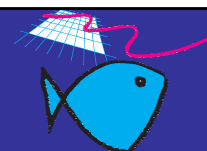
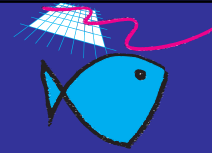


Legal issues related to VMS



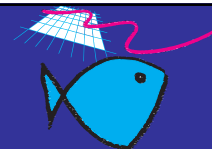
Legal definition of VMS

VMS means the satellite-based reporting system that is capable of monitoring fishing and related activities of fishing vessels including, but not limited to, the determination of a vessel's identity, GPS position, course and speed and special codes.



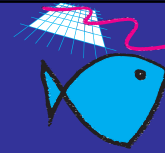
VMS history

- In use since around 1990 by European Union, USA, Australia and New Zealand
- Has since spread to use world-wide including RFMOs
- Use of VMS implies issue of both international and national law



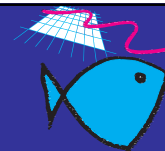
International law 1 -- UNCLOS

- 1982 United Nations Convention on Law of the sea (entered into force 1994)
- No direct discussion of VMS but recognizes sovereign rights of a coastal state over living and non-living aquatic resources in coastal waters and EEZ
- Fishing beyond EEZs left to open access regime, with specific obligations



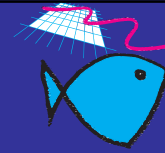
Straddling/Migratory stocks --1

- « 1995 UN Fish Stocks Agreement »
- Article 5 provisions support VMS
 - Collect and share in timely manner complete and accurate data concerning fishing activities, i.e. vessel positions, catch and effort
 - Research to promote technology for fisheries management
 - Conservation & management -- MCS



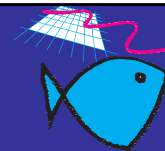
Straddling/Migratory stocks --2

- Article 10: through RFMOs agree standards for collection, reporting, verification and exchange of data
 - Compile and disseminate accurate and complete statistical data
- Article 14: Duty of flag state to ensure that vessels provide necessary information
- Article 18: MCS as flag state duty
- Article 25: Cooperation with developing states



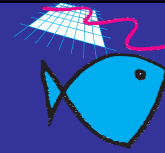
FAO Compliance Agreement

- 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas
- Part of 1995 Code of Conduct for Responsible fisheries
- Article 5: exchange of information on fishing vessel activities



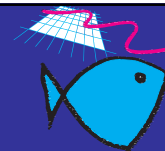
National law

- Implementation of a VMS may imply modification of national legislation to accommodate international obligations
- Some countries may be able to avoid legislation with a modification of fisheries regulations.
- Distinction between civil and common law



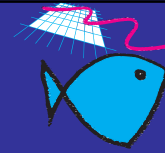
Legal issues -- confidentiality

- Highly sensitive issue related to disclosure, access and use of data
- Responsibility begins with reception of data at FMC
- Avoid harm to owner's competitive position
- Aggregation of data can facilitate distribution.



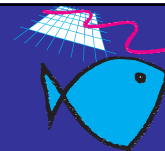
Legal issues -- evidence

- Does VMS, by itself, provide evidence of a standard to satisfy criminal courts?
 - Position is automatic and independent
 - Consecutive reports can lead to conclusions about vessel activity
 - Unlikely to be satisfactory in criminal court
- May be able to establish probable cause



Legal issues -- equipment

- Regulation establishes minimum performance standards:
 - Security (tamper proof)
 - Operational at all times
 - Position accuracy and velocity
 - Frequency of position reports
 - Data to be transmitted
 - format
- Approval certifies equipment
- Procedures in case of failure
- Responsibilities of permit holder and master
- Offences and penalties



Legal framework conclusions

- VMS must be supported by
 - Comprehensive legislation and regulations
 - Sound general legal framework
- International cooperation for:
 - Harmonized VMS regulations
 - Standards for delivering data and exchange of data between countries