



New England Fishery Management Council

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MEETING SUMMARY

Enforcement Committee

In-Person - Wakefield, MA

November 18, 2024

The Enforcement Committee met on November 18th, 2024, to provide feedback to the On-Demand Fishing Gear Conflict Working Group and to the Council, as they continue developing recommendations for reducing gear conflict, and other challenges related to on-demand gear.

MEETING ATTENDANCE: Committee members present; Patrick Keliher (Chair), Rob Beal (MEDMR), Jason Berthiaume (NOAA OLE), Clint Prindle (USCG). NEFMC staff; Emily Bodell, David McCarron. Public and Agency Staff; Kevin Staples (MEDMR); Tom Bleifuss, Stephanie Oatway (USCG); Colleen Coogan, Allison Murphy (GARFO); Sam Duggan, Katie Pohl (NOAA Office of General Counsel); Heidi Henninger (NEFSC), Brett Alger (NOAA HQ), Erica Fuller.

KEY OUTCOMES:

- Provided feedback on whether gear performance standards should be specified in detail in regulations or referenced to a NOAA Fisheries web page.
- Provided feedback on where alternative gear marking technologies might be most appropriately used (e.g. closed areas only, additional designated areas, or all areas).
- Identified what type of ownership information must be available to enforcement via gear marking and location technology.
- Provided feedback on the protocol for enforcement setting gear back after retrieving it, and how gear inspection authority differs between states.
- Provided feedback on the accuracy of location information needed for on-demand gear, and how that may differ in high-density vs. low-density fishing areas.
- Discussed the gear conflict avoidance framework that currently exists in Council FMPs and how that framework might be changed to assist enforcement.
- Discussed data retention and access policies for any on-demand gear location data to support enforcement needs.
- Recommended that the next Enforcement Committee meeting include a deep-dive into the latest developments in on-demand gear capabilities.

Chair Keliher opened the meeting at 10:00 am. There were no changes to the agenda.

AGENDA ITEM # 1: PROVIDE FEEDBACK TO THE ODWG ON RECOMMENDATIONS TO REDUCE GEAR CONFLICT (EMILY BODELL, NEFMC)

Chair Keliher conducted introductions around the table and the audience. Mr. McCarron explained the use of a portable audio system for recording the meeting and asked participants to step up to the microphone for better transcription. Chair Keliher discussed the ODWG's recent report to the Council and their request to address law enforcement concerns and provide input. The Chair's option to conduct a closed session if necessary was noted.

Ms. Bodell provided an overview of the On-Demand Gear Working Group (ODWG) and its goals. The working group aims to identify strategies for reducing interactions between on-demand fishing gear and other fisheries. The group has six terms of reference, including identifying implications of on-demand gear use and developing strategies to reduce gear interactions.

The first deliverable from the ODWG was a report on reducing interactions related to risk reduction measures for gillnet and other trap pot fisheries, presented to the Council in fall 2024. The report included consensus statements requesting input from the Enforcement Committee and prioritizing developing an action for revising gear marking regulations by 2025. The next deliverable is a final report by Fall 2025 on reducing gear interactions between on-demand gear in lobster and Jonah crab fisheries.

The New England Council adopted a gear conflict amendment in 1996 to address gear conflicts in scallop, northeast multispecies, and the lobster plan. The amendment outlines processes for identifying and developing management measures to address gear conflicts, including mandatory monitoring, fixed gear location reporting, and gear restrictions, which can be incorporated into various FMPs via a framework process. Finally, Ms. Bodell presented several questions prepared by the ODWG for the Enforcement Committee to discuss.

Chair Keliher then led the Enforcement Committee in discussions of each question prepared by the ODWG.

- 1) *The ODWG has discussed two potential avenues for how to include gear standards in gear marking language thus far: 1) gear performance standards are specified in detail in regulations, or 2) regulations reference gear performance standards as listed on a NOAA Fisheries webpage. How might enforceability differ between these two strategies?*

Some Committee members expressed concerns about the enforceability of regulations that reference evolving standards on a webpage. NOAA General Counsel emphasized the importance of including performance standards within regulations to ensure enforceability. Chair Keliher described how the State of Maine normally doesn't reference documents or websites outside of their control, with the exception of the NOAA weak link standards website due to the constant changes with those contrivances, while another committee member explained that states are required to provide certified copies of regulations, so maintaining portions of standards on a webpage could create an additional challenge for prosecution. The Chair also noted that the agencies involved would be responsible for communicating any changes on the webpage to the industry. A committee member stated that while regulations are stronger and

easier to enforce, it may be helpful to have supplemental information available via a webpage. **The final consensus of the Enforcement Committee: Performance standards should be included in future regulations.**

