

ENFORCEMENT CONSULTANTS REPORT ON FINAL ACTION TO ADOPT FIXED GEAR
ELECTRONIC MONITORING ALTERNATIVE AND DEEM WHITING AND FIXED GEAR
ELECTRONIC MONITORING REGULATIONS

The Enforcement Consultants (EC) has reviewed Agenda Item F.4.a NMFS Report: Deeming of Electronic Monitoring Regulations for the Whiting and Fixed Gear Fisheries, and the Groundfish Electronic Monitoring Policy Advisory Committee's (GEMPAC) recommended changes. The EC strongly supports National Marine Fisheries Service's (NMFS) proposal that electronic monitoring (EM) records, including video data, be retained for a minimum of three years. Three years is a significant compromise from the EC's preferred approaches for permanent retention by NMFS or a minimum five-year retention period to be consistent with the statute of limitations for violations under the Magnuson-Stevens Act. Three years is consistent with other recordkeeping requirements of the individual fishing quota (IFQ) program and state recordkeeping requirements. The EC notes that the state of California requires records to be kept for a minimum of four years. Video data will primarily be used to validate self-reporting in the discard logbooks to ensure the integrity of catch accounting data. The integrity of this data provides an opportunity to take enforcement action, should it be detected that a vessel is attempting to evade the self-reporting requirements. The system will also serve as evidence for enforcement of the new EM regulations, as well as the IFQ program and other applicable regulations, just as the testimony of observers is sometimes used for these purposes. The video data would not only be used to enforce fisheries violations by vessel operators and crew, but also by the EM service providers and their employees that will be conducting the video review beginning in 2020. Monitoring for compliance is an important function performed by catch share observers in the trawl program and catch share observers will continue to serve this function on non-EM vessels.

The EC believes that retaining EM data is essential if video review will be less than 100 percent. The retention of video can serve as a safety net for any subsampling method and encourage compliance. It can take time to develop an enforcement case, and it is not yet clear what procedures will be in place for spot-checking video that has not been otherwise reviewed or procedures to save video clips of potential violations if not all the video is retained. The EC notes that in the British Columbia EM program, the EM service provider deletes most of the video once the catch record for the trip has been accepted by Department of Fisheries and Oceans, but retains clips of any potential violations. Preliminary guidance from National Oceanic and Atmospheric Administration General Counsel at this time is that such rules in the U.S. could raise equity concerns. Until these issues can be resolved or alternate strategies can be developed to ensure retention of important information, the EC believes anything less than full retention for three years would undermine NMFS Office of Law Enforcement's and state enforcement partners' ability to effectively enforce the new EM regulations and other fisheries regulations on EM trips. The EC objects to the GEMPAC's recommendation of a one-year retention period and recommends that the Council deem NMFS' proposed three-year retention period which is already a compromise with the 5-year retention requirement described above. The EC did not have any other enforcement concerns with NMFS' proposed regulations or the GEMPAC's other recommended changes.