

## ENFORCEMENT CONSULTANT REPORT ON ELECTRONIC MONITORING ALTERNATIVES

The Enforcement Consultants (EC) has reviewed the documents associated with Agenda Item H.8 Electronic Monitoring Alternatives and has the following comments.

As stated in our September EC report, electronic monitoring (EM) is a high priority issue for the EC. Primary issues for the EC are the 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 E-Fish Ticket Program.

We appreciate the work done by the Groundfish Electronic Monitoring Policy Advisory Committee (GEMPAC) in drafting alternatives for Council consideration listed in Agenda Item H.8.b Groundfish Electronic Monitoring Policy Advisory Committee Report, November 2013. Working from the GEMPAC Committee report, we endorse the following alternatives for further analysis.

### **Over Arching Policy Decision:**

The EC endorses both the No Action Alternative (Alternative 1) and Alternative 2. Alternative 1 maintains the status quo, which for enforcement is viable. Alternative 2 allows use of both observers and cameras as compliance monitoring tools. Maintaining both compliance monitoring options will be more costly to administer, but we believe the different nuances of the trawl rationalization catch shares program inclusive of geography, gear type, targeted species, marketing strategies, and compliance incentives require both options (observers and EM) to be in play.

### **1. Major Policy Decisions**

#### **1.1 EM Participation and Eligibility:**

The EC endorses Alternative 2, EM is Voluntary. We believe to properly incentivize EM, the use of cameras in lieu of human observers should be a privilege, not a requirement. The declaration for use of EM should be “conservative” in allowing how often and when EM participants can switch from EM to observers and back. Our conclusions on this issue are influenced by concerns for cost, industry confusion, and regulatory complexity.

#### **1.2 Monitoring for Discards:**

The EC endorses Alternative 1 Self-reporting and Audit Approach. Alternative 1 has the shortest discard data turnaround, vessel turnaround is immediate, and it projects the greatest account balance certainty. We do not endorse application of the sub options under any alternative for the stated reasons: more regulatory complexity and higher enforcement costs.

We believe all the alternatives may increase cost for enforcement relative to status quo. Overall cost may not in fact be reduced, but rather shifted, with that portion of the industry using EM being the beneficiary of reduced costs. Observer cost will likely increase because of the economy of scale, and enforcement and administrative costs may increase as some costs of monitoring shift from industry to government. But, we also believe that a properly incentivized compliance program which employs the lessons learned in the at-sea coop sectors may lessen the burden on enforcement and fisheries management.

### **1.3 Discard Alternatives:**

The EC endorses Alternative 2, Maximized Retention. Under this alternative only non-selective and prohibited species discards would be allowed, but all discards would be analyzed for catch accounting and debited from the vessel's individual fishing quota (IFQ) account.

It is our belief that Alternative 1, Full Retention is not viable. The *no non-selective discard option* does not reflect the reality inherent in the trawl fishery. There will always be some level of discard: accidental, operational, or because of legitimate safety concerns. Implementation of this option would violate the legal standard of "what is reasonable" and place the industry in a "gotcha" situation. For this reason, we recommend Alternative 1 be considered, but rejected, with no further analysis.

Alternative 3: Retention of Catch Shares Species with Options may have some future merit, but the EC is not prepared to endorse this option at this time. We await further analysis and information that would better inform us on the viability of this alternative.

Alternative 4: Discard at Will. The EC does not endorse this option. Intuitively, we believe this option to be the most costly, with the greatest impact on timely and accurate reporting of said discards, and fraught with opportunities to undermine the management objective of 100% accountability.

### **1.4 Individual Vessel Monitoring Plans (IVMP)**

*Approval and Duration of Effectiveness:* The EC endorses the use of IVMPs inclusive of these elements: *Approval* (1) approval by NMFS based on criteria specified in regulation; and *Duration of Effectiveness* (2b) annual or if modifications are made (NMFS to determine process). Annual application and approval allows for administrative review of performance standards record(s) and adjustments to the IVMP based on previous year's compliance.

*IVMP Information Categories:* We believe the IVMP information categories listed in the GEMPAC Committee Report (page 19) are a good start but should not be viewed as all inclusive and should be left open for additions/modifications.

