

ENFORCEMENT CONSULTANTS REPORT ON
ELECTRONIC MONITORING REGULATIONS AND
EXEMPTED FISHING PERMIT UPDATES

The Enforcement Consultants (EC) has reviewed NMFS Report Agenda Item H.4.a, NMFS Report: Groundfish Electronic Monitoring (EM) Exempted Fishing Permits (EFP) Update and NMFS Recommendations for the Whiting Regulatory Amendment and have the following comments.

We would like to commend NMFS and Pacific States Marine Fisheries Commission (PSMFC) staff and especially Melissa Hooper, Dr. Steve Freese, Dave Colpo, and Alia AlHumaidhi for their efforts in implementing this EM EFP program and the substantial progress that has been made. We would also like to acknowledge the EM EFP participants for their role in implementing this groundbreaking EM EFP effort.

Regarding the preliminary lessons learned section of the report, the EC was an early advocate of an EFP process for EM implementation and believes the tiered approach as outlined on page 2 demonstrates the wisdom of such an approach, the same approach that was used with great success in implementing the First Receiver Site License Program.

We concur that “tracking compliance and communicating feedback to vessel owners and captains is critical to program success especially in incidents where performance needs to improve.” And that “there needs to be clear standards for performance, consequences for continued non-compliance, and procedures for re-evaluating a vessel’s eligibility to use EM when all other efforts to improve performance have failed.”

A score card on EM EFP compliance is being developed by PSMFC to assist NMFS in evaluating EFP performance. Our understanding is that approximately half of the applicants have performed admirably, whereas the other half have minor to significant compliance issues. Much of the noncompliance involves violations of sorting and discard protocols, timely submittal of the logbooks, failure to change out the hard drives as required, and the timely submittal of those hard drives. These requirements are essential to program performance, making compliance with the sorting, discard, log book, and hard drive requirements essential for program success.

Unfortunately, what starts as a minor correctable issue quickly escalates to a fundamental failure, placing the applicant in harms way. This is why the EC continues to encourage the Council to incorporate and assess an EM EFP Management and Enforcement Agreement in their EM analytical and regulation development process. Such an agreement written by attorney, Joe Sullivan, incorporating ideas gleaned through discussions with NMFS West Coast Division OLE and General Counsel staff has recently been submitted to NMFS by the California Coalition. NMFS is working with the Coalition to add this agreement to the Coalition’s existing EM EFP. Our hope is that the agreement will achieve the tracking compliance, communication feedback, and performance improvement objectives deemed necessary for program and individual success without direct involvement by NMFS SFD permitting staff or OLE. We believe such an

outcome would be greatly beneficial to the fleet participants and the overall management objectives of the Groundfish Catch Shares Program.

The NMFS report recommends proactive education of vessel owners and operators. The EC concurs. Many of the non-compliance issues that have surfaced are rooted in the individual vessel operators not understanding their individual performance requirements. We believe much of the non-compliance we are seeing could be resolved through mandatory pre-season meetings, at least initially. Once an individual has successfully participated in the program, the mandatory meeting requirement could be waived based on demonstrated past compliance, or made mandatory every two or three years.

As noted in the report, log books are the actual discard report delivered by the vessel for (IFQ) account debiting, with the video used to validate the submitted discard data. EM EFP language addresses the timely submittal of the log book data, but not how timely individual tow data needs to be recorded in the log book. Washington regulations are silent on timeliness of individual tow data recording. Oregon requires the logbook to be filled out within one week of landing. California requires the logbook to be filled out within 24 hours.

Alaska has a regulation requiring recording of individual tow information within two hours after completion of the tow. The Alaska regulation is designed to further improve the accuracy of the recorded data. This recording issue may be a lesser concern in the whiting fishery, given their robust hotspot tracking system, but no equivalent program exists in the non-whiting IFQ sector. With an eye towards improving accuracy, the Council may want to consider adding a requirement that individual tow information be recorded in the log book within a certain time frame after the tow is completed.

NMFS also reports that equipment failure has been greater than expected. As a precaution, in addition to motherships carrying backup camera systems, we believe individual vessels should carry a backup camera. On at least one occasion, a vessel moved a camera that was deemed less critical and replaced a down camera that was deemed critical, thus avoiding a situation where they would have been ordered to terminate their trip. This “carry a spare tire” approach would achieve the same positive outcome.

On at least three occasions, equipment glitches have occurred on the vessel’s initial trip. On one trip, the vessel was allowed to continue because the “glitch” was deemed non critical, but on at least two occasions the vessel was on either a “shake down” cruise, thus carrying an observer, or was on their initial trip and was carrying a NWFSC observer. Percentage wise, over 10% of the initial trips had equipment problems that would have terminated the vessel’s trip, absent the observer being on board. The EC believes this demonstrates the importance of the shakedown cruise. Yes, the vessel will be incurring the one-time cost of the observer, but termination of the trip would be much more costly to the vessel. We recommend requiring an observer present shakedown cruise after the initial installation of the EM system, after changes or modifications to the EM system, upon a change in the vessel operator, or on an annual basis.

The EC concurs with the NMFS Recommendations for Whiting EM Regulatory Amendments 1 and 2 found on page 4 of the report. In addition, we recommend the Council make a third change to its EM Final Preferred Alternative (FPA). Incorporate and assess an EM EFP Management and Enforcement Agreement in their EM analytical and regulation development

process. We believe this addition to be consistent with the last two bullets of the Council's EM EFP Final Preferred Alternative, per below.

- *Council staff should also monitor EFP progress and at the earliest Council meeting following when information from the EFP which would impact the Council's final preferred alternative becomes available, NMFS would provide Council with this information and request the Council's input on refinements on either the EFPs and/or Council's final preferred alternative.*
- *Until these policy decisions are verified by EFP testing and confirmed by the Council, proposed rules and associated decision documents would not be deemed for transmittal."*

EC Recommendations for EFP FPA Amendments and Regulation Considerations:

1. Incorporate and assess an EM EFP Management and Enforcement Agreement in the EM analytical and regulation development process.
2. Require vessel owners or representatives, vessel operators, and their alternates to attend mandatory pre-season meetings.
3. Require individual tow information to be recorded in the log book within a certain time frame after the tow is completed.
4. Require individual vessels to carry a backup camera.
5. Require an observer present shakedown cruise after the initial installation of the EM system, when changes to the system or vessel operator are made, or on an annual basis.

PFMC
09/12/15