

GROUND FISH ELECTRONIC MONITORING POLICY ADVISORY AND TECHNICAL
ADVISORY COMMITTEES' REPORT ON ELECTRONIC MONITORING IMPLEMENTATION
UPDATE - RECOMMENDATIONS FOR VIDEO REVIEW

Members in Attendance: Phil Anderson, John Corbin, Lisa Damrosch, Bob Dooley, Kate Kauer, Heather Mann, Brent Paine, Ryan Wulff, Dan Chadwick, Dave Colpo, Justin Kavanaugh, Jason Krauss, Andrew Torres

The Groundfish Electronic Monitoring Policy and Technical Advisory Committees (GEMPAC/TAC) met on June 16, 2023, to further discuss business rules for the [EM Program Manual](#) that would trigger additional electronic monitoring (EM) video review by third-party providers and the discard species list. Third-party review of the EM video was designed to corroborate the logbook data and note compliance with the regulations on allowable discard, which is used to meet the Shorebased Individual Fishing Quota (IFQ) Program catch accounting requirements. Starting in 2024, reviews are scheduled to occur as follows: 100 percent of hauls per trip for vessels following the maximized retention regulations and 10 percent of hauls per trip for optimized retention and fixed gear. On an optimized retention trip, if there is a discrepancy between the logbook and the EM estimate or if unallowable discards occur, 100 percent of the hauls from that trip would be reviewed. In these cases, EM data, and not the logbook estimate, would be used to debit the vessel account for discards. After the vessel has been notified of the non-compliant behavior, the GEMPAC/TAC had proposed, as part of their March 2023 report to the Council, an additional review of 100 percent of the hauls for two subsequent trips¹ to monitor for accurate catch accounting. Subsequently, the Office of Law Enforcement (OLE) representative suggested additional provisions which in turn led to the establishment of a GEMPAC/TAC sub-committee to further work on the issue with National Marine Fisheries Service (NMFS) and OLE. Of note is the recognition that the current application of the [EM Cost Allocation Policy Directive](#), is that video review for the purposes of catch accounting is a sampling cost borne by the industry.

The subgroup of the GEMPAC/TAC met on May 9, 2023 to prepare materials for consideration during the June 16, 2023 GEMPAC/TAC meeting. Specifically, the subgroup brought forward a proposal to modify the previously proposed business rules, while taking into account the suggestions made by the enforcement representatives on the committee and while ensuring a flexible and cost-effective program was maintained. A history of the proposed business rules can be found in Appendix 1 and the EM Subgroup Report can be found in Appendix 2.

After considerable discussion, which is summarized below, the GEMPAC/TAC recommended the following text be included in the EM Program Manual:

"Allowable discard species are approved by National Marine Fisheries Service and listed in the regulations and Vessel Monitoring Plans. If review indicates non-compliant behavior, it will be noted in the drive report. In such cases, the vessel operator will be notified and EM data, rather than logbook data, will be used to debit the vessel account for discards."

¹ Proposals were to review the subsequent two trips (GEMPAC recommendation) or two of the next five trips, randomly selected (Enforcement Consultants recommendation).

Summary of the Discussion

Some members of the GEMPAC remain concerned about the proposed additional video review, the lack of a clear purpose, and intent of the review as well as the expected costs for the bottom trawl sector. GEMPAC members noted that fisherman primarily rely on the Vessel Monitoring Plan (VMP) and the EM drive reports as the primary performance feedback tool. The group identified some changes to the EM drive reports that could increase understanding of and compliance with the regulations. A number of committee members thought a focus should be placed on improved communications rather than the secondary review since the latter is a punitive approach with financial implications. There was broad agreement that the greatest incentive for compliance was the potential for participants to be ineligible to participate in the EM Program if they receive violations. There was general agreement that an adaptive approach was needed to address these issues, while ensuring a cost-effective program that meets the regulatory requirements. There was some consideration that an EM Oversight Committee be established, once the GEMPAC/TAC has completed its tasks, to work with NMFS on these and other emerging issues with the expectation that the solutions could result in revisions to the [EM Program Manual](#).

