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**DOCUMENT # 3**

Supplement to the  
Northeast Region  
Standardized Bycatch  
Reporting Methodology  
Omnibus Amendment

For the  
New England Fishery Management Council

April 2007

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## Purpose and Scope of the Supplement

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Although this is a joint amendment covering all fishery management plans (FMPs) of both the Mid-Atlantic and New England Fishery Management Councils, this action is not the same as a joint FMP such as the Monkfish or Spiny Dogfish FMPs. In the case of a joint FMP, which stipulates the management measures governing a fishery, both Councils must adopt the same measures and approve the same version of any changes to those FMPs (through an amendment, framework adjustment, etc.). However, due to its largely administrative nature in that it establishes a methodology rather than implements fishing regulations, in the case of the SBRM Amendment differences in certain provisions adopted by the two Councils may be allowed.

In February 2007, the New England Council added two provisions to the amendment regarding the frequency of reports to be generated by the Northeast Fisheries Science Center and the process to develop and implement future industry-funded observer and observer set-aside programs. However, the Mid-Atlantic Council did not choose to incorporate similar provisions for its FMPs. This created a disconnect in the sets of alternatives available to the two Councils for the SBRM. Because these provisions are not related to how observer coverage levels are determined or how discard data are analyzed in relation to the SBRM, and, therefore, do not cut across FMPs, these issues can be considered on a Council-by-Council or FMP-by-FMP basis.

To reduce the potential for confusion and maintain consistency in the body of the SBRM Amendment, the additions of the New England Council are not included in the relevant sections of the SBRM Amendment document. Rather, this supplement includes the full discussion of the additional alternatives that now apply to New England Council FMPs. The purpose of this supplement is to provide the additional items added by the New England Council, but the scope of this document is limited to these two items and does not apply to the considerations before the Mid-Atlantic Council.

The two items addressed by this supplement are as follows:

1. A semi-annual report to be provided by the Northeast Fisheries Science Center; and
2. Authorization to develop and establish industry-funded observer programs, with or without observer set-aside provisions, in each FMP via framework adjustment.

This document supplements, adds to, or replaces sections 6.4 (reports to the Council), 6.7 (observer set-aside provisions), 6.8 (alternatives considered but rejected),

6.9 (evaluation of the alternatives), 6.10 (rationale for the preferred alternatives), and 7.2 (environmental consequences) of the SBRM Amendment.

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## SBRM Review/Reporting Process

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This supplement creates a new sub-section of the SBRM Amendment, section 6.4.3, to address a new alternative for consideration by the New England Council on the type and periodicity of discard reports prepared and provided by the Northeast Fisheries Science Center. This supplement also adds to section 6.8, alternatives considered but rejected; section 6.9, evaluation of the alternatives, section 6.10, rationale for selecting the preferred alternatives; and section 7.2, environmental consequences of the alternatives. For the purposes of the SBRM Amendment, this is considered part of Item 4 among the alternatives under consideration. The remainder of this section will be structured as if excerpted from the appropriate sections of the SBRM Amendment.

### **6.4.3. Alternative 4.3 – Require Semi-Annual Bycatch Reports**

This alternative would require, in addition to a periodic report on effectiveness of the SBRM (see Alternative 4.2), a semi-annual discard report prepared by the Northeast Fisheries Science Center on discards occurring in New England Council-managed fisheries. This Semi-Annual Bycatch Report would detail information obtained from the Northeast Fisheries Observer Program (NEFOP). The report would be presented to the Council and would include catch and bycatch data from all observed trips during the specified quarters and for the year to date.

The bycatch reports would include summaries of the trips observed, fisheries of particular interest in the relevant time period, funding issues and other related issues and developments, and projections of coverage across fisheries for upcoming quarters. More detailed information would be provided in tables that addressed: The number of observer sea days scheduled for each fishery, by area and gear type, in each quarter; the percent of total trips observed, by gear type, in each quarter; the distribution of sea sampling trips by gear type and statistical area in each fishery; the observed catch and discards of each species, by gear type and fishery, in each quarter; and the observed catch and discards of each species, by gear type and fishery, in each statistical area.

