



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
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Tom A. Nies, Executive Director
New England Fishery Management Council
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SEP 20 2013

Dr. Christopher M. Moore, Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street
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Dear Tom and Chris:

Since our July 30, 2013, letter to Tom, the agency working group on observer funding has been working to resolve the legal issues related to proposed observer cost sharing measures. We concluded that these issues required further discussion among NMFS, NOAA General Counsel, and Department of Commerce staff and that our lack of internal resolution of these issues prevented the joint observer funding plan development team and fishery management action team (Joint PDT/FMAT) from advancing their efforts. We now have a plan as to how to incorporate industry-funded observer coverage into fishery management plans (FMPs), which we will present at your upcoming September and October meetings; the plan is summarized below. Our plan would not specify fishery-by-fishery provisions for industry coverage programs, but would allow the Councils to use industry funding to increase observer coverage levels in their fisheries.

There are two components to the costs of observer coverage, and funding must be available for both components in order to achieve desired observer coverage levels. These components are:

- 1) Observer monitoring costs, which include the costs that would be incurred by an observer service provider, such as observer salary and travel; and
- 2) NMFS support and infrastructure costs, which include observer training, data processing, and infrastructure.

Under existing law, NMFS and industry cannot share responsibility for observer monitoring costs in the regulations. For example, we cannot cap the industry contribution and require NMFS to be responsible for the remainder of observer monitoring costs, such as the \$325 per day cap on industry contribution that was proposed in the recent Atlantic herring and Atlantic mackerel amendments. Also, any increases to observer coverage, even when industry is paying the full costs for the observers, will result in NMFS incurring additional support and infrastructure costs. Because NMFS's appropriations to cover support and infrastructure costs are limited and variable, the Councils cannot mandate specific levels of observer coverage that could impose financial obligations beyond what is appropriated.

The only way to increase observer coverage levels above levels set to cover legal mandates or the standardized bycatch reporting methodology (SBRM) is for industry to be responsible for 100 percent of observer monitoring costs, and for the Council to recommend coverage targets



rather than mandating specific coverage levels. We believe the best way to provide the Councils the tools to use industry funding of increased observer coverage is through an omnibus amendment for all New England and Mid-Atlantic fishery management plans (FMPs). As we have done with SBRM, we have asked our staffs to take the technical lead on developing this amendment if the Councils choose to proceed. The omnibus amendment would:

- 1) Define both NMFS and industry cost responsibilities for observer coverage consistent with the allocations noted above;
- 2) Create industry-funding requirements, similar to those currently in place in the Northeast multispecies and the Atlantic sea scallop FMPs, that can be referenced by any FMP that needs to implement industry funding requirements; and
- 3) Establish an annual process in which NMFS and both Councils would prioritize observer coverage levels above SBRM that will inform NMFS's decisions on the allocation of available NMFS support and infrastructure funds to achieve regional coverage goals, consistent with considering efficiency in the utilization of resources and minimizing costs as required by National Standards 5 and 7.

We intend to keep this action focused exclusively on the observer issue to avoid lengthy development that could result from the addition of other issues and management measures. Council input and meetings remain critical to ensure the public is involved, so we recommend leaving the Joint PDT/FMAT intact, with expanded membership to include experts from other FMPs.

We acknowledge that the observer monitoring costs can be a significant burden for industry. That is why we have identified a potential mechanism that may enable NMFS, when funding is available, to help offset some of industry's costs. This model was used to fund NE multispecies Sector dockside monitoring coverage in 2010 and 2011.

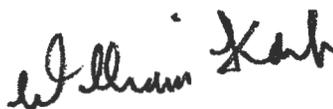
In order for these concepts to work, we need support from both Councils. This proposed approach would require both Councils to be willing to work together to prioritize regional monitoring goals. The Councils must remember that available funds limit the amount of observer coverage for all of our fisheries, regardless of the source of funding. The Councils must not prescribe specific observer coverage levels or specific industry contribution levels in future Council actions.

There are many details of this plan that still need to be resolved, but if both Councils agree with this approach, our staff will begin to develop alternatives for the omnibus amendment. Our goal is to present both Councils with an initial range of alternatives at their January and February 2014 meetings.

Sincerely,



John K. Bullard
Regional Administrator



William A. Karp, Ph.D.
Science and Research Director