

Draft Discussion Document

Industry-Funded Monitoring Omnibus Amendment



Prepared by the National Marine Fisheries Service

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INTRODUCTION

The New England and Mid-Atlantic Councils are interested in increasing monitoring 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 is 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 an omnibus amendment to remedy the disapprovals of these actions and to reconsider new monitoring requirements for the Atlantic herring and mackerel fisheries.

The Legal Constraints

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. The NMFS Northeast Region receives 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. 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.

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 legal constraints, the 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.

Note that this action would not automatically allow for higher coverage levels in NE fisheries. This action establishes a tool that NMFS and the Councils could use to provide additional monitoring in NE fisheries when funding becomes available. This means that in years when there is no additional funding to cover NMFS infrastructure costs, above funding for SBRM, the tools developed in this action would not be used and there would be no additional monitoring coverage, even if industry is able to fully fund their cost responsibilities.

Purpose and Need

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 would also establish standard administrative requirements for monitoring providers and vessels. Additionally, this amendment would establish monitoring coverage targets for the Atlantic Herring FMP and the Atlantic Mackerel, Squid, Butterfish 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.

Types of Measures Considered

The PDT/FMAT for this amendment will develop a range of management options for the Councils to consider. These could include, but are not limited to:

- A standard definition of the costs associated with industry-funded monitoring programs and determination of the costs that NMFS and the industry would each be responsible for;
- A process by which NMFS and/or the Councils would prioritize Federal funding for monitoring across FMPs, when Federal funding is not sufficient to meet all coverage targets;
- Add industry-funded monitoring programs (e.g., portside/dockside monitoring, at-sea monitoring, electronic monitoring) to the list of measures that can be modified by framework adjustment in each FMP;
- Standards for service providers and monitors (e.g., for portside/dockside monitoring, at-sea monitoring, electronic monitoring); and
- Monitoring coverage targets or requirements for certain permit categories and/or gear types for the Atlantic herring and Atlantic mackerel fisheries.

Proposed Timeline for Amendment

Action	Timeline, based on current Council meeting schedule
Councils initiate amendment	September/October 2013
First PDT/FMAT meeting	December 2013
Second PDT/FMAT meeting	January 2014
Councils approve draft range of alternatives to be developed	January/February 2014
PDT/FMAT/Councils develop alternatives, draft EA	January-April 2014
Councils approve draft EA for public review	April 2014
30-day public comment period on draft amendment	May 2014
Councils take final action	June 2014
EA finalized, proposed rule drafted	July 2014
Proposed rule publishes with 30 day comment period	September 2014
Comment period ends, final rule drafted	October 2014
Final rule publishes	November 2014

ACTION ALTERNATIVES

Omnibus Alternative Set 1: Definition of costs and cost-responsibility for industry-funded monitoring programs

The following alternatives consider a standard definition of cost responsibility between NMFS and the industry for supporting monitoring programs above and beyond SBRM. We note that there is only a single action alternative for the cost delineation because there are legal requirements that dictate cost responsibilities, as described in the Introduction.

Alternative 1a: No Action

Under the no action alternative, there would be no standard definition of costs and cost responsibility for 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.

Alternative 1b: Definition of industry-funded monitoring cost responsibility

Under Alternative 1b, there would be a standard definition of those costs associated with industry-funded monitoring programs that NMFS and the industry would be responsible for. This standard definition would be used by the Councils when developing any industry-funded monitoring program for New England and Mid-Atlantic fisheries in future actions. The definition described below is already in operation in the Atlantic sea scallop and NE multispecies fisheries, although it is not explicitly defined in those FMPs. Selection of this alternative would only codify the cost responsibilities in regulation and would not change the operations of those fisheries.

