



New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: November 1, 2006
TO: Council
FROM: Paul Howard, Executive Director
SUBJECT: **Background information on initiating a scallop action for industry funded observer coverage (Amendment 13)**

Since 1999 observer coverage in the scallop fishery has been funded through the Scallop RSA program. A percentage of the TAC in access areas has been deducted before allocations are made to generate funding for vessels required to carry an observer. Amendment 10 extended that requirement to open areas as well. Observer coverage is necessary in the scallop fishery to monitor bycatch of finfish and to monitor interactions with endangered and threatened species. About 1% of the scallop TAC for access areas and 1% of open area DAS are deducted before allocations are made to generate funds for the program. Vessels required to carry an observer are authorized to land more than the possession limit from trips in access areas, and in open areas vessels are charged a reduced amount to help compensate for the cost of an observer. Observers were deployed through a contractual arrangement between NMFS and an observer provider until June 2004. This arrangement was not renewed because of unresolved issues concerning the use of a contract to administer the industry funded observer program. Specifically, there is concern that the previous arrangement conflicted with augmentation of appropriations policy and law. Without the arrangement, there was no mechanism for vessels to pay for observers, and in its absence NMFS did not require vessels to pay for observers, rather NMFS provided the necessary observer coverage through the Observer Program.

In February 2006 the Northeast Fisheries Science Center received their budget for fiscal year 2006 and the level of funding was only sufficient to support minimal observer coverage in the scallop fishery. In April 2006 NMFS determined that it could not reconcile the reduced level of observer coverage. Without an additional mechanism to fund observers the level of coverage would be below recommended levels in the Scallop FMP for precise estimates of bycatch, and would make it difficult to monitor and estimate interactions with sea turtles. Therefore, NMFS implemented an emergency action in June 2006 to reactivate the industry funded observer program [*Final Rule for the emergency action published on June 16, 2006 is included in the Council binder, 71 CFR 34842*]. This emergency regulation was implemented before the access areas opened on June 15 and before the time of year when interactions with sea turtles in the Mid-Atlantic are most likely (June – October). Emergency regulations are in effect for six months, therefore this program will expire in mid December unless a second emergency action is filed. Even if a second emergency action is filed that will only extend the industry funded observer program another six months until June 2007.

Funding at the Northeast Fisheries Science Center is not expected to increase to levels needed to fund the entire observer program necessary to monitor the scallop fishery. Therefore, this industry funded observer program is essential to maintain the level of coverage recommended in the Scallop FMP.

Only two emergency actions can be implemented related to this issue, so in order for regulations to be in place before the access areas open for the 2007 fishing year, a Council action will have to be initiated to reactivate the industry funded observer program under the Scallop FMP. The Scallop FMP still sets aside 1% of access area TAC and open area DAS to fund observers even though the program was not utilized in part of 2004 and all of 2005. Framework 18 was recently implemented for FY2006 and 2007 and it also included a provision for 1% of the TAC and open area DAS to be set aside to defray the cost of industry funded observers. Council staff has discussed what action would be needed to reactivate the industry funded observer program and NMFS has determined that an amendment would be required because this mechanism is not a measure under the current FMP and is not specifically listed as an item that can be considered in a framework action. Due to the nature of this action the Council will pursue the preparation of an Environmental Assessment (EA), not an Environmental Impact Statement (EIS).

If the Council initiates an action at the November 2006 Council meeting it is possible that regulations could be in place near the start of the access area programs in June 2007 provided the measures under consideration are similar to the provisions implemented by the emergency rule. If the alternatives considered vary substantially then it may not be possible to complete the analysis in time for the February Council meeting. If the February Council meeting is the second meeting on this action then it is possible that an industry funded observer program could be in regulation under the Scallop FMP in time for the 2007 access program and before the time of year when sea turtle interactions are most likely. However, if final decisions are not made in February it is unlikely that the mechanism to permit industry funded observers would be in place in time.