

NATIONAL MARINE FISHERIES SERVICE (NMFS) REPORT ON DRAFT ELECTRONIC  
(EM) REGULATIONS PREPARED BY NMFS WEST COAST REGIONAL OFFICE, PFMC  
MEETING, JUNE 12-19, 2020

In this report, NMFS is providing the draft regulatory text for possible inclusion in the proposed rule that would implement the electronic monitoring (EM) regulatory amendment to the Pacific Coast Groundfish Fishery Management Plan for which the Council is taking final action at this meeting. We are submitting this draft regulatory text to the Council so that the Council can consider the regulations for deeming as necessary and appropriate, in accordance with 303(c) of the Magnuson-Stevens Act (see Council Operating Procedures 1). We request that the Council allow Council staff to do a final review and deem any changes that are made to address the Council's comments following the Council meeting, to expedite publication of the proposed rule as soon as possible.

We have also included two additional regulatory changes based on public comments and discussion at and following the April 2020 Council meeting, that we are recommending that the Council include in its Final Preferred Alternative at this meeting, if appropriate.

**Revising regulations regarding authorized release of EM data**

The regulations at 50 CFR 660.603(n)(3) prohibit an EM service provider from releasing a vessel's EM data and other records unless authorized by the "owner or operator of the vessel." Public comment at the April 2020 Council meeting noted that referring to both the vessel owner and operator is confusing and does not make clear who is authorized to release the data. This issue was also raised and discussed briefly at the April 2020 Groundfish Electronic Monitoring Policy Advisory Committee (GEMPAC) meeting, but was not included in the GEMPAC report. NMFS further notes that fishing operations can be different, and a vessel operator may be authorized to act on behalf of the vessel owner in some businesses but not others. The way NMFS addresses this issue in other permit regulations is to refer to "an authorized representative of the vessel" rather than the owner or operator. In this way, anyone signing a release of information or other permit forms is attesting to their authority to do so. **Therefore, NMFS recommends that the regulations at §660.603(n)(3) be revised to refer to an "authorized representative of the vessel" consistent with other west coast regulations.**

**Revising regulations defining limitations on conflicts of interest for EM service providers**

An EM service provider has requested a change to the regulations that define a conflict of interest for EM service providers at §660.603(h) to expand the types of services that are exempt from a conflict of interest beyond just biological sampling services. Currently the definition excludes “the provision of observer, catch monitor, EM or other biological sampling services, in any federal or state managed fisheries” from the definition of a “direct financial interest.” The EM service provider noted that many EM vendors provide a range of other services to fishing companies, including vessel monitoring systems (VMS), automatic identification system (AIS) transponders, telemetry (such as product temperature monitoring for seafood safety), buoy and gear monitoring, sonar systems, and mandatory safety services (i.e. GMDSS). Under the current regulatory definition, such EM vendors would be ineligible to provide EM services in the west coast groundfish fishery. The EM service provider noted that there is no evidence to suggest that providing such technical services to fishing companies creates any greater conflict of interest than providing biological sampling services, and requested that the definition be revised. **NMFS agrees and recommends revising the definition of a conflict of interest at §660.603(h) to exclude providing other types of technical and equipment services to fishing companies.**

The draft regulations in this report are based on the regulations for the EM program at 50 CFR 660 Subpart J, and the Council’s Preliminary Preferred Alternative for this regulatory amendment as defined at the April 2020 Council meeting. Introductory text is included in some places, unchanged, to provide context for new regulatory language:

**1. Hard Drive Deadline: increase the hard drive submission deadline to 72 hours from the beginning of the offload.**

§660.604 *Vessel and first receiver responsibilities*

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(s) *Reporting requirements*\*\*\*

(3) *Submission of EM data.* \*\*\*

(i) *Pacific whiting IFQ vessels.* EM data from an EM trip must be submitted within 10 calendar days of the end of that EM trip.

(ii) *Mothership catcher vessels.* EM data from an EM trip must be submitted within ~~24~~ 72 hours of the catcher vessel's return to port.

(iii) *Non-trawl shorebased IFQ vessels.* EM data from an EM trip must be submitted within 10 calendar days of the end of that EM trip.

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**2. Reusing Hard Drives: require EM data to be removed before reusing hard drives only if end-to-end encryption is not used.**

§660.603 *Electronic monitoring provider permits and responsibilities*

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(m) *Data services.*\*\*\*

(3) The EM service provider must track hard drives and EM datasets throughout their cycles, including documenting any access and modifications. If end-to-end encryption is not used to protect EM data, EM data must be removed from hard drives or other medium before returning them to the field.

