is the backbone of enforcement—paper-based and electronic data systems can be used to detect suspicious activities and track repeat offenders. To have maximum impact, information should be made available and shared as much as possible among all parties who have a stake in fishery enforcement issues, including the various components of NMFS, federal and state agencies, and the public. We found that improvements were needed in data collection activities within NMFS and between NMFS, the Coast Guard, and state marine enforcement agencies.

A. *NMFS science and enforcement data should be electronically collected, integrated, and shared across organizational lines*

NMFS's science centers, fishery management councils, and OLE rely on fisheries data to carry out their respective missions. To help assess fishery stock, the centers collect data from fishers' vessel logbooks and from observers placed on board fishing vessels to gather information about catch, bycatch, discards, and marine mammal interactions. OLE agents use this data to help uncover evidence of illegal activities by fishers or the dealers to whom they sell their catch. We found that the agents do not have the capability to quickly access and analyze NMFS's fishery management data for suspected illegal activity for two reasons:

1. Methods for collecting and storing information make access difficult—data is either received by mail in hard copy and must be scanned into the database (which takes time), or is received electronically, but in a format that does not interface with OLE's computer systems.
2. Many NMFS observer program managers are resistant to sharing observer data with enforcement officials.

Improving regional data integration

The United Kingdom—though responsible for an EEZ much smaller than that of the U.S.—has a fisheries data-sharing system that allows multiple databases to interface and thus support enforcement efforts across agencies. Fishers in England and Wales are required to report their catch daily in a hardcopy logbook. Fisheries staff located at ports type the paper logbook information into a central database. Enforcement officers then access and verify the electronic logbook data by comparing it with surveillance information from Royal Navy sea and air patrols and with data from vessel monitoring systems. The fisheries database also interfaces with vessel and licensing databases, so that the officer checking the logged data can electronically verify the vessel's licensing privileges at the same time.

Unfortunately, neither NMFS nor OLE has a system for querying all relevant data records electronically. NMFS's data collection processes are inefficient and thus often hamper investigations. For example, fishers mail their logbook information to NMFS, where it is

first scanned and input into an electronic file. Seafood dealers submit their logbook information to NMFS either electronically or in hard copy. OLE then compares the catch reported in fisher logbooks against the purchase records in dealer reports—a manual process accomplished by viewing either paper copies or separate databases that cannot be compared electronically. According to one agent, NMFS data collection is incredibly antiquated: “There is no way to cross-check dealer information and vessel information other than manually.”

OLE also uses VMS information to determine the accuracy of location reports in vessel logbooks, and permit information to confirm that vessels are fishing for what they are licensed to catch. We were told that although permit information is available electronically, some NMFS permit offices are behind in inputting data, so OLE agents must telephone the office for up-to-date licensing information.

Analyzing fisher data is very labor intensive, particularly when an investigation spans several years and includes different fisheries and hundreds of tons of product. Transcribing paper copies into electronic formats is error-prone; OLE officials estimate that 50 percent of transcribed paper logbooks have errors, compared with 2 percent of electronic logbooks. Even when information is available electronically, OLE cannot compare one database against others because the systems do not interface. Fisher and dealer logbook reports, VMS information, individual fishing quotas (IFQs), boarding reports, and violation information should all be collected and either stored regionally in a single database or in multiple systems that interface.

A recent initiative in the Northeast region suggests progress is being made. The region has established a working group—which includes OLE staff—to explore database integration. Specifically, the group is focusing on electronic permitting and dealer and fisher logbook reporting. Since OLE is considered a secondary user of fishery management information, the regions traditionally have not considered the enforcement value of the data, thus the inclusion of OLE in this project is promising. We commend the Northeast region for its action.

RECOMMENDATION. NMFS should establish a working group or other mechanism to develop an integrated data collection system that would meet the research, fishery management, and enforcement needs of OLE, NMFS regions, and the fishery management councils.



In its response to the draft report, NOAA stated that it concurred with the recommendation, with some reservations. It noted that the recommendation is of “monumental size and scope” and thus does not lend itself to easy or swift implementation. Given the compatibility and security issues associated with the many databases discussed in this section, NOAA believes that it is unlikely that the data functions can be totally integrated. However, NOAA agrees that they can probably be “linked and associated for some functions.” NOAA’s response also indicated that a

project, recently initiated by the Assistant Administrator for Fisheries, addresses a number of information technology solutions relative to fisheries information programs, including a number of the data and record systems referenced within this section, that will impact implementation. An April 15, 2005 completion data is expected.

Improving access to fishery observer data

Observer programs gather data from U.S. commercial fishing and processing vessels that operate in 20 fisheries in U.S. coastal waters, and use the information primarily for scientific purposes—managing fishery quotas and collecting data on bycatch and endangered and protected species interactions. Observer reports provide valuable details on this data as well as on gear usage and vessel location—all of which can help OLE identify violations. Observers do not actively enforce fishery regulations, but do record potential violations in their logbooks. According to NOAA officials, the Magnuson-Stevens Fishery Conservation and Management Act allows OLE full access to the data observers collect—a fact we found that some agents were unaware of.⁷

Several agents who were aware of their right to access observer data told us that one NMFS regional program manager denied them access to observers' trip logs and notes. NMFS headquarters officials stated that they have no policy prohibiting OLE access to observer data, and NMFS regional officials explained that the program manager who blocked the agents' access believed that data collected for research purposes should not be used to enforce fisheries regulations—a viewpoint reportedly shared by most observer program personnel, with the exception of those in Alaska. The reluctance to share this information with law enforcement is based on the belief that such collaboration would taint the program as a compliance effort rather than a scientific pursuit. In some countries, this dual role is the norm. Observers in Canada, for example, are responsible for law enforcement first and scientific data collection second. However, in the U.S., both fishers and scientists believe that giving observers an explicit enforcement role would influence fisher behavior (e.g., fishers might avoid their usual fishing grounds or change gear when an observer is on board in order to be in compliance) and thus bias the information collected.

