

GROUND FISH ELECTRONIC MONITORING POLICY ADVISORY REPORT
ON ELECTRONIC MONITORING PROGRAM GUIDELINES AND DATA
STORAGE PROCEDURAL DIRECTIVE PRELIMINARY REVIEW

The Groundfish Electronic Monitoring Policy Advisory GEMPAC/TAC held a meeting on September 12. Attendance was low with only four members of the GEMPAC and two members of the GEMTAC participating along with several members of the public. Regardless of the low attendance, the GEMPAC had a robust discussion around the agenda items as well as other relevant issues currently impacting the continued development of the EM regulatory program.

This statement includes overarching concerns and recommendations by the GEMPAC first, followed by specific comments related to the current agenda items.

Overarching Concerns

The GEMPAC discussed the serious concerns expressed in public comments regarding the direction of the development of the west coast electronic monitoring (EM) regulatory program. The GEMPAC shares those concerns due to the projected costs of the proposed regulatory program, noting the significant remaining uncertainty about key details and cost drivers.

The future cost of the program is of primary concern, given the original goal of creating a cost-effective monitoring option. The current implementation model for EM under exempted fishing permits (EFPs) allows for Pacific States Marine Fisheries Commission (PSMFC) to conduct video review and data storage, while the regulatory program will require EM implementation to occur under a third-party provider model, where private companies would provide video review and data storage services. The costs under the regulatory program are expected to increase significantly for both the industry and for National Marine Fisheries Service (NMFS). The industry will need to pay new costs for video review and data storage, while the agency will need to fund a new internal program in the Observer Program to conduct secondary review of EM video and audit EM service providers (the cost was \$410k in fiscal year 2019 and is projected to cost ~\$300k annually). Meanwhile, PSMFC is currently conducting video review and data storage services for under \$300,000 a year (see [Regulatory Impact Review](#) document).

The GEMPAC also discussed concerns about the timeline for finalizing critical components of the EM program (including guidance documents and application/review processes). We understand that an EM Manual with detailed business rules for EM Providers is in the process of being drafted and may be shared with the public during the November 2019 meeting. The components of the Manual – such as the rate of video review, auditing protocols and data storage requirements are critical aspects of EM service providers' ability to determine the pricing structure and likely costs of implementing the program. EM service providers present at the meeting (AMR/Saltwater) indicated that they were not able to provide accurate cost estimates for the future program based on the currently available information.

The implementation timeline as we understand it is below. The GEMPAC is concerned that the timeline is overly ambitious considering the key components of the program which have yet to be vetted with EM stakeholders and the Council.

Date	Task
September 2019	-Council considers extending current EFP through 2020
October 2019	-Proposed rule for bottom trawl and non-whiting midwater trawl published
November 2019	-Final Action on EM Guidelines -First opportunity to review EM Manual -Council consider EFP's to continue through 2021 (in case timeline isn't met and in order to get into the proper EFP schedule)
February 2020	-Final Rule for bottom trawl and non-whiting midwater trawl is published
April 2020	-First of two meetings to amend the EM regulations for whiting and fixed gear -Council finalizes EM Manual possibly
June 1, 2020	-EM Service Provider applications are due
June 2020	-Second of two meetings to amend the EM regulations for whiting and fixed gear
December 31, 2020	-EFP's currently expire
January 1, 2021	Rule(s) become effective; start of 3 rd party system

The GEMPAC is committed to developing a robust EM program which meets the goals and objectives set by the Council, including:

1. Reduce total fleet monitoring costs to levels sustainable for the fleet and agency;
2. Reduce observer costs for vessels that have a relatively lower total revenue;
3. Maintain monitoring capabilities in small ports;
4. Increase national net economic value generated by the fishery;
5. Decrease incentives for fishing in unsafe conditions;
6. Use the technology most suitable and cost effective for any particular function in the monitoring system; and,
7. Reduce the physical intrusiveness of the monitoring system by reducing observer presence.¹

Therefore, the GEMPAC supports the recommendations listed in the supplemental public comment [letter](#). Specifically, the GEMPAC requests the Council recommend the following to NMFS:

