



Pacific Fishery Management Council

7700 NE Ambassador Place, Suite 101 Portland, OR 97220-1384
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pcouncil.org
Philip Anderson, Chair | Charles A. Tracy, Executive Director

November 5, 2018

Ryan J. Wulff
Assistant Regional Administrator for Sustainable Fisheries
National Marine Fisheries Service West Coast Region
650 Capitol Mall, Suite 5-100
Sacramento, California 95814

Re: Response to Letter Regarding Final Regulations for an Electronic Monitoring Program for Whiting Trawl and Fixed Gear Vessels

Dear ^{Ryan}Mr. Wulff:

Thank you for your letter dated October 24, 2018 regarding National Marine Fisheries Service (NMFS) preparations of final regulations to implement the electronic monitoring (EM) program for midwater trawl whiting and fixed gear vessels. The Pacific Fishery Management Council (Council) selected their final preferred alternatives in November 2015 (final action for whiting) and in April 2016 (final action for fixed gear). The Council deemed the proposed regulations for both actions at its April 2016 meeting in Vancouver, Washington.

The analytical basis for the Council's recommendations are contained in the *Draft Environmental Assessment for a Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan - An Electronic Monitoring Program for the Limited Entry Groundfish Trawl Fishery* (Transmitted to NMFS by the Council on August 16, 2018) and in *NMFS Draft Environmental Assessment for a Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan to Implement an Electronic Monitoring Program* (Proposed by NMFS, September 6, 2016). In addition, our website contains meeting materials, advisory body statements, and recordings of Council meeting discussions that document the development of the EM Program.

During development of the EM program, your staff worked closely with Council staff and the Council's advisory bodies, including the Ad Hoc Groundfish Electronic Monitoring Policy and Technical Advisory Committees (GEMPAC and GEMTAC). Based on information you provided in your letter and documented discussions that occurred during GEMPAC, GEMTAC and Council meetings, I have determined all of your proposed changes for the final rule meet the intent of the Council's final preferred alternatives and the EM program as a whole.

I would like to provide some additional information to support your proposed changes where you noted consultation may not have been explicitly addressed by the Council:

- "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."

Meetings of the GEMPAC and GEMTAC assisted NMFS in the development of retention policies for protected species as part of the final preferred alternatives for optimized and maximized retention fishery. The committees recognized the need for NMFS to conduct sampling and develop necessary retention rules to be consistent with national policies and acts, including seabirds. Although the GEMPAC, GEMTAC, and Council did not specifically discuss consistency with the Seabird Avoidance Program, the proposed changes are consistent with the Council's responsibility to comply with other applicable laws and the intent of the Council's action for the proposed EM Program.

- “NMFS intends to grandfather in [vessels with existing exempted fishing permits (EFP)] for the remainder of 2018 and 2019, and EM providers through the end of 2019 through this final rule.”

The GEMPAC provided a report to the Council (Agenda Item F.4.a, Supplemental GEMPAC Report, April 2016), which included the following comment: “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 Council action at that meeting included direction to “incorporate the other recommendations contained in the GEMPAC report.” The Council intended to streamline the transition from EFP use to the regulatory regime and given the expected time line for implementation, we recognize the most efficient and least burdensome process will be to use a grandfather approach for vessels currently using an EFP for EM.

- “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.”

The Council and the advisory bodies saw videos of the tools being used by the industry to identify, measure (with a board), and estimate total fish discards. In addition, approval of EM EFPs by the Council included details of various catch handling measures and tools. Flexibility to add other tools to the VMPs are necessary so that the industry can adjust to technological advances and gain efficiencies in fish handling. The Council did not intend to limit the use of improved technologies and tools for implementing the EM program, and recommended NMFS allow such flexibility in the final rule; therefore, the proposed changes are consistent with the intent of the Council's action and proposed EM Program.

- “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.”

Although insurance coverage was discussed and recommended by the GEMPAC as necessary, no analysis of these specific insurance requirements and its potential impact was provided to the Council. The proposed change are a reasonable interpretation of such necessity and are unlikely to have any impact on EM providers or the industry.

- “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 GEMPAC developed eligibility criteria, renewal procedures, and expiration dates at several meetings. Upon Council approval of the final preferred alternatives in April 2016, industry representatives understood that permits expire annually and may not be renewed based on certain eligibility criteria. Clarity in the procedures for vessel authorizations and effective dates are consistent with the Council's expectations when it took final action for the proposed EM Program.

- “Also, to address EM service providers’ desire for stability in planning, NMFS has made EM provider permits effective for two years instead of one.”

The GEMPAC discussed permit expirations when the Council deemed the proposed EM regulations in April 2016. The GEMPAC’s intent was to create stability in the number of approved EM providers each year but expressed a strong desire to know the number of approved EM providers early in the EM Program application process. Therefore, a longer effectiveness would create more stability for EM participants and providers. Extending the effective period from one to two years is consistent with the intent of the Council’s action and proposed EM Program.

This response should be considered to satisfy any remaining need for consultation with the Council under section 304(b)(3) for this rule. Thank you for working closely with the Council on this important program and do not hesitate to call if you have any questions.

Sincerely,



Charles A. Tracy
Executive Director

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Cc: Mr. Phil Anderson
Mr. Marc Gorelnik
Mr. Barry Thom
Ms. Aja Szumylo
Ms. Caitlin Imaki
Mr. Lyle Enriquez
Ms. Melissa Hooper
Mr. Brett Wiedoff

