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M E M O R A N D U M

Date: September 23, 2014

To: Council

From: Jason Didden

Subject: Oct 8, 2014 Omnibus Observer Funding Amendment Agenda Item

Staff will update the Council on Amendment development and the Council can direct document development as appropriate. The following background documents are included:

Page	Item (Page numbers refer to large underlined numbers)
3	Current Omnibus Draft Document
27	Most Recent Technical Team (FMAT/PDT) Report
37	New England Observer Policy Committee Summary

The most recent action timeline is below. The fallback timeline currently appears more feasible, assuming the necessary analyses are completed soon enough.

Action Timeline:

Action	Current Timeline	Fallback Timeline
Councils initiate amendment	September/October 2013	September/October 2013
PDT/FMAT develops range of alternatives	December 2013/ January 2014	December 2013/ January 2014
Councils approve range of alternatives	January/February 2014	January/February 2014
PDT/FMAT/Councils develop alternatives, draft EA	February-October 2014	February-December 2014
Councils review draft document and select preferred alternatives	November/December 2014	January/February 2015
30-day comment period on draft amendment	December 2014-January 2015	February-March 2015
Councils take final action	January/February 2015	April 2015
EA finalized, proposed rule drafted	March 2015	June 2015
Proposed rule publishes with 30-day comment period	April 2015	July 2015
Comment period ends, final rule drafted	May 2015	August 2015
Final rule publishes	June 2015	September 2015
Final rule effective	July 2015	October 2015

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Draft Discussion Document

Industry-Funded Monitoring Omnibus Amendment

New England Fishery Management Council
Observer Oversight Committee Meeting
August 19, 2014

Prepared by NOAA's National Marine Fisheries Service

1.0 INTRODUCTION AND BACKGROUND

The New England and Mid-Atlantic Councils are interested in increasing monitoring and/or other types of data collection in some fishery management plans (FMPs) to assess the amount and type of catch, to monitor annual catch limits, and/or provide other information for management. This increased monitoring would be above and beyond coverage required through the Standardized Bycatch Reporting Methodology (SBRM), the Endangered Species Act (ESA) or Marine Mammal Protection Act (MMPA). The amount of available Federal funding to support additional monitoring and legal constraints on the sharing of costs between the National Marine Fisheries Service (NMFS) and the fishing industry have recently prevented NMFS from approving proposals for industry-funded monitoring in some fisheries, specifically Atlantic Herring Amendment 5, Atlantic Mackerel Amendment 14, and Northeast (NE) Multispecies Framework Adjustment 48. The Councils have initiated this omnibus amendment to remedy the disapprovals of these actions and to reconsider new monitoring requirements for the Atlantic herring and mackerel fisheries. This amendment considers mechanisms that could facilitate the use of industry funding to increase monitoring, but it cannot resolve the underlying issue of limited Federal funding.

The Anti-Deficiency Act (ADA) prohibits augmenting or improperly shifting congressional appropriations, and a criminal prohibition restricts supplementing government employee salaries. These provisions tightly control government funding and services. The basic funding principle is that congressional appropriations establish a maximum authorized program level that cannot be exceeded without specific statutory authorization, and any monitoring or observer funding must comply with these restrictions. When Congress appropriates money for observer coverage, NMFS cannot obligate funding for a monitoring program if the total costs to fund that program and existing monitoring programs exceeds its appropriations for that purpose.

Consequently, NMFS cannot approve monitoring levels for which there is potentially insufficient funding because NMFS cannot spend funds on contracts that are not provided for in its appropriations. Also, insufficiently funded monitoring coverage would result in coverage levels that would not meet the FMP's goals and objectives. NMFS also cannot commit to pay for costs that do not fall under its legal obligations to pay for government services. NMFS has interpreted this to mean that it can only be obligated to pay for its infrastructure costs to support industry-funded programs and cannot commit to pay for any costs generated from sampling activities for these programs. This standard was applied to the monitoring cost provisions recently proposed in the Herring, Mackerel, and NE Multispecies FMPs and resulted in the disapproval of those measures.

NMFS Greater Atlantic Regional Fisheries Office (GARFO) and Northeast Fisheries Science Center (NEFSC) receive certain line items and set amount of funds in those line items to fund its infrastructure costs for monitoring programs. NMFS cannot shift funds appropriated for another purpose to pay for new monitoring programs, without congressional authorization. Additionally, monitoring coverage levels for the NE Multispecies and Atlantic Sea Scallop FMPs

are specified through existing processes that do not allow for coverage levels to fluctuate based upon NMFS funding, so NMFS must fully fund its infrastructure costs for monitoring in those fisheries. Monitoring in the groundfish fishery is required to meet a 30% coefficient of variation. While NMFS has paid for both infrastructure and sampling costs in past years, the groundfish fleet is required to cover the sampling costs if NMFS does not cover those costs. Observer coverage in the scallop fishery is based on SBRM and ESA requirements and sampling costs are funded by a 1% harvest set-aside. NMFS cannot reduce coverage in NE multispecies or scallop fisheries in order to increase coverage in another FMP. Thus, "available Federal funding" refers to any funds in excess of those allocated to meet SBRM or other existing monitoring requirements. However, this amendment could apply to the NE multispecies and scallop fisheries to the extent that the Council desires coverage above levels currently set by those FMPs.

The Miscellaneous Receipts Statute requires Federal employees to deposit any money received on behalf of the government into the general Treasury, unless otherwise directed by law. This means that if NMFS could accept funds from the industry, NMFS would be required to direct those funds to the Treasury and would not be able to reserve them to pay for monitoring in the Northeast. The Alaska Region has special authorization in the Magnuson-Stevens Act (MSA) to collect fees from the industry and to put these fees into a fund to be used to defray the costs of monitoring in that region (Section 313). The NMFS Northeast Region does not have any such authority, except for cost recovery for Limited Access Privilege Programs (LAPPs).

Given these constraints, a joint New England and Mid-Atlantic Fishery Management Council Industry-Funded Monitoring Plan Development Team/Fishery Management Action Team (PDT/FMAT) has been tasked with developing alternatives for the omnibus amendment that would allow NMFS to approve the Councils' future proposals for new monitoring programs while meeting the legal requirements outlined above.

The PDT/FMAT used the following criteria in developing the alternatives outlined in this document. The alternatives must allow NMFS to approve new monitoring programs **without**:

- Obligating itself to pay for any costs beyond its appropriations;
- Obligating itself to redirect appropriations designated for another purpose;
- Obligating itself to pay for costs it is not required to by law; and/or
- Requiring itself to accept funds from the fishing industry or other entity in order to meet its obligations.

Additionally, the PDT/FMAT developed the concept of monitoring *coverage targets*, rather than *mandatory coverage levels*, for industry-funded monitoring to achieve on an annual basis to meet certain FMP objectives. The realized coverage level in a given year would be determined by the amount of funding available to cover NMFS cost responsibilities a given year. The realized coverage level for the fishery in a given year (above and beyond SBRM) would fall somewhere between no additional coverage above SBRM and the specified coverage target. Establishing monitoring coverage targets would allow NMFS to approve and implement new

industry-funded monitoring programs, without committing to support coverage levels above appropriated funding or before funding is determined to be available.

However, this industry-funded omnibus amendment WOULD NOT automatically allow for higher coverage levels in NE fisheries. This amendment establishes tools that NMFS and the Councils could use to provide additional monitoring in NE fisheries when Federal funding is available. Therefore, during years when there is no additional funding to cover NMFS cost responsibilities above funding for SBRM, the tools developed in this amendment would not be used and there would be no additional monitoring coverage, even if industry is able to fully fund their cost responsibilities.

1.1 PURPOSE AND NEED FOR ACTION

The purpose of this action is to consider measures that would allow the Councils to implement industry-funded monitoring coverage in New England and Mid-Atlantic FMPs. This amendment would allow industry funding to be used in conjunction with available Federal funding to pay for additional monitoring to meet FMP-specific coverage targets. This amendment also considers (1) standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry, (2) process for FMP-specific industry-funded monitoring to be implemented via a future framework adjustment action, (3) standard administrative requirements for industry-funded monitoring service providers, and (4) process to prioritize available Federal funding for industry-funded monitoring across FMPs. Additionally, this amendment considers monitoring coverage targets for the Atlantic Herring FMP and the Atlantic Mackerel, Squid, Butterfish (MSB) FMP, which are anticipated to enhance the monitoring of at-sea catch of herring, mackerel, river herring, shad, haddock, and other species harvested in the herring and mackerel fisheries. This amendment is being done as an omnibus to ensure consistency for industry-funded monitoring programs across New England and Mid-Atlantic FMPs.

2.0 MANAGEMENT ALTERNATIVES

The PDT/FMAT for this amendment has developed a range of management alternatives for the Councils to consider. These alternatives include the following:

- Standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry;
- A process by which NMFS and/or the Councils would prioritize available Federal funding for industry-funded monitoring across FMPs, when Federal funding is not sufficient to meet all coverage targets;
- A process by which industry-funded monitoring programs (e.g., at-sea monitoring, dockside monitoring, electronic monitoring) can be implemented via framework adjustment in each FMP;

- Standards for industry-funded monitoring service providers (e.g., for dockside monitoring, at-sea monitoring, electronic monitoring); and
- Monitoring coverage targets or requirements for certain permit categories and/or gear types for the herring and mackerel fisheries.

2.1 OMNIBUS ALTERNATIVES

The following alternatives consider provisions that would apply to all New England and Mid-Atlantic FMPs, including (1) standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry, (2) process for FMP-specific industry-funded monitoring to be implemented via a future framework adjustment action, (3) standard administrative requirements for industry-funded monitoring service providers, and (4) process to prioritize available Federal funding for industry-funded monitoring across FMPs.

2.1.1 Omnibus Alternative 1: No Industry-funded Monitoring Programs (No Action)

Under Omnibus Alternative 1 (No Action), there would be no standard definition of costs and cost responsibility for industry-funded monitoring in the New England and Mid-Atlantic fisheries. Cost definitions and the determination of who pays for them would be considered individually by each FMP as industry-funded monitoring programs are developed. Under Omnibus Alternative 1, there would be no process to prioritize available Federal funding to meet Council desired monitoring coverage target above and beyond the SBRM and no standard administrative requirements for industry-funded monitoring service providers. The allocation of available Federal funding to increase monitoring to meet Council desired coverage levels and observer service provider requirements for industry-funded monitoring would be evaluated on an FMP-by-FMP basis. Additionally, under Omnibus Alternative 1, there would be no framework adjustment process to implement FMP-specific industry-funded monitoring. Rather, industry-funded monitoring programs would be developed and established in FMP-specific amendments.

