

Phil Anderson, Chair
Pacific Fishery Management Council
7700 Ambassador Place, Suite 101
Portland, OR 97220

RE: Agenda Item G.5 Electronic Monitoring Program Review

March 31, 2020

Dear Chair Anderson and Council members,

As participants in and supporters of the West Coast groundfish electronic monitoring (EM) experimental fishing permit program, we are writing to express our collective concerns over the trajectory and timeline for the EM program regulatory implementation. Now, as COVID-19 causes major disruption to daily life and to the entire fishing industry, we feel it is imperative that the Council request that NMFS delay the effective date of EM regulations to January 2022 and ensure continuation of the EM EFPs.

Our collective goal has been to develop a cost-effective EM program that provides an alternative to human observer coverage and maintains accountability in the groundfish fishery. As the COVID-19 pandemic causes greater uncertainty and instability, we need to ensure the industry has the tools it needs to maintain affordable accountability while producing local and sustainable food. We understand that NMFS has authorized fishery-specific waivers of observer coverage requirements in response to the pandemic and that a national waiver provision is under consideration. This development points to the importance of a robust, efficient EM program.

We believe that the current timeline for EM implementation does not afford us time to refine and clarify elements of the EM program that will determine whether it is successful in meeting its goals.

The implementation of the final rule should be delayed to provide additional time for stakeholders and managers to identify and develop necessary amendments to the June 2019 final rule and the pending proposed rule for bottom trawl and midwater trawl – and importantly – to ensure necessary revisions to the EM Program Guidelines and Manual can be made. These pending changes will significantly impact EM operations and program costs – and therefore, also impact the success of the EM program.

In advance of the Council reviewing the status of the EM Program, considering changes to the final rule, and considering extension of the current EM EFPs, we provide the following comments.

Final Rule Changes

The NMFS Report ([Agenda item G.5.a](#)) recommends changes to the final EM regulations to “ensure an effective and efficient EM program.” **We agree that multiple changes are needed to the final EM regulations, and we believe these changes should be made prior to implementing the EM program and prior to requiring EM service providers or prospective**

vessels to submit permit applications (currently required by June 1, 2020). We include a preliminary list of changes (attached). Changes to the final rule will result in substantive adjustments to the projected costs of the EM Program, further justifying the need to delay the implementation of the final regulations until they are revised to ensure ample time for assessing and planning for the transition from EFPs to regulations.

EM Program Guidelines and Manual

The EM Program Guidelines and Manual detail some of the most important protocols that will define the costs of the EM Program – such as how EM video review will be conducted, auditing protocols, and data storage requirements. Guidance on these critical aspects of the EM Program directly impact service providers’ ability to determine pricing and therefore the costs of the program. The GEMPAC/TAC reviewed the Guidelines and Manual at the November 2019 Council meeting and attempted, with less than ample time, to provide recommendations for improvements. Since that meeting, the GEMPAC/TAC and public have not yet reviewed additional proposed changes to the Guidelines and Manual. At the March 2020 Council meeting, some EFP representatives requested another dedicated GEMPAC/TAC meeting to review and revise the Guidelines and Manual; while the GEMPAC/TAC is scheduled to meet on April 4th, 2020, we do not expect that meeting to provide sufficient opportunity to review and adequately revise the Guidelines and Manual. The Guidelines and the Manual need to be modified to reduce projected costs and increase overall program efficiency. **Because changes to the Guidelines and Manual may also trigger necessary changes to the final rule, we recommend delaying implementation of the final rule so that revisions can be made collaboratively and effectively.** For example, the NMFS Report ([Agenda item G.5.a](#)) proposes a significant change in logbook submission and processing that would not only trigger a change in the final rule but would also require substantive changes to the Manual. Additionally, the Logbook Audit Model contained within the EM Manual was discussed at length during the November 2019 GEMPAC meeting and needs to be revised to ensure a cost-effective and efficient EM program. Finally, we are concerned about NMFS’s determination of when specific types of EM data become a federal record, and whether that determination is consistent across regions.

Extending EFPs

In light of our recommendations to delay implementation of the final rule until 2022, we recommend the Council extend the existing EFPs until regulations are in effect. Additional vessels could be added to the existing EFPs. Ensuring continued EM operations will allow us opportunities to work out details that will support meeting the goals of the EM program– such as testing and refining a mechanism for the industry to pay PSMFC for video review services under a third-party model.

