

October 27, 2013

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New England Fishery Management Council
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Richard Robins
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Submitted via email to: nmfs.ner.draftSBRM@noaa.gov.

Re: Comments on Draft Standardized Bycatch Reporting Methodology Omnibus Amendment

Dear Chairman Stockwell and Chairman Robins:

Oceana thanks you for the opportunity to submit these comments on the Northeast Region Omnibus Standardized Bycatch Reporting Amendment Draft document.¹

For more than a decade Oceana has advocated and litigated to improve the quality of information available to support Northeast Region fisheries management under the guidance of the New England and the Mid-Atlantic Fishery Management Councils. Modern fisheries management is becoming more data-dependent every year, so access to high-quality, accurate, and precise catch data is essential. As the SBRM document itself explains, “(t)he primary purpose of bycatch reporting and monitoring is to collect information that can be used reliably as the basis for making sound fisheries management decisions.”²

Oceana’s longstanding goal for the SBRM is to establish a program across the Northeast region that collects accurate and precise information about bycatch in all fisheries and then timely reports this information in a useful form to Councils, fisheries scientists, the fishing industry, and other stakeholders. A robust data collection and reporting system will help identify bycatch interactions that need management attention, improve stock assessments, and support efforts to manage the region’s fisheries.

¹ Standardized Bycatch Reporting Methodology Draft Document downloaded from <http://www.nero.noaa.gov/mediacenter/2013/09/2013nersbrmdraftamendment.pdf>, September 27, 2013. Oceana submits these comment based on the documents available on 9/27/2013 and notes that the document was incomplete at that time with the notable omission of appendices and supporting materials.

² *Id* at 3 (Section 1.3)

There is great potential for the Councils and the National Marine Fisheries Service (NMFS) to support these multiple functions. However, the Agency-led SBRM development process has not done the job. Moreover the Agency's revision of the SBRM irrationally ignores how the fisheries work, by using a data-set that is almost 10-years old, when the fishery had vastly different characteristics, and by failing to consider the management changes brought on by important events such as the introduction of Annual Catch Limit (ACLs) and Accountability Measures (AMs) in the fishery management plan amendments that implemented the 2006 reauthorization of the Magnuson Act (MSA) and the establishment of a catch shares fishery for New England groundfish.

Oceana repeats many of the comments that we raised in a May, 2013 letter to the Fishery Management Action Team (FMAT) chair highlighting deficiencies in the document at that time.³ Despite assurances to the Councils that revisions and modifications would be made prior to public comments⁴, it appears that the majority of the promised changes have not been made the document continues to suffer from deficiencies we identified 5 months ago. Oceana encourages the Councils to ensure that the document is complete before proceeding with approval and submission to the Agency.

For these reasons, despite the need to establish the SBRM as quickly as possible, we urge you to delay Council approval of the SBRM document. It is incomplete and inadequate to satisfy the goals and objectives of the amendment or satisfy the various mandates that guide this action. The SBRM simply does not provide the information needed to identify, recognize, describe, and respond to bycatch in the region or assess the effects of this action on the fisheries of the region. Approving a fundamentally flawed document in the name of speed is unacceptable. Oceana looks to you as chairs of your respective Councils to lead your Councils and disapprove the current SBRM document to allow further development and specific action to address the important shortcomings in the document which can then be approved at a later date.

Oceana encourages the Councils to convene an open *Council-led* process in the near future to publicly develop and refine the amendment to meet the needs of the fisheries of the region and provide the information that fisheries managers, scientists and stakeholders need to manage New England and Mid-Atlantic fisheries.

In the interim, Agency can move forward with an observer allocation process for 2014 regardless of Council action on the draft amendment. An interim plan of action that continues the status quo approach is not ideal but will serve the fisheries of the region until a new SBRM amendment can be completed: a short term solution that Oceana reluctantly accepts.

³ See Oceana letter to Doug Potts, FMAT Chair May 17, 2013.

⁴ See Testimony and Answers to questions by Doug Potts, NEFMC meeting April, 2013 and June, 2013.

The SBRM is an incomplete response to the Court Order in *Oceana v. Locke*

The SBRM includes measures that specifically respond to the court opinion in *Oceana v. Locke*.⁵ As the SBRM document explains, the court found that the 2007 SBRM provided the Agency with undue discretion to determine whether there was insufficient funding and also provided the Agency undue discretion to address insufficient funding to support the goals of the SBRM.