- 2) *The working group has also discussed where alternative gear marking technologies might be used, i.e., in areas closed to persistent vertical lines only, or in additional areas, or in all areas. Does the Committee have any feedback on where alternative gear technologies might be most appropriate/feasible?*

The committee discussed the feasibility of using alternative gear marking technology in closed areas versus all areas. The need for clear, defined areas for on-demand gear use was highlighted to manage enforcement and gear conflicts effectively. The implications of widespread use of on-demand gear are not known and could be significant. Use of on-demand gear in closed management areas would be more manageable and easier to address gear conflict with permitted gear in closed areas. Coast Guard noted that allowing on-demand gear in navigation areas (i.e., shipping lanes) could impact vessel traffic schemes if they had to haul and inspect that gear in a congested area. A member of the public raised the idea that using on-demand gear for market reasons (i.e., ‘whale-safe’ labeling) and how it could benefit the industry, but the Committee was not comfortable with that as a short-term goal and remained focused on enforcement priorities. The committee was encouraged that some areas could be “hybrid” (one endline on a trawl) and generally felt that using that approach was preferable. **The final consensus of the Enforcement Committee: On-demand gear should only be used in closed areas until such time that technology and enforcement techniques are more finely developed.**

- 3) *Are there particular gear standards that are important for enforceability?*

A committee member emphasized the importance of real-time data to reduce gear conflicts, and highlighted interoperability of various technologies as a concern moving forward, particularly for enforcement personnel who would need to access on-demand gear. Another committee member recommended having some sort of stamp to certify that gear meets these standards.

The committee had a long discussion on distinguishing between what are performance or regulatory standards and what are technical standards. Performance standards shouldn’t change too often and could be codified into regulation, while technical standards would evolve with gear technology. Approved on-demand gear systems would have to meet all performance standards and could do so with each manufacturer having distinct technical standards. **The final consensus of the Enforcement Committee: On-demand gear must have real-time data uploads to ensure gear conflicts can be avoided and to better aid law enforcement personnel. The Committee feels that it should be updated regularly as this technology is developed.**

- 4) *What type of information (if any) must be available to enforcement via gear marking/location technologies? What information would enforcement find helpful to support enforcement activities/actions even if its availability is not strictly necessary?*

Chair Keliher noted that gear marking and identification are not confidential. Buoys are marked with colors and stamped with names and permit numbers. Enforcement needs this information to be effective on the water. New technology should not preclude all fishermen and enforcement from talking to each other and sharing details about how gear is set on the bottom.

Committee members suggested including information such as the lead trap/end trap location, number of traps per trawl, time set, gear type, target species, and device status/health. The

device status is important for enforcement to ensure that there is enough battery/ air/ etc. remaining on the device for fishermen to haul the gear again. There was also the question of what data might be helpful to have shoreside, such as the type(s) of on-demand gear enforcement may need to access, to ensure that vessels have the appropriate supplies to conduct hauls. **The final consensus of the Enforcement Committee: On-demand gear development must ensure transparency related to gear identification. Allowing harvesters from all sectors to know whose gear it is, and where, will allow them to interact as they do now, allowing them to avoid possible conflicts. This is another area that the Committee would like to remain engaged in as the technology advances.**

- 5) *If gear was retrieved by enforcement officials, what would the protocol be for setting it back? Does inspection authority differ between states? How much lead time is needed for law enforcement training before a specific gear configuration is approved?*

The committee highlighted the need for training and equipment acquisition for law enforcement to learn how to handle on-demand gear. The committee discussed the importance of having a protocol for setting gear back if it is retrieved by enforcement officials. Major Beal noted that on-demand gear would be replacing a lot of information that the buoys and buoy positions can provide on the water, such as tidal influence, which can help enforcement re-deploy traps in the same area. Maintaining the ability to conduct covert enforcement operations on on-demand gear will be critical. Finally, staff will compile state and federal regulations regarding inspection authority to ensure there are not gaps related to the inspection of on-demand gear. **The final consensus of the Enforcement Committee: Agencies must prioritize training for all LE officers (state and federal). Furthermore, systems must allow for the covert hauling and setting of gear without the license/permit holder being aware. Losing this ability to covertly haul gear will eliminate a key inspection tool used for the conservation of species such as American lobster.**

- 6) *What state/Federal resources are available 24/7 for fishermen to report gear conflict events? Is it necessary to have such resources available 24/7?*