NMFS Cost Responsibilities

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

- Training and debriefing of monitors
- Certification of monitoring providers and individual monitors
- Developing and executing vessel selection
- Data processing

Industry Cost Responsibilities

The industry shall 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

Option 1c: Vessel cancellation charges

This option would provide specific instructions for how costs to the provider for observer time and travel to a scheduled deployment that doesn't sail and was not cancelled by the vessel prior to the sail time, would be charged to the industry. This may include provisions for a fee and travel costs to be paid to observer providers by vessels when there is a “no show” or “cancellation” by vessels when less than 12-hr notice is provided relative to the initially specified dock departure time. Payment of fees would be a part of permit requirements, in that outstanding fees would result in non-renewal of permits. This option could be selected in addition to Option 1a or 1b.

This measure does not already exist in the Atlantic Sea Scallop and NE Multispecies FMPs. This option, if selected, would change the current operations of monitoring programs in those fisheries.

[Note: This option was included as a way to provide a disincentive to individual vessels that do not provide adequate notice of a cancelled trip without penalizing other vessels. This option would require further development by the PDT/FMAT.]

Omnibus Alternative Set 2: Regional Prioritization Process

The alternatives in this section address the issue of what to do when Federal funding is not sufficient to cover NMFS’s costs to support the Council’s desired coverage level (above and beyond SBRM) for a given FMP.

General Approach

As described in Omnibus Alternative Set 1, NMFS and the industry both have costs associated with monitoring programs above and beyond SBRM. Due to legal and budgetary constraints described in the Introduction, NMFS cannot approve proposals for additional monitoring that it does not have the Federal funding to support (i.e., to cover NMFS’s costs outlined in Alternative 1b). Therefore, the Councils and NMFS need an approach that would allow NMFS to approve a proposal for a new monitoring program without committing to fund its costs to support that program until it has the funding to do so. The PDT/FMAT considered a general approach with built-in flexibility to adjust coverage levels for a given FMP based on the total amount of

Federal funding available to cover NMFS's costs for coverage above sea days allocated through the SBRM or to meet ESA and MMPA requirements.

The first component of the PDT/FMAT's approach requires individual FMPs to specify a coverage target, rather than a mandatory coverage level, that NMFS and the Councils should aim to achieve on an annual basis to meet certain FMP objectives. The realized coverage level for the fishery in a given year (above and beyond SBRM) could fall anywhere between the coverage target and no additional coverage above SBRM. The realized coverage level in a given year would be determined by the amount of funding available to cover NMFS's costs in that year as allocated through a prioritization process, which is the second component outlined below. This would allow NMFS to approve a new monitoring program in general, without committing to support coverage levels above appropriated funding or before funding is determined to be available.

When coverage targets exist for multiple FMPs, the Councils and NMFS must decide how to allocate the total Federal funding available among all FMPs. The Councils and NMFS must decide which FMPs would be provided with additional monitoring for a given year and which would not, and what prioritization would maximize benefits to the region. The PDT/FMAT considered several alternatives for a regional prioritization process, described below, by which NMFS and the Councils could allocate Federal funds among FMPs to cover NMFS's cost responsibilities. Under all of the alternatives, industry would be responsible for the costs outlined in Alternative 1b, unless it is determined that Federal funds were also to be used to offset industry's cost responsibility. Additional prioritization of Federal funds to offset industry's costs through an administrative mechanism is possible under Alternatives 2b and 2c. The administrative mechanism by which those funds would be distributed is not a part of this action, but is being developed by NMFS separately. Under all of the alternatives, NMFS's costs to support the coverage levels resulting from the prioritization process must be fully funded.

Alternatives 2b and 2c 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 2d, 2e, and 2f use a formulaic approach, eliminating much of the discretion and analytical burden of Alternatives 2b and 2c.