Attachment 1 to the supplement includes a suggestion as to how bycatch data could be summarized by fishery and presented to the Council on a regular (semi-annual) basis.

### **6.8.3. Quarterly Discard Reports**

The New England Council considered requiring quarterly bycatch reports instead of semi-annual reports (described in section 6.4.3). This information, however, would only be useful if the Council could take action on the same frequency to modify fishing

regulations on a quarterly basis. Most Council FMPs provide for an annual or biennial adjustment or measures set on a 3-year basis. Although all Council FMPs allow for mid-season changes to management measures through a framework adjustment, frameworks require at least two meetings of the Council to be approved, which generally means that framework adjustments take 4-6 months (or longer) to develop. Thus, it is not possible for the Council to make changes to management measures on a quarterly basis. Because the Council generally operates on an annual basis, or less frequently, the potential value of quarterly reports is extremely limited. Quarterly reports would, however, require a significant investment of staff time and resources. Given the high cost staff time and resources, and the limited utility for directing Council action, this option was rejected from full consideration, in favor of semi-annual reports.

#### **6.9.4. Item 4: SBRM Review/Reporting Process**

For this item, three alternatives were considered: (1) The status quo (no action); (2) establishing an SBRM review process; and (3) requiring semi-annual bycatch reports. Under the status quo scenario, there is no requirement to prepare formal reports that evaluate the effectiveness of the SBRM at achieving its goals and objectives, or to prepare periodic reports that provide information on discards occurring in the fisheries. This information would be available upon request by the Council or NOAA Fisheries Service, but there would be no standards for the type or level of information to be provided in response to any such request. It would be difficult to plan for and budget resources in advance for the preparation of any report requested in an ad-hoc manner by the Council.

With the second alternative, the frequency of the preparation of SBRM review reports would be specified, allowing for adequate planning and resource allocation, and minimum expected contents of the reports would be specified, providing for consistency of information and comparison across reports and across time. The second alternative would contribute to meeting the intent of the Court in *Oceana v. Evans I and II* in which the Court identified a “mandated” SBRM as a requirement of the Magnuson-Stevens Act. By mandating periodic reports evaluating the effectiveness of the SBRM implemented under this amendment, as well as the contents of such reports, a required element of the Northeast Region SBRM would become a reporting and evaluation feedback mechanism to determine whether modifications to the SBRM are required.

Within the second alternative to specify an SBRM review process, three options are presented for the periodicity of such reports: Annually; every 5 years; and as part of an existing required reporting schedule (e.g., SAFE reports). Under the first two options, a single report would present the required information for all species and fishing modes to allow the Councils and NOAA Fisheries Service to evaluate the effectiveness of the SBRM. The primary concern with this approach (a single, all-encompassing report) is the significant staff time and resources required in order to conduct such a review, which may prevent other important activities, such as stock assessments, from being completed. In particular, the option for an annual report does not reflect an effective use of available

resources. In addition, there is concern that under either of the first two options, the SBRM report may be presented out of sync with either the stock assessments utilizing the information, such that the information in the report would not represent the current status of how the information is being used in stock assessments, or the consideration of management measures for which the information may be useful. Lastly, both of the first two options add an additional reporting requirement, which may be perceived as redundant with other reports prepared for Northeast Region fisheries (including stock assessment reports, SAFE reports, annual reports, etc.)

The third option addresses all of these concerns by linking the presentation of the SBRM information to the development of reports already prepared for the relevant fisheries. This distributes the reporting requirement so that the analytical burden in any one year would be limited and more manageable, and incorporates the reporting requirement into an existing reporting requirement that is in sync with schedules for anticipated management actions (for example, the preparation and presentation of a SAFE report to a Council typically includes recommendations for changes to management measures to address any noted issues related to stock status, rebuilding, or changes in the affected fisheries).

