

GROUND FISH ELECTRONIC MONITORING POLICY ADVISORY COMMITTEE
RECOMMENDATIONS FOR FINAL ACTION TO ADOPT FIXED GEAR ELECTRONIC
MONITORING ALTERNATIVE AND DEEM WHITING AND FIXED GEAR ELECTRONIC
MONITORING REGULATIONS

Recommendations and Rationale for Revisions of the Final Preferred Alternatives (FPA) and Options for an Electronic Monitoring Program for the Fixed Gear Fishery:

In reference to Agenda Item F.4, Attachment 1, the Groundfish Electronic Monitoring Advisory Committee (GEMPAC) recommends the following changes:

- 1) Under EM Vessel Operation Plan - IVMP Expiration, change the final preferred alternative from Option B (Annual Expiration) to Option A (No Expiration). The GEMPAC notes that Option A provides more flexibility and already includes caveats to review plans when changes are made. Option A would likely be more cost effective for the government; National Marine Fisheries Service (NMFS) would not need to annually review IVMPs. NMFS notes that preseason planning would still be conducted to assist observer providers and the West Coast Groundfish Observer Program (WCGOP) in workload planning to supply an appropriate number of observers in each port.
- 2) Under Declaration of EM Use, change final preferred alternative from Option A (Annual – choose for entire year) to Option D (Declare Until Changed - no limit on frequency). This incorporates more flexibility for vessels. Again, NMFS notes that preseason planning would still be conducted to assist observer providers and the WCGOP in workload planning to supply an appropriate number of observers in each port.
- 3) Under Data Transfer Process, the GEMPAC recommends only Option D (Vessel Operator and Crew). The draft regulations already put the responsibility on the captain to send the hard drive to the review agency. This has worked well under the exempted fishing permit program.
- 4) Regarding Video and Data Processing Analysis, and as noted in footnote d/, once a certification process has been established by NMFS, Third Party reviewers may compete for business and conduct video reviews. The GEMPAC notes that it would like to include PSMFC as a potential third party reviewer beyond January 2020 or upon implementation of this element of the electronic monitoring (EM) program.

Regarding the Deeming of the Regulations:

The GEMPAC reviewed the NMFS Report and draft regulations under Agenda Item F.4. The GEMPAC appreciates the work that NMFS staff and EM fishery participants have done to continue moving towards finality of the regulations for an EM program. The GEMPAC has the following recommendations and concerns. Generally, the regulations implement the intent of the Council's Final Preferred Alternatives for whiting and fixed gear fisheries. In addition to the

recommended changes below, the GEMPAC recommends including the changes to fixed gear final preferred alternative as described above.

NMFS is seeking comment from the GEMPAC/TAC and Council on the appropriateness of the proposed declaration change limits for fixed gear vessels. The draft regulations cite a limit of 2 changes per year for the fixed gear fishery. The GEMPAC thinks that a change in the final preferred alternative to Option D (Declare Until Changed - no limit on frequency) would provide greater flexibility for the fixed gear fishery.

Regarding Section 660.603(b) (Agenda Item F.4.a, NMFS Report, April 2016, pg. 14) “*Provider permits*. To be an EM service provider, a person must obtain an EM service provider permit and endorsement by submitting an application to the NMFS West Coast Region Fisheries Permit Office. A person may meet some requirements of this section through a partnership or subcontract with another entity, in which case the application for an EM service provider permit must include information about the partnership.”

The GEMPAC is concerned that this language potentiality dampens the open market for new providers, may increase costs to participants, or may limit specialized EM providers. Partnering may reduce options to vessels to work with multiple providers. We do not recommend language changes at this time but note the concern.

660.603(b)(4) (Agenda Item F.4.a, NMFS Report, April 2016, pg. 17) “*Effective dates*. The provider permit is valid from the effective date until December 31 of that year or until NMFS notifies the EM service provider that its permit is invalid, whichever comes first.”

The GEMPAC recommends removing this date to conform to our recommendation above that permits be valid until modified.

660.603(e)(1) (Agenda Item F.4.a, NMFS Report, April 2016, pg. 17) “*New EMS or software versions*. If an EM service provider seeking to deploy a new EMS or software version submits a complete renewal application by August 1, and the application meets the requirements under this section, NMFS will issue a new EM service provider permit and endorsement by January 1 of the following calendar year.”

The GEMPAC recommends that NMFS review the January 1 date relative to the effective date as noted above.

660.603(i)(4) (Agenda Item F.4.a, NMFS Report, April 2016, pg. 19) “The EM service provider must provide technical assistance to vessels, upon request, in EM system operation, the diagnosis of the cause of malfunctions, and assistance in resolving any malfunctions. Technical support must be available by email. Technical support must be available by phone 24 hours per day, seven days per week, and year-round.”

The GEMPAC recommends removing references to particular modes of communication (i.e., email). This is too prescriptive and does not allow for technical advances.

660.603 (j)(3) (Agenda Item F.4.a, NMFS Report, April 2016, pg. 19) “Litigation support to NMFS if the EM system/data is being admitted as evidence in a court of law.”

The GEMPAC understands that requiring providers to offer litigation support free of charge may affect EM providers and, ultimately, the cost may be transferred to the participants. This cost may become quite large. This issue should be discussed in the preamble of the proposed rule so EM providers would understand the standard and how this language would be applied. NMFS may pay a portion of services needed in court.

660.603(k)(6) (Agenda Item F.4.a, NMFS Report, April 2016, pg. 21) “*Retention of records.* Following an EM trip, the EM service provider must maintain all EM data and other records specified in this section, or used in the preparation of records or reports specified in this section or corrections to these reports, for a period of not less than three years after the date of landing for that trip.”

The GEMPAC recommends that actual video retention be a 1-year requirement unless there is a catch-accounting or other compliance issue identified and reported during the initial video review. The GEMPAC agrees that the reports generated by the video reviewer could be kept for 3 years, but retention of the video as well is redundant and results in additional costs. There is uncertainty around the video storage expense, which could be overly burdensome to the fleet, particularly if video from trips is not able to be truncated to only include discard events to reduce file sizes. The GEMPAC does not believe that retention of the actual video is actually necessary, rather, the video review record should serve the purpose of documenting the video review/audit and meet the goals of catch accounting. The personal accountability aspects of the trawl IFQ program are met with the current review and reporting requirements, and retention of the video (unless an issue is identified by the video reviewer) seems contrary to the Purpose and Need for this action.

Additional recommendations:

The GEMPAC recommends that NMFS include a one-page EM application process for existing EM participants to reduce the paperwork burden for the industry.

The GEMPAC recommends including a general statement in the regulations that would require EM providers to comply with state and Federal warranty statutes. Currently some contracts are highly restrictive regarding warranty for services provided. Vessel owner’s remedies are severely limited in the event of equipment breakdown.

PFMC
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