

ENFORCEMENT CONSULTANTS REPORT ON ELECTRONIC MONITORING REGULATORY PROCESS

The Enforcement Consultants (EC) has reviewed the documents associated with Agenda Item F.2. In general, the EC had difficulty making recommendations for refining or adopting numerous Preliminary Preferred Alternatives. Primarily because we feel there is a need for additional information, information we hope to obtain through the electronic monitoring (EM) Exempted Fishing Permit (EFP) process, which the Council will take up later this week. The EC has been consistent in its position that EFPs will better inform all parties for making decisions regarding the use of EM in lieu of, or in conjunction with observers in the Trawl Rationalization Fishery. Our review of this agenda item has done nothing to change our opinion in that regard. With that understanding, the EC makes the following comments pertaining to the alternatives listed under Chapter 2 of the document *Draft Analysis of an Electronic Monitoring Program for the Pacific Coast Limited Entry Trawl Groundfish Fishery Catch Shares Program*. As an alternative to listing our recommendation as a summary at the end of our analysis, we offer our recommendations/endorsements as presented in bold text throughout the document.

2.2 Compliance Monitoring Basic Provisions

2.2.1 We **endorse the draft analysis position**, that it is the individual vessel's option to use cameras in lieu of human observers and that 100% of all individual fishing quota (IFQ) trips must either have an observer or camera.

2.2.2 Video Reading Protocols: At this point in the process, the EC has no position on this option and awaits additional information gleaned through the EFP process and/or analysis from the Northwest Fisheries Science Center (NWFSC), Scientific and Statistical Committee (SSC), and Pacific States Marine Fisheries Commission (PSMFC).

2.3 Discard Accounting: The EC believes individual catch accounting should be maximized, which is one of the hallmark objectives of the Trawl Rationalization Program and which is achieved in the current program using 100% observer coverage. **We endorse Option A in that it appears to be the best "fit" for maintaining this management objective.**

2.4 Definitions for Total Catch Accounting: **The EC endorses these definitions as presented.** These definitions are consistent with the definitions used by the WCGOP in evaluating discards reported by observers and therefore seem appropriate.

2.5 Discard Requirements: Regarding Option A: Maximize Retention and Option B: Optimize Retention Retain Catch Share Species with Limited Discard Options, both Options A and B have been proposed for testing in the EFP applications currently under Council consideration. As with the Video Reading Protocols, the EC prefers to wait for additional information gleaned through the EFP process and/or analysis from the NWFSC, SSC, and PSMFC prior to endorsing or recommending either or both Options A and B.

Option B provides flexibility regarding discard proposals as well as requiring purposeful definition of the discard. Option C appears to be unduly broad, especially in light of the fact that speciation through camera technology has proven, thus far, to have limited application. For these reasons, **the EC recommends Option C: Discard at Will, be rejected from further consideration.**

2.6 Halibut Retention/Discard with Fishery Specific Options: The EC has no position other than to note any option adopted must be compliant with International Pacific Halibut Commission rules and regulations.

2.7 Discard Species List Adjustments: The EC has no position on this matter.

2.8 Vessel Operations Provisions

2.8.1 Observer Exemption Process

2.8.2 Eligibility for Camera Use:

2.8.2.1 Initial eligibility criteria

2.8.2.2 Continued eligibility

2.8.2.3 Self-Governing Plan Elements

2.8.3 Application Approval and Required Information

2.8.4 EM Vessel Operational Plan – Individual Vessel Monitoring Plans (IVMP)

2.8.4.1 IVMP requirements

With respect to Sections 2.8.1-2.8.4, the EC endorses these options as presented but also notes that if EM EFPs are approved by the Council later this week, that the information gleaned from those EFPs may alter, change, and/or enhance these options as currently presented.

2.8.5 EM Vessel Operational Plan – IVMP Expiration: **The EC endorses Option B Annual Expiration or if modifications are made.** This option is consistent with general West Coast federal or state permitting processes. Although not a permit, the IVMP supports a request for a regulatory exemption. As such the exemption should be viewed as a privilege. We believe the status of that privilege, at least initially, should expire, be reviewed, and potentially renewed on an annual basis. Our position demonstrates a conservative approach to the initial implementation of the EM Program. As the program matures and all participating effected parties become familiar with the program components and requirement, we believe this annual requirement may become a candidate for modification. This has been our experience in the First Receiver Site License Program which has similar elements.