Information collected through the NEFOP is the primary source of data for the Council's SBRM. As such, it is important that the Council receive this information on a regular basis and in a consistent format, so that trends can be monitored, and potential problems and issues can be identified as they arise. A semi-annual report that provides detailed information for all observed trips in the Northeast Region, as proposed in alternative 4.3, would keep the Council updated on the collection of bycatch information and may help to identify bycatch problems in a more timely manner. This should allow the Council to respond more expeditiously and address problems before they worsen and potentially compromise stock rebuilding. Ultimately, reviewing these data regularly will improve fisheries management in the Region and help the Council to better comply with the requirements of the Magnuson-Stevens Act.

It is possible, but not necessary, to adopt both alternative 4.2 and alternative 4.3, or to adopt either alone. Alternative 4.3 would provide for a semi-annual report of discards occurring in New England Council fisheries, while alternative 4.2 would provide for reporting on the efficacy of the SBRM. The most robust reporting procedures would include both, but neither alternative depends upon the other.

There are several potential benefits of requiring a semi-annual bycatch report. The report would highlight the on-going data collection program of the NEFOP, and would formalize a process to provide an ongoing summary of observed discard rates by gear, area, and quarter. This information is not currently provided in one location at this level of detail across fisheries, although some stock assessment documents show discard rates by gear and quarter. A requirement for monitoring annual catch limits and attendant accountability measures may require more frequent discard estimates. The suggested format (see Attachment 1) starts reporting the data that will be needed to track discards. Currently, discard estimates are officially provided only in stock assessments, although some PDTs review discard and discard rate information more frequently on an ad hoc

basis. This report may help to identify discard issues at a temporal scale that is shorter than the assessment cycle or to identify emerging discarding event/issues if reporting is sufficiently timely.

There are, however, also several limitations and concerns associated with the proposed semi-annual report. As proposed, the strata in the report are not identical to the strata used in the SBRM Amendment and to assign observer coverage. This makes a direct comparison to the SBRM methodology difficult, if not impossible. The proposed report would present only a summary of observed discards in the fisheries, without expanding this information to an estimate of total discards. Without this expansion (which would require additional work and, therefore, further delay in presenting the information), the data in the report do not provide a complete picture of discards occurring in a fishery. There would be no context for the data presented in the report, which may lead to misinterpretation or incorrect responses to the data. For example, a high discard-to-kept ratio in one statistical area in one quarter cannot be interpreted without knowing the number of trips observed in the cell, total catch from that cell, etc. There is a risk that outliers (apparently high discard events) will attract undue attention because they are obvious.

Under current data collection, processing, and reporting requirement time frames, the time between an observed fishing trip and the date when the data from that trip would be available for inclusion in a semi-annual report could exceed 9 months. Such a long time lag diminishes the usefulness of such a report if there is an expectation that the information presented would be more current than is possible. By the time the information is presented, any apparent discard problem or event may no longer be occurring. A report such as what has been proposed may invites attempts to micro-manage fisheries based on incomplete data. Requiring such a detailed report on a semi-annual basis would divert resources to prepare a report with limited utility from other tasks such as stock assessments and supporting the development of management actions.

#### **6.10. Rationale for Selecting the Preferred Alternatives**

The specific rationale for the preferred alternatives can be summarized as follows:

- SBRM Review and Reporting Process – **TBD**.

#### **7.2.4. Environmental Consequences of Item 4: SBRM Review/Reporting Process**

This item includes three alternatives addressing whether the SBRM should include a reporting/evaluation process to present information on bycatch rates in the Northeast Region fisheries, and also to compare the effectiveness of the SBRM against the performance standard. The status quo alternative would result in no requirements for an SBRM reporting process, while the other alternatives (either alone or in combination)

would establish a periodic reporting and evaluation process as a formal component of the Northeast Region SBRM. The requirement to provide periodic reporting would specify the types of information to be provided in the reports, and time intervals for which the reports must be prepared (semi-annually, annually, every 5 years, or as part of an existing required reporting process).

