

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE REPORT ON
ELECTRONIC MONITORING REQUIREMENTS IN THE BOTTOM TRAWL
AND NON-WHITING MIDWATER TRAWL FISHERY

On February 22, 2017 the Groundfish Electronic Monitoring Policy Advisory Committee held a work session to evaluate the Council's preferred alternatives for an electronic monitoring program for bottom trawl and non-whiting midwater trawl vessels. During this meeting, California Department of Fish and Wildlife (CDFW) staff discovered potential inconsistencies with State law for the retention/discard species list under both the optimized and maximum retention plans for the bottom trawl and non-whiting midwater trawl fishery participants. Since the Council is scheduled to reaffirm or revise their final preferred alternative to implement an electronic monitoring program for these fisheries at this meeting, CDFW provides a brief summary of the issue and identifies a potential pathway forward.

In September 2014, the Council chose optimized retention as part of their preferred alternative for the bottom trawl fishery. This allows vessels to discard species that can be differentiated on camera and requires retention of species that cannot be differentiated. Included in the species retention list for the bottom trawl fisheries are three nearshore rockfish species (black, blue, and olive) and state-managed species (California halibut). For the non-whiting midwater trawl fishery, the Council chose maximized retention as the preferred alternative, which would require retention of all IFQ groundfish, non-IFQ groundfish, and salmon.

Retention of select species of nearshore groundfish is only permissible in California when in possession of one of three permits – Nearshore Fishery Permit¹, Deeper Nearshore Species Permit², and Nearshore Fishery Bycatch Permit³. These permits are issued to individuals, not vessels. It is not clear how many individuals in the bottom trawl fishery using EM are in possession of state-issued nearshore permits and would be able to land black, blue, and olive rockfishes as required by the Exempted Fishing Permit (EFP) rules and the Electronic Monitoring (EM) program. Although CDFW understands the rationale for retaining these species, it is illegal to land them in California without a nearshore permit.

A state-issued permit is also required for an individual to take and land California halibut with trawl gear, although incidental amounts of California halibut can be landed with trawl gear if a vessel is trawling under authority of a federal groundfish trawl permit. Per California Fish and Game Code Section 8494 “individuals holding a federal groundfish trawl permit may retain and land up to 150 pounds of California halibut per trip without a California halibut trawl permit in accordance with federal and state regulations.”

¹ Nearshore Fishery Permit (NFP), allows the take of cabezon, California scorpionfish, California sheephead, greenlings (kelp and rock), and black-and-yellow, China, gopher, grass and kelp rockfishes; with hook-and-line and trap gear, in one of four regions.

² Deeper Nearshore Species Fishery Permit allows the take of blue, black, brown, calico, copper, olive, quillback, and treefish rockfishes; with any gear, statewide.

³ Nearshore Fishery Bycatch Permit allows the take of the NFP species with trawl or gill net gear south of Point Año Nuevo.

In order to meet requirements of the EFPs, the EM program and State law, CDFW supports adding proposed regulatory language to the final preferred alternative language of 50 CFR 660.604 to specify that state-managed species be treated in the same manner as prohibited species if the vessel captain, or person signing the fish ticket, does not have the appropriate state permit to land and sell these particular species of fish. Because the retention/discard species list can change through time, CDFW supports regulatory language that would cover any state-managed species to eliminate the need for further revisions should other state-managed species be added/removed from the lists.

Under the proposed rules (81 FR 61161, reprinted below), the first receiver is responsible for disposing of the prohibited species by either giving the fish to NMFS or U.S. Fish and Wildlife Service, or donating the fish to a local charitable organization for human consumption, if suitable. The vessel owner, crew member, first receiver or processing crew member cannot keep any part of the prohibited species for personal use and no part of any prohibited species may be allowed to reach commercial markets. CDFW believes that treating state-permitted species as prohibited species would be a simple and straight forward solution to meeting the needs of the EFPs, EM program and State law.

CDFW also recommends incorporating language into the federal rules in 50 CFR 660.604 to specify the landing limit for California halibut for those individuals who do not possess a state-issued California halibut trawl permit (e.g., the state of California allows federally-permitted groundfish trawlers to retain and land up to 150 pounds of California halibut per trip, per California Fish and Game Code, Section 8494).

50 CFR 660.604 in the proposed rule:

(u) First receiver requirements.

(1) Prohibited species handling and disposition. To ensure compliance with fishery regulations at 50 CFR part 300, subparts E and F, and part 600, subpart H; with the Pacific Salmon Fishery Management Plan; and with the Pacific Halibut Catch Share Plan; the handling and disposition of all prohibited species in EM trip landings are the responsibility of the first receiver and must be consistent with the following requirements:

(i) Any prohibited species landed at first receivers must not be transferred, processed, or mixed with another landing until the catch monitor has:

Recorded the number and weight of salmon by species; inspected all prohibited species for tags or marks; and, collected biological data, specimens, and genetic samples.

(ii) No part of any prohibited species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any prohibited species may be allowed to reach commercial markets.

(iii) Prohibited species suitable for human consumption at landing must be handled and stored to preserve the quality. Priority in disposition must be given to the donation to surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(iv) The first receiver must report all prohibited species landings on the electronic fish ticket and is responsible for maintaining records verifying the disposition of prohibited species. Records on catch disposition may include, but are not limited to: Receipts from charitable organizations that include the organization's name and amount of catch donated; cargo manifests setting forth the origin, weight, and destination of all prohibited species; or disposal receipts identifying the recipient organization and amount disposed. Any such records must be maintained for a period not less than three years after the date of disposal and such records must be provided to NMFS OLE immediately upon request.

(2) Protected Species handling and disposition. All protected species must be abandoned to NMFS or the US Fish and Wildlife Service or disposed of consistent with paragraphs (u)(2)(i) and (ii) of this section. No part of any protected species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any protected species may be allowed to reach commercial markets.