OLE's Alaska division has developed a working relationship with the observer program that we believe is applicable to other areas. To foster cooperation, OLE assigned two agents to the observer program and collocated them in the observer program office. The agents train observers to detect fisheries violations and participate in their debriefings following a vessel fishing trip.

OLE officials report that this arrangement has built trust between the observers and OLE special agents. As one agent stated, "There is an incredibly important role for observers in the compliance arena and an even greater need for improving the working relationship between observer programs and enforcement nationwide. I view this area as one which needs a great deal of emphasis on a national level in the near future."

⁷ Sections 402(b)(1)(A) and 311(b)(1)(A)(v).

The Alaska observer program reported more than 900 violations to OLE in the past 4 years. The overwhelming majority of these were resolved by giving the fisher a simple verbal warning or written reminder about applicable regulations. We believe such cooperation is essential to protecting marine resources by diminishing instances of illegal fishing behavior. NMFS should explore the practicality of replicating the Alaskan effort elsewhere.

NMFS should ensure that, in addition to meeting its scientific and fishery management data collection goals, it recognizes and supports the enforcement objectives of OLE, making sure the agency has full access to all pertinent fisheries information. It should be recognized that the OIG may be addressing this issue further as part of its upcoming review of the Fishery Observer Program.

RECOMMENDATIONS. NMFS should work with observer program officials to develop a policy statement or directive that specifies (a) the fisheries observers' role in monitoring and compliance (b) how observer information will be made available to OLE, and (c) appropriate use of observer data by OLE agents.

Where feasible, NMFS should collocate OLE staff with observer program staff to foster closer, more productive working relationships. (Also see other collocation recommendation on page 33.)



In response to the draft report, NOAA concurred with the need for a policy or guideline that details the fisheries observers' role in monitoring and compliance and reiterates its position that observer data is available for use by OLE. NOAA also discussed the longstanding national and international philosophies that often differ on shared enforcement and observer responsibilities versus separate responsibilities. OLE believes that the perceived conflict of interest between the two responsibilities can be resolved with improved observer training and better communication with the fishermen. NOAA anticipates an April 15, 2004, completion date.

NOAA also agreed that it would be beneficial to collocate OLE staff with observer program staff, where feasible, and that it would foster closer, more productive working relationships. OLE indicated that this is an on-going process.

B. Intergovernmental information sharing would benefit enforcement efforts

Most data on boardings, repeat violations, and other fisheries matters collected by NMFS, the Coast Guard, and state enforcement agencies is currently not shared across agency lines, largely because of incompatible information technology systems and statutory limitations. NMFS and the Coast Guard have initiated discussions regarding mutual access, but whether or when such access will occur is uncertain. In the meantime, OLE officials report that they are compiling JEA state information into a new database that will be accessible by all OLE divisions and possibly the Coast Guard.

Federal interagency information sharing

Section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act permits OLE to share information at the federal level. Both OLE and the Coast Guard are interested in sharing information but currently cannot because their systems do not interface. Thus, NMFS lacks full access to important Coast Guard data from sea and air patrols, and the Coast Guard lacks full access to NMFS information on violation histories.

The Coast Guard identified the need to share fisheries enforcement information with OLE and the states in its 1999 fisheries enforcement strategic plan, noting that these agencies should have access to its database. However, a Coast Guard official informed us that such access has yet to be extended because of “various technical issues due to the dissimilar nature and age of the systems/architecture.”

Federal–state information sharing

Information sharing across state and federal agency lines is more problematic because the Magnuson Act limits the circumstances under which most enforcement information may be shared with nonfederal agencies. Specifically, information submitted to the Secretary by any person in compliance with the act may only be disclosed to state employees pursuant to a court order or an agreement. Thus, OLE could establish procedures for sharing enforcement information on a state-by-state basis in the JEA. However, because any such agreement must include provisions that prevent public disclosure of the identity or business of any person, state use of shared information can only be for *federal* law enforcement purposes. Consequently, NOAA has proposed a statutory amendment to the Magnuson Act that will allow states operating under a JEA to use shared data for state investigative and prosecutorial purposes.

OLE, the Coast Guard, and the states must make effective information sharing a priority, to ensure a coordinated enforcement effort that maximizes the use of enforcement resources and minimizes unnecessary intrusions on law-abiding fishers. For example, because boarding information is not shared, a state could potentially stop a vessel one day, and the Coast Guard stop it the next. At a minimum, NMFS’ s Enforcement Management Information System (EMIS) database, which tracks vessels’ violations history, and the Coast Guard’s Marine Information for Safety and Law Enforcement (MISLE), which compiles boarding information, should either be mutually accessible or should interface with each other and with state systems, where appropriate and consistent with state and federal laws.

The practicality of collocating OLE agents and officers with their federal and state counterparts should also be explored.⁸ We believe collocation promotes an

⁸ According to the OLE agents who responded to our survey, eight OLE offices are colocated with the state enforcement offices in Alaska, American Samoa, Maryland, New Jersey (2 locations), New York, South Carolina, and Virginia. Three OLE offices are colocated with the U.S. Coast Guard.

understanding of the priorities, missions, and regulatory mandates of each agency involved in enforcement; facilitates data sharing; and fosters cooperative interagency working relationships.

