

ENFORCEMENT CONSULTANTS REPORT ON ELECTRONIC MONITORING PROGRAM REVIEW

The Enforcement Consultants (EC) have reviewed the material associated with Agenda Item G.5 Electronic Monitoring Program Review and have the following comments. The EC appreciates National Marine Fisheries Service (NMFS), West Coast Region, Permits and Monitoring Branch Chief, Melissa Hooper, providing an overview of NMFS Report 1: EM Regulatory Changes and NMFS Procedure 04-115-03, Policy on Electronic Technologies and Fishery-Dependent Data Collection.

With respect to NMFS Report 1, the EC focused on sections 5. *Pre-departure Test* and 8. *Retention of EM Data*.

The EC recommends maintaining the requirement to have EM systems that have the pre-departure system function test built in. We understand that this feature can be easily added to units that currently don't have it. Having that system check prior to leaving the dock is both beneficial to the vessel operator and enforcement should an issue arise. The current exempted fishing permit (EFP) requirement of 100 percent video review can identify system issues quickly. However, we are concerned that random video reviews may allow for a system to be off-line without being detected for a considerable period of time. There is also concern that a combination of random video review and the inability to conduct a systems check on the vessel may encourage some to tamper with the video system.

Regarding section 8. *Retention of EM Data*, the EC reiterates its previously stated position that it strongly supports NMFS proposal that EM records, including video data, be retained for a minimum of three years after the date of landing as is currently required by regulation. Three years is a significant compromise from the EC's preferred approaches for permanent retention by NMFS for a minimum five-year retention period to be consistent with the statute of limitations for violations under the Magnuson-Stevens Act. Three years is consistent with other recordkeeping requirements of the individual fishing quota (IFQ) program and state recordkeeping requirements. Video data will primarily be used to validate self-reporting in the discard logbooks to ensure the integrity of catch accounting data. The integrity of this data provides an opportunity to take enforcement action, should it be detected that a vessel is attempting to evade the self-reporting requirements. The system will also serve as evidence for enforcement of the new EM regulations, as well as the IFQ program and other applicable regulations, just as the testimony of observers is sometimes used for these purposes. Monitoring for compliance is an important function performed by catch share observers in the trawl program and catch share observers will continue to serve this function on non-EM vessels.

The EC believes that retaining EM data is essential if video review will be less than 100 percent. The retention of video can serve as a safety net for any subsampling method and encourage compliance. It can take time to develop an enforcement case, and it is not yet clear what procedures will be in place for spot-checking video that has not been otherwise reviewed or procedures to save video clips of potential violations if not all the video is retained. The EC believes anything less than full retention for three years would impair NMFS Office of Law Enforcement's and state

enforcement partners' ability to effectively enforce the new EM regulations and other fisheries regulations on EM trips.

The EC notes that NMFS Procedure 04-115-03 outlines the desire to have a fixed monitoring period that is "evaluated through regional processes and not this procedural directive." The Procedure document includes an example of a variable retention period between 15 and 27 months. The EC recommends that if there is a desire to have less than a three-year retention, then at a minimum, it should be no shorter than 27 months after the date of landing for that trip. This would include a 12-month fixed (vice variable) Fishing & Monitoring Period, a three-month Review and Analysis Period and a 12-month Retention Period.

PFMC
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