*Declaration of EM use:* We believe an EM declaration should be required as "best practice" for clarifying what monitoring process is being used by a given vessel throughout the fishing year. Enforcement, NMFS, state agencies, Science Centers and providers will need this information for planning and administering various program aspects. As such, we recommend Section 4a of the GEMPAC Report, No Declaration, be considered but rejected.

Our preference is for a declaration to appropriate agencies and contractors for use of EM (as identified in Section 4b of the GEMPAC Report), inclusive of Option 1: for the coming year participants must indicate in which months EM will be used. We do not endorse Option 2 (trip by trip basis) believing it is overly burdensome to administer while not allowing proper planning by agencies, Science Centers, and providers. Option 3, Emergency Situation seems appropriate.

Furthering the analysis of Declaration of EM Use, we request inclusion of an Option 4: Annual Declaration of Intent to Use EM (year-round). Inclusion of this option will, at a minimum, allow for a more robust cost analysis of the declaration options, inclusive of the enforcement costs and costs associated with administrative and implementation responsibilities assumed by agencies and contractors.

## **1.5 Implementation**

The EC endorses Alternatives 2 and 3. These 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. Make no mistake, this undertaking is complicated. Testing components of the trawl catch shares program prior to the January 1, 2011 full implementation date was a good strategy. We recommend that strategy be employed here as well.

## **2. Data Capture and Processing**

### **2.1 Vessel Hardware and Data Maintenance Onboard**

### **2.2 Data Transfer Process**

The EC endorses the elements as described under 2.1 and 2.2. And we endorse the GEMPAC Committee recommendation that development of performance standards and the ultimate implementation of those standards be left to NMFS, PSMFC, the states, and contractors-to include video hardware, onboard operations, and transfer of data (video, electronic logbooks, data logger, and sensor). It is imperative that these standards meet evidentiary standards during initial data capture, on vessel storage, data transfer, analysis, and post analysis storage.

### **2.3 Data Processing, Validation, and Analysis**

At this point in the development of the alternatives, the EC has the most confidence in Alternative 2; the video review and log comparison analysis is done by Pacific States Marine Fisheries Commission (PSMFC). Consider:

- (1) The list of interested, responsible, and impacted parties involved in this program development and subsequent implementation is long, inclusive of state agencies, NMFS (SFD, Science Centers, and OLE), the fishing industry, communities, NGOs, PFMC, and contractors, and observer providers. For this program to succeed, a level of trust must be achieved with all parties. PSMFC is the best opportunity for achieving that trust.
- (2) PSMFC is fully engrained in the various West Coast catch accounting systems and is the end receiver and keeper of the data for all West Coast fisheries, both state and federal.
- (3) The current EM study underway by PSMFC further demonstrates their ability to carry out the data processing, validation and analysis function.

Bottom-line: PSMFC is a trusted partner with demonstrated experience and expertise.

## **Inclusion of an Additional Alternative**

Prior to the government shutdown and at the request of Council staff, Dayna Matthews was preparing Agenda Item H.8 Supplemental NMFS Report November 2013, *Electronic Monitoring Compliance Program: Electronic Monitoring System (EMS) Criteria*, to be presented for consideration at the GEMPAC meeting held October 15 and 16, 2013. Unfortunately, with the government shutdown, Mr. Matthews was unable to attend. The EC endorses inclusion of this report in the range of alternatives for further analysis.

## **EC Recommendations**

1. Recommend the GEMPAC Report H.8.b be forwarded for further analysis with these modifications:
  - a. Recommend 1.1 EM Participation and Eligibility Alternative 1 EM is mandatory, be considered, but rejected, with no further analysis.
  - b. Recommend 1.3 Discards Alternative 1 Full Retention be considered but rejected with no further analysis.
  - c. Recommend 1.4 Individual Vessel Monitoring Plan (IVMP), Declaration of EM use: Option 4 No Declaration to appropriate agencies and contractors be considered, but rejected with no further analysis.
2. Recommend an Option 5 be added to 1.4 Individual Vessel Monitoring Plan (IVMP), Declaration of EM use: Annual Declaration of Intent to Use EM (year around).
3. Recommend Agenda Item H.8 Supplemental NMFS Report November 2013, *Electronic Monitoring Compliance Program: Electronic Monitoring System (EMS) Criteria*, be included in the range of alternatives moved forward for further analysis.

PFMC  
11/04/13