

NMFS Report 2: Draft Electronic Monitoring (EM) Regulations
Prepared by NMFS West Coast Regional Office
PFMC Meeting, April 7-11, 2016

In this report, NMFS is providing the regulatory text that we intend to include in the proposed rule that would implement the electronic monitoring (EM) regulatory amendment to the Pacific Coast Groundfish Fishery Management Plan for bottom trawl and non-whiting midwater trawl vessels, if approved. We are submitting these regulations to the Council so that the Council can consider the regulations for deeming necessary and appropriate, in accordance with 303(c) of the Magnuson-Stevens Act. Please review Appendix I under the Council's deeming procedures. After Council discussion, the Council may wish to allow Council staff to do a final review and deem any changes that are made to address the Council's comments.

The draft regulations in this report are based on the proposed regulations in the whiting and fixed gear EM proposed rule that published in September 2016 (81 FR 61161), and the Council's Final Preferred Alternative as defined at the September 2014 Council meeting. The regulations below only include those sections that would have requirements specific to bottom trawl and non-whiting midwater trawl. It is assumed that the other program requirements would remain the same for bottom trawl and non-whiting midwater trawl vessels as for whiting and fixed gear vessels.

1. NMFS would amend 50 CFR 660.13 to create declarations for electronic monitoring for non-whiting midwater trawl and bottom trawl vessels:

§ 660.13 Recordkeeping and reporting.

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(d) * * *

(5) * * *

(iv) * * *

(A) One of the following gear types or sectors, and monitoring type where applicable, must be declared:

* * * * *

(4) Limited entry midwater trawl, non-whiting shorebased IFQ, observer,

(5) Limited entry midwater trawl, non-whiting shorebased IFQ, electronic monitoring,

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(10) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl, observer,

(11) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl, electronic monitoring,

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2. NMFS would amend the regulations on vessel responsibilities at § 660.604 to include gear-specific requirements for bottom trawl and non-whiting midwater trawl vessels. Introductory text is included in some places, unchanged, to provide context for new provisions. The following section also includes provisions for self-enforcing agreements to complete the overall EM program requirements. The self-enforcing agreements would apply to whiting and fixed gear vessels as well as bottom trawl and non-whiting midwater trawl vessels.

§ 660.604 Vessel and first receiver responsibilities.

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(e) * * *

(1) *Initial application.* To be considered for an EM Authorization, the vessel owner must submit a completed application form provided by NMFS, signed and dated by an authorized representative of the vessel, and meet the following eligibility criteria:

(i) * * *

(ii) * * *

(iii) * * *

(iv) The vessel is participating in the Pacific whiting IFQ fishery, mothership sector, or the Shorebased IFQ sector ~~using groundfish non-trawl gear;~~

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(5) *Self-enforcing agreement.* In lieu of individual EM Authorizations, a group of eligible vessel owners participating in the shorebased IFQ sector may obtain an EM Authorization for a self-enforcing agreement. This agreement allows a group of eligible vessels to encourage compliance with the requirements of this section through a private, contractual arrangement. To be considered for a group EM Authorization, a group of vessel owners must submit a completed application package to NMFS for review and approval. Participating vessel owners must agree to conduct fishing operations according to the enforcement agreement. For a vessel to be deemed eligible to operate under the agreement, its owner(s) and its operator(s) must have executed a copy of the agreement or an adherence agreement under which they agree to be bound by the agreement's terms. The existence of a self-enforcing agreement among EM vessels does not foreclose the possibility of independent enforcement action by NMFS OLE or authorized officers.

(i) *Initial application.* To be considered for a group EM Authorization, a vessel owner must submit the following information:

(A) A completed application form provided by NMFS, signed and date by authorized representatives of the participating vessels, which attests that each participating vessel owner meets the following eligibility criteria:

(i) The applicant owns the vessel proposed to be used;

(ii) The vessel has a valid Pacific Coast Groundfish limited entry, trawl-endorsed permit registered to it;

(iii) The vessel is participating in the Pacific whiting IFQ fishery, mothership sector, or the Shorebased IFQ sector;

(iv) The vessel is able to accommodate the EM system, including providing sufficient uninterrupted electrical power, suitable camera mounts, adequate lighting, and fittings for hydraulic lines to enable connection of a pressure transducer;

(v) The vessel owner and operator are willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted vessel monitoring plan.