The treatment of funding triggers in the draft document is wholly inadequate. The draft contains only one alternative to the status quo, and does not coherently explain what that alternative is or how it differs from the status quo. The Councils need to take a fresh look at this issue, considering what it really means to have insufficient resources within the context of how fisheries and budgets are actually managed.

The reallocation alternatives presented in the current document are fundamentally incomplete, because they address reallocation observer coverage without addressing reallocating buffers for uncertainty and otherwise modifying management measures to account for the reallocated observer coverage. The Amendment must address this fundamental aspect of the SBRM in order to be consistent with the conservation goals and objectives of the Magnuson Act.

Funding Triggers

While *Oceana* supports developing a formulaic approach to determine when available funds are insufficient to support the needs of the SBRM observer allocation in order to remove Council and Agency discretion from this portion of the allocation process, the draft document fails to contain such an approach. The draft document purports to consider only one alternative to the status quo, but a review of the text intended to describe that alternative reveals that there is no substance to this approach.

The document starts out by claiming that the Amendment “would identify specific funding sources to be used to fund observer coverage under the SBRM each year.”⁶ But the document never actually describes an alternative that would do that. The most specific it gets is the claim that “total available funds allocated to the Northeast Region from the Congressional appropriate funding lines listed in Table 66 would be used to support SBRM consistent with historic practice.”⁷ But the draft document fails to explain why only these funding lines and not others would be considered, fails to explain the relevant aspects of the appropriations and Agency budgeting process, fails to explain whether other discretionary sources of money exist, fails to explain how new or different funding lines that might be applicable would be handled, and fails to explain exactly how much leeway the Agency gives itself in the phrase “consistent

⁵ *Oceana, Inc. v. Locke*, 670 F.3d 1238 (D.C. Cir. 2011)

⁶ Standardized Bycatch Reporting Methodology Draft Document page 238.

⁷ *Id.*

with historic practice.” It appears to all intents and purposes that this alternative is the same as the status quo expressed in different words.

So the Councils must develop alternatives that really do confine Agency and Council discretion. In developing these alternatives, the Councils must consider all the relevant factors, not just federal funding from certain named funding lines. Among these factors to be considered would be other potentially applicable funding lines, discretionary money, existing industry-funding opportunities in the Northeast Region, and the possibility of developing industry-funding alternatives within the SBRM amendment.

Prioritization Alternatives

Prioritizing Buffers for Uncertainty in Conjunction with Changing Observer Levels

The SBRM Amendment’s discussion of the prioritization process should start from the realization that the prioritization is related to the performance standard which is related to the management needs. These three elements can be balanced in more than one way. A reduction in observer coverage increases scientific and management uncertainty which then causes uncertainty in permissible catch levels. The Agency and Council have already begun to explore these tradeoffs between catch levels and uncertainty. In the 2004 SBRM guidance, the Agency described this basic situation:

‘as the CV of the estimate increases, the limit on bycatch for the marine mammal species of interest decreases in a predictable manner. Therefore, managers can determine the costs and benefits associated with various levels of the CVs on both the abundance estimate and the bycatch estimate and allocate funding appropriately to improve either or both estimates.⁸’

The Agency then further discussed the effects of increased uncertainty:

‘if bycatch mortality is not monitored adequately, it increases the uncertainty concerning total fishing-related mortality, which in turn makes it more difficult to assess the status of stocks of fish and other bycatch species, to set the appropriate optimum yields and overfishing levels for fish stocks, to determine acceptable levels of bycatch for other bycatch species, and to ensure that the optimum yields are attained, that overfishing does not occur and that the acceptable levels of bycatch for other species are not exceeded.⁹’

⁸ National Marine Fisheries Service. 2004. Evaluating bycatch: a national approach to standardized bycatch monitoring programs. at 59

⁹ *Id* at 85

More recently, the Council analyzed this type of reduction of quota to account for uncertainty in the discussion of monitoring in the Multispecies sector fishery.¹⁰ This work summarized the effect of various CV levels on different catch scenarios and suggested requiring catch reductions to account for scientific uncertainty and keep catch below set levels. This approach is a fundamental requirement of management under ACLs and AMs as advised by the National Standard One Guidance¹¹

Any observer prioritization process must consider and rationally include the appropriate trade offs between uncertainty and buffers in catch limits to allow for scientific and management uncertainty. If uncertainty is increased as a result of the prioritization, there must be changes to account for this increased uncertainty. The Omnibus SBRM amendment is the appropriate place to develop and consider these necessary changes in every Fishery Management Plan. Without a full consideration of the effect of monitoring prioritization on catch management, the SBRM is incomplete.