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**3. Limit on Switching Between EM and Observers for Whiting: remove the limit on switching between observers and EM for whiting vessels.**

§ 660.604 *Vessel and first receiver responsibilities*

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(m) *Declaration reports.* The operator of a vessel with a valid EM Authorization must make a declaration report to NMFS OLE prior to leaving port following the process described at §660.13(d)(4). A declaration report will be valid until another declaration report revising the existing gear or monitoring declaration is received by NMFS OLE. ~~A vessel operator declaring a limited entry midwater trawl, Pacific whiting shorebased IFQ trip or limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership) trip may only revise the existing monitoring declaration twice during the same calendar year. NMFS may waive this limitation with prior notice if it is determined to be unnecessary for purposes of planning observer deployments. Additional revisions may be made if the EM system has malfunctioned and the vessel operator has chosen to carry an observer, as allowed under paragraph (m)(3); or subsequently, the EM system has been repaired; and upon expiration or invalidation of the vessel's EM Authorization.~~

**4. Mothership/Catcher Vessel (MS/CV) Endorsement: remove the requirement for an MS/CV endorsement to use EM on mothership catcher vessel trips.**

§660.604 *Vessel and first receiver responsibilities*

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(e) *Electronic Monitoring Authorization.* \*\*\*

(1) *Initial application.* To be considered for an EM Authorization, the vessel owner must submit a completed application form provided by NMFS, signed and dated by an authorized representative of the vessel, and meet the following eligibility criteria:

(i) The applicant owns the vessel proposed to be used;

(ii) The vessel has a valid Pacific Coast Groundfish limited entry, trawl-endorsed permit registered to it;

~~(iii) If participating in the mothership sector, the vessel has a valid MS/CV endorsement;~~

~~(iii)~~(iv) The vessel is participating in the Pacific whiting IFQ fishery, mothership sector, or the Shorebased IFQ sector using groundfish non-trawl gear;

~~(iv)~~(v) The vessel is able to accommodate the EM system, including providing sufficient uninterrupted electrical power, suitable camera mounts, adequate lighting, and fittings for hydraulic lines to enable connection of a pressure transducer;

~~(v)~~(vi) The vessel owner and operator are willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted VMP.

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**5. Pre-departure Test: Maintain status quo for the pre-departure test requirements as it is useful in ensuring systems are working before departure.**

No changes.

**6. Logbook Processing: allow EM providers to receive and enter logbook information, rather than submitting to National Marine Fisheries Service (NMFS). (see also 7. B)**

§660.603 *Electronic monitoring provider permits and responsibilities*

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(m) *Data services.* For vessels with which it has a contract (see §660.604(k)), the EM service provider must provide and manage EM data and logbook processing, reporting, and

record retention services, as described below and according to a NMFS-approved EM Service Plan, which is required under §660.603(b)(1)(vii), and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, and such that the EM Program achieves its purpose as defined at §660.600(b).

(1) The EM service provider must process vessels' EM data and logbooks according to a prescribed coverage level or sampling scheme, as specified by NMFS, and determine an estimate of discards for each trip using standardized estimation methods specified by NMFS. NMFS will maintain manuals for EM and logbook data processing protocols on its website.

(2) \*\*\*

(3) \*\*\*

(4) \*\*\*

(5) \*\*\*

(6) The EM service provider must process copies of state and federal logbooks and report logbook data to NMFS for EM trips. EM service providers must receive, data enter, quality assure/quality control, and submit logbook data to NMFS according to the EM Program Manual or other written and oral instructions provided by the EM Program, such that the EM program achieves its purpose as defined at §660.600(b). Logbook data must be submitted to NMFS within 2 business days of receipt from the vessel operator.

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§660.604 *Vessel and first receiver responsibilities.*

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(s) *Reporting requirements—*

(1) *Discard logbook.* \*\*\*\*

(2) *Submission of logbooks.* Vessel operators must submit copies of the federal discard logbook and state retained logbook to the vessel owner's contracted EM service provider and to NMFS or its agent within 24-hours of the end of each EM trip.

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**7. Reporting Deadlines for EM Service Providers: require deadlines for EM service provider reports of technical assistance, logbook data, vessel operator feedback, EM**

**summary and data compliance reports, and other as specified elsewhere.**

- A. Reports of technical assistance at §660.603(k).**
- B. Logbook data (see #6 Logbook Processing above).**
- C. Vessel operator feedback reports at §660.603(m)(4).**
- D. EM summary data and compliance reports (§660.603(m)(5)).**

**7.A. Reports of technical assistance at §660.603(k).**

§660.603 *Electronic monitoring provider permits and responsibilities*

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(k) *Field and technical support services.* The EM service provider must provide and manage EM systems, installation, maintenance and technical support, as described below and according to a NMFS-accepted EM Service Plan, which is required under §660.603(b)(1)(vii), and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, such that the EM program achieves its purpose as defined at §660.600(b).

- (1) \*\*\*
- (2) \*\*\*
- (3) \*\*\*
- (4) \*\*\*

(5) The EM service provider must submit to NMFS reports of requests for technical assistance from vessels, including when the call or visit was made, the nature of the issue, and how it was resolved. Reports must be submitted to NMFS within 24 hours of the EM service provider being notified of the request for technical assistance.

