

# **Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment**

## **Public Hearing Summary**

Gloucester, MA  
November 14, 2006

**Chair:** Dana Rice  
**Council Staff:** Chris Kellogg  
**NMFS Staff:** Michael Pentony  
**Council Members:** Phil Ruhle  
**Attendance:** 32 (8 signed in)

### **Introduction:**

Mr. Rice welcomed those in attendance and introduced the purpose and structure of the SBRM Amendment public hearing. Mr. Pentony provided a short presentation on the purpose of the hearing, a summary of the SBRM Amendment and the Councils' preferred alternatives, and a review of the process to comment on the draft amendment, which are accepted at the hearing, or at the second of two public hearings on December 13, 2006, in New York, NY. Mr. Pentony announced that written comments would be accepted through December 29, 2006, via mail, fax, or email.

Five individuals provided comments on the draft amendment. The following represents a summary of the testimony of each commenter and is not intended to be a complete transcript.

### **Comments:**

1. Gib Brogan, Oceana: Mr. Brogan relayed Oceana's concerns regarding the draft SBRM Amendment. Mr. Brogan asserted that the SBRM Amendment, as proposed, does not satisfy the Court's remand order regarding Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). During his testimony, Mr. Brogan identified the following concerns with the document:

- The proposed SBRM continues to leave the level of observer coverage at the discretion of the Regional Administrator (RA). The SBRM Amendment should require a minimum level of observer coverage for each fishery and, therefore, does not meet the court order.
- The Purpose and Need in the first section of the document is not sufficiently clear. It should better state what is in the document and what it sets out to do; that is, how it will move the SBRM issue forward.
- An omnibus FMP amendment effects changes to all the region's FMPs. The document does not, but should, discuss how the amendment will affect each individual FMP.

- The possibility of future management implications is not spelled out in the document.
- The document should also clarify the annual process to update the observer allocations.
- An SBRM needs to establish an allocation of observer days and this document does not do that.
- The range of alternatives considered in the document is inadequate to comply with the National Environmental Policy Act (NEPA), and more viable alternatives should be considered. The performance standard of a CV equal to or less than 30% is accepted in the document as a gold standard without consideration of other CV levels.
- The document should specify what is to be included in the SBRM Report. The alternatives for requiring reports on the SBRM should be expanded.
- The idea of *accuracy* is not explored in the amendment document.
- The SBRM amendment is very complex and technical and relies on NMFS science. The amendment should be peer reviewed to ensure the science and reasoning are robust.
- The concept of *importance filters* is too vague in the document. Sample threshold levels (used in several of the filters) and the effects of their range (0.5% - 3.0%) on the outcomes of data quality are not discussed. It appears that the threshold level can be manipulated. Threshold values should be fixed and established in the SBRM amendment document. The importance filters should not be a mechanism merely for justifying status quo observer levels.
- Oceana has issues with specific fisheries. For sea scallop trawls, NMFS and the Councils should consider the use of underwater video monitoring to capture interactions of the fishing gear with marine life. There is no discussion of underwater video monitoring in the amendment document.
- Appendix E is an example of what a required SBRM Report might look like. The information provided in Appendix E is insufficient and does not satisfy the requests of the NEFMC regarding SBRM reporting. The example does not include any time/area data or analyses of bycatch patterns. Mr. Brogan expressed concern that if such information is not specified as required, it will not be collected.
- The SBRM amendment has come a long way since the review of the Rago et al (2005) paper in September 2005, but more needs to be done to move the region's bycatch monitoring into modern management. Oceana will submit written comments.

2. David Frulla, Fisheries Survival Fund: Commenting on behalf of the Fisheries Survival Fund, Mr. Frulla expressed concern that some of the approaches proposed in the SBRM amendment are too open to litigation. Mr. Frulla stated that the Fisheries Survival Fund will be submitting written comments and, perhaps, technical papers on specific issues. During his testimony, Mr. Frulla identified the following issues:

- Levels of precision and accuracy are matters of policy that should be left to the Councils. Whatever monitoring methods are decided upon, they should not unduly burden the public or bankrupt the industry.
- The document should explain the costs and benefits of achieving varying levels precision and accuracy.
- Mr. Frulla expressed support for the concept of importance filters and notes that under the example threshold levels the required number of observer days still more than doubles the highest levels ever achieved.

