

MEMORANDUM

DATE: December 31, 2013

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

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

SUBJECT: Observer Funding Omnibus Development

1. The PDT/FMAT met via conference call on December 5, 2013 to begin work on the omnibus amendment to address observer funding issues. The PDT/FMAT discussion focused on planning for the omnibus and the scope of draft alternatives. PDT/FMAT participants included Melissa Hooper, Aja Szumylo, Carrie Nordeen, Mitch MacDonald, Kevin Collins, Katherine Richardson (NMFS NERO), Susan Gardner, Amy Martins, Wendy Gabriel, Andrew Kitts (NMFS NEFSC), Jason Didden, Lee Anderson (MAFMC), and Lori Steele (NEFMC). Geoffrey Smith, Greg Wells, Joseph Gordon, Mary-Beth Tooley, Shana Moore, Tom Rudolph, James Reinhart, Claire Fitzgerald, Lucy Van Hook, Michael Lake, Bonnie Brady, Jerry Cygler, Melissa Yuen, JP Bilodeau, Patrick Paquette, Shannon Davis, Shawn Gehan, Eoin Rochford.

2. NMFS staff recapped the purpose of the omnibus amendment and the charge of the PDT/FMAT. Northeast Multispecies Framework Adjustment 48, Atlantic Herring Amendment 5, and Mackerel, Squid, and Butterfish Amendment 14, considered sharing the costs for additional monitoring coverage between the industry and NMFS. These measures did not meet legal requirements, which prevent NMFS and the industry from sharing costs, and thus were disapproved. NMFS staff presented a proposal to the New England and Mid-Atlantic Councils in September/October to take the lead on an omnibus amendment that would establish a clear delineation of costs for monitoring between the industry and NMFS for all FMPs. It would also address the issue of limited federal funding to support NMFS infrastructure for industry-funded monitoring programs, and consider industry-funded monitoring requirements for the herring and mackerel fisheries. The Councils concurred with NMFS' proposal and the PDT/FMAT is charged with developing an initial range of alternatives to present to the Councils in January/February.

Melissa Hooper will chair the PDT/FMAT with assistance from Aja Szumylo and Carrie Nordeen as the NERO leads for Atlantic mackerel and herring. The PDT/FMAT took some public comment from attendees after each topic. Council and NMFS staff will discuss a policy for public comment for future meetings. The meeting was not recorded. Jason Didden volunteered to set up the webinar for future meetings to enable audio recording. The chair will coordinate communication of future meetings with Council staff.

3. The PDT/FMAT briefly discussed the interaction of the SBRM Omnibus Amendment and this Observer Funding/Coverage Omnibus Amendment. The SBRM amendment contains some measures that were originally contemplated for the Observer Funding amendment. The SBRM amendment contains standards and requirements for observer service providers, which would be standardized across all FMPs. It also includes an alternative that would make industry-funded observer coverage a frameworkable item in all FMPs. If these alternatives go forward in the SBRM amendment, they may not need to be included in the Observer Funding omnibus. But if these alternatives do not go forward in the SBRM amendment, it may be necessary to include them in the Observer Funding amendment in order have operational monitoring programs in the Atlantic herring and mackerel fisheries with this action. Additionally, the Observer Funding amendment may include alternatives beyond those considered in the SBRM amendment. For example, the Observer Funding amendment may consider standards for dockside monitoring/port samplers.

4. The PDT/FMAT reviewed the preliminary timeline for the amendment (Table 1). Since the range of alternatives is not yet known, the level of necessary NEPA analysis has not been determined. If the action requires an EIS, the timeline in Table 1 would need to be revised. The PDT/FMAT discussed publishing a general NOI as soon as possible in case an EIS is needed. NMFS staff will draft an NOI to begin circulating.