What does this mean in terms of alternatives? The SBRM reallocation alternatives section must develop and consider alternatives for *achieving the conservation goals and objectives* of the Magnuson Act prior to considering alternatives for doing the best the Agency can if it *cannot achieve those goals*. Thus, the reallocation alternatives should result not in a simple reallocation of observers but also in a process for rebalancing buffers for uncertainty in the catch limits and management measures that will not receive full funding for their observer needs. It is irrational to completely ignore this vitally important component of the prioritization process.

Reallocation Methodologies

To the extent that one component of reallocation will be reallocation of observers, Oceana offers comments on the incomplete alternatives put forward in the draft. Oceana sees merit in both the Proportional and Penultimate Approaches to prioritizing monitoring resources if funding does not match the needs described by the SBRM analysis. Both approaches are rational and methodical means to reallocate observer coverage – which is only a portion of what a reallocation alternative must do.

Oceana also notes that these prioritization approaches are untested. Without practical application of these tools, there may be unforeseen significant effects on the ability of the SBRM to accomplish its primary purpose to collect information to support management. Oceana suggests that the Councils revise the proportional and penultimate prioritization measures to guard against these shortcomings and improve the transparent oversight of catch

¹⁰ Northeast Multispecies Framework Adjustment 48, page 413-420:

http://www.nefmc.org/nemulti/frame/fw%2048/130307_FW48_Figures_Repaired.pdf

¹¹ National Marine Fisheries Service National Standard One Final Rule (74 Fed. Reg 3178, January 16, 2009)

monitoring in the region. The product of any prioritization must be subject to public review and comment.

The Draft SBRM Does Not Provide Information Needed to Support Management of the Region’s Fisheries

Since 1996, the MSA has required every FMP to ‘establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.’¹² Importantly, the Act also defines a *fishery* as ‘(A)(O)ne or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and (B) any fishing for such stocks.’¹³

When developing an SBRM, the document advises that “(t)he development of an SBRM must consider how, where, and when it is most appropriate to collect information on and monitor bycatch occurring in a fishery, and the most effective SBRM will be designed at the *appropriate operational level*’¹⁴. “ It then clarifies that an ‘FMP is the operational unit used for managing a fishery (or collection of fisheries) that targets the species specifically addressed in the FMP. FMP is the operational unit for MSA compliance.’¹⁵

For these reasons, it is logical that the Councils would want an SBRM that collects and reports bycatch using the ‘operational unit’ for management of the region’s fisheries: the FMP. All management actions are at the FMP level. MSA-mandated accountability is at the FMP level.¹⁶ If bycatch issues are taking place or arise, the response at the Council level will be through an FMP action.

However, instead of allowing the Councils to consider and select the appropriate *operational level* for the fisheries of the region relative the management needs of the fisheries, the Agency has forced the Councils to adopt a new concept, known as the ‘fishery mode’ as the operational unit of the SBRM with emphatic clarity: “While the FMP works very well as the operational unit for devising and implementing fishing regulations, it is not the most efficient or appropriate operational unit for devising and implementing an SBRM’¹⁷” Unlike most other policy decisions, the Councils have not been given the opportunity to consider the effects of the mode approach on the administration of the fisheries of the region or the merits and tradeoffs of this approach. Since the beginning of the previous SBRM, the fishery mode has not been discussed.