(B) A complete proposed self-enforcing agreement that describes how the group's operations will be conducted to meet the requirements of this section. NMFS will develop EM Program Guidelines containing best practices and templates and make them available on NMFS's website to assist vessel owners in developing a self-enforcing agreement. The self-enforcing agreement must include descriptions of the following:

(i) A list of all participating vessels, owners, operators, and other parties;

(ii) The name and contact information of a designated representative who will be responsible for ensuring that each vessel is complying with the terms and conditions of the agreement and the requirements of this section, and who will promptly inform the appropriate parties and NMFS if any vessel fails to comply;

(iii) Eligibility criteria for participating vessels, owners, and operators;

(iv) The roles and responsibilities of participating vessels, owners, operators, the designated representative, and any other parties to the agreement;

(v) Procedures for communication between participating vessels, owners, operators, the designated representative, and any other parties to the agreement, NMFS or its designated agent, and EM service providers, for the execution of the agreement and the requirements of this section;

(vi) Performance standards or requirements for equipment, if applicable;

(vii) Reporting requirements, if applicable;

(viii) Time and area restrictions, if applicable;

(ix) Provisions for the use and protection of confidential data necessary for execution of the agreement;

(x) Provisions to encourage or enforce the compliance of members with the agreement and the requirements of this section;

(xi) Procedures for addressing the non-compliance of members with the agreement and the requirements of this section, including procedures for restricting or terminating vessel's participation in the agreement;

(xii) Procedures for notifying NMFS when a participating vessel or its owner(s) or operator(s) are not complying with the terms of the agreement or the requirements of this section;

(xiii) Procedures for participating vessels, owners, operators, the designated representative, or other parties to the agreement, to exit the agreement;

(xiv) Any other provisions that the applicants deem necessary for the execution of the agreement.

(ii) *Review of initial application.* Based on a complete initial application, if NMFS determines that the applicant meets the eligibility criteria in paragraph (e)(5)(i) of this section, NMFS will notify the applicant in writing that the initial application has been accepted for further consideration. An applicant who receives such notice may install an EM system on his or her vessel and proceed with submission of a final application as provided under paragraph (e)(5)(iii). If an initial application has not been accepted, NMFS will provide the applicant an

explanation of the denial in writing. The applicant may appeal NMFS's determination following the process at § 660.25(g).

(iii) *Final application.* A final application must be complete and must include:

(A) *EM system certification.* For each participating vessel, a certification form, provided by NMFS, signed by a representative of a NMFS-permitted EM service provider that attests that an EM system and associated equipment that meets the performance standards at paragraph (k) was installed on the vessel, that the system was tested while the vessel was underway, and that the vessel operator was briefed on the EM system operation and maintenance. NMFS will maintain a list of permitted EM service providers on its website.

(B) *Tentative fishing plan.* For each participating vessel, a description of the vessel owner's fishing plans for the year, including which fishery the vessel owner plans to participate in, from what ports, and when the vessel owner intends to use EM and observers. This information is for purposes of planning observer deployments and is not binding.

(C) *Vessel monitoring plan.* For each participating vessel, a complete vessel monitoring plan for the vessel that accurately describes how fishing operations on the vessel will be conducted and how the EM system and associated equipment will be configured to meet the performance standards at paragraph (k). NMFS will develop EM Program Guidelines containing best practices and templates and make them available on NMFS's website to assist vessel owners in developing VMPs (see § 660.600(b)). An EM service provider may prepare and submit a VMP on behalf of the applicant. The VMP must include descriptions of the following (using pictures and diagrams where appropriate):

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(iv) *Review of final application.* NMFS may request additional information or revisions from the applicant until NMFS is satisfied that the application is complete. Based on a complete application, if NMFS determines that the applicant has met the requirements of this section, NMFS will issue an IAD and an EM Authorization. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS's determination following the process at § 660.25(g). NMFS will evaluate an application based on the EM Program Guidelines (see § 660.600(b)) and the following criteria, at a minimum:

(A) Review of the vessel owners' and operators' eligibility based on the eligibility criteria at paragraph (e)(5)(i);

(B) Review of the proposed vessel monitoring plans; and,

(C) Review of the proposed self-enforcing agreement.

(v) *Changes to a NMFS-approved self-enforcing agreement.* A group may make changes to an approved self-enforcing agreement by submitting a revised agreement or agreement addendum to NMFS in writing. NMFS will review and accept the change if it meets all the requirements of this section. A self-enforcing agreement addendum must contain:

(A) The date and the name and signature of the designated representative;

(B) Address, telephone number, fax number and email address of the person submitting the addendum;

(C) A complete description of the proposed agreement change.

