

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 (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 (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.