



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
650 Capitol Mall Suite 5-100  
Sacramento, California 95814

October 24, 2018

Mr. Chuck Tracy, Executive Director  
Pacific Fishery Management Council  
7700 NE Ambassador Place  
Portland, OR 97220

Dear Mr. Tracy:

In August 2016, the Pacific Fishery Management Council (Council) transmitted to the National Marine Fisheries Service (NMFS) its proposed regulations for an electronic monitoring (EM) program for whiting trawl and fixed gear vessels. NMFS published proposed regulations on September 6, 2016 (81 FR 61161). NMFS is preparing final regulations for publication in the Federal Register. While drafting final regulations, NMFS has identified several revisions to the proposed regulations that are needed to clarify the regulations and achieve the objectives of the FMP. MSA Section 304(b)(3) states that NMFS “shall consult with the Council before making any revisions to proposed regulations, and must publish in the Federal Register an explanation of any differences between the proposed and final regulations.” NMFS provides a list of revisions to the proposed rule below, along with details of whether NMFS has consulted with the Council, or if that consultation has not yet occurred. NMFS intends for this letter and any subsequent response to satisfy any remaining need for consultation under section 304(b)(3) for this rule.

- NMFS intends to revise the proposed regulations so that fixed gear retention rules are consistent with the Seabird Avoidance Program at 50 CFR § 660.21. The proposed regulations would require fixed gear vessels to discard seabirds. While this is consistent with other law for pot vessels, longline vessels are required by the Seabird Avoidance Program to retain short-tailed albatross carcasses and turn them over to the U.S. Fish and Wildlife Service. Therefore, NMFS would publish final retention rules for fixed gear vessels to reference and not contradict the requirements of the Seabird Avoidance Program. To the best of our knowledge, this issue has not come before the Council to date.
- NMFS intends to grandfather in existing EFP vessels for the remainder of 2018 and 2019 and EM providers through the end of 2019 through this final rule. NMFS’s revisions to the proposed rule for vessel EM authorizations and provider permits would exempt existing EM EFP vessels and EM providers from application requirements in grandfathered years. This is necessary



because the June 2018 application deadline has passed and NMFS would not have time to process EM provider applications by the beginning of 2019. To the best of our knowledge, this issue has not come before the Council to date.

- NMFS intends to revise the proposed rule to change the requirement that a Vessel Monitoring Plan include measurements for bins and baskets to include other tools as well, because some species are measured using a length board and length-weight regression rather than volumetric estimates. To the best of our knowledge, this issue has not come before the Council to date.
- NMFS intends to remove the requirement for EM providers to maintain insurance coverage under the Jones Act and the U.S. Longshore and Harbor Workers' Compensation Act. NMFS proposed requiring insurance under these acts to mirror similar regulations for observers and catch monitors. However, after further review, NMFS believes those provisions are unnecessary and should be removed. To the best of our knowledge, this issue has not come before the Council to date.
- NMFS intends to revise the renewal procedures for vessel authorizations and provider permits to clarify the effective date and conditions under which authorizations and permits may expire or become invalid due to a lapse in eligibility. The proposed regulations were not clear that EM authorizations and provider permits have an expiration date or become invalid and that vessels and providers must apply to renew them. Revisions to the final rule would clarify the renewal procedures to avoid confusion. Also, to address EM service providers' desire for stability in planning, NMFS has made EM provider permits effective for two years instead of one. To the best of our knowledge, this issue has not come before the Council to date.

NMFS considers that we have completed the necessary consultation with the Council regarding the following revisions, for the reasons stated below.

- NMFS intends to revise the regulations governing the transmission and handling of EM data to reference EM data more generally, rather than hard drives specifically, to allow for other types of technology to be used to transmit EM data in the future (e.g., satellite, WiFi). The Council discussed this during its June 2018 meeting, therefore NMFS and the Council have consulted on this revision and it would be part of the final regulations.
- The Council's April 2016 final preferred alternative (FPA) selected "optimized retention" for fixed gear vessels, in which vessels would be able to discard any species that could be differentiated on camera. At the time of the Council's final action, NMFS only had data from the 2015 EFPs in which fixed gear vessels tested maximized retention, retaining all catch until landing. NMFS planned to allow fixed gear vessels to test optimized retention in 2016, but the results were not yet available. As a result, NMFS's proposed regulations reflected the more conservative, and restrictive, maximized retention rules that were based on 2015 EFP results and the Council's deemed

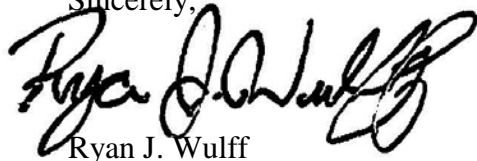
regulations. Under the maximized retention option, fixed gear vessels would be required to retain IFQ species, salmon, and non-IFQ rockfish, flatfish, and roundfish. However, NMFS also considered the optimized retention option in which fixed gear vessels may discard all fish, except salmon, and requested public comment on this option. NMFS received one public comment in favor of optimized retention for fixed gear vessels.

Updated data from the 2016 and 2017 EFPs show that optimized retention would not substantially increase uncertainty in catch estimates, because fixed gear trips continue to have low bycatch and discards. NMFS intends to revise the final regulations accordingly and select optimized retention for fixed gear vessels in the final rule. NMFS considers that we have completed any necessary consultation with the Council regarding this change because this approach was discussed with the Council at the April 2016 meeting (see slide 9 of F.4.a Supplemental NMFS Powerpoint), the Council's original 2016 FPA was optimized retention, and data collected since then supports its use.

As a reminder, NMFS made a revision to the definition of "minor operational discards" from the Council's deemed regulations before publishing them in the proposed rule, and that would remain in the final rule. NMFS included a definition of "minor operational discards" in its September 2016 proposed regulations. This proposed definition was not included in the version of the regulations deemed by the Council because the need for clarification occurred afterwards. NMFS proposed the revised definition as a technical change needed for clarity in the proposed rule. NMFS specifically requested comment on this proposed definition, but did not receive any comments opposing this revised definition. NMFS determined this definition in the final regulations is necessary to implement the program because it minimizes discards in the whiting EM program, reduces uncertainty in the species composition of discards, and ensures data produced through the program is the best available science for management. NMFS made this technical change to provide clarity at the proposed rule stage and does not require further consultation with the Council on this measure.

Thank you for your prompt attention. Please confirm receipt of this letter and inform us of any concerns you may have. Upon receipt of your response, NMFS will consider that it has completed any required consultation under MSA and proceed with publishing the final rule. If you have any questions, please contact Melissa Hooper, Permits and Monitoring Branch Chief at 206-526-4357 or [melissa.hooper@noaa.gov](mailto:melissa.hooper@noaa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan J. Wulff". The signature is fluid and cursive, with a large, stylized initial "R".

Ryan J. Wulff  
Assistant Regional Administrator  
for Sustainable Fisheries