

GROUND FISH ELECTRONIC MONITORING POLICY ADVISORY REPORT ON  
ELECTRONIC MONITORING PROGRAM REVIEW AND COST ALLOCATION  
PROCEDURAL DIRECTIVE

The Council's Ad Hoc Groundfish Electronic Monitoring Policy Advisory Committee (GEMPAC) met via webinar on August 17, 2018 to hear a presentation from National Marine Fisheries Service (NMFS) staff and discuss the draft Procedural Directive on Cost Allocations in Electronic Monitoring Programs for Federally Managed U.S Fisheries (Agenda Item F.3, Attachment 1). In addition, the GEMPAC discussed a number of electronic monitoring (EM) issues that need further attention and development for the West Coast EM program. Enclosed are the recommendations from the GEMPAC and a list of issues and concerns for Council consideration.

**Extension of Exempted Fishing Permits (EFPs)**

The GEMPAC received a report from NMFS regarding the status of the EM rulemaking packages for the catch share fisheries. These fisheries are currently operating under EFPs through 2018. **Since final rule making packages may not be complete by the end of 2018, the GEMPAC recommends extending the EFPs for all catch share fisheries through 2019.**

**Draft NMFS Procedural Directive on Cost Allocations in EM Programs for Federally Managed U.S Fisheries**

The GEMPAC received a presentation from Mr. Brett Alger of NMFS and provides the following recommendation and considerations. **The GEMPAC agrees with topics identified and described in the draft letter to the National Oceanic and Atmospheric Administration (NOAA, Agenda Item F.3, Attachment 2) and recommends these topics remain in the document.** In addition, the GEMPAC would like NMFS to consider finalizing related procedural directives, such as the forthcoming draft NMFS data storage procedural directive, prior to finalizing the Cost Allocation Procedural Directive. The GEMPAC would like NMFS to recognize the importance of the storage cost issue and its direct connection to development of the Cost Allocation Procedural Directive.

The GEMPAC would also like NMFS to provide the Council with an update of how comments from all Regional Councils were addressed and the expected implementation timeline for the Cost Allocation Procedural Directive.

**EM Items for Consideration and Prioritization**

The following is a list of items identified by the GEMPAC that need further attention and discussion. The GEMPAC would like to continue working on all these issues and thinks all items are a priority.

The GEMPAC notes that some members of the public and members of the GEMPAC will work on several of these items outside the Council process to support the GEMPAC discussions at future meetings. These "subgroups" would not be sponsored by the Council, but will work to provide much needed solutions and materials for further consideration and decision-making by the GEMPAC and the Council. This could help expedite the development of important items, several

of which have languished on the GEMPACs list of issues for several years, such as the shoreside catch share monitor issue.

**The GEMPAC also recommends that the November council meeting include a one-hour agenda item for another EM update.** The subgroups plan to develop some items and potential paths forward to support the Council discussion and workload planning to add EM agenda items to the Council's [Year-at-a-Glance document](#). Currently, there is a tentative Council agenda item regarding EM Program Review for Percent Video Review and NMFS Data Storage Procedural Directive.

### **1. EM Third Party Transition Plan**

The GEMPAC may need to work with NMFS and the Council to develop a plan to transfer EM costs from NMFS to the industry, including Third-Party video review. The EM program proposed rule for whiting and fixed gear identified that, by 2020 or earlier, the costs for the EM Program will be transferred to the industry. In addition, Page 5 of the draft Cost Procedural Directive identifies that:

“...transition plans should be developed to transition those costs to industry over time (not to exceed 3 years). The pace of the transition to industry funding will be specific to each fishery and will be determined by NOAA Fisheries and the Regional Fishery Management Councils, taking into account the status of the fisheries and the amount of funding appropriated to NOAA Fisheries for fishery monitoring programs.”

The transition plan should implement the cost sharing procedural directive that identifies sampling vs. administrative and include a timeline for when all EM program regulations would be final and implemented. This may include development of regulations (if applicable) and guidance documents for all parties involved. Deadlines for applicants to begin the observer exemption process and business planning to secure third-party providers should be included when developing the timeline for final transition. In addition, NMFS must develop plans to audit third-party providers to ensure compliance with program rules; it's possible that NMFS may conduct the audit internally, through a contractor or by some other means.

This issue is likely a top priority for 2018/2019 for NMFS, the GEMPAC, and the Council. This topic is directly related to cost sharing between NMFS and the industry (i.e., who bears the cost of video review), therefore; the final procedural directive may inform the discussion and development of this topic.

### **2. Reduction of Video Review from 100 Percent**

When finalizing the EM program policy for the west coast, the Council recommended an initial video review of all logbooks at a rate of 100 percent but no less than 10 percent in the future. The current requirement under the EFPs is to review 100 percent of all video; however, NMFS is paying Pacific States Marine Fisheries Commission (PSMFC) to conduct the review. In late 2017, the GEMPAC began to consider reducing the percentage of the video review conducted by third-party providers to lower costs. In addition, a lower rate may incentivize the industry to continue high quality discard documentation and compliance in order to receive a lower review rate. Business rules for increasing and decreasing review rates based on compliance

and other factors still need to be developed. The PSMFC began to explore the topic to examine risk and potential savings. Melissa Mahoney of the Environmental Defense Fund and Dayna Mathews of NOAA's Office of Law Enforcement examined other aspects. This policy needs further examination and may be directly related to cost sharing discussion (i.e., sampling vs. or administrative cost), therefore; the final procedural directive may inform further discussion and development of this topic.