2.1.2 Omnibus Alternative 2: Industry-funded Monitoring Programs

Under Omnibus Alternative 2, there would be an industry-funded monitoring program that would apply to all New England and Mid-Atlantic FMPs. This industry-funded monitoring program would include the following components: (1) standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry, (2) process for FMP-specific industry-funded monitoring to be implemented via a future framework adjustment action, and (3) standard administrative requirements for industry-funded monitoring service providers. Additionally, Omnibus Alternative 2 would include a range of option for the process to prioritize available Federal funding for industry-funded monitoring across FMPs.

Standard Cost Responsibilities

Omnibus Alternative 2 would include standard cost responsibilities between NMFS and the industry for supporting monitoring programs targeting coverage above and beyond SBRM. Because there are legal requirements that dictate cost responsibilities, as described in the Introduction, certain costs must be borne by NMFS. These cost responsibilities would be codified into regulation for industry-funded monitoring in New England and Mid-Atlantic FMPs. If Omnibus Alternative 2 was not selected by the Councils, cost responsibilities for industry-funded monitoring would be codified on an FMP-by-FMP basis.

The cost responsibilities described below would be considered by the Councils when developing any industry-funded monitoring program for New England and Mid-Atlantic FMP in future actions. The cost responsibilities described below are already in operation in the Atlantic Sea Scallop and NE Multispecies FMPs, although the cost responsibilities are not explicitly defined in those FMPs. Selection of the Omnibus Alternative 2 would codify the industry-funded monitoring cost responsibilities in regulation for all New England and Mid-Atlantic FMPs, but it would not change industry-funded monitoring in the scallop or multispecies fisheries.

<u>NMFS Cost Responsibilities</u>
NMFS would be responsible for funding the costs to set standards for, monitor performance of, and support industry-funded monitoring programs. These program elements would include:

- The labor and facilities costs associated training and debriefing of monitors
- Certification of monitoring providers and individual monitors
- Developing and executing vessel selection
- Data processing
- Costs associated with liaison activities between service providers and NMFS

<u>Industry Cost Responsibilities</u>
The industry would be responsible for funding all other costs of the monitoring program. These program elements and activities would include, but are not limited to:

- Costs to the provider for deployments and sampling (e.g., travel and salary for observer deployments and debriefing)
- Equipment, as specified by NMFS, to the extent not provided by NMFS
- Costs to the provider for observer time and travel to a scheduled deployment that doesn't sail and was not canceled by the vessel prior to the sail time.
- Provider overhead and project management costs (e.g., facility costs, training)
- Other costs of the provider to meet performance standards laid out by a fishery management plan

NMFS costs to support industry-funded monitoring must be fully funded. The industry would be responsible for its cost responsibilities, unless it was determined that Federal funds were also available to offset industry cost responsibilities. The administrative mechanism by which

industry cost responsibilities could be offset using available Federal funding is being developed by NMFS separately and can be used in conjunction with Omnibus Alternative 2.

Framework Adjustment Process

Omnibus Alternative 2 would include the ability for Councils to implement industry-funded monitoring programs, including at-sea monitoring, dockside monitoring, or electronic monitoring, through framework adjustments to the relevant FMP. If Omnibus Alternative 2 was not selected by the Councils, a full FMP amendment would be required to implement industry-funded monitoring programs for all New England and Mid-Atlantic fisheries, excluding existing industry funded monitoring programs in the Scallop and Multispecies FMP and any program developed in this action for the Herring or MSB FMPs.

Under Omnibus Alternative 2, the details of any industry-funded monitoring program, including at-sea, dockside, or electronic monitoring, would be specified and/or modified in a subsequent framework adjustment to the relevant FMP. These details may include, but are not limited to: (1) Level and type of coverage target, (2) rationale for level and type of coverage, (3) process for vessel notification and selection, (4) fee collection and administration, (5) standards for monitoring service providers, and (6) any other measures necessary to implement the industry-funded monitoring program. Additional National Environmental Policy Act (NEPA) analysis would be required for any subsequent FMP framework adjustment action implementing and/or modifying industry-funded monitoring programs.

Omnibus Alternative 2 contains a framework adjustment component for the known types of monitoring that are available for NE fisheries. At-sea monitoring focuses data collection at sea, recording the type and quantity of retained and/or discarded catch. Dockside monitoring focuses data collection at the dock, accounting for landings of target species and incidental catch. If all fish caught are retained and landed, dockside monitoring can also record type and quantity of total catch. Electronic monitoring uses video cameras and other sensors to monitor discards at sea or to monitor compliance with full retention requirements or other at-sea requirements. Depending on the information needs for a given fishery, a dockside and/or electronic monitoring program could be used in addition to at-sea monitoring to provide more complete catch monitoring, or to reduce the overall monitoring costs for a given fishery (if dockside or electronic monitoring can be administered at a lower cost).

Monitoring Service Providers

Omnibus Alternative 2 would include standard administrative requirements for industry-funded monitoring service providers. If Omnibus Alternative 2 was not selected by the Councils, service provider requirements for industry-funded monitoring programs would be developed and implemented in individual FMPs.

The SBRM Omnibus Amendment, if approved, would modify the scallop industry-funded observer service provider requirements (at 50 CFR 648.11(h) and (i)) to apply to all New England and Mid-Atlantic FMPs as of April 2015. Specifically, the SBRM Amendment would authorize at-sea observer service provider approval and certification for all applicable fisheries, should a Council develop and implement a requirement or option for an industry-funded observer program in other fisheries beside scallops. However, the SBRM Amendment does not address service provider requirements for other types of industry-funded monitoring programs.

The Omnibus Alternative 2 would include an approval and certification process for dockside and electronic monitoring service providers for all New England and Mid-Atlantic FMPs. The monitoring service provider approval and certification process would be based on the current process in place for the scallop fishery and would be developed in the coming months. The selection of Omnibus Alternative 2 would not implement any dockside or electronic monitoring programs, but would only implement a process to approve and certify dockside and electronic monitoring service providers. In the future, if the Councils implement any industry-funded dockside or electronic monitoring programs through a future action, the process to develop those monitoring programs would be streamlined.

Prioritization Process

The Omnibus Alternative 2 also includes prioritization options to allocate available Federal funding towards industry-funded monitoring. When Federal funding is not sufficient to cover NMFS cost responsibilities to achieve target coverage levels (above and beyond SBRM) across FMPs, Omnibus Alternative 2 includes different prioritization processes to allocate available Federal funding towards industry-funded monitoring. Alternatives 2.1 and 2.2 provide the Councils and NMFS with more discretion to make trade-offs between FMPs, but also require more analysis and resources. The primary difference between these two alternatives is who (NMFS or Councils) would lead the prioritization process and analysis. Alternatives 2.3 – 2.5 use formulaic approaches, eliminating much of the discretion and analytical burden of Alternatives 2.1 and 2.2. However, these formulaic approaches in Alternatives 2.3 - 2.5 may reduce the effectiveness of the resulting outcome. If Omnibus Alternative 2 was not selected by the Councils, available Federal funding would be allocated toward industry-funded monitoring on an FMP-by-FMP basis.

Due to legal and budgetary constraints described in the Introduction, NMFS cannot approve and implement monitoring requirements for which it does not have the Federal funding to cover NMFS cost responsibilities. Omnibus Alternative 2 includes a prioritization process to allocate available Federal funding across FMPs to cover NMFS cost responsibilities for coverage targets above and beyond SBRM and independent from ESA and MMPA requirements.

When target monitoring coverage levels exist for multiple FMPs, the Councils and NMFS must decide how to allocate available Federal funding available across FMPs. Available Federal funding refers to any funds in excess of those allocated to meet SBRM or other existing

monitoring requirements. The allocation of available Federal funding to cover NMFS cost responsibilities would determine which FMPs had additional monitoring for a given year and which would not. Under all of the options described below, the industry would be responsible for covering its cost responsibilities, unless it was determined that Federal funds were also available to be used to offset industry cost responsibilities.

2.1.2.1 Omnibus Alternative 2.1: NMFS-led Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.1, the Regional Administrator and Science and Research Director would determine, in consultation with the Councils, how to allocate NMFS available resources to support NMFS cost responsibilities required to achieve coverage targets for industry-funded monitoring coverage. After those costs are funded, NMFS would also determine, in consultation with the Councils, the allocation of any remaining funding available to offset industry costs established in this amendment for the Herring and MSB FMPs and other FMP actions. The costs would be defined as described by Omnibus Alternative 2. Funding for SBRM, ESA, and MMPA observer coverage would not be changed by this measure. Any funding for industry-funded monitoring programs would be allocated separate from any funding for SBRM or other statutory requirements and any coverage would be above and beyond coverage for SBRM or other statutory requirements.

The prioritization process would have the following steps:

1) NMFS would develop a proposed allocation of Federal resources across FMPs with industry-funded monitoring programs. If available funding in a given year is sufficient, this distribution would be based on the allocation necessary to fully implement the industry-funded monitoring coverage targets specified in each FMP. If available funding is not sufficient to fully fund all industry-funded monitoring programs, then NMFS would recommend an allocation of resources across FMPs that would include:
    - The total amount of funding and seadays necessary to meet the coverage targets specified by each FMP if each FMP were fully funded, including each FMP's share of the total;
    - The coverage level for each FMP if each FMP maintains its percentage share of the total funding (e.g., a fishery with a bigger proportion of the total funding would absorb a bigger proportion of the shortfall);
    - The coverage levels that incorporate the recommended prioritization; and
    - The rationale for the recommended prioritization.