3. NMFS would amend the regulations at § 660.604(m) to create a limit on switching for bottom trawl and non-whiting midwater trawl vessels, consistent with the Council's FPA from September 2014. The new text is underlined in the paragraph below.

(m) *Declaration reports.* The operator of a vessel with a valid EM Authorization must make a declaration report to NMFS OLE prior to leaving port following the process described at § 660.13(d)(5). A declaration report will be valid until another declaration report revising the existing gear or monitoring declaration is received by NMFS OLE. A vessel operator declaring a limited entry midwater trawl, Pacific whiting shorebased IFQ trip; limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership) trip; limited entry bottom trawl, shorebased IFQ trip; or limited entry midwater trawl, non-whiting shorebased IFQ trip, may only revise the existing monitoring declaration twice during the same calendar year. NMFS may waive this limitation with prior notice if it is determined to be unnecessary for purposes of planning observer deployments. Additional revisions may be made if the EM system has malfunctioned and the vessel operator has chosen to carry an observer, as allowed under paragraph (m)(3); or subsequently, the EM system has been repaired; and upon expiration or invalidation of the vessel's EM Authorization.

4. NMFS would amend the retention and reporting requirements in § 660.604(p) and (s) to add provisions for bottom trawl and non-whiting midwater trawl. The regulatory text below reflects the Council's FPA from September 2014, which specified optimized retention for bottom trawl and non-whiting midwater trawl vessels.

(p) *Retention requirements.*

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(3) *Bottom trawl, shorebased IFQ.* A vessel operator on a declared limited entry bottom trawl, shorebased IFQ trip must retain IFQ species (as defined at § 660.140(c)), except for Arrowtooth flounder, English sole, Dover sole, deep sea sole; Pacific whiting, and lingcod; salmon; greenland turbot; slender sole; hybrid sole; c-o sole; bigmouth sole; fantail sole; hornyhead turbot; spotted turbot; California halibut; longfin sanddab; speckled sanddab; northern rockfish; black rockfish; blue rockfish; shortbelly rockfish; olive rockfish; Puget Sound rockfish; semaphore rockfish; walleye pollock; slender codling; and Pacific tom cod; with exceptions listed below. The operator of a bottom trawl shorebased IFQ vessel must discard Pacific halibut, Dungeness crab caught seaward of Washington or Oregon, green sturgeon, eulachon, seabirds, sea turtles, and marine mammals.

- (i) Mutilated and depredated fish may be discarded.
- (ii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.
- (iii) Trash, mud, rocks, and other inorganic debris may be discarded.
- (iv) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(4) *Midwater trawl, non-whiting shorebased IFQ.* A vessel operator on a declared limited entry midwater trawl, non-whiting shorebased IFQ trip must retain IFQ species (as defined at § 660.140(c)), except for Arrowtooth flounder, English sole, Dover sole, deep sea sole, Pacific whiting, and lingcod; salmon; greenland turbot; slender sole; hybrid sole; c-o sole; bigmouth sole; fantail sole; hornyhead turbot; spotted turbot; California halibut; longfin sanddab; speckled sanddab; northern rockfish; black rockfish; blue rockfish; shortbelly rockfish; olive rockfish; Puget Sound rockfish; semaphore rockfish; walleye pollock; slender codling; and Pacific tom

cod; with exceptions listed below. The operator of a midwater trawl, non-whiting shorebased IFQ vessel must discard Pacific halibut, Dungeness crab caught seaward of Washington or Oregon, green sturgeon, eulachon, seabirds, sea turtles, and marine mammals.

(i) Mutilated and depredated fish may be discarded.

(ii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(iii) Trash, mud, rocks, and other inorganic debris may be discarded.

(iv) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

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(3) *Submission of hard drives.* Vessel operators must submit hard drives to NMFS or its agent using a method that requires a signature for delivery and provides a return receipt or delivery notification to the sender. Beginning January 1, 2020, or earlier if announced by NMFS in the *Federal Register* with six months prior notice, a vessel operator must submit hard drives to the vessel owner's contracted EM service provider. Deadlines for submission are as follows:

(i) *Pacific whiting IFQ vessels.* Hard drives containing data from an EM trip must be postmarked within 10 calendar days of the end of that EM trip.

(ii) *Mothership catcher vessels.* Hard drives containing data from an EM trip must be postmarked within 24-hours of the catcher vessel's return to port.

(iii) *Other shorebased IFQ vessels.* Hard drives containing data from an EM trip must be postmarked within 10 calendar days of the end of that EM trip.