¹² Magnuson-Stevens Act Section 303 (a) (11)

¹³ Magnuson Stevens Act, Section 104

¹⁴ Standardized Bycatch Reporting Methodology Draft Document, at 9

¹⁵ Id at 47

¹⁶ Magnuson Stevens Act, Section 303 (a)(15)

¹⁷ Standardized Bycatch Reporting Methodology Draft Document, at 47

Instead the Agency simply opines that, “the fishing mode is a more appropriate operational unit than the FMP...”¹⁸

Oceana has commented in the past that the fishery mode is an ineffective approach to bycatch reporting that provides bycatch data that is of little use to be the ‘basis for making sound fisheries management decisions.’¹⁹ Oceana continues to oppose the use of the fishery mode because this approach 1) does not report bycatch relative to FMPs, 2) does not collect or report bycatch in a spatially useful manner and 3) does not consider the data needed to manage the same species in different stock areas. These weaknesses present problems for the Councils as they try to manage fisheries and can be remedied by rejecting the fishery mode in favor of a Fishery Management Plan-level operational unit.

First the aggregation of FMPs or parts of FMPs under a single mode improperly aggregates catch and shields this bycatch from appropriate management scrutiny. Allowing the Agency to continue to aggregate bycatch by the mode stratification will continue to hamper the efforts of the Councils to identify bycatch problems, manage catch and meet the management objectives of each FMP.

Second continuing to collect and report bycatch information by species (e.g. cod) rather than species and stock area (e.g Georges Bank cod) does not provide useful information for assessment or management. The document even notes that “(s)tock areas will not be considered in the analyses, although retrospective data on observed discards would be available at this scale.”²⁰

To illustrate the inefficiency of the fishery mode, a recent report from the Agency estimated that across the fisheries of the region, over 71,000 mt (156,500,000 pounds) of discards of the 14 species groups occurred during the July 2010 through June 2011 period²¹. Although the data was reported by species such as yellowtail flounder, the report was unable to parse bycatch by FMP or stock and instead reported it by the more general fishery mode. This lack of clarity does not indicate which stock was caught or which fishery should be held accountable. This lack of clarity leaves all stakeholders and managers unable to respond to this vast volume of discards. If this data were reported by stock and FMP level, the Councils could then consider appropriate management actions in response to ensure accountability.

The Councils’ struggle to manage the catch of specific stocks in varying levels of abundance across the region. The Councils should take clear action to include options to define the

¹⁸ *Id.*

¹⁹ *Id.* at 3)

²⁰ Standardized Bycatch Reporting Methodology Draft Document, at 146

²¹ 2012 Discard Estimation, Precision, and Sample Size Analyses for 14 Federally Managed Species Groups in the Northeast Region. NEFSC CRD 12-17.

operational unit for the SBRM to be the FMP level with stock area stratification to provide useful information support management.

The Councils must take this action before moving forward with approval of the SBRM.

The SBRM Does Not Meet the Data Needs of Annual Catch Limits and Accountability Measures

Since the advent of Annual Catch Limits (ACLs) and Accountability Measures (AMs) in 2006, the need for robust catch information has become more critical to ensure that all catch, both landings and discards, are accounted for in the effort to end overfishing. Accurate, precise and timely catch information is essential for the Councils to ensure that ACLs are not exceeded. In the absence of robust data, managers are left to use assumptions about catch without any assurances about the quality of these important descriptors of the fisheries.

In the 2007 SBRM, the Agency declined to assess the bycatch reporting that ACLs and AMs would necessitate. Instead the Agency chose to ignore the mandate for ACLs and AMs, treating it as a future change that could be considered at a later date²². This responsibility cannot be avoided any longer. Managing the FMPs of the region under ACLs and AMs is now the *status quo* for every FMP. The Councils and Agency must ensure that the data collected and reported match the data needs of the respective FMPs to ‘be used reliably as the basis for making sound fisheries management decisions’²³ including in-season closures, overage deductions and the ‘off the top’ Annual Catch Target (ACT) setting process that is used throughout the Mid-Atlantic. Remarkably this process is described in just two sentences in the document without any discussion of the role of data in the process: “The Council then sets corresponding annual catch targets (ACT) for each fishing sector. The commercial quota and recreational harvest limit are the amount of landings remaining after deducting discards from the respective ACTs.”²⁴

The SBRM must include an explicit discussion of the data needed to administer each fishery and its ACLs and AMs. Without this fishery-by-fishery discussion, the SBRM will not support the specification or administration of ACLs and AMs used in the region and cannot be shown to meet the mandates of the MSA.