    NMFS' recommendation would be based upon a consideration of:
    - Any restrictions on the appropriations;
    - Funding necessary to meet mandatory coverage levels or standards in any FMPs or other legal mandates (i.e., required sector at-sea monitoring coverage in the NE multispecies fishery);

- Objectives of the individual industry-funded monitoring programs established by FMPs;
- The statistical basis for the FMP coverage target, including an evaluation of the basis for the coverage target (i.e., why the specified coverage level is necessary);
- Coverage already available in a fishery from other sources (e.g., if SBRM coverage in a given year provides sufficient information, additional industry-funded monitoring coverage may not be necessary);
- The extent to which proposed coverage or combinations of coverage would benefit management of fisheries or fleet types operating under multiple FMPs;
- The cost of coverage in each fishery, including the marginal cost and benefit of different coverage levels;
- Available funding to offset industry costs;
- Data needs of upcoming fishery management actions;
- Status of the stock of interest (i.e., coverage of a stock in poor condition would be prioritized over coverage of a stock in better condition);
- Risk to management based on fishery performance (e.g., a stock for which the quota is consistently under harvested is unlikely to face the same management risk as one with a constraining quota);
- The minimum level of coverage defined in the FMP that would provide sufficient information to meet the FMP's objectives for additional monitoring; and
- Any other criteria identified by NMFS and/or the Councils.

Some of the information above would be defined or analyzed in the original FMP action that created the industry-funded monitoring program. NMFS would first look to the original FMP action for information and update or supplement this information as necessary.

2) At the Spring Northeast Region Coordinating Council (NRCC) meeting, NMFS and the Councils would review NMFS's proposed allocation of funding and recommend any modifications to the prioritization.

3) Following this discussion, NMFS would provide the Councils, at the earliest practicable opportunity: (1) The estimated industry-funded monitoring coverage levels that incorporate the recommended prioritization, based on available funding; and (2) the rationale for the recommended prioritization, including the reason for any deviation from the NRCC's recommendations. The Councils may recommend revisions and additional considerations to be made by the Regional Administrator and Science and Research Director.

The process is outlined above as an annual process. However, an annual process could be time intensive and strain Council and NMFS resources. The prioritization process could be in effect for longer than one year by remaining as specified until revised.

The Councils may choose to form a joint committee or hold a joint Council meeting instead of using the NRCC as the forum for the prioritization process.

Step 3 allows the Councils and NMFS to discuss any final revisions to the distribution, which might be necessary if the final budget is not known at the time of initial prioritization and is less than expected.

2.1.2.2 Omnibus Alternative 2.2: Council-led Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.2, the Regional Administrator and Science and Research Director would inform the Councils of NMFS's available funding to achieve coverage targets for industry-funded monitoring coverage, including supporting NMFS's infrastructure costs and/or any offset of industry costs established in this amendment for the Herring and MSB FMPs and other FMP actions. If available funding in a given year is sufficient, this distribution would be based on the allocation necessary to fully implement the industry-funded monitoring coverage targets specified in each FMP. If available funding is not sufficient, the Councils would determine the best allocation of available funding across FMPs with industry-funded monitoring programs to meet regional priorities and make recommendations to NMFS. NMFS and industry's costs would be defined as described by Omnibus Alternative 2. Funding for SBRM, ESA, and MMPA observer coverage would not be changed by this measure.

The prioritization process would have the following steps:

1) If available funding is not sufficient to fully fund all industry-funded monitoring programs, the Councils would form a PDT/FMAT to help develop a proposed allocation of resources across FMPs with industry-funded monitoring programs that would include:
    - The total amount of funding and seadays necessary to meet the coverage targets specified by each FMP if each FMP were fully funded, including each FMP's share of the total;
    - The coverage level for each FMP if each FMP maintains its percentage share of the total funding (e.g., e.g., a fishery with a bigger proportion of the total funding would absorb a bigger proportion of the shortfall);
    - The coverage levels that incorporate the recommended prioritization; and
    - The rationale for the recommended prioritization.

    The PDT/FMAT's recommendation would be based upon a consideration of:
    - Any restrictions on the appropriations;
    - Funding necessary to meet mandatory coverage levels or standards in any FMPs or other legal mandates (i.e., required sector at-sea monitoring coverage in the NE multispecies fishery);

- Objectives of the individual industry-funded monitoring programs established by FMPs;
- The statistical basis for the FMP coverage target, including an evaluation of the basis for the coverage target (i.e., why the specified coverage level is necessary);
- Coverage already available in a fishery from other sources (e.g., if SBRM coverage in a given year provides sufficient information, additional industry-funded monitoring coverage may not be necessary);
- The extent to which proposed coverage or combinations of coverage would benefit management of fisheries or fleet types operating under multiple FMPs;
- The cost of coverage in each fishery, including the marginal cost and benefit of different coverage levels;
- Available funding to offset industry costs;
- Data needs of upcoming fishery management actions;
- Status of the stock of interest (i.e., coverage of a stock in poor condition would be prioritized over coverage of a stock in better condition);
- Risk to management based on fishery performance (e.g., a stock for which the quota is consistently under harvested is unlikely to face the same management risk as one with a constraining quota);
- The minimum level of coverage defined in the FMP that would provide sufficient information to meet the FMP's objectives for additional monitoring; and
- Any other criteria identified by NMFS and/or the Councils.

Some of the information above would be defined or analyzed in the original FMP action that created the industry-funded monitoring program. The PDT/FMAT would first look to the original FMP action for information and update or supplement this information as necessary.

2) At the Spring NRCC meeting, NMFS and the Councils would review the PDT/FMAT's proposed allocation of funding for NMFS's infrastructure costs and offsets for industry costs. The NRCC would make any modifications and recommend a prioritization to NMFS.

3) NMFS would provide the Councils, at the earliest practicable opportunity: (1) The estimated industry-funded monitoring coverage levels that incorporate the recommended prioritization, based on available funding; and (2) the rationale for the recommended prioritization, including the reason for any deviation from the NRCC's recommendations. The Councils may recommend revisions and additional considerations to be made by the Regional Administrator and Science and Research Director.

Again, the process outlined above could be annual or the allocation of resources could remain as specified unless revised.

2.1.2.3 Omnibus Alternative 2.3: Proportional Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.3, the amount of Federal funding available to support industry-funded monitoring in each FMP would be reduced by the same percentage as the funding shortfall. If the available Federal funding falls short, the amount of the shortfall would be deducted from the total amount of funding to be allocated to each FMP, proportional to that FMP's share of the total funding need. For example, an FMP that represents 20% of the total funding need would absorb 20% of the total funding shortfall.

There could be a scenario where the available Federal funding for a given FMP would produce a coverage level below the coverage target defined by the FMP as providing sufficient information to meet an FMP's objectives for monitoring. For example, an additional 10 observed trips may provide additional data, but not sufficient data to provide a robust estimate of bycatch of the species of interest. In this case, that FMP would not receive additional coverage and the funding for that FMP would be re-allocated proportionally to other FMPs.

NMFS would determine and provide the Councils with: (1) The estimated industry-funded monitoring coverage levels that incorporates the proportional adjustments, based on available funding; and (2) the rationale for the recommended prioritization, including how it deviates from the fully funded coverage levels across all FMPs. This could be done on an annual basis or the allocation of resources could remain as specified unless revised.

Example FMP 1 needs $3 million, FMP 2 needs $5 million, and FMP 3 needs $2 million to fully implement their coverage targets. The total funding need is $10 million, with FMP 1 needing 30%, FMP 2 50%, and FMP 3 20% of the total. If there is only $8 million in Federal funds for the coming year, then there is a $2 million shortfall. Using the proportional prioritization process, NMFS would allocate the $8 million such that each FMP maintains its share of the total. FMP 1 would get 30% of $8 million, or $2.4 million, FMP 2 would get 50% of $8 million, or $4 million, and FMP 3 would get 20% of $8 million, or $1.6 million. These would be the total funds available to the FMPs to fund NMFS's costs for coverage days above SBRM.

2.1.2.4 Omnibus Alternative 2.4: Cost-based Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.4, the Federal funding would be assigned to each FMP by sequentially eliminating coverage in FMPs that have the highest funding need until the available funding is sufficient to meet the funding needs of the FMPs remaining. This process would prioritize fisheries with the least expensive programs first. NMFS would determine and provide the Councils with: (1) The estimated industry-funded monitoring coverage levels that incorporates the prioritization, based on available funding; and (2) the rationale for the

recommended prioritization, including how it deviates from the fully-funded coverage target across all FMPs. This could be done on an annual basis or the allocation of resources could remain as specified unless revised.

Example FMP 1 needs $3 million, FMP 2 needs $5 million, and FMP 3 needs $2 million to fully implement their coverage targets. The total funding need is $10 million, with FMP 1 needing 30%, FMP 2 50%, and FMP 3 20% of the total. If there is only $8 million in Federal funds for the coming year, then there is a $2 million shortfall. Under the cost-based prioritization approach, NMFS would eliminate the FMP with the highest cost first, FMP 2. Because total funding need of the remaining programs, $5 million, is less than the available Federal funds, $8 million, coverage for FMP 1 and FMP 3 would be fully funded. FMP 2 would receive no additional coverage. This leaves $3 million in unused Federal funds, or this amount could be put toward achieving some coverage for FMP 2.

2.1.2.5 Omnibus Alternative 2.5: Coverage Ratio-based Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.5, the amount of funding would be allocated to each FMP by prioritizing coverage in fisheries that have the lowest coverage needs (based on projections for the coming year) relative to effort (based on vessel trip reports from the previous year). In practice, this would mean that fisheries with the highest ratio of coverage to effort would be sequentially eliminated until the available Federal funding is sufficient to meet the coverage targets of the remaining FMPs. NMFS would determine and provide the Councils with: (1) the estimated industry-funded monitoring coverage levels that incorporate the prioritization, based on available funding; and (2) the rationale for the recommended prioritization, including how it deviates from the fully funded coverage levels across all FMPs. This could be done on an annual basis or the allocation of resources could remain as specified unless revised.

Example FMP 1 needs $3 million, FMP 2 needs $5 million, and FMP 3 needs $2 million to fully implement their coverage targets. The total funding needed is $10 million, but there is only $8 million in Federal funds for the coming year, so there is a $2 million shortfall. Under the coverage ratio-based prioritization approach, NMFS would calculate the following ratio for each FMP:

$$\text{Coverage Ratio} = \frac{\text{Projected coverage days needed in the coming year}}{\text{Level of effort in the previous year}}$$

If FMP 1 had a ratio of 0.1, FMP 2 a ratio of 0.08, and FMP 3 a ratio of 0.2, FMP 3 would be eliminated from coverage first. Because the total funding need of the remaining programs, $8 million, can be met by the available Federal funding, $8 million, coverage for FMP 1 and FMP 2 would be fully funded. FMP 3 would receive no additional coverage in the coming year.