#### 7.2.4.1 Effects on Biological Resources

Due to the nature of the alternatives under consideration for this item, which are limited to a decision on whether or not to establish a requirement for a periodic reporting and evaluation process for the Northeast Region SBRM, there are no direct or indirect effects on any biological resources (fishery resources, protected resources, or other non-fishery resources) anticipated for any of the alternatives.

#### 7.2.4.2 Effects on the Physical Environment

Due to the nature of the alternatives under consideration for this item, which are limited to a decision on whether or not to establish a requirement for a periodic reporting and evaluation process for the Northeast Region SBRM, there are no direct or indirect effects on the physical environment (including EFH) anticipated for any of the alternatives.

#### 7.2.4.3 Socio-Economic Effects

Due to the nature of the alternatives under consideration for this item, which are limited to a decision on whether or not to establish a requirement for a periodic reporting and evaluation process for the Northeast Region SBRM, there are no direct or indirect socio-economic effects on fishing vessels, fleets, or ports anticipated for any of the alternatives.

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## Industry-Funded Observer Programs

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This supplement creates a new section of the SBRM Amendment, section 6.7, to address a new item for consideration by the New England Council on the establishment of industry-funded observer programs, including observer set-aside provisions, in its FMPs. This supplement also adds to section 6.9, evaluation of the alternatives; section 6.10, rationale for the preferred alternative; and section 7.2, environmental consequences of the alternatives. For the purposes of the SBRM Amendment, this is considered Item 7 among the alternatives under consideration. The remainder of this section will be structured as if excerpted from the appropriate sections of the SBRM Amendment.

### **6.7. Item 7: Industry-Funded Observer Program Provisions**

#### **6.7.1. Alternative 7.1 – Status Quo**

The only FMP currently with an industry-funded observer program is the Sea Scallop FMP. Beginning in 1999, a percentage of the total allowable catch (TAC) in scallop access areas has been set aside from the amount available to the fishery in order to generate funding for vessels required to carry an observer on a fishing trip. The scallop TAC set-aside was then allocated to scallop vessels in the form of increased trip limits on trips for which an observer is required. The increased trip limits are intended to offset the cost of carrying and paying for an observer. Amendment 10 to the Scallop FMP extended the set-aside program to include a days-at-sea (DAS) set-aside for fishing trips in the open areas. The scallop DAS set-aside was provided to scallop vessels in the form of a reduced DAS charge on fishing trips for which an observer is required. In either case, scallop vessels are required to carry and pay for observers when asked, regardless of the availability of either TAC set-aside or DAS set-aside; i.e., vessels are compensated for carrying an observer only to the extent that the set-asides are available, and once the set-asides are exhausted, fishing vessels required to carry observers bear the entire cost.

Under the status quo alternative, similar provisions would not be created for any other FMP under the Council's jurisdiction. Should the Council decide, at any point in the future, to require permitted fishing vessels to pay for at-sea observers and to develop an observer set-aside program to offset the costs to the vessels of carrying and paying said observers, a full amendment to the subject FMP would be required.

Under the status quo alternative, no changes would be made to the sea scallop observer set-aside program, which would continue to operate as established under Framework Adjustments 16 and 18 and Amendments 10 and 13 to the FMP.

### **6.7.2. Alternative 7.2 – Authorize Observer Service Provider Approval and Certification**

Under this alternative, the sea scallop industry-funded observer regulations at 50 CFR 648.11(h) and (i) implemented via emergency rule would be modified and broadened to apply to all New England Council FMPs. This action would authorize observer service provider approval and certification for all applicable fisheries, should the Council develop and implement a requirement or option for an industry-funded observer program in other fisheries besides sea scallops. It would not, in itself, implement or obligate the Council to develop an industry-funded observer program, but would create the process by which observer service providers can be approved and certified. This alternative should be considered a parallel to developing a Vessel Monitoring System (VMS) type approval process that applies to all fisheries implementing a VMS provision. The VMS type approval process requirements at § 648.9 were established across all fisheries, but a separate action is required under each FMP to implement VMS provisions for each fishery. Similarly, only through a follow-on action for each FMP (either an amendment or framework adjustment, see alternative 7.3) could an industry-funded observer program, along with any observer set-aside provisions, be developed and implemented.