NMFS noted their responsibility for determining the best scientific information available to determine individual accountability for catch (both landings and discards) and compliance with requirements of the Shorebased IFQ Program. While NMFS supports the GEMPAC/TAC-recommended business rules, there is a need to maintain the ability to have additional video review. NMFS' OLE spoke to the rationale for Proposal #1 during the call (see Appendix 1). If additional reviews are implemented, the GEMPAC/TAC notes that third-party providers would need an objective standard by which to trigger the additional review. Given the available time and resources, the group was unable to develop such a standard during the June 16, 2023 meeting. Members of industry were concerned that absent a standard, even small discrepancies between the EM video review and logbook or small unallowable discards would result in increased reviews and costs to industry. Pacific States Marine Fisheries Commission (PSMFC) noted that, absent further clarification, it would be challenging for a video reviewer to know when to trigger the additional review. Additionally, PSMFC noted that unallowable discards are more common than discrepancies between the logbook and EM records.

Relative to costs, NMFS noted that proposals that require the agency to conduct the proposed additional video reviews (e.g., Proposal 2 in Appendix 1) would result in increased cost to all program participants, via cost recovery, compared to reviews conducted by third-party providers. That is, third-party providers could bill each vessel based on the amount of review that occurs whereas the current practice to calculate cost recovery combines all direct program costs by sector.

Additional Reviews for the Purposes of Enforcement

The GEMPAC recommends that provisions contained in the [EM Program Manual](#) take into account the dynamic nature of fishing operations. They support the enforcement measures needed to ensure adequate catch accounting and compliance with the program requirements. Enforcement entities maintain the ability to order additional EM video review, as needed, to determine whether the magnitude of accounting discrepancies or unallowable discards are significant enough to warrant an investigation and a potential violation. The current application of the [EM Cost Allocation Policy Directive](#) is that enforcement costs are administrative costs, borne by the agency and recovered via cost recovery with fees paid by sector. Enforcement officers have specialized training and discretion to evaluate activities and determine the appropriate type of follow up action. Responses range, for

example, from education, verbal warnings, investigations, and notice of violation and assessment. There was agreement that third-party video reviewers should not be responsible for identifying violations, rather the reviewers should implement standard business rules and provide documentation on the drive reports for use by enforcement.

Loper Bright Enterprises v. Raimondo

The GEMPAC noted that the Supreme Court consideration of *Loper Bright Enterprises v. Raimondo* could have implications regarding the requirements for industry-funded monitoring systems. The Court is scheduled to begin hearing cases for the 2023-2024 term on October 2, 2023.

Discard Species List

Under the current exempted fishing permit EM program, the discard species list is contained in the VMP. On January 1, 2024, vessels will be required to follow the discard species list in regulation, which is different than the list in the current VMP. NMFS acknowledged the importance of maintaining the status quo discard species list and said the agency is seeking interim (2024) and long-term solutions. Moving the discard species list from regulation to the VMPs was added to the groundfish workload priorities “B List” in March 2023.

PFMC
06/20/23

Appendix 1 – Evolution of Language Developed for Inclusion in the EM Program Manual

November 2022

GEMPAC/TAC recommended text ([Agenda Item H.7, Supplemental Attachment 6, page 5, 5th bullet](#))

“Allowable discard species are approved by NMFS and listed in the VMP. If review indicates species other than the allowable discards listed in the VMP are discarded, it will trigger additional review for that trip and will be noted in the feedback report. In these cases, EM data (rather than logbook data) will be used to debit the vessel account for discards.”

March 2023

GEMPAC/TAC recommended modifications to the November 2022 text ([Agenda Item F.5.a, GEMPAC Report 1, page 4](#))

“Allowable discard species are approved by NMFS and listed in [the regulations at 50CFR 660.604(p)(4) and in] VMPs. If review indicates species other than the allowable discards listed in the VMP are discarded, ~~it will trigger additional review for that trip and will be noted in the feedback report. In these cases, EM data (rather than logbook data) will be used to debit the vessel account for discards.~~ then the entire trip will be reviewed (100% of hauls) and at a minimum a warning will be issued to the vessel operator. In these cases, EM data, rather than logbook data, will be used to debit the vessel account for discards. After the vessel has been notified of the issue, the subsequent two trips will be reviewed at 100% and if either review of those two trips indicates that species other than allowable discards listed in the VMP are discarded it may result in a loss of eligibility in the EM program for the remainder of the fishing year. If the subsequent two trips do not have instances of non-allowable discarding, then the review rate will revert to 10% of hauls per trip.”