2.1.3 Considered But Rejected Omnibus Alternatives

The January 2014 version of the Discussion Document contained a Vessel Cancellation Charge Option. That option included discussion of a fee to be paid by the vessel to the at-sea observer service provider when vessels are a "no show" or when they cancel trips less than 12 hours before the scheduled departure time. That option also discussed that payment of fees would be a vessel permit requirement and that outstanding fees would result in non-renewal of vessel permits.

As the PDT/FMAT further developed this option, the Department of Commerce Office of General Counsel advised that the government may not dictate the terms of a private transaction such as this fee. As a result, the Vessel Cancellation Charge Option is likely not legal because it involves the terms of a private business contract between a vessel and an observer service provider. While an observer service provider or a vessel could specify a cancellation fee as part of a contract, thereby eliminating the necessity of increasing the base rate that all vessels pay, it is unlikely that NMFS could legally require or specify the amount of such a fee.

2.2 ATLANTIC HERRING MONITORING ALTERNATIVES

As described in the Introduction, the New England Council is interested in increasing monitoring in the Herring FMP to assess the amount and type of catch, to monitor annual catch limits, and/or provide other information for management. This increased monitoring is above and beyond coverage required through the SBRM, the ESA, or MMPA. The amount of available Federal funding to support additional monitoring and legal constraints on the sharing of costs between NMFS and the fishing industry have recently prevented NMFS from approving proposals for industry-funded monitoring in some fisheries, specifically Atlantic Herring Amendment 5. This amendment is intended to remedy the industry-funded monitoring disapproval in Herring Amendment 5 by establishing (1) a process by which available Federal funding could be allocated to the Herring FMP and (2) a monitoring coverage target for the industry-funded monitoring to achieve on an annual basis to meet Herring FMP objectives.

Using the process established in this amendment, the realized coverage level for the Herring FMP in a given year would be determined by the amount of Federal funding available to cover NMFS cost responsibilities a given year. The realized coverage level for the Herring FMP in a given year (above and beyond SBRM) would fall anywhere between no additional coverage above SBRM and the specified coverage target. Establishing monitoring coverage targets would allow NMFS to approve and implement new industry-funded monitoring programs, without committing to support coverage levels above appropriated funding or before funding is determined to be available.

However, this amendment WOULD NOT automatically allow for higher coverage levels in the herring fishery. This amendment establishes tools that NMFS and the Councils could use to provide additional monitoring in the herring fishery when Federal funding is available.

Therefore, during years when there is no additional funding to cover NMFS cost responsibilities above funding for SBRM, the tools developed in this amendment would not be used and there would be no additional monitoring coverage in the herring fishery, even if industry is able to fully fund their cost responsibilities.

Under Omnibus Alternative 2, the details of any industry-funded monitoring program, including at-sea, dockside, or electronic monitoring, may include, but are not limited to: (1) Level and type of coverage target, (2) rationale for level and type of coverage, (3) process for vessel notification and selection, (4) fee collection and administration, (5) standards for monitoring service providers, and (6) any other measures necessary to implement the industry-funded monitoring program. Additional NEPA analysis may be required for any subsequent Herring FMP framework adjustment action modifying the industry-funded monitoring program.

Additionally, after the specified target coverage levels are effective for 2 years, this amendment gives the New England Council the choice to either (1) require that target coverage levels expire or (2) examine the results of any higher coverage in herring fishery, and consider if adjustments to the coverage targets are warranted. Depending on the results and desired actions, subsequent action to adjust the coverage targets could be accomplished via specifications, a framework adjustment, or an amendment to the Herring FMP, as appropriate.

2.2.1 – 2.2.2.4 RANGE OF HERRING MONITORING ALTERNATIVES

Atlantic Herring Monitoring Alternatives	Target Coverage Level	Coverage Category	Effects on Fishing Effort	Comments
Herring Alternative 1: No Coverage Target	No additional coverage above SBRM, ESA, and MMPA	SBRM allocates observer coverage based on gear and area	No effect	No target level specified
Herring Alternative 2: Coverage Target Specified	Target coverage level specified for industry-funded monitoring above SBRM, ESA, and MMPA	Coverage target specified by permit and/or gear	Effects vary by alternative	Ability to target coverage level is variable
Herring Alternative 2.1: Up to 100% Coverage	*Up to* 100% coverage on Category A and B vessels	Category A and B vessels	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met
Herring Alternative 2.2: 100% Coverage	100% coverage on Category A and B vessels	Category A and B vessels	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met
Herring Alternative 2.3: Up to Specified Confidence Interval Coverage	*Up to* specified confidence interval around RH/S catch	Category A, B, C, and E vessels are subject to RH/S catch caps	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met; aligns with Mackerel Alternative 2.3
Herring Alternative 2.4: Confidence Interval Coverage	Specified confidence interval around RH/S catch	Category A, B, C, and E vessels are subject to RH/S catch caps	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met; aligns with Mackerel Alternative 2.4

2.3 ATLANTIC MACKEREL MONITORING ALTERNATIVES

As described in the Introduction, the Mid-Atlantic Council is interested in increasing monitoring for the mackerel fishery in the MSB FMP to assess the amount and type of catch, to monitor annual catch limits, and/or provide other information for management. This increased monitoring is above and beyond coverage required through the SBRM, the ESA, or MMPA. The amount of available Federal funding to support additional monitoring and legal constraints on the sharing of costs between NMFS and the fishing industry have recently prevented NMFS from approving proposals for industry-funded monitoring in some fisheries, specifically MSB Amendment 14. This amendment is intended to remedy the industry-funded monitoring disapproval in MSB Amendment 14 by establishing (1) a process by which available Federal funding could be allocated to the MSB FMP and (2) a monitoring coverage target for the industry-funded monitoring to achieve on an annual basis to meet MSB FMP objectives.

Using the process established in this amendment, the realized coverage level for the MSB FMP in a given year would be determined by the amount of Federal funding available to cover NMFS cost responsibilities a given year. The realized coverage level for the MSB FMP in a given year (above and beyond SBRM) would fall somewhere between no additional coverage above SBRM and the specified coverage target. Establishing monitoring coverage targets would allow NMFS to approve and implement new industry-funded monitoring programs, without committing to support coverage levels above appropriated funding or before funding is determined to be available.

However, this amendment WOULD NOT automatically allow for higher coverage levels in the mackerel fishery. This amendment establishes tools that NMFS and the Councils could use to provide additional monitoring in the mackerel fishery when Federal funding is available. Therefore, during years when there is no additional funding to cover NMFS cost responsibilities above funding for SBRM, the tools developed in this amendment would not be used and there would be no additional monitoring coverage in the mackerel fishery, even if industry is able to fully fund their cost responsibilities.

Under Omnibus Alternative 2, the details of any industry-funded monitoring program, including at-sea, dockside, or electronic monitoring, may include, but are not limited to: (1) Level and type of coverage target, (2) rationale for level and type of coverage, (3) process for vessel notification and selection, (4) fee collection and administration, (5) standards for monitoring service providers, and (6) any other measures necessary to implement the industry-funded monitoring program. Additional NEPA analysis may be required for any subsequent MSB FMP framework adjustment action modifying the industry-funded monitoring program.

Additionally, after the specified target coverage levels are effective for 2 years, this amendment gives the Mid-Atlantic Council the choice to either (1) require that target coverage levels expire or (2) examine the results of any higher coverage in mackerel fishery, and consider if adjustments to the coverage targets are warranted. Depending on the results and desired

actions, subsequent action to adjust the coverage targets could be accomplished via specifications, a framework adjustment, or an amendment to the MSB FMP, as appropriate.

2.3.1 – 2.3.2.4 RANGE OF MACKEREL MONITORING ALTERNATIVES

Atlantic Mackerel Monitoring Alternatives	Target Coverage Level	Coverage Category	Effects on Fishing Effort	Comments
Mackerel Alternative 1: No Coverage Target	No additional coverage above SBRM, ESA, and MMPA	SBRM allocates observer coverage based on gear and area	No effect	No target level specified
Mackerel Alternative 2: Coverage Target Specified	Target coverage level specified for industry-funded monitoring above SBRM, ESA, and MMPA	Coverage target specified by permit and/or gear	Effects vary by alternative	Ability to target coverage level is variable
Mackerel Alternative 2.1: Up to Target Coverage Levels	*Up to* 100% coverage on limited access MWT & Tier 1 SMBT; 50% coverage on Tier 2 SMBT; 25% on Tier 3 SMBT	Limited access MWT and SMBT	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met
Mackerel Alternative 2.2: Target Coverage Level	100% coverage on limited access MWT & Tier 1 SMBT; 50% coverage on Tier 2 SMBT; 25% on Tier 3 SMBT	Limited access MWT and SMBT	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met
Mackerel Alternative 2.3: Up to Specified Confidence Interval Coverage	*Up to* specified confidence interval around RH/S catch	Limited access MWT and SMBT	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met; aligns with Herring Alternative 2.3
Mackerel Alternative 2.4: Confidence Interval Coverage	Specified confidence interval around RH/S catch	Limited access MWT and SMBT	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met; aligns with Herring Alternative 2.4

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7.0 LITERATURE CITED

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MEMORANDUM

DATE: August 15, 2014

TO: New England Fishery Management Council
Mid-Atlantic Fishery Management Council

FROM: Industry-funded Monitoring Plan Development Team/Fishery Management Action Team

SUBJECT: Industry-funded Monitoring Omnibus Amendment Development

1. The PDT/FMAT met via in person on March 7 and August 5, 2014 to continue development of the omnibus amendment to address observer funding issues. The March 7th PDT/FMAT meeting focused on planning the analysis and the PDT reviewed the preliminary results of the analysis at the August 5th meeting, so the meeting reports of these meetings are combined. PDT/FMAT participants at the March 7th meeting included Melissa Hooper, Aja Szumylo, Carrie Nordeen, Katherine Richardson, J. Michael Lanning, (NMFS GARFO), Susan Gardner, Kelly Neville, Andrew Kitts, Kiersten Curti, Susan Wigley, Paul Rago (NMFS NEFSC), Jason Didden(MAFMC), and Lori Steele (NEFMC), and several members of the public. Participants at the August 5th meeting included Carrie Nordeen, Katherine Richardson, J. Michael Lanning, (NMFS GARFO), Andrew Kitts, Kiersten Curti, Susan Wigley, Amy Martins, (NMFS NEFSC), Jason Didden(MAFMC), and Lori Steele (NEFMC), and several members of the public.