Amendment 13 to the Sea Scallop FMP proposes to make permanent the industry-funded observer regulations that were implemented on December 28, 2006, via emergency rule. While this action is modeled on Amendment 13, it is not contingent on either the continuation of the emergency regulations or the approval and implementation of Amendment 13. Should Amendment 13 be approved, this action would broaden the relevant regulations proposed in Amendment 13 to apply to all New England Council FMPs. Should Amendment 13 not be approved, this action would either replace or reestablish the emergency regulations at § 648.11(h) and (i) to stipulate the process and requirements for observer service provider approval and certification, and revise those regulations to apply more broadly. This action would not expand or modify the regulations at § 648(g), which include the specific requirements for sea scallop vessels to obtain, carry, and pay for observers.

The intent of the current regulations at § 648.11(h) that would be expanded through this action is to allow any entity to become an observer service provider, provided it meets the established approval process and all the responsibilities stipulated. An application would be required to contain detailed information such as contact information; description of past experience with placing individuals in remote field and/or marine environments; evidence of adequate insurance to cover injury, liability, and accidental death for observers during employment; and proof of compensation for observers while employed that meet or exceed U.S. Department of Labor guidelines. NOAA Fisheries Service would review and evaluate each application and, if approved, the observer service provider's name would be added to the list of approved observer service providers. An approved observer service provider would be required to maintain at least eight certified observers that have passed the NOAA Fisheries Service NEFOP Fisheries Observer Training course. The observer service provider would be responsible for all necessary transportation, lodging expenses, and necessary equipment for the

observer. An observer service provider would be required to be available for access by the fishing industry 24 hours per day, 7 days per week. Specific reporting requirements would apply, including the timing of reports to be provided to NOAA Fisheries Service. Additional requirements are detailed in Attachment 2 to this supplement.

This action would include specific standards set by NOAA Fisheries Service that an observer service provider would be required to meet in order to be certified, including that employees of observer service providers meet the NOAA Fisheries Service National Minimum Eligibility Standards;<sup>2</sup> and the observers would be required to pass the NOAA Fisheries Service training course, be physically and mentally capable of carrying out the responsibilities of an observer, and hold a current CPR/first aid certification. NOAA Fisheries Service would retain the authority to review observer certifications and issue observer certification probation and/or decertification if warranted. Additional requirements are detailed in Attachment 2 to this supplement.

#### **6.7.3. Alternative 7.3 – Addition of Industry-Funded Observer and Observer Set-Aside Provisions as a Measure That Can Be Implemented Through Framework Adjustment to the FMPs**

Under this alternative, the development of and/or modifications to an industry-funded observer program, including observer set-aside provisions, could be implemented through a framework adjustment to the relevant FMP. Absent this action, a full FMP amendment would be required for all fisheries, with the exception of the sea scallop fishery. This measure would include general language in the regulations of each FMP that would allow an industry-funded observer program and observer set-aside provisions to be implemented by framework adjustment.

Development of an industry-funded observer program, an observer set-aside program, or changes to either could be implemented by framework adjustment and could include measures such as the level of observer coverage required in the fishery, the basis for an observer set-aside program and the amount of the set-aside (e.g., quota, DAS, etc.), how the set-aside is allocated to vessels required to carry an observer (e.g., an increased trip limit, differential DAS counting, additional trips, an allocation of quota, etc.), the process for vessel notification, how funds are collected and administered from the industry to cover the costs of observer coverage, revisions to the observer service provider program (if adopted in this action), along with any other measures necessary to develop and implement either an industry-funded observer program or an observer set-aside program.