The Standardized Bycatch Reporting Methodology Must Consider Alternatives to Respond to Management and Scientific Uncertainty Created by the 30% CV Performance Standard

²² See Agency response to Oceana comments in 2008 Standardized Bycatch Reporting Methodology Final Rule (73 Fed. Reg. 4741, January 28, 2008)

²³ Standardized Bycatch Reporting Methodology Draft Document, section 1.3 at 3

²⁴ Id at 39

Uncertainty and assumptions are common and expected in fisheries management. However it is incumbent upon the Agency as part of both NEPA and MSA analysis to fully explore, discuss and account for the effects of this uncertainty on management and science. The document itself recognizes the effects of uncertainty as well, concluding that “(u)ncertainty related to the amount and mortality of discards increases the uncertainty associated with stock assessments, diminishing managers’ ability to accurately set and achieve optimum yield from a fishery.”²⁵

It is troubling then to see that the SBRM does not discuss the effect of CV-associated uncertainty on both management uncertainty²⁶ and scientific uncertainty²⁷ or the need to consider these factors when setting and administering ACLs and AMs. In fact, the SBRM offers just one reference to the stock assessment process as a footnote²⁸ and generalizes the discussion of ACL specification in each fishery.

Oceana has submitted independent analysis of the effects of a 30% CV on bycatch estimates that show this uncertainty to be as much as +/- 100% of the true value²⁹. This is a considerable amount of uncertainty that cannot be ignored. Uncertainty must be discussed in the context of each FMP, an approach that was suggested by the Agency in its 2004 guidance on developing SBRMs: “The appropriate precision standards for the estimates of bycatch depend on the management objectives, the management uses of the estimates, the precision of other information used with the bycatch estimates to make management decisions, and the cost of increasing the precision of the bycatch estimates.”³⁰

For these reasons, the SBRM should be rejected by your Councils to allow a full discussion and consideration of the effects of uncertainty associated with the 30% CV Performance Standard and the ability of this information to support current management of each fishery. Further, as discussed above, if the CV standard cannot be met, the effects of this increased uncertainty must be discussed and accounted for in the SBRM.

The Draft SBRM Does Not Use the Best Available Science in its Consideration of Bias and Precision

²⁵ Id at 2-3

²⁶ Management uncertainty occurs because of the lack of sufficient information about catch (*e.g.*, late reporting, underreporting and misreporting of landings or bycatch). National Marine Fisheries Service National Standard One Final Rule (74 Fed. Reg. 3178, January 16, 2009)

²⁷ Stock assessment models have various sources of scientific uncertainty associated with them and many assessments have shown a repeating pattern that the previous assessment overestimated near-future biomass, and underestimated near future fishing mortality rates (*i.e.*, called retrospective patterns). National Marine Fisheries Service National Standard One Final Rule (74 Fed. Reg. 3181, January 16, 2009)

²⁸ Standardized Bycatch Reporting Methodology Draft Document Footnote 36, at 207

²⁹ McAllister, M. K., 2007. Review of the Northeast Regional Standardized Bycatch Reporting Methodology. Lenfest Ocean Program.

³⁰ National Marine Fisheries Service. 2004. Evaluating bycatch: a national approach to standardized bycatch monitoring programs. at 58

Catch data that is collected and reported to support assessment and management must be both precise and accurate. Accuracy and precision will ensure that bycatch data is representative of the catch of the fishery as a whole and provide useful information to meet the goals and purpose of the respective FMPs and the SBRM. The Agency has advised that bias may present more significant problems for management than precision: "(i)n some instances decreasing bias (including that caused by the observer effect) will be more important than increasing precision."³¹ This necessity for accuracy as well as precision is aptly noted in the objectives of the SBRM: "to establish, maintain, and utilize biological sampling programs designed to *minimize bias* to the extent practicable, thus *promoting accuracy* while maintaining sufficiently high levels of precision"³².

The current SBRM however continues the trend started by the 2007 SBRM by inappropriately focusing its design on achieving goals of precision and largely discounts bias. Bias in data is a serious issue that must be accounted for at the risk, in the words of one NEFMC member of being 'precisely wrong.'³³

The SBRM does a poor job examining and exploring the issue of bias while attempting to justify a conclusion that "there are no bias issues evident"³⁴ in the monitoring of the region's fisheries. This conclusion advanced to justify the findings of the SBRM is not supported by the analysis and discussion in the document. Furthermore, the publication of external reports demonstrating bias in the region's fisheries questions this conclusion.

