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Correspondence regarding
Industry Funded Monitoring
(Nies/Bullard)



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New England Fishery Management Council

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C.M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

June 6, 2013

Mr. John Bullard
Regional Administrator, Northeast Region
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

RE: Development of Industry-Funded Monitoring/Cost-Sharing Programs

Dear John:

The issue of cost sharing for fishery monitoring programs in the Northeast Region is cross-cutting across several management plans, and extensive guidance from the Agency is needed to move forward. Industry-funded monitoring programs are required by Amendment 16 to the Northeast Multispecies (Groundfish) FMP, and will be required by Amendment 5 to the Herring Fishery Management Plan (FMP), and Amendment 14 to the Mid-Atlantic Fishery Management Council's Squid/Mackerel/Butterfish FMP. Unfortunately, progress in addressing issues related to cost-sharing mechanisms for observer programs has been slow.

As you are aware, Herring Amendment 5 includes a requirement for 100% observer coverage on Category A and B herring vessels, with an industry-funded component to become effective one year after the date of Amendment 5 implementation. The Mid-Atlantic Council's Amendment 14 includes similar requirements for limited access mackerel vessels. While both amendments are expected to become effective before the end of 2013, there has been little progress towards developing the details of the industry-funded monitoring programs. To date, the Herring/Mackerel Observer Funding Fishery Management Action Team (FMAT) has only met once (February 2013). There is not a similar effort for the observer funding requirements mandated by Amendment 16.

Increasing my concern is the recent disapproval of the cost sharing proposal in Framework 48 to the Multispecies (Groundfish) FMP. The Interim Final Rule (*Federal Register* May 3, 2013) cites the Anti-Deficiency Act and other appropriations laws as reasons for disapproving this measure. The Interim Final Rule suggests that NMFS believes the approach to cost-sharing proposed in Framework 48 could be viable if restructured and pursued in a future action but does not provide any guidance on what this means. The rationale also states that "*NMFS is already working with the New England and Mid-Atlantic Council's joint Herring-Mackerel FMAT to pursue cost-sharing options such as this one for those fisheries for FY 2014. The Council could consider including the NE Multispecies FMP in this joint effort to develop a workable and consistent cost-sharing mechanism for the Northeast region.*" The FW 48 partial approval letter did not make any mention of the regional approach mentioned in the Interim Final Rule, and the Herring/Mackerel FMAT has not proposed this idea, either. To date, the Council has not received any requests from NMFS regarding the development of a cost-sharing mechanism for multiple Northeast Region fisheries.

Another issue is the limited progress of the existing Herring/Mackerel FMAT. It would be helpful for NERO to update the Council at its September meeting regarding the next steps for the FMAT identified at the February 2013 FMAT meeting. It would also be helpful to understand how these cost-sharing efforts will be coordinated with the fishery dependent data review that was discussed at the May 2013 NRCC meeting.

Without a dedicated effort led by your office to address cost-sharing issues we will not make progress in time to meet the requirements of Amendment 5 and other actions. The Agency will be administering these programs and any cost-sharing agreements, so the development of legally and administratively viable alternatives must start with guidance from NMFS and NOAA General Counsel. It remains unclear whether or not additional Council action will be required to develop the details of the program that is proposed in Herring Amendment 5, or whether an omnibus approach across multiple FMPs would be preferable. If changes to the Magnuson-Stevens Act would be necessary to implement cost-sharing programs, these issues should be highlighted by NMFS during the reauthorization process.

I look forward to working with you and your staff to move forward on these industry-funded monitoring programs. Thank you for your attention to this matter. Please contact me if you have any questions.

Sincerely,



Thomas A. Nies
Executive Director

cc: Dr. Bill Karp, NEFSC
Dr. Chris Moore, Mid-Atlantic Fishery Management Council



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

JUL 30 2013

Thomas A. Nies
Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear Tom:

Thank you for your June 6, 2013, letter regarding cost-sharing for monitoring in the herring, mackerel, and groundfish fisheries. I appreciate your concerns, and I agree that we must take the lead in defining the administrative and legal constraints. That is why we have formed an internal workgroup composed of staff from the Northeast Regional Office, Northeast Fisheries Science Center, and NOAA General Counsel Northeast to research the action items that came out of the first PDT/FMAT meeting. The PDT/FMAT should be able to review the results of this workgroup later this summer. We are taking a comprehensive approach to develop a path forward for all fisheries. However, identifying a legal mechanism to allocate costs for fisheries that do not have a cost-recovery program or other special authorization for fee collection is a complicated issue and there are no easy answers.

As Bill Karp and I relayed to you at the last Northeast Regional Coordinating Committee meeting, our situation is made more complicated by the current budget climate. If we are able to identify a legal mechanism by which to distribute costs, it is not clear whether NMFS would have the resources to implement and administer such a program. Furthermore, the mechanism may not entirely meet the Council's or industry's goals for monitoring and cost-sharing. Thus, I still believe that we must work collaboratively to evaluate the information my staff can compile and develop any cost-sharing program moving forward. Toward that end, we have also been working with the Gulf of Maine Research Institute to host a series of workshops with fishing industry representatives, Council members, and other interested parties in the late summer/early fall to discuss industry-funded monitoring programs and cost-sharing strategies in a more public forum. A major objective of these workshops will be to develop the details of industry-funded monitoring programs for FY 2014 and a standard set of guidelines for cost-sharing that can be applied across multiple fisheries. We will provide more information about the workshops as we finalize the details.



I would be happy to update the Council on our progress and provide more details at the September Council meeting. Should you have any questions in the meantime, please feel free to contact me or my staff.

Sincerely,

A handwritten signature in black ink, appearing to read 'JKB', with a long horizontal line extending to the right.

John K. Bullard
Regional Administrator

Handwritten initials 'fw' in black ink, located to the left of the typed name.

cc: Dr. William Karp, Northeast Fisheries Science Center
Dr. Christopher Moore, Mid-Atlantic Fishery Management Council