#### **6.9.7. Item 7: Industry-Funded Observer Programs**

For this item, three alternatives are considered: (1) The status quo (no action); (2) authorizing an observer service provider approval and certification process; and (3) adding industry-funded observer and observer set-aside provisions as measures that can be implemented through framework adjustments. It is possible, but not necessary, to

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<sup>2</sup> Available at <http://www.st.nmfs.gov/st4/nop/>.

adopt both alternative 7.2 and alternative 7.3 under this item. Alternatives 7.2 and 7.3 are somewhat independent of one another, such that if alternative 7.2 were implemented, but alternative 7.3 was not, then the observer service provider approval and certification procedures and requirements would be established, but each FMP would continue to require an amendment to establish a requirement to utilize these procedures and requirements for an industry-funded observer program and/or observer set-aside program. This could be done to ensure consistent procedures and requirements across all fisheries for approving and certifying observer service providers, even if FMP-specific amendments would be required to establish the industry-funded observer program.

If, however, alternative 7.2 is not implemented, there is likely little benefit to alternative 7.3, as an amendment to each FMP would remain required to create the observer service provider approval and certification procedures and requirements necessary to implement an industry-funded observer requirement. This would be analogous to Amendment 13 to the Sea Scallop FMP: An amendment was required to establish the observer service provider approval and certification provisions even though the industry-funded observer requirements and observer set-aside provisions were adopted in earlier actions (Framework Adjustments 16 and 18 and Amendment 10 to the Sea Scallop FMP).

The most benefit would be derived if both alternatives 7.2 and 7.3 are adopted in this action. This would establish the observer service provider approval and certification procedures and requirements across all fisheries, and allow development and implementation of an industry-funded observer program, with or without observer set-aside provisions, through a framework adjustment for each fishery.

One reason in particular why it would be prudent to adopt alternatives 7.2 and 7.3 in this action is to facilitate the development of new sector programs or special access programs (SAPs) under the Northeast Multispecies FMP. Amendment 13 to the FMP authorized the development and implementation of both sectors and SAPs through the framework adjustment process. However, should the Council choose to require specialized levels of observer coverage, at industry expense (with or without an observer set-aside program to offset costs), as part of either the sector or the SAP, currently an amendment to the FMP would be required. Adoption of alternatives 7.2 and 7.3 would allow these provisions to be included in the framework adjustment to implement the sector or SAP. The Council's proposed Omnibus Sector Amendment would similarly allow new sectors to be established under other FMPs through a framework adjustment, but adoption of alternatives 7.2 and 7.3 would be necessary for the Council to include in such a framework the provisions for an industry-funded observer program and observer set-aside.

#### **6.10. Rationale for Selecting the Preferred Alternatives**

The specific rationale for the preferred alternatives can be summarized as follows:

- Observer Set-Aside Provisions – TBD.

### **7.2.7. Environmental Consequences of Item 7: Industry-Funded Observer Programs**

This item includes three alternatives addressing whether the SBRM Amendment should establish and authorize observer service provider approval and certification procedures and requirements, and/or add provisions allowing industry-funded observer programs and observer set-aside programs as measures that can be implemented through framework adjustments. The status quo alternative would result in no change to the regulations on observer service provider approval and certifications that currently apply to the sea scallop fishery. The other alternatives would not actually implement any industry-funded observer programs or observer set-aside programs, but would create the mechanisms needed to more quickly and easily develop and implement such provisions in any of the New England Council FMPs.

#### **7.2.7.1. Effects on Biological Resources**

Due to the nature of the alternatives under consideration for this item, which are limited to decisions regarding creating the mechanisms needed to develop and implement industry-funded observer programs rather than actually implementing any such programs, there are no direct or indirect effects on any biological resources (fishery resources, protected resources, or other non-fishery resources) anticipated for any of the alternatives. Any impacts that may be associated with actually implementing an industry-funded observer program and/or an observer set-aside program through a framework adjustment to an FMP would be fully analyzed in the documents supporting the action.