In conclusion, we ask that the Council request that NMFS delay the effective date of EM regulations to January 2022 and ensure continuation of the EM EFPs until a regulatory program is in place. In addition, please consider our recommendations for changes to the final rule and ensure an adequate process to revise and improve the EM Guidelines and Manual to cost-effective EM program that provides an alternative to human observer coverage and maintains accountability in the groundfish fishery.

Sincerely,

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California Groundfish Collective EM EFP sponsor
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Groundfish trawl EM EFP participant
President, Fishermen's Marketing Association

Brent Paine
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Executive Director, United Catcher Boats

Attachment:

Preliminary list of changes to Final EM Rule:

Note – we expect additional changes may be identified through a public process and as the EM Guidelines and Manual are further reviewed and refined. This is a preliminary list of proposed changes to the final EM rule published in June 2019.

Retention of EM data – NMFS has not yet issued the National Procedural Directive on Minimum Data Retention Period for Electronic Monitoring Programs for Federally Managed U.S. Fisheries. We expect that the National Procedural Directive will have a shorter data retention requirement than the current EM regulations which require EM service providers to

retain EM data, including raw video data, on behalf of vessel owners for a minimum of 3 years after the date of landing (§660.603(m)(6)). The storage of video data is a significant expense, and storage requirements should be as short as possible to increase cost effectiveness. The final rule needs to be changed to shorten the data retention period.

Clarifying EM data status – The legal status of EM data ownership is not adequately resolved under the final rule and the Program Manual’s provisions. On one hand, NMFS notes that the preamble of the final rule states that “NMFS considers EM data and related records that a vessel owner stores with its EM service provider as owned by the vessel owner.” However, on the other hand, the preamble states “Note that vessel owners’ rights with respect to their data does not affect the authority of NMFS or its authorized officers to obtain EM data or other records directly from an EM service provider for the purposes specified in the regulations. See §§ 660.603(m)(6), (n)(3).” Section 660.603(m)(6) states that “The EM service provider must produce EM data and other records immediately upon request by NMFS or an authorized officer.” Further, the EM Program Manual specifies extensive EM service provider responsibilities for supporting NMFS access to and use of EM video data (see Section 2.2) and provides the WCGOP with virtually unlimited access to video data for audit purposes (see Section 2.3.8). Given the level of NMFS access to and control over video data held by a third-party service provider, we are concerned that it could potentially be considered an agency record, even if it has not been submitted to or obtained by the agency.

The final rule includes a provision (in §660.603) stating that EM Service Providers may not release a vessel’s EM data except “as authorized by the **owner or operator** of the vessel.” This fails to clarify whether an owner or an operator owns EM data and can authorize its disclosure or use. EM data ownership needs to be clarified within the regulations (rather than just the preamble) to protect EM data ownership rights.

Submission of EM data – the NMFS report recommends changing deadlines for hard drive submissions to match a 72-hour rule used under EFPs. We agree that EM data submission should be reviewed and clarified in the final rule – although the final rule only includes a 24-hour submission requirement for mothership catcher vessels.

“(3) *Submission of EM data.* Vessel operators must submit EM data to the vessel owner’s contracted EM service provider using a method that documents time, date, and location of transmission and receipt. Deadlines for submission are as follows: (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-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.”

We agree that EM data submission requirements should be reviewed and clarified.

Submission of logbooks – The NMFS Report suggests revising this aspect of the regulations to make the program more efficient and cost effective based on guidance from the GEMPAC. The final rule states “(2) *Submission of logbooks.* Vessel operators must submit copies of the federal discard logbook and state retained logbook to NMFS or its agent within 24-hours of the end of each EM trip.” (§ 660.604(s), p. 93). Changes to this provision could impact vessel and Service Provider operations and expected costs – and may require more extensive changes throughout

the rest of the rule, such as creating new or different reporting requirements for EM Service Providers.

Limit on Switching Between EM and Observers for Whiting – Remove the limit on switching for whiting vessels at §660.604(m).

MS/CV Endorsement – Remove the requirement for an MS/CV endorsement to use EM on MS/CV trips.

Pre-departure Test – Remove the requirement for EM units to have a system function test.

Remove all mention of specific types of EM system sensors – e.g. 660.603(b) “pressure sensor” and “drum rotation sensor.”