Enforcement Consultants recommended modifications to GEMPAC/TAC proposal (yellow highlights)

“Allowable discard species are approved by NMFS and listed in [the regulations at 50CFR 660.604(p)(4) and in] VMPs. If review indicates **one of the following situations are met**, then the entire trip will be reviewed (100% of hauls):

- Allowable non-IFQ fish discards and invertebrates are not handled, displayed, measured or logged per the VMP
- IFQ species on the IFQ Allowable Discard List are not handled, displayed, measured or logged per the VMP
- Non-IFQ species not on the Non-IFQ Prohibited Discard List are not handled, displayed, measured or logged per the VMP
- Species other than allowable non-IFQ discards listed in the VMP are discarded
- Prohibited and protected species are not logged and discarded per the VMP, plus
 - Pacific halibut are not placed in view of the camera AND on an

approved measuring tools for measurement prior to discard.

- Any salmon, short-tailed albatross, or eulachon (prior to observer sampling) are discarded

Additionally, if review indicates any of the above occur, at a minimum a notification and warning will be issued to the vessel owner, vessel operator and NMFS (SFD and OLE). In these cases, EM data, rather than logbook data, will be used to debit the vessel account for discards. After the vessel has been notified of the issue, two of the next five trips will be randomly selected and reviewed at 100%, and if either review of those two trips indicates that species other than allowable discards listed in the VMP are discarded it may result in a loss of eligibility in the EM program for the remainder of the fishing year. If the selected two trips do not have instances of non-allowable discarding, then the review rate will revert to the lower review rate.”

June 16, 2023

Proposal 1 – text in red represents the modifications discussed by the GEMPAC/TAC during the meeting.

“Allowable discard species are approved by NMFS and listed in [the regulations at 50CFR 660.604(p)(4) and in] VMPs. If review indicates species other than the allowable discards listed in the VMP are **substantially** discarded, it will trigger additional review for that trip and will be noted in the feedback report. In these cases, EM data (rather than logbook data) will be used to debit the vessel account for discards., then the entire trip will be reviewed (100% of hauls) and at a minimum a **warning notice** will be issued to the vessel operator. In these cases, EM data, rather than logbook data, will be used to debit the vessel account for discards. After the vessel has been notified of the issue, ~~the subsequent~~ **two of the next five** trips will be **randomly selected and** reviewed at 100% and if either review of those two trips indicates that species other than allowable discards listed in the VMP are discarded it may result in a loss of eligibility in the EM program for the remainder of the fishing year. If the subsequent two trips do not have instances of non-allowable discarding, then the review rate will revert to 10% of hauls per trip.”

Proposal 2 – substitute proposal

“Allowable discard species are approved by NMFS and listed in the regs and in the VMPs. If review indicates species other than allowable discards listed in the VMP are discarded, it will be noted in the drive report and NMFS may take additional administrative action.”

Proposal 3 - substitute proposal, adopted by the GEMPAC/TAC

"Allowable discard species are approved by NMFS and listed in the regs and VMPs. If review indicates non-compliant behavior, it will be noted in the drive report. In such cases, the vessel operator will be notified and EM data, rather than logbook data, will be used to debit the vessel account for discards.”

Proposal 4 - substitute proposal

"Allowable discard species are approved by NMFS and listed in the regs and in the VMPs. If review indicates species other than allowable discards listed in the VMP are discarded, it will be noted in the drive report and after notification the subsequent two trips will be reviewed 100%."

