

# Florida Keys Commercial Fishermen's Association

(Formerly Monroe County Commercial Fishermen, Inc.)

P.O. Box 501404, Marathon, FL 33050

Phone: 305-743-0294 Cell: 305-619-0039

Email: fkcfa1@hotmail.com

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You may not all be aware, but we have a serious problem facing our industry and we need to address it with legal moves (money) and we need your help. On May 18, 2006 NMFS (National Marine Fisheries Service) issued Amendment 18A, stating that effective December 7, 2006, vessels holding Gulf of Mexico Fisheries Reef Fish Permit will be required to have an operating VMS (Vessel Monitoring System) onboard their vessel.

Although VMS may not impact you right now, we have to realize that this is probably just the tip of the iceberg. We know that government is relentless once it gets its foot in the door. What group will be next? South Atlantic permit holders, shrimpers, king mackerel fishermen, lobster or stone crab fishermen?

An organization in Clearwater, the Gulf Fishermen's Association (GFA), has filed an injunction challenging the VMS program. FKCFA believes that GFA's attorney & counselor Mike Mastry and his legal team have filed legitimate claims that may possibly stop the federal government's invasion of our privacy and our livelihoods. It is now time to join forces with GFA and support their lawsuit. We are asking that you send \$200 dollars to us at the address above, made payable to FKCFA, so that we can compile the donation and show our support from the Keys fishermen. The money paid to GFA will all be "earmarked" solely to fight this battle. If funds are left over, they will be returned to us, then to you in a prorated amount.

This is a summary of the complaint filed by GFA's lawyers:

WHEREFORE, Plaintiff Gulf Fishermen's Association and its members respectfully request that this honorable Court enter the following relief:

1. A declaratory judgment that the VMS requirement of Amendment 18A violates the Magnuson-Stevens Act, National Standard number eight (8) by failing to take into account the importance of the fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to minimize adverse economic impacts on such communities;

2. A declaratory judgment that Defendants violated the APA in that the VMS requirement of Amendment 18A is arbitrary, capricious, contrary to law, and an abuse of agency discretion;

3. A declaratory judgment that the VMS requirement of Amendment 18A violates the RFA by failing to adequately address the specific considerations required within 5 U.S.C. §§ 604(a)(4) and (5);

4. A declaratory judgment that the VMS requirement of Amendment 18A is a violation of the Fourth Amendment to the Constitution in that the 24 hour per day electronic monitoring of the location of vessels with no indication that they will be used in violation of governmental fishing regulations is a violation of the vessel owner and/or operator's right to privacy;

5. An order awarding Plaintiff Gulf Fishermen's Association its attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

6. An order granting such other and further relief as the Court deems equitable, just, and proper under the circumstances.

**Get onboard now, before it's too late. \$200 will be a small price to pay if we can stop this.**

**We have to stand and fight; if we lay down, we die.**

Here's the abridged rule from the Federal Register: Vessel Monitoring System (18-A)

The Reef Fish FMP contains several area-specific regulations where fishing is restricted or prohibited to protect habitat or spawning aggregations, or to reduce fishing pressure in areas that are heavily fished. Unlike size, bag, and trip limits, where the catch can be monitored onshore when a vessel returns to port, area restrictions require at-sea enforcement. However, at-sea enforcement of offshore area restrictions is difficult due to the distance from shore and limited number of patrol vessels. There is a need to improve enforceability of area fishing restrictions through electronic methods.

This proposed rule would require permitted commercial reef fish vessels, including charter vessel/headboats with commercial reef fish vessel permits even when under charter, to be equipped with an operating VMS approved by NMFS for the Gulf reef fish fishery. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS would publish in the Federal Register a list of approved VMS mobile transmitting units and associated communication service providers that meet the minimum standards for the Gulf reef fish fishery....The VMS would be required to transmit a signal indicating the vessel's accurate position at least once per hour and must function 7 days a week, 24 hours a day unless exempted by NMFS under the power down exemption of the NOAA Enforcement Draft Vessel Monitoring System Requirements that is included as Appendix E to Amendment 18A. Prior to departure for each trip, a vessel owner or operator would be required to report to NMFS any fishery the vessel would participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that would be on board the vessel. This information could be reported via NMFS' toll-free number, 888-219-9228, or via an attached VMS terminal. The vessel owner would be responsible for the cost of the VMS equipment, installation, maintenance, and month-to-month communications. These VMS requirements would apply throughout the Gulf of Mexico. Compliance with the VMS requirements would be required 120 days after publication of the final rule implementing Amendment 18A.

Vessels fishing exclusively with fish traps would be exempted from the VMS requirement through February 7, 2007, but would remain subject to mandatory trip origination and termination reporting requirements through February 7, 2007. The use of fish traps in the Gulf reef fishery is prohibited after February 7, 2007.

These are some questions and answers that NMFS put together.

### **Why are vessel monitoring systems (VMS) needed in the reef fish fishery?**

The Reef Fish FMP contains several area-specific regulations in which fishing is restricted or prohibited to protect habitat, protect spawning aggregations, or reduce fishing pressure. Unlike size, bag, and trip limits, where the catch can be monitored when a vessel returns to port, area restrictions require at-sea enforcement. VMS enhances enforcement of area restrictions.

### **What vessels would be required to have VMS onboard?**

Amendment 18A would require all commercially permitted reef fish vessels and charter vessels with commercial reef fish permits to have VMS. Reef fish vessels exclusively using fish traps are exempt the VMS requirement because fish traps will no longer be an allowable gear type after February 7, 2007.

### **Who will pay for VMS?**

The cost of the vessel equipment, installation, maintenance, and month-to-month communications will be paid or arranged for by the vessel owners as appropriate. NOAA Fisheries Service will maintain and will publish in the *Federal Register* a list of type-approved units and communications protocols.