In many cases, funds appropriated to NMFS to support NE monitoring programs are restricted for use in certain fisheries or programs (e.g., catch shares or SBRM). These funds must be used to support monitoring programs that meet the criteria of the funding line and may not be directed to support other fisheries. In addition, coverage levels for the NE multispecies and Atlantic sea scallop fisheries are specified through existing processes that do not allow for coverage levels to fluctuate based upon NMFS's funding, so NMFS must fully fund its infrastructure costs for monitoring in those fisheries. NMFS cannot reduce coverage in these fisheries in order to increase coverage in another FMP. Thus, "Federal funding" discussed throughout this section refers to any funds that are available above funds allocated to meet SBRM or other programs or requirements. In all of the alternatives developed by the

PDT/FMAT, funding for NMFS's costs for these programs would be "taken off the top" before any remaining funding is allocated to support NMFS's costs for other industry-funded monitoring programs. However, the alternatives below could apply to the NE multispecies and Atlantic sea scallop fisheries to the extent that the Council desires coverage above levels currently set by those FMPs.

Alternative 2a: No Action

Under the no action alternative, the Northeast Fisheries Science Center and Northeast Fisheries Observer Program would determine the allocation of any available funding to support NMFS costs responsibilities related to industry-funded monitoring programs. This would not affect funding necessary for observer coverage to meet the requirements of the SBRM, ESA, or MMPA.

Alternative 2b: NMFS-led prioritization process

Under Alternative 2b, the Regional Administrator and Science and Research Director would determine, in consultation with the Councils, how to allocate NMFS available resources to resources 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 Herring and Mackerel Alternative Set 1 and other FMP actions. The costs would be defined as described by Omnibus Alternative Set 1. 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 share of the total funding pie would absorb a bigger share 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 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.

Alternative 2c: Council-led prioritization process

Under this alternative, 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 Herring and Mackerel Alternative Set 1 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 Alternative Set 1. 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 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., a fishery with a bigger share of the total funding pie would absorb a bigger share 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 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.

Alternative 2d: Proportional prioritization process.

Under this alternative, 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, after restrictions on appropriations have been taken into account and any funding needed to meet legal mandates has been deducted (e.g., to meet the required sector at-sea monitoring coverage in the NE multispecies fishery). NMFS would first determine how much funding would be necessary to fully implement the coverage target in each FMP. If the available Federal funding falls short of this amount, 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 level that was 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.

Alternative 2e: Cost-based prioritization process.

Under this alternative, 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 cheapest 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.

Alternative 2f: Coverage ratio-based prioritization process.

Under this alternative, the amount of funding would be allocated to each FMP by sequentially eliminating coverage in fleets that have the highest ratio of projected coverage days needed in the coming year to actual days absent from port reported in the Vessel Trip Report in the previous year until the available Federal funding is sufficient to meet the funding needs of the remaining FMPs. Essentially the fisheries with the most activity would be prioritized. 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:

$$\text{Coverage Ratio} = \frac{\text{Projected coverage days needed for the coming year}}{\text{Days absent in previous year}}$$

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.

Omnibus Alternative Set 3: Industry Funded Monitoring Provisions

Alternative 3a: No Action

The SBRM Omnibus Amendment includes an alternative (Alternative 7.3) that would allow the Councils to develop and/or make modifications to an industry-funded observer program, including observer set-aside provisions, through a framework adjustment to the relevant FMP. The SBRM Amendment would include general language in the regulations of each FMP that would allow industry-funded monitoring programs and observer set-aside provisions to be implemented by framework adjustment. However, the SBRM Amendment does not address other types of industry-funded monitoring programs, such as at-sea monitoring, portside/dockside monitoring, and electronic monitoring. Thus, under this status quo alternative, no new provisions for industry-funded at-sea, portside/dockside, and electronic monitoring would be created for any New England or Mid-Atlantic FMP. Should a Council decide, at any point in the future, to require permitted fishing vessels to pay for at-sea, portside/dockside, or electronic monitoring, a full amendment to the relevant FMP would be required. Existing provisions for observers, at-sea monitors, dockside monitors, and electronic monitoring in the Atlantic Sea Scallop and Northeast Multispecies FMPs would be unchanged.

[Note: This alternative set may need to be updated depending upon the timing of the SBRM Amendment.]

Alternative 3b: Addition of Industry-funded Monitoring Provisions as a Measure That Can Be Implemented through a Framework Adjustment to the FMPs.

