

***NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 06-101
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Law Enforcement

VMS DATA ACCESS AND DISSEMINATION POLICY

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SUMMARY OF REVISIONS:

The VMS Data Access and Dissemination Policy required revision due to the migration of OLE IT resources and personnel to the Office of the Assistant Chief Information Officer. The revised policy reflects the new guidelines, responsibilities, and limitations now imposed on both OLE and ACIO.

Broadly, the new provisions of this policy embody the OLE/ACIO relationship where OLE governs the approved uses and dissemination of VMS data, and the ACIO provides secure IT services and systems to support the VMS program and the storage and handling of the confidential VMS data. [Kelly Spalding]

Introduction

This policy establishes guidelines for accessing, disseminating, and managing information collected through the National Oceanic and Atmospheric Administration's (NOAA's) Vessel Monitoring System (VMS) Program.

NOAA's National Marine Fisheries Service (NOAA Fisheries) Office of Law Enforcement (OLE) was delegated the responsibility to manage and administer the VMS Program and is responsible for the regulatory, monitoring, and other operational functions of the VMS Program's components unrelated to Fisheries' information technology resources, including the records management processes and schedules. NOAA Fisheries' Office of the Assistant Chief Information Officer (ACIO) has been delegated the responsibility to provide the information technology (IT) services, networks, systems, and support associated with the VMS Program, and is responsible for Fisheries' IT-components including the storage, access, security, and destruction of VMS data in a manner which preserves the integrity and credibility of the data commensurate with standards that ensure the data's acceptance for use in investigative and legal proceedings, protected resources and fisheries management, and science. Both OLE and the ACIO are responsible for maintaining the confidentiality of VMS data pursuant to the confidentiality requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other applicable laws.

A VMS collects data such as participating vessels' identity, location, and activity throughout the U.S. Exclusive Economic Zone, the Pacific and Atlantic Oceans, and other bodies of water for fisheries management, enforcement, science, and research, and for developing, implementing, revising, or monitoring fishery conservation and management measures under the MSA and other applicable law. Authorized use of and access to VMS data submitted under the MSA is governed by the Act's confidentiality requirements under sections 311(i) and 402(b), 16 U.S.C. §§ 1861(i) and 1881a(b), and implementing regulations at 50 CFR 600.405-600.425. VMS data submitted under the Western and Central Pacific Fisheries Convention Implementation Act is subject to the Act's confidentiality requirements under section 506(d), 16 U.S.C. § 6905(d), and implementing regulations at 50 CFR 300.220. NOAA Administrative Order 216-100 prescribes policies and procedures for protecting all confidential information received, collected, or used by NMFS. For specific confidentiality requirements of other authorities, please consult NOAA's Office of the General Counsel (GC).

VMS can provide 24 or more position reports per day, accurate to 100 meters, to continuously and accurately monitor vessel positions and activities, meet international obligations, and support other fishery management measures.

VMS also serves as a tool to supplement traditional enforcement activities. For example, VMS can be used to provide a comprehensive surveillance framework and to more efficiently direct the limited number of U.S. Coast Guard and NMFS assets available for fisheries patrols and boardings.

The VMS is also used extensively to collect data for the purposes of fisheries management, science, and research. A number of fishery management plans include VMS requirements. NOAA Fisheries may also use VMS information to monitor catch limits established for designated areas. As a tool for protected resources, VMS is used to monitor vessel activities in and near critical habitat areas. VMS is also an invaluable data quality control for use in conjunction with NOAA Fisheries observer programs. Use of VMS data for these purposes is expected to increase in the future.

Objective

NOAA Fisheries will develop and use the VMS as efficiently and effectively as is practical and within the full scope of purpose and utility that the technology may provide. The purpose of this policy is to ensure the protection and control of, lawful and timely access to, and the dissemination and management of VMS information.

Authorities and Responsibilities

This policy directive establishes the following authorities and responsibilities:

Within NOAA Fisheries, OLE is delegated the responsibility of managing and administering the VMS Program, and is responsible for the regulatory, monitoring, and other operational functions of the VMS Program's components separate from NMFS' information technology (IT) resources, including the records management processes and schedules. The ACIO has been delegated the responsibility to provide the NMFS IT services, networks, systems, and support associated with the VMS Program. The ACIO is responsible for operating these VMS support services in

compliance with the Federal Information Security Management Act of 2002 (FISMA) standards for a system rated moderate, and to manage and handle the data in compliance with the legal provisions cited in this Policy Directive, and in a manner that ensures the data's acceptance for use in investigative and legal proceedings, protected resources and fisheries management, and science. Both OLE and the ACIO are responsible for maintaining the confidentiality of VMS data pursuant to the confidentiality requirements of the MSA and other applicable law.

Legal Restrictions

The MSA and other applicable laws restrict use and dissemination of VMS data. In specific instances, for example, VMS data may be compiled for a law enforcement investigation and, as such, be subject to withholding under the Freedom of Information Act Exemption Seven, 5 U.S.C. § 552(b)(7).