RECOMMENDATIONS. NMFS should work with the Coast Guard and coastal state marine enforcement agencies to explore options for better sharing enforcement information among OLE, the Coast Guard, and JEA partners.

NMFS should collocate, where feasible, OLE agents with NMFS regional observer programs, Coast Guard, and JEA partners to foster closer, more productive working relationships.



In its response to the draft report, NOAA concurred with the recommendation and stated that the key steps are to identify the information that should be shared and the information that can already be shared in accordance with existing law and policy. The next steps will involve seeking changes that will open barriers to sharing that information, and overcoming technical and data base barriers. An April 15, 2004, completion date for implementation of this recommendation has been established.

NOAA concurs with the recommendation to collocate, where feasible and opportunities permit, with the U.S. Coast Guard and the JEA partners.

RECOMMENDATIONS

We recommend that the Assistant Administrator for Fisheries take the necessary actions to do the following:

1. Prepare guidance that will help the councils formulate more enforceable measures (see page 9).
2. To strengthen the role of the law enforcement committees and advisory panels, (a) develop and implement NMFS guidance that helps ensure that these bodies have clearly defined roles, meet regularly, and give proper focus to enforcement issues, and (b) seek greater OLE involvement on the committees and adequately represent enforcement matters at council meetings (see page 13).
3. Develop a strategy for implementing VMS across the regions (see page 16).
4. Develop minimum scientific and enforcement standards to be used for NMFS vessel monitoring applications (see page 16).
5. Issue clear and specific guidance for the Joint Enforcement Agreement Program (see page 20) that
 - a. establishes and communicates federal fisheries enforcement priorities to the states (see page 22);
 - b. outlines a formal, documented approval process for allocating funds (see page 22);
 - c. explains JEA funding options and uses as well as other essential program information and requirements that the recipients must meet (see page 23).
6. Develop a process to verify state-reported activities and expenditures, and document its monitoring results for use in making annual funding decisions (see page 24).
7. Develop guidance for conducting periodic, on-site program reviews to measure and verify internal program controls and program accomplishments. The evaluation findings should be shared with state JEA officials (see page 26).
8. Establish a working group or other mechanism to develop an integrated fishery management data collection system that would meet the research, fishery management, and enforcement needs of the various NMFS components and the councils (see page 28).
9. NMFS should work with observer program officials to develop a policy statement or directive that specifies (a) the fisheries observers' role in monitoring and

- compliance (b) how observer information will be made available to OLE, and (c) appropriate use of observer data by OLE agents (see page 30).
10. Work with the Coast Guard and coastal state marine enforcement agencies to explore options for better sharing enforcement information among OLE, the Coast Guard, and JEA partners (see page 31).
 11. Collocate, where feasible, OLE agents with NMFS regional observer programs, the Coast Guard, and JEA partners to foster closer, more productive working relationships (see pages 30 and 31).

APPENDIXES

APPENDIX A

Fishery Management Measures: Practical Advice for Developing Enforceable Measures

Closed seasons, which limit fishing during specific times of the year, is a useful prohibition when there are no exemptions to allow fishing on certain days or in certain areas, and adjacent state waters are either closed or have been taken into account. If adjacent state waters remain open during a federal closed season, enforceability becomes harder because you cannot determine where the product was actually caught unless you are on the scene when it was caught.

Closed areas are most effective if they are closed to all vessels, are of sufficient size, constitute a clearly defined shape with straight lines, and employ exact latitude/longitude specifications. If vessels are allowed to transit through the closed area, they should be required to stow fishing gear and transit through the area in designated lanes. Designated lanes allow for better remote monitoring and enable air and sea patrols to target their resources on those vessels deviating from the transit lanes.

Days-at-Sea, a measure used only by the New England council, works best in conjunction with a vessel monitoring system that automatically tallies the number of days spent fishing.

Gear restricted areas and gear regulations should restrict “possession” of gear. Restricting the “use” of gear (i.e., fishers are allowed to carry the gear on board but not use it) limits the method of enforcement to at-sea boarding while the gear is deployed and may necessitate hauling gear on-board, impractical for both the fisher and the Coast Guard.

Individual Fishing Quotas (IFQs) work best if appropriate consideration has been given to how catch quota will be tallied. Heavy dock-side accounting for allowable catch is needed, which is not considered the role of enforcement by many (i.e., it may be more appropriate for the regional administrator to manage a program that would, for example, require all quota fishers to off-load and weigh catch at specific locations).

Prohibiting bycatch by limiting the amount or percent landed is extremely difficult to enforce at-sea because of the problems inherent in estimating an accurate percentage in multi-thousand or -ton load of fish. Dockside enforcement is possible because the product is weighed and compared on shore. Prohibiting retention is an easier measure to enforce both dockside and at-sea.

Permits are effective tools that are easy to monitor, as long as there are no exceptions allowing possession of certain species. In addition to vessel permits, permits for vessel

captains are useful to track captains who may continue to illegally fish, but on a different boat.

Prohibited species measures are most effective when they allow no exemptions as to how or where fish are taken.

Reporting and record keeping can be useful to compare information against each other for the purpose of identifying potential fraud. Requirements for timely data submission help detect possible unlawful activity.

Bag/possession limits and trip limits are time-consuming to enforce. Dock-side monitoring and investigative work are the only effective means for enforcing fish trip limits.

Size restrictions are easier to enforce when fish are required to remain intact (in other words, the fish may not be cleaned, filleted, or otherwise processed).

Vessel Monitoring Systems should have regulations that prohibit tampering/interfering with the operation of the system, transmit real-time data (so that violators can be apprehended at the time the violation is occurring), and have two-way communication capabilities to warn vessels that they are entering a closed area and need to turn around.

