

ENFORCEMENT CONSULTANT REPORT ON ELECTRONIC MONITORING PROGRAM
DEVELOPMENT INCLUDING PRELIMINARY APPROVAL OF EXEMPTED FISHING
PERMITS

The Enforcement Consultants (EC) has reviewed the documents associated with agenda item C.7, and in particular Agenda Item C.7.a, Attachment 3, April 2014 and has the following comments.

The EC is highly interested in the development and implementation of Electronic Monitoring (EM) strategies. Primary issues for the EC are the proper use of cameras as a component to achieving compliance monitoring objectives, development of an electronic logbook, and expanded use of the Pacific States Marine Fisheries Commission (PSMFC) E-Fish Ticket program.

We appreciate the work done by PSMFC as they further develop and understand these tools and their capabilities and restrictions.

Working from *Table 3: Detailed Descriptive Display of EM Alternatives*, the EC endorses the three alternatives as presented. These alternatives are consistent with the recommendations we made at the November 2013 Council meeting under Agenda Item H.8. Electronic Monitoring Alternatives. We have no recommended modifications, deletions, or additions at this time.

Speaking to the specific component of Adaptive or Phased Implementation, the EC is a strong supporter of *Option B: Use EFPs to test final Council policy, prior to full regulatory implementation*. We also recognize the merits of *Option C: Phase in by sector/gear*. Both alternatives allow for a phased-in approach that will provide opportunity to test “proof of concept” of the many nuances of this proposed compliance monitoring program.

Some will suggest that certain sectors such as the at-sea Pacific whiting fishery could move forward under a regulatory development schedule and that no further exempted fishing permit (EFP) testing is necessary. Other sectors, such as fixed gear and bottom trawl could certainly benefit from an EFP phased-in approach. The dilemma in moving forward with both a regulatory and EFP approach is the impact on workload, putting proposed timelines for both processes at risk, which for the EC is the heart of the issue, risk!

The EFP proposals the Council will be evaluating under this agenda item encompass all trawl rationalization sectors. With some further guidance and development, the EC believes the Leipzig, Fisherman’s Marketing Association (FMA) EFP Application, the California Risk Pool EFP Application, the Mann/Paine EFP Application, and the Eder Fixed Gear EFP Application have merit and represent a unique opportunity for the Council. That is not to say that these applications are complete and “ready for prime time.”

To that end, the EC offers these specific comments:

Leipzig FMA EFP Application: This application will provide the opportunity to analyze the capabilities of EM on a bottom trawl vessel under a full/maximized retention protocol.

The application presents a clear justification for testing EM on bottom trawl vessels, but lacks rationale for the large scope of the EM work. The applicant appears capable of reporting results of the EFP, but vessel specific oversight is unclear, particularly if the permit were an umbrella EFP. The EFP proposes near full retention which could address a barrier in EM implementation for bottom trawl and non-whiting midwater trawl, and will be using existing EM systems and providers.

But, there will be discards, so there needs to be a plan for handling discards. More importantly, a crew handling plan for protected species needs to be included. As presented, halibut would be retained, a specific violation of International Pacific Halibut Commission regulations. Overall, the applicant needs to add catch accounting rules adequate for individual fishing quota (IFQ) catch accounting if IFQ and individual bycatch quota catch are discarded.

The large number of participants (upwards to 120) is problematic. In discussions, the applicant has indicated that the retention requirements and potential halibut interactions will virtually eliminate vessels fishing near shore of the Rockfish Conservation Area. The primary target species will be Dover sole. The applicant suggests that perhaps as many as 20 vessels may participate.

More specifics on system components such as lighting requirements and chain of custody would be helpful. What is the protocol if the EM system fails at sea? The applicants' actions to address non-compliance needs to be a stronger component of the EFP. For example: how would the applicant facilitate removal of the EFP for non-compliance in lieu of due process?

California Risk Pool EFP Application: This application is by far the most comprehensive application received and offers the Council the opportunity to analyze a maximized retention protocol for fixed gear and a modified retention protocol for bottom trawl in a nearshore application.

The applicant presents a clear justification with clear goals and objectives and appears capable of providing adequate oversight of EFP activities and reporting. The scope of the work is reasonable and is applicable to fixed gear and trawl, which could be later applied to non-IFQ fisheries, particularly fixed gear.

Specific to enforcement, there are well-defined maximized retention protocols per gear type. The applicant proposes to only use existing EM systems and providers. Catch accounting from video sources is addressed to include catch accounting rules for IFQ catch accounting. This is the only EFP proposed that recognizes the need for observer validation. Chain of custody is considered, but more explanation is needed as to what constitutes discarding for safety.