Appendix 2 -Summary of EM Subgroup Call May 9, 2023

Topic: Revision of Business Rules for Video Review Within Current EM Manual

Attendees: Brent Paine, Heather Mann, Bob Dooley, Dan Chadwick, Greg Busch, Courtney Paiva, Brett Wiedoff, Lisa Damrosch, Kate Kauer

Background

The purpose and need of the action related to implementing the EM program is primarily to “create and ensure flexibility in the electronic monitoring (EM) program in order to reduce potential costs.” In support of that purpose and need, the GEMPAC developed the proposed EM Manual that was presented to the Council in November 2022 (Agenda Item H.7, Supplemental Attachments 5 and 6) in an effort to streamline and simplify the guidance for EM providers and reduce potential costs of EM review. In that version of the Manual, the guidance included in the section on “EM Review using logbook audit process” read:

“Allowable discard species are approved by NMFS and listed in the VMP. If review indicates species other than the allowable discards listed in the VMP are discarded, it will trigger additional review for that trip and will be noted in the feedback report. In these cases, EM data (rather than logbook data) will be used to debit the vessel account for discards.”

Following the November 2022 Council meeting, the GEMPAC reconvened to discuss the ‘business rules’ of video review per NMFS request, and in January 2023 the GEMPAC added language to that above clause that was intended to detail when and how additional video review would be triggered:

“Allowable discard species are approved by NMFS and listed in [the regulations at 50CFR 660.604(p)(4) and in] VMPs. If review indicates species other than the allowable discards listed in the VMP are discarded, ~~it will trigger additional review for that trip and will be noted in the feedback report. In these cases, EM data (rather than logbook data) will be used to debit the vessel account for discards.~~, then the entire trip will be reviewed (100% of hauls) and at a minimum a warning will be issued to the vessel operator. In these cases, EM data, rather than logbook data, will be used to debit the vessel account for discards. After the vessel has been notified of the issue, the subsequent two trips will be reviewed at 100% and if either review of those two trips indicates that species other than allowable discards listed in the VMP are discarded it may result in a loss of eligibility in the EM program for the remainder of the fishing year. If the subsequent two trips do not have instances of non-allowable discarding, then the review rate will revert to 10% of hauls per trip.”

This language was presented in the GEMPAC report to the Council at the March 2023 meeting (Agenda Item F.5.a, GEMPAC Report). At the March 2023 meeting, the Council provided guidance to NMFS based on the GEMPAC report that included guidance to adjust the video review rate for optimized retention trips to 10 percent as described in the proposed EM Manual, as well as asking for further discussions with the GEMPAC regarding refinement of the EM Manual business rules for video review. Following that, the EC provided proposed changes for GEMPAC consideration (highlighted):

- Allowable discard species are approved by NMFS and listed in [the regulations at 50CFR 660.604(p)(4) and in] VMPs. If review indicates one of the following situations are met, then the entire trip will be reviewed (100% of hauls):

- Allowable non-IFQ fish discards and invertebrates are not handled, displayed, measured or logged per the VMP
- IFQ species on the IFQ Allowable Discard List are not handled, displayed, measured or logged per the VMP
- Non-IFQ species not on the Non-IFQ Prohibited Discard List are not handled, displayed, measured or logged per the VMP
- Species other than allowable non-IFQ discards listed in the VMP are discarded
- Prohibited and protected species are not logged and discarded per the VMP, plus
 - Pacific halibut are not placed In view of the camera AND on an approved measuring tools for measurement prior to discard.
 - Any salmon, short-tailed albatross, or eulachon (prior to observer sampling) are discarded

Additionally, if review indicates any of the above occur, at a minimum a notification and warning will be issued to the vessel owner, vessel operator and NMFS (SFD and OLE). In these cases, EM data, rather than logbook data, will be used to debit the vessel account for discards. After the vessel has been notified of the issue, two of the next five trips will be randomly selected and reviewed at 100%, and if either review of those two trips indicates that species other than allowable discards listed in the VMP are discarded it may result in a loss of eligibility in the EM program for the remainder of the fishing year. If the selected two trips do not have instances of non-allowable discarding, then the review rate will revert to the lower review rate.

In May 2023, a subgroup of the GEMPAC met with representatives of the EC to discuss the proposed language. This report summarizes the discussion.