2. Prioritization Process and Timeline

At the August 5th meeting, the PDT reviewed several potential schedules for the prioritization process alternatives (Table 1). The IFM Omnibus would create the framework for industry-funded monitoring (IFM) programs for all fisheries for coverage above and beyond SBRM. Under this amendment, the Councils could flesh out those monitoring programs in future actions, but these programs would be contingent upon funding which would be allocated through a prioritization process, on an annual or other time scale, to determine actual seaday allocations for any given year. The sub-options in the document consider different processes for this prioritization, which would follow different schedules. The major components affecting the schedules are:

1. How much discretion does NMFS have? Advice from NE General Counsel is that the more discretion NMFS has, the more likely rulemaking and additional NEPA would be required before the seaday allocation could be put into effect. The formulaic alternatives (2.3-2.5) are not likely to require rulemaking.
2. How much Council and public input is desired? In what forum would the prioritization take place? Hosting public meetings or syncing with Council meetings, as opposed to a formula computed by NMFS, requires a longer process. But more public input reduces need for rulemaking.
3. Does the amount of industry-funded coverage depend on the amount of SBRM coverage in the same fishery? If an IFM program counts SBRM coverage toward the IFM

coverage in a given fishery (e.g., as in sector ASM), then it will be necessary to conduct the IFM prioritization after the SBRM prioritization is complete.

4. When is NMFS's budget to support IFM known? The IFM funding prioritization can't be completed without a budget. The draft timelines are based on a January/February timeline for final budget approval, as that has been the case recently. However, that may differ year to year.
5. How much or what type of information is needed to calculate the IFM coverage? The availability of different types of data would affect when the analysis could begin, and the complexity of the analysis would also affect the timeline. At this time, it is difficult to predict what type of analysis would be needed and how long it would take.
6. What is the "coverage year"? Is the IFM coverage allocated on the fishing year, calendar year, or SBRM year? This would affect when the process needs to be completed by. Because the prioritization process would have to address all fisheries that have an IFM program, it may be necessary for all IFM programs to be on a consistent timeline with each other and with SBRM (April-May).

Alternatives 2.1/2.2 – These alternatives have the advantage of allowing the Councils and NMFS the most discretion over the funding priorities. However, they call for substantial analysis to be prepared by someone (a PDT or NMFS), and for that analysis to be presented at a joint meeting between the Councils, such as an NRCC meeting. These alternatives would also likely require rulemaking because of the potential for very different priorities year to year. After reviewing potential timelines for this alternative, the PDT concluded that the process laid out in these alternatives would be difficult, maybe impossible, to complete within a year and thus could not be done annually. The PDT recommends that this alternative include a schedule based on a 2-3 year cycle, similar to how the Councils set specifications. This would allow the Councils/NRCC and NMFS to go through the prioritization process before NMFS conducts rulemaking, and the rulemaking to be complete before the annual budget/SBRM process begins. This could work if NMFS and the NRCC/Councils agree on a set of priorities that would remain static for 3 years, and that NMFS would use to run a formulaic prioritization on an annual basis to determine final coverage rates based on available funding, without additional rulemaking (similar to SBRM). This would also provide some stability for industry, because they would know if their fishery was first priority and, therefore, more likely to get funding and have IFM in those 2-3 years. However, this would mean that the Councils would be conducting the prioritization well in advance of the specs cycle and would not modify the criteria during a cycle, although the Councils could always do so anyway if new information became available.

Alternatives 2.3/2.4/2.5 – Under these alternatives, the Councils would select a formula in this omnibus amendment that NMFS would use to determine the funding allocation to each IFM program. The formula would be agreed upon and analyzed in this omnibus amendment, so additional rulemaking would not be required. This results in a more streamlined timeline that could be completed on an annual basis and adjust to changes in budget from year to year. However, these alternatives are blunt tools that do not provide NMFS or the Councils any discretion over the funding priorities in a given year.

In order for a monitoring program to be implemented with completion of this action, the Councils/NMFS would have to run the Council's preferred prioritization process as part of the

omnibus rulemaking (AND assuming there is funding). Depending upon which alternative the Councils select and how long it would take, the Councils may want to specify a separate one-time priority list through this amendment that would stand for the first 1-2 years (contingent upon funding), until the prioritization process could be set up and run.

The PDT had some questions for the Observer Committee related to the timing and process for these alternatives:

1. Is the timing and process laid out for the alternatives clear? Are there any modifications or other alternatives that the Committee recommends for consideration?
2. For Alternatives 2.1/2.2, what joint meeting forum does the Committee recommend to consider for the prioritization discussion?
3. Does the Committee inclusion of a separate one-time priorities list in this action for the early years of implementation?

Table 1: Current and potential process schedules

		Status Quo (SBRM, etc.)	**Alternatives 2.1.-2.2 (discretionary)**	**Alternatives 2.3-2.5 (formulaic)**
Year 1	January-April		Prepare and analyze draft IFM prioritization for Years 2-4 **(4 mos)**	
	April		NRCC and/or Councils review draft IFM prioritization for Years 2-4	
	May-October		NMFS conducts proposed and final rulemaking **(6 mos)**	
	October – December	Observer data July Year 0 - June Year 1 is available; work on analysis for SBRM; work on analysis for sector ASM **(3 mos?)**	Observer data July Year 0 - June Year 1 is available;work on analysis for IFM including coverage and funding needs **(3 mos)**	Observer data July Year 0 - June Year 1 is available; work on analysis for IFM including coverage and funding needs **(3 mos)**
Year 2	January-February	Receive Year 2 budget; publish sector ASM coverage rates in proposed rule; determine scallop seaday schedule and compensation rate **(1-2 mos?)**	Receive Year 2 budget; determine whether funding sufficient; determine final Year 2 coverage rates **(2 mos)**	Receive Year 2 budget; determine whether funding sufficient; run IFM prioritization **(2 mos)**
	March	Run SBRM	Announce Year 2	Announce Year 2

		prioritization; publish sector ASM rates in final rule; begin scallop Year 2; roll-out SBRM seadays to providers ASAP **(1-2 mos)**	coverage rates and roll-out to providers **(min 30 days before year start)**	coverage rates and roll-out to providers **(min 30 days before year start)**
	April	Begin Year 2 seaday schedule for SBRM	Begin Year 2 for IFM; NMFS briefs Councils on final rates	Begin Year 2 for IFM; NMFS briefs Councils on final rates
	May	Begin sector ASM Year 2		

3. Prioritization Criteria

Alternatives 2.1/2.2 include criteria to be used by the PDT/FMAT or NMFS in developing the initial recommendations for funding priorities. These criteria are meant to guide the PDT/NMFS and ensure they examine all the factors that the Councils wish to weigh on the decision. The PDT discussed how the PDT/NMFS would use the criteria in any given year to generate a recommendation. The criteria are quite diverse and it is not clear how the PDT/NMFS is intended to weight fisheries within a criterion or across criteria. For example, if one fishery's objective is to monitor bycatch of an overfished stock, while another fishery's objective is to monitor a recently listed species, which should take priority? In absence of further guidance, this would require the PDT/NMFS to project what value judgments the Councils are likely to make and to reconcile the different concerns of the two Councils in order to generate the initial recommendation. The PDT was concerned that this would be too much to expect of the PDT/NMFS and would require a significant amount of analysis that would extend the process timeline. This wide open process could also result in vastly different recommendations from cycle to cycle, which would be unstable for the industry and may require more public input and be more likely to be litigated. The PDT considered developing a weighting scheme in this omnibus amendment that could provide the PDT/NMFS more guidance in developing their initial recommendation. The PDT found an example of a similar process that the Mid-Atlantic SSC developed to prioritize RSA projects (Attachment 1). Developing a similar weighting scheme in this omnibus would require the Councils to make value judgments now about the different criteria and FMPs, but would save time in the specs cycle process. The Councils could make modifications to the weighting scheme frameworkable.

The PDT was concerned that if the Councils have difficulty agreeing on the weighting scheme, it could delay the omnibus. The PDT considered whether a separate omnibus framework adjustment could be the vehicle for the weighting scheme to be implemented after the omnibus amendment. However, the actual prioritization of funding could not take place until the framework is implemented, so the PDT concluded this would not save time. If the Council specified a one-time priorities list in this omnibus amendment to be effective until the framework

is implemented, this may be more feasible. The PDT plans to investigate this option further and try to develop a weighting scheme to present at the Committee's next meeting.

Specific questions the PDT has for the Committee on this topic:

1. Does the Committee support the list of criteria in Alternatives 2.1 and 2.2? Are there any modifications the Committee recommends?
2. Does the Committee support the idea to try to develop a weighting scheme for prioritizing fisheries?

4. Monitoring Provider Standards

The Omnibus Alternative 2 will lay out a framework for IFM programs moving forward, including general standards for monitoring providers and individual monitors. The SBRM amendment already includes general standards for observers and observer providers. This omnibus amendment would add standards for other types of monitoring programs, such as at-sea monitoring, dockside monitoring, portside sampling, and electronic monitoring (EM). The PDT plans to develop these standards for the Committee's next meeting. The PDT discussed what types of programs and standards to include in the amendment. The observer provider standards are based on national policy and national policies may be developed in the future for EM providers and other types of providers. The PDT discussed that any provider standards developed in this amendment should be consistent with national policy and existing observer service provider standards. Although these types of monitoring programs differ in terms of the types of data they collect, the PDT thought it would be possible to develop some overarching standards for all monitoring programs in this amendment (e.g., conflict of interest, insurance requirements). Later Council frameworks that implement IFM programs for individual fisheries could then add on any specific standards applicable to their individual situation. The PDT thought that EM may be too fluid at this point to develop specific standards, but it may be possible to include EM in some of the general standards.