#### **7.2.7.2. Effects on the Physical Environment (Habitat)**

Due to the nature of the alternatives under consideration for this item, which are limited to decisions regarding creating the mechanisms needed to develop and implement industry-funded observer programs rather than actually implementing any such programs, there are no direct or indirect effects on any physical environment (including EFH) anticipated for any of the alternatives. Any impacts that may be associated with actually implementing an industry-funded observer program and/or an observer set-aside program through a framework adjustment to an FMP would be fully analyzed in the documents supporting the action.

#### **7.2.7.3. Socio-Economic Effects**

Due to the nature of the alternatives under consideration for this item, which are limited to decisions regarding creating the mechanisms needed to develop and implement industry-funded observer programs rather than actually implementing any such programs, there are no direct or indirect socio-economic effects on fishing vessels, fleets, or ports anticipated for any of the alternatives. Any impacts that may be associated with actually

implementing an industry-funded observer program and/or an observer set-aside program through a framework adjustment to an FMP would be fully analyzed in the documents supporting the action.

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## Attachment 1

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### National Marine Fisheries Service

### EXAMPLE BYCATCH REPORT

**DATE: SEMI-ANNUAL**

#### 1.0 INTRODUCTION/SUMMARY

- Include a general description of NMFS Observer Program by Quarter – number of trips observed, fisheries of particular interest/focus, etc.
- Discuss funding issues and other related issues/developments
- Provide projections on coverage across fisheries for upcoming quarters

#### 2.0 OBSERVER DATA FOR FISHERY X

##### 2.1 SUMMARY OF OBSERVED TRIPS IN FISHERY X

- Information could be provided for the quarters in question as well as across the entire year to date.

#### EXAMPLE TABLES:

Table S-1. Number of NMFS Observer Days Scheduled for Fishery X during YEAR by Area, Gear, and Quarter

Gear Type	Area	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
GEAR 1	XXX					
	XXX					
	XXX					
GEAR 2	XXX					
	XXX					
	XXX					
GEAR 3	XXX					
	XXX					
	XXX					
Totals						

Table S-2. Distribution of NMFS' Sea Sampling Trips in Fishery X by Gear Type and Quarter  
(Expressed as Percentage of Total Trips as Reported in the VTRs)

NMFS SEA SAMPLING BY QUARTER		1	2	3	4
GEAR 1	Observed Trips				
	Total Trips (VTR)				
	% Trips Observed				
GEAR 2	Observed Trips				
	Total Trips (VTR)				
	% Trips Observed				
GEAR 3	Observed Trips				
	Total Trips (VTR)				
	% Trips Observed				
Total No. Observed Trips YTD					
Total No. Trips YTD (VTR)					
Total % Observed Trips YTD					

Table S-3. Distribution of NMFS' Sea Sampling Trips by Gear Type and Statistical Area in Fishery X

STATISTICAL AREA	GEAR 1	GEAR 2	GEAR 3
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
XXX			
Unknown			

## 2.2 OBSERVER DATA BY GEAR TYPE AND AREA IN FISHERY X

- Information could be provided for the quarters in question as well as across the entire year to date.

Table S-4. Catch and Discards (Lbs.) of All Species on X# Observed Gear Type Trips in Fishery X for Quarter X

SPECIES CAUGHT	DISCARD LBS.	KEPT LBS.	TOTAL CATCH LBS.
Species X			
Species X			
Species X			
Species X			
Species X			
Species X			
Species X			
Species X			
Species X			
Species X			
GRAND TOTAL			

Table S-5. Observed Catch (Kept Fish and Discards) by Statistical Area on X# Observed Gear Type Trips Fishery X for Quarter X

AREA:		Stat Area	Stat Area	Stat Area	Stat Area	Stat Area
Species X	Kept Lbs					
	Discard Lbs					
Species X	Kept Lbs					
	Discard Lbs					
Species X	Kept Lbs					
	Discard Lbs					
Species X	Kept Lbs					
	Discard Lbs					
Species X	Kept Lbs					
	Discard Lbs					

- Repeat above tables for entire year to date.