The discussion of bias in the document relies on an analysis of 2004 observer data to characterize the accuracy of observer data relative to Fishing Vessel Trip Report (FVTR) data. This analysis concludes that an examination of kept pounds 'compares favorably' and 'indicates no evidence of systematic bias.'³⁵ However, an exploration of other metrics indicates that bias may be present in this data. Trip length was 'different' between the observer and VTR data set with a consistently longer trips with observers³⁶. Further when viewed spatially, the document advises that '(t)he null hypothesis of observer proportions equal to FVTR proportions was rejected ($P < 0.05$) in 38 of the 86 comparisons, which suggests that there are some spatial differences in the observed data compared with the FVTR data.'³⁷ Put a different way, bias exists in the spatial data in 44 percent of comparisons. This additional analysis suggests that a difference exists between observed and unobserved trips and observer data is not representative of the fishery.

³¹ *Id* at vi

³² Standardized Bycatch Reporting Methodology Draft Document, at iii

³³ Comments of David Goethel on FW48. New England Fishery Management Council Meeting November, 2012.

³⁴ Standardized Bycatch Reporting Methodology Draft Document Page 177

³⁵ *Id* at 176

³⁶ *Id* at 176

³⁷ *Id* at 177

This weakness in the SBRM analysis of bias is further demonstrated with the analysis performed by Chad Demarest in 2012 to examine bias in the NE Multispecies sector fishery³⁸. Demarest used a more comprehensive examination of eight metrics of fishing behavior³⁹ and used a peer reviewed technique to examine for observer bias⁴⁰. Demarest found that ‘analyses point towards a highly variable but relatively consistent pattern of different fishing behaviors when an observer is on board and when one is not’ and further concluded that ‘fishing behavior across the eight metrics was variable, but that statistically significant differences in reporting were observed across all eight metrics and that the strength of the statistical signal varied depending on how the data were parsed.’⁴¹

The omission of the Demarest analysis comes after Oceana’s specific comments describing its findings to the FMAT in May 2012.⁴² This omission raises questions of the intent of the Agency to reach predetermined conclusions relative to bias and whether the conclusions are arbitrary, capricious and an abuse of discretion.

It should also be noted that the Standardized Bycatch Reporting Methodology has improperly inserted ‘*to the extent practicable*’ language into the goals for accuracy where it is not warranted. The SBRM is required of all FMPs⁴³, not where practicable. Conservation and management measures shall be based upon the best scientific information available⁴⁴, not where practicable. And ACLs and AMs must be included in each Fishery Management Plan to prevent overfishing⁴⁵, not where practicable. Accuracy is therefore necessary for each of these requirements and must be ensured.

The SBRM must be updated with a complete discussion of bias and include measures to assess and account for bias in bycatch monitoring.

The Standardized Bycatch Reporting Methodology Omnibus Amendment Requires an Environmental Impact Statement

³⁸ Summary of Analyses Conducted to Determine At-Sea Monitoring Requirements for Multispecies Sectors FY2013 Page 8-9

(http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf).

³⁹ total landed pounds; total roundfish pounds; total groundfish pounds; total non-groundfish pounds; total cod pounds; total groundfish value; total non-groundfish value; trip duration

⁴⁰ Benoit and Allard (2009)

⁴¹ Summary of Analyses Conducted to Determine At-Sea Monitoring Requirements for Multispecies Sectors FY2013 at 8-9

(http://www.nero.noaa.gov/ro/fso/reports/Sectors/ASM/FY2013_Multispecies_Sector_ASM_Requirements_Summary.pdf).

⁴² See Oceana letter to Doug Potts, FMAT Chair May 17, 2013.

⁴³ See Magnuson Stevens Act Section 303 a(11)

⁴⁴ See Magnuson Stevens Act National Standard Two, Section 301 a(2)

⁴⁵ See Magnuson Stevens Acts Section 303 a(15)

In this comment letter, Oceana identifies a number of specific ways in which the SBRM Environmental Assessment (EA) does not satisfy NEPA, the MSA and the Administrative Procedure Act (APA) These flaws are symptoms of a systematic problem: a measure of such major significance and widespread impact requires that the Agency take a hard look at a full spectrum of alternatives through an Environmental Impact Statement (EIS).