The PDT noted that there are different educational requirements for groundfish ASMs (high school diploma) and observers (college degree), and that the Councils need to clarify whether the general ASM standards developed in this omnibus would include the college degree requirement or the high school diploma requirement, and if the former, if they would supersede the groundfish ASM standards. Because ASMs collect a simpler dataset than NEFOP observers and only have to have a high school diploma, it was thought they would require less training and could be paid less, which would reduce the costs of the program. However, the National Observer Program conducted a review of ASM and observer performance and found that ASMs have not been a cost savings. In addition, wages are established by the Department of Labor based on the duties and environment of the position, which is not substantially different for ASMs and observers, so observers and ASMs receive the same wages. Providers also take experience into account in setting wages. ASMs are less likely to complete the training program and have a higher attrition rate, requiring them to be more frequently replaced, which increases costs. They also found that ASMs struggle more with the subsampling methods under intense conditions (e.g., high volume catches), resulting in lower data quality. Therefore, NEFSC staff recommends not extending the exemption from the college degree requirement.

The PDT has the following questions for the Committee on this topic:

1. Does the Committee support using the observer service provider requirements from the SBRM amendment to establish consistent requirements for all third party monitoring services (at-sea, dockside, EM)?
2. Does the Committee recommend that the omnibus standards supersede the groundfish ASM standards?

5. Monitoring Costs/Economic Analysis

At the March 5th meeting, the PDT discussed how to approach the economic analysis for the omnibus and individual FMP alternatives. At the August 5th meeting, the PDT received an initial report from the NEFSC and discussed how to proceed. The omnibus alternatives (1 and 2) are all administrative. Since there would be no impacts on the fishing industry until a framework implements a regulation using these administrative requirements, an analysis of impacts can be general at this time. A detailed analysis of impacts will be needed when a framework adjustment is made on a fishery FMP. For Alternative 2.1 and 2.2, it would be helpful to provide information about the level of costs to be borne by NMFS and by the industry so the public and decision makers have a sense of the relative magnitudes of the separate cost responsibilities. While this would not be a formal economic evaluation, it would provide useful information for when a framework proposes a level of observer coverage so there is a clear understanding of how that translates to costs for industry, and for NMFS.

For all of the mackerel and herring coverage options (Herring Alternatives 1-2.4, Mackerel Alternatives 1-2.4) an estimate on the impacts on fishing vessels from paying for increased observer coverage is required. These are the general steps for doing this analysis:
Under each coverage option:

1. Identify the directly regulated vessels
2. Identify trips from the previous year's landings records that would have been eligible for selection under the new proposed coverage.
3. Describe the regulated vessels and eligible trips and, if appropriate, divide them into categories for analyses (large/small vessels, long/short trips, etc)
4. Estimate the number of trips, by category (could do a random selection of trips), that would get observer coverage
5. Calculate the average revenue and average operating costs by vessel category
6. Show to what degree the increased industry-funded observer cost (and so would need a breakdown of observer costs) increases the average operating costs. Report this impact on a per trip basis and on an annual basis.
7. Calculate the cost to both industry and to NMFS of the increased observer coverage, including the average vs. marginal costs.

However, the NEFSC's research into monitoring costs revealed a clarification that needs to be made to the definition of cost responsibility. Specifically, training and debriefing costs need to be separated between the cost of labor and facilities to provide the training/debriefing (NMFS responsibility) and the salary and per diem of the monitors for attending the training/debriefing (not NMFS responsibility). The NEFSC also has costs for maintaining a liaison between the NEFSC, enforcement, the USCG, and the observer providers to address safety and compliance

issues for IFM programs. The PDT has made this clarification to Omnibus Alternative 2. The PDT plans to provide annual totals for each of these items, as well as in terms of cost per seaday. The PDT is still compiling this information, and does not have actual number values to share with the Committee at this time. However, the PDT wanted to prepare the Committee for the eventual results - that the cost per seaday based on Alternative 2, assuming a total seaday cost is ~$1200, is likely to be ~$300-500/day for NMFS and $700-900/day for industry. This is substantially different than the $325/day industry cost called for in the original herring and mackerel amendments.

Another consideration for this analysis is that infrastructure costs do not increase in seaday increments. At a given certain level of infrastructure, the NEFSC may be able to absorb some additional seadays, up to a point. After that tipping point, another substantial investment of infrastructure would be needed (e.g., a new lease on additional office space, hiring a new staff member, modification to a contract or creation of a new contract). How much additional coverage could be absorbed depends on how close to the tipping point the Observer Program is at any given time. NEFSC staff are looking at the amount of additional seadays they may be able to absorb at current levels, and preliminarily estimated it to be an additional 10% of total seadays. An additional 20% seadays would require additional infrastructure investment.

The NEFSC does not track costs by individual FMP or by the items listed in Alternative #, but the NEFSC is trying to develop annual and seaday cost estimates for each of the items. This may be necessary for the NEFSC to do on a regular basis as part of the analysis for the eventual prioritization process, in order for the prioritization to be scalable. For example, if the NEFSC has $2M, they need to be able to translate that into seadays in order to determine how much coverage that would provide a given FMP. Estimates would have to be generated for different types of monitoring programs in order to see how far the funding would go in a fishery with observer coverage vs. a fishery with dockside monitoring, which have different per day costs.

6. Observer Coverage Alternatives Analysis

At the March 7th meeting, the PDT developed an approach to the analysis in support of the alternatives for observer coverage in the herring and mackerel fisheries (Herring Alternatives and Mackerel Alternatives 1-2.4). On August 5th, the PDT received a progress report on the analysis.

The PDT has been working on updating the analysis of incidental catch of river herring and shad by different gear types, similar to the analysis conducted for mackerel Amendment 14. Preliminary results are consistent with previous analysis. For river herring species, midwater trawl gear and small mesh bottom trawl gear continue to account for the large majority of incidental catch. For shad species, large mesh gillnets account for the greatest percentage, followed by small mesh bottom trawl gear, and then midwater trawl gear. NEFSC staff are continuing to refine these results and plan to present them at a later date. NEFSC staff are also planning to calculate CVs/confidence intervals for the estimates, and develop curves of the relationship of a given CV/CI to coverage level. The NEFSC is also looking further into which fisheries in the small mesh bottom trawl strata are responsible for the river herring catch. This should assist the PDT in identifying what CV/CI and coverage levels to recommend to the Councils and for which gear types or permit categories in the alternatives.

The PDT has also discussed several other ideas to pursue in the analysis:

- Look at the CV/CI at the catch cap vs. fleet vs. stock level, which can require different sample sizes and lead to vastly different coverage rates.
- Look at what level of precision would provide assurance for monitoring catch caps. The PDT could use the methodology developed in FW 3 for the catch caps to simulate the performance of the estimates under different scenarios.
- Examine changes to CV/CI as a result of coverage on gear types/permit categories under the catch caps vs. gears responsible for the most incidental catch. This would illustrate the value of coverage on different trip types in terms of precision. Modes with high variance, but not necessarily high volume, of discards will tend to be magnet for observer coverage, so it is important to determine what modes to focus coverage on.
- Look at the relationship of precision to cost, and the tradeoffs. What is the marginal value of incremental increases in coverage?
- Determine timeliness of data needed for making determinations if analysis had to be conducted as part of prioritization process.
- Consider whether a single coverage target or complimentary coverage targets for both herring and mackerel fisheries would meet objectives, given the amount of overlap in these fisheries.
- Look at what kind of SBRM coverage herring and mackerel fleets would be likely to get under the SBRM amendment to see if would satisfy some objectives. If so, additional IFM coverage might not be needed, or additional coverage could focus on making up for specific short-falls (e.g., if compliance objective, then maybe EM).
- Consider alternatives that might take advantage of the overlap in the herring and mackerel fisheries for efficiency.

SBRM Coverage

The NEFSC ran the Councils' preferred SBRM amendment prioritization process for the first time to determine 2014 seaday allocations, so the PDT was able to get an idea of the coverage levels herring and mackerel modes might get under the SBRM amendment. Currently, midwater trawl vessels are required to have 100-percent coverage of trips into the groundfish closed areas. The NEFSC typically sets aside a pool of sea days for this coverage based on the anticipated number of closed area trips, prior to conducting the seaday allocation for SBRM. So this coverage is in addition to any seadays the midwater trawl fleets are allocated through the SBRM prioritization process. This has resulted in fairly high overall coverage levels for the herring fishery in recent years. However, this separate closed area seaday allocation is not expected to continue after implementation of the SBRM amendment because the amendment requires that the funding currently used for this purpose be directed exclusively to SBRM. Beginning April 2015, the midwater trawl fleets would only receive coverage allocated through SBRM. This amounted to 45 seadays in 2014 for NE midwater trawl (pilot coverage), and none for MA midwater trawl. The MA midwater trawl mode is filtered out by the "trip filter, " because it accounted for less than 1% of total VTR trips and any pilot coverage would have resulted in 100% coverage or more. The NE midwater trawl mode was given only pilot coverage through the prioritization process because it accounts for a small proportion of discards to total catch of herring. Seaday allocations may increase or decrease in future years, depending on discard behavior on these trips, and the results of the prioritization process. However, it appears the Councils cannot rely on increased SBRM coverage to achieve this amendment's objectives.

The PDT wants to highlight to the Committee that the discontinuation of the additional seaday allocation for herring closed area trips under SBRM next year could limit closed area trips by herring midwater trawl vessels. Under Amendment 5, herring midwater trawl vessels are prohibited from fishing in the closed areas without an observer. When the new SBRM goes into effect, this means that herring vessels would only be able to fish in a closed area if they are randomly assigned an observer for SBRM. This also has the potential to bias discard estimates for SBRM, if a large majority of midwater trawl SBRM trips are fished in the closed areas. The PDT intends to address this issue in the document by including this requirement in industry-funded monitoring program described in the Herring Alternatives.