Under this option, the Councils would be able to implement other types of industry-funded monitoring programs, including at-sea monitoring, portside/dockside monitoring, or electronic monitoring, through framework adjustments to the relevant FMP. Absent this action, a full FMP amendment would be required to implement industry-funded monitoring programs of all types for all fisheries, with the exception of the existing monitoring programs for the Atlantic Sea Scallop and NE Multispecies FMPs, and any monitoring programs implemented for the Atlantic Herring and Atlantic Mackerel FMPs through this action (provided that options from Alternative Set 3 are selected). If this alternative is selected, the details of any industry funded at-sea, portside/dockside, or electronic monitoring program would be specified and/or modified in a subsequent framework adjustment to the relevant FMP. These details may include, but are not limited to: The level of relevant coverage required in the fishery; the basis for the proposed level and type of coverage; the process for vessel notification and selection; fee collection and administration; standards for monitoring providers; and any other measures necessary to implement the industry-funded monitoring program. Additional NEPA analysis would be required when relevant FMPs develop industry-funded at-sea, portside, or electronic monitoring programs.

[Note: The PDT/FMAT included the known types of monitoring that are available in the New England and Mid-Atlantic Regions in this alternative. At-sea monitoring focuses data collection at sea, recording the type and quantity of total catch and bycatch – anything that enters the net and is either brought aboard the fishing vessel or discarded at sea. Portside monitoring focuses data collection at the dock, accounting for landings and incidental catch, and total catch if all fish are brought to the dock and offloaded from the vessel. Electronic monitoring uses video cameras and other sensors to monitor discards at sea or to monitor compliance with full retention requirements or other requirements at sea. Depending on the information needs for a given fishery, a portside 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 portside or electronic monitoring can be administered at a lower cost).]

DRAFT

Mackerel and Herring Alternative Set 1: Monitoring Alternatives

Atlantic Mackerel Coverage Options	Target Coverage Level	Vessels/fleet where coverage could apply	Consequence (necessity of reaching target)	Other notes
Alternative M1: No action	SBRM (6.5% mackerel catches observed 2006-2010)	Gear and area <ul style="list-style-type: none"> • MWT • SMBT • Mid-Atlantic and New England 	Waivers provided when observer not available	
Alternative M2: Amendment 14 Council preferred with waivers	<ul style="list-style-type: none"> • 100% limited access MWT trips and Tier 1 SMBT trips • 50% Tier 2 SMBT trips • 25% Tier 3 SMBT trips 	Permit and gear combined <ul style="list-style-type: none"> • Limited access mackerel trips • MWT • SMBT 	Waivers provided when observer not available	
Alternative M3: Amendment 14 Council preferred without waivers	<ul style="list-style-type: none"> • 100% limited access MWT trips and Tier 1 SMBT trips • 50% Tier 2 SMBT trips • 25% Tier 3 SMBT trips 	Permit and gear combined <ul style="list-style-type: none"> • Limited access mackerel trips • MWT • SMBT 	Vessels cannot fish without an observer for 100% option. Waivers provided to achieve 50% and 25% options.***	Council may choose to focus only on the 100% coverage options (i.e., exclude Tiers 2 and 3)
Alternative M4: Confidence interval-based coverage targets with waivers	Coverage to result in a certain confidence interval around the RH/S catch cap estimate (e.g., X% certainty that the RH/S catch cap estimate is within +/-Y% of the real number)	Permit, gear and area <ul style="list-style-type: none"> • Limited access mackerel trips • MWT • SMBT • MA and NE 	Waivers provided when observer not available	Aligns with H4 for herring
Alternative M5: Confidence interval-based coverage targets without waivers	Coverage to result in a certain confidence interval around the RH/S catch cap estimate (e.g., X% certainty that the RH/S catch cap estimate is within +/-Y% of the real number)	Permit, gear and area <ul style="list-style-type: none"> • Limited access mackerel trips • MWT • SMBT • MA and NE 	Vessels cannot fish unless adequate coverage exists to maintain the CI for the RH/S cap***	Aligns with H5 for herring