As Oceana has explained in prior comment letters on this process and the previous SBRM iterations⁴⁶, the information and analysis in the SBRM document will have a significant impact on thirteen fisheries from the Canadian border to North Carolina. The information, analysis, and technical guidance contained in a complete SBRM will affect how these fisheries are managed, their stock assessments, and ultimately the efficacy of the management approaches used to reach the goals of the FMPs through ACLs, AMs and other measures. The Omnibus SBRM amendment is a major federal action significantly affecting the quality of the human environment and cannot satisfy the requirements for a Finding of No Significant Impact, or FONSI.

In bringing the environmental analysis into compliance with NEPA, the Council and the Agency must also give proper consideration to the alternatives preemptively and irrationally rejected for consideration in the draft document *before the Councils have even had the opportunity to rationally consider them*. These alternatives include the important alternative of extending the *bycatch* reporting methodology to *bycatch species* rather than only to target species managed under a plan and alternatives to develop and employ alternative monitoring techniques where observer coverage would not be completely accurate. The scoping process that comes with an EIS should prove invaluable in this regard.

Accordingly, the Agency must disapprove the SBRM Amendment as inconsistent with NEPA and swiftly act to develop an EIS and a revised SBRM Amendment that will comply with the Court's order, NEPA, and the Magnuson-Stevens Act. With a wide range of stakeholders affected by the findings of this process, the Agency should engage in a complete scoping process to educate and engage the public about the issue and seek concerns and ideas to be investigated and developed as part of the document. This scoping should include the narrow range of issues that were vacated by the Court, the new challenges posed by the *status quo* ACLs and AMs requirements for the affected fisheries as well as other issues highlighted by stakeholders.

Conclusion and Recommendations-

In conclusion, while it is disappointing that the Agency has not seized the opportunity to improve catch monitoring and reporting in the NE region with the current SBRM , it is not surprising. Since the beginning of the development of the previous SBRM, it has been clear that the intent of the Agency has been to elaborately codify the Agency's outdated approach to

⁴⁶ See Oceana comments related to 2007 Standardized Bycatch Reporting Methodology Amendment and Implementing Regulations, submitted September 24, 2007.

monitoring without ever answering the critically important question of *how much observer coverage do the region's fisheries need to be effectively managed under the current management regime?*

Oceana suggests that the Councils take the following actions when it reviews the Standardized Bycatch Reporting Methodology at their upcoming meetings:

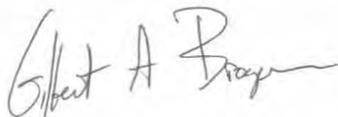
1. Disapprove the Standardized Bycatch Reporting Methodology document. The document is not complete and many of the promises made to the Councils have not been fulfilled.
2. Initiate an Environmental Impact Statement process to identify and address issues related to the primary purpose of the SBRM, to *collect information that can be used reliably as the basis for making sound fisheries management decisions.*
3. Convene a joint ad hoc Council committee to explore the data needs of each fishery and how the SBRM can be structured provide the necessary information to support current management.
4. Task the FMAT with developing options in the SBRM that account for uncertainty associated with the CV30 performance standard in ACL specification processes. Additionally management options should be developed to respond when the CV standard cannot be met.
5. Include alternatives and analysis to ensure accuracy of bycatch data.
6. Require the Agency to publish the observer coverage needs that are associated with the assertion that 'NMFS requests funding for the Fisheries Observer Program that it has *determined necessary to meet the needs of the fishery and to comply with statutory mandates*⁴⁷'

Oceana remains committed to ensuring that the fisheries of the NE region are managed with statistically robust data that is accurate, precise and timely to support sound fisheries management decisions.

We agree with the purpose of the SBRM and look forward to working with the Councils as you continue to develop an SBRM that meets these purposes.

Thank you for considering these comments,

Sincerely,



Gib Brogan
Oceana
Wayland, MA

⁴⁷ Standardized Bycatch Reporting Methodology Draft Document at 119