GEMPAC Subgroup Discussion

The subgroup discussed the proposal from Enforcement Consultants (EC) to change the language in the EM Manual. The topics discussed included:

- EC's interest in proposing changes to the EM Manual;
- the overall goal of the EM program to reach cost effectiveness for this monitoring option and the importance of reducing additional costs to industry;
- the purpose of the EM Manual as providing guidance to EM service providers;
- the specific rules for compliance laid out in the regulations (and repeated in VMPs);

- the clear incentives to comply with the EM program provisions laid out in regulation in order to be eligible for the option to use EM for compliance monitoring;
- the process of EM service providers filling out and using drive reports to communicate any potential problems to vessels and to NMFS; the ability of OLE to review any EM video at any time; and
- the EM Cost Allocation Policy that guides what types of EM costs should be born by industry versus the agency.

Based on discussion, the subgroup recommends revising the EM Manual language and not adopting any of the language proposed by the EC. The subgroup recommends that the EM Manual language should provide guidance on conducting video review in line with Council-approved video review rates and not include any additional ‘triggers’ for additional review that would be paid for by industry.

Specifically, the subgroup recommends revisions to the EM Manual text to now read:

"- Higher estimate from logbooks or EM data will be used as final discard number.

Allowable discard species are approved by NMFS and listed in [the regulations at 50CFR 660.604(p)(4) and in] VMPs."

In discussing the proposed changes to the EM Manual, the subgroup discussed rationale for the changes.

The EC representatives (Greg Busch and Dan Chadwick) discussed intentions of the proposed changes, which included intending to help categorize possible situations that may warrant additional review and to help EM reviewers identify when and how to respond to allowable and unallowable discards (i.e., random 100 percent review of the next 2 out of 5 trips). The EC representatives shared concern over species being retained that shouldn't be retained and discards happening contrary to VMPs as well as discards occurring outside of the view of cameras. The EC also discussed the spectrum of non-compliance events from unintended to egregious.

The subgroup discussed the intent and goal of the EM program and the importance of maintain cost effectiveness, as well as the purpose of the EM Manual – which is to provide guidance to EM Service Providers (and which is a ‘living and breathing’ document that may be updated as needed). The subgroup also noted that the regulations and the VMPs detail specific catch handling and other requirements, noting that repeating parts of those requirements in the EM Manual is both duplicative (i.e., unnecessary) and potentially confusing. The subgroup also discussed the use of the drive reports as the primary communication tool to the agency and to vessels of any compliance issues. And noted that there may be an important opportunity before the program goes into regulation to improve the drive reports to help differentiate between minor catch handling noncompliance and egregious noncompliance. The subgroup noted that

improving drive reports may be more beneficial than any other efforts to trigger additional video review.

The subgroup discussed the role of incentives for compliance in this program. The subgroup discussed the purpose of the provisions triggering additional video review – which in essence is simply a punitive financial ‘incentive’ for compliance. The EC representatives concurred and there was question as to whether there was any other ‘management’ purpose or need for this additional review. The subgroup noted the clear incentives already in place to comply with the EM program provisions – specifically, maintaining eligibility to use EM as an alternative to human observers for compliance monitoring. The subgroup also noted that there is no analogous additional punitive financial ‘incentive’ when using human observers for compliance monitoring

– for example, if there is a noncompliance event, the vessel is not charged for an additional day of carrying a human observer. On the contrary, noncompliance events are noted by observers and can be taken up by OLE as necessary. The analogous situation under the use of EM would be the drive report noting a noncompliance event – which can then be looked into by OLE as necessary. Representatives from PSMFC also noted that trips with noncompliance events (like poor catch handling) already take longer and cost more to review, which creates a separate financial incentive for catch handling in line with VMPs.

The subgroup discussed that OLE always has the ability to review any EM video at any time – it is not restricted in any way. But video review conducted at NMFS or OLE request is considered an ‘administrative cost’ per the [EM Cost Allocation Policy](#) and thus paid for by the agency, not by industry. Requiring additional EM review (and the storage of potential Federal Records by third party EM providers) to aid OLE in inspecting potential non-compliance events should not be a cost borne by industry.