APPENDIX B

NOAA Joint Enforcement Agreements
With States/Territories
Fiscal Year 2001

Participating State/Territory and Priorities Listed in Agreement	NOAA Funding Amount (\$000s)	Dockside patrols	At-sea patrols	Air patrols	Vessels /Equip- ment	Outreach/ Education
Alaska – King, tanner, and dungeness crab, groundfish, halibut individual fishing quota (IFQ), herring, lingcod, bottom fish, rock fish, salmon	\$1,000	✓	✓	✓	✓	✓
Alabama – Red snapper, highly migratory species, turtle excluder devices, and bycatch reduction device	486	✓	✓		✓	✓
California – Groundfish, salmon, steelhead, Living Marine Resources	1,000	✓	✓	✓	✓	✓
Connecticut – Groundfish, multi-species, scallops, lobster, striped bass, highly migratory species, tuna	200	✓	✓	✓	✓	
Florida – Mackerel complex, snapper grouper-complex, and pelagic species, the Endangered Species Act, and turtle excluder devices	1,250	✓	✓		✓	✓
Georgia – Snapper, grouper, red drum, shrimp, golden crab, coral, pelagic species, turtle excluder devices and Gray's Reef National Marine Sanctuary	350	✓	✓	✓	✓	✓
Hawaii ⁹	1,000					
Louisiana – Red snapper, highly migratory species, Lacey Act, charter & recreational off-loadings	2,000	✓	✓			✓
Massachusetts – Northeast multi-species, Atlantic sea scallop, squid, mackerel, butterfish black sea bass, bluefish, spiny dogfish	1,295	✓	✓			✓
Maryland – Scallops, monkfish, summer flounder, black sea bass, dogfish, striped bass, horseshoe crab, bluefish, tuna, billfish and shark	100	✓	✓		✓	✓
Maine – Atlantic tuna, mackerel, Atlantic coast red drum, Atlantic bluefish, Atlantic swordfish, Atlantic highly migratory species, squid	400	✓	✓	✓	✓	✓

⁹ Agreement is still being negotiated with Hawaii.

Participating State/Territory and Priorities Listed in Agreement	NOAA Funding Amount (\$000s)	Dockside patrols	At-sea patrols	Air patrols	Vessels /Equip- ment	Outreach/ Education
Mississippi – Reef fish complex, commercial shrimp, including turtle excluder devices and bycatch reduction devices and highly migratory species	416	✓	✓	✓	✓	✓
New Hampshire – American eel, American shad, alewives, bluefin tuna, bluefish, crabs, goosefish, groundfish	100	✓	✓			✓
New Jersey – Summer flounder, scallops, Northeast multi-species, bluefish, monkfish, dogfish, sea bass, lobster, scup, sharks, tuna	500	✓	✓		✓	✓
New York – Commercial harvesting of species subject to trip limits under Magnuson Act, and other Magnuson Act species landed in NY	400	✓	✓		✓	✓
Oregon – Groundfish fishery, commercial salmon, ESA patrols	100	✓	✓		✓	✓
Rhode Island – Northeast multispecies, Atlantic sea scallop, squid, mackerel, butterfish, black sea bass, bluefish, spiny dogfish	400	✓	✓		✓	✓
South Carolina – Mackerel complex, snapper-grouper complex, red drum, pelagic species, and turtle excluder devices	1,000	✓	✓		✓	✓
Texas – Reef fish, pelagic and migratory species	1,000	✓	✓	✓	✓	✓
Virginia – Scallop, striped bass, squid, summer flounder, black sea bass, dogfish, surf clam and ocean quahog	600	✓	✓	✓	✓	✓
Washington – Groundfish, IFQ, salmon, anadromous fish stocks	900	✓	✓		✓	✓
American Samoa ¹⁰	150					
Guam ¹¹						
Total	\$14,647					

Source: Fiscal Year 2001 Joint Enforcement Agreements

¹⁰ Agreement is being reviewed by Commerce Office of General Counsel.

¹¹ Agreement to begin in FY 2002; no funding will be provided in FY 2001.

APPENDIX C

List of Acronyms

COPPS	Community Oriented Policing and Problem Solving
EEZ	Exclusive Economic Zone
EMIS	Enforcement Management Information System
FWS	U.S. Fish and Wildlife Service
GPRA	Government Performance and Results Act of 1993
JEA	Joint Enforcement Agreement
MISLE	Marine Information for Safety and Law Enforcement
NOAA	National Oceanographic and Atmospheric Administration
NMFS	National Marine Fisheries Service
OLE	Office for Law Enforcement
VMS	Vessel Monitoring System

APPENDIX D

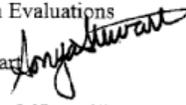
NOAA Response to OIG Draft Report



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
CHIEF FINANCIAL OFFICER/CHIEF ADMINISTRATIVE OFFICER

MAR 31 2003

MEMORANDUM FOR: Jill Gross
Assistant Inspector General for Inspections
And Program Evaluations

FROM: Sonya G. Stewart 

SUBJECT: Response to the Office of Inspector General (OIG) Draft
Inspection Report: NMFS Should Take a Number of
Actions to Strengthen Fisheries Enforcement
Report No. IPE-151154

The National Oceanic and Atmospheric Administration (NOAA) appreciates the opportunity to respond to your draft inspection report. We fully concur with 11 of the recommendations and have provided an action plan for each.

Attachment



Printed on Recycled Paper



**NOAA Comments on the Draft Inspection Report entitled "NMFS Should
Take a Number of Actions to Strengthen Fisheries Enforcement"
(IPE-15154/February 2003)**

NOAA appreciates the opportunity to comment on the DOC Office of Inspector General (OIG) report, "NMFS Should Take a Number of Actions to Strengthen Fisheries Enforcement" (IPE-15154), and recommendations made there in. NOAA commends the OIG on this well written report.