The importance of having clear protocols for reporting gear conflicts and the role of law enforcement in addressing these issues was discussed. Coast Guard indicated that their operations center is available around the clock and has a protocol for documenting and addressing gear conflicts as they happen. Similarly, NOAA OLE has a 24/7 duty agent available, and state law enforcement agencies can be called by 911 dispatch. Mr. Alger noted that it may be important to have some sort of contact if there are technological issues (i.e., not seeing gear on screen, data issues, etc.). **The final consensus of the Enforcement Committee: The Committee recognizes the need for 24/7 enforcement contacts to help the industry maintain voluntary compliance. While outside the purview of enforcement, the Committee agrees that technical assistance for permit holders will be key to ensure operational viability.**

- 7) *Does enforcement have concerns about how widely available (i.e., distance/area of visibility) an individual fisherman's gear location data is shared with other commercial and recreational fishermen?*

Chair Keliher discussed the need for visibility of all fishing activities, especially for enforcement purposes. Differences between inshore and offshore fisheries were highlighted, with offshore activities requiring more visibility. The committee discussed the importance of having accurate

and real-time location information for on-demand gear and the need for gear conflict avoidance regulations. The challenges of enforcing requirements for other vessels to ascertain the position and extent of already placed on-demand gear are considerable. **The final consensus of the Enforcement Committee: Ensure that the visibility and accessibility of individual fishermen's gear location data to other fishermen is maintained with real-time data.**

8) Do you have any feedback on the accuracy of location information for on-demand gear locations? How accurate does location information need to be?

Chair Keliher asked for feedback on the accuracy of location information for on-demand gear. The committee discussed the importance of accurate data in high-density areas. General Counsel highlighted the need for accurate location information for prosecution purposes and understanding the margin of error associated with each manufacturer's gear systems. Real-time data and sharing are critical to enforceability. There was a discussion of how long gear marking data would be stored in the cloud for enforcement purposes.

Chair Keliher asked about emerging technology for automatic marking of when gear is deployed from a vessel. NEFSC staff described how companies are integrating Bluetooth technology into their systems to automatically capture each gear set. Chair Keliher noted this would make the gear easier for fishermen to use. There was also a discussion about gear defaulting to an "I am lost" mode after a period of time without being hauled. **The final consensus of the Enforcement Committee: Automated deployment marking should be developed to eliminate operational errors.**

9) Would more specific gear conflict avoidance regulations assist state and Federal enforcement agencies with making cases when gear conflicts are reported? If so, is there an example in the strawman that would be helpful or would the Committee recommend different strawman language?

Chair Keliher asked how to enforce other, non-on-demand vessels' ascertainment of gear positions and again emphasized the importance of real-time data. The committee discussed by what authority gear marking data would be collected and retained and if the 'rule-of-three' would apply and how that could be challenging for preventing gear conflicts. Staff indicated that data policies will definitely have to be developed as technologies are implemented. The committee and General Counsel also discussed the legal concept of 'duty of care' and the importance of every vessel being able to demonstrate the measures that they take to meet the standards of gear conflict avoidance. **The Enforcement Committee had no recommendations but acknowledged that more time is needed to consider regulatory language. Again the committee focused on the need for real-time data.**

10) How could a requirement for other vessels to ascertain position and extent of already placed on-demand gear at certain intervals (i.e., before leaving the dock, once an hour, in real time) be enforced for various fisheries/vessels?

This question could largely be addressed with the utilization of real time data. There was also some discussion of data storage for various uses, and the confidentiality restrictions that may impact it. **The final consensus of the Enforcement Committee: Systems should be developed so data is uploaded in real-time.**

11) With respect to on-demand gear conflicts, does the 1996 Gear Conflict Amendment provide helpful guidance on resolving relevant enforcement concerns? Would the Committee recommend modifications to the Amendment?

Chair Keliher asked if the 1996 gear conflict amendment provides helpful guidance to the committee. Ms. Bodell asked if there are any omissions in the gear conflict management measures that on-demand gear would need. The Chair suggested that ‘real-time’ should be added to the ‘Fixed gear location reporting and plotting requirements’ bullet. **The final consensus of the Enforcement Committee is to keep this question open for future discussions.**

12) Future Enforcement Technology Presentations

Chair Keliher suggested having an in-depth technology presentation at the next Enforcement Committee meeting and emphasized the growing body of work at the science center and the gear libraries. New Hampshire Fish & Game is hosting an on-demand gear workshop on December 9th, the next in a series of enforcement workshops related to on-demand fishing gear

With no other business, the Enforcement Committee meeting adjourned at 1:20 pm.