- Mr. Frulla concurs with the document’s finding that video monitoring of discards is still a ways off. The method is not robust, as the boat deck is not a production line that is easily videotaped. Also, vis a vis underwater video monitoring, sea turtles that are deflected by a scallop dredge’s turtle chains are not *bycatch*. A white paper by the Fisheries Survival Fund will address this issue.
- Mr. Frulla expressed support for the “gray cell” importance filter that removes from consideration (for observer day allocation) improbable bycatch gear/species combinations. Bycatch problems that have been addressed, such as sea turtles scallop dredges, might also be considered as gray cells in the importance filters.
- Add consideration of reducing needed observer coverage levels for fisheries that have implemented successful bycatch reduction devices.
- The detailed discussion of accuracy in the SBRM Amendment document and Rago et al (2005) should satisfy the Court’s remand order. NMFS has done a good job addressing accuracy and bias in a principled way.
- The SBRM Amendment would set a performance standard of a CV less than or equal to 30% for each mode/species combination. Case law has provided more room for flexibility in this matter. The level of detail – down to mode/species combinations – is one reason the tally of observer days is so high. Mr. Frulla expressed concern that this approach may lead to a court order that requires observer coverage to meet a CV target of 30% for each mode/species combination.
- There’s more flexibility in the court orders than Oceana suggests. Methodology has not been specified by the courts. The Pacific groundfish SBRM has been held up by the court as an acceptable example, but even it does not go into the level of detail of the Northeast SBRM Amendment.

3. Cindy Smith, Maine Department of Marine Resources (DMR): Speaking on behalf of the Maine DMR, Ms. Smith identified an issue related to the estimated discard mortalities. NMFS’s mortality estimates by mode, derived from observed discards, are perceived by constituents in Maine as inequitable from mode to mode. The SBRM Oversight Committee should explain the discard estimates in the document. She explained that Maine DMR will be submitting written comments.

4. Jeff Kaelin, Ocean Spray Partnership/Ocean Frost Seafood: During his testimony, Mr. Kaelin identified the following issues:

- Mr. Kaelin supports the Council’s decision not to adopt an electronic monitoring alternative. Electronic monitoring methods are not yet practical.
- Mr. Kaelin expressed concern regarding the Council’s decision not to set minimum percentages of observer coverage.
- Mr. Kaelin also expressed concern regarding how a CV standard may leave NMFS open to litigation and that setting such a standard would handcuff the SBRM to artificial and unrealistic expectations. NMFS should not be in the position of getting sued due to lack of resources to meet CV and observer coverage targets. Can other parties at the table pitch in funds to support additional observer coverage?

- The use of importance filters in the determination of observer day determinations makes good sense. Mr. Kaelin expressed concern about the extrapolation of observed discards to derive total discard estimates. He will be submitting written comments.

5. Ron Smolowitz, Fisheries Survival Fund: During his testimony, Mr. Smolowitz identified the following issues:

- One component of monitoring that could be expanded is the use of industry and NMFS surveys to estimate bycatch. Prior to opening an area to fishing, the area gets surveyed by commercial vessels. The pre-opening surveys and the bycatch rates from VMS reporting could be expanded. Mr. Smolowitz believes that pre-opening surveys in which bycatch rates are determined may support discard estimates, even with a lower level of observer coverage in the fishery.
- The SBRM Amendment document should include a retrospective analysis of the Georges Bank sea scallop opening to determine whether the target CV was met using the pre- and post-opening surveys.
- Sea turtle interactions with scallop dredges are not bycatch. Turtle chains prevent the turtles from being caught. The interactions are “takes” (under the Endangered Species Act) and should be addressed elsewhere. This distinction should be clarified in the document.
- In areas without a TAC-driven closure, the Council and NMFS should consider requiring an exploratory level of observer coverage and develop methodology for such pilot coverage.
- The reliance in the SBRM Amendment on fishing gear/area modes is a concern for the scallop industry. Each new access area in the fishery is likely to result in a separate mode under the SBRM. This concern may be alleviated if pre-opening surveys are used to reduce the observer burden on the industry.