SPECIFIC COMMENTS

On page i, in the first sentence of the second paragraph of the Executive Summary, NOAA suggests modifying the end of that sentence to read as follows ". . . in what is now known as the U.S. Exclusive Economic Zone (EEZ)." As currently written, the sentence might be interpreted to suggest that the Magnuson-Stevens Act created the EEZ. While the Magnuson-Stevens Act did establish a 200 mile fishery conservation zone in 1976, the EEZ was not created until 1983 by Presidential Proclamation #5030.

Relative to the section entitled "OLE Operations" (page 6 and continuing on to page 7, third paragraph), the report incorrectly states that Joint Enforcement Agreements (JEA) include "tribes". The legislation providing the \$15 million in funding for cooperative enforcement designates the funding for "coastal states", which does not include the tribes. Though the OLE works with the tribes and sees the tribes as partners in fisheries enforcement, they are not eligible for this funding.

In section I, page 10, requiring fishing gear to be stowed when transiting through closed areas still requires at-sea or at-air enforcement strategies to confirm the gear is stowed. We suggest that specific transit lanes be delineated and that all transiting must occur within the transit lanes. This would provide us the opportunity to remotely monitor transiting and we will only need to direct sea or air assets when the vessel deviates from the transit lanes.

In section II, page 12, in the paragraph titled "Multiagency Involvement," NOAA suggests that the words "...general counsel's..." in the beginning of the last sentence be capitalized.

In section III, page 15, the table for Vessel Monitoring System Programs references "Limited Entry Groundfish" and shows it in the "Southwest Division". It should reflect that it is in the Northwest Enforcement Division as well. A change in the entry to "Southwest/Northwest" would accurately reflect the coverage. In fact, the groundfish fishery is a west coast matter and the VMS system covers vessels in both Divisions from California, Oregon and Washington and the VMS operations for ground fish are being run by the Northwest Division.

On page 16, the text says; "NMFS should develop minimum scientific and enforcement standards to be used for NMFS vessel monitoring applications." Our concern is by defining minimum

standards, enforcement needs may be diminished in order to accommodate scientific requirements. We suggest a recommendation that recognizes VMS as an important enforcement tool (this is what it was designed for) that could be utilized to support scientific research. NMFS should consider, and include where appropriate, scientific capabilities in the future expansion of the VMS program. Notwithstanding this statement, the VMS program can not be altered in support of scientific applications at the cost of enforcement capabilities. In other words, we simply are concerned that the standards should not be restricted to "minimum" standards.

In section IV, page 17, the report details a number of observations relative to the Joint Enforcement Agreements and the Cooperative Enforcement program with the states. The program is in the developmental stages even though it is funded and operational. Therefore, it is open to a number of program improvements. At the outset of the OIG review, the OLE pointed out to the OIG that the program was in its initial year of funding and operations and was initiated with no lead time prior to program inception. There are a number of improvements and measures that have yet to be developed. Section A. on page 18 alludes to this fact, however, I recommend and respectfully request that this point be made more definitively at the outset of section IV. This would assist the reader in their review of the report with the respect to and in perspective of its overall context. Without the benefit of this perspective the reader may be left with a critical impression of the program and its responsible development. Many persons familiar with the program, and its progress under the circumstances, are complimentary of the progress made and management of the program thus far. Though we understand and concur with the recommendations, we believe that the program has been developed and managed to date in a more responsible and thorough manner than may be taken from the report as it now stands.

In section IV, page 18, in the first paragraph, first sentence, the report states that "administrative and operation deficiencies . . . prevent the states from exercising their full enforcement potential" under the JEA program. While NOAA does not disagree with this statement, it feels that another important impediment to realizing the full potential of the JEA program was omitted. That is the statutory barrier that precludes the sharing of data, with states, that will be publicly disclosed. As all enforcement actions that are prosecuted lead to public disclosure, the sharing of data collected under the Magnuson-Stevens Act with the states for enforcement purposes is currently prohibited by statute. NOAA has proposed a statutory amendment, that has been cleared by DOC, that would allow states that participate in the JEA program access to and the ability to publicly disclose data collected under the Magnuson-Stevens Act for enforcement purposes. NOAA suggests that the OIG include among the two listed "deficiencies," the statutory barrier as well. This can be accomplished by modifying the above-referenced sentence to read as follows: ". . . the JEA program is weakened by statutory barriers, and administrative and operational deficiencies . . ."

In section IV, page 18, in the sub-heading titled "Setting/communicating priorities," NOAA does not agree with the characterization of the Southeast region as being ". . . dominated by recreational fishers . . ." The Southeast region has a large number of vessels participating in many different commercial fisheries managed by NOAA. To state that enforcement priorities for the

region are dominated by recreational fishers is simply not accurate. NOAA suggests the following language to more accurately reflect the state of the fisheries in the Southeast region: "... the Southeast consists of small scale commercial and recreational fishers who, because of the mild weather can fish throughout the year; ..."

In section IV, page 19, in the first sentence of the second paragraph, NOAA suggests that the words "... general counsel ..." be capitalized. Also, in the fourth sentence, NOAA suggests that the words "... general counsel ... enforcement ... litigation ..." be capitalized.