Guidelines and Procedures

It is the policy of NOAA Fisheries to utilize VMS to aid in monitoring, control, and surveillance of fishing vessels that are managed under one or more U.S. Federal fishery management plans, and other vessels that may participate (voluntarily or otherwise) in the VMS Program, and to use VMS data for scientific research or management purposes.

Pursuant to NAO 216-100, the ACIO will document and maintain a list of all VMS software account-holders and other real-time VMS data users (to include execution of associated Interconnection Service Agreements), pursuant to account access guidelines set out by OLE in conjunction with NOAA GC Enforcement Section. The ACIO will also document and maintain a list of all federal and contract personnel with access to VMS data and databases. All MOUs and MOAs will be considered and executed by OLE, and all Interconnection Service Agreements executed by the ACIO must receive prior approval by OLE. OLE will evaluate and approve all data dissemination and access to parties outside of NMFS and will document and maintain a list of data requests from outside parties.¹

In addition, pursuant to NAO 216-100, the ACIO will issue employee security rules and the description of the security procedures used to prevent unauthorized access to, or removal of, confidential data. ACIO will monitor for such unauthorized access or removal.

Other policy considerations may limit OLE's ability to provide access to or disseminate VMS information. For example, to protect the integrity of a law enforcement investigation, OLE may restrict access to and dissemination of specific polling of a vessel over and above the normal position reporting rate for such vessels, or additional information collected or generated from a routine VMS investigative operation, such as communications with the vessel. It shall be the responsibility of the OLE to assure that such restrictions occur only as necessary on a case by case basis and only for the minimum time necessary to meet enforcement mission requirements. In determining the need to invoke restrictions, the OLE will give careful consideration to the operational needs of other agency components and the potential that such restrictions may diminish or otherwise hamper the mission of others dependent upon the information. In this case,

¹ VMS data requests are often complex, case-by-case considerations, and often require consultation with NOAA GC Enforcement Section. OLE must review and approve any request for access to VMS data.

OLE will notify any impacted office prior to restriction of access.

Though OLE and ACIO are responsible for the operation of the VMS Program and system, any significant expenses and support resources necessary to distribute VMS data to entities external to NOAA will be the responsibility of those entities unless otherwise provided for within budgetary and planning decisions. The OLE will support and facilitate a cooperative and participatory approach toward assisting other offices.

Authorized Users and Non-Disclosure Agreements (NDA)

Pursuant to NAO 216-100, each person who is given access to VMS data or its associated systems must provide a current, written and signed NDA to OLE before gaining access to VMS information.

OLE Enforcement Officers and Special Agents and our joint enforcement agreement (JEA) partners' fisheries enforcement officers are excluded from this requirement, as are NOAA GC Enforcement Section attorneys, and JEA partners' attorneys responsible for prosecuting marine natural resource enforcement cases.

Violations of NAO 216-100 will result in immediate termination of access and/or dissemination of VMS data along with the return of all data previously provided.

VMS Information

a. Use of Information

VMS information requested by an authorized user may be used only for the purpose authorized by legal provisions cited in this policy. Access to VMS data is subject to cancellation and sanctions for improper dissemination of information.

VMS may be utilized and disclosed, for enforcement purposes, in the investigation and prosecution of marine natural resource violations by OLE, NOAA GC Enforcement Section, and our JEA partners.

b. Storage of Information

In accordance with the legal and FISMA provisions cited in this policy, all VMS information must be maintained in a secure records environment to prevent unauthorized access or dissemination. No dissemination outside of NMFS shall occur without OLE's evaluation and approval.

c. Method of Disposal

VMS information must be used, stored, archived, or disposed of as authorized and prescribed by the applicable National Archives and Record Administration schedule and the legal provisions cited in this policy.

Measuring Effectiveness

This Policy Directive will be reviewed and updated annually in accordance with the NMFS Policy Directive System procedures. OLE works with the OCIO on an ongoing basis, which will provide for continual evaluation of the effectiveness of and the adherence to this policy.

References. This policy directive is supported by the references and glossary of terms listed in Attachment 1.

_____/s/_____
William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries

June 7, 2006
Date

Attachment 1

References.

16 U.S.C. §§ 1861(i) and 1881a(b); 50 CFR 600.405-600.425; 50 CFR 300.220; NAO 216-100; Federal Information Security Management Act of 2002 (FISMA) standards for a system rated moderate; and NOAA's records schedule 1513-18 for vTrack Vessel Monitoring System.

Glossary of Terms.

Interconnection-Service Agreements – An Agreement between parties to connect two IT systems for the purpose of sharing/delivering data, and which sets out rules, responsibilities, and other terms.

Non-Disclosure Agreement (NDA) – OLE issues a VMS-specific non-disclosure agreement setting out liability and restrictions on the use and handling of VMS data by parties to whom the data is given.

Position reports - Vessel location data (latitude, longitude, date, time) that is periodically transmitted from an affected vessel, via the vessel monitoring system; usually at set intervals.

Vessel Monitoring System (VMS) - An electronic monitoring system authorized by the Secretary to collect vessel data, via satellite transmission, including positional data and fishing declaration data.