2.8.6 Declaration of EM Use

At present, the EC is not prepared to recommend or endorse any of the options and awaits additional information regarding industry needs, such as, what is considered feasible by observer providers, and analysis from the NWFSC, SSC, and PSMFC.

2.9 Equipment and Protocol Provisions

The EC is not prepared to make a recommendation on this issue, but notes that currently, there are only two EM systems available for deployment in the trawl fishery, either by EFP or regulation.

2.9.1 EM Equipment Requirements

- 2.9.1.1 Data formats
- 2.9.1.2 Video Hardware
- 2.9.1.3 Logbook Data Source
- 2.9.1.4 On vessel Data Storage
- 2.9.1.5 Onboard operations

With respect to Section 2.9.1, the EC has no objection to these options as presented but notes these options, as listed, are incomplete in their detail and application description since the details will be developed during implementation. As with other operational components, we anticipate our understanding of needed equipment requirements will improve through the EFP process if EM EFPs are approved by the Council later this week.

2.9.2 Data Transfer Process

The EC is actively engaged in this issue. Chain of custody is a topic that is often raised in this discussion. The EC is confident that chain of custody requirements can be developed that create reasonable requirements on industry participants while meeting the evidentiary requirements of enforcement.

Regarding the personnel options listed for transfer of the data from the vessels to the reviewer, the EC believes all listed options are viable as long as proper training and accountability elements are in place.

Speaking specifically to the “crew” option, while a crew member may in fact, be the person who does the change out of the hard drive, the EC believes the ultimate responsibility for ensuring the transfer of the data from the vessel to the reviewer is completed, lies with the vessel operator/captain.

The EC recommends the shoreside catch monitor option as the option with the lowest probability of compromise of the data in the transfer process.

2.9.3 Data Confidentiality/Accessibility Ownership

- 2.9.4.1 Video Review Process
- 2.9.4.2 Video reviewers

The EC concurs with the options as stated with a caveat and an exception.

Video Reviewers, Option C: EM Provider. The EC is concerned there may be a conflict of interest with an EM provider reviewing their own data or some other EM provider’s data. EM providers want to promote the capabilities and reliability of their product as a basic element of their business plan, which may influence their review of the data generated by their systems, i.e. their analysis may be biased because of their interest in demonstrating the advertised capability

or reliability of their system, which in turn may be exaggerated or overstated. Conversely, this bias may manifest doubt on the capabilities or reliability of their competition's system.

The EC is also concerned about the consistence of the data analysis fleet wide. Even with one reviewing entity doing all data analysis coast wide, there will be some level of subjectivity in that analysis. The inconsistency of that subjectivity could expand exponentially if, for example, there are three or four system providers all doing their own data analysis, or possibly even more so if there is an additional third party analysis option.

The EC believes strongly that taking a conservative approach in the initial implementation phases of this program is a prudent course of action. One such step is to have one provider doing the data analysis for the entire coast, at least in the beginning of this program.

We also believe that it is reasonable to assume the video review will be deemed an inherently government function. **The EC recommends NMFS or its agent assume the video analysis responsibility, with one reviewer doing the data analysis for the entire coast.**

2.10 WCGOP Scientific Observations

The EC defers to the WCGOP for this entire section.

2.11 NMFS Processes

The EC has no deletions or changes to offer at this time, but as with other options, we await additional information gleaned through the EFP process and/or analysis from the NWFSC, SSC, and PSMFC.

2.12 Spatial Variation for High Bycatch Areas

The EC supports the GEMPAC recommendation to remove Options B and C for spatial management options. We agree the spatial management will add complexity to the management of the IFQ fishery and will require identifying additional management areas which in turn will be more difficult and more costly to manage.

2.13 Adaptive or Phased Implementation

The EC looks forward to agenda item F.5, later this week, where the merits of the four EM EFPs will be discussed and evaluated.

PFMC
06/20/14