Mann/Paine EFP Applications: This is a maximized retention EM application for the At-Sea Whiting and Shoreside Midwater Trawl sectors.

The applicant presents a clear justification for testing EM on midwater trawl vessels in two sectors, but could benefit by bolstering the rationale for the large scope of the EM work. The applicant appears capable of reporting EFP outcomes, but vessel-specific oversight is unclear, particularly if approved as an umbrella EFP. The applicant states that the work is broadly significant, but does not identify what aspects are broadly significant. Existing EM systems and providers will be used in this EFP.

There is no discussion regarding target species, i.e. whiting and/or yellowtail. This is significant because regulations regarding salmon disposition are different for these species. Absent specifics, we assume this application to be for EM use on a midwater trawl vessel, targeting more than just Pacific whiting. As such, the applicant needs to add catch accounting rules adequate for IFQ catch accounting for IFQ discards and prohibited species handling protocols. The application is unclear how the EFP would facilitate removal of the EFP for non-compliance, as such; a non-compliance criteria needs to be a stronger component of the EFP.

Eder Fixed Gear EFP Application: This application is for use of EM under a fixed gear maximum retention protocol.

The applicant presents a clear justification for testing EM on fixed gear vessels and appears capable of reporting results of the EFP, but vessel specific oversight is unclear, particularly if the permit was issued as an umbrella EFP. This proposal is applicable to fixed gear which could inform EM usage in fixed gear non-IFQ fisheries. The maximized retention protocols need refinement. The applicant proposes only using existing EM systems and providers but fails to address the percentage of video that would be analyzed. Are we to assume 100 percent video analysis? What is the protocol if the EM system fails at sea?

The applicant needs to add catch accounting rules adequate for IFQ catch accounting for IFQ discards. The application is unclear how the EFP would facilitate removal of the EFP for non-compliance, as such, non-compliance criteria need to be a stronger component of EFP.

Other than the California Risk Pool EFP application, no other EFP application includes any of the concepts delineated in the document “*Electronic Monitoring Compliance Program: Electronic Monitoring System (EMS) Criteria*” as presented at the November 2013 Council meeting. The EC believes the applications could be improved with consideration and inclusion of these program incentive/accountability components.

We believe applicants would be well-served to evaluate and consider elements contained throughout the California Risk Pool EFP application to include: Section 6, Justifications and Broader Significance where mitigating accountability risks are addressed, and Section 11, Proposed Data Collection in its entirety where Individual Vessel Monitoring Plans, data capture and analysis, concurrent observer coverage, quota accounting, and compliance with related penalty structure are discussed in detail.

In Summary

As presented, these EFP applications provide an opportunity for each sector to further explore their interest in using EM monitoring technology in lieu of the 100 percent human observer coverage. Yes, some EFPs have components which are redundant from previous experiments, but they still offer opportunity for furthering technology development, analytical capabilities, and development of incentivized self-governing schemes. And then there are other EFPs, which will explore new ground providing information for future regulatory development that simply does not exist today.

Is there risk in moving forward with these EFPs as presented? Certainly, but with modifications prior to implementation, as well as subsequent improvements as more is learned, we feel the risk is mitigated to make it more equitable on the risk/reward scale. Is there also risk in moving

forward with EM regulations? Absolutely! For example: the EC, as an advisory body, is not yet comfortable with making recommendations on EM application in the bottom trawl sector. Nor is there a thorough understanding of the implications on observer coverage, observer availability, or observer costs if the Council moves forward with regulations to provide EM in the whiting sectors, but not in other sectors.

Therefore, we return to the original dilemma: Can we continue with EM regulation development and EFP implementation concurrently? It appears, due to workload implications, the answer is no. So which option, regulations or EFPs, offers the best option for timely EM implementation with the least amount of risk? The EC contends the answer is to pursue EFPs, while using a deliberate, informed, controlled, and adaptive, “learn as you go” approach.

To the extent workload will constrict the number of EFPs which can be finalized and implemented within the Council’s desired timeframe; the EC offers this qualitative ranking.

1. California Risk Pool
2. Eder Fixed Gear EFP
3. Mann/Paine EFP
4. Leipzig FMA EFP

EC Recommendations:

1. Forward for further consideration and development the following EFP applications (Provide guidance to the applicants to include elements of *Electronic Monitoring Compliance Program: Electronic Monitoring System (EMS) Criteria* as appropriate):

Leipzig, Fisherman’s Marketing Association (FMA) EFP Application
California Risk Pool EFP Application
Mann/Paine EFP Application
Eder Fixed Gear EFP Application

2. Prioritize EFP EM development, analysis, and processing over EM regulation development.

PFMC
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