### **3. Shoreside Catch Monitor Issue**

Implementation of the EM program will affect the availability of catch monitors at offload. Typically, an observer will step off the fishing vessel and become the shoreside monitor to document IFQ catch at time of landing. Absent an observer, processing plants and fish buyers are challenged with finding qualified (based on NMFS criteria) and available people to be shoreside monitors. Often monitors work intermittent hours and less than full time (less than 20 hours per week); the workforce for this type of situation is non-existent or severely lacking, especially in small ports. At the November 2017 Council meeting, the California Groundfish Collective provided a discussion paper on this topic that analyzes issues and solutions for shoreside catch monitor limitations ([Agenda Item F.2.b, Supplemental Public Comment 2](#)). This topic needs to be addressed by the GEMPAC in the near future.

### **4. Data Storage Procedural Directive**

NMFS stated in the draft Cost Allocation Procedural Directive:

“...NOAA Fisheries will be developing a procedural directive on EM data storage for EM video held by a third party, contracted by the fishing industry. The policy will consider the costs and benefits of storing video for various lengths of time, as well as the management, scientific, and enforcement needs of any EM program. NOAA Fisheries will also consider different types of data storage to reduce costs to industry.”

This draft directive is expected in early 2019 and the GEMPAC anticipates an opportunity to review the draft for the Council. This directive may be directly related to the EM final rule for whiting and fixed gear since storage of the data was proposed to be from 1 to 3 years. This topic needs to be address by the GEMPAC in the near future.

### **5. Consider Development of Dedicated EM Funding Mechanism**

The Council asked Council staff and the Executive Director to explore opportunities to secure future funding or support for west coast EM programs. This could include a revision to the Magnuson-Stevens Act to collect fees (similar to Alaska provisions) or some other fee collection process, aside from the NMFS cost recovery fee program.

As noted in the EM Cost Procedural Directive:

“Councils should be aware that NOAA Fisheries cannot guarantee the availability of appropriated funds for EM program administrative costs. If NOAA Fisheries at any point determines that it no longer has sufficient authorized appropriated funds to cover the administrative costs of a program, NOAA Fisheries will not approve a new program (if it has yet to be approved) or would adjust or end an existing program (if it has already

been approved). In either case, a Council and NOAA Fisheries will need to consider what, if any, action might be needed to ensure that its fishery management plans are consistent with the MSA or other legal obligations.”

The GEMPAC can provide feedback or further development regarding this topic.

## **6. Confidentiality of EM Data**

The GEMPAC is concerned about protecting confidential information in the EM program, particularly the video data. NMFS staff and General Counsel committed to providing an update regarding the development of revised or new confidentiality rules. NMFS provided an update in the spring of 2018; however, there has not been an update since then ([Agenda Item H.1.a, Supplemental NMFS Report 3, March 2018](#)). NMFS schedule for this project as noted in the report is as follows:

1. Completion of NMFS and NOAA General Counsel analysis (December 2017)
2. Discuss findings with PSMFC, the states, and tribes (February-March 2018)
3. Update the Council on findings (March and April 2018 Council meetings)
4. Compile inventory of affected data (Spring 2018)
5. Determine whether changes to Federal regulations are needed based on the data affected (Spring 2018)
6. Complete Council action and rulemaking to make changes to Federal regulations, if needed;
7. Develop joint, uniform procedures for protection and release of this data.

The GEMPAC is concerned about the final rule for whiting and fixed gear being released without a final decision by NMFS regarding confidentiality rules. Changes to the current rules and defining ownership of the video and other fishery data (i.e., owned by the vessel owner, captain, third-party or NMFS), and how it is protect under Federal law is critical. The GEMPAC would like to work with the Council, NMFS, NOAA Office of Law Enforcement, and General Counsel to define ownership and what data is considered protected. The GEMPAC would like to protect this information so that it may not be released through the Freedom of Information Act or by other applicable law unless the owner of the data agrees to do so.

## **7. Continue Development of Nearshore Bottomtrawl Solutions**

The Council began to explore the use of EM to assist the bottom trawl fishery in reducing their monitoring costs. However, nearshore fisherman cannot efficiently sort, weigh, and discard unwanted fish to make EM a cost effective tool for this fishing strategy. Nearshore fishermen are focused primarily on underutilized species (flatfish like Dover, English, Rex and Sand soles) with annual attainments well below 20% of the annual catch limits. These flat fish are mixed, difficult to identify on a video screen, and include other unwanted non-individual fishing quota fish species that may be discarded. The GEMPAC will continue to pursue technology that can speciate fish with speed and accuracy. In addition, the GEMPAC would like to explore what may be an acceptable margin of error for speciation and discard under the Council’s EM discard policy.

**8. Vessel Monitoring Plan Conflicts**

Fishery participants recently identified a few potential changes that may be needed in the current set of EFPs to increase efficient transfer of information of EM data and/or align timing of data transfer with current data submission deadlines. The industry is working with NMFS to examine these issues under the current EFPs. The GEMPAC may assist in the development of these changes if necessary.

**9. Potential to Modify Ad Hoc EM Committees**

There may be efficiencies gained by sharing knowledge and including other fishery representatives on the GEM committees to support the Council when considering implementation of EM in other fisheries on the west coast, such as the swordfish fishery.

PFMC  
08/28/18