The PDT has struggled with how to approach the analysis for the coverage alternatives – by gear type or permit category or fishery (e.g., "mackerel trip"). The current alternatives adapted from the original amendments are developed around permit categories or a trip definition (e.g., "mackerel trip"), rather than gear type. However, the PDT is using NEFOP observer data from SBRM deployments, so stratifying incidental catch estimates by permit category or an FMP trip definition would violate the randomness of the SBRM sampling scheme and potentially bias estimates. Council staff indicated that the original alternatives were developed around the river herring/shad catch cap definition – because the catch caps apply to the limited access fisheries, the IFM coverage would be targeted at the limited access fisheries. Yet the objectives and performance standard for the coverage is to achieve a certain CV/CI on the estimate of river herring and shad catch. This suggests targeting the coverage at the fleets responsible for the most incidental catch, which may not be the same as the permit category or FMP definitions under the catch cap. The analysis the PDT is developing will help to illustrate the impacts of defining the performance standard in these different ways. It may be possible to develop an alternative that addresses both the cap definition and the objectives for coverage. The PDT is also considering how to specify the coverage target in these alternatives – as a desired CV? A confidence interval? A coverage level? The definition of a desired CV or CI allows for the coverage level to be calculated through the prioritization process, but these concepts can be difficult to understand. The Councils could also specify a target coverage level based on the desired CV or CI that would be maintained in the regulations until modified. However, this would not be robust to changes in incidental catch patterns. The PDT will continue work on the analysis for these alternatives and bring the refined alternatives to the Committee/Councils at a later meeting.

7. Public Comments

- One member of the public commented that the amendment should consider accuracy and observer bias as well as precision. Another member of the public suggested looking at whether certain gear types might have greater impact on accuracy than others, such as high volume gears. The PDT responded that it intends to consider the issue of accuracy in the document, but that it is difficult to quantify. The PDT may be able to use data from the 100% coverage on herring closed area trips to model potential observer effects in fleets with less than 100% coverage.
- Some members of the public emphasized the urgency of completing the action and expressed disappointment that development is not progressing more quickly.

- One member of the public was concerned about fairness, that some vessels may receive "free" coverage from SBRM, while others have to pay for coverage. He emphasized the need to understand these types of interactions between the amendments.
- One commenter suggested that only the alternative for 100% coverage without waivers would meet the Councils' objectives, because all other alternatives would result in coverage levels that fluctuate based on funding which would not ensure objectives are met.
- One commenter suggested the PDT economic analysis of the alternatives should include potential cost savings that could accrue if the fishery has 100% coverage in terms of efficiencies in notifications and deployments.
- One commenter asked that the analysis of infrastructure costs for NMFS in the document consider whether it would be cheaper to outsource some tasks.
- One commenter emphasized the need for information about the costs for industry as soon as possible so that the industry could better weigh in on the alternatives under consideration. One commenter asked to see analysis of the industry's ability to pay and believed that industry would not be able to accommodate $300-800/day for industry. Another commenter suggested that the PDT flag cost drivers for the industry, NMFS, providers so that they can change practices to reduce costs (e.g., lack of notice of trip cancellations).
- One comment suggested that data collection tasks for herring observers could be prioritized to require less training and reduce costs. The Observer Program responded that herring observers are paid the same as other NEFOP observers, even though they have additional high volume sampling training. Another commenter expressed concern that requiring a college degree of at-sea monitors would result in a shortage of qualified applicants. The Observer Program clarified that this has not been an issue.

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FINAL MEETING SUMMARY

Observer Policy Committee

Sheraton Colonial Hotel, Wakefield, MA
August 19, 2014

The Observer Policy Committee held its first meeting on August 19, 2014 in Wakefield, MA to: discuss Terms of Reference (TOR) and the general charge to the Observer Committee; review progress regarding development of NMFS-led Omnibus Industry-Funded Monitoring (IFM) Amendment, which will establish provisions for industry-funded monitoring across all Council-managed fisheries; and to discuss the details of the Omnibus IFM Amendment alternatives and develop related Committee recommendations.

MEETING ATTENDANCE: Terry Stockwell (Chairman), Pete Kendall, Mary Beth Tooley, Jeff Kaelin, Peter Christopher, Wendy Gabriel, Paul Parker, Gerry O'Neill, Peter Hughes, Rick Usher, Bruce Lambert, Doug Brander (12 of 13 Committee members present, Terry Alexander absent); Lori Steele (NEFMC staff); Melissa Hooper, Carrie Nordeen (NMFS GARFO staff); Mitch MacDonald (NOAA General Counsel); Michael Lake (Alaskan Observers, Inc.), Jenna Rockwell (Fathom Research), Amy Martins (NEFOP), Don Frei (NMFS OLE), Greg Wells (Pew Charitable Trusts), Shaun Gehan, JP Bilodeau (F/V Providian), Ryan Raber (F/V Providian), Erica Fuller (EarthJustice).

In addition, several individuals listened to the Committee meeting online via GoToMeeting.

KEY OUTCOMES

The Observer Committee reviewed the details of the Omnibus IFM Amendment alternatives and addressed specific questions raised in the August 5, 2014 Report from the Industry-Funded Monitoring Fishery Management Action Team/Plan Development Team (FMAT/PDT).

- The Committee recommended that Alternative 2.1.2.4, Cost-Based Prioritization, be eliminated (considered but rejected) from the Omnibus IFM Amendment.
- Through several motions and consensus items, the Committee developed recommendations for modifying the other prioritization options under consideration in the Omnibus IFM Amendment.
- The Committee was not comfortable providing specific recommendations about standards for service providers at this time but agreed to revisit this issue at a future meeting. There was agreement that the Omnibus IFM Amendment should establish standards for all service providers.

- The Committee unanimously recommended that an alternative be developed in the Omnibus IFM Amendment that would allow for the direct contracting between a vessel/fishing business and a NMFS approved at-sea monitoring and/or electronic monitoring provider to meet the coverage levels identified by the Council and help achieve the catch monitoring goals of the FMP.
- The Committee recommends that the Council ask the Agency to develop a mechanism to accept funding for monitoring from outside sources, and to review the proposed division of cost responsibilities with the goal being a 50-50 IFM cost-sharing outcome.

Detailed minutes of the August 19, 2014 Observer Committee meeting are provided below.

INTRODUCTIONS, GROUND RULES, REVIEW OF AGENDA AND TERMS OF REFERENCE (TOR)

As the meeting began, each member of the Observer Committee introduced themselves and provided a brief background regarding their involvement in fisheries and monitoring programs as well as their interest in participating on the Committee. Mr. Stockwell then reviewed the Terms of Reference with the Committee:

1. Provide input regarding the continued development of the NMFS-led omnibus Industry-Funded Monitoring (IFM) Amendment and recommend ***Preferred Alternatives*** for the Council to consider during the selection of final measures for this amendment;
2. Upon completion of the omnibus Industry-Funded Monitoring (IFM) Amendment, provide input regarding issues related to observer coverage and catch monitoring, at the request and discretion of the Council.

Mr. Stockwell encouraged members of the Observer Committee to focus on the omnibus elements of the IFM Amendment, i.e., the alternatives in the document that will apply to all fisheries managed by the New England and Mid-Atlantic Councils.

PRESENTATION: OMNIBUS INDUSTRY-FUNDED MONITORING AMENDMENT – BACKGROUND AND CONTEXT (STEELE)

Ms. Steele provided the Committee with a presentation summarizing the background regarding the development of the Omnibus IFM Amendment. Following the presentation, there was some brief discussion regarding the notion that monitoring costs must be split in only one way (infrastructure/at-sea) and always shared by the government and industry. Mr. Parker questioned the need for government-supported infrastructure (and related costs) for IFM programs. He suggested that this may be a primary reason why costs continue to be high, and he asked why a IFM program cannot be developed that would allow the industry to pay for 100% of the cost. Mr. Macdonald stated that the cost delineation comes from the Department of Commerce General Counsel and relates to what is determined to be an inherent governmental function. The government receives data from observers and uses that data for management purposes. Mr. Macdonald noted that data that are collected by fisheries monitors are similar to vessel trip reports and dealer reports in that the infrastructure must exist to process these data and utilize it for fisheries management purposes. Mr. Parker encouraged the Committee members to continue to test the boundaries established by this legal interpretation of cost delineation in order to ultimately build a more cost-efficient system.

PRESENTATION: OMNIBUS INDUSTRY-FUNDED MONITORING AMENDMENT– MANAGEMENT ALTERNATIVES UNDER CONSIDERATION (HOOPER)

Melissa Hooper (GARFO staff) provided a detailed presentation to the Observer Committee about the omnibus alternatives under consideration in the Omnibus IFM Amendment. Following the presentation, Committee and audience members asked clarifying questions and discussed several issues:

- Mr. Parker asked how the prioritization options respond to new fisheries/new programs. Dr. Gabriel explained that the formulaic options simply add another fishery to the equation; the discretionary options may include scoring/ranking criteria that would be evaluated for each fishery requiring IFM. Mr. Parker then expressed concern that the alternatives in the amendment appear to be reactive in that they respond to limited funding by reducing observer coverage because it's expensive. He said that the industry supports monitoring to create better data and wants to move in a direction that does not appear to be supported by the alternatives in this amendment.
- Mr. Kendall asked for more information regarding the infrastructure costs. Dr. Gabriel cited some data from a presentation she recently made to the Council, which was distributed to the Committee. She noted that most of the costs are related to infrastructure and labor; labor costs are in data processing.
- Mr. Kaelin questioned the equity of the cost-sharing breakdown proposed in the IFM amendment and also wondered if/how the language requiring consideration of waivers could be incorporated into the omnibus elements of the amendment. He also suggested that there be more focus in the document on other types of monitoring programs like dockside and electronic monitoring.
- Mr. Brander asked for more information regarding the $1,200 estimate of the cost of an observer per day at sea. This estimate includes both infrastructure and at-sea costs.

  Dr. Gabriel provided some details regarding the infrastructure costs, which total about $5 million annually; these costs are distributed over the total sea days per year, which fluctuate from year to year. This is how the average infrastructure costs are estimated.

  The at-sea costs are paid to service providers; providers are invoiced for at-sea time, travel, salary, land days, and meals. In aggregate, the Northeast Fisheries Observer Program (NEFOP) paid $2.6 million for about 5,000 sea days in 2013, which equates to about **$542 per sea day** for at-sea costs. In 2011, the NEFOP spent $4.8 million for about 6,500 sea days, so the at-sea cost in 2011 was **$746 per sea day**. This variability is why it is difficult to estimate the costs per sea day of IFM programs. She also noted that the timing of the allocation of Federal funds varies from year to year, further complicating the process.
- Mr. O'Neill asked how the requirement for 100% observer coverage on Atlantic herring vessels fishing in the groundfish year-round closed areas would be funded given the projected 45 sea days that will be covered under the standardized bycatch reporting methodology (SRBM) amendment allocations next year. Ms. Hooper responded that any additional observer days beyond the 45 SBRM days would have to be industry-funded through the program that will be established in the IFM amendment, if any additional government funds are available to support IFM programs. Otherwise, herring vessels will be prohibited from fishing in the groundfish closed areas unless they are on one of the SBRM

trips with an observer on board. Mr. Macdonald added that a statutory change would be needed to allow the industry to pay for 100% of the costs of these additional closed area trips. Ms. Hooper agreed to follow-up with GARFO staff regarding efforts to develop a mechanism to allow for the industry to pay for 100% of the monitoring costs. Ms. Fuller expressed concern that the amendment does not appear to be making any progress to address this issue.