The PDT/FMAT was concerned about the limited amount of time to develop and analyze alternatives. The timeline was drafted to meet the Councils' target of having operational monitoring programs in the herring and mackerel fisheries with the start of the 2015 fishing year. The timeline may have to be extended depending on how progress is made, but the timeline in Table 1 is what would be necessary to achieve a Jan. 1, 2015 implementation.

Table 1 – Preliminary timeline for completing an amendment and EA. This timeline does not allow for any delays or complications.

| Timeline | Meeting Schedule | Task |
|-----------------------|------------------|---|
| January/February 2014 | Council Meetings | Councils consider and adopt a range of draft alternatives |
| March-May 2014 | | Develop alternatives and NEPA analysis |
| April 2014 | Council Meetings | Councils receive update |
| June 2014 | Council Meetings | Councils take final action |
| September 2014 | | Proposed rule publishes |
| November 2014 | | Final rule publishes |
| January 2015 | | Implementation of herring and mackerel coverage |

Monitoring Cost Definitions

5. NMFS staff prepared and presented an initial outline of alternatives for the amendment (Attachment 1). The PDT/FMAT first discussed Alternative Set 1, which lays out the types of costs NMFS and the industry would each be responsible for in future monitoring programs.

Council staff suggested developing an estimate of the costs to industry of Option 1 to illustrate the measure for the Councils. This would be difficult to estimate, because the costs differ depending on the fishery and program requirements, but may be possible to do for the NEPA analysis.

The PDT/FMAT considered whether it would be possible to consider additional options for this alternative set, but concluded that it would not be feasible because few options meet the legal requirements. NEPA staff advised that the range of cost definition options would still meet NEPA requirements because of the other legal constraints.

The PDT/FMAT recommended clarifying that “no shows” refers to instances where the vessel operator changed plans or cancelled the trip they previously notified for without updating NEFOP. NEFOP staff reported that this can be a significant problem in some fisheries (70% for some), though not in the herring fishery. NEFOP provides some compensation to observers to make up for the lost opportunity, but not as much as a seaday salary.

The PDT/FMAT also recommended clarifying the terminology used in Option 1 to make clear whether it refers to observers or at-sea monitors. Option 1 is intended to apply to all types of monitoring moving forward, so a general term will need to be identified. The need to clearly and reasonably specify if/when/why/how compensation for "no shows" would be made by vessel operators was discussed as critical if included as an alternative.

Coverage Prioritization Process

6. The PDT/FMAT reviewed Alternative Set 2, an outline of a prioritization process for industry-funded monitoring coverage (Attachment 1). The purpose of these alternatives is to establish a process by which the Councils and NMFS can prioritize NMFS’ funding for monitoring (above SBRM) when it is not enough to achieve the desired coverage levels in every FMP. The omnibus amendment would establish the prioritization process, and defer to individual FMP actions to establish coverage targets to guide the process. This process would have to defer to specific instructions in the appropriations for certain line items (e.g., X amount must be spent on groundfish monitoring), but would facilitate evaluation of trade-offs given resource limitations and legal constraints.

The PDT/FMAT discussed that this means that coverage levels can no longer be required, but only targeted. If the Council desired 100% coverage of a fleet, it would need to consider requiring vessels not to leave the dock without an observer, as is done in other regions (e.g. give example FMPs).

The PDT/FMAT was concerned that the process outlined would be too cumbersome to be completed annually. One possible solution would be to specify the priorities for multiple years, like a specifications cycle, or to be effective until revised. The Councils and NMFS could then revisit it every few years or as circumstances change.