**Conclusion:**

No one else requested to speak, and the hearing was adjourned at 6:30 p.m.

# **Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment**

## **Public Hearing Summary**

New York, NY  
December 13, 2006

**Chair:** Laurie Nolan  
**Council Staff:** Jim Armstrong  
**NMFS Staff:** Michael Pentony  
**Council Members:** Pat Augustine, Paul Scarlett, Ed Goldman, Fran Puskas, Gene Kray, and Jeff Deem  
**Attendance:** 16 (10 signed in)

### **Introduction:**

Ms. Nolan welcomed those in attendance and introduced the purpose and structure of the SBRM Amendment public hearing. Mr. Pentony provided a short presentation on the purpose of the hearing, a summary of the SBRM Amendment and the Councils' preferred alternatives, and a review of the process to comment on the draft amendment. Mr. Pentony announced that written comments would be accepted through December 29, 2006, via mail, fax, or email.

After a short question-and-answer period to clarify several specific points about the amendment, four members of the public provided comments on the draft amendment. The following represents a summary of the testimony of each commenter and is not intended to be a complete transcript.

### **Comments:**

1. Shaun Gehan, Fisheries Survival Fund: Speaking on behalf of the Fisheries Survival Fund, Mr. Gehan reiterated many of the comments made at the first hearing. In particular, Mr. Gehan identified the following issues:
  - The draft SBRM Amendment does a good job of addressing the issue of accuracy that was identified by the Court as an area of concern.
  - Overall, the importance filters are a good thing. In particular, they help focus limited resources where they would be the most meaningful.
  - Some concern that the plan far exceeds the National guidance for bycatch monitoring, which suggests achieving a CV of 20-30 percent across fisheries, not at the species-by-species level as the SBRM Amendment proposes.
  - Concerned over the potential for litigation if the amendment creates high expectations which are then not met. In order to remedy this, Mr. Gehan suggested expanding the

importance filters and focusing them to further refine the resulting observer coverage levels.

- Concerned that the document does not go far enough in *requiring* an observer program; the Court said this was not optional. At a minimum, the document should stipulate that the use of observers is mandatory.
2. Greg DiDomenico, Garden State Seafood Association: Mr. DiDomenico expressed mixed emotions regarding this type of action, but stressed he hopes NOAA Fisheries Service can get good information on bycatch occurring in the fisheries. He expressed concern that if the Agency cannot meet the requirements for fisheries observer coverage, then the amendment could serve as a tool for litigation. His primary concerns are that, if litigation occurs, either a fishery would be shut down due to incomplete observer coverage or the industry would be forced to pay for the observers.
  3. Sima Freierman, Montauk Inlet Seafood: Ms. Freierman expressed concern that the SBRM Amendment does not address problems with the fisheries observer program, such as faulty data, anomalous tows, and putting observers on smaller vessels. She reported being particularly concerned about standardizing observer practices. Ms. Freierman would like the amendment to shift away from focusing on how the data are collected and to look at what goes on on the fishing vessels.
  4. Peter Moore, American Pelagics Association: Mr. Moore indicated he would be submitting written comments, but expressed particular concern over the potential for unintended consequences of the amendment if the Agency cannot achieve the observer coverage levels stipulated in the amendment. He is concerned that fisheries may be shut down if there is insufficient funding to meet the expectations.

### **Conclusion:**

There was some discussion among the attending Council members and staff, but no other members of the public requested to speak, and the hearing was adjourned at 8:15 p.m.