



Pacific Fishery Management Council

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Marc Gorelnik, Chair | Charles A. Tracy, Executive Director

July 21, 2021

Ms. Janet Coit, Assistant Administrator for Fisheries
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

SUBJECT: Council Recommendation to Delay Final Rule Effectiveness for Electronic Monitoring Program Regulations for the West Coast Until 2023

Dear Ms. Coit:

First, I would like to offer congratulations on your appointment as Assistant Administrator for Fisheries on behalf of the Pacific Fishery Management Council (Council). We look forward to working with you on fishery issues, and hope we have an opportunity to meet each other in the near future.

The Council appreciates all the work National Marine Fisheries Service (NMFS) has done to develop the information and engage the industry to support implementation of the electronic monitoring (EM) program regulations for the West Coast Trawl Catch Share Fishery, which are currently set to be effective January 1, 2022. The Council has a strong desire to continue working collaboratively with NMFS and affected stakeholders to develop and implement a program that effectively meets our goals and objectives with particular emphasis on the cost-effectiveness of the program for the groundfish industry and the wise use of public funds. In 2011, the Council began investigating the use of EM in the Trawl Catch Share Fishery to assist the industry in reducing observation costs, particularly for the bottom trawl industry, and create flexibility in choosing between human observers and EM to conduct catch accounting, which is especially important in small and remote ports where human observer availability can be limiting. The Council and the industry still think that the future success of the groundfish fishery hinges on a successful, cost-effective, and flexible monitoring program; however, we remain concerned about how the program will be funded by the industry and NMFS in the future.

Given the importance of this program, the need to have strong industry buy-in, and our collective desire to build on the successes we have achieved thus far using Exempted Fishing Permits (EFPs), the Council strongly recommends that NMFS delay implementation of the EM Program regulations. The Council also thinks that it is imperative NMFS change the [2019 EM final rule](#) prior to its implementation to, among other things, remove the requirement for third-party video review contained in the rule.

The Council request would provide additional time for the industry to continue to work with NMFS and Pacific States Marine Fisheries Commission (PSMFC) to examine ways to develop a mechanism for the industry to fund video review and storage by PSMFC and reduce concerns regarding confidentiality and Federal record retention.

The Council would also like information as to how NMFS may use the authority of the 2007 Reauthorized Magnuson-Stevens Fishery Conservation and Management Act to implement a sole-source contract with PSMFC:

“Section 402 (d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if— (1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or (2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.”

The Council believes that application of this authority may not be consistent within the agency across regions and so requests clarification and guidance on how it may be applied to help meet the objectives of the West Coast Trawl Catch Share EM program. For example, it is the Council’s understanding that recent discussions at the North Pacific Fishery Management Council (NPFMC) indicate that NMFS may be able to use PSMFC as a sole-source contractor to conduct video review and storage on behalf of the Bering Sea pollock industry, and to use cost recovery money to cover those costs. The Pacific Council would like to be able to consider this option, and in fact requested this in [April 2017](#); however, at that time [NMFS responded](#) “We have determined that NMFS cannot designate PSMFC, or any other service provider, as the sole provider for video review, because NMFS cannot favor one company over another, including PSMFC.” The Council would like to understand if there has been a policy shift, and if a mechanism similar to that proposed by the NPFMC could be used in the West Coast EM Program.

The Council recognizes that application of 402(d) authority would require NMFS to cover the cost of a sole-source contract with PSMFC to conduct video review, and that [NMFS policy](#) is industry should be responsible for the cost of video review. Therefore, during several Council meetings, and in particular, June 2021, the Council expressed support for use of cost recovery dollars under the Trawl Catch Share Program (up to the 3 percent cap) to offset NMFS’ costs associated with a grant to PSMFC for video review and storage both when the program is under permanent regulations and in the interim under EFPs. The Council believes there is room under the 3 percent cap to cover those costs for the mothership whiting sector, and cover or nearly cover those costs for the shoreside trawl sector, based on the cost estimates provided by NMFS at the June 2021 Council meeting. Those estimates assumed 100 percent review rates, which are expected to decline through time and further reduce costs.

The Council also understands that NMFS is planning on creating an audit program to review the accuracy of third-party video review providers in the West Coast Trawl Catch Share EM program, a costly expense that includes new staff that would not be needed with a sole-source contract with PSMFC (PSMFC would be exempt from the audit as a trusted partner, as they currently are under

the EFP program). The cost of the audit program would be recoverable, and is [estimated](#) to be similar to the cost of a sole-source contract with PSMFC. Therefore, it seems likely that the overall cost of a third-party review model with a NMFS audit could approximately double the cost of a PSMFC contract model. Industry would bear the full cost of the third-party review, and the audit costs would be borne largely if not entirely by industry through cost recovery. Therefore, the Council believes cost efficiency could be gained by both industry and NMFS by using the PSMFC sole-source contract approach. In addition, efficiency and program consistency may also be gained for vessels that use EM in both the Bering Sea pollock and West Coast whiting trawl fisheries (about 19 vessels fish in both fisheries).

The Council requests NMFS investigate potential use of the cost recovery funding mechanism to charge the mothership and shorebased sectors for reimbursement to NMFS for the PSMFC's actual cost for video review and data storage. The Council recognizes that reimbursement of funds from the industry directly to NMFS may not be possible at this time and if there is a shortfall in the cost recovery funds a mechanism may be needed to reimburse PSMFC unless NMFS would consider using the "savings" from the audit program to cover those costs.

In 2019 NMFS delayed the implementation date of the final rule based on a conclusion that an additional year of EM implemented through an enhanced EFP through 2021 would provide valuable information that will lead to a more successful, stable, and economically viable EM regulation. The Council believes an additional delay and extension of the EM EFPs through at least 2022 is needed to continue investigating efficient catch handling and discard options that could provide lower costs and encourage more acceptance of EM use in the trawl catch share fishery and to establish a cost-effective funding mechanism for video review and storage that is consistent with other EM programs across regions. The Council and NMFS may also want to consider aligning the timing of the regulatory processes in the West Coast trawl and Bering Sea pollock fisheries to help ensure consistency and fairness.

In summary, the Council requests that NMFS delay implementation of the EM regulations and extend the EM EFPs until such time that the Council can develop a recommendation to amend the final rule in a manner that takes full advantage of all the tools at our disposal to achieve a cost-effective and fair EM program. The Council may take action at the September 2021 Council meeting to recommend a delay in implementation to examine amending the EM regulations that will allow use of a sole-source contract with PSMFC for video review and data storage, and to address the concerns associated with data confidentiality. Therefore, the Council requests that NMFS provide a response in time for full consideration of potential paths forward and Council action at the September 2021 Council meeting.

The Council strongly desires to continue working collaboratively with NMFS and affected stakeholders to develop and implement an EM program that effectively meets our goals and objectives relative to catch accounting and cost-effectiveness for the groundfish industry. Should you or your staff have any questions, please feel free to contact me or Executive Director, Chuck Tracy.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Gorelnik". The signature is fluid and cursive, with the first name "Marc" and last name "Gorelnik" clearly distinguishable.

Marc Gorelnik
Council Chair

BLW:kma

Cc: Pacific Council Members
Mr. Sam Rauch
Mr. Brett Alger
Ms. Melissa Hooper
Ms. Keely Kent
Ms. Abigail Harley
Mr. Justin Kavanaugh
Groundfish Electronic Monitoring Policy Advisory Committee
Groundfish Electronic Monitoring Technical Advisory Committee
RFMC Executive Directors