1. Delay implementation of the final rule for whiting and fixed gear vessels and delay publishing a rule for bottom trawl and non-whiting midwater trawl until
 - The final rule for whiting and fixed gear can be amended to ensure it meets the original goals and objectives of the EM program, including an option to continue allowing NMFS to fund PSMFC to provide video review and data storage services.
2. Allow existing programs to continue under Exempted Fishing Permits (EFPs) until such time the following occurs:
 - All National Policy/Procedural Directives related to EM are finalized and published.
 - A “*fully articulated program design*,” as described by the April 2017 motion, is made available for Council and stakeholder review, consideration, and approval and is finalized (i.e. guidance docs *and* manual)

¹ From Purpose & Need statement in Final EA ([URL](#))

- Updated cost estimates, based on finalized guidance and manuals, are presented, and clarity is provided regarding inequity issues raised related to the application of cost recovery fees under a Limited Access Privilege Permit (LAPP) to NMFS administrative EM costs.

NMFS EM Storage Procedural Directive

The GEMPAC heard a presentation from Ms. Melissa Hooper, NOAA WCR, regarding the draft national procedural directive on EM storage. The procedural directive requires that primary ('raw' EM) data must be stored for a minimum of 1 year after the fishing season/monitoring period ends, resulting in a total storage time of 2.25 years for the Pacific groundfish program. Under the final rule and the Cost Allocation Directive, industry bears the responsibility of storage costs of these data. The EM Manual is expected to prescribe how the data should be stored and accessed, which could alter the storage costs.

During discussions, the GEMPAC learned that under the EFP program, PSMFC rarely received requests to review video more than a few weeks after it had been reviewed and reported on. The GEMPAC also discussed how NMFS expects to store any EM data that it determines to be a Federal record. Current guidance suggests that any EM video that NMFS reviews during an audit will likely become a Federal record and would be subject to record retention requirements that are yet to be determined but that would incur costs to NMFS. Agency staff noted that these storage costs could be recouped using cost recovery fees under a LAPP like the trawl rationalization program.

The GEMPAC believes that a 2.25-year storage requirement for EM video data, the majority of which is not used after the first few weeks of storage, is excessive cost. As a comparison, in the British Columbia Rockfish hook-and-line EM program, the EM service provider is only required to hold EM data for two weeks following review unless video is requested by managers to be stored longer. Those requests occur approximately 14 percent of the time².

While we note the directive does not provide best practices on data confidentiality, access, or ownership, the Whiting and Fixed Gear Final Rule did make reference to these issues. We note that an EM workshop took place in June to discuss such topics but are unclear as to whether NMFS headquarters will provide more formal documentation, or an additional policy directive in the future, or if the EM Manual will provide language on these topics. Some fishermen perceive this issue as paramount to their reasons for not participating in an EM program, so the GEMPAC believes it is important for NMFS to place emphasis on how they will protect the confidentiality of EM data in at least the same way as observer data.

NMFS EM Implementation Guidance

The GEMPAC reviewed the EM Program Guidelines with NMFS staff, and provided several suggestions to clarify language and guidance. The GEMPAC understands these guidelines are intended to be a 'living document' that can be revised over time. As such, the GEMPAC recommends that the guidelines be pared down to only the most critical information for the start of the program. The GEMPAC noted some confusion around what aspects of the guidelines

² Estimate provided by Mike Orcutt, Archipelago Marine Research, LTD

provide 'recommendations' and what aspects are required (i.e. language from the final rule), and suggested the document be edited to clarify this.

Again, the GEMPAC notes that many key business planning elements for EM Providers are not in this document, but are forthcoming in the EM Manual, which NMFS is currently developing, and which has not yet been vetted with stakeholders.

The GEMPAC strongly recommends that NMFS staff work collaboratively with stakeholders and the Council on key elements of the EM Manual, so that input by impacted users can be incorporated on the front end. We believe an inclusive, collaborative process results in the best outcome with greater efficiency and buy-in from the EM stakeholder community who will ultimately use or refrain from using this program.

PFMC
09/15/19