**7. C and D. Vessel operator feedback reports at §660.603(m)(4) and EM summary data and compliance reports (5).**

§660.603 *Electronic monitoring provider permits and responsibilities*

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(m) *Data services.* For vessels with which it has a contract (see §660.604(k)), the EM service provider must provide and manage EM data and logbook processing, reporting, and record retention services, as described below and according to a NMFS-approved EM Service

Plan, which is required under §660.603(b)(1)(vii), and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, and such that the EM Program achieves its purpose as defined at §660.600(b).

(1) \*\*\*

(2) \*\*\*

(3) \*\*\*

(4) The EM service provider must communicate with vessel operators and NMFS to coordinate data service needs, resolve specific program issues, and provide feedback on program operations. No later than three weeks from the date of receipt of EM data for processing from the vessel operator, tThe EM service provider must provide feedback to vessel representatives, field services staff, and NMFS regarding:

(i) Adjustments to system settings;

(ii) Changes to camera positions;

(iii) Advice to vessel personnel on duty of care responsibilities;

(iv) Advice to vessel personnel on catch handling practices; and,

(v) Any other information that would improve the quality and effectiveness of data collection on the vessel.

(5) On behalf of vessels with which it has a contract (see §660.604(k)), the EM service provider must submit to NMFS logbook data, EM summary reports, including discard estimates, fishing activity information, and meta data (*e.g.*, image quality, reviewer name), and incident reports of compliance issues according to a NMFS-accepted EM Service Plan, which is required under §660.603(b)(1)(vii), and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, such that the EM program achieves its purpose as defined at §660.600(b). EM summary reports must be submitted within three weeks of the date the EM data was received by the EM service provider from the vessel operator. If NMFS determines that the information does not meet these standards, NMFS may require the EM service provider to correct and resubmit the datasets and reports.

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**8. Correct the reference to “a NMFS-accepted EM Service Plan” under 660.603(a)(1) to 660.603(b)(1)(vii).**

§660.603 *Electronic monitoring provider permits and responsibilities*

(a)\*\*\*

(1) Operate under a NMFS-accepted EM Service Plan (*see* §660.603(b)(~~3~~)(1) (vii)).

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**9. Change the implementation date to be no earlier than January 1, 2022 in the EM Program regulations for both the electronic monitoring provider permits and responsibilities, and the vessel and first receiver responsibilities**

§660.603 *Electronic monitoring provider permits and responsibilities.*

(a) *General.* This section contains requirements for EM service providers providing EM services, pursuant to contracts with vessel owners whose vessels operate in the Shorebased IFQ Program (§660.140) or the MS Co-op Program (§660.150) and use EM under this subpart. A person must obtain a permit and endorsement as provided under §660.603(b) in order to be an EM service provider. These requirements are effective January 1, 2022. An EM service provider must:

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§660.604 Vessel and first receiver responsibilities.

(a) *General.* This section lays out the requirements for catcher vessels to obtain an exemption to use EM in place of 100-percent observer coverage required by the Shorebased IFQ Program (§660.140(h)(1)(i)) and MS Co-op Program (§660.150(j)(1)(i)(B)). Requirements are also described for first receivers receiving landings from EM trips. These requirements are effective January 1, 2022.

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**In addition, the following regulatory changes are based on additional input from the public at and following the April 2020 Council meeting.**

- 1. Changing "owner or operator" to "authorized representative of the vessel" in §660.603(n)(3)**

§660.603 *Electronic monitoring provider permits and responsibilities*

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(n) *Data integrity and security.* The EM service provider must ensure the integrity and security of vessels' EM data and other records specified in this section. The EM service provider and its employees:

(1)\*\*\*

(2) \*\*\*

(3) Must not release a vessel's EM data and other records specified in this section (including documents containing such data and observations or summaries thereof) except to NMFS and authorized officers as provided in §660.603(m)(6), or as authorized by an owner or operator authorized representative of the vessel.

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- 1. change to the regulations that define conflict of interest for EM service providers at 660.603(h). Revise this definition to also exempt companies that provide VMS tracking, AIS transponders, telemetry (such as product temperature monitoring for seafood safety), buoy and gear monitoring, sonar systems, and mandatory safety services (i.e. GMDSS) to the list of services that are considered not to be a conflict of interest.**

§660.603 *Electronic monitoring provider permits and responsibilities*

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(h) Limitations on conflict of interest for providers and employees.

(1) EM service providers and their employees must not have a direct financial interest, other than the provision of observer, catch monitor, EM, ~~or~~ other biological sampling services, or VMS, AIS transponders, telemetry (such as product temperature monitoring for seafood safety), buoy and gear monitoring, sonar systems, mandatory safety services (i.e. GMDSS), or other technical or equipment services, in any federal or state managed fisheries, including but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(ii) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

(2) \*\*\*

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