The PDT/FMAT also discussed how to address the fact that the following year’s budget may not be known in order to be taken into account during the prioritization. The seaday or dollar

amount allocation agreed to by the Councils and NMFS could be meaningless if NMFS revised it after the fact when the budget was finally known. One possible solution would be for the process to set priorities for coverage (e.g., rank fisheries) or percentages for each fishery (e.g., 20% funding to mackerel, 20% funding to herring, etc.), rather than to allocate sea days. If final funding was less than anticipated, it could still be applied according to the priorities. This option would divorce the process from the budget timeline and ease timing constraints. NEFSC staff also recommended developing flexibility guidelines to allow funding to be shifted between fisheries, if, for example, a fishing season closed early before the money for monitoring was used up. Other regions use these “deployment plans” that include both required and discretionary coverage. NMFS staff also shared preliminary advice from GCNE, which is that rulemaking may be necessary to solicit public comment on the priorities if they may change drastically from year to year or there is a substantial amount of discretion in setting them.

Since the alternative sets are inter-dependent, the PDT/FMAT recommended modifying the structure of the alternatives to give the Councils a clearer understanding of the impacts from a suite of alternatives. NMFS staff clarified that the no-action alternative in this set means that there would be no additional above-SBRM coverage for FMPs that do not have industry-funded monitoring programs.

7. One member of the public asked whether industry could pay for infrastructure costs to meet the desired coverage level, if federal funding is short. NMFS staff responded that this would not meet legal requirements, because it would necessitate fee collection which the NE Region does not have the authority to do. Another member of the public asked if this process could be merged with the SBRM process and amendment. NMFS staff responded that the actions deal with separate needs and constraints which necessitate keeping them separate – SBRM is a statutory requirement whereas industry-funded monitoring is a discretionary requirement. However, the PDT/FMAT is trying to align the timeline and measures of the two actions, so as not to conflict or duplicate effort. A public comment expressed concern at the idea of requiring herring and mackerel vessels to not leave the dock without an observer when other fleets are not subject to the same requirement.

7. The PDT/FMAT discussed the scope of alternatives for the coverage targets for the herring and mackerel fisheries in this action (Alternative Set 3). Specific measures to consider:

- Coverage target
- Criteria – area and gear-based versus permit type
- Consequences if coverage falls short – a target only? Or must something happen if coverage falls short (e.g., can’t fish without an observer).
- Types of monitoring (at sea monitors, observers, dockside monitors, electronic monitoring).

The omnibus amendment would make setting these coverage targets frameworkable in other FMPs. To address the disapproved elements of Amendments 5 and 14, the omnibus would implement monitoring coverage targets for the herring and mackerel fisheries, so no subsequent action would be required.

These alternatives will require further development at the next meeting. The PDT/FMAT felt that the range of coverage levels considered in Amendments 5 and 14 would be a good place to

start. Council and NMFS staff will discuss these options offline and prepare a more complete draft of these alternatives for the next meeting.

Other Items

8. Council staff wanted to include an option in the document for states to serve as dockside monitoring providers for the herring and mackerel fisheries, which was contemplated in Amendments 5 and 14.

9. Council staff asked that the PDT/FMAT provide an update to the Herring Committee at their January 14th meeting. Council staff will need any documents by January 7th to be distributed in the mailing.

10. Council staff asked how this action would interact with the third party mechanism that was outlined at the presentation to the Councils in September and October. NMFS staff explained that the third party mechanism is administrative and does not need to be put in regulation. NMFS has been working on that internally since the September/October Council meetings. It would allow NMFS to offset the costs of the items laid out as industry costs in Option 1 of Alt. Set 1, when funding is available. On the West Coast this is an offset paid to the provider at a fixed rate per sea day or trip, so the provider takes that off the top of the industry's bill. To be eligible for this, the fishery has to have the options laid out in the omnibus amendment. NMFS staff will check if a mechanism for external entities (non-governmental organizations) to contribute funds for reimbursement could be established.

11. One member of the public asked whether charging data users for the use of observer data to offset the costs of monitoring. NMFS staff commented that this idea was not considered by the internal working group, but would seem to have some legal issues on its face. NMFS does not currently have the authority to collect fees for data or to withhold any fees collected from the general treasury. Both of these authorities the North Pacific has, which allows fee collection from industry in that region, but we don't have in the Northeast.