In section IV, page 19, in the second paragraph, the report makes two statements that do not accurately reflect the status of party involvement in establishing fishery enforcement priorities. In the first sentence, the report states that only "some" OLE division heads meet with the NMFS Regional Administrator (RA) and NOAA General Counsel (GC) at least once a year to develop enforcement priorities. In fact, every OLE division head is directed to meet with the RA and GC on a quarterly basis to discuss regional enforcement priorities. NOAA suggests correcting the first sentence of this paragraph to accurately reflect the number of regional enforcement priority meetings. In the last sentence, the report states that the Coast Guard is not "informed of (or involved in establishing) federal fishery enforcement priorities for the regions. ..." This statement is not completely accurate. In all regions, NOAA makes efforts to communicate fishery enforcement priorities to the appropriate Coast Guard District as soon as they are identified, and in the Northeast and Southeast regions the appropriate Coast Guard Districts are invited to participate in the quarterly enforcement priority meeting with OLE, GC, and the RA. NOAA recognizes that there are always opportunities for improved communication, however, as written, the last sentence of this paragraph implies a larger problem than actually exists.

In section IV A, pages 19 and 20, under "Allocating Funds" and "Funding guidance" the report indicates "little documentation or explanation to show how it determined funding levels".... and "However, OLE provided no instruction to state funding recipients about this option or other aspects of the JEA program funds".... Apparently, some misinformation or misunderstanding has occurred with regard to these points and in fact every state was advised of the potential to enter into a 3 year agreement. The states were informed both verbally and in writing that funding distribution would be based on federal fisheries priorities. A letter that went out to every state on February 16, 2001, that specifically addressed all three of these areas (copy attached). The Division Special Agents in Charge were specifically charged with developing agreements that met our priorities and which complimented the state mission wherever possible. A review of the targets of the JEA agreements in each Division (as shown in the table in the Draft on pages 33 and 34) reflect the fisheries enforcement priorities of the states, the NOAA Fisheries Regional Administrators, and Enforcement. In some cases the SAC even sent out lists of federal fisheries priorities to the states. Though the criteria for the allocation of the funding were not numerically weighted or somehow specifically valued qualifiers, the federal enforcement priorities, viability of the proposals, and credibility of the potential for ongoing operations were all considered in the process.

Section IV, page 23, of the report addresses "lump sum payments" and concludes that "OLE should monitor the states' use of lump sum funding to determine if there are significant vulnerabilities..." We concur with this concern in that such payments may provide for less opportunity for controls in the event of any abuse of the intended and agreed upon expenditure and operations. One primary reason for the use of this distribution approach is that the funding is going exclusively to another governmental entity, a state, and not to a quasi governmental or non governmental agency. There is a presumption that state legislative controls and monetary obligations for the management of such funds are structured and managed within a system that is unlikely to result in abusive or inappropriate use of the funding. Also, some state budgetary processes have a requirement that new budget initiatives be fully funded, particularly where it relates to hiring. Further reason for this approach is to provide for the funding of significant purchases, such as the purchase of vessels, aircraft, multiple numbers of vehicles, or similar large capital purchases. Notwithstanding these comments, the OLE recognizes the need to be diligent in monitoring and inspecting the use and expenditure of such funds. We anticipate that the states will have the intent and desire to be ongoing participants in this program and any abuse or misuse of such funding will undoubtedly be met with an invocation of state and federal reviews of the action and with either reduced allocations in future requests and even the potential to be excluded from future participation.

In section V, page 25, in the last sentence of the second paragraph, the report states that OLE can compare NMFS data with OLE violation-tracking data to determine whether a vessel is a repeat offender. This statement is not accurate. OLE's EMIS system is the only system used to track and determine whether vessels and/or individuals are repeat offenders of U.S. fisheries laws. In fact, it would not be possible to make such a determination by comparing any NMFS data to an OLE system. NOAA suggest deleting the reference regarding comparison of NMFS data in this sentence.

In section V, page 25, third paragraph - last line: We are concerned over the report language of how one might collect and store enforcement information. The draft report language states that "all be collected and either stored regionally in a single database or in multiple systems that interface." We have evaluated a number of storage solutions including those recommended. Some have been negated due to the evidentiary challenges that could be raised as a result thereof. We would request your modification of the language to only recommend interface capability.

In section V, page 27, in the first paragraph, the report recommends that NMFS work with the observer program to develop a policy guidelines or directive which specifies "... (b) whether and how observer information should be made available to OLE; and (c) appropriate use of observer data by OLE agents." This recommendation implies that the issue of "whether" observer data should be made available to OLE is discretionary. The Magnuson-Stevens Act clearly provides that observer data collected by NOAA is available for access and use by OLE for monitoring/law enforcement purposes. NOAA does, however, agree that a policy statement or directive reiterating this long-standing practice would be useful for the fisheries management and enforcement personnel of NMFS. NOAA suggests rewording this recommendation as follows:

“NMFS should develop a policy statement or directive that details the fisheries observers’ role in monitoring and compliance, and reiterates that observer data is available for use by OLE. Where feasible, NMFS should collocate OLE staff with observer program staff to foster closer, more productive working relationships.” If adopted, the suggested language should be changed in this response on page 9, in the paragraph titled Recommendation 9.

In section V, page 27, in the paragraph subtitled “Federal-state information sharing,” the report discusses the statutory barrier to sharing certain data with the states. Recognizing the statutory limitation, NOAA’s Magnuson-Stevens Act reauthorization proposal includes eliminating the statutory barriers that currently bar use and disclosure of Magnuson-Stevens Act data to states for state use. No agreement can remove this restriction. This limitation prevents the states from investigating and prosecuting cases based on information collected under the Magnuson-Stevens Act. Currently, the states can have access to Magnuson-Stevens Act data if they are operating as federally deputized personnel, and use of that data is for federal investigative and prosecutorial purposes. NOAA suggests modifying this paragraph to reflect that a federally deputized state officer can currently access Magnuson-Stevens Act data as long as the data is only used for federal investigative and prosecutorial purposes. It should also be noted in your final report, that NOAA has proposed a statutory amendment which would allow states operating under a JEA to use Magnuson-Stevens Act data for state investigative and prosecutorial purposes.