- Mr. Parker emphasized the need to consider another structure that allows the government and industry to work together to reduce the overall cost of monitoring programs. He stated that the industry should be able to seek competitive pricing and reduce costs, and the government should oversee the product that comes out of this competitive service. He feels that the government does not need to own a fraction of the costs in order for the programs to support fisheries management.
- Several Committee members further discussed issues associated with at-sea costs. Mr. Hughes estimated that the industry is averaging about $750 per DAS for a scallop observer. Mr. Usher stated that his company's costs are significantly lower but noted that it is all very relative. Ms. Tooley expressed frustration that obtaining specific and clear cost information about IFM seems to be very challenging. She asked whether long-term contracts with observers are limited in the Northeast, and she suggested that any limitations on observer contracts be evaluated to determine how costs can be reduced.

DISCUSSION OF OMNIBUS INDUSTRY-FUNDED MONITORING ALTERNATIVES

Following the morning discussion, the Observer Committee walked through the details of the Omnibus IFM Amendment alternatives and addressed the questions raised in the August 5, 2014 FMAT/PDT Report.

- The Committee discussed the timing/process associated with each prioritization alternative and felt that the concepts are generally clear, but the timing of budget allocations and funding is so variable and unclear that it is not possible to really understand how the processes would work in a given year, or how the IFM prioritization process would coincide with the SBRM process. Mr. Kaelin suggested that the document more clearly address the relationship between the SRBM and IFM amendments.
- Mr. Kaelin and other Committee members expressed general support for the matrix concept proposed by the FMAT/PDT under the discretionary prioritization options. Ms. Steele noted that the matrix needs more development/discussion.

1. MOTION: TOOLEY/PARKER

To recommend that Alternative 2.1.2.4, Cost-Based Prioritization, be eliminated (considered but rejected)

Discussion on the Motion: Observer Committee members acknowledged that this motion is consistent with comments made by the FMAT/PDT (August 5, 2014) regarding this option, although the FMAT/PDT did not formally recommend that it be eliminated from consideration at this time. The Committee felt that the cost-based prioritization proposed in this option lacks rationale and would likely not support the goals/objectives of IFM monitoring programs established by the Council.

MOTION #1 carried unanimously.

OBSERVER COMMITTEE CONSENSUS

The Observer Committee agreed by consensus to support further development of the prioritization matrix discussed by the FMAT under Alternatives 2.1 and 2.2 (NMFS-led and Council-led prioritization process).

The Observer Committee agreed by consensus to recommend further development of the catch-ratio alternative (Alternative 2.5) to allow for the ratio to be calculated/applied in both directions.

The Committee members briefly discussed what may be an appropriate forum for prioritizing fisheries under the two discretionary options. Ms. Tooley stated that she does not support the Northeast Region Coordinating Committee (NRCC) as the appropriate forum for making prioritization decisions and suggested a joint Committee between the New England and Mid-Atlantic Councils. Mr. Kaelin suggested that prioritization decisions should come before both Councils for formal decision-making. Dr. Gabriel noted that the scoring/ranking matrix suggested by the FMAT/PDT may be a good way to reconcile differing priorities between the two Councils.

Mr. Parker asked how industry initiatives can be accommodated under the proposed prioritization options and asked for clarification regarding consideration of future experimental fisheries that may need observer coverage. Ms. Steele and Ms. Hooper agreed to flag this issue for the FMAT/PDT.

The Committee identified the fisheries that would be subject to a prioritization process for IFM during Year 1 under the omnibus amendment: groundfish (sector monitoring), Atlantic herring, and Atlantic mackerel. It was noted that because of requirements within the Northeast Multispecies Fishery Management Plan (FMP), groundfish monitoring would be prioritized first.

2. MOTION: KAELIN/HUGHES

To Amend Section 2.1.2, Prioritization sub-options, to add a waiver/no waiver alternative to each sub-option

Discussion on the Motion: Ms. Nordeen asked for clarification as to how the provisions to require consideration of waivers fit into the prioritization options in the omnibus amendment. Ms. Hooper responded that this language could be added under the discussion of general requirements for monitoring programs under Alternative 2.

MOTION #2 PERFECTED:

To Amend Section 2.1.2, Omnibus Alternative 2, to include language to require consideration of waivers with coverage targets in industry-funded monitoring programs

PERFECTED MOTION #2 CARRIED UNANIMOUSLY.

The Observer Committee discussed issues related to establishing universal standards for service providers. Ms. Steele noted that the SBRM amendment already proposes to apply the scallop observer service provider requirements to observer service providers in all fisheries and clarified that the IFM amendment proposes to extend those requirements to providers of other monitoring services, including at-sea monitoring (ASM, different from observer coverage), dockside monitoring, and electronic monitoring. She also pointed out that the Multispecies (Groundfish) FMP includes requirements/standards for at-sea monitors, which differ from observer service provider standards in that the at-sea monitors are not required to have a college degree. She suggested that the Observer Committee consider the differences between the two sets of requirements and provide a recommendation regarding the proposed standards for all service providers in the IFM Amendment.

- Mr. Usher expressed support for requiring a college degree for observers. He stated that in his experience, there is a significant difference in terms of retention and data quality. Mr. O'Neill agreed. Mr. Hughes noted that there are highliners in the industry who have not even graduated high school and he questioned the need to restrict people who do not have a college degree from observing catch, counting and measuring fish, and filling out reports.
- Ms. Tooley pointed out that there does not appear to be a cost savings from eliminating the requirement for a college degree in the groundfish ASM program.

3. MOTION: PARKER/WITHDRAWN

To support standard requirements for service providers across fisheries

Discussion on the Motion: Ms. Tooley said that she is unclear about which standards to support because she cannot tell how costs are impacted by the requirements. Mr. Parker stated that he supports standard requirements across fisheries but was not ready to move this motion forward given the ongoing discussion at the meeting. He further emphasized that the business aspect of providing observers should be decoupled from the government to allow for a more competitive marketplace and lower costs.

MOTION #3 was withdrawn.

Through further discussion, Ms. Martins (Northeast Fisheries Observer Program, NEFOP) highlighted several points for the Committee:

- In recent program evaluations, the retention rate was a lot higher with at-sea monitors that have a college degree (about a 40% difference).
- The minimum wage in the Commonwealth of Massachusetts is about $8/hour. The requirement for contractors to meet this wage is a minimum requirement, and many service providers go above and beyond this wage. This is determined individually by the providers.
- Portside samplers probably don't need as much training as observers.
- Deployment issues can affect cost, i.e., how fast you have to turn around an observer and what kinds of options the providers have to get observers to the vessels.

Ms. Tooley and several other Committee members indicated that they are not comfortable providing specific recommendations about standards for service providers at this time. However, there was agreement that the omnibus IFM amendment should establish standards for all service providers. The Committee agreed to revisit this issue at a future meeting (October 2014). Ms. Hooper agreed to distribute the requirements for ASM for comparison purposes.

Mr. Parker urged the Committee to continue to emphasize the importance of developing a mechanism to allow the industry to pay 100% of monitoring costs in some circumstances. He offered a motion for consideration.

4. MOTION: PARKER/KAELIN

To include for analysis in the omnibus amendment an alternative that would allow for the direct contracting between a vessel/fishing business and a NMFS approved at-sea monitoring and/or electronic monitoring provider to meet the coverage levels identified by the Council and help achieve the catch monitoring goals of the FMP

Discussion on the Motion: Mr. Parker stated that his rationale is to craft an alternative that improves the opportunity for the industry to seek pricing efficiency for monitoring services. He suggested that NMFS reassess its current assumptions regarding which cost responsibilities may be covered by the government and by the industry to determine of a more efficient structure exists than the one currently proposed in the IFM Amendment. Mr. Kaelin expressed support for the motion and emphasized the importance of this issue. Mr. Kendall also expressed support for further consideration of this issue. Mr. Parker suggested that at the very least, a more specific rationale should be provided regarding the legal constraints that are preventing this approach. He encouraged further debate of the legal interpretation of the applicable laws.

MOTION #4 CARRIED 10/0/1.

5. MOTION: KENDALL/HUGHES

To request that the Council ask the Agency to develop a mechanism to accept outside funding for monitoring purposes

Discussion on the Motion: The Committee acknowledged that this motion directly relates to the previous motion and that outside funding sources may extend beyond the fishing industry.

MOTION #5 CARRIED 9-0-2.

6. MOTION: KAELIN/HUGHES

To request the Council ask the Agency and the FMAT/PDT to review the proposed division of cost responsibilities (p. 6 of Discussion Document) with the goal being a 50-50 IFM cost-sharing outcome

Discussion on the Motion: Mr. Kaelin expressed support for achieving a 50-50 split between costs for which the government and industry are responsible. Mr. Parker expressed support for the intent of the motion and concern about restricting the outcome to a 50-50 split. Mr. Kendall agreed and expressed similar concern. Ms. Fuller expressed support for a substantive examination of costs but opposed the 50-50 restriction and encouraged the Committee to prioritize the other issues/motions discussed at the meeting.

MOTION #6 CARRIED 8-0-3.

OTHER ISSUES

The Observer Committee briefly discussed issues related to the economic analyses to be developed for the Omnibus IFM Amendment. Ms. Hooper stated that the analyses will provide information about the range of costs to each of the affected fisheries under different coverage levels since the available funding and coverage levels in Year 1 cannot be determined at this time. Mr. Kaelin suggested that the document provide information about what percentage of profits the industry may lose to support IFM and what the limitations on fishing businesses may be. Ms. Tooley emphasized the importance of understanding the economic impacts before making final decisions regarding the alternatives in the IFM Amendment.

The Observer Committee agreed to meet again on Thursday, October 23, 2014, to review further work on the Omnibus IFM Amendment.