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## Attachment 2

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### Proposed Regulations for Industry-Funded Observer Program Provisions

#### 50 CFR 648.11

*(h) Observer service provider approval and responsibilities.*

(1) *General.* An entity seeking to provide observer services must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to vessel owners and shall be posted on the NMFS/NEFOP website at <http://www.nefsc.noaa.gov/femad/fsb/>.

(2) *Existing observer service providers.* Observer service providers that currently deploy certified observers in the Northeast must submit an application containing the information specified in paragraph (h)(3) of this section, excluding any information specified in paragraph (h)(3) of this section that has already been submitted to NMFS.

(3) *Contents of application.* An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a fishery observer services provider as set out under paragraph (h)(2) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the U.S. Department of Labor (DOL) guidelines for observers. Observers shall be compensated as a Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers on staff or a list of its training candidates (with resumes) and a request for an appropriate NMFS/NEFOP Observer Training class. The NEFOP training has a minimum class size of eight individuals, which may be split among multiple vendors requesting training. Requests for training classes with less than eight individuals will be delayed until further requests make up the full training class size. Requests for training classes must be made 30 days in advance of the requested date and must have a complete roster of trainees at that time.

(x) An Emergency Action Plan (EAP) describing its response to an 'at sea' emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

*(4) Application evaluation.*

(i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination of the applicant's ability to perform the duties and responsibilities of a fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 business days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS/NEFOP website specified in paragraph (h)(1) of this section and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list of approved observer service providers.

*(5) Responsibilities of observer service providers.*

(i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in a fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (viii) of this section. An approved observer service provider must maintain a minimum of eight appropriately-trained NEFOP certified observers in order to remain approved; should a service provider cadre drop below eight, the provider must submit the appropriate number of candidates for the next available training class. Failure to do so shall be cause for suspension of their approved status until rectified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a fishing vessel or to attend an appropriate NMFS/NEFOP Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on the NMFS/NEFOP website specified in paragraph (h)(1) of this section, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the appropriate fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports.*

(A) *Observer deployment reports.* The observer service provider must report to NMFS when, where, to whom, and to what fishery an observer has been deployed, within 24 hours of their departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hours of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hours of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip that has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal or to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least two weeks following any observed trip. If requested by NMFS, an observer that is at sea during the 2-week period must contact NMFS upon his or her return.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5 pm, Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior must be submitted to NMFS within 24 hours of the event or within 24 hours of learning of the event.

(viii) *Refusal to deploy an observer.*

(A) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider does not have an available observer within 72 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting fishing vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at §600.746.

(C) The observer service provider may refuse to deploy an observer on a fishing vessel that is otherwise eligible to carry an observer for any other reason including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence that clearly disproves the reasons for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by

NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any fishing trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

- (i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;
  - (ii) Evidence of conflict of interest as defined under paragraph (h)(3) of this section;
  - (iii) Evidence of criminal convictions related to:
    - (A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
    - (B) The commission of any other crimes of dishonesty, as defined by state law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;
  - (iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant;
- and
- (v) Evidence of any history of decertification as either an observer or observer provider.

(i) *Observer certification.*

(1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program website: <http://www.st.nmfs.gov/st4/nop/>.

(2) *Observer training.* In order to be deployed on any fishing vessel, a candidate observer must have passed an appropriate NMFS/NEFOP Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, as part of the observer's training, aboard a fishing vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) *Observer requirements.* All observers must:

- (i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;
- (ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board fishing vessels, pursuant to standards established by NMFS. Such standards are available from NMFS/NEFOP website specified in paragraph (h)(1) of this section and shall be provided to each approved observer service provider; and
- (iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section.
- (iv) Hold a current Red Cross (or equivalence) CPR/first aid certification.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the NMFS/NEFOP website specified in paragraph (h)(1) of this section.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraph (i)(3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.