On page 28, in the first paragraph - last sentence: The language in the report suggests that “At a minimum ... EMISMISLE... should either be mutually accessible or should interface with each other and with state systems for the benefit of law enforcement agencies at all levels.” Although we do not disagree with the recommendation, or the underlying intent of the language, there are a number of legal (state and federal) prohibitions which need to be explored and resolved prior to this occurring. Additionally, there will be instances where a portion of the information should not be accessible. A modification of this sentence to acknowledge “where appropriate” and “after meeting all legal requirements at both the state and federal level” would be sufficient to meet our concerns.

On page 31, under Appendix A, in the paragraph titled “Closed seasons,” NOAA suggests the following additional language be added to the end of the sentence: “, and adjacent state waters are either closed or have been taken into account. If adjacent state waters remain open during a federal closed season, enforceability becomes harder because you can not determine where the product was actually caught unless you are on scene when it was caught.

On page 31, under Appendix A, in the paragraph titled “Closed areas,” NOAA suggests inserting “are of a sufficient size,” between “. . .closed to all vessels,” and “constitute a clearly defined shape . . .” in the first sentence. The smaller the closed area, the harder it becomes to enforce. As such, this should also be a consideration.

On page 31, under Appendix A, in the paragraph titled “Prohibiting bycatch,” the report states that using percentages of allowable catch to determine the allowable bycatch is hard to enforce.

This is a bit over simplified. In fact, bycatch as a percentage of allowable catch is very easy to enforce using dockside enforcement because the product is weighed and compared. NOAA acknowledges that problems exist if you try to make such a determination at-sea based on volume to weight estimates. NOAA suggests that this statement be qualified based on the enforcement platform – e.g. at-sea vs. dockside.

On page 32, under Appendix A, in the paragraph titled “Bag/possession limits and trip limits,” NOAA suggests deleting the words “. . .for large volumes of fish.” This qualification is not necessary. All trip/bag limit regulations are time consuming to enforce, regardless of the volume of fish.

On page 32, under Appendix A, in the paragraph titled “Vessel Monitoring Systems,” NOAA suggests that the language stating that VMS should “be tamper proof” be changed to “have regulations that prohibit tampering/interfering with the operation of the system, . . .” Making a computer-based system that relies on satellite transmissions “tamper proof” is not a possibility.

NOAA Response to OIG Recommendations

The OIG states, “We recommend that the Assistant Administrator for Fisheries take the necessary actions to do the following:

Recommendation 1: Prepare guidance that will help the councils formulate more enforceable measures.

NOAA Response:

We concur. The NOAA Office for Law Enforcement has drafted and disseminated several such documents to some of the councils. The United States Coast Guard has incorporated them into guidance and utilized them to make presentations on the topic as well. We will produce and distribute such documents to each council and will tailor the guidance as appropriate to the fisheries of the specific region.

Target Date for Completion:

This endeavor will involve a collective and cooperative effort with participation from each OLE Division. It will also require input by our enforcement partners and other stake holders. We anticipate that this task will be completed by December 1, 2003.

Recommendation 2: To strengthen the role of the law enforcement committees and advisory panels, (a) develop and implement NMFS guidance that helps ensure that these bodies have clearly defined roles, meet regularly, and give proper focus to enforcement issues, and (b) seek greater OLE involvement on the committees and adequately represent enforcement matters at the council meetings.

NOAA Response:

We concur. Some of the eight fisheries councils already have such measures in place. We will assure that each Regional Administrator and each OLE Special Agent in Charge communicates this need to the councils to assure that the recommendation is adopted by the councils. The Councils, their Chairs and their Executive Directors are key to this process and will therefore need to concur and participate as requested for this recommendation to be viable.

Target Date for Completion:

Given the need for Council adoption, changes, and appointments, this endeavor could take in excess of one year to resolve. We anticipate that this will be complete as of April 15, 2004.

Recommendation 3: Develop a strategy for implementing VMS across the regions.

NOAA Response:

To some degree this strategy is in place and progressing. The equipment infrastructure and personnel support for this measure is already in place. The next level of this initiative will be to complete a review of all of the Fisheries Management Plans to determine which fisheries compliance efforts would be best supported through the use of VMS. Recommendations will then need to be passed on from Fisheries to the Councils.

Target Date for Completion:

This initiative will also involve the participation of the councils as well as some of our enforcement partners and stake holders. We anticipate that this initiative may also require at least a year to resolve. We anticipate that this initiative will be complete by April 15, 2004.

Recommendation 4: Develop minimum scientific and enforcement standards to be used for NMFS vessel monitoring applications.

NOAA Response:

We concur. VMS has been and is primarily in place as an enforcement tool. Use of VMS for the collection of scientific data as a collateral function is a responsible and practical goal. Both functions are fisheries management responsibilities and it "makes sense" to assure that redundant expenses are not incurred in our efforts to manage the fisheries. It also is important for us to use every reasonable available tool at our disposal to improve the extent and credibility of the scientific data with which we make our decisions. We must, however, not supersede the enforcement function of VMS by imposing technical or operational parameters that diminish the primary function.

Target Date for Completion:

This task involves numerous persons who should participate including fishermen, scientists, managers, council members, and enforcement entities. We anticipate that it will take at least 18

months to do an adequate job in meeting this recommendation. Anticipated completion date is October 31, 2004.