Atlantic Herring Coverage Options	Target Coverage Level	Vessels/fleet where coverage could apply	Consequence (necessity of reaching target)	Other notes
Alternative H1: No action	SBRM coverage	Gear and area <ul style="list-style-type: none"> • MWT • SMBT • Purse Seine 	Waivers provided when observer not available	
Alternative H2: Amendment 5 Council preferred with waivers	100% coverage on Category A and B vessels	Permit and gear combined <ul style="list-style-type: none"> • Category A and B trips • MWT • SMBT • Purse Seine 	Waivers provided when observer not available	
Alternative H3: Amendment 5 Council preferred without waivers	100% Category A and B	Permit and gear combined <ul style="list-style-type: none"> • Limited access herring trips • MWT • SMBT • Purse Seine 	Vessels cannot fish without and an observer***	
Alternative H4: Confidence interval-based coverage targets with waivers	Coverage to result in a certain confidence interval around the RH/S catch cap estimate (e.g., X% certainty that the RH/S catch cap estimate is within +/-Y% of the real number)	Permit, gear and area <ul style="list-style-type: none"> • Limited access herring trips • MWT in NE and MA • SMBT in MA • 	Waivers provided when observer not available	Aligns with M4 for mackerel
Alternative H5: Confidence interval-based coverage targets without waivers	Coverage to result in a certain confidence interval around the RH/S catch cap estimate (e.g., X% certainty that the RH/S catch cap estimate is within +/-Y% of the real number)	Permit, gear and area <ul style="list-style-type: none"> • Limited access herring trips • MWT in NE and MA • SMBT in MA 	Vessels cannot fish unless adequate coverage exists to maintain the CI for the RH/S cap***	Aligns with M5 for mackerel

***Alternative M3/H3 and M5/H5 above specify that vessels cannot fish without an observer. This means that, if NMFS funding is not available for infrastructure costs, or if a provider cannot deploy an observer, the trip cannot sail, even if a vessel can pay for the observer.

Option M6/H6: Require reevaluation of coverage requirement after 2 years to determine if catch rates justify continued expense of continued high coverage level (must be selected with an action alternative).

Under this alternative, after the selected coverage target was effective for 2 years, each Council would examine the results of any higher coverage in the Atlantic mackerel and Atlantic herring fisheries, and consider if adjustments to the coverage targets are warranted. Depending on the results and desired actions, subsequent action could be accomplished via specifications, a framework adjustment, or an amendment to each FMP, as appropriate. This alternative was selected by each of the Councils in Amendments 5 and 14.

Additional Ideas Discussed by the PDT/FMAT

Possible addition to Mackerel and Herring Alternative Set 1:

Option M7/H7: X year sunset provision for coverage targets (must be selected with an action alternative).

Under this alternative, the increased coverage targets implemented through this action would expire X years after implementation.

Possible addition to Omnibus Alternative Set 3:

Alternative 3c: Addition of portside monitoring to observer service provider approval requirements.

The SBRM Omnibus Amendment contains an alternative (Alternative 7.2) that would modify the sea scallop industry-funded at-sea observer regulations at 50 CFR 648.11(h) and (i) implemented via emergency rule so that the regulations apply to all Council FMPs. 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 besides Atlantic sea scallops. The SBRM Amendment alternative considers requirements specific to providers that would provide at-sea observer coverage. However, the SBRM Amendment does not address provider standards for other types of industry-funded monitoring programs. The PDT/FMAT discussed including an alternative in this amendment that would add an approval process for portside/dockside monitoring providers for all FMPs to the regulations considered under Alternative 7.2 in the SBRM Omnibus Amendment. Including portside monitoring to observer service provider approval requirements would not implement a portside monitoring program through this action, but would only implement regulations to approve providers should the Councils

implement an industry-funded portside monitoring program through a future action. This would streamline the development of any future portside monitoring programs in all FMPs.

DRAFT