Recommendation 5: Issue clear and specific guidance for the Joint Enforcement Agreement Program that

- a. establishes and communicates federal fisheries enforcement priorities to the states;
- b. outlines a formal, documented approval process for allocating funds;
- c. explains JEA funding options and uses as well as other essential program information and requirements that the recipients must meet.

NOAA Response:

We concur. This recommendation confirms existing plans by the Office for Law Enforcement to improve and expand upon existing guidance on this program.

Target Date for Completion:

It will be helpful to have this guidance in place prior to beginning the process for the distribution of 2004 funding. We anticipate that we can and will comply with this recommendation by September 30, 2003.

Recommendation 6: Develop a process to verify state-reported activities and expenditures, and document its monitoring results for use in making annual funding decisions.

NOAA Response:

We concur. This process will involve the establishment of several audit and inspections functions in addition to resolving basic reporting formats. The OLE currently has been able to engage many of the states in the use of a single standardized reporting software. This system provides uniform, clear and comprehensive data on the activities of the states pursuant to the Joint Enforcement Agreements. This will facilitate a much more functional and viable basis from which we will conduct activity and expenditure reviews.

Target Date for Completion:

We have been working and negotiating with our state partners relative to such reporting. We also anticipate staffing one to two positions to fulfill this function. Compliance with this recommendation will be completed by December 31, 2003.

Recommendation 7: Develop guidance for conducting periodic, on-site program reviews to measure and verify internal program controls and program accomplishments. The evaluation findings should be shared with state JEA officials.

NOAA Response:

We concur. This task will be done in coordination with those of Recommendation 6.

Target Date for Completion:

The implementation of this function should be complete and operational by December 31, 2003.

Recommendation 8: Establish a working group or other mechanism to develop an integrated fishery management data collection system that would meet the research, fishery management, and enforcement needs of the various NMFS components and the councils.

NOAA Response:

We concur, however, with reservations. This recommendation is of monumental size and scope. There are other compatibility and security issues associated with many of the data bases referenced in this recommendation. It is unlikely that these data functions can be totally integrated, they probably can be linked and associated for some functions. Dr. William T. Hogarth, Assistant Administrator for Fisheries, initiated a project earlier this year that is intended to address a number of information technology solutions relative to fisheries information programs that include a significant number of the information or record systems referenced within this recommendation.

Target Date for Completion:

We suggest a completion date of two years, at April 15, 2005.

Recommendation 9: Develop policy guidelines and a directive that specify the fisheries observers' role in monitoring and compliance, whether and how observer information should be made available to OLE, and the appropriate use of observer data by OLE agents.

Where feasible, NMFS should collocate OLE staff with observer program staff to foster closer, more productive working relationships.

NOAA Response:

We concur with the need for a policy or guideline that details the fisheries observers' role in monitoring and compliance, and reiterates that observer data is available for use by OLE. There are longstanding philosophies relative to this concept. We have found that the same logic or philosophy exists on this subject both nationally and internationally. There is a wide spread, and in many cases, deep seated belief that the roles of observers should not be "mixed" between science and enforcement. The foundation for this belief is that the collection of scientific information will be tainted and even interfered with if the fishermen and vessel operators believe that the observers are there for enforcement purposes, or even that their data will be used for enforcement purposes. We do, however, believe that with proper observer training and communication with fishermen, this perceived conflict of interest can be resolved.

The recommendation of co-location of OLE and observer staff to foster a closer working

relationship, is functional and operational in a number of areas. NOAA agrees that strengthening these relationships where they currently exist, and encouraging them where they do not currently exist would be beneficial.

Target Date for Completion:

Because of the history and reluctance in using observer data in enforcement, and the necessity of legal input the creation of the recommended policy will require considerable development and implementation time. We anticipate a completion date of April 15, 2004.

Where feasible, the collocation of OLE and observer personnel will continue, and further collocations will be encouraged.

Recommendation 10: Work with the Coast Guard and coastal state marine enforcement agencies to explore options for better sharing enforcement information among OLE, the Coast Guard, and JEA partners.

NMFS should collocate, where feasible, OLE agents with NMFS regional observer programs, Coast Guard, and JEA partners to foster closer, more productive working relationships.

NOAA Response:

We concur. The key steps in this endeavor will be to identify the information that should be shared and the information that can already be shared by law and policy. The next steps will involve resolving changes that will open barriers to sharing that information. There will also be the practical matter of technical exchanges and data base management.

NOAA agrees that the co-location of OLE, observer personnel, Coast Guard and JEA partners to foster a closer working relationship would be beneficial, and should be encouraged where feasible.

Target Date for Completion:

This initiative involves numerous entities, a number of laws and numerous policies and practices. It will take a considerable period of time to work through the various levels involved, identify viable targets, prioritize them and then effect changes. We anticipate a completion date of April 15, 2004.

Where feasible, the collocation of OLE, observer personnel, Coast Guard and JEA partners will be encouraged.

Recommendation 11: Collocate, where feasible, OLE agents with NMFS regional observer programs, the Coast Guard, and JEA partners to foster closer, more productive working relationships.

NOAA Response:

We concur. We do not view this recommendation as an aggressive and strongly proactive

approach. It makes sense to co-locate personnel where possible and appropriate. However, there are many other factors that influence the location of offices. This recommendation will have to be addressed on the basis of "as opportunities permit".

Target Date for Completion:

The primary action item to achieve compliance with this recommendation will be to take a look at and develop a list of those existing offices and positions that currently comply with or conform to this recommendation. We will then need review those positions and offices that may be appropriate to co-locate as recommended, then to seek opportunities to make such assignments